

Statement on justice sector operations in the wake of the COVID-19 pandemic

1st April 2020

We, the members of the National Council on the Administration of Justice (NCAJ), join other national leaders in calling for strict adherence to the safety measures put in place by the National Emergency Response Committee on Coronavirus. The justice sector is committed to doing its part to ensure that the battle against the pandemic is won.

Further to this, we wish to make it clear that contrary to some perceptions, the Judiciary and the rest of the justice sector have not closed shop.

What has happened is that following the declaration by the World Health Organization of Coronavirus as a pandemic and the subsequent confirmation of positive cases in the country, the NCAJ – which comprises all the State and non-State actors in the justice sector – met on March 15, 2020 and resolved to scale down all the Judiciary public-facing operations in compliance with the recommendations of the National Emergency Response Committee on Coronavirus.

All the stakeholders in the justice sector have appropriately adapted to the emerging challenges and taken various actions, both individually and collectively, to ensure that they prevent the spread of the virus while also ensuring that the sector continues to render essential services to the people of Kenya.

Yesterday, the NCAJ members held a virtual meeting attended by, among others, the Director of Public Prosecutions; the Chief Executive Officer of the Ethics and Anti-Corruption Commission; the Inspector General of Police; the Commissioner General of Prisons; the President of the Law Society of Kenya (LSK) as well as the Chairman of the LSK Nairobi Branch; and the Judiciary leadership to review the sector operations in the wake of the scaling down of the Court operations.

After consideration of the issues raised and challenges experienced in the two-week period as well as a review of the measures taken by the different agencies, the Council agreed on the following:

1. HANDLING OF CRIMINAL MATTERS

A. Police Bond

i) Petty and traffic offenders should never be held at Police Stations for more than

24 hours; they should be released on either cash bail or free Police bond. Officers in charge of Police Stations are therefore under strict instructions to implement these directions.

ii) To enhance transparency and accountability, the Police will establish centralized records showing the number of people arrested and handled in all police stations and the terms of their release on bail or bond. This will be regularly monitored by Office of the Director of Public Prosecutions and periodic reports submitted to the NCAJ members.

B. Plea-Taking and Urgent Criminal Hearings

i. The Office of the Director of Public Prosecutions remains open with one officer in charge of every regional office to process files for plea-taking and other urgent matters.

ii. In consultation with Regional ODPP officers, Heads of Court Stations have been facilitating plea-taking for serious offences that are not subject to Police bond. Magistrates across the country continue to review and revise bail and bond terms for petty offenders to facilitate their release from Prisons as they await trial.

iii. Serious crimes, including defiance of national orders regarding the control of COVID-19, will continue to be presented to court for plea-taking. In consultation with the Police and the DPP, courts will be convened at short notice to handle such cases.

iv. There has been a significant spike in Sexual Offences in many parts of the country in the past two weeks. These offences constitute 35.8 per cent of the criminal matters reported during that period. In some cases, the perpetrators of such offences are close relatives, guardians and/or persons living with the victims. Depending on the individual facts of each case, upon application by the DPP, the courts will consider giving directions on early hearing dates in such cases.

C. Decongestion of Prisons

i. In the past two weeks, files of inmates who are petty offenders jailed for less than six months and others who have less than six months to complete their jail terms have been presented to the High Court for review of their sentences. This has led to the release of 4800 inmates, significantly helping to decongest the prisons. The exercise is continuing.

ii. New inmates are being isolated to reduce the risk of infection and movement of inmates has been highly restricted. Prison visits have been suspended, including visits to the staff quarters. Prison labour has also been reduced to a bare minimum.

The justice sector actors will embrace technology and plans are under way to enable inmates to participate in virtual trials as the prisoners are no longer being produced in open court.

2. HANDLING OF CIVIL MATTERS

A. Filing of Urgent Matters and Pleadings

i. On March 20, 2020 the Chief Justice gazetted Practice Directions on Electronic Case Management to guide the integration of ICT in judicial proceedings. The Practice Directions are being used by various courts across the country to facilitate use of technology in the delivery of justice.

ii. The courts have provided contact lists including email addresses and telephone numbers of court stations and specific contact persons. Stakeholders are given directions as to the filing of matters under Certificate of Urgency and also the filing of time-bound pleadings. A duty Judge in each of the Superior Courts and a Magistrate in every station is available every day to deal with urgent matters. Urgent applications are forwarded to the Judges and Magistrates who give directions as to hearing or issue orders as necessary. This system is working well as is evidenced by the fact that in the first one week, 1779 matters were handled at various High Court stations.

iii. Tribunals, on the other hand, have handled 244 Applications under Certificates of Urgency in the past two weeks, the bulk of them being from the Business Premises Tribunal and the Rent Restriction Tribunal.

B. Judgement and Rulings

i. In line with safety guidelines issued by the National Emergency Response Committee on Coronavirus, Judges and Magistrates are executing their duties albeit from home.

The Judges and Magistrates have taken this opportunity to write their pending judgments and rulings. In this regard, we are happy to report that in the next two weeks, the Supreme Court will deliver **one judgment and 10 rulings**; the Court of Appeal will deliver more than **45** judgments and rulings of appeals and applications heard in Nairobi, Kisumu, Mombasa and Eldoret through email on Friday, April 3, 2020; the High Court will deliver **367** judgments and rulings; the Environment and Land Court—**269**, the Employment and Labour Relations Court—**75**; and the Subordinate Courts—**390**. Various Heads of Courts and Tribunals will, at Court Station level, issue directions on delivery of Judgments and Rulings in cases where parties and/or their advocates have not provided their email addresses.

ii. Video conferencing technology has been adopted to deliver some of these judgments as was evident in Mombasa, Malindi and Eldoret in the past two weeks. More courts will deliver judgments in this manner in the days ahead.

iii. Judges and Magistrates shall continue to utilize this period of working from home to write pending Judgments and Rulings. Details of Judgments and Rulings that are ready for delivery shall be published weekly in the Judiciary, Kenya Law Reports and LSK websites.

C. Execution

i. Execution of warrants of arrest, court decrees and orders made prior to March 15, 2020 is suspended until further notice. The Police, Court Bailiffs and Auctioneers

are, in the circumstances, instructed not to carry out execution of warrants, orders or decrees issued before March 15, 2020.

ii. Orders and directives of a conservative nature and mandatory injunctions issued during the scaling-down period starting March 15, 2020 will, however, be executed.

iv. The LSK will continue to communicate to its members on the essential services being offered by the courts and the resolutions above.

3. SAFETY OF STAFF AND LITIGANTS

As the justice sector actors continue to offer scaled-down operations, efforts continue to be made by all the agencies to provide protective gear and maintain the necessary social distance. For the safety of the public attending court proceedings, some proceedings may be held in open places within the court premises in order to maintain the required social distance.

4. CONCLUSION

Even in the difficult and unprecedented times we find ourselves in, the National Council on Administration of Justice is determined to ensure that the wheels of justice do not grind to a halt.

As a sector, we are determined to work together to adopt online processes and embrace technological solutions in accordance with the recently-gazetted Practice Directions on Electronic Case Management.

The NCAJ will constantly review the situation and update the nation from time to time.

This communique supersedes all other communication regarding the different matters.

**HON. JUSTICE DAVID K. MARAGA, EGH,
CHIEF JUSTICE AND CHAIRMAN, NATIONAL COUNCIL ON THE
ADMINISTRATION OF JUSTICE**