



## **SITUATION OF HUMAN RIGHTS DEFENDERS IN KENYA IN THE WAKE OF COVID-19: VIOLENCE, IMPUNITY AND RETROGRESS TO POLICE STATE**

Following a declaration by the World Health Organization (WHO) on March 11 2020 on Corona virus disease as global pandemic, speed and nature of its spread, the government of Kenya has put in place a raft of measures to keep her citizens safe by curbing the spread of the virus. These measures include advising citizens to stay at home, corporates to minimize crowds at places of work, banning all public and social gatherings, implementing measures as advised by WHO and the a nationwide dusk to dawn curfew between 7pm to 5 am to be observed by all citizens except for a select institutions and professions classified as essential service providers that took effect on Friday 27<sup>th</sup> March 2020. This directive, consequently, omitted the recognition of fundamental oversight and watchdog institutions who play a critical role in monitoring the implementation of such directives.

The curfew directive has been the direct cause of numerous human rights violations. Majority of these violations, as you will see below, are cases perpetuated by police officers who are on a wave of using excessive force while enforcing the presidential directive. On the first day of the curfew (27<sup>th</sup> March) innocent and unarmed home-goers were brutalized, treated with indignity, whipped, battered, violently assembled- an action that was contrary of social distancing directive- and tear gassed even before clock of curfew time.. Horrific images and videos circulated in the media as Kenyans called on the government to bring to book the perpetrators and respect human rights. This incident happened in Mombasa where 16 people were injured as per data.

On the onset of a steady increase in confirmed cases of COVID-19 in Kenya, the government further announced even stringent and stiff measures to contain the spread of the virus. President Uhuru Kenyatta announced a 21-day partial lockdown (cessation of travel) at four counties (Nairobi, Mombasa, Kwale, Kilifi and Mandera on 24<sup>th</sup> April) that had indicated infection numbers going through the roof and therefore regarded as COVID-19 hotspots.

In his address that was televised on 6<sup>th</sup> April 2020, the President warned that “We must be ready to go even further if necessary.” Movement of food supplies and cargo was, however, to continue moving in and out of the partially locked down counties through road, rail and air.

### **Impact of the containment measures to minimize virus spread**

The measures put in place by the government to curb the spread of the virus have had repercussions not only on the livelihoods of the public including human rights defenders but also access to or violation of fundamental human rights including access to legal services,



against torture, police brutality, access to healthcare, access to employment, right to life, right to housing, enforced disappearances, enforced confinement without cause to mention but a few.

1. **Police violence, brutality and death during curfew:** Kenya has had a long history of police excesses during law enforcement operations. During this period innocent citizens have succumbed to the violent enforcement of government directives. Moreover, there are dozens of unverified or unreported cases that can be linked to either police excesses or are a result of the severe unprecedented effects of the measures put in place. Since the curfew was declared, police excesses resulted to the deaths of **thirteen (13)** people as detailed below:

- **Calvince Omondi, Kendu - Homa Bay County (27/03/2020)**

Calvince, a boda boda (motorcycle taxi) operator was on his way home the first day of the curfew where he met a group of officers at Kosele trading centre who physically assaulted him unconscious claiming he was working outside curfew hours. The officers then took him to hospital where he 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. The matter has been taken up by the Independent Policing and Oversight Authority (IPOA) and it's being investigated.

- **Hamisi Juma Mbega, Msambweni - Kwale County (27/03/2020)**

Hamisi was a boda boda operator, had just dropped a client in labor at the Mwahima Likoni Hospital and was on his way home with another client Hassan Kitosha. Kitosha narrated that the police hit Hamisi on the head causing him to lose control of the motorbike and they fell into a muddy ditch. The police allegedly let Kitosha go home but beat up Hamisi with batons and gun butts. Hamisi was unable to seek medical attention due to the curfew and his family took him to Msambweni hospital the following day where he died.<sup>1</sup> The matter has been taken by IPOA for investigation.

- **Ochieng \*\*\*, Korogocho - Nairobi County (27/03/2020)**

Ochieng was assaulted by police officers enforcing the curfew as he was on his way to his house from his father's house. He succumbed to his injuries and passed away. Verification of this matter is ongoing.

- **Yassin Moyo, Kiamaiko - Nairobi County (30/03/2020)**

Yassin was a 13 year old boy who was shot dead by police while playing with his siblings on their home balcony. This was after the curfew had been declared. He was rushed to Mama Lucy hospital where they waited for three hours before being attended to. He passed away. A post mortem was conducted facilitated by IMLU and the cause of death was determined as excessive bleeding and a bullet was removed from his stomach. IPOA has taken up the matter and investigations are ongoing.

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<https://www.standardmedia.co.ke/article/2001366167/two-boda-boda-riders-killed-as-police-officers-enforce-curfew>



- **Eric Ng'ethe Waithugi, Ukunda - Kwale County (01/04/2020)**

Eric, an accountant at Nile Pub, Diani was at work and around 9:00pm police officers conducted a raid on the pub but the doors were locked so police launched tear gas into the pub and customers began fleeing. Eric was crawling on the floor when one police officer hit his head with a club. Witnesses noted that the police poured cold water on him after which the convulsions stopped. The police realised that Eric had passed away and they attempted to leave his body at the back room of the pub but it was locked so they instead dropped it off at Kwale County morgue and booked him under 'unknown' further indicating that they had found him by the roadside. Even with witnesses citing police violence and excesses, Msambweni sub county police commander, Nehemiah Bitok, told media that Ng'ethe died in a stampede<sup>2</sup> after the people inside allegedly defied police orders to open the pub. The matter is under investigation with IPOA.

- **Yusuf Ramadhan Juma, Kakamega County (01/04/2020)**

Ramadhan went missing from town on April 1, 2020 and the family was deeply concerned due to his mental disability. He was discovered the following day at Kakamega County Referral Hospital where he succumbed to his injuries. It is alleged that his injuries were as a result of the brutality he suffered under police the previous evening. While reporting to the media on April 2, Kakamega Central OCPD David Kabena brushed off the allegations that police had assaulted Yusuf and instead claimed "We have heard that the deceased has mental problems, maybe he went out there touching other people's property and was beaten by people who didn't know he was sick."<sup>3</sup> No action has been taken up by any authorities on this matter.

- **Idris Mukolwe, Mumias - Kakamega County (07/04/2020)**

On April 7, 2020, Idris, a 45- year old tomato vendor, died after getting hit by a tear gas canister. The tear gas canister was thrown by police officers who were enforcing the ban on open-air market in Mumias town to combat Covid. Witnesses interviewed by the media claim that the tear gas canister exploded in Mukolwe's face and he ran out of air and started suffocating. When his friends from the market tried to help him the police threw another canister at them forcing them to flee for safety and leave their friend behind. He collapsed and died minutes later. No action has been taken by authorities.

- **Peter Gacheru, Kawangware - Nairobi County (04/04/2020)**

Peter, a second-hand clothes dealer from Kawangware, was beaten by police on April 4. He died shortly thereafter. Police are reported to have descended on him at around 7:15 PM along Naivasha road near Precious Blood Secondary School. He had just closed his business. Police descended on him with a baton, giving him a beating that would

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<sup>2</sup> <https://mpasho.co.ke/tears-family-views-body-23-year-old-eric-ngethe-beated-police-death-curfew/>

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<https://citizentv.co.ke/news/mentally-ill-man-35reportedly-beaten-to-death-by-police-enforcing-curfew-in-kakamega-328761/>



eventually cost his life. He somehow managed to run away. An ambulance found him half-conscious and rushed him to PCEA Kikuyu Hospital where he passed on.

- **David Kiiru Kihara, Lanet - Nakuru County (30/03/2020)**

David was physically assaulted by policemen who claimed he was a thief, information which he gave his father prior to his passing on. His father had been summoned by an officer at the Free Area Patrol Base in Nakuru Town to identify a gentleman, upon his arrival he found his son writhing in pain and pleaded to take him to hospital to seek medical attention request which was denied as the officers claimed that his matter was under investigation and he was requested to leave. The following day he was referred to Lanet police station where he was informed that his son had been pronounced dead upon arrival at PGH. The police claim that he was attacked by a mob.

- **John Muli, Ruai - Kiambu County (04/04/2020)**

John was tortured by police officers and was unable to seek medical attention due to the curfew timings. He was accompanied to hospital the following day but he succumbed to his injuries. A post mortem was conducted and the cause of death was determined as blunt trauma. State authorities have taken no action on the perpetrators or investigated the matter.

- **Maurice Otunga, Khayenga - Kakamega County (13/04/2020)**

Maurice, a mentally disabled individual, was attacked by police officers after he was found outside past the curfew hours. He was rushed to hospital the following morning after his sister-in-law found him by the roadside. He passed away on reaching the hospital. No known action has been taken by officials.

- **Jane Aoko, Mathare - Nairobi County (16/04/2020)**

Jane was on her way home trying to beat the curfew hours when she fell into Mathare River and drowned as she was attempting to cross it. It is alleged she was at the time running away from police officers enforcing the curfew. Her body is yet to be discovered.

- **Kennedy Wanyonyi, Koromboi - Kajiado County (11/04/2020)**

Agnes Saiya, the area chief stormed into Kennedy's house accompanied by a gang of about 20 maasai morans all armed with pistols, pangas, rungus and sticks. They beat up Kennedy demanding that he produce the chang'aa he has been hiding. There was no chang'aa in the house and his cries of help alerted the neighbours who came to his aide. They were also attacked by the morans. The chief then called police officers from Isinya police station requesting that Kennedy be brought in. A request the area OCS declined and he ordered that Kennedy be taken to a medical facility first. All the injured were taken to Galaxy hospital where they were not treated due to lack of funds. Kennedy passed away while at Galaxy. His neighbours were then taken to Isinya Public hospital and were given painkillers. One who was severely injured was admitted at Machakos Level 5 hospital. He has since been discharged. All the neighbours recorded statements



at the police station but no action has been taken as of yet. The police claim they have forwarded the file to ODPP Kajiado.

In addition to the deaths attributed to police brutality, **two (2) deaths** were reported as a result of unlawful actions by community policing actors that stabbed 2 motorcycle operators who succumbed to the injuries in Western Kenya<sup>4</sup> in the name of 'enforcing the curfew'. **One (1)** refugee person, described as a member of the LGBT community reportedly committed suicide when he allegedly failed to access assistance of the refugee agency (UNHCR, Nairobi)<sup>5</sup>. Another South Africa national who is alleged to have committed suicide at the quarantine centre at KITI Nakuru. She allegedly had an international travel history hence the quarantine<sup>6</sup>.

### **Injuries and degrading treatment**

On the first day of enforcing the curfew directive in Kenya, a total of 16 people were treated and released to go home as per data by Kenya Red Cross. Muslims for Human Rights (MUHURI), a human rights organization based in Mombasa have worked with the families to access medical assistance. Three victims expressed desire to seek legal redress.

- In Nakuru, a man described a **deaf** was clobbered by police officers during the 7pm-5am curfew. Luckily, the man survived the beating and has since recovered.
- **Journalists** have been assaulted on different occasions while in the line of duty by police while covering enforcement of curfew order. They were documenting mayhem, violence and unwarranted hurdling together of innocent home-goers even before the curfew set in, something that further exposed the victims to the same virus that the directive was meant to curb. Such cases were reported in Mombasa (2), Eldoret (2), and Meru (1). Two (2) journalists from Nakuru were summoned by the DCI office Nakuru for allegedly writing a story regarding infections at the Lanet Army Barracks.
- A person with Disability was beaten by police in Kayole County on the first day of curfew. The case was referred to KNCHR where they got in touch with the victim and are pursuing the case.

## **2. Sexual and Gender Based Violence.**

Sexual and gender based violence is on the rise as even depicted here by the head of the Judiciary in Kenya.<sup>7</sup> To make it worse for the victims, the process of seeking justice is almost

<sup>4</sup>

<https://www.nation.co.ke/counties/kisumu/Police-arrest-10-boda-boda-riders-after-spate-of-attacks-/1954182-5513638-119j88m/index.html>

<sup>5</sup> <http://glaa.org/2020/04/14/abused-refugee-hangs-himself-outside-unhcr-office-in-nairobi/>

<sup>6</sup> <https://citizentv.co.ke/news/south-african-woman-quarantined-in-nakuru-commits-suicide-328133/>

<sup>7</sup>

<https://citizentv.co.ke/news/sexual-offenses-on-the-rise-in-kenya-as-more-people-work-from-home-over-covid-19-328846/>



unavailable because 'the healthcare system is focusing on COVID-19'. Reports, through Defenders Coalition monitors at the ground indicate that victims of SGBV cannot access healthcare and healthcare reports during this time because medics turn them away. This is one development that Defenders Coalition is monitoring closely as women and children pay the ultimate price in times of war, difficult financial times and state of emergencies.

- Police officers play the role of ensuring the existence of a conducive law and order atmosphere. Several women have found themselves between a rock and a hard place because they are stuck with their own abusers during curfew hours<sup>8</sup>. They face abuse for hours on end. And when they begin the process of seeking justice through the police, reports indicate that some are denied access to P3 forms because the department is not running at the moment. The eventuality is hopelessness, fatalism and back into the hands of the people abusing them. While at this, it is also paramount that at the time when the president of the judiciary called alarm on the surge in cases of SGBV, the government acknowledged that the Covid-19 containment measures-related violations were perpetrated by close relatives.
- A woman from Kibera area is reported to be nursing injuries after she was assaulted by her husband after coughing severally, he claimed she was exhibiting covid-19 symptoms. She sustained injuries to her surgical wounds as she was recovering from delivery. The SGBV victim is in a stable condition and community HRDs are following up on her status regularly.
- A queer woman On 5/04/20 was sexually and physically assaulted by 2 men in Migosi area, Kisumu.
- Another woman was assaulted by her ex-husband in Kiamaiko area in Nairobi after demanding custody of her three children aged 8,4,and 3 years respectively who were taken forcefully by her ex-husband last year. The case has been reported to the police and Defenders Coalition is monitoring closely through HRDs at the local level. From this area alone, we have received two more cases of SGBV, an indication that the cases are more rampant among middle and low income areas in Nairobi.
- A 14yr old girl from Ogada Primary school, in Nyahera village , Kisumu West sub County was found dead with injuries pointing at the possibility of strangling. The circumstances surrounding her death are unclear but preliminary investigations show that she might have been sexually assaulted before being strangled. The matter is still under investigation.

Cases of SGBV may be going unreported due to the stigma, harassment and intimidation subjected to the victims by the perpetrators. Additionally, those who were facing such violations, and especially the elderly and vulnerable are believed to have sunk into a new low

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<sup>8</sup> <https://www.nation.co.ke/gender/5362750-5520184-wkx0gy/index.html>





because of the curfew and partial lockdown in the aforementioned areas<sup>9</sup> and curfew countrywide.

Access to maternal healthcare for expectant women is a nightmare during the curfew period. Reports point at the possibility of unnecessary suffering of expectant women because of the fear of brutality they may be subjected to should they seek medical attention late in the night<sup>10</sup>. Women in rural and in-city informal settlements and already marginalized, have suffered a great deal.

In Mombasa, there are reports indicating that an expectant woman suffered a miscarriage due police brutality and trauma she was subjected to during the infamous first day of enforcing the nationwide curfew. Moreover, one of the deaths highlighted above, was a young man who was brutalized and battered by police officers after ferrying an expectant woman to a health centre for delivery. By precedence, this has elicited reaction by expectant human rights defenders who have expressed fears that such occurrences are criminalizing access to maternal healthcare. It is even more precarious for them since the implementers of this directive are the same people who have discriminated, stigmatized, conducted unlawful detention and reprised WHRDs for decades. From this, the government is overlooking other fundamental human rights to achieve one human right that is dependent on the existence of all other human rights.

### **3. Forceful evictions**

The government has been reluctant in providing information and personal protection equipment for health workers. With 126 COVID-19 cases reported so far, we fear that a spike is imminent and our nurses are not well equipped. There could be a shortage in the world for PPEs but only if the only frontline caregivers are protected that we shall defeat the virus. To note, one health worker was denied access to her house on 5th April 2020 by her own sibling stigmatizing her profession. The sibling stigmatized her sister (the medic) on the basis that health workers are at a risk of contracting the disease because of the nature of her profession. Following police intervention with the help of local HRDs, the medic and her 2 children were allowed access to their home.

### **4. Police extortion**

An incident was reported in Kariobangi Round-About area in Nairobi, where three police officers were arrested after local community outcry. The three had been engaging in the illegal activity of extorting money from the public. The three have been charged with robbery and extortion.

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<https://www.nation.co.ke/lifestyle/dn2/Coronavirus-and-elderly-in-the-rural-areas/957860-5529036-qwqe3l/index.html>

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<https://www.nation.co.ke/counties/kwale/Kwale-man-dies-after-being-assaulted-by-police--curfew--/3444918-5512794-hlexcmz/index.html>



Police officers from Turkana County have been breaking into people's homes and demanding money arbitrarily. This is in the guise of implementing the curfew. However, most of the reported break ins have occurred during the day. IPOA has recorded statements with affected victims but no known action has been taken against the rogue officers.

With the implementation of the preventive measures directive requiring citizens to have masks, police officers have been arbitrarily arresting citizens for lack of masks and extorting monies to secure their release.

#### **5. Heavy flooding in Siaya county and impact on HRDs**

Due to heavy rains being experienced in most parts of the country, HRDs have been affected especially in Siaya county where twenty families were forced to seek refuge at one of the justice centres. Eight families are HRD families. All the twenty families have been supported by the Defenders Coalition with meals for one week. Those of the HRDs will be supported with temporary relocation in due course.

- **What is the situation for the media in Kenya? Are there any further restrictions on freedom of expression that are corona-related?**

Media has been a critical player and tool in providing information to the public. The media has been very vocal in covering human rights violations and pushing to hold the perpetrators to account. Throughout the COVID-19 period, three cases of assault and intimidation of journalists and bloggers have been reported. One journalist was assaulted by police while covering police brutality on the first day of the curfew<sup>11</sup>. Additionally, two bloggers have been arrested and charged on grounds of sharing 'alarming' posts on social media<sup>12</sup>.

These are examples of acts of intimidation, assault and threats by the state to silence bloggers and journalists from freely enjoying their freedom of expression and consequently relay information for public good. An employee of the Kenya Airways faced numerous threats and intimidation for revealing that the government was still allowing planes to come into the country from the then coronavirus hit nation-China<sup>13</sup>. The employee was suspended from work but was reinstated due to public outcry. With the above examples, already freedom of expression is limited, and further restrictions are expected.

- **Why do you think that police violence is so extensive? What are the consequences of the violence?**

Police violence is so extensive because of a slow pace of implementation of police reforms and almost non-existent accountability mechanisms within the service. The National Police Service

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<sup>11</sup> <https://nairobinews.nation.co.ke/editors-picks/ntv-cameraman-assaulted-at-5pm-by-cop-enforcing-7pm-curfew>

<sup>12</sup> <https://www.standardmedia.co.ke/article/2001365603/blogger-cyprian-nyakundi-arrested-over-covid-19-post>

<sup>13</sup>

<https://www.standardmedia.co.ke/article/2001362206/kg-employee-suspended-for-recording-arrival-of-china-plane>





is clearly still a force because even with the decades-long reforms, statistics say otherwise<sup>14</sup>. Officers who commit such offences are protected by the state through transfers to remote areas as ‘punishment’ or elimination of witnesses/victims of such cases. Human rights defenders who denounce such excesses are always a target by police officers. Reprisals, violence, threats, intimidation, loss of livelihoods or death are some of the challenges they face each day. However, in recent times, cases of police officers being interdicted<sup>15</sup> for committing human rights violations are manifesting- a glimmer of hope that justice for the victims could be realized.

### **Interventions by Defenders Coalition**

1. Defenders Coalition and in solidarity with Kenyans and other human rights organizations publicly condemned the use of excessive force by police officers while enforcing directives.<sup>16</sup>
2. Defenders Coalition further advocated for the respect of all human rights as stipulated by the Constitution of Kenya, Universal Declaration on Human Rights and other legal provisions, treaties and instruments that Kenya is party to.
3. Defenders Coalition called for the classification of constitutional human rights monitors and oversight bodies<sup>17</sup> as essential service providers through the media because of the critical role they play in providing oversight and monitoring the implementation of government directives being implemented by state actors, that if not closely monitored may result in abuse of other fundamental human rights and freedoms, which has proven the case from previous experiences.
4. Robust campaigns on mainstream media and social media to advocate for the respect of human rights and treatment of violators of COVID-19 measures with dignity even when enforcing the directives.<sup>18</sup>
5. With other human rights organizations, Defenders Coalition publicly published 7 fundamental guidelines for distance conscious policing that respects human rights and stops police brutality.<sup>19</sup>
6. Supported human rights defenders networks across the country to stay safe as they continue with sensitizing on COVID-19, offering reprieve, help keep their communities

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<sup>14</sup> <http://theconversation.com/why-decades-of-kenya-police-reforms-have-not-yielded-change-127332>

<sup>15</sup>

<https://www.nation.co.ke/counties/nakuru/Officers-interdicted-for-assaulting-Kenyans-during-curfew-/1183314-5512270-l7h5sx/index.html>

<sup>16</sup> <https://twitter.com/DefendersKE/status/1243822305781874688>

<sup>17</sup> <https://twitter.com/DefendersKE/status/1243622137300234241>

<sup>18</sup> <https://twitter.com/DefendersKE/status/1244891540683665408>

<sup>19</sup> <https://twitter.com/AmnestyKenya/status/1246430430762590208>



safe by setting up sanitizing and hand washing points and monitoring human rights violations within their communities.<sup>20</sup>

7. Defenders Coalition has deployed twenty six monitors who are regularly monitoring and reporting on violations as well as verifying those reported by other organisations or HRDs.
8. Defenders Coalition has supported close to twenty families who were displaced after heavy rains in Siaya County that have seen eight families of HRDs displaced and housed by Nyando Justice Centre.

**ENDS**

***This report was compiled and comprises of human rights violations between 25th March 2020 to 30 April 2020***

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<sup>20</sup>[https://www.facebook.com/DefendersCoalition/posts/948102065625482?\\_xts\\_\\_\[0\]=68.ARAmNw9mV5FJwYdKIJZlr8858KKp9eWuG2hbwMjU3UjVZc1ELwcRnnJMLGEo6yTpd906eAwOsRByk\\_DVPrghS2EzK79hwa01r3CCOmZEaw9UI8kFEJyc08u5DgGO3kioAsatqr4ODr-GrpOhlsehEFbwjxp0N2-k6GPafpoSwmslEm6xDn3QU85eL27exQvM3lfZfhfgNOaPtNU&\\_tn\\_=-R](https://www.facebook.com/DefendersCoalition/posts/948102065625482?_xts__[0]=68.ARAmNw9mV5FJwYdKIJZlr8858KKp9eWuG2hbwMjU3UjVZc1ELwcRnnJMLGEo6yTpd906eAwOsRByk_DVPrghS2EzK79hwa01r3CCOmZEaw9UI8kFEJyc08u5DgGO3kioAsatqr4ODr-GrpOhlsehEFbwjxp0N2-k6GPafpoSwmslEm6xDn3QU85eL27exQvM3lfZfhfgNOaPtNU&_tn_=-R)