

COMMUNIQUE ON ACCESS TO JUSTICE IN THE CONTEXT OF THE COVID-19 PANDEMIC:
PLACING WANJIKU AT THE CENTER

HELD ON TUESDAY 12 MAY 2020

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) held the fifth in a series of webinars. The webinar, held on 12 May 2020, was focused on how adjustments in the Judiciary necessitated by the Covid-19 pandemic have affected the right to access to justice for the ordinary citizen (hereinafter 'Wanjiku').
2. We appreciate the participation of our distinguished panellists representing the government, civil society, the private sector and the legal fraternity on Zoom, on our social media platforms, online streaming services including YouTube, Twitter, Facebook and WhatsApp, and KTN TV;
3. We acknowledge that engagements thus far on justice, have centred around interventions for the legal practice and the Judiciary during the pandemic; and has missed out on access to justice for Wanjiku as a key stakeholder of the justice system;
4. We note that in the wake of the Covid-19 pandemic, and the ensuing restrictions on movement, physical access to courts and court sessions have not been possible;
5. We recognise the need to resort to technological solutions to facilitate the administration of justice remotely amidst the threat of the spread of Covid-19;
6. We are concerned about the limited availability of infrastructure in courts across the country to use technology in the administration of justice;
7. We are concerned further by the limited access to technology by Wanjiku to engage with online justice platforms, despite the increase in the number of cases affecting the poor and vulnerable populations such as women, children and persons in detention and confinement facilities;
8. We note that a large percentage of Kenyans seek justice in other justice mechanisms aside from the courts, and thus the need to consider these mechanisms when discussing justice for Wanjiku;
9. We recognise the efforts of the legal fraternity and civil society in providing free legal aid for the poor and vulnerable whose rights have been threatened, abrogated or violated;



9. In the discussion, the panellists and participants acknowledged that:

- a. The Kenyan Judiciary has taken commendable steps in the wake of the pandemic to alleviate the negative consequences of accessing justice. In this regard, the Judiciary has taken steps to decongest prisons by revising sentences and reviewing bail and bond terms following the enabling legal framework.
- b. The courts have also embraced digital solutions to proceed with the cases before them. The uptake of online hearings has been different from one court level to another, and from court station to court station depending on the nature of the cases and/or the availability of necessary infrastructure;
- c. Access to justice for Wanjiku must remain at the centre of all interventions during the pandemic, bearing in mind the risk of exacerbating the existing barriers to accessing justice;
- d. The Judiciary lacks the appropriate technological infrastructure to fully deliver efficient digital services at all court levels and court stations;
- e. The resort to online hearings for court proceedings raises the concern of access for a part of the population who may lack internet connectivity, the required gadgets, or knowledge on how to navigate online platforms.
- f. Digitisation of court processes has increased the speed of dispensing with some cases, such as commercial and appeal cases. However, other categories of cases such as land and succession, family matters and cases that are self-represented have delayed;
- g. Communities have continued to use other justice mechanisms even amid the pandemic. Thus, there is a need to promote these justice mechanisms, ensuring that they comply with the standards set in the constitution and that the rights of vulnerable groups are safeguarded;
- h. Decisions on access to justice must be made in consultation with communities and not for the communities. Effective interventions require the collaboration of all stakeholders and not just the Judiciary.
- i. Access to justice for Wanjiku will only be realised by a collaboration of all actors in the justice chain and not just the Judiciary.

10. Therefore, and in view of the foregoing, ICJ Kenya calls upon:

A. The Executive:

- i. To provide sufficient resources to the Judiciary to enable the setting up of the necessary infrastructure to facilitate the digitisation of the judicial system both in the context of responding to Covid-19 and in the long term;



B. To the Judiciary:

- i. Engage with Wanjiku on the interventions by the Judiciary to increase access to justice during Covid-19 and beyond;
- ii. Collaborate with other agencies to provide spaces such as Huduma Centers, social justice centres and other institutions where Wanjiku can access internet facilities and assistance to file and participate in court hearings;
- iii. Prioritise access to justice for the poor and vulnerable including victims of sexual and gender-based violence, children and persons in detention facilities during this pandemic;
- iv. Support Court Users Committees (CUCs) to provide solutions that are specific to the respective court stations particularly those that do not have the relevant digital infrastructure;
- v. Take steps to enhance cybersecurity in the digitisation of judicial processes; and,
- vi. Develop long term strategies aimed at enhancing the role of technology as an enabler of justice and build the momentum from here on.

C. To the Civil Society actors:

- i. Continue monitoring human rights violations and collect necessary evidence for purposes of holding perpetrators accountable;
- ii. Monitor arrests by security agencies during the pandemic to ensure that the constitutional rights of arrested persons to be presented in court within 24 hours are respected; and,
- iii. Engage with and support the Judiciary in order to enhance access to justice amidst this pandemic.

D. To Legal Practitioners :

- i. Embrace technology and support the Judiciary in the digitisation process to ensure that cases continue to be filed and heard; and,
- ii. Utilise other justice systems to complement the court system, especially where courts are not easily accessible or available, noting to do so within the confines of the constitution.

D. To the General Public:

- i. Engage with the local Court User Committee to participate in the administration of justice initiatives at respective court levels; and,
- ii. Demand for access to justice, where the same is denied or restricted, as this is a constitutional right.



11. ICJ Kenya commits and undertakes to:

- i. Continuously assess the impact of the Covid-19 on access to justice to ensure that Wanjiku's rights are respected;
- ii. Support the Judiciary in its efforts to enhance access to justice;
- iii. Engage in advocacy efforts to ensure that the recommendations above are implemented.

Signed



Kelvin Mogeni
Chairman
Icj Kenya