



STATUS



DEFENDING IN A PANDEMIC

STATUS OF HUMAN RIGHTS DEFENDERS IN KENYA
DURING THE COVID-19 PANDEMIC

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“To cheapen the lives of any group of men, cheapens the lives of all men, even our own. This is a law of human psychology, or human nature. And it will not be repealed by our wishes, nor will it be merciful to our blindness.”
-William Pickens



Table of Contents

BACKGROUND:	2
CONTEXT:	2
IMPACT OF COVID 19 TO HRDS AND HUMAN RIGHTS WORK ACROSS KENYA:	4
THEMATIC GROUP REPRESENTATION:	6
Women Human Rights Defenders (WHRDs)	6
Journalists;	7
Sexual Orientation, Gender Identity and Expression (SOGIE) Defenders;	8
Environment/Land Rights Defenders;	8
INTERVENTION BY DEFENDERS COALITION:	9
RECOMMENDATIONS:	11
CONCLUSION:	11

Background



Human Rights Defenders (HRDs) play a critical role in society in the protection and promotion of human rights which is integral to the success of a nation's growth. Human rights defenders are persons that work individually or in collaboration with others towards the realization of a human right (or rights) on behalf of individuals or groups. They play a critical role in the society by championing the promotion and protection of civil and political rights as well as the economic, social and cultural rights. Human rights defenders are active in every part of the world and Kenya is no exception. The country has a vibrant human rights movement comprising national civil society organizations, community groups and individuals who are concerned that everyone must and should enjoy all rights as codified in international human rights instruments and the Constitution.

Despite their noble work, individuals and groups at the forefront of the protection and promotion of human rights, including journalists and community based justice actors that demand the accountability for serious human rights violations by security forces, including extrajudicial killings and enforced disappearances attributed to security agencies are faced with serious threats as they confront the violations. Security forces often target individuals synonymous with demanding accountability. They consider HRDs as “enemies” because of raising human rights concerns during their operations.

Following the onset of the Covid-19 pandemic and, reports of human rights violations by security forces during the enforcement of the World Health Organisation (WTO) and the Ministry of Health (MoH) measures to contain the spread of the virus, the National Coalition of Human Rights Defenders, Kenya (Defenders Coalition), a national organization that works primarily for the protection of HRDs through championing their safety, security and wellbeing undertook a monitoring exercise to look into the situation of human rights in the country but more so, the situation of HRDs during this Covid pandemic.

Defenders Coalition intends to undertake this monitoring exercise for the entire period when the country is grappling with the pandemic. The findings of the monitoring exercise are expected to be shared with duty bearers and other stakeholders with a view of improving the working environment of HRDs

Defenders Coalition deployed twenty seven monitors distributed in counties that experienced the first cases of human rights violations in the initial months of reporting of COVID 19. The monitors were County based and were able to document and report instances of violations not only to HRDs but to the community at large. The documentation forms the basis of this report.



Context

2020 began with the globe battling a new global pandemic - COVID 19. The World Health Organization (WHO) set up an Incident Management Support Team for dealing with the COVID-19 virus and continued to issue comprehensive guidance to countries on how to detect and manage the spread of the Coronavirus. Most countries adopted state of emergency¹ measures to prevent the spread of COVID 19.

Kenya recorded the first case on 13th March 2020 and by 30th June there were 6,366 individuals that had tested positive with 148 deaths recorded.² As an initial response to this, the government of Kenya issued some measures and directives in a bid to contain the situation. These included;

1. Countrywide curfew between 7:00pm and 5:00am which was later revised to 9.00 P.M to 4.00 A.M
2. Partial lockdown comprising of cessation of movement into or out of Nairobi Metropolitan area, Mombasa, Kilifi, Kwale and Mandera Counties
3. Cessation of movement into and out of Eastleigh, Nairobi and Old Town in Mombasa which were recording a very high number of infections.

The restrictions of movement within these areas were lifted progressively. The government has indicated that they were closely monitoring the spread of the pandemic and that if there is an increase, it would consider putting in place stringent containment measures including lockdown.

Kenya, like some other countries has seized the opportunity presented by the current crisis to enforce measures that restrict or suspend certain constitutional rights and freedoms, including freedom of movement and freedom of peaceful assembly. The decrees prohibiting public gatherings of certain numbers of people and restrictions on who can disseminate information, including online, that refers to the coronavirus or activities carried out by health authorities. This has limited information sources on the pandemic to the special emergency office of the government.

Kenyan authorities have demonstrated reluctance to engage with the Civil Society, indeed the public, to collectively address the current crisis and have been averse to criticism over the use of force in its application of containment measures like the curfew, expensive yet poor hygiene at facilities for quarantine, and lack of basic and essential services like water among residential areas as

¹ <https://www.icnl.org/covid19tracker/?location=&issue=5&date=&type=#>

² <https://www.worldometers.info/coronavirus/country/kenya/>

well as conducting forceful evictions among various communities that have left hundreds of people homeless during the pandemic.

Restrictions on the media during this period was reported in Kenya as was the case globally as states put in place strict measures that limited access to information and limited journalists and media workers from reporting the COVID 19 crisis. In some countries, journalists were required to seek prior approval to publish information about coronavirus; banned journalists from independent media houses from covering government updates of the impact of the virus and only allowing government and pro-government media. Arrests and detaining of journalists³ covering human rights issues during the pandemic; suspension of journalists and accusing journalists of being members of terror groups; and suspension/denial of the usual deadlines for administrative processes requests for public information.

Defenders Coalition believes that suspending the rule law in a pandemic is a recipe for anarchy. If not checked, it might get out of control during and after the coronavirus crisis. The state must be compelled to not resort to arbitrary actions that threaten the rule of law and democracy even when faced with such a monumental challenge. Human rights defenders must be at the frontline to safeguard the positive gains that have been realised to build a democratic society and in advancing and safeguarding the Civic Space.

3. <https://sjsyndicate.org/2020/04/21/voa-journalist-detained-after-reporting-death-of-a-rape-victim-in-somalias-south-west-state/>

IMPACT OF COVID 19 TO HRDS AND HUMAN RIGHTS WORK ACROSS KENYA

Defenders Coalition started monitoring and documenting the impact of Covid-19 pandemic on Kenyan citizens and the human rights defenders community in March 2020 in response to emerging reports of human rights violations in the enforcement of the various measures that the Kenya state put in place to manage the spread of the CoronaVirus.

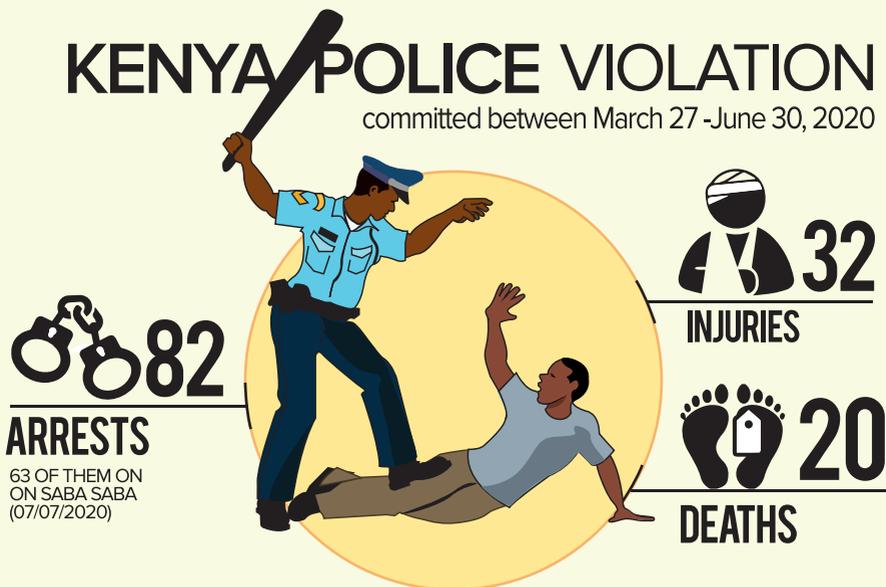
The monitoring exercise was conducted by Defenders Coalition in partnership with a network of human rights defenders across the country. This activity was conducted in the context of restrictive measures like cessation of movements and mandatory quarantine, have affected on the capacity of human rights actors, reach affected communities and individuals to document violations and offer timely service including access to justice for victims and accountability. The report highlights the social-economic and well-being impact on the citizens in general and human rights defenders more particularly. We assess the application of human rights-based approach in the responses by state including identifying the group(s) of citizens left behind in this fight.

The report highlight the following most glaring effects of the pandemic;

- **Loss of livelihoods:** The application of measures like quarantine, social distancing and a ban on or discouraging interaction in public spaces like work, school, church and markets have meant that citizens are unable to make a living. Capacities to support families with food, Medicare, among others have severely diminished in Kenya, particularly among the rural and urban poor that rely on daily wage for survival. Human Rights Defenders have not been spared. Unable to work, they also rely on charities and donations for survival and to conduct their work.
- **Loss of lives and disappearances:** Kenya has had a history of police excesses during regular law enforcement operations and the curfew period has been no exception. During this period innocent citizens have succumbed to the violent enforcement of government directives. Moreover, there were dozens of cases of deaths reported in the media that were 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, **the Defenders Coalition, through its monitors, recorded that police excesses resulted in the deaths of twenty (20) individuals between March 27th to June 30th 2020.**

KENYA POLICE VIOLATION

committed between March 27 -June 30, 2020



- **Use of violence by security agents:** Violent enforcement of curfew and other containment measures by security agents were recorded that resulted in serious injuries to thirty two (32) individuals between March 27th to June 30th 2020.
- **Police arrests, extortion and quarantine of individuals for non-medical grounds:** Police arrested persons that allegedly defied curfew rules. The Judiciary scaled down on its operations and issued guidelines to the law enforcement officers to issue police bonds for non-serious offenses. Defenders Coalition monitors documented massive arrests, extortion in lieu of being detained in police custody and suspects being placed in quarantine centres for at least fourteen days and where they paid \$20 per day. For example, an artist in Nairobi was arrested for alleged being off curfew hours. His vehicle had a mechanical breakdown after going to get some medication for his wife who was unwell. In cooperating with the police, he paid a police bail of Ksh. 10,000 and required that he be issued with a receipt as proof of payment. Because of his insistence, the bond was cancelled and he was forcefully quarantined. After public outcry, he was released.⁴

4. <https://www.facebook.com/BonifaceMwangiBM/videos/eko-dyda-arrested-and-taken-to-quarantine/258926802174538/>

- **Increased policing of the communities and individuals** has become the new normal in many parts of the country giving rise to concerns of a new culture of over policing of citizens that might not go away post-COVID 19.

- **Threats to Right to Privacy:** Countries have put in place measures that are meant to curtail the right to privacy and enhance surveillance of its citizens. Some of them have taken initiatives to: carrying out "cyber patrols"⁵ in an effort to monitor "social humor" and curb misinformation about the coronavirus; such technologies will make the work of HRDs significantly more challenging both in the context of the virus itself and once it has passed, with the likelihood of continued monitoring of their movements and work. The arbitrary and



unlawful arrest of an avid social media advocate in Kenya from his house a few hours before curfew by the police on account of his social media content is an example of the infringements to the right of privacy of an individual.

- **Threats to Right to peaceful assembly:** Article 37 of the Constitution of Kenya 2010 articulates that every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.⁶ This right has however been violated during this period with arrests being the order of the day. Defenders Coalition recorded eighty two (82) arrests between March and July 2020, twice as much the number recorded in 2019 which recorded thirty eight (38) arrests in total. Some examples include;

5. <https://www.argentina.gob.ar/noticias/ciberpatrullaje-reunion-del-defensor-del-pueblo-porteno-y-la-ministra-de-seguridad-de-la>

6. *Constitution of Kenya 2010*



Naivasha

In Naivasha seven members of a community based organization were arrested following a peaceful protest when a public access road was blocked by a private company. Police picked two of the leaders and booked them into a quarantine facility while 5 others were taken to court where they were accused of illegal assembly. The two were taken to court two days after the court required that they be presented in court, charged and granted pre-trial bail.



Kayole

A team of HRDs from Kayole peacefully marched to the local Nairobi Water offices to present their petition over the lack of water in the area. The 9 HRDs were all arrested and charged with creating disturbance and violating covid regulations on social distancing. The case is still active but they are yet to be presented in court for an arrest that happened in May.



Saba Saba

Annually, members of the CSO in Kenya, including HRDs commemorate vthe Saba Saba day on July 7th. This is usually a commemoration for that is comprised of a March dubbed #SabaSabaMarchForOurLives and a conference. This year, the peaceful assemblies were disrupted from the very onset and 63 HRDs were arrested by police officers from stations across Nairobi including Kilimani, Pangani, Muthaiga, Kayole and Central Police Stations.

Thematic Group Representation



Women Human Rights Defenders (WHRDs)

WHRDs play a very unique role in society and in the fight to protect and promote human rights. Their role as human rights defenders takes a huge toll on them as they are fighting battles both at home to ensure their families are well taken care of, and at the community where they confront stereotypes and violence.



Defenders Coalition has documented increased Sexual and Gender-Based Violence (SGBV) during the period of COVID 19 that have included spousal violence, rape and forced child marriage. This observation has been echoed by other actors including the Chief Justice David Maraga who noted an increased caseload of SGBV matters.⁷ To make it worse for the victims, the process of seeking justice is almost unavailable because of stigma and the real or imagined prioritization of COVID 19 cases by the healthcare system. Defenders Coalition's community-based monitors documented that victims of SGBV cannot access healthcare out of fear of contracting Coronavirus at medical facilities, distance and

restriction of travel and curfew and in some cases healthcare providers were reported have turned away patient by asking for a Covid-19 clearance certificate before they can be attended to.

With loss of livelihoods being at risk, WHRDs have come together in their communities to support each other by sharing foodstuffs with the vulnerable. WHRDs have conducted food drives and distributed them to their communities with the support of well-wishers.⁸

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

8. <https://www.facebook.com/thekhrc/videos/against-all-the-odds-rachael-mwikali-still-protects-and-provides-for-her-communi/2997981306944062/>

Journalists;

Following the gazette of the Public Order (State Curfew) Variation Order, 2020 issued in April 2020⁹ that imposed curfew from 7pm to 6am only individuals designated as “essential service providers” that included journalists were allowed to operate during curfew hours because of their role of seeking, receiving and/or imparting information to the public. This gazette notice essentially allowed free movement of journalists in pandemic restricted zones and during pandemic restricted hours. This special leverage was however, not always respected by law enforcement agencies. Journalists and bloggers were among the first victims of police brutality in enforcing the curfew. They were harassed, beaten, their equipment destroyed and sometimes placed under forced quarantine as was the case with a journalist from Uasin Gishu County. The journalist, having gone to the station to seek an accompaniment letter to his press card, lowered his mask so as to speak to the Officer Commanding Station (OCS) after the officer claimed he couldn’t hear him properly. The officer, in his drunken state assaulted the journalist and ordered him placed under quarantine.

Sexual Orientation, Gender Identity and Expression (SOGIE) Defenders;

The SOGIE community suffered a setback in the fight against the repeal of sections of the Penal Code that criminalized consensual sexual relations among members of the same sex. In 2019, the High Court of Kenya dismissed petitions 150 & 234 of 2016 that challenged the constitutionality of sections 162 a), c) and 165 of the Penal Code of Kenya. Rights groups had petitioned the court to declare these sections of the law unconstitutional and in violation of rights guaranteed to all Kenyans in Chapter Four of the Constitution of Kenya (2010) including the right to privacy, dignity, health, equality and non-discrimination and freedom and security of the person. The two petitions were consolidated and judgement passed that they were not unconstitutional and had no merit.¹⁰

As feared by the petitioners, sections 162 (a), (c) and 165 of the Penal Code continued to validate discrimination and violence towards individuals who do not conform to society’s expectations of gender identity, expression or sexual orientation. Since the failed judgement and including during the COVID 19 period, the following was witnessed;

1. Declined mental health for community members
2. Increase in online attacks and outings of community members
3. Evictions from homes and disownment from family members
4. Increase in homelessness for community members being recorded across the country. SOGIE activists have been forcefully evicted from their homes

Active community rights activists were shunned by the larger community members for their advocacy efforts in what is considered a taboo topic.

9. http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN57_2020.pdf

10. <http://kenyalaw.org/caselaw/cases/view/173946/>

Environment/Land Rights Defenders;

Defenders of the rights of indigenous communities in the country, environment and land rights defenders continued to find themselves in an interesting position in trying to defend their rights with regards to community land and dwelling places as well as help community members fight Covid. Leaders of the Ogiek community were threatened with death and closure of their organizations as they advocated for the implementation of the ruling of the African Court that recognized the right of the indigenous community to their ancestral land in the Mau Forest. This happened shortly after the Ogiek celebrated the anniversary of the historic African Commission that asserted the right of the community to their land and culture.

The Sengwer community further continued to fight for their recognition as an indigenous group with rights to settle at their land in the Embobut forest. Despite the effects of the pandemic, the homes of the Sengwer within the Embobut forest were burnt down by the Kenya Forest Services. Forced evictions from the forest with their houses and granaries being burned down by what is alleged to be Kenya Forest Service officers. This has left several people homeless and without food as over 28 houses were burnt down leaving families destitute during COVID 2019.

A positive note for Environment/Land Rights Defenders was the conclusion of Owino Uhuru Case when the courts directed the state and two private investors to pay Ksh. 1.3 billion in reparations. In 2016, community members from Owino Uhuru, an informal settlement in Mombasa, moved to court to challenge the lead poisoning affecting the area as a result of the companies operating from the area which resulted to death and permanent impairment for some.¹¹

13. <https://www.nation.co.ke/kenya/counties/mombasa/owino-uhuru-slum-dwellers-get-sh1-3bn-1869548>

Defenders Coalition



To champion the safety, security and wellbeing of Human Rights Defenders.

Intervention By Defenders Coalition

#PamojaTuangamizeCorona



Charged with the nationwide mandate of responding to the needs of human rights defenders, the Defenders Coalition has supported HRDs across the country in various ways including;

livelihoods support, and equipping HRDs with information on safety and protection and personal protection equipment;

HRDs are vastly talented and they took this gift to their communities to talk about Covid-19 and the measures to employ in curbing the virus. This messaging to the form of murals/graffiti at select places within their communities. These locations



were selected strategically to capture the attention of community members through the aesthetic message.

Defenders Coalition supported the installation of 4 murals in Kisumu, Kibera, Maringo and Dandora, and has partnered with the Social Justice Centres Working Group (SJCWG) in a project dubbed #PamojaTuangamizeCorona to share information, provide livelihood support and personal protection equipment for HRDs when Defending rights. The over 20 Justice Centres that received support are spread across the country.

Further, the Coalition supported WHRDs to make soap to be used both at home and for commercial purposes so as to sustain their livelihoods. Six (6) WHRDs networks were trained and equipped with the skills and supplies to make soap.

Family Support, medical + Relocation assistance;

1. The Defenders Coalition has directly supported 23 HRDs and their families who have been affected severely by the prevailing context. Ten (10) of these were SOGIE HRDs who have needed immediate relocation support due to hostility from community members. HRDs from Nyanza and Western region were severely devastated by floods in which homes were submerged in water and food and crops destroyed. Defenders Coalition supported eight (8) HRD families and the community that they serve with food and shelter as well as relocation to safety. Five (5) HRDs have been supported with rent.
2. Defenders offered urgent intervention to six (6) HRDs that required medical and psycho-social assistance because of ailments and conditions that exacerbated during COVID 19 period.
3. Other HRDs have been supported through Defenders Coalition referral networks to both local and international partners.



Legal support;

Arbitrary arrests as a strategy for persecuting HRDs has been commonly employed by the police that have been keen to limit public discord, demand for accountability over abuse of power and misuse of public resources. The Criminal charge of contravening Covid regulations which entailed failure to wear a mask and/or failure to observe social distance was common. Majority cases have been withdrawn by the police unconditionally without preferring charges in court. This however happened after several time-consuming summons to police stations with the intention to intimidate and persecute rights defenders.

Recommendations



Based on the monitoring conducted by Defenders Coalition and the notable intentional violation of rights, the Coalition makes the following recommendations which speak to the working environment of human rights defenders;

1. That the government employs a human rights-based approach in exercising measures seeking to combat Covid-19.
2. Capacity building for officers at the gender desk at police stations/posts to ensure gender related violations are addressed promptly and with a human angle.
3. Rogue police officers to be promptly investigated and prosecuted for violations of human rights.
4. Freedom of the media enshrined in articles 33¹², 34¹³ and 35¹⁴ of the Constitution of Kenya 2010 are upheld and respected
5. Monitoring and documentation of human rights violations continues by different actors.
6. Call for relevant stakeholders including the Police, the Office of the Director of Prosecutions (ODPP) and the Judiciary to address the criminalisation of HRDs through petty offenses.

12. Freedom of expression

13. Freedom of media

14. Access to information

Conclusion

The Covid pandemic is at the peak globally and will continue to affect citizens and more so, human rights defenders extremely. As human rights defenders have always been at the forefront of advocating rights and being the community emergency contacts, it is quite easy to forget that they too are affected. They too are dealing with the pandemic while trying to be there for their communities as well. Perhaps they carry the bulk of this weight.

Faced with a humanitarian and health crisis occasioned by the COVID 19 pandemic have seen some governments shifting funding priorities. Support to institutions advocating for good governance, accountability and human rights are often the first target for budget cuts greatly affecting the vibrancy and capacity of such institutions to hold the government to account and demand respect for human rights during the pandemic.

As the UN Secretary General António Guterres in his 23rd April Address noted that, human rights cannot be an afterthought in times of crisis and acknowledged that and we now faced the biggest international crisis in generations. The coronavirus will likely transform other pillars of democratic governance and usher in broader effects on governance.

The protection and promotion of human rights however, does not stop at the wake of a global pandemic but rather, more efforts to do so should be in place at a time such as this.



Stay healthy, strong and safe!

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