



INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

Meaningful
ACCESS
TO JUSTICE
For Economic and
Social Rights

UGANDA'S PROGRESS

A Report Summary

September 2019

Introduction

Access to Justice is a core element of the rule of law and an essential prerequisite for the protection and promotion of all human rights. It is a right grounded on the recognition that everyone in the world enjoys equal and inalienable rights and it is the obligation of the state to promote universal respect for, and observance of, human rights and fundamental freedom for all individuals including their economic social rights (ESRs) without distinction of any kind.

The State is required to **Respect, Protect** and **Fulfil** ESRs including particularly the duty of states to ensure that the ESRs are to be implemented through the provision of legislative measures and judicial remedies, in accordance with the national legal system. The State is obliged to take appropriate steps both to prevent ESRs violations and to investigate, punish and redress such abuse when it does occur - in other words, to provide access to remedy.

In recent years, International Human Rights Law has developed principles and standards on the scope of the rights to a fair trial and effective judicial protection in cases involving violation of ESRs. Several of the core international and regional human rights treaties explicitly provide for these elements of access to justice including the right to effective remedy; and where they do not, there has been some useful commentary from the relevant human rights commissions, courts and United Nations treaty bodies.

Accordingly, the Initiative for Social and Economic Rights (ISER) research sought to determine the status quo of Access to Justice in Uganda as regards ESRs, and critically analyze the impediments to access to justice in Uganda as regards to ESRs with a view to making practical recommendations.

The first chapter introduces access to justice and ESRs. The second chapter examines the scope of Uganda's obligations to provide access to justice for ESRs. It sets out the normative content of ESRs and access to justice. It analyses international human rights treaties including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities and the African Charter on Human and Peoples' Rights and other regional treaties. It assesses the extent to which Uganda's legal framework domesticates these obligations and outlines the protections provided in law to realise ESRs and access to justice. The next chapter assesses measures that have been undertaken to address ESRs violations and provide justice to the victims. It assesses the use of judicial and quasi-judicial mechanisms and other administrative mechanisms, in effective dispensation of equal justice to all for violations of ESRs in Uganda and the extent of implementation of the decisions.

Key Findings

As a country, Uganda has, to some degree, put in place a supportive legal framework and formal grievance mechanisms to ensure access to judicial and other remedies for violations of Human rights including Economic Social Rights (ESRs). Article 50 of the Constitution of the Republic of Uganda enables any person that claims that a fundamental human right has been violated or is threatened to apply for redress to a competent court of law. This has been buttressed by enabling legislation, for example the Human Rights Enforcement Act, 2019 promulgated to give effect to Article 50 of the Constitution of the Republic of Uganda. Courts and quasi-judicial mechanisms including national human rights institutions

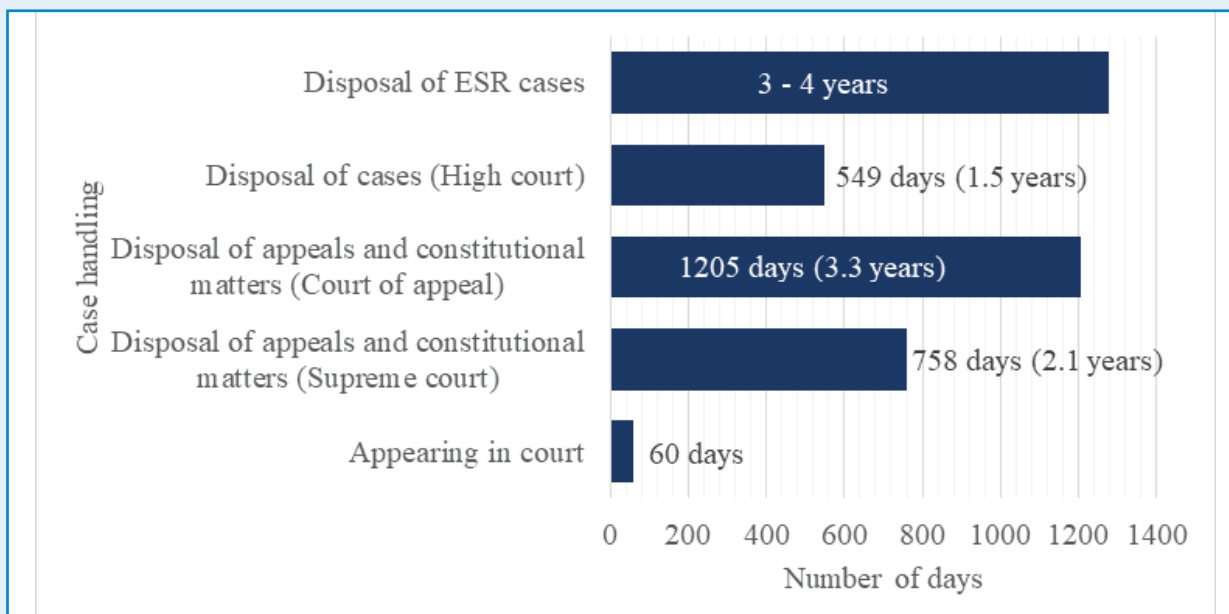
have been established that should be able to investigate and judiciously rule on human rights violations. These are supplemented by customary, traditional or informal legal systems, which in theory, fill the gaps in formal mechanisms, and play a vital role in the provision of justice, as well as the strengthening of social cohesion through their (invariably) restorative nature. As economic, social and cultural (ESC) rights gain prominence, advocates have increasingly looked to judicial, quasi-judicial and administrative remedies as an important way of holding governments accountable and empowering those whose rights are violated.

However, significant impediments exist hindering access to justice for ESR violations, especially for vulnerable and marginalized groups like children, women, Persons with disabilities, the poor and those living in rural or hard to reach areas.

The inadequate legal and policy framework relating to ESRs has affected the way courts of law have adjudicated ESRs and makes the process of filing and arguing cases more onerous for victims of violations and advocates. The 1995 Constitution of the Republic of Uganda enshrines a few ESRs under the Bill of rights, with majority of the ESRs under its National Objectives and Directive Principles of State Policy (NODPS) in the Preamble to the Constitution, which guides policy development and implementation. As such, Courts initially shied away from interpreting and or adjudicating most ESRs provided under the National Objectives and Directive Principles of State Policy and mostly admitted jurisdiction over those cases that concern rights under the Bill of Rights. Similarly, victims of ESRs violations, in order to gain redress, increasingly sought adjudication of ESRs through wide interpretation of Civil and Political rights like the right to life, freedom from torture and inhumane treatment, as well as arguing specific group rights like the rights of women, children, Persons with disabilities and minorities. The 2005 Constitutional amendment through article 8A effectively made the NODPS part of the Constitution. This opened up some room for the protection of ESRs through the courts and there have been increasingly diverse claims filed. However, courts of law are yet to deal with the whole spectrum of ESRs under the current legal system.

The prioritisation of Civil and Political Rights within the justice law and order sector results in undue delays in the hearing and conclusion of ESCRs cases. Historically, the right to access to justice focused on providing remedy for civil and political rights. Current discussions within the Justice Law and Order Sector (JLOS) also focus mostly on the criminal justice system, with less attention paid to ESCRs (JLOS, 2019). Statistics also show that both National Human Rights institutions and the courts of law have prioritized civil and political cases of ESCRs, resulting in low morale for victims and advocates to file ESCR cases. As a result, ESCR related cases take an unreasonably long time to go through the courts of law.

It takes the Supreme Court, an average of 758 days and the Court of Appeal, 1205 days to dispose of appeals and constitutional matters in the Court of Appeal. In 2017/18, the High Court took an average time of 549 (days) to dispose of cases



(Source: JLOS, 2018, ISER calculations from interview data).

The delays in the disposal of cases results in case backlog. In 2017/2018, the Court of Appeal had 7,662 cases brought forward, registered 1,317 cases and only cleared 1,411 cases leaving about 7,568. Overall the case backlog stood at 21% of the total pending cases, which was about 31,580 backlogged cases in the system as of 30th June 2018. The High Court Civil division, on the other hand, had 19,651 cases brought forward, registered 9901 cases and cleared only 7230 leaving about 22,322 (JLOS, 2018).

A sample of the ESRs cases before courts of law revealed that a case takes about 3 to 4 years for some even more years have been taken in the justice system. This is especially alarming for ESRs cases that involve continuous violations where everyday spent without a remedy compounds the violations.

Petition 16 of 2011, a case concerning government's failure to provide basic indispensable health items in government facilities for expectant mothers is yet to be determined more than eight years after it was filed.

In 2017, Persons with Hearing Disabilities in *ISER & Ors v. A.G, petition 29/2017* petitioned the Constitutional Court seeking sign language interpretation in health facilities, arguing the failure to ensure its provision deprived them of access to healthcare. The case is yet to be heard.

Bulyahika Kamugisa ors v. Rwakiswaza Kimera & ors, 008/2012 filed over six years ago as a result of mass land evictions in Hoima has been pending judgement for about three years.

In the *Kaweeri Coffee case*—the case against Neumann Gruppe, a German coffee producer in August 2001 who with the help of Uganda Peoples Defence Forces (UPDF) violently evicted 4,000 people from their land resulting in loss of lives and property—the community, 19 years later, is yet to receive remedy. The case was postponed over three times from 2004 to December 2006, four years after the filing, due to delaying tactics, case transfers to another judge, failure by the judge show up, absence of Kaweri Coffee' lawyers. Although judgement for the High Court case was delivered on 28 March 2013, eleven years after the evictions, it was appealed.

Even quasi judicial bodies that have been established to expedite access to justice have backlog.

In October 2017, over 45 persons older persons from over 4 districts filed a complaint before the Equal Opportunities Commission arguing discrimination with regard to the Social Assistance Grants for Empowerment program and are yet to receive written judgment. Similarly, ISER V AG, 2018 a complaint filed before the Equal Opportunities Commission on limited access to healthcare in Sigulu islands filed in April 2018, has been pending determination judgement for more than ten months.

There are economic or financial obstacles hindering access to the courts and quasi-judicial mechanisms for example, high procedural costs, legal fees and transport expenses incurred as a result of the location of tribunals and courts.

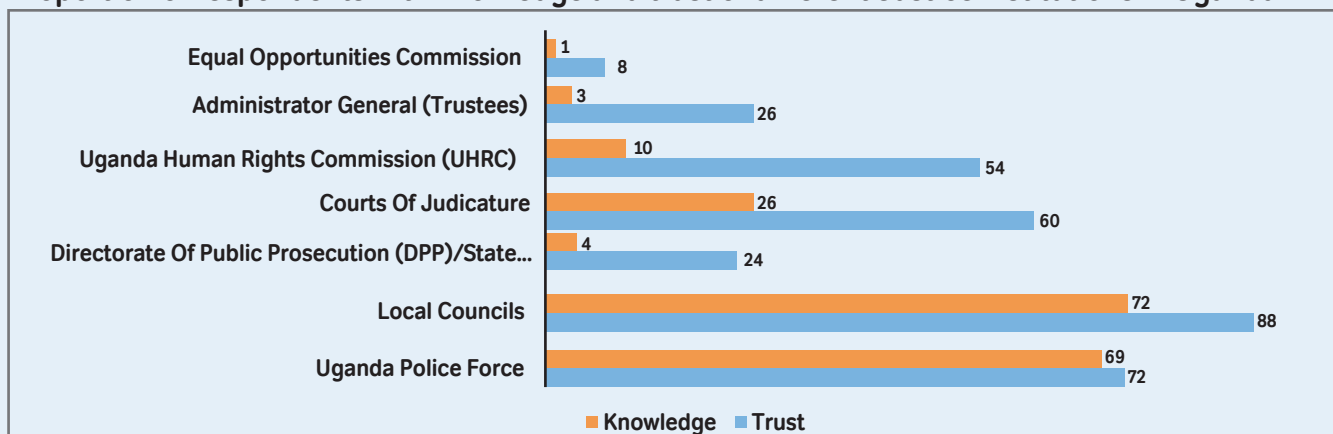
Despite the positive obligation of the State to remove those obstacles in order to ensure an effective right to a hearing by a court or tribunal, ISER's research found that costs of access to justice, whether through judicial or administrative proceedings, and the location of tribunals in urban areas are factors that have rendered access to justice inaccessible, particularly for vulnerable groups. The Advocates (Remuneration and Taxation of Costs) Amendment Regulations, 2018 requires an advocate be paid as a minimum, 15% of the claim or subject that doesn't exceed two million as fees for appearing before court and while attendance of court, tribunal, before an arbitrator, mediator or conciliator conducting the matter requires a minimum of one hundred thousand shillings per hour to be paid to the advocate. The general rule in Uganda is that "costs follow the event". In other words, the loser in legal proceedings must pay the legal costs of the successful party. Where a defendant has a reasonable apprehension that its legal costs will not be paid for by the plaintiff if the defendant is successful, the defendant can apply to the court for an order that the plaintiff provide security for costs.

In addition to the direct economic costs, there is a myriad of smaller costs that all poor clients have to meet. They need to travel long distances to Courts of record. The latest census found 78.5% lived in rural areas (UBOS, 2019). Yet courts are predominantly located in urban areas, for example the High Court Circuits, the Industrial Court-which handles labour claims- is located in the capital city of Kampala making it inaccessible to majority of Ugandans. The Constitutional Court sits in Kampala. This makes it expensive for litigants who need "survive" there while completing the formalities. They need to pay to obtain basic documents; they need to make photocopies and phone calls. These items may not count as obstacles for most people but could represent serious barriers for the poor who are most times the victims of social economic rights abuse.

Limited access to legal aid makes justice inaccessible As of 2016, the proportion of magisterial areas accessing state funded legal aid services was only 26% (JLOS, 2018). Currently state provided legal aid is only guaranteed for criminal matters. Justice Centers— which should offer legal aid including for civil matters— are few and far between. They are only located at magistrate courts and one High Court and they are not everywhere. Only 18.2% of the people in rural areas have access to a Magistrate Court within a distance of less than 5km and residents often have to travel long distances to get to the courts where the Justice Centers are housed. Non-state actors that offer legal aid, to supplement government efforts, are not everywhere, particularly in rural and hard to reach communities. Even where they exist, they focus more on civil and political violations. A comprehensive legal aid policy with an independent legal aid body to ensure free representation for persons without means would go a long way in ensuring the enforceability of ESRs. However, Uganda is yet to pass the National Legal Aid Policy.

Limited knowledge of ESRs represents one of the biggest challenges to increasing access to justice for ESRs. Victims of ESR violations, particularly marginalised groups often lack basic understanding regarding human rights, and often do not view economic, social and cultural rights as legal entitlements. Even when they do, it is often not clear how to access remedy when these rights are violated. For example, the Uganda Bureau of Statistics found 1% of the population aware of the Equal Opportunities Commission, 4% of the Director of Public Prosecutions (UBOS,2019). Only 26% aware of the Courts of judicature. Only 10% aware of the Uganda Human Rights Commission (UBOS, 2019).

Proportion of respondents with knowledge and trust of different Justice institutions in Uganda



Source:UBOS, 2019

As a result of lack of knowledge of their legal rights and entitlements, people are often deprived of the opportunity to acquire the tools, social capital and basic legal knowledge necessary to engage with the justice system. According to the HILL 2016 survey on justice needs in Uganda, more than a third of the people faced with a problem did not take any steps to resolve it because of lack of knowledge among others (HILL, 2016).

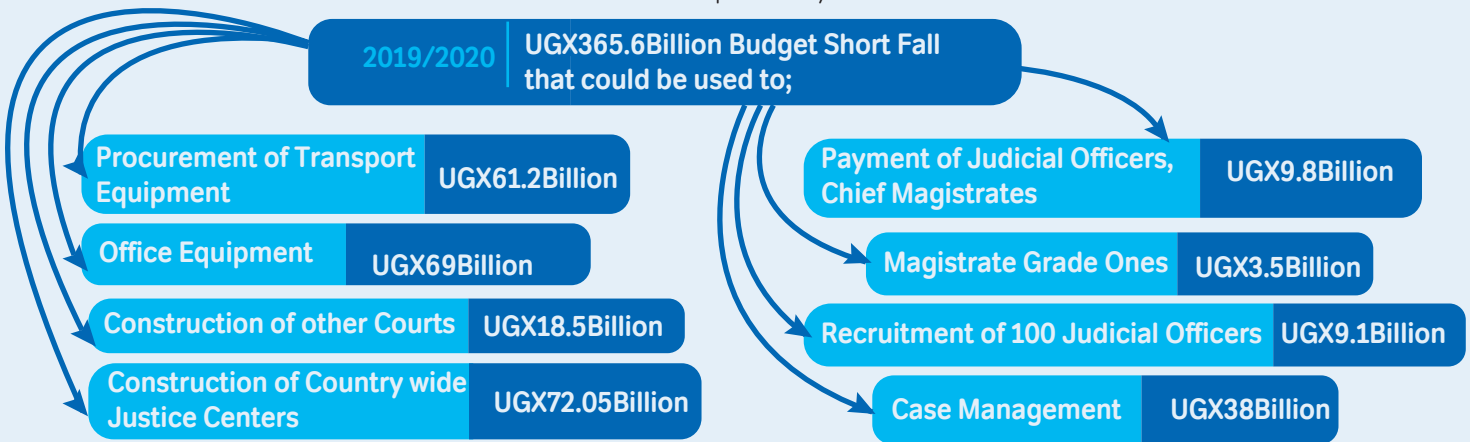
Accessing justice for ESRs abuses by private actors or corporate entities remains a challenge.

Many private entities do not consider themselves to have human rights obligations. Access to information in the hands of private actors to facilitate justice processes is also difficult to obtain partly due to the fact that the Access to information Act predominantly focuses on the state. In some cases, private actors have sought security for costs prior to litigation, hence scaring away potential complainants. ISER'S research also found retaliation of human rights defenders including harassment by governments or corporations. In the case of evictions by Kaweeri Coffee, Peter Kayira, the speaker of the evicted community was arrested on accusations of misappropriation of funds. He was exonerated of all charges in June, 2005. After his release out of prison Peter Kayiira was transferred to a school far away from the settlement of the evicted community but denied salary payments for a couple of months. Notably, lower courts, particularly the High Court have more progressively adjudicated ESRs with regard to private actors. In **Initiative for Social and Economic Rights (ISER) v. Attorney General, Civil Suit 353/2016**, the High Court of Uganda declared that the government policy on public private partnerships with regard to secondary education infringes on the right to; education; and equality and freedom from discrimination as provided for under the Constitution. The court directed the government to regulate private actors' involvement in education in order to ensure that minimum standards are always adhered to by those private actors and sanction defaulters.

Limited accessibility of adjudication institutions resulting in exclusion of persons with disabilities.

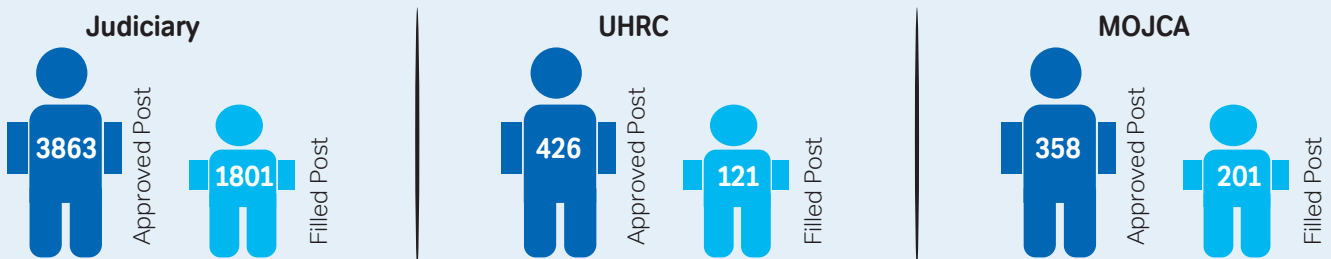
Courts are not physically accessible to some litigants, such as persons with disabilities. This inaccessibility is heightened for persons with other forms of disabilities, for example persons with hearing disabilities lack sign language interpreters. None of the rules of Courts of law and Quasi-Judicial bodies currently in force expressly provide for reasonable or procedural accommodations to ensure equal and effective access to justice.

Persistent inadequate financial and human resource allocations. According to the Report of the Auditor General to Parliament for the Financial year ended-30-June-2018, the judiciary had a budget shortfall of approximately UGX. 375.9 Billion, the Directorate of Public Prosecutions, a budget shortfall of approximately UGX. 1,302,834,578 (OAG,2019). The report also recorded a low case clearance rate by the judiciary with only 8% case disposal rate compared to previous financial years when performance stood at 25% in 2015/2016 and 11% in 2016/2017 respectively.



Currently in Uganda, there is still a big deficit in the number of grade 1 magistrates alone, there are 450 grades out of the 536 magisterial offices that remain vacant leaving about only 193 grade I magistrates that serve in as judges, out of these 6 of these are currently under study leave and 3 were interdicted leaving 182 grade one magistrates serving in the 82 magisterial areas. Only 40 %of the magisterial areas have vehicles to visit locus (JLOS, 2018). One high court judge serves per circuit, save for the High Court circuit of Mbarara, Jinja and Mbale that have two judges each, a senior resident and a resident judge. The Auditor General also reported a 59% staffing shortage of the ODPP. Only 28% of positions within the Uganda Human Rights Commission are filled (JLOS, 2018).

Staffing position in JLOS Institutions



Source; JLOS Report for financial year 2017/2018

As a result of inadequate human and financial resources, there has been low case clearance rate, lack of enforcement, and abuse of orders and judgement, undermine the effective functioning of judicial and adjudicatory mechanisms and have a disproportionate impact on and undermine the ESRs of Ugandans. The failure to dispose of all the cause listed cases is attributed to unavailability of State Attorneys in some cases, resulting in adjournments (JLOS, 2018;Interviews).

Lack of Implementation of existing judgments. ISER's research found that compliance is often slow or only partial with existing judgments. The Office of the Auditor General found Ministry of Justice and Constitutional Affairs accumulated liabilities of 655 bn UGX with respect to unsettled court awards and compensation. Some cases have not been implemented for ten years, despite monetary awards being awarded and have accumulated interest amounting to 124 bn UGX (OAG, 2019).

Apaa Land Evictions. In February 2018, Gulu High Court in February 2018 stopping any evictions until a case filed by some of the villagers regarding the boundary dispute near Zoka Forest reserve and East Madi Game Reserve was heard. Despite this, in March 2018, the Uganda Peoples' Defence Forces (UPDF) at the behest of the Uganda Wildlife Authority and the National Forestry Authority burnt down more than 250 homes in Oyanga, Luru, Acholi Ber and Gaji villages in Apaa area, northern Uganda, destroyed property and beat up villagers and threatened members of the community with further violence in a bid to intimidate people into leaving their homes.

Bulyahika & ors versus Hoima Sugar Limited, 0020/2015. On 7th July 2014, in the case of the residents of Kijayo, muzirandura received a court order from the High Court of Masindi against Hoima Sugar Limited instructing Hoima Sugar to stop further eviction. Despite this, the respondents went on to evict over 394 families and plant sugar canes and factory without compensation. The community of Kijayo were forced to live in camps under makeshifts made from banana fibres and grass, having had their property destroyed, suffered from lack of food, shelter, education.

Over the past years, the UHRC has been making recommendations to various MDAs, aimed at improving the human rights situation in the country. Government compliance was at 4% for full compliance; 26% for partial compliance; and 19% for non-compliance (UHRC, 2019). For the majority of the recommendations (51%), the Commission was unable to get any updates or information from the responsible entities. The UHRC has no power to enforce its decisions as enforcement is left to the parties. Lack of implementation of judgments undermines the Public's confidence in these systems.

There is limited disaggregation of cases by subject matter, with regard to cases involved with Human rights or even ESRs, which hinders effective monitoring of access to justice. The disaggregation of existing cases by courts of law only differentiates between criminal and civil. The existing case data available is not disaggregated in terms of subject matter of suits before either the Court of Appeal or High Court. As the country implements the Sustainable Development Goals, which call for disaggregated data, it should ensure the indicators for access to justice do not solely focus on civil political rights issues. Currently SDG target 16.3 indicators focus on civil and political rights, simply requiring: (1) proportion of victims of violence who reported their victimisation to competent authorities/conflict resolution mechanisms; (2)unsentenced detainees as a proportion of prison population.

The failures in access to justice for ESRs result in increased conflict. ISER's research found that when poor or vulnerable persons cannot access justice systems, they are sometimes forced to take justice into their own hands through illegal or violent means, or to accept unjust settlements. According to the Justice Law and Order Society Sector Fourth Strategic Plan, land disputes rank highest countrywide and are key issues for concern especially for poor and marginalised persons. These disputes cause other disputes including family disputes, murder, assault and impact on the livelihood on citizens (JLOS,2017). For example in Mubende, people resorted to killings, mob justice and fabrication of false charges on neighbours as a result of the failure to access efficient justice systems.

This report makes the following key recommendations;

THE GOVERNMENT OF UGANDA

- ◆ Effect constitutional amendments to fully incorporate ESRs under the Bill of Rights, Chapter four of the Constitution;
- ◆ Ratify the Optional protocol to ICESCRs;
- ◆ Promptly revise and update legislative frameworks on ESRs;
- ◆ Establish more effective adjudication, enforcement and implementation of ESRs judgements;
- ◆ Take deliberate efforts to implement decisions and recommendations from judicial and quasi – judicial mechanisms to enable victims get access to remedy;
- ◆ Provide adequate legal aid and assistance to victims of ESR violations so that they are able to secure effective legal or judicial remedies;
- ◆ Promote the sensitisation and ensure the availability of services and information on ESRs;
- ◆ Ensure that domestic human rights institutions or mechanisms are adequately equipped and have the capacity, to exercise their responsibility and the authority to investigate violations of ESRs including by increasing human resource and financing;
- ◆ Reinforce the judiciary by allocating the necessary resources and increasing the number of judges so that justice can be accessed and achieved without delay;
- ◆ Develop appropriate methodologies and approaches for addressing economic, social rights, and to allocate priority to their implementation;
- ◆ Improve and strengthen Local Justice systems to ensure meaningful access to Justice for all;
- ◆ Facilitate the expeditious appointment of more commissioners, judges to judicial and quasi-judicial bodies like the Courts of Law, Uganda Human Rights Commission and Equal Opportunities Commission, to enable them to expeditiously dispose of their backlog;
- ◆ Pass the legal aid policy;
- ◆ Promote and ensure the implementation of the transitional Justice policy, 2019 in order to strengthen transitional justice systems;

- ◆ Fast-track the development of the National Action Plan on business and Human Rights to ensure private actors have set up internal grievance mechanisms to dispose quickly of people's ESRs complaints.

JUDICIARY

- ◆ Ensure that judicial decisions consistent with ESRs are respected and implemented and develop mechanisms to ensure the effective oversight of the implementation process for example through structural interdicts. In *Muhindo James & 3 Ors V Attorney General, Misc. Cause No.127 of 2016*, Ssekana J., granted an order on 25 January 2019 compelling the Government to develop comprehensive guidelines governing land evictions before, during and after the fact, and ordered government to embark on the process and report back on progress to the Court with seven months. As a result, the Ministry of Lands drafted eviction guidelines.
- ◆ Ensure and promote broader use of Amicus to enhance justice. It is a nascent phenomenon that has been used in a few cases but has the potential to enhance access to justice. Article (6)(3) of the Human Rights Enforcement Act, 2019 enables a court to allow any competent person with expertise on a particular issue to appear as amicus either through application or at the court's own request. The judicial systems should give priority to the upholding and protection of ESRs.
- ◆ Implement the Human rights enforcement Act, 2019. The Act has a number of provisions that will strengthen implementation, for example it requires implementation of decisions within six months and court awards will become a civil debt that can be enforced.
- ◆ Thematically disaggregate cases.
- ◆ Strengthen case management systems.

CIVIL SOCIETY

- ◆ Strengthen community social movements that can improve and strengthen access to justice. Currently many of the access to justice initiatives are CSO led.
- ◆ Make access to information requests to both State and private actors and take measures to provide access to communities.
- ◆ Raise awareness among communities on ESRs and build capacity for case identification. Legal aid service providers need to widen scope of legal aid provided and equally prioritize ESRs.

In conclusion, realizing smooth access to justice involves a wide range of steps, from amending legislation, to the modernization of court systems, strengthening informal systems and quasi-judicial bodies, promoting due process among stakeholders in the administration of justice and buttressing their roles as protectors of ESRs, which will ultimately engender unhindered access to justice.

ABOUT THIS REPORT

The Initiative for Social and Economic Rights (ISER) is a non-profit organisation dedicated to advancing economic social rights. In 2019, ISER conducted research to ascertain status of access to justice for economic social rights. The objectives of this study were: (1) determine the status quo of Access to Justice in Uganda as regards to Economic, Social Rights; (2) critically analyze the impediments to access to justice in Uganda as regards to Economic, Social Rights; (3) make appropriate recommendations on interventions that can address the hindrances faced in access to justice. The researchers deployed numerous methods including key informant interviews with lawyers, civil society organisations, judges, community leaders; literature review of all relevant documentation including research reports, sector performance reports related to access to justice in Uganda and in regional and international contexts. Case analysis was conducted with respect to reported and unreported cases of both judicial and quasi-judicial bodies including the High Court, Constitutional Court, Uganda Human Rights Commission (UHRC), Equal Opportunities Commission of Uganda were considered. It includes all cases that concern ESRs including those that have an indirect claim of the violation of any ESRs rather than specific economic social rights cases. Data was analyzed using a thematic approach in accordance with the objectives of the study, research questions. Thematic analysis helped in identifying patterns or themes within the qualitative data.

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