Press Statement

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Pain and Pandemic: Unmasking the State of Human Rights in Kenya in Containment of the COVID-19 Pandemic

The Kenya National Commission on Human Rights wishes from the onset to salute all the health workers and other front-line professionals and responders who continue to sacrifice their lives to save others amidst the risks of contacting COVID-19 disease. It has been more than 100 days of managing the pandemic yet the zeal of the healthcare workers remains on the high. The Commission continues to urge the Government to strengthen incentives for healthcare workers during this period and beyond the pandemic. The development of a nation is dependent on a healthy population that is able to access quality health care services.

Since the announcement of the first COVID-19 case in Kenya in March 2020, the Government has put in place a raft of measures in a bid to manage its spread. Almost at the same time, KNCHR immediately embarked on monitoring the adherence of human rights standards even as the country adjusted to the ‘new normal’.

As a National Human Rights Institution (NHRI) established under Article 59 of the Constitution of Kenya, the Commission is charged with two broad mandates; (i) to promote human rights, fundamental freedoms and constitutionalism (ii) protect and secure the observance of human rights and fundamental freedoms in all spheres of life. It is these guiding mandates that have enabled KNCHR to compile the human rights status report, which covers the period of March 17th 2020 to June 6th 2020.

Dubbed Pain and Pandemic: Unmasking the State of Human Rights in Kenya in Containment of the COVID-19 Pandemic, this is just but the first of a series reports that the Commission will publish as it continues with the monitoring efforts during this pandemic period, and even after. The contents of this report are not just the effort of KNCHR staff, but also enormous efforts of the grassroots human rights defenders, the media and other civil society partners whose work push for accountability and strengthening the enjoyment of human rights.

Thus, KNCHR developed a monitoring framework with the following thematic focus;

1) Enforcement of COVID 19 Prevention and Control Measures:

   This included monitoring the government’s efforts aimed at drafting new or amending existing laws and policies to accommodate flexibility in managing the effects of COVID 19 and cushioning citizens from
a legal point of view. The Commission thus sought to interrogate any proposed drafts and amendments and shared advisories that would strengthen them with human rights based approach.

2) **Access to Justice:**
As the government implemented COVID-19 related policies and standards, there was bound to be cases of misrule from civilians and duty bearers. Additionally, with the inevitable yet requisite suspension and scaling down of government functions such as in the Judiciary, there still remained the need to ensure right to access justice by both civilians and duty bearers was strengthened. The Commission thus put in place measures and monitoring mechanisms that would document violations by activating its legal team to provide appropriate redress and accountability to strengthen access to justice.

3) **Media and Access to Information:**
Minimal movement and social contact occasioned by measures of mitigating the spread of COVID-19 saw the media remain as one of the critical pillars of sharing information, whether from the Government or other relevant stakeholders accredited with sharing information. We forget not that we are in the digital age, and thus social media and its use by the Government and other actors played a key role in keeping the population abreast with updates. The Commission sought to document how the government facilitated or curtailed (if any) the right to access information.

4) **Education:**
One of the very first sectors to be affected by the pandemic was the education sector during when schools and higher learning institutions were immediately suspended and closed. While there are efforts by both government and private actors to institute E-learning modules and also boost learning through frequent radio and TV lessons in select mediums, the Commission, in its monitoring efforts sought to document equitable access by all regardless of technological disparities.

5) **Labour and Social Security, Housing:**
After the announcement of the first COVID-19 case in Kenya, many employers and employees in the formal and informal employment sectors were optimistic that the impact of the pandemic would be minimal if managed in good time. However, as measures such as curfew orders and lockdown started being implemented, the labour sector received a down turn. By the first one and a half months or so, employers had started considering downsizing measures that saw many citizens lose income; to an extent many could not afford basic necessities and even pay rent.

6) **Health Facilities and Services:**
Access to public health facilities and hospitals, well equipped isolation and quarantine centers and motivated health personnel were the most critical and primary factors that needed to be safeguarded and strengthened. The health sector had to deal with dual medical services; both to COVID-19 patients and patients who have to attend hospital for other ailments and continuous treatment. The Commission sought to monitor National and County governments’ preparedness and their ability to respond to the ever changing environment.

7) **Vulnerable Groups:**
Persons with Disability, the elderly, migrants and refugees, children, persons deprived of liberty (largely prisoners) are just but some of the groups who, even in pre-COVID-19 times are more disadvantaged and need affirmative action to safeguard their enjoyment of rights. As a minority population, it is possible for targeted action to be a last resort as the State endeavor ‘saving’ the majority. In its monitoring efforts, KNCHR sought to document the extent to which government and stakeholders
consciously put in place strategies to enhance enjoyment of rights by the vulnerable and marginalized in society.

In view of the above monitoring standards parameters, these are the findings of KNCHR whose full documentation are in the final report to be circulated today;

**Summary of the findings**

1. That while the Constitution and other international and regional treaties that Kenya has signed up to safeguard the enjoyment of human rights and fundamental freedoms, it is important to note that it is allowable for derogation of some rights as a means of safeguarding other rights during such times as pandemics. In this case, the derogation of the freedom of movement and freedom of association is lauded.

2. During the enforcement of the curfew and lockdown measures, loss of life, inhuman and degrading treatment and cases of torture were witnessed during the monitoring period as measures were being taken to contain the spread of the virus. The Commission documented **10 cases of loss of life and 87 varied cases of inhuman and degrading treatment** by law enforcement officers. The Commission has been working with partners especially the Independent Policing Oversight Authority in investigating and ensuring justice for victims.

3. On access to justice, the Commission found that some of the regulations and directives put in place to support suppression of the pandemic have resulted in the creation of criminal offences and penalties. These offences include restrictions of movement, maintenance of physical distancing and use of face masks in public spaces. Consequently there has been an increase in the number of arrests and charges, making the demand for access to justice services higher. This, coupled with scaling down of court services has increased the backlog of cases.

4. On media freedom, the Commission notes their inclusion on the list of essential service providers which has acted as a boost to information flow. KNCHR note efforts by varied media bodies and partners to provide training for the media to not only safeguard them from the pandemic but also equip them with knowledge for coverage and reporting during this period. However, the Commission recorded **6 cases** of harassment meted on journalists from **4 counties**.

5. On access to information, the Commission notes the swift set up of the **National Emergency and Response Committee** under the stewardship of the Ministry of Health, which has been issuing daily updates on the progress being made to manage the pandemic. Additionally, KNCHR notes efforts by the Ministry to partner with the media in carrying advertisements that have been updated to accommodate varied target audiences. However, the Commission is concerned at stigma and victimization that recovered patients experienced upon return to their communities.

6. On education, the Commission established that the government, through the Kenya Institute of Curriculum Development, the national broadcaster KBC aired radio and TV education programmes for primary and secondary schools children as well as provided online materials to learners. Private schools embraced E-learning through scheduled online classes for their students for continuous learning. However, laudable as these efforts are, accessibility, which is a critical pillar in enhancing the right to education remains a concern. Children in public schools, and especially those in marginalized areas remain disadvantaged as many parents cannot afford internet services or mediums such as; television or radio sets. Additionally, access to the learning content by children living with disabilities ranging from
those with visual and hearing impairment, to those with mental challenges has been a challenge as most of the mediums available are not accessible to this group of persons with disabilities, hence further excluding them.

7. As the economic effects of COVID 19 began to be felt, job losses, pay cuts, unpaid leave and several other measures were taken by employers to cushion their business and institutions from total collapse. The Commission notes the Government’s quick efforts to implement tax measures on VAT and PAYE among others; which went a long way in sustaining institutions. That said, the loss of livelihoods for many, coupled with the high standards of living, is an area the Commission will keep engaging the government and relevant stakeholders.

8. The Government has a duty to ensure that Kenyans enjoy the right to housing by offering subsidies that would allow the real estate sector accommodates all cadres in society. A very small margin of Kenyans own homes, with many either on mortgage or in rental homes. With the dipping economy owing to COVID 19 and loss of livelihoods, the Commission in its monitoring efforts established and received concerns from citizens on the need for rental subsidies, and still wait to see whether the Government will have a policy that will save them from looming evictions as many start falling behind in payment of rent. Additionally, the Commission takes note of evictions that have taken place in areas where residents purportedly settled on Government land. The Commission holds that while the government may have legitimate reasons to evict persons from grabbed land, throwing citizens out in the cold in the middle of pandemic lockdown especially in the city is a recipe for the spread of COVID 19.

9. On the critical health sector, KNCHR found that health facilities and services during the COVID 19 pandemic fall short of meeting the highest attainable standards. The Government should therefore operate within the four core components namely; Availability, Accessibility, Acceptability and Quality. During the monitoring period, there was a significant drop in hospital visits for maternal and child health services. Additionally, patients with chronic diseases had complained of lack of access to health services especially those who had to cross the locked down boundaries.

On quarantine centers, the Commission established that the conditions of many quarantine facilities were deplorable thus limited the enjoyment of certain rights which are not derogable under the constitution and international standards. Majority lacked sufficient bedding, water, and food and cleaning supplies, such as soaps and detergents. The action to use quarantine centers as punishment zones for those who breached curfew timelines and failed to put on masks was also unwarranted and had the potential of exposing healthy citizens with infected patients.

10. On safeguarding the rights of vulnerable persons, the Commission noted government efforts of providing the elderly persons with a stipend to cushion them against the adverse economic effects of the pandemic. However, there were no deliberate and immediate efforts targeted at Persons with Disabilities as the Commission received complaints of harassment during the enforcement of the curfew period especially to persons with impaired hearing. Recently enlisted as vulnerable persons, the Commission also received concerns and complaints from Intersex persons, many of whom live below the poverty line and are in need for humanitarian aid. The intersex persons also decried eviction from their homes owing to challenges of paying rent.
In light of the above extensive findings, KNCHR has issued recommendations to various institutions, some of which the Commission is already engaging to ensure a smooth transition as the country gears up to the re-opening of the economy.

**Summary of recommendations:**

1. Strengthen law enforcement agencies through capacity building to ensure that they enforce regulations within the law and uphold human rights standards and approaches.
2. The National Emergency and Response Committee on COVID 19 prioritizes and strengthens actions aimed at cushioning vulnerable persons against marginalization,
3. The National Council on Administrative Justice continuously reviews actions and activities of court users to enhance access to justice. Specifically, enhance ICT services to Kenya Prisons Service to fast track remote hearing of cases to reduce on the backlog that has been occasioned by the lockdown. Additionally, ICT support to be given to the *department of children services* and the *children courts* to ensure evidence is secured and cases heard and determined in a timely manner.
4. Evaluate remote functions of the courts using human rights standards of acceptability, affordability, adaptability, non-discriminative, adequacy and quality.
5. The Office of the Director of Public Prosecutions strengthens and employs alternative prosecution processes to reduce the number of cases being sent to the courts and prioritize cases resulting from the COVID 19 and public health regulations.
6. The Ministry of Health embarks on a conscious campaign that would reduce the stigma and victimization of recovered patients once they are re-integrated into society.
7. The Ministry of ICT strengthens ICT infrastructure to strengthen information flow especially in the rural areas to ensure consistent sensitization efforts.
8. During the normal learning calendar, many children relied on schools for school feeding programmes and girls were beneficiaries of sanitary towels. KNCHR urges the Ministries of Education and Social Services to ensure modalities that sustain these efforts.
9. As the country continues to maintain safe hygiene practices as one of the ways to manage the pandemic, the Commission urges the Ministry of Water and Sanitation to increase funding on water services including to water service providers to mitigate revenue gaps to enable them provide water and sanitation services to the vulnerable.
10. That Citizens continue to obey the rule of law and report any incidences to relevant authorities such as KNCHR.

In conclusion, KNCHR will continue with its monitoring efforts. The Commission acknowledges the European Union, one of its development partners for strengthening these monitoring efforts through a two year grant as the country gears towards a smooth transition to normalcy. KNCHR monitoring will continue to be guided by the internationally acceptable human rights based approach.

I thank you all.

**Dr. Bernard Mogesa, PhD, CPM**

**Secretary to The Commission/Chief Executive Officer**