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GENDERED IMPACTS OF RESPONSES TO THE COVID-19 PANDEMIC IN KENYA

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Published in: *Nairobi: University of Nairobi* (2020).

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<http://www.ielrc.org/content/w2001.pdf>

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Foundational work on this project was made possible by the United States Agency for International Development through the Agile Harmonised Assistance for Devolved Institutions (AHADI), in aid of partners working on improved governance programming on the COVID-19 county funds in May-June 2020.

Citation: Gendered Impacts of Responses to the Covid-19 Pandemic in Kenya

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P O Box 30197- 00100

Nairobi, Kenya

Design, Layout, and printing by;

Digital Process Works Limited: dpw@cgiar.org

Po Box 35045-00200

Nairobi, Kenya

ISBN-13: 978-9966-1952-7-2



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Abstract

The COVID -19 pandemic in Kenya is unfolding in a context in which gender is socially and culturally constructed. The construction of gender that existed before the onslaught of COVID-19 is informing the way in which the pandemic affects men and women. Indeed, men and women are experiencing the pandemic in different ways. The government has taken varied measures to contain the pandemic and mitigate its adverse effects. These measures have however been generally framed in gender neutral terms. This ignores the fact that the pandemic and the measures taken by the government to address it are gendered and produce different outcomes for men and women. The framing of responses in gender neutral terms limits their capacity to contain the pandemic and mitigate its adverse impacts. Women have historically been disadvantaged and borne the brunt of gender discrimination and inequality thus it is important to analyze how existing forms of gender inequality affect women's experiences of the pandemic. Further, COVID-19 is revealing specific ways in which men suffer discrimination on the basis of their gender, hence highlighting the importance of analyzing the impact of the pandemic using masculinity as a lens. Using several theoretical approaches and drawing from discussions with different stakeholders, this paper analyses the government of Kenya responses to the COVID-19 pandemic and reveals the ways in which those responses are gendered. It further makes proposals on how Kenya can be better prepared to address future pandemics and disasters, by addressing current forms of gender inequality and adopting gender analyses in interventions.

1.0 Background

The COVID-19 pandemic was confirmed as affecting Kenya on 12th March 2020.¹ Thereafter, the government announced a series of measures to help contain the spread of disease. These measures include self-isolation, social distancing, staying at home, observing hygiene by frequent cleaning of hands using alcohol-based sanitizer and water and soap, covering the nose and mouth with a flexed elbow or disposable tissue when coughing or sneezing and avoiding close contact with people who were suspected to have been exposed to the coronavirus.² Self-isolation or mandatory quarantine have been used to keep people suspected to have been exposed to coronavirus away from others to avoid infection owing to the highly contagious nature of the illness from both symptomatic and asymptomatic people.³ To minimize the likelihood of infections, crowded places including schools, offices, places of worship and other public spaces were closed.⁴ People were also required to avoid any social gatherings as these were viewed as promoting the spread of the virus.

On 27th March, 2020 a nationwide dusk to dawn curfew was further imposed, banning movement in the country from 7 pm to 5 am as an enhanced social distancing measure.⁵ On 6th April, 2020, a cessation of movement order was imposed for twenty one days, banning movement in and out of four counties: Nairobi, Mombasa, Kilifi, Kwale,. The counties affected were those that accounted for the highest numbers of people testing positive for the disease.⁶ On 23rd April, 2020, the cessation of movement order was extended to Mandera county where the rate of infection was rising.⁷ Movement during the nationwide curfew and cessation of movement order is allowed only for essential services, such transportation of food and medical supplies. People are however allowed to move freely within the counties and outside of the curfew period. On 6th May 2020, movement out of Eastleigh in Nairobi and Old Town, Mombasa was stopped on account of astronomical spikes in the levels of infections. The government has also adopted financial measures aimed at providing safety nets and social support to the most vulnerable groups, as well as cushioning all Kenyans from the economic impacts of the COVID-19 pandemic.⁸

1 Government of Kenya Ministry of Health, <https://www.health.go.ke/first-case-of-coronavirus-disease-confirmed-in-kenya/>.

2 Government of Kenya Ministry of Health, <https://www.health.go.ke/>.

3 Ibid.

4 Ibid.

5 Presidential Address on the State Interventions to Cushion Kenyans Against the Economic Impacts of COVID 19 Pandemic, 25th March 2020, <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/>.

6 Presidential Address of 6th April 2020, <https://www.youtube.com/watch?v=Xjaoaoriq1o>; President Kenyatta Urges Kenyans to Observe Government Directives on Coronavirus, <https://www.president.go.ke/2020/04/07/president-kenyatta-urges-kenyans-to-observe-government-directives-on-coronavirus/>.

7 Mandera Under Partial Lockdown as Kenya Covid-19 Cases Cross 300 Mark, <http://www.mygov.go.ke/index.php?act=article&id=158>.

8 Presidential Address on the State Interventions to Cushion Kenyans Against the Economic Impacts of COVID 19 Pandemic, 25th March 2020, <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/>.

While these measures apply equally to men, women, boys and girls, they have gender implications. Women and girls already experience sex discrimination, which results in inequalities between them and men and boys. The crisis has implications for existing sex inequalities, but it could also contribute to the development of new or different ways in which such inequalities present and are experienced. The crisis is a threat multiplier for women and girls. It is important to point out at the outset that the measures that Kenya has taken to curb the spread of the novel illness have had a number of impacts on the social, cultural, political and economic life of the country. These impacts are also gendered.

The health crisis is an extra-ordinary situation that has brought into sharp focus existing feminist analyses of social and gender relations. Interventions aimed at addressing its social, economic and political impacts of must necessarily take into consideration the gender dynamics and appreciate the skewed nature of these impacts, so as not to exacerbate inequality, marginalization and disadvantage.

Kenya has an obligation to ensure that the health crisis does not result in further marginalization and disadvantage for women. Kenya is a party to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)⁹, which create obligations for the state to protect, respect and guarantee the human rights of women and girls. Kenya has also committed to implement the Sustainable Development Goals (SDGs) under the United Nations Agenda 2030.¹⁰ Goal 5 seeks to achieve gender equality and empower all women and girls. At the domestic level, Article 27(4) of the Constitution of Kenya¹¹ prohibits discrimination on the basis of sex, and other provisions of the Constitution buttress Article 27(4). For instance, Article 60 requires the state to ensure that women have equal access to land; while Article 27(8) provides for proportionate gender representation in elective or appointive bodies. Against this backdrop, in 2019, Kenya adopted the National Gender and Development Policy, whose aim is to ensure gender equality and women's empowerment in the social, economic, political and cultural spheres as envisioned under the Constitution.

The health crisis poses a threat to the ability of the state to discharge its legal obligations under these International, Regional and national provisions. It is therefore necessary to support the state and other actors involved in the fight against the COVID-19, to ensure that their responses are gender sensitive.

9 African Union, (11 July 2003), *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, available at: <https://www.refworld.org/docid/3f4b139d4.html>.

10 UN High Commissioner for Refugees (UNHCR), (March 2017). *The Sustainable Development Goals and Addressing Statelessness*, available at: <https://www.refworld.org/docid/58b6e3364.html>.

11 *The Constitution of Kenya*, (27 August 2010), available at: <https://www.refworld.org/docid/4c8508822.html> [accessed 7 May 2020].

2.0 Problem Context: Gender Dimensions of the COVID-19 Pandemic

A. The Public/Private Divide

Responses to the health crisis have necessitated the closure of public spaces, thus leading to the merging of the public/productive and private/reproductive spheres of life. At the core of the public-private divide is the juxtaposition between the public realm of politics, law and market on the one hand and the private household, family and intimacy sphere on the other.¹² This divide delineates the issues in which the state may intervene or regulate and those which fall outside the state's intervention or regulation.¹³ Relegation of family issues to the private sphere entrenches gender and generational inequalities within the family, owing to the prevailing societal and cultural norms. Many legal systems do not provide for protection against domestic violence, considering this as a private matter within the private sphere, yet women and children disproportionately bear the brunt of domestic violence.¹⁴ Further, the non-recognition of household labour such as cooking, homemaking, nurturing and child bearing and rearing, puts it in the unpaid work category.¹⁵ This distinction is usually employed in framing issues of inequality in society.

Many of the gender dimensions of the global health crisis result from the merging of the public and private spheres. Feminist theories have long problematized the distinction between the public and private spheres of life, arguing that these spheres inform and influence each other, hence the distinction represents a false paradigm.¹⁶ The activities that happen in the public sphere, such as academic and professional work, are necessarily supported by the activities that happen in the private sphere, such as domestic work, provision of care, and overall social reproduction. In distinguishing between gender roles, women have traditionally been assigned roles that happen within the private sphere, such as child care and other household chores, while men have been assigned those that happen in the public sphere, such as work outside the home for financial and material provision. Consequently, the gender division of labour drawing from social construction of maleness and femaleness relegates women to the domestic sphere where private reproductive activities take place.¹⁷

The closure of schools, offices, areas of worship and other public spaces has meant that the home, which has traditionally been perceived as the private sphere, is now the physical space where all activities, both productive and reproductive, happen. The closing of places of work and attendant shifting of the locus of work from public office spaces to homes has brought great pressure to bear on families. Most men operate in the public/productive spaces outside

12 Gavison, R. (1992). Feminism and the Public Private Distinction. 45(1) *Stanford Law Review*, 1-45.

13 Ibid.

14 UN Women. (2019) *Progress of the World's Women 2019-2020*, UN Women.

15 Yavorsky, J. E., Dush, C. M., & Schoppe-Sullivan, S. J. (2015). The Production of Inequality: The Gender Division of Labor Across the Transition to Parenthood. *Journal of Marriage and the Family*, 77(3), 662-679. <https://doi.org/10.1111/jomf.12189>.

16 Gavison, R. (1992). Feminism and the Public Private Distinction. 45(1) *Stanford Law Review*, 1-45.

17 Yavorsky, J. E., Dush, C. M., & Schoppe-Sullivan, S. J. (2015). The Production of Inequality: The Gender Division of Labor Across the Transition to Parenthood. *Journal of Marriage and the Family*, 77(3), 662-679. <https://doi.org/10.1111/jomf.12189>.

the home. Women never shift their operation fully to the public/productive space even when they work outside the home.

The responsibility for keeping the household running inexorably falls on women who have to procure services of domestic workers to keep the home together.¹⁸ The procurement of domestic workers does not free women from the responsibility of managing the household and making sure that it runs.¹⁹ It is not unusual for women to seek time off work outside the home to provide care and nurture work particularly when a member of the family is unwell or the domestic worker is unavailable.²⁰

Closures of public spaces have moved work from the public realm to the private spaces for men and women blurring the boundaries between the private/reproductive and the public/productive. For domestic workers whose work, though performed in the private sphere is public/productive,²¹ the sphere of operation has become both crowded and stifled as people who should be at work and children who should be at school stay at home. The domestic workload has increased and women who ordinarily work outside the home find themselves having to straddle between their online work schedules, supervising children's schoolwork and providing supplemental domestic labour to maintain equilibrium at home. Care work and domestic labour are now undertaken concurrently with productive activities.

Having everybody at home brings its own share of stress. Not being able to leave home to socialize with friends can lead to stress and friction between members of the family. Domestic violence and mental health issues are likely to increase. This is compounded by the constrained economic space and the threat or actual loss of means of livelihood. There have already been reports of escalating cases of sexual and gender based violence (SGBV) and domestic violence and demand for shelters for victims of such violence.²² It should be noted that GBV trends in Kenya currently indicate that age and gender intersect in order to increase the vulnerability of girls and women to SGBV. Thus, girls younger than the age of 18 are at increased risk of such violence, but at the same time, older women are also increasingly vulnerable.²³ However, older women are less likely to report cases of violence against them, because of the social stigma that they might face, especially because the perpetrators are likely to be younger males who are closely related to them, such as their sons and grandsons.²⁴

18 Charmes, J. (2019). *The Unpaid Care Work and the Labour Market. An analysis of time use data based on the latest World Compilation of Time-use Surveys*. International Labour Organization, Geneva.

19 Ibid.

20 Ibid.

21 Armstrong, P. and Armstrong, H. (2005). Public and Private: Implications for Care Work. *The Sociological Review*, 53(2), 167-187.

22 Odhiambo, A. (8 April 2020). Tackling Kenya's Domestic Violence Amid COVID 19 Crisis. Human Rights Watch. <https://www.hrw.org/news/2020/04/08/tackling-kenyas-domestic-violence-amid-covid-19-crisis>; Obiria, M. (10 April 2020). Domestic Violence Amid COVID 19: Women Stuck with Abuse Partners in Curfews, Lockdown. Daily Nation. <https://www.nation.co.ke/gender/5362750-5520184-wkx0gy/index.html>.

23 Mutavati, A, Zaman, M, and Olajide, D. (5 May 2020) Fighting the Shadow Pandemic of Violence against Women and Children during COVID-19. ReliefWeb. <https://reliefweb.int/report/kenya/fighting-shadow-pandemic-violence-against-women-and-children-during-covid19>

24 Rugene, N. (31 July 2020). COVID-19: Elderly Women Facing Abuse in Silence, Daily Nation. <https://www.nation.co.ke/kenya/gender/covid-19-elderly-women-facing-abuse-in-silence-1910272>

In tandem with this, the closure of public spaces has also resulted in reduced social support for women, thereby further relegating women into the private sphere. Under ordinary circumstances, women form social support systems that enable them to address various challenges that they may face, such as the social, economic or family related matters.²⁵ These systems are provided through different women's groups, such as church groups, *chamas*, or other social and enterprise groups. These social support mechanisms also offer women spaces outside of the home and private sphere, and are often a window through which they are able to connect with the world outside their homes.²⁶ Self-isolation and social distancing requirements mean that these groups cannot meet hence there is a reduction in the social support mechanisms that women are able to access. Reduced social support might also contribute to increasing women's vulnerability to gender based violence (GBV). Moreover, women are the main audience in churches and participate in many church activities such as prayers, choir and visiting the sick. Social distancing that has led to the closure of places of worship has left women with no space to interact with others outside the home.

B. Prevailing Socio-Cultural Attitudes and Gender Norms

Socio-cultural attitudes about gender that prevail within the society are also apparent in the way in which the health crisis is currently being addressed in Kenya. Thus, women's rights organizations have noted the gendered framing of national messages that are addressed to 'country men'.²⁷ Implicit in this type of messaging is the notion that they target a "male subject," hence a denial of female subjectivity. Considering the extent to which the 2010 Constitution debunked gender neutrality and put mechanisms to assault gender discrimination and inequality, it is shocking that ten years on, women are still encased in 'men'. Moreover, the daily public briefings have featured mainly men. It is worth pointing out that there has been one prominent woman, a Chief Administration Secretary in the Ministry of Health, who has been part of the briefings. She has received a lot of positive comments but she has not been spared gendered comments with many men inquiring into her marital status and threatening to ignore her briefings on account of her statement that she has a partner.²⁸ The men who provide the briefings with her, who are her professional colleagues, have not been under pressure to disclose their marital status.

In addition, gender norms inform the ways in which some of the responses to the health crisis are enforced. Thus, police are more likely to use unnecessary force when dealing with men who flout various orders, such as the curfew and restriction of movement. While women are more likely to experience domestic and sexual and gender based violence, men might also face these forms of violence. However, men will be less likely to seek assistance because of the prevailing gender norms about masculinity, which hold that real men cannot be victims

25 Eudaimonia. Women's Groups: Developing Social Structures to Encourage Some of the Most Impoverished, Abused, and Traumatized Women to be Part of the Hakuna Matata Community, <https://www.eudaimonia-hmk.com/womens-groups/>.

26 Ibid.

27 Obiria, M. (24 march 2020). UN Chief Seeks Gender Responsive strategies on COVID 19. Daily Nation. <https://www.nation.co.ke/gender/UN-boss-seeks-gender-responsive-strategies/5362750-5501222-7gq04vz/index.html>.

28 Mwangi, E. (28 March 2020). Who is Dr. Mercy Mwangangi. Breaking News. <https://breakingnews.co.ke/who-is-dr-mercy-mwangangi/>.

of violence.²⁹ Conversely, these gender norms normalize male violence against women.³⁰ It is therefore imperative to understand how socio-cultural attitudes and gender norms operate during crisis and the types of experiences they produce for women, girls, men and boys.

C. Broader Human Rights implications

The health crisis also has implications for the gains that have so far been made towards safeguarding the human rights of women and girls. The closure of public spaces means that some of the critical spaces that work to promote the rights of women and girls are not functioning optimally. These spaces include schools, health centres, and the courts. Thus, the closure of schools pre-disposes the girl child to harmful cultural practices such as female genital mutilation and early and forced marriage, motivated by the need to secure economic resources through bride-wealth.³¹ The curfew and restriction of movement have also been reported to be clawing back at the gains that have been made with regard to reproductive health rights, because they discourage women from leaving their homes to seek medical assistance for reproductive health matters, such as antenatal care and child birth, preferring instead to stay and deliver at home. Another area that is likely to be affected is the women's rights under the law of succession. Kenya has achieved notable gains in the area of women's rights in inheritance and succession. The changes in burial protocols are likely to claw back on the gains. In the African context, burials represent a moment in time when decisions about succession, child custody, bride wealth and other matters concerning personal law are made.³² The burial protocols now limit the extent to which communities can meet in order to make these types of decisions, and this is likely to have a detrimental effect on women.

The uncertainty that people have had to get used to living with has created what people now refer to as the *new normal*. There are even those who opine that society has changed and will continue changing radically, never reverting to what it was before the onset of the COVID-19 pandemic. Gender norms and relations are already evolving in line with this *new normal*, resulting in new forms of gender inequality or different ways of experiencing existing inequalities. For example, with the shift towards using online platforms to work and learn from home, sexual harassment has now evolved, so that it is being experienced in different ways, through the online platforms. This means that interventions aimed at protecting the human rights of women and girls must therefore adapt to this new normal, if they are to be effective both during and after the health crisis.

29 Mayer, D.M. (October 08 2018). How Men Get Penalized for Straying From Masculine Norms. Harvard Business Review. <https://hbr.org/2018/10/how-men-get-penalized-for-straying-from-masculine-norms>.

30 Greig, A. (2016). Self-Learning Booklet: Understanding Masculinities and Violence Against Women and Girls. UN Women Training Centre. https://trainingcentre.unwomen.org/RESOURCES_LIBRARY/Resources_Centre/masculinities%20booklet%20.pdf.

31 OHCHR, Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children. https://www.google.com/search?rlz=1C1AZAA_enKE750KE750&ei=6zKtXv36BZ6GjLsP67WQyAQ&q=harmful+cultrual+practices%2Bwomen%27s+rights&oq=harmful+cultrual+practices%2Bwomen%27s+rights&gs_lcp=CgZwc3ktYWlQAzoFCAAQkQI6AggAOgQIABBDOgkIABBDEYQ-QE6BAGAEA06BggAEBYQHjOHCCEQChCgAToGCCEQChAVUKfuCljpvAtg68ELaABwAHgAgAGXB4gB0V-SAQwyLTiuM-TUuNS4xLjSYAQCGAQGqAQdnd3Mtd2l6&sclient=psy-ab&ved=0ahUKEwi9nM_x5JTpAhUeA2MBHesaBEkQ4dUDCAw&uact=5

32 Stamp, P. (1991). Burying Otieno: The Politics of Gender and Ethnicity in Kenya. *Women, Family, State, and Economy in Africa*. 16(4), 808-845.

3.0 Objectives

Using existing feminist theories and perspectives, this paper discusses the gender dimensions of the COVID-19 pandemic in Kenya; the gender specific ways in which the government responses to the pandemic affect women; entry points for CSOs in engendering the responses and makes recommendations as to how these impacts may be addressed through gender sensitive advocacy. The specific objectives are:

1. To highlight the implications of the measures that have been taken to address the COVID-19 pandemic on women; and Discuss theoretical perspectives and provisions of Kenyan policy and
2. To discuss theoretical perspectives and provisions of Kenyan policy and law that can be used in enabling gender sensitive advocacy.

4.0 Methodology

Feminist approaches and women's studies have been used to analyse the specific responses Kenya has taken to contain the spread of COVID-19. Feminist analyses of the Government of Kenya responses to the pandemic are used to determine how each response is likely to impact upon women and further to unmask the hidden gender dimensions of those responses. The study also uses feminist approaches to challenge dominant narratives in order to ensure inclusion of women's views at an early stage of policy formulation and implementation. These feminist approaches are further supported by the grounded theory approach whereby women are taken as the starting point in the analyses of the responses to the crisis. The capabilities approach is used to explain the specific ways in which the pandemic limits the opportunities that women have to pursue their well-being, while the human rights and development approach is used to make a case for the holistic protection of human rights and the need to guard against clawing back of the gains that have been made so far in protecting human rights. Intersectionality³³ is used to highlight the dangers of a one size fits all approach, and to demonstrate why gender analyses must also be understood in light of how they intersect with other axes of inequality. Thus, gender intersects with economic class to affect women from low income groups in different ways from more economically empowered women. Gender also intersects with disability to produce unique experiences for women and girls with disabilities. Ethnicity and religion also intersect with gender to produce different types of experiences for women in different regions of the country. In Mandera for instance, the limitation of movement and partial lockdown is likely to affect women in that county differently from how those measures affect women in Nairobi and Mombasa. Intersectionality is therefore a framework that enables us to understand the way in which the multiple identities of women operate to produce their lived experiences. Masculinity is also used as framework of analysis in order to demonstrate how the gendered nature of the responses to the crisis affects men, and how this in turn might affect women. A focus on masculinity in this context therefore supports the notion of holistic protection of all

33 Crenshaw, K. (1989). Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *University of Chicago Legal Forum, Special Issue: Feminism in the Law; Theory, Practice and Criticism*, 139 – 168.

human rights for all people, as a means of ensuring that the rights of women and girls continue to be promoted. The global health crisis has highlighted the equality of all human beings with regard to susceptibility to its effects albeit with varying impacts predicated on the abilities of and resources available to individuals.

Specific research methods used include: desk review and textual analysis of the pieces of legislation and executive orders that contain the Government of Kenya responses to the COVID-19 pandemic. Analysis of media reports on the crisis is also applied. Mainstream and social media reports form an important source of information about the crisis, under the current constrained conditions, where it is not possible to use the usual methods of conducting research and gathering information. The study also relies on informal discussions with women. Observation is also used a method of gathering data, and in particular, taking note of the way in which social life has changed since the onset of the crisis. Finally, technology is used to assist the researchers to conduct the study and attend relevant webinars, given the limitations of doing research under the restrictions imposed by the responses to the crisis.

The study also collected data using an electronic research tool, administered to civil society organizations operating at county level and which are supported by AHADI. The aim of using this electronic research tool was to collect data specific to the counties, which could inform our understanding of how the National Government responses to COVID-19 have been implemented at county level and any unique circumstances arising out of the crisis at the county level.

5.0 Theoretical Perspectives

A. Feminist Theories and Women's Studies

Feminist theories and women's studies have debunked the idea of gender neutrality and exposed the ways in which women and men have different lived realities.³⁴ Further, feminist theories have demonstrated that male experiences are dominant, and they form the lens through which the world is generally understood, and as a consequence of this, women's experiences are largely hidden.³⁵ The aim of feminist theories is to make women's lived experiences visible, and to use them as a different way through which our world might be explained and understood. In the context of male dominance, responses to COVID-19 envision a male subject, and are therefore tailored towards this male subject. This means that male experiences are easily visible, and this may result in the presumption that these male experiences mirror those of women.

Feminist theoretical perspectives are used to debunk this position and to make women's lived realities and experiences of the crisis visible. Feminist theories necessarily call for gender sensitivity in the formulation and implementation of law, policy and other interventions. The crisis has necessitated the passing of legislative and policy measures, and from a feminist

34 Kameri-Mbote, P. (2013). *Fallacies of Equality and Inequality: Multiple Exclusions in Law and Legal Discourses*. Inaugural Lecture, University of Nairobi;

35 Naffine, N. (1990). 'The Man of Law' in Ngairé Naffine (Ed) *Law and the Sexes: Explorations in Feminist Jurisprudence*, Allen and Unwin, 100-123; Mackinnon, C. (2005). *Women's Lives, Men's Laws*, Belknap Press.

perspective, these measures should be subjected to a gender analysis in order to identify how they are likely to impact men and women differently. Such an analysis can help flag the possible ways in which legislation and policy addressing the crisis might contribute to inequalities between men and women, and further how such a situation may be allayed.

Kabira and Masinjila³⁶, argue that it is important for stories told to reflect varied experiences of men, women, boys and girls. They make the case for textual analysis to facilitate understanding and analysis of any story told in a textbook, a process that they refer to a narratological analysis. Narratological analysis, in their view, illuminates both the story and the process through which the story has been transmitted, recognizing that stories contain within them “a gendered perspective that purports to mirror the reality of that which is written about, that which is spoken about and that which is visualized.”³⁷ This perspective is very important in the analysis of experiences of the crisis by men and women as it is likely to elicit different parameters and understandings.

B. Capabilities Approach

The capabilities approach as developed by Sen³⁸ and Nussbaum,³⁹ buttresses the feminist theories. In this context the focus is what women are able to be and do (being and doing), and how this impacts the life they are able to lead. What one can be and do is determined by their capabilities. The primary focus is therefore on the capabilities, which are the opportunities one has to enable her to be and do certain things that can enhance her quality of life. In analyzing what one is able to be and do, the focus is on the extent to which they have achieved well-being; capabilities on the other hand focus on the freedoms and opportunities that one has to pursue their well-being. Gender inequality limits the opportunities and freedoms women have to pursue a better and meaningful life for themselves. In the context of COVID-19, there is a further limitation of opportunities and freedoms to pursue well-being because gender inequalities may be exacerbated by both the disease burden and measures adopted to address it. Thus for example, the merging of the public/productive and private/reproductive spheres is likely to worsen the existing situation whereby women are saddled with care work, thus limiting the extent to which they are able to engage in income generating activities.

C. Human Rights and Development

In his work, *Development as Freedom*, Sen⁴⁰ argues for the need to see human rights and freedoms both as means to and ends of development. Consequently, by promoting human rights and freedoms, states effectively work towards the attainment of development, by creating opportunities for people to pursue their well-being. Conversely, human rights and

36 Kabira, W. and Masinjila, M. (1997). *ABC of Gender Analysis*. Forum for Africa Women Educationalists.

37 Ibid. pp 11.

38 Sen, A. (1984). Rights and Capabilities. *Resources, Values and Development*, Cambridge, MA: Harvard University Press. 307–324; Sen, A. (1985) *Commodities and Capabilities*. North-Holland, Amsterdam; Sen, A. (2005). Human Rights and Capabilities. *Journal of Human Development*, 6(2), 151–66.

39 Nussbaum, M. (2000). *Women and Human Development: The Capabilities Approach*, Cambridge: Cambridge University Press; Nussbaum, M. (2003). Capabilities as Fundamental Entitlements: Sen and Social Justice. *Feminist Economics*, 9(2/3), 33–59.

40 Sen, A. (1999). *Development as Freedom*. Anchor Books, New York.

freedoms are also the products of development, and therefore development creates an enabling environment in which people are able to pursue their well-being. In addition, if human rights and freedoms are promoted during normal times, then it is more likely that states will be able to deal with extra ordinary situations, such as famines, disasters and pandemics. What this tells us is that gender inequalities that existed before the onset of the COVID-19 pandemic are likely to weaken state responses to the pandemic and further that women are likely to emerge from the pandemic in a worse off state, thus further entrenching the inequalities between them and men. This will have a social, political and economic cost to the nation, and might result in slowed down recovery of all these spheres of life after the pandemic.

From a human rights perspective, disasters of different kinds generally pose a threat to human rights, and indeed might lead to situations where human rights are suspended or violated with impunity. This might be justified as being necessary in order to allow for effective responses to the disaster or pandemic. In Kenya, this has been witnessed with regard to the specific containment measures that the state has taken. For example, police brutality was witnessed when the curfew was first introduced, with defaulters being treated in inhumane ways by the police, and this was justified as necessary for purposes of enforcing the curfew.⁴¹ However, human rights theorists argue that in fact the limitation of human rights during periods of disasters or pandemics might do more harm than good. Human rights violations might be normalized, and thus returning to the rule of law and respect for human rights once the disaster or pandemic is over might be difficult. Consequently, rather than limit, suspend or neglect human rights during the COVID-19 pandemic, human rights theories indicate that there is even more impetus to protect and promote these rights during this time, as this will aid recovery after the pandemic.⁴²

In addition to the violation of human rights, scarce resources might be channeled towards addressing the disaster or pandemic, while neglecting other aspects of human well-being. There might be a temptation for states to channel fewer resources toward the enforcement and implementation of human rights. In terms of women's human rights, this might mean that there will be limited resources availed for promoting these rights. In Kenya, this is a real challenge, because even before the crisis, there were suggestions that one way of reducing the country's wage bill was to cut back on some of the measures that have been taken to promote gender equality and inclusivity.⁴³ In particular, there was a suggestion that reducing the number of elective positions set aside for women might help reduce the wage bill.⁴⁴ It is therefore necessary to guard against such claw-back proposals.

41 Wasike, A. (16 April 2020). Kenya Police Kill More During Curfew than COVID 19. *AA News*. <https://www.aa.com.tr/en/africa/kenya-police-kill-more-during-curfew-than-covid-19/1807930#>; *Civil Rights Defenders*. (28 April 2020). Wave of Violence as Kenyan Police Enforce Dusk-to-Dawn Curfew. *Civil Rights Defenders*. <https://crd.org/2020/04/28/wave-of-violence-as-kenyan-police-enforces-dusk-to-dawn-curfew/>.

42 Kenya Human Rights Commission. (3 April 2020). Responses to COVID 19 Situation in Kenya. *Press Release by Kenya Human Rights Commission*. <https://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/711-reponses-to-the-covid-19-situation-in-kenya.html>.

43 Odhiambo, M. (16 July 2019). MPs Want to Get Rid of 47 Woman Reps. *The Star*. <https://www.the-star.co.ke/news/2019-07-16-mps-want-to-get-rid-of-47-woman-reps/>

44 Ibid.

Further, it should be noted that Kenya is in the midst of dealing with other disasters, such as floods, landslides, cholera outbreak, locust invasion as well as famine.⁴⁵ These other disasters if not properly addressed are likely to weaken the effectiveness of the responses to the COVID-19 pandemic and also adversely affect recovery efforts. For instance, where communities are facing starvation as a result of harsh weather conditions, it is unlikely that they will adhere to the curfew and restriction of movement measures.⁴⁶ The country has also witnessed the provision of relief food and other items being done in a manner that does not adhere to social distancing protocols.⁴⁷ From a human rights and development approach, the call is for the state to ensure that all disasters are holistically addressed, rather than focusing on one that seems to have the most adverse effects and threats. Socio-economic rights, particularly the rights to food, shelter, water, sanitation, health care and education must receive sufficient attention even as the state battles the COVID-19 pandemic.

D. Intersectionality

As an approach that critiques mainstream feminist analyses as well as anti-racist discourse, intersectionality was originally developed to problematize the situation of Black Women in the United States of America. Crenshaw's⁴⁸ work demonstrated that mainstream feminist analyses did not respond to the unique circumstances of Black Women, and instead these analyses focused on the experiences of White Women. On the other hand, critical race studies focused on the experiences of Black Men to the exclusion of Black Women. Consequently, Black Women were marginalized within marginality. Even in discourses that were aimed at challenging exclusion and discrimination, dominance was apparent. In feminism, the experiences of White Women were dominant. In critical race studies, the experiences of Black Men were dominant.

Intersectionality has evolved to become an important framework of analysis in the African context. The experiences of African women are also shaped by other axes of identity, such as ethnicity, economic class, disability, age and religion. The gendered impacts of the responses to COVID-19 are therefore not solely informed by gender, but rather, gender intersects with other axes of identity to produce particular types of experiences. For instance, it is likely that women and girls with disabilities will face a greater risk of GBV as compared to women without disabilities, because even during normal times, their risk of GBV is higher. Women and girls with disabilities will however, be less likely to report cases of GBV because the legal system is generally not very accessible to them.⁴⁹ This is further compounded by the protocols altering the way in which justice is administered during the crisis. While women generally face

45 Sky News. (3 May 2020). *More Than 100 dead After Flooding and Landslides in Kenya*. Sky News. <https://news.sky.com/story/more-than-100-people-dead-after-flooding-and-landslides-in-kenya-11982357>; Siele, M. (20 April 2020). *Pain as Deadly Flood Hit Kenya During COVID-19*. *Kenyans.co.ke*. <https://www.kenyans.co.ke/news/52267-pain-deadly-floods-hit-kenya-during-covid-19-photos-video>

46 Ibid.

47 Africanews. (11 April 2020). *COVID 19: Mad Rush for Food Aid in Kenya Creates Stampede*. *Africanews*. <https://www.africanews.com/2020/04/11/covid-19-mad-rush-for-food-aid-in-kenya-creates-stampede/>

48 Crenshaw, K. (1989). *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*. *University of Chicago Legal Forum, Special Issue: Feminism in the Law; Theory, Practice and Criticism*, 139 – 168.

49 Aloo, C.A. (2014). *Study on Gender Based Violence Against Women and Girls with Disabilities in Kenya*. Women Challenged to Challenge. <https://namati.org/wp-content/uploads/2015/06/WCC-GBV-Study-Report.pdf>.

limited access to the courts at this time, for women and girls with disabilities the shift to online platforms might further lock them out of accessing justice, because there are no clear measures that have been taken to ensure accessibility and inclusivity for differently abled users.

Women from minority and marginalized communities are also likely to experience the effects of the COVID-19 pandemic more acutely than women from other ethnic communities. Under normal circumstances, minority and marginalized communities in Kenya have struggled to achieve equality, and in some instances, they state has blatantly ignored them.⁵⁰ The reach of essential services to these communities is therefore limited. Further, discussions around equality for these communities has taken masculine experiences as the starting point, a situation which is largely contributed to by the fact that men tend to take up the key roles as political representatives.⁵¹ Women from these communities have minimal access to the state and with entrenched customary norms that are discriminatory on the basis of gender, they lack the opportunities to agitate for gender equality. The pandemic is likely to worsen the position of women from minority and marginalized communities.

E. Masculinity

In addressing the gender dimensions of the COVID-19 pandemic, it is necessary to also highlight how men have been affected. Gender in this context therefore refers to those experiences that an individual is likely to have as a result of being either male or female. It means that in this time of the health crisis, men have specific experiences that are informed by their masculinity. It is important to give the narrative of male experiences, because this will contribute towards strengthening human rights protections. Further, there has been a concern that much work on gender focuses only on women's and girls' experiences, thus neglecting men and boys.⁵² In the context of the health crisis, we have seen so far that existing exclusions might be exacerbated. The Gender Directorate of the Ministry of Public Service and Gender has noted that while the bulk of domestic violence incidences have been reported by women, men are also increasingly reporting incidences. It is therefore necessary to take deliberate measures to address all forms of exclusions, and to address them in a holistic manner. Thus, this paper will also highlight and analyze masculine experiences of the pandemic from a gender perspective.

6.0 National Government Responses to the COVID-19 Pandemic and their Gendered Impacts

At national level, the government of Kenya has taken several measures to contain the pandemic. These measures are anchored in various sections of Kenya's law and are multi-faceted, and they include: public health regulations, behavior protocols, economic and financial measures, public order regulations, and regulations on administration of justice.⁵³ This section discusses the gender impacts of these interventions.

50 Young, L.A. (2012). *Challenges at the Intersection of Gender and Ethnic Identity in Kenya*. Minority Rights Group International.
51 Ibid.

52 Romaniuk, S., & Wasylciw, J. (2010). 'Gender' Includes Men Too! Recognizing Masculinity in Security Studies and International Relations. *Perspectives*, 18(1), 23-39. Retrieved May 2, 2020, from www.jstor.org/stable/23616076

53 See catalogue of responses as documented by kenyalaw.org. Public Legal Information on Kenya Response to COVID 19. <http://kenyalaw.org/kenyalawblog/kenyas-response-to-covid-19/>.

A. Public Health Interventions

The Public Health Regulations 2020 for quarantine and isolation for persons who are suspected to have been exposed to the coronavirus. In practice, persons who are held in a quarantine facility are required to pay for the costs of quarantine. From a gender perspective, women generally have less access to economic resources as compared to men, and they are also less likely to make decisions about household finances. This means that women who are held in quarantine facilities are less likely to be able to meet the costs associated with the quarantine. It is heartening to note that the Ministry of Health has responded to these financial implications by undertaking to pay these costs for all persons. In practice however, the quarantine facilities do not have separate spaces for men and women. Men and women share the facilities, thus making the women held in these facilities vulnerable to sexual violence and other forms of predations. The removal of women to quarantine facilities also has implications from a care perspective, because women are in most circumstances the primary care-givers within the family, hence their removal from home and confinement in quarantine facilities is likely to affect the family's well being. Women with nursing babies are either separated from the babies or take them to the facilities. The conditions in the facilities may not be conducive to taking care of babies. Dealing with the stress of waiting for testing, escalating bills and concerns about the home makes women's experiences of quarantine warrant special attention.

B. Social Support Measures

These were announced during the presidential address on the state interventions to cushion Kenyans against the economic effects of the COVID-19 pandemic on 25th March⁵⁴ and 25th April 2020.⁵⁵ They include the provision of Kshs. 2000 social support payments to the most vulnerable groups. It is necessary to analyze how women might spend the funds they receive for social support, given that many women do not have the agency and autonomy to make decisions about the distribution and use of household income. Further, the funds are disbursed through mainstream banks, which might not be easily accessible to many women. Women also use their finances in different ways from men. For instance, in the context of hygiene protocols, and the gender division of labour, women are likely to use the income they receive for the purchase of sanitizer, soap and water, taking resources from other needs that they must provide for such as food. Moreover, provision of essential supplies is currently not taking into consideration gender specific needs. The packs that are currently being distributed to the most vulnerable groups include food and medication, but items such as sanitary towels, baby food and diapers are not included. This means that women have to use cash allocated for food to procure these goods. There is clearly need for gender disaggregated data and gender analyses of beneficiaries of essential supplies and cash grants to determine allocations and facilitate proper planning.

54 Presidential Address on the State Interventions to Cushion Kenyans Against the Economic Impacts of COVID 19 Pandemic, (25 March 2020). <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/>.

55 President Uhuru Assents to Tax Law (Amendment) Bill, 2020, <https://www.president.go.ke/2020/04/25/president-kenyatta-assents-to-the-tax-laws-amendment-bill-2020/>

C. Tax Measures

These include 100% waiver of tax for persons earning less than Kshs. 24,000; and the reduction of PAYE from 30% to 25%. While indeed commendable, these measures might not ameliorate the situation for many Kenyans and women in particular. Most women are employed in the informal sector, and statistics indicate that many of them are employed as casual labourers, domestic workers or small-scale traders. According to the World Bank, the Kenya National Bureau of Statistics reported in 2014 that the informal sector accounted for 82.7% of employment in the country.⁵⁶ The World Bank further reports that men account for a majority of those employed in the informal sector and further that employment in the informal sector is associated with much lower levels of poverty as compared with work in the agricultural sector, which is considered the mainstay of Kenya's economy.⁵⁷ Indeed, the casual nature of employment relationships in this sector means that there are certain protections that workers do not have. From a gender perspective, one such protection would be guaranteed and paid maternity leave. The World Bank statistics which indicate that there are more men employed in the informal sector⁵⁸ might point to the challenges that women face making them not stay in this sector, given their roles as mothers, wives and care-givers. However, the fact that this sector is associated with lower levels of poverty means that it has great potential in promoting women's economic empowerment.

The measures taken to address the health crisis have had a significant impact on Kenya's informal sector, and in particular, for women, these measures have made it more difficult to work within this sector. To a large extent, informal employment in Kenya mirrors traditional gender roles, so that women will generally work informally within the domestic set up, while men work in more public spaces. Thus, much of the work that women do within the informal sector relates to the provision of care and domestic labour.⁵⁹ Due to the closure of public spaces, opportunities for domestic work and child minding have significantly reduced, meaning that many women do not now have access to employment opportunities.

These closures have meant that women who would be going out to work are now staying at home, and coupled with the need to self-isolate and maintain social distance, opportunities for domestic work have significantly reduced. Bearing in mind that women are already economically worse off as compared to men,⁶⁰ this means that these economic impacts are likely to affect women more severely than men. Reduced economic activities for women affect the family unit overall, because existing research in the area of women's economic empowerment indicates that women tend to spend their income towards improving life for their families.

Thus, women are likely to spend their income on food, shelter, education and health. Consequently, when women are unable to earn an income, their families are likely to lack these basic needs. Women are therefore unlikely to benefit from the measures taken by the

56 World Bank. (2016). *Informal Enterprises in Kenya*. World Bank, Washington, DC. <https://openknowledge.worldbank.org/handle/10986/24973>.

57 Ibid.

58 Ibid.

59 Oxfam. (2017). *Women and unpaid Care Work: Rapid Care Work Analysis in Nairobi Informal Settlements*. Oxfam. https://cng-cdn.oxfam.org/kenya.oxfam.org/s3fs-public/file_attachments/Women-Unpaid-CareWork_Report-Publish.pdf.

60 UN Women. (2018). *Facts and Figures: Economic Empowerment*. UN Women. <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>.

government to cushion Kenyans from economic impacts of the pandemic because they work in the marginal spaces that are largely unregulated. While under ordinary circumstances women are already limited from seeking employment in the informal sector because of the precarious nature of that employment, it is likely that the responses to the pandemic will make it even more difficult for women to work in this sector both during and after the crisis. It is therefore necessary to consider taking measures that will cushion workers in the informal sector, as this is also likely to benefit more women in the country. It should however be noted that the reduction of VAT from 16% to 14% might have a positive impact enabling households to buy basic goods at reduced prices.

D. Easing Restrictions to open the Economy

The government further announced the easing of restrictions to open up the economy, which would allow some businesses to open. However, these businesses are required to strictly observe set guidelines on hygiene and social distancing, along with initial and regular testing of staff. Most micro and small enterprises (MSEs) in the country are unlikely to have the capacity to implement these guidelines and will therefore be unable to open. Many women work within the MSEs and they are therefore unlikely to benefit from the easing of restrictions.⁶¹

E. Behaviour Protocols

The measures under this rubric have been discussed above. They require individuals to maintain social distance of a meter or more between them and to avoid unnecessary movement, hence the encouragement to stay at home. The need to maintain social distancing has been the basis for the closure of many public spaces, including schools and offices. President Uhuru Kenyatta ordered the closure of schools on 15th March 2020,⁶² and on 29th May 2020, the Cabinet Secretary for Education indicated that as a result of the growing impacts of the COVID-19 pandemic, the closure of schools could be extended.⁶³ On 6th June 2020, the President announced that the Ministry of Education would roll out a programme for the re-opening of schools from 1st September 2020.⁶⁴ The extended closure of schools is likely to increase the vulnerability of girls of school going age to GBV and harmful cultural practices. So far, in spite of alarming reports concerning the effect of school closures on girls,⁶⁵ measures have not been taken to ensure their protection from the growing threats of GBV and harmful cultural practices. Consequently, when schools re-open, there is likely to be fewer girls reporting back, and this will therefore claw back on the gains Kenya has made in enhancing education for the girl child.

61 World Bank. (2016). *Informal Enterprises in Kenya*. World Bank, Washington, DC. <https://openknowledge.worldbank.org/handle/10986/24973>.

62 Mboga, J. (15 March 2020). Uhuru Orders Schools to be Closed to Curb Coronavirus Spread. *Standard*. <https://www.standardmedia.co.ke/article/2001364357/uhuru-orders-schools-to-be-closed-to-curb-coronavirus-spread>.

63 Mboga, J. (29 May 2020). Schools May Remain Closed Beyond June 4- Magoha. *Standard*. <https://www.standardmedia.co.ke/article/2001373213/schools-may-remain-closed-beyond-june-4-magoha>.

64 8th Presidential Address on Coronavirus Pandemic, 6th June 2020. <https://www.president.go.ke/2020/06/06/the-eighth-8th-presidential-address-on-the-coronavirus-pandemic-state-house-saturday-june-6th-2020/>.

65 Odhiambo, A. (15 April 2020). How Girls Education and Safety will be Harmed by COVID Response. *Human Rights Watch*. <https://www.hrw.org/news/2020/04/15/how-girls-education-and-safety-will-be-harmed-covid-response>; UNESCO. COVID 19 Educational Disruption and Response. <https://en.unesco.org/covid19/educationresponse/>.

Within the family set up, social distancing measures that require individuals to maintain at least one meter of physical distance between them are impractical in African family set ups where communal meal times and sharing is the norm. Indeed the spiking of infections in Eastleigh is attributable to social mores of sharing food *Iftar* (meal eaten by Muslims at sunset) during Ramadhan.⁶⁶ The enforcement of physical distancing in small spaces within households in huts or structures in informal settlements is also not practically feasible. Allowing people to move during the day is self-defeating in a sense and cannot protect the household as those who leave the home may be exposed to the virus. Staying at home is also not practical for many households that depend on a daily wage.

Social distancing has also been enforced through Public Health Regulations on burials, which limit the number of persons allowed to attend burial ceremonies. This affects both people that die of the novel illness and those that die from other causes. Burials raise specific issues for widows relating to property, children, cultural rites and could affect women's agency and capabilities. The limitation in the number of people at funerals denies women availability of their social support network as the people chosen may be limited to the kinsmen. The effect of the burial protocols that require social distancing might lead to the disenfranchisement of widows, who are left without vital social support networks and access to mechanisms through which their concerns relating to burial rites, property, inheritance, child custody and related issues might be addressed.

The effects of social distancing in the household unit are also likely to have an impact on people who need extra care, such as persons with disabilities. For persons with psychosocial disabilities, social distancing within the home may upset their daily routines and therefore cause the disabilities to manifest even more acutely. This might increase the risk of GBV and domestic violence against persons with disabilities. Women and girls with disabilities generally face a greater risk of violence, and the effects of social distancing within the home are likely to increase this risk. The provision of care for persons with disabilities is also affected by social distancing measures, whereby care needs are now largely met by the family. Access to the market for the provision of care is greatly limited, hence increasing pressure on the family to provide the care. As noted, women are mainly the primary care givers, and this is therefore likely to increase their workload. Where it is women and girls who require care due to disabilities, it may not be readily available within the family due to prevailing gender norms that assign women as care givers rather than recipients of care, in which case the market is largely relied upon to provide the care. Social distancing has reduced the extent to which the market may be relied upon to provide care for women and girls with disabilities, but at the same time prevailing gender norms further limit the provision of such care within the family.

F. National Hygiene Programme

Hand-washing is encouraged as a basic containment measure. However, this requires water, which is already a scarce commodity that is also not readily accessible or affordable. Women

⁶⁶ Namlola, J. (7 May 2020). Eastleigh Lockdown: Residents Wake up to 11 Roadblock. *Daily Nation*. <https://nation.africa/kenya/counties/nairobi/eastleigh-lockdown-residents-wake-up-to-11-roadblocks--487486>.

are responsible for the provision of water for household uses,⁶⁷ but the increased demand for water means that it has become even more scarce, thus increasing the pressure that women face in providing this commodity, and further increasing their workload. Regular hand-washing also means that households now require more water, and this might not be practical, since water must still be used for other chores, such as cooking and cleaning. Under the prevailing gender norms and gender division of labour, ensuring hygiene has traditionally been viewed as women's work. Thus, women are now also responsible for ensuring that hygiene is actually observed within the family, which further increases their workload. The proposal by the President to introduce broad based hygiene measures through a national programme providing employment should be implemented with gender considerations in mind. It should not exclude women who have traditionally been the custodians of domestic hygiene.

G. Public Order Interventions

Legal Notice 57 of 2020 provides for the nationwide dusk to dawn curfew from 7pm-5am, while Legal Notice 50 of 2020 provides for the restriction of movement of persons. The restriction of movement orders affected Nairobi, Mombasa, Kilifi, Kwale and Mombasa. On 6th May 2020, the CS for Health ordered the cessation of movement into and out of Eastleigh in Nairobi and Old Town in Mombasa.⁶⁸ On 7th June 2020, the President announced the varying of the nationwide curfew, so that it runs from 9pm-4am, in order to allow for a full working day; opening up Kilifi and Kwale counties and also lifting the restriction of movement order for Eastleigh and Old Town.⁶⁹ On July 6th 2020, the restriction of movement into and out of Nairobi, Mombasa and Mandera was lifted.⁷⁰

The consequence of these regulations is to limit the freedom of movement. The gender implications of these regulations are diverse and varied. The restriction of movement had the potential to destabilize relationships within families, with the long separation period affecting marriages negatively. Further, women are more likely to stay at home and limit their movement, even when movement might be necessary for the provision of essential services. Thus, for instance, agricultural workers and market sellers, the bulk of whom are women, might reduce the amount of time they spend working, and this in turn impacts the production and sale of food. This therefore has a negative impact on food security. The varying of the curfew to provide for a longer work day is likely to have a positive impact on women, particularly those who work in the agricultural sector, by allowing them to begin the productive activities before dawn and to end at dusk.

The curfew also aggravates social and familial relationships, because some individuals might exploit the curfew and the restriction of movement to avoid going home. Further, where provision of material and financial support to the family is adversely affected due to the

67 Hellum, A, Kamari-Mbote, P and Koppen, B. (2015) *Water is Life: Women's Human Rights in National and Local Water Governance in Southern and Eastern Africa*, North South Book Series, Weaver Press, Harare .

68 Capital New. (6 May 2020) Government Declares Lockdown in Eastleigh and Old Town in Mombasa. *Capital New*. FM <https://www.capitalfm.co.ke/news/2020/05/govt-declares-lockdown-in-eastleigh-and-old-town-in-mombasa/>

69 8th Presidential Address on Coronavirus Pandemic, 6th June 2020. <https://www.president.go.ke/2020/06/06/the-eighth-8th-presidential-address-on-the-coronavirus-pandemic-state-house-saturday-june-6th-2020/>.

70 9th Presidential Address on the Coronavirus Pandemic, 6th July 2020. <https://www.president.go.ke/2020/07/06/the-ninth-9th-presidential-address-on-the-coronavirus-pandemic-harambee-house-nairobi-monday-july-6th-2020/>

economic impacts of the closure of public spaces, the family set up might be put under a lot of strain. This thus means that there are economic and psychological impacts to the family, which might be manifest in a number of ways, such as increased incidence of domestic and gender based violence, domestic violence and sexual violence. Reports indicate that currently, the rates of GBV are increasing, with most victims being women. The most common form of violence that is currently being witnessed is domestic violence, involving physical and sexual abuse. This may be attributed to the stress that individuals are currently facing as a result of restrictions in movement and having to stay at home over a long period of time. Further, the patriarchal norms that normalize violence as acceptable masculine behaviour have contributed to increased cases of domestic violence and GBV.⁷¹ With restrictions in movement, and closure of most public spaces where victims of GBV would ordinarily seek refuge, it is also difficult for victims of violence to seek assistance.⁷² It should be noted that men can also be victims of such forms of violence, but prevailing gender norms and social attitudes limit the extent to which they can admit to being victims and reporting the violence.

It is also notable that men have experienced severe backlash and police brutality for flouting the public order regulations on the curfew and restriction of movement.⁷³ Thus, police are more likely to treat men who breach these rules more harshly, and such treatment is motivated by their gender. Consequently, men are more likely to experience the violations of their fundamental rights and freedoms if they fall afoul of these regulations.

H. Administration of Justice

The state ordered the physical closure of courts, while encouraging courts to continue handling matters through online platforms. This means that access to justice is generally limited. Women have been shown to have trouble accessing courts during normal times, due to such issues as having to travel long distances to access court stations; low literacy levels as well as the expenses involved in filing matters in court.⁷⁴ The shift toward online platforms might make the courts even more inaccessible for many women. The shift to online platforms raises other issues that prevent easy access to the courts such as: technological illiteracy; changes in modes of notice, service and preparation of court documents; and changes in the mode in which matters are heard and court decisions delivered.

71 Smart, C. (1989), *Feminism and the Power of Law*, Routledge 1989; Gender-Based Violence in Kenya, <http://www.womankind.org.uk/wp-content/uploads/2012/03/FIDA-Kenya-Report-on-Gender-Based-Domestic-Violence-in-Kenya.pdf>.

72 Odhiambo, A. (8 April 2020). Tackling Kenya's Domestic Violence Amid COVID 19 Crisis. *Human Rights Watch*. <https://www.hrw.org/news/2020/04/08/tackling-kenyas-domestic-violence-amid-covid-19-crisis>; Obiria, M. (10 April 2020). Domestic Violence Amid COVID 19: Women Stuck with Abuse Partners in Curfews, Lockdown. *Daily Nation*. <https://www.nation.co.ke/gender/5362750-5520184-wkx0gy/index.html>.

73 Wasike, A. (16 April 2020). Kenya Police Kill More During Curfew than COVID 19. *AA News*. <https://www.aa.com.tr/en/africa/kenya-police-kill-more-during-curfew-than-covid-19/1807930#>; Civil Rights Defenders. (28 April 2020). Wave of Violence as Kenyan Police Enforce Dusk-to-Dawn Curfew. *Civil Rights Defenders*. <https://crd.org/2020/04/28/wave-of-violence-as-kenyan-police-enforces-dusk-to-dawn-curfew/>.

74 Office of the High Commissioner on Human Rights. (2010) *Understanding Women's Access to Justice: A Briefer on Women's Access to Justice*. OHCHR. <https://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/WomensLegalAndHumanRightsBureau.pdf>.

Besides, limited access to courts has implications for people who may have problems relating to deceased person's burial sites, property and other related issues. The rules on burial do not anticipate such disputes, which take more time than what is allowed. Much work has been done to ensure that women benefit from equal rights to inheritance, as in the case of *Joshua Kiprono Cheruiyot v Rachel Cherotich Korir*,⁷⁵ which was determined after the promulgation of the 2010 Constitution, and where the judge ordered that the estate of the deceased be distributed equally among the eight male and female children of the deceased. Under circumstances where women have limited access to the courts, there is a danger that the customary norms that deny women equal rights in matters of personal law may go unchecked. The same is true for other issues such as divorce, child custody, domestic and gender based violence, whereby limited access to the courts means that women may not have these matters resolved, or the justice may be delayed.

I. Closure of the Kenya-Tanzania and Kenya-Somalia Border Points

On 16th May 2020, Kenya closed its borders with Tanzania and Somalia.⁷⁶ This order provided for cessation of movement of passenger ferrying vehicles across Kenya's international borders with Tanzania and Somalia, with the exception of cargo vehicles. All cargo vehicle drivers were however required to undergo mandatory testing for the novel illness and would only be allowed into Kenya if they tested negative. This order greatly affected long distance truck drivers, who are mostly male. Their income generating activities were negatively impacted, with many facing the challenge of delayed deliveries of the goods and perishable goods going bad.⁷⁷ Further, they also faced the challenge of delayed reunion with their families, thereby contributing to strenuous relationships within the family.

J. The Second Economic Stimulus Package

This package was unveiled by President Uhuru Kenyatta on 23rd May 2020.⁷⁸ It provides for 8 specific measures aimed at reducing the adverse effects of the global health crisis on Kenya's economy. The 8 measures include: improving roads and infrastructure; improving education outcomes; enhancing SMEs liquidity; improving health and social protection; agriculture and food security; tourism; improving environment, water and sanitation; and supporting manufacturing.

With regard to improving roads and infrastructure, tourism and improving environment, water and sanitation, this second stimulus package aims to create employment for the youth. However, it is important here to analyse how young women are likely to benefit from these

75 *Joshua Kiprono Cheruiyot v Rachel Cherotich Korir* [2017] eKLR

76 The Sixth Presidential Address on the Coronavirus Pandemic at State House Nairobi. (16 May 2020). <https://www.president.go.ke/2020/05/16/the-sixth-presidential-address-on-the-coronavirus-pandemic-at-state-house-nairobi-saturday-16th-may-2020/>

77 Oketch, A. (16 May 2020). Truck Drivers Count Losses in Long Wait for COVID-19 Tests. *Daily Nation*. <https://www.nation.co.ke/news/Truck-drivers-decry-long-border-wait/1056-5554158-139wppw/index.html>

78 The Seventh Presidential Address on the Coronavirus Pandemic: The 8 Point Economic Stimulus Programme. (23 May 2020). <https://www.president.go.ke/2020/05/23/the-seventh-presidential-address-on-the-coronavirus-pandemic-the-8-point-economic-stimulus-programme-saturday-23rd-may-2020/>

measures. While Kenya's Constitution recognizes and promotes the engagement of the youth in development,⁷⁹ the question of how young women are integrated into programs aimed at achieving the full participation of the youth has been problematic. Young women fall into an intersectional category, whereby their experiences of marginality are informed both by gender and age, meaning that programmes which target the youth might remain gender blind; while those that target women might fail to take into account age, and in societies where age sets affect the opportunities that people are likely to access, this means that young women might not access opportunities on an equal basis as older women. Indeed, initiatives such as Kazi Mtaani and rehabilitation of access roads and footbridges and general construction works are predominantly male dominated fields, hence, targeting these areas for youth employment, there is a high likelihood that the opportunities will benefit young men and not necessarily young women.

With regard to improving education outcomes and improving health and social protection, there have been concerning reports concerning the impact of the global health crisis on women and girls' right to health⁸⁰ and education.⁸¹ Thus for instance, it has been reported that the numbers of women seeking health services for such issues as ante-natal and post-natal clinics, family planning, well baby and well woman clinics and hospital deliveries has significantly decreased. With regard to education, there has been an increase in the number of girls of school-going age who are exposed to sexual violence, harmful cultural practices such as early and forced marriage and female genital mutilation. However, in the second stimulus package, the measures targeting improved education outcomes and improved health and social protection, do not make provisions to ensure that the gains that have been made so far in keeping girls in school by protecting them from harmful cultural practices and sexual violence, and the gains made in the promoting women's reproductive health are not eroded.

In the area of agriculture and food security, the interventions aim to subsidize farm inputs through the e-voucher system and to provide temporary support to cushion flower and horticultural producers to access the international markets. Overall, it is expected that these measures will create employment for the youth. Food security is an issues that affects women significantly, because with regard to gender roles, they have the primarily responsibility of providing nutrition for their families.⁸² Measures aimed at ensuring food security are therefore likely to have a positive impact on women. It is however important to understand that attaining food security entails a chain of events and actors, and it is therefore important to locate the specific points at which women are most likely to be located and to have interventions that target those points. Here, the intervention targets subsidies of farm inputs. While women account for

79 Article 27(4) of the Constitution of Kenya prohibits discrimination on the basis of age; Article 55 of the Constitution of Kenya requires the state to take measures, including affirmative action, to ensure inclusion of the youth in various aspects of the nation's social life.

80 Rodriguez, L. (15 April 2020). Pregnant Women in Rural Kenya are Struggling to Access Health Care Amid COVID 19. Global Citizen. <https://www.globalcitizen.org/en/content/covid-19-coronavirus-kenya-maternal-health/>.

81 Odhiambo, A. (15 April 2020). How Girls Education and Safety will be Harmed by COVID Response. *Human Rights Watch*. <https://www.hrw.org/news/2020/04/15/how-girls-education-and-safety-will-be-harmed-covid-response>; UNESCO. COVID 19 Educational Disruption and Response. <https://en.unesco.org/covid19/educationresponse/>.

82 Horenstein, Nadine R. (1989) *Women and food security in Kenya (English)*. Policy, Planning and Research Department working papers ; no. WPS 232. Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/507351468773413859/Women-and-food-security-in-Kenya>.

a large percentage of farm workers, it is not clear whether this measure will target the owners of large scale commercial farms, or whether it includes smaller farms where subsistence farming happens.

Women undertake primarily small scale subsistence farming, where they engaging in food production for family consumption. It is important therefore that such small scale farms benefit from the subsidies of farm inputs in order to ensure that women benefit from this measure.

With regard to flower farming and horticultural production, statistics indicate that most workers in flower farms in Kenya are women.⁸³ Thus, keeping these flower farms afloat and supporting their businesses to thrive during the COVID-19 pandemic, is likely to ensure that women who work in these flower farms do not lose their jobs. However, the precarious nature of the women's employment in these flower farms has long been reported about.⁸⁴ Female workers in Kenya's horticulture industry face such issues as sexual harassment, low pay, unfair contractual terms and inflexible working hours.⁸⁵ It is likely that the adverse economic impacts of COVID-19 on flower and horticulture farms will worsen the conditions under which women work. It is not clear how the government's support to the horticulture industry will ensure that working conditions for women are not worsened as a result of the adverse effects of the pandemic to the flower and horticulture farms.

Support to the tourism sector under the stimulus package entails provision of a grant to community conservancies, support to KWS to engage 5,500 scouts for one year, aggressive tourism marketing once the pandemic comes to an end, support for renovations to hotels through soft loans and support to Utalii College to ensure provision of trained hospitality staff. This measure is likely to support women's work, given that there are many women who work in the tourism industry, particularly in the hotels. Further, women also engage in income generating activities that are supported by the tourism industry, such as the making of ushngas and other traditional crafts.

The stimulus package further provides for enhancing of SMEs liquidity by fast tracking VAT refunds owed to local businesses, payment of outstanding bills owed to local businesses and provision of seed capital to operationalize the SME Credit Guarantee Scheme. Indeed, many women entrepreneurs are likely to operate micro, small and medium sized enterprises and will therefore benefit from these measures. Many more women are employed by SMEs, and thus measures aimed at enhancing their liquidity are also likely to benefit the employees of these businesses.

K. Home-based Care for Asymptomatic or Mild Symptom COVID-19 Patients

In June 2020, the Government of Kenya introduced home based isolation and care for asymptomatic or mild symptom COVID-19 positive patients in order to ease the pressure on

83 Stewart, A. (2012). *Gender, Law and Justice in a Global Market*. Cambridge University Press, Cambridge. Obiria, M. (24 March 2020). Women in Floriculture Feel the Heat of COVID 19. *Daily Nation*. <https://www.nation.co.ke/gender/Women-in-floriculture-feel-the-heat-of-COVID-19/5362750-5495674-olqffy/index.html>.

84 Stewart, A. (2012). *Gender, Law and Justice in a Global Market*. Cambridge University Press, Cambridge.

85 Ibid.

health care facilities following a spike in the number of confirmed cases.⁸⁶ This is also likely to increase the burden of unpaid care work for women, because in line with the gender division of roles and gender norms, women are the primary care givers within the family set up. This increased burden of unpaid care work also means that women will have less time to devote towards income generating activities. Thus, the shift towards home based isolation and care also illustrates the importance of recognizing and supporting the provision of care within the family set up, given that this type of work has largely been ignored and undervalued.⁸⁷

7.0 County Government Responses to the COVID-19 Pandemic

The measures taken by the national government are implemented at the county level. It should be noted that counties might be facing unique impacts of the global health crisis, and therefore they might need to go beyond implementing the national government measures, by putting in place mechanisms to address their unique circumstances.⁸⁸ Thus for instance, some counties have been dealing with additional disasters such as flooding, famine, water borne diseases, locust invasions and inter-ethnic clashes. In addition to dealing with the COVID-19 pandemic, they must also address these other disasters. This presents a challenge in terms of ensuring that their responses are adequate and address all these challenges in a holistic manner. However, not all county governments have put in place measures to address the unique impacts of pandemic. Some counties, such Nyamira, have however made significant progress in addressing the crisis, by drafting a policy on Community Social Responsibility, which provides a blueprint on how the County Government of Nyamira can assist vulnerable categories during the global health crisis. There is a need to support the county governments both with the implementation of national government initiatives and also with the development of measures to address other challenges that they might be facing.

In addition, the Council of Governors noted that their reproductive, maternal, new born and child health services had witnessed reduced numbers of users, and they attributed this to the effects of the COVID-19 pandemic. It should be noted that health is a devolved function and county governments are responsible for the provision of health services. Thus, the Council of Governors issued a statement urging the public to ensure that they continue to seek services for reproductive, maternal and child health.⁸⁹ However, much more needs to be done in order to ensure that women and children continue to use these services. As already discussed, the responses adopted by the National Government and which are implemented at county level have the potential to limit the ability of individuals in seeking these services.

The Council of Governors has further noted that there is need to increase support, particularly in terms of funding, both from the National Government and also from NGOs that benefit from

86 Ministry of Health, 2020, Home Based Isolation and Care Guidelines for Patients with COVID-19, Ministry of Health.

87 Yavorsky, J. E., Dush, C. M., & Schoppe-Sullivan, S. J. (2015). The Production of Inequality: The Gender Division of Labor Across the Transition to Parenthood. *Journal of Marriage and the Family*, 77(3), 662–679. <https://doi.org/10.1111/jomf.12189>.

88 Council of Governors, (27 May 2020) Press Statement on Preparedness of County Governments on COVID-19- Week 10.

89 Ibid.

donor funds.⁹⁰ Responses received from respondents to the research tool administered by this study indicated that coordination between county governments and CSOs can be improved so as to strengthen a multi-pronged approach to addressing the crisis. In particular, a number of CSOs that were sampled indicated that they were not aware of any response mechanisms to the pandemic that the county governments in their areas of operation had adopted. Notably, however, Kiambu county reported that Kshs. 30 million has been set aside as an emergency reserve to address the pandemic, and three hospitals were identified as facilities that would provide COVID-19 care, and each received 10 million for this purpose. Consequently, we see that there are varied responses by the county governments and these present an opportunity for learning and mapping best practices.

Following the presidential directive that re-opening of the economy will depend on the preparedness of the national and county governments to respond effectively to the COVID-19 pandemic, county governments embarked on measures to ensure that they have sufficient hospital beds and other facilities to provide care for COVID-19 patients.⁹¹ On July 6th 2020, the president directed the phased re-opening of the economy and lifted the restriction of movement into and out of the counties of Nairobi metropolitan, Mombasa and Mandera,⁹² thus easing movement within the various counties, and further also increasing transmission of the coronavirus within the counties.⁹³ Thus, county preparedness is one of the key issues that will determine the country's success in containing the pandemic.

8.0 Conclusion

The COVID-19 pandemic has implications for gender roles and norms, and it represents a threat to women's and girls' rights. The government responses to the crisis are also gendered. Steps should be taken at an early stage to address these gender issues. This will ensure that women and girls are cushioned from possible human rights violations and further that they do not emerge from the crisis in a worse off state than they were in before it. Failure to address the gender concerns discussed here is likely to have negative impacts on an economy that is already weakened by the pandemic, and will slow down recovery efforts as well as future developmental goals. As noted, Kenya has taken progressive steps to promote, protect and guarantee the rights of women and girls, but responses COVID-19 containment measures threaten the state's capacity to live up to its obligations. There is therefore a need to support the state in developing gender sensitive responses to the crisis, and further to ensure that the gains that have so far been made with regard to women's rights continue to be maintained and upscaled. Actors such as civil society organisations (CSOs) play a significant role in ensuring that the state receives the support it needs as it seeks to address the COVID-19 pandemic.

90 Ibid.

91 8th Presidential Address on Coronavirus Pandemic, 6th June 2020. <https://www.president.go.ke/2020/06/06/the-eighth-8th-presidential-address-on-the-coronavirus-pandemic-state-house-saturday-june-6th-2020/>.

92 9th Presidential Address on the Coronavirus Pandemic, 6th July 2020. <https://www.president.go.ke/2020/07/06/the-ninth-9th-presidential-address-on-the-coronavirus-pandemic-harambee-house-nairobi-monday-july-6th-2020/>

93 Shabaan, A. R. A (17th July 2020) Kenya Coronavirus: Caseload Hits 12,000; Home-based Care Progressing. *Africanews*. <https://www.africanews.com/2020/07/17/kenya-coronavirus-updates/>.

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