

ICJ KENYA COMMUNIQUE ON THE IMPACT OF THE COVID- 19 PANDEMIC ON THE POOR AND VULNERABLE IN SOCIETY

HELD ON TUESDAY 19, MAY 2020

Introduction

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) held the fifth in a series of webinars on the impact of Covid-19 on the poor and vulnerable in society.
2. Over 100 people participated in the webinar while others followed the deliberations through social media and online streaming services including YouTube, Twitter, Facebook and WhatsApp. The participants were drawn from civil society, the private sector and the government.
3. The topic of the webinar was informed by the fact that the measures taken by the government to curb the spread of Covid-19, though necessary, have posed serious socio-economic challenges for the poor, the vulnerable and the marginalised in society.
4. The panellists and participants discussed the following:
 - The role of the criminal justice sector in ensuring petty offenders are not exposed to Covid-19, and the justice needs of the poor and marginalised are prioritised;
 - How the pandemic has affected the mental health of the poor and vulnerable; and
 - The ongoing disregard of economic and social rights of the poor and vulnerable by the government in the measures it has taken to mitigate Covid-19.
5. Based on the extensive and highly interactive deliberations guided by thematic experts, the following resolutions were adopted:

A. To the Judiciary

- i. Continue implementing the guidelines issued by the National Council on Administrative Justice (NCAJ) to ensure that criminal justice actors address the justice needs of the poor and vulnerable while ensuring citizens are not exposed to Covid-19. These measures include: the use of technology for the continued delivery of justice; review of bond and bail terms; prioritising non-custodial sentences such as community service orders, especially for cases relating to public health offences and breach of stipulated guidelines; and the withdrawal of cases under section 87(a) in instances where witnesses are not available;
- ii. Encourage the use of open court spaces where possible to enable access to justice for all citizens while ensuring compliance with the Ministry of Health guidelines;
- iii. Partner with relevant institutions to ensure courts in rural areas and in prisons are equipped with the necessary infrastructure to enable cases to be disposed of expeditiously;
- iv. Put in place measures to secure the release of petty offenders from the detention centres;

- v. The Rent Tribunal to avoid issuing eviction orders for persons with rent arrears during this period and instead advocate for alternative amicable arrangements between landlord and tenant agreements.

B. To the National Council on Administration of Justice- Criminal Justice Committee

- i. Develop a mental health criminal justice policy which would inform justice actors on how to handle accused persons with mental disability;
- ii. Put in place measures to provide psychosocial support to those released from detention centres;
- iii. Continue to advocate for the decriminalisation and reclassification of petty offences;
- iv. Issue and publish relevant guidelines towards sustained prison decongestion;
- v. Develop sustainable measures for access to justice for all citizens in lieu of the fact that the pandemic may soon become an epidemic;
- vi. Advocate for the uptake of technology by all justice actors to encourage expeditious disposal and case management.

C. To the Senate of the Republic of Kenya

- i. Continue addressing challenges faced by the poor and marginalised in the five thematic areas identified by the Senate Ad Hoc Committee on Covid-19 namely: health, economic and finance, public social order and human rights, access to food, water and basic commodities, and ICT;
- ii. Continue oversight on the various ministries on the measures taken in addressing Covid-19;
- iii. Advocate for coordination amongst national government and county government to ensure seamless utilisation of resources especially those targeted towards the alleviation of the suffering of the poor and the vulnerable;
- iv. Continue seeking input from key stakeholders, particularly civil society organisations in developing laws and policies that prioritise the needs of the poor and the vulnerable;
- v. Develop or advocate for the development of social welfare policy for emergencies and pandemics;
- vi. Desist from engaging in politics and instead focus on the development of sustainable solutions for the poor and the vulnerable;
- vii. Use innovation and technology to create awareness on the laws and policies passed that safeguard the rights of all citizens;
- viii. Invoke the oversight mandate of the Senate to summon the Cabinet Secretary of the Ministry of Interior and Coordination of National Government to explain the demolition exercise in Ruai, Kariobangi and other parts of the country.



D. Ministry of Interior and Coordination of National Government

- i. Put on hold the all demolitions and instead allow for dialogue between the parties to ensure that Kenyans are not rendered homeless and exposed to Covid-19;
- ii. Observe and respect the rule of law by adhering to court orders issued by the Judiciary;
- iii. Exercise transparency and accountability in the management of the Kazi Mtaani initiative wherein 26,000 youth have been engaged by the Ministry of Interior and Coordination of National Government;
- iv. Encourage vigilance in the distribution of the KES 1,000 fund per week to the 250,000 vulnerable households identified by the Members of County Assembly in the various counties through the nyumba kumi initiative.

E. Ministry of Labour, Social Security and Services

- i. Urge the Cabinet Secretary Ministry of Labour to update the registers for Inua Jamii Initiative to ensure that elderly persons who qualify for the fund are included in the dissemination exercise;
- ii. Urge the Cabinet Secretary Ministry of Labour to incorporate the use of cashless fund transfer to ensure that elderly persons who are vulnerable are able to access their monies without having to travel to banking halls;
- iii. Ensure that the government stimulus package caters to persons in the formal and informal sector. As a Commission of Jurists, we have noted that the current package only benefits those employed in the formal sector;
- iv. Review the social welfare register which is currently outdated and incorporate other classes of vulnerable persons;
- v. Provide safe houses and shelters for homeless persons who are affected by the demolitions and persons living on the streets.

F. To the National Police Service

- i. Desist from detaining persons who are poor, vulnerable and marginalised;
- ii. Sensitise police officers and county administrators on the appropriate way to handle persons living with psychosocial disabilities;
- iii. Issue Bail and Bond in accordance to Article 49(1) (h) of the Constitution of Kenya and ensure that the bail terms issued are in tandem with the National Council on Administration of Justice (NCAJ) Guidelines during the Covid-19 pandemic period;
- iv. Desist from extorting, harassing and soliciting bribes from Kenyans who are seeking legitimate access to areas that are under lockdown;
- v. Put in place appropriate measures to allow for reporting and investigation of errant police officers who are acting in contravention to the National Police Standing orders.

G. To the Ministry of Health

- i. Ensure access to medical facilities for persons who have psychosocial disorders;



- ii. Coordinate with the National Police Service/County Administration to ensure that registered health care professionals to give movement passes to persons in need of medical attention;
- c. Ensure access to dignity kits in the instances of gender-based violence;
- d. Create awareness on the existence of victim centres where persons may seek assistance within communities, especially those in lockdown and during curfew hours.

ICJ Kenya Commits and undertakes to:

- i. Continuously assess the impact of the Covid-19 pandemic on the enjoyment of fundamental human rights and freedoms with a view to ensuring that the highest protection of these rights are guaranteed and offered during the pandemic;
- ii. Continuously advocate for decriminalisation and reclassification of petty offences;
- iii. Engage with the criminal justice actors to advocate for the decongestion of detention centres;
- iv. Advocate for the strengthening of the legal aid service to ensure access to legal aid for the poor and the vulnerable;
- v. Engage with the Legislature to ensure human rights principles are factored into the development of law and policy;
- vi. Advocate for legal services to be classified as essential services during this period.

SIGNED



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