

**KEY NOTE ADDRESS AT THE LAUNCH OF THE STATE OF ACCESS
TO JUSTICE REPORT**

BY THE CHIEF REGISTRAR, JUDICIARY

DATE: 19TH OCTOBER 2017 AT HOTEL AFRICANA, KAMPALA

1.0 The Concept of Access to Justice

Access to Justice has been broadly defines as a situation where the justice seeker as its point of departure and looks at the process this justice seeker has to go through to achieve appropriate redress. Access to justice is taken as a process and not a goal. Access to justice exists if people suffering from injustices have the ability to make their grievances be listened to by justice institutions leading to redress based on the rule of law.¹

Access to justice is a human right that derives its status from the principles laid down under the Universal Declaration of Human Rights, 1948 (UDHR).² The UDHR provides for equality of all persons before the law.³ It also provides that everyone has the right to an effective remedy by the competent tribunals for acts violating the fundamental rights granted by the constitution or by law.⁴ This article has been interpreted to mean accessibility to Justice.⁵ It should be noted that access to justice is a very crucial human right since the enforcement of all the other rights depend on the right of access to justice. Thus, it has been argued that access to justice is the ability

¹ Vel, J.A.C., 'Researching Access to Justice in Indonesia: A review of World Bank and UNDP reports'. Access to Justice in Indonesia Working Papers, Van Vollenhoven Institute, Leiden University, 2010, pp.3-4.

² United Nations General Assembly Resolution 217(III) of 10 December, 1948.

³ UDHR, Article 7.

⁴ *Ibid*, Article 8.

⁵ Okumuwengi, J., *Weeding the millet field: Women's Law and Grass root Justice in Uganda*. Kampala: Uganda Law Watch Centre, 1997, p. 28.

of people to obtain a remedy through the formal and informal institutions of justice, and in conformity with human rights standards.

Access to justice has been equated to human rights awareness, procedural awareness, availability of forum to resolve disputes, communication and negotiation, supply of information regarding the dispute, decision making procedures which are neutral to all parties, transparency in the decision making process and compliance by the various parties affected by the process of access to justice. It should be noted that different categories of people perceive the concept of access to justice differently. The men, women, children, persons with special needs, corporate entities and unincorporated entities are affected differently while trying to enforce the right of access to justice.

Access to justice is very key in the realization of human rights based on the rule of law and due process whether before the formal institutions or traditional justice systems (informal in nature). Disputes can only be resolved through the utilization of the concept of access to justice.

2.0 The Framework of Access of the concept of access to Justice

The United Nations Development Programme (UNDP) provided a conceptual framework of access to justice by indicating the crucial factors in form of a chain that have to be present in order for access to justice to revolve properly in the year 2006. The following were taken into consideration:

- a) Normative Framework. Under this provision the concept of access to justice relies on the available laws, procedures and administrative structures in place which are utilized by justice seekers.
- b) Legal Awareness. The justice seekers must be aware of the rights which have been infringed and be in position to claim the infringed rights.
- c) Access to appropriate forum. Justice institutions must be in place to handle grievances of various categories.
- d) Capacity of Duty Bearers. The people charged with the responsibility if dispensing Justice should have the capacity to handle and resolve disputes according to the set standards in an effective and appropriate manner.

- e) Effective Remedy. The claim holders must receive a remedy which is arrived at in accordance with human rights standards that have been agreed upon universally, regionally and nationally.

3.0 Legal Framework for Access to justice

Internationally the concept of access to justice is provided in various instruments and these include ;

- a), International covenant on Civil and Political Rights (ICCPR) 1966,⁶
- b), International Covenant on Economic Social and Cultural Rights (ICESCR) 1966,⁷
- c), The Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1964,⁸
- d), The Convention on the Protection of All Migrant Workers 1990,⁹

⁶ UN GA Res 2200A (XXI), 21 UN Doc G AOR Supp No. 16 p.59 UN Doc A/6316 (1966), UNTS 302, entered into force March 23, 1976 (International Covenant on Civil and Political Rights), 16 December 1966.

⁷ UN General Assembly Res. 2200A (XXI) of 16 December 1966 entered into force 3 January 1976, in accordance with article 7.

⁸ United Nations, General Assembly Resolution 2106 (xx) of 21 December 1964 and entered into force on 4 January 1969.

⁹ United Nations, General Assembly Resolution. 45/158 at its Fifty-ninth session dated 18 December 1990, and entered into force on 1 July 2003.

e), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979,¹⁰ and

f), the Convention on the Rights of the Child (CRC) 1989.¹¹ Uganda is State Party to the above mentioned International Instruments.

Regionally, there is the African Charter on Human and Peoples' Rights 1981. The standards provided for in this instrument, apply in the respective regions of the African continent for that matter. This regional treaty provides for access to justice as a fundamental right and establishes a judicial body responsible for enforcement of the same right enshrined in the charter.

In addition, there is a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.¹² This is referred to as Protocol on the Rights of Women in Africa;¹³ The protocol was adopted Heads of State of the African Union in Maputo.¹⁴ The protocol provides for women's access to justice in articles 8 and 25. This is in respect of equality

¹⁰ UN General Assembly Resolution 34/180 of 1979, UN Doc.A/34/46, at 193 (1979).

¹¹ United Nations General Assembly, Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990, in accordance with the provisions on article 49.

¹² Resolution AHG/Res 240 (XXXI). Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, 11 July 2003.

¹³ Heyns CH & Killander M., 'The African Regional Human Rights System' ed, Heyns CH & Stefiszyn K., *Human Rights, Peace and Justice in Africa*, Pretoria: Pretoria University Law Press, 2006, p.201. See also, African Commission on Human Rights., 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa'. Available at: <http://www.achpr.org/instruments/women-protocol/> accessed 18th October 2017.

¹⁴ Smith K.M. Rhona., *Text and Materials on International Human Rights* (3rd, edn.), Oxon: Routledge, 2013, p.562.

of all before the law and effective remedies for women who present their cases before courts of law. Appropriate remedies have to be provided by State Parties to the Protocol. The African Commission on the Human and Peoples' Rights plus the African Court on Human and Peoples' Right provide avenues of access to justice at the continental level.

The East African Court of Justice (EACJ), is a Treaty based judicial body of the EAC, established under Article 9(v) of the EAC Treaty. It is tasked under the Treaty to ensure adherence to the rule of law in interpretation and application of and compliance with the Treaty.¹⁵ This amounts to access to justice.

4.0 Uganda's Domestic Framework

Matters pertaining to access to justice in Uganda are governed by the international agreements where Uganda is a party, Acts of Parliament, and procedural law in form of statutory instruments related to the administration of justice. The Constitution of 1995 provides for equality of all before the law

¹⁵ EAC Treaty Article 23. See also, East African Community Secretariat., *Strengthening Popular Participation in the East African Community: An EAC Guide to EAC Structures and Processes*, Arushu: East African Community Secretariat, 2012, p.24.

which brings into action issues of access to justice as it is provided as follows:-

All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.¹⁶

Legislation passed by the Parliament of Uganda and other laws must conform to the above provision. Thus in the case of *Law & Advocacy for Women in Uganda versus Attorney General of Uganda*, the Constitutional Court of Uganda declared sections 14, 15, 26, 27, 29, 43 and 44 of the Succession Act of Uganda unconstitutional and inconsistent with article 21 of the Constitution regarding equality of all before the law.

The Constitution of the Republic of Uganda also provides for the creation of different fora in order to determine civil disputes and criminal cases arising in Uganda. The Constitution envisages establishment of structures to handle cases by providing as follows:-

In determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.¹⁷

This provision implies that all people should have access to administration of justice in case their rights have been violated. The entitlement provision is

¹⁶ The Constitution of the Republic of Uganda 1995, art. 21(1).

¹⁷ The Constitution of the Republic of Uganda, art. 28 (1) &(3).

the entry point to justice administration institutions. The courts and tribunal must be accessible and independent from any influence whatsoever.

The Judiciary is vested with all judicial powers in administration of justice in Uganda. Article 129 (1) of the Constitution which establishes the judiciary, provides inter alia that:-

The judicial power of Uganda shall be exercised by the courts of judicature which shall consist of- Supreme Court of Uganda; Court of Appeal of Uganda; High Court of Uganda and Such subordinate courts as parliament may by law establish, including qadhis courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by parliament.

In addition, the Constitution stipulates the parameters within which the judiciary should exercise the judicial powers. Article 126(1) states that

Judicial power is derived from the people and shall be exercised by the courts established under this constitution in the name of the people and in conformity with the values, norms and aspirations of the people.¹⁸

This provision indicates that the judicial officers derive their mandate from the people of Uganda. The judicial officers are representatives of the people in the administration of justice.

¹⁸ The Constitution of the Republic of Uganda, art. 126 (1).

In addition the Constitution of the Republic of Uganda makes provisions regarding principles to be followed by courts in the process of administering justice. Article 126 (2) of the Constitution provides as follows:-

In adjudicating cases both of civil and criminal nature, the courts shall, subject to the law apply the following principles;

- (a) Justice shall be done to all irrespective of their social or economic status;
- (b) Justice shall not be delayed;
- (c) Adequate compensation shall be awarded to victims of wrongs;
- (d) Reconciliation between the parties shall be promoted and
- (e) Substantive justice shall be administered without undue regard to technicalities.

The above provisions indicate that all people irrespective of their social or economic status must be treated equally during the administration of justice as provided for under article 21 of the Constitution. Cases should be heard within reasonable time and courts should not permit unnecessary delays. Any delays must be explained satisfactorily to the parties concerned by the courts.

5.0 Comparison with the United Nations Development Programme Framework

- a) **Normative Framework.** The Law are in place providing for access to Justice and these include the Constitution, the Judicature Act, The Magistrates Courts Act, Labour Disputes (Arbitration and Settlement)

Act, the Tax Appeals Tribunal Act, the Uganda Human Rights Commission Act, the Land Act and the Local Council Court Act.

- b) **Legal Awareness.** Legal awareness is a key element of justice and access to justice in particular as it empowers justice seekers to understand and claim their rights. Various studies undertaken by the Justice Law and Order Sector (JLOS), have indicated that a big percentage of the Ugandan population are not aware of their legal rights are set out in various provisions of the law.

c) Access to Appropriate Forum

The ability of persons to seek and obtain a remedy through justice institutions whether formal or informal is a vital component of access to justice. In the case of Uganda the traditional justice systems seem to be at the grass root of society. However, formal justice institutions are inaccessible for some people. For instance the Industrial court is only accessible in the capital city. The same applies to the Tax Appeals Tribunal and the PPDA Tribunal. Accessing such forum for the up country people is a big issue. The magistrates' courts are available in all districts of Uganda. However, some of them are yet to be operationalized.

d) Physical Access to the Justice Institutions

Accessibility to appropriate forum would be ideal if the said forum is physically accessible. Physical infrastructure in a country impacts on the concept of access to justice. Some of the courts are inaccessible during the rainy season and some litigants have to travel long distances to access the justice institutions. For instance most litigants who require services at Bukwo court in Eastern Uganda, have to access the court via the western part of Kenya.

e) Capacity of the Judiciary to Handle the Disputes.

The Judicial officers available have the legal capacity to handle the disputes arising in the courts of law. However, they are few in number and the population of the country grows every day.

F) Enforcement of court orders. The process of realization of court orders involves a lot of procedures which require technical understanding.

Conclusion.

Access to Justice is a central right which enables the realization of all the other rights through litigation and enforcement. Uganda should aim at achieving the Judiciary's vision of Justice for All.

Thank you for Listening to me.



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