

ICJ KENYA COMMUNIQUE ON LEGAL AID FOR PERSONS IN DETENTION CENTRES DURING THE COVID 19 PANDEMIC

HELD ON TUESDAY 26, MAY 2020

Introduction

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya), held its eighth in a series of its webinars on the 26 May 2020 to discuss the impact of Covid-19 on persons in prisons and detention centers.
2. Over 170 people participated in the webinar while others followed the deliberations through social media and online streaming services including YouTube, Twitter, Facebook and WhatsApp.
3. The participants were diverse group, drawn from different fields of expertise and sectors, namely, civil society, human rights defenders and the private sector.
4. The topic of the webinar was informed by the need to interrogate the impact of the measures the State has undertaken to prevent the spread of the virus vis-à-vis the rights of persons deprived of liberty.
5. The panellists and participants discussed the following:
 - a. The challenges faced by detainees as a result of scaling down of legal services during Covid-19 pandemic;
 - b. The advantages and the drawbacks of using Information, Communication and Technology (ICT) in judicial proceedings; and;
 - c. The various ways of providing legal aid to detainees during Covid-19 pandemic.
6. Based on the extensive and highly interactive deliberations guided by thematic experts, the following resolutions were adopted:

A. To the Judiciary

Expedite the uptake of ICT in all court stations and prisons to ensure cases are fast-tracked during the pandemic in order to deal with the backlog of cases occasioned by the suspension of normal judicial proceedings.

- Ensure that rights of an accused person are safeguarded by providing them with information on where they can obtain free legal assistance.



- iii. Continue providing information on efforts being undertaken by the Judiciary to promote access to justice to persons in detention and juveniles particularly in remote areas.
- iv. Automate case files in court registries in order to make it possible to retrieve files during this pandemic when the court registries are closed.

B. To the Kenya Prison Service

- i. Ensure that persons in detention are able to attend virtual court sessions and make efforts to increase the number of the laptops available in the prisons.
- ii. Continue supporting prison paralegals by ensuring that they are provided with the requisite facilities to ensure they are able to provide legal aid in the prisons.
- iii. Partner with other organisations such as the National Legal Aid Service, the Law Society of Kenya and Civil Society Organisations in the referral of cases to pro-bono lawyers.

C. To the National Legal Aid Service

- i. Partner with the Kenya Prison Service in ensuring that legal aid services are accessible to prisoners and detainees in remote areas.
- ii. Encourage partnership with the Law Society of Kenya, ICJ Kenya, FIDA Kenya among other membership bodies to effectively engage legal practitioners in providing legal representation to detainees.
- iii. Collaborate with Social Justice Centers that have a presence in the community in order to support reintegration of detainees who are released from detention in the community.
- iv. Create more channels for provision of legal aid and awareness that adapt to the prevailing circumstances such as toll-free lines and community-based radio stations.

D. To the National Treasury

- i. Increase financial support towards bolstering the efforts undertaken by the Judiciary and prison facilitates to ensure access to justice to prisoners and detainees during the Covid-19 pandemic.
- ii. Enhance budgetary allocation to the National Legal Aid Service Board in order to fast-track the implementation of the Legal Aid Act.



E. To the Law Society of Kenya

- i. Consider assigning Continuing Legal Education (CLE) points as a way of encouraging advocates to provide pro-bono legal services.
- ii. Partner with Kenya Prison Service in order to facilitate the referral of cases to pro-bono lawyers for those who are not able to afford legal representation.

F. To Civil Society Organizations

- i. Train more paralegals on self-representation, criminal justice procedure, processes and human rights.
- ii. Continuously provide prison justice centers with resource materials such as self-representation manuals to enable them to offer advice and draft pleadings for remandees.
- iii. 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.

G. ICJ Kenya Commits and Undertakes to:

- i. Continuously advocate for the operationalisation of the Legal Aid Act 2016. Legal-aid is essential to the right to access to justice for all and is fundamental to the promotion of rule of law, justice, peace and sustainable development;
- ii. Continuously advocate for decriminalisation and reclassification of petty offences and the release of petty offenders from detention centres;
- iii. Advocate for the strengthening of the legal aid service to ensure access to legal aid for the poor and the vulnerable;
- iv. Continue supporting paralegal networks at the grassroots level to monitor and document human rights violations, and provide legal aid;
- v. Continue offering support to the National Legal Aid Service to ensure the operationalization of the Legal Aid Act;
- vi. Engage with stakeholders in the criminal justice sector to collaborate and ensure that the poor and marginalised in the community are able to access justice during this difficult period of the Covid-19 pandemic.

SIGNED



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