

Theme: *“Strengthening Access to Justice for Economic, Social and Cultural Rights (ESCRs)”*

CONCEPT NOTE

1. Introduction

International human rights law has developed standards on the right of access to judicial and other remedies that serve as suitable and effective grievance mechanisms against violations of human rights. Accordingly, states not only have a negative obligation not to obstruct access to those remedies but a positive obligation to organize their institutional apparatus so that all individuals can access those remedies. To that end, states are required to remove any regulatory, social, or economic obstacles that prevent or hinder the possibility of access to justice.

However, discussions around access to justice often focus on civil and political rights violations, with less attention paid to economic, social and cultural rights, even though both judicial and non-judicial remedies are equally relevant in the context of ESCRs. It is no surprise therefore that a recent report by the UN Special Rapporteur on the right to adequate housing recognized that "the global housing crisis is rooted in a crisis in access to justice because without access to justice, housing is not properly recognized, understood or addressed as a human right." This is true for other social and economic rights issues.

In 1993, the United Nations affirmed that “all human rights are universal, indivisible and interdependent and interrelated”.¹ One area where the inter-relatedness is visible is with respect to the role that access to justice plays in the realisation of ESCRs. This is to the extent that access to justice allows those whose ESCRs have been violated or abused to seek relief. The same applies to those whose ESCRs are threatened. The United Nations has defined “access to justice” as access by people, in particular poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts.² It has been indicated that this includes the ability of people to seek and obtain a remedy through formal and informal justice systems, and the ability to seek and exercise influence on law-making and law-implementing processes and institutions.³

Article 2(2)(a) of the International Covenant on Economic, Social and Cultural Rights (ICCPR) requires states to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity. Article 2(2)(b) also in this respect requires states to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy. It is the obligation of the states to ensure that the competent authorities shall enforce such remedies when granted. Access to justice is also seen through the provision of the Covenant that guarantees the right to a fair hearing in Article 14. Similar provisions are seen in several human rights instruments, including United Nations and regional instruments.

The connection between access to justice and ESCRs is among others seen through the relationship between justice and poverty. According to UNDP, there are strong links between establishing democratic governance, reducing poverty and securing access to justice. That democratic governance is undermined where access to justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent. UNDP asserts that access to justice is also closely linked to poverty reduction since being poor and marginalized means being deprived of

¹ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

² UNDP *Access to Justice Practice Note* (2004) UNDP, pg 6.

³ Bedner (2004), ‘Towards Meaningful Rule of Law Research: An Elementary Approach’, MS Unpublished, VVI, Leiden.



choices, opportunities, access to basic resources and a voice in decision-making. Lack of access to justice limits the effectiveness of poverty reduction and democratic governance programmes by limiting participation, transparency and accountability.⁴

Furthermore, the Sustainable Development Goal 16 aims to “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. Specifically, SDG 16.3 is related to access to justice for all, especially vulnerable and marginalised groups by 2030, and the international community made commitments to eliminate barriers to access to justice for vulnerable groups.

In the case of Uganda, the legal framework has provisions that guarantee access to justice, including provisions of the Bill of Rights in the Constitution. In addition, there are institutions whose mandate is to ensure access to justice. This includes both judicial and quasi-judicial bodies. Also, justice could be accessed through informal mechanisms, including local council courts, traditional institutions and religious institutions. However, the discussions on access to justice focus on criminal matters or matters of a civil and political nature without reflecting on social and economic rights violations.

As has been demonstrated by several reports, there are still serious bottlenecks to access to justice, affecting especially the indigent and vulnerable.⁵ The factors that constrain access to justice could be understood in the context of the indicators of access to justice: cost of the procedures; quality of the procedures and quality of the outcomes. With respect to the cost, access to justice is expensive for the poor who cannot afford such costs as legal fees, court fees and incidental costs such as travel and documentation. Yet this is aggravated by corruption. For quality, this is compromised by deficiencies in the various Justice Law and Order Sector institutions, including the Police and the courts. These suffer from logistical deficits as well human resource gaps. The quality of the outcome is largely affected by the non-implementation of court orders and directives. These constraints affect the enjoyment of ESCRs as much as they affect other rights. This denied victims of ESCR violations and abuses relief. The situation is exacerbated by increasing influence of business, understood in the context of business and human rights. Increasingly, as business, including foreign business, increase their footprint in Uganda, cases of abuse of human rights are on the increase. In some cases, obtaining remedies against the companies is a problem.

2. About the National ESCRs Conference

The idea of an Annual Conference on Economic, Social and Cultural Rights was born in 2014, at the behest of Government processes that flagged the need for constitutional reforms. The Conference was at the time conceived as a forum to advocate for the inclusion of economic, social and cultural rights in the Constitution. At the 1st Conference in September 2014, the question of the justifiability of ESCRs took center stage. The 2nd Conference in September 2015 confronted the subject of the state of socio-economic services, focusing particularly on the issue of exclusion and vulnerability. The subject of development planning and use of the Human Rights Based Approach as well featured prominently at the 2nd Conference. The subject of business and human rights was flagged as a serious issue. One of the outcomes of the 2nd Conference was the birth of the Uganda Consortium on Corporate Accountability (UCCA) including a decision that the 3rd Conference addresses the subject of business and human rights under the theme: Accountability versus Social Responsibility in the Era of Business Human Rights Abuses in Uganda: International and Domestic Policy and Legal Responses. From the 3rd conference, it was decided that the 4th conference address the subject of local government and the realization of

⁴ As above, at p 3 Legal Aid Service Providers Network Access to Justice for the Poor, Marginalised and Vulnerable People of Uganda (2015), available at < <http://www.laspnet.org/joomla-pages/reports/research-reports/377-access-to-justice-for-the-poor-marginalised-and-vulnerable-people-of-uganda/file> > (accessed on 26th March 2019).

⁵ See Hague Institute for Innovation of Law *Justice Needs in Uganda* (2016).



economic, social and cultural rights. The 4th conference centered on the headway local governments have made in the delivery of social services. This was conducted under the theme: Local Government and Service Delivery in Uganda: Achievements, Challenges and the Way Forward. During the 4th conference, it was agreed that the 5th Annual National Conference addressed the issue of fully aligning the country's national developmental agenda to the SDGs since achieving them has a positive bearing on service delivery and the enjoyment of social and economic rights by the citizens. The aim of the conference was to create awareness among the citizenry on the importance of the SDGs in the realization of the country's development goals. This was in addition to underscoring the link between SDGs and ESCRs rights and how the former can be used to achieve fulfilment of the latter.

3. The 6th Conference

6th National Conference on Economic, Social and Cultural Rights will be held on Wednesday 25th and Thursday 26th September, 2019 at Makerere University main campus, Kampala, under the theme *Strengthening access to justice for Economic, Social and Cultural Rights*. The aim of the Conference is to take stock of access to justice policies, laws and mechanisms and how these were impacting on access to justice for victims of ESCRs violations and abuses. The Conference will discuss the different mechanisms and remedies available to victims and how effective and efficient these are. This will cover both formal and informal mechanisms, as well as judicial and quasi-judicial systems, in addition to administrative mechanisms. The specific objectives of the Conference are:

- i. To examine the relationship between access to justice and ESCRs and the international standards that govern this area of human rights law;
- ii. To take stock of the access to justice mechanisms available for victims of ESCRs violations and abuses;
- iii. To examine the extent to which justice needs of victims of ESCRs violations and abuses have been addressed through the available mechanisms;
- iv. To identify and discuss best practices for the ensuring that victims of ESCRs violations and abuses access justice; and
- v. To ensure inclusion of ESCRs in the access to justice discourse at the national, regional and international levels.

4. Expected outcomes:

It is hoped that the Conference will contribute to ensuring that the access to justice mechanisms in Uganda address the needs of victims of ESCR violations and abuses. This will be achieved through the discussion of the successes and failures of the existing mechanisms, in addition to the best practices from comparative jurisdictions. The international standards will help to determine what needs to be done to improve our legal framework to make it deliver justice to victims. The Conference is expected to act as a platform networking by different stakeholders working on access to justice and ESCRs.

5. About the Organizers

Initiative for Social & Economic Rights (ISER)

ISER is an independent, not-for-profit human rights organization responsible for promoting the effective understanding, monitoring, implementation and realization of Economic and Social Rights in Uganda. This they do by promoting a Human Rights Based approach to the design and implementation of legal and policy frameworks relating to Economic and Social Rights; building awareness about Economic and Social Rights and exploring strategies for securing their realization; broadening individuals' and communities' access to Economic and Social Rights in Uganda; strengthening community participation in the design and implementation of social



and economic policies and programs that affect them; ensuring government accountability for Economic and Social Rights through community empowerment; and mobilizing and building capacity of Non Governmental organizations and the media to advocate more effectively for Economic and Social Rights including using Regional and International mechanisms. ISER also hosts the Uganda Consortium on Corporate Accountability (UCCA)

The Public Interest Law Clinic (PILAC)

The Public Interest Law Clinic (PILAC) is the premier University Based Law Clinic in Uganda. Established in 2012, PILAC seeks to promote Social Justice through hands-on experiential learning as well as exposing students to 'live' cases of individuals who have been confronted by the law in its varied manifestations. The Clinic has a Clinical Legal Education (CLE) programme, which is intended to equip law students with public lawyering skills. PILAC has also extended the benefits of hands-on practical learning through the establishment of a Community Law Programme and mobile clinic (CLAPMOC), which is used to extend legal literacy sessions and other legal services to the communities around the university. PILAC also hosts the Network of Public Interest Lawyers which is an umbrella organization that brings together individual lawyers, CSOs/NGOs and law firms committed to public interest litigation and advocacy.

Uganda Consortium on Corporate Accountability (UCCA)

The UCCA was established in August 2015 as a civil society consortium on corporate accountability aimed at enhancing accountability by corporations, States, international finance institutions and development partners for violations or abuses of economic, social and cultural rights (ESCRs). It has a founding membership of four organizations specializing in different areas of rights protection, including the Initiative for Social and Economic Rights (ISER), the Public Interest Law Clinic at Makerere University Law School (PILAC), Legal Brains Trust (LBT) and the Center for Health Human Rights and Development (CEHURD). It is currently in the process of widening the consortium membership to include more organizations and community based organization to strengthen the platform working around business and human rights issues. The UCCA is an active member of regional and international networks including the African Coalition on Corporate Accountability (ACCA) and the International Network on Economic Social and Cultural Rights (ESCR-Net) among others.

Uganda Human Rights Commission (UHRC)

Uganda Human Rights Commission is a national human rights institution that was established on 6th November 1996 to promote and promote human rights in Uganda. Under Article 52 of the Constitution of the Republic of Uganda, 1995, its functions include monitoring the enjoyment and realization of all human rights (ESCR rights inclusive) in Uganda and Government's compliance with international treaties and conventions it has ratified. It also receives and initiates complaints of ESCR related abuses/violations and conducts ESCR advocacy and sensitization activities with stakeholders at national level and at the grassroots. UHRC produces Annual and Special Reports on its findings and recommendations and they are submitted to Parliament of Uganda to follow up implementation from its stakeholders. In May 2016, Uganda Human Rights Commission (UHRC) and the Danish Institute for Human Rights (DIHR) launched a preliminary web-based country guide that aims to be a resource for businesses, Civil Society Organizations, Governments, multilateral institutions and all other relevant local and international actors, to enable these actors ensure that business fosters sustainable development in line with human rights standards. UHRC is accredited with "A status" by the Global Alliance of National Human Rights Institutions (GANHRI), Geneva Switzerland, giving it enhanced access to the United Nations human rights system. It is also a member of the Network of African NHRIs (NANHRI).

The Equal Opportunities Commission (EOC)

The Equal Opportunities Commission is a constitutional body mandated to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability, and take



affirmative action in favor 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 which exist against them. Our vision is to have a just and fair society where all persons have equal opportunity to participate and benefit in all spheres of political, economic, social and cultural life. Our role is to assist you to understand your right to equal opportunities and your responsibilities, and to facilitate redress to discrimination. We are committed to fostering a society in which all individuals are equal and are treated with respect and dignity.

Strengthening Human Rights Research and Education in Sub-Sharan Africa (SHUREA)

SHUREA is a cooperation project between the Institute for Human Rights at Åbo Akademi University in Finland and Centre for Human Rights at University of Pretoria in South Africa, School of Law at Addis Ababa University in Ethiopia, School of Law at Makerere University in Uganda and School of Law at University of Nairobi in Kenya. The project aims at improved capacity in research and research-based teaching in human rights in project countries. To achieve this, the emphasis in the project is on improving quality and availability of PhD training in human rights, and strengthening the role of human rights research in societal development processes. The project is funded through the Higher Education Institutions Institutional Cooperation Instrument (HEI ICI) of the Ministry for Foreign Affairs of Finland. The instrument supports cooperation projects between higher education institutions in Finland and the developing world that are designed to enhance higher education provision in these countries.

Legal Aid Service Providers' Network (LASPNET)

The Legal Aid Service Providers Network (LASPNET) is a national, member-based, Non-Government organization established in 2004 with the mandate 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 and other like-minded stakeholders on issues of access to justice and the rule of law. To achieve its objective, LASPNET targets three critical aspects namely: coordination which is in the form of bringing together different LASPs for solidarity in strategizing, sharing lessons and experiences while minimizing duplication; capacity building of stakeholders through collaborative research and analysis; as well as documenting, providing feedback and amplifying the voice of member LASPs on key issues relating to access to justice and legal aid at the regional, national and international level. Currently, the network has a membership of 54 organizations spread across a total of 70 Districts in different regions of Uganda. This is in addition to honorary members who include eminent judges and other strategic partners.

FIDA Uganda

The Uganda Association of Women Lawyers (FIDA-Uganda) is one of the leading women's rights organizations in Uganda and the pioneer of legal aid and public legal education in sub-Saharan Africa. Formed in 1974, FIDA-Uganda has an established track record of promoting and defending human rights, with a focus on the rights of women with children as beneficiaries of this work. In particular, FIDA (U) seeks to promote human rights standards as established in international, regional and national human rights instruments and uses a feminist and rights based approach in order to address the underlying causes of abuse, including patriarchy, injustice and exclusion. As a feminist organization, FIDA Uganda uses multiple strategies aimed at advancing law and policy reform for the protection of women including advocacy, public interest litigation and various forms of public engagement. FIDA (U) also supports and monitors the Government of Uganda as the primary duty bearer to fulfil its obligation to protect and promote the human rights of women through establishing/strengthening sustainable and effective legal and structural mechanisms. FIDA (U) also monitors the justice systems' adherence to international human rights standards in delivering justice to women. FIDA-Uganda has observer status with the Africa Human Rights Commission.

