

REPUBLIC OF KENYA



THE JUDICIARY

SPEECH BY HON. DAVID K. MARAGA, CHIEF JUSTICE AND PRESIDENT OF THE SUPREME COURT OF KENYA, DURING THE HAND OVER OF THE FINAL REPORT OF THE BAIL AND BOND IMPLEMENTATION COMMITTEE ON 13TH FEBRUARY 2020 AT THE SAROVA STANLEY, NAIROBI

It is my great pleasure to join you today as we witness the hand over and launch of the final report of the Bail and Bond Implementation Committee (BBIC). As you may all recall, the BBIC, which is headed by Lady Justice Jessie Lesiit, was established back in 2015 with the primary

responsibility and core mandate of overseeing the implementation of the Bail and Bond Guidelines. The Guidelines were developed by the Taskforce on Bail Bond, which was established in May 2014 by the NCAJ and tasked with developing a national Bail Policy to guide justice sector institutions in the application of laws on bail and bond. The taskforce was also asked to make appropriate recommendations on legislative and policy changes. The Guidelines formed the basis of all the activities and processes that have been undertaken by the BBIC.

In 2015, during the first year of the operations of the BBIC, the NCAJ commissioned an audit of the entire criminal justice sector with a view of identifying the main challenges that were facing the administration of justice. The audit was led by a multi-sectoral committee, which was composed of organisations and persons, a good number of whom are here today. The report was titled “**Criminal Justice in Kenya: An Audit**” was finalized in 2016 and had the specific theme of *understanding pre-trial detention in respect to case flow management and conditions of detention.*

A key finding in the report was the criminal justice system was largely skewed against the poor. The majority of people who were within the criminal justice system (70 percent) were persons accused of minor and petty offences while those in the upper economic echelons of society were largely left free. This was a serious indictment of the entire justice system, which flew in the face of the very constitutional principles that the country committed to achieve in the 2010 Constitution.

While criminal justice reforms had been ongoing (generally on a piecemeal basis) prior to 2010, the current Constitution introduced fundamental reforms that not only consolidated the previous gains but also significantly expanded the reforms by introducing broad areas of reform in access to criminal justice. In essence, the Constitution of 2010 became the springboard for the reforms in the criminal justice sector, including the establishment of the BBIC and the taskforce that came earlier.

On Bail and Bond matters, for instance, the Constitution gives an arrested person the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

These provisions seek to regulate administration of the right to bail and pre-trial detention and these range from: the confinement of accused persons in facilities such as police cells or prisons, pending the investigation, hearing, determination, or appeal of their cases.

However, the implementation and realization of these rights, as has been demonstrated by the various reports of the Committee, is not neither linear nor automatic. In the course of its work, the BBIC identified issues that require attention, even as the Committee winds up its work and hands over its final report. Some of the challenges identified in the report include:

- Delays in hearing and granting of bail and bond due to a variety of reasons
- Capacity of litigants to understand and undertake complex procedures related to bail and bond
- Lack of a mechanism for regular review of bail and bond matters in cases
- Safety concerns of probation officers in the field
- Lack of clear and standard procedures in the verification of bail and bond documents and weak inter-agency links to facilitate this.

- Allegations of corruption and improper conduct
- Lack of supervision of offenders granted bail
- Bail and bond issues contribute to unnecessary congestion of holding facilities.

It is clear from the nature of the challenges experienced regarding the administration of bail and bond that there is need for coordination among the various actors in the justice chain. Indeed, beyond the relevant provisions that address the question of Bail and Bond, there are constitutional provisions that require coordination among the different agencies in order to ensure seamless delivery of services to citizens, including those who come into conflict with the laws.

While the Constitution and our various constitutive laws and instruments emphasize our distinctness, the practicalities of our mandate and responsibilities require us to converge together for purposes of service delivery. Our very own experiences as justice sector institutions have unequivocally demonstrated that we can only achieve effectiveness and success as individual institutions and agencies gathered and represented here if there is an

overall enabling environment in the entire criminal justice sector.

Apart from identifying the challenges, the Committee has also made important proposals on how to move ahead with the implementation of bail and bond issues. The **first** recommendation is the continuous development of capacity, skills and ability to perform functions vested in our institutions. This is only possible if we invest financial and human resources in growing our respective and collective capacities as justice sector agencies.

Secondly, we need to invest in the development and expansion of facilities and employment of more human resource in institutions such as courts, police, prosecution, and probation and aftercare as this will ensure that bail and bond issues are expedited.

Thirdly, we need to leverage on technology in order to enhance efficiency in our work. While different institutions are at different levels of implementing technology based solutions for their work, we need to ensure that the use of technology complements the inter-agency processes, not only in the administration of bail, but in all criminal justice sector processes.

In the Judiciary, we are in the process of introducing a broad range of technology-based innovations to facilitate case management and efficiency. I know that there are efforts to link the verification process of documents of title between the Judiciary, the Police, and the Ministry in charge of Lands through the efforts of the Bail and Bond Implementation Committee. Such efforts will ensure the integrated use of technology for better and more effective service.

As an important starting point is that the membership of the BBIC was drawn from the key Criminal Justice Agencies and this provided a holistic view from the relevant agencies in the work of the Committee. It is my wish that we maintain the same approach in following up the recommendations and issues that the Committee has identified for further action.

I thank the BBIC, under the leadership of Lady Justice Jessie Lesiit for steering the Committee to deliver on its mandate. I also thank the justice sector agencies that ensured active and competent representation in the BBIC, which in turn laid the basis for the comprehensive and quality out puts from the Committee.

Finally, I also thank the development partners: the EU/ UNODC, IDLO, US Department of Justice, and indeed all the other partners who have played a supporting role to the activities of the BBIC. We thank you for the financial resources as well as the technical guidance provided to the Committee.

I thank you all.

**HON. MR JUSTICE DAVID K. MARAGA, EGH
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OF THE SUPREME COURT OF KENYA**

**CHAIR, OF THE NATIONAL COUNCIL ON THE ADMINISTRATION
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