

“Access to Justice in context of COVID-19 in East Africa”

“Practitioner’s perspective on COVID19 response by justice sector actors in Uganda.”

In one of the most unprecedented events to rock the year 2020, COVID-19 takes a special spot in this respect. This falls at various levels and lest to say this pandemic has pushed the justice sector to its limits in line with ensuring that all persons are equally treated during this dire time. As a practitioner, the pandemic inhibited most of the work that could have been executed but also went on to show the big lacuna that lies between the realities of access to justice. I hope to point attention to certain factors that formed the crux of whether or not our clients got the much desired access to justice.

Supporting the development of a holistic and inclusive strategy for ensuring the functioning of the justice system and equal access to fair, timely, and effective justice services. During the early stages of the pandemic, it was evidenced that there was a strategic disconnect between the justice actors. For instance in an article by **Justice Henry Peter Adonyo**¹ he stated that, “on **21 March 2020**, Uganda reported its first COVID-19 case and a new paradigm was set in motion. More stringent measures were issued by the Chief Justice that effectively shut down courts, as they restricted the number of judicial officers and staff allowed at any given court at any time. While all the do's and don'ts for the effective control of the virus are meaningful, they all do invariably impact the hallowed right of access to justice. Courts, and the justice system generally, have ultimately become inaccessible. This kind of situation requires appropriate mechanisms that should enable access to justice in these trying times. On **31 March 2020**, additional stringent measures were issued that effectively shut down the country with only the so-called essential services such as healthcare, food markets and banks left in place. The administration of justice was not listed among these essential services, yet the consequences of the public disobedience of the measures means that violators are sanctionable by law. The accessibility of judicial processes, such as arraignments, the taking of pleas and the right to apply for bail were given little or no thought. This makes the legally provided timeline for the filing of civil matters and the required efficiency in the judicial ethical code difficult to maintain.”

¹ COVID-19 and the Administration of Justice: A Reflection on Ethical Judicial Conduct

As was ably explained by the Learned Justice, it was abundantly clear that there was a need to ensure a speedy response by the justice system to assess which measures should be prioritized in the context of limited capacities and abilities to function in situations of full or partial 'shut down' orders. This strategy should have considered that courts do not act in isolation but are part of an inter-connected justice chain that includes a broad range of justice sector and social service actors. Therefore, there needed to be an inclusive process of consultation with all the key actors to develop a response plan, including the judiciary, the prosecution, law enforcement and, defence lawyers, bar associations, civil society groups, and relevant social support services.

The involvement of women's organizations and other civil society organizations in this process would have been crucial to consider the particular obstacles in accessing justice faced by specific groups. This strategy would have taken into consideration historical and structural inequalities facing different groups in accessing justice, and how these may be exacerbated because of the crisis. In a New Vision paper article; "**How COVID-19 has affected women in Uganda**" By **Lillian N. Magezi** dated **11th August 2020**², within one month of the lockdown, the Uganda Police Force recorded more than **3,000** cases of domestic violence and six deaths.

Potentially negative unintended consequences of emergency measures. The lockdown strategy by government in the early phases of the pandemic was one of the best methods to curtail the disease. However, one oversight by government was that there was no initiation of the enforcement agencies into a holistic understanding of how the new normal would affect the public. For example, if police have the power to arrest people for a breach of curfew and they apply this power rigorously, this could overwhelm the courts and increase the spread of the virus within detention facilities. Indeed, evidence to this shows that a rise was seen during the pandemic time which later led to the pardoning of prisoners by H.E the President of Uganda. This was done on **22nd of April 2020** where he pardoned **833** prisoners' country wide were pardoned through the Prerogative of Mercy as a measure against the spread of COVID-19 (Corona virus) by decongesting the prison facilities³.

Another challenge we faced was the courts' ability to hold online sessions to fast track bail hearings. This posed a challenge since few prisons or police

² <https://www.newvision.co.ug/news/1524450/covid-19-affected-women-uganda>

³ <https://www.prisons.go.ug/media/833-prisoners-pardoned-president%E2%80%99s-prerogative-mercy>

stations have the equipment to enable detainees/accused persons and their lawyers to participate in such hearings in a manner that respects the defendant's rights including presumption of innocence. The video teleconferencing at Buganda Road Court⁴ and Luzira Maximum Prison⁵ is testimony to this fact⁶. Additionally, people who were eligible for release at times were deprived of their liberty for longer than necessary which exposed to a higher risk of contracting COVID-19.

Enabling justice systems to develop business continuity plans, including prioritization of cases and remote case management systems. The COVID-19 context provides an opportunity for the justice sector to examine ways in which the justice system can become more efficient and agile, with long-term impact that can last beyond the crisis period. This could include strengthening information, communication, and technology (ICT) infrastructures and supporting the digitalization of case management or prison population management systems to better identify and manage priority caseloads in the short and long-term. Support is required to develop strategies to strengthen policies, regulations and capacities of the justice sector to continue to provide essential services during the crisis, while ensuring that business continuity does not come at the expense of the most marginalized members of society. Developing a strategy for prioritization of critical cases, while continuing to protect the rights of defendants, should be part of the COVID-19 response planning and preparation. For example, priority should be given to cases involving child offenders (and detention of children should be a last resort for the shortest time); crimes against children; violence against women and children; accountability for serious crimes; and where the statute of limitation may apply.

With the establishment of the COVID-19 SOPs, law enforcement agencies had made this a human rights degradation haven. A lot of cases were seen as police enforced the presidential directives in total disregard of the human rights that bind each individual. It is clear under **Article 44 of the Constitution of the Republic of Uganda** that certain rights are non-derogable. Therefore, states remain legally bound to provide effective remedies to victims of human rights violations even in the context of states of emergencies, including for victims of unnecessary, disproportionate, or

⁴ <https://www.newvision.co.ug/news/1498557/chief-justice-launches-video-conferencing-criminal>

⁵ <http://judiciary.go.ug/data/news/684/CJ%20Launches%20Video%20Conferencing%20System%20to%20Luzira%20Prison.html>

⁶ <https://www.monitor.co.ug/uganda/news/national/lawyers-decry-long-queues-at-buganda-road-court-1904160>

discriminatory application of limitations or emergency measures. Policies and procedures should be developed to facilitate cases that concern non-derogable rights and to avoid postponing of cases that would infringe upon due process and fair trial rights. It was however, a dismay to witness these very rights being violated by our law enforcement agencies at the expense of the citizen under the disguise of the presidential directive.

Additionally, faced a challenge of working in line with the requirements of the right to a fair hearing under **Article 28 of the Constitution of the Republic of Uganda**. The determination of which matters are 'urgent' and should proceed during an emergency had to be non-discriminatory, mindful of the right to trial in a timely manner and free from undue external influence. Additionally, judges had to consider procedural guarantees, and interim injunctions, restraining orders, or other forms of immediate relief based on summary procedures. A review should be undertaken of the types of cases that could be dealt with remotely (via teleconferencing for example) without compromising due process rights and victims' participation, including the right to consult and be represented by a lawyer. The rationale for this is grounded on the fact that, due to the lack of adequate preparation led to certain cases lagging behind and causing a backlog which added to the already existing one. This brought about frustration amongst the practitioners and the clients.

Access to personal protective equipment (PPE) for justice sector actors. Justice sector actors include police and prison officials, prosecutors, lawyers, legal aid providers, and social welfare workers. In many contexts, community-based paralegals, CSOs, and bar associations provide essential services by providing information and advice as well as advocating for the rights of their clients. This was another challenge whereby our professionals lacked the necessary protection against exposure to the virus. At Uganda Law Society for instance, we have about **2,000 pro bono advocates** who have been giving on spot legal assistance even during the lockdown period. As a result, we were able to handle over **5,000 cases** during the lockdown period. But, the cost these advocates have to pass through to give these services exposes them to the virus given the dire conditions.

Enhancing law enforcement accountability, integrity and oversight. Law enforcement agencies are an important part of the justice chain and play a significant role in COVID-19 response. I believe that the pandemic has shone a light on the brutality of the law enforcement agencies. An

article in the **British Broadcasting Corporation** titled **“Uganda - where security forces may be more deadly than coronavirus”**⁷ pointed out that, “In Uganda, at least 12 people have allegedly been killed by security officers enforcing measures to restrict the spread of coronavirus, while the country has only just confirmed its first death from Covid-19”. Therefore as we move forward, joint planning by all security sector actors charged with implementing the directives is necessary in ensuring the safe and appropriate implementation of these regulations. In addition, the judiciary and other state and non-state accountability and oversight mechanisms, should also be prepared to monitor the actions of law enforcement and security actors so that they are enforcing their responsibilities within the scope of the emergency regulations and are held accountable for any abuse of authority. Protocols and training should be put in place for police and security personnel, including border authorities, to ensure the respect for dignity and rights of people in the context of implementing presidential directives and quarantine rules, including adopting a gender-sensitive and child-friendly approach. This will be particularly relevant in the treatment of marginalized groups that may be constrained in their ability to follow quarantine rules.

In summary, the COVID-19 has exposed the challenge in our justice sector which gives us an opportunity to work on these fallbacks and ensure better access to justice with discrimination whatsoever. As a practitioner, the effects of COVID- 19 trickle back to me in such a way that I have had to internalize my knowledge of ICT with the already existing legal rules to bring justice to my clients. This has therefore been a learning period but also one where I expect most of us can benefit if we take a closer look at the opportunities created.

⁷ <https://www.bbc.com/news/world-africa-53450850>