

COVID-19 AND THE ADMINISTRATION OF JUSTICE IN UGANDA

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Introduction

In line with the standard public health guidelines, Uganda had to institute a partial lockdown of the country when it was confirmed that there was an outbreak of COVID-19 within the country. When the lockdown was instituted only “essential” services were allowed to operate, those deemed basic and yet indispensable without which the nation would collapse.²

Indeed the COVID-19 pandemic means we are wading in uncharted waters. But with no vaccine in the near future and with the number of patients increasing by the day, there is no way of predicting how long the lockdown will be in force, or how long it will take for judicial work to return to “normal”. This article therefore examines existing interventions in the administration of justice, challenges and how the pandemic presents an opportunity for access to justice through LC Courts.

Current efforts by the Judiciary

The Judiciary was listed as an essential service but would only hear remands, urgent mentions, bail and other very pressing interlocutory applications. Court registries were directed to stay open but only for the purposes of filing new suits.³ Even then extreme social distancing was to be practiced by all participants to the court process. To mitigate this, the Chief Justice issued the “Guidelines for on-line hearings in the Judiciary of

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² Luke Anami, 'Ugandan Takes Govt to EACJ over Lockdown' (*The East African*, 2020) <<https://www.theeastafrican.co.ke/news/ea/Ugandan-takes-government-to-EACJ-lockdown-against-the-law/4552908-5520778-wl31aaz/index.html>> accessed 12 May 2020.

³ Chief Justice's Circular, Administrative and Contingency Measures to Prevent and Mitigate the Spread of Corona Virus (Covid-19)

Uganda”⁴. The Guidelines indicate that online hearings may be used for *inter alia*, delivering of judgments and rulings, plus the hearing of bail applications, mentions and interlocutory applications. Attendance/participation is by invitation through a Judiciary provided link. The hearing of these matters is not exclusively limited to the online option though and in some cases, advocates and parties appear in person before the judicial officer.⁵

These efforts are building upon a foundation set by other recent Judiciary interventions. For example the installation of a Video Conferencing Facility between Buganda Road Court and Luzira Maximum Prison (Male and female Wing), Kigo Government prison and Kitalya Government prison. Initially it aimed at handling cases at mention stages especially in very sensitive cases that require a high level of security where transporting the accused persons to Court may cause security threats to the entire public or unnecessary cost.

The Judiciary is also in final stages of developing the Electronic Court Case Management Information System (ECMIS) that will be:-

- (i) A fully-featured system which automates and tracks all aspects of a case life cycle from initial filing through disposition and appeal;
- (ii) Able to facilitate the efficient and reliable collection, organization, distribution and retrieval of significant amounts of case specific data as well as the processing of payment of relevant court fees and fines by the Citizens.

The system will ease filing of matters and all documents, reducing the need for physical contact in the court registries.

⁴ Office Instructions No 2 of 2020

⁵ This in itself is rather difficult as both private and public transport is banned during the lockdown period. See Joseph Kiiza, 'Uganda Relaxes Coronavirus Lockdown Measures' (The New Vision, 2020) <https://www.newvision.co.ug/new_vision/news/1518485/-live-coronavirus-lockdown-ugandas> accessed 12 May 2020.

Hurdles in the administration of justice

Even then, as we await the interventions to be put to full use, currently, access to justice has been greatly hampered by the pandemic. Restricting court hearings means, ultimately, that all pending matters before the courts had to be adjourned *sine die* until the lockdown is lifted and courts are allowed to resume normal operations. Save for very urgent matters that would require party to first obtain a certificate of urgency. In addition to that, because the Judiciary does not work in a vacuum and relies on other stakeholders in the Justice sector (such as Police, Prisons, Directorate of Public Prosecutions) for it to be effective and with these stakeholders also substantially limited by the lockdown, court business has literally ground to a halt. There are a few matters being heard by the courts.

It is a well-established principle that justice shall not be denied. **Article 126(2) (b)** of the **Constitution** provides that justice shall not be delayed. But as the lockdown continues, for litigants who had matters before court, justice is delayed. They have to wait until the lockdown is lifted for their matters to be heard. Even then, the judiciary which has for long been affected by case backlog which will no doubt be exacerbated by the lockdown.

Relatedly, the lockdown (and pandemic as a whole) has also led to a rise of novel legal situations. Some parties are unable to execute their obligations while others will no doubt use this as a cloak to hide from their obligations. For the aggrieved party, waiting until the world is declared free from COVID-19 for him or her to get a remedy is justice denied. Ominously, there are also increased reports of domestic and gender based violence as people are forced to stay at home.⁶ Studies have identified that isolations

⁶ The Independent, 'Police Records 328 Cases Of Domestic Violence During COVID-19 Lockdown' (*The Independent Uganda*, 2020) <<https://www.independent.co.ug/police-records-328-cases-of-domestic-violence-during-covid-19-lockdown/>> accessed 11 May 2020.

and extreme social distancing protocols tend to affect the mental health of individuals and may be a contributing factor to the violence.⁷ The victims of domestic violence are unable to obtain justice since both public and private means of transportation are prohibited unless one has a special car sticker from the Ministry of Works and Transport.⁸ The ban on transportation means that even if a litigant has a matter which the courts are allowed to hear in this period, he or she may not be able to attend, if they do not have the special sticker for “essential” workers.

Local Council Courts

These concerns raise questions about whether justice is being “done to all irrespective of their social or economic status”.⁹ But they also present opportunities for the justice sector to transform itself into a “people-centric” institution. **Article 126(1)** of the **Constitution** provides that

“Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.”

Currently, the courts of judicature are the Supreme Court, the Court of Appeal, the High Court and subordinate courts created by Parliament.¹⁰ Currently, the only active subordinate courts in operation are the Military Courts (Court Martial) created under the UPDF Act¹¹ and the Magistrates Courts created under the Magistrates Courts Act.¹²

⁷ Jamie Bartosch, 'Violence Linked To Isolation And Chronic Health Problems - Uchicago Medicine' (*University of Chicago Medicine*, 2019) <<https://www.uchicagomedicine.org/forefront/community-articles/violence-linked-to-social-isolation-hypervigilance-and-chronic-health-problems>> accessed 12 May 2020.

⁸ Supra n1

⁹ Article 126(2)(a) Constitution

¹⁰ Article 129(1) of the Constitution

¹¹ 2005

¹² Cap 16 Laws of Uganda

It is however the Magistrates Courts which bear the load of the dispute resolution since military courts are primarily criminal courts whose jurisdiction is limited to the few offences of the UPDF Act. As already discussed, Magistrates Courts are not fully operational because of the COVID19 pandemic. The online option is also limited to courts in Kampala. Yet even in a pandemic, there is need to dispense justice.

It is for this reason that the Government should fully re-operationalise the Local Council Courts. The courts are established in a hierarchical manner of the Local Council I (Village/Cell), Local Council II (Parish/Ward) and Local Council III (Sub county/Division).¹³ Their composition and structure is elaborately provided for under the Act.¹⁴ They have both civil and criminal jurisdiction to handle matters arising from their geographical areas of authority.¹⁵ They are presided over by the elected LC official at the specific level. Because they are considered as a form of grassroots justice, they are only obliged to follow the fundamental and inalienable principles of law.¹⁶ But they are not to be bogged down in formal rules of procedure.

Because LC courts handle disputes amongst residents, they tend to uphold the fundamental of ensuring that the parties are reconciled.¹⁷ LC Courts are generally not adversarial in nature and as such focus on obtaining a resolution for both parties. LC courts are also easily accessible at the grassroots level since their geographical jurisdiction is limited to specific localities. Unlike for example the Magistrate's Court which sometimes serves an entire district, the LC Courts are very many and well spread

¹³ S.3 Local Council Courts Act states that "There is established a local council court at every village, parish, town, division and sub-county level."

¹⁴ Part III of the Local Council Courts Act 2006

¹⁵ S.9 of the Local Council Courts Act provides that "...the jurisdiction of a local council court shall extend only to causes and matters arising within the territorial area of the council for which the court is established and to causes and matters arising elsewhere if the defendant or accused is ordinarily resident within that area."

¹⁶ Such as the non-derogable right to a fair hearing under Article 28 and 44 of the Constitution

¹⁷ S.13 Local Council Courts Act provides that the Local Council Court may order reconciliation, declaration, compensation, restitution, costs, apology, or attachment and sale

across the nation. The accessibility of courts is not only for the litigants but witnesses as well. Operationalising LC Courts would also help to reduce on case backlog within the formal judicial system since they have jurisdiction to handle civil cases of debts, contracts, assault, battery, conversion, damage to property, trespass.¹⁸ They also have jurisdiction to handle cases governed by customary law¹⁹, causes and matters arising out of infringement of bye-laws and Ordinances duly made under the Local Governments Act²⁰, matters specified under the Children Act²¹, matters relating to land²².

Conclusion

Over 90% of Ugandan people experience one or more serious justice need(s) that are difficult to resolve. Majority of Ugandan seek information and advice from their social network and the local council courts. Formal legal sources are used as well but to a less extent.²³ 9 out of 10 Ugandan citizens who needed access to justice in the recent past from both formal and informal systems have had their justice needs unmet because of a myriad of factors. ²⁴ In regards to the formal justice system, a third of the people in the nation do not even have access to the courts.²⁵

If there is any lesson to be learned from this pandemic, especially for Uganda, it is that grassroots systems can be effective when operationalised. Currently, the LC officials

¹⁸ S.10(1)(b) & Second Schedule to the Local Council Courts Act

¹⁹ S.10(1)(b) & Third Schedule to the Local Council Courts Act

²⁰ S.10(1)(c) Local Council Courts Act

²¹ S.10(1)(d) Local Council Courts Act

²² S.10(1)(e) Local Council Courts Act

²³ HIL Report on Justice needs in Uganda 2016.

²⁴ Johanna Piest, 'How Innovation Can Lead To Better Access To Justice For The Ugandan People' (*Justice, Law and Order Sector*, 2016) <<https://www.jlos.go.ug/index.php/com-rsform-manage-directory-submissions/services-and-information/press-and-media/latest-news/item/545-how-innovation-can-lead-to-better-access-to-justice-for-the-ugandan-people>> accessed 12 May 2020.

²⁵ *ibid.*

have been effective in the distribution of food to the vulnerable poor within the Kampala Metropolitan Area. Because they are residents of their own localities, they know who is in urgent need of food. The National Taskforce, no matter how well intentioned it is, would not have been able to effectively execute the distribution of food within Kampala. In addition, they have been resourceful in providing information to the formal security structures about new entrants to their areas, who may be potential carriers of the Corona Virus. They have been able to execute these duties smoothly and alongside their other day to day executive tasks. There is no reason as to why they should be retooled and placed at the frontlines of grassroots justice. Their structures are already in existence and they do not even need permanent buildings to operate.²⁶

It is therefore recommended that the Justice Law and Order Sector Leadership, together with the Ministry of Justice and Constitutional Affairs and Local Government should reconsider re-operationalising the Local Council Courts.

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²⁶ S.8(1) of the Local Council Act provides that “A local council court may be held at a designated place within the limits of its jurisdiction for the convenient and speedy discharge of its business.”