

**67<sup>th</sup> ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

**13<sup>th</sup>-25<sup>th</sup> November 2020**

**STATEMENT BY CIVIL SOCIETY ORGANISATIONS IN EAST AFRICA**

Honourable Chair, Honourable Commissioners, State delegates, representatives of National Human Rights Institutions, members of civil society organisations and distinguished participants; the undersigned civil society organisations welcome the opportunity to present this Statement on the state of access to justice in East Africa during the COVID 19 pandemic.

We, the undersigned, are civil society organisations working towards promotion of access to justice in East Africa. The organisations appreciate the significant institutional and normative progress made to date in promoting and protecting human and peoples' rights. However, we are concerned that governments in East Africa hastily instituted emergency directives, laws and regulations that were intended to curb the spread of the COVID 19 pandemic. We are further concerned that hastily-enacted measures heighten the risk of abuse through closing civic space and curtailing human rights in the long-term.

The COVID 19 measures have raised a number of justice questions and human rights violations. Despite this reality, legal services are yet to be categorized among the essential services in any of the East African countries. Before the pandemic, marginalized communities and vulnerable groups were already facing challenges in accessing justice, now, they face the highest risks. The pandemic is widening the justice gap, with a sharp increase in the problems that many people face and the ability of justice actors to respond declining.

In particular the organisations noted following justice challenges;

- a) **Increased 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 saw 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 of Africa that declared or gazetted legal aid or legal empowerment services as essential services. Accordingly, advocates, community paralegals and human rights defenders were constrained from assisting persons in rural areas or those without access to the internet and/or phones and those arrested from urban centres for violating COVID 19 directives. The situation exacerbates existing justice deficiencies. Notably, Kenya has recognized lawyers as essential workers. However due to fear of arbitrary arrests by law enforcement officers enforcing Curfew Orders, most are unlikely to offer their services after curfew hours. Notably, Kenya has recognized lawyers as essential workers. However due to fear of arbitrary arrests by law enforcement officers enforcing Curfew Orders, most are unlikely to offer their services after curfew hours.
- 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 which affects the right to fair and speedy hearing. In most cases, the police have had to release the perpetrators back into the community where they committed the offences. There also exists a challenge in access to the virtual court systems and e-filing systems resulting in limited access to justice for the poor and marginalized communities.
- f) **Excessive use of force by police:** There was 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 and Uganda were comparable to incarceration, raising concerns about the rights of arrested persons and fair trial rights.

We, however, acknowledge that many countries in the region have gradually eased lockdown measures in order to return to economic activities. Governments should take note that now more than ever, effective justice responses that are people centred are needed to help societies manage the institutional, social, and economic fallout from the pandemic. People continue to experience several repercussions as result of the COVID 19 measures and if left unaddressed, the repercussions will endure far beyond the current crisis.

As the governments in the region begin to reconsider instituting new directives, we call on the African Commission to:

**Urge the Governments in the East Africa Region to:**

- i. Declare legal services as an essential service and in countries that do not have legal aid laws, hasten the development and implementation of the same;
- ii. Enforce emergency measures fairly and in line with human rights standards. Enforcement must be visible and fair;
- iii. 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;
- iv. 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,
- v. Prioritize domestic violence cases by the virtual courts and law enforcement officers responding to calls from victims should be trained and sensitized,
- vi. 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;
- vii. 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;
- viii. Take measures to reduce the number of detained persons as they are particularly vulnerable to COVID-19;
- ix. Reduce demand on justice systems by declining to arrest or prosecute people for minor or petty offenses and in countries where applicable, decriminalise petty offenses;
- x. 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;
- xi. 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;
- xii. Make people your partners. It is unlikely that containment will work without strong partnerships with respected community figures. Grassroots justice actors such as community paralegals, human rights activists, and other community leaders are well placed to share health and other information within the communities they serve and live in
  - xiii. Rapidly redirect the funding of services towards online delivery, such as public information campaigns, helplines, alternative justice mechanism and online mediation of disputes.
  - xiv. 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.
  - xv. 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;
  - xvi. 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;
  - xvii. 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;
  - xviii. Prepare for future disease containment phases, by ensuring strategies are in line with human rights standards, monitoring their implementation, and strengthening the institutional capacity to identify and respond to emerging justice problems.

**The statement is signed by:**

- 1. The Kenyan section of the International Commission of Jurists**
- 2. Legal Empowerment Network convened by NAMATI**
- 3. Kituo cha Sheria**
- 4. Legal Resources Foundation**
- 5. The Uganda Association of Women Lawyers (FIDA Uganda)**

6. Legal Aid Service Providers Network
7. Tanzania Paralegal’s Network
8. Federation of Women Lawyers , South Sudan (FIDA South Sudan)

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2. Pathfinders for Peaceful, Just and Inclusive Societies ( April, 2020). “Justice for All and the Public Health Emergency”. See:  
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