

ACHPR/Res. 445 (LXVI) 2020 Resolution on the Human Rights Situation in the Republic of Kenya

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 66th Ordinary Session held virtually from 13 July to 07 August 2020:

Recalling its mandate of promotion and protection of human and peoples' rights in Africa under Article 45 of the African Charter on Human and Peoples' Rights (African Charter);

Further recalling that according to Article 46 of the African Charter, the Commission may resort to any appropriate method of investigation in the execution of its mandate;

Recalling the Guidelines for the Prohibition and Prevention of Torture in Africa (Robben Island Guidelines) on the implementation of the provisions of Article 5 of the African Charter and other international instruments aimed at preventing torture, and General Comment 4 to the African Charter on the Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (General Comment 4);

Concerned by the human and peoples' rights challenges arising from certain regulations adopted in the Republic of Kenya to limit and slow the spread of the novel coronavirus (COVID-19) pandemic in the country, particularly impacting the most socially and economically vulnerable people;

Alarmed by reports of excessive use of force by police officials entrusted with enforcing the regulations and measures aimed at curbing the spread of COVID-19, which has resulted in at least twenty-three (23) deaths and many instances of assault and forced quarantine;

Further concerned that these trends of use of force are part of a systemic challenge on which the Commission pronounced itself through the Country Rapporteur, without it being resolved, and which has been exacerbated under the COVID-19 pandemic;

Recalling previous statements and letters of appeal which addressed the matter of police brutality in Kenya, including the Press Statement of the Commission of 18 October 2017 on the re-run of the presidential election in Kenya on 26 October 2017; Letter of Urgent Appeal regarding Extra-Judicial killings and lack of Investigation and Prosecution of Extra-Judicial killings in Kenya of 21 May 2017; and the Press Statement on the human rights situation in Kenya of 9 February 2018;

Deeply disturbed by reports of the eviction of people in the course of the COVID-19 pandemic, including from the Kariobangi North Sewerage settlement between 4 and 15 May 2020 during the night and early morning; as well as the eviction of members of indigenous communities/populations, including the Ogiek and the Sengwer, who were forcefully evicted from their homes and their homes destroyed, in contravention of the country's guidelines on evictions as well as the right to shelter and access to sanitation;

Also concerned by the socio-economic impact of the COVID-19 pandemic and COVID-19 pandemic regulations on all Kenyans, particularly on the most vulnerable, including those working in the informal sector;

The Commission:

1. **Calls** on the Government of Kenya to adhere to the Robben Island Guidelines and General Comment 4, by ensuring that effective, impartial and prompt investigations are conducted into the conduct of security forces, including through a dedicated commission of inquiry, that those responsible for acts of torture or ill-treatment are subjected to the legal process and that the victims are able to access reparations;
2. **Calls** on the Government to ensure that the human and peoples' rights of all people in Kenya are upheld during the COVID-19 pandemic, including their basic rights to life, dignity, shelter, access to justice and bodily integrity and ensure that all people, including the most vulnerable groups are not subjected to unlawful evictions;
3. **Urges** the Government to identify, for purposes of effective prevention and response, areas and communities that are particularly vulnerable to the consequences of COVID-19 regulations and develop a comprehensive national action plan for addressing rights violations arising from the implementation of COVID-19 regulations; and
4. **Mandates** the Country Rapporteur for the Republic of Kenya to engage the Government of Kenya and other relevant national actors within the framework of Article 46 of the Charter towards reform of and accountability measures for addressing the systematic challenge of excessive use of force by security forces.

ACHPR/Res. 446 (LXVI) 2020: Resolution on conducting a Study on the right to health for all and its financing in Africa

The African Commission on Human and Peoples' Rights (the Commission), at its 66th Ordinary Session held virtually from 13 July to 07 August 2020:

Recalling its mandate of promotion and protection of human and peoples' rights in Africa pursuant to Article 45 of the African Charter on Human and Peoples' Rights (the African Charter);

Recalling the right of every individual to enjoy the best attainable state of physical and mental health protected in Article 16 of the African Charter and the duty that this places on States Parties to protect the health of their people and ensure access to health care;

Recalling its Resolution 73 adopted at the 36th Ordinary Session held from 23 November to 7 December 2004, which established the Working Group on Economic, Social and Cultural Rights and mandated it to undertake studies and research on specific economic, social and cultural rights;

Noting with concern the various challenges to the right to health which have arisen in the context of the novel coronavirus (COVID-19), including the overburdening of fragile health care systems across the continent, challenges to the rights of health workers, and the diversion of resources and limited capacity away from other critical health services, including sexual and reproductive health care and services for persons living with and affected by HIV/AIDS;

Further concerned by the other socio-economic circumstances which affect millions of people across the continent, and which negatively impact on their right to health, including access to water, sanitation, basic education, housing, and the extensive impact of climate change on all aspects of socio-economic rights;

Bearing in mind the Abuja Declaration, adopted by Heads of State and Government of the African Union in 2001, through which they set a target of allocating at least 15 percent of their annual budgets to improve the health sector;

Further recalling the meeting between the Chairperson of the Commission and the Executive Director of the Joint United Nations Programme on HIV and AIDS (UNAIDS) on 11 February 2020 during which the need to conduct a joint study on access to health for all and its financing in Africa was identified and which is made more pressing by the COVID-19 global pandemic;

The Commission:

1. **Affirms** access to health care for all as a fundamental right and public good that should be guaranteed through public investment;
2. **Reiterates its call** to States Parties to make human rights, and socio-economic rights specifically, a central pillar of responses to the COVID-19 pandemic and in particular to ensure that the right to health is respected, protected and upheld, through guaranteeing that all persons and vulnerable people in particular are provided with the necessary socio-economic circumstances to limit their exposure to disease; and

3. **Tasks** the Working Group on Economic, Social and Cultural Rights in collaboration with UNAIDS, to prepare a draft study on 'The Right to health for all and its financing in Africa' and to present it to the Commission for its consideration and adoption within one (1) year.

Done virtually, 07 August 2020