

**EXPLANATORY MEMORANDUM TO THE PUBLIC HEALTH (COVID-19
RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) RULES,
2020**

A. The Purpose of the Rules

1. The general purpose of the *Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020* is to prevent the spread of COVID-19. The specific objectives of the Rules are as follows:
- (i) to establish a framework by which the Cabinet Secretary may declare an area to be an area a COVID-19 infected area;
 - (ii) to provide for the restriction of movement into and out of COVID-19 infected areas;
 - (iii) to provide a framework for prohibiting and or regulating certain public gatherings;
 - (iv) to define hygiene conditions to be applied in public places during the restriction period; and
 - (v) to provide for penalties for violations thereof.

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2. The Legislative Context

Section 35 of the of the Public Health Act, Chapter 242 of the Laws of Kenya gives the Minister (Cabinet Secretary) responsible for Health (hereinafter, the Cabinet Secretary) the power to declare, by order, a disease a formidable epidemic disease. By Legal Notice No. 37 dated 27th March 2020, the Cabinet Secretary declared COVID-19 a formidable epidemic disease. Section 36 of the said Act gives the power to make rules to prevent the spread of a formidable epidemic, endemic or infectious disease. The present rules have therefore been made in this context.

3. Policy Background

The World Health Organisation declared COVID-19 a public health emergency on 30th January 2020. Since then, the disease continues to spread rapidly, across boundaries. The disease spreads mainly through close contact with infected persons. On 13th March 2020, Kenya confirmed its first case of COVID-19. As at 15th April 2020, there were a total of two hundred and twenty five (225) confirmed cases of COVID-19 in Kenya, with ten (10) deaths and fifty three (53) recoveries.

The World Health Organisation has provided guidelines on measures that need to be taken to prevent and control the spread of COVID-19. Some of these measures had been or are being implemented in several jurisdictions that have been afflicted by COVID-19. These measures include maintaining social distance; washing hands with soap and water; observing respiratory hygiene and the safe management of dead bodies in the context of COVID-19.

The provisions of the present rules seek to give effect to the foregoing prevention and control measures that have been recommended by the World Health Organisation and or implemented in other jurisdictions faced with the COVID-19 pandemic, in order to prevent and control the spread of COVID-19.

4. Public Consultations

In view of the emergency circumstances occasioned by the rapid spread of COVID-19, and the need to prevent and control the spread of the same, public consultations were not feasible prior to the publication of the rules. It would be appreciated that the measures that the rules seek to implement are reflective of the necessary executive action that, as a matter of necessity, has to be taken urgently, to prevent and contain the further spread of COVID-19.

It would also be appreciated that the objectives of the present rules would have been undermined if the rules were to be subjected to public participation prior to their publication. The purpose of the rules is to restrict movement into and out of identified infected areas. Disclosing the rules prior to publication, especially through public participation, would only have led to panic reactions and pre-emptive mass movements from the infected areas, with the consequence that the rules would serve no meaningful purpose. Such mass movements would have been exacerbated by the fact that the rules were made around the Easter period, which is a peak travel period as thousands of Kenyans travel upcountry for the Easter festivities. Indeed, the reported incidents of persons attempting to flout the

rules by using the so-called "panya routes" serve to corroborate this apprehension.

While there is reasonable probability that the identified infected areas certainly have infected persons, not all of them have been identified, tested and isolated, partly due to limitations of contact tracing, and the time required to undertake the said contact tracing. Consequently, without the restrictions imposed by the present rules, interactions with such persons would enable community transmission across the country, thereby jeopardizing efforts at containing the spread of the disease.

If the present rules were not of the nature to precipitate immediate pre-emptive reactions, then the same would have been subjected to public participation, as was the case with the preceding *Public Health (Prevention, Control and Suppression of Covid-19) Rules*.

Indeed, and in any case, it is noteworthy that the *Public Health (Prevention, Control and Suppression of Covid-19) Rule* were subjected to public consultations following their publication. The present rules reflect most of the comments and views which, although given in the context of the earlier set of rules, provided the public's general views and suggestions on the legal response measures to contain COVID-19. It is also noteworthy that Rule 12 of the said *Public Health (Prevention, Control and Suppression of Covid-19) Rules* gives the Cabinet Secretary the power to declare any place to be an infected area and to thereupon regulate and/or prescribe such activities and conduct that may be carried out in the infected area, which is, in essence, the effect of the present rules.

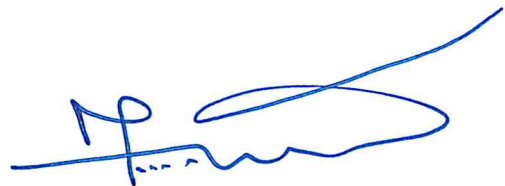
5. Guidance

The Ministry of Health, the Office of the Government Spokesman and the County Governments shall sensitize members of the public on the provisions and requirements of the present rules.

6. The Contact Person in the Ministry of Health

The contact person at the Ministry of Health shall be the Cabinet Secretary, Hon. Mutahi Kagwe EGH or the Principal Secretary, Ms. Susan Mochache CBS.

Dated the 16th APR....., 2020.



Hon. Mutahi Kagwe, EGH
CABINET SECRETARY.

(Legislative Supplement No. 27)

LEGAL NOTICE No. 50

THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES) RULES,
2020

IN EXERCISE of the powers conferred by section 36 of the Public Health Act and in view of the serious threat posed to the health and lives of Kenyans by the spread of the COVID-19 pandemic, the Cabinet Secretary for Health makes the following Rules—

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES) RULES,
2020

1. These Rules may be cited as the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules 2020.

Citation.

2. Unless the context otherwise requires, in these Rules—

Interpretation.

“commercial vehicle” has the meaning assigned to it in the Traffic Act;

“gathering” means any gathering, grouping, assembly, crowd, or procession in or on any public road or space, any building, place or premises, including wholly or partly in the open air, and including any premises or place used for any barber shop, massage parlor and beauty salon activities, gymnasium, spa, sporting, religious, cultural, political, academic, and fundraising purposes but does not include a market;

“market” means any public place used for the trade of food and farm produce;

“infected area” means an area to which these Rules apply, as the Cabinet Secretary may, by order, declare;

“law enforcement officer” means a police officer, National Government Administration Officer or medical officer of health;

“public place” means any outdoor, indoor, enclosed, or partially enclosed area which is open to the public or any part of the public, or to which members of the public ordinarily have access, and includes a workplace and a public conveyance;

“restriction period” means the period specified by the Cabinet Secretary in the order declaring an area to be an infected area.

3. The Cabinet Secretary may, by order, declare these Rules to be in force within an area specified in the order and such area shall be deemed to be an infected area.

Declaration of infected area.

4. (1) During the restriction period, there shall be no movement of persons into or out of an infected area, either by road, rail or air, unless the movement into or out of an infected area is for the purpose of—

Restriction of movement of persons.

- (a) transportation of food and farm produce for commercial purposes including rice, beans, maize, potatoes, cassava, cabbages, kale, spinach, tomatoes, onions, bananas, eggs, meat, fish, chicken, dairy products, tea, coffee, miraa and other food items and farm produce.
- (b) transportation of all types of lawful cargo and goods including construction material, fuel and pharmaceutical products.
- (c) Ambulances transporting patients to health facilities located within an infected area.

(2) Provided that for purposes of sub-rule (1)—

- (a) commercial vehicles or vessels entering or exiting an infected area for purposes of collecting food and farm produce, cargo and goods, shall upon proof in writing, be deemed to be undertaking transportation of food and farm produce, cargo and goods.
- (b) commercial vehicles or vessels including lorries and pick-up trucks shall, in addition to food and farm produce, cargo and goods, carry only the driver and no more than three assistants.

(3) The persons referred to under sub-rule (2) (b) herein shall be designated in writing by the employer in a manner that substantially corresponds with Form 1 set out in Schedule I and shall on demand by a law enforcement officer, produce the prescribed documentation.

(4) A person permitted to enter or exit an infected area under sub-rule (1) or as the case may be; may be subjected to screening for COVID-19

(5) Any person who contravenes sub-rules (1), (2), (3) or provides false information, commits an offence.

5. (1) All public transport services including passenger rail services, bus services, matatu services, taxicab services, motorcycle services, tricycle services, e-hailing services, and air passenger transport services into or out of an infected area are prohibited during the restriction period.

Restriction of transport services.

(2) All private cars into or out of an infected area are prohibited during the restriction period.

(3) During the restriction period, all public transport services including passenger rail services, bus services, matatu services, taxicab

services, motorcycle services, tricycle services, e-hailing services and private cars may operate within an infected area subject to the following conditions—

- (a) passenger rail services, bus services, matatu services, taxicab services and e-hailing services vehicles shall not carry more than 50% of their licensed capacity;
- (b) motorcycles shall carry only one passenger or goods;
- (c) bicycles shall carry only the rider;
- (d) tricycles may carry goods and not more than one passenger; and
- (e) private vehicles shall not carry more than 50% of the licensed capacity.

(4) Users of public or private transport and public transport operators shall wear a proper mask that must cover the person's mouth and nose.

(5) A person who contravenes sub-rules (1), (2), (3), or (4) commits an offence.

6. (1) Every person who is in a public place during the restriction period shall—

Hygiene conditions.

- (a) maintain a physical distance of no less than one metre from the next person; and
- (b) use a proper face mask that must cover the person's mouth and nose.

(2) Every organisation, business entity, trader or vendor whether in a market or enclosed premises shall—

- (a) provide at their business location or entrance to their premises, a handwashing station with soap and water or an alcohol-based sanitizer approved for use by the Kenya Bureau of Standards;
- (b) put in place measures to ensure that physical distance of no less than one metre is maintained between persons accessing or within their premises or business location; and;
- (c) regularly sanitize their premises or business location.

(3) A person who contravenes sub-rules (1) or (2) commits an offence.

7. (1) Save for a funeral undertaken in accordance with sub-rule (2), any gathering as defined under rule 2 is prohibited during the restriction period.

Prohibition of gatherings.

(2) For purposes of these Rules, a funeral shall not be regarded as a prohibited gathering provided that—

- (a) attendance at the funeral shall be limited to fifteen people;

- (b) night vigils shall not be held in relation to a funeral;
- (c) hygiene conditions under rule 6 are adhered to; and
- (d) all the conditions under rule 8 (1) of the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020 are adhered to.

(3) A person who contravenes sub-rule (1) commits an offence.

8. Where a person infected with COVID-19 dies, the body shall be interred or cremated within forty-eight hours from the time of death. Disposal of bodies.

9. A person who contravenes either rules 4 (1), (2), (3) or 5 (1), (2), (3), (4) may have their vehicle detained in a police station or any other place as the Inspector-General of the National Police Service may designate, pending their arraignment in court and/or for the duration of the restriction period. Detention of Motor Vehicle.

10. The Cabinet Secretary may exempt any person from the provisions of the Rules on such terms and conditions as he shall certify in writing. Exemption

11. A person who commits an offence under these Rules shall, on conviction, be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding six months or both. Penalty.

SCHEDULE I

Form 1

I,.....(Full name) of National Identity Card number..... and telephone number hereby certify that our employee named below providesservice being a service exempted under rule 4 (1) of the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020.

Full name of employee	
National Identity Card number	
Residential area and details (Estate, location, street)	
Job description	
Telephone number	
Purpose of the trip	
Assigned motor vehicle's registration number	
Origin and destination of the vehicle	
Nature of cargo	

Signed at, on this day of 2020.

Institution/ business/entity

Physical address

Postal address

Office telephone number

Signature of authorized officer

Official stamp of institution

Dated the 6th April, 2020.

MUTAHI KAGWE,
Cabinet Secretary for Health.

LEGAL NOTICE NO. 51

THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(NAIROBI METROPOLITAN AREA) ORDER, 2020

IN EXERCISE of the powers conferred by Section 36 of the Public Health Act and Rule 3 of the Public Health (Restriction of Movement of Persons and Related Measures) Rules 2020, the Cabinet Secretary for Health makes the following Order—

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(NAIROBI METROPOLITAN AREA) ORDER, 2020

12. This Order may be cited as the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan Area) Order, 2020.

Citation.

1. In this Order, unless the context otherwise requires—

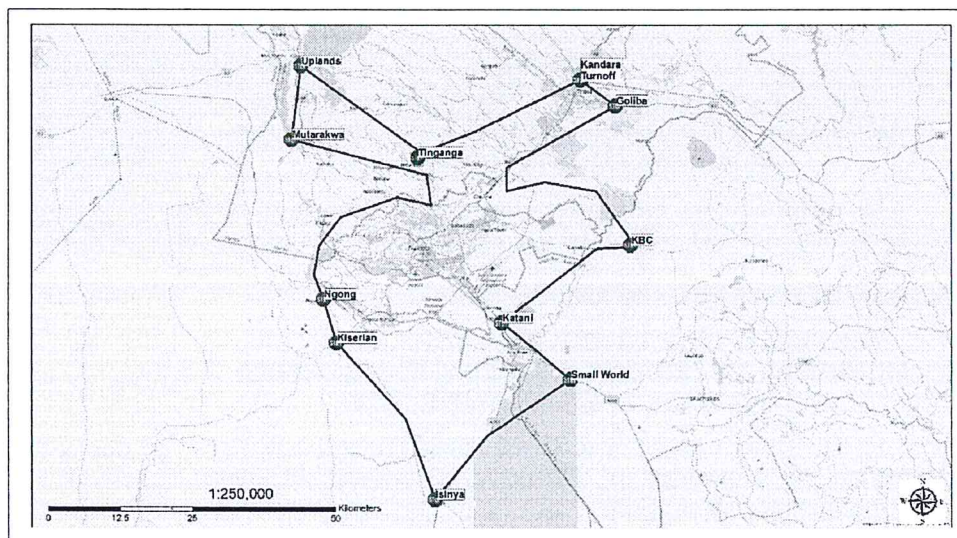
Interpretation.

“Nairobi Metropolitan Area” means Nairobi City County and all the adjoining areas including Part of Kiambu County up to Chania River Bridge (Thika), including Rironi, Ndenderu, Kiambu Town; Part of Machakos County, up to Athi-River including Katani; Part of Kajiado County including Isinya, Kiserian, Ongata Rongai and Ngong Town; and all other areas as delineated on the map set out in Schedule I.

2. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 shall be in force in the Nairobi Metropolitan Area for twenty-one days with effect from 1900HRS on Monday 6 April 2020 until 2359HRS on Monday 27 April 2020.

3.

SCHEDULE I



Dated the 6th April, 2020.

MUTAH KAGWE,
Cabinet Secretary for Health.

LEGAL NOTICE NO. 52

THE PUBLIC HEALTH ACT

*(Cap. 242)*THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(MOMBASA COUNTY) ORDER, 2020

IN EXERCISE of the powers conferred by Section 36 of the Public Health Act and Rule 3 of the Public Health (Restriction of Movement of Persons and Related Measures) Rules 2020, the Cabinet Secretary for Health makes the following Order—

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
(MOMBASA COUNTY) ORDER, 2020

1. This Order may be cited as the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mombasa County) Order, 2020.

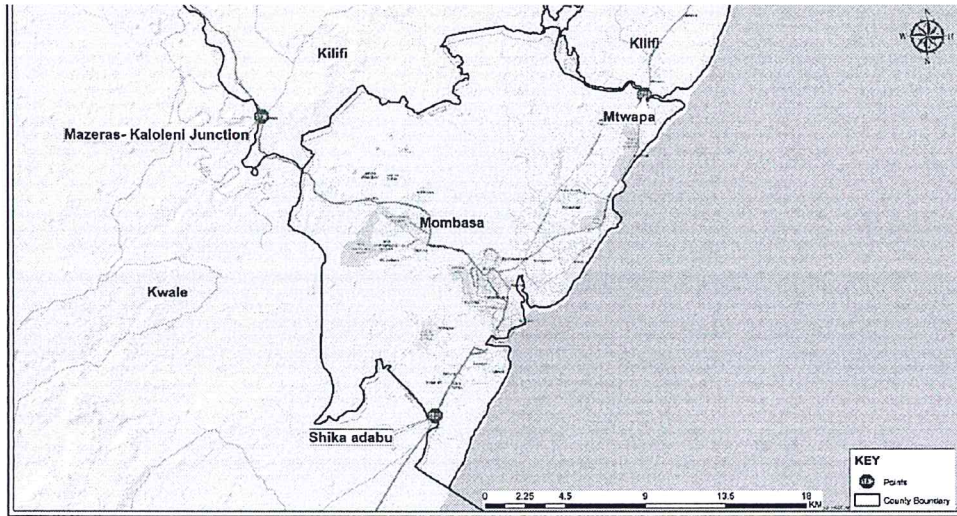
Citation.

2. In this Order, unless the context otherwise requires—

“Mombasa County” means that area covering Mombasa County and all the adjoining areas as delineated on the map set out in Schedule I.

3. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 shall be in force in Mombasa County for twenty-one days with effect from 1900HRS on Wednesday 8 April 2020 until 2359HRS on Wednesday 29 April 2020.

SCHEDULE I



Dated the 6th April, 2020.

MUTAH KAGWE,
Cabinet Secretary for Health.

LEGAL NOTICE No. 53

THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES) (KILIFI
COUNTY) ORDER, 2020

IN EXERCISE of the powers conferred by Section 36 of the Public Health Act and Rule 3 of the Public Health (Restriction of Movement of Persons and Related Measures) Rules 2020, the Cabinet Secretary for Health makes the following Order—

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES) (KILIFI
COUNTY) ORDER, 2020

1. This Order may be cited as the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kilifi County) Order, 2020.

Citation.

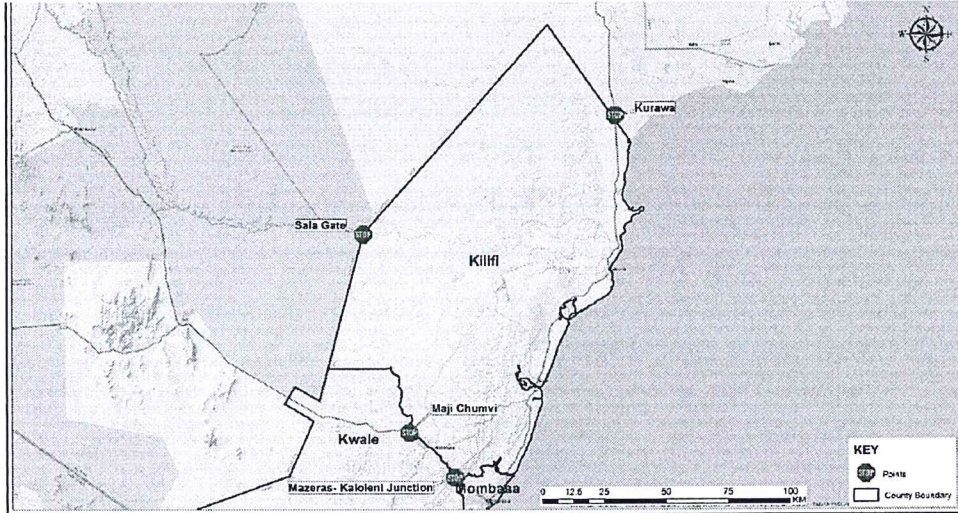
2. In this Order, unless the context otherwise requires—

Interpretation

“Kilifi County” means that area covering Kilifi County and all the adjoining areas as delineated on the map set out in Schedule I.

3. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 shall be in force in Kilifi County for twenty-one days with effect from 1900HRS on Wednesday 8 April 2020 until 2359HRS on Wednesday 29 April 2020.

SCHEDULE I



Dated the 6th April, 2020.

MUTAHI KAGWE,
Cabinet Secretary for Health.

LEGAL NOTICE NO. 54

THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (COVID-19 RESTRICTION
OF MOVEMENT OF PERSONS AND RELATED
MEASURES) (KWALE COUNTY) ORDER, 2020

IN EXERCISE of the powers conferred by Section 36 of the Public Health Act and Rule 3 of the Public Health (Restriction of Movement of Persons and Related Measures) Rules 2020, the Cabinet Secretary for Health makes the following Order—

THE PUBLIC HEALTH (COVID-19 RESTRICTION
OF MOVEMENT OF PERSONS AND RELATED
MEASURES) (KWALE COUNTY) ORDER, 2020

1. This Order may be cited as the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kwale County) Order, 2020.

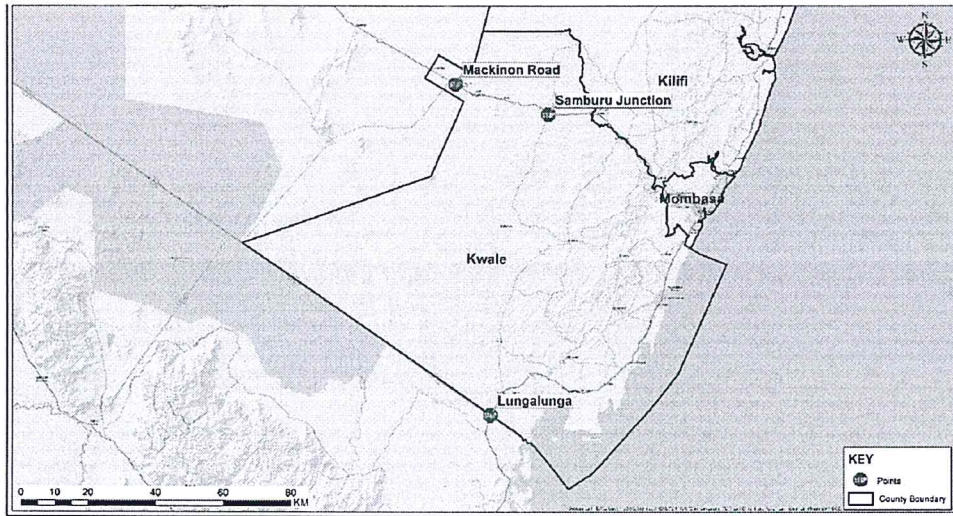
Citation.

2. In this Order, unless the context otherwise requires—

“Kwale County” means that area covering Kwale County and all the adjoining areas as delineated on the map set out in Schedule I.

3. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 shall be in force in Kwale County for twenty-one days with effect from 1900HRS on Wednesday 8 April 2020 until 2359HRS on Wednesday 29 April 2020.

SCHEDULE I



Dated the 6th April, 2020.

MUTAHI KAGWE,
Cabinet Secretary for Health.

