

ICJ KENYA STATEMENT TO THE GOVERNMENT OF KENYA TO RESPECT HUMAN RIGHTS AMIDST COVID 19 PANDEMIC

We, a collective body of Jurists, are deeply concerned about the increasing spread of the COVID-19 virus in Kenya. While we laud the Government for providing directions and taking actions aimed at enhancing measures towards preventing the pandemic, ICJ Kenya wishes to state as follows:

THAT the COVID-19 pandemic is an unprecedented global emergency. It is not only a health crisis but also a governance and human rights crisis. Government actors are currently facing overwhelming responsibilities as they design, implement and enforce new measures to prevent the spread of the infection.

THAT even though we are experiencing a pandemic, we are not in a state of emergency and therefore our constitutional and international human rights have not been suspended.

THAT while the measures taken by the Government are necessary, we are witnessing rampant and continued human rights violations meted on the people indiscriminately in the guise of controlling the spread of COVID-19. The restrictions have also made it harder for victims of human rights abuses to report the abuses and seek redress.

THAT the National Police Service and the Ministry of Interior, have used the health crisis, to violate people's rights via the Public Health Act, the Public Order Act and other subsidiary legislation. We are concerned that the country is retrogressing into a police state and the police are becoming enforcers of all laws in Kenya. The combination of the curfew and the quarantine is being used as if they were a presidential order operationalising the security measures that were once permitted under the repealed Preservation of Public Security Act.

THAT the Government has stated severally that during this pandemic, and following the closure of all schools, that learning is going on online and on the radio. However, the reality is that majority of young learners live in rural areas and poor households and have no access to all the necessary gadgets, electricity or internet connectivity to ensure proper tutelage and learning.



THAT funds have been channelled towards fighting the pandemic with His Excellency the President setting up an Emergency Response Fund Board to oversee resource mobilisation and utilisation of COVID-19 response. The Government itself has allocated over Ksh. 40Billion, and received Ksh. 2 Billion from money recovered from corruption, as well as funds from several development partners and philanthropists to assist in efforts to curb the pandemic. However, no transparency and accountability measures have been put in place to ensure that all these resources are being managed effectively and for the benefit of all Kenyans.

THAT the recommendations and decisions made by the President to fight COVID-19, and indeed other authorities do not speak to, nor do they address the majority of Kenyan citizens who are vulnerable and most susceptible to the spread of the virus, and its effects.

THAT concerns have arisen over the access of medical facilities at the country's main referral hospitals and their capacity to continue to provide healthcare to those in emergencies and/or in need of special care in light of the order banning movement in and out of the defined counties.

In view of the need to contain the spread of the COVID-19 pandemic and secure lives while at the same time upholding the dignity and human rights of all Kenyans, ICJ Kenya therefore:

1. Calls upon the National and County Governments to ensure that the enforcement of the curfew and indeed all directives pertaining to managing the coronavirus are not enforced by the National Police Service alone. This is especially on issues requiring specialisation such as education, public health, transportation, immigration, environment, and many others. All the relevant bodies must be empowered to undertake enforcement as they are knowledgeable in the requirements of the specific legislation and how to deter abuses.
2. Reminds the National Government and the National Police Service that every enforcement must be lawful. The 14-Day quarantine is not and should not be a form of punishment but a measure to curb the COVID-19 pandemic. The quarantine must not be weaponised by the police to harass, punish or induce bribes from Kenyans. We, therefore, call on the Government to establish a task force to look into reports arising out of abuses and violations occurring in the context of enforcement of quarantine measures.
3. Calls on the Government to ensure that all children, especially those in the rural areas and poor communities, have equal opportunity to continue with learning through the use of technology. Consequently, measures have to be put in place to ensure access to learning materials even if in hard copies, distributed at the smallest levels of administration. Further, there is a need for a comprehensive plan on how to address the effect of the pandemic on the education sector in the long term.



4. Urges the national Government in collaboration with the respective county governments to ensure that, even in implementation of the orders, Kenyans who need medical care that is only available in the capital or other hospitals in emergency situations are able to continue to access those facilities within and without the curfew or lock down periods.
5. Calls upon National, County Governments and all authorities to ensure that there is transparency and that accountability measures have been put in place to ensure that all resources geared towards fighting the pandemic is managed effectively and for the benefit of all Kenyans. This includes procurement of medical supplies and services needed to protect Kenyans from the contagion. There must be free flow of timely, accurate, factual information. Kenyans should also be involved in making decisions that affect them during the pandemic.
6. Reminds all authorities that even though it is unanimously accepted that these are unprecedented times as we struggle through the pandemic, we should not forget that basic human decency and fundamental human rights as enshrined in our constitution and various international instruments are not to be suspended unless certain measures have been put in place to cushion against violations. We call upon the National and County Governments to observe and respect the rule of law, human rights and good governance during the pandemic and ensure that every person is treated with dignity, in all responses geared towards fighting the pandemic.

During this period, ICJ Kenya will continue monitoring how COVID19 directives are being implemented as per our mandate of promoting and protecting human rights through observance of human rights and the rule of law.

Signed by:



Kelvin Mogeni
Chairperson,
ICJ Kenya

Done in Nairobi on this 24 Day of April 2020.