

# COVID-19 pandemic:

Awakening the call for paradigm shifting in the teaching, learning, research and professional development in human and peoples' rights, freedoms and responsibilities in Africa and the rest of the world

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## Keywords

*African Law, Constitutional Law, Human Rights, Legal Education, Legal Teaching*

The COVID-19 pandemic has awoken the entire world from its slumber – the highly-industrialised and the less-industrialised, those regarded to be developed and the less developed or underdeveloped in sciences and technologies, the rich/wealthy and the poor-but-rich-in-resources alike. It has shown that it has no respect for the few who belong to the ruling class and political elites – the virus' attack on the heir-to-the-throne in Britain, Prince Charles, and the British Prime Minister, Boris Johnson, are good examples. International conferences and summits of heads of state and governments are being conducted virtually. Educators and students from primary school to university and college levels are forced to re-skill to teach and learn online and not mainly through contact learning as was the established norm. Contextually, limited electrification hinders access to the internet and digitisation. The emerging norm is no longer going to be the traditional separation of the sciences, technology, engineering and medicine (STEM) from humanities and social sciences. The interface and interrelatedness of disciplines is a requirement in managing and manoeuvring human life through this pandemic, and beyond. There should be more use of multi-discipline and inter-discipline perspectives and approaches of knowledge development and

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application. This is not a call for the death of mono-disciplines. They remain essential fields of specialisation within broader contexts.

This article assesses the good, the bad and the ugly in society, which the COVID-19 pandemic has brought to light. Among the super-rich dollar-billionaires, however they have acquired their wealth, a few have expressed solidarity through not-for-profit donations of all kinds of needed material, such as Personal Protection Equipment (PPE) to assist in prevention and treatment of those who have been infected by the virus, including ventilators in healthcare facilities for patients as well as for the health workers. African leaders have also woken up to the need for collective Pan-African collaboration in confronting the pandemic. They have expressed Africa's disdain for diversionary 'cold war' ranting by the US President against China and withdrawal of financial contribution to the World Health Organisation (WHO). The article then proceeds to apply the lessons learned in combatting the pandemic to teaching, research, professional development and community engagement in the prevention and protection of human and peoples' rights, freedoms and responsibilities. COVID-19 has clearly exposed the weaknesses and strengths of current dominant approaches in promotion and protection of human rights, which are deficient in revealing freedoms and responsibilities of collectivity of peoples and communities locally, nationally and internationally. It is argued that no single or mono-discipline can effectively deal with the challenges in this field at individual, local, national, regional or global levels. Combined and multifaceted approaches are imperative – the way it is in efforts to deal with the COVID-19 global pandemic challenges. Globally, research scientists are racing against time to develop vaccines.

Given that the phenomenon the article analyses is still very much on the march and is escalating on a daily basis – it is a moving target – the information and data collated and used is drawn mainly from the media: daily newspaper reports, opinions, commentaries, editorials, letters to editors, advertising and official statements and features; radio and television; personal observation; and digital social media such as postings on WhatsApp and YouTube platforms and websites. The situation requires innovative thinking and action.

### **The entire world has been shaken by the ravaging pandemic and there is nowhere to hide**

Whereas the WHO informed the world in March 2020 that a virus was discovered in Wuhan City in the People's Republic of China in December 2019, COVID-19 (the disease)/SARS-COV-2 (the virus) is now a global pandemic that

is still spreading very speedily. As on 15 July 2020 the statistics showed that the 16 leading countries in the world in terms of verified infections and deaths from the pandemic are Brazil, Chile, France, India, Italy, Mexico, Peru, Russia, Spain, United Kingdom of Britain, and the United States of America. Most of these are regarded as rich industrialised countries with advanced technologies. A few of them such as Brazil, Chile, India, Iran, Mexico, and Peru are 'emerging markets.' In Africa the top 16 that have been devastated by the pandemic in terms of reported verified infections and deaths are Algeria, Cameroon, Côte d'Ivoire, Democratic Republic of Congo (DRC), Djibouti, Egypt, Ethiopia, Gabon, Ghana, Guinea, Kenya, Mauritania, Madagascar, Morocco, Nigeria, Senegal and South Africa. None of the African countries are regarded as rich, industrialised and developed; less than five are graded as 'emerging markets' and the rest are poor, lower income, less developed or underdeveloped. However, African states have, at least as of 15 July 2020, performed much better in controlling the spread of COVID-19 than the rich, developed, industrialised nations. This has baffled even medical research scientists and the WHO.<sup>1</sup> Nonetheless, the confirmed COVID-19 cases are on steady rise in some African countries. As on 23 July 2020, President Cyril Ramaphosa of South Africa acknowledged that 'South Africa now has the fifth highest number of confirmed COVID-19 cases in the world and accounts for half of all the cases in Africa;' however, South Africa has 'one of the lowest fatality rates in the world.'<sup>2</sup>

It is still early in this dangerous game but some analysts have already expressed their opinions, especially on the quality of national leadership in combating the spread of the virus. One hypothesis suggests that countries with women as heads of state or government have done better than those led by men, at least in the so-called developed economies. The countries mentioned are: Iceland (Prime Minister Katrín Jakobsdóttir), Norway (Prime Minister Erna Solberg), Finland (Prime Minister Sanna Marin), Germany (Chancellor Angela Merkel), Ethiopia (President Sahle-Work Zewde and New Zealand (Prime Minister Jacinda Arden); and they add the breakaway controversial Chinese island Taiwan (President Tsai Ing-wen).<sup>3</sup> This does not mean that these women-led countries are the only ones

<sup>1</sup> Research findings published in *American Journal of Tropical Medicine and Hygiene* showed that by mid-May 2020 infections in Africa were fewer than other regions of the world, pointing out that public measures taken, youth population and warm weather are some of the reasons. See, Bernadine Mutua, 'Low number of COVID-19 cases in Africa baffles scientists' *Daily Nation*, 4 June 2020 at page 10.

<sup>2</sup> Official Presidential Statement: 'Progress report in the national effort to contain the Covid-19 pandemic', Union Building (State House), Tshwane Metro City, Pretoria, 23 June 2020.

<sup>3</sup> A Global Chart, 'Covid-19: Where women lead, Coronavirus dies' *Daily Nation*, 16 June 2020, at page 9. This was earlier published under the title, 'Women leaders shine in handling their countries'

that have so far demonstrated efficiency in responsible leadership during this crisis; countries like Vietnam have also managed efficiently.<sup>4</sup> The others include Cuba, Venezuela and, paradoxically, China. It is not just coincidental; the latter countries are those with socialist political economy characteristics.<sup>5</sup>

Then USA President Donald Trump however, emerged as the world's leading arrogant, egocentric, and ditherer who has led his country to become the global epicentre of the COVID-19 pandemic. He seemed to be entangled in his 'Cold War' mentality against China, which he escalated to position the USA as a nation with anti-WHO, anti-China and xenophobia against black people, including the mix-races from Central and South America. His niece, Mary Trump, in her recently published book, *Too much and never enough: How my family created the world's most dangerous man*,<sup>6</sup> reveals a personality that was groomed and groomed himself to be domineering, power drunk, megalomaniac, money-worshipping, racist and sexist. It is his pursuit and delusion of repositioning the USA as a hegemon of a unipolar world order, irrespective of the reality on the ground that demonstrates clearly that such imagined era is unattainable. His ego propels him to expect the WHO to denounce China for the emergence of COVID-19 and its devastating and continuing spread throughout the world.<sup>7</sup> When his home, the USA, was burning he was busy looking for who may have started the fire rather than first putting all energy to extinguishing the fire. He is living in a hallucinatory world, always vacillating: today it is not there, tomorrow it is there; it was manufactured in a Chinese laboratory today, tomorrow it is natural. And the charade goes on while Americans are affecting each other and thousands are dying on a weekly basis. And the tragi-comedy continues. Former President Barack Obama has called it 'a chaotic disaster'.<sup>8</sup>

China informed the WHO in early January 2020 about a detection of a novel virus in Wuhan, a city of 11 million people in central China. WTO alerted the

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Coronavirus cases' Daily Nation, 22 April 2020, at page 3.

<sup>4</sup> Laura Ajiambo, 'We can learn from Vietnam how to fight pandemics like Covid-19' letter to the editor Daily Nation, 3 July 2020, at page 6. Also available at <<https://nation.africa/kenya/blogs-opinion/letters/we-can-learn-from-vietnam-how-to-fight-pandemics-like-covid-19-1406476>> on 6 November 2020.

<sup>5</sup> See Tricontinental: Institute for Social Research, 'CoronaShock and socialism' Tricontinental, 8 July 2020, available at <<https://www.thetricontinental.org/studies-3-coronashock-and-socialism/>> on 6 November 2020.

<sup>6</sup> Published by Simons & Schuster, New York, 2020.

<sup>7</sup> Alexander Cooley and Daniel Nexon, 'How hegemony ends: The unraveling of American power' *Foreign Affairs*, July/August 2020, 143-156. Lee Hsien Loong, 'The endangered Asian Century: America, China and the perils of confrontation' *Foreign Affairs*, July/August 2020, 52-64.

<sup>8</sup> The news agency AFP from Washington DC, 'This is 'a chaotic disaster': Obama shreds Trump's pandemic response' Daily Nation, 11 May 2020, at page 27.

world on 20 January 2020 that pneumonia of an unknown cause is transmittable from human to human. On 30 January 2020, WHO Director-General Tedros Adhanom Ghebreyesus declared that the outbreak constitutes a Public Health Emergency of International Concern (PHEIC). The declaration further stated that ‘a highly contagious virus has been detected that requires stringent measures of tests, physical distance, and aggressive sanitation.’ Most countries in the world acted immediately by putting in place preventive measures including curfews, lockdowns, air and land travel bans, school and university closures, and prohibiting social gathering events in religious places of worship, shops, restaurants, nightclubs, and workplaces including courts of law and tribunals. The USA, however, kept on dithering and was in denial. In mid-April 2020, President Trump wrote an official letter to the Director-General of the WHO informing him that the USA was withdrawing from funding the multilateral body stating:

I suspended United States contributions to the WHO pending an investigation by my Administration of the organisation’s failed response to the COVID-19 outbreak.....You have not commented on China’s racially discriminatory actions...The only way forward for the WHO is if it can actually demonstrate independence from China.....I cannot allow American taxpayer dollars to continue to finance an organisation that, in its present state, is so clearly not serving America’s interests.<sup>9</sup>

Fortunately, however, the Bill & Melinda Gates Foundation is the second largest contributor of funds to the WHO and have the financial muscle to escalate the amount it donates to this very important multilateral institution on a voluntary philanthropic basis. Other rich billionaires may join in in this moment of global crisis. The use of global economic and military powers should not be abused by errant leaders like President Trump of the USA.

### **Inter-country solidarity, assistance, coordination and a few philanthropic support from private wealthy people and their foundations**

There is not a single country in the world that the COVID-19 pandemic has spared. Stewart Patrick captures it well:

The chaotic global response to the COVID-19 pandemic has tested the faith of even the ardent internationalists. Most nations, including the world’s most powerful, have turned inward, adopting travel bans, implementing export controls, hoarding or obscuring information, and marginalising the WHO and other multilateral institutions. The pandemic seems to have exposed the liberal order and the international community as mirages, even as it demonstrates the terrible consequences of faltering global cooperation.<sup>10</sup>

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<sup>9</sup> Full letter available at <<https://www.whitehouse.gov/wp-content/uploads/2020/05/Tedros-Letter.pdf>> on 7 November 2020.

<sup>10</sup> Patrick Stewart, ‘When the system fails: COVID-19 and the costs of global dysfunction’ *Foreign*

There is little doubt that the global world system is turbulent, dysfunctional and, in many respects, requires restructuring and remodelling. This requires a deeper focused critical examination that goes beyond what the present article is examining. Briefly, however, there are pockets of isolated cases of international solidarity in combating the pandemic. Notable is a small island country of only 11.27 million people choked by illegitimate sanctions and blockade by the USA since the early 1961, Cuba, that has made its specialised medical brigades (doctors) available for international solidarity assistance to developing as well as big and rich industrialised countries. It estimated that since 1960 it has sent well over 300,000 doctors to 158 countries. In response to the pandemic, the current Kenyan Ambassador to Cuba (concurrently serving as the High Commissioner to Jamaica, Barbados, Saint Kitts and Nevis, and Guyana), Anthony Muchiri has penned:<sup>11</sup>

The Henry Reeve Medical Brigade was constituted by the then Cuban President Fidel Castro on September 19, 2005 with the objective not only in intervening in local domestic emergencies and during disasters but, more importantly, internationally in any country facing disasters such as hurricanes, floods, earthquakes and epidemics. The Brigade is named after a young American named Henry Reeve who was born in Brooklyn [New York], United States, on April 4, 1850, travelled, lived and served in the Cuban Army for seven years and died on August 4, 1876 after having participated in over 400 engagements against the Spanish Army....As Kenya prepares to reach COVID-19 peak, the 43<sup>rd</sup> Henry Reeve Brigade departed Cuba for Kenya on July 16 [2020], to join and assist the gallant Kenyan health professionals in the frontline of the battle against the pandemic. This humanitarian mission which, save for the overhead transport and accommodation fees, is normally at no cost to the recipient country, is in the spirit of the existing strong bilateral relations between the two countries.

It seems that Henry Reeve was a precursor to Ernesto ‘Che’ Guevara, the global icon who left his country of birth, Argentina, drove a motorcycle northward through Latin and Central America and joined the Cuban armed revolutionary movement that removed the dictatorship in Cuba. The Henry Reeve Brigade has been in existence since 1960, long before its re-branding in 2005, and has served in many countries in Africa, Asia, the Caribbean, Central America, Europe and

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*Affairs*, July/August 2020, 40-50, at page 40.

<sup>11</sup> Letter to editor, Sunday Nation, 19 July 2020, at page 16. See also a news report of the doctors’ arrival in Kenya: Irene Mugo, ‘Cuban doctors arrive to aid in COVID-19 fight’ Saturday Nation, 18 July 2020, at page 7. The report indicates that the team consists of those specialised in cardiology, renal disease (urology), and paediatrics. They will be placed at Kenyatta University Teaching Referral and Research Hospital unlike those who came early and were deployed mostly in different counties in the country. Those 100 who were already in the country were highly-specialised oncologists, nephrologists, neurologists and family doctors. See, Angela Oketch, ‘Ministry plans to negotiate longer stay for Cuban doctors’ Daily Nation, 10 June 2020, at page 48.

Latin America. At the moment it is in Kenya, South Africa and, may be, a few other countries on the continent. It is not the first time the Brigade has been deployed in Kenya; the press has been reporting some of its previous work in Kenya and elsewhere. On 10 June 2020, the *Daily Nation* also reported that a Henry Reeve Brigade had arrived back at Jose Marti International Airport in Havana, Cuba on 9 June 2020 from Italy and that they had arrived in Italy on 22 March 2020 to help contain COVID-19 pandemic in the Lombardy region. Italy is among the countries most devastated by the pandemic. The Secretary of State, Mike Pompeo, a distinguished mouth-piece (parrot) of President Trump, expressed serious concern and displeasure that South Africa had requested for and received the Cuban doctors.<sup>12</sup>

As soon as the pandemic was to have spread globally, a few wealthy philanthropists acted quickly and started donating needed PPEs to a number of countries. One who has demonstrated commendable contribution is billionaire Jack Ma from China and his Alibaba Foundation. On 24 March 2020, the consignment of his donation to be distributed to African countries arrived at Jomo Kenyatta International Airport on Ethiopian Airlines. The consignment consisted of 6,000 pieces of N95 masks, 500 pieces of isolation gowns, 3,000 pieces of surgical protective suits, 40 pieces of thermometers and 85,000 pieces of cloth masks and other equipment whose value was estimated to be about Kenya Shillings 200 million. And on 20 April 2020, the Chinese government's donation also arrived. According to a published communiqué in a press release on 16 June 2020, the African Union's Bureau of the Heads of State and Government held a video conference on 11 June 2020 at which it announced and congratulated China for its commitment to supply to the recently established African Medical Supplies Procurement Platform 30 million test kits, 10,000 ventilators, 80 million masks each month to the continent at competitive prices. The Platform was hailed as 'a truly Pan-African Initiative aimed at the procurement, coordination and distribution of medical supplies for all AU member states.'<sup>13</sup> Before the Summit, the AU Special Envoy for the African Private Sector Initiative (APSI), Zimbabwean billionaire Strive Masiyiwa, announced that he was partnering with

<sup>12</sup> AFP (Washington DC), 'Pompeo criticises South Africa for taking Cuban doctors' *Daily Nation*, 1 May 2020, at page 26.

<sup>13</sup> <<https://au.int/en/pressreleases/20200616/communique-vtc-meeting-bureau-au-heads-state-and-government>> on 6 November 2020. The meeting was presented with reports of AU Special Envoys regarding economic relief measures and pooled procurement of medical for Member States in the fight against COVID-19 as well as a briefing on the implementation of the continental COVID-19 Strategy by the Director of Africa Centres for Disease Control and Prevention, Dr John Nkengasong.



external billionaires Richard Branson and Jeff Skoll, that they would partner with Africa Centres for Disease Control and Prevention (Africa CDC) to have a company based in South Africa, Invicta Holdings, to manufacture oxygen helmets and 1,000 bridge ventilators. Masiyiwa is reported to have said: “This is a not-for-profit venture for us as philanthropists.”<sup>14</sup>

A few local corporate entities also pitched in<sup>15</sup> with kits like ventilators, hand wash sanitisers and infrared thermometers for health workers and those operating in humanitarian food programmes. A locally-based but international non-governmental organisation (NGO), Plan International, donated a consignment of PPEs such as surgical masks, shoe covers and aprons, sanitisers and thermoguns in Kwale County, Kenya.<sup>16</sup> Another small NGO that chipped in was One Acre Fund that donated soaps and sanitisers to farms and farmworkers.<sup>17</sup> The Chief Executive Officer of Equity Bank, made a personal philanthropic donation of up-to Kshs 300 million and the Bank upped it to Kshs 1.1 billion to the COVID-19 Fund in partnership with Master Card Foundation and Coca-Cola Foundation.<sup>18</sup> The combined donation is to buy PPEs for frontline medical workers in public hospitals.

Even though President Trump unilaterally declared and waged a shameful and unnecessary war on China and the WHO over the pandemic, some American embassies abroad tried to make small contributions to the efforts of combatting the scourge. In Kenya, for example, Ambassador Kyle McCarter donated recyclable face masks made in Kenya by an American construction company based in Kenya, Bechtel, to the Kenyan police.<sup>19</sup> In addition, the USA Embassy included the fight against the pandemic in a development assistance financial package amounting to Ksh 5 billion for distribution to counties for improvement in the health sector and water systems.<sup>20</sup> The United Nations Development

<sup>14</sup> Kitsepile Nyathi, ‘Zimbabwe’s mogul leads cheaper ventilators drive’ Daily Nation, 1 June 2020, at page 27.

<sup>15</sup> Anthony Kitimo, ‘Mining firm Base Titanium donate Sh80 million to support war on Covid-19’ Daily Nation, 6 May 2020, at page 19.

<sup>16</sup> Fadhili Frederick, ‘NGO donates supplies to COVID-19 war’ Daily Nation, 23 June 2020, at page 24.

<sup>17</sup> Shaban Makokha, ‘NGO donates hygiene kits to farmers’ Daily Nation, 28 April 2020, at page 24.

<sup>18</sup> Paul Wafula, ‘Equity Bank CEO James Mwangi donates Sh300m, Bank ups it with Sh1.1bn to COVID-19 Fund’ Daily Nation, 30 April 2020, at page 5. See also Gitau Warigi, ‘Equity Bank CEO James Mwangi raises bar in local philanthropy’ Sunday Nation, 3 May 2020, at page 15. Also available at <<https://nation.africa/kenya/blogs-opinion/opinion/equity-s-ceo-james-mwangi-raises-bar-in-local-philanthropy-493240>> on 6 November 2020.

<sup>19</sup> Mary Wambui, ‘American firm’s gift of masks to officers’ Daily Nation, 17 June 2020, at page 10.

<sup>20</sup> Allan Olingo, ‘Sh5bn bounty from US for Covid-19 war’ Daily Nation, 2 July 2020, at page 8.



Programme (UNDP) has also made its contribution by placing 50 UN Volunteer Health Experts in counties in Kenya, namely: Busia, Garissa, Kajiado, Kakamega, Kiambu, Kilifi, Kisumu, Machakos, Migori, Nairobi, Taita-Taveta, Uasin-Gishu and Wajir.<sup>21</sup> Another UN contribution is the ongoing construction of long-lasting specialist hospital in Nairobi, an annex to the current Nairobi Hospital, to cater for high risk, mild and moderate cases, with priority given to foreign and local staff, dependents, including those deployed by UN troops in the African Union Mission in Somalia.<sup>22</sup>

Big African multinational mobile corporates competing against each other for market share pulled together to launch a Pan-Africa shared Africa Communication and Information Platform (ACIP) for Health and Economic Action initiative, which will rely on artificial intelligence. Airtel, MTN, Orange and Vodacom execute the data. It is an online digital data and mobile-based information tool jointly managed by the UN Economic Commission for Africa (UNECA) and Africa Centres for Disease Control with links to all national COVID-19 task forces. During the launch of the initiative, Executive Secretary of UNECA, Vera Songwe, said, 'Within this platform, we have the possibility of reaching between 600 million and 800 million mobile subscribers in Africa.'<sup>23</sup>

In this response to the pandemic, there are intriguing actions by some African countries. Two of these worth pointing out are Egypt and Morocco. Egypt ranks at number two, following South Africa, as African countries most devastated by confirmed infections and the mortality rates from COVID-19. Therefore, it is very surprising that Egypt sent a military cargo of medical supplies, especially face masks and other protective materials (shoe covers and surgical caps) to China, Italy, Sudan and the UK.<sup>24</sup> It was also reported that Morocco sent medical supplies, including face masks, visors, hygiene caps, medical coats, and some pharmaceuticals to 15 African countries.<sup>25</sup>

However, it is very disheartening that all the mentioned commendable

<sup>21</sup> Collins Omulo, 'UN to place volunteer health experts in 14 counties to stop spread of virus' Daily Nation, 30 June 2020, at page 9.

<sup>22</sup> Elizabeth Merab and Elvis Ondieki, 'UN to build 160-bed health facility for staff who may suffer from Covid-19' Sunday Nation, 19 July 2020, at page 4. Also available at <<https://nation.africa/kenya/news/un-to-build-160-bed-facility-for-staff-who-may-suffer-from-covid-19-1901090>> on 6 November 2020.

<sup>23</sup> Faustine Ngila, 'Africa's mobile giants launch Covid-19 plan' Daily Nation, 30 June 2020, at page 60. Also available at <<https://nation.africa/kenya/healthy-nation/africa-s-mobile-giants-launch-covid-19-plan-1447394>> on 6 November 2020.

<sup>24</sup> An AFP news release from Cairo reported in Sunday Nation, 16 May 2020, at page 35.

<sup>25</sup> Xinhua (Rabat), 'Morocco sends virus fight aid to 15 states' Daily Nation, 16 July 2020, at page 29.

efforts are being undermined by organised criminal cartels who have penetrated and looted the materials, including donated blood from blood banks. For instance in Kenya, they have infiltrated state governance institutions that are established to guard and distribute preventive and protective devices required for combating this dangerous pandemic.<sup>26</sup> This is the reality on the ground.<sup>27</sup> Sabre-rattling by the minister in charge seems far from adequate as he simply redeploys those he considers to be part of the rot.<sup>28</sup> Law enforcement agencies that are expected to detect, investigate, arrest and prosecute the criminals are weak, compromised and moribund. The same phenomenon is happening in South Africa.

### **A time for paradigm shifting in the teaching, learning, research and professional development in human and peoples' rights, freedoms and responsibilities in Africa and the rest of the world**

The COVID-19 pandemic started hitting Africa very hard as it did elsewhere in the world by March 2020. In Kenya and South Africa, my two countries and homes,<sup>29</sup> nation-wide disaster and states of emergency were declared which involved, among other measures, closedown of schools, universities, places of worship, funerals, workplaces, shopping malls, open-air markets, street trading – including *mama mboga* traders and *boda boda* (PSV) motorbike riders – beaches, nightclubs and most of the other places of political public gatherings. Public

<sup>26</sup> 'Health Ministry must rid itself of criminals' Sunday Nation Editorial, 21 June 2020, at page 14. Also available at <<https://nation.africa/kenya/blogs-opinion/editorials/editorial-health-ministry-must-rid-itself-of-criminals-733848>> on 6 November 2020. Angela Oketch and Brian Wasuna, 'Authorities tight-lipped over theft of medical equipment' Daily Nation, 22 June 2020, at page 8. Also available at <<https://nation.africa/kenya/news/authorities-tight-lipped-over-theft-of-medical-equipment-734096>> on 6 November 2020. See also, Angela Oketch and Brian Wasuna, 'Scanty information of theft of donated Covid-19 equipment' Saturday Nation, 20 June 2020, at page 6. Also available at <<https://nation.africa/kenya/news/scanty-information-on-theft-of-donated-covid-19-equipment-733440>> on 6 November 2020.

<sup>27</sup> Angela Oketch, 'Kagwe: I'll dismantle Afya House cartels' Daily Nation, 23 June 2020, at page 7. Also available at <<https://nation.africa/kenya/news/kagwe-i-ll-dismantle-afya-house-cartels-734632>> on 6 November 2020. In the cited interview, the Minister (Cabinet Secretary) for Health, Dr Mutahi Kagwe, admitted that criminals had penetrated the ministry and he was going to purge them out. He added that he is in the process of 'building a team of trusted people, who are against corruption.'

<sup>28</sup> Bernard Mwinzi and Nasibo Kabale, 'Kagwe transfers 30 officers from ministry in battle against cartels' Daily Nation, 2 May 2020, at page 4.

<sup>29</sup> I hold dual citizenship of the two countries, but have been domiciled mostly in South Africa since 1994. Kenya is my ancestral home and South Africa is my country of adoption through naturalisation. It is a long and complicated story that I will not go into presently. However, those who are interested may read a synoptic memoir narrative in, Shadrack Gutto, *The refugee & asylum seeker: My personal journey*, Ssalli Publishers, Johannesburg, 2018.

transport by road or air was restricted. Very quick internal migration of people to rural villages and cities ensued as people were desperate to be locked down in places where they could unite with their larger families and feel secure. Given that urbanisation is relatively recent in countries like Kenya, most citizens have two homes; one is their residences in urban areas where they work and earn their living and another in the ancestral rural villages where some of their family and relatives live. This is almost a universal reality in most countries on the continent where agrarian lifestyles constitute a large part of the national social and economic systems.

Night curfews were imposed. It was challenging, chaotic and traumatic. For older people it was reminiscent of the terror imposed by the occupying colonial and apartheid regimes as the people intensified the struggle for liberation, freedom and independence. Towards the middle of March 2020, I had just finished writing a first draft of a curriculum for a Bachelor of Arts (BA) in Human and Peoples' Freedoms and Responsibilities that was requested by one of the public universities in Kenya. As the situation caused by the scourge of COVID-19 continued and got worse, it became compelling that the draft curriculum developed be revisited and applied to the unfolding realities on the ground; the dialectic of theory and practice informed by the multiplicity of measures taken to contain the spread of infections, to lower the fatality rate, and to provide treatment for those affected. Many 'normal' behavioural and belief systems in practically all areas of life, especially in culture, education, religion, labour, factories and office work places, management, law enforcement, meetings, shopping, street trading, transport, sports, entertainment had to change. Even ordinary personal physical practices had to transform. For example, new rules for face masking, hand washing with soap or sanitising, and social distancing became the new 'normal,' so long as there is no clinically-tried and approved vaccine that has long-term protection against the virus.

In all of this, practically every aspect of human rights was affected. It became clear that human rights, narrowly based in the 1948 United Nations Universal Declaration on Human Rights (UDHR)<sup>30</sup> and the twin legally binding conventions of 1966 – International Covenant on Civil and Political Rights (ICCPR)<sup>31</sup> and International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>32</sup> are deficient in scope and require new thinking and innovation, without necessarily

<sup>30</sup> *Universal Declaration on Human Rights* (UDHR), 10 December 1948, A/RES/217/(III).

<sup>31</sup> *International Covenant on Civil and Political Rights* (ICCPR), 16 December 1966, A/RES/2200A(XXI).

<sup>32</sup> *International Covenant on Economic, Social and Cultural Rights* (ICESCR), 16 December 1966, A/RES/2200A (XXI).

discarding them as the founding legally binding pillars. Naturally, it must also be recognised that since 1966 many new legally binding human rights international treaties have been adopted, with participation of African states – of which many of them have ratified. Among these are those focusing on women (and the girl child)<sup>33</sup> and the one on children's rights.<sup>34</sup> Other non-binding 'soft law' human rights documents that are very persuasive if used strategically such as the UN Vienna Human Rights Declaration and Plan of Action of 1993<sup>35</sup> and the Durban Declaration and Plan of Action that was adopted by the World Conference on Racism, Racial Discrimination, Xenophobia and Other Related Intolerances of 2001<sup>36</sup> are very relevant developments after 1966. Such international conference declarations are not treaties requiring ratification.

Besides the above mentioned plethora of international achievements, there are other group-focused norms and standards that should be included in a properly conceived and structured approach to human rights. Among them are those setting standards, norms and principles in the fields of labour and employment, as well as environmental protection and climate change. It is also of paramount importance to take into account that the UDHR was adopted without the participation of African nations that were at the time under colonial occupation and rule. The two 1966 conventions, ICCPR and ICESCR, were adopted with participation of only a few of Africa's politically independent and free states. The other important international treaty that is of relevance to the phenomena that are relevant here are the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the Convention on the Elimination of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC). All the above should, like all other 'international' and 'universal' treaties or agreements, require contextualised interpretation and understanding in teaching, research and professional capacity-building training in the African context. Formalistic, parrotic and cutting-and-pasting or regurgitation from liberal North-America-centric and Euro-centric epistemologies is very pervasive and hegemonic in African scholarly and intellectual discourses and need urgent transformation.<sup>37</sup> And, by 'contextualised'

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<sup>33</sup> *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 18 December 1979, A/RES/34/180.

<sup>34</sup> *Convention on the Rights of the Child (CRC)*, 20 November 1989, A/RES/44/25.

<sup>35</sup> *Vienna Human Rights Declaration and Programme of Action*, 25 June 1993.

<sup>36</sup> *Durban Declaration and Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerances*, 8 September 2001, A/CONF.189/12.

<sup>37</sup> There are emerging critical, some innovating, writings on this. For example: Claude Alvares and Shad Saleem Faruqi (eds), *Decolonising the university: The emerging quest for non-Eurocentric paradigms*,

is meant the integration of African norms, standards and values that have evolved from times immemorial – many centuries before the emergence of the relatively imported globalised religions like Christianity, Islam and others, as well as before the capturing, trading, enslavement of Africans in Europe and the Americas followed by the brutal and barbaric conquest and colonisation of the continent and its peoples. Proper understanding of Africa's historiography, including the spiritual and mental enslavement and colonisation, is important in understanding and applying the human and peoples' rights, freedoms and responsibilities.

It is also compelling that Africa's regionally developed standards and norms should be the basis of interpreting and applying the forementioned international human rights instruments. Furthermore, national constitutions – especially the bills of rights – and the accompanying laws and policies should be incorporated, as this article attempts to do in the context of this ravaging pandemic. Such a holistic approach creates hybridity of the norms, standards and principles that provide a coherent body of knowledge on the multi-, inter- and trans-disciplinary subject of human and peoples' rights, freedoms and responsibilities. The international, regional and national spheres ought not to be separated and used selectively as is the common practice by many crusaders of human rights. This is one of the central academic and intellectual message of this article. It is also necessary to put into context the fact that written basic documents which articulate or set legal standards, norms, concepts, principles or rules are not frozen in time and place – they evolve in time by incorporating new challenges and opportunities in life. They are always redefined and reinforced through interpretation and application in practice, as well as by new up-dated instruments developed at international, regional and national spheres.

In Africa, the relevant principal regional human and peoples' rights, freedoms and responsibilities norms and standards that are relevant in this analysis include the following: African Charter on Human and Peoples' Rights-ACHPR (1981, entered into force 1986), incorporating the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol, 2003); African Charter on the Rights and Welfare of the Child - ACRWC (1990,

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Penerbit Universiti Sains Malaysia, Pulau Pinang, 2012. Thomas Sowell, *Intellectuals and society* (revised and enlarged edition), Basic Books, New York, 2012, especially chapters 2 (on Knowledge and Notions) and chapter 8 (on The Rhetoric of 'Rights' and 'Social Justice'). James Thuo Gathii, 'The promise of International Law: A Third World view' Grotius Lecture presented at the 2020 Virtual Annual Meeting of the American Society of International Law, 25 June 2020. Prof Gathii calls for a 'subaltern epistemic location that questions international law's presumed universality' in teaching and research. Read the PDF version at, <<https://uicr.uiowa.edu/assets/Documents/GathiiGrotiusLecture2020.pdf>> on 6 November 2020.

entered into force in 1999); and Convention Governing the Specific Aspects of Refugee Problems in Africa (1969). The national constitutional provisions and relevant legislation that deal with human and peoples' rights, freedoms and responsibilities are numerous and the relevant ones will be weaved in as the analysis delves into how the COVID-19 pandemic has been responded to so far. What follows need to be linked to what has been pointed out before and the areas and issues covered are those that stand out in prominence. Thematic methodology and approach are used.

Given the information that has so far been generated since COVID-19 was declared a national disaster calling for emergency measures, the six thematic areas which stand out in human and peoples' rights, freedoms and responsibilities are: (i) life; (ii) health; (iii) sexual and gender-based violence; (iv) education; (v) safety, security and law enforcement; and, (vi) poverty and inequality. There has been major and serious challenges and opportunities across all these thematic areas and others.

Let us start with life. Every day, statistics are published nationally, regionally and globally indicating the number of reported cases of those who have been affected, those who have been treated and have recovered, and those who have died. Globally, the USA leads in all those categories; in Africa, South Africa is in the lead in all the three categories. As Kenya's President Uhuru Kenyatta has been repeating over and over again in extending the deadlines for opening up the educational institutions and the deteriorating economy because of the stringent measures put in place to curb people's movements, gatherings and socialising, the pandemic has forced all into a situation between a rock and a hard stone. It is a choice between lives and deaths and he has been forced to choose protecting the citizens or people's lives. The right to life of human beings is at the core of all other individual and collective people's rights, freedoms and responsibilities. Without going into too much detail, it is at the core of all the aforementioned international and regional instruments. It is also enshrined in the national constitutions of almost all the countries that have bills of rights and fundamental freedoms. It is in Article 26 of the Constitution of Kenya (2010 Constitution), even though other provisions such as 'life begins at conception' and the limiting of 'abortion' are controversial and debatable. Naturally, it is inseparably linked to the right to health that has become the focus of the state and all its organs and agencies as well as spheres of government at national, county, and all other lower structures. COVID-19 is a deadly disease that is transmitted through body contact, contact with physical material surfaces and, more recently, it has been

discovered that it is airborne as well,<sup>38</sup> which means it can be transmitted through the air by breathing out, talking and laughing. Even though a vaccine for it has been discovered, tested, manufactured and distributed it will remain a human threat for generations to come.

The right to health is provided for in some of the international instruments like the UDHR, ICESCR, and UNCAT. At regional level it is provided for in the ACHPR, the Maputo Protocol and ACRWC. It is equally provided for in national constitutional bills of rights and fundamental freedoms. In Kenya, the right to health is tangentially mentioned in Articles 42 under environment, read together with Article 70(2)(c) on clean and healthy environment, 43(1)(a) under economic and social rights, 46(1)(c) under consumer rights, and 53(1)(c) under children. Again, failure to recognise and provide for it as a stand-alone article reveals what the author regards as poor drafting informed by the volatile atmosphere under which it was negotiated and agreed on. Whatever the defaults in the wording and placing, the little that was gained is better than if it was totally omitted. Almost every day since the last week of March 2020, newspapers are awash with good and bad stories about medical health facilities, health workers, mortality rates, and many more. The COVID-19 pandemic has exposed the weaknesses and inadequacies in the health system in the country and globally. It has also demonstrated the weaknesses in society, especially lack of individual discipline and collective responsibilities. Rights and freedoms can only be realised meaningfully and comprehensively when understood and promoted or observed responsibly by individuals and the broader society. The lesson that has been learned and needs entrenching to guide society to a life of safety and security is the adage: 'prevention is better than cure'. It should be self-evident that life depends on health and health presumes access to food and water. The minimum requirement of social distancing, regular washing of hands with soap or using sanitisers and wearing face masks also presume the availability and access to clean water and proper sanitation which is wanting in most public restrooms or toilets at hospitals, eateries and gas and petrol stations, markets, education institutions and places of worship throughout the country. It requires action not only by the health ministry but other departments in government such as (in the case of Kenya) the Ministry of Transport, Infrastructure, Housing, Urban Development

<sup>38</sup> Bernadine Mutanu, 'Scientists push for WHO to declare virus airborne citing new evidence' Daily Nation, 10 July 2020, at page 10 (also available at <<https://nation.africa/kenya/news/scientists-push-who-to-declare-virus-airborne-1448088>> on 6 November 2020). The report is based on an open letter to the WHO written and signed by 239 scientists. It was published on 6 July 2020 in an Oxford journal, *Clinical Infectious Diseases* and *Emerging Infectious Diseases*, a peer-reviewed journal by Centres for Disease Control and Prevention (USA).



and Public Works. Lastly, on this health and COVID-19 thematic area, it is important to note here that Kenya National Commission on Human Rights (KNCHR) has just published a report that identifies health, water and sanitation, among a few others, as some of the thematic areas that need highlighting.<sup>39</sup>

The third thematic area that require spotlighting to combat the spread of COVID-19 is the high rise in sexual and gender-based violence (SGBV) during the lockdowns. COVID-19 does not commit SGBV; it is human beings who routinely and with impunity commit SGBV. This is happening in Kenya, South Africa and, perhaps, in many other countries on the continent. It should be understood that the SGBV did not start with the virus, it has been with us for a long time and will remain long into the future after vaccines are developed to prevent SARS-COV-2 infection. What the surge in the cases of SGBV has been during the pandemic is to exacerbate the scourge.<sup>40</sup> In other words, the pandemic is fuel added to a fire that has been raging for a long time. Sadly, over 95 per cent of the perpetrators are by those who are in my gender section of society – men and teenage boys. It is shameful and hurting. President Cyril Ramaphosa stated it very succinctly on 17 July 2020 in his address to the nation. This is part of what he said:<sup>41</sup>

It is now just over 100 days since the first case of COVID-19 was identified in South Africa. For 100 days we have been living in the shadow of one of the greatest threats to global health in over 100 years. The disease, and the measures we have taken to fight it have caused massive disruption in the lives of our people, bringing our economy to a standstill and threatening the livelihoods of millions...It is with the heaviest of heart that I stand before the women and girls of South Africa this evening to talk about another pandemic that is raging in our country – the killing of women and children by the men of our country. At a time when the pandemic has left us feeling vulnerable and uncertain, violence is being unleashed on women and children with a brutality that defies comprehension. These rapists and killers walk among us. They are among us. They are in our communities. They are our

<sup>39</sup> KNCHR, *Pain and pandemic: Unmasking the state of human rights in Kenya in containment of the COVID-19 pandemic – Situational Report 1 of June 2020*, KNCHR, Nairobi, parts 4.8, 4.7 read with parts 5.8 and 5.6.

<sup>40</sup> USAID Kenya and East Africa, *Country Consultations Data Packets: Improving the quality of life for the people of Kenya and throughout East Africa*, Nairobi, 2019, part 4 (Abuse of adolescent girls and Ranking of Number of Teenage Pregnancies). Helen Clark (New Zealand), Margaret Kobia (Kenya), Preeti Sudan (India) and Nadine FG Zylbermann (Mexico), 'Let women, girls shape their health care' Daily Nation, 2 July 2020, at page 18. Also available at <<https://nation.africa/kenya/blogs-opinion/opinion/-let-women-s-voices-lead-the-way-to-strengthen-health-systems-1353420>> on 6 November 2020.

<sup>41</sup> Press Release, 'Address by President Cyril Ramaphosa on the South Africa's response to the Coronavirus pandemic', on 17 July 2020, available at <<https://sacoronavirus.co.za/2020/06/17/president-cyril-ramaphosa-south-africas-response-to-the-covid-19-coronavirus-pandemic/>> on 6 November 2020.

fathers, our brothers, our sons and our friends; violent men with utterly no regard for the sanctity of human life. Over the first few weeks no fewer than 21 women and children have been murdered. Their killers thought they could silence them. But we will not forget them and we will speak for them where they cannot. We will speak for [names given – including 89 and 79-year old grandmothers and six-year old children] ...I want to assure the women and children of South Africa that our criminal justice system will remain focused on gender-based violence cases... The perpetrators of violence against women and children must receive sentences that fit the horrific crimes they commit. It is deeply disturbing the spike in crime against women and children has coincided with the easing of the COVID-19 lockdown...

The reported cases and written opinion pieces in newspapers coverage between the last week of March and the middle of August 2020 of SGBV in Kenya is horrific, staggering and astounding. In the interest of space, only 22 media reports are cited below:

George Oduor, 'Man held for defiling girl with epilepsy' *Daily Nation*, 4 May 2020 at page 26 – the child was a 10-year old and the man a 30-year old; Ngare Kariuki, 'Child marriage: An overlooked evil as Kenya fights the COVID-19 pandemic' *Daily Nation*, 4 May 2020 at page 26 – the child was first married when she was 9 and the second time when she was 11 years old. She was married off by her parents; George Oduor, '60 year-old man arrested for defiling teenage girl, infecting her with HIV' *Daily Nation*, 5 May 2020 at page 19 – he defiled the child multiple times; Faith Oneya, 'Teen pregnancies: We're all guilty of victimising girls' *Daily Nation*, 27 June 2020 at page 15 – the writer points out teenage pregnancies, forced child-marriages, defilement, outright murders, rape and many others; Ruth Mbula, 'Teenagers appeal for protection from FGM' *Saturday Nation*, 30 May 2020 at page 8 – the 700 teenagers staying at Kakenya Centre of Excellence in Trans Mara in Narok County fear being forced into early marriages during the COVID-19 crisis; Ian Byron, 'Cry for justice as pupil defiled by a neighbour' *Daily Nation*, 16 June 2020 at page 22 – the child is a 13-year old but police say they are still investigating; Titus Ominde, 'Five men accused of defiling girl arrested' *Sunday Nation*, 2 August 2020 at page 27 – the men in Uasin Gishu County are between 30 and 50 years old and they infected the mentally ill 13-year old child with a sexually transmitted disease; Faith Matete, 'Rape of children in Kisumu sparks cry for safe houses' *The Star*, 23 July 2020 at page 12-13; Njeri Rugene, 'Gender violence spikes as COVID-19 control rules bite' *Daily Nation*, 10 May 2020 at page 6 – domestic violence against women and girl children shows a spike of more than 100% in a month, especially in Nairobi, Kisumu, Kiambu, Homa Bay, Siaya, Nakuru, Mombasa and Murang'a; Stella Cherono, 'Njoro family endures a night of rape, beatings' *Daily Nation*, 8 July 2020 at page 9 – the gang slaughtered, cooked and ate stolen hen, they made the children watch as their mother was raped in turns, the father was tied and beaten. The four thieves also stole money and household goods; Njeri Rugene, 'Don't allow COVID-19 safety measures to give abusers cover' *Daily Nation*, 3 June 2020 at page 15 – victims are mostly elderly women and young and older women with disability and the forms of violence are physical, psychological and financial; Mishi Gongo 'Alarm as teen pregnancy and gender violence rises' *Daily Nation*, 25 May 2020 at page 6 – children as young as 12 in Mombasa; Anna Mutavati, Maniza Zaman and Demola Olajide (employees of UN agencies), 'Let's stop the shadow pandemic' *Daily Nation*, 25 April 2020 at page 5 – the UN agencies United Nations

Population Fund, United Nations Children's Fund, UN Women as well as the Red Cross have jointly expressed their concern; Macharia Mwangi, 'Letter from the mum who killed her four children' *Daily Nation*, 29 June 2020 at page 7 – the mother left a suicide note as she killed three boys and one girl and only two older boys who were not at home survived. She wrote that she could not afford to pay rent, electricity etc, as she had lost her part-time job and the poverty gave her unbearable pain and suffering; Jeremiah Kiplang'at, 'Town in shock after gruesome killings of girls' *Daily Nation*, 27 June 2020 at page 2 – at Moi's Bridge town at the border of Uasin Gishu and Trans-Nzoia counties, four girls between ten and thirteen years-old were brutally murdered and their bodies dismembered and dumped in thickets, the Director of Criminal Investigations was still investigating; David Muchui, 'COVID-19 break mums must finish their school, orders Uhuru' *Daily Nation*, 29 June 2020 at page 17 – President Uhuru Kenyatta gave an order that girl children who get pregnant during the school closure must be re-admitted unconditionally when schools reopen; Kevin Kelley, 'US missionary admits sexually abusing minors' *Daily Nation*, 17 June 2020 at page 6 – Gregory Dow, a sixty-one year old paedophile US citizen, who lived in Kenya as a Christian missionary and established The Dow Family's Children's Home (an orphanage in Boito, Bomet County) where he consistently defiled children between 11 and 13 years old before he fled to the US, was found guilty by a New York Federal Court; On 19 June 2020 *Daily Nation* had the headline 'Let's talk about rape' and on pages 2, 3, 4, and 5 published more than five stories and statements that touch on different aspects of the scourge of SGBV in Kenya, including a critique of the poorly-performing Ministry of Public Service, Youth and Gender Affairs; Vitalis Kimutai, 'Chief arrested while defiling a 15-year-old' *Daily Nation*, 8 May 2020 -59 year-old David Langat, Chief of Mogogosiek in Bomet County charged with defilement of a Form One school girl in his car; Steven Oduor, 'Give me more time to pay fine, "husband beater" says', *Daily Nation*, 26 March 2020, at page 22 – a married woman found guilty of domestic violence for regularly battering her husband and boasting about it by the Council of Elders in Kipini, Tana River County; Njeri Rugene, 'Inclusive measures to combat gender, sexual violence timely' *Daily Nation*, 26 March 2020 at page 15 – mentions many cases, including one in which a male university student who was gang-raped by five of his colleagues after attending a birthday party together; and, lastly, Kaltum Guyo, 'Teen pregnancy explosion calls for stronger child protection', *Daily Nation*, 29 June 2020 at page 14 – the opinion piece refers to the high number of minors [4,000] who have become pregnant during the COVID-19 lockdown in Machakos County and that 'paedophiles who groom minors for sex come from all walks of life.'

Scientists are working hard to find a vaccine for the SARS-COV-2 (the virus) but there will never be a vaccine for the scourge of SGBV pandemic. What we men in society must do lies in our patriarchal mentality and culture. We must stop it and work towards regaining our humanity. Laws are there at international,<sup>42</sup> regional<sup>43</sup> and national spheres.<sup>44</sup> SGBV not only cuts across human and peoples'

<sup>42</sup> In particular, UNCAT, CEDAW and CRC.

<sup>43</sup> In particular, the *Maputo Protocol* (2003) and ACRWC.

<sup>44</sup> See *Constitution of Kenya* (2010): Articles 29 (freedom and security of the person), and 53 (1) (c) and (d) (children's rights to be protected against abuse.... all forms of violence, inhuman and degrading

rights, freedoms and responsibilities; they cross over to criminal laws and justice systems as well. This last aspect applies to practically all areas and aspects of rights, freedoms, and responsibilities.

The fourth thematic area is education. The COVID-19 pandemic is an educator per excellence. Article 45 (1) of the 2010 Constitution states that ‘the family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the state.’ The article continues with provisions about marriage and property relations within the family. However, what the pandemic has taught us is that ‘the family’ can also be turned into an institution of brutality and abuse of rights, freedoms and responsibilities of its members and the broader society. The scourge of SGBV testifies to this. The pandemic is also an eye-opener on corruption and looting of public resources; it has, for example, exposed systemic and endemic stealing within the Ministry of Health, especially through Kenya Medical Supplies Authority (KEMSA) according to a recently released independent audit report<sup>45</sup> and the ‘disappearance’ of COVID-19 medical equipment donations by philanthropists that were mentioned earlier as well as the KEMSA’s collaboration with corporate criminals in looting funds provided by multilateral bodies to the state.<sup>46</sup>

COVID-19 affected the whole education system. Even though the 2010 Constitution has no stand-alone provision for the right to education, it is an established human right in all the earlier mentioned international and regional instruments. In the 2010 Constitution, the right is mentioned under economic and social rights – Article 43(1)(f); children – Article 53(1); youth – Article 55(a); freedom of expression – Article 33(1); and freedom of the media – Article 34(2). The right is enhanced in the Children Act and Basic Education Act further.<sup>47</sup> Legislation regulating universities and technical vocational education and training enhances it. But, as one journalist has put it, ‘Children’s right to life is more valuable than to education’<sup>48</sup>; this is the choice that informed the presidential directive that schools, universities and other tertiary education institutions be

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treatment.... parental care...etc). See also, *Children Act* (Act No. 8 of 2001), *Sexual Offences Act* (Act No. 3 of 2006), *Protection against Domestic Violence Act* (Act No. 2 of 2015) and *Prohibition of Female Genital Mutilation Act* (Act No. 32 of 2011).

<sup>45</sup> Paul Wafula, ‘Audit at Kemsra reveals massive financial and procurement irregularities’ *Daily Nation*, 9 July 2020, at page 2-3. The audit was commissioned by funders/donors, USAID and Global Fund.

<sup>46</sup> Paul Wafula, ‘Traders who made millions from Covid supplies’ *Daily Nation*, 3 August 2020, at page 4.

<sup>47</sup> *Children Act* (Act No. 8 of 2001). *Basic Education Act* (Act No. 14 of 2013).

<sup>48</sup> Timothy Ayuo in *Daily Nation*, 5 August 2020, at page 15. Article also available at <<https://nation.africa/kenya/blogs-opinion/opinion/child-right-to-life-more-valuable-than-education-1912952>> on 6 November 2020.

closed until the beginning of 2021. This is a global trend, with few exceptions.<sup>49</sup> This is painful and costly. Given the reality of inadequacy in availability of infrastructure, water and sanitation as demonstrated in protective measures such as face masks, regular washing of hands with soap or sanitisers and social distancing, transmission of the virus will escalate and become unmanageable by the already overstretched and expensive medical health system if education institutions were to be opened without appropriate safe learning conditions.

Education builds people's ability to think and acquire knowledge and skills necessary for their individual and society's survival – to understand the world better and to participate in all areas of life now and in the future. It is skilling for confronting all aspects of life and is at the core of 'survival of the fittest.' Teaching, learning, research and publishing are almost paralysed at the moment. What the virus has forced on us is making society recognise and realise weaknesses, challenges and strengths. Some would say, it has given society a reality check or a wake-up call. All that has been traversed in this article are educative, are lessons learned. It is time for critical thinking and paradigm shifting.

As the *Daily Nation Editorial* observes:<sup>50</sup>

The new development adds to the pain that COVID-19 has inflicted on education and other sectors in the economy. It is unprecedented in the history of education to have all learning institutions right from kindergarten to university, shut for nearly a year. The only time universities were closed for long – nine months – was after the abortive 1982 coup. The only higher education institutions then were the University of Nairobi and its constituent, Kenyatta University College. But the nine-month closure caused a five-year backlog in university admissions, which only resolved by having a double intake in 1987.

This contextualised observation in the *Daily Nation* provides a lesson that should be learned in developing a coherent strategy on the way forward from 2021 onwards but with the understanding that the damage this time is far greater than what occurred in 1980s. The number of universities and technical, vocational, education and training institutions (TVETs) have ballooned, both public and

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<sup>49</sup> David Muchunguh 'One billion learners at home across the world due to COVID-19' *Daily Nation*, 8 July 2020, at page 2 – it refers to a UNESCO statement which indicates that 'there are countrywide closure of schools in 110 countries, which translates to 61 per cent of learners being kept away from school. In Africa, only Botswana and Niger schools are fully open while some counties have partially opened their learning institutions.' Available at <https://nation.africa/kenya/news/1-billion-learners-at-home-across-the-world-1446778> on 6 November 2020. See, Nation Team, 'The bad and the ugly as Covid-19 keeps pupils away from school' *Daily Nation*, 16 July 2020, at page 14. See also, David Muchunguh, 'Lack of Pre-Primary One intake next year has parents worried' *Daily Nation*, 13 July 2020, at page 3.

<sup>50</sup> 'Universities must now take up online learning' *Daily Nation Editorial*, 29 July 2020, at page 14.

private, with numerous differentiations and inequalities in physical infrastructure, learning, teaching and research capacity – especially well-stocked research and reading libraries, laboratories for the sciences and engineering, boarding houses and student accommodation, as well as sports facilities. Education challenges in the country are already many, and the pandemic is exacerbating the situation. The USAID *Country Consultations Data Packets of 2019* states that ‘out of every 100 students who start primary school, 83 transition to secondary school; yet just 6 of this group go to universities or tertiary institutions to learn skills required to give the country an edge in an increasingly competitive world.’<sup>51</sup> The KNCHR’s *Situational Report 1 of June 2020* has already sounded alarm bells about the early impact of the pandemic on education and made some recommendations, among them, that online teaching and learning be used to mitigate the situation.<sup>52</sup>

Online teaching, learning and research is proffered as part of the immediate solutions to suspending the opening of education institutions until the beginning of 2021. But, in reality it is an appealing quick fix de-contextualised remedial measure since at the moment it can only benefit a tiny section of the society. The super-rich, the rich and upper classes in society will take advantage of it but the majority in the middle and lower middle class, the ordinary working class, the poor who live in urban and suburban informal settlements (slums), the rural poor peasants and the mass of the unemployed do not have access to affordable electricity, laptops and computers or smart mobile phones. Most schools and universities and their pupils and students, even the teachers and lecturers, do not have 24 hours-7 days a week access to the internet. Citizens need to push for access to affordable electricity and advocate that it be formally recognised as a stand-alone human and peoples’ right. Kenya has an estimated 200 private secondary or high schools that offer the British curriculum, and they are all well-endowed with digital infrastructure that enable online education. They are less constrained by the pandemic, even though home-based schooling denies children extra-curriculum experiential learning that contact schooling give.<sup>53</sup>

According to information obtained from the Commission for University Education (CUE) and published in a newspaper, ‘Kenya has 74 universities, with 31 of them being public and six public constituent colleges. There are also 18 private universities, five private constituent colleges and 14 institutions with

<sup>51</sup> USAID Kenya and East Africa, *Country Consultations Data Packets: Improving the quality of life for the people of Kenya and throughout East Africa*, Nairobi, 2019, part 5 (Youth Employment).

<sup>52</sup> See Thematic Focus 4 on right to education at page 34-39 and recommendations on page 70-71.

<sup>53</sup> Kariuki Waihenya, ‘Kenyans pursuing international education in limbo as exams cancelled’ *Daily Nation*, 29 April 2020, at page 3 – the writer notes: ‘More than 200 schools in Kenya.... offer UK-based education targeting rich Kenyans and the international community living in the country’.



Letters of Interim Authority.<sup>54</sup> The universities have expanded exponentially, but the proliferation ought to be accompanied with high-level academic, intellectual and scholarly engagements, otherwise they may produce half-baked graduates who will undermine the development needs of Africa in this highly-competitive world. They must pursue not only quantity but high quality as well as introduce a better balance between and among disciplines that would lead to multi-, inter-, and trans-disciplinary (MIT) approach to knowledge production and application.<sup>55</sup> There is ongoing pressure put on universities that predates the arrival of the pandemic that requires them to explore ways of effecting mergers as well as re-evaluating the relevance and quality of the qualifications they provide. Although the drive for reforms has been driven by the Cabinet Secretary for Education so far,<sup>56</sup> the process needs to deal with the problematic situation in which the state sponsors most of the students enrolled in the private universities, which are supposed to be business enterprises.<sup>57</sup> Of the private universities, only three – Strathmore, USIU and Aga Khan – do not depend or receive state-sponsored students. The rightful authority to lead and conduct such an exercise is the CUE, following a recent ruling by Justice James Makau in the High Court.<sup>58</sup> In this regard, CUE has to collaborate with the Kenya National Qualifications Authority (KNQA) in line with the Kenya National Qualifications Framework Act (No 22 of 2014). Some professional bodies who lost in the case battle have indicated that they will appeal the High Court decision in the Court

<sup>54</sup> Augustine Oduor, 'Reluctant VCs approve varsities merger plans' *The Standard*, 22 February 2020, at page 11. Prof Mwenda Ntarangwi, the CEO of CUE confirms these figures in 'What our universities can learn from pandemic' *Daily Nation* [Higher Education Section], 10 August 2020, at page 54.

<sup>55</sup> Godwin Siundu, 'How academics fell in the trap of STEM and humanities play-off' *Saturday Nation*, 23 May 2020, at page 19 – the writer puts it in a historical context, pointing out that the problem has been sustained under all the four presidents who have led Kenya with a view to silencing critical academia and ruthlessly purging universities of thought leaders.

<sup>56</sup> Godwin Siundu, 'How academics fell in the trap of STEM and humanities play-off' *Saturday Nation*, 23 May 2020, at page 19. Editorial, 'CS should not relent on university reforms' *Daily Nation*, 3 February 2020, page 14.

<sup>57</sup> David Aduda, 'Private varsities rocked by severe funding crisis' *Daily Nation*, 17 August 2020, at page 47. Also available at <<https://nation.africa/kenya/news/education/private-varsities-rocked-by-severe-funding-crisis-1919964>> on 6 November 2020. See also Nation Reporter, 'Cash crunch bites hard as State funding deal fails' *Daily Nation*, 17 August 2020, at page 47. George Osanjo, 'Why State must overhaul varsities funding model' *Daily Nation*, 17 August 2020, at page 54. Also available at <<https://nation.africa/kenya/news/education/state-overhaul-varsities-funding-model-1919990>> on 6 November 2020.

<sup>58</sup> Brian Wasuna, 'CUE to control academic programmes regulation' *Sunday Nation*, 21 July 2020, at page 10. Also available at <<https://nation.africa/kenya/news/education/cue-to-control-academic-programmes-regulation--733822>> on 6 November 2020.



of Appeal,<sup>59</sup> even though their effort has little chance of success. In the context of fighting the pandemic, some could have rose up to the occasion to be among the global leaders in research and clinical tests of a possible vaccine. Except for medical centres like the Kenya Medical Research Institute (KEMRI), only a few local universities have so far contributed by producing basic rudimentary PPEs such as hand sanitisers and facemasks.<sup>60</sup> There are other warning signs for universities that are not necessarily linked to the impact of the pandemic. Worth mentioning is that some of the 2019 KCSE candidates who scored very high marks and who usually are grabbed by universities have this time preferred to join Technical Vocational Education and Training (TVET) colleges, an indication that some university degree programmes are conceived as lacking merit in enabling graduates to pursue their professional ambitions.<sup>61</sup> As of 17 August 2020, only two public universities, the University of Nairobi (through its Vice Chancellor) had indicated that it would enrol students and train the students on how to learn in online classrooms and how to access library resources and other online resources,<sup>62</sup> and Egerton University (by an advertorial in the newspapers) had invited first-year students to register for online classes to commence on 31 August 2020.<sup>63</sup> The reality is that whenever the universities are mandated to open in January 2021, they have to adopt new models of teaching that combine open-distance and contact learning and teaching; this is likely to be a long-term innovative approach imposed by the COVID-19 pandemic.<sup>64</sup>

The fifth thematic area is safety, security and law enforcement. This has become a hot potato, very challenging to handle. Like SGBV, it has been an endemic challenge before COVID-19 but the entry of a new virus has exacerbated the situation. Safety, security and law enforcement covers a wide range of issues that are interconnected and interrelated between the criminal justice system and human and peoples' rights, freedoms and responsibilities. The applicable laws and state organs and agencies assigned responsibilities for oversight and

<sup>59</sup> Angela Oketch and Anita Chepkoech, 'As bodies plan to challenge ruling, universities welcome change' Sunday Nation, 21 June 2020, at page 10.

<sup>60</sup> Musembi Nzengu, 'Vasity rolls out mass production of sanitiser' The Star, 23 July 2020, at page 26 – citing South Eastern Kenya University (Kitui), Dedan Kimathi University (Nyeri) and Kisii University (Kisii).

<sup>61</sup> Duncan Omanga, 'That A graders shun degree calls for university reforms' The Standard, 6 June 2020, at page 21.

<sup>62</sup> 'UON ready to enrol 8,425 freshers in three weeks' Daily Nation [Higher Education Section], 10 August 2020, at page 51.

<sup>63</sup> See, <[http://firstyears.egerton.ac.ke/\\_/](http://firstyears.egerton.ac.ke/_/)> on 6 November 2020.

<sup>64</sup> Editorial, 'Pandemic should propel varsities towards reform' Daily Nation, 17 August 2020, at page 16.

implementation are numerous, cutting across the Executive and Judicial arms of government. In all of this, individuals, communities and society as a whole also have responsibilities and not just rights and freedoms. In this instance, safety and security is for the protection and prevention of all people, citizens and non-citizens, from being contaminated or infected by the virus and the unlucky infected victims need medical attention to prevent them from transmitting the virus to others but also for their treatment when it is possible to do so. This is a tall order, given that the infected may be symptomatic and asymptomatic. The KNCHR *Situational Report 1 of June 2020*, captures what this article groups under safety, security and law enforcement. The relevant focus themes in the report are: enforcement of COVID-19 prevention and control measures,<sup>65</sup> access to justice,<sup>66</sup> labour and social security<sup>67</sup> and vulnerable groups, especially persons deprived of liberty.<sup>68</sup>

In this instance, we begin with the relevant constitutional provisions. First, the relevant articles in the Bill of Rights which are: Article 24(1) – limitation of rights and fundamental freedoms; Article 29 – freedom and security of the person; Article 39 – freedom of movement and residence; Article 48 – access to justice; Article 49 – rights of arrested persons; and, Article 51 – rights of persons detained, held in custody or imprisoned; Article 53 (1)(d) – children; Article 59 (c) – older members of society to live in dignity and respect and be free from abuse; and, Article 58 – state of emergency. Powers and responsibilities of the police services are captured in Article 244, read with relevant legislation such as the Public Order Act. At the international sphere, the ICCPR, UNCAT and the CEDAW are important to this thematic area and at the regional sphere the Maputo Protocol (2003) provides basic norms and standards.

What has stood out under safety, security and law enforcement are: 1) the majority of the population has behaved responsibly in abiding by the rules and orders that the government has imposed, but a few have disregarded and ignored them while a few others, especially the poor who live in squalor in informal settlements have been constrained by circumstances; 2) the police have emerged as a force for brutality and abuse of power; and, 3) the Judiciary (including tribunals) has been partially disabled as it is inaccessible and cannot deliver justice timeously as required by the law. Here we shall elaborate more on the performance of the police and the courts and the issue of people's weak or non-

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<sup>65</sup> Part 4.1 read together with Part 5.1.

<sup>66</sup> Part 4.2 read with Part 5.2.

<sup>67</sup> Part 4.5 read with Part 5.5.

<sup>68</sup> Part 4.9 read together with 5.8.5.

adherence to the regulations.<sup>69</sup>

Police brutality and neglect of duty has reached epidemic proportions, it has always been there but has escalated during this ravaging COVID-19 pandemic regime.<sup>70</sup> Here below is a selected list of 12 reported cases and public opinion comments of police brutality and abuse of power during the curfew, lockdown and other social distancing and containment measures and rules imposed:

Weldon Kipkemoi, 'Police linked to 20 deaths at the Coast during curfew' *The Standard*, 8 June 2020 at page 21 – from a report covering the period March to May 2020 by an NGO, Haki Africa, that was handed to the regional police commander and regional commissioner at the Coast; Andrew Kasuku, 'My life will never be the same again – police brutality victim' *The Star*, 8 June 2020 at page 3 – attacked by police officers five minutes past 7pm (designated curfew time then) as he went home from work in Kahawa West, Nairobi; Joseph Openda and Eric Matara, '3 police officers seized over woman's beating' *Daily Nation*, 12 June 2020 at page 44 – Video clip showed them assaulting a woman – whipping and dragging Mercy Cherono tied to a motor bike; Vincent Achuka, 'Law of the jungle as police turn blind eye to breaking rules' *Daily Nation*, 22 April 2020 at page 10 – people breaking curfew rules, police roadblocks for bribe collection to escape quarantine; Kalume Kazungu, 'It's life in jail for police constable who raped a woman in Lamu station' *Saturday Nation*, 4 July 2020 at page 3 – the woman had gone to report her husband who was forcing her to have abortion; Kaltum Guyo, 'Police brutality at critical stage, should not be masked anymore' *Daily Nation*, 8 June 2020 at page 14 – the opinion piece cites several cases before and during the COVID-19 pandemic and links them to the horrific torture and murder of George Floyd by police officers in the USA; Victor Oluoch, 'Police killings marks bloody year for officers' *Daily Nation*, 25 June 2020 at pages 2-3 – 101 killed between January and May 2020 and transgressions picked since March 27 when the curfew was declared and the cases include that of a 13-year old Hussein Moyo who was fatally shot on the balcony of his parents' house; Editorial, 'Punish police officers who assaulted MCA' *Daily Nation*, 30 July 2020 at page 14 – it notes, among other cases, 'the sight of police officers battering Nairobi's County Assembly member Patricia Mutheu on Tuesday was revolting.... Brutality has become synonymous with the National Police Service despite attempts to eradicate it...'; Dickens Wesonga, 'Siaya police on the spot over failure to arrest man accused of rape' *Daily Nation*, 22 July 2020 at page 3 – a primary school teacher defiled an 11-year old female pupil and the aunt to the girl said they reported the matter and recorded a statement but nothing was being done; Kaltum Guyo, 'Kenya's lives matter; the bosses must account for police brutality' *Daily Nation*, 11 May 2020 at page 14 – an opinion piece on human rights; Irungũ Houghton,

<sup>69</sup> For example, see Nation Team, 'Mt Kenya residents tempt fate as COVID-19 safety tips ignored' *Daily Nation*, 22 April 2020, at page 8 – "breaching social-distancing, sanitation and hand washing regulations is pronounced at markets, matatu terminals, shops and supermarkets", and many regard it as a disease for and of Nairobi. See also, Gerald Bwisa 'Out go health rules and masks, as villagers declare cut a must' *Daily Nation*, 13 August 2020, at page 24 – teenage boys gather for circumcision and council of elders preside in community ceremonies for rite-of-passage of boys-to-men in Bukusu, Trans Nzoia County.

<sup>70</sup> Oscar Ochieng', 'Police more threatening to citizens than coronavirus' *The Standard*, 15 August 2020, at page 17.

'Kenya's Floyds deserve their justice too, speak and act up' *The Standard*, 6 June 2020 at page 16 – the opinion piece names several victims of police violence during the virus pandemic: Khamis Juma, Calvince Omondi, David Kiiru, Peter Gacheru, Eric Ngethe, Idris Mukolwe, John Muli, Ibrahim Onyango, Samuel Maina, James 'Waite' Waitheru and Yassin Moyo; and, lastly, one exceptional case – Sarah Nanjala, 'Meet policeman out to make a difference' *Daily Nation*, 7 August 2020 at page 3 – Justus Njeru, a policeman attached Huruma Police Station has volunteered to use his own money to provide 2-weeks supply of maize meal, face masks, and soap for hand washing to 50 families from Mathare and Huruma (informal settlements) and he campaigns for a stop to SGBV, rape, teenage pregnancies, domestic violence as well as providing mentorship to the youth.

The preventive measures declared under a state of emergency based on the Public Order Act (Cap 56) are with the purpose of securing people's safety and security. The police (including the Director of Criminal Investigations), working hand-in-glove with prosecuting authorities, have constitutional and legal authority and duty to carry out the indispensable role of the state to ensure that the imposed measures are implemented in order to safeguard human and peoples' rights, freedoms and responsibilities. This is an essential pillar in and for good and responsible governance, based on the rule of law. The COVID-19 pandemic should not be used as a cover for police criminality, abuse of power and violation of peoples' rights and freedom.

As for the Judiciary, it is an essential arm of state and government whose role and mandate depends mostly on the capability and credibility of the police and prosecutorial authorities – in so far as criminal justice is concerned. Where issues of human and peoples' rights, freedoms and responsibilities are concerned, the factual situations do determine aspects which can or should be pursued through criminal justice processes and which ones can only be dealt with through civil litigation and other recognised alternative dispute resolution mechanisms. Put simply, the courts wait to receive cases brought before them; at law, it is not their responsibility to solicit for cases. However, it is their responsibility to hear, judge and pronounce remedies expeditiously. The adage goes: 'justice delayed is justice denied.' Briefly, these are enshrined in provisions in the Constitution: Articles 20, 22, 23 and 50.

COVID-19 has put enormous pressure on the Judiciary although some of the pressures were there before the negative impacts caused by the pandemic. The pressure includes delays in processing cases due to shortage of judges in the High Court and Court of Appeal as the President, head of the Executive, has declined to formalise the appointment of the 41 judges who were appropriately interviewed and nominated for appointment by the Judicial Service Commission (JSC) as required by the Constitution and the laws of the country. Related to

and coinciding with this is the controversial initiative in Executive Order No. 1 of 2020 in which the President attempted to bunch the Judiciary with other commissions and agencies under control by the presidency.<sup>71</sup> An inadequate budget allocation to the Judiciary is also curtailing the efforts by the Judiciary to digitise its operations and simplify its access to the general public; the planned operations will include filing cases online, eliminating case backlogs as well as holding physical open court sessions under trees.<sup>72</sup> The reforms the Judiciary is pursuing are laudable and will assist during the crisis caused by COVID-19 and beyond. But it must be taken into account that access to appropriate information and communication technology is still very limited in the country, especially in rural areas. What is being done should be upscaled to incorporate mobile courts so that justice is taken to where the people reside and/or work.

Last but not least for this thematic area, it should be appreciated that judges and magistrates require continuous education so that they can improve their understanding of the laws, including diligence in sentencing and meting out punishment to those found to have transgressed the law, including providing appropriate remedial measures for the victims and survivors. For example, one judge of the High Court is reported to have commuted a life sentence given to a man who had defiled his daughter of 11 years old to 25 years in jail because there were 'mitigating circumstances' and the judge proceeded to rule that Section 8(2) of the Sexual Offences Act that prescribes a life sentence is unconstitutional because it undermines the discretionary powers of the presiding judicial officers.<sup>73</sup> Such a questionable reasoning and judgement should be taken for hearing by a bench consisting of at least three judges of the High Court or for review by a higher court.

The sixth, and last, thematic area of inquiry in this article is poverty and

<sup>71</sup> Two pieces by columnists very cogently captures this tension: Ken Opalo, 'Forget the DP, the judiciary is under attack' *The Standard*, 6 June 2020, at page 15 (available at <<https://www.standardmedia.co.ke/ken-opalo/article/2001374154/forget-the-dp-the-judiciary-is-under-attack>> on 6 November 2020). Barrack Muluka, 'We are birthing a sinister monster that will eat us up' *The Standard*, 6 June 2020, at page 15.

<sup>72</sup> Maureen Kakah, 'Judiciary launches electronic case filing system to expedite delivery of justice' *Daily Nation*, 2 July 2020, at page 6: The Chief Justice is quoted to have said, 'We've since the onset of the pandemic, established virtual courts and engaged litigants through online meeting applications. The Coronavirus has been a blessing in disguise.' Vincent Achuka, 'Maraga on trial as virus threatens his legacy at Judiciary' *Sunday Nation*, 9 August 2020, at page 4 – Chief Justice David Maraga is about to retire (Also available at <<https://nation.africa/kenya/news/maraga-on-trial-virus-threatens-his-legacy--1915210>> on 6 November 2020).

<sup>73</sup> Charles Wanyoro, 'Judge faults law prescribing fixed penalty for child abusers' *Daily Nation*, 7 July 2020, at page 10, also available at <<https://nation.africa/kenya/news/judge-faults-law-prescribing-fixed-penalty-for-child-abusers-1446046>> on 6 November 2020.

inequality. Poverty and inequality are conjoined historical, economic and social phenomena in society that are systemic and embedded in Kenya, South Africa and most countries in the world. They are divisions in society revealed in many forms, especially in class, race, gender, ethnic and nationality terms. In terms of human and peoples' rights provided for in the Bill of Rights in the Constitution, they are derivable from a bundle, especially Article 20(4)(a) – human dignity, equality, equity and freedom; Article 21(3) – persons with disability, members of minority or marginalised communities; Article 31 – privacy, home, property, possessions; Article 39 – movement and residence; Article 42 – clean and healthy environment; Article 43 highest attainable standard of health, access to adequate housing and reasonable standards of sanitation, clean and safe water in adequate quantities, freedom from hunger, and adequate food of acceptable quality, social security, education and emergency medical treatment; Article 53 (children) – free and compulsory basic education, basic nutrition, shelter and health care; Article 55 (youth) – relevant education and training; and Article 56 (minorities and marginalised groups). The constitutional provisions mentioned are all relevant but the ones that anchor most of them are those relating to the mother of material resources essential for human survival; that is those relating to property, land and the environment<sup>74</sup> – Articles 39 (privacy) – Article 39 (movement and residence) and Article 40 (property). However, other linked provisions are not included in the Bill of Rights but need to be considered as essential and core to those expressly recognised. These are in Articles 60-66 and 260 (public, private, community land and land held by non-citizens) and 69-72 (environment and natural resources). All the mentioned constitutional provisions applicable to this thematic area are in the already mentioned basic international and regional treaty documents on human and peoples' rights, freedoms and responsibilities; as such, they should all be read together with relevant national legislation and, where necessary and appropriate, precedent-setting decisions of the higher courts (case law).

Poverty and inequality are multi-faceted and multi-dimensional. The KNCHR *Situational Report 1 of June 2020* does not directly focus on poverty and inequality but, in essence covers them indirectly in the thematic focus pillars and recommendations it has developed. In the report the relevant ones fall

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<sup>74</sup> Shadrack Gutto, 'Re-theorising and conceptualising land, sovereignty, socio-economic rights and responsibility in the context of pan-Africanism and African renaissance in the 21st Century' 9(1) *International Journal of African Renaissance Studies-Multi-, Inter- and Transdisciplinary*, 2014, 5-15.

under education,<sup>75</sup> labour and social security,<sup>76</sup> housing,<sup>77</sup> water and sanitation,<sup>78</sup> health facilities and services,<sup>79</sup> and vulnerable groups.<sup>80</sup> The USAID Country Consultations Data Packets of 2019 does cover ‘persistent poverty’ and under it refers to inequality. It states: ‘There is a persistent gap between the rich and nearly 70% of Kenyans who are poor or live near the poverty line, which leaves them vulnerable to poor nutrition and preventable diseases.’ The data used covers 2015/2016 but does not indicate what a poverty rate is. The latest released World Bank rate is \$1.9 a day, which translates to about Ksh 200. This is a global benchmark.<sup>81</sup> These figures do not differ significantly from the Kenya National Bureau of Standard’s (KNBS) *Comprehensive Poverty Report*, which was released on 11 August 2020. The survey’s figures go beyond a monetary poverty line to the ‘multi-dimensionally poor.’ It states that:

An individual is considered multi-dimensionally poor if he or she is deprived of at least three basic needs, services or rights out of seven analysed. The basic needs are physical development, nutrition, health, education, child protection, information, water, sanitation and housing. The analysis also found that more than half (53 percent) of the population or 23.4 million are multi-dimensionally poor.<sup>82</sup>

What KNBS did not add to the list of basic needs but should have done so is access to affordable electricity. The first quarter of the 21<sup>st</sup> Century is far different from fifty years ago. The advances in information and communication technology (ICT) and their application in everyday life, at work, education, travelling, recreation, at home and practically everywhere else require and depends on access to affordable electricity. Lack or diminished access to affordable electricity exacerbates poverty and inequality. In addition, lack or inadequate access to affordable electricity for a vast majority of the population living in urban slums and in rural areas undermines efforts to combat climate change since people are forced to use trees and forests for firewood and charcoal for energy. The generation and transmission of electricity is often controlled by the state, ostensibly for national security reasons – in Kenya by Kenya Electricity Generating Company (KenGen) and Kenya Power in collaboration with the

<sup>75</sup> Parts 4.4 and 5.4.

<sup>76</sup> Parts 4.5 and 5.5.

<sup>77</sup> Part 4.6.

<sup>78</sup> Parts 4.7 and 5.6.

<sup>79</sup> Parts 4.8 and 5.7.

<sup>80</sup> Parts 4.9 and 5.8

<sup>81</sup> Tim Odinga, ‘Pandemic to sink over 13 million Africans into poverty’ Business Daily, 14 August 2020, at page 12 – it is estimated that more than one million workers in Kenya have been rendered jobless with one in every three citizens now considered monetary poor.

<sup>82</sup> Paul Wafula, ‘Report: 23.4m Kenyans are poor’ Daily Nation, 12 August 2020, at page 9.



Rural Electrification and Renewable Energy Corporation (REREC), and in South Africa by Eskom.

Poverty and inequality are socio-economic and historical realities that have faced humanity throughout several modes of production from early communalism through feudalism, slavery, capitalism, imperialism, truncated socialism to the current globalised neo-imperialism underpinned by hegemonic neo-liberal ideology or world outlook with its variants. The progression in modes of production are however not lineal, sometimes there are mixtures and overlaps. There is also need to historicise and contextualise the past and the present. For Africa, there is need to understand that the enslavement of Africans in the Caribbean, South, Central and North America created the resources that were used for industrialisation in Europe and North America, that led to capitalism, imperialism and colonisation of the continent. Slavery and colonialism was a period of pillage and plunder of Africa's wealth, including its labour force, for the development of West Europe and its North America extension.<sup>83</sup>

Today, there are a few countries that are capitalist and imperialist but pursue social democracy with narrow gaps between the rich and poor, quite similar to the other very few that regard themselves as socialist-oriented and strive to narrow the gaps between the relatively well-off and the majority of the citizenry who do not live in abject poverty. Despite differences in the rhetoric by leaders, Kenya and South Africa are neo-colonial capitalist political economies with very wide gaps between the few rich and the majority poor. Inequality is not only class-based; within there are aspects of gender, race and, sometimes, ethnic dimensions. Human rights, freedoms and responsibility to an extent aim towards reducing inequality but it remains a daunting task.<sup>84</sup> Poverty on the other hand can be eliminated, whatever the political economy is followed. In many countries, developed and less developed, the rich political elite and their technocrats in state institutions (the bureaucracy), the owners and controllers of wealth and those in the middle class do preach justice, equality, human rights, rule of law and sustainable development while condoning poverty and inequality. Such duplicity needs to be exposed and condemned in every society. It is a responsibility of all to fight for eradication of poverty and struggle in the pursuit of equity in society.

COVID-19 found a world where the majority are poor with systemic

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<sup>83</sup> Walter Rodney, *How Europe underdeveloped Africa*, Bogle-L'Ouverture Publications, London and Tanzania Publishing House, Dar es Salaam, 1972.

<sup>84</sup> Although written in the South African context, this book provides some insights on how the task could be approached: Shadrack Gutto, *Equality and non-Discrimination in South Africa: The political economy of law and law-making*, New Africa Books, Cape Town, 2001.

and entrenched inequalities. It simply worsened the situation, with those at the bottom becoming disproportionately infected and dying. The poor are becoming poorer and social and economic inequality is widening.<sup>85</sup> Poverty also denies human beings from developing to their full potential; it's disempowering.

## In lieu of a conclusion

COVID-19 is devastating the world. The pandemic is an awaking call and requires paradigm shifting in all aspects of human life. How we teach, learn and carry out research for knowledge development in all academic fields and disciplines needs to learn lessons from the crisis. It requires innovative critical thinking and action. This article has attempted to make a contribution in the search for how best we can cope but also where we should be heading when and if effective cure is developed and more importantly vaccines are developed and universally accessed to prevent infection from the virus. Core aspects of human and peoples' rights, freedoms and responsibilities as a course or a degree programme has been used with the aim of promoting a multi-, inter- and trans-disciplinary approach, especially because the COVID-19 pandemic affects humanity in multi-dimensional and multi-faceted ways. Normal studies tend to focus on human rights and freedoms and do not cover enough of 'peoples and responsibilities.' The six areas of focus or themes covered are: life; health; SGBV; education; safety, security and law enforcement; and, poverty and inequality. Some of the aspects clearly demonstrate inter-linkages between criminal justice and human and peoples' rights, freedoms and responsibilities. Based on information drawn from the media, especially daily newspapers, gathered, collected and then condensed, the exercise was challenging. It was not a phenomenon that had been

<sup>85</sup> Joshua Oigara, 'Cushioning the vulnerable socially and economically' Daily Nation, 14 August 2020, at page 15 – 'The Kenya National Bureau of Standards (KNBS) says 61.9 percent of the workforce is out of work and, with the economic situation uncertain and bleak, 77.8 percent of them are unsure of resuming' (also available at <<https://nation.africa/kenya/blogs-opinion/blogs/cushioning-the-vulnerable-socially-and-economically-1918146>> on 6 November 2020). James Kahongeh, 'Sad tale of poor folks pushed to the brink' Daily Nation, 13 August 2020, at page 4 – story of single mother Judith Wanga's difficult experience at her shelter/'home' in Korogocho, Nairobi during the pandemic (also available at <<https://nation.africa/kenya/news/poor-folks-pushed-to-the-brink-1917804>> on 6 November 2020); Silas Apollo, 'No respite for elders as pledged weekly cash fails to reach them' Daily Nation, 13 August 2020, at page 4 (available at <<https://nation.africa/kenya/news/elders-wait-in-vain-for-weekly-cash-1917800>> on 6 November 2020). See also, Winnie Atieno, 'Tough times for the elderly in battle against stigma, COVID-19' Daily Nation, 18 August 2020, at page 9 – story of an abandoned septuagenarian at Nyumba ya Wazee, Tudor, Mombasa (also available at <<https://nation.africa/kenya/news/tough-times-elderly-stigma-covid-19-1920474>> on 6 November 2020).

studied before but requiring new thinking, reflection and analysis. The author considers that the major impact of the pandemic fall into the six thematic areas. However, it will take quite some time before the virus is fully contained and life begins to operate under 'a new normal.' Many lessons will have been learned and a lot of scholarship on the pandemic and society will certainly develop.