



FOLLAP
Faculty of Law Legal Aid Project



NATIONAL LEGAL AID CONFERENCE ON ACCESS TO JUSTICE

THEME:

**ACCESS TO JUSTICE AND SOCIO-ECONOMIC CRISIS:
LESSONS FROM COVID-19 PANDEMIC**

PROGRAMME AND BOOK OF ABSTRACTS

**Conference Dates
29th Nov, 2021
to 4th Dec, 2021**



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FACULTY OF LAW

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THE NATIONAL LEGAL AID CONFERENCE ON ACCESS TO JUSTICE

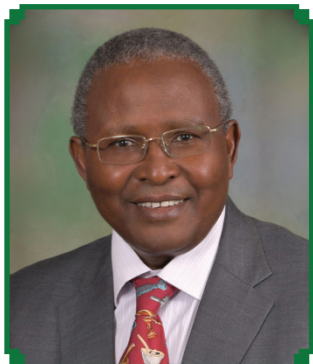
THEME:

Access to Justice and Socio-
Economic Crisis: Lessons
from Covid-19 Pandemic

TAKING LAW TO THE PEOPLE

Published by Egerton University

Welcoming Message



Prof. Isaac O. Kibwage,
Professor of
Pharmaceutical
Chemistry and
Vice-Chancellor,
Egerton
University.

Welcome to the Second National Legal Aid Conference on access to justice. This year's conference is very special and focuses on access to justice in crises situations. The Conference theme "access to justice for all in a socio-economic crisis: lessons from a global pandemic Covid-19". It comes at a time when countries are now more concerned with not only containment measures about the pandemic but also building back the economy better.

We are all aware of the ravages caused by Covid-19. The pandemic dramatically impacted and continues impacting on livelihoods across the globe in particular people in the informal sector. There is slow down in economic growth resultant from the pandemic and a pointer that the larger world population could be pushed to extreme poverty. This has greater pitfalls for the poor and the marginalized because of their socio-economic status. Strategies taken to sustain the economy often overlook the needs of those who are marginalized and poor compounding issues of access to justice for them.

It is at this point legal aid becomes handy for those who are poor, vulnerable and marginalized to help them cope with the stark inequalities deepened by the pandemic. They need protection of their legal and human rights as well as needs that are seldom addressed in policy responses. Legal aid services play a pivotal role in protecting the rights of the marginalized and enhancing their access to justice in the various justice systems formal and informal.

Egerton University Management is proud to be associated with the legal aid services offered by the institution through the Faculty of Law under the aegis of European Union and United Nations Development Programme, through Amkeni Wakenya Project. Through this support the University was able to reach out to many and facilitated their access to justice during the pandemic through various ways in collaboration with other stakeholder in the justice sector.

This service is anchored in Egerton University Vision that is a world class university for the advancement of humanity and implemented through the Faculty of Law legal Aid Project (FOLLAP) that envisions justice and equality for all. I am happy to report that during the pandemic, the FOLLAP was able to make a difference in the lives of many in Nakuru County through legal aid service that involved advice, referrals for assistance, trainings to monitor and report violations, capacity building among others. Through this project the University is proud of producing responsible graduates that will give back to the society through legal aid. This is what the project inculcates, embracing pro bono work at infancy of training of learning friends.

This conference is another milestone for the FOLLAP. Through support of the European Union and UNDP under the Amkeni Wakenya project, the University is co-hosting the second National Legal Aid Conference from 29th November - 4th December 2021 to deliberate on issues of access to justice in socio-economic crisis in the context of Covid-19 pandemic. This conference is important not only for academic discourse, but also shaping discussions around the direction the country needs to look into in rebuilding the economy.

I wish to thank our sponsors, the European Union and UNDP for the important work they do in promoting access to justice for the poor, vulnerable and marginalized populations through the various programmes they have in the country. Throughout the pandemic, they provided support not only to our project but to other entities including government to respond to the global pandemic to prevent infections and minimize the spread of the disease. In particular government interventions such as restrictions of movement, lockdown, curfews were imperative to secure livelihood, maintain the legal order and fundamental rights of citizens. All these measures have implications for access to justice for all. However, the marginalized and poor were disproportionately affected due to their socio-economic status.

As we reflect on the theme of the conference "access to justice for all in a socio-economic crisis: lessons from a global pandemic Covid-19," we should be alive to the fact that the citizens are faced with the hardship resultant from the pandemic and recovery is not instant. Rebuilding the economy after the ravage is an uphill task for both citizens and government to restore the injustices of the aftermath. We as citizens have a duty to help shape the government rebuild the economy in many ways in the spaces we occupy as scholars, practitioners, administrators of justice, policy makers, civil society members and private sector.

This conference provides a platform for the stakeholders to discuss and provide a road map that can help the country build back better both in the short and long term to ensure that the strategies adopted are people centred and have a human

rights lens. I urge those in the justice sector, the development partners that as we look into strategies for the recovery of the economy, special attention should be given to the impacts of Covid19 on the most vulnerable and marginalized in society. We must take stock of best practices or guiding principles to ensure equitable access to justice in crisis situations and be well equipped to address such issues in similar circumstances.

Covid 19 is not leaving us soon, we have to learn to live and adapt to its menace. Today, let us have an open discussion on how we can collectively develop innovative strategies to improve the wellbeing of our society and rally support to the citizens and our government to ensure access to justice at all times. I am hopeful that the outcome of this conference will shape policy and legal responses that are amenable to all. This is our collective and primary goal as responsible citizens.

Once again, I thank the European Union and UNDP for their continued support to Egerton University Faculty of Law Legal Aid Project and making it possible to host this timely conference. Finally, I appeal to the organizers and sponsors of the conference to ensure that the dialogue started a year ago and running into its second year, be made annual event for scholars and those in the justice sector to deliberate on access to justice issues to strengthen the collaboration among and between the actors.

I wish you a fruitful deliberation. Keep safe!!

Thank You.

Welcoming Message



Dr. Ruth Aura,
FOLLAP Team
Leader and
Dean Faculty of
Law,
Egerton
University.

Egerton University Faculty of Law with the generous support from the European Union and United Nations Development Programme (UNDP) will hold the Second National Legal Aid Conference on theme "Access to Justice for all in a Socio-economic Crisis: Lessons from a Global Pandemic Covid-19. The conference will run for four days, 29th November -4th December at Lake Naivasha Simba Lodge, Naivasha, Nakuru County.

This a very special conference that focuses on access to justice in crisis situation. The Covid-19 pandemic has caused mass disruption around the world that made most sectors and systems including the justice systems to chart new ways of coping in unfamiliar territory of operations and increased demands for services. Containment measures taken to prevent and curb the spread of the disease were drastic and has had serious implications for citizens and governments alike. These implications are worthy of interrogations from wide perspectives to get the varied experiences. This conference provides a platform for such engagements and deliberations.

The conference brings together academics, civil society, legal professionals, human rights defenders and policy makers to engage in policy and human rights discourse on this critical theme. Conference participants will:

- share their experiences and discuss current and potential future impacts of Covid19 on access to justice and justice systems- formal and informal;
- interrogate the right to health care amidst the crisis and minimum irreducible standards for right holders and duty bearers;
- discuss ethical, legal and safety containment measures; disruptions in the economy and its implications;
- examine the legal conditions under which digitalization of the justice system has been undertaken and the challenges appertained thereto;

- discuss ongoing and emerging challenges and highlight the much needed support for the marginalized and vulnerable populations including people with disability;
- explore innovative strategies that embrace human rights-based and people-centered approaches in rebuilding the economy and ensuring access to justice for all.

It is imperative that the pathway for recovery integrates accessible and people-centred justice systems as a core pillar, as legal and justice services play a major role in restoring economies, social cohesion and confidence in institutions. This is in tandem with Sustainable Development Goal No. 16, which advocates for peace, justice and strong institutions.

It is hoped that this high-level conference will stimulate discussions that can provide avenues through which the society can contend with an economy that is ravaged by the pandemic and still be able to ensure access to justice. We hope that outcome of the conference can inform and influence legal policies that would safeguard human dignity and fundamental freedoms for the citizens, particularly the poor, vulnerable and marginalized populations whose needs are seldom met to ensure access to justice.

We thank European Union and United Nations Development Programme for their invaluable support as well as Egerton University Management for making it possible to host this critical conference.

CONFERENCE PROGRAMME

NATIONAL LEGAL AID CONFERENCE ON ACCESS TO JUSTICE

THEME: ACCESS TO JUSTICE AND SOCIO-ECONOMIC CRISIS: LESSONS FROM COVID-19

November 29th – December 4th, 2021, Naivasha

Day 1: Monday, 29th November, 2021

TIME	ACTIVITY
3.00pm - 7.00pm	Arrival and registration Facilitated by FOLLAP, Egerton University
7.00pm - 8.30pm	Dinner

Day 2: Tuesday, November 30th 2021

7.00am - 8.00am	Breakfast
08:00am - 8:30am	Arrival & Registration
08.30am - 09.30 am	Anthem East Africa National Anthem Welcome and opening Remarks Master of Ceremony: Kioko Kivandi <ul style="list-style-type: none">• Dean, Faculty of Law- Dr. Ruth Aura• Team leader, Governance Unit – UNDP Dr. Dan Juma• DVC Research & Extension- Egerton University – Prof. Bockline Bebe• DVC Academic Affairs- Prof. Micah Chepchieng• Vice Chancellor- Egerton University- Prof. Isaac O. Kibwage

09.30am - 1.00pm	Keynote Session:
	Keynote Session Moderators: Dr. Ruth Aura – Dean Faculty of Law; Dr. Miyawa Maxwell, (Egerton), Dr. Dan Juma (UNDP)
09.45am -10.20am	<p>Keynote address: Theme: Role of Duty Bearers in Access to Justice through Legal Aid</p> <ul style="list-style-type: none"> • Council for Legal Education- Ms. Mercy Mugure • National Legal Aid Service- Ms. Flora Bidali • Office of the Director Public Prosecutions • Chief Registrar of the Judiciary of Kenya- Hon. Anne Amadi
10.20am -11.10am	<p>Keynote address: The role of Development Partners in strengthening Access to Justice in Kenya: post pandemic lens</p> <ul style="list-style-type: none"> • UNDP Kenya Resident Representative- Mr. Walid Badawi • Embassy of the Kingdom of Netherlands- H.E. Ambassador Maarten Brouwer • European Union Delegation in Kenya- Head of Section-Governance & Macro Economics -Mr. Alexandre Baron
11.20am -11.45am	Launch of the Inaugural Journal
11.45am -12.00pm	Media Briefing, Photo Session & Tea Break

Session 1

12.30pm - 1.30pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Dr. Miyawa Maxwell: Promotion of the Right to International Solidarity in the Context of Covid-192. Dr. Damaris Parsitau - Robbed dreams or Economies of Violence! The Covid 19 pandemic, Religious Contestations over Teenage Pregnancy and the Quest for Gendered and Education Justice in Kenya3. Odhiambo Rodgers: The Future of Legal Education in Kenya Post Covid-19 Pandemic <p>Discussants: TBA</p>
1.30pm - 2.30 pm	LUNCH BREAK

Session 2

2.30pm - 4.00pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Dr. Ruth Aura & John S Nyanje: Re-imagining Legal education in Kenya: Adapting to the Covid-19 Pandemic2. Prof. Patricia Kameri - Mbote, Prof. Collins Odote, Dr. Robert Kibugi , Khadijah Yahyah & Susan Yara: Access to Education during the Covid-19 Pandemic in Kenya: The Law, Realities and Innovations.3. Ferd Moyomba: An assessment the impact of Covid-19 in legal education: a case study of Mount Kenya University & Kenya School of Law. <p>Discussants: TBA</p>
4.00pm - 4.30pm	Health Break

Day 3: Wednesday, December 1st 2021

7.00am - 8.00am	Breakfast
8.00am - 8.20am	Opening Remarks

Session 3

8.30am-10.00am	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Dr. Nicholas Orago: When the justice system fails the poor: Access to justice and Evictions during the Covid-19 Pandemic in Kenya2. Prof. PLO Lumumba & Evans Ogada: An analysis of Kenyan's preparedness to tackle socio-economic imbalances: Examination of state sanctioned evictions during the period of the Covid Pandemic.3. Dr. Damaris Seleina Parsitau & Ruth Aura: Economies of Violence and Gender Inequality! Re-examining the nexus between Gender and the Covid-19 Pandemic in Africa. <p>Discussants: TBA</p>
10.00am -10.20am	Health break

Session 4

10.20am-12.00pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Juliana W. Njiriri: Access to Justice in the Digital Age: Opportunities and Challenges.2. Dianah Ndashiki: Human Rights Protection in context of Covid 19 Pandemic.3. David Thuku Mburu: Establishment of the Small Claims Court: A stupendous victory to Paralegalism. <p>Discussants: TBA</p>

Session 5

12.00pm - 1.30pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Maurice Oduor: The Right to Health, Covid-19 and Non-communicable Diseases: Measuring Access to Justice through Progress Indicators.2. Dr. Brian Sang & Jackie Gachiri: Covid-19, Blockchain Technology and Access to Healthcare in Kenya: Using Health informatics to deliver Universal Health Coverage.3. Collins Odundo: For Whom the Bell of Mandatory Vaccination Tools? The Illusory and Functional Limits of Human Rights in Times of a Pandemic. <p>Discussants: TBA</p>
1.30pm - 2.15pm	LUNCH BREAK

Session 6

2.15pm - 3.45pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Dr. Paul Ogendi: Access to justice and the health sector during covid-19 pandemic2. Vianney Sebayiga: Online dispute resolution and access to justice in the Covid-19 era.3. Valerie Kutima: Access to justice in the digital age; opportunities and challenges <p>Discussants: TBA</p>

Session 7

3.45 pm - 5.00pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Dr. Ruth Aura & Mary Mugure: Use of Technology in the Administration of Justice During the Pandemic: Opportunities and Challenges.2. Samuel M. Mangera: Access to Justice in the Digital Age: Opportunities and Challenges.3. Muiruri Wanyoike, Erastus Njaga, Nicole Ahoya and Josephine Wairimu: Access to Justice in the Digital Age: Opportunities and Challenges. <p>Discussants: TBA</p>
5.00pm - 6.00pm	Health break

Day 4: Thursday, December 2nd 2021

7.00am - 8.00am	Breakfast
8.00am - 8.20am	Opening Remarks

Session 8

8.30am-10.00am	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Josephine Maragia Nyatuga & Omondi Scholastica: Court Annexed Mediation and Access to Justice for the poor within the context of Covid-192. Moses Muchiri: Covid-19 Containment Measures in Kenya; a Quasi-Emergency without the Declaration of Emergency – Towards a principle-based system3. Mary Wanjiru: Rebuilding an equal and just society in the Post Covid-19 Pandemic. <p>Discussants: TBA</p>
10.00am -10.20am	Health break

Session 9

10.30am -12.00pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Justus Munyithia: ADR as alternative justice system for service delivery in crisis systems2. Michael R. Chesikaw: ADR as Alternative Justice systems for service delivery in crisis situations.3. Dickson Gitonga: Protecting the Family in the time of Covid-19 Pandemic: Addressing the Escalating cases of Gender-based violence, Girl Child Disempowerment and Violation of Children Rights in Kenya. <p>Discussants: TBA</p>

Session 10

12.00pm - 1.30pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Robert Mutembei & Fridah Musau: Financing Access to Justice in Kenya: Justification and Prospects in the Context of Covid 19 Pandemic.2. Joseph Lwannia: Village-Level Justice in Kibwezi East, Kenya-Legitimacy and Complexities of Dispute Resolution Processes.3. Ronald Kihali: Covid-19 and Legal Education in Kenya: An Analysis. <p>Discussants: TBA</p>
1.30pm - 2.15pm	LUNCH BREAK

Session 11

2.15pm - 3.45pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Dominic Rono: Rethinking Juvenile Delinquency: Towards Emancipatory Jurisprudence in the Juvenile Justice System in Kenya.2. Kevin Muiruri & Florida Musi: Impact of Covid-19 On Access to Justice: An Analysis of the Kenyan Criminal Justice System in A Socio-Economic Crisis.3. Francis Khayundi: Analysing the roles of the national and county governments in promoting the right to health while responding to the COVID-19 pandemic in Kenya <p>Discussants: TBA</p>

Session 12

3.45 pm - 5.00pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Shem Oganga: Preparing for the next Pandemic: The Need to Re-evaluate the NHIF.2. Erick Masafu & Eunice Kinyanjui Nyokabi: Court fees and Access to Justice: Towards a Policy-oriented Approach in Kenya.3. Amos Shiundu: The Rights of Victims and the Pendulum of Criminal Justice System in Kenya: Covid-19 Perspective, Pitfalls and Progression. <p>Discussants: TBA</p>
5.00pm - 6.00pm	Health break

Day 5: Friday, December 3rd 2021

7.00am - 8.00am	Breakfast
8.00am - 8.20am	Opening Remarks

Session 13

8.30am -10.00am	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Patricia Kameri-Mbote & Agnes Meroka-Mutua: From Formality to Informality: The Changing Landscape of Access to Justice for Women and Girls During Covid 19 pandemic in Kenya.2. Ruth Okara: Paralegals as Key Accelerators of Access to Justice During a Crisis.3. Dr. Ruth Aura: Rebuilding the Economy Post Covid-19 Pandemic: The need for stronger social protection systems.4. Robert Mutembei & Alvin Kosgei: Normative Framework for Mandatory Vaccination.5. Francis Khayundi: An analysis of responses to COVID-19 and Legal Education in Kenya: The need to revisit modes of LLB instruction <p>Discussants: TBA</p>
10.00am -10.20am	Health break

Session 14

10.30am -12.00pm	Paper presentations and Panel Discussion
	<ol style="list-style-type: none">1. Duncan Ojwang: Burial protocols in Kenya, protest and non-compliance: Jachiga funeral2. Charles Getanda: Accessing Justice through Information and Communication Technology Initiative in Kenya: The Hidden Challenges.3. Brendah Achungo: Principles of stay-at-home policies: Experiences from PLEAD grantees on Gender Based Violence and Response Mechanisms within the COVID 19 containment period.4. Onyango Aaron Okoth: Rendering Unto Caesar: Protecting the Rights and Entitlements of Interns in the Post-Covid Era.5. Mary Mwangi: ADR as Alternatives Justice Systems for Service Delivery in Crisis Situation. <p>Discussants: TBA</p>

12.00pm - 12:45pm	Plenary
12:45pm - 2.00pm	LUNCH BREAK

2.00pm - 4:00pm	Conference Communique
	<ul style="list-style-type: none"> Action Points and Way Forward Conference Evaluation
4:00 pm - 6:00 pm	Closing Ceremony
	<ul style="list-style-type: none"> Highlights from the Rapporteur Action points and way forward Conference Evaluation <p>Closing Remarks:</p> <ol style="list-style-type: none"> Prof. PLO Lumumba - Advisory Board Prof. Patricia K. Mbote - UNEP Dan Juma - UNDP Kenya <ul style="list-style-type: none"> Conclusion and way forward Vote of thanks

Day 6: Saturday, December 4th 2021	
7.00am - 8.00am	Breakfast
Departure	

CONFERENCE COMMITTEE



Dr. Ruth Aura	Dean, Faculty of Law Chair - Conference Committee Project Leader, FOLLAP
Robert Mutembei	Project Manager, FOLLAP
Dr. Wambua Kituku	Project Manager, UNDP Amkeni Wakenya
Brendah Achungo	UNDP Amkeni Wakenya
Audrey Othim	UNDP Amkeni Wakenya
Dr. Maxwell Miyawa	Egerton University Faculty of Law
Samuel Kimani	Administrator, Faculty of Law
Kioko Kivandi	Media & Communication Advisor - FOLLAP
Susan A.I.E. Mbada-Obura	Copyeditor A.g Egerton University Press Manager
Peter I. Kiganda	Technical Editor Systems Developer, Egerton University

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An Analysis of Kenya's Preparedness to Tackle Socio-Economic Imbalances: Examination of State Sanctioned

Professor P.L.O. Lumumba and Evans O. Ogada*

The interplay between democracy, constitutionalism, the rule of law and socio-economic rights in Kenya came into sharp focus in the wake of the evictions by the State in the Kariobangi area of Nairobi, and with the related court decision of Kariobangi Sewerage Farmers Self Help Group versus the Cabinet Secretary Water, Sanitation & Irrigation & 6 Others E.L.C. Petition No. 11 of 2020(unreported). The case exposed the State for not only demolishing informal settlements at a time when the country was facing the ravenous effects of the Covid-19 pandemic and torrential floods that were experienced in the country at the time, but also for ignoring court orders barring the evictions. The evictions were conducted against a background of publicly stated state preparedness in mitigating the effects of Covid-19 and as such, these evictions evinced contrary intention to what the government had promised.

The case concerned squatters living in the wider Kariobangi area of Nairobi, who had been served with eviction notices, which notices the residents complained were rather short since they were required to leave in a matter of days. The residents under the umbrella of a residents' welfare group known as the Kariobangi Sewerage Farmers Self Help Group moved to court and managed to obtain interim orders barring any evictions on 3rd May 2020. The State however chose to ignore the orders and proceeded to evict the Petitioners alongside other squatters on 4th May 2020.

The evictions in the Kariobangi area and the disregard of court orders in the process of the evictions revealed the fragility of the Kenyan State. It is a weakness that portends to be a disaster in the near future if left unchecked. The Petitioners in this case, like many citizens of Kenya, are victims of systematic weakness of the Kenyan state, that has not paid keen attention to the social welfare of its citizens who live in conditions of squalor. The forced evictions happened without adequate warning, compensation and without the provision of alternative housing for the evictees and without respect for the human dignity of those affected.

* Professor Lumumba is an accomplished author and Pan Africanist. Evans Ogada is the Managing Editor, the Platform for Law, Justice & Society; an Advocate and Researcher in Constitutional, Human Rights and Public International Law and a Law Lecturer.

The evictions were conducted at a time when the ravages of the Covid-19 pandemic were starting to be felt. The life for the evictees which is normally difficult became direr. A good number of people had lost their means of livelihood and were barely struggling to survive.

The evictions and disregard for court orders paint a motif of the Kenyan State, which is synonymous by its coercive elements, official impunity and it is therefore not a surprise that the evictions were carried out in a brutal manner. Life in the informal settlements paints a picture of the reality for a majority of Kenyans where a majority live in conditions of abject poverty. The life led by the poor majority in this country is evidence of the frailties in the architecture of the Kenyan State, even though the Constitution sought to ameliorate these frailties with the inclusion of socio-economic rights under article 43. The eviction and the failure to respect human dignity is in violation of the International Covenant on Economic, Social and Cultural Rights which binds Kenya in terms of international law commitments.

The need to adhere to human rights ideals has been stated by the courts and particularly in the case of *Susan Waithera Kariuki & 4 Others v. Town Clerk Nairobi City Council & 3 Others* (2013 e KLR) where it was stated that evictions should not result in homelessness, vulnerability and violation of Human Rights.

The State was also expected to be guided by the Eviction and Resettlement Guidelines (2009) whose stated objective is said to be, 'Towards Fair and Justifiable Management of Evictions and Resettlements.' It is worth noting that human rights are more than just a means to enforce state forbearance or a protective tool directed against the evil actions of the state. They are part of the state and the state must actively protect them. The State has an obligation to respect, protect and promote human rights.

For the Constitution to have meaning, it must be respected as legally binding. The legal supremacy of the Constitution should mean that no other claims of superiority should lie above the Constitution in so far as matters of government are concerned. It therefore behooves the State to address itself to the welfare of the poor by meaningfully tackling endemic poverty. The Constitution's provisions on socio-economic rights seek to correct foundational and functional mistakes of previous years as an existential urgency. Beyond the rhetorical flourish of commitment to constitutionalism by politicians, court orders must be respected. Constitutionalism assumes that political power holders must be restrained under preordained constitutional rules, fully aware of the fact that those who govern in

Promotion of the Right to International Solidarity in the Context of Covid-19

Dr. Miyawa Maxwell

In his on 15 February 1996 lecture at Pace University School of Law, Judge Ronald St. J MacDonald firmly declared that solidarity is “a fundamental and a fundamentally sound principle of international law.” This insight has now crystalized into near aphorism, reflected in the contemporary idea – at least within official UN human rights circles – that “international solidarity is a foundational principle underpinning contemporary international law, and is based on respect for and protection and fulfillment of human rights and fundamental freedoms for all individuals, without distinction or discrimination.” The dispersal of this aphorism within international law discourse and practice is now an undeniable fact. For example, it is deployable (and has been deployed) in the access to COVID-19 vaccines context to require specific actions to be taken by certain actors to benefit specific persons across the globe. That is to say that the actuality of the existence of the right to international solidarity is even more manifest in the discourses/ those sub-aspects of international law that are concerned with humanity’s most formidable common challenges such as Covid-19 pandemic. This paper investigates the various aspects/dimensions of how the right to international solidarity is deployable or has been deployed, in certain areas and cases, in specific enough ways as to be operationally significant in the fight against Covid-19.

When The Justice System Fails the Poor: Access to Justice and Evictions During the COVID-19 Pandemic in Kenya

Dr. Nicholas Orago,

The COVID-19 pandemic threw a curve ball to the land and housing sector in Kenya in many ways. The pandemic and its containment measures reduced the capacity of civil society and peoples' movements to organise and advocate for the right to housing of people living in precarious shelter situations in informal settlements. The net effect of this was that many more evictions were undertaken during the pandemic than at any other time since the promulgation of the Constitution of Kenya 2010. This happened despite a moratorium issued by the President in May 2020 stopping any planned evictions during the pandemic. In this period, several evictions have been undertaken, with over 20, 000 Kenyans losing their homes and being rendered homeless and destitute in the middle of a pandemic. These evictions have mainly been done without adequate notice, at night, in bad weather and without consideration of the legal and procedural requirements for lawful evictions. The Justice Sector actors have mainly been in the forefront of the violations of these rights, with the national police service being the main culprits in aiding and facilitating these demolitions and evictions. The courts have equally been complicit in most instances, with courts failing, refusing, or generally delaying the issuance of conservatory orders to prevent these evictions, and where eviction cases have been concluded, failing to order reasonable compensation for the victims of these violations. It is the contention of this paper that failure to hold entities, institutions, and individuals jointly and severally accountable for the many instances of forced evictions is the main reason for the continued failure in access to justice for the poor in urban informal settlements. The paper recommends if illegal and irregular evictions are to be brought to a stop and the eviction guidelines as contained in national and international law are to be observed and followed, leaders of entities or institutions that undertake forced evictions must be held individually responsible for the evictions and should be forced to pay compensation from their own pockets and not from the exchequer. This individual responsibility, the paper asserts, will ensure that those who perpetrate the violation of the right to land, housing and other attendant rights through forced evictions feel the actual pain of their actions. This, in essence, will reduce instances of forced evictions and ensure that the procedural provisions in the law in relation to eviction are followed for better protection of the right to land and housing of the urban poor in informal settlements.

Robbed Dreams or Economies of Violence! The Covid 19 Pandemic, Religious Contestations over Teenage Pregnancy and the Quest for Gendered and Education Justice in Kenya

Dr. Damaris Parsitau

The Covid 19 Pandemic has had an unprecedented impact on women and girls globally. In Africa, Kenya in particular, there has been an unprecedented explosion of teenage pregnancies during the Covid 19 pandemic and subsequent lockdowns that has essentially robbed thousands of teenage girls of not just their dreams but also their right to education and gendered justice. Amidst serious contestations, politicizations and moralization of teenage sexualities and pregnancy, the girls' education is both a right and a gendered justice question. This paper examines not just the explosion of teenage pregnancies during the lock downs but also contestations and quests for justice and rights for marginalized girls' Kenya. The paper is based on evidence-based policy research as well as personal reflections on the status of vulnerable girls' quest for educational justice in Kenya and beyond.

Access to Education During the Covid-19 Pandemic in Kenya: The Law, Realities and Innovations

***Prof. Patricia Kameri-Mbote , Prof. Collins Odote , Dr. Robert Kibugi ,
Hadijah Yahyah and Susan Yara**

The outbreak of the COVID-19 pandemic has not only impacted human health and caused fatalities across the globe but has also immensely affected the realization and protection of socio-economic rights. One such right is the right to education. In Kenya, one of the early sectors to suffer from the onset of the pandemic was education, with the President ordering the closure of all learning institutions. With this decision Kenya joined around 150 countries that closed their learning institutions in response to the pandemic. The closures disrupted learning exacerbating a crisis that existed already in the education sector across the world. In the process, debates arose about the appropriate balance between the right to health and the right to education, the obligations of the Government in the process and the role of courts in helping secure the right to education during a pandemic.

In response to the impact of the crisis on the education sector, online learning was adopted. However, this too raised issues around equity and the psychological impacts on both learners and instructors. As a result, the role of the state and that of the private sector in provision of education and whether education is a public good in light of Article 43 of the Constitution emerged.

The High Court in the case of *Joseph Enock Aura v Cabinet Secretary, Ministry of Education, Science & Technology & 3 others; Teachers Service Commission & 6 others (Interested Parties)* [2020] eKLR grappled with some of these issues. It ordered the re-opening of schools to enable learners to enjoy the benefits of in-person learning. The decision raises the question about the appropriate balance between health and education rights and the role of the Courts in clarifying and enforcing that balance.

Against the above background, the paper seeks to assess the experience of Kenya in implementing the right to education during the COVID-19 pandemic, the innovations deployed during the process and the challenges faced. It interrogates the role of the Courts in enhancing access to education during a pandemic and argues that while the Judiciary is a critical anchor, its decisions must always be delivered within a context that ensures that the enjoyment of one right does not impair the realization of another.

Key words: COVID-19, Courts, Education, socio-economic rights, Pandemic, Innovations

An Assessment the Impact of Covid-19 Pandemic in Legal Education: A Case Study of Mount Kenya University & Kenya School of Law Indicators

Ferd Moyomba

The World Health Organization declared the novel COVID-19 a global pandemic on Wednesday 11th March 2020. Kenya just like the rest of the world was greatly affected. Legal education was greatly hampered as universities were shut down as part of the GoK Covid-19 containment measures. This resulted in the need for creativity within the legal education sector leading to among other adjustments, the embrace of technology.

The aim of this paper is to assess the impact of Covid-19 in legal education in Kenya. The paper will explore the challenges faced by universities; students, teaching staff, etc and how legal education in Kenya has since transformed despite the challenges earlier experienced.

This paper will discuss the challenges identified during the study period i.e March 2020– October 2021. Among the challenges faced included inadequacy of the required technological infrastructure, unreliable electrical power, low internet connectivity in most parts of the country, inadequate physical facilities, to facilitate social distance, among others.

Every cloud has a silver lining: the paper will examine the gains made by universities i.e enhancement of physical infrastructure in attempt to comply with government regulations, Covid-19 prevention regulations, increase in the adoption and utilization of technology, invention and manufacturing of PPEs, engaging in cost cutting measures, and enhancement in number of students pursuing legal education.

Library / desktop research methodology will be used as is the most appropriate and hence will be extensively utilized in this study. Existing data from various credible sources will be considered and extensively cited in the study. While the study will focus on institutions offering legal education in Kenya, Mount Kenya University and Kenya School of Law will be given specific attention as a case study.

In conclusion, the paper will underscore that while the Corona pandemic brought a myriad of challenges, it also brought along with it some benefits that will go along away in enhancing access to legal education through technological advancement in the legal education sector in Kenya.

The Future of Legal Education in Kenya Post Covid-19 Pandemic: A Call for Reform

Odhiambo Rodgers*

This paper seeks to analyze the impact of Covid-19 Pandemic on the legal education in Kenya and calls for the need to re-imagine the future of legal education post Covid-19 Pandemic so as to address some of the challenges that have been exposed by the pandemic and in order to adequately prepare the next generation of lawyers the values, skills and knowledge necessary for the delivery of the constitutional promise of access to justice. Therefore, there is need to evaluate the fairness and effectiveness of the changes to legal education adopted by universities in the country as a result of the crisis fueled by the Covid-19 pandemic.

Indeed, Covid-19 has had an enormous impact on the education sector including legal education, not just in Kenya but across the globe. Most Universities switched over to online teaching immediately the pandemic hit us, and with very little or no time to evaluate the impact of online teaching, and the use of technology in developing technical skills of law students. As a result, several challenges were encountered by both the institutions and students. It was obvious that the pandemic caught most of our institutions ill equipped as it was evident that a majority of law schools in Kenya did not have adequate online facilities of learning. A number of students, especially those from the rural areas, did not have access to the internet. As a matter of fact, the emergence of Covid-19 pandemic exposed the social and economic disparity in the country, causing hardships to many students from less privileged backgrounds in our society having limited access to the necessary infrastructure. There were several concerns observed that included inability of many students especially from marginalized backgrounds to pay school fees, lack of access to infrastructure, mental health issues, lack of conducive home environments.

This paper contends that, unequal access to technological tools and internet

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connection impaired the online teaching or learning platform, and indeed the economic inequality witnessed in our society meant that students from poor background who could not afford to buy laptops or mobile phone devices or those from areas with poor or no internet connection were unduly prejudiced. Their frustration was compounded when they were required to take exams online with little or no assurance that they would submit within the stipulated time.

This paper notes that legal education is a critical infrastructure in Kenya, and its soundness and stability is imperative to the national economy, the country's democracy, public safety and national security. Therefore, in order to address the challenges in legal education occasioned by the Covid-19 pandemic, there is an urgent need for development of a robust and promotion of effective legal education based on pedagogical models that do not undermine diversity and inclusion since to do otherwise would greatly undermine our constitutional values. The pandemic has exposed not only the social and economic iniquities in society, but also the pedagogical and access to justice iniquities in the traditional law curriculum. As a result, this paper contends that the Covid-19 pandemic has provided the opportunity to re-imagine the future of legal education post Covid-19 pandemic, as challenges posed by the pandemic, as well as social justice awareness and the emergence of technological change will transform the future of legal education and practice. It is this paper's anticipation that online learning methodologies adopted by law schools all over the globe will most likely carry on in restructuring legal pedagogy in light of the COVID-19 pandemic, technological innovation, and the financial pressures facing most law schools. This provides law schools, however, with an opportunity to cultivate the potential benefits of online pedagogy.

Key Words: Covid-19, Legal education, Inequality, Social Justice, Access to Justice, Technological Innovation.

Re-Imagining Legal Education in Kenya: Adapting to The Covid-19 Pandemic

Dr Ruth Aura* and Mr. John S Nyanje

When the COVID-19 Pandemic emerged around the globe, many sectors did not imagine and neither were they prepared for its impact in shaping up new methods and developments of operating under such tough circumstance. The impact on higher education was even much worse as universities around the world had to stop all its activities and locked down, rightly so, in order to ensure that the pandemic does not spread around the world.

The legal education sector in Kenya has been hit hard by the COVID-19 pandemic and is not even close to full recovery. The bar school (Kenya School of Law) as well as the law schools in respective universities had to stop its learning, some even for months. This left many students in a limbo and a lot of complaints emerged overtime on how the law schools poorly managed the situation.

While some law school adapted really quick and began online mode of teaching, questions have been raised on the preparedness and efficacy of the online platforms mode of teaching, as well as whether such methods could be improvised to ensure that legal education remains of high standards as has always been envisioned by the relevant agencies concerned with regulating the legal education sector.

Examinations were also affected largely, with institution such as Kenya School of Law postponing the bar exams for over a year leaving the students anxious and nervous as they did not know when they were to undertake the exams. Some universities, opted to change their grading system to pass and fail as they lacked requisite technology to conduct exams online.

The challenges of a developing country for the individual students were also high. Due to the lack of requisite equipment such as laptops and the high costs and poor connectivity of internet especially in Rural Kenya. Indeed COVID-19 struck the Kenyan legal education sector like a lightning bolt and shook it to its core.

As has been argued by a Kenya academic, there is need to relook legal education reforms in Kenya in a broader context, necessitating the review of national higher education terrain and to consider issues of transformation within the education sector in Kenya. It is against this backdrop that the authors of this article ask, can the traditional, campus-based legal education structures in Kenya adapt by choosing the right technologies and approaches for educating and engaging their students in the wake of the COVID-19 pandemic?

The article will first examine the traditional landscape of the legal education sector in Kenya. The article will then look into the specific challenges that the law schools in Kenya

faced after the outbreak of the Pandemic. The article will then look at how the challenges were tackled by the individual students. In doing this, the authors will interview different players in the Kenyan legal education sectors majorly being students and lecturers. The article will then offer what best practices have been adapted in legal education to counter the pandemic and whether such methods would be effective in the Kenyan scenario. A conclusion will then be offered.

Economies of Violence and Gender Inequality! Re-examining the Nexus between Gender and the Covid 19 Pandemic in Africa

Dr. Damaris Seleina Parsitau & Ruth Aura

Across every sphere of life, the novel Covid 19 pandemic has and continues to have devastating consequences on all peoples but especially women and girls in the majority world. Since mid-March 2020 to date, both emerging and anecdotal evidence suggests that women and girls were disproportionately impacted by the Covid 19 pandemic compared to other demographics. First, the Covid 19 pandemic has massively disrupted women's lives in every sphere of their lives, and has threatened to wipe out and unravel decades of progress towards women rights and gender equality in Africa. African women and girls therefore continue to bear the brunt of this unprecedented pandemic that has not only further exacerbated already existing gender inequalities for millions of these vulnerable constituencies but also one that has laid bare serious fault lines in respect of gender equality. Yet, the gendered effects of this pandemic are just beginning to unravel. There is need therefore to critically understand the gendered effects of this pandemic and its implication for policy research, recovery and reconstruction. This paper examines the gendered effects of the Covid 19 Pandemic in Africa with a special focus on girls' education, teenage pregnancy and early/forced marriage and argues for the inclusion of women and girls in Africa's policy, governance, decision making, recovery and reconstruction. The paper is based on evidence-based research as well as my own personal reflections coupled with ethnographic data gathered since early 2020 to date. I use theories of intersectionalities to clearly show the intersections between patriarchy and gender inequality that continues to not only exclude women in decision making but also in tremendous vulnerabilities in light of the covid 19 pandemic.

Access to Justice in The Digital Age: Opportunities and Challenges

Juliana W. Njiriri

The covid 19 pandemic has caused confusion in a lot of sectors within and without our borders. One of the sectors that has suffered this unprecedented confusion and is an integral part to our country's well-being and development is the justice system. This has caused us to innovate and to rethink things. A number of measures have been put in place to ensure that the justice system is kept in good shape especially in the wake of the covid 19 pandemic. The digitalization of operations has been the notable change in the Justice system. This has come as no surprise especially because of its numerous advantages that by far outweigh the disadvantages. We must recognize that digitalization poses urgent questions as regards acceptance in the justice system and its promotion of the rule of law.

This paper postulates that whilst digitalization comes with its fair share of challenges, we must work together to make the digital channel a sure way for the realization of justice. It also explores the urgency that has been caused by the covid 19 pandemic in some of the digitalization processes that were underway but had stalled due to institutional, organizational and financial challenges. It further proposes a digitalized justice system so as to guarantee easy and timely access to justice and improve the efficiency and quality of services.

Human Rights Protection in Context of Covid 19 Pandemic

Dianah Ndashiki

Kenya announced its first Corona virus case on 12th March 2020. Following this, the Kenyan Government put in place various measures in an attempt to halt or slow the spread of the deadly virus. Some of steps taken were the imposition of a night curfew, the banning of all public gatherings and events, the immediate closure of schools, passenger limit in Public Service Vehicles and movement restrictions. As a consequence, there was an increase in cases of human rights violations in the country. In response, human rights civil society organizations (CSO) devised novel interventions to protect the rights of the indigent and vulnerable in society and to enhance access to justice for those whose rights had been violated. This article will highlight some of the human rights that have been infringed during the pandemic and the interventions employed by CSOs to protect human rights.

The police in enforcing the curfew orders, meted violence on members of the public, killing and brutalizing many Kenyans including a 13-year-old boy by the name Yassin Moyo at Mathare within Nairobi City County. To hold the National Police Service responsible for violating the rights of others, human rights organizations filed Petition No. 120 of 2020 (COVID 025) Law Society of Kenya v Hillary Mutyambai Inspector General National Police Service & 4 others ; Kenya National Commission on Human Rights & 3 others (Interested Parties) [2020] Eklr seeking redress. The court declared that the unreasonable use of force in enforcing the Public Order (State Curfew) Order, 2020 was unconstitutional. However, the police continued to mete unreasonable force on innocent Kenyans despite the declaration by the Court. CSOs continued to highlight these cases of police brutality and demanded justice through social media platforms.

The stay at home order and other containment measures increased vulnerability of women and children especially the poor and marginalized. Statistics released by the Ministry of Public Service and Gender showed that there was a 36 percent spike in Gender Based Violence(GBV) cases in the year 2020. Fear of police brutality kept survivors from seeking help. There was also a lack of capacity among police officers in conducting investigations on GBV since most of them were occupied with enforcing the containment measures. In Kenya, safe houses are few and because of the restrictions could not operate 24 hours a day.

In response to this the Human Rights Watch released a report titled “I had

nowhere to go’: Violence against women and girls during the Covid-19 pandemic in Kenya.” The report highlights the plight of survivors in reporting and accessing justice and makes recommendations to the Government on measures it needs to put in place ahead of the 2022 General Elections to prevent GBV.

Despite the Covid-19 situation, the Government carried out forceful evictions in several areas including Ruai, Njiru, Kibos and Kariobangi. This left more than 30,000 families homeless with no alternative resettlement and compensation accorded to the victims. The brutal evictions exposed the affected families to the danger of contracting Covid-19 since they could not access shelter, sanitation services, and protection from weather elements. The residents were not accorded proper notice that is required under law and the demolitions processes failed to adhere to the mandatory procedures during evictions. This was in total violation of the Constitution of Kenya 2010, the Land Law (Amendment) Act 2016 and the UN Evictions Guidelines. Kituo cha Sheria represented the residents of Kibos in *Fatuma Khamis Bilal & 3505 others v Kenya Railways Corporation & 6 others* [2021] Eklr where the court declared that any forceful eviction and or demolition without relocation is illegal and violates the rights of the petitioners to property and that the petitioners are entitled to the property or compensation before relocation.

The Covid-19 pandemic has exposed the extent of structural inequalities, human rights abuses and violations in Kenya, as justice systems struggle to adapt to the changing dynamics in the country.

Establishment of The Small Claims Court: A Stupendous Victory to Paralegalism

David Mburu

The purpose of this article is to provide an analysis on the use of Small Claims Courts as a mechanism to improve access to justice in order to support the ongoing reform movement in Kenya especially in civil matters. This essential information is intended to be used by policymakers to help the judiciary to confront several barriers that currently face common citizens: lack of information, high economic cost of the judicial process and obtaining legal representation, corruption, extreme formalism, delays, and even the geographical location of the courts. The experience on the implementation of the Small Claims Courts in other jurisdictions, with the modifications made will contribute to the discussion. With this purpose, the author has made an empirical research at the attitudes towards the small claims courts, functions and procedures of the court and finally benefits, challenges and recommendations of the court. The climax of the article will highlight the rarely acknowledged role of paralegals in the Justice system in Kenya, with a special focus as to their role as regards the small claims court.

The Right to Health, Covid-19 And Non-Communicable Diseases: Measuring Access to Justice Through Progress

Maurice Oduor

People living with noncommunicable diseases (PLWNCDs) are more at risk of becoming severely ill or dying from COVID-19. Besides, they have less access to essential health services during COVID 19, amplifying an already bad situation. When health systems shifted focus to COVID 19 e.g. when clinics were rescheduled from e.g. once monthly to once every 3 months, PLWNCDs were severely affected in terms of their access to treatment. COVID-19 also affected the health seeking behavior of PLWNCDs either through fear of attending hospital or arising from restriction of movement. The attendant disruption of rehabilitative and palliative care has had a significant impact on the right to health of PLWNCDs.

Measuring access to justice in the context of COVID-19 and NCDs requires an analysis of progress indicators which are either structural, process or results oriented. Structural indicators revolve around the normative frameworks that undergird the attainment of the right to health as guaranteed in the law. Thus, there ought to be present in a given system, not only a definition of what the right to health entails, but also a mechanism that provides an opportunity to redress violations of rights e.g. a complaints redress mechanism, available legal remedies, accessible legal services, procedural guarantees of fairness. Process indicators refer to the tangible steps a government takes to accomplish the right to health. Results indicators refer to the actual impact of the relevant interventions towards the realization of the right to health, e.g. the degree of public awareness of health rights. Access to justice in the context of health transcends questions about access to courts and encompass questions that straddle the three progress indicators.

The purpose of this paper is to evaluate the above progress indicators to evaluate access to justice in the context COVID-19 and NCDs. There are 4 key questions that this paper deals with. First, the paper seeks to uncover the access to justice dimensions of the right to health generally. Secondly, demonstrates how COVID-19 interplays with NCDs to produce grave consequences for PLWNCDs. Thirdly, the paper identifies the critical access to justice issues presented by the interplay between COVID-19 and NCDs and answers the question whether the entire corpus of the justice system responds to those issues. Finally, the paper anticipates the access to justice parameters that may suffice to resolve the identified issues.

COVID-19, Blockchain Technology, and Access to Healthcare in Kenya: Using Health Informatics to Deliver Universal Health Coverage

Dr Brian Sang & Jackie Gachiri

Although the full extent of the impact of the COVID-19 pandemic is yet to be conclusively ascertained, it is doubtless that it has had far more wide-ranging global effects than any other comparable event in recent memory. A dominant theme in contemporary analyses of effects of, and responses to, the COVID-19 pandemic is its inherently disruptive characteristic and the ways in which state or non-state actors have sought to adapt to the unprecedented changes wrought by it. COVID-19 caused the tragic loss of millions of lives and the massive economic disruptions necessitated by its containment measures triggered socioeconomic crises in many countries. While COVID-19 created the perfect storm of misery and inconvenience for human beings, it can also be credited for availing a context of necessity that has been conducive to technological innovation. To ensure continuity of learning, classes were moved to digital platforms and online spaces; to ensure availability of essential medicines, suppliers in some African countries relied on drones to deliver them; and to ensure timely development and dissemination of COVID-19 vaccines the world over, several countries participated in cooperation efforts. There is need to seize on progress in technological innovation and support its application across all sectors.

More than any other sector during the COVID-19 pandemic, the health sector has been the focal point of concerted efforts to harness the potential of technological innovations and put their various applications to practical use. One of the promising uses to which emerging technologies have been put to surmount pandemic-induced disruptions in the health sector is the adoption of health informatics. This entails utilizing information technology to capture, sort, organize and analyze retrievable health records so as to improve healthcare outcomes. Also known as health information systems, health informatics includes the resources, devices and processes needed to acquire and use electronic medical data. A particularly relevant application of health informatics is its functionality as customized software programmes based on blockchain technology (which allows a group of select persons to share data securely) that can run comprehensive healthcare management systems. Some of the notable capabilities of blockchain-enabled health informatics include its ability to facilitate the process of recording and verifying digital transactions, the impossibility of tampering with published

transactions, secure encryption of patient electronic medical records, and the capacity for interoperability.

These attributes of blockchain-enabled health informatics hold special promise for promoting greater access to healthcare in sub-Saharan countries like Kenya which are resource-constrained while at the same time bearing the substantial burden of communicable disease globally. That the COVID-19 pandemic did exacerbate the inequalities in accessing healthcare in Kenya is its most visible aspect, and so it has invariably been the subject of numerous studies. Attention has been given to the implications of the COVID-19 pandemic for less financially able persons by the pluralist community of experts, including economists, public health practitioners, civil society organizations and professional bodies. These diverse actors have suggested a number of options for expanding the reach of healthcare services, including adoption of technological solutions. A few studies have explored the likely problems and benefits of using health informatics in Kenya, but their findings are for the most part conceptual as they are rarely based on actual experiences. For the few that report on case studies of actual use of health informatics in Kenya, their scope tends to be narrow in the sense of being restricted to situation-specific circumstances and their focus is often more on the technical aspects of information systems. The operationalization of blockchain-enabled health informatics in Kenya and the likely effects it can have on the delivery of universal health coverage is a question that has received scant attention.

This paper seeks to contribute to the ongoing discussion on the need to reform national health priorities, policies and delivery models in Kenya in the wake of the deficiencies highlighted by the unsatisfactory response to the COVID-19 pandemic. In doing so, it offers a threefold thesis. The first proposition is that achievement of universal health coverage in Kenya is inextricably intertwined with the fulfilment by the government of its legal obligation under Articles 43 and 23 of the 2010 Constitution to give effect to the right to health. This informs the second proposition that the adoption and operationalization of blockchain-enabled health informatics in Kenya's public health sector, which will likely yield significant and durable benefits by minimizing the effects of economic disparity while increasing systemic efficiency, can enhance the availability, accessibility and adequacy of healthcare services. Focusing on the utility of health informatics to strengthen equitable and efficient delivery, the third proposition is that a phased approach to the nationwide implementation of blockchain-enabled health informatics is one of the programmatic steps that Kenya's government can take towards realization of the constitutional right to health and achievement of

universal health coverage.

To demonstrate the validity of its threefold thesis, this paper draws on the experiences of two hospitals in Kenya. The first one, located in Nairobi County, has already deployed a blockchain-enabled health informatics system with an integrated Artificial Intelligence (AI) component. The second one, located in Makueni County, has achieved a remarkable degree of inclusive health coverage that is without precedent in Kenya. Through an analysis of the distinct yet interrelated experiences of the two hospitals as case studies, this paper explores the mutual complementarity between technological innovation, systemic efficiency and health outcomes. It finds that these two case studies demonstrate that there is both the need and scope for locking in current trends towards the use of health informatics in Kenya, and further that the key lessons gleaned from the two case studies offer an experiential basis on which legislators and policymakers can proceed when designing national models for the delivery of universal health coverage.

For Whom the Bell of Mandatory Vaccination Tolls? The Illusory and Functional Limits of Human Rights in Times of a Pandemic

Collins Odundo

It is undeniable that Covid—19 pandemic has presented novel legal questions which test the depth of human rights relevance and application within states. The effect of the pandemic has been to not only limit the enjoyment of individual rights and freedoms, but also, at times, suspend their enjoyment altogether. This article admits, without conceding too much conceptual ground, that human rights discourse is inherently imbued with its own pathologies and dilemmas which expose both explicit and implicit limitations. The purpose of this article will be to interrogate and analyze impact of the pandemic on the human rights landscape. Mandatory vaccination, juxtaposed against the idea that human rights must be practical and effective and not theoretical and illusory, will provide the primary focal point for legal analysis. The article will attempt to answer whether contextual requirement for mandatory vaccination is justifiable under a free and democratic society or it violates substantive human rights precepts, including the right to bodily integrity, religion, and freedom from non-discrimination. These rights are enshrined and protected both at the international and municipal levels of the human rights framework. In particular, the article will highlight the main legal principles in constitutional and human rights law that govern the right of states to take measures, apparent or otherwise, derogating from their legal obligations during a crisis. The Kenyan example, where vaccination of civil servants has been mandated, will be used to determine whether the pandemic has facilitated gross

Access to Justice and The Health Sector During COVID-19 Pandemic

Dr. Paul Ogendi

The health sector has been disproportionately encumbered by the COVID-19 pandemic. In trying to deal with the menace, the health sector has seen many violations being perpetrated against particularly the patients trying to access services in health facilities. Also affected in equal measures are the health care workers who have been forced to work under very difficult and dangerous circumstances and sometimes even losing their lives.

On the one hand, for patients, the main violations that need redress include loss of privacy and confidentiality while accessing services in the health facilities, forced COVID-19 testing at own cost and as a condition precedent to access to other services, as well as outright denial or unavailability of other health services including sexual and reproductive health.

On the other hand, the health care workers have also suffered a great deal under the COVID-19 pandemic. In some health facilities, the health care workers have been forced to work without personal protective equipment thereby exposing them to covid-19 infections. In other cases, health care workers have been forced to work long hours without compensation. Other issues include lack of health insurance that have been lacking to protect the health care workers in case they contract the disease. Lastly, the issue of mental health and wellbeing of health care workers has been overbearing due to the unprecedented times they are operating in.

In all these examples, the element of justice has not been adequately addressed or emphasized by man stakeholders in the sector. It is crucial to note that simply because there is an ongoing pandemic then that does not mean that justice is thrown out of the window. Access to justice remains a crucial part of the health care system. The circumstances obtaining for access to justice are dire including ignorance, fear, at one point, the closure of courts, and severe restriction of movement for lawyers. Therefore, there is need to work with all stakeholders to ensure that these categories of people interacting with Kenya's health care system are able to access justice at all times and in all cases.

The questions that this article should ask are therefore: what is the extent and nature of violations that occurred in the health sector during COVID-19 pandemic? what are the barriers for access to justice in the context of COVID 19 for the different categories of people affected? how can those barriers be overcome or addressed to guarantee access to justice for all?

The proposed article will investigate the above issues and provide an indepth analysis of the same using various approaches including comparative studies of other jurisdictions to especially find out how they were able to overcome the existing barriers on access to justice in the context of COVID-19.

Online Dispute Resolution and Access to Justice in The Covid-19 Era

Vianney Sebayiga

The COVID-19 pandemic will go down in history as one of the worst catastrophes to ever hit man. The effects of the pandemic have been experienced by all people, whether rich or poor, across all nations of the world. The pandemic has not only affected the health of people but also impacted how people interact and relate with one another. Many families have at least lost a loved one or know someone who died due to COVID-19. Where one is not affected health-wise, they are hugely affected by the economic conditions arising from the effects of the pandemic on the economy.

In a bid to curb the spread of COVID-19, governments world over have put in place mandatory measures that must be adhered to. These include among other things wearing masks, and social distancing. The measures have meant that people can no longer interact physically and freely as they used to before the pandemic. Despite the reduced physical interactions, people have had to adapt and adopt new ways of life such as telework, telemedicine, remote learning, and food delivery among others. This transition to a sort of 'new normal' has not reduced the number of disagreements and disputes that arise among people. In fact, disputes and conflicts have steadily risen during these unprecedented times. It is noteworthy that even in such uncertain times, people still expect access to justice to be realized. They still believe that when a misunderstanding or dispute arises between or among them, there should be an avenue for resolving the said dispute and offer redress to the aggrieved party. To some people, access to justice means the existence of courts. To others, it means sorting out the issues harmoniously and getting redress. This implies that access to justice has a fluid meaning to different people.

With the closure of public spaces including courts, innovative ways of achieving access to justice have had to be developed. This article argues that the pandemic has increased the usage of Online Dispute Resolution (ODR) which has either enhanced or impeded access to justice. ODR refers to the combination of technology and the internet in dispute resolution mechanisms to resolve disputes efficiently and expeditiously. Such technology-powered ADR mechanisms include e-litigation, e-negotiation, e-mediation, and e-arbitration.

The increased online interactions have led to the upsurge of disagreements

and disputes, thus prompting the use of digital solutions in dispute resolution mechanisms to resolve disputes. For instance, courts have resorted to virtual hearings during these unprecedented times, virtual mediations, and virtual arbitration have similarly followed cue. The article argues that the use of ODR has huge implications on the right of access to justice. On the one hand, ODR can enhance access to justice by enabling people to resolve their disputes expeditiously and cost-effectively. On the other hand, it can hinder access to justice where parties are not familiar with or lack access to technology and internet. This article articulates the opportunities and challenges of using ODR in resolving disputes. An extensive examination of the recent developments of ODR in Kenya and Africa in light of the COVID-19 pandemic is done to illustrate the potential resilience of ODR after the pandemic. Lastly, the article concludes that there is a need to establish and re-establish digital infrastructure across Africa to facilitate the use of ODR thus enhancing access to justice.

Access To Justice In The Digital Age; Opportunities And Challenges

Valerie Kutima

“Access to justice” is defined as “the ability of persons within a given jurisdiction to seek and secure a remedy on legal matters through official or informal institutions of Justice, in accordance with human rights standards and principles that are acceptable across the world. The right to access Justice is entrenched in article 48 of the Constitution of Kenya 2010; in this section, the state is charged with the duty and responsibility to guarantee that every person within Kenya can access Justice regardless of the fee charged. It is imperative to underscore that access to Justice is not related to the judicial system alone, but it can extend to legal aid and other alternative justice methods.

Digitization is the way to go, and almost every sector in the country has adopted technology in the running of their daily activities. The pandemic necessitated the scaling down of most government operations within the various arms of the government. With the advent of the Novel Coronavirus in Kenya and across the world, the right of access to Justice has taken another trend in the adoption of technology; this was motivated by the fact that there were specific measures that the government set to mitigate the spread of the virus across the country. The most popular form of digitization adopted in access to Justice has been the virtual court systems where court sessions are conducted through online platforms that facilitate video conferencing. The civil Procedure act had to be amended to accommodate this trend that was adopted.

This paper seeks to bolster the challenges and advantageous opportunities within the functioning of the virtual court system and other forms of digitization in the mechanisms of access to Justice. Most of the attributes discussed by the paper are sourced from a series of continued qualitative and quantitative research from the onset of the radical reforms that led to the adoption of technology in the systems of access to Justice. The other imperative thing that informs the paper’s discourse is my interaction with the technology during my advancement of legal services in the corridors of Justice and the academic world.

Kenya’s Judicial Reforms on Access to Justice have brought some advantages; here are some of the benefits that will be tackled in-depth by the paper: For decades, paper-based procedures and physical court appearances have dominated the Kenyan court system. For a long time, the traditional procedures

have undermined the provision and administration of Justice since they take a long time. Still, with digitization, the process will be easier and faster hence ensuring that advancement of Justice is not delayed since the practicality of the popular legal saying Justice delayed is Justice denied has been felt by most citizens. The digitization of court records and the automation of various court operations speed up case resolution and reduce case backlogs.

There is efficiency in the utility of the digital resources virtual judicial system. The user interface allows lawyers, legal firms, and citizens to register on the Judiciary's website through the e-filing portal or the e-citizen portal, hence preventing them from wasting resources in traveling to various court sessions. Registered users can then re-fill cases, upload documents, and make e-payments for commercial and civil cases using their login credentials. In addition, the public can use electronic case searches and electronic case tracking to find out how matters are progressing. The efficiency of the users with cases enables remote access to their case status compared to the tedious traditional methodologies where one had to queue at the court registry to determine the developments in their case.

Savings on government revenue; the courts save money on the costs of storing and retrieving court papers, which are connected with manual records management. This is an advantage since there are issues relating to funding within the Judiciary.

The paper discusses the following challenges regarding access to Justice in the digital era: There is a significant problem in obtaining affordable and secure internet connectivity, which is sometimes exacerbated by the lack of electricity. When one lacks such core elements, it becomes difficult for them to access Justice, leading to miscarriage of Justice. For instance, defendants' ability to adequately defend themselves digitally may be jeopardized if they do not have a sufficient internet connection. There's also the risk of cyber-attacks jeopardizing digital technology in courts and jeopardizing the fairness of court proceedings.

Compared to the physical court session, assessing nonverbal cues such as the defendant's motions and eye movements to establish believability is limited. Furthermore, virtual court hearings prevent proper detection of symptoms of torture and ill-treatment of accused people. Because they cannot appear before a judge physically, virtual courts may tilt the criminal justice system against people who have been deprived of their liberty. They may feel intimidated and lack confidence. Virtual court systems are sometimes set up within the police stations. This provides a perfect opportunity for the police to coerce the accused persons to admit their charges, hoping that they will get shorter sentences.

The paper will also offer pragmatic recommendations on dealing with the highlighted challenges and how to make the already existing systems better with a focus on a comparative study on Australia which adopted the use of technology in the year 2018 for the advancement of the right to access Justice for all, centered within the Judiciary.

Use of Technology in The Administration of Justice During the Pandemic: Opportunities and Challenges

Dr. Ruth Aura* & Mary Mugure*

Digitalization has had a profound impact in our society with individuals and organizations embracing Information Communication Technologies (ICT) to improve their daily operations. Digitalization has transformed the justice sector, revolutionizing how individuals access legal services and how institutions in the justice sector provide legal services. Although ICT has been in use in the justice sector, its acceptance has been slow. As the Covid-19 pandemic caused mass disruption around the world, most sectors and systems including the justice systems struggled to cope with new ways of operating and increased demand. As Pauline White, the President of the Law Council Australia posits, Covid-19 did not halt the cogs of justice, the emergence of legal issues nor the need for members of the community to protect and defend their legal and human rights but tested and transformed how justice is administered and accessed in Australia and many other jurisdictions. Indeed, several changes had to be made in the justice system in order to adapt to the new reality and to curb the spread of the virus. The most notable change was the increased use of technology by institutions to conduct their activities, such as introduction of virtual courts, e-filing platforms, and teleconferencing among others. As the changes were being embraced to ensure that there was no difference in the fairness afforded to litigants in the courts and to have open access to all litigants in dispensing justice. Covid-19 has become the game changer in how justice is administered in the society. It initiated a worldwide trend, where the advantages of ICT in improving delivery of legal services are acknowledged and will likely be fully incorporated in the daily operations of stakeholders in the justice sector even post-pandemic. Even though technology has permitted judicial systems to function despite the limitations on in-person engagement during the pandemic, its use presents challenges and limitations as well. In exploring the opportunities brought about by the digital age to the justice sector, the paper analyses how various stakeholders such as justice seekers, the court system, the legal practitioners, legal aid institutions and law enforcement officers have benefited from the use of ICT, especially during the Covid-19 Pandemic. It must be acknowledged that these benefits have not been uniform raising concerns from an access to justice perspective. This paper catechizes challenges resultant from technology use such as, threats to the rule of law and fundamental rights of individuals, fairness, security and privacy of information, accessibility of technology in remote areas and the capacity of actors

in the justice system to provide digital legal services. Finally, the paper explores best practices from other jurisdictions with well-established digital justice systems that Kenya can adopt and replicate to ensure proper and effective administration of justice through technological use.

Key Words: Technology- administration of justice- access to justice- covid-19 -legal services- legal aid- stakeholders digital justice systems-best practices- other jurisdictions.

Access to Justice in The Digital Age: Opportunities and Challenges

Samuel M. Mangera

Digitization of the legal system in Kenya has been undergoing a slow but steady progress before the Covid-19 pandemic with the main focus being on digitizing the judiciary starting with the superior courts and slowly moving to the other courts. However, this changed with the advent of the Covid-19 pandemic which saw the closure of courts and necessitated rapid digitization so as to allow court processes to proceed uninterrupted. This paper highlights the opportunities that the digitization brought in terms of allowing the courts to go back to full hearings as well as the challenges experienced. The process was not easy as it brought with it new technology that required training of judicial officers, staff and advocates on the uses of the new system. To date, the system still faces challenges especially for litigants who were left lost in the woods especially self-representing litigants who either could not access the needed technological gadgets or did not have the requisite technological know how to use those gadgets to access court. This hampered the progress of cases already in court and prevented the filing of new cases.

This paper focuses on the challenges and opportunities of access to justice through technological platforms.

Access to Justice in The Digital Age: Opportunities and Challenges

Muiruri Wanyoike, Erastus Njaga, Nicole Ahoya
and Josephine Wairimu

The continued integration of various technologies and software in the legal sector has had a multitude of disruptions leading to enhanced access and delivery of justice, peace in the society, and strong institutions in furtherance of the United Nations Sustainable Development Goal No. 16. Whilst technological advancements seek to cure the traditional ills in the justice sector, they are yet to be wholly integrated physically and socially, causing continued abuse of human rights and freedoms and perpetuating inaccessible, expensive and inefficient justice systems to the marginalized and vulnerable.

From our practical experiences [as Utatuzi Center] in relation to the implementation of legal technology solutions such as online dispute resolution and virtual legal aid programs, we note a mixed bag approach. Factors such as technology bias, cultural relativism, and inadequate infrastructure (amongst others) hamper the delivery of justice solutions. Furthermore, institutional discussions surrounding “access to justice”, “people-centered justice” and “legal assistive technologies” tend to move away from the core end-user; the citizen.

This article will highlight existing practical legal technology solutions offered in the Kenyan context and lessons learned with regards to universal and inclusive design, cost of social justice outcomes and the realities of implementation of legal technology.

Covid-19 and the Continued Imposition of Global Institutions' Fetishized Way of Understanding the World

Dr. Miyawa Maxwel

The Covid-19 pandemic has seen governments all-over the world going on the overdrive with practical policy measures aimed at combating the novel virus and resuscitating battered economies. Coincidentally, though unsurprisingly, the pandemic has provided the World Bank and IMF a perfect opportunity to proliferate standard norms and practices for countries to adopt in response to the economic catastrophe sparked by the health crisis. The measures currently in deployment in developing countries are mostly Western-derived. They are advanced through excessive economic rationalism that the Bank and the IMF are well known for. They are applied in a paternalistic process of enculturation to global financial institutions' fetishized understanding of the world. This enculturation takes place, notwithstanding that those proposed standards and norms are apparently ill-suited to our socio-economic contexts. Our socio-economic context, especially during this extraordinary time, is that of fragile economies, weak health infrastructure, pockets of conflict, and the accumulating sovereign debt burdens. And yet, contingent to the adoption and praxis of these paradigms are troubling human rights violations and potential economic harms in the recipient countries. This article criticizes the emerging trend in which Sub-Saharan African countries have been made to unquestioningly embrace global institutions fetishized ways of tackling the health and economic crises spawned by the covid-19 pandemic in ways that are human rights retrogressive. It argues that in the adoption of the fetishized ways of understanding the world that is championed by the World Bank and IMF during this health crisis, economically weak countries in the developing world are being encultured to globalized standards, norms and practices in ways that create severe human rights impact on the most vulnerable.

Court Annexed Mediation and Access to Justice for the Poor Within the Context of Covid19

Maragia Josephine Nyatuga and Omondi Scholastica

Court annexed mediation in Kenya (CAM) is a form of alternative dispute resolution mechanism which happens under the umbrella of the court. The method is perceived to be flexible, voluntary, faster and more cost-effective compared to litigation that is often riddled with challenges of high legal costs, long distances to court, complex court procedures and technicalities as well as congested court dockets. Consequently, in terms of access to justice, CAM is expected to achieve better results compared to litigation.

CAM takes place in civil disputes already filed in court. Covid 19 has resulted into online case filing and remote hearing which creates specific challenges to poor litigants who live below the poverty line. Thereby limiting their access to justice. Inhibiting factors include court filing fees, Information communication technology (ICT) skills, required gadgets, internet connectivity, understanding of the CAM processes itself. Most Kenyans, according to research live below the poverty line.

This paper is a desk review and field analysis of determinants to accessing justice for the poor in Kenya. The study was conducted in 2021 and interviewed judicial officers, advocates, mediators, mediation registry clerks as well as disputants who have interacted with the CAM process. The study applied John Rawls theory of justice. The study found that CAM has the potential to promote access to justice especially for the poor when compared to litigation. However, it is yet to achieve this fully due to some challenges that include limiting it to civil cases already filed in court, lack of awareness among members of the public, resistance from lawyers and judicial officers, among others. The study concludes that CAM can achieve better results when identified challenges are ironed out. The study recommends that CAM should be made accessible to disputants who have not filed cases in court, referral of cases to be done at the point of filing cases in court, resource mobilization and allocation to CAM processes and activities, capacity building, continuous public sensitization and incorporating traditional mediation into formal mediation.

Key words: access, court-annexed, justice, mediation, covid19

COVID-19 Containment Measures in Kenya; a Quasi-Emergency without the Declaration of Emergency - Toward a Principles-Based System

Moses Muchiri*

In its efforts to 'flatten the curve' of COVID-19 infections, the Kenyan Government took various measures, including curfews, lockdown, bans of social gatherings, social distancing, sanitation, and quarantines. Although these measures were justified under the precautionary principle, the issue whether the government at various stages acted within the principle of legality and constitutional limits in enforcing them is now in focus. The adoption, use, and enforcement of COVID-19 containment measures had the same effect as emergency measures without the attendant declaration of emergency pursuant to Article 58 Constitution. Consequently, this increased the risk of abuse of power and a shift in the balance of power in favour of executive agencies, which posed a greater risk of erosion of constitutionalism and rule of law values including access to justice. Instances of executive overreach were witnessed particularly in enforcement of curfews and other containment measures, raising questions over their legality and the manner in which they were enforced. Emergency measures are prone to abuse and misuse. A broad and indeterminate use of even the best-intentioned statutory powers can give rise to unchecked discretion and temptation to trample over human rights through overzealous enforcement. This is a significant weakness of a rules-based framework and one of the reasons why a shift towards a principles-based framework is necessary. Shifting from a rules-based response system to a principles-based framework is advocated because emerging practice reveals that entrenching safeguards against executive excess can be achieved by entrenching principles to guide development, scope, and enforcement of emergency interventions. These principles are premised on fundamental rights and freedoms, transparency, democracy, rule of law (legality), accountability, legislative and judicial oversight, and proportionality. This article reflects on whether Kenya's COVID-19 mitigation and containment interventions have made it better or worse for the rule of law and constitutionalism. The article juxtaposes COVID-19 interventions against the legality and precautionary principles to understand the residual impact on constitutional values and rule of law and advocates for a principles-based framework to protect access to justice and rule of law, especially during public emergencies.

Keywords: Access to Justice, Rule of Law, Precautionary Principle, Legality Principle, Covid-19.

Rebuilding an Equal and Just Society in the Post Covid-19 Pandemic

Mary Wanjiru

The Covid-19 pandemic has exposed the gross inequality that characterizes the Kenyan society. Unlike Uganda and Rwanda, Kenya was not able to implement a full lock-down to protect its citizenry from the spread of the disease with the main challenge being the inability of the majority of the citizens to obtain their basic needs in such a situation. Over 83% of the working population in the country are employed in the informal sector where they have no social protection. These individuals survive on “hand-to-mouth” basis and thus implementing a total lock-down would have necessitated the government to provide food ration to this population. The Kenya National Bureau of Statistics estimated that only 42 per cent of Kenyans living in rented apartments across the country were able to pay their rent in time in June 2020. Rental arrears have exacerbated the already dire financial situation for renters.

Food insecurity has also risen especially among those living in informal settlements leading to increased insecurity. A Red Cross Society of Kenya survey in Mukuru and Korogocho informal settlements in Nairobi County revealed that most families could afford less than 25 percent of the food that they needed. The survey further revealed that about 25% of the residents of these informal settlements were experiencing hunger in their homes while less than 8% had a stable income earner in their household. Lack of robust social safety nets has left the majority of Kenyans without any form of assistance. A significant section of the country’s population was also left vulnerable to Covid-19 infections due to poor or non-existent sanitation facilities and cost of accessing clean water. Many could not afford medical care after contracting the disease because the country’s hospitals had been overwhelmed by the rising number of patients due to lack of adequate infrastructure.

In the education sector, incidents were reported in the mainstream and social media of children being compelled to learn under trees to avoid overcrowding in classes that would lead to the spread of Covid-19. Such incidences have been caused by years of neglect of the education sector particularly when it comes to infrastructure. This paper argues that the Covid-19 experiences are a wake-up call for the country to re-examine the inequality situation in the country. It is time to re-examine why the majority of the Kenya people were left vulnerable and suffering the devastation of Covid-19 pandemic. The paper explores policies

that need to be re-examined and restructured as the country tries to recover and rebuild itself in the post covid-19 era. It argues in favour of investing more in social services such as education, health care, and social protection in order to build back a better and more resilient society. A progressive tax regime should also be adopted to cushion the poor from excessive taxation, which will enable them to save. Savings not only act as a cushion during emergencies but are also a gradual way of accumulating wealth. There is a need for more effort towards ensuring health coverage, schooling, and housing for all. There should be heightened commitment towards building healthier, more inclusive, just, and gender equal society.

ADR as Alternative Justice System for Service Delivery in Crisis Systems

Justus Munyithya

In times of crisis, the judiciary is called upon to be innovative enough in addressing extra ordinary circumstances that arise emanating from the architecture of the legal system that is based on personal attendance. The legal process in times of crisis is faced with issues like disruption of hearings, cancellations, postponements or remote hearings. Others include how to follow the judicial processes, evidence gathering and potential risks if in person hearings are held. For example, the outbreak of COVID 19 in Kenya found the legal system ill equipped to balance the interests of justice and the health needs of staff and litigants due to enforced travel restrictions, social distancing and requirement of masking that affected in person court attendance. This paper will discuss alternative dispute resolution (ADR) mechanisms as alternative justice systems for service delivery in crisis systems. It will further investigate this growing phenomenon to determine the challenges judicial systems face in times of crisis, its merits and demerits, the challenges it is likely to face and the reforms that would mainstream ADR as a dispute resolution system in Kenya.

ADR describes a broad range of dispute resolution mechanisms ranging from arbitration, mediation, conciliation, negotiation and traditional dispute resolution mechanisms (TDRM). It also refers to facilitated settlement or negotiated processes where parties are encouraged to negotiate with each other prior to other legal processes. Dispute resolution through ADR has for a long time been viewed as being complementary to the judicial system due to its inherent advantages like affordability, expediency, flexibility, informality and cultural acceptance. However, in times of crisis ADR has turned out to be an alternative to the formal judicial processes. Judicial innovation has created frameworks that were not envisaged by Article 159(2) C of the Constitution, that provided for ADR as a form of dispute resolution mechanisms complementary to the legal system.

The promotion and adoption of ADR as a dispute resolution mechanism is based on its characteristics of being less formal and flexible as compared to the judicial system, it can help bypass institutional weaknesses like inadequate resources, corruption and systemic biases that successful court action is impossible. ADR offers justice for populations that are not well served with the courts as demonstrated in Bangladesh, India and South Africa. Furthermore, specialized ADR programs

may offer efficient and satisfactory solutions to technical issues. Moreover, ADR are more efficient than courts in addressing ethnic conflicts due to its low cost, minimum delays and expediency, cultural acceptability and maintenance of relationships. In addition, ADR is appropriate in dealing with systemic bias against women and the marginalized on various grounds in support of the rule of law among other development objectives.

Mainstreaming ADR will depend on how the judiciary will address existing and systemic challenges. First, is the lack of political will necessary in securing legislative support for the creation of jurisdiction and authority. Second, is support for cultural norms that will facilitate acceptance of informal processes, appropriate standards for settlement and enforcement through community customs and sanctions. Third, is human resources necessary for the creation of a sufficient pool skilled and respected mediators or arbitrators for efficient and effective case management. Fourth, limited financial resources to meet the administrative costs for purposes of sustainability. Finally, parity in the power of the parties in balancing the legal rights of the parties and procedural protection for those in weaker positions.

ADR as Alternative Justice Systems for service Delivery in crisis situations.

Michael R. Chesikaw

Generally, the society in which we live in Kenya and Africa at large is characterized with high levels of diversity in terms of behaviors, expectations and capabilities. Similarly, nature and sometimes human actions present conditions that create discrepancies in the environment in which we live. The diversities and discrepancies sometimes lead to disputes and conflict. Amicable dispute resolution therefore becomes a key ingredient for peaceful coexistence and progressiveness in a society. There are various dispute resolution mechanisms which are currently in use that range from alternative dispute resolution methods, the traditional methods to formal judicial system. While effectiveness in dispute resolution varies from method to method, and application of the methods vary from dispute to dispute, the choice of the dispute resolution method, especially in rural set-ups in Africa depend on method accessibility rather than appropriateness. In most African countries, the rural communities are characterized with high level of poverty and some level of illiteracy, hence limiting access to contemporary and more effective dispute resolution methods. When disputes or conflicts occur, the most commonly applied dispute resolution methods which will be identified in this paper include; negotiation, mediation, conciliation and reconciliation. This paper will therefore examine Alternative dispute resolution mechanisms as appropriate justice system for service delivery in crisis situations. In addition, the paper will identify the challenges faced in the application of alternative dispute resolution in Kenya during the Covid-19 pandemic and the strategies that are employed to keep the system afloat. The paper will further delve into some reports that women and youths are not actively involved in dispute resolution while they are the most affected individuals by the disputes. In the end, this paper will make recommendations that are expected to elevate to a higher pedestal the use of ADR as a means to access justice during times of crisis such as that caused by the Covid -19 pandemic.

Key Words: Alternative Dispute Resolution, Legal Aid, Women and youth Participation

Protecting The Family in The Time of Covid-19 Pandemic: Addressing The Escalating Cases of Gender-Based Violence,

Dickson Gitonga

Family protection is one of the leading functions of the Public Service. During the ninth State address on the COVID-19 pandemic delivered on 6th July, 2020, H.E The President acknowledged the apparent escalation of cases of gender-based violence, violations of children's rights and girl child disempowerment which were affecting the wellbeing of the Kenyan family as the foundation of the State. In order to fortify the protection of the Kenyan family, the President directed and ordered that the National Crime Research Centre probes these aspects and prepares an advisory to security agencies on remedial action within thirty (30) days from 6th July, 2020.

Premised on the above background, this study sought to: establish the patterns of gender-based violence, violations of children's rights and girl child disempowerment in Kenya in light of COVID-19 pandemic; examine factors contributing to gender-based violence, violations of children's rights and girl child disempowerment; identify the perpetrators of gender-based violence, violations of children's rights and girl child disempowerment; and present an advisory prioritizing multiple programmatic areas for inter-agency consideration and implementation.

The study took the form of a rapid assessment using a mixed method approach and utilizing consultations with key stakeholders and desk review of data from state and non-state key informant agencies dealing with the subject. The reviews examined data for the period before and during the COVID-19 pandemic in order to generate meaningful recommendations on the remedial action to be taken during and after the pandemic period.

Financing Access to Justice In Kenya: Justification And Prospects In The Context Of COVID-19 Pandemic.

Robert Mutembei & Fridah Musau

Access to justice is a fundamental tenet of the rule of law and has been asserted in UN Sustainable Development Goals and diverse domestic and international legal instruments. The Constitution of Kenya 2010 guarantees access to justice for all, and obligates the state to ensure all Kenyans benefit. However, the reality of access to justice for the poor and marginalized in Kenya is a far cry from this aspiration. Many cannot boast of meaningful access to institutions that offer social inclusion and justice. The need for access to justice has been exacerbated by the effects of Covid 19. Economies world over have been affected and many citizens have lost their income, leading to an increased need for social welfare and other aid programmes. The government is cutting spending; austerity measures and increased taxation are in the offing as donors tighten the purse strings.

This scenario brings to the fore the implication of reduced funding and harsh economic conditions on access to justice. Historically, there have been many barriers on access to justice, ranging from technicalities of accessing courts to lack of legal representation. These challenges have been addressed narrowly, through legal aid provision. Kenya has enacted the Legal Aid Act, 2016 to establish a national mechanism for legal aid for the indigent. However, looking at the wider meaning of access to justice, there is a bigger challenge emanating from reduced funding and budget cuts for key institutions. The challenge of financial barriers goes beyond the cost of legal representation. Access to justice is not merely granting people a ticket to the courts and other dispute resolution tribunals. It is much more and its implications are far reaching, even to the economic welfare of a nation.

Funding is therefore a critical aspect in access to justice, as this paper seeks to demonstrate. The paper explores the state of funding for access to justice in the context of the ravages of Covid 19. Drawing from the concept of development, the paper establishes a justification for financing access to justice and analyses the various pathways of alternative funding. Accommodating the reality that government officials may lean towards a narrow view of justice, this paper further lays a basis for increased funding even in a pandemic, citing the economic benefits of improved access to justice. Its theoretical framework is informed by law and development theories.

The paper is divided into three parts. Part one analyses the legal framework providing access to justice, state of funding and demonstrated priorities of the government of Kenya towards enhanced access to justice.

Part two discusses the concept of access to justice, demonstrating the wider scope that should be adopted to justify increased funding. This part links the concept of justice with law and development thus creating an economic basis for financing.

Part three of this paper explores the sources and methods of funding and considers the alternatives that the government of Kenya can explore in the face of constrained resources occasioned by Covid 19 Pandemic. The paper proceeds on the premise that access to justice is critical to development and requires funding. It builds a case for economic justification for financing while exploring alternative sources of funding due to the prevailing economic conditions.

Key words: Access to Justice, Law and Development, Financing Justice, Legal Aid

Village-Level Justice in Kibwezi East, Kenya: Legitimacy and Complexities of Dispute Resolution Processes

Joseph Lwannia

This paper examines the critical role played by village-level actors and community paralegals in tracking human rights violations and accelerating access to justice in their community. It is based on research carried out by Urafiki Kenya, a non-governmental organization based at Syembeni Town in Kibwezi East Sub-County, Makueni County, Kenya. On 12th May 2015, an underground petroleum oil spill incident by the Kenya Pipeline Company Limited occurred at the Thange River along the Mombasa-Nairobi pipeline Kilometre 256 in Kibwezi. Through a petition filed by the Thange River Basin Community on behalf of the eight affected villages - Mbulutuni, Thange, Nzavoni, Ngomano, Kyuasini, Mwanza, Moki and Kavunie - Kenya Pipeline engaged SGS Kenya Limited to conduct an Environmental Site Assessment at the oil spill area whose report indicated high presence of petroleum products in soils, ground and surface water and the biota samples. The water samples were later examined by the Water Resources Management Authority, Kenya, who returned the same verdict as that of SGS Kenya Limited, and ordered Kenya Pipeline Company to undertake a socio-economic study to establish any effects on the livelihoods, develop impact mitigation/remediation action plans and compensating for any losses or damages arising thereof.

At the core of the oil spill dispute were issues directly affecting community livelihoods. Village-level associations, community paralegals actors and customary elders and/or local religious actors play a dominant role in dispute resolution processes. Given the importance of these actors at the community level, the paper examines how they operate and obtain their legitimacy. This paper presents the argument that government and community roles in dispute resolution are not only varied but have limitations. These two actors derive their legitimacy from various sources, such as the law, local government recognition and community legitimacy. The nature of their roles better represents the complexities of dispute resolution processes, where multiple actors and their sources of legitimacy overlap and interact.

This paper draws on information obtained through research conducted by Urafiki Kenya Peace and Justice program between 2015 and 2018. The research included a comprehensive quantitative baseline survey. The survey was conducted among 2,800 households within the eight affected villages and community leaders of

the Thange River Basin Association. It was representative of the eight geographic areas. The baseline survey was followed up with a five months' qualitative research across the affected villages.

COVID-19 And Legal Education in Kenya: An Analysis

Ronald Kihali

The Covid-19 pandemic (herein 'the pandemic') has left in its wake, far reaching consequences on legal education in Kenya. This paper endeavours to unpack these impacts of the pandemic on legal education. As a student currently undertaking the Advocates Training Programme at the Kenya School of Law, I have borne witness to the discussion in question.

Alive to the myriad changes witnessed in legal education recently, this study has developed two competing propositions in examining the impact of the pandemic in the legal education. First, the study advances the argument that the pandemic has brought about positive changes necessary to achieve a progressive legal education dispensation. For instance, the emergence and development of information and communications technology (ICT) in teaching and learning has been embraced. Digitization of the legal education system is a welcome change. The pandemic here is seen as a blessing in disguise.

Nevertheless, the study adopts the approach that the pandemic has been nothing short of a thorn in the flesh of the legal education system. The pandemic has had far reaching negative effects that have stagnated the growth of legal education. The study will focus on aspects such as equality, socialization, quality of teaching and learning, physical and mental health of key players in the legal education system, gender based violence and the costs of education among others.

Taking cognizance of the fact that the pandemic has left a trail of deleterious effects, this study has adopted the latter approach as to the reflection of the current situation. While both positive and negative impacts of the pandemic have been witnessed, the negative consequences have been felt to a greater extent. This study critically examines both approaches while drawing relevant comparisons from South Africa and the United Kingdom. The study also justifies why those countries have been picked for the discussion. In the end, the study adopts a balanced approach that takes into account the totality of the discussion.

Rethinking Juvenile Delinquency: Towards Emancipatory Jurisprudence in The Juvenile Justice System in Kenya

Dominic Rono

The COVID-19 pandemic has glared bare significant deficits and futility of the best interest of a child. The Kenyan juvenile justice system remains reactive as opposed to proactive, thus coming across as a manifestation of failed family units, dysfunctional communities and a lethargic justice system. The role of a child's socio-economic status has received less attention in the juvenile justice system.

Every day in Kenya, especially during the Covid -19 pandemic children come in contact with the justice system. Decisions that have the potential to influence the future course of a child's life have been pronounced. Such pronouncement leads to more questions than answers; what rights do these children have when they come in contact with the law? Are they entitled to any type of legal assistance? If so, how might those services best be made available and actually reach children who have been conflict with the law amidst the pandemic? How does the concept of child friendly justice system play out?

To avert stigma, restorative justice mechanisms should be promoted as an intervention for the best interest of the child.

Impact of Covid-19 On Access to Justice: An Analysis of the Kenyan Criminal Justice System in A Socio-Economic Crisis

Kevin Muiruri & Florida Musi

COVID-19 pandemic has affected delivery of justice in many ways especially after closure of courts. With the rise of Covid-19 pandemic the judiciary embraced virtual court sessions albeit with inadequate infrastructure. The criminal court system was most affected, especially with the need to handle prisoners visiting court in person. In effect, accused persons have been disproportionately affected by the pandemic. This article undertakes an analysis of the Kenyan criminal justice system with a view to establishing the adequacy of the responses undertaken by the government in handling criminal cases. It argues that the elements that build up the criminal justice system in Kenya have crumbled due to the crisis and this has led to a miscarriage of justice. While highlighting the impact of COVID -19 pandemic on the criminal justice system, this article calls for concerted efforts of the key stakeholders to ensure the right responses are adopted in the interests of access to justice in the criminal justice system. The paper recommends measures that can be taken to address glaring loopholes in the current virtual court system in order to enhance access to justice within the Criminal Justice system in Kenya.

Analysing the roles of the national and county governments in promoting the right to health while responding to the

Francis Khayundi

The COVID-19 pandemic has affected the right to health and tested the government's Big Four Agenda meant to achieve "affordable healthcare to all." Health is a devolved function and is a responsibility of both the national and county governments. Thus, both governments have a role to play in fulfilling the right to health. In responding to the pandemic, the status of the health system and access to the right to health was brought to the limelight. Moreover, the pandemic has brought to question the respective roles played by both the governments in the fulfilment of the right to health. Kenya is an unequal society and what this meant with the advent of COVID-19 is that the inequalities were exacerbated.

The right to health is provided for in article 43 (1) (a) of the Constitution of Kenya 2010 together with several international and regional human rights instruments that Kenya has ratified. The right to health includes a wide range of factors that can help lead a healthy life and affects the enjoyment of many other socio-economic rights and should ideally guide the provision of health services in the state. The nature of this right is that the government has obligations to fulfil for the right to be a reality to many Kenyans. However, access to health in Kenya remains a challenge for many and the sorry state of the health infrastructure in the devolved unit was laid bare by the COVID-19 pandemic. Moreover, the government led responses to COVID-19 have not necessarily been spearheaded by concerns of promoting the right to health but have taken the approach of a security concern requiring strict enforcement measures. Unfortunately, the measures have resulted in the limitation of human rights and have been mired by shortages which have defeated efforts to alleviate the suffering brought about by the pandemic.

This paper is an analysis of the responses to the COVID-19 pandemic and fulfilment of the right to health and measures which both the national and county governments can put in place to achieve affordable healthcare for all. It also proposes measures to be put in place to improve the access to the right to health in the country.

Preparing for The Next Pandemic: The Need to Re-evaluate The NHIF

Shem Oganga

The Covid-19 Pandemic has been a major disruptor, due to lockdown measures many Kenyans have lost their jobs, business is no longer thriving. Many families are struggling to put a meal on the table. Even more painful is the refusal of the social health insurer (NHIF) to cover any cost related to Covid-19 diagnosis, treatment, and hospitalization. This is an abdication by the state from its core duty which is to protect life. As a result, many Kenyans who cannot afford to pay for their treatment even after diagnosis, have opted to go home and die. Some who have the symptoms have chosen not to go to the hospital since they know too well that they don't have a penny. As a result, there have been numerous deaths that are unaccounted for.

The National Health Insurance Fund is a state corporation charged with providing social health cover by collecting a fixed monthly premium from public and private workers through their employers. It also receives funds from the state and donors.

Kenyans who have been loyally contributing to the fund have been denied access to health coverage when they need it most. This has laid bare the rot in the social health insurer. It has emerged that even before the pandemic, NHIF refused to cover hospitalization costs for several Kenyans mostly from rural areas while giving access to the rich and influential members of society.

On the 10th of December 2018, the Director of Public Prosecutions laid evidence before the honorable Douglas Ogoti, magistrate of the Criminal court decrying the blatant theft of NHIF funds and outright disregard of procurement rules. "Such theft is worse than murder", he acknowledged.

Further, the viability of NHIF has been put into question. Although the government has made significant efforts to ensure Kenyans access health insurance cover, concerns have been raised regarding the equity, efficiency, feasibility the sustainability of NHIF. Lack of transparency is a major challenge. It spends funds without any outside checks and balances.

In addition to that, the NHIF board has been subjected to wrangles. In recent times members of the board have engaged in public squabbles. The board suffers from a lack of independence. Its members do not enjoy the security of tenure. Political interference is one of the biggest challenges facing NHIF.

The Kenyan government is fixated with enrolling more citizens in NHIF schemes and injecting huge amounts of money, however, little attention is paid towards the changes needed to make the health insurer efficient.

The unending mismanagement of NHIF has eroded public confidence. The level of distrust is so high that the president himself has cast aside the corporation he once envisioned as the vehicle to propel Kenya to universal health coverage. On 13th December 2018, he opted to send funds for universal health coverage directly to devolved governments instead of relying on NHIF because it has been plagued by incessant cases of loss of funds. Moreover, unions of workers led by civil servants have issued an ultimatum to quit NHIF.

NHIF is heading downhill fast. It is in a state of disrepair. It is opined that the major reason why past reforms have not been effective is that they were superficial, band-aid solutions. The situation is not likely to improve unless a complete overhaul of the regulatory framework of NHIF is done to unearth underlying issues which promote a culture of inefficiency and impunity.

During a pandemic, an efficient social health insurer plays an important role in cushioning citizens who have lost their jobs from plunging into further abject poverty and disillusionment. This has been evident since the advent of the Covid-19 pandemic, many families whose kin has been infected are forced to drain their savings to the last coin.

The time has come for Kenyans to interrogate the efficacy of NHIF and reform it. This is the best way to prepare for future pandemics. Therefore, this researcher intends to dig deep into the internal systems of NHIF such as memos, by-laws, administrative notifications, procedures, statutory and institutional regulations to expose the mischief, flaws, and loopholes in the legal structure of NHIF. Thereafter, a well thought, argued and researched remedy shall be suggested that will necessitate a complete overhaul of NHIF in line with the best international practice.

Court Fees and Access to Justice: Towards A Policy-Oriented Approach in Kenya

Erick Masafu & Eunice Kinyanjui Nyokabi

In this article, the authors examine the rise in court fees which has been decided in Kenya. The authors argue that this increase is excessive and contravenes the constitutional right of access to justice, as poor litigants cannot afford the fees and thereby cannot access the justice system. In their analysis, the authors suggest that the decision-makers in Kenya should adopt a policy-oriented approach in reviewing court fees in order to protect citizens' rights and achieve equality.

Levying of court fees at common law has a very long and complex history dating back to as early as the 13th century. Fees have always been charged to users of courts. Kenya's justice system was erected upon the English system allowing for levying of fees in judicial institutions. In Kenya, the Court Fees Assessment Schedule governs the levying of court fees. The Court Fees Assessment Schedule provides fees applicable to the lodging and filing of the respective documents in proceedings before the specified courts and tribunals in Kenya. It provides a description of the relevant court documents and corresponding fees as prescribed by the following courts and tribunals, for public information and case management purposes. The Law gives the power to the Chief Justice to revoke, replace or amend the schedule from time to time, by notice published in the Gazette. Since its enactment, this schedule has been amended, revoked and replaced several times. For a long time, such levying of court fees was kept relatively low so as to facilitate access to justice. During the 2021 court fees revision, Kenyans, who live in one of the least developed countries, whose economy is predominantly agriculture-based, were paying rather high court fees.

This is against a background of a majority of the population living below the poverty line. That notwithstanding, the high level of attendant cost for processing applications coupled with the prohibitive costs of legal services heavily contributed towards an upward revision of court fees. The Chief Justice executed the powers vested in her office, by replacing the schedule in General Notice Number 10181. This led to an increase in court or filing fees. Kenyans now have to pay high court fees with an inflation rate of 5.87 %. This increase prompted an outcry from the media and the public.

This article explores the Court Fee Schedule in Kenya and how the same affects the right to access justice. The discussion considers arguments for and against the

The Rights of Victims and The Pendulum of Criminal Justice System in Kenya: Covid-19 Perspective, Pitfalls and Progression.

Amos Shihundu

It is said most often that every case is important to the victim of that crime. This was upheld in the case of *Joseph Lendrix Waswa v Republic*, where the learned judges of the Supreme Court rendered themselves as follows:

The purpose of criminal proceedings, generally speaking, is to hear and determine finally whether the accused has engaged in conduct which amounts to an offence and, on that account, is deserving punishment. Thus, the rights of the accused cannot be considered in isolation without regard to those of the victim. Victims too have a legitimate interest in the Court's exercise of its jurisdiction.

One of the fulcrum that contributes to the foregoing is the logic that victims should come first concerning pursuit for justice. In Kenya, the Victim Protection Act, 2014 has given victims of crime a higher stake in the criminal justice system. The Act sanctions a competent court or any administrative organ to ensure that a victim is accorded legal and social requirements of his or her choice. The import of it requires the victim to be represented by counsel alike to the accused who is entitled to this right. This prerogative extends into trial, and accords the victim the following key rights:

1. Right to commence and conclude a trial without any unreasonable delay;
2. Right to make submissions in any plea bargain
3. Right to information on the evidence to be relied by both the prosecution and the accused.
4. Right to be informed in detail the charges facing the accused person.
5. Right to present views at different stages where the victim's interests are concern.

The Act provides for active participation of the victim in various ways. These opportunities accorded to victims of crime must be appraised under the prevailing COVID-19 situation in Kenya. The COVID-19 crisis has affected victims of crime in different ways. Largely, it has aggravated the plights of victims already facing structural vulnerabilities, increasing their susceptibility by undermining equal

access to justice.

In this paper, I explore the position of victims of crime and the criminal justice response in light of the prevailing COVID-19 pandemic. I interrogate the response of criminal justice system and attempt to determine the possibility of improving responses to victims of crime. I also proffer suggestions on ways to adjust the criminal justice response to victims' plight, including policy responses during and beyond COVID-19.

From Formality to Informality: The Changing Landscape of Access to Justice for Women and Girls During COVID-19 Pandemic in Kenya

Patricia Kameri-Mbote and Agnes Meroka-Mutua

Emergencies often have the impact of weakening legal systems and limiting the extent to which affected communities can access justice, particularly within the formal legal systems. Women and girls tend to be adversely affected by the limited access to justice through formal legal systems, primarily because women and girls are more likely to experience grievances in the context of the private spheres of life. This is grounded in the fact that in most African countries having plural legal systems, the regulation of private sphere is mainly through informal customary and religious norms, with formal law norms relegated to the periphery. For women and girls, both formal and informal law have their limitations, and neither system is able to fully guarantee their rights. Studies have shown that African women seek justice in both formal and informal systems of law, and that both can be complementary in providing opportunities for access to justice and guaranteeing the rights of women.

The COVID-19 pandemic has weakened formal law systems, and women and girls in plural legal settings cannot rely on both formal and informal legal systems to secure their rights. In the circumstances, women and girls have been pushed into the informal justice space of customary law and other semi-autonomous social fields. This has implications for women's rights. In some aspects, customary law and semi-autonomous social fields may act as a fetter to women's rights, while in other aspects they may provide greater protection for such rights as compared to formal law.

This paper explores the extent to which the COVID-19 pandemic has affected women's access to justice through the formal legal system. It further seeks to explore the extent to which women and girls are relying on customary law and other semi-autonomous social fields to address grievances and resolve disputes during the COVID-19 pandemic. The response by customary law and other semi-autonomous social fields to gender concerns arising out of the pandemic will also be discussed and proposals made for enhanced access to justice using plural systems of law.

Paralegals as Key Accelerators of Access to Justice During a Crisis

Ruth Okara

The need to access justice has led to the introduction of a variety of actors previously left out, but now seen as crucial and having formal legal recognition. The role of paralegals has gained traction particularly in young democracies and Low and Middle Income Countries where big and powerful interests compete with those of vulnerable persons with the likely result of unjust outcomes due to informational asymmetry and other factors such as corruption and a lack of wherewithal. Additionally, the existence of ambitious, pro-poor legislation in states that lack the institutional and financial capacity to implement the same creates a niche and useful platform for paralegal work which is geared to meet the daily demands of justice for communities that may be locked out of more formal justice systems. This paper will briefly explore the growing work of paralegals in Kenya, the challenges faced by them and opportunities for scaling up their efforts, with a special focus on the interplay of paralegal work and varied justice issues emerging during the COVID 19 pandemic vis-à-vis the formal justice systems efficacy in addressing the same. With the onset of the pandemic, a variety of justice issues largely affecting vulnerable populations included access to information; socio-economic justice, as many people lost their jobs and couldn't afford basic amenities to sustain decent livelihoods; right to health which encompasses accessibility of quality healthcare services and safety equipment; security and well-being in light of the restrictive containment measures resulting in lynching and unlawful arrests and detention; gender justice issues as the negative impact of COVID-19 was heavily borne by women, whose earning power was diminished, and young girls forced to stay home, who became victims of sexual violence and the attendant consequences of early pregnancies, STIs; and intimate partner violence exacerbated by stay-at-home orders, all of which impact the protection and promotion of the overarching right to life. Such legal challenges, whilst still existing in pre-pandemic times became more aggravated by special circumstances created by the pandemic. This paper will further seek to outline the special achievements and innovations, if any, precipitated by paralegals to address the aforementioned justice issues, the anticipated challenges when assessing the possibility of enlarging the shadow of justice cast by paralegals and the expectations of other justice actors who have extensively and continuously strengthened a working relationship with them. This paper will briefly address the interplay of the Sustainable Development Goals

(SDGs) in guiding various approaches to and refining an understanding of justice and as well as look at the importance of paralegal work in their overall achievement. This will help inform the various programmes of action designed by paralegals in moving towards achievement of the broader goals of equality and justice, both in and out of pandemics, through the use of a universal blueprint to harmonize local and global efforts. The methodology to be used in the research will involve key informant interviews, statistical analysis of data, literature and desktop reviews.

Rebuilding The Economy Post COVID-19 Pandemic: The Need for Stronger Social Protection Systems

Dr. Ruth Aura*

The Covid 19 pandemic has had a profound impact globally, affecting most sectors including the economy and labour markets. Consequently there has been massive loss of employment or salary cuts at the behest of employers to cope with the adversities created by the pandemic. The pandemic dramatically impacted and continues impacting on livelihoods across the globe in particular people in the informal sector. There is slowdown in economic growth resultant from the pandemic and a pointer that the larger world population could be pushed to extreme poverty. This has greater pitfalls for employees especially those in the informal sector, temporary workers, domestic works and those whose work can be easily be dispensed with that form the base of the work pyramid. Like other countries in the world, Kenya adopted containment measures to prevent and curb spread the virus such as drastic lock down, curfews, restriction of movements local and international. These measures resulted in disruption of global supply chains and declining business activities. Consequently, workers faced lay-offs, mandatory unpaid leaves and pay-cuts. This crisis found many governments unprepared and thus faced with a dual problem of addressing the health component of the of the disease on the one hand and on the other responding to its economic and social impact

In such socio-economic crisis, it is only countries and institutions that have social protection frameworks or mechanism that can comfortably cushion their workers against the hardships. Countries that are ill-equipped or have no social protection leave workers exposed as demonstrated by the pandemic. Social protection, is a human right that countries are obligated under international instruments to make provision for their citizenry for their wellbeing. It is against this backdrop that this paper interrogates the social protection responses made available to protect workers from the ravage of Covid-19 in Kenya. It also makes references to United Kingdom and Australia to draw best practices that Kenya can borrow from. It also discusses the efficacy or otherwise of the protection measures to cushion workers and the vulnerable population during the pandemic and phases of rebuilding the economy. The paper adopts a human rights perspectives particularly the human rights based approach (HRBA) for its analysis of the problem under investigation. Human rights based approached is used by virtue

of its wide acceptance in development agenda by virtue of being people centred. According to the United Nations, HRBA is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress and often result in groups of people being left behind.

In rebuilding the economy in the aftermath of crisis, it is imperative to engage and involve citizens as active participants of the new development agenda and not just spectators. The people should be at the core of the new development agenda that they want. Such a strategy will ensure that no one is left behind and the needs of everyone affected by the pandemic is taken into consideration by the future legal, policy responses and programme interventions.

Key Words: Covid-19- social protection- social security- unemployment- unemployment benefits- social protection benefits- livelihood, poverty, informal economy- safety management-rebuilding economy-human rights.

A Normative Framework for Mandatory Vaccination During a Pandemic

Robert Mutembei & Alvin Kosgei

The effects of COVID-19 pandemic have been catastrophic and vaccines against the virus have been welcomed and imposed with zeal. Governments have taken different positions on this issue with most of them resorting to punitive and legal mandates even in the face of underlying skepticism and apathy. Some states have further imposed broad mandatory vaccination policies while others have introduced negative consequences for failure to take the vaccine. Many countries Kenya included, have announced intentions to offer essential services only to the vaccinated. Such approaches used across the nations have raised fundamental questions on human rights protection that call for a determinate analysis in legal theory and a reliable normative theory, which this paper undertakes to establish.

The debate on whether mandatory vaccination is legally justifiable has been reignited by the onset of COVID-19. Legal questions on mandatory vaccination have been longstanding in various parts of the world since the 1905 United States of America Supreme Court decision of *Jacobson vs. Massachusetts* but the global effects of COVID-19 raise human rights concerns that need a rigorous analysis in jurisprudence towards a viable normative framework to guide decision makers. COVID-19 vaccines have been developed in a relatively record time compared to other vaccines known historically and this has raised several questions and fears. Notably, most vaccines being administered have only been given emergency approvals by regulators, raising questions of inadequate tests and rushed administration. Conspiracy theories are on the rise on the pros and cons of the vaccines. The theories notwithstanding, there is no medical or scientific consensus on the certainty of the full effects of the vaccines on humanity. In some instances the vaccines have caused deaths and exposed some vulnerable groups to further danger. Despite the underlying unanswered questions, governments are not taking chances with containment of the virus and forced vaccination is taking root as the way to go. There are genuine concerns both for the government and the skeptics, and there is need to strike a balance in human rights protection.

With a view to establishing a viable normative framework for mandatory vaccination, this paper undertakes a jurisprudential analysis of the various concerns raised by forced vaccination, drawing from two leading schools of jurisprudence, Natural law and Legal Positivism. The paper will be contextualized in the Kenyan legal system and offers a broad based analysis of various considerations that are taken into account in a decision on vaccine mandates. It is structured as follows: part one undertakes a historical analysis of regulation of vaccine development and administration, part two establishes the conceptual and theoretical framework; part three covers a situational

analysis in Kenya, looking at a review of the applicable legal regime. Part four analyses the jurisprudential foundations for mandatory vaccination in order to establish a viable normative framework.

An analysis of responses to COVID-19 and Legal Education in Kenya: The need to revisit modes of LLB instruction

Francis Khayundi

The COVID-19 pandemic affected all aspects of life including the mode of education at the tertiary level. Traditionally, most university courses have been offered using face to face learning taking advantage of the available space to host as many students as possible. Legal education in Kenya has always been expected to take place using the face to face mode and online learning or the use of technology has not been greatly embraced.

Consequently, plenty of time was wasted with the closure of learning institutions and the disruption of most law schools' academic calendars. Thus, the return to normalcy amidst efforts to respond to the pandemic marked the advent of a shift to online and hybrid learning. A concept that had hitherto not been embraced in legal education in Kenya. The Council for Legal Education (CLE), the legal education regulator in Kenya has yet to recognise the online learning mode and insists on legal education being offered face to face.

In efforts to return to normalcy, the COVID-19 pandemic exposed safety culture and equity gaps in all aspects of tertiary education and particular legal education. Thus, the coronavirus pandemic challenges the model of in-person teacher-student pedagogy characteristic of Kenyan legal education since independence and moving forward into the future. Arguably, the pandemic underscores the urgency of developing a safety culture and equity-based framework to guide the future of legal education while making it accessible and affordable for all.

Using a socio-legal approach, this article analyses the responses to and measures taken by various legal education providers in response to the COVID-19. This article proceeds from the assumption that "Law schools must be prepared to switch to online education and work for some class members, faculty, or staff, and for the entire school or university depending on health and safety conditions, and equity and pedagogical assessments of hybrid education." To sufficiently do this CLE will have to put in standards that each of the legal education providers should adhere to. The article thus recommends measures that can be put in place to maintain the measures already in place and take advantage of the flexibility provides by hybrid learning.

Keywords: Legal education – Covid-19, hybrid learning and regulation of legal

Covid-19 Burial Protocols in Kenya, Protests and Non Compliance: Jachiga Funeral

Duncan Ojwang

There are numerous literatures on theories determining why people obey law or choose to comply with legal orders. Ultimately this narrows to whether law should be compelling the Will or reasoning and the role of individuals in cooperating, understanding and approving those law according to Dworkin. Others have also investigated the issue of enforcement of the Covid protocol from not from procedural or substantive justice but experiential justice among those who undergo through the protocols and find themselves in court. Generally, there are various reasons that effect and motivate individuals to obey law besides its enforcement by force through the use of police, courts and sanctions. This article presents and discuss the Kenya government's 2020 April strict burial measures meant to curb the spread of Covid-19. These protocols are reviewed in relation to the funeral of the Ohangla famous musician Benard Onyango, famously known as Benny Jachiga, the composer of the Luo song Mano Kasinde . The chaos by hundreds of mourners who stopped the intended rushed burial initiatives by the Kisumu county government is explored in attempt to review what happens when positive law overlooks the social cultural context or when people experience with justice is that of compelling their will and not their reasoning. Various theories of legal compliance, provides that when law is perceived to be logical and fair then it has a higher compliance rate than when it relies on the force of law and physical enforcements but perceived to be violating customs and human dignity of the community. The discussion is more relevant to the requirements of the administration of justice and an engagement with those scholars who view culture and human rights as opposite and antagonistic to each other.

Accessing Justice Through Information and Communication Technology Initiative in Kenya: The Hidden Challenges

M.C. Getanda

Access to justice is a fundamental right to be enjoyed by all. It is a fundamental rule of law that any person who has a dispute with another in a court of law should be given an opportunity to be heard. The poor, vulnerable and the marginalized in Kenya may be disadvantaged in accessing justice institutions like courts and legally established tribunals. These categories of people may be disadvantaged because of various reasons including the fact that some justice institutions have not been established in remote areas of some parts of Kenya; justice institutions are expensive to access; the already established institutions are very slow in dispute resolution, the justice procedures are unnecessarily complex and the disadvantaged groups may not be aware of their rights in accessing justice. Due to the foregoing reasons a person may miss an opportunity to be heard which will amount to a violation of his/her right contrary to the provisions of the Constitution and International Instruments to which Kenya is a signatory.

Accessing justice can now involve new initiatives for purposes of doing away with aforementioned barriers. Such initiatives include improving the literacy level of the poor, marginalized and disadvantaged; providing some degree of legal assistance through legal aid; applying Alternative Justice Systems (AJS) in resolving some of the disputes and through the use of information and communication Technology (ICT) systems to access justice. ICTs systems include the use of radios, televisions, mobile/cellphones, computers, internet/WIFI etc. Accessing justice through ICT initiatives can help in supporting the disadvantaged groups who are facing problems in accessing justice institutions in various way such as avoiding travelling long distances to attend court; providing a cheaper ways of accessing courts without physical appearance and also making it possible to participate in court proceedings during pandemics like Covid19. While it is appreciated that the use of ICTs systems will hasten the resolution of disputes and in an inexpensive way, the use of current digital technology has also its own hidden challenges that would need to be addressed. This paper seeks to addresses the meaning of the phrase access to justice; who are the marginalized and or disadvantaged; information technology initiatives and the hidden challenges of accessing justice through the use of ICT initiatives in Kenya.

Key words: Access to justice, justice, hidden challenges, human rights, rule of law, information and communication technology.

Principles of stay-at-home policies: Experiences from PLEAD grantees on Gender Based Violence and Response Mechanisms within the COVID 19 containment period

Brendah Achungo

The COVID-19 pandemic has affected every part of the world and every aspect of life with far greater implication on the broad range of human rights including access to justice which is a cardinal component of the rule of law. Equally, the pandemic and the containment of the same have presented greater gaps in administration of justice due to the reduction of operations to closure of courts in the exigent circumstances. The closure of prisons and detention centres as well as bringing of prisoners into court for remand hearings prolonged detention of pre-trial detainees. In Kenya, however, the National Council of Administration of Justice working with the Police Service developed guidelines for the disposal of criminal matters at police stations, except for serious matters which must be forwarded to court.

With the lockdown measures applied invariably to control the spread and mitigate adverse impact of the virus, came the challenges for the marginalized populations with increased violations both in public and private domains during the period, making access to justice almost impracticable. The pandemic exposed gender justice needs with the rise in gender-based violence in particular, sexual gender-based violence. Women and girls disproportionately suffered from the pandemic and containment measures that ensured compliance to the stay-at-home policies. It is within the private domains where gender-based violence and domestic violence have been issues of concern. 2020 reports from KNBS indicate 23.6 per cent of households reporting that they had witnessed or heard of domestic violence within their communities following the introduction of COVID-19 containment measures. The Kenya National Commission on Human Rights has reported human rights violations arising enforcement of containment measures wherein loss of lives and degrading and inhuman treatment have been experienced in the hands of law enforcement agents. The timely, fair and effective response to these as emerging issues within the public health crisis is of critical concern.

The economic fall out because of the pandemic numerous enterprises shut down operations attributable to the curfew regulations that dictated operation hours. Businesses defaulted on loans unable to meet their loan repayments schedules because of reduction in economic activities, thus are unable to break even and

are faced with imminent closure. This situation resulted to many people losing their jobs and incomes. The loss of the incomes from the broad base of the work pyramid consequently resulted in loss of purchase-power leading to an economic crisis, triggered, and perpetuated by the pandemic further exacerbating the conditions of poor, marginalized and vulnerable populations. According to World Bank report of 2020, Kenya experienced an increase in the poverty index by 4 per cent (equated to an additional 2 million poor) through serious impacts on livelihoods, by sharp decreases in incomes and employment following the imposed restrictions on movement.

To mitigate the impact of the crisis on justice systems and justice seekers with a specific focus on those most vulnerable, women, girls, and marginalized groups, PLEAD actors have developed response mechanisms ensuring that no one is left behind. This paper will delve into the experience of the Amkeni Wakenya grantees during and post pandemic highlighting the actions implemented to address the continued gender justice risks emanating from the crisis. Perhaps the value of this paper will also be in establishing the role of duty bearers and development partners in addressing these risks while furthering development goals, sustainable recovery and long-term responsiveness, and resilience.

Rendering unto Caesar: Protecting The Rights and Entitlements of Interns in The Post - Covid Era

Onyango Aaron Okoth

The unexpected COVID-19 pandemic that has ravaged several aspects of man's activities life ranging from the socioeconomic as well as political activities which form the cruse of day to day life. As countries attempt to gradually return to normal life by lifting restrictions and rules intended to stem the spread of the deadly virus, the ravenous effects the virus has cast onto the economies of countries lay bare. In Kenya, thousands of jobs have been lost, and businesses have been forced to close down or downsize. Similarly, many civil servants have been forced to find alternative places from where to work. All these have resulted in a loss of income which have affected the incoe of both the state, through taxes, and individuals. One silver lining of the ordeal the Kenyan labour market has had to endure is that previous inefficiencies plaguing the labour force have come to the fore. Chiefly, loose regulations encompassing the protection of the rights of employees, mainly interns. With this demographic constituting of tens of thousands in the work force, and encompassing the individuals intended to form the labour market in the foreseeable future, one would expect that their rights and training would be more thoroughly regulated due to the important place they hold in the reconstruction of the economy interns are to play in the post-COVID era both as interns and as absorbed employees I Kenya's labour market. This article explores the loopholes in the regulation of interns and how remedying them would secure the recovery of the economy in the post-COVID era.

ADR as Alternatives Justice Systems for Service Delivery in

Mary Mwangi

The administration of justice and access to formal legal services was severely disrupted by the CoVID-19 pandemic. On 15th March 2020, the National Council on Administration of Justice suspended all court sittings except those involving urgent matters with the view of protecting its officers and members of the public from contracting the virus. The Chief Justice directed that all court houses be closed to the public and that all stations to operate with three members. Although these directives were necessary, they hampered the delivery of legal and conflict resolution services to members of the public. In addition, the functioning of the formal justice system was hampered by increased workload on the police to whom the work of enforcing COVID-19 containment measures was bestowed. Prioritization of Covid-19 containment measures left most other law enforcement issues unattended. Trust between the law enforcement agencies and members of the public was also eroded by the perceived use of excessive force in implementation COVID-19 containment measures. These factors led to diminished access to justice by the members of the public.

This dire situation was compounded by increase in the number of conflicts experienced in the height of the pandemic. For instance, the National Crime Research Centre (NCRC) reported that the total number of gender-based violence cases increased by 87.7% between April and June 2020 when the government implemented restrictions in mobility and assembly. Various forms of violence against women and girls were reported including beatings, sexual abuse, being thrown out of the home, being forced to marry, and being forced to undergo female genital mutilation. A study conducted by International Alert in January and February 2021 in the Korogocho Informal Settlement in Nairobi County also found that tension between landlords and tenants had increased during the COVID-19 pandemic because people found it harder to pay their rent. The conflict between landlord and tenants created ethnic tension because rental properties tend to be owned by members of a few ethnic groups. Ethnic tension was further compounded by perceived ethnic favouritism in the registration and distribution of COVID-19 relief programmes. The way relief was provided in this area frayed both horizontal and vertical relations within the community. Incidents of petty crimes also increased as more people were drawn into crime and gang membership due to loss of livelihood and school closure.

These accounts highlight how crises situations such as the Covid-19 pandemic

can increase incidents of conflicts within a society. They showcase how crises can cause strain on relationships between community members leading to decline in the level of cohesion. Consequently, there is need to ensure that there are appropriate mechanisms in the country that can respond to heightened conflicts during crises. This paper advances that alternative forms of dispute resolution (ADR) such as community elders, Nyumba Kumi, and grassroots administration offices can serve as alternative justice systems for resolving conflicts that occur during crises situations. The paper argues that these ADR mechanisms can complement the formal court system in resolving conflicts that emerge during crises leading to creation of more resilient communities. It explores measures that the country needs to put in place in order to enhance the effectiveness of these ADR forms in delivering services during crises.



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