REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA.. 2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM..4TH PETITIONER

FA...5TH PETITIONER

KB ....6TH PETITIONER

MO ....7TH PETITIONER

EL..8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN).................................. ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ......12TH PETITIONER

ACHIENG ORERO... 13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY FOR HEALTH... 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL, MINISTRY OF HEALTH... 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF SIAYA COUNTY...3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT ....5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET SECRETARY FOR INFORMATION AND COMMUNICATIONS..7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER, KENYA MEDICAL PRACTITIONERS' AND DENTISTS COUNCIL..9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

CERTIFICATE OF URGENCY

I, **Ochiel J Dudley**, 1st Petitioner's counsel, certify that this matter is urgent and should expediting because:

1. Kenyans are battling the spread of severe acute respiratory syndrome coronavirus 2 (the coronavirus) and the increasing number of serious illnesses and deaths caused by the coronavirus disease (COVID-19), which has been declared a global health pandemic. Yet, Kenya remains at high risk of an extensive spread of the coronavirus and a catastrophic outbreak of COVID-19 according to multiple WHO reports on Country Preparedness and Response Status for COVID-19.

2. To better understand the efficacy of the government's response, from 28 March 2020 to 27 April 2020, the 9th through 13th Petitioners wrote to the Respondents requesting information on the efforts that they had made to combat the pandemic and protect the public. The letters requested that the government provide information regarding: the implementation of mandatory quarantine; Siaya County's burial of James Oyugi, which violated cultural norms, lacked dignity, and was inconsistent with standards for burials during the pandemic; the support that the Respondents were providing to health care workers who were risking their health to protect the community; the rationale for extending quarantine beyond 28

days; and the importation and distribution of the Personal Protective Equipment as part of the COVID 19 Response.

3. Respondents, however, have refused to provide the 9th through 13th Petitioners with the information sought and refused to satisfy their affirmative duty to provide this information to the public.

4. The 1st through 8th Petitioners, all of whom were directly impacted by the Petitioners responses to the pandemic, also requested information from the government—information that directly affected their health and safety. Still, the government failed to respond.

5. In light of the Respondents' refusal to comply with their Constitutional and statutory duties during the COVID-19 crisis, the Petitioners have had no option but to file this Petition.

6. The Application and Petition are both urgent. They concern the violation of fundamental rights and freedoms—not just the right to information, but the right to life and health. The lives and health of thousands could turn on how the Respondents address the pandemic. By denying the public the information necessary to determine the sufficiency of their response, the Respondents are insulating themselves from scrutiny, preventing the public from participating in, and being informed about, the government response, and preventing open discussion about the most effective way for the government to save lives and limit the damage the virus will cause.

7. Any delay in addressing the Respondents' refusal to provide information could significantly impair the public's ability to participate in the steps taken to protect themselves and could prevent the Respondents from receiving important information about how better to address the crisis. Given what is at stake for the Petitioners and the public, addressing this failure is urgent and necessary.

Dated at Nairobi this day of June, 2020

Ochiel JD

OCHIEL J. DUDLEY

ADVOCATE FOR THE 9th PETITIONER

DRAWN AND FILED BY:

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Practice Number: LSK/2020/07699

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AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) .... **1ST INTERESTED PARTY**

NOTICE OF MOTION

(Under Article 22, 23 and 258 of the Constitution of the Republic of Kenya and all enabling statutes and provisions of the law)

TAKE NOTICE that this matter will be heard on the of 2020 at 9:00 am or soon after as the matter may be listed for hearing of the Petitioners' application for orders that:

1. This matter be certified urgent.

2. Pending hearing of the Notice of Motion and Petition a conservatory order be issued compelling the Respondents to supply the Petitioners with the information sought under Article 35 of the Constitution through their letters dated 6 April 2020, 15 April 2020, 17 April 2020, 18 April 2020, 22 April 2020 and 29 April 2020 within **48 hours from service of the court's orders.**

3. The Respondents bear the costs of this Notice of Motion

1. Basis for motion

1. Article 33 entitles every person the right to freedom of expression, which includes freedom to seek, receive or impart information or ideas.

2. Article 35(1) guarantees every citizen the right of access to information held by the State and information held by another person that is required for the exercise or protection of any right or fundamental freedom.

3. Under Article 35(3) the State has an affirmative duty to provide the public with any important information affecting the nation.

4. Article 43 guarantees every person the right to the highest attainable standard of health, which includes the right to health care services.

5. The need to seek, receive and impart information is even more crucial during a global health pandemic. The progression of the pandemic is unpredictable and ever-changing. As of the filing of this Notice of Motion, Kenya had reported over 6,000 cases with more than 140 fatalities. Globally there were more than 10 million confirmed cases and more than half a million fatalities.

6. As has been evident throughout the world, the scope of the harm to life and health has significantly depended on the efficacy of the government's response. The Petitioners, and the public at large, are entitled to information about the government's response.

7. Health depends not only on readily accessible health care, but also on access to accurate information about the nature of the threats, the government's efforts to address those threats, and the means to protect oneself, one's family, and one's community.

8. The right to freedom of expression, which includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media, applies to everyone, everywhere, and may only be subject to narrow restrictions. This right is particularly important under the circumstances, since the dissemination of timely and accurate information about the virus may help the public protect themselves and prevent the spread of the virus.

9. For all of these reasons, on 6 April 2020, 15 April 2020, 17 April 2020, 18 April 2020, 22 April 2020, and 29 April 2020 the Petitioners requested the Respondents to provide information under Article 35 of the Constitution. The letters among others requested the Respondents to provide the Petitioners with information—

- on the implementation of mandatory quarantine;
- on Siaya County's burial of James Oyugi in the dead of the night - violating cultural norms, lacking dignity, and inconsistent with standards for burials during the pandemic;
- support that the Respondents provide to health care workers risking their health to protect the community;
- the rationale for extending quarantine beyond 28 days; and
- rationale for mandatory quarantine as punishment for those who allegedly commit curfew offences.

2. Threat arising from the refusal to supply information

10. To date, the Respondents have refused to provide the information sought by the Petitioners even though the information is necessary for the exercise of rights to life, liberty and health.

11. The Respondent's failure or refusal to supply Petitioners with the information violates the values and principles of governance in Article 10—especially human dignity, rule of law, social justice, human rights, good governance, transparency and accountability. It also violates the principles of public service under Article 232(1)(c) and (f) of the Constitution.

12. The refusal violates the Respondent's obligation under Article 35(1)(a) and 35(3). Article 43, which concern the violation of fundamental rights and freedoms—not just the right to information, but the right to life and health. The lives and health of thousands could turn on how the Respondents address the pandemic. By denying the public the information necessary to determine the sufficiency of their response, the Respondents are insulating themselves from scrutiny, preventing the public from participating in, and being informed about, the government response,

and preventing open discussion about the most effective way for the government to save lives and limit the damage the virus will cause.

13. Any delay in addressing the Respondents' refusal to provide information could significantly impair the public's ability to participate in the steps taken to protect themselves and could prevent the Respondents from receiving important information about how better to address the crisis. Given what is at stake for the Petitioners and the public, addressing this failure is urgent and necessary.

14. Unless this court intervenes and grants the conservatory orders sought, the Respondents' conduct will increasingly endanger the Petitioners' right to life and health in the face of the escalating threat of the COVID 19 pandemic.

Dated at Nairobi this day of 2020

Ochieng

OCHIEL J. DUDLEY
ADVOCATE FOR THE 9TH PETITIONER

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THE COMMISSION ON ADMINISTRATIVE

JUSTICE..8th RESPONDENT

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AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF ERICK OKIOMA IN SUPPORT OF THE NOTICE OF MOTION

I, Erick Okioma, a male adult of sound mind and resident of Kisumu County in the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am the 1st Applicant/Petitioner in this case and competent to swear this affidavit.

2. **THAT** I am making this Affidavit in support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.

3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.

4. **THAT** I am a resident of Nyalenda, Kisumu County and work for a community-based organization called Nelson Mandela TB HIV Community Information and Resource Center.

5. **THAT** I work as a community health champion undertaking community sensitizations, advocacy and outreach services on HIV, TB and Malaria.

6. **THAT** following the reporting of the first person with coronavirus disease ("COVID-19) in Kenya on 12th March 2020, I have had questions on access to health services which questions remain unanswered by the respondents.

7. **THAT** I am nervous given that information that would enable me or people in my community obtain health services in the event we became infected by COVID-19 is not readily available.

8. **THAT** I have written two request for information letters to the respondents both of which remain unanswered.

9. **THAT** in the first request for information letter I wrote together with others, dated 17 April 2020, I requested information from the 1st Respondent on the kind of support being given to health care workers in the COVID-19 response.

   (Annexed and Marked as EO-001 is the *request for information letter dated 17April 2020 on provision of support to health care workers in the COVID-19 response*).

10. **THAT** I have not received any response to this request for information letter.

11. **THAT** in the second request for information letter I wrote together with others, I requested the respondents for information on why quarantine was being used as a form of punishment.

    (Annexed and Marked EO-002 is the *Open Letter and Request for Information On Use of Quarantine as A Form of Punishment and Criminalization of COVID-19 Response* dated 27 April 2020).

12. **THAT** both requests for information letters remain unanswered to date. I still want to receive the requested information from the respondents.

13. **THAT** the failure by the respondents to provide me with the requested information is an ongoing violation of my right to access to information hence the urgent need for this court to provide guidance on this matter.

14. **THAT** with no information I find it difficult to exercise my right to public participation hence the urgency of this petition.

15. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

THAT what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Kisumu this 18th day of June 2020.

ERICK OKIOMA) ____________

) Deponent

)

BEFORE ME)

COMMISSIONER FOR OATHS)

CHARLES .O. ONYANGO Advocate and Commissioner for Oaths P.O. BOX 2878-40100, KISUMU

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Dandora Community AIDS support Association (DACASA)

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 17/April/2020**

This is Exhibit marked "EO-1" referred to in the Annexed affidavit/Declaration of ... Sworn/Declared before me on this ... day of ... 2020 at ... in the Republic of Kenya
Commissioner for Oaths

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON PROVISION OF SUPPORT TO HEALTH CARE WORKERS IN THE COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We are also Kenyan citizens concerned about the state of preparedness of health facilities to deal with COVID-19, given that any of us is likely to use them. The information we seek in this letter is therefore critical to safeguard our rights including right to life, and right to health.

We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" that remains unanswered.

In the previous advisory, we noted the need to support health care workers during this pandemic period through provision of adequate training, and ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks.

We write this urgent request for information letter in light of concerns that health care workers continue to raise as regards to their occupational safety and health risks. We note that it is imperative that the plight of health care workers is urgently, adequately and conclusively addressed given that they have placed themselves and their families at risk to secure the health of this nation.

In our previous advisory, we urged the Ministry of Health to guarantee the safety and well-being of health care workers by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic.

- Ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks through provision of quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and running water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimizing occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Additionally, we proposed that the government ensures this information is available to the public through a live dashboard that is updated on a regular basis with the following information on inputs and processes:

- Number of health care workers trained in every county and in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on trainings provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

However, we take note of the fact that to date there are still complaints and concerns on the protection of health care workers in this pandemic. For instance, the Health Unions (Kenya National Union of Nurses, Kenya Union Clinical Officers and Kenya Medical Practitioners Pharmacist and Dentist Union) have recently done a survey and noted that most of their members in county governments and Ministry of Health have not been adequately trained and or prepared to handle the Corona Virus pandemic.

They have also reported that provision of personal protective equipment (PPE) remains a challenge at health facilities in most counties. The Kenya Medical Practitioners Pharmacists and Dentists' Union in its weekly brief dated 13th April, 2020 called for:

- The need to provide adequate PPEs for all personnel in the hospital including N95 masks, face shields, goggles, scrubs and gowns;
- Designation of specific COVID-19 testing centers for health care workers;
- Provision of catering services to healthcare workers;

- Provision of transport for all health care workers handling COVID-19 patients to and from the hospital to their accommodation facilities;
- Increase in the number of health care personnel;
- Provision of accommodation to health workers on duty during the pandemic (especially those in health facilities treating suspected and confirmed COVID-19 patients.

The government has a Constitutional and legal obligation to ensure every person enjoys their right to the highest attainable standard of health. This obligation cannot be achieved without health care workers. We therefore urge the government in fulfilment of its legal obligations and in line with the World Health Organization guidelines to (among others):

- Ensure that all necessary preventive and protective measures are taken to minimize occupational safety and health risks;
- Provide information, instruction, and training on occupational safety and health, including; refresher training on infection prevention and control (IPC); use, putting on, taking off and disposal of personal protective equipment (PPE);
- Provide adequate IPC and PPE supplies (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) in sufficient quantity to those caring for suspected or confirmed COVID-19 patients, such that workers do not incur expenses for occupational safety and health requirements;
- Familiarize personnel with technical updates on COVID-19 and provide appropriate tools to assess, triage, test, and treat patients, and to share IPC information with patients and the public;
- Provide appropriate security measures as needed for personal safety;

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Number health care workers trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.

(ii) Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

(iii) Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.

(iv) Number of health care workers tested for COVID-19.

(v) Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Signed by the following individuals:

1. Allan Maleche
2. Becky Odhiambo Mududa
3. Bradley Njukia
4. Caroline Oyumbo
5. Cecilia Mumbi
6. Erick Okioma
7. Fenwick Oyumbo
8. Houghton Irungu
9. Mary Ger
10. Nelson Silas
11. Patricia Osero
12. Peter Owiti
13. Samson Onditi
14. Sheila Masinde
15. Steve Anguva

Endorsed by:

1. Amnesty International
2. Boda Boda Association of Kenya
3. COFAS
4. Dandora Community AIDS Support Association (DACASA)
5. EMAC Kenya
6. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
7. Happy Life Development
8. HERAF
9. ICJ – Kenyan Section
10. Kenya Sex Workers Alliance (KESWA)
11. Mumbo International
12. Nelson Mandela TB-HIV Resource Centre Nyalenda
13. Nyarwek Network
14. Transparency International
15. WOYDEP (Wote Youth Development Projects)

cc:

1. Kenya Medical Practitioners Pharmacist and Dentist Union
2. Kenya National Union of Nurses
3. Kenya Union Clinical Officers
4. Association of Public Health Professionals Kenya (APHOK)
5. Kenya Medical Association (KMA)
6. Chairperson, Council of Governors
7. Kenya National Commission on Human Rights
8. Commission on Administrative Justice

Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

Hon. Mutahi Kagwe,
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Chairperson, National Emergency Response
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Good Health Community Programme

Dandora Community AIDS support Association (DACASA)

icj

ICHR

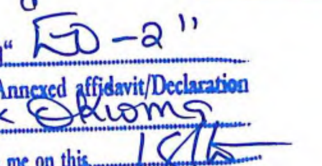
Mbita Suba Paralegal Network

Next Generation of Kenya Lawyers Project

Neema Foundation

SHAPE Kenya

The Eagles for Life (TEFL)



This is Exhibit marked "ED-2"
referred to in the Annexed affidavit/Declaration
of Erick Okiong
Sworn/Declared before me on this 18th
day of June 2020
at Kisumu in the Republic of Kenya
Commissioner for Oaths

Paul Kihara Kariuki,
Attorney General of Kenya,
P.O. Box 40112-00100,
Nairobi.
Email: communications@ag.go.ke; legal@justice.go.ke

Mr. Maina Njoroge,
CEO, Independent Policing Oversight Authority,
1st Ngong Avenue, ACK Garden Annex, 2nd floor,
P.O. Box 23035 – 00100,
Nairobi.
Email: info@ipoa.go.ke

Dr. Bernard Mogesa,
CEO, Kenya National Commission on Human Rights,
1st Floor, CVS Plaza, Lenana Road,
P.O. Box 74359-00200,
Nairobi.
Email: haki@knchr.org; complaint@knchr.org

Dr Rudi Eggers,
WHO Country Representative – Kenya,
Email: afkenwr@who.int

The Chairman,
Council of Governors,
Delta Corner, 2nd floor,
Opposite PWC Chiromo Road, off Waiyaki Way,
P.O Box 40401-00100,
NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:

a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;

b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.

2. The Ministry of Health to provide us with information on the following:

a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;

b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;

c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:

a. Information on the criteria that was used to select hotels and facilities as quarantine centers.

b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.

c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.

d. The approved standard operating procedures of the quarantine facilities.

e. The designated medical personnel responsible for oversight at each quarantine center.

4. The **Council of Governors and all the 47 Governors** urgently share information on:

a. The number of people currently in quarantine in each of their respective counties.

b. The number of people who have been tested in the various quarantine facilities in the counties.

c. The testing schedule of the people in county quarantine.

d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.

e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:

a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –

i. what training these officers have been given to undertake the role of medical experts;

ii. what infection prevention and control protocols they follow; and

iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Commission of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo
27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

cc:

Siddharth Chatterjee,
UN Resident Coordinator in Kenya
Email: siddharth.chatterjee@one.un.org

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR
lfung@ohchr.org

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Spokesperson, Government of Kenya
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governmentmediacentre@ict.go.ke

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice
chair@ombudsman.go.ke

The Chairperson
Senate Ad Hoc Committee on COVID-19
covid19@parliament.go.ke

The Chairperson
National Assembly Health Committee
clerk@parliament.go.ke

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA .... 1ST PETITIONER

ESTHER NELIMA.. 2ND PETITIONER

CHRIS OWALLA .... 3RD PETITIONER

CM... 4TH PETITIONER

FA.. 5TH PETITIONER

KB... 6TH PETITIONER

MO .... 7TH PETITIONER

EL.. 8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN)...................................... ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO..13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH.. 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY...3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT..5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS..7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL..9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF ESTHER NELIMA IN SUPPORT OF THE NOTICE OF MOTION

I, **Esther Nelima**, a citizen of Kenya and resident of Mombasa, within the Republic of Kenya do solemnly make oath and state as follows:

1. **THAT** I am the 2nd Applicant/Petitioner and have the authority to swear this Affidavit.

2. **THAT** I am making this Affidavit is support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.

3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.

4. **THAT** I work as a community health advocate with a community-based organisation called Coast Advocacy Network. My work entails sensitizing the community on issues around HIV, TB and sexual and reproductive health and rights.

5. **THAT** I also document and report to various authorities any health rights violations brought to my attention from the community.

6. **THAT** since the reporting of the first case of the coronavirus disease ("COVID-19") in Kenya I have had challenges engaging with people in the community due to limited information being shared by the government about coronavirus disease.

7. **THAT** the problem of limited information persists to date, hence the urgency of this petition.

8. **THAT** for instance, I currently do not have information on the level of preparedness within my community to deal with COVID-19. I do not know whether:
    a. health care workers in health facilities within my community have been trained;

    b. whether they have adequate personal protective equipment;

    c. whether there are designated facilities for COVID-19 treatment;

    d. whether a designated health facility could admit other patients other than those with COVID-19.

9. **THAT** together with 27 other individuals and 27 organisations, I have written a request for information letter to the respondents requesting for information on why quarantine was being used a form of punishment.

    (Annexed and Marked EN-01 is a copy of the request for information letter on use of quarantine as a form of punishment dated 27 April 2020).

10. **THAT** the respondents have not answered the request for information letter to date. I still want to receive the requested information from the respondents.

11. **THAT** the failure by the respondents to provide me with the requested information is an ongoing violation of my right to access to information hence the urgent need for the court to provide guidance on this matter.

12. **THAT** as a result, I do not have a true picture of the level of preparedness in our community health facilities, and this is causing me and people in my community a lot of unease.

13. **THAT** therefore, the hearing and determination of this petition is of paramount urgency to protect my constitutional right.

14. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

27. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN by the said)
ESTHER NELIMA)
)
at MOMBASA this 18th day)
of June 2020)
)
BEFORE ME:)

JACQUELINE WAIHENYA
Advocate of the High Court of Kenya
Notary Public & Commissioner for Oaths
P/105/3896/98
PC NO. LSK/2020/05273
MOMBASA
Tel: +254-41-2311060
Email: waihenya@jwmadvocates.com

COMMISSIONER FOR OATHS)

____
DEPONENT

DRAWN & FILED BY: -
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P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response
Committee on Coronavirus
Afya House, Cathedral Road,
P.O. Box:30016–00100
Nairobi
Email: ps@health.go.ke;
cabsecretary@health.go.ke

Daniel M. Yumbya,
Chief Executive Officer,
Kenya Medical Practitioners and Dentists Council,
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Nairobi
Email: info@kmpdc.go.ke

Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors,
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Off Waiyaki Way,
P.O. Box 40401 – 00100,
Nairobi, Kenya.
Email: info@cog.go.ke

Dr. Fred Okengo Matiang'i,
Cabinet Secretary for Interior & Coordination
of National Government,
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Nairobi.
Email: ps@interior.go.ke

Mr. Hilary Nzioki Mutyambai,
Inspector General, National Police Service,
Jogoo House 'A' Taifa Road,
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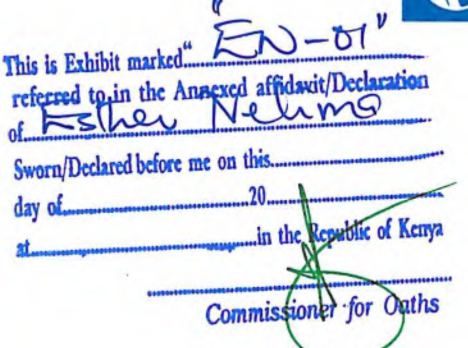
Nairobi.
Email: nps@nationalpolice.go.ke


This is Exhibit marked "EN-01"
referred to in the Annexed affidavit/Declaration
of Esther Nelima
Sworn/Declared before me on this..........
day of..........20..........
at..........in the Republic of Kenya
....
Commissioner for Oaths

Paul Kihara Kariuki,
Attorney General of Kenya,
P.O. Box 40112-00100,
Nairobi.
Email: communications@ag.go.ke; legal@justice.go.ke

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We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:

a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;

b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.

2. The Ministry of Health to provide us with information on the following:

a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;

b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;

c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:

a. Information on the criteria that was used to select hotels and facilities as quarantine centers.

b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.

c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.

d. The approved standard operating procedures of the quarantine facilities.

e. The designated medical personnel responsible for oversight at each quarantine center.

4. The **Council of Governors and all the 47 Governors** urgently share information on:

a. The number of people currently in quarantine in each of their respective counties.

b. The number of people who have been tested in the various quarantine facilities in the counties.

c. The testing schedule of the people in county quarantine.

d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.

e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:

a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –

i. what training these officers have been given to undertake the role of medical experts;

ii. what infection prevention and control protocols they follow; and

iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Commission of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo
27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

cc:

Siddharth Chatterjee,
UN Resident Coordinator in Kenya
Email: siddharth.chatterjee@one.un.org

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR
lfung@ohchr.org

Col. (Rtd) Cyrus Oguna
Spokesperson, Government of Kenya
spox@ict.go.ke;
governmentmediacentre@ict.go.ke

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice
chair@ombudsman.go.ke

The Chairperson
Senate Ad Hoc Committee on COVID-19
covid19@parliament.go.ke

The Chairperson
National Assembly Health Committee
clerk@parliament.go.ke

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA..2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM...4TH PETITIONER

FA...5TH PETITIONER

KB..6TH PETITIONER

MO ....7TH PETITIONER

EL..8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN).. ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO..13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY

FOR HEALTH.. 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH... 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF

SIAYA COUNTY...3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND

COORDINATION OF NATIONAL

GOVERNMENT...5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET

SECRETARY FOR INFORMATION

AND COMMUNICATIONS ....7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE..8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,

KENYA MEDICAL PRACTITIONERS' AND

DENTISTS COUNCIL..9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON

HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF CHRIS OWALLA IN SUPPORT OF THE NOTICE OF MOTION

I, **Chris Owalla,** a male adult of sound mind and resident of Siaya County in the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am the 3rd Applicant/Petitioner in this case and competent to swear this affidavit.

2. **THAT** I am making this Affidavit is support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.

3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.

4. **THAT** following the reporting of the first person with coronavirus disease ("COVID-19") in Kenya, I have been working with other organisations to monitor the government's response to the pandemic.

5. **THAT** I understand that the respondents are under an obligation to ensure the public has access to information on the pandemic.

6. **THAT** I do not have information on how my county, Siaya County, is preparing to deal with COVID-19 pandemic.

7. **THAT** despite daily press briefings from the 1st Respondent, I have no information on what the county COVID-19 committee is doing. I do not know how much resources the county government has set aside for COVID-19, how much has been spent, which are the designated health facilities, whether the health care workers in those facilities have personal protective equipment, whether the health care workers have been trained, where one can be tested, etc.

8. **THAT** 13th April 2020, James Oyugi, suspected to have succumbed to COVID-19 was hurriedly buried in a bizarre manner in the middle of the night at Kamalunga Village, Simur Kondiek Sub-Location, Ukwala, Siaya County.

9. **THAT** together with 12 other individuals and 14 organisations I wrote a request for information letter to the 1st and 2nd Respondents dated 15th April 2020 protesting against the undignified manner in which the deceased had been buried. The letter requested for information from the respondents. **(Annexed and Marked as CO-001** is a copy of the request for information letter dated 15 April 2020 *Protest Against the Undignified Sendoff of the Late James Oyugi and Violation of Guidelines for Handling Bodies Suspected or Confirmed of COVID-19: Request for Information*).

10. **THAT** on 20th May 2020 I received a response from the County Secretary of the 3rd respondent county to the effect that "questions raised in the said letter will be answered once the taskforce investigating the matter finalise the exercise and present its findings on the same." **(Annexed and Marked as CO-002** is a copy of the response dated 20th May 2020).

11. **THAT** since then I have not received any further response to the request for information letter dated 15th April 2020. I still want to receive the requested information from the respondents.

12. **THAT** the failure by the respondents to provide me with the requested information is an ongoing violation of my right to access to information hence the urgent need for the court to provide guidance on this matter.

13. **THAT** the lack of substantive response has caused people to be anxious, and heightened stigma associated with COVID-19 in the community. We have witnessed similar instances in Murang'a and Bomet county hence the urgency in determining this petition. **(Annexed and Marked as EO-003** are copies of newspaper reports on unusual COVID-19 burials).

14. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

THAT what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Kisumu this 18th day of June 2020.

CHRIS OWALLA	)	
	)	Deponent
BEFORE ME	)	
COMMISSIONER FOR OATHS	)	

CHARLES .O. ONYANGO
Advocate and Commissioner for Oaths
P.O. 2876-40100, KISUMU

DRAWN & FILED BY: -

Nerima Were, Advocate,

C/O KELIN

Kuwinda Lane, off Langata Road, Karen C

P O Box 112 - 00202 KNH Nairobi

Mobile: +254 751 292 520

E-mail: nwere@kelinkenya.org

This is Exhibit marked "CO-001" referred to in the Annexed affidavit/Declaration of Chris Owalla Sworn/Declared before me on this 18th day of June 2020 at ...... Commissioner for Oaths

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 15/April/2020**

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

H.E. Cornel Rasanga Amoth
Governor, Siaya County Government

Dear Sir,

RE: PROTEST AGAINST THE UNDIGNIFIED SENDOFF OF THE LATE JAMES OYUGI AND VIOLATION OF GUIDELINES FOR HANDLING BODIES SUSPECTED OR CONFIRMED OF COVID-19: REQUEST FOR INFORMATION

We, the undersigned, are representatives of civil society organizations working in Siaya County, community-based organizations and health and human rights civil society and non-governmental organizations.

We write to you both in our individual and organizational capacities to express our concern in the undignified manner in which the late James Oyugi, a suspected COVID-19 patient, was buried in Siaya County. The undignified burial was conducted in the wee hours of the night of 12th April 2020 in Ugenya Sub-County, Ukwala, Simur Kondiek Sub-Location, Kamalunga village.

We take note of the fact that James Oyugi was the first suspected COVID-19 patient in Siaya County. This occurred more than a month since the first patient was reported in Kenya. As such, the county government and national government agencies in Siaya county had more than a month to prepare and put in place all the necessary measures to appropriately respond to any emerging COVID-19 in Siaya.

We were thus taken aback by reports of James Oyugi's burial in a bizarre ceremony with his body being tossed unceremoniously into a shallow grave at night. No cultural or religious rites were performed, and the family was not given a chance to pay their last respects and accord their loved one a dignified send-off.

We are concerned about the impact of this burial, especially the trauma, distress, and stigma caused to family members and the village. We thus condemn the unethical, unacceptable and bizarre interment that was conducted contrary to national guidelines, and with zero regard to the cultural and religious traditions of the deceased.We are also concerned about the stigma that this act causes to other suspected COVID-19 patients. This is an act with the potential to stigmatize people, make people fear and shun services thereby increasing infections in the community.

James Oyugi is not the first reported death from this pandemic. As of 11th April 2020, seven people had died from COVID-19 in Kenya and accorded dignified burials, during the day and in the presence of their families complete with religious rites.

The Ministry of Health's Guidelines for Safe Disposal of Human Remains of a patient who has died from suspected or confirmed COVID-19 requires that safe disposal of human remains be conducted in a manner that prevents infection, control the spread of disease, is culturally appropriate for the bereaved family and that before the commencement of the handling of the remains, the family must be fully informed about the dignified burial process and their religious and personal rights to show respect for the deceased.

The World Health Organization's guidelines for Infection Prevention and Control for the safe management of a dead body in the context of COVID-19 also provide that the dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout and that hasty disposal of a dead from COVID-19 should be avoided.

In James Oyugi's situation, all the above guidelines were not adhered to. It is imperative that the dead are accorded a dignified and respectful send-off. The need for dignity and respect during send-off cannot be waived even in the face of the current pandemic. Not even in times of war.

We thus condemn in the strongest terms possible the despicable actions of the Siaya County Government, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service who hurriedly oversaw the undignified burial.

We demand that the County Government of Siaya, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service issue a public apology to the family of the deceased, and members of the public.

We also call upon the County Government, the Ministry of Health, the National Police Service and the Ministry of Interior and Coordination of National Government to strictly adhere to guidelines provided in handling suspected and confirmed COVID--19 bodies in Kenya. Dignity in death is of utmost importance.

From the foregoing, we also demand that the County Government of Siaya, Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently provide us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Provide the family of the late Oyugi with a detailed report of the results of the COVID-19 test conducted on the late James Oyugi.

(ii) Provide us with a detailed report on how the decision to bury James Oyugi was made. Who authorized the burial? Who conducted the burial? Why were guidelines not adhered to? Why was the burial conducted at night? Why was the dignity of the dead not respected?

(iii) Provide us with information on measures put in place to ensure this act is not replicated any where in the county and the country.

(iv) Provide us with information on measures taken to ensure that this act does not increase the stigma on COVID-19 patients in the community;

(v) Provide us with information on measures taken to secure the mental health of family members and community members from Kamalunga village through counseling;

(vi) Information on how the family of the deceased and close contacts are being quarantined? In which quarantine facilities? How many health care workers are in those facilities? Has the family and other close contacts been tested? Who will pay the costs of the quarantine?

(vii) Investigation report on the circumstances leading to the death of James Oyugi. Is there a formal inquiry being conducted?

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Yours faithfully,

1. **Chris Owalla** on my own behalf and
   on behalf of Community Initiative Action Group Kenya

2. **Titus Ogalo** on my own behalf and
   on behalf of Transparency International Kenya

3. **Nicholas Ngesa** on my own behalf and
   on behalf of Tembea Youth Centre for Sustainable Development

4. **Janet Okach** on my own behalf and
   on behalf of VSO-Kenya

5. **Mildred Andere** on my own behalf and
   on behalf of Young Women Christian Organisation - Siaya Branch

6. **Enock Chiteri** on my own behalf and
   on behalf of Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter

7. **Isiah Ochieng** on my own behalf and
   on behalf of Ugunja Development Initiative

8. **Aggrey Omondi** on my own behalf and
   on behalf of Ugunja Community Resource Centre

9. **Charles Juma** on my own behalf and
   on behalf of Siaya County Disability Network

10. **Peter Aduda** on my own behalf and
    on behalf of West Ugenya Development Forum

11. **Peter Owiti** on my own behalf and
    on behalf of Wote Youth Development Projects

12. **Allan Maleche** on my own behalf and
    on behalf of Kenya Legal and Ethical Issues Network (KELIN)

Endorsed by: Organizations:

1. Community Initiative Action Group Kenya
2. Community Forum for Advanced & Sustainable Development (COFAS)
3. Kenya Legal and Ethical Issues Network (KELIN)
4. Kenya Sex Workers Alliance (KESWA)
5. Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter
6. Tembea Youth Centre for Sustainable Development
7. Transparency International Kenya
8. Ugunja Development Initiative
9. Ugunja Community Resource Centre
10. Siaya County Disability Network
11. West Ugenya Development Forum
12. Wote Youth Development Projects
13. VSO-Kenya
14. Young Women Christian Organisation - Siaya Branch

CC:

1. **Hon Dr. Fred Okengo Matiangi,**
   The Cabinet Secretary,
   Ministry of Interior and Coordination of National Government.

2. **Hon. Wycliffe Ambetsa Oparanya,**
   Chairperson, Council of Governors.

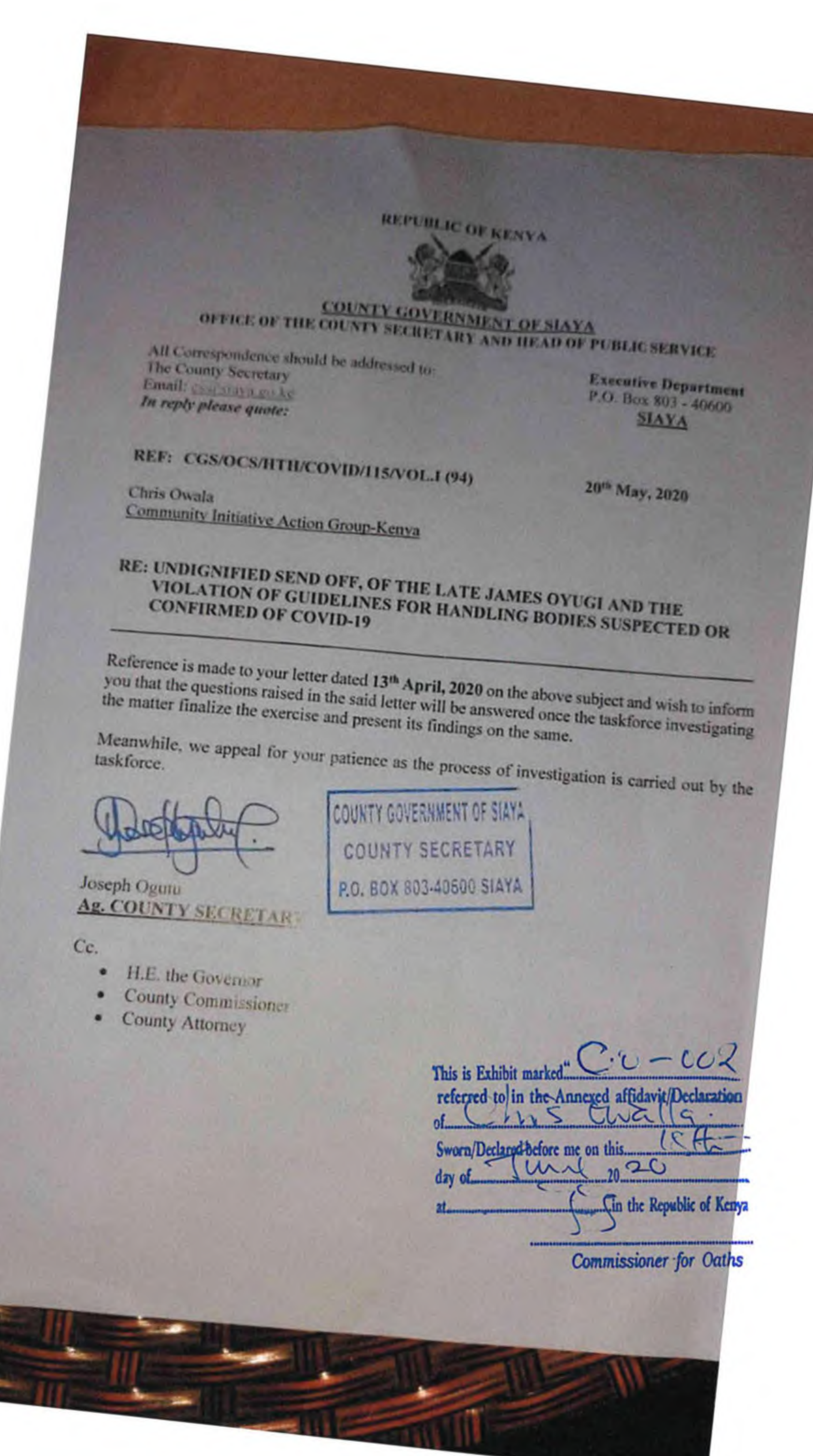
3. **Hillary Nzioki Mutyambai,**
   Inspector General of Police.

4. **Bernard Mogesa,**
   CEO, Kenya National Commission on Human Rights.

5. **Dr. Joyce Mwikali Mutinda,**
   Chairperson, National Gender and Equality Commission (NGEC).

6. **Hon. Florence Kajuju,**
   Chairperson, Commission on Administrative Justice

7. **Li Hsiang FUNG,**
   Senior Human Rights Advisor, OHCHR.



REPUBLIC OF KENYA

COUNTY GOVERNMENT OF SIAYA

OFFICE OF THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE

All Correspondence should be addressed to:
The County Secretary
Email: [illegible]
In reply please quote:

Executive Department
P.O. Box 803 - 40600
SIAYA

REF: CGS/OCS/HTH/COVID/115/VOL.I (94)

20th May, 2020

Chris Owala
Community Initiative Action Group-Kenya

RE: UNDIGNIFIED SEND OFF, OF THE LATE JAMES OYUGI AND THE VIOLATION OF GUIDELINES FOR HANDLING BODIES SUSPECTED OR CONFIRMED OF COVID-19

Reference is made to your letter dated **13th April, 2020** on the above subject and wish to inform you that the questions raised in the said letter will be answered once the taskforce investigating the matter finalize the exercise and present its findings on the same.

Meanwhile, we appeal for your patience as the process of investigation is carried out by the taskforce.

COUNTY GOVERNMENT OF SIAYA
COUNTY SECRETARY
P.O. BOX 803-40600 SIAYA

Joseph Ogutu
Ag. COUNTY SECRETARY

Cc.

- H.E. the Governor
- County Commissioner
- County Attorney

This is Exhibit marked "C.O – 002"
referred to in the Annexed affidavit/Declaration of Chris Owalla
Sworn/Declared before me on this 15th day of June 2020
at ______ in the Republic of Kenya

Commissioner for Oaths

"CO-003"
This is Exhibit marked...
referred to in the Annexed affidavit/Declaration
of Chris Owalla
Sworn/Declared before me on this 18th
June 2020
at ... in the Republic of Kenya
...
Commissioner for Oaths

Bomet Covid-19 victim buried at night

A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family is in quarantine. PHOTO | COURTESY

Summary

- A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family is in quarantine.
- The burial was conducted at around 7 pm Wednesday night in a ceremony that lasted only a few minutes.
- Governor said family members of the patient lied to doctors at Longisa Hospital that he had not travelled out of Bomet

ADVERTISEMENT

By VITALIS KIMUTAI
More by this Author

As Bomet residents were retreating to their homes to beat the 7 pm curfew on Wednesday night, a Land Rover ferrying the remains of the County's first Covid-19 case was making its way to Kagawet village in Itembe Location, Chepalungu where he was buried.

County public health officers presided over the burial of 55-year-old at Erick Kosgei in accordance with the protocols set by the Ministry of Health (MoH).

A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family was in quarantine.

The burial was conducted at around 7 pm Wednesday night in a ceremony that lasted only a few minutes.

Villagers are said to have earlier in the day been requested to help in digging a grave for the deceased as 16 of his relatives are holed up in quarantine at Kaplong Girls High School in Sotik Sub-county.

A few pictures taken by those who witnessed the burial and shared on social media show public health officers dressed in white hazmat suits and other protective gear lowering the body to the grave as darkness engulfs the area.

Also read

Eight arrested after skirmishes along Narok border

Stray lion kills 3 cows in Kwale

Five arrested over murder of Bungoma trader

Covid-19: Nyeri residents keep off hospitals

ADVERTISEMENT

A Land Rover was used to transport the coffin under police escort from Longisa Hospital mortuary to the homestead for final burial rites.

The Nairobi-based businessman had travelled to Bomet County from Nairobi last week using a police vehicle secured by a relative on Monday May 4. He was admitted at Longisa Hospital the same day before passed away the following day.

Mr Kosgei, 55, had a history of diabetes. He had travelled while ill.

Samples taken to Kenya Medical Research Institute (Kemri) on May 5 after he died were finally released on May 12, and showed he had Covid-19.

As a result, 10 doctors and nurses who came in contact with the patient at Longisa Hospital have been placed under quarantine.

A total of 36 people, including 16 of his family members, are now in isolation.

It has emerged that 20 of those quarantined are doctors and nurses who handled the patient at Longisa county referral, and others who handled a second case that tested positive in Nairobi after being transferred from Tenwek hospital.

In the second case, a child from Baringo County who had been taken for eye treatment at Tenwek hospital was transferred to Kenyatta National Hospital (KNH), Nairobi last week and tested positive for coronavirus.

As a result, ten doctors at Tenwek Hospital who came in contact with the child before the referral have also been placed in quarantine as a precautionary measure.

QUESTIONS OVER TRAVEL

Mr Kosgei's travel has raised questions over why he used a police vehicle instead of an ambulance or private car from Nairobi to Bomet and whether clearance was sought from the Ministry.

"A police vehicle was secured by a relative who is policeman to transport the man from Nairobi. He had been undergoing treatment in Nairobi on and off for some time before the transfer to Longisa Referral Hospital," said a family member who did not want to be named.

A relative to the deceased who had accompanied him to hospital had not been traced by public health officers by Wednesday afternoon.

The revelations were made even as questions were raised over why it took so long for Kemri to release the results of his test.

But according to County Executive in charge Medical Services and Public Health, Dr Joseph Sitonik, the tests were repeated to ascertain the results.
He also explained that it takes longer to conduct tests on a body that has been preserved.

"The process of testing samples from a patient is not the same as the one for a body which has been treated with preservatives," said Dr Sitonik, adding that there was no delay in release of the results.

He also said the body had properly been preserved at the mortuary in line with protocols from MoH ahead of its disposal.

LIED TO DOCTORS

Bomet Governor Hillary Barchok warned residents against withholding crucial information from doctors on their recent travels.

He revealed that as a result of Mr Kosgei's non-disclosure, many people including doctors, nurses, mortuary attendants, patients and members of the public have been put at risk of contracting the virus.

"Sadly, family members of the patient lied to doctors at Longisa Hospital that he had not travelled out of Bomet...that he had been brought direct from his rural home for treatment," he said.

He said the county would take charge of the burial arrangements to ensure the family follows laid down health protocols on disposal of bodies for Covid-19 cases.

The county government, he added, will push for disciplinary action against the police officer for his actions which had exposed many others to Covid-19.

Murang’a: Outrage as body of a Covid-19 victim is buried at night

By Njange Maina
Saturday, May 30th, 2020

Body of a man who died of Covid-19 in Murang'a buried at night. PHOTO/COURTESY

In summary

- *After waiting in vain for over seven hours for the County Health officials to arrive, the family members took the body of the deceased to a police station prompting an outcry on social media.*

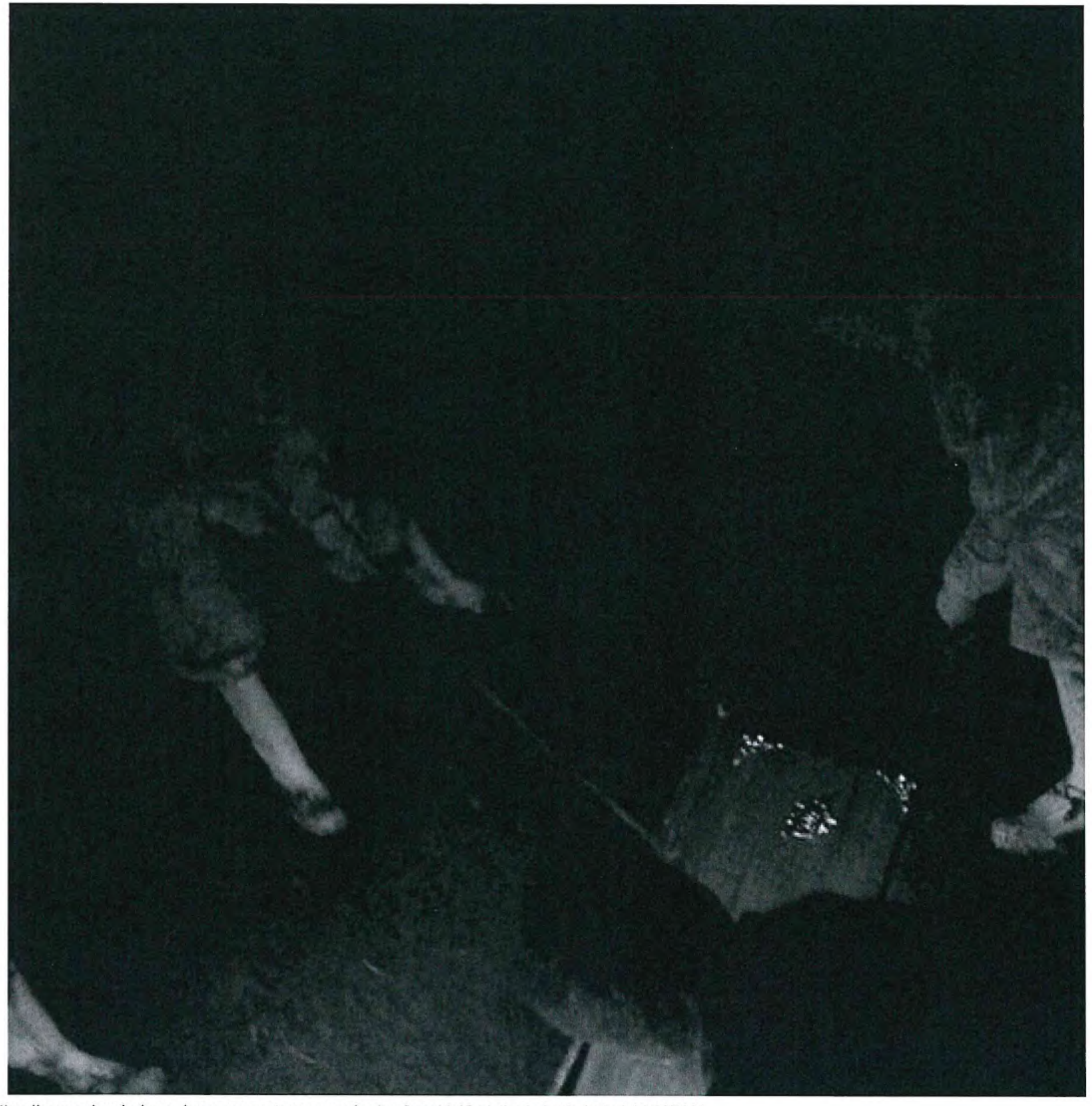
The burial of a Covid-19 victim in Kangema, Murang'a County on Saturday has sparked outrage after it emerged that County health officials delayed close to midnight.

The body arrived from Thika Level 5 hospital in Kiambu County, and was scheduled to be buried by 3 pm.

After waiting in vain for over seven hours for the County Health officials to arrive, the family members took the body of the deceased to a police station prompting an outcry on social media.

A few minutes past 10pm, Murang'a county health officials arrived with protective equipment and laid the body to rest.

Murang'a Health CEC Joseph Mbai blamed Thika Hospital for not notifying the County that the deceased had died of Covid-19.



The body being lowered into the grave PHOTO/COURTESY

Critics blamed health and County officials for discrimination in handling Covid-19 cases. They said only the rich families are accorded dignity.

John Pianist wrote; "your people are buried like dogs especially those from poor backgrounds"

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA...2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM...4TH PETITIONER

FA..5TH PETITIONER

KB...6TH PETITIONER

MO ....7TH PETITIONER

EL...8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK
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THE KENYA SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO..13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH.. 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY...3rd RESPONDENT

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FRED OKENGO MATIANGI, CS INTERIOR AND
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HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

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JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS...7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE..8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF C.M. IN SUPPORT OF THE NOTICE OF MOTION

I, **C.M.** a female adult of sound mind and resident of Nairobi County in the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am the 4th Applicant/Petitioner in this case and competent to swear this affidavit.

2. **THAT** I am making this Affidavit is support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.

3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.

4. **THAT** I was living and working in Malawi prior to the COVID-19 pandemic.

5. **THAT** I came into the country on 23rd March 2020 at 7.20 PM accompanied by my 9-year-old daughter through Jomo Kenyatta International Airport arriving from Kamuzu International Airport Lilongwe in Malawi.

6. **THAT** on arrival in Kenya, the government was neither prepared and did not provide the passengers with prompt, adequate and comprehensive information on how the mandatory quarantine process would take place such as the places that were set aside for them to be placed under mandatory quarantine.

7. **THAT** my daughter and I first faced stigma on arrival at the airport where we were treated differently by the officials that were at the airport as though we had brought COVID 19 into the country. This was despite the fact that I had come from a country, Malawi, which at that time had no reports of people that tested positive COVID 19.

8. **THAT** I was placed in mandatory quarantine together with my nine-year-old daughter for 14 days at HillPark Hotel.

9. **THAT** while in quarantine and in an attempt to get some answers, I joined 14 others and drafted a petition requesting the government of Kenya and the Ministry of health for among others, reasons as to why many of us were not getting tested and once tested that our test results be produced expeditiously and those rendered negative permitted to go into self-quarantine (Annexed and Marked **CM 1** is the "*Petition by the 4th, 5th and 6th Petitioners and 11 other residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 30 March 2020).

10. **THAT** we did not receive a response to the above petition from the 1st Respondent and that on 6th April 2020 we decided to send the petition dated 30 March 2020 a second time seeking a quick response from the government. (Annexed and Marked **CM 2** is the "*Petition by the by the 4th, 5th and 6th Petitioners and 11 other Residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 6 April 2020).

11. **THAT** we also faced stigma in mandatory quarantine facilities where the staff of the hotel were very terrified to interact with us, they even placed food on the floor, knocked on our doors and ran away because they suspected us of having COVID-19. In addition, we face stigma and the threat of stigma from the members of the public considering we came into Kenya from other countries and were in mandatory quarantine.

12. **THAT** I am eager to hear a response from the government to the issues I had raised despite the fact that by filing this petition for the enforcement of my constitutional right to information, I could face further stigmatization attached to the COVID-19 pandemic.

13. **THAT** disclosure of my identity will take away constitutional protection of their right to privacy.

14. **THAT** I am willing to confidentially disclose my true identity only to the Court by way of presenting copies of our national identity cards and any other information that the court may direct once assurances are made by the Respondents herein that my identity will remain confidential.

15. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

THAT what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Nairobi this 17th day of JUNE 2020.

CM) ______________
) Deponent
)
BEFORE ME)
COMMISSIONER FOR OATHS)

NDURU GICHAMBA ADVOCATE & COMMISSIONER FOR OATHS P.O. Box 55645-00200, NAIROBI

DRAWN & FILED BY: -
Nerima Were, Advocate,
C/O KELIN
Kuwinda Lane, off Langata Road, Karen C
P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

This is Exhibit marked "CM-1"
referred to in the Annexed affidavit/Declaration
of CM
Sworn/Declared before me on this 25th
day of June 2020
at Nairobi in the Republic of Kenya
Commissioner for Oaths

Monday 30th March 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

PETITION BY THE RESIDENTS OF HILLPARK HOTEL TO THE GOVERNMENT OF KENYA ON ACCOMMODATION AND TESTING

We, the people now under Government-mandated quarantine currently residing at Hillpark Hotel, are making this request to the Ministry of Health and the Government of Kenya to accept our request for expediting of our testing process and related health check-ups, and to address our accommodation costs, in the manner specifically outlined below.

1. Testing and Quarantine
    a. Many of us are on our 7th day (or beyond) of quarantine and we have not yet been tested.
    b. We request that test results are availed to us within a 24-hour period as promised. A longer wait time will increase our anxiety and will result in more days in quarantine.
    c. Once we are tested on the 5th day, should the result come back negative, those that test negative should be permitted to go into self-quarantine.
    d. We request a psychiatric evaluation of all individuals placed in quarantine, during their stay and at the end of their period. This is largely due to the fact that isolation will likely take a toll on our mental health and increases anxiety and depressive thoughts that could result in long-term consequences.
2. Payment to Hotels
    a. Hon. Mutahi Kagwe, in his press statement on March 23, 2020 stated that "hotels should be charging no more than 50% or 25% of the total charges of the hotel." (https://www.youtube.com/watch?v=Nw7ykmBsFjE). While we commend the Hillpark Hotel for their attempt to reduce the costs as per the directive, the stated cost of KSh. 7,000 per day is still a very high rate for us, and we request for government support to subsidize these costs. Despite our specific extenuating financial circumstances, as part of our commitment to our health and safety, and that of other wananchi, we are each still willing to pay a maximum amount of Kshs. 50,000/- per person for our total stay. We request the GoK to subsidize the remaining costs of Kshs. 48,000/- per person for our quarantine period or negotiate a waiver with the hotel for this amount.
        i. We believe that the Kshs. 50,000/- amount is reasonable to pay, given that our rooms will not be cleaned for 14 days, and we are required to change our own linen.

ii. We are also unable to use the gym, swimming pool and other hotel facilities, which would ordinarily be available to us.

iii. We are unable to have our clothes washed, which might also be carrying the virus, hence increasing the chance of disease.

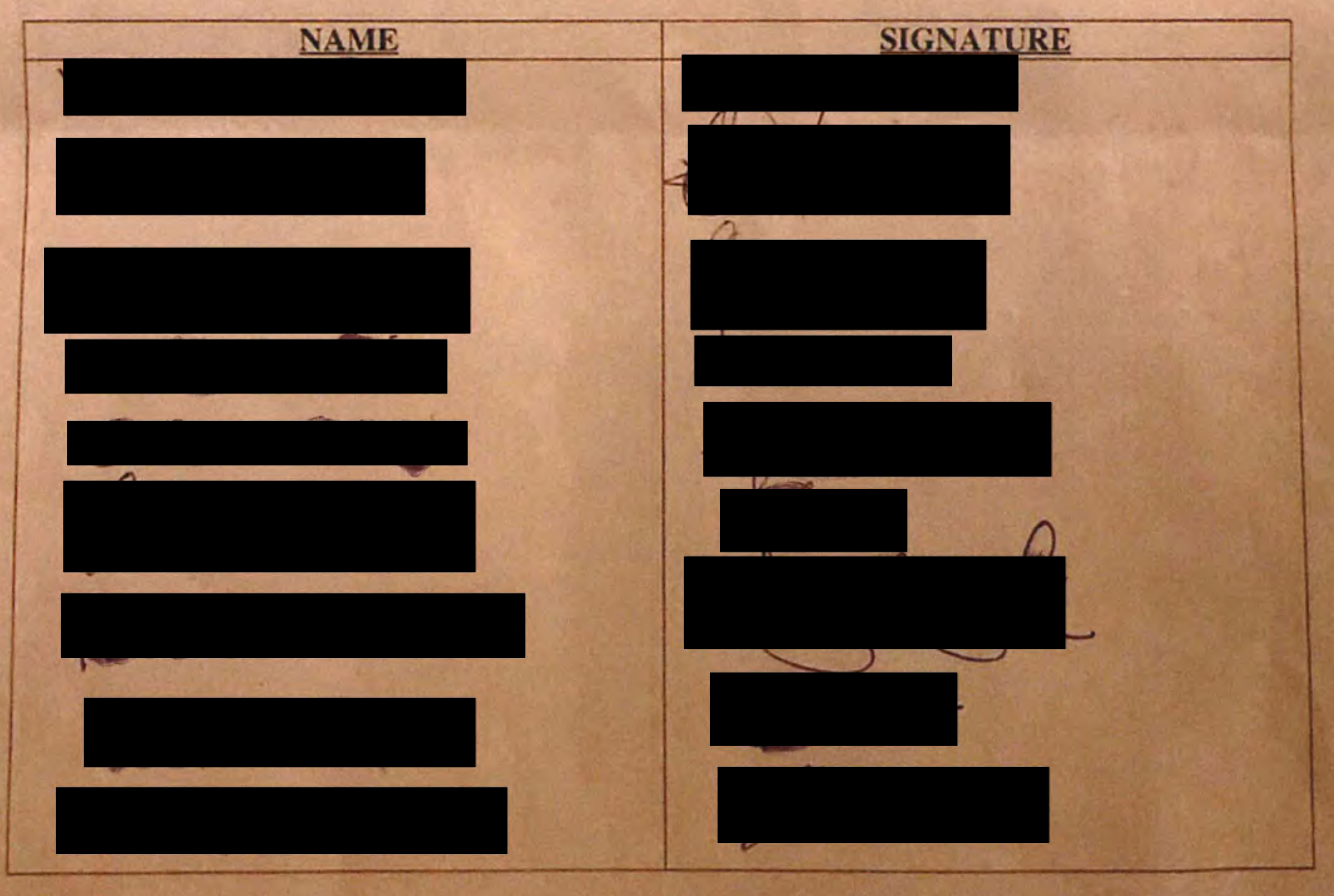
iv. Many of us that are quarantined, are students, and others are parents with financial responsibilities. Some of us have also been laid off from our jobs abroad and are currently unemployed, and so this unforeseen cost is an extra financial burden.

b. If the GoK is unable to subsidize the cost, we request that the GoK release those that have negative test results to be allowed to self-quarantine at home. We have already provided our phone numbers, so tracking our location during the self-quarantine period is still possible.

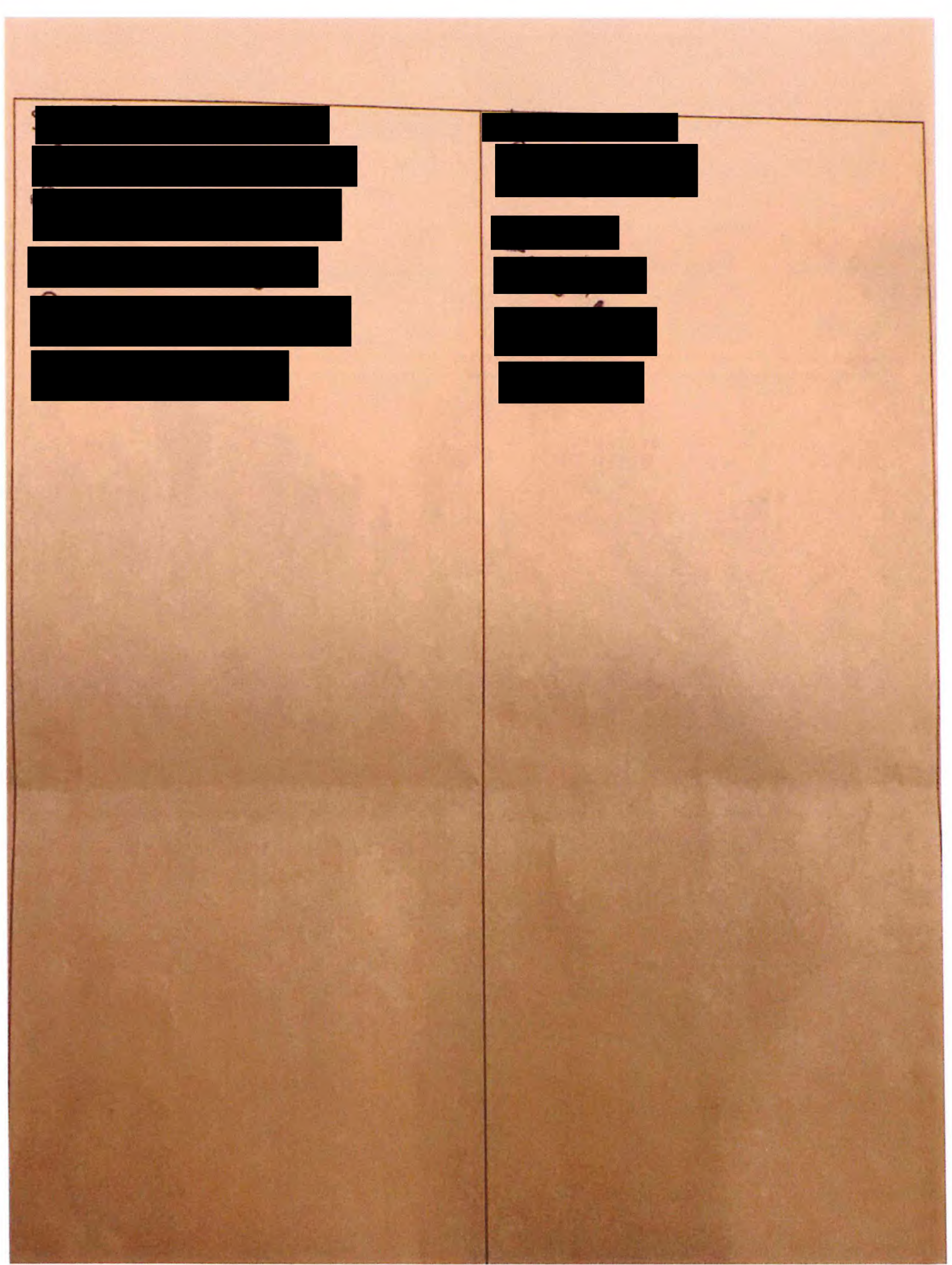
Sincerely,

The Residents-in-Quarantine at Hillpark Hotel, Nairobi
(Signatures below)

By signing below, I acknowledge that I am a resident-in-quarantine at the Hill Park Hotel, Nairobi. This signature serves as an endorsement of the above stated terms and requests made to the Ministry of Health and the Government of Kenya



NAME	SIGNATURE



This is Exhibit marked "CM-2"
referred to in the Annexed affidavit/Declaration
of CM
Sworn/Declared before me on this 17th
day of June 2026
at Nairobi in the Republic of Kenya
Commissioner for Oaths

Monday 6th April 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

PETITION BY THE RESIDENTS OF HILLPARK HOTEL
TO THE GOVERNMENT OF KENYA ON ACCOMMODATION AND TESTING

We, the people now under Government-mandated quarantine currently residing at Hillpark Hotel, are making this request to the Ministry of Health and the Government of Kenya to accept our request for expediting of our testing process and related health check-ups, and to address our accommodation costs, in the manner specifically outlined below. We made this request to our MoH officials on-site on March 30th and received no response. Many of us in the hotel are scheduled to complete our 14 days today, April 6th and check out tomorrow, April 7th. Your prompt response would be appreciated.

1. Testing and Quarantine
   a. We request that test results are availed to us within a 24-hour period as promised. We were tested on Saturday 4th April and still have not received our results. A longer wait time will increase our anxiety and will result in more days in quarantine.
   b. We request a psychiatric evaluation of all individuals placed in quarantine, during their stay and at the end of their period. This is largely due to the fact that isolation will likely take a toll on our mental health and increases anxiety and depressive thoughts that could result in long-term consequences.
2. Payment to Hotels
   a. Hon. Mutahi Kagwe, in his press statement on March 23, 2020 stated that "hotels should be charging no more than 50% or 25% of the total charges of the hotel." (https://www.youtube.com/watch?v=Nw7ykmBsFjE). While we commend the Hillpark Hotel for their attempt to reduce the costs as per the directive, the stated cost of KSh. 7,000 per day is still a very high rate for us, and we request for government support to subsidize these costs. Despite our specific extenuating financial circumstances, as part of our commitment to our health and safety, and that of other wananchi, we are each still willing to pay a maximum amount of Kshs. 50,000/- per person for our total stay. We request the GoK to subsidize the remaining costs of Kshs. 48,000/- per person for our quarantine period or negotiate a waiver with the hotel for this amount.
      i. We believe that the Kshs. 50,000/- amount is reasonable to pay, given that our rooms will not be cleaned for 14 days, and we are required to change our own linen.

ii. We are also unable to use the gym, swimming pool and other hotel facilities, which would ordinarily be available to us.
iii. We are unable to have our clothes washed, which might also be carrying the virus, hence increasing the chance of disease.
iv. Many of us that are quarantined, are students, and others are parents with financial responsibilities. Some of us have also been laid off from our jobs abroad and are currently unemployed, and so this unforeseen cost is an extra financial burden.

Sincerely,

The Residents-in-Quarantine at Hill Park Hotel, Nairobi

Below you will find the names and our individual cases as to why we are requesting financial support to offset the costs of our stay.

I am a single parent with school going kids, I can't afford to pay the amount stated by the hotel. I had booked an apartment before, fully paid with shopping to self-quarantine. I still have to look for ways to feed my kids and rent after the quarantine.

I am a single mother, with no funds to pay for this, as I take care of my child by myself.

My daughter and I are housed in two different rooms which is cost prohibitive as I have to meet the cost of two separate rooms.

I am a full-time postgraduate student at the University of Pretoria, SA and on scholarship. Raising the amount levied by the hotel is therefore not feasible for me.

I am a single mum and lost my job in Malawi since my boss had to go back to his country. I do home schooling there for my daughter. I haven't been paid for March and don't know when I will and I have no idea what will happen if I don't get paid. I can't afford to pay the amount, please help.

I am on full scholarship at a university and have no job or source of income to pay for the cost of the hotel. my parents are also prioritizing on basic needs in these uncertain times.

My name is [redacted], I came home due to the termination of my job contract. I am currently unemployed; therefore I am not in a position to pay the hotel bill as I cannot afford it.

I set up a management consultancy firm early in the year. As a result of the pandemic, work has diminished. I need to hang onto whatever little income I have now.

I'm a struggling electrician, with no source of income and a young family of four to support. All the resources I could scram up from savings, friends and family went into the last ticket to bring me home and to pay the quarantine deposit.

I am a student on full scholarship at NYU, and so am unable to afford the costs of this hotel. I am financially independent and do not have support from my parents. I am also from Mombasa and hope to leave to return to my home city as soon as possible.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION ____ OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

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BETWEEN

ERICK OKIOMA .... 1ST PETITIONER

ESTHER NELIMA.. 2ND PETITIONER

CHRIS OWALLA .... 3RD PETITIONER

CM.. 4TH PETITIONER

FA.. 5TH PETITIONER

KB.. 6TH PETITIONER

MO .... 7TH PETITIONER

EL.. 8TH PETITIONER

KATIBA INSTITUTE .... 9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN).. 10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) .... 11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO..13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH.. 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY...3rd RESPONDENT

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THE COMMISSION ON ADMINISTRATIVE

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DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL..9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF F.A. IN SUPPORT OF THE NOTICE OF MOTION

I, **F.A.** a male adult of sound mind and resident of Nairobi City County in the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am the 5th Applicant/Petitioner in this case and competent to swear this affidavit.

2. **THAT** I am making this Affidavit is support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.

3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.

4. **THAT** I travelled back to Kenya from Malawi, where I had gone to work on 23rd March 2020, after hearing on the news that the boarders will be closed on 25th March 2020.

5. **THAT** on arrival at the airport I could sense fear by the airport staff about the passengers who had arrived from outside the country.

6. **THAT** I felt stigma by the way I was treated at the airport especially when I could not afford the expensive hotels and some of the security officials would make remarks like we, the passengers were the ones that brought COVID 19 into Kenya.

7. **THAT** I was placed under mandatory quarantine at Hill Park Hotel for 14 days.

8. **THAT** while in quarantine, I joined 14 other individuals in writing a letter to the Government of Kenya asking questions about accommodation and testing. **(Annexed and Marked FA-001** is the "*Petition by the 4th, 5th and 6th Petitioners and 11 other Residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 30 March 2020)

9. **THAT** we again resend the letter addressed to the respondents and pleaded for a prompt response, but this was a vain attempt at getting the help we needed. **(Annexed and Marked FA-002** is the "*Petition by the 4th, 5th and 6th Petitioners and 11 other Residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 6 April 2020)

10. **THAT** I have never seen an acknowledgment letter or received a written response to the above letters hence the need to urgently hear and determine this petition.

11. **THAT** I faced stigma and the threat of stigma from the public, considering I have been in mandatory quarantine and had just come into the country from another country therefore being suspected of having COVID 19 infection.

12. **THAT** since I have filed this petition to enforce my right to access information, I could face further stigmatization attached to my stay at quarantine if my identity is not protected. However, given the extent of the stigma and mental anguish I have faced I am still willing to proceed with the petition in the hope that I will finally receive the information sought.

13. **THAT** disclosure of my identity will take away the constitutional protection of my right to privacy. As such, it is essential that measures are taken to ensure my identity remains unknown to prevent a violation of the foregoing right.

14. **THAT** I am willing to confidentially disclose my true identity only to the Court by way of presenting copies of my national identity card and any other information that the court may direct.

15. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

THAT what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Nairobi this 18th day of June 2020.

FA) ______________________

) Deponent

)

BEFORE ME)

COMMISSIONER FOR OATHS)

DRAWN & FILED BY:

Nerima Were, Advocate,
C/O KELIN
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P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

This is Exhibit marked "CM-1" referred to in the Annexed affidavit/Declaration of CM
Sworn/Declared before me on this 18th day of June 2020 at Nairobi in the Republic of Kenya
Commissioner for Oaths

Monday 30th March 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

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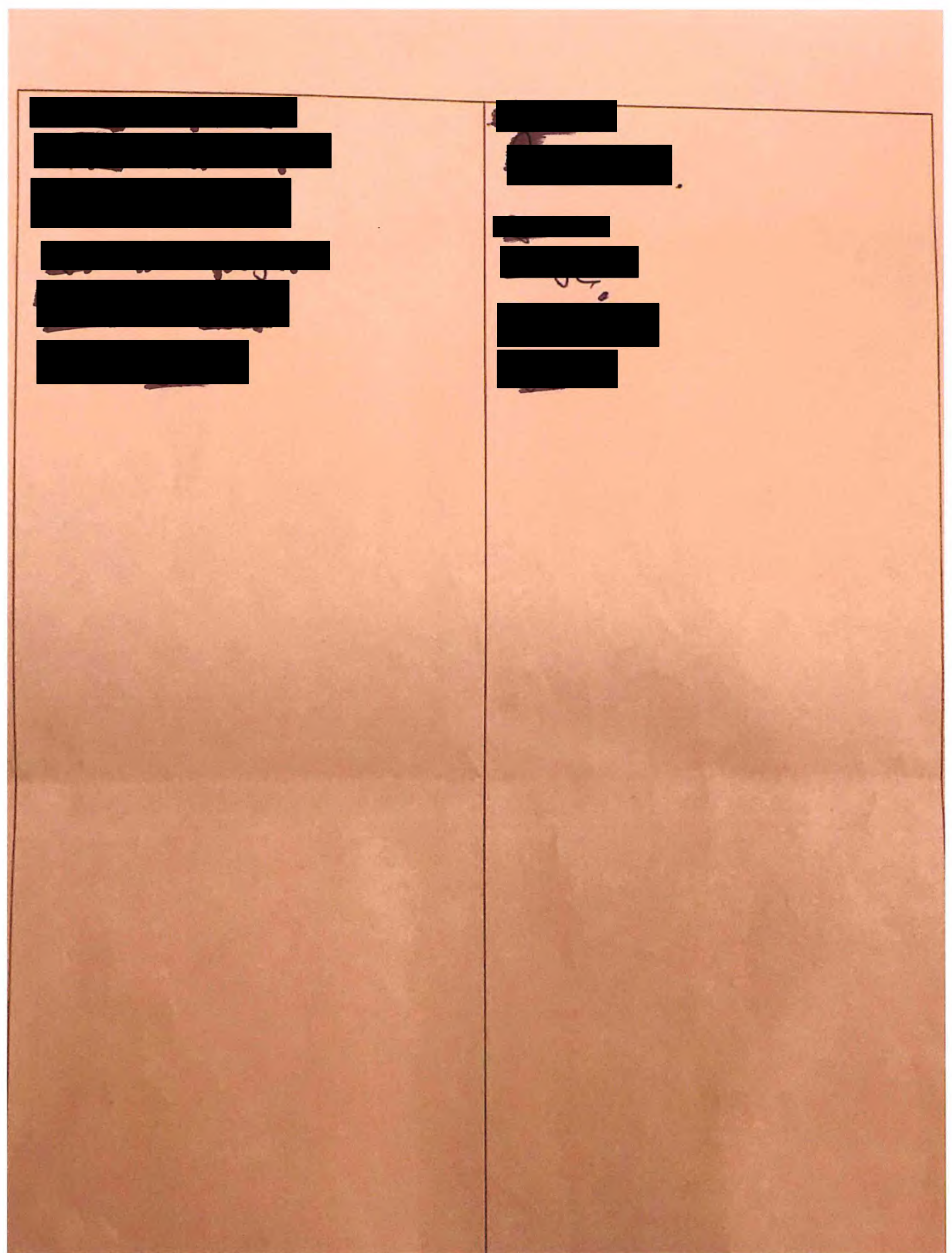
   d. We request a psychiatric evaluation of all individuals placed in quarantine, during their stay and at the end of their period. This is largely due to the fact that isolation will likely take a toll on our mental health and increases anxiety and depressive thoughts that could result in long-term consequences.
2. Payment to Hotels
   a. Hon. Mutahi Kagwe, in his press statement on March 23, 2020 stated that "hotels should be charging no more than 50% or 25% of the total charges of the hotel." (https://www.youtube.com/watch?v=Nw7ykmBsFjE). While we commend the Hillpark Hotel for their attempt to reduce the costs as per the directive, the stated cost of KSh. 7,000 per day is still a very high rate for us, and we request for government support to subsidize these costs. Despite our specific extenuating financial circumstances, as part of our commitment to our health and safety, and that of other wananchi, we are each still willing to pay a maximum amount of Kshs. 50,000/- per person for our total stay. We request the GoK to subsidize the remaining costs of Kshs. 48,000/- per person for our quarantine period or negotiate a waiver with the hotel for this amount.
      i. We believe that the Kshs. 50,000/- amount is reasonable to pay, given that our rooms will not be cleaned for 14 days, and we are required to change our own linen.



This is Exhibit marked "CM2"
referred to in the Annexed affidavit/Declaration
of CM
Sworn/Declared before me on this
day of 20
at in the Republic of Kenya
Commissioner for Oaths

Monday 6th April 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

PETITION BY THE RESIDENTS OF HILLPARK HOTEL TO THE GOVERNMENT OF KENYA ON ACCOMMODATION AND TESTING

We, the people now under Government-mandated quarantine currently residing at Hillpark Hotel, are making this request to the Ministry of Health and the Government of Kenya to accept our request for expediting of our testing process and related health check-ups, and to address our accommodation costs, in the manner specifically outlined below. We made this request to our MoH officials on-site on March 30th and received no response. Many of us in the hotel are scheduled to complete our 14 days today, April 6th and check out tomorrow, April 7th. Your prompt response would be appreciated.

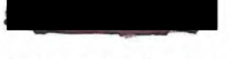
1. Testing and Quarantine
    a. We request that test results are availed to us within a 24-hour period as promised. We were tested on Saturday 4th April and still have not received our results. A longer wait time will increase our anxiety and will result in more days in quarantine.
    b. We request a psychiatric evaluation of all individuals placed in quarantine, during their stay and at the end of their period. This is largely due to the fact that isolation will likely take a toll on our mental health and increases anxiety and depressive thoughts that could result in long-term consequences.
2. Payment to Hotels
    a. Hon. Mutahi Kagwe, in his press statement on March 23, 2020 stated that "hotels should be charging no more than 50% or 25% of the total charges of the hotel." (https://www.youtube.com/watch?v=Nw7ykmBsFjE). While we commend the Hillpark Hotel for their attempt to reduce the costs as per the directive, the stated cost of KSh. 7,000 per day is still a very high rate for us, and we request for government support to subsidize these costs. Despite our specific extenuating financial circumstances, as part of our commitment to our health and safety, and that of other wananchi, we are each still willing to pay a maximum amount of Kshs. 50,000/- per person for our total stay. We request the GoK to subsidize the remaining costs of Kshs. 48,000/- per person for our quarantine period or negotiate a waiver with the hotel for this amount.
        i. We believe that the Kshs. 50,000/- amount is reasonable to pay, given that our rooms will not be cleaned for 14 days, and we are required to change our own linen.

ii. We are also unable to use the gym, swimming pool and other hotel facilities, which would ordinarily be available to us.
iii. We are unable to have our clothes washed, which might also be carrying the virus, hence increasing the chance of disease.
iv. Many of us that are quarantined, are students, and others are parents with financial responsibilities. Some of us have also been laid off from our jobs abroad and are currently unemployed, and so this unforeseen cost is an extra financial burden.

Sincerely,

The Residents-in-Quarantine at Hill Park Hotel, Nairobi

Below you will find the names and our individual cases as to why we are requesting financial support to offset the costs of our stay.



I am a single parent with school going kids, I can't afford to pay the amount stated by the hotel. I had booked an apartment before, fully paid with shopping to self-quarantine. I still have to look for ways to feed my kids and rent after the quarantine.

I am a single mother, with no funds to pay for this, as I take care of my child by myself.

My daughter and I are housed in two different rooms which is cost prohibitive as I have to meet the cost of two separate rooms.

I am a full-time postgraduate student at the University of Pretoria, SA and on scholarship. Raising the amount levied by the hotel is therefore not feasible for me.

I am a single mum and lost my job in Malawi since my boss had to go back to his country. I do home schooling there for my daughter. I haven't been paid for March and don't know when I will and I have no idea what will happen if I don't get paid. I can't afford to pay the amount, please help.

I am on full scholarship at a university and have no job or source of income to pay for the cost of the hotel. my parents are also prioritizing on basic needs in these uncertain times.

My name is [redacted] I came home due to the termination of my job contract. I am currently unemployed; therefore I am not in a position to pay the hotel bill as I cannot afford it.

I set up a management consultancy firm early in the year. As a result of the pandemic, work has diminished. I need to hang onto whatever little income I have now.

I'm a struggling electrician, with no source of income and a young family of four to support. All the resources I could scram up from savings, friends and family went into the last ticket to bring me home and to pay the quarantine deposit.

I am a student on full scholarship at NYU, and so am unable to afford the costs of this hotel. I am financially independent and do not have support from my parents. I am also from Mombasa and hope to leave to return to my home city as soon as possible.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA .... 1ST PETITIONER

ESTHER NELIMA.. 2ND PETITIONER

CHRIS OWALLA .... 3RD PETITIONER

CM.. 4TH PETITIONER

FA.. 5TH PETITIONER

KB.. 6TH PETITIONER

MO .... 7TH PETITIONER

EL.. 8TH PETITIONER

KATIBA INSTITUTE .... 9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN).. ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH.. 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY..3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT...5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS ....7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF K.B. IN SUPPORT OF THE NOTICE OF MOTION

I, **K.B**, an adult female of sound mind and a citizen of the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am the 6th Applicant/Petitioner in this case and competent to swear this affidavit.
2. **THAT** I am making this Affidavit in support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.
3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.
4. **THAT** I travelled back to Kenya from New York and arrived in Nairobi at around 11:30am on 24 March 2020.
5. **THAT** on arrival at the airport I could sense fear by the airport staff about the passengers who had arrived from outside the country.
6. **THAT** I felt stigma by the way I was treated at the airport with every person treating me as if I was already infected with COVID-19.
7. **THAT** I was placed in mandatory quarantine in Hillpark hotel for 14 days.
8. **THAT** I faced stigma from hotel staff who were fearful of those of us in mandatory quarantine.
9. **THAT** I have also faced stigma from public after being released from mandatory quarantine with those I shared the information with being scared that I might be infected and also viewing me as among those who brought the virus to the country.
10. **THAT** since I have filed this petition to enforce my right to access to information, and the fact that I was in quarantine, I could face further stigmatization attached to the COVID-19 pandemic. However, given the extent of the stigma and mental anguish I have faced I am still willing to proceed with the petition in the hope that I will finally receive the information sought.
11. **THAT** disclosure of my identity will take away constitutional protection of my right to privacy. As such, it is essential that measures are taken to ensure my identity remains unknown to prevent a violation of the foregoing right.
12. **THAT** I am willing to confidentially disclose my true identity only to the Court by way of presenting copies of my national identity card and any other information that the court may direct.
13. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN in Mombasa this 18th day of June 2020.

KB

JACQUELINE WAIHENYA
Advocate of the High Court of Kenya
Notary Public & Commissioner for Oaths
P/105/3896/98
PC No: LSK/2020/05273
P.O. Box 80100, MOMBASA
Tel: +254-41-2311060
Email: waihenya@jwmadvocates.com

BEFORE ME

COMMISSIONER FOR OATHS

) ________________
) Deponent
)
)
)

DRAWN & FILED BY: -

Nerima Were, Advocate,
C/O KELIN
Kuwinda Lane, off Langata Road, Karen C
P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA.. 1ST PETITIONER

ESTHER NELIMA.. 2ND PETITIONER

CHRIS OWALLA.. 3RD PETITIONER

CM.. 4TH PETITIONER

FA.. 5TH PETITIONER

KB.. 6TH PETITIONER

MO.. 7TH PETITIONER

EL.. 8TH PETITIONER

KATIBA INSTITUTE... 9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN)..10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ KENYA)...11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA.................................12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH ....1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH ....2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY ....3rd RESPONDENT

COUNCIL OF GOVERNORS..4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT ....5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA...6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS..7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE ....8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL ....9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR)..................................1ST INTERESTED PARTY

AFFIDAVIT OF M.O IN SUPPORT OF THE NOTICE OF MOTION

I, **M.O** a male adult of sound mind and Kenyan citizen residing in Nairobi County in the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am the 7th Applicant/Petitioner in this case and competent to swear this Affidavit.
2. **THAT** I am making this Affidavit is support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.
3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.
4. **THAT** I travelled from Pakistan, where I was working, to Nairobi because the situation in Pakistan in terms of the COVID-19 pandemic was worsening.
5. **THAT** I arrived in Jomo Kenyatta International Airport (JKIA) on Tuesday 25th March, 2020 at 2.30 PM.
6. **THAT** when I arrived at the airport, I could sense there was fear among those who were working at the airport. They treated arriving passengers, myself included, as though we were bringing COVID 19 to the country.
7. **THAT** I spent 21 days in mandatory quarantine at Grace Resort in Kilimani.
8. **THAT** when I was in quarantine, I was also treated differently by the staff of the hotel because of them suspecting that I could possibly have COVID-19 disease. I also fear that I will be stigmatised by members of the public because of being in a quarantine facility.
9. **THAT** I am eager to hear a response from the government to the issues I had raised despite the fact that by filing this petition which seeks to enforce my right to access information, I could face further stigmatization attached to the COVID 19 pandemic.
10. **THAT** disclosure of my identity will take away constitutional protection of my right to privacy.
11. **THAT** I am willing to confidentially disclose my true identity only to the Court by way of presenting copies of my national identity card and any other information that the court may direct, once assurances are made by the Respondents herein that my identity will remain confidential.
12. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

THAT what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN in Nairobi this 18th day of June. 2020.

MO) ____________

) Deponent

)

BEFORE ME)

COMMISSIONER FOR OATHS)

NDURU GICHAMBA ADVOCATE & COMMISSIONER FOR OATHS P.O. BOX 55645 - 00200, NAIROBI

DRAWN & FILED BY: -
Nerima Were, Advocate,
C/O KELIN
Kuwinda Lane, off Langata Road, Karen C
P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA..2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM..4TH PETITIONER

FA...5TH PETITIONER

KB...6TH PETITIONER

MO ....7TH PETITIONER

EL...8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN).. ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH... 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY...3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND
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HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS ....7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF E.L. IN SUPPORT OF THE NOTICE OF MOTION

I, **EL** a Kenyan citizen and resident of Nairobi County in the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am the 8th Applicant/Petitioner in this case and competent to swear this affidavit.

2. **THAT** I am making this Affidavit is support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.

3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.

4. **THAT** when news broke that COVID-19 was now a pandemic, my daughter was attending a global exchange semester abroad in Singapore an option which was offered by the University of Canada.

5. **THAT** on 16 March 2020, the University of Canada communicated to her that they were cancelling the global exchange program and that all those enrolled would now have to return to their home countries.

6. **THAT** in light of the ban on international flights scheduled to take effect at midnight on 25 March 2020, I was able to secure a flight for my daughter leaving Singapore on Sunday 22 March 2020 and arriving at Jomo Kenyatta International Airport (JKIA) on 23 March 2020 at approximately 19:00 hrs.

7. **THAT** shortly after 9:00pm, I received a call from my daughter informing me that they were all being taken to various designated facilities to undergo mandatory quarantine. After some time, I received another call from her asking me to try and book a hotel for her online but it was impossible to get through. Noting the fear and urgency in my daughter's voice, I frantically requested a friend living close by to physically book a room at Pride Inn Azure and had no choice but to pay the full amount of Kshs 126,000 for the entire quarantine period.

8. **THAT** my daughter described her chaotic experience at the airport to me and expressed the difficulties she faced trying to get information from the airport staff and the police on exactly which hotels were available and how they would be getting to them. It was evident that the

government was ill prepared in their management of those entering the country and the overall mandatory quarantine process.

9. **THAT** by 9 April 2020 my daughter was still in quarantine and the thought of her having to endure a further 14 days in quarantine without due cause was infuriating to say the least. Consequently, I decided to draft a letter urgently requesting the Ministry for Health for information regarding the extension of mandatory quarantine beyond the WHO recommended 14-day period.

   (Annexed and Marked **EL1** herein is a *copy of the letter requesting for information*).

10. **THAT** I continue to remain anxious about the emotional and mental well-being of my child and believe that the State acted negligently by failing to respond to the questions detailed above most of which were directly related to the right to life and health of my daughter.

11. **THAT** on 10 April 2020 the 'guests' of the hotel and some parents (myself included) wrote a letter to the acting Director General for Health, Dr. Patrick Amoth on the undue financial burden occasioned by both the initial and the extended mandatory quarantine period.

    (Annexed and marked **EL2** herein is a *copy of the letter requesting for financial assistance*).

12. **THAT** I am eager to hear a response from the government to the issues I had raised despite the fact that by filing this petition for the enforcement of my constitutional right to information, I could face further stigmatization attached to the COVID-19 pandemic.

13. **THAT** disclosure of my identity will take away constitutional protection of their right to privacy.

14. **THAT** I am willing to confidentially disclose my true identity only to the Court by way of presenting copies of our national identity cards and any other information that the court may direct once assurances are made by the Respondents herein that my identity will remain confidential.

15. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

THAT what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN in Nairobi this 17th day of June 2020.

EL)

) Deponent

)

BEFORE ME)

COMMISSIONER FOR OATHS)

ADVOCATE & COMMISSIONER FOR OATHS

DRAWN & FILED BY:-

Nerima Were, Advocate,
C/O KELIN
Kuwinda Lane, off Langata Road, Karen C
P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

This is Exhibit marked "EL 1"
referred to in the Annexed affidavit/Declaration
of EL
Sworn/Declared before me on this 17th
day of June 2020
at Nairobi in the Republic of Kenya
Commissioner for Oaths

Your REF: TBA My REF: Covid-19 Initial Test Result for MEL Date: 9th April 2020

Advance copy via email

MINISTRY OF HEALTH
RECEIVED
09 APR 2020
OFFICE OF THE CABINET SECRETARY
P. O. Box 30016-00100, NAIROBI

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Dear Sir,

Re: Urgent Request for Information Regarding Extension of Mandatory Quarantine Beyond initial WHO recommended 14 Days

My name is [redacted] Kenyan citizen and parent. My daughter [redacted] is currently under mandatory quarantine at **Pride Inn Azure Hotel in Westlands.**

She has been in quarantine since Monday 23rd March 2020, a total of **17 days**, since she arrived in Kenya. My family and I have so far spent Kshs 126,000 on accommodation and we have no other resources to spare.

While in quarantine, Melanie has observed strict social distancing, and has been keeping her personal twice-daily temperature chart. During this time, she has **not** exhibited any of the common WHO Covid-19 symptoms. She was tested by your MOH representatives on Tuesday 31st March 2020.

On Thursday 2nd April 2020, s he and others quarantined in the same location were advised by the assigned MOH official, **one Dr. Carol Asin**, that 2 persons had tested positive and that arrangements for their transfer to a treatment center had been made and that the rest of the mandatory quarantine "guests" had tested **negative**.

Per the Ministry of Health COVID 19 Quarantine Protocols, Melanie was supposed to be under mandatory quarantine for 14 days after which if tested negative she should have been released into self-quarantine as per the MOH protocols. However, to date, she has not been released.

I am requesting for a written response to the following as part of my right as a Kenyan, and a very concerned, frustrated and anxious parent. To date, Melanie still does not have access to information that affects her under Article 35 of the Constitution and section 4 and 9 (2) of the Access to Information Act, 2016:

i. She has not been issued with a personal medical notification slip confirming her Covid-19 negative status
ii. Why is she still being held at the quarantine facility against the Ministry's protocols and best practice recommended by WHO?
iii. Who will cater for the costs of the extra stay?
iv. Why has she not been provided information as to when she will be discharged and the conditions for such discharge?
v. Why wasn't the impact of another person's positive test, within her quarantine period and location, communicated and documented to her in writing including the protocols to guide any decisions thereafter ?

vi. What if there are persons - who since Melanie's initial negative test – tested [might test] positive and said persons had / have not been removed from the facility?

vii. Whose responsibility is it to ensure that Covid-19 tested positive persons are removed as soon as is reasonably possible and what are the mitigating factors around protecting Melanie and others without violating the other party's rights to privacy and dignity?

viii. Have all persons working within Pride Inn Azure - and those that have access to the facility - (including suppliers and assigned MOH staff themselves) been tested? and if not how does MOH plan to ensure those under mandatory quarantine are protected?

I am extremely concerned about the risk of exposure to COVID-19 at Pride Inn Azure. I am concerned about Melanie's emotional well-being and mental health; especially given the additional 14-day denial of normal socialization. I am worried about the additional financial costs of quarantine and the restrictive conditions of self-isolation.

I look forward to and will appreciate an urgent response to the concerns outlined above within the next 48 hours.

Yours faithfully,

cc: Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Government Spokesperson
spox@ict.go.ke; governmentmediacentre@ict.go.ke

Commission on Administrative Justice
complain@ombudsman.go.ke

Transparency International- Kenya
transparency@tikenya.org

Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)
info@kelinkenya.org

Kenya National Commission on Human Rights
complaint@knchr.org

Office of The High Commissioner for Human Rights – Kenya

This is Exhibit marked "EL 2"
referred to in the Annexed affidavit/Declaration
of EL
Sworn/Declared before me on this 18th
day of June 2020
at Nairobi in the Republic of Kenya
Commissioner for Oaths

Via email

Date: 10th April 2020

Dr. Patrick Amoth
Acting Director General for Health
Ministry of Health
Covid-10 Response Team
dghealth2019@gmail.co; patrickamoth@gmail.com

Dear Sir,

Re: Undue Financial burden occasioned by initial and extended Mandatory Quarantine

We the undersigned have been in various mandatory quarantine centers since Monday 23rd March 2020.

As you are well aware the decision to place all travelers who landed at JKIA came as a huge shock and surprise especially since we were given limited information and choice of option. Nonetheless, we complied with the directive and were placed in different facilities at **our own** expense.

Since that time, communication regarding the quarantine policies has not been easily forthcoming and going forward we anticipate that decisions that directly affect persons in quarantine would be communicated to us directly and promptly by your Ministry officials.

Payment for the initial (WHO recommended 14 days) was already an unexpected strain on our personal finances because none of us had planned for this cost. Many of us were forced to travel, at very short notice, paying higher than premium airline ticket costs because the countries we were in required non-citizens to leave. This was further complicated by the announcement that JKIA would be shutting down passenger travel from Wednesday 25th March leaving very little time and a limited number of incoming flights.

The Mandatory quarantine was put in place by the government. As such we expected that they would cater for any and all related costs. We hereby request that costs incurred thus far be refunded and in addition cost incurred following the extension by the Government to the date of release be paid for to facilitate discharge of all persons under mandatory quarantine into self-quarantine at home.

We had anticipated that those who had initially tested negative for Covid-19, were going to be released into 7-day self-quarantine per WHO and MOH's original guidelines. We hereby commit that upon release we will comply and strictly observe the laid out self-quarantine guidelines in our own homes.

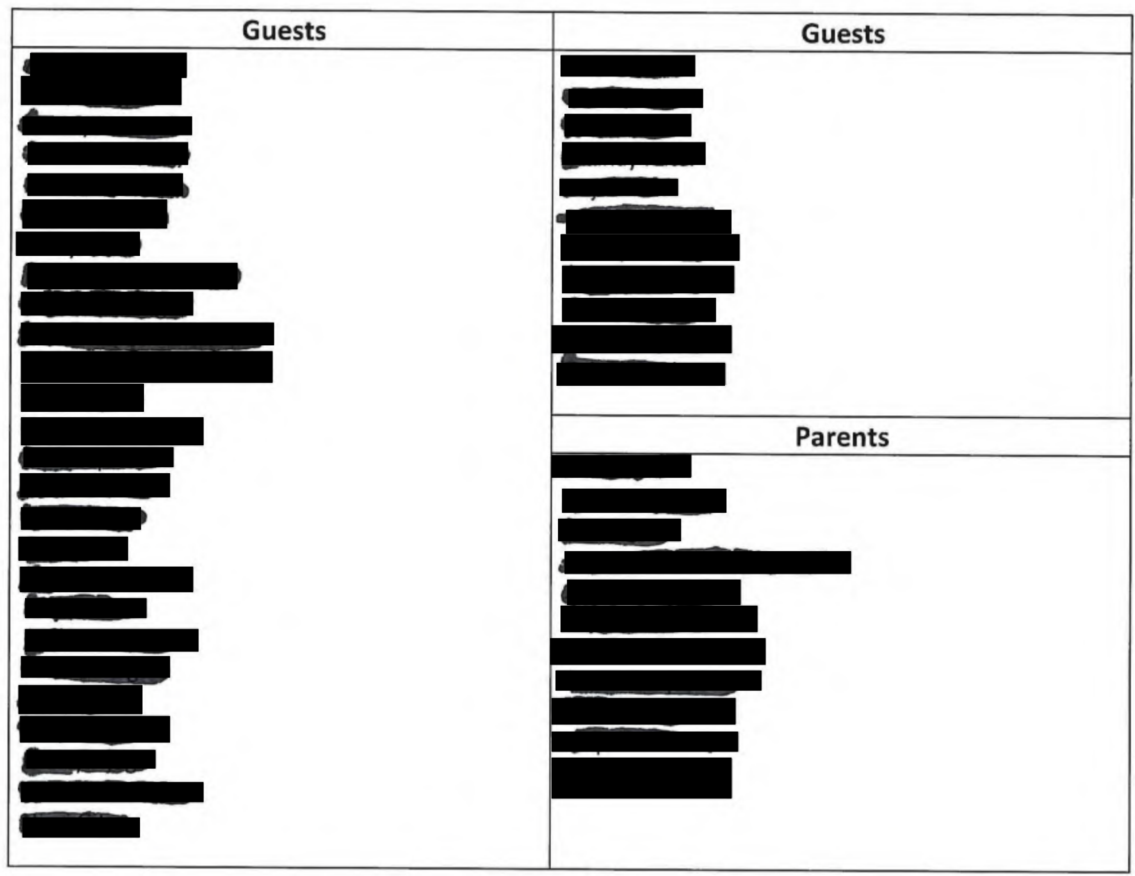
We strongly feel that being asked to pay for the additional 14-day mandatory quarantine is not only a huge strain on our personal finances but it is also seriously affecting our already fragile mental health.

We therefore request the Ministry and Covid-19 task force to address this issue, with the Treasury and other partners, as a matter of urgency to find an alternative way to compensate the hotels for the costs incurred by them from the date of extension to discharge .

We look forward to and will appreciate an urgent response to the concerns outlined above.

Yours faithfully,

Pride Inn Azure Guests and Families (listed below)



cc: Cabinet Secretary for Health - Hon. Mutahi Kagwe
cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Principal Secretary Ministry of Health
ps@health.go.ke;

Mr. Nick Nesbitt - Chairman KEPSA

Dr. Amit Thakker - Kenya Healthcare Federation
mailto:athakker@khf.co.ke

Mr. Hasnain Noorani - Pride Inn Hotels
mailto:md@prideinn.co.ke

(KELIN) info@kelinkenya.org

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, 165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA.. 1ST PETITIONER

ESTHER NELIMA.. 2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM... 4TH PETITIONER

FA... 5TH PETITIONER

KB... 6TH PETITIONER

MO .... 7TH PETITIONER

EL... 8TH PETITIONER

KATIBA INSTITUTE....................................... ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN)..10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA)..... ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA.......12TH PETITIONER

ACHIENG ORERO ....13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY FOR HEALTH..1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL, MINISTRY OF HEALTH ....2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF SIAYA COUNTY... 3rd RESPONDENT

COUNCIL OF GOVERNORS .... .4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT.. 5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL OF THE POLICE, KENYA.. 6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET SECRETARY FOR INFORMATION AND COMMUNICATIONS .... 7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE JUSTICE .... 8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER, KENYA MEDICAL PRACTITIONERS' AND DENTISTS COUNCIL.. 9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) ....1ST INTERESTED PARTY

AFFIDAVIT SUPPORTING THE APPLICATION AND PETITION

I, Christine Nkonge a resident of Nairobi within the Republic of Kenya, do solemnly make oath and state as follows:

1. I am the Executive Director to the 9th Petitioner herein and I am legally competent and have the authority to swear this Affidavit on behalf of the Petitioners.

2. On 28 March 2020, the 9th to 12th Petitioners wrote to the 1st Respondent information on 'testing kits, facilities, health workers, resources, processes'.
I annex the advisory note dated 28th March 2020 marked as CN-1.

3. I am aware that on 6th April 2020 the 9th to 12th Petitioners wrote to the 1st Respondent seeking information on 'implementation of mandatory quarantine in the COVID 19 response in Kenya'.
I annex a copy of the letter dated 6th April 2020 marked as CN-2.

4. On 27 April 2020, the 10th to 12th Petitioners wrote to the 1st and 3rd Respondent seeking information on the 'use of quarantine as a form of punishment and criminalization of COVID 19 response'.
I annex a copy of the letter dated 27th April 2020 marked as CN-3.

5. To date, the Respondents have refused to provide the information sought by the Petitioners even though the information is necessary for the exercise of rights to life, liberty and health.

6. The Respondent's failure or refusal to supply Petitioners with the information violates the values and principles of governance in Article 10 especially human dignity, rule of law, social justice, human rights, good governance, transparency and accountability as well as the principles of public service under Article 232(1)(c) and (f) of the Constitution.
7. Petitioners believe that the refusal also violates the Respondent's obligation under Article 35(1)(a) and 35(3) and Article 43.
8. Petitioners aver that the Respondents' omission concerns the violation of fundamental rights and freedoms—not just the right to information, but the right to life and health. The lives and health of thousands could turn on how the Respondents address the pandemic. By denying the public the information necessary to determine the sufficiency of their response, the Respondents are insulating themselves from scrutiny, preventing the public from participating in, and being informed about, the government response, and preventing open discussion about the most effective way for the government to save lives and limit the damage the virus will cause.
9. Any delay in addressing the Respondents' refusal to provide information could significantly impair the public's ability to participate in the steps taken to protect themselves and could prevent the Respondents from receiving important information about how better to address the crisis. Given what is at stake for the Petitioners and the public, addressing this failure is urgent and necessary.
10. Unless this court intervenes and grants the conservatory orders sought, the Respondents' conduct will increasingly endanger the Petitioners' right to life and health despite the escalating threat of the COVID 19 pandemic.
11. I swear this affidavit in support of the Application and Petition based on facts within my knowledge (unless I have disclosed other sources) believing it to be in accordance with the Oaths and Statutory Declarations Act, Cap 20.

Sworn by Christine Nkonge at Nairobi this 30th day of June, 2020

CHRISTINE NKONGE	)	
	)	____________________
	)	DEPONENT
BEFORE ME	)	
COMMISSIONER OF OATHS	)	

DRAWN AND FILED BY:

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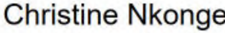
Admission Number: P105/13954/17
Practice Number: LSK/2020/07699

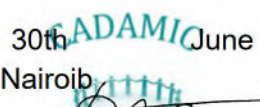
Aninas Community Networks for Development (ACND)

Christine Nkonge

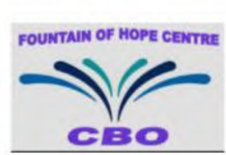
30th June 20

Nairobi





Dandora Community AIDS support Association (DACASA)



Nyakach Elders' Group

Your REF: **Our REF: C/KELIN/2020** Date: 28/03/2020

To
Hon. Mutahi Kagwe,
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Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke

Hon. Simon K. Chelugui,
Cabinet Secretary for Labour, Social Security and Services,
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Dr. Fred Okengo Matiang'I,
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Hon David Maraga,
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governor@kakamega.go.ke

Mr. Hilary Nzioki Mutyambai,
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ADVISORY NOTE ON ENSURING A RIGHTS-BASED RESPONSE TO CURB THE SPREAD OF COVID-19

People - not Messaging - Bring Change

We, the undersigned organisations and associations, being representatives of health and human rights, civil society and non-governmental organisations, community-based organisations and representatives, professional bodies, informal sector actors, economic, and governance experts have taken note of the growing public health concern arising out of the global outbreak of the coronavirus disease (COVID-19).

We write pursuant to our constitutional mandate under Articles 3, 10 and 35 of the Constitution on the responsibility to defend and protect the Constitution, the right to participate in matters concerning us and to access public information respectively.

While we, in our organisational capacities, have made individual efforts through open letters requesting information and calling for a rights-based approach to the COVID-19 response, we issue this comprehensive advisory, inclusive of multi-stakeholder views, to provide guidance on a transparent response that safeguards the health and rights of the most vulnerable and underserved populations in Kenya. This is cognisant of the fact that the COVID-19 pandemic continues to negatively impact the health, economic and social status of populations we represent.

1. On March 13 2020 KELIN wrote an open letter to the Cabinet Secretary of Health titled "A rights-based response is critical in dealing with COVID-19" ; On 17 March 2020 KNCHR issued an "advisory On The COVID-19 Disease Response In Kenya"; Patrick Gathara, "Kenya needs to stop panicking and start preparing for coronavirus," 2 Mar 2020.

We recognise the efforts so far made by the government, including:

- Provision of information and updates on the number of people affected through regular press briefings;
- Provision of contact and hotline numbers for the public to access information especially for emergency assistance;
- Emphasis on preventive measures, including directives issued encouraging working from home; directing public transport providers to ensure social distancing; information on the need for proper sanitation; limiting interaction in social and entertainment places; among others;
- Implementation of fiscal and monetary policy measures to provide relief through tax reduction and ensure continued liquidity for individuals and organisations.

Despite these strides, the information and response availed has not been comprehensive and has failed to localise and contextualise how preventive and promotive measures shall be undertaken; highlighting the diverse differences between our country and the developed world. There have also been inadequacies in emphasising the need to respect human rights while employing public health measures.

We, therefore, write this letter to provide guidance on the following critical areas:

Right to information and transparency

Sharing accurate, timely, and lifesaving information is a constitutional obligation, necessary to meet the rights to health and information. Information is critical in ensuring transparency, which in turn builds public trust especially in these difficult times. As such, passing stigmatising information on testing, isolation, and quarantine will be counterproductive to the response.

There are gaps in the information shared and contained in the public domain. Primarily, the government has issued a number of policy directives to manage the pandemic but has failed to stipulate what each seeks to achieve and the timeframe for implementation. The lack of transparency around decisions taken (public health, behavioural or fiscal) make it nearly impossible for Kenyans to engage in a meaningful discourse around the potential costs and the benefits of these measures.

The public needs transparent, accurate and comprehensive updates that relay the state of preparedness and the precautionary measures being taken to curb the spread of COVID-19; the response at population level both locally and abroad; and information on clinical management. Comprehensive information will not only fulfil the constitutional right to access information but also help alleviate public fear, anxiety, and hysteria around COVID-19. If Kenyans do not trust in the accuracy and completeness of the information received, they may be less willing to comply with and adopt measures. This may result in the State enforcing measures through security forces; which is detrimental.

Further, the public needs information on how resources allocated to the response are being utilised, bearing in mind that there have been numerous reports of corruption in the health sector. The World Bank has committed KES Six Billion, of which KES One Billion has already been disbursed, while an additional KES Seven Billion from the Central Bank has been allocated to the pandemic response. Also, several county governments have announced the allocation of funds to support county response measures. The public needs to know how this money is being spent. Transparency in the receipt, allocation, disbursement, and utilisation of these resources with information on requirements for the funds to become available; availability of funds; budget line items that they are supporting; and eventually an audit to check the expenditure is paramount. We, therefore, propose that the government, with support from multilateral development institutions and stakeholders, sets up a live dashboard that is updated regularly with the following information on inputs and processes:

Inputs

- **Testing kits:** Numbered by type, percentages by turnaround time or technology used e.g. point of care (like GeneXpert) or based, and how many testing kits have been delivered to various designated testing facilities.
- **Facilities:** Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

- **Health workers:** Number trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, general physicians and critical care specialists. Number of health care workers deployed in every county.
- **Resources:** Publication of allocated, issued and expended financial and non-financial resources for COVID-19 responses. Including resources from private, bilateral and multilateral sources.

Processes

- Publication of previous and current COVID-19 response plans.
- Clarity on strategic goals of current approaches, e.g. isolation, quarantine and testing strategies. For example, whether and why at risk populations are being urged to self-isolate; why quarantined persons are not being offered tests; and why tests are not available on a voluntary basis to all who have symptoms as done in the South Korea response.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on training provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

In addition to gaps in the information provided, we have also noted gaps in the methods of communication, which may disadvantage certain populations. To ensure that all citizens are informed, we advise that:

- The Ministry of Health utilises a neutral SMS platform that will extend to users outside of Safaricom.
- Communication is tailored to meet the needs of underserved populations, including people with disabilities.
- Prioritise the information and communication needs of children and adolescents.

Timely, accurate, and transparent communication on our risk as a country, and how we are managing it, is essential during an emergency and it will determine whether the public will trust the government or turn to rumours and misinformation. The experience in DRC is illustrative of the negative impacts of mistrust in the Ebola response with persons refusing to seek treatment; responders and clinics receiving death threats and being assaulted and attacked, and community members believing the epidemic to be a government scheme.

Right to health

Every Kenyan has the right to the highest attainable standard of health, which the government is under an obligation to progressively realise. Containing this pandemic is our country's best chance at ensuring the citizens' health and avoiding the collapse of an already fragile health care system.

Given that the number of confirmed people with COVID-19 has increased to 31 (as of Friday, 27th March 2020, with one confirmed death), we urge the Ministry of Health to work with County Governments and other actors to scale up preparedness by:

- Increasing surveillance to affected 'hotspot' counties as well as neighbouring counties.
- Increasing testing in the communities for all suspected cases.
- Scaling up the tracing of contacts of known or suspected cases.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers. Special attention and care must be paid to vulnerable and underserved populations, including People with Disabilities; displaced populations including refugees, communities living with and affected by HIV and TB, homeless persons and those who are incarcerated or otherwise detained.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Respecting the rule of law

We believe that this response can only succeed if it is undertaken within the confines of the law. We, therefore, urge the government to ensure:

2. The right to health requires that preventive, promotive, curative, rehabilitative and palliative aspects of healthcare are made available, accessible, acceptable and of quality.

- A rights-based response to COVID-19 is adopted. Such a response contains many important aspects, among them, the right to health, equality and non-discrimination, freedom of peaceful assembly, association and movement, an adequate standard of living, as well as the right to benefit from scientific progress. The Public Health Act should be applied in a rights-based manner to meet the ends of public health while respecting, promoting, and protecting the rights of the affected.
- Strict protection of the right to privacy and confidentiality of health information is maintained. We urge the government, the media, and other actors to avoid succumbing to pressure to name the affected people. The COVID-19 situation is not unique to Kenya and we, therefore, urge the government to draw lessons from other countries in contact tracing without violating privacy and confidentiality. We note that discrimination based on 'health status' is prohibited under Article 27 (4) of the Constitution. The response be guided by established international principles, for instance, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.
- Adherence to progressive policies, for instance, the recently enacted Tuberculosis (TB) Isolation Policy, which provides guidelines applicable to the isolation of patients with infectious diseases. The policy was adopted following the decision in Daniel Ng'etich & 2 others v Attorney General & 3 others [2016] *eKLR*, which adopted a rights-based interpretation of the Public Health Act and, as a result, declared the practice of jailing people with TB, as a form of isolation, unlawful and unconstitutional.

Based on media reports and individual experiences, we are concerned that mandatory quarantine and isolation of people affected by COVID-19 appear uncoordinated, unplanned and not guided by policy. For instance, the decision to mandatorily quarantine people in hotels & government facilities raises two fundamental concerns: (i) what measures are being put in place to protect the workers at such facilities from infection; and (ii) why are citizens being forced to incur the costs of isolation at these hotels? These concerns create the impression that the government does not have a contingency plan to ensure mandatory quarantine meets public health objectives to prevent further spread. Further, on 27 March 2020, a person under mandatory quarantine died at Kiti Quarantine Centre in Nakuru County. There is a need - to investigate the circumstances of this death and determine if the quarantine centers are fit for purpose and meet the requirements to ensure individual and public health. Quarantine centers must be able to ensure that persons within it are safe, secure and their mental and physical health is guaranteed taking into account underlying health conditions. The County Government of Nakuru working with the Ministry of Health must provide information on the circumstances of the death and any measures that shall be put in place to address quality gaps within quarantine facilities.

- Recognition that punitive measures or criminal sanctions are not effective in epidemic control. Criminal sanctions are counterproductive because they drive people underground and expose more people to the virus. On 22 March 2020, the government communicated to the public that *"all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."* The HIV response has taught us that *"using criminal law to regulate behaviour and prevent transmission of a virus is a severe and drastic approach in attempting to slow the spread of the virus. As has been seen in the HIV epidemic, the overuse of criminal law can have significant negative outcomes both for the individual and for the response as a whole and often fails to recognize the reality of people's lives. It can further stigmatise people who have the virus, dissuade people from getting tested and destroy trust between the government and communities."*
- That the Kenya Police Service and all other security forces act within the confines of the Constitution and the Criminal Procedure Act. A mandatory curfew between 7:00 PM and 5:00 AM came into place on Friday, 27 March 2020. After only one day there have been reports of police brutality in enforcing this curfew, illustratively, in Mombasa County there are reports of police using teargas and brutalising ferry users well before the curfew time. The rights to dignity; security of the person; and freedom of movement must be respected and protected. Kenyans have a right to be free from corporal punishment and not to be subjected to cruel, inhuman and degrading treatment. The Kenya Police service has a history of using brutality to enforce order, this is both unlawful and unconstitutional as the right not to be subjected to inhuman and degrading treatment is non-derogable.

- The conduct of the Police is strongly condemned and we urge security forces to act within the rule of law as an emergency does not suspend their obligation to respect constitutional rights.

  Procurement laws must be followed to ensure transparency in the procurement of life-saving medicines and other medical supplies, with greater efforts taken to prevent price gouging of drugs, and other goods and services required to protect citizens from contagion (such as hand sanitizers, masks, gloves). While the Public Procurement and Asset Disposal Act allows for flexibility in an emergency we urge that agencies involved in the response balance the need to act without delay to save or preserve lives with the need to act with integrity, guarantee quality and ensure value for money.

Social protection and economic aspects

An inclusive social protection system can have long-lasting impacts on well-being and economic growth. By offering all citizens the guarantee of income security, social protection effectively tackles poverty and inequality, enhances human capital, helps build a strong and productive workforce, protects against shocks and crises, and builds social cohesion. Both the pandemic and the response to it can have severe consequences on people's livelihoods, employment and access to food and essential services. The right to social security is guaranteed in Article 43(1) e of the Constitution. Social protection has three main pillars: social assistance, social insurance; and health insurance.

The COVID-19 pandemic has placed the Kenyan population in a precarious economic situation. The directive for limited social contact has forced businesses to shut their doors. Whereas some businesses or institutions have the ability to operate remotely, this has impacted negatively the many others that require physical presence to operate optimally. The disruption of business operations has had consequences on people's ability to provide basic needs. The problem is particularly acute for informal laborers. 82.7 percent of Kenyans work in the informal sector. If they do not work, they will not receive any income and will not be able to provide basic needs for themselves or their families. Fear of losing their jobs can prevent people from taking necessary steps, such as working from home, quarantine, isolation and seeking medical services.

The COVID-19 response should ensure that people are protected from loss of employment, income or livelihoods through strong labour protections, social security schemes and insurance, so that Kenyans are better able to look after their health, to self-isolate, and accordingly, improve the response to the pandemic.

The measures and messaging around COVID-19 have been tailored for Kenyans in formal wage employment who can afford to and have the amenities to work from home. Additionally, the tax reductions will have little impact on the more than 50 percent of Kenyan households who have an income of less than KES 10,000 per month (outside of the lowest income tax bracket) and who mostly consume goods that are VAT exempt. We note that the government has been replicating measures from the global north without taking time to contextualise it for Kenya, and as a result, we risk disastrous consequences. Kenyans that survive off of a daily wage, will not eat if they stay home. The government cannot place them in the untenable position of choosing between their livelihood and public safety.

We urge the government to put in place measures for social protection and especially, non-contributory social assistance mechanisms and safety nets to 'cushion' the communities and persons who cannot afford to not work. Further, we urge the government not to utilise security forces to enforce measures around social distancing and curfews, as this will be detrimental to a majority of Kenyans and may result in civil unrest. We cannot use a 'one size fits all' approach for COVID-19 and the government must be cognisant of the need to secure the economic well-being of its people.

Urgent solutions are necessary to protect the economic and social rights of all people, including the vulnerable and marginalised, as the COVID-19 pandemic and the measures being implemented create a dire threat to citizen's ability to access health services, housing, sanitation, food, clean and safe water, social security and education. We commend the government for committing KES 10 Billion to cushion elderly, orphaned and vulnerable members of the society from the adverse economic effects of the pandemic through cash transfers.

We call upon the government through the Ministry of Labour, Social Security and Services-department of social protection; UN agencies, multilateral development institutions, and stakeholders working in this space to:

- Support both levels of government in appropriate beneficiary targeting - to target the right geographical areas, vulnerable communities, households and individuals.
    - It will be crucial to engage with and strengthen capacities of community-based organisations and community health workers to support in the identification of vulnerable households in different areas, and in the actual distribution of in-kind transfers in cases of restricted movement and to vulnerable and physically challenged individuals.
- Beneficiary management systems for enrolment and registration through the expansion of existing social registries and assisting the government to temporarily expand its existing social protection programme to include households newly affected by the COVID pandemic.
- There is a need for standardized guidelines and streamlining of targeting, types of cash and food transfers; management information systems (MIS), registries and databases of all beneficiaries and programmes, including the simplification of registration functions.
- Use of different unconditional transfer modalities as appropriate. These may include mobile/electronic cash transfers, in-kind transfers (actual food baskets to meet the food and nutritional needs of households; and non-food items), or commodity vouchers that can be redeemed for food and non-food items at various vendor outlets.
    - If vouchers are selected as a modality, expand the network of traders offering commodities
    - If cash transfers are used to ensure quicker and more efficient disbursements by strengthening digital payments and relaxing the eligibility criteria or conditions of existing programs that already have the cash delivery infrastructure in place.
    - Identify and set up food and non-food items commodity pick up points in close proximity to various communities (this may be necessary with the imposed curfew).
    - Set up home delivery mechanisms for delivery of food and non-food items to households with vulnerable individuals (if a complete lockdown is implemented this shall be necessary).
- Launch community awareness campaigns about how to enroll for and access available cash transfers and food assistance programmes; as well as complaints and feedback mechanisms.
- Prevent utilities such as electricity and water from being cut off during the pandemic.
- Strengthening institutions and technical capacity to refine and operationalise safety nets and social transfers delivery systems of the government including payment service providers, M&E systems to ensure accountability.

Women and girls

Health crises, such as COVID-19 impact women and men differently, exacerbating gender inequality. Previous experiences have shown that women and girls will be more severely affected by the pandemic. Girls and women face disadvantages, because of their limited ability to join the labour sector and their reduced earning capacity compared to men (earning as much as 30 percent less than men).

Women account for a significant part of the healthcare workforce. 75.8 percent of nurses are women, and nurses account for the largest proportion of the healthcare workforce. The health care system also relies on women's unpaid labour, a situation that will become more acute with the implementation of social distancing because the disproportionate burden of caring for children, who are now home from school, will fall on women. Additionally, the burden of home-based health care often falls on women, subjecting them to risk of infection and also limiting their ability to engage in other work. This problem is exacerbated in an epidemic when no support measures are put in place for home-based care providers.

Women and girls are affected by poverty in disproportionately high numbers in Kenya, and in seeking to respond to the realities created by gender inequity, the government should consider the impact that deepening poverty will have on these vulnerable populations. Therefore, social protection measures must account for the very gendered nature of poverty and inequality. Gendering the pandemic, also requires understanding the increased risk women are placed in when resources are diverted towards the pandemic response or services become unavailable. During the Ebola epidemic in Sierra Leone there was a 34 percent increase in facility maternal mortality and a 24 percent increase in the stillbirth rate; fewer women were able to access both pre and post-natal care. Sexual and reproductive health services were affected with obstetric and paediatric care facilities closing; the closure of organisations that offered contraceptive services and information; and the lack of guidance on the management of pregnant women.

The following are recommendations to ensure a gendered approach to the COVID-19 pandemic and include some of the recommendations that have been issued by UN Women:

- Protect essential health services for women and girls, recognising that sexual and reproductive health services are part and parcel of ensuring the right to health in Article 43(1) (a) and (2) of the Constitution for women and girls, are guaranteed and accessible in light of enforced curfews and potentially stretched health facilities
- Make provision for the comprehensive health care of women in all stages of pregnancy in COVID-19 preparedness plans to manage maternal morbidity and mortality rates and mitigate potential health disparities.
- Prioritise services for prevention and response to gender-based violence in communities affected by COVID-19 which must include essential services to address violence against women in preparedness and response plans for COVID-19, provide resources for the said services, and identify ways to make them accessible in the context of social distancing measures and imposed curfews.
- Ensure that there is access to the justice system for women and girls who face sexual and gender-based violence, which includes access to proper reporting and investigations systems and the enforcement of the right to a fair trial.
- Ensure availability of sex-disaggregated data, including on differing rates of infection, differential economic impacts, differential care burden, and incidence of domestic violence and sexual abuse.
- Embed gender dimensions and gender experts within response plans and budget resources to build gender expertise into response teams.
- Provide priority support to women on the frontlines of the response, for instance, by improving access to women-friendly personal protective equipment and menstrual hygiene products for healthcare workers and caregivers, and flexible working arrangements for women with a burden of care.
- Ensure equal voice for women in decision making in the response and long-term impact planning.
- Ensure that public health messages properly target women including those most marginalised.
- Develop mitigation strategies that specifically target the economic impact of the outbreak on women.

Children

Children, like women, experience socio-economic marginalisation and in Kenya the overall child poverty rate is 45 per cent. An epidemic can deepen marginalisation and in the case of children, they are vulnerable because: younger children may not be able to understand information on COVID-19; unaccompanied children may be unable to access timely and life-saving information; they may be unable to express fears and anxieties, and prolonged periods away from schools may cause anxiety and have an impact on emotional wellbeing.
The pandemic response must be cognisant of the burden on caregivers who may not have the capacity to care for children – with children home from school there are increased safety and security risks if parents still have to go to work and lack access to other caregivers. Heightened anxiety among parents and caregivers may result in violence against children at home. Finally, while children are less likely to become severely ill their caregivers may be at greater risk which may impact a child negatively.

Children are at risk of deepening poverty, and their health and mental well-being may be impacted by the: disruption of their lives (which may have financial implications and make them more vulnerable to child labour or exploitation); erosion of social capital; and possible separation of families who may not have access to support systems. The best interest of the child is of paramount importance in every matter concerning the child and the government must take into account the possible negative impact of this pandemic on children.

Media

We appreciate the role that the media has played in informing the public of the signs and symptoms of the virus as well as the preventive measures people can take to curb its spread. The media still has a central role to play in the response namely:

- Providing multi-stakeholder analyses on the broad impact that COVID-19 has on people beyond their health;
- Playing a monitoring and accountability role by providing constructive criticism when, and if, the Government's COVID-19 response falls short;
- Practicing responsible and ethical reporting that does not profile people with COVID-19.

We have received reports of Police seeking to curtail the movement of media personnel, despite media being an essential service and the constitutional guarantee of media freedom. We condemn any actions to interfere with media freedom as this is a violation of Article 34(2) of the Constitution, particularly at a time when access to timely and accurate information is critical to prevent hysteria.

Building public trust is a key component of any pandemic response and the media can play a significant role in ensuring accurate and timely information is availed to citizens, as well as provide avenues to build rapport between the government and its people.

We, therefore, note with grave concern the role played by certain media outlets in vilifying persons confirmed to be infected with COVID-19, referring to them as 'agents of death'. We note that while freedom of the media is guaranteed in Article 34 of the Constitution, this is subject to Article 33(2) which provides that freedom of expression does extend to advocating hatred based on health status. The media is required to meet its obligation to provide information, but it cannot do so in a manner that is likely to incite violence or be interpreted as advocating hatred.

Rather than incite fear, the media can build trust by bridging the information gap and hold the state to account. Conversely, they can fuel stigma and hamper the pandemic response with misinformation and vilification. There are important lessons to be learned from the impact stigma had in exacerbating both the HIV and TB epidemics – this has resulted in driving communities underground; impacting both access to and quality of healthcare, and increasing the spread of the disease.

Healthcare Workers

As part of the pandemic response, we have called upon our medical practitioners, nurses, clinical officers, midwives, community health workers, and volunteers; to place themselves and their families at risk to secure the health of this nation. We note with concern that in early March nurses at Mbagathi Hospital were on a Go-Slow as they were expected to provide care without adequate training. Every worker has the right to fair labour practices which includes reasonable working conditions (Article 41 of the Constitution). This right should be protected even in a pandemic response, and we call upon the government to guarantee the safety and well-being of those taking these risks by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic. Additionally, regular technical updates and appropriate tools to assess, triage, test and treat patients, as well as how to share infection prevention and control information should be made available.
- Ensuring that all necessary preventive and protective measures are taken to minimise occupational safety and health risks. Provide quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitiser, soap and water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimising occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.

UN and Multilateral Development Institutions

We appreciate the role played by the UN Family in Kenya, led by WHO, and other development partners in providing technical and financial support to the government's COVID- 19 Contingency plan. We call upon the leadership of the UN and multilateral development institutions to help safeguard the progress made thus far to reach the Sustainable Development Goals and to include the most vulnerable and hard to reach populations in the country's response. We therefore wish to call on the development and technical partners in Kenya to scale up efforts in supporting the Government to respond to the crisis in an inclusive, transparent and rights-based manner that adopts evidence-based interventions.

We all want the country and the world to triumph over COVID-19. This will only be achieved through a rights-based response – with all necessary efforts made to prevent further spread of COVID-19, maximum support provided to those affected, enhanced accountability in the use of resources to support response measures and contingent measures to cushion the public from the economic turmoil put in place.

The undersigned are ready and willing to help. We are eager to put our collective expertise to solve this problem in a way that fits Kenya's unique situation, respects the Constitution, and ensures the public health and safety of all.

Signed by:

1. African Institute for Children Studies AICS
2. AHF Kenya
3. Aninas Community Networks for Development (ACND)
4. Boa Boda Association of Kenya (BAK)
5. Buliding Lives Around Sound Transfomation (BLAST)
6. CADAMIC
7. CEDGG
8. Centre for Rights Education and Awareness (CREAW)
9. Community Forum For Advanced and Sustainable Development (COFAS)
10. Community Initiative Action Group Kenya (CIAG-K)
11. COPHAM
12. Constitution and Reform Education Consortium (CRECO)
13. Dandora Community Aids support Association (DACASA)
14. Empowering Marginalized Communities NGO (EMAC)
15. FIDA-Kenya
16. Fountain of Hope
17. Happy Life For Development
18. Health NGOs Network (HENNET)
19. Health Rights Advocacy Forum (HERAF)
20. HUSA
21. International Commission of Jurists-Kenyan Section
22. ICS Africa
23. International community of women living with HIV Kenya
24. Institute of Economic Affairs
25. Katiba Institute
26. Kounkuey Design Initiative (KDI)
27. Keliwo widows' group
28. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
29. Kenya Red Cross Society
30. Kenya Sex Workers Alliance (KESWA)
31. Kenya Union of Clinical Officers (KUCO)
32. KIASWA Institute
33. Kondele community social justice Center
34. Lean on Me Foundation
35. Men Against Aids Youth Group.
36. Mildmay Kenya
37. Mumbo International
38. Nelson Mandela TB & HIV Information
39. NEPHAK
40. Nyakach Elders' Group
41. Next Generation of Kenya Lawyers Project
42. National Nurses Association of Kenya
43. Pamoja TB group
44. PEMA Kenya
45. People's Health Movement
46. Rising to Greatness
47. SHAPE Kenya
48. Society of Radiography in Kenya
49. Teenseed
50. TISA
51. Transparency International Kenya
52. Trust for Indigenous Culture and Health (TICAH)
53. Voices Of Community Action And Leadership (Vocal Kenya)
54. Wacha Health
55. Women in Real Estate
56. Women's Link Worldwide

CN-1

Christine Nkonge

30th June 20

Nairobi

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 06/April/2020**

**Advance copy via email*

Hon. Mutahi Kagwe
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke; pshealthke@gmail.com

Dear Sir,

REF: OPEN LETTER ON IMPLEMENTATION OF MANDATORY QUARANTINE IN THE COVID-19 RESPONSE IN KENYA & REQUEST FOR INFORMATION

We, the undersigned, individuals, individuals under mandatory quarantine, family members of individuals under quarantine, organizations and associations, are representatives of health and human rights civil society and non-governmental organizations, community-based organizations and governance experts. We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" whose issues raised remains unaddressed.

Our previous advisory had, among other concerns, noted that the implementation of the government's directive of mandatory quarantine and isolation of people affected by COVID-19 was uncoordinated, unplanned and not guided by any policy or guidelines.

We issue this open letter and formal request for information in light of concerns raised by individuals currently in mandatory quarantine, their family members and media reports. The media have documented poor management of individuals from the time they landed at Jomo Kenyatta International Airport, their transportation, up to the time they were admitted to various mandatory quarantine facilities. This exposed them to risk of infection, defeating the very essence of safeguarding the greater public and avoiding co-infection.

People in mandatory quarantine have also brought to our direct attention and through open letters[1] and personal videos clear cases of recklessness in their handling, exorbitant costs they have been forced to incur to pay for the quarantine facilities, deplorable living conditions in most quarantine centers, lack of information on any quarantine protocols, and a general lack of any regard to their health, safety and well-being[2]. For the general public, it is not clear how many people are in mandatory quarantine, whether they have all been tested while in quarantine, how many have tested negative or positive and whether the results have been communicated to them. Similar information is unavailable to those in quarantine.

We take note of the fact that quarantine as a public health measure involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, *with the objective of monitoring their symptoms and ensuring early detection of cases*[3]. The World Health Organization (WHO) recommends that mandatory quarantine should be implemented as part of a comprehensive package of public health response and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons. Further, that if a decision to implement quarantine is taken, the authorities should ensure that:

- the quarantine setting is appropriate and that adequate food, water, and hygiene provisions can be made for the quarantine period;
- minimum Infection Prevention and Control (IPC) measures can be implemented; and
- minimum requirements for monitoring the health of quarantined persons can be met during the quarantine period.

We are therefore appalled by the manner in which mandatory quarantine is being implemented which is putting those in quarantine, all health care workers attending to them and, by extension, the entire nation at risk. From the time the decision to enforce mandatory quarantine was made on 22nd March 2020, the public has had several concerns:

- There has been no public information on any guidelines on the mandatory quarantine process, save for draft protocols dated 27th March 2020 and published on the Ministry of Health website on or about 3rd April 2020;

- There has never been information, within the public domain, or to those quarantined, on what to expect at the quarantine facilities, the period, costs, health information etc;There has never been information within the public domain, or to those quarantined on measures put in place to protect the workers at such quarantine facilities from infection including the provisions of personal protective equipment to the health care workers and others attending to them such as hotel workers. For instance, were all the health care workers and hotel staff tested and offered training on managing persons with COVID-19 before they received the people in mandatory quarantine?

As the nation continues struggling with the above, our attention is now drawn to a circular by Acting Director General for Health (Ref: MOH/ADM/1/3/Vol.1) communicating a decision to extend the quarantine period beyond 14 days for occupants of all facilities in which positive cases are identified. As expected, the circular raises further concerns:

- **The risk of co infection for those who are negative:** The Ministry of Health is already handling the quarantine process poorly, putting those in quarantine at risk and contributing to increased infections. What will extension of the quarantine period, of such poorly managed quarantine facilities[4] achieve other than increase chances of co infection for those who are COVID-19 negative?

1. Open letter by people quarantined at Pride Inn Azure Hotel dated 5th April 2020, REF: Directive to extend quarantine period beyond 14 days.

2. See Angela Okech, et. al "Covid-19: Kenyans reveal poor state of isolation centres,"; John Allan-Namu "Inside the Quarantine: Fears of Further Spreading the Virus Haunt the Confined."

3. WHO, 19 March 2020, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19) available at https://www.who.int/publications-detail/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)

4. For example, the Kenya Medical Training Centre, Moi Girls High School Nairobi, Lenana School

- **Lack of information to the people under quarantine of the extension:** Who does the circular apply to? At whose cost is the extension? Why a blanket circular to all, yet the Ministry admits that some centers were managed better? Was this circular communicated to those in the mandatory quarantine facilities before it was made public? Do the health care workers and other personnel (e.g. hotel staff) in these facilities have personal protective equipment? Why is it that people who have tested positive appear to learn of their status from the media? Is this not a breach of medical ethics?

- **Poor quarantine facilities:** It is evident that most quarantine facilities are in deplorable conditions. WHO recommends that those who are in quarantine must be placed in adequately ventilated, spacious single rooms with en suite facilities (that is, hand hygiene and toilet facilities). If single rooms are not available, beds should be placed at least one meter apart. Those in quarantine report otherwise, and publicly available video evidence confirms this.

- **Psychosocial Effects of Prolonged Isolation:** How will the Ministry of Health ensure that the mental health of those in quarantine is well taken care of?

- **Proof of Contact:** WHO recommends that contacts of patients with laboratory-confirmed COVID-19 be quarantined for 14 days from the last time they were exposed to the patient. This is also reflected in the draft protocols dated 27th March 2020. What happens to those people who have adhered to quarantine conditions, including social distancing, and have tested negative?

- **Turnaround times for testing:** Per the Ministry's Draft Protocols, test results are to be availed within 24 hours. What is the Ministry doing to ensure results are availed within a reasonable time, to allay unnecessary anxiety and strengthen the quarantine regime overall?

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and the Right to Access Information Act:

1. Provide an explanation as to why the Ministry of Health is not adhering to its own guidelines relating to managing the designated mandatory quarantine facilities. For instance, why are people who have first tested negative test not released into self-quarantine as per the self-quarantine protocols?
2. Does the circular extending the quarantine period apply to all quarantine facilities? Why? At whose cost?
3. The total number of designated quarantine facilities as at 6th April 2020 and the number of occupants in each? The number of heath care workers and their cadres that have been deployed to these quarantine facilities? How many people are currently in quarantine who have been tested and received their results?
4. What measures are being taken to safeguard the health of people in quarantine facilities who have pre-existing medical conditions?
5. What is the time period taken when one tests positive in a quarantine facility before they are transferred to medical facility for isolation?
6. Have the healthcare workers and hotel attendants who have come into contact with the persons who have tested positive been tested and provided with PPE?

As per Section 27 of the Public Health Act, the government has the responsibility of isolating persons who have been exposed to infectious diseases. In the public health emergency occasioned by COVID-19 pandemic, we urge the government to diligently undertake this obligation by, among others, providing safe, clean and hygienic quarantine facilities; meeting the costs of such facilities; and above all monitoring the health including mental health of those in quarantine and promptly discharging those who test negative.

Signed by the following individuals:

1. Allan Maleche
2. Ashok Rajput
3. Atieno Odenyo
4. Benson Maina
5. Bridget Kanini
6. Bonface Ombui
7. Caroline Jerop Morogo
8. Catherine Murugi
9. Christine Nkonge
10. Eugene Ligale
11. Evaline Kibuchi
12. Evelyne Wanjiru Karanja
13. Etta Ligale
14. Francis Aywa
15. Francis Mwangi
16. Grace Macharia
17. Hallima Nyota
18. Huzefa Amirali Mohamedbhai
19. Jamie Nyamongo
20. Jasmine Lemelin
21. Karishma Bhagani
22. Margaret Kalekye
23. Mark Gitau
24. Melanie Ligale
25. Maureen Ouma
26. Naiya Anil Haria
27. Nicholas Mwenda
28. Nickitah Mckena
29. Patricia Asero
30. Peter Owiti
31. Rahul Ponda
32. Rashmi Shah
33. Reggie Ann
34. Sarah Mburu
35. Sajan Thakar
36. Sarah Mwangi
37. Samson Onditi
38. Shanay Sirju Patel
39. Sheila Masinde
40. Sirju Shashikant Patel
41. Sophia Muchiri
42. Soukhya Ankala
43. Tanika Dodhia
44. Twinkle Pethad
45. Vaishali Sirju Patel
46. Vivian Washiko
47. William Mburu

Organisations:

1. Amnesty International
2. CADAMIC
3. COFAS
4. Community Initiative Action Group – Kenya
5. EMAC Kenya
6. FIDA Kenya
7. GALCK
8. Happy Life for Development CBO
9. HENNET
10. HERAF
11. International Community of Women Living with HIV – Kenya Chapter
12. ICJ – Kenyan Section
13. Katiba Institute
14. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
15. KANCO
16. Lean on Me Foundation
17. Next Generation of Kenya Lawyers Project
18. Nelson Mandela TB-HIV Resource Centre Nyalenda
19. People's Health Movement – Kenya
20. PEMA Kenya
21. Rising to Greatness
22. SWOP Ambassadors
23. The Network on Food and Nutrition Security
24. TICAH
25. TISA
26. Transparency International Kenya
27. Wote Youth Development Projects

cc:
Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors

Siddharth Chatterjee,
UN Resident Coordinator in Kenya

Bernard Mogesa
CEO, Kenya National Commission on Human Rights

Dr. Joyce Mwikali Mutinda
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ALL MEDIA HOUSES

Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

Christine Nkonge

30th June 20
Nairoib

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Dr Rudi Eggers,
WHO Country Representative – Kenya,
Email: afkenwr@who.int

The Chairman,
Council of Governors,
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P.O Box 40401-00100,
NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal "*measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation.*"

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:

a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;

b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.

2. The Ministry of Health to provide us with information on the following:

a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;

b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;

c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:

a. Information on the criteria that was used to select hotels and facilities as quarantine centers.

b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.

c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.

d. The approved standard operating procedures of the quarantine facilities.

e. The designated medical personnel responsible for oversight at each quarantine center.

4. The **Council of Governors and all the 47 Governors** urgently share information on:

a. The number of people currently in quarantine in each of their respective counties.

b. The number of people who have been tested in the various quarantine facilities in the counties.

c. The testing schedule of the people in county quarantine.

d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.

e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:

a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –

i. what training these officers have been given to undertake the role of medical experts;

ii. what infection prevention and control protocols they follow; and

iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Committee of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo

27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

cc:

Siddharth Chatterjee,
UN Resident Coordinator in Kenya
Email: siddharth.chatterjee@one.un.org

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR
lfung@ohchr.org

Col. (Rtd) Cyrus Oguna
Spokesperson, Government of Kenya
spox@ict.go.ke;
governmentmediacentre@ict.go.ke

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice
chair@ombudsman.go.ke

The Chairperson
Senate Ad Hoc Committee on COVID-19
covid19@parliament.go.ke

The Chairperson
National Assembly Health Committee
clerk@parliament.go.ke

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution
and
In the Matter of Section 4 and 9 of the Access to Information Act, 2016
and
In the Matter of Section 5, 6 and 10 of the Health Act, 2017
and
In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA..1ST PETITIONER

ESTHER NELIMA..2ND PETITIONER

CHRIS OWALLA..3RD PETITIONER

CM..4TH PETITIONER

FA..5TH PETITIONER

KB..6TH PETITIONER

MO..7TH PETITIONER

EL..8TH PETITIONER

KATIBA INSTITUTE..9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN)..10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA)..11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA..12TH PETITIONER

ACHIENG ORERO..13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY FOR HEALTH..1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH..2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF SIAYA COUNTY..3rd RESPONDENT

COUNCIL OF GOVERNORS...4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT...5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL OF THE POLICE, KENYA..6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET SECRETARY FOR INFORMATION AND COMMUNICATIONS...7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER, KENYA MEDICAL PRACTITIONERS' AND DENTISTS COUNCIL..9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR).................................1ST INTERESTED PARTY

AFFIDAVIT OF ALLAN MALECHE IN SUPPORT OF THE NOTICE OF MOTION

I, **ALLAN MALECHE**, a citizen of Kenya and resident of Nairobi, within the Republic of Kenya do solemnly make oath and state as follows:

1. **THAT** I am the Executive Director of the 10th Petitioner and have the authority to swear this Affidavit on behalf of Kenya Legal & Ethical Issues Network On HIV & AIDS (KELIN).

2. **THAT** I am swearing this Affidavit is support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.

3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.

4. **THAT** following the global outbreak of the coronavirus disease ("COVID-19") pandemic, and the reporting of the first person with COVID-19 in Kenya on 12th March 2020, KELIN in exercise of its mandate, and in partnership with other non-governmental, civil society and community-based organisations, has been monitoring the government's response to the pandemic, especially how the government was fulfilling its constitutional and statutory obligation to protect the right to health of Kenyans.

5. **THAT** I have on my own behalf and on behalf of KELIN made several requests for information to the respondents as follows:
   (a) Request for information via a letter dated 6th April 2020 on requesting for information on implementation of Mandatory Quarantine in the COVID-19 Response **(Annexed and Marked "AM-00A")**
   (b) Request for information vide a letter dated 15th April 2020 requesting for information on the undignified sendoff of the late James Oyugi **(Annexed and Marked "AM-00B")**
   (c) Request for information vide a letter dated 17th April 2020 on requesting for information on provision of Support to Health Care Workers in the COVID-19 Response **(Annexed and Marked "AM-00C")**
   (d) Request for information via a letter dated 22nd April 2020 to the Pharmacy and Poisons Board **(Annexed and Marked "AM-00D")**
   (e) Request for information vide a letter dated 27th April 2020 on use of Quarantine as a form of Punishment and Criminalization of COVID-19 Response **(Annexed and Marked "AM-00E").**

6. **THAT** as an organisation, and individual, working to promote and protect health related rights for all, the requests for information I and the 10th petitioner have made, have the sole intention of ensuring the right to health of people is respected, promoted and protected during the pandemic period noting that access to information is indispensable for realisation of this right.

7. **THAT** the respondents have to date not honoured the requests for information occasioning confusion to us and the public on several issues, for instance, implementation of quarantine programme, burial of people who have succumbed to COVID-19, the level of preparedness of

healthcare workers for the pandemic, among others. (**Annexed and Marked "AM-00F"** are newspaper reports highlighting the persistent challenges in implementation of mandatory quarantine; **Annexed and Marked "AM-00G"** are media reports on bizarre burials of people who died from COVID-19 in Bomet and Murang'a; and **Annexed and Marked "AM-00H"** is the strike notice by unions of health care workers).

8. **THAT** this petition is therefore urgent because there is a continuing violation in that people still have no information on many issues pertaining to the level of preparedness of the country to deal with the COVID-19 pandemic.

9. **THAT** all questions asked to the respondents in the various request for information letters are still relevant to date, and that the respondent's failure to answer then has occasioned the public confusion and violation of other human rights.

10. **THAT** for instance, KELIN and the public still has no information on why quarantine facilities are being used as detention centers; whether new prisons have been created outside of the law; what legal framework empowers the police to detain people in quarantine without following due process; whether people in these detention facilities are tested for COVID-19; who between the 1st and 5th / 6th respondent is in charge of these facilities.

11. **THAT** further, the failure of the 1st respondent to publish and publicise information on the justification as well as mode of implementation of other measures, especially the curfew order, resulted in the 5th and 6th respondents violating fundamental rights of people with reports that police were brutalizing, maiming and killing innocent people while enforcing the curfew order **(Annexed and Marked AM-00I** are related newspaper reports).

12. **THAT** the failure by the 1st and 3rd respondent information on continuity of health services, emergency access, as well as information on prevention, treatment and care for the COVID-19 has led to violation of rights with reports of people unable to access health services due to measures introduced by the government as well as people affected by COVID-19 being detained in health facilities **(Annexed and Marked AM-00J** are related newspaper reports).

13. **THAT** noting the urgency of the information requested to protect the rights of the public during this pandemic, the inaction of the 8th Respondent to enforce compliance of the requests for

information, and the lack of guidelines anticipated under Section 25 of the Access to Information Act 2016, continues to cause great confusion thus necessitating the urgency of this matter for the court to provide direction.

14. **THAT** in relation to the anonymity order, the Constitution provides for the right to privacy, especially in instances such as this where the petitioners may face stigmatisation related to the COVID 19 pandemic.

15. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

16. **THAT** what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Nairobi this day of 2020.

By the said

ALLAN MALECHE)
) Deponent
)
BEFORE ME)
COMMISSIONER FOR OATHS)

DRAWN & FILED BY: -

Nerima Were, Advocate,
C/O KELIN
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P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 06/April/2020**

Hon. Mutahi Kagwe **Advance copy via email*
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke; pshealthke@gmail.com

Dear Sir,

REF: OPEN LETTER ON IMPLEMENTATION OF MANDATORY QUARANTINE IN THE COVID-19 RESPONSE IN KENYA & REQUEST FOR INFORMATION

We, the undersigned, individuals, individuals under mandatory quarantine, family members of individuals under quarantine, organizations and associations, are representatives of health and human rights civil society and non-governmental organizations, community-based organizations and governance experts. We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" whose issues raised remains unaddressed.

Our previous advisory had, among other concerns, noted that the implementation of the government's directive of mandatory quarantine and isolation of people affected by COVID-19 was uncoordinated, unplanned and not guided by any policy or guidelines.

We issue this open letter and formal request for information in light of concerns raised by individuals currently in mandatory quarantine, their family members and media reports. The media have documented poor management of individuals from the time they landed at Jomo Kenyatta International Airport, their transportation, up to the time they were admitted to various mandatory quarantine facilities. This exposed them to risk of infection, defeating the very essence of safeguarding the greater public and avoiding co-infection.

People in mandatory quarantine have also brought to our direct attention and through open letters[1] and personal videos clear cases of recklessness in their handling, exorbitant costs they have been forced to incur to pay for the quarantine facilities, deplorable living conditions in most quarantine centers, lack of information on any quarantine protocols, and a general lack of any regard to their health, safety and well-being[2] For the general public, it is not clear how many people are in mandatory quarantine, whether they have all been tested while in quarantine, how many have tested negative or positive and whether the results have been communicated to them. Similar information is unavailable to those in quarantine.

We take note of the fact that quarantine as a public health measure involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, *with the objective of monitoring their symptoms and ensuring early detection of cases*[3] The World Health Organization (WHO) recommends that mandatory quarantine should be implemented as part of a comprehensive package of public health response and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons. Further, that if a decision to implement quarantine is taken, the authorities should ensure that:

- the quarantine setting is appropriate and that adequate food, water, and hygiene provisions can be made for the quarantine period;
- minimum Infection Prevention and Control (IPC) measures can be implemented; and
- minimum requirements for monitoring the health of quarantined persons can be met during the quarantine period.

We are therefore appalled by the manner in which mandatory quarantine is being implemented which is putting those in quarantine, all health care workers attending to them and, by extension, the entire nation at risk. From the time the decision to enforce mandatory quarantine was made on 22nd March 2020, the public has had several concerns:

- There has been no public information on any guidelines on the mandatory quarantine process, save for draft protocols dated 27th March 2020 and published on the Ministry of Health website on or about 3rd April 2020;
- There has never been information, within the public domain, or to those quarantined, on what to expect at the quarantine facilities, the period, costs, health information etc;There has never been information within the public domain, or to those quarantined on measures put in place to protect the workers at such quarantine facilities from infection including the provisions of personal protective equipment to the health care workers and others attending to them such as hotel workers. For instance, were all the health care workers and hotel staff tested and offered training on managing persons with COVID-19 before they received the people in mandatory quarantine?

As the nation continues struggling with the above, our attention is now drawn to a circular by Acting Director General for Health (Ref: MOH/ADM/1/3/Vol.1) communicating a decision to extend the quarantine period beyond 14 days for occupants of all facilities in which positive cases are identified. As expected, the circular raises further concerns:

- **The risk of co infection for those who are negative:** The Ministry of Health is already handling the quarantine process poorly, putting those in quarantine at risk and contributing to increased infections. What will extension of the quarantine period, of such poorly managed quarantine facilities[4] achieve other than increase chances of co infection for those who are COVID-19 negative?

1. Open letter by people quarantined at Pride Inn Azure Hotel dated 5th April 2020, REF: Directive to extend quarantine period beyond 14 days.

2. See Angela Okech, et. al "Covid-19: Kenyans reveal poor state of isolation centres,"; John Allan-Namu "Inside the Quarantine: Fears of Further Spreading the Virus Haunt the Confined."

3. WHO, 19 March 2020, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19) available at https://www.who.int/publications-detail/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)

4. For example, the Kenya Medical Training Centre, Moi Girls High School Nairobi, Lenana School

- **Lack of information to the people under quarantine of the extension:** Who does the circular apply to? At whose cost is the extension? Why a blanket circular to all, yet the Ministry admits that some centers were managed better? Was this circular communicated to those in the mandatory quarantine facilities before it was made public? Do the health care workers and other personnel (e.g. hotel staff) in these facilities have personal protective equipment? Why is it that people who have tested positive appear to learn of their status from the media? Is this not a breach of medical ethics?

- **Poor quarantine facilities:** It is evident that most quarantine facilities are in deplorable conditions. WHO recommends that those who are in quarantine must be placed in adequately ventilated, spacious single rooms with en suite facilities (that is, hand hygiene and toilet facilities). If single rooms are not available, beds should be placed at least one meter apart. Those in quarantine report otherwise, and publicly available video evidence confirms this.

- **Psychosocial Effects of Prolonged Isolation:** How will the Ministry of Health ensure that the mental health of those in quarantine is well taken care of?

- **Proof of Contact:** WHO recommends that contacts of patients with laboratory-confirmed COVID-19 be quarantined for 14 days from the last time they were exposed to the patient. This is also reflected in the draft protocols dated 27th March 2020. What happens to those people who have adhered to quarantine conditions, including social distancing, and have tested negative?

- **Turnaround times for testing:** Per the Ministry's Draft Protocols, test results are to be availed within 24 hours. What is the Ministry doing to ensure results are availed within a reasonable time, to allay unnecessary anxiety and strengthen the quarantine regime overall?

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and the Right to Access Information Act:

1. Provide an explanation as to why the Ministry of Health is not adhering to its own guidelines relating to managing the designated mandatory quarantine facilities. For instance, why are people who have first tested negative test not released into self-quarantine as per the self-quarantine protocols?
2. Does the circular extending the quarantine period apply to all quarantine facilities? Why? At whose cost?
3. The total number of designated quarantine facilities as at 6th April 2020 and the number of occupants in each? The number of heath care workers and their cadres that have been deployed to these quarantine facilities? How many people are currently in quarantine who have been tested and received their results?
4. What measures are being taken to safeguard the health of people in quarantine facilities who have pre-existing medical conditions?
5. What is the time period taken when one tests positive in a quarantine facility before they are transferred to medical facility for isolation?
6. Have the healthcare workers and hotel attendants who have come into contact with the persons who have tested positive been tested and provided with PPE?

As per Section 27 of the Public Health Act, the government has the responsibility of isolating persons who have been exposed to infectious diseases. In the public health emergency occasioned by COVID-19 pandemic, we urge the government to diligently undertake this obligation by, among others, providing safe, clean and hygienic quarantine facilities; meeting the costs of such facilities; and above all monitoring the health including mental health of those in quarantine and promptly discharging those who test negative.

Signed by the following individuals:

1. Allan Maleche
2. Ashok Rajput
3. Atieno Odenyo
4. Benson Maina
5. Bridget Kanini
6. Bonface Ombui
7. Caroline Jerop Morogo
8. Catherine Murugi
9. Christine Nkonge
10. Eugene Ligale
11. Evaline Kibuchi
12. Evelyne Wanjiru Karanja
13. Etta Ligale
14. Francis Aywa
15. Francis Mwangi
16. Grace Macharia
17. Hallima Nyota
18. Huzefa Amirali Mohamedbhai
19. Jamie Nyamongo
20. Jasmine Lemelin
21. Karishma Bhagani
22. Margaret Kalekye
23. Mark Gitau
24. Melanie Ligale
25. Maureen Ouma
26. Naiya Anil Haria
27. Nicholas Mwenda
28. Nickitah Mckena
29. Patricia Asero
30. Peter Owiti
31. Rahul Ponda
32. Rashmi Shah
33. Reggie Ann
34. Sarah Mburu
35. Sajan Thakar
36. Sarah Mwangi
37. Samson Onditi
38. Shanay Sirju Patel
39. Sheila Masinde
40. Sirju Shashikant Patel
41. Sophia Muchiri
42. Soukhya Ankala
43. Tanika Dodhia
44. Twinkle Pethad
45. Vaishali Sirju Patel
46. Vivian Washiko
47. William Mburu

Organisations:

1. Amnesty International
2. CADAMIC
3. COFAS
4. Community Initiative Action Group – Kenya
5. EMAC Kenya
6. FIDA Kenya
7. GALCK
8. Happy Life for Development CBO
9. HENNET
10. HERAF
11. International Community of Women Living with HIV – Kenya Chapter
12. ICJ – Kenyan Section
13. Katiba Institute
14. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
15. KANCO
16. Lean on Me Foundation
17. Next Generation of Kenya Lawyers Project
18. Nelson Mandela TB-HIV Resource Centre Nyalenda
19. People's Health Movement – Kenya
20. PEMA Kenya
21. Rising to Greatness
22. SWOP Ambassadors
23. The Network on Food and Nutrition Security
24. TICAH
25. TISA
26. Transparency International Kenya
27. Wote Youth Development Projects

cc:
Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors

Siddharth Chatterjee,
UN Resident Coordinator in Kenya

Bernard Mogesa
CEO, Kenya National Commission on Human Rights

Dr. Joyce Mwikali Mutinda
Chairperson, National Gender and Equality Commission (NGEC)

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR

This is Exhibit marked "AM-008" referred to in the Annexed affidavit/Declaration of Allan Maleche
Sworn/Declared before me on this .... day of .... 20.... in the Republic of Kenya
Commissioner for Oaths

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 15/April/2020**

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

H.E. Cornel Rasanga Amoth
Governor, Siaya County Government

Dear Sir,

RE: PROTEST AGAINST THE UNDIGNIFIED SENDOFF OF THE LATE JAMES OYUGI AND VIOLATION OF GUIDELINES FOR HANDLING BODIES SUSPECTED OR CONFIRMED OF COVID-19: REQUEST FOR INFORMATION

We, the undersigned, are representatives of civil society organizations working in Siaya County, community-based organizations and health and human rights civil society and non-governmental organizations.

We write to you both in our individual and organizational capacities to express our concern in the undignified manner in which the late James Oyugi, a suspected COVID-19 patient, was buried in Siaya County. The undignified burial was conducted in the wee hours of the night of 12th April 2020 in Ugenya Sub-County, Ukwala, Simur Kondiek Sub-Location, Kamalunga village.

We take note of the fact that James Oyugi was the first suspected COVID-19 patient in Siaya County. This occurred more than a month since the first patient was reported in Kenya. As such, the county government and national government agencies in Siaya county had more than a month to prepare and put in place all the necessary measures to appropriately respond to any emerging COVID-19 in Siaya.

We were thus taken aback by reports of James Oyugi's burial in a bizarre ceremony with his body being tossed unceremoniously into a shallow grave at night. No cultural or religious rites were performed, and the family was not given a chance to pay their last respects and accord their loved one a dignified send-off.

We are concerned about the impact of this burial, especially the trauma, distress, and stigma caused to family members and the village. We thus condemn the unethical, unacceptable and bizarre interment that was conducted contrary to national guidelines, and with zero regard to the cultural and religious traditions of the deceased.We are also concerned about the stigma that this act causes to other suspected COVID-19 patients. This is an act with the potential to stigmatize people, make people fear and shun services thereby increasing infections in the community.

James Oyugi is not the first reported death from this pandemic. As of 11th April 2020, seven people had died from COVID-19 in Kenya and accorded dignified burials, during the day and in the presence of their families complete with religious rites.

The Ministry of Health's Guidelines for Safe Disposal of Human Remains of a patient who has died from suspected or confirmed COVID-19 requires that safe disposal of human remains be conducted in a manner that prevents infection, control the spread of disease, is culturally appropriate for the bereaved family and that before the commencement of the handling of the remains, the family must be fully informed about the dignified burial process and their religious and personal rights to show respect for the deceased.

The World Health Organization's guidelines for Infection Prevention and Control for the safe management of a dead body in the context of COVID-19 also provide that the dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout and that hasty disposal of a dead from COVID-19 should be avoided.

In James Oyugi's situation, all the above guidelines were not adhered to. It is imperative that the dead are accorded a dignified and respectful send-off. The need for dignity and respect during send-off cannot be waived even in the face of the current pandemic. Not even in times of war.

We thus condemn in the strongest terms possible the despicable actions of the Siaya County Government, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service who hurriedly oversaw the undignified burial.

We demand that the County Government of Siaya, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service issue a public apology to the family of the deceased, and members of the public.

We also call upon the County Government, the Ministry of Health, the National Police Service and the Ministry of Interior and Coordination of National Government to strictly adhere to guidelines provided in handling suspected and confirmed COVID--19 bodies in Kenya. Dignity in death is of utmost importance.

From the foregoing, we also demand that the County Government of Siaya, Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently provide us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Provide the family of the late Oyugi with a detailed report of the results of the COVID-19 test conducted on the late James Oyugi.

(ii) Provide us with a detailed report on how the decision to bury James Oyugi was made. Who authorized the burial? Who conducted the burial? Why were guidelines not adhered to? Why was the burial conducted at night? Why was the dignity of the dead not respected?

(iii) Provide us with information on measures put in place to ensure this act is not replicated any where in the county and the country.

(iv) Provide us with information on measures taken to ensure that this act does not increase the stigma on COVID-19 patients in the community;

(v) Provide us with information on measures taken to secure the mental health of family members and community members from Kamalunga village through counseling;

(vi) Information on how the family of the deceased and close contacts are being quarantined? In which quarantine facilities? How many health care workers are in those facilities? Has the family and other close contacts been tested? Who will pay the costs of the quarantine?

(vii) Investigation report on the circumstances leading to the death of James Oyugi. Is there a formal inquiry being conducted?

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Yours faithfully,

1. **Chris Owalla** on my own behalf and
   on behalf of Community Initiative Action Group Kenya

2. **Titus Ogalo** on my own behalf and
   on behalf of Transparency International Kenya

3. **Nicholas Ngesa** on my own behalf and
   on behalf of Tembea Youth Centre for Sustainable Development

4. **Janet Okach** on my own behalf and
   on behalf of VSO-Kenya

5. **Mildred Andere** on my own behalf and
   on behalf of Young Women Christian Organisation - Siaya Branch

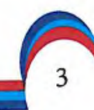
6. **Enock Chiteri** on my own behalf and
   on behalf of Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter

7. **Isiah Ochieng** on my own behalf and
   on behalf of Ugunja Development Initiative

8. **Aggrey Omondi** on my own behalf and
   on behalf of Ugunja Community Resource Centre

9. **Charles Juma** on my own behalf and
   on behalf of Siaya County Disability Network

10. **Peter Aduda** on my own behalf and
    on behalf of West Ugenya Development Forum



11. **Peter Owiti** on my own behalf and
on behalf of Wote Youth Development Projects

12. **Allan Maleche** on my own behalf and
on behalf of Kenya Legal and Ethical Issues Network (KELIN)

Endorsed by: Organizations:

1. Community Initiative Action Group Kenya
2. Community Forum for Advanced & Sustainable Development (COFAS)
3. Kenya Legal and Ethical Issues Network (KELIN)
4. Kenya Sex Workers Alliance (KESWA)
5. Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter
6. Tembea Youth Centre for Sustainable Development
7. Transparency International Kenya
8. Ugunja Development Initiative
9. Ugunja Community Resource Centre
10. Siaya County Disability Network
11. West Ugenya Development Forum
12. Wote Youth Development Projects
13. VSO-Kenya
14. Young Women Christian Organisation - Siaya Branch

CC:

1. **Hon Dr. Fred Okengo Matiangi,**
The Cabinet Secretary,
Ministry of Interior and Coordination of National Government.

2. **Hon. Wycliffe Ambetsa Oparanya,**
Chairperson, Council of Governors.

3. **Hillary Nzioki Mutyambai,**
Inspector General of Police.

4. **Bernard Mogesa,**
CEO, Kenya National Commission on Human Rights.

5. **Dr. Joyce Mwikali Mutinda,**
Chairperson, National Gender and Equality Commission (NGEC).

6. **Hon. Florence Kajuju,**
Chairperson, Commission on Administrative Justice

7. **Li Hsiang FUNG,**
Senior Human Rights Advisor, OHCHR.

Dandora Community AIDS support Association (DACASA)

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 17/April/2020**

This exhibit marked "AM-OOC" referred to in the Annexed affidavit/Declaration of Allan Maleche Sworn/Declared before me on this ... day of ... 20... in the Republic of Kenya at ... Commissioner for Oaths

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON PROVISION OF SUPPORT TO HEALTH CARE WORKERS IN THE COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We are also Kenyan citizens concerned about the state of preparedness of health facilities to deal with COVID-19, given that any of us is likely to use them. The information we seek in this letter is therefore critical to safeguard our rights including right to life, and right to health.

We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" that remains unanswered.

In the previous advisory, we noted the need to support health care workers during this pandemic period through provision of adequate training, and ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks.

We write this urgent request for information letter in light of concerns that health care workers continue to raise as regards to their occupational safety and health risks. We note that it is imperative that the plight of health care workers is urgently, adequately and conclusively addressed given that they have placed themselves and their families at risk to secure the health of this nation.

In our previous advisory, we urged the Ministry of Health to guarantee the safety and well-being of health care workers by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic.

- Ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks through provision of quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and running water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimizing occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Additionally, we proposed that the government ensures this information is available to the public through a live dashboard that is updated on a regular basis with the following information on inputs and processes:

- Number of health care workers trained in every county and in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on trainings provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

However, we take note of the fact that to date there are still complaints and concerns on the protection of health care workers in this pandemic. For instance, the Health Unions (Kenya National Union of Nurses, Kenya Union Clinical Officers and Kenya Medical Practitioners Pharmacist and Dentist Union) have recently done a survey and noted that most of their members in county governments and Ministry of Health have not been adequately trained and or prepared to handle the Corona Virus pandemic.

They have also reported that provision of personal protective equipment (PPE) remains a challenge at health facilities in most counties. The Kenya Medical Practitioners Pharmacists and Dentists' Union in its weekly brief dated 13th April, 2020 called for:

- The need to provide adequate PPEs for all personnel in the hospital including N95 masks, face shields, goggles, scrubs and gowns;
- Designation of specific COVID-19 testing centers for health care workers;
- Provision of catering services to healthcare workers;

- Provision of transport for all health care workers handling COVID-19 patients to and from the hospital to their accommodation facilities;
- Increase in the number of health care personnel;
- Provision of accommodation to health workers on duty during the pandemic (especially those in health facilities treating suspected and confirmed COVID-19 patients.

The government has a Constitutional and legal obligation to ensure every person enjoys their right to the highest attainable standard of health. This obligation cannot be achieved without health care workers. We therefore urge the government in fulfilment of its legal obligations and in line with the World Health Organization guidelines to (among others):

- Ensure that all necessary preventive and protective measures are taken to minimize occupational safety and health risks;
- Provide information, instruction, and training on occupational safety and health, including; refresher training on infection prevention and control (IPC); use, putting on, taking off and disposal of personal protective equipment (PPE);
- Provide adequate IPC and PPE supplies (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) in sufficient quantity to those caring for suspected or confirmed COVID-19 patients, such that workers do not incur expenses for occupational safety and health requirements;
- Familiarize personnel with technical updates on COVID-19 and provide appropriate tools to assess, triage, test, and treat patients, and to share IPC information with patients and the public;
- Provide appropriate security measures as needed for personal safety;

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Number health care workers trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.

(ii) Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

(iii) Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.

(iv) Number of health care workers tested for COVID-19.

(v) Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Signed by the following individuals:

1. Allan Maleche
2. Becky Odhiambo Mududa
3. Bradley Njukia
4. Caroline Oyumbo
5. Cecilia Mumbi
6. Erick Okioma
7. Fenwick Oyumbo
8. Houghton Irungu
9. Mary Ger
10. Nelson Silas
11. Patricia Osero
12. Peter Owiti
13. Samson Onditi
14. Sheila Masinde
15. Steve Anguva

Endorsed by:

1. Amnesty International
2. Boda Boda Association of Kenya
3. COFAS
4. Dandora Community AIDS Support Association (DACASA)
5. EMAC Kenya
6. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
7. Happy Life Development
8. HERAF
9. ICJ – Kenyan Section
10. Kenya Sex Workers Alliance (KESWA)
11. Mumbo International
12. Nelson Mandela TB-HIV Resource Centre Nyalenda
13. Nyarwek Network
14. Transparency International
15. WOYDEP (Wote Youth Development Projects)

cc:

1. Kenya Medical Practitioners Pharmacist and Dentist Union
2. Kenya National Union of Nurses
3. Kenya Union Clinical Officers
4. Association of Public Health Professionals Kenya (APHOK)
5. Kenya Medical Association (KMA)
6. Chairperson, Council of Governors
7. Kenya National Commission on Human Rights
8. Commission on Administrative Justice

Mbita Suba
Paralegal Network

SHAPE
Kenya

Your REF: TBA **Our REF:** **Date: 22 April, 2020**

Advance copy via email

This is Exhibit marked "AM-ODD" referred to in the Annexed affidavit/Declaration of Allan Maleche
Sworn/Declared before me on this .... day of .... 20...... at .... in the Republic of Kenya
Commissioner for Oaths

Dr. F.M Siyoi
Chief Executive Officer,
Pharmacy & Poisons Board
P.O. Box 27663 – 00506, Nairobi.
Lenana Road Opp. DOD
Email: info@pharmacyboardkenya.org

Dear Sir,

RE: REQUEST FOR INFORMATION ON IMPORT AND DISTRIBUTION OF PERSONAL PROTECTIVE EQUIPMENT

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We make this request for information in the spirit of ensuring transparency and accountability in the procurement of life-saving medicines and other medical supplies. The information is also necessary to protect us against price gouging of drugs, and other goods and services required to protect citizens and health workers from COVID-19 infection (such as hand sanitizers, masks, gloves). The information we seek will also enable the public to know the state of preparedness to curb the spread of COVID-19.

Our letter is informed by the fact that the Pharmacy and Poisons Board has the mandate to implement the appropriate regulatory measures to achieve the highest standards of safety,

efficacy and quality for all drugs, chemical substances and medical devices, locally manufactured, imported, exported, distributed, sold, or used, to ensure the protection of the consumer as envisaged by the laws regulating drugs in force in Kenya.

The COVID-19 pandemic has created the need to ensure urgent availability of medical devices, for instance, personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) among others.

We therefore request that the Board provides us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Which distributors have been licensed to import PPE?
(ii) What are the procedures or processes of seeking the import license?
(iii) How long does the process take?
(iv) How much does it cost to get the license?
(v) Which department of the board is responsible for issuance of the license?
(vi) From which countries are the PPEs being imported from? And what are the main ports of entry?
(vii) How many local suppliers and manufacturers are involved in the process?
(viii) What are the procedures or processes of certifying local manufacturers of PPEs? And is this done in collaboration with KEBS?
(ix) How has the Pharmacy and Poisons Board adjusted its processes to support accelerated importation and distribution of PPE?
(x) Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPEs locally manufactured or imported? Where can this information be obtained?
(xi) Has the board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/ local PPEs to users in Kenya?

We look forward to your urgent response in not later than five days to inform our next course of action.

Signed by:

1. Becky Odhiambo Mududa on my own behalf and on behalf of Nyarwek Network.
2. Brezhnev Otieno on my own behalf and on behalf Amnesty International Kenya.
3. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba Paralegal Network.
4. Cecilia Mumbi Mugo on my own behalf and on behalf International Commission of Jurists (ICJ-Kenyan Section).

5. Chris Owalla on my own behalf and on behalf of Community Initiative Action Group Kenya.
6. Christine Ajulu on my own behalf and on behalf of Health Rights Advocacy Forum (HERAF)
7. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
8. Fenwick M Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K).
9. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
10. Linda Noah on my own behalf and on behalf of The East African Centre for Human Rights (EACHRights).
11. Naitore Nyamu
12. Nancy Githogori
13. Mary Ger on my own Behalf and on behalf of Mumbo International.
14. Mercy Onsando on my behalf and on behalf of HENNET.
15. Peter Owiti on my behalf and on behalf Wote Youth Development Projects.
16. Samson Onditi on my behalf and on behalf Happy Life for Development CBO.
17. Sheila Masinde on my own behalf and on behalf of Transparency International.

Endorsed by:

1. Amnesty International Kenya.
2. Boda Boda Association of Kenya (BAK)
3. Community Initiative Action Group Kenya. (CIAG-K)
4. Community Forum For Advanced and Sustainable Development (COFAS)
5. East African Centre for Human Rights (EACHRights).
6. Happy Life for Development CBO.
7. Health NGOs Network (HENNET)
8. Health Rights Advocacy Forum (HERAF)
9. International Commission of Jurists (ICJ-Kenyan Section).
10. Kenya Legal and Ethical Issues Network on HIV & TB (KELIN).
11. Mbita Suba Paralegal Network
12. Mumbo International
13. National Association of Clinical Officer Anaesthetists - Kenya (NACOA- K).
14. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
15. NYARWEK Network
16. Pamoja TB Group
17. Shape Kenya
18. Transparency International Kenya
19. Wote Youth Development Projects

cc:

1. Dr. Samuel Oroko
   National Chairman, Kenya Medical Practitioners Pharmacist and Dentist Union
   5th Avenue Office Suites (7th Floor, Room 14)
   Ngong Road, Nairobi.
   Email: admin@kmpdu.org; nec@kmpdu.org;

2. Alfred Obengo
   Chairman, National Nurses Association of Kenya
   Nurses Complex, KNH Grounds
   Nairobi, Kenya
   Email: info@nnak.or.ke

3. Peterson Wachira
   National Chairman, Kenya Union Clinical of Officers

4. Cheboi Kore Mathew
   Chairman, Association of Public Health Professionals Kenya
   Duplex Flats Suite No.43,
   On lower hill road next to Hillpark Hotel
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5. Dr. Elizabeth Gitau Maina
   CEO, Kenya Medical Association (KMA)
   KMA Centre
   4th Floor, Chyulu Road-Upper Hill
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6. Hon. Wycliffe Ambetsa Oparanya,
   Chairperson, Council of Governors
   Delta Corner, 2nd Floor, Opp PWC Chiromo Road, Off Waiyaki Way
   P.O Box 40401 - 00100
   Nairobi, Kenya
   Email: info@cog.go.ke

7. Hon. Florence Kajuju
   Chairperson, Commission on Administrative Justice
   Commission on Administrative Justice
   Email: info@ombudsman.go.ke

Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response
Committee on Coronavirus
Afya House, Cathedral Road,
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Daniel M. Yumbya,
Chief Executive Officer,
Kenya Medical Practitioners and Dentists Council,
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Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors,
Delta Corner, 2nd Floor, Opp PWC Chiromo Road,
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P.O. Box 40401 – 00100,
Nairobi, Kenya.
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Dr. Fred Okengo Matiang'i,
Cabinet Secretary for Interior & Coordination
of National Government,
Harambee House, Harambee Avenue,
P.O. Box 30510 – 00100,
Nairobi.
Email: ps@interior.go.ke

Mr. Hilary Nzioki Mutyambai,
Inspector General, National Police Service,
Jogoo House 'A' Taifa Road,
P.O.Box 44249 – 00100,
Nairobi.
Email: nps@nationalpolice.go.ke

CIAG-KENYA

Good Health Community Programme

EACHRights
THE EAST AFRICAN CENTRE FOR HUMAN RIGHTS

Dandora Community AIDS support Association (DACASA)

ICHR

Mbita Suba Paralegal Network

Next Generation of Kenya Lawyers Project

Neema Foundation

mumbo International

This is Exhibit marked "AM-00E"
referred to in the Annexed affidavit/Declaration
of Allan Maleche.
Sworn/Declared before me on this ....
day of .... 20....
at .... in the Republic of Kenya
....
Commissioner for Oaths

Paul Kihara Kariuki,
Attorney General of Kenya,
P.O. Box 40112-00100,
Nairobi.
Email: communications@ag.go.ke; legal@justice.go.ke

Mr. Maina Njoroge,
CEO, Independent Policing Oversight Authority,
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Dr. Bernard Mogesa,
CEO, Kenya National Commission on Human Rights,
1st Floor, CVS Plaza, Lenana Road,
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Nairobi.
Email: haki@knchr.org; complaint@knchr.org

Dr Rudi Eggers,
WHO Country Representative – Kenya,
Email: afkenwr@who.int

The Chairman,
Council of Governors,
Delta Corner, 2nd floor,
Opposite PWC Chiromo Road, off Waiyaki Way,
P.O Box 40401-00100,
NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:
   a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;
   b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.

2. The Ministry of Health to provide us with information on the following:
   a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;
   b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;
   c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:
   a. Information on the criteria that was used to select hotels and facilities as quarantine centers.
   b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.
   c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.
   d. The approved standard operating procedures of the quarantine facilities.
   e. The designated medical personnel responsible for oversight at each quarantine center.

4. The **Council of Governors and all the 47 Governors** urgently share information on:
   a. The number of people currently in quarantine in each of their respective counties.
   b. The number of people who have been tested in the various quarantine facilities in the counties.
   c. The testing schedule of the people in county quarantine.
   d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.
   e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:

a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –

i. what training these officers have been given to undertake the role of medical experts;

ii. what infection prevention and control protocols they follow; and

iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Commission of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo

    27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

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The Chairperson
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The Chairperson
National Assembly Health Committee
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Inside the Quarantine: Fears of Further Spreading the Virus Haunt the Confined

By John-Allan Namu

"We were flying over Juba when the announcement was made". Chris*, not his real name, recounts to me his whereabouts when Kenya's Cabinet Secretary for Health, Mutahi Kagwe, made the announcement that mandatory quarantining of all persons flying into Kenya would begin with immediate effect. It was early evening in Nairobi and a likely anxious nation tuned in for what was the tenth briefing from the ministry about the global COVID-19 pandemic that had made its way to Kenya, on the wings of an aircraft much like the one that ferried Chris back from a work trip to London.

Chris and I spoke a day after his arrival. He was in a hotel turned government-sanctioned quarantine facility, the Boma Hotel. The hotel, one of four Kenya Red Cross hotels that had just weeks before been placed under receivership, was dusty, with some rooms not having been cleaned for a while. Dead flies lined his windowsill. Chris complained that layers of dust on his pillowcase and bedsheets caused him discomfort. That was a minor inconvenience in comparison to the subject of our call.

This is Exhibit marked "AM-OOF"
referred to in the Annexed affidavit/Declaration
of Allan Maleche
Sworn/Declared before me on this ....
day of .... 20 ....
at .... in the Republic of Kenya
Commissioner for Oaths

Their flight, which arrived at the Jomo Kenyatta International Airport on the night of Monday, March 23rd, carried what was, in Chris's estimation, about 60 people.

"After being screened and filling out immigration forms, we were told about the Ministry of Health's directive. We protested the directive because some of us had made arrangements to self-quarantine. Among those on our flight were students who, I think, wouldn't have taken the flight if they thought that they would be taken into mandatory quarantine."

Their protests would seem vain in the face of the government's efforts to slow the spread of the COVID-19 virus, which has overwhelmed some of the world's best-equipped healthcare systems, but the response to these complaints from Ministry of Health officials was even more strange.

"The government relented and allowed us to leave the airport and go home, with orders that we report to the Kenya Medical Training Centre (KMTC) at 11:00 a.m for tests."

Chris was picked up by his driver and recalls reaching his home at about midnight on the 23rd of March.

As he was falling asleep, Doris*, also not her real name, was on a fairly empty flight from Germany, a country hard-hit by the COVID-19 pandemic, via Amsterdam, back home.

"I was alone on my row, the two rows behind me were empty and the lady in the row next to mine also sat alone."

Her flight touched down in Nairobi on the morning of 23rd March and taxied in. In the nine hours between the landing of Chris' flight and Doris', the information that passengers were given had differed.

"Our temperature was taken, then we filled a form saying that we would self-quarantine. Then we filled the older, yellow immigration form. As we did so, there was a lady shouting that we should all go to KMTC at 11:00 am for testing. That was it."

Doris had already made plans to self-quarantine. She had found an apartment on an online booking site, AirBnB, where she says she was going to stay for the recommended 14-day quarantine. She booked an Uber, made the trip across town to her apartment in Kileleshwa, showered, changed and then booked another Uber to the KMTC.

Before they got to KMTC, if Chris and Doris were carriers of COVID-19 and were contagious, they may have spread the disease to at least three people each. Neither of them has been asked to account for their movements or the people that they came into contact with; termed by the World Health Organisation as contact-tracing. They do not yet know whether or not they have the virus, because they have yet to be tested for it. They weren't alone on their flights home, and sadly, their experience was not unique to them.

Infection within the quarantine facilities

Both Doris and Chris are worried about the possibility that they contracted COVID-19 while they were in the throes of evident lapses and confusion that they found at the Jomo Kenyatta International Airport, and at the KMTC, where they would go as ordered, on the 24th of March, at 11 am.

"When we turned up at the KMTC, they closed and barricaded the gates behind us, and said that we were officially under mandatory quarantine," Chris remembers.

Doris witnessed the furore of the now hundreds of passengers grow, with them crowding around Ministry of Health officials for answers, having just been stung by the news. She tried to hang as far back as she could to avoid coming into contact with the virus.

"We were then given three options for places that we would undergo quarantine. Boma Hotel (where Chris would eventually go), the KMTC and the Kenya School of Government (KSG) in Lower Kabete, Nairobi," she remembers.

"Boma would cost us USD 100 (Kshs 10,000) a night (this figure was later revised downwards), and the conditions at KMTC were just awful, so I chose KSG. When we got to KSG the director of the campus told us that it would cost us USD 40 (Kshs 4,000) a night. People protested again and crowded around the officials telling us this. They then relented and said we would be charged USD 20 (Kshs 2,000) a night."

A video taken by one of the passengers shows the proximity of the passengers to the officials, and to one another. Again, Doris wisely chose to hang back and wait until things calmed down so that she could get a room.

Chris chose to stay at the Boma hotel.

When Chris's cohort of travellers arrived at the Boma hotel, he says there was just one receptionist at hand to meet them.

"We all herded around the reception area waiting to be checked in. I am very afraid that we may have been exposed while we were getting into quarantine!"

Later that evening, Chris heard the sounds of sirens outside his window.

A hotel staffer told him that ambulance workers in hazmat suits were there to evacuate a fellow traveller, an elderly lady who allegedly fell ill.

"We are all so worried".

Even with the inconveniences they have experienced, both Doris and Chris's worry extends to the unanswered question they both have - were they both complicit in some way in the spread of COVID-19?

"If the government was serious about a mandatory quarantine, why did they let us go home first?" Chris asks, the tone of his voice deep and serious, unfettered by the muffles and crackling on the phone line.

"There were people on our flight who took public transport from the airport and to KMTC. How many people have they been in touch with?"

The question of how the virus spreads is no longer in contention, but there are concerns about the handling of passengers who were being put in isolation in order to contain COVID-19's spread in Kenya.

Dr Ahmed Kalebi, the founder and CEO of Lancet Laboratories, which is among Kenya's first private laboratories to offer PCR tests for COVID-19 (Polymerase Chain Reaction tests detect the genetic material of COVID-19, called RNA), shares his worries about the possible contagion that people in the mandatory quarantine may be facing.

"For me, it is a big scare. I am privy to what has been going on in some of those facilities and it has been a bit of a mess."

"If two hundred people go into a hotel and three or four of them have COVID-19, by keeping them in close proximity we are creating an incubating chamber (for the virus)."

Dr Kalebi believes that in late April, Kenyan cases of COVID-19 will have risen exponentially. Government models publicized on Monday 30th March put Kenya at possibly having 10,000 cases by that time.

Several accounts from persons currently in mandatory quarantine speak to the potential for this, especially as they were being transferred into quarantine facilities. Doris, who was being quarantined at the Kenya School of Government facility, Chris at the Boma hotel, and Caleb* (not his real name), a traveller who is currently in quarantine at the Kenyatta University Conference Centre, all give similar accounts about how risky the first day of their return was.

They were all supposed to be part of a Ministry of Health-led mass testing campaign of the over two thousand Kenyans currently in quarantine facilities, being carried out beginning the weekend ending March 29th. Chris took a photo of a Ministry of Health official in a Hazmat suit from a common area at the Boma hotel.

Doris, Chris, Caleb and other travelers in quarantine that I spoke to all say that they feel healthy, save for a few coughs and sniffs which they hope are signs of a cold rather than COVID-19, but they may not be out of the woods, even as the days wind down to the end of their quarantine.

"The Coronavirus takes between two to fourteen days to incubate," says Dr Kalebi.

"If tests were done at day seven, which is what the government is doing this weekend (weekend ending March 29th), you may have only a few people testing positive, who would be taken to more stringent quarantine facilities. Then you wait another week. Assume more people get infected. On day 14, when you are releasing them, people may have been infected in quarantine."

Fears that the government quarantine facilities may become petri dishes for the spread of the virus are valid, but over-estimated, according to Professor Omu Anzala, who specializes in virology and immunology. He's also part of the taskforce set up by the government to deal with the COVID-19 outbreak in Kenya.

"There is that possibility but we have not seen anybody go more than 14 to 15 days without having come down with the disease. We have not seen anybody who has gone more than 15 days who is not showing symptoms but is secreting the virus."

He does say that these still are early days and that the government, like all governments, is learning as it goes deeper into fighting the virus.

It won't be long before Doris and Chris get out of quarantine. Perhaps, it won't take much longer before the country knows whether the mandatory quarantine strategy helped spread or stop COVID-19.

This article was first published by Africa Uncensored.

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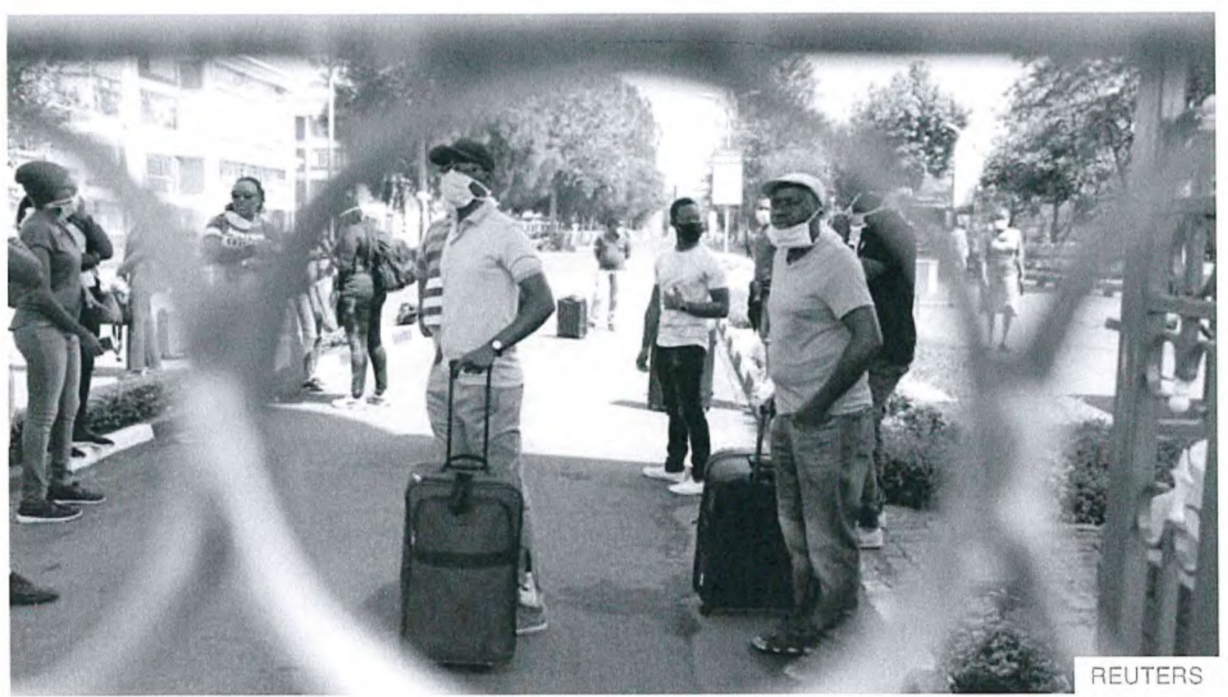
AD

Coronavirus: The fear of being sentenced to a Kenyan quarantine centre

By Basillioh Mutahi
BBC News, Nairobi

20 April 2020

Coronavirus pandemic



REUTERS

Like people around the world, Rachel Gachuna is extremely worried about catching coronavirus. But she is just as fearful about being locked up in a Kenyan quarantine centre.

If the single mother of one-year-old twins is to believe those already held at some of these government-assigned facilities, living conditions are not much better than at a prison.

"The toilets are just messy, dirty... even the cleaners who clean the toilets once a day complain how messy the toilets," one woman in quarantine told the BBC.

"It's because there is no water, so people are touching the same taps when you want to wash your hands, if there is even water... it's just a mess."

I try to be careful. When I get into the house, I have to take a shower before I touch my kids"

Rachel Gachuna
Nairobi resident

Rachel Gachuna

People who arrived in Kenya from countries affected by the virus before it closed its borders and those found to have been in contact with a coronavirus patient have been sent to these centres for 14 days.

However, the quarantine period has been extended twice for everyone at centres where someone has shown symptoms of the virus - and they have had to keep paying the bills.

There have been also complaints that social distancing is impossible at some centres because of overcrowding.

"You pray to God that it never happens because I honestly do not know what I would do," Ms Gachuna told the BBC.

She is now on leave after first choosing to work from her home in the capital, Nairobi - even though the city's residents are able to go out during the day.

Escape attempt

To protect her family from infection, she only goes out to the shops when essential - and would rather not go out at all.

Kenyans may now have to wear face masks in public and buses are carrying fewer passengers, but social distancing can be difficult.

"I try to be careful. When I get into the house, I have to take a shower before I touch my kids. You can't guarantee what your clothes have picked from outside," she said.

She has also let go of one her nannies, who came in to help look after the twins during the week, because she was worried that her use of public transport would leave the family

vulnerable to infection.

Kenya and Covid-19:

- **Weddings, births and deaths in the age of Covid-19**
- **Whipping, shooting and snooping during Africa lockdowns**

And her fears were heightened last week after dozens of people attempted to storm out of an isolation centre at Kenyatta University in Nairobi, citing unbearable conditions.

"First on our inability to pay and secondly because it does not make any scientific sense for our continued stay at the centre," Simon Mugambi, one of the would-be escapees, said.

Others spoke of their psychological and mental anguish after the government extended their stay beyond 14 days.

But the group was forced to return. In the words of another quarantine complainant: "It's like you are condemned... it's like you are at the mercy of the government."

Kenya's coronavirus restrictions:

- Borders shut and flights restricted
- Night-time curfew between 19:00 and 05:00 local time
- No travel to or from the capital Nairobi and parts of the city's neighbouring counties. Such measures also apply to some coastal counties
- Schools, pubs, entertainment venues, churches and mosques shut
- Everyone required to wear face masks in public and face arrest for not doing so
- Employers encouraged to allow staff to work from home
- All places of work required to have a hand-washing area with soap and water or approved hand sanitiser
- Cashless transactions encouraged

Live virus tracker: Kenya has recorded 246 cases, including 11 deaths

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By the end of March, the government had more than 50 quarantine facilities at hotels, hostels at schools and universities, which cost between $20 (£16) and $100 a night.

Some of these have now closed - but at least five are subject to a third period of quarantine. Out of 2,336 people put into quarantine, 425 remain there.

Some have fared better than others.

A Kenya Airways pilot who arrived from Dubai on 24 March, told the BBC the airline was paying the hotel bill for him and his crew - and had offered them counselling sessions.

Being confined for so long away from one's family was mentally tough, said the pilot, who did not want to be named.

'Lives being put at risk'

A group of human rights organisations, Kelin, has raised concerns over the conditions and lack of information being given to those in quarantine.

"The government has not been clear on who is paying for the cost; the government has not been clear on when people are supposed to be tested," it said.

Kenya's health ministry has said it is aware of the inconvenience, but maintains the practice is being done in the interest of protecting the public as some of those quarantined have tested positive for Covid-19, the respiratory illness caused by coronavirus.

Patrick Amoth, who is in charge of public health at the ministry, also pointed to five centres when a second extension was announced where people "did not maintain optimal social distance and instead had close contact and interactions".

The head of Kenyatta National Hospital, the country's largest public referral hospital that falls under the health ministry, also criticised the behaviour of some of those in quarantine.

AFP

"They are becoming so hostile even to the workers; even some of my workers have had to be physically abused," Evanson Kamuri said.

"They are putting their lives at stake, the least you can do as Kenyans is to give them some little, basic support and even show some level of etiquette," the doctor said.

But the extensions have, **according to one person who posted a video from a quarantine centre at Lenana School in Nairobi**, meant that people have lost their jobs as well as being faced with crippling bills.

For Ms Gachuna, a logistics manager, this would be a disaster.

She's already concerned about finances given that her firm that has now had to pause operations because of the coronavirus restrictions - and she has had to take on more child care herself.

The Kenya Airways pilot, who is now required to self-isolate at home for a further week, advises others to do everything to avoid being put in a mandatory quarantine facility.

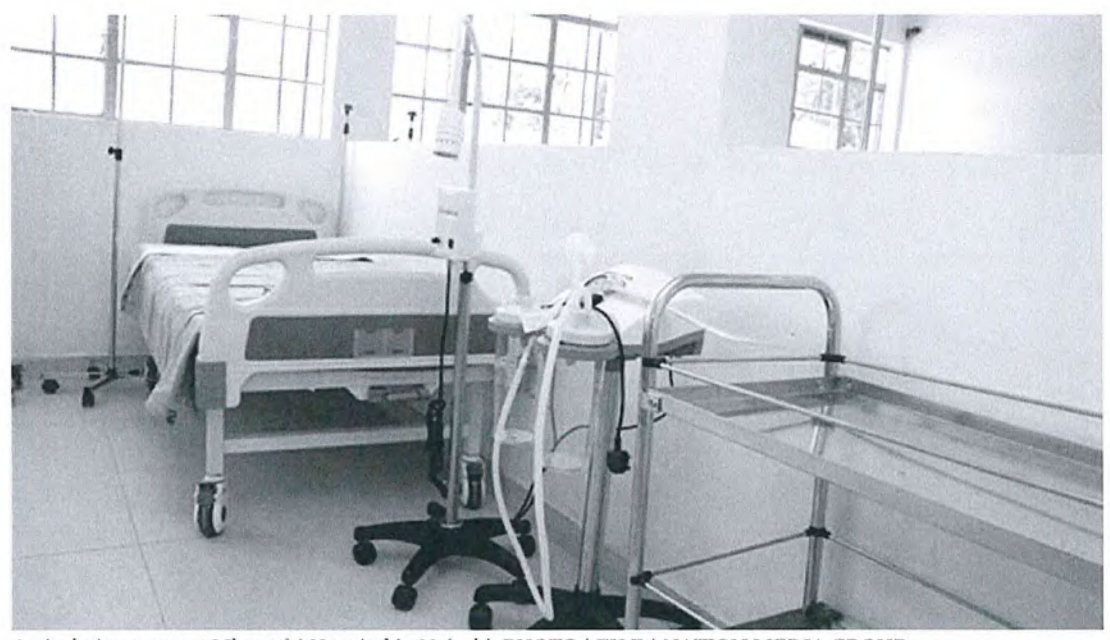
"Quarantine is not a good place to be, so if you can avoid being there, just practise personal hygiene and social distancing to avoid all this trouble," he said.

It is advice that Ms Gachuna and others like her have taken to heart.

- A SIMPLE GUIDE: **How do I protect myself?**
- HOPE AND LOSS: **Your coronavirus stories**
- VIDEO: **The 20-second hand wash**
- STRESS: **How to look after your mental health**

Daily Nation News

Coronavirus: Why Kenya's forced quarantine is a sham



An isolation room at Mbagathi Hospital in Nairobi. PHOTO | FILE | NATION MEDIA GROUP

Summary

- The cost per room was given as Sh12,500 and they were expected to make a deposit of Sh62,500 to cover at least five nights.
- Two police officers then asked the group to board a National Youth Service bus and wait for further instructions.

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By NATION REPORTER
More by this Author

A plan to quarantine all passengers arriving at Jomo Kenyatta International Airport on international flights turned into a sham and a nightmare for the travellers after it emerged that the government was ill-prepared for the exercise.

Health CS Mutahi Kagwe had announced the measure on Sunday, among others taken to prevent the spread of coronavirus, when he revealed that all 15 confirmed cases had been imported into the country through the main airport.

He ordered the suspension of all international flights from midnight Wednesday and directed that any passengers arriving in the intervening period would be quarantined at designated premises.

However, the harrowing tales of some of the passengers reveal a hasty decision, made without the necessary preparations or due consideration for the passengers' welfare.

FURTHER INSTRUCTIONS

A passenger who arrived on a morning flight told the *Nation* that she and her fellow passengers had just completed all clearance with port health and immigration departments and was wheeling her luggage out when an official ran towards her and asked her to wait.

Also read

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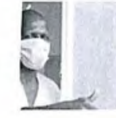
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Two police officers then asked the group to board a National Youth Service bus and wait for further instructions.

"That was at 8.15am and we sat in that bus, under guard, and with the doors locked until noon. It had no sanitiser and we were seated close to one another, unlike on the plane where we were spaced out," the passenger said. The passengers' asked where they were being taken and were told that they were going for a briefing.

At noon, they were driven to Boma Hotel in Nairobi's South C area and ordered to disembark in two minutes and make the difficult choice: Boma or Mbagathi (the isolation unit of Kenyatta National Hospital where persons suspected of having contracted Covid-19 are being held).

The cost per room was given as Sh12,500 and they were expected to make a deposit of Sh62,500 to cover at least five nights. Some 22 of them signed up and the rest, who could not raise the deposit, were bundled back into the bus and driven to Mbagathi.

"At about 2.00pm, the bus returned with them and we were informed that they had refused to get off the bus at Mbagathi," the passenger said. The second group was later taken to the Kenya School of Government.

GATES LOCKED

Later, another lot of travellers was brought to the hotel. They had arrived on Sunday, hot on the heels of the CS's directive and, after being detained for more than four hours, they were allowed to go home and report at the Kenya Medical Training Institute Monday.

BREAKING NEWS!

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Four State House staffers test positive for Covid-19

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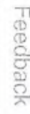

How COVID-19 pandemic has affected the healthcare system in Kenya

By NCHAFATSO OBONYO | April 29th 2020 at 22:14:54 GMT +0300

Not even Members of Parliament are exempt from surveillance when it comes to Covid-19. [File, Standard]

HEALTH & SCIENCE

A medical scholar looks at how Kenya has responded to the Covid-19 pandemic

By the time the first case of COVID-19 in Kenya was reported on 12 March 2020, the Ministry of Health already had an Emergency Operations Centre comprising four Rapid Response Teams (RRTs).

Each team had five trained medical staff as well as designated telephone communication numbers for members of the pubic to report suspected cases, seek more information on the infection and ask questions.

A treatment and isolation unit for managing COVID-19 positive cases had been established at the country's largest teaching and referral hospital - Kenyatta National Hospital and a total of 1500 health workers across various health facilities were also receiving training on managing COVID-19 patients.

World Health Organisation

SEE ALSO: Kenya's Covid-19 cases shoot by 123 as government focuses on truckers

In order to prevent community transmission of the SARS-CoV-2 virus causing the COVID-19 pandemic, cutting off spread at an early stage is extremely vital.

On 30 January 2020, the WHO declared COVID-19 a Public Health Emergency of International Concern (PHEIC) and issued the COVID-19 Country Preparedness and Response Plan (CPRP) catering for an initial 3-month period (1 February to 30 April 2020).

The CPRP was part of the WHO's Strategic Preparedness and Response Plan (SPRP) and included operational planning guidelines to support countries preparation and response to COVID-19 cases.

The public health preparedness and response planning were aimed at stopping community human-to-human transmission of the SARS-CoV-2 virus while the healthcare system preparedness and response planning was aimed at providing care to infected cases while minimising the risk of further transmission to the healthcare providers.

Some of the WHO recommended measures for preparedness to handle COVID-19 at country level included: Surveillance focusing on rapid detection of imported cases, comprehensive and rapid case identification and contact tracing.

SEE ALSO: New hospital order to beat corona fears

The measures further included monitoring the geographical spread and transmission intensity in areas where sustained community transmission has been detected; infection prevention and control measures at all levels of the healthcare system; establishment of functional triage systems and isolation rooms and procurement of supplies based on the WHOs COVID-19 Disease Commodity Package (DCP).

DCP included the developing reserve stock of patient kits required for case management; having sufficient infection prevention materials including personal protective equipment (PPE), water and sanitation for health (WASH) and hand-hygiene facilities; preparation of healthcare facilities for large increases in the number of suspected cases including identifying the capacity of intensive care units.

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It also provided guidance on self-care for persons with mild symptoms of COVID-19 and when to contact healthcare facilities; establishing dedicated and well-equipped teams for transportation of suspected and referral mechanisms for confirmed cases; preparation of laboratory capacity to manage large-scale testing for COVID-19; training all staff handling COVID-19 patients and samples on standardized infection prevention and control practices etc.

Kenya's response

When the WHO declared COVID-19 a global pandemic on 13 March 2020, Kenya already had one confirmed positive case being managed at the Kenyatta National Hospital isolation and treatment centre.

SEE ALSO: Kenyans warned against giving false contacts during targeted Covid-19 testing

This was an imported case with a history of travel from continents with human-to-human community transmission of COVID-19 and the Ministry of Health had started the process of contact-tracing for isolation, screening and testing for infection.

Through an Executive Order issued on 28 February 2020, the President had established a National Emergency and Response Committee (NERC) for COVID-19 chaired by the Cabinet Secretary for Health.

The NERC had already started nationwide awareness and sensitization initiatives on public education about the COVID-19 pandemic including symptoms of SARS-CoV-2 viral infection as well as public health measures on

reducing infection such as social-distancing; hand-washing and sanitation; respiratory hygiene and importance of minimising unnecessary movement by staying at home.

The government has also enhanced public-private partnerships to increase the local capacity for production of personal protective equipment (PPE) for the healthcare facilities. This increased local production, alongside donations sourced externally, has ensured there is a steady supply of PPEs to the healthcare facilities meeting current demand as well as availing face-masks to other essential service providers.

Impact and challenges

SEE ALSO: We've no option but to reopen and this is how it should happen

The points of entry public health emergency screening were initially very weak when the first case was reported.

Preparation of rapid health assessment and isolation facilities to manage symptomatic and/or ill passengers at major points of entry to the country as well as mechanisms to transport them under strict infection prevention precautions to designated isolation and treatment centres was done prior to closing the borders to human traffic on 25 March 2020 as the number of positive cases increased.

Feedback

In order to effectively handle a pandemic such as the COVID-19, mass testing, isolation and quarantine of infected persons is critical to controlling and limiting the number of new infections.

Countries that had previous epidemic experience with SARS and MERS epidemics rapidly deployed mass-testing which enabled them to isolate and quarantine infected persons to limit community spread of the infection.

In China where the epidemic had started, a hospital facility with intensive care and respiratory support capabilities was rapidly set-up to handle the anticipated surge in severely ill patients.

SEE ALSO: New Covid-19 high as 72 more people test positive

This has been a major challenge in Kenya's response to the COVID-19 pandemic with testing initially being restricted to only persons in isolation, with a history of travel to areas where there was community spread of COVID-19 and were exhibiting symptoms upon arrival in Kenya.

There is limited capacity for mass-testing especially in densely populated areas with confirmed cases. Mass-testing was initially being done for front-line health workers at designated treatment and isolation facilities.

This needs scaling-up to include mass-testing of other essential service providers within health facilities and beyond such as food handlers, security and cleaning personnel among others.

The government announced a nationwide curfew from 7pm to 5am as well as restriction of movement into and out of counties with a high number of COVID-19 positive cases (Nairobi, Mombasa, Kilifi, Kwale, Mandera).

These measures have impacted healthcare access and delivery especially for areas surrounding the major cities of Nairobi and Mombasa where most comprehensive healthcare services are found.

While hospitals and clinics still remain open, the ban on public transportation across counties introduces significant challenges in terms of accessing healthcare facilities for persons with chronic illnesses, pregnant women etc attending regularly scheduled clinics.

There have been challenges in coordination between the county and national levels of government in the procurement of critical equipment such as ventilators for respiratory support as well as recruitment of additional healthcare personnel.

With increasing community transmission of COVID-19 in Kenya, there is an urgent need for a better defined and coordinated mechanism to increase the capacity for intensive care, the supply of PPEs and recruitment of trained healthcare personnel in anticipation of a surge in the numbers of COVID-19 positive cases.

In summary, Kenya has taken most of the appropriate steps at implementing the WHO recommended Country Preparedness and Response measures for healthcare facilities, however, these require scaling-up to handle a surge in the numbers of acute and critically ill patients as a result of infection with COVID-19.

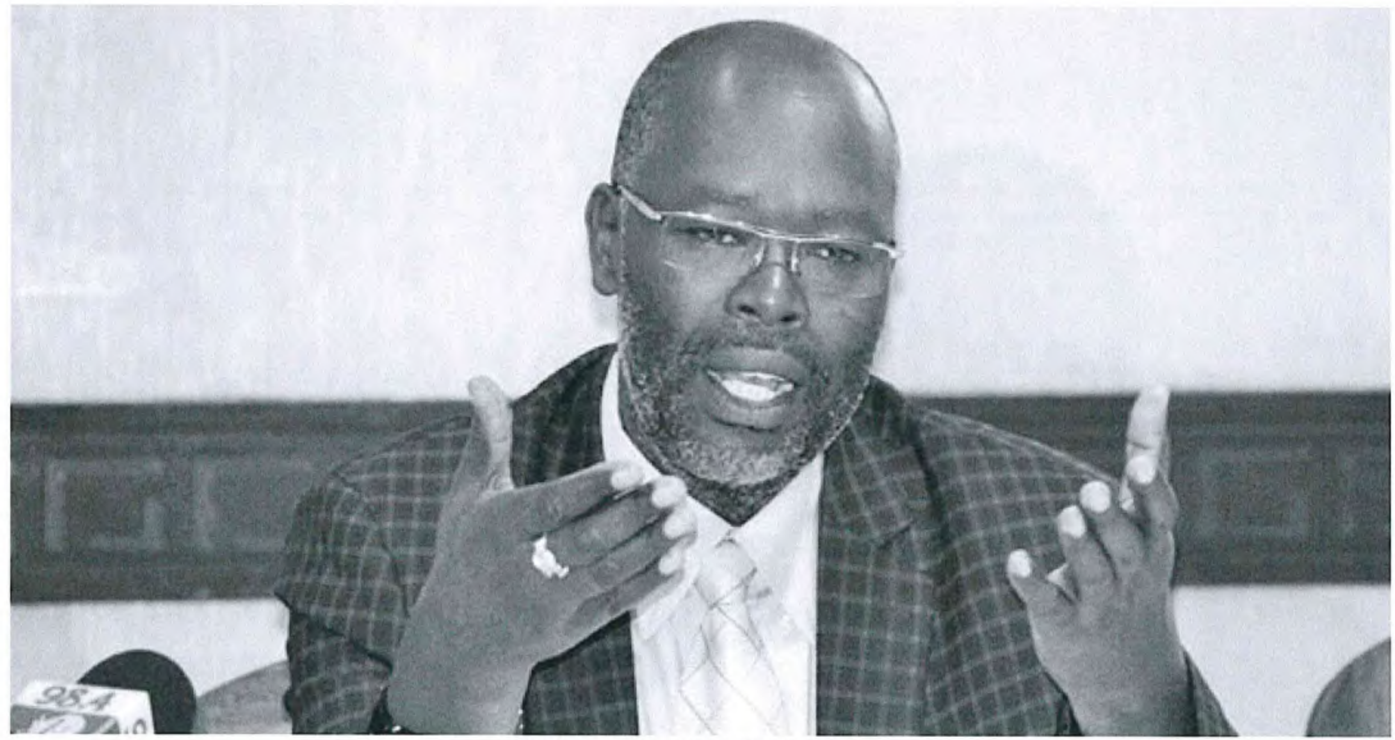
Nchafatso Obonyo is a Doctoral Clinical Researcher at ACAL Consulting's COVID-19 Think Tank

Related Topics

Coronavirus Kenya | Responses | Interventions

State asked to exempt patients in Nairobi, Coast region lockdown

By Hillary Mageka
Thursday, April 16th, 2020



ICJ Kenya President Kelvin Mogeni

The International Commission of Jurists (ICJ) now wants Kenyans in need of medical care that is only available in Nairobi or Mombasa to be allowed to access facilities in the wake of the partial lockdown.

The government has outlawed entry into and exit from Kilifi, Kwale, Mombasa and an expanded Nairobi metropolitan area.

A countrywide curfew is also being enforced to control the spread of the coronavirus disease.

services can do so without being deemed as contravening the curfew orders and not be subjected to any form of harassment by the police.

In their submissions to the Senate adhoc committee on COVID-19 situation, the Jurists said they concerned on the access of medical services at Kenyatta National Hospital and its capacity to continue providing other health services to patients other than those seeking treatment for COVID-19.

They argued, in light of the order banning movement in and out of the defined Nairobi Metropolitan area, persons travelling to Nairobi for advanced healthcare from outside the metropolitan area face challenges of accessing the National hospital and other major health facilities in the city.

"Of particular concern are those in need of life supporting treatments such as hemodialysis, and those who will require to access major hospitals in Nairobi and Mombasa from outside those counties in the event of medical emergencies," read part of the submissions by ICJ Kenya President Kelvin Mogeni to the committee chaired by Nairobi Senator Johnson Sakaja.

Mogeni added: "In the wake of the indiscriminate and harsh enforcement of the curfew by the police, ICJ Kenya is concerned that without addressing the issue of access to health and to health centres, especially from those immediately outside Nairobi and Mombasa, we may witness further violations and there is need to have clear directions on the same,"

The jurists lament that hospitals are taking measures to decongest their facilities in line with the guidelines on physical distancing, meaning the number of patients being admitted in a health facility at any one time is limited.

Coronavirus: 133 more cases confirmed positive

Four State House staff test positive for COVID-19

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More on Coronavirus

COVID-19 ICJ ICJ Kenya President Kelvin Mogeni

From the web

Murang’a: Outrage as body of a Covid-19 victim is buried at night

By Njange Maina
Saturday, May 30th, 2020

Body of a man who died of Covid-19 in Murang'a buried at night. PHOTO/COURTESY

In summary

- *After waiting in vain for over seven hours for the County Health officials to arrive, the family members took the body of the deceased to a police station prompting an outcry on social media.*

The burial of a Covid-19 victim in Kangema, Murang'a County on Saturday has sparked outrage after it emerged that County health officials delayed close to midnight.

The body arrived from Thika Level 5 hospital in Kiambu County, and was scheduled to be buried by 3 pm.

This is Exhibit marked "AM-006" referred to in, the Annexed affidavit/Declaration Allan Maleche Sworn/Declared before me on this ...... day of ...... 20...... at ...... in the Republic of Kenya ...... Commissioner for Oaths

After waiting in vain for over seven hours for the County Health officials to arrive, the family members took the body of the deceased to a police station prompting an outcry on social media.

A few minutes past 10pm, Murang'a county health officials arrived with protective equipment and laid the body to rest.

Murang'a Health CEC Joseph Mbai blamed Thika Hospital for not notifying the County that the deceased had died of Covid-19.

The body being lowered into the grave PHOTO/COURTESY

Critics blamed health and County officials for discrimination in handling Covid-19 cases. They said only the rich families are accorded dignity.

John Pianist wrote; "your people are buried like dogs especially those from poor backgrounds"

Bomet Covid-19 victim buried at night

A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family is in quarantine. PHOTO | COURTESY

Summary

- A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family is in quarantine.
- The burial was conducted at around 7 pm Wednesday night in a ceremony that lasted only a few minutes.
- Governor said family members of the patient lied to doctors at Longisa Hospital that he had not travelled out of Bomet

ADVERTISEMENT

By VITALIS KIMUTAI
More by this Author

As Bomet residents were retreating to their homes to beat the 7 pm curfew on Wednesday night, a Land Rover ferrying the remains of the County's first Covid-19 case was making its way to Kagawet village in Itembe Location, Chepalungu where he was buried.

County public health officers presided over the burial of 55-year-old at Erick Kosgei in accordance with the protocols set by the Ministry of Health (MoH).

A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family was in quarantine.

The burial was conducted at around 7 pm Wednesday night in a ceremony that lasted only a few minutes.

Villagers are said to have earlier in the day been requested to help in digging a grave for the deceased as 16 of his relatives are holed up in quarantine at Kaplong Girls High School in Sotik Sub-county.

A few pictures taken by those who witnessed the burial and shared on social media show public health officers dressed in white hazmat suits and other protective gear lowering the body to the grave as darkness engulfs the area.

Also read

Eight arrested after skirmishes along Narok border

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Five arrested over murder of Bungoma trader

Covid-19: Nyeri residents keep off hospitals

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A Land Rover was used to transport the coffin under police escort from Longisa Hospital mortuary to the homestead for final burial rites.

The Nairobi-based businessman had travelled to Bomet County from Nairobi last week using a police vehicle secured by a relative on Monday May 4. He was admitted at Longisa Hospital the same day before passed away the following day.

Mr Kosgei, 55, had a history of diabetes. He had travelled while ill.

Samples taken to Kenya Medical Research Institute (Kemri) on May 5 after he died were finally released on May 12, and showed he had Covid-19.

As a result, 10 doctors and nurses who came in contact with the patient at Longisa Hospital have been placed under quarantine.

A total of 36 people, including 16 of his family members, are now in isolation.

It has emerged that 20 of those quarantined are doctors and nurses who handled the patient at Longisa county referral, and others who handled a second case that tested positive in Nairobi after being transferred from Tenwek hospital.

In the second case, a child from Baringo County who had been taken for eye treatment at Tenwek hospital was transferred to Kenyatta National Hospital (KNH), Nairobi last week and tested positive for coronavirus.

As a result, ten doctors at Tenwek Hospital who came in contact with the child before the referral have also been placed in quarantine as a precautionary measure.

QUESTIONS OVER TRAVEL

Mr Kosgei's travel has raised questions over why he used a police vehicle instead of an ambulance or private car from Nairobi to Bomet and whether clearance was sought from the Ministry.

"A police vehicle was secured by a relative who is policeman to transport the man from Nairobi. He had been undergoing treatment in Nairobi on and off for some time before the transfer to Longisa Referral Hospital," said a family member who did not want to be named.

A relative to the deceased who had accompanied him to hospital had not been traced by public health officers by Wednesday afternoon.

The revelations were made even as questions were raised over why it took so long for Kemri to release the results of his test.

But according to County Executive in charge Medical Services and Public Health, Dr Joseph Sitonik, the tests were repeated to ascertain the results.
He also explained that it takes longer to conduct tests on a body that has been preserved.

"The process of testing samples from a patient is not the same as the one for a body which has been treated with preservatives," said Dr Sitonik, adding that there was no delay in release of the results.

He also said the body had properly been preserved at the mortuary in line with protocols from MoH ahead of its disposal.

LIED TO DOCTORS

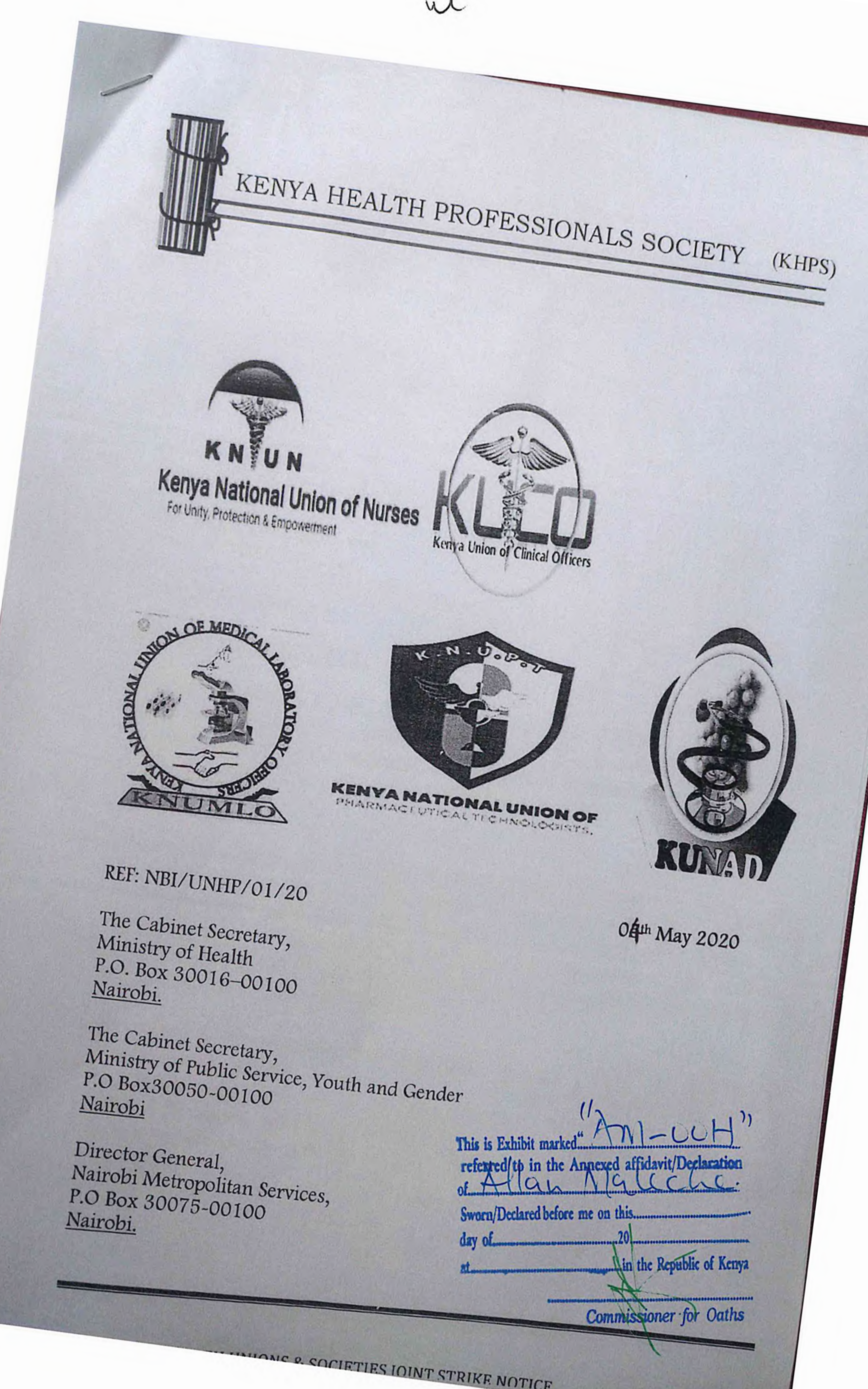
Bomet Governor Hillary Barchok warned residents against withholding crucial information from doctors on their recent travels.

He revealed that as a result of Mr Kosgei's non-disclosure, many people including doctors, nurses, mortuary attendants, patients and members of the public have been put at risk of contracting the virus.

"Sadly, family members of the patient lied to doctors at Longisa Hospital that he had not travelled out of Bomet...that he had been brought direct from his rural home for treatment," he said.

He said the county would take charge of the burial arrangements to ensure the family follows laid down health protocols on disposal of bodies for Covid-19 cases.

The county government, he added, will push for disciplinary action against the police officer for his actions which had exposed many others to Covid-19.



KENYA HEALTH PROFESSIONALS SOCIETY (KHPS)

KNUN
Kenya National Union of Nurses
For Unity, Protection & Empowerment

KUCO
Kenya Union of Clinical Officers

KENYA NATIONAL UNION OF MEDICAL LABORATORY OFFICERS
KNUMLO

K.N.U.P.T
KENYA NATIONAL UNION OF PHARMACEUTICAL TECHNOLOGISTS.

KUNAD

REF: NBI/UNHP/01/20

04th May 2020

The Cabinet Secretary,
Ministry of Health
P.O. Box 30016–00100
Nairobi.

The Cabinet Secretary,
Ministry of Public Service, Youth and Gender
P.O Box30050-00100
Nairobi

Director General,
Nairobi Metropolitan Services,
P.O Box 30075-00100
Nairobi.

This is Exhibit marked "ANI-UUH"
referred to in the Annexed affidavit/Declaration
of Allan Malcche
Sworn/Declared before me on this..........
day of..........20..........
at..........in the Republic of Kenya
....
Commissioner for Oaths

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The Chief Executive Officer
Kenyatta National Hospital
P.O Box 20723-00202
Nairobi.

The Chief Executive Officer
Moi Teaching & Referral Hospital
P.O Box 3-30100,
Eldoret.

All Secretaries/ CEO,
County Public Service Boards

All County Secretaries and
Head of Public Service.

Dear Sir/Madam,

RE: JOINT STRIKE NOTICE.

The KNUN, KUCO, KNUMLO, KNUPT, KUNAD and KHPS are registered Trade Unions, and Professional Associations with the mandate to represent the interests of the health workers on matters of profession, employment and labour pursuant to the Labour Relations Act No. 14 of 2007, Laws of Kenya,

This is in reference to our memorandum submitted to your office highlighting the issues mostly affecting health care workers and which the unions requested the government to address them with finality, it is disappointing to note that up to date the government has remained adamant or choose to totally ignore our grievances leaving the union with no option but to take further action.

In view of the above, we reiterate our good will to support the government during this period of fighting the novel coronavirus pandemic and once more appeal to the governments to address the following issues within Fourteen (14) days from the date of this letter failure to which the unions will commence National Wide Strike on **18th May 2020.**

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1. **Risk allowance.**

World-over, facts by statistics indicate that health workers are highly exposed to risk of infections. Currently some health workers enjoy a risk allowance ranging from 3,000k (lowest) to 20,000kshs (highest) hence we request for harmonization of the same allowance to Kshs. 30,000 across all health cadres. The health workers have been calling for harmonization of these allowances in vain.

2. **Promotion of Health Care workers,**

It has been noted health workers have stagnated in entry Job Group for over 8 years both in the Ministry of Health and Counties, this is despite continuous signed agreement between employers and union which later they are turned away never to be implemented.

It is within our knowledge that the ministry of Health has promote one cadre and leaving other which we find very demoralizing and discriminative and negatively affecting our members since most of them especially specialists are performing duties that are outside their job descriptions as per their current job group and in reference to the schemes of service.

3. **Contractual, locum and Casual employment.**

The Ministry of health together with the County Governments have continued to employ health workers on contract basis contrary to the Public Service Act No. 10 of 2017 paragraph 45, read together with Employment Act 2007 section 5(5 as No contract under the county has satisfied the above requirement making them illegal.

It is therefore a fact that these contracts are not only illegal and unfair but also propagates discrimination in the context of article 27 of Constitution of Kenya hence we propose to government to consider employing Health workers on Permanent and Pensionable.

We demand that National and County Governments convert and confirm them into permanent and Pensionable within the meaning of the Employment Act 2007 Section 37.

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4. Formulation of frontline Health Workers Welfare Package.

While we appreciate the directive made by his Excellency to the MOH and MOPS on frontline health workers package, It should be known that Union and society leadership for health workforce form part of stakeholder hence should be totally involved in planning for COVID 19 mitigation.

Article 41 of the constitution mandates the Unions to ensure and champion the right to fair and reasonable working conditions and therefore cannot be left out when this conditions and terms are being discussed.

We will appreciate if you address the issue urgently owing to the fact that our country is fighting against the pandemic disease which health workers play a critical role.

By a copy of this letter we inform our branch officials to mobilize our members and prepare for the strike if the government will not heed to our request.

Yours in Solidarity,

1. George M. Gibore G.S KUCO..
2. Seth Panyako G.S KNUN ....
3. Mohammed Duba Chairman KHPS..
4. Enock Wanyonyi G.S. KNUMLO ....
5. Peter Karegwa Chairman KNUPT..
6. Nduta Karanja G.S. KUNAD ....

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CC:

The Cabinet Secretary,
Ministry of Labour and Social Services
P.O Box 40326 -00100,
Nairobi.

All Branch Unions officials.

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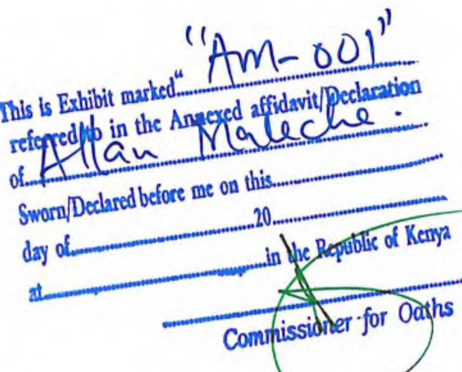


Kenya: Police Brutality During Curfew

Several dead, Others with Life-Threatening Injuries

Kenyan police hold back ferry passengers causing a crowd to form outside the ferry in Mombasa, Kenya on Friday, March 27, 2020. © 2020 AP Photo

(Nairobi) – At least six people died from police violence during the first 10 days of Kenya's dusk-to-dawn curfew, imposed on March 27, 2020 to contain the spread of Covid-19, Human Rights Watch said today.

The police, without apparent justification, shot and beat people at markets or returning home from work, even before the daily start of the curfew. Police have also broken into homes and shops, extorted money

from residents or looted food in locations across the country. On March 30, following criticism from various groups over abuses in Mombasa, including by Human Rights Watch, President Uhuru Kenyatta apologized generally about police use of force, but did not instruct the police to end the abuses.

"It is shocking that people are losing their lives and livelihoods while supposedly being protected from infection," said Otsieno Namwaya, senior Africa researcher at Human Rights Watch. "Police brutality isn't just unlawful; it is also counterproductive in fighting the spread of the virus."

Between March 29 and April 14, Human Rights Watch conducted phone interviews with 26 witnesses, relatives, and victims of abuses related to the curfew in Nairobi, Mombasa, Kwale, Busia, Kakamega, Mandera, and Homa Bay counties, revealing severe police abuses in these communities.

On March 25, President Kenyatta announced a government plan for a nationwide dusk-to-dawn curfew starting March 27. Police appear to have enforced it in a chaotic and violent manner from the start. In downtown Nairobi, police arrested people on streets, whipping, kicking, and herding them together, increasing the risks of spreading the virus. In the Embakasi area of eastern Nairobi, police officers forced a group of people walking home from work to kneel, then whipped and kicked them, witnesses told Human Rights Watch.

In Mombasa, on March 27, more than two hours before curfew took effect, police teargassed crowds lining up to board a ferry back home from work, beating them with batons and gun butts, kicking, slapping, and forcing them to huddle together or lie on top of each other. Video clips on local television stations and social media showed that the police were not wearing masks and other protective gear, which authorities were encouraging everyone to wear and have since made mandatory.

Human Rights Watch heard similar accounts from many parts of the country as police violently enforced the curfew over the following days, shooting, beating, and extorting money from people. The violence killed at least six people.

On March 31, at around midnight in the Kiamaiko neighborhood, in Nairobi's Eastlands area, the police shot live ammunition at Yassin Hussein Moyo, 13, hitting him in the stomach and killing him, witnesses said. His father, Hussein Moyo, told the Kenyan media that his son was standing on the third-floor balcony at midnight alongside his siblings when the bullet struck him.

The Independent Policing Oversight Authority, a civilian police accountability institution, on April 2 said it has started investigating Moyo's killing. However, similar promises in the past have not resulted in prosecution. In 2017, the oversight authority promised to investigate the killing in Kisumu of Samantha Pendo, 6 months old, and, in Nairobi, of Stephanie Moraa, age 9, by police around the time of the presidential elections. But no officer has been charged with either killings or in any of the more than 100 cases of killings Human Rights Watch documented in that period.

In Busia and Kakamega counties, in western Kenya, the police have also beaten and shot at people, in many cases outside the hours, resulting in death and serious injury, local residents told Human Rights Watch.

In Kakamega county, at around midday on April 1, police enforcing a ban on the open-air market arrived in trucks at the market in Mumias and began beating, kicking, and shooting at traders. Three traders at the market told Human Rights Watch that Idris Mukolwe, a 45-year-old tomato vendor, died from being hit with a teargas canister police threw at him. One trader said:

> We ran when the police arrived, but they threw teargas at us. One teargas canister hit Mukolwe and exploded in his face. He started suffocating as police laughed at him, and when we went to his aid, police again threw teargas at us, forcing us to flee.

At the same market on March 30, police shot a 24-year-old trader, Grace Muhati, with live ammunition. Fellow traders rushed her to a county referral hospital, where she is recuperating after doctors removed two bullets from her body, a family member said.

Human Rights Watch was able to confirm a second man was beaten to death by police in Kakamega, a third in Homa Bay, western Kenya, and two more in Kwale county, in the coastal region.

Kenyan authorities should urgently investigate instances in which police shot, beat, or abused people, killing or seriously injuring them, and hold those responsible to account, Human Rights Watch said. Under Kenyan and international law, police may only use lethal force when it is strictly necessary to save lives.

Kenya has a long history of police use of excessive force during law enforcement operations, either in informal settlements or in response to demonstrations, often resulting in unnecessary deaths. In February, Human Rights Watch documented eight cases of police killings, six of them during peaceful protests. One was in Majengo against the police killing of a 24-year-old man and another in Kasarani against the poor condition of roads in Nairobi's low-income neighborhoods of Majengo, Kasarani, and Mathare. There was apparently no justification for these killings.

In February 2018, local and international rights organizations, including Human Rights Watch, documented more than 100 cases of police killings of opposition protesters during the 2017 presidential elections. In June 2016, Human Rights Watch found that at least five people died and 60 more were wounded by gunfire in the Nyanza region as police tried to obstruct two protests calling for reform and reconstitution of the electoral body.

Although many killings by the police have been well documented by both state institutions and rights organizations, the security officers have rarely been held to account, including by the police oversight

authority. Those responsible for investigations appear to focus only on one or two cases that have elicited public outrage and ignore the rest. The police authorities and the oversight body have a responsibility to ensure that all current and past killings are thoroughly investigated and that all those implicated are held to account in line with Kenyan law, Human Rights Watch said.

"Kenyan authorities should ensure that the police do not use excessive force and that the curfew is carried out legally to benefit Kenyans," Namwaya said. "The Kenyan authorities should follow through on promises to investigate the killings and abuses and hold those responsible to account."

For further details of the abuses Human Rights Watch documented, please see below.

The Curfew Killings/Deaths

Kenya's curfew to curb the spread of Covid-19 went into effect on March 27. Within the first10 days, police used excessive force across the country, causing the deaths of at least six people and leaving many others injured, Human Rights Watch found. The 26 people Human Rights Watch interviewed included victims of police beatings, witnesses, relatives of the victims, including those killed, and activists involved in seeking justice for the victims and their families.

Ferry passengers flee from police firing tear gas, at the ferry in Mombasa, Kenya Friday, March 27, 2020. © 2020 AP Photo

Calvin Omondi, 23, March 27, Homa Bay County, Western region

A witness in Rachuonyo, Homa Bay County, western Kenya, said that Omondi, a motorcycle taxi driver, died on March 29 at Rachuonyo Level Four Hospital in Oyugis from injuries following police beatings on March 27, the first day of the curfew. Relatives said that Omondi was returning to his house at around 7 p.m., the official start of the curfew when a group of officers attacked him at a trading center in Homa Bay, causing him to lose control of his motorcycle. But the area police commander, Esau Ochorokodi, told media that police were not involved in his death and that Omondi lost control of his motorcycle and hit his head on a bridge.

Hamisi Juma Mbega, 49, March 28, Kwale County, Coast region

A relative and two activists said that just before 7 p.m., Juma, a 49-year-old former police officer who is a motorcycle taxi rider, volunteered to take a woman in labor to Mwahima hospital, Kwale county, in the coast region. On his way back to his house in Zibani village in Matuga constituency, relatives said, a group of police officers, stopped him, beating him with rifles and gun butts. A relative, Omar Abdallah Raisi, said that the police first threw teargas at Juma, a father of four, in the middle of the road at Mkunamnazi, Likoni: "He lost control of the motorcycle and fell. Police then just started beating him, leaving him for dead."

Moyo, 13, March 31, Nairobi County

Police shot Yassin, standing on the third floor balcony of a family apartment at night, in the stomach, killing him instantly.

Eric Ng'ethe Waithugi, 23, April 1, Kwale County, Coast region

Two witnesses and one activist said that more than 20 police officers beat Eric Ng'ethe, 23, an accountant at a pub in Ukunda, Kwale county, to death, at around 7 p.m. on April 1. One witness said that Ng'ethe was at work, but that he and other young men locked themselves inside the pub when curfew hours approached. The officers shot teargas into the pub and broke down the door, then beat Ng'ethe and 11 other people inside with wooden clubs. The Msambweni sub county police commander, Nehemiah Bitok, told Kenyan media that Ng'ethe died in a stampede after the people inside allegedly defied police orders to open the pub.

Yusuf Ramadhan Juma, 35, April 1, Kakamega County, Western region

The family of Ramadhan Juma, who had a mental disability, said he left their home on the evening of April 1 and never returned. One family member said they searched for him the next morning and found him in Kakamega County Referral hospital with serious injuries they believed were from beatings during curfew the previous night. Juma died just moments after the family found him. Kakamega central divisional police commander, David Kabena, told the media that the police were not responsible: responsible: "We have heard that the deceased had mental problems," he said. "Maybe he went out there touching other people's property and was beaten by people who didn't know he was sick."

Idris Mukolwe, 45, April 1, Kakamega County, Western region

Relatives and fellow traders at Mumias market told Human Rights Watch on the phone that Mukolwe, a tomato vendor, was hit by a teargas canister thrown at him by police who were dispersing traders due to the open-air market ban imposed by the county government of Kakamega. One of the traders narrated how Idris remained down after he was hit by canister, and as he struggled to stand up, the officers laughed and mocked him. He collapsed moments later and died at the scene, according to the traders.

Beatings and Extortion by the Police

Human Rights Watch also documented instances of harsh beatings and extortion. Two victims of police beatings said that, on March 28, seven police officers forced their way into a block of six units, including a shop and a pub, in Nairobi's Kayole neighborhood, Matopeni area, dragged the owner of the building, a middle aged disabled man, from his shop, and started beating him and his wife. The victims said that other officers pulled down the building's doors and beat the tenants. One victim said: "They beat us from 8 p.m. up to 10 p.m. and then started taking valuables, mostly electronics, from houses, the pub, and the shop."

In another incident, a middle-aged man from Kipevu, in Mombasa County, said that on April 1 he ran into a group of police officers at about 7 p.m. at a grocery shop not far from his house. He said two of the police officers confronted him and started beating him with black leather whips. "They all started beating me," he said.

> "Some were hitting me with batons, others were just kicking and punching me. I could not tell how many they were. Others were beating other people near me. It was around 7:20 p.m."

Another man, 26, from Mombasa's Mwangulu area in Lungalunga, said that on April 2 police stormed into his compound at around 7:20 p.m. and beat him with whips. He had just stepped out of his house to go to the latrine within his compound when police started beating him, saying he had violated the curfew by being outside at that time. He was injured on his back, hand, and neck.

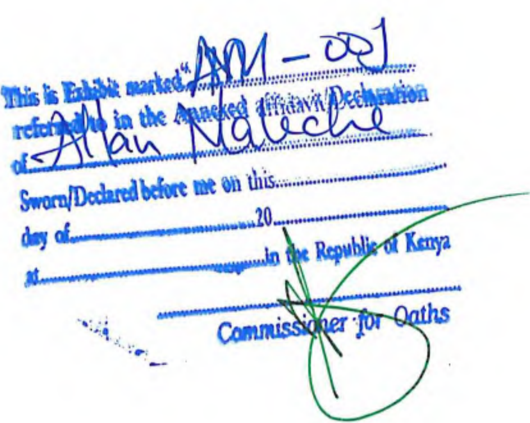
In Nairobi's Eastleigh neighborhood, a middle-aged businessman said that police beat him, then put him in the trunk of his car, and drove around the neighborhood with him for three hours, releasing him only after he bribed them with Ksh2,000 (approximately US$20).

In Mandera county, in northeastern Kenya, a 35-year-old man said that National Police Reservists officers, a force recruited from local people whom police train to assist them in maintaining law and order in villages across the country, forced their way into his car and started driving him to the police station an hour before the start of the curfew. The officers beat him when he asked why they had arrested him before the curfew. He shared pictures of serious injuries he sustained on legs, hands and back with researchers.

In Busia county, residents said police have been conducting curfew enforcement operations during the day, raiding homes where local alcohol is brewed and sold, and arresting people, whom they later release after they pay bribes of between Ksh2,000 and Ksh5,000 ($20 and $50), depending on negotiations. In a village not far from the town of Busia, a 27-year-old motorcycle taxi driver said that on the afternoon of March 29, the police stopped him and beat him for no apparent reason. He said he had serious injuries all over his body.

Daily Nation News

Double tragedy as Covid-19 patients hit with huge bills



A National Youth Service bus transports new arrivals from JKIA to quarantine centres, on March 24, 2020. PHOTO | FILE | NATION MEDIA GROUP

Summary

- While there are those being punished for breaching quarantine rules, a big number are poor men, women and children taken in after coming into contact with suspected patients.
- Should the tests find you positive, the government transfers you to a hospital where you are observed and any symptoms managed, until you recover, before releasing you back into society.
- But not before you are slapped with a hefty bill imposed on you by the global pandemic, and over which you have absolutely no control.

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By NATION TEAM
More by this Author

When the government learns that you have come into contact with an individual who has tested positive for coronavirus, it dispatches a team in hazmat suits, masks and protective gumboots to your home to pick you and your entire household up for mandatory quarantine and testing.

The strategy, known as contact tracing, has been credited for the relatively low numbers of confirmed cases of infected people in the country as it reduces the spread of the disease in the wider community.

Should the tests find you positive, the government transfers you to a hospital where you are observed and any symptoms managed, until you recover, before releasing you back into society. But not before you are slapped with a hefty bill imposed on you by the global pandemic, and over which you have absolutely no control.

This is how Ms Irene Akinyi, 48, has found herself staring at a Sh168,000 bill or more, after she was picked up from her house in Mombasa's Mtopanga estate on Saturday, together with her three daughters, a house help and her eight-month-old grandson, and taken to a quarantine facility.

She is required to pay Sh2,000 per day for each of the family members.

Her only mistake is that she inadvertently came into contact with her children's father, who had dropped in to check on them.

Also read

Hard times push parents to give up children

Shock as Jack Ma's Covid-19 donations stolen

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Officer in murder case misses court

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After testing positive for the virus, the man told health authorities about his visit to the family house and they were all rounded up.

Ms Akinyi turned to social media and the church for help to pay a part of her bill, and says she does not have money to pay the rest.

Her story is repeated in tens of quarantine centres and government hospitals, with hundreds of Kenyans held there pleading with the government to use some of the cash set aside to fight the coronavirus to meet these costs.

However, the government would hear none of it.

On Tuesday, the Health ministry said it would continue charging for quarantine despite the public uproar. "The testing and the treatment are borne by the government, but it is the responsibility of Kenyans to take care of their bills when they are in quarantine," said Health Chief Administrative Secretary (CAS) Dr Rashid Aman during a media briefing on state of Covid-19 in Kenya.

On Monday, a 22-year-old man attempted suicide at the Kenyatta University Teaching, Research and Referral Hospital (KUTRRH) after what he said was a bloated bill at the quarantine ward.

Mr Samuel Osore, the patient in the video, yesterday told the Nation he snapped and thought of committing suicide as a way out of his more than Sh55,000 bill.

"I cannot leave this place, I am told to sell my land and the nurses are even threatening," he shouted to onlookers who were beseeching him not to do the unthinkable.

"Why should I stay in here; I am tired of being frustrated. At home my mother is physically challenged and we have nothing. I want to leave this place."

Mr Osore tribulations mirror the pain of hundreds of Kenyans who have been slapped with bills of tens and hundreds of thousands of shillings after spending at least 14 days at public isolation centres run by the government.

The victims are being held at public hospitals, Kenya Medical Training Colleges, Kenya School of Government, public schools, technical training centres and universities, among other State-run facilities.

While there are those being punished for breaching quarantine rules, a big number of those stuck in the facilities for failing to clear bills are poor men, women and children taken in after being suspected to have come in contact with Covid-19 patients.

They were taken into isolation through contact tracing and locked up at State-run centres even though there is the option of self-quarantine at their homes.

Mr Osore, who had lost his job at a hotel in town, was taken to Kenyatta National Hospital by a close friend after showing Covid-19-like symptoms.

Later, he was moved to Mbagathi Hospital where he undertook a coronavirus test that turned out negative.

He said he was not discharged at this point and was instead transferred to the Kenyatta University Hospital which has attended to 288 patients since it was categorised as a Covid-19 management centre.

"When I came to this hospital, I was told that I do not have coronavirus, but tuberculosis. However, I have not been treated for anything yet I have been here for a while, with charges going up daily," he said.

The hospital yesterday blamed Mr Osore for the drama, saying they were only effecting a government policy requiring suspected Covid-19 patients to pay for their stay.

"The one of yesterday (Mr Osore) had declared that he would not pay so he had to find a way of whipping up public emotions," said Dr Wekesa Masasabi, the KUTRRH CEO. "We have since calmed all of them and allowed those who have tested negative twice (including Mr Osore) to leave."

In Nyeri, police have launched a manhunt for two quarantine escapees who left in a prison-break style.

Nyeri County Commissioner Lyford Kibaara yesterday said the two cut grills in their cubicles at the Wambugu Farm Training Centre.

The escape comes days after dozens of suspected Covid-19 patients escaped from the Kenya Medical Training College (KMTC) at Kenyatta National Hospital in Nairobi. So far, only a handful have been traced and arrested.

In Homa Bay, some families in quarantine said they are living in fear of being detained for failure to clear their bills.

This was after Health executive Richard Muga said all those who were quarantined will have to pay before being set free.

"There are guidelines on payment. Everyone who is at the facility will be charged because they were being taken care of by the government, including the provision of food," he said.

It has emerged that while those unable to pay are allowed to leave, they are required to commit to pay later.

Ms Sophia Kitui, who was discharged from KMTC in Nairobi, said their stress increased when they discovered that they would not be allowed to leave without clearing their bills.

"Those who were not able to leave were given contracts that they would leave a valuable like passports which they would take after they have cleared the bills," she said.

In Nyamira, those quarantined at Menyenya Secondary School in Borabu yesterday said the facility is in a deplorable state.

The families lack of basic items such as hand sanitisers, soap and mosquito nets. Women with children have been greatly affected as they need sanitary towels and diapers.

Meanwhile, in Siaya, the family of the county's first coronavirus death, who have been in quarantine at the KMTC, yesterday took the fourth test grudgingly.

The family of the late James Oyugi Onyango, led by the deceased's brother Zack Onyango, said the health team should have allowed them to go home as promised earlier.

Mr Zack Onyango said they were to be released yesterday if the results turned out negative.

"We have been here for 17 days," he said. "We have been tested three times which have all turned out negative. Why are they keen to hold us here longer?" he posed.

The Coronavirus Tracker

Reporting by Nasibo Kabale, Hellen Shikanda, Aggrey Omboki, Dickens Wasonga, George Odiwuor, Wycliffe Nyaberi, Irene Mugo and Verah Okeyo

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22,24,25, 27, 28, 29, 35, 165 232(1), 253, 258 and 259 of the Constitution

and

In the Matter of Section 4 And 9 the Access to Information Act, 2016

and

In the Matter of Section 5, 6, 7 and 10 of the Health Act, 2017

BETWEEN

ERICK OKIOMA……………………………………………………………1ST PETITIONER
ESTHER NELIMA…………………………………………………………2ND PETITIONER
CHRIS OWALLA…………………………………………………………3RD PETITIONER
CM……………………………………………………………………………4TH PETITIONER
FA……………………………………………………………………………5TH PETITIONER
KB……………………………………………………………………………6TH PETITIONER
MO……………………………………………………………………………7TH PETITIONER
EL……………………………………………………………………………8TH PETITIONER
KATIBA INSTITUTE………………………………………………………9TH PETITIONER
KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN)……………………………………………………10TH PETITIONER
THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF
JURISTS (ICJ KENYA)……………………………………………………11TH PETITIONER
TRANSPARENCY INTERNATIONAL KENYA…………………………12TH PETITIONER
ACHIENG ORERO…………………………………………………………13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organizations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH………………………………………………………………1ST RESPONDENT
PATRICK AMOTH, AG DIRECTOR GENERAL,
MINISTRY OF HEALTH…………………………………………………2ND RESPONDENT
CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY……………………………………………………………3RD RESPONDENT
COUNCIL OF GOVERNORS………………………………………………4TH RESPONDENT
FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT………………………………………………………………5TH RESPONDENT
HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL
OF THE POLICE, KENYA…………………………………………………6TH RESPONDENT
JOSEPH WAKABA MUCHERU, CABINET SECRETARY
FOR INFORMATION AND

COMMUNICATIONS...7TH RESPONDENT
COMMISSION ON ADMINISTRATION
OF JUSTICE...8TH RESPONDENT
DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND DENTISTS
COUNCIL...9TH RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR)..1ST INTERESTED PARTY

13TH PETITIONER'S AFFIDAVIT IN SUPPORT OF THE PETITION

I, **ACHIENG ORERO**, residing in Nairobi in the Republic of Kenya and of Post Office Box 62323-00200 representing Women's Link Worldwide do hereby solemnly make oath and state THAT:

1. I am an adult of sound mind and a Staff Attorney at Women's Link Worldwide, duly authorized and thus competent to make and swear this affidavit in support of and on behalf of Women's Link Worldwide.

2. I swear this Affidavit in support of the Petition.

3. Women's Link Worldwide is an international non-governmental organization founded in 2001 working to uphold women's rights through the domestic implementation of international human rights law and the use of comparative law by national courts.

4. As a clearinghouse of legal precedent from national, regional and international courts, Women's Link Worldwide is a global resource for judges, advocates and organizations committed to women's human rights. We are a trusted international resource for legal expertise in women's human rights and have a demonstrated commitment to sharing that expertise by providing information on a national, regional and international level, through our publications and amicus briefs. We have intervened as amicus curiae before the Supreme Court of Rwanda (Prosecution v NTIBAJYINAMA Esther, Case No. RPAA 0078/15/CS), the Court of Appeal of Rwanda (Prosecution vs TWAGIRUMUKIZA Claver, Case No. RPA 00001/2018/CA), the High Court of Kenya at Bungoma (Petition No. 5 of 2014) and the High Court of Kenya at Nairobi (Petition No. 266 of 2015).

5. Women's Link Worldwide has issued numerous publications relating to the protection and promotion of women's and girls' human rights, focusing on sexual and reproductive rights and health, gender-discrimination and gender-based violence. Focusing specifically on sexual and reproductive health and rights, some of the organization's publications in English include: *Human Rights: the Foundation for a Comprehensive Sexual and Reproductive Health Counselling Service (2012)*, *Migrant Women's Rights: An Invisible Reality (2009)*, *Mothers in Human Trafficking Networks: Robbed of their Rights (2017)*, *The Truth Spoken Aloud (2017)*, *Trapped in Europe. Dignity denied (2016)*, and *Trafficking of Nigerian girls and women: slavery between borders and prejudices (2014)*.

6. In April 2020, the 1st Respondent issued the Kenya Covid 19 RMNH Guidelines: A Kenya Practical Guide for Continuity of Reproductive, Maternal, New-born and Family Planning Care and Services in the Background of COVID 19 Pandemic (hereafter referred to as RMNH Guidelines). The Guidelines were intended to provide health care service providers as well as members of the general public, particularly women and girls, information related to provision and acquisition of sexual and reproductive health services.

7. Given that the RMNH Guidelines as they currently exist are not comprehensive in their scope and have left out information crucial to the fulfilment of the highest attainable standard of reproductive health for women and girls as provided for under Article 43 of the Constitution of Kenya, the 13thPetitioner in concerted effort with a number of other Civil Society Organisations wrote to the 1st Respondent vide an e-letter dated 28th April, 2020 seeking more information as to how the RMNH Guidelines could ensure a comprehensive approach to sexual and reproductive health and rights of women and girls.

Annexed hereto and marked AO-1 is a copy of the letter to the 1st Respondent dated 28th April 2020.

8. The 1st Respondent has to the date of the filing of this Petition neither acknowledged receipt or responded to the said letter of 28th April, 2020 leaving women and girls in this country with uncertainty on how to access certain essential reproductive health care services within the existing reality of the COVID 19 pandemic and the measures in place such as the lockdown and curfew.

9. On 7th May 2020, the 13th Petitioner in partnership with Amnesty International and International Planned Parenthood Federation Africa, launched Guidelines for African States to protect the rights of women and girls during the Covid-19 Pandemic. Based on the State obligations emanated from international and regional human rights instruments that Kenya has ratified, the guidelines outlined recommendations that states must address in order to ensure their responses to the pandemic guarantee the protection of women and girls' right to live free from gender based discrimination and violence and to access essential sexual and reproductive health rights services, commodities and information.

10. The guide which is a roadmap for national and local government authorities to better understand their obligations towards women and girls during this COVID-19 Pandemic period provides for: public information campaigns on support services such as medical care and counselling; protection measures like provision of shelter in safe houses and access to legal support available to ALL women victims of domestic violence during the pandemic. Others include mass dissemination, publication and public access to information on sexual and reproductive health services and commodities in relevant languages for the targeted communities and in accessible formats for all women including women living with disabilities and women in the context of migration and human mobility.

Annexed hereto and marked AO-2 is a copy of the guidelines launched on the 7th May 2020.

11. The prevailing conditions created by the COVID 19 pandemic as well as the measures put in place by the Respondents restricting movement has inadvertently restricted the access of women and girls to essential services. The failure to issue comprehensive information by the Respondents regarding any exceptions to movement restrictions if at all only serves

to violate the rights of women and girls not only to access information as provided in Article 35 of the Constitution of Kenya, but inextricably the right to the highest attainable standard of health care also provided in the Constitution of Kenya, Article 43(1)(a). The State has an obligation to ensure information on exceptions to movement restrictions for women survivors of violence who need to seek assistance outside their homes or who escape from situations of violence is made available. Similarly, information on support services such as medical care, counselling and legal assistance for women survivors of sexual violence which are essential services must also be availed.

12. In times of emergency, risks of violence to women and girls increase. As UN Women has noted, violence against women is "the most widespread human rights violation in the world." The World Health Organization has described it as "a global public health problem of epidemic proportions." Staying home reduces the risk of catching COVID-19. However, for thousands and women and girls, staying home does not mean greater safety, but rather greater risk of violence, including sexual violence, when they are isolated with their abusers or potential abusers. This is due to high rates of sexual violence, particularly by girls' family members or other people close to them, and lack of access to reproductive health services; a situation that is exacerbated by measures such as curfews and by the overwhelmed healthcare system.

13. The judiciary through an address by the Chief Justice of Kenya has indeed reported a sharp increase in the number of rape and defilement cases reported since March 2020 as a result of the advisory to stay at home and other measures subsequently issued by the 1st Respondent in response to the COVID 19 pandemic. In his statement, the Chief Justice, Justice David Maraga indicated that sexual offences constitute 35.8% of the criminal matters reported during this period with 'perpetrators being close relatives, guardians and/or persons living with the victims'.

    Annexed hereto and marked AO-3 is a copy of the statement on justice sector operations in the wake of the COVID-19 pandemic' (CJ's Statement) issued on 1st April 2020.

    Annexed hereto and marked AO-4 is an article published by Standard Media on 'Sex predators on the Rampage amid Curfew' on 18th April 2020.

    Annexed hereto and marked AO-5 is an article published by Human Rights Watch on 'Tackling Kenya's Domestic Violence Amid COVID-19 Crisis' on 8th April 2020.

14. Violations of the rights to life, health and particularly the sexual and reproductive health and rights of women, including women in situations of heightened vulnerability due to circumstances such as humanitarian or health crises, are forms of gender violence that may constitute torture or cruel, inhuman, or degrading treatment. Failure to provide these essential services is a form of discrimination against women and girls because it places their lives, health, and physical and psychological integrity at risk.

15. It has been reported by a number of media outlets that women and girls in Kenya are failing to access health care facilities and reproductive health services as a result of the stringent curfew measures and further the failure by the Respondents to issue and disseminate clear and comprehensive guidelines and information to the public responding to these challenges.

Annexed hereto and marked AO-6 is a news article 'Pregnant Mother bleeds to Death During Curfew' published on 10th April 2020.

Annexed hereto and marked AO-7 is an article 'Pregnant Women in Rural Kenya are Struggling to Access Health Care Amid covid-19' published on 15th April 2020.

16. The Respondents therefore have a special obligation to ensure access to these healthcare services in accordance with principles of dignity, equality, and non-discrimination, particularly in light of the range of vulnerability or risk situations women and girls may face while quarantine and isolation measures are in effect.

17. Women's right of access to information on sexual and reproductive health gives rise to a proactive obligation for the Respondents to provide reliable, complete, timely, and accessible information that allows them to exercise their rights or meet their needs. Considering the fact that vulnerable women and girls face more barriers to access information—particularly those who are poor, rural, migrants, or lacking in education—States must make special efforts to ensure information reaches them. The use of Internet, social media platforms and mainstream media should also be accompanied by various community outreach programs to ensure non-discrimination of women who have no access to the above means of communication.

18. The Constitution of Kenya recognizes the right to receive information in Article 33 stating, "every person has the right to freedom of expression, which includes—(a) freedom to seek, *receive* or impart information or ideas." (Emphasis added). Article 35 further guarantees the right of access to information stating, "(1) Every citizen has the right of access to—(a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom"; in the case of the latter, validly including information required for the exercise or protection of the right to the highest attainable standard of health.

19. The right to information as stated in the Constitution of Kenya obligates the State to provide information that is **accurate, impartial and complete**. The right to access to information is an essential part of guaranteeing women's right to health. The right to access to information is especially relevant in the area of health, as individual's ability to make free and informed decisions with regard to their health is contingent upon their access to information. The right to information also intersects with other rights, such as the right to non-discrimination, as marginalized groups including women, migrants, ethnic minorities, and people living in rural areas often have less access to information than other member of society.

20. The State has an obligation, pursuant to the respect and guarantee obligations imposed by regional and international law, and under the principles of equality and non-discrimination, to ensure that accurate information is available in a timely, complete, accessible, and reliable manner to all women and girls, and particularly to the poor, vulnerable, and those from marginalized communities.

21. Further, both Articles 19 of the ICCPR and the UDHR recognize everyone's 'right to freedom of expression; including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print'.

22. The Respondents have an obligation of active transparency consistent with providing the public the maximum amount of information proactively—without a petition—particularly when the information in question is related to satisfying other rights. The obligation of active transparency is particularly relevant when the information has to do with issues related to sexuality and reproduction, since such information helps people be prepared to make free and informed decisions concerning these aspects that are so intimate to their lives.

23. The right of access to information is closely related to the exercise of other human rights, and in that sense, the failure to comply with the obligations of respecting and guaranteeing women's free access to information can be understood to lead to various violations of their rights to live free from violence and discrimination. As such, the Respondent's obligation to guarantee the right of access to information is essential in order for women to be able to fully exercise all of their rights, and in particular, their sexual and reproductive rights.

24. The failure of the Respondents to adhere to its obligation to guarantee the right to access information to women and girls continues to pose a threat to their attainment of the highest attainable standard of reproductive health.

25. Without the timely intervention of this Honourable Court and issuance of the reliefs sought in the Petition, the Respondents will continue to act in neglect of their obligation to ensure the provision of accurate, transparent, impartial and timely information to the detriment of women and girls across this country.

26. I depose this affidavit in support of the Petition from facts within my knowledge save for the information the sources whereof are otherwise disclosed. I believe this affidavit to be in accordance with the Oaths and Statutory Declarations Act, Cap 20.

SWORN at **NAIROBI** by the said
ACHIENG ORERO
This day of **2020**

Achieng Orero
DEPONENT

BEFORE ME

NELSON WANYONYI OSIEMO ADVOCATE & COMMISSIONER FOR OATHS P.O. BOX 3642-00200 NAIROBI

NOTARY PUBLIC

AO-1

Achieng Orero

26 June 20

Nairobi

worldwide

Hon. Mutahi Kagwe, Cabinet Secretary for Health and
Chairperson, National Emergency Response Committee on Coronavirus
Ministry of Health
Afya House
Cathedral Road
P.O. Box 30016-00100
Nairobi
Email: ps@health.go.ke; cabsecretary@health.go.ke

Women's Link Worldwide
Via email only:
guiacovid@womenslinkworldwide.org

28th April 2020

Dear Sir/Madam,

Re: Ministry of Health COVID-19 RMNH Guidelines: A Kenya Practical Guide for Continuity of Reproductive, Maternal, New-born and Family Planning Care and Services in the Background of COVID19 Pandemic.

We write in relation to the "COVID-19 RMNH Guidelines: A Kenya Practical Guide for Continuity of Reproductive, Maternal, New-born and Family Planning Care and Services in the Background of COVID19 Pandemic" (hereinafter, "the guidelines"), issued by the Kenyan Ministry of Health in April 2020 in response to the COVID-19 pandemic in Kenya.

We, the undersigned, are representatives of civil society organisations which advocate for the protection and promotion of human rights standards, particularly relating to the rights of women and girls. Firstly, we are grateful to the Ministry for acting swiftly in responding to the developing situation with the COVID-19 pandemic and seeking to ensure that the rights of women and girls to access sexual and reproductive health services continue to be protected throughout this challenging and unprecedented time. Further to the guidelines given on family planning and maternity care, we write to urgently draw the Ministry's attention to the need to include access to safe abortion, as permitted by the Constitution under Article 26(4), and comprehensive post-abortion care within the scope of these guidelines as emergency health care treatments which must continue to be prioritised, even during the COVID-19 pandemic. In light of the range of vulnerability or risk situations that women and girls may face while curfew and isolation measures are in place, it is vital that women and girls continue to have access to a full range of healthcare services, particularly sexual and reproductive healthcare services, as guaranteed by international and regional human rights standards.

Women and girls have a right to comprehensive health care, including sexual and reproductive health care. This is laid down in various instruments within international human rights law, particularly in the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Particularly in relation to sexual and reproductive health rights, the UN Committee on Economic, Social and Cultural Rights has established that the right to health, which includes sexual and reproductive health, requires health services to be available, accessible, acceptable and of good quality; including legal abortion. Further, under the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the "Maputo Protocol"), the right of women to adequate, affordable health services, including safe abortion services under specified circumstances has been recognised. This was reinforced by the African Commission on Human and People's Rights' in General Comment No.2, which recognises that it is critical that States "ensure the availability, financial and geographic accessibility, as well as the quality of women's sexual and reproductive health-care services without discrimination." It is also important to note that the right to the highest attainable standard of health, which includes the right to heath care services, is encompassed within the rights and fundamental freedoms guaranteed by the Constitution of Kenya, at Article 43(1)(a).

The right to reproductive health care is explicitly included within this provision. This right was reaffirmed by the High Court last year in *Federation of Women Lawyers (FIDA-Kenya) & 3 Others v Attorney General & 2 Others; East Africa Centre for Law & Justice (Interested Party) & Women's Link Worldwide & 2 Others (Amicus Curiae) [2019] eKLR*, which declared that women and girls have the right to the highest attainable standard of health, which includes mental and social well-being, as well as physical health, the right to non-discrimination and other rights, and affirmed the rights of victims of sexual violence to access an abortion.

Comprehensive post-abortion care includes not only emergency treatment for complications relating to spontaneous or induced abortions, but may, where relevant for each individual patient, also include family planning and birth spacing counselling, the provision of family planning methods, and evaluations for sexually transmitted infections including HIV/AIDS. Article 43(2) of the Constitution guarantees every person the right to emergency treatment and this is also reflected at Section 6 of the Health Act and post-abortion care must be guaranteed as part of emergency treatment. We note with the utmost concern that there is no provision for treatment of all emergencies in the guideline in the light of the government imposed curfew and the mere guideline to seek telemedicine as an alternative does not adequately address the needs of survivors of Sexual and Gender Based Violence or pregnant women who go into labour during the curfew hours. Provision of post-abortion care is considered part of the core obligations of State Parties to the Covenant on Economic, Social and Cultural Rights, in relation to the realisation of sexual and reproductive health, as a component of the right to the highest attainable standard of health. Further, as a signatory to the Beijing Declaration and Platform for Action, the Kenyan State has committed to ensure the provision of post-abortion care. States are required to undertake measures to ensure access to post-abortion care for all women and girls, free from discrimination, violence or coercion. This obligation includes the provision of adequate training, support, and supplies to ensure that abortion-related complications can be treated, irrespective of the legality of abortion. The denial of life-saving obstetric care, including post-abortion care, has been recognised as a violation of women's and girl's right to life by the UN Human Rights Committee.

The obligation on States to provide comprehensive health services, including sexual and reproductive health services and, particularly relevant in this context, comprehensive post abortion care, continues during times of national emergencies, including health care

emergencies such as the current COVID-19 pandemic. As emphasised by the UN Committee on the Elimination of Discrimination Against Women in their General Recommendation No. 37, "Health services and systems, including sexual and reproductive health services, should be available, acceptable and of good quality, even in contexts of disaster."

Reviewing the guidelines as published by the Ministry of Health, we note with concern that **the need to continue providing abortion, as permitted by the Constitution, and post-abortion care as essential and urgent treatments is missing from the list of acute gynaecological conditions outlined in Section 9 of the guidelines**. When post-abortion care is denied, or such treatment is administered inadequately or unsafely, women and girls are placed at significant risk of suffering serious physical and mental harm, and sometimes even die from being denied such care. Research into abortion in Kenya, to which this Ministry contributed and was a study partner, found that there were around 464,000 abortions induced in 2012; translating to an abortion rate of 48 per 1,000 in women aged 15 to 49. Further, it was estimated that around 120,000 women are hospitalised in Kenya each year due to abortion-related complications. Further research carried out by the Ministry of Health and the Africa Population and Health Research Center has shown that the cost of unsafe abortions borne by the Public Sector each year is estimated at KES 533 Million with 58% of the cost being towards the cost of the personnel and 42% of this cost being allocated to the medication and other related costs. This cost being known and documented should be allocated in the overall budgeting and costing for the response to Covid-19. Unless the need to provide comprehensive post-abortion care as an emergency medical treatment is explicitly incorporated into the guidance offered by the Ministry of Health to health care professionals, women and girls will be denied care and their lives, health, and physical and psychological integrity will be left at risk of serious harm during the pandemic. **We therefore urge the Ministry to amend the official guidelines without delay by releasing and distributing supplementary information which addresses the need for healthcare professionals to provide providing abortion, as permitted by the Constitution, and post-abortion care as emergency treatments during the Covid-19 pandemic.**

We would also like to share with you the Guidelines for Protecting the Rights of Women and Girls During the Covid-19 Pandemic, which have been developed by the international human rights organisation Women's Link Worldwide, together with Amnesty International (Americas

Office) and with IPPF Western Hemisphere Region, on how States should make sure they protect and fulfil women and girls rights during the COVID-19 pandemic. The recommendations contained in this document are tailored towards Latin American States but can in fact be used by any national authority as a roadmap on how to avoid deepening gender inequality during the pandemic. Please note that we will shortly be launching a version of these guidelines which is tailored to African States and adapted to the regional context; we would be pleased to share this with the Ministry when this is available.

We refer the Ministry specifically to section 2 of these Guidelines, focusing on the provision of sexual and reproductive health services, and in particular, point 2 *"Voluntary termination of pregnancy services....should be considered essential services during quarantine, and any contingency plans adopted should take this into account*," and point 4, *"They should also designate post-abortion care as an essential service during times of quarantine and isolation."* We hope that these recommendations, alongside the other guidance contained within this document, is of use when the Ministry is considering ways in which to expand and extend the published guidance to ensure the full protection of women's and girl's right to health during the COVID-19 pandemic.

Should you need any further information or assistance in relation to this matter, please do not hesitate to contact us. **Given the urgent nature of this matter, we respectfully request your response within 7 working days of receipt of this letter (in either physical or electronic format) in order to inform our next action.**

Endorsed by:

1. Amnesty International
2. Boda Boda Association of Kenya
3. Community Forum for Advanced and Sustainable Development (COFAS)
4. Community Initiative Action Group Kenya
5. ICW Kenya Chapter
6. Kenya Ethical Legal Issues Network (KELIN)
7. Kenya AIDS NGO Consortium (KANCO)
8. Kenya Sex Workers' Association (KESWA)
9. Mumbo International

10. Nyarwek Network
11. Trust for Indigenous Culture and Health
12. Women’s Empowerment Link
13. Women’s Link Worldwide

AO-2

women's LINK worldwide

Achieng Orero
26 June 20
Nairobi

GUIDELINES FOR AFRICAN STATES TO PROTECT THE RIGHTS OF WOMEN AND GIRLS DURING THE COVID-19 PANDEMIC

Achieng Orero

The COVID-19 pandemic — like all crises — will have a distinct impact on women and girls that is both immediate and that poses the risk of exacerbating pre-existing gender and other intersecting inequalities. Women and girls, particularly those who are already experiencing the greatest marginalization, will be disproportionately affected and, unless their rights are protected and their needs are met, will be further deprived of justice. Any measures taken to respond to the COVID-19 pandemic must uphold and protect human rights, including basic rights such as access to food and water, shelter and health services. States must ensure that their responses include a gender approach in order to guarantee the rights of all women and girls to live free of gender-based discrimination and violence, and to access essential sexual and reproductive health services, commodities and information.

The UN High Commissioner for Human Rights, the UN Special Rapporteur on violence against women, the African Commission on Human and Peoples' Rights and others have issued clear guidelines for States that should be used to craft measures to respond to the pandemic that also fulfill their human rights obligations. National and local authorities should be aware that in contexts of health, humanitarian, or other crises, inequality gaps increase when the adverse effects of these crises on women and women's rights are not taken into account and addressed.

The COVID-19 crisis does not relieve States of their obligations to address the gender-based violence faced by thousands of women and girls in the region; on the contrary, it requires more rigorous measures to minimize the negative impacts this new health crisis may have on them. Without a differential approach, half of the population may lack effective protection during the crisis resulting from the pandemic, which may have long-term effects well beyond the current health crisis, leading to greater exclusion and discrimination against women and girls in Africa.

Worldwide, 70% of the healthcare and social service workforce are women — meaning women are at the front lines of containing the spread of COVID-19 and may be heavily exposed to the virus through work in the health and social service sectors. Public service systems rely on women's unpaid labour, including for home-schooling and providing care for family members who are elderly, sick or living with disabilities. Women and girls are affected by poverty in disproportionally high numbers in the region. In Sub-Saharan Africa, women make up to 92 percent of workers in the informal sector, where there is no job security and no safety net if a crisis like COVID-19 deprives them from their earnings. Informal work includes many occupations such as street vendors, goods traders, and seasonal workers, which are most likely to be harmed by the

pandemic containment measures such as quarantines, lockdowns, travel restrictions and social distancing, and by the economic slowdown. Women are also over-represented in service industries that have been among the hardest hit by the response to COVID-19. Women and girls are also at high risk of domestic violence, which is reported to have increased with travel restrictions, social isolation and lockdowns.

States must take into account the underlying gender and other, intersecting forms of discrimination that increase women and girls' vulnerability in this context, including on the grounds of migrant or refugee status, nationality, ethnicity, belonging to religious or linguistic minorities or Indigenous people; age, gender identity, sexual orientation and sex characteristics, or status as a human rights defender, among others. Likewise, States must specifically address the needs of women living with disabilities, in rural or remote areas, and women needing access to essential, time-sensitive services such as voluntary termination of pregnancy, and guarantee access to assistance and protection for women victims of sexual violence, trafficking and other forms of exploitation.

As governments across the globe have introduced states of emergency, curfews and general lockdowns in order to slow the spread of COVID-19, billions of people have faced unprecedented restrictions. As a consequence of some governments having approached the pandemic as a security threat rather than as a public health emergency, some police forces around the world are applying violent and humiliating punishments to enforce quarantine on the poorest and most vulnerable groups, including tens of millions people who live hand-to-mouth and who risk starving if they are not able to seek work or subsistence for themselves and their families. Therefore, it is imperative that while working to mitigate the adverse impact of the global pandemic, States parties to the African Charter on Human and Peoples' Rights are also obliged to take appropriate measures to respect, protect and fulfill the rights enshrined in the Charter, including through taking all necessary measures to prevent threats to the life, safety, and health of people, while also respecting human and peoples' rights and protecting marginalized groups. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) which guides African Union member States in addressing women rights also protects these rights.

HOW TO USE THIS GUIDE

This guide provides a roadmap for national and local government authorities and agencies, as well as sub-regional and regional organisations, to better understand the obligations they must fulfill as regards women and girls' rights during the pandemic. This guide is designed to help duty bearers to ensure that minorities, internally displaced persons (IDPs), the vulnerable, marginalized and disadvantaged communities have access to basic rights and freedoms during these challenging times. This is a short guide and does not cover the full extent of State obligations under international human rights law. Instead, this guide focuses on some particular aspects of the crisis which differentially and disproportionately impact women and girls. Importantly, States should ensure that women are enabled to effectively participate in the decision making relating to COVID-19.

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For civil society and human rights organizations, this guide may be used as a list of minimum indicators for assessing State responses to the pandemic as regards their obligations to uphold women and girls' rights, and as a support for advocacy activities directed at getting governments and authorities to apply a human rights approach to any response.

For humanitarian and international cooperation organizations, this guide may complement efforts underway to provide technical support and assistance to States as they prepare contingency and pandemic response plans in order to ensure that these responses include a differential approach and that effective measures that were in place prior to the crisis continue to work.

This guide is also meant to be an inventory of competencies and activities that States should strengthen as they grapple with their response to the global COVID pandemic. The measures in response to the pandemic should leave no one behind and should be backed up with sufficient resources to ensure they are implemented without discrimination.

AN URGENT RESPONSE: ACTIONS TO RESPECT, PROTECT AND FULFILL THE HUMAN RIGHTS OF WOMEN AND GIRLS

1) THE RIGHTS TO LIVE FREE FROM VIOLENCE AND TO BE FREE FROM TORTURE AND CRUEL, INHUMANE OR DEGRADING TREATMENT

In times of crisis, the risk of gender-based violence against women and girls increases. As UN Women has noted, violence against women is "the most widespread human rights violation in the world". Therefore, during the COVID-19 crisis, addressing risks of violence faced by women and girls in the context of social distancing and isolation, states of emergency, travel restrictions, and other containment measures should be prioritized. The implementation of States' measures such as curfews, travel restrictions and lockdowns can lead to police brutality and violence which ultimately puts women and girls at an increased risk of being subjected to sexual violence as it has recently been the case in parts of Kenya.

When dealing with the pandemic, **States should ensure that support services and protective mechanisms for women survivors of violence remain accessible while travel restrictions and quarantine orders are in effect**. To this end, States should promote the following measures:

- Judicial authorities should ensure women survivors of domestic violence and their children or other family members have effective access to justice and timely protective measures such as restraining orders including extending the current ones, with no additional requirements, for the period of the pandemic.
- Competent national and local authorities should ensure that support services such as shelters remain open and that they have sufficient capacity to provide safe space for self-isolation if needed, and/or new facilities are made available for women who must leave their homes while quarantine orders are in effect in order to be protected from their assailants. Authorities

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should also ensure that all women and girls have information regarding services available during this quarantine period.

- Services allowing women to report violence and receive assistance such as gender desks and Gender Based Violence Recovery Centres (GBVRCs) should remain open, and those services and lines established to provide assistance during the pandemic should include measures allowing for effective reporting of cases of domestic violence, disappearances, risk of femini-cide, FGM, child marriages and similar incidents.
- Authorities should adopt necessary measures to allow search protocols to be carried out when women are reported missing while quarantine orders are in effect.
- Travel restrictions should include exceptions for women survivors of violence who need to seek assistance outside the home or who escape from situations of violence or exploitation. Law enforcement agencies should be directed to consider these situations in order to prevent revictimization or prosecution of victims.
- States should strengthen efforts to effectively identify victims of trafficking in human beings and other forms of exploitation and provide them with necessary legal assistance, medical care and support services.
- In countries where crisis and turmoil have historically led to documented widespread gender-based violence, including sexual violence (such as recently in Kenya and Rwanda), authorities should include prevention and protection measures from the outbreak of the crisis.
- Medical care, counselling and legal assistance for women victims of sexual violence should be considered an essential service during quarantine.
- Authorities should ensure there are public information campaigns on support services and protective measures available to women victims of violence during the pandemic.

2) ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES, COMMODITIES AND INFORMATION

Access to healthcare services, commodities and information is a key part of human rights protected under multiple regional and international human rights instruments, in particular the right of all persons to enjoy the highest possible level of physical and mental health, including sexual and reproductive health. Violations of the rights to life and health, including the sexual and reproductive health rights of women and girls, particularly those in situations of heightened vulnerability due to circumstances such as humanitarian or health crises, are forms of gender-based violence that may in some cases constitute torture or cruel, inhuman, or degrading treatment. Denial or failure to provide these essential services is a form of gender-based discrimination, and places the lives, health, and personal and bodily integrity of women and girls and people who can become pregnant at risk.

States have an obligation to ensure access to healthcare services, commodities and information in accordance with principles of dignity, equality, and non-discrimination, particularly in light of the range of circumstances putting women, girls and marginalised groups at greater risks while quarantine and isolation measures are in effect.

When prioritizing assistance to specific groups and/or designating services as essential during the COVID-19 crisis, States should ensure availability of, and access to, sexual and reproductive healthcare services, commodities and information as follows:

- Care for pregnant and breastfeeding women should be available, adequate, accessible and affordable. Uninterrupted access to maternal health services (including pre- and antenatal care and emergency obstetric services) should be guaranteed under safe circumstances for staff and pregnant people.
- Safe abortion, contraception including emergency contraception, and maternal health services should be considered essential services during quarantine, and any contingency plans adopted should take this into account. These services should be exempted from travel restrictions in order to ensure access.
- Service providers' ability to travel and continue their work should be supported, in particular by granting the necessary travel permits to medical providers, humanitarian groups, and co-operation organizations during times of quarantine and isolation.
- When travel restrictions are in place, States should adopt measures to facilitate access to voluntary termination of pregnancy services using abortion medication at home and tele-health tools. They should also designate post-abortion care and miscarriage treatment as an essential service during times of quarantine and isolation.
- Delays in access to safe abortion services may be anticipated during the crisis, so States whose abortion laws are based on a gestational limits model should consider increasing flexibility in those time limits. States should also mitigate any enhanced barriers to access, such as refusals of care on grounds of personal beliefs, mandatory counselling, waiting periods, and multiple authorizations.
- Measures should be taken to increase assistance to territories and regions that have historically had greater barriers to access to health services. Local authorities should encourage implementation of these measures, with the support of national authorities.
- Emergency obstetric care should be prioritized during the crisis, and measures should be taken to provide healthcare personnel with necessary protections in case of suspected or confirmed cases of COVID-19.
- Healthcare services should be guaranteed for women and girl victims of sexual violence during the crisis, including effective application of protocols or guidelines in effect in each country. Referral pathways should also be updated to reflect the changes in available facilities.
- Impacts on supply and distribution chains for family planning methods and other sexual and reproductive health commodities related to menstrual health should be addressed and measures to minimize these impacts adopted. This includes listing these products as essential services to be supplied by relevant State authorities so they can continue to be available and accessible.
- States should uphold the right to receive information with an intersectional approach by continuing to ensure the dissemination, publication, and public access to information on sexual and reproductive health services and commodities in relevant languages for the targeted communities and in accessible formats for people with disabilities.

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3) ACCESS TO JUSTICE

High levels of impunity are one of the greatest challenges to access to justice for women and girls survivors of violence in the region. States have a special obligation to ensure due diligence in the investigation and prosecution of all cases of gender-based violence. International and regional human rights bodies have found that judicial ineffectiveness encourages impunity, perpetuates gender-based violence, and sends a message to society that violence against women and girls may be tolerated and accepted.

The obligation to ensure access to justice for women survivors of violence should be strictly observed in contingency plans for the COVID-19 crisis. The following actions should be taken:

- The capacity of government institutions to receive and process complaints should be increased through adoption of the special measures necessary to ensure continued availability of judicial actors.
- Assistance and support services for women survivors of violence should be considered essential during quarantine, and local and national authorities should take steps to ensure their continued availability and funding.
- Survivors of violence should have access to flexible means of making complaints and seeking protections, such as by electronic means, telephone, or other alternative means, taking into account the travel restrictions in effect.
- Security forces and law enforcement should prioritise responding to and following up on complaints of violence against women as they perform their duties during the crisis.
- Any extension of judicial time limits should take into account the obligation to ensure access to justice for women victims of violence within a reasonable time and without undue delay.
- Special mechanisms should be put in place to ensure proper collection of forensic evidence in cases of physical, sexual, and/or psychological violence for use in court proceedings.
- Adequate records of complaints of gender-based violence made during the crisis should be kept and follow-up mechanisms should be put in place to assist victims and initiate appropriate legal actions.

4) WOMEN AND GIRLS IN THE CONTEXT OF MIGRATION AND HUMAN MOBILITY

In a joint statement, UNHCR, IOM, OHCHR and WHO have specified that the rights of migrants, refugees, displaced people, and persons at risk of being stateless must be protected in the context of the pandemic response, and that even as borders are being closed, the principle of non-refoulement must still be observed.

In other regions, human rights organizations have stressed the importance of protecting the life and health of migrants and refugees in the context of the COVID-19 crisis, particularly in light of the extreme impact caused by State responses in the Americas, including border closings and other measures directly affecting these groups. In the African region, organizations have expressed similar concerns about the exclusion of migrants and refugees in States' responses to the pandemic.

The above mentioned measures regarding access to justice, to sexual and reproductive health services commodities and information, and to a life free from violence, torture and cruel, inhumane or degrading treatment should apply to migrant and refugee women and girls, and more broadly, to women and girls on the move in Africa, regardless of their migration status. Border closings will increase the use of clandestine border crossings, placing women and girls at greater risk of violence, exploitation, and trafficking in human beings, including for the purposes of sexual exploitation.

Africa hosts more than 25.2 million refugees and internally displaced people and houses four of the world's six largest refugee camps (in Uganda, Kenya, Tanzania and Ethiopia). Refugee camps usually provide inadequate and overcrowded living arrangements that present a severe health risk to inhabitants and host populations. Inadequate supplies in some camps, such as clean running water and soap, insufficient medical personnel presence, and poor access to adequate health information are major problems in these settings. Additionally, women and girls face an increased risk of suffering sexual violence and of being recruited into trafficking.

States must therefore adopt measures that take into account the differential impact of the crisis on women and girls on the move, including the following:

- Put in place clear service delivery mechanisms for migrants and include access to healthcare and prevention systems in pandemic contingency plans.
- Ensure access to essential healthcare services, including sexual and reproductive health services, commodities and information for migrant women, in accordance with the above guidelines under "Access to sexual and reproductive health services, commodities and information".
- Follow the guidelines jointly developed by IFRC, IOM, UNHCR and WHO, "Scaling-Up COVID-19 Outbreak Readiness and Response Operations in Humanitarian Situations, Including Camps and Camp-Like Settings" to, at a minimum, avoid refugee camps becoming spaces for transmission of the coronavirus and to make sure they are equipped with adequate water, sanitation and hygiene facilities and products.
- Increase capacities and strengthen implementation of protocols for identification, referral and assistance for victims of human trafficking and other forms of exploitation, particularly in places where borders are closed, or migration is restricted in the context of the crisis.
- Immigration authorities should consider extending time limits for immigration proceedings, refugee applications, and travel permits. They should also expedite processing of asylum applications in cases related to gender-based violence and provide access to GBV services for asylum applicants and migrants regardless of migration status.
- Given Africa's significant human mobility and humanitarian crises related to forced displacement, clear guidelines should be put in place to ensure that humanitarian aid groups can continue to perform their work, particularly those providing assistance to victims of gender-based violence or essential sexual and reproductive health services. Local authorities should assist in these efforts, including by issuing the necessary permits for healthcare personnel so they can travel safely.

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- Adopt special protective measures to ensure access to healthcare and protection for migrants held in detention centres and living in refugee camps, particularly pregnant women, victims of sexual violence, and survivors of trafficking and exploitation. In the context of the pandemic, authorities should consider relaxing immigration policies, increasing access to asylum applications, and providing safe facilities for migrants.

5) WOMEN AND INFORMAL ECONOMY

Africa's informal sector plays an important role in creating jobs and providing incomes for its population. Women contribute a majority of workforce within this sector, greatly affected by the COVID-19 pandemic. This means many women are out of employment and have no source of income to fend for themselves and their families.

It is therefore important that States adopt measures to reduce the adverse impacts of this on women by:

- Implementing social protection measures such as social security and national health insurance schemes, particularly for women who cannot work, to ensure needs such as access to healthcare are met during this period.
- Introducing bailouts and stimulus packages for women in informal employment such as reduction of tax on essential products and services, including food and health care. Food baskets should also be introduced, with a specific focus on ensuring the needs of elderly women, sick women and those living with disabilities are met.
- Ensuring a conducive environment is created to allow women in business to continue operations without putting them at risk of infection. This includes providing information on how to prevent the spread of COVID-19, particularly the need to practice social distancing in public spaces like markets, the provision of masks and access to hand sanitizers. Further, security should be provided in such spaces to ensure all women are protected from harm in their workspaces.

May 2020

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AO-3

Achieng Orero

26 June 20
Nairobi

ncaj.go.ke

Statement on justice sector operations in the wake of the COVID-19 pandemic – National Council on the Administration of Justice

9-11 minutes

We, the members of the National Council on the Administration of Justice (NCAJ), join other national leaders in calling for strict adherence to the safety measures put in place by the National Emergency Response Committee on Coronavirus. The justice sector is committed to doing its part to ensure that the battle against the pandemic is won.

Further to this, we wish to make it clear that contrary to some perceptions, the Judiciary and the rest of the justice sector have not closed shop.

What has happened is that following the declaration by the World Health Organization of Coronavirus as a pandemic and the subsequent confirmation of positive cases in the country, the NCAJ – which comprises all the State and non-State actors in the justice sector – met on March 15, 2020 and resolved to scale down all the Judiciary public-facing operations in compliance with the recommendations of the National Emergency Response Committee on Coronavirus.

All the stakeholders in the justice sector have appropriately adapted to the emerging challenges and taken various actions, both individually and collectively, to ensure that they prevent the spread of the virus while also ensuring that the sector continues to render essential services to the people of Kenya.

Yesterday, the NCAJ members held a virtual meeting attended by, among others, the Director of Public Prosecutions; the Chief Executive Officer of the Ethics and Anti-Corruption Commission; the Inspector General of Police; the Commissioner General of Prisons; the President of the Law Society of Kenya (LSK) as well as the Chairman of the LSK Nairobi Branch; and the Judiciary leadership to review the sector operations in the wake of the scaling down of the Court operations.

After consideration of the issues raised and challenges experienced in the two-week period as well as a review of the measures taken by the different agencies, the Council agreed on the following:

1. HANDLING OF CRIMINAL MATTERS

A. Police Bond

i) Petty and traffic offenders should never be held at Police Stations for more than 24 hours; they should be released on either cash bail or free Police bond. Officers in charge of Police Stations are therefore under strict instructions to implement these directions.

ii) To enhance transparency and accountability, the Police will establish centralized records showing the number of people arrested and handled in all police stations and the terms of their release on bail or bond. This will be regularly monitored by Office of the Director of Public Prosecutions and periodic reports submitted to the NCAJ members.

B. Plea-Taking and Urgent Criminal Hearings

i. The Office of the Director of Public Prosecutions remains open with one officer in charge of every regional office to process files for plea-taking and other urgent matters.

ii. In consultation with Regional ODPP officers, Heads of Court Stations have been facilitating plea-taking for serious offences that are not subject to Police bond. Magistrates across the country continue to review and revise bail and bond terms for petty offenders to facilitate their release from Prisons as they await trial.

iii. Serious crimes, including defiance of national orders regarding the control of COVID-19, will continue to be presented to court for plea-taking. In consultation with the Police and the DPP, courts will be convened at short notice to handle such cases.

iv. There has been a significant spike in Sexual Offences in many parts of the country in the past two weeks. These offences constitute 35.8 per cent of the criminal matters reported during that period. In some cases, the perpetrators of such offences are close relatives, guardians and/or persons living with the victims. Depending on the individual facts of each case, upon application by the DPP, the courts will consider giving directions on early hearing dates in such cases.

C. Decongestion of Prisons

i. In the past two weeks, files of inmates who are petty offenders jailed for less than six months and others who have less than six months to complete their jail terms have been presented to the High Court for review of their sentences. This has led to the release of 4800 inmates, significantly helping to decongest the prisons. The exercise is continuing.

ii. New inmates are being isolated to reduce the risk of infection and movement of inmates has been highly restricted. Prison visits have been suspended, including visits to the staff quarters. Prison labour has also been reduced to a bare minimum.

The justice sector actors will embrace technology and plans are under way to enable inmates to participate in virtual trials as the prisoners are no longer being produced in open court.

2. HANDLING OF CIVIL MATTERS

A. Filing of Urgent Matters and Pleadings

i. On March 20, 2020 the Chief Justice gazetted Practice Directions on Electronic Case Management to guide the integration of ICT in judicial proceedings. The Practice Directions are being used by various courts across the country to facilitate use of technology in the delivery of justice.

ii. The courts have provided contact lists including email addresses and telephone numbers of court stations and specific contact persons. Stakeholders are given directions as to the filing of matters under Certificate of Urgency and also the filing of time-bound pleadings. A duty Judge in each of the Superior Courts and a Magistrate in every station is available every day to deal with urgent matters. Urgent applications are forwarded to the Judges and Magistrates who give directions as to hearing or issue orders as necessary. This system is working well as is evidenced by the fact that in the first one week, 1779 matters were handled at various High Court stations.

iii. Tribunals, on the other hand, have handled 244 Applications under Certificates of Urgency in the past two weeks, the bulk of them being from the Business Premises Tribunal and the Rent

Restriction Tribunal.

B. Judgement and Rulings

i. In line with safety guidelines issued by the National Emergency Response Committee on Coronavirus, Judges and Magistrates are executing their duties albeit from home.

The Judges and Magistrates have taken this opportunity to write their pending judgments and rulings. In this regard, we are happy to report that in the next two weeks, the Supreme Court will deliver **one judgment and 10 rulings**; the Court of Appeal will deliver more than **45** judgments and rulings of appeals and applications heard in Nairobi, Kisumu, Mombasa and Eldoret through email on Friday, April 3, 2020; the High Court will deliver **367** judgments and rulings; the Environment and Land Court—**269**, the Employment and Labour Relations Court—**75**; and the Subordinate Courts—**390**. Various Heads of Courts and Tribunals will, at Court Station level, issue directions on delivery of Judgments and Rulings in cases where parties and/or their advocates have not provided their email addresses.

ii. Video conferencing technology has been adopted to deliver some of these judgments as was evident in Mombasa, Malindi and Eldoret in the past two weeks. More courts will deliver judgments in this manner in the days ahead.

iii. Judges and Magistrates shall continue to utilize this period of working from home to write pending Judgments and Rulings. Details of Judgments and Rulings that are ready for delivery shall be published weekly in the Judiciary, Kenya Law Reports and LSK websites.

C. Execution

i. Execution of warrants of arrest, court decrees and orders made prior to March 15, 2020 is suspended until further notice. The Police, Court Bailiffs and Auctioneers are, in the circumstances, instructed not to carry out execution of warrants, orders or decrees issued before March 15, 2020.

ii. Orders and directives of a conservative nature and mandatory injunctions issued during the scaling-down period starting March 15, 2020 will, however, be executed.

iv. The LSK will continue to communicate to its members on the essential services being offered by the courts and the resolutions above.

3. SAFETY OF STAFF AND LITIGANTS

As the justice sector actors continue to offer scaled-down operations, efforts continue to be made by all the agencies to provide protective gear and maintain the necessary social distance. For the safety of the public attending court proceedings, some proceedings may be held in open places within the court premises in order to maintain the required social distance.

4. CONCLUSION

Even in the difficult and unprecedented times we find ourselves in, the National Council on Administration of Justice is determined to ensure that the wheels of justice do not grind to a halt.

As a sector, we are determined to work together to adopt online processes and embrace technological solutions in accordance with the recently-gazetted Practice Directions on Electronic Case Management.

The NCAJ will constantly review the situation and update the nation

from time to time.

This communique supersedes all other communication regarding the different matters.

HON. JUSTICE DAVID K. MARAGA, EGH,
CHIEF JUSTICE AND CHAIRMAN, NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE

AO-4

Achieng Orero

Sex predators on the rampage amid curfew

26 June 20
Nairobi

By **ALLAN MUNGAI** | April 18th 2020 at 00:00:00 GMT +0300

Feedback

KENYA

Sexual offences constitute 35.8 per cent of criminal matters since order to stay home in March

Cases of sexual violence have soared since Kenya recorded the first case of coronavirus on March 12 and started enforcing measures such as the closure of schools to curb the spread of the virus.

Sexual offences have overtaken other crimes as the country restricts movement.

This has prompted the Ministry of Health to call for more protection of those vulnerable to sexual and gender violence.

"We remind everyone that the law has not been suspended and that it will catch up with those who mete violence on others during this period," said Health Chief Administrative Secretary Dr Mercy Mwangangi.

SEE ALSO: After failed bid to become a nun, now I rescue girls

The ministry's reaction follows reports by the Gender Violence Recovery Centre (GVRC), the Director of Public Prosecution and the National Council on Administration of Justice (NCAJ) on increase in sexual offences cases.

Data showing the cases the Director of Public Prosecutions has registered in court indicate the sexual offences are disproportionately high, suggesting a correlation between measures instituted to curb coronavirus and the spike in sexual abuse.

Sexual offences such as defilement and rape make up 41 per cent of the cases recorded in court since March 16. Out of the 265 cases registered for prosecution during the last two weeks, sexual offences were 95. There have been 37 robberies and 19 murders in the same period.

Majority of the sexual abuse cases were reported in Nairobi (13), Mombasa (11), and Uasin Gishu County (10).

Last month, the cases reported to the gender-based violence (GBV) hotline, 1195, were 115 compared to the 86 that were reported in February, representing an increase of 33.7 per cent.

SEE ALSO: How I became a mother of two by the age of 16

Comparatively, 106 women and girls reported being either physically or sexually violated while nine men and boys reported the same. Nairobi reported the highest cases of GBV.

Closure of schools and the curfew has forced millions of children to stay indoors making them vulnerable to abuse.

Apart from Kisii which has had one case of defilement, Siaya had two and Nyamira three, while Kisumu, Migori and Homa Bay counties each recorded six cases of sexual offences.

In North Rift, Trans Nzoia had three defilement cases. Central had one sexual abuse case prosecuted in Kirinyaga while Kakamega had five cases.

Embu had one sexual offence case and four murder cases.

Chief Justice David Maraga said the sexual offences constituted 35.8 per cent of the criminal matters reported during the period since orders to stay home were enforced.

"These are people who are supposed to take care of the young girls, but instead of taking care, they are preying on them," he said.

AO-5

Achieng Orero

26 June 20
Nairobi

hrw.org

Tackling Kenya's Domestic Violence Amid COVID-19 Crisis | Human Rights Watch

3 minutes

For 4 days, Juliet M., a 16-year-old Kenyan, was held captive by a man and sexually assaulted. She was rescued by neighbors and is now being cared for in a safe house in Nairobi. The attacker reportedly said he kidnapped her because he needed female company to get through the government-imposed COVID-19 lockdown.

The Kenya government has adopted strict measures to counter the spread of the COVID-19 virus. But these measures, as necessary as they are, are having particular impact on women and girls, including elevating the risk of gender-based violence. Last week, the National Council on Administration of Justice reported "a significant spike in sexual offences in many parts of the country in the past two weeks." They noted that "in some cases, the perpetrators are close relatives, guardians and/or persons living with the victims." The report pledged that "the courts will consider giving directions on early hearing dates in such cases."

Violence is a daily reality for women and girls across Kenya. According to government data, 45 percent of women and girls aged 15 to 49 have experienced physical violence and 14 percent have

experienced sexual violence. Many cases are not reported to authorities and few women get justice or receive medical care.

The restrictions imposed in response to the COVID-19 pandemic are likely to make it harder for survivors to report abuse and seek help and for service providers to respond efficiently. Sexual and other forms of violence against women have devastating consequences including injuries and serious physical, mental, sexual, and reproductive health problems, including sexually transmitted infections, HIV, and unplanned pregnancies.

The Kenya government should urgently protect women and girls against violence during this crisis. Its public awareness campaigns should highlight this risk and give detailed information on how victims, including those infected with COVID-19, can access services. It should treat services for women who experience violence as essential, ensure these services have the resources they need, and make alternative accommodation available when the current limited shelters are full. Violence against women and girls is a crime, and they have a right to be protected even when the government is preoccupied with a pandemic.

AO-6

Achieng Orero

26 June 20
Nairobi

NEWS JUST IN DJ Evolve Discharged From Hospital 6 Months After Shooting »

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Pregnant Mother Bleeds to Death During Curfew

By **MANYIBE EZRA** on *10 April 2020 - 10:28 am*

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6 Chinese President Offers Uhuru Lifeline

7 Kenya Falls Short in Fight for UNSC Seat

8 K24's Fresh Newsroom Faces Leaked

People mill outside Kibwezi Sub-County Hospital in Makueni County on February 28, 2019. DAILY NATION

A pregnant woman bled to death in Makueni County for fear of flouting the nationwide dusk to dawn curfew and the fear of harassment by the police.

KTN News on Thursday, April 9 reported that Lydia Mueni, a mother of seven, endured a whole night of labour pains, with her family also afraid to go outside.

"She told me she would not go out at that time. She told me to go out if I wanted a beating. So we agreed to wait until around 4 a.m in the morning," Matty Nyamai told the media house.

Pregnant woman bleeds to death in t...

It wasn't until 5 a.m at the end of the curfew that the family got assistance from someone who helped them to Kibwezi Sub-county hospital. She had lost her child the dead of night and later bled to death at the facility.

Mueni was buried forty eight hours after she had passed on as directed by the national government in the wake of the Covid-19 pandemic. She had become an indirect casualty of the virus.

Makueni County Referal Hospital has been greatly affected by the pandemic, recording 15 maternal deaths in 2019, but has since registered four deaths in one week, owing to the pandemic.

9 **Murkomen: How Sunday School Teacher Became Political Bigwig**

10 **Alfred Mutua's Promise After Alarming Teenage Pregnancies**

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Health Director-General Patrick Amoth while addressing the media from Afya House on Thursday, April 9, had directed that counties designate Covid-19 hospitals, and the others carry on with their normal routine.

"We have directed all the 47 counties to identify and designate a Covid-19 hospital so that the other hospitals continue offering the normal services, immunisation, maternal-child health,

"We are also in constant dialogue with the security apparatus to ensure that there is the unfettered movement of those who need to seek services at any given time," Amoth stated.

On Wednesday, April 7, Dr, Jemimah Kariuki, a Resident in Obstetrics and Gynaecology based in Nairobi, tweeted that she would aid pregnant women in times of emergency, after she was informed of a scenario where an expectant mother perished, leaving behind an infant, a story that touched her.

"Any lady during this curfew and Covid-19 crisis who feels they are unable to reach the hospital and they are in labour or have an emergency, kindly reach out and I will do my best to intervene," Kariuki stated as she further detailed to *Kenyans.co.ke* her plan which she hopes will rope in different stakeholders in the country.

The health worker who is listed as an essential service provider disclosed that there was an

increased rate of pregnant related issues such as haemorrhage and infections after women have been in labour for long, stating that she was out to offer any help, ranging from advice and guidance to connecting the patients to emergency service providers.

"First of all, even before we discuss how they can be assisted, these patients are embroiled in fear and anxiety. Remember birth pains can go up to 13 hours and anxiety and expectancy do not go hand in hand," Kariuki stated.

According to the medical practitioner, more efforts would be realised if the police service is also incorporated in the plan as they would be notified of special cases, or they themselves would assess a scenario and judge carefully, hence saving lives.

"Our police should be informed that they can give leeway to allow people to go to the hospital, either by seeing a letter of admission or by the pain a patient is undergoing. However, in some cases, one cannot see blood. For example like in a first-semester miscarriage.

"Women should also be aware of danger signs such as the baby not moving or water breaking and should avail themselves at a facility. They should be prepared by having their bathing kits ready, their NHIF, ID cards available and should pack baby clothes to be shown to police officers," Kariuki detailed.

Achieng Orero

26 June 20
Nairobi

globalcitizen.org

Pregnant Women in Rural Kenya Are Struggling to Access Health Care Amid COVID-19

By Leah Rodriguez April 15, 2020

8-10 minutes

Doris, social mobilizer at Child.org in Kenya, meeting Regina, new mom to twins.
Courtesy of Child.org

Health

We spoke to NGO Child.org about the impact coronavirus is having on the women it supports.

Why Global Citizens Should Care

When women and girls have access to reproductive and maternal health care, they lead healthier lives, are more likely to stay in school, and contribute to their communities. We must continue to provide women with adequate health resources and information amid global health crises. You can take action on this issue here.

Resources are often diverted away from maternal health care during crises, and the COVID-19 pandemic is making it increasingly difficult to provide adequate maternal care worldwide.

Although Kenya does not have many confirmed positive COVID-19 cases, the organization Child.org is starting to face obstacles as it tries to continue to support mothers through its maternal care program in the country.

Kenya has one of the world's highest maternal mortality rates and one in 26 babies die before they reach their first birthday. But studies show that exposure to women's groups in low-income countries can reduce neonatal mortality by 20%.

Let's Help Our Communities During Coronavirus — Spread the Word

15,207 / 20,000 actions taken

Communities are stepping up to help vulnerable people during the ongoing COVID-19 pandemic.

As the health crisis deepens, some of us are at extra risk from social isolation and instability.

Follow our tips on what you can do to help those around you and share with others to spread the word!

Child.org's Pregnant Women's Groups in Meru, Kenya help equip expectant mothers in the rural area with the information and resources they need to keep themselves and their babies safe and healthy.

Martina Gant, head of programming at Child.org, shared with Global Citizen how the COVID-19 pandemic is affecting the organization's ability to continue crucial initiatives with limited resources.

Global Citizen: How has the COVID-19 coronavirus impacted Child.org's maternal health project in Meru, Kenya?

Martina Gant: The biggest impact that the COVID-19 outbreak has had is that we can't run our groups. We are not able to get the women together anymore and haven't been for a few weeks now. We don't have a full lockdown here in Kenya. The government is doing what it can to prevent the spread. [But] getting people together in groups is not a sensible activity right now.

We've also got the issue around the overall costs and impact to the organization. We are relying on income from UK festivals and festivals in Europe, and many of those are not going to go ahead. We also are heavily reliant on fundraising events. If we're not able to run those on top of all of the damage to other activities, we are set to lose between 50 and 80% of our income.

Related Stories April 2, 2020 3 Ways COVID-19 Lockdowns and Curfews Risk Increasing Already Existing Inequalities in Africa

How are these women at risk when the groups aren't happening?

We ran some surveys in Nairobi with some of our participants from a previous project.

We've been in contact with those women and they were telling us that they are not going to clinics or they're scared to go to clinics because of the potential risk of infection.

Just in the papers this week, we learned that in-hospital delivery rates are down by over 50%, while immunization clinics are down by over two-thirds.

In Mombasa, healthcare workers are being moved from maternity

to critical care. We're seeing the same in Meru.

This isn't just Meru, but health care workers haven't been provided with the PPE (personal protective equipment) that they were expecting, meaning that they're not feeling safe.

If there's a suspected case, there have been multiple cases of healthcare workers fleeing health facilities because they're worried about the risk of infection to themselves and the families. On top of an already strained health system, we're seeing that access to services is becoming more challenging, and the quality of care if patients do seek those services is reduced.

Community health volunteers in the past couple of days have been visiting 100 women who delivered their babies since the suspension came in and running surveys with them, but also providing them with the government COVID-19 health and sanitation updates.

We provided the community health volunteers with their own PPE as well, because as far as we've seen, that hasn't been provided outside of the immediate first response to the COVID-19 crisis. There's an additional risk to mom and baby and to the health worker in terms of transmission.

Really good work has been done across Kenya and across the world, to improve the maternal mortality rates and neonatal mortality rates. But [the current situation] is really concerning for any of us working in this field. We've got the direct impacts of COVID-19 but the secondary impact is really concerning.

Related Stories March 25, 2020 Why COVID-19 Response Efforts Need to Consider That Pandemics Hit Women and Girls the Hardest

Can you tell me how you're using the Mama Tips SMS platform to keep providing pregnant women with resources in a safe way?

It allows women to ask questions and puts them directly in touch with their frontline health workers. We can encourage them to take themselves to medical centers, but also we can follow up and we can do home visits with our community health volunteers.

This is going to allow us to continue contact with women and also to recruit women on to the project so that when we are able to get groups back together, we can do this kickoff very quickly.

How would your organization like support from the international community to continue ensuring that pregnant women have access to the resources they need during the COVID-19 pandemic?

We need support, we need the global community to recognize the value that organizations like ours have.

This is a really tough situation around, for everyone...for people in isolation across the globe.

In the vast majority of countries, there is food available. There's economic support, there's a recognition from the government that further assistance is needed. But for communities like those that we're working with, there isn't that, and very soon people are going to start to go hungry. It's going to become really challenging to support themselves and their families without putting them themselves and their health at risk.

It's just really important to recognize that despite how hard this is for those of us from countries like the UK and the US, we are lucky

in terms of what we still have, and to not forget those people in those countries where those pullbacks and those welfare systems are not in place.

We got to the point with this project where the feedback from women was incredible.

There's real misinformation and myths surrounding maternal health in these communities. And it's only with access to reliable information, science-based information, that we're going to be able to make real inroads with maternal deaths and neonatal deaths. It's absolutely critical that access to information doesn't stop given this crisis.

This interview has been edited and condensed for clarity.

You can find out how to take action against coronavirus through our Together At Home campaign here, and you can find all of Global Citizen's COVID-19 coverage here.

Related Stories

- The First UN 'Solidarity Flight' Is Bringing Much-Needed COVID-19 Medical Supplies to Africa
- How COVID-19 Is Impacting Elderly People in Mozambique Who Are Still Recovering From Cyclone Idai
- 8 Resources for Reliable Information About Coronavirus

Doris, social mobilizer at Child.org in Kenya, meeting Regina, new mom to twins.
Courtesy of Child.org

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, 165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA...1ST PETITIONER

ESTHER NELIMA...2ND PETITIONER

CHRIS OWALLA..3RD PETITIONER

CM...4TH PETITIONER

FA..5TH PETITIONER

KB..6TH PETITIONER

MO...7TH PETITIONER

EL..8TH PETITIONER

KATIBA INSTITUTE..9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN)...10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ KENYA)...11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA..12TH PETITIONER

ACHIENG ORERO..13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH...1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH...2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY..3rd RESPONDENT

COUNCIL OF GOVERNORS...4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT..5th **RESPONDENT**

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL OF THE POLICE, KENYA...6th **RESPONDENT**

JOSEPH WAKABA MUCHERU, CABINET SECRETARY FOR INFORMATION AND COMMUNICATIONS...7th **RESPONDENT**

THE COMMISSION ON ADMINISTRATIVE JUSTICE...8th **RESPONDENT**

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER, KENYA MEDICAL PRACTITIONERS' AND DENTISTS COUNCIL...9th **RESPONDENT**

AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)................................**1ST INTERESTED PARTY**

AFFIDAVIT IN SUPPORT OF THE NOTICE OF MOTION

I, **SHEILA MASINDE,** of P.O Box 198-00200 Nairobi, do hereby make oath and state as follows: -

1. **THAT** I am the Executive Director of the 12th Petitioner herein and therefore competent to make this Affidavit.

2. **THAT** I am swearing this Affidavit is support of the Notice of Motion and the Prayers particularized therein especially those seeking certification for urgency and the protection of identity of the petitioners.

3. **THAT** for the purpose of the Motion, I fully rely on the information I have sworn in my Affidavit supporting the Petition. I also rely on the Petition.

4. **THAT** on 12th March 2020 the First Respondent announced the outbreak of Covid – 19 Pandemic in Kenya.

5. **THAT** concerned about issues of transparency and accountability in the handling of the pandemic, the 14th Applicant joined other likeminded partners in ensuring that while government discharges its mandate of protecting citizens it abides by the Constitution, specifically the Bill of Rights and other attendant provisions on good governance.

6. **THAT** the 12th Applicant together with its partners have issued Access to Information Requests to the Respondents as follows:

   i. On 6th April 2020, request for information around the implementation of mandatory quarantine, specifically seeking information guidelines, processes, conditions and information around measures to protect the health workers in quarantine facilities. A copy of which is **annexed and marked "SM 1".**

   ii. Request for information vide a letter dated 15th April 2020 requesting for information on the undignified sendoff of the late James Oyugi. A copy of which is **Annexed and Marked** "**SM 2**")

   iii. On 17th April 2020, an Open letter and request for information on the provision of support to health care workers in the COVID-19 response to the First Respondent. A copy of which is **annexed and marked "SM 3".**

   iv. Request for information letter dated 22nd April 2020 to the Pharmacy and Poisons Board. A copy of which is **Annexed and Marked "SM 4"**)

   v. Request for information vide a letter dated 27th April 2020 on use of Quarantine as a form of Punishment and Criminalization of COVID-19 Response. A copy of which is **annexed and marked "SM 5"**).

7. **THAT** on 16th April 2020, the 12th Applicant sent a letter to the Commission on Administrative Justice urgently requesting the 8th respondent to indicate in writing and within 48 hours, what actions and the timelines for the actions the Commission will take in line with the Provisions of Part V of the Access to Information Act to ensure that the information requested is received within 48 hours. **A copy of which is annexed and marked "SM 6"**

8. **THAT** we have not received any response to our letter dated 16th April 2020 from the Commission on Administrative Justice, the 8th Respondent herein, and have had no further guidance from the 8th Respondent, hence the decision to file this suit.

9. **THAT** on 22nd April 2020, together with other partners, Transparency International Kenya wrote a request for information letter to the Pharmacy and Poisons Board requesting for information on importation and distribution of personal protective equipment. **A copy of which is annexed and marked "SM 7".**

10. **THAT** on 5th May 2020 the Pharmacy and Poisons Board responded and provided the requested information. **A copy of which is annexed and marked as "SM 8".**

11. **THAT** as such, there are indeed government agencies who understand and respect their constitutional obligation, and I therefore believe that the respondents herein have the ability to honour the requests but are knowingly neglecting not to do so.

12. **THAT** I am concerned about the lack of guidelines to access information contemplated under section 25 of the Access to Information Act 2016.

13. **THAT** for Transparency International Kenya to properly exercise its mandate, public institutions must provide access to information to the public.

14. **THAT** the information requested is critical to inform the safeguarding of the rights of Kenyan citizens and the continued failure by the respondents to provide the information is a continuing violation of the Constitution hence the urgency of this petition.

15. **THAT** it will be in the interests of justice for the court to grant these orders as no parties will be prejudiced.

16. THAT what is stated herein is true to the best of my knowledge, information and belief.

SWORN BY THE SAID)
SHEILA MASINDE)
At Nairobi, this day of 2020) .... Deponent
BEFORE ME)

COMMISSIONER FOR OATHS)

DRAWN & FILED BY: -
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Your REF: TBA **Our REF: C/KELIN/2020** **Date: 06/April/2020**

**Advance copy via email*

Hon. Mutahi Kagwe
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke; pshealthke@gmail.com

Dear Sir,

REF: OPEN LETTER ON IMPLEMENTATION OF MANDATORY QUARANTINE IN THE COVID-19 RESPONSE IN KENYA & REQUEST FOR INFORMATION

We, the undersigned, individuals, individuals under mandatory quarantine, family members of individuals under quarantine, organizations and associations, are representatives of health and human rights civil society and non-governmental organizations, community-based organizations and governance experts. We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" whose issues raised remains unaddressed.

Our previous advisory had, among other concerns, noted that the implementation of the government's directive of mandatory quarantine and isolation of people affected by COVID-19 was uncoordinated, unplanned and not guided by any policy or guidelines.

We issue this open letter and formal request for information in light of concerns raised by individuals currently in mandatory quarantine, their family members and media reports. The media have documented poor management of individuals from the time they landed at Jomo Kenyatta International Airport, their transportation, up to the time they were admitted to various mandatory quarantine facilities. This exposed them to risk of infection, defeating the very essence of safeguarding the greater public and avoiding co-infection.

This is Exhibit marked referred to in the annexed affidavit/Declaration of ......
Sworn/Declared before me on this...... day of......20...... at......in the Republic of Kenya
......
Commissioner for Oaths

People in mandatory quarantine have also brought to our direct attention and through open letters[1] and personal videos clear cases of recklessness in their handling, exorbitant costs they have been forced to incur to pay for the quarantine facilities, deplorable living conditions in most quarantine centers, lack of information on any quarantine protocols, and a general lack of any regard to their health, safety and well-being[2]. For the general public, it is not clear how many people are in mandatory quarantine, whether they have all been tested while in quarantine, how many have tested negative or positive and whether the results have been communicated to them. Similar information is unavailable to those in quarantine.

We take note of the fact that quarantine as a public health measure involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, *with the objective of monitoring their symptoms and ensuring early detection of cases*[3]. The World Health Organization (WHO) recommends that mandatory quarantine should be implemented as part of a comprehensive package of public health response and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons. Further, that if a decision to implement quarantine is taken, the authorities should ensure that:

- the quarantine setting is appropriate and that adequate food, water, and hygiene provisions can be made for the quarantine period;
- minimum Infection Prevention and Control (IPC) measures can be implemented; and
- minimum requirements for monitoring the health of quarantined persons can be met during the quarantine period.

We are therefore appalled by the manner in which mandatory quarantine is being implemented which is putting those in quarantine, all health care workers attending to them and, by extension, the entire nation at risk. From the time the decision to enforce mandatory quarantine was made on 22nd March 2020, the public has had several concerns:

- There has been no public information on any guidelines on the mandatory quarantine process, save for draft protocols dated 27th March 2020 and published on the Ministry of Health website on or about 3rd April 2020;

- There has never been information, within the public domain, or to those quarantined, on what to expect at the quarantine facilities, the period, costs, health information etc;There has never been information within the public domain, or to those quarantined on measures put in place to protect the workers at such quarantine facilities from infection including the provisions of personal protective equipment to the health care workers and others attending to them such as hotel workers. For instance, were all the health care workers and hotel staff tested and offered training on managing persons with COVID-19 before they received the people in mandatory quarantine?

As the nation continues struggling with the above, our attention is now drawn to a circular by Acting Director General for Health (Ref: MOH/ADM/1/3/Vol.1) communicating a decision to extend the quarantine period beyond 14 days for occupants of all facilities in which positive cases are identified. As expected, the circular raises further concerns:

- **The risk of co infection for those who are negative:** The Ministry of Health is already handling the quarantine process poorly, putting those in quarantine at risk and contributing to increased infections. What will extension of the quarantine period, of such poorly managed quarantine facilities[4] achieve other than increase chances of co infection for those who are COVID-19 negative?

1. Open letter by people quarantined at Pride Inn Azure Hotel dated 5th April 2020, REF: Directive to extend quarantine period beyond 14 days.

2. See Angela Okech, et. al "Covid-19: Kenyans reveal poor state of isolation centres,"; John Allan-Namu "Inside the Quarantine: Fears of Further Spreading the Virus Haunt the Confined."

3. WHO, 19 March 2020, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19) available at https://www.who.int/publications-detail/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)

4. For example, the Kenya Medical Training Centre, Moi Girls High School Nairobi, Lenana School

- **Lack of information to the people under quarantine of the extension:** Who does the circular apply to? At whose cost is the extension? Why a blanket circular to all, yet the Ministry admits that some centers were managed better? Was this circular communicated to those in the mandatory quarantine facilities before it was made public? Do the health care workers and other personnel (e.g. hotel staff) in these facilities have personal protective equipment? Why is it that people who have tested positive appear to learn of their status from the media? Is this not a breach of medical ethics?

- **Poor quarantine facilities:** It is evident that most quarantine facilities are in deplorable conditions. WHO recommends that those who are in quarantine must be placed in adequately ventilated, spacious single rooms with en suite facilities (that is, hand hygiene and toilet facilities). If single rooms are not available, beds should be placed at least one meter apart. Those in quarantine report otherwise, and publicly available video evidence confirms this.

- **Psychosocial Effects of Prolonged Isolation:** How will the Ministry of Health ensure that the mental health of those in quarantine is well taken care of?

- **Proof of Contact:** WHO recommends that contacts of patients with laboratory-confirmed COVID-19 be quarantined for 14 days from the last time they were exposed to the patient. This is also reflected in the draft protocols dated 27th March 2020. What happens to those people who have adhered to quarantine conditions, including social distancing, and have tested negative?

- **Turnaround times for testing:** Per the Ministry's Draft Protocols, test results are to be availed within 24 hours. What is the Ministry doing to ensure results are availed within a reasonable time, to allay unnecessary anxiety and strengthen the quarantine regime overall?

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and the Right to Access Information Act:

1. Provide an explanation as to why the Ministry of Health is not adhering to its own guidelines relating to managing the designated mandatory quarantine facilities. For instance, why are people who have first tested negative test not released into self-quarantine as per the self-quarantine protocols?
2. Does the circular extending the quarantine period apply to all quarantine facilities? Why? At whose cost?
3. The total number of designated quarantine facilities as at 6th April 2020 and the number of occupants in each? The number of heath care workers and their cadres that have been deployed to these quarantine facilities? How many people are currently in quarantine who have been tested and received their results?
4. What measures are being taken to safeguard the health of people in quarantine facilities who have pre-existing medical conditions?
5. What is the time period taken when one tests positive in a quarantine facility before they are transferred to medical facility for isolation?
6. Have the healthcare workers and hotel attendants who have come into contact with the persons who have tested positive been tested and provided with PPE?

As per Section 27 of the Public Health Act, the government has the responsibility of isolating persons who have been exposed to infectious diseases. In the public health emergency occasioned by COVID-19 pandemic, we urge the government to diligently undertake this obligation by, among others, providing safe, clean and hygienic quarantine facilities; meeting the costs of such facilities; and above all monitoring the health including mental health of those in quarantine and promptly discharging those who test negative.

Signed by the following individuals:

1. Allan Maleche
2. Ashok Rajput
3. Atieno Odenyo
4. Benson Maina
5. Bridget Kanini
6. Bonface Ombui
7. Caroline Jerop Morogo
8. Catherine Murugi
9. Christine Nkonge
10. Eugene Ligale
11. Evaline Kibuchi
12. Evelyne Wanjiru Karanja
13. Etta Ligale
14. Francis Aywa
15. Francis Mwangi
16. Grace Macharia
17. Hallima Nyota
18. Huzefa Amirali Mohamedbhai
19. Jamie Nyamongo
20. Jasmine Lemelin
21. Karishma Bhagani
22. Margaret Kalekye
23. Mark Gitau
24. Melanie Ligale
25. Maureen Ouma
26. Naiya Anil Haria
27. Nicholas Mwenda
28. Nickitah Mckena
29. Patricia Asero
30. Peter Owiti
31. Rahul Ponda
32. Rashmi Shah
33. Reggie Ann
34. Sarah Mburu
35. Sajan Thakar
36. Sarah Mwangi
37. Samson Onditi
38. Shanay Sirju Patel
39. Sheila Masinde
40. Sirju Shashikant Patel
41. Sophia Muchiri
42. Soukhya Ankala
43. Tanika Dodhia
44. Twinkle Pethad
45. Vaishali Sirju Patel
46. Vivian Washiko
47. William Mburu

Organisations:

1. Amnesty International
2. CADAMIC
3. COFAS
4. Community Initiative Action Group – Kenya
5. EMAC Kenya
6. FIDA Kenya
7. GALCK
8. Happy Life for Development CBO
9. HENNET
10. HERAF
11. International Community of Women Living with HIV – Kenya Chapter
12. ICJ – Kenyan Section
13. Katiba Institute
14. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
15. KANCO
16. Lean on Me Foundation
17. Next Generation of Kenya Lawyers Project
18. Nelson Mandela TB-HIV Resource Centre Nyalenda
19. People's Health Movement – Kenya
20. PEMA Kenya
21. Rising to Greatness
22. SWOP Ambassadors
23. The Network on Food and Nutrition Security
24. TICAH
25. TISA
26. Transparency International Kenya
27. Wote Youth Development Projects

cc:
Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors

Siddharth Chatterjee,
UN Resident Coordinator in Kenya

Bernard Mogesa
CEO, Kenya National Commission on Human Rights

Dr. Joyce Mwikali Mutinda
Chairperson, National Gender and Equality Commission (NGEC)

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 15/April/2020**

This is Exhibit marked "SM-2" referred to in the Annexed affidavit/Declaration of ... Sworn/Declared before me on this ... day of ... 20... in the Republic of Kenya at ... Commissioner for Oaths

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

H.E. Cornel Rasanga Amoth
Governor, Siaya County Government

Dear Sir,

RE: PROTEST AGAINST THE UNDIGNIFIED SENDOFF OF THE LATE JAMES OYUGI AND VIOLATION OF GUIDELINES FOR HANDLING BODIES SUSPECTED OR CONFIRMED OF COVID-19: REQUEST FOR INFORMATION

We, the undersigned, are representatives of civil society organizations working in Siaya County, community-based organizations and health and human rights civil society and non-governmental organizations.

We write to you both in our individual and organizational capacities to express our concern in the undignified manner in which the late James Oyugi, a suspected COVID-19 patient, was buried in Siaya County. The undignified burial was conducted in the wee hours of the night of 12th April 2020 in Ugenya Sub-County, Ukwala, Simur Kondiek Sub-Location, Kamalunga village.

We take note of the fact that James Oyugi was the first suspected COVID-19 patient in Siaya County. This occurred more than a month since the first patient was reported in Kenya. As such, the county government and national government agencies in Siaya county had more than a month to prepare and put in place all the necessary measures to appropriately respond to any emerging COVID-19 in Siaya.

We were thus taken aback by reports of James Oyugi's burial in a bizarre ceremony with his body being tossed unceremoniously into a shallow grave at night. No cultural or religious rites were performed, and the family was not given a chance to pay their last respects and accord their loved one a dignified send-off.

We are concerned about the impact of this burial, especially the trauma, distress, and stigma caused to family members and the village. We thus condemn the unethical, unacceptable and bizarre interment that was conducted contrary to national guidelines, and with zero regard to the cultural and religious traditions of the deceased.We are also concerned about the stigma that this act causes to other suspected COVID-19 patients. This is an act with the potential to stigmatize people, make people fear and shun services thereby increasing infections in the community.

James Oyugi is not the first reported death from this pandemic. As of 11th April 2020, seven people had died from COVID-19 in Kenya and accorded dignified burials, during the day and in the presence of their families complete with religious rites.

The Ministry of Health's Guidelines for Safe Disposal of Human Remains of a patient who has died from suspected or confirmed COVID-19 requires that safe disposal of human remains be conducted in a manner that prevents infection, control the spread of disease, is culturally appropriate for the bereaved family and that before the commencement of the handling of the remains, the family must be fully informed about the dignified burial process and their religious and personal rights to show respect for the deceased.

The World Health Organization's guidelines for Infection Prevention and Control for the safe management of a dead body in the context of COVID-19 also provide that the dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout and that hasty disposal of a dead from COVID-19 should be avoided.

In James Oyugi's situation, all the above guidelines were not adhered to. It is imperative that the dead are accorded a dignified and respectful send-off. The need for dignity and respect during send-off cannot be waived even in the face of the current pandemic. Not even in times of war.

We thus condemn in the strongest terms possible the despicable actions of the Siaya County Government, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service who hurriedly oversaw the undignified burial.

We demand that the County Government of Siaya, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service issue a public apology to the family of the deceased, and members of the public.

We also call upon the County Government, the Ministry of Health, the National Police Service and the Ministry of Interior and Coordination of National Government to strictly adhere to guidelines provided in handling suspected and confirmed COVID--19 bodies in Kenya. Dignity in death is of utmost importance.

From the foregoing, we also demand that the County Government of Siaya, Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently provide us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Provide the family of the late Oyugi with a detailed report of the results of the COVID-19 test conducted on the late James Oyugi.

(ii) Provide us with a detailed report on how the decision to bury James Oyugi was made. Who authorized the burial? Who conducted the burial? Why were guidelines not adhered to? Why was the burial conducted at night? Why was the dignity of the dead not respected?

(iii) Provide us with information on measures put in place to ensure this act is not replicated any where in the county and the country.

(iv) Provide us with information on measures taken to ensure that this act does not increase the stigma on COVID-19 patients in the community;

(v) Provide us with information on measures taken to secure the mental health of family members and community members from Kamalunga village through counseling;

(vi) Information on how the family of the deceased and close contacts are being quarantined? In which quarantine facilities? How many health care workers are in those facilities? Has the family and other close contacts been tested? Who will pay the costs of the quarantine?

(vii) Investigation report on the circumstances leading to the death of James Oyugi. Is there a formal inquiry being conducted?

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Yours faithfully,

1. **Chris Owalla** on my own behalf and
   on behalf of Community Initiative Action Group Kenya

2. **Titus Ogalo** on my own behalf and
   on behalf of Transparency International Kenya

3. **Nicholas Ngesa** on my own behalf and
   on behalf of Tembea Youth Centre for Sustainable Development

4. **Janet Okach** on my own behalf and
   on behalf of VSO-Kenya

5. **Mildred Andere** on my own behalf and
   on behalf of Young Women Christian Organisation - Siaya Branch

6. **Enock Chiteri** on my own behalf and
   on behalf of Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter

7. **Isiah Ochieng** on my own behalf and
   on behalf of Ugunja Development Initiative

8. **Aggrey Omondi** on my own behalf and
   on behalf of Ugunja Community Resource Centre

9. **Charles Juma** on my own behalf and
   on behalf of Siaya County Disability Network

10. **Peter Aduda** on my own behalf and
    on behalf of West Ugenya Development Forum

11. **Peter Owiti** on my own behalf and
on behalf of Wote Youth Development Projects

12. **Allan Maleche** on my own behalf and
on behalf of Kenya Legal and Ethical Issues Network (KELIN)

Endorsed by: Organizations:

1. Community Initiative Action Group Kenya
2. Community Forum for Advanced & Sustainable Development (COFAS)
3. Kenya Legal and Ethical Issues Network (KELIN)
4. Kenya Sex Workers Alliance (KESWA)
5. Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter
6. Tembea Youth Centre for Sustainable Development
7. Transparency International Kenya
8. Ugunja Development Initiative
9. Ugunja Community Resource Centre
10. Siaya County Disability Network
11. West Ugenya Development Forum
12. Wote Youth Development Projects
13. VSO-Kenya
14. Young Women Christian Organisation - Siaya Branch

CC:

1. **Hon Dr. Fred Okengo Matiangi,**
The Cabinet Secretary,
Ministry of Interior and Coordination of National Government.

2. **Hon. Wycliffe Ambetsa Oparanya,**
Chairperson, Council of Governors.

3. **Hillary Nzioki Mutyambai,**
Inspector General of Police.

4. **Bernard Mogesa,**
CEO, Kenya National Commission on Human Rights.

5. **Dr. Joyce Mwikali Mutinda,**
Chairperson, National Gender and Equality Commission (NGEC).

6. **Hon. Florence Kajuju,**
Chairperson, Commission on Administrative Justice

7. **Li Hsiang FUNG,**
Senior Human Rights Advisor, OHCHR.

Dandora Community
AIDS support
Association (DACASA)

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 17/April/2020**

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

This is Exhibit marked "SM-3" referred to in the Annexed affidavit/Declaration
Sworn/Declared before me on this .... day of .... 20.... in the Republic of Kenya
at ....
Commissioner for Oaths

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON PROVISION OF SUPPORT TO HEALTH CARE WORKERS IN THE COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We are also Kenyan citizens concerned about the state of preparedness of health facilities to deal with COVID-19, given that any of us is likely to use them. The information we seek in this letter is therefore critical to safeguard our rights including right to life, and right to health.

We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" that remains unanswered.

In the previous advisory, we noted the need to support health care workers during this pandemic period through provision of adequate training, and ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks.

We write this urgent request for information letter in light of concerns that health care workers continue to raise as regards to their occupational safety and health risks. We note that it is imperative that the plight of health care workers is urgently, adequately and conclusively addressed given that they have placed themselves and their families at risk to secure the health of this nation.

In our previous advisory, we urged the Ministry of Health to guarantee the safety and well-being of health care workers by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic.

- Ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks through provision of quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and running water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimizing occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Additionally, we proposed that the government ensures this information is available to the public through a live dashboard that is updated on a regular basis with the following information on inputs and processes:

- Number of health care workers trained in every county and in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on trainings provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

However, we take note of the fact that to date there are still complaints and concerns on the protection of health care workers in this pandemic. For instance, the Health Unions (Kenya National Union of Nurses, Kenya Union Clinical Officers and Kenya Medical Practitioners Pharmacist and Dentist Union) have recently done a survey and noted that most of their members in county governments and Ministry of Health have not been adequately trained and or prepared to handle the Corona Virus pandemic.

They have also reported that provision of personal protective equipment (PPE) remains a challenge at health facilities in most counties. The Kenya Medical Practitioners Pharmacists and Dentists' Union in its weekly brief dated 13th April, 2020 called for:

- The need to provide adequate PPEs for all personnel in the hospital including N95 masks, face shields, goggles, scrubs and gowns;
- Designation of specific COVID-19 testing centers for health care workers;
- Provision of catering services to healthcare workers;

- Provision of transport for all health care workers handling COVID-19 patients to and from the hospital to their accommodation facilities;
- Increase in the number of health care personnel;
- Provision of accommodation to health workers on duty during the pandemic (especially those in health facilities treating suspected and confirmed COVID-19 patients.

The government has a Constitutional and legal obligation to ensure every person enjoys their right to the highest attainable standard of health. This obligation cannot be achieved without health care workers. We therefore urge the government in fulfilment of its legal obligations and in line with the World Health Organization guidelines to (among others):

- Ensure that all necessary preventive and protective measures are taken to minimize occupational safety and health risks;
- Provide information, instruction, and training on occupational safety and health, including; refresher training on infection prevention and control (IPC); use, putting on, taking off and disposal of personal protective equipment (PPE);
- Provide adequate IPC and PPE supplies (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) in sufficient quantity to those caring for suspected or confirmed COVID-19 patients, such that workers do not incur expenses for occupational safety and health requirements;
- Familiarize personnel with technical updates on COVID-19 and provide appropriate tools to assess, triage, test, and treat patients, and to share IPC information with patients and the public;
- Provide appropriate security measures as needed for personal safety;

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Number health care workers trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.

(ii) Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

(iii) Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.

(iv) Number of health care workers tested for COVID-19.

(v) Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Signed by the following individuals:

1. Allan Maleche
2. Becky Odhiambo Mududa
3. Bradley Njukia
4. Caroline Oyumbo
5. Cecilia Mumbi
6. Erick Okioma
7. Fenwick Oyumbo
8. Houghton Irungu
9. Mary Ger
10. Nelson Silas
11. Patricia Osero
12. Peter Owiti
13. Samson Onditi
14. Sheila Masinde
15. Steve Anguva

Endorsed by:

1. Amnesty International
2. Boda Boda Association of Kenya
3. COFAS
4. Dandora Community AIDS Support Association (DACASA)
5. EMAC Kenya
6. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
7. Happy Life Development
8. HERAF
9. ICJ – Kenyan Section
10. Kenya Sex Workers Alliance (KESWA)
11. Mumbo International
12. Nelson Mandela TB-HIV Resource Centre Nyalenda
13. Nyarwek Network
14. Transparency International
15. WOYDEP (Wote Youth Development Projects)

cc:

1. Kenya Medical Practitioners Pharmacist and Dentist Union
2. Kenya National Union of Nurses
3. Kenya Union Clinical Officers
4. Association of Public Health Professionals Kenya (APHOK)
5. Kenya Medical Association (KMA)
6. Chairperson, Council of Governors
7. Kenya National Commission on Human Rights
8. Commission on Administrative Justice

EACHRights
THE EAST AFRICAN CENTRE FOR HUMAN RIGHTS

HERAF
Health Rights Advocacy Forum

Mbita Suba
Paralegal Network

SHAPE
Kenya

Your REF: TBA **Our REF:** **Date: 22 April, 2020**

Advance copy via email

Dr. F.M Siyoi
Chief Executive Officer,
Pharmacy & Poisons Board
P.O. Box 27663 – 00506, Nairobi.
Lenana Road Opp. DOD
Email: info@pharmacyboardkenya.org

This is Exhibit marked "SM-4" referred to in the Annexed affidavit/Declaration of Sheila Masinde
Sworn/Declared before me on this .... day of .... 20.... at .... in the Republic of Kenya
Commissioner for Oaths

Dear Sir,

RE: REQUEST FOR INFORMATION ON IMPORT AND DISTRIBUTION OF PERSONAL PROTECTIVE EQUIPMENT

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We make this request for information in the spirit of ensuring transparency and accountability in the procurement of life-saving medicines and other medical supplies. The information is also necessary to protect us against price gouging of drugs, and other goods and services required to protect citizens and health workers from COVID-19 infection (such as hand sanitizers, masks, gloves). The information we seek will also enable the public to know the state of preparedness to curb the spread of COVID-19.

Our letter is informed by the fact that the Pharmacy and Poisons Board has the mandate to implement the appropriate regulatory measures to achieve the highest standards of safety,

efficacy and quality for all drugs, chemical substances and medical devices, locally manufactured, imported, exported, distributed, sold, or used, to ensure the protection of the consumer as envisaged by the laws regulating drugs in force in Kenya.

The COVID-19 pandemic has created the need to ensure urgent availability of medical devices, for instance, personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) among others.

We therefore request that the Board provides us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Which distributors have been licensed to import PPE?
(ii) What are the procedures or processes of seeking the import license?
(iii) How long does the process take?
(iv) How much does it cost to get the license?
(v) Which department of the board is responsible for issuance of the license?
(vi) From which countries are the PPEs being imported from? And what are the main ports of entry?
(vii) How many local suppliers and manufacturers are involved in the process?
(viii) What are the procedures or processes of certifying local manufacturers of PPEs? And is this done in collaboration with KEBS?
(ix) How has the Pharmacy and Poisons Board adjusted its processes to support accelerated importation and distribution of PPE?
(x) Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPEs locally manufactured or imported? Where can this information be obtained?
(xi) Has the board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/ local PPEs to users in Kenya?

We look forward to your urgent response in not later than five days to inform our next course of action.

Signed by:

1. Becky Odhiambo Mududa on my own behalf and on behalf of Nyarwek Network.
2. Brezhnev Otieno on my own behalf and on behalf Amnesty International Kenya.
3. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba Paralegal Network.
4. Cecilia Mumbi Mugo on my own behalf and on behalf International Commission of Jurists (ICJ-Kenyan Section).

5. Chris Owalla on my own behalf and on behalf of Community Initiative Action Group Kenya.
6. Christine Ajulu on my own behalf and on behalf of Health Rights Advocacy Forum (HERAF)
7. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
8. Fenwick M Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K).
9. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
10. Linda Noah on my own behalf and on behalf of The East African Centre for Human Rights (EACHRights).
11. Naitore Nyamu
12. Nancy Githogori
13. Mary Ger on my own Behalf and on behalf of Mumbo International.
14. Mercy Onsando on my behalf and on behalf of HENNET.
15. Peter Owiti on my behalf and on behalf Wote Youth Development Projects.
16. Samson Onditi on my behalf and on behalf Happy Life for Development CBO.
17. Sheila Masinde on my own behalf and on behalf of Transparency International.

Endorsed by:

1. Amnesty International Kenya.
2. Boda Boda Association of Kenya (BAK)
3. Community Initiative Action Group Kenya. (CIAG-K)
4. Community Forum For Advanced and Sustainable Development (COFAS)
5. East African Centre for Human Rights (EACHRights).
6. Happy Life for Development CBO.
7. Health NGOs Network (HENNET)
8. Health Rights Advocacy Forum (HERAF)
9. International Commission of Jurists (ICJ-Kenyan Section).
10. Kenya Legal and Ethical Issues Network on HIV & TB (KELIN).
11. Mbita Suba Paralegal Network
12. Mumbo International
13. National Association of Clinical Officer Anaesthetists - Kenya (NACOA- K).
14. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
15. NYARWEK Network
16. Pamoja TB Group
17. Shape Kenya
18. Transparency International Kenya
19. Wote Youth Development Projects

cc:

1. Dr. Samuel Oroko
   National Chairman, Kenya Medical Practitioners Pharmacist and Dentist Union
   5th Avenue Office Suites (7th Floor, Room 14)
   Ngong Road, Nairobi.
   Email: admin@kmpdu.org; nec@kmpdu.org;

2. Alfred Obengo
   Chairman, National Nurses Association of Kenya
   Nurses Complex, KNH Grounds
   Nairobi, Kenya
   Email: info@nnak.or.ke

3. Peterson Wachira
   National Chairman, Kenya Union Clinical of Officers

4. Cheboi Kore Mathew
   Chairman, Association of Public Health Professionals Kenya
   Duplex Flats Suite No.43,
   On lower hill road next to Hillpark Hotel
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5. Dr. Elizabeth Gitau Maina
   CEO, Kenya Medical Association (KMA)
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6. Hon. Wycliffe Ambetsa Oparanya,
   Chairperson, Council of Governors
   Delta Corner, 2nd Floor, Opp PWC Chiromo Road, Off Waiyaki Way
   P.O Box 40401 - 00100
   Nairobi, Kenya
   Email: info@cog.go.ke

7. Hon. Florence Kajuju
   Chairperson, Commission on Administrative Justice
   Commission on Administrative Justice
   Email: info@ombudsman.go.ke

Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response
Committee on Coronavirus
Afya House, Cathedral Road,
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cabsecretary@health.go.ke

Daniel M. Yumbya,
Chief Executive Officer,
Kenya Medical Practitioners and Dentists Council,
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Hon. Wycliffe Ambetsa Oparanya,
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Delta Corner, 2nd Floor, Opp PWC Chiromo Road,
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Nairobi, Kenya.
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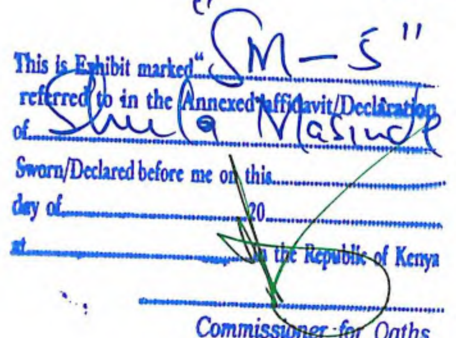
Dr. Fred Okengo Matiang'i,
Cabinet Secretary for Interior & Coordination
of National Government,
Harambee House, Harambee Avenue,
P.O. Box 30510 – 00100,
Nairobi.
Email: ps@interior.go.ke

Mr. Hilary Nzioki Mutyambai,
Inspector General, National Police Service,
Jogoo House 'A' Taifa Road,
P.O.Box 44249 – 00100,
Nairobi.
Email: nps@nationalpolice.go.ke



Paul Kihara Kariuki,
Attorney General of Kenya,
P.O. Box 40112-00100,
Nairobi.
Email: communications@ag.go.ke; legal@justice.go.ke

Mr. Maina Njoroge,
CEO, Independent Policing Oversight Authority,
1st Ngong Avenue, ACK Garden Annex, 2nd floor,
P.O. Box 23035 – 00100,
Nairobi.
Email: info@ipoa.go.ke

Dr. Bernard Mogesa,
CEO, Kenya National Commission on Human Rights,
1st Floor, CVS Plaza, Lenana Road,
P.O. Box 74359-00200,
Nairobi.
Email: haki@knchr.org; complaint@knchr.org

Dr Rudi Eggers,
WHO Country Representative – Kenya,
Email: afkenwr@who.int

The Chairman,
Council of Governors,
Delta Corner, 2nd floor,
Opposite PWC Chiromo Road, off Waiyaki Way,
P.O Box 40401-00100,
NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:
   a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;
   b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.
2. The Ministry of Health to provide us with information on the following:
   a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;
   b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;
   c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.
3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:
   a. Information on the criteria that was used to select hotels and facilities as quarantine centers.
   b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.
   c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.
   d. The approved standard operating procedures of the quarantine facilities.
   e. The designated medical personnel responsible for oversight at each quarantine center.
4. The **Council of Governors and all the 47 Governors** urgently share information on:
   a. The number of people currently in quarantine in each of their respective counties.
   b. The number of people who have been tested in the various quarantine facilities in the counties.
   c. The testing schedule of the people in county quarantine.
   d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.
   e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:

a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –

i. what training these officers have been given to undertake the role of medical experts;

ii. what infection prevention and control protocols they follow; and

iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Commission of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo
27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

cc:

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UN Resident Coordinator in Kenya
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Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR
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Col. (Rtd) Cyrus Oguna
Spokesperson, Government of Kenya
spox@ict.go.ke;
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Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice
chair@ombudsman.go.ke

The Chairperson
Senate Ad Hoc Committee on COVID-19
covid19@parliament.go.ke

The Chairperson
National Assembly Health Committee
clerk@parliament.go.ke

Transparency International Kenya
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Tel +254-20-2727763/5| 0722 296 589
Email: transparency@tikenya.org
http://www.tikenya.org

Your REF: **Our REF: OC/TIKENYA/2020** **Date: 16/04/2020**

Ms. Lucy Ndungu, HSC, EBS
Commissioner in Charge of Access to Information
Commission on Administrative Justice
2nd Floor, West End Towers
Opposite Aga Khan High School off Waiyaki Way – Westlands
P.O. Box 20414 – 00200
NAIROBI.
l.ndungu@ombudsman.go.ke; complain@ombudsman.go.ke

Dear Commissioner Ndung'u,

RE: FOLLOW UP ON URGENT REQUEST FOR INFORMATION FROM THE MINISTRY OF HEALTH

Thank you for your communication dated 9th April 2020 and our tele-conversation on 15th and 16th April 2020. During the call, you reported that the Ministry of Health is yet to formally respond to your letter dated 8th April 2020. I similarly reported that we have not received any response from the Ministry.

Given the urgency of the matter and noting that the statutory timeline of 48 hours to respond has lapsed, we kindly but urgently request the Commission to indicate to us in writing and within 48 hours, what actions and the timelines for the actions the Commission will take in line with the Provisions of Part V of the Access to Information Act to ensure that this information is received within 48 hours.

Kindly note that this information is critical to inform the safeguarding of the rights of Kenyan citizens some still in mandatory quarantine. Please note that unless we receive a response from all parties concerned including the Commission we shall consider other measures including litigation to safeguard the rights of Kenyans.

We look forward to your timely response.

Sincerely,

Sheila Masinde
Ag. Executive Director

"SM-6"
This is Exhibit marked "SM-6" referred to in the Annexed affidavit/Declaration of Sheila Masinde
Sworn/Declared before me on this .... day of .... 20..... at .... in the Republic of Kenya
....
Commissioner for Oaths

cc:
Hon. Florence Kajuju, MBS
Chairperson,
Commission on Administrative Justice

Mr. Leonard Ngaluma
Commission Secretary
Commission on Administrative Justice

HERAF
Health Rights Advocacy Forum

Mbita Suba
Paralegal Network

SHAPE
Kenya

Your REF: TBA **Our REF:** **Date: 22 April, 2020**

Dr. F.M Siyoi
Chief Executive Officer,
Pharmacy & Poisons Board
P.O. Box 27663 – 00506, Nairobi.
Lenana Road Opp. DOD
Email: info@pharmacyboardkenya.org

This is Exhibit marked "Advance copy via email"
referred to in the Annexed affidavit/Declaration
of Sheila Masinde
Sworn/Declared before me on this ......
day of ...... 20......
at ...... in the Republic of Kenya
......
Commissioner for Oaths

Dear Sir,

RE: REQUEST FOR INFORMATION ON IMPORT AND DISTRIBUTION OF PERSONAL PROTECTIVE EQUIPMENT

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We make this request for information in the spirit of ensuring transparency and accountability in the procurement of life-saving medicines and other medical supplies. The information is also necessary to protect us against price gouging of drugs, and other goods and services required to protect citizens and health workers from COVID-19 infection (such as hand sanitizers, masks, gloves). The information we seek will also enable the public to know the state of preparedness to curb the spread of COVID-19.

Our letter is informed by the fact that the Pharmacy and Poisons Board has the mandate to implement the appropriate regulatory measures to achieve the highest standards of safety,

efficacy and quality for all drugs, chemical substances and medical devices, locally manufactured, imported, exported, distributed, sold, or used, to ensure the protection of the consumer as envisaged by the laws regulating drugs in force in Kenya.

The COVID-19 pandemic has created the need to ensure urgent availability of medical devices, for instance, personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) among others.

We therefore request that the Board provides us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Which distributors have been licensed to import PPE?
(ii) What are the procedures or processes of seeking the import license?
(iii) How long does the process take?
(iv) How much does it cost to get the license?
(v) Which department of the board is responsible for issuance of the license?
(vi) From which countries are the PPEs being imported from? And what are the main ports of entry?
(vii) How many local suppliers and manufacturers are involved in the process?
(viii) What are the procedures or processes of certifying local manufacturers of PPEs? And is this done in collaboration with KEBS?
(ix) How has the Pharmacy and Poisons Board adjusted its processes to support accelerated importation and distribution of PPE?
(x) Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPEs locally manufactured or imported? Where can this information be obtained?
(xi) Has the board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/ local PPEs to users in Kenya?

We look forward to your urgent response in not later than five days to inform our next course of action.

Signed by:

1. Becky Odhiambo Mududa on my own behalf and on behalf of Nyarwek Network.
2. Brezhnev Otieno on my own behalf and on behalf Amnesty International Kenya.
3. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba Paralegal Network.
4. Cecilia Mumbi Mugo on my own behalf and on behalf International Commission of Jurists (ICJ-Kenyan Section).

5. Chris Owalla on my own behalf and on behalf of Community Initiative Action Group Kenya.
6. Christine Ajulu on my own behalf and on behalf of Health Rights Advocacy Forum (HERAF)
7. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
8. Fenwick M Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K).
9. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
10. Linda Noah on my own behalf and on behalf of The East African Centre for Human Rights (EACHRights).
11. Naitore Nyamu
12. Nancy Githogori
13. Mary Ger on my own Behalf and on behalf of Mumbo International.
14. Mercy Onsando on my behalf and on behalf of HENNET.
15. Peter Owiti on my behalf and on behalf Wote Youth Development Projects.
16. Samson Onditi on my behalf and on behalf Happy Life for Development CBO.
17. Sheila Masinde on my own behalf and on behalf of Transparency International.

Endorsed by:

1. Amnesty International Kenya.
2. Boda Boda Association of Kenya (BAK)
3. Community Initiative Action Group Kenya. (CIAG-K)
4. Community Forum For Advanced and Sustainable Development (COFAS)
5. East African Centre for Human Rights (EACHRights).
6. Happy Life for Development CBO.
7. Health NGOs Network (HENNET)
8. Health Rights Advocacy Forum (HERAF)
9. International Commission of Jurists (ICJ-Kenyan Section).
10. Kenya Legal and Ethical Issues Network on HIV & TB (KELIN).
11. Mbita Suba Paralegal Network
12. Mumbo International
13. National Association of Clinical Officer Anaesthetists - Kenya (NACOA- K).
14. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
15. NYARWEK Network
16. Pamoja TB Group
17. Shape Kenya
18. Transparency International Kenya
19. Wote Youth Development Projects

cc:

1. Dr. Samuel Oroko
   National Chairman, Kenya Medical Practitioners Pharmacist and Dentist Union
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   Email: admin@kmpdu.org; nec@kmpdu.org;

2. Alfred Obengo
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3. Peterson Wachira
   National Chairman, Kenya Union Clinical of Officers

4. Cheboi Kore Mathew
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5. Dr. Elizabeth Gitau Maina
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   P.O Box 48502-00100
   Nairobi
   Email: nec@kma.co.ke

6. Hon. Wycliffe Ambetsa Oparanya,
   Chairperson, Council of Governors
   Delta Corner, 2nd Floor, Opp PWC Chiromo Road, Off Waiyaki Way
   P.O Box 40401 - 00100
   Nairobi, Kenya
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7. Hon. Florence Kajuju
   Chairperson, Commission on Administrative Justice
   Commission on Administrative Justice
   Email: info@ombudsman.go.ke

MINISTRY OF HEALTH
PHARMACY AND POISONS BOARD

Telegram: "MINHEALTH" Nairobi
Telephone: 020-2716905/6, 020-3562107
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Fax: 2713409
Email: admin@pharmacyboardkenya.org
Website: www.pharmacyboardkenya.org

Pharmacy & Poisons Board Hse
Along Lenana Road
P. O. Box 27663-00506
NAIROBI

When replying please quote our ref No:

PPB/REG/GEN/VOL.III/019/20

5th May, 2020

Sheila Masinde,
Ag. Executive Director,
Transparency International, Kenya

Dear Madam,

RE: REQUEST FOR INFORMATION ON IMPORT AND DISTRIBUTION OF PERSONAL PROTECTIVE EQUIPMENT

We acknowledge receipt of your letter dated 21st April, 2020 whose contents are duly noted.

The Board, in implementing its mandate seeks to ensure the availability of information to ensure protection of the public. This information is published on the organizations website that can be access via www.pharmacyboardkenya.org. Nevertheless, we wish to respond to your specific queries as follows:

1. Which distributors have been licensed to import PPE?
   The information requested is captured under the column of Local Technical Representatives under the Medical Device Reports that can be accessed via:
   https://products.pharmacyboardkenya.org/ppb_admin/pages/system_reports_public.php

2. What are the procedures or processes of seeking the import license?
   The Board, works in collaboration with the Kenya Trade Network Agency (KenTrade) in ensuring expeditious access of health products imported into the country. These procedures are captured under the trade facilitation platform implemented by the KenTrade under the supervision of the National Trade Facilitation Committee, which may be accessed via:

This is Exhibit marked "SM-8"
referred to in the Annexed affidavit/Declaration of Sheila Masinde.
Sworn/Declared before me on this.......
day of.......20.......
at.......in the Republic of Kenya

....
Commissioner for Oaths

https://infotradekenya.go.ke/objective/search?l=en&embed=&include Search=true&filter_tab=1&flt_2=10&flt_9=231

3. How long does the process take?
   Currently, in view of the pandemic, the Board is implementing an expedited review procedure that takes 24 hours for one to obtain an import permit assuming the product is registered or listed. Products not registered or listed an additional seven (7) days for Emergency Use Marketing Authorization process to take effect. This is captured under the processes indicated above.

4. How much does it cost to get the license?
   For Emergency Use Marketing Authorization, the following fees shall apply:
   a. Locally manufactured products – Kshs. 5000
   b. Foreign – Class A – USD 100, B – USD 200, C& D- USD 1000

   Fee for import permit is 0.75% FOB, applicable to all classes.

5. Which department of the Board is responsible for issuance of the licenses?
   The Department of Health Products and Health technologies is responsible for vetting the applications for licenses.

6. From which Countries are the PPE being imported from? and what are the main ports of entry?
   Majorly India, China, UAE, Turkey, USA and Europe. The main port of entry is JKIA and ICD.

7. How many local suppliers and manufacturers are involved in the process?
   This information is found here:
   https://products.pharmacyboardkenya.org/ppb_admin/pages/system_reports_public.php

8. What are the procedures or processes of certifying local manufacturers of PPE? and is this done in collaboration with KEBS?
   - In view of the ongoing pandemic caused by COVID-19, the Ministry of Health recommended the use of alcohol-based hand sanitizers whenever water and soap are not available. To ensure access to quality, safe and effective hand sanitizers, the Pharmacy and Poisons Board (the Board), under the Ministry of Health, continues to provide timely and appropriate guidance for manufacturing of the

PPE to ensure they are compliant with applicable WHO guidance and to local as well as international standards. Since there is a direct claim or implication that alcohol-based hand sanitizer products can be used to prevent infections associated with pathogens like corona virus, they are considered to be borderline health products under the Pharmacy and Poisons Act, Cap 244 of the Laws of Kenya.

- The Board encourages **eligible local pharmaceutical companies licensed to manufacture** and market topical products to manufacture quality-assured alcohol-based hand sanitizers at an affordable cost for consumers use and for use by health care personnel. These Pharmaceutical Manufacturers are encouraged to utilize their established pharmaceutical quality management system, practical experience in manufacturing and supply chain to avail the products for consumer use during this pandemic.
- In response to unmet demand for alcohol-based hand sanitizer products entities that are not currently licensed and regulated as pharmaceutical manufacturers are now involved in manufacturing of alcohol-based hand sanitizers. These unlicensed manufacturers provided with simple, easy-to-follow guidance on the preparation, quality control, packaging, labelling and release of alcohol-based hand sanitizer products. These documents are publicly and freely accessible on www.pharmacyboardkenya.org.
- Further, the Board has published specifications for PPE and continues to provide technical support to local manufacturers who intend to manufacture the same. This is available on https://pharmacyboardkenya.org/covid19-material
- All manufacturers are urged to ensure that the formulation and production of alcohol-based hand sanitizers are in compliance with international and local standards.
- Products manufactured by establishments that are currently not licensed by PPB are similarly expected to comply at least with the KEBS standards.
- Licensed Distributers are required similarly to stock and offer for sale only quality-assured hand sanitizers from licensed manufacturers or the temporarily authorized manufacturers complying with international and local standards.
- For the avoidance of doubt, PPE include, but are not limited to, masks, gowns, aprons, goggles among others.
- KEBS is a standard setting body that sets standards in line with the Standards Act while PPB enforces the set standards alongside international standards.

9. How has the Pharmacy and Poison's Board adjusted its processes to support accelerated importation and distribution of PPE?
   The Board has adjusted its processes by implementing expedited processes with significantly reduced timelines. Documents are on the website.

10. Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPE's locally manufactured or imported? Where can this information be obtained?
    The Board continues to generate its internal periodic performance reports and stakeholders continue to be updated on any regulatory changes. Details of PPB's efforts in COVID 19 can be found on the site at:https://pharmacyboardkenya.org/covid19-materialincluding guidelines for PPE's.

11. Has the Board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/local PPE's to users in Kenya?

    The Board continues to ensure adequate pharmacovigilance of health products and technologies in line with the guidelines available on https://pharmacyboardkenya.org/pharmacovigilance. The reporting is done via https://pv.pharmacyboardkenya.org.

Yours faithfully,

Dr. F. M. Siyoi
CHIEF EXECUTIVE OFFICER

AK/na

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, 165, 232(1), 258 and 259 of the Constitution of Kenya, 2010

and

In the Matter of Section 4, 9, 20, 25 and 28 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA .... 1ST PETITIONER

ESTHER NELIMA.. 2ND PETITIONER

CHRIS OWALLA .... 3RD PETITIONER

CM.. 4TH PETITIONER

FA... 5TH PETITIONER

KB .... 6TH PETITIONER

MO .... 7TH PETITIONER

EL... 8TH PETITIONER

KATIBA INSTITUTE .... 9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN).. ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH..1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY...3rd RESPONDENT

COUNCIL OF GOVERNORS .... 4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT .... 5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL OF THE POLICE, KENYA .... 6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET SECRETARY FOR INFORMATION AND COMMUNICATIONS .... 7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE JUSTICE .... 8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER, KENYA MEDICAL PRACTITIONERS' AND DENTISTS COUNCIL .... 9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

PETITION

This Petition concerns the right of access to information as guaranteed under Article 35 of the Constitution of Kenya, 2010 (The Constitution). This right obliges the State and public entities to provide information, both proactively and upon request, so that citizens can be informed of the State's actions, participate in State affairs, and enjoy the rights protected under the Constitution. Although the right of access to information is always important, timely and accurate information is particularly important during a global health pandemic.

This humble Petition is filed by the 1st-8th and 10th, 12th and 13th Petitioners, whose address of service is Nerima Were, Advocate, C/O KELIN, Kuwinda Lane, off Lang'ata Road, Karen C , P.O. Box 112-00202, Nairobi; the 9th Petitioner, whose address of service is Dudley Ochiel, Advocate, C/O Katiba Institute, 5 the Crescent, Off Parklands Road, Westlands, P.O. Box 26586-00100, Nairobi; the 11th Petitioner whose address of service is Patrick Ngunjiri, C/o Patricks Law Associates (Plass

Advocates), Old Mutual Building, 4th Floor, Kimathi Street, Suite 401, P.O. Box 16727 – 00100 GPO.

A. THE PARTIES

1. The 1st Petitioner, Erick Okioma, is a resident of Kisumu County. He works as a community health champion for a community-based organisation called Nelson Mandela TB HIV Community Information and Resource Center. The 1st Petitioner relies on accurate and timely public health information to provide community health services.

2. The 2nd Petitioner, Esther Nelima, is a resident of Mombasa County. She works as a community health advocate with a community-based organisation called Coast Advocacy Network. The 2nd Petitioner relies on accurate and timely public health information in order to provide community health services.

3. The 3rd Petitioner, Chris Owalla, is the Executive Director of Community Initiative Action Group Kenya, a social justice organisation with operations based in Western Kenya along the Lake Victoria Basin. He works within Siaya County.

4. The 4th-8th Petitioners are persons and the family members of persons who were held in mandatory quarantine after they travelled to Kenya.

5. The 9th Petitioner, Katiba Institute, is a constitutional research, policy and litigation institute established to further implementation of Kenya's 2010 Constitution and to develop a culture of constitutionalism in Kenya.

6. The 10th Petitioner, Kenya Legal and Ethical Issues Network On HIV and AIDS (KELIN), is a non-partisan, non-profit organisation and non-governmental organisation duly registered under the Non-Governmental Organisations Act, working to protect and promote health-related human rights in Kenya.

7. The 11th Petitioner, The Kenyan Section of the International Commission of Jurists Kenya (ICJ Kenya) is a non-governmental, non-profit, and member-based organisation of jurists committed to the realisation and promotion of human rights,

justice, rule of law and democracy in Kenya and around Africa through the application of legal expertise and international best practices.

8. The 12th Petitioner, Transparency International Kenya (TI Kenya), is a not-for-profit organisation aimed at developing a transparent and corruption-free society through good governance and social justice initiatives.

9. The 13th Petitioner, Achieng Orero, is a Staff Attorney at Women's Link Worldwide, an international non-profit human rights organisation working in East Africa, Latin America and Europe.

10. The 1st Respondent is the Cabinet Secretary in charge of the Ministry of Health. He is being sued in his capacity as the Cabinet Secretary and in his individual capacity because he has either failed or refused to provide the information sought by the Petitioners through the letters dated 30 March 2020, 6 April 2020, 9 April 2020,15 April 2020, 17 April 2020, 27 April 2020 and 28 April 2020.

11. The 2nd Respondent is the Acting Director-General at the Ministry of Health. He is being sued in his capacity as the Acting Director-General and in his individual capacity because he has either failed or refused to provide the information sought by the Petitioners through the letters dated 10 April 2020, 18 April 2020 and 28 April 2020

12. The 3rd Respondent is the elected governor of Siaya County. He is being sued in his capacity as governor and in his individual capacity for either failing or refusing to provide the information that was sought in the letter dated 15 April 2020.

13. The 4th Respondent is the Council of Governors established under the Intergovernmental Relations Act. The Council is sued for failing or refusing to respond to the request for information dated 27 April 2020.

14. The 5th Respondent, the Cabinet Secretary for Interior and Coordination of National Government, is being sued in his official and individual capacities for failing or refusing to respond to the request for information dated 27 April 2020

15. The 6th Respondent, the Inspector General for the Kenya Police Service, is being sued in his official and individual capacities for failing or refusing to respond to the request for information dated 27 March 2020.

16. The 7th Respondent, the Cabinet Secretary for Information and Communications, is being sued in his official capacity as the Cabinet Secretary in charge of the development of regulations to implement the Access to Information Act, 2016.

17. The 8th Respondent, the Commission on Administrative Justice, is an independent commission established under article 59(4) of the Constitution and the Commission on Administrative Justice Act. The 8th Respondent is designated under Part IV of the Access to Information Act with the responsibility to review access to information decisions and, under Part V, is granted oversight and enforcement of the Access to Information Act. Under Part VI of the Access to Information Act, the 8th Respondent is to consult with the Ministry of Information, Communication and Technology (ICT) to make regulations that will assist in carrying out the Act.

18. The 9th Respondent, the Chief Executive Officer of the Kenya Medical Practitioners' and Dentists Council, is sued in his capacity as the chief executive officer and in his individual capacity for failing or refusing to respond to the request for information dated 27 March 2020.

19. The 1st Interested Party, the Kenya National Commission on Human Rights, is established under Article 59(1) of the Constitution and the Kenya National Commission on Human Rights Act, 2011. The 1st Interested Party has a number of functions, including to promote respect for human rights; promote protection and observance of human rights in public institutions; monitor, investigate and report observance of human rights; and investigate any conduct in state affairs. The 1st Interested Party is enjoined because of its mandate to promote human rights and hold the State and its agents accountable for human rights violations.

B. FACTS IN SUPPORT OF THE PETITION

a. The State's Response to the coronavirus

20. On 30 January 2020, the World Health Organisation declared the coronavirus a global health emergency of international concern.[1] On 11 March 2020, the WHO declared COVID-19 a pandemic.[2]

21. On 12 March 2020, the 1st Respondent announced Kenya's first case of coronavirus.

22. On 20 March, the government requested that public service vehicles reduce the number of passengers they carry to reduce the risk of spreading the virus during commutes. On 22 March, the government announced that all international flights, except for cargo flights, would be suspended as of midnight on 25 March. Any travellers entering the country before the suspension were to be quarantined in a government-designated facility. The government asserted that anyone who violated the quarantine requirements would be forcefully quarantined at their own expense.

23. On 25 March, President Kenyatta announced that in two days a nationwide curfew would go into effect that would prohibit movement between 7 pm and 5 am. The next day, the 5th Respondent published the Public Order (State Curfew) Order, 2020—the 'Curfew Order'—which gave effect to the President's announcement.[3] The Curfew Order was promulgated under s 8(1) of the Public Order Act. It imposed a 21-day, country-wide ban on public gathering and movement from 7 pm to 5 am. This was extended for two further 21-day periods on 25 April 2010[4]; and on 16 May 2020.[5] On

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[1] World Health Organisation, 'Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-NCoV)' <https://tinyurl.com/rjdtx2k> accessed 15 May 2020.
[2] Tedros Adhanom Ghebreyesus, 'WHO Director-General's Opening Remarks at the Media Briefing on COVID-19' (11 March 2020) <https://tinyurl.com/vyvm6ob> accessed 15 May 2020.
[3] Public Order (State Curfew) Order 2020 (Leg No 36).
[4] Uhuru Kenyatta, 'The Fifth Presidential Address on the Coronavirus Pandemic' (State House, Nairobi, Kenya, 25 April 2020) <https://tinyurl.com/y9nlrenb> accessed 15 May 2020.
[5] Uhuru Kenyatta, 'The Sixth Presidential Address on the Coronavirus Pandemic' (State House, Nairobi. Kenya, 16 May 2020) < https://www.president.go.ke/2020/05/16/the-sixth-presidential-address-on-the-coronavirus-pandemic-at-state-house-nairobi-saturday-16th-may-2020/>.

6 June 2020, the President extended the curfew order for another thirty days, but revised the curfew hours to between 9 pm to 4 am.

24. Subsequent regulations were imposed under the Public Health Act. On 31 March 2020, the Cabinet Secretary for Health published the Public Health (Prevention, Control and Suppression of COVID -19) Rules, 2020—the 'Prevention and Control Regulations'. These regulations largely tracked Section 36 of the Public Health Act. They gave the Cabinet Secretary the authority to designate 'any place' an infected area and to regulate activities within infected areas when 'deemed necessary for preventing the spread of or for the eradication of COVID-19'.[6] Every person in an infected area is required to 'undergo such medical inspection or examination as the medical officer of health may direct'.[7] And everyone in an infected area may be placed under 14-day observation and surveillance in any place selected by the medical officer of health. The regulations make it a crime to 'escape' or assist someone to 'escape' from this quarantine.

25. On 6 April, the President made a second address to the nation in which he stated that the coronavirus presented Kenya with 'the greatest health challenge our country has ever faced'.[8] He told the public that the coronavirus presented an 'extraordinary emergency' and that Kenyan's national interest had 'never… been threatened to this extent before'.[9] He told the public that 'Our families, our schools, our way of life, the way we worship, our economy, our businesses, our workers, every single Kenyan stands threatened by this invisible, relentless enemy that is COVID-19'.[10]

26. On the same day, the 1st Respondent published the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules 2020—the 'Movement Restriction Regulations'.[11] The Regulations were promogulated under Section 36(m) of the Public Health Act. The Movement Restriction Regulations

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[6] Public Health (Prevention, Control and Suppression of COVID-19) Rules 2020 (Leg No 49) rule 2.
[7] ibid rule 12(2).
[8] H.E. Uhuru Kenyatta, CGH, President and Commander-in-Chief of Kenya Defence Forces, 'Presidential Address on Enhanced Measures in Response to the Covid-19 Pandemic' (State House, Nairobi, Kenya, 6 April 2020) para 33 <https://www.president.go.ke/2020/04/06/17505/> accessed 11 April 2020.
[9] ibid 4, 12.
[10] ibid 5.
[11] Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules 2020 2020 (Leg No 50).

elaborated and expanded upon the powers conveyed under the Prevention and Control Regulations. The Movement and Restriction Regulations defined an 'infected area' as 'an area to which the rules apply' as declared by the 1st Respondent. It also provided a broad definition of a 'public place', which included a place of work. And it defined 'restriction period' as the period specified by the 1st Respondent when declaring an area an infected area. [12]

27. The Movement Restriction Regulations imposed broad limitations on individual movement and transportation. With certain exceptions, the rules limited people's movement into and out of an infected area during a restriction period. The rules prohibited both public transportation and private vehicles from going in or out of an infected area. They also limited movement within an infected area, limited the number of passengers public transport and private vehicles could carry, and required that anyone in a vehicle 'wear a proper mask that must cover the person's mouth and nose'.

28. Any person violating the rules is subject to a twenty thousand shilling (Kshs. 20,000) fine, six months' imprisonment, or both. Also, violators will have their vehicle impounded 'pending their arraignment in court and/or for the duration of the restriction period'.

29. The Movement Restriction Regulations also restrict the conduct of people in public places (which also includes a workplace). They require that people stay a metre apart and use a 'proper face mask'. Businesses are required to provide hand washing or hand-sanitizing facilities, enact measures to ensure physical distancing, and regularly sanitize their premises. As with the restrictions on transportation, violators of these rules are subject to a twenty thousand shilling (Kshs. 20,000) fine, up to six months imprisonment, or both.

30. The Prevention, Control and Suppression of COVID -19 Rules 2020 and the Movement Restriction Regulations both provide guidance on the removal and disposal of bodies of persons who have died from COVID-19. The Prevention, Control and Suppression of COVID-19 Rules provide for a burial and cremation and limit the

[12] ibid rule 2.

number of persons that may attend a burial or cremation to 15 persons.[13] The Movement Restriction Regulations, provide that a burial and cremation must take place within 48 hours when someone has died of COVID-19.[14] On 16 April 2020, the 1st Respondent published Interim Guidelines on the Handling of Human Remains Affected with COVID-19 in Kenya.[15] These provide guidance on the measures to be put in place when handling dead bodies and how to ensure the protection, dignity and respect for the deceased individual and the next of kin.

31. In a memorandum issued on 3 April 2020, the 2nd Respondent announced that those in quarantine would be required to remain for an additional 14 days. The reasons provided in the memo included the failure to: maintain optimal social distance between persons; and the prescribed hygiene standards. A further memorandum on 7 April 2020, indicated that if any person tested positive for COVID-19 on the 8th day of their quarantine, all persons held in that facility will be held for a further 14 days.

32. On 19 April 2020, the Ministry of Health Chief Administrative Secretary (CAS) Dr Mercy Mwangangi announced that those alleged to have violated the curfew regulations would 'be assumed to have been in contact with suspected cases, hence will be quarantined for 14 days'.

33. On 3rd May 2020, the Ministry of Health issued another press release given by Dr Rashid Abdi Aman, Chief Administrative Secretary in charge of Health, who spoke on behalf of the National Emergency Response Committee. Dr. Aman stated that, as a result of debates on people being held in quarantine, curfew breakers will no longer be held in government quarantine facilities and that the Inspector General of Police was directed by the committee to designate a 'curfew breakers holding place'.

34. In April 2020, the Ministry of Health issued the Kenya COVID-19 RMNH Guidelines: A Kenya Practical Guide for Continuity of Reproductive, Maternal, Newborn and Family Planning Care and Services in the Background of COVID 19 Pandemic (hereafter referred to as RMNH Guidelines). The Guidelines were intended

[13] Regulation 8 of the Prevention, Control and Suppression on COVID-19 Rules.
[14] Regulation 8 of the Movement and Restriction Regulations.
[15] Ministry of Health, 'Interim Guidelines on the Handling of Human Remaind Affected with COVID-19 in Kenya' < https://www.health.go.ke/wp-content/uploads/2020/06/Interim-Guidance-on-Handling-of-Human-Remains-Infected-with-COVID-19.pdf>accessed> accessed on 17 June 2020.

to provide health care service providers as well members of the general public, particularly women and girls, with information related to provision and acquisition of sexual and reproductive health services.

b. Petitioners' Requests for Information

35. Concerned by the threat to the lives, health and safety of 'every single Kenyan' and the drastic—and, at times, inconsistent erratic—measures taken by the Respondents, the Petitioners wrote a series of letters requesting for information.

36. On 30 March 2020, 6 April 2020, 9 April 2020, 10 April 2020, 15 April 2020, 16 April 2020, 17 April 2020, 18 April 2020, 27 April 2020 and 28 April 2020, the Petitioners requested that the Respondents provide information under Article 35 of the Constitution. The letters among others requested the Respondents to provide the Petitioners with information on—

    a. the implementation of mandatory quarantine;

    b. Siaya County's burial of James Oyugi in the dead of the night - violating cultural norms, lacking dignity, and inconsistent with standards for burials during the pandemic;

    c. support that the 1st Respondent is providing to health care workers risking their health to protect the community;

    d. the 8th Respondent's obligation to enforce the Access to Information Act, 2016.

    e. the rationale for extending quarantine beyond the initial 14-day period;

    f. the rationale for mandatory quarantine as punishment for those who allegedly commit curfew offences; and

    g. the guarantee on essential reproductive health services during the COVID-19 Pandemic.

37. On 14 April 2010, the 9th, 10th and 12th Petitioners set up a legal aid support system to provide *pro bono* legal advice to those who were facing human rights violations during the COVID-19 period. As a result of this system, the 10th Petitioner received complaints from the 4th-8th Petitioners, persons, or the family of persons, who were being held in mandatory quarantine.

38. The 4th-7th Petitioners travelled to Kenya after 23 March 2020, and the 8th Petitioner is the parent of a person who travelled into Kenya after 23 March 2020, following the imposition of a travel ban into the country. They had been informed on their flights that they would be held in mandatory quarantine Upon arrival, they were provided with little or no information about the government's COVID-19 policy as they waited to be cleared to enter the country.

39. When the 4th-7th Petitioners asked for information, they were told that the officials at the airport were waiting for orders 'from the top'. The 8th Petitioner, for instance, was abruptly informed that her daughter would be held in mandatory quarantined while waiting to collect her. Because she was unable to reserve a room online, she was forced to ask a friend living close by to travel to hotel in the middle of the night to book a room for her daughter.

40. On 24 March, the 4th Petitioner was forced to travel to Crowne Plaza at 3 am with her 9-year-old daughter only to be turned away and returned to Jomo Kenyatta International Airport because she could not afford accommodation fees upfront. She had not been informed beforehand that advance payments were required for mandatory quarantine. The 6th Petitioner, who was travelling to Mombasa, was forced to ask multiple people for information on mandatory quarantine until she was eventually told she would be forced to undergo quarantine in Nairobi County, despite not being a resident of Nairobi and having checked her luggage to Mombasa.

41. Once they arrived at the mandatory quarantine facilities, the 4th-7th Petitioners were not given information on the protocols and process to be used during the mandatory quarantine. The 8th Petitioner, for instance, had to send her daughter the Ministry of Health Quarantine Protocols she found online because her daughter had not been given any information and was getting increasingly distressed. The 6th Petitioner, a

person with asthma who was already suffering from a cold, became increasingly worried about the lack of information about testing while she was in quarantine.

42. Because of their concerns, on 30 March 2020 the 4th-6th Petitioners sent a letter to the 1st Respondent requesting that testing takes place and that results are made available within 24 hours.

43. Following concerns raised by the 4th-8th Petitioners, their family members, other individuals in mandatory quarantine, and the media reports, on 6 April 2020, the 9th-12th Petitioners, together with 23 other organisations and 47 individuals, wrote to the 1st Respondent requesting for the following information:

    a. An explanation as to why the Ministry of Health was reportedly not adhering to its guidelines relating to managing the designated mandatory quarantine facilities.

    b. Clarification on the circular issued by the 1st Respondent that extended the quarantine, where the extension would apply, why it had been issued, and who would bear the cost of the extension.

    c. The total number of designated quarantine facilities as at the date of the letter.

    d. The number of healthcare workers (including details on the groups of workers) that had been deployed to each of these facilities.

    e. The number of people held in quarantine who had been tested and had received their results.

    f. The measures being taken to safeguard the health of people in quarantine facilities who had a pre-existing medical condition.

    g. The time between a positive test and referral to an isolation facility.

    h. Whether healthcare workers and other staff who had had contact with people who had tested were also tested and whether healthcare workers and staff had access to Personal Protective Equipment.

44. On 8 April 2020, the 8th Respondent wrote to the 1st Respondent, requesting that he respond to the 6 April letter as required under Sections 9(1) and (4) of the Access to Information Act, 2016.

45. On 16 April 2020, the 12th Petitioner, becoming increasingly frustrated with the lack of response to the requests for information, wrote to the 8th Respondent, asking it to exercise its mandate to enforce the Access to Information Act, 2016 given the urgency and importance of the information required.

46. On 13 April, the 3rd Petitioner received numerous calls from people in Kamalunga Village, Simur Kondiek Sub-Location, Ukwala telling him that a person with COVID-19 had been buried in their village in an unusual manner. Upon further investigation, he learned that on or about 12 April 2020, the late James Oyugi was buried in a bizarre ceremony, in the middle of the night, in which his body was tossed into a shallow grave by officials wearing Personal Protective Equipment, without following any religious or cultural rituals. Although this occurred a month after the first COVID-19 diagnosis in the country, and after the publication of the Prevention, Control and Suppression of COVID-19 Regulations and the Movement Restriction Regulations, the burial was handled hurriedly and without due regard to the dignity and respect of all the persons involved, suggesting that the authorities were either unprepared for or unaware of the necessary protocols for burials of those suspected to have COVID-19.

47. After the burial the 3rd Petitioner began to receive enquiries from the communities in which he works with. Many were afraid that the incident would result in a bad omen and that they would be treated similarly if they were found to have COVID-19. As a leader in his community, the 3rd Respondent was unable to assuage these fears because he did not understand why the late James Oyugi had been buried in the manner he had.

48. Following the incident, the 3rd, 10th and 12th Petitioners, together with 1 other person and 12 other organisation, again wrote to the 1st and 3rd Respondents seeking information on the undignified burial and violation of the guidelines for handling

bodies that were either suspected or confirmed to be infected with COVID-19. This letter further requested the following information:

a. An explanation as to the process undertaken to authorise the burial that took place contrary to the Ministry of Health's Guidelines for the safe disposal of human remains of a person who has died from suspected or confirmed COVID-19.

b. Measures put in place to ensure that the act was not replicated.

c. Measures put in place to ensure that this act does not result in stigma against James Oyugi's family and community.

d. Measures put in place to secure the mental health and wellbeing of James Oyugi's family members and members of his community.

e. Quarantine or isolation of close contacts of James Oyugi.

49. The 1st Petitioner works with a community-based organisation in Nyalenda, Kisumu County and has experience in advocacy on behalf of those infected with HIV, TB and Malaria. Since the announcement of the first COVID-19 case in Kenya he has been working within his community to share information and to ensure persons with TB and HIV do not experience a disruption of access to health services. As a community practitioner in the health field, he has become increasingly frustrated with the lack of information from the County Government of Kisumu. He has not been told, for instance, which facilities have been designated COVID-19 facilities, where people can be tested, what resources the county has made available, and how those resources are being used.

50. The 10th Petitioner, collaborated with health care workers' unions and conducted three surveys to gauge how prepared clinical officers, nurses, and doctors were to respond to COVID-19. While conducting the surveys, the 10th Respondent received concerns from the public, healthcare workers, and their unions that the government was not providing enough support to healthcare workers and that this was causing public anxiety and emotional distress among healthcare workers.

51. Healthcare workers are at the core of the response to the pandemic, yet the 1st Respondent has not been forthcoming on the steps being taken to prepare healthcare workers to handle the pandemic and to protect them, their families, and the members of the public that might be in contact with them from infection. Healthcare workers have continued to raise concerns about the occupational safety and the health risks they face. Informed by the results of the surveys and the lack of information from the 1st Respondent, the 1st and 10th-12th Petitioners, together with 13 other organisations and 14 individuals, wrote to the 1st Respondent on 17 April 2020 seeking information on the provision of support to the healthcare workers in the response to COVID 19. The letter sought the following pertinent information:

    a. The number health care workers trained in each designated COVID-19 facility by cadre; evidence of team-based approaches in COVID-19 facilities e.g. the number of Intensive Care Units teams with nurses, clinical officers, anaesthetists, general physicians and critical care specialists; and the number of health care workers deployed in each county.

    b. The number of designated COVID-19 management facilities; their distribution around the country; their capacity to manage severe cases; their capacity to manage critical cases; and their laboratory capabilities.

    c. The number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitiser, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.

    d. The number of health care workers tested for COVID-19.

    e. Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

52. The 7th Petitioner was tested for Coronavirus on 2 April 2020, 7 days after he arrived in Nairobi and was detained in mandatory quarantine. He expected to receive his results within 24 hours but was forced to request for them after 48 hours, and they

were orally provided to him. Following this, he became aware only through a commotion outside his room that some persons in his facility had tested positive for COVID-19. On 7 April 2020, on the day that his 14-day quarantine period was to be completed, he and other people in his facility were informed that they were required to stay an additional 14-days because of the positive tests. The 7th Petitioner, wrote to the 1st Respondent seeking an explanation for the extension of the quarantine period on 9 April 2020.

53. On 4 April 2020, the 8th Petitioner learned from a media briefing that her daughter's quarantine period would be extended for a further 14 days. The 8th Petitioner had no clear information as to why her daughter's quarantine had been extended particularly given that she had already tested negative for the virus. In hopes of getting information, on 9 April 2020, the 8th Petitioner wrote to the 1st Respondent seeking, among other things, the following information:

    a. why her daughter not been issued with a personal notification slip confirming she had tested negative for Covid-19;

    b. why her daughter was still being held at the quarantine facility in violation of the Ministry's protocols and the best practice recommendations issued by the World Health Organisation[16];

    c. why her daughter had not been told when she would be discharged and the conditions that would be imposed once discharged;

    d. why the 1st Respondent had not informed her daughter about the effect that another person's positive test at her quarantine facility would have on her and what protocols had been put in place to address positive tests in the facilities; and

    e. who was responsible for ensuring that people who had tested positive were removed from the quarantine facility as soon as reasonably possible and what steps were being taken to mitigate the risk to her

[16] Ministry of Health, 'COVID-19 Quarantine Protocols' (27 March 2020), < https://www.health.go.ke/wp-content/uploads/2020/04/L-Quarantine-Protocols-for-Sites-with-Lab.pdf> (accessed on 17 June 2020).

daughter and others while still protecting the rights to privacy and dignity of those who had tested positive.

54. The 8th Petitioner followed the above with a letter on 10 April 2020, addressed to the 2nd Respondent underscoring the financial difficulty placed on her and her family by her daughter's continued detention in mandatory quarantine. In this the letter the 8th Petitioner asked that the 2nd Respondent to find alternative ways to compensate the quarantine facilities and refund her for the expenses that had already been incurred.

55. In response to the circular issued by the 2nd Respondent extending the mandatory quarantine period beyond 28 days, people who were affected by the circular wrote to the 2nd Respondent and copied the 10th and 12th Petitioners. They requested, among other things, the following information:

    a. Why the 2nd Respondent had decided to extend the quarantine period for everyone based on violations of social distancing requirements event though most of those in quarantine had complied with social distancing requirements;

    b. Whether Ministry of Health officials assigned to their quarantine facilities posed a risk to them;

    c. Why there was a delay in moving people who had tested positive from the quarantine facilities to isolation facilities; and

    d. Whether the Ministry of Health would bear the cost for the extended stay.

56. The authors of the letter also raised concerns about inequitable treatment in quarantine facilities. They noted that some people in quarantine were allowed to use ATMs outside of the facility; that some people's passports had been unlawfully seized; and that the Ministry of Health failed to effectively explain the social distancing policies at the quarantine facilities while, at the same time, using a failure to adhere to comply with these policies as a justification to extend quarantine.

57. Since the first case was announced in Kenya, the 2nd Petitioner, a community health advocate who works in Mombasa, Kilifi, and Kwale Counties, has faced significant challenges accessing information about the Pandemic and the government's response. She has become increasingly concerned that the curfew is preventing people from accessing health services during curfew hours. Because of the lack of information, women have not been attending ante-natal and post-natal care and others did not know whether or where they could access health services. Many people who live in Kilifi and Kwale counties have to travel to Mombasa to receive essential health services. Those people are now barred from entering Mombasa, and because she does not have accurate information from the government, she does not know what to tell them and can no longer assist members in her community effectively.

58. On 19 April 2020, the Ministry of Health announced that persons alleged to have breached curfew will be held in mandatory quarantine. On 3 May 2020, the 6th Respondent stated that accused curfew violators would be sent to 'curfew-breakers holding places' rather than quarantine facilities.

59. Noting that mandatory quarantine was increasingly being used as a punishment to detain those alleged to have violated curfew, travel restrictions, directives on wearing masks, and social gathering restrictions, the 1st, 2nd, and 10th-12th Petitioners, together with 24 other organisations and 26 individuals, wrote on 27 April 2020. The letter requested information from each party was addressed to the 1st,4th, 5th, 6th, 8th and 9th Respondents, as well as the 1st Interested Party, seeking specific information around the use of mandatory quarantine as a punishment, including the following:

    a. To the 1st Respondent: Whether the Ministry of Health supports the use of quarantine facilities for punitive measures as part of the COVID-19 response; a justification, legal scientific or otherwise, for the use of mandatory quarantine as a punishment; and actions being taken to ensure that public health measures are in line with human rights.

    b. To the 4th Respondent: the number of people being held in mandatory quarantine in each county; the number of people that have been tested

in various facilities in the counties; the testing schedule for persons being held in quarantine; and the number of people in quarantine for breach of COVID-19 regulations and rules.

c. To the 5th and 6th Respondents: Whether the police are being used to screen and decide who is suspected to have contracted COVID-19 , and if so, what training the officers have been given; what infection, prevention and control protocols the police are using; and whether police officers have access to personal protective equipment.

d. To the 9th Respondent: The criteria that were used to select hotels and facilities as quarantine centres; a checklist for the approval of the facilities as quarantine facilities; a list of places certified as quarantine facilities as at the date of the letter; approved standard operating procedures at quarantine facilities; and designated medical personnel responsible for oversight at each centre.

60. The 13th Petitioner works with Women's Link Worldwide, an organisation which promotes the rights of women and girls, especially those facing multiple forms of discrimination. The organisation advocates for domestic implementation of international human rights law and the use of comparative law by national courts.

61. In April 2020, the 1st Respondent launched the RMNH Guidelines. On 28 April 2020, the 13th Petitioner, and 12 other organisations that promote access to sexual and reproductive health rights, wrote a joint letter, raising concerns around the comprehensive nature of the guidelines, to the 1st Respondent seeking clarity and provision of supplementary information on securing sexual and reproductive health and rights; and the provision of services for women and girls in the country in a manner that is comprehensive and accessible to all.

62. As at the date of filing this Petition, none of the Respondents, save for the 3rd Respondent who has acknowledged receipt of the request but not provided the information requested, have responded to any of the letters of request for information. The 4th-7th Petitioners, who were being held in mandatory quarantine at the time of their requests have since been released and have still not received responses

to their time-bound queries. The 1st-3rd and 9th-13th Petitioners, who are acting on their own behalves and on behalf of the public, have also not received responses to queries.

C. CONSTITUTIONAL, INTERNATIONAL LAW AND STATUTORY BASIS FOR THE PETITION

a. Constitutional Foundation of the Petition

63. Article 1 of the Constitution states that all sovereign power belongs to the people and shall be exercised only per the Constitution. Article 2(1) states that the Constitution is the supreme law of Kenya and it binds all persons and state organs at both levels. Article 2(4) states in part that any act or omission in contravention of the Constitution is invalid.

64. Article 3(1) obliges every Kenyan to respect, uphold and defend the Constitution.

65. Article 10 of the Constitution establishes the national values and principles of governance. These values and principles are binding on all State organs and people whenever they interpret or apply the Constitution, enact, apply, or interpret any law, or make or implement public policy. The values and principles include the rule of law, human rights, human dignity, good governance, transparency and accountability.

66. Article 19(1) of the Constitution provides that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic, and cultural policies. Article 20(1) states that the Bill of Rights binds all state organs. Article 20(2) provides that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent possible consistent with the nature of the right or fundamental freedom. Article 20(4) requires Courts, when in interpreting the Bill of Rights, to promote its spirit, purport, and objects.

67. Article 21(1) establishes that the State and all State organs have a 'fundamental duty' to 'observe, respect, protect, promote and fulfil those rights and fundamental freedoms in the Bill of Rights'.

68. Article 26(1) establishes that every person has the right to life.

69. Article 27 states that all people are equal and that every person 'has the right to equal protection and equal benefit of the law', including the 'full and equal enjoyment of all rights and fundamental freedoms'.[17] Neither the State nor any person may discriminate (whether directly or indirectly) against any person on any ground.[18]

70. Article 28 provides for every person's inherent dignity and the right to have that dignity respected and protected.

71. Article 29 guarantees the right of every person not to be deprived of their freedom and security arbitrarily without just cause. A person may not be detained without trial unless a state of emergency has been declared, may not be subjected to torture; or treated or punished in a cruel, inhuman, or degrading manner.

72. Article 33 guarantees everyone the right to freedom of expression, including the freedom to seek, receive, or impart information and ideas.

73. The right of access to information is guaranteed under Article 35 of the Constitution, which states that '*[e]very citizen has the right of access to information held by the State*'. Article 35(3) requires that the State '*publish and publicize any important information affecting the nation*'. The State has a duty not only to proactively publish information in the public interest but also publicize such information'.[19]

74. The right to the highest attainable standard of health including reproductive health care is guaranteed under Article 43(1)(a) of the Constitution.

75. Article 47 also entitles everyone to fair administrative action which, among other things, is expeditious and lawful.

76. Article 232 outlines the following values and principles of public service: *responsive* provision of services; *involvement* of the people in the process of policymaking; and *transparency and provision to the public of timely, accurate information.*

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[17] Constitution of Kenya 2010 arts 27(1) & (2).
[18] ibid art 27(2).
[19] *Manase Guyo & 260 others v Kenya Forest Services* High Court Const Pet 22 of 2014, [2016] eKLR [76]; citing *Nairobi Law Monthly Co Ltd v Kenya Electricity Generating Company & 2 Others* [2013] High Court Pet 278 of 2011, eKLR [34].

b. International and Regional Law Foundations of the Petition

77. Under Article 2(6) of the Constitution, any treaty or convention ratified by Kenya is a part of Kenyan law. Kenya is a party to a number of international treaties and conventions that guarantee the right of access to information and other rights and fundamental freedoms that are relevant to this Petition.

78. Article 3 of the Universal Declaration of Human Rights (UDHR) guarantees that: '*Everyone has the right to life, liberty and security of the person*'. The International Covenant on Civil and Political Rights (ICCPR) provides that: '*Every human being has the inherent right to life . . .*'.[20] The right to life is also guaranteed in the African Charter on Human and Peoples' Rights (the Banjul Charter) which states: "*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*'[21]

79. Article 19 of the ICCPR entitles everyone '*the right to freedom of expression; including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print*'. This is also guaranteed in Article 19 of the UDHR. The Banjul Charter guarantees the right to receive information.[22]

80. Article 12 of the International Covenant of Economic, Social and Cultural Rights recognizes the right of everyone to enjoy the highest attainable standard of physical and mental health. This provision is reiterated in Article 16 of the Banjul Charter.

81. The right to equality and non-discrimination is guaranteed in Article 7 of the UDHR; Article 26 of the ICCPR; and Article 2 and 3 of the Banjul Charter. Article 2 of the Convention on All Forms of Discrimination Against Women (CEDAW) places a positive obligation on states to eliminate discrimination against women.

82. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), protects health and reproductive rights, including access to adequate, affordable and accessible health services.[23] Article 12 of

[20] Article 6 of the ICCPR.
[21] Article 4 of the Banjul Charter.
[22] Article 9 of the Banjul Charter.
[23] Article 14 of the Maputo Protocol.

CEDAW obliges states to take all appropriate measures to eliminate discrimination against women in the field of health care.

c. Statutory Foundations of the Petition

83. Parliament enacted the Access to Information Act, 2016 to give effect to the rights provided under Article 35. It establishes a framework for responding to information requests and disseminating information to the public. The Act reaffirms the rights established under Article 35.

84. Section 4(1) guarantees the right of access to information and 4(3) stipulates how the information must be provided:

> *"(1) Subject to this Act and any other written law, every citizen has the right of access to information held by— (a) the State; and (b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.*
>
> ...
>
> *(3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.*

85. The Access to Information Act stipulates that, generally speaking, information shall be provided expeditiously. An exception, however, is set forth in Section 9(2) which provides that:

> *"Where the information sought concerns the life or liberty of a person, the information officer shall provide the information within forty-eight hours of the receipt of the application."*

86. The 8th Respondent has the power to oversee the State's compliance with the Access to Information Act.[24] The 8th Respondent has the mandate to investigate possible violations of the Act, either on its own volition or in response to a complaint.[25]

87. The power to make regulations under the Access to Information Act is derived from Section 25(1) and (2) which states that:

[24] Section 20 of the Access to Information Act, 2016.
[25] Section 21(1) (a) of the Access to Information Act, 2016.

"(1) The Cabinet Secretary may, in consultation with the Commission, make regulations, prescribing anything required by this Act to be prescribed or generally for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(a) the manner in which applications under this Act shall be made;

(b) the form in which information requested under this Act shall be supplied;

(c) the making of an application for personal information by representatives of the person to whom the information relates;

(d) the measures to be taken by public entities to facilitate the exercise by persons of their rights under this Act;

(e) the measures to be taken by public entities to ensure that adequate records are created and maintained by the entities;

(f) the procedures for the making of an application by a complainant for the review by the Commission, of a decision made by a public entity relating to access to information;

(g) the procedure to be followed by a public entity in consulting with a third party before giving access to information obtained by it from that party;

(h) the procedures requiring a public entity to ensure that personal information is accurate;

(i) compensation to be sought by an individual who has suffered damage as a result of the holding of inaccurate information about the individual's personal affairs by a public entity;

(j) the records that public entities shall be required to keep; or

(k) such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration."

88. Section 28(4) of the Access to Information Act provides that "*Any person who . . . fails to respond to a request for information required for the exercise or protection of a right in accordance with the requirements of this Act . . . commits an offence and is liable, on conviction, to a fine not*

exceeding one hundred thousand shillings, or imprisonment for a term not exceeding six months, or both"

89. Section 5(1) of the Health Act, 2017 guarantees and further codifies the right to health, stating that:

> *'Every person has the right to the highest attainable standard of health which shall include progressive access for provision of promotive, preventive, curative, palliative and rehabilitative services.:*

90. Section 10 of the Health Act, 2017 requires national and county governments to proactively provide health-related information, stating that:

> *'The national government, county governments and. every organ having a role or responsibility within the National Health System, shall ensure that appropriate, adequate and comprehensive information is disseminated on the health functions for which they are responsible being cognizant of the provisions of Article 35(l)(b) of the Constitution, which must include:*
>
> *(a) the types, availability and cost if any of health services;*
>
> *(b) the organisation of health services; operating schedules and timetables of visits;*
>
> *(c) procedures for access to the health services;*
>
> *(d) procedures for laying complaints; the rights and duties of users and health care providers under this Act and as provided for in the applicable service charters; and*
>
> *(e) management of environmental risk factors to safeguard public health."*

91. The Fair Administrative Action Act, 2015 defines administrative action as including: "*the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or any act, ommisson or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.*"[26]

92. In terms of the Fair Administrative Action Act, every person has a right to administrative action that is 'expeditious, efficient, lawful, reasonable and procedurally fair'.[27] This right also entitles persons to receive written reasons for any administrative action taken against them.[28]

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[26] Section 2 of the Fair Administrative Action Act, 2015 (4 of 2015).
[27] Section 4(1) of the Fair Administrative Action Act 2015 (4 of 2015).
[28] Section 4(2) of the Fair Administrative Action Act 2015 (4 of 2015).

93. Section 4(3) of the Fair Administrative Action Act provides that were administrative action is likely to affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision:

> *"(a)prior and adequate notice of the nature and reasons for the proposed administrative action;*
>
> *(b) an opportunity to be heard and to make representations in that regard;*
>
> *(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;*
>
> *(d) a statement of reasons pursuant to section 6;*
>
> *(e) notice of the right to legal representation, where applicable;*
>
> *(f) notice of the right to cross-examine or where applicable; or*
>
> *(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.*

D. PARTICULARS OF CONSTITUTIONAL VIOLATIONS

a. Right of access to information

94. Article 35(3) of the Constitution places an affirmative duty on the State to publish and publicize important information affecting the public. There can be no doubt that the coronavirus pandemic has, in the President's words, presented Kenya with an 'extraordinary emergency' and required it to confront 'the greatest health challenges our country has ever faced'.[29] In response to this challenge, the State has made a number of decisions to secure public health, including implementing a 7:00 pm-5:00 am curfew, restricting movement, and requiring people to wear a mask while in public.

95. The 1st, 5th and 6th Respondents have taken two pertinent decision: first that people alleged to have violated curfew shall be assumed to have been exposed to the coronavirus; and second that alleged curfew violators should be held in mandatory

[29] H.E. Uhuru Kenyatta, CGH, President and Commander-in-Chief of Kenya Defence Forces (n 6) paras 4, 33.

quarantine and, later, in 'curfew breakers holding places'. The 1st, 5th and 6th Respondent failed to provide information on:

a. The justification, both scientifically and legally, for assuming that alleged curfew violators had been exposed to the coronavirus;

b. The justification for holding persons alleged to have breached the law in mandatory quarantine or 'curfew breakers holding places' without access to courts; and

c. The legal framework under which a 'curfew breakers holding place' can be established, including the power to establish such a facility.

96. This failure is a breach of the affirmative duty to provide information that is affecting the nation. The criminalisation of a public health emergency has stigmatised COVID-19 and driven fear into the public. The people required to rely on this information find themselves confused, afraid and without an understanding of the government actions. While the Public Order Act stipulates that breaching a curfew order is an offence, the actions of the 1st, 5th and 6th Respondents are contrary to the established process that ought to be followed when an offence is committed.[30] The failure to provide clear and concise information around the criminal offences and procedures instill fear in the public and delegitimises existing legal systems.

97. The failure to provide information about mandatory quarantine and its implementation also violated the constitutional and statutory right to information.

98. The 1st Respondent failed to provide the 4th-7th Petitioners, who were held in mandatory quarantine; and the 8th Petitioner, whose daughter was in mandatory quarantine, with the information necessary to guarantee their safety and well-being while in quarantine.

99. The 1st Respondent has a duty to ensure that the information relevant for the proper implementation of mandatory quarantine was made available before the measures

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[30] Section 8(6) of the Public Order Act stipulates that it is an offence to breach the provisions of a curfew order.

were rolled out. He breached that duty when he failed to provide the 4th-7th Petitioners with information necessary to protect their safety and inform them of their rights and fundamental freedoms.

100. The 1st Respondent's conduct also violates the reciprocal privilege under Article 33 to 'seek' and 'receive' information.

101. The 1st-6th and 9th Respondents failure to affirmatively publish and publicise information affecting the nation has been exacerbated by their failure to respond to requests for information.

102. The Petitioners', who have a constitutional and statutory right to access information held by the State have sought information from 1st-6th and 9th Respondents on 30 March 2020, 6 April 2020, 9 April 2020, 10 April 2020, 15 April 2020, 17 April 2020, 18 April 2020, 27 April 2020 and 28 April 2020. All these requests have been ignored and over 8 weeks have passed since the most recent request.

103. Despite a shared understanding that it is necessary to provide the public with information that will help them stay safe and minimise the risk of transmission the 1st-6th and 9th Respondents have failed to do this. They did not affirmatively provide critical information that would help Kenyans protect their health and mitigate the spread of the virus. As the experiences of the 1st, 3rd, 9th, and 12th Petitioners demonstrate, the government failed to provide accurate and timely information that would not only inform the public but could be further disseminated by community-based workers, health advocates, and civil society organizations.

104. By violating Article 35, the 1st-6th and 9th Respondents have also breached the values and principles of rule of law, human rights, good governance, transparency and accountability, and the provision to the public of timely and accurate information that are required of them under Articles 10 and 232(1)(f) of the Constitution.

d. Right to life

105. At the date of filing this petition, there have been more than half a million deaths as a result of COVID-19 globally and more than 140 deaths in Kenya. The continued

spread of COVID-19 poses a threat to the lives of everyone, including Kenyans. And it is undisputed that the proper management of the pandemic is key to curbing its spread.

106. The 1st and 4th Respondents have endangered the lives of Kenya by failing to provide timely and accurate lifesaving information on the spread and management of the virus. The 1st-3rd Petitioners' have noted that the lack of information has inhibited their ability to provide information on necessary health services, has instilled fear in their communities, and has increased the stigmatization of those who may have the virus..

107. In light of the extensive threat imposed by the coronavirus, the Respondents violated Article 26 of the Constitution by a) failing to affirmatively provide the Petitioners and the public with the critical information necessary to protect their health and safety, and b) by failing to respond to the Petitioners requests for access to information.

e. Right to health

108. As at the time of filing this petition, there are more than 10 million confirmed COVID-19 cases globally; and over 6,000 in Kenya. The continued spread of COVID-19 poses a threat to the health and well-being of every person, including Kenyans. Kenya's first COVID-19 case was confirmed on 12th March 2020 and in the three months since we have recorded an amore than 6,000 cases, with the numbers rising daily.

109. The right to the highest attainable standard of health which includes reproductive health care requires access to information to prevent and promote good health and well-being for all including that of women and girls. By failing to affirmatively provide information to the Petitioners and the public and by failing to respond to the Petitioners' requests for information, the Respondents' violated the Petitioners and the public's right under Article 43(1) to the highest attainable standards of health.

f. Right to freedom and security of the person

110. The experiences of the 4th-8th Petitioners are illustrative that despite opting for mandatory quarantine to curb the spread of COVID-19, little to no information was

provided in its implementation. From the experiences of 1st-3rd Petitioners, communities are both afraid of and confused about mandatory quarantine. From the work of 9th-12th Petitioners, the derogation of the right to freedom and security of the person through mandatory quarantine and 'curfew breakers holding places' without due process of the law is a violation of said right.

111. The Respondents' failure to provide the Petitioners with the information sought under Article 35(1) and to publicise that information under Article 35(3) during the pandemic, has resulted in a concomitant violation of the Petitioners and the public's rights under Article 29 of freedom and security of the person.

g. Right to equality and non-discrimination

112. The 2nd, 10th and 13th Petitioners have noted concerns around the disproportionate effect of the pandemic on women and girls and other marginalised communities. The 2nd Petitioner, has noted a decrease in access to reproductive and maternal health services as a result of the lack of information occasioned by failures on the part of the 1st Respondent.

113. The 1st Respondent by failing to ensure the dissemination of accurate and timely information to the most marginalised and vulnerable of the population, majority being women and girls, has failed to ensure the enjoyment of the right to equality and non-discrimination. Further, this failure by the government led to the violation of other rights inextricably linked to the right to equality and non-discrimination such as the right to health, life and dignity.

h. Right to fair administrative action

114. The 1st and 2nd Respondents took a decision to extend the period for those held in mandatory quarantine and this was communicated through two memorandums on 3 and 7 April 2020. The 7th and 8th Petitioners were adversely affected by this decision and sought clarification from the 1st and 2nd Respondent through writing.

115. The 1st and 2nd Respondent violated Article 47 by failing to adhere to the principles of lawfulness, reasonableness or procedural fairness. The decision taken to extend the

mandatory quarantine was contrary to the provisions of the COVID-19 Quarantine protocols which state that if a person is found to be negative, they shall be released to self-quarantine after 14-days. Both the 7th Petitioner and the daughter of the 8th Petitioner tested negative for COVID-19. The decision was not reasonable as it provided a blanket statement that all persons who were in facilities where a person had tested positive would continue to be held despite their own negative test. Finally, the decision was taken without taking into account the views of those it affected and was thus procedurally unfair.

116. When the 7th and 8th Petitioners, sought to get clarification for the decision taken highlighting specific concerns, the 1st and 2nd Respondent failed to address these concerns or even respond to the letters heightening the egregiousness of their actions.

E. PARTICULARS OF STATUTORY VIOLATIONS

a. Access to Information Act, 2016

117. The 1st-6th and 9th Respondents violated Section 4(1) of the Access to Information Act, by failing or refusing to respond to letters requesting information from the Petitioners. As at the date of filing this Petition, none of the Petitioners, save for the 3rd Petitioner who has received an acknowledgment of his letter, has received a response to their requests for information.

118. The 1st-6th and 9th Respondents also violated Section 9(2) of the Access to Information Act, which requires them to provide information relating to the life or liberty of a person within 48 hours of receiving the request. As noted by the President and demonstrated above, the coronavirus presents a threat to the life and liberty of each person in Kenya. Information relating to the Pandemic, in turn, concerns the life of all persons in Kenya, including the lives of the Petitioners.

119. The 1st-6th and 9th violated Section 9(2) of the Access to Information Act by failing to provide information regarding the detention of those in quarantine who, because they were unlawfully detention with those who may be infected with the coronavirus, had their lives and liberty directly threatened.

120. The 1st-6th and 9th Respondents have violated Section 9(1) of the Access to Information Act because they have failed to respond to eight separate requests for information (submitted on 6 April 2020, 9 April 2020, 10 April 2020, 15 April 2020, 17 April 2020, 18 April, 27 April 2020 and 28 April 2020) within 48 hours of receipt of the requests. They have further violated Section 4(3) of the Access to Information Act by failing to expeditiously provide information sought, with an 8-week period having passed since the information was sought.

121. The 8th Respondent has violated Sections 20 and 21 of the Access to Information Act, by failing to exercise its mandate and provide oversight into the enforcement of the Act. After being made aware of the failure of the 1st Respondent to respond to an urgent request, the 8th Respondent, despite its obligation to enforce the Access to Information Act opted not to act and failed to exercise its statutory mandate.

122. The 7th and 8th Respondents, have jointly violated Section 25, by failing to enact regulations that would guide the manner and form on which requests to access information can be made, and the measures to be taken by public entities to facilitate access to information.

123. It has been four years since the Access to Information Act was enacted to give effect to Article 35 of the Constitution and the 7th and 8th Respondents have failed to enact regulations that would facilitate the realisation of this right. The impact of this failure is perhaps demonstrated by the letter of 16 April 2020, in which the 12th Petitioner noted that they would consider "other measures including litigation to safeguard the lives of Kenyans if a response was not received". However, what is critical is that none of the Petitioners understand what process they should take to safeguard their rights, and those of Kenyans as a result of the non-responsiveness of the 1st-6th and 9th Respondents. The Access to Information Act provides a framework to facilitate access to information and also authorises the 7th and 8th Respondent to work collaboratively in ensuring that the manner and form in which information is sought is provided in regulations.

124. Due to the failure of the 7th and 8th Respondents to enact regulations – the Petitioners and Kenyans do not know:

a. What 'expeditiously' means in the context of the Access to Information Act;

b. What costs one can reasonably expect to incur when seeking information;

c. How a decision on whether information concerns life and liberty of a person shall be taken;

d. When a decision on whether or not information concerns the life and liberty of a person must be communicated;

e. The form and manner in which to seek information; and

f. The procedure to be followed in the case of non-responsiveness.

125. The Petitioners have not received any information they have sought and because of the lack of regulations the only process available to them in vindicating their right of access to information is through judicial intervention.

126. As a result of this failure, public entities such as the 1st-6th and 9th Respondents can, and have, willfully ignored access to information requests with no meaningful intervention from the 7th and 8th Respondents.

i. Health Act, 2017

127. The 1st and 4th Respondents, by failing to respond to requests for information and to proactively provide information, have violated Section 5(1) of the Health Act, which guarantees the right to the highest attainable standard of health, including promotive and preventive health services. By repeatedly failing to provide information on the country's preparedness-——either proactively or in response to requests—the 1st and 4th Respondents violated Section 5(1) of the Health Act. This has been illustrated in Mombasa County by the 2nd Petitioner who has witnessed the challenges to accessing health services created by the lack of information about the Pandemic and the Petitioners' response.

128. The 1st and 4th Respondents have violated their obligation under Section 10 to ensure that appropriate, adequate and comprehensive information is disseminated per Article 35(1) (b) of the Constitution, including information on the management of environmental risk factors to safeguard public health. The 1st and 4th Respondents have failed to proactively provide information on the management of the pandemic in Kenya and have breached this Section and acted to the detriment of the Petitioners and Kenyans.

129. The 1st, 2nd and 4th Respondents have received and failed to respond to letters requesting for information on seven separate occasions (6 April 2020, 9 April 2020, 10 April 2020, 15 April 2020, 17 April 2020, 18 April 2020 and 27 April 2020); information that is critical for an understanding of the pandemic and the government's response, and that would guide the public on what steps they can take to not only minimise their health risks but also continue to access health services.

130. The 1st Respondent's failure to provide information and respond to requests seeking such information violated Section 6(1) of the Health Act which provides for every person's right to be informed about their reproductive health and to have access to reproductive health services. This includes the right to emergency medical treatment as shown in Section 7 of the Health Act. The impact of the 1st Respondent's failure to provide information to women has been demonstrated by the 2nd and 13th Petitioners who through their work have been monitoring the experiences of women in accessing such services.

j. Fair Administrative Action Act, 2015

131. The 1st and 2nd Respondents breached the provisions of Section 4(1) of the Fair Administrative Action Act by taking a decision to extend mandatory quarantine that was unlawful, unreasonable and not procedurally fair against the 7th and 8th Petitioners.

132. The 1st and 2nd Respondents breached Section 4(3) of the Fair Administrative Action, Act through the decision to extend mandatory quarantine. Firstly, prior and adequate notice of the nature and reasons for the decision is required, however the 7th Petitioner was informed on the day he was to be released that his period in quarantine shall be

extended and the 8th Petitioner learned of the decision in a press briefing two-days before her daughter was to be released. Secondly, they were not given an opportunity to be heard before the decision was taken, and when they sought to query the decision the 1st and 2nd Respondent were non-responsive. The non-responsiveness of the 1st and 2nd Respondent was indicative that there was no right of review or appeal and neither of the memorandums issued by the 2nd Respondent communicated what the procedure for appeal or review was. Finally, the 7th and 8th Petitioners were not provided with any information, materials or evidence that had been utilised in taking the decision despite asking for it.

F. PRAYERS FOR RELIEF

133. Based on the Constitutional and statutory violations noted above, the Petitioners request that this court provides the following relief:

   a. A declaration be issued that the 1st-6th and 9th Respondents' failure to proactively publish and publicise important information about the pandemic and the State's response violates the right of access to information as guaranteed under Article 35(3).

   b. A declaration be issued that the 1st and 4th Respondents' failure to affirmatively provide information about the COVID-19 pandemic and the government's response violates the right to life as guaranteed under Article 26(1).

   c. A declaration be issued that the 1st and 4th Respondents' failure to affirmatively provide information about the COVID-19 pandemic and the government's response violates the right to health as guaranteed under Article 43(1)(a) and the Health Act, 2017.

   d. A declaration be issued that the 1st-6th and 9th Respondents' failure to affirmatively provide information regarding the pandemic and the State's response violates Articles 10 and 232 of the Constitution.

   e. A declaration be issued that the 1st-6th and 9th Respondents' failure to provide the information sought by the Petitioners violates their right of access to

information as guaranteed under Article 35(1) and the Access to Information Act.

f. A declaration be issued that the 1st-6th and 9th Respondents' failure to provide the information sought by the Petitioners violates their right to freedom of expression as guaranteed under Article 33(1) (a).

g. A declaration be issued that the 1st and 4th Respondents' failure to provide the information sought by the Petitioners violates their right to life as guaranteed under Article 26(1).

h. A declaration be issued that the 1st and 4th Respondents' failure to provide the information sought by the Petitioners violates their right to health as guaranteed under Article 43(1)(a) and the Health Act, 2017.

i. A declaration be issued that the 1st-6th and 9th Respondents can be held criminally liable in their individual capacities for breach of Sections 28(4)(b) of the Access to Information Act, 2016.

j. A declaration be issued that the 1st and 2nd Respondent's decision to extend mandatory quarantine as communicated via circular by the 2nd Respondent violated the 7th and 8th Petitioners' rights to fair administrative action as guaranteed in Article 47 and the Fair Administrative Action Act, 2015.

k. A declaration be issued that the 8th Respondent has failed to exercise its mandate to provide oversight and ensure the enforcement of the Access to Information Act, 2016 and has resultantly violated Article 35 of the Constitution.

l. An order of mandamus be issued compelling the 1st-6th and 9th Respondents to provide the Petitioners with the information sought in the letters dated 30 March 2020, 6 April 2020, 9 April 2020, 10 April 2020, 15 April 2020, 17 April 2020, 18 April 2020, 27 April 2020 and 28 April 2020 within 48 hours of this order.

m. An order of mandamus compelling the 8th Respondent to exercise its statutory mandate under Section 21(1)(a) of the Access to Information Act, 2016 to investigate the alleged violations of the Act.

n. An order of mandamus compelling the 7th Respondent, in consultation with the 8th Respondent, to draft and publish regulations within 90 days of this order on:

    i. The manner in which applications under the Access to Information Act, 2016 may be made;

    ii. The form in which information requested under the Access to Information Act, 2016 may be supplied; and

    iii. The measures to be taken by public entities to facilitate the exercise of the right under Article 35 of the Constitution and the implementation of the Access to Information Act, 2016.

o. An order of mandamus compelling the 7th Respondent, in consultation with the 8th Respondent, to draft and publish regulations on the procedures for requesting and supplying information that concerns the life and liberty of a person within 90 days of this order (under Section 9 of the Access to Information Act, 2016).

p. An order of mandamus compelling the 1st Respondent in consultation with the 4th Respondent, and other relevant stakeholders, to update and re-publish the Reproductive Maternal and Newborn Health Guidelines: A Kenya Practical Guide for Continuity of Reproductive, Maternal, Newborn and Family Planning Care and Services in the Background of COVID 19 Pandemic, to include comprehensive information to health care workers, women and girls on the provision of essential services which includes access to all sexual and reproductive health and rights.

q. An order that the 1st Respondent pays general damages to the 4th-8th Petitioners for the emotional distress these Petitioners underwent as a result of the inadequate information received during the mandatory quarantine period.

r. That the Respondents, within twenty-one (21) days from the date the order, file affidavits with the Court detailing their compliance with these orders.

s. Costs of this Petition and any other just and expedient order the Court may deem fit to make.

OchielJD

OCHIEL J. DUDLEY
ADVOCATE FOR THE 10TH PETITIONER

NERIMA WERE
ADVOCATE FOR THE 1ST-8TH AND 10TH, 12TH AND 13TH PETITIONERS

PATRICK NGUNJIRI
ADVOCATE FOR THE 11TH PETITIONER

DRAWN AND FILED BY:

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA .... 1ST PETITIONER

ESTHER NELIMA... 2ND PETITIONER

CHRIS OWALLA .... 3RD PETITIONER

CM... 4TH PETITIONER

FA.. 5TH PETITIONER

KB... 6TH PETITIONER

MO .... 7TH PETITIONER

EL.. 8TH PETITIONER

KATIBA INSTITUTE .... 9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN).. ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY

FOR HEALTH.. 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH... 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF

SIAYA COUNTY..3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND

COORDINATION OF NATIONAL

GOVERNMENT..5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET

SECRETARY FOR INFORMATION

AND COMMUNICATIONS ....7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE..8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,

KENYA MEDICAL PRACTITIONERS' AND

DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON

HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

ERICK OKIOMA AFFIDAVIT IN SUPPORT OF PETITION

I, Erick Okioma, of Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am a male adult of sound mind, the 1st petitioner in this case and competent to swear this affidavit.

2. **THAT** I am a resident of Nyalenda, Kisumu County and work for a community-based organization called Nelson Mandela TB HIV Community Information and Resource Center. I work as a community health champion undertaking community sensitizations, advocacy and outreach services on HIV, TB and Malaria.

3. **THAT** following the reporting of the first person with coronavirus disease ("COVID-19) in Kenya on 12th March 2020, I immediately embarked on community health engagements that at first meant to ensure people in my community were still able to access HIV, TB and malaria services.

4. **THAT** I have therefore been volunteering to take HIV and TB medication to people, escorting people to health facilities, distributing masks and sanitizers, and generally sensitizing people about the new disease and what they needed to do to protect themselves.

5. **THAT** in my community engagements and for my own benefit, I rely on information shared with the public by the government on the measures introduced, for instance, curfew, movement restriction, quarantine, wearing masks, washing hands, social distancing, among other preventative measures.

6. **THAT** when COVID-19 was first reported in Kenya, I had many questions on access to health services, for instance: Where can I be tested for COVID-19 in Kisumu County? Which health facility was designated for COVID-19? Were these facilities adequate? Were the health care workers in such facilities trained on COVID-19?

7. **THAT** I was nervous given that information that would enable me or people in my community obtain health services in the event we became infected by COVID-19 was not readily available. I became more scared when I started reading newspaper reports of health care workers complaining about lack of protective equipment.

   (**Annexed and Marked as EO-001** are copies of newspaper reports).

8. **THAT** in a bid to obtain answers, I joined 15 other individuals and 15 organisations in writing a request for information letter dated 17 April 2020 to the 1st Respondent requesting for the following information:

   (i) Number of health care workers trained in each designated COVID-19 facility by cadre

   (ii) Evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers, Anaesthetists, general physicians and critical care specialists.

   (iii) Number of health care workers deployed in every county.

   (iv) Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

   (v) Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.

   (vi) Number of health care workers tested for COVID-19.

   (vii) Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

   (Annexed and Marked as EO-002 is the request for information letter dated 17April 2020 on provision of support to health care workers in the COVID-19 response)

9. **THAT** I have not received any response to this request for information letter.

10. **THAT** in a bid to obtain information on production and distribution of personal protective equipment, I, together with 17 other individuals and 19 organisations wrote to the Chief Executive Officer of the Pharmacy & Poisons Board seeking the following information:

    (i) Which distributors have been licensed to import PPE?

    (ii) What are the procedures or processes of seeking the import license?

    (iii) How long does the process take?

    (iv) How much does it cost to get the license?

    (v) Which department of the board is responsible for issuance of the license?

(vi) From which countries are the PPEs being imported from? And what are the main ports of entry?

(vii) How many local suppliers and manufacturers are involved in the process?

(viii) What are the procedures or processes of certifying local manufacturers of PPEs? And is this done in collaboration with KEBS?

(ix) How has the Pharmacy and Poisons Board adjusted its processes to support accelerated importation and distribution of PPE?

(x) Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPEs locally manufactured or imported? Where can this information be obtained?

(xi) Has the board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/ local PPEs to users in Kenya?

(Annexed and Marked EO-003 is a copy of the letter dated 22 April 2020 Request for Information On Import and Distribution of Personal Protective Equipment).

11. **<u>THAT</u>** I was glad when the Pharmacy and Poisons Board in a letter dated 5th May 2020 responded and provided us with the requested information. **(Annexed and Marked EO-004** is a copy of the response from the Pharmacy and Poisons Board dated 5th May 2020).

12. **<u>THAT</u>** when the government started implementing mandatory quarantine, I also had many questions given that I did not have sufficient information about the quarantine process. For instance, I did not know:

(i) What happens in a mandatory quarantine facility? What should one expect when taken to such a facility?

(ii) Why was the government using public schools as quarantine centers, are they properly designed to act as quarantine facilities?

(iii) Who pays the cost of quarantine?

(iv) Does one get tested in quarantine? When is the testing done, and when are the results released to the person?

(v) How long is the quarantine period?

(vi) Under what circumstance would one be taken to mandatory quarantine?

(vii) Is there an alternative to the mandatory quarantine?

(viii) Which were the quarantine facilities in Kisumu County? How many people were currently in these facilities? Had they been tested?

(ix) Why were people being arrested by the police and taken to quarantine centers? Were quarantine facilities prisons or detention facilities?

13. **THAT** I did not have the above information and the same was not readily available to the community. Some people who relied on me for health information would ask me and I would be unable to answer or share any verifiable sources.

14. **THAT** the lack of information on quarantine became a source of unease in the community. I was stressed and fearful hoping that I do not find myself in a quarantine facility.

15. **THAT** this hope quickly diminished when police started arresting people who had no masks, those found outside during curfew hours, and those who were not maintaining physical distancing. The arrested would then be taken to quarantine facilities. **(Annexed and Marked as EO-005** are newspaper reports of arrests in Kisumu County)

16. **THAT** this was a confusing scenario, were quarantine facilities now police stations or prisons? What was the objective of these facilities?

17. **THAT** based on the foregoing, I joined 27 other individuals and 27 organizations in writing a request for information letter to the respondents requesting for information on why quarantine was being used as a form of punishment. **(Annexed and Marked EO-006** is the *Open Letter and Request for Information On Use of Quarantine as A Form of Punishment and Criminalization of COVID-19 Response* dated 27 April 2020)

18. **THAT** in this letter, I wanted to know the following, among others:

(i) whether the Ministry of Health supports the use of quarantine facilities as punitive measures in the COVID-19 response;

(ii) the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;

(iii) what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

(iv) The Kenya Medical Practitioners and Dentists Council to urgently provide a list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date;

(v) The approved standard operating procedures of the quarantine facilities.

(vi) The National Police Service to provide information on whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so (a) what training these officers have been given to undertake the role of medical experts; (b) what infection prevention and control protocols they follow; and (c) whether they have the right equipment e.g. thermometers & PPE.

19. **THAT** I did not receive any response to the request for information letter.

20. **THAT** I know it is my constitutional right to access information from the government, and especially information that will enable me exercise and protect my other rights.

21. **THAT** as a person who have worked on HIV and TB programmes for over 20 years, I am aware of the dire consequences that lack of health information causes in the community. I know that without information there will be an increase in stigma, discrimination and people cannot realise their rights.

22. **THAT** from the HIV and TB experience, I also know that without information the resultant stigma will affect uptake of testing services.

23. **THAT** the lack of this information has continued to cause anxiety in the community, people are afraid of going for covid-19 tests fearing that they will be taken to quarantine. Quarantine is now a place that is feared, and no one wants to be associated with it. (Annexed and Marked as **EO-007** are newspaper reports of people avoiding testing services due to fear and lack of information).

24. **THAT** with no information I find it difficult to exercise my right to public participation.

25. **THAT** I feel aggrieved that the government has denied me access to information that is important in protecting my other rights in the community.

26. **THAT** what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Kisumu this 18th day of June. 2020.

ERICK OKIOMA) ____________

) Deponent

)

BEFORE ME)

COMMISSIONER FOR OATHS)

CHARLES .O. ONYANGO
Advocate
and
Commissioner
for Oaths
P.O. Box 2076-40100, KISUMU

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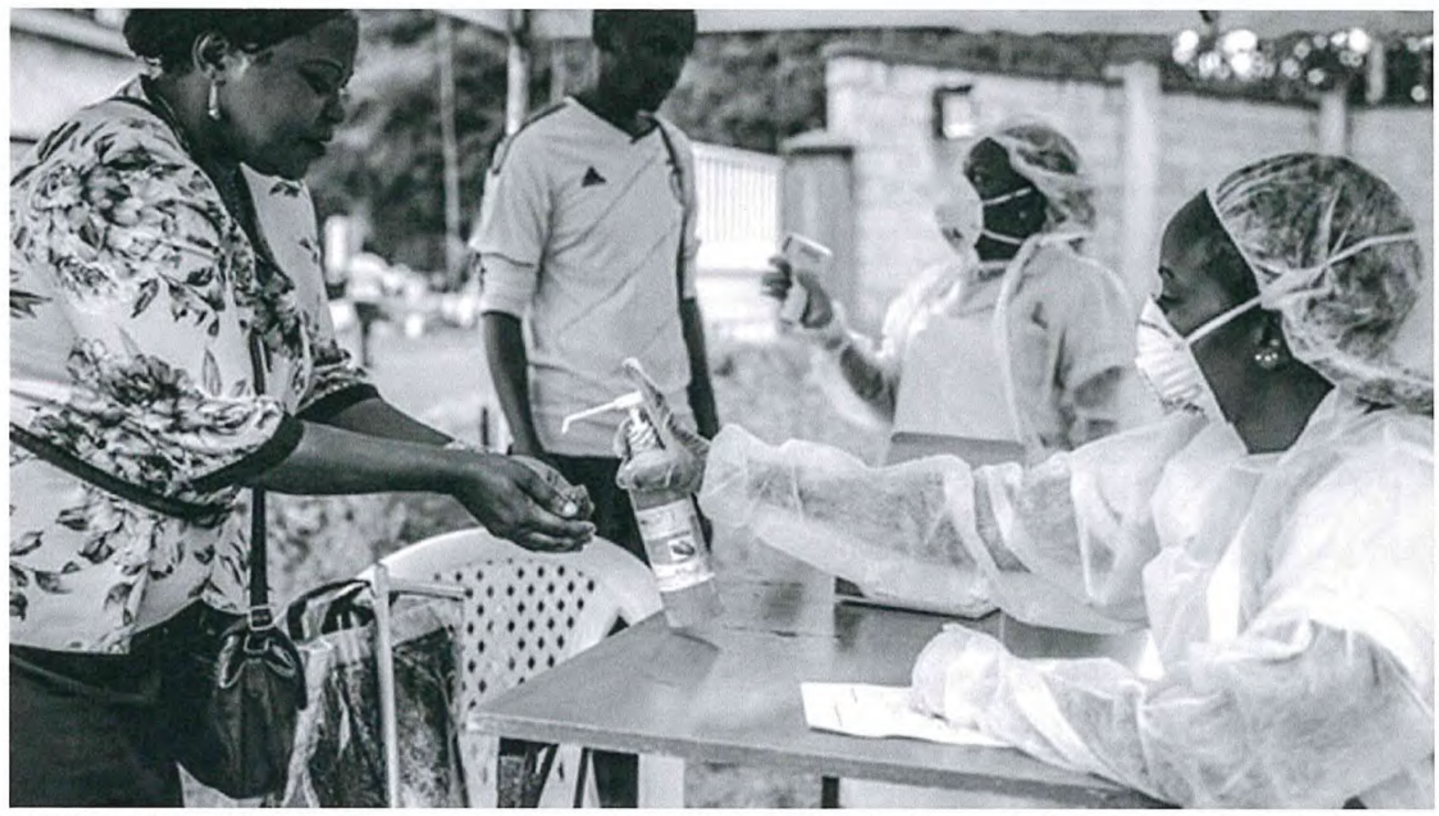
Health workers' nightmare in bid to tame virus



Health workers disinfect and screen visitors at Mbagathi Hospital, Nairobi, to reduce coronavirus spread, on March 18, 2020. PHOTO | LUIS TATO | AFP

Summary

- At least 14 health workers in a city hospital are currently under quarantine after coming into contact with a Covid-19 patient.
- Patients seeking health services have repeatedly been advised not to leave out any essential information while giving details of their symptoms.

ADVERTISEMENT

This is Exhibit marked "EO – 007" referred to in the Annexed affidavit/Declaration of Erick Okioma Sworn/Declared before me on this 18th day of June 2020 at Kisumu in the Republic of Kenya Commissioner for Oaths

By ANGELA OKETCH
More by this Author

If you're finding it hard to stay at home to shield yourself from coronavirus, imagine how it would feel to be a doctor or nurse who does not have that luxury.

The health workers have to expose themselves to the risk by taking care of unnoticed coronavirus patients, while some are staying away from their families to avoid transmitting the virus to them.

THOUSANDS INFECTED

Her concern is mirrored by dozens of healthcare workers globally, who are the first points of contact, but have to attend to patients without protective gear.

Some patients are asymptomatic, which means they have the virus but don't have the symptoms.

While interacting with frontline healthcare workers before a diagnosis is made, the patient can infect them, and hence the need to take the necessary precautions to avoid cross infections.

A March 21 editorial in *The Lancet* clearly illustrates the danger, noting that 3,300 healthcare workers were infected with the Covid-19 virus in China by early March.

At least 22 died by the end of February. The virus has also affected healthcare workers in the United States.

The Kenyan health workers join a growing chorus of their American counterparts, who say they're battling the virus with far too little armour as shortages force them to reuse personal protective equipment.

At least 14 health workers in a city hospital are currently under quarantine after coming into contact with a Covid-19 patient, who did not disclose his travel history while being triaged.

FULL DISCLOSURE

The team of three doctors and 11 nurses working at the city hospital were forced to go into quarantine after attending to a 66-year-old patient.

"We do confirm that a number of our healthcare workers were exposed to a Covid-19 case by virtue of non-disclosure by the patient on their travel history. The types of exposure were classified into whether there were high risk or low risk exposure," said a hospital official.

healthcare workers," Mr Opetu said.

He said if such measures are not adhered to, then the government should be ready to quarantine more health workers as witnessed in other countries.

Mr Panyako said Section 13 of the 2007 Occupation Health and Safety Act requires an employer to provide equipment and maintain a clean working environment for employees.

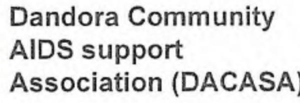
LAXITY

If this is not done, he said, Section 14 gives the employee the right to abscond duty when they know that their life is at risk.

"If this virus starts hitting us hard, understaffed hospitals are going to witness an overwhelming number of patients, extremely long hours for medical staff and shortage of protective gear, leaving our nurses underprotected, overworked, and increasingly vulnerable," he warned.

"I've advised my people that they should only attend to patients when they are protected. If the government does not provide the equipment required, I don't see why our nurses should put their lives at risk."

Similarly, several doctors have taken to social media to express their worry at the perceived laxity of the Ministry of Health in taking charge of the situation and coordinating response between counties and the national government.



Your REF: TBA **Our REF: C/KELIN/2020** **Date: 17/April/2020**

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON PROVISION OF SUPPORT TO HEALTH CARE WORKERS IN THE COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We are also Kenyan citizens concerned about the state of preparedness of health facilities to deal with COVID-19, given that any of us is likely to use them. The information we seek in this letter is therefore critical to safeguard our rights including right to life, and right to health.

We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" that remains unanswered.

In the previous advisory, we noted the need to support health care workers during this pandemic period through provision of adequate training, and ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks.

We write this urgent request for information letter in light of concerns that health care workers continue to raise as regards to their occupational safety and health risks. We note that it is imperative that the plight of health care workers is urgently, adequately and conclusively addressed given that they have placed themselves and their families at risk to secure the health of this nation.

In our previous advisory, we urged the Ministry of Health to guarantee the safety and well-being of health care workers by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic.

This is Exhibit marked "ED-002"
referred to in the Annexed affidavit/Declaration
Brick Okwiri
Sworn/Declared before me on this 1st
day of June 2020
at Kisumu in the Republic of Kenya
Commissioner for Oaths

- Ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks through provision of quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and running water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimizing occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Additionally, we proposed that the government ensures this information is available to the public through a live dashboard that is updated on a regular basis with the following information on inputs and processes:

- Number of health care workers trained in every county and in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on trainings provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

However, we take note of the fact that to date there are still complaints and concerns on the protection of health care workers in this pandemic. For instance, the Health Unions (Kenya National Union of Nurses, Kenya Union Clinical Officers and Kenya Medical Practitioners Pharmacist and Dentist Union) have recently done a survey and noted that most of their members in county governments and Ministry of Health have not been adequately trained and or prepared to handle the Corona Virus pandemic.

They have also reported that provision of personal protective equipment (PPE) remains a challenge at health facilities in most counties. The Kenya Medical Practitioners Pharmacists and Dentists' Union in its weekly brief dated 13th April, 2020 called for:

- The need to provide adequate PPEs for all personnel in the hospital including N95 masks, face shields, goggles, scrubs and gowns;
- Designation of specific COVID-19 testing centers for health care workers;
- Provision of catering services to healthcare workers;

- Provision of transport for all health care workers handling COVID-19 patients to and from the hospital to their accommodation facilities;
- Increase in the number of health care personnel;
- Provision of accommodation to health workers on duty during the pandemic (especially those in health facilities treating suspected and confirmed COVID-19 patients.

The government has a Constitutional and legal obligation to ensure every person enjoys their right to the highest attainable standard of health. This obligation cannot be achieved without health care workers. We therefore urge the government in fulfilment of its legal obligations and in line with the World Health Organization guidelines to (among others):

- Ensure that all necessary preventive and protective measures are taken to minimize occupational safety and health risks;
- Provide information, instruction, and training on occupational safety and health, including; refresher training on infection prevention and control (IPC); use, putting on, taking off and disposal of personal protective equipment (PPE);
- Provide adequate IPC and PPE supplies (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) in sufficient quantity to those caring for suspected or confirmed COVID-19 patients, such that workers do not incur expenses for occupational safety and health requirements;
- Familiarize personnel with technical updates on COVID-19 and provide appropriate tools to assess, triage, test, and treat patients, and to share IPC information with patients and the public;
- Provide appropriate security measures as needed for personal safety;

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Number health care workers trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
(ii) Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.
(iii) Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.
(iv) Number of health care workers tested for COVID-19.
(v) Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Signed by the following individuals:

1. Allan Maleche
2. Becky Odhiambo Mududa
3. Bradley Njukia
4. Caroline Oyumbo
5. Cecilia Mumbi
6. Erick Okioma
7. Fenwick Oyumbo
8. Houghton Irungu
9. Mary Ger
10. Nelson Silas
11. Patricia Osero
12. Peter Owiti
13. Samson Onditi
14. Sheila Masinde
15. Steve Anguva

Endorsed by:

1. Amnesty International
2. Boda Boda Association of Kenya
3. COFAS
4. Dandora Community AIDS Support Association (DACASA)
5. EMAC Kenya
6. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
7. Happy Life Development
8. HERAF
9. ICJ – Kenyan Section
10. Kenya Sex Workers Alliance (KESWA)
11. Mumbo International
12. Nelson Mandela TB-HIV Resource Centre Nyalenda
13. Nyarwek Network
14. Transparency International
15. WOYDEP (Wote Youth Development Projects)

cc:

1. Kenya Medical Practitioners Pharmacist and Dentist Union
2. Kenya National Union of Nurses
3. Kenya Union Clinical Officers
4. Association of Public Health Professionals Kenya (APHOK)
5. Kenya Medical Association (KMA)
6. Chairperson, Council of Governors
7. Kenya National Commission on Human Rights
8. Commission on Administrative Justice

EACHRights
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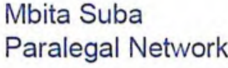

Your REF: TBA **Our REF:** **Date: 22 April, 2020**

This is Exhibit marked "FO-003" referred to in the Annexed affidavit/Declaration of ... Sworn/Declared before me on this ... day of June 2020 at Kisumu in the Republic of Kenya
Commissioner for Oaths

Advance copy via email

Dr. F.M Siyoi
Chief Executive Officer,
Pharmacy & Poisons Board
P.O. Box 27663 – 00506, Nairobi.
Lenana Road Opp. DOD
Email: info@pharmacyboardkenya.org

Dear Sir,

RE: REQUEST FOR INFORMATION ON IMPORT AND DISTRIBUTION OF PERSONAL PROTECTIVE EQUIPMENT

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We make this request for information in the spirit of ensuring transparency and accountability in the procurement of life-saving medicines and other medical supplies. The information is also necessary to protect us against price gouging of drugs, and other goods and services required to protect citizens and health workers from COVID-19 infection (such as hand sanitizers, masks, gloves). The information we seek will also enable the public to know the state of preparedness to curb the spread of COVID-19.

Our letter is informed by the fact that the Pharmacy and Poisons Board has the mandate to implement the appropriate regulatory measures to achieve the highest standards of safety,

efficacy and quality for all drugs, chemical substances and medical devices, locally manufactured, imported, exported, distributed, sold, or used, to ensure the protection of the consumer as envisaged by the laws regulating drugs in force in Kenya.

The COVID-19 pandemic has created the need to ensure urgent availability of medical devices, for instance, personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) among others.

We therefore request that the Board provides us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Which distributors have been licensed to import PPE?
(ii) What are the procedures or processes of seeking the import license?
(iii) How long does the process take?
(iv) How much does it cost to get the license?
(v) Which department of the board is responsible for issuance of the license?
(vi) From which countries are the PPEs being imported from? And what are the main ports of entry?
(vii) How many local suppliers and manufacturers are involved in the process?
(viii) What are the procedures or processes of certifying local manufacturers of PPEs? And is this done in collaboration with KEBS?
(ix) How has the Pharmacy and Poisons Board adjusted its processes to support accelerated importation and distribution of PPE?
(x) Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPEs locally manufactured or imported? Where can this information be obtained?
(xi) Has the board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/ local PPEs to users in Kenya?

We look forward to your urgent response in not later than five days to inform our next course of action.

Signed by:

1. Becky Odhiambo Mududa on my own behalf and on behalf of Nyarwek Network.
2. Brezhnev Otieno on my own behalf and on behalf Amnesty International Kenya.
3. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba Paralegal Network.
4. Cecilia Mumbi Mugo on my own behalf and on behalf International Commission of Jurists (ICJ-Kenyan Section).

5. Chris Owalla on my own behalf and on behalf of Community Initiative Action Group Kenya.
6. Christine Ajulu on my own behalf and on behalf of Health Rights Advocacy Forum (HERAF)
7. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
8. Fenwick M Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K).
9. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
10. Linda Noah on my own behalf and on behalf of The East African Centre for Human Rights (EACHRights).
11. Naitore Nyamu
12. Nancy Githogori
13. Mary Ger on my own Behalf and on behalf of Mumbo International.
14. Mercy Onsando on my behalf and on behalf of HENNET.
15. Peter Owiti on my behalf and on behalf Wote Youth Development Projects.
16. Samson Onditi on my behalf and on behalf Happy Life for Development CBO.
17. Sheila Masinde on my own behalf and on behalf of Transparency International.

Endorsed by:

1. Amnesty International Kenya.
2. Boda Boda Association of Kenya (BAK)
3. Community Initiative Action Group Kenya. (CIAG-K)
4. Community Forum For Advanced and Sustainable Development (COFAS)
5. East African Centre for Human Rights (EACHRights).
6. Happy Life for Development CBO.
7. Health NGOs Network (HENNET)
8. Health Rights Advocacy Forum (HERAF)
9. International Commission of Jurists (ICJ-Kenyan Section).
10. Kenya Legal and Ethical Issues Network on HIV & TB (KELIN).
11. Mbita Suba Paralegal Network
12. Mumbo International
13. National Association of Clinical Officer Anaesthetists - Kenya (NACOA- K).
14. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
15. NYARWEK Network
16. Pamoja TB Group
17. Shape Kenya
18. Transparency International Kenya
19. Wote Youth Development Projects

cc:

1. Dr. Samuel Oroko
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2. Alfred Obengo
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   Nairobi, Kenya
   Email: info@nnak.or.ke

3. Peterson Wachira
   National Chairman, Kenya Union Clinical of Officers

4. Cheboi Kore Mathew
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5. Dr. Elizabeth Gitau Maina
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6. Hon. Wycliffe Ambetsa Oparanya,
   Chairperson, Council of Governors
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   P.O Box 40401 - 00100
   Nairobi, Kenya
   Email: info@cog.go.ke

7. Hon. Florence Kajuju
   Chairperson, Commission on Administrative Justice
   Commission on Administrative Justice
   Email: info@ombudsman.go.ke

MINISTRY OF HEALTH
PHARMACY AND POISONS BOARD

Telegram: "MINHEALTH" Nairobi
Telephone: 020-2716905/6, 020-3562107
Cellphone: 0733-884411/0720 608811
Fax: 2713409
Email: admin@pharmacyboardkenya.org
Website: www.pharmacyboardkenya.org

Pharmacy & Poisons Board Hse
Along Lenana Road
P. O. Box 27663-00506
NAIROBI

When replying please quote our ref No:

This is Exhibit marked "EO-004"
referred to in the Annexed affidavit/Declaration
of Erick Otieno
Sworn/Declared before me on this 18th
day of June 2020
at Kisumu in the Republic of Kenya
Commissioner for Oaths

PPB/REG/GEN/VOL.III/019/20 5th May, 2020

Sheila Masinde,
Ag. Executive Director,
Transparency International, Kenya

Dear Madam,

RE: REQUEST FOR INFORMATION ON IMPORT AND DISTRIBUTION OF PERSONAL PROTECTIVE EQUIPMENT

We acknowledge receipt of your letter dated 21st April, 2020 whose contents are duly noted.

The Board, in implementing its mandate seeks to ensure the availability of information to ensure protection of the public. This information is published on the organizations website that can be access via www.pharmacyboardkenya.org. Nevertheless, we wish to respond to your specific queries as follows:

1. Which distributors have been licensed to import PPE?
   The information requested is captured under the column of Local Technical Representatives under the Medical Device Reports that can be accessed via:
   https://products.pharmacyboardkenya.org/ppb_admin/pages/system_reports_public.php

2. What are the procedures or processes of seeking the import license?
   The Board, works in collaboration with the Kenya Trade Network Agency (KenTrade) in ensuring expeditious access of health products imported into the country. These procedures are captured under the trade facilitation platform implemented by the KenTrade under the supervision of the National Trade Facilitation Committee, which may be accessed via:

https://infotradekenya.go.ke/objective/search?l=en&embed=&include Search=true&filter_tab=1&flt_2=10&flt_9=231

3. How long does the process take?
   Currently, in view of the pandemic, the Board is implementing an expedited review procedure that takes 24 hours for one to obtain an import permit assuming the product is registered or listed. Products not registered or listed an additional seven (7) days for Emergency Use Marketing Authorization process to take effect. This is captured under the processes indicated above.

4. How much does it cost to get the license?
   For Emergency Use Marketing Authorization, the following fees shall apply:
   a. Locally manufactured products – Kshs. 5000
   b. Foreign – Class A – USD 100, B – USD 200, C& D- USD 1000

   Fee for import permit is 0.75% FOB, applicable to all classes.

5. Which department of the Board is responsible for issuance of the licenses?
   The Department of Health Products and Health technologies is responsible for vetting the applications for licenses.

6. From which Countries are the PPE being imported from? and what are the main ports of entry?
   Majorly India, China, UAE, Turkey, USA and Europe. The main port of entry is JKIA and ICD.

7. How many local suppliers and manufacturers are involved in the process?
   This information is found here:
   https://products.pharmacyboardkenya.org/ppb_admin/pages/system_reports_public.php

8. What are the procedures or processes of certifying local manufacturers of PPE? and is this done in collaboration with KEBS?
   - In view of the ongoing pandemic caused by COVID-19, the Ministry of Health recommended the use of alcohol-based hand sanitizers whenever water and soap are not available. To ensure access to quality, safe and effective hand sanitizers, the Pharmacy and Poisons Board (the Board), under the Ministry of Health, continues to provide timely and appropriate guidance for manufacturing of the

PPE to ensure they are compliant with applicable WHO guidance and to local as well as international standards. Since there is a direct claim or implication that alcohol-based hand sanitizer products can be used to prevent infections associated with pathogens like corona virus, they are considered to be borderline health products under the Pharmacy and Poisons Act, Cap 244 of the Laws of Kenya.

- The Board encourages **eligible local pharmaceutical companies licensed to manufacture** and market topical products to manufacture quality-assured alcohol-based hand sanitizers at an affordable cost for consumers use and for use by health care personnel. These Pharmaceutical Manufacturers are encouraged to utilize their established pharmaceutical quality management system, practical experience in manufacturing and supply chain to avail the products for consumer use during this pandemic.
- In response to unmet demand for alcohol-based hand sanitizer products entities that are not currently licensed and regulated as pharmaceutical manufacturers are now involved in manufacturing of alcohol-based hand sanitizers. These unlicensed manufacturers provided with simple, easy-to-follow guidance on the preparation, quality control, packaging, labelling and release of alcohol-based hand sanitizer products. These documents are publicly and freely accessible on www.pharmacyboardkenya.org.
- Further, the Board has published specifications for PPE and continues to provide technical support to local manufacturers who intend to manufacture the same. This is available on https://pharmacyboardkenya.org/covid19-material
- All manufacturers are urged to ensure that the formulation and production of alcohol-based hand sanitizers are in compliance with international and local standards.
- Products manufactured by establishments that are currently not licensed by PPB are similarly expected to comply at least with the KEBS standards.
- Licensed Distributers are required similarly to stock and offer for sale only quality-assured hand sanitizers from licensed manufacturers or the temporarily authorized manufacturers complying with international and local standards.
- For the avoidance of doubt, PPE include, but are not limited to, masks, gowns, aprons, goggles among others.
- KEBS is a standard setting body that sets standards in line with the Standards Act while PPB enforces the set standards alongside international standards.

9. How has the Pharmacy and Poison's Board adjusted its processes to support accelerated importation and distribution of PPE?
   The Board has adjusted its processes by implementing expedited processes with significantly reduced timelines. Documents are on the website.

10. Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPE's locally manufactured or imported? Where can this information be obtained?
    The Board continues to generate its internal periodic performance reports and stakeholders continue to be updated on any regulatory changes. Details of PPB's efforts in COVID 19 can be found on the site at:https://pharmacyboardkenya.org/covid19-materialincluding guidelines for PPE's.

11. Has the Board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/local PPE's to users in Kenya?

    The Board continues to ensure adequate pharmacovigilance of health products and technologies in line with the guidelines available on https://pharmacyboardkenya.org/pharmacovigilance. The reporting is done via https://pv.pharmacyboardkenya.org.

Yours faithfully,

Dr. F. M. Siyoi
CHIEF EXECUTIVE OFFICER

AK/na

This is Exhibit marked "EO-005" referred to in the Annexed affidavit/Declaration of Enock Okumu Sworn/Declared before me on this 18th day of June 2020 at Kisumu in the Republic of Kenya

Commissioner for Oaths

BREAKING NEWS!

FOUR STATE HOUSE STAFFERS TEST POSITIVE FOR COVID-19

Four State House staffers test positive for Covid-19

READ FULL STORY

Health CAS: Breaking curfew rules will land you in quarantine

By JAEL MBOGA | April 19th 2020 at 18:53:18 GMT +0300

Nairobi's densely populated Eastleigh estate residents mill around closed shops after the business community closed earlier before the curfew hours. [Elvis Ogina, Standard]

Breaking curfew rules may land one in a quarantine facility, the Health CAS has said.

Speaking at a press briefing in Nairobi on Sunday, Dr Mercy Mwangangi said all those who break the curfew rules will be assumed to have been in contact with suspected cases.

They will be held in quarantine for 14 days.

Further, the government has set out to screen truck drivers entering and operating in Kenya.

This will be done at roadblocks by a combined team of health and security personnel.

Mwangangi echoed Health CS Mutahi Kagwe, who said citizen responsibility is key in beating coronavirus.

The two have criticised Kenyans who mock the directives or ignore them.

Some of the rules include PSVs carrying at half capacity, social distancing, handwashing stations set up in public areas and wearing face masks.

But the CAS said many are especially not taking the face mask rule seriously.

"We have received disturbing news that some unscrupulous persons are recycling face masks, after collecting them from bins and selling them to unsuspecting Kenyans."

The CAS said such people will be arrested and punished.

"Together with the awareness that we are enhancing on disposal of facemasks, we will crack the whip on anyone found endangering the lives of fellow Kenyans for selfish gain."

Mwangangi called on the police, Kenya Bureau of Standards, National Environment and Management Authority (NEMA) and other government agencies to close in on such characters.

Another phenomenon is people assuming face masks alone can beat the virus.

The CAS criticised a situation in Baringo on Saturday where elected leaders led a mass demonstration in Kabarnet town, thus endangering the health of the locals.

"What we saw in Baringo must be condemned in the strongest of terms. All gatherings, including political, or religious groupings, remain banned."

Obeying curfew orders

Mwangangi added that there are people presenting letters of authority to move out of restricted areas.

The cessation of movement order is in effect in Mombasa, Kilifi, Kwale and the Nairobi metropolitan area.

Mwangangi said nobody has the authority to clear any person to move out of the listed areas.

The dusk-to-dawn curfew still applies across the country.

Some wines and spirits outlets have been converted into drinking joints, a situation the CAs says may lead to the businesses being closed down.

"These facilities are licensed as take-aways only. Any one found drinking at a Wines and Spirits shop will be arrested."

HEALTH & SCIENCE
Mwangangi echoed Health CS Mutahi Kagwe, who said citizen responsibility is key in beating coronavirus.

Related Topics

coronavirus | quarantine | Health CAS

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Standard Team

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Nderitu Gichure

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Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

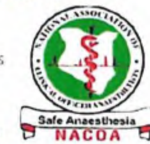
CIAG-KENYA
Community Initiative Action Group

Good Health Community Programme

Dandora Community AIDS support Association (DACASA)

ICHR

Mbita Suba Paralegal Network



Next Generation of Kenya Lawyers Project

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SHAPE Kenya

The Eagles for Life (TEFL)

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Chairperson, National Emergency Response
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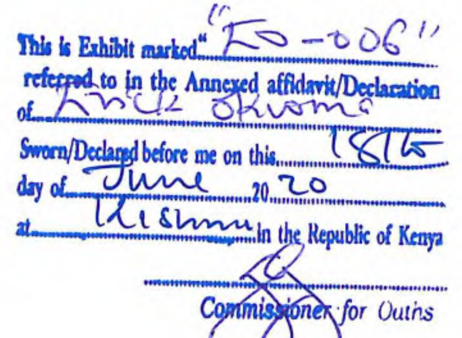
This is Exhibit marked "EO-006"
referred to in the Annexed affidavit/Declaration
of [illegible]
Sworn/Declared before me on this 18th
day of June 20 20
at Kisumu in the Republic of Kenya
Commissioner for Oaths

Paul Kihara Kariuki,
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Mr. Maina Njoroge,
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Dr Rudi Eggers,
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Email: afkenwr@who.int

The Chairman,
Council of Governors,
Delta Corner, 2nd floor,
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P.O Box 40401-00100,
NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:
   a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;
   b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.

2. The Ministry of Health to provide us with information on the following:
   a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;
   b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;
   c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:
   a. Information on the criteria that was used to select hotels and facilities as quarantine centers.
   b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.
   c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.
   d. The approved standard operating procedures of the quarantine facilities.
   e. The designated medical personnel responsible for oversight at each quarantine center.

4. The **Council of Governors and all the 47 Governors** urgently share information on:
   a. The number of people currently in quarantine in each of their respective counties.
   b. The number of people who have been tested in the various quarantine facilities in the counties.
   c. The testing schedule of the people in county quarantine.
   d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.
   e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:

a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –

i. what training these officers have been given to undertake the role of medical experts;

ii. what infection prevention and control protocols they follow; and

iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Commission of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo
27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

cc:

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UN Resident Coordinator in Kenya
Email: siddharth.chatterjee@one.un.org

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Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice
chair@ombudsman.go.ke

The Chairperson
Senate Ad Hoc Committee on COVID-19
covid19@parliament.go.ke

The Chairperson
National Assembly Health Committee
clerk@parliament.go.ke

NEWS / KENYA

Stigma, fears of quarantine hinder Kenya's COVID-19 fight

COVID-19 testing ramps up across worst-affected parts of Kenya, but many are worried they will be forced into quarantine.

by **Catherine Soi**

15 May 2020

Mass testing for the novel coronavirus is under way in the worst affected areas of Kenya.

But many are reluctant to be checked, for fear of being forced into quarantine.

There is also a stigma attached to the virus and the disease it causes, known as COVID-19.

Al Jazeera's Catherine Soi reports from the capital Nairobi.

SOURCE: **AL JAZEERA NEWS**

This is Exhibit marked "EO-007" referred to in the Annexed affidavit/Declaration of [handwritten] Sworn/Declared before me on this 18th day of June 2020 at Kisumu in the Republic of Kenya

Commissioner for Oaths

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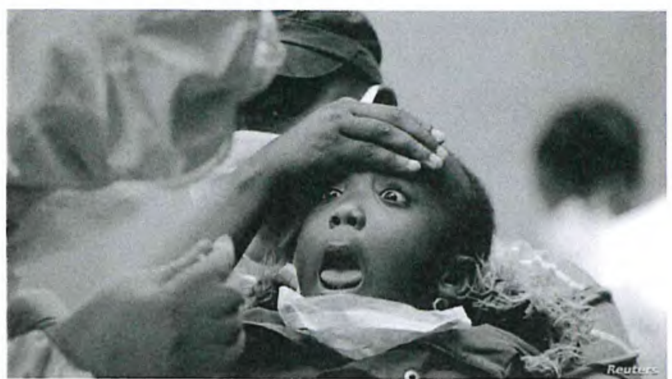
COVID-19 Pandemic

Low Turnout as Kenya Offers Free Testing in Feared Coronavirus Hotspots

By Rael Ombuor
May 04, 2020 05:16 PM



- **First Widespread US COVID-19 Vaccine Tests Set for July**
- **Britain Faces Grim Coronavirus Forecast**
- **UN Agencies Warn COVID-19 Could Plunge Millions of Children into Forced Labor**

NAIROBI - Kenya is offering free testing for the coronavirus in densely populated, high-risk areas of Nairobi but the Ministry of Health says that so far, it's been a low turnout. The testing, which kicked off Friday and continues this week, has uncovered dozens of new positive cases.

On Monday morning, 25-year-old Martin Wakwayika was one of the hundreds in Eastleigh, a neighborhood in Nairobi's central business district, who turned up at a temporary Ministry of Health stand to get tested for the coronavirus.

Having recorded more than 50 coronavirus cases, Eastleigh is one of the most densely populated neighborhoods in Nairobi that Kenya's Ministry of Health warned might be a coronavirus hotspot.

A patient sits in a ward for those who have tested positive for the new coronavirus, at the infectious disease unit of Kenyatta National Hospital, in Nairobi, Kenya, May 1, 2020.

Mwana said she cannot risk exposing her kids to quarantine if she was to test positive.

She hopes if she has the virus, it may pass as a flu without her noticing.

But thinking like that will allow the virus to spread, said ministry official Rashid Aman at a news conference Sunday.

"The outcome of the testing so far has shown a low turnout in some of these areas. In the last two days, the testing teams have tested 803 against a target of 2,000 in Kawangware, 494 in Eastleigh against a target of 3,000. I want to remind Kenyans that there are countries that people beg to be tested yet their governments are unable to do so. As of now the Ministry of Health has acquired the testing capacity to undertake targeted testing, but the willingness of the people to be tested is low," he said.

Part of the problem may be that those who are found positive are charged for the tests, and have to send two weeks in quarantine at a government facility.

The cost of quarantine, which is also charged to the patient, is $20 per day, much more than the daily wage of most people in the slum areas where the mass tests are being conducted.

In an effort to encouraging more testing, the Ministry of Health on Monday said the government will cover the fees of patients who show they cannot afford the cost.

On Monday, Kenya recorded 25 new cases of the coronavirus, raising the number of confirmed cases in the country to 490.

RELATED STORIES

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA..2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM..4TH PETITIONER

FA...5TH PETITIONER

KB..6TH PETITIONER

MO ....7TH PETITIONER

EL...8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN)....................................... ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH... 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY..3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT...5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS...7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE..8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

ESTHER NELIMA AFFIDAVIT IN SUPPORT OF PETITION

I, Esther Nelima, of Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am a female adult of sound mind, the 2nd petitioner in this case and competent to swear this affidavit.
2. **THAT** I am a resident of Mombasa County. I work as a community health advocate with a community-based organisation called Coast Advocacy Network. My work entails sensitizing the community on issues around HIV, TB and sexual and reproductive health and rights. I also document and report to various authorities any health rights violations brought to my attention from the community.
3. **THAT** the reporting of the first case of the coronavirus disease ("COVID-19") in Kenya introduced a new public health challenge. As a community health advocate I embarked on sensitizing the community generally of the existence of this disease and also sharing information that was available on preventive measures, for instance, washing hands and maintaining physical distancing.
4. **THAT** I sometimes had challenges engaging with people in the community due to limited information being shared by the government about coronavirus disease. At first, I thought that this was because the disease being new, measures were still being put in place to ensure we access all information we needed as people in the community.
5. **THAT** however, it became increasingly frustrating when the government introduced and enforced measures, that it said were aimed at controlling spread of COVID-19, without providing sufficient information.
6. **THAT** for instance, when the government announced a nationwide curfew to take effect on 27th March 2020, I had questions on what would happen if one fell sick or needed medical attention during curfew hours.

7. **THAT** I was apprehensive on how people will access health facilities during the curfew hours.

8. **THAT** my worst fears about the curfew were confirmed when on the night of 27th March 2020, the first day of the curfew, police brutalised people who were found outside during curfew hours.

   (Annexed and Marked as EN-001 are copies of newspaper reports on police brutality in enforcing the curfew in Mombasa).

9. **THAT** I am aware that the police continue to beat people, arrest indiscriminately, harass, extort and brutalise people found outside during curfew hours. I personally dread being outside at 7.01 pm even to seek medical services for fear of police brutality.

10. **THAT** the enforcement of the curfew has now made a lot of people in my community including pregnant women fear accessing health services during curfew hours, even when in dire need.

11. **THAT** further, I had similar fears when the president announced movement restrictions into and out of Mombasa from 6 April 2020. I was concerned about those people who reside in the counties of Kwale and Kilifi who were previously accessing health services in Mombasa County.

12. **THAT** I work with people from across the counties of Mombasa, Kilifi and Kwale who have called expressing challenges in accessing health services. I did not know how they could continue accessing services across counties and no information had been shared on cross 'county' movement or any procedure to be followed. I am aware of people with underlying health conditions in the counties of Kwale and Kilifi who cannot access health services in Mombasa due to lack of this information.

13. **THAT** I have had so many questions and concerns on access to health services in the community. When COVID-19 was first announced in Kenya, I did not have any information if there were any designated health services for treatment and isolation of COVID-19.

14. **THAT** I did not have information about whether other public health facilities would continue with normal operations and provide the routine health services.

15. **THAT** I am aware of women in my community who stopped going to health facilities for antenatal care, postnatal care, family planning, or taking their children for vaccinations.

16. **THAT** people have reached out to me expressing confusion on whether health facilities were open to the general public, or if they were waiting for only COVID-19 patients. There has been no clear information on this.

17. **THAT** I did not have information on the level of preparedness within my community to deal with COVID-19. I did not know whether:

    a. health care workers in health facilities within my community had been trained;

    b. whether they had adequate personal protective equipment;

    c. whether there were designated facilities for COVID-19 treatment;

    d. whether a designated health facility could admit other patients other than those with COVID-19.

18. **THAT** without this information, I developed a phobia of health facilities, concerns which were also shared with me by other people in the community. I did not know if I would be safe if I visited a health facility or if I would be exposed to COVID-19 at the facility.

19. **THAT** I also became increasingly concerned on how mandatory quarantine was being implemented. To begin with, I had no information on which were the quarantine facilities in Mombasa County; who pays costs of quarantine; at what point is one taken to quarantine; and what to expect in the quarantine facility.

20. **THAT** I further became increasingly concerned when I started receiving reports that the police were taking people they arrest to quarantine facilities.

    (Annexed and Marked as EO-002 are newspaper reports of the police arrests in Mombasa county).

21. **THAT** it is based on the foregoing that together with 27 other individuals and 27 organisations, I wrote a request for information letter to the respondents requesting for the following information:

    (i) Whether the Ministry of Health supports the use of quarantine facilities as punitive measures in the COVID-19 response;

(ii) the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;

(iii) what actions, if any, the Ministry of Health was undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

(iv) The Kenya Medical Practitioners and Dentists Council to provide a list of all places certified as quarantines facilities both at the national and county level; the approved standard operating procedures of the quarantine facilities. And the designated medical personnel responsible for oversight at each quarantine center.

(Annexed and Marked EN-03 is a copy of the request for information letter on use of quarantine as a form of punishment dated 27 April 2020).

22. **THAT** the respondents have not answered the request for information letter.

23. **THAT** as a result, I do not have a true picture of the level of preparedness in our community health facilities, and this is causing me and people in my community a lot of unease.

24. **THAT** access to health services is still a challenge, and women are the most affected group **(Annexed and Marked as EN-04** are newspaper reports highlighting challenges in access to health services).

25. **THAT** I am concerned that I cannot access information that is important for me to access health services and secure my right to health.

26. **THAT** the actions of the respondents of denying the community crucial information on COVID-19 preparedness has diminished the level of trust between the community and the government. I do not trust the routine daily press briefings that only communicates numbers and does not answer concerns that we have at the community.

27. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN by the said	)	
ESTHER NELIMA	)	
	)	
at MOMBASA this 18th day	)	**DEPONENT**
of June 2020	)	
	)	
BEFORE ME:	)	
JACQUELINE WAIHENYA	)	
Advocate of the High Court of Kenya	)	
Notary Public & Commissioner for Oaths	)	
P/105/3896/98	)	
PC No: LSK/2020/05273	)	
COMMISSIONER FOR OATHS	)	

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April 22, 2020 1:00AM EDT

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Kenya: Police Brutality During Curfew

Several dead, Others with Life-Threatening Injuries

Kenyan police hold back ferry passengers causing a crowd to form outside the ferry in Mombasa, Kenya on Friday, March 27, 2020. © 2020 AP Photo

(Nairobi) – At least six people died from police violence during the first 10 days of Kenya's dusk-to-dawn

This is Exhibit marked "EN-001"
referred to in the Annexed affidavit/Declaration
of ESTHER NELIMA
Sworn/Declared before me on this 18th
day of June 2020
at Kisumu in the Republic of Kenya
Commissioner for Oaths

from residents or looted food in locations across the country. On March 30, following criticism from various groups over abuses in Mombasa, including by Human Rights Watch, President Uhuru Kenyatta apologized generally about police use of force, but did not instruct the police to end the abuses.

"It is shocking that people are losing their lives and livelihoods while supposedly being protected from infection," said Otsieno Namwaya, senior Africa researcher at Human Rights Watch. "Police brutality isn't just unlawful; it is also counterproductive in fighting the spread of the virus."

Between March 29 and April 14, Human Rights Watch conducted phone interviews with 26 witnesses, relatives, and victims of abuses related to the curfew in Nairobi, Mombasa, Kwale, Busia, Kakamega, Mandera, and Homa Bay counties, revealing severe police abuses in these communities.

On March 25, President Kenyatta announced a government plan for a nationwide dusk-to-dawn curfew starting March 27. Police appear to have enforced it in a chaotic and violent manner from the start. In downtown Nairobi, police arrested people on streets, whipping, kicking, and herding them together, increasing the risks of spreading the virus. In the Embakasi area of eastern Nairobi, police officers forced a group of people walking home from work to kneel, then whipped and kicked them, witnesses told Human Rights Watch.

In Mombasa, on March 27, more than two hours before curfew took effect, police teargassed crowds lining up to board a ferry back home from work, beating them with batons and gun butts, kicking, slapping, and forcing them to huddle together or lie on top of each other. Video clips on local television stations and social media showed that the police were not wearing masks and other protective gear, which authorities were encouraging everyone to wear and have since made mandatory.

Human Rights Watch heard similar accounts from many parts of the country as police violently enforced the curfew over the following days, shooting, beating, and extorting money from people. The violence killed at least six people.

On March 31, at around midnight in the Kiamaiko neighborhood, in Nairobi's Eastlands area, the police shot live ammunition at Yassin Hussein Moyo, 13, hitting him in the stomach and killing him, witnesses said. His father, Hussein Moyo, told the Kenyan media that his son was standing on the third-floor balcony at midnight alongside his siblings when the bullet struck him.

The Independent Policing Oversight Authority, a civilian police accountability institution, on April 2 said it has started investigating Moyo's killing. However, similar promises in the past have not resulted in

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In Busia and Kakamega counties, in western Kenya, the police have also beaten and shot at people, in many cases outside the hours, resulting in death and serious injury, local residents told Human Rights Watch.

In Kakamega county, at around midday on April 1, police enforcing a ban on the open-air market arrived in trucks at the market in Mumias and began beating, kicking, and shooting at traders. Three traders at the market told Human Rights Watch that Idris Mukolwe, a 45-year-old tomato vendor, died from being hit with a teargas canister police threw at him. One trader said:

> We ran when the police arrived, but they threw teargas at us. One teargas canister hit Mukolwe and exploded in his face. He started suffocating as police laughed at him, and when we went to his aid, police again threw teargas at us, forcing us to flee.

At the same market on March 30, police shot a 24-year-old trader, Grace Muhati, with live ammunition. Fellow traders rushed her to a county referral hospital, where she is recuperating after doctors removed two bullets from her body, a family member said.

Human Rights Watch was able to confirm a second man was beaten to death by police in Kakamega, a third in Homa Bay, western Kenya, and two more in Kwale county, in the coastal region.

Kenyan authorities should urgently investigate instances in which police shot, beat, or abused people, killing or seriously injuring them, and hold those responsible to account, Human Rights Watch said. Under Kenyan and international law, police may only use lethal force when it is strictly necessary to save lives.

Kenya has a long history of police use of excessive force during law enforcement operations, either in informal settlements or in response to demonstrations, often resulting in unnecessary deaths. In February, Human Rights Watch documented eight cases of police killings, six of them during peaceful protests. One was in Majengo against the police killing of a 24-year-old man and another in Kasarani against the poor condition of roads in Nairobi's low-income neighborhoods of Majengo, Kasarani, and Mathare. There was apparently no justification for these killings.

In February 2018, local and international rights organizations, including Human Rights Watch, documented more than 100 cases of police killings of opposition protesters during the 2017 presidential elections. In June 2016, Human Rights Watch found that at least five people died and 60 more were wounded by gunfire in the Nyanza region as police tried to obstruct two protests calling for reform and

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authority. Those responsible for investigations appear to focus only on one or two cases that have elicited public outrage and ignore the rest. The police authorities and the oversight body have a responsibility to ensure that all current and past killings are thoroughly investigated and that all those implicated are held to account in line with Kenyan law, Human Rights Watch said.

"Kenyan authorities should ensure that the police do not use excessive force and that the curfew is carried out legally to benefit Kenyans," Namwaya said. "The Kenyan authorities should follow through on promises to investigate the killings and abuses and hold those responsible to account."

For further details of the abuses Human Rights Watch documented, please see below.

The Curfew Killings/Deaths

Kenya's curfew to curb the spread of Covid-19 went into effect on March 27. Within the first10 days, police used excessive force across the country, causing the deaths of at least six people and leaving many others injured, Human Rights Watch found. The 26 people Human Rights Watch interviewed included victims of police beatings, witnesses, relatives of the victims, including those killed, and activists involved in seeking justice for the victims and their families.

Ferry passengers flee from police firing tear gas, at the ferry in Mombasa, Kenya Friday, March 27, 2020. © 2020 AP Photo

Calvin Omondi, 23, March 27, Homa Bay County, Western region

A witness in Rachuonyo, Homa Bay County, western Kenya, said that Omondi, a motorcycle taxi driver, died on March 29 at Rachuonyo Level Four Hospital in Oyugis from injuries following police beatings on March 27, the first day of the curfew. Relatives said that Omondi was returning to his house at around 7 p.m., the official start of the curfew when a group of officers attacked him at a trading center in Homa Bay, causing him to lose control of his motorcycle. But the area police commander, Esau Ochorokodi, told media that police were not involved in his death and that Omondi lost control of his motorcycle and hit his head on a bridge.

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A relative and two activists said that just before 7 p.m., Juma, a 49-year-old former police officer who is a motorcycle taxi rider, volunteered to take a woman in labor to Mwahima hospital, Kwale county, in the coast region. On his way back to his house in Zibani village in Matuga constituency, relatives said, a group of police officers, stopped him, beating him with rifles and gun butts. A relative, Omar Abdallah Raisi, said that the police first threw teargas at Juma, a father of four, in the middle of the road at Mkunamnazi, Likoni: "He lost control of the motorcycle and fell. Police then just started beating him, leaving him for dead."

Moyo, 13, March 31, Nairobi County

Police shot Yassin, standing on the third floor balcony of a family apartment at night, in the stomach, killing him instantly.

Eric Ng'ethe Waithugi, 23, April 1, Kwale County, Coast region

Two witnesses and one activist said that more than 20 police officers beat Eric Ng'ethe, 23, an accountant at a pub in Ukunda, Kwale county, to death, at around 7 p.m. on April 1. One witness said that Ng'ethe was at work, but that he and other young men locked themselves inside the pub when curfew hours approached. The officers shot teargas into the pub and broke down the door, then beat Ng'ethe and 11 other people inside with wooden clubs. The Msambweni sub county police commander, Nehemiah Bitok, told Kenyan media that Ng'ethe died in a stampede after the people inside allegedly defied police orders to open the pub.

Yusuf Ramadhan Juma, 35, April 1, Kakamega County, Western region

The family of Ramadhan Juma, who had a mental disability, said he left their home on the evening of April 1 and never returned. One family member said they searched for him the next morning and found him in Kakamega County Referral hospital with serious injuries they believed were from beatings during curfew the previous night. Juma died just moments after the family found him. Kakamega central divisional police commander, David Kabena, told the media that the police were not responsible: responsible: "We have heard that the deceased had mental problems," he said. "Maybe he went out there touching other people's property and was beaten by people who didn't know he was sick."

Idris Mukolwe, 45, April 1, Kakamega County, Western region

Relatives and fellow traders at Mumias market told Human Rights Watch on the phone that Mukolwe, a

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Beatings and Extortion by the Police

Human Rights Watch also documented instances of harsh beatings and extortion. Two victims of police beatings said that, on March 28, seven police officers forced their way into a block of six units, including a shop and a pub, in Nairobi's Kayole neighborhood, Matopeni area, dragged the owner of the building, a middle aged disabled man, from his shop, and started beating him and his wife. The victims said that other officers pulled down the building's doors and beat the tenants. One victim said: "They beat us from 8 p.m. up to 10 p.m. and then started taking valuables, mostly electronics, from houses, the pub, and the shop."

In another incident, a middle-aged man from Kipevu, in Mombasa County, said that on April 1 he ran into a group of police officers at about 7 p.m. at a grocery shop not far from his house. He said two of the police officers confronted him and started beating him with black leather whips. "They all started beating me," he said.

> "Some were hitting me with batons, others were just kicking and punching me. I could not tell how many they were. Others were beating other people near me. It was around 7:20 p.m."

Another man, 26, from Mombasa's Mwangulu area in Lungalunga, said that on April 2 police stormed into his compound at around 7:20 p.m. and beat him with whips. He had just stepped out of his house to go to the latrine within his compound when police started beating him, saying he had violated the curfew by being outside at that time. He was injured on his back, hand, and neck.

In Nairobi's Eastleigh neighborhood, a middle-aged businessman said that police beat him, then put him in the trunk of his car, and drove around the neighborhood with him for three hours, releasing him only after he bribed them with Ksh2,000 (approximately US$20).

In Mandera county, in northeastern Kenya, a 35-year-old man said that National Police Reservists officers, a force recruited from local people whom police train to assist them in maintaining law and order in villages across the country, forced their way into his car and started driving him to the police station an hour before the start of the curfew. The officers beat him when he asked why they had arrested him before the curfew. He shared pictures of serious injuries he sustained on legs, hands and back with researchers.

In Busia county, residents said police have been conducting curfew enforcement operations during the day, raiding homes where local alcohol is brewed and sold, and arresting people, whom they later release

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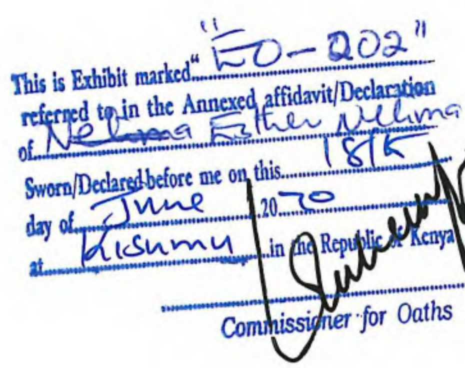
This is Exhibit marked "EO-202" referred to in the Annexed affidavit/Declaration of Nelima Esther Nelima
Sworn/Declared before me on this 18th day of June 2020 at Kisumu in the Republic of Kenya
Commissioner for Oaths

BREAKING NEWS!

FOUR STATE HOUSE STAFFERS TEST POSITIVE FOR COVID-19

Four State House staffers test positive for Covid-19

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Health CAS: Breaking curfew rules will land you in quarantine

By JAEL MBOGA | April 19th 2020 at 18:53:18 GMT +0300

Nairobi's densely populated Eastleigh estate residents mill around closed shops after the business community closed earlier before the curfew hours. [Elvis Ogina, Standard]

Breaking curfew rules may land one in a quarantine facility, the Health CAS has said.

Speaking at a press briefing in Nairobi on Sunday, Dr Mercy Mwangangi said all those who break the curfew rules will be assumed to have been in contact with suspected cases.

Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

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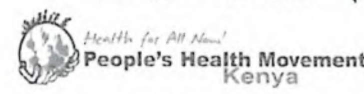

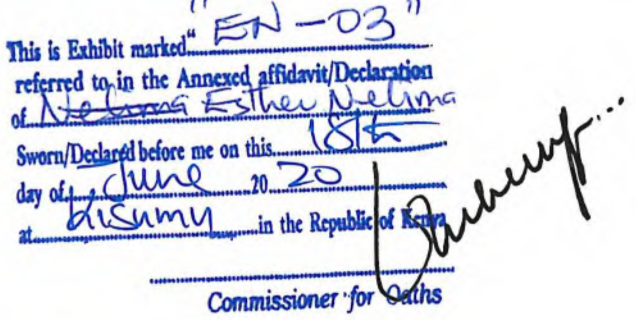

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NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:
   a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;
   b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.

2. The Ministry of Health to provide us with information on the following:
   a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;
   b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;
   c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:
   a. Information on the criteria that was used to select hotels and facilities as quarantine centers.
   b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.
   c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.
   d. The approved standard operating procedures of the quarantine facilities.
   e. The designated medical personnel responsible for oversight at each quarantine center.

4. The **Council of Governors and all the 47 Governors** urgently share information on:
   a. The number of people currently in quarantine in each of their respective counties.
   b. The number of people who have been tested in the various quarantine facilities in the counties.
   c. The testing schedule of the people in county quarantine.
   d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.
   e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:

a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –

i. what training these officers have been given to undertake the role of medical experts;

ii. what infection prevention and control protocols they follow; and

iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Commission of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo

27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

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BREAKING NEWS!

FOUR STATE HOUSE STAFFERS TEST POSITIVE FOR COVID-19

Four State House staffers test positive for Covid-19

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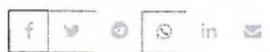

Home / Health & Science

How COVID-19 pandemic has affected the healthcare system in Kenya

By NCHAFATSO OBONYO | April 29th 2020 at 22:14:54 GMT +0300

Not even Members of Parliament are exempt from surveillance when it comes to Covid-19. [File, Standard]

HEALTH & SCIENCE

A medical scholar looks at how Kenya has responded to the Covid-19 pandemic

By the time the first case of COVID-19 in Kenya was reported on 12 March 2020, the Ministry of Health already had an Emergency Operations Centre comprising four Rapid Response Teams (RRTs).

Each team had five trained medical staff as well as designated telephone communication numbers for members of the pubic to report suspected cases, seek more information on the infection and ask questions.

A treatment and isolation unit for managing COVID-19 positive cases had been established at the country's largest teaching and referral hospital - Kenyatta National Hospital and a total of 1500 health workers across various health facilities were also receiving training on managing COVID-19 patients.

World Health Organisation

SEE ALSO: Kenya's Covid-19 cases shoot by 123 as government focuses on truckers

In order to prevent community transmission of the SARS-CoV-2 virus causing the COVID-19 pandemic, cutting off spread at an early stage is extremely vital.

On 30 January 2020, the WHO declared COVID-19 a Public Health Emergency of International Concern (PHEIC) and issued the COVID-19 Country Preparedness and Response Plan (CPRP) catering for an initial 3-month period (1 February to 30 April 2020).

The CPRP was part of the WHO's Strategic Preparedness and Response Plan (SPRP) and included operational planning guidelines to support countries preparation and response to COVID-19 cases.

The public health preparedness and response planning were aimed at stopping community human-to-human transmission of the SARS-CoV-2 virus while the healthcare system preparedness and response planning was aimed at providing care to infected cases while minimising the risk of further transmission to the healthcare providers.

Some of the WHO recommended measures for preparedness to handle COVID-19 at country level included: Surveillance focusing on rapid detection of imported cases, comprehensive and rapid case identification and contact tracing.

SEE ALSO: New hospital order to beat corona fears

The measures further included monitoring the geographical spread and transmission intensity in areas where sustained community transmission has been detected; infection prevention and control measures at all levels of the healthcare system; establishment of functional triage systems and isolation rooms and procurement of supplies based on the WHOs COVID-19 Disease Commodity Package (DCP).

DCP included the developing reserve stock of patient kits required for case management; having sufficient infection prevention materials including personal protective equipment (PPE), water and sanitation for health (WASH) and hand-hygiene facilities; preparation of healthcare facilities for large increases in the number of suspected cases including identifying the capacity of intensive care units.

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It also provided guidance on self-care for persons with mild symptoms of COVID-19 and when to contact healthcare facilities; establishing dedicated and well-equipped teams for transportation of suspected and referral mechanisms for confirmed cases; preparation of laboratory capacity to manage large-scale testing for COVID-19; training all staff handling COVID-19 patients and samples on standardized infection prevention and control practices etc.

Kenya's response

When the WHO declared COVID-19 a global pandemic on 13 March 2020, Kenya already had one confirmed positive case being managed at the Kenyatta National Hospital isolation and treatment centre.

SEE ALSO: Kenyans warned against giving false contacts during targeted Covid-19 testing

This was an imported case with a history of travel from continents with human-to-human community transmission of COVID-19 and the Ministry of Health had started the process of contact-tracing for isolation, screening and testing for infection.

Through an Executive Order issued on 28 February 2020, the President had established a National Emergency and Response Committee (NERC) for COVID-19 chaired by the Cabinet Secretary for Health.

The NERC had already started nationwide awareness and sensitization initiatives on public education about the COVID-19 pandemic including symptoms of SARS-CoV-2 viral infection as well as public health measures on

reducing infection such as social-distancing; hand-washing and sanitation; respiratory hygiene and importance of minimising unnecessary movement by staying at home.

The government has also enhanced public-private partnerships to increase the local capacity for production of personal protective equipment (PPE) for the healthcare facilities. This increased local production, alongside donations sourced externally, has ensured there is a steady supply of PPEs to the healthcare facilities meeting current demand as well as availing face-masks to other essential service providers.

Impact and challenges

SEE ALSO: We've no option but to reopen and this is how it should happen

The points of entry public health emergency screening were initially very weak when the first case was reported.

Preparation of rapid health assessment and isolation facilities to manage symptomatic and/or ill passengers at major points of entry to the country as well as mechanisms to transport them under strict infection prevention precautions to designated isolation and treatment centres was done prior to closing the borders to human traffic on 25 March 2020 as the number of positive cases increased.

In order to effectively handle a pandemic such as the COVID-19, mass testing, isolation and quarantine of infected persons is critical to controlling and limiting the number of new infections.

Countries that had previous epidemic experience with SARS and MERS epidemics rapidly deployed mass-testing which enabled them to isolate and quarantine infected persons to limit community spread of the infection.

In China where the epidemic had started, a hospital facility with intensive care and respiratory support capabilities was rapidly set-up to handle the anticipated surge in severely ill patients.

SEE ALSO: New Covid-19 high as 72 more people test positive

This has been a major challenge in Kenya's response to the COVID-19 pandemic with testing initially being restricted to only persons in isolation, with a history of travel to areas where there was community spread of COVID-19 and were exhibiting symptoms upon arrival in Kenya.

There is limited capacity for mass-testing especially in densely populated areas with confirmed cases. Mass-testing was initially being done for front-line health workers at designated treatment and isolation facilities.

This needs scaling-up to include mass-testing of other essential service providers within health facilities and beyond such as food handlers, security and cleaning personnel among others.

The government announced a nationwide curfew from 7pm to 5am as well as restriction of movement into and out of counties with a high number of COVID-19 positive cases (Nairobi, Mombasa, Kilifi, Kwale, Mandera).

These measures have impacted healthcare access and delivery especially for areas surrounding the major cities of Nairobi and Mombasa where most comprehensive healthcare services are found.

While hospitals and clinics still remain open, the ban on public transportation across counties introduces significant challenges in terms of accessing healthcare facilities for persons with chronic illnesses, pregnant women etc attending regularly scheduled clinics.

There have been challenges in coordination between the county and national levels of government in the procurement of critical equipment such as ventilators for respiratory support as well as recruitment of additional healthcare personnel.

With increasing community transmission of COVID-19 in Kenya, there is an urgent need for a better defined and coordinated mechanism to increase the capacity for intensive care, the supply of PPEs and recruitment of trained healthcare personnel in anticipation of a surge in the numbers of COVID-19 positive cases.

In summary, Kenya has taken most of the appropriate steps at implementing the WHO recommended Country Preparedness and Response measures for healthcare facilities, however, these require scaling-up to handle a surge in the numbers of acute and critically ill patients as a result of infection with COVID-19.

Nchafatso Obonyo is a Doctoral Clinical Researcher at ACAL Consulting's COVID-19 Think Tank

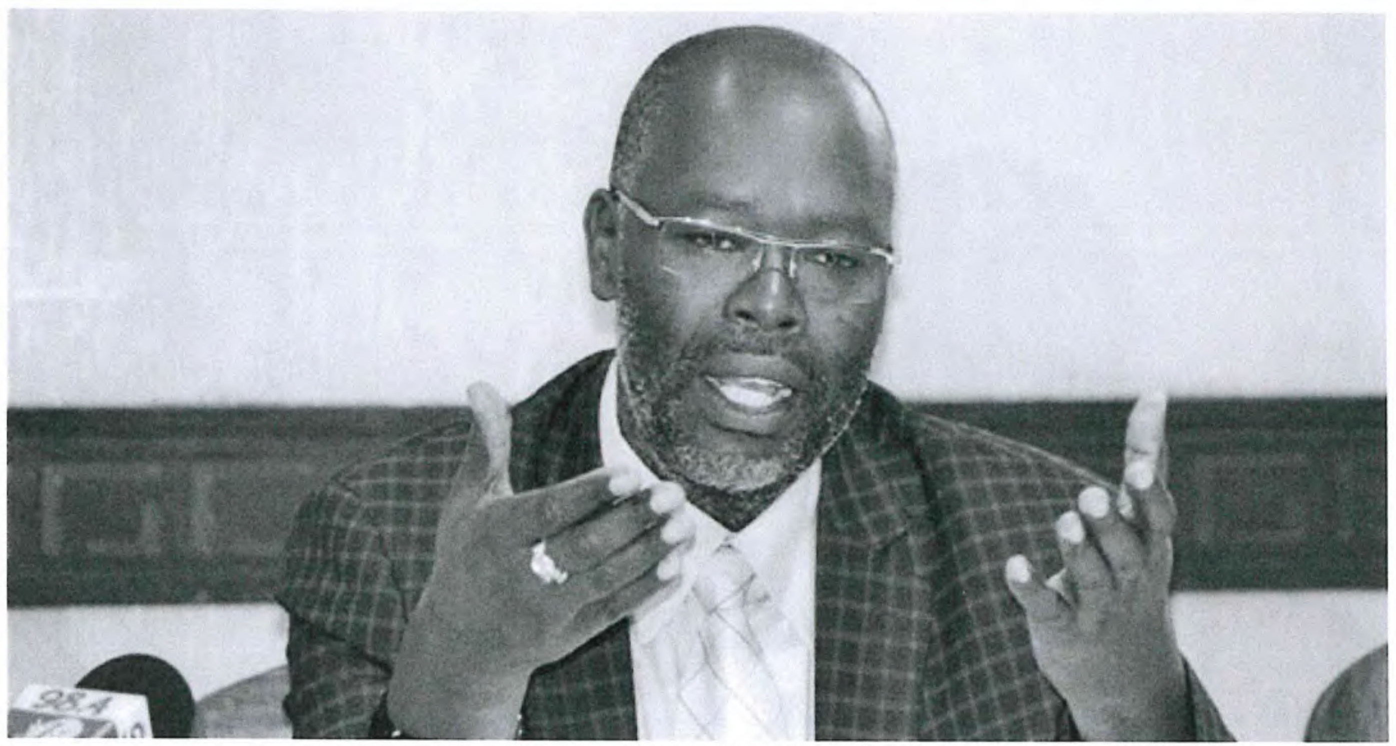
Related Topics

Coronavirus Kenya | Resources | Interventions

Feedback

State asked to exempt patients in Nairobi, Coast region lockdown

By Hillary Mageka
Thursday, April 16th, 2020



ICJ Kenya President Kelvin Mogeni

The International Commission of Jurists (ICJ) now wants Kenyans in need of medical care that is only available in Nairobi or Mombasa to be allowed to access facilities in the wake of the partial lockdown.

The government has outlawed entry into and exit from Kilifi, Kwale, Mombasa and an expanded Nairobi metropolitan area.

A countrywide curfew is also being enforced to control the spread of the coronavirus disease.

services can do so without being deemed as contravening the curfew orders and not be subjected to any form of harassment by the police.

In their submissions to the Senate adhoc committee on COVID-19 situation, the Jurists said they concerned on the access of medical services at Kenyatta National Hospital and its capacity to continue providing other health services to patients other than those seeking treatment for COVID-19.

They argued, in light of the order banning movement in and out of the defined Nairobi Metropolitan area, persons travelling to Nairobi for advanced healthcare from outside the metropolitan area face challenges of accessing the National hospital and other major health facilities in the city.

"Of particular concern are those in need of life supporting treatments such as hemodialysis, and those who will require to access major hospitals in Nairobi and Mombasa from outside those counties in the event of medical emergencies," read part of the submissions by ICJ Kenya President Kelvin Mogeni to the committee chaired by Nairobi Senator Johnson Sakaja.

Mogeni added: "In the wake of the indiscriminate and harsh enforcement of the curfew by the police, ICJ Kenya is concerned that without addressing the issue of access to health and to health centres, especially from those immediately outside Nairobi and Mombasa, we may witness further violations and there is need to have clear directions on the same."

The jurists lament that hospitals are taking measures to decongest their facilities in line with the guidelines on physical distancing, meaning the number of patients being admitted in a health facility at any one time is limited.

Coronavirus: 133 more cases confirmed positive

Four State House staff test positive for COVID-19

On survival mode – world's top socialites are also staying at home

Bishops urge State to address high coronavirus cases among truckers

More on Coronavirus

COVID-19 ICJ ICJ Kenya President Kelvin Mogeni

From the web

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA...2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM..4TH PETITIONER

FA...5TH PETITIONER

KB..6TH PETITIONER

MO ....7TH PETITIONER

EL...8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN)...10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH.. 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH... 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY...3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT...5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS...7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

CHRIS OWALLA AFFIDAVIT IN SUPPORT OF PETITION

I, Chris Owalla, of Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am a male adult of sound mind, the 3rd petitioner in this case and competent to swear this affidavit.
2. **THAT** I am a voter in Alego Usonga Constituency, Siaya County and the Executive Director of Community Initiative Action Group Kenya, a social justice organisation with an operation base in Western Kenya along the Lake Victoria Basin. The Organization is registered under the laws of Kenya as a trust and carries out its activities through research, policy analysis, advocacy, trainings and facilitation of debates in different aspects of civic duties and responsibilities. The main goal of the Trust is, to support basic community efforts in order to build a self-sustaining alter-native sector in Kenya and to raise the competence of community institutions and their representatives.
3. **THAT** following the reporting of the first person with coronavirus disease ("COVID-19") in Kenya, I have been working with other organisations to monitor the government's response to the pandemic.
4. **THAT** on 13th April 2020, one month after the first person was reported with COVID-19 in Kenya, I received numerous calls from people in Kamalunga Village, Simur Kondiek Sub-Location, Ukwala who informed me that a person with COVID-19 had been buried in their village in an unusual manner.
5. **THAT** on further enquiry, I came to learn that burial was of one James Oyugi and that it had been undertaken at night by people who identified themselves as county government health officials who announced to everybody who cared to listen that the deceased had succumbed to COVID-19. People who were present reported that the deceased was not put in any coffin, no burial rites were conducted, the family was not given an opportunity to pay their last respects and that the deceased was unceremoniously tossed in to the grave.
6. **THAT** people reported to me that they were afraid that this incident would bring a bad omen to the community. I was personally alarmed given that I knew that under Luo customs, a burial is a solemn occasion that is undertaken in a manner to ensure maximum respect to the dead.

7. **<u>THAT</u>** I had many questions following this incident. For instance: Is this how people who die of COVID-19 would be buried? Why was the burial conducted at night? Why did the COVID-19 status of the deceased broadcast to everyone in the village? Was the county even prepared to handle COVID-19 patients? What plans were there in the event that more people became sick? and so many other questions.

8. **<u>THAT</u>** I knew that the Ministry of Health had announced that there were guidelines to be followed in burials of people suspected to have succumbed to COVID-19. I quickly accessed the guidelines from the Ministry of Health website and perused through.

   (**Annexed and Marked as CO-001 are** *Ministry of Health's Guidelines for Safe Disposal of Human Remains and World Health Organization's guidelines for Infection Prevention and Control for the safe management of a dead body in the context of COVID-19*).

9. **<u>THAT</u>** noting that the burials clearly contravened the guidelines, I together with 12 other individuals and 14 organisations wrote a request for information letter to the 1st and 2nd Respondents dated 15 April 2020 requesting for the following information:

   (i) Provide the family of the late Oyugi with a detailed report of the results of the COVID-19 test conducted on the late James Oyugi.
   (ii) Provide us with a detailed report on how the decision to bury James Oyugi was made. Who authorized the burial? Who conducted the burial? Why were guidelines not adhered to? Why was the burial conducted at night? Why was the dignity of the dead not respected?
   (iii) Provide us with information on measures put in place to ensure this act is not replicated anywhere in the county and the country.
   (iv) Provide us with information on measures taken to ensure that this act does not increase the stigma on COVID-19 patients in the community;
   (v) Provide us with information on measures taken to secure the mental health of family members and community members from Kamalunga village through counselling;
   (vi) Information on how the family of the deceased and close contacts are being quarantined? In which quarantine facilities? How many health care workers are in those facilities? Has the family and other close contacts been tested? Who will pay the costs of the quarantine?
   (vii) Investigation report on the circumstances leading to the death of James Oyugi. Is there a formal inquiry being conducted?

(Annexed and Marked as CO-002 is a copy of the request for information letter dated 15 April 2020 *Protest Against the Undignified Sendoff of the Late James Oyugi and Violation of Guidelines for Handling Bodies Suspected or Confirmed of COVID-19: Request for Information*)

10. **THAT** on 20th May 2020 I received a response from the County Secretary of the 3rd respondent county to the effect that "questions raised in the said letter will be answered once the taskforce investigation the matter finalise the exercise and present its findings on the same."
(Annexed and Marked as CO-003 is a copy of the response dated 20th May 2020).

11. **THAT** since then I have not received any further response to the request for information letter dated 15th April 2020.

12. **THAT** the lack of substantive response has caused people to be anxious, and heightened stigma associated with COVID-19 in the community. Some people have expressed concerns to me that they would not wish to be buried in the manner James Oyugi was buried and therefore would risk not knowing their COVID-19 status. Further, there have reports of burials conducted in a similar manner in other parts of the country **(Annexed and Marked as EO-004 are copies of newspaper reports on unusual COVID-19 burials).**

13. **THAT** apart from the bizzare burial, I have no information on how my county is preparing to deal with the COVID-19 pandemic. That despite daily press briefings from the 1st Respondent, I have no information on what the county COVID-19 committee is doing. The county committee has not been involving the public in its affairs, I do not know how much resources the county government has set aside for COVID-19, how much has been spent, which are the designated health facilities, whether the health care workers in those facilities have personal protective equipment, whether the health care workers have been trained, where one can be tested, etc.

14. **THAT** I cannot guarantee or secure my health and wellbeing if I do not have the right information around the Pandemic and the government is not providing it.

15. **THAT** I believe that with no information in the community, stigma increases, people will fear to get tested and eventually the number of infections will increase.

16. **THAT** what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Kisumu this 18th day of June 2020.

CHRIS OWALLA)

) Deponent

BEFORE ME)

COMMISSIONER FOR OATHS)

CHARLES .O. ONYANGO Advocate and Commissioner for Oaths P.O. Box 2878-40100, KISUMU

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REPUBLIC OF KENYA

MINISTRY OF HEALTH

Guidelines for Safe Disposal of Human Remains of a patient who has died from suspected or confirmed COVID-19

MARCH 2020

This is Exhibit marked "CO-001"
referred to in the Annexed affidavit/Declaration
of Chris Owalla
Sworn/Declared before me on this 18th
day of June 2020
at Kisumu in the Republic of Kenya
Commissioner for Oaths

Foreword

Kenya has adopted guidelines for the safe handling and disposal of human remains from COVID-19 outbreak. The guidelines have been developed in line with World Health Organization (WHO) protocols, the Public Health Act Cap 242, Laws of Kenya, Waste Management policies of the Ministry of Health and the Public Health Officers and Technicians Council Scope of Practice.

The guidelines seek to provide information on the safe management of burial of patients who died from suspected or confirmed COVID-19 disease. These measures should be applied not only by healthcare workers but also by anyone involved in the management of burial of suspected or confirmed COVID-19 patients.

During the COVID-19 global outbreak, an increased number of fatalities would be expected. As with any fatality, three main processes must be accomplished: identification of the deceased, certification of death, and disposal of the human remains.

Deaths related to COVID-19 should be certified as such, and whether the diagnosis was laboratory confirmed or presumed based on clinical history and/or circumstances should be indicated. For example, in cases when COVID-19 infection causes acute respiratory distress syndrome due to pneumonia, these can be included in the prescribed reporting tools. If the deceased had other chronic conditions such as COPD or asthma that may have also contributed, these conditions can be reported as contributory conditions.

As a minimum, the human remains arising from COVID-19 cases should be handled in line with section 35 and 36 of the Public Health Act cap 242 Laws of Kenya. The guidelines shall equally be applied in line with the existing regulations under the Public Health Act, Cap 242 and all other guidelines on safe handling and management of human remains from infectious Diseases.

Safe disposal of human remains should therefore be conducted in a manner that prevents infection, control the spread of disease and is culturally appropriate for the bereaved family. The Ministry of Health has therefore developed standards guidelines for the safe management and disposal of human remains from deaths arising from COVID-19 confirmed or suspected cases.

These guidelines shall act as the minimum standards for the health facilities holding the human remains, the family members of the deceased persons and the general public. The guidelines shall also provide measures for the staff in the funeral homes and holding facilities established for such purposes.

The guidelines shall be applicable to the handling of all human remains related to COVID-19 reported within the republic of Kenya and shall be observed by all health workers, health institutions and persons involved the handling and disposal of such remains.

Dr Patrick Amoth
Ag. Director General
Ministry of Health

ACKNOWLEDGEMENT

These guidelines on the disposal of human remains from COVID-19 related deaths were developed through a collaborative effort of many stakeholders.

The Ministry of Health wishes to sincerely thank all the stakeholders for their invaluable contribution towards the development and production of this document.

We thank the World Health organization for developing a guide on infectious diseases particularly the development of guidelines for safe management of human remains from Ebola and Marburg diseases from which the Kenya country-level team established the basis of these guidelines.

The Ministry of Health would also wish to express sincere gratitude to the Public Health Officers and Technicians Council for leading the initiative to develop and adopt the guidelines through a stakeholders' coordination approach.

We are thankful to the Department of Environmental Health within the ministry of Health for providing key technical guidance to finalize the compilation of the guidelines. The Ministry further acknowledges the Public Health Officers who were involved in the collection of these guidelines.

We similarly thank the Public Health staff of the Kenya Medical Training College, Umma University, Mount Kenya University, Jomo Kenyatta University of Agriculture and Technology, University of Kabianga and Meru University of Science and Technology.

All those who have not been mentioned but supported the compilation of these guidelines are most appreciated for their contributions.

Kepha M. Ombacho, PhD, FAIPH, MBS
Director, Public Health

Guidelines for Safe Disposal of Human Remains of a patient who has died from suspected or confirmed COVID-19

It is presumed that deaths from COVID-19 will be reported in health facilities. However, should any deaths occur outside health facility setting, procedures have been laid down as follows:

Deaths reported in Health Facility: Since these individuals will presumably be identified and have a known or presumed death due to COVID-19, a competent health professional will be responsible for certifying the death, and the health facility working closely with a designated Public Health Officer and the family will facilitate disposal of human remains.

Deaths Reported Outside Health Facilities: Deaths occurring outside a health facility will be reported through the established guidelines for notification of deaths from infectious disease causes. If preliminary investigation suggests a natural death without concern for COVID-19, and if the deceased is properly identified, the body may be transported to a local funeral home/crematory with subsequent certification by a competent health professional. If preliminary investigation meets the definition for COVID-19 at the time of death and/or risk for COVID-19, the Ministry of Health shall be notified and assume jurisdiction to determine the need for laboratory confirmation and autopsy, A designated Public Health Officer and the family shall thereafter facilitate disposal of the human remains.

Twelve steps have been identified describing the different phases that the teams involved in handling and disposal of human remains have to follow to ensure safe burials, starting from the moment the teams arrive in the burial sites up to their return to the health facilities or team headquarters after burial and disinfection and decontamination procedures.

Due to the infectious nature of COVID-19, the handling of human remains should be kept to a minimum and only trained personnel should handle remains during the outbreak. In addition, the teams involved in handling and disposal of the remains should always consider the cultural appropriateness and other societal concerns.

The burial process is considered a sensitive process for the family and the general public and is a potential source of infection. The safely handling and disposal of body remains should therefore be observed in line with the Infection Prevention and control protocols

Before commencement of the handling of the remains, the family must be fully informed about the dignified burial process and their religious and personal rights to show respect for the deceased. Ensure that the formal agreement of the family has been given before starting the burial. **No burial should begin until family agreement has been obtained.**

Step 1: Prior to departure: Team composition and preparation of disinfectants
Step 2: Assemble all necessary equipment
Step 3: Arrival at burial site/crematorium: prepare final rites with family and evaluate risks
Step 4: Put on adequate Personal Protective Equipment (PPE)
Step 5: Placement of the body in the body bag (Deaths outside health facilities)
Step 6: Placement of the body bag in a coffin where culturally appropriate
Step 7: Decontaminate the environment
Step 8: Remove PPE, disinfect, manage waste and perform hand hygiene
Step 9: Return to the hospital or team headquarters

Step 1: Prior to departure, team composition and preparation of disinfectants

DO NOT ENTER THE PATIENT AREA IF YOU DO NOT HAVE ALL PROTECTIVE GEAR ON

Full PPE in field situation

Sprayer & Supervisor

Communicator

Prior to departure

One team should comprise:

- **4 members, wearing full PPE for field situation**
- **1 sprayer, wearing full PPE for field situation**
- **1 technical supervisor, not wearing PPE**
- **1 communicator, a person who interact with family and community, not wearing PPE**
- **1 religious group representative, not wearing PPE**

All burial/cremation management team members should be clear on their roles and responsibilities, including who is the technical supervisor.

Disinfectant solutions must be prepared for the same day:

- 0.05% chlorine solution for hand hygiene
- 0.5% chlorine solution for disinfection of object and surfaces

Step 2: Assemble all necessary equipment

❑ **Assemble body bag to hold the body of the deceased**

- Impermeable, vinyl, minimum thickness 400 microns
- Should be able to hold 100-125 kilos (200-250 lbs)
- At least 4 handles included in the body bag to allow safe hand carry
- Provide full containment of blood borne pathogens

❑ **Assemble all necessary equipment to prevent infections**

❑ **Hand hygiene**

- Clean running water with soap and disposable towels (recommended) **OR**
- Alcohol-based hand rub solution (recommended) **OR**
- Chlorine solution 0.05% (when option above are not available)

Personal Protective Equipment (PPE)

- One pair of disposable gloves (non-sterile, ambidextrous)
- One pair of heavy-duty gloves
- Disposable coverall suit (e.g. Tyvec suit) + impermeable plastic apron
- Face protection: goggles and mask
- Footwear:
  - rubber boots (recommended) **OR** if not available
  - shoes with puncture-resistant soles and disposable overshoes

Waste management materials

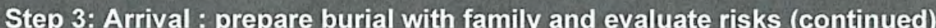
- Disinfectant:
  - ✓ One hand sprayer (0.05% chlorine solution)
  - ✓ One back sprayer (0.5% chlorine solution)

- Leak-proof and puncture resistant sharps container

- Two leak-proof infectious waste bags: one for disposable material (destruction) and one for reusable materials (disinfection)

Step 3: Arrival : prepare body disposal with family and evaluate risks

1. Prior to departure the team leader must brief the Body disposal team about how to conduct the final rites.
2. Arrival of the Body disposal team
3. The staff should not be wearing PPE upon arrival.
4. Greet the family and offer your condolences before unloading the necessary material from the vehicles. Request respectfully for a family representative.
5. The communicator should liaise with the family representative for the final rites
6. The Body disposal team leader should ensure that the family witness and other family members have understood these procedures. **Obtain the formal agreement of the family's representative before proceeding.**



Step 3: Arrival : prepare burial with family and evaluate risks (continued)

1. Body disposal team to refer to these guidelines at all times

2. Ask the family representative if there are any specific requests from the family or community, for example, about the personal effects of the deceased. The family should decide what to do with the personal effects of the deceased (burn, bury in the grave or disinfect).

The Body disposal Team should include

1. A family representative
2. A Public Health Officer
3. A local administrator (Chief / Assistant Chief)
4. Security
5. Any other co 'opted health professional

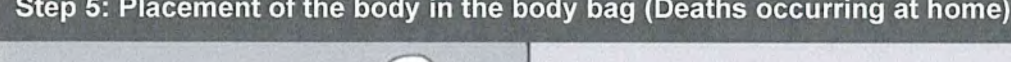
Step 4: Put on adequate Personal Protective Equipment (PPE)

❑ **Evaluate the set-up of the environment**

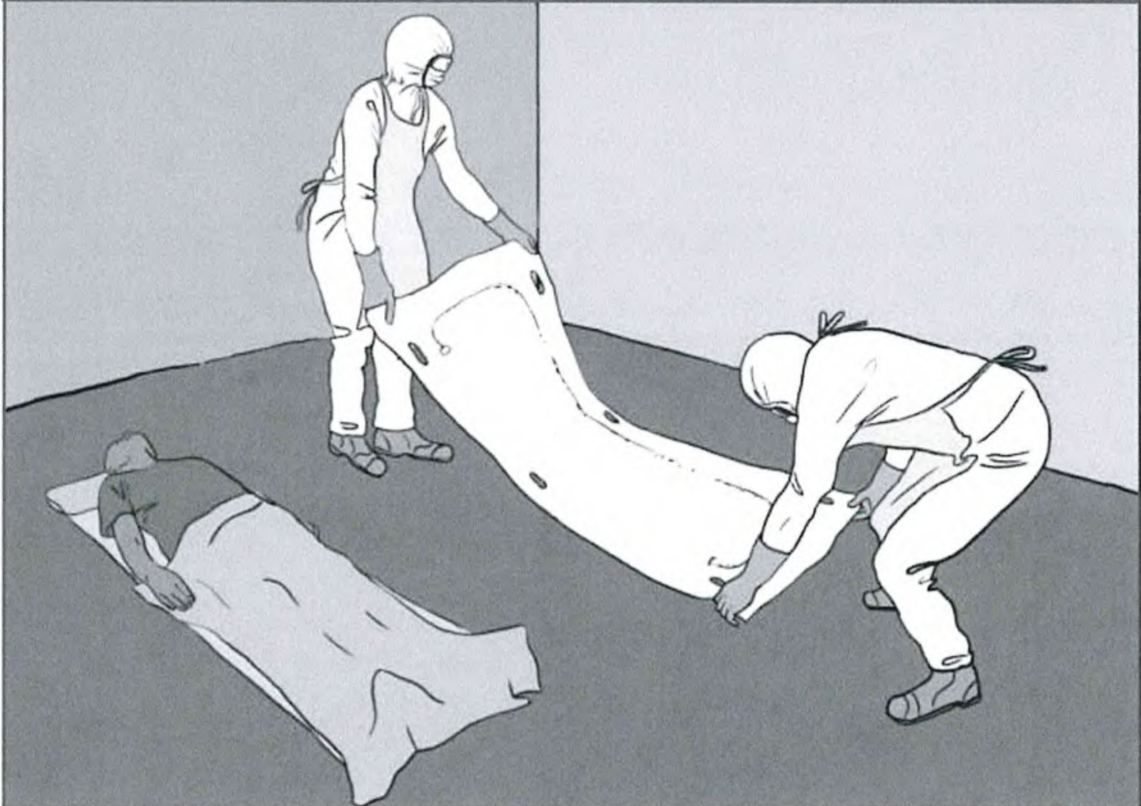
a) Locate the room where the remains are, open the windows and doors for optimal light and ventilation
b) Evaluate the size and weight of the deceased in order to choose the right size of body bag. This bag needs to be opaque.
c) If a coffin is to be used, place the coffin outside the house
d) Identify with the family, the rooms and annexes (bathroom, toilet) that were used by the deceased patient as they need to be cleaned and disinfected

❑ **Put on all personal protective equipment (PPE)** by body disposal team in the Presence of the family according to the recommended steps

1. Put on rubber boots
2. Perform Hand Hygiene
3. Put on coverall suit and plastic apron
4. Put on face mask and safety goggles
5. Hood up
6. Make thumb hole in suit
7. Put on inner gloves (under cuff)
8. Put on outer gloves (over cuff)



Step 5: Placement of the body in the body bag (Deaths occurring at home)

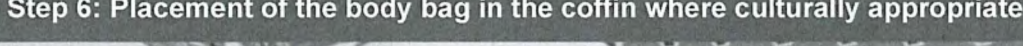


❑ **Entry into the house with at least 2 persons of the Body disposal team:**

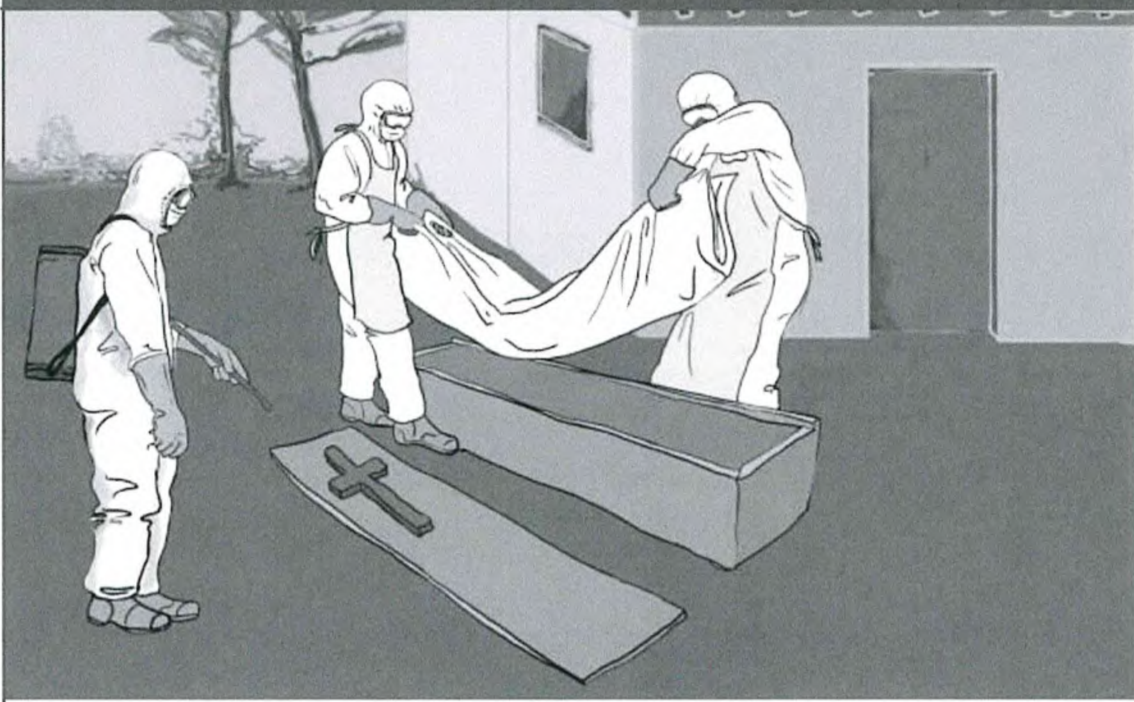
1. Laboratory- team collect a post-mortem sample for confirmation (see oral swab protocol)
2. Place the body in a body bag or impervious material (in case of secretions/mutilations)
3. Disinfecting the outer side of the body by spraying over the surface of the body with a suitable disinfectant (e.g., 0.5% chlorine solution)
4. Dress the body

❑ **IMPORTANT NOTES:**

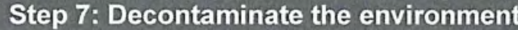
- **Manipulation of the body should be minimal**
- **Remains should not be washed or embalmed**



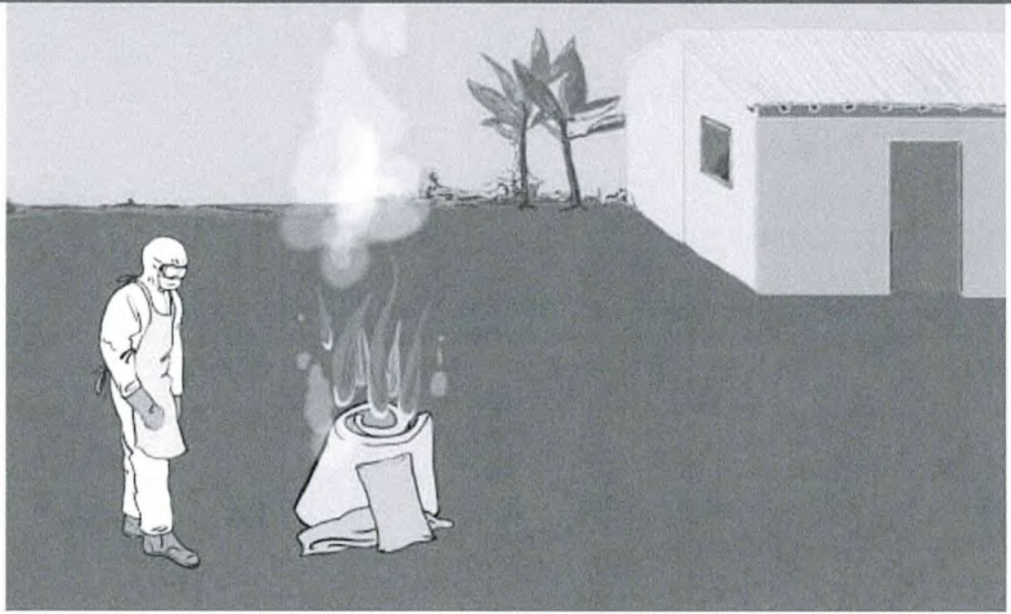
Step 6: Placement of the body bag in the coffin where culturally appropriate



1. Placement of the body bag in the coffin by persons wearing PPE
2. In case no coffin is available the body bag should be used by persons wearing PPE
3. Place clothes and/or objects of the deceased patient inside the coffin if the family so wishes
4. Allow one of the family members to close the coffin, ensure they are wearing gloves at all times
5. Disinfect the coffin
6. Respect the grieving time requested by the family
7. The coffin should remain permanently closed
8. The body should then be interred



Step 7: Decontaminate the environment



Collection of soiled objects, disinfection if needed, or burning and cleaning and disinfection of the environment (rooms, house) wearing PPE:

1. Collect any sharps that might have been used on the patient and dispose them in a leak-proof and puncture resistant container.
2. Clean with clean water and detergent and then disinfect with a suitable disinfectant (e.g., 0.5% chlorine solution) all rooms and annexes of the house that were possibly infected by the deceased patient. Special focus should be given to areas soiled by blood, nasal secretions, sputum, urine, stool and vomit.
3. Clean with water and detergent all objects (e.g. dishes...) possibly infected by the deceased patient; then disinfect with a chlorine solution 0.5%.
4. Any, bed linen, clothes and objects of the deceased, should be disinfected
5. Mattresses, straw mats soiled with body fluid of the deceased patient should be burnt at a distance from the house. Ensure the family has given permission to destroy the mattresses, straw mat, etc.

After this operation and before proceeding to removing the PPE confirm if:
Did the Body disposal team disinfect all belongings of the deceased patient?

At the end of this step all places in the home are disinfected

Step 8: Remove PPE, manage waste and perform hand hygiene

A. Disinfect boots without removing them

B. Remove apron

1. Untie the apron, remove it and discard into infectious waste bag for disinfection
2. Wash outer gloves

C. Remove outer gloves

1. Remove outer gloves
2. Wash inner gloves

D. Remove coverall

1. Take Hood off
2. Pull zip down
3. Wash inner gloves
4. Remove coverall suit, from inside, peeling it off
5. Dispose the coverall suit in the infectious waste bag for destruction
6. Wash inner gloves

E1. Remove goggles from behind
Place it in a waste bag for disinfection.
Wash inner gloves

E2. Remove mask from behind
Place it in waste bag for destruction
Wash inner gloves

F. Remove inner gloves

1. Grasp the outer edge of the 1st glove and peel it off.
2. Hold the 1st glove in the gloved hand and drag a bare finger under the 2nd glove.

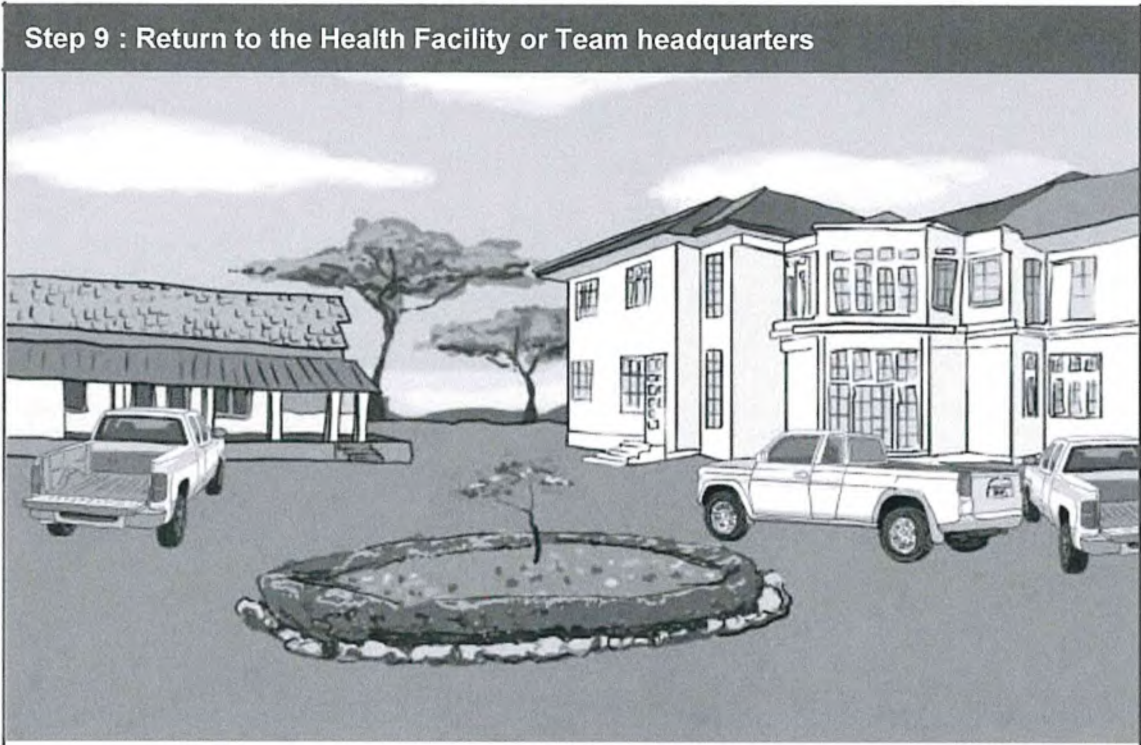
3. Remove 2nd glove from the inside, creating a "bag" for both gloves and throw it in waste bag for disposal.

G. Wash hands/ sanitize your hands

1. Disinfect rubber boots without removing them. When you are back to Hospital or Team headquarters at the end of the working day, each team member should take off rubber boots and disinfect them
2. Remove PPE of the Body disposal team am carefully following the recommended steps and perform hand hygiene
3. Recover the single-use PPE in an appropriate waste bag, prepared by the supervisor. The bag will be closed and disinfected and there after brought for incineration at the health facility (or other designated place where single-use equipment will be burned)
4. Recover any reusable disinfected equipment in a waste bag, closed and disinfected on-site, before bringing this to the health facility or team headquarters for appropriate handling.
5. Perform hand hygiene.

At the end of this step the Body disposal team has removed their PPE (except the rubber boots) and has performed hand hygiene

Step 9 : Return to the Health Facility or Team headquarters



1. Organize the incineration of the single-use (disposable) equipment at the hospital or in another designated place for burning this type of equipment
2. The reusable equipment is again disinfected and dried
3. The post-mortem samples are sent to the laboratory team
4. The car used for the funerals needs to be cleaned and disinfected (especially the rear)
5. At the end of the working day, before going back home, each team member should take off rubber boots and disinfect them with 0.5% chlorine solution.
6. Rubber boots should be kept at the hospital of team headquarters.

It may be worthwhile to use a checklist, to ensure that all steps are followed during the entire process from arrival at the house until the end of the funeral. Any problems detected should be reported

Siaya County
Disability Network

West Ugenya
Development
Forum

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 15/April/2020**

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

H.E. Cornel Rasanga Amoth
Governor, Siaya County Government

This is Exhibit marked "CO-002"
referred to in the annexed affidavit/Declaration
of Chris Owalla
Sworn/Declared before me on this..........
day of..........20..........
at..........in the Republic of Kenya
....
Commissioner for Oaths

Dear Sir,

RE: PROTEST AGAINST THE UNDIGNIFIED SENDOFF OF THE LATE JAMES OYUGI AND VIOLATION OF GUIDELINES FOR HANDLING BODIES SUSPECTED OR CONFIRMED OF COVID-19: REQUEST FOR INFORMATION

We, the undersigned, are representatives of civil society organizations working in Siaya County, community-based organizations and health and human rights civil society and non-governmental organizations.

We write to you both in our individual and organizational capacities to express our concern in the undignified manner in which the late James Oyugi, a suspected COVID-19 patient, was buried in Siaya County. The undignified burial was conducted in the wee hours of the night of 12th April 2020 in Ugenya Sub-County, Ukwala, Simur Kondiek Sub-Location, Kamalunga village.

We take note of the fact that James Oyugi was the first suspected COVID-19 patient in Siaya County. This occurred more than a month since the first patient was reported in Kenya. As such, the county government and national government agencies in Siaya county had more than a month to prepare and put in place all the necessary measures to appropriately respond to any emerging COVID-19 in Siaya.

We were thus taken aback by reports of James Oyugi's burial in a bizarre ceremony with his body being tossed unceremoniously into a shallow grave at night. No cultural or religious rites were performed, and the family was not given a chance to pay their last respects and accord their loved one a dignified send-off.

We are concerned about the impact of this burial, especially the trauma, distress, and stigma caused to family members and the village. We thus condemn the unethical, unacceptable and bizarre interment that was conducted contrary to national guidelines, and with zero regard to the cultural and religious traditions of the deceased.We are also concerned about the stigma that this act causes to other suspected COVID-19 patients. This is an act with the potential to stigmatize people, make people fear and shun services thereby increasing infections in the community.

James Oyugi is not the first reported death from this pandemic. As of 11th April 2020, seven people had died from COVID-19 in Kenya and accorded dignified burials, during the day and in the presence of their families complete with religious rites.

The Ministry of Health's Guidelines for Safe Disposal of Human Remains of a patient who has died from suspected or confirmed COVID-19 requires that safe disposal of human remains be conducted in a manner that prevents infection, control the spread of disease, is culturally appropriate for the bereaved family and that before the commencement of the handling of the remains, the family must be fully informed about the dignified burial process and their religious and personal rights to show respect for the deceased.

The World Health Organization's guidelines for Infection Prevention and Control for the safe management of a dead body in the context of COVID-19 also provide that the dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout and that hasty disposal of a dead from COVID-19 should be avoided.

In James Oyugi's situation, all the above guidelines were not adhered to. It is imperative that the dead are accorded a dignified and respectful send-off. The need for dignity and respect during send-off cannot be waived even in the face of the current pandemic. Not even in times of war.

We thus condemn in the strongest terms possible the despicable actions of the Siaya County Government, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service who hurriedly oversaw the undignified burial.

We demand that the County Government of Siaya, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service issue a public apology to the family of the deceased, and members of the public.

We also call upon the County Government, the Ministry of Health, the National Police Service and the Ministry of Interior and Coordination of National Government to strictly adhere to guidelines provided in handling suspected and confirmed COVID--19 bodies in Kenya. Dignity in death is of utmost importance.

From the foregoing, we also demand that the County Government of Siaya, Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently provide us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Provide the family of the late Oyugi with a detailed report of the results of the COVID-19 test conducted on the late James Oyugi.

(ii) Provide us with a detailed report on how the decision to bury James Oyugi was made. Who authorized the burial? Who conducted the burial? Why were guidelines not adhered to? Why was the burial conducted at night? Why was the dignity of the dead not respected?

(iii) Provide us with information on measures put in place to ensure this act is not replicated any where in the county and the country.

(iv) Provide us with information on measures taken to ensure that this act does not increase the stigma on COVID-19 patients in the community;

(v) Provide us with information on measures taken to secure the mental health of family members and community members from Kamalunga village through counseling;

(vi) Information on how the family of the deceased and close contacts are being quarantined? In which quarantine facilities? How many health care workers are in those facilities? Has the family and other close contacts been tested? Who will pay the costs of the quarantine?

(vii) Investigation report on the circumstances leading to the death of James Oyugi. Is there a formal inquiry being conducted?

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Yours faithfully,

1. **Chris Owalla** on my own behalf and
on behalf of Community Initiative Action Group Kenya

2. **Titus Ogalo** on my own behalf and
on behalf of Transparency International Kenya

3. **Nicholas Ngesa** on my own behalf and
on behalf of Tembea Youth Centre for Sustainable Development

4. **Janet Okach** on my own behalf and
on behalf of VSO-Kenya

5. **Mildred Andere** on my own behalf and
on behalf of Young Women Christian Organisation - Siaya Branch

6. **Enock Chiteri** on my own behalf and
on behalf of Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter

7. **Isiah Ochieng** on my own behalf and
on behalf of Ugunja Development Initiative

8. **Aggrey Omondi** on my own behalf and
on behalf of Ugunja Community Resource Centre

9. **Charles Juma** on my own behalf and
on behalf of Siaya County Disability Network

10. **Peter Aduda** on my own behalf and
on behalf of West Ugenya Development Forum

11. **Peter Owiti** on my own behalf and
    on behalf of Wote Youth Development Projects

12. **Allan Maleche** on my own behalf and
    on behalf of Kenya Legal and Ethical Issues Network (KELIN)

Endorsed by: Organizations:

1. Community Initiative Action Group Kenya
2. Community Forum for Advanced & Sustainable Development (COFAS)
3. Kenya Legal and Ethical Issues Network (KELIN)
4. Kenya Sex Workers Alliance (KESWA)
5. Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter
6. Tembea Youth Centre for Sustainable Development
7. Transparency International Kenya
8. Ugunja Development Initiative
9. Ugunja Community Resource Centre
10. Siaya County Disability Network
11. West Ugenya Development Forum
12. Wote Youth Development Projects
13. VSO-Kenya
14. Young Women Christian Organisation - Siaya Branch

CC:

1. **Hon Dr. Fred Okengo Matiangi,**
   The Cabinet Secretary,
   Ministry of Interior and Coordination of National Government.

2. **Hon. Wycliffe Ambetsa Oparanya,**
   Chairperson, Council of Governors.

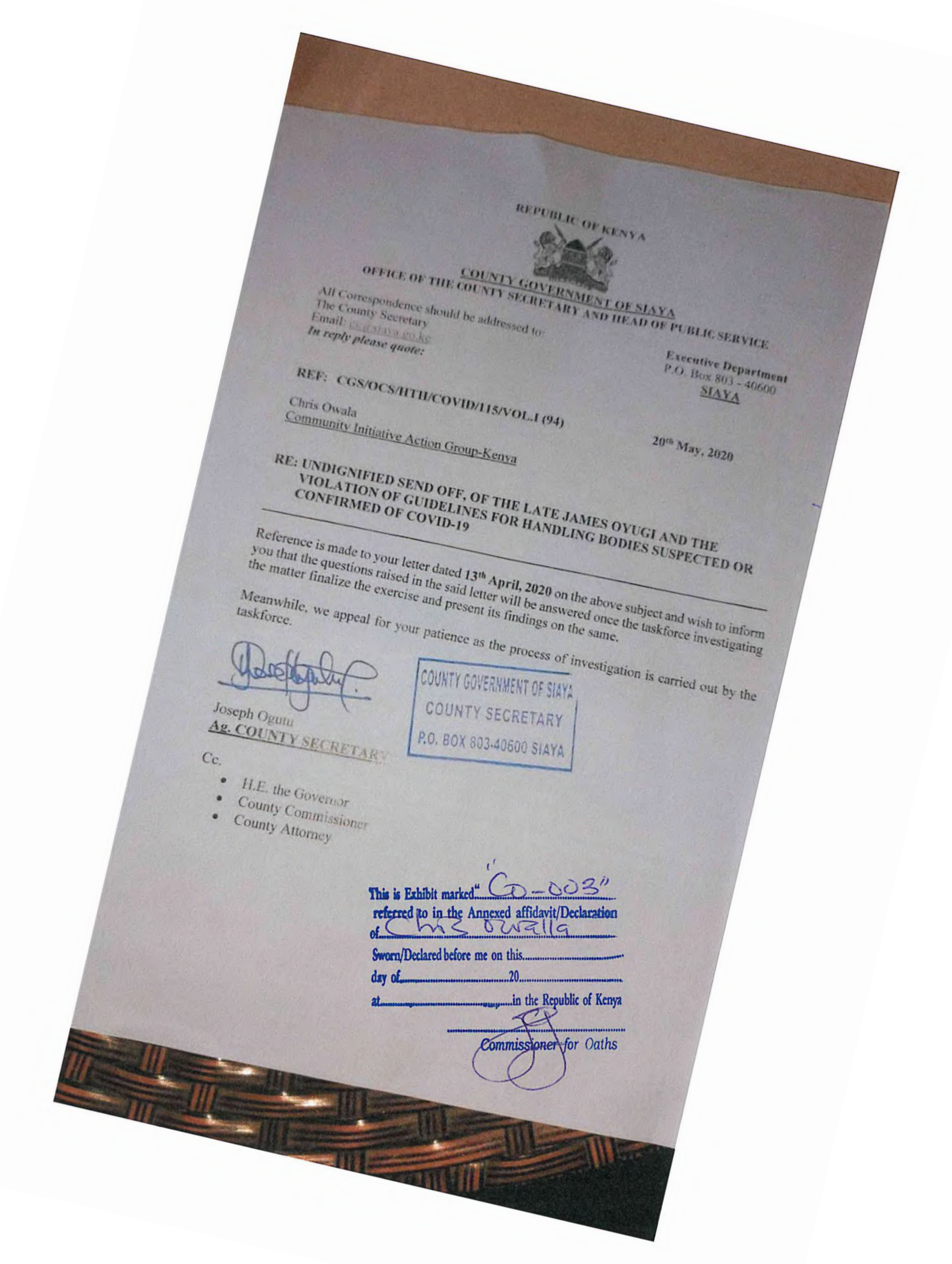
3. **Hillary Nzioki Mutyambai,**
   Inspector General of Police.

4. **Bernard Mogesa,**
   CEO, Kenya National Commission on Human Rights.

5. **Dr. Joyce Mwikali Mutinda,**
   Chairperson, National Gender and Equality Commission (NGEC).

6. **Hon. Florence Kajuju,**
   Chairperson, Commission on Administrative Justice

7. **Li Hsiang FUNG,**
   Senior Human Rights Advisor, OHCHR.



REPUBLIC OF KENYA

COUNTY GOVERNMENT OF SIAYA

OFFICE OF THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE

All Correspondence should be addressed to:
The County Secretary
Email: cs@siaya.go.ke
In reply please quote:

Executive Department
P.O. Box 803 - 40600
SIAYA

REF: CGS/OCS/HTH/COVID/115/VOL.I (94)

Chris Owala
Community Initiative Action Group-Kenya

20th May, 2020

RE: UNDIGNIFIED SEND OFF, OF THE LATE JAMES OYUGI AND THE VIOLATION OF GUIDELINES FOR HANDLING BODIES SUSPECTED OR CONFIRMED OF COVID-19

Reference is made to your letter dated **13th April, 2020** on the above subject and wish to inform you that the questions raised in the said letter will be answered once the taskforce investigating the matter finalize the exercise and present its findings on the same.

Meanwhile, we appeal for your patience as the process of investigation is carried out by the taskforce.

COUNTY GOVERNMENT OF SIAYA
COUNTY SECRETARY
P.O. BOX 803-40600 SIAYA

Joseph Ogutu
Ag. COUNTY SECRETARY

Cc.

- H.E. the Governor
- County Commissioner
- County Attorney

This is Exhibit marked "CO-003"
referred to in the Annexed affidavit/Declaration
of Chris Owalla
Sworn/Declared before me on this..........
day of..........20..........
at..........in the Republic of Kenya

....
Commissioner for Oaths

Thank You!

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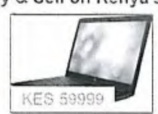

News

Another night burial for Kenyan patient who succumbed to Covid-19 [Photos]

05/14/2020

Tell your friends

This is Exhibit marked "CO-004" referred to in the Annexed affidavit/Declaration of Chris Owalla. Sworn/Declared before me on this 18th day of June 2020 at Kisumu in the Republic of Kenya

Commissioner for Oaths

A night burial by State officials in Siaya County caused uproar

Pulse launches a dedicated mobile gaming channel in partnership with Good World Games

Thank You!

Night burial by State officials for Kenyan patient who succumbed to Covid-19 in Kagawet, Bomet County

(/misc/sitemap/categories.html)
(/commerce/user/manage/)
English (/)
En Français (https://fr.allafrica.com/)

Kenya: Bomet's First COVID-19 Victim Buried at Night

The Nation (Nairobi) (http://www.nation.co.ke/) 14 MAY 2020

By Vitalis Kimutai

As Bomet residents were retreating to their homes to beat the 7 pm curfew on Wednesday night, a Land Rover ferrying the remains of the County's first Covid-19 case was making its way to Kagawet village in Itembe Location, Chepalungu where he would later be buried.

County public health officers presided over the burial of 55-year-old Erick Kosgei in accordance with protocols set by the Ministry of Health (MoH).

A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family was in quarantine.

The burial was conducted at around 7 pm Wednesday night in a ceremony that lasted only a few minutes.

Villagers are said to have earlier in the day been requested to help in digging a grave for the deceased as 16 of his relatives are holed up in quarantine at Kaplong Girls High School in Sotik Sub-county.

A few pictures taken by those who witnessed the burial and shared on social media show public health officers dressed in white hazmat suits and other protective gear lowering the body to the grave as darkness engulfs the area.

A Land Rover was used to transport the coffin under police escort from Longisa Hospital mortuary to the homestead for final burial rites.

The Nairobi-based businessman had travelled to Bomet County from Nairobi on Monday May 4 using a police vehicle secured by a relative. He was admitted at Longisa Hospital the same day before passed away the following day.

Mr Kosgei, 55, had a history of diabetes. He had travelled while ill.

Samples taken to Kenya Medical Research Institute (Kemri) on May 5 after he died were finally released on May 12, and showed he had Covid-19.

As a result, 10 doctors and nurses who came in contact with the patient at Longisa Hospital have been placed under quarantine.

A total of 36 people, including 16 of his family members, are now in isolation.

It has emerged that 20 of those quarantined are doctors and nurses who handled the patient at Longisa county referral, and others who handled a second case that tested positive in Nairobi after being transferred from Tenwek hospital.

In the second case, a child from Baringo County who had been taken for eye treatment at Tenwek hospital was transferred to Kenyatta National Hospital (KNH), Nairobi last week and tested positive for coronavirus.

As a result, ten doctors at Tenwek Hospital who came in contact with the child before the referral have also been placed in quarantine as a precautionary measure.

QUESTIONS OVER TRAVEL

Mr Kosgei's travel has raised questions over why he used a police vehicle instead of an ambulance or private car from Nairobi to Bomet and whether clearance was sought from the Ministry.

"A police vehicle was secured by a relative who is policeman to transport the man from Nairobi. He had been undergoing treatment in Nairobi on and off for some time before the transfer to Longisa Referral Hospital," said a family member who did not want to be named.

A relative to the deceased who had accompanied him to hospital had not been traced by public health officers by Wednesday afternoon.

The revelations were made even as questions were raised over why it took so long for Kemri to release the results of his test.

But according to County Executive in charge Medical Services and Public Health, Dr Joseph Sitonik, the tests were repeated to ascertain the results.

He also explained that it takes longer to conduct tests on a body that has been preserved.

"The process of testing samples from a patient is not the same as the one for a body which has been treated with preservatives," said Dr Sitonik, adding that there was no delay in release of the results.

He also said the body had properly been preserved at the mortuary in line with protocols from MoH ahead of its disposal.

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Murang'a: Outrage as body of a Covid-19 victim is buried at night

By Njange Maina
Saturday, May 30th, 2020

Body of a man who died of Covid-19 in Murang'a buried at night. PHOTO/COURTESY

In summary

- *After waiting in vain for over seven hours for the County Health officials to arrive, the family members took the body of the deceased to a police station prompting an outcry on social media.*

The body being lowered into the grave PHOTO/COURTESY

Critics blamed health and County officials for discrimination in handling Covid-19 cases. They said only the rich families are accorded dignity.

John Pianist wrote; "your people are buried like dogs especially those from poor backgrounds"

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA...2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM..4TH PETITIONER

FA...5TH PETITIONER

KB...6TH PETITIONER

MO ....7TH PETITIONER

EL...8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN)....................................... ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY

FOR HEALTH... 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF

SIAYA COUNTY...3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND

COORDINATION OF NATIONAL

GOVERNMENT...5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET

SECRETARY FOR INFORMATION

AND COMMUNICATIONS ....7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,

KENYA MEDICAL PRACTITIONERS' AND

DENTISTS COUNCIL..9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON

HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF CM IN SUPPORT OF THE PETITION

I, **CM** of Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am a female adult of sound mind, a petitioner in this case and competent to swear this affidavit.

2. **THAT** I was living and working in Malawi prior to the COVID-19 pandemic but following the outbreak, I lost my job and my employer returned to the United States of America before their borders were closed.

3. **THAT** I heard there would be a ban on international travel to Kenya with effect from 25 March 2020 and decided to return home as I could not afford to remain in Malawi without an income.

4. **THAT** I arrived at Jomo Kenyatta International Airport on 23 March 2020 at 7:20pm accompanied by my 9-year-old daughter.

5. **THAT** before we alighted the plane, the Kenya airways crew stated that we would be put in mandatory quarantine.

6. **THAT** my daughter and I went through the health port and then proceeded to the immigration section where we found a big crowd of people and when I asked the immigration officers what was going on, I was told that they were waiting for "orders from above".

7. **THAT** after clearing with immigration and collecting our luggage, at around 3:00am an announcement was made and passengers were informed that a bus would be transporting them to Crowne Plaza hotel. Without any further information on what other facilities were available, my daughter and I boarded the bus.

8. **THAT** unbeknown to me, Crowne Plaza hotel would only admit passengers that could pay the US$ 2550 for the 14-day mandatory quarantine in full. Unable to pay the exorbitant fee, my daughter and I were turned away and taken back to the airport terminal at around 4:00am in the morning.

9. **THAT** after sleeping on the cold airport floor, at around 6:30am a policeman called Hillpark Hotel who stated that they were charging Kshs 7000 per day. Still unable to raise the money, but desperate to find a place for my child and I to sleep and eat, I decided to take the bus to Hillpark Hotel.

10. **THAT** upon our arrival at the hotel, we were not immediately tested as I had initially thought. It was only on 26 March 2020 that nurses came to the hotel and asked a series of questions regarding where we had travelled from and for our contact details, but we were still not tested.

11. **THAT** on 30 March 2020 our temperature was taken but still no official tests were conducted. The uncertainty surrounding when we would get tested and the financial burden begun to take its toll on me and the other 'guests'.

12. **THAT** I cannot think of any reason why the Ministry of Health personnel could not give us authoritative updates on when and how we would be tested, given that they were receiving orders from those 'above' with knowledge on how the whole process was being coordinated.

13. **THAT** in an attempt to get some answers, I joined 14 others and drafted a petition requesting the government of Kenya and the Ministry of health for among others, reasons as to why many of us were not getting tested and once tested that our test results be produced expeditiously and those rendered negative permitted to go into self-quarantine.

    (Annexed and Marked **CM 1** is the "*Petition by the 4th, 5th and 6th Petitioners and 11 other residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 30 March 2020)

14. **THAT** the petition also addressed the hefty hotel fee which cost me a total of Kshs. 112,000. I did not know how I was going to afford to pay the hotel and it is for this reason I sought the help of the government to assist me and others struggling with the same dilemma.

15. **THAT** we did not receive a response to the above petition from the 1st Respondent who should have so within the shortest time possible particularly considering that the contents of the letter referenced issues regarding our health.

16. **THAT** I was hopeful that the government would consider what we were going through and at the very least help us understand their reasoning behind having to complete the 14-day quarantine period despite possibly testing negative and also why they could not take care of our bills since mandatory quarantine was a public health measure.

17. **THAT** after being tested 11 days after our arrival on 4 April 2020, we continued to ask the assigned Ministry of Health nurses what the Ministry could do to assist us with our financial predicament, but we were consistently advised to direct our issues to the Ministry.

18. **THAT** by neglecting to provide us with the information we needed from the beginning to fully appreciate and make sense of the government's response to the pandemic, it was difficult to manage our expectations going forward. As a result, their silence accelerated the deterioration of our mental and emotional state.

19. **THAT** realising the government would not be coming to our aid, I tried to negotiate with the hotel to and get my fees reduced but was instead met with threats and told that if I was unable to meet the costs, I would be taken to a government facility. I had heard of the deplorable conditions within some of these facilities and feared that there was a higher chance I would expose myself and my 9-year-old daughter to the virus.

20. **THAT** on 6 April 2020 we decided to send the petition dated 30 March 2020 a second time seeking a quick response from the government. This petition also particularly set out statements describing our inability to pay for the hotel costs due to reasons such as loss of employment and lack of sufficient funds to cater for both quarantine and our families.

(Annexed and Marked **CM 2** is the "*Petition by the by the 4th, 5th and 6th Petitioners and 11 other Residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 6 April 2020)

21. **THAT** to my dismay, the 1st Respondent declined to respond to the foregoing follow up petition.

22. **THAT** we did not even receive an acknowledgment letter confirming receipt of both petitions. The Respondents should have mechanisms in place that generate a response to the messages received, to enable those requesting for information easily follow up on any progress made with respect to their being actionable steps towards the realisation of issues raised.

23. **THAT** when our results came out, we were told to prepare to be released but this was on condition we pay the hotel dues owed. Desperate to leave this ordeal behind, I had to ask friends for financial assistance. I knew that I would have to pay them all back and suddenly, it dawned on me that my financial troubles were far from over.

24. **THAT** because I did not get a response from the government to either petition, I felt as though i served a country that demanded my compliance and cooperation but could not or would not deliver on their mandate to provide its citizens with the information they rightfully deserved.

25. **THAT** as a citizen of Kenya, I was counting on the government to ensure that we were safe and protected from all the direct and indirect psychosocial and financial costs of the pandemic.

26. **THAT** my daughter and I felt abandoned and have been left traumatised and emotionally drained by the whole experience detailed above.

27. **THAT** there has been a continued deprivation of information by the 1st Respondent which in turn has a direct effect on my ability to I attain the highest standard of health in that, I cannot ensure I am healthy, if I do not have the information to make that determination.

28. **THAT** given what is at stake in the government's response to the pandemic, by denying myself and countless others access to information, they have irrefutably failed the people it serves. Nonetheless, I am still eager to get answers to the issues raised in the correspondence above from the relevant government agencies.

29. **THAT** it is my hope that the Respondents in this petition will change the way in which they communicate with the public, especially those directly affected by their actions during this COVID-19 crisis.

30. **THAT** what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Nairobi this 18th day of June 2020.

CM)

) Deponent

)

BEFORE ME)

COMMISSIONER FOR OATHS)

DRAWN & FILED BY:-

Nerima Were, Advocate,
C/O KELIN
Kuwinda Lane, off Langata Road, Karen C
P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

This is Exhibit marked "CM-1"
referred to in the Annexed affidavit/Declaration
of CM
Sworn/Declared before me on this 18th
day of June 2020
at Kisumu in the Republic of Kenya

Commissioner for Oaths

Monday 30th March 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

PETITION BY THE RESIDENTS OF HILLPARK HOTEL TO THE GOVERNMENT OF KENYA ON ACCOMMODATION AND TESTING

We, the people now under Government-mandated quarantine currently residing at Hillpark Hotel, are making this request to the Ministry of Health and the Government of Kenya to accept our request for expediting of our testing process and related health check-ups, and to address our accommodation costs, in the manner specifically outlined below.

1. Testing and Quarantine
   a. Many of us are on our 7th day (or beyond) of quarantine and we have not yet been tested.
   b. We request that test results are availed to us within a 24-hour period as promised. A longer wait time will increase our anxiety and will result in more days in quarantine.
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   d. We request a psychiatric evaluation of all individuals placed in quarantine, during their stay and at the end of their period. This is largely due to the fact that isolation will likely take a toll on our mental health and increases anxiety and depressive thoughts that could result in long-term consequences.
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   a. Hon. Mutahi Kagwe, in his press statement on March 23, 2020 stated that "hotels should be charging no more than 50% or 25% of the total charges of the hotel." (https://www.youtube.com/watch?v=Nw7ykmBsFjE). While we commend the Hillpark Hotel for their attempt to reduce the costs as per the directive, the stated cost of KSh. 7,000 per day is still a very high rate for us, and we request for government support to subsidize these costs. Despite our specific extenuating financial circumstances, as part of our commitment to our health and safety, and that of other wananchi, we are each still willing to pay a maximum amount of Kshs. 50,000/- per person for our total stay. We request the GoK to subsidize the remaining costs of Kshs. 48,000/- per person for our quarantine period or negotiate a waiver with the hotel for this amount.
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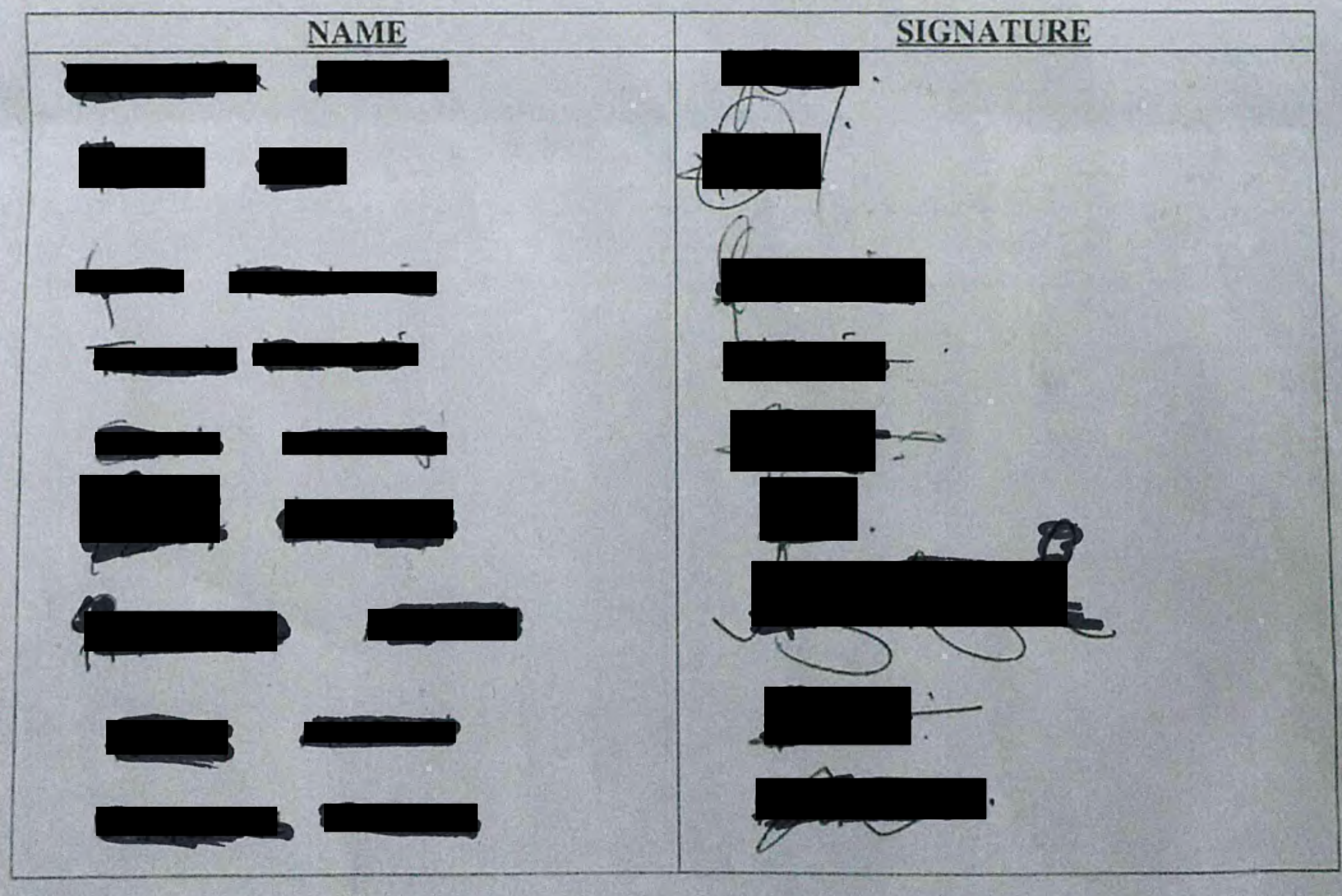
ii. We are also unable to use the gym, swimming pool and other hotel facilities, which would ordinarily be available to us.
iii. We are unable to have our clothes washed, which might also be carrying the virus, hence increasing the chance of disease.
iv. Many of us that are quarantined, are students, and others are parents with financial responsibilities. Some of us have also been laid off from our jobs abroad and are currently unemployed, and so this unforeseen cost is an extra financial burden.

b. If the GoK is unable to subsidize the cost, we request that the GoK release those that have negative test results to be allowed to self-quarantine at home. We have already provided our phone numbers, so tracking our location during the self-quarantine period is still possible.

Sincerely,

The Residents-in-Quarantine at Hillpark Hotel, Nairobi
(Signatures below)

By signing below, I acknowledge that I am a resident-in-quarantine at the Hill Park Hotel, Nairobi. This signature serves as an endorsement of the above stated terms and requests made to the Ministry of Health and the Government of Kenya



This is Exhibit marked "CM-2" referred to in the Annexed affidavit/Declaration of CM 1815
Sworn/Declared before me on this 20 day of June 2020 at Kisumu in the Republic of Kenya
Commissioner for Oaths

Monday 6th April 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

PETITION BY THE RESIDENTS OF HILLPARK HOTEL TO THE GOVERNMENT OF KENYA ON ACCOMMODATION AND TESTING

We, the people now under Government-mandated quarantine currently residing at Hillpark Hotel, are making this request to the Ministry of Health and the Government of Kenya to accept our request for expediting of our testing process and related health check-ups, and to address our accommodation costs, in the manner specifically outlined below. We made this request to our MoH officials on-site on March 30th and received no response. Many of us in the hotel are scheduled to complete our 14 days today, April 6th and check out tomorrow, April 7th. Your prompt response would be appreciated.

1. Testing and Quarantine
    a. We request that test results are availed to us within a 24-hour period as promised. We were tested on Saturday 4th April and still have not received our results. A longer wait time will increase our anxiety and will result in more days in quarantine.
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iv. Many of us that are quarantined, are students, and others are parents with financial responsibilities. Some of us have also been laid off from our jobs abroad and are currently unemployed, and so this unforeseen cost is an extra financial burden.

Sincerely,

The Residents-in-Quarantine at Hill Park Hotel, Nairobi

Below you will find the names and our individual cases as to why we are requesting financial support to offset the costs of our stay.

[redacted]

I am a single parent with school going kids, I can't afford to pay the amount stated by the hotel. I had booked an apartment before, fully paid with shopping to self-quarantine. I still have to look for ways to feed my kids and rent after the quarantine.

[redacted]

I am a single mother, with no funds to pay for this, as I take care of my child by myself.

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My daughter and I are housed in two different rooms which is cost prohibitive as I have to meet the cost of two separate rooms.

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I am a full-time postgraduate student at the University of Pretoria, SA and on scholarship. Raising the amount levied by the hotel is therefore not feasible for me.

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I am a single mum and lost my job in Malawi since my boss had to go back to his country. I do home schooling there for my daughter. I haven't been paid for March and don't know when I will and I have no idea what will happen if I don't get paid. I can't afford to pay the amount, please help.

[redacted]

I am on full scholarship at a university and have no job or source of income to pay for the cost of the hotel. my parents are also prioritizing on basic needs in these uncertain times.

My name is [redacted] I came home due to the termination of my job contract. I am currently unemployed; therefore I am not in a position to pay the hotel bill as I cannot afford it.

I set up a management consultancy firm early in the year. As a result of the pandemic, work has diminished. I need to hang onto whatever little income I have now.

I'm a struggling electrician, with no source of income and a young family of four to support. All the resources I could scram up from savings, friends and family went into the last ticket to bring me home and to pay the quarantine deposit.

I am a student on full scholarship at NYU, and so am unable to afford the costs of this hotel. I am financially independent and do not have support from my parents. I am also from Mombasa and hope to leave to return to my home city as soon as possible.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA...2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM...4TH PETITIONER

FA...5TH PETITIONER

KB...6TH PETITIONER

MO ....7TH PETITIONER

EL...8TH PETITIONER

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ACHIENG ORERO..13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY

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THE COMMISSION ON ADMINISTRATIVE

JUSTICE..8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,

KENYA MEDICAL PRACTITIONERS' AND

DENTISTS COUNCIL..9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON

HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF FA IN SUPPORT OF THE PETITION

I, **F.A.** of Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am a male adult of sound mind and the 5th Petitioner in this petition, thus I have knowledge of the facts and I am competent to swear this Affidavit.

2. **THAT** I was in Malawi on a two-week work assignment when I heard the news that the Kenyan borders would be closed with effect from midnight on 25 March 2020. To avoid being indefinitely restricted from travelling back to Kenya, I rescheduled my flight back home and arrived a few minutes to 8:00pm on 23 March 2020.

3. **THAT** I was aware that on 22 March 2020 the Government of Kenya, through the Ministry of Health, would require any passengers coming into Kenya to go into mandatory quarantine, and coming from Malawi which had not yet reported a single positive COVID-19 case, I had trust in the state to take my circumstances into consideration when determining who should and should not be forcefully subjected to mandatory quarantine.

4. **THAT** upon disembarking from the flight, I along with the other passengers were ushered to the port health and given a sheet of paper to fill in our contact details and answer questions on whether we were exhibiting any symptoms of the disease.

5. **THAT** after finishing at the port health, the other passengers from my flight and I along with passengers from flights which had arrived at varied times, were instructed to wait at the immigration counter for 3 hours where we were crammed up with little to no possibility of adhering to the social distancing measures in place.

6. **THAT** throughout the foregoing process, we had not received any information from any of the officials on duty on what was going to happen to us.

7. **THAT** even after clearing with immigration and finally being informed that I and all the other passengers would be placed in mandatory quarantine, there was still no explanation on how this process was to be conducted, the places offering mandatory quarantine or if there were any quarantine procedures being utilized to facilitate the process.

8. **THAT** we were informed that only the Ministry of Health could provide us with the answers we desperately needed, therefore, confused and frustrated due to the lack of communication several passengers and I had to fend for ourselves as our questions continued to remain unanswered.

9. **THAT** I tried to get on a bus going to the Kenya School of Government, but was told that the bus was full, and with no information on any other places offering mandatory quarantine the remaining passengers and I continued to wait for an inordinately long period of time before getting on a bus headed to Crowne Plaza Airport Hotel.

10. **THAT** on arriving at Crowne Plaza Airport Hotel, I and others found that we could not afford the 1260 US dollars required to be paid upfront for the entire 14-day period. With nowhere else to go, we were taken back to the airport terminal before eventually being driven to Hillpark Hotel, being the only option made available to us.

11. **THAT** upon arriving at Hillpark Hotel, we asked when we would be tested but once again, we were informed that the Ministry of health would communicate in due time.

12. **THAT** based on the foregoing, I joined 14 other individuals in writing a letter to the Government of Kenya asking questions about accommodation and testing. **(Annexed and Marked FA-001** is the "*Petition by the 4th, 5th and 6th Petitioners and 11 other Residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 30 March 2020)

13. **THAT** in the letter we set out our requests for information concerning testing and quarantine as follows:

    i. why we had not been tested on or beyond the 7th day of quarantine;
    ii. that our test results be availed within the guaranteed 24- hour period;
    iii. that those tested negative be permitted to go into self-quarantine; and
    iv. that psychiatric evaluation of all individuals be provided during and after our stay in quarantine.

14. **THAT** we also raised the issue of the cost of quarantine in the letter and noted that the Kshs 7,000 per day fee was a high rate for many of us to pay. We therefore agreed to pay Kshs 50,000 of the total amount of Kshs 98,000 and requested the government to subsidize the remaining cost of Kshs 48,000 per person for the 14-day period, or negotiate a waiver with the hotel of the said amount.

15. **THAT** given our living conditions at the time, the inability to fully enjoy the amenities within the hotel and the financial strain burdening those quarantined, our requests for information and financial assistance from the government were entirely justified.

16. **THAT** I did not receive a response to the letter requesting the Ministry of Health and the Government to expedite our testing process and address our accommodation costs. This was and still is a gross violation of my constitutional right to demand for and receive information from the state.

17. **THAT** I along with others continued to experience high levels of anxiety due to the slow turnaround of our test results and ultimately, the state of our mental health diminished and the lack psychosocial support exacerbated the situation.

18. **THAT** as a last attempt at gaining some relief and answers to our questions, we agreed to resend the letter addressed to the government and Ministry, and pleaded for a prompt response, but this was a vain attempt at getting the help we needed. **(Annexed and Marked FA-002** is the "*Petition by the 4th, 5th and 6th Petitioners and 11 other Residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 6 April 2020)

19. **THAT** sending the foregoing petition should not have been a necessary intervention. We should have received confirmation from the government that they had received the letter and were reviewing the same with the intention of responding and taking measures to address our situation.

20. **THAT** I have never seen an acknowledgment letter or received a written response to the above letters.

21. **THAT** after testing negative on 6 April 2020, in light of my impending discharge from quarantine, I had to pay for my accommodation in full in order to regain my freedom. I believe

that the State should have covered these costs and relieved me of the financial burden which added to the already poor psychological state I was in.

22. **THAT** since landing in Kenya and during the imposed mandatory quarantine period, I did not receive any definite information from the government, thereby infringing on my ability to ensure my life and liberty was protected.

23. **THAT** given the severity of the current crisis and the fact that lives are at stake, the respondents ought to prioritize the issues affecting the public and more specifically, those directly affected by the actions taken to curb the virus.

24. **THAT** I am deeply aggrieved by the way in which the entire quarantine process was managed. The government should have been well prepared before our arrival by ensuring we were adequately and consistently informed of the government's actions to protect us from the impact COVID-19 was going to have on the population.

25. **THAT** since the state of my health was at stake, I should still receive information expressly justifying why communication with those in mandatory quarantine was not treated as a priority.

26. **THAT** this lack of communication has caused mental anguish and weakened my trust in the state and its ability to effectively govern its people.

27. **THAT** what is deponed to in this Affidavit is within my knowledge save for information the sources whereof are otherwise disclosed.

SWORN in Nairobi this 18th day of June 2020.

FA)________________

) Deponent

)

BEFORE ME)

COMMISSIONER FOR OATHS)

ADVOCATE & COMMISSIONER FOR OATHS

DRAWN & FILED BY: -

Nerima Were, Advocate
C/O KELIN
Kuwinda Lane, off Langata Road, Karen C
P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

This is Exhibit marked "FA – 007" referred to in the Annexed affidavit/Declaration of FA
Sworn/Declared before me on this 18th day of June 2020 at Nairobi in the Republic of Kenya

Commissioner for Oaths

Monday 30th March 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

PETITION BY THE RESIDENTS OF HILLPARK HOTEL TO THE GOVERNMENT OF KENYA ON ACCOMMODATION AND TESTING

We, the people now under Government-mandated quarantine currently residing at Hillpark Hotel, are making this request to the Ministry of Health and the Government of Kenya to accept our request for expediting of our testing process and related health check-ups, and to address our accommodation costs, in the manner specifically outlined below.

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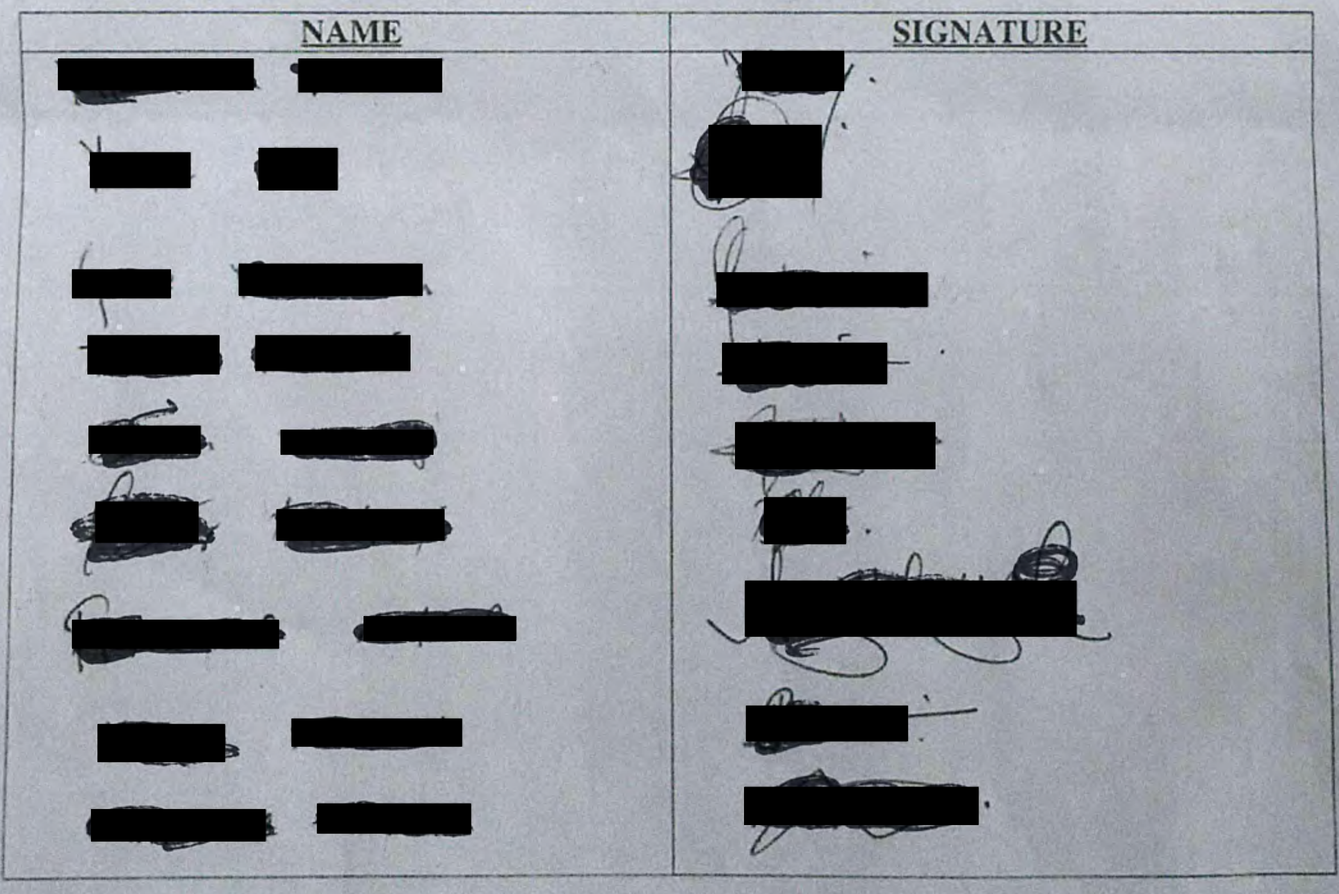
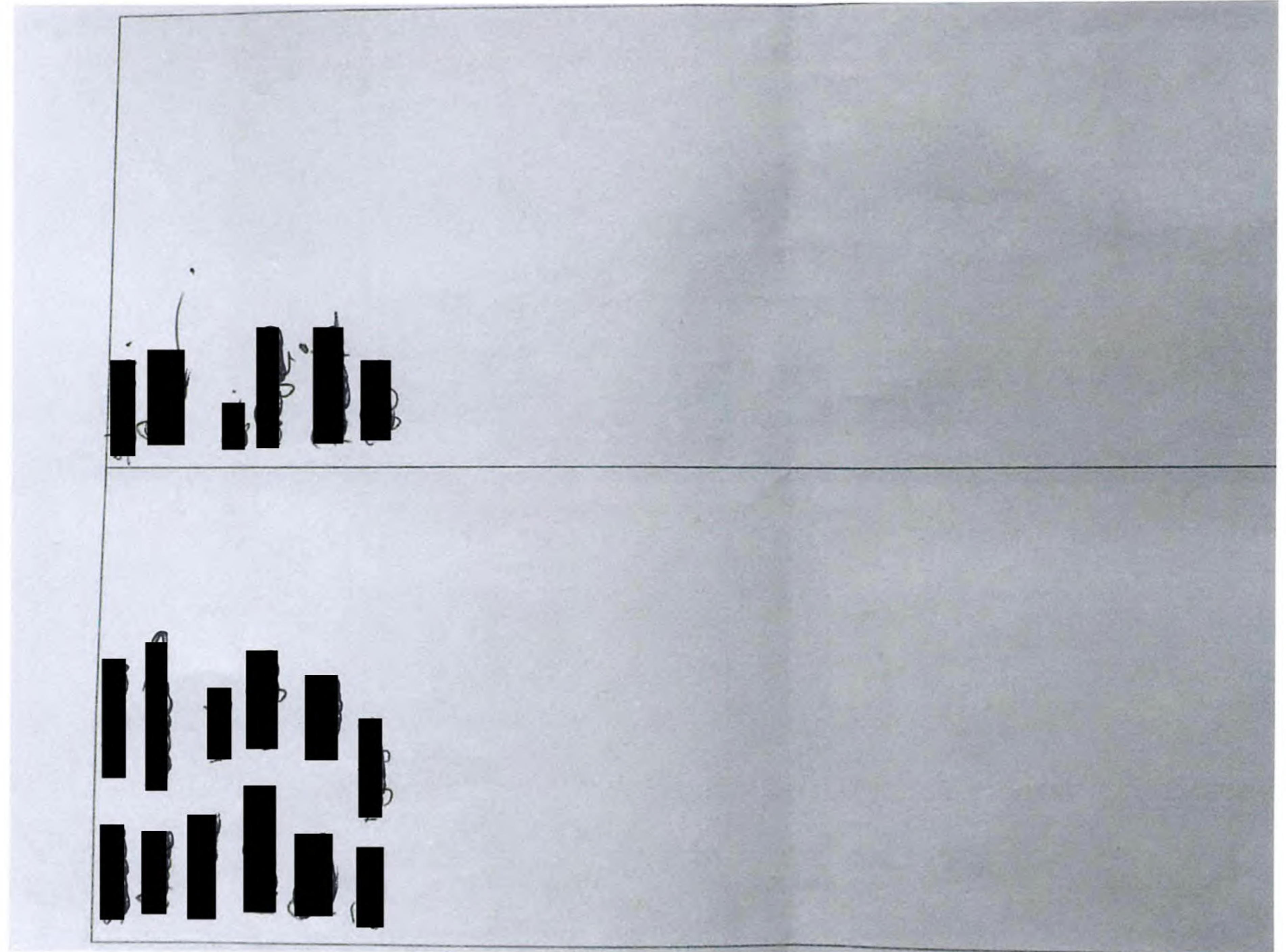
Sincerely,

The Residents-in-Quarantine at Hillpark Hotel, Nairobi
(Signatures below)

By signing below, I acknowledge that I am a resident-in-quarantine at the Hill Park Hotel, Nairobi. This signature serves as an endorsement of the above stated terms and requests made to the Ministry of Health and the Government of Kenya



NAME	SIGNATURE



This is Exhibit marked "PA-002"
referred to in the Annexed affidavit/Declaration
of PA
Sworn/Declared before me on this 18th
day of June 2020
at Kisumu in the Republic of Kenya
Commissioner for Oaths

Monday 6th April 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
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MINISTRY OF HEALTH, GOVERNMENT OF KENYA

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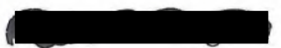

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

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(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

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KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

K.B AFFIDAVIT IN SUPPORT OF PETITION

I, **K.B**, an adult female of sound mind and a citizen of the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am, a petitioner in this case and have knowledge of the facts in the petition hence competent to swear this Affidavit.

2. **THAT** I left Kenya to study at the New York University in the United States of America on full scholarship where I have been undertaking my undergraduate studies for last 5 years. I was required to undertake my internship this year however, because my visa was coming to an end in July and in light of the looming closure of Kenyan borders on 25 March 2020, I decided to travel to Kenya to have my papers regularised to avoid the risk of being confined in the USA illegally.

3. **THAT** in light of the imminent closure of the Kenyan borders on 25 March 2020, with little to no time to spare I attempted to pack the last 5 years of my life in a suitcase and booked a Kenya Airways ticket departing from J.F Kennedy Airport scheduled to arrive Mombasa on 24 March 2020.

4. **THAT** the flight was supposed to pass through Nairobi's Jomo Kenyatta International Airport but I would soon learn that this would be the end of the road. We arrived in Nairobi at around 11:30am on 24 March 2020 and were warned about the government's stringent measures against COVID-19, more particularly the mandatory quarantine awaiting those travelling into the country.

5. **THAT** considering I had checked in my baggage directly to Mombasa, I consulted a cabin crew member about what would transpire now that there was uncertainty about whether some of us would indeed make it to our final destination. I was advised that information would be readily available once we had landed.

6. **THAT** as soon as we disembarked from the aircraft, we were directed to the health port where we were required to fill in forms about our current health status and to have our temperature checked for fever, a well-known indicator of the COVID-19 virus.

7. **THAT** nervous about the prospects of making my way to Mombasa, I asked one of the officials on duty whether there was a possibility I could be quarantined in Mombasa as I had knowledge of two quarantine facilities in place created to host those arriving in Mombasa at the time. I was informed that after proceeding through immigration, health officers in the baggage area would communicate a way forward.

8. **THAT** the information desk denied the existence of a quarantine facility in Mombasa and insisted I be quarantined in Nairobi. Without any further assistance from those assigned to provide us with guidance, I sought help from my fellow passengers who instructed me to head over to customs for guidance on the list of hotels available.

9. **THAT** I unsuccessfully tried to book a hotel online but still managed to secure a room at Hillpark Hotel, 5 hours after landing. The hotel charged us Kshs 7000 a night, a price I knew I could not afford given the fact that I was only a student on scholarship, but exhausted and in need of food and water I was forced to settle for a room.

10. **THAT** the next morning I received a phone call requesting that I immediately pay a total amount of Kshs 98,000 for the entire 14-day period. I did not have the amount required and even if I did, it became clear after a few days that price paid would not be commensurate to the living conditions we were forced to endure.

11. **THAT** the food and the way in which it was served was substandard and blatantly exposed us to the possibility of contracting the virus, we had no access to the laundry services therefore, we were unable to wash our clothes furthermore, our rooms were never cleaned. More importantly we had not been tested. This was of particular importance to me because I was suffering from a cold and due to my asthma, I was afraid I was more prone to or at risk of contracting COVID-19.

12. **THAT** after incessantly asking when we would finally be tested and receiving no response, a group of the residents in quarantine at Hillpark Hotel decided to draft a petition to the government dated 30 March 2020 requesting for among others; that the government subsidize the costs of quarantine, that we be tested and results availed within a 24-hour period and thereafter that those found negative be released into self-quarantine and finally that we receive psychiatric evaluation. (Annexed and Marked **KB 1** is the *"Petition by the by the 4th, 5th and 6th Petitioners*

and 11 other Residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing" dated 30 March 2020)

13. **THAT** the petition clearly set out our concerns and requests which we believed and still believe were reasonable given the unbearable circumstances. We were literally in the middle of a pandemic afraid for our health and lives but we received no comfort from the State, who to date has failed to respond to the foregoing petition.

14. **THAT** the 1st Respondent as the state representative should have responded to the petition within a reasonable amount of time due to its time sensitive nature however, if at all this was not possible, I expected that at the very least they would acknowledge receipt and assure us that they intended to respond in due time.

15. **THAT** at long last on 4 April 2020, the 12th day of our quarantine period, we were tested. Considering the way in which the whole process had been carried out thus far, we were not in any way convinced that our results would be ready in the prescribed 24-hour period. With only 2 days remaining in quarantine the waiting was agonizing and my mental state deteriorated even further. I was miserable and desperate to get back to my family in Mombasa.

16. **THAT** instead of suffering in silence, on 6 April 2020 the same 15 residents, myself included, sent another petition requesting for a prompt response to the previous petition dated 30 March 2020. I sent this letter directly to a Ministry of Health official at 2:00pm who acknowledged receipt and understood that she was to forward the same to the Ministry of Health. (Annexed and Marked **KB 2** is the "*Petition by the 4th, 5th and 6th Petitioners and 11 other Residents of Hillpark Hotel to the Government of Kenya on Accommodation and Testing*" dated 6 April 2020)

17. **THAT** without any knowledge as to whether the first petition was indeed received, sending a secondary petition was therefore necessary, though this should have not been the case. This second petition demonstrated the importance and urgency of a response to the requests for information made, with emphasis on our inability to pay for quarantine.

18. **THAT** I have not received a response to either petition to date, despite efforts made by myself and those involved to get the government's attention.

19. **THAT** we all received our results shortly after we sent the second petition and told that we were all negative. We received our Ministry of Health discharge slips just after 6:00pm but because the President had just announced the curfew restrictions, we now needed to spend an extra night at the hotel.

20. **THAT** we were given an ultimatum, to either pay for the cost of quarantine or stay in the hotel until payment was rendered in full. I had already made it explicitly clear that I was unable to afford the charges and was totally reliant on the government's financial assistance as indicated in the letters dated 30 March 2020 and 6 April 2020.

21. **THAT** following the governments extension of the 14-day mandatory quarantine by a further 14 days in some facilities, I frantically called my parents asking for money to settle the bill. After parting with the said amount, having done so under considerable strain and difficulty on my part and that of my parents, particularly my mother who had to borrow money from her employer, I was able to pay for the bill and was discharged.

22. **THAT** it has been weeks since I went through the above traumatic experience and have still not received a response from the government to the petitions referred to above. Today, my questions remain the same and it is still essential that I receive this information. This is so I can understand the rationale behind the actions taken by the 1st Respondent and allow them to prove that they acknowledged our concerns and will make efforts to change the way information regarding public health emergencies is shared now and in the future.

23. **THAT** in addition to the substantial dent in my finances and that of my parent's finances, I felt mentally and emotionally mistreated by the state due to their lack of communication and sensitivity to our plight.

24. **THAT** I deserve an explanation as to why I had to endure immense mental distress during a public health emergency without any assurances or acknowledgment by the State.

25. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN in Mombasa this 18th day of June 2020.

KB	)	Deponent
JACQUELINE WAIHENYA Advocate of the High Court of Kenya Notary Public & Commissioner for Oaths P/105/3896/98 PC No: LSK/2020/05273 Tel: +254-41-2311060 Email: waihenya@jwmadvocates.com	)	
BEFORE ME	)	
COMMISSIONER FOR OATHS	)	

DRAWN & FILED BY: -

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Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

This is Exhibit marked "KB-1" referred to in the Annexed affidavit/Declaration of KB

Sworn/Declared before me on this 18th day of June 2020 at Mombasa in the Republic of Kenya

Commissioner for Oaths

Monday 30th March 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

PETITION BY THE RESIDENTS OF HILLPARK HOTEL TO THE GOVERNMENT OF KENYA ON ACCOMMODATION AND TESTING

We, the people now under Government-mandated quarantine currently residing at Hillpark Hotel, are making this request to the Ministry of Health and the Government of Kenya to accept our request for expediting of our testing process and related health check-ups, and to address our accommodation costs, in the manner specifically outlined below.

1. Testing and Quarantine
   a. Many of us are on our 7th day (or beyond) of quarantine and we have not yet been tested.
   b. We request that test results are availed to us within a 24-hour period as promised. A longer wait time will increase our anxiety and will result in more days in quarantine.
   c. Once we are tested on the 5th day, should the result come back negative, those that test negative should be permitted to go into self-quarantine.
   d. We request a psychiatric evaluation of all individuals placed in quarantine, during their stay and at the end of their period. This is largely due to the fact that isolation will likely take a toll on our mental health and increases anxiety and depressive thoughts that could result in long-term consequences.
2. Payment to Hotels
   a. Hon. Mutahi Kagwe, in his press statement on March 23, 2020 stated that "hotels should be charging no more than 50% or 25% of the total charges of the hotel." (https://www.youtube.com/watch?v=Nw7ykmBsFjE). While we commend the Hillpark Hotel for their attempt to reduce the costs as per the directive, the stated cost of KSh. 7,000 per day is still a very high rate for us, and we request for government support to subsidize these costs. Despite our specific extenuating financial circumstances, as part of our commitment to our health and safety, and that of other wananchi, we are each still willing to pay a maximum amount of Kshs. 50,000/- per person for our total stay. We request the GoK to subsidize the remaining costs of Kshs. 48,000/- per person for our quarantine period or negotiate a waiver with the hotel for this amount.
      i. We believe that the Kshs. 50,000/- amount is reasonable to pay, given that our rooms will not be cleaned for 14 days, and we are required to change our own linen.

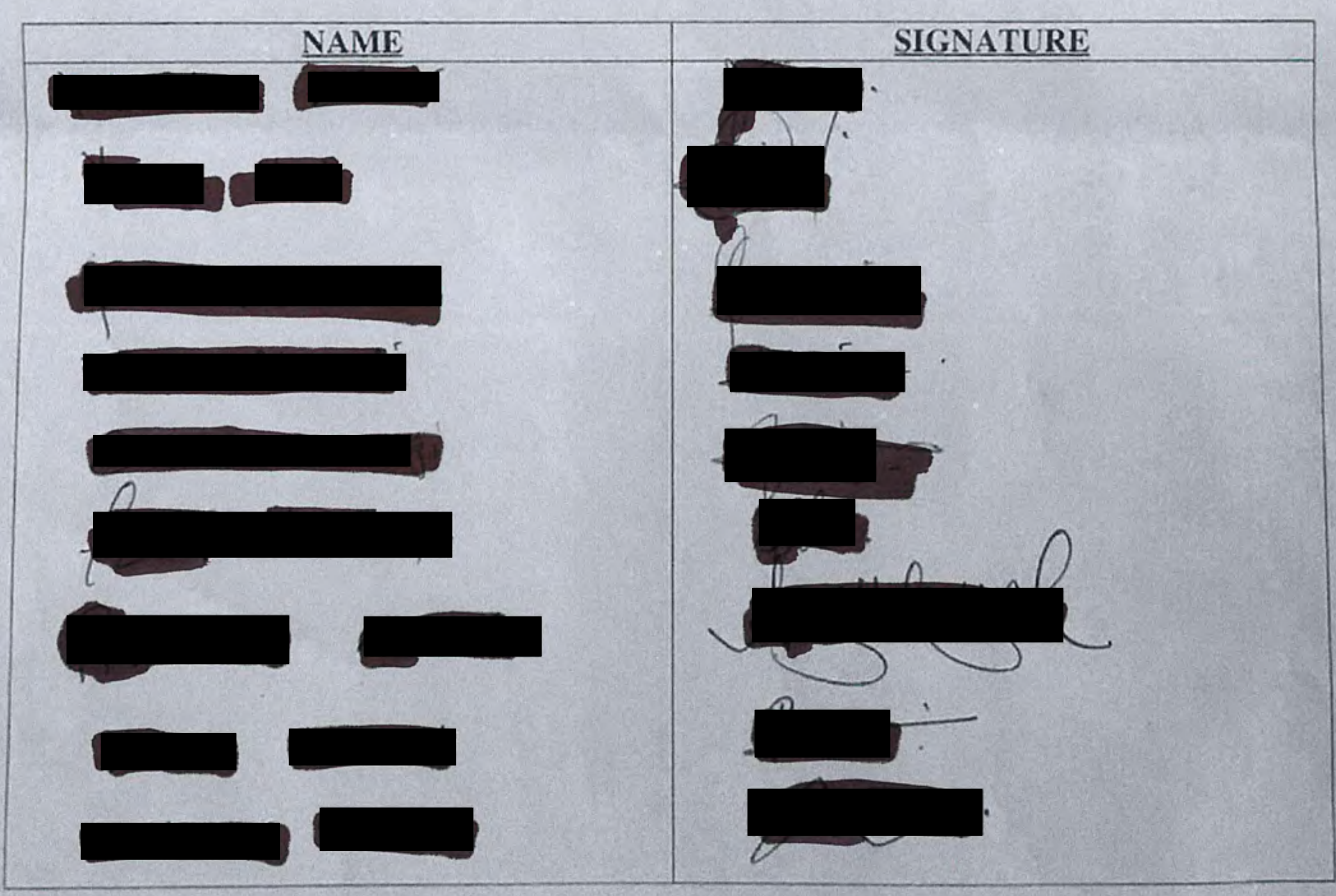
ii. We are also unable to use the gym, swimming pool and other hotel facilities, which would ordinarily be available to us.
iii. We are unable to have our clothes washed, which might also be carrying the virus, hence increasing the chance of disease.
iv. Many of us that are quarantined, are students, and others are parents with financial responsibilities. Some of us have also been laid off from our jobs abroad and are currently unemployed, and so this unforeseen cost is an extra financial burden.

b. If the GoK is unable to subsidize the cost, we request that the GoK release those that have negative test results to be allowed to self-quarantine at home. We have already provided our phone numbers, so tracking our location during the self-quarantine period is still possible.

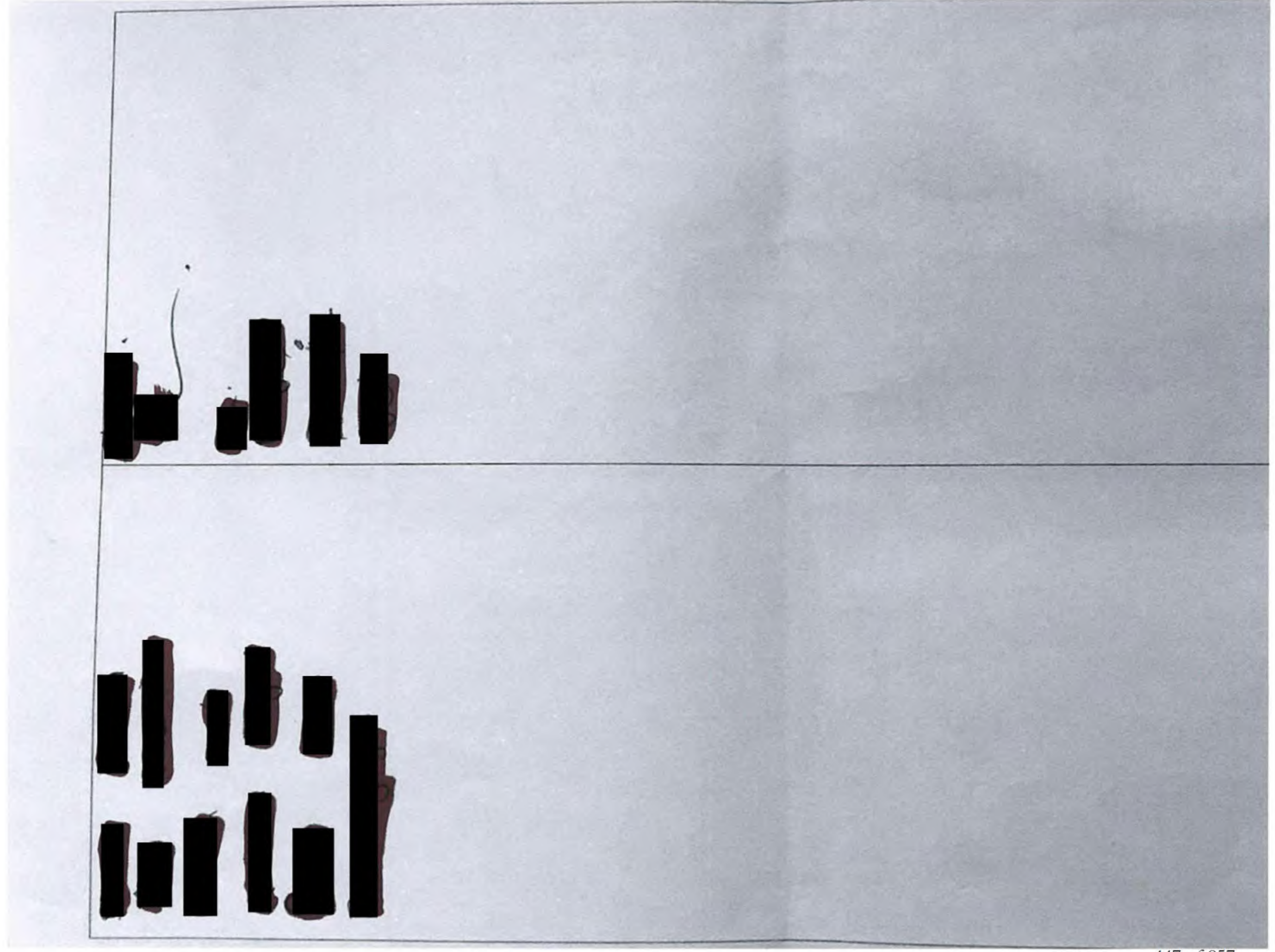
Sincerely,

The Residents-in-Quarantine at Hillpark Hotel, Nairobi
(Signatures below)

By signing below, I acknowledge that I am a resident-in-quarantine at the Hill Park Hotel, Nairobi. This signature serves as an endorsement of the above stated terms and requests made to the Ministry of Health and the Government of Kenya



NAME	SIGNATURE



This is Exhibit marked "KB-2"
referred to in the Annexed affidavit/Declaration
of KB.
Sworn/Declared before me on this 18th
day of June 2020
at Mombasa in the Republic of Kenya

Commissioner for Oaths

Monday 6th April 2020

H.E. UHURU KENYATTA
PRESIDENT OF
THE REPUBLIC OF KENYA

THRO: HON. MUTAHI KAGWE
CABINET SECRETARY
MINISTRY OF HEALTH, GOVERNMENT OF KENYA

PETITION BY THE RESIDENTS OF HILLPARK HOTEL TO THE GOVERNMENT OF KENYA ON ACCOMMODATION AND TESTING

We, the people now under Government-mandated quarantine currently residing at Hillpark Hotel, are making this request to the Ministry of Health and the Government of Kenya to accept our request for expediting of our testing process and related health check-ups, and to address our accommodation costs, in the manner specifically outlined below. We made this request to our MoH officials on-site on March 30th and received no response. Many of us in the hotel are scheduled to complete our 14 days today, April 6th and check out tomorrow, April 7th. Your prompt response would be appreciated.

1. Testing and Quarantine
    a. We request that test results are availed to us within a 24-hour period as promised. We were tested on Saturday 4th April and still have not received our results. A longer wait time will increase our anxiety and will result in more days in quarantine.
    b. We request a psychiatric evaluation of all individuals placed in quarantine, during their stay and at the end of their period. This is largely due to the fact that isolation will likely take a toll on our mental health and increases anxiety and depressive thoughts that could result in long-term consequences.
2. Payment to Hotels
    a. Hon. Mutahi Kagwe, in his press statement on March 23, 2020 stated that "hotels should be charging no more than 50% or 25% of the total charges of the hotel." (https://www.youtube.com/watch?v=Nw7ykmBsFjE). While we commend the Hillpark Hotel for their attempt to reduce the costs as per the directive, the stated cost of KSh. 7,000 per day is still a very high rate for us, and we request for government support to subsidize these costs. Despite our specific extenuating financial circumstances, as part of our commitment to our health and safety, and that of other wananchi, we are each still willing to pay a maximum amount of Kshs. 50,000/- per person for our total stay. We request the GoK to subsidize the remaining costs of Kshs. 48,000/- per person for our quarantine period or negotiate a waiver with the hotel for this amount.
        i. We believe that the Kshs. 50,000/- amount is reasonable to pay, given that our rooms will not be cleaned for 14 days, and we are required to change our own linen.

ii. We are also unable to use the gym, swimming pool and other hotel facilities, which would ordinarily be available to us.
iii. We are unable to have our clothes washed, which might also be carrying the virus, hence increasing the chance of disease.
iv. Many of us that are quarantined, are students, and others are parents with financial responsibilities. Some of us have also been laid off from our jobs abroad and are currently unemployed, and so this unforeseen cost is an extra financial burden.

Sincerely,

The Residents-in-Quarantine at Hill Park Hotel, Nairobi

Below you will find the names and our individual cases as to why we are requesting financial support to offset the costs of our stay.

I am a single parent with school going kids, I can't afford to pay the amount stated by the hotel. I had booked an apartment before, fully paid with shopping to self-quarantine. I still have to look for ways to feed my kids and rent after the quarantine.

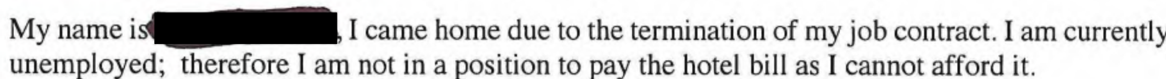
I am a single mother, with no funds to pay for this, as I take care of my child by myself.

My daughter and I are housed in two different rooms which is cost prohibitive as I have to meet the cost of two separate rooms.

I am a full-time postgraduate student at the University of Pretoria, SA and on scholarship. Raising the amount levied by the hotel is therefore not feasible for me.

I am a single mum and lost my job in Malawi since my boss had to go back to his country. I do home schooling there for my daughter. I haven't been paid for March and don't know when I will and I have no idea what will happen if I don't get paid. I can't afford to pay the amount, please help.

I am on full scholarship at a university and have no job or source of income to pay for the cost of the hotel. my parents are also prioritizing on basic needs in these uncertain times.



My name is [redacted], I came home due to the termination of my job contract. I am currently unemployed; therefore I am not in a position to pay the hotel bill as I cannot afford it.

I set up a management consultancy firm early in the year. As a result of the pandemic, work has diminished. I need to hang onto whatever little income I have now.

I'm a struggling electrician, with no source of income and a young family of four to support. All the resources I could scram up from savings, friends and family went into the last ticket to bring me home and to pay the quarantine deposit.

I am a student on full scholarship at NYU, and so am unable to afford the costs of this hotel. I am financially independent and do not have support from my parents. I am also from Mombasa and hope to leave to return to my home city as soon as possible.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA ....1ST PETITIONER

ESTHER NELIMA...2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM...4TH PETITIONER

FA..5TH PETITIONER

KB...6TH PETITIONER

MO ....7TH PETITIONER

EL..8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN).. ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO..13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY

FOR HEALTH.. 1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH.. 2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF

SIAYA COUNTY..3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND

COORDINATION OF NATIONAL

GOVERNMENT...5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET

SECRETARY FOR INFORMATION

AND COMMUNICATIONS ....7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,

KENYA MEDICAL PRACTITIONERS' AND

DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON

HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF MO IN SUPPORT OF THE PETITION

I, **MO** a Kenyan citizen and resident of Nairobi County in the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am a male adult of sound mind and the 7th Petitioner in this petition, thus I have knowledge of the facts and I am competent to swear this Affidavit.

2. **THAT** I work as a consultant in Quetta City, Balochistan province, Pakistan and when the Coronavirus broke out of China, the company I work for decided to suspend operations and on 17 March 2020 reallocated my colleagues and I to Islamabad temporarily while they monitored the situation.

3. **THAT** as the Covid-19 crisis begun to worsen overtime, the company advised that we book flights and return to our home countries. My looming return to Kenya was expedited by an announcement made by the Cabinet Secretary, Ministry of Health that the Kenyan borders would be closed at midnight on 25 March 2020.

4. **THAT** using money that would later be deducted from my payslip, my employers booked my flight departing from Pakistan to Kenya and I arrived at Jomo Kenyatta International Airport on 25 March 2020 at 2:00pm, merely a few hours away from the imminent closure of our borders.

5. **THAT** once I arrived, I was guided through to the health port for a temperature check and thereafter to the immigration desk for clearance.

6. **THAT** there was a lack of communication surrounding what the next steps would be however, after a while, an official stated that there were 57 facilities that would be offering mandatory quarantine and we should download a copy of the list of facilities from the Ministry of Health website.

7. **THAT** it was made clear that our entry into the country was pegged on being placed under mandatory quarantine, consequently, I decided to book a room at Grace House Resort based in Kilimani. It was in my opinion the most ideal location given its small size and struck me as a place where one could work peacefully with little interruption.

8. **THAT** from the moment I disembarked from the plane to the point at which we were trying to find suitable quarantine accommodation, we had gone through a gruelling 4-hour process. There were hundreds of people crammed up together with no protective gear of any kind scrambling to acquire information that was not made readily available to us.

9. **THAT** There was no order, so I began to doubt the States preparedness and the effectiveness of the imposed mandatory quarantine process.

10. **THAT** upon my arrival at Grace House Resort, we were immediately faced with a bill to pay, approximately Kshs 7,000 per night. Grace House management advised us that this was a special rate negotiated with the government, even still, I informed them that I did not have enough money to pay the deposit as requested at the time.

11. **THAT** I was tested on 2 April 2020 by officials from the Ministry of Health who subsequently assured me that my results would be available after 48 hours. After the expiration of 48 hours, I asked about my results and instead of receiving a physical document, I was verbally informed of my negative status.

12. **THAT** on 7 April 2020, the day I was due to complete my 14-day mandatory quarantine it was brought to my attention that there were possibly three positive cases in the facility. This came as a surprise because just 3 days earlier I had witnessed three passengers arguing with two Ministry of Health officials, protesting the fact that they had tested positive for Covid-19. I had assumed that that they had already been transferred to an isolation centre.

13. **THAT** because of the foregoing individuals who had tested positive, we were one of the quarantine facilities compelled to quarantine for an additional 14 days. The rest of the 'guests' protested the extension particularly due to the financial burden it would bring as some of us were already struggling to pay for the initial 14 days. We also demanded that we be given our results, but this did not happen.

14. **THAT** being subjected to an additional 14 days was due to the Ministry of Health and other officials who failed to protect or fight for the safety of the residents that had been declared negative. They knowingly allowed three positive individuals to stay with non-infected residents, who may have contracted the virus from them. The Ministry further denied myself and countless others our written test results thereby causing unnecessary stress and anxiety.

15. **THAT** the resort started to call us incessantly requesting for payment for the extra days in quarantine.

16. **THAT** despite being shown the infamous memo drafted by the Director General for Health, Dr. Patrick Amoth, I did not understand where this measure was emanating from or the justification given for continuing to confine negative persons.

    (Annexed herein is a copy of the memorandum marked as MO 1).

17. **THAT** feeling aggrieved by the ongoing situation and treatment by the Ministry of Health officials who failed to adequately communicate with those of us within the resort, I joined several others in drafting a letter to the Ministry of Health.

(Annexed herein is a copy of the letter marked as MO2.)

18. **THAT** in the letter we requested for information regarding why we were being subjected to the additional days in mandatory quarantine at our own expense, yet we were informed that we would be released once we tested negative and upon our completion of the initial 14-day period.

19. **THAT** we have never received a response to the above letter and consequently with no other options available to us, we continued to endure the unwarranted quarantine for another week and were finally tested for a second time on 13 April 2020.

20. **THAT** we received our results within 24-hours on 14 April 2020 as promised but again, they were given to us verbally and not in written form.

21. **THAT** I had tested negative once again and along with others immediately asked the Ministry of Health official, when we would be leaving the premises. At this point, we were getting increasingly restless and frustrated but in the evening on 14 April 2020 we were finally informed that we would be getting released the next day.

22. **THAT** the following morning, on 15 April 2020 we were allowed to leave but on condition we settle all our pending bills with the resort. I was able to pay for my bills albeit with extreme difficulty and was thereafter, given a COVID-19 "Quarantine Discharge Summary Sheet" and

also required to sign the "Self-Quarantine Declaration Form" indicating that I would self-quarantine at home for a minimum of 7 days.

23. **THAT** I was deprived of my test results which were never presented to me even after being discharged from the facility. In addition, being told you can presume you are negative is not a response at all and given the fact that many of us were scared and afraid that we could die from the virus, the lack of concrete information was unwarranted to say the least.

24. **THAT** being isolated for days on end, unsure if you would test positive for the virus, living with persons who were allegedly tested positive and being forced to pay for a measure you did not really need but did so for the protection of the people, really affected me psychologically.

25. **THAT** my mental health deteriorated and the stress associated with paying a hotel bill for not just 14 days but possibly 28 days weighed heavily on me.

26. **THAT** I do not believe the State was ready to manage mandatory quarantine and this was made evident by their lack of consistent, relevant and concrete communication to the various persons in mandatory quarantine facilities across Nairobi.

27. **THAT** the whole process was done in a haphazard manner and without complete transparency.

28. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN in Nairobi this 16th day of June 2020.

MO) Deponent

BEFORE ME

COMMISSIONER FOR OATHS

NDURU GICHIMBA ADVOCATE & COMMISSIONER FOR OATHS BOX 55645 - 00200, NAIROBI

DRAWN & FILED BY:-
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P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

This is Exhibit marked "MO-1"
referred to in the Annexed affidavit/Declaration
of MO
Sworn/Declared before me on this 18th
day of June 2020
at Nairobi in the Republic of Kenya

Commissioner for Oaths

MINISTRY OF HEALTH

OFFICE OF THE DIRECTOR GENERAL

INTERNAL MEMO

FROM: Ag. Director General for Health

TO: All Heads of Directorates
Officers in-charge of Quarantine Facilities

REF: MOH/ADM/2/2/2020

DATE: April 7, 2020

RE: EXTENDED QUARANTINE BEYOND 14 DAYS

It has come to the notice of this office that some quarantine sites are discharging clients from the quarantine sites without due consideration for guidelines issued vide our circular dated April 3, 2020.

Please be guided that for any quarantine facility in which there was a client testing positive for Covid-19 in the tests conducted from the 8th day of quarantine, all clients in such facility are required to observe an additional 14 days of mandatory quarantine with effect from the day the client who tested positive was isolated from the facility. There shall be a repeat testing around the 10th day of such extended quarantive period.

Any conerns of payments on hotel charges during this extended quarantine perid are to be communicated to the Director General's office for consideration including transfer of such guests for a duration of 7 days.

Your co-operation in this matter will be highly appreciated.

Dr. Patrick Amoth
Ag. DIRECTOR GENERAL FOR HEALTH

This is Exhibit marked "MO-9"
referred to in the Annexed affidavit/Declaration
of MO
Sworn/Declared before me on this 18th
day of June 2020
Nairobi in the Republic of Kenya
Commissioner for Oaths

Your REF: **TBA** My REF: **Date: 9th April, 2020**

Advance copy via email

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cabsecretary@health.go.ke

Dear Sir,

RE: URGENT REQUEST FOR INFORMATION REGARDING EXTENSION OF MANDATORY QUARANTINE BEYOND 14 DAYS

My name is [redacted] I am currently under mandatory quarantine at **GRACE HOUSE HOTEL, KILIMANI, NAIROBI.**
I have been in quarantine for **15** days since I arrived in Kenya on **MARCH 25, 2020.** While in quarantine, I have observed social distancing and all the Ministry of Health COVID 19 Quarantine Protocols and Guidelines without failure. I have so far spent **KSH. 84,000** and still counting on food and accommodation and I have no other resources to spare.

As per the Ministry of Health COVID 19 Quarantine Protocols, I was supposed to be under mandatory quarantine for 14 days after which if I test negative I will be released into self-quarantine as per the self-quarantine protocols.

I was tested on **THURSADAY APRIL, 2 2020** and I have not been informed of my results being, although I understand that some people who tested positive were moved to Kenya University hospital for isolation. I assume I have tested negative since the MoH site officials have not confirmed the contrary. However, I have not been discharged as per the quarantine protocols.

I write to request for a written response to the following as part of my right as a Kenyan to have access to information that affects me under Article 35 of the Constitution and section 4 and 9(2) of the Access to Information Act, 2016:

i. Why am I still being held at the quarantine facility as against the Ministry's protocol and the best practice recommended by WHO?
ii. Who will carter for the costs of the extra stay beyond the initial 14 days?
iii. Why am I not being provided information as to when I will be discharged and the conditions for such discharge?
iv. What is the impact of another person's positive test (within my quarantine site) on my quarantine period and are there protocols to guide this? If so, kindly share the same with me.
v. What if there are persons that have tested positive and have not been removed from the facility as was the case with about 3 people who were told that they were positive on April

4 2020 but stayed put until April 7 night? Whose responsibility is it to ensure that persons are removed as soon as is reasonably possible and what are the mitigating factors around protecting me and others without violation of rights to privacy and dignity?

vi. Have all persons working within (and that have access to) my facility been tested? and if not, how do you plan to ensure those of us under quarantine are protected?

vii. How come some 4 people who also tested positive were released today April 8 2020 while the rest are still being held? What was the criteria for the release?

I am now concerned about the risk of exposure to COVID-19 at this facility, my mental health, additional costs of quarantine and the deplorable conditions of the facility I am currently in. I will therefore appreciate an urgent response to my letter within the next 48 hours.

Yours faithfully,

CC:

Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Commission on Administrative Justice
complain@ombudsman.go.ke

Transparency International- Kenya
transparency@tikenya.org

Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)
info@kelinkenya.org

Kenya National Commission on Human Rights
complaint@knchr.org

Office of Kenya Human Rights Commission (KNHRC)
admin@khrc.or.ke

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA .... 1ST PETITIONER

ESTHER NELIMA .... 2ND PETITIONER

CHRIS OWALLA .... 3RD PETITIONER

CM .... 4TH PETITIONER

FA .... 5TH PETITIONER

KB .... 6TH PETITIONER

MO .... 7TH PETITIONER

EL .... 8TH PETITIONER

KATIBA INSTITUTE .... 9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN) ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA) ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA ....12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH..1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,
MINISTRY OF HEALTH..2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY...3rd RESPONDENT

COUNCIL OF GOVERNORS ....4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT...5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL
OF THE POLICE, KENYA ....6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS ....7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE
JUSTICE...8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL...9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR) .... 1ST INTERESTED PARTY

AFFIDAVIT OF EL IN SUPPORT OF THE PETITION

I, **EL** a Kenyan citizen and resident of Nairobi County in the Republic of Kenya, do solemnly make oath and state as follows:

1. **THAT** I am a female adult of sound mind and the 8th petitioner in this petition, and therefore competent to swear this Affidavit.

2. **THAT** when news broke that COVID-19 was now a pandemic, my daughter was attending a global exchange semester abroad in Singapore an option which was offered by the University of Canada.

3. **THAT** on 16 March 2020, the University of Canada communicated to her that they were cancelling the global exchange program and that all those enrolled would now have to return to their home countries.

4. **THAT** in light of the ban on international flights scheduled to take effect at midnight on 25 March 2020, I was able to secure a flight for my daughter leaving Singapore on Sunday 22 March 2020 and arriving at Jomo Kenyatta International Airport (JKIA) on 23 March 2020 at approximately 19:00 hrs.

5. **THAT** shortly after 9:00pm, I received a call from my daughter informing me that they were all being taken to various designated facilities to undergo mandatory quarantine. After some time, I received another call from her asking me to try and book a hotel for her online but it was impossible to get through. Noting the fear and urgency in my daughter's voice, I frantically requested a friend living close by to physically book a room at Pride Inn Azure and had no choice but to pay the full amount of Kshs 126,000 for the entire quarantine period.

6. **THAT** my daughter described her chaotic experience at the airport to me and expressed the difficulties she faced trying to get information from the airport staff and the police on exactly which hotels were available and how they would be getting to them. It was evident that the government was ill prepared in their management of those entering the country and the overall mandatory quarantine process.

7. **THAT** since the government declined to supply my daughter and the other residents with information about what to expect during mandatory quarantine, I decided to equip my daughter with the relevant information myself, sending her a copy of the Ministry of Health Quarantine

Protocols on 25 March 2020, which I had acquired from the Ministry of Health's website. The protocols provided that the Ministry was to carry out tests on the 5th day of quarantine however, my daughter was only tested on the 8th day of quarantine.

(Annexed and Marked **EL 1** is a copy of the *Ministry of Health Quarantine Protocols*).

8. **THAT** results were released publicly through the Cabinet Secretary's COVID-19 media update on 2 April 2020, which stated that 2 among those quarantined in Pride Inn Azure had tested positive. Having kept in constant communication with my daughter, she revealed that she had tested negative and that this was confirmed by Dr. Caroline Asin the assigned Ministry of Health doctor on a what's app group that had been created for the guests and management at the hotel.

9. **THAT** I was relieved that my daughter had tested negative and anticipated her release in accordance with the Ministry of Health "Testing of persons under quarantine protocols" which stated at page 14 that "following the first negative test, the persons will be released into self-quarantine". This however did not happen.

10. **THAT** infact the situation escalated and on 4 April 2020 just 2 days after my daughter was declared negative and merely a day before she was scheduled to conclude the government mandated 14-day quarantine stay at the hotel, the Health CS, Mutahi Kagwe announced that the Ministry of Health would be extending the mandatory quarantine period by a further 14 days for "respective individuals in facilities that had such [positive] cases".

11. **THAT** determined to get my daughter out of quarantine following the government's extension announcement, I read about quarantine protocols and the processes used in other countries and shared this information with my daughter. I was able to learn that her continued detention, based on my reading, appeared to be an unprecedented tactic.

12. **THAT** the Ministry of Health officials assigned to the hotel hosting my daughter kept changing and neither of them could provide my daughter with concrete reliable information about the looming 14-day extension.

13. **THAT** by 9 April 2020 my daughter was still in quarantine and the thought of her having to endure a further 14 days in quarantine without due cause was infuriating to say the least. Consequently, I decided to draft a letter urgently requesting the Ministry for Health for

information regarding the extension of mandatory quarantine beyond the WHO recommended 14-day period.

(Annexed and Marked **EL2** herein is a *copy of the letter requesting for information*).

14. **THAT** the letter laid down the inconsistencies between what the prescribed protocols directed and the continued detention of my child. I explicitly stated that as per the Ministry of Health Quarantine protocols, my daughter was to be under mandatory quarantine for only 14 days after which she should have been released into self-quarantine.

15. **THAT** as a parent and even more so as a citizen of the State I exercised my constitutional and statutory right to information and requested a written response to the following:

    i. why she has not been issued with a personal medical notification slip confirming her Covid-19 negative status;
    ii. why she is still being held at the quarantine facility against the Ministry's protocols and best practice recommended by WHO?
    iii. who will cater for the costs of the extra stay?
    iv. why she has not been provided with information about when she will be discharged and the conditions for such discharge?
    v. why wasn't the impact of another person's positive tests within her quarantine period and location communicated and documented to her in writing including the protocols to guide any decisions thereafter?
    vi. what if there are persons who since her initial negative test, tested (might test) positive and said persons had/have not been removed from the facility?
    vii. whose responsibility is it to ensure that Covid-19 testes positive persons are removed as soon as is reasonably possible and what are the mitigating factors around protecting my daughter and others without violating the other party's rights to privacy and dignity?
    viii. have all persons working within Pride Inn Azure and those that have access to the facility (including suppliers and assigned MOH staff) been tested? And if not, how does the MOH plan to ensure those under mandatory quarantine are protected?

16. **THAT** in light of the foregoing, it is clear that I was asking pertinent questions about the safety of my child and highlighted areas of concern regarding the Ministry of Health's failure to provide

my daughter and other residents in the hotel with information about the receipt of their results, the costs of quarantine and how they would be discharged from the facility.

17. **THAT** I continue to remain anxious about the emotional and mental well-being of my child and believe that the State acted negligently by failing to respond to the questions detailed above most of which were directly related to the right to life and health of my daughter.

18. **THAT** in the event the government was prioritizing letters received by those in mandatory quarantine, my daughter sent a letter on the same terms as the foregoing letter to the government.

(Annexed and Marked **EL 3** is a *copy of the letter requesting for information* dated 9 April 2020).

19. **THAT** my daughter has never received an acknowledgment or response to the letter, a response that she urgently needed amid the growing threat of the Coronavirus.

20. **THAT** on 10 April 2020 the 'guests' of the hotel and some parents (myself included) wrote a letter to the acting Director General for Health, Dr. Patrick Amoth on the undue financial burden occasioned by both the initial and the extended mandatory quarantine period.

(Annexed and marked **EL 4** herein is a *copy of the letter requesting for financial assistance*).

21. **THAT** we highlighted the unexpected strain mandatory quarantine had already had on our personal finances in addition to the higher costs of last-minute airline tickets as well as the unavoidable strain it was having on our mental health. We requested that costs already incurred and to be incurred following the extension by the government, be paid to the hotel in order to facilitate the discharge of those in quarantine. However, since paying and having the relevant persons discharged, we are yet to receive an acknowledgment of receipt and a detailed response from the government on this request.

22. **THAT** given the circumstances, we needed urgent help and credible comprehensive information but the government refused to give us the time of day.

23. **THAT** to add insult to injury, the government continues to violate my right to information and I now have to continue living in a country I do not believe has our best interests at heart.

24. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN in Nairobi this 18th day of June 2020.

EL)________________

) Deponent

)

BEFORE ME)

COMMISSIONER FOR OATHS)

DRAWN & FILED BY: -

Nerima Were, Advocate,
C/O KELIN
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MINISTRY OF HEALTH
COVID 19 QUARANTINE PROTOCOLS

This is Exhibit marked "EL 1"
referred to in the Annexed affidavit/Declaration
of EK
Sworn/Declared before me on this 18th
day of June 20 20
at Nairobi in the Republic of Kenya
Commissioner for Oaths

COVID 19 Mandatory Quarantine Site Protocols

Interim Guidance

1/1/2020

The protocol is to be used in mandatory quarantine sites

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

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MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Background

On the 22nd of March 2020, the Cabinet secretary of Health issued new directives abolishing self quarantine and instituting mandatory quarantine for all individuals returning to the country. This directive came into effect on the same day and so far over 2000 people are undergoing mandatory quarantine for 14 days at several government designated facilities. In his directive, the Cabinet Secretary in the Ministry of Health has instituted Mandatory Quarantine (either self or otherwise) measures for all incoming international passengers who may have come into conduct with person who may have COVID 19.

The possible quarantine settings include hotels, dormitories, other facilities catering to groups, or the home of the contact. Regardless of the setting, an assessment must ensure that the appropriate conditions for safe and effective quarantine are being met including linen processing and laundry. The designated centres are housing persons who have arrived in the country from countries with confirmed COVID-19 cases or persons who may need to be confined because they have been in contact with a confirmed COVID-19 case in the country.

This document has borrows heavily from the interim guidelines on Infection prevention and control, case management guidelines and guidance by experts in policy development, monitoring and evaluation, clinical and diagnostic among others.

The following protocols will guide the operations of the premises, how the people in quarantine will be handles and the roles and responsibilities of key players in the implementation of the quarantine directive.

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Contact information

Service	Name	Contact
Ambulance Services	Jackline Obonyo	0724343365
Rapid response/ Medical response Team	Jackline Obonyo	0724343365
Quarantine Sites	Head of Directorates/Divisions	
Port health	Majid Mohammed	0720456297
PPE	Dr Isaac Kimani	0722761746
Transport/Fleet	Mr. Osman	0722976438
Disinfection	Mr. Lagho	0722876860
Laboratory testing	Mr Mamo	0722968955
Psychosocial support	Mental Health & Psychosocial support services	1199
Psychologists	Matilda Dorothy	0722375248 0721511988
Inter-hotel transfers	Dr. Eva Njenga	0722496305
Administration services	Mr. Abdi	0722478687
NB: All other communications go through the Divisions/head of Directorates For counties: Update the contact list as per county duty allocation		

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Requirements for a Quarantine Site

Regardless of the setting, an assessment must done to ensure that the appropriate conditions for safe and effective quarantine are being met including linen processing and laundry. The designated centers are housing persons who have arrived in the country from countries with confirmed COVID-19 cases or persons who may need to be confined because they have been in contact with a confirmed COVID-19 case in the country.A quarantine unit should have the following features:

1. Located within a single operational entity, if possible. It should be structurally physically separated from all other operations and is dedicated solely to the holding.
2. It should not share a building having areas that are used for different purposes and should not serve as an access way to other buildings or activities.
3. It should not to be used for any purpose, what-so-ever, other than as a place for the performance of quarantine.
4. Have customer service desk to ensure that visitors consult the health-care worker in charge (who is also responsible for keeping a visitor record)
5. It should be weatherproof and maintained in a state of good repair.
6. The holding capacity should be commensurate with the proposed numbers
7. It should be equipped with back-up systems for essential components (e.g. electricity, water circulation, aeration, temperature control, etc.)
8. Hand wash basins with running water and elbow taps with liquid soap should be provided. (At least 1 for every 4 beds)
9. The following items should be availed:
    a. Alcohol based hand sanitizers
    b. Adequate room ventilation, clean beds and linen
    c. Provision for proper waste disposal and management.
    d. Provision for a functional kitchen
    e. Provision for laundry, washrooms and toilets for suspected cases
    f. Washrooms and toilets for staff manning the unit
10. Designated transport system(In case of the need to transfer to isolation centre

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Responsibilities of Health Care Worker team at the Quarantine Site

Every mandatory quarantine site will be manned by a team of health care workers that will include a clinician, a nurse and a public health worker. On arrival at the side, the health workers should introduce themselves to the hotel staff and the people in quarantine. The roles of the health care worker teams will include:

1. Act as liaison to the national Emergency response Taskforce for the next 14 days from the time of deployment
2. Receive the persons arriving the site for quarantine
3. Identify and report persons in quarantine as per the attached table
4. Sensitise the hotel workers on:
    a. The infection control measures
    b. The period of quarantine and their roles
    c. The hotel protocols as per the Ministry of Health guidance
5. Provide psychosocial support as per the guidelines provided
6. Oversee meal service to ensure IPC measures are observed
7. Identify persons who will require health care and refer accordingly
8. Ensure proper handover at the end of shift to the new members. A shift runs for 12 hours – day shift is 8 am to 8 pm and Night shift 8pm to 9pm
9. Forecast, quantify and order for the necessary PPEs
10. Regular monitoring and reporting of status of persons in quarantine. Where testing is required, a laboratory team will be on standby.

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Responsibilities of persons in quarantine

Quarantine is done to stop the spread of diseases that are easily transmitted from one person to another. Quarantines are for people or groups who don't have symptoms but were exposed to the sickness. Quarantine keeps them away from others so they don't unknowingly infect anyone.

In line with the Public Health Act, the Cabinet Secretary in the Ministry of Health has instituted Mandatory Quarantine (either self or otherwise) measures for all incoming international passengers who may have come into conduct with persons who may have COVID 19.

Information you need to know when you are in quarantine

Quarantine for COVID-19 is recommended for individuals who have been directly exposed to the virus or who have travelled to areas where there are large numbers of people infected in order to prevent further transmission.

1. Stay home except to get medical care.
2. As much as possible, you should stay in a specific room and away from other people (even when quarantined at home). Do not go to public areas.
3. Use a separate bathroom, if available. Clean bathroom using soap and water and disinfect with bleach solution provided by the quarantine premises.
4. If you develop symptoms, put on Facemasks to help prevent the spread of the disease to others.
5. Cough or sneeze into the fold of your elbow. Alternatively, cover your mouth and nose with a tissue when you cough or sneeze.

6. Wash your hands often with soap and water for at least 20 seconds or clean your hands with an alcohol-based hand sanitizer that contains over 70% alcohol, covering all surfaces of your hands and rubbing them together until they feel dry. Soap and water should be used preferentially if hands are visibly dirty.
7. Avoid touching your eyes, nose, and mouth with unwashed hands.
8. Clean all "high-touch" surfaces every day.
9. It is recommended that people sick with COVID-19 limit contact with animals until more information is known about the virus. When possible, have another member of your household care for your animals.

What to do when you feel sick

1. Monitor development of symptoms: Fever, cough, shortness of breath.
2. Seek prompt medical attention if you become ill. Call the health care worker at the quarantine site or 719 for care.

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Quarantine of Flight Crew and Engineers

1. All airline crew and accompanying flight engineers who have operated local and international flights in the last 21 days should be tested.
2. Those who arrived in the country in the last 21 days should be quarantined for at least 21 days from time of entry in to the country or contact with positive cases. Crew on self quarantine should not operate any flights.

Hotel Payments

1. All persons in mandatory quarantine must pay the cost of accommodation in the premises they are in prior to checking out.
2. Hotels are advised to make arrangements for cashless payments.
3. In the event the premises or hotels have to take cash, the cashier must use gloves and the person giving the cash must wash hands with soap and water or sanitize with over 70% alcohol based sanitizer

MINISTRY OF HEALTH
COVID 19 QUARANTINE PROTOCOLS

Schools and Shared Accommodation

General Information

In line with the Public Health Act, the Cabinet Secretary in the Ministry of Health has instituted Mandatory Quarantine measures for all incoming international passengers. This document provides the protocols that will be utilised for the management of Quarantine in the Mandatory Government designated Areas

Accommodation

1. All clients should be placed in a well-ventilated rooms (i.e., with open windows and an open door).

2. Movement of the clients shall be limited, however clients may be allowed time outside of the rooms to stretch at designated areas within the premises with timed intervals while maintaining 1 meter social distance. (E.g release clients in groups of 10)

3. Accommodation premises are required to submit to the MOH Quarantine Team Leaders the details of all clients booked and the related hotel room nos.(Form attached)

Cleaning of Rooms

1. During Stretching time/periods, the management shall organize cleaning of the rooms, following the infection prevention protocols as guided by MoH response team.
2. Prior to occupancy the rooms should be cleaned daily with disinfectant with bleach 1:6 dilution
3. The management shall ensure all the laundry is disinfected and washed accordingly

MINISTRY OF HEALTH
COVID 19 QUARANTINE PROTOCOLS

Food Service

1. Guest shall have their meals in a well ventilated dining area. The sitting arrangement should maintain the 1 meter spacing requirement.

2. After meal service the used utensils shall be cleaned with hot water and soap before disinfecting in bleach solution, rinsing then drying prior to subsequent use

Health promotion and Infection Prevention & Control

1. Hand hygiene should also be performed before eating, after using the toilet and whenever hands look dirty. If hands are not visibly dirty, an alcohol-based hand rub can be used. For visibly dirty hands, use soap and water.
2. When washing hands with soap and water, it is preferable to use disposable paper towels to dry hands. If these are not available, use clean cloth towels (single user).
3. To contain respiratory secretions, the mouth and nose should be covered with a disposable paper tissue when coughing or sneezing. Materials used to cover the mouth and nose should be discarded or cleaned appropriately after use (e.g., wash handkerchiefs using regular soap or detergent and water).

Accommodation Staff and Health Workers

Staff working in the quarantine centers should be trained on basic non-pharmaceutical infection prevention procedure that they should enforce in the quarantine centers.

1. Health workers and Accommodation Staff interacting closely with the client should wear a tightly fitted N95 mask that covers their mouth and nose
2. Remove the mask using the appropriate technique – that is, do not touch the front, but instead untie it. Discard the mask immediately after use and perform hand hygiene.
3. Avoid direct contact with body fluids, particularly oral or respiratory secretions, and stool. Use disposable gloves when handling stool, urine and other waste and

an N95 mask when providing oral or respiratory care. Perform hand hygiene before and after removing gloves and the mask.

4. Accommodation staff should ensure dedicated linen and eating utensils for the patient; these items should be cleaned with soap and hot water after use and may be re-used instead of being discarded.
5. Heavy duty gloves and protective clothing (e.g., plastic aprons) should be used when cleaning surfaces or handling clothing or linen soiled with body fluids. Depending on the context, either heavy duty or single-use gloves can be used. After use, heavy duty gloves should be cleaned with soap and water and decontaminated with 0.5% chlorine bleach solution. Perform hand hygiene before and after removing gloves.

Medical Screening and Testing

1. The medical response team shall conduct a daily symptomatic screen, using the phone service
2. From the 8th day, lab screening shall be done. A screening will be shared with the Ministry of Health team leads.

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Mandatory Government Designated Areas and Hotels

General Information;

In line with the Public Health Act, the Cabinet Secretary in the Ministry of Health has instituted Mandatory Quarantine measures for all incoming international passengers. This document provides the protocols that will be utilised for the management of Quarantine in the Mandatory Government designated Areas and Hotels.

Accommodation

6. All clients should be placed in a well-ventilated single room (i.e., with open windows and an open door).

7. Movement of the clients shall be limited, however clients may be allowed time outside of their rooms to stretch at designated areas in the hotel and coordinated time intervals while maintaining 1 meter social distance. (E.g release clients in groups of 10)

8. We discourage sharing of rooms. Couples are discouraged from sharing rooms, however consideration will be made for parents with children who require guardianship.

9. Hotels are required to submit to the MOH Quarantine Team Leaders the details of all clients booked and the related hotel room nos.(Form attached)

Cleaning of Rooms

1. Cleaning will be the responsibility of the room occupant. The hotel shall facilitate cleaning materials(bucket & mop with bleach 1:6 dilution)

2. The room occupant shall request and change of bed linen themselves as need arises. The hotel shall provide fresh linen and buckets with bleach, soap and water
3. The Hotel shall launder the disinfected laundry and wash accordingly separate from the linen processed for other residents

Food Service

1. Guest shall have their meals delivered outside their doors.
2. After meal service the used utensils shall be washed with hot water and soap before disinfecting with bleach solution provided by the hotel.
3. The utensils shall be washed with hot water and soap, disinfected using bleach solution and rinsed well prior to subsequent use.

4. Health Promotion and Infection Prevention & Control

1. Hand hygiene should also be performed before eating, after using the toilet and whenever hands look dirty. If hands are not visibly dirty, an alcohol-based hand rub can be used. For visibly dirty hands, use soap and water.
2. When washing hands with soap and water, it is preferable to use disposable paper towels to dry hands. If these are not available, use clean cloth towels (single user).
3. To contain respiratory secretions, the mouth and nose should be covered with a disposable paper tissue when coughing or sneezing. Materials used to cover the mouth and nose should be discarded or cleaned appropriately after use (e.g., wash handkerchiefs using regular soap or detergent and water).

Hotel Staff and Health Workers

1. Health workers and Hotel Staff interacting closely with the client should wear a tightly fitted N95 mask that covers their mouth and nose
2. Remove the mask using the appropriate technique – that is, do not touch the front, but instead untie it. Discard the mask immediately after use into appropriately line bins for proper disposal and perform hand hygiene.

3. Avoid direct contact with body fluids, particularly oral or respiratory secretions, and stool. Use disposable gloves when handling stool, urine and other waste and a mask when providing oral or respiratory care. Perform hand hygiene before and after removing gloves and the mask.
4. Hotel staff should ensure dedicated linen and eating utensils for the patient; these items should be cleaned with soap and hot water after use and may be re-used instead of being discarded.
5. Heavy duty gloves and protective clothing (e.g. plastic aprons) should be used when cleaning surfaces or handling clothing or linen soiled with body fluids. Depending on the context, either heavy duty or single-use gloves can be used. After use, heavy duty gloves should be cleaned with soap and water and disinfected with 0.5% chlorine bleach solution. Perform hand hygiene before and after removing gloves.

Medical Screening and Testing

1. The medical response team shall conduct a daily symptomatic screen, using the hotel phone service or mobile number
2. From the 8th day, lab screening shall be done. A screening will be shared with the Ministry of Health team leads.

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Environmental controls and Cleaning process

To reduce the risk of infection transmission from the environment and utensils, cleaning and disinfection is critical. Well trained cleaners should be assigned for cleaning and disinfection following the decontamination procedure then monitored frequently.

CLEANING PROCESS

- Cleaning should be done first with detergents/soaps and water to remove stains. Disinfection is then done to remove pathogens such as COVID 19
- Using soap and water, clean the furniture and other equipment first, then surfaces and lastly clean the floor.
- Commonly touched surfaces such as door handles, telephones, switches, bed rails and other bedroom furniture should be cleans frequently.
- Develop a cleaning schedule and ensure cleaning is done at least twice a day and as and when necessary.

Clean progress:

· Cleaning should start from the least soiled to the most soiled areas

- The cleaning tools (e.g., Mops, buckets, cleaning cloths) **MUST** be disinfected and hang to dry before next use.
- The recommended Disinfectant should contain a diluted bleach solution (that is, 1-part bleach to 99 parts water). For surfaces that cannot be cleaned with bleach, 70% ethanol can be used.
- Clean clothes, bed linens, and bath and hand towels using regular laundry soap and water or machine wash at 60-90 °C with common laundry detergent, and dry thoroughly.

- Cleaning personnel should wear heavy duty gloves when cleaning surfaces (if handling clothing or linen soiled with body fluids wear disposable gloves), and they should perform hand hygiene before putting on and after removing their gloves.

Disinfection Process

- Prepare fresh chlorine solution because it loses strength with time. Store any remaining chlorine solutions safely in closed containers for not more than 24 hours. Keep the solution away from direct sunlight to avoid further inactivation of chlorine.
- Wipe equipment and surfaces with a cloth soaked in the disinfectant and mop the floor using a mop soaked in chlorine solution prepared **at least 30 minutes before use.**
- Use Chlorine solution mainly on hard, non-porous surfaces. Adequate time is required to kill the virus, i.e., **at least 10 minutes contact time.**

NB: Details on the dilution process: refer to Guidance on cleaning and disinfection of quarantine centers

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Testing of COVID 19 among persons on quarantine

Evidence has shown that the incubation period ranges from 2 to 14 days. Following the release of the Advisory Opinion on COVID 19 testing during mandatory quarantine by the Kenya COVID-19 Technical Task Force, the Ministry of health has planned for testing from **Day 8** of quarantine.

1. A team of laboratory experts from the National Influenza Centre (NIC) will do the testing.
2. The collection of a sample will take15 minutes per individual
3. Before testing the procedure will be explained to the persons in quarantine
4. The laboratory person will swab the back of the nose and the mouth to collect the sample for testing (nasopharygeal and oropharygeal swabs).
5. Results will be delivered within 24 hours after sample collection
6. Positive results will be isolated and managed as per the case management guidelines.
7. Those who are negative will remain in quarantine till the 14 days are over.

Person on quarantine

1. The person will avail himself or herself and cooperate with the laboratory team for testing.
2. The person will be expected to observe cough hygiene

Hotel Administration

1. The hotel administration is expected to provide a room for sample collection for the laboratory team.
2. The room provided and services in the room should be cleaned using jik solution to ensure the area is disinfected prior to testing.

3. After the testing, the room should be disinfected the room before further use

Quarantine teams from MoH

1. The health worker teams should prepare the hotel staff and the people on quarantine for testing
2. The teams will be expected to support the laboratory team collecting the samples

The Laboratory Team

The team will:

1. Introduce themselves to the hotel staff and the quarantine site health teams on arrival at site.
2. Explain the procedure to the persons before collecting the samples
3. Clean the sample collecting room prior to departure
4. Carry any waste generated during sample collection.
   NB: Priority is given to those with symptoms of COVID 19 and those identified to have co-morbidities including hypertension, diabetes, cancer, recent surgery, those who are pregnant or those of advanced age.

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Guidance for management of those with co-morbidities, advanced age or pregnancy

Over 70 individuals in the quarantine facilities have been identified to have various co-morbidities including hypertension, diabetes, cancer, recent surgery, some who are pregnant while others are of advanced age. It is noted that supporting care of these disease conditions is difficult in mandatory quarantine situations, and may lead to psychological strain and stretch available resources. The following measures are therefore recommended for the management of individuals with highlighted co-morbidities and conditions in quarantine:

1. A list of all individuals with co-morbidities and the type of co-morbidities and chronic medication needs as well as pregnancy needs should be developed.
2. Patients with co-morbidities, pregnant and those above the age of 60:
   a. Should have SARS-COV 2 RT PCR testing and if negative allowed home with strict instructions to continue on self quarantine as per previous self-quarantine guidelines. This should be monitored
   b. The home situation should be assessed by the health care worker to ensure that it meets the minimum requirements for self quarantine. Anyone who breaks self quarantine should be taken back to the government quarantine facility.
   c. The self quarantine form should be signed before release of the individual.
   d. At home the individuals should continue to monitor and record their temperature twice daily and promptly report any fever or other symptoms. This means that individuals must buy thermometers to monitor themselves at home.

NB: Mandatory quarantine should not be waived for any other non-medical reasons.

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Home Assessment for Self Quarantine

Assess the Suitability of the Residential Setting for Home Care

In consultation with MOH or county health department staff, a healthcare professional should **assess whether the patient and the family are capable of adhering to the precautions** that will be recommended as part of home care isolation (e.g., hand hygiene, respiratory hygiene, environmental cleaning, limitations on movement around or from the house) and can address safety concerns (e.g., accidental ingestion of and fire hazards associated with using alcohol-based hand rubs). Considerations for care at home include whether:

1. The patient is stable enough to receive care at home.
2. Appropriate caregivers are available at home.
3. There is a separate bedroom where the patient can recover without sharing immediate space with others.
4. Resources for access to food and other necessities are available.
5. The patient and other household members have access to appropriate, recommended personal protective equipment (at a minimum, gloves and facemask) and are capable of adhering to precautions recommended as part of home care or isolation (e.g., respiratory hygiene and cough etiquette, hand hygiene);
6. There are household members who may be at increased risk of complications from COVID-19 infection (.e.g., people >65 years old, young children, pregnant women, people who are immunocompromised or who have chronic heart, lung, or kidney conditions).

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Special considerations for rapid response teams and teams in quarantine

Setting	Target personnel or patients	Activity	Type of PPE or procedure
Anywhere	Rapid response team investigators.	Interview suspected or confirmed COVID-19 patients or their contacts.	No PPE if done remotely (e.g., by telephone or video conference).
			Remote interview is the preferred method.
Anywhere	Rapid response team investigators.	In-person interview of suspected or confirmed COVID-19 patients without direct contact.	Surgical mask Maintain spatial distance of at least 1 m.
			The interview should be conducted outside the house or outdoors, and confirmed or suspected COVID-19 patients should wear a surgical mask if tolerated. If indoor maintain the 1 m distance.
Anywhere	Rapid response team investigators.	In-person interview with asymptomatic contacts of COVID-19 patients.	Maintain spatial distance of at least 1 m.
			No PPE required
			The interview should be performed outside the house or outdoors. If it is necessary to enter the household environment, use a thermal imaging camera to confirm that the individual does not have a fever, maintain spatial distance of at least 1 m and do not touch anything in the household environment.

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Quarantine Reporting Tool for Travellers Needing Medical Attention

Serial No. ____________________________________

Name ____

Age ____

Sex ____

Facility _____________________________________

Room No ____________________________________

Phone _______________________________________

Symptoms

____

____

____

____

____

____

Time ____

Date f Reporting________________________________

Co morbidities ___________________________________

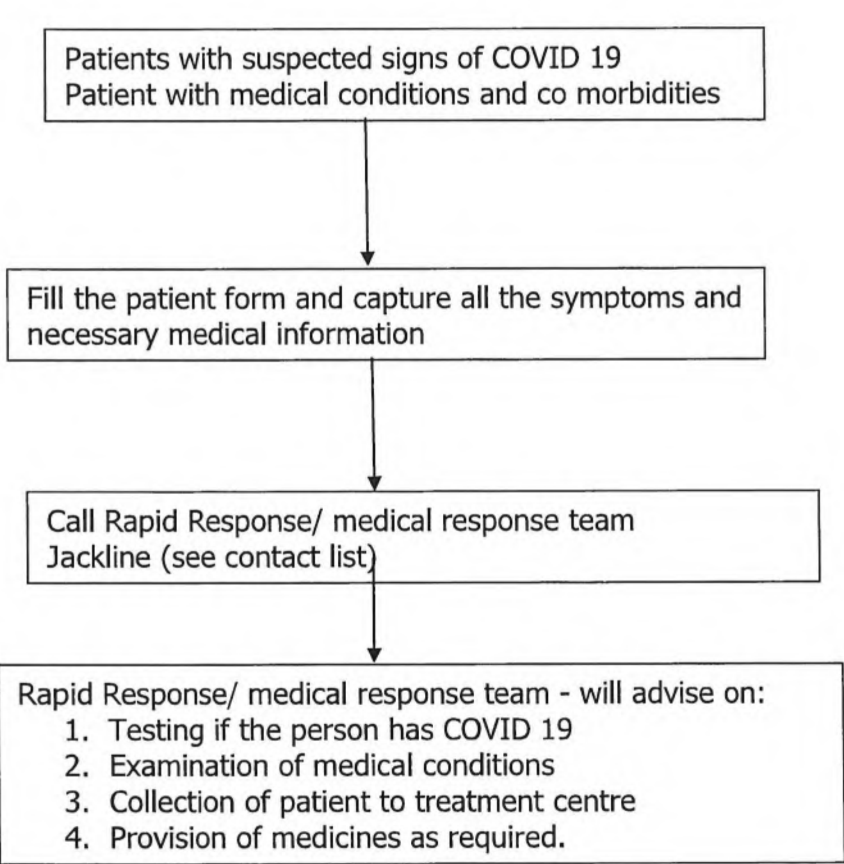
Status ____________________________

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Referral Protocol

The Kenya COVID-19 Technical Task Force advised the formation of a rapid response team and a medical response team. The quarantine sites are therefore guided to follow the following guidance in patient referral.



MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Inter- Hotel Transfer

1. The team lead to fill the inter-site transfer form
2. Email the request to *quarantine@kmpdc.go.ke; g.mwangi@kmpdc.go.ke*
3. Copy head of directorate
4. All persons must pay before leaving the current site to the new site.

Inter-site transfer form

Details to be captured for clients wishing to move from one site to another

	Name	Passport Number/ID	Current Centre	Proposed Centre	Accepted at Proposed Centre (Y/N)	Cleared bill at current site	Reasons for moving
1							
2							
3							
4							
5							

Send form by 12 noon for movement within the day

Requesting site MOH contact Name: ____________________ Tel ________________

Send to Gathoni Mwangi
g.mwangi@kmpdc.go.ke
0722-80 70 61

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Reporting from Quarantine sites

The ministry of health will be collecting case based information from the persons in quarantine for accountability and personalised care. To facilitate this, the health care workers at the quarantine facility will be expected to report daily on each individual using the attached tools.

1. Particulars of all persons at the quarantine site filled in **the reporting tool at quarantine site** on the first day of quarantine.
2. Daily monitoring of each individual will carried out and information filled on the daily reporting tool
3. Summary Tool will be filled daily and shared
4. The information collected will be shared in soft copy to the Directorate Data Focal Person

NB: All reports must be submitted by 12 noon everyday.

To facilitate submission of data:

All directorates will assign a data focal person and a team lead who will be communicated to the team leads in their respective sites.

Role of Directorate Data Focal Person

The role of the data focal person will be to:

1. Receive data from the quarantine sites
2. Identify missing data from the line lists and inform the respective team leads.
3. Consolidate and update all the data provided in the baseline form.
4. Consolidate all data in the daily reporting tool.
5. Summarize all the information in the summary tool.
6. Send the consolidated directorate daily monitoring tool and summary tool by **2 pm** daily to meunitmoh@gmail.com and mohcovid19updates@gmail.com.

Role of the teams leads

1. Ensure that teams have collected data and reported using the assigned templates.
2. Ensure that summary reports are submitted in time.

MINISTRY OF HEALTH

The Reporting Tool at Quarantine Site

Name of Quarantine Site____________________ **Name of Team Lead** ____________________

Tel No of Team Lead ____________________ **Report shared to:** ____________________

No	Name	Age[1]	Sex	ID/ Passport NO	Phone No	Country of Origin	Nationality	Comorbidity[2]	Any drugs one is on[3]	Next of Kin	Phone No of Next of Kin	Date of Arrival	Day 1	Day of Quarantine (2-14)[4]	Any requests for MoH[5]	Room No

Key

1. Age in year and or months for children
2. Please indicate if a person has a co morbidity, pregnancy etc
3. Indicate the drugs one is on e.g. for hypertensive
4. Indicate on which day of quarantine the person is. Day 1 of quarantine is day of arrival
5. If persons have special requests such as refill of drugs for co morbidity etc should be included here
   Email: meunitmoh@gmail.com and mohcovid19updates@gmail.com

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Daily Reporting Tool

Name of Quarantine Site____________________ **Head of Directorate** ____________________

Name of Team Lead ____________________ **Tel No of Team Lead**____________________

Date____________________

No	Client Name	ID/Passport no. *(as provided in original form)*	Age	Sex F/M	Day of Quarantine (2-14)[4]	New client on site Y/N			Temperature (°C)	Client status		Test done (Y/N)		Discharged (Y/N)		Referred (Y/N)			*Transfers out Y/N*			Comments
						NO	New in quarantine	Transfer in *(source facility)*		Stable (Y/N) if N go to unwell column	Unwell (record *symptoms)***	No	Yes (record results)	*NO*	*Yes (see key)*	*NO*	*Referred for:*	*Facility referred to;*	*No*	*Reason for transfer*	*Facility transferred to*	
1																						
2																						
3																						

Email send to: meunitmoh@gmail.com and mohcovid19updates@gmail.com

Key

- **Record symptoms:** **A** =cough; **B** =sneezing; **C** =fever (high body temperature); **D**= Difficulty in Breathing; **E** = headache; **F**= sore throat
- **Record status of results:** **A** =Awaiting results **N**=Negative **P**= Positive
- **Reason for transfer:** **1**= cost **2**= special medical request e.g. disability **3.** Other specify
- **New in quarantine:** **N**=New traveler; **C**= contact; **Ti** =Transfer in
- **Referred for:** **1**= COVID treatment; **2**= Co-morbidity management
- **Discharged:** **SQ**= To self quarantine; **EQ**= End of quarantine

MINISTRY OF HEALTH
COVID 19 QUARANTINE PROTOCOLS

Summary tool

Name of Quarantine Site____________________ **Head of Directorate ____________________**

Date__________________________

S.NO	Name of Quarantine Site	Total Number of guests admitted **	No of New clients in Quarantine	Numbers Transferred in	Numbers Transferred out	Total No with co morbidities	No. referred for COVID 19 management	No. referred for COVID 19 management	No COVID 19 Test positive	No COVID 19 Test Negative	Total awaiting results	Total No Tested for COVID 19	Total discharged home	Remarks
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														

** Those on site at time of filling form
Email send to: meunitmoh@gmail.com and mohcovid19updates@gmail.com

MINISTRY OF HEALTH

Self Quarantine Form

MOH/PH242/COVID19

MINISTRY OF HEALTH

SN:

CORONAVIRUS SELF-QUARANTINE DECLARATION

I______________________________ of ID/Passport No: ________________having travelled from or through a COVID-19 affected area (specify)and having been advised by Ministry of Health (MOH), commit to undertake self-quarantine for FOURTEEN (14) DAYS.

Kindly indicate the following:

a. Country of Departure ....b. Countries visited in the last 14 days

i. .... ii. .... iii. ....iv. ....

c. Stop overs in the last 14 days i.................................. ii.....................................iii....................................

During the 14 day self-quarantine period, I shall strictly observe the following:

1. Stay at home and avoid contact with others
2. **NOT** to take public transportation, taxis, or ride-share
3. If sharing a house with others while on quarantine, I shall:
   - Contain myself in a separate well-ventilated room away from the other members and use a separate bathroom and toilet.
   - (If you must share hygiene and toilet facilities), I shall ensure proper disinfection of these facilities after use using regular household disinfectant or soap and water
4. Not to allow visitors coming into my home
5. Avoid sharing household items such as toothbrush, utensils, clothes, towels and beddings. Wash these items thoroughly after use with a disinfectant solution.
6. Frequently disinfect touched shared surfaces that may be contaminated with body fluids such as door knobs, telephones, toilets, bathrooms and sinks frequently with regular household cleaner or disinfectant
7. I undertake to provide correct information to the Ministry of Health regarding my health status during the 14 day quarantine period
8. Immediately notify the Ministry of Health through theToll-free number 719 or 0729-47-14-14 or 0732-35-35-35) when I develop signs and symptoms of acute respiratory illness (Fever or cough or sore throat or difficulty in breathing)

I have read and understood this statement of commitment and fully understand its purpose, intent and effect. I have voluntarily executed this commitment by action of my own free will. I also understand that it is an offence under the Public Health Act to give false information. By signing this form I agree to abide by these instructions and do understand that the Government of Kenya is at liberty to take all necessary actions including putting me under mandatory quarantine in a designated facility and/or instituting legal action.

Signature: ____________________ Date (DDMMYYYY) ____________________

Print name: ____________________ Nationality: ____________________

Mobile No: ____________________ Mobile No. of next of kin: ____________________

Physical Address: ____

NB: The form will be provided and signed in hard copy

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Self Quarantine Flier

Persons with co-morbidities such as hypertension, diabetes, cancer, recent surgery, some who are pregnant while others are of advanced age will be released for self quarantine once conditions are met. This is the information flier is given to them to educate them on self quarantine.

Having travelled from a country that has reported cases of COVID-19, you are required to undergo a 14 day quarantine period. This must be adhered to.

What is quarantine?

Quarantine separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick. This means that you reduce contact with other people until the period of quarantine is over. The aim is to protect your loved ones and other members of the public from potentially acquiring an infection from you if you have come into contact with the disease. This is an important public health measure that will be enforced.

How to move from the point of entry:

- You should be picked by only one person who should wear a mask.
- Sit on the back left seat of the vehicle (do not sit on the co-driver's seat)
- Do not have any physical contact with the driver

If you are to self-quarantine, then you must stay at home and not move out of your home for a period of 14 days and:

- While at home stay away from others. If possible, you should stay in a specific room with adequate ventilation and use a separate bathroom. If you are sharing bathroom facilities then this should be disinfected regularly using household disinfectant or soap and water
- Wash your hands often with soap and water for 20 seconds.
- Avoid sharing personal household items. After using personal items, such as silverware, dishes, towels, sheets and more, wash thoroughly with soap and water.
- Cover your mouth and nose with a tissue when you cough and sneeze and then throw it into the trash.
- Postpone all non-essential appointments until you are out of quarantine.

NB: The form will be provided and signed in hard copy

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

We will collect your contact details (name, next of kin, physical address and Telephone contact) to allow follow-up on the progress of your self-quarantine. If at anytime you feel you are unable to continue self-quarantine then call **719** and you will be directed to a self-quarantine facility.

If you develop any symptoms during the period of quarantine (such symptoms may include fever, cough, muscle pain, headache, sore throat, diarrhea), then you should call **719** and you will be transferred to an isolation facility.

At the facility, you will be evaluated by a health care personnel and a swab of your throat and nose taken for laboratory testing and appropriate care offered.

Understand that if you break the self-quarantine then you risk exposing your loved ones and other members of the public to infection .

Your movements during this period of quarantine may be monitored by the Ministry of Health from time to time. If your break the self-quarantine, then Ministry of Health officials are authorised to admit you to a quarantine facility.

If you are unable to self-quarantine, then you will be taken to a Government designated quarantine facility

Ensure you give correct contact and address information.. Please note that it is an offence under the Public Health Act to give false information

By signing the appended self-quarantine declaration form, you agree to abide by these instructions (failure to agree/sign means you accept to be admitted to a government designated quarantine facility):

MINISTRY OF HEALTH

COVID 19 QUARANTINE PROTOCOLS

Document compiled by

i.	Dr. Mercy Mwangangi	Chief Administrative Secretary
ii.	Dr. Francis Kuria	Ag Head Directorate of Public Health
iii.	Dr. Sultani Matendechero	Head Division of Neglected Tropical Diseases
iv.	Dr. Kamene Kimenye	Head Division of Health Legislation

This is Exhibit marked "EL-2" referred to in the Annexed affidavit/Declaration of EL LKF
Sworn/Declared before me on this ... day of June 2020
at Nairobi in the Republic of Kenya
Commissioner for Oaths

Your REF: TBA My REF: Covid-19 Initial Test Result for MEL Date: 9th April 2020

Hon. Mutahi Kagwe, Advance copy via email
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

MINISTRY OF HEALTH RECEIVED 09 APR 2020 OFFICE OF THE CABINET SECRETARY P. O. Box 30016-00100, NAIROBI

Dear Sir,

Re: Urgent Request for Information Regarding Extension of Mandatory Quarantine Beyond initial WHO recommended 14 Days

My name is [redacted] a Kenyan citizen currently under mandatory quarantine at **Pride Inn Azure Hotel in Westlands.**

I have been in quarantine since Monday 23rd March 2020, a total of **17 days**, since she arrived in Kenya. My family and I have so far spent Kshs 126,000 on accommodation and we have no other resources to spare.

While in quarantine, I have observed strict social distancing, and have been keeping a personal twice-daily temperature chart. During this time, I have **not** exhibited any of the common WHO Covid-19 symptoms. I was tested by your MOH representatives on Tuesday 31st March 2020.

On Thursday 2nd April 2020, myself and others quarantined in the same location were advised by the assigned MOH official, **one Dr. Carol Asin**, that 2 persons had tested positive and that arrangements for their transfer to a treatment center had been made and that the rest of the mandatory quarantine "guests" had tested **negative**.

Per the Ministry of Health COVID 19 Quarantine Protocols, I was supposed to be under mandatory quarantine for 14 days after which if tested negative I should have been released into self-quarantine as per the MOH protocols. However, to date, I have not been released.

I am requesting for a written response to the following as part of my right as a Kenyan, and a very concerned, frustrated and anxious quarantined citizen. To date, I still do not have access to information that affects her under Article 35 of the Constitution and section 4 and 9 (2) of the Access to Information Act, 2016:

i. I have not been issued with a personal medical notification slip confirming my Covid-19 negative status
ii. Why am I still being held at the quarantine facility against the Ministry's protocols and best practice recommended by WHO?
iii. Who will cater for the costs of the extra stay?
iv. Why have I not been provided information as to when I will be discharged and the conditions for such discharge?
v. Why wasn't the impact of another person's positive test, within my quarantine period and location, communicated and documented to me in writing including the protocols to guide any decisions thereafter ?

vi. What if there are persons - who since my initial negative test – tested [might test] positive and said persons had / have not been removed from the facility?

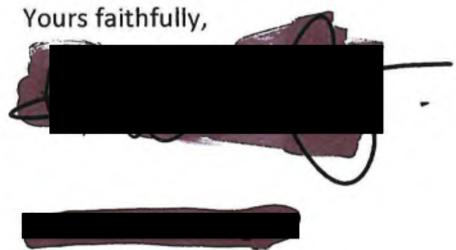
vii. Whose responsibility is it to ensure that Covid-19 tested positive persons are removed as soon as is reasonably possible and what are the mitigating factors around protecting myself and others without violating the other party's rights to privacy and dignity?

viii. Have all persons working within Pride Inn Azure - and those that have access to the facility - (including suppliers and assigned MOH staff themselves) been tested? and if not how does MOH plan to ensure those under mandatory quarantine are protected?

I am extremely concerned about the risk of exposure to COVID-19 at Pride Inn Azure. I am concerned about my emotional well-being and mental health; especially given the additional 14-day denial of normal socialization. I am worried about the additional financial costs of quarantine and the restrictive conditions of self-isolation.

I look forward to and will appreciate an urgent response to the concerns outlined above within the next 48 hours.

Yours faithfully,



cc: Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Commission on Administrative Justice
complain@ombudsman.go.ke

Transparency International- Kenya
transparency@tikenya.org

Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)
info@kelinkenya.org

Kenya National Commission on Human Rights
complaint@knchr.org

Office of The High Commissioner for Human Rights – Kenya

This is Exhibit marked "EL 3"
referred to in the Annexed affidavit/Declaration
of EL 1216
Sworn/Declared before me on this
day of June 2020
at Nairobi in the Republic of Kenya
Commissioner for Oaths

Your REF: TBA My REF: Covid-19 Initial Test Result for MEL Date: 9th April 2020

Hon. Mutahi Kagwe, Advance copy via email
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

MINISTRY OF HEALTH
RECEIVED
09 APR 2020
OFFICE OF THE CABINET SECRETARY
P. O. Box 30016-00100, NAIROBI

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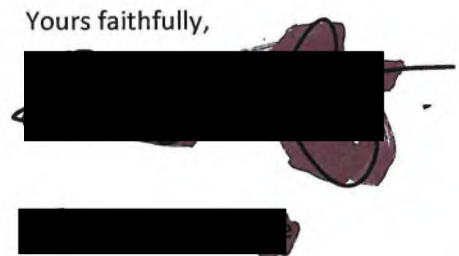

cc: Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Commission on Administrative Justice
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transparency@tikenya.org

Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)
info@kelinkenya.org

Kenya National Commission on Human Rights
complaint@knchr.org

Office of The High Commissioner for Human Rights – Kenya

This is Exhibit marked "SL 4" referred to in the Annexed affidavit/Declaration of ... Sworn/Declared before me on this ... day of June 2020 at Nairobi in the Republic of Kenya
Commissioner for Oaths

Date: 10th April 2020

Dr. Patrick Amoth
Acting Director General for Health
Ministry of Health
Covid-10 Response Team
dghealth2019@gmail.co; patrickamoth@gmail.com

Dear Sir,

Re: Undue Financial burden occasioned by initial and extended Mandatory Quarantine

We the undersigned have been in various mandatory quarantine centers since Monday 23rd March 2020.

As you are well aware the decision to place all travelers who landed at JKIA came as a huge shock and surprise especially since we were given limited information and choice of option. Nonetheless, we complied with the directive and were placed in different facilities at **our own** expense.

Since that time, communication regarding the quarantine policies has not been easily forthcoming and going forward we anticipate that decisions that directly affect persons in quarantine would be communicated to us directly and promptly by your Ministry officials.

Payment for the initial (WHO recommended 14 days) was already an unexpected strain on our personal finances because none of us had planned for this cost. Many of us were forced to travel, at very short notice, paying higher than premium airline ticket costs because the countries we were in required non-citizens to leave. This was further complicated by the announcement that JKIA would be shutting down passenger travel from Wednesday 25th March leaving very little time and a limited number of incoming flights.

The Mandatory quarantine was put in place by the government. As such we expected that they would cater for any and all related costs. We hereby request that costs incurred thus far be refunded and in addition cost incurred following the extension by the Government to the date of release be paid for to facilitate discharge of all persons under mandatory quarantine into self-quarantine at home.

We had anticipated that those who had initially tested negative for Covid-19, were going to be released into 7-day self-quarantine per WHO and MOH's original guidelines. We hereby commit that upon release we will comply and strictly observe the laid out self-quarantine guidelines in our own homes.

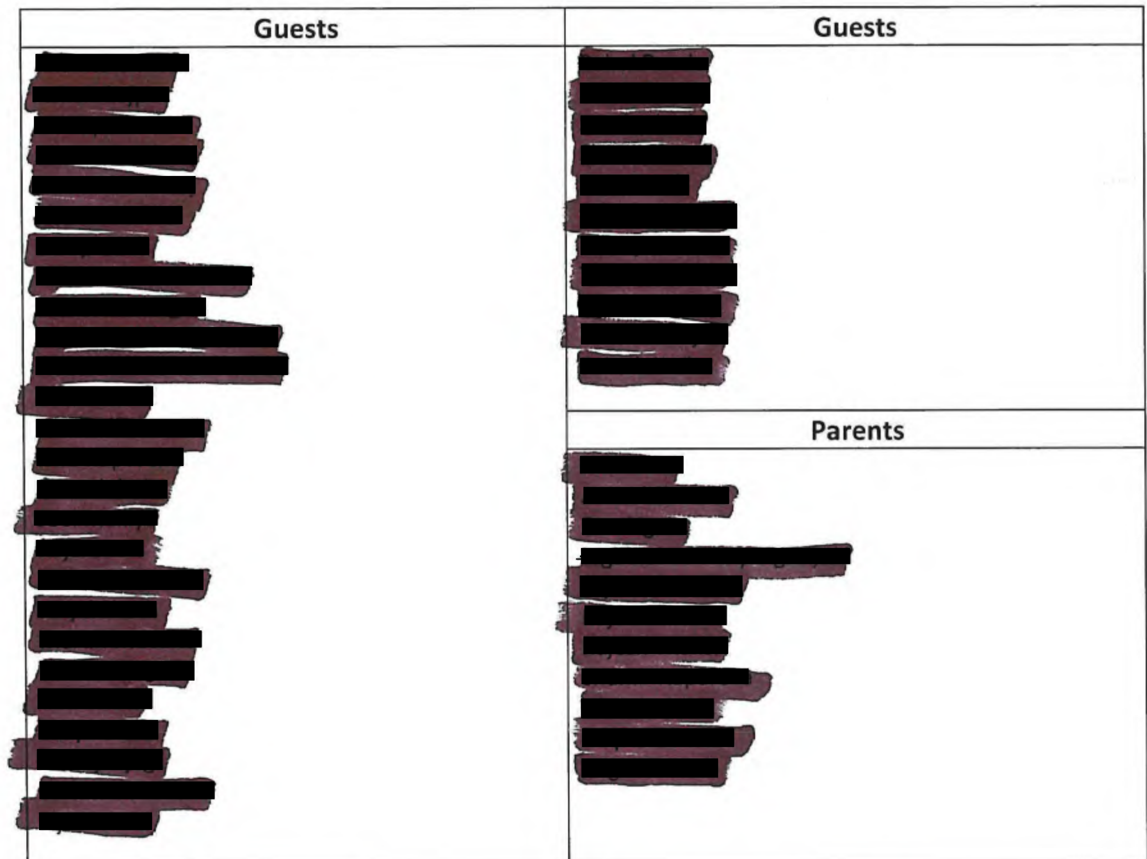
We strongly feel that being asked to pay for the additional 14-day mandatory quarantine is not only a huge strain on our personal finances but it is also seriously affecting our already fragile mental health.

We therefore request the Ministry and Covid-19 task force to address this issue, with the Treasury and other partners, as a matter of urgency to find an alternative way to compensate the hotels for the costs incurred by them from the date of extension to discharge .

We look forward to and will appreciate an urgent response to the concerns outlined above.

Yours faithfully,

Pride Inn Azure Guests and Families (listed below)



cc: Cabinet Secretary for Health - Hon. Mutahi Kagwe
cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Principal Secretary Ministry of Health
ps@health.go.ke;

Mr. Nick Nesbitt - Chairman KEPSA

Dr. Amit Thakker - Kenya Healthcare Federation
mailto:athakker@khf.co.ke

Mr. Hasnain Noorani - Pride Inn Hotels
mailto:md@prideinn.co.ke

(KELIN) info@kelinkenya.org

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, 165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA.. 1ST PETITIONER

ESTHER NELIMA.. 2ND PETITIONER

CHRIS OWALLA ....3RD PETITIONER

CM... 4TH PETITIONER

FA.. 5TH PETITIONER

KB.. 6TH PETITIONER

MO .... 7TH PETITIONER

EL.. 8TH PETITIONER

KATIBA INSTITUTE.. ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN) ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ KENYA)..... ....11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA.......12TH PETITIONER

ACHIENG ORERO ....13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH...1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,
MINISTRY OF HEALTH ....2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY .... 3rd RESPONDENT

COUNCIL OF GOVERNORS .... .4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT.. 5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL OF THE POLICE, KENYA... 6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET SECRETARY FOR INFORMATION AND COMMUNICATIONS .... 7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE JUSTICE... 8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER, KENYA MEDICAL PRACTITIONERS' AND DENTISTS COUNCIL... 9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR) ....1ST INTERESTED PARTY

AFFIDAVIT SUPPORTING THE APPLICATION AND PETITION

I, Christine Nkonge a resident of Nairobi within the Republic of Kenya, do solemnly make oath and state as follows:

1. I am the Executive Director to the 9th Petitioner herein and I am legally competent and have the authority to swear this Affidavit on behalf of the Petitioners.
2. On 28 March 2020, the 9th to 12th Petitioners wrote to the 1st Respondent information on 'testing kits, facilities, health workers, resources, processes'.
   I annex the advisory note dated 28th March 2020 marked as CN-1.
3. I am aware that on 6th April 2020 the 9th to 12th Petitioners wrote to the 1st Respondent seeking information on 'implementation of mandatory quarantine in the COVID 19 response in Kenya'.
   I annex a copy of the letter dated 6th April 2020 marked as CN-2.
4. On 27 April 2020, the 10th to 12th Petitioners wrote to the 1st and 3rd Respondent seeking information on the 'use of quarantine as a form of punishment and criminalization of COVID 19 response'.
   I annex a copy of the letter dated 27th April 2020 marked as CN-3.
5. To date, the Respondents have refused to provide the information sought by the Petitioners even though the information is necessary for the exercise of rights to life, liberty and health.

6. The Respondent's failure or refusal to supply Petitioners with the information violates the values and principles of governance in Article 10 especially human dignity, rule of law, social justice, human rights, good governance, transparency and accountability as well as the principles of public service under Article 232(1)(c) and (f) of the Constitution.
7. Petitioners believe that the refusal also violates the Respondent's obligation under Article 35(1)(a) and 35(3) and Article 43.
8. Petitioners aver that the Respondents' omission concerns the violation of fundamental rights and freedoms—not just the right to information, but the right to life and health. The lives and health of thousands could turn on how the Respondents address the pandemic. By denying the public the information necessary to determine the sufficiency of their response, the Respondents are insulating themselves from scrutiny, preventing the public from participating in, and being informed about, the government response, and preventing open discussion about the most effective way for the government to save lives and limit the damage the virus will cause.
9. Any delay in addressing the Respondents' refusal to provide information could significantly impair the public's ability to participate in the steps taken to protect themselves and could prevent the Respondents from receiving important information about how better to address the crisis. Given what is at stake for the Petitioners and the public, addressing this failure is urgent and necessary.
10. Unless this court intervenes and grants the conservatory orders sought, the Respondents' conduct will increasingly endanger the Petitioners' right to life and health despite the escalating threat of the COVID 19 pandemic.
11. I swear this affidavit in support of the Application and Petition based on facts within my knowledge (unless I have disclosed other sources) believing it to be in accordance with the Oaths and Statutory Declarations Act, Cap 20.

Sworn by Christine Nkonge at Nairobi this 30th day of June, 2020

CHRISTINE NKONGE)
) ________________
) DEPONENT
BEFORE ME)
COMMISSIONER OF OATHS)

DRAWN AND FILED BY:

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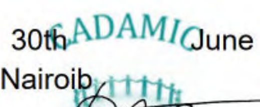
Admission Number: P105/13954/17
Practice Number: LSK/2020/07699

Aninas Community Networks for Development (ACND)

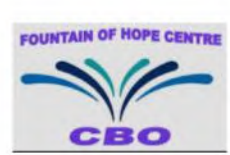
Christine Nkonge

30th June 20

Nairobi



Dandora Community AIDS support Association (DACASA)



KELIWO WIDOWS' GROUP

Next Generation of Kenya Lawyers Project

Nyakach Elders' Group

SHAPE Kenya

Your REF: **Our REF: C/KELIN/2020** Date: 28/03/2020

To
Hon. Mutahi Kagwe,
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Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke

Hon. Simon K. Chelugui,
Cabinet Secretary for Labour, Social Security and Services,
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Mr. Hilary Nzioki Mutyambai,
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Siddharth Chatterjee,
UN Resident Coordinator in Kenya,
siddharth.chatterjee@one.un.org

ADVISORY NOTE ON ENSURING A RIGHTS-BASED RESPONSE TO CURB THE SPREAD OF COVID-19

People - not Messaging - Bring Change

We, the undersigned organisations and associations, being representatives of health and human rights, civil society and non-governmental organisations, community-based organisations and representatives, professional bodies, informal sector actors, economic, and governance experts have taken note of the growing public health concern arising out of the global outbreak of the coronavirus disease (COVID-19).

We write pursuant to our constitutional mandate under Articles 3, 10 and 35 of the Constitution on the responsibility to defend and protect the Constitution, the right to participate in matters concerning us and to access public information respectively.

While we, in our organisational capacities, have made individual efforts through open letters requesting information and calling for a rights-based approach to the COVID-19 response, we issue this comprehensive advisory, inclusive of multi-stakeholder views, to provide guidance on a transparent response that safeguards the health and rights of the most vulnerable and underserved populations in Kenya. This is cognisant of the fact that the COVID-19 pandemic continues to negatively impact the health, economic and social status of populations we represent.

1. On March 13 2020 KELIN wrote an open letter to the Cabinet Secretary of Health titled "A rights-based response is critical in dealing with COVID-19" ; On 17 March 2020 KNCHR issued an "advisory On The COVID-19 Disease Response In Kenya"; Patrick Gathara, "Kenya needs to stop panicking and start preparing for coronavirus," 2 Mar 2020.

We recognise the efforts so far made by the government, including:

- Provision of information and updates on the number of people affected through regular press briefings;
- Provision of contact and hotline numbers for the public to access information especially for emergency assistance;
- Emphasis on preventive measures, including directives issued encouraging working from home; directing public transport providers to ensure social distancing; information on the need for proper sanitation; limiting interaction in social and entertainment places; among others;
- Implementation of fiscal and monetary policy measures to provide relief through tax reduction and ensure continued liquidity for individuals and organisations.

Despite these strides, the information and response availed has not been comprehensive and has failed to localise and contextualise how preventive and promotive measures shall be undertaken; highlighting the diverse differences between our country and the developed world. There have also been inadequacies in emphasising the need to respect human rights while employing public health measures.

We, therefore, write this letter to provide guidance on the following critical areas:

Right to information and transparency

Sharing accurate, timely, and lifesaving information is a constitutional obligation, necessary to meet the rights to health and information. Information is critical in ensuring transparency, which in turn builds public trust especially in these difficult times. As such, passing stigmatising information on testing, isolation, and quarantine will be counterproductive to the response.

There are gaps in the information shared and contained in the public domain. Primarily, the government has issued a number of policy directives to manage the pandemic but has failed to stipulate what each seeks to achieve and the timeframe for implementation. The lack of transparency around decisions taken (public health, behavioural or fiscal) make it nearly impossible for Kenyans to engage in a meaningful discourse around the potential costs and the benefits of these measures.

The public needs transparent, accurate and comprehensive updates that relay the state of preparedness and the precautionary measures being taken to curb the spread of COVID-19; the response at population level both locally and abroad; and information on clinical management. Comprehensive information will not only fulfil the constitutional right to access information but also help alleviate public fear, anxiety, and hysteria around COVID-19. If Kenyans do not trust in the accuracy and completeness of the information received, they may be less willing to comply with and adopt measures. This may result in the State enforcing measures through security forces; which is detrimental.

Further, the public needs information on how resources allocated to the response are being utilised, bearing in mind that there have been numerous reports of corruption in the health sector. The World Bank has committed KES Six Billion, of which KES One Billion has already been disbursed, while an additional KES Seven Billion from the Central Bank has been allocated to the pandemic response. Also, several county governments have announced the allocation of funds to support county response measures. The public needs to know how this money is being spent. Transparency in the receipt, allocation, disbursement, and utilisation of these resources with information on requirements for the funds to become available; availability of funds; budget line items that they are supporting; and eventually an audit to check the expenditure is paramount. We, therefore, propose that the government, with support from multilateral development institutions and stakeholders, sets up a live dashboard that is updated regularly with the following information on inputs and processes:

Inputs

- **Testing kits:** Numbered by type, percentages by turnaround time or technology used e.g. point of care (like GeneXpert) or based, and how many testing kits have been delivered to various designated testing facilities.
- **Facilities:** Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

- **Health workers:** Number trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, general physicians and critical care specialists. Number of health care workers deployed in every county.
- **Resources:** Publication of allocated, issued and expended financial and non-financial resources for COVID-19 responses. Including resources from private, bilateral and multilateral sources.

Processes

- Publication of previous and current COVID-19 response plans.
- Clarity on strategic goals of current approaches, e.g. isolation, quarantine and testing strategies. For example, whether and why at risk populations are being urged to self-isolate; why quarantined persons are not being offered tests; and why tests are not available on a voluntary basis to all who have symptoms as done in the South Korea response.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on training provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

In addition to gaps in the information provided, we have also noted gaps in the methods of communication, which may disadvantage certain populations. To ensure that all citizens are informed, we advise that:

- The Ministry of Health utilises a neutral SMS platform that will extend to users outside of Safaricom.
- Communication is tailored to meet the needs of underserved populations, including people with disabilities.
- Prioritise the information and communication needs of children and adolescents.

Timely, accurate, and transparent communication on our risk as a country, and how we are managing it, is essential during an emergency and it will determine whether the public will trust the government or turn to rumours and misinformation. The experience in DRC is illustrative of the negative impacts of mistrust in the Ebola response with persons refusing to seek treatment; responders and clinics receiving death threats and being assaulted and attacked, and community members believing the epidemic to be a government scheme.

Right to health

Every Kenyan has the right to the highest attainable standard of health, which the government is under an obligation to progressively realise. Containing this pandemic is our country's best chance at ensuring the citizens' health and avoiding the collapse of an already fragile health care system.

Given that the number of confirmed people with COVID-19 has increased to 31 (as of Friday, 27th March 2020, with one confirmed death), we urge the Ministry of Health to work with County Governments and other actors to scale up preparedness by:

- Increasing surveillance to affected 'hotspot' counties as well as neighbouring counties.
- Increasing testing in the communities for all suspected cases.
- Scaling up the tracing of contacts of known or suspected cases.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers. Special attention and care must be paid to vulnerable and underserved populations, including People with Disabilities; displaced populations including refugees, communities living with and affected by HIV and TB, homeless persons and those who are incarcerated or otherwise detained.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Respecting the rule of law

We believe that this response can only succeed if it is undertaken within the confines of the law. We, therefore, urge the government to ensure:

2. The right to health requires that preventive, promotive, curative, rehabilitative and palliative aspects of healthcare are made available, accessible, acceptable and of quality.

- A rights-based response to COVID-19 is adopted. Such a response contains many important aspects, among them, the right to health, equality and non-discrimination, freedom of peaceful assembly, association and movement, an adequate standard of living, as well as the right to benefit from scientific progress. The Public Health Act should be applied in a rights-based manner to meet the ends of public health while respecting, promoting, and protecting the rights of the affected.
- Strict protection of the right to privacy and confidentiality of health information is maintained. We urge the government, the media, and other actors to avoid succumbing to pressure to name the affected people. The COVID-19 situation is not unique to Kenya and we, therefore, urge the government to draw lessons from other countries in contact tracing without violating privacy and confidentiality. We note that discrimination based on 'health status' is prohibited under Article 27 (4) of the Constitution. The response be guided by established international principles, for instance, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.
- Adherence to progressive policies, for instance, the recently enacted Tuberculosis (TB) Isolation Policy, which provides guidelines applicable to the isolation of patients with infectious diseases. The policy was adopted following the decision in Daniel Ng'etich & 2 others v Attorney General & 3 others [2016] *eKLR*, which adopted a rights-based interpretation of the Public Health Act and, as a result, declared the practice of jailing people with TB, as a form of isolation, unlawful and unconstitutional.

Based on media reports and individual experiences, we are concerned that mandatory quarantine and isolation of people affected by COVID-19 appear uncoordinated, unplanned and not guided by policy. For instance, the decision to mandatorily quarantine people in hotels & government facilities raises two fundamental concerns: (i) what measures are being put in place to protect the workers at such facilities from infection; and (ii) why are citizens being forced to incur the costs of isolation at these hotels? These concerns create the impression that the government does not have a contingency plan to ensure mandatory quarantine meets public health objectives to prevent further spread. Further, on 27 March 2020, a person under mandatory quarantine died at Kiti Quarantine Centre in Nakuru County. There is a need - to investigate the circumstances of this death and determine if the quarantine centers are fit for purpose and meet the requirements to ensure individual and public health. Quarantine centers must be able to ensure that persons within it are safe, secure and their mental and physical health is guaranteed taking into account underlying health conditions. The County Government of Nakuru working with the Ministry of Health must provide information on the circumstances of the death and any measures that shall be put in place to address quality gaps within quarantine facilities.

- Recognition that punitive measures or criminal sanctions are not effective in epidemic control. Criminal sanctions are counterproductive because they drive people underground and expose more people to the virus. On 22 March 2020, the government communicated to the public that *"all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."* The HIV response has taught us that *"using criminal law to regulate behaviour and prevent transmission of a virus is a severe and drastic approach in attempting to slow the spread of the virus. As has been seen in the HIV epidemic, the overuse of criminal law can have significant negative outcomes both for the individual and for the response as a whole and often fails to recognize the reality of people's lives. It can further stigmatise people who have the virus, dissuade people from getting tested and destroy trust between the government and communities."*
- That the Kenya Police Service and all other security forces act within the confines of the Constitution and the Criminal Procedure Act. A mandatory curfew between 7:00 PM and 5:00 AM came into place on Friday, 27 March 2020. After only one day there have been reports of police brutality in enforcing this curfew, illustratively, in Mombasa County there are reports of police using teargas and brutalising ferry users well before the curfew time. The rights to dignity; security of the person; and freedom of movement must be respected and protected. Kenyans have a right to be free from corporal punishment and not to be subjected to cruel, inhuman and degrading treatment. The Kenya Police service has a history of using brutality to enforce order, this is both unlawful and unconstitutional as the right not to be subjected to inhuman and degrading treatment is non-derogable.

- The conduct of the Police is strongly condemned and we urge security forces to act within the rule of law as an emergency does not suspend their obligation to respect constitutional rights.

  Procurement laws must be followed to ensure transparency in the procurement of life-saving medicines and other medical supplies, with greater efforts taken to prevent price gouging of drugs, and other goods and services required to protect citizens from contagion (such as hand sanitizers, masks, gloves). While the Public Procurement and Asset Disposal Act allows for flexibility in an emergency we urge that agencies involved in the response balance the need to act without delay to save or preserve lives with the need to act with integrity, guarantee quality and ensure value for money.

Social protection and economic aspects

An inclusive social protection system can have long-lasting impacts on well-being and economic growth. By offering all citizens the guarantee of income security, social protection effectively tackles poverty and inequality, enhances human capital, helps build a strong and productive workforce, protects against shocks and crises, and builds social cohesion. Both the pandemic and the response to it can have severe consequences on people's livelihoods, employment and access to food and essential services. The right to social security is guaranteed in Article 43(1) e of the Constitution. Social protection has three main pillars: social assistance, social insurance; and health insurance.

The COVID-19 pandemic has placed the Kenyan population in a precarious economic situation. The directive for limited social contact has forced businesses to shut their doors. Whereas some businesses or institutions have the ability to operate remotely, this has impacted negatively the many others that require physical presence to operate optimally. The disruption of business operations has had consequences on people's ability to provide basic needs. The problem is particularly acute for informal laborers. 82.7 percent of Kenyans work in the informal sector. If they do not work, they will not receive any income and will not be able to provide basic needs for themselves or their families. Fear of losing their jobs can prevent people from taking necessary steps, such as working from home, quarantine, isolation and seeking medical services.

The COVID-19 response should ensure that people are protected from loss of employment, income or livelihoods through strong labour protections, social security schemes and insurance, so that Kenyans are better able to look after their health, to self-isolate, and accordingly, improve the response to the pandemic.

The measures and messaging around COVID-19 have been tailored for Kenyans in formal wage employment who can afford to and have the amenities to work from home. Additionally, the tax reductions will have little impact on the more than 50 percent of Kenyan households who have an income of less than KES 10,000 per month (outside of the lowest income tax bracket) and who mostly consume goods that are VAT exempt. We note that the government has been replicating measures from the global north without taking time to contextualise it for Kenya, and as a result, we risk disastrous consequences. Kenyans that survive off of a daily wage, will not eat if they stay home. The government cannot place them in the untenable position of choosing between their livelihood and public safety.

We urge the government to put in place measures for social protection and especially, non-contributory social assistance mechanisms and safety nets to 'cushion' the communities and persons who cannot afford to not work. Further, we urge the government not to utilise security forces to enforce measures around social distancing and curfews, as this will be detrimental to a majority of Kenyans and may result in civil unrest. We cannot use a 'one size fits all' approach for COVID-19 and the government must be cognisant of the need to secure the economic well-being of its people.

Urgent solutions are necessary to protect the economic and social rights of all people, including the vulnerable and marginalised, as the COVID-19 pandemic and the measures being implemented create a dire threat to citizen's ability to access health services, housing, sanitation, food, clean and safe water, social security and education. We commend the government for committing KES 10 Billion to cushion elderly, orphaned and vulnerable members of the society from the adverse economic effects of the pandemic through cash transfers.

We call upon the government through the Ministry of Labour, Social Security and Services-department of social protection; UN agencies, multilateral development institutions, and stakeholders working in this space to:

- Support both levels of government in appropriate beneficiary targeting - to target the right geographical areas, vulnerable communities, households and individuals.
    - It will be crucial to engage with and strengthen capacities of community-based organisations and community health workers to support in the identification of vulnerable households in different areas, and in the actual distribution of in-kind transfers in cases of restricted movement and to vulnerable and physically challenged individuals.
- Beneficiary management systems for enrolment and registration through the expansion of existing social registries and assisting the government to temporarily expand its existing social protection programme to include households newly affected by the COVID pandemic.
- There is a need for standardized guidelines and streamlining of targeting, types of cash and food transfers; management information systems (MIS), registries and databases of all beneficiaries and programmes, including the simplification of registration functions.
- Use of different unconditional transfer modalities as appropriate. These may include mobile/electronic cash transfers, in-kind transfers (actual food baskets to meet the food and nutritional needs of households; and non-food items), or commodity vouchers that can be redeemed for food and non-food items at various vendor outlets.
    - If vouchers are selected as a modality, expand the network of traders offering commodities
    - If cash transfers are used to ensure quicker and more efficient disbursements by strengthening digital payments and relaxing the eligibility criteria or conditions of existing programs that already have the cash delivery infrastructure in place.
    - Identify and set up food and non-food items commodity pick up points in close proximity to various communities (this may be necessary with the imposed curfew).
    - Set up home delivery mechanisms for delivery of food and non-food items to households with vulnerable individuals (if a complete lockdown is implemented this shall be necessary).
- Launch community awareness campaigns about how to enroll for and access available cash transfers and food assistance programmes; as well as complaints and feedback mechanisms.
- Prevent utilities such as electricity and water from being cut off during the pandemic.
- Strengthening institutions and technical capacity to refine and operationalise safety nets and social transfers delivery systems of the government including payment service providers, M&E systems to ensure accountability.

Women and girls

Health crises, such as COVID-19 impact women and men differently, exacerbating gender inequality. Previous experiences have shown that women and girls will be more severely affected by the pandemic. Girls and women face disadvantages, because of their limited ability to join the labour sector and their reduced earning capacity compared to men (earning as much as 30 percent less than men).

Women account for a significant part of the healthcare workforce. 75.8 percent of nurses are women, and nurses account for the largest proportion of the healthcare workforce. The health care system also relies on women's unpaid labour, a situation that will become more acute with the implementation of social distancing because the disproportionate burden of caring for children, who are now home from school, will fall on women. Additionally, the burden of home-based health care often falls on women, subjecting them to risk of infection and also limiting their ability to engage in other work. This problem is exacerbated in an epidemic when no support measures are put in place for home-based care providers.

Women and girls are affected by poverty in disproportionately high numbers in Kenya, and in seeking to respond to the realities created by gender inequity, the government should consider the impact that deepening poverty will have on these vulnerable populations. Therefore, social protection measures must account for the very gendered nature of poverty and inequality. Gendering the pandemic, also requires understanding the increased risk women are placed in when resources are diverted towards the pandemic response or services become unavailable. During the Ebola epidemic in Sierra Leone there was a 34 percent increase in facility maternal mortality and a 24 percent increase in the stillbirth rate; fewer women were able to access both pre and post-natal care. Sexual and reproductive health services were affected with obstetric and paediatric care facilities closing; the closure of organisations that offered contraceptive services and information; and the lack of guidance on the management of pregnant women.

The following are recommendations to ensure a gendered approach to the COVID-19 pandemic and include some of the recommendations that have been issued by UN Women:

- Protect essential health services for women and girls, recognising that sexual and reproductive health services are part and parcel of ensuring the right to health in Article 43(1) (a) and (2) of the Constitution for women and girls, are guaranteed and accessible in light of enforced curfews and potentially stretched health facilities
- Make provision for the comprehensive health care of women in all stages of pregnancy in COVID-19 preparedness plans to manage maternal morbidity and mortality rates and mitigate potential health disparities.
- Prioritise services for prevention and response to gender-based violence in communities affected by COVID-19 which must include essential services to address violence against women in preparedness and response plans for COVID-19, provide resources for the said services, and identify ways to make them accessible in the context of social distancing measures and imposed curfews.
- Ensure that there is access to the justice system for women and girls who face sexual and gender-based violence, which includes access to proper reporting and investigations systems and the enforcement of the right to a fair trial.
- Ensure availability of sex-disaggregated data, including on differing rates of infection, differential economic impacts, differential care burden, and incidence of domestic violence and sexual abuse.
- Embed gender dimensions and gender experts within response plans and budget resources to build gender expertise into response teams.
- Provide priority support to women on the frontlines of the response, for instance, by improving access to women-friendly personal protective equipment and menstrual hygiene products for healthcare workers and caregivers, and flexible working arrangements for women with a burden of care.
- Ensure equal voice for women in decision making in the response and long-term impact planning.
- Ensure that public health messages properly target women including those most marginalised.
- Develop mitigation strategies that specifically target the economic impact of the outbreak on women.

Children

Children, like women, experience socio-economic marginalisation and in Kenya the overall child poverty rate is 45 per cent. An epidemic can deepen marginalisation and in the case of children, they are vulnerable because: younger children may not be able to understand information on COVID-19; unaccompanied children may be unable to access timely and life-saving information; they may be unable to express fears and anxieties, and prolonged periods away from schools may cause anxiety and have an impact on emotional wellbeing.
The pandemic response must be cognisant of the burden on caregivers who may not have the capacity to care for children – with children home from school there are increased safety and security risks if parents still have to go to work and lack access to other caregivers. Heightened anxiety among parents and caregivers may result in violence against children at home. Finally, while children are less likely to become severely ill their caregivers may be at greater risk which may impact a child negatively.

Children are at risk of deepening poverty, and their health and mental well-being may be impacted by the: disruption of their lives (which may have financial implications and make them more vulnerable to child labour or exploitation); erosion of social capital; and possible separation of families who may not have access to support systems. The best interest of the child is of paramount importance in every matter concerning the child and the government must take into account the possible negative impact of this pandemic on children.

Media

We appreciate the role that the media has played in informing the public of the signs and symptoms of the virus as well as the preventive measures people can take to curb its spread. The media still has a central role to play in the response namely:

- Providing multi-stakeholder analyses on the broad impact that COVID-19 has on people beyond their health;
- Playing a monitoring and accountability role by providing constructive criticism when, and if, the Government's COVID-19 response falls short;
- Practicing responsible and ethical reporting that does not profile people with COVID-19.

We have received reports of Police seeking to curtail the movement of media personnel, despite media being an essential service and the constitutional guarantee of media freedom. We condemn any actions to interfere with media freedom as this is a violation of Article 34(2) of the Constitution, particularly at a time when access to timely and accurate information is critical to prevent hysteria.

Building public trust is a key component of any pandemic response and the media can play a significant role in ensuring accurate and timely information is availed to citizens, as well as provide avenues to build rapport between the government and its people.

We, therefore, note with grave concern the role played by certain media outlets in vilifying persons confirmed to be infected with COVID-19, referring to them as 'agents of death'. We note that while freedom of the media is guaranteed in Article 34 of the Constitution, this is subject to Article 33(2) which provides that freedom of expression does extend to advocating hatred based on health status. The media is required to meet its obligation to provide information, but it cannot do so in a manner that is likely to incite violence or be interpreted as advocating hatred.

Rather than incite fear, the media can build trust by bridging the information gap and hold the state to account. Conversely, they can fuel stigma and hamper the pandemic response with misinformation and vilification. There are important lessons to be learned from the impact stigma had in exacerbating both the HIV and TB epidemics – this has resulted in driving communities underground; impacting both access to and quality of healthcare, and increasing the spread of the disease.

Healthcare Workers

As part of the pandemic response, we have called upon our medical practitioners, nurses, clinical officers, midwives, community health workers, and volunteers; to place themselves and their families at risk to secure the health of this nation. We note with concern that in early March nurses at Mbagathi Hospital were on a Go-Slow as they were expected to provide care without adequate training. Every worker has the right to fair labour practices which includes reasonable working conditions (Article 41 of the Constitution). This right should be protected even in a pandemic response, and we call upon the government to guarantee the safety and well-being of those taking these risks by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic. Additionally, regular technical updates and appropriate tools to assess, triage, test and treat patients, as well as how to share infection prevention and control information should be made available.
- Ensuring that all necessary preventive and protective measures are taken to minimise occupational safety and health risks. Provide quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitiser, soap and water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimising occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.

UN and Multilateral Development Institutions

We appreciate the role played by the UN Family in Kenya, led by WHO, and other development partners in providing technical and financial support to the government's COVID- 19 Contingency plan. We call upon the leadership of the UN and multilateral development institutions to help safeguard the progress made thus far to reach the Sustainable Development Goals and to include the most vulnerable and hard to reach populations in the country's response. We therefore wish to call on the development and technical partners in Kenya to scale up efforts in supporting the Government to respond to the crisis in an inclusive, transparent and rights-based manner that adopts evidence-based interventions.

We all want the country and the world to triumph over COVID-19. This will only be achieved through a rights-based response – with all necessary efforts made to prevent further spread of COVID-19, maximum support provided to those affected, enhanced accountability in the use of resources to support response measures and contingent measures to cushion the public from the economic turmoil put in place.
The undersigned are ready and willing to help. We are eager to put our collective expertise to solve this problem in a way that fits Kenya's unique situation, respects the Constitution, and ensures the public health and safety of all.

Signed by:

1. African Institute for Children Studies AICS
2. AHF Kenya
3. Aninas Community Networks for Development (ACND)
4. Boa Boda Association of Kenya (BAK)
5. Buliding Lives Around Sound Transfomation (BLAST)
6. CADAMIC
7. CEDGG
8. Centre for Rights Education and Awareness (CREAW)
9. Community Forum For Advanced and Sustainable Development (COFAS)
10. Community Initiative Action Group Kenya (CIAG-K)
11. COPHAM
12. Constitution and Reform Education Consortium (CRECO)
13. Dandora Community Aids support Association (DACASA)
14. Empowering Marginalized Communities NGO (EMAC)
15. FIDA-Kenya
16. Fountain of Hope
17. Happy Life For Development
18. Health NGOs Network (HENNET)
19. Health Rights Advocacy Forum (HERAF)
20. HUSA
21. International Commission of Jurists-Kenyan Section
22. ICS Africa
23. International community of women living with HIV Kenya
24. Institute of Economic Affairs
25. Katiba Institute
26. Kounkuey Design Initiative (KDI)
27. Keliwo widows' group
28. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
29. Kenya Red Cross Society
30. Kenya Sex Workers Alliance (KESWA)
31. Kenya Union of Clinical Officers (KUCO)
32. KIASWA Institute
33. Kondele community social justice Center
34. Lean on Me Foundation
35. Men Against Aids Youth Group.
36. Mildmay Kenya
37. Mumbo International
38. Nelson Mandela TB & HIV Information
39. NEPHAK
40. Nyakach Elders' Group
41. Next Generation of Kenya Lawyers Project
42. National Nurses Association of Kenya
43. Pamoja TB group
44. PEMA Kenya
45. People's Health Movement
46. Rising to Greatness
47. SHAPE Kenya
48. Society of Radiography in Kenya
49. Teenseed
50. TISA
51. Transparency International Kenya
52. Trust for Indigenous Culture and Health (TICAH)
53. Voices Of Community Action And Leadership (Vocal Kenya)
54. Wacha Health
55. Women in Real Estate
56. Women's Link Worldwide

CN-1
Christine Nkonge
30th June 20
Nairobi

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 06/April/2020**

Hon. Mutahi Kagwe
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke; pshealthke@gmail.com

**Advance copy via email*

Dear Sir,

REF: OPEN LETTER ON IMPLEMENTATION OF MANDATORY QUARANTINE IN THE COVID-19 RESPONSE IN KENYA & REQUEST FOR INFORMATION

We, the undersigned, individuals, individuals under mandatory quarantine, family members of individuals under quarantine, organizations and associations, are representatives of health and human rights civil society and non-governmental organizations, community-based organizations and governance experts. We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" whose issues raised remains unaddressed.

Our previous advisory had, among other concerns, noted that the implementation of the government's directive of mandatory quarantine and isolation of people affected by COVID-19 was uncoordinated, unplanned and not guided by any policy or guidelines.

We issue this open letter and formal request for information in light of concerns raised by individuals currently in mandatory quarantine, their family members and media reports. The media have documented poor management of individuals from the time they landed at Jomo Kenyatta International Airport, their transportation, up to the time they were admitted to various mandatory quarantine facilities. This exposed them to risk of infection, defeating the very essence of safeguarding the greater public and avoiding co-infection.

People in mandatory quarantine have also brought to our direct attention and through open letters[1] and personal videos clear cases of recklessness in their handling, exorbitant costs they have been forced to incur to pay for the quarantine facilities, deplorable living conditions in most quarantine centers, lack of information on any quarantine protocols, and a general lack of any regard to their health, safety and well-being[2]. For the general public, it is not clear how many people are in mandatory quarantine, whether they have all been tested while in quarantine, how many have tested negative or positive and whether the results have been communicated to them. Similar information is unavailable to those in quarantine.

We take note of the fact that quarantine as a public health measure involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, *with the objective of monitoring their symptoms and ensuring early detection of cases*[3]. The World Health Organization (WHO) recommends that mandatory quarantine should be implemented as part of a comprehensive package of public health response and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons. Further, that if a decision to implement quarantine is taken, the authorities should ensure that:

- the quarantine setting is appropriate and that adequate food, water, and hygiene provisions can be made for the quarantine period;
- minimum Infection Prevention and Control (IPC) measures can be implemented; and
- minimum requirements for monitoring the health of quarantined persons can be met during the quarantine period.

We are therefore appalled by the manner in which mandatory quarantine is being implemented which is putting those in quarantine, all health care workers attending to them and, by extension, the entire nation at risk. From the time the decision to enforce mandatory quarantine was made on 22nd March 2020, the public has had several concerns:

- There has been no public information on any guidelines on the mandatory quarantine process, save for draft protocols dated 27th March 2020 and published on the Ministry of Health website on or about 3rd April 2020;

- There has never been information, within the public domain, or to those quarantined, on what to expect at the quarantine facilities, the period, costs, health information etc;There has never been information within the public domain, or to those quarantined on measures put in place to protect the workers at such quarantine facilities from infection including the provisions of personal protective equipment to the health care workers and others attending to them such as hotel workers. For instance, were all the health care workers and hotel staff tested and offered training on managing persons with COVID-19 before they received the people in mandatory quarantine?

As the nation continues struggling with the above, our attention is now drawn to a circular by Acting Director General for Health (Ref: MOH/ADM/1/3/Vol.1) communicating a decision to extend the quarantine period beyond 14 days for occupants of all facilities in which positive cases are identified. As expected, the circular raises further concerns:

- **The risk of co infection for those who are negative:** The Ministry of Health is already handling the quarantine process poorly, putting those in quarantine at risk and contributing to increased infections. What will extension of the quarantine period, of such poorly managed quarantine facilities[4] achieve other than increase chances of co infection for those who are COVID-19 negative?

1. Open letter by people quarantined at Pride Inn Azure Hotel dated 5th April 2020, REF: Directive to extend quarantine period beyond 14 days.

2. See Angela Okech, et. al "Covid-19: Kenyans reveal poor state of isolation centres,"; John Allan-Namu "Inside the Quarantine: Fears of Further Spreading the Virus Haunt the Confined."

3. WHO, 19 March 2020, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19) available at https://www.who.int/publications-detail/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)

4. For example, the Kenya Medical Training Centre, Moi Girls High School Nairobi, Lenana School

- **Lack of information to the people under quarantine of the extension:** Who does the circular apply to? At whose cost is the extension? Why a blanket circular to all, yet the Ministry admits that some centers were managed better? Was this circular communicated to those in the mandatory quarantine facilities before it was made public? Do the health care workers and other personnel (e.g. hotel staff) in these facilities have personal protective equipment? Why is it that people who have tested positive appear to learn of their status from the media? Is this not a breach of medical ethics?

- **Poor quarantine facilities:** It is evident that most quarantine facilities are in deplorable conditions. WHO recommends that those who are in quarantine must be placed in adequately ventilated, spacious single rooms with en suite facilities (that is, hand hygiene and toilet facilities). If single rooms are not available, beds should be placed at least one meter apart. Those in quarantine report otherwise, and publicly available video evidence confirms this.

- **Psychosocial Effects of Prolonged Isolation:** How will the Ministry of Health ensure that the mental health of those in quarantine is well taken care of?

- **Proof of Contact:** WHO recommends that contacts of patients with laboratory-confirmed COVID-19 be quarantined for 14 days from the last time they were exposed to the patient. This is also reflected in the draft protocols dated 27th March 2020. What happens to those people who have adhered to quarantine conditions, including social distancing, and have tested negative?

- **Turnaround times for testing:** Per the Ministry's Draft Protocols, test results are to be availed within 24 hours. What is the Ministry doing to ensure results are availed within a reasonable time, to allay unnecessary anxiety and strengthen the quarantine regime overall?

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and the Right to Access Information Act:

1. Provide an explanation as to why the Ministry of Health is not adhering to its own guidelines relating to managing the designated mandatory quarantine facilities. For instance, why are people who have first tested negative test not released into self-quarantine as per the self-quarantine protocols?
2. Does the circular extending the quarantine period apply to all quarantine facilities? Why? At whose cost?
3. The total number of designated quarantine facilities as at 6th April 2020 and the number of occupants in each? The number of heath care workers and their cadres that have been deployed to these quarantine facilities? How many people are currently in quarantine who have been tested and received their results?
4. What measures are being taken to safeguard the health of people in quarantine facilities who have pre-existing medical conditions?
5. What is the time period taken when one tests positive in a quarantine facility before they are transferred to medical facility for isolation?
6. Have the healthcare workers and hotel attendants who have come into contact with the persons who have tested positive been tested and provided with PPE?

As per Section 27 of the Public Health Act, the government has the responsibility of isolating persons who have been exposed to infectious diseases. In the public health emergency occasioned by COVID-19 pandemic, we urge the government to diligently undertake this obligation by, among others, providing safe, clean and hygienic quarantine facilities; meeting the costs of such facilities; and above all monitoring the health including mental health of those in quarantine and promptly discharging those who test negative.

Signed by the following individuals:

1. Allan Maleche
2. Ashok Rajput
3. Atieno Odenyo
4. Benson Maina
5. Bridget Kanini
6. Bonface Ombui
7. Caroline Jerop Morogo
8. Catherine Murugi
9. Christine Nkonge
10. Eugene Ligale
11. Evaline Kibuchi
12. Evelyne Wanjiru Karanja
13. Etta Ligale
14. Francis Aywa
15. Francis Mwangi
16. Grace Macharia
17. Hallima Nyota
18. Huzefa Amirali Mohamedbhai
19. Jamie Nyamongo
20. Jasmine Lemelin
21. Karishma Bhagani
22. Margaret Kalekye
23. Mark Gitau
24. Melanie Ligale
25. Maureen Ouma
26. Naiya Anil Haria
27. Nicholas Mwenda
28. Nickitah Mckena
29. Patricia Asero
30. Peter Owiti
31. Rahul Ponda
32. Rashmi Shah
33. Reggie Ann
34. Sarah Mburu
35. Sajan Thakar
36. Sarah Mwangi
37. Samson Onditi
38. Shanay Sirju Patel
39. Sheila Masinde
40. Sirju Shashikant Patel
41. Sophia Muchiri
42. Soukhya Ankala
43. Tanika Dodhia
44. Twinkle Pethad
45. Vaishali Sirju Patel
46. Vivian Washiko
47. William Mburu

Organisations:

1. Amnesty International
2. CADAMIC
3. COFAS
4. Community Initiative Action Group – Kenya
5. EMAC Kenya
6. FIDA Kenya
7. GALCK
8. Happy Life for Development CBO
9. HENNET
10. HERAF
11. International Community of Women Living with HIV – Kenya Chapter
12. ICJ – Kenyan Section
13. Katiba Institute
14. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
15. KANCO
16. Lean on Me Foundation
17. Next Generation of Kenya Lawyers Project
18. Nelson Mandela TB-HIV Resource Centre Nyalenda
19. People's Health Movement – Kenya
20. PEMA Kenya
21. Rising to Greatness
22. SWOP Ambassadors
23. The Network on Food and Nutrition Security
24. TICAH
25. TISA
26. Transparency International Kenya
27. Wote Youth Development Projects

cc:
Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors

Siddharth Chatterjee,
UN Resident Coordinator in Kenya

Bernard Mogesa
CEO, Kenya National Commission on Human Rights

Dr. Joyce Mwikali Mutinda
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Hon. Florence Kajuju
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ALL MEDIA HOUSES

CN-3

Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

Christine Nkonge

30th June 20

Nairoib

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Dr Rudi Eggers,
WHO Country Representative – Kenya,
Email: afkenwr@who.int

The Chairman,
Council of Governors,
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P.O Box 40401-00100,
NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:
   a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;
   b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.
2. The Ministry of Health to provide us with information on the following:
   a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;
   b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;
   c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:
   a. Information on the criteria that was used to select hotels and facilities as quarantine centers.
   b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.
   c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.
   d. The approved standard operating procedures of the quarantine facilities.
   e. The designated medical personnel responsible for oversight at each quarantine center.

4. The **Council of Governors and all the 47 Governors** urgently share information on:
   a. The number of people currently in quarantine in each of their respective counties.
   b. The number of people who have been tested in the various quarantine facilities in the counties.
   c. The testing schedule of the people in county quarantine.
   d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.
   e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:
   a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –
      i. what training these officers have been given to undertake the role of medical experts;
      ii. what infection prevention and control protocols they follow; and
      iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Committee of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo

27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

cc:

Siddharth Chatterjee,
UN Resident Coordinator in Kenya
Email: siddharth.chatterjee@one.un.org

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR
lfung@ohchr.org

Col. (Rtd) Cyrus Oguna
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spox@ict.go.ke;
governmentmediacentre@ict.go.ke

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice
chair@ombudsman.go.ke

The Chairperson
Senate Ad Hoc Committee on COVID-19
covid19@parliament.go.ke

The Chairperson
National Assembly Health Committee
clerk@parliament.go.ke

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA... 1ST PETITIONER

ESTHER NELIMA ....2ND PETITIONER

CHRIS OWALLA.. 3RD PETITIONER

CM ....4TH PETITIONER

FA ....5TH PETITIONER

KB ....6TH PETITIONER

MO..7TH PETITIONER

EL .... 8TH PETITIONER

KATIBA INSTITUTE ....9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN) ....10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ KENYA)...11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA.................................12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH ....1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH ....2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF SIAYA COUNTY .... 3rd RESPONDENT

COUNCIL OF GOVERNORS.. .4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT .... 5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA .... 6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET SECRETARY FOR INFORMATION AND COMMUNICATIONS... 7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE .... 8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER, KENYA MEDICAL PRACTITIONERS' AND DENTISTS COUNCIL .... 9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (KNCHR)..1ST INTERESTED PARTY

AFFIDAVIT IN SUPPORT OF THE PETITION

I, **ALLAN ACHESA MALECHE**, of **P.O.BOX 112 – 00202, Nairobi**, a male adult Kenyan of sound mind residing and working for gain in Nairobi County within the Republic of Kenya, and the Executive Director of the 10th Petitioner herein whose address for purposes of Petition is care of KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV AND AIDS, Kuwinda Lane, off Langata Road, Karen C, P.O. Box 112 – 00202, Nairobi, do hereby make a solemn oath and state as follows;

1. **THAT** I am an advocate of the High Court of Kenya and the Executive Director of the Kenya Legal and Ethical Issues Network of HIV and AIDS (KELIN) thus competent to swear this Affidavit.

2. **THAT** I have the authority of the Board of Directors to swear this Affidavit on behalf of KELIN herein.

3. **THAT** I am conversant with the contents of the Petition, I have interacted with the Petitioners, I fully understand the issues in question and I further adopt the contents of the Petition filed herein as if the same were set out *seriatim*.

4. **THAT** KELIN is a non- partisan, non-profit making and non- governmental organization duly registered under the Non-Governmental Organizations Act, working to protect and promote health related human rights in Kenya. **(Annexed and Marked "AM-001" is a copy of KELIN's registration certificate).**

5. **THAT** the mandate of KELIN is achieved by facilitating access to justice for those who have faced human rights violations, creating partnerships with key stakeholders, building capacities of communities to know their rights and analysing laws and policies to ensure they integrate human rights principles.

6. **THAT** KELIN's vision is the full enjoyment of health-related human rights for all while its mission is to promote and protect health related rights for all.

7. **THAT** following the global outbreak of the coronavirus disease ("COVID-19") pandemic, and the reporting of the first person with COVID-19 in Kenya on 12th March 2020, KELIN in exercise of its mandate, and in partnership with other non-governmental, civil society and community based organisations, has been monitoring the government's response to the pandemic, especially how the government was fulfilling its constitutional and statutory obligation to protect the right to health of Kenyans.

8. **THAT** in this regard, KELIN, in partnership with the 9th, 11th, and 12th Petitioners and other organizations, set up a legal aid support system to provide *pro bono* legal advice to people facing human rights violations during the pandemic period **(Annexed and Marked "AM-002" is a copy of the legal aid poster).**

9. **<u>THAT</u>**, KELIN with other stakeholders has written advisories to government representatives (including the respondents herein) calling for a rights-based and transparent COVID-19 response that safeguards the health and rights of all including vulnerable and underserved populations. **(Annexed and Marked <u>"AM-003"</u> is the Multi-Stakeholder Advisory Note dated 28th March 2020).**

10. **THAT** in this advisory dated 28th March 2020, over 57 organisations noted to the 1st, 4th, 5th and 6th respondents that *"sharing accurate, timely, and lifesaving information is a constitutional obligation, necessary to meet the rights to health and information. Information is critical in ensuring transparency, which in turn builds public trust especially in these difficult times."*

11. **<u>THAT</u>** the advisory further urged the 1st respondent to sets up a live dashboard that is updated regularly to share critical information on testing kits, health facilities, health care workers, utilization of resources allocated to COVID-19 response, strategic goals of current approaches, e.g. isolation, quarantine and testing strategies, information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers, information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

12. **<u>THAT</u>** based on the foregoing, and pursuant to the constitutional mandate under Articles 3, 10 and 35 of the Constitution on the responsibility to defend and protect the Constitution, the right to public participation and right to access public information respectively, KELIN with other stakeholders subsequently also made several requests for information to the respondents as follows:

    (a) Request for information letter dated 6th April 2020 on Implementation of Mandatory Quarantine in the COVID-19 Response **(Annexed and Marked <u>"AM-004")</u>**

    (b) Request for information letter dated 15th April 2020 on the Undignified Sendoff of the Late James Oyugi **(Annexed and Marked <u>"AM-005")</u>**

(c) Request for information letter dated 17th April 2020 on Provision of Support to Health Care Workers in the COVID-19 Response **(Annexed and Marked "AM-006")**

(d) Request for information letter dated 22nd April 2020 to the Pharmacy and Poisons Board **(Annexed and Marked "AM-007")**

(e) Request for information letter dated 27th April 2020 on use of Quarantine as a form of Punishment and Criminalization of COVID-19 Response **(Annexed and Marked "AM-008")**

13. **THAT** KELIN, together with other organisations and individuals, made the request for information letter dated 6th April 2020 to the 1st Respondent following complaints from people who were under mandatory quarantine, their family members, and through media reports:

    i. That implementation of the mandatory quarantine was exposing them to increased risk of contracting COVID-19;

    ii. That the list of quarantine facilities given to quarantined individuals included both private hotels and government institutions, all of which were charging relatively high costs per day, which costs were to be personally incurred by the individuals who were effectively detained in these institutions;

    iii. That for most of the people who selected government owned quarantine facilities, they encountered deplorable living conditions in those facilities, poor hygiene, scarcity of water, poor ventilation and crowding – ripe conditions for further spread of COVID-19, rather than prevention.

    iv. That upon entry in the mandatory quarantine facilities, the government neglected to provide quarantined individuals with information on quarantine protocols, information about COVID-19 symptoms, treatment and prevention, timely indications of the expected length of quarantine, and other information relevant to enable people to appreciate their rights, responsibilities and expectations.

    v. That the government had little regard for their general mental and physical health, safety and well-being, thus defeating the public health objective of their quarantine.

vi. That the government also had little regard for the health of those with pre-existing conditions, and failed to conduct adequate and timely screening to identify pre-existing conditions.

vii. That the government had little regard for its obligation to protect the rights of children.

viii. That the government had little regard for its obligation to ensure women are protected and did not put measures in place to prevent abuse.

ix. That there was poor turnaround time for testing with COVID-19 test results, taking anywhere between 4 -7 days to complete.

x. That test results were not communicated to quarantined individuals in a timely, confidential and dignified manner, subjecting people to unnecessary anxiety and increasing social stigma associated with COVID-19.

xi. That the government proceeded to arbitrarily extend the quarantine period beyond the recommended 14 days without availing quarantined individuals with any information, without providing adequate reasons or mechanisms to appeal, and at their own individual costs.

xii. The government neglected and ignored the concerns of quarantined persons, refused to provide them with information, services for pre-existing conditions and mental health – thus exposing them to grave violations of their rights to dignity, information, health and threatening their right to life.

xiii. That decisions generally taken in enforcing quarantine were unreasonable, arbitrary, and inconsistent and people subjected to these measures were not provided with mechanisms to reasonably challenge these decisions in the circumstances.

14. **THAT,** in the stated 6th April 2020 request for information letter, KELIN together with 27 other organisations and 47 individuals requested the following information from the 1st Respondent:

i. An explanation as to why the Ministry of Health was not adhering to its own guidelines relating to managing the designated mandatory quarantine facilities. For instance, why were people who had first tested negative not released into self-quarantine as per the self-quarantine protocols?

ii. Whether the circular extending the quarantine period applied to all quarantine facilities? If so, why? If not, why not? At whose cost?
iii. The total number of designated quarantine facilities as at 6th April 2020 and the number of occupants in each. The number of health care workers and their cadres that had been deployed to those quarantine facilities.
iv. How many people were in quarantine then? How many had been tested and received their results?
v. What measures were being taken to safeguard the health of people in quarantine facilities who had pre-existing medical conditions?
vi. What was the time period taken when one tests positive in a quarantine facility before they were transferred to medical facility for isolation?
vii. Whether health care workers and hotel attendants who had come into contact with the persons who have tested positive, had themselves been tested and provided with personal protective equipment (PPEs)?

15. **THAT** on 8th April 2020, the 8th Respondent herein, Commission on Administrative Justice, in a letter dated 8th April 2020 copied to KELIN, wrote to the 1st Respondent and requested the 1st Respondent to provide a response to our request for information letter dated 6th April 2020 **(Annexed and Marked "AM-009"** is the letter by the 8th Respondent). That, this was the only action taken by the 8th Respondent with no further steps taken, as per its constitutional and legal mandate, to ensure compliance from the 1st respondent.

16. **THAT** I am aware that the 12th Petitioner, Transparency International Kenya, wrote a follow up letter to the 8th Respondent, the Commission on Administrative Justice. **(Annexed and Marked "AM-009A"** is the letter by the 12th Petitioner to the 8th Respondent dated 16th April 2020). In this follow up letter, the 12th Petitioner reported to the 8th Respondent that we were yet to receive any response to our Request for Information Letter dated 6th April 2020. The follow up letter further requested the 8th Respondent to respond in writing and within 48 hours, what actions and the timelines for the actions the Commission will take in line with the Provisions of Part V of the Access to Information Act to ensure that the information

requested is received within 48 hours. The 8th Respondent has to date not responded nor indicated the actions it is taking to ensure compliance with the law.

17. **THAT** the 1st respondent has not provided the requested information. This has exposed people in mandatory quarantine to human rights violations as evidenced by various letters they sent to the 1st respondent and copied to KELIN. *(***Annexed and Marked "AM-010"** are copies of various letters dated 9th and 10th April 2020 written by individuals in quarantine, copied to KELIN via the email provided in the legal aid poster annexed above as **AM-002).**

18. **THAT** with the 1st respondent not forthcoming with information, some people were detained in quarantine facilities for being unable to pay the required cost. (**Annexed and Marked "AM-011"** are newspaper reports highlighting the persistent challenges in implementation of mandatory quarantine).

19. **THAT** as a further consequence of lack of proper information, mandatory quarantine was extended by the 1st respondent for an additional 14 days and then later on beyond 28 days occasioning great distress to those in quarantine.

20. **THAT** on 18th April 2020, KELIN was copied in a letter written by people who were in mandatory quarantine, who in response to a memo dated 16th April, 2020 that was further extending the quarantine period beyond 28 days, wrote a request for information letter to Dr. Amoth, an Acting Director General of Health in the 1st Respondent Ministry requesting for information on, among others,

    (i) Why the blanket decision to extend the quarantine period on the basis of lack of social distancing yet most of them had complied with social distancing requirements;
    (ii) Whether MOH officials who are posted to carry out tests and check our temperature tested for COVID -19 or do they pose a risk to those in quarantine?
    (iii) Why there were delays in moving a person who had tested positive from the quarantine center to the isolation facilities? Will the Ministry bear the cost of the extended stay?

(Annexed and Marked "AM-012 is the letter dated 18th April 2020)

21. **THAT** to date the 1st respondent to the best of our knowledge has not acknowledged receipt of the letter nor provided the requested information.

22. **THAT,** the second request for information letter was written on 15th April 2020 after the 3rd Petitioner, Chris Owalla, brought to KELIN's attention media reports of a burial ceremony in Siaya County involving a suspected COVID-19 patient that was both bizarre, undignified and contrary to Ministry of Health Guidelines (**Annexed and Marked "AM-013"** are media reports on the Siaya Burial).

23. **THAT** KELIN, together with 14 other organizations and 12 individuals, having noted that the manner the burial was conducted could heighten stigma and discrimination, aggravate violation of human rights and also noting that the burial contravened the Ministry of Health's Guidelines for Safe Disposal of Human Remains and World Health Organization's guidelines for Infection Prevention and Control for the safe management of a dead body in the context of COVID-19, wrote a request for information letter to the 1st and 2nd Respondents requesting for the following information:

    i. A report on how the decision to bury James Oyugi was made. Who authorized the burial? Who conducted the burial? Why were guidelines not adhered to? Why was the burial conducted at night? Why was the dignity of the dead not respected?
    ii. Information on measures put in place to ensure this act is not replicated anywhere in the county and the country.
    iii. Information on measures taken to ensure that this act does not increase the stigma on COVID-19 patients in the community;
    iv. Information on measures taken to secure the mental health of family members and community members from Kamalunga village through counseling;
    v. Information on how the family of the deceased and close contacts are being quarantined? In which quarantine facilities? How many health care workers are in those facilities? Has the family and other close contacts been tested? Who will pay the costs of the quarantine?
    vi. Whether there was any formal inquiry being conducted on the circumstances leading to the death of James Oyugi.

24. **THAT** KELIN has to date not received any acknowledgment of receipt or any response to this request from the 1st Respondent.

25. **THAT** KELIN has received reports of similar bizarre, undignified and stigmatizing burial ceremonies in Bomet, Murang'a and Trans Nzoia counties, and that if no clear information is provided by the 1st respondent this trend is likely to escalate (**Annexed and Marked "AM-014"** are media reports on instances in Bomet and Trans Nzoia Counties)

26. **THAT** in order to inform enhanced monitoring of health rights and collectively advocate for the health-related rights of the healthcare workers during the period of COVID-19 and develop short- and long-term strategies to address rights issues during and after the pandemic, KELIN collaborated with health care workers unions and conducted three surveys on the level of preparedness of clinical officers, nurses, and doctors to respond to COVID-19 **(Annexed and Marked "AM-015"** is *Report on HealthCare Workers (Clinical Officers) Level of Preparedness in Response to COVID-19*; **Annexed and Marked "AM-016"** is the *Report on the Level of Preparedness of Healthcare Workers (Nurses) in Response to COVID-19*; **Annexed and Marked "AM-017"** is the *Report on Healthcare Workers (Medical Practitioners, Pharmacists and Dentists) Level of Preparedness in Response to COVID-19*)

27. **THAT** in the course of conducting the three surveys, KELIN received concerns from the public, health care workers and their unions that the government was not providing enough support to health care workers and that this was causing public anxiety and emotional distress among health care workers. In order to clarify this, KELIN together with 15 other organisations and 15 individuals wrote to the 1st Respondent on 17th April 2020 seeking the following information:
    i. Number of health care workers trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, clinical officers, anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
    ii. Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability),

capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

iii. Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.

iv. Number of health care workers tested for COVID-19.

v. Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

28. **THAT** KELIN has to date not received any acknowledgment of receipt or any response to this request from the 1st Respondent.

29. **THAT** I have read newspaper reports and seen on the news of persistent challenges facing health care workers which at one point culminated in their professional unions issuing strike notices. (**Annexed and Marked "AM-018"** is the strike notice by the unions).

30. **THAT** in a bid to obtain information on production and distribution of personal protective equipment, KELIN, together with 17 other individuals and 19 organisations wrote a request for information letter dated 22nd April, 2020 to the Chief Executive Officer of the Pharmacy & Poisons Board seeking the following information:

(i) Which distributors have been licensed to import PPE?

(ii) What are the procedures or processes of seeking the import license?

(iii) How long does the process take?

(iv) How much does it cost to get the license?

(v) Which department of the board is responsible for issuance of the license?

(vi) From which countries are the PPEs being imported from? And what are the main ports of entry?

(vii) How many local suppliers and manufacturers are involved in the process?

(viii) What are the procedures or processes of certifying local manufacturers of PPEs? And is this done in collaboration with KEBS?

(ix) How has the Pharmacy and Poisons Board adjusted its processes to support accelerated importation and distribution of PPE?

(x) Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPEs locally manufactured or imported? Where can this information be obtained?

(xi) Has the board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/ local PPEs to users in Kenya?

31. **<u>THAT</u>** in compliance with our request, the Pharmacy and Poisons Board in a letter dated 5th May 2020 responded and provided the requested information. **(Annexed and Marked AM-019** is a copy of the response from the Pharmacy and Poisons Board dated 5th May 2020). That this was a positive that to us demonstrated that there were government departments that understood their constitutional and statutory obligations to respond to request of information in a timely manner

32. **<u>THAT</u>** KELIN received further reports that mandatory quarantine was being used for punitive measures, with the 5th and 6th Respondents detaining in quarantine facilities people alleged to have flouted curfew rules, travel restrictions, directive on wearing of masks, and social gathering restrictions. **(Annexed and Marked AM-020** are copies of related media reports).

33. **THAT** KELIN together with 27 other organizations and 27 individuals wrote a request for information letter dated 27th April 2020 to the 1st, 4th, 5th, 6th and 9th Respondents.

34. **THAT** from the Cabinet Secretary for Health, 1st Respondent herein, KELIN requested the following information:

(i) whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response

(ii) the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;

(iii) what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

35. **THAT** from the 4th Respondent, Council of Governors, KELIN requested for the following information:

(i) The number of people currently in quarantine in each of their respective counties.

(ii) The number of people who have been tested in the various quarantine facilities in the counties.

(iii) The testing schedule of the people in county quarantine.

(iv) The number of people in quarantine because of breach of curfew and other COVID-19 rules.

(v) The number of people in quarantine because they are close contacts of COVID-19 patients.

(vi) The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

36. **THAT** from the 6th Respondent, the Inspector General, National Police Service, KELIN requested for information on:

(i) Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so - what training these officers have been given to undertake the role of medical experts; what infection prevention and control protocols they follow; and whether they have the right equipment e.g. thermometers & PPE

37. **THAT** from the 9th Respondent, the Chief Executive Officer, Kenya Medical Practitioners and Dentists Council, KELIN requested the following information:

(i) Information on the criteria that was used to select hotels and facilities as quarantine centers.

(ii) As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.

(iii) The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.

(iv) The approved standard operating procedures of the quarantine facilities.

(v) The designated medical personnel responsible for oversight at each quarantine center.

38. **THAT** KELIN has to date not received any acknowledgment of receipt or any response to this request from the Respondents.

39. **THAT** as a result, KELIN and the public still has no information on why quarantine facilities are being used as detention centers; whether new prisons have been created outside of the law; what legal framework empowers the police to detain people in quarantine without following due process; whether people in these detention facilities are tested for COVID-19; who between the 1st and 5th / 6th respondent is in charge of these facilities.

40. **THAT** as an organisation working to promote and protect health related rights for all, the requests for information KELIN has made, have the sole intention of ensuring the right to health of people is respected, promoted and protected during the pandemic period. Access to information is indispensable for realisation of this right.

41. **THAT** as an organisation, we understand the public health objective of quarantine, as guided by the World Health Organization where "quarantine involves the restriction of activities of or the separation of persons who are not ill but who may have been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases." (**Annexed and Marked AM-021** is WHO's Interim Guidance *Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19)*.

42. **THAT** given that mandatory quarantine involves limitation of rights, I aver that the government has an obligation to proactively share all information with the public on its implementation: legal mandate for quarantine, its objectives, justification, the manner it will be implemented, any alternatives, etc.

43. **THAT** I aver that the 1st respondent has an obligation to proactively publish and publicise information on mandatory quarantine as required under Article 35(3) of the Constitution. I am concerned why the respondents refused, neglected and/or failed to proactively provide this information, and more so even after requests from KELIN and other stakeholders.

44. **THAT** the failure by the 1st respondent to provide information on mandatory quarantine resulted in a breakdown in the rule of law, with the 5th and 6th introducing a use for these facilities other than a public health objective.

45. **THAT** further, the failure of the 1st respondent to publish and publicise information on the justification as well as mode of implementation of other measures, especially the curfew order, resulted in the 5th and 6th respondents violating fundamental rights of people with reports that police were brutalizing, maiming and killing innocent people while enforcing the curfew order **(Annexed and Marked AM-022** are related newspaper reports)

46. **THAT** despite the 1st respondent holding daily press briefings on the COVID-19 situation, critical information requested by KELIN and other stakeholders on the state of preparedness of the nation to deal with COVID-19 was not shared. I aver that the 1st respondent has a constitutional obligation, in a public health emergency, to proactively publish and publicise all such information to protect the right to health of people.

47. **THAT** the 1st and 3rd respondents had an obligation to publish information on access to health services for all people including the vulnerable and marginalized. In this case, information on continuity of health services, emergency access, as well as information on prevention, treatment and care for the COVID-19 would be critical. I aver that this obligation was violated with reports of people unable to access health services due to measures introduced by the government as well as people affected by COVID-19 being detained in health facilities **(Annexed and Marked AM-023** are related newspaper reports).

48. **THAT** to the extent that the government is unable to proactively provide information as obligated by the Article 35 of the Constitution, I am gravely concerned that this failure poses a threat to the ability of the government's ongoing and future interventions to address COVID-19 in Kenya effectively.

49. **THAT** I am concerned about the failure by the respondents to honour requests for information thereby committing offences as prescribed under section 28 of the Access to Information Act, 2016.

50. **THAT** I am also concerned about the inability by the 8th Respondent, the Commission on Administrative Justice, to effectively exercise its oversight and enforcement function to ensure KELIN and public access information.

51. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief, save for information whereof sources of information have been disclosed.

SWORN by the said)
ALLAN ACHESA MALECHE)
)
at NAIROBI this day)
of 2020)
)
BEFORE ME:)
)
)
)
COMMISSIONER FOR OATHS)

DEPONENT

NAIRU GICHAMBA ADVOCATE & COMMISSIONER FOR OATHS Tel:0722 643 813 P.O. BOX ... NAIROBI

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FORM 5

REPUBLIC OF KENYA

OP.218/051/2002/0155/2233

OFFICE OF THE PRESIDENT

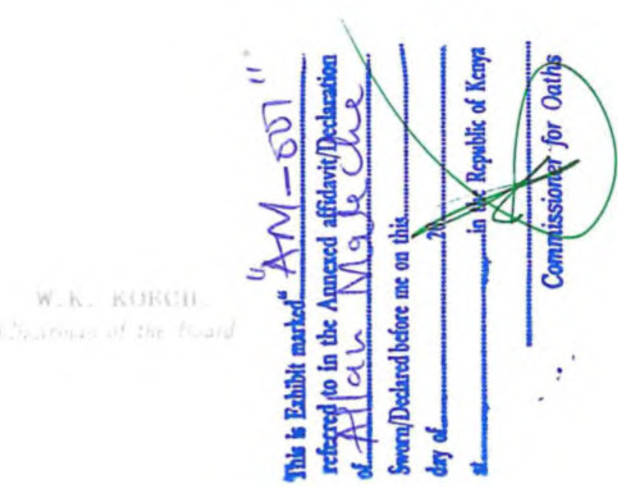
CERTIFICATE OF REGISTRATION

I, PROF. WILSON KIPNG'ENO KOECH, Chairman of the Non-Governmental Organizations Board, certify that the xxx KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS xxx

has this day been registered under section 10 of the Non-Governmental Organizations Co-ordination Act as applied for.

Dated 20TH DECEMBER, 2001.

W. K. KOECH,
Chairman of the Board



GPK 2004—200—1/2002

ACCESS TO JUSTICE
DURING COVID-19
Have your rights been abused or have you witnessed a rights violation or corruption incident during the COVID-19 period?
Call our toll free line:
0800-720-721
SMS:
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Email:
complain@kelinkenya.org
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Changing You, Transforming All!
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KENYAN SECTION | Since 1959
KATIBA
Institute
TRANSPARENCY INTERNATIONAL
KENYA
KELIN
One of the organizations will be available to provide probono legal advice.
This is Exhibit marked "AM-002"
referred to in the Annexed affidavit/Declaration
Sworn/Declared before me on this
day of 20
in the Republic of Kenya
Commissioner for Oaths

This is Exhibit marked "AM - 003"
referred to in the Annexed affidavit/Declaration
of Allan Maleche
Sworn/Declared before me on this..............
day of..............20..........
in the Republic of Kenya
Commissioner for Oaths

Aninas Community Networks for Development (ACND)

CADAMIC

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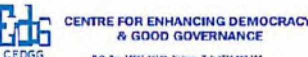
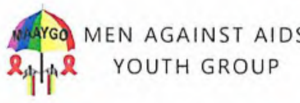


CONSTITUTION AND REFORM EDUCATION CONSORTIUM - CRECO

Dandora Community AIDS support Association (DACASA)

KELIWO WIDOWS' GROUP



Next Generation of Kenya Lawyers Project

Nyakach Elders' Group

SHAPE Kenya

women's link worldwide

Your REF: **Our REF: C/KELIN/2020** Date: 28/03/2020

To
Hon. Mutahi Kagwe,
Cabinet Secretary for Health,
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke

Hon. Simon K. Chelugui,
Cabinet Secretary for Labour, Social Security and Services,
ps@labour.go.ke, info@labour.go.ke, ps@socialprotection.go.ke

Dr. Fred Okengo Matiang'I,
Cabinet Secretary for Interior & Coordination of National Government,
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Hon David Maraga,
Chief Justice and President of the Supreme Court of Kenya,
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Hon. Wycliffe Ambetsa Oparanya,
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ADVISORY NOTE ON ENSURING A RIGHTS-BASED RESPONSE TO CURB THE SPREAD OF COVID-19

People - not Messaging - Bring Change

We, the undersigned organisations and associations, being representatives of health and human rights, civil society and non-governmental organisations, community-based organisations and representatives, professional bodies, informal sector actors, economic, and governance experts have taken note of the growing public health concern arising out of the global outbreak of the coronavirus disease (COVID-19).

We write pursuant to our constitutional mandate under Articles 3, 10 and 35 of the Constitution on the responsibility to defend and protect the Constitution, the right to participate in matters concerning us and to access public information respectively.

While we, in our organisational capacities, have made individual efforts through open letters requesting information and calling for a rights-based approach to the COVID-19 response, we issue this comprehensive advisory, inclusive of multi-stakeholder views, to provide guidance on a transparent response that safeguards the health and rights of the most vulnerable and underserved populations in Kenya. This is cognisant of the fact that the COVID-19 pandemic continues to negatively impact the health, economic and social status of populations we represent.

1. On March 13 2020 KELIN wrote an open letter to the Cabinet Secretary of Health titled "A rights-based response is critical in dealing with COVID-19" ; On 17 March 2020 KNCHR issued an "advisory On The COVID-19 Disease Response In Kenya"; Patrick Gathara, "Kenya needs to stop panicking and start preparing for coronavirus," 2 Mar 2020.

We recognise the efforts so far made by the government, including:

- Provision of information and updates on the number of people affected through regular press briefings;
- Provision of contact and hotline numbers for the public to access information especially for emergency assistance;
- Emphasis on preventive measures, including directives issued encouraging working from home; directing public transport providers to ensure social distancing; information on the need for proper sanitation; limiting interaction in social and entertainment places; among others;
- Implementation of fiscal and monetary policy measures to provide relief through tax reduction and ensure continued liquidity for individuals and organisations.

Despite these strides, the information and response availed has not been comprehensive and has failed to localise and contextualise how preventive and promotive measures shall be undertaken; highlighting the diverse differences between our country and the developed world. There have also been inadequacies in emphasising the need to respect human rights while employing public health measures.

We, therefore, write this letter to provide guidance on the following critical areas:

Right to information and transparency

Sharing accurate, timely, and lifesaving information is a constitutional obligation, necessary to meet the rights to health and information. Information is critical in ensuring transparency, which in turn builds public trust especially in these difficult times. As such, passing stigmatising information on testing, isolation, and quarantine will be counterproductive to the response.

There are gaps in the information shared and contained in the public domain. Primarily, the government has issued a number of policy directives to manage the pandemic but has failed to stipulate what each seeks to achieve and the timeframe for implementation. The lack of transparency around decisions taken (public health, behavioural or fiscal) make it nearly impossible for Kenyans to engage in a meaningful discourse around the potential costs and the benefits of these measures.

The public needs transparent, accurate and comprehensive updates that relay the state of preparedness and the precautionary measures being taken to curb the spread of COVID-19; the response at population level both locally and abroad; and information on clinical management. Comprehensive information will not only fulfil the constitutional right to access information but also help alleviate public fear, anxiety, and hysteria around COVID-19. If Kenyans do not trust in the accuracy and completeness of the information received, they may be less willing to comply with and adopt measures. This may result in the State enforcing measures through security forces; which is detrimental.

Further, the public needs information on how resources allocated to the response are being utilised, bearing in mind that there have been numerous reports of corruption in the health sector. The World Bank has committed KES Six Billion, of which KES One Billion has already been disbursed, while an additional KES Seven Billion from the Central Bank has been allocated to the pandemic response. Also, several county governments have announced the allocation of funds to support county response measures. The public needs to know how this money is being spent. Transparency in the receipt, allocation, disbursement, and utilisation of these resources with information on requirements for the funds to become available; availability of funds; budget line items that they are supporting; and eventually an audit to check the expenditure is paramount. We, therefore, propose that the government, with support from multilateral development institutions and stakeholders, sets up a live dashboard that is updated regularly with the following information on inputs and processes:

Inputs

- **Testing kits:** Numbered by type, percentages by turnaround time or technology used e.g. point of care (like GeneXpert) or based, and how many testing kits have been delivered to various designated testing facilities.
- **Facilities:** Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

- **Health workers:** Number trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, general physicians and critical care specialists. Number of health care workers deployed in every county.
- **Resources:** Publication of allocated, issued and expended financial and non-financial resources for COVID-19 responses. Including resources from private, bilateral and multilateral sources.

Processes

- Publication of previous and current COVID-19 response plans.
- Clarity on strategic goals of current approaches, e.g. isolation, quarantine and testing strategies. For example, whether and why at risk populations are being urged to self-isolate; why quarantined persons are not being offered tests; and why tests are not available on a voluntary basis to all who have symptoms as done in the South Korea response.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on training provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

In addition to gaps in the information provided, we have also noted gaps in the methods of communication, which may disadvantage certain populations. To ensure that all citizens are informed, we advise that:

- The Ministry of Health utilises a neutral SMS platform that will extend to users outside of Safaricom.
- Communication is tailored to meet the needs of underserved populations, including people with disabilities.
- Prioritise the information and communication needs of children and adolescents.

Timely, accurate, and transparent communication on our risk as a country, and how we are managing it, is essential during an emergency and it will determine whether the public will trust the government or turn to rumours and misinformation. The experience in DRC is illustrative of the negative impacts of mistrust in the Ebola response with persons refusing to seek treatment; responders and clinics receiving death threats and being assaulted and attacked, and community members believing the epidemic to be a government scheme.

Right to health

Every Kenyan has the right to the highest attainable standard of health, which the government is under an obligation to progressively realise. Containing this pandemic is our country's best chance at ensuring the citizens' health and avoiding the collapse of an already fragile health care system.

Given that the number of confirmed people with COVID-19 has increased to 31 (as of Friday, 27th March 2020, with one confirmed death), we urge the Ministry of Health to work with County Governments and other actors to scale up preparedness by:

- Increasing surveillance to affected 'hotspot' counties as well as neighbouring counties.
- Increasing testing in the communities for all suspected cases.
- Scaling up the tracing of contacts of known or suspected cases.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers. Special attention and care must be paid to vulnerable and underserved populations, including People with Disabilities; displaced populations including refugees, communities living with and affected by HIV and TB, homeless persons and those who are incarcerated or otherwise detained.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Respecting the rule of law

We believe that this response can only succeed if it is undertaken within the confines of the law. We, therefore, urge the government to ensure:

2. The right to health requires that preventive, promotive, curative, rehabilitative and palliative aspects of healthcare are made available, accessible, acceptable and of quality.

- A rights-based response to COVID-19 is adopted. Such a response contains many important aspects, among them, the right to health, equality and non-discrimination, freedom of peaceful assembly, association and movement, an adequate standard of living, as well as the right to benefit from scientific progress. The Public Health Act should be applied in a rights-based manner to meet the ends of public health while respecting, promoting, and protecting the rights of the affected.
- Strict protection of the right to privacy and confidentiality of health information is maintained. We urge the government, the media, and other actors to avoid succumbing to pressure to name the affected people. The COVID-19 situation is not unique to Kenya and we, therefore, urge the government to draw lessons from other countries in contact tracing without violating privacy and confidentiality. We note that discrimination based on 'health status' is prohibited under Article 27 (4) of the Constitution. The response be guided by established international principles, for instance, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.
- Adherence to progressive policies, for instance, the recently enacted Tuberculosis (TB) Isolation Policy, which provides guidelines applicable to the isolation of patients with infectious diseases. The policy was adopted following the decision in Daniel Ng'etich & 2 others v Attorney General & 3 others [2016] *eKLR*, which adopted a rights-based interpretation of the Public Health Act and, as a result, declared the practice of jailing people with TB, as a form of isolation, unlawful and unconstitutional.

Based on media reports and individual experiences, we are concerned that mandatory quarantine and isolation of people affected by COVID-19 appear uncoordinated, unplanned and not guided by policy. For instance, the decision to mandatorily quarantine people in hotels & government facilities raises two fundamental concerns: (i) what measures are being put in place to protect the workers at such facilities from infection; and (ii) why are citizens being forced to incur the costs of isolation at these hotels? These concerns create the impression that the government does not have a contingency plan to ensure mandatory quarantine meets public health objectives to prevent further spread. Further, on 27 March 2020, a person under mandatory quarantine died at Kiti Quarantine Centre in Nakuru County. There is a need - to investigate the circumstances of this death and determine if the quarantine centers are fit for purpose and meet the requirements to ensure individual and public health. Quarantine centers must be able to ensure that persons within it are safe, secure and their mental and physical health is guaranteed taking into account underlying health conditions. The County Government of Nakuru working with the Ministry of Health must provide information on the circumstances of the death and any measures that shall be put in place to address quality gaps within quarantine facilities.

- Recognition that punitive measures or criminal sanctions are not effective in epidemic control. Criminal sanctions are counterproductive because they drive people underground and expose more people to the virus. On 22 March 2020, the government communicated to the public that *"all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."* The HIV response has taught us that *"using criminal law to regulate behaviour and prevent transmission of a virus is a severe and drastic approach in attempting to slow the spread of the virus. As has been seen in the HIV epidemic, the overuse of criminal law can have significant negative outcomes both for the individual and for the response as a whole and often fails to recognize the reality of people's lives. It can further stigmatise people who have the virus, dissuade people from getting tested and destroy trust between the government and communities."*
- That the Kenya Police Service and all other security forces act within the confines of the Constitution and the Criminal Procedure Act. A mandatory curfew between 7:00 PM and 5:00 AM came into place on Friday, 27 March 2020. After only one day there have been reports of police brutality in enforcing this curfew, illustratively, in Mombasa County there are reports of police using teargas and brutalising ferry users well before the curfew time. The rights to dignity; security of the person; and freedom of movement must be respected and protected. Kenyans have a right to be free from corporal punishment and not to be subjected to cruel, inhuman and degrading treatment. The Kenya Police service has a history of using brutality to enforce order, this is both unlawful and unconstitutional as the right not to be subjected to inhuman and degrading treatment is non-derogable.

- The conduct of the Police is strongly condemned and we urge security forces to act within the rule of law as an emergency does not suspend their obligation to respect constitutional rights.

  Procurement laws must be followed to ensure transparency in the procurement of life-saving medicines and other medical supplies, with greater efforts taken to prevent price gouging of drugs, and other goods and services required to protect citizens from contagion (such as hand sanitizers, masks, gloves). While the Public Procurement and Asset Disposal Act allows for flexibility in an emergency we urge that agencies involved in the response balance the need to act without delay to save or preserve lives with the need to act with integrity, guarantee quality and ensure value for money.

Social protection and economic aspects

An inclusive social protection system can have long-lasting impacts on well-being and economic growth. By offering all citizens the guarantee of income security, social protection effectively tackles poverty and inequality, enhances human capital, helps build a strong and productive workforce, protects against shocks and crises, and builds social cohesion. Both the pandemic and the response to it can have severe consequences on people's livelihoods, employment and access to food and essential services. The right to social security is guaranteed in Article 43(1) e of the Constitution. Social protection has three main pillars: social assistance, social insurance; and health insurance.

The COVID-19 pandemic has placed the Kenyan population in a precarious economic situation. The directive for limited social contact has forced businesses to shut their doors. Whereas some businesses or institutions have the ability to operate remotely, this has impacted negatively the many others that require physical presence to operate optimally. The disruption of business operations has had consequences on people's ability to provide basic needs. The problem is particularly acute for informal laborers. 82.7 percent of Kenyans work in the informal sector. If they do not work, they will not receive any income and will not be able to provide basic needs for themselves or their families. Fear of losing their jobs can prevent people from taking necessary steps, such as working from home, quarantine, isolation and seeking medical services.

The COVID-19 response should ensure that people are protected from loss of employment, income or livelihoods through strong labour protections, social security schemes and insurance, so that Kenyans are better able to look after their health, to self-isolate, and accordingly, improve the response to the pandemic.

The measures and messaging around COVID-19 have been tailored for Kenyans in formal wage employment who can afford to and have the amenities to work from home. Additionally, the tax reductions will have little impact on the more than 50 percent of Kenyan households who have an income of less than KES 10,000 per month (outside of the lowest income tax bracket) and who mostly consume goods that are VAT exempt. We note that the government has been replicating measures from the global north without taking time to contextualise it for Kenya, and as a result, we risk disastrous consequences. Kenyans that survive off of a daily wage, will not eat if they stay home. The government cannot place them in the untenable position of choosing between their livelihood and public safety.

We urge the government to put in place measures for social protection and especially, non-contributory social assistance mechanisms and safety nets to 'cushion' the communities and persons who cannot afford to not work. Further, we urge the government not to utilise security forces to enforce measures around social distancing and curfews, as this will be detrimental to a majority of Kenyans and may result in civil unrest. We cannot use a 'one size fits all' approach for COVID-19 and the government must be cognisant of the need to secure the economic well-being of its people.

Urgent solutions are necessary to protect the economic and social rights of all people, including the vulnerable and marginalised, as the COVID-19 pandemic and the measures being implemented create a dire threat to citizen's ability to access health services, housing, sanitation, food, clean and safe water, social security and education. We commend the government for committing KES 10 Billion to cushion elderly, orphaned and vulnerable members of the society from the adverse economic effects of the pandemic through cash transfers.

We call upon the government through the Ministry of Labour, Social Security and Services-department of social protection; UN agencies, multilateral development institutions, and stakeholders working in this space to:

- Support both levels of government in appropriate beneficiary targeting - to target the right geographical areas, vulnerable communities, households and individuals.
    - It will be crucial to engage with and strengthen capacities of community-based organisations and community health workers to support in the identification of vulnerable households in different areas, and in the actual distribution of in-kind transfers in cases of restricted movement and to vulnerable and physically challenged individuals.
- Beneficiary management systems for enrolment and registration through the expansion of existing social registries and assisting the government to temporarily expand its existing social protection programme to include households newly affected by the COVID pandemic.
- There is a need for standardized guidelines and streamlining of targeting, types of cash and food transfers; management information systems (MIS), registries and databases of all beneficiaries and programmes, including the simplification of registration functions.
- Use of different unconditional transfer modalities as appropriate. These may include mobile/electronic cash transfers, in-kind transfers (actual food baskets to meet the food and nutritional needs of households; and non-food items), or commodity vouchers that can be redeemed for food and non-food items at various vendor outlets.
    - If vouchers are selected as a modality, expand the network of traders offering commodities
    - If cash transfers are used to ensure quicker and more efficient disbursements by strengthening digital payments and relaxing the eligibility criteria or conditions of existing programs that already have the cash delivery infrastructure in place.
    - Identify and set up food and non-food items commodity pick up points in close proximity to various communities (this may be necessary with the imposed curfew).
    - Set up home delivery mechanisms for delivery of food and non-food items to households with vulnerable individuals (if a complete lockdown is implemented this shall be necessary).
- Launch community awareness campaigns about how to enroll for and access available cash transfers and food assistance programmes; as well as complaints and feedback mechanisms.
- Prevent utilities such as electricity and water from being cut off during the pandemic.
- Strengthening institutions and technical capacity to refine and operationalise safety nets and social transfers delivery systems of the government including payment service providers, M&E systems to ensure accountability.

Women and girls

Health crises, such as COVID-19 impact women and men differently, exacerbating gender inequality. Previous experiences have shown that women and girls will be more severely affected by the pandemic. Girls and women face disadvantages, because of their limited ability to join the labour sector and their reduced earning capacity compared to men (earning as much as 30 percent less than men).

Women account for a significant part of the healthcare workforce. 75.8 percent of nurses are women, and nurses account for the largest proportion of the healthcare workforce. The health care system also relies on women's unpaid labour, a situation that will become more acute with the implementation of social distancing because the disproportionate burden of caring for children, who are now home from school, will fall on women. Additionally, the burden of home-based health care often falls on women, subjecting them to risk of infection and also limiting their ability to engage in other work. This problem is exacerbated in an epidemic when no support measures are put in place for home-based care providers.

Women and girls are affected by poverty in disproportionately high numbers in Kenya, and in seeking to respond to the realities created by gender inequity, the government should consider the impact that deepening poverty will have on these vulnerable populations. Therefore, social protection measures must account for the very gendered nature of poverty and inequality. Gendering the pandemic, also requires understanding the increased risk women are placed in when resources are diverted towards the pandemic response or services become unavailable. During the Ebola epidemic in Sierra Leone there was a 34 percent increase in facility maternal mortality and a 24 percent increase in the stillbirth rate; fewer women were able to access both pre and post-natal care. Sexual and reproductive health services were affected with obstetric and paediatric care facilities closing; the closure of organisations that offered contraceptive services and information; and the lack of guidance on the management of pregnant women.

The following are recommendations to ensure a gendered approach to the COVID-19 pandemic and include some of the recommendations that have been issued by UN Women:

- Protect essential health services for women and girls, recognising that sexual and reproductive health services are part and parcel of ensuring the right to health in Article 43(1) (a) and (2) of the Constitution for women and girls, are guaranteed and accessible in light of enforced curfews and potentially stretched health facilities
- Make provision for the comprehensive health care of women in all stages of pregnancy in COVID-19 preparedness plans to manage maternal morbidity and mortality rates and mitigate potential health disparities.
- Prioritise services for prevention and response to gender-based violence in communities affected by COVID-19 which must include essential services to address violence against women in preparedness and response plans for COVID-19, provide resources for the said services, and identify ways to make them accessible in the context of social distancing measures and imposed curfews.
- Ensure that there is access to the justice system for women and girls who face sexual and gender-based violence, which includes access to proper reporting and investigations systems and the enforcement of the right to a fair trial.
- Ensure availability of sex-disaggregated data, including on differing rates of infection, differential economic impacts, differential care burden, and incidence of domestic violence and sexual abuse.
- Embed gender dimensions and gender experts within response plans and budget resources to build gender expertise into response teams.
- Provide priority support to women on the frontlines of the response, for instance, by improving access to women-friendly personal protective equipment and menstrual hygiene products for healthcare workers and caregivers, and flexible working arrangements for women with a burden of care.
- Ensure equal voice for women in decision making in the response and long-term impact planning.
- Ensure that public health messages properly target women including those most marginalised.
- Develop mitigation strategies that specifically target the economic impact of the outbreak on women.

Children

Children, like women, experience socio-economic marginalisation and in Kenya the overall child poverty rate is 45 per cent. An epidemic can deepen marginalisation and in the case of children, they are vulnerable because: younger children may not be able to understand information on COVID-19; unaccompanied children may be unable to access timely and life-saving information; they may be unable to express fears and anxieties, and prolonged periods away from schools may cause anxiety and have an impact on emotional wellbeing.

The pandemic response must be cognisant of the burden on caregivers who may not have the capacity to care for children – with children home from school there are increased safety and security risks if parents still have to go to work and lack access to other caregivers. Heightened anxiety among parents and caregivers may result in violence against children at home. Finally, while children are less likely to become severely ill their caregivers may be at greater risk which may impact a child negatively.

Children are at risk of deepening poverty, and their health and mental well-being may be impacted by the: disruption of their lives (which may have financial implications and make them more vulnerable to child labour or exploitation); erosion of social capital; and possible separation of families who may not have access to support systems. The best interest of the child is of paramount importance in every matter concerning the child and the government must take into account the possible negative impact of this pandemic on children.

Media

We appreciate the role that the media has played in informing the public of the signs and symptoms of the virus as well as the preventive measures people can take to curb its spread. The media still has a central role to play in the response namely:

- Providing multi-stakeholder analyses on the broad impact that COVID-19 has on people beyond their health;
- Playing a monitoring and accountability role by providing constructive criticism when, and if, the Government's COVID-19 response falls short;
- Practicing responsible and ethical reporting that does not profile people with COVID-19.

We have received reports of Police seeking to curtail the movement of media personnel, despite media being an essential service and the constitutional guarantee of media freedom. We condemn any actions to interfere with media freedom as this is a violation of Article 34(2) of the Constitution, particularly at a time when access to timely and accurate information is critical to prevent hysteria.

Building public trust is a key component of any pandemic response and the media can play a significant role in ensuring accurate and timely information is availed to citizens, as well as provide avenues to build rapport between the government and its people.

We, therefore, note with grave concern the role played by certain media outlets in vilifying persons confirmed to be infected with COVID-19, referring to them as 'agents of death'. We note that while freedom of the media is guaranteed in Article 34 of the Constitution, this is subject to Article 33(2) which provides that freedom of expression does extend to advocating hatred based on health status. The media is required to meet its obligation to provide information, but it cannot do so in a manner that is likely to incite violence or be interpreted as advocating hatred.

Rather than incite fear, the media can build trust by bridging the information gap and hold the state to account. Conversely, they can fuel stigma and hamper the pandemic response with misinformation and vilification. There are important lessons to be learned from the impact stigma had in exacerbating both the HIV and TB epidemics – this has resulted in driving communities underground; impacting both access to and quality of healthcare, and increasing the spread of the disease.

Healthcare Workers

As part of the pandemic response, we have called upon our medical practitioners, nurses, clinical officers, midwives, community health workers, and volunteers; to place themselves and their families at risk to secure the health of this nation. We note with concern that in early March nurses at Mbagathi Hospital were on a Go-Slow as they were expected to provide care without adequate training. Every worker has the right to fair labour practices which includes reasonable working conditions (Article 41 of the Constitution). This right should be protected even in a pandemic response, and we call upon the government to guarantee the safety and well-being of those taking these risks by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic. Additionally, regular technical updates and appropriate tools to assess, triage, test and treat patients, as well as how to share infection prevention and control information should be made available.
- Ensuring that all necessary preventive and protective measures are taken to minimise occupational safety and health risks. Provide quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitiser, soap and water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimising occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.

UN and Multilateral Development Institutions

We appreciate the role played by the UN Family in Kenya, led by WHO, and other development partners in providing technical and financial support to the government's COVID- 19 Contingency plan. We call upon the leadership of the UN and multilateral development institutions to help safeguard the progress made thus far to reach the Sustainable Development Goals and to include the most vulnerable and hard to reach populations in the country's response. We therefore wish to call on the development and technical partners in Kenya to scale up efforts in supporting the Government to respond to the crisis in an inclusive, transparent and rights-based manner that adopts evidence-based interventions.

We all want the country and the world to triumph over COVID-19. This will only be achieved through a rights-based response – with all necessary efforts made to prevent further spread of COVID-19, maximum support provided to those affected, enhanced accountability in the use of resources to support response measures and contingent measures to cushion the public from the economic turmoil put in place.

The undersigned are ready and willing to help. We are eager to put our collective expertise to solve this problem in a way that fits Kenya's unique situation, respects the Constitution, and ensures the public health and safety of all.

Signed by:

1. African Institute for Children Studies (AICS)
2. AHF Kenya
3. Aninas Community Networks for Development (ACND)
4. Boa Boda Association of Kenya (BAK)
5. Buliding Lives Around Sound Transfomation (BLAST)
6. CADAMIC
7. CEDGG
8. Centre for Rights Education and Awareness (CREAW)
9. Community Forum For Advanced and Sustainable Development (COFAS)
10. Community Initiative Action Group Kenya (CIAG-K)
11. COPHAM
12. Constitution and Reform Education Consortium (CRECO)
13. COSWA
14. Dandora Community Aids support Association (DACASA)
15. Empowering Marginalized Communities NGO (EMAC)
16. FIDA-Kenya
17. Fountain of Hope
18. Happy Life For Development
19. Health NGOs Network (HENNET)
20. Health Rights Advocacy Forum (HERAF)
21. HUSA
22. International Commission of Jurists (ICJ-Kenyan Section)
23. ICS Africa
24. International community of women living with HIV Kenya
25. Institute of Economic Affairs
26. Katiba Institute
27. Kounkuey Design Initiative (KDI)
28. Keliwo widows' group
29. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
30. Kenya Red Cross Society
31. Kenya Sex Workers Alliance (KESWA)
32. Kenya Union of Clinical Officers (KUCO)
33. KIASWA Institute
34. Kondele community social justice Center
35. Lean on Me Foundation
36. Men Against Aids Youth Group.
37. Mildmay Kenya
38. Mumbo International
39. Nelson Mandela TB & HIV Information
40. NEPHAK
41. Nyakach Elders' Group
42. Next Generation of Kenya Lawyers Project
43. National Nurses Association of Kenya
44. Pamoja TB group
45. PEMA Kenya
46. People's Health Movement
47. Rising to Greatness
48. SHAPE Kenya
49. Society of Radiography in Kenya
50. Teenseed
51. TISA
52. Transparency International Kenya
53. Trust for Indigenous Culture and Health (TICAH)
54. Voices Of Community Action And Leadership (Vocal Kenya)
55. Wacha Health
56. Women in Real Estate
57. Women's Link Worldwide

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 06/April/2020**

**Advance copy via email*

Hon. Mutahi Kagwe
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke; pshealthke@gmail.com

Dear Sir,

REF: OPEN LETTER ON IMPLEMENTATION OF MANDATORY QUARANTINE IN THE COVID-19 RESPONSE IN KENYA & REQUEST FOR INFORMATION

We, the undersigned, individuals, individuals under mandatory quarantine, family members of individuals under quarantine, organizations and associations, are representatives of health and human rights civil society and non-governmental organizations, community-based organizations and governance experts. We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" whose issues raised remains unaddressed.

Our previous advisory had, among other concerns, noted that the implementation of the government's directive of mandatory quarantine and isolation of people affected by COVID-19 was uncoordinated, unplanned and not guided by any policy or guidelines.

We issue this open letter and formal request for information in light of concerns raised by individuals currently in mandatory quarantine, their family members and media reports. The media have documented poor management of individuals from the time they landed at Jomo Kenyatta International Airport, their transportation, up to the time they were admitted to various mandatory quarantine facilities. This exposed them to risk of infection, defeating the very essence of safeguarding the greater public and avoiding co-infection.

People in mandatory quarantine have also brought to our direct attention and through open letters[1] and personal videos clear cases of recklessness in their handling, exorbitant costs they have been forced to incur to pay for the quarantine facilities, deplorable living conditions in most quarantine centers, lack of information on any quarantine protocols, and a general lack of any regard to their health, safety and well-being[2] For the general public, it is not clear how many people are in mandatory quarantine, whether they have all been tested while in quarantine, how many have tested negative or positive and whether the results have been communicated to them. Similar information is unavailable to those in quarantine.

We take note of the fact that quarantine as a public health measure involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, *with the objective of monitoring their symptoms and ensuring early detection of cases*[3] The World Health Organization (WHO) recommends that mandatory quarantine should be implemented as part of a comprehensive package of public health response and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons. Further, that if a decision to implement quarantine is taken, the authorities should ensure that:

- the quarantine setting is appropriate and that adequate food, water, and hygiene provisions can be made for the quarantine period;
- minimum Infection Prevention and Control (IPC) measures can be implemented; and
- minimum requirements for monitoring the health of quarantined persons can be met during the quarantine period.

We are therefore appalled by the manner in which mandatory quarantine is being implemented which is putting those in quarantine, all health care workers attending to them and, by extension, the entire nation at risk. From the time the decision to enforce mandatory quarantine was made on 22nd March 2020, the public has had several concerns:

- There has been no public information on any guidelines on the mandatory quarantine process, save for draft protocols dated 27th March 2020 and published on the Ministry of Health website on or about 3rd April 2020;

- There has never been information, within the public domain, or to those quarantined, on what to expect at the quarantine facilities, the period, costs, health information etc;There has never been information within the public domain, or to those quarantined on measures put in place to protect the workers at such quarantine facilities from infection including the provisions of personal protective equipment to the health care workers and others attending to them such as hotel workers. For instance, were all the health care workers and hotel staff tested and offered training on managing persons with COVID-19 before they received the people in mandatory quarantine?

As the nation continues struggling with the above, our attention is now drawn to a circular by Acting Director General for Health (Ref: MOH/ADM/1/3/Vol.1) communicating a decision to extend the quarantine period beyond 14 days for occupants of all facilities in which positive cases are identified. As expected, the circular raises further concerns:

- **The risk of co infection for those who are negative:** The Ministry of Health is already handling the quarantine process poorly, putting those in quarantine at risk and contributing to increased infections. What will extension of the quarantine period, of such poorly managed quarantine facilities[4] achieve other than increase chances of co infection for those who are COVID-19 negative?

1. Open letter by people quarantined at Pride Inn Azure Hotel dated 5th April 2020, REF: Directive to extend quarantine period beyond 14 days.

2. See Angela Okech, et. al "Covid-19: Kenyans reveal poor state of isolation centres,"; John Allan-Namu "Inside the Quarantine: Fears of Further Spreading the Virus Haunt the Confined."

3. WHO, 19 March 2020, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19) available at https://www.who.int/publications-detail/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)

4. For example, the Kenya Medical Training Centre, Moi Girls High School Nairobi, Lenana School

- **Lack of information to the people under quarantine of the extension:** Who does the circular apply to? At whose cost is the extension? Why a blanket circular to all, yet the Ministry admits that some centers were managed better? Was this circular communicated to those in the mandatory quarantine facilities before it was made public? Do the health care workers and other personnel (e.g. hotel staff) in these facilities have personal protective equipment? Why is it that people who have tested positive appear to learn of their status from the media? Is this not a breach of medical ethics?

- **Poor quarantine facilities:** It is evident that most quarantine facilities are in deplorable conditions. WHO recommends that those who are in quarantine must be placed in adequately ventilated, spacious single rooms with en suite facilities (that is, hand hygiene and toilet facilities). If single rooms are not available, beds should be placed at least one meter apart. Those in quarantine report otherwise, and publicly available video evidence confirms this.

- **Psychosocial Effects of Prolonged Isolation:** How will the Ministry of Health ensure that the mental health of those in quarantine is well taken care of?

- **Proof of Contact:** WHO recommends that contacts of patients with laboratory-confirmed COVID-19 be quarantined for 14 days from the last time they were exposed to the patient. This is also reflected in the draft protocols dated 27th March 2020. What happens to those people who have adhered to quarantine conditions, including social distancing, and have tested negative?

- **Turnaround times for testing:** Per the Ministry's Draft Protocols, test results are to be availed within 24 hours. What is the Ministry doing to ensure results are availed within a reasonable time, to allay unnecessary anxiety and strengthen the quarantine regime overall?

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and the Right to Access Information Act:

1. Provide an explanation as to why the Ministry of Health is not adhering to its own guidelines relating to managing the designated mandatory quarantine facilities. For instance, why are people who have first tested negative test not released into self-quarantine as per the self-quarantine protocols?
2. Does the circular extending the quarantine period apply to all quarantine facilities? Why? At whose cost?
3. The total number of designated quarantine facilities as at 6th April 2020 and the number of occupants in each? The number of heath care workers and their cadres that have been deployed to these quarantine facilities? How many people are currently in quarantine who have been tested and received their results?
4. What measures are being taken to safeguard the health of people in quarantine facilities who have pre-existing medical conditions?
5. What is the time period taken when one tests positive in a quarantine facility before they are transferred to medical facility for isolation?
6. Have the healthcare workers and hotel attendants who have come into contact with the persons who have tested positive been tested and provided with PPE?

As per Section 27 of the Public Health Act, the government has the responsibility of isolating persons who have been exposed to infectious diseases. In the public health emergency occasioned by COVID-19 pandemic, we urge the government to diligently undertake this obligation by, among others, providing safe, clean and hygienic quarantine facilities; meeting the costs of such facilities; and above all monitoring the health including mental health of those in quarantine and promptly discharging those who test negative.

Signed by the following individuals:

1. Allan Maleche
2. Ashok Rajput
3. Atieno Odenyo
4. Benson Maina
5. Bridget Kanini
6. Bonface Ombui
7. Caroline Jerop Morogo
8. Catherine Murugi
9. Christine Nkonge
10. Eugene Ligale
11. Evaline Kibuchi
12. Evelyne Wanjiru Karanja
13. Etta Ligale
14. Francis Aywa
15. Francis Mwangi
16. Grace Macharia
17. Hallima Nyota
18. Huzefa Amirali Mohamedbhai
19. Jamie Nyamongo
20. Jasmine Lemelin
21. Karishma Bhagani
22. Margaret Kalekye
23. Mark Gitau
24. Melanie Ligale
25. Maureen Ouma
26. Naiya Anil Haria
27. Nicholas Mwenda
28. Nickitah Mckena
29. Patricia Asero
30. Peter Owiti
31. Rahul Ponda
32. Rashmi Shah
33. Reggie Ann
34. Sarah Mburu
35. Sajan Thakar
36. Sarah Mwangi
37. Samson Onditi
38. Shanay Sirju Patel
39. Sheila Masinde
40. Sirju Shashikant Patel
41. Sophia Muchiri
42. Soukhya Ankala
43. Tanika Dodhia
44. Twinkle Pethad
45. Vaishali Sirju Patel
46. Vivian Washiko
47. William Mburu

Organisations:

1. Amnesty International
2. CADAMIC
3. COFAS
4. Community Initiative Action Group – Kenya
5. EMAC Kenya
6. FIDA Kenya
7. GALCK
8. Happy Life for Development CBO
9. HENNET
10. HERAF
11. International Community of Women Living with HIV – Kenya Chapter
12. ICJ – Kenyan Section
13. Katiba Institute
14. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
15. KANCO
16. Lean on Me Foundation
17. Next Generation of Kenya Lawyers Project
18. Nelson Mandela TB-HIV Resource Centre Nyalenda
19. People's Health Movement – Kenya
20. PEMA Kenya
21. Rising to Greatness
22. SWOP Ambassadors
23. The Network on Food and Nutrition Security
24. TICAH
25. TISA
26. Transparency International Kenya
27. Wote Youth Development Projects

cc:
Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors

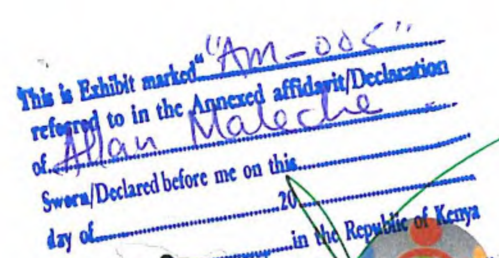
Siddharth Chatterjee,
UN Resident Coordinator in Kenya

Bernard Mogesa
CEO, Kenya National Commission on Human Rights

Dr. Joyce Mwikali Mutinda
Chairperson, National Gender and Equality Commission (NGEC)

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR



Your REF: TBA **Our REF: C/KELIN/2020** **Date: 15/April/2020**

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

H.E. Cornel Rasanga Amoth
Governor, Siaya County Government

Dear Sir,

RE: PROTEST AGAINST THE UNDIGNIFIED SENDOFF OF THE LATE JAMES OYUGI AND VIOLATION OF GUIDELINES FOR HANDLING BODIES SUSPECTED OR CONFIRMED OF COVID-19: REQUEST FOR INFORMATION

We, the undersigned, are representatives of civil society organizations working in Siaya County, community-based organizations and health and human rights civil society and non-governmental organizations.

We write to you both in our individual and organizational capacities to express our concern in the undignified manner in which the late James Oyugi, a suspected COVID-19 patient, was buried in Siaya County. The undignified burial was conducted in the wee hours of the night of 12th April 2020 in Ugenya Sub-County, Ukwala, Simur Kondiek Sub-Location, Kamalunga village.

We take note of the fact that James Oyugi was the first suspected COVID-19 patient in Siaya County. This occurred more than a month since the first patient was reported in Kenya. As such, the county government and national government agencies in Siaya county had more than a month to prepare and put in place all the necessary measures to appropriately respond to any emerging COVID-19 in Siaya.

We were thus taken aback by reports of James Oyugi's burial in a bizarre ceremony with his body being tossed unceremoniously into a shallow grave at night. No cultural or religious rites were performed, and the family was not given a chance to pay their last respects and accord their loved one a dignified send-off.

We are concerned about the impact of this burial, especially the trauma, distress, and stigma caused to family members and the village. We thus condemn the unethical, unacceptable and bizarre interment that was conducted contrary to national guidelines, and with zero regard to the cultural and religious traditions of the deceased.We are also concerned about the stigma that this act causes to other suspected COVID-19 patients. This is an act with the potential to stigmatize people, make people fear and shun services thereby increasing infections in the community.

James Oyugi is not the first reported death from this pandemic. As of 11th April 2020, seven people had died from COVID-19 in Kenya and accorded dignified burials, during the day and in the presence of their families complete with religious rites.

The Ministry of Health's Guidelines for Safe Disposal of Human Remains of a patient who has died from suspected or confirmed COVID-19 requires that safe disposal of human remains be conducted in a manner that prevents infection, control the spread of disease, is culturally appropriate for the bereaved family and that before the commencement of the handling of the remains, the family must be fully informed about the dignified burial process and their religious and personal rights to show respect for the deceased.

The World Health Organization's guidelines for Infection Prevention and Control for the safe management of a dead body in the context of COVID-19 also provide that the dignity of the dead, their cultural and religious traditions, and their families should be respected and protected throughout and that hasty disposal of a dead from COVID-19 should be avoided.

In James Oyugi's situation, all the above guidelines were not adhered to. It is imperative that the dead are accorded a dignified and respectful send-off. The need for dignity and respect during send-off cannot be waived even in the face of the current pandemic. Not even in times of war.

We thus condemn in the strongest terms possible the despicable actions of the Siaya County Government, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service who hurriedly oversaw the undignified burial.

We demand that the County Government of Siaya, the Ministry of Health, Ministry of Interior and Coordination of National Government and the National Police Service issue a public apology to the family of the deceased, and members of the public.

We also call upon the County Government, the Ministry of Health, the National Police Service and the Ministry of Interior and Coordination of National Government to strictly adhere to guidelines provided in handling suspected and confirmed COVID--19 bodies in Kenya. Dignity in death is of utmost importance.

From the foregoing, we also demand that the County Government of Siaya, Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently provide us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Provide the family of the late Oyugi with a detailed report of the results of the COVID-19 test conducted on the late James Oyugi.

(ii) Provide us with a detailed report on how the decision to bury James Oyugi was made. Who authorized the burial? Who conducted the burial? Why were guidelines not adhered to? Why was the burial conducted at night? Why was the dignity of the dead not respected?

(iii) Provide us with information on measures put in place to ensure this act is not replicated any where in the county and the country.

(iv) Provide us with information on measures taken to ensure that this act does not increase the stigma on COVID-19 patients in the community;

(v) Provide us with information on measures taken to secure the mental health of family members and community members from Kamalunga village through counseling;

(vi) Information on how the family of the deceased and close contacts are being quarantined? In which quarantine facilities? How many health care workers are in those facilities? Has the family and other close contacts been tested? Who will pay the costs of the quarantine?

(vii) Investigation report on the circumstances leading to the death of James Oyugi. Is there a formal inquiry being conducted?

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Yours faithfully,

1. **Chris Owalla** on my own behalf and
   on behalf of Community Initiative Action Group Kenya

2. **Titus Ogalo** on my own behalf and
   on behalf of Transparency International Kenya

3. **Nicholas Ngesa** on my own behalf and
   on behalf of Tembea Youth Centre for Sustainable Development

4. **Janet Okach** on my own behalf and
   on behalf of VSO-Kenya

5. **Mildred Andere** on my own behalf and
   on behalf of Young Women Christian Organisation - Siaya Branch

6. **Enock Chiteri** on my own behalf and
   on behalf of Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter

7. **Isiah Ochieng** on my own behalf and
   on behalf of Ugunja Development Initiative

8. **Aggrey Omondi** on my own behalf and
   on behalf of Ugunja Community Resource Centre

9. **Charles Juma** on my own behalf and
   on behalf of Siaya County Disability Network

10. **Peter Aduda** on my own behalf and
    on behalf of West Ugenya Development Forum

11. **Peter Owiti** on my own behalf and
on behalf of Wote Youth Development Projects

12. **Allan Maleche** on my own behalf and
on behalf of Kenya Legal and Ethical Issues Network (KELIN)

Endorsed by: Organizations:

1. Community Initiative Action Group Kenya
2. Community Forum for Advanced & Sustainable Development (COFAS)
3. Kenya Legal and Ethical Issues Network (KELIN)
4. Kenya Sex Workers Alliance (KESWA)
5. Talanta Youth Empowerment Centre/The Youth Parliament -Ugunja Chapter
6. Tembea Youth Centre for Sustainable Development
7. Transparency International Kenya
8. Ugunja Development Initiative
9. Ugunja Community Resource Centre
10. Siaya County Disability Network
11. West Ugenya Development Forum
12. Wote Youth Development Projects
13. VSO-Kenya
14. Young Women Christian Organisation - Siaya Branch

CC:

1. **Hon Dr. Fred Okengo Matiangi,**
The Cabinet Secretary,
Ministry of Interior and Coordination of National Government.

2. **Hon. Wycliffe Ambetsa Oparanya,**
Chairperson, Council of Governors.

3. **Hillary Nzioki Mutyambai,**
Inspector General of Police.

4. **Bernard Mogesa,**
CEO, Kenya National Commission on Human Rights.

5. **Dr. Joyce Mwikali Mutinda,**
Chairperson, National Gender and Equality Commission (NGEC).

6. **Hon. Florence Kajuju,**
Chairperson, Commission on Administrative Justice

7. **Li Hsiang FUNG,**
Senior Human Rights Advisor, OHCHR.

Dandora Community
AIDS support
Association (DACASA)

This is Exhibit marked "KM-006" referred to in the Affidavit/Declaration of Allan Maleche
Sworn/Declared before me on this .... day of .... 20.... at ....
Commissioner for Oaths

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 17/April/2020**

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON PROVISION OF SUPPORT TO HEALTH CARE WORKERS IN THE COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We are also Kenyan citizens concerned about the state of preparedness of health facilities to deal with COVID-19, given that any of us is likely to use them. The information we seek in this letter is therefore critical to safeguard our rights including right to life, and right to health.

We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" that remains unanswered.

In the previous advisory, we noted the need to support health care workers during this pandemic period through provision of adequate training, and ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks.

We write this urgent request for information letter in light of concerns that health care workers continue to raise as regards to their occupational safety and health risks. We note that it is imperative that the plight of health care workers is urgently, adequately and conclusively addressed given that they have placed themselves and their families at risk to secure the health of this nation.

In our previous advisory, we urged the Ministry of Health to guarantee the safety and well-being of health care workers by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic.

- Ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks through provision of quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and running water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimizing occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Additionally, we proposed that the government ensures this information is available to the public through a live dashboard that is updated on a regular basis with the following information on inputs and processes:

- Number of health care workers trained in every county and in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on trainings provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

However, we take note of the fact that to date there are still complaints and concerns on the protection of health care workers in this pandemic. For instance, the Health Unions (Kenya National Union of Nurses, Kenya Union Clinical Officers and Kenya Medical Practitioners Pharmacist and Dentist Union) have recently done a survey and noted that most of their members in county governments and Ministry of Health have not been adequately trained and or prepared to handle the Corona Virus pandemic.

They have also reported that provision of personal protective equipment (PPE) remains a challenge at health facilities in most counties. The Kenya Medical Practitioners Pharmacists and Dentists' Union in its weekly brief dated 13th April, 2020 called for:

- The need to provide adequate PPEs for all personnel in the hospital including N95 masks, face shields, goggles, scrubs and gowns;
- Designation of specific COVID-19 testing centers for health care workers;
- Provision of catering services to healthcare workers;

- Provision of transport for all health care workers handling COVID-19 patients to and from the hospital to their accommodation facilities;
- Increase in the number of health care personnel;
- Provision of accommodation to health workers on duty during the pandemic (especially those in health facilities treating suspected and confirmed COVID-19 patients.

The government has a Constitutional and legal obligation to ensure every person enjoys their right to the highest attainable standard of health. This obligation cannot be achieved without health care workers. We therefore urge the government in fulfilment of its legal obligations and in line with the World Health Organization guidelines to (among others):

- Ensure that all necessary preventive and protective measures are taken to minimize occupational safety and health risks;
- Provide information, instruction, and training on occupational safety and health, including; refresher training on infection prevention and control (IPC); use, putting on, taking off and disposal of personal protective equipment (PPE);
- Provide adequate IPC and PPE supplies (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) in sufficient quantity to those caring for suspected or confirmed COVID-19 patients, such that workers do not incur expenses for occupational safety and health requirements;
- Familiarize personnel with technical updates on COVID-19 and provide appropriate tools to assess, triage, test, and treat patients, and to share IPC information with patients and the public;
- Provide appropriate security measures as needed for personal safety;

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Number health care workers trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.

(ii) Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

(iii) Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.

(iv) Number of health care workers tested for COVID-19.

(v) Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Signed by the following individuals:

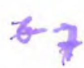
1. Allan Maleche
2. Becky Odhiambo Mududa
3. Bradley Njukia
4. Caroline Oyumbo
5. Cecilia Mumbi
6. Erick Okioma
7. Fenwick Oyumbo
8. Houghton Irungu
9. Mary Ger
10. Nelson Silas
11. Patricia Osero
12. Peter Owiti
13. Samson Onditi
14. Sheila Masinde
15. Steve Anguva

Endorsed by:

1. Amnesty International
2. Boda Boda Association of Kenya
3. COFAS
4. Dandora Community AIDS Support Association (DACASA)
5. EMAC Kenya
6. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
7. Happy Life Development
8. HERAF
9. ICJ – Kenyan Section
10. Kenya Sex Workers Alliance (KESWA)
11. Mumbo International
12. Nelson Mandela TB-HIV Resource Centre Nyalenda
13. Nyarwek Network
14. Transparency International
15. WOYDEP (Wote Youth Development Projects)

cc:

1. Kenya Medical Practitioners Pharmacist and Dentist Union
2. Kenya National Union of Nurses
3. Kenya Union Clinical Officers
4. Association of Public Health Professionals Kenya (APHOK)
5. Kenya Medical Association (KMA)
6. Chairperson, Council of Governors
7. Kenya National Commission on Human Rights
8. Commission on Administrative Justice



Mbita Suba
Paralegal Network

SHAPE
Kenya

Your REF: TBA **Our REF:** **Date: 22 April, 2020**

This is Exhibit marked "AM – 007" referred to in the Annexed affidavit/Declaration of Allan Ngeche. Sworn/Declared before me on this ... day of ... 20... at ... in the Republic of Kenya ... Commissioner for Oaths

Advance copy via email

Dr. F.M Siyoi
Chief Executive Officer,
Pharmacy & Poisons Board
P.O. Box 27663 – 00506, Nairobi.
Lenana Road Opp. DOD
Email: info@pharmacyboardkenya.org

Dear Sir,

RE: REQUEST FOR INFORMATION ON IMPORT AND DISTRIBUTION OF PERSONAL PROTECTIVE EQUIPMENT

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We make this request for information in the spirit of ensuring transparency and accountability in the procurement of life-saving medicines and other medical supplies. The information is also necessary to protect us against price gouging of drugs, and other goods and services required to protect citizens and health workers from COVID-19 infection (such as hand sanitizers, masks, gloves). The information we seek will also enable the public to know the state of preparedness to curb the spread of COVID-19.

Our letter is informed by the fact that the Pharmacy and Poisons Board has the mandate to implement the appropriate regulatory measures to achieve the highest standards of safety,

efficacy and quality for all drugs, chemical substances and medical devices, locally manufactured, imported, exported, distributed, sold, or used, to ensure the protection of the consumer as envisaged by the laws regulating drugs in force in Kenya.

The COVID-19 pandemic has created the need to ensure urgent availability of medical devices, for instance, personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) among others.

We therefore request that the Board provides us with the following information in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Which distributors have been licensed to import PPE?
(ii) What are the procedures or processes of seeking the import license?
(iii) How long does the process take?
(iv) How much does it cost to get the license?
(v) Which department of the board is responsible for issuance of the license?
(vi) From which countries are the PPEs being imported from? And what are the main ports of entry?
(vii) How many local suppliers and manufacturers are involved in the process?
(viii) What are the procedures or processes of certifying local manufacturers of PPEs? And is this done in collaboration with KEBS?
(ix) How has the Pharmacy and Poisons Board adjusted its processes to support accelerated importation and distribution of PPE?
(x) Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPEs locally manufactured or imported? Where can this information be obtained?
(xi) Has the board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/ local PPEs to users in Kenya?

We look forward to your urgent response in not later than five days to inform our next course of action.

Signed by:

1. Becky Odhiambo Mududa on my own behalf and on behalf of Nyarwek Network.
2. Brezhnev Otieno on my own behalf and on behalf Amnesty International Kenya.
3. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba Paralegal Network.
4. Cecilia Mumbi Mugo on my own behalf and on behalf International Commission of Jurists (ICJ-Kenyan Section).

5. Chris Owalla on my own behalf and on behalf of Community Initiative Action Group Kenya.
6. Christine Ajulu on my own behalf and on behalf of Health Rights Advocacy Forum (HERAF)
7. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
8. Fenwick M Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K).
9. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
10. Linda Noah on my own behalf and on behalf of The East African Centre for Human Rights (EACHRights).
11. Naitore Nyamu
12. Nancy Githogori
13. Mary Ger on my own Behalf and on behalf of Mumbo International.
14. Mercy Onsando on my behalf and on behalf of HENNET.
15. Peter Owiti on my behalf and on behalf Wote Youth Development Projects.
16. Samson Onditi on my behalf and on behalf Happy Life for Development CBO.
17. Sheila Masinde on my own behalf and on behalf of Transparency International.

Endorsed by:

1. Amnesty International Kenya.
2. Boda Boda Association of Kenya (BAK)
3. Community Initiative Action Group Kenya. (CIAG-K)
4. Community Forum For Advanced and Sustainable Development (COFAS)
5. East African Centre for Human Rights (EACHRights).
6. Happy Life for Development CBO.
7. Health NGOs Network (HENNET)
8. Health Rights Advocacy Forum (HERAF)
9. International Commission of Jurists (ICJ-Kenyan Section).
10. Kenya Legal and Ethical Issues Network on HIV & TB (KELIN).
11. Mbita Suba Paralegal Network
12. Mumbo International
13. National Association of Clinical Officer Anaesthetists - Kenya (NACOA- K).
14. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu.
15. NYARWEK Network
16. Pamoja TB Group
17. Shape Kenya
18. Transparency International Kenya
19. Wote Youth Development Projects

cc:

1. Dr. Samuel Oroko
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3. Peterson Wachira
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4. Cheboi Kore Mathew
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6. Hon. Wycliffe Ambetsa Oparanya,
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7. Hon. Florence Kajuju
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   Commission on Administrative Justice
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Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

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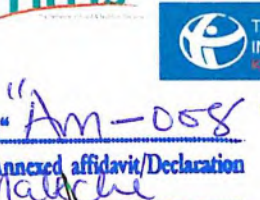
Health for All Now!
People's Health Movement Kenya

SHAPE Kenya

The Eagles for Life (TEFL)



This is Exhibit marked "AM-058"
referred to in the Annexed affidavit/Declaration
of Allan Maleche
Sworn/Declared before me on this ....
day of .... 20 ....
at .... in the Republic of Kenya
....
Commissioner for Oaths

Paul Kihara Kariuki,
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Email: haki@knchr.org; complaint@knchr.org

Dr Rudi Eggers,
WHO Country Representative – Kenya,
Email: afkenwr@who.int

The Chairman,
Council of Governors,
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Opposite PWC Chiromo Road, off Waiyaki Way,
P.O Box 40401-00100,
NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

C. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

E. Public health and human rights dangers of this approach

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

F. Requests and recommendations

In light of the concerns above, we seek the following urgent actions and access to information:

1. The **Ministry of Health** to urgently:
   a. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;
   b. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.
2. The Ministry of Health to provide us with information on the following:
   a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;
   b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;
   c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.
3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:
   a. Information on the criteria that was used to select hotels and facilities as quarantine centers.
   b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.
   c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.
   d. The approved standard operating procedures of the quarantine facilities.
   e. The designated medical personnel responsible for oversight at each quarantine center.
4. The **Council of Governors and all the 47 Governors** urgently share information on:
   a. The number of people currently in quarantine in each of their respective counties.
   b. The number of people who have been tested in the various quarantine facilities in the counties.
   c. The testing schedule of the people in county quarantine.
   d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.
   e. The number of people in quarantine because they are close contacts of COVID-19 patients.

f. The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

5. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

6. The National Police Service to further provide the following information:

a. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –

i. what training these officers have been given to undertake the role of medical experts;

ii. what infection prevention and control protocols they follow; and

iii. whether they have the right equipment e.g. thermometers & PPE.

7. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

8. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Commission of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo
27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

cc:

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The Chairperson
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The Chairperson
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Chairperson: Hon. Florence Kajuju, MBS
Vice-Chairperson: Mr.Washington Sati
Commissioner: Mrs. Lucy Ndung'u,EBS,HSC

THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

Our Ref: CAJ/ATI/M.HEA/012/10/20
Your Ref: TBA

8th April, 2020

Hon. Mutahi Kagwe, EGH
Cabinet Secretary &
Chairperson, National Emergency Response Committee on COVID-19
Ministry of Health
Afya House, Cathedral Road
P O Box 30016-00100
NAIROBI

Dear CS,

RE: OPEN LETTER ON IMPLEMENTATION OF MANDATORY QUARANTINE IN THE COVID-19 RESPONSE IN KENYA & REQUEST FOR INFORMATION

Receive warmest compliments from the Commission on Administrative Justice.

The Commission received the above referenced letter from KELIN dated 6th April 2020 addressed to your esteemed Office and copied to the Chairperson, Commission on Administrative Justice (Copy enclosed for ease of reference).

The Commission is the Oversight and Enforcement Agency of the Access to Information Act, 2016 (ATIA 2016). In line with Section 9 (1) and (4) of the ATIA 2016, the Commission humbly request your response to the same, bearing in mind the prevailing circumstances in the country.

Thank you for your continued support.

Yours Sincerely,

HON. FLORENCE KAJUJU, MBS
CHAIRPERSON OF THE COMMISSION

This is Exhibit marked "AM-009" referred to in the Annexed affidavit/Declaration of Allan Maleche
Sworn/Declared before me on this.......... 20....
day of.......... in the Republic of Kenya
at..........
Commissioner for Oaths

CC:

Principal Secretary
Afya House, Cathedral Road
P O Box 30016-00100
NAIROBI

Mr. Allan Maleche
Executive Director, KELIN
Somak Building, 4th Floor, Mombasa Road
P O Box 112-00202
NAIROBI
(Your Ref: No. C/KELIN/2020. Receipt of your letter dated 6th April 2020 is acknowledged. Kindly keep us updated on any developments therein)

Hon. Wycliffe Ambetsa Oparanya
Chairperson, Council of Governors

Siddharth Chatterjee
UN Resident Coordinator in Kenya

Benard Mogesa
CEO, Kenya National Commission on Human Rights

Dr. Joyce Mwikali Mutinda
Chairperson, National Gender and Equality Commission (NGEC)

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR

This is Exhibit marked "AM-010"
referred to in the Annexed affidavit/Declaration
of Allan Maleche
Sworn/Declared before me on this.......
day of.............20.......
at.............in the Republic of Kenya
Commissioner for Oaths

Your REF: TBA My REF: Covid-19 Initial Test Result for MEL Date: 9th April 2020

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Advance copy via email

MINISTRY OF HEALTH
RECEIVED
09 APR 2020
OFFICE OF THE CABINET SECRETARY
P. O. Box 30016-00100, NAIROBI

Dear Sir,

Re: Urgent Request for Information Regarding Extension of Mandatory Quarantine Beyond initial WHO recommended 14 Days

My name is [redacted] a Kenyan citizen currently under mandatory quarantine at **Pride Inn Azure Hotel in Westlands.**

I have been in quarantine since Monday 23rd March 2020, a total of **17 days**, since she arrived in Kenya. My family and I have so far spent Kshs 126,000 on accommodation and we have no other resources to spare.

While in quarantine, I have observed strict social distancing, and have been keeping a personal twice-daily temperature chart. During this time, I have **not** exhibited any of the common WHO Covid-19 symptoms. I was tested by your MOH representatives on Tuesday 31st March 2020.

On Thursday 2nd April 2020, myself and others quarantined in the same location were advised by the assigned MOH official, **one Dr. Carol Asin**, that 2 persons had tested positive and that arrangements for their transfer to a treatment center had been made and that the rest of the mandatory quarantine "guests" had tested **negative**.

Per the Ministry of Health COVID 19 Quarantine Protocols, I was supposed to be under mandatory quarantine for 14 days after which if tested negative I should have been released into self-quarantine as per the MOH protocols. However, to date, I have not been released.

I am requesting for a written response to the following as part of my right as a Kenyan, and a very concerned, frustrated and anxious quarantined citizen. To date, I still do not have access to information that affects her under Article 35 of the Constitution and section 4 and 9 (2) of the Access to Information Act, 2016:

i. I have not been issued with a personal medical notification slip confirming my Covid-19 negative status
ii. Why am I still being held at the quarantine facility against the Ministry's protocols and best practice recommended by WHO?
iii. Who will cater for the costs of the extra stay?
iv. Why have I not been provided information as to when I will be discharged and the conditions for such discharge?
v. Why wasn't the impact of another person's positive test, within my quarantine period and location, communicated and documented to me in writing including the protocols to guide any decisions thereafter ?

vi. What if there are persons - who since my initial negative test – tested [might test] positive and said persons had / have not been removed from the facility?

vii. Whose responsibility is it to ensure that Covid-19 tested positive persons are removed as soon as is reasonably possible and what are the mitigating factors around protecting myself and others without violating the other party's rights to privacy and dignity?

viii. Have all persons working within Pride Inn Azure - and those that have access to the facility - (including suppliers and assigned MOH staff themselves) been tested? and if not how does MOH plan to ensure those under mandatory quarantine are protected?

I am extremely concerned about the risk of exposure to COVID-19 at Pride Inn Azure. I am concerned about my emotional well-being and mental health; especially given the additional 14-day denial of normal socialization. I am worried about the additional financial costs of quarantine and the restrictive conditions of self-isolation.

I look forward to and will appreciate an urgent response to the concerns outlined above within the next 48 hours.

Yours faithfully,

cc: Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Commission on Administrative Justice
complain@ombudsman.go.ke

Transparency International- Kenya
transparency@tikenya.org

Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)
info@kelinkenya.org

Kenya National Commission on Human Rights
complaint@knchr.org

Office of The High Commissioner for Human Rights – Kenya

Your REF: TBA My REF: Covid-19 Initial Test Result for MEL Date: 9th April 2020

Advance copy via email

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09 APR 2020
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CABINET SECRETARY
P. O. Box 30016-00100, NAIROBI

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Dear Sir,

Re: Urgent Request for Information Regarding Extension of Mandatory Quarantine Beyond initial WHO recommended 14 Days

My name is [redacted] a Kenyan citizen and parent. My daughter, [redacted] is currently under mandatory quarantine at **Pride Inn Azure Hotel in Westlands.**

She has been in quarantine since Monday 23rd March 2020, a total of **17 days**, since she arrived in Kenya. My family and I have so far spent Kshs 126,000 on accommodation and we have no other resources to spare.

While in quarantine, Melanie has observed strict social distancing, and has been keeping her personal twice-daily temperature chart. During this time, she has **not** exhibited any of the common WHO Covid-19 symptoms. She was tested by your MOH representatives on Tuesday 31st March 2020.

On Thursday 2nd April 2020, s he and others quarantined in the same location were advised by the assigned MOH official, **one Dr. Carol Asin**, that 2 persons had tested positive and that arrangements for their transfer to a treatment center had been made and that the rest of the mandatory quarantine "guests" had tested **negative**.

Per the Ministry of Health COVID 19 Quarantine Protocols, Melanie was supposed to be under mandatory quarantine for 14 days after which if tested negative she should have been released into self-quarantine as per the MOH protocols. However, to date, she has not been released.

I am requesting for a written response to the following as part of my right as a Kenyan, and a very concerned, frustrated and anxious parent. To date, Melanie still does not have access to information that affects her under Article 35 of the Constitution and section 4 and 9 (2) of the Access to Information Act, 2016:

i. She has not been issued with a personal medical notification slip confirming her Covid-19 negative status
ii. Why is she still being held at the quarantine facility against the Ministry's protocols and best practice recommended by WHO?
iii. Who will cater for the costs of the extra stay?
iv. Why has she not been provided information as to when she will be discharged and the conditions for such discharge?
v. Why wasn't the impact of another person's positive test, within her quarantine period and location, communicated and documented to her in writing including the protocols to guide any decisions thereafter ?

vi. What if there are persons - who since Melanie's initial negative test – tested [might test] positive and said persons had / have not been removed from the facility?

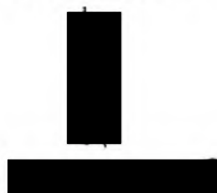
vii. Whose responsibility is it to ensure that Covid-19 tested positive persons are removed as soon as is reasonably possible and what are the mitigating factors around protecting Melanie and others without violating the other party's rights to privacy and dignity?

viii. Have all persons working within Pride Inn Azure - and those that have access to the facility - (including suppliers and assigned MOH staff themselves) been tested? and if not how does MOH plan to ensure those under mandatory quarantine are protected?

I am extremely concerned about the risk of exposure to COVID-19 at Pride Inn Azure. I am concerned about Melanie's emotional well-being and mental health; especially given the additional 14-day denial of normal socialization. I am worried about the additional financial costs of quarantine and the restrictive conditions of self-isolation.

I look forward to and will appreciate an urgent response to the concerns outlined above within the next 48 hours.

Yours faithfully,



cc: Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Government Spokesperson
spox@ict.go.ke; governmentmediacentre@ict.go.ke

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Office of The High Commissioner for Human Rights – Kenya

Your REF: **TBA** My REF: Date: 9th April, 2020

MINISTRY OF HEALTH RECEIVED 09 APR 2020 OFFICE OF THE CABINET SECRETARY P. O. Box 30016-00100, NAIROBI

Advance copy via email

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Dear Sir,

Re: Urgent Request For Information Regarding Extension Of Mandatory Quarantine Beyond 14 Days

---

My name is [redacted] I am currently under mandatory quarantine at Pride Inn, Rhapta Road. I support GOK efforts to contain the Covid virus and I appreciate that difficult decisions need to be made and personal hardship must be borne for the common good. However, I genuinely feel that retaining me in quarantine does not serve the public interest and indeed diminishes my ability to support my dependents, employees, business and inhibits my professional ability to contribute to the GOK COVID response efforts.

I have now been in GOK mandated quarantine for 16 days since I arrived in Kenya on 23rd March 2020 from South Sudan which was Covid free. While in quarantine, I have complied with social distancing, hygiene and minimal contact requirements as monitored by the MOH staff within the premises. While in quarantine I am subject to the health and safety provisions provided by the premises, many of which are outside of my control.

I was tested for Covid on 3/04/2020 and informed of my negative result on 6/04/2020 when I was also informed that my quarantine period would be extended for an additional 14 days because one co-quarantine person (out of 99) was supposedly tested as positive and removed from the premises.

However there has been no genuine assessment of the risk of disease transmission within this facility and the movement of hotel staff, MOH staff and policemen into and out of the facility, movement which is monitored by MOH and deemed acceptable, is as likely to pose a risk of transmission as the interaction of the detainees. I am therefore being collectively punished for being detained by GOK in the same facility as a COVID positive person without a fair assessment of this facility and the public health risk of releasing me into self-isolation at home.

I therefore write to request for a written response to the following as part of my right as a Kenyan to have access to information that affects me under Article 35 of the Constitution and section 4 and 9(2) of the Access to Information Act, 2016, namely:

i. Where is the evidence that my continued detention in this facility is warranted given that I have been tested Covid free on day 11 of quarantine, that I have complied with the IPC protocol to minimize disease transmission and that I had no contact with the Covid positive person in this facility?
ii. Where is the risk assessment that evaluates the public health risk posed by my release into self-isolation versus the public health risk posed by MOH approved entry and exit into this facility of MOH staff, hotel staff and policemen?

It is detrimental to the epidemiological and economic fight against COVID to unnecessarily lock up members of the public at great financial, emotional and mental expense. While tough decisions to fight the disease are required they must be justified and balanced against rights enshrined in the Constitution, public health and economic benefits, and our ability to serve in the fight against the disease.

Yours faithfully,

P.O. Box
Email:
Mobile:

cc:

Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Government Spokesperson
spox@ict.go.ke; governmentmediacentre@ict.go.ke

Commission on Administrative Justice
complain@ombudsman.go.ke

Transparency International- Kenya
transparency@tikenya.org

Your REF: **TBA** My REF: Date: 9th April, 2020

MINISTRY OF HEALTH RECEIVED 09 APR 2020 OFFICE OF THE CABINET SECRETARY Box 30016-00100, NAIROBI

Advance copy via email

Hon. Mutahi Kagwe,
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Dear Sir,

Re: Urgent Request For Information Regarding Extension Of Mandatory Quarantine Beyond 14 Days

---

My name is [redacted] I am currently under mandatory quarantine at Batians peak apartments.

I have been in quarantine for **16 days** since I arrived in Kenya on **24th March 2020**. While in quarantine, I have observed social distancing and **isolation**. I have so far spent **USD 1,350** on food and accommodation and I have no other resources to spare.

As per the Ministry of Health COVID 19 Quarantine Protocols, I was supposed to be under mandatory quarantine for **14 days** after which if I test negative I will be released into self-quarantine as per the self-quarantine protocols.

I was tested on **4TH April 2020** and I was informed of my results being negative on **6th April 2020**. However, I have not been discharged as per the quarantine protocols.

I write to request for a written response to the following as part of my right as a Kenyan to have access to information that affects me under Article 35 of the Constitution and section 4 and 9(2) of the Access to Information Act, 2016:

i. Why am I still being held at the quarantine facility as against the Ministry's protocol and the best practice recommended by WHO?
ii. Who will carter for the costs of the extra stay?
iii. Why am I not being provided information as to when I will be discharged and the conditions for such discharge?
iv. Have the facility been assessed individually to check adherence to the quarantine protocol?
v. What is the impact of another person's positive test (within my quarantine site) on my quarantine period and are there protocols or exceptions to guide this? If so, kindly share the same with me.
vi. Have all persons working within (and that have access to) my facility been tested? and if not how do you plan to ensure those of us under quarantine are protected?

vii. Why has a police now been deployed to my facility but none was there before? Is this a show of intimidation?

I am now concerned about the risk of exposure to COVID-19 at this facility, my mental health, additional costs of quarantine and the deplorable conditions of the facility I am currently in. I will therefore appreciate an urgent response to my letter within the next 48 hours.

Yours faithfully,

WAW (e-signature if available)

[redacted]

cc:

Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

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Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
Email. cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

MINISTRY OF HEALTH RECEIVED 09 APR 2020 OFFICE OF THE CABINET SECRETARY BOX 30016-00100, NAIROBI

Dear Sir,

Re: Urgent Request For Information Regarding Extension Of Mandatory Quarantine Beyond 14 Days

My name is [redacted] I am currently under mandatory quarantine at Grace House Resort.

I have been in quarantine for 16 days since I arrived in Kenya on 24th March 2020. While in quarantine, I have observed social distancing. I have so far spent Ksh 112,000 on food and accommodation and I have no other resources to spare.

As per the Ministry of Health COVID 19 Quarantine Protocols, I was supposed to be under mandatory quarantine for 14 days after which if I test negative I will be released into self-quarantine as per the self-quarantine protocols.

I was tested on 2nd April 2020 and I was informed of my results verbally being negative on 5th April 2020. However, I have not been discharged as per the quarantine protocols.

I write to request for a written response to the following as part of my right as a Kenyan to have access to information that affects me under Article 35 of the Constitution and section 4 and 9(2) of the Access to Information Act, 2016:

i. Why am I still being held at the quarantine facility as against the Ministry's protocol and the best practice recommended by WHO?
ii. Who will carter for the costs of the extra stay?
iii. Why it took too long to communicate that there will be an extension?
iv. Why some people from the same facility have since been released and not me?
v. What is the impact of another person's positive test (within my quarantine site) on my quarantine period and are there protocols to guide this? If so, kindly share the same with me.
vi. What if there are persons that have tested positive and have not been removed from the facility? Whose responsibility is it to ensure that persons are removed as soon as is reasonably possible and what are the mitigating factors around protecting me and others without violation of rights to privacy and dignity?
vii. Have all persons working within (and that have access to) my facility been tested? and if not how do you plan to ensure those of us under quarantine are protected?

I am now concerned about the risk of exposure to COVID-19 at this facility, my mental health, additional costs of quarantine and the deplorable conditions of the facility I am currently in since there are no cleaning services since we were checked in. I will therefore appreciate an urgent response to my letter within the next 48 hours.

Yours faithfully,

XXXXXX(e-signature if available)

cc:

Principal Secretary Ministry of Health
ps@health.go.ke;

Acting Director General for Health
dghealth2019@gmail.co; patrickamoth@gmail.com

Director DPPHS
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Advance copy via email

MINISTRY OF HEALTH
RECEIVED
09 APR 2020
OFFICE OF THE CABINET SECRETARY
P. O. Box 30016-00100, NAIROBI

Dear Sir,

Re: Urgent Request For Information Regarding Extension Of Mandatory Quarantine Beyond 14 Days

---

My name is [redacted] My husband, Martin Mwangi is currently under mandatory quarantine at Grace House Resort.

He has been in quarantine for 16 days since he arrived in Kenya on 24th March 2020 from Tanzania. While in quarantine, he has observed social distancing as has been confirmed by the hotel. We have so far spent KES 119,000 on food and accommodation and we have no other resources to spare.

As per the Ministry of Health COVID 19 Quarantine Protocols, he was supposed to be under mandatory quarantine for 14 days after which if he tests negative he will be released into self-quarantine as per the self-quarantine protocols.

He was tested on Thursday, 2nd April 2020 and was informed that he tested negative on Sunday, 5th April 2020. However, he has not been discharged as per the quarantine protocols.

I write to request for a written response to the following as part of my right as a Kenyan to have access to information affecting him under Article 35 of the Constitution and section 4 and 9(2) of the Access to Information Act, 2016:

i. Why is he still being held at the quarantine facility as against the Ministry's protocol and the best practice recommended by WHO?
ii. Who will carter for the costs of the extra stay?
iii. Why is he not being provided information as to when he will be discharged and the conditions for such discharge?
iv. What is the impact of another person's positive test (within his quarantine site) on his quarantine period and are there protocols to guide this? If so, kindly share the same with me and him.
v. What if there are persons that have tested positive and have not been removed from the facility? Whose responsibility is it to ensure that persons are removed as soon as is

reasonably possible and what are the mitigating factors around protecting him and others without violation of rights to privacy and dignity?

vi. Have all persons working within (and that have access to) his facility been tested? And if not how do you plan to ensure those under quarantine are protected?

I am now concerned about the risk of exposure to COVID-19 at this facility, my husband's mental health, additional costs of quarantine, and the deplorable conditions of the facility he is currently in. I will therefore appreciate an urgent response to my letter within the next 48 hours.

Yours faithfully,

cc:

Principal Secretary Ministry of Health
ps@health.go.ke;

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dghealth2019@gmail.co; patrickamoth@gmail.com

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MINISTRY OF HEALTH RECEIVED 09 APR 2020 OFFICE OF THE CABINET SECRETARY P. O. Box NAIROBI

Dear Sir,

Re: Urgent Request For Information Regarding Extension Of Mandatory Quarantine Beyond 14 Days

---

My name is [redacted] My brother [redacted] is currently under mandatory quarantine at Grace house resort

He arrived in Kenya on 24th March and has been on quarantine for more than the 14 days the government had initially put. The cost of food and accommodation for the period he has stayed on the quarantine facility has been over 100,000 Ksh and is becoming strainous to afford if the stay is prolonged.

As per the Ministry of Health COVID 19 Quarantine Protocols, persons who had traveled back to the country were supposed to undergo a mandatory quarantine for 14 days awaiting test which if result turn negative, persons are supposed to be realised for a self quarantine.

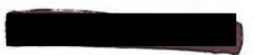
My brother was tested and informed that he is negative but has not been released yet as per the quarantine protocol. He has also been observing the relevant WHO accredited procedures of social distance and sanitizing.

I write to request for a written response to the following as part of my right as a Kenyan to have access to information that affects me under Article 35 of the Constitution and section 4 and 9(2) of the Access to Information Act, 2016:

i. Why is he still being held at the quarantine facility as against the Ministry's protocol and the best practice recommended by WHO?
ii. Who will carter for the costs of the extra stay?
iii. Why are we not being provided with information as to when he will be discharged and the conditions for such discharge?
iv. Have all persons working within (and that have access to) the facility been tested? and if not how do you plan to ensure those of us under quarantine are protected?

I am concerned of the uncertainty the government is putting us. The people in quarantine are more prone to contracting the covid 19 virus due to the conditions they are subjected to. I will therefore appreciate an urgent response to my letter within the next 48 hours.

Yours faithfully,



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MINISTRY OF HEALTH
0 9 APR 2020
CABINET SECRETARY
BOX 30016-00100

Dear Sir,

Re: Urgent Request For Information Regarding Extension Of Mandatory Quarantine Beyond 14 Days

---

My name is [redacted] I am currently under mandatory quarantine at **Prideinn Hotel Raphta Road.**

I have been in quarantine for **17 days** since I arrived in Kenya on **23rd March 2020** While in quarantine, I have observed social distancing. I have so far spent **102,000 Kenya Shillings** on food and accommodation and I have no other resources to spare.

As per the Ministry of Health COVID 19 Quarantine Protocols, I was supposed to be under mandatory quarantine for 14 days after which if I test negative I will be released into self-quarantine as per the self-quarantine protocols.

I was tested on **3rd March 2020** and I was informed of my results being negative on **6th March 2020.** However, I have not been discharged as per the quarantine protocols.

I write to request for a written response to the following as part of my right as a Kenyan to have access to information that affects me under Article 35 of the Constitution and section 4 and 9(2) of the Access to Information Act, 2016:

i. Why am I still being held at the quarantine facility as against the Ministry's protocol and the best practice recommended by WHO?
ii. Who will cater for the costs of the extra stay?
iii. Why am I not being provided information as to when I will be discharged and the conditions for such discharge?
iv. On my 3rd day at the quarantine facility I informed the medical team here that I suffer from other medical conditions and up to date no one seems to care about my condition which is worsening day after day.
v. What is the impact of another person's positive test (within my quarantine site) on my quarantine period and are there protocols to guide this? If so, kindly share the same with me.

vi. What if there are persons that have tested positive and have not been removed from the facility? Whose responsibility is it to ensure that persons are removed as soon as is reasonably possible and what are the mitigating factors around protecting me and others without violation of rights to privacy and dignity?

vii. Have all persons working within (and that have access to) my facility been tested? and if not how do you plan to ensure those of us under quarantine are protected?

viii. Will there be another test and if so when will this take place? What happens if the facility registers another positive case?

ix. Considering the current travel cessation, how will I travel to my home place (Embu County) once released?

I am now concerned about the risk of exposure to COVID-19 at this facility, my mental health, additional costs of quarantine and the deplorable conditions of the facility I am currently in. I will therefore appreciate an urgent response to my letter within the next 48 hours.

Yours faithfully,

cc:

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ps@health.go.ke;

Acting Director General for Health
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Kenya National Commission on Human Rights
complaint@knchr.org

Office of The High Commissioner for Human Rights – Kenya

Date: 10th April 2020

Via email

Dr. Patrick Amoth
Acting Director General for Health
Ministry of Health
Covid-10 Response Team
dghealth2019@gmail.co; patrickamoth@gmail.com

Dear Sir,

Re: Undue Financial burden occasioned by initial and extended Mandatory Quarantine

We the undersigned have been in various mandatory quarantine centers since Monday 23rd March 2020.

As you are well aware the decision to place all travelers who landed at JKIA came as a huge shock and surprise especially since we were given limited information and choice of option. Nonetheless, we complied with the directive and were placed in different facilities at **our own** expense.

Since that time, communication regarding the quarantine policies has not been easily forthcoming and going forward we anticipate that decisions that directly affect persons in quarantine would be communicated to us directly and promptly by your Ministry officials.

Payment for the initial (WHO recommended 14 days) was already an unexpected strain on our personal finances because none of us had planned for this cost. Many of us were forced to travel, at very short notice, paying higher than premium airline ticket costs because the countries we were in required non-citizens to leave. This was further complicated by the announcement that JKIA would be shutting down passenger travel from Wednesday 25th March leaving very little time and a limited number of incoming flights.

The Mandatory quarantine was put in place by the government. As such we expected that they would cater for any and all related costs. We hereby request that costs incurred thus far be refunded and in addition cost incurred following the extension by the Government to the date of release be paid for to facilitate discharge of all persons under mandatory quarantine into self-quarantine at home.

We had anticipated that those who had initially tested negative for Covid-19, were going to be released into 7-day self-quarantine per WHO and MOH's original guidelines. We hereby commit that upon release we will comply and strictly observe the laid out self-quarantine guidelines in our own homes.

We strongly feel that being asked to pay for the additional 14-day mandatory quarantine is not only a huge strain on our personal finances but it is also seriously affecting our already fragile mental health.

We therefore request the Ministry and Covid-19 task force to address this issue, with the Treasury and other partners, as a matter of urgency to find an alternative way to compensate the hotels for the costs incurred by them from the date of extension to discharge .

We look forward to and will appreciate an urgent response to the concerns outlined above.

Yours faithfully,

Pride Inn Azure Guests and Families (listed below)

Guests	Guests
	Parents

cc: Cabinet Secretary for Health - Hon. Mutahi Kagwe
cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Principal Secretary Ministry of Health
ps@health.go.ke;

Mr. Nick Nesbitt - Chairman KEPSA

Dr. Amit Thakker - Kenya Healthcare Federation
mailto:athakker@khf.co.ke

Mr. Hasnain Noorani - Pride Inn Hotels
mailto:md@prideinn.co.ke

(KELIN) info@kelinkenya.org

Date: 10th April 2020 Via email

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mailto:athakker@khf.co.ke

Mr. Hasnain Noorani - Pride Inn Hotels
mailto:md@prideinn.co.ke

(KELIN) info@kelinkenya.org

Daily Nation News

Double tragedy as Covid-19 patients hit with huge bills

This is Exhibit marked "AM-011" referred to in the Annexed affidavit/Declaration of Allan Maleche. Sworn/Declared before me on this .... day of .... 20...... at .... in the Republic of Kenya

Commissioner for Oaths

A National Youth Service bus transports new arrivals from JKIA to quarantine centres, on March 24, 2020. PHOTO | FILE | NATION MEDIA GROUP

Summary

- While there are those being punished for breaching quarantine rules, a big number are poor men, women and children taken in after coming into contact with suspected patients.
- Should the tests find you positive, the government transfers you to a hospital where you are observed and any symptoms managed, until you recover, before releasing you back into society.
- But not before you are slapped with a hefty bill imposed on you by the global pandemic, and over which you have absolutely no control.

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By NATION TEAM
More by this Author

When the government learns that you have come into contact with an individual who has tested positive for coronavirus, it dispatches a team in hazmat suits, masks and protective gumboots to your home to pick you and your entire household up for mandatory quarantine and testing.

The strategy, known as contact tracing, has been credited for the relatively low numbers of confirmed cases of infected people in the country as it reduces the spread of the disease in the wider community.

Should the tests find you positive, the government transfers you to a hospital where you are observed and any symptoms managed, until you recover, before releasing you back into society. But not before you are slapped with a hefty bill imposed on you by the global pandemic, and over which you have absolutely no control.

This is how Ms Irene Akinyi, 48, has found herself staring at a Sh168,000 bill or more, after she was picked up from her house in Mombasa's Mtopanga estate on Saturday, together with her three daughters, a house help and her eight-month-old grandson, and taken to a quarantine facility.

She is required to pay Sh2,000 per day for each of the family members.

Her only mistake is that she inadvertently came into contact with her children's father, who had dropped in to check on them.

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After testing positive for the virus, the man told health authorities about his visit to the family house and they were all rounded up.

Ms Akinyi turned to social media and the church for help to pay a part of her bill, and says she does not have money to pay the rest.

Her story is repeated in tens of quarantine centres and government hospitals, with hundreds of Kenyans held there pleading with the government to use some of the cash set aside to fight the coronavirus to meet these costs.

However, the government would hear none of it.

On Tuesday, the Health ministry said it would continue charging for quarantine despite the public uproar. "The testing and the treatment are borne by the government, but it is the responsibility of Kenyans to take care of their bills when they are in quarantine," said Health Chief Administrative Secretary (CAS) Dr Rashid Aman during a media briefing on state of Covid-19 in Kenya.

On Monday, a 22-year-old man attempted suicide at the Kenyatta University Teaching, Research and Referral Hospital (KUTRRH) after what he said was a bloated bill at the quarantine ward.

Mr Samuel Osore, the patient in the video, yesterday told the Nation he snapped and thought of committing suicide as a way out of his more than Sh55,000 bill.

"I cannot leave this place, I am told to sell my land and the nurses are even threatening," he shouted to onlookers who were beseeching him not to do the unthinkable.

"Why should I stay in here; I am tired of being frustrated. At home my mother is physically challenged and we have nothing. I want to leave this place."

Mr Osore tribulations mirror the pain of hundreds of Kenyans who have been slapped with bills of tens and hundreds of thousands of shillings after spending at least 14 days at public isolation centres run by the government.

The victims are being held at public hospitals, Kenya Medical Training Colleges, Kenya School of Government, public schools, technical training centres and universities, among other State-run facilities.

While there are those being punished for breaching quarantine rules, a big number of those stuck in the facilities for failing to clear bills are poor men, women and children taken in after being suspected to have come in contact with Covid-19 patients.

They were taken into isolation through contact tracing and locked up at State-run centres even though there is the option of self-quarantine at their homes.

Mr Osore, who had lost his job at a hotel in town, was taken to Kenyatta National Hospital by a close friend after showing Covid-19-like symptoms.

Later, he was moved to Mbagathi Hospital where he undertook a coronavirus test that turned out negative.

He said he was not discharged at this point and was instead transferred to the Kenyatta University Hospital which has attended to 288 patients since it was categorised as a Covid-19 management centre.

"When I came to this hospital, I was told that I do not have coronavirus, but tuberculosis. However, I have not been treated for anything yet I have been here for a while, with charges going up daily," he said.

The hospital yesterday blamed Mr Osore for the drama, saying they were only effecting a government policy requiring suspected Covid-19 patients to pay for their stay.

"The one of yesterday (Mr Osore) had declared that he would not pay so he had to find a way of whipping up public emotions," said Dr Wekesa Masasabi, the KUTRRH CEO. "We have since calmed all of them and allowed those who have tested negative twice (including Mr Osore) to leave."

In Nyeri, police have launched a manhunt for two quarantine escapees who left in a prison-break style.

Nyeri County Commissioner Lyford Kibaara yesterday said the two cut grills in their cubicles at the Wambugu Farm Training Centre.

The escape comes days after dozens of suspected Covid-19 patients escaped from the Kenya Medical Training College (KMTC) at Kenyatta National Hospital in Nairobi. So far, only a handful have been traced and arrested.

In Homa Bay, some families in quarantine said they are living in fear of being detained for failure to clear their bills.

This was after Health executive Richard Muga said all those who were quarantined will have to pay before being set free.

"There are guidelines on payment. Everyone who is at the facility will be charged because they were being taken care of by the government, including the provision of food," he said.

It has emerged that while those unable to pay are allowed to leave, they are required to commit to pay later.

Ms Sophia Kitui, who was discharged from KMTC in Nairobi, said their stress increased when they discovered that they would not be allowed to leave without clearing their bills.

"Those who were not able to leave were given contracts that they would leave a valuable like passports which they would take after they have cleared the bills," she said.

In Nyamira, those quarantined at Menyenya Secondary School in Borabu yesterday said the facility is in a deplorable state.

The families lack of basic items such as hand sanitisers, soap and mosquito nets. Women with children have been greatly affected as they need sanitary towels and diapers.

Meanwhile, in Siaya, the family of the county's first coronavirus death, who have been in quarantine at the KMTC, yesterday took the fourth test grudgingly.

The family of the late James Oyugi Onyango, led by the deceased's brother Zack Onyango, said the health team should have allowed them to go home as promised earlier.

Mr Zack Onyango said they were to be released yesterday if the results turned out negative.

"We have been here for 17 days," he said. "We have been tested three times which have all turned out negative. Why are they keen to hold us here longer?" he posed.

The Coronavirus Tracker

Reporting by Nasibo Kabale, Hellen Shikanda, Aggrey Omboki, Dickens Wasonga, George Odiwuor, Wycliffe Nyaberi, Irene Mugo and Verah Okeyo

12

This is Exhibit marked "AM-012"
referred to in the Annexed affidavit/Declaration
of Allan Maleche
Sworn/Declared before me on this.............
day of.............20......
at.............in the Republic of Kenya
....
Commissioner for Oaths

18th April 2020

Dr. Patrick Amoth
Acting Director General for Health
Ministry of Health Covid-19 Response Team
dghealth2019@gmail.com
patrickamoth@gmail.com

REF: URGENT OPEN LETTER AND REQUEST FOR INFORMAITION REGARDING THE ABITRARIY EXTENSION OF QUARANTINE PERIOD BEYOND 28 DAYS

We make reference to the above subject matter and a circular dated 16th April 2020 which we only got wind of through social media platforms.

We write this open letter in response to the above-mentioned circular and in an effort to ensure a human rights-based approach for curbing the spread of COVID-19 is taken and information is provided relating to our requests.

Under this circulant, a number of institutions have been placed under an extended quarantine period. The Kenya medical Training Institute MG appears on the list. The open letter raises concerns on the neglect, extortion and risks members impacted by this quarantine enforcement are faced with:

A. RELEASE OF PEOPLE UNDER QUARANTINE

The Ministry of Health set up clear guidelines for placing members under quarantine. The simple qualification for persons to be placed under this quarantine was defined as any person that travelled into the country between 23rd-25th March 2020. To date, there has been no clear guidelines set for members still under quarantine to warrant their release. Is it possible that the ministry is putting our lives at risk while they figure out proper mechanisms for releasing members from quarantine? Kindly provide a response to the following questions:

i. Why is there no proper date set for persons in quarantine, who at this point have observed all the rules set at the institution and have in turn tested negative twice?
ii. Why is there a blanket accusation of lack of practicing social distancing yet many of us have strictly adhered to the rules including going as far as voluntarily providing information to the Ministry where people are not observing this and requesting, they be taken elsewhere to avoid endangering our lives?

iii. Why have we not received our test results within 24 hours as stipulated by the quarantine protocol and guidelines? We are left to assume to have tested negative for Covid-19, if we are not taken to an isolation center.

B. EXITING OF THE FACILITIES

According to the guidelines, nobody can exit the quarantine facilities unless cleared. However much unclear the guidelines for equitably accessing clearance forms, it was evidenced on the 17th of April, that a member under quarantine was escorted by KMTC staff with no protective gear whatsoever to an ATM facility outside of the quarters of the institution in order to access a public ATM machine. This support was accorded to this member to allow them to withdraw money in order to furnish the institution so as to facilitate their speedy release from quarantine, in spite of the circulant in question. In this regard please provide a response to these questions:

i. Why is there such selective application of these alleged strict contact control measures in the fight against corona?
ii. Are those officials who are escorting people to the ATMS being tested and declared COVID-19 free?
iii. Why is one allowed to leave the premises only if they are going to access a bank account for the benefit of the institution, yet we have members in need of urgent medical attention that have been denied access to medical care?
iv. Is covid-19 risk exempt during accessing financial resources?
v. Does it mean that the extension period can be mitigated by forwarding of financial resources to the institution?
vi. Are there acts of corruption taking place to facilitate the release of certain individuals?

C. ILLEGAL DETENTION OF PASSPORTS

It has come to our attention that certain members were only released from the facility after depositing their passports at the institution in exchange for their freedom. These members had been brought to the institution on the understanding that the facilities shall be free of charge. That said, is it possible that the institution is turning this matter of national public health concern into an opportunity for extorting desperate frustrated members in quarantine? Please provide a response to the following:

i. Is there a directive from the Ministry to KMTC & other government facilities to detain people's passports in exchange for their freedom? If no, why is this Ministry allowing this to happen?

ii. Isn't it illegal to detain people in hotels or governments facilities for non-payment of civil debts?
iii. Why are we being compelled to pay for mandatory quarantine when it was a government-initiated policy and the government has received sufficient funding towards the COVID-19 response.

D. HEALTH CONCERNS AND WELLBEING

Even as we enter the fourth week of quarantine, issues raised around the provision of adequate psycho-social support have not been addressed nor granted to the members under quarantine contrary to the press briefings. The lack of communication and concern from the officials handling the quarantined members is wanting. Please respond to the following:

i. Why are you not following your guidelines by failing to provide psycho-social support needs for members in quarantine?
ii. How do you plan to address the long-term mental effect of the deplorable quarantine conditions, that are already destroying the fragile mental health of many here?

E. SOCIAL DISTANCE STANDARDS

Finally, time and again the Ministry of Health, despite being present in the institution for brief moments at a time, continually cites the lack of adequate social distancing as the reason for extension of period of quarantine. We are aware of the circular dated 3rd April 2020 by Dr. Pacifica Onyancha instructing that an MOH official be available at the quarantine facility for 24 hours in two shifts. This has however not been happening. (attached is the circular)

While this reason was first considered, the members in quarantine are now baffled and surprised as to what these exact and precise standards of social distancing are, and if so, why hasn't anyone from the Ministry of Health been present to advice on this exact and precise standard that they speak of. In spite of the circular by Dr. Pacifica Onyancha indicating that MOH officials need to be present.

Ultimately, the use of shared feeding points, toilets and other amenities is far below the stipulated WHO standards that call for single rooms with en-suite provisions that entails hand hygiene and toilet facilities. What is the evidence of this lack of social distancing, while quarantined members took it upon themselves to create one-meter demarcations around the compound, something which the Ministry of Health nor the institution did, yet continues to extend quarantine periods for members under obscure reasons? We thus request Reponses to the following:

(i) Why the blanket decision to extend the quarantine period on the basis of lack of social distancing noting that many of us have complied with the social distancing requirement and avoided contact with others
(ii) Why has the Ministry not responded to the concerns raised about the few who are not observing the social distancing rules and move them to another block so as not to endanger our lives?
(iii) If the Ministry is aware and has evidence of those who are not practicing social distancing, why not send them to a separate block?
(iv) Are MOH official expected to be present at the Mandatory Quarantine facilities in light of the letter dated 3rd April 2020 by Dr. Pacifica Onyancha?
(v) Are the MOH officials who are posted here to carry out tests and check our temperature tested for COVID -19 or do they pose a risk to us too?
(vi) Why is there delay in moving a person who has tested positive from the quarantine center to the isolation facilities? Isn't this negligence on the part of the Ministry and putting us further at risk?
(vii) Will the Ministry bear the cost of the extended stay noting many of us have complied with the rules set?

We therefore request that the Ministry of Health provides us with the following information in writing in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016 and within 48 hours noting the urgency of the situation at hand and our fragile mental health status. Failure of which we ask the Commission of Administration of Justice to urgently and fully exercise its mandate.

Signed by the following:

CC.

Cabinet Secretary for Health - Hon. Mutahi Kagwe cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Principal Secretary Ministry of Health
ps@health.go.ke; pshealthke@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Government Spokesperson
spox@ict.go.ke; governmentmediacentre@ict.go.ke

Commission on Administrative Justice
complain@ombudsman.go.ke

Transparency International- Kenya
transparency@tikenya.org

Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)
complain@kelinkenya.org

Kenya National Commission on Human Rights
complaint@knchr.org

Office of The High Commissioner for Human Rights – Kenya
Lfung@ohchr.org

Women's International League for Peace and Freedom
hello@wilpfkenya.org

ALL MEDIA HOUSES

NO REST

Virus victim hurriedly buried at night in Siaya

Mortuary workers tossed the body of the KPA worker into a cold grave at dawn.

In Summary

•On Sunday, Health Cabinet Secretary Mutahi Kagwe said the number of confirmed cases in the country now stand at 197 after six more cases were confirmed.

•The total number of people having recovered and discharged from hospital is now 25.

by MAGDALINE SAYA AND JOHN MUCHANGI

Coronavirus
13 April 2020 - 09:08

This is Exhibit marked "AM—013" referred to in the Annexed affidavit/Declaration of: Allan Maleche.
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Commissioner for Oaths

Health CS Mutahi Kagwe.
Image: FILE

Five of the cases were picked from mandatory quarantine centres, while the sixth was picked by various surveillance teams. Contact tracing is ongoing.

A total of 2,160 contacts so far have been monitored, out of which 1,660 have been discharged after completing the 14 days follow-up period. Five hundred are on follow-up while the ministry has tested 7,447 samples since the first case was reported in the country on March 13.

"We thank all the Kenyans for their continued support and adherence to the Covid-19 mitigation measures that we have put in place. However, we also want to remind our citizens not to relent until we succeed in completely containing the spread of the virus in our country," Kagwe said.

The ministry says at least 7,000 people will be tested for coronavirus in the coming weeks after the government received testing kits from Roche Diagnostics.

Director of Public Health Patrick Amoth on Saturday said the machines have been placed at various facilities.

"The beauty of what you're going to deploy is that now you're able to do more tests in a shorter time," he said.

Mass testing will start in quarantine centres and for healthcare workers and thereafter across the different institutions.

Amoth explained that the Kobus 8,800 machine can do two to three-hour tests in about one hour.

The ministry, however, said mass testing will only face a setback considering the availability of testing kits based on global supply chain challenges.

The director assured that the ministry was putting efforts to procure more kits to utilise the machines to reach a bigger population.

"By testing, we shall be able to tell for sure where we are in terms of winning the battle," he said.

The ministry acknowledged that so far, everything is according to its projection and has urged Kenyans to maintain personal hygiene, practice social distancing and stay at home if possible.

Last week, Health CAS Mercy Mwangangi announced that the ministry will roll out mass testing.

This was after reports that 17 Members of the National Assembly and Senate had tested positive for the virus.

Mwangangi said the private laboratories that tested the MPs had not relayed the information to the ministry.

She said by law all private facilities must now share their Covid-19 test results with the ministry.

Mwangangi also said as much the Public Health Act is invoked, the ministry is taking seriously matters of confidentiality and ensuring that those principles that are governed in medicine are still adhered to.

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at ...
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Bomet Covid-19 victim buried at night

A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family is in quarantine. PHOTO | COURTESY

Summary

- A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family is in quarantine.
- The burial was conducted at around 7 pm Wednesday night in a ceremony that lasted only a few minutes.
- Governor said family members of the patient lied to doctors at Longisa Hospital that he had not travelled out of Bomet

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By VITALIS KIMUTAI
More by this Author

As Bomet residents were retreating to their homes to beat the 7 pm curfew on Wednesday night, a Land Rover ferrying the remains of the County's first Covid-19 case was making its way to Kagawet village in Itembe Location, Chepalungu where he was buried.

County public health officers presided over the burial of 55-year-old at Erick Kosgei in accordance with the protocols set by the Ministry of Health (MoH).

A few relatives who had not come in contact with the deceased witnessed the burial while the rest of his family was in quarantine.

The burial was conducted at around 7 pm Wednesday night in a ceremony that lasted only a few minutes.

Villagers are said to have earlier in the day been requested to help in digging a grave for the deceased as 16 of his relatives are holed up in quarantine at Kaplong Girls High School in Sotik Sub-county.

A few pictures taken by those who witnessed the burial and shared on social media show public health officers dressed in white hazmat suits and other protective gear lowering the body to the grave as darkness engulfs the area.

Also read

Poaching suspects to face court

Covid-19: Kuti urges county partnerships

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Woman kills Nyumba Kumi official in Kisii

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A Land Rover was used to transport the coffin under police escort from Longisa Hospital mortuary to the homestead for final burial rites.

The Nairobi-based businessman had travelled to Bomet County from Nairobi last week using a police vehicle secured by a relative on Monday May 4. He was admitted at Longisa Hospital the same day before passed away the following day.

Mr Kosgei, 55, had a history of diabetes. He had travelled while ill.

Samples taken to Kenya Medical Research Institute (Kemri) on May 5 after he died were finally released on May 12, and showed he had Covid-19.

As a result, 10 doctors and nurses who came in contact with the patient at Longisa Hospital have been placed under quarantine.

A total of 36 people, including 16 of his family members, are now in isolation.

It has emerged that 20 of those quarantined are doctors and nurses who handled the patient at Longisa county referral, and others who handled a second case that tested positive in Nairobi after being transferred from Tenwek hospital.

In the second case, a child from Baringo County who had been taken for eye treatment at Tenwek hospital was transferred to Kenyatta National Hospital (KNH), Nairobi last week and tested positive for coronavirus.

As a result, ten doctors at Tenwek Hospital who came in contact with the child before the referral have also been placed in quarantine as a precautionary measure.

QUESTIONS OVER TRAVEL

Mr Kosgei's travel has raised questions over why he used a police vehicle instead of an ambulance or private car from Nairobi to Bomet and whether clearance was sought from the Ministry.

"A police vehicle was secured by a relative who is policeman to transport the man from Nairobi. He had been undergoing treatment in Nairobi on and off for some time before the transfer to Longisa Referral Hospital," said a family member who did not want to be named.

A relative to the deceased who had accompanied him to hospital had not been traced by public health officers by Wednesday afternoon.

The revelations were made even as questions were raised over why it took so long for Kemri to release the results of his test.

But according to County Executive in charge Medical Services and Public Health, Dr Joseph Sitonik, the tests were repeated to ascertain the results.
He also explained that it takes longer to conduct tests on a body that has been preserved.

"The process of testing samples from a patient is not the same as the one for a body which has been treated with preservatives," said Dr Sitonik, adding that there was no delay in release of the results.

He also said the body had properly been preserved at the mortuary in line with protocols from MoH ahead of its disposal.

LIED TO DOCTORS

Bomet Governor Hillary Barchok warned residents against withholding crucial information from doctors on their recent travels.

He revealed that as a result of Mr Kosgei's non-disclosure, many people including doctors, nurses, mortuary attendants, patients and members of the public have been put at risk of contracting the virus.

"Sadly, family members of the patient lied to doctors at Longisa Hospital that he had not travelled out of Bomet...that he had been brought direct from his rural home for treatment," he said.

He said the county would take charge of the burial arrangements to ensure the family follows laid down health protocols on disposal of bodies for Covid-19 cases.

The county government, he added, will push for disciplinary action against the police officer for his actions which had exposed many others to Covid-19.

Family cry foul after kin is buried at 3am

The body of a man who allegedly died of Covid-19 is buried in Baraton village in Trans Nzoia at 3am on May 15, 2020. PHOTO | GERALD BWISA | NATION MEDIA GROUP

Summary

- The exercise, which was supervised by government officials, lasted only 15 minutes.
- The family claimed that Barasa had died after being denied dialysis services to manage his kidney condition.

ADVERTISEMENT

By GERALD BWISA
More by this Author

A man who allegedly died of Covid-19 was hurriedly buried by health officials at 3am in Kimilili, Trans Nzoia County, on Friday.

His family, which has contested a medical report indicating that their kin died of coronavirus, is now seeking to have the body exhumed to undergo a postmortem.

15 MINUTES

Geoffrey Kibet Barasa's body was buried in the wee hours of Friday at his homestead at Baraton in Kiminini constituency.

The exercise, which was supervised by government officials, lasted only 15 minutes.

The family, which feels it was denied the opportunity to give their relative a befitting send-off, said Barasa had just secured a driving job in Kajiado County.

Also read

Poaching suspects to face court

Covid-19: Kuti urges

Mt Kenya lawyers: We support Maraga

Woman kills Nyumba Kumi official in Kisii

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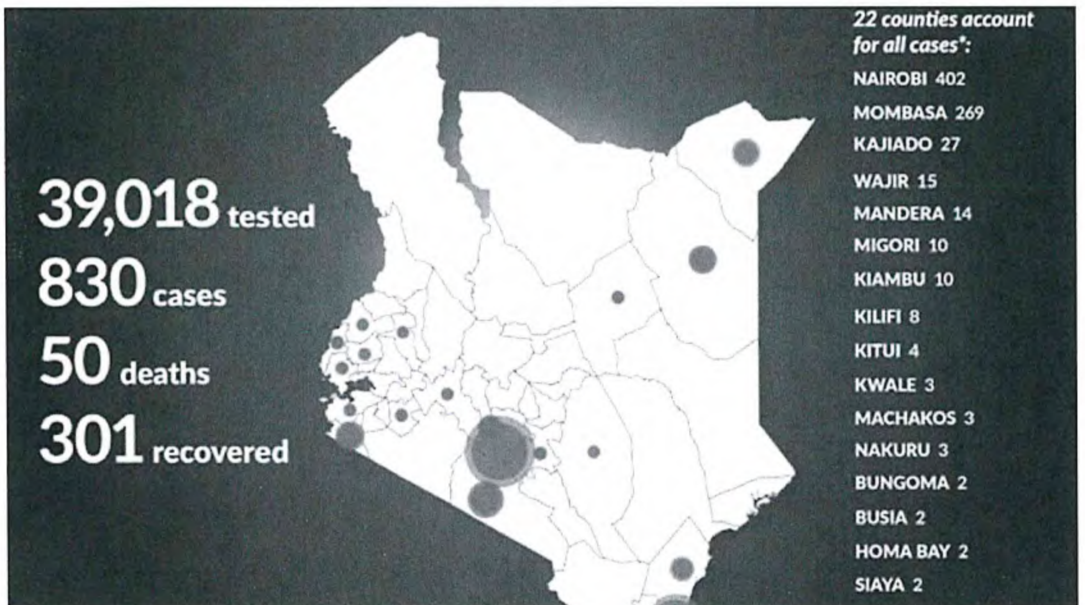
The family claimed that Barasa had died after being denied dialysis services to manage his kidney condition.

"He has been sickly even before the coronavirus outbreak. He had been admitted at the Nairobi Women's Hospital in Kajiado before he was referred to the Kenyatta National Hospital where he tested negative for the virus," said Barasa' wife Victoria Wafula.



The family said they read mischief after the hospital earmarked the deceased's body to be buried alongside other bodies of individuals who had succumbed to the virus at the facility.

Ms Christine Barasa, the deceased sister said that they were informed that her brother had succumbed to coronavirus and the body had to be buried as soon as it arrived home.

Ms Linet Chemutai, Barasa's mother, said her son had been complaining of abdominal pains and was later diagnosed with liver and kidney failure.

GOVERNMENT OFFICIALS

Trans Nzoia Health Executive Claire Namenge, told the *Nation* that due process was followed in burying the body.

"When we received notice from the government about person who had died of the Covid-19, we followed due process of burying him," she said.

Trans Nzoia County Commissioner Samson Ojwang said he received a phone call from his Nairobi County counterpart about the case.

"It is true that the patient died of coronavirus and this is why his body was accompanied by government officials," said Mr Ojwang.

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HEALTHCARE WORKERS (CLINICAL OFFICERS) LEVEL OF PREPAREDENESS IN RESPONSE TO COVID-19

ASSESSMENT REPORT

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ACRONYMS

CSO-Civil Society Organization
HIV- Human Immunodeficiency Virus
AIDS- Acquired Immune Deficiency Syndrome
KELIN-Kenya Legal & Ethical Issues Network on HIV and AIDS
KUCO-Kenya Union of Clinical Officers
M&E-Monitoring and Evaluation
PPE-Personal Protective Equipment
PPS-Population Proportion Sampling
WHO-World Health Organization
WIBA- Work Injury Benefits Act

ACKNOWLEDGEMENTS

Healthcare workers (clinical officers) level of preparedness in response to COVID-19 assessment was made possible due to coordinated efforts by various stakeholders including KELIN, Kenya Union of Clinical Officers, Civil Society Organization amongst other like-minded stakeholders.

The partners acknowledge contributions from other stakeholders throughout the survey process, including:

- All clinical officers (respondents) for collaborating and undertaking the assessment despite their hectic schedule during this time of COVID-19.
- Health care workers sub-committee of the COVID-RBA consortium coordinated by KELIN.
- Kenya Union of Clinical Officers leadership structure.
- Kenya Legal and Ethical Issues Network on HIV & AIDS entire team particularly the Monitoring and Evaluation team and the communications team.

EXECUTIVE SUMMARY

Kenya Legal and Ethical Issues Network, an Kenyan NGO working on promoting and protecting the health rights and Kenya Union of Clinical Officers, an association that promotes the welfare of Clinical Officers and advocate for the professional development through training and advocacy and other like mind stakeholders in the health sector developed a working relationship through a consortium to enhance monitoring of health rights and collectively advocate for the health related rights of the healthcare workers during this period of COVID-19 and develop strategies to address rights issues during and after COVID-19 pandemic. The assessment was designed to support the two organizations and the consortium on evidence building of healthcare workers level of preparedness to respond to COVID-19 and provide recommendations on areas of improvement through collective advocacy to the respective agencies.

This partnership seeks to strengthen governance, promote equity, and build capacities to demand health related rights during the COVID-19 pandemic through developing collecting advocacy.

The aims of the assessment were to determine the level of preparedness to respond to COVID-19 in context of Occupational Health and Safety. Specific objectives were to:

i. Assess the status of environment and level of preparedness to provide services during COVID-19 period
ii. Assess experiences and challenges faced and major concerns from the health perspective during the COVID-19 period

STUDY DESIGN

The assessment was informed by a WHO report on health workers EBOV infections in Guinea, Liberia and Sierra Leone from January 2014 through March 2015 which concluded that, depending on their occupation in the health service, health workers were at 21 to 32 times greater risk of contracting EVD[1].

The online assessment targeted healthcare workers (clinical officers) across all the 47 counties working in the public and private sector. Data collection was completed with 601 healthcare workers sampled from 47 counties. The assessment questionnaire was digitized through KOBO collect platform and shared in respective clinical officers' platform under the leadership of clinical officers' union secretary general and other elected leaders of the union.

KEY FINDINGS

Safe Working Environment

Patients Screening at Entry

In assessing the health facility preparedness, the findings show that 43% of the facilities are not screening clients at entry and not separating those with respiratory symptoms.

Staffing and ventilation

Further results show that 63% of the facilities lack adequate staff to handle the client flow, only 57% of the facilities are well ventilated. These results demonstrate contrary results from what the government has shared with the public. More measures must be put in place by the Ministry of Health to prevent and control the spread of COVID-19.

[1] *Preferred product characteristics for personal protective equipment for the health worker on the front-line responding to viral hemorrhagic fevers in tropical climates. Geneva: World Health Organization; 2018*

Availability of Personal Protective Equipment

The results show that 93% of the healthcare workers do not have personal protective equipment (PPE) with more than 90% citing lack of eye protection gear, isolation gowns and protective suits as required by WHO standards[2], while 82% lack N95 respirators. Only 18% of respondents lacked gloves and 30% lacked surgical masks. Further, the findings established that 82% of the assessmented healthcare workforce are forced to reuse PPEs because of irregular supply of the equipment.

This is against the occupational safety and health standard provided by WHO that all healthcare workers should have this equipment to prevent exposure to the COVID-19 virus. The government must prioritize access to the above as soon as possible as the healthcare providers are at the epicenter of response and can be agents of COVID-19 spread to the rest of the population due to their position as frontline responders.

Cleanliness and Waste Management of the health facility

The findings show majority of the health facilities have waste management equipment but only 40% of the health facilities waste management are cleaned and disinfected. This implies that though measures have been put in place to have the equipment, very little has been done to ensure they are clean and safe which exposes more the healthcare workforce to COVID-19.

Capacity and wellbeing of Healthcare Workers to Respond to COVID-19

Training

The findings show that 58% of the healthcare workers have not been trained on preparedness and response of corona virus indicating that the level of preparedness to response to the virus as well as provision quality of health services to patients is not up to the expected WHO standards thus jeopardizing the health of patients as well as the healthcare workers as result of lack/insufficient knowledge or skills to provide better healthcare for the patients. Further the findings show that 90% of the healthcare require refresher and additional training.

Accommodation/Isolation centers for Healthcare Providers

Results established that (94%) of healthcare workers are not provided alternative accommodation/isolation so as to minimize the risk of exposing their family members. This further demonstrates poor level of preparedness by the government in protecting the health of healthcare workers and their immediate families which is a heightened risk factor of exposure to other non-healthcare workforce.

Alternative Transport to and from Work

Findings showed that (42%) of healthcare workers have no transport to and from work and with the curfew and partial lockdown. This has led to difficulties in accessing health facilities due to constant inquiries by police at various road blocks hence creating barriers to access of health care for the patients who would have been served by the healthcare workers.

Testing of Health Care Workers

Findings established that 97% of the healthcare workers feel more exposed to COVID-19 due to lack of enough PPE equipment and preparedness of the health facilities. This reiterates low levels of preparedness by the health sector which may hinder provision of quality healthcare services by health workforce because of fear. Recent data has shown I UK 16% of the healthcare workforce while in US more than 9,000 healthcare workforce have tested positive for COVID-19 [3].

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[2]*Infection prevention and control of epidemic-and pandemic-prone acute respiratory infections in health care. Geneva: World Health Organization; 2014*

[3]*The Centre for Evidence-Based Medicine*

Further findings established that 98% of assessmented healthcare workers have not been tested for COVID-19 as at (17th April 2020). The results demonstrate the level of unpreparedness since the health workforce is at the epicenter of this pandemic being first responders which makes more exposed since they interact with clients yet they have not been tested to assess if they will continue to provide medical health care or they should be isolated and receive medical care. This takes into account the fact that National Government (PS Health) announced testing for Healthcare workers on 15th April[4].

Life Insurance Cover & Work Injury Benefits Act

The results established that only 11% of the respondents have life insurance cover. This is a worrying statistic since the healthcare workers are at the frontline in responding to COVID-19 which makes them more vulnerable to the virus hence this is a key requirement for the workforce.

Conclusion

The findings show the level of preparedness towards response to COVID-19 is poor, particularly issues have been cited on lack of personal protective equipment, lack of COVID-19 testing for health care workers, lack of training amongst other key underlying issues which the government and private sector need to immediately address to enhance preparedness.

Recommendations

Recommendation to the National Government

i. There is need to review the laws and policies that govern protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This should include life insurance, compensation in regards to accidents/incidents at work.
ii. Resources and mechanisms to capacity build healthcare workforce for epidemics and emergencies. This should include review of the medical curriculum to include compulsory training using case studies like COVID-19. There is a clear capacity gap in regard to response to COVID-19 hence a training must be provided for all healthcare workers as part of preparedness mechanisms.
iii. Strengthen all health facilities to have the capacity to handle all diseases by equipping them with proper medical equipment, medical staff and medication which should be accessible and available. This should include isolation centres for respiratory diseases as captured in the TB guidelines on management of the disease.
iv. Develop post COVID-19 strategies to ensure the workforce and resources are not overstretched not to care of other health care needs.
v. Have regular conversations with healthcare unions to understand their level of preparedness to address future epidemics.
vi. Provide enough test kits and prioritize testing of the healthcare workers.
vii. Ensure healthcare workers have personal protective equipment that are in line with WHO standards which are regular supplied to enable them provide quality health services to patients in epidemic periods.
viii. Provide regular and accurate information pertaining preparedness and response to COVID-19 and epidemics, e.g trainings conducted , number of people trained and in which regions, quantity of equipment supplied and which regions etc.
ix. Develop policies geared towards construction of consultation rooms with adequate ventilation.
x. Urgent need to conduct mass testing rather than targeting testing since majority of the cases are asymptomatic-Do we really know about Kenya COVID-19 curve?
xi. Innovation through cross learning from countries able to produce quality and cheap test kits or get cheaper rapid test kits in order to enhance mass testing, or purchase

[4]Mass testing of health workers for COVID-19 to begin. KTN News YouTube Channel (https://www.youtube.com/watch?v=K3P6zBx7knY)

cheap but quality test kits.

xii. Proper disposal of used PPE since if not well handled after putting on (donning) Personal Protective Equipment and removal of(doffing) Personal Protective Equipment they can lead to spread of the virus.

xiii. Protect healthcare workforce from infection by protecting the general population from infection-Increased positive cases in informal settlements because of lack of masks, water, sanitizers.

xiv. Breastfeeding healthcare workers/Healthcare workers with pre medical conditions how are they been protected- not to expose their infants, are there measure to ensure they do not engage in COVID-19 response.

Recommendation to the County Governments

i. County health committee team to work closely with healthcare unions and map out the needs, preparedness to respond to COVID-19 and future epidemics.

ii. Ensure the health care services at the facilities are available and accessible at all times with proper medication, medical personnel and medical equipment.

iii. Review Laws and policies that hinders accessibility of healthcare services to all through the epidemic and post COVID-19.

iv. Ensure attractive remuneration, allowances and pay outstanding salaries and benefits including life cover are part of the healthcare workers package.

v. For facilities with poor ventilated consultation rooms, provide alternative consultation areas or tents and work towards improving ventilation in all consultation rooms.

vi. Ensure all healthcare workers employed are included in a uniform benefit package since some healthcare workers are missing out on the benefits entitled to healthcare workers.

Recommendation to the Healthcare Workers Union

i. Sensitize members on their rights to health to demand for compensation in relation to occupation safety and health.

ii. Ensure health care workers mainstream rights-based approach in their work.

iii. Continuous collaboration with like-minded institutions working on health rights issues to come up with collective advocacy measures for their workers through identification of gaps in health laws and policies that are retrogressive.

Recommendation to the Civil Society Organizations

i. CSOs should work closely with healthcare union to ensure they deliver on health rights issues of the clients they serve.

ii. CSOs to work with other like-minded institutions to ensure the laws and policies developed towards preparedness and responding to COVID-19 and other epidemic reflect rights based approach and have factored the needs of the vulnerable and marginalized communities.

iii. CSOs and other like-minded institutions to ensure the vulnerable communities are able to receive quality COVID 19 healthcare and any future epidemics.

iv. CSOs and other like-minded organizations to develop mechanisms for monitoring, documentation the level of preparedness towards responding to COVID-19 and other epidemics.

Development Partners and Multinational Organizations

i. Ensure measures are put in place to ensure realization of right to health to all through continuous supporting the global health initiatives through increased funding in addressing epidemics.

ii. Document lessons learnt out of COVID-19 epidemic to influence review of the current global disaster management plans as well be better prepared for future epidemics.

Media

i. Engage more on fact finding about the level of preparedness beyond what is provided during press conferences and counter the facts if they are contradicting the information they have.
ii. Highlight stories on the plight of healthcare workers during the COVID-19 period.

National Assembly

i. There is need to review the laws and policies that govern protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This should include life insurance, compensation in regards to accidents/incidents at work.
ii. To review the current national health budget allocation and ensure there is an increased budgets assigned to health

County Assembly

i. There is need to review the laws and policies that govern protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This should include life insurance, compensation in regards to accidents/incidents at work.
ii. To review the current county health budget allocation and ensure there is an increased budget assigned to health.

All Health Stakeholders

i. Ensure there is continuous access to health services for all despite the COVID-19 outbreak through provision of health services for service providers and demand for health services by service users.

CHAPTER ONE - INTRODUCTION

SITUATION ANALYSIS

Corona virus disease 2019 (COVID-19) is a new respiratory illness that can easily be spread from person to person. Globally they are 3,066,417 COVID-19 positive cases, and 211,660 deaths. [5]In Kenya the first case was reported on 13th March 2020 and the cases have currently risen to 363 with 14 deaths.

1.1 ABOUT THE SUB COMMITTEE

KELIN, KUCO and other consortium members are working in partnership to strengthen governance, promote equity, and build capacities to demand health related rights during the COVID-19 pandemic through developing collecting advocacy.

KELIN has been tasked with providing technical assistance and guidance on rights based approaches by ensuring appropriate adaptation and high-quality implementation of health rights by documenting the situation analysis and collectively develop strategies to address these issues through advocating for laws, policies, and system gaps to be addressed.

1.2 PURPOSE AND OBJECTIVES OF THE SURVEY

The assessment aimed to determine the level of preparedness respond to COVID-19 in context of Occupational Health and Safety. Specific objectives were to:

i. Assess the status of environment and level of preparedness to provide services during COVID-19 period.
ii. Assess experiences and challenges faced and major concerns from the health perspective.

1.3 SURVEY METHODOLOGY

The online assessment targeted healthcare workers (clinical officers) across all the 47 sub counties. The. sampling frame consisted of the healthcare workers (clinical officers) in the counties with use of PPS applied to cater for the population size (clinical officer) difference spread across the counties. The survey questionnaire was developed, tested and digitized through KOBO collect platform and shared in the respective clinical officers' platforms under the leadership of clinical officers' union secretary general and other elected leaders of the union.

1.4 TIMEFRAME

The survey was conducted from 9th April to 20th April 2020.

1.5 QUALITY CONTROL

The data collection forms in Kobo collect contained data validation checks and skip logics that decreased human error in data entry. KELIN M&E/Statistician checked for duplicate entries in the Kobo toolkit system as well as outliers throughout the data collection exercise. A daily check of survey time stamps and analysis of average completion time was shared out with the respective coordination team, flagging any outliers for follow-up.

1.6 DATA ANALYSIS

Quantitative analysis was done using STATA while qualitative analysis was done using Atlas.ti

[5]*https://www.health.go.ke/press-releases/*

CHAPTER TWO - BASELINE FINDINGS

2.1 BACKGROUND INFORMATION

2.1.2 Response Rate

The target sample for this survey was 630 health care workers which included 5% non-response rate. Nevertheless, at the end of the survey 601 respondents undertook the assessment which translates to a response rate of 95% which is satisfactory since the 5% non-response rate is less than what had been projected. Findings show Nairobi and Machakos had the highest number of respondents at 13.5% and 7.3% respectively.

Table 1: Response Rate

County	Frequency	Percentage (%)
Baringo	4	0.7
Bomet	9	1.5
Bungoma	17	2.8
Busia	10	1.7
Elgeyo/Marakwet	7	1.2
Embu	17	2.8
Garissa	7	1.2
Homa Bay	8	1.3
Isiolo	2	0.3
Kajiado	11	1.8
Kakamega	16	2.7
Kericho	3	0.5
Kiambu	33	5.5
Kilifi	21	3.5
Kirinyaga	2	0.3
Kisii	21	3.5
Kisumu	12	2.0
Kitui	12	2.0
Kwale	25	4.2
Laikipia	5	0.8
Lamu	4	0.7
Machakos	44	7.3
Makueni	31	5.2
Mandera	5	0.8
Marsabit	1	0.2
Meru	17	2.8
Migori	6	1.0
Mombasa	18	3.0
Murang'a	12	2.0
Nairobi City	81	13.5
Nakuru	11	1.8
Nandi	4	0.7
Narok	2	0.3
Nyamira	13	2.2
Nyandarua	4	0.7
Nyeri	13	2.2
Samburu	1	0.2
Siaya	7	1.2
Taita/Taveta	15	2.5
Tana River	8	1.3
Tharaka-Nithi	26	4.3
Trans Nzoia	3	0.5
Turkana	2	0.3
Uasin Gishu	19	3.2
Vihiga	5	0.8
Wajir	6	1.0
West Pokot	1	0.2
Total	601	100.0

2.1.3 Sex of the respondents

The results findings show that the majority of the respondents are male (65%) while female (35%).

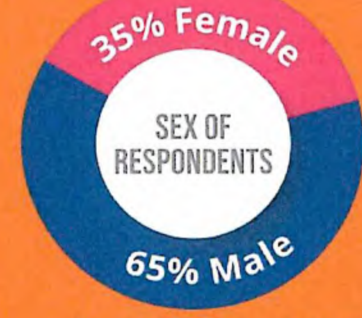


Figure 1: Sex of the respondent
Data Source: Computed by author using survey data

2.1.4 Age of the respondents

The majority (40%) of the respondents are healthcare workers of age (31-35 years), the lowest (1%) number of respondents are of age 18-24 years.

Table 2: Age Group of the respondents

Age	Frequency	Percent
18-24	9	1%
25-30	141	23%
31-35	242	40%
36-40	93	16%
40-45	66	11%
46-49	22	4%
50 and above	28	5%
Total	601	100.0

2.2 FACILITY THE RESPONDENTS ARE CURRENTLY PROVIDING HEALTH CARE SERVICES

The majority of the respondents are currently providing healthcare services at government health facilities (74%) and private facilities (16.4%).

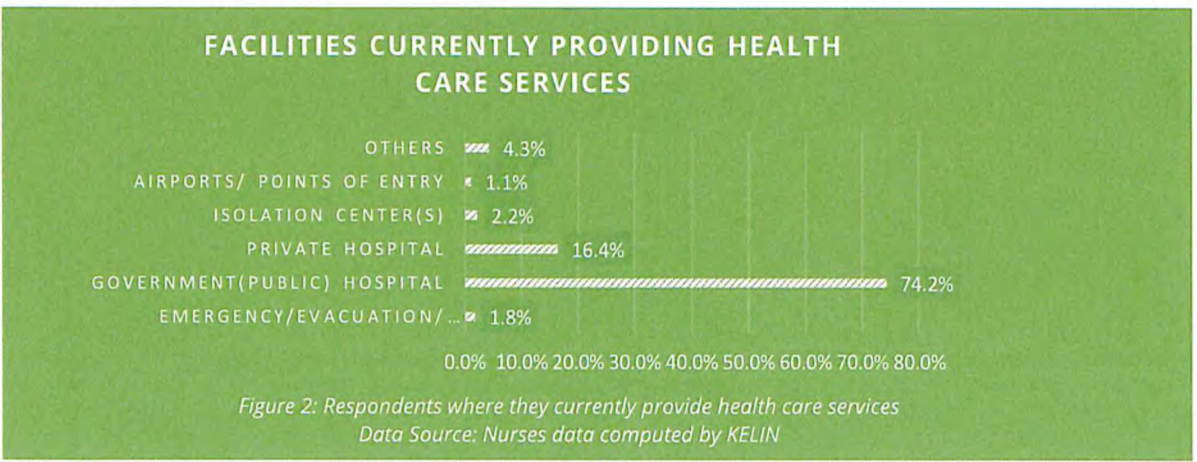


Figure 2: Respondents where they currently provide health care services
Data Source: Nurses data computed by KELIN

2.3 HEALTH FACILITY PREPAREDENESS TO HANDLE COVID 19 CASES

The findings established that 43% of the facilities are not screening clients at entry and separating the ones demonstrating respiratory symptoms as shown in figure 3 below.

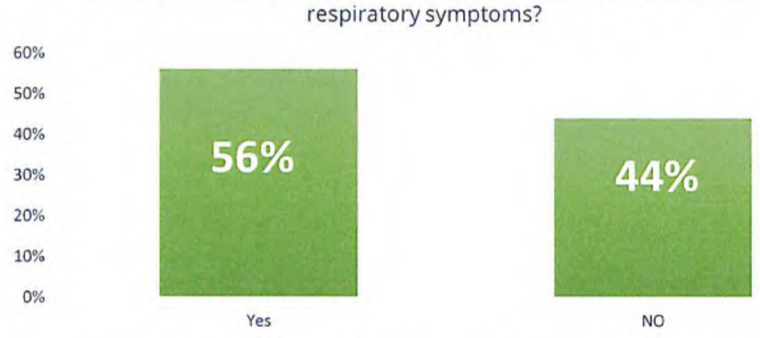


Figure 3: Screening of client at entry and separation of patients with respiratory symptoms
Source: Nurses data computed by KELIN

Further results show that 64% of the facilities are not having enough staff to handle the client flow as shown in this figure.

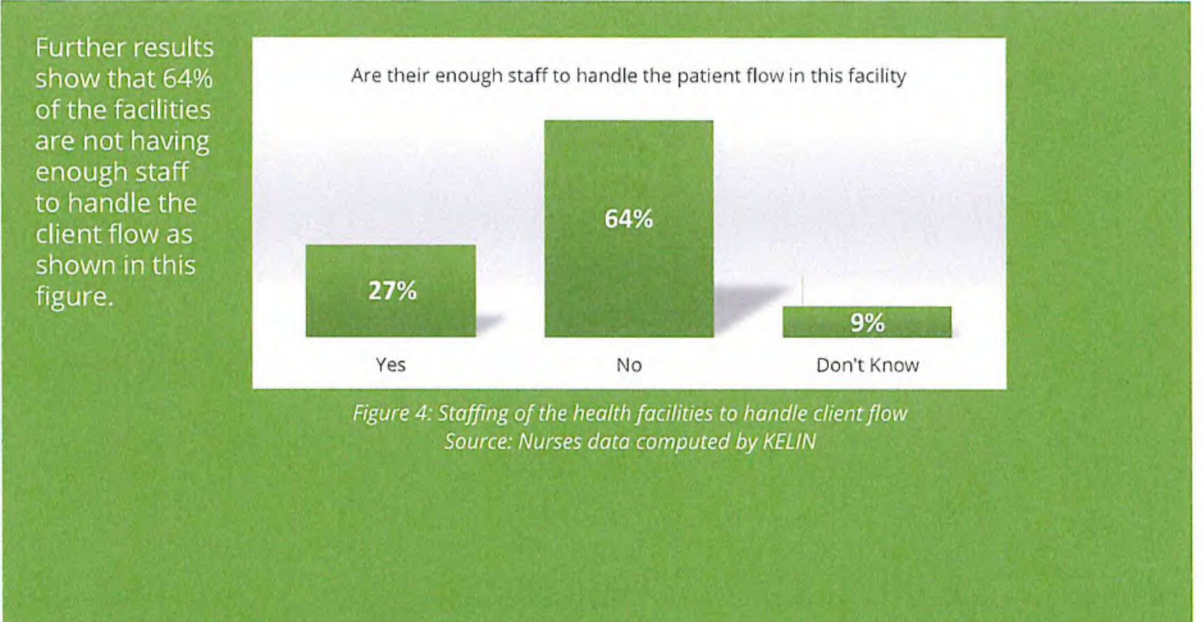


Figure 4: Staffing of the health facilities to handle client flow
Source: Nurses data computed by KELIN

The findings show only 43% of facilities are well ventilated. According to MOH guidelines on respiratory diseases the facilities need to have natural ventilation; free flow of ambient air in and out through open windows. These results show that as much as the government has stated the level of preparedness has been enhanced, the findings show contrary results meaning a lot still needs to be done for Kenya to be prepared to handle COVID-19 pandemic.

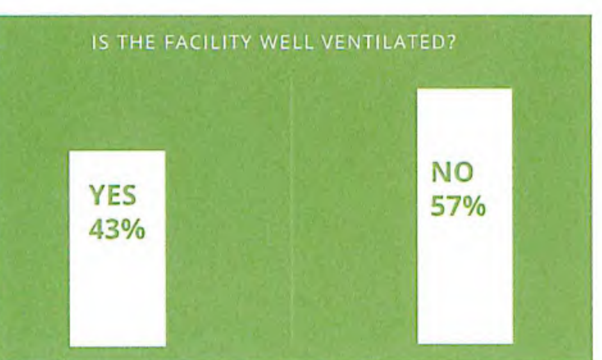


Figure 5: Facilities Ventilation
Source: Nurses data computed by KELIN

The assessment documented concerns recommendations provided by the healthcare workforce which included;

- "Temperatures to be recorded at entry point and separation of patients with respiratory illnesses";
- "Prompt response to patients with respiratory symptoms";
- "Screening thermometers should be provided to all facilities";
- "Increase healthcare workers because of the client flow";
- "All healthcare workers to be screened since they enter facilities without being triaged"

Cleanliness and Waste Management of the health facility

The findings show that majority of the health facilities have waste management equipment with only 40% of the waste management in the facilities being cleaned and disinfected. These findings imply that the healthcare workforce is exposed to COVID19 through poor hygiene practices of the health facilities management.

Table 3: Hygiene of the health facility

		Frequency	Percent
Are waste management equipment available?	No	108	18%
	Yes	493	82%
	Total	**601**	**100%**
Are they regularly emptied and the area disinfected?	No	238	40%
	Yes	268	45%
	Don't know	95	15%

Changing Rooms Cleanliness

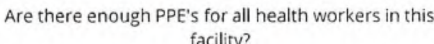
The findings show that 89% of the healthcare workers stated that the health facilities do not have enough changing area and rest room and further results shows 80% of the respondents mentioned that these changing areas and rest rooms and not regularly cleaned and disinfected putting the healthcare workers more vulnerable to COVID-19 exposure.

Table 4: Changing Rooms availability and Hygiene Cleanliness

		Frequency	Percent
Do health workers in the facility have sufficient changing area and rest room?	No	535	89.0
	Yes	66	11.0
	Total	**601**	**100.0**
Are they regularly cleaned and disinfected?	No	485	80.7
	Yes	116	19.6

Availability of Personal Protective Equipment Materials

The results show 93% of the healthcare workers do not have enough/sufficient personal protective equipment.



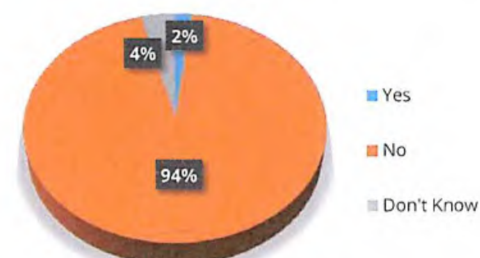


Figure 6: Availability of PPEs
Source: Nurses data computed by KELIN

Specific Personal Protective Equipment Availability

The findings demonstrated that majority of healthcare workers lack PPE equipment. With more than 90% citing they lack eye protection gear, isolation gowns, protective suit as required by WHO standards, while 82% lack N95 respirators. Only 18% of respondents lacked gloves and 30% lacked face masks.

Table 5: Unavailable PPES

PPEs Unavailability		Responses	
		N	Percent
	Eye Protection	553	92.0%
	Isolation Gowns	567	94.3%
	Face Masks/face Shields	183	30.4%
	N95 Respirators	498	82.9%
	Gloves	113	18.8%
	Protective suits	566	94.2%

PPEs Supply

Results established that majority of healthcare workers (82%) are forced to reuse PPEs because of lack of regular supply of the commodities.

Table 6: PPEs Supply

		Frequency	Percent (%)
Are the PPE regularly supplied or you have to reuse them?	Forced to Reuse	494	82.2
	Regular supplied	107	17.8
	Total	**601**	**100.0**

2.4 CAPACITY AND WELLBEING OF HEALTHCARE WORKERS TO RESPOND TO COVID-19

In assessing healthcare workers capacity on COVID-19 response, the findings show 58% of the healthcare workers have not been trained on preparedness and response of corona virus. Further the findings show that 90% of the healthcare require refresher and additional training.

Table 7: Capacity Assessment

		Frequency	Percent (%)
In the last two months, Did you received any training on COVID-19 response?	No	349	58.1
	Yes	252	41.9
	Total	**601**	**100.0**
Do you require refresher training/additional Training?	No	62	10
	Yes	539	90

The findings established some of the topics that the healthcare workers require additional training and refresher training included;

- "Case Management of COVID-19 patients"
- "How healthcare workers can best protect themselves"
- "Proper use and disposing PPE"

Accommodation/Isolation centres for Healthcare Providers

Findings demonstrate that majority of the healthcare workers (94%) are not provided alternative accommodation/isolation so as to minimize the risk of exposing their family members. These findings imply that the healthcare workers are putting their families & loved ones at a risk of exposure since the government and non-state actors in the sector are not providing isolation centres during this pandemic period.

Table 8: Isolation centres for healthcare workers

		Frequency	Percent (%)
Are you provided with accommodation/Isolation facility if you wouldn't wish to go home as a measure of protecting your family?	No	567	94.3
	Yes	34	5.7
	Total	**601**	**100.0**
Is the accommodation provided shared with other colleagues?	No	25	73.5
	Yes	9	26.5

Alternative Transport to and from Work

The results show nearly half of the healthcare workers (42%) have no transport to and from work and with the curfew and partial lockdown, this leads to difficulties in accessing health facilities due to constant inquiries by police at various road blocks.

Table 9: Alternative Transport Provided by Employer

		Frequency	Percent (%)
Can you easily access your work station from your place of residence?	No	267	44.4
	Yes	334	55.6
	Total	**601**	**100**
Have you been provided with an alternative transport?	No	253	42.1
	Yes	348	57.9
	Total	601	100.0

Healthcare workers exposure to COVID-19

The findings show 97% of the healthcare workers feel more exposed to COVID-19 as a result of their work as first responders and lack of preparedness of the health facilities.

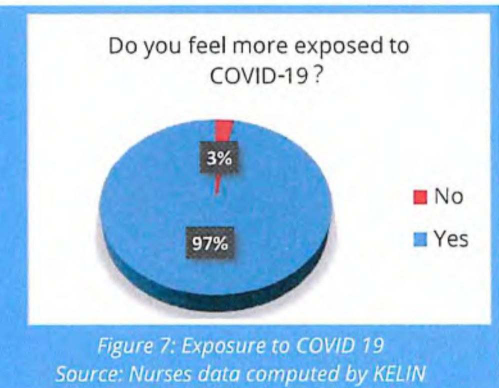


Figure 7: Exposure to COVID 19
Source: Nurses data computed by KELIN

Testing of Healthcare Workers for COVID-19

The results shows 98% of the health-care workers have not been tested for COVID-19. The results demonstrate the level of unpreparedness since the health workforce is at the epicenter of this pandemic being first responders which make them to be more exposed since the interact with clients yet they have not been tested to assess if they will continue to provide medical health care or they should be isolated and re-ceive medical care.

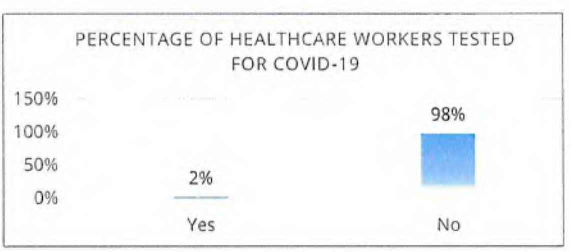


Figure 8: Percentage of Healthcare workers tested for COVID-19
Source: Nurses data computed by KELIN

Why have Healthcare Workers not been tested for COVID-19

The results established that majority (66%) of the healthcare workers cited lack of test kits as the reason as to why they have not been tested for COVID-19.

Figure 9: Why healthcare have not been tested for COVID-19
Source: Nurses data computed by KELIN

Healthcare Workers Incentive and Motivation

Life Insurance Cover/WIBA

The results established that only 89% of the respondents do not have life insurance cover. This is a worrying statistic since the healthcare workers are at the frontline in responding to COVID-19 which makes them more vulnerable to the virus hence this is a key requirement for the workforce.

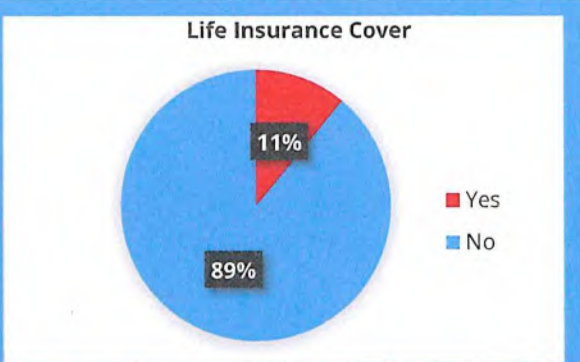


Figure 10: Healthcare workers on Life Insurance cover
Source: Nurses data computed by KELIN

Psychosocial Support

The findings established that 91% of the respondents require psychosocial support.

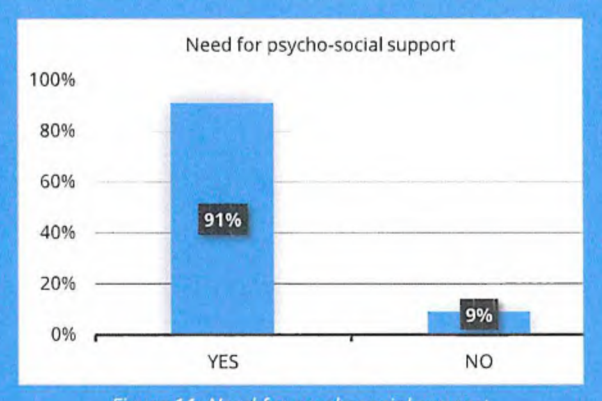


Figure 11: Need for psychosocial support
Source: Nurses data computed by KELIN

Key Issues that drive healthcare workers to seek psychosocial support

The findings show various issues that have triggered healthcare workers need for psychosocial support in the COVID-19 period. Majority of the healthcare workers stated they were not prepared for this situation hence the response has brought about a difficult period in the health workforce. Spending many hours at work and overburdened with client flow, stigmatization from community, regular harassments after work by police because of curfew and debriefing on post death were also identified as other key issues affecting the healthcare workers.

Table 10: Issues driving the need for psychosocial support

	Responses	
	N	Percent (%)
Debriefing on Post death	153	27.9%
Stigmatization from Community	244	44.5%
Hardship situations that we were never prepared for	432	78.8%
Spending many hours at work and overburden with client flow	268	48.9%
Regular harassments after work by police because of curfew	194	35.4%
Other specify	35	6.4%

CHAPTER THREE: CONCLUSIONS AND RECOMMENDATIONS

3.1 CONCLUSIONS

The findings of the assessment suggest that level of preparedness to respond to COVID-19 is still poor given the multiple challenges faced by healthcare workers. In particular, the lack of PPEs, lack of healthcare workers testing as well as insufficient knowledge to respond to COVID-19 brought about by lack of proper training suggest that the government and private bodies still need to do a lot to improve the level of preparedness.

The KELIN team will liaise with the KUCO and other like-minded organizations to examine the results alongside other COVID-19 studies with the aim of prioritizing actions towards addressing healthcare workers challenges by providing a right based response to the management and support being offered to the front-line teams across the country during the COVID-19 epidemic. In particular, "micro trainings" will be provided by the team to provide an opportunity to integrate key messaging on rights-based approaches and demand for occupational safety and health for all healthcare workers. Review of health laws and policies to identify and address gaps in relation to right based approaches for healthcare workers.

3.2 RECOMMENDATIONS

Recommendation to the National Government

i. There is need to review the laws and policies that govern protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This could include life insurance, compensation in regards to accidents/incidents at work.

ii. Resources and mechanisms to capacity build healthcare workforce for epidemics and emergencies. This could include review of the medical curriculum to include compulsory training using case studies like COVID-19.There is a clear capacity gap in regards to respond to COVID-19 hence a training need to be provided for all healthcare workers as part of preparedness mechanisms.

iii. Strengthen all health facilities to have the capacity to handle all diseases by equipping them with proper medical equipment, medical staff and medication which should be accessible and available. This should include isolation centres for respiratory diseases as captured in the TB guidelines on management of the disease.

iv. Develop post COVID-19 strategies to ensure the workforce and resources are not overstretched not to care of other health care needs.

v. Have regular conversations with healthcare unions to understand their level of preparedness to address future epidemics.

vi. Provide enough test kits and prioritize testing of the healthcare workers.

vii. Ensure healthcare workers have the right personal protective equipment which are regular supplied to enable them provide quality health services to patients in epidemic periods.

viii. Provide regular and accurate information pertaining preparedness and response to COVID-19 and epidemics ,e.g trainings made and how many people trained and in which regions, quantity of equipment supplied and which regions etc.

Recommendation to the County Governments

i. County health committee team to work closely with healthcare unions and map out the needs, preparedness to respond to COVID-19 and future epidemics.
ii. Ensure the health care services at the facilities are available and accessible at all times with proper medication, medical personnel and medical equipment.
iii. Review Laws and policies that hinders accessibility of healthcare services to all through the epidemic and post COVID-19.
iv. Ensure attractive remuneration and allowances including life cover are part of the healthcare workers package.

Recommendation to the Healthcare Workers Union

i. Sensitize member on their rights to health to demand for compensation in relation to occupation safety and health.
ii. Ensure health care workers mainstream rights-based approach in their work.
iii. Continuous collaboration with like-minded institutions working on health rights issues to come up with collective advocacy measure for their workers through identification of gaps in health laws and policies that are retrogressive.

Recommendation to the Civil Society Organizations

i. CSOs should work closely with healthcare union to ensure they deliver on health rights issues of the clients they serve.
ii. CSOs to work with other like-minded institutions to ensure the laws and policies developed towards preparedness and responding to COVID-19 and other epidemic reflect rights based approach and have factored the needs of the vulnerable and marginalized communities.
iii. CSOs and other like-minded institutions to ensure the vulnerable communities are able to receive quality COVID-19 healthcare and any future epidemics.
iv. CSOs and other like-minded organizations to develop mechanisms for monitoring, documentation the level of preparedness towards responding to COVID-19 and other epidemics.

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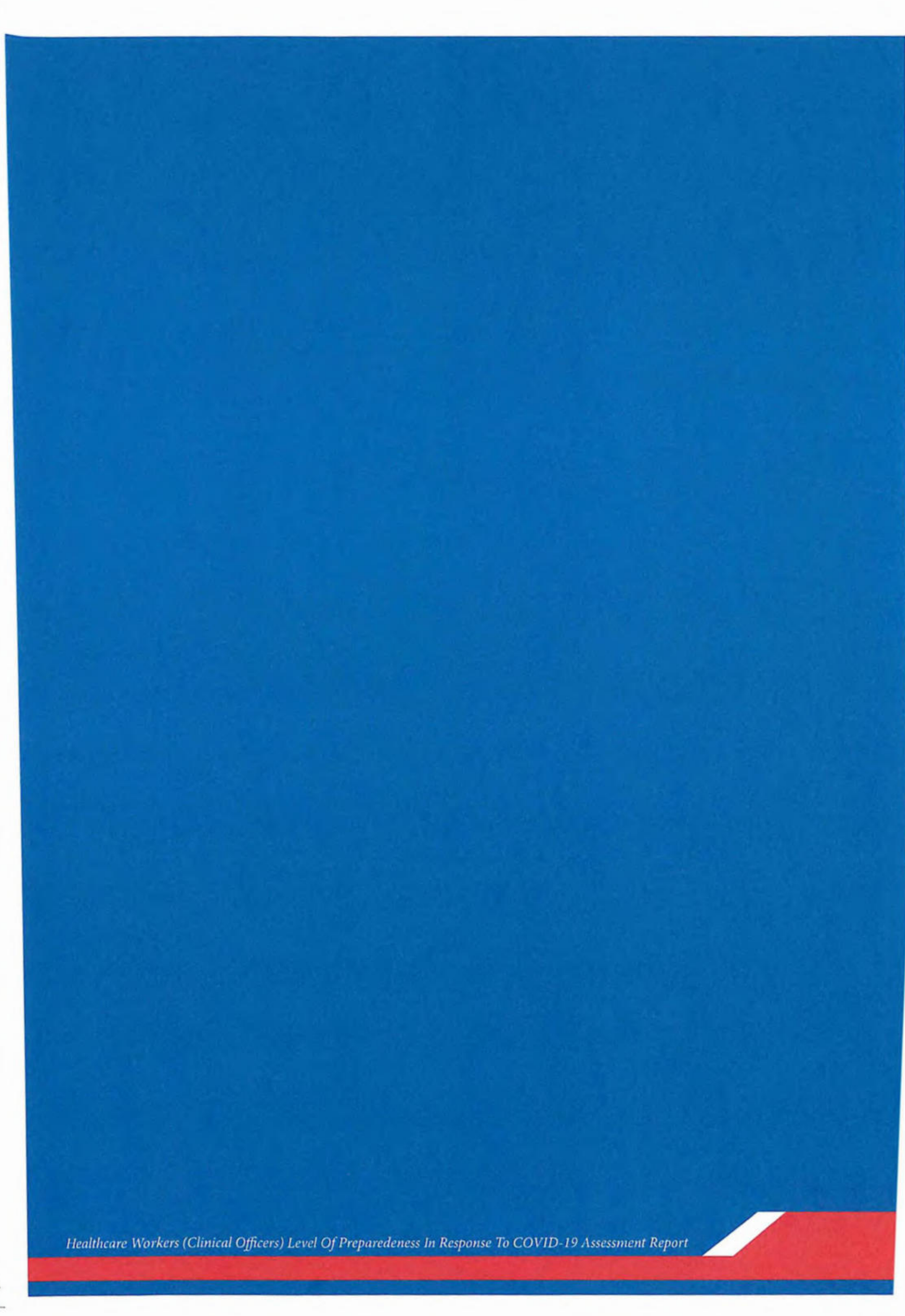
[i] *Burden of endemic health-care-associated infection in developing countries: systematic review and meta-analysis, LANCET 2010*


Healthcare Workers (Clinical Officers) Level Of Preparedeness In Response To COVID-19 Assessment Report

"AM-16"

This is Exhibit marked "AM-16" referred to in the Annexed affidavit/Declaration of Allan Maleche

Sworn/Declared before me on this .... day of .... 20........ at .... in the Republic of Kenya

Commissioner for Oaths

16

THE LEVEL OF PREPAREDNESS OF HEALTHCARE WORKERS' (NURSES) IN RESPONSE TO COVID-19: A ROUTINE MONITORING REPORT.

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ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
CSO	Civil Society Organization
COVID-19	Coronavirus Disease 2019
HIV	Human Immunodeficiency Virus
HW-F	Health Workers at Frontline
IPC	Infection Prevention and Control
KELIN	Kenya Legal and Ethical Issues on HIV/AIDS
M&E	Monitoring and Evaluation
NGO	Non-Governmental Organization
NNAK	National Nurses Association of Kenya
PPE	Personal Protective Equipment
PPS	Population Proportion Sampling
RBA	Rights-Based Approach
TB	Tuberculosis
UK	United Kingdom
US	United States of America
WHO	World Health Organization
WIBA	Work Injury Benefits Act

ACKNOWLEDGEMENTS

The healthcare workers' level of preparedness in response to COVID-19 routine monitoring was made possible due to coordinated efforts by various stakeholders including KELIN, National Nurses Association of Kenya and Civil Society Organizations amongst other like-minded stakeholders. The partners acknowledge contributions from other stakeholders throughout the routine monitoring process, including:

- All healthcare officers (nurses) for collaborating and undertaking the routine monitoring despite their hectic schedule during this time of COVID-19;
- The healthcare workers sub-committee of the COVID-RBA consortium coordinated by KELIN;
- The National Nurses Association of Kenya leadership structure;
- The entire team at the Kenya Legal and Ethical Issues Network on HIV and AIDS particularly the Monitoring and Evaluation team and the Communications team.

EXECUTIVE SUMMARY

The Kenya Legal and Ethical Issues Network on HIV and AIDS a Kenyan NGO working on promoting and protecting the health rights and the National Nurses Association of Kenya who represent all cadres of nurses within the profession with the aim of building and maintaining nursing professional standards, authority, leadership, and trust of the society as critical for generating the energy and flow of ideas needed to maintain a healthy profession. The association is committed to providing quality health care through the delivery of quality nursing services; collaboration with organizations to deliver on quality health for all citizenry and advocacy and lobbying for an improved policy environment.

KELIN, NNAK and other like-minded stakeholders in the health sector developed a working relationship through a consortium to better understand issues healthcare workers are facing during the COVID-19 period. This is with the aim of informing enhanced monitoring of health rights and collectively advocating for the health-related rights of the healthcare workers during this period of COVID-19 and develop short and long term strategies to address rights issues during and after the COVID-19 pandemic.

Contributing to the Government efforts towards ensuring a rights-based response to COVID-19, we surveyed the healthcare workers' level of preparedness in response to this pandemic to provide a rights-based response to the management and support being offered to our frontline teams across the country. It is in recognizing the Government efforts need accountability and support from the greater public, that we shall achieve a standard that upholds human dignity and the safety of our citizens. The survey aimed to determine the level of preparedness, and respond to COVID-19 in context of occupational health and safety. Specific objectives were to:

1. Assess the status of environment and level of preparedness to provide services during COVID-19 period;
2. Assess experiences and challenges faced and major concerns from the health perspective during the COVID period; and
3. Utilize the findings to develop short-term and long-term advocacy approaches that are rights-based and recommendations for the benefit of all healthcare workers in the country.

A health worker at the frontline (HW-F) refers to clinical health workers tending to people who have COVID-19 and non-clinical staff performing heavy duty services such as transporting symptomatic patients, care-setting cleaning, environment decontamination and removal of the deceased for respectful disposition. Together, these workers are at the highest risk of exposure and thus are defined as health workers at the frontline (HW-F).

The survey was informed by a WHO report on health workers infections during epidemics which concluded that, depending on their occupation in the health service, health workers were at 21 to 32 times greater risk of contracting EVD[1]

WHO has provided guidelines on infection, prevention and control (IPC) that includes

WHO report on health worker Ebola infections in Guinea, Liberia and Sierra Leone,2015

health workers at the frontline[2]. Gaps still exist in the current response to COVID-19 where transmission is likely to take place in the health facilities. Among these, the most frequently reported were inappropriate use or lack of personal protective equipment (PPE), lack of sufficient knowledge to respond to COVID-19 as well unfavourable employment working conditions i.e. a majority of the health workers at the frontline lacking life insurance cover.

Assesment

The online survey targeted healthcare workers (nurses) across all the 47 counties in Kenya working in the public and private sector. Data collection was completed with 151 healthcare workers sampled from 33 counties. The survey questionnaire was digitized through a KOBO collect platform and shared in respective NNAK platforms under the leadership of NNAK Chairman and other elected leaders of the union.

Assesment Limitation

Though the Assesment targeted to reach all the 47 counties, the Assesment was able to reach 33 counties. As such, findings can generalize the findings related to those counties but it provides an indication on what could be happening in the other 14 counties. Also, the survey did not achieve its target of 384 nurses hence it might not be generalized to represent the situation of all nurses but for the sampled nurses.

Key Findings

Safe working environment

Evaluation of patients-patients screening at entry

In assessing the health facility preparedness, the findings show that 25% of the healthcare workers are not screening clients at entry and not separating those with respiratory symptoms. According to the interim guideline on management of COVID-19 in Kenya, patient triaging over the telephone should be done before arrival at the clinic. Patients with symptoms of respiratory tract infection should be advised to stay home until the condition resolves hence not all facilities are currently adhering to the guidelines provided which could easily contribute to the increase of COVID-19 spread.

Staffing and ventilation

Further results show that 60% of the facilities lack adequate staff to handle the client flow despite government's allocation of KSh.1 billion from the Universal Health Coverage kitty which was to be disbursed towards the recruitment of health workers curbing the spread of COVID-19 in Kenya. Also, findings show that only 60% of the facilities are well ventilated. These results demonstrate contrary results from what the government has shared with the public in terms of measures taken to curb the spread through recruitment of staff. Therefore, the government has to prioritize and have sufficient healthcare workers to enhance preparedness in response to COVID-19.

Availability of personal protective equipment

Assessment results show that 88% of the healthcare workers do not have personal

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Guidelines on core components of infection prevention and control programmes at the national and acute health care facility level. Geneva: World Health Organization; 2016

protective equipment (PPE) with more than 92% citing lack of eye protection gear, 93% lack isolation gowns and 93% lack protective suits as required by WHO[3] standards , while 92% lack N95 respirators. Only 62% of respondents lacked gloves and 68% lacked surgical masks. Further, the findings established that 75% of the surveyed healthcare workforce are forced to reuse PPEs because of irregular supply of the equipment.

This is against the occupational safety and health standard provided by WHO, Article 41 of the Constitution of Kenya as well as the Employment Act that all demand employers to provide a safe working environment and the proper protective equipment towards protecting their health. In the context of COVID-19, healthcare workers should have this equipment to prevent exposure to the COVID-19 virus. Healthcare workers during this pandemic have been categorized in the high-risk category and have to be provided with sufficient supply of PPE. The government must prioritize access to the above as soon as possible as the healthcare providers are at the epicentre of response and can be agents of the spread of COVID-19 to the rest of the population due to their position as frontline responders.

Cleanliness and waste management of the health facility

The findings show a majority of the health facilities have waste management equipment but only 38% of the health facilities' waste management are cleaned and disinfected. This implies that though measures have been put in place to have the equipment, very little has been done to ensure they are clean and safe which exposes more the healthcare workforce to COVID-19.[4] According to National Biosafety Guidelines, work surfaces and equipment should be decontaminated as soon as possible after specimens are processed. Studies have shown that coronaviruses can survive on environmental surfaces and can infect a person for up to 2–8 hours after being deposited on the surface. Consequently, cleanliness of the waste management equipment is a key infection preventative measure that should be adhered to[5].

Capacity and wellbeing of healthcare workers to respond to COVID-19

Training

The findings show that 58% of the healthcare workers have not been trained on preparedness and response of coronavirus. This indicates that the level of preparedness to respond to the virus as well as providing quality of health services to patients is not up to the expected WHO standards thus jeopardizing the health of patients as well as the healthcare workers as a result of lack/insufficient knowledge or skills to provide better healthcare for the patients. Further, the findings show that 90% of healthcare workers require refresher and additional training.

The interim MoH Guidelines on COVID-19 Management[6] has articulated that every healthcare workers should receive training in updated clinical knowledge of epidemic COVID-19, notification of infection at risk, epidemic prevention tools, and guidelines from the government and hospital authority. These include training staff in the control of infectious diseases, providing access to personal protective equipment and apparatus, and encouraging proper handwashing. Items that are often in contact with respiratory droplets and hands (e.g., doorknobs, faucets, etc.,) should be cleaned and disinfected regularly. The findings show that more than half of the surveyed nurses have not been trained.

Infection prevention and control of epidemic-and pandemic-prone acute respiratory infections in health care. Geneva: World Health Organization; 2014

Infection prevention and control of epidemic-and pandemic-prone acute respiratory infections in health care. Geneva: World Health Organization; 2014

Coronavirus survival on healthcare personal protective equipment, Lisa Casanova (a1), William A. Rutala (a2), David J. Weber (a2) and Mark D. Sobsey

Accommodation/isolation centres for healthcare providers

Results established that 92% of healthcare workers are not provided with alternative accommodation/isolation to minimize the risk of exposing their family members. This further demonstrates the poor level of preparedness by the government in protecting the health of healthcare workers and their immediate families which is a heightened risk factor of exposure to another non-healthcare workforce.

Alternative transport to and from work

Findings showed that 86% of healthcare workers have no transport to and from work during the curfew and partial lockdown. As a result, they are unable to access the health facilities due to constant inquiries by the police manning various roadblocks. This is incognizant of the fact that some healthcare workers do not reside in the counties they currently work in. Hence, the restricted movement caused by the curfew is continuously affecting access to health services for the public due to lack of sufficient health personnel in the facilities. A clear strategy amicably resolves this either through sensitization of the police on the importance of healthcare workforce accessing health facilities as well as their homes or the government to ensure they provide alternative transport for ease of movement of healthcare workers in and out of the hospital.

Testing of healthcare workers

Findings established that 95% of the healthcare workers feel more exposed to COVID-19 due to lack of enough PPE equipment and preparedness of the health facilities. This reiterates low levels of preparedness by the health sector which may hinder the provision of quality healthcare services by the health workforce due of fear. Recent data has shown that 16% of the healthcare workforce in the UK tested positive while in the US more than 9,000 healthcare workforce has tested positive for COVID-19[7]. Previous studies show that during epidemics HCWs are 21-32% more at risk of infection hence a clear reflection on how HCWs also felt in regards to exposure and as a result, the government made a directive for mass testing of HCW.

Further findings established that 97% of healthcare workers have not been tested for COVID-19 as at (24th April 2020). The results demonstrate the level of unpreparedness as the health workforce is at the epicentre of this pandemic. As first responders, they are more exposed since they interact with clients yet they have not been tested to assess if they will continue to provide medical health care or they should be isolated and receive medical care. This considers the fact that the National Government (PS Health) announced testing for healthcare workers on 15th April 2020 when the survey had just commenced.

Life insurance cover/Work Injury Benefit Act

The findings established that only 6% of the respondents have life insurance cover. This is a worrying statistic since the healthcare workers are at the frontline in responding to COVID-19, making them more vulnerable to the virus. The life insurance cover is therefore a key requirement for the workforce. The National Government announced various measures to combat COVID-19 in Kenya. This included the Health and Public Service ministries developing a welfare package to cushion frontline health workers most at risk of contracting

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Interim Guidelines on Management of Covid-19 In Kenya;2020

The Centre for Evidence-Based Medicine

the virus. However, the findings demonstrated that very few HCWs have been put on life insurance cover.

Conclusion

The findings show the health care workers level of preparedness towards response to COVID-19 is poor. Particularly, issues have been cited on lack of personal protective equipment, lack of COVID-19 testing for healthcare workers, and lack of training amongst other key underlying issues which the government and private sector need to immediately address to enhance preparedness. There is need to ensure the various MoH guidelines (Interim Guidelines on the Management of COVID-19 in Kenya; Comprehensive Guide on Mental Health and Psychosocial Support During the COVID-19 Pandemic) towards curbing COVID-19 are implemented to the latter and to ensure transparency and accountability to the resources secured to address COVID-19.

RECOMMENDATIONS

Recommendation to the National Government (The Executive)

1. Review the laws, policies and guidelines on occupational health and safety as well as the implementation of the same towards the protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This could include life insurance and compensation in regards to accidents or incidents at work.
2. Ensure implementation of the reviewed policies to ensure a rights-based approach to health.
3. Health system strengthening through ensuring all health facilities can handle all diseases by equipping them with proper medical equipment, medical staff and medication which should be accessible and available. This should include isolation centres for respiratory diseases as captured in the guidelines on the management of TB. This is addition to strengthening relations with suppliers and manufacturers of personal protective gear and medication both locally and internationally through financial incentives or other means now and in the future, to avoid shortages and ensure a steady increase of the requisite equipment in the country in preparation for any future public health emergencies.
4. Review current national health budget allocation and ensure there is a higher budget assigned to health.
5. Ensure transparency and accountability in the resources allocated for health by factoring public participation in planning and implementation of the interventions through public forums or monthly notices on the MoH website by the various healthcare facilities stating what and how many resources have been allocated to them.
6. Ensure healthcare workers' capacity is enhanced on epidemics and emergencies. This could include innovative ways to build the capacity of HCWs on the interim guideline on COVID-19 as well as a review of the medical curriculum to include compulsory training using case studies like COVID-19.
7. Ensure there is enough supply of PPEs according to the COVID-19 MoH infection, prevention and control guidelines.
8. Develop strategies to ensure other healthcare services run smoothly and there is continuous access to medical services to all despite the COVID-19 pandemic.

9. Provide regular and accurate information about preparedness and response to COVID-19 and epidemics, e.g. training made and how many people trained and in which regions, the quantity of equipment supplied and which regions etc.

Recommendation to the National Assembly

1. There is a need to review the laws and policies that govern the protection of healthcare workers (nurses) in matters about the preparedness of epidemics and occupation safety and health of healthcare workers (nurses). Laws such as the Occupational Safety and Health Act and the Work Injury Benefits Act need to be amended to include provisions that specifically relate to working conditions for healthcare workers (nurses) during a public health emergency. Moreover, rules under Section 36 of Public Health Act should include rules to be made for healthcare workers (nurses) working in an infected area during an epidemic or pandemic period.
2. To review the current national health budget allocation and ensure there is an increased budget assigned to health.
3. To review the proposed Pandemic Response and Management Bill and ensure that funds mobilized for the establishment of a pandemic response fund are directed towards the increase of laboratory testing on healthcare workers (nurses), salary increases for frontline workers and the establishment of more isolation centers for healthcare workers (nurses).
4. To ensure continuous implementation of laws relating to oversight of the National Government to implement laws on national budget allocation on health as well as a strengthened health system.

Recommendation to the Senate

1. To ensure continuous implementation of laws relating to oversight of County Government to implement laws on county budget allocation on health as well as a strengthened health system.

Recommendation to the County Governments

1. Review current county health budget allocations and ensure there is a higher budget assigned to health and accountability and transparency of the resources allocated to curb the pandemic and health in general.
2. County health committee team to work closely with healthcare unions and map out the needs, preparedness to respond to COVID-19 and future epidemics.
3. Ensure the health care services at the facilities are available and accessible at all times with proper medication, medical personnel and medical equipment.
4. Review laws and policies that hinder the accessibility of healthcare services to all through the epidemic and post COVID-19.
5. Ensure attractive remuneration and allowances including life cover are part of the healthcare workers (nurses) package.

Recommendation to the County Governments

1. Review current county health budget allocations and ensure there is a higher budget assigned to health and accountability and transparency of the resources allocated to curb the pandemic and health in general.
2. County health committee team to work closely with healthcare unions and map out the needs, preparedness to respond to COVID-19 and future epidemics.
3. Ensure the health care services at the facilities are available and accessible at all times with proper medication, medical personnel and medical equipment.
4. Review laws and policies that hinder the accessibility of healthcare services to all through the epidemic and post COVID-19.
5. Ensure attractive remuneration and allowances including life cover are part of the healthcare workers package.

Recommendation to the County Assembly

1. There is a need to review the laws and policies that govern the protection of healthcare workers in matters pertaining to the preparedness of epidemics and occupation safety and health of healthcare workers. This should include life insurance, compensation in regards to accidents or incidents at work.
2. To review the current county health budget allocation and ensure there is an increased budget assigned to health.
3. Law Society of Kenya
4. To continuously advocate for the rights of healthcare workers through inquiring for information on working conditions for persons providing essential health services and measure taken to mitigate occupational safety and health risks, insurance coverage and availability of frontline healthcare shelters.

Recommendation to the Healthcare Workers Union

1. Sensitize members on their rights to health to demand compensation in relation to occupational safety and health.
2. Have joint litigation with like-minded partners working on health rights issues on occupational safety and health of healthcare workers and advocacy for the availability of PPEs.
3. Ensure healthcare workers mainstream rights-based approach in their work.
4. Continuous collaboration with like-minded institutions working on health rights issues to come up with collective advocacy measure for their workers through the identification of *gaps in health laws and policies that are retrogressive.*
5.

Recommendation to the Media

1. Engage more on a fact-finding about the level of preparedness beyond what is provided during press conferences and counter the facts if they are contradicting the provided information.
2. Highlight stories on the plight of healthcare workers during the COVID-19 period as well as success stories on the effective response to COVID-19.
3. Recommendation to the Civil Society Organizations
4. CSO should work closely with the healthcare union to ensure they deliver on health rights issues of the clients they serve.
5. CSOs to work with other like-minded institutions to ensure the laws and policies developed towards preparedness and responding to COVID-19 and other epidemics reflect a rights-based approach and have factored the needs of the vulnerable and marginalized communities.
6. CSOs and other like-minded institutions to ensure the vulnerable communities can receive quality COVID-19 healthcare and any future epidemics.

9. CSOs and other like-minded organizations to develop mechanisms for monitoring, documentation the level of preparedness towards responding to COVID-19 and other epidemics.

Recommendation to the UN Partners and Donors

1. Ensure measures are put in place to ensure the realization of the right to health to all through continuous supporting the global health initiatives through increased funding in addressing epidemics.
2. Document lessons learnt out of COVID-19 epidemic to influence the review of the current global disaster management plans as well be better prepared for future epidemics.

Recommendation to the International Labour Organization

1. Ensure occupational safety and health is universally guaranteed during this pandemic and in the future since it is a core aspect of decent work. Healthcare workers in Kenya and around the world should be able to feel safe in their workplaces, reassured that they are not exposed to undue risks.
2. Ensure protection of labour rights and the promotion of safe and secure working environments for all healthcare workers.

Recommendation to the All Health Stakeholders

1. Ensure there is continuous access to health services for all despite the COVID-19 outbreak through the provision of health services for service providers and demand for health services by service users.

CHAPTER ONE - INTRODUCTION

SITUATION ANALYSIS

Coronavirus disease 2019 (covid19) is a new respiratory illness that can easily be spread from person to person. Globally they are 3,066,417 COVID-19 positive cases and 211,66 deaths. In Kenya, the first case was reported on 13th March 2020 and the cases have currently risen to 465 with 24 deaths. [8]

1.1 ABOUT THE SUB COMMITTEE

KELIN, NNAK and other consortium members are working in partnership to strengthen governance, promote equity, and build capacities to demand health-related rights during the COVID-19 pandemic through developing collective advocacy.

KELIN has been tasked with providing technical assistance and guidance on rights-based approaches by ensuring appropriate adaptation and high-quality implementation of health rights by documenting the situation analysis and collectively develop strategies to address these issues through advocating for laws, policies, and system gaps to be addressed.

1.2 PURPOSE AND OBJECTIVES OF THE SURVEY

The assessment aimed to determine the level of preparedness respond to COVID-19 in context of occupational health and safety. Specific objectives were to:

1. Assess the status of environment and level of preparedness to provide services during COVID-19 period;
2. Assess experiences and challenges faced and major concerns from the health perspective.

1.6 METHODOLOGY

The online assessment targeted healthcare workers (nurses) across all the 47 counties. The sampling frame consisted of the healthcare workers (nurses) in the counties with the use of PPEs applied to cater to the population size (nurses) difference spread across the counties. The survey questionnaire was developed, tested and digitized through KOBO collect platform and shared in the respective nurses' platforms under the leadership of NNAK chairman and other elected leaders of the union.

1.7 TIMEFRAME

The survey was conducted from 11th April to 24th April 2020.

1.8 QUALITY CONTROL

The data collection forms in KOBO collect contained data validation checks and skip logics that decreased human error in data entry. KELIN's Statistician checked for duplicate entries in the KOBO toolkit system as well as outliers throughout the data collection exercise. A daily check of survey time stamps and analysis of average completion time was shared out with the respective coordination team, flagging any outliers for follow-up.

1.6 DATA ANALYSIS

Quantitative analysis was done using STATA while qualitative analysis was done using Atlas.t

1.7 STUDY LIMITATION

The survey targeted at least 384 nurses in the 47 counties but was able to reach 151 nurses in 33 counties hence the findings cannot be completely generalized to represent the nurses in the 47 counties but rather nurses representing the counties reached.

https://www.health.go.ke/covid-19/

CHAPTER TWO - BASELINE FINDINGS

2.1 INTRODUCTION

This chapter presents the findings of the assessment. It provides a background of study participants followed by the status of a safe working environment as well as the level of preparedness by healthcare workers and finally incentives and motivations.

2.1.2 RESPONSE RATE

The target sample for this survey was 384 healthcare workers (nurses) which included 5% non-response rate. Nevertheless, at the end of the survey, 151 respondents undertook the survey which translates to a response rate of 45% which is below 95% target with 5% non-response rate is less than what had been projected. Findings show Nairobi and Kiambu had the highest number of respondents at 37.7% and 7.3% respectively.

Table 1: Response Rate

County	Frequency	Per cent	County	Frequency	Per cent
Baringo	1	.7	Marsabit	1	.7
Bungoma	1	.7	Meru	3	2.0
Busia	5	3.3	Migori	1	.7
Embu	3	2.0	Mombasa	7	4.6
Garissa	1	.7	Nairobi City	57	37.7
Homa Bay	7	4.6	Nakuru	9	6.0
Isiolo	1	.7	Nandi	1	.7
Kajiado	5	3.3	Narok	1	.7
Kakamega	1	.7	Nyandarua	1	.7
Kiambu	11	7.3	Nyeri	1	.7
Kilifi	4	2.6	Siaya	1	.7
Kirinyaga	2	1.3	Taita/Taveta	5	3.3
Kisumu	3	2.0	Trans Nzoia	1	.7
Kitui	4	2.6	Turkana	2	1.3
Kwale	2	1.3	Uasin Gishu	1	.7
Machakos	6	4.0	Vihiga	1	.7
Makueni	1	.7	Marsabit	1	.7

2.1.3 Sex of the respondents

The results findings show that the majority of the respondents are male (64%) while female (36%).

64%
Male

36%
Female

Figure 1: Sex of the respondent
Data Source: Computed by author using survey data

2.1.4 Age of the respondents

The majority (40%) of the respondents are healthcare workers of age (31-35 years), the lowest (1%) number of respondents are of age 18-24 years.

Age	Frequency	Per cent
18-24	4	3%
25-30	36	24%
31-35	47	31%
36-40	22	15%
40-45	17	11%
46-49	8	6%
50 & above	17	11%
Total	151	100.0

2.2 FACILITY THE RESPONDENTS ARE CURRENTLY PROVIDING HEALTH CARE SERVICES

The majority of the respondents are currently providing healthcare services at government health facilities (74%) and private facilities (16.4%).

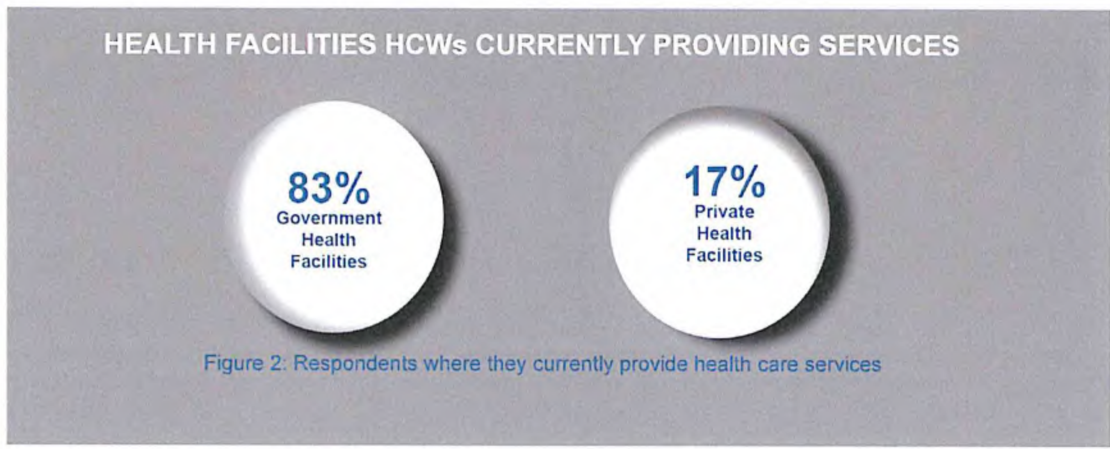


Figure 2: Respondents where they currently provide health care services

2.3 HEALTH FACILITY PREPAREDENESS TO HANDLE COVID 19 CASES

The findings established that 43% of the facilities are not screening clients at entry and separating the ones demonstrating respiratory symptoms as shown in figure 3 below.

HAVE YOU ENCOUNTERED ANY PATIENT PRESENTING COVID-19 SYMPTOMS IN YOUR FACILITY?

Figure 3: Screening of client at entry and separation of patients with respiratory symptoms

Results further show that 37% of the respondents stated that the number of cases presenting COVID-19 symptoms is increasing in the health facilities. According to the Kenya case management protocol, when the number of cases increases then facilities should be identified for isolation of mild cases outside of the hospitals. Though the numbers from the survey keep on increasing, no isolation areas have been created in most of these health facilities.

COVID-19 SYMPTOMS PRESENTED IN THE HEALTH FACILITIES

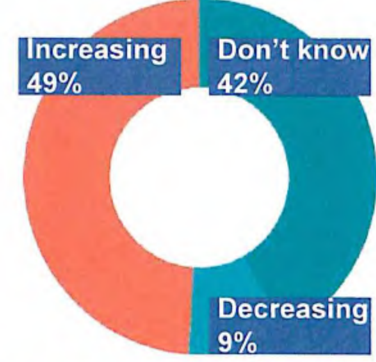


Figure 4: Staffing of the health facilities to handle client flow

Assessment findings established that 86% of the healthcare workers (nurses) felt the health facilities are not prepared to handle COVID-19 client flow.

FACILITY PREPARED TO HANDLE COVID-19 CLIENT FLOW

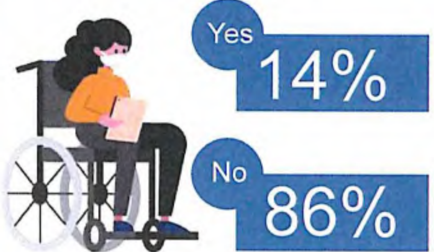


Figure 5: Facilities Ventilation

FACILITY SCREENS CLIENTS AT ENTRY AND SEPARATES THOSE WITH RESPIRATORY SYMPTOMS

68%
Screen Clients and separate those with respiratory symptoms.

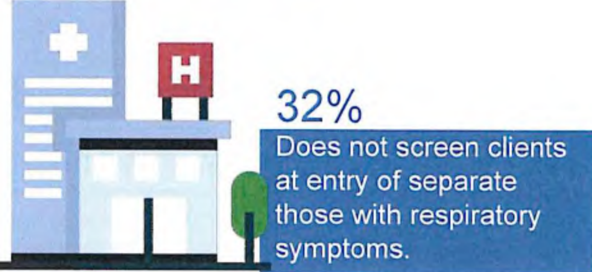


Figure 6: Screening of client at entry and separation of patients with respiratory symptoms

AVAILABILITY OF STAFF TO HANDLE COVID-19 PATIENT FLOW IN THE FACILITY

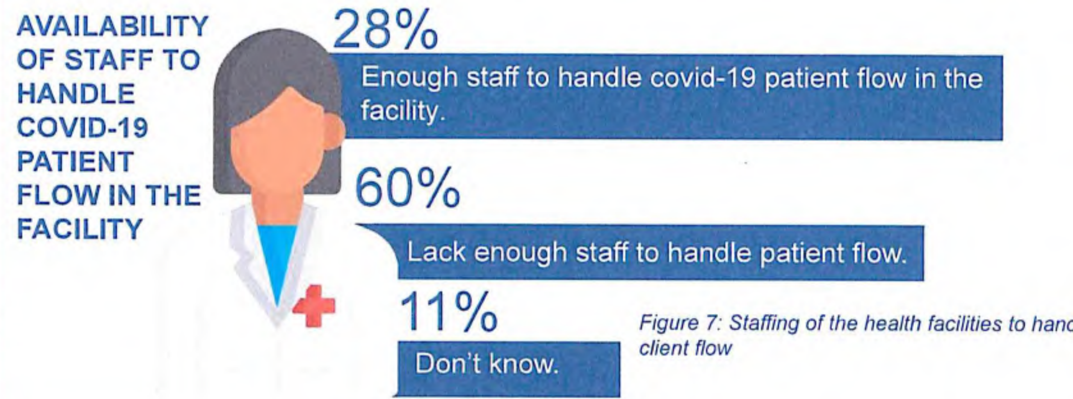


Figure 7: Staffing of the health facilities to handle client flow

Study findings show only 40% of the health facilities are not well ventilated. According to MoH guidelines on respiratory diseases, the facilities need to have natural ventilation; free flow of ambient air in and out through open windows for infection prevention and control. Ensure adequate room ventilation.

These results show that much has been done by the government to ensure the facilities adhere to standards but more efforts have to be done to ensure the remaining facilities adhere to these standards to be able to better address COVID-19 pandemic through reducing the spread within the health facilities.

HEALTH FACILITY VENTILATION

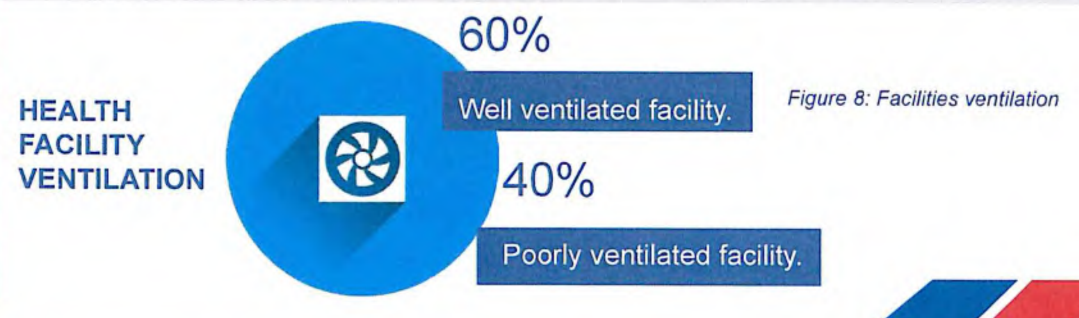


Figure 8: Facilities ventilation

ENVIRONMENTAL INFECTION CONTROL

The assessment findings show that majority of the health facilities (83%) have waste management equipment with 28% of the waste management in the facilities not being cleaned and disinfected. The medical waste from confirmed or suspected people who have COVID-19 infection must be considered as infectious medical waste and disposed of accordingly. Routine cleaning and disinfection are captured in the case management protocol under procedures COVID-19 waste management guidelines yet this is not fully adhered by all health facilities hence there is a great need to ensure all facilities have the waste management equipment cleaned and disinfected. These findings imply that the healthcare workforce is exposed to COVID-19 through poor adherence to environmental infection control guidelines.

Figure 9: Health Facilities Waste Management Equipment

Figure 10: Cleanliness and disinfection of the waste management facilities

CHANGING ROOMS CLEANLINESS

Wearing the PPE correctly will protect the healthcare worker from contamination. After the patient has been examined, the removal (doffing) of the PPE and disposing of the PPE is a critical and important step that needs to be carefully carried out to avoid self-contamination because the PPE could by now be contaminated. PPEs can be reused by placing them in a bag or container for disinfection or disposed of if they are single-use.

Findings show that 84% of the healthcare workers stated that the health facilities do not have enough changing areas and restrooms and further results show that 83% of the respondents stated that these changing areas and restrooms are not regularly cleaned and disinfected putting the healthcare workers more vulnerable to COVID-19 exposure.

Figure 11: Changing rooms in health facilities

Figure 12: Facilities ventilation

AVAILABILITY OF PERSONAL PROTECTIVE EQUIPMENT MATERIALS

All healthcare personnel who enter the patient's room should take standard and contact precautions. The COVID-19 management protocol has highlighted that PPE is to be provided to staff healthcare workers who manage patients clinically and have close contact (<1 meter) with known/suspected people who have COVID-19. The materials to be provided include Eye Protection (e.g. Goggles/ Face Shield), Particulate Respirators (e.g. N95 masks), Gown, Surgical Masks and Gloves.

The results show 96% of the healthcare workers (nurses) do not have enough/sufficient personal protective equipment.

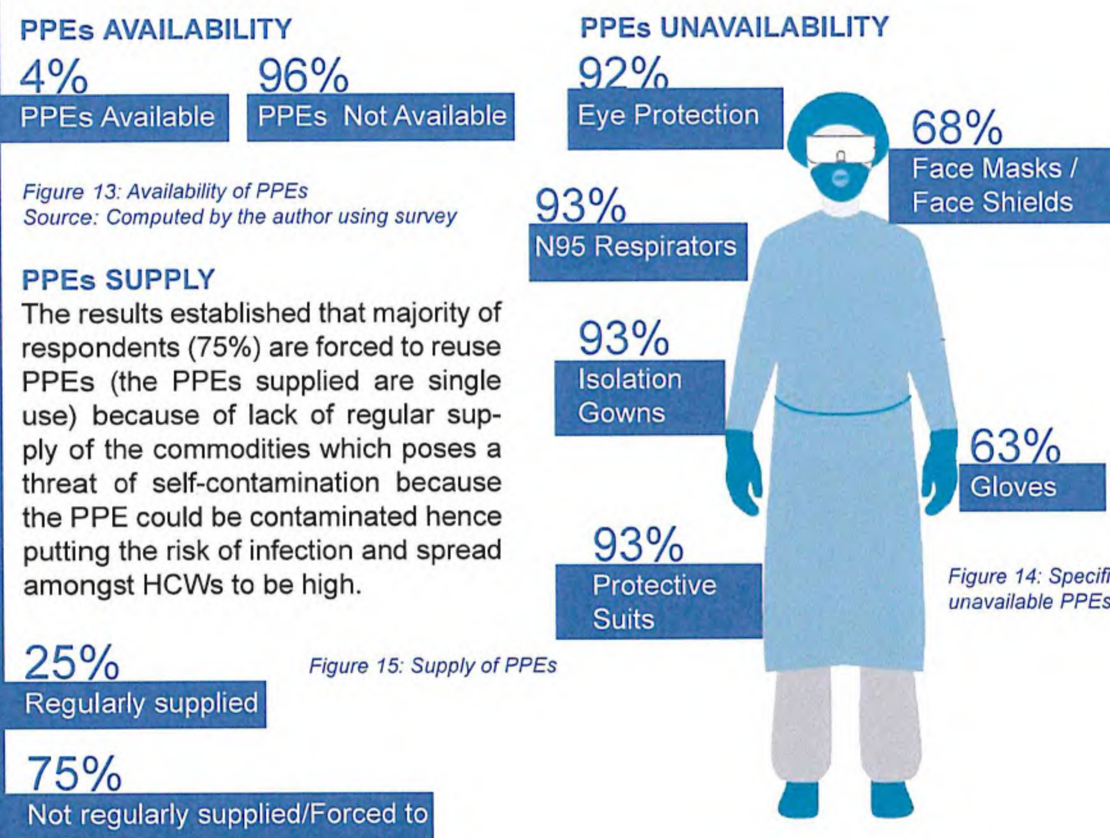


Figure 13: Availability of PPEs
Source: Computed by the author using survey

PPEs SUPPLY

The results established that majority of respondents (75%) are forced to reuse PPEs (the PPEs supplied are single use) because of lack of regular supply of the commodities which poses a threat of self-contamination because the PPE could be contaminated hence putting the risk of infection and spread amongst HCWs to be high.

Figure 14: Specific unavailable PPEs

Figure 15: Supply of PPEs

SPECIFIC PERSONAL PROTECTIVE EQUIPMENT AVAILABILITY

The findings demonstrated that the majority of healthcare workers (nurses) lack PPE equipment. With 92% citing they lack eye protection gear, 93% lack isolation gowns, 93% lack protective suits, 93% lack N95 respirators while 68% lack face shields and 63% lack. According to the breakdown expenditure by the government from the KSh1 billion donated by the World Bank for emergency response, including procurement of Personal Protective Equipment (PPEs), KSh277.9 million has been spent on procurement of PPEs from mid-March to April 24th 2020 when the survey was still been conducted.

2.2 CAPACITY AND WELLBEING OF HEALTHCARE WORKERS TO RESPOND TO COVID-19

The COVID-19 management protocol stipulates that facilities should identify and train personnel who will take care of people who have COVID-19, all the staff in the facility should be sensitized on COVID-19, facilities should also ensure they identify clinical or lab personnel that are trained on sample collection. The health facility team consisting of dialysis physicians, nursing staff and technologists should receive training in updated clinical knowledge of epidemic COVID-19, notification of infection at risk, epidemic prevention tools, and guidelines from the government and hospital authority.

In assessing healthcare workers capacity on COVID-19 response, the findings show 54% of the healthcare workers have not been trained on preparedness and response of coronavirus. Further, the findings show that 91% of healthcare workers require refresher and additional training.

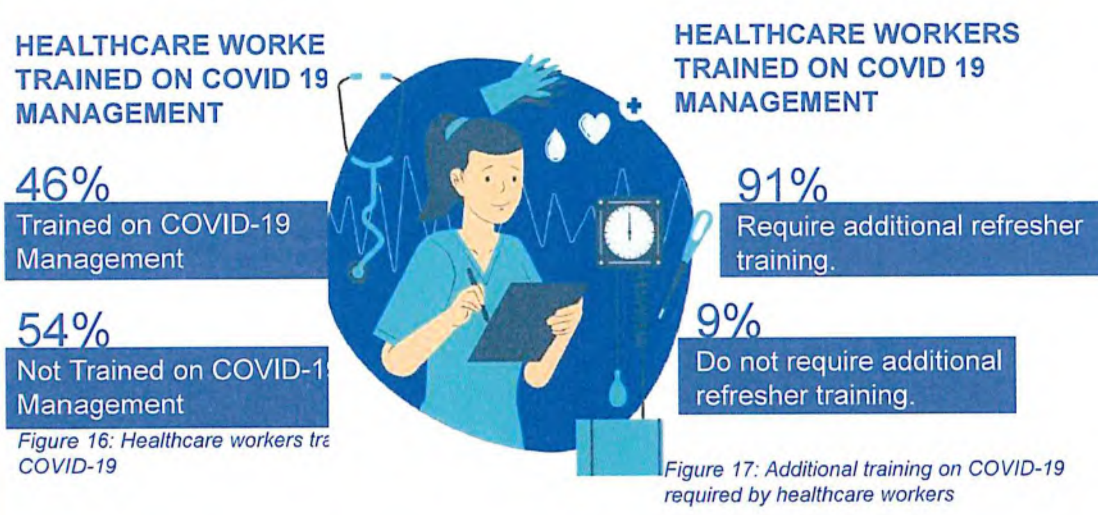


Figure 16: Healthcare workers tra COVID-19

Figure 17: Additional training on COVID-19 required by healthcare workers

ALTERNATIVE ACCOMMODATION FOR HEALTHCARE PROVIDERS

Findings demonstrate that majority of the healthcare workers 93% are not provided alternative accommodation to minimize the risk of exposing their family members. These findings imply that the healthcare workers are putting their families and loved ones at risk of exposure since the government and non-state actors in the sector are not providing alternative accommodation during this pandemic period.

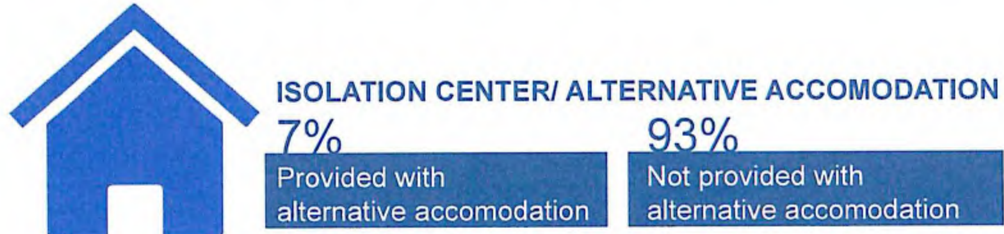


Figure 18: Isolation centre/alternative accommodation

UPTAKE OF HEALTH SERVICES IN THE FACILITY DURING COVID-19 PANDEMIC (RIGHT TO HEALTH)

The right to health is a fundamental human right guaranteed in the Constitution of Kenya. Article 43 (1) (a) of the Constitution provides that every person has the right to the highest attainable standard of health, which includes the right to access health care services including reproductive health services. Article 43 (2) also provides that a person shall not be denied emergency medical treatment.

The survey results established 84% of the healthcare workers stated that COVID-19 pandemic has affected uptake of health services at the health facilities. This is incognizant of the fact that there is a high prevalence of communicable and non-communicable diseases hence putting the patients' health at risk.

COVID-19 AND UPTAKE OF HEALTH SERVICES IN THE FACILITY

84%
Has affected the uptake of health services.

16%
Has not affected the uptake of health services.

Figure 19: Uptake of health services

ALTERNATIVE TRANSPORT TO AND FROM WORK

The results show nearly half of the healthcare workers 86% have not been provided with alternative transport to and from work and with the curfew and partial lockdown, this leads to difficulties in accessing health facilities due to constant inquiries by police at various roadblocks.

Table 3: Alternative Transport Provided by Employer

		Per cent
Can you easily access your work station from your place of residence?	No	54
	Yes	46
Have you been provided with an alternative transport?	No	86
	Yes	14
	Total	**100.0**

SURVEILLANCE OF HEALTHCARE PERSONNEL (nurses)

HEALTHCARE WORKERS (Nurses), especially in communities where transmission is occurring, should be monitored daily for signs and symptoms of febrile respiratory illness and[11] tested for COVID-19.

HEALTHCARE WORKERS (Nurses) (nurses)EXPOSURE TO COVID-19

The findings show 95% of the respondents feel very exposed to COVID-19 as a result of their work as first responders and lack of preparedness of the health facilities.

EXPOSURE TO COVID-19

95%
Feel very exposed to COVID-19.

5%
Don't feel very exposed to COVID-19.

Figure 20: Exposure to COVID-19

TESTING OF HEALTHCARE WORKERS FOR COVID-19

The results show 97% of the healthcare workers (nurses) have not been tested for COVID-19. One key approach in reducing the spread of COVID-19 is by ensuring there is the elimination of healthcare-associated infection (HAI), also referred to as "hospital" infection, which is an infection occurring in a patient during the process of care in a hospital or other health care facility which was not present or incubating at the time of admission. This means that all healthcare workforce should be tested to understand the disease burden within the healthcare workforce which will reduce the spread of the virus in the health facilities among staff and patients.

This is cognizant of the fact that the Health CAS, declared that mass testing for COVID-19 to be conducted for all high-risk individuals (healthcare workers) and high-risk regions on 14th April 2020 when the survey had just commenced.

HEALTHCARE (NURSES) TESTED FOR COVID-19

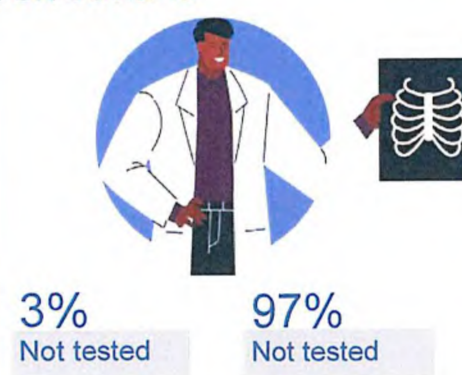


Figure 21: Healthcare workers (nurses) tested for COVID-19

WHY HAVE HEALTH CARE WORKERS NOT BEEN TESTED

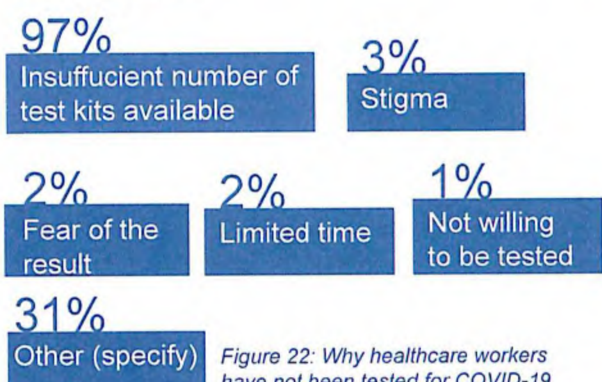


Figure 22: Why healthcare workers have not been tested for COVID-19

WHY HAVE HEALTHCARE WORKERS NOT BEEN TESTED FOR COVID-19?

The results established that the majority 61% of the healthcare workers (nurses) cited lack of test kits as the main reason as to why they have not been tested for COVID-19. This is despite the government having spent KSh197 million to purchase Roche test kits yet most HCWs who are at the epicentre of the COVID-19 have not been tested.

HEALTHCARE WORKERS INCENTIVE AND MOTIVATION

The survey findings established that 67% of the respondents are not aware of the existing reporting mechanisms for compensation in case of exposure to COVID-19 or risks related to the virus.

REPORTING MECHANISMS RISK AND EXPOSURE TO COVID 19

33%
There are reporting mechanisms risk and exposure to COVID-19.

67%
There are no reporting mechanisms risk and exposure to COVID-19.

Figure 24: Existence of reporting mechanisms-exposure and risk COVID-19

LIFE INSURANCE COVER/ WORK INJURY BENEFITS ACT (WIBA)

The results established that only 93% of the respondents do not have a life insurance cover. This is a worrying statistic since the healthcare workers are at the frontline in responding to COVID-19 which makes them more vulnerable to the virus hence this is a key requirement for the workforce.

WORK BENEFIT INJURY ACT

21%
Stigmatization from community.

21%
Stigmatization from community.

Figure 25: Healthcare workers on Life Insurance cover

PSYCHOSOCIAL SUPPORT

The findings established that 95% of the respondents require psychosocial support. A comprehensive guide on mental health and psychosocial support during the COVID-19 pandemic has been developed with some coping strategies suggested including ensuring sufficient rest and respite during work or between shifts though this has not been adhered because of lack of healthcare workers since they cannot find enough time to rest.

HEALTHCARE WORKERS (NURSES) PSYCHOSOCIAL SUPPORT

95%
Need psychosocial support

5%
Don't need psychosocial support.

Figure 26: Psychosocial support for healthcare workers

REASONS FOR PSYCHOSOCIAL SUPPORT

21%
Stigmatization from community.

40%
Hardship situations that we never experienced before.

20%
Spending many hours at work and being overburdened with client flow

16%
Regular harrasment after work by police because of curfew

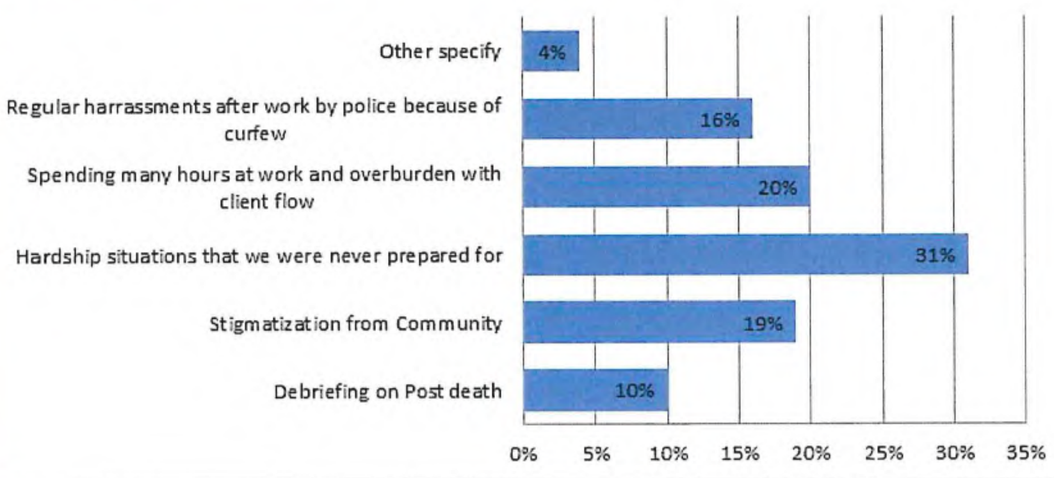
3%
Other, specify.

Figure 23: Reasons for psychosocial support

KEY ISSUES THAT DRIVE HEALTHCARE WORKERS TO SEEK PSYCHOSOCIAL SUPPORT

The findings show various issues that have triggered healthcare workers need for psychosocial support in the COVID-19 period. Majority of the healthcare workers, 31%, stated they were not prepared for this situation hence the response has brought about a difficult period in the health workforce. Spending many hours at work and overburden with client flow, stigmatization from the community, regular harassments after work by police because of curfew and debriefing on post-death were also identified as other key issues affecting the healthcare workers.

KEY ISSUES THAT DRIVE HEALTHCARE WORKERS(NURSES) TO SEEK PSYCHOSOCIAL SUPPORT



CHAPTER THREE: CONCLUSIONS AND RECOMMENDATIONS

CHAPTER THREE:

CONCLUSIONS AND RECOMMENDATIONS

3.1 INTRODUCTION

This chapter presents the summary and conclusion that have been derived from the assessment, focusing on the introduction, literature review, methodology and analysis of the survey results. The chapter also presents recommendations based on the assessment findings.The assessment aimed to assess healthcare workers level of preparedness towards COVID-19 response to provide a right based response to the management and support being offered to our frontline teams across the country. The objectives of the assessment were: assess the status of environment and level of preparedness to provide services during COVID-19 period; assess experiences and challenges faced and major concerns from the health perspective. Data was collected through healthcare workers filling an online questionnaire that was developed in KOBO platform. Data were analyzed using descriptive statistics.

The findings of the assessment are as follows: 91% of the healthcare workers do not have sufficient PPE equipment and 72% are forced to reuse PPEs because of irregular supply of the commodities; 41% of healthcare workers have not been trained on COVID-19 management and 84% of the healthcare workers require additional training on COVID-19; on environmental cleanliness, only 34% of the health facilities are regularly cleaning and disinfecting the waste management equipment; 82% of the respondents stated uptake of other health services has been affected meaning majority of patients are not accessing medical care which is against Article 41 on rights to health; 95% of healthcare workers have not been tested for COVID-19 despite the Health CAS declaring the commencement of mass testing for COVID-19 targeting high-risk persons and regions almost a month ago before the survey started; 91% of healthcare workers do not have life insurance cover despite government providing a directive to develop a welfare package to cushion frontline health workers; 82% of healthcare workers require psychosocial support yet we have limited HCWs hence they still lack time to get adequate rest.

3.1.1 Conclusion

The assessment sought out to determine the level of preparedness of health workers in response to COVID-19. The findings show that there is poor occupational safety and health, low level of healthcare workers testing for COVID-19 is majorly be attributed to the unavailability of test kits. The findings show clearly that there are insufficient PPEs for the healthcare workers to be able to respond better to COIVID-19 as they protect themselves from infection or infecting patients. Moreover, the majority of the healthcare workers lack life insurance cover despite being at the frontline providing services during the pandemic. Slightly more than half of the healthcare workers have been trained on COVID-19 case management hence affecting the quality of services to be provided. Finally, due to COVID-19 other healthcare services have vastly been affected hence the majority of the population of accessing basic medical services.

The KELIN team will liaise with NNAK and other like-minded organizations to examine the results alongside other COVID-19 studies to prioritize actions towards addressing healthcare workers challenges by providing a right based response to the management and support being offered to the frontline teams across the country during the COVID-19 epidemic. In particular, “micro training” will be provided by the team to provide an opportunity to integrate key messaging on rights-based approaches and demand for occupational safety and health for all healthcare workers. Review of health laws and policies to identify and address gaps concerning right based approaches for healthcare workers.

3.2 RECOMMENDATIONS

This section presents the recommendations for National, County Governments, National Assembly and Senate, multinationals, development partners and other stakeholders that have been informed by the survey in aimed providing a right based response to the management and support being offered to our frontline teams across the country.

Recommendation to the National Government (The Executive)

1. Review the laws, policies and guidelines on occupational health and safety as well as the implementation of the same towards the protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This could include life insurance, compensation in regards to accidents or incidents at work.
2. Ensure implementation of the reviewed policies to ensure a rights-based approach to health.
3. Health system strengthening through ensuring all health facilities can handle all diseases by equipping them with proper medical equipment, medical staff and medication which should be accessible and available. This should include isolation centres for respiratory diseases as captured in the guidelines on the management of TB. This is addition to strengthening relations with suppliers and manufacturers of personal protective gear and medication both locally and internationally through financial incentives or other means now and in the future, to avoid shortages and ensure a steady increase of the requisite equipment in the country in preparation for any future public health emergencies.
4. Review current national health budget allocation and ensure there is a higher budget assigned to health.
5. Ensure transparency and accountability in the resources allocated for health by factoring public participation in planning and implementation of the interventions through public forums or monthly notices on the MoH website by the various healthcare facilities stating what and how many resources have been allocated to them.
6. Ensure healthcare workers' capacity is enhanced on epidemics and emergencies. This could include innovative ways to capacity build HCWs on the interim guideline on COVID-19 as well as a review of the medical curriculum to include compulsory training using case studies like COVID-19.
7. Ensure there is enough supply of PPEs according to the COVID-19 MoH infection, prevention and control guidelines.
8. Develop strategies to ensure other healthcare services run smoothly and there is continuous access to medical services to all despite the COVID-19 pandemic.
9. Provide regular and accurate information pertaining preparedness and response to COVID-19 and epidemics, e.g. the number of training sessions held and how many people trained and in which regions, the quantity of equipment supplied and which regions etc.

Recommendation to the National Assembly

1. There is a need to review the laws and policies that govern the protection of healthcare workers in matters about the preparedness of epidemics and occupation safety and health of healthcare workers. Laws such as the Occupational Safety and Health Act and the Work Injury Benefits Act need to be amended to include provisions that specifically relate to working conditions for healthcare workers during a public health emergency. Moreover, rules under Section 36 of Public Health Act should include rules to be made for healthcare workers working in an infected area during an epidemic or pandemic period.
2. To review the current national health budget allocation and ensure there is an in creased budget assigned to health.
3. To review the proposed Pandemic Response and Management Bill and ensure that funds mobilized for the establishment of a pandemic response fund are direct ed towards the increase of laboratory testing on healthcare workers, salary increases for frontline workers and the establishment of more isolation centers for healthcare workers.
4. To ensure continuous implementation of laws relating to oversight of the National Government to implement laws on national budget allocation on health as well as a strengthened health system.

Recommendation to the Senate

1. To ensure continuous implementation of laws relating to oversight of County Government to implement laws on county budget allocation on health as well as a strengthened health system.

Recommendation to the County Governments

1. Review current county health budget allocation and ensure there is a higher budget assigned to health and accountability and transparency of the resources allocated to curb the pandemic and health in general.
2. County health committee team to work closely with healthcare unions and map out the needs, preparedness to respond to COVID-19 and future epidemics.
3. Ensure the health care services at the facilities are available and accessible at all times with proper medication, medical personnel and medical equipment.
4. Review Laws and policies that hinder the accessibility of healthcare services to all through the epidemic and post COVID-19.
5. Ensure attractive remuneration and allowances including life cover are part of the healthcare workers package.

Recommendation to the County Assembly

1. There is a need to review the laws and policies that govern the protection of healthcare workers in matters pertaining to the preparedness of epidemics and occupation safety and health of healthcare workers. This should include life insurance, compensation in regards to accidents or incidents at work.
2. To review the current county health budget allocation and ensure there is an increased budget assigned to health.

Law Society of Kenya

1. To continuously advocate for the rights of healthcare workers through inquiring for information on working conditions for persons providing essential health services and measure taken to mitigate occupational safety and health risks, insurance coverage

Recommendation to the Healthcare Workers Union

1. Sensitize member on their rights to health to demand compensation in relation to occupational safety and health.
2. Have joint litigation with like-minded partners working on health rights issues on occupational safety and health of healthcare workers and advocacy for the availability of PPEs.
3. Ensure healthcare workers mainstream rights-based approach in their work.
4. Continuous collaboration with like-minded institutions working on health rights issues to come up with collective advocacy measure for their workers through the identification of gaps in health laws and policies that are retrogressive.

The Media

1. Engage more on fact-finding of the level of preparedness beyond what is provided during press conferences and counter the facts if they are contradicting the provided information.
2. Highlight stories on the plight of healthcare workers during the COVID-19 period as well as success stories in the effective response to COVID-19.

Recommendation to the Civil Society Organizations

1. CSO should work closely with the healthcare union to ensure they deliver on health rights issues of the clients they serve.
2. CSOs to work with other like-minded institutions to ensure the laws and policies developed towards preparedness and responding to COVID-19 and other epidemic reflect rights-based approach and have factored the needs of the vulnerable and marginalized communities.
3. CSOs and other like-minded institutions to ensure the vulnerable communities can receive quality COVID-19 healthcare and any future epidemics.
4. CSOs and other like-minded organizations to develop mechanisms for monitoring, documentation the level of preparedness towards responding to COVID-19 and other epidemics.

Recommendation to the UN Partners and Donors

1. Ensure measures are put in place to ensure the realization of the right to health to all through continuous supporting the global health initiatives through increased funding in addressing epidemics.
2. Document lessons learnt out of COVID-19 epidemic to influence the review of the current global Disaster management plans as well be better prepared for future epidemics.

Recommendation to the International Labour Organization

1. Ensure occupational safety and health is universally guaranteed during this pandemic and in the future since it is a core aspect of decent work. Healthcare workers in Kenya and around the world should be able to feel safe in their workplaces, reassured that they are not exposed to undue risks.
2. Ensure protection of labour rights and the promotion of safe and secure working environments for all healthcare workers.

Recommendation to the All Health Stakeholders

1. Ensure there is continuous access to health services for all despite the COVID-19 outbreak through the provision of health services for service providers and demand for health services by service users.

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This is Exhibit marked "AM – 17"
referred to in the Annexed affidavit/Declaration
of Allan Malecha
Sworn/Declared before me on this............
day of..........20..........
at..........in the Republic of Kenya
....
Commissioner for Oaths

HEALTHCARE WORKERS' (MEDICAL PRACTITIONERS, PHARMACISTS AND DENTISTS) LEVEL OF PREPAREDENESS IN RESPONSE TO COVID-19

ROUTINE MONITORING REPORT

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ACRONYMS

AIDS- Acquired Immune Deficiency Syndrome
CSO-Civil Society Organization
COVID-19-Coronavirus Disease 2019
HIV- Human Immunodeficiency Virus
HW-F-Health workers at Frontline
IPC-Infection Prevention and Control
KELIN-Kenya Legal and Ethical Issues Network on HIV &AIDS
KMPDU-Kenya Medical Practitioners, Pharmacists and Dentists Union
M&E-Monitoring and Evaluation
PPE-Personal Protective Equipment
PPS-Population Proportion Sampling
RBA-Right Based Approach
TB-Tuberculosis
UK-United Kingdom
US-United States of America
WHO-World Health Organization
WIBA- Work Injury Benefits Act

ACKNOWLEDGEMENTS

The Healthcare workers' level of preparedness in response to COVID-19 routine monitoring was made possible due to coordinated efforts by various stakeholders including KELIN, Kenya Medical Practitioners, Pharmacists and Dentists, Civil Society Organizations amongst other like-minded stakeholders.

The partners acknowledge contributions from other stakeholders throughout the routine monitoring process, including:

- All medical practitioners, pharmacists and dentists (Medical Practitioners, Pharmacists and Dentists) for collaborating and undertaking the survey despite their hectic schedule during this time of COVID-19.
- Health care workers sub-committee of the COVID-RBA consortium coordinated by KELIN.
- Kenya Medical Practitioners, Pharmacists and Dentists Union leadership structure
- Kenya Legal and Ethical Issues Network on HIV/AIDS entire team particularly the Monitoring and Evaluation team and the communications team.

Kenya Legal and Ethical Issues Network is a Kenyan NGO working on promoting and protecting health rights, and, Kenya Medical Practitioners and Dentist Union is the trade union that represents all medical doctors in employment and labour relations in Kenya with an aim of improving doctors' welfare. The union also engages actively in health advocacy to ensure that Kenyans have access to high-quality healthcare with emphasis on the public health sector.

KELIN, KMPDU and other like mind stakeholders in the health sector developed a working relationship through a consortium to better understand the issues that healthcare workers are facing during the COVID-19 period. This was in order to inform enhanced monitoring of health rights and collectively advocate for the health-related rights of the healthcare workers during this period of COVID-19 and develop short- and long-term strategies to address rights issues during and after the pandemic.

Contributing to the Government efforts towards ensuring a rights based response to COVID-19, we embarked on a routine monitoring process on the healthcare workers' level of preparedness in response to this pandemic. The assessment was conducted to provide a right based response to the management and support being offered to our frontline teams across the country.

It is in recognizing the Government efforts need accountability and support from the greater public, that we shall achieve a standard that upholds human dignity and the safety of our citizens.

The aims of the routine monitoring were to determine the level of preparedness in response to COVID-19 in context of Occupational Health and Safety. Specific objectives were to:

i. Assess the status of environment and level of preparedness to provide services during the COVID-19 period.
ii. Assess experiences and challenges faced as well as major concerns from the health perspective during the pandemic.
iii. Utilize the findings to develop advocacy, short and long term right based approaches, and recommendations for the benefit of all healthcare workers in the country short term and long term advocacy approaches that are rights based.

Health workers at the frontline (HW-F): Clinical health workers tending to COVID-19 disease patients and non-clinical staff performing heavy duty services such as transporting symptomatic patients, care-setting cleaning, environment decontamination and removal of deceased for respectful disposition. Together, these workers are at the highest risk of exposure and thus are defined as health workers at the frontline (HW-F).

The assessment/routine monitoring was informed by a WHO report on health workers infections during epidemics which concluded that, depending on their occupation in the health service, health workers were at 21 to 32 times greater risk of contracting EVD[1].

WHO has provided guidelines on infection, prevention and control (IPC) that includes health workers at frontline[2]. Gaps still exist in the current response to COVID-19 where transmission likely took place in the

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[1] *WHO report on Health worker Ebola infections in Guinea, Liberia and Sierra Leone,2015*

[2] *Guidelines on core components of infection prevention and control programmes at the national and acute health care facility level. Geneva: World Health Organization; 2016*

health facilities. Among these, the most frequently reported were inappropriate use or lack of personal protective equipment (PPE), insufficient knowledge to respond to COVID-19 as well as unfavorable employment working conditions, i.e. majority of the HW-F lacking life insurance cover.

ROUTINE ASSESSMENT DESIGN

The online survey targeted healthcare workers (Medical Practitioners, Pharmacists and Dentists) across all the 47 counties working in the public and private sector. Data collection was completed with 85 healthcare workers sampled from 22 counties. The monitoring questionnaire was digitized through KOBO collect platform and shared in respective Medical Practitioners, Pharmacists and Dentists union platform under the leadership of KMPDU acting secretary general and other elected leaders of the union.

ROUTINE ASSESSMENT LIMITATION

Though the study targeted to reach all the 47 counties the routine assessment was able to reach 22 counties hence findings can generalize the findings related to those counties but it provides an indication on what could be happening in the other 14 counties. Also the monitoring did not achieve its target of 384 Medical Practitioners, Pharmacists and Dentists hence it might not be generalized to represent situation of all HCWs under KMPDU.

KEY FINDINGS

Safe Working Environment

Evaluation of Patients - Patients Screening at Entry

In assessing the health facility preparedness, the findings show that 32% of the facilities are not screening clients at entry and not separating those with respiratory symptoms. According to the interim guideline on management of COVID-19 in Kenya patient triaging over the telephone should be done prior to arrival at the clinic. Patients with symptoms of respiratory tract infection should be advised to stay home until the condition resolves, hence, not all facilities are currently adhering to the guidelines provided which could easily contribute to the increase of COVID-19 spread.

Staffing and ventilation

Further results show that 54% of the facilities lack adequate staff to handle the client flow, this is despite government's allocation of Ksh.1 billion from the Universal Health Coverage kitty which was disbursed towards the recruitment of health workers curbing the spread of COVID-19 in Kenya. Also findings show that only 70% of the facilities are well ventilated. These results demonstrate contrary results from what the government has shared with the public in terms of measures taken to curb the spread through recruitment of staff hence the government has to prioritize and have sufficient healthcare workers to enhance preparedness in response to COVID-19.

Availability of Personal Protective Equipment

Monitoring results show that 91% of the healthcare workers do not have personal protective equipment (PPE) with more than 86% citing lack of eye protection gear, 83% lack isolation gowns and 88% lack protective suits as required by WHO standards[3], while 79% lack N95 masks. Only 19% of respondents lacked gloves and 19% lacked surgical masks. Further, the findings established that 72% of the surveyed healthcare workforce are forced to reuse PPEs because of irregular supply of the equipment.

This is against the occupational safety and health standard provided by WHO, Article 41 of the Kenya constitution[4] as well as Employment Act[5] that all employers should provide a safe working environment and the proper protective equipment towards protecting their health and in the context of COVID-19 that all healthcare workers should have this equipment to prevent exposure to the COVID-19 virus. The government must prioritize access to the above as soon as possible as the healthcare providers are at the epicenter of response and can be agents of COVID-19 spread to the rest of the population due to

[3] *Infection prevention and control of epidemic-and pandemic-prone acute respiratory infections in health care. Geneva: World Health Organization; 2014*

[4] *The Constitution of Kenya, 2010*

[5] *The Employment Act, 2007*

their position as frontline responders.

Cleanliness and Waste Management of the health facility

Study findings show majority of the health facilities have waste management equipment but only 34% of the health facilities waste management are cleaned and disinfected. This implies that, though measures have been put in place to have the equipment, very little has been done to ensure they are clean and safe which exposes the healthcare workforce to COVID-19. [6]According to National Biosafety Guidelines work surfaces and equipment should be decontaminated as soon as possible after specimens are processed. Studies have shown that corona viruses can survive on environmental surfaces and can infect a person for up to 2–8 hours after being deposited on the surface hence cleanliness of the waste management equipment is a key infection preventative measure that should be adhered to.

Capacity and wellbeing of Healthcare Workers to Respond to COVID-19

Training

The assessment findings show that 58% of the healthcare workers have not been trained on preparedness and response to corona virus, indicating that their level of preparedness and response to the virus as well as provision of quality health services to patients is not up to the expected WHO standards. This jeopardizes the health of patients as well as the healthcare workers as a result. Further the findings show that 90% of the healthcare workers require refresher and additional training.

The interim MOH Guidelines on COVID-19 Management[7] has articulated that every healthcare workers should receive training in updated clinical knowledge of epidemic COVID-19, notification of infection at risk, epidemic prevention tools, and guidelines from the government and hospital authority. These includes training staff in the control of infectious diseases, providing access to personal protective equipment and apparatus, and encouraging proper handwashing. Items that are often in contact with respiratory droplets and hands (e.g., doorknobs, faucets, etc.,) should be cleaned and disinfected regularly. The findings show that more than half of the respondents have not been trained.

Accommodation/Isolation centers for Healthcare Providers

Results established that 94% of healthcare workers are not provided with alternative accommodation/ isolation so as to minimize the risk of exposing their family members. This further demonstrates poor level of preparedness by the government in protecting the health of healthcare workers and their immediate families which is a heightened risk factor of exposure to other non-healthcare workforce.

Alternative Transport to and from Work

Findings showed that (42%) of healthcare workers have no transport to and from work with the curfew and partial lockdown. This contributes to barriers to access to healthcare due to healthcare workers not being available in the health facilities, as they cannot reach them due to constant inquiries by police at various road-blocks. This is in cognizant of the fact that not all the healthcare workers reside in the counties there are currently working hence with restricted movement caused by the curfews are continuously affecting access to health services due to lack of sufficient health personnel. Clear strategy amicably resolves this either through sensitization of the police on the importance of healthcare workforce accessing health facilities as well as their homes or the government to ensure they provide alternative transport for ease of movement of healthcare workers in and out of hospital.

Testing of Health Care Workers

Findings established that 92% of healthcare workers feel more exposed to COVID-19 due to insufficient PPE and preparedness of the health facilities. This may hinder provision of quality healthcare services by health workforce because of fear. Recent data has shown that 16% of the healthcare workforce in UK tested positive while in US more than 9,000 healthcare workforce have tested positive for COVID-19. [8]Previous studies show during epidemics HCWs are 21-32% more at risk of infection hence a clear

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[6]*Infection prevention and control of epidemic-and pandemic-prone acute respiratory infections in health care. Geneva: World Health Organization; 2014*

[7]*Interim Guidelines on Management of Covid-19 In Kenya;2020*

[8]*The Centre for Evidence-Based Medicine*

reflection on how HCWs also felt in regards to exposure and as a result the government made a directive for mass testing of HCW though the findings established this was not adhered to.

Further findings established that 95% of respondents have not been tested for COVID-19 as at (24th April 2020). The results demonstrate that they are more exposed as they interact with clients, yet they have not been tested to assess if they should continue to provide health care or if they should be isolated and receive medical care. This takes into account the fact that National Government (PS Health) announced testing for Healthcare workers on 15th April 2020[9].

Life Insurance Cover/Work Injury Benefit Act (WIBA)

The routine monitoring established that only 9% of the respondents have life insurance cover. This is a worrying statistic since the healthcare workers are at the frontline in responding to COVID-19 which makes them more vulnerable to the virus hence this is a key requirement for the workforce. The National Government announced various measures to support combatting of COVID-19 in Kenya that included the Health and Public Service ministries developing a welfare package to cushion frontline health workers since they are at most risk of contracting the virus and yet the findings demonstrated that very few HCWs have been put on life insurance cover.

Conclusion

The findings demonstrate poor preparedness towards the response to COVID-19, particularly, lack of PPE, lack of COVID-19 testing for health care workers, lack of training, amongst other key underlying issues which the government and private sector need to immediately address in order to enhance preparedness. There is need to ensure the various MOH guidelines (Interim guidelines on management of COVID-19 in Kenya; Comprehensive guide on mental health and psychosocial support during the COVID-19 pandemic) towards curbing COVID-19 are implemented to the latter and the ensure transparency and accountability to the resources secured to address COVID-19.

Recommendations

Recommendation to the National Government

1) Review the laws, policies and guidelines on occupational health and safety as well as implementation of the same towards protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This could include life insurance, compensation in regards to accidents/incidents at work.
2) Review current national health budget allocation and ensure there is a higher budget assigned to health.
3) Ensure healthcare workers' capacity is enhanced on epidemics and emergencies. This could include innovative ways to capacity build HCWs on the interim guideline on COVID-19 as well as review of the medical curriculum to include compulsory training using case studies like COVID-19.
4) Ensure there is enough supply of PPEs according to the COVID-19 MoH infection, prevention and control guidelines.
5) Health system strengthening through ensuring all health facilities have the capacity to handle all diseases by equipping them with proper medical equipment, medical staff and medication which should be accessible and available. This should include isolation centers for respiratory diseases as captured in the TB guidelines on management of the disease.
6) Develop strategies to ensure other healthcare services run smoothly and there is continuous access to medical services to all despite the COVID-19 pandemic.
7) Provide regular and accurate information pertaining preparedness and response to COVID-19 and epidemics, e.g. trainings made and how many people trained and in which regions, quantity of equipment supplied and which regions etc.

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[9] *IMass testing of health workers for COVID-19 to begin (https://www.youtube.com/watch?v=K3P6zBx7knY)*

Recommendations to the County Governments

1) Review current county health budget allocation and ensure there is a higher budget assigned to health and accountability and transparency of the resources allocated to curb the pandemic and health in general.
2) County health committee team to work closely with healthcare unions and map out the needs, preparedness to respond to COVID-19 and future epidemics.
3) Ensure the health care services at the facilities are available and accessible at all times with proper medication, medical personnel and medical equipment.
4) Review Laws and policies that hinder accessibility of healthcare services to all, throughout the epidemic and post COVID-19.
5) Ensure that attractive remuneration and allowances including life cover are part of the healthcare workers package.

Recommendations to the Healthcare Workers Union

1) Sensitize members on their rights to health, and to demand for compensation in relation to occupation safety and health.
2) Have joint litigation with like-minded partners working on health rights issues on occupational safety and health of healthcare workers and advocacy for availability of PPEs
3) Ensure healthcare workers observe a rights-based approach in their work.
4) Continuous collaboration with like-minded institutions working on health rights issues to come up with collective advocacy measures for their workers through identification of gaps in health laws and policies that are retrogressive.

Recommendations to the Civil Society Organizations

1) CSOs should work closely with healthcare unions to ensure they deliver on the health rights issues of the clients they serve.
2) CSOs should work with other like-minded institutions to ensure the laws and policies developed towards preparedness and responding to COVID-19 and other epidemics reflect a rights-based approach and have factored the needs of the vulnerable and marginalized communities.
3) CSOs and other like-minded institutions should ensure the vulnerable communities are able to receive quality healthcare during the COVID-19 pandemic and any future epidemics.
4) CSOs and other like-minded organizations should develop mechanisms for monitoring and documentation of the level of preparedness towards responding to COVID 19 and other epidemics.

Recommendations to UN Partners and Donors

1) Ensure measures are put in place to ensure realization of the right to health for all, through continuous support of the global health initiatives and increased funding in addressing epidemics.
2) Document lessons learnt from the COVID-19 pandemic to influence review of the current global disaster management plans as well be better prepared for future epidemics.

Recommendations to International Labour Organization

1) Ensure Occupational safety and health is universally guaranteed during this pandemic and in the future since it is a core aspect of decent work. Healthcare workers in Kenya and around the world should be able to feel safe in their workplaces, reassured that they are not exposed to undue risks.
2) Ensure protection of labour rights and the promotion of safe and secure working environments for all healthcare workers.

Recommendations to Media

1) Engage more on fact finding about the level of preparedness beyond what is provided during press conferences and counter the facts if they contradict the information they have.
2) Highlight stories on the plight of healthcare workers during the COVID-19 period as well as success stories on the pertaining COVID-19.

Recommendations to the National Assembly

1) There is need to review the laws and policies that govern protection of healthcare workers in matters pertaining preparedness for epidemics and occupation safety and health. This should include life insurance, compensation with regard to accidents/incidents at work.
2) To review the current national health budget allocation and ensure there is an increased budgets assigned to health.

Recommendations to the County Assembly

1) There is need to review the laws and policies that govern protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This should include life insurance, compensation in regards to accidents/ incidents at work.
2) To review the current county health budget allocation and ensure there is an increased budgets assigned to health.

Recommendation to all Health Stakeholders

1) Ensure there is continuous access to health services for all despite the COVID-19 outbreak through provision of health services for service providers service users.

CHAPTER ONE - INTRODUCTION

SITUATION ANALYSIS

Corona virus disease 2019 (COVID-19) is a new respiratory illness that can easily be spread from person to person. Globally there are 3,066,417COVID 19 positive cases and 211,66 deaths. In Kenya the first case was reported on 13th March 2020 and the cases have currently risen to 363 with 14 deaths.[10]

1.1 ABOUT THE SUB COMMITTEE

KELIN, KMPDU and other consortium members are working in partnership to strengthen governance, promote equity, and build capacities to demand health related rights during the COVID-19 pandemic through developing collective advocacy.

KELIN has been tasked with providing technical assistance and guidance on rights based approaches by ensuring appropriate adaptation and high-quality implementation of health rights. This will be done by documenting the situation analysis and collectively developing strategies to address these issues through advocating for laws, policies, and system gaps to be addressed.

1.2 PURPOSE AND OBJECTIVES OF THE SURVEY

The assessment to determine the level of preparedness in response to COVID-19 in the context of Occupational Health and Safety. Specific objectives were to:

i. Assess the status of environment and level of preparedness to provide services during COVID-19 period.
ii. Assess experiences and challenges faced, as well as major concerns from the health perspective.

1.3 ROUTINE MONITORING METHODOLOGY

The online survey targeted healthcare workers (Medical Practitioners and Dentists) across all the 47 sub counties. The sampling frame consisted of the healthcare workers (medical practitioners, pharmacists and dentists) in the counties with use of PPS applied to cater for the population size (healthcare workers) difference spread across the counties. The survey questionnaire was developed, tested and digitized through KOBO collect platform and shared in the respective medical practitioners, pharmacists and dentists' platforms under the leadership of medical practitioners, pharmacists and dentists' union secretary general and other elected leaders of the union.

1.4 TIMEFRAME

The routine monitoring was conducted from 9th April to 20th April 2020.

1.5 QUALITY CONTROL

The data collection forms in Kobo collect contained data validation checks and skip logics that decreased human error in data entry. KELIN M&E/Statistician checked for duplicate entries in the Kobo toolkit system as well as outliers throughout the data collection exercise. A daily check of survey time stamps and analysis of average completion time was shared out with the respective coordination team, flagging any outliers for follow-up.

1.6 DATA ANALYSIS

Quantitative analysis was done using STATA while qualitative analysis was done using Atlas.ti

[10] *https://www.worldometers.info/coronavirus/*

2.1 INTRODUCTION

This chapter presents the findings of the assessment. It provides background of study participants followed by status of safe working environment as well as level of preparedness by healthcare workers and finally incentives and motivations.

2.1.2 Response Rate

The target sample for this survey was 384 health care workers which included 5% non-response rate. Nevertheless, at the end of the survey 85 respondents hence the-response rate is less than what had been projected. Findings show Mombasa and Kilifi had the highest number of respondents at 12.9% each.

Table 1: Response Rate

County	Frequency	Percent (%)
Baringo	1	1.2
Bungoma	2	2.4
Busia	3	3.5
Embu	1	1.2
Kakamega	4	4.7
Kiambu	8	9.4
Kilifi	11	12.9
Kirinyaga	1	1.2
Kwale	3	3.5
Lamu	5	5.9
Mombasa	11	12.9
Nairobi City	9	10.6
Nakuru	3	3.5
Nyandarua	2	2.4
Nyeri	3	3.5
Samburu	1	1.2
Taita/Taveta	1	1.2
Trans Nzoia	1	1.2
Turkana	4	4.7
Uasin Gishu	9	10.6
Vihiga	1	1.2
West Pokot	1	1.2
Total	**85**	**100.0**

2.1.3 Sex of the respondents

The results findings show that the majority of the respondents are male (59%) while female (41%).

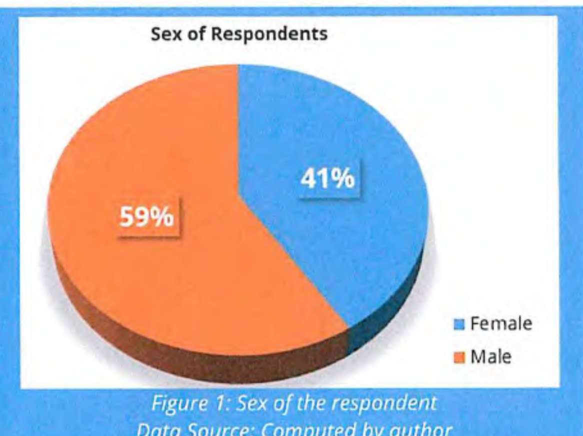

Figure 1: Sex of the respondent
Data Source: Computed by author

2.1.4 Age of the respondents

The majority (48%) of the respondents are healthcare workers of age (31-35 years), with no respondents of age 18-24 years.

Table 2: Age Group of the respondents

Age	Frequency	Percent(%)
18-24	0	0%
25-30	21	25%
31-35	41	48%
36-40	13	15%
40-45	3	3.5%
46-49	3	3.5%
50 and above	4	4%
Total	**85**	**100.0**

2.2 FACILITY THE RESPONDENTS ARE CURRENTLY PROVIDING HEALTH CARE SERVICES

The majority of the respondents are currently providing healthcare services at government health facilities (94%) and private facilities (6%).

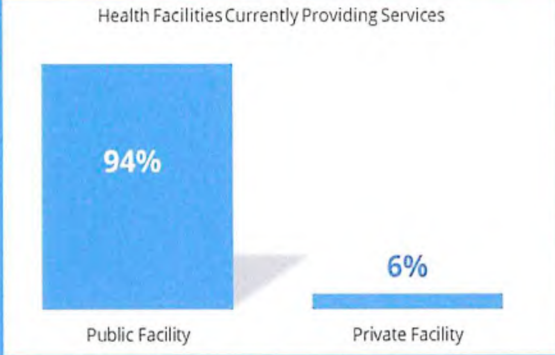

Figure 2:
Respondents where they currently provide health care services
Data Source: Computed by author

2.3 HEALTH FACILITY PREPAREDENESS TO HANDLE COVID-19 CASES

The monitoring results show that 39% of the surveyed healthcare workers have encountered a patient presenting COVID-19 symptoms.

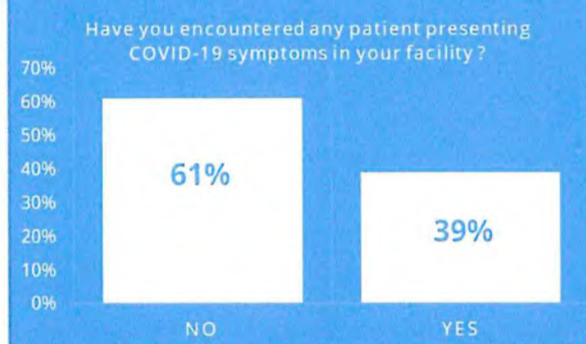

Figure 3: Encountered Patient with COVID-19 symptoms
Source: Computed by author

Results further show 37% of the respondents stated that the number of cases presenting COVID-19 symptoms are increasing in the health facilities. According to the Kenya case management protocol, when the number of cases increases then facilities should be identified for isolation of mild cases outside of the hospitals. Though the numbers from the survey keep on increasing, no isolation areas have been created in most of these health facilities.

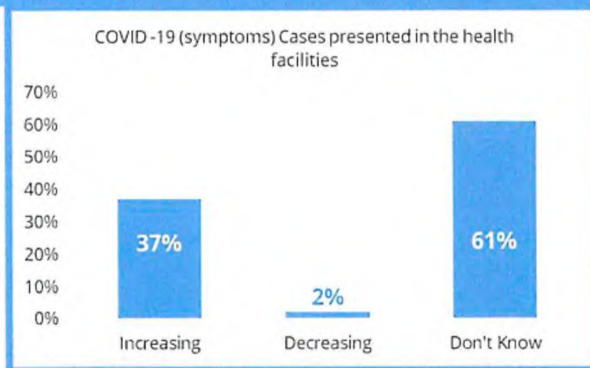

Figure 4:
Status of COVID-19 cases presented in the health facilities
Source: Computed by author

The findings established that 87% of the healthcare workers felt the health facilities are not prepared to handle COVID-19 client flow.

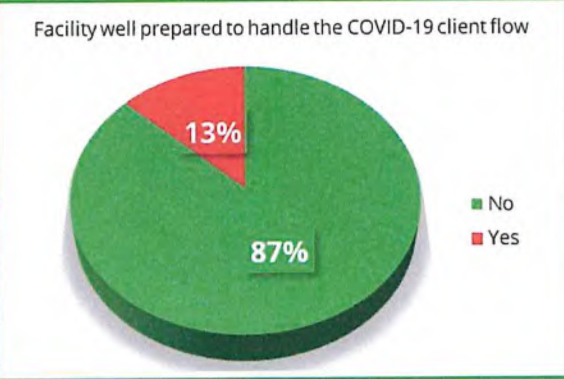

Figure 5:
Status of COVID-19 cases presented in the health facilities
Source: Computed by author

The findings further established that 32% of the facilities are not screening clients at entry and separating the ones demonstrating respiratory symptoms as shown in figure 3 below. According to the Interim guidelines on management of COVID-19 in Kenya (Infection Prevention and Control (IPC) and Case Management)[11] people who have COVID-19 or are presenting symptoms suggestive of COVID-19 should be isolated pending transfer to designated hospitals screening COVID-19 cases, or if the clinic is within a hospital, the designated COVID-19 screening sit. The findings established that though we have the guidelines in place they are not fully adhered to by all health facilities.

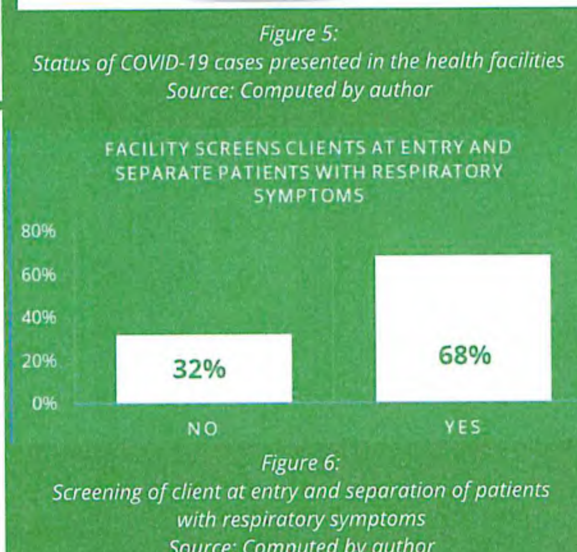

Figure 6:
Screening of client at entry and separation of patients with respiratory symptoms
Source: Computed by author

Further results show that 54% of the facilities do not have enough staff to handle the client flow as shown in the figure below

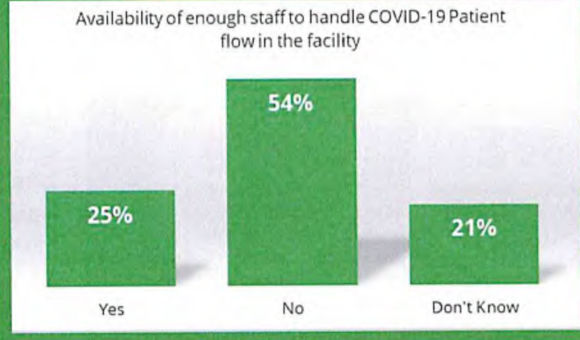

Figure 7: Staffing of the health facilities to handle client flow
Source: Computed by author

Assessment findings show only 31% of the health facilities are not well ventilated. According to MOH guidelines on respiratory diseases the facilities need to have natural Ventilation; free flow of ambient air in and out through open windows for infection prevention and control of COVID-19.

These results show that much has been done by the government to ensure the facilities adhere to standards but more effort has to be made to ensure the remaining facilities adhere to these standards to be able to better address COVID-19 pandemic through reducing the spread within the health facilities.

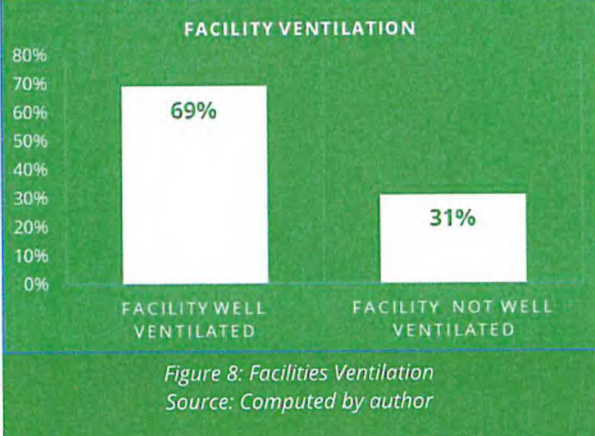

Figure 8: Facilities Ventilation
Source: Computed by author

[11]Interim Guidelines on Management Of COVID-19 In Kenya

Availability of Personal Protective Equipment Materials

All healthcare personnel who enter the patient's room should take standard and contact precautions. The COVID-19 management protocol has highlighted that PPE is to be provided to Staff Health care workers who manage people who have COVID-19 and have close contact (<1 meter) with known/suspected COVID-19 patients. The materials to be provided include Eye Protection (e.g. Goggles/ Face Shield), Particulate Respirators (e.g. N95 masks), Gown, Surgical Masks and Gloves.

The results show 91% of the healthcare workers do not have enough/sufficient personal protective equipment.

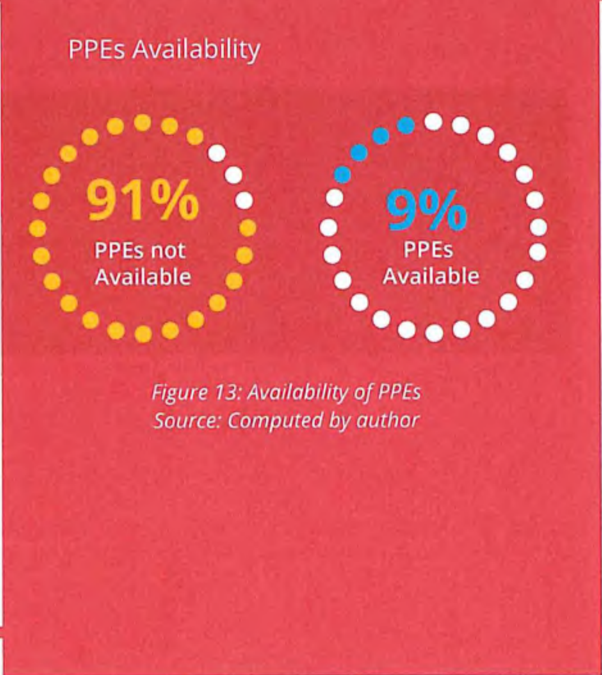

Figure 13: Availability of PPEs
Source: Computed by author

Specific Personal Protective Equipment Availability

The findings demonstrated that majority of healthcare workers lack PPE equipment. With 86% citing they lack eye protection gear,83% lack isolation gowns,88% lack protective suits, 79% lack N95 respirators while 19% lack gloves and face shields. According to the breakdown expenditure by the government from the Sh1 billion donated by the World Bank for emergency response, including procurement of Personal Protective Equipment (PPEs), Sh277.9 million has been spent on procurement of PPEs from Mid-March to April 24th 2020 when the survey was still been conducted.

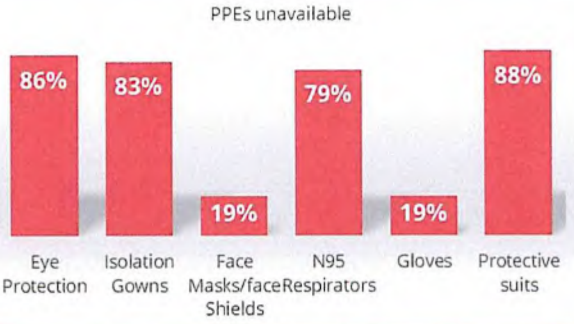

Figure 14: Specific unavailable PPEs
Source: Computed by author

PPEs Supply

The assessment results established that majority of respondents (72%) are forced to reuse PPEs (the PPEs supplied are single use) because of lack of regular supply of the commodities. which poses a threat of self-contamination because the PPE could be contaminated hence putting the risk of infection and spread amongst HCWs to be high.

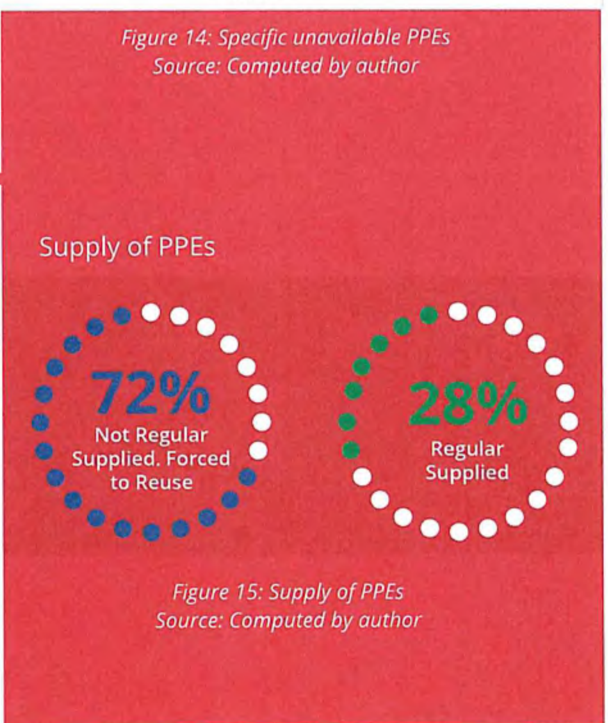

Figure 15: Supply of PPEs
Source: Computed by author

2.4 CAPACITY AND WELLBEING OF HEALTHCARE WORKERS TO RESPOND TO COVID-19

The COVID-19 management protocol stipulates that facilities should identify and train personnel who will take care of people who have COVID-19, all the staff in the facility should be sensitized on COVID-19, facilities should also ensure they identify clinical or lab personnel that are trained on sample collection. The health facility team consisting of dialysis physicians, nursing staff and technologists should receive training in updated clinical knowledge of epidemic COVID-19, notification of infection at risk, epidemic prevention tools, and guidelines from the government and hospital authority.

In assessing healthcare workers capacity on COVID-19 response, the findings show 41% of the healthcare workers have not been trained on preparedness and response of corona virus. Further the findings show that 90% of the healthcare workers require refresher and additional training

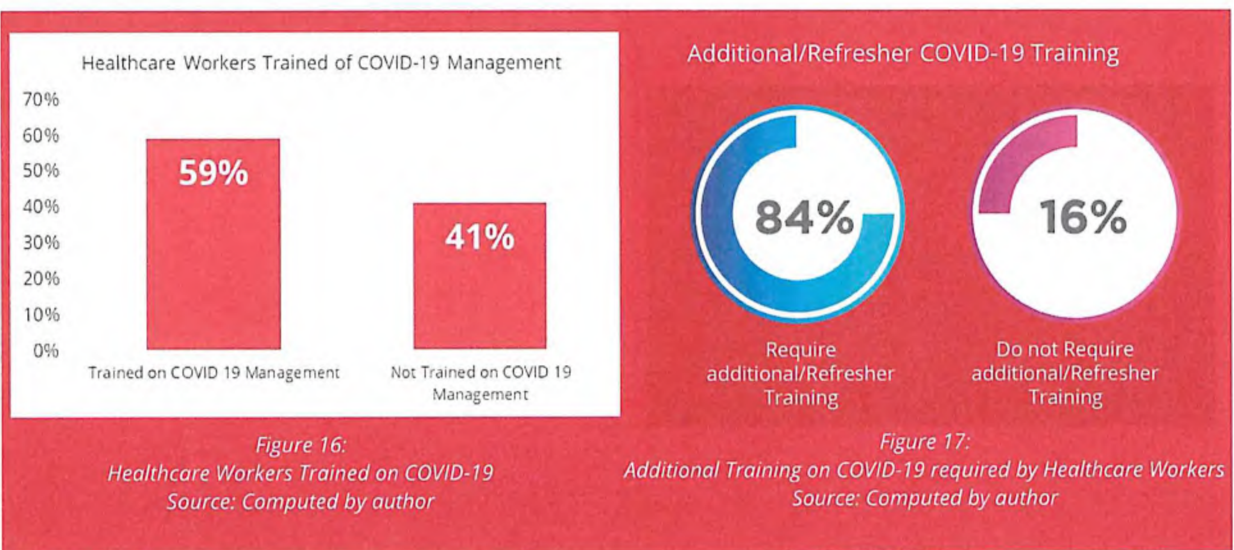

Figure 16:
Healthcare Workers Trained on COVID-19
Source: Computed by author

Figure 17:
Additional Training on COVID-19 required by Healthcare Workers
Source: Computed by author

Accommodation/Isolation centers for Healthcare Providers

Findings demonstrate that majority of the healthcare workers (96%) are not provided alternative accommodation/isolation so as to minimize the risk of exposing their family members. These findings imply that the healthcare workers are putting their families & loved ones at a risk of exposure since the government and non-state actors in the sector are not providing isolation centers during this pandemic period.

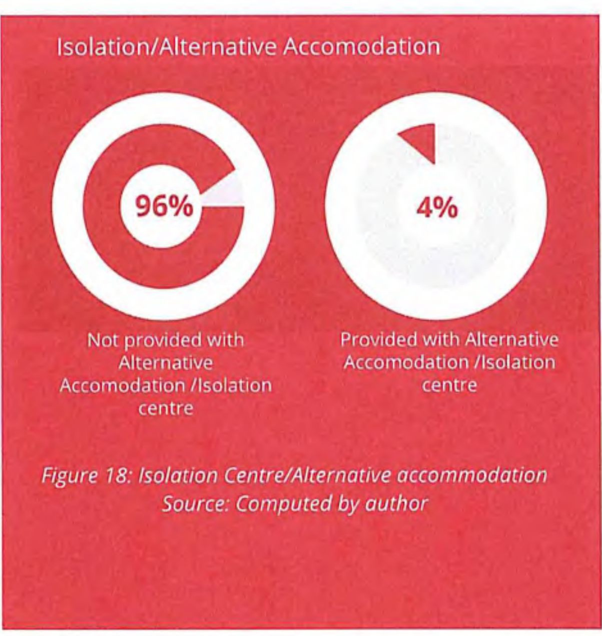

Figure 18: Isolation Centre/Alternative accommodation
Source: Computed by author

Uptake of Health Services in the Facility during COVID-19 pandemic (Right to Health)

The right to health is a fundamental human right guaranteed in the Constitution of Kenya. Article 43 (1) (a) of the Constitution provides that every person has the right to the highest attainable standard of health, which includes the right to health care services. Article 43 (2) also provides that a person shall not be denied emergency medical treatment.

The assessment results established 82% of the healthcare workers stated that COVID-19 pandemic has affected uptake of health services at the health facilities. This is cognizant of the fact that there is a high prevalence of Communicable and Non-Communicable diseases hence putting the patients' health at risk.

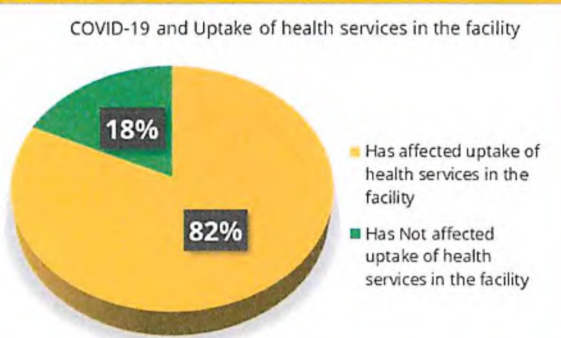

Figure 19: Uptake of health services
Source: Computed by author

Alternative Transport to and from Work

The results show more than half of the healthcare workers (81%) have not been provided with alternative transport to and from work and with the curfew and partial lockdown, this leads to difficulty in accessing health facilities due to constant inquiries by police at various roadblocks.

Table 3: Alternative Transport Provided by Employer

	Frequency	Percent (%)
Can you easily access your workstation from your place of residence?	No	24
	Yes	76
Have you been provided with an alternative transport?	No	81
	Yes	19
	Total	**100.0**

Surveillance of healthcare personnel

Healthcare workers especially in communities where transmission is occurring, should be monitored daily for signs and symptoms of febrile respiratory illness and tested for COVID-19. [12]

Healthcare workers exposure to COVID-19

The findings show 92% of the healthcare workers feel very exposed to COVID-19 as a result of their work as first responders and lack of preparedness of the health facilities.

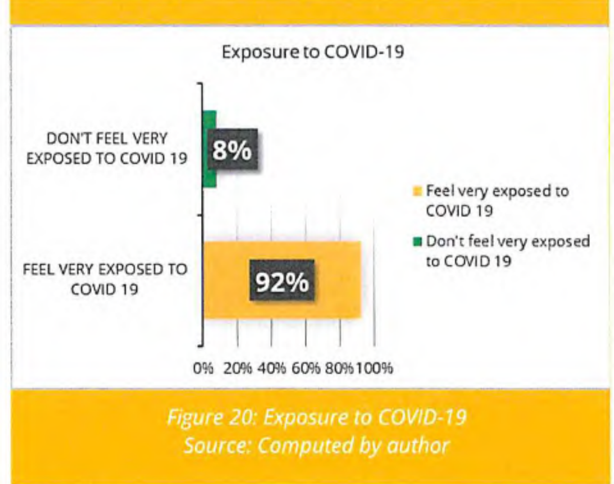

Figure 20: Exposure to COVID-19
Source: Computed by author

[12] *COVID-19, Infection Prevention and Control (IPC) and Case Management MOH guidelines*

Testing of Healthcare Workers for COVID-19

Assessment results show 95% of the healthcare workers have not been tested for COVID-19. One key approach in reducing spread of COVID-19 is by ensuring there is elimination of health care-associated infection (HAI), also referred to as "hospital" infection, which is an infection occurring in a patient during the process of care in a hospital or other health care facility which was not present or incubating at the time of admission. This means that all healthcare workforce should be tested in order to understand the disease burden within the healthcare workforce which will reduce the spread of the virus in the health facilities among staff and patients. This is cognizant of the fact that Health CAS, declared that mass testing for COVID-19 to be conducted for all high-risk individuals (healthcare workers) and high-risk regions on 14th April 2020 when the survey had just commenced.

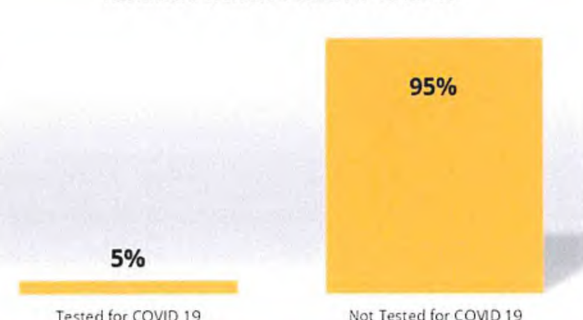

Figure 21: Healthcare workers tested for COVID-19
Source: Computed by author

Why have Healthcare Workers not been tested for COVID-19?

The results established that majority (74%) of the healthcare workers cited lack of test kits as the main reason as to why they have not been tested for COVID-19. This is despite the government having spent Sh197 million to purchase Roche test kits yet most HCWs who are at the epicenter of the COVID-19 have not been tested.

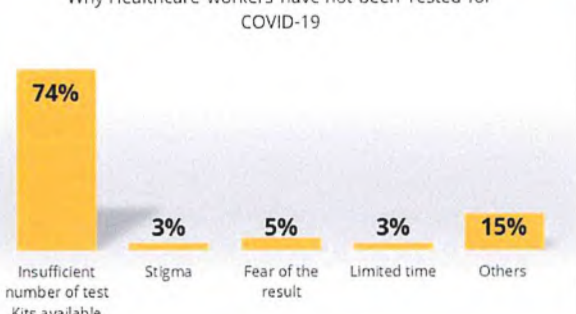

Figure 22:
Why healthcare workers have not been tested for COVID-19
Source: Computed by author

Healthcare Workers Incentive and Motivation

The findings established that the 41% of the healthcare workers are not aware of the existing reporting mechanisms for compensation in case of exposure to COVID-19 or risks related to the virus.

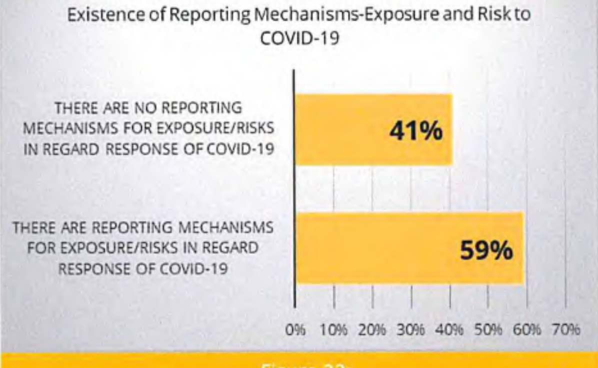

Figure 23:
Existence of Reporting Mechanisms-Exposure and Risk COVID 19
Source: Computed by author

Life Insurance Cover/Work Injury Benefit Act (WIBA)

The results established that 91% of the respondents do not have life insurance cover. This is a worrying statistic since the healthcare workers are at the frontline in responding to COVID-19 which makes them more vulnerable to the virus hence this is a key requirement for the workforce.

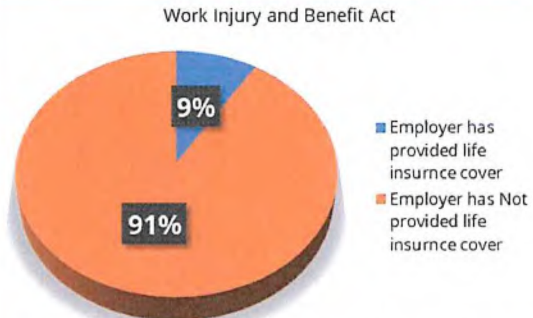

Figure 24: Healthcare workers on Life Insurance cover
Source: Computed by author

Psychosocial Support

The findings established that 82% of the respondents require psychosocial support. A comprehensive guide on mental health and psychosocial support during the COVID-19 pandemic has been developed with some coping strategies suggested including ensuring sufficient rest and respite during work or between shifts though this has not been adhered because of lack of healthcare workers since they cannot find enough time to rest.[13]

Figure 25: Psychosocial support for healthcare workers
Source: Computed by author

Key Issues that drive healthcare workers to seek psychosocial support

The findings show various issues that have triggered healthcare workers' need for psychosocial support in the COVID-19 period. Majority of the healthcare workers stated they were not prepared for this situation hence the response has brought about a difficult period in the health workforce. Spending many hours at work and overburden with client flow, Stigmatization from Community, Regular harassment after work by police because of curfew and Debriefing on Post death were also identified as other key issues affecting the healthcare workers.

Figure 26: Issues driving the need for psychosocial support
Source: Computed by author

[13] *A comprehensive guide on mental health and psychosocial support during the COVID-19 pandemic*

3.1 Conclusion

This chapter presents the summary and conclusion that have been derived from the routine monitoring, focusing on introduction, literature review, methodology and analysis of the survey results. The chapter also presents recommendations based on the study findings.

The assessment aimed to assess healthcare workers level of preparedness towards COVID-19 response with the aim of providing a rights-based response to the management and support being offered to our frontline teams across the country. The objectives of the assessment were: Assess the status of environment and level of preparedness to provide services during COVID-19 period; Assess experiences and challenges faced and major concerns from the health perspective. Data was collected through healthcare workers filling an online questionnaire that was developed on KOBO platform. Data was analyzed using descriptive statistics.

The findings of the assessment are as follows; 91% of the healthcare workers do not have sufficient PPE and 72% are forced to reuse PPEs because of irregular supply of the commodities; 41% of healthcare workers have not been trained on COVID-19 management and 84% of the healthcare workers require additional training on COVID-19, Environment cleanliness, only 34% of the health facilities are regularly cleaning and disinfecting the waste management equipment; 82% of the respondents stated uptake of other health services has been affected meaning majority of patients are not accessing medical care which is against article 41 of the constitution on rights to health, 95% of healthcare workers have not been tested for COVID-19 despite the Health CAS declaring the commencement of mass testing for COVID-19 targeting high-risk persons and regions almost a month ago before the survey started; 91% of healthcare workers do not have life insurance cover despite government providing a directive to develop a welfare package to cushion frontline health workers; 82% of healthcare workers require psychosocial support yet we have limited HCWs hence they still lack time to get adequate rest..

Conclusion

The assessment sought out to assess the level of preparedness of health workers in response to COVID-19. The findings show that there is poor occupational safety and health. Low level of health-care workers testing for COVID-19 is majorly attributed to the unavailability of test kits. The findings show clearly that there are insufficient PPEs for the healthcare workers to be able to respond better to COIVID-19 as they protect themselves from infection or infecting patients. Moreover, majority of the healthcare workers lack life insurance cover despite being at the frontline providing services during the pandemic. Slightly more than half of the healthcare workers have been trained on COVID-19 case management hence affecting the quality of services to be provided. Finally, due to COVID-19 other healthcare services have vastly been affected hence majority of the population of accessing basic med-ical services.

The KELIN team will liaise with the KMPDU and other like-minded organizations to examine the results alongside other COVID-19 studies with the aim of prioritizing actions towards addressing healthcare workers challenges by providing a right based response to the management and support being offered to the frontline teams across the country during the COVID-19 epidemic. In particular, "micro-trainings" will be provided by the team to provide an opportunity to integrate key messaging on rights-based approaches and demand for occupational safety and health for all healthcare workers. Review of health laws and policies to identify and address gaps in relation to rights-based approaches for healthcare workers.

3.2 Recommendations

This section presents the recommendations for National, County governments, National Assembly and Senate, Multinationals, development partners and other stakeholders that have been informed by the routine monitoring aimed at providing a rights-based response to the management and support being offered to our frontline teams across the country

Recommendations to the National Government

Recommendation to the National Government Executive

i. Review the laws, policies and guidelines on occupational health and safety as well as implementation of the same towards protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This could include life insurance, compensation in regards to accidents/incidents at work.
ii. Ensure implementation of the reviewed policies to ensure a right based approach in relation to health.
iii. Health system strengthening through ensuring all health facilities have the capacity to handle all diseases by equipping them with proper medical equipment, medical staff and medication which should be accessible and available. This should include isolation centers for respiratory diseases as captured in the TB guidelines on management of the disease.
iv. Review current national health budget allocation and ensure there is a higher budget assigned to health.
v. Ensure transparency and accountability in the resources allocated for health by factoring public participation in planning and implementation of the interventions.
vi. Ensure healthcare workers' capacity is enhanced on epidemics and emergencies. This could include innovative ways to capacity build HCWs on the interim guideline on COVID-19 as well as review of the medical curriculum to include compulsory training using case studies like COVID-19.
vii. Ensure there is enough supply of PPEs according to the COVID-19 MoH infection, prevention and control guidelines
viii. Develop strategies to ensure other healthcare services run smoothly and there is continuous access to medical services to all despite the COVID-19 pandemic.
ix. Provide regular and accurate information pertaining preparedness and response to COVID-19 and epidemics, e.g. trainings made and how many people trained and in which regions, quantity of equipment supplied and which regions etc.

Recommendation to the County Governments

i. Review current county health budget allocation and ensure there is a higher budget assigned to health and ensure accountability and transparency of the resources allocated to curb the pandemic and health in general
ii. County health committee team to work closely with healthcare unions and map out the needs, preparedness to respond to COVID 19 and future epidemics
iii. Ensure the health care services at the facilities are available and accessible at all times with proper medication, medical personnel and medical equipment.
iv. Review Laws and policies that hinders accessibility of healthcare services to all through the epidemic and post COVID 19
v. Ensure attractive remuneration and allowances including life cover are part of the healthcare workers package.

Recommendation to the Healthcare Workers Union

i. Sensitize member on their rights to health to demand for compensation in relation to occupation safety and health
ii. Have joint litigation with like-minded partners working on health rights issues on occupational safety and health of healthcare workers and advocacy for availability of PPEs
iii. Ensure health care workers mainstream rights-based approach in their work,
iv. Continuous collaboration with like-minded institutions working on health rights issues to come up with collective advocacy measure for their workers through identification of gaps in health laws and policies that are retrogressive.

Recommendation to the Civil Society Organizations

i. CSOs should work closely with healthcare union to ensure they deliver on health rights issues of the clients they serve.
ii. CSOs to work with other like-minded institutions to ensure the laws and policies developed towards preparedness and responding to COVID-19 and other epidemic reflect rights-based approach and have factored the needs of the vulnerable and marginalized communities.
iii. CSOs and other like-minded institutions to ensure the vulnerable communities are able to receive quality COVID-19 healthcare and any future epidemics
iv. CSOs and other like-minded organizations to develop mechanisms for monitoring, documentation the level of preparedness towards responding to COVID-19 and other epidemics.

UN Partners and Donors

i. Ensure measures are put in place to ensure realization of right to health to all through continuous supporting the global health initiatives through increased funding in addressing epidemics.
ii. Document lessons learnt out of COVID-19 epidemic to influence review of the current global Disaster management plans as well be better prepared for future epidemics.

International Labour Organization

i. Ensure Occupational safety and health is universally guaranteed during this pandemic and in the future since it is a core aspect of decent work. Healthcare workers in Kenya and around the world should be able to feel safe in their workplaces, reassured that they are not exposed to undue risks.
ii. Ensure protection of labour rights and the promotion of safe and secure working environments for all healthcare workers.

Media

i. Engage more on fact finding about the level of preparedness beyond what is provided during press conferences and counter the facts if they are contradicting the information they have
ii. Highlight stories on the plight of healthcare workers during the COVID-19 period as well as success stories on the pertaining COVID-19.

National Assembly

i. There is need to review the laws and policies that govern protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This should include life insurance, compensation in regard to accidents/incidents at work.
ii. To review the current national health budget allocation and ensure there is an increased budget assigned to health.
iii. To ensure continuous implementation of laws relating to oversight of National Government to implement laws on national budget allocation on health as well as strengthened health system.

Senate

i. To ensure continuous implementation of laws relating to oversight of County Government to implement laws on county budget allocation on health as well as strengthened health system.

County Assembly

i. There is need to review the laws and policies that govern protection of healthcare workers in matters pertaining preparedness of epidemics and occupation safety and health of healthcare workers. This should include life insurance, compensation in regard to accidents/incidents at work.
ii. To review the current county health budget allocation and ensure there is an increased budget assigned to health.

All Health Stakeholders

i. Ensure there is continuous access to health services for all despite the COVID-19 outbreak through provision of health services for service providers and demand for health services by service users.

KELIN
Reclaiming Rights, Rebuilding Lives

KENYA HEALTH PROFESSIONALS SOCIETY (KHPS)

REF: NBI/UNHP/01/20

04th May 2020

The Cabinet Secretary,
Ministry of Health
P.O. Box 30016-00100
Nairobi.

The Cabinet Secretary,
Ministry of Public Service, Youth and Gender
P.O Box30050-00100
Nairobi

Director General,
Nairobi Metropolitan Services,
P.O Box 30075-00100
Nairobi.

This is Exhibit marked "AM-18" referred to in the Annexed affidavit/Declaration of Allan Maleche
Sworn/Declared before me on this.......... day of.......... 20..... at.......... in the Republic of Kenya

Commissioner for Oaths

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The Chief Executive Officer
Kenyatta National Hospital
P.O Box 20723-00202
Nairobi.

The Chief Executive Officer
Moi Teaching & Referral Hospital
P.O Box 3-30100,
Eldoret.

All Secretaries/ CEO,
County Public Service Boards

All County Secretaries and
Head of Public Service.

Dear Sir/Madam,

RE: JOINT STRIKE NOTICE.

The KNUN, KUCO, KNUMLO, KNUPT, KUNAD and KHPS are registered Trade Unions, and Professional Associations with the mandate to represent the interests of the health workers on matters of profession, employment and labour pursuant to the Labour Relations Act No. 14 of 2007, Laws of Kenya,

This is in reference to our memorandum submitted to your office highlighting the issues mostly affecting health care workers and which the unions requested the government to address them with finality, it is disappointing to note that up to date the government has remained adamant or choose to totally ignore our grievances leaving the union with no option but to take further action.

In view of the above, we reiterate our good will to support the government during this period of fighting the novel coronavirus pandemic and once more appeal to the governments to address the following issues within Fourteen (14) days from the date of this letter failure to which the unions will commence National Wide Strike **on 18th May 2020.**

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1. Risk allowance.

World-over, facts by statistics indicate that health workers are highly exposed to risk of infections. Currently some health workers enjoy a risk allowance ranging from 3,000k (lowest) to 20,000kshs (highest) hence we request for harmonization of the same allowance to Kshs. 30,000 across all health cadres. The health workers have been calling for harmonization of these allowances in vain.

2. Promotion of Health Care workers,

It has been noted health workers have stagnated in entry Job Group for over 8 years both in the Ministry of Health and Counties, this is despite continuous signed agreement between employers and union which later they are turned away never to be implemented.

It is within our knowledge that the ministry of Health has promote one cadre and leaving other which we find very demoralizing and discriminative and negatively affecting our members since most of them especially specialists are performing duties that are outside their job descriptions as per their current job group and in reference to the schemes of service.

3. Contractual, locum and Casual employment.

The Ministry of health together with the County Governments have continued to employ health workers on contract basis contrary to the Public Service Act No. 10 of 2017 paragraph 45, read together with Employment Act 2007 section 5(5 as No contract under the county has satisfied the above requirement making them illegal.

It is therefore a fact that these contracts are not only illegal and unfair but also propagates discrimination in the context of article 27 of Constitution of Kenya hence we propose to government to consider employing Health workers on Permanent and Pensionable.

We demand that National and County Governments convert and confirm them into permanent and Pensionable within the meaning of the Employment Act 2007 Section 37.

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4. **Formulation of frontline Health Workers Welfare Package.**

While we appreciate the directive made by his Excellency to the MOH and MOPS on frontline health workers package, It should be known that Union and society leadership for health workforce form part of stakeholder hence should be totally involved in planning for COVID 19 mitigation.

Article 41 of the constitution mandates the Unions to ensure and champion the right to fair and reasonable working conditions and therefore cannot be left out when this conditions and terms are being discussed.

We will appreciate if you address the issue urgently owing to the fact that our country is fighting against the pandemic disease which health workers play a critical role.

By a copy of this letter we inform our branch officials to mobilize our members and prepare for the strike if the government will not heed to our request.

Yours in Solidarity,

1. George M. Gibore G.S KUCO..
2. Seth Panyako G.S KNUN ....
3. Mohammed Duba Chairman KHPS..
4. Enock Wanyonyi G.S. KNUMLO ....
5. Peter Karegwa Chairman KNUPT..
6. Nduta Karanja G.S. KUNAD ....

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CC:

The Cabinet Secretary,
Ministry of Labour and Social Services
P.O Box 40326 -00100,
Nairobi.

All Branch Unions officials.

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MINISTRY OF HEALTH
PHARMACY AND POISONS BOARD

Telegram: "MINHEALTH" Nairobi
Telephone: 020-2716905/6, 020-3562107
Cellphone: 0733-884411/0720 608811
Fax: 2713409
Email: admin@pharmacyboardkenya.org
Website: www.pharmacyboardkenya.org

Pharmacy & Poisons Board Hse
Along Lenana Road
P. O. Box 27663-00506
NAIROBI

When replying please quote our ref No:

PPB/REG/GEN/VOL.III/019/20

5th May, 2020

Sheila Masinde,
Ag. Executive Director,
Transparency International, Kenya

Dear Madam,

RE: REQUEST FOR INFORMATION ON IMPORT AND DISTRIBUTION OF PERSONAL PROTECTIVE EQUIPMENT

We acknowledge receipt of your letter dated 21st April, 2020 whose contents are duly noted.

The Board, in implementing its mandate seeks to ensure the availability of information to ensure protection of the public. This information is published on the organizations website that can be access via www.pharmacyboardkenya.org. Nevertheless, we wish to respond to your specific queries as follows:

1. Which distributors have been licensed to import PPE?
   The information requested is captured under the column of Local Technical Representatives under the Medical Device Reports that can be accessed via:
   https://products.pharmacyboardkenya.org/ppb_admin/pages/system_reports_public.php

2. What are the procedures or processes of seeking the import license?
   The Board, works in collaboration with the Kenya Trade Network Agency (KenTrade) in ensuring expeditious access of health products imported into the country. These procedures are captured under the trade facilitation platform implemented by the KenTrade under the supervision of the National Trade Facilitation Committee, which may be accessed via:

This is Exhibit marked "AM – 19" referred to in the Annexed affidavit/Declaration of Allan Maleche
Sworn/Declared before me on this........ day of........ 20...... at........ in the Republic of Kenya
....
Commissioner for Oaths

https://infotradekenya.go.ke/objective/search?l=en&embed=&include Search=true&filter_tab=1&flt_2=10&flt_9=231

3. How long does the process take?
   Currently, in view of the pandemic, the Board is implementing an expedited review procedure that takes 24 hours for one to obtain an import permit assuming the product is registered or listed. Products not registered or listed an additional seven (7) days for Emergency Use Marketing Authorization process to take effect. This is captured under the processes indicated above.

4. How much does it cost to get the license?
   For Emergency Use Marketing Authorization, the following fees shall apply:
   a. Locally manufactured products – Kshs. 5000
   b. Foreign – Class A – USD 100, B – USD 200, C& D- USD 1000

   Fee for import permit is 0.75% FOB, applicable to all classes.

5. Which department of the Board is responsible for issuance of the licenses?
   The Department of Health Products and Health technologies is responsible for vetting the applications for licenses.

6. From which Countries are the PPE being imported from? and what are the main ports of entry?
   Majorly India, China, UAE, Turkey, USA and Europe. The main port of entry is JKIA and ICD.

7. How many local suppliers and manufacturers are involved in the process?
   This information is found here:
   https://products.pharmacyboardkenya.org/ppb_admin/pages/system_reports_public.php

8. What are the procedures or processes of certifying local manufacturers of PPE? and is this done in collaboration with KEBS?
   - In view of the ongoing pandemic caused by COVID-19, the Ministry of Health recommended the use of alcohol-based hand sanitizers whenever water and soap are not available. To ensure access to quality, safe and effective hand sanitizers, the Pharmacy and Poisons Board (the Board), under the Ministry of Health, continues to provide timely and appropriate guidance for manufacturing of the

PPE to ensure they are compliant with applicable WHO guidance and to local as well as international standards. Since there is a direct claim or implication that alcohol-based hand sanitizer products can be used to prevent infections associated with pathogens like corona virus, they are considered to be borderline health products under the Pharmacy and Poisons Act, Cap 244 of the Laws of Kenya.

- The Board encourages **eligible local pharmaceutical companies licensed to manufacture** and market topical products to manufacture quality-assured alcohol-based hand sanitizers at an affordable cost for consumers use and for use by health care personnel. These Pharmaceutical Manufacturers are encouraged to utilize their established pharmaceutical quality management system, practical experience in manufacturing and supply chain to avail the products for consumer use during this pandemic.
- In response to unmet demand for alcohol-based hand sanitizer products entities that are not currently licensed and regulated as pharmaceutical manufacturers are now involved in manufacturing of alcohol-based hand sanitizers. These unlicensed manufacturers provided with simple, easy-to-follow guidance on the preparation, quality control, packaging, labelling and release of alcohol-based hand sanitizer products. These documents are publicly and freely accessible on www.pharmacyboardkenya.org.
- Further, the Board has published specifications for PPE and continues to provide technical support to local manufacturers who intend to manufacture the same. This is available on https://pharmacyboardkenya.org/covid19-material
- All manufacturers are urged to ensure that the formulation and production of alcohol-based hand sanitizers are in compliance with international and local standards.
- Products manufactured by establishments that are currently not licensed by PPB are similarly expected to comply at least with the KEBS standards.
- Licensed Distributers are required similarly to stock and offer for sale only quality-assured hand sanitizers from licensed manufacturers or the temporarily authorized manufacturers complying with international and local standards.
- For the avoidance of doubt, PPE include, but are not limited to, masks, gowns, aprons, goggles among others.
- KEBS is a standard setting body that sets standards in line with the Standards Act while PPB enforces the set standards alongside international standards.

9. How has the Pharmacy and Poison's Board adjusted its processes to support accelerated importation and distribution of PPE?
   The Board has adjusted its processes by implementing expedited processes with significantly reduced timelines. Documents are on the website.

10. Is there a report produced by the board that shows efforts of the PPB so far in ensuring regulatory measures are upheld to achieve the highest standards of safety, efficacy and quality of PPE's locally manufactured or imported? Where can this information be obtained?
    The Board continues to generate its internal periodic performance reports and stakeholders continue to be updated on any regulatory changes. Details of PPB's efforts in COVID 19 can be found on the site at:https://pharmacyboardkenya.org/covid19-materialincluding guidelines for PPE's.

11. Has the Board developed an appropriate system for detecting, reporting and monitoring adverse effects or reactions of imported/local PPE's to users in Kenya?

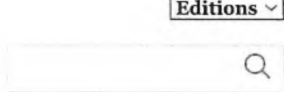
    The Board continues to ensure adequate pharmacovigilance of health products and technologies in line with the guidelines available on https://pharmacyboardkenya.org/pharmacovigilance. The reporting is done via https://pv.pharmacyboardkenya.org.

Yours faithfully,

Dr. F. M. Siyoi
CHIEF EXECUTIVE OFFICER

AK/na

XINHUANET



Roundup: Kenyan police rounds up over 1,100 for flouting curfews

Source: Xinhua | 2020-04-22 18:33:58 | Editor: huaxia

NAIROBI, April 22 (Xinhua) -- Kenyan police have arrested more than 1,100 people in Nairobi over the past one week for flouting a dusk-to-dawn curfew imposed to contain the spread of coronavirus in the country.

Wilson Njenga, Nairobi regional commissioner, said the suspects were taken to courts, fined and forced to self-isolate.

More will be detained at the quarantine centers if they flout the rules, he warned.

"People don't seem to take this thing seriously. We are here for them," Njenga told journalists in Nairobi.

He said more than 200 people were arrested on Monday in Nairobi after they broke the public health regulations against the COVID-19 pandemic.

Over the weekend, more than 300 others were rounded up and taken to quarantine centers after being arrested from roadblocks, clubs, homes, weddings, and other joints.

They were placed in forced quarantine at their own cost.

QUARANTINE ESCAPEES

On Tuesday evening, more than 50 people reportedly escaped from a quarantine center in Nairobi. County police commander Phillip Ndolo said authorities are waiting for the medical personnel attending to the escapees to provide a list to start searching for those who fled.

"The medical team is still in the quarantine area and we expect them to give us details on those missing then we start the other process," said Ndolo.

He said according to video clips that are circulated on social media, those seen escaping had bags showing they were in quarantine.

"From the look of things, they are not those who were arrested from bars and roadblocks. This is dangerous behavior," Ndolo said.

This is Exhibit "AM-2" referred to in the Annexed affidavit/Declaration of Allan Maleche
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been exposed to COVID-19 be isolated for 14 days.

The authorities said the suspects will remain at the quarantine under observation for health officials to monitor if any symptoms develop.

President Uhuru Kenyatta, in a live radio interview early Wednesday, said those who escaped from the quarantine facility will be arrested and returned there.

Kenyatta warned that those found breaking the new laws on social distancing will be put in mandatory quarantine for 14 days, and if they continue to disregard the stringent measures, they will have their quarantine duration extended.

"We will get those people that are escaping from quarantine centers to finish clear their days. They cannot hide," Kenyatta said.

"Those that are arrested for flouting night curfew regulations must pay for their accommodation. You cannot be a burden to the law-abiding citizens. Everyone must carry his own cross," he said during a live address on national Swahili radio stations.

Kenya Medical and Practitioners and Dentists Board CEO Daniel Yumbya said there are 54 quarantine centers across the country after six more were opened up over the weekend. So far, 2,195 have been released from mandatory quarantine.

TOUGHER CURFEW MEASURES

On Sunday, Mercy Mwangangi, chief administrative secretary in the Ministry of Health, said Kenyans found outside of their houses during the curfew will now be assumed to have contacted suspected cases of coronavirus and placed under quarantine.

"All those who break the curfew rules will be assumed to have been in contact with suspected cases and hence will be quarantined for 14 days," she said. Enditem

BREAKING HEALTH REGULATIONS

Miraa driver among 70 in forced quarantine in Meru

Authorities say the driver was found sneaking into Meru two people from Nairobi

In Summary

- Most found either breaking the dusk-to-dawn curfew, not wearing face masks, being in bars or not keeping social distance.
- Driver had delivered miraa in Eastleigh in Nairobi.

by GERALD MUTETHIA
Correspondent, Meru

Eastern
23 April 2020 - 22:00

AT OWN COSTS: - Those arrested for breaking health regulations at the Meru KMTC (Photo by: GERALD MUTETHIA)

Uhuru distances himself from Murathe on Ruto retirement remark

A miraa pick-up truck driver is among 70 people forced into quarantine in Nairobi into the county.

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Machari said people like the driver will not be tolerated adding that they may be forced to ban the use of vehicles that are being used to traffic people from coronavirus hotspot counties.

Meru medical services director Koome Muthuri told journalists at KMTC that the 57 were arrested after breaking the dusk-to-dawn curfew and for not wearing face masks, being in bars and not keeping social distance.

Muthuri said they will intensify the enforcement of health directives to ensure residents help prevent the spread of coronavirus.

He said they had strict instructions from Governor Kiraitu Murungi to aid the fight against the pandemic.

Nyambene Miraa Traders Association chairman Kimathi Munjuri said any driver disobeying directives to curb the spread of Covid-19 must carry their own cross.

He said the driver had delivered Miraa in Eastleigh in Nairobi.

Edited by P.O

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Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19)

Interim guidance
19 March 2020

On 30 January 2020, the WHO Director-General determined that the outbreak of coronavirus disease (COVID-19) constitutes a Public Health Emergency of International Concern.[1] As the outbreak continues to evolve, Member States are considering options to prevent introduction of the disease to new areas or to reduce human-to-human transmission in areas where the virus that causes COVID-19 is already circulating.

Public health measures to achieve these goals may include quarantine, which involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, with the objective of monitoring their symptoms and ensuring early detection of cases. Many countries have the legal authority to impose quarantine. Quarantine should be implemented only as part of a comprehensive package of public health response and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.[2]

The purpose of this document is to offer guidance to Member States on implementing quarantine measures for individuals in the context of the current COVID-19 outbreak. It is intended for those who are responsible for establishing local or national policy for the quarantine of individuals and for ensuring adherence to infection prevention and control (IPC) measures.

This document is informed by current knowledge of the COVID-19 outbreak and by considerations undertaken in response to other respiratory pathogens, including the severe acute respiratory syndrome coronavirus (SARS-CoV), the Middle East respiratory syndrome (MERS)-CoV and influenza viruses. WHO will continue to update these recommendations as new information becomes available.

Quarantine of persons

The quarantine of persons is the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. Quarantine is different from isolation, which is the separation of ill or infected persons from others to prevent the spread of infection or contamination.

Quarantine is included within the legal framework of the International Health Regulations (2005), specifically:

- Article 30 – Travellers under public health observation;
- Article 31 – Health measures relating to entry of travellers;
- Article 32 – Treatment of travellers.[2]

Member States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to legislate and to implement legislation, in pursuit of their health policies, even if this involves the restriction of movement of individuals.

Before implementing quarantine, countries should properly communicate such measures to reduce panic and improve compliance.[1]

- Authorities must provide people with clear, up-to-date, transparent and consistent guidelines, and with reliable information about quarantine measures.
- Constructive engagement with communities is essential if quarantine measures are to be accepted.
- Persons who are quarantined need to be provided with health care; financial, social and psychosocial support; and basic needs, including food, water, and other essentials. The needs of vulnerable populations should be prioritized.
- Cultural, geographic and economic factors affect the effectiveness of quarantine. Rapid assessment of the local context should evaluate both the drivers of success and the potential barriers to quarantine, and they should be used to inform plans for the most appropriate and culturally accepted measures.

When to use quarantine

Introducing quarantine measures early in an outbreak may delay the introduction of the disease to a country or area or may delay the peak of an epidemic in an area where local transmission is ongoing, or both. However, if not implemented properly, quarantine may also create additional sources of contamination and dissemination of the disease.

In the context of the current COVID-19 outbreak, the global containment strategy includes the rapid identification of laboratory-confirmed cases and their isolation and management either in a medical facility[3] or at home.[4]

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WHO recommends that contacts of patients with laboratory-confirmed COVID-19 be quarantined for 14 days from the last time they were exposed to the patient.

For the purpose of implementing quarantine, a contact is a person who is involved in any of the following from 2 days before and up to 14 days after the onset of symptoms in the patient:

- Having face-to-face contact with a COVID-19 patient within 1 meter and for >15 minutes;
- Providing direct care for patients with COVID-19 disease without using proper personal protective equipment;
- Staying in the same close environment as a COVID-19 patient (including sharing a workplace, classroom or household or being at the same gathering) for any amount of time;
- Travelling in close proximity with (that is, within 1 m separation from) a COVID-19 patient in any kind of conveyance;
- and other situations, as indicated by local risk assessments.[5]

Recommendations for implementing quarantine

If a decision to implement quarantine is taken, the authorities should ensure that:

- the quarantine setting is appropriate and that adequate food, water, and hygiene provisions can be made for the quarantine period;
- minimum IPC measures can be implemented;
- minimum requirements for monitoring the health of quarantined persons can be met during the quarantine period.

Ensuring an appropriate setting and adequate provisions.

The implementation of quarantine implies the use or creation of appropriate facilities in which a person or persons are physically separated from the community while being cared for.

Appropriate quarantine arrangements include the following measures.

- Those who are in quarantine must be placed in adequately ventilated, spacious single rooms with en suite facilities (that is, hand hygiene and toilet facilities). If single rooms are not available, beds should be placed at least 1 metre apart.
- Suitable environmental infection controls must be used, such as ensuring are adequate air ventilation, air filtration systems, and waste-management protocols.
- Social distance must be maintained (that is, distance of at least 1 metre) between all persons who are quarantined.
- Accommodation must provide an appropriate level of comfort, including:
  - provision of food, water, and hygiene facilities;
  - protection for baggage and other possessions;
  - appropriate medical treatment for existing conditions;
  - communication in a language that those who are quarantined can understand, with an explanation of their rights, services that will be made available, how long they will need to stay and what will happen if they get sick; additionally, contact information for their local embassy or consular support should be provided.
- Medical assistance must be provided for quarantined travellers who are isolated or subject to medical examinations or other procedures for public health purposes.
- Those who are in quarantine must be able to communicate with family members who are outside the quarantine facility.
- If possible, access to the internet, news, and entertainment should be provided.
- Psychosocial support must be available.
- Older persons and those with comorbid conditions require special attention because of their increased risk for severe COVID-19.

Possible settings for quarantine include hotels, dormitories, other facilities catering to groups, or the contact's home. Regardless of the setting, an assessment must ensure that the appropriate conditions for safe and effective quarantine are being met.

When home quarantine is chosen, the person should occupy a well-ventilated single room, or if a single room is not available, maintain a distance of at least 1 metre from other household members, minimize the use of shared spaces and cutlery, and ensure that shared spaces (such as the kitchen and bathroom) are well ventilated.

Minimum infection prevention and control measures.

The following IPC measures should be used to ensure a safe environment for quarantined persons.

1. Early recognition and control

- Any person in quarantine who develops febrile illness or respiratory symptoms at any point during the quarantine period should be treated and managed as a suspected case of COVID-19.
- Standard precautions apply to all persons who are quarantined and to quarantine personnel:
  - Perform hand hygiene frequently, particularly after contact with respiratory secretions, before eating, and after using the toilet. Hand hygiene includes either cleaning hands with soap and water or with an alcohol-based hand rub. Alcohol-based hand rubs are preferred if hands are not visibly dirty; hands should be washed with soap and water when they are visibly dirty.

- Ensure that all persons in quarantine are practicing respiratory hygiene and are aware of the importance of covering their nose and mouth with a bent elbow or paper tissue when coughing or sneezing and then immediately disposing of the tissue in a wastebasket with a lid and then performing hand hygiene.
- Refrain from touching the eyes, nose and mouth.

- A medical mask is not required for persons with no symptoms. There is no evidence that wearing a mask of any type protects people who are not sick.

2. Administrative controls

Administrative controls and policies for IPC within quarantine facilities include but may not be limited to:

- establishing sustainable IPC infrastructure (for example, by designing appropriate facilities) and activities;
- educating persons who are quarantined and quarantine personnel about IPC measures. All personnel working in the quarantine facility need to have training on standard precautions before the quarantine measures are implemented. The same advice on standard precautions should be given to all quarantined persons on arrival. Both personnel and quarantined persons should understand the importance of promptly seeking medical care if they develop symptoms;
- developing policies to ensure the early recognition and referral of a suspected COVID-19 case.

3. Environmental controls

Environmental cleaning and disinfection procedures must be followed consistently and correctly. Cleaning personnel need to be educated about and protected from COVID-19 and ensure that environmental surfaces are regularly and thoroughly cleaned throughout the quarantine period.

- Clean and disinfect frequently touched surfaces – such as bedside tables, bed frames and other bedroom furniture – daily with regular household disinfectant containing a diluted bleach solution (that is, 1-part bleach to 99 parts water). For surfaces that cannot be cleaned with bleach, 70% ethanol can be used.
- Clean and disinfect bathroom and toilet surfaces at least once daily with regular household disinfectant containing a diluted bleach solution (that is, 1-part bleach to 99 parts water).
- Clean clothes, bed linens, and bath and hand towels using regular laundry soap and water or machine wash at 60-90 °C (140–194 °F) with common laundry detergent, and dry thoroughly.
- Countries should consider implementing measures to ensure that waste is disposed of in a sanitary landfill and not in an unmonitored open area.
- Cleaning personnel should wear disposable gloves when cleaning surfaces or handling clothing or linen soiled with body fluids, and they should perform hand hygiene before putting on and after removing their gloves.

Minimum requirements for monitoring the health of quarantined persons.

Daily follow up of persons who are quarantined should be conducted within the facility for the duration of the quarantine period and should include screening for body temperature and symptoms. Groups of persons at higher risk of infection and severe disease may require additional surveillance owing to chronic conditions or they may require specific medical treatments.

Consideration should be given to the resources and personnel needed and rest periods for staff at quarantine facilities. This is particularly important in the context of an ongoing outbreak, during which limited public health resources may be better prioritized for health care facilities and case-detection activities.

Respiratory samples from quarantined persons, irrespective of whether they have symptoms, should be sent for laboratory testing at the end of the quarantine period.

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WHO continues to monitor the situation closely for any changes that may affect this interim guidance. Should any factors change, WHO will issue a further update. Otherwise, this interim guidance document will expire 2 years after the date of publication.

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WHO reference number: WHO/2019-nCoV/IHR_Quarantine/2020.2

Daily Nation News

Dozens injured as police brutality marks start of curfew

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Summary

- Not spared were media personnel with Nation Media Group television cameraman Pater Wainaina being clobbered by a police officer, as he struggled to perform his duties.
- The brutality of the journalist, which was roundly condemned by the Kenya Editors Guild (KEG) and Kenya Union of Journalist (KUJ).

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Police brutality ushered in the coronavirus curfew for Coast and Eldoret residents as cops descended on hapless citizens two hours before the deadline.

Not spared were media personnel with Nation Media Group television cameraman Pater Wainaina being clobbered by a police officer, as he struggled to perform his duties.

The brutality of the journalist, which was roundly condemned by the Kenya Editors Guild (KEG) and Kenya Union of Journalist (KUJ), came as a shocker as the crew were recording the new measures the police and Coastguard had effected at the Likoni Channel.

"I was actually doing my work and the brutality meted on me by the policeman caught me surprise. I did not provoke him, and it was uncalled for," Mr. Wainaina said.

Coast regional police boss Rashid Yakub apologised for the incident, terming it unfortunate and uncalled for.

"Please advise the journalist to record a statement at the Central Police Station in Mombasa, get an Occurrence Book (OB) number so that we can take appropriate action against this officer. We do not condone such incidents, and his actions have no place in the force," Mr. Yakub said.

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Churchill Otieno, the president of Kenya Editors Guild said that this wasn't an officer of the law, but a criminal.

"We demand that he is immediately disarmed and prosecuted in a court of law. The public have a right to timely, accurate information hence journalists must be allowed to wor," Mr. Otieno said.

The KUJ Secretary General Eric Oduor said that this was another unfortunate incident which showed police's low value for the work journalists do.

"This is a matter we shall revisit and report it to Independent Police Oversight Authority (Ipoa) and the Inspector General (IG) Hillary Mutyambai for action. We will go for these specific police officers caught assaulting journalists. This is a classic case where will use to settle this. We have the footage of the said officer, and we will want action taken," Mr. Oduor said.

The Police officers also went on another brutality spree, beating up hundreds of ferry users who had who were lining up to get into the ferries at the Likoni Channel.

The officers who were armed with batons beat the commuters after they crowded and tried to force themselves towards the Likoni Channel.

The commuters complained they were getting late as the curfew time was approaching.

The officers hurled teargas cannisters at the crowd as they mercilessly beat up the people seriously injuring them.

Women who were caught in the melee were left with tears after they were beaten and frogged marched by the irate officers.

A stampede occurred as the hundreds of the pedestrians were forced back to the line that has stretched past PCEA church and meandered within Kizingo streets.

During the better part of the day, police have been forcing commuters to line to allow them maintain the 1.5m social distance once they get into the ferries.

The measure has been announced by the government in its effort to deal with the spread of coronavirus.

On Thursday, Coast regional commissioner John Elungata said there will be no ferries at night.

Mr Elungata said that ferries will be available as from 5.30am to 6pm in the evening.

During peak hours, he said three ferries will be available to carry pedestrians only and the fourth vessel to ferry vehicles only.

Meanwhile, police officers lobbed teargas at harmless wananchi who were rushing home along Kenyatta Street in Eldoret town at around 6pm.

The officers were patrolling the streets asking people to go home.

Most of them were caught unawares as the officer threw teargas canisters unprovoked.

Additional reporting by Jeremiah Kiplagat

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Kenya: Police Brutality During Curfew

Several dead, Others with Life-Threatening Injuries

Kenyan police hold back ferry passengers causing a crowd to form outside the ferry in Mombasa, Kenya on Friday, March 27, 2020. © 2020 AP Photo

(Nairobi) – At least six people died from police violence during the first 10 days of Kenya's dusk-to-dawn

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from residents or looted food in locations across the country. On March 30, following criticism from various groups over abuses in Mombasa, including by Human Rights Watch, President Uhuru Kenyatta apologized generally about police use of force, but did not instruct the police to end the abuses.

"It is shocking that people are losing their lives and livelihoods while supposedly being protected from infection," said Otsieno Namwaya, senior Africa researcher at Human Rights Watch. "Police brutality isn't just unlawful; it is also counterproductive in fighting the spread of the virus."

Between March 29 and April 14, Human Rights Watch conducted phone interviews with 26 witnesses, relatives, and victims of abuses related to the curfew in Nairobi, Mombasa, Kwale, Busia, Kakamega, Mandera, and Homa Bay counties, revealing severe police abuses in these communities.

On March 25, President Kenyatta announced a government plan for a nationwide dusk-to-dawn curfew starting March 27. Police appear to have enforced it in a chaotic and violent manner from the start. In downtown Nairobi, police arrested people on streets, whipping, kicking, and herding them together, increasing the risks of spreading the virus. In the Embakasi area of eastern Nairobi, police officers forced a group of people walking home from work to kneel, then whipped and kicked them, witnesses told Human Rights Watch.

In Mombasa, on March 27, more than two hours before curfew took effect, police teargassed crowds lining up to board a ferry back home from work, beating them with batons and gun butts, kicking, slapping, and forcing them to huddle together or lie on top of each other. Video clips on local television stations and social media showed that the police were not wearing masks and other protective gear, which authorities were encouraging everyone to wear and have since made mandatory.

Human Rights Watch heard similar accounts from many parts of the country as police violently enforced the curfew over the following days, shooting, beating, and extorting money from people. The violence killed at least six people.

On March 31, at around midnight in the Kiamaiko neighborhood, in Nairobi's Eastlands area, the police shot live ammunition at Yassin Hussein Moyo, 13, hitting him in the stomach and killing him, witnesses said. His father, Hussein Moyo, told the Kenyan media that his son was standing on the third-floor balcony at midnight alongside his siblings when the bullet struck him.

The Independent Policing Oversight Authority, a civilian police accountability institution, on April 2 said it has started investigating Moyo's killing. However, similar promises in the past have not resulted in

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In Busia and Kakamega counties, in western Kenya, the police have also beaten and shot at people, in many cases outside the hours, resulting in death and serious injury, local residents told Human Rights Watch.

In Kakamega county, at around midday on April 1, police enforcing a ban on the open-air market arrived in trucks at the market in Mumias and began beating, kicking, and shooting at traders. Three traders at the market told Human Rights Watch that Idris Mukolwe, a 45-year-old tomato vendor, died from being hit with a teargas canister police threw at him. One trader said:

> We ran when the police arrived, but they threw teargas at us. One teargas canister hit Mukolwe and exploded in his face. He started suffocating as police laughed at him, and when we went to his aid, police again threw teargas at us, forcing us to flee.

At the same market on March 30, police shot a 24-year-old trader, Grace Muhati, with live ammunition. Fellow traders rushed her to a county referral hospital, where she is recuperating after doctors removed two bullets from her body, a family member said.

Human Rights Watch was able to confirm a second man was beaten to death by police in Kakamega, a third in Homa Bay, western Kenya, and two more in Kwale county, in the coastal region.

Kenyan authorities should urgently investigate instances in which police shot, beat, or abused people, killing or seriously injuring them, and hold those responsible to account, Human Rights Watch said. Under Kenyan and international law, police may only use lethal force when it is strictly necessary to save lives.

Kenya has a long history of police use of excessive force during law enforcement operations, either in informal settlements or in response to demonstrations, often resulting in unnecessary deaths. In February, Human Rights Watch documented eight cases of police killings, six of them during peaceful protests. One was in Majengo against the police killing of a 24-year-old man and another in Kasarani against the poor condition of roads in Nairobi's low-income neighborhoods of Majengo, Kasarani, and Mathare. There was apparently no justification for these killings.

In February 2018, local and international rights organizations, including Human Rights Watch, documented more than 100 cases of police killings of opposition protesters during the 2017 presidential elections. In June 2016, Human Rights Watch found that at least five people died and 60 more were wounded by gunfire in the Nyanza region as police tried to obstruct two protests calling for reform and

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authority. Those responsible for investigations appear to focus only on one or two cases that have elicited public outrage and ignore the rest. The police authorities and the oversight body have a responsibility to ensure that all current and past killings are thoroughly investigated and that all those implicated are held to account in line with Kenyan law, Human Rights Watch said.

"Kenyan authorities should ensure that the police do not use excessive force and that the curfew is carried out legally to benefit Kenyans," Namwaya said. "The Kenyan authorities should follow through on promises to investigate the killings and abuses and hold those responsible to account."

For further details of the abuses Human Rights Watch documented, please see below.

The Curfew Killings/Deaths

Kenya's curfew to curb the spread of Covid-19 went into effect on March 27. Within the first10 days, police used excessive force across the country, causing the deaths of at least six people and leaving many others injured, Human Rights Watch found. The 26 people Human Rights Watch interviewed included victims of police beatings, witnesses, relatives of the victims, including those killed, and activists involved in seeking justice for the victims and their families.

Ferry passengers flee from police firing tear gas, at the ferry in Mombasa, Kenya Friday, March 27, 2020. © 2020 AP Photo

Calvin Omondi, 23, March 27, Homa Bay County, Western region

A witness in Rachuonyo, Homa Bay County, western Kenya, said that Omondi, a motorcycle taxi driver, died on March 29 at Rachuonyo Level Four Hospital in Oyugis from injuries following police beatings on March 27, the first day of the curfew. Relatives said that Omondi was returning to his house at around 7 p.m., the official start of the curfew when a group of officers attacked him at a trading center in Homa Bay, causing him to lose control of his motorcycle. But the area police commander, Esau Ochorokodi, told media that police were not involved in his death and that Omondi lost control of his motorcycle and hit his head on a bridge.

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A relative and two activists said that just before 7 p.m., Juma, a 49-year-old former police officer who is a motorcycle taxi rider, volunteered to take a woman in labor to Mwahima hospital, Kwale county, in the coast region. On his way back to his house in Zibani village in Matuga constituency, relatives said, a group of police officers, stopped him, beating him with rifles and gun butts. A relative, Omar Abdallah Raisi, said that the police first threw teargas at Juma, a father of four, in the middle of the road at Mkunamnazi, Likoni: "He lost control of the motorcycle and fell. Police then just started beating him, leaving him for dead."

Moyo, 13, March 31, Nairobi County

Police shot Yassin, standing on the third floor balcony of a family apartment at night, in the stomach, killing him instantly.

Eric Ng'ethe Waithugi, 23, April 1, Kwale County, Coast region

Two witnesses and one activist said that more than 20 police officers beat Eric Ng'ethe, 23, an accountant at a pub in Ukunda, Kwale county, to death, at around 7 p.m. on April 1. One witness said that Ng'ethe was at work, but that he and other young men locked themselves inside the pub when curfew hours approached. The officers shot teargas into the pub and broke down the door, then beat Ng'ethe and 11 other people inside with wooden clubs. The Msambweni sub county police commander, Nehemiah Bitok, told Kenyan media that Ng'ethe died in a stampede after the people inside allegedly defied police orders to open the pub.

Yusuf Ramadhan Juma, 35, April 1, Kakamega County, Western region

The family of Ramadhan Juma, who had a mental disability, said he left their home on the evening of April 1 and never returned. One family member said they searched for him the next morning and found him in Kakamega County Referral hospital with serious injuries they believed were from beatings during curfew the previous night. Juma died just moments after the family found him. Kakamega central divisional police commander, David Kabena, told the media that the police were not responsible: responsible: "We have heard that the deceased had mental problems," he said. "Maybe he went out there touching other people's property and was beaten by people who didn't know he was sick."

Idris Mukolwe, 45, April 1, Kakamega County, Western region

Relatives and fellow traders at Mumias market told Human Rights Watch on the phone that Mukolwe, a

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Beatings and Extortion by the Police

Human Rights Watch also documented instances of harsh beatings and extortion. Two victims of police beatings said that, on March 28, seven police officers forced their way into a block of six units, including a shop and a pub, in Nairobi's Kayole neighborhood, Matopeni area, dragged the owner of the building, a middle aged disabled man, from his shop, and started beating him and his wife. The victims said that other officers pulled down the building's doors and beat the tenants. One victim said: "They beat us from 8 p.m. up to 10 p.m. and then started taking valuables, mostly electronics, from houses, the pub, and the shop."

In another incident, a middle-aged man from Kipevu, in Mombasa County, said that on April 1 he ran into a group of police officers at about 7 p.m. at a grocery shop not far from his house. He said two of the police officers confronted him and started beating him with black leather whips. "They all started beating me," he said.

> "Some were hitting me with batons, others were just kicking and punching me. I could not tell how many they were. Others were beating other people near me. It was around 7:20 p.m."

Another man, 26, from Mombasa's Mwangulu area in Lungalunga, said that on April 2 police stormed into his compound at around 7:20 p.m. and beat him with whips. He had just stepped out of his house to go to the latrine within his compound when police started beating him, saying he had violated the curfew by being outside at that time. He was injured on his back, hand, and neck.

In Nairobi's Eastleigh neighborhood, a middle-aged businessman said that police beat him, then put him in the trunk of his car, and drove around the neighborhood with him for three hours, releasing him only after he bribed them with Ksh2,000 (approximately US$20).

In Mandera county, in northeastern Kenya, a 35-year-old man said that National Police Reservists officers, a force recruited from local people whom police train to assist them in maintaining law and order in villages across the country, forced their way into his car and started driving him to the police station an hour before the start of the curfew. The officers beat him when he asked why they had arrested him before the curfew. He shared pictures of serious injuries he sustained on legs, hands and back with researchers.

In Busia county, residents said police have been conducting curfew enforcement operations during the day, raiding homes where local alcohol is brewed and sold, and arresting people, whom they later release

Submit

RW COVID-19 page: Find latest updates on global humanitarian responses

Kenya

Kenya: In Mathare, measures to prevent the spread of COVID-19 are disrupting other essential health services

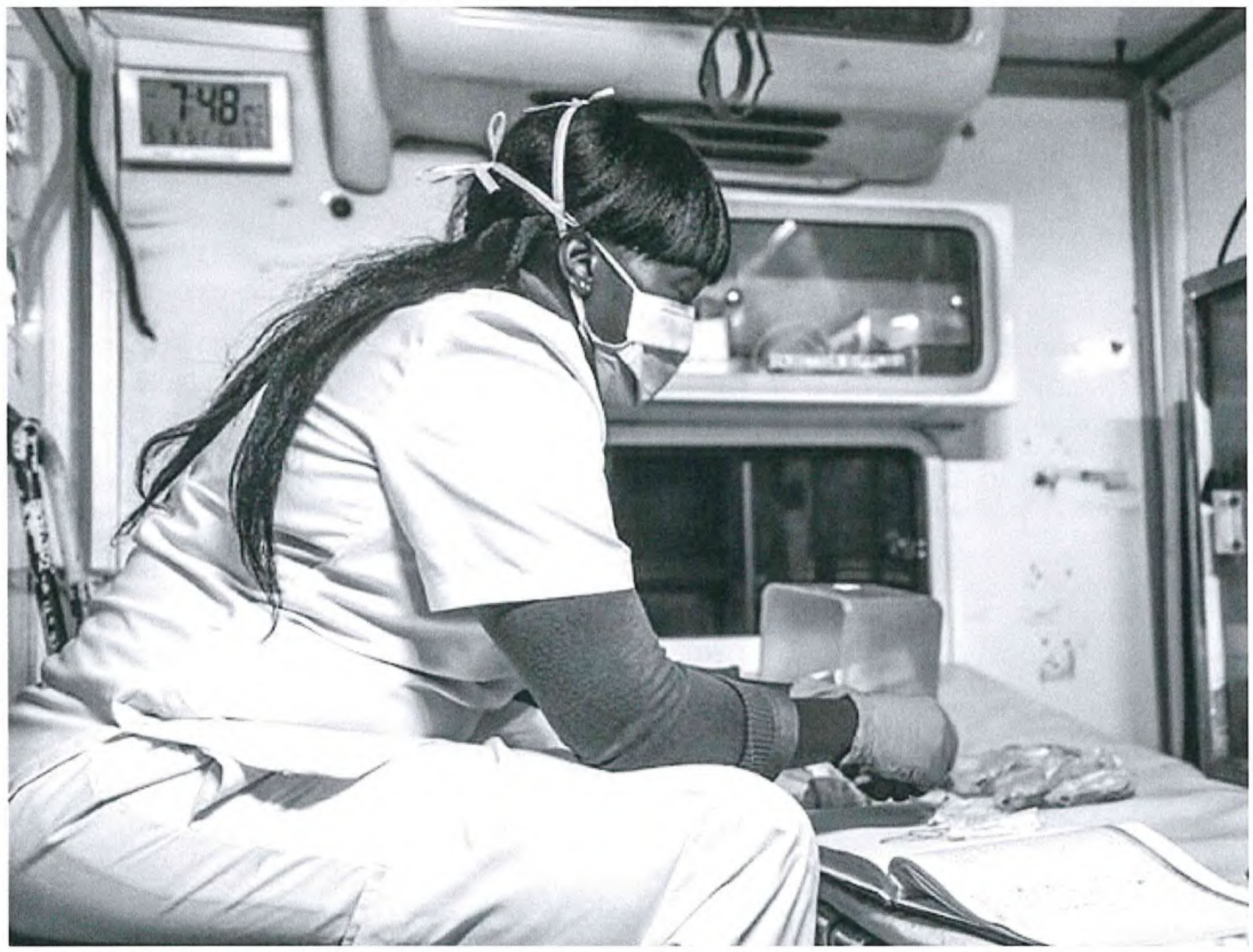
Source: MSF

Posted: 22 May 2020

Originally published: 22 May 2020

Origin: View original

This is Exhibit marked "AM – 23"
referred to in the Annexed affidavit/Declaration
of Allan Maleche.
Sworn/Declared before me on this.............
day of.....................20....
at...............................in the Republic of Kenya
....
Commissioner for Oaths



© Paul Odongo/MSF

For people living in Mathare, one of the largest slums in Nairobi, Kenya, the disruption to local health services caused by a curfew and other preventative measures implemented as a part of the country's COVID-19 response may prove more dangerous to the 500,000 people living there than the outbreak itself. Shortages of personal protective equipment (PPE) for health care workers are exacerbating the problem.

As of May 14, there were 758 confirmed cases of COVID-19 and 42 deaths in Kenya, and although this number is relatively low, Doctors Without Borders/Médecins Sans Frontières (MSF) teams working in Mathare have already witnessed the impacts of the outbreak response on people's access to health care.

"Many private health facilities closed because of the risk of contamination and the lack of PPE," says Dr. Hajir Elyas, MSF project coordinator in Mathare. "At least one public health center has been closed and its staff quarantined after some of them tested positive [for COVID-19]. Some hospitals are refusing to admit patients with respiratory issues even when coronavirus has been ruled out. As a consequence, many [people with] tuberculosis, asthma, and pneumonia end up in COVID-19 isolation facilities, resulting in delayed care and increased exposure to [the virus]."

As in many other MSF projects, our teams in Mathare have adapted and expanded programs to fill gaps and continue providing emergency medical services and medical and psychological care for victims of sexual and gender-based violence (SGBV) amid the pandemic. But our supplies of PPE are limited, and if a reliable source is not found soon MSF may have no choice but to suspend lifesaving activities. Doing so in the middle of an outbreak will be catastrophic.

Consequences of a curfew

In April, MSF teams received 551 ambulance calls and 2,300 people at the emergency room—more than any other month this year. The number of obstetric patients calling MSF's ambulance at night more than doubled from 98 in March to 209 in April, due to a curfew implemented as part of the pandemic response, a lack of transportation options, and some health facilities not accepting patients.

"The challenge for pregnant women is that no taxis or public service vehicles are operating after curfew, not even the *boda boda* (motorcycle taxis) that people use in informal settlements," said George Wambugu, MSF's medical activities manager. "This leaves mothers exposed to obstetric complications. We've had mothers deliver in our ambulances or in the trauma room. We recently had a mother deliver a pre-term baby in need of resuscitation in our ambulance. Luckily, the baby survived, and both recovered well."

Trapped at home

Victims of sexual violence are facing a particularly difficult situation made worse by the lack of transportation options. Despite reports of increases in sexual violence, the number of women coming to MSF's center dedicated to care for victims of SGBV, known as the "Lavender House" because of its purple façade, has decreased.

"We know the number of cases is on the rise," said Dr. Elyas. "We received calls from women or [children] trapped with their abusers, with no way to leave and access care."

In Mathare, many people live in cramped conditions where physical distancing to prevent transmission of the coronavirus is impossible. Many also lack access to clean water, making proper hygiene and handwashing difficult. People also need to earn a living, so "staying home" is not viable.

Doris, social mobilizer at Child.org in Kenya, meeting Regina, new mom to twins.
Courtesy of Child.org

HEALTH

Pregnant Women in Rural Kenya Are Struggling to Access Health Care Amid COVID-19

We spoke to NGO Child.org about the impact coronavirus is having on the women it supports.

SHARE TWEET EMAIL

By **Leah Rodriguez** | APRIL 15, 2020

Why Global Citizens Should Care

When women and girls have access to reproductive and maternal health care, they lead healthier lives, are more likely to stay in school, and contribute to their communities. We must continue to provide women with adequate health resources and information amid global health crises. You can take action on this issue here.

Resources are often diverted away from maternal health care during crises, and the COVID-19 pandemic is making it increasingly difficult to provide adequate maternal care worldwide.

Although Kenya does not have many confirmed positive COVID-19 cases, the organization Child.org is starting to face obstacles as it tries to continue to support mothers through its maternal care program in the country.

Kenya has one of the world's highest maternal mortality rates and one in 26 babies die before they reach their first birthday. But studies show that exposure to women's groups

Tweet Now:

Let's Help Our Communities During Coronavirus — Spread the Word

15,176 / 20,000 actions taken

TAKE ACTION

More Info

Child.org's Pregnant Women's Groups in Meru, Kenya help equip expectant mothers in the rural area with the information and resources they need to keep themselves and their babies safe and healthy.

Martina Gant, head of programming at Child.org, shared with Global Citizen how the COVID-19 pandemic is affecting the organization's ability to continue crucial initiatives with limited resources.

Global Citizen: How has the COVID-19 coronavirus impacted Child.org's maternal health project in Meru, Kenya?

Martina Gant: The biggest impact that the COVID-19 outbreak has had is that we can't run our groups. We are not able to get the women together anymore and haven't been for a few weeks now. We don't have a full lockdown here in Kenya. The government is doing what it can to prevent the spread. [But] getting people together in groups is not a sensible activity right now.

We've also got the issue around the overall costs and impact to the organization. We are relying on income from UK festivals and festivals in Europe, and many of those are not going to go ahead. We also are heavily reliant on fundraising events. If we're not able to run those on top of all of the damage to other activities, we are set to lose between 50 and 80% of our income.

April 2, 2020

3 Ways COVID-19 Lockdowns and Curfews Risk Increasing Already Existing Inequalities in Africa

How are these women at risk when the groups aren't happening?

We ran some surveys in Nairobi with some of our participants from a previous project.

We've been in contact with those women and they were telling us that they are not going to clinics or they're scared to go to clinics because of the potential risk of infection.

Just in the papers this week, we learned that in-hospital delivery rates are down by over 50%, while immunization clinics are down by over two-thirds.

In Mombasa, healthcare workers are being moved from maternity to critical care. We're seeing the same in Meru.

This isn't just Meru, but health care workers haven't been provided with the PPE (personal protective equipment) that they were expecting, meaning that they're not feeling safe.

If there's a suspected case, there have been multiple cases of healthcare workers fleeing health facilities because they're worried about the risk of infection to themselves and the families. On top of an already strained health system, we're seeing that access to services is becoming more challenging, and the quality of care if patients do seek those services is reduced.

Community health volunteers in the past couple of days have been visiting 100 women who delivered their babies since the suspension came in and running surveys with them, but also providing them with the government COVID-19 health and sanitation updates.

as we've seen, that hasn't been provided outside of the immediate first response to the COVID-19 crisis. There's an additional risk to mom and baby and to the health worker in terms of transmission.

Really good work has been done across Kenya and across the world, to improve the maternal mortality rates and neonatal mortality rates. But [the current situation] is really concerning for any of us working in this field. We've got the direct impacts of COVID-19 but the secondary impact is really concerning.

Related Stories

March 25, 2020

[Why COVID-19 Response Efforts Need to Consider That Pandemics Hit Women and Girls the Hardest]

Can you tell me how you're using the Mama Tips SMS platform to keep providing pregnant women with resources in a safe way?

It allows women to ask questions and puts them directly in touch with their frontline health workers. We can encourage them to take themselves to medical centers, but also we can follow up and we can do home visits with our community health volunteers.

This is going to allow us to continue contact with women and also to recruit women on to the project so that when we are able to get groups back together, we can do this kickoff very quickly.

How would your organization like support from the international community to continue ensuring that pregnant women have access to the resources they need during the COVID-19 pandemic?

This is a really tough situation around, for everyone...for people in isolation across the globe.

In the vast majority of countries, there is food available. There's economic support, there's a recognition from the government that further assistance is needed. But for communities like those that we're working with, there isn't that, and very soon people are going to start to go hungry. It's going to become really challenging to support themselves and their families without putting them themselves and their health at risk.

It's just really important to recognize that despite how hard this is for those of us from countries like the UK and the US, we are lucky in terms of what we still have, and to not forget those people in those countries where those pullbacks and those welfare systems are not in place.

We got to the point with this project where the feedback from women was incredible.

There's real misinformation and myths surrounding maternal health in these communities. And it's only with access to reliable information, science-based information, that we're going to be able to make real inroads with maternal deaths and neonatal deaths. It's absolutely critical that access to information doesn't stop given this crisis.

This interview has been edited and condensed for clarity.

You can find out how to take action against coronavirus through our Together At Home campaign here, and you can find all of Global Citizen's COVID-19 coverage here.

Related Stories

- The First UN 'Solidarity Flight' Is Bringing Much-Needed COVID-19 Medical Supplies to Africa
- How COVID-19 Is Impacting Elderly People in Mozambique Who Are Still Recovering From Cyclone Idai
- 8 Resources for Reliable Information About Coronavirus

TOPICS Women & Girls Health Maternal Health Kenya Global Health Child.org Coronavirus COVID-19 Pregnant Women

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6,7 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015

BETWEEN

ERICK OKIOMA..........1ST PETITIONER
ESTHER NELIMA..........2ND PETITIONER
CHRIS OWALLA..........3RD PETITIONER
CM..........4TH PETITIONER
FA..........5TH PETITIONER
KB..........6TH PETITIONER
MO..........7TH PETITIONER
EL..........8TH PETITIONER
KATIBA INSTITUTE..........9TH PETITIONER
KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN)..........10TH PETITIONER
THE KENYA SECTION OF THE INTERNATIONAL
COMMISSION OF
JURISTS (ICJ KENYA)..........11TH PETITIONER
TRANSPARENCY INTERNATIONAL KENYA..........12TH PETITIONER
ACHIENG ORERO..........13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organizations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH..........1ST RESPONDENT
PATRICK AMOTH, AG DIRECTOR GENERAL,
MINISTRY OF HEALTH..........2ND RESPONDENT
CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY..........3RD RESPONDENT
COUNCIL OF GOVERNORS..........4TH RESPONDENT
FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT..........5TH RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL
OF THE POLICE, KENYA.. 6TH RESPONDENT
JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS..7TH RESPONDENT
COMMISSION ON ADMINISTRATION
OF JUSTICE.. 8TH-RESPONDENT
DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL...9TH RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR)...1ST INTERESTED PARTY

AFFIDAVIT SUPPORTING THE APPLICATION AND PETITION

I, **KELVIN MOGENI,** of **P.O. Box 59743-00200 Nairobi** in the Republic of Kenya do hereby make oath and state as follows:

1. **THAT** I am an advocate of the High Court of Kenya and the chairperson of the Kenya Section of the International Commission of Jurists (hereinafter ICJ Kenya), the 11th Petitioner in this petition.

2. **THAT** ICJ Kenya is the oldest human rights organization in Kenya with a membership of over 500 jurists drawn from the bar, bench and civil society. It is dedicated to the legal protection of human rights in Kenya and the African region as defined by Article 4 of the ICJ Kenya Statute.

3. **THAT** the mission of ICJ Kenya is to promote human rights, justice, rule of law and democracy in Kenya and around Africa through the application of legal expertise and international best practices.

4. **THAT** I have obtained a copy of the application and petition and wish to state as follows:

5. **THAT** I am aware that on 6th April 2020 the 9th to 12th Petitioners together with 23 other organizations and 47 individuals wrote to the 1st Respondent seeking information on 'implementation of mandatory quarantine in the COVID 19 response in Kenya'. (*a copy of the letter dated 6th April 2020 is annexed and marked as* ***KM-1***)

6. **THAT** I am aware that on 17th April 2020 the 9th to 12th Petitioners together with 13 other organizations and 14 individuals wrote to the 1st Respondent seeking information on 'provision of support to healthcare workers in the COVID 19 response. *(a copy of the letter dated 17th April 2020 is annexed and marked as **KM- 2**)*

7. **THAT** on 27 April 2020, the 1st,2nd and 10thto 12th Petitioners also wrote to the 1st, 4th ,6th ,8th and 9th Respondents seeking information on the 'use of quarantine as a form of punishment and criminalization of COVID 19 response'. *(a copy of the letter dated 27th April 2020 is annexed and marked as **KM-3**).*

8. **THAT** the Respondents have refused to provide the information sought by the Petitioners even though the information is necessary for the exercise of rights to life, health and freedom and security of the person.

9. **THAT** the Respondent's failure or refusal to supply Petitioners with the information violates the values and principles of governance in Article 10 especially human dignity, rule of law, social justice, human rights, good governance, transparency and accountability as well as the principles of public service under Article 232(1)(c) and (f) of the Constitution.

10. **THAT** Petitioners believe that the refusal also violates the Respondents' obligations under Article 35(1)(a) and 35(3), Article 29 and Article 43 of the Constitution.

11. **THAT** Petitioners aver that the Respondents' omission concerns the violation of fundamental rights and freedoms—not just the right to information, but the right to life and health. The lives and health of thousands could turn on how the Respondents address the pandemic. By denying the public the information necessary to determine the sufficiency of their response, the Respondents are insulating themselves from scrutiny, preventing the public from participating in, and being informed about, the government response, and preventing open discussion about the most effective way for the government to save lives and limit the damage the virus will cause.

12. **THAT** any further delay in addressing the Respondents' refusal to provide information could significantly impair the public's ability to participate in the steps taken to protect themselves and could prevent the Respondents from receiving important information about how better to address

the crisis. Given what is at stake for the Petitioners and the public, addressing this failure is urgent and necessary.

13. **THAT** unless this court intervenes and grants the conservatory orders sought, the Respondents' conduct will increasingly endanger the Petitioners' and other Kenyans rights to life and health despite the escalating threat of the COVID 19 pandemic.

14. **THAT** it is in the interest of justice that the Application be allowed.

15. **THAT** I swear this affidavit in support of the Application and the Petition and reiterate the prayers therein.

16. **THAT** I swear this affidavit in support of the Application and Petition based on facts within my knowledge (unless I have disclosed other sources) believing it to be in accordance with the Oaths and Statutory Declarations Act, Cap 20.

SWORN at NAIROBI this ......23rd......Day of ......June...... 2020

By the said KELVIN MOGENI) ....
) (Deponent)
)
)

BEFORE ME)
COMMISSIONER FOR OATHS)

E. CHEGE NG'ANG'A
ADVOCATE AND
COMMISSIONER FOR OATHS
P. O. Box 45618-00100 NAIROBI

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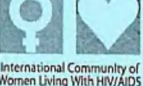
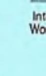
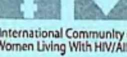
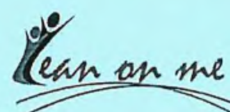
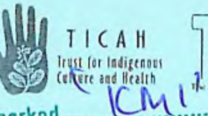
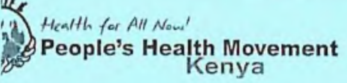




Next Generation of Kenya Lawyers Project





This is the exhibit marked KM1 referred to in the Affidavit of Kelvin Mogeni Declaration Sworn this 23rd day of June year 2020 at Nairobi.
Commissioner for Oaths

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 06/April/2020**

Hon. Mutahi Kagwe *Advance copy via email*
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke; pshealthke@gmail.com

Dear Sir,

REF: OPEN LETTER ON IMPLEMENTATION OF MANDATORY QUARANTINE IN THE COVID-19 RESPONSE IN KENYA & REQUEST FOR INFORMATION

We, the undersigned, individuals, individuals under mandatory quarantine, family members of individuals under quarantine, organizations and associations, are representatives of health and human rights civil society and non-governmental organizations, community-based organizations and governance experts. We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" whose issues raised remains unaddressed.

Our previous advisory had, among other concerns, noted that the implementation of the government's directive of mandatory quarantine and isolation of people affected by COVID-19 was uncoordinated, unplanned and not guided by any policy or guidelines.

We issue this open letter and formal request for information in light of concerns raised by individuals currently in mandatory quarantine, their family members and media reports. The media have documented poor management of individuals from the time they landed at Jomo Kenyatta International Airport, their transportation, up to the time they were admitted to various mandatory quarantine facilities. This exposed them to risk of infection, defeating the very essence of safeguarding the greater public and avoiding co-infection.

1

People in mandatory quarantine have also brought to our direct attention and through open letters[1] and personal videos clear cases of recklessness in their handling, exorbitant costs they have been forced to incur to pay for the quarantine facilities, deplorable living conditions in most quarantine centers, lack of information on any quarantine protocols, and a general lack of any regard to their health, safety and well-being[2]. For the general public, it is not clear how many people are in mandatory quarantine, whether they have all been tested while in quarantine, how many have tested negative or positive and whether the results have been communicated to them. Similar information is unavailable to those in quarantine.

We take note of the fact that quarantine as a public health measure involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, *with the objective of monitoring their symptoms and ensuring early detection of cases*[3]. The World Health Organization (WHO) recommends that mandatory quarantine should be implemented as part of a comprehensive package of public health response and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons. Further, that if a decision to implement quarantine is taken, the authorities should ensure that:

- the quarantine setting is appropriate and that adequate food, water, and hygiene provisions can be made for the quarantine period;
- minimum Infection Prevention and Control (IPC) measures can be implemented; and
- minimum requirements for monitoring the health of quarantined persons can be met during the quarantine period.

We are therefore appalled by the manner in which mandatory quarantine is being implemented which is putting those in quarantine, all health care workers attending to them and, by extension, the entire nation at risk. From the time the decision to enforce mandatory quarantine was made on 22nd March 2020, the public has had several concerns:

- There has been no public information on any guidelines on the mandatory quarantine process, save for draft protocols dated 27th March 2020 and published on the Ministry of Health website on or about 3rd April 2020;

- There has never been information, within the public domain, or to those quarantined, on what to expect at the quarantine facilities, the period, costs, health information etc;There has never been information within the public domain, or to those quarantined on measures put in place to protect the workers at such quarantine facilities from infection including the provisions of personal protective equipment to the health care workers and others attending to them such as hotel workers. For instance, were all the health care workers and hotel staff tested and offered training on managing persons with COVID-19 before they received the people in mandatory quarantine?

As the nation continues struggling with the above, our attention is now drawn to a circular by Acting Director General for Health (Ref: MOH/ADM/1/3/Vol.1) communicating a decision to extend the quarantine period beyond 14 days for occupants of all facilities in which positive cases are identified. As expected, the circular raises further concerns:

- **The risk of co infection for those who are negative:** The Ministry of Health is already handling the quarantine process poorly, putting those in quarantine at risk and contributing to increased infections. What will extension of the quarantine period, of such poorly managed quarantine facilities[4] achieve other than increase chances of co infection for those who are COVID-19 negative?

1. Open letter by people quarantined at Pride Inn Azure Hotel dated 5th April 2020, REF: Directive to extend quarantine period beyond 14 days.

2. See Angela Okech, et. al "Covid-19: Kenyans reveal poor state of isolation centres,"; John Allan-Namu "Inside the Quarantine: Fears of Further Spreading the Virus Haunt the Confined."

3. WHO, 19 March 2020, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19) available at https://www.who.int/publications-detail/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)

4. For example, the Kenya Medical Training Centre, Moi Girls High School Nairobi, Lenana School

2

- **Lack of information to the people under quarantine of the extension:** Who does the circular apply to? At whose cost is the extension? Why a blanket circular to all, yet the Ministry admits that some centers were managed better? Was this circular communicated to those in the mandatory quarantine facilities before it was made public? Do the health care workers and other personnel (e.g. hotel staff) in these facilities have personal protective equipment? Why is it that people who have tested positive appear to learn of their status from the media? Is this not a breach of medical ethics?

- **Poor quarantine facilities:** It is evident that most quarantine facilities are in deplorable conditions. WHO recommends that those who are in quarantine must be placed in adequately ventilated, spacious single rooms with en suite facilities (that is, hand hygiene and toilet facilities). If single rooms are not available, beds should be placed at least one meter apart. Those in quarantine report otherwise, and publicly available video evidence confirms this.

- **Psychosocial Effects of Prolonged Isolation:** How will the Ministry of Health ensure that the mental health of those in quarantine is well taken care of?

- **Proof of Contact:** WHO recommends that contacts of patients with laboratory-confirmed COVID-19 be quarantined for 14 days from the last time they were exposed to the patient. This is also reflected in the draft protocols dated 27th March 2020. What happens to those people who have adhered to quarantine conditions, including social distancing, and have tested negative?

- **Turnaround times for testing:** Per the Ministry's Draft Protocols, test results are to be availed within 24 hours. What is the Ministry doing to ensure results are availed within a reasonable time, to allay unnecessary anxiety and strengthen the quarantine regime overall?

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and the Right to Access Information Act:

1. Provide an explanation as to why the Ministry of Health is not adhering to its own guidelines relating to managing the designated mandatory quarantine facilities. For instance, why are people who have first tested negative test not released into self-quarantine as per the self-quarantine protocols?
2. Does the circular extending the quarantine period apply to all quarantine facilities? Why? At whose cost?
3. The total number of designated quarantine facilities as at 6th April 2020 and the number of occupants in each? The number of heath care workers and their cadres that have been deployed to these quarantine facilities? How many people are currently in quarantine who have been tested and received their results?
4. What measures are being taken to safeguard the health of people in quarantine facilities who have pre-existing medical conditions?
5. What is the time period taken when one tests positive in a quarantine facility before they are transferred to medical facility for isolation?
6. Have the healthcare workers and hotel attendants who have come into contact with the persons who have tested positive been tested and provided with PPE?

As per Section 27 of the Public Health Act, the government has the responsibility of isolating persons who have been exposed to infectious diseases. In the public health emergency occasioned by COVID-19 pandemic, we urge the government to diligently undertake this obligation by, among others, providing safe, clean and hygienic quarantine facilities; meeting the costs of such facilities; and above all monitoring the health including mental health of those in quarantine and promptly discharging those who test negative.

Signed by the following individuals:

1. Allan Maleche
2. Ashok Rajput
3. Atieno Odenyo
4. Benson Maina
5. Bridget Kanini
6. Bonface Ombui
7. Caroline Jerop Morogo
8. Catherine Murugi
9. Christine Nkonge
10. Eugene Ligale
11. Evaline Kibuchi
12. Evelyne Wanjiru Karanja
13. Etta Ligale
14. Francis Aywa
15. Francis Mwangi
16. Grace Macharia
17. Hallima Nyota
18. Huzefa Amirali Mohamedbhai
19. Jamie Nyamongo
20. Jasmine Lemelin
21. Karishma Bhagani
22. Margaret Kalekye
23. Mark Gitau
24. Melanie Ligale
25. Maureen Ouma
26. Naiya Anil Haria
27. Nicholas Mwenda
28. Nickitah Mckena
29. Patricia Asero
30. Peter Owiti
31. Rahul Ponda
32. Rashmi Shah
33. Reggie Ann
34. Sarah Mburu
35. Sajan Thakar
36. Sarah Mwangi
37. Samson Onditi
38. Shanay Sirju Patel
39. Sheila Masinde
40. Sirju Shashikant Patel
41. Sophia Muchiri
42. Soukhya Ankala
43. Tanika Dodhia
44. Twinkle Pethad
45. Vaishali Sirju Patel
46. Vivian Washiko
47. William Mburu

Organisations:

1. Amnesty International
2. CADAMIC
3. COFAS
4. Community Initiative Action Group – Kenya
5. EMAC Kenya
6. FIDA Kenya
7. GALCK
8. Happy Life for Development CBO
9. HENNET
10. HERAF
11. International Community of Women Living with HIV – Kenya Chapter
12. ICJ – Kenyan Section
13. Katiba Institute
14. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
15. KANCO
16. Lean on Me Foundation
17. Next Generation of Kenya Lawyers Project
18. Nelson Mandela TB-HIV Resource Centre Nyalenda
19. People's Health Movement – Kenya
20. PEMA Kenya
21. Rising to Greatness
22. SWOP Ambassadors
23. The Network on Food and Nutrition Security
24. TICAH
25. TISA
26. Transparency International Kenya
27. Wote Youth Development Projects

cc:

Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors

Siddharth Chatterjee,
UN Resident Coordinator in Kenya

Bernard Mogesa
CEO, Kenya National Commission on Human Rights

Dr. Joyce Mwikali Mutinda
Chairperson, National Gender and Equality Commission (NGEC)

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR

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Dandora Community AIDS support Association (DACASA)

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 17/April/2020**

This is the exhibit marked 'KM2' referred to in the Affidavit of Kelvin Mogeni Declaration Sworn this 23 day of June year 2020 at Nairobi. Commissioner for Oaths

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON PROVISION OF SUPPORT TO HEALTH CARE WORKERS IN THE COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We are also Kenyan citizens concerned about the state of preparedness of health facilities to deal with COVID-19, given that any of us is likely to use them. The information we seek in this letter is therefore critical to safeguard our rights including right to life, and right to health.

We make reference to our previous advisory dated 28th March 2018 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" that remains unanswered.

In the previous advisory, we noted the need to support health care workers during this pandemic period through provision of adequate training, and ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks.

We write this urgent request for information letter in light of concerns that health care workers continue to raise as regards to their occupational safety and health risks. We note that it is imperative that the plight of health care workers is urgently, adequately and conclusively addressed given that they have placed themselves and their families at risk to secure the health of this nation.

In our previous advisory, we urged the Ministry of Health to guarantee the safety and well-being of health care workers by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic.

- Ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks through provision of quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and running water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimizing occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Additionally, we proposed that the government ensures this information is available to the public through a live dashboard that is updated on a regular basis with the following information on inputs and processes:

- Number of health care workers trained in every county and in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on trainings provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

However, we take note of the fact that to date there are still complaints and concerns on the protection of health care workers in this pandemic. For instance, the Health Unions (Kenya National Union of Nurses, Kenya Union Clinical Officers and Kenya Medical Practitioners Pharmacist and Dentist Union) have recently done a survey and noted that most of their members in county governments and Ministry of Health have not been adequately trained and or prepared to handle the Corona Virus pandemic.

They have also reported that provision of personal protective equipment (PPE) remains a challenge at health facilities in most counties. The Kenya Medical Practitioners Pharmacists and Dentists' Union in its weekly brief dated 13th April, 2020 called for:

- The need to provide adequate PPEs for all personnel in the hospital including N95 masks, face shields, goggles, scrubs and gowns;
- Designation of specific COVID-19 testing centers for health care workers;
- Provision of catering services to healthcare workers;

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- Provision of transport for all health care workers handling COVID-19 patients to and from the hospital to their accommodation facilities;
- Increase in the number of health care personnel;
- Provision of accommodation to health workers on duty during the pandemic (especially those in health facilities treating suspected and confirmed COVID-19 patients.

The government has a Constitutional and legal obligation to ensure every person enjoys their right to the highest attainable standard of health. This obligation cannot be achieved without health care workers. We therefore urge the government in fulfilment of its legal obligations and in line with the World Health Organization guidelines to (among others):

- Ensure that all necessary preventive and protective measures are taken to minimize occupational safety and health risks;
- Provide information, instruction, and training on occupational safety and health, including; refresher training on infection prevention and control (IPC); use, putting on, taking off and disposal of personal protective equipment (PPE);
- Provide adequate IPC and PPE supplies (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) in sufficient quantity to those caring for suspected or confirmed COVID-19 patients, such that workers do not incur expenses for occupational safety and health requirements;
- Familiarize personnel with technical updates on COVID-19 and provide appropriate tools to assess, triage, test, and treat patients, and to share IPC information with patients and the public;
- Provide appropriate security measures as needed for personal safety;

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Number health care workers trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
(ii) Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.
(iii) Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.
(iv) Number of health care workers tested for COVID-19.
(v) Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

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We look forward to your urgent response not later than 48 hours to inform our next course of action.

Signed by the following individuals:

1. Allan Maleche
2. Becky Odhiambo Mududa
3. Bradley Njukia
4. Caroline Oyumbo
5. Cecilia Mumbi
6. Erick Okioma
7. Fenwick Oyumbo
8. Houghton Irungu
9. Mary Ger
10. Nelson Silas
11. Patricia Osero
12. Peter Owiti
13. Samson Onditi
14. Sheila Masinde

Endorsed by:

1. Amnesty International
2. Boda Boda Association of Kenya
3. COFAS
4. Dandora Community AIDS Support Association (DACASA)
5. EMAC Kenya
6. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
7. Happy Life Development
8. HERAF
9. ICJ – Kenyan Section
10. Kenya Sex Workers Alliance (KESWA)
11. Mumbo International
12. Nelson Mandela TB-HIV Resource Centre Nyalenda
13. Nyarwek Network
14. Transparency International
15. WOYDEP (Wote Youth Development Projects)

cc:

1. Kenya Medical Practitioners Pharmacist and Dentist Union
2. Kenya National Union of Nurses
3. Kenya Union Clinical Officers
4. Association of Public Health Professionals Kenya (APHOK)
5. Kenya Medical Association (KMA)
6. Chairperson, Council of Governors
7. Kenya National Commission on Human Rights
8. Commission on Administrative Justice

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Your REF: TBA **Our REF:** COVID-19 RBA **Date:** 27 April 2020

Hon. Mutahi Kagwe,
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Good Health Community Programme

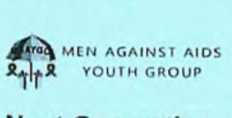
EACHRights
THE EAST AFRICAN CENTRE FOR HUMAN RIGHTS

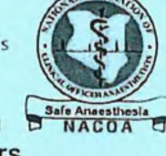
Dandora Community AIDS support Association (DACASA)

ICHR

Mbita Suba Paralegal Network

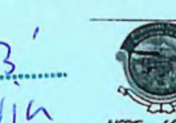
Komesha Kifua Kikuu



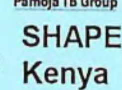


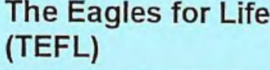
Next Generation of Kenya Lawyers Project

Neema Foundation



Health for All Now!
People's Health Movement Kenya


SHAPE Kenya


The Eagles for Life (TEFL)

nfhs

This is the exhibit marked 'ICM3' referred to in the Affidavit of Kelvin Mogeni Declaration
Sworn this 23rd day of June year 2020
at Nairobi.
Commissioner for Oaths

10

Paul Kihara Kariuki,
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Dr Rudi Eggers,
WHO Country Representative – Kenya,
Email: afkenwr@who.int

The Chairman,
Council of Governors,
Delta Corner, 2nd floor,
Opposite PWC Chiromo Road, off Waiyaki Way,
P.O Box 40401-00100,
NAIROBI.

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON USE OF QUARANTINE AS A FORM OF PUNISHMENT AND CRIMINALIZATION OF COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts. We write this open letter to express our concern with the criminalization of the COVID-19 response and with the inappropriate use of quarantine as punishment.

A. Prior Communications

We refer to our previous advisory note on ensuring a rights-based response to curb the spread of COVID-19 where we advised against the use of punitive measures or criminal sanctions in the current pandemic. This was in the backdrop of the government's communication that "all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."

We also refer to our subsequent open letter and request for information letter on the implementation of mandatory quarantine in the COVID-19 response in Kenya. In this request, we urged the government to diligently undertake its obligation under Section 27 of the Public Health Act of isolating people who may have been exposed to COVID-19, support such persons to self-quarantine in the comfort of their homes; and where this may not be possible, provide safe, clean and hygienic quarantine facilities; meet the costs of such facilities; monitor the health including the mental health of those in quarantine and promptly discharge those who test negative. We also refer to the numerous letters written by persons in quarantine to the Ministry of Health and copied to Kenya National Commission on Human Rights and other stakeholders pointing out their plight, the risk of infection they face and acts of corruption taking place.

Both advisories and letters for request of information to the Ministry of Health by those in quarantine, have urged relevant government agencies to ensure that the public health objective of quarantine is not lost.

B. International Standards

As per the World Health Organization, quarantine involves the restriction of activities of or the separation of persons who are not ill but who may been exposed to an infectious agent or disease, with the objective of monitoring their symptoms and ensuring the early detection of cases. It is recommended that mandatory quarantine should only be implemented as part of a comprehensive package of public health responses and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons.

We also bring to your attention the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, that Kenya has signed and ratified, that require certain criteria are met when rights are restricted, including the right to freedom of movement. In the context of the COVID-19 response, these principles include:

- That the restriction is provided for and carried out in accordance with the law;
- That the restriction pursues a legitimate objective of pressing public need;
- That the restriction is proportionate and strictly necessary in a democratic society to achieve the objective;
- That there are no less intrusive and restrictive means available to reach the same objective;
- That the limitation is not applied for any other purpose than the prescribed objective;
- That the restriction is based on scientific evidence and not drafted or imposed

arbitrarily i.e. in an unreasonable or otherwise discriminatory manner.

We acknowledge that the emergence of COVID-19 brings with it unprecedented challenges nationally and globally.

We further understand that current human rights standards do not necessarily preclude the reasonable and proportionate use of criminal law as a measure of last resort in public health matters.

However, we remain gravely concerned with the application and increased use of criminal law and punitive measures in the COVID-19 response in Kenya. We have observed these punitive measures being abused, misapplied and exploited. This threatens constitutional rights, democratic culture, and the very public health objectives that these measures purport to achieve.

'. Misuse of Quarantine

Mandatory quarantine is being used inappropriately as a punitive measure.
This is despite the fact that quarantine is not, and may not by law be used as a form of punishment. Its purpose is strictly to prevent disease and provide care for the sick as a public health measure.

For instance, the government has resorted to using quarantine as form of detention for people who are alleged to have flouted curfew rules, travel restrictions, directives on wearing of masks, and social gathering restrictions, among others.
We have seen this practice of forcefully placing people who breach curfew in quarantine being applied in a number of counties including Siaya, Uasin Gichu, Nakuru, Nyandarua, Kirinyaga, Isiolo, and Murang'a.

This has been done without following due process by ensuring a right to fair hearing. Further, the recently developed COVID -19 Rules, nowhere provide for mandatory quarantine as a penalty. We are concerned that quarantine facilities are being misused at a time when the appropriate use of these facilities are crucial to efficacy of the COVID-19 response.

D. Criminalization and the punitive response

Enforcement of infection-prevention measures has taken a punitive instead of supportive approach. For example, people have been arrested for not wearing masks in public. This is despite the fact that the government has not provided the public with free masks. In contrast, we have observed the positive approaches of some County Governments, for instance Mombasa County, where the Governor has partnered with the police to distribute masks at police roadblocks instead of arresting those without.

Enforcement of curfew regulations and travel restrictions have also seen increased reports of police brutality, violence, extortion and corruption. The police have even brutalized health care workers when in the line of duty.

Criminalization of COVID-19 is further manifested in the regulations. For instance, the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 inappropriately criminalize the coronavirus response with penal sanctions and use stigmatizing language such as 'carriers of the disease'.

These regulations are not evidence-based. These hastily-gazetted regulations further ignored legitimate concerns from the public (with gazettement happening on the same day that the public was supposed to provide input).

The enforcement of the criminal sanctions is now being abused by the Police who have brutalized, extorted, and arbitrarily arrested poor, vulnerable and marginalized people in Kenya. Further, detention, particularly in quarantine facilities, is placing Kenyans at a higher risk of COVID-19 infection with overcrowding in these facilities, and mixing of new entrants with those already there.

In addition, the quarantine centres themselves are not designed to meet the basic requirements, which is to keep the exposed persons separated from other people. Instead, as we have seen in some quarantine centres, these persons quarantined are in open halls with congested beds in close contact with each other.

. **Public health and human rights dangers of this approach**

With this punitive and criminalized approach to COVID-19, stigma, fear and avoidance of testing and health services is bound to increase. The undignified burial of the late James Oyugi in Siaya County is testament to the growing stigma around COVID-19.

Drawing from remarks of the Health Cabinet Secretary on 22 April, 2020, we can learn from the Kenyan and international experiences in the HIV and TB responses. In these contexts, we have learnt of the dangers of applying criminal sanctions as public health measures, as they are counterproductive, stigmatize people, dissuade people from getting tested and destroy trust. In addition, criminal sanctions disproportionately impact already marginalized groups and lead to increased violations of rights and discrimination in the community.

The HIV Justice Network who in advising that communicable diseases are public health issues, not criminal issues notes that: *"criminalisation is not an evidence-based response to public health issues. In fact, the use of the criminal law most often undermines public health by creating barriers to prevention, testing, care, and treatment – for example, people may not disclose their status or access treatment for fear of being criminalized."* Further, that criminal *"measures can be expected to have a devastating impact on the most vulnerable in society, including those who are homeless and/or living in poverty, as well as individuals from marginalised and already stigmatised or criminalised communities – especially where no economic and social support is provided to allow people to protect themselves and others, including through self-isolation."*

In its advisory, *Rights in the time of COVID -19*, UNAIDS rightfully cautions against "use of criminal laws in a public health emergency" noting that such use "is often broad-sweeping and vague and they run the risk of being deployed in an arbitrary or discriminatory manner," something we are witnessing in the Kenyan context. Instead, the best approach is to empower and enable people and communities to protect themselves and others.

António Guterres, the Secretary-General of the United Nations, in his statement of 23rd April, 2020 , has also rightly advised that, *"the threat is the virus, not people. We must ensure that any emergency measures — including states of emergency — are legal, proportionate, necessary*

and non-discriminatory, have a specific focus and duration, and take the least intrusive approach possible to protect public health. The best response is one that responds proportionately to immediate threats while protecting human rights and the rule of law."

As a country we would do well to also learn from Ebola, a far deadlier disease than COVID-19. Médecins sans Frontières has documented in its work following the 2014-2015 West African Ebola epidemic, how deadly, dangerous and disruptive the use of force and the climate of fear were to the critical need for community-trust and cooperation in responding effectively to the epidemic.

In the current epidemic in the Democratic Republic of Congo, it appears that interventions have been handled in a more rational manner that has sought to preserve the dignity of the patients, the contacts and the community at large, encouraging the community to implement quarantine measures down to the individual level, without the need to criminalize the process.

. **Requests and recommendations**

In light of the concerns above, we seek the following urgent actions and access to information:

. The **Ministry of Health** to urgently:

. ensure that only public health measures that are evidence-based are implemented to prevent and manage the spread of COVID-19;

. take charge of the quarantine process and strictly utilize the facilities for the purpose of separating only people who may have been exposed to the virus, in line with its protocols, the National TB Isolation Policy and WHO guidelines and Constitution.

2. The Ministry of Health to provide us with information on the following:

a. whether the Ministry supports the use of quarantine facilities as punitive measures in the COVID-19 response;

b. the justification, legal, scientific or otherwise, for the use of mandatory quarantine as a punitive measure for people who breach curfew;

c. what actions, if any, the Ministry is undertaking to ensure the public health objectives of quarantine are met in line with human rights standards.

3. The **Kenya Medical Practitioners and Dentists Council** to urgently provide us with:

a. Information on the criteria that was used to select hotels and facilities as quarantine centers.

b. As the body mandated to inspect and approve these quarantine facilities, to share the check list used in selection and approval of the facilities.

c. The list of all places certified as quarantines facilities both at the national and county level as from 23rd March 2020 to date.

d. The approved standard operating procedures of the quarantine facilities.

e. The designated medical personnel responsible for oversight at each quarantine center.

4. The **Council of Governors and all the 47 Governors** urgently share information on:

a. The number of people currently in quarantine in each of their respective counties.

b. The number of people who have been tested in the various quarantine facilities in the counties.

c. The testing schedule of the people in county quarantine.

d. The number of people in quarantine because of breach of curfew and other COVID-19 rules.

e. The number of people in quarantine because they are close contacts of COVID-19 patients.

The welfare measures taken to ensure the physical and mental health and well-being of the persons in quarantine.

. The **National Police Service** urgently deal with errant police officers who have been extorting, brutalizing and arbitrarily arresting essential workers and, poor and vulnerable people in the pretext of enforcing COVID-19 restrictions and make publicly available a list of police officers who are being investigated or prosecuted for breaking the law and the status of the disciplinary process.

. The National Police Service to further provide the following information:
. Whether police are being used to screen and decide who is considered to be a suspected COVID-19 patient and, if so –
. what training these officers have been given to undertake the role of medical experts;
. what infection prevention and control protocols they follow; and
. whether they have the right equipment e.g. thermometers & PPE.

. **The Independent Policing Oversight Authority (IPOA)** to exercise its mandate and take action against the numerous complaints on police excesses in enforcing curfew rules and other COVID-19 restrictions and to make publicly available any actions that the IPOA has already taken on its own motion to address the concerns raised.

. The **Kenya National Commission on Human Rights (KNCHR)** to urgently investigate reports of human rights violations emanating from the enforcement of the COVID-19 restrictions and make publicly available information on any actions it has taken with regard to the human rights violations raised by individuals in mandatory quarantine, as well as in enforcement of other government directives.

9. The **Attorney General** to abide by the Constitution and provide sound legal advice to the government against enacting and enforcing hasty, disproportionate, and non-evidence based punitive regulations in this pandemic, that flout the requirement for public participation.

10. The **WHO Country Office in Kenya**, as it offers technical support, to promote a rights based approach in the response to this public health pandemic and moreover, to provide information on whether it has provided technical guidance such as the National TB Isolation Policy and the Siracusa Principles to the government.

As law abiding citizens and noting H.E President Uhuru Kenyatta's remarks on 1st April, 2020 and 16th April, 2020 where he asked all officers dealing with COVID-19 to abide by the law, we refer you to Article 35 of the Constitution that gives every citizen the right to access information held by the State; sections 4 and 9(2) of the Access to Information Act, 2016; section 18 of the Access to Information Act that criminalizes public bodies non-response to access to information requests; and section 8 of the Public Service (Values and Principles) Act that requires transparency and provision of timely and accurate information to the public, and trust that you shall abide by them. Further noting the president's remarks on 25th April 2020 we trust that you shall be guided by sound medical expertise and science in making an informed decision to stop using quarantine as a punitive measure.

Endorsed by:

1. Bodaboda Association of Kenya
2. Community Initiative Action Group Kenya
3. COFAS
4. Dandora Communirt AIDS Support Association (DACASA)
5. The East African Centre for Human Rights (EACHRights)
6. Good Health Community Programme
7. HAPA Kenya
8. Happy Life For Development Community Based Organization
9. Health Rights Advocacy Forum
10. International Commission of Jurists (ICJ-Kenya Section)
11. Kamkunji Paralegal Trust (KAPLET)
12. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
13. Kenya Female Advisory Organization
14. Mbita Suba Paralegal Network
15. Mumbo International
16. Movement of Men Against AIDS in Kenya (MMAAK)
17. National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
18. Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
19. Next Generationof Kenya Lawyers Project
20. National Nurses Association of Kenya
21. Nyarkwek
22. Pamoja TB Group
23. People's Health Movement - PHM Kenya
24. SHAPE Kenya
25. The Network on Food and Nutrution Security (NFNS)
26. Transparency International
27. Wote Youth Development Projects (WOYDEP)

Signed by:

1. Allan Maleche on my own behalf and on behalf of Kenya Legal & Ethical Issues Network on HIV & AIDS KELIN
2. Caroline Oyumbo on my own behalf and on behalf of Mbita Suba paralegal network
3. Chris Owalla on my own behalf and on behalf ofCommunity Initiative action group Kenya (CIAGK)
4. Catherine Mumma on my own behalf and on behalf of The Network on Food and Nutrution Security (NFNS)
5. David Makori on my own behalf and on behalf of Society of Development and Care (SODECA)
6. Denis Gaturuku
7. Easter Achieng Okech on my own behalf and on behalf of Kenya Female Advisory Organization Organization
8. Elizabeth Mökkönen on my own behalf and on behalf of COFAS (Community Forum For Advanced and Sustainable Development)
9. Enosh Abuya on my own behalf and on behalf of The Eagles For life (TEFL)
10. Erick Owuor on my own behalf and on behalf of KAPLET
11. Erick Okioma on my own behalf and on behalf of Nelson Mandela TB HIV Community Information and Resource Center CBO Kisumu
12. Esther Nelima on my own behalf and on behalf of Coast Advocacy Network
13. Fenwick Muthangya on my own behalf and on behalf of National Association of Clinical Officer Anaesthetists- Kenya (NACOA- K)
14. Francis George Apina on my own behalf and on behalf of COPFAM

15. Jectone Chilo on my own behalf and on behalf of MOPESUN
16. Joyce Munala
17. Kristine Yakhama on my own behalf and on behalf of Good Health Community Programme
18. Lydia Adhiambo on my own behalf and on behalf of ICRH
19. Mary Ger on my own behalf and on behalf of MUMBO INTERNATIONAL
20. Maurine Murenga on my own behalf and on behalf of Lean on Me Foundation
21. Naomi Muthua
22. Patricia Ochieng on my own behalf and on behalf of DANDORA COMMUNITY AIDS SUPPORT ASSOCIATION (DACASA)
23. .Peninah Khisa on my own behalf and on behalf of PHM Kenya PeninahMwangi on my own behalf and on behalf of BHESP
24. Peter Owiti on my own behalf and on behalf of Wote Youth Development Projects
25. Philip Nyakwana on my own behalf and on behalf of Movement of Men Against AIDS in Kenya (MMAAK)
26. Sharon Obilo
27. Vexinah Muindi on my own behalf and on behalf of Neema Foundation

cc:

Siddharth Chatterjee,
UN Resident Coordinator in Kenya
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Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice
chair@ombudsman.go.ke

The Chairperson
Senate Ad Hoc Committee on COVID-19
covid19@parliament.go.ke

The Chairperson
National Assembly Health Committee
clerk@parliament.go.ke

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22, 24, 25, 26(1), 28, 29, 35, 47, z165, 232(1), 258 and 259 of the Constitution

and

In the Matter of Section 4 and 9 of the Access to Information Act, 2016

and

In the Matter of Section 5, 6 and 10 of the Health Act, 2017

and

In the Matter of Section 3 and 4 of the Fair Administrative Action Act, 2015.

BETWEEN

ERICK OKIOMA..1ST PETITIONER

ESTHER NELIMA...2ND PETITIONER

CHRIS OWALLA...3RD PETITIONER

CM..4TH PETITIONER

FA...5TH PETITIONER

KB...6TH PETITIONER

MO..7TH PETITIONER

EL...8TH PETITIONER

KATIBA INSTITUTE..9TH PETITIONER

KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN)...10TH PETITIONER

THE KENYA SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS (ICJ KENYA)..11TH PETITIONER

TRANSPARENCY INTERNATIONAL KENYA..12TH PETITIONER

ACHIENG ORERO...13TH PETITIONER

(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organisations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH ....1st RESPONDENT

PATRICK AMOTH, AG DIRECTOR GENERAL,

MINISTRY OF HEALTH ....2nd RESPONDENT

CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY .... 3rd RESPONDENT

COUNCIL OF GOVERNORS...4th RESPONDENT

FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT .... 5th RESPONDENT

HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL

OF THE POLICE, KENYA.. 6th RESPONDENT

JOSEPH WAKABA MUCHERU, CABINET
SECRETARY FOR INFORMATION
AND COMMUNICATIONS... 7th RESPONDENT

THE COMMISSION ON ADMINISTRATIVE

JUSTICE .... 8th RESPONDENT

DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND
DENTISTS COUNCIL .... 9th RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR)...............................1ST INTERESTED PARTY

AFFIDAVIT IN SUPPORT OF THE PETITION

I, **SHEILA MASINDE,** of P.O Box 198-00200 Nairobi, do hereby make oath and state as follows:-

1. THAT I am the Executive Director of the 12th Petitioner herein and therefore competent to make this Affidavit.

2. THAT Transparency International – Kenya is a non-governmental organization registered in Kenya working on raising awareness and advancing general education of the public on matters relating to corruption.

3. THAT the matter contained herein directly affects our target population that falls under our mandate as enshrined in the Transparency International - Kenya Memorandum and Articles of Association. A copy of which is **annexed and marked as "SM 1".**

4. THAT on 12th March 2020 the First Respondent announced the outbreak of Covid – 19 Pandemic in Kenya.

5. THAT concerned about issues of transparency and accountability in the handling of the pandemic, the 14th Applicant joined other likeminded partners in ensuring that while government discharges its mandate of protecting citizens it abides by the Constitution, specifically the Bill of Rights and other attendant provisions on good governance.

6. THAT on 28th March 2020, the 12th Applicant together with other civil society organizations issued an Advisory Note to the first, fifth and sixth Respondents a rights-based approach towards curbing Covid – 19 in Kenya. A copy of which is **annexed and marked "SM 2"**

7. THAT the Advisory addressed a number of issues including the right to information and transparency and how it was crucial in enhancing public trust during such a crucial time when handling a pandemic.

8. THAT on 6th April 2020, the 12th Applicant together with its partners issued an Access to Information Request to the First Respondents around the implementation of mandatory quarantine, specifically seeking information guidelines, processes, conditions and

information around measures to protect the health workers in quarantine facilities. A copy of which is **annexed and marked "SM 3".**

9. THAT on 17th April 2020, the 12th Applicant together with its partners issued an Open letter and request for information on the provision of support to health care workers in the COVID-19 response to the First Respondent. A copy of which is **annexed and marked "SM 4".**

10. THAT on 18th April 2020, the 12th Applicant was copied in an Access to Information Request regarding the arbitrary extension of quarantine period beyond 28 to the First Respondent. A copy of which is **annexed and marked "SM 5".**

11. THAT on 16th April 2020, the 12th Applicant together with its partners sent a letter to the Commission of Administrative Justice to act on its mandate and ensure the First Respondent provides the information requested by and on behalf of the Respondents. **A copy of which is annexed and marked "SM 6"**

12. THAT on 8th April 2020, the 8th Respondent acknowledged receipt of the letter issued on 6th April 2020 and instructed the First Respondent to respond to the letter.

13. THAT to date the 1st Respondents are yet to comply with the instructions from the 8th Respondents and is yet to respond to any of the Access to Information Requests made by the 14th Applicant and the other Applicants.

14. THAT I am advised by my Advocates, which advice I verily believe, that the aforementioned failure to respond to the Access to Information requests mentioned above is contrary to the provisions of Article 35 of The Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016. This obligates the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th Respondents to respect, protect and guarantee the right to access information held by the state and required for the protection of rights of the Applicants and others not mentioned in the petition.

15. THAT I am further advised by allowing the Respondents to infringe on the said right, as a responsible citizen and an Executive Director of an institution promoting good governance, I have a right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed or is threatened as provided for under Article 22 (1) of the Constitution of Kenya.

16. THAT in addition to that advice, I have been informed by my Advocates on record that the Constitution being a supreme law of the land, binds all persons and all state organs at all levels of government and that no person or state authority can exercise power except as authorized under the Constitution and hence, the right to access to information as enshrined in this Constitution cannot be derogated by any person or authority as provided for under Article 2(1) and (2) of the Constitution of Kenya.

17. THAT what is stated herein is true to the best of my knowledge, information and belief.

SWORN BY THE SAID)
SHEILA MASINDE)
)..
At Nairobi, this day of 2020) Deponent
)
BEFORE ME)
)
COMMISSIONER FOR OATHS)

DRAWN & FILED BY: -
Nerima Were, Advocate,
C/O KELIN
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P O Box 112 - 00202 KNH Nairobi
Mobile: +254 751 292 520
E-mail: nwere@kelinkenya.org

THE COMPANIES ACT

(CHAPTER 486)

PRIVATE COMPANY LIMITED BY GUARANTEE
AND NOT HAVING SHARE CAPITAL

MEMORANDUM OF ASSOCIATION

OF

TRANSPARENCY INTERNATIONAL KENYA

This is Exhibit marked "SM-1"
referred to in the Annexed affidavit/Declaration
of Sheila Masinde
Sworn/Declared before me on this..........
day of..........20..........
at..........in the Republic of Kenya
....
Commissioner for Oaths

1. The Company's name is "TRANSPARENCY INTERNATIONAL KENYA".
2. The Company's registered office is to be situated in Kenya.
3. The Company's objects are: -
   (a) To raise public awareness and advance the general education of the public in matters relating to corruption in all sectors of the Kenya, through advocacy for legislation/policy change, technical support for strengthening integrity and other methods which exist to combat corruption;
   (b) to establish a facility for education, research, study, discussion fora, seminars, debates and the dissemination and spread of information relating to the study of corruption, the promotion of transparency and accountability in private and public affairs, and related social, economic, legal and cultural matters;
   (c) To promote, undertake or commission research for the public benefit in matters relating to corruption in public and private affairs and to disseminate the useful results of any such research;
   (d) To support and promote the aims and objectives of Transparency International, a not-for-profit organization under German law, and in particular to assist in securing support within Kenya for transparency and accountability in public and private affairs, and to co-operate with other organizations throughout the world with similar objectives;
   (e) To provide assistance and expertise to public and private institutions in ensuring compliance with existing anti-corruption legislations and Standards;
   (f) To give the legislative and public bodies and others facilities for conferring with and ascertaining the view of persons and institutions engaged in combating corruption as regards matters directly or indirectly affecting that activity;
   (g) To arrange, provide, organize or promote the provisions of conferences, lectures, seminars, meeting, courses, exhibitions, training and information services and other events in furtherance of the objects of the company;
   (h) To write, make, prepare, edit and print, publish, issue and circulate gratuitously or otherwise, reports, periodicals, books, pamphlets, leaflets, articles, films, video tapes, computer software, electronic devices, materials for study or other documents in furtherance of or necessary for the promotion of the objects of the company, or procure any of the above acts; and in furtherance of the above-mentioned objects but not further or otherwise the company shall have the power to all or any of the following:-
   (i) Subject to such consents as may be required by law, to borrow and raise money for the furtherance of the objects of the Company in such manner and on such security as the Company may think fit.
   (j) To raise funds and invite and receive contributions from any person or persons whatsoever by way of subscription, donation or otherwise provided that this shall be without prejudice to the ability of the Company to disclaim any gift, legacy or bequest in whole or in part in such circumstances as the Company may think fit and provided also that the Company shall not undertake any permanent trading activities in raising funds for the above mentioned charitable objects.
   (k) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable, transferable, or mercantile instruments.

(l) To subscribe for either absolutely or conditionally or otherwise acquire and hold shares, stocks, debentures, debenture stock or other securities or obligations of any other company.

(m) To invest the moneys of the Company not immediately required for the furtherance of its objects in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) as may for the time being be imposed or required by law.

(n) To purchase, take on lease or in exchange, hire or otherwise acquire any rights or privileges and to construct, maintain and alter any building or erections, which the Company may think necessary for the promotion of its objects.

(o) Subjects to such consents as may be required by law, to sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the Company with a view to the furtherance of its objectives.

(p) Subject to clause 4 hereof to employ and pay such architects, surveyors, Advocates and other professional persons, workmen, clerks, and other staff as are necessary for the furtherance of the objects of Company.

(q) To make all reasonable and necessary provisions for the payment of pensions and superannuation to or on behalf of employees and their widows and other dependants.

(r) To make payments towards insurance for any Directors officer of Auditor against any liability as in referred t in section 323(1) of the Act.

(s) To subscribe to, become a member of, or amalgamate or cooperate with any other charitable organization, institution, society or body not formed or established for purposes of profit (whether incorporated or not and whether in Kenya or elsewhere) whose objects are wholly or in part similar to those of the Company and which by its constitution prohibits the distribution of its income and property amongst its members as an extent as least as great as is imposed on the Company under or by virtue of Clause 4 hereof and to purchase or otherwise acquire and undertake all such part of the property, assets, liabilities and engagements as may lawfully be acquired or undertaken by the Company of any such charitable organization, institution, society or body.

(t) To establish and support or aid the establishment and support of any charitable purposes in any way connected with or calculated to further any of the objects of the Company.

(u) To do all or any of the things hereinbefore authorized either alone or in conjunction with any other charitable organization, institution, society or body with which this Company is authorized to amalgamate.

(v) To pay all or any expenses incurred in connection with the promotion, formation and incorporation of the company.

(w) To do all such other lawful things as are necessary for the attainment of the above objects of any of them.

Provided that: -

(i) In case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts.

(ii) The objects of the Company shall not extend to the regulation of relations between workers and employers or organizations of workers and organizations of employers.

4. The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in this Memorandum of Association and no portion thereof shall

be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to members of the Company.

5. The liability of the members is limited.
6. Every member of the Company undertakes to contribute such amount as may be required (not exceeding Shs. 20/= to the Company's assets if it should be wound up while he is a member, or within one year after he ceased to be a member, for payment of the Company's debts and liabilities contracted before he ceased to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.
7. If upon the winding–up or dissolution of the company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company but to institutions which shall prohibit the distribution of its or their income and property to an extent at least as great as is imposed on the Company under or by virtue of Clause 4 hereof, such institution or institutions to be determined by the member of the Company at or before the time of dissolution, and is and so far as effect cannot be given to such provision, then to some other charitable object.

WE, the several persons whose names, addresses and description are subscribed, are described, are desirous of being formed into a Company in pursuance of this Memorandum of Association.

Names, Addresses and Descriptions of Subscribers

---

1. JOSEPH MUIRURI GITHONGO (Signed)
   P O BOX 47089
   NAIROBI

   (BUSINESS MAN)

2. HARRIS MUTIO MULE (Signed)
   P O BOX 49946
   NAIROBI

   (ECONOMIST)

DATED this 20th day of July 1998

WITNESS to the above signatures:

DAVID GACHUKI
ADVOCATE
PO BOX 60043
NAIROBI
KENYA

THE COMPANIES ACT
(CHAPTER 486)
PRIVATE COMPANY LIMITED BY GUARANTEE
AND NOT HAVING A SHARE CAPITAL

ARTICLES OF ASSOCIATION

- OF -

TRANSPARENCY INTERNATIONAL KENYA

INTERPRETATION

1. In these Articles: -

"The Act" means the Companies Act, (Chapter 486), but so that any reference to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of the provision for the time being in force.

"the Board" means the Board of Directors of the Company.

"the seal" means the Common Seal of the Company.

"Secretary" means any person appointed to perform the duties of the secretary of the Company.

Expressions referring to writing shall, unless the contrary intention appears to be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Unless the context otherwise requires, words or expressions contained in these Articles shall bear the same meaning as in the Act or any statutory modification or re-enactment thereof for the time being in force.

OBJECTS

2. The Company is established for the objects expressed in the Memorandum of Association and its founding members are:

MEMBERS

1. **MR. JOSEPH BARRAGE WANJUI**
2. **MR. JOSEPH GILBERT KIBE**
3. **MR. HARRIS MURIO MULE**
4. **MR.JOSEPH MUIRURU GITHONGO**
5. **MR. AHMED ABDALLA**
6. **PROF KIVUTO NDETI**
7. **MRS EVELYN MUNGAI**
8. **MRS. MARY OKELLO**
9. **MS GRACE GITHU**
10. **MR. JOHN MARK GITHONGO**
11. **PROF MOHAMED HYDER**

3. The subscribers to the Memorandum of Association and such other persons as the Board of Directors shall admit to membership shall be members of the Company. The number of members with which the Company proposes to be registered is One Hundred, but the Board of Directors may from time to time register an increase of members. The Board of Directors shall impose such conditions and requirements for qualification for, admission to, and termination of one or more classes of membership including, but not limited to, admission and annual fees (if any) as they may from time to time by majority vote decide. Every member of the Company shall either sign a written consent to become a member or sign the register of members on becoming a member.

4. Unless the Board of Directors or the Company in General Meeting shall make other provision pursuant to the powers contained in Article 67, the Board of Directors may in their absolute discretion permit any member of the Company to retire, provided (regardless of any other provision pursuant to Article 67) that after such retirement the number of members shall not be less than three.

GENERAL MEETINGS

5. Subject to the provisions of any elective resolution of the Company for the time being in force, the Company shall in each year hold a general meeting as its Annual General Meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one Annual General Meeting of the Company and that of the next. Provided that so long as the Company holds its first Annual General Meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year. The Annual General Meeting shall be held at such time and place, as the Board of Directors shall appoint. All General meetings other than Annual General Meetings shall be called Extraordinary General Meetings.

6. The Board of Directors may, whenever they think fit, convene an Extraordinary General Meeting, and Extraordinary General Meetings shall also be convened on such requisitions, or in default, may be convened by such requisitions, as provided by Section 132 of the Act. If at any time there not being within Kenya sufficient members of the Board ofDirectors any two members of the Company may convene an Extraordinary General Meeting in the same manner as nearly as possible as that in which meetings may be convened by the Board of Directors.

NOTICE OF GENERAL MEETINGS

7. An annual General Meeting and a meeting called for the passing of a special resolution shall be called by, at the least, twenty-one days' notice in writing,. The notice shall be exclusive of the day on which it is served or deemed to be served and for the day for which it is given, and shall specify the place and the day and the hour of meeting and, in case of special business, the general nature of that business and shall be given, in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under the Articles of the Company, entitled to receive such notices from the Company:

Provided that a meeting of the Company shall, notwithstanding that it is called by a shorter notice than that specified in this Article is deemed to have been duly called if it so agreed: -

(a) In the case of a meeting called as the Annual General Meeting, by all the members entitled to attend and vote thereat; and

(b) In the case of any other meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together representing (subject to the provisions of any elective resolution of the Company for the time being in force) not less than ninety-five per cent of the total voting rights at the meeting of all the members.

8. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

PROCEEDINGS AT GENERAL MEETINGS

9. No business shall be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as it is herein otherwise provided, ten members present in person or by proxy, or in case of a corporation represented in accordance with Article 26 shall be a quorum. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board of Directors may determine.

10. The Chairman, or failing whom, the Vice-Chairman of the Board of Directors shall preside as chairman at every General Meeting of the Company, or if there is no such Chairman or Vice-Chairman, or if neither shall be present within fifteen minutes after the time appointed for the holding of the meeting or are unwilling to act the Members of Board of Directors present shall elect one of their number to be chairman of the meeting.

11. If at any meeting no Members of Board of Directors is willing to act as chairman or if no Members of Board of Directors is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

12. The Chairman, may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment of the business to be transacted at an adjourned meeting.

13. At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded: -

(a) by the chairman; or
(b) by at least two members present in person or by proxy; or
(c) by any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Unless a poll be so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particularly majority, or lost and an entry to

that effect in the book containing the minutes of proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

The demand for a poll may be withdrawn.

14. Except as provided in Article 16, if a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

15. In the case of any equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

16. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending that taking of the poll.

VOTE OF MEMBERS

17. A member of unsound mind, or in respect of whom an order has been made by a court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may, on a poll, vote by proxy

18. No member shall be entitled to vote at any General Meeting unless all moneys presently payable by him to the Company have been paid.

19. (a) Any member of the Company entitled to attend and vote at a General Meeting shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him and any proxy so appointed shall have the same right as the member to speak at the meeting.
(b) On a poll votes may be given either personally or by proxy.

20. The instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney duly authorized in writing, or if the appointer is a corporation, either under the hand of an officer orattorney duly authorized. A proxy need not be a member of the company.

21. The instrument appointing a proxy and the power of attorney or other authority shall be deposited at the registered office of the Company or at such other place within the Republic of Kenya as is specified for that purpose in the notice convening the meeting, before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy shall not be treated as valid.

22. An instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit:
"Transparency International Kenya"
I/We of being a member/members of the above named Company, hereby appoint of or failing him

of as my/our proxy to vote for me/us on my/our behalf at the (Annual or Extraordinary, as the case may be) General Meeting of the Company to be held on the day of 2 and at any adjournment thereof.

Signed this day of 20 ."

23. Where it is desired to afford members an opportunity of voting for or against a resolution the instrument appointing a proxy shall be in the following form or a form as near thereto as circumstances admit: -

"Transparency International Kenya Limited

I/We of being a member/members of the above named Company, hereby appoint or failing him of as my/our proxy to vote for me/us on my/our behalf at the (Annual or Extraordinary, as the case may be) General Meeting of the Company to be held on the day of 20 , at any adjournment thereof.

Signed this day of 20

This form is to be used *in favour of/against the resolution.

Unless otherwise instructed, the proxy will vote as he thinks fit.

* Strike out whichever is not desired"

24. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

25. A vote given in accordance with the terms of an instrument of proxy shall be valid not withstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation as aforesaid shall have been received by the Company at the office before the commencement of the meeting or adjourned meeting at which the proxy is used.

CORPORATIONS ACTING BY REPRESENTATIVES AT MEETING

26. Any corporation which is a member of the Company may in accordance with their regulations authorize such person as it thinks fit to act as its representative at any meeting of the Company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company.

BOARD OF DIRECTORS

27. The board shall be made up of all the directors. The number of Directors shall be not less than Three nor more than Seven. Directors must become members of the Company not less than Three months from their appointment.

28. The Directors shall be entitled to be paid all reasonable traveling, hotel and other expenses properly incurred by them in attending and returning home from meeting of the Board or any

committee of the Board or General Meetings of the Company or in conjunction with the business of the Company, provided that the Board shall have agreed to pay such expenses prior to their having been incurred.

BORROWING POWERS

29. The Board of Directors may exercise all the powers of the company to borrow money, and to mortgage or charge its undertaking and property, or any part thereof, and to issue debenture stock and other securities, whether outright or as security for any debt, liability or obligation of the Company or any third party subject to such consents as may be required by law.

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

30 (a) The business of the Company shall be managed by the Board of Directors, who may pay all expenses incurred in promoting and registering the Company, and may exercise all such powers of the Company as are not, by the Act or by these Articles, required to be exercised by the Company in General Meetings, subject nevertheless to the provisions of the Act or these Articles and to such regulations, being not inconsistent with the aforesaid, but no resolution of the Company in General Meeting shall invalidate any prior act of the Board of Directors which would have been valid if the resolution had not been passed.

31. All cheques, promisory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the company, shall be signed, drawn, accepted endorsed or otherwise executed, as the case may be, in such a manner as the Board of Directors shall from time to time by resolution determine.

32. The Board of Directors shall cause minutes to be made in books provided for the purpose: -

(a) of all appointments of officers made by the Board;
(b) of the names of the members of the Board of Directors present at each meeting of the Board and of committees of the Board.
(c) of all resolutions and proceedings at all meetings of the Company, and of the Board and of committees of the Board.

DISQUALIFICATION OF A MEMBER OF THE BOARD OF DIRECTORS

33. The office of member of the Board of Director shall be vacated if the member: -

(a) becomes bankrupt or makes any arrangement or composition with his creditors generally; or
(b) becomes prohibited from being a member of the Board of Director by reason of any order made under any provision of the Act or any other statute or otherwise prohibited by law from becoming a member of the Board of Director; or
(c) becomes incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
(d) resigns his office by notice in writing to the Company; or
(e) is directly or indirectly interested in any contract with the company and fails to declare the nature of the interest in manner required by Section 200 of the Act.

34. A member of the Board of Director shall not vote in respect of any contract in which he is interested or any matter arising there out, and if he does so vote his vote shall not be counted.

ROTATION OF MEMBERS OF THE BOARD OF DIRECTORS

35. At first Annual General Meeting of the Company all the members of the Board of Directors shall retire from office, and at the Annual General Meeting in every subsequent year one-third of the members of the Board of Directors for the time being or, if their number is not three or a multiple of three, then the number nearest one-third, shall retire from office. Provided that the Executive Director shall not while he continues to hold such office be subject to retirement by rotation and he shall not be reckoned as a Director for the purpose of determining the rotation of retirement of Directors or in fixing the number of Directors to retire but (subject to provisions of any contract between him and the Company) he shall be subject to the same provisions as to resignation and removal as the other Directors of the Company and he shall ipso facto and immediately cease to be a Director if he ceases to hold the office of the Executive Director.

36.The members of the Board to retire in every year shall be those who have been longest in office since their last election, but as between persons who become members of the Board of Directors on the same day as those to retire shall (unless they otherwise agree among themselves) be determined by lot.

37. A retiring member of the Board of Directors shall be eligible for re-election.

38. The company at the meeting at which a member of the Board of Directors retires in manner aforesaid may fill in the vacated office by electing a person thereto, and in default the retiring member of the Board of Directors shall, if offering himself for re-election, be deemed to have been re-elected, unless at such meeting it is expressly resolved not to fill such vacated office or unless a resolution for the re-election of such member of the Board of Directors shall have been put to the meeting and lost.

39. No person other than a member of the Board of Directors retiring at the meeting shall unless recommended by the Board be eligible for election to the office of member of the Board of Directors at any General Meeting unless, no less than three nor more than twenty-one clear days before the date appointed for the meeting, there shall have been left at the registered office of the company notice in writing signed by a member duly qualified to attend and vote at the meeting for which such notice has been given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.

40. The company may from time to time by ordinary resolution increase or reduce the number of Directors, and may also determine in what rotation the increased or reduced number is to go out of office.

41. The Board shall have power at any time, and from time to time, to appoint any person to be a member of the Board of Directors, either to fill a casual vacancy or as an addition to the existing members of the Board of Directors, but so that the total number of Directors shall not at any time exceed any maximum number in accordance with these Articles. Any member of the Board of Directors so appointed shall hold office only until the next following Annual General Meeting, and shall then be eligible for reelection, but shall not be taken into account in determining the members of the Board of Directors who are to retire by rotation at such meeting.

42. The Company may by ordinary resolution, of which special notice has been given in accordance with section 142 of the Act, remove any member of the Board of Directors before the expiration of his period in office notwithstanding anything in these Articles or in any agreement between the Company and such member of the Board of Directors.

43. The Board may by ordinary resolution appoint another person in place of a member of the Board of Directors removed from office under the immediately proceeding article, without prejudice to the powers of the Board under Article 42 the company in General Meeting may appoint any person to be a member of the Board of Directors either to fill in a casual vacancy or as an additional member of the Board of Directors. The person appointed to fill in such a vacancy shall be subject to retirement at the same time as if he had become a member of the Board of Directors on the day on which the Director in whose place he is appointed was elected a member of the Board of Directors.

PROCEEDINGS OF THE BOARD OF DIRECTORS

44. The Board may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman shall have a second or casting vote. A Director may, and the Secretary on the requisition of a member of the Board of Directors shall, at any time summon a meeting of the Board. It shall not be necessary to give notice of a meeting of the Board to any member for the time being absent from Kenya.

45. The quorum necessary for the transaction of the business of the Board may be fixed by the Board, and unless so fixed shall be three or one-third of the number of members of the Board of Directors for the time being whichever shall be the greater number.

46. The continuing Board ofDirectors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the Articles of the company as the necessary quorum of the Board of Directors the continuing member of the Board of Directors may act for the purpose of increasing the number of members of the Board of Directors to that number, or of summoning a General Meeting of the Company, but for no other purpose.

47. The Board may elect a chairman and a vice-chairman of their meetings and determine the period for which each will hold office, but if no such chairman or vice-chairman is elected, or if at any meeting neither the chairman nor the vice-chairman is present within fifteen minutes after the time appointed for holding the same, the members of the Board of Directors present may choose one of their number to be chairman of the meeting.

48. The Board may delegate any of their powers to committees consisting of such majority of members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board and shall report all acts and proceedings to the Board as soon as is reasonably practicable.

49. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

50. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

51. All acts done by any meeting of the Board or of a committee of the Board, or by any person acting as a member of the Board of Directors, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such member of the Board of Directors of person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board of Directors.

52. Any Director or member of a committee of the Directors may participate in a meeting of Directors or such committee by means of telephonic video, electronic or similar communications whereby all persons participating in the meeting can at least hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting. The place where the Chairman of the meeting is located at the time of the meeting shall be deemed to be the location of the meeting.

53. A resolution in writing signed by all the Directors for the time being to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.

EXECUTIVE DIRECTOR

54. The Board of Directors may from time to time appoint an Executive Director for such period and on such terms and with such powers, at such remuneration as the Board may have documented and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment as per TI's laid down company policies. Without prejudice to any right to treat such determination as a breach of any such agreement as aforesaid, the appointment of such a Director to office as aforesaid shall be subject to determination ipso facto if he or she ceases from any cause to be the Executive Director of the Company, or if the Company in general meeting resolves that his or her tenure of the office as the Executive Director be determined.

55. The Executive Director will be an ex-officio member of the board of directors. The role and responsibility Executive Director will be to provide leadership to the TI Kenya secretariat and perform any other duties as my be defined by the Board of Director

SECRETARY

55. The Secretary may be appointed by the Directors for such term, at such remuneration and upon such conditions as they may think fit; and any Secretary so appointed may be removed by them.

56. A provision of the act or these Articles requiring or authorizing a thing to be done by or to a member of the Board of Directors and the secretary shall not be satisfied by its being done by or to the same person acting both as member of the Board of Directors and as, or in place of, the secretary.

THE COMPANY SEAL

57. If the Company has a seal the Board shall provide for its safe custody and it shall only be used by the authority of the Board or of a committee of the Board authorized by the Board in that behalf, and every instrument to which the seal shall be affixed shall be signed by a member for the Board and shall be countersigned by the secretary or by a second member of the BoardDirector or by some other person appointed by the Board for the purpose.

ACCOUNTS

58. The Board shall cause accounting records to be taken in accordance with the provisions of the Act.

59. The accounting records shall be kept at the registered office of the Company or, subject to the provisions of the Act, at such other place or places as the Board thinks fit, and shall always be open to the inspection of the members of the Company.

60. Subject to provisions of any elective resolution of the Company for the time being in force, the Board shall from time to time in accordance with the provision of the Act, cause to be prepared and to be laid before the Company in General Meeting such profit and loss accounts, balance sheets, group accounts (if any) and reports as are referred to in those provisions.

61. Subject to the provisions of any elective resolution of the Company for the time being in force, a copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in General Meeting together with a copy of the auditor's report and Board's report, shall not less than twenty-one days before the date of the meeting be sent to every member of the Company and every person entitled to receive notice of General Meetings of the Company.

AUDIT

62. Auditors shall be appointed and their duties regulated in accordance with the provisions of the Act.

NOTICE

63. A notice may be given by the Company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Kenya) to him at the address, if any, within Kenya supplied by him to the Company for giving of notice to him. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 48 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

64. Notice of every general meeting shall be given in any manner hereinbefore authorized to: -

(a) every member except those members who (having no registered address within Kenya have not supplied to the Company any address within Kenya for the giving of notices to them;
(b) every person being a trustee in bankruptcy of a member where the member but for his bankruptcy would be entitled to receive notice of the meeting;
(c) the auditors for the time being of the Company; and
(d) each member of the board of Directors.

No other person shall be entitled to receive notices of General Meetings.

DISSOLUTIONS

65. Clause 7 of the Memorandum of Association relating to the winding up and dissolution of the Company shall have effect as if the provisions thereof were repeated in these Articles.

RULES OF BYE LAWS

66. (a) The Board of Directors may from time to time make such Rules, Policies or Bye Laws as it may deem necessary or expedient or convenient for the proper conduct and management of the Company and for the purposes of prescribing classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, it may by such Rules or Bye Laws regulate: -

(1) The admission and classification of members of the Company, and the rights and privileges of such members, and the conditions of membership terminated and the entrance fees, subscriptions and other fees or payments to be made by members.
(2) The setting aside of the whole or any parts of the Company's premises at any particular time or times of for any particular purpose of purposes.
(3) The procedure at general meeting and meetings of the Board and Committee of the Board in so far as such procedure is not regulated by these presents.
(4) The management and operations of the company
(5) And, generally, all such matters as are commonly the subject matter of the Company rules.

(b) The Company in General Meeting shall have powers to alter or repeal the Rules, Policies or Bye Laws and to make additions thereto and the Board shall adopt such means, as they deem sufficient to bring to the notice of members of the Company. Provided, nevertheless, that no Rule or Bye Law shall be inconsistent with, or shall affect or repeal anything contained in, the Memorandum or Articles of Association of the Company.

INDEMNITY

67. (a) Every member of the Board of Directors or other officer or Auditor of the Company shall be indemnified out of the assets of the Company against losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto, including any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in favour or in which he is acquitted or in connection with any application under Section 402 of the Act in which relief is granted to him by the Court, and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in this Article shall only have effect in so far as its provisions are not avoided by Section 206 of the Act.

(b) The members of the Board of Directors shall have power to purchase and maintain for any member of the Board of Directors, officer or Auditor of the Company, insurance against any such liability as is referred to in Section 323(1) of the Act.

Names, Addresses and Description of Subscribers

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1. JOSEPH MUIRURI GITHONGO (Signed)
   P O BOX 47089
   NAIROBI

   (BUSINESS MAN)

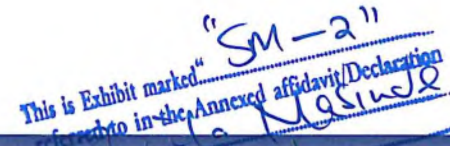
2. HARRIS MUTIO MULE (Signed)
   P O BOX 49946
   NAIROBI

   (ECONOMIST)

DATED this 20th day of July 1998

WITNESS to the above signatures:

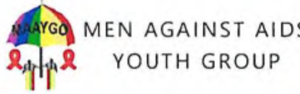
DAVID GACHUKI
ADVOCATE
PO BOX 60043
NAIROBI
KENYA



Anina Community Networks for Development (ACND)

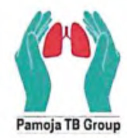
Dandora Community AIDS support Association (DACASA)

KELIWO WIDOWS' GROUP



Next Generation of Kenya Lawyers Project

Nyakach Elders' Group



SHAPE Kenya

Your REF: **Our REF: C/KELIN/2020** Date: 28/03/2020

To
Hon. Mutahi Kagwe,
Cabinet Secretary for Health,
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke

Hon. Simon K. Chelugui,
Cabinet Secretary for Labour, Social Security and Services,
ps@labour.go.ke, info@labour.go.ke, ps@socialprotection.go.ke

Dr. Fred Okengo Matiang'I,
Cabinet Secretary for Interior & Coordination of National Government,
ps@interior.go.ke

Hon David Maraga,
Chief Justice and President of the Supreme Court of Kenya,
chiefjustice@judiciary.go.ke

Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors,
info@cog.go.ke
governor@kakamega.go.ke

Mr. Hilary Nzioki Mutyambai,
Inspector General, National Police Service,
nps@nationalpolice.go.ke

Siddharth Chatterjee,
UN Resident Coordinator in Kenya,
siddharth.chatterjee@one.un.org

ADVISORY NOTE ON ENSURING A RIGHTS-BASED RESPONSE TO CURB THE SPREAD OF COVID-19

People - not Messaging - Bring Change

We, the undersigned organisations and associations, being representatives of health and human rights, civil society and non-governmental organisations, community-based organisations and representatives, professional bodies, informal sector actors, economic, and governance experts have taken note of the growing public health concern arising out of the global outbreak of the coronavirus disease (COVID-19).

We write pursuant to our constitutional mandate under Articles 3, 10 and 35 of the Constitution on the responsibility to defend and protect the Constitution, the right to participate in matters concerning us and to access public information respectively.

While we, in our organisational capacities, have made individual efforts through open letters requesting information and calling for a rights-based approach to the COVID-19 response, we issue this comprehensive advisory, inclusive of multi-stakeholder views, to provide guidance on a transparent response that safeguards the health and rights of the most vulnerable and underserved populations in Kenya. This is cognisant of the fact that the COVID-19 pandemic continues to negatively impact the health, economic and social status of populations we represent.

1. On March 13 2020 KELIN wrote an open letter to the Cabinet Secretary of Health titled "A rights-based response is critical in dealing with COVID-19" ; On 17 March 2020 KNCHR issued an "advisory On The COVID-19 Disease Response In Kenya"; Patrick Gathara, "Kenya needs to stop panicking and start preparing for coronavirus," 2 Mar 2020.

We recognise the efforts so far made by the government, including:

- Provision of information and updates on the number of people affected through regular press briefings;
- Provision of contact and hotline numbers for the public to access information especially for emergency assistance;
- Emphasis on preventive measures, including directives issued encouraging working from home; directing public transport providers to ensure social distancing; information on the need for proper sanitation; limiting interaction in social and entertainment places; among others;
- Implementation of fiscal and monetary policy measures to provide relief through tax reduction and ensure continued liquidity for individuals and organisations.

Despite these strides, the information and response availed has not been comprehensive and has failed to localise and contextualise how preventive and promotive measures shall be undertaken; highlighting the diverse differences between our country and the developed world. There have also been inadequacies in emphasising the need to respect human rights while employing public health measures.

We, therefore, write this letter to provide guidance on the following critical areas:

Right to information and transparency

Sharing accurate, timely, and lifesaving information is a constitutional obligation, necessary to meet the rights to health and information. Information is critical in ensuring transparency, which in turn builds public trust especially in these difficult times. As such, passing stigmatising information on testing, isolation, and quarantine will be counterproductive to the response.

There are gaps in the information shared and contained in the public domain. Primarily, the government has issued a number of policy directives to manage the pandemic but has failed to stipulate what each seeks to achieve and the timeframe for implementation. The lack of transparency around decisions taken (public health, behavioural or fiscal) make it nearly impossible for Kenyans to engage in a meaningful discourse around the potential costs and the benefits of these measures.

The public needs transparent, accurate and comprehensive updates that relay the state of preparedness and the precautionary measures being taken to curb the spread of COVID-19; the response at population level both locally and abroad; and information on clinical management. Comprehensive information will not only fulfil the constitutional right to access information but also help alleviate public fear, anxiety, and hysteria around COVID-19. If Kenyans do not trust in the accuracy and completeness of the information received, they may be less willing to comply with and adopt measures. This may result in the State enforcing measures through security forces; which is detrimental.

Further, the public needs information on how resources allocated to the response are being utilised, bearing in mind that there have been numerous reports of corruption in the health sector. The World Bank has committed KES Six Billion, of which KES One Billion has already been disbursed, while an additional KES Seven Billion from the Central Bank has been allocated to the pandemic response. Also, several county governments have announced the allocation of funds to support county response measures. The public needs to know how this money is being spent. Transparency in the receipt, allocation, disbursement, and utilisation of these resources with information on requirements for the funds to become available; availability of funds; budget line items that they are supporting; and eventually an audit to check the expenditure is paramount. We, therefore, propose that the government, with support from multilateral development institutions and stakeholders, sets up a live dashboard that is updated regularly with the following information on inputs and processes:

Inputs

- **Testing kits:** Numbered by type, percentages by turnaround time or technology used e.g. point of care (like GeneXpert) or based, and how many testing kits have been delivered to various designated testing facilities.
- **Facilities:** Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

- **Health workers:** Number trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, general physicians and critical care specialists. Number of health care workers deployed in every county.
- **Resources:** Publication of allocated, issued and expended financial and non-financial resources for COVID-19 responses. Including resources from private, bilateral and multilateral sources.

Processes

- Publication of previous and current COVID-19 response plans.
- Clarity on strategic goals of current approaches, e.g. isolation, quarantine and testing strategies. For example, whether and why at risk populations are being urged to self-isolate; why quarantined persons are not being offered tests; and why tests are not available on a voluntary basis to all who have symptoms as done in the South Korea response.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on training provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

In addition to gaps in the information provided, we have also noted gaps in the methods of communication, which may disadvantage certain populations. To ensure that all citizens are informed, we advise that:

- The Ministry of Health utilises a neutral SMS platform that will extend to users outside of Safaricom.
- Communication is tailored to meet the needs of underserved populations, including people with disabilities.
- Prioritise the information and communication needs of children and adolescents.

Timely, accurate, and transparent communication on our risk as a country, and how we are managing it, is essential during an emergency and it will determine whether the public will trust the government or turn to rumours and misinformation. The experience in DRC is illustrative of the negative impacts of mistrust in the Ebola response with persons refusing to seek treatment; responders and clinics receiving death threats and being assaulted and attacked, and community members believing the epidemic to be a government scheme.

Right to health

Every Kenyan has the right to the highest attainable standard of health, which the government is under an obligation to progressively realise. Containing this pandemic is our country's best chance at ensuring the citizens' health and avoiding the collapse of an already fragile health care system.

Given that the number of confirmed people with COVID-19 has increased to 31 (as of Friday, 27th March 2020, with one confirmed death), we urge the Ministry of Health to work with County Governments and other actors to scale up preparedness by:

- Increasing surveillance to affected 'hotspot' counties as well as neighbouring counties.
- Increasing testing in the communities for all suspected cases.
- Scaling up the tracing of contacts of known or suspected cases.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers. Special attention and care must be paid to vulnerable and underserved populations, including People with Disabilities; displaced populations including refugees, communities living with and affected by HIV and TB, homeless persons and those who are incarcerated or otherwise detained.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Respecting the rule of law

We believe that this response can only succeed if it is undertaken within the confines of the law. We, therefore, urge the government to ensure:

2. The right to health requires that preventive, promotive, curative, rehabilitative and palliative aspects of healthcare are made available, accessible, acceptable and of quality.

- A rights-based response to COVID-19 is adopted. Such a response contains many important aspects, among them, the right to health, equality and non-discrimination, freedom of peaceful assembly, association and movement, an adequate standard of living, as well as the right to benefit from scientific progress. The Public Health Act should be applied in a rights-based manner to meet the ends of public health while respecting, promoting, and protecting the rights of the affected.
- Strict protection of the right to privacy and confidentiality of health information is maintained. We urge the government, the media, and other actors to avoid succumbing to pressure to name the affected people. The COVID-19 situation is not unique to Kenya and we, therefore, urge the government to draw lessons from other countries in contact tracing without violating privacy and confidentiality. We note that discrimination based on 'health status' is prohibited under Article 27 (4) of the Constitution. The response be guided by established international principles, for instance, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.
- Adherence to progressive policies, for instance, the recently enacted Tuberculosis (TB) Isolation Policy, which provides guidelines applicable to the isolation of patients with infectious diseases. The policy was adopted following the decision in Daniel Ng'etich & 2 others v Attorney General & 3 others [2016] *eKLR*, which adopted a rights-based interpretation of the Public Health Act and, as a result, declared the practice of jailing people with TB, as a form of isolation, unlawful and unconstitutional.

Based on media reports and individual experiences, we are concerned that mandatory quarantine and isolation of people affected by COVID-19 appear uncoordinated, unplanned and not guided by policy. For instance, the decision to mandatorily quarantine people in hotels & government facilities raises two fundamental concerns: (i) what measures are being put in place to protect the workers at such facilities from infection; and (ii) why are citizens being forced to incur the costs of isolation at these hotels? These concerns create the impression that the government does not have a contingency plan to ensure mandatory quarantine meets public health objectives to prevent further spread. Further, on 27 March 2020, a person under mandatory quarantine died at Kiti Quarantine Centre in Nakuru County. There is a need - to investigate the circumstances of this death and determine if the quarantine centers are fit for purpose and meet the requirements to ensure individual and public health. Quarantine centers must be able to ensure that persons within it are safe, secure and their mental and physical health is guaranteed taking into account underlying health conditions. The County Government of Nakuru working with the Ministry of Health must provide information on the circumstances of the death and any measures that shall be put in place to address quality gaps within quarantine facilities.

- Recognition that punitive measures or criminal sanctions are not effective in epidemic control. Criminal sanctions are counterproductive because they drive people underground and expose more people to the virus. On 22 March 2020, the government communicated to the public that *"all persons who violate the self-quarantine requirement will be forcefully quarantined for a full period of 14 days at their cost, and thereafter arrested and charged under the Public Health Act."* The HIV response has taught us that *"using criminal law to regulate behaviour and prevent transmission of a virus is a severe and drastic approach in attempting to slow the spread of the virus. As has been seen in the HIV epidemic, the overuse of criminal law can have significant negative outcomes both for the individual and for the response as a whole and often fails to recognize the reality of people's lives. It can further stigmatise people who have the virus, dissuade people from getting tested and destroy trust between the government and communities."*
- That the Kenya Police Service and all other security forces act within the confines of the Constitution and the Criminal Procedure Act. A mandatory curfew between 7:00 PM and 5:00 AM came into place on Friday, 27 March 2020. After only one day there have been reports of police brutality in enforcing this curfew, illustratively, in Mombasa County there are reports of police using teargas and brutalising ferry users well before the curfew time. The rights to dignity; security of the person; and freedom of movement must be respected and protected. Kenyans have a right to be free from corporal punishment and not to be subjected to cruel, inhuman and degrading treatment. The Kenya Police service has a history of using brutality to enforce order, this is both unlawful and unconstitutional as the right not to be subjected to inhuman and degrading treatment is non-derogable.

- The conduct of the Police is strongly condemned and we urge security forces to act within the rule of law as an emergency does not suspend their obligation to respect constitutional rights.

  Procurement laws must be followed to ensure transparency in the procurement of life-saving medicines and other medical supplies, with greater efforts taken to prevent price gouging of drugs, and other goods and services required to protect citizens from contagion (such as hand sanitizers, masks, gloves). While the Public Procurement and Asset Disposal Act allows for flexibility in an emergency we urge that agencies involved in the response balance the need to act without delay to save or preserve lives with the need to act with integrity, guarantee quality and ensure value for money.

Social protection and economic aspects

An inclusive social protection system can have long-lasting impacts on well-being and economic growth. By offering all citizens the guarantee of income security, social protection effectively tackles poverty and inequality, enhances human capital, helps build a strong and productive workforce, protects against shocks and crises, and builds social cohesion. Both the pandemic and the response to it can have severe consequences on people's livelihoods, employment and access to food and essential services. The right to social security is guaranteed in Article 43(1) e of the Constitution. Social protection has three main pillars: social assistance, social insurance; and health insurance.

The COVID-19 pandemic has placed the Kenyan population in a precarious economic situation. The directive for limited social contact has forced businesses to shut their doors. Whereas some businesses or institutions have the ability to operate remotely, this has impacted negatively the many others that require physical presence to operate optimally. The disruption of business operations has had consequences on people's ability to provide basic needs. The problem is particularly acute for informal laborers. 82.7 percent of Kenyans work in the informal sector. If they do not work, they will not receive any income and will not be able to provide basic needs for themselves or their families. Fear of losing their jobs can prevent people from taking necessary steps, such as working from home, quarantine, isolation and seeking medical services.

The COVID-19 response should ensure that people are protected from loss of employment, income or livelihoods through strong labour protections, social security schemes and insurance, so that Kenyans are better able to look after their health, to self-isolate, and accordingly, improve the response to the pandemic.

The measures and messaging around COVID-19 have been tailored for Kenyans in formal wage employment who can afford to and have the amenities to work from home. Additionally, the tax reductions will have little impact on the more than 50 percent of Kenyan households who have an income of less than KES 10,000 per month (outside of the lowest income tax bracket) and who mostly consume goods that are VAT exempt. We note that the government has been replicating measures from the global north without taking time to contextualise it for Kenya, and as a result, we risk disastrous consequences. Kenyans that survive off of a daily wage, will not eat if they stay home. The government cannot place them in the untenable position of choosing between their livelihood and public safety.

We urge the government to put in place measures for social protection and especially, non-contributory social assistance mechanisms and safety nets to 'cushion' the communities and persons who cannot afford to not work. Further, we urge the government not to utilise security forces to enforce measures around social distancing and curfews, as this will be detrimental to a majority of Kenyans and may result in civil unrest. We cannot use a 'one size fits all' approach for COVID-19 and the government must be cognisant of the need to secure the economic well-being of its people.

Urgent solutions are necessary to protect the economic and social rights of all people, including the vulnerable and marginalised, as the COVID-19 pandemic and the measures being implemented create a dire threat to citizen's ability to access health services, housing, sanitation, food, clean and safe water, social security and education. We commend the government for committing KES 10 Billion to cushion elderly, orphaned and vulnerable members of the society from the adverse economic effects of the pandemic through cash transfers.

We call upon the government through the Ministry of Labour, Social Security and Services-department of social protection; UN agencies, multilateral development institutions, and stakeholders working in this space to:

- Support both levels of government in appropriate beneficiary targeting - to target the right geographical areas, vulnerable communities, households and individuals.
    - It will be crucial to engage with and strengthen capacities of community-based organisations and community health workers to support in the identification of vulnerable households in different areas, and in the actual distribution of in-kind transfers in cases of restricted movement and to vulnerable and physically challenged individuals.
- Beneficiary management systems for enrolment and registration through the expansion of existing social registries and assisting the government to temporarily expand its existing social protection programme to include households newly affected by the COVID pandemic.
- There is a need for standardized guidelines and streamlining of targeting, types of cash and food transfers; management information systems (MIS), registries and databases of all beneficiaries and programmes, including the simplification of registration functions.
- Use of different unconditional transfer modalities as appropriate. These may include mobile/electronic cash transfers, in-kind transfers (actual food baskets to meet the food and nutritional needs of households; and non-food items), or commodity vouchers that can be redeemed for food and non-food items at various vendor outlets.
    - If vouchers are selected as a modality, expand the network of traders offering commodities
    - If cash transfers are used to ensure quicker and more efficient disbursements by strengthening digital payments and relaxing the eligibility criteria or conditions of existing programs that already have the cash delivery infrastructure in place.
    - Identify and set up food and non-food items commodity pick up points in close proximity to various communities (this may be necessary with the imposed curfew).
    - Set up home delivery mechanisms for delivery of food and non-food items to households with vulnerable individuals (if a complete lockdown is implemented this shall be necessary).
- Launch community awareness campaigns about how to enroll for and access available cash transfers and food assistance programmes; as well as complaints and feedback mechanisms.
- Prevent utilities such as electricity and water from being cut off during the pandemic.
- Strengthening institutions and technical capacity to refine and operationalise safety nets and social transfers delivery systems of the government including payment service providers, M&E systems to ensure accountability.

Women and girls

Health crises, such as COVID-19 impact women and men differently, exacerbating gender inequality. Previous experiences have shown that women and girls will be more severely affected by the pandemic. Girls and women face disadvantages, because of their limited ability to join the labour sector and their reduced earning capacity compared to men (earning as much as 30 percent less than men).

Women account for a significant part of the healthcare workforce. 75.8 percent of nurses are women, and nurses account for the largest proportion of the healthcare workforce. The health care system also relies on women's unpaid labour, a situation that will become more acute with the implementation of social distancing because the disproportionate burden of caring for children, who are now home from school, will fall on women. Additionally, the burden of home-based health care often falls on women, subjecting them to risk of infection and also limiting their ability to engage in other work. This problem is exacerbated in an epidemic when no support measures are put in place for home-based care providers.

Women and girls are affected by poverty in disproportionately high numbers in Kenya, and in seeking to respond to the realities created by gender inequity, the government should consider the impact that deepening poverty will have on these vulnerable populations. Therefore, social protection measures must account for the very gendered nature of poverty and inequality. Gendering the pandemic, also requires understanding the increased risk women are placed in when resources are diverted towards the pandemic response or services become unavailable. During the Ebola epidemic in Sierra Leone there was a 34 percent increase in facility maternal mortality and a 24 percent increase in the stillbirth rate; fewer women were able to access both pre and post-natal care. Sexual and reproductive health services were affected with obstetric and paediatric care facilities closing: the closure of organisations that offered contraceptive services and information; and the lack of guidance on the management of pregnant women.

The following are recommendations to ensure a gendered approach to the COVID-19 pandemic and include some of the recommendations that have been issued by UN Women:

- Protect essential health services for women and girls, recognising that sexual and reproductive health services are part and parcel of ensuring the right to health in Article 43(1) (a) and (2) of the Constitution for women and girls, are guaranteed and accessible in light of enforced curfews and potentially stretched health facilities
- Make provision for the comprehensive health care of women in all stages of pregnancy in COVID-19 preparedness plans to manage maternal morbidity and mortality rates and mitigate potential health disparities.
- Prioritise services for prevention and response to gender-based violence in communities affected by COVID-19 which must include essential services to address violence against women in preparedness and response plans for COVID-19, provide resources for the said services, and identify ways to make them accessible in the context of social distancing measures and imposed curfews.
- Ensure that there is access to the justice system for women and girls who face sexual and gender-based violence, which includes access to proper reporting and investigations systems and the enforcement of the right to a fair trial.
- Ensure availability of sex-disaggregated data, including on differing rates of infection, differential economic impacts, differential care burden, and incidence of domestic violence and sexual abuse.
- Embed gender dimensions and gender experts within response plans and budget resources to build gender expertise into response teams.
- Provide priority support to women on the frontlines of the response, for instance, by improving access to women-friendly personal protective equipment and menstrual hygiene products for healthcare workers and caregivers, and flexible working arrangements for women with a burden of care.
- Ensure equal voice for women in decision making in the response and long-term impact planning.
- Ensure that public health messages properly target women including those most marginalised.
- Develop mitigation strategies that specifically target the economic impact of the outbreak on women.

Children

Children, like women, experience socio-economic marginalisation and in Kenya the overall child poverty rate is 45 per cent. An epidemic can deepen marginalisation and in the case of children, they are vulnerable because: younger children may not be able to understand information on COVID-19; unaccompanied children may be unable to access timely and life-saving information; they may be unable to express fears and anxieties, and prolonged periods away from schools may cause anxiety and have an impact on emotional wellbeing.
The pandemic response must be cognisant of the burden on caregivers who may not have the capacity to care for children – with children home from school there are increased safety and security risks if parents still have to go to work and lack access to other caregivers. Heightened anxiety among parents and caregivers may result in violence against children at home. Finally, while children are less likely to become severely ill their caregivers may be at greater risk which may impact a child negatively.

Children are at risk of deepening poverty, and their health and mental well-being may be impacted by the: disruption of their lives (which may have financial implications and make them more vulnerable to child labour or exploitation); erosion of social capital; and possible separation of families who may not have access to support systems. The best interest of the child is of paramount importance in every matter concerning the child and the government must take into account the possible negative impact of this pandemic on children.

Media

We appreciate the role that the media has played in informing the public of the signs and symptoms of the virus as well as the preventive measures people can take to curb its spread. The media still has a central role to play in the response namely:

- Providing multi-stakeholder analyses on the broad impact that COVID-19 has on people beyond their health;
- Playing a monitoring and accountability role by providing constructive criticism when, and if, the Government's COVID-19 response falls short;
- Practicing responsible and ethical reporting that does not profile people with COVID-19.

We have received reports of Police seeking to curtail the movement of media personnel, despite media being an essential service and the constitutional guarantee of media freedom. We condemn any actions to interfere with media freedom as this is a violation of Article 34(2) of the Constitution, particularly at a time when access to timely and accurate information is critical to prevent hysteria.

Building public trust is a key component of any pandemic response and the media can play a significant role in ensuring accurate and timely information is availed to citizens, as well as provide avenues to build rapport between the government and its people.

We, therefore, note with grave concern the role played by certain media outlets in vilifying persons confirmed to be infected with COVID-19, referring to them as 'agents of death'. We note that while freedom of the media is guaranteed in Article 34 of the Constitution, this is subject to Article 33(2) which provides that freedom of expression does extend to advocating hatred based on health status. The media is required to meet its obligation to provide information, but it cannot do so in a manner that is likely to incite violence or be interpreted as advocating hatred.

Rather than incite fear, the media can build trust by bridging the information gap and hold the state to account. Conversely, they can fuel stigma and hamper the pandemic response with misinformation and vilification. There are important lessons to be learned from the impact stigma had in exacerbating both the HIV and TB epidemics – this has resulted in driving communities underground; impacting both access to and quality of healthcare, and increasing the spread of the disease.

Healthcare Workers

As part of the pandemic response, we have called upon our medical practitioners, nurses, clinical officers, midwives, community health workers, and volunteers; to place themselves and their families at risk to secure the health of this nation. We note with concern that in early March nurses at Mbagathi Hospital were on a Go-Slow as they were expected to provide care without adequate training. Every worker has the right to fair labour practices which includes reasonable working conditions (Article 41 of the Constitution). This right should be protected even in a pandemic response, and we call upon the government to guarantee the safety and well-being of those taking these risks by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic. Additionally, regular technical updates and appropriate tools to assess, triage, test and treat patients, as well as how to share infection prevention and control information should be made available.
- Ensuring that all necessary preventive and protective measures are taken to minimise occupational safety and health risks. Provide quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitiser, soap and water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimising occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.

UN and Multilateral Development Institutions

We appreciate the role played by the UN Family in Kenya, led by WHO, and other development partners in providing technical and financial support to the government's COVID- 19 Contingency plan. We call upon the leadership of the UN and multilateral development institutions to help safeguard the progress made thus far to reach the Sustainable Development Goals and to include the most vulnerable and hard to reach populations in the country's response. We therefore wish to call on the development and technical partners in Kenya to scale up efforts in supporting the Government to respond to the crisis in an inclusive, transparent and rights-based manner that adopts evidence-based interventions.

We all want the country and the world to triumph over COVID-19. This will only be achieved through a rights-based response – with all necessary efforts made to prevent further spread of COVID-19, maximum support provided to those affected, enhanced accountability in the use of resources to support response measures and contingent measures to cushion the public from the economic turmoil put in place.

The undersigned are ready and willing to help. We are eager to put our collective expertise to solve this problem in a way that fits Kenya's unique situation, respects the Constitution, and ensures the public health and safety of all.

Signed by:

1. African Institute for Children Studies (AICS)
2. AHF Kenya
3. Aninas Community Networks for Development (ACND)
4. Boa Boda Association of Kenya (BAK)
5. Buliding Lives Around Sound Transfomation (BLAST)
6. CADAMIC
7. CEDGG
8. Centre for Rights Education and Awareness (CREAW)
9. Community Forum For Advanced and Sustainable Development (COFAS)
10. Community Initiative Action Group Kenya (CIAG-K)
11. COPHAM
12. Constitution and Reform Education Consortium (CRECO)
13. COSWA
14. Dandora Community Aids support Association (DACASA)
15. Empowering Marginalized Communities NGO (EMAC)
16. FIDA-Kenya
17. Fountain of Hope
18. Happy Life For Development
19. Health NGOs Network (HENNET)
20. Health Rights Advocacy Forum (HERAF)
21. HUSA
22. International Commission of Jurists (ICJ-Kenyan Section)
23. ICS Africa
24. International community of women living with HIV Kenya
25. Institute of Economic Affairs
26. Katiba Institute
27. Kounkuey Design Initiative (KDI)
28. Keliwo widows' group
29. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
30. Kenya Red Cross Society
31. Kenya Sex Workers Alliance (KESWA)
32. Kenya Union of Clinical Officers (KUCO)
33. KIASWA Institute
34. Kondele community social justice Center
35. Lean on Me Foundation
36. Men Against Aids Youth Group.
37. Mildmay Kenya
38. Mumbo International
39. Nelson Mandela TB & HIV Information
40. NEPHAK
41. Nyakach Elders' Group
42. Next Generation of Kenya Lawyers Project
43. National Nurses Association of Kenya
44. Pamoja TB group
45. PEMA Kenya
46. People's Health Movement
47. Rising to Greatness
48. SHAPE Kenya
49. Society of Radiography in Kenya
50. Teenseed
51. TISA
52. Transparency International Kenya
53. Trust for Indigenous Culture and Health (TICAH)
54. Voices Of Community Action And Leadership (Vocal Kenya)
55. Wacha Health
56. Women in Real Estate
57. Women's Link Worldwide

This is Exhibit marked "SM-3" referred to in the Annexed affidavit/Declaration of .... Sworn/Declared before me on this .... day of .... 20 ..... at .... in the Republic of Kenya .... Commissioner for Oaths

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 06/April/2020**

**Advance copy via email*

Hon. Mutahi Kagwe
Cabinet Secretary for Health &
Chairperson, National Emergency Response Committee on Coronavirus
ps@health.go.ke; pshealthke@gmail.com

Dear Sir,

REF: OPEN LETTER ON IMPLEMENTATION OF MANDATORY QUARANTINE IN THE COVID-19 RESPONSE IN KENYA & REQUEST FOR INFORMATION

We, the undersigned, individuals, individuals under mandatory quarantine, family members of individuals under quarantine, organizations and associations, are representatives of health and human rights civil society and non-governmental organizations, community-based organizations and governance experts. We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" whose issues raised remains unaddressed.

Our previous advisory had, among other concerns, noted that the implementation of the government's directive of mandatory quarantine and isolation of people affected by COVID-19 was uncoordinated, unplanned and not guided by any policy or guidelines.

We issue this open letter and formal request for information in light of concerns raised by individuals currently in mandatory quarantine, their family members and media reports. The media have documented poor management of individuals from the time they landed at Jomo Kenyatta International Airport, their transportation, up to the time they were admitted to various mandatory quarantine facilities. This exposed them to risk of infection, defeating the very essence of safeguarding the greater public and avoiding co-infection.

People in mandatory quarantine have also brought to our direct attention and through open letters[1] and personal videos clear cases of recklessness in their handling, exorbitant costs they have been forced to incur to pay for the quarantine facilities, deplorable living conditions in most quarantine centers, lack of information on any quarantine protocols, and a general lack of any regard to their health, safety and well-being[2]. For the general public, it is not clear how many people are in mandatory quarantine, whether they have all been tested while in quarantine, how many have tested negative or positive and whether the results have been communicated to them. Similar information is unavailable to those in quarantine.

We take note of the fact that quarantine as a public health measure involves the restriction of movement, or separation from the rest of the population, of healthy persons who may have been exposed to the virus, *with the objective of monitoring their symptoms and ensuring early detection of cases*[3]. The World Health Organization (WHO) recommends that mandatory quarantine should be implemented as part of a comprehensive package of public health response and containment measures and, in accordance with Article 3 of the International Health Regulations (2005), be fully respectful of the dignity, human rights and fundamental freedoms of persons. Further, that if a decision to implement quarantine is taken, the authorities should ensure that:

- the quarantine setting is appropriate and that adequate food, water, and hygiene provisions can be made for the quarantine period;
- minimum Infection Prevention and Control (IPC) measures can be implemented; and
- minimum requirements for monitoring the health of quarantined persons can be met during the quarantine period.

We are therefore appalled by the manner in which mandatory quarantine is being implemented which is putting those in quarantine, all health care workers attending to them and, by extension, the entire nation at risk. From the time the decision to enforce mandatory quarantine was made on 22nd March 2020, the public has had several concerns:

- There has been no public information on any guidelines on the mandatory quarantine process, save for draft protocols dated 27th March 2020 and published on the Ministry of Health website on or about 3rd April 2020;

- There has never been information, within the public domain, or to those quarantined, on what to expect at the quarantine facilities, the period, costs, health information etc;There has never been information within the public domain, or to those quarantined on measures put in place to protect the workers at such quarantine facilities from infection including the provisions of personal protective equipment to the health care workers and others attending to them such as hotel workers. For instance, were all the health care workers and hotel staff tested and offered training on managing persons with COVID-19 before they received the people in mandatory quarantine?

As the nation continues struggling with the above, our attention is now drawn to a circular by Acting Director General for Health (Ref: MOH/ADM/1/3/Vol.1) communicating a decision to extend the quarantine period beyond 14 days for occupants of all facilities in which positive cases are identified. As expected, the circular raises further concerns:

- **The risk of co infection for those who are negative:** The Ministry of Health is already handling the quarantine process poorly, putting those in quarantine at risk and contributing to increased infections. What will extension of the quarantine period, of such poorly managed quarantine facilities[4] achieve other than increase chances of co infection for those who are COVID-19 negative?

1. Open letter by people quarantined at Pride Inn Azure Hotel dated 5th April 2020, REF: Directive to extend quarantine period beyond 14 days.

2. See Angela Okech, et. al "Covid-19: Kenyans reveal poor state of isolation centres,"; John Allan-Namu "Inside the Quarantine: Fears of Further Spreading the Virus Haunt the Confined."

3. WHO, 19 March 2020, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19) available at https://www.who.int/publications-detail/considerations-for-quarantine-of-individuals-in-the-context-of-containment-for-coronavirus-disease-(covid-19)

4. For example, the Kenya Medical Training Centre, Moi Girls High School Nairobi, Lenana School

- **Lack of information to the people under quarantine of the extension:** Who does the circular apply to? At whose cost is the extension? Why a blanket circular to all, yet the Ministry admits that some centers were managed better? Was this circular communicated to those in the mandatory quarantine facilities before it was made public? Do the health care workers and other personnel (e.g. hotel staff) in these facilities have personal protective equipment? Why is it that people who have tested positive appear to learn of their status from the media? Is this not a breach of medical ethics?

- **Poor quarantine facilities:** It is evident that most quarantine facilities are in deplorable conditions. WHO recommends that those who are in quarantine must be placed in adequately ventilated, spacious single rooms with en suite facilities (that is, hand hygiene and toilet facilities). If single rooms are not available, beds should be placed at least one meter apart. Those in quarantine report otherwise, and publicly available video evidence confirms this.

- **Psychosocial Effects of Prolonged Isolation:** How will the Ministry of Health ensure that the mental health of those in quarantine is well taken care of?

- **Proof of Contact:** WHO recommends that contacts of patients with laboratory-confirmed COVID-19 be quarantined for 14 days from the last time they were exposed to the patient. This is also reflected in the draft protocols dated 27th March 2020. What happens to those people who have adhered to quarantine conditions, including social distancing, and have tested negative?

- **Turnaround times for testing:** Per the Ministry's Draft Protocols, test results are to be availed within 24 hours. What is the Ministry doing to ensure results are availed within a reasonable time, to allay unnecessary anxiety and strengthen the quarantine regime overall?

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus, urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and the Right to Access Information Act:

1. Provide an explanation as to why the Ministry of Health is not adhering to its own guidelines relating to managing the designated mandatory quarantine facilities. For instance, why are people who have first tested negative test not released into self-quarantine as per the self-quarantine protocols?
2. Does the circular extending the quarantine period apply to all quarantine facilities? Why? At whose cost?
3. The total number of designated quarantine facilities as at 6th April 2020 and the number of occupants in each? The number of heath care workers and their cadres that have been deployed to these quarantine facilities? How many people are currently in quarantine who have been tested and received their results?
4. What measures are being taken to safeguard the health of people in quarantine facilities who have pre-existing medical conditions?
5. What is the time period taken when one tests positive in a quarantine facility before they are transferred to medical facility for isolation?
6. Have the healthcare workers and hotel attendants who have come into contact with the persons who have tested positive been tested and provided with PPE?

As per Section 27 of the Public Health Act, the government has the responsibility of isolating persons who have been exposed to infectious diseases. In the public health emergency occasioned by COVID-19 pandemic, we urge the government to diligently undertake this obligation by, among others, providing safe, clean and hygienic quarantine facilities; meeting the costs of such facilities; and above all monitoring the health including mental health of those in quarantine and promptly discharging those who test negative.

Signed by the following individuals:

1. Allan Maleche
2. Ashok Rajput
3. Atieno Odenyo
4. Benson Maina
5. Bridget Kanini
6. Bonface Ombui
7. Caroline Jerop Morogo
8. Catherine Murugi
9. Christine Nkonge
10. Eugene Ligale
11. Evaline Kibuchi
12. Evelyne Wanjiru Karanja
13. Etta Ligale
14. Francis Aywa
15. Francis Mwangi
16. Grace Macharia
17. Hallima Nyota
18. Huzefa Amirali Mohamedbhai
19. Jamie Nyamongo
20. Jasmine Lemelin
21. Karishma Bhagani
22. Margaret Kalekye
23. Mark Gitau
24. Melanie Ligale
25. Maureen Ouma
26. Naiya Anil Haria
27. Nicholas Mwenda
28. Nickitah Mckena
29. Patricia Asero
30. Peter Owiti
31. Rahul Ponda
32. Rashmi Shah
33. Reggie Ann
34. Sarah Mburu
35. Sajan Thakar
36. Sarah Mwangi
37. Samson Onditi
38. Shanay Sirju Patel
39. Sheila Masinde
40. Sirju Shashikant Patel
41. Sophia Muchiri
42. Soukhya Ankala
43. Tanika Dodhia
44. Twinkle Pethad
45. Vaishali Sirju Patel
46. Vivian Washiko
47. William Mburu

Organisations:

1. Amnesty International
2. CADAMIC
3. COFAS
4. Community Initiative Action Group – Kenya
5. EMAC Kenya
6. FIDA Kenya
7. GALCK
8. Happy Life for Development CBO
9. HENNET
10. HERAF
11. International Community of Women Living with HIV – Kenya Chapter
12. ICJ – Kenyan Section
13. Katiba Institute
14. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
15. KANCO
16. Lean on Me Foundation
17. Next Generation of Kenya Lawyers Project
18. Nelson Mandela TB-HIV Resource Centre Nyalenda
19. People's Health Movement – Kenya
20. PEMA Kenya
21. Rising to Greatness
22. SWOP Ambassadors
23. The Network on Food and Nutrition Security
24. TICAH
25. TISA
26. Transparency International Kenya
27. Wote Youth Development Projects

cc:
Hon. Wycliffe Ambetsa Oparanya,
Chairperson, Council of Governors

Siddharth Chatterjee,
UN Resident Coordinator in Kenya

Bernard Mogesa
CEO, Kenya National Commission on Human Rights

Dr. Joyce Mwikali Mutinda
Chairperson, National Gender and Equality Commission (NGEC)

Hon. Florence Kajuju
Chairperson, Commission on Administrative Justice

Li Hsiang FUNG
Senior Human Rights Advisor, OHCHR

Dandora Community
AIDS support
Association (DACASA)

Your REF: TBA **Our REF: C/KELIN/2020** **Date: 17/April/2020**

This is Exhibit marked "SM-4" referred to in the Annexed affidavit/Declaration of Sheila Masinde
Sworn/Declared before me on this ... day of ... 20... in the Republic of Kenya at ...
Commissioner for Oaths

Hon. Mutahi Kagwe
Cabinet Secretary for Health
Chairperson, National Emergency Response Committee on Coronavirus

Dear Sir,

RE: OPEN LETTER AND REQUEST FOR INFORMATION ON PROVISION OF SUPPORT TO HEALTH CARE WORKERS IN THE COVID-19 RESPONSE

We, the undersigned organizations and associations, are representatives of health and human rights, civil society and non-governmental organizations, community-based organizations and representatives of professional bodies, informal sector actors, economic, and governance experts.

We are also Kenyan citizens concerned about the state of preparedness of health facilities to deal with COVID-19, given that any of us is likely to use them. The information we seek in this letter is therefore critical to safeguard our rights including right to life, and right to health.

We make reference to our previous advisory dated 28th March 2020 "Advisory Note on Ensuring a Rights-Based Response to Curb the Spread of COVID-19: People - not Messaging - Bring Change" that remains unanswered.

In the previous advisory, we noted the need to support health care workers during this pandemic period through provision of adequate training, and ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks.

We write this urgent request for information letter in light of concerns that health care workers continue to raise as regards to their occupational safety and health risks. We note that it is imperative that the plight of health care workers is urgently, adequately and conclusively addressed given that they have placed themselves and their families at risk to secure the health of this nation.

In our previous advisory, we urged the Ministry of Health to guarantee the safety and well-being of health care workers by:

- Providing adequate training for all healthcare workers deployed towards the management of the COVID-19 pandemic.

- Ensuring that all necessary preventive and protective measures are taken to minimize occupational safety and health risks through provision of quality and adequate personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and running water, cleaning supplies) in sufficient quantities to healthcare or other staff caring for suspected or confirmed COVID-19 patients.
- Consulting with healthcare workers on occupational safety and health aspects of their work and put measures in place to ensure safety.
- Allowing workers to exercise the right to remove themselves from a work situation if they have reason to believe it presents an imminent and serious danger to their life or health.
- Minimizing occupational risks and risk to families of healthcare workers by the provision of insurance and adequate and acceptable frontline healthcare worker shelters.
- Increasing testing of people who are at risk such as vulnerable populations and healthcare workers.
- Increasing testing of symptomatic healthcare workers and non-clinical staff regardless of their contact history.

Additionally, we proposed that the government ensures this information is available to the public through a live dashboard that is updated on a regular basis with the following information on inputs and processes:

- Number of health care workers trained in every county and in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.
- Information on the working conditions for persons providing essential health services, including health care workers, staff in quarantine facilities, and home-based care providers. This should include updates on trainings provided; measures taken to mitigate occupational safety and health risks, insurance coverage; and availability of frontline healthcare worker shelters.
- Information on how communities will be included in efforts to reduce health risks, access care, and participate in prevention and treatment to slow down COVID-19 spread without undermining the critical role of biomedical and epidemiological interventions that have so far been implemented.

However, we take note of the fact that to date there are still complaints and concerns on the protection of health care workers in this pandemic. For instance, the Health Unions (Kenya National Union of Nurses, Kenya Union Clinical Officers and Kenya Medical Practitioners Pharmacist and Dentist Union) have recently done a survey and noted that most of their members in county governments and Ministry of Health have not been adequately trained and or prepared to handle the Corona Virus pandemic.

They have also reported that provision of personal protective equipment (PPE) remains a challenge at health facilities in most counties. The Kenya Medical Practitioners Pharmacists and Dentists' Union in its weekly brief dated 13th April, 2020 called for:

- The need to provide adequate PPEs for all personnel in the hospital including N95 masks, face shields, goggles, scrubs and gowns;
- Designation of specific COVID-19 testing centers for health care workers;
- Provision of catering services to healthcare workers;

- Provision of transport for all health care workers handling COVID-19 patients to and from the hospital to their accommodation facilities;
- Increase in the number of health care personnel;
- Provision of accommodation to health workers on duty during the pandemic (especially those in health facilities treating suspected and confirmed COVID-19 patients.

The government has a Constitutional and legal obligation to ensure every person enjoys their right to the highest attainable standard of health. This obligation cannot be achieved without health care workers. We therefore urge the government in fulfilment of its legal obligations and in line with the World Health Organization guidelines to (among others):

- Ensure that all necessary preventive and protective measures are taken to minimize occupational safety and health risks;
- Provide information, instruction, and training on occupational safety and health, including; refresher training on infection prevention and control (IPC); use, putting on, taking off and disposal of personal protective equipment (PPE);
- Provide adequate IPC and PPE supplies (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) in sufficient quantity to those caring for suspected or confirmed COVID-19 patients, such that workers do not incur expenses for occupational safety and health requirements;
- Familiarize personnel with technical updates on COVID-19 and provide appropriate tools to assess, triage, test, and treat patients, and to share IPC information with patients and the public;
- Provide appropriate security measures as needed for personal safety;

From the foregoing, we now demand that the Ministry of Health, and the National Emergency Response Committee on Coronavirus urgently makes the following information public in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016:

(i) Number health care workers trained in each designated COVID-19 facility by cadre, evidence of team-based approaches in COVID-19 facilities e.g. number of ICU teams with nurses, Clinical Officers Anaesthetists, general physicians and critical care specialists. Number of health care workers deployed in every county.

(ii) Number of designated COVID-19 management facilities, distribution around the country, capacity to manage severe cases (number of beds, oxygen availability), capacity to manage critical cases (ICU capacity to serve cases of COVID-19, ventilator numbers), laboratory capabilities e.g. blood gas analysis, full metabolic screen and full electrolyte screen.

(iii) Number of personal protective equipment (masks, gloves, goggles, gowns, hand sanitizer, soap and water, cleaning supplies) procured and distributed to health care workers and the distribution schedule.

(iv) Number of health care workers tested for COVID-19.

(v) Whether health care workers in health facilities treating suspected and confirmed COVID-19 patients are being provided with (a) catering services; (b) accommodation; (c) transport to their accommodation.

We look forward to your urgent response not later than 48 hours to inform our next course of action.

Signed by the following individuals:

1. Allan Maleche
2. Becky Odhiambo Mududa
3. Bradley Njukia
4. Caroline Oyumbo
5. Cecilia Mumbi
6. Erick Okioma
7. Fenwick Oyumbo
8. Houghton Irungu
9. Mary Ger
10. Nelson Silas
11. Patricia Osero
12. Peter Owiti
13. Samson Onditi
14. Sheila Masinde
15. Steve Anguva

Endorsed by:

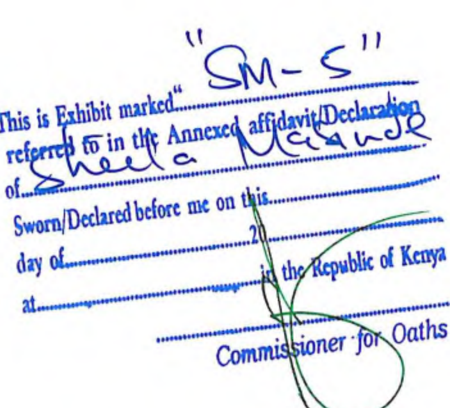
1. Amnesty International
2. Boda Boda Association of Kenya
3. COFAS
4. Dandora Community AIDS Support Association (DACASA)
5. EMAC Kenya
6. Kenya Legal & Ethical Issues Network on HIV & AIDS (KELIN)
7. Happy Life Development
8. HERAF
9. ICJ – Kenyan Section
10. Kenya Sex Workers Alliance (KESWA)
11. Mumbo International
12. Nelson Mandela TB-HIV Resource Centre Nyalenda
13. Nyarwek Network
14. Transparency International
15. WOYDEP (Wote Youth Development Projects)

cc:

1. Kenya Medical Practitioners Pharmacist and Dentist Union
2. Kenya National Union of Nurses
3. Kenya Union Clinical Officers
4. Association of Public Health Professionals Kenya (APHOK)
5. Kenya Medical Association (KMA)
6. Chairperson, Council of Governors
7. Kenya National Commission on Human Rights
8. Commission on Administrative Justice

18th April 2020

Dr. Patrick Amoth
Acting Director General for Health
Ministry of Health Covid-19 Response Team
dghealth2019@gmail.com
patrickamoth@gmail.com



REF: URGENT OPEN LETTER AND REQUEST FOR INFORMAITION REGARDING THE ABITRARIY EXTENSION OF QUARANTINE PERIOD BEYOND 28 DAYS

We make reference to the above subject matter and a circular dated 16th April 2020 which we only got wind of through social media platforms.

We write this open letter in response to the above-mentioned circular and in an effort to ensure a human rights-based approach for curbing the spread of COVID-19 is taken and information is provided relating to our requests.

Under this circulant, a number of institutions have been placed under an extended quarantine period. The Kenya medical Training Institute MG appears on the list. The open letter raises concerns on the neglect, extortion and risks members impacted by this quarantine enforcement are faced with:

A. RELEASE OF PEOPLE UNDER QUARANTINE

The Ministry of Health set up clear guidelines for placing members under quarantine. The simple qualification for persons to be placed under this quarantine was defined as any person that travelled into the country between 23rd-25th March 2020. To date, there has been no clear guidelines set for members still under quarantine to warrant their release. Is it possible that the ministry is putting our lives at risk while they figure out proper mechanisms for releasing members from quarantine? Kindly provide a response to the following questions:

i. Why is there no proper date set for persons in quarantine, who at this point have observed all the rules set at the institution and have in turn tested negative twice?
ii. Why is there a blanket accusation of lack of practicing social distancing yet many of us have strictly adhered to the rules including going as far as voluntarily providing information to the Ministry where people are not observing this and requesting, they be taken elsewhere to avoid endangering our lives?

iii. Why have we not received our test results within 24 hours as stipulated by the quarantine protocol and guidelines? We are left to assume to have tested negative for Covid-19, if we are not taken to an isolation center.

B. EXITING OF THE FACILITIES

According to the guidelines, nobody can exit the quarantine facilities unless cleared. However much unclear the guidelines for equitably accessing clearance forms, it was evidenced on the 17th of April, that a member under quarantine was escorted by KMTC staff with no protective gear whatsoever to an ATM facility outside of the quarters of the institution in order to access a public ATM machine. This support was accorded to this member to allow them to withdraw money in order to furnish the institution so as to facilitate their speedy release from quarantine, in spite of the circulant in question. In this regard please provide a response to these questions:

i. Why is there such selective application of these alleged strict contact control measures in the fight against corona?
ii. Are those officials who are escorting people to the ATMS being tested and declared COVID-19 free?
iii. Why is one allowed to leave the premises only if they are going to access a bank account for the benefit of the institution, yet we have members in need of urgent medical attention that have been denied access to medical care?
iv. Is covid-19 risk exempt during accessing financial resources?
v. Does it mean that the extension period can be mitigated by forwarding of financial resources to the institution?
vi. Are there acts of corruption taking place to facilitate the release of certain individuals?

C. ILLEGAL DETENTION OF PASSPORTS

It has come to our attention that certain members were only released from the facility after depositing their passports at the institution in exchange for their freedom. These members had been brought to the institution on the understanding that the facilities shall be free of charge. That said, is it possible that the institution is turning this matter of national public health concern into an opportunity for extorting desperate frustrated members in quarantine? Please provide a response to the following:

i. Is there a directive from the Ministry to KMTC & other government facilities to detain people's passports in exchange for their freedom? If no, why is this Ministry allowing this to happen?

ii. Isn't it illegal to detain people in hotels or governments facilities for non-payment of civil debts?
iii. Why are we being compelled to pay for mandatory quarantine when it was a government-initiated policy and the government has received sufficient funding towards the COVID-19 response.

D. HEALTH CONCERNS AND WELLBEING

Even as we enter the fourth week of quarantine, issues raised around the provision of adequate psycho-social support have not been addressed nor granted to the members under quarantine contrary to the press briefings. The lack of communication and concern from the officials handling the quarantined members is wanting. Please respond to the following:

i. Why are you not following your guidelines by failing to provide psycho-social support needs for members in quarantine?
ii. How do you plan to address the long-term mental effect of the deplorable quarantine conditions, that are already destroying the fragile mental health of many here?

E. SOCIAL DISTANCE STANDARDS

Finally, time and again the Ministry of Health, despite being present in the institution for brief moments at a time, continually cites the lack of adequate social distancing as the reason for extension of period of quarantine. We are aware of the circular dated 3rd April 2020 by Dr. Pacifica Onyancha instructing that an MOH official be available at the quarantine facility for 24 hours in two shifts. This has however not been happening. (attached is the circular)

While this reason was first considered, the members in quarantine are now baffled and surprised as to what these exact and precise standards of social distancing are, and if so, why hasn't anyone from the Ministry of Health been present to advice on this exact and precise standard that they speak of. In spite of the circular by Dr. Pacifica Onyancha indicating that MOH officials need to be present.

Ultimately, the use of shared feeding points, toilets and other amenities is far below the stipulated WHO standards that call for single rooms with en-suite provisions that entails hand hygiene and toilet facilities. What is the evidence of this lack of social distancing, while quarantined members took it upon themselves to create one-meter demarcations around the compound, something which the Ministry of Health nor the institution did, yet continues to extend quarantine periods for members under obscure reasons? We thus request Reponses to the following:

(i) Why the blanket decision to extend the quarantine period on the basis of lack of social distancing noting that many of us have complied with the social distancing requirement and avoided contact with others
(ii) Why has the Ministry not responded to the concerns raised about the few who are not observing the social distancing rules and move them to another block so as not to endanger our lives?
(iii) If the Ministry is aware and has evidence of those who are not practicing social distancing, why not send them to a separate block?
(iv) Are MOH official expected to be present at the Mandatory Quarantine facilities in light of the letter dated 3rd April 2020 by Dr. Pacifica Onyancha?
(v) Are the MOH officials who are posted here to carry out tests and check our temperature tested for COVID -19 or do they pose a risk to us too?
(vi) Why is there delay in moving a person who has tested positive from the quarantine center to the isolation facilities? Isn't this negligence on the part of the Ministry and putting us further at risk?
(vii) Will the Ministry bear the cost of the extended stay noting many of us have complied with the rules set?

We therefore request that the Ministry of Health provides us with the following information in writing in compliance with Article 35 of the Constitution of Kenya and section 4 and 9(2) of the Access to Information Act, 2016 and within 48 hours noting the urgency of the situation at hand and our fragile mental health status. Failure of which we ask the Commission of Administration of Justice to urgently and fully exercise its mandate.

Signed by the following:

CC.

Cabinet Secretary for Health - Hon. Mutahi Kagwe cshealth2015@gmail.com; cshealth2015@gmail.com;cabsecretary@health.go.ke

Principal Secretary Ministry of Health
ps@health.go.ke; pshealthke@gmail.com

Director DPPHS
Directordpphs.moh@gmail.com

Government Spokesperson
spox@ict.go.ke; governmentmediacentre@ict.go.ke

Commission on Administrative Justice
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Transparency International- Kenya
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Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)
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Women's International League for Peace and Freedom
hello@wilpfkenya.org

ALL MEDIA HOUSES

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Email: transparency@tikenya.org
http://www.tikenya.org

Your REF: **Our REF: OC/TIKENYA/2020** **Date: 16/04/2020**

Ms. Lucy Ndungu, HSC, EBS
Commissioner in Charge of Access to Information
Commission on Administrative Justice
2nd Floor, West End Towers
Opposite Aga Khan High School off Waiyaki Way – Westlands
P.O. Box 20414 – 00200
NAIROBI.
l.ndungu@ombudsman.go.ke; complain@ombudsman.go.ke

Dear Commissioner Ndung'u,

RE: FOLLOW UP ON URGENT REQUEST FOR INFORMATION FROM THE MINISTRY OF HEALTH

Thank you for your communication dated 9th April 2020 and our tele-conversation on 15th and 16th April 2020. During the call, you reported that the Ministry of Health is yet to formally respond to your letter dated 8th April 2020. I similarly reported that we have not received any response from the Ministry.

Given the urgency of the matter and noting that the statutory timeline of 48 hours to respond has lapsed, we kindly but urgently request the Commission to indicate to us in writing and within 48 hours, what actions and the timelines for the actions the Commission will take in line with the Provisions of Part V of the Access to Information Act to ensure that this information is received within 48 hours.

Kindly note that this information is critical to inform the safeguarding of the rights of Kenyan citizens some still in mandatory quarantine. Please note that unless we receive a response from all parties concerned including the Commission we shall consider other measures including litigation to safeguard the rights of Kenyans.

We look forward to your timely response.

Sincerely,

Sheila Masinde
Ag. Executive Director

cc:
Hon. Florence Kajuju, MBS
Chairperson,
Commission on Administrative Justice

Mr. Leonard Ngaluma
Commission Secretary
Commission on Administrative Justice

This is Exhibit marked "SM-6"
referred to in the Annexed affidavit/Declaration
of Sheila Masinde
Sworn/Declared before me on this .... 20....
day of .... in the Republic of Kenya
at ....
Commissioner for Oaths

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PETITION ________ OF 2020

In the Matter of Articles 1, 2, 3, 10, 19, 20(1)(4), 21, 22,24,25, 27, 28, 29, 35, 165 232(1), 253, 258 and 259 of the Constitution

and

In the Matter of Section 4 And 9 the Access to Information Act, 2016

and

In the Matter of Section 5, 6, 7 and 10 of the Health Act, 2017

BETWEEN

ERICK OKIOMA……………………………………………………1ST PETITIONER
ESTHER NELIMA…………………………………………………2ND PETITIONER
CHRIS OWALLA…………………………………………………3RD PETITIONER
CM……………………………………………………………………4TH PETITIONER
FA……………………………………………………………………5TH PETITIONER
KB……………………………………………………………………6TH PETITIONER
MO……………………………………………………………………7TH PETITIONER
EL……………………………………………………………………8TH PETITIONER
KATIBA INSTITUTE……………………………………………9TH PETITIONER
KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV/AIDS (KELIN)…………………………………………10TH PETITIONER
THE KENYA SECTION OF THE INTERNATIONAL COMMISSION OF
JURISTS (ICJ KENYA)…………………………………………11TH PETITIONER
TRANSPARENCY INTERNATIONAL KENYA………………12TH PETITIONER
ACHIENG ORERO………………………………………………13TH PETITIONER
(9th to 13th Petitioners suing on behalf of health and human rights civil society and non-governmental organizations)

VERSUS

MUTAHI KAGWE, CABINET SECRETARY
FOR HEALTH……………………………………………………1ST RESPONDENT
PATRICK AMOTH, AG DIRECTOR GENERAL,
MINISTRY OF HEALTH…………………………………………2ND RESPONDENT
CORNEL RASANGA, GOVERNOR OF
SIAYA COUNTY…………………………………………………3RD RESPONDENT
COUNCIL OF GOVERNORS……………………………………4TH RESPONDENT
FRED OKENGO MATIANGI, CS INTERIOR AND
COORDINATION OF NATIONAL
GOVERNMENT……………………………………………………5TH RESPONDENT
HILARY NZIOKI MUTYAMBAI, INSPECTOR GENERAL
OF THE POLICE, KENYA………………………………………6TH RESPONDENT
JOSEPH WAKABA MUCHERU, CABINET SECRETARY
FOR INFORMATION AND

COMMUNICATIONS..7TH RESPONDENT
COMMISSION ON ADMINISTRATION
OF JUSTICE...8TH RESPONDENT
DANIEL YUMBYA, CHIEF EXECUTIVE OFFICER,
KENYA MEDICAL PRACTITIONERS' AND DENTISTS
COUNCIL...9TH RESPONDENT

AND

KENYA NATIONAL COMMISSION ON
HUMAN RIGHTS (KNCHR)......................................1ST INTERESTED PARTY

13TH PETITIONER'S AFFIDAVIT IN SUPPORT OF THE PETITION

I, **ACHIENG ORERO**, residing in Nairobi in the Republic of Kenya and of Post Office Box 62323-00200 representing Women's Link Worldwide do hereby solemnly make oath and state THAT:

1. I am an adult of sound mind and a Staff Attorney at Women's Link Worldwide, duly authorized and thus competent to make and swear this affidavit in support of and on behalf of Women's Link Worldwide.

2. I swear this Affidavit in support of the Petition.

3. Women's Link Worldwide is an international non-governmental organization founded in 2001 working to uphold women's rights through the domestic implementation of international human rights law and the use of comparative law by national courts.

4. As a clearinghouse of legal precedent from national, regional and international courts, Women's Link Worldwide is a global resource for judges, advocates and organizations committed to women's human rights. We are a trusted international resource for legal expertise in women's human rights and have a demonstrated commitment to sharing that expertise by providing information on a national, regional and international level, through our publications and amicus briefs. We have intervened as amicus curiae before the Supreme Court of Rwanda (Prosecution v NTIBAJYINAMA Esther, Case No. RPAA 0078/15/CS), the Court of Appeal of Rwanda (Prosecution vs TWAGIRUMUKIZA Claver, Case No. RPA 00001/2018/CA), the High Court of Kenya at Bungoma (Petition No. 5 of 2014) and the High Court of Kenya at Nairobi (Petition No. 266 of 2015).

5. Women's Link Worldwide has issued numerous publications relating to the protection and promotion of women's and girls' human rights, focusing on sexual and reproductive rights and health, gender-discrimination and gender-based violence. Focusing specifically on sexual and reproductive health and rights, some of the organization's publications in English include: *Human Rights: the Foundation for a Comprehensive Sexual and Reproductive Health Counselling Service (2012)*, *Migrant Women's Rights: An Invisible Reality (2009)*, *Mothers in Human Trafficking Networks: Robbed of their Rights (2017)*, *The Truth Spoken Aloud (2017)*, *Trapped in Europe. Dignity denied (2016)*, and *Trafficking of Nigerian girls and women: slavery between borders and prejudices (2014)*.

6. In April 2020, the 1st Respondent issued the Kenya Covid 19 RMNH Guidelines: A Kenya Practical Guide for Continuity of Reproductive, Maternal, New-born and Family Planning Care and Services in the Background of COVID 19 Pandemic (hereafter referred to as RMNH Guidelines). The Guidelines were intended to provide health care service providers as well as members of the general public, particularly women and girls, information related to provision and acquisition of sexual and reproductive health services.

7. Given that the RMNH Guidelines as they currently exist are not comprehensive in their scope and have left out information crucial to the fulfilment of the highest attainable standard of reproductive health for women and girls as provided for under Article 43 of the Constitution of Kenya, the 13thPetitioner in concerted effort with a number of other Civil Society Organisations wrote to the 1st Respondent vide an e-letter dated 28th April, 2020 seeking more information as to how the RMNH Guidelines could ensure a comprehensive approach to sexual and reproductive health and rights of women and girls.

   Annexed hereto and marked AO-1 is a copy of the letter to the 1st Respondent dated 28th April 2020.

8. The 1st Respondent has to the date of the filing of this Petition neither acknowledged receipt or responded to the said letter of 28th April, 2020 leaving women and girls in this country with uncertainty on how to access certain essential reproductive health care services within the existing reality of the COVID 19 pandemic and the measures in place such as the lockdown and curfew.

9. On 7th May 2020, the 13th Petitioner in partnership with Amnesty International and International Planned Parenthood Federation Africa, launched Guidelines for African States to protect the rights of women and girls during the Covid-19 Pandemic. Based on the State obligations emanated from international and regional human rights instruments that Kenya has ratified, the guidelines outlined recommendations that states must address in order to ensure their responses to the pandemic guarantee the protection of women and girls' right to live free from gender based discrimination and violence and to access essential sexual and reproductive health rights services, commodities and information.

10. The guide which is a roadmap for national and local government authorities to better understand their obligations towards women and girls during this COVID-19 Pandemic period provides for: public information campaigns on support services such as medical care and counselling; protection measures like provision of shelter in safe houses and access to legal support available to ALL women victims of domestic violence during the pandemic. Others include mass dissemination, publication and public access to information on sexual and reproductive health services and commodities in relevant languages for the targeted communities and in accessible formats for all women including women living with disabilities and women in the context of migration and human mobility.

    Annexed hereto and marked AO-2 is a copy of the guidelines launched on the 7th May 2020.

11. The prevailing conditions created by the COVID 19 pandemic as well as the measures put in place by the Respondents restricting movement has inadvertently restricted the access of women and girls to essential services. The failure to issue comprehensive information by the Respondents regarding any exceptions to movement restrictions if at all only serves

to violate the rights of women and girls not only to access information as provided in Article 35 of the Constitution of Kenya, but inextricably the right to the highest attainable standard of health care also provided in the Constitution of Kenya, Article 43(1)(a). The State has an obligation to ensure information on exceptions to movement restrictions for women survivors of violence who need to seek assistance outside their homes or who escape from situations of violence is made available. Similarly, information on support services such as medical care, counselling and legal assistance for women survivors of sexual violence which are essential services must also be availed.

12. In times of emergency, risks of violence to women and girls increase. As UN Women has noted, violence against women is "the most widespread human rights violation in the world." The World Health Organization has described it as "a global public health problem of epidemic proportions." Staying home reduces the risk of catching COVID-19. However, for thousands and women and girls, staying home does not mean greater safety, but rather greater risk of violence, including sexual violence, when they are isolated with their abusers or potential abusers. This is due to high rates of sexual violence, particularly by girls' family members or other people close to them, and lack of access to reproductive health services; a situation that is exacerbated by measures such as curfews and by the overwhelmed healthcare system.

13. The judiciary through an address by the Chief Justice of Kenya has indeed reported a sharp increase in the number of rape and defilement cases reported since March 2020 as a result of the advisory to stay at home and other measures subsequently issued by the 1st Respondent in response to the COVID 19 pandemic. In his statement, the Chief Justice, Justice David Maraga indicated that sexual offences constitute 35.8% of the criminal matters reported during this period with 'perpetrators being close relatives, guardians and/or persons living with the victims'.

    Annexed hereto and marked AO-3 is a copy of the statement on justice sector operations in the wake of the COVID-19 pandemic' (CJ's Statement) issued on 1st April 2020.

    Annexed hereto and marked AO-4 is an article published by Standard Media on 'Sex predators on the Rampage amid Curfew' on 18th April 2020.

    Annexed hereto and marked AO-5 is an article published by Human Rights Watch on 'Tackling Kenya's Domestic Violence Amid COVID-19 Crisis' on 8th April 2020.

14. Violations of the rights to life, health and particularly the sexual and reproductive health and rights of women, including women in situations of heightened vulnerability due to circumstances such as humanitarian or health crises, are forms of gender violence that may constitute torture or cruel, inhuman, or degrading treatment. Failure to provide these essential services is a form of discrimination against women and girls because it places their lives, health, and physical and psychological integrity at risk.

15. It has been reported by a number of media outlets that women and girls in Kenya are failing to access health care facilities and reproductive health services as a result of the stringent curfew measures and further the failure by the Respondents to issue and disseminate clear and comprehensive guidelines and information to the public responding to these challenges.

Annexed hereto and marked AO-6 is a news article 'Pregnant Mother bleeds to Death During Curfew' published on 10th April 2020.

Annexed hereto and marked AO-7 is an article 'Pregnant Women in Rural Kenya are Struggling to Access Health Care Amid covid-19' published on 15th April 2020.

16. The Respondents therefore have a special obligation to ensure access to these healthcare services in accordance with principles of dignity, equality, and non-discrimination, particularly in light of the range of vulnerability or risk situations women and girls may face while quarantine and isolation measures are in effect.

17. Women's right of access to information on sexual and reproductive health gives rise to a proactive obligation for the Respondents to provide reliable, complete, timely, and accessible information that allows them to exercise their rights or meet their needs. Considering the fact that vulnerable women and girls face more barriers to access information—particularly those who are poor, rural, migrants, or lacking in education—States must make special efforts to ensure information reaches them. The use of Internet, social media platforms and mainstream media should also be accompanied by various community outreach programs to ensure non-discrimination of women who have no access to the above means of communication.

18. The Constitution of Kenya recognizes the right to receive information in Article 33 stating, "every person has the right to freedom of expression, which includes—(a) freedom to seek, *receive* or impart information or ideas." (Emphasis added). Article 35 further guarantees the right of access to information stating, "(1) Every citizen has the right of access to—(a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom"; in the case of the latter, validly including information required for the exercise or protection of the right to the highest attainable standard of health.

19. The right to information as stated in the Constitution of Kenya obligates the State to provide information that is **accurate, impartial and complete**. The right to access to information is an essential part of guaranteeing women's right to health. The right to access to information is especially relevant in the area of health, as individual's ability to make free and informed decisions with regard to their health is contingent upon their access to information. The right to information also intersects with other rights, such as the right to non-discrimination, as marginalized groups including women, migrants, ethnic minorities, and people living in rural areas often have less access to information than other member of society.

20. The State has an obligation, pursuant to the respect and guarantee obligations imposed by regional and international law, and under the principles of equality and non-discrimination, to ensure that accurate information is available in a timely, complete, accessible, and reliable manner to all women and girls, and particularly to the poor, vulnerable, and those from marginalized communities.

21. Further, both Articles 19 of the ICCPR and the UDHR recognize everyone's 'right to freedom of expression; including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print'.

22. The Respondents have an obligation of active transparency consistent with providing the public the maximum amount of information proactively—without a petition—particularly when the information in question is related to satisfying other rights. The obligation of active transparency is particularly relevant when the information has to do with issues related to sexuality and reproduction, since such information helps people be prepared to make free and informed decisions concerning these aspects that are so intimate to their lives.

23. The right of access to information is closely related to the exercise of other human rights, and in that sense, the failure to comply with the obligations of respecting and guaranteeing women's free access to information can be understood to lead to various violations of their rights to live free from violence and discrimination. As such, the Respondent's obligation to guarantee the right of access to information is essential in order for women to be able to fully exercise all of their rights, and in particular, their sexual and reproductive rights.

24. The failure of the Respondents to adhere to its obligation to guarantee the right to access information to women and girls continues to pose a threat to their attainment of the highest attainable standard of reproductive health.

25. Without the timely intervention of this Honourable Court and issuance of the reliefs sought in the Petition, the Respondents will continue to act in neglect of their obligation to ensure the provision of accurate, transparent, impartial and timely information to the detriment of women and girls across this country.

26. I depose this affidavit in support of the Petition from facts within my knowledge save for the information the sources whereof are otherwise disclosed. I believe this affidavit to be in accordance with the Oaths and Statutory Declarations Act, Cap 20.

SWORN at **NAIROBI** by the said
ACHIENG ORERO
This 17th day of June **2020**

Achieng Orero
DEPONENT

BEFORE ME

NELSON WANYONYI OSIEMO
ADVOCATE & COMMISSIONER FOR OATHS
P.O. Box 842 - 00200, NAIROBI

NOTARY PUBLIC

DRAWN AND FILED BY:

AO-1

Achieng Orero

26 June 20

Nairobi

women's LINK worldwide

Hon. Mutahi Kagwe, Cabinet Secretary for Health and
Chairperson, National Emergency Response Committee on Coronavirus
Ministry of Health
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Cathedral Road
P.O. Box 30016-00100
Nairobi
Email: ps@health.go.ke; cabsecretary@health.go.ke

Women's Link Worldwide
Via email only:
guiacovid@womenslinkworldwide.org

28th April 2020

Dear Sir/Madam,

Re: Ministry of Health COVID-19 RMNH Guidelines: A Kenya Practical Guide for Continuity of Reproductive, Maternal, New-born and Family Planning Care and Services in the Background of COVID19 Pandemic.

We write in relation to the "COVID-19 RMNH Guidelines: A Kenya Practical Guide for Continuity of Reproductive, Maternal, New-born and Family Planning Care and Services in the Background of COVID19 Pandemic" (hereinafter, "the guidelines"), issued by the Kenyan Ministry of Health in April 2020 in response to the COVID-19 pandemic in Kenya.

We, the undersigned, are representatives of civil society organisations which advocate for the protection and promotion of human rights standards, particularly relating to the rights of women and girls. Firstly, we are grateful to the Ministry for acting swiftly in responding to the developing situation with the COVID-19 pandemic and seeking to ensure that the rights of women and girls to access sexual and reproductive health services continue to be protected throughout this challenging and unprecedented time. Further to the guidelines given on family planning and maternity care, we write to urgently draw the Ministry's attention to the need to include access to safe abortion, as permitted by the Constitution under Article 26(4), and comprehensive post-abortion care within the scope of these guidelines as emergency health care treatments which must continue to be prioritised, even during the COVID-19 pandemic. In light of the range of vulnerability or risk situations that women and girls may face while curfew and isolation measures are in place, it is vital that women and girls continue to have access to a full range of healthcare services, particularly sexual and reproductive healthcare services, as guaranteed by international and regional human rights standards.

Women and girls have a right to comprehensive health care, including sexual and reproductive health care. This is laid down in various instruments within international human rights law, particularly in the International Covenant on Economic, Social and Cultural Rights, which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Particularly in relation to sexual and reproductive health rights, the UN Committee on Economic, Social and Cultural Rights has established that the right to health, which includes sexual and reproductive health, requires health services to be available, accessible, acceptable and of good quality; including legal abortion. Further, under the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the "Maputo Protocol"), the right of women to adequate, affordable health services, including safe abortion services under specified circumstances has been recognised. This was reinforced by the African Commission on Human and People's Rights' in General Comment No.2, which recognises that it is critical that States "ensure the availability, financial and geographic accessibility, as well as the quality of women's sexual and reproductive health-care services without discrimination." It is also important to note that the right to the highest attainable standard of health, which includes the right to heath care services, is encompassed within the rights and fundamental freedoms guaranteed by the Constitution of Kenya, at Article 43(1)(a).

The right to reproductive health care is explicitly included within this provision. This right was reaffirmed by the High Court last year in *Federation of Women Lawyers (FIDA-Kenya) & 3 Others v Attorney General & 2 Others; East Africa Centre for Law & Justice (Interested Party) & Women's Link Worldwide & 2 Others (Amicus Curiae) [2019] eKLR*, which declared that women and girls have the right to the highest attainable standard of health, which includes mental and social well-being, as well as physical health, the right to non-discrimination and other rights, and affirmed the rights of victims of sexual violence to access an abortion.

Comprehensive post-abortion care includes not only emergency treatment for complications relating to spontaneous or induced abortions, but may, where relevant for each individual patient, also include family planning and birth spacing counselling, the provision of family planning methods, and evaluations for sexually transmitted infections including HIV/AIDS. Article 43(2) of the Constitution guarantees every person the right to emergency treatment and this is also reflected at Section 6 of the Health Act and post-abortion care must be guaranteed as part of emergency treatment. We note with the utmost concern that there is no provision for treatment of all emergencies in the guideline in the light of the government imposed curfew and the mere guideline to seek telemedicine as an alternative does not adequately address the needs of survivors of Sexual and Gender Based Violence or pregnant women who go into labour during the curfew hours. Provision of post-abortion care is considered part of the core obligations of State Parties to the Covenant on Economic, Social and Cultural Rights, in relation to the realisation of sexual and reproductive health, as a component of the right to the highest attainable standard of health. Further, as a signatory to the Beijing Declaration and Platform for Action, the Kenyan State has committed to ensure the provision of post-abortion care. States are required to undertake measures to ensure access to post-abortion care for all women and girls, free from discrimination, violence or coercion. This obligation includes the provision of adequate training, support, and supplies to ensure that abortion-related complications can be treated, irrespective of the legality of abortion. The denial of life-saving obstetric care, including post-abortion care, has been recognised as a violation of women's and girl's right to life by the UN Human Rights Committee.

The obligation on States to provide comprehensive health services, including sexual and reproductive health services and, particularly relevant in this context, comprehensive post abortion care, continues during times of national emergencies, including health care

emergencies such as the current COVID-19 pandemic. As emphasised by the UN Committee on the Elimination of Discrimination Against Women in their General Recommendation No. 37, "Health services and systems, including sexual and reproductive health services, should be available, acceptable and of good quality, even in contexts of disaster."

Reviewing the guidelines as published by the Ministry of Health, we note with concern that **the need to continue providing abortion, as permitted by the Constitution, and post-abortion care as essential and urgent treatments is missing from the list of acute gynaecological conditions outlined in Section 9 of the guidelines**. When post-abortion care is denied, or such treatment is administered inadequately or unsafely, women and girls are placed at significant risk of suffering serious physical and mental harm, and sometimes even die from being denied such care. Research into abortion in Kenya, to which this Ministry contributed and was a study partner, found that there were around 464,000 abortions induced in 2012; translating to an abortion rate of 48 per 1,000 in women aged 15 to 49. Further, it was estimated that around 120,000 women are hospitalised in Kenya each year due to abortion-related complications. Further research carried out by the Ministry of Health and the Africa Population and Health Research Center has shown that the cost of unsafe abortions borne by the Public Sector each year is estimated at KES 533 Million with 58% of the cost being towards the cost of the personnel and 42% of this cost being allocated to the medication and other related costs. This cost being known and documented should be allocated in the overall budgeting and costing for the response to Covid-19. Unless the need to provide comprehensive post-abortion care as an emergency medical treatment is explicitly incorporated into the guidance offered by the Ministry of Health to health care professionals, women and girls will be denied care and their lives, health, and physical and psychological integrity will be left at risk of serious harm during the pandemic. **We therefore urge the Ministry to amend the official guidelines without delay by releasing and distributing supplementary information which addresses the need for healthcare professionals to provide providing abortion, as permitted by the Constitution, and post-abortion care as emergency treatments during the Covid-19 pandemic.**

We would also like to share with you the Guidelines for Protecting the Rights of Women and Girls During the Covid-19 Pandemic, which have been developed by the international human rights organisation Women's Link Worldwide, together with Amnesty International (Americas

Office) and with IPPF Western Hemisphere Region, on how States should make sure they protect and fulfil women and girls rights during the COVID-19 pandemic. The recommendations contained in this document are tailored towards Latin American States but can in fact be used by any national authority as a roadmap on how to avoid deepening gender inequality during the pandemic. Please note that we will shortly be launching a version of these guidelines which is tailored to African States and adapted to the regional context; we would be pleased to share this with the Ministry when this is available.

We refer the Ministry specifically to section 2 of these Guidelines, focusing on the provision of sexual and reproductive health services, and in particular, point 2 *"Voluntary termination of pregnancy services....should be considered essential services during quarantine, and any contingency plans adopted should take this into account*," and point 4, *"They should also designate post-abortion care as an essential service during times of quarantine and isolation."* We hope that these recommendations, alongside the other guidance contained within this document, is of use when the Ministry is considering ways in which to expand and extend the published guidance to ensure the full protection of women's and girl's right to health during the COVID-19 pandemic.

Should you need any further information or assistance in relation to this matter, please do not hesitate to contact us. **Given the urgent nature of this matter, we respectfully request your response within 7 working days of receipt of this letter (in either physical or electronic format) in order to inform our next action.**

Endorsed by:

1. Amnesty International
2. Boda Boda Association of Kenya
3. Community Forum for Advanced and Sustainable Development (COFAS)
4. Community Initiative Action Group Kenya
5. ICW Kenya Chapter
6. Kenya Ethical Legal Issues Network (KELIN)
7. Kenya AIDS NGO Consortium (KANCO)
8. Kenya Sex Workers' Association (KESWA)
9. Mumbo International

10. Nyarwek Network
11. Trust for Indigenous Culture and Health
12. Women's Empowerment Link
13. Women's Link Worldwide

Achieng Orero
26 June 20
Nairobi

GUIDELINES FOR AFRICAN STATES TO PROTECT THE RIGHTS OF WOMEN AND GIRLS DURING THE COVID-19 PANDEMIC

Achieng Orero

The COVID-19 pandemic — like all crises — will have a distinct impact on women and girls that is both immediate and that poses the risk of exacerbating pre-existing gender and other intersecting inequalities. Women and girls, particularly those who are already experiencing the greatest marginalization, will be disproportionately affected and, unless their rights are protected and their needs are met, will be further deprived of justice. Any measures taken to respond to the COVID-19 pandemic must uphold and protect human rights, including basic rights such as access to food and water, shelter and health services. States must ensure that their responses include a gender approach in order to guarantee the rights of all women and girls to live free of gender-based discrimination and violence, and to access essential sexual and reproductive health services, commodities and information.

The UN High Commissioner for Human Rights, the UN Special Rapporteur on violence against women, the African Commission on Human and Peoples' Rights and others have issued clear guidelines for States that should be used to craft measures to respond to the pandemic that also fulfill their human rights obligations. National and local authorities should be aware that in contexts of health, humanitarian, or other crises, inequality gaps increase when the adverse effects of these crises on women and women's rights are not taken into account and addressed.

The COVID-19 crisis does not relieve States of their obligations to address the gender-based violence faced by thousands of women and girls in the region; on the contrary, it requires more rigorous measures to minimize the negative impacts this new health crisis may have on them. Without a differential approach, half of the population may lack effective protection during the crisis resulting from the pandemic, which may have long-term effects well beyond the current health crisis, leading to greater exclusion and discrimination against women and girls in Africa.

Worldwide, 70% of the healthcare and social service workforce are women — meaning women are at the front lines of containing the spread of COVID-19 and may be heavily exposed to the virus through work in the health and social service sectors. Public service systems rely on women's unpaid labour, including for home-schooling and providing care for family members who are elderly, sick or living with disabilities. Women and girls are affected by poverty in disproportionally high numbers in the region. In Sub-Saharan Africa, women make up to 92 percent of workers in the informal sector, where there is no job security and no safety net if a crisis like COVID-19 deprives them from their earnings. Informal work includes many occupations such as street vendors, goods traders, and seasonal workers, which are most likely to be harmed by the

pandemic containment measures such as quarantines, lockdowns, travel restrictions and social distancing, and by the economic slowdown. Women are also over-represented in service industries that have been among the hardest hit by the response to COVID-19. Women and girls are also at high risk of domestic violence, which is reported to have increased with travel restrictions, social isolation and lockdowns.

States must take into account the underlying gender and other, intersecting forms of discrimination that increase women and girls' vulnerability in this context, including on the grounds of migrant or refugee status, nationality, ethnicity, belonging to religious or linguistic minorities or Indigenous people; age, gender identity, sexual orientation and sex characteristics, or status as a human rights defender, among others. Likewise, States must specifically address the needs of women living with disabilities, in rural or remote areas, and women needing access to essential, time-sensitive services such as voluntary termination of pregnancy, and guarantee access to assistance and protection for women victims of sexual violence, trafficking and other forms of exploitation.

As governments across the globe have introduced states of emergency, curfews and general lockdowns in order to slow the spread of COVID-19, billions of people have faced unprecedented restrictions. As a consequence of some governments having approached the pandemic as a security threat rather than as a public health emergency, some police forces around the world are applying violent and humiliating punishments to enforce quarantine on the poorest and most vulnerable groups, including tens of millions people who live hand-to-mouth and who risk starving if they are not able to seek work or subsistence for themselves and their families. Therefore, it is imperative that while working to mitigate the adverse impact of the global pandemic, States parties to the African Charter on Human and Peoples' Rights are also obliged to take appropriate measures to respect, protect and fulfill the rights enshrined in the Charter, including through taking all necessary measures to prevent threats to the life, safety, and health of people, while also respecting human and peoples' rights and protecting marginalized groups. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) which guides African Union member States in addressing women rights also protects these rights.

HOW TO USE THIS GUIDE

This guide provides a roadmap for national and local government authorities and agencies, as well as sub-regional and regional organisations, to better understand the obligations they must fulfill as regards women and girls' rights during the pandemic. This guide is designed to help duty bearers to ensure that minorities, internally displaced persons (IDPs), the vulnerable, marginalized and disadvantaged communities have access to basic rights and freedoms during these challenging times. This is a short guide and does not cover the full extent of State obligations under international human rights law. Instead, this guide focuses on some particular aspects of the crisis which differentially and disproportionately impact women and girls. Importantly, States should ensure that women are enabled to effectively participate in the decision making relating to COVID-19.

women's LINK worldwide

For civil society and human rights organizations, this guide may be used as a list of minimum indicators for assessing State responses to the pandemic as regards their obligations to uphold women and girls' rights, and as a support for advocacy activities directed at getting governments and authorities to apply a human rights approach to any response.

For humanitarian and international cooperation organizations, this guide may complement efforts underway to provide technical support and assistance to States as they prepare contingency and pandemic response plans in order to ensure that these responses include a differential approach and that effective measures that were in place prior to the crisis continue to work.

This guide is also meant to be an inventory of competencies and activities that States should strengthen as they grapple with their response to the global COVID pandemic. The measures in response to the pandemic should leave no one behind and should be backed up with sufficient resources to ensure they are implemented without discrimination.

AN URGENT RESPONSE: ACTIONS TO RESPECT, PROTECT AND FULFILL THE HUMAN RIGHTS OF WOMEN AND GIRLS

1) THE RIGHTS TO LIVE FREE FROM VIOLENCE AND TO BE FREE FROM TORTURE AND CRUEL, INHUMANE OR DEGRADING TREATMENT

In times of crisis, the risk of gender-based violence against women and girls increases. As UN Women has noted, violence against women is "the most widespread human rights violation in the world". Therefore, during the COVID-19 crisis, addressing risks of violence faced by women and girls in the context of social distancing and isolation, states of emergency, travel restrictions, and other containment measures should be prioritized. The implementation of States' measures such as curfews, travel restrictions and lockdowns can lead to police brutality and violence which ultimately puts women and girls at an increased risk of being subjected to sexual violence as it has recently been the case in parts of Kenya.

When dealing with the pandemic, **States should ensure that support services and protective mechanisms for women survivors of violence remain accessible while travel restrictions and quarantine orders are in effect**. To this end, States should promote the following measures:

- Judicial authorities should ensure women survivors of domestic violence and their children or other family members have effective access to justice and timely protective measures such as restraining orders including extending the current ones, with no additional requirements, for the period of the pandemic.
- Competent national and local authorities should ensure that support services such as shelters remain open and that they have sufficient capacity to provide safe space for self-isolation if needed, and/or new facilities are made available for women who must leave their homes while quarantine orders are in effect in order to be protected from their assailants. Authorities

should also ensure that all women and girls have information regarding services available during this quarantine period.

- Services allowing women to report violence and receive assistance such as gender desks and Gender Based Violence Recovery Centres (GBVRCs) should remain open, and those services and lines established to provide assistance during the pandemic should include measures allowing for effective reporting of cases of domestic violence, disappearances, risk of feminicide, FGM, child marriages and similar incidents.
- Authorities should adopt necessary measures to allow search protocols to be carried out when women are reported missing while quarantine orders are in effect.
- Travel restrictions should include exceptions for women survivors of violence who need to seek assistance outside the home or who escape from situations of violence or exploitation. Law enforcement agencies should be directed to consider these situations in order to prevent revictimization or prosecution of victims.
- States should strengthen efforts to effectively identify victims of trafficking in human beings and other forms of exploitation and provide them with necessary legal assistance, medical care and support services.
- In countries where crisis and turmoil have historically led to documented widespread gender-based violence, including sexual violence (such as recently in Kenya and Rwanda), authorities should include prevention and protection measures from the outbreak of the crisis.
- Medical care, counselling and legal assistance for women victims of sexual violence should be considered an essential service during quarantine.
- Authorities should ensure there are public information campaigns on support services and protective measures available to women victims of violence during the pandemic.

2) ACCESS TO SEXUAL AND REPRODUCTIVE HEALTH SERVICES, COMMODITIES AND INFORMATION

Access to healthcare services, commodities and information is a key part of human rights protected under multiple regional and international human rights instruments, in particular the right of all persons to enjoy the highest possible level of physical and mental health, including sexual and reproductive health. Violations of the rights to life and health, including the sexual and reproductive health rights of women and girls, particularly those in situations of heightened vulnerability due to circumstances such as humanitarian or health crises, are forms of gender-based violence that may in some cases constitute torture or cruel, inhuman, or degrading treatment. Denial or failure to provide these essential services is a form of gender-based discrimination, and places the lives, health, and personal and bodily integrity of women and girls and people who can become pregnant at risk.

States have an obligation to ensure access to healthcare services, commodities and information in accordance with principles of dignity, equality, and non-discrimination, particularly in light of the range of circumstances putting women, girls and marginalised groups at greater risks while quarantine and isolation measures are in effect.

women's LINK worldwide

When prioritizing assistance to specific groups and/or designating services as essential during the COVID-19 crisis, States should ensure availability of, and access to, sexual and reproductive healthcare services, commodities and information as follows:

- Care for pregnant and breastfeeding women should be available, adequate, accessible and affordable. Uninterrupted access to maternal health services (including pre- and antenatal care and emergency obstetric services) should be guaranteed under safe circumstances for staff and pregnant people.
- Safe abortion, contraception including emergency contraception, and maternal health services should be considered essential services during quarantine, and any contingency plans adopted should take this into account. These services should be exempted from travel restrictions in order to ensure access.
- Service providers' ability to travel and continue their work should be supported, in particular by granting the necessary travel permits to medical providers, humanitarian groups, and cooperation organizations during times of quarantine and isolation.
- When travel restrictions are in place, States should adopt measures to facilitate access to voluntary termination of pregnancy services using abortion medication at home and telehealth tools. They should also designate post-abortion care and miscarriage treatment as an essential service during times of quarantine and isolation.
- Delays in access to safe abortion services may be anticipated during the crisis, so States whose abortion laws are based on a gestational limits model should consider increasing flexibility in those time limits. States should also mitigate any enhanced barriers to access, such as refusals of care on grounds of personal beliefs, mandatory counselling, waiting periods, and multiple authorizations.
- Measures should be taken to increase assistance to territories and regions that have historically had greater barriers to access to health services. Local authorities should encourage implementation of these measures, with the support of national authorities.
- Emergency obstetric care should be prioritized during the crisis, and measures should be taken to provide healthcare personnel with necessary protections in case of suspected or confirmed cases of COVID-19.
- Healthcare services should be guaranteed for women and girl victims of sexual violence during the crisis, including effective application of protocols or guidelines in effect in each country. Referral pathways should also be updated to reflect the changes in available facilities.
- Impacts on supply and distribution chains for family planning methods and other sexual and reproductive health commodities related to menstrual health should be addressed and measures to minimize these impacts adopted. This includes listing these products as essential services to be supplied by relevant State authorities so they can continue to be available and accessible.
- States should uphold the right to receive information with an intersectional approach by continuing to ensure the dissemination, publication, and public access to information on sexual and reproductive health services and commodities in relevant languages for the targeted communities and in accessible formats for people with disabilities.

women's LINK worldwide

AMNESTY INTERNATIONAL

3) ACCESS TO JUSTICE

High levels of impunity are one of the greatest challenges to access to justice for women and girls survivors of violence in the region. States have a special obligation to ensure due diligence in the investigation and prosecution of all cases of gender-based violence. International and regional human rights bodies have found that judicial ineffectiveness encourages impunity, perpetuates gender-based violence, and sends a message to society that violence against women and girls may be tolerated and accepted.

The obligation to ensure access to justice for women survivors of violence should be strictly observed in contingency plans for the COVID-19 crisis. The following actions should be taken:

- The capacity of government institutions to receive and process complaints should be increased through adoption of the special measures necessary to ensure continued availability of judicial actors.
- Assistance and support services for women survivors of violence should be considered essential during quarantine, and local and national authorities should take steps to ensure their continued availability and funding.
- Survivors of violence should have access to flexible means of making complaints and seeking protections, such as by electronic means, telephone, or other alternative means, taking into account the travel restrictions in effect.
- Security forces and law enforcement should prioritise responding to and following up on complaints of violence against women as they perform their duties during the crisis.
- Any extension of judicial time limits should take into account the obligation to ensure access to justice for women victims of violence within a reasonable time and without undue delay.
- Special mechanisms should be put in place to ensure proper collection of forensic evidence in cases of physical, sexual, and/or psychological violence for use in court proceedings.
- Adequate records of complaints of gender-based violence made during the crisis should be kept and follow-up mechanisms should be put in place to assist victims and initiate appropriate legal actions.

4) WOMEN AND GIRLS IN THE CONTEXT OF MIGRATION AND HUMAN MOBILITY

In a joint statement, UNHCR, IOM, OHCHR and WHO have specified that the rights of migrants, refugees, displaced people, and persons at risk of being stateless must be protected in the context of the pandemic response, and that even as borders are being closed, the principle of non-refoulement must still be observed.

In other regions, human rights organizations have stressed the importance of protecting the life and health of migrants and refugees in the context of the COVID-19 crisis, particularly in light of the extreme impact caused by State responses in the Americas, including border closings and other measures directly affecting these groups. In the African region, organizations have expressed similar concerns about the exclusion of migrants and refugees in States' responses to the pandemic.

women's LINK worldwide

The above mentioned measures regarding access to justice, to sexual and reproductive health services commodities and information, and to a life free from violence, torture and cruel, inhumane or degrading treatment should apply to migrant and refugee women and girls, and more broadly, to women and girls on the move in Africa, regardless of their migration status. Border closings will increase the use of clandestine border crossings, placing women and girls at greater risk of violence, exploitation, and trafficking in human beings, including for the purposes of sexual exploitation.

Africa hosts more than 25.2 million refugees and internally displaced people and houses four of the world's six largest refugee camps (in Uganda, Kenya, Tanzania and Ethiopia). Refugee camps usually provide inadequate and overcrowded living arrangements that present a severe health risk to inhabitants and host populations. Inadequate supplies in some camps, such as clean running water and soap, insufficient medical personnel presence, and poor access to adequate health information are major problems in these settings. Additionally, women and girls face an increased risk of suffering sexual violence and of being recruited into trafficking.

States must therefore adopt measures that take into account the differential impact of the crisis on women and girls on the move, including the following:

- Put in place clear service delivery mechanisms for migrants and include access to healthcare and prevention systems in pandemic contingency plans.
- Ensure access to essential healthcare services, including sexual and reproductive health services, commodities and information for migrant women, in accordance with the above guidelines under "Access to sexual and reproductive health services, commodities and information".
- Follow the guidelines jointly developed by IFRC, IOM, UNHCR and WHO, "Scaling-Up COVID-19 Outbreak Readiness and Response Operations in Humanitarian Situations, Including Camps and Camp-Like Settings" to, at a minimum, avoid refugee camps becoming spaces for transmission of the coronavirus and to make sure they are equipped with adequate water, sanitation and hygiene facilities and products.
- Increase capacities and strengthen implementation of protocols for identification, referral and assistance for victims of human trafficking and other forms of exploitation, particularly in places where borders are closed, or migration is restricted in the context of the crisis.
- Immigration authorities should consider extending time limits for immigration proceedings, refugee applications, and travel permits. They should also expedite processing of asylum applications in cases related to gender-based violence and provide access to GBV services for asylum applicants and migrants regardless of migration status.
- Given Africa's significant human mobility and humanitarian crises related to forced displacement, clear guidelines should be put in place to ensure that humanitarian aid groups can continue to perform their work, particularly those providing assistance to victims of gender-based violence or essential sexual and reproductive health services. Local authorities should assist in these efforts, including by issuing the necessary permits for healthcare personnel so they can travel safely.

- Adopt special protective measures to ensure access to healthcare and protection for migrants held in detention centres and living in refugee camps, particularly pregnant women, victims of sexual violence, and survivors of trafficking and exploitation. In the context of the pandemic, authorities should consider relaxing immigration policies, increasing access to asylum applications, and providing safe facilities for migrants.

5) WOMEN AND INFORMAL ECONOMY

Africa's informal sector plays an important role in creating jobs and providing incomes for its population. Women contribute a majority of workforce within this sector, greatly affected by the COVID-19 pandemic. This means many women are out of employment and have no source of income to fend for themselves and their families.

It is therefore important that States adopt measures to reduce the adverse impacts of this on women by:

- Implementing social protection measures such as social security and national health insurance schemes, particularly for women who cannot work, to ensure needs such as access to healthcare are met during this period.
- Introducing bailouts and stimulus packages for women in informal employment such as reduction of tax on essential products and services, including food and health care. Food baskets should also be introduced, with a specific focus on ensuring the needs of elderly women, sick women and those living with disabilities are met.
- Ensuring a conducive environment is created to allow women in business to continue operations without putting them at risk of infection. This includes providing information on how to prevent the spread of COVID-19, particularly the need to practice social distancing in public spaces like markets, the provision of masks and access to hand sanitizers. Further, security should be provided in such spaces to ensure all women are protected from harm in their workspaces.

May 2020

womenslinkworldwide.org
Twitter: @WomensLink

amnesty.org
Twitter: @amnesty

ippfar.org
Twitter: @IPPFAR

AO-3

Achieng Orero

26 June 20
Nairobi

ncaj.go.ke

Statement on justice sector operations in the wake of the COVID-19 pandemic – National Council on the Administration of Justice

9-11 minutes

We, the members of the National Council on the Administration of Justice (NCAJ), join other national leaders in calling for strict adherence to the safety measures put in place by the National Emergency Response Committee on Coronavirus. The justice sector is committed to doing its part to ensure that the battle against the pandemic is won.

Further to this, we wish to make it clear that contrary to some perceptions, the Judiciary and the rest of the justice sector have not closed shop.

What has happened is that following the declaration by the World Health Organization of Coronavirus as a pandemic and the subsequent confirmation of positive cases in the country, the NCAJ – which comprises all the State and non-State actors in the justice sector – met on March 15, 2020 and resolved to scale down all the Judiciary public-facing operations in compliance with the recommendations of the National Emergency Response Committee on Coronavirus.

All the stakeholders in the justice sector have appropriately adapted to the emerging challenges and taken various actions, both individually and collectively, to ensure that they prevent the spread of the virus while also ensuring that the sector continues to render essential services to the people of Kenya.

Yesterday, the NCAJ members held a virtual meeting attended by, among others, the Director of Public Prosecutions; the Chief Executive Officer of the Ethics and Anti-Corruption Commission; the Inspector General of Police; the Commissioner General of Prisons; the President of the Law Society of Kenya (LSK) as well as the Chairman of the LSK Nairobi Branch; and the Judiciary leadership to review the sector operations in the wake of the scaling down of the Court operations.

After consideration of the issues raised and challenges experienced in the two-week period as well as a review of the measures taken by the different agencies, the Council agreed on the following:

1. HANDLING OF CRIMINAL MATTERS

A. Police Bond

i) Petty and traffic offenders should never be held at Police Stations for more than 24 hours; they should be released on either cash bail or free Police bond. Officers in charge of Police Stations are therefore under strict instructions to implement these directions.

ii) To enhance transparency and accountability, the Police will establish centralized records showing the number of people arrested and handled in all police stations and the terms of their release on bail or bond. This will be regularly monitored by Office of the Director of Public Prosecutions and periodic reports submitted to the NCAJ members.

B. Plea-Taking and Urgent Criminal Hearings

i. The Office of the Director of Public Prosecutions remains open with one officer in charge of every regional office to process files for plea-taking and other urgent matters.

ii. In consultation with Regional ODPP officers, Heads of Court Stations have been facilitating plea-taking for serious offences that are not subject to Police bond. Magistrates across the country continue to review and revise bail and bond terms for petty offenders to facilitate their release from Prisons as they await trial.

iii. Serious crimes, including defiance of national orders regarding the control of COVID-19, will continue to be presented to court for plea-taking. In consultation with the Police and the DPP, courts will be convened at short notice to handle such cases.

iv. There has been a significant spike in Sexual Offences in many parts of the country in the past two weeks. These offences constitute 35.8 per cent of the criminal matters reported during that period. In some cases, the perpetrators of such offences are close relatives, guardians and/or persons living with the victims. Depending on the individual facts of each case, upon application by the DPP, the courts will consider giving directions on early hearing dates in such cases.

C. Decongestion of Prisons

i. In the past two weeks, files of inmates who are petty offenders jailed for less than six months and others who have less than six months to complete their jail terms have been presented to the High Court for review of their sentences. This has led to the release of 4800 inmates, significantly helping to decongest the prisons. The exercise is continuing.

ii. New inmates are being isolated to reduce the risk of infection and movement of inmates has been highly restricted. Prison visits have been suspended, including visits to the staff quarters. Prison labour has also been reduced to a bare minimum.

The justice sector actors will embrace technology and plans are under way to enable inmates to participate in virtual trials as the prisoners are no longer being produced in open court.

2. HANDLING OF CIVIL MATTERS

A. Filing of Urgent Matters and Pleadings

i. On March 20, 2020 the Chief Justice gazetted Practice Directions on Electronic Case Management to guide the integration of ICT in judicial proceedings. The Practice Directions are being used by various courts across the country to facilitate use of technology in the delivery of justice.

ii. The courts have provided contact lists including email addresses and telephone numbers of court stations and specific contact persons. Stakeholders are given directions as to the filing of matters under Certificate of Urgency and also the filing of time-bound pleadings. A duty Judge in each of the Superior Courts and a Magistrate in every station is available every day to deal with urgent matters. Urgent applications are forwarded to the Judges and Magistrates who give directions as to hearing or issue orders as necessary. This system is working well as is evidenced by the fact that in the first one week, 1779 matters were handled at various High Court stations.

iii. Tribunals, on the other hand, have handled 244 Applications under Certificates of Urgency in the past two weeks, the bulk of them being from the Business Premises Tribunal and the Rent

Restriction Tribunal.

B. Judgement and Rulings

i. In line with safety guidelines issued by the National Emergency Response Committee on Coronavirus, Judges and Magistrates are executing their duties albeit from home.

The Judges and Magistrates have taken this opportunity to write their pending judgments and rulings. In this regard, we are happy to report that in the next two weeks, the Supreme Court will deliver **one judgment and 10 rulings**; the Court of Appeal will deliver more than **45** judgments and rulings of appeals and applications heard in Nairobi, Kisumu, Mombasa and Eldoret through email on Friday, April 3, 2020; the High Court will deliver **367** judgments and rulings; the Environment and Land Court—**269**, the Employment and Labour Relations Court—**75**; and the Subordinate Courts—**390**. Various Heads of Courts and Tribunals will, at Court Station level, issue directions on delivery of Judgments and Rulings in cases where parties and/or their advocates have not provided their email addresses.

ii. Video conferencing technology has been adopted to deliver some of these judgments as was evident in Mombasa, Malindi and Eldoret in the past two weeks. More courts will deliver judgments in this manner in the days ahead.

iii. Judges and Magistrates shall continue to utilize this period of working from home to write pending Judgments and Rulings. Details of Judgments and Rulings that are ready for delivery shall be published weekly in the Judiciary, Kenya Law Reports and LSK websites.

C. Execution

i. Execution of warrants of arrest, court decrees and orders made prior to March 15, 2020 is suspended until further notice. The Police, Court Bailiffs and Auctioneers are, in the circumstances, instructed not to carry out execution of warrants, orders or decrees issued before March 15, 2020.

ii. Orders and directives of a conservative nature and mandatory injunctions issued during the scaling-down period starting March 15, 2020 will, however, be executed.

iv. The LSK will continue to communicate to its members on the essential services being offered by the courts and the resolutions above.

3. SAFETY OF STAFF AND LITIGANTS

As the justice sector actors continue to offer scaled-down operations, efforts continue to be made by all the agencies to provide protective gear and maintain the necessary social distance. For the safety of the public attending court proceedings, some proceedings may be held in open places within the court premises in order to maintain the required social distance.

4. CONCLUSION

Even in the difficult and unprecedented times we find ourselves in, the National Council on Administration of Justice is determined to ensure that the wheels of justice do not grind to a halt.

As a sector, we are determined to work together to adopt online processes and embrace technological solutions in accordance with the recently-gazetted Practice Directions on Electronic Case Management.

The NCAJ will constantly review the situation and update the nation

from time to time.

This communique supersedes all other communication regarding the different matters.

HON. JUSTICE DAVID K. MARAGA, EGH,
CHIEF JUSTICE AND CHAIRMAN, NATIONAL COUNCIL ON THE ADMINISTRATION OF JUSTICE

AO-4

Achieng Orero

Sex predators on the rampage amid curfew

26 June 20

Nairobi

By **ALLAN MUNGAI** | April 18th 2020 at 00:00:00 GMT +0300

KENYA

Sexual offences constitute 35.8 per cent of criminal matters since order to stay home in March

Feedback

Cases of sexual violence have soared since Kenya recorded the first case of coronavirus on March 12 and started enforcing measures such as the closure of schools to curb the spread of the virus.

Sexual offences have overtaken other crimes as the country restricts movement.

This has prompted the Ministry of Health to call for more protection of those vulnerable to sexual and gender violence.

“We remind everyone that the law has not been suspended and that it will catch up with those who mete violence on others during this period,” said Health Chief Administrative Secretary Dr Mercy Mwangangi.

SEE ALSO: After failed bid to become a nun, now I rescue girls

The ministry’s reaction follows reports by the Gender Violence Recovery Centre (GVRC), the Director of Public Prosecution and the National Council on Administration of Justice (NCAJ) on increase in sexual offences cases.

Data showing the cases the Director of Public Prosecutions has registered in court indicate the sexual offences are disproportionately high, suggesting a correlation between measures instituted to curb coronavirus and the spike in sexual abuse.

Sexual offences such as defilement and rape make up 41 per cent of the cases recorded in court since March 16. Out of the 265 cases registered for prosecution during the last two weeks, sexual offences were 95. There have been 37 robberies and 19 murders in the same period.

Majority of the sexual abuse cases were reported in Nairobi (13), Mombasa (11), and Uasin Gishu County (10).

Last month, the cases reported to the gender-based violence (GBV) hotline, 1195, were 115 compared to the 86 that were reported in February, representing an increase of 33.7 per cent.

SEE ALSO: How I became a mother of two by the age of 16

Comparatively, 106 women and girls reported being either physically or sexually violated while nine men and boys reported the same. Nairobi reported the highest cases of GBV.

Closure of schools and the curfew has forced millions of children to stay indoors making them vulnerable to abuse.

Apart from Kisii which has had one case of defilement, Siaya had two and Nyamira three, while Kisumu, Migori and Homa Bay counties each recorded six cases of sexual offences.

In North Rift, Trans Nzoia had three defilement cases. Central had one sexual abuse case prosecuted in Kirinyaga while Kakamega had five cases.

Embu had one sexual offence case and four murder cases.

Chief Justice David Maraga said the sexual offences constituted 35.8 per cent of the criminal matters reported during the period since orders to stay home were enforced.

“These are people who are supposed to take care of the young girls, but instead of taking care, they are preying on them,” he said.

Achieng Orero

26 June 20
Nairobi

hrw.org

Tackling Kenya's Domestic Violence Amid COVID-19 Crisis | Human Rights Watch

3 minutes

For 4 days, Juliet M., a 16-year-old Kenyan, was held captive by a man and sexually assaulted. She was rescued by neighbors and is now being cared for in a safe house in Nairobi. The attacker reportedly said he kidnapped her because he needed female company to get through the government-imposed COVID-19 lockdown.

The Kenya government has adopted strict measures to counter the spread of the COVID-19 virus. But these measures, as necessary as they are, are having particular impact on women and girls, including elevating the risk of gender-based violence. Last week, the National Council on Administration of Justice reported "a significant spike in sexual offences in many parts of the country in the past two weeks." They noted that "in some cases, the perpetrators are close relatives, guardians and/or persons living with the victims." The report pledged that "the courts will consider giving directions on early hearing dates in such cases."

Violence is a daily reality for women and girls across Kenya. According to government data, 45 percent of women and girls aged 15 to 49 have experienced physical violence and 14 percent have

experienced sexual violence. Many cases are not reported to authorities and few women get justice or receive medical care.

The restrictions imposed in response to the COVID-19 pandemic are likely to make it harder for survivors to report abuse and seek help and for service providers to respond efficiently. Sexual and other forms of violence against women have devastating consequences including injuries and serious physical, mental, sexual, and reproductive health problems, including sexually transmitted infections, HIV, and unplanned pregnancies.

The Kenya government should urgently protect women and girls against violence during this crisis. Its public awareness campaigns should highlight this risk and give detailed information on how victims, including those infected with COVID-19, can access services. It should treat services for women who experience violence as essential, ensure these services have the resources they need, and make alternative accommodation available when the current limited shelters are full. Violence against women and girls is a crime, and they have a right to be protected even when the government is preoccupied with a pandemic.

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Achieng Orero

26 June 20
Nairobi

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Pregnant Mother Bleeds to Death During Curfew

By **MANYIBE EZRA** on *10 April 2020 - 10:28 am*

People mill outside Kibwezi Sub-County Hospital in Makueni County on February 28, 2019. DAILY NATION

A pregnant woman bled to death in Makueni County for fear of flouting the nationwide dusk to dawn curfew and the fear of harassment by the police.

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KTN News on Thursday, April 9 reported that Lydia Mueni, a mother of seven, endured a whole night of labour pains, with her family also afraid to go outside.

"She told me she would not go out at that time. She told me to go out if I wanted a beating. So we agreed to wait until around 4 a.m in the morning," Matty Nyamai told the media house.

Pregnant woman bleeds to death in t...

It wasn't until 5 a.m at the end of the curfew that the family got assistance from someone who helped them to Kibwezi Sub-county hospital. She had lost her child the dead of night and later bled to death at the facility.

Mueni was buried forty eight hours after she had passed on as directed by the national government in the wake of the Covid-19 pandemic. She had become an indirect casualty of the virus.

Makueni County Referal Hospital has been greatly affected by the pandemic, recording 15 maternal deaths in 2019, but has since registered four deaths in one week, owing to the pandemic.

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Health Director-General Patrick Amoth while addressing the media from Afya House on Thursday, April 9, had directed that counties designate Covid-19 hospitals, and the others carry on with their normal routine.

"We have directed all the 47 counties to identify and designate a Covid-19 hospital so that the other hospitals continue offering the normal services, immunisation, maternal-child health,

"We are also in constant dialogue with the security apparatus to ensure that there is the unfettered movement of those who need to seek services at any given time," Amoth stated.

On Wednesday, April 7, Dr, Jemimah Kariuki, a Resident in Obstetrics and Gynaecology based in Nairobi, tweeted that she would aid pregnant women in times of emergency, after she was informed of a scenario where an expectant mother perished, leaving behind an infant, a story that touched her.

"Any lady during this curfew and Covid-19 crisis who feels they are unable to reach the hospital and they are in labour or have an emergency, kindly reach out and I will do my best to intervene," Kariuki stated as she further detailed to *Kenyans.co.ke* her plan which she hopes will rope in different stakeholders in the country.

The health worker who is listed as an essential service provider disclosed that there was an

increased rate of pregnant related issues such as haemorrhage and infections after women have been in labour for long, stating that she was out to offer any help, ranging from advice and guidance to connecting the patients to emergency service providers.

"First of all, even before we discuss how they can be assisted, these patients are embroiled in fear and anxiety. Remember birth pains can go up to 13 hours and anxiety and expectancy do not go hand in hand," Kariuki stated.

According to the medical practitioner, more efforts would be realised if the police service is also incorporated in the plan as they would be notified of special cases, or they themselves would assess a scenario and judge carefully, hence saving lives.

"Our police should be informed that they can give leeway to allow people to go to the hospital, either by seeing a letter of admission or by the pain a patient is undergoing. However, in some cases, one cannot see blood. For example like in a first-semester miscarriage.

"Women should also be aware of danger signs such as the baby not moving or water breaking and should avail themselves at a facility. They should be prepared by having their bathing kits ready, their NHIF, ID cards available and should pack baby clothes to be shown to police officers," Kariuki detailed.

AO-7

Achieng Orero

26 June 20
Nairobi

globalcitizen.org

Pregnant Women in Rural Kenya Are Struggling to Access Health Care Amid COVID-19

By Leah Rodriguez April 15, 2020

8-10 minutes

Doris, social mobilizer at Child.org in Kenya, meeting Regina, new mom to twins.
Courtesy of Child.org

Health

We spoke to NGO Child.org about the impact coronavirus is having on the women it supports.

Why Global Citizens Should Care

When women and girls have access to reproductive and maternal health care, they lead healthier lives, are more likely to stay in school, and contribute to their communities. We must continue to provide women with adequate health resources and information amid global health crises. You can take action on this issue here.

Resources are often diverted away from maternal health care during crises, and the COVID-19 pandemic is making it increasingly difficult to provide adequate maternal care worldwide.

Although Kenya does not have many confirmed positive COVID-19 cases, the organization Child.org is starting to face obstacles as it tries to continue to support mothers through its maternal care program in the country.

Kenya has one of the world's highest maternal mortality rates and one in 26 babies die before they reach their first birthday. But studies show that exposure to women's groups in low-income countries can reduce neonatal mortality by 20%.

Let's Help Our Communities During Coronavirus — Spread the Word

15,207 / 20,000 actions taken

Communities are stepping up to help vulnerable people during the ongoing COVID-19 pandemic.

As the health crisis deepens, some of us are at extra risk from social isolation and instability.

Follow our tips on what you can do to help those around you and share with others to spread the word!

Child.org's Pregnant Women's Groups in Meru, Kenya help equip expectant mothers in the rural area with the information and resources they need to keep themselves and their babies safe and healthy.

Martina Gant, head of programming at Child.org, shared with Global Citizen how the COVID-19 pandemic is affecting the organization's ability to continue crucial initiatives with limited resources.

Global Citizen: How has the COVID-19 coronavirus impacted Child.org's maternal health project in Meru, Kenya?

Martina Gant: The biggest impact that the COVID-19 outbreak has had is that we can't run our groups. We are not able to get the women together anymore and haven't been for a few weeks now. We don't have a full lockdown here in Kenya. The government is doing what it can to prevent the spread. [But] getting people together in groups is not a sensible activity right now.

We've also got the issue around the overall costs and impact to the organization. We are relying on income from UK festivals and festivals in Europe, and many of those are not going to go ahead. We also are heavily reliant on fundraising events. If we're not able to run those on top of all of the damage to other activities, we are set to lose between 50 and 80% of our income.

Related Stories April 2, 2020 3 Ways COVID-19 Lockdowns and Curfews Risk Increasing Already Existing Inequalities in Africa

How are these women at risk when the groups aren't happening?

We ran some surveys in Nairobi with some of our participants from a previous project.

We've been in contact with those women and they were telling us that they are not going to clinics or they're scared to go to clinics because of the potential risk of infection.

Just in the papers this week, we learned that in-hospital delivery rates are down by over 50%, while immunization clinics are down by over two-thirds.

In Mombasa, healthcare workers are being moved from maternity

to critical care. We're seeing the same in Meru.

This isn't just Meru, but health care workers haven't been provided with the PPE (personal protective equipment) that they were expecting, meaning that they're not feeling safe.

If there's a suspected case, there have been multiple cases of healthcare workers fleeing health facilities because they're worried about the risk of infection to themselves and the families. On top of an already strained health system, we're seeing that access to services is becoming more challenging, and the quality of care if patients do seek those services is reduced.

Community health volunteers in the past couple of days have been visiting 100 women who delivered their babies since the suspension came in and running surveys with them, but also providing them with the government COVID-19 health and sanitation updates.

We provided the community health volunteers with their own PPE as well, because as far as we've seen, that hasn't been provided outside of the immediate first response to the COVID-19 crisis. There's an additional risk to mom and baby and to the health worker in terms of transmission.

Really good work has been done across Kenya and across the world, to improve the maternal mortality rates and neonatal mortality rates. But [the current situation] is really concerning for any of us working in this field. We've got the direct impacts of COVID-19 but the secondary impact is really concerning.

Related Stories March 25, 2020 Why COVID-19 Response Efforts Need to Consider That Pandemics Hit Women and Girls the Hardest

Can you tell me how you're using the Mama Tips SMS platform to keep providing pregnant women with resources in a safe way?

It allows women to ask questions and puts them directly in touch with their frontline health workers. We can encourage them to take themselves to medical centers, but also we can follow up and we can do home visits with our community health volunteers.

This is going to allow us to continue contact with women and also to recruit women on to the project so that when we are able to get groups back together, we can do this kickoff very quickly.

How would your organization like support from the international community to continue ensuring that pregnant women have access to the resources they need during the COVID-19 pandemic?

We need support, we need the global community to recognize the value that organizations like ours have.

This is a really tough situation around, for everyone...for people in isolation across the globe.

In the vast majority of countries, there is food available. There's economic support, there's a recognition from the government that further assistance is needed. But for communities like those that we're working with, there isn't that, and very soon people are going to start to go hungry. It's going to become really challenging to support themselves and their families without putting them themselves and their health at risk.

It's just really important to recognize that despite how hard this is for those of us from countries like the UK and the US, we are lucky

in terms of what we still have, and to not forget those people in those countries where those pullbacks and those welfare systems are not in place.

We got to the point with this project where the feedback from women was incredible.

There's real misinformation and myths surrounding maternal health in these communities. And it's only with access to reliable information, science-based information, that we're going to be able to make real inroads with maternal deaths and neonatal deaths. It's absolutely critical that access to information doesn't stop given this crisis.

This interview has been edited and condensed for clarity.

You can find out how to take action against coronavirus through our Together At Home campaign here, and you can find all of Global Citizen's COVID-19 coverage here.

Related Stories

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Doris, social mobilizer at Child.org in Kenya, meeting Regina, new mom to twins.
Courtesy of Child.org