

Thank you very much for inviting me to come speak here today and take part of this excellent panel. Although this is a conference on the Pacific region and my work focuses primarily on Sub Saharan Africa, I'm going to provide a general overview of the A2J landscape in SSA, particularly with regards to issues of gender violence, though not limited to this specific issue. I hope this will help to contribute to the discussion on justice, provide some comparative models, and allow us to exchange knowledge and know – how for better being able extend access to justice to poor, marginalized and disadvantaged populations – populations that frequently have the hardest time achieving justice and bettering their livelihoods.

Access to justice is defined 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.” I would argue that A2J has to be a principal part of any development agenda – really an interdependent component - with any development agenda - since it provides the basic mechanism for individuals to demand the adequate realization by states of MDGs and SDGs, nearly all of which are linked in some way to the protection and furtherance of basic human rights. Unfortunately, the MDGs didn't include access to justice as one of its goals, though the SDGs do touch on it under Goal 16, even though I don't think it's particularly captures the spirit of what A2J is or how it should be conceptualized.

Turning to SSA, Justice in Sub Saharan Africa is complex for a number of reasons. We know that SSA continues to suffer from extremely high levels of chronic poverty of any region despite impressive GDP growth over the last decade. Access to lawyers, the courts and police continue to be determined largely in function of economic ability, gender and geographic location. Nearly 65% of the population of SSA lives in non-urban areas, making information outreach and access to courts, lawyers, police stations and mediators extremely difficult.

SSA suffers from a severe shortage of lawyers. For example, in Botswana, the ratio is approximately 1 lawyer for every 8,400 people, in Tanzania is 1 for every 47,000 people and in Ghana it's 1 for every 10,000. Comparatively, to put this figure in perspective, in the US and Europe, and probably here in Australia, as well, it's approximately 1 for every 300 people – a number perhaps problematic in itself. This shortage is particularly problematic in rural areas since most lawyers are concentrated in urban settings. Taking into account that much of the SSA population lives in rural areas, outreach, access to advocates and access to courts remains highly limited to urban settings and as a result there's a greater reliance in rural areas of informal justice mechanisms, which are often problematic due to unfair and inconsistent application of laws, especially in cases involving females; “legal” decisions that violate due process and human rights frameworks.

In rural areas of SSA, like in much of the world, we find the legal system – at all levels – starting with police officers - plagued by strong, patriarchal attitudes and low levels of female empowerment. We can find decisions and transcripts from High Courts in which judges directly discredit women and instruct the jury to keep in mind that female testimony is often a bunch of “false stories,” as one judge on the a Ugandan High Court put it. I was recently doing a workshop on sexual violence for judges in Angola and one of the judges asked the question,

“but how can I not take into account at the time of sentencing that the woman was wearing a mini skirt when she was raped?”

The low levels of female empowerment and pervasiveness of patriarchal values in SSA societies can be seen reflected in the Demographic Household Surveys of individual countries of SSA. In rural areas, in particular, autonomous decision making by females is sometimes as low as 20%. Comparing women’s empowerment with South East Asia, for example, SSA indicators on women’s decision making over such things as their earnings, spending and health care demonstrate much lower levels than in SEA or even Latin America, particularly in those countries with very low HDI, such as SL, Liberia and Congo.

SSA has also been plagued by a wave of radical evangelical conservatism, which has hampered efforts to improve access to justice for certain groups. This wave of evangelical conservatism is partly due to the fact that evangelical movements in the US have increasingly faced stiff resistance by the Courts in area such as homosexuality. This has led evangelical leaders to look East towards Africa in what I would call a new wave of colonialism, this time in the form of religious colonialism.

This has led to a number of difficulties in providing access to justice to “unwanted groups,” such as sex workers and homosexuals – who have increasingly found themselves with limited access to report abuses. There’s a high level of impunity on the part of the citizenry, particularly the police, to abuse the rights of these marginal groups. This is compounded, in part, by a strong and growing bias by the public and government, the growth of new and influential newspapers exposing and condemning these groups’ actions, as well as pressures on governments to criminalize homosexual acts – all of which has been fueled by external pressure groups.

In part due to the pressure by evangelic groups, though not exclusively for this reason, SSA governments have been using legislation establishing NGO review board to provide or deny permission to operate based on the objective of the NGO work. This has posed big problems for sex workers and homosexuals, who have had little success developing advocacy groups and finding legal aid.

While undertaking research with sex workers in Kampala, Uganda, one of the big problems I came across in terms of limiting A2J is that NGOs working on behalf of sex workers and homosexuals / groups formed to advocate for their rights – were denied NGO status by the NGO board, forcing these groups to not be able to operate openly, making it very difficult to conduct street outreach, hold information/rights seminars, or openly accommodate victims of abuse to the police stations.

In fact, just a few years ago a sex worker rights meeting held in downtown Kampala was broken up by police forces for advocating immoral and illegal behavior, when the real intention of the meeting was only to provide sex workers from East Africa with basic rights knowledge. This concern of being associated with these groups has spilled over into the work of established NGO groups and legal aid organizations, which reported during interviews avoiding cases involving certain groups such as sex workers and homosexuals, for fear of guilt by association.

In Malawi, there’s a similar problem – with tax breaks for NGOs determined by the Ministry of Finance under the Malawi Revenue Authority Act of 1998. This has given the government

power to essentially help or hurt NGOs, many of which operate on a tiny budget, depending on their objectives.

Police, as I mentioned earlier, also present a huge barrier to accessing the initial stages of justice particularly in gender violence cases. Conducting interviews with victims of gender violence in SSA, we found that police often made it impossible to report cases and, worse yet, often further perpetuated the violation by themselves by either raping the unaccompanied women or requiring large sums of money to process the claim. In addition, police are often ill trained to take down statements and properly process gender violence cases from beginning to end – requiring payment for photocopying and filings, failing to advise women about not showering, tossing blame at the women through questions such as “why did he hit you?” and “why did you make him angry.”

In response to this, a number of countries, such as Uganda, Kenya and Rwanda have created all women police units to assist victims of gender violence, though they tend to be concentrated more in urban areas and they tend to be more what I would call “passive police stations,” in that they don’t conduct sufficient outreach and educational campaigns to slums and other areas traditionally plagued by high levels of violence. Though generally speaking, reporting levels are higher at police stations/units staffed by all females than men or mixed.

In Uganda, with the fairly recent implementation of the 3 stage Justice, Law and Order Sector (JLOS) plan to improve access to justice, family and female police units have been created, and the UN, through a multidisciplinary team, is currently working with the Ugandan police to revise all of their sexual violence complaint forms to ensure standardized procedures, streamlined processes integrated with hospital support, and proper training for police charged with assisting to fill out these reports. Previously, there was no standardization of police forms and processes amongst police stations throughout the country. This is often the case amongst police stations in SSA – there are either no forms, guidance or clear protocol for filling out forms and advising victims, and this becomes very discouraging to females seeking to report cases of gender violence.

There’s also been a greater adoption amongst many SSA countries of integrated justice centers and one stop shops to promote a multi-pronged, on-site approach to providing integrated care to gender violence victims. These have been placed both in rural and urban settings. In Rwanda, one stop shops have been created in the capital but also in a number of rural areas, providing not only care for victims but also initial rights outreach. Access to justice for sexual gender victims in Rwanda and Uganda – something I recently worked on - has been aided by the creation of sector / wide checklists for police services, prosecutors and judges, clarifying specific protocol when dealing with, and adjudicating cases of sexual violence.

Since one stop shops do often partner with external organizations and due to the lack of government involvements in coordinating legal aid schemes, it’s important that one – stop shops adopt a coordinating function between NGOs involved in legal aid provision, something that’s severely lacking in many SSA countries. In Uganda, the Justice Centres have helped to take the role of a coordinating body amongst NGOs working in partnership with these one stop shops and evidence shows improved provision of services, better geographic outreach and fewer service gaps.

Despite the availability of these one stop shops and strong usage numbers, we see a certain trend in problems amongst them. First, the lack of outreach to communities is lacking, which can be done both through village visits but also through mobile technology to provide access

to information, hotlines, addresses and other resources. Basic access know-how amongst the population is still fairly low, though improving thanks to bigger budgets and resources being allocated to outreach efforts. Another problem is the lack of follow up after women have left the one-stop shops. There's minimal tracking of women once the provision of services end. Something particularly troubling is that in Rwanda, access to services in these centers is contingent on filing a police report against the aggressor. This has left women to choose not to seek services, such as psychological support.

At perhaps a more macro level, another substantial problem is the lack of government involvement in legal aid and the way legal aid is conceptualized at the state level. We are seeing a trend over the last 5 or 6 years towards the creation of legal aid bills – for example in 2014 in South Africa, 2011 in Nigeria – which have established legal aid councils to oversee, as the Nigerian bill says, “the provision of legal aid, advice and access to justice.” But these bills are very focused on legal aid for civil litigation and criminal defense – both of which are important – but don't capture the broader need of access to justice to focus resources on the earliest stages of intervention – police, social services, one – stop shops, outreach and NGO coordination. Nor do most of these bills really take ownership for the provision of legal aid.

In addition, these bills merely state that funding will be determined by the Parliament on a yearly basis, but to date, no SSA country, except perhaps SA, has dedicated any significant amount of financing. In Uganda, for example, legal aid, through its Council is estimated at .20 cents per capita, and it's roughly the same or less in most of the region.

Interestingly, where there is a more comprehensive and expansive A2J framework is at the SA regional level, though almost none of which is integrated into domestic legislation. For example, the Dakar Resolution for a Fair Trial in Africa, the African Commission's Principles and Guidelines on the Fair Trial and Legal Assistance, as well as the Lilongwe Declaration on Legal Aid in the Criminal Justice System. It's important to point out that these Resolutions, particularly the Commission Principles, do a fairly good job at conceptualizing access to justice beyond merely legal aid in criminal matters, which is really what most of SSA's domestic legislation does. There's a strong focus on ensuring training and development for legal practitioners, there's an emphasis on female access to justice, and, interestingly, there's a section on access to information and the publication of court records.

Despite, however, the strong frameworks at the regional level, there's minimal interest, amongst other reasons, both on the part of the African Commission, as well as on the individual states, to expand A2J and put in place A2J infrastructure. We can see this partly from the fact that states within Africa have only dedicated about 4,000,000 USD to the African Commission for its overall operations and to hear cases of human rights abuses by state actors, demonstrating, in my opinion, very little interest in court accessibility. The African Commission, which hears cases of human rights violations, only receives and adjudicates somewhere around 100 cases a year, whereas the European states provide approximately 60,000,000 USD for the functioning, administration and outreach of the European Court of Human Rights, which receives around 57,000 cases a year. The adjudication time between these two courts is also significant, with the Commission taking around 8 years to adjudicate decisions and the European Court around 3 years. So we can see that even from the highest levels of SSA Governance, Commitment to access to justice is quite limited.

Before I conclude, I want to point out a few more areas we're seeing improving and then mention what I think our next steps – focus should be: The types of things we're seeing.

Mobile technology –Massive numbers in SSA of mobile technology. In Uganda, for example, there a program through the University of London, which allows prisoners and prison officials to obtain a law diploma in order to provide legal advise to other prisoners and to help support good practice in prisons. This program, since its inception in 2013, has spread to 8 prisons in Uganda, including in rural areas far outside the capital.

We're also seeing a significant emphasis on SSA on birth registration through mobile devices. Lack of birth registration is a big problem and makes it difficult for children and adults to access government services, commence litigation, or even find employment in the formal sector, and perpetuates a cycle of marginalization. In 2000, nearly 70% of births went unregistered in SSA – this number is down now to around 20-30%, though still fairly elevated in rural areas. Uganda recently launched a program with the Government of Uganda to provide birth registration through mobile devices.

In Sierra Leone, through partnerships with private technology companies, women in certain regions receive information on human rights, gender violence from radio signals that link to their phones. This technology is helping to reach communities particularly in rural areas.

Results: a number of local journalists have created weekly shows on issues such as traditional marriage, domestic violence, HIV/AIDS, that was played through either mobile phones or listening centers in villages. In the 11<sup>th</sup> month pilot, approximately 1,300 women turned in a month. And in a qualitative survey that was done, most women reported better understanding their rights, and in a bit of anecdotal evidence, one man stated that he now understood – through his wife / that gender violence was not acceptable.

Looking forward, I believe there's an opportunity to improve access and deal directly with a number of the problems discussed by placing our efforts towards helping law schools develop or improve student driven legal clinics. Law schools however, need, assistance by development experts in developing and launching legal clinics, but there are very few organizations, with the exception of, for example, the American Bar Association's ROLI and a few others, that provide support to law school assistance. Instead, much of the donor support in the area of A2J goes directly to Governments or NGOs, but I think law school clinics provide a more agile, cost effective solution to expand A2J

For those of you who aren't familiar with this concept of law school clinics, clinics are something that originated in the US and allow students to provide legal services to indigent individuals under the supervision of an admitted lawyers. In Africa, we are seeing some development of legal clinics, largely in South Africa, but also in places such Uganda, Nigeria, Sierra Leone, and then some NGO – University partnerships in Burkino Faso, Senegal and Benin.

Law school clinics, as I stated, are a cost effective way of providing legal services and assistance at all levels of the access to justice spectrum, ranging from outreach and information sharing to police and medical document filing, all the way to court room advocacy. I've visited a number of law clinics in SSA, and many of them are moving in the right direction – but I think

common to all of them are a few deficiencies which would enhance the expansion of justice and which I think is a replicable model, whether to Latin America or Asia.

Let me first explain the advantages

1. Law students are often willing to undertake activities that admitted lawyers or those who have graduated do not want to do, such as conducting information sessions in communities to inform women of their rights, reporting mechanisms, and to even, in some cases, hold sessions for men on gender and sexual violence laws and norms. Outreach in sex worker communities.
2. Law students (or if a law clinic is more multi – dimensional, this can involve others) can serve as initial advocates for victims of sexual violence, such as escorting them to the police stations to file reports or taking them to health service providers to have rape tests conducted. – this helps deal with early access to justice issues, and is something a lawyer likely won't do, and a service that generally isn't provided by legal aid of any type.
3. Finally, since many law students travel to cities and capitals for their legal education, they could be charged with implementing some sort of local programming in their hometowns, or serving as a sort of paralegal in their villages when they return home on visits. Lawyers and social services providers are particularly absent in rural areas of SSA, where in some countries there are almost no lawyers in rural areas.

**I also want to mention some of the challenges amongst African law schools that limit their potential and which need to be addressed when working with law schools to develop legal clinics:**

1. Many students choose not to participate in legal clinics because of educational time constrains. Students should be given academic credits for legal clinics in lieu of another class in order to incentivize participation. ALSO CREATING A PRO BONO REQUIREMENT, LIKE IN NYC
2. Students sometimes enter legal clinics without the requisite training. Schools need to provide gender sensitivity training to law students as part of the curriculum – how to interview sexual assault victims, how to develop confidence with the victim and how to ensure they don't act in an accusatory way. .give example.
3. Laws need to be reformed in many countries to allow students broader responsibilities in legal clinics. As many laws currently stand, law students can do little more than outreach. In Uganda, for instance, the Advocates Act states that only lawyers can go to court. In comparison, in the U.S. laws have been modified to allow law students in their 2<sup>nd</sup> or 3<sup>rd</sup> year of law students and who have taken certain requisite classes to provide some legal services to individuals who are victims of, for instance, gender based violence.
4. IMPORTANT: Law clinics that deal with sexual violence should be developed in conjunction with other Faculties at the University. Thinking about all of what's been said at this conference.... For instance, a legal clinic should seek to triangulate its services with students from nursing and medicine, social work, psychology, etc. in order to provide a one stop shop for victims of sexual violence.

5. They need to have an office that's accessible. Mobile offices, accessible offices.

At this point I think I'll stop and just say in conclusion that SSA is a complicated environment for A2J. We are seeing a number of advances and there's a lot of potential for low cost solutions.