



Access to Justice for the Poor, Marginalised and Vulnerable People of Uganda



LASPNET
LEGAL AID SERVICE PROVIDERS' NETWORK

What's LASPNET?

The **Legal Aid Service Providers Network (LASPNET)** is a national member-based non-governmental organisation established in 2004 to provide strategic linkages and a collaborative platform for legal aid service providers (LASPs) in Uganda. The network maintains a common front to interface with the Justice Law and Order Sector on issues of access to justice and the rule of law. It targets three critical aspects of coordination: bringing together different LASPs for solidarity in strategizing, sharing lessons and experiences, while minimizing duplication; capacitating them through collaborative research and analysis; as well as documenting, providing feedback, and amplifying their voice on key issues regarding access to justice/legal aid at regional, national or international level.

Vision

A Free and Just Society.

Mission

To provide a platform for effective networking and collaboration to enhance legal aid service delivery and access to justice for the most vulnerable and marginalized people.

Goal

To improve networking, collaboration and coordination among legal aid service providers in Uganda.

Mandate

To strengthen coordination and networking of LASPs, harmonization and standardization of legal aid service provision by the different service providers, lobbying and advocacy to facilitate a favorable legal and policy environment.

Strategic Objectives

1. To strengthen advocacy for supportive enacting and implementation of legal aid harmonized legal and policy framework.
2. To promote research and knowledge management to support evidence based programming and advocacy for legal aid and access to justice.
3. To enhance networking and coordination of LASPs through promoting professional standards, collective voice and advancing the legal aid and access to justice agendas.
4. To strengthen institutional development of LASPNET through effective and efficient, functional organizational systems that provide sustainability.

Our Values

1. Justice
2. Team work
3. Commitment
4. Collaboration
5. Non-discrimination

Programs and Interventions

- Lobbying and Advocacy
- Networking and Coordination
- Research and Knowledge Management
- Strengthening institutional capacity of LASPNET and LASPs

Membership

LASPNET has a membership of 47 Legal Aid Service Providers (LASPs), operating in over 70 districts of Uganda. Membership is granted after meeting the eligibility criteria and approval by the board. See www.laspnet.org for the membership directory and details on the application procedure.



Access to Justice for the Poor, Marginalised and Vulnerable People of Uganda

A RESEARCH REPORT

by

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15th December 2015

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FOREWORD



The Legal Aid Service Providers Network (LASPNET) is a national member NGO established in 2004 to provide strategic linkages and a collaboration framework for the Legal Aid Service Providers and maintain a common front to interface with various actors in the Justice, Law and Order Sector in Uganda. It targets three critical aspects of coordination: a collective role bringing together different LASPs for solidarity in strategizing, sharing lessons and experiences, while minimizing duplication; capacitating them through collaborative research and analysis ; as well as documenting, providing needed feedback, and amplifying voice on key issues regarding access to justice/legal aid at regional, national or international level. LASPNET's mission is "to strengthen access to justice for all by utilizing the synergies of legal aid service providers" and it has taken up a mandate "to coordinate and standardize legal aid services provided by different service providers."

In line with the above aims and objectives, LASPNET commissioned Pro Initiatives Legal and Human Rights Agency, a consultancy firm, to conduct this study on poverty, vulnerability, marginalisation and access to justice.

Legal Aid Service Providers, despite sharing a common vision and mission, have devised different programmes and activities to fulfil them. We hope that this study will not only provide members with a useful resource full of important background information on the legislative framework for legal aid and the socio-economic context that gives rise to the need for free legal advice and assistance, but that it will also provide them with a common starting point from which to streamline their legal aid programmes and ensure that the poor, vulnerable and marginalised are able to access legal aid according to their needs and the merits of their claims. In this regard, the study will assist the network in establishing the identities and categories of the persons they should target in legal aid service provision and other related interventions such legal education.

The study makes a number of useful recommendations on legal aid in general, which members should consider and try to incorporate in their future activities. It also provides suggested guidelines and a sample means and merit test (MMT) that members can use as a point of reference to come up with a more customised standard for evaluating potential clients.

**Mr. Samuel Herbert Nsubuga,
CHAIRPERSON OF THE BOARD OF DIRECTORS,
LEGAL AID SERVICE PROVIDERS' NETWORK**



ACKNOWLEDGEMENTS



The Legal Aid Service Providers' Network (LASPNET) wishes to acknowledge the contributions of the various individuals, groups and organisations who played a role in the completion of this study.

LASPNET acknowledges the financial support of the Democratic Governance Facility (DGF).

The study on poverty, vulnerability, marginalisation and access to justice was conducted in a participatory manner that involved extensive consultations. We deeply thank LASPNET members, staff of the LASPNET Secretariat and other stakeholders from the Justice, Law and Order Sector (JLOS) who participated as respondents, gave their views and participated in the Validation Workshop.

Lastly, LASPNET thanks the study team: Laura Nyirinkindi, Monica Twesiime Kirya, Robert Mugagga and Maurice Muhumza of Pro Initiatives.

We are hopeful that this report will be an important resource that will help us to achieve our strategic objectives.

Ms. Sylvia Namubiru Mukasa
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LIST OF ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
CBO	Community Based Organisation
EOC	Equal Opportunities Commission
IDP	Internally Displaced Person
JLOS	Justice Law and Order Sector
JAC	Justice for Children
LAC	Legal Aid Clinic
LASP	Legal Aid Service Provider
LASPNET	Legal Aid Service Providers' Network
LDC	Law Development Centre
MAAIF	Ministry of Agriculture, Animal Industry and Fisheries
NDP	National Development Plan
NGP	National Gender Policy
NGO	Non Governmental Organisation
OVC	Orphans and Vulnerable Children
PLHIV	Persons Living with HIV
PWD	Persons with Disabilities
SIP	Sector Investment Plan
UBOS	Uganda Bureau of Statistics
UN	United Nations
UNHS	Uganda National Household Survey
UNESCO	United Nations Education and Scientific Cooperation Organisation



SUMMARY OF THE REPORT

Introduction

Uganda is a signatory to a number of international and regional instruments that seek to guarantee access to justice as an inalienable right to Ugandans. The Ugandan Government has also introduced policy and domestic legislation that seeks to regulate or promote access to justice for various groups or individuals. The legal and policy framework notwithstanding, a significant part of the population can be categorised as poor, vulnerable and marginalised. Such groups of people often struggle or fail to access justice.

Summary of Findings

Access to Justice is *“a process which enables people to claim and obtain justice remedies through formal or informal institutions of justice, and in conformity with human rights standards.”* **Justice** is *“the amount of fairness that people experience and perceive when they take steps to solve disputes and grievances.”*

There are various understandings of the term **“poverty:”** *Chronic poverty* is the type that traps households into severe and multi-dimensional poverty and can take on an intergenerational form to the effect that those born in poverty live in it and bestow it on their children. The United Nations maintains that *‘Absolute poverty is a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to social services.’*

Most official definitions of poverty use relative income to measure who is in poverty. The World Bank sets the threshold at \$ 1.25 a day, and the Uganda Government takes a similar position.

Vulnerability on the other hand is *“the probability or risk today of being in poverty or to fall into deeper poverty in the future due to disasters or shocks that would worsen the status quo.”*

Marginalisation has been defined as *“processes by which some groups of people are being pushed or kept out of the system, or being maintained in a peripheral, disadvantaged position within that system.”* The United Nations Education and Scientific Cooperation Organisation (UNESCO) has defined marginalisation as occurring *‘when people are systematically excluded from meaningful participation in economic, social, political, cultural and other forms of human activity in their communities and thus are denied the opportunity to fulfil themselves as human beings.’* The Orphans and Vulnerable Children (OVC) Policy defines marginalized groups as *‘persons in society who are deprived of opportunities for living a respectable and reasonable life that is regarded as normal by the community to which they belong.’*

Causes and Impact of Poverty, Vulnerability and Marginalisation in Uganda

Some of the underlying causes of poverty in Uganda include the large size of households, low education levels and low asset holding. Other factors include living in a rural area; living in Northern Uganda; having a large family; having little education or low skills levels; being a member of a female headed household; being a widow, an orphan, a disabled person or a member of a ‘gap generation family’ (with children and grandparents but no economically



active adults).

Another way to think about the causes of poverty is to think in terms of capabilities. These reflect a person's freedom or ability to choose the way (s)he would like to live. They include the capacity to be free from hunger, to become educated, and to earn a decent living. They are interconnected and mutually reinforcing. People trapped in persistent poverty tend to experience multiple 'capability deprivations' concurrently. That is to say, they are illiterate, have inadequate nutrition, poor human rights, and insufficient income and livelihood opportunities. Such factors drive and maintain poverty and perpetuate it across generations. In addition, weak state institutions and governance result in poorly designed and implemented policies, weak formal institutions and rule of law, inadequate service delivery, and to other practices that undermine the creation of an enabling environment for wealth creation.

Uganda Poverty Trends

There has been a significant reduction of the population living below the poverty line from the previous rate of 56% in 1993 to 31% in 2005 and 24.5% in 2009. The Uganda National Household Survey 2012/13 indicates that the percentage of the people living in absolute poverty declined by 4.8% points from the 24.5% reported in 2009/10.

Despite the recorded decline in poverty, this has not translated in sustained or significant progress in the general welfare of Ugandans. In Uganda, only two out of the seventeen MDG targets have been met, with some reversals and stagnancy in key social indicators such as maternal health, HIV/AIDS. Uganda ranked 161st out of 187 countries on the United Nations Development Programme's Human Development Index in 2012 in the Low Human Development category. In 2014, it ranked 164 out of 187 countries on the Human Development Index. The NDP II starkly states that '*Uganda is judged to be amongst the most vulnerable and least climate resilient due to poverty and low income diversity*'.

Moreover, approximately 43% of the population risks falling back into poverty in the event of a shock. Statistics from the UNHS 2012/13 reveal that the rural areas, which hold about 77% of the population, constitute 89% of national poverty. According to the UNHS 2012/3, poverty incidences remain highest in the Northern region (44%) and least in the Central region (5.1%). At sub-regional level, Karamoja in North East dominates with 75% being income poor, followed by West-Nile (42%) and Mid-North (36%).

Who the Poor, Vulnerable and Marginalised?

It should be noted that even though the terms are used together they are not interchangeable as stated clearly in the definitions above. There are numerous groups and categories who can be considered as poor, vulnerable and marginalised. They include people with neglected and often misunderstood diseases (including the mentally ill, nodding disease victims, and other such diseases in Uganda). They include Persons with Disabilities, the Elderly, lonely and isolated, Children, especially those who have disabilities, are refugees, or fall into other categories of vulnerable groups. Children with Parents in Prison, children who head households and the homeless should not be left out.

The landless who sell their labour, women especially widows, widowers who have many children to look after, those with large families, orphans and abandoned children, the chronically sick, the elderly, the youth who are jobless, the internally displaced, refugees and those living in areas prone to natural disasters such as earthquakes and landslides and ethnic



minority groups are also in this category.

The youth are a significant majority of Uganda's population, and although not all of them are considered vulnerable, the following sub-categories of youth may be vulnerable to poverty: unemployed youth, school drop-outs, out-of-school youth, youth inmates, domestic workers, sex workers, and drug and alcohol addicts.

The Equal Opportunities Commission extends its mandate to groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom.

Access to Justice bottlenecks and on-going efforts to address them

The government of Uganda is making some effort to address the lack of access to justice through the State Briefs scheme for persons charged with capital offences, the Pro bono scheme run by Uganda Law Society, allowing Students to offer legal aid and the establishment of the Justice Centres. The efforts of the various non-governmental Legal Aid Service Providers (LASPs) also help substantially to fill the gap.

However, access to justice remains limited for various reasons. For example, most of the JLOS services remain in the urban areas and central region. This creates a physical barrier that may result in victims or users not attempting to close the distance gap hence choosing to relinquish their rights. The Justice Centres that provide critical legal aid are found in only four satellite locations. Only 18.2% of the people in rural areas are able to access a Magistrate Court within a distance of less than 5km compared to an overwhelming 56% in urban areas. There are challenges of raising resources for transportation to the relevant institutions.

The ease of transactions of legal matters is at best difficult for lawyers who are schooled in legal practice and confusing for laypersons who may be literate. However, in the case of poor and vulnerable persons, who are already disadvantaged in several ways including illiteracy; interfacing with legal processes can be a formidable task, daunting at best. The often highly charged and adversarial system of justice combined with a strong focus on procedures and rules can be distressing and disempowering, especially for poor people.

There is a lack of confidence in the justice delivery system as impartial and transparent. Individuals or groups who have been subjected to abuse, bias or discrimination are likely to be fearful of power structures and dynamics and suspicious of government agencies. Their status as poor persons in a highly monetised justice system and environment raises fears of further marginalisation and re-victimisation

Other challenges include various user fees for legal processes which may serve as a deterrent to filing cases before institutions. Also, lawyers' fees tend to be prohibitive, even where lawyers may be accessed. Moreover, there is a perception of corruption in JLOS institutions. (National Service Delivery Survey indicates that 41% gave '*facilitation*' to the police, prisons 29%, and magistrates 15% while customary courts had the least at 2%).

Gender discrimination and patriarchal norms such as the fact that people are discouraged from solving their disputes through State Forums under the guise of not washing dirty linen in public also play a role in hindering access to justice. Also, there is limited gender sensitivity



in JLOS institutions – training one or two staff is not enough! The justice system is not child friendly or friendly to marginalised and vulnerable groups such as refugees and persons with disabilities.

Conclusion and Recommendations

The poor and vulnerable are the primary victims of marginalisation, discrimination, exclusion and exploitation which further exacerbates their situation, leading to extreme forms of poverty and vulnerability. It is therefore imperative that Uganda devises means of ensuring that the most affected individuals and populations are identified for priority action including affirmative action, at the same time establishing longer term measures for sustainable service delivery for other categories facing challenges. Without effective, inclusive and affordable access to justice mechanisms, the poor, vulnerable and marginalized are denied the opportunity to enjoy, claim or reassert their rights or challenge breaches thereof. In sum, the barriers to justice that are attitudinal, procedural or physical have the effect of denying these groups the appropriate standard of justice that is critical for resolving some root causes of marginalization, discrimination, poverty and vulnerability. Therefore, the progression towards comprehensive legal aid programmes is critical in restoring some of the balance in favour of vulnerable and marginalised groups. However, it is important to note that to improve access justice for such categories of people requires tackling a range of legal, socio-economic and cultural barriers that exist in the formal and non-formal justice system.

In view of the above, it is recommended, that:

The reach of legal aid be extended to offer more comprehensive services. For instance, labour officers and social workers/ probation officers could be part of the justice centres, following the example of South Africa. This is in recognition of the fact that vulnerable & marginalised groups need counselling and psycho-social support, not just legal solutions. Alternatively, lawyers should be trained to offer counselling services.

Eligibility for legal aid should go beyond indigence to include vulnerability and marginalisation. Legal Aid Services Providers should also utilise the Merit test by considering the substantive justice issues raised by the case.

State Legal aid should be made available for children in both criminal and civil proceedings and in family law matters in general.

There should be automatic waivers of court fees for indigent persons, and thus there is a crucial need to further analyse the applicability and relevance of Order 33 of the Civil Procedure Rules, which provides for Pauper Suits.

Legal Aid Service Providers should work with cultural institutions to ensure that they adhere to natural justice principles.

LASPs are encouraged to conduct baselines before initiating legal aid service provision projects. They can also use data from UBOS Household and demographic surveys and State of the Population report. Information on behaviour and attitudes can be obtained from Afrobarometer.



LASPNET should partner with the EOC which has the mandate for vulnerable and marginalised groups. It is also important for LASPNET to strengthen appreciation for legal aid in JLOS and the legal profession especially State briefs and pro bono scheme, and sensitise State institutions about the importance of legal aid.

LASPS should continue to promote legal literacy, recognise the role of non-lawyers – (students and paralegals) in legal aid and encourage partnerships with advocates in private practice. The Legal Education Curriculum should actively promote Clinical Legal Education and inspire more lawyers to take up “community lawyering.”

It is crucial to ensure sustainability of LASPs by finding alternative sources of funding.

The Law Council should consider allowing LASPs to advertise in Police Stations so that their services are known to those who most need them.

Lastly, LASPs need to deliberate further on how to modify and apply the various means and merit tests according to their own aims and target groups.

Further and more in depth research would be required to pin-point exactly who and where the poor are in each district, region or town of Uganda. Other aspects that should be studied further include issues of pecuniary and geographical jurisdiction over various civil and criminal matters and how these affect access to justice. It is also important to analyse whether and how the Civil Procedure Rules on Pauper Suits (Order 33) are being applied and whether they can adequately address financial barriers to access to justice for the poor in Uganda.



1.0 INTRODUCTION AND BACKGROUND

1.1 Introduction

The Legal Aid Service Providers Network (LASPNET) was established as an institutional mechanism to provide a collaborative framework and strategic linkages for Legal Aid Service Providers (LASPs) in the country. One of its key aims is to enable LASPs to maintain a common and united front in interfacing with various actors in the Justice, Law and Order Sector (JLOS) in Uganda.

LASPNET-Uganda commissioned this study on poverty, vulnerability and marginalisation in the context of access to justice in order to support one of its strategic functions which is “to research, advocate, document and amplify voice on key issues regarding access to justice and legal aid at the regional and national levels.” The study will assist the network in establishing the identities and categories of the poor, marginalised and vulnerable persons that the state and non-state actors should target in legal aid service provision and other related interventions.

The study was regarded as necessary because Uganda is a signatory of International and regional conventions such as the International Convention on Civil and Political Rights, the Convention on Economic, Social and Cultural Rights and the African Charter on Human Rights, all of which provide for access to justice as an inalienable right. In recognition of the importance of these Conventions and the need to domesticate and implement them locally, a number of international and regional conferences have been held and declarations/resolutions made to enhance access to justice through legal aid. Such conferences/declarations include: the Lilongwe Conference and declaration on Accessing Legal Aid in the Criminal Justice System in Africa 2004 the Kiev Conference 2007 and the Kigali Conference on Access to Justice in Africa 2008. Uganda's Constitution 1995 further entitles an accused person charged with a capital offense to be represented in court at the State's expense. In a number of respects, the national legal framework including the Poor Persons Defence Act 1998; the Advocates (Amendment) Act 2002; the Advocates (Pro bono Services to Indigent Persons) Regulations 2009; and the Advocates (Student Practice) Rules 2004; all make provision for the right of the vulnerable and poor to access justice.

Although the State is legally designated as the key duty bearer to respect, protect, promote and fulfil basic rights including the provision of legal assistance to those who are in conflict or in contact with the law, this has not been forthcoming. There are only a few state led initiatives such as Pro-bono and State Brief which provide state legal aid. This has meant that the bulk of interventions is left to non-state actors. Non-state actors are in turn bedevilled by a number of issues; such as the fact that their support is ad hoc, fragmented, and non-sustainable due to limited resources. Moreover, whilst there are many persons in need of services, there is no standardised demarcation regarding which categories or groups are most in need of legal aid services. The fact that the target groups are not clearly defined is therefore problematic.

It is therefore important to have a comprehensive understanding of the rights holders – the poor, vulnerable and marginalised that face challenges in accessing justice; so as to streamline legal aid service provision and ensure that LASPs are targeting as many as possible of the people who need legal aid services.



1.2 Objectives of the study

The purpose of the study was to provide evidence based information on categories of persons who access legal services and to set standards for service provision. Specifically, the study was aimed at:

- i. providing baseline information on who the poor, vulnerable and marginalised persons are and where they are found in Uganda.
- ii. analysing patterns and linkages of poverty, vulnerability and marginalisation and how these factors affect the right to access justice by all.
- iii. highlighting how access to justice programs are being formulated and devise a standardized approach for intervention that will address the needs of the poor, vulnerable and marginalized in a manner that targets the most deserving beneficiaries.
- iv. making appropriate recommendations on interventions (both short term and long term) that can address the hindrances faced by the poor, vulnerable and marginalised in accessing justice.

1.3 Research Questions

The study was guided by the following research questions as per the terms of reference:

- i. What is the definition of poverty, vulnerability and marginalisation in the context of Access to Justice
- ii. What are the causes and impact of poverty, vulnerability and marginalisation in Uganda on national development especially in relation to the promotion of access to justice by all?
- iii. Who are the poor, vulnerable and marginalised in Uganda, where are they and how many are there?
- iv. What are the major access to justice bottle necks and what efforts are being made by the state and non-state interventions to address them?
- v. What cost effective, good practices from other Jurisdictions in relation to enhancing access to justice by the most poor vulnerable and marginalised can be replicated in Uganda?
- vi. What standards should guide the identification and provision of access to justice services for the poor, vulnerable and marginalised?
- vii. How should LASPNET plan for interventions that seek to enhance access to justice by the most vulnerable and marginalised in Uganda?

1.4 Methodology

The study was mainly qualitative in nature although quantitative data was obtained from secondary sources. The choice of qualitative methodology was informed, firstly, by the need for the study to provide detailed descriptive information on poverty, vulnerability, marginalisation and access to justice in Uganda; and secondly, the importance of identifying patterns and linkages between the aforementioned phenomena. To this end therefore, the study adopted the following methods of data collection.

- i. **Literature Review:** The consultants reviewed a substantial amount of literature; ranging from treaties, laws, and policies; to previous studies on access to justice, official reports by JLOS agencies, and reports of LASPNET member organisations. The literature reviewed is included in the reference list.
- ii. **Key informant interviews:** The consultants conducted semi-structured interviews



with key informants in JLOS agencies and LASPs. Interviews were recorded or transcribed by hand. A list of the individuals and institutions interviewed is attached in the Appendix.

Information from the literature review and the interviews was synthesised and analysed in order to present as complete a picture as possible of the the issues under scrutiny.

1.5 Limitations of the study

The study was constrained by several factors, one of which was the short time available for data collection, analysis and synthesis. Moreover, the sample size was limited by the funds available, resulting in a significant reliance on secondary data. Data collection was also constrained by the lack of and inadequate information management systems among the LASPs. The study required detailed information on who and where the poor are and whether they can access justice if at all – unfortunately, answering this question would have required a longer time and ethnographic approach which was not possible with the time and resources available. Nonetheless an attempt has been made to be as thorough as possible and provide a detailed analysis of the issues in spite of the limitations encountered.

1.6 Synopsis of report

Part 1 is the introductory part of the report, highlighting purpose of the study and the methodology that was adopted. Part 2 considers the legal, policy and institutional frameworks promoting access to justice in Uganda. Part 3 looks at poverty, vulnerability and marginalisation; analysing how these factors influence and impact access to justice in Uganda. Part 4 analyses legal aid services provision in Uganda and its impact on poverty, vulnerability and marginalisation. Part 5 contains the recommendations and conclusion of the study.

1.7 Definitions of key concepts

In this study, the concepts of access to justice, poverty, marginalization and vulnerability feature prominently.

The concept of access to justice is fundamental as a mechanism for the possible reversal of some of the most harmful aspects of poverty, marginalization, and vulnerability and for inclusion in the post-2015 development agenda. In addition to the above, the concepts of poverty, marginalization and vulnerability are key factors in accessing the rights and welfare of citizens. The three concepts are useful for identifying those most in need of legal aid and access to justice. Briefly, the following meaning can be attached to these concepts and is further elaborated in chapter 3.

i. Access to Justice

The concept of access to justice refers to a process which enables people to claim and obtain justice remedies through formal or informal institutions of justice, and in conformity with human rights standards. It also relates to 'the mere contact or right to entry to use the justice system by citizens.' In essence therefore access to justice entails an examination of how individuals, groups and communities realise de facto justice from the enforcement of substantive law as well as the quality of justice meted out on them by the justice delivery system. In a comprehensive or holistic manner, access to justice includes elements entailing contact, entry and use of justice delivery system.

ii. Poverty

The concept of poverty can be defined as a multidimensional phenomenon that includes as one of its components chronic social, political and economic inequality or 'a human condition characterized by the sustained or chronic deprivation of resources, capabilities, choices and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights'.

iii. Marginalization

The concept of marginalisation has been defined as "processes by which some groups of people are being pushed or kept out of the system, or being maintained in a peripheral, disadvantaged position within that system." It is in effect complex process of relegating specific groups of people to the lower or outer edge of society. Marginalisation pushes these groups of people to the margin of society economically, politically, culturally and socially; in line with an unwritten, but nonetheless real, policy of exclusion.

iv. Vulnerability

The concept of vulnerability refers to the probability or risk today of being in poverty or to fall into deeper poverty in the future due to disasters or shocks that would worsen the status quo. Linked to the concept of vulnerability is the fact that vulnerable groups of individuals do not participate or have an ability to influence decisions that ultimately impact their lives or welfare. Vulnerable groups or people do not have access to effective justice that would enable them to obtain legal remedies to their problems.





2.0 LEGAL, POLICY AND INSTITUTIONAL FRAMEWORKS FOR PROMOTING ACCESS TO JUSTICE IN UGANDA

2.1 Introduction

Access to Justice is widely viewed as human rights in itself, and as a process of attaining human rights, thus an end to a means. Access to justice can be viewed as being two-dimensional, and intended to remove de facto and de jure barriers to obtaining effective remedies. One is the procedural aspect: access to courts, lawyers and law enforcement agencies- this is important for making the justice system more user friendly, effective and accessible. Substantive justice looks at the fairness of the legal system and procedures and laws in place, that is to say, access to just outcomes.¹ These concepts can also be extended to informal or traditional systems of justice, which in many Ugandan societies people resort to. There are various legal, policy and institutional frameworks that promote access to justice as will be discussed here-under.

2.2 International Human Rights Framework

2.2.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is the earliest and most consensus-building instrument of the United Nations. It is a standard setting document that highlights the importance of freedom from want and fear, combining civil and political rights in the same document and promoting the principle of human rights as indivisible, interrelated and inalienable. It recognises the central role of rule of law as an outlet for those who are oppressed.

Article 7 of the Declaration recognises that all are equal before the law and are entitled without any discrimination to equal protection of the law and all have right to an effective remedy by the competent national tribunals for any violation of legal or constitutional rights.

2.2.2 International Covenant on Civil and Political Rights

Uganda has ratified the International Covenant on Civil and Political Rights. This Covenant sets out fundamental human rights, freedoms and guarantees that states have an obligation to respect, fulfill and protect under international law. Article 2 (2) requires states to fill gaps in legislative and other measures in protecting rights by adopting required laws or other measures to give effect to the rights recognized in the Covenant. This builds the case for substantive legal or *de jure* justice that recognises the principles of fairness, equity and non-discrimination, including in the realm of access to justice.

Article 3 in its entirety looks at the procedural aspects of justice, focusing on the role of institutions in ensuring fair outcomes. It mandates effective remedies for persons whose rights or freedoms are violated. Lawful authorities within the legal system must adjudicate these rights, and meaningful remedies provided.

Article 26 of the Covenant provides that all persons are equal before the law and entitled to equal protection of the law, without discrimination based on any characteristics laid out therein. These include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Read in conjunction with Article

¹ Farrow, T. (2014). *What is access to justice?* Osgoode Hall Law Journal, 51(3), Research Paper No. 51 Vol. 10/ Issue. 12.



32 of the Constitution of Uganda, 1995,² the argument can be made that groups that have been marginalized and disadvantaged are prime candidates for legal aid in order to facilitate their access to justice on an equal footing with others, to achieve the meaning of Article 26 of the Convention.

The ICCPR also contains important due process guarantees during trial on criminal charges under for Article 14 (3) (d), including access to free legal representation. General Comment Number 32 of the UN Human Rights Committee makes the following critical pronouncement in this regard³ that the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.

While article 14 explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3 (d), States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so. For instance, where a person sentenced to death seeks available constitutional review of irregularities in a criminal trial but does not have sufficient means to meet the costs of legal assistance in order to pursue such remedy, the State is obliged to provide legal assistance in accordance with article 14, paragraph 1, in conjunction with the right to an effective remedy as enshrined in article 2, paragraph 3 of the Covenant.

Thus the United Nations standard setting entities encourage a more expansive interpretation of the provision of legal aid to other areas, to promote substantive and procedural justice.

2.2.3 International Covenant on Economic, Social and Cultural Rights

Uganda is a state party to the International Covenant on Economic, Social and Cultural Rights but the instrument does not contain provisions on judicial remedies. However, current developments in international and regional jurisprudence reveal that economic and social rights are justiciable.⁴ In addition, the right to an effective remedy before a competent authority is required. In that regard, the UN Committee on Economic, Social and Cultural rights in General Comment number 9 pronounces itself thus⁵ that the right to an effective remedy need not be interpreted as always requiring a judicial remedy.

Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. By the same token, there are some obligations, such as (but by no means limited to) those concerning non-discrimination in relation to which the provision of some form of judicial remedy would seem indispensable in order to satisfy the requirements of the Covenant. In other words, whenever a Covenant right cannot be made fully effective without some role for the judiciary, judicial remedies are necessary.

2 It provides thus-Notwithstanding anything in this Constitution; the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances that exist against them.

3 Human Rights Committee, General Comment No. 32, and Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).

4 Ibid.

5 United Nations 'General Comment No. 9', Committee on Economic, Social, and Cultural Rights, E/C.12/1998/24 (1998) para. 2.

Further, in regard to justiciability, the UN Committee on Economic Social and cultural rights has this to say that the adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.

Thus a reading of the international bill of human rights as analysed above is illustrative of the intentions of the drafters of the Bill of rights to promote all persons, particularly the vulnerable, from denial of their rights based on technical, procedural and substantive barriers. It is this framework that Uganda is bound to observe in its addressing poverty, vulnerability and access to justice at the domestic level.

2.2.4 UN Convention on the Rights of the Child

Uganda has signed, ratified and domesticated the Convention on the Rights of the Child (CRC). Uganda's Children Act consolidates several of the standards of the CRC. The CRC outlines the rights that children are to enjoy without discrimination, recognizing them as substantive rights holders.

Under Art 40 (2) of the CRC, children have protections that are quite significant in ensuring that as a vulnerable group, they have access to justice. It provides that a child is to be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence. This provision automatically bestows upon a child the right to legal aid in criminal cases. However, the Children Act Cap 59 of Uganda does not have this progressive provision.

Further, the speediness of the trial is emphasised in Article 40 (2) (iii) which requires states to have such matters without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians. This speaks to the procedural aspects of access to justice for children, which is in their best interests given the potentially harmful impact of their interaction with the criminal justice system.

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime call for support to child victims and witnesses that transcends mere legal processes⁶ The Guidelines encourage provision of not only legal services that include advice or representation, but also health, psychological, social and other relevant services.

2.2.5 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

This international instrument which is also referred to as the 'international bill of rights for women' was adopted in 1979 by the UN General Assembly. The instrument essentially spells out what in effect constitutes discrimination against women and lays out the agenda for national action against different forms of discrimination. Uganda is a state party to this

⁶ UN Economic and Social Council 'Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime' E/2005/INF/2/Add.1.



legislation having signed on 30th July 1980 and ratified the same on 22nd July 1985.

The right of access to justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. Article one of the Convention defines discrimination against women as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Important to note that article 2 stipulates that States parties must take all appropriate measures to guarantee the substantive equality of men and women in all areas of life, including through the establishment of competent national tribunals and other public institutions to ensure the effective protection of women against any act of discrimination. While article 15 of the Convention provides that women and men must have equality before the law and benefit from equal protection of the law. On the other hand article 3 of the Convention lays out the need for appropriate measures to ensure that women can exercise and enjoy their human rights and fundamental freedoms on a basis of equality with men.

Uganda as a state party to this Convention, has committed itself to undertake a series of measures to end discrimination against women in all forms, including but not limited to incorporating the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women.

2.2.6 The Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted by the United Nations General Assembly on 13 December 2006. Uganda signed the Convention 30th March 2007 and ratified it on 25th September 2008.

Article one sets the purpose of the Convention as being to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. It goes further to define Persons with disabilities as including those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

The Convention under article 13 provides for the ‘access to justice’ wherein it is stated that States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. To this end, States Parties are enjoined to promote appropriate training for those working in the field of administration of justice, including police and prison staff.

2.2.7 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) 1995

The Beijing Rules were adopted by the United Nations General Assembly resolution 40/33 of 29 November 1985. The Rules in essence represent the minimum conditions which are accepted as suitable by the United Nations for the handling of juvenile offenders under any justice system of dealing with such persons.

Under Rule 1.4, juvenile justice is regarded as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

Although, the Beijing Rules do not expressly spell out the right to access to justice in the text, it is provided under Rule 13.3 that juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations. Further to the above, Rule 13.5 states that while in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.

2.3 Regional Human Rights Instruments

2.3.1 The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights is a homegrown continental human rights instrument, also referred to as the Banjul Charter. The Banjul Charter recognises the rights and freedoms of African citizens in the political, social, economic and cultural spheres, both individually and collectively.

The Banjul Charter recognises all persons as equal before the law and as being entitled to equal protection of the law. Principles promoting access to justice can be read in the provisions of Article 7 that recognise the right of every individual to have his cause heard. This includes the right to defence, including the right to be defended by counsel of his choice. This provision is not stated specifically as the right to free legal representation, but it is implied in that the latter part of the sentence provides the option for an individual to choose his or her own legal representative.

2.3.2 The African Charter on the Rights and Welfare of the Child

This charter sets out by recognizing from the outset that the 'needs of the child due to his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security'. Within that framework, it recognises the rights of children in the area of civil, political, economic and social cultural rights. Article 4 addresses the legal status of the child in judicial proceedings within the principle of the best interests of the child. It notes that children's views must be respected in all n all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views.

Article 17 addresses Juvenile Justice for children in conflict with the law. It requires that such a child shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence. Further, such trials are to be determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal.



Such a positive provision entails an understanding that children are to be availed legal aid to enable them realise their rights to access justice in a meaningful manner.

2.3.3 The Protocol on the Rights of Women in Africa (Maputo Protocol)

The Maputo Protocol is ground breaking in terms of standard setting for the protection of women's rights, and is reflective of several concerns that African women face. The protocol recognises the rights of women and their freedom from all forms of discrimination. Unlike other international instruments on women's rights, it has a specific article on access to justice, with far reaching implications. Article 8 recognises the right of access to Justice and Equal Protection before the Law, noting that women and men are equal before the law and shall have the right to equal protection and benefit of the law. Specifically, it highlights the right to effective access by women to judicial and legal services, *including legal aid*.

The Maputo Protocol also provides for b) support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid; c) the establishment of adequate educational and other appropriate structures with particular attention to women and to sensitise everyone to the rights of women; d) that law enforcement organs at all levels are equipped to effectively interpret and enforce gender equality rights; e) that women are represented equally in the judiciary and law enforcement organs; f) reform of existing discriminatory laws and practices in order to promote and protect the rights of women.

On the continent, this instrument provides by far the most comprehensive compulsion to remove *de facto* and *de jure* barriers to accessing justice, including through the provision of legal aid.

2.3.4 African Youth Charter

The Africa Youth Charter is an instrument of the African Union. The Charter from the outset notes with concern the marginalisation of youth from mainstream society through inequalities in income, wealth and power among other things. It also notes their plight of unemployment and underemployment, poverty and hunger, illiteracy and poor quality educational systems, restricted access to health services and to information, exposure to violence including gender violence, engagement in armed conflicts and experiencing of various forms of discrimination.

The Charter recognises the socio-economic and civil and political rights of youth in Africa. contains although it does not provide for a right to effective remedies for breaches of these rights, nor equal protection of the law. Article 18 on law enforcement enjoins states to ensure that accused and convicted young people are entitled to a lawyer.

2.4 Other instruments (Soft Law)

2.4.1 Resolution on the Right to Fair Trial and Legal Aid in Africa (Dakar Declaration)

This is a resolution of the African Commission on Human and Peoples' Rights made in 1999. It frames the right to legal aid within the context of fair trial guarantees and rule of law, noting that it is a non-derogable and fundamental human right. It recognises the impact of other role players in the administration of justice, such as military courts and Traditional Courts but highlights their potential shortcomings that may deny a person the right to a fair trial. Other important stakeholders such as lawyers and other human rights defenders including paralegals are mentioned in the Declaration and the potential harassment they



may face in trying to protect the rights of victims.

The Dakar Declaration recognises that 'most accused and aggrieved persons are unable to afford legal services due to the high cost of court and professional fees' and obligates governments to provide legal assistance to indigent persons to actualise the right to a fair trial. The Declaration calls on Governments to also encourage contribution of the judiciary, human rights NGOs and professional associations.

In addition, the Declaration makes several important recommendations. Among others, it calls for innovations to determine how legal assistance could be extended to indigent accused persons, including through adequately funded public defender and legal aid schemes. It also seeks to promote collaborations with Bar Associations and NGOs to enable the establishment of innovative and additional legal assistance programmes, including the provision of legal assistance by allowing paralegals to indigent suspects at the pre-trial stage and pro-bono representation for accused in criminal proceedings. Further, it recognises the need to protect the rights of victims of crime and abuse of power and their defenders, which is key to protecting the vulnerable and marginalized.

2.4.2 The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa 2004

This Declaration is a pronouncement of delegates to a Conference on Legal Aid in Criminal Justice titled 'the Role of Lawyers, Non-Lawyers and other Service Providers in Africa' that was meant to be an advocacy tool for governments, the African Union and other stakeholders. Due to its relevance and import, the African Commission formally adopted it in 2006.⁷ The United Nations Economic and Social Council too adopted the Lilongwe Declaration, which is illustrative of the normative value of this Declaration.⁸

The Declaration links access to justice to due process, a fair hearing and to legal representation. It also recognises the systems lack of access in Africa to legal aid among the poor. It also notes the absence of legal advice and assistance in police stations and prisons are absent, leading to various violations of suspects.

This comprehensive document calls on governments to deliver legal aid to the poor and vulnerable, especially women and children. Further, it recommends broad and expansive definitions of Legal aid to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution. The Declaration calls for the participation of a wide range of actors in the provision of legal aid, including NGOs, CBOs, FBOs, professional bodies and associations, and academic institutions.

Other areas touched on include: providing legal aid at all stages of the criminal justice process; recognising the right to redress for violations of human rights; recognising the role of non-formal means of conflict resolution; diversifying legal aid delivery systems; diversifying legal aid service providers; encouraging pro-bono provision of legal aid by lawyers; guaranteeing sustainability of legal aid and Encouraging legal literacy. The Declaration in addition details an Action Plan of implementation.

⁷ Resolution on the Adoption of the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System <http://www.achpr.org/sessions/40th/resolutions/100/> (Accessed: 15 August 2015).

⁸ ECOSOC Resolution 2007/24 'International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa'.



2.4.3 The Kyiv Declaration on the Right to Legal Aid Conference on the Protection and Promotion of Human Rights through Provision of Legal Services, 2007

This Document is the outcome of a conference of 115 practitioners in 2007; it is meant to influence among others national governments, legal aid bodies and organisations. It is a far-reaching document in stating many important principles of access to justice as human rights.

The preamble recognises that citizens of many states are denied access to justice and are ignorant about their human and legal rights and procedures. It states that justice for all can only be realised when its rules and operation are understandable and accessible to all, and that the provision of legal aid is a vital in promoting access to justice.

The preamble also highlights the benefits of legal aid, including elimination of unnecessary detention, speedy processing of cases, fair and impartial trials and dispute resolution, the reduction of prison populations, the lowering of appeal rates, decreased reliance on a range of social services, the advancement of social and economic rights, and greater social harmony.

The Declaration covers 14 key areas; Recognizing and supporting the right to legal aid in the justice system: Providing legal aid at all stages of the justice process: Sensitising all government officials: Viewing legal aid as one means of ensuring a justice system that is accessible and available to all: Cooperating with other stakeholders and the public: Recognizing the right to redress for violations of human rights: Recognising the role of non-formal means of conflict resolution: Diversifying legal aid delivery systems: Diversifying legal aid service providers: Encouraging pro bono provision of legal aid by lawyers: Guaranteeing sustainability of legal aid: Promoting legal literacy through legal education and advocacy: Ensuring access to justice in programmes of assistance to justice systems in developing and transitional countries and: Guaranteeing a secure environment for the provision of legal aid.

2.4.4 Sustainable Development Goals (SDGs)

During the recently held United Nations Sustainable Development Summit of 25th September 2015, the 2030 Agenda for Sustainable Development was adopted by world leaders. In essence, it contains a set of 17 Sustainable Development Goals (SDGs) to end poverty, fight inequality and injustice, and tackle climate change by 2030.

The Sustainable Development Goals, also known as the Global Goals will build on the Millennium Development Goals (MDGs) that were adopted in 2000. The SDGs go much further than the MDGs since they aim at addressing the root causes of poverty and the universal need for development that works for all people.

Goal 16 of the Sustainable Development Goals is dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels. Some of the key targets linked to this goal with regard to access to justice for the poor, marginalized and vulnerable include: promoting the rule of law at the national and international levels and ensure equal access to justice for all; developing effective, accountable and transparent institutions at all levels; ensuring responsive, inclusive, participatory and representative decision-making at all levels; ensuring public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements; and promoting and enforce non-discriminatory laws and policies for sustainable development.



2.5 National Policy Frameworks

2.5.1 The National Development Plan

Uganda is currently implementing its Second National Development Plan, 2010/11 - 2014/15. The Second NDP (NDP II) is the ultimate planning framework for all sectors in Uganda, and offers overarching principles and priorities for achieving development in the country. JLOS is identified as an enabling sector. Enabling sectors are understood to refer to those sectors that 'provide a conducive environment and framework for efficient performance of all sectors of the economy'.⁹

The focus of JLOS as noted in the NDP is on the poor and the marginalized groups.¹⁰ To that end, JLOS has been undertaking reforms around removing barriers to access to justice, such as case backlog, physical distance, technical barriers, poverty, and lack of access by women and marginalized groups.

Objective 3 of the NDP III focuses on Enhancing access to "Justice for All", particularly for the poor and marginalized. The strategies focus physical access and availability of JLOS institutions and functions largely on construction and renovations of physical premises as well as equipping offices and courts in prioritizing hard to reach areas and post conflict areas. Another strategy is the development of enabling policy and a framework for provision of legal aid countrywide and the development, implementation and integration of innovative pilots and low cost model of legal aid including paralegal advisory services, juvenile justice and use of paralegal services.

However, a criticism of the JLOS SIPs is that despite well-formulated objectives striking a balance between supply and demand, they tend to address more supply side issues than demand side.¹¹ Thus the results areas tend to emphasize physical accessibility such as infrastructure, construction and addressing systemic and institutional bottlenecks, more than on those accessing the service and their ability to understand and claim rights legal rights from appropriate dispute mechanisms. In particular, the poor and vulnerable are often the most challenged in their knowledge of laws, procedures and mechanisms of access. The involvement of the non-state actors who are a critical link to the demand side has been viewed as 'perfunctory' and 'vague in its actuation'.¹²

In response to some of these critiques, JLOS SIP III has made significant reference to these two issues, and in its ensuing programmatic and policy stance, as will be discussed later.

2.5.2 JLOS Strategic Investment Plan SIP III

JLOS institutions are currently implementing the third strategic investment plan (SIP III) under the sector wide approach. There is no legal framework in which access to justice is being pursued, but under JLOS SIP III, a law on Access to Justice Act is envisaged. JLOS since SIP I in 2000 has focused on how to improve the efficiency, effectiveness, fairness, outreach and scope of the institutions involved in administering justice and ensuring that it reaches those most in need, the poor and vulnerable. From SIP I to SIP III, several challenges to the attainment of sector goals have been registered in various reports and joint reviews with partners. Civil society organisations working on access to justice issues have attempted to

⁹ National Development Plan (2010/11 - 2014/15), 2010 page 22.

¹⁰ National Development Plan (2010/11 - 2014/15), 2010 page 291.

¹¹ The Republic of Uganda (2010), *Justice Law and Order Sector (JLOS) Mid Term Evaluation Final Report*, page 37.

¹² Ibid page 8.



work closely on law and order issues with varying degrees of success, and the magnitude of the demand for justice services is overwhelming.

JLOS SIP III has many far reaching principles, goals and targets to ease access to justice for all, and in particular, poor and vulnerable. Enhancing Access to Justice for vulnerable persons is one of 3 outcome areas. The list of who is vulnerable is expansive and includes the persons whose access to JLOS services is limited by:-

Age; material and knowledge poverty; physical impairment; powerlessness; gender based barriers and may extend to minority groups; Internally displaced persons; migrants; children; suspects and prisoners; refugees; persons living with HIV/AIDS; persons with disability among others.

The outputs under this outcome area are four: *Rationalized physical de-concentration of JLOS services; Construction of JLOS House; Effectiveness to meet Service Delivery standards improved; improving user empowerment services and Vulnerability profiled and discrimination and bias in access to JLOS Services eliminated.* The outputs show a reasonable balance between the supply and demand side tensions that have plagued the sector.

Another important strategy of SIP III is to focus on the use of alternative conflict resolution mechanisms (ADR) in the areas of criminal, commercial, land and family justice) with emphasis to conflict affected areas of Northern Uganda. The incidence of conflict in Northern Uganda as well as its gravity and duration has resulted in severe vulnerability as will be seen, requiring heightened vigilance and sustained measures to redress some of the extremities that have occurred in the region, aggravating vulnerability, poverty and marginalisation. The provision of much needed services in the area is essential in ensuring access to justice for persons seeking to assert their rights in the political, economic and socio-cultural sphere.

The JLOS strategy on strengthening the capacity of local council courts to ease access to justice is critical to the poor, vulnerable and marginalized accessing justice at the most basic unit, the community level. This has the potential to ease case disposal and make justice physically accessible. However, concerns have persisted since the outset of the establishment of these courts over their fairness and capacity to administer justice effectively, and this is a gap that must be plugged in the lifetime of SIP III.

SIP III also focuses on minimising technicalities that hamper access to justice. In particular, the emphasis on developing a comprehensive information dissemination strategy, simplifying laws and translating into local languages and strengthening community policing programmes is critical to empowering rights holders particularly the poor and vulnerable who tend to be functionally illiterate. The focus on SGBV and building the capacity of capacity of JLOS institutions and stakeholders to address and fast track cases of Sexual Gender Based Violence (SGBV) is essential to protect the rights of women suffering from multiple forms of vulnerability.

The establishment of the Justice Centres of Uganda is a remarkable and significant development in the realization of access to justice for hitherto unreached groups. Justice Centres are JLOS initiatives geared at promoting the rights of vulnerable communities



through provision of quality human rights based legal aid, legal rights awareness, community outreach, empowerment and advocacy.¹³ Services offered to only the most indigent persons include Legal Advice, Legal representation, Alternative Dispute Resolution (ADR), Counseling, Legal Awareness, Referrals and a Toll free phone line.

2.6 National Legal Framework

2.6.1 The 1995 Constitution of Uganda

The 1995 Constitution of Uganda has far reaching provisions contained in the Bill of Rights that guarantee fundamental rights and freedoms for Ugandans. When these rights are breached, the Constitution provides that for civil and criminal processes, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.¹⁴ These are important due process guarantees that anchor the procedural and substantive aspects of access to justice. In respect of persons charged with an offence that carries a sentence of death or imprisonment for life, the provision of legal aid in the form of free representation is framed as an entitlement at the expense of the State.¹⁵ Thus the Constitution limits legal aid services for indigent persons to the realm of criminal law. However, Government of Uganda and JLOS have extended the provision of legal aid to civil rights, in the form of the Justice Centres.

The Legal Aid Bill is a fundamental document that embraces a paradigmatic shift towards rights based approaches to justice for the poor, vulnerable and marginalized. It is primarily made in furtherance of the objective of providing accessible, affordable, sustainable, credible and accountable legal aid services to indigent persons. The timely passing of the Legal Aid Bill into law will help to consolidate gains made towards realising access to justice for vulnerable groups.

2.6.2 The Legal Aid Policy and Draft Bill

The Bill contains provisions covering various areas of relevance to access to justice, including the determination of who can access legal aid and who can provide it and under what circumstances. It also addresses the role of important service providers such as civil society and NGO entities, magistrates, and quite significantly, the involvement of community based resource persons – paralegals. It also regulates the accreditation of legal aid service providers.

2.6.3 The Children Act, Cap. 59

The Children Act reiterates many of the positive and enabling positions contained in the CRC. The Children Act provides legal assistance for children in need of care and protection in conjunction with the Local Councils, one of whom is in charge of children affairs by virtue of office. One of the functions of this functionary is to protect the properties of orphans under Section 10(3).

This law also looks at community based resources to give legal assistance to children. Fit persons have been appointed under the provisions of the Children Act to facilitate the work of the judiciary for children in conflict with the law. Fit persons are community based people who are given temporary custody of children under the Children Act as an alternative to remand or institutionalization for children in conflict with or contact with the

13 <http://www.jlos.go.ug/old/index.php/2012-09-25-11-09-41/legal-aid/justice-centers> (Accessed: 13 September 2015).

14 Article 28 (1).

15 Article 28 (2) (e).



law under Section 37 (Removal of a child under emergency protection), 87 (Unfit parents-during divorce, separation and nullity proceedings) and 91 (children on remand) of the Children Act.

Organisations like Legal Aid Clinic of the Law Development Centre and the JLOS Justice for Children initiatives are working with Fit persons to protect children. It is notable that Sections 37 and 87 relate to children who are at risk of suffering physical or psychological harm. The applicability of Section 37 is not necessarily linked to a legal process and this is a good example of assistance being extended as a prelude court related processes or even totally non-related.

2.6.4 Persons with Disabilities Act of 2006

Uganda ratified the Convention on the Rights of Persons with Disabilities was ratified by Uganda on 25 September 2008 and its optional protocol, both without reservations. This Convention contains several far reaching provisions on the rights of PWDs. Uganda also observes the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities which call for recognition of the overall importance of accessibility in the process of equalisation of opportunities in society.

The Persons with Disabilities Act defines disability as “a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting in limited participation”. This definition reflects a human rights based approach that closely resembles the definition of the UN Convention on the Rights of Persons with Disabilities. A National Policy on Disability buttresses the law. The Act contains several positive provisions that ensure legal protection and equal opportunities for persons with disabilities.

Article 14 of the UN Convention on the Rights of Persons with Disabilities 2006 requires government to ensure effective access to justice for PWDs on an equal basis with others. This is to be done in various ways including through the provision of procedural and age-appropriate accommodations with a view to facilitating their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

What amounts to reasonable accommodations has been defined in the UN Convention on the Rights of Persons with Disabilities ‘necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’. There are deep reaching implications for the obligation on JLOS to ensure access to justice within the meaning of reasonable accommodation.

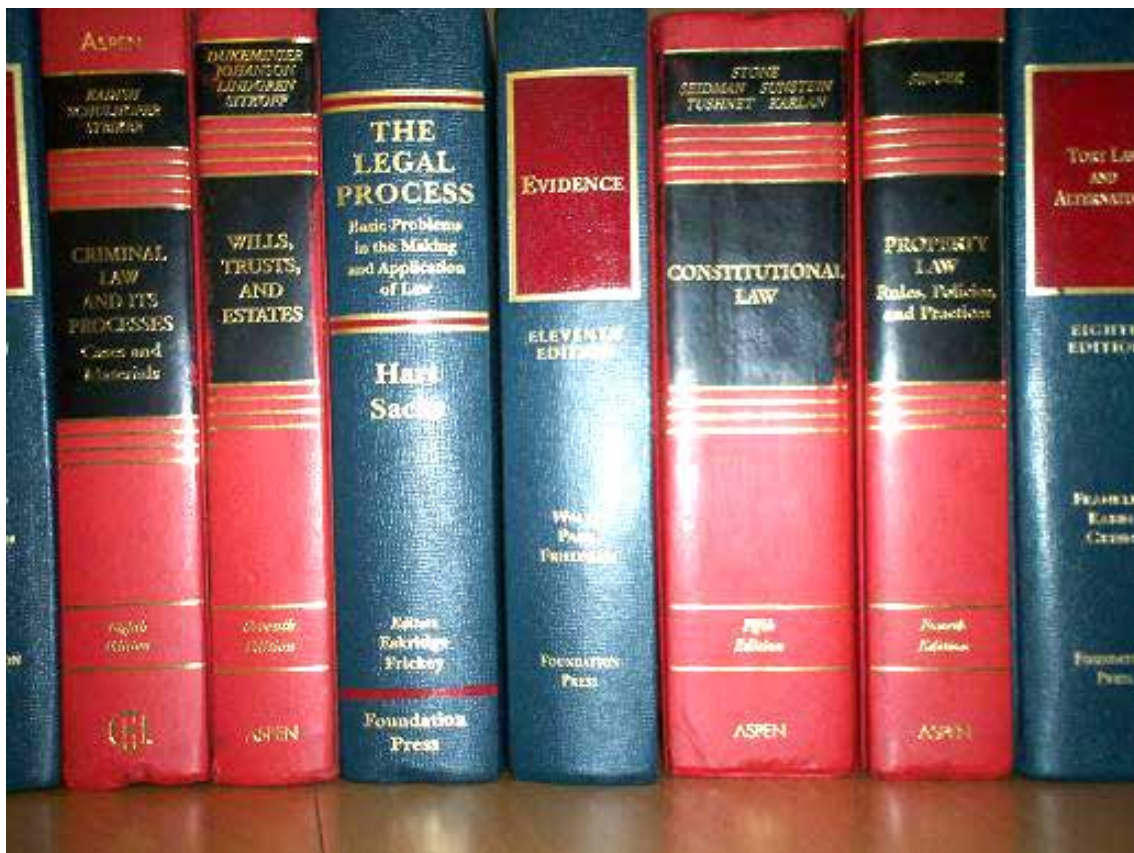
Section 25 of the Persons with Disabilities Act prohibits JLOS actors from accessing justice services, including by refusing to provide the service to the person or by making it impossible or unreasonably difficult for the person to use the service. The Act in Article 26 and 27 obligates the JLOS law enforcement agents to provide physical accessibility and auxiliary aid or services to enable a person with a disability to use the service. The Evidence Act Cap 6 has made accommodations for people with hearing disabilities allowing them to give evidence in sign language or writing, but this is limited to people with hearing disabilities and does not cover other types of disabilities such as sight.

2.6.5 Pauper Suits under the Civil Procedure Rules

Order 33 of the Civil Procedure Rules, made under the Civil Procedure Act, Cap. 65, provides for Pauper Suits. It states that "Subject to the following provisions of this Order, any suit may be instituted by a pauper. For the purposes of this Order a person is a "pauper" when he or she is not possessed of sufficient means to enable him or her to pay the fee prescribed by law for the plaint in the suit." Whereas this is a very useful provision for enhancing access to justice, the conditions for pauper suits are so stringent that few people would be able to file such suits without legal assistance. For instance, the pleadings must be set out as prescribed under the Rules, and the application must be properly signed. The application must be presented in person, and the court requires evidence of the applicant's pauperism. Nonetheless these provisions are useful for LASPs filing civil claims on behalf of the poor, vulnerable and marginalised.

2.6.6 Other Laws

There are a number of other Acts that have a bearing on access to justice. These are mainly the Acts that create jurisdiction of Courts and other bodies to hear disputes and dispense justice. They include the Judicature Act, Cap. 12, the Magistrates' Courts Act, Cap 16 and the Local Council Courts Act of 2006. It should also be noted that their customary courts and tribunals dispensing justice that are currently not regulated by any law. The Bataka Courts in Kagadi are a local initiative to improve access to justice but they too are not regulated. The Qadi Courts are mentioned in Article 129 (1) (d) of the 1995 Constitution of Uganda but an Act to define their powers and procedure has never been passed. The manner in which jurisdiction over various causes is defined and exercised is a crucial element on access to justice. A further analysis of jurisdiction issues and their role in access to justice is called for.





3.0 INVESTIGATING THE LINK BETWEEN POVERTY, VULNERABILITY AND MARGINALIZATION AND ACCESS TO JUSTICE IN UGANDA

3.1 Access to Justice – What does it mean?

The United Nations defines Access to Justice as “a process which enables people to claim and obtain justice remedies through formal or informal institutions of justice, and in conformity with human rights standards.”¹⁶

To explore the issues relating to poverty, marginalisation and access to justice, it is important to delineate the meaning of “justice.” Rawls developed the model of “*justice as fairness*,”¹⁷ encompassing ideas of both freedom and equality. Another way to look at justice is to perceive it through the eyes of the ‘end-user,’ an approach favoured by institutions such as the European Union.¹⁸ The end-user in this context understands justice as the amount of fairness that people experience and perceive when they take steps to solve disputes and grievances. This understanding of justice has also been named bottom-up justice.¹⁹

Bedner and Vel of the University of Leiden Van Vollenhoven Institute, in their paper “An analytical framework for empirical research on Access to Justice”²⁰ suggest a broad definition of Access to Justice, which takes the perspective of the justice seeker as its point of departure and looks at the process this justice seeker has to go through to achieve appropriate redress. The various elements in the definition leave room to see Access to Justice as a process and not merely as a situation or a goal. This approach is crucial because it upholds the rights-based approach to programming for access to justice. In their conceptualisation; access to Justice exists if:

People, notably poor and vulnerable

Suffering from injustices

Have the ability

To make their grievances be listened to

And to obtain proper treatment of their grievances

By state or non-state institutions

Leading to redress of those injustices

On the basis of rules or principles of state law, religious law or customary law

16 United Nations Development Programme (UNDP), (2005), *Programming for Justice: Access for All. A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice*, Thailand: UNDP.

17 Rawls, J. (1971), *A theory of Justice*, Cambridge, MA: Harvard University Press. Quoted in the Stanford Encyclopaedia of Philosophy.

18 Executive Summary, *Concept paper on Monitoring and Evaluation of the Rule of Law and Justice in the EU*, page i.

19 Ibid.

20 Bedner, A. & Vel, J.A.C., (2010), *An Analytical Framework for Empirical Research on Access to Justice*, 2010(1) Law, Social Justice & Global Development Journal (LGD). http://www.go.warwick.ac.uk/elj/lgd/20010_1/bedner_vel (Accessed: 13 September 2015).

In accordance with the rule of law

This is a comprehensive, rights-based definition that is centred on justice seekers' point of view and will therefore provide an acceptable standard of analysis in this study. The emphasis that redress obtained must be in accordance with the rule of law, that is, the principle of equality before the law, is crucial because some aspects of religious, customary and even State Law may be discriminatory and exacerbate rather than redress grievances.

3.2 Poverty

Uganda has experienced economic growth in the past two decades, although the trajectory has not always reflected a smooth course. The Second National Development Plan of Uganda (NDP II) indicates that the Ugandan economy grew from the implementation of the Poverty Eradication Action Plan from an average Gross Domestic Product (GDP) growth rate of 7.2% between 1997/98 and 2000/01 to 6.8% between 2000/01 and 2003/04, increasing to 8% over the period 2004/05 to 2007/08.²¹ In 2014 Uganda experienced a gradual recovery of economic activity, with real GDP growth projected to reach 5.9% in FY 2014/15 from 4.5% growth in FY 2013/14.²²

Despite this evidence of economic growth, several challenges have continually confronted the country, leading to a high incidence of poverty. These include debt crisis, low agricultural productivity; low human resource development largely reflected in unskilled workers; poor connective infrastructure; insecurity and armed conflict in various pockets; disasters and persisting environmental degradation. Malaria is also identified as a leading cause of poverty and low productivity.²³

The various constraints and persistent poverty have had an adverse effect on the quality of life of many Ugandans as reflected in several poverty and social indicators. The impact of these challenges to human development affects the majority of Ugandans, but certain groups are more predisposed to extreme and adverse effects of underdevelopment in a manner that is deleterious to their welfare and human rights. These are inevitably the poor and vulnerable who end up being marginalised and disadvantaged in such conditions, and they more often than not get trapped into a vicious cycle of poverty whose most extreme form is chronic poverty.

The causal-effect linkages between the situation of poverty and the consequential limitations on the enjoyment of human rights in various categories of populations at risk will be discussed in this section. The correlation between poverty and vulnerability leading to marginalisation will also be established. The underlying tensions between vulnerability and access to justice for poor and vulnerable groups will be examined, the overarching notion being that access to justice is the gateway to extending a human rights framework to the problem of inequality in the political, economic and social-cultural sphere.

In this regard the centrality of access to justice is fundamental as a mechanism for the possible reversal of some of the most harmful aspects of vulnerability, including victimisation and chronic poverty. The UN Special Rapporteur on Extreme poverty and Human rights has acknowledged the importance of access to justice as a 'fundamental tool for tackling poverty', recommending its inclusion as a stand-alone goal or as a target in the post-2015

21 Republic of Uganda, National Development Plan (2010/11 - 2014/15), 2010.

22 Kintu V O, Rwabizambuga A, Sedegah K, Muhumuza T 'Uganda' <http://www.africaneconomicoutlook.org/en/country-notes/east-africa/uganda/> African Economic Outlook (Accessed: 9 September 2015).

23 UNDP, *Drivers of MDG Progress in Uganda and the Implications for the Post-2015 Development Agenda* (2013), page 29.



development agenda.²⁴

3.2.1 Poverty, Marginalization and Vulnerability in Uganda

Poverty, marginalization and vulnerability are key factors in assessing the rights and welfare of citizens. From a human rights perspective, poverty is understood as a multidimensional phenomenon that includes as one of its components chronic social, political and economic inequality or 'a human condition characterized by the sustained or chronic deprivation of resources, capabilities, choices and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights'.²⁵ Further, the UN Special Rapporteur on Extreme poverty and Human rights links extreme poverty to extreme inequality, positing the issue of poverty within a human rights narrative and arguing that 'a human rights framework that does not address extreme inequality as one of the drivers of extreme poverty... is doomed to fail'.²⁶

3.2.2 Poverty trends analysis in Uganda

In the last two decades, Uganda has implemented several sectoral policy and programmatic interventions and measures in the fight against poverty with some level of success in the socio-economic sector. This can be deduced from the significant reduction of the population living below the poverty line from the previous rate of 56% in 1993²⁷ to 31% in 2005²⁸ and 24.5% in 2009²⁹. The Uganda National Household Survey 2012/13 indicates that the percentage of the people living in absolute poverty declined by 4.8% points from the 24.5% reported in 2009/10.³⁰

Nonetheless, 19.7% of Ugandans are poor, which is approximately 6.7 million persons. Despite recorded decline in poverty, this has not translated in sustained or significant progress in the general welfare of Ugandans. In Uganda, only two out of the seventeen MDG targets have been met, with some reversals and stagnancy in key social indicators such as maternal health, HIV AIDS.³¹ Uganda ranked 161st out of 187 countries on the United Nations Development Programme's Human Development Index in 2012 in the Low Human Development category.³² In 2014, it ranked 164 out of 187 countries on the Human Development Index.³³ The NDP II starkly states that '*Uganda is judged to be amongst the most vulnerable and least climate resilient due to poverty and low income diversity*'.³⁴ Moreover, approximately 43% of the population risks falling back into poverty in the event of a shock.³⁵

²⁴ M. Sepulveda (2013), *Equality and Access to Justice in the Post 2015 Development Agenda*, page 3.

²⁵ E/C.12/2001/10, para.8.

²⁶ UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights*, A/HRC/29/312015.

²⁷ UNDP 'Eradicate Extreme Poverty and Hunger in Uganda' <http://www.ug.undp.org/content/uganda/en/home/mdgoverview/overview/mdg1/> (Accessed: 12 September 2015).

²⁸ National Development Plan (2010/11 - 2014/15), 2010.

²⁹ Rural Poverty in Uganda <http://www.ruralpovertyportal.org/country/home/tags/uganda> (Accessed: 12 September 2015).

³⁰ Uganda Bureau of Statistics 'Uganda National Household Survey 2012/13' page 84

³¹ Millennium Development Goals Report for Uganda 2013 'Drivers of MDG Progress in Uganda and Implications for the Post-2015 Development Agenda' 2013.

³² Republic of Uganda, Uganda National Household Survey 2012/13, page 87.

³³ United Nations Development Programme, *Human Development Report 2014*, 2014.

³⁴ National Development Plan (2010/11 - 2014/15), 2010 page 315.

³⁵ Republic of Uganda, *Poverty Status Report 2014 -Structural Change and Poverty Reduction in Uganda*, 2014.

One of the biggest challenges on the poverty landscape is the marked regional inequality, with the central and western regions being more markedly developed than the other regions. The following table illustrates the extent and incidence of income inequality at the regional level over fourteen years, showing a consistent pattern.

Box 1: Comprehensive UNHS 2005/06 and World Bank calculations³⁶

Inequality Gini Coefficient For Uganda				
Region/Year	1992/93	1999/00	2002/03	2005/06
National	0.37	0.40	0.43	0.41
Urban	0.33	0.33	0.36	0.43
Rural	0.40	0.43	0.48	0.36
Central	0.40	0.42	0.46	0.42
Eastern	0.33	0.35	0.36	0.35
Northern	0.34	0.34	0.35	0.33
Western	0.32	0.32	0.36	0.34

Data from six years later from the Uganda National Household Survey (UNHS) 2012/13 reveals that little has changed in the regional disparities, with the rural regions being disproportionately affected by poverty.

Location	2005/06	2009/10	2012/13
Uganda	8.4	7.5	6.7
Residence			
Rural	7.9	7.1	6.0
Urban	0.6	0.4	0.7
Region			
Central	1.3	0.9	0.4
Eastern	2.5	2.2	2.5
Northern	3.5	2.8	3.1
Western	1.4	1.6	0.7

Box 2 Poor Persons in Millions 2005-2013 (UNHS 2012/13)

³⁶ National Development Plan (2010/11 - 2014/15), 2010 page 14.



Statistics from the UNHS 2012/13 reveal that the rural areas, which hold about 77% of the population, constitute 89% of national poverty. The NDP II and UNHS 2012/13 both show that the greater proportion of the population living under the poverty line is located in the Northern region, explaining this result as arising from the prolonged insecurity the region experienced for over 20 years. According to the UNHS 2012/13, poverty incidences remain highest in the Northern region (44%) and least in the Central region (5.1%). At sub-regional level, Karamoja in North East dominates with 75% being income poor, followed by West-Nile (42%) and Mid-North (36%).

The NDPII observes that the mean consumption of the richest area (Kampala) is 2.5 times that of the poorest area (Northern region). There is a wide gap between poverty rates in rural areas compared to urban areas i.e. 34% and 14% respectively and greater income inequality in the urbanised central region.³⁷ In the richer area of central region, the UNHS 2012/13 shows that in the central region more poor people reside in Central II and Mid-West than in Central I and South West sub-regions.

Similarly, the Uganda Demographic and Health Survey Report of 2011 points out to regional disparities in the wealth index.³⁸ The statistics show that in urban areas three-quarters of the population is in the highest wealth quintile compared to only one in nine persons in the highest wealth quintile in the rural areas. Also significant is the finding that over 90% of the population in Kampala is in the highest wealth quintile against other regions with 35% or lower. In Karamoja, eight out of ten households are in the lowest quintile; In North, West Nile, and Eastern regions, 33% or more of the households are in the lowest quintile.

3.2.3 Understanding the concept of poverty

The definitions of poverty are varied and often tend to be highly contested, depending on the discipline and perspective³⁹ It has been suggested that in Uganda the scope of poverty reflects a lower measurement of poverty than usual; *'the poverty line used in Uganda is set at a very low level by international standards, equivalent to 'extreme poverty' or 'food poverty' in other countries. This represents the very bare minimum level of consumption needed for survival.'*⁴⁰ Such a perception reveals a grim picture of poverty in Uganda, which is tagged to survival.

Most poor Ugandans are not only poor, but they are chronically poor. **Chronic poverty** is the type that traps households into severe and multi-dimensional poverty and can take on an intergenerational form to the effect that those born in poverty live in it and bestow it on their children.⁴¹ Similarly, it can also be said that the majority of Ugandans are trapped in **absolute poverty**. The World Bank describes absolute poverty lines as being based on a baseline of basic essentials that households need, and this is contextual.⁴²

37 UNDP 'Eradicate Extreme Poverty and Hunger in Uganda' <http://www.ug.undp.org/content/uganda/en/home/mdgoverview/overview/mdg1/> (Accessed: 12 September 2015).

38 Uganda Bureau of Statistics (2011), *Uganda Demographic and Health Survey*, page 16

39 David Gordon, *The concept and measurement of poverty*, Extract from: Pantazis, C., Gordon, D. and Levitas, R. (2006) *Poverty and Social Exclusion in Britain*, Bristol, The Policy Press.

40 Ministry of Gender (2012), Labour and Social Protection 'Uganda Social Protection Public Expenditure Review', page 1.

41 Moore, K., Hulme, D., A Shepherd. "Chronic Poverty: Meanings and Analytical Frameworks." In *Chronic Poverty in India*, ed. Mehta, A. Ghosh, S. Chatterjee, D. Menon, N, New Delhi: Indian Institute of Public Administration, 2003. eScholarID:3b322

42 World Bank 'Choosing and estimating a poverty line' <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20242879~menuPK:492130~pagePK:148956~piPK:216618~theSitePK:430367,00.html> (Accessed: September 15).



The United Nations maintains '*Absolute poverty is a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to social services*'⁴³ It is clear that the Ugandan standard of poverty closely mirrors this definition as will be illustrated below.

Uganda's Participatory Poverty Assessment (UPPAP) Project Report, 2002 documents how Ugandans perceive poverty, perceiving it as '*poverty beyond the lack of income and material assets to include the absence of social aspects that support life*', some of which are listed as soap, food, sugar, medicine and freedom from hunger and disease.⁴⁴

The UPPAP reflects perceptions of Ugandans around the distinction between individual and community-level poverty. At the personal level, poverty is defined by local people as '*inability to meet the basic necessities of life, poor access and quality of social services and inadequate infrastructure*'.⁴⁵ Thus at individual or household level poverty relates to disempowerment and helplessness. Community level poverty is seen as lacking benefits enjoyed in common or collectively, such as basic physical infrastructure and services, productive assets and social harmony within the community.

Respondents to this study considered poverty variously as including:

the inability of a person to afford the day-to-day needs of life such as food, clothing, shelter, medical care, and so on;

the highest degree of disempowerment;

having no income and being lonely – not having any family to identify with and no means of support.

The definition of poverty matters because not only does it set the standard by which we determine whether the incomes and living conditions of the poorest in society are acceptable or not, but also because the definition adopted is essential for determining questions of fairness. The definition then influences the solutions adopted and actions to help the poorest.⁴⁶

Poverty is a dynamic concept as reflected in its various formations or contexts. For example, officials and social commentators in eighteenth century France distinguished between the *pauvre* and the *indigent*. The former experienced seasonal poverty when crops failed or demand for casual agricultural labour was low. The latter were permanently poor because of ill health (physical and mental), accident, age or alcoholism. The central aim of policy was to support the *pauvre* in ways that would stop them from becoming *indigent*.⁴⁷

Nonetheless, most official definitions of poverty use relative income to measure who is in poverty; an income threshold is set and those who fall below it are seen to be 'in poverty'.

⁴³ UN World Summit for Social Development Programme of Action - Chapter 2

⁴⁴ UPPAP page xiii, 25, page 160.

⁴⁵ UPPAP page 17.

⁴⁶ Poverty and Exclusion Research, at <http://www.poverty.ac.uk/definitions-poverty> (Accessed: 13 September 2015).

⁴⁷ Alex Addae-Korankye, *Causes of Poverty in Africa: A Review of Literature*, American International Journal of Social Science, Vol. 3, No. 7; December 2014.

The World Bank sets the threshold at \$ 1.25 a day,⁴⁸ and the Uganda Government takes a similar position. But while this is easy to measure and does provide useful comparisons over time, it is essentially an arbitrary definition that fails to take into account issues of justice and fairness which are crucial to this study.

A proposed alternative approach to defining poverty is to look at direct measures of deprivation rather than using income as a proxy for poverty. Looking at deprivation allows a wide range of aspects of living standards to be included. Peter Townsend, a renowned poverty scholar, argued that deprivation should not be seen only in terms of material deprivation but also in the social exclusion from 'the ordinary patterns, customs and activities' of society.⁴⁹ This conceptualisation of poverty can assist us to take into account how the poor are prevented from accessing justice. For instance, residing a long distance away from services, including formal justice institutions, most of which are in urban centres, is one way in which the poor are deprived of their rights.

Since poverty is relative, it is important to consider the fact that poverty and material deprivation are important drivers of stigma and shame. Poor people are often depicted as 'the other' through the use of particular language, labels and images about what it means to be in poverty. For instance, it is telling that in a number of local Ugandan languages, the word for "poor" is the same as or similar to the word for "lazy."⁵⁰ Capitalism's emphasis on entrepreneurship and the promise it holds that anyone can become rich if they try hard enough anomalises poverty and further fuels the stigma of being poor. In addition, media images may depict poor people as dirty and diseased, in a way that negatively stereotypes those who are disadvantaged. These factors may create an atmosphere where poverty is regarded as a moral failing and poor people are blamed for their situation. This in turn further prevents poor people from seeking and accessing justice when their rights are violated.

3.3 Drivers and impact of poverty



48 World Data Bank, World Development Indicators, http://databank.worldbank.org/data/reports.aspx?Report_Name=Poverty_Data_4&Id=d17dbedb (Accessed: 13 September 2015).

49 Peter Townsend (1979), *Poverty in the United Kingdom: A Survey of Household Resources and Standards of Living*, University of California Press, page 1).

50 In Luganda, poor is "Mwavu" and lazy is "Mugayavu." In Runyakore/Rukiga, poor and lazy is "Mworo."



According to the 2nd Uganda Chronic Poverty Report, the factors associated with chronic poverty include living in a rural area; living in Northern or Western Uganda; having a large family; having little education or low skills levels; being a member of a female headed household; being a widow, an orphan, a disabled person or a member of a 'gap generation family' (with children and grandparents but no economically active adults).⁵¹

Having large families has negative consequences for poor families as income growth cannot keep pace with the expansion of their households. Chronically poor households were larger than the national average (6.2 people compared to 5.4. Analysis shows that 1.1% fewer families would have fallen into poverty between 2005/6 and 2009/10 had their family not grown. Having a large family may also trap people in poverty because high dependency ratios make upward mobility more difficult.⁵²

Education also remains a key determinant of poverty in Uganda and children aged 6-12 in chronically poor households have fewer years of schooling than other Ugandan children, despite the introduction of the Universal Primary Education in 1997 and chronically poor households are less educated. So, labour shortages are not necessarily their key constraint, but poor education means that incomes are low.⁵³

Conflict and insecurity was found to be a powerful and long term driver of poverty and chronic poverty in Northern Uganda, with many of the barriers to poverty exit remaining even now after years of peace. Households in that part of the country are more likely to be widow-led, contain a disabled person or orphan, be 'gap generation households', have lower levels of education and be more likely to rely on subsistence agriculture. These factors all make exiting poverty more difficult. Elsewhere in the country many of these factors affect the population, but in Northern Uganda there are many more households facing multiple challenges. The study further established that poverty exit is tough if there are not enough adults able to bring in an income. Therefore, high dependency ratios, where there are few economically active adults in comparison with the numbers of children and older people, can push people into poverty and once there, they can become trapped.⁵⁴

Female headed and widow headed households are more likely to be chronically poor and nearly two out of three people living in chronic poverty are children. Being an orphan further increases the likelihood of being chronically poor and even though the proportion of children who are orphans has declined, nationally two out of ten households contain an orphan with higher proportions in the northern region.⁵⁵

The causes of poverty in Uganda are complex and varied, particularly in the case of rural poverty. Some of the underlying causes include the large size of households, low education levels and low asset holding.⁵⁶ The UPAP report of 2002 also notes the absence of social support, unequal gender relations and geographical isolation as factors leading to poverty and resulting in isolation and exclusion, powerlessness, deprivation of basic human rights and a feeling of helplessness to influence the conditions around one.⁵⁷

51 Ibid at pages 7 - 8.

52 Ibid.

53 Ibid.

54 Ibid.

55 Ibid

56 Kasule A T, The causes of rural poverty in Uganda: a case study of Wakiso Sub County, Wakiso District. <http://hdl.handle.net/10570/1337> (Accessed: 23 August 2015).

57 UPPAP Report (2002), page 69.



Failure to adopt rights based approaches to development in Uganda also raises the risk of increasing poverty and further marginalizing the poor and powerless regarding the continuum of human rights, which are interrelated and indivisible. As in most developing countries, economic, social and cultural rights in Uganda tend to take on more of a programmatic, policy and resources narrative rather than as a human rights issue. Despite government undertaking major investments in socio-economic sectors such as health, education, infrastructure development including roads among others Uganda has been noted to spend less than most countries in sub-Saharan Africa on economic and social services.⁵⁸

These deficiencies in public services expenditure leads to social, economic and cultural rights being undermined yet they are critical in effecting transformative change for poor, vulnerable and marginalised groups from an empowerment paradigm. Thus for example, the disability movement in Uganda has in the past two decades rejected soundly the needs based and charitable model of development in favour of a rights based approach, in order to assert their human rights.

3.3.1 Socio-economic drivers of poverty

Handley *et al's* examination of poverty in Sub-Saharan Africa distinguishes between *socio-economic drivers* and *political-economy drivers*.⁵⁹ Amongst the socio-economic drivers of poverty, Handley *et al* mention risks and vulnerabilities as a key factor that drives poverty. Poor people, especially those living in rural areas dependant on agriculture and in tropical ecologies, face more risks than others. These risks include, including harvest failure, market failure and volatility, conflict, and health shocks.⁶⁰ Harvest failure is influenced by Africa's geography and agro-ecology (prone to drought and heavy rains), which combine with inefficient agricultural technologies and inadequate agricultural support, ultimately resulting in environmental degradation, unmanaged pests and poor access to inputs, which further increases vulnerability. Harvest failure affects crop-dependent households and the wider rural economy (including households that are dependent on non-farm income sources) as well as national well-being and stability. It can have long-term effects as people sell assets as a coping strategy.⁶¹

Market failure and market volatility increase the prevalence of poverty. This is due to the fact that the poor often do not have enough assets to protect themselves from shocks resulting from markets. Market volatility is many times driven by international economic shifts. For instance, the impact of the collapse of coffee prices in the early 2000s affected many Ugandan households. Moreover, price volatility can also be a poverty driver for urban and net consumer households as the cost of their basket of goods increases as the price of key goods like fuel oil rises.⁶²

Violent conflict results in injury, battlefield and civilian deaths, the destruction of household assets and displacement. It has indirect and long-term poverty impacts by increasing dependency ratios, resulting from an absence of men and an increase in the proportion of

58 World Bank: Uganda, growing out of poverty

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20204772~menuPK:435735~pagePK:148956~piPK:216618~theSitePK:43036> (Accessed: 11 September 2015).

59 Geoff Handley, Kate Higgins and Bhavna Sharma with Kate Bird and Diana Cammack (2009) *Poverty and poverty reduction in sub-Saharan Africa: An overview of the issues*, Overseas Development Institute, Working Paper No 229.

60 Ibid.

61 Ibid.

62 Chronic Poverty Research Centre (2004).

disabled and elderly, as well as women and children. It destroys public infrastructure and assets, disrupts livelihoods and reduces savings, undermines law and order and political processes, and causes social and cultural erosion and dislocation.⁶³

Sudden or prolonged ill health is one of the main drivers of poverty. It often results in impoverishment as people are forced to abandon productive activities. The relationship between ill health and poverty is complex and works in both directions: illness can cause poverty and poverty can contribute to poor health. In Uganda, poor maternal health is rampant, with the odds that a woman will die from complications during pregnancy and childbirth at 1 in 16 – compared with a developed-world rate of 1 in 3800.⁶⁴ Further to the problem of maternal health are seasonal conditions (such as diarrhoea, water- and mosquito-borne diseases) that result in poor health outcomes, and given that they commonly coincide with the rainy season and therefore the most highly labour-demanding agricultural season, such illnesses can have broader poverty implications.⁶⁵ Moreover, HIV/AIDS has an impact on households' livelihoods and labour productivity and on the ability of households and communities to cope. Households affected by HIV/AIDS commonly have less income, reduced food security and are more vulnerable to other shocks, such as drought. Dependency ratios (dependents as a proportion of the working population) in Uganda are partly driven by the HIV/AIDS epidemic, with infection rates at 7.3% as of 2014.⁶⁶

3.3.2 Political-economic drivers of poverty

With regard to political economic drivers of poverty, it has been observed by scholars that weak state institutions and governance result in poorly designed and implemented policies, weak formal institutions and rule of law, inadequate service delivery, and to other practices that undermine the creation of an enabling environment for wealth creation.⁶⁷ Such situations also tend to have a lot of corruption, where millions of dollars are diverted from the public purse into private pockets. This affects economic growth, the delivery of services, and poverty-reduction.⁶⁸ The situation is further worsened by the weakness of civil society. Such weaknesses result from the fact that most people live in the rural areas and know very little about the world outside their villages. Poor roads and transport links make it even worse. This creates a society that prioritises local connections (family and clan, tribal, religious, regional) rather than a shared national identity. It is also difficult for them to relate to the problems of those hundreds of miles away, or if they do, to organise for change.⁶⁹ This leads to lack of accountability by the leaders, creating a complex interplay of political and economic factors that drive poverty.

⁶³ Ibid.

⁶⁴ United Nations Department of Public Information (2007), page 2.

⁶⁵ Handley et al, op cit

⁶⁶ Source: UNAIDS, at <http://www.unaids.org/en/regionscountries/countries/uganda> (Accessed: 25 September 2015).

⁶⁷ Neopatrimonialism is a hybrid system combining patrimonial practices with formal institutions and processes (Bratton and Van de Walle, 1999). Patrimonialism is a form of traditional rule where there is no distinction between public and private spheres, where the ruler treats all political and administrative affairs as his personal affairs (Medard, 1982). Neopatrimonialism maintains the illusion of separation of the public and private with seemingly functioning and independent state institutions and bureaucracy. See Chabal and Daloz, 1999, *Africa Works- Disorder as a Political Instrument*.

⁶⁸ Uganda has had its fair share of corruption scandals and mismanagement of public funds, for instance, the Global Fund Scandal, the Helicopters, CHOGM, NSSF and the on-going Uganda National Roads Authority scandal.

⁶⁹ Handley et al, op cit

The conceptualisation of drivers of poverty as both socio-economic and political economic in nature point to the fact that access to justice is not just because poor people cannot afford legal services, but also because justice institutions are part of the wider phenomenon of weak state institutions. Courts are often poorly facilitated,⁷⁰ creating delays in court processes, which in turn discourage victims and witnesses from seeking justice. Moreover, there have been accusations of corruption in the Judiciary, which further alienates the poor who are under the impression that they cannot receive justice since they cannot afford to pay bribes.⁷¹

3.3.3 Poverty as an absence or lack of capabilities

According to Amartya Sen, another way to think about the causes of poverty is to think in terms of capabilities. These reflect a person's freedom or ability to choose the way (s)he would like to live. They include the capacity to be free from hunger, to become educated, and to earn a decent living. They are interconnected and mutually reinforcing. People trapped in persistent poverty tend to experience multiple 'capability deprivations' concurrently. That is to say, they are illiterate, have inadequate nutrition, poor human rights, and insufficient income and livelihood opportunities. Taken as a whole, these factors drive and maintain their poverty and perpetuate it across generations.⁷² For instance, in conflict-affected communities, livelihood and income-generating opportunities are extremely limited; there are poor living conditions, inadequate provision of public services which lead to poor health, which in turn affects, among other things, educational outcomes. Poor health and education levels, combined with insecurity and weak governance, make it difficult to come out of poverty.

Marginalisation, (also referred to as exclusion) from political, social and economic institutions is part of a vicious cycle that leads to low capability levels, which in turn reduces the ability of the people to escape poverty. As mentioned above, exclusion results from various forms of active discrimination, directed against certain people (e.g. who do not share ethnicity, religion, or culture of the majority or dominant group). It may be reinforced by discrimination on the basis of personal characteristics, such as gender, age or impairment. It has two faces – favouritism of certain groups, and marginalisation of others.⁷³ Because ethnicity is a key defining characteristic in Uganda and indeed Africa at large, it is normally the basis for exclusion and accompanying discrimination, and can influence conflict, state formation, *district formation*, (our emphasis) political alliances and economic choices.⁷⁴ Ethno-territoriality (where ethnicity overlaps with territorial claims) plays a central role in determining wealth and poverty as well as access to resources and political power. For instance, the study revealed that district formation along ethno-territorial lines has led to certain groups becoming minorities in particular districts, where they are consequently marginalised.⁷⁵

70 The Judiciary receives the least funding of the three arms of government. See 2015-2016 Budget Framework Paper.

71 See Uganda: Temples of Injustice, at <http://www.aljazeera.com/programmes/africainvestigates/2014/12/uganda-temples-injustice-201412913517224628.html> (Accessed: 23 September 2015).

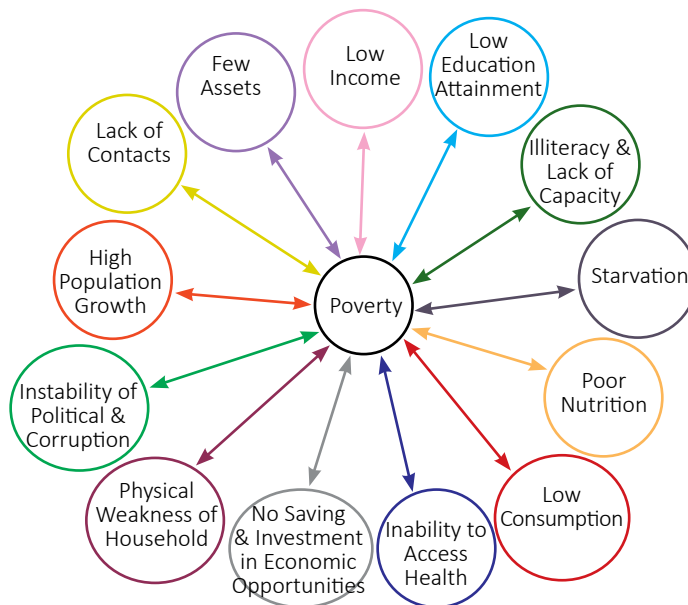
72 Sen, Amartya (1999). *Development as Freedom*. New York: Oxford University Press, page 5.

73 Handley et al, above.

74 Ibid.

75 Interview with AHURIO, Fort Portal, Rwenzori Region. It was revealed that in Kasese and Bundibugyo, inter ethnic rivalry amongst the Bamba, Babwisi and Bakonjo results in the marginalisation of different ethnic groups depending on which District they are in.

Poverty and its various drivers are mutually reinforcing.⁷⁶



3.4 Implications for the poor and vulnerable in terms of access to justice

Poverty leads to vulnerability to external shocks in the economic, social and political system. These could impact Ugandans in the form of food insecurity, unemployment, poor health, agricultural production and natural or man made hazards. Extreme forms of poverty have the risk of stirring up conflict, crime and exploitation of weaker groups in a bid for survival. Having remedial measures from a policy and programmatic perspective, including provision of justice, law and order interventions, can best mitigate all these risks.

Poverty places a greater demand for the government to put in place efficient and effect public services for all citizen but particularly the poor and vulnerable, as their survival and human development is jeopardised by high dependency from household members and reliance on external institutions or actors. The dependency ratio in Uganda is estimated at 119; it is highest in rural areas 129 compared to urban areas 91, and Northern and East Central have a very high dependence ratio of 134 while Kampala has the lowest at 61.⁷⁷ Thus, without provision of critical social and economic services by the government, some households are likely to face multiple forms of vulnerability, such as household categories of disabled persons, widows and child-headed households.

Uganda's high population rate carry a lot of significance for the adequacy of services and resources, and is likely to put a strain on service delivery including in the Justice, Law and Order Sector. According to the UNHS 2012/13, Uganda's population size is estimated to be 34 million, up from 25.3 million in 2002/3. Further, 77% Uganda live in rural areas. Despite this, JLOS service delivery institutions, non-state actors involved in providing legal aid, as well as the majority of lawyers, tend to concentrate more in the central region and urban areas rather than in the regional and rural areas. For example, the UNHS statistics analyses the availability of police stations in communities. The presence of police stations in rural is 5.9% compared to 25.1% in urban areas. At the regional level, police stations availability is rated at 15. 8% Central, 7.8% Eastern, 7.8% northern 7.8 and 9.5% western.⁷⁸

⁷⁶ Image from <https://kirstenskrazyscience.wordpress.com/2011/06/06/poverty-diagram/>, June 2011 (Accessed: 23 September 2015).

⁷⁷ UDHS 2012/13 page 18

⁷⁸ Uganda Bureau of Statistics 'Uganda National Household Survey' 2012/2013 page 162



This is but one example of the scarcity of JLOS services where the majority of Ugandans live.

Conversely as illustrated in the NDP II and UNHS 2013 and UDHS 2011 rates, the poor, vulnerable and marginalised tend to reside far from urban areas or from the central region where more services are available. The increasing creation of districts places a demand on the establishment of JLOS services, and it is a challenge for most legal aid service providers and JLOS institutions to de-concentrate to each district or beyond the district level, to sub country and below.

From the above analysis, it is clear that access to justice is a critical human right and process in ensuring that those locked in chronic poverty have the means to assert their rights and change their status quo through just, fair and equitable laws and from justice delivery institutions. It could also be the case in many instances that the best solution for vulnerable and marginalised groups escaping chronic poverty, exploitation and abuse lays in legal solutions. Left to their own devices, poor, vulnerable and marginalised people may opt out of pursuing legal means to promote their welfare or protect themselves, due to the complexities, costs and distances involved.⁷⁹ The provision of relevant and responsive services at all levels as well as the removal of barriers to justice; both *de jure* and *de facto*, are critical to the wellbeing and rights of the poor, vulnerable and marginalised.

3.5 Vulnerability and marginalisation in Uganda: conceptual issues and regulatory frameworks

According to an Economist scholar Chaudhuri, poverty is an *ex-post* measure of a household's well-being (or lack thereof). It reflects a current state of deprivation, of lacking the resources or capabilities to satisfy current needs. Vulnerability, on the other hand, may be broadly construed as an *ex-ante* measure of well-being, reflecting not so much how well off a household currently is, but what its future prospects are.⁸⁰

What distinguishes the two is the presence of risk—the fact that the level of future well-being is uncertain. The uncertainty that households face about the future stems from multiple sources of risk—harvests may fail, food prices may rise, the main income earner of the household may become ill, etc. If such risks were absent (and the future were certain) there would be no distinction between *ex-ante* (vulnerability) and *ex-post* (poverty) measures of well-being. Therefore, we can think of vulnerability as the probability or risk today of being in poverty or to fall into deeper poverty in the future due to disasters or shocks that would worsen the status quo.⁸¹

Chaudhuri discusses the importance of considering risk and vulnerability in the design and implementation of social policy. First, he notes that an atemporal (not taking time into account) or static approach to well-being, if strictly adhered to, is of limited use in thinking about policy interventions to improve well-being that can only occur in the future. In practice, poverty assessments are usually expressed in atemporal terms and in this way, they make assumptions about the extent to which the situation recorded in the poverty assessment will be reproduced over time. This is not adequate for planning purposes.

⁷⁹ Justice Law and Order Sector Annual Performance Report 2013/14

⁸⁰ Shubham Chaudhuri (2003) *Assessing vulnerability to poverty: concepts, empirical methods and illustrative examples*, Department of Economics, Columbia University, page 2.

⁸¹ It is however, also important to note that poverty in itself is dynamic, and some of the poor are not poor all the time.

Hence, looking at vulnerability to poverty, which, by definition has to be forward-looking, forces us to acknowledge the assumptions we are making about the poor and to consider the potential role and effects of risk.⁸²

Second, a focus on vulnerability to poverty serves to highlight the distinction between ex-ante poverty prevention interventions and ex-post poverty alleviation interventions. He utilises a simple public health analogy to make this distinction clear. Just as efforts to combat a disease outbreak include both treatment of those already afflicted as well as preventive measures directed at those at risk, poverty reduction strategies need to incorporate both alleviation and prevention efforts.⁸³

The implications of the above for access to justice are that it is not adequate to strategise only for the poor, but also to take into account issues of vulnerability. Will the current poor fall further into poverty, thereby further limiting their access to justice? Are their groups and individuals above the poverty line whose ability to access justice might be affected by shocks and disasters? Using the analogy above, access to justice interventions must take into account both present and future. They must not only focus on remedies for those who seek justice; but also on empowering members of society to know their rights as a means of mitigating against future injustice and violations.

Who is Vulnerable, to what, and why?

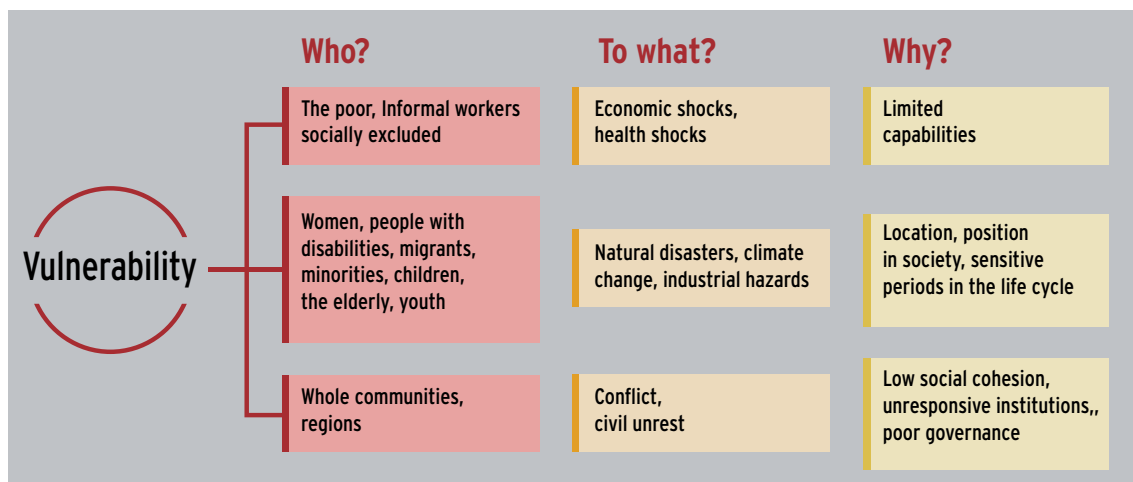


Image: oxfamblogs.org

3.6 Marginalisation

Marginalisation has been defined as “processes by which some groups of people are being pushed or kept out of the system, or being maintained in a peripheral, disadvantaged position within that system.” It is a complex process of relegating specific groups of people to the lower or outer edge of society. Marginalisation pushes these groups of people to the margin of society economically, politically, culturally and socially; in line with an unwritten, but nonetheless real, policy of exclusion. In this way, a section of society is denied equal access to productive resources and avenues for the realization of their productive human potential and opportunities for utilisation of their full potential and capacity. This shoves the community to poverty, misery, low wages and livelihood insecurity and uncertainty. Their upward social mobility is limited. In the political sphere, this process of relegation denies

⁸² Ibid.

⁸³ Risk and uncertainty are a central pre-occupation of the poor



people equal access to the formal power structure and participation in the decision making processes; leading to their subordination to and dependence on the economically and politically dominant groups of society.⁸⁴

Marginalisation is a multi-layered concept and can take place at different levels. Whole societies can be marginalized at the global level (for instance, the marginalisation of African economies in Global Trade) while classes and communities can be marginalised from the dominant social order. Similarly, ethnic groups, families or individuals can be marginalized within localities. To a certain extent, marginalization is a shifting phenomenon, linked to social status. So, individuals or groups might enjoy high social status at one point in time, but as social change takes place, they lose this status and become marginalized. Similarly, as life cycle stages change, so might people's marginalized position. At certain stages of the life cycle, the risk of marginalization increases or decreases. For example, the marginalized status of children and youth may decrease as they get older; the marginalized status of adults may increase as they become elders; the marginalized status of single mothers may change as their children grow up, and so on.⁸⁵

Marginalisation can arise because a group speaks a different language, follows different customs or has differing religious beliefs from the majority community. The marginalised are relegated because not only because they are poor, but also because they are considered to be of 'low' social status and viewed as being less human than others. Sometimes, marginalised groups are viewed with hostility and fear. This sense of difference and exclusion leads to communities not having access to resources and opportunities and makes it difficult for them to assert their rights. They experience a sense of disadvantage and powerlessness vis-a-vis more powerful and dominant sections of society, who own land, is wealthy, better educated and politically powerful.⁸⁶

Marginalised groups vary in their nature and characteristics and are to be found all over the world. From indigenous groups in South America and pygmies and albinos in Africa, to refugees in Europe and untouchables in India, marginalised people are often regarded as an underclass - unable to access basic material needs, work opportunities, education, welfare or healthcare - their needs ignored or forgotten by the public. The Global Fund for Forgotten People also includes the following within its categories of marginalised groups:

People with neglected and often misunderstood diseases (including the mentally ill. Respondents to the study also mentioned nodding disease syndrome in northern Uganda as a factor for marginalisation).

Persons with disabilities

The Elderly, lonely and isolated

Children with Parents in Prison

Children Born with Disabilities

⁸⁴ Sociology guide, at <http://www.sociologyguide.com/civil-society/marginalization.php> (Accessed: 21 September 2015).

⁸⁵ Mark Burton and Carolyn Kagan (2003) *Marginalisation*. In Isaac Prilleltensky and Geoff Nelson, (Eds.) *Community Psychology: In pursuit of wellness and liberation*, chapter 3. MacMillan/Palgrave, London.

⁸⁶ Class 8 Social Science, at <http://www.excellup.com/ClassEight/sseight/marginalisationeight.aspx> (Accessed: 21 September 2015).

The homeless⁸⁷

According to the 2nd Uganda Chronic Poverty Report, the link between marginalisation and poverty is illustrated by the fact that where individuals or households face overlapping drivers of poverty, they face deeper problems. People with disabilities, for instance, were found to face various forms of exclusion, isolation and disregard. Poor women were found to be especially vulnerable to chronic poverty and had to confront unfair treatment that may leave them landless or facing other difficulties. Other 'vulnerable groups' were identified as including poor orphans, children of second or third wives in poor households, those acutely affected by HIV, and the long-term sick.⁸⁸

Respondents to the study also mentioned island-based communities, who tend to live isolated lives with little access to amenities and services and may also be regarded as a marginalised group. Migrant groups such as Asians and Somalis, Albinos, and War returnees who were former rebels are also marginalised in Uganda.

Marginalisation is a useful concept for identifying those most in need of legal aid and access to justice, as it seeks to bring into focus the people at the very lowest strata of society, those who are poor not just because of a lack of income, but because of various individual and societal factors that conspire to consign them to the outermost margins of society. In formulating access to justice programmes, a wide conceptualisation of marginalisation would assist in ensuring that the various marginalised groups such as those described above are taken into account.

What amounts to vulnerable persons or groups is not always clearly articulated, and it is easier to list who vulnerable people are than to define them. Some have posited vulnerability as the flip side of capacity.⁸⁹

Vulnerability in Uganda is addressed in various frameworks, the most significant being the Constitution of Uganda. The Constitution in Article 17 (c) makes it a duty for every Ugandan to protect children and vulnerable persons against any form of abuse, harassment or ill treatment, and states that laws shall be made to protect orphans and other vulnerable children. Thus children are specifically singled out as vulnerable groups; the others are not as well explained. The Orphans and Vulnerable Children Policy sets out to define vulnerability, describing it as '*A state of being or likely to be in a risky situation, where a person is likely to suffer significant physical, emotional or mental harm that may result in their human rights not being fulfilled.*'

The Constitution further addresses categories that have become disadvantaged based on certain characteristics. The State undertakes affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances that exist against them. The Constitution envisages laws and the establishment of an Equal Opportunities Commission to give effect to this provision. The open ended provision of the Constitution in describing disadvantaged groups – *any other reason created by history, tradition or custom*- leaves

87 The Global Fund for Forgotten People, at <http://www.forgottenpeople.org/about-us/> (Accessed: 20 September 2015).

88 Chronic Poverty Advisory Centre, 2nd Chronic Poverty Report – Uganda; *Is anybody listening?*, page 3.

89 *What is vulnerability?* <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster/what-is-vulnerability/> (Accessed: on 11 September 2015).



the door open to defining new and emerging forms of vulnerability for posterity.

The UNHS 2012/13 states that vulnerability is a state of being or likely to be in a risky situation, where a person is likely to suffer significant physical, emotional or mental harm that may result in their human rights not being fulfilled.⁹⁰ Vulnerability is linked to structural problems that disempower certain social groups and categories of populations, rendering them exposed to certain hazards. Some of the underlying problems or root causes encompass inequality and discrimination, inadequate access to resources and poor governance.⁹¹

The Uganda Vision 2040 focuses on the need to provide assistance to certain categories of people; those who are vulnerable due to age, social class, location, disability, gender, disaster or do lack of income, listing also orphans, vulnerable youths, the destitute and PWDs.⁹²

JLOS SIP III whose vision is 'Justice for All' reflects a policy shift that seeks to broaden access to justice and among other things, enhance JLOS services with due emphasis accorded to the poor and marginalized groups. One of its values is 'Growth and equity in service provision' aiming to remove the gender, age, social and geographical disparities among JLOS beneficiaries. This has direct implications and benefits for the poor, vulnerable and marginalized in Uganda.

Within this, the development and funding of special programs to target gender, age, poverty and other forms of vulnerability is highlighted, focusing on areas of importance to vulnerable and marginalized groups such as land justice, family justice, transitional justice and age and Gender justice, poverty and other forms of vulnerability. However, it must be noted that SIP III does not attempt to define vulnerability or its characteristics, and to date has no comprehensive baseline study on vulnerable and marginalized groups in order to map them and plan, resource for and implement in this area.

The failure to clearly define who the vulnerable are is evident in the indicators developed under SIP III Outcome 2 -Access to JLOS Services particularly for vulnerable persons enhanced. The focus is on increased completion rates of cases, increased JLOS institutional services, capital offenders and reduction in transaction lead-time including services to women and children. All these indicate the JLOS proclivity towards supply side domination, and less emphasis on increasing the *capacity* of the vulnerable groups to access these services.

3.7 Causes and effects of vulnerability and marginalization in Uganda

Vulnerability can arise out of environmental social and economic constructions e.g. geographic location, numeric composition (minorities), historical developments or out of natural circumstances such as those relating to age, gender or disability. Poverty is also highlighted as a vulnerability factor; the NDP II estimates that there are about 7 million Ugandans are trapped in chronic poverty, leading to vulnerability.

Characteristics or risk factors that may predispose people to vulnerability include disability, social origin age, ethnicity, gender, poverty, geographical location, numeric status or other identity. Both the NDP II and UNHS 2012/13 refer to social vulnerabilities drawing from

⁹⁰ UNHS 2012/13, page 150.

⁹¹ *What is vulnerability?* <http://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/what-is-a-disaster/what-is-vulnerability/> (Accessed: on 11 September 2015).

⁹² Vision 2040, page 93.



characteristics of age, disability, unemployment and ethnic minorities. Thus the socio economic, political and cultural environment may have a bearing on vulnerability, either increasing or decreasing its impact and incidence.

Box 3 The UPAP Report, 2002 categorisation of populations prone to vulnerability to poverty

The landless who sell their labour, women especially widows, widowers who have many children to look after, those with large families, orphans and abandoned children, the chronically sick, the elderly, the youth who are jobless, the internally displaced, refugees and those living in areas prone to natural disasters such as earthquakes and landslides, the poorest, the illiterate, the elderly and certain minority groups.

As with vulnerability, there is no global definition on what amounts to marginalisation. The United Nations Education and Scientific Cooperation Organisation (UNESCO) has defined marginalisation as occurring when '*when people are systematically excluded from meaningful participation in economic, social, political, cultural and other forms of human activity in their communities and thus are denied the opportunity to fulfil themselves as human beings.*' UNESCO also links marginalisation as a cause of disadvantage, and refers to these concepts as '*clearly remediable injustice*'⁹³ and '*situations of acute and persistent disadvantage*'⁹⁴

The Equal Opportunities Commission extends its mandate to groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom. It stands to reason that the act of marginalisation is what triggers the status of being marginalised, and so the acts, practices, policies and actions of other actors in relation to such groups must be carefully analysed, as well as their impact on the targeted group.

The Orphans and Vulnerable Children (OVC) Policy defines marginalized groups as '*persons in society who are deprived of opportunities for living a respectable and reasonable life that is regarded as normal by the community to which they belong.*' The Policy identifies poverty as a structural barrier to the enjoyment of basic human rights and security for children.

Vulnerability and marginalisation have a deleterious effect on the quality of life enjoyed by a person, and their externally diminished status quo as rights holders having a right to justice mechanisms. In terms of access to justice, such victimised persons may fail to view themselves or be viewed as persons having equal status before the law or claiming equal protection from the law. In addition, it is more often the case that the legal frameworks as well as justice institutions will be blind to their needs and more responsive to mainstream groups.

3.8 Implications for access to justice in Uganda

Vulnerability causes helplessness, disempowerment and victimization in affected populations. If these vulnerable marginalised individuals or populations are not poor, they can leverage themselves better through tools such as education, employment and participation in public

⁹³ Deprivation and Marginalization in Education. <http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/ED/GMR/html/dme-1.html> (Accessed: 11 September 2015).

⁹⁴ Paper commissioned for the EFA Global Monitoring Report 2010 -Reaching the marginalized' file:///Users/macuser/Documents/LASPNET/Education%20marginalisation.pdf (Accessed: on 8 September 2015).

life and governance processes to address their lot as individuals or a collective. However, as happens in most situations, poverty, vulnerability and marginalisation in Uganda tend to be inextricably linked, and arise out of systemic factors rather than as accidents of fate. For example, the Ministry of Finance, Planning and Economic Development noted in its poverty profile in 1997 that children, elderly women, and people from large households form the majority of the chronically poor,⁹⁵ yet they also fall under vulnerable groups. In 2014, the pattern remained consistent; the categories that were considered as vulnerable of falling into poverty were the elderly, children and those with disabilities.⁹⁶

The individuals and groups that fall in these unfortunate categories face structural barriers to inclusion, participation and equal treatment and do not often benefit from development dividends. They are often victims of discrimination, abuse, exploitation and neglect in the private and public sphere, and lack the capacity to enforce their rights through meaningful remedies. In the absence of proactive measures by government to extend public services to these affected groups, their plight is more likely to worsen, due to social and income inequality. The JLOS institutions are mandated to ensure equitable treatment and ensure justice for all; this requires special measures, interventions and planning to identify and reach the poor, vulnerable and marginalised.

3.9 A Profile of the Poor, Marginalized and Vulnerable in Uganda

The following section looks at the major categories of vulnerable and marginalised groups in Uganda who require strategic support in order to realise their right to access justice to assert their socio-economic, political and cultural rights. This is more so important, as the vulnerable groups experience different forms of disadvantage, exclusion and marginalization. The following groups have been identified as vulnerable groups by various research studies undertaken on poverty in Uganda,⁹⁷ but the list is by no means exclusive.

3.9.1 Children



Children in Uganda constitute 59% of the population⁹⁸ and were two thirds of the chronically poor population in Uganda as at 2005.⁹⁹ Child poverty in Uganda is rated at 55% for under-

95 Okidi A, Mugambe G. (2002), *Development Policy in Uganda*, Economic Policy Research Centre CPRC Working Paper 11, page 2.

96 Republic of Uganda, *Poverty Status Report 2014: Structural Change and Poverty Reduction in Uganda*, page 79.

97 MFPED report 2000; Makerere University 2002; and Okidi and Kampala 2001.

98 UDHS 2012/13 page 10.

99 Eldis 'Understanding the causes of chronic poverty in Uganda <http://www.eldis.org/id21ext/s5bkb1g2.html> (Accessed: 18 August 2015).



fives, and 38% for 6-17 year olds.¹⁰⁰ Child poverty is not measured in terms of income poverty, but is based on poverty indicators based on deprivations of rights contained in the UN Convention on the Rights of the Child. In their own words, children view deprivation of the certain rights as poverty e.g lack of education, hunger, violence and poor health'.¹⁰¹

As a result of their tender years, children are recognised as a vulnerable group, who face the risk of having their development stunted due to abuse, neglect and exploitation. However, even determining who is a child has plagued many justice institutions in charge of childcare and protection; this is largely attributable to the fact that slightly above 10% of Ugandan children had birth certificates as at 2005.¹⁰²

Too often, poor and vulnerable children are more victimized by the legal systems than protected and cared for. In particular, the street children, abandoned and homeless children, children involved hazardous forms of labour and sexual exploitation, children in domestic work end up being victimized and treated as children in conflict with the law.¹⁰³ The reasons for increased presence of homeless children springs from conflict, poverty, the HIV/AIDS epidemic, lack of basic services in homes of origin and the search for work.¹⁰⁴ One of the single largest categories of vulnerable children is working children, who form 40% of the children aged 5-15 years.¹⁰⁵

Studies trace the influx of many of these children from the prolonged conflict in northern Uganda and the forced disarmament operations in the remote northern Karamoja region. The prolonged effects of these hardships have resulted in poor development indicators around health, education, livelihoods and food security, driving children from the regions to the streets of Kampala.¹⁰⁶ Children from internally displaced populations as a result of natural or human made disasters face several forms of vulnerabilities, as well as child refugees.

The UNHS 2012/13 figures indicate that 1.1 million out of 7.2 million households had at least an orphan, constituting about 16% of all households. Orphan hood remains a big cause of vulnerability in children. The Poverty Status Report, 2014 reiterates this concern, noting that these children face multiple deprivations from an early stage, including malnutrition, lack of health care and education among others.¹⁰⁷

Box 4 The OVC Policy categorisation of vulnerable children

Children affected by armed conflict, Children abused or neglected, Children in conflict with the law, Children affected by HIV/AIDS or other diseases, Children in need of alternative family care, Children affected by disability, Children in 'hard-to-reach' areas Children living under the worst forms of labour and Children living on the streets.

100 UNICEF, *Situation Analysis of Child Poverty and Deprivation in Uganda*, page 4

101 Ibid.

102 Supra at page 39.

103 Human Rights Watch 'Where Do You Want Us to Go? Abuses against Street Children in Uganda' 2014. <https://www.hrw.org/report/2014/07/17/where-do-you-want-us-go/abuses-against-street-children-uganda> (Accessed: 1 September 2015).

104 Ibid.

105 UNHS 2012/13

106 Ibid.

107 Ibid, Page 79



The Constitution of the Republic of Uganda (1995) recognises children's rights under Article 34, and that children are substantive rights holders. The Children Act Cap 59 buttresses the Constitutional provision. The Children Act upholds the welfare principle as being paramount in determining the best interests of the child. It addresses the position of children in conflict with the law, putting in place mechanisms for childcare and protection such as Family and Children's Courts, Probation services, approved homes, a national rehabilitation centre and the Local Council Courts. However in practice, the local council courts which under the Children Act play a primary role in child justice have not been optimally operational in terms of capacity and effectiveness and there has been undue delay to elect LCI and II Courts, creating a gap between the *de jure* and *de facto* enjoyment of rights. The Constitution of Uganda refers to orphans and *other* vulnerable children. The OVC Policy expands the details of these 'others' as explained in Box 4 above.

Efforts are underway to reform the Children Act through an amendment bill in order to rectify some of the gaps that relate to child protection. Concerns have arisen over the adequacy of protection of vulnerable children, many of whom are believed to be victims of modern day slavery and trafficking. Other reforms proposed include prohibition of corporal punishment in the home, rights to privacy, registration at birth, legal representation in court, access to information and freedom of expression.¹⁰⁸

Other laws that touch on children's rights include the National Youth Council Act (2003) and the Succession Act (1964). There is also a Child Labour policy that addresses the urgency of eliminating the worst forms of child labour. The JLOS SIP III identifies children as a vulnerable group and is cognizant of the often-fragmented services that children receive at the institutional level and the over focus on children in conflict with the law over other children in need of care and protection. SIP III also identifies vulnerable children as those at risk of victimization and children accessing legal services for matters of determining inheritance and parental custody, guardianship and other legal processes.

One of the innovations under SIP III is an undertaking to establish 3 one-stop centres for children services. In furtherance of this approach, JLOS established in 2011 a progressive programme for child friendly approaches to justice, known as the Justice for Children (J4C) Programme, to actualize the child justice indicators contained in SIP III and institutional SIPs for those addressing child justice issues. The Justice for Children programme has been implemented in the sixteen District Chain-linked Committees involved in the J4C Programme. J4C seeks to improve access to justice for children, through legislation/policy, capacity development of stakeholders and targeted support to key institutions within and outside the sector.¹⁰⁹

Fit persons¹¹⁰ have been appointed under the provisions of the Children's Act to facilitate the work of the judiciary for children in conflict with the law, and many JLOS institutions have adopted this approach of working with community based resources. Children who go through the criminal justice system as having broken a law face extreme challenges. These include lack of remand facilities for children only, lack of Child and Family Protection Unit officials well versed in child friendly approaches, inadequate supervision by probation offices, who are grossly overburdened with work, and lack of child friendly court structures

108 The Children (Amendment) (No 2) (Bill) 2015.

109 Uganda Justice, Law and order Sector, *Justice for Children -Special Sessions Report*, 2012.

110 Fit persons are community based people who are given temporary custody of children under the Children Act as an alternative to remand or institutionalization for children in conflict with or contact with the law under Section 37, 87 and 91 of the Children Act



personnel and equipment in the Family and Children courts. Legal aid for children in conflict with the law is very limited, as most NGOs involved in legal aid cater more to child victims.

3.9.2 Older persons

Older persons in Uganda are men and women who are over 60 years. The Constitution identifies age when prohibiting discrimination, and undertakes affirmative action for groups that are marginalised due to age (Article 32). According to the Uganda National Household Survey 2008/9 there were 1.3 million old persons in 2008¹¹¹ and the UNHS 2012/13 shows that older persons have increased by 0.5% since 2009/10 to 1.6 million forming 5% of the population.

It is not a given that every older person is vulnerable. In terms of social protection measures, Ministry of Gender, Labour and Social Development is undertaking programmes to primarily target households of older persons over 65 years that suffer from chronic poverty (except Karamoja which has a lower age of 60) with a view to eventually universally extending them to all older persons.¹¹² The grants under the Expanding Social Protection Programme target older persons who are highly vulnerable to poverty due to reduced capacity for work. Thus it would seem, based on a prioritisation of needs, that chronic poverty is the key indicator of vulnerability in older persons.¹¹³

It is to be noted that at least 8% of the older persons have never been to school, with females constituting 68% of this figure. This has implications for their levels of income generation and employment for the most part, as most of the non-educated persons tend to be self-employed and so cannot draw a pension. Thus the majority of older persons in Uganda do not have the luxury of retirement from physically demanding work. Research shows that many older people do not opt out of work to escape poverty.¹¹⁴ Older persons continue to work beyond sixty years: 75% of the older persons are heads of households with males constituting 93 percent % of this figure. The UNHS 2012/13 statistics show that 82% older men and 87.6% older women aged beyond 60 are employed in agriculture. Likewise, 86.7% older men and 81.8% women are still economically employed.¹¹⁵ Only 7.1% of the old persons had access to pension in 2008, 60% of them male.¹¹⁶

Since older persons may not have opportunities or capacity to be engaged in gainful employment, their dependency increases. When required support is non-existent or limited, their survival is threatened hence vulnerability. A Mini Participatory Poverty appraisal conducted by the Ministry of Finance in Bushenyi revealed some challenges faced by older persons, such as lack of land, food and collateral to get loans; care responsibilities for orphaned grandchildren; disabilities and lack of access to Government services such as NAADS.¹¹⁷

Most of the interventions by the Ministry of Gender, Labour and Social Development in place

111 Page 138.

112 Ministry of Gender, Labour and Social Protection 'Uganda Social Protection Public Expenditure Review' 2012 page 21.

113 Chronic Poverty Research Centre, *Social Protection and cash transfers in Uganda*, Policy Brief No.3/2007

114 Ministry of Gender, Labour and Social Protection, *'Uganda Social Protection Public Expenditure Review*, 2012, page 18.

115 UNHS 2012/13 page 155.

116 UNHS 2008/9 page 3.

117 Poverty Status Report, page 79.



for older persons focus more on the social protection aspects. Studies show that in the case of older women, particularly widows, certain challenges to their rights are prevalent. The Older Persons Policy reveals that 75% of women aged 60 years and above are widowed compared to 23% of men in the same age category yet widows face marginalisation in the form of access, ownership and control over household property.

Older persons in Uganda are respected as a result of their age, and end up being involved in conflict resolution, sometimes to their detriment as they are dragged into disputes in court or at police stations. Older persons also face abuse and exploitation from relatives and friends seeking to take advantage of their diminishing capacity. Government reports indicate that this abuse is physical (violence), sexual, psychological and socio-economic violations such as land grabbing.¹¹⁸ Wife inheritance is also an insidious cultural practice that widows are exposed to. Also, when spouses of older women marry younger women, older women are faced with expulsion from the home and domestic violence¹¹⁹ as well as discrimination before traditional dispute resolution mechanisms or Local Council Courts.¹²⁰ Older persons who suffer from HIV and other illnesses often face discrimination and lack of adequate caregiving.

In terms of the framework for their protection, under the Constitution of Uganda, the National Objectives and Directive Principles of State Policy (VII) undertake to ensure the protection of the aged and to make reasonable provision for their welfare and maintenance.

There is a National Policy For Older Persons in place and National Plan of Action for Older Persons (2011/12-2015/16). The Policy highlights the challenges posed by old age, including limited employment opportunities, failure to obtain pension, food security and nutrition, health, HIV and AIDs, water and sanitation, shelter, conflicts and emergencies and accessibility. The Policy takes note of the gendered challenges pertaining to old age, highlighting the plight of older women. While the Policy states that legislation will be rights based, there is to date no law specifically on the rights and protection of older persons.

The Ministry of Gender, Labour and Social Development has put in place some initiatives to protect older persons. The National Strategic Programme Plans of Interventions for Orphans and Other Vulnerable Children 2005/6-2009/10 and 2011/12 – 2015/16 respectively included children from vulnerable households, in their definitions of vulnerable groups and viewed them as households headed by older persons.¹²¹

The Cash Transfer Scheme is a key programme targeting older persons as part of the most vulnerable households in chronic poverty conditions, under the Social Assistance Grants for Empowerment (SAGE). Additionally, there is in place a senior Citizens Grant programme that is being implemented in 15 districts which also targets older persons.¹²² The Ministry of

118 The Republic of Uganda 'World Elder Abuse Awareness Day' paper presented by Uganda at the event organized by the Administration for Community Living, U.S. Department of Health and Human Services partnership with the UN, the Canadian Government and other partners held on June 14th at the UN headquarters in New York.

119 'Discrimination against older women in Uganda,' July 2010 Parallel report submitted to the 47th session of the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) in relation to Uganda's Combined fourth, fifth, sixth and seventh periodic report of States Parties, CEDAW/C/UGA/7, May 2009

120 UPPAP Report, 2002, page 143.

121 Supra at note 44, page 40.

122 Ministry of Gender, Labour and Social Development <http://www.socialprotection.go.ug/Whatsnew>.



Gender, Labour and Social Development in addition operates a Vulnerable Family Support Grant whose objectives are to raise the status of low-income capacity households due to various factors including old age.

3.9.3 Women

Pervasive gender inequalities in all sectors of life based on unequal power relations predispose women to vulnerability at any given point in time. There are several categories of women that display characteristics of vulnerability and often face victimisation and marginalisation, based on socio-economic and cultural constraints that they face. Particularly vulnerable women are PWDs, widows, older women, especially those in “generation gap” families who have to look after grandchildren, and women prisoners including those who are jailed for civil debt, suspects and convicts. Among this category, pregnant women prisoners face unique hardships.

Women's rights are marginalised by several factors, which manifest in *de facto* discrimination against women. Harmful traditional and cultural practices and the social construction of gender roles in society tend to relegate women to a subordinate status, and this disempowerment is evident at the national, community and family level and in the private and public spheres. Female victims of domestic violence and gender based violence often fail to obtain meaningful remedies in the public sphere and particularly in the JLOS institutions like the Police, due gender and cultural stereotypes. These institutionalised patriarchal responses act as barriers to accessing justice for vulnerable women.

Women face *de jure* barriers to accessing justice, due to many existing laws that are either gender neutral or discriminatory. In the area of property ownership including land and in the personal status laws relating to marriage, divorce and adultery, domestic violence and sexual offences, women continue to face gender related barriers. Women form the majority of the illiterate population and find it hard to access justice institutions and mechanisms for fear of the technicalities, complexities and costs involved. Within the traditional justice and informal justice mechanisms, women are subjected to the same patriarchal norms that reinforce inequalities and violence.

High levels of poverty are evidenced more among women than men. The Poverty Status Report, 2014 states that women are vulnerable to poverty.¹²³ The patterns of inheritance that favour male ownership of property and title means that women rarely own property in their own right and this increases their dependency on male relatives, spouses and partners. Widows and girls in Uganda are systematically denied inheritance rights, which have been linked to their impoverishment.¹²⁴ In various social indicators, statistics indicate inequalities between men and women in the same category, e.g 38% of female headed households have no formal education compared to 10.2% male households, 35% of the males in Uganda were involved in wage employment compared to only 27% of the female counterparts, ownership of owner occupied house in urban areas is 31.0% for men and 26.8% for women and 36% of male headed households owned land in urban areas compared to 23% of female headed households in both urban and rural areas.¹²⁵

php (Accessed: 26 April 2015).

123 Page 81.

124 Bennett V, Faulk G, Kovina A & Eres T 'Inheritance Law In Uganda: The Plight of Widows and Children' *The Georgetown Journal of Gender and the Law* Vol. VII: 451.

125 UNHS page 140, 144, 147-149.



The feminisation of poverty is a stark reality in Uganda, where women form the majority of the poor and vulnerable. Over 56% of the female-headed households had either widowed or divorced heads. 12% of the households in Uganda were headed by widows mostly in the North East (19%). Poverty was highest among the divorced female heads of households and widow headed households at 7%.

These findings show a group that is burdened by multiple roles, responsibilities and identities that require significant resources and status to make meaningful decisions and actions, yet gender relations have relegated a lower status to women in Uganda. This raises the risk of such women being exposed to multiple forms of vulnerability and disadvantage that puts them at risk. Women are burdened by significant gender roles that apportion the burden of work disproportionately to them, e.g. in the UNHS 2012/13, 78% of the household members who fell sick reported being given care by adult female, and the survey noted that two thirds of the women in the households collect water and firewood.

The UN Committee on the Elimination of Discrimination Against Women has expressed concern for the disadvantaged women in rural and remote areas who face challenges of poverty, illiteracy and constraints in accessing various health and social services.¹²⁶ In the rural areas where custom, tradition and patriarchal norms are stronger, women are prevented from inheriting or acquiring properties including land, based on discriminatory grounds.

With regard to the Framework for protection of women's rights and promotion of gender equality, it can be said that Uganda ratified the UN Convention on the Elimination of all forms of Discrimination against women and the Maputo Protocol on the Rights of Women in Africa, but is yet to make a comprehensive law on the rights of women. The delay of the passage of the Marriage and Divorce has created a gap in the protection of women's rights and constitutional protections guaranteed for women, including elderly women, widows and the girl child.

The Constitution contains provisions that call for gender balance and fair representation of marginalised groups, and it is cognizance of the role that women play in Uganda. Discrimination based on sex is prohibited in the Constitution and women are guaranteed rights on an equal footing as men. As a marginalised group based on gender, women are entitled to affirmative action. Further, the Constitution undertakes to provide facilities and opportunities to enhance the welfare of women to enable them to realise their full potential and advancement. Also, the Constitution prohibits Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution. All these provisions are quite progressive in promoting the rights and welfare of women.

The National Gender Policy 2007 emphasises the need to develop strategies for designing and implementing programmes to improve women and men's access to justice, although it does not clarify who who vulnerable women are. The Policy seeks to prioritise gender inequality in access to justice.

There are other laws in place to protect women, such as the Domestic Violence act. Amendments have been made to the Penal Code Act to strengthen sanctions against aggravated defilement and rape. The Land (Amendment) Act 2004 contains provisions that facilitate women to attain an interest in matrimonial land by requiring spousal consent

126 CEDAW 'Concluding observations of the Committee on the Elimination of Discrimination against Women CEDAW/C/UGA/CO/7.



before any transactions on such land. Amendments to the Succession (Amendment) Bill 2011 have been proposed to strengthen the rights of widows to inherit property. However, challenges remain over strong cultural norms that make protection of vulnerable women and girls illusory in Uganda.

3.9.4 Persons with disabilities (PWDs)

In Uganda, the incidence of persons over five years old and suffering from one form or another of disability is estimated at 19%, with difficulties in seeing, walking or climbing stairs registered as the most common.¹²⁷ There is not much available data on PWDs, which is a persistent problem.

The marginalisation and exclusion of PWDs in Uganda has been well documented in studies by Disabled Peoples Organisations (DPOs) and other institutions.¹²⁸ The discrimination of PWDs is both *de jure* and *de facto*, causing this population to face great vulnerability in the private and public sector. PWDs are largely marginalised in Uganda and notwithstanding the existing disability legislative framework, very few legal provisions are implemented and translated into real programmes and actions. This means that PWDs continue to face diverse social and physical barriers, which restrict their full participation in society and the realisation of their rights.

PWDs face challenges of physical access to schools, work places, roads, public and private facilities, while those with sight and hearing disabilities similarly face due to failure to make reasonable accommodations for them. Within the educational sector, there are countless stories of pupils and students who can't access school's facilities due to disability unfriendly structures, facilitation methods and equipment. Children with physical disabilities often end up in special schools on an exclusionary basis and register high drop out rates.

As a consequence, PWDs are less likely to receive education, access health care services, travel, or exercise their right to benefit from employment. This translates into illiteracy, poverty, discrimination, segregation, poor health and a heavier burden of care for otherwise would-be self-reliant persons. The situation of women with physical disabilities is even worse because of the double burden imposed by gender disparities and disability-related discrimination.

Women with disabilities: Women with disabilities face multiple forms of discrimination, including denial of health and reproductive health services, sexual assaults and violence and abandonment by fathers of their children. Reports by human rights observers revealed that that for example in during the conflict in Northern Uganda and in its aftermath, women with disabilities were among the most affected, being subjected to social stigma, isolation, abandonment and discrimination as well as sexual violence and yet they were denied access to justice.¹²⁹

¹²⁷ The Republic of Uganda 'Uganda Demographic and Health Survey 2011' Uganda Bureau of Statistics Kampala, Uganda.

¹²⁸ UNAPD 'Publication Of Selected Legal Provisions In Domestic And International Laws On Physical Accessibility' 2010, See the Report of the National Council on Disability submitted to the UN in UN Committee on the Rights of Persons with Disabilities 'Consideration of reports submitted by States parties under article 35 of the Convention' Initial report of State party due in 2010 Uganda CRPD/C/UGA/1 2013, OHCHR Working Paper: A Review of the Ugandan Legal Framework relevant to Persons with Disabilities-Comparative Analysis to the Convention on the Rights of Persons with Disabilities, 2008, ANNPCAN 'Research study on Children living with disabilities in Uganda-Situational analysis on children living with disabilities in Uganda 2014.

¹²⁹ Human Rights Watch (2010), *As If We Weren't Human: Discrimination and Violence against Women with Disabilities in Northern Uganda*, page 2.

Children with disabilities: Children with disabilities are estimated at 13% or 2.5 million in Uganda.¹³⁰ Children with disabilities are usually at risk of abandonment, isolation, abuse, neglect and exploitation in various forms. Children with disabilities face discrimination in the health and education system and have their human rights abused or violated. The same challenges that apply to disabled adults and non disabled children in the justice system apply to children, with the added disadvantage that children under civil law procedure lack individual agency and must be represented by a 'next friend' or legal representative, further contributing to their marginalisation and non participation in legal procedures affecting them. Thus, children with disabilities face multiple forms of marginalisation.

PWDs in Uganda face the general challenges that Ugandans face due to systemic constraints in the Justice delivery system, but in addition, they face physical and non physical barriers that render them more vulnerable as a result of exclusionary or disabling physical and attitudinal barriers. For example, while SIP III has laid emphasis on increasing awareness on laws and policies affecting the rights of citizens through legal education, it is unlikely that the information and communication materials being developed as well as presentations in various print and electronic media have taken into account the need for disability friendly formats for the sight disabled. Neither do most non-state actor providing legal aid meet the needs of this category. This automatically limits the ability of PWDs to increase their understanding of the laws relating to them on an equal basis with other citizens.

Article 14 of the UN Convention on the Rights of Persons with Disabilities 2006 requires government to ensure effective access to justice for PWDs on an equal basis with others. This is to be done in various ways including through the provision of procedural and age-appropriate accommodations with a view to facilitating their effective role as direct and indirect participants including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

What amounts to reasonable accommodations has been defined in the UN Convention on the Rights of Persons with Disabilities 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'. There are deep reaching implications for the obligation on JLOS institutions to ensure access to justice within the meaning of reasonable accommodation. In fact, the right of PWDs to access justice has been interpreted in other jurisdictions to create a right to legal aid.¹³¹

PWDs face **de jure** discrimination through disabling legal frameworks that deny them justice as persons before the law and as legal persons despite constitutional guarantees to that effect. There are laws that prevent certain categories of PWDs from being elected to Parliament, to be appointed and hold positions in financial institutions of national These provisions are contained in the Constitution under Article 80 (2) (a), the Presidential Elections Act, Article 4 (4) (a) or other government structures and to participate in legal

¹³⁰ ANNPCAN (2014), Research study on Children living with disabilities in Uganda-Situational analysis on children living with disabilities in Uganda, page 1.

¹³¹ Francis Gibson 'Article 13 of the Convention on Rights of Persons with Disabilities – A Right to Legal Aid?' http://www.academia.edu/207906/Article_13_of_the_Convention_on_Rights_of_Persons_with_Disabilities_-_A_Right_to_Legal_Aid (Accessed: on 9 September 2015).



proceedings as lay personnel.¹³²

Other discriminatory provisions include those regulating the appointment of a manager for the estate of persons with a mental or intellectual disability or writing a will under the Succession Act. In civil matters, PWDs with mental health disabilities are not viewed as legal persons before the law, denying them a fundamental human right to access justice. For many people with speech and language disabilities, effective communication in the JLOS system requires the services of an intermediary translator to facilitate two-way communication. This is not usually provided in good time, resulting in miscarriages or denial of justice. For example, there have been an unconscionably high number of people with hearing disabilities who have been remanded due to failure to get the services of sign and language interpretation.¹³³

The National Council on Disability has observed the increase in access to justice services for PWDs through increased information sharing, advocacy and sensitization. Indeed this is borne out by reports that link increased information sharing to increased access to justice centres e.g PWDs seeking services of Justice Centres increased to 883 (424 female and 459 male) from 135 (23 female and 112 male) in 2013/14.¹³⁴ This is attributable to sensitisation campaigns, seminars and workshops at the community level in some regions.¹³⁵ Also noted by the National Council of Disability is the provision arbitration services by the Rehabilitation and Probation Officers and where necessary, referral to police or courts of law. However, there is no clear data on how these services are effective, nor the scope in terms of cases handled and number of people reached and at which level.

In terms of the Framework for protection of the rights of PWDs, Uganda ratified the Convention on the Rights of Persons with Disabilities on 25 September 2008 and its optional protocol, both without reservations. This Convention contains several positive provisions on the rights of PWDs. Uganda also observes the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities which call for recognition of the overall importance of accessibility in the process of equalisation of opportunities in society.

The Persons with Disabilities Act 2006 of Uganda defines disability as '*a substantial functional limitation of daily life activities caused by physical, mental or sensory impairment and environmental barriers resulting in limited participation*'. This definition reflects human rights based approach that closely resembles the definition of the UN Convention on the Rights of Persons with Disabilities. A National Policy on Disability buttresses the law. The Act contains several positive provisions that ensure legal protection and equal opportunities PWDs.

Article 13 (2) of the Convention enjoins States to promote appropriate training for those working in the field of administration of justice, including police and prison staff. Section 25 of the PWD Act prohibits JLOS actors from denying PWDs access to justice services, including by refusing to provide the service to the person or by making it impossible or unreasonably difficult for the person to use the service. Article 26 and 27 of the Act obligate the JLOS law enforcement agents to provide physical accessibility and auxiliary aid or services to enable a person with a disability to use the service. However, compliance

132 UN Committee on the Rights of Persons with Disabilities 'Consideration of reports submitted by States parties under article 35 of the Convention' Initial report of State party due in 2010 Uganda CRPD/C/UGA/1

133 National Union Of Disabled Persons Of Uganda (NUDIPU) 'Alternative Report to the UN Committee of Experts on the Implementation of the Convention on the Rights of Persons With Disabilities (CRPD), 2013

134 JLOS Annual Performance Report 2013/2014, page 59

135 Ibid.



with these legal provisions remains problematic.

While the Evidence Act has made accommodations for people with hearing disabilities allowing them to give evidence in sign language or writing, little else has been done to accommodate the participation of PWDs as complainants, defendants, witnesses and even lawyers. Number 2 of the Assessors Rules under the Trial on Indictment Act even prevents their participation as assessors in criminal proceedings, denying them a right to participate in civic duties.

3.9.5 Youth

The National Youth Policy defines the youth as young persons, female and male aged 12 to 30 years. The Uganda National Household Survey 2009/2010 established that youths constituted 48% (7,310,386 people) of the population in 2008. Updated statistics show that in 2013, 6.5 million (21.3%) Ugandans were aged between 18 to 30 years.

The youth are a significant majority. Youths stand on the cusp of childhood and adulthood and are an important human development resource for the country. The youth play a critical role in the socio-economic dynamics of the country, as the labour force and budding entrepreneurs, as socially and politically conscious persons and key players in development processes. However, apart from the education and sports sector, few development strategies are designed to improve their capacities and skills base.

One of the biggest challenges faced by the youth is that of lack of employment. This is a priority issue that is related to poverty and vulnerability, as 12% of Ugandan youth are chronically poor.¹³⁶ There are few employment opportunities for the youth, whether in the informal or formal sector, leading to high unemployment rates. Unemployment rates are higher in females aged 18- 24 at 27%, more than in males at 9% in the same age.¹³⁷ Overall, 83% of the youth lacked employment in 2008.¹³⁸ Youth are also caught up in vulnerable employment characterised by low pay, low utilisation of skills and job insecurity. Many youths have failed to create wealth and job opportunities due to lack of enabling financial climates or opportunities for loans to make meaningful investment. The lack of land means that they lack collateral and lack capacity to engage in agricultural produce.¹³⁹

While the ideal is for youths to be educated and develop their mental capacities and skills profiles, many poor youths fail to obtain an education or drop out of school due to poverty related issues. Those youths with poor to no education enter the informal sector to survive; In 2011, about 95% of youth in non-farm enterprises were employed in the informal sector.¹⁴⁰

Some young people become engaged in adolescent sex and early marriage, and unsafe practices in intimate relationships also raise the risk of HIV. Young women are vulnerable to HIV due to their inability to negotiate safe sex and teenage pregnancy is prevalent. In

136 Action Aid International 'Lost Opportunity? Gaps in Youth Policy and Programming in Uganda' 2012 page 31.

137 Ibid page 39.

138 Uganda Bureau of Statistics (2013), *The State of Uganda Population Report 2013: Population and Social Transformation: Addressing the needs of Special Interest Groups*, page 40.

139 Uganda Poverty Status Report 2014, page 58

140 Ahaibwe G, Mbowa S Youth Unemployment Challenge in Uganda and the Role of Employment Policies in Jobs Creation <http://www.brookings.edu/blogs/africa-in-focus/posts/2014/08/26-youth-unemployment-uganda-ahaibwe-mbowa> (Accessed: 12 August 2015).



one study, the youth accounted for 11% with females more than affected than males 6% (65) as compared to 4.5% (51).¹⁴¹ Young mothers and young girls in intimate relationships are often exposed to domestic violence and abandonment of children, causing them to suffer multiple forms of vulnerability including poverty. Access to sexual and reproductive rights becomes a challenge in the absence of comprehensive services.

Failure to obtain a means of livelihood through existing employment channels in the youth not only increases dependency but also can trap the youth into chronic poverty and absolute poverty; this in turn increases their resort to alcohol and crime to sustain them. Due to these challenges, youths lack the means to afford legal representation in civil or criminal justice cases when their rights are violated or at stake. The National Youth Policy at 2001 noted that 63% of in-mates are youth who are characterized as street youth, sex workers, drug addicts, orphans and disadvantaged youth fending for themselves and younger siblings.

With regard to the Framework for protection of youth's rights, the National Youth Policy is cognisant of the status of youth as a vulnerable one, describing it as *'a period of great emotional, physical and psychological changes that require societal support for a safe passage from adolescent to full adulthood'*. This process requires a multidimensional approach to ensuring personal security and development of the youth. It underscores the need for equity in opportunities and gender inclusiveness. The Policy recognises the rights of youth, which embody the whole regime of civil and political rights under the Constitution and UN standards that Uganda adheres to. The policy prioritises certain types of vulnerable youths as follows:

Box 5 Vulnerable youth under the National Youth Policy

School dropouts and out of school youth; The female youth; Urban youth migrants; Youth in situations of armed conflict and disaster areas; Youth in-mates and those just released from prisons; Youth with disabilities; The illiterate youth; Domestic servants/ helpers; The street youth; Orphans; Youth infected/affected with HIV/AIDS; The rural youth; The unemployed youth; Youth in schools/ training institutions; Youth in security agencies; Pastoral and nomadic youth; Sex workers; Youth in refugee camps; Youth who are terminally ill; Youth addicted to drugs and substances; Youth in the informal sector; Employed youth below the age of 18.

SIP III touches on youth justice but focuses more on employment issues rather than from a rights based approach, how to ensure access to justice for youths as a particular social group that is often rendered vulnerable by circumstances and age. Solutions offered dwell on market information systems; minimum wage; non-formal skills development, improved access to finance, entrepreneurship training and promotion of value chains. However, the youth require important safeguards in the employment sector, including labour rights, protection from exploitation and harassment among other things. Vulnerable victims of exploitation and abuse in all forms require care and protection services of JLOS institutions. Access to justice to enforce their socio-economic and political rights is critical to the full development of youth into mature adults.

141 National Forum of People Living with HIV Networks in Uganda 'The People Living with HIV Stigma Index 2013

3.9.6 Fishing and island-based communities

Fishing communities in Uganda are described as being in two categories; those that are located around the general area of a landing and those closely clustered at or around a landing.¹⁴² There were 503 landing sites in 2010.¹⁴³ They are a high-risk population owing to many factors that affect their well-being and socio-economic development. The majority of the fishing communities are found in remote or inaccessible places such as on isolated islands and such areas usually have low human development and social indicators.

A study conducted by FAO and UNDP in 1991 found that over half of the mainland Lake Victoria-Uganda communities are situated at a distance of more than 5 km from any trunk road; 57% of these roads classified as 'Poor,' 37% as 'Fair,' and 6% as 'Good'.¹⁴⁴ The remoteness of these communities presents challenges regarding the provision of adequate public social services.

The fishing community in general displays signs of vulnerability and poverty, based on several factors. The road infrastructure development is not well developed particularly in the rural arrears, leading to isolation and higher transaction costs, which reduces profit margins. Fishermen lack proper gear for the work that they do, and are vulnerable to weather patterns, often leading highly migratory work lifestyles. Most landing sites are not accessible in poor weather.

While fishing as an activity is male dominated, many other players are involved in the industry, including women and children. Traditionally, the men fish, while women and children are involved in rudimentary fish processing, trade and marketing to individuals and large-scale buyers. Male behaviour in the fishing communities reveals patterns of polygamous large families and high mobility through migration, leaving the women in charge of significant socio-economic responsibilities.¹⁴⁵ Studies show that in addition to these roles, women also work as lodge and bar operators, and have to perform child care and household duties, as well as secure food security through farming and educational expenses.¹⁴⁶

Gender stereotypes and inequalities drawn from cultural norms and practices in these communities render women vulnerable to poverty. Women in the fishing community suffer high unemployment rates and are subjected to sexual exploitation; they also resort to transactional/commercial sex for survival.

Most fishing communities are known as at risk populations that are vulnerable to HIV.¹⁴⁷ It is estimated that the prevalence rate of HIV in the fishing communities is high, ranging from 15-40%. Women have a higher HIV prevalence than men at 33.9% and 23.9%, respectively.¹⁴⁸ HIV/AIDS incidences and socio-behavioral risk patterns in fishing communities are three

142 FAO 'Fishing Communities of Lake Victoria-A first assessment' <http://www.fao.org/docrep/006/AD150E/AD150E01.htm> (Accessed: on 21 September 2015).

143 Ministry Of Agriculture, Animal Industry and Fisheries Statistical Abstract 2011

144 Ibid.

145 ICEIDA 'The Status of Fishing Communities in Buikwe District, Uganda' 2013 page 20

146 Kwesiga M, Kidega W, Mudioppe P 'HIV Vulnerability of Women in Fishing Communities in Uganda' KMMC http://www.kmcc.org.ug/documents/12560/0/KMCC_POSTERS_RS_26May2014_2.pdf (Accessed: 20 September 2015).

147 KMMC' Most at Risk Populations – Fishing Communities and HIV/AIDS in Uganda: Synthesis of Information and Evidence to Inform the Response 2014

148 ICEIDA 'The Status of Fishing Communities in Buikwe District, Uganda' 2013 page 26



times higher than the national average at 7.8%: 28.8%, respectively.¹⁴⁹ Most of these fishing communities lack access to testing and counselling and care services and health centres may be remote to access. Those identified with HIV often face discrimination and stigma from other community members.

Children and youth are usually pulled out of education to become involved in fishing and related trade activities, affecting their development. Children are also heavily involved in child labour in the fishing communities from a very young age, and are easily exploited¹⁵⁰; particularly the young girls suffer from sexual exploitation and abuse. There is little information and research on the legal challenges that fishing communities face, or the availability of law and order services and their adequacy.

3.9.7 The landless and smallholders

Farmers or agricultural workers are one of vulnerable groups that face significant challenges in accessing justice given the fact that they are poor and in many respects marginalized. In Uganda, agricultural workers face challenges with regard to the kind of work they are involved in, financial hardships, illiteracy environmental conditions and language barriers.

The agricultural sector, despite its dominance within the Ugandan economy, is volatile and insecure; farmers or agricultural workers who are employed in the sector are vulnerable – a significant number of farmers are illiterate or have low levels of education and work in a highly unregulated informal sector. The volatility of the agricultural sector employment means that they receive the lowest incomes or none at all, and as poor people it means that they cannot access justice since they cannot afford to pay costs related to the justice delivery agencies.

The poor and vulnerable have low skills due to high illiteracy levels and often turn to self-employment in the agricultural sector for subsistence farming. The UNHS 2012/13 estimates that 67% heads of households in all regions except Kampala are involved in agriculture. Agriculture has the highest percentage of poor persons who are self-employed (29%).¹⁵¹ The NDP II estimates that women form 70% of the agricultural work force.¹⁵² The UN makes a case for legal empowerment of the poor in order to protect important labour rights and business enterprise in the informal sector of self-employed persons.¹⁵³

The Ethical Trading Initiative (ETI) Smallholder Guidelines (2005) define some of the characteristics of smallholder farmers.

Box 6 Ethical Trading Guidelines description of smallholder farmers

Production of relatively small volumes of produce on relatively small plots of land; generally, less well-resourced than commercial-scale farmers; usually considered as part of the informal economy (may not be registered, tend to be excluded from aspects of labour legislation, have limited records); are often vulnerable in supply chains.

149 Ibid

150 ICF Macro. Child Labor in the Fishing Industry in Uganda. Calverton; 2011 www.macroeconomic.com. (Accessed: 20 September 2015).

151 UNHS page 51

152 Page 26

153 UN General Assembly 'Report of the Secretary General 'General Assembly Legal empowerment of the poor and eradication of poverty Report of the Secretary-General A/64/133

Some of the products that smallholder farmers or out growers are engaged in include tea, cocoa, cotton and coffee and almost all other plantation crops.¹⁵⁴ While they are part of the global value chains due to their role as primary producers of export products, they also face various challenges related to their living wage, protection of labour laws for the informal sector, security of contracts and transparency in transactions, freedom to form and join trade unions among other things.

Smallholder farmers play an important role in providing food security, but are constrained by the lack of an effective land policy in Uganda. The land tenure systems in Uganda have resulted in some land holders having big parcels of land that lie unutilised while many small holders have little to no land to farm on. Land fragmentation is also common and prevents farmers from branching out into commercial farming.

Another challenge relates to the nature of land holding in Uganda, which sometimes is reflective of conflicting legal regimes. As at 2001, about 82% of the cultivated land in the central region of Uganda was held under mailo tenancy, 17% under leasehold, and 1% under freehold, with most farmers holding land under squatter or customary type of tenure.¹⁵⁵ These are some of the least secure forms of land ownership. In the case of squatters, evictions can arise at any point and in the case of customary tenure, there may arise conflicting uses of lands held in common. In the Northern regions, new forms of land holding policies believed to be intended to benefit large-scale farmers have been highly contested as marginalising the interests of smallholder farmers. Additionally, large tracts of land are often given away to multinational corporations of big investment firms, sometimes at the cost of the small holder farmers, who may be evicted, forcibly displaced or forced to sell.¹⁵⁶ The mechanisms for land registration and titling are poor in many districts, affecting those who would like to formalise their landholding.¹⁵⁷

Smallholder farming is characterised by family labour as opposed to mechanisation, which labour is provided by children and women. The participation of children in farming can be problematic when its magnitude reaches the threshold of child labour, and often in such settings, children may be pulled out of school or not sent to school with the preference for them to provide the manual labour needed. Also, women who participate in this type of farming may not necessarily reap financial rewards for their work, especially in the male-headed household model. Thus it is necessary to protect the rights of vulnerable groups in these situations and balance their responsibilities with rights.

3.9.8 Internally Displaced Persons (IDPs)

The International Federation of Red Cross and Red Crescent Societies defines vulnerability from a social vulnerability perspective as *'The diminished capacity of an individual or group to anticipate, cope with, resist and recover from the impact of a natural or man-made*

154 Bank of Uganda, Ministry of Agriculture, Animal Industries and Fisheries 'Agriculture Finance Yearbook 2012: Transformation of the Agricultural Sector: The Critical Role of Agricultural Finance

155 Serunkuma D, Pender J, Nkonya E 'Land Management in Uganda: Characterization of Problems and Hypotheses about Causes and Strategies for Improvement Project on Policies for Improved Land Management in Uganda' 2001 file:///Users/macuser/Documents/LASPNET/Land%20management.pdf (Accessed: 1 September 2015).

156 National Association of Professional Environmentalists 'Uganda: A study on Land Grabbing cases in Uganda 2012

157 Advisory Consortium on Conflict Sensitivity 'LAND AND INVESTMENT': Balancing Local and Investor Interest http://www.refugeelawproject.org/files/ACCS_activity_briefs/Land_and_Investment;_Balancing_Local_and_Investor_Interests.pdf (Accessed: 18 August 2015).



hazard.¹⁵⁸ The National Policy for Disaster Preparedness and Management 2010 defines vulnerability as 'the extent to which a community, structure, service, or geographic area is likely to be damaged or disrupted by the impact of a particular disaster hazard, on account of their nature, construction and proximity to hazardous terrain or a disaster-prone area.'

It recognizes categories of vulnerable groups to include unaccompanied minors, the elderly, the mentally and physical disabled, victims of physical abuse or violence and the pregnant, the lactating and persons with HIV/AIDS. In general terms, a person or persons with certain inherent or externally constructed characteristics that predispose them to shocks, risks and harms are considered vulnerable.

The situation of internally displaced persons (IDPs) in Africa is indicative of extreme disruptions of a way of life and socio-economic as well as cultural structures for a whole community, communities or even regions. The National Policy for Disaster Management and Preparedness refers to this phenomenon as 'crisis-induced mass migration' for 'survival'. Given that even under normal circumstances, the enjoyment of rights is curtailed due to limited investments and provision of public services in the social and economic sector, it becomes exponentially more difficult when dealing with the issue of displaced population from commencement of displacement to reintegration.

Uganda has faced this persistent challenge for over five decades now. While the numbers have varied over the years, based on various triggers and circumstances, it is estimated that there were 37,880.63 IDPs in Uganda in 2014.¹⁵⁹ One of the difficulties of determining the population of IDPs is that not all of them live in designated camps; some live with relatives and friends, but still retain the status of IDPs.

In Uganda, people have been displaced as a result of two categories of phenomena. The first category is that of human induced hazards or activities, most prominent of which has been armed conflict. The National Policy for Disaster Preparedness and Management 2010 highlights some of the triggers for disaster including armed conflict, land conflicts, terrorism, industrial and technological hazards, environmental degradation, cattle rustling and retrogressive cultural practices. Some or many of these cause internal population displacement. As noted in the National Policy for Disaster Preparedness and Management 2010, several conflicts occurred in the past five decades, including the 1979 war that ousted the government of Idi Amin, the 1980-1986 armed struggles that took place mainly in the central parts of Uganda, and the 1986-2007 armed conflicts in Northern and Eastern Uganda, as well as unrest in the form of cattle rustling in Karamoja area.

There has been prolonged conflict in Northern Uganda, Western Uganda and North East Uganda. These conflicts were spurred by different impetus. Citizens based in Northern Uganda were trapped by the clashes between the National armed forces and the Lord's Resistance Army, in which they became caught up in the cross fire, and were the object of abductions, maiming, sexual violence and loss of property. This led to the abandonment of homes and properties and *en masse* displacement to government established camps and outlying settlement camps. It was estimated in 2007 that approximately 1.7 million people of which women and children comprised 80% were displaced in more than 200 camps in the regions of Acholi (Amuru, Gulu, Kitgum and Pader districts) and Lango (Apac, Amolatar, Dokolo, Lira and Oyam).¹⁶⁰

158 Ibid

159 Prevention Web 'Uganda: Basic Country Statistics and Indicators 2014' <http://www.preventionweb.net/countries/uga/data/> (Accessed: 5 October 2015).

160 UNICEF 'UNICEF Humanitarian Action Uganda In 2007' <http://www.unicef.org/har07/files/Uganda>.



The rampant insecurity evidenced in Karamoja for decades was caused by armed civilians involved in criminal enterprise and violent raids by armed pastoralists for purposes of cattle rustling within Karamoja and Teso. The resulting militant solutions adopted by the National Armed Forces and backlash from the armed groups in the region affected civilians again. Civilians left their habitations in large numbers, travelling to Katakwi and Soroti to live in camps. Over 80,000 internally displaced persons (IDPs) were situated in Katakwi from the late seventies to early 2001.¹⁶¹ At present, these IDPs have all returned to their origins.

In Western Uganda, sporadic attacks against civilians by armed groups have also contributed to insecurity in the region and consequently, displacement. The Alliance of Democratic Forces (ADF) emerged in the 90s as an Islamist based insurgent group that targeted civilians and government facilities in Bundibugyo, Kabarole, and Kasese. The civilians in those districts fled to camps; 135,000 IDPs were evidenced in 1999.¹⁶² Due to continued attacks on the IDP camps, some IDPs fled to the nearby district of Fort Portal.

The African Union Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa 2010 recognises that 'the situation of IDPs and refugees arises from underlying political, socio-economic and developmental problems as well as the influence of external factors which cause destabilization'. The Declaration also notes that the majority of the refugees and IDPs are women and children, old persons and PWDs because of their vulnerability.

The UN Guiding Principles on Internal Displacement 2004 point out that IDPs are the most forgotten, neglected and vulnerable. The Guidelines define an IDP as

'Persons or groups of persons internally displaced people are people or groups of people who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.'

The critical rights for IDPs relate to the right to return, the right to participation, the right to property, and access to the law. During the time of displacement, welfare services such as food, water, sanitation and medical care are important for survival particularly of vulnerable groups. Also, with the strain of displacement come related psychosocial problems; the social fabric of communities is worn out, leading to sexual and domestic violence, hooliganism prostitution, alcoholism, malnutrition, disease and extreme dependency. The increase of widow headed homes, orphan hood and child is notable in conflict-affected areas. These situations exacerbate vulnerability and poverty.

The conditions under which IDPs live, whether in camps or outside, are inimical to their enjoyment of their rights without a multidimensional intervention from government and other actors. IDPs are vulnerable to marginalisation, exclusion, denial of basic services and needs. In the case of women and children, the risks of sexual abuse, violence and marginalisation increase vastly. At the point of return, re-integration and resettlement

pdf (Accessed: 15 August 2015).

161 UGANDA: Karamojong strength over 80,000 IDPs into camps <http://www.irinnews.org/fr/report/24135/uganda-karamojong-force-over-80-000-into-idp-camps> (Accessed: 12 August 2015).

162 UGANDA: IRIN Special Report on the ADF rebellion [1999] <http://www.africa.upenn.edu/Hornet/irin-120899c.html> (Accessed: 1 September 2015).



may not be achieved without key rights being re-asserted, such as the right to property. For example, in Northern Uganda, although most IDPs were resettled by 2010 into their original habitations, disputes have arisen over the demarcation of land boundaries, leading to criminal responses such as arson. In the absence of justice mechanisms to resolve disputes and conflicts objectively, violence and other forms of harassment are likely to arise. Other key areas of concern relate to security, access to justice and social services.

The second category of IDPs arises from disasters caused by natural causes. From 1990 to 2014, natural disasters occurred in the form of floods, fires, electric storms, drought, landslides and storms.¹⁶³ It is estimated that within 2005 to 2013, approximately 37,880 people were displaced, houses were destroyed and deaths occurred too. The National Policy for Disaster Preparedness and Management 2010 adds earthquakes, HIV AIDS, epidemic diseases in humans and animals, pest infestations, famine, mudslides to this list.

The Framework for protection of IDP rights as reflected under the IDP Policy recognises that IDPs are a vulnerable group that is entitled to enjoy their human rights on the same basis as other citizens. The focus of the IDP Policy is on the return, resettlement, integration and reintegration of IDPs.

The National Policy on Disaster Preparedness and Management was adopted to enhance government's response to disasters. Other policies with a bearing on IDP re-integration include the Karamoja Integrated Disarmament and Development Program 2007; the Peace, Recovery and Development Plan for Northern Uganda 2007; National IDP Return, Resettlement and Re-Integration Strategic Plan for Lango and Teso Sub Regions 2005; the Emergency Plan for Humanitarian Interventions for the North, 2006; and the Camp Phase-Out Guidelines, May 2008.

3.9.9 Conflict-Affected Groups

As discussed above, conflict has plagued the country in various regions. The most affected in relative terms could arguably be Northern Uganda, where not only human beings were targeted, but also physical infrastructure and the service industry devastated, effectively crippling the provision of all critical services in the district, including access to justice services.

In the wake of the conflict, efforts were made by government and other partners to identify the most affected persons to target for care and support. For example in the post resettlement period, the Disaster Management Policies of Gulu identified vulnerable groups as including child headed households or elderly headed household without any other social support, widows and widowers, child mothers headed household without a supporting spouse; the medically impaired, amputees; terminally ill persons with dependents who are under 18 years.¹⁶⁴ This list is not exhaustive, as there are indeed several other vulnerable groups that fall under this list such as children, child and female abductees, former rebel returnees, PWDs, youths, People living with HIV among others. These categories exist in all the northern and also certain extent eastern Uganda districts that were conflict affected.

Guidelines and parameters were set to protect returnees in Northern Uganda in the form of the Camp Phase Out Guidelines for all Districts that have IDP Camps. Priority was given to the most vulnerable groups in the camps such as widows and orphans in regard to land

¹⁶³ Prevention web 'Uganda' <http://www.preventionweb.net/countries/uga/data/> (Accessed: 15 August 2015).

¹⁶⁴ Nyirinkindi L 'Delivery, Local Governance and Economic, Social and Cultural Rights' page 38 HURIPCE Working Paper No 13, 2007



through the area land committees, local council courts, clan systems, formal courts. The deployment of Special Police Constables was also encouraged to maintain law and order. However in reality, there were problems in executing these guidelines. The Local council adjudicating bodies lack jurisdiction over land matters, and the judicial and law and order institutions did not match up to the population's demands. The PRDP noted the 'sketchy' presence of justice law and order institutions in the regions and lack of infrastructure for these services.

The landless in the conflict regions are also vulnerable to extreme forms of poverty. Conflicts over land disputes have escalated in the region, fostering crimes and violence in the region. In the absence of effective and fair arbitration mechanisms, poverty and vulnerability is likely to increase. The Peace and Recovery Development Plan (PRDP) 2007-2010 highlights the role of access to justice, law and order institutions among other service providers in lowering the incidence of persons living below the poverty line from 56% in 1992 to 31% in 2005/06.¹⁶⁵ The PRDP set out to prioritise the re-establishment of functional legal and judicial system including prosecutorial staff, judges and courts, mechanisms for land related conflict resolutions and dissemination on legal awareness and available judicial services.¹⁶⁶ To date, this remains a challenge.

In terms of the Frameworks for protection of victims of war, it is to be noted that for long, there has been a move to ensure meaningful justice for Northern Ugandan victims beyond formal measures, with emphasis on victim centered approaches. Calls have been made for a truth telling process, reconciliation and reparations. There is a Transitional Justice Policy in the offing by the Government of Uganda.

SIP III takes heed of people from disadvantaged areas of Uganda as a result of civil conflict, particularly women and children. It notes the need to enhance access to justice and basic services for them. In regard to Northern Uganda, the adoption of alternative models of transitional justice such as the informal justice processes is highlighted. There is emphasis on comprehensive, and victim-centered approaches to post-conflict justice, and in particular, the rights, welfare and participation of women and children.

Disadvantaged areas are prioritised under the Transitional Justice result area in SIP III. Strengthening of service delivery in land, family and criminal justice is promised for the PRDP, KIDDP and others. In Northern Uganda, SIP III commits to establishing pilot District Land Tribunals in the four Districts of Amuru, Gulu, Kitgum and Pader, with linkages to traditional institutions in Acholi region through the Ker Kwaro Acholi traditional structure.¹⁶⁷

It is estimated that approximately 82% of the Karamoja population lives in poverty, and large households that contribute to poverty aggravate this situation.¹⁶⁸ The Karamoja Integrated Disarmament and Development Programme (KIDP) 2007: Creating conditions for Promoting Human Security and Recovery in Karamoja, 2007/2008-2009/2010 is a policy and operational framework for restoring peace and development in the region. The KIDP points out the fundamental challenges posed by armed conflict in Karamoja that has rendered the people poor and vulnerable, which include lack of adequate access to

165 Republic of Uganda 'Peace, Recovery and Development Plan for Northern Uganda (PRDP) 2007-2010 September 2007' page 15

166 Ibid

167 An Independent Mid Term Evaluation Report of the Second Sector strategic investment plan SIP II, p. 112, 2010

168 Fairventures Worldwide 'Feasibility Study Dryland commodities and livelihoods in Karamoja' 2013 page 5, 25



health and education, and the destruction of physical and social capital leading to pervasive poverty. It also notes the wide spread social exclusion of poor and vulnerable groups and persistent gender disparities in benefiting from the development process.

While there are severely poor social and economic indicators overall in Karamoja, studies show that access to legal assistance is the most scarce form of intervention by NGOs and the least met need in all the five districts, at 1% as at 2007.¹⁶⁹ KIDP Phase 2, July 2012 – June 2015 provides a stronger framework in this regard. Due emphasis is placed on embedding rule of law in the region; Judicial services enhancement is envisaged in the area of court construction and functionality in the administration of justice of LC courts, support to traditional and transitional justice processes and sensitising local governments and traditional justice structures on sexual and gender based violence.

3.9.10 People Living with the Human Immunodeficiency Virus (HIV)

People living with HIV (PLHIV) are exposed to stigma, discrimination, isolation and exclusion once their status comes to light in the public domain. This has the adverse effect of limiting those PLHIV from accessing prevention and treatment as well as support services to cope with the physiological, psychosocial effects of HIV.

The stigmatisation of HIV status has contributed its increased prevalence and at 2013 it was estimated that approximately 1,390,000 people live with HIV in Uganda.¹⁷⁰ In 2011 the prevalence rates of those aged 15-49 that are infected stood at 7.3%. The incidence was higher in women at 8.3% with men at 6.1%.¹⁷¹ The rights of PLHIV are affected in the political, socio-cultural and economic arena, leading to them being shunned and marginalised when seeking health and work services or participation in several social and economic activities. The PLHIV Stigma Index of 2013 cites the incidence of social exclusion and harassment/insults in a sample study at 16% and failure to access work at 23%. High poverty levels are noted, with 60% earning less than 100 dollars 20% earning earned between 100 dollars to 300 dollars and 7% lacking sufficient food between one to seven days. 4% of PLHIV had their HIV status disclosed to a spouse without granting consent and 7% had their status exposed to third parties by a health care professional had without their consent. 6% were subjected to involuntary testing and health procedures. 23% of the 27% who lost their jobs attributed it to their HIV status, which in itself is discriminatory. Denial of health insurance and segregation were also noted in 4.3% and 1.4% of PLHIV among others due to their status.

The HIV Stigma Index reported that 23% respondents had faced human rights abuses in 2012 such as assault, abuse, exclusion, forced medical tests and other discriminatory acts as a result of their status. Despite this, almost 75% of those whose rights were abused or violated did not seek any form of legal redress pointing to either lack of knowledge about the legal procedures or lack of enabling environments to seek redress. 19% reported lacking financial resources to seek redress while 19% lacked confidence in the justice system. Only 20% approached relevant government officials for assistance.

From the above evidence, it is clear that as a result of their status, PLHIV who are identified as such face human rights abuses and violations including right to privacy, from health

169 Chronic Poverty 'Research Centre 'Understanding Chronic Poverty and Vulnerability Issues in Karamoja Region' 2008

170 National Forum of People Living with HIV Networks in Uganda 'The People Living with HIV Stigma Index 2013

171 Uganda AIDS Indicator Survey, Key Findings 2011



professionals, co-workers, spouses and intimate partners. All this renders them vulnerable and marginalized as a population. Despite this, knowledge of their rights is low, at 43%. The Uganda AIDS Indicator Survey 2011 points to low overall acceptance of people living with HIV/AIDS in Uganda, which is stigmatized and kept secret. The PLHIV Stigma Index poignantly points out that PLHIV suffer stoically rather than seek the services of judicial system and administrative offices; the primary cause of this reticence is the costs involved¹⁷²

Within the category of PLHIV, there are those that face various forms of marginalisation. One such category is women living with HIV. The tribulations that these women suffer, mostly in the form of domestic violence, have been documented vividly¹⁷³ but there is little evidence of improvement in their plight. The domestic violence that women face when they reveal their HIV status to intimate partners and spouses has served to deter many women from revealing their status and in the context of polygamy this has served to increase the risk of spreading HIV. Women's economic dependence on partners and spouses increases their vulnerability and this situation is aggravated by law enforcement agencies that do not view domestic violence as a serious crime, as well as the access to justice barriers that women face in general. Women also face rejection and abandonment for male partners, who not only deter them from revealing their HIV status but also from seeking medical help and intervention to enable them to live positively.

With regard to Framework for protection of PLHIV, the HIV Prevention and Control Bill endeavoured to set out the human rights of PLHIV but raised serious concerns around compulsory testing, mandatory notification and disclosure and criminalizing of transmission among others.¹⁷⁴ Despite this, the HIV Prevention and Control Act of 2014 became law in 2014.

Government has put in place policies as well as strategies to deal with the pandemic from a public health and human rights perspective. These include the Uganda National HIV Prevention Strategy (2011-2015) and the National HIV/AIDS Policy, Uganda National Policy for HIV Counselling and Testing. The SIP III touches on the policy and programmatic areas of addressing HIV within the health sector, and the need for appropriate management of resources for HIV/AIDS activities as stipulated in the Uganda National AIDS Policy. However, it fails to make the linkage between the Health Sector and the strategic interventions that JLOS can make synergistically to ensure that the rights of Persons Living with HIV are protected and that those whose rights are infringed can access justice as a specific category of vulnerable persons.

3.9.1.1 Indigenous groups and Ethnic minorities

The United Nations Declaration on the Rights of Indigenous Peoples recognises that indigenous peoples have rights, but does not define who they are. The politics of who is an indigenous group have always been murky and controversial in Africa, due to the power

172 National Forum of People Living with HIV Networks in Uganda 'The People Living with HIV Stigma Index 2013 page 27

173 Human Rights Watch 'Just Die Quietly: Domestic Violence and Women's Vulnerability to HIV In Uganda' 2003 Vol. 15, No. 15(A)

174 Human Rights Watch - Comments to Uganda's Parliamentary Committee on HIV/AIDS and Related Matters about the HIV/AIDS Prevention and Control Bill Uganda: Civil society coalition condemns President Museveni for signing HIV Prevention and Control Bill into law - See more at: [http://www.hivjustice.net/news/ugandas-president-museveni-signs-hiv-prevention-and-control-bill-into-law-contradicting-evidence-and-human-rights/](http://www.hivjustice.net/news/ugandas-president-museveni-signs-hiv-prevention-and-control-bill-into-law-contradicting-evidence-and-human-rights/#sthash.pUVDPXJx.dpuf) (Accessed: 1 September 2015).



relations and complex dynamics of ethnicity. The UN in 2004 came up with a working definition as follows:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system”¹⁷⁵

The implications of this statement captures key elements of indigenous groups; they have prior claims to settlements, they are culturally or linguistically distinct and seek to preserve their identity based on their own systems, including legal systems. On the other hand, the United Nations Minorities Declaration Article 1 thereof refers to minorities as based on national or ethnic, cultural, religious and linguistic identity whose existence must be protected. Despite that, there is no international agreement on a definition of groups constituting minorities.¹⁷⁶ The UN Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities described a minority group as:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”¹⁷⁷

Ethnic minorities in Uganda tend to experience some of the highest risk of human rights abuse or denial, discrimination, poverty, marginalization and social exclusion in comparison to most of the remaining population. Ethnic minorities just like most other vulnerable groups face significant challenges such as access to productive resources, illiteracy, unemployment or under-employment hence leading to further poverty, vulnerability and social exclusion and in effect impacting on access to justice. Their vulnerability means they are likely to be denied or will fail to access to beneficial sources of livelihood and access to justice when wronged¹⁷⁸. Access to justice by ethnic minorities is also hampered by limited or none existent justice delivery agencies in their areas.¹⁷⁹

For purposes of this study, a group that embodies both the aspects of a minority group and an indigenous group will be analysed. The Batwa in the South East of Uganda will be sampled, although it is acknowledged that a whole range of ethnic and indigenous groups exist in Uganda. It may be surmised that the challenges faced by these two groups highlight just a few of the issues that other ethnic minority groups face. The Batwa are unique in that they are not only numeric minorities but linguistic minorities and have adhered to their ancestral ways of life, including life as hunters and gatherers.

It is believed that the Batwa were the original inhabitants of the forests surrounding Lake

175 UN ‘The Concept of Indigenous Peoples’ PFII/2004/WS.1/

176 Office of the High Commission for Human Rights ‘Minorities under International Law’ <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationalallaw.aspx> (Accessed: 18 September 2015).

177 E/CN.4/Sub.2/384/Rev.1, para. 568.

178 Challenges of Ethnic Minority Groups in Achieving their full Potential: The Role of Development Actors, Community Development Resource Network, http://www.cdrn.or.ug/downloads/Policy_Brief_EMG.pdf

179 Global Rights Legal Needs Assessment, Bundibugyo, 2010.



Kivu and Lake Edward in the Great Lakes region of Central and East Africa and predated the other inhabitants. The Batwa coexisted peacefully with the animal and plant species in the forests. However, in 1964 the Forest and Game Acts limited the access of the Batwa to the forests. Thereafter in 1991, the Batwa were evicted from Mgahinga and Bwindi national parks after they were upgraded from game reserves, (the latter which was declared a world heritage site protecting gorillas) and the Ecuva Forest reserve.¹⁸⁰ This resulted in the disruption of a whole way of life and put their health, nutrition, cultural life and economic activities in peril that pertains to date.

The Batwa have faced severe challenges in the enjoyment of their human rights, as a minority group and indigenous people, as the forest is not only a habitation but also a whole way of life, providing physical, economic, spiritual, and social nourishment.¹⁸¹ They live in conditions of extreme poverty and are faced with challenges of drought and lack of nutrition.¹⁸² In effect, they have become landless and homeless. It is estimated that in 2008 there were 6,700 Batwa and 80% of them were landless and homeless.¹⁸³

Although under the UN Declaration on the Rights of Minorities and of Indigenous Persons respectively the positive culture and customs of indigenous groups should be preserved through all means, the Batwa's way of life is heavily challenged. The Batwa are discriminated against in their surrounding communities of the Bakiga and Bafumbira and seen as inferior due to their way of life and hence isolated. Systemic exclusion is also evident in the limited provision of services such as health and education. Communities around them not only deny them employment but also land user rights. The Batwa have very low levels of education and very high levels of poverty.¹⁸⁴

The Ik of Karamoja similarly are numeric and linguistic minorities, hunters and gatherers who have secluded themselves to their indigenous way of life. Several other minority groups and indigenous groups are deemed to exist in Uganda although the determination of that status is not forthcoming. The Africa Commission on Human and Peoples Rights has noted with concern the apparent lack of political will by government of Uganda to take adequate measures to realize the rights of indigenous populations as guaranteed under the Charter, urging Uganda to put in place laws that protect land rights and natural resources of indigenous populations.¹⁸⁵

It has been noted that among the vulnerable groups, the most affected by the lack of traditional justice systems are the indigenous communities.¹⁸⁶ Formal laws are alien to such groups, whose unique customary norms and sanctions mechanisms are weakened by breakdown in the social set up and structures due to being scattered and disempowered

180 <http://www.culturalsurvival.org/Uganda-Country-Profile> (Accessed: 12 August 2015).

181 United Organisation for Batwa Development in Uganda 'Securing Indigenous Peoples' Rights in Conservation: A review of South-West Uganda, 2008

182 Ethnic Minorities in Uganda: Universal Periodic Review Joint Submissions for Uganda' Submitted to the Human Rights Council by Minority Rights Group and others <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/JS6-JointSubmission6-eng.pdf> (Accessed: 22 September 2015).

183 United Organisation for Batwa Development in Uganda 'The Right of Indigenous Batwa Peoples to Land and Natural Resources in Uganda- A statement submitted to the Human Rights council, 2014 <https://uobdu.wordpress.com/2014/05/27/the-right-of-indigenous-batwa-peoples-to-land-and-natural-resources-in-uganda-a-statement-submitted-to-the-human-rights-council/> (Accessed: 18 September 2015).

184 Ibid page 9

185 African Union 'Concluding observations of the African Commission on Human and Peoples' Rights on the 4th periodic report of the Republic of Uganda' (Presented at the 49th Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul, the Gambia from 28 April to 12 May 2011)

186 Mbazira C. (2009), *Uganda: Constitutional, Legislative and Administrative Provisions concerning Indigenous Peoples*, ILO/ACHPR, page 5.



by dominant groups and norms.

The Constitution does not make specific reference to indigenous groups, as it does for minority groups. However it could be surmised that where indigenous groups are marginalised, they fall within the ambit of those entitled to affirmative action. For purposes of this study, an ethnic group from the west and the east will be utilised to showcase some of the human rights and rule of law concerns for ethnic groups.

The Land Act of 1998 Section 23 thereof allows for grazing and watering of livestock; hunting; gathering of wood fuel and building materials; gathering of honey and other forest resources for food and medicinal purposes; any other purposes as may be traditional among the community using the land communally. However, under Section 44 government may protect environmentally sensitive forest reserves, thus curtailing activities of the Batwa for example.

Section 45 of the National Environment Act 1995 allows for traditional uses of forests which are indispensable to the local communities and are compatible with the principle of sustainable development but the law retains the discretion to exclude human activities in any forest area by declaring a forest area a specially protected forest.

3.9.12 Refugees

Refugees are vulnerable persons due to the lack of entitlement to citizenship rights, and because they are seen as foreign entities competing for scarce resources with homegrown communities. As such they are subjected to stigmatisation and discrimination and are targeted for crime by non-refugee communities.

Efforts by government and UNHCR have seen some programmes established, such as the pilot mobile court scheme in Nakibale that commenced on April 2013. The project aimed at improving access to justice and legal assistance for refugees who were being targeted and affected by crime.¹⁸⁷ Access to justice tends to be problematic due to scarcity of services, particularly for victims of crime, given the institutional challenges that exist in criminal justice administration within the police and the judiciary. This discourages refugees from reporting crime and even those who report have long waits before their cases can be heard and determined. One of the challenges posed by refugees in Uganda is their habitation in settlements as opposed to camps; this diffusion makes service provision difficult.

3.9.13 Other groups

There are categories of people who are marginalized because they are regarded as transgressing religious mores and indeed the Criminal Law, such as sex workers and sexual minority groups, also known as LGBTI (Lesbian, Gay, Trans-sexual and Intersexual). Sex workers face harassment by the Police, abuse from their clients and they are often marginalized by the rest of society.¹⁸⁸ LGBTIs in Uganda suffer violence such as corrective rape, being disowned by families and being chased out of their homes.¹⁸⁹ Although these groups are regarded by many as not having any rights, there are a few LASPs working with these groups to offer counselling, legal advice and legal representation.

187 UNHCR *'Mobile court scheme launched in Uganda's Nakivale refugee settlement* ://www.unhcr.org/516d29359.html (Accessed: 14 August 2015).

188 For more on sex workers in Uganda, see Tamale, S. (2009) *Paradoxes of Sex Work and Sexuality in Modern- Day Uganda*, East African Journal of Peace & Human Rights, Volume 15, Number 1, 2009

189 Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation (2015) *Human Rights Violations Based on Gender Identity and Sexual Orientation in Uganda in 2014*, available at http://www.hrapf.org/sites/default/files/publications/15_02_22_lgbt_violations_report_2015_final.pdf



4.0 LEGAL AID AND ACCESS TO JUSTICE IN UGANDA

4.1 Introduction

From a literal point of view, the concept of Access to justice relates to 'the mere contact or right to entry to use the justice system by citizens'¹⁹⁰. Access to justice entails an examination of how individuals, groups and communities realise de facto justice from the enforcement of substantive law as well as the quality of justice meted out on them by the justice delivery system i.e. procedural justice.

As seen in the previous chapters, being in a state of vulnerability highly impacts on capacity to enforce rights, from a personal standpoint or as a collective. This brings to bear an examination of the adequacy of the frameworks for legal aid that are established to make the right to access justice a reality for vulnerable and poor groups; in terms of relevance, organisation, accessibility and effectiveness.

Access to justice therefore encompasses physical access to justice institutions and services; financial access to justice and: procedural or technical access to justice law and order institutions and services. Sometimes, these factors may all come into play in the same circumstances, forming extreme barriers to justice, particularly vulnerable groups faced with multiple forms of vulnerability. For example, an orphan child in conflict with the law requiring legal representation would face significant constraints in all three aspects, as would a Mtwa woman from Mgahinga seeking to enforce her rights as a widow.

Physical access refers to the presence and availability of services by key JLOS institutions and non-state actors. Successive JLOS strategic investment plans have striven to ensure that the right balance is achieved between supply and demand of services. The emphasis on de-concentrating JLOS services has long occupied the planners in JLOS, but to date, most of the JLOS services remain in the urban areas and central region. This creates a physical barrier that may result in victims or users not attempting to close the distance gap hence choosing to relinquish their rights to pursue certain options. For example, the Justice Centres that provide critical legal aid are found in only four satellite locations.

The procedural or technical aspects of access to justice could also be referred to as mental or attitudinal barriers to accessing justice. The ease of transactions of legal matters is at best difficult for lawyers who are schooled in legal practice and confusing for laypersons who may be literate. However, in the case of poor and vulnerable persons, who are already disadvantaged in several ways including illiteracy, interfacing with legal processes can be a formidable task, daunting at best. Ironically, due to high poverty levels among the majority of Ugandans, few can afford to retain the services of lawyers, who not only are far from the poor in terms of distance, but charge highly for their services. The often highly charged and adversarial system of justice combined with an overly focus on procedures and rules can be distressing and disempowering.

Financial accessibility as a precondition to accessing justice is problematic for the poor. Given the challenges of raising resources for transportation to the relevant institutions, the various user fees may serve as a deterrent to filing cases before institutions. Lawyers' fees tend to prohibitive even where lawyers may be accessed.

190 Donald Rukare, *Access to Justice and the Rule of Law*, National Consultation Conference: Legal Empowerment of the Poor, 24-25 November 2015, page 10.



Both poverty and vulnerability are or can be a cause and a consequence of inadequate levels of access to justice¹⁹¹. By ensuring that the poor and vulnerable access justice, the potential for economic and social empowerment through legal measures improve considerably. Conversely, by excluding poor and vulnerable people from accessing justice institutions, they are prevented from exploring opportunities that would otherwise improve their lot and status. Therefore the promotion of access to justice related rights and in effect the rule of law implies strengthening the ability of vulnerable and marginalised groups to use justice systems to obtain remedies.

To that end, legal aid is a tool, a means to providing disempowered and marginalised groups with agency or representation to attain either mobility, fiscal or technical means for admission into the justice, law and order system.

4.2 Models of Legal Aid In Uganda

Uganda currently lacks a national legal aid scheme, such as say South Africa has in place. Other countries like Malawi or Sudan have a public defender system. In Uganda presently, legal aid is given various mixed models broadly under the state run legal aid schemes and non-state Legal Aid Service Providers (LASP).

4.2.1 State provided legal assistance

Traditionally, government has provided legal aid in the arena of criminal justice to people accused of capital offences that lack representation. Government has been providing free legal services under two major laws; The Poor Persons Defence Act, 2000 and the Advocates (Amendment) Act 27 of 2002. Critiques have decried a public legal aid system that focuses on rights of accused persons and omits to take action for victims of crime, exploitation, abuse and neglect. However, there have been developments, particularly under JLOS SIP III, to infuse a more victim centric approach to justice and to address the particular needs of vulnerable groups.

4.2.2 States brief scheme

The Judiciary operates a State Briefs Scheme within its mandate, referred to in other jurisdiction as the Judicare model. Under this scheme, advocates are sought to accept cases with minimal resources provided by the Registrars as opposed to charging commercial rates. The Poor Persons Defence Act Chapter 20 provides for the defence of poor persons committed for trial before the High Court. It is activated when it appears that in the interests of justice, a prisoner should have legal aid in the preparation and conduct of a defence at his or her trial and that the means of the prisoner are insufficient to enable him or her to obtain such aid (Section 2).

Section 55 The Trial on Indictment Act, Cap. 23 states reinforces this position, stating that: "A person accused of an offence before the High Court should be defended by an advocate, at his or her own expense as of right. Nonetheless, because the majority of the cases tried in High Court are of a capital nature, and more than likely lead to life imprisonment or the death penalty, this means that all accused persons appearing in the High Court must be defended by an advocate either of their choice at their own expense or by one assigned to them by the state at the expense of the state, as provided for under Article 28 (3) e of the 1995 Constitution of Uganda.

Section 158 of the Magistrates' Court Act, Cap 16 provides for legal assistance to the same

191 Julinda Beqiraj and Lawrence McNamara, *International Access to Justice: Barriers and Solutions*, Bingham Centre for the Rule of law Report, 2014 page 14.



effect as the above laws for indigent accused persons.

4.2.3 Pro bono legal scheme

During the implementation of JLOS SIP I, donors in the justice and law sector supported the establishment of a joint donor Legal Aid Basket Fund as a means for non-state actors to be capacitated to carry out legal aid for the poor and vulnerable.¹⁹² This precipitated NGOs and CSOs organizing themselves under the umbrella network Legal Aid Service Providers Network (LASPNET). The Ministry of Justice and Constitutional Affairs (Uganda Law Council) and the Uganda Law Society were supported by the Legal Aid Basket Fund to create the '*pro bono*' scheme in October 2008, which pertains to date under the auspices of the Democratic Grant Facility.

The Advocates (Amendment) Act Cap 267 as amended by Act. No. 27 of 2002 is the fundamental law governing legal aid in Uganda. The Uganda Law Council established the Pro-bono (Services to Indigent Persons) Regulations SI No. 39 of 2009 under which Advocates are required to provide forty (40) hours of Pro bono services every year or make payment in lieu. The Uganda Law Society manages this scheme, whose primary aim is to provide access to legal aid services for the poor, vulnerable and marginalised. The Pro-bono Project of the Uganda Law Society is meant to generate professional legal aid work at a low cost to vulnerable or underprivileged persons- the 'unrepresented have-nots'.¹⁹³ The Law Council supervises this scheme, which is running in 9 districts where the Uganda Law Society runs satellite offices.

The Advocates (Amendment) Act allows students seeking the acquisition of professional skills or experience for the purpose of enrolment and audience in court to practice if an advocate possessing a valid practicing certificate accompanies them. The Advocates (Student Practice) Rules, 2004 cements this position, allowing Post Graduate Bar students to provide legal aid for children in conflict with the law, when appearing before Magistrates' Courts and accompanied by a senior practising lawyer. The Legal Aid Clinic of the Law Development Centre (LDC) has benefitted from working with students from LDC to provide legal aid to indigent children in the criminal justice system and petty adult offenders.

4.2.4 Uganda Human Rights Tribunal

The Uganda Human Rights Commission is established under the auspices of the Constitution. It has a tribunal that adjudicates on human rights violations under Article 53(2).¹⁹⁴ The Tribunal has interpreted its mandate widely to apply to all human rights violations, and it utilises mediation and adjudication to provide remedies for the poor and vulnerable.

4.2.5 Justice Centres

The Justice Centres Uganda (JCU) is a programme of JLOS that was designed to provide legal services as a one-stop model for indigent, marginalized and vulnerable persons. JCU are located in the judiciary in four pilot centres that canvass 30 districts. They aid indigent and vulnerable persons seeking access to justice in both civil and criminal proceedings. Lawyers, paralegals and persons trained in psychosocial services staff the centres and provide legal aid through its clinics and community outreach programmes as well as advocacy.¹⁹⁵

192 Embassy of Sweden Kampala -Sweden's Development cooperation with Uganda: Brief summary of current and planned contributions 2011 <http://www.swedenabroad.com/SelectImageX/202754/Sweden%27sDevelopmentCooperationwithUganda2011.pdf> (Accessed: 15 September 2015).

193 Uganda Law Society 'The Pro bono work of the Uganda Law Society' <http://www.uls.or.ug/projects/pro-bono-project/pro-bono-project/> (Accessed: 15 September 2015).

194 <http://uhrc.ug/tribunal> (Accessed: 15 September 2015).

195 Justice Law and Order Sector 'Justice Centers' <http://www.jlos.go.ug/old/index.php/2012-09-25-11->



Justice Centres are also involved in the state brief scheme by representing accused persons through the state briefs scheme.¹⁹⁶

4.2.6 Legal aid by NGOs

The Advocates (Legal Aid to Indigent Persons) Regulations, No. 12 of 2007 forms the basis for the legal aid and the delivery of free legal services by LASPs, which are supervised by the Uganda Law Council. A number of LASPs are providing legal aid to indigent persons in a number of thematic areas, and many of these fall under the umbrella body Legal Aid Service Providers Network (LASPNET). The thematic areas range from children, women, refugees, IDPs, agricultural workers, youth, workers, People living with HIV AIDs, accused persons etc. A few of these LASPs have national coverage i.e. extend their services to at least the four traditional regions of Uganda. The majority tend to cover between one to two regions, although in those regions they may address a number of human rights issues.

Legal aid covers many aspects of lawyering, including giving counsel to victims, drafting documents and court papers, mediation and dispute resolution and court representation. Legal aid has now been widely understood to include legal education, which is the aspect of increasing literacy and awareness on laws and rights, procedures and mechanisms seeking redress.

Innovative trends in legal aid have also seen LASPs train communities on how to represent themselves in certain matters of adjudication e.g before LC Courts or traditional authorities, as done by UCLF, AHURIO, LAPD and ULA. This is important for empowering citizens to assert their rights, in the absence of lawyers to represent them. Increasingly, LASPs are utilising strategic interest litigation on behalf of groups of marginalised and vulnerable groups. FIDA Uganda, Legal Aid for Persons with Disabilities (LAPD) and MIFUMI for example have used this form of intervention to equip vulnerable groups to fight for their rights through legal means.

The use of mobile legal aid clinics and rural outreach community programmes by LASPs has also been useful in helping to overcome the challenges of physical accessibility for remote or far off communities. These clinics are useful in identifying the most urgent legal needs of victims and marginalised groups for expeditious action and eases the transactional cost for many beneficiaries.

Community based resource persons have been integral to the work of several LASPs. These persons have several titles, ranging from the contested one of 'paralegals' (the Advocates Act views paralegals only as those who have obtained a required diploma from the Law Development Centre) to Community legal volunteers. These community-based resources are usually trained in basic legal knowledge and procedures, and act as a liaison in the community for the commissioning LASP as mobilisers, educators and focal points for receiving cases of their target beneficiaries. They refer cases to the appropriate institutions such as courts, police, prisons among others and sometimes act on behalf of the victims e.g as fit persons or witnesses or reporters of crime. These volunteers have helped to ease the challenge of physical outreach for many legal aid service providers and their knowledge of local contexts, contacts and networks is invaluable in making legal aid provision sustainable in their communities.

The Paralegal Advisory Services Programme has trained paralegals to work in the regional referral prisons and in police stations. They work exclusively with remand suspects who

09-41/legal-aid/justice-centers (Accessed: 14 September 2015).

196 JLOS Annual Performance Report 2013/14



are held on minor charges to provide legal aid representation or educate them on self-representation. The Paralegal Advisory Services have succeeded in being accepted by the District Chain Linked Committees as major players, helping to ease many barriers to justice that suspects would otherwise face in the criminal justice system.¹⁹⁷

Most LASPs provide legal aid for in the area of civil justice more than in criminal justice. LASPs including Legal Aid Project of the Uganda Law Society, Foundation for Human Rights Initiatives, Legal Aid CLINIC of the Law Development Centre, AHURIO and Public Defenders Association of Uganda assist poor persons accused of crime with legal representation. Advocacy and research have also become integral to the work of LASPs as they seek to address de facto and de jure discrimination against poor, vulnerable and marginalised groups.

4.3 Impact of Legal aid on vulnerability, marginalisation and poverty

While there are numerous LASPs working in the area of poverty, marginalisation and vulnerability, few have holistically documented or disseminated the impact of their work from a poverty reduction or empowerment dimension, or indicated the economic value of their interventions. Also, the immense difficulty of quantifying the value of legal aid cannot be overrated.¹⁹⁸ However, there have been instances of success that indicate the effectiveness of various legal aid strategies on reducing marginalisation, poverty and vulnerability and contributing towards economic empowerment.

4.3.1 Public Interest Litigation

MIFUMI lodged a case before the Constitutional court (Mifumi (U) Ltd & 12 others v Attorney General, Kenneth Kakuru). Its ruling directly had a bearing on poverty reduction and vulnerability and the correlation between these concepts was vigorously debated. At the heart of the case was the contention that the demand for and refund of bride price as a precondition for dissolution of marriage promotes gender inequality hence is discriminatory and unconstitutional. The discourses had strong overtones unequal gender power dynamics and poverty.

The Affidavit of Ms Turner one of the petitioners stated among other things:

That the Bukedi Bye-law on Bride Price (Laws of Uganda, 1964, revised) was enacted in an attempt to standardize the amounts of bride price demanded which had gone to high levels against increasing poverty in the then Bukedi district (Tororo, Pallisa, Busia, Butalega and Budaka), however this provision is still too high for most people therefore the State is helping in keeping alive laws that are to the detriment of women and poor people.¹⁹⁹

THAT bride price has increasingly become a tool of oppression of women because it turns them into a possession equated to a price and in rural areas where the poverty levels are high the practice has increasing increasingly

197 'A Survey of Pro Bono Practices and Opportunities in 71 Jurisdictions' Prepared by Latham & Watkins LLP for the Pro Bono Institute 2012 page 332

198 PriceWaterhouseCoopers 'Economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law' National Legal Aid 2009

199 The Bukedi by-law states that; "The maximum bride price which may be paid or demanded shall be five head of cattle, five goats and twenty shillings." A person receiving or demanding bride price in excess of this commits an offence and is liable to a fine not exceeding one hundred and fifty shillings



become commercialized in nature with the parents of girl or woman extracting as much as they can from the prospective groom.

In his judgement, Justice Twinomujuni noted the extreme impact of bride price on increasing vulnerability of women, holding that where this is allowed it 'leaves a lot of desperate and helpless women in society which provides a breeding ground for prostitution'. On appeal, the poverty, vulnerability and marginalisation discourse continued when Justice Tumwesigye noted that the effect of the woman's parents not having the property to refund may be to keep the woman in an abusive marital relationship for fear that her parents may be put into trouble owing to their inability to refund bride price, or that her parents may not welcome her back home as her coming back may have deleterious economic implications for them.

Justice Kisakye in her judgement continued this analysis, saying that it is therefore not surprising that forced marriages, especially of girls who have not yet come of age in this country are not uncommon in rural areas where poverty levels are high and literacy levels are relatively much lower than in urban areas.

Thus the pronouncement by the Supreme Court labelling requests for refunds of bride price unconstitutional has the potential to free vulnerable women and poor families from economic hardships that hitherto were a reality.

4.3.2 Intervening for financial security

This strategy has seen LASPs undertake mediation, alternative dispute resolution and litigation to ensure that vulnerable groups are protected financially. LASPs like FIDA Uganda have noticed an increase in women and widows involved in property disputes to protect family property from sale or grabbing after they attended legal awareness sessions. ACTV is cooperating with Refugee Law Project and other CSO's to provide legal and economic empowerment to refugees who are searching for work and also securing compensation for victims of torture.

NUDIPU and LAPD have had results in training PWDs to represent themselves in the Judiciary's Small claims procedures mechanisms for quick wins over debts less than 10 million shillings. In addition, successfully representing clients in land and employment disputes has helped to release monies and properties that can help PWDs.

Some LASPs are engaging in teaching community members to make wills through which fair distribution is encouraged for spouses and children, to reduce vulnerability of women and children.

4.3.3 Securing economic livelihoods

Some LASPs are involved in working with groups of employees, entrepreneurs and smallholder female farmers to build their capacity to transact with other entities and training them on the basics of making enduring contracts. Others are training vulnerable groups on their labour rights and providing representation in labour disputes to ensure workers obtain a fair pay. Organisations like Micro Justice Uganda, Justice Centres, Refugee Law Project, and Platform for Labour Action and FIDA Uganda have supported these initiatives.

Uganda Land Alliance and LEMU have played a critical advocacy and lobbying role to prevent vulnerable farmers and landowners from being displaced in favour of bigger corporations and land grabbers. Refugee Law Project has played a strong lobbying role to seek the established for mechanism on Transitional Justice for Northern Uganda that will address the rights of conflict affected peoples to reparations for the harm they suffered.



Certain groups are vulnerable to facing prejudices at the workplace and marginalisation. The easiest targets have been PLHIV as indicated in the earlier sections. The discovery of the status of HIV in many instances has led to work place persecution and even termination of services. UGANET in offering legal assistance to victims of such practices has protected the rights of these workers to earn a living.

4.3.4 Ensuring gender equity in assets management

Organisations like MIFUMI, Muslim Centre for Justice and Law and Legal Aid Clinic of the Law Development Centre have been critical in representing vulnerable women to protect their family and matrimonial homes as well as lands that are critical in providing subsistence farming from being unilaterally seized or sold by partners or spouses.

The Uganda Land Alliance has facilitated the formation of Communal Land Associations in Karamoja to enhance land use and management. Women utilise the land in several ways but traditionally in Karamoja women do not participate in decision-making fora. Uganda Land Alliance successfully lobbied for the inclusion of women in these Associations, strengthening their position as decision makers and promoting equitable land uses and gender sensitivity in managing the use of the land.

4.3.5 Diversion from criminal and civil justice processes and cost saving

The criminal justice system in Uganda has been affected by the severe case backlog in the judiciary, resulting in overcrowding in police cells and remandee populations that in some instances far exceed the convicted population, and which is a cost to the state. The remand of children in homes has also been problematic due to lack of adequate remand facilities in the majority of the districts and inadequate resources to meet children's welfare. All these categories have financial implications for their upkeep and the human resources required to deal with the magnitude of the problem across the JLOS institutions.

The interventions of FHRI, AHURIO, Public Defenders Association of Uganda, Justice Centres Uganda, the Pro Bono Scheme of Uganda Law Society, the State Brief Scheme of the Judiciary, the Legal Aid Clinic of the Law Development Centre and Paralegal Advisory Services among others in providing representation to petty offenders and children in conflict with the law has unclogged the population of prisons and police cells as well as children's remand homes. This results in efficiency savings for JLOS although no known study has provided empirical evidence of these developments in Uganda.

Several LASPs are offering useful services of mediation, particularly in family related property disputes. This has a dual benefit; agreement on financial bestowments to poor or vulnerable family dependants such as widows, spouses or children, and non-resort to court resulting in less burden on courts.

These are just a few examples of the wide array of positive results that legal aid service providers are registering in fighting for the rights of vulnerable groups.

4.4 Barriers in Accessing Justice by the Poor, Marginalized and Vulnerable in Uganda

4.4.1 Physical accessibility to legal or justice delivery agencies

Accessing justice requires one to engage with the officials and institutions under the various justice/ legal systems. The poor, marginalized and vulnerable in most cases have to travel very long distances to reach and access the nearest justice institution such as the police



and courts. To a limited extent for example, the physical accessibility to the High Court has improved with the introduction of criminal circuits but it remains a constraint for remandees and their dependants. The higher Courts of Record (Court of Appeal and Supreme Court) only sit in the capital city (Kampala). The Administrator General's office for long has been in the capital city, making it difficult for vulnerable widows and orphans from remote areas to obtain critical services.

According to the National Service Delivery Survey 2008, access to magistrates Courts and Police stations is still very limited per population particularly in rural areas. Only 18.2% of the people in rural areas are able to access a Magistrate Court within a distance of less than 5km compared to an overwhelming 56% in urban areas. Further, most LASP, even the few who have regional coverage are urban based. Several other JLOS institutions in the rural areas pose this challenge of remoteness and scarcity of services.

4.4.2 Orientation of supply side

In many cases, those responsible for the administration of justice e.g the lawyers, judges, police, local councillors, traditional authorities (the majority of whom are men) are not trained to demystify the law or make it user friendly. Gender justice also requires that the actors involved in administration of justice are not only gender sensitive but responsive. The same goes for child friendly approaches to justice and disability issues as well as victim-centered approaches. Most JLOS institutions training one or two personnel rather on one or the other of these principles, rather than institutionalising them, thus creating silos in the organisation. When the few who have been trained people leave, institutional memory gaps are created. These lacunae only serve to accentuate an already hostile or unaware environment.

There is also suspicion around the work of LASPs by JLOS sectors and politicians, particularly when the LASPs interventions touch on power relations and economic bases. Many LASPs are viewed as spoilers who seek to upset status quos, with some branded as anti establishment particularly in the case of activists. This limits the cooperation that the LASPs require in order to come up with comprehensive solutions for vulnerable and impoverished persons.

4.4.3 Lack of confidence in the justice delivery system

A common barrier to access to justice for the poor and vulnerable is lack of confidence in the justice delivery system as impartial and transparent. Individuals or groups who have been subjected to abuse, bias or discrimination are likely to be fearful of power structures and dynamics and suspicious of government agencies. Their status as poor persons in a highly monetised justice system and environment raises fears of further marginalisation and re-victimisation.²⁰⁰

4.4.4 The complexities of the Justice system

The working language and technicalities involved in justice systems may prove a barrier to access to justice for the poor, who in many cases have no or little education. This results in the lack of or limited participation in justice processes.

English is the official language of Uganda and the working language of justice institutions. In addition the justice system is best geared for oral communication, not sign or tactile

200 M. Supulveda, report of the Special Rapporteur on Extreme Poverty and Human Rights on the Right to Participation of People Living in Poverty (UN Human Rights Council 2013).



language, which automatically disables PWDs. Few poor and vulnerable persons can fully comprehend the English language let alone not the technical language and in the justice system. This serves to mystify the JLOS institutions and discourage participation by vulnerable and marginalised groups. In this regard, Local Council Courts have been more favoured even though their jurisdiction is limited. For example, the 2008 National Service Delivery Survey reveals high satisfactory rates for in Households with the customary courts (84%) and LC courts (78%) compared to 59.9 for Magistrates Courts and 48.7% for the high court.²⁰¹

4.4.5 Cultural and social barriers

Societies tend to have deeply entrenched biased and discriminatory stereotypes that assume that the poor, marginalized and vulnerable are inherently lazy, dependant, irresponsible, undeserving and even criminally inclined. Individuals and agencies engaged in the administration of justice tend to reflect the wider societal prejudices and biases unless there is strict enforcements of codes and standards of service delivery.

Patriarchal norms are the dominant social construction of gender in Uganda, and men and women subscribe to it. These influences pervade the institutions that victims and vulnerable groups seek to access. Most notoriously, the case of domestic violence victims drives this point home; these issues are seen as private domestic matters not to be aired in public. In the instances of sexual violence, taboos around discussing sexual terminologies have often worked against the rights of victims. Thus women, the majority of whom live in rural areas, are reluctant to refer matters to JLOS institutions against intimate partners or even strangers in more powerful positions than they. Even where they do, they face immense hostility from their communities and family members and sometimes, law enforcement agencies.

In the case of children's rights, while international norms dictate that children's rights to participate in judicial processes and to information be upheld, this is rarely adhered to. In Ugandan socio-cultural norms, children do not have rights and freedoms, and due to social construction, children will rarely assert themselves even in prejudicial situations in the justice processes.

These social barriers are extended to other groups such as refugees and PWDs, who face discrimination in the justice system based on unequal power relations and stereotypes of inferiority and other characteristics.

As a consequence poor and vulnerable persons are not treated fairly or equally in the justice chain, or in informal adjudicatory mechanisms. The bias and discrimination tends to propagate stigma and fear in the poor and vulnerable hence discouraging them from approaching the justice system and seek the support that they need. This situation may be exacerbated when people living in poverty belong to groups that are under-represented in the justice sector and law enforcement personnel, such as women, ethnic minorities and indigenous peoples to mention but a few.

4.4.6 The Cost of Justice

The low levels of literacy, education and knowledge among the poor and vulnerable reduce fiscal capacity to enforce rights hence inaccessibility to justice²⁰². There are both

²⁰¹ Page 121

²⁰² M. Anderson, *Access to Justice and Legal Process: making Legal Institutions Responsive to Poor People in LDCs*, IDS Working Paper, 2003 page 178.



direct and indirect costs to accessing justice, which often disproportionately disadvantages or discourages the poor and vulnerable. For example, legal representation by lawyers in Uganda is for those with means, and even some LASPs require indigent clients to pay user fees to third party institution, which they cannot afford. Poor clients have to meet their transport costs to the LASP providing assistance and to JLOS institutions. This in itself can pose challenges for the poor and vulnerable of any community.

The 2008 National Service Delivery Survey indicates the deterrent effect of user fees. The survey notes that LCs charge arbitrary fees like fines and court charges while the formal courts charge high fees for services in civil cases. The LCs are said to ask for huge amounts of money to arbitrate land disputes and the police ask to be facilitated with transport and other communication fees. Thus if an indigent person is seeking any or all of these combined services, fees may consequentially serve as an effective barrier to justice.

4.4.7 Threat of corruption

Uganda has an under-resourced and overstretched justice sector. This challenge has attracted corrupt practices with the officers and agencies that administer justice. For example, the National Service Delivery Survey indicates that 41% gave facilitation to the police, prisons 29%, and magistrates 15% while customary courts had the least at 2%.

Corruption is an insidious barrier to justice, as it tends to undermine the entire reliability of outcomes from the justice system and promotes bias and discrimination against those unable to facilitate such practices. The poor who access justice are in many cases going up against an individual or entity more powerful or influential than they are. Examples could be a household or community in danger being displaced by a corporation from their lands; a widow seeking to reclaim family possessions; or a PWD seeking damages from an institution for workplace discrimination. These few examples elicit a David versus Goliath dynamic which is amplified by corruption; the powerful can afford to pay to disempower the weak.

As is the case in many countries, Uganda faces a challenge of systemic corruption, which guarantees that those with financial and social capital are able to access the justice system with greater efficiency and effectiveness, and even to secure a positive outcome. When the poor and vulnerable cannot afford to pay requested bribes for services that should be free, their claims and cases are delayed, denied or discontinued. Moreover, bribes represent a greater burden for persons living in poverty, increasing transactional costs of accessing justice institutions and services. They are not only denied access to justice when they are unable to meet the costs of bribes or engage in other corrupt activities, but they are also discouraged from accessing the justice system when they perceive the system to be corrupt.

4.5 Capacity of LASPs

There are several LASPs providing legal aid as discussed earlier, in various thematic areas. However, LASPs are limited in outreach, and human and financial resources to service the magnitude of the poor and vulnerable groups. Most LASPs are heavily donor funded and lack funds for institutional development and capacity building in the area of strategic litigation, training and research.

Uganda Law Council has communicated concerns over the eligibility of some organisations to qualify as LASPs under the law. While there are organisations conducting very important activities of community legal education and awareness on legal rights, some of these do not



have legal personnel; lawyers or paralegals, to qualify as LASPs. LASPNET has taken these organisations on board as associate members in order to work synergistically with them on critical issues of empowerment of vulnerable groups.



5.0 RECOMMENDATIONS AND CONCLUSION

Social justice and equity is key to accessing justice by all persons and groups within any given community. Social justice acts of leveller for poor and vulnerable groups to have their day in justice institutions and right wrongs or leverage more power and equity to affect their status quo positively.

The poor and vulnerable are usually victims of marginalisation, discrimination, exclusion and exploitation. This further exacerbates their situation, leading to extreme forms of poverty and vulnerability. It is recognised that there are millions of poor people in Uganda, and yet limited resources to protect their legal and human rights when violated. As such, it is important to devise means of ensuring that the most affected individuals and populations are identified for priority action including affirmative action, at the same time establishing longer term measures for sustainable service delivery for other categories facing challenges.

The following section presents some key areas that should be addressed with a view to strengthening access to justice for poor and vulnerable groups.

5.1 Short term recommendations

5.1.1 National Framework for Legal Aid

A National Legal Aid Policy and Law are imminent. These are instructive for purposes of clarifying on the scope and nature of legal aid. It is important that the mechanism for legal aid embrace a holistic approach to legal aid services. For example in Malawi, the law that was enacted on legal aid extended the scope of legal aid to include pre-trial assistance, legal advice, and legal education; the recognition of the role of other players in the provision of legal aid services such as lawyers, law students, paralegals, and NGOs and introduced a Legal Aid Board that independent of the Ministry of Justice and Constitutional Affairs.²⁰³ It also introduced a national Legal Aid Fund.

5.1.2 Extending the reach of legal aid

While not without challenges, it cannot be denied that the public assistance given by government in the form of legal aid as well as the invaluable work of LASPs has aided populations that that would otherwise be left on the margins of justice. Some of these efforts have resulted in good practices being established, although there is little documentation of how these practices have worked and can be replicated to adapt to other contexts.

The Justice centres of Uganda have provided essential support and broken out of the traditional state model of legal aid in criminal justice to encompass civil justice. The rolling out of Justice Centres to more districts will help more poor and vulnerable Ugandans to seek remedies and matters would be improved if their scope widened. Justices centres in South Africa have not only legal and social workers but also attach labour officers to their justice centres.²⁰⁴ Similarly, Uganda could consider attaching labour officers and probation Officers or Community Development Officers to these centres. LASPs and government-assisted legal aid should prioritise the inclusion of social workers to provide psychosocial support to victims as vulnerable and marginalised groups require more than formal legal responses for the most part.

203 Desmond Mudala Kaunda, *Expanding Access to Justice for the Poor, Malawi's search for solutions*, The Danish Institute for Human Rights, 2011, 32.

204 Legal Aid South Africa -Legal Aid Guide, 2014, 13th Edition



LASPs should be supported and capacitated to increase presence, scope, voice and impact on legal aid to the subnational level. The ambit of determining eligibility for legal aid should be widened beyond indigence in both LASPs and government to embrace vulnerability and the interests of substantive justice. For example, Legal Aid South Africa criteria for eligibility for legal aid looks beyond financial status to address for criteria like the seriousness of the case i.e. substantive justice.

Legal aid assistance by government should be guaranteed for certain categories, particularly where there are imperatives to guide this prioritisation. The standards under Section 40 of the Convention on the Rights of the Child providing for state assisted legal aid in the case of a child in conflict with the law should be adopted in national practices. The South Africa Constitution provides that legal representation must be granted at State expense in civil proceedings affecting a child if substantial injustice would otherwise result (section 28(1)(h)). It is hoped that Uganda can emulate this good practice.

Box 7 Good practice: Scope of services provided by Legal Aid South Africa²⁰⁵

In South Africa, legal aid is given to all indigent persons who are charged with crime, to prevent substantial injustice from occurring. In civil law legal aid is given in the areas of criminal and civil law, Family law / matrimonial matters maintenance matters, primary care and residence and access, Labour law, Deceased estates and related matters, Insolvency, including debt counselling, Property law and related matters, Constitutional matters and Contracts. Legal aid is extended to children, women particularly in divorce, maintenance and settlement cases and the landless particularly with regard to evictions and assistance to farmers in certain instances.

Kenya has recognised that certain indigent people are unable to pay fees; through the pauper brief system in civil cases it waives payments of court fees for indigent court users.²⁰⁶ In Tanzania mainland, indigent persons who benefit from legal aid under the legal aid scheme of the Faculty of Law of University of Dar es Salaam or LASPs like Tanzania Law Society, Tanzania Association of Women Lawyers and the Human Rights Commission or the Judicare scheme are exempted from paying court fees.²⁰⁷ In Zanzibar, indigent litigants who meet certain criteria can also seek a waiver for paying court fees. In Uganda, Order 33 of the Civil Procedure Rules allows for Pauper Suits, under which Court Fees could be waived. LASPs should utilise this provision as much as possible, as it has the potential to dispense with a significant barrier to accessing justice for the poor.²⁰⁸

LASPs should extend to working with cultural institutions rather than solely focusing on formal institutions, as the majority of the poor are turning to these fora for justice. Institutions such as the Ker Kwaro have been open to working with NGOs in general and handle cases of poor vulnerable and marginalised groups. It is important to incorporate human rights

205 Law Society of South Africa-Getting assistance http://www.lssa.org.za/index.php?q=con,333,Getting_legal_assistance (Accessed: on 20 September 2015).

206 Danish Institute for Human Rights 'Access to Justice and Legal Aid in East Africa: A comparison of the legal aid schemes used in the region and the level of cooperation and coordination between the various actors' 2011.

207 Ibid

208 Note that in Uganda, Order 33 of the Civil Procedure Rules allows for Pauper Suits, under which Court Fees may be waived. Pauperism must be proved to the satisfaction of the Court.



norms and standards in the important work of traditional justice mechanisms by working with them and those who access their courts to raise awareness in these standards.

5.2 Long term evidence based interventions for vulnerable groups

One of the big challenges LASPs designing appropriate and effective interventions for vulnerable and marginalised groups are the lack of substantive data, both quantitative and qualitative. Few LASPs carry out comprehensive baselines on their target groups beyond the regions they work in. This makes it hard to understand from a global the magnitude of the problem and how to design efficient strategies in legal aid.

The Uganda Bureau of Statistics (UBOS) household and demographic surveys are an invaluable source of data, but they do not provide in depth analysis. UBS for example did a study on special interest groups in The State of Uganda Population Report 2013. However, the categories chosen were very limited, and do not give a clear picture of the affected populations. On the other hand, the UBOS State of Uganda Population Report 2014 focuses on the plight of the youth and gives an in-depth and comprehensive analysis of this vulnerable demography, although it does not address their access to justice needs in detail. Partnerships with institutions like UBOS and other data collection agencies could produce a comprehensive baseline on a wider array of categories and help with planning and data useful for access to justice.

5.2.1 Strengthen Monitoring and Evaluation

Most LASPs continually monitor and evaluate the impact and results of their interventions, but this is done from an internally introspective dimension. A State of Access to Justice report compiled regularly by LASPNET for example would be an invaluable resource for most actors and would help to track progress towards a national legal aid system. The Uganda Law Council, which is vested with powers to regulate the legal aid sector, should together with LASPNET devise a monitoring mechanism for this purpose.

The Equal Opportunities Commission (EOC) had not been involved in access to justice issues, perhaps due to its infancy. However, the EOC has a constitutional role to play in monitoring the rights of vulnerable and marginalised groups. The Equal Opportunities Act 2007 bestows on the EOC the mandate to monitor and evaluate, evaluate and ensure that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs of organs of state at all levels; statutory bodies and agencies; public bodies and authorities private businesses and enterprises; on governmental organizations, and social and cultural communities are compliant with equal opportunities and affirmative action in favour of marginalised groups. A partnership between LASPs and the EOC can also exploit the symbiotic relationship to strengthen the surveillance of compliance with the protection of vulnerable and marginalised groups and utilise the tribunal to promote their right to effective remedies through very targeted litigation.

5.2.2 Strengthen appreciation for legal aid in JLOS institutions

Legal aid provision is best effected when the corresponding institutions and actors are equally or similarly vested in the programme. Failure to appreciate the value addition of legal aid in JLOS runs the risk of reducing the potential for positive outcomes. For example, the State brief scheme and the pro bono scheme face the challenges of seasoned lawyers opting out and preferring to pay monies in lieu of actual participation, which denies the public of much needed expertise. On the flip side, the warm reception for Paralegal advisory services assistances by criminal justice stakeholders in JLOS District Chain linked Committees is indicative of the value in harnessing synergies to the benefit of the poor and the vulnerable.



The LASPs need to strengthen their coordination and meet the standards recommended by the Uganda Law Council, in order to build credibility for their value addition. Better equipping of community based resource persons to execute their mandates in tandem with the referral pathway institutions should be emphasised. This requires that LASPs adopt strong collaborative approaches and that LASPNET play a strong coordinating role and continually engage the Uganda Law Society and other JLOS actors in expanding the horizon and continuum of legal aid services in Uganda.

LASPs also need to reach out more to Law Students, to encourage them to take up careers in “community lawyering.” More Clinical Legal Education Programmes in Law Schools might help to inspire more students to get involved in legal aid provision as a career. The Legal Education Curriculum should make an effort to include access to justice issues and emphasise the role of the legal profession as the vanguards of justice in society. This will help to increase the lawyers available for legal aid in the long term.

LASPNET should conduct further research on who and exactly where the poor are in Uganda by district, town and region so as to ensure legal aid is more specifically targeted. An in-depth study on how pecuniary and geographical jurisdiction of various formal and informal justice mechanisms affect access to justice is called for, as is a study on the applicability of Order 33 of the Civil Procedure Rules for Pauper Suits is also necessary.

5.2.3 Consider and adapt Means and Merit Test to standardise legal aid provision

Means and merit tests are used by governments and non-state actors in many jurisdictions to streamline legal aid services and apply an objective standard to defining who is poor enough to qualify for legal aid. Applying such tests in Uganda could, however, be problematic due to the absence of a proper system of identify information management and a system of addresses and post codes which can allow people to be traced. However, the on-going National Identity Card Registration exercise may help in this regard. It should also be noted that the Justice Centres of Uganda are applying a means and Merit test which other LASPs may consider analysing and adapting to suit their own target groups. A sample means and merit test is included in the appendix, however, careful thought and analysis is necessary before LASPs decide to utilise tis tool.

5.3 Conclusion

Access to justice is a fundamental human right and is indivisible from the other genres of human rights; it actually may in certain instances be the prerequisite for catalysing the realisation of civil, political, economic and social rights. The full realization and enjoyment of the rights of poor, marginalized and vulnerable groups or individuals depends on rights based approaches that equip communities to know and assert their rights in an atmosphere of accountability, empowerment and non-discrimination. In this regard, it is incumbent on all actors involved in promoting the right to access to ensure that core human rights values of dignity, equality and affirmative action for the weakest and most needy are embedded in the interventions that they devise.

Without effective, inclusive and affordable access to justice mechanisms, the poor, vulnerable and marginalized are denied the opportunity to enjoy, claim or reassert their rights or challenge breaches thereof. Barriers to justice that are attitudinal, procedural or physical have the effect of denying these groups the appropriate standard of justice that is critical for resolving some root causes of marginalization, discrimination, poverty and vulnerability.

One of the major conclusions derived from this study is that while barriers to justice exist for the majority of Ugandans, the poor, the marginalized and most vulnerable of all groups are the most affected by the failure to access justice. The progression towards comprehensive legal aid programmes is critical in restoring some of the balance in favour of vulnerable and marginalised groups. Improvement in accessing justice by such categories of people requires tackling a range of legal, socio-economic and cultural barriers that exist in the formal and non-formal justice system.





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APPENDIX I: TERMS OF REFERENCE

In summary, the Consultant had the following Terms of Reference:

1. Define The concept of poverty, Vulnerability and marginalisation in the context of Access to Justice.
2. Analyse the causes and impact of poverty, vulnerability and marginalisation in Uganda on national development especially in relation to the promotion of access to justice by all.
3. Provide baseline information on poverty, vulnerability and marginalisation In Uganda.
4. Analyse data and information on the percentages of the poor, vulnerable and marginalized persons accessing justice In Uganda.
5. Highlight the most affected category, regions, and population in accessing justice.
6. Establish the major access to justice bottle necks and the efforts by the state and non-state interventions to address them.
7. Bench mark cost effective, good practices from other Jurisdictions in relation to enhancing access to justice by the most poor vulnerable and marginalised.
8. Provide guidelines to support identification and provision of access to Justice services for the poor , vulnerable and marginalised.
9. Provide relevant recommendations for planning of interventions that seek to enhance access to justice by the most vulnerable and marginalised in Uganda.



APPENDIX 2: PROPOSED GUIDELINES FOR LEGAL AID SERVICE PROVIDERS ON THE IDENTIFICATION AND PROVISION OF ACCESS TO JUSTICE SERVICES FOR THE POOR, MARGINALISED AND VULNERABLE

These guidelines are based on the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa 2004, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems 2013, and the Uganda Legal Aid Bill 2011.

1. Legal Aid Service Providers (hereafter LASPs) should play a role in sensitising the government, law enforcement agencies and the public on the important role that legal aid plays in the justice system. The benefits include elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations.
2. LASPs should promote legal literacy as a priority of their programmes because people who do not know their legal rights cannot enforce them and are subject to abuse in the justice system. Legal literacy should target vulnerable groups such as children, young people, women, persons with disabilities and the urban and rural poor. LASPs should advocate for and celebrate a designated National Legal Aid or Legal Literacy Day.
3. LASPs shall recognise the role of informal justice institutions and mechanisms such as Local Council Courts, Clans, and Elders in access to justice. Such community-based alternatives to formal criminal processes have the potential to resolve disputes without acrimony and to restore social cohesion within the community. These mechanisms also have the potential to reduce reliance upon the police to enforce the law, to reduce congestion in the courts, and to reduce the reliance upon incarceration as a means of resolving conflict based upon alleged criminal activity. LASPs should recognise the significance of such diversionary measures to the administration of a community-based, victim-oriented criminal justice system and should provide support for such mechanisms provided that they conform to human rights norms.
4. LASPs shall recognise the important role that non-lawyers such as law students, para-legals and legal assistants play in improving access to justice. Non-lawyers can assist suspects and criminal defendants, and provide knowledge and training to those affected by the system.
5. LASPs should encourage partnerships with Lawyers and Advocates in Private Practice to expand the scope of pro bono services available to the poor.
6. LASPs should ensure sustainability of their services in the long term by reducing reliance on donor funding and exploring how government, private sector and other funding, and community ownership arrangements can be strengthened in order to ensure the sustainability of legal aid service provision.



7. LASPs should work with the Uganda Law Society and the Law Council and Police Stations to allow their services to be advertised at Police Stations for the provision of legal aid to victims of crime and accused persons.
8. LASPs shall provide legal aid services to the poor, vulnerable and marginalised in criminal matters. They shall also provide legal aid in civil matters and shall utilise the attached Means and Merit test (MMT) in determining indigent persons who require assistance.
9. LASPs shall be particularly mindful of the following categories of persons who should be granted legal aid regardless of the MMT: children in need of care and protection, women in vulnerable circumstances, immigrants, refugees, asylum-seekers, internally displaced persons, suspects in criminal proceedings, prisoners, aged, persons with a serious health condition (including HIV AIDS), or who are mentally fragile, or physically disabled or unskilled labourers and any other category of people recognised as a vulnerable or marginalised group by the State and the Equal Opportunities Commission.



APPENDIX 3: SAMPLE MEANS AND MERIT TEST

MEANS

1. To qualify for legal aid, an applicant to LASP must have a disposable income of not more than per annum UGXand a disposable capital of not more than UGX
2. Disposable income is defined in the Act as the income of the Applicant during the last 12 months prior to the application after deducting the following:
 - per annum for each dependant of the Applicant
 - personal deduction per annum for the Applicant;
 - Rent (if any) not exceeding per annum;
 - Full contribution of the applicant to his NSSF or other retirement savings scheme account.
3. Disposable capital means the value of property the Applicant owns, excluding:
 - the subject-matter of the proceedings,
 - the wearing apparel or clothing of the applicant,
 - the tools of the applicant's trade;
 - furniture used in his house;
 - a dwelling house owned and exclusively used by the applicant and his family as their home assessed at an annual value of not more than UGX
 - savings of the applicant of up to (if the applicant is 60 years old and above); and
 - the Applicant's monies standing in his retirement savings scheme, if any
4. Where an applicant fails the means test but is facing hardship, for instance,
 - a) where the applicant is suffering from any sudden physical or mental disability which permanently and severely restricts his capacity to earn an income and where it appears to the LASP in their discretion to be reasonable to do so to relieve hardship,
 - b) where the applicant has suffered a sudden loss of income and requires legal aid to defend or take legal proceedings as a matter of urgency, and where it appears to the LASP Director in their absolute discretion to be reasonable to do so to relieve hardship, revise the limit in each particular case as the circumstances may determine.
 - c) where the applicant is likely to lose their liberty or their livelihood;
 - d) is a victim of a crime;
 - e) is a party to a case involving a substantial question of law;
 - f) is a party to proceedings which may involve the tracing, interviewing or expert cross-examination of witnesses; or
 - g) is a party to a case in which the LASP is of the opinion that the person before it cannot have a fair trial unless the person receives legal representation.



5. The Director of the LASP retains the discretion to refuse aid if it appears to him unreasonable for the applicant to receive it, in the particular circumstances of the case. Thus, an applicant may, in certain circumstances, still be refused aid even if he passes the means test.
6. The Applicant will be asked to provide the LASP with documentary evidence of his income and capital, and to swear a statutory declaration setting out information of his assets and means. Such evidence may include payslips, receipts for work done, bank statements, mobile money records, land titles, etc. A signed statement by the LCI Chairman of his or her village of residence attesting to the applicants' means may also suffice.

THE MERIT TEST

7. Once the Applicant passes the means test, the LASP will review the applicant's case and prepare a legal opinion on whether there is merit to the Applicant's case. This is to sift out unmeritorious claims. The Opinion is reviewed by all the LASP's legal team who will decide whether legal aid ought to be granted to the Applicant. In determining the merits of a case, the LASP should take into account the following:
 - the prospect of success in the proceedings;
 - the availability of any method, other than court proceedings, for dealing satisfactorily with the problem, for example, mediation; and
 - the probable cost to the LASP of providing legal services as measured against the likely benefit to the applicant, bearing in mind Guideline 3 on the role of informal justice mechanisms.
8. If the applicant is successful, a letter affirming the representation by the LASP will be issued to the applicant.
9. Contribution by the applicant: The applicant may be required to pay a small financial contribution to the LASP. How much contribution is payable by him or her depends on his/ her financial means, the nature and complexity of the case, the amount of work done in the case and the amount of money recovered for the applicant.

The contribution collected goes into the Legal Aid Fund. Legal costs and interest paid by the opposing party also goes into this Fund.

**APPENDIX 4: LIST OF RESPONDENTS**

Organisation	Name	District
Uganda Association of Women Lawyers (FIDA)	Ajok Lillian	Gulu
Uganda Law Society	Conrad Luboya	Gulu
Human Rights Focus.	Peace Elizabeth	Gulu
Uganda Association of Women Lawyers (FIDA)	Caroline Omvia	Karamoja
MIFUMI	Ochieng Emmanuel	Moroto
Muslim Centre for Justice and Law	Sulaiman Kafeero	Kampala
African Centre for the Treatment and Rehabilitation of Torture Victims	Samuel Herbert Nsubuga	Kampala
Community Legal Action and Integrated Development (COLAID)	Mr. Paul Kavuma	Kampala
Uganda Youth Development Link (UYDEL)	Mr. Kasirye Rogers	Kampala
Uganda Christian Lawyers Fraternity (UCLF)	Ann Adikini	Buikwe
Association of Human Rights Organisation (AHURIO)	Fred Kahwaa Kayondo	Fort Portal
Law Development Centre- Legal Aid Clinic	Herbert Kwikiriza	Fort Portal



LASPNET
LEGAL AID SERVICE PROVIDERS' NETWORK

LEGAL AID SERVICE PROVIDERS' NETWORK (LASPNET)
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Legal Aid Service Providers Network

Twitter: @LaspnetUganda

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