

# **PRESENTATION ON CIVIC EDUCATION UNDER ACCESS TO JUSTICE THEMATIC AREA FOR THE MASTER TRAINERS' CLASS AT NIMROD HOTEL LUWERO ON THE 7<sup>TH</sup> DAY OF DECEMBER, 2016 BY RONALD SEKAGYA – REGISTRAR, EDUCATION AND PUBLIC AFFAIRS JUDICIAL SERVICE COMMISSION.**

**Note: We will navigate through the Access to Justice thematic area of the Consolidated Civic Education Modules – Civic Education for Effective Participation of Uganda Citizens**

## **1.0: Violation/infringement on rights and administration of Justice.**

Chapter four of the 1995 Constitution of Uganda guarantees protection and promotion of Fundamental and other Human Rights and freedoms to wit; equality and freedom from discrimination, protection of right to life, protection of personal liberty, respect for human dignity and protection from inhuman treatment, protection from slavery, servitude and forced labour, protection from deprivation of property, right to a fair hearing, protection of freedom of conscience, expression, movement, religion, assembly and association, right to education, rights of the family, rights of women, children, persons with disabilities, minorities etc.<sup>1</sup>

When our rights are infringed upon, we have to seek protection and remedies for the breach or violations of our rights. The process of seeking to have a remedy is the quest for justice in order that the violations are addressed and remedies obtained. The question that will follow is whether we are in a position to get justice wherever it is supposed to be got. This seeking to obtain a remedy through formal or informal institutions is what we refer to as access to justice.<sup>2</sup> We presume that once we lay our case before those who are obliged to enforce the law, justice will prevail. At least for the start, let this be the assumption but we know that all is not well. The investigators, prosecutors and adjudicators may be well far off the expected ethical and technical standards.

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<sup>1</sup> The 1995 Constitution of the Republic of Uganda. See Chapter four Articles 20-58.

<sup>2</sup> Uganda Project Implementation and Management Centre (UPIMAC), "Consolidated Civic Education Modules" at 100

The institutions working together in ensuring access and administration of justice in Uganda through coordination, cooperation and communication are placed under a sector umbrella called the Justice, Law and Order Sector (JLOS)<sup>3</sup>.

These have collectively put up interventions targeting access to justice for all.<sup>4</sup>

We have many institutions that administer justice. Apart from those listed under the civic education module regarding access to justice, there are others that need to be noted. The Tax Appeals Tribunal settles tax disputes, the Judicial Service Commission receives complaints on misconduct of judicial officers, the Electricity Disputes Tribunal settles electricity related disputes including false billing. The Law Council handles disputes between Advocates and their clients, the Industrial Court for labour disputes not forgetting the Labour officers. A Labour officer is the Court of first instance for labour disputes. The Court Marshal is also an institution that administers justice to those in the military and those found in possession of military ware. Administration of justice is not a preserve of one institution. Administration of justice requires a chain of institutions working together including the public as the most important. Public participation should be at its best if we are to have reasonable administration of justice. It is important to note that there are complaint handling institutions to enforce ethical standards of professionals. When the officers become the hindrances in access and administration of justice, the public is advised to take them on through the various complaints systems. The Police Standards Unit caters for Police misconduct, the Directorate of Public Prosecutions has an elaborate complaints system.

In cases of a civil nature, the law encourages settlement of disputes through mediation, and other alternative dispute resolution mechanism. These may be

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<sup>3</sup> The Justice, Law and Order Sector Institutions include; Ministry of Justice and Constitutional Affairs, The Ministry of Internal Affairs, The Judiciary, The Uganda Prison Service, The Uganda Police Force, The Judicial Service Commission, The Directorate of Public Prosecutions, The Uganda Law Reform Commission, The Ministry of Local Government (Local Council Courts), The Ministry of Gender, Labour and Social Development (Probation and Juvenile Justice), The Uganda Human Rights Commission, The Law Development Centre, The Tax Appeals Tribunal, The Uganda Law Society, the Centre for Arbitration and Alternative Dispute Resolution (CADER), The Directorate of Citizenship and Immigration Control and The National Identification Registration Authority.

<sup>4</sup> Justice, Law and Order Sector Annual Performance Report 2015/2016 “A pro people justice system: Building public Trust” at 26.

informal as long as the parties can stick to their agreement of reconciliation. In criminal matters, the law allows reconciliation in small cases (Misdemeanors). At a higher level, we are considering plea bargaining which enables a person to plead guilty to a lesser charge.

Although justice is meant to be for all, there are people who are vulnerable that would find it difficult to access justice. These could be limited by various aspects including age, knowledge, physical impairment, powerlessness, gender based barriers, internally displaced persons, migrants, children, suspects and prisoners, refugees, persons living with HIV AIDS and persons with disability.<sup>5</sup> Any form of barrier to access to justice needs to be addressed.

## 2.0 Concept of Access to Justice

According to Sustainable Development Goal (SDG) 16, the United Nations General Assembly set an agenda for 2030 and under this agenda, the question of access to justice is considered. I reproduce SDG 16 hereunder;

**“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”<sup>6</sup>**

The key words for our presentation here are “provide access to justice for all”. Though it appears all UN member States have to provide access to justice for all, we should note that in the declaration, all countries accepted that the application of the sustainable development goals must take into account different national realities, capacities and levels of development and respecting national policies and priorities. This implies that we cannot have the same standards world over. We however should be taking the same direction so that by 2030 we have attained the goal.

In our civic education module of UPIMAC, three levels of access to justice are laid down as being physical (closeness to law enforcement agencies), technical

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<sup>5</sup> Id.

<sup>6</sup> A/RES/70/1 at 25,

(how comfortable users are with the legal language, procedural requirements, treatment by law enforcement officers, legal experts representing the people and how they use their techniques) and finally financial (how affordable the legal services are to the users or how accessible the free legal aid services are). The module singles out insufficient awareness about the access to justice sector, people's legal rights and obligations. This should explain why the module seeks to let the people know how to access justice through publications and civic education. Lack of knowledge truly is a barrier to access to justice but many more barriers exist. As the JLOS noted in its annual report referred to above; there are other considerations that need to be examined. We have vulnerable people. These require specific attention to access justice. Some are limited by old age, physical impairment, powerlessness, gender barriers, migrants, children, suspects, prisoners, and refugees, persons living with HIV/AIDS and other by disability. In other words, even if the public got awareness about law and administration of justice, others would still be unable to access justice.

### **Quality of justice accessed**

We should look beyond buildings being near if we do not have human resource in the buildings. Having a building of a court where a disabled has no access because of the way the court was constructed is a barrier to access to justice. We cannot be comfortable that we have human resource when such human resources are corrupt and lazy. We cannot look at good detention centres when the suspects therein cannot access witnesses and legal aid. When we have institutions, these institutions should be functioning and the human resource ready technically and ethically to handle their schedule.

The narrative should not be about access to justice but effective access to justice. When we consider persons with disability as an example, effective access to justice will not be having a court near. To this person with disability, the question is whether he/she can enter the court room without having bigger burden than all others. The Convention on the rights of persons with Disabilities

which Uganda ratified requires provision of effective access to justice to persons with disabilities.<sup>7</sup>It states that

1. 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 a direct and indirect participants, including as witnesses, in all legal proceeding, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, states Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

We can gather from the provisions of the Convention on the rights of persons with Disabilities that access to justice must be effective. Consideration of the discussion giving rise to the final article 13 of the convention during the Ad Hoc Committee sessions, effective access is broad<sup>8</sup>. It includes;

- a) Provision of information in plain language and other formats accessible to persons with disabilities
- b) Provision of personal assistance to understand legal procedures, practices and rules
- c) Recognizing and facilitating access to alternative modes of communication and communication technology, including sign language
- d) Taking all necessary measures to ensure that everyone whose rights and freedoms as recognized in the convention are violated shall have an effective remedy before a national authority.
- e) Training people working in the field of administration of justice including police and prison staff.

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<sup>7</sup>Available at [www.un.org/disabilities/documents/convention/convoptprot-e.pdf](http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf). Last accessed on 6.12. 2016

<sup>8</sup>Kevin M. Cremin, JD, Yale Law School; “What Does Access To Justice Require? – Overcoming Barriers To Invoke The United Nations Convention On The Rights Of Persons With Disabilities”, *Frontiers of Law in China*, June 2016. Also available at <http://www.law.ruc.edu.cn/uploadfile/20167/201671817174073499.pdf>

We can conclusively state that the UNCRPD requires the person with disability to have full and equal enjoyment of all human rights and fundamental freedoms. Access to justice is one of the human rights people with disability must enjoy. Not just them but all persons must enjoy the right of access to justice.

### **Improvement of access to justice**

Paying attention to the limitations in access to justice certainly will lead to an improvement of access to justice. Addressing concerns of old age, physical impairment, powerlessness, gender barriers, migrants, children, suspects, prisoners, and refugees, persons living with HIV/AIDS and other by disability should be a way forward. Pursuing the target by SDG 16 should lead to improved access to justice. A closer look at SDG 16 reveals what can be done to ensure access to justice is improved. In particular goal 16.3 to 16.7 are of great importance<sup>9</sup>.

“16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all, 16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime, 16.5 Substantially reduce corruption and bribery in all their forms, 16.6 Develop effective, accountable and transparent institutions at all levels, 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels”

Increased awareness of processes and procedures in a clear and easy to understand language should be a priority. This must be done by Government partnering with civil society

Access to justice is a duty that the State has to shoulder as a duty bearer. The civil society and Government institutions must work together to provide effective remedies to every violations.

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<sup>9</sup> A/RES/70/1 at 25