

## Chapter 15

### Access to Justice for the Very Poorest and Marginalized in Uganda

Adam Dubin & David Lawson

*As we have seen throughout this volume, some policies and programs in SSA have positively contributed in various forms to reductions in chronic poverty and marginalization. While in no way to take away from these policies' substantial role in combating poverty, this chapter suggests that of equal importance, and often overlooked by social scientists without a juridical background, is the critical role of promoting rule of law through the expansion of access to justice policies in order to reduce chronic poverty and marginalization, and increase empowerment. Uganda, perhaps more than any other SSA country, provides a unique country case study – due to having had significant poverty analysis undertaken and achieved remarkable success in reducing poverty over the last 2-3 decades. However, and despite such success, there remains relatively little understanding of how access to justice can impact on the poorest in Uganda. We therefore provide a unique case study to highlight the intersection between poverty, empowerment and justice, and demonstrate the need for greater integration of justice policies into broader pro-poor programming.*

Keywords: Access to Justice, Empowerment, Marginalized, Extreme Poverty, Uganda

#### **Introduction: Justice, Poverty and Empowerment: Inter-Related, Inter-Dependent**

Access to justice is a key policy component associated in escaping poverty and is a broad term that “cuts a large swath” concerning to what exactly it refers (Mosher, 2006: 46). It is defined by the World Bank as “access by the people, particularly the poorest and most disadvantaged, to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts (World Bank, 2007: 1).”<sup>1</sup> While there is no estimate as to how many people fall into the broad category of those lacking *access to justice*, it is reasonable to argue that most of the poor in some way lack some form of *access to justice* mechanisms.

Legal practitioners and academics often conceptualise *access to justice* as ranging from access to formal justice mechanisms for dispute resolution such as the courts, to substantive conceptions of social justice to broader secondary categories of justice, including the ability to access health care, education and social services. It can also refer to informal justice, which is often the most common route of justice-seeking since it is affordable and most accessible to the poor and marginalized, though it does raise questions concerning its effectiveness and fairness, particularly for females.

*Access to justice* is guaranteed as a right under human rights treaties, such as Universal Declaration of Human Rights<sup>ii</sup>. It is also guaranteed under many domestic legislative documents, including in most African countries<sup>iii</sup>. Despite its guarantee as a fundamental right, the chronically poor and marginalized often find it difficult to achieve justice. In many countries, *access to justice* is a “commodity” that is more easily obtained by the economically advantaged than the poor and marginalized, who often lack the financial capacity, know-how and ability to access basic legal services (Dias and Welch, 2011).

However, this deprivation of access to justice implies more than just the violation of human rights; it has consequences for development and poverty alleviation, and is closely aligned with

questions of individual and community empowerment and the ability, as Amartya Sen points out, to exercise freedoms. To highlight this interconnection, take the example of access to justice and maternal mortality. As we have seen in Chapter 4, statistics clearly demonstrate that maternal deaths are more concentrated in SSA countries than other developing countries – for example, we saw that an African woman’s lifetime risk of dying from pregnancy-related causes in 2010, is 100 times higher than a woman in a developed country (Ado-Kofie and Lawson, this series). Commonly there is no domestic legal remedy for someone who has been denied maternal health care to enforce this right through the country’s court system, unless the court is willing to accept international law. This is particularly problematic for the poor and marginalized, who are not only most at risk of falling ill, but who also have the least access to health care services.

This chapter commences by discussing the interconnection between access to justice, poverty and pro poor policy, before providing a case study of Uganda, and in particular how Justice Centres have created access for the poorest. We find, in that Justice Centre’s Uganda (JCU’s) have been an important breakthrough in providing many of the necessary resources, both financial and personnel, to widening access to justice for the poor. However, access to justice programs need develop further and ‘cut-across’ government and civil societies agencies to ensure coordinated and multifaceted approaches to access to justice provision whilst simultaneously ensuring geographic availability to remote areas.

### **Background: Interconnecting Justice, Poverty and Pro-Poor Policy**

#### *Interconnecting Justice and Poverty*

A country’s judicial system plays a central role in helping to ensure that individual’s fundamental right to maternal health is not only recognized but also enforced. Too often, however, countries lack adequate constitutional guarantees, political willpower or resources to uphold this right and, in many cases, even where this right exists, the poor are unable to have this right enforced due to the financial, geographic and other constraints associated with going commencing litigation and going to court (Twinomogisha, 2007).

This interconnectedness between poverty and access to justice has increasingly been recognized as a central and essential aspect of development policy. In a speech by James Goldston, the Executive Director of the Open Society, to the United Nations General Assembly, he asserted that justice policies are equally as important to development as other, and more commonly pursued policy initiatives, such as education.

*In short, we now know that justice and governance are no less important to equitable and sustainable development than good schools, functioning health clinics and passable roads (Goldston, 2014: 2).*

Much to the disappointment of many working in development, however, access to justice was not included as one of the Millennium Development Goals. Notwithstanding, the United Nations has increasingly recognized access to justice as an essential component of the Goals. A report by the UN Special Rapporteur for Extreme Poverty and Human Rights, noted that, “*access to justice is crucial for tackling the root causes of poverty, exclusion and vulnerability (...) (Special Rapporteur 2012)*”. This report highlights a number of ways in which poverty and *access to justice* are linked. First, it points out that the poor are inherently vulnerable and are more likely to fall victim to illegal acts and exploitation, which perpetuate their poverty and marginalization.

Secondly, by achieving easier *access to justice*, the poor have a greater opportunity to develop jurisprudence on social and economic rights whose absence or lack of enforcement often times

disproportionately affects the poor. Twinomugish (2007) argues, for example, that emergency obstetric care should be considered a human right, even though it is not formally recognized in legislation. To make this a recognized right within a country, however, it would require an individual or NGO with standing to bring a case in court in front of a judge who was willing to expand currently recognized notions of socio-economic rights to include emergency obstetric care. For

Third, the poor are often forced to take justice into their own hands due to exclusion from the formal justice system. This can lead to civil unrest and the unfair and unequal application of justice by informal justice mechanisms, which often are gender biased and closed off to certain groups. This has been particularly true in the case of land tenure and property rights, which can impact, positively or negatively, the ability of the poor to mitigate the effects of economic shocks by providing certain forms of sustainable livelihoods (Odeney, 2013). Land tenure and property disputes are amongst the most common problems faced by the poor, who are often powerless to defend against those with more economic power or due to gender biases in informal and formal court systems.

For example, Hallward – Driemeier and Hasan (2003:129) point to an example in rural Malawi, where a local village chief adjudicating a land loss claim of a female by her husband was attempting himself to pressure the woman to give him the little land she had retained. Reliance on local courts, chiefs, and particularly customary can leave females vulnerable due to a “lack of networks, to counter unlawful land-grabbing and other breaches of their rights by local leaders (Hallward – Dreimeir and Hasan 2003:129).”

#### *Justice, Law and Order Sector: Integrating Justice as a Pro-Poor Policy in Uganda*

Having discussed the close intersection between access to justice and poverty, this chapter now explores Uganda’s integration of access to justice policies within its anti-poverty agenda. Uganda’s experience with the inclusion of *Justice Centres - Uganda* within a broader framework of the three-part Justice, Law and Order Sector (JLOS) reform policy presents an important case study on an access to justice policy that has integrated a pro – poor approach to access to justice.

Uganda, located in East Africa, is classified by the World Bank as a low-income country. It has a population of approximately 37.5 million people, with an income per capital of 788 USD. The past 2-3 decades, have experienced relatively consistent economic growth, which has helped to reduce poverty levels and increase social indicators. Headcount poverty has fallen from 34% in 2000 to 19.5% in 2012 (World Bank – Uganda 2015), primary school enrollment is at nearly 100% and life expectancy since 1995 has increased by nearly 13 years, from 46 to 59 years.

In Uganda, the distribution of health care closely corresponds to economic well – being, in which the poor, marginalized and geographically isolated tend to have less and poorer quality care, while the middle and upper classes, who can afford private clinics or medical care in foreign countries, can have access to substantially better health care (Lawson, 2004). According to the 2011/12 Ugandan National Panel Survey (UNPS) in Uganda, 23% of respondents complained of limited range of care in public hospitals, while 22% of respondents complained of long geographic distances from the closest health care clinic (UNPS Survey, 2011/12: 34). Without a clear codified right within the law, or the ability to access the court system due to financial or other restraints, there is little possibility for the poor or marginalized to realize this right to maternal health and ensure the government’s compliance, perpetuating a system that reinforces this interconnectedness between poverty and maternal health.

Despite some of the positive gains Uganda has made in reducing poverty and social inequality, one of the challenges has been to provide access to justice for the hard to reach poor and marginalized communities, with extreme and persistent poverty still prevalent. To deal with the difficulties in accessing justice, in 2000, the Ugandan Government launched, under a mandate given to the Ministry of Justice and Constitutional Affairs (MOJCA), and through state and donor funding, the JLOS reform to improve rule of law and *access to justice* across Uganda. The concept for a sector-wide approach developed as a result of the Government's Poverty Eradication Action Plan (PEAP), which was launched in 1997 with the purpose of turning Uganda into a middle-income country (Uganda PEAP 1997). The Government and donors argued that in order to achieve this transformation economic investment alone was not sufficient – instead, sustainable and inclusive development needed to be a priority.

There were, and continue to be, a number of problems that limit access to justice in Uganda. The Ugandan judicial sector has suffered from are referred to as supply and demand problems. On the demand side, Ugandans express negative sentiment towards the justice system through their lack of confidence in it caused by perceived corruption and ineffectiveness. This, in turn, leads to non-usage, among other problems. On the supply side, the justice system has suffered from severe backlogs of pending cases, poor enforcement mechanisms of domestic and international rights and inadequate budget and planning for justice resources and infrastructure, all of which make it less used and less accessible (Rukare 112: 2008).

The first part of the JLOS reform was the launch of the Strategic Investment Plan I (SIP I) in August of 2000 with the goal of achieving: “the improved safety of the person, security of property and *access to justice* that ensures a strong economic environment to encourage economic development and benefit poor and vulnerable people (JLOS Progress Report 2004 – 25: 1).” SIP I's core objectives were to undertake criminal justice and commercial justice reform through programs to reduce court backlog, expand trained staff, and reform penal and commercial laws.

To align the work of the different institutions that were involved in implementing the policy, committees were created and composed of representatives from the different government institutions to monitor and coordinate better improvement of rule of law in these two areas. This proved to be challenging, if not in some cases a failure, because the indicators developed to track progress were poorly designed, lacked baselines or, in some cases, were not specific enough to determine whether real progress had been made. It did, however, help to develop some collection of data regarding case processing times and other rule of law deficiencies in the system. One evaluation of the program points out that JLOS and SIP I were “more a convening of institutions to share and access resources than what was intended, that is a joint working arrangement which would help address common problems” (Flew and Ryan, 2009:8). A World Bank Report on the Ugandan legal sector points out that problems that persisted after the conclusion of SIP I included a relative lack of understanding of human rights standards, lack of efficient mechanisms to enforce judgments, lack of effective monitoring and evaluation of sector institutions, and corruption (World Bank, 2009: 19). Despite, however, the failing of the government institutions to achieve all their objectives, some gains were made:

- There was a reduction in the number of people held in prison in violation of their Constitutional rights from 39 percent to 1 percent for felony crimes and 29 percent to 10 percent for serious and petty offences.
- There was an increased use of alternative dispute resolution and the establishment of a Tax Appeals Court.
- More legal professionals were available to deal with commercial disputes.

- Commercial laws were reformed. (World Bank, 2009: 14).

While some gains were made by the JLOS in the first years of this program, increasingly the Government recognized that the poor were isolated from formal justice mechanisms and this was perpetuating a cycle of poverty and marginalization that needed to be more directly dealt with. A Participatory Poverty Assessment (PPA) on Safety, Security and *Access to justice*, conducted by JLOS in 2002, underscored the close connection between access to justice and poverty. This report, which has been one of the driving forces behind the Government's attempt to expand access to justice, points out that, "the poor have not utilized the formal justice dispensing systems due to expensive, cumbersome and complex procedures within the judicial processes (PPA, 2002: 29)." It went on to note that, "The vast majority of study participants reiterated helplessness before justice dispensing institutions. Throughout the study it was revealed that court fees, bribes transport costs, limit the poor from accessing legal services (PPA, 2002: 29)."

In 2006, the government of Uganda and JLOS launched a second Strategic Investment Plan (SIP II), which sought to include a stronger approach aimed at service provision for the poor. Under SIP II, there were five primary objectives aligned to the broader goal of poverty reduction and economic development: 1) to promote rule of law and due process; 2) to foster human rights culture across JLOS institutions; to enhance access to justice, particularly for the poor and marginalized; 4) to reduce the incidence of crime and promote safety of the person and property; 5) to enhance JLOS contribution to economic development (Rukare, 2008: 5). These objectives fit within the expanded scope of JLOS reform to include, in addition to the reforms areas of SIP I, land and family justice. This new program, unlike in SIP I, acknowledges in more explicit terms the limitations facing the poor in accessing justice:

*Not all people in Uganda have equal access (includes availability and accessibility) to the justice system. The poor and marginalised groups still bear unreasonable burdens taking the form of physical distance to JLOS institutions, cost of access, language and attitudinal barriers and existence of conflict situations (JLOS Strategic Investment Plan II 2006/7 – 2010/11:39).*

### **Justice Centres Uganda: Bringing Legal Aid to the Poor**

In 2009, the Government, under JLOS SIP II, launched a new program to expand access to justice to the poor and other hard to reach groups. The Government launched Justices Centres Uganda (JCU), a "one stop shop" model to provide legal and other support services throughout Uganda. It is funded in part by the Legal Aid Basket Fund, which provides funding through donors and which supports legal aid projects. The Centres are also funded through the Democratic Governance Facility, which is a multi-donor mechanism to provide funding and technical support on matters such as *access to justice*.

The primary work of the Centres has been on issues of land disputes and human rights, including issues of gender based violence (JCU Mapping Analysis, 2011). The Centres serve not only to provide legal aid through the formal court system, but also to mediate disputes amongst parties and conduct outreach and education campaigns, including going door to door to educate people about their rights.

In the early period of the JCU launch, the indicators suggested that while successful, only a handful of individuals were taking advantage of the services, which was to be expected

considering the novelty of this institution. However, early on, JCUs served as an important focal point for reporting human rights abuses by the Government against marginal and poor individuals. Within approximately nine months of JCUs opening, as a result of heavy outreach to communities around Uganda, the number of human rights cases reported increased from 100, early on, to over 300. Similarly, in the Tororo region of Uganda, from August 2010 – May 2011, JCU cases increased in the areas of land, criminal, family, civil and commercial disputes by over 1000% in all categories (JLOS Monitoring and Evaluation 2011-12).

In recent years, the impact of JCUs has been more significant and JCUs have reached a much wider demographic of people. According to the JLOS Annual Performance Report 2013-14 (95), JCUs conducted outreach to over 160,000 individuals through visits to women's groups, schools, to groups of persons with disabilities, and to prisons and churches. This is more than a 300% over the previous year. In addition, last year, JCUs served 8, 823 walk in clients requesting various legal and other support services (3,794 females and 5, 029) males). Nearly 4,500 additional clients were served through toll free lines seeking advice on legal problems, primarily dealing with land disputes. JCU has also increasingly focused on providing mediation serves – a more cost effective form of dispute resolution – to poor communities. In 2013/14, 734 disputes were resolved from through mediation. JCU also provided direct legal aid to the poor through the appointment of a lawyer, with 1, 322 clients using JCU advocates. The evaluation also mentioned that, “some clerks who had been ‘ripping off’ unsuspecting litigants by charging them exorbitant amounts for free series have since had no business... (JLOS Monitoring and Evaluation 2013-14: 96)” In addition, “the quality of legal documents filed in court has also improved with the helped of professional lawyers... This has reduced the need for numerous applications for amendment of pleadings that lengthen the already long litigation process<sup>iv</sup> (JLOS Monitoring and Evaluation 2013-14: 96).” Although difficult to quantify the impact access to justice policies alone have on economic well being and headcount poverty, this type of qualitative evidence suggests that many of the practices that contribute to keeping the poor in a perpetual state of poverty are, through access to justice programs, slowly being eliminated.

In 2012/13, the JLOS launched the third phase of the SIP project, SIP III, which is set to terminate in 2017. This policy project builds off of the previous two SIP projects but includes greater targeting of vulnerable populations based on, for example, age and gender. This policy comes in recognition of continued empowerment limitations amongst certain segments of the population, particularly women, and the need to develop more specific programming to expand access to justice. JLOS is experimenting with fast tracking adjudication processes for vulnerable populations, increased empowerment outreach to females and increased profiling of vulnerable populations.

### **Conclusion: Making Justice Local for the Poorest**

Like through much of Sub Saharan Africa, improving access to justice in Uganda has been a slow process and continues to face a number of obstacles such as the shortage of financial and human capital and political willpower. Nonetheless, Uganda has demonstrated recognition of the role access to justice must play in reducing headcount poverty and increasing empowerment amongst vulnerable and hard to reach groups. The Government has integrated access to justice and judicial sector reform as centerpieces of broader programming aimed at improving economic development and increasing empowerment amongst poor and marginal populations.

Moving forward, access to justice programs need to cut across government and civil societies

agencies to ensure coordinated and multifaceted approaches to access to justice provision and adequate geographic availability of one stop shops. Particularly in regions that are geographically isolated and where strong cultural norms perpetuate disempowerment amongst certain populations, governments and civil society actors need to pay more attention to ways in which justice mechanisms can be extended outside of capital cities and regional hubs. Through mobile clinics and by engaging new forms of technology, access to justice has the potential to reach across socio economic and geographic divides and arrive to all segments of the population. Africa has the second highest rate of cell phone usage in the world. Increasingly, the Government and other actors should seek new ways to interconnect access to justice and technology to provide greater outreach and support for communities not as readily served by JLOS institutions.

Another way that access to justice can move forward is through greater partnerships with law schools. Law schools have the potential to provide low cost methods of providing access to justice to poor communities through the development of legal clinics, which allow students to provide basic justice support services to poor and marginalized communities, such as outreach and assistance with self representation. Currently in Uganda, the only university to offer a clinic is Makerere University, through its Public Interest Law Clinic.

Furthermore, universities also have the ability to provide access to justice organisms with more multi-disciplinary personnel and students, including medical and nursing students, as well as psychology and social work students to more directly and broadly deal with the multidimensionality of problems the poor and marginalized face. Also, since many of the students attending universities come from outside the capital, particularly from more rural provinces, these students could also be trained to assist locals in their home villages to help provide better develop access to justice mechanisms, such as village paralegals and local dispute resolution assistants.

The progress Uganda has made through its three phases of access to justice programming is laudable. While much work remains to be done, and many parts of the population still suffer from an inability to adequately access the justice system, the targeted focus of Uganda's access to justice program through multiphase projects have been important steps in bringing justice to populations historically excluded. Each of these phases of the JLOS has been guided under the broader guise of combatting poverty and marginalization, and Uganda's JCUs have been an important breakthrough in providing many of the necessary resources, both financial and personnel, to widening access to justice for the poor.

Ultimately, pro – poor policies in the world need to recognize that law and economic and social development are not exclusive of each other. Rather, there is a close dependency between social and economic development and an adequately functioning legal system. Practitioners and academics implementing economic and social policies should consider the extent to which such policies could be supported by improvements to the justice system, and policies initiatives that spin off of such recognition can therefore better target the chronically poor and marginalized.

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### **About the authors**

**Adam Dubin** is an Assistant Professor of Law in the International Public Law Department of Universidad Pontificia Comillas in Madrid, Spain, and Adjunct Professor of Politics at New York University's Madrid Campus. He has published and taught extensively on topics related to access to justice and human rights in developing countries, particularly in the Sub-Saharan African region.

**David Lawson** is a Senior Lecturer in Development Economics and Public Policy, Institute for Development Policy and Management, The University of Manchester. He has worked extensively on SSA and specializes in poverty dynamics in African countries

### **Endnotes**

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<sup>i</sup>As stated previously, *access to justice* is a broad and amorphous concept and no single definition fully captures all conceptualizations of the term. However, the World Bank *Access to justice* definition presents a comprehensive starting point for understanding the baseline objective and significance of the term. Justice for the Poor, *A Framework for Strengthening Access to justice in Indonesia*, World Bank, (2007).

<sup>ii</sup> Articles 7, 8, 9, 10 & 11, Universal Declaration of Human Rights; Article 14, International Covenant on Civil and Political Rights; Articles 2 & 3, International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of Discrimination Against Women; Articles 3 & 18, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; Articles 9, 12, 13 and 14, Convention Against Torture and other Cruel, In-Humane, or Degrading Treatment or Punishment; Articles 9 & 27, Convention the Rights of the Child; Article 9, Aarhus Convention; Principles 1, 2, 3, 4, 5, 6, 7 & 10, Basic Principles on the Independence of the Judiciary; Principle 2, 3, 4, 5, 6, 7, 8, 13, 14, 19, & 21 of the Basic Principles on the Role of Lawyers; Guideline 2, 10, 12, 16 18 & 20; Guidelines on the Role of Prosecutors; & Principles 4 & 8, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Article 8, Universal Declaration of Human Rights, 1948;

<sup>iii</sup> See, for example, Articles 16 – 19, Constitution of Rwanda, 2003; or, Articles 10 – 12, Constitution of the Republic of Namibia, 1990.

