

Effects of Coronavirus Control Measures on Economic and Social Rights in Kenya: Evaluating Legal and Policy Responses

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Abstract

The advent of the coronavirus disease has disrupted health, economic and social systems worldwide. Although the first case was reported in Wuhan, China in December 2019, the disease has since spread throughout the globe. Many governments have had to respond by taking an array of interventions to prevent and suppress the spread of the disease. These measures varied from total lockdowns to stay at home orders. In Kenya, the government opted to slow down the spread of the disease by instituting curfews, localized and partial lockdowns aimed at restricting the movement of people. It also ordered the closure of educational institutions and advised employees to work from home. The Ministry of Health issued social distancing and hygiene guidelines aimed at protecting public health. Public order mechanisms were deployed by the police through the prohibition of public gatherings to reinforce social distancing and to suppress community transmission. These containment measures impacted enjoyment of human rights in many ways. This study, therefore, examines the effects of coronavirus control measures contained in the laws and policies (both public health and non-public health) on people's human rights, especially on the economic, social and cultural rights. The study evaluates the legality and constitutionality of pertinent coronavirus laws and regulations. It also examines the challenges in the enforcement of such laws and assesses the implications of these measures on Kenyans' enjoyment of social and economic rights.

Keywords: Coronavirus disease, Human Rights, Constitution, Public Health, Public Order

INTRODUCTION

The advent of COVID-19 has impacted all spheres of life in different ways. First reported in Wuhan, China in December 2019, the infectious disease has since spread throughout the globe. As of July 28, 2020, the virus had infected over 16,341,920 million people and led to 650,805 deaths. At the same time, the total number of confirmed cases in Kenya were 17,975 with 7,908 recoveries and 285 deaths (WHO, 2020). The nature of the pandemic in terms of its spread, transmission, treatment and death rates necessitated governments to institute measures aimed at containing the spread of the disease. Some of the measures adopted in Kenya were a nationwide curfew, localized and partial lockdowns aimed at restricting the movement of people. Social distancing and hygiene protocols were also set by the Ministry of Health towards securing public health. Public order mechanisms were set in motion prohibiting public and social gatherings as a precaution against transmission of the disease and as a safeguard to the general health and safety of the public. In aggregate, these measures, affected people's rights in different ways.

This study examines the effects of the government's COVID-19 control measures on people's rights. It also evaluates the legality, constitutionality and gaps of pertinent COVID-19 control measures and related enforcement challenges and their respect for Kenyans' economic and social rights.

Economic and social rights are primarily provided for in Chapter IV of the Constitution of Kenya, 2010 (African Women's Studies Centre, 2013). Article 43 of the Constitution provides for a wide array of economic and social rights, namely, the right to the highest attainable standard of health, adequate housing, food, clean and safe water, social security and education. Article 41 of the Constitution provides that, everyone has a right to fair labor practices, fair remuneration, reasonable working conditions and the right to participate in the activities of a trade union. This study, therefore, seeks to address these questions: what legislative and policy responses were adopted in containing the coronavirus disease, and, what effect did these measures have on the enjoyment of economic and social rights?

MATERIALS AND METHODS

The study primarily relied on secondary data in the form of documents that were examined and mined through documentary analysis. Documentary analysis is a procedure for evaluating select documents to extract data, which is then analyzed to understand and develop empirical knowledge (Bowen, 2009). The data sourced from these documents varied from excerpts, phrases, quotations to entire passages. The data was then analyzed and organized into themes or categories related to the central question of research (Bowen, 2009). Specifically, this study collected data on the laws and policies used to institute measures and interventions to contain, prevent and suppress the spread of COVID-19. The data was sourced from Acts of Parliament such as the Public Health Act and the Public Order Act. Executive orders, policies, rules and regulations were also reviewed. The study also relied on a review of relevant Constitutional provisions and laws pertaining to economic, social and cultural rights of all Kenyans. The study reviewed the constitutionality of subsidiary legislation, including orders, rules and regulations, such as the State Curfew Orders and court decisions concerning the limitation of human rights. The study examined institutional reports, newspaper articles, editorials, survey reports, memoranda and press releases. The study also conducted informal interviews with key informants on the effects of coronavirus on access to education. Table 1 provides a summary of the documents selected for study, the data collected and relevant information analyzed from each source.

Table 1: Summary of documentary analysis framework

Documents Selected	Data	Scope of Analysis
Constitution	Provisions on the enjoyment of array rights relating to health, education, food, social security, labor and fair remuneration	Chapter IV of the Constitution of Kenya, 2010
Public Health Act	Minister's Powers to make Rules and Regulations; Control Measures on Infectious disease for public health protection	Sections 35, 169 of the Public Health Act
Public Order Act	Rationale for Restriction of Movement and Imposition of State Curfew	Section 8 of the Public Order Act

Case Law	Court interpretation and reasoning on disputes on legality of administrative actions in enforcing curfew	Analysis of Court’s Decision in LSK v Inspector General 2020 [eKLR]
Rules, Regulations and Orders	Subsidiary legislation on restriction of movement	Restriction of Movement Orders (Nairobi Metropolitan, Mombasa, Kwale and Kilifi)
Executive Order	Executive Authority in instituting National responses to COVID -19	Executive Order No. 2 of 2020
Media reports	Emergent issues relating to COVID-19 measures and enjoyment of economic and social rights	Pertinent newspaper articles and editorials

RESULTS

To contain the spread of COVID-19, since the announcement of the first case in Kenya in March 2020 (Ministry of Health, 2020), the government used different response mechanisms such as public health, public order and various and fiscal and non-fiscal measures as outlined below.

Containment of coronavirus: Legal responses

In view of the threat posed by COVID-19, the government of Kenya issued a nationwide curfew restricting movement before 5:00 a.m. and after 7:00 p.m. effective March 27, 2020 for an initial period of 30 days. The curfew, issued by the Cabinet Secretary of the Ministry of Interior and Coordination of National Government, under section 8 of the Public Order Act, prohibited public gatherings, processions or movement, except when permitted by a police officer in writing. The State Curfew Order also provided a list of essential service providers who were exempted from the curfew.

Section 8(1) of the Public Order Act reads:

The Cabinet Secretary, on the advice of the Inspector-General of the National Police Service may, if he considers it necessary in the interests of public order so to do, by order (hereinafter referred to as a curfew order) direct that, within such area and during such hours as may be specified in the curfew order, every person, or, as the case may be, every members of any class of persons specified in the curfew order, shall, except under and in accordance with the terms and conditions of a written permit granted by an authority or person specified in the curfew order, remain indoors in the premises at which he normally resides, or at such other premises as may be authorized by or under the curfew order.

Pursuant to section 8(1) of the Public Order Act, the Cabinet Secretary for Interior and Coordination of National Government issued through Legal Notice number 36, the Public Order (State Curfew) Order 2020 (“State Curfew Order”).

The Law Society of Kenya (LSK) moved to court to challenge the State Curfew Order of March 27, 2020 on grounds that the manner in which the curfew was enforced was unconstitutional. In the case of *Law Society of Kenya vs Hillary Mutyambai, Inspector General of Police Services and 4 Others (interested parties) 2020*, the LSK successfully challenged the State Curfew Order for failing to include all persons that provide essential services, including Advocates and members of the Independent Police Oversight Authority (IPOA). The court declared that the

use of excessive force by the police in the enforcement of the State Curfew Order was unconstitutional. It also ordered that the advocates or members of LSK and IPOA be included in the list of those exempted in curfew.

Public health measures- April 2020

On April 3, 2020, the Cabinet Secretary for Health published the Public Health (Prevention, Control and Suppression of COVID-19) Rules, which outlined: the powers of control of COVID-19, the powers vested in the medical and public health officers to control the disease and regulate the safe disposal of bodies, and outlined the sanctions for anyone escaping from isolation and quarantine facilities. These rules are summarized in Table 2.

Table 2: Summary of the main provisions of Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020

Rule	Legal Provision	Objective
Rule 2	Duty of owner or premises to notify authorities suspect resident suffering from COVID-19	Rapid notification
Rule 4	Medical Officer of Health Inspect premises where COVID-19 patient resides	Isolation and transfer of contact
Rule 6/7	Medical Officer/Public Health Officer powers to disinfect premises	Prevent spread of virus
Rule 8	Time and mode of disposal of bodies Restriction of number of persons at burial/transportation of bodies	Prevent transmission from persons succumbed to COVID-19 Social distancing
Rule 10	Escape from isolation or quarantine facilities	Punitive measures to prevent transmission from persons in isolation

Rule 2 of the *Prevention, Control and Suppression of COVID-19 Rules* places primary responsibility on the occupier or owner of premises to notify authorities where suspected COVID-19 patient(s) reside. Rule 4 mandates the medical officer of health to visit and inspect premises where a COVID-19 positive patient resides and order the isolation and transfer of the individual to quarantine facility. Rule 6 and 7 mandates a medical officer and public health officers to disinfect premises to prevent the spread of the virus.

Rule 8 provides for the modalities for removal and disposal of bodies. It prescribes the time of burial or cremation ceremonies (9:00 a.m. to 3:00 p.m.), limits the number of attendees to 15 and restricts the age limit (12 years and above) for those in attendance. It also provides for the fumigation of the body and vehicle used in transportation immediately after the procession. Rule 10 specifies that in the event persons placed in isolation and quarantine facilities escape, they will be liable on conviction to a fine of Kenyan Shillings (KES) 20,000 or imprisonment of up to 2 months.

Containment measures in high risk areas

The Cabinet Secretary for Health on April 6, 2020 published a raft of measures designed to contain the spread of COVID-19 in counties like Nairobi deemed to be high risk areas. (Ministry of Health, 2020) The five orders published on April, 6, 2020 marked the highest number of measures

published in a day since the start of the anti-coronavirus disease campaign (Table 3). The main objective of the Orders was to contain the pandemic by restricting movement in and out of areas which had recorded higher daily rates of infection since reporting of the first case and were thus considered *hotspots*.

Table 3: Summary of COVID-19 containment measures in subsidiary legislation for high risk areas: April 2020

Containment Measure	Legislative Provision (Source)	Objective	Geographical Area
Social distancing capacity limits in vehicles	Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules, 2020	<ul style="list-style-type: none"> • Restrict movement • Capacity limits in vehicles • Social distancing • Limits to large gatherings 	National
Restriction of movement in and out of Nairobi	Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules (Nairobi Metropolitan Area) 2020	<ul style="list-style-type: none"> • Restrict movement • Delineate Nairobi Metropolitan area 	County (Multiple) Nairobi, Kajiado Machakos Kiambu
Restriction of movement in and out of Mombasa	Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules (Mombasa County) 2020	<ul style="list-style-type: none"> • Restrict movement • Delineate Mombasa 	County (Single)
Restriction of movement in and out of Kwale	Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules (Kwale County) 2020	<ul style="list-style-type: none"> • Restrict movement • Delineate Kwale County 	County (single)
Restriction of movement in and out of Kilifi	Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules (Kilifi County) 2020	<ul style="list-style-type: none"> • Restrict movement • Delineate Kilifi area 	County (single)

The overarching subsidiary legislation was the Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules, 2020 which was of general application to all 47 counties, while the other Orders were specific to the counties of Nairobi Metropolitan, Mombasa, Kwale and Kilifi. The main provisions introduced by the Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules, 2020 were in regard to restriction of capacities in public and private transport, protocols on social distancing, guidelines on wearing of masks, speedy interment of dead bodies and prohibition of large gatherings (public and private).

The Restriction of Movement Orders specific to the *high-risk counties* had similar provisions. They included the provision that defined the geographical area with specific location in which the specific Order was to apply. The difference was that the Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules, 2020 (Nairobi Metropolitan

Area) became effective on April 6, 2020, while the others for Mombasa, Kwale and Kilifi took effect on April 8, 2020.

The *Restriction of Movement of Persons Rules 2020* mandates the Cabinet Secretary to make a declaration of an infected area, restrict movement of persons and make restrictions on the use of transport services. Rule 6 provides for preventive measures such as maintaining one-meter social distance, wearing of masks in public to cover the mouth and nose. Rule 7 prohibits large public gatherings, including weddings and funerals. This rule restricts attendance at funerals to a maximum of fifteen persons.

Rule 8 of the *Restriction of Movement of Persons Rules 2020* provides that a person who dies of COVID-19 to be interred or cremated within 48 hours. In rule 10, the Cabinet Secretary for health may exempt in writing a person from these rules. In rule 4, the transport of food and cargo should go on uninterrupted. Rule 5 stipulates that a public transport provider should carry 50% of their licensed capacity, a private car to carry 60% of its capacity, a motor cycle, bicycle and tricycle to carry one passenger and all users of public and private transport should wear masks. Rule 11 provides a penalty for contravening these rules, which is a maximum fine of twenty thousand Kenya shillings or a maximum imprisonment of six months.

Partial reopening of the economy - July 6, 2020

Due to the relative success of these measures in slowing the spread of COVID-19, the government moved to reopen the economy. In his address to the nation on July 6, 2020, President Uhuru Kenyatta sought to institute a phased reopening of the economy through a number of measures. The President lifted cessation of movement in and out of Nairobi, Mombasa and Mandera (Mutanu, 2020). Public transport out of the restricted areas was required to get clearance with the Ministry of Interior and Coordination of National Government (Kahongeh et al., 2020). Other measures taken included a phased reopening of churches, resumption of domestic flights from July 14, and resumption of international flights from August 1, 2020. The President also announced that colleges, technical and vocational training institutions and universities would be permitted to start reopening as from September provided that they would have complied with the Ministry of Health inspections and directives.

A number of bans announced in the previous presidential statement in June 2020 were extended. The President directed that bars would remain closed for an additional 30 days, but could offer take away services. The ban on weddings, political and other social gatherings was extended for a further 30 days. The night curfew running from 9:00 p.m. to 4:00 a.m. was also extended for a period of 30 days.

The President also announced that the phased reopening would be subject to review after twenty-one days and called on Kenyans to observe these measures. In the event there were spikes in infection rates, the government would reinstate restrictions on movement and containment measures.

Stalling of phased reopening of the economy - July 27, 2020

President Kenyatta announced further measures on the control of coronavirus on July 27, 2020 (Office of the President, 2020). The nationwide curfew was extended for a further 30 days as follows: The sale of alcoholic beverages in eateries was banned; the indefinite closure of bars instituted; and the closing time for restaurants was amended from 8:00 p.m. to 7:00 p.m.

Furthermore, the Ministry of Health was directed to develop a protocol to temporarily retain retired anesthetists and intensive care unit (ICU) staff to support the medical staff assigned to dealing with serious COVID-19 cases in the counties. The phased reopening of universities and other tertiary institutions for face-to-face learning was suspended until January 2021.

Fiscal measures

The President announced several fiscal measures to cushion Kenyans from adverse economic impacts of the coronavirus disease. A number of the proposals in the form of tax measures were captured in the Tax (Amendment) Bill, 2020, which was passed into law, assented to by the President on April 25, 2020 and published in the *Kenya Gazette* on April 27, 2020. The Tax Law (Amendment) Act, 2020 amended the related tax laws such as: Income Tax Act; Value Added Tax Act, 2013; Exercise Duty Act, 2015; The Tax Procedure Act, 2015; Retirement Benefit Act, 1997; and Miscellaneous Levies and Fee Act, 2016.

The new tax measures were primarily aimed at providing relief to employees and borrowers by reducing the rates on income tax, the cost of credit, and reducing the cost of goods and services. The Central Bank Rate (CBR) was lowered from 8.25 % to 7.25 % so that commercial banks could lower interest rates to borrowers. Borrowers were further given a reprieve as loan defaulters were blocked from being listed at the Credit Reference Bureau. This reprieve applied to both individual and small and medium sized enterprises (SMEs). Companies and SMEs were also afforded relief through reduction on turnover tax and corporate tax. Cash revenue ratios were also reduced to free up more funds to the banks, which would in turn enable them to avail more funds for loans to new and existing borrowers. The cash revenue ratio requirement was lowered from 5.25 % to 4.25 % to provide additional KES 35 billion to enable commercial banks to directly support borrowers distressed by the effects of COVID-19.

Under the new Act, employees earning less than KES 24,000 were exempted from paying Income Tax. The Act also provides that: Pay-As-You-Earn (PAYE) tax be reduced from 30% to 25% for the highest tax band; corporate tax be reduced from 30% to 25%; turnover tax reduced from 3% to 1% for micro, small and medium enterprises, and value added tax reduced from 16% to 14%.

Further financial measures taken by the government included the establishment of the COVID-19 Emergency Response Fund dedicated to the allocation and management of funds, specifically for financing supplementary expenditure due to the additional costs brought about by the coronavirus disease. Under the mandate provided in section 24(4) of the Public Finance Management Act, the Cabinet Secretary for National Treasury published the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020. Regulation 3 established COVID-19 Emergency Response Fund, which was made up of monies voted and appropriated by Parliament and voluntary contributions, gifts and donations.

Social security policies

The government has put in place a number of social programs to assist the public from the shocks of COVID-19. Social assistance and protection programs have been implemented through new mechanisms or by re-directing existing resources to cushion vulnerable groups. For example, *Inua Jamii*, a cash transfer program, has been enhanced during this period of the pandemic. (Oyunge & Chebii, 2020). This program has been redesigned to enable the elderly and the most vulnerable members of society to meet their daily essential needs like buying food, while coping with the

effects of COVID-19 (Ministry of Labor and Social Protection, 2020). The program is administered jointly by the Ministry of Labor and Social Protection, the National Drought Management Authority, the Ministry of Health, and the Council of Governors.

The coming into force of the Tax (Amendment) Act, 2020 had a favorable impact on the social security of pensionable employers and pensioners, which amended the Retirement Benefits Act by enabling beneficiaries to access part of their retirement savings and use some of their pension to purchase a residential property. As a result of the amendment to the Retirement Benefits Act, the Retirement Benefits Authority has drafted regulations to govern the new mechanism for accessing pension savings. A worker can use up to 40% of his or her savings to purchase a residential property.

DISCUSSION

The results above show the health, security, and financial measures the government used to control the spread of COVID-19. The central question of this study was to evaluate how these measures impacted the economic and social rights of Kenyans.

The discussion below focuses on the effects of the coronavirus pandemic on the main constitutional rights and responsibilities in Article 41 (fair labor practices), Article 43 (health, housing, food, water, social security and education), Article 45 (family), and Article 53 to Article 57 (protection of special groups). The findings in this study, in general, indicate that COVID-19 containment measures adversely affected citizens' economic and social well-being. However, in some instances, legal and policy interventions worked to mitigate the impact of the disease on Kenyans.

Unfair labor practices and remuneration

Although Article 41 provides that every person has a right to fair labor practices and remuneration, the actions by both public and private employers in Kenya have limited the workers' rights in the period of the coronavirus pandemic. For instance, in April, 2020 the management of Fairmont Norfolk decided to lay off its employees due to the negative impacts of the coronavirus disease on its business (Wambu, 2020). This was before the intervention of the Solicitor General, which forced Fairmont Norfolk to reverse its decision until a consultative meeting with relevant stakeholders had taken place. Later, when a meeting between Fairmont Norfolk and the Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (Kudheihia) failed to resolve the issue on the payment of May salaries, the hotel sent its entire staff on an unpaid leave (Wambu, 2020).

The Standard Group, a leading media house, also announced a salary reduction for its entire staff due to depressed economic activities brought about by the coronavirus. Salary reduction went into effect on April 1, 2020 as follows: staff earning over KES 100,000 took a 25% salary reduction; those earning below KES 100,000 took a 20% salary reduction; and some employees went on leave until when needed (Oroo, 2020). Instead of cutting salaries, other institutions extended working hours. For instance, the Nairobi Hospital increased its employees' working hours from 40 to 45; however, the Kenya Medical Practitioners, Pharmacists and Dentists Union successfully challenged this decision in court (Kabale, 2020). From the foregoing, it was clear that the actions of employers to reduce or withhold pay, and increase working hours without adjustment of pay, violated Article 41 on fair labor practices and remuneration.

Effect of containment on access to health facilities and reproductive health care

Article 43(1)(a) provides for the right to the highest attainable standards of health care, a right to access health care services, including reproductive health. The implementation of COVID-19 containment measures, which restricted movement adversely, impacted access to health care services and reproductive health. A study conducted jointly by the African Medical and Research Foundation (AMREF), the Ministry of Health, Population Council and Youth in Action, revealed that COVID-19 containment measures, which restricted movement, also heightened sexual risks among the youth (Aradi, 2020). The report noted that 5% of women were unable to access emergency pills or sanitary towels while 8% of men reported a lack of access to condoms. Youth living with HIV/AIDS were also affected negatively with 2.3% saying that coronavirus cut off their access to anti-retroviral medications while 4.7% were unable to access counseling (Aradi, 2020).

It has also been noted that as the coronavirus pandemic rages on, the number of patients seeking services in public and private hospitals has declined (Standard Editorial, 2020). Private hospitals, including those run by churches, have experienced a decline in the number of patients who are unable to foot their bills and have sought government bailouts. The restrictions have reduced hospital visitations because some people: (i) fear that going to the hospital would expose them to coronavirus; (ii) have either lost their jobs or sources of income and have no money to spend on doctors or medications; and (iii) who used to seek treatment in Nairobi no longer have access to the city (Standard Editorial, 2020). This has, therefore, endangered Kenyans with COVID-19 and other diseases that are not being treated.

COVID-19 has also compromised Kenyans' right to health by negatively impacting their health insurance coverage. For instance, the National Hospital Insurance Fund (NHIF) recently announced that it will only provide cover for coronavirus positive patients admitted to designated public hospitals, including Kenyatta National Hospital, Mbagathi Hospital, Kenyatta University Hospital, and other County hospitals designated by the Ministry of Health (Alushula, 2020). On their part, private health insurance companies have also excluded coronavirus positive patients from accessing insurance cover for their treatment expenses, thereby further compromising Kenyans' right to health.

Standards of housing, water, and food

According to a recent survey by the Kenya National Bureau of Statistics, about 70% of households had difficulty paying rent in May 2020 due to the economic effects of the coronavirus disease (Mutua, 2020). Out of the respondents interviewed, 31.6% paid rent on time in May, compared to 41.7% in April. About 37% of rent defaulters were unable to pay any rent while 23% paid partially and 8.5% were hopeful of paying it later that month. The reasons why majority of the households in the survey were unable to pay rent included reduced income or earnings, closure of businesses like bars and restaurants due to COVID-19 social distancing mandates, job cuts, and unpaid leave for many workers (Mutua, 2020).

Social security

The Kenya National Safety Net program (*Inua Jamii*) comprises cash transfers to orphans and vulnerable children, older persons over seventy years old, and persons with disability. With the outbreak of COVID-19, the President ordered disbursement of an additional KES 12 billion to

these vulnerable members of society. To this end, the government has taken significant steps in meeting the requirement in Article 43 (e) of providing social security to Kenyans. However, there have been complaints that the disbursements under the cash transfer program have not reached the intended beneficiaries, while some have complained of not receiving any funds since the program started in March, 2020 (People Daily Online Editorial Team, 2020).

Education

Effects of COVID-19 containment measures on primary and secondary school children

COVID-19 containment measures included closure of all educational institutions in the country, with classes expected to resume in January 2021 (Wanzala, 2020). This extended closure of educational institutions has negatively affected the academic progress and social lives of school-aged children in the country. Even with projected resumption of studies in January 2021, the number of school-aged children who will be unable to complete their studies due to unplanned pregnancies, early marriages, and other factors will be high. According to Plan International (2020), unintended teenage pregnancies significantly distort the affected girls' lives, education, and future income since they have to drop out of school to raise their children. School-aged girls dropping out of school has a number of negative consequences. For example, girls dropping out of school leads to low education attainment which, in turn, negatively impacts the country's effort to achieve universal primary education for all students (Subramanyam, 2016). Women who acquire qualifications and skills are more likely to be employed and earn a higher level of income than those with low education. According to Subramanyam (2016), low academic achievement amongst women results in their decreased labor participation in the workforce as fewer are likely to get good employment opportunities. This, in turn, reduces national economic growth and poverty reduction efforts.

Effect of containment measures on university education

The closure of schools and institutions of higher learning was among the first COVID-19 control measures announced by the Kenyan government in March 2020. University education has been greatly disrupted by the closure order, although some have managed to switch to online learning and virtual graduation ceremonies.

Although many Kenyan universities have shifted to online and virtual learning, this strategy is not workable for all students, especially those from rural areas. The shift to online education has created disparities in learning experiences due to a number of factors, such as lack of money for internet bundles, limited or no access to digital devices, internet access, and electricity (B. Gisore, personal communication, July 2020). They also lack a conducive home learning environment. This digital divide, between students from rich and poor backgrounds, urban and rural areas, is a major drawback to the potential benefits of e-learning in Kenya. Furthermore, these inequalities have the potential of perpetuating and reproducing Kenya's already wide socioeconomic inequalities and limiting Kenyans' right to education as envisaged in Article 43 (1) (f) of the Constitution. As online learning takes a central place in university education, the government ought to establish funding mechanisms to enable students to purchase laptops or smart phones. The student loan to purchase digital devices can be channeled through public institutions such as the Higher Education Loans Board (HELB).

CONCLUSION

The objective of this study centered on the effects of coronavirus control measures on Kenyans' enjoyment of economic and social rights. The initial COVID-19 control measures such as the enforcement of a nationwide curfew, focused on reducing the number of infections by policing and limiting public movement in the name of public health protection. These measures will be remembered for their disproportionate use of force by law enforcement officers against the public and journalists. Media reports of police brutality on the first day of the curfew in Likoni Ferry, Mombasa grabbed national headlines because little thought was given to helping the public to practice COVID-19 preventive measures (e.g., providing sanitation points, releasing employees early from work, ensuring adequate access to water and quarantine facilities). Although the prohibitive laws and policies were firmly, if not enthusiastically enforced, the measures to facilitate citizens' adjustment to the *new normal*, including tough economic times and restricted economic opportunities, were accorded little attention by the government.

Since the issuance of the State Curfew Order in response to the outbreak of COVID-19, a number of public and private measures have had disruptive effects on the well-being of Kenyans in a variety of ways. Though COVID-19 control measures were intended to contribute to the wellbeing of Kenyans' enjoyment of their rights, they have had the opposite effect in terms of limiting access to healthcare services and reproductive health. Similarly, the closure of educational institutions, for some students, has limited their access to education. With some universities resorting to online learning, inequalities have been laid to bear between rural and urban students. Moreover, these measures have reduced working hours for many Kenyans, leading to depressed economic activities, in turn, contributing to unfair labor practices and remuneration. The labor market has been characterized by COVID-19 related layoffs, retrenchment and variation of working conditions to the detriment of workers.

On the other hand, the government has undertaken certain measures to help cushion the welfare of workers and its vulnerable members from the negative effects of its COVID-19 measures. In the process, these measures have contributed to the promotion and protection of Kenyans' economic and social rights (e.g., tax reduction measures increased access to credit and greater access to social security savings). Despite the efforts of the government and private sector to counter the effects of COVID-19 and related effects, these measures have not been adequate for the protection and realization of Kenyans' economic and social rights. The disease has limited people's access to health care services, housing, education, food, water, and fair labor practices. More interventions and funding need to be set aside to counteract coronavirus induced impacts on Kenyans.

References

- African Women's Studies Centre (2013) Implementation of Article 43 of the Constitution on economic social rights in Kenya, *University of Nairobi*.
<http://erepository.uonbi.ac.ke/bitstream/handle/11295/61404/FINAL%20PROGRAMME%20REPORT%20pdf.pdf?sequence=2&isAllowed=y>
- Alushula, P. (2020, July 28). NHIF stops Covid-19 bill payout in private hospitals. *Business Daily*.
<https://www.businessdailyafrica.com/economy/NHIF-stops-Covid19-bill-private-hospitals/3946234-5600660-14ve0yo/index.html>

- Aradi, G. (2020, May 26). Covid-19 battering Kenyan youth into poverty, depression. *The Standard*. <https://www.standardmedia.co.ke/article/2001372787/study-covid-19-battering-kenyan-youth-into-poverty-depression>
- Bowen, G. A. (2009). Document Analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27-40
- Kabale, N. (2020, June 2). Pay cut in private hospitals as business slumps. *Daily Nation*. <https://nation.africa/kenya/news/pay-cuts-in-private-hospitals-as-business-slumps-489294>
- Kahongeh, J., Okinda, B., Wafula, C., Ayienda, B., Luvega, D., Odiwuor, G. & Wasonga, D. (2020, July 7). Lockdown lifted but Kenyans still can't travel over lack of guidelines. *Daily Nation*. <https://nation.africa/kenya/news/lockdown-lifted-but-kenyans-cant-travel-1446750>
- Ministry of Health (2020, March 13) First case of coronavirus disease confirmed in Kenya. <https://www.health.go.ke/first-case-of-coronavirus-disease-confirmed-in-kenya>
- Ministry of Health (2020, April 7). Government announces extra measures to prevent spread of coronavirus, Nairobi, Monday April 6, 2020. <https://www.health.go.ke/govt-announces-extra-measures-to-prevent-spread-of-coronavirus-nairobi-monday-april-6-2020>
- Ministry of Labor and Social Protection (2020, April 19). Press release on Inua Jamii. <https://www.socialprotection.go.ke/wp-content/uploads/2020/04/PRESS-RELEASE-INUA-JAMII.pdf>
- Mutau, B. (2020, July 7). It's now up to you to protect yourself and family from virus. *Daily Nation*. <https://nation.africa/kenya/news/protect-yourself-family-from-covid-19-uhuru-1446022>
- Mutua, G. (2020, July 9). 70pc of households struggle to pay rent. *Business Daily*. <https://www.businessdailyafrica.com/bd/economy/70pc-of-households-struggle-to-pay-rent-2295466>
- Ochunge, N. (2020, July 14). Teachers sent on unpaid leave as private schools grapple with prolonged closure. *The Standard*. <https://www.standardmedia.co.ke/education/article/2001378749/teachers-sent-on-unpaid-leave-as-private-schools-risk-permanent-closure>
- Office of the President. (2020, March 23). Presidential Address on the State Intervention to Cushion Kenyan's against Economic Effect of Covid-19. Retrieved from <https://www.president.go.ke/2020/03/25/presidential-address-on-the-state-interventions-to-cushion-kenyans-against-economic-effects-of-covid-19-pandemic-on-25th-march-2020/>
- Oroo, V. (2020, April 7). Standard Group slashes staff salaries. *Kenya.co.ke* <https://www.kenya.co.ke/news/51772-standard-group-slashes-staff-salaries>
- Oyunge, P. & Chebii M. (2020). Kenya enhance its cash transfer programmes in response to the COVID-19 pandemic. *Financial Sector Deepening Kenya*. <https://fsdkenya.org/blog/kenya-enhances-its-cash-transfer-programmes-in-response-to-the-covid-19-pandemic>
- People Daily Online Editorial Team (2020, May 19). Accountability key in use of COVID-19 pandemic cash. *People Daily Online*. <https://www.pd.co.ke/news/national/accountability-key-in-use-of-covid-19-pandemic-cash-37086/>
- Plan International. (2020, June 25). Covid-19: lockdown linked to high numbers of unintended teen pregnancies in Kenya. Retrieved from <https://plan-international.org/news/2020-06-25-covid-19-lockdown-linked-high-number-unintended-teen-pregnancies-kenya>
- Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020, Legal Notice No. 49. http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN49_2020.pdf
- Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules, 2020, Legal Notice No. 54. http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN50_2020.pdf

- Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules (Kilifi County) 2020, Legal Notice No. 54.
http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN53_2020.pdf
- Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules (Kwale County) 2020, Legal Notice No. 54.
http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN54_2020.pdf
- Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules (Mombasa County) 2020, Legal Notice No. 54.
http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN52_2020.pdf
- Public Health (COVID-19 Restrictions of Movement of Persons and Related Measures) Rules (Nairobi Metropolitan Area) 2020, Legal Notice No. 54.
http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN51_2020.pdf
- Standard Editorial (2020, May 21). Declining number of patients in health facilities cause for concern. *The Standard*. <https://www.standardmedia.co.ke/article/2001372086/declining-number-of-patients-in-health-facilities-cause-for-concern>
- Subramanyam, G. (2016) Gender perspectives on causes and effects of school dropouts from primary and secondary education in developing countries, *Swedish International Development Cooperation Agency*. Retrieved from
http://www.ungei.org/Final_Paper_on_Gender_perspectives_C2.pdf
- Wambu, W. (2020, June 5). Reprieve for Norfolk workers as sack notice is reversed. *The Standard*. <https://www.standardmedia.co.ke/business/article/2001374023/reprieve-for-norfolk-workers-as-sack-notice-is-reversed>
- Wanzala, O. (2020, July 7). Education CS Magoha cancels KCPE, KCSE as Covid-19 bites. *Business Daily*. <https://www.businessdailyafrica.com/bd/news/education-cs-magoha-cancels-kcpe-kcse-as-covid-19-bites-2295062>
- WHO. (2020). Coronavirus Disease (COVID-19) situation report – 190. Retrieved from
https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200728-covid-19-sitrep-190.pdf?sfvrsn=fec17314_2