

ANALYSIS OF ACCESS TO JUSTICE DURING THE COVID-19 PANDEMIC: PERSPECTIVES OF E-JUSTICE IN UGANDA

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ABSTRACT

This study examined access to justice, social justice, and perspectives of e-justice through the judicial system in Uganda in the age of the Covid-19. The study was desktop research that relied entirely on the documentary review method. The purpose of the study was to examine the challenges faced by the Judiciary in Uganda in the adjudication of cases in light of Covid-19 Pandemic to promote access to justice while taking cognizance of social justice considerations. It also considered perspectives of e-justice as a possible solution to improving access to justice during the period. This was against the backdrop of the Ministry of Health guidelines to control the spread of the disease contained in the Standard Operating Procedures it issued out to the public under the Public Health (Control of Covid-19) Rules, 2020. The procedures involve social distancing, regular hand-washing and sanitizing, and prohibition of public gatherings. To comply with the Standard Operating Procedures courts were restricted to entertaining urgent cases, online applications, and case hearing facilities such as e-court room for courts to operate during the Covid-19 pandemic. The study found that social justice and access to justice remain wanting in Uganda's justice system. Meanwhile, e-justice offers opportunities not only to promote access to justice during pandemics but also to create efficiency in the case management process. The existing digital infrastructure in the Judiciary is so limited that it cannot effectively support the application of e-justice. The study argues that deliberate efforts to digitalize the judiciary are feasible as there exists an enabling legal framework. Meanwhile, some courts have registered some success in the use of zoom technology in the trial of cases during the Covid-19 lockdown.

Keywords: Access to justice, Social justice, E-Justice, Covid-19 pandemic, Case management

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1.1 INTRODUCTION

An effective justice system is essential for the administration of justice as it promotes access to justice even to the marginalized sector of society. However, the Covid-19 that befell the world noticeably from the end of 2019 was declared by the World Health Organization (WHO) on 11 March 2020 as a pandemic,³ and hence, a public health emergency. Following the WHO declaration, the President of Uganda Yoweri Kaguta Museveni on the 18 March 2020 directed a lockdown on places of worship (churches and mosques), schools, tertiary institutions, and universities. It was extended to public and private transport, non-essential businesses and, the movement of non-essential personnel shortly thereafter. The proliferation of the disease has consequently changed how normal business is conducted including adjudication of cases that appear to have negatively impacted access to justice. Meanwhile, digital technology advances could offer opportunities for increased access to justice through e-justice such as e-filing, and e-case hearing⁴ and judgment/ruling opportunities during the Covid-19.

Previous studies related to this one have examined the effect of the Covid-19 pandemic on the different aspects of life including employment, social security, constitutionalism, health, human rights generally, environment, cyberspace, and the rise of machines.⁵ The few that consider the effect of Covid-19 on the adjudication of cases in Uganda include Justice Geoffrey W. M. Kiryabwire, who highlights the need for technological machines in adjudication currently and shortly.⁶ This study differs from the previous ones as it examined access to justice and social justice in light of the Covid-19 pandemic.

This study argues that e-justice could improve access to justice not only in compliance with the Standard Operation Procedures (SOPs) issued by the Ugandan Ministry of Health (MoH), to control the spread of the Covid-19 but also increase the effectiveness of the case management process when the Covid-19 pandemic has ended. There is, therefore, a need to re-engineer the court system to improve case management techniques by harnessing the potentiality of the available digital technology to its fullest extent. The objective is to increase access to justice and provide an affordable, accessible, cost-effective, transparent, and accountable justice system.

1.2 Background to the Study

According to Legal Aid Service Provider Network (2015), access to justice connotes a process which makes it possible for people to claim and obtain justice remedies through formal or informal institutions of justice, according to human rights standards. It entails an examination of how individuals, groups, and communities realize *de facto* justice from the enforcement of substantive law and the quality of justice administered by the justice delivery system. Access to justice includes elements entailing contact, entry, and use of the justice delivery system.

3 World Health Organization Declares COVID-19 a 'Pandemic.<https://time.com/5791661/who-coronavirus-pandemic-declaration/>

4 Kikabi. A Paper Presented at the Induction Workshop for the newly appointed Magistrates Grade One, 2012.

5 Geoffrey W.M. Kiryabwire: Covid-19 and the Rise of the Machines: Adjudication in the Covid and Post Covid-19 era in Uganda, Law Africa (*unpublished*).

6 Geoffrey W.M. Kiryabwire. *ibid*.

Access to justice serves to focus on two basic purposes of the legal system; the system by which people may vindicate their rights and/or resolve their disputes under the general auspices of the state. First, the system must be equally accessible to all, and second, it must lead to results that are individually and socially just. The United Nations Development Programme (UNDP) has defined access to justice as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.”⁷

E-justice is the use of digital technology to improve access of citizens to justice and the effective judicial action dispute settlement or the imposition of (criminal) sanctions.⁸ Delays in the resolution of court cases and issuing judicial decisions particularly in light of the MoH SOPs such as social distancing measures have a range of adverse consequences on access to justice. Meanwhile, the seeming inability of the judiciary to deliver justice promptly and efficiently in light of the Covid-19 pandemic can cause a lack of confidence in such state institutions, undermining the social and political fabric and a state’s international standing. At a material level, inadequate access to the justice system may deter access to legal remedies such as enjoyment of personal liberties and freedom from torture. It has long been recognized that ‘justice should not only be done but also manifestly and undoubtedly be seen to be done.’⁹

Pandemics meanwhile are large-scale outbreaks of infectious diseases that could cause massive morbidity and mortality over a wide geographic area causing economic, social, and political disruption. Evidence suggests that the likelihood of pandemics such as the Covid-19 has increased over the past century because of the increased global travel and integration, urbanization, changes in land use, and the increased exploitation of the natural environment.¹⁰ These trends are likely to continue and intensify. Significant policy attention has focused on the need to identify and control the emerging outbreaks that might lead to pandemics and to expand and sustain investments in the health emergency preparedness and to build the capacity of the health workers.¹¹

The use of digital technologies in case management can significantly accelerate the processing of cases hence promoting access to justice during the Covid-19 pandemic. By simplifying the filing and the control of legal documents, it is easier to monitor pending cases thus facilitating the work of the judiciary. A more effective case-flow management system that involves electronic filing and classification of court cases offers enormous potential for comparative juxtaposition and jurisdictional control during the pandemic. As a result, judges can more thoroughly and efficiently handle the cases assigned to them.

The access to justice concept has been progressively broadened to include other forms of ‘justice’ as well. Thus, in her standard work on the English legal system ‘Paths to Justice’, Hazel Genn (1999) not only explored the access to courts and how cases were processed but also access to other mechanisms dealing with injustices, such as

7 UNDP (2005) *Programming for Justice: Access for All* (Bangkok: United Nations Development Programme)

8 Santaniello and partners, International law Firm. Accessed at: <http://www.legalsl.com/en/what-is-e-justice-1.htm>.

9 *R v Sussex Justices; Ex parte McCarthy* [1924] KB 256).

10 Jones and others 2008; Morse 1995.

11 Smolinsky, Hamburg, and Lederberg 2003.

mediation consistent with the arguments that had started developing fifteen years earlier.¹²

The Judiciary in Uganda is guided by the Information Communication Technology (ICT) policy which is aligned with the government's National Development Plan III (NDP III) which highlights the ICT key sector areas that include; collaborative development of an interoperable ubiquitous ICT infrastructure, creation of an enabling environment that is aligned to emerging changes; enhancing integration and automation of e-Government services and position Uganda competitively in the Global ICT market; enhancing capacity for local content development and usage in the various ICT sector services; development of quality ICT human capital stock to meet the industry demand for ICT skills and support research and development.¹³ The National Electronic Government Policy Framework details the principles of e-Government which include Citizen-Centric accessibility and choice; trust, confidence and security; better governance; collaboration and integration; and accountability.¹⁴

The proliferation of Covid-19 across the world has compelled judicial reform which strives to ensure access to justice in new circumstances. The countries with the common law system, however, appear to be more adaptive to changes compared to other jurisdictions.¹⁵ Besides, they appear to have responded more promptly to attempt to promote access to justice which has been constrained by the challenges posed by the Covid-19 pandemic without having to wait for legislative amendments. Whereas the governments and parliaments in most of the civil law countries were considering ways to ensure safe and uninterrupted operation of the courts, common law jurisdictions appear to be adjusting by default.¹⁶

1.3 Statement of the Problem

To control the proliferation of the Covid-19 in Uganda, the MoH has issued SOPs under the Public Health (Control of Covid-19) Rules, 2020. The rules include social distancing,¹⁷ frequent hand-washing, and sanitizing as measures to control the spread of the disease. The measures have emanated from the ban on public gathering under the MOH Rules. Accordingly, the courts of judicature have acted on the directive by entertaining only urgent cases and allowing only a few people in the courtroom coupled with the application of zoom technology in a few instances because of what appears to be the limited availability of the technology in the judiciary.

Despite the various infection control measures adopted by the judiciary in Uganda to remain active while preventing the spread of Covid-19, unfortunately, most of the

12 Cappelletti and Garth (1978: 6).

13 See the Second National Development Plan II (NDP II), 2015/20 whose 16-2019/2020.

14 The National e-Governmental Policy Framework, 2011.

15 Roman Kuybida. How Covid-19 Forces Courts to Operate Creatively under New circumstances. Centre of Policy and Legal Reform. Uploaded 31 03 2020. Accessed on 29 April 2020 from <https://rpr.org.ua>.

16 Among the laws passed in Uganda concerning Covid-19 include; Public Health (Control of Covid-19) Rules, 2020, Public Health (Prohibition of Entry into Uganda) Order, 2020 and Public Health (Notification of Covid-19) Order, 2020.

17 Visitors are required to maintain social distancing before entering the court and inside the court building (for e.g., at least 2 metres in the UK, 1.5 metres in Australia and in Uganda, 4 metres. Accessed at <https://rpr.org.ua>.

steps in the case management process are still rooted in the traditional and analog technology. Case management which involves filing in the registry, issue and service of summons, the return of service, testimony in the court, tender of documents, exchange of pleadings by the parties to the case, recording proceedings in court, filing written submissions and delivery of judgments and rulings remain a challenge to litigants, advocates, and the judiciary during the Covid-19 pandemic. This is likely to constrain the access to justice as, for example, the suspects arrested for a suspected violation of Covid-19 Rules experience difficulties accessing their lawyers, having their cases heard and consequently remain on remand for extended periods. Leaving alone those that have been on remand for a long period, it is not clear what the judiciary meant by restricting court business to urgent cases during the lockdown.

These situations lead to several questions that demand answers. For example; were cases involving the violation of Covid-19 Rules considered urgent? Did access to justice mean the equal right of access or did it depend on the urgency of the case as described by the judiciary? What about violators of SOPs occasioned by real needs; walking long distances and getting caught up by curfew because of the prohibition of the public transport system? Could the adoption of e-justice improve access to justice during the Covid-19? How about the “administration of justice” beatings by members of the security agencies for a suspected violation of curfew hours? These and other questions demand answers.

1.4 Purpose of the Study

The purpose of this study was to analyze how access to justice and social justice could be promoted in light of the Covid-19 in Uganda.

1.5 Scope of the Study

This study was limited to access to justice and social justice in the face of the Covid-19 Pandemic. It analyzes the prospects for e-Justice in the promotion of access to justice during the Covid-19 outbreak in Uganda. The study was limited to the courts of judicature in Uganda and covered the period from 21 March 2020 when the lockdown on businesses was first imposed up to July 2020 when this report was compiled.

1.6 Significance and Justification of the Study

Considering the importance of access to justice, it follows that justice should not be postponed as it could infringe on the rights of the people. The findings of this study will help policy-makers and implementers make more informed decisions concerning access to justice and social justice in the face of natural calamities and pandemics such as Covid-19. A pandemic of the scale of Covid-19 is unprecedented, meanwhile, it presently has no cure nor does it have a vaccine. This, therefore, poses uncertainties as to when it will end which justifies an inquiry into access to justice during the pandemic as human rights mustn't be unduly infringed upon on the ground of the Covid-19.

1.7 Conceptual/Theoretical Framework

The Social Justice theory was initially propounded by John Rawls¹⁸ and David Miller.¹⁹ This study has however focused on the variant advocated by the former. According to Rawls, social justice is about assuring the protection of equal access to liberties, rights, and opportunities, and the rights of the least advantaged members of society.²⁰ Thus, whether something is consistent with social justice depends on whether it promotes or hinders equality of access to civil liberties, human rights, opportunities for healthy and fulfilling lives, as well as whether it allocates a fair share of benefits to the least advantaged members of society. Rawls' theory of Social Justice conceived in terms of "justice as fairness" was reduced to three primary principles namely: the equal liberties principle; equal opportunity principle, and the difference principle.²¹

According to Rawls, liberty is the most important element of social justice because the three principles are ordered in terms of importance; this means the first principle; the equal liberties principle ought to be achieved before efforts to achieve, the second; the equal opportunity principle and third; the difference principle is attempted. The second and third principles should be applied within a set of background institutions that satisfy the requirements of the first principle including the requirement of securing the fair value of political liberties.²² Background institutions refer to basic structures of society; the family, school, religion, economy, polity, which, when just, can be referred to as background justice. Logically, agencies of criminal justice are part of the societal institutions.

Rawls explains that the principles of justice as fairness are adopted and applied in a four-stage sequence. The first is the adoption of the principles of justice to regulate society. Rawls asserts that these must be adopted behind a "veil of ignorance," which exists when there is a limit on the information because parties are not allowed to know the social positions or the particular comprehensive doctrines of the people they represent. They also do not know persons' race and ethnic group, sex, or various native endowments such as strength and intelligence, all within the normal range.²³

The second phase is the constitutional convention, which sets forth the institutions and basic processes of governance. The third stage is the legislative stage, where just laws are enacted. Finally, the fourth stage is the application of the rules by administrators, the interpretation of the constitution and laws by the judiciary, and the following of the rules by members of society in the conditions required by justice as fairness.

Crimes of the poor for example, violation of the curfew hours because a street vendor had to walk several kilometers back home as a result of the lockdown on public transport are at times aimed at satisfying basic human "needs."²⁴ Thus, the application of the law to stop such acts can be seen as interfering with social justice, at least when

18 J. Rawls, *Justice as Fairness: A Restatement*, 2nd ed. *Belknap Press*, Boston, MA, 2003.

19 D. Miller, *Principles of Social Justice*. *Harvard University Press*, Boston, MA, 2003.

20 Rawls, *supra*.

21 Rawls, 2003, pp. 42–43.

22 Rawls, 2003, p. 46..

23 Rawls (2003, p. 15).

24 Agnew, 2005.

the means to achieve one's goals are blocked for reasons such as discrimination, which itself is not consistent with social justice.²⁵ That is, if opportunities to succeed through legal means are not truly equally available to all, as they should be according to Rawls, and some people respond through "innovation" by creating new, illegitimate (i.e., criminal) means to achieve their goals, then we can see the labeling of some behaviors as crimes as the criminalization of efforts to meet needs.²⁶

In a nutshell, to the degree that criminal law is aimed at the crimes committed disproportionately by the poor while it simultaneously ignores the harmful and culpable acts of the powerful, it is unequal, undeserved, not focused on helping people achieve their basic needs, and not aimed at providing the greatest advantage to the least advantaged. Thus, it violates Rawls' conceptions of "need," "equality," "desert," and the "difference principle." Further, since the police, courts, and corrections enforce the criminal law through arrest, conviction, sentencing, and punishment, any bias in the criminal law will logically be perpetuated through the enforcement of that law.²⁷

2.0 LITERATURE REVIEW

2.1 Public Concerns during the Covid-19

The justice agencies have been facing serious criticisms during the Covid-19 for keeping suspects including those accused of violating the curfew hours for extended periods on remand. The argument is that courts have been closed and only urgent cases excluding theirs are entertained. Others have claimed that the "criminal justice system" may be aimed at controlling certain segments of the population; 'the dangerous classes' while the powerful are not affected.²⁸ The question is, what is an urgent case? How can access to justice be guaranteed when such classification of cases is done by the judiciary?

2.2 Access to Justice

Access to justice has become an increasingly significant concept in the struggle for social justice in recent decades. The access to justice movement has, for example, emphasized the impact of socio-economic disparities and other forms of inequalities on the accessibility level of the legal system to all persons.²⁹ It has exposed the substantial gap that exists between the promises of two liberal ideals; equality before the law and the rule of law and the ability of members of different groups in society to effectively enjoy that promise. The movement's basic argument is that unequal access to the legal system violates the equal protection of the law and infringes on the ability of individuals and groups' ability to exercise their fundamental rights.³⁰

25 Simons & Gray, 1989.

26 Merton, 1938.

27 Reiman, 2003; Robinson, 2009; Shelden, 2000.

28 Reiman, 2003; Shelden, 2000.

29 Deborah L. Rhode (2009). *Whatever Happened to Access to Justice?*, 42 *LOY. L.A. L. REV.* 42(2009): 869).

30 *Ibid.*

The right of access to justice is one of the most basic human rights, without which, the enjoyment of many other rights cannot be guaranteed. It demands that judicial organs be open to all those whose rights have been affected.³¹ Among the fair trial-guarantees are the right to equality before the law, which implies equality of access before the courts. Secondly, any person appearing before a court has the right not to be discriminated against, either in the course of the proceedings or in the way the law is applied to the person concerned. Further, whether individuals are suspected of a minor offence or a serious crime, the rights to a fair trial must be equally secured.³²

Another dimension of access to justice is that “delayed justice is bad justice.” This is because unreasonable court delays may tantamount to a denial of justice.³³ Delay in the administration of justice is used in a general sense to refer to the time spent before case disposition, which is not necessary for case development and processing.³⁴ Delay may occur in bringing the case to trial, in the trial itself, or the proceedings after the trial.³⁵ It occurs in a situation where too much time elapses between the filing of action through to its ultimate decision by the court to the time the remedies are obtained by the plaintiff in, for example, civil proceedings.

The problem of delay of cases, therefore, denies people access to justice at all stages of the trial. Unless the institutions that are engaged in the process of administration of justice speed up the entire process, the problem of delay will remain an obstacle to the realization of the right of access to justice.

2.3 Experiences with the Quest for Social Justice

Although Covid-19 is a new disease, many of the problems it has caused in, for example, the criminal justice system are similar to those that were experienced in natural calamities previously. For example, hurricanes of an enormous scale, such as *Katrina*, hit the Eastern coast of the United States in August 2005. It was one of the deadliest hurricanes that ever hit the United States causing an estimated 1,833 deaths from the flooding that followed in late August 2005, with million others left homeless along the Gulf Coast and in New Orleans.³⁶

After the occurrence of the hurricane, several jails were evacuated causing overcrowding at others where the inmates were transferred. At the same time, the normal law enforcement activities proceeded and arrests continued, even as many courts, including the Louisiana Supreme Court, had closed for extended periods. The situation left advocates scrambling to seek release for pre-trial detainees, low-level offenders, and older, more vulnerable offenders, while also coping with personal

31 CM Peter *Human rights in Tanzania: Selected cases and materials* (1997) 306.

32 *Ibid.*

33 BA Samatta, ‘The right to legal aid’ in H Othman & CM Peter (eds) *Perspectives on legal aid and access to justice in Zanzibar* (2003) 2.

34 107 M Cappalletti. *The Judicial process: A comparative perspective* (1985) 243.

35 108 J Kakalik *et al*: *Averting gridlock: Strategies for reducing civil delay in the Los Angeles Superior Court* (1990)

36 Kim Ann Zimmermann - Live Science Contributor 27 August 2001 Hurricane Katrina: Facts, Damage & Aftermath, <https://www.livescience.com/22522-hurricane-katrina-facts.html>.

losses, office closures and other impacts of the storm.³⁷ Apparently, despite a few such experiences, the Judiciary was caught yet unprepared to handle such crises.

To reduce the risk of the Covid-19 spreading inside the prisons, some countries have released certain categories of prisoners. To observe social distancing measures, the Supreme Court of India has, for example, directed the release on parole of prisoners charged with offences carrying jail terms of up to seven years, a 4–6 week reduction of the sentences. The French Justice Minister has issued similar orders to attempt to observe social distancing rules in the prisons.³⁸

2.4 E-Justice

For courts to operate more robustly, they should embrace more innovative ways such as the digital platform to manage cases to facilitate case management processes; filing, serving a defendant/respondent, conferencing, trial, delivery of ruling/judgment. To initiate a case, for example, e-filing could be one such option. E-filing refers to the process of transmitting documents and other court information to the court through an electronic medium rather than on paper.³⁹ The implication is that this can be done remotely without physical interphase between court and lawyers and litigants to submit the required documentation. It permits courts to access the necessary documents, authentications, and confirm signatures in a legally acceptable format for further processing and to also save time.

E-filing requires an electronic signature and identity verification, e-file size limitations, and appropriate e-storage capacities, enabling legislation and court rules for e-signature and the filing of e-documents, document management systems, and link to case management systems, link to e-payment and access for self-representing litigants.

Closely related and frequently linked to e-filing is the provision of electronic service (e-service) of court orders and notices to parties. E-service generally means the electronic transmission of documents from a court to a party, attorney, or representative.⁴⁰ In many countries, however, e-service is not allowed for service of process or summons to gain jurisdiction over persons or property,⁴¹ which is the focus of the particular practice area included in the Quality of Judicial Process Indicators (QJPI).⁴² In 2016, the service of the initial summons through e-mail, fax, or text message was allowed in 27 of the 189 economies included in the World Bank Doing Business survey.⁴³

This does not mean that these courts allow e-service exclusively, nor does it mean that courts in other economies do not use select electronic means for some information

37 CRSJ Covid-19 Series. The Section of Civil Rights and Social Justice. https://www.americanbar.org/groups/crsj/events_cle/crsj-covid-19-series/

38 Cited at <https://rpr.org.ua>.

39 *Ibid.*

40 *Supra.*

41 Olson, Edwards, and Ahalt 2003.

42 The Doing Business methodology reviews whether the initial complaint can be served on the defendant electronically, through a dedicated system or by e-mail, fax or SMS (Short Message Service). It does not distinguish if e-service is used parallel to existing paper-based service of process or can be used exclusively (World Bank 2016, 155).

43 World Bank, 2016.

changes, such as SMS messages, for hearing schedule updates or acceptance of electronic documents. But it is particularly the initial summons that informs a party for the first time that a claim has been filed against them, for which the laws in most countries continue to require service in hard copy to the respective party or representative.⁴⁴

Such practices are not only because laws may not have been updated to allow e-transmissions but for a range of other important reasons, such as little public acceptance and trust in e-notifications as well as concerns for the system's unreliability and lack of capacity to deliver fully authenticated documents and return receipts, all of which serve to discourage policy-makers from adjusting related laws and regulations. *Pro se* (self-representing) litigants and other parties might not have access to computers. Most importantly, there is still a fundamental difference between receiving a physical summons and receiving an e-mail or Facebook message.

The ultimate hurdle, however, remains the due process required to establish that the notice will “reasonably” get to the defendant. As a result, to date, it has not been possible to confirm that the electronic service of the initial summons is allowed in any jurisdiction as the primary or exclusive option of service but only as an alternative option with limited application. At the same time, as electronic means of communication and new technologies, including social media applications, become increasingly ubiquitous across the globe, this is an area where new options are being explored by many courts with advanced automated systems.

An e-filing system that does not offer the option of also paying the required court fees electronically is likely to largely eliminate its benefits. When litigants and other court users have the option of paying court fees (and fines) electronically, they save the time and resources needed to come to the court. Such options should be explored in times of natural calamities such as the Covid-19.

In the United States, for example, courts offer few alternatives. A survey conducted in 2012 has shown that 29 courts across several U.S. states reported acceptance or planned acceptance of credit cards and only two, the digital wallet service provider PayPal, suggesting the need for continued expansion of forms of acceptable payment.⁴⁵ According to an online report from the Pew Charitable Trusts, “Research predicts that mobile payments in the U.S. would grow at an overall 22 percent compound annual rate through 2019”.⁴⁶

Given that fees tend to be immediately triggered when a case is filed, the inability to pay these fees online significantly limits the usefulness of an e-filing application. The question is, therefore, how to offer options that make fee payment easy, speedy, efficient, and financially feasible. Electronic payments or “e-payments” are not new to the court system. The e-payment was previously for traffic citations and limited to “clean” cases, which meant that e-payments were offered for uncontested payments on first-time fines and traffic court payments only. From the customer's perspective, the convenience of online payments appeared to be easy and to save time; however, the back-end processing inside the court was usually completely manual. The vendor

44 *Ibid.*

45 Hernandez, 2013.

46 Pew Charitable Trusts, 2016.

typically sent a daily report to the court that listed the fines paid from the previous day. Court staff would then enter the individual payments manually in the CMS.

New technologies are increasingly enabling organizations to transition from cash to e-payments. In the developing world, mobile phone access today far outstrips access to banks. In 2016, electronic payment of court fees was the most commonly available feature of court automation measured by the “Doing Business World Bank report.” Forty-five economies provide for e-payment, more than all the other court automation practices measured altogether.

Despite the progress made towards e-filing and payment, e-pleadings demonstrate challenges from previous experience. This is because the courts require original pleadings to be filed with the actual signature of the party and/or attorney which must be provided by law. Besides, the filer must provide verifiable proof of identity electronically.⁴⁷ Increasingly, courts have devised ways that could accommodate such requirements using the e-platform.

A range of verification approaches has been used by courts. They include a pre-registration of e-mail accounts combined with individual pass codes. Other approaches involve the use of smart ID cards, or, when e-verification is not yet feasible, the somewhat inefficient process of in-person verification within a few days of e-submission. Experience from the US in 2012 indicates that in Virginia, new legislation allowed for video supported notarization.⁴⁸ This is in contrast to the older laws that often required multiple signatures which were very cumbersome. Such is perhaps an area that needs attention with the view to reviewing them.⁴⁹

3.0 RESULTS AND DISCUSSIONS

The Covid-19 pandemic has affected how the Judiciary has operated. This is partly contained in the instructions issued on 19 March 2020 signed by Hon. Bart M. Katureebe (then) Chief Justice of Uganda.⁵⁰ The guidelines issued suspended court appearances for 32 days, following earlier presidential guidelines on the prevention and mitigation of the spread of Covid-19. The Chief Justice directed courts to adjudicate urgent matters only and the parties to file written submissions regarding cases in advanced stages, and judgments or rulings to be delivered online or via email where possible.

This position brings into perspective the way social justice has been administered, taking into consideration access to justice including social justice concerns and the perspectives of e-justice during the Covid-19 period. Accordingly, access to justice and perspectives of e-justice to promote access to justice during the Covid-19 are considered in the subsequent sections.

47 Zorza, 2013.

48 USAID and UNDP, 2015.

49 *Supra*.

50 Office Instruction No. 2 of 2020.

3.1 Access to Justice

Following the Chief Justice's guidelines instructing the courts to only deliver e-judgments among others directives,⁵¹ courts adopted them to avoid a complete lockdown of the Judiciary. Some judgments were consequently delivered electronically using, for example, advocates' e-mail addresses. Some rulings were also delivered following the guidelines. A ruling was, for example, delivered denying a bail application of Lt Gen (RTD.) Henry Tumukunde on twitter. Meanwhile, a bail application of Jamil Mukulu who was facing treason charges was presented at the International Crimes Division of the High Court of Uganda on 11th July 2020 via zoom technology.⁵² These applications were made before the court in compliance with the MoH SOPs. At the same time, the ruling was able to reach the applicant/respondent/citizenry through the link.⁵³ This approach was able to ensure access to justice despite the subsistence of the partial lockdown.

Despite the silver lining painted by some of the approaches above, however, the WHO safety precautions⁵⁴ coupled with the Covid-19 Rules 2020, appear to have affected access to the justice system. The administration of justice was, for example, excluded from the list of essential services. Services categorized as essential insulated them from certain restrictions such as the movement and use of private transport during the lockdown. The consequences of excluding the Justice administration from the list of essential services in the face of the likely public disobedience of the preventive measures meant that violators were sanctionable by law.⁵⁵ This, therefore, means that suspects would require legal counsel, which most of them failed to obtain.

A case in point is that of Luzira prison inmates where the High Court of Uganda at Kampala awarded UGX. 95 million to 19 former inmates who were arrested for suspected flouting of regulations on Covid-19 for being denied access to their lawyers. The said group was picked from one house in Kyengera Town Council, in Wakiso District, and held at Nkonkonjeru Police Post at the end of March 2020.⁵⁶

In another incident, the Mityana Municipality MP Francis Zaake was, for example, arrested on allegations of distributing food items to his starving constituents in Buswabulongo, Busimbi Division in Mityana municipality contrary to the presidential directives. He was hospitalized after being tortured under police custody.⁵⁷ Police

51 CJ/C.7 Circular dated 19 March 2020. Accessed from <https://judiciary.go.ug> on 21 May 2020.

52 <https://www.ntv.co.ug/news/national/Rebel-leader-Jamil-Mukulu-wants-new-judge-in-his-case/4522324-5594592-13v11nc/index.html>.

53 Judiciary Uganda on Twitter: Lt. Gen. Henry Tumukunde Bail Ruling live. Judiciary is starting to embrace use of Technology in service delivery. Accessed from <https://twitter.com> on 21 May 2020.

54 Justice Henry Peter Adonyo *ibid* notes that; "When the WHO declared Novel COVID-19 as a pandemic, many countries opted to implement either full scale or partial lockdowns in an effort to control the spread of the virus. WHO safety precaution measures include; self-isolation and social distancing. These measures affected the day-to-day functioning of court activities.

55 Access to justice—such as arraignments, pleas and the right to apply for bail were given little or little thought which could lead to despotism and the possibility of compromised judicial ethical behaviour. Henry Peter Adonyo, *ibid*.

56 The Independent, Inmates awarded UGX 95m for being denied access to lawyers during lockdown. <https://www.independent.co.ug/inmates-awarded-ugx-95m-for-being-denied-access-to-lawyers-during-lockdown/>

57 Innocent Anguyo (2020). The politics of food relief in Uganda's Covid-19, 21 July 2020. <https://blogs.lse.ac.uk/africaatlse/2020/07/01/politics-food-relief-aid-uganda-covid19/>.

attributed it to flouting measures and guidelines of the Covid-19 national task force, on food distribution to the vulnerable people.⁵⁸ Meanwhile, the MP alleged that his tormentors (the police) broke into his house searching to arrest him for the crime of sharing food with the starving people. In his televised addresses recently, President Museveni cautioned politicians who distribute food during the lockdown faced attempted murder charges. The president said whoever wanted to contribute relief items ought to hand them to the national task force.

President Museveni also attacked (in passing) the police for arresting opposition politicians for giving out food while letting members of (his) ruling National Resistance Movement (NRM) do so unconstrained.⁵⁹ Despite his remarks, none of the suspected MPs have been summoned by police to make a statement or arraigned in any court of law. Following a public outcry on the brutality of the Local Defence Unit (LDU), an auxiliary force supporting police, he only suspended their operations.

Many questions remain unanswered. Why are the “tormentors” of Zaake not brought to book or will it come after the COVID-19? Why were the security operatives so fast in arresting and torturing Zaake for suspected offences that the President confirmed were also committed by his party members (MPs) including ministers; was this an example of a spiked application of the law? What is the situation of access to justice especially where such apparent injustices such as torture in the name of implementing COVID-19 guidelines occasioned by members of the security forces exist? What is the situation of social justice in Uganda when MPs from one shade of opinion seem to be treated differently than the other, yet on similar suspected offences? Million-dollar questions!

3.2 Social Justice Considerations

Given the situations in the prison such as overcrowding in light of the Covid-19 crisis, President Museveni in the exercise of the powers vested in the President under the Constitution of the Republic of Uganda, 1995 has pardoned over 800 prisoners.⁶⁰ They included the elderly, above 54 years, pregnant women, breastfeeding mothers, terminally sick prisoners, and petty offenders who had completed three-quarters of their sentences.⁶¹

Prerogative of Mercy is an executive process that comes after the Judiciary has concluded its duties, due process, and sentencing. It is a system that mandates the president to exercise his powers to pardon some prisoners. Headed by the President and chaired by the Attorney General plus six reputable members of the public, the Prerogative of Mercy Committee is authorized to receive the names of prisoners who qualify for clemency from the Commissioner for Prisons and forward them to the president for approval.

58 Kim Ann Zimmermann - Live Science Contributor August 27, 201 Hurricane Katrina: Facts, Damage & Aftermath, <https://www.livescience.com/22522-hurricane-katrina-facts.html>.

59 *Ibid.*

60 Article 121(1) (a).

61 Lockdown as a measure to decongest prisons to avoid the spread of the Covid-19 pandemic. Accessed from <http://observer.ug> on 15 June 2020.

3.3 Prospects for E-Justice in Uganda

In Uganda, the use of ICT is regulated through various legislations. Some of the laws are merely transactional and others are for verification and authenticity of identity and signatures, few laws regulate procedures of courts in the adjudication process which include Uganda Communications Act, 2013, the Computer Misuse Act, 2011, Electronic Transactions Signatures Act, 2011, Electronic Transactions Act 2011, the Judicature (Visual-Audio Link) Rules, 2016, the Data Protection and Privacy Act 2019, and the Constitution (Integration of the ICT into Adjudication Processes for the Courts of Judicature) (Practice) Directions 2019.

These laws provide, *inter alia*, that;“(1) In every judicial proceeding, the court and the parties to the case may, as much as possible, use technology to expedite proceedings and make them more efficient and effective.⁶² The technology referred to include e-filing and service of court documents electronically; digital display devices; real-time transcript devices; video and audio conferencing; and (e) computers. The court may direct the parties to use information technology in appropriate cases.

Cases in courts start with the payment of fees. Options for e-payment of court fees is available in Uganda. The same provisions also provide for payment of fines. The possible options for such a transaction are using the mobile money platform and e-bank payments. Both payments require an assessment of fees to pay, which is electronically done and this can only be achieved when stable network connectivity exists. The challenge, however, lies with not only the availability but also the reliability of network connectivity which still poses challenges to e-justice in Uganda.

The Directions (ICT) in Uganda provide for e-filing, however, it does not specify limits of the document size (storage). Litigants and advocates tend to file very voluminous documents specifically in matters concerning constitutional interpretation and appeals to the High Court, Court of Appeal, and Supreme Court. When the document size is not specified, then e-filing can be constrained and consequently affect the application of e-justice.

Despite the enactment of the Constitution (Integration of the ICT into Adjudication Processes for the Courts of Judicature) (Practice) Directions,⁶³ service of summons and exchange of pleadings in Uganda is still manually-operated and in hard form. This is a serious setback to e-service and subsequently e-justice. This is a critical area of concern that could halt the progress already registered towards the adoption and rolling-out of e-justice in Uganda’s judiciary.

62 Directive 5 (1) – (6) *ibid.* (2) The technology referred to in this sub-paragraph (1) includes; (a) an e-filing and service of court documents electronically; (b) digital display devices; (c) real time transcript devices; (d) video and audio conferencing; and (e) computers at the bar table (3) Nothing in these Practice Directions is intended to preclude practitioners from using their own electronic devices at the bar table during hearings. (4) A judicial officer who approves the use of technology shall request the registry to make all necessary arrangements for the efficient use of technology required. (5) The court reserves the power to direct the parties to use information technology in appropriate cases. (6) The parties shall comply with any directions issued by the court in relation to the use of technology and any requirements published by court in relation to issues concerning the use of technology, including as document formats.”

63 *Supra* at note 87.

In Uganda, the Electronic Transactions Signatures Act⁶⁴ applies to signatures concerning electronic transactions, it has no business with court pleadings which are critical in e-filing. This can however be applied together with the Constitution (Integration of the ICT into Adjudication Processes for the Courts of Judicature) (Practice) Directions to promote e-filing. Despite the presence of these directions, the filing system in Uganda is still manual posing a big challenge to the application of e-justice during the Covid-19 pandemic.

3.4 CONCLUSIONS

The Covid-19 pandemic has enormously impacted the way things are done. Of particular importance is its effect on access to justice and concern for social justice in Uganda. While the declaration of the disease as a pandemic and a public health emergency of international scale led to severe restrictions on normal life to contain its spread, access to social justice was severely hampered. Whereas some of the prohibitions to public gatherings as a means of social distancing helped to contain the spread of the disease, measures such as curfews, prohibitions on distribution of food to the starving citizens did not amount to social injustice alone, but the brutality unleashed by the security forces in effecting the measures has had more damaging effects than the Covid-19 itself. Moreover, most of the victims have not accessed justice because of the difficulties of legal redress due to inadequate digital options.

Prospects for e-justice exist in Uganda as digital technology has already been introduced in the judiciary. Besides, there exists an enabling legal framework. The attempts to provide access to justice during the restrictions in normal court business provides hope that Uganda can apply e-justice during natural calamities. However, the process should be expedited as justice delayed has already been described as bad justice.

Areas that need focus are: the judiciary should fast-track digitalization, train personnel, secure funds to purchase equipment, and assist litigants and officers of the court to embrace e-justice applications to promote access to justice during natural calamities such as the Covid-19. Although the President has suspended the operations of the security agencies that unleashed brutality in enforcing the Covid-19 guidelines, care should be taken by the lead security agencies' top management in any attempts for their redeployment as the force seems to be ill-trained for the task.

64 Act No. 7 of 2011, Laws of Uganda.