



2020 Regional Decriminalization Conference

Day 3: Proposed sub-themes by Lawyers Alert Nigeria and Pan African Lawyers Union

1st Session: Impact on access to justice for the poor and marginalized.

Without doubt, COVID-19 presented a huge public health concern, and the management of the pandemic by states impacted on access to justice in several ways. Part of states responses saw courts closing or rationed, with the attendant consequences on justice losing the cardinal principles of timely and fair hearings owing to case backlogs and inordinate delays in an already challenging justice system. Vulnerable and marginalized persons suffered unattended and un remedied violence within the domestic space, pre-trial detainees suffered long detentions, especially those for minor offenses. Support for the justice system in terms of sanitation measures was inadequate, and harmony amongst justice sectors low, leading to negative impact on especially the poor and marginalized.

Proposed Discussion Points

- Ensuring institutional reforms and harmony amongst Justice sector actors in a pandemic for a holistic and pro-poor approach in terms of resolution of justice problems.
- Support for the justice sector in terms of health and sanitation measures towards enhanced confidence by providers and users in a pandemic.

Questions and Answers

2nd Session: Impact on social , economic and political rights of the poor

The management of the pandemic has evidenced inequalities and discrimination that exists in our societies and disparities in wealth, power and status.

For socio-economic aspect: access to movement, health, services and livelihood and resources are limited to the privileged and those who can pay their way through. Disputes around critical issues like housing, employment, or other social protection mechanisms, have been on hold owing to lockdowns and non-functionality of the judiciary. This has occasioned negative consequences as violations of the rights of especially the poor and marginalized groups including daily income earners, women, persons with disabilities, LGBTI persons, etc. Palliatives and social benefits are awash with allegations of corruption including a spike in unemployment and job losses in especially the private sector.

For political aspect: the COVID-19 pandemic, poses a challenge to democratic governance, the rule of law and the promotion and protection of human and peoples' rights. There are 22 AU Member States that are scheduled to hold presidential and/or legislative and/or local elections in 2020. At least 11 of these elections are for the position of President or Prime Minister. In these 22 Au Member States exist the poor and marginalized groups: such as, vagrant persons; persons who have no visible means of subsistence; idle and disorderly persons; and persons who have no ostensible means of subsistence and cannot give a satisfactory account of him or herself, however, these groups have a right to participate in the governance process, mainly, right to vote.

The scheduling of national elections is a matter of sovereignty within the domestic jurisdiction of every state party. The conduct of elections, nevertheless, is a matter of continental treaty law affecting the exercise of the human right to effective participation in government as well as standards of good governance now accepted in treaty law by African states. In response to the COVID--19 pandemic, AU Member States have mostly taken measures that have had the practical effect of limiting some rights in order to guarantee the right to life. These measures have affected the enjoyment of basic rights such as the rights to freedom of movement, assembly, association and information, and also the right of citizens to effectively participate in the governance of their respective countries, especially (although not limited to) through regular, free and fair elections; the most negatively impacted by these measures, are the poor and marginalized groups.

As such, PALU respectfully placed before the African Court on Human and People's Rights one among the issues for determination in its Application for Advisory opinion:¹ --Whether this

¹ IN THE MATTER OF A REQUEST BY THE PAN AFRICAN LAWYERS UNION(PALU) FOR AN ADVISORY OPINION ON THE GUARANTEES FOR THE EFFECTIVE PROTECTION OF THE RIGHT TO PARTICIPATE IN GOVERNMENT IN AFRICA, IN THE CONTEXT OF THE COVID--19 PANDEMIC AND CRISIS, FILED ON 2ND JUNE,2020.

Honourable Court cannot be seized with the question of this advisory opinion in terms of “Safeguarding the Right to Participate in Government under Articles 1 and 13(1) of the African and Peoples’ Rights in Elections in Africa Affected by the COVID--19 Crisis.”

Proposed Discussion Points

- Legal empowerment strategies to help the marginalized to understand and use the law to realise their right to obtaining redress for violations occasioned by government measures to stop the spread of the virus.
- Working with local, community led groups and actors in collation of data on the most marginalized, for people-centered interventions and evidence-based policy decisions that addresses social and economic rights of the poor.
- Role of Regional Mechanisms in safeguarding political rights for poor and marginalized groups during the COVID-19 pandemic.

Question and Answers

3rd Session: Impact on public health and the criminal justice system.

The impact of COVID-19 will last beyond the public health emergency occasioned by it. The criminal justice system in many African countries was not exactly perfect amidst issues of long and expensive trials, back log of cases which have been exacerbated by the pandemic, undue executive influence etc. Trust in the criminal justice system remains low with long-standing issues of corruption, inequality, and exclusion. The pandemic is testing and deepening people’s mistrust of the criminal justice system, especially as it relates to petty offences mostly associated with the poor and marginalized. The fact that persons could not be brought before the courts in good time occasioned torture and other ill-treatment in prisons and other detention centers. Undoubtedly, criminal justice can facilitate public health especially in a pandemic, as in the case of COVID-19, where release from detention can mitigate the spread of the virus. While states understand this, their approach to the release of especially pre-trial detainees and those awaiting trial for petty offenses does not reflect this understanding. Attempted use of technologies for legal proceedings failed to yield the desired result owing to infrastructural challenges.

Proposed Discussion Points

- Building the capacity of criminal justice sector actors to respond to the pandemic in a manner that engenders trust in the sector and overcoming systemic barriers in accessing justice in a criminal justice system during a pandemic

- COVID-19 and resumption of judicial activities: Access to virtual legal aid and remote technology as measures for pre-trial detention, and prison decongestion strategies with regard to petty offenses.

Question and Answers

