

Making Justice More Accessible in Our Local Courts

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An old woman came to our chambers. She had with her a set of toddler twins barely two years old. She informed us that her daughter, the mother of the twins, was at Luzira prison. Her story was that her daughter sells vegetables at the market in the evenings to supplement her small cleaner’s salary. That as she returned from the market one evening she was rounded up and thrown on a patrol car together with other women. They were taken to the police station and charged with loitering. She was advised by the other women to plead guilty so that she gets a lenient sentence. She pleaded guilty and was sentenced to serve a sentence of three months imprisonment and to pay a fine of 50,000 Uganda Shillings. While in prison there was no one to raise money for food for the old woman and the children. Rent had to be paid as well. The old woman lamented.

In a subsequent interview with the convicted woman, our advocate learned that on the day of the arrest she had had 60,000 shillings that she had earned after a particularly good sales day. The 60,000 represented her entire capital and profits. This was collected from her at the police counter but was not returned when she was escorted to the court. She probably would have used the money to pay the fine but this would still have left her without capital to continue her business. In any case while she was in prison, the mother and children who depended on her were about to become homeless and were at the verge of starving.

We felt that the lady had been unfairly treated, wrongly convicted and was serving an unlawful sentence. The nature of the sentence was that after serving three months she would continue serving indefinitely until the fine was paid. This was a denial of justice perpetuated in our local courts. We thought to assist her to appeal the decision. We hastened to make an application to the magistrate for a record of proceedings to verify the facts and prepare our case.

Although the magistrate agreed to give us the proceedings, we moved to the court for two months and no record was secured. The secretary kept on promising to type the proceedings telling our clerk to return the following day. No proceedings were provided to us. She later said that she had no papers. No appeal was made and it is not clear whether the unfortunate woman got out of prison. Poor resources made it impossible for the association to continue following up the case.

Several scholars and authors in the field of law, gender and the law, domestic violence, human rights and poverty, and other subjects relating to gender, justice, and the law have raised and discussed various schools of thought regarding what constitutes formal justice and the barriers



that fetter access to formal justice for both men and women.¹ These have demonstrated how the capacity by both men and women to access justice is constrained, when their civil, political, property rights and personal security are violated by many factors. In the case above, knowledge of the law and rights by the accused woman, delayed action in the local court, poor facilitation of the court and service providers are some of the barriers. The factors have been categorized as social, economic, cultural, legal, institutional, procedural, and geographical.

These barriers to justice are broad and interlinked such that the elimination of a single one brings others to the surface. When geographical/physical barriers have been removed, financial barriers have been removed, social constraints surmounted, there are still constraints inherent in the legal provisions, technicalities and procedures followed during litigation processes as well as the structural arrangement of the institutions in the justice delivery system, which constrain access to justice for both men and women. But these constraints are exacerbated for women because of structural disadvantages resulting from gender-based discrimination that permeate all areas of their lives. They also affect litigants in criminal and civil cases.

If we look back at the woman in the above case; she was poor. She lacked security and property. On arrest, she could probably have benefited from the services of a lawyer. But even those services were not readily available. When they became available they were rendered useless by factors within the institutions that should ideally offer justice.

The above case poses a number of issues. What amounts to justice for women?

Justice has been considered at two levels that of the institutions that deliver and arbitrate disputes. It is also an abstract concept of fundamental values. In this way it refers to standards of rights set and defined under substantive law.

Should women expect justice when they personally make an effort to search for it or should they expect justice when they are dragged into conflict situations? The answer to both questions is yes. However, the reality is that women lack access to justice due to the many factors mentioned above.

The task of the participants at this conference is to suggest measures that can make justice more accessible in the local courts for women.

As a starting point, I have a checklist of the different tasks to be performed to make justice more accessible to women in our local courts. The checklist can be modified to remove suggestions that are not practical and other practical suggestions can be added.

Checklist of tasks to make justice more accessible to women in local courts.

¹ In the shadow of the law, women and Justice Delivery in Zimbabwe (Women and Law in Southern Africa Research Trust Zimbabwe 2000). Gender and Access to Justice (Justice Law and Order Sector 2001). Gender and Access to Justice Strategy for the Judiciary (Strengthening the Judiciary Project DANIDA 2003).

Task 1: Re-examine the concept ‘justice’ and the meaning attached to it by women

Task 2: Make an audit of the laws to:

- i) identify laws that have negative gender influences
- ii) analyse the laws to assess their relevancy to women’s expectations of justice

The result of the audit should be a basis for designing advocacy programmes for law reforms to address gender inequities.

Task 3: Study the different types of courts in the country, their layout in geographic terms, structure, facilities, procedures, and jurisdiction and identify those elements that inhibit access to justice for women.

Task 4: Make an audit of court users and determine the extent to which women seek legal remedies in local courts.

Task 5: Identify all barriers; documented and undocumented that inhibit access to justice for women.²

Task 6: Study the outcome of cases involving women in the local courts and determine whether decisions made result in justice for them.

Task 7: Study best practices from other jurisdictions and identify those practices applicable to women and the courts in Uganda.

Task 8: Design a package of accessible justice measures that will in reality result in access to justice for women.

In this paper, I suggest some measures to be included in the package. They should be designed to address social and cultural barriers, economic barriers, legal and political barriers, institutional and procedural barriers, as well as geographical barriers.

Measures to address social and cultural barriers

Legal and rights education for women communities should be undertaken to ensure that women are aware of their rights.

² In particular consider: i) women’s other duties in the garden or at the market stall which may clash with court sessions. ii) Women’s other concerns i.e. babies who may have to be fed on demand, sanitation provisions and monthly ailments that may interfere with proceedings. iii) The multiplicity of dispute resolution for a. Opinions offered by family, clan courts, LC, etc. that are practical and inability to make informed choices due to lack of information.

Sensitization of the community on observing the rights of women; this will serve to enlighten communities on cultural practices that deny women justice and assist in designing measures to address them.

Make information available on different courts and their specific functions: This will provide knowledge of relevant institutions and create confidence in women who will then be in a position to make informed choices.

Training of paralegals; this will ensure that there are people within the community who constantly remind community members on rights, responsibilities and appropriate action in the event of any violation. They should be trained to perceive issues from gender perspective.

Measures to address economic barriers

Donors and other organizations should ensure adequate support for civil society initiatives, especially in the area of law and legal services for women. This will ensure that economic requirements for accessing justice are addressed. An example is the Public Defender Association of Uganda. The Association supports poor defendants in criminal cases and meets court fees and incurs expenses of preparing the case and calling witnesses. The association realizes a need for further support. Some of the clients walk long distances and get to our chambers when they are hungry. Some seek and need support. These are challenges that the association has to meet.

Policy and Law Reforms to Address Legal and Political Barriers

Policy reforms to incorporate legal concerns of women

Audit of the laws to ensure reform of laws that promote gender inequity.

Simplification of the laws and publication of simplified laws for the benefit of women.

Law Reform

Lobby for a community mediation act such as the Trinidad Tobago Community Mediation Act 1998, which introduced a feasible alternative to civil and criminal litigation so as to introduce mediation in petty/personal offences.

Lobby for an Access to Justice Act as in Pennsylvania. Under this law a surcharge should be levied on filing legal papers in court houses in order to assist solely low income citizens to access legal aid services. Some of this money should be used by the courts and other portions by legal aid institutions. This kind of system exists in at least 27 states in the USA; Florida, Georgia, Ohio, Washington, etc. This addition should also require the amendment of relevant fees schedules.

Lobby for removal of cumbersome and complicated procedures through amendment of procedural laws.

Measures to address institutional and procedural barriers

Institutionalize a women's day in the courts a day should be set aside each week to handle women's legal concerns.

Conduct gender training of service providers; this should change attitude and ensure gender responsiveness.

Strengthening traditional informal and community based systems and methods of dispute resolution which allow for cheaper and more accessible justice, avoids custodial sentences but are in conformity with international human rights standards using the Shalish style mediation as an example. This is a project in Bangladesh that derives from the traditional system of dispute resolution.³ This kind of project reportedly eliminates the judge, expensive legal representation, obstacles of procedure and language, saves time, involves friends and families.

Care should be taken to ensure that the project does not perpetuate domination of the powerful. It should also ensure that inequitable cultural notions of justice that oppress women are not reproduced and emphasizes reaching a solution that is agreeable to all people.

ADR should be designed to address a range of social and economic problems, e.g. divorce, polygamy, desertion, maintenance, dowry disputes and other domestic conflicts.

Measures to address geographic barriers

Provision of legal services at least as close as the sub-county level in Uganda should be ensured.

Creation of Alternative dispute resolution centers in the community with gender oriented training.

The above suggestion, however with the knowledge that barriers are usually interlinked there is that need for multidimensional approach to ensure that as many of the barriers to women's search for justice are addressed to give them a measure of confidence.

³ Bulletin of the New Models of Accessible Justice and Penal Reform Programmes (Accessible Justice No. 2, Spring/Summer 2000).