

Police Brutality and Human Rights Violations in the COVID-19 Era through the Lens of Selected African Countries

Abstract

Global responses to the coronavirus (COVID-19) pandemic since its discovery in Wuhan, China, in December 2019 have been geared towards containing the virus through the adoption of measures such as restrictions on movement and social distancing to reduce physical contact among persons. Countries have also adopted diverse legislation, regulation and policies; and have also exercised emergency powers to facilitate restrictive measures. Various international instruments emphasise the need for restrictive measures to be objective without any attendant violation of individual human rights to dignity and other freedoms. Utilising a mixed methods approach, involving doctrinal, historical, critical and geopolitical perspectives, this paper examines the acts of law enforcement officers in implementing compliance with various COVID-19 measures and their effect on the fundamental rights of citizens in selected African countries. It discusses the trend of human rights violations in these countries and analyses the legality of adopted enforcement measures in line with international human rights law.

Keywords: COVID-19, human rights, police brutality, lockdown, restrictions

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I Introduction

Human security is a critical component of the global political and development agenda.¹ At the heart of this assertion lies two strategic issues. First, the protection of individuals is a deliberate concern for national as well as international security; and second, security conditions for the development of individuals are not bound to traditional matters of national defence, law and order, but rather encompass all political, economic and social issues enabling a life free from risk and fear.² The concept of human security as a ‘public good’³, which States must establish, has attained new dimensions with the advent of the coronavirus pandemic (COVID-19) emanating from Wuhan, China, in December 2019. As one of the biggest health crises the world has faced in over a century,⁴ States were largely unprepared to deal with the spread of the virus. The deployment of containment measures by States was precipitated by the World Health Organisation (WHO)’s call in March 2020 for governments to take urgent and aggressive action to stop the spread of the virus.⁵ Thus, in adherence to this call, States began to implement stringent containment measures. The implementation of these measures to curtail the public health threat significantly limited certain rights of citizens, including freedom of movement and association. International human rights law protects, in principle, the right of everyone to leave any country; enter their own country of nationality, and the right of everyone lawfully in a country to move freely in the country’s whole territory. Restrictions on these rights can only be imposed when lawful, for a legitimate purpose and when the restrictions are proportionate, including when considering their impact.⁶

Security operatives in developing African States, entrusted with the responsibility of enforcing compliance with COVID-19 restrictive measures, have been accused of

¹ Kareen Hussein, Donata Gnisci and Julia Wanjiru ‘Security and Human Security: An Overview of Concepts and Initiatives – What Implications for West Africa?’ (2004) OECD – Sahel and West Africa Club Issue Paper, SAH/D(2004)547, 8 <<https://www.oecd.org/swac/publications/38826090.pdf>> accessed 2 June 2021.

² Ibid.

³ All governments consider supplying the public good of national security as their responsibility. Hasan Ersel ‘Putting Human Security at the heart of public policy making’ (10 October 2017) Economic Research Form, <<https://theforum.erf.org/2017/10/08/putting-human-security-heart-public-policy-making/#:~:text=In%20public%20economics%2C%20national%20security,example%20of%20a%20public%20good.&text=Government%20strategies%20that%20overemphasise%20national,as%20a%20composite%20public%20good.>>> accessed 2 June 2021.

⁴ ‘COVID-19: Joint Memo by Civil Society Organisations on Response to COVID-19 Pandemic in Nigeria’ (29 April 2020) 4 <<http://www.osiwa.org/wp-content/uploads/2020/05/COVID19-CSOs-Joint-Memo-final.pdf>> accessed 21 May 2021.

⁵ Human Rights Watch ‘Human Rights Dimensions of COVID-19 Response’ (19 March 2020) <<https://reliefweb.int/sites/reliefweb.int/files/resources/Human%20Rights%20Dimensions%20of%20COVID-19%20Response.pdf>> accessed 21 May 2021.

⁶ Ibid.

extrajudicial killing, abuse of power and broad-based violation of human rights of persons during this pandemic era.

This paper, in seeking to understand the prevalence of such ‘cultures of violation’, examines the characteristic nature of ‘police brutality’ and the human rights implications of deploying security forces in cases of public health threats (COVID-19). Focusing on perspectives from the developing countries of Nigeria, Kenya and Uganda, with international concern about repeated human rights violations, the paper explores trends of incidents of human rights violations during the COVID-19 pandemic, considering national and international legal instruments targeted at facilitating the prevention of such incidents. The paper also explores the sanctions and judicial approaches adopted by the government in these countries as key reflections of the respective governments’ commitment to end these human rights violations or prevent their reoccurrence. The paper finds that alleged violations are intrinsically linked to enforcing the will of the government against citizens who are perceived as in defiance of the measures, sometimes deliberately or because citizens lack the basic protective means and services, which are the responsibility of government to provide. Hence, the measures adopted by government without adequately providing for the needs of its citizens serves as a catalyst to fuel already existing potential for rights violations. Furthermore, pre-existing notions that law enforcement exists to protect the government from the people, resulting in the disconnect between citizens and law enforcement, remains prevalent during the pandemic. The paper therefore recommends possible solutions for the prevention of police brutality and preventing future violations of human rights of citizens while the pandemic persists.

Whilst issues of police brutality and human right violations have been the subject of discourse in various academic circles, these issues occurring during the COVID-19 pandemic provide a basis for further research. As such, this paper adopts a desk research approach, alluding to empirical studies encapsulated in various jurisdictional reports. The choice of Nigeria, Uganda and Kenya is strategic, as these sub-Saharan African countries provide differing perspectives on how the issues of police brutality and HR violations are handled by the government and through judicial means. The paper is divided into five sections. Following the introduction, the paper explores the nature of police brutality and human rights violations in general. Part III discusses the COVID-19 pandemic as a challenge to the promotion and protection of human rights, with Part IV providing an analysis of these issues in the three key jurisdictions analysed above. Part V discusses next steps to ensure the promotion and protection of human rights, concluding with recommendations for the adoption of procedures and strategies using Kenya’s approach. The paper advocates for the adoption of strategies like that of Kenya’s IPOA and how these strategies can be implemented effectively to ensure continued respect for and promotion of the human rights of citizens.

II Law Enforcement Officials, Nature of ‘Police Brutality’ and Human Rights Violations

The United Nations’ (UN) Code of Conduct for Law Enforcement Officials defines the term ‘law enforcement officials’ as including ‘all officers of the law, whether appointed or elected, who exercise police powers, especially the power of arrest or detention.’⁷ However, in countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.⁸ Generally, law enforcement is not a traditional core skill of military training. Nevertheless, it has increasingly become common for military personnel to be involved in helping to maintain security in various African countries, in areas where unarmed conflict and tension persists.

Therefore, within the context of this paper, the term ‘law enforcement officials’ includes the police, security operatives, army personnel, paramilitary operatives and other security personnel authorised to carry weapons. In the absence of war and in the context of exercising police powers, the aforementioned groups are held accountable to the same standards.

Law enforcement officials are enjoined to ‘respect and protect human dignity, and ‘maintain and uphold the human rights of all persons’⁹ as they are accountable to the community. Despite this requirement, incidents of police brutality still abound worldwide. Whilst a universally acceptable definition of the term is yet to emerge, police brutality can be described as the use of unnecessary and/or excessive violence by police.¹⁰ It may include verbal commands and threats, but physical force must constitute a component of the threat for it to be termed brutality.¹¹ According to Article 3 of the UN Code of Conduct for Law-Enforcement Officials, the legitimate use of force is only that which is ‘strictly necessary’ to subdue persons under the circumstances confronting officers.¹² Nevertheless, police officers in several jurisdictions continue to display an attitude that gravely contravenes the idea of legitimate use of force. Worden puts forward the perspective that the behaviour of police officers in carrying out their duties is psychological, and largely affected by the

⁷ United Nations General Assembly (UNGA), Code of Conduct for Law Enforcement Officials, Res. 34/169, annex (17 December 1979); United Nations Office for Drug and Crime (UNODC), *Compendium of United Nation Standard and Norms in Crime Prevention and Criminal Justice* (United Nations 2016) 281.

⁸ United Nations Office for Drug and Crime (UNODC), *Compendium of United Nation Standard and Norms in Crime Prevention and Criminal Justice* (United Nations 2016) 281.

⁹ Ibid, art 2; United Nations Office of the High Commissioner, (UNOHCHR) Centre for Human Rights, *International Human Rights Standards for Law Enforcement – A Pocket Book on Human Rights for the Police* (Centre for Human Rights 1997) 18, <<https://www.ohchr.org/Documents/Publications/training5Add1en.pdf>> accessed 21 May 2021.

¹⁰ Carl Root ‘Police Brutality’ in *Encyclopaedia of Crime and Punishment*, 1 <https://www.researchgate.net/publication/315406775_Police_Brutality> accessed 2 June 2021.

¹¹ Ibid.

¹² UNODC (n 7) 282.

organisational context in which they work.¹³ The actions of security forces in the context of rights violation in the African countries examined subsequently are reflective of the notion that these officers work for the government, protecting the government rather than the people.¹⁴ Hence, police officers' behaviour is not a simple extension of attitudes, as organisational and other social forces can attenuate the impact of attitudes on behaviour.¹⁵

Unfortunately, incidents of police brutality have been rife in 2020. The situation presented by the COVID-19 pandemic has required States to take extraordinary measures to protect the health and well-being of their population. These extraordinary measures, ranging from lockdown measures; declaring a state of emergency; and adoption of emergency legislation on measures such as compulsory use of facemasks and curfews are potentially difficult to implement without the deployment of the police and other security agency personnel as law enforcement officers.¹⁶ The involvement of security operatives to enforce the measures has resulted in accounts of law enforcement officers' use of excessive force on citizens and the violation of human rights.¹⁷ These incidents of police brutality have mostly arisen amongst poor and vulnerable citizens who are violating the State-imposed measures for a variety of reasons, including in a bid to purchase food for survival, seeking access to emergency health services and seeking alternate means of transport to get home from their daily work. In some other instances, citizens flouted directives due to circumstances beyond their immediate control, such as in improvised and overcrowded settlements where adherence to social distancing were practically impossible.¹⁸ These acts of police brutality are in total disregard of the fact that States must enforce COVID-19 exceptional measures humanely, respecting the principle of proportionality (i.e. that the restriction must be proportionate to the interests of citizens at stake) and ensuring that penalties for violations for such exceptional measures are not imposed in an arbitrary or discriminatory way.¹⁹

¹³ R. E. Worden, 'The Causes of Police Brutality: Theory and Evidence on Police Use of Force' (1995) *Police Violence*, 23 at 27.

¹⁴ N. J. Madubuike-Ekwe and O. K. Obayemi, 'Assessment of the Role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria' (2018) 23 *Annual Survey of International & Comparative Law*, 19 at 48.

¹⁵ Worden (n 13) 27.

¹⁶ Edward P. Richards, Katherine C. Rathbun, Corina Solé Brito and Andrea Luna, *The Role of Law Enforcement in Public Health Emergencies: Special Considerations for an all-Hazards Approach* (Bureau of Justice Assistance 2006) <<https://www.ojp.gov/pdffiles1/bja/214333.pdf>> accessed 24 May 2021.

¹⁷ Amnesty International, *Policing the pandemic: human rights violations in the enforcement of Covid 19 measures in Europe* (Amnesty International Ltd 2020) 4.

¹⁸ Isaac Mugabi, 'COVID-19: Security Forces in Africa brutalizing citizens under lockdown' 20 April, 2020, <<https://www.dw.com/en/covid-19-security-forces-in-africa-brutalizing-civilians-under-lockdown/a-53192163>> accessed 02 June 2021; Amnesty International 'Governments and police must stop using pandemic as pretext for abuse' 17 December 2020, <<https://www.amnesty.org/en/latest/news/2020/12/governments-and-police-must-stop-using-pandemic-as-pretext-for-abuse/>> accessed 2 June 2021.

¹⁹ UNOHCHR, 'Emergency Measures and COVID-19: Policy Guidance' 1, <https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf> accessed 2 June 2021.

In April 2020, the United Nations (UN) High Commissioner for Human Rights decried the reports from different regions about the abuse of persons for breaking curfews and detentions for curfew violations. The High Commissioner noted that

[...] police and other security forces have been using excessive, and at times, lethal force to make people abide by lockdowns and curfews. Such violations have often been committed against people belonging to the poorest and most vulnerable segments of the population.²⁰

From the international perspective, the International Covenant on Economic, Social and Cultural Rights (ICESCR) obliges governments to ‘take effective steps for the prevention, treatment and control of epidemic, endemic, occupational and other diseases’.²¹ This supports governments’ obligation to curtail the virus effectively using necessary measures. However, international law assumes that the measures adopted would be such that, as much as possible, respect for human dignity would be maintained. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights,²² expressly states that restrictions of guaranteed rights should, at a minimum, be characterised as being carried out in accordance with the law; directed towards a legitimate objective of general interest; strictly necessary in a democratic society to achieve the objective; be the least intrusive and restrictive available to reach the objective; based on scientific evidence and neither arbitrary nor discriminatory in application; and of limited duration, respectful of human dignity, and subject to review.²³ Furthermore, Part II of the Siracusa Principles, titled ‘Derogations in a Public Emergency,’ states further that:

(al)though protections against arbitrary arrest and detention and the right to a fair and public hearing in the determination of a criminal charge may be subject to legitimate limitations if strictly required by the exigencies of an emergency situation, the denial of certain rights fundamental to human dignity can never be strictly necessary in any conceivable emergency, and respect for them is essential in order to ensure enjoyment of non-derogable rights and to provide an effective remedy against their violation.²⁴

²⁰ UNOHCHR, ‘COVID-19: Exceptional measures should not be cover for human rights abuses and violations – Bachelet’ (27 April 2020) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25828>> accessed 2 June 2021.

²¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, art 12.

²² UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, Pt 1.

²³ Ibid; Human Rights Watch, ‘Human Rights Dimensions of COVID-19 Response’ (19 March 2020) <<https://reliefweb.int/sites/reliefweb.int/files/resources/Human%20Rights%20Dimensions%20of%20COVID-19%20Response.pdf>> accessed 23 May 2021.

²⁴ UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, Paragraph 70.

The African regional perspective adopts a similar approach to the above instruments. The African Commission on Human and Peoples' Rights in General Comment No. 3 on the right to life²⁵ states that the primary duty of law enforcement officials – meaning any actor officially tasked with exercising a law enforcement function, including police, gendarmerie, military or private security personnel – is to protect the safety of the public.²⁶ Interestingly, the document notes that 'particular attention should be paid to ensuring the availability and use of weapons less likely to cause death or serious injury than are firearms. However, such weapons should not be abused... Special training concerning the use of such weapons should be provided.'²⁷

General Comment No. 3 also clearly sets out the responsibility of African States with regards to such human rights violations or deprivations of life:

States must take steps both to prevent arbitrary deprivations of life and to conduct prompt, impartial, thorough and transparent investigations into any such deprivations that may have occurred, holding those responsible to account and providing for an effective remedy and reparation for the victim or victims, including, where appropriate, their immediate family and dependents. States are responsible for violations of this right by all their organs (executive, legislative and judicial), and other public or governmental authorities, at all levels (national, regional or local).²⁸

In addition, States are also required to adopt a 'clear legislative framework for the use of force by law enforcement and other actions that complies with international standards, including the principles of necessity and proportionality'.²⁹ Hence, the combined effects of these soft law instruments provide a sufficient basis for States to ensure the prevention of police brutality and rights violation, even during the pandemic.

As with several other jurisdictions in other continents, incidents of unlawful use of force and violence continues to take place in countries in Africa during the pandemic. The paper subsequently examines the incidents of these violations in Nigeria, Kenya and Uganda, and the basis for the occurrences in these jurisdictions, but first analyses the COVID-19 pandemic as a key challenge to the protection of human rights.

²⁵ General Comment No. 3 on the African Charter on Human and Peoples' Rights – The Right to Life (Article 4), Adopted during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights held from 4 to 18 November 2015 in Banjul, The Gambia, <<https://policehumanrightsresources.org/content/uploads/2015/01/General-Comment-3-On-The-African-Charter-On-Human-And-Peoples%E2%80%99-Rights-The-Right-To-Life-Article-4.pdf?x96812>> accessed 31 October 2021.

²⁶ Para 27, *ibid*.

²⁷ Para 30, *ibid*.

²⁸ Para 7, *ibid*.

²⁹ Force may be used in law enforcement only in order to stop an imminent threat. The intentional lethal use of force by law enforcement officials and others is prohibited unless it is strictly unavoidable in order to protect life (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary). Para 27, *ibid*.

III The COVID-19 Pandemic as a Challenge to the Promotion and Protection of Human Rights

Since independence from colonialism, many countries on the African continent have a reputation for human rights violations of their citizens. A significant number of countries in the continent have been subject to longstanding authoritarian single-party or military rule or decades. Consequently, although boasting of independence from colonialism, political liberalisation and democratisation, citizens in reality are repressed by the government.³⁰ Particularly, citizens suffer from an array of rights violations inflicted by various government agencies that collectively form the security forces, while carrying out their statutory security responsibilities. The most significant human rights issues in this regard include the arbitrary deprivation of life; excessive use of force that may also lead to the deprivation of life; restrictions on freedom of assembly and arbitrary arrest. These violations exist despite provisions in their national laws that prohibit them.³¹ Furthermore, a significant number of the states in the continent are parties to various international treaties that highlight the need to respect human rights, including the International Covenant on Civil and Political Rights (ICCPR),³² the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)³³ and the African Charter on Human and Peoples Rights.³⁴ The obligations under these international treaties mandate states to adopt a variety of measures against the abuse of human rights.³⁵ With the outbreak of the COVID-19 pandemic, citizens have continued to experience threats to these guaranteed rights, putting a strain on protecting these rights in several contexts.

The severity of the COVID-19 outbreak placed the global community on high alert regarding the public health safety implications on citizens if the virus were left unchecked. States, including Nigeria, Uganda and Kenya, adopted immediate containment strategies with the knowledge that COVID-19 had permeated their jurisdictions. The adoption of these strategies created a human rights situation that was problematic in two significant ways. In the first instance, the over-arching pandemic further increased the likelihood of violations within the pre-existing antagonistic relationship between the public and security

³⁰ Human Rights Watch, 'Protectors or Pretenders: Government Human Rights Commissions in Africa' (2001) <<https://www.hrw.org/reports/2001/africa/overview/record.html>> accessed 2 June 2021.

³¹ For instance, the Constitution of the Federal Republic of Nigeria, ss 33–35 provide for the right to life, dignity and personal liberty respectively. S. 41 also provides for the freedom of movement which can be curtailed in specific situations. Constitution of the Republic of Uganda 1995 (as amended), arts 22–24 refer to the rights to life, personal liberty and protection from inhumane treatment. Art 20 of the same Constitution provides that the rights shall be respected, upheld and promoted by all organs and agencies of government.

³² *International Convention on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171 (ICCPR).

³³ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Dec. 10, 1984; 1465 U.N.T.S. 85, 113 (UNCAT).

³⁴ *African Charter on Human and Peoples' Rights*, June 27, 1981, 1520 U.N.T.S. 217 (Banjul Charter).

³⁵ UNCAT, art 4(2); Banjul Charter, art 25.

officials involving the excessive use of force, since the latter ordinarily remain strategic to the enforcement of the various measures. For instance, the Independent Police Oversight Authority (IPOA) of Kenya indicated that, of the 87 complaints against the police between the end of March and April 2020, 15 deaths and 31 other incidents where victims sustained injuries are directly linked to the actions of police officers during the curfew enforcement.³⁶ Notably, these numbers may not be a true reflection of the actual number of victims who have suffered ill-treatment at the hands of law enforcement officers. Some victims never formally voice or delay reporting such abuse. Factors that influence latency in this regard include lack of functional independent structures for disclosing such abuse; and the fear of intimidation or manipulation by the offender. Nevertheless, the existence of reports indicates the existence of a palpable problem

Second, the decisive measures, which were in several instances indefinite, adversely affected various features of existence, tied generally to the standard of living and wellbeing of a significant number of households. Citizens suffered a loss of income and, in some cases, experienced difficulty in accessing medical care due to the quarantine and interstate travel bans. In the absence of sufficient palliatives to cushion the effect of these measures, nationals in several jurisdictions are known to have flouted the measures, creating the opportunity for security officials to engage in various forms of rights violation in a bid to enforce the measures.

In several African states, government failed to provide constantly accurate and up-to-date information about the virus, as well as various processes and responses involved in its curtailment. The absence of open and transparent communication by government affects the level of trust that citizens have with respect to the decisions made by government. For instance, citizens of Nigeria continued to receive conflicting information from the central and subnational government of the states of Kogi and Cross Rivers concerning the presence of the virus in their states.³⁷ In addition, several persons suspected of having been affected by the virus complained that, although they were isolated for a specific period of time, they were not given access to the results that actually confirmed their positive status to the virus.³⁸ The inconsistencies as to presence of the virus nationwide and other complaints

³⁶ Amanda Sperber, 'They have killed us more than Corona: Kenyans protest against police brutality' *The Guardian*, (International edition, June 9, 2020) <<https://www.theguardian.com/global-development/2020/jun/09/they-have-killed-us-more-than-corona-kenyans-protest-against-police-brutality>> accessed 28 May 2021.

³⁷ 'Kogi govt insist state has no COVID 19 Case' *Premium Times* (June 8, 2020) <<https://www.premiumtimesng.com/coronavirus/396724-kogi-govt-insists-state-has-no-covid-19-case.html>> accessed 28 May 2021; A Akpan, 'Cross River Dismisses COVID-19 claims of Bauchi governor, insists state is virus free' *The Guardian* (June 13, 2020) <<https://guardian.ng/news/cross-river-dismisses-covid-19-claims-of-bauchi-governor-insists-state-is-virus-free/>> accessed 28 May 2021.

³⁸ T. Omilana, 'Why we don't give COVID-19 test results to Individuals: NCDC' *The Guardian* (May 15, 2020) <<https://guardian.ng/news/why-we-dont-give-covid19-test-results-to-individuals-ncdc/>> accessed 28 June 2020.

relating to the failure of transparent communication and open reporting largely caused citizens to doubt the existence of the virus. The transparency and accountability failures also diluted the effect of government enlightenment about practices to protect oneself and prevent the spread of the virus. A social interaction needs perspective also met with some resistance. Citizens considered the imposition of mobility restrictions as a cultural shock to the communal (as opposed to individualistic) lifestyles typical of Africans.³⁹ Consequently, citizens continue to flout government directives to maintain social distancing, creating the need for the security forces to enforce government directives. Clearly, the pandemic and the resultant measures adopted in this context, served as a catalyst to fuel the already existing potential for rights violation.

Where caution is not exercised, there is a tendency for States to overlook the pertinent human rights of its citizens in a bid to suppress issues perceived as threatening public health and safety. The examples of Nigeria, Kenya and Uganda provide some perspective on the ways in which these rights have been suppressed in seeking to contain COVID-19 within their respective jurisdictions and the efforts by governments in this jurisdiction to penalise law enforcement officials who seek to suppress these rights.

IV COVID-19: Incidents of Police Brutality, Human Rights Violations and Punishment for Law Enforcement Officials in Selected African Countries

1 Nigeria

Nigeria recognises her primary responsibility for ensuring the safety and protection of her citizens' basic human rights. The 1999 Constitution of the Federal Republic of Nigeria provides that 'the security and welfare of the people shall be the primary purpose of government'.⁴⁰ To protect the security and welfare of the citizens, Chapter VI of the Constitution embodies their fundamental rights.⁴¹ In addition, other municipal instruments affirm and contribute to the protection of a variety of citizen's rights.⁴² The municipal laws enacted to protect the inherent rights and freedom of citizens in the country echo and draw from pre-existing international and regional laws and standards in the international sphere to which the country is signatory.⁴³

³⁹ Christopher Agulanna, 'Community and Human Well-Being in an African Culture' (2010) 14 (64/59) *Trames Journal of the Humanities and Social Sciences*, 282, 288–289. DOI: 10.3176/tr.2010.3.05

⁴⁰ Section 14(2)(b), Constitution of the Federal Republic of Nigeria 1999.

⁴¹ Sections 33–42. Rights protected include the right to life, fair hearing, freedom of association, freedom of movement, freedom from torture, and ill treatment as well as freedom from discrimination.

⁴² Administration of Criminal Justice Act (ACJA) 2015, s 8; Anti-Torture Act 2017.

⁴³ *Universal Declaration of Human Rights*, G.A. Res. 217 (III) A, U.N. Doc A/810, 1 71 (Dec. 10. 1948); ICCPR (n 32). CAB/LEG/24.9/49 (Nov. 29, 1999).

The state's internal security architecture comprises several security agencies required to perform functions that aid in maintaining peace within the borders of the state.⁴⁴ The Nigerian police is principally responsible for maintaining law and order.⁴⁵ These duties of the Police Force members require them to utilise the powers of arrest, search and detention of person(s) or property and the use of force in certain situations.⁴⁶ In some instances, the state armed forces are deployed to aid the protection of internal security when existing police resources are overstretched and unable to cope with a potential or actual breakdown of law and order.⁴⁷

Following the discovery of the first case of the virus in Lagos, Nigeria, on 27 February 2020, the federal government issued the COVID-19 Health Protection Regulation 2020 made pursuant to the Quarantine Act (Cap Q2, LFN 2004), (COVID 19 Regulation) in March 2020. The Regulation provided for a stay-at-home order for specified states and the country's capital.⁴⁸ In addition, businesses, offices providing non-essential services and places of worship were closed for as long as the regulation was in force.⁴⁹ A significant number of states at sub-national level also imposed similar measures within their territories as the federal government's, to curtail the spread of the virus. The measures at state level included movement and social gathering restrictions and, in some instances, total lockdown.⁵⁰ The pandemic and measures established to curtail its spread shook the country's socio-economic landscape and exposed further severe gaps in the social protection systems. Citizens faced challenges arising from diminished trade prospects amidst the uneven distribution and access of the promised palliatives to the vulnerable and the country's poor. Nevertheless, the implementation of the measures was regarded as necessary for the greater public health.

Police and other security officers responsible for ensuring observance of the measures engaged different strategies to ensure compliance. The tactics included physical monitoring in the form of patrols to disperse public gatherings; stop and question tactics applied to people in transit within curfew hours; sealing businesses and closing places of worship that were in violation of extant social distancing, and restrictions on gathering protocols; arrest of persons violating the 'wearing of face mask requirement'; impounding vehicles of violators

⁴⁴ The security agencies include the Nigeria Police and other para-military agencies such as the State Security Services, Nigerian Immigration Services, the Nigerian Customs, Nigerian Civil Security and Civil Defence. See generally M Afolabi, 'Nigeria's Major Internal Security Agencies and their Statutory Roles' in L. N. Asiegbu *Unending Frontiers in Intelligence and Security Studies* (Intelligence and Security Studies Programme, Afe Babalola University 2017) 225–268.

⁴⁵ The Police Act (2010) Cap P19, Laws of the Federation of Nigeria (LFN) 2004, Section 4.

⁴⁶ For example, the Administration of Criminal Justice Act (ACJA), ss 3, 9 and 143.

⁴⁷ 1999 Constitution, s 217.

⁴⁸ COVID 19 Regulation, s 1(2).

⁴⁹ *Ibid.*

⁵⁰ Voluntary total lockdown for specified periods were imposed by the Nigerian Governors of Anambra, Adamawa, Abia, Akwa Ibom, Bauchi, Bayelsa, Borno, Cross Rivers, Ebonyi, Ekiti, Enugu, Delta, Kaduna, Kwara, Rivers, Nasarawa, Niger, Osun Yobe, Jigawa, Plateau, Sokoto and Taraba States respectively.

during the mandatory lockdown, and arraigning defaulters for prosecution in Mobile Courts set up explicitly for this purpose.⁵¹ Aborisade identifies that the law enforcement officers in the process engaged in hostilities, intimidations and extortions of citizens, resulting in violations of human rights.⁵² In the wake of the imposition of measures to curtail the spread of the virus, there were more deaths due to brutality by the police force than from the virus itself, in spite of the plethora of laws prohibiting the use of lethal force. The National Human Rights Commission (NHRC) reported 18 extrajudicial killings by security agents enforcing lockdown measures between March 30 and April 4, an alarming trend, especially when compared to the 11 patient deaths from the actual virus during the same period.⁵³ According to the NHRC, the Nigeria Correctional Service, Nigeria Police Force and Nigerian Army were responsible for 8, 7 and 2 deaths respectively. The Ebonyi State Task Force on COVID-19, Afikpo South LGA, was responsible for 1 death.⁵⁴ In the recorded incidents, the security operatives violated the principles of necessity and proportionality while dealing with citizens' violations of the lockdown measures. In 2020, Joseph Pessu, a 28-year-old was accosted by soldiers enforcing the lockdown order while he was driving. He was shot at the Ogonu flyover bridge in Warri for allegedly refusing to stop for a check.⁵⁵ An eyewitness account indicates that

one of his tyres was first blasted by one of the army officers. He quickly parked in a nearby street off the NPA Expressway to explain why he refused to stop when flagged down but the temper of one of the soldiers couldn't make him wait for any explanations. He was then shot at close range by the trigger-happy army officer, who refused to listen to any explanation.⁵⁶

⁵¹ See generally Richard Izuora, 'Anambra State Impose N10,000 for Facemask Violation' (2020, June 26) *Oriental News* <<https://orientalnewsng.com/anambra-state-imposes-n10000-fine-for-face-mask-violations/>> accessed 03 June 2021; Ifeoluwa Adediran, 'Lockdown: 202 street joggers bag community service, fines in Lagos' (9 April 2020) *Premium Times* <<https://www.premiumtimesng.com/coronavirus/386945-lockdown-202-street-joggers-bag-community-service-fines-in-lagos.html>> accessed 2 June 2021.

⁵² Richard Aborisade, 'Accounts of Unlawful Use of Force and Misconduct of the Nigerian Police in the Enforcement of COVID-19 Measures' (2021) *Journal of Police and Criminal Psychology*, DOI: 10.1007/s11896-021-09431-4.

⁵³ Executive Secretary National Human Rights Commission, 'National Human Rights Commission Press Release on COVID-19 Enforcement so far: Reports of Incidents of Violation of Human Rights' (15 April 2020) <<https://www.nigeriarights.gov.ng/nhrc-media/press-release/100-national-human-rights-commission-press-release-on-covid-19-enforcement-so-far-report-on-incidents-of-violation-of-human-rights.html>> accessed 4 June 2021.

⁵⁴ National Human Rights Commission Report on Human Rights Violations Following the Implementation of COVID-19 Regulations 2020 and Directives Issued by Federal and State Governments from 31st March to 13th April 2020' (on file with the authors).

⁵⁵ Samuel Oyadongha and others, 'COVID-19 Lockdown: Tension as Soldiers Kill 28 yr Old Man' (3 April 2020) *The Vanguard* <<https://www.vanguardngr.com/2020/04/covid-19-lockdown-tension-as-soldier-kills-28-yr-old-man-in-delta/>> accessed 20 October 2021.

⁵⁶ *Ibid.*

In another incident of a raid of a makeshift market set up in contravention of the sit at home lockdown directive imposed by the state governor of Kaduna State, at least five persons were shot dead by police officers in the process of trying to enforce these measures. The government had announced a temporary relaxation of lockdown measures from 3 pm Wednesday, April 1 to Thursday, April 2. However, residents were still carrying on the business of buying and selling in a makeshift market, two days after. Police officers utilised tear gas and live ammunition to disperse the citizens forcefully after they failed to heed the warnings to do so by the Civilian Joint Task Force.

The NHRC also received over 100 complaints of violations by security forces within the same one-week period, across 24 of the 36 states in the federation, with Lagos and Abuja recording the most incidents.⁵⁷ In one of such incidents, the video of which went viral, two policemen repeatedly flogged a woman with whips in Odo Ori Market Iwo, Osun State. The victim was on her way to purchase household needs, when she was accosted by the officers.⁵⁸ Thus, the abuse of powers conferred on the law enforcement have been a persistent occurrence and a source of concern in Nigeria even prior to the COVID era.⁵⁹ Ekwe and Obayemi⁶⁰ note that the human rights most violated by members of the enforcement agencies, including the Nigeria Police Force, are the rights to life, dignity of a human person, personal liberty, fair hearing, and privacy.⁶¹ Authors link the persistent excessive use of force by law enforcement to British colonial rule, when the police force was established as a means of solely enforcing the will of the state rather than protecting locals and fostering harmonious community relations.⁶² Post-colonial law enforcement has unfortunately sustained the colonial legacy of repressive policing, which has been further compounded by the learned behaviour of a 'warrior mindset' within the years of prolonged military rule in Nigeria. Consequently, a disconnect between the citizens and law enforcement operatives continues to exist, with the latter viewing the former primarily as adversaries.⁶³

The culture of rights violation by the Special Anti-Robbery Squad (SARS), a unit of the Nigerian police tasked with tackling crimes of violence and kidnapping deserves special mention. This unit is repeatedly involved in cases of extortion, torture and ill treatment

⁵⁷ Ibid.

⁵⁸ Nsikak Nseyen, 'Coronavirus: Police Arrest Officers for Flogging Woman in Osun' (video) (19 April 2020) Daily Post <<https://dailypost.ng/2020/04/19/coronavirus-police-arrest-officers-for-flogging-woman-in-osun-video/>> accessed 20 October 2021; Aborisade (n 52) 451.

⁵⁹ Aborisade (n 52) 452.

⁶⁰ Madubuike-Ekwe & Obayemi (n 14) 28.

⁶¹ Ibid, 28.

⁶² Etannibi Alemika, 'Colonialism, state and policing in Nigeria' (1993) 20 *Crime Law and Social Change*, 187, 202–211; Madubuike-Ekwe and Obayemi (n 14) 40–41; Sanya Osha, '#EndSARS: A brief history of police brutality in Nigeria' (25 November 2020) Africa Portal <<https://www.africaportal.org/features/endsars-brief-history-police-brutality-nigeria/>> accessed 20 October 2021; Aborisade (n 52) 3.

⁶³ Alemika (n 62).

of persons as a routine and systemic part of their investigation.⁶⁴ SARS also exhibited the culture of intimidation and extortion whilst enforcing the COVID-19 preventive measures.⁶⁵ In October 2020, young Nigerians organised a three-week long nationwide protest, popularly known as the #End SARS protest, in breach of pre-existing COVID-19 safety protocols. The protesters, fuelled principally by incidents of human rights violations by the special unit, called for reforms to end police brutality, abolish SARS and provide justice for victims. While the Nigerian government took some immediate measures, such as disbanding SARS and replacing them with a Special Weapons and Tactics unit (SWAT), there were also incidents of human rights violations by security operatives during this period. Security agencies were alleged to have shot and killed scores of unarmed citizens and injured many others, including peaceful protesters under the pretext of restoring order.

The involvement of the armed forces in restoring law and order in Nigeria is also tainted with human rights abuses.⁶⁶ Members of the Nigerian armed forces are known to arrest and detain persons arbitrarily, and torture and engage in the deprivation of life under the pretext of restoring law and order.⁶⁷ On 20th October 2020, between 6.45 pm and 9.00 pm during the #End SARS protest, the Nigerian army and police reportedly shot and killed over 15 unarmed peaceful protesters at the Lekki Toll Gate, Lagos State, Nigeria. Amnesty International reports that at least 50 people were killed across the country, with several people also injured.⁶⁸ The condemnation of this Act by Nigerians and the international community on social media spurred the government to set up Panels of Inquiry in Lagos and the other 35 States in Nigeria to investigate complaints against SARs and the events of 20th October 2020 in Lagos State.⁶⁹ The proceedings of the Panels of Inquiry are

⁶⁴ Amnesty International, 'Time to End Impunity: Torture and Other Violations by Special Anti-Robbery Squad (SARS)' 9, <<https://www.amnesty.org/download/Documents/AFR4495052020ENGLISH.PDF>> accessed 2 June 2021.

⁶⁵ Philip Obaji, 'Women Abused by Police enforcing COVID 19 rules in Nigeria' (9 September 2020) Aljazeera <<https://www.aljazeera.com/features/2020/9/9/women-abused-by-police-enforcing-covid-19-rules-in-nigeria>> accessed 28 May 2021.

⁶⁶ Human Rights Watch, 'They Didn't Know if I Was Alive or Dead: Military Detention of Children for Suspected Boko Haram Involvement in Northeast Nigeria' (2019) <https://www.hrw.org/sites/default/files/report_pdf/nigeria0919_web.pdf> accessed 25 May 2021; Amnesty International, 'They Betrayed Us: Women who Survived Boko Haram Raped, Starved and Detained in Nigeria' <<https://www.amnesty.org/download/Documents/AFR4484152018ENGLISH.PDF>> accessed 25 June 2020.

⁶⁷ Human Rights Watch (n 66).

⁶⁸ Amnesty International, 'Nigeria: Killing of #EndSARS protesters by the military must be investigated' (21 October 2020) <<https://www.amnesty.org/en/latest/news/2020/10/killing-of-endsars-protesters-by-the-military-must-be-investigated/>> accessed 29 October 2021.

⁶⁹ Amnesty International, 'Nigeria: Denials and cover up mark 100 days since Lekki shooting' (28 January 2021) <<https://www.amnesty.org/en/latest/news/2021/01/nigeria-denials-and-cover-up-mark-100-days-since-lekki-shooting/>> accessed 31 May 2021; The Native 'An Update on the Nationwide #EndSARS Judicial Panels' (01 February 2021) <<https://thenativemag.com/update-endsars-judicial-panels/>> accessed 31 May 2021. Only 28 out of the 35 other states eventually set up the panels. Seven northern states- Borno, Jigawa, Zamfara, Yobe, Sokoto, Kebbi and Kano ignored the directive and did not set up panels of inquiry.

conducted based on submitted petitions. In Lagos State particularly, the Judicial Panel of Inquiry⁷⁰ with a six-month mandate to complete their work, has already recommended the awarded compensation totalling 43.75 million NGN (forty-three million, seven hundred and fifty thousand Nigerian Naira [i.e. the equivalent of \$106,556.58 – one hundred and six thousand, five hundred and fifty-six dollars, fifty-eight cents]) so far, to persons whose family members were subject to extrajudicial killings by the police.⁷¹ Panels of other states have also made recommendations for compensation of SARs victims and their families. As of the first-year anniversary of the #End SARS protest, all states panels except Lagos had concluded their assignments. Eleven states' panels submitted their final reports to the National Economic Council (NEC).⁷² Some of them recommend prosecution of some security operatives who were involved in rights violations based on petitions brought before them.⁷³ As such, these Panels and reparatory measures adopted by the Nigerian government are indicative of ACHPR General Comment No. 3's recommendation to States to facilitate thorough investigations into any deprivations of life, holding those responsible to account and ensuring reparation for victims.

The Lagos panel concluded its proceedings on 18 October 2021. The panel is yet to finalise its report and make public its recommendations regarding punishment of the perpetrators (police officers, Nigerian Army) for the incident of 20 October 2020.⁷⁴ Nevertheless, it appears that a reliance on the recommendations of the Panel of Inquiry to obtain punishment and accountability of security operatives for extra-judicial killings, police brutality and human rights violations pre- and during COVID-19 is far-fetched. This assertion is based on the trend of non-implementation of the disciplinary actions against erring security operatives as recommended by concluded panel reports from other states. For instance, the Rivers State government has indicated doubt about the

⁷⁰ The Tribunals of Inquiry Law of Lagos State empowers the Lagos State Governor to set up a tribunal to examine disputes and matters relating to public welfare, including allocating a time frame for completion of the work of a designated Panel.

⁷¹ Ifeoluwa Adediran, 'ANALYSIS: #EndSARS: How Lagos Judicial Panel has fared in six months' (30 April 2021) <<https://www.premiumtimesng.com/regional/ssouth-west/458533-analysis-endsars-how-lagos-judicial-panel-has-fared-in-six-months.html>> accessed 31 May 2021.

⁷² Yusuf Alli, 'Breaking: Indicted Security Operatives, Civilians in for Trial-FG, *The Nation* (20 October 2021) <<https://thenationonline.net/breaking-indicted-security-operatives-civilians-in-endsars-for-trial-fg/>> accessed 29 October 2021.

⁷³ 'Panel Recommends SARS Operative's Prosecution over Ekiti Teenager's Killing' (25 February 2021) This Day Newspaper <<https://www.thisdaylive.com/index.php/2021/02/25/panel-recommends-sars-operatives-prosecution-over-ekiti-teenagers-killing/>> accessed 20 October 2021; 'Wike receives EndSARS panel report, urges IGP to implement document indicting disbanded SARS officers' (20 February 2021) *The Guardian* (Metro) <<https://guardian.ng/news/wike-receives-endsars-panel-report-urges-igp-to-implement-document-indicting-disbanded-sars-officers/>> accessed 20 October 2021.

⁷⁴ Alexix Akwagyiram, 'Anger over slow progress, size of rewards at Nigeria's police brutality hearings' (19 May 2021) <<https://www.reuters.com/world/africa/anger-over-slow-progress-size-rewards-nigerias-police-brutality-hearings-2021-05-19/>> accessed 31 May 2021.

government's commitment to implementing the recommendations connected to addressing police brutality through criminal channels.⁷⁵ The State Governor has further challenged the Inspector General of Police (IGP), and the new state Commissioner of Police (CP), to implement the White Paper to prove that the Nigerian government is serious about ending such police brutality in the country.

The constant show of concern by international organisations and civil society for the abuse of rights in the Nigerian context, even during the COVID-19 era, exposes the deficiencies in the security forces' accountability. The Human Rights Committee in 2019 expressed concern that provisions of the Nigerian Constitution allowed for a broad use of lethal force, including for the defence of property.⁷⁶ In addition, provisions of other laws, such as the Code of Criminal Procedure, the Administration of Justice Act, and Police Order permitted the use of force without adequately restricting the nature of the force and setting out the principles of necessity or proportionality.⁷⁷ These deficiencies contribute and exacerbate violations, especially as the Nigerian government often becomes complicit in the violations perpetuated by members of the various security forces by not ensuring complaints are investigated and they are held accountable for their actions.⁷⁸ More often than not, there is often a lack of information about the outcome of investigations and recommendations, including the punishment of the perpetrators and the reparations granted to the victims.⁷⁹

It is noteworthy that the 1999 Constitution establishes the Nigeria Police Council to be responsible for the organisation and administration of the Nigeria Police Force (NPF) and all other matters relating thereto, excluding disciplinary control.⁸⁰ On the other hand, the Police Service Commission (PSC) is responsible for disciplinary control over persons in the Nigerian Police Force,⁸¹ while the National Human Rights Commission (NHRC) investigates violations of individual human rights in Nigeria. In May 2021, the Action Group on Free

⁷⁵ '#EndSARS Inquiry, 'Wike receives report indicting SARS officials' (19 February 2021) *The Vanguard* (online) <<https://www.vanguardngr.com/2021/02/endsars-inquiry-wike-receives-report-indicting-sars-officials/>> accessed 18 October 2021.

⁷⁶ United Nations Human Rights Committee, Concluding observations on Nigeria in the absence of its second periodic report CCPR/C/NGA/CO/2 (29 August 2019) para 26.

⁷⁷ *Ibid.*

⁷⁸ For example, over 20 cases of torture and extrajudicial execution by SARS officers were brought by Rivers State Civil Society Coalition to the attention of police authorities between January 2018 and February 2020. No SARS official was prosecuted but were rather transferred to other States in Nigeria to avoid prosecution. Amnesty International 'Nigeria: Time to End Impunity – Torture and other Violations by Special Anti-Robbery Squad (SARS), June 2020, <https://www.policinglaw.info/assets/downloads/Amnesty_International_Report_on_Special_Robbery_Squad.pdf> accessed 31 May 2021; I Onwuazombe 'Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil-Producing Communities in the Niger Delta Region', (2017) 22 (1) *Annual Survey of International & Comparative Law*, 114.

⁷⁹ United Nations Human Rights Committee (n 76).

⁸⁰ 1999 Constitution, s 28(a).

⁸¹ *Ibid.*, s 30.

Civic Space published a comprehensive 80-page report⁸² detailing the actions of SARS and police misconduct in Nigeria and detailing recommendations to be considered immediately by the Police Service Commission. One key recommendation in the report is for the federal government and State Judicial Panels of Inquiry to investigate serving and dismissed officers of the disbanded SARS and other units of the NPF who committed atrocities that violated the fundamental human rights of victims. The Report also seeks an express prohibition on police officers from harassing and brutalising citizens who make and publicise video recordings of unlawful police conduct. As laudable as this detailed report is, it behoves the PSC, NPE, NPC, NHRC and Ministry of Police Affairs to swing into action immediately and implement the recommendations proffered to facilitate the immediate prevention of further police brutality and human rights violations in the country.

2 Kenya

In Kenya, the State and its organs have the fundamental duty to observe, respect, protect and fulfil the rights and fundamental freedoms expressed in the Bill of Rights of the Kenyan Constitution.⁸³ The State must also create legislative policy and other measures, including setting standards, to achieve the progressive realisation of these rights.⁸⁴ However, the Constitution empowers the State to limit the application of the right to privacy, right of arrested persons, freedom of association, etc. so long as the State can justify such a limitation.⁸⁵ Nevertheless, the Kenyan Constitution expressly states that the right to freedom from torture and cruel, inhuman or degrading treatment or punishment and the right to a fair trial, among others, shall not be subject to such limitations.⁸⁶

With regard to the National Police Service (NPS), Part 4 of the Kenyan Constitution of 2010 describes the duties of the NPS as including ‘striv[ing] for the highest standards of professionalism and discipline among its members; complying with constitutional standards of human rights and fundamental freedoms; and training staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity.’⁸⁷ In addition, the Kenyan National Police Service Act 2011 (Sixth Schedule) expressly requires police officers to attempt to use non-violent means first always, and employ force only when non-violent means are ineffective or without any promise of achieving the intended result. In terms of police oversight, the Independent Police Oversight Authority (IPOA), an independent authority established to provide civilian oversight of the

⁸² Spaces for Change, #EndSARS: Police Brutality, Protests and Shrinking Civic Space in Nigeria (2021) <<https://spacesforchange.org/action-group-on-free-civic-space-launches-joint-research-report/>> accessed 2 June 2021.

⁸³ Constitution of the Republic of Kenya, 2010, s 21(1).

⁸⁴ *Ibid*, s 21(2). These rights are set out in Section 43 of the Kenyan Constitution.

⁸⁵ S 24(3) and (5).

⁸⁶ S 25.

⁸⁷ Article 244(a), (c) and (d).

work of the police in Kenya, is authorised to investigate any death or serious injury that has occurred or suspected to have occurred as a result of police action. Police officers are also required to report all deaths resulting from police action to the IPOA.⁸⁸

On April 6, 2020, the Kenyan government imposed absolute restrictions on movement in four key counties (Nairobi, Kilifi and Kwale counties) as they accounted for 96% of infections in the country. The government stated that it derived its authority for these restrictions from the Constitution, the Public Health Act Cap (242), the Health Act No. 21 of 2017 and the Public Order Act.⁸⁹ In enforcing these restrictions, the Kenyan police shot and beat people in markets or returning home from work, broke into homes and shops, extorted money from residents and arrested people on the streets, whipping, kicking and herding them together, thus increasing the risks of spreading the virus.⁹⁰ Reports of the police teargassing crowds lined up to board a ferry back home from work, beating them with batons and gun butts, and the shooting of 13-year-old Yassin Hussein Moyo, who was standing on the third-floor balcony of his home at midnight, are evidence of the several police abuses in Kenyan communities.⁹¹

However, the Kenyan courts have upheld justice with regards to cases of police brutality and violations of fundamental human rights during the pandemic era. In the case of *Law Society of Kenya v Hilary Mutyambai Inspector General National Police Service (2020) & 4 Ors; Kenya National Commission on Human Rights & 3 others (Interested Parties)*,⁹² the petitioner sought a declaration that unreasonable use of force (teargassing, beating, etc.) in enforcing the Public Order (State Curfew) 2020 imposed by the authorities is unconstitutional. The petitioner argued that these actions were a violation of the right to dignity and freedom from cruel and degrading treatment under Articles 28 and 29 of the Kenyan Constitution. Whilst the first respondent (IGP) sought a dismissal of the petitioner's claim on the basis of hearsay evidence and media reports, the High Court rejected that argument, noting that there was recorded evidence that the people of Mombasa were attacked by law enforcement officers before the time of the commencement of the curfew. The Court issued a declaration stating that the Respondents' use of force in enforcing the curfew was unconstitutional, observing that:

⁸⁸ Analysis of Domestic Rules on Use of Force by Law Enforcement. 'The Law on Police Use of Force Worldwide: Kenya' <<https://www.policinglaw.info/country/kenya>> accessed 24 May 2021.

⁸⁹ Stephen Arthur Lamoney, 'A Comparative Analysis of COVID-19 Responses and their Effects on Human Rights Protections in East Africa' (9 June 2020) <<http://opiniojuris.org/2020/06/09/a-comparative-analysis-of-covid-19-responses-and-their-effects-on-human-rights-protections-in-east-africa/>> accessed 2 June 2021.

⁹⁰ Human Rights Watch, 'Kenya: Police Brutality during Curfew,' (22 April 2020) <<https://www.hrw.org/news/2020/04/22/kenya-police-brutality-during-curfew>> accessed 29 May 2020.

⁹¹ Ibid.

⁹² [2020] eKLR, Petition 120 of 2020 (Covid 025), <<http://kenyalaw.org/caselaw/cases/view/193192/>> accessed 2 June 2021; 'The Law on Police Use of Force Worldwide: Kenya' (n 88).

Diseases are not contained by visiting violence on members of the public. One cannot suppress or contain a virus by beating up people. The National Police Service must be held responsible and accountable for violating the rights to life and dignity among other rights.⁹³

The IPOA have also been proactive in ensuring that Kenyan police officers are prosecuted for police impunity, excessive force or arbitrary killings pre- and during the COVID-19 era. For example, in the case of *Republic v Nahashon Mutua*,⁹⁴ following investigations by the IPOA, and the Kenyan High Court receiving evidence from 14 prosecution witnesses under Witness Protection,⁹⁵ Nahashon Mutua, a former senior police officer, was convicted and sentenced to death by a Kenyan High Court on 14th February 2019 for the murder of Martin Koone, who was found dead in a cell at a Nairobi policed station in 2013. Mutua was in charge of the police station in which Koone was being detained at the time before his death. However, other officers in the station were not investigated by the IPOA.⁹⁶ Wambui reports that delay tactics, cover-ups, witness murders and intimidation of victims' families have made it increasingly difficult to prosecute rogue police officers successfully.⁹⁷ Between January and June 2021, the IPOA recorded 1, 324 complaints against the police, with allegations of 105 deaths (21 deaths in custody, 55 from police action, 15 from shooting causing serious injuries, 12 on enforced disappearances and two of unlawful discharge of firearms).⁹⁸ However, while Mutua's conviction is laudable the efforts of the Kenya's IPOA still leave much to be desired. Whilst its mandate to eliminate all forms of police brutality pre- and during COVID-19 and facilitate police reform in Kenya is in progress, the Kenyan judicial system must also ensure that dispensation of justice is achieved by ensuring that dozens of murder cases involving police officers that have been stuck in courts for more than a year are swiftly adjudicated to ensure justice is served to the victims and their families.

Whilst it can be argued that the powers of the police to act in such a manner were legalised by government and the provisions of the Constitution which empower the Kenyan government to limit certain fundamental human rights, it cannot be overemphasised that upholding human rights of individuals must be proportionate and non-discriminatory alongside the

⁹³ Law Society of Kenya v Hilary Mutyambai Inspector General National Police Service (2020) & 4 Ors; Kenya National Commission on Human Rights & 3 others (Interested Parties). [2020] eKLR, Petition 120 of 2020 (Covid 025) Per Justice W. Korir, para 137.

⁹⁴ [2019] eKLR, Criminal Case 84 of 2015, <<http://kenyalaw.org/caselaw/cases/view/169489/>> accessed 2 June 2021.

⁹⁵ *Republic v Nahashon Mutua* [2016] eKLR, Criminal Case 84 of 2015 <<http://kenyalaw.org/caselaw/cases/view/131193/>> accessed 2 June 2021.

⁹⁶ Reuters, 'Kenyan Court sentences police officer to death for killing detainee' Reuters (14 February 2019) <<https://www.reuters.com/article/uk-kenya-justice/kenyan-court-sentences-police-officer-to-death-for-killing-detainee-idUKKCN1Q31G3?edition-redirect=uk>> accessed 2 June 2021.

⁹⁷ Mary Wambui, 'Kenya: Why Rogue Police Officers are Getting Away with Murder' (29 October 2021) AllAfrica <<https://allafrica.com/stories/202110290320.html>> accessed 31 October 2021.

⁹⁸ Ibid.

public health measures imposed by a State – an ideal which is consistently being upheld by the Kenyan IPOA. Such police brutality serves to undermine government’s efforts in containing the virus, undermines the rule of law and promotes distrust and fear among citizens who are already mentally and psychologically affected by the outbreak of the pandemic.

3 Uganda

Uganda reported its first COVID-19 case on 21 March 2020, which set a new paradigm in motion.⁹⁹ Bearing in mind that the Ugandan Constitution requires the State to respect, uphold and promote the rights of individuals and groups in the country,¹⁰⁰ and in view of the provisions of international instruments on human rights, stringent measures were immediately issued by government to contain the spread of the virus.¹⁰¹ As part of the phases of measures, the Ugandan government on 31 March, 2020, further ordered a nationwide lockdown to curb the spread of COVID-19, banning private vehicles, public transport and non-food markets and the closure of all public places except for places supplying essential items for food and health.¹⁰² The Ugandan Government’s security forces, comprising the police, army, and an armed community-policing paramilitary group called the Local Defence Unit [LDU], coordinated by the Ugandan Army, engaged in enforcing pandemic procedures. Ordinary citizens, especially those in improvised housing, became targets of the enforcement, suffering human rights violations by the security forces.¹⁰³ According to a recent study, law enforcement officers in Uganda perpetrated more than one-third of the reported violence and discrimination in the country in the pandemic era.¹⁰⁴ Media reports

⁹⁹ Justice Henry Peter Adonyo, ‘COVID-19 and the Administration of Justice: A Reflection on Ethical Judicial Conduct’ <https://www.unodc.org/dohadeclaration/en/news/2020/04/covid-19-and-the-administration-of-justice_-a-reflection-on-ethical-judicial-conduct.html> accessed 20 May 2021

¹⁰⁰ Constitution of the Republic of Uganda, 1995, s 20 <<https://ulii.org/ug/legislation/consolidated-act/0>> accessed 29 June 2020.

¹⁰¹ These measures include the Public Health (Prevention of COVID-19) Requirements and Conditions of Entry into Uganda Order 2020 which restricts entry into Uganda. It also mandates that a medical officer examiner for COVID-19 persons arriving in Uganda (March 13, 2020); the Public Health (Prohibition of Entry into Uganda) Order, 2020 which prohibits the ‘entry into Uganda by any person and the introduction into Uganda of any animal, article or thing through any of the border posts of Uganda (March 21, 2020); and Public Health (Control of COVID-19) Rules, 2020 which imposes restriction on gatherings and specifies closure of certain venues of public gathering for specific periods.

¹⁰² Hamza Kyeyune, ‘Uganda declares curfew to curb spread of COVID-19’ 31 March 2020, <<https://www.aa.com.tr/en/africa/uganda-declares-curfew-to-curb-spread-of-covid-19/1785775>> accessed 2 June 2021; The Public Health (Control of COVID-19) (No. 2) Rules 2020, <<https://ulii.org/ug/legislation/statutory-instrument/2020/55>> accessed 2 June 2021.

¹⁰³ Human Rights Watch, ‘Uganda: Respect Rights in COVID-19 Response, Ensure Security Forces Refrain from Violence, Abuse’ 02 April 2020, <<https://www.hrw.org/news/2020/04/02/uganda-respect-rights-covid-19-response>> accessed 30 April 2021; Elizabeth Katana and others, ‘Violence and discrimination among Ugandan residents during the COVID-19 lockdown’ (2021) 21 BMC Public Health, 467.

¹⁰⁴ Katana and others (n 103).

identify incidences of excessive force by these security forces as including beating, shooting and arbitrarily detaining persons.¹⁰⁵ During the first wave of the pandemic, several citizens were arrested for allegedly violating COVID-19 measures that had not yet legally become an offence.¹⁰⁶ These premature enforcements amounted to a violation of human rights protected under the Constitution.

With the legal instruments firmly in place, reports of arbitrary practices by law enforcement enforcing measures were still rife. On March 26, 2020, police shot two construction workers who were riding a motorcycle taxi outside of Kampala, despite the ban on motorcycle transport with multiple passengers.¹⁰⁷ This shooting was a direct violation of the provisions of the Ugandan Constitution's protection of citizens from arbitrary use of lethal force. Furthermore, the act of law enforcement in this context contravenes international human rights law standards that emphasise the need for States to be humane in ensuring the safety and security of its citizens, and to ensure that the basic human rights of people, especially those who are most vulnerable, should be at the centre of government's response to the pandemic.¹⁰⁸ In an extreme but not exceptional incident, law enforcement officials rounded up and brutalised the whole village of Lorokwo West.¹⁰⁹ The police, in admitting the act, argued that the 'patrollers targeted the area due to much congestion and an uncontrolled setting of makeshift structures'.¹¹⁰ Similarly, on 29 March 2020 community residents and police raided a shelter for homeless lesbian, gay, bisexual and transgender (LGBT) youth in Wasiko, outside of Kampala, beating and arresting 23 persons.¹¹¹ The police charged the arrested persons with a negligent act likely to spread infection of disease and disobedience of lawful orders and for allegedly disobeying the government's directives

¹⁰⁵ Human Rights Watch (n 103).

¹⁰⁶ These incidents of abuse against the right to free movement and liberty were connected to the gaps between the announcements by the President and the publication of the legal instruments a few days later by the Minister of Health, pursuant to s 11 of the Public Health Act. See Phillip Karugaba, Rehema Nakiryra Ssemyalo and Tracy Kakongi, 'Uganda: An Assessment Of Uganda's Legal Response To The Coronavirus (COVID-19)' (9 May 2020) *Ensafrica* <https://www.ensafrika.com/news/detail/2469/uganda-an-assessment-of-ugandas-legal-respons?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration> accessed 1 June 2021.

¹⁰⁷ Human Rights Watch (n 103).

¹⁰⁸ United Nations, 'COVID-19 and Human Rights: We are all in this Together' (2020) 12, <https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_-_human_rights_and_covid_april_2020.pdf> accessed 27 October 2021; Human Rights Watch, 'Human Rights Dimension of COVID 19' <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446576> accessed 27 October 2021.

¹⁰⁹ Adventino Banjwa, 'When 'a People's War' Turns Against Them: Reflections on Uganda's 'War of the Wananchi' against COVID-19' (29 March 2021) <http://somatosphere.net/2021/peoples-war-uganda-covid-19.html/#_edn21> accessed 27 October 2021; Uganda Police Force, '14 security officers arrested for excessive use of force' (6 April 2020) <<https://www.upf.go.ug/14-security-officers-arrested-for-excessive-use-of-force/>> accessed 27 October 2021.

¹¹⁰ Uganda Police Force, *ibid*.

¹¹¹ Human Rights Watch (n 103).

by residing in the shelter.¹¹² The arrest of the persons from the homeless shelter for LGBT appeared to be a direct attack on a vulnerable group of people who are already stigmatised by the everyday actions of other citizens.

Notably, the government appeared to be complicit in violations by law enforcement officers through the politicisation of the already securitised pandemic measures. In particular, several opposition politicians and their followers under a repressive strategy were arrested and assaulted under the pretence of violating COVID regulations while holding rallies, while the ruling National Resistance Movement (NRM) party was able to continue uninterrupted.¹¹³ Furthermore, the incumbent president at the time directed the police to arrest several politicians providing (food) relief on the grounds that the food donations did not go through the government organised taskforce. The absence of appropriate reaction by the government of the day to the recorded violations of the opposition as well as the directive on relief was arguably a repressive strategy targeted at influencing the outcome of the January 2021 election. The chain of events in the context of enforcing compliance so far supports assertions that the interests of the government are prioritised above the protection of Uganda's people.¹¹⁴

Widespread allegations of human rights violation by the state security forces, regardless of the existence of the provisions in the Constitution and other stop-gaps¹¹⁵ prohibiting them precedes the COVID pandemic.¹¹⁶ Security services in Uganda, including the police (which ought to be under civil authority control) have been highly militarised since colonial times. These agencies remain firmly under the ruling government. The Ugandan Parliament Committee on Human Rights' finding that authorities using security agencies continue to detain people in several unacknowledged and ungazetted places of detention across the country, often referred to as 'safe houses, and to subject detainees to torture and abuse with near-total impunity' support this position.¹¹⁷ Consequently, perpetrators are often not investigated or punished as the existing mechanisms to investigate and punish abuse are ineffective. In spite of the Uganda Human Rights Commission (UHRC) recommendations to the Director of Prosecution to prosecute enforcement officers violating citizen's rights, there

¹¹² Ibid.

¹¹³ Banjwa (n 109).

¹¹⁴ Michelle Kagari and Evelyn Edroma, *The Police, The People, The Politics: Police Accountability in Uganda* (Matrix 2006) 1; Banjwa (n 109).

¹¹⁵ Constitution of the Federal Republic of Uganda, ss 22–24; Prevention and Prohibition of Torture Act (2012).

¹¹⁶ Reports of local and international civil society organisations as well as the media are replete with incidences of arbitrary deprivation of life, disappearances, torture and other cruel and inhuman treatment perpetuated by the country's security forces. See United State Department of State, Country Report on human rights in Uganda (2018) <<https://www.justice.gov/eoir/page/file/1146646/download>> accessed 30 May 2021; Human Rights Watch, 'Uganda: Events of 2020' in World Report 2021 <<https://www.hrw.org/world-report/2021/country-chapters/uganda>> accessed 30 May 2021; 'UPPA calls for an end to police brutality' (2 November 2019) The Independent (online) <<https://www.independent.co.uk/uppa-calls-for-an-end-to-police-brutality/>> accessed 29 May 2021.

¹¹⁷ Human Rights Watch (n 103).

is no reported incident in which any of the perpetrators has been prosecuted. The United States' Report on Human Rights in Uganda interprets the ineffectiveness as the 'reluctance of government to investigate, prosecute or punish officials who committed human rights violations, ...in the security services due to corruption'.¹¹⁸

A continuation of this blueprint undermines civilian structures and standards¹¹⁹ during this pandemic. This may lead to public protests from citizens, a situation which provides an avenue for gatherings of persons and a further spread of the virus.

V Towards the Effective Protection and Promotion of Human Rights: The Way Forward

The responsibility of the government of every country globally for protecting its citizens includes the adoption of public health safety standards. However, the adoption of such standards should not be utilised as an excuse for infringing the fundamental human rights of its citizens. A country's constitution remains the *Grundnorm* over all legislations or measures imposed by States and should continually be used as a blueprint to ensure that such COVID-19 measures are not in express violation of the Constitution. This means that constitutional provisions pertaining to the right to life, right to human dignity and other fundamental human rights must be upheld and protected by the government, with citizens having the right to seek redress in national courts for the violation of such rights. Flowing from this and the analysis of the various jurisdictions above, the following suggestions are proffered to facilitate the protection and promotion of human rights in COVID-19 era in a developing Africa.

First, while national legislation establishing specific law enforcement agencies allude to the use of firearms/weapons, it is imperative that law enforcement officers utilise their weapons in a manner that does not cause death or serious injuries to persons who may be in direct violation of an imposed curfew. Law enforcement officers should also be re-trained in use of such weapons/firearms or in the use of alternative weapons such as batons rather than firearms on persons who appear to engage in altercations with them without excessive use of force. Adopting de-escalation strategies, including utilising batons instead of weapons, and training the law enforcement agents in utilising these strategies is very necessary to avoid incidents of police brutality or death of persons. This measure, which is in consonance with the ACHPR General Comment No. 3 and other global human rights instruments discussed

¹¹⁸ United State Department of State, Country Report on human rights in Uganda (2018) <<https://www.justice.gov/eoir/page/file/1146646/download>> accessed 27 October 2021.

¹¹⁹ 'Uganda's army and violence: how COVID-19 is offering hints of change' (12 May 2020) The Conversation <<https://theconversation.com/ugandas-army-and-violence-how-covid-19-is-offering-hints-of-change-138331>> accessed 29 May 2021.

in Part II of this paper will curb the incidents of use of lethal force, disrespect for citizens and prevent rising cases of human rights abuses in States.

Second, there is a need for urgent training of persons in the education, immigration, transportation, public health and other sectors to facilitate their understanding of fundamental human rights under State legislation. This will also enable them to carry out enforcement measures as civilians within their own community and thus dissuade persons from violating curfews and end attendant abuses by States. The human rights institutions established in various jurisdictions, such as the National Human Rights Commission (NHRC) in Nigeria, for example, are best placed to facilitate such training at the national level.

Third, the establishment of an independent special tribunal in Nigeria and Uganda, similar to the Independent Police Oversight Authority (IPOA) in Kenya, is imperative to investigate complaints and petitions on human rights violations by law enforcement officials periodically. Whilst bearing in mind that the IPOA is still fraught with criticisms and lapses, its establishment provides a model for establishing a similar body in Nigeria and Uganda, bearing in mind the need to prevent the lapses that have been observed with the IPOA. Where possible, the power of such tribunals must be so extended to include recommendations for swift prosecution of investigated police officers by the judiciary, and imposition of huge financial penalties on such officers who are responsible for arbitrary arrest, detention, death, brutality or human rights violation on a citizen, to deter other officers from doing so.

Fourth, in adopting any COVID-19 directive, States without appropriate sanctions, must include punishment provisions relating to the conduct of law enforcement officers, emphasising that the human rights of citizens must be of paramount importance in enforcing compliance with the directives. Sanctions within COVID-19 directives should not only be imposed on violators who publicly disobey them but should also be imposed on law enforcement officials who abuse citizens. In addition, it is important that, where appropriate sanction mechanisms exist, investigation and arrests for violations should also be made public. This would help to assure citizens that the government is committed to addressing the problem of violations by security operatives. For instance, the Nigeria Police Force, made public the arrest of the two police officers involved in assaulting a woman in Osun for violating the lockdown measure. However, the government has remained silent on the actual prosecution of these offenders. Publicising the investigation and prosecution of offenders would also serve as a deterrent to security operatives.

Fifth, the imposition of lockdown measures by States must not be done in such a manner as to make life difficult for their citizens. Reasons for disobeying movement restriction measures are linked to the absence of certain amenities and adequate social protection systems. Therefore, the government working with private organisations should where necessary create amenities such as availability of transportation for persons who are permitted to work during the pandemic, to avoid severe human rights abuses meted out on them.

VI Conclusion

The COVID-19 pandemic presents a unique opportunity for States to facilitate stronger legal reforms within their jurisdictions relating to entrenching the fundamental human rights of citizens. The selected countries discussed in this paper have a history of civil strife and so, their governments' responses prior to and during the COVID-19 pandemic must, as a necessity, consider the effects of such measures and restrictions on protecting the fundamental human rights of its citizens, particularly vulnerable groups such as the LGBT community, women and children and the elderly. However, such protection of fundamental human rights in these jurisdictions must be in tandem with the appropriate investigations, penalties and punishments for retired or law enforcement officers in active service who have been involved in forms of police impunity, police brutality, arbitrary arrests and violations of citizens' fundamental human rights. Hence, States and law enforcement officials must not serve as a 'virus' themselves while working hard to control an existing one.