

COMMUNIQUE ON

LEGAL AID APPROACHES FOR THE INDIGENT AND MARGINALIZED IN THE WAKE OF THE COVID-19 PANDEMIC

1. The Kenyan Section of the International Commission of Jurists in partnership with the Global Legal Empowerment Network (convened by NAMATI) held the second in a series of its Justice and Rule of Law webinar on the challenges and opportunities for legal aid actors in promoting access to justice for the poor and marginalized during the COVID-19 pandemic.
2. The webinar was informed by the fact that governments in the East and Horn of Africa were hastily instituting emergency directives, laws and regulations that were intended to curb the spread of the COVID-19 pandemic. These measures, while necessary, raised a number of justice questions and human rights violations. Despite this reality, legal services were not categorized among the essential services in any of the East and Horn of Africa countries.
3. The hosting of the webinar also marked the commemoration and entry into force of the Legal Aid Act in Kenya being the 26th of April, 2016.
4. Over 100 people from the East and Horn of Africa participated in the webinar, representing different fields of expertise and sectors.
5. The webinar took the form of a panel discussion blended with an open question and answer session. The panelists included the Legal Resources Foundations- Kenya, Federation of Women Lawyers- Kenya, The National Legal Aid Service- Kenya, Users and Survivors of Psychiatry- Kenya, Law Society of Kenya, Federation of Women Lawyers- Uganda, Legal Services Facility- Tanzania and The Horizon Institute- Somaliland.
6. In the discussion the panelists and participants acknowledged the following justice challenges;
 - a) **Gender Based Violence:** Confinement measures have witnessed an increase in the number of gender-based violence. In some cases, victims of abuse cannot access health care services. This has also increased the exposure of children to sexual predators, forced child marriage and female genital mutilation.
 - b) **Increased cases of injustice and human rights violations:** Lockdown measures have seen a rise in cases of evictions, arbitrary arrests, dismissal by employers and demands for bribes by security and/or health officials for failure to either adhere to curfew timelines or wear protective clothing in public.
 - c) **Vulnerable communities:** The surge in human rights violations is disproportionately affecting vulnerable communities such as persons with psychosocial disabilities living on

the streets. Directives have not taken into consideration this group that is unable to access information and fully understand the current context. When the security forces encounter such vulnerable persons, they do not respond to their needs, instead they use force to administer directives.

- d) **Legal services are not essential:** There is no country in the East and Horn of Africa region that declared or gazetted legal aid or legal empowerment services as essential services. Accordingly, advocates, community paralegals and human rights defenders are constrained from assisting persons in rural areas or those without access to the internet and/or phones. The situation exacerbates existing justice deficiencies.
- e) **Limited access to courts:** Judiciaries in the region have been slow in the uptake of technology to conduct hearings and deliver judgements remotely. In some countries, courts are closed and perpetrators therefore cannot be arraigned in court. In most cases, the police have had to release the perpetrators back into the community where they committed the offences.
- f) **Excessive use of force by police:** There is evidenced widespread arbitrary arrests and excessive use of force by police in the implementation of directives by governments, particularly in Kenya and Uganda.
- g) **Hastily-enacted measures:** Governments have been hasty in developing emergency legislations that may lead to further violations of rights. Quarantine measures in Kenya are comparable to incarceration, raising concerns about the rights of arrested persons and fair trial rights.
- h) In concluding the discussions, the following Resolutions were adopted:

A. To the Governments in the East and Horn of Africa Region

- i. Support existing safe houses or shelters for domestic violence survivors through provision of financial and technical resources in order to increase demand for their services by individuals escaping abusive homes.
- ii. Establish more safe shelters for victims. The use of hotels or schools as temporary safe shelters should be considered, as has been the practice in other jurisdictions.
- iii. Prioritize domestic violence cases by the virtual courts and law enforcement officers responding to calls from victims should be trained and sensitized.
- iv. Provide financial assistance to survivors, and those reportedly at risk of domestic violence, who may otherwise hesitate to report threats or incidents of violence for fear of economic deprivation.
- v. Expand social protection measures and targeted economic support, such as cash transfers and subsidies, to include women who have lost their livelihood and women who manage households.
- vi. Integrate justice efforts into national COVID-19 strategies and stimulus packages. Governments must recognize that justice providers are essential workers during pandemic crisis and recovery. They can complement and enhance public services, especially among excluded or marginalized communities. They can help people to understand emergency regulations and new legislation. They are critical to ensuring equal access to healthcare and any future vaccine, supporting victims of gender-

- based and domestic violence, navigating social welfare and other public services, helping small businesses to access business loans, and more.
- vii. Take measures to reduce the number of detained persons as they are particularly vulnerable to COVID-19 as has been done in Kenya and Somaliland.
 - viii. Reiterate that fundamental rights and freedoms have not been suspended during the pandemic period and the government still remains obligated to respect, fulfil and protect human rights as contemplated in national constitutions and regional instruments.

B. To State Actors that Provide Legal Aid

- i. Create more channels for accessing justice that adapt to the prevailing circumstances such as toll-free lines, community-based radio stations and working in close partnership with community-based justice structures to document violations.
- ii. Rapidly redirect the funding of services towards online delivery, such as public information campaigns, helplines, alternative justice mechanism and online mediation of disputes.
- iii. Convene representatives of the legal profession, the private sector (in particular, technology companies), paralegals and others that provide justice services in communities, as well as stakeholders from outside the justice system including social workers, unions, community elders, and religious leaders to provide input and coordinate effective responses to the crisis by justice actors.
- iv. Collect data and evidence for decision making from the justice frontline, especially on interactions between police and the citizenry on their experiences in accessing social benefits and coping with new COVID-19 containment measures;
- v. Audit the status and conditions in prisons being high-risk environments in order to mine existing data sources, to identify justice needs that are likely to be exacerbated by COVID-19.
- vi. Share effective models with other countries and draw on the experience of the private sector and of existing alternative and community-based dispute resolution mechanisms.

C. To Development Partners

- i. Realign planned activities to adapt to emerging justice gaps.
- ii. Provide specific grants to address emerging justice issues during the pandemic
- iii. Increase funding for community-based organizations who are in the frontline and those who may be able to adapt operations for rapid response, especially in light of the surge in cases and new vulnerabilities. The assistance should come in the form of unrestricted grants, enabling legal empowerment groups to adapt their community-driven work in appropriate, time-sensitive way.
- iv. When creating COVID-19-specific response structures, ensure that justice considerations are built into financing mechanisms from the start. Funds should be spent transparently, allow for inclusive decision-making in their use, function with

independence and accountability, and support legal empowerment efforts serving vulnerable populations during and after the pandemic.

D. To Civil Society Organisations

- i. Take a multi-stakeholder approach in the provision of legal aid through partnerships with both state and non-state actors in order to facilitate the referral of cases to organisations that have expertise in different areas.
- ii. Put in place innovative strategies that can promote access to justice during this period such as toll-free numbers that will enable organisations to give legal advice or conduct alternative dispute resolution on phone.
- iii. Leverage access to communities and grass root networks in advancing public health messages, secure basic services for the poor and marginalized, food aid, cash transfers,
- iv. Increase demand for accountability and effectiveness of COVID-19 programs.
- v. Collect real-time data from casework and share this information to highlight where programs are breaking down.

SIGNED,



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