

COMMUNIQUE BY THE KENYAN SECTION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ KENYA)

WEBINAR ON LEGAL PRACTICE DURING THE COVID-19 PANDEMIC

HELD ON TUESDAY 21, APRIL 2020

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya), held a webinar on legal practice during the COVID-19 pandemic on 21 April 2020.
2. Over 200 people participated in the webinar, and 300 others followed the deliberations through social media and online streaming services including YouTube, Twitter, Facebook and WhatsApp.
3. The participants were drawn from a diverse age group, different fields of expertise and from all sectors, including government, civil society, and the private sector.
4. The webinar was informed by the changes to legal practice, and access to justice caused by the COVID-19 pandemic and the impact this has had on the legal fraternity and Kenyan citizens.
5. The Government, the National Emergency Response Committee, the National Council on the Administration of Justice (NCAJ) and relevant authorities put in place safety measures in order to prevent the spread of the disease.
6. The Chief Justice Hon. Justice David Maraga, through various statements, scaled-down all public-facing court operations and placed a mandate on Court User Committees (CUCs) to develop practice directions for respective court stations. He, vide Gazette Notice No. 3137 dated April 17 2020, further issued Practice Directions on Electronic Case Management to guide the integration of ICT in judicial proceedings.
7. There have been significant changes to traditional legal practice due to limited access to the courts, court registries, and closure of the lands registry. This has affected access to justice for victims of human rights violations, accused persons and halted work for legal practitioners as a whole.
8. The discussions were centred on the following themes:
 - a. Immediate and long-term steps to mitigate the risks of the spread of COVID-19 as well as ensure that legal services and legal practice continue without affecting access to justice for clients and the citizens;
 - b. Immediate measures law firms can undertake to ensure their work continues;

- c. Strategies law firms should adopt to tackle internal operations, such as staff retention, safety, use of technology and budget adjustments;
 - d. How lawyers, can best respond to ensure access to justice for the most vulnerable in our society; and
 - e. Creative and innovative proposals for the Judiciary to ensure access to the courts by litigants.
9. In the discussions, participants acknowledged the following:
- a. THAT the Judiciary has been able to utilize Information Communication and Technology (ICT) to enhance internal and external communication with stakeholders and Court users;
 - b. THAT the Judiciary in Kenya is yet to fully automate court operations;
 - c. THAT there is a disagreement in the legal fraternity as to whether the courts should be fully reopened;
 - d. THAT many legal practitioners in Kenya are yet to embrace technology and digitization of operations in firms; and
 - e. THAT lawyers have a key role in helping the vulnerable and the marginalized in accessing justice during the COVID-19 pandemic.

10. The following resolutions were adopted following the deliberations of the meeting:

To the Government:

1. We call on the Government to observe and respect the rule of law, democracy and good governance during the pandemic;
2. We call on the government to issue directives to ameliorate the impact of COVID-19 on vulnerable groups especially where hefty costs are incurred by citizens during quarantine;
3. We call on the Executive to ensure accountability and transparency in government expenditure of funds allocated to fight the COVID-19 pandemic;
4. We call on the government to undertake policy directions in enhancing the use of ICT in providing access to justice for citizens;
5. We appeal to the Cabinet Secretary for Interior and Coordination of National Government as well as the Commissioner of Kenya Prison Services to disclose directions and measures taken to prevent the spread of COVID-19 in prisons;
6. We appeal to the Advisory Committee on the Power of Mercy to exercise its mandate in advising the president on persons who can be released as stipulated by law in a bid to decongest prison quarters;



7. We call on all actors in the Criminal Justice System to work jointly and implement the diversion policy to ensure petty offenders are not detained;
8. We call on the Cabinet Secretary for Health to issue clear directions on the period for quarantine to ensure that the measures for quarantine are not weaponised by security agents;
9. We call on the Government to establish a tribunal or any other access to justice mechanism to look into complaints arising out of abuses and violations occurring in the context of enforcement of quarantine measures.
10. We urge the Government to ensure access to information and transparency on all tenders related to the procurement of services and equipment in the fight of the COVID-19 pandemic;
11. We urge the Ministry of Health and county health officers to issue guidelines and directions for court users in the event that courts operations are scaled up.

We Urge the Judiciary to:

12. Scale up the use of ICT to enhance internal and external communication with stakeholders and Court users;
13. Accelerate the integration of information technology (IT) to fully automate court processes;
14. Consider internet security measures to ensure the protection of data and information of litigants, as well as internal communications;
15. Issue directions on bail terms that are more relaxed to ensure vulnerable and marginalized citizens can afford;
16. Consider non-custodial sentences for petty offenders;
17. We urge the Chief Justice to issue practice directions specifically addressing issues of Sexual and Gender-Based Violence involving children during the pandemic.

To the National Council of Administration of Justice (NCAJ):

18. We appeal to the NCAJ to equitably allocate funds to ensure that Court User Committees (CUCs) can meet and develop practice directions as required by the Council;
19. We urge the NCAJ and other stakeholders in the criminal justice sector to ensure public participation and inclusivity in reaching decisions regarding the reopening of courts;



To Advocates and Lawyers:

20. We call on law firms to embrace technology and digitisation of operations and capitalise on the practice directions on filing issued by the Chief Justice vide Gazette Notice 3137;
21. We urge legal fraternity to consider diversification or specialising on areas of the law specific to the pandemic to respond to access to justice needs by the public;
22. We urge all advocates to take up more pro-bono matters involving vulnerable and marginalised groups to help decongest prisons during the pandemic;

To the Law Society of Kenya:

23. We appeal to the Law Society of Kenya to collaborate with service providers to develop IT solutions aimed at automation of legal services(to encompass law firms and others in the sector) operations;
24. We urge the Law Society of Kenya to consider waiving the payment of fees for Practicing Certificates, especially for young advocates;
25. We call on the Law Society of Kenya to issue favourable directions on Continuous Professional Development (CPDs) for the year 2020;
26. We urge the Law Society of Kenya to ensure inclusivity of all members in reaching decisions regarding reopening the courts.

To Civil Society:

27. We call on Civil Society Organizations (CSOs), who together with ICJ Kenya, have been taking measures to mitigate the effects of the lockdown on vulnerable and marginalised communities, to continue providing the much-needed support in monitoring violations and ensuring accountability. This includes undertaking strategic litigation and advocacy where necessary;
28. We urge CSOs to continue advising and critiquing Government on the measures taken to combat the spread of COVID-19, including by providing technical support in the development of relevant guidelines, standards, and directions that conform to Constitutional and international human rights standards.

Signed by



Kelvin Mogeni
Chairman
ICJ Kenya

Done in Nairobi on this 22 Day of April 2020.