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NAVIGATING THE ADMINISTRATION OF JUSTICE SPACE POST-PIL COURT RULING ON P3 FORM

POLICY BRIEF

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In July 2017, Legal Resources Foundation Trust (LRF) filed a Public Interest Litigation (PIL) as a response to its survey finding that P3 Forms access was stifling access to justice for poor litigants, especially survivors of violence, including SGBV and domestic violence since some form of unreceipted payments were demanded by duty bearers from the survivors in order to access P3 Forms. The successful petition was filed, heard and determined before Embu High Court which ruled on 4th day of April 2019, that victims should have free access to this very vital prosecutorial document. The intervention was conducted with support from Trocaire in a project titled: Action to adopt, strengthen and promote the protection of survivors of sexual and gender-based violence among women and girls, and enhancement of their ability to access justice through sound and enforceable policies and legislations to reduce their vulnerability. Such charges put a strain on poor survivors who usually give up their right to pursue justice. And this is a travesty.

THE TREND POST-P3 FORM COURT RULING

Despite this ruling, there are some interesting issues that are emerging that needs to be considered for advocacy and policy regulation. Although access to P3 form access remain largely free in urban areas, the situation largely remains the same in the countryside where people still pay to access the document. It is not clear if these are cases of active non-compliance, or lack of awareness on the ruling.

EMERGING ISSUES

Even where P3 form is stated to be 'freely' available, the police still refer people to specific Cyber-Cafes to print or make copies, usually paid at almost twice the normal printing or copy charges. This is still a cost with the potential to impact access to justice by the poor of the poor.





CONCLUSION

This policy brief provides actionable proposals for consideration to alleviate the suffering of poor survivors of violence. Stakeholders should close ranks in providing solutions.



ABOUT

Legal Resources Foundation Trust (LRF) is a national CSO which works towards access to justice for all, with a focus on the poor, marginalized, vulnerable and minorities. LRF utilizes various strategies, including practice advocacy, paralegal approach, human rights, partnerships and research.

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Besides this, some of the survivors lack the capacity to navigate the internet, download and print the documents from the police websites.

Lack of awareness on the ruling by the high court on free access to P3 forms could potentially lead to lack of demand for accountability on the side of the duty bearers to issue the documents freely.

Definition of 'free access' to p3 form remains amorphous, giving the online, or printing/ photocopying access an aura of free access.

The costs associated with the production and issue of the P3 forms is yet to be quantified, making it difficult to provide a budget-line for it.

The competing mandates of the national (security function) and county (health function) governments over P3 forms which the police issue, and the medics populate after medical examinations.

Directives on the complementary roles that P3 and PRC Forms play in medical examinations and prosecution of crimes.

Capacity to handle the P3 and PRC Forms to meet evidentiary threshold: - in some instances, lack of needed competencies in investigations, examinations, interpretation, documentation of injuries and evidence gathering, including forensic specimen collection and those who receive, analyze and provide results of analysis of the evidence, and those required to testify in court as witnesses, prosecution and medical experts lead to defects in the two documents, hence impacting access to justice.

Fatigue associated with the processes that need to be followed by survivors, from the crime scene (survivors' body in crimes involving violence becomes 'moving scenes of crime') also impact collection and documentation of evidence in both P3 and PRC forms. Survivors move from one office to another in pursuit of justice, and this results in fatigue. Information gaps also makes it difficult to use the document. For example, they lack information pertaining to the gender of intersexes, yet they also constitute a group which is potentially at risk and may require legal redress.

“Even where P3 form is stated to be ‘free’, the police still refer people to specific Cyber-Cafes to print or make copies, usually paid at almost twice the normal printing or copy charges. This is still a cost with the potential to impact access to justice by the indigent persons”

The circular by the Council of Governors (CoG) mandating county government health facilities to attend to P3 form cases is a welcome directive, and will decongest the workload being experienced by the Police Pathology Department. However, the department is very lean despite the important role it plays in catalysing access to justice. The government should consider expanding it, and also increase its budgetary allocation so it can deal with the high volume of work.

? WHETHER OR NOT TO MERGE P3 AND PRC FORMS

Forensic management of cases is very crucial in enhancing access to justice to survivors of violence by ensuring that credible evidence is available for presentation in court. This evidence either links or delinks a suspect of such violence to either sexual or physical contact in such crimes. The “How” such evidence is collected, managed or preserved, documented, and maintained and the chain of custody to such evidence is key in facilitation of administration of justice to the parties involved.

Both P3 and PRC forms constitute prosecution documents which add value to oral testimonies in SGBV and domestic violence related cases. However, the process of obtaining these documents, have them filled after examination by a medical practitioner sometimes contributes to affected survivors losing interest

5. There is need to expand the Police Pathology Department, with additional staff and budget.
6. Awareness creation on free access of the P3 form is necessary.
7. Free access to P3 form should mean exactly that; necessary measures need to be put in place to achieve exactly this.
8. Council of Governors (CoG) and National government must have a common stand on P3 form to avoid the conflict around their competing mandates (security verses health). CoG’s Technical Committees on Health and Legal, Human Rights and Intergovernmental Affairs to consider budget-lines for P3 form access.
9. Targeted litigation against cases of non- compliance with the ruling on P3 Form by agencies that work within the justice chain should be considered.
10. NCAJ should develop guidelines on access to P3 forms as well as other police forms that constitute prosecutorial documents to enhance justice.





RECOMMENDATIONS

1. The NCCJR should consider criminalization of charges in public health facilities to access expert witness reports such as P3 Forms, age assessment report, post-mortem report among others.
2. Professionalism should be observed by experts who examine specimen and evidence to inspire confidence in the process, and also enrich the content of the prosecutorial documents, including P3 form. Survivors of violence, including domestic, SGBV ought to be briefed and debriefed before and after the medical examinations to enable them understand the processes involved, and the reasons for them. Minors should be accompanied by a trusted relative.
3. Merging of the P3 and PRC Forms: - this ensures that specimens and forensic samples collected (e.g., swabs: anal, rectal, oral, bite marks etc.) such evidence corroborate written evidence with the witness statements. It also eases the logistics of moving from one place to the other, and having the documents be handled by more people as this may compromise the content of the evidence captured in the two documents. It also ensures that the details of any further referrals or recommendations are dealt with urgently, especially if the survivor is a minor (support either medical or psychosocial and the chain of custody), unlike the current standalone documents. Finally, merged documents also reduce cases of loss of either document.
4. Enriching the document: - some vital information is missing from the P3 form. For example, information on intersex persons gender is missing in the current documents and should there be a merged document, then inclusion of such persons is essential.

MISSION
To harness the collaborative benefits of strategic partnerships to gain holistic participatory interventions towards justice, equity and resilience in communities

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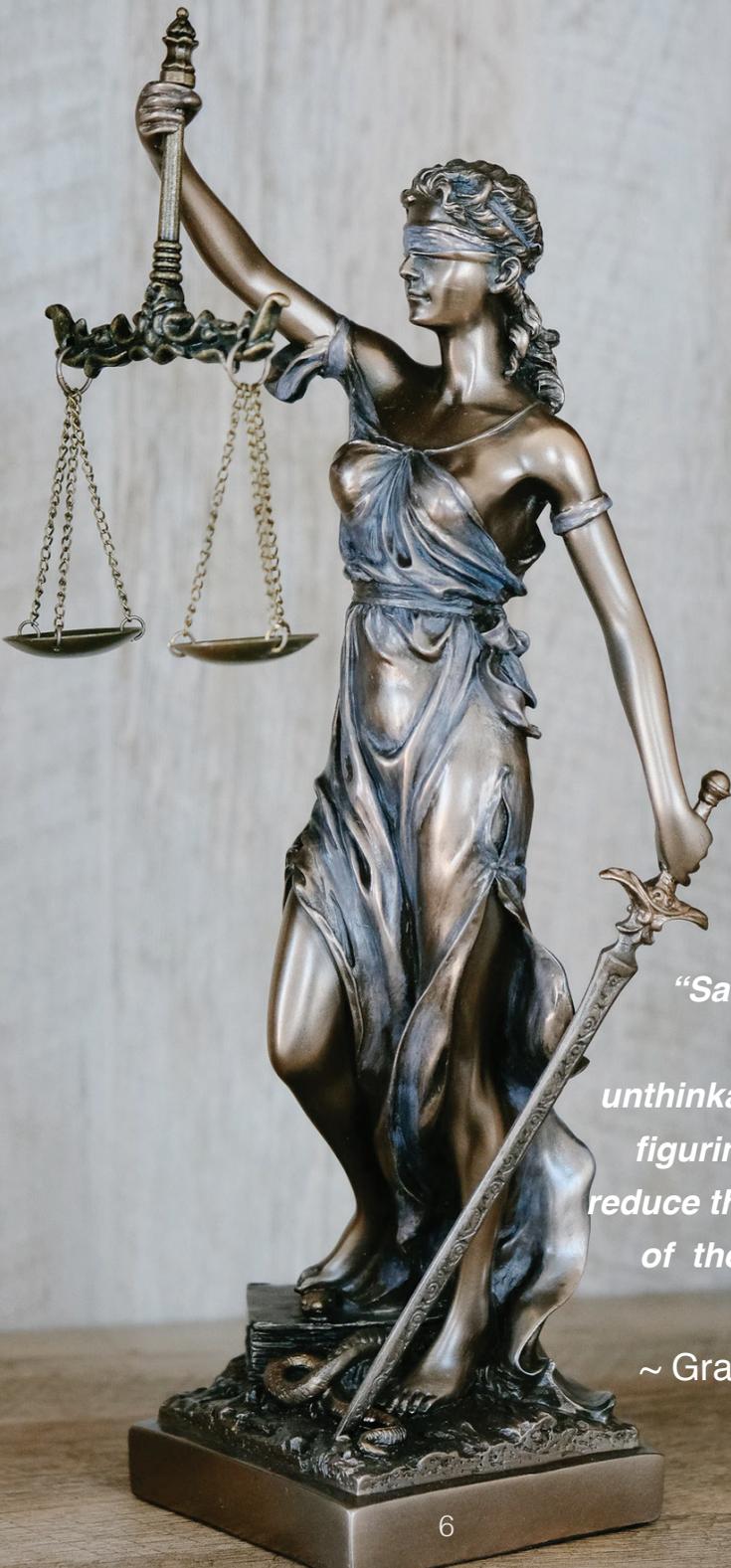


in pursuing justice due to the complex referral pathways that include the various visits to the hospital, police, prosecution and court systems. These visits are physically and financially draining and more often than not lead to lethargy, which in some instances lead to survivors dropping out of the cases, hence forgoing justice. Illegal costs to the P3 form is a further impediment to justice for those who cannot afford the fees especially at the police and hospital levels.



WHY MERGE P3 AND PRC FORMS

Merging the forms is likely to reduce the survivors' burdens navigating the referral pathways to have the two documents filled and signed by the designated authorities. Secondly, it ensures that there is centralization of services so that the forms are populated and signed in the same place, thus ensuring that forensic specimens taken corroborate testimonial evidence. This mitigates the fatigue associated with the movements within the referral pathways chain. It also mitigates the 72-hour rule as the survivor is likely to be provided with the necessary services in a timely manner. Equally, the fact that both documents are processed in the same place, by probably the same person helps to preserve specimen and data that the court relies upon for prosecution of cases.



“Safeguarding is thinking the unthinkable and then figuring out how to reduce the probability of the unthinkable happening”
~ Graham Fawcett

▶ WAY FORWARD

The issues contained in this policy brief are weighty and have the potential to impact negatively access to justice to poor people who lack the ability to fend for themselves. Chapter Four, specifically Article 48 of the Constitution of Kenya 2010 talks with clarity on the centrality of the principle of access to justice, and gives parameters for what needs to be done to expand its availability. This requirement is more urgent, especially if the victims of violent crime are poor people. Other facilitative legislations also give prominence to the government’s responsibility in ensuring access to justice, including the Criminal procedure Act, Cap 75 laws of Kenya, Sexual Offences Act, Penal Code, cap 63 LoK, Children Act

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Marriage Act, Protection from Domestic violence Act, HIV and Aids Prevention and Control Act of 2007, Victims Protection Act No. 17 of 2014 among others emphasizes access to justice for survivors. The issues therefore require urgent attention that may be anchored on ongoing processes both in parliament, taskforces and also agencies of law and order. LRF should engage with the Intersex Persons Implementation Coordination Committee (IPICC) that is currently coordinating issues around intersexes, including laws and policies. Similarly, the Sexual Offences Act is undergoing review, and so is the Children Act. The National Council on the Administration of Justice (NCAJ) led National Committee on Criminal Justice Reforms (NCCJR) could incorporate the recommendations below as it prepares the proposed Criminal Justice Bill’.