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TOWARDS A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE TECHNOLOGIES IN UGANDA: THE ROLE OF DUTY BEARERS

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Pretoria

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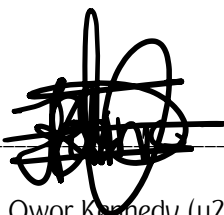
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DEDICATION

I dedicate this mini-dissertation to my loving parents, Candy, and my son – Jethro. Mummy, thank you for being a true embodiment of an African woman who defied all odds to fulfil her dreams and those of her children and to my loving Dad - my best advisor, thank you for the enormous support, love, and care. You have moulded me into the man that I am today.

To Candy, my *Nyakato*, thank you for being that special one. Your care, comfort, and prayers mean a lot to me. I treasure your contributions towards my academic success and most importantly your patience. You have waited thrice, you waited for Antwerp and Ghent to get done, and when Pretoria came, you understood and exhibited patience. What else can I say? – *Amari Matek*.

To fellow advocates and legal innovators – John Musinguzi, Namutamba Agnes Kawombe, Bamwesigye Emmanuel, Rugambwa Geoffrey, Kiconco David, Wanda Ben, and Akena Junior, allow me to re-echo what Lord Denning stated in *Parker v Parker [1954] ALLER 22* on the need of crafting a legal remedy and new procedure;

[W]hat is the argument on the other side? Only this; that no other case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on: and that will be bad for both. Thus, the winds of change are upon us. We have a duty to give the law a purposive and liberal legal interpretation.

It is now 68 years after this case, and it is upon us to do unique things and craft solutions for the needy justice seekers. Following that line of call, I equally dedicate this work to all the justice seekers that are enduring with all the hardships that delays and injustice caused. Through all, you have managed to outlive the challenges and persisted for justice. My kind and hopeful word to you all is that **‘technology is coming to your aid.’**

May your spirit never be broken!

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O ẹun fun itọṣona mi, o ẹun fun fifipamọ akoko didara ẹ, ati pe mo dupe fun sūru yin pelu mi. Ki Olorun Eledumare fi emi gigun ati ilera dara fun yin. Amin.

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Aluta Continua!

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ACRONYMS

ADR	-	Alternative Dispute Resolution
AFSJ	-	AI Appellate Feedback System for Judges
AI	-	Artificial Intelligence
CDEI	-	Centre for Data Ethics and Innovation
CDs	-	Compact Discs
CEDA	-	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	-	International convention on Economic, Social and Cultural Rights
CPR	-	Civil Procedure Rules (may mean for Nigeria and Uganda)
CRPD	-	Convention on the Rights of Persons with Disability
CSOs	-	Civil Society Organisations
DPP	-	Director of Public Prosecution
ECCMIS	-	Electronic Court Case Management Information System
EOC	-	Equal Opportunity Commission
FCTPD	-	Federal Capital Territory COVID-19 Practice Direction 2020
GDS	-	Government Digital Service
GoU	-	Government of Uganda
HiIL	-	Hague Institute for Innovation of Law
HRBA	-	Human Rights-Based Approach
ICCPR	-	International Covenant on Civil and Political Rights
JLOS	-	Justice Law & Order Sector
L4F	-	Lawyers 4 Farmers
LASPs	-	Legal Aid Service Providers

LC	-	Local Council
LDC	-	Law Development Centre
LSPD	-	Lagos State Practice Direction for Remote Hearing, 2020
LSPs	-	Legal Service Providers
MolCT	-	Ministry of Education and Sports
MP	-	Member of Parliament
MPs	-	Members of Parliament
NBS	-	National Bureau of Standards
NGO	-	Non- Governmental Organization
NGOs	-	Non-Governmental Organisations
NITDA	-	National Information Technology Development Agency
NOTAP	-	National Office for Technology Acquisition and Promotion Act
ODPP	-	Office of the Director of Public Prosecution
ODR	-	Online Dispute Resolution
OSPD	-	Ogun State Practice Direction No.2 of 2020
PANEL	-	Participation, Accountability and transparency, Non-discrimination, Empowerment of rights-holders and Legality
PDs	-	Practice Directions
PLANET	-	Participation, Links to human rights obligations, Accountability, Non- discrimination, Empowerment and Transparency
PROCAMIS	-	Prosecution Case Management System
PWDs	-	People with Disabilities
PWDs	-	Persons with Disabilities
SBS	-	State Brief Scheme
SDGs	-	Sustainable Development Goals.

SHRC	-	Scottish Human Rights Commission
SMS	-	Short Message Service
UHRC	-	Uganda Human Rights Commission
ULS	-	Uganda Law Society
UN	-	United Nations
UNDP	-	United Nations Development Programme
Universal Declaration	-	Universal Declaration of Human Rights
USSD	-	Unstructured Supplementary Service Data

GLOSSARY

Android	-	Android is a mobile operating system designed primarily for touchscreen mobile devices such as smartphones and tablets.
Artificial Intelligence	-	Artificial intelligence (AI) refers to the simulation of human intelligence in machines that are programmed to think like humans and mimic their actions.
Audio hearing	-	A hearing where all parties join by telephone.
Bluetick	-	A blue tick is one of the primary features of WhatsApp, a messaging application, which lets the sender know if the receiver has seen the message or not.
Bluetooth	-	Bluetooth is a short-range wireless technology standard that is used for exchanging data between fixed and mobile devices over short distances and building
Digital inclusion	-	Refers to the multiple and integrated initiatives resulting in people previously excluded from using access to justice technologies, being included into normal exchanges, practices, and interventions in the development process.
Digital literacy	-	Digital literacy refers to an individual's ability to find, evaluate, and communicate information through typing and other media on various digital platforms.

- Discrimination - Treating people in a different, usually bad, manner because of their class, race, disability, or gender instead of who they are as individuals.
- e-discovery - e-discovery is a form of digital investigation that attempts to find evidence in email, business communications, and other data that could be used in litigation or criminal proceedings.
- e-File - e-file comes from the term, electronic file. It is an electronic filing system that allows individuals to file their court documents to court over the internet
- e-Filing - e-filing comes from the term, electronic filing. And this is the processing of filing court documents like complaints, and petitions to courts.
- e-mail - An email is a message distributed by electronic means from one computer or phone to one or more recipients via a network. Common email applications in Uganda include Google Mail (Gmail), YahooMail, Outlook, etc.
- e-Service - e-Service originates from the term, electronic service. It encompasses all the processes of sending or serving court documents using electronic means to the other party either by WhatsApp or email.
- Hybrid hearing - A hearing in which some of the people involved attend court in-person and some join the hearing remotely by video or audio.

Impairment	-	Refers to any loss or abnormality of psychological, physical, neurological, or anatomic function or structure. An example of access to justice technology includes hearing and visual impairments
Indigent person	-	An indigent person is extremely poor, lacks the basic resources of normal life, and cannot afford the cost of accessing justice.
In-person hearing	-	A hearing held in a courtroom with the Judge, public users, tribunal, and legal representatives all attending the court building in person.
ODR	-	Online Dispute Resolution (ODR) is a public-facing digital space in which parties can convene to resolve their dispute or case.
Online hearing	-	A hearing held where some or all of the parties join by phone or video links. This includes audio, video, and hybrid hearings.
User or Users	-	Refers to any person, or groups of persons that enjoy the benefits of operating access to justice technologies. This may include justice seekers or people seeking legal information.
Video hearing	-	A hearing where all participants join by video
Web-based Application	-	A web application (or web app) is application software that runs in a web browser, either on a phone or on a computer. It is applications are delivered on the World Wide Web to users with an active network connection (internet)

CHAPTER ONE: INTRODUCTION

1.1 Background and context

The evolution of technology is gradually transforming the justice sector.¹ Justice systems around the world are moving away from the conservative old paper-based procedures towards technologies and this transition is redefining how the courts, lawyers, and, legal service providers (LSPs) deliver justice.² The United Nations (UN) acknowledges the speed at which fast-evolving technologies are transforming service delivery.³ It emphasised that technologies should be used to fulfil the Sustainable Development Goals (SDG).⁴ However, the reality on ground, especially as it relates to access to justice as SDG 16.3 still remains a global problem.⁵ A report shows that over five billion people do not have meaningful access to the justice delivery system.⁶ In Uganda, a report shows that about 90% of people with legal disputes cannot access justice and the judiciary remains marginal to the administration of justice as only five percent of people with legal disputes can access the courts.⁷

To address the access to justice challenges in Uganda, more judges were appointed and courts were decentralised to more regions.⁸ However, these initiatives did not prioritise the deployment of technology. Yet digital indicators in Uganda such as 67.2% tele-density, 52% internet penetration rate, and 10.48 million smartphone adoption,⁹ could have increased the use of technology for justice. While in other parts of the world, the use of technologies had taken shape by courts, LSPs, and lawyers for research, facts findings, communications,

¹ M Thompson *et al* 'How courts embraced technology, met the pandemic challenge, and revolutionized their operations (2021) *The Pew Charitable Trusts* 3.

² S Karikkandathil 'How digital justice is transforming the justice system' *Middle East & Africa News Centre* 10 August 2022.

³ UN E-Government Survey 'Gearing e-government to support transformation towards sustainable and resilient societies' (2018) 178.

⁴ UN E-Government (n 3 above) 183-189.

⁵ World Justice Project's *Global insights on access to justice: 2019 Findings from the population poll in 101 countries* (2019) 5.

⁶ Pathfinder 'Task force on Justice: Justice for all report' (2019) 28

⁷ HiiL Uganda 'Justice needs in Uganda: Legal Problems in Daily Life' (2016) 2-3.

⁸ 'Judiciary to set up five more High Court units' *Monitor* 16 January 2021.

⁹ Uganda Communication Commission 'Market performance wreport Q1 2022' (2022) 17.

e-filing, e-service, and dispute resolution as pathways for accessing justice.¹⁰ With such trends, non-state actors adopted a similar practice in Uganda with Barefoot Law providing legal information on Facebook;¹¹ Legal Hub Uganda sharing legal information in form of podcasts;¹² JusticeBot Uganda linking justice seekers to lawyers via Facebook chat-bot while Nkola App assisting employees with labour disputes resolution via mobile phone.¹³ Still with that, the Ugandan judiciary was slow in adapting to the changing landscapes of technology.

Following the global outbreak of COVID-19 pandemic, the President of Uganda, Yoweri Kaguta Museveni issued directives to curb the spread of coronavirus that declared a lockdown and closure of public offices. The missing link in the directives was that it did not consider the courts and LSPs as essential workers during the lockdown and they could not continue with justice delivery in the country. As a result, court activities were reduced since few courts were digitalised enough to cope with the world of COVID-19, where social distancing, remote working, and electronic exchange of documents were required. In response, the Chief Justice of Uganda issued a guideline for online hearings and online judgment delivery.¹⁴ Besides the courtrooms, law firms, Civil Society Organisations (CSOs), and Non-Governmental Organisations (NGOs) were equally closed.¹⁵ Coupled with the increased delays in justice delivery from the courts, LSPs resorted to delivering justice through technologies as an alternative. Therefore, COVID-19 outbreak was an opportunity for Uganda to adopt the wide use of access to justice technologies.¹⁶

Consequently, practices by the judiciary, executive, CSOs, LSPs, and NGOs are rapidly harnessing the efficiency and expediency of access to justice technologies.¹⁷ Still with those technologies, access to justice remains

¹⁰ RH Brescia *et al* 'Embracing disruption: How technological change in the delivery of legal services can improve access to justice' (2014) 78 *Albany Law Review* 553.

¹¹ 'Barefoot Law I Get Legal Help Online' <<https://barefootlaw.org/>> accessed 10 August 2022.

¹² 'Podcast - Legal Hub Uganda' <<https://legalhubug.org/podcast/>> accessed 16 September 2022.

¹³ 'Nkola App | Facebook' <<https://www.facebook.com/nkolaapp/>> accessed 11 August 2022.

¹⁴ Guideline for online hearing in the judiciary of Uganda, Office Instrument No.2/2020

¹⁵ PW Nabasa 'No stickers for lawyers in lockdown' *The Monitor* 24 June 2021 para 2-5.

¹⁶ Maka 'Legal tech offers lessons for digital COVID-19 solutions in Africa' *Africa at LSE* 20 July 2020

¹⁷ BG Chanwat 'Current ICT approaches to enhance access to justice in Uganda' *betterplace lab* (de) 4 May 2020

a problem. It is against this background that this mini-dissertation seeks to examine whether the duty bearers' role in deploying access to justice technologies can ensure effective access to justice in Uganda. In resolving the challenges, the study bends towards a human rights-based approach (HRBA) to analyse the role of duty-bearers.

1.2 Research objectives

The research seeks to examine how access to justice technologies can ensure effective access to justice in Uganda. It also seeks to lay a conceptual basis for a HRBA to access to justice technologies in Uganda. Subsequently, it explores the roles of Ugandan duty-bearers in comparison to those in Nigeria and the UK in ensuring a HRBA access to justice technologies.

1.3 Problem statement

Access to justice is not simply a problem in Uganda, but a crisis. Uganda's institutional flaws have made the road to justice uneven, long, and frustrating for those living in extreme poverty.¹⁸ A 2016 Needs report estimates that over 90% of Ugandans that face one or more justice challenges related to land, domestic violence, and property disputes have no access to adequate justice mechanisms.¹⁹

Additionally, the World Bank estimates that about 20.3% of Ugandans live below the poverty line,²⁰ and injustice could plunge them into more poverty. This is because such people have limited capacity to manage the socio-economic challenges resulting from legal disputes. This has spill-over effects on their dependants and immediate family thus exposing them to more vulnerabilities. As of October 2022, the Uganda Judiciary reports that out of the 6,004 licensed advocates, only 3778 are active.²¹ Meaning that with an estimated population of 47.1 million people,²² there is one lawyer for every 12,467 Ugandan, and with their concentration in urban centres,

¹⁸ HiiL Uganda 'Justice needs and satisfaction in Uganda: Innovative measuring in times of Covid-19 pandemic' (2021) para 3.

¹⁹ HiiL (n 7 above)

²⁰ World Bank 'Poverty headcount ratio at national poverty lines - Uganda' (2022) <<https://data.worldbank.org/indicator/SI.POV.NAHC?locations=UG>> accessed 9 August 2022.

²¹ Judiciary 'List of licensed advocates' <http://www.judiciary.go.ug/print_all_advocates.php> accessed on 03 October 2022

²² World Bank 'Population - Uganda' (2022) <<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=UG>> accessed 29

75% of people living in the rural areas have to rely on the Local Council Courts (LCCs) for justice, yet the LLCs have no jurisdiction over some disputes.²³

However, the use of technology as an alternative means of accessing justice could not provide effective access to justice for the people due to some challenges. For example, the emerging trend in development financing saw donor funders including HiiL Uganda, Justice Law & Order Sector (JLOS), and Ministry of Information and Communication Technology (MolCT), among others, provide seed funding to socio-legal start-ups that innovatively develop access to justice technologies.²⁴ And challenges came when donors failed to assess whether the technologies they fund conform to human rights standards. As a result, most access to justice technologies was developed and deployed in urban areas without the input of rights-holders who are the users of these technologies. For example, the judiciary adopted and piloted online hearing technologies without consulting or educating the rights-holders.

Another challenge was that legal innovators paid attention to business growth, meeting the interest of donors and gaining huge online followers instead of focusing on the consequential impact of the technologies on access to justice.²⁵ To date, no one seems to question the need of justice and whether they have been met, or statistics of cases that have been resolved to the satisfaction of rights-holders using access to justice technologies. Given these challenges, this mini-dissertation calls for a HRBA to access to justice technologies as a possible means of addressing these issues in Uganda.

1.4 Research questions

The main question this mini-dissertation seeks to respond to is: How can a human rights-based approach improve access to justice technologies in Uganda? This main question is further broken down as follows:

May 2022.

²³ n 7 above

²⁴ HiiL Uganda 'Justice needs and satisfaction in Uganda' <<https://dashboard.hiil.org/e-jns-uganda-2>> accessed 12 August 2022.

²⁵ H Mukasa 'Breaking barriers to high impact innovations in Uganda' *Innovation Village* 16 August 2022 para 16.

1. How can a human rights-based approach to access to justice technologies be conceptualised in Uganda?
2. What are the roles of duty-bearers in ensuring such an approach in Uganda?
3. What can Uganda learn from duty-bearers in Nigeria and the United Kingdom on how to ensure such an approach?

1.5 Literature review

Rogers in the theory of innovations explained how new technology spread to users in society.²⁶ He stated that technology's spread is influenced by indicators like the technology itself, adopters, communication channels, time, and the social system.²⁷ As part of diffusing innovation, mobile and web applications are being developed to deliver justice. These indicators by Roger present a complete innovation cycle that this study seeks to expound on for the inclusion of rights-holders in the innovation cycle.

However, these 'good technologies' are also capable of failing in many ways. According to Norman²⁸ good technologies can fail because:

...[w]e tend to place emphasis on the technologies themselves when it is really the social impact and cultural changes that will be most dramatic. This is an industry that puts the device first, the customer second. The real needs of the customer/user are ignored...²⁹

Norman suggests that corporations should design 'user-centred and human-centred' technologies and should not think that they know better than the customers or users – they should provide users with what they want, but not what they think as best for users.³⁰ Norman's point situates the 'human' and his or her wellbeing in the context of public-facing technologies and this in a way evinces the HRBA principles of participation and accountability which this mini-dissertation discusses much later under Chapter two.

²⁶ EM Rogers *Diffusion of Innovations* (2005) 1-6.

²⁷ As above.

²⁸ D Norman *The Invisible Computer* (1998) 22.

²⁹ Norman (n 28 above) 15.

³⁰ As above.

In terms of what access to justice technologies are capable of, Raymond *et al*, acknowledged that technological changes are ‘disruption’ which will force legal practitioners to change how they operate.³¹ The authors stated that technology makes lawyering easier by simplifying lawyers’ tasks. Equally, new modes of providing legal services through web and mobile applications or the ‘do-it-yourself programs’ make clients receive services at a discounted price but those services may be of such low quality that may barely respond to clients’ needs.

Wing noted that Online Dispute Resolution (ODR) must ensure accountability, confidentiality, competence, empowerment, equality, fairness, impartiality, informed participation, legal obligation, security, integration, and transparency.³² What this suggests is that the use of ODR as a medium for accessing justice should be backed by these regulating principles from the users on both ends.

Additionally, Ssekaana and Ssekaana acknowledged the use of technologies in civil proceedings in Uganda. The authors stated that, like in all other modes of service provided by the Civil Procedure Rules, service of any form by email, WhatsApp, or through other technologies are means of providing parties with notice and updates about court cases.³³

McGill *et al*, noted that legal apps have flaws as they raise ethical concerns regarding confidentiality, privacy, reliability, and regulatory issues.³⁴ They argue that technologies perpetrate uneven access to justice due to the varied demographics of their users.³⁵ Relatedly, Edwards *et al*, questioned how the law, regulation, and ethics govern the future of fast-changing technologies.³⁶ The authors acknowledged the development of new technologies but noted that the law might fail how to regulate emerging technologies like artificial intelligence (AI). These perspectives give an overview of the importance of access to justice technologies in Uganda.

³¹ Brescia *et al* (n 10 above)

³² L Wing *et al* ‘Designing ethical online dispute resolution systems: The rise of the fourth party’ (2021) *Negotiation Journal* 49.

³³ M Ssekaana & S Ssekaana *Civil procedures and practice in Uganda* (2017) 215.

³⁴ J McGill *et al* ‘Mobile & web-based legal apps: Opportunities, risks & information gaps’ (2017) 15 *Canadian Journal of Law & Technology* 2

³⁵ McGill *et al* (n 34 above).

³⁶ L Edwards *Future law: Emerging technology, regulation and ethics* (2020) 5-8.

However, Brescia argues that digital lawyering is no panacea.³⁷ He noted that it is an accessory to a lawyer's function but this can never substitute the value that real lawyering offers to justice seekers. He maintained that technology alone is not sufficient to close the justice gaps when the users are low-income earners. And if the users cannot apply the technologies without further assistance, then it is not an effective system for its delivery.³⁸ From an African perspective, Mahleka asserts that 'technology is not the whole answer'.³⁹ He noted that much as technology presents a huge potential to improve access to justice, it should blend with ADR mechanisms established in the community structures. The critical arguments raised by Brescia and Mahleka point out the need to consider a more human-centred and less profit-driven access to justice technologies in Uganda like a human rights-based approach – an area that this study seeks to address.

By pointing out the lacunas in Uganda's laws, Nanima argued that the objectives and the circumstances for the application of the Judicature (Visual-Audio Link) Rules do not contextualise the complete protection of an accused's right to a fair trial during emergencies.⁴⁰ He criticised the rules for not having any drafting history and recommended that when applying such laws, courts should look beyond the initial object of the Rules.⁴¹

Fountain discusses the impact of technologies in public institutions.⁴² She focused on how a positive reception of technologies by institutions' staff can influence their implementation and use for service delivery.⁴³ Fountain's literature builds a foundation for recommendations to duty-bearers such as courts and legal service providers who implement access to justice technologies in their institutions.

³⁷ RH. Brescia 'Using technology to improve rural access to justice' (2018) 17 *Law and Policy Journal* 60-63

³⁸ As above.

³⁹ T Mahleka 'Can technology be leveraged to improve access to justice' (2021) *Human Rights Pulse*.
<<https://www.humanrightspulse.com/mastercontentblog/can-technology-be-leveraged-to-improve-access-to-justice>> accessed 12 September 2022.

⁴⁰ RD Nanima 'A right to a fair trial in Uganda's Judicature (Visual-Audio Link) Rules: Embracing the challenges in the era of Covid-19' (2020) 46 *Commonwealth Law Bulletin* 329.

⁴¹ As above.

⁴² JE Fountain *Building the virtual state: Information technology and institutional change* (2004) 10-14.

⁴³ Fountain (n 42 above) 98.

While the views above have pointed out the importance, benefits, and challenges of access to justice technologies, they are yet to address how a HRBA can ensure effective access to justice technologies in Uganda. Therefore, this mini-dissertation modestly contributes to how to improve access to justice technologies in Uganda.

1.6 Methodology

This mini-dissertation uses desktop research to evaluate international and Ugandan legislation, academic literatures, jurisprudence from international human rights bodies and national courts, websites, government, and CSOs reports, and literatures relevant to HRBA to access to justice technologies in Uganda. Equally, a comparative methodology on laws, court decisions, and practices from the UK and Nigeria are considered to evaluate the roles of their duty-bearers in ensuring access to justice technologies.

1.7 Significance of the study

The study contributes to the debate on the roles of technology in promoting effective access to justice in Uganda. It provides an opportunity for duty-bearers who deploy access to justice technologies to ensure that HRBA becomes a core aspect of carrying out their responsibilities. The study considers Nigeria and the United Kingdom in this respect and calls on Ugandan duty-bearers to learn from their experiences when incorporating HRBA practices. In general, if the recommendations of this study are implemented by Uganda, it will facilitate a people-centred solution that improves rights-holders' interactivity with access to digital technologies.

1.8 Scope and limitations of the study

This research is limited to the assessment of a human rights-based approach to access to justice technologies in Uganda. References to general human rights principles and comparative experiences from the UK and Nigeria are made to show how HRBA to digital technologies can improve such an approach.

1.9 Chapterisation

This mini-dissertation is made up of five chapters. Chapter one introduces the study while chapter two analyses the conceptual basis for HRBA to access to justice technologies in Uganda. Chapter three discusses the legal frameworks, duty-bearers' obligations, and how they can ensure a HRBA to access to justice technologies in Uganda. Chapter four analyses how the duty-bearers in the UK and Nigeria fare in ensuring a HRBA to access to justice technologies in comparison to Uganda and the lessons that Uganda can draw from the UK and Nigeria. The fifth chapter summarises the mini-dissertation and recommended that Uganda duty-bearers should ensure effective legislation, deployment, and practices on access to justice technologies. It concludes that for Uganda to ensure HRBA to access to justice technologies, duty-bearers must place human rights principles at the core of their roles.

CHAPTER TWO: CONCEPTUALISING A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE TECHNOLOGIES IN UGANDA

2.1 Introduction

This chapter examines a human rights-based approach to access to justice technologies in Uganda. It seeks to respond to the first research sub-question on how a HRBA to access to justice technologies can be conceptualised in Uganda. As a result, this chapter is divided into five sections. The first section introduces the chapter while the second section presents an overview and scope of access to justice in Uganda. The third section discusses the HRBA as a concept and its relationship with access to justice while the fourth section examines the relationship between the HRBA, access to justice, and digital technologies in Uganda. The last section concluded and found that to conceptualise a HRBA to access to justice technologies in Uganda, the five HRBA principles should be mainstreamed into duty-bearers' obligations.

2.2 The concept of access to justice in Uganda: an overview

Generally, access to justice is a contested concept with unsettled meanings in many jurisdictions but that does not mean it does not have certain meanings.⁴⁴ According to Rukare, in the context of Uganda, access to justice is a means of accessing justice systems by citizens. He noted that 'access' encompasses all forms of physical, financial, technical, and psychological contacts, entry, and use of the legal system.⁴⁵

In *Okenyo Omwansa George & Another v Attorney General & Others [2012] eKLR*, the Kenyan High Court while defining access to justice in paragraph 88, stated that:

⁴⁴ KW Jemaneh 'Reconsidering access to justice in Ethiopia: Towards a human rights-based approach' (2014) 15.

⁴⁵ D Rukare 'The access to justice challenge in Uganda' in D Banik *Rights and legal empowerment in eradicating poverty* (2008) 111-112.

Access to justice is a broad concept that defies easy definition. It includes the enshrinement of rights in the law; awareness of and understanding of the law; easy availability of information pertinent to one's rights; equal right to the protection of those rights by the law enforcement agencies; easy access to the justice system particularly the formal adjudicatory processes; availability of physical legal infrastructure; affordability of legal services; provision of a conducive environment within the judicial system; expeditious disposal of cases and enforcement of judicial decisions without delay.

According to the United Nations Development Programme (UNDP), access to justice extends to all aspects of seeking and obtaining justice.⁴⁶ Equally, Gutterman noted that access to justice is a cross-cutting concept that must be understood and interpreted in line with rule of law, and equality, among other legal principles.⁴⁷ To Farrow, access to justice means different things to different people – it can mean access to lawyers or courts, understanding a legal right, and the ability to obtain a just outcome.⁴⁸

Therefore, the foregoing shows that access to justice has no single definition. But in the context of this mini-dissertation, effective access to justice may be considered as ways of removing barriers and impediments to fair treatment before, during, and after seeking justice. Owing to the fact that access to justice is considered from different perspectives, it may be conceptualised in broader ways in Uganda.

2.2.1 Access to justice as legal aid

Sometimes, access to justice is used interchangeably with legal aid.⁴⁹ The UN acknowledges legal aid as a key element of access to justice.⁵⁰ Legal aid refers to the provision of free legal assistance and services to people who are unable to afford the cost of legal representation and access to the court system.⁵¹ As stated by Breger, legal aid is defined as subject to the practices that shape its provision in each jurisdiction.⁵² Within the African human

⁴⁶ UNDP 'Access to justice Practice Note (2004) 4.

⁴⁷ A Gutterman *What Is access to justice?* (2022) 1.

⁴⁸ TCW Farrow 'What is access to justice?' (2014) 51 *Osgoode Hall Law Journal* 957.

⁴⁹ J Robins 'Access to justice is a fine concept. What does it mean in view of cuts legal aid?' *The Guardian* 5 October 2011 para 4.

⁵⁰ UNODC 'Access to Legal Aid' <<http://www.unodc.org/unodc/en/justice-and-prison-reform/legal-aid.html>> accessed 20 August 2022.

⁵¹ C Nanjala 'Determinants of effective legal aid service delivery in Kenya' *International Journal of Social Sciences* (2013) 1(5) 273.

⁵² MJ Breger 'Legal aid for the poor: A Conceptual Analysis' (1981) 60 *North Carolina Law Review* 281.

rights system, the Lilongwe Declaration on Accessing Legal Aid in Criminal Justice Systems in Africa 2004 defines it to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution.

In Uganda, the government of Uganda (GOU) provides free legal representation for indigent accused persons in capital cases through the State Brief Scheme (SBS).⁵³ Equally, the Uganda Law Society tasks all registered advocates to voluntarily handle at least one legal aid case in a year.⁵⁴ According to Winzer, law schools through their clinic projects can provide legal aid to enhance access to justice.⁵⁵ In Uganda, law schools including the Law Development Centre (LDC) issue a 'student practicing certificate' for their students to provide legal aid to indigent persons in Magistrate Courts under the supervision of a practising advocate.⁵⁶ This shows that legal aid is a pathway to access to justice and that access to justice can encompass the availability and provision of legal aid.⁵⁷

2.2.2 Access to justice as a legal protection

As means of legal protection, access to justice guarantees the right to seek a remedy before an independent court or tribunal established by law.⁵⁸ Francioni relates legal protection to the rule of law which calls on judges to act within the confines of the law while exercising their judicial powers.⁵⁹ This implies that access to justice primarily aims at protecting vulnerable groups from the unjust application of laws and ensures that laws are used to resolve legal problems.⁶⁰

However, full legal protection remains questionable as laws in Uganda are not being adapted to protect the poor from the abuse of its process. Equally, the laws applied by the courts are out-of-date and still carry the

⁵³ G Bamugereire & JC Sseremba 'A Review of the Uganda State Brief Scheme' (2013) 9.

⁵⁴ 'Pro Bono scheme|Uganda Law Society' <<https://www.uls.or.ug/pro-bono-scheme>> accessed 20 August 2022.

⁵⁵ S Wizner & J Aiken 'Teaching and doing: The role of law school clinics (2004) 73 *Fordham Law Review* 997.

⁵⁶ Reg 3-9 Advocates (Student Practice) Regulations.

⁵⁷ J Donoghue 'The rise of digital justice: Courtroom technology, public participation and access to justice' (2017) 80 *The Modern Law Review* 995.

⁵⁸ F Francioni *Access to justice as a human right* (2007) 5.

⁵⁹ Francioni (n 58 above) 5-6.

⁶⁰ J Robins (n 49 above).

footprints of colonial rules, hence accounting for the technicalities, delays, adjournments, and case backlogs.⁶¹ As such, Ugandans tend to lean more on the informal justice system such as the LCCS,⁶² and traditional or religious leaders for dispute resolution.⁶³

2.2.3 Access to justice as access to remedy

Access to justice also means the availability of remedies,⁶⁴ either from formal or informal justice mechanisms. Regardless of the justice mechanism, Farrow noted that the adjudicator should be capable of delivering justice and the test for their capabilities in dispensing effective justice depends on each particular case. According to Francioni, what counts is that informal avenues exhibit fairness, objectivity, and impartiality as of a judge.⁶⁵ Francioni's point may also be gleaned from the provisions of article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), which provides for administrative or legislative authorities as authorities capable of providing remedies.

2.2.3 Access to justice as just and equitable judicial outcomes

Access to justice also relates to procedures that ensure just and equitable judicial outcomes.⁶⁶ Conklin insists that legal processes should remain fair and neutral for all persons and that rules of procedures should determine how a dispute should be resolved. And if a fair procedure is adopted, a rebuttable presumption exists that the outcomes are just.⁶⁷

Taking gambling, as an example, Rawls theorised that the outcome of a gamble is considered just if the procedure of throwing the dice is fair, be it a loss or win, and the winner or loser takes it in good faith. Relating this to the context of access to justice, fairness is manifest if the decision-maker acts within the confines of

⁶¹ Rukare (n 45 above) 115.

⁶² Sections 3 of The Local Council Court Act 2006.

⁶³ As above.

⁶⁴ n 50 above.

⁶⁵ n 59 above.

⁶⁶ UNDP (n 47 above) 3.

⁶⁷ WE Conklin 'Whither justice - The common problematic of five models of access to justice' (2001) 19 *Windsor Yearbook of Access to Justice* 297.

established rules and procedures.⁶⁸ Therefore, achieving justice may be said to lie in the fairness of the procedure. This points to the judges to ensure equality by hearing both parties and making decisions based on their arguments and dictates of the law.⁶⁹

To illustrate this point better, the rules of natural justice demands that judges must be fair. Thus, a judge cannot hear a case if their impartiality has or might be compromised.⁷⁰ This position was elaborated on by the East African Court of Appeal in *Ndegwa v Nairobi Liquor Licensing Court (1957) EA 709* where it held that the actions of the two prosecutors were biased when they were witnesses and judges in the same cases for cancelling a liquor license. This decision portrays that judicial compromise results into an unjust outcome for the complainants hence defeating justice.

2.2.4 Access to justice as an alternative justice

The concept of access to justice includes those forms of ‘alternative’ justice in form of Alternative Dispute Resolution (ADR) through arbitration, mediation and negotiations. Alternative justice responds to the technicalities, costs, and delays that impede accessing justice before courts. Other notable challenges in the Uganda judiciary include underfunding, few courts, and judges. In the 2022/23 budget, the judiciary was allocated 381.6 billion Uganda Shillings which is by far less than the two other arms of government. The Chief Justice of Uganda once stated:

We find a lot of hardships in giving timely justice to Ugandans. When there are limited resources, manpower also becomes limited thus a disservice to the community. If I am given half of parliament’s budget, then judges and courts would be everywhere in the country.⁷¹

⁶⁸ J Rawls *A theory of justice* (1972) 85-87.

⁶⁹ n 58 above.

⁷⁰ CF Forsyth & W Wade *Administrative law* (2014) 373.

⁷¹ R Kabanza 'CJ Dollo decries poor funding to judiciary' *Monitor* 19 July 2022.

Equally, such gaps move duty-bearers to adopt innovative approaches like technologies as an alternative means for ensuring access to justice.⁷²

The above discussions illustrate that access to justice in Uganda is a cross-cutting concept with broader meanings attached to it by different people. It also concludes that access to justice is not limited to access to courts. As an evolving concept, access to justice intersects with other disciplines and the next section deals with how it intersects with human rights using the HRBA.

2.3 A human rights-based approach to access to justice in Uganda

The term 'human rights-based approach' emerged in the early 1990s.⁷³ Its origin can be traced to the UN Secretary General's call in 1977 to all UN agencies to mainstream human rights into their various activities.⁷⁴ As a result, the UNDP adopted HRBA in its access to justice reform programs to renew its practices with development actors.⁷⁵

By definition, HRBA is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promote and protect human rights.⁷⁶ In describing a HRBA, the UNDP noted that:

The central goal of development has been and will be the promotion of human well-being. Given that human rights define and defend human well-being, a rights-based approach to development provides both the conceptual and practical framework for the realization of human rights through the development process.⁷⁷

⁷² n 58 above.

⁷³ A Cornwall & C Nyamu-Musembi 'Putting the "rights-based approach" to development into perspective' (2004) 25 *Third World Quarterly* 1415.

⁷⁴ R Sudarshan *Avatars of rule of law and access to justice: Some Asian aspects* (2009) 668-681.

⁷⁵ UNDP 'Programming access to justice for all: A practitioners guide to a human rights-based approach to access to justice' (2005) 3.

⁷⁶ UNSDG 'Human Rights-Based Approach' <<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed 22 August 2022.

⁷⁷ UNDP 'A human rights-based approach to development programming in UNDP' 2015.

HRBA identifies rights-holders' rights and freedoms, translates their needs into rights, and places obligations on duty-bearers to ensure that rights-holders enjoy such rights.⁷⁸ It aims at empowering rights-holders to claim their rights and encourages duty-bearers to meet those obligations.⁷⁹ According to Molly & Aronson, HRBA is interpreted by its reliance on international human rights law as a source of normative commitments.⁸⁰ It is anchored in the protection and promotion of rights and addressing inequalities that hinder development.⁸¹ Additionally, HRBA principles are built on the understanding that States as primary duty-bearers codify rights into national laws to which citizens are entitled.⁸² Therefore, HRBA places human rights standards at the core of development, policy formulation, planning, and practices that empower underprivileged and marginalised groups.⁸³

However, critics have pointed out some weaknesses in HRBA. According to Makau, current human rights instruments were framed in the European perspective without multi-cultural debates, and these rights were exported into non-Western contexts.⁸⁴ Makau's argument resonates with the current trends of politically driven ratification of the human rights law instruments instead of a human rights motivation. Noting that it is upon these instruments that HRBA is founded, the politically motivated agenda makes it difficult to implement such provisions and this often defeats the HRBA in non-Western contexts including African countries.

Regardless of the above criticism, this mini-dissertation leans towards a HRBA and emphasises that HRBA applies to Uganda upon ratification and domestication of human rights treaties. Generally, HRBA is an elastic concept that applies in various contexts.⁸⁵ The United State Agency for International Development (USAID) noted

⁷⁸ As above.

⁷⁹ H Miller & R Redhead 'Beyond "rights-based approaches"? Employing a process and outcomes framework' (2019) 23 *International Journal of Human Rights* 699.

⁸⁰ MK Land & JD Aronson 'The promise and peril of human rights technology' in *New Technologies for Human Rights Law and Practice* (2018). 2-3.

⁸¹ USAID 'Applying rights-based approach: A practical how-to-note on integrating principles of empowerment into almost any development activity' (2018) 2.

⁸² USAID (n 81 above) 2.

⁸³ MC Branco 'Five principles for a human right-based to De-growth' (2013) *Portuguese Foundation Science & Technology* 7.

⁸⁴ M Mutua *Human rights: A political and cultural critique* (2002).

⁸⁵ J Tobin 'Understanding a human rights-based approach to matters involving children: Conceptual foundations and strategic considerations in A Invernizzi & J Williams (eds) *The Human rights of children: From visions to implementation* (2011) 64-65.

that HRBA principles can be integrated into almost any developmental activity.⁸⁶ Equally, Soken-Huberty noted that HRBA applies to healthcare, economic development, gender equality, education, and social justice among others.⁸⁷

Most importantly, HRBA brought in a new wave, ‘HRBA to access to justice’, a term which is increasingly gaining acceptance among international organisations and states as a reform measure for achieving access to justice.⁸⁸ Generally, HRBA to access to justice is premised on six salient indicators, namely (a) identification of the immediate access to justice gaps; (b) identification of rights-holders with consideration of the vulnerable persons; (c) categorisation of stakeholders into duty-bearers and rights-holders and signalling duty-bearers responsible; (d) analysing the capacity gaps of rights-holders and their ability to enforce their rights, and duty-bearers’ ability in meeting their obligations; (e) focusing on the ability of rights-holder and duty-bearer to address the issue; and (f) building strategies for capacity development, setting up of platforms that facilitate participation for all, especially those affected by an injustice through interventions guaranteed by human right laws and standards.⁸⁹

Relatedly, the UNDP recognises that a HRBA to access to justice enhances mechanisms for accountability and processes through which rights-holders can assert their rights.⁹⁰ Within the African context, Olowu noted that HRBA is based on international, regional, and national legal mechanisms.⁹¹ He perceived human rights as components of human development and a platform for their achievement.⁹² Olowu’s position is supported by a 2003 United Nations Sustainable Development Group (UNSDG) statement:

All programs of development co-operation, policies, and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.⁹³

⁸⁶ n 81 above, 3.

⁸⁷ E Soken-Huberty ‘What is a human rights-based approach?’ *Human Rights Careers* 28 March 2020.

⁸⁸ HP Schmitz ‘A human rights-based approach in practice: Evaluating NGO Development Efforts’ [2012] *Polity* 17.

⁸⁹ UNDP (n 75 above) 11.

⁹⁰ n 75 above, 5.

⁹¹ D Olowu *An integrative rights-based approach to human development in Africa* (2009) 17.

⁹² Olowu (n 91 above).

⁹³ UNSDG *The HRBA to development: Cooperation towards a common understanding among UN agencies* (2003) 3.

There are ongoing discussions on access to justice as a developmental agenda in SDG 16.3. Filmer-Wilson argues that HRBA is a pathway to fulfilling the SDGs,⁹⁴ meaning that access to justice as a developmental goal is achievable through HRBA. Additionally, access to justice and HRBA have their foundations in human rights and they are applied according to human principles – this leads to a conclusion that access to justice and HRBA complement each other towards a common goal of development.⁹⁵

Scholars have weighed in on HRBA to access to justice. Plantilla appraised access to justice as an appropriate avenue for applying a HRBA.⁹⁶ Theis argues that a HRBA promotes justice, equality, and freedom since its aims at tackling fundamental causes of poverty, injustices, and exploitations that hinder development.⁹⁷ Hickey & Mitlin also noted that situating rights with social justice opens multiple routes of working towards justice which is best achieved through a rights-based strategy.⁹⁸

Given these perspectives, it may be inferred that HRBA and social justice motivates individuals to defend their right. Considering the fact that alternative access to justice is being delivered through technologies, a HRBA becomes relevant in bridging the two.

2.4 Conceptualising a HRBA to access to justice technologies in Uganda

The previous discussion highlighted that access to justice delivery in Uganda is gradually shifting to the use of digital technologies.⁹⁹ Digital technologies are electronic tools, systems, devices, and resources that generate, store, and process data.¹⁰⁰ When these technologies are used for accessing justice, they are described as ‘access to justice

⁹⁴ E Filmer-Wilson ‘The human rights-based approach to development: The right to water’ (2005) 23 *Netherlands Quarterly of Human Rights* 213..

⁹⁵ UNDP Human Development Report: 2000 Human Rights & Human Development (2000) 9.

⁹⁶ JR Plantilla ‘Human rights-based approach to access to justice’ (2010) para 4.

⁹⁷ J Theis *Promoting rights-bases approaches: Experience and ideas from Asia and the Pacific* (2004) 18.

⁹⁸ S Hicky & D Mitlin ‘The potential and pitfalls of rights-based approaches to Development’ *Rights-based approaches to development: Exploring the Potential and Pitfalls* (2009) 36.

⁹⁹ ME Karsh & O Rabinovich-Einy *Digital justice: Technology and the internet of disputes* (2017) 4.

¹⁰⁰ Williams & E Gerald *Digital technology* (1986) 2-3.

technologies¹⁰¹ The UN acknowledges that technology accelerates the achievement of the SDGs.¹⁰² And SDG 9.4, targets 9B and 9C provides for the domestic development of technology and its universal access. This signifies that access to justice and technology are developmental agendas that are achievable through a HRBA. According to Moser and Norton, the application of a HRBA depends on the context and priorities that it aims to resolve.¹⁰³ In this context, it relates to how technology can be applied to meet the ends of justice.

In unravelling a HRA to access to justice technologies, HRBA principles must be placed at the core of each aspect of their design and deployment by duty-bearers. This ensures that their actions and access to justice technologies are human rights-complaint. HRBA principles relate to the human rights principles derived from the international human rights instruments including principles of universality and inalienability, indivisibility, interdependence and inter-relatedness, equality and non-discrimination, participation and inclusion, and accountability.¹⁰⁴

However, applying principles like universality at the national and organisational level is challenging due to variations in objectives, economic development, and socio-cultural values that results into different implementation strategies.¹⁰⁵ As a result, duty-bearers adopted similar principles or combinations that align with their objectives. For example, the Scottish Human Rights Commission (SHRC) broke down the HRBA into five principles of participation, accountability and transparency, non-discrimination, empowerment of rights-holders, and legality – widely known as PANEL.¹⁰⁶

¹⁰¹ D Hodson 'The role, benefits, and concerns of digital technology in family justice system' (2019) *Family Court Review* 425.

¹⁰² UN 'The impact of digital technologies' <<https://www.un.org/en/un75/impact-digital-technologies>> accessed 27 August 2022.

¹⁰³ C Moser & A Norton 'To claim our right: livelihood security, human rights and sustainable development' (2001) 12.

¹⁰⁴ P Van Weerelt, *A HRBA to development programming in UNDP- Adding the missing link* (2001) 6-8.

¹⁰⁵ Geneva Academy 'Universality in the human rights council: Challenges & achievements' 2016 1-4.

¹⁰⁶ SHRC 'A human rights-based approach: An introduction' (2019)

<https://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf> accessed 15 September 2022

The Swedish International Development Cooperation (SIDA), an international organisation working in Uganda adopted PLANET as its HRBA to digitalisation.¹⁰⁷ PLANET means participation, links to human rights obligations, accountability, non-discrimination, empowerment, and transparency. The foregoing shows that using the HRBA principle is dependent on the context and institutional objectives. In the context of this mini-dissertation, PANEL is preferred as its elasticity is its greatest virtue of a customised application to various approaches and disciplines and it presents a more holistic framework for shaping the practice of duty-bearers. Its simplicity, notoriety, directness, and wide usage in the UK which is further discussed in chapter four aligns with the mini-dissertation's objectives.

2.4.1 Participation

The principle of participation calls for rights-holders involvement in decision-making processes on matters that affect their rights.¹⁰⁸ It obligates duty-bearers to ensure rights-holders' active, free and meaningful participation.¹⁰⁹ Participation includes consultations, dialogue, partnership, and technical add-ons of rights-holders.¹¹⁰ In the Ugandan context, a participatory access to justice technology is one that is fit for addressing justice problems of rights-holders. This implies that the technology should be designed and deployed with rights-holders' inputs. By illustration, innovators ensure participatory design by conducting testing surveys, consultations, and community outreach to discuss the prospects and how the access to justice technologies fit right-holders' needs.

2.4.2 Accountability

The principle of accountability is a central element in HRBA.¹¹¹ It obligates states to be transparent.¹¹² Accountability shifts to non-state actors when they impose human rights obligations upon themselves.¹¹³ This

¹⁰⁷ SIDA 'Human rights-based approach and digitalisation' Thematic Support Unit (2022) 1.

¹⁰⁸ V Mosefi 'Public participation for sustainable development in local cities' (2010) 46 ISOCARP Congress Kenya 1-2.

¹⁰⁹ UN Declaration on the Right to Development Art 2(3).

¹¹⁰ OCHR 'Frequently Asked Questions on HRBA to development corporation' (2006) 26.

¹¹¹ P Alston 'Towards a human rights accountability' (2000) 2 *Journal of Human Development* 261.

¹¹² ICCPR Art 2(1), (2) & (3); ICESCR Art 2(1), (2) & (3).

¹¹³ A Berkes 'The human rights obligations of non-state actors' *International Human Rights Law Beyond State Territorial Control*

principle identifies duty-bearers at different levels and checks whether they have sufficient capacity and interest to be accountable to rights-holders. It equally questions if feedback or complaint mechanisms are in place for the duty rights-holders.¹¹⁴

It equally holds duty-bearers to account and calls them to act responsibly, in the public interest, and to accept criticism and proposals from rights-holders.¹¹⁵ Boisson de Chazournes noted that duty-bearers should be prudent when designing or deploying access to justice technologies.¹¹⁶ In the Uganda context, an accountable access to justice technology is one that considers public interest, with a feedback collection mechanism for progress and fault evaluation, and one that holds duty-bearers to account.

2.4.3 Non-discrimination and equality

HRBA's elements of inclusion, equality, and non-discrimination prohibits and eliminates any forms of discrimination against an individual or group irrespective of their particular characteristics.¹¹⁷ The UNHRC in General Comment 8 notes that:

Any distinction, exclusion, restriction, or preference which is based on any grounds such as race, colour, sex, language, religion, political or other opinions, national or social origin, birth or status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedom.¹¹⁸

It places an obligation on duty-bearers to ensure equal treatment and protection of rights-holders by and before the law.¹¹⁹ In the context of this mini-dissertation, HRBA calls on duty-bearers to ensure that access to

(2021) 15.

¹¹⁴ P Twomey 'Human rights-based approaches to development: towards accountability' in MBaderin & R McCorquodale (eds) *Economic, social, and cultural rights in action* (2007) 21.

¹¹⁵ C Lafont 'Accountability and global governance: Challenging the state-centric conception of human rights' (2010) 3 *Ethics & Global Politics* 193.

¹¹⁶ L Boisson de Chazournes 'New technologies, the precautionary principle, and public participation' (2009) *New Technologies and Human Rights* 164.

¹¹⁷ AP Vijapur 'The principle of non-discrimination in international human rights law: The meaning and scope of the concept' (1993) 49 *India Quarterly* 69.

¹¹⁸ UNHRC General Comment 8 on Non-Discrimination. Adopted at 37th Session UN Doc. HRI/GEN/1/Rev.6 at 146 (2003) para 1.

¹¹⁹ Mckean *Equality & discrimination under international law* (1983) 271-277: Article 21 Ugandan Constitution

justice technologies does not discriminate against any rights-holder. For example, innovators should contemplate persons with visual impairment who face difficulties in using mobile phones and indigent persons who cannot afford a smartphone as groups that may be excluded from using their technologies for accessing justice. Therefore, a non-discriminative access to justice technology in the Ugandan context is in multiple local languages, for wider geographical coverage, flexible, affordable, disability-friendly, and inclusive for all.

2.4.4 Empowerment

The HRBA principle of empowerment states that rights-holders should understand their rights, and be fully supported to take part in matters which affect their lives.¹²⁰ Empowerment aims at building the capacities of duty-bearers to fulfil the obligation and ensuring that rights-holders have the ability, knowledge, and skills to act independently when claiming their rights.¹²¹ Scadden noted that with technology, a mute person uses augmentative communication devices to speak on their own to other people.¹²² And Johnstone backed his argument using the ‘capability theory’ to illustrate how technologies integrated in terms of human needs and values make people able to perform tasks to their abilities.¹²³ These capabilities could not be achieved without the empowering aspects of technology.

In the Ugandan context, an empowering access to justice technologies is one that makes rights-holders become independent thinkers when dealing with their justice needs. For example, legal information provided on mobile apps should enable a layperson to ably file a suit in court or resolve disputes without the need for a lawyer.

¹²⁰ SHRC (n 106 above) 1.

¹²¹ OCHR (n 110 above) 3-4.

¹²² LA Scadden ‘Empowerment through technology’ (1999) 11 *Assistive Technology* 55-65.

¹²³ J Johnstone ‘Technology as empowerment: A capability approach to computer ethics’ (2007) 9 *Ethics & Information Technology* 73.

2.4.5 Legality

A HRBA requires that a national legal framework reflects human rights standards.¹²⁴ This means that laws, policies, and practices on access to justice technologies should conform to the standards enshrined in international human rights laws.¹²⁵ For example, the law may guarantee the inclusion of all rights-holders, or its provisions can hold duty-bearers to account.¹²⁶ Therefore, legality infers that Ugandan laws and practices that negate participation, non-discrimination, and accountability on access to justice technologies must be brought in line with human rights standards through a repeal, amendment, or enactment of corresponding legal standards.¹²⁷

2.5 Conclusion

The discussion in this chapter conceptualised a HRBA to access to justice technologies in Uganda and found that access to justice is a broad and cross-cutting concept, and achieving it means different things to different people. It equally concluded that access to justice technologies should be grounded in human rights. This chapter emphasised that achieving access to justice technologies can be greatly improved through a HRBA in Uganda. However, such approach requires a solid legal framework and the buy-in of duty bearers in Uganda. Therefore, the next chapter examines these legal frameworks and the obligations of duty-bearers in ensuring a HRBA to access to justice technologies in Uganda.

¹²⁴ UNDP (n 77 above) 39.

¹²⁵ n 106 above 1.

¹²⁶ n 110 above 39-40.

¹²⁷ n 77 above.

CHAPTER THREE:

THE ROLE OF DUTY-BEARERS IN ENSURING EFFECTIVE LEGISLATIVE FRAMEWORKS FOR ACCESS TO JUSTICE TECHNOLOGIES IN UGANDA

3.1 Introduction

As discussed in the previous chapter, achieving access to justice technologies is hinged on a HRBA but such an approach requires a strong legislative framework and the support of duty-bearers. In addressing the second sub-question, this chapter examines the legal framework of a HRBA to access to justice technologies and the role of duty-bearers in ensuring such an approach. Being divided into five sections, the first section introduces the chapter while the second section discusses the development of access to justice under international human rights law.

The third and fourth sections examine the international human rights framework and national legal framework on access to justice technologies in Uganda. The fifth section analyses how various duty-bearers effectively implement the legal provisions on access to justice technologies in Uganda. It concludes that duty-bearers can ensure a HRBA to access to justice technologies by incorporating the HRBA principles in their roles and learning from other jurisdictions such as Nigeria and the United Kingdom.

3.2 The development of access to justice under international human rights frameworks

The term ‘access to justice’ as it appears in international human rights today is fairly recent.¹²⁸ The development of human rights laws saw a shift from the earlier used term ‘effective remedy’ to ‘access to justice’.¹²⁹ The provisions in the Universal Declaration, ICCPR, European Convention on Human Rights (ECHR), and the African

¹²⁸ M Abate *et al.*, ‘Advancing access to justice for the poor and vulnerable through legal clinics in Ethiopia: Constraints and opportunities’ (2017) 11 *Mizan Law Review* 4.

¹²⁹ As above.

Charter on Human and Peoples' Rights (ACHPR) mention the term effective remedy.¹⁵⁰ Much as the term 'effective remedy' is mentioned throughout the above-stated treaties, 'access to justice' which has the closest meaning to the earlier term was what the draftsmen aimed at achieving.¹⁵¹ To support the above argument, Nchekwube noted that the rationale of the ACHPR in establishing the African Court and African Commission was to provide formal mechanisms for people in Africa to access justice for their human rights violations.¹⁵²

Years later, human rights treaties incorporated the term 'access to justice' in their texts. For example, the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters under article 9(1) and article 13 of the UN Convention on the Rights of Persons with Disability (CRPD) mentions the term access to justice. These instruments impose a positive obligation on state parties and establish firm parameters and standards which must be satisfied to fulfil the states' duties on the right of access to justice for rights-holders.

3.3 Uganda and the international human rights framework on access to justice technologies

In Uganda, article 123(1) of the 1995 Constitution of Uganda (Ugandan Constitution) empowers the President to ratify treaties on behalf of Uganda. Equally, article 123(2) mandates parliament to make laws domesticating ratified treaties. This provision confirms that Uganda is a dualist state and ratified treaties do not necessarily have a direct application, unless domesticated under the Ratification of Treaties Act, 1998.¹⁵³ However, courts in Uganda have always had a progressive interpretation, making ratified treaties self-executing.¹⁵⁴ As part of the international

¹⁵⁰ Art 2 & 9 ICCPR; Art 8 & 10 Universal Declaration; Art 3& 7 ACHPR; and Art 13 ECHR

¹⁵¹ V Lima & M Gomez 'Access to justice: Promoting the legal system as a human right' (2019) *Peace, Justice and Strong Institutions* 5.

¹⁵² CE Nchekwube 'Access to justice mechanism for individuals and groups under the African regional human rights systems: An appraisal' (2015) 8 *African Journal of Legal Studies* 115-144.

¹⁵³ Secs.1-6 RTA.

¹⁵⁴ M Killander & H Adjohoun 'International law and domestic human rights litigation in Africa: An introduction' (2010) *Pretoria University Law Press* 16.

community, Uganda ratified several treaties that have significant bearing and direct implications on the right to access to justice and technologies.

For example, the Universal Declaration recognises that every Ugandan has the right to an effective remedy before national tribunals for acts that violate their fundamental rights granted by the laws of Uganda.¹³⁵ Relatedly, the ICCPR guarantees Ugandans the right to an effective remedy for acts that violate their rights.¹³⁶ Article 14 calls for fairness, equality, and non-discrimination in the administration of justice, and article 14(3)(d) guarantees the right to free legal representation for criminal trials. This is being implemented through the provision of free legal assistance to those accused of capital offences under the SBS. However, the SBS is beset with several challenges which have limited its effectiveness and impact. Besides underfunding the SBS, lawyers contracted for SBS face delays in their low payments and some undertook industrial action of strike mid-way through the session. This accounts for the low turnout by advocates whenever a call for SBS is made.¹³⁷

Uganda as a state party to the CRPD must ensure effective access to justice for PWDs and recognise their legal capacity.¹³⁸ This provision is replicated in section 15 of Uganda's Persons with Disabilities Act 2019. Effective access to justice for PWDs includes adopting procedures that accommodate their direct and indirect participation, provision of sign-language interpreters, hearing aid, and customised mechanism for adducing evidence in courtrooms.¹³⁹ However, in Uganda only a few courts have sign-language experts and mentally handicapped persons cannot adequately access court with only 33 practising psychiatrists in Uganda, yet there are 112 districts each with courts.¹⁴⁰

¹³⁵ Art 8 Universal Declaration.

¹³⁶ Art 2(3)(a) ICCPR.

¹³⁷ Bamugerereire (n 53 above) 25-33.

¹³⁸ Art 12 & 13 CRPD.

¹³⁹ R White et al, 'Court accommodations for persons with severe communication disabilities: A legal scoping review' (2022) 27(2) *Psychology Public Policy and Law* 399.

¹⁴⁰ T Parbkaka 'Ensuring human rights-based access to justice for persons with mental disabilities' JLOS 2016

Much as the International Convention on Economic, Social, and Cultural Rights (CESCR) contains no express provision for the right of access to justice, its preamble reads that:

In accordance with the Universal Declaration, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights.¹⁴¹

To that effect, the Committee on Economic, Social, and Cultural Rights (CESCR Committee) interpreted the CESCR permeable to include all the appropriate means for seeking redress similar to those rights provided in the Universal Declaration and other treaties.¹⁴² However, states take advantage of article 2 CESCR to deliberately fail in fulfilling their obligations on grounds of limited resources. Yet the CESCR's rights on employees' rights to wages and workplace safety; right to food, health, and education have significant dispute prevalence which requires remedies. By laying emphasis, the Supreme Court of Uganda re-echoed the government's obligations under the CESCR in *CEHURD & Others v Attorney General, Constitutional Appeal No.1/2013*. This implies that the CESCR obligates Uganda to consider vulnerability and poverty as impeding factors for access to justice.

The Convention on the Rights of the Child (CRC) plays a significant role in ensuring that children, as one of the vulnerable groups, have access to justice.¹⁴³ Article 40(2)(b)(i) - (vii) provides that a child is to be informed promptly and directly in a language that they understand, the nature of charges against him or her or if appropriate through his or her parents or legal guardian. In addition, the UN Committee on the Rights of the Child noted that States need to adopt and implement effective child-sensitive procedures for children and their representatives as they pursue remedies for breaches of their rights.¹⁴⁴ To advance justice for children, the UN Secretary General's Guiding Note calls on states to ensure the non-discrimination of children in legal proceedings.¹⁴⁵ Notably, all these

¹⁴¹ Preamble CESCR Para 3.

¹⁴² CESCR Committee 'General Comment 9 on the domestic application of the Covenant' (1998) para 2.

¹⁴³ CRC Art 40(2).

¹⁴⁴ CRC 'General Comment 5' General measures of implementation of the Convention, para 24 (2003).

¹⁴⁵ Guidance Note of the Secretary-General: UN Approach to Justice for Children (2008) 2.

provisions automatically bestow upon a child the right to legal aid.¹⁴⁶ As a signatory to the CRC, the Children's Act of Uganda consolidates several of the standards enshrined in the CRC.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates Uganda to guarantee substantive equality for men and women in the exercise and enjoyment of fundamental rights and freedom.¹⁴⁷ The CEDAW Committee observed that access to justice for women encompasses justiciability, availability, accessibility, accountability of justice systems, and provision of remedies for victims.¹⁴⁸ However, the GoU has not fully ensured effective access to justice for women as they face challenges in accessing justice due to knowledge gaps and cost.¹⁴⁹

The African human rights system recognises and protects several rights, including the right to access to justice.¹⁵⁰ For example, article 7 of the ACHPR and article 8 of the Protocol on the Rights of Women in Africa (Maputo Protocol) provide for equal access to justice. A deeper look into the ACHPR guarantees the right to a fair and speedy trial, legal assistance, the right to an interpreter, and access to lawyers of the accused's choice at the State's expense. Unfortunately, Uganda has not deposited a declaration before the African Court as required by article 34(6) of the African Court Protocol and as such, Ugandans cannot access justice before the court.

The African Commission on Human and People's Rights' Resolution in 1999 on the Right to a Fair Trial and Legal Aid in Africa (the Dakar Declaration) emphasises the importance of access to justice as part of the right to a fair trial, and places the primary responsibility for ensuring legal aid in criminal cases on states to provide legal assistance to indigent persons in order to make the right to a fair trial more effective. Since reference is made not only to accused persons, but also to 'aggrieved persons', it is right to have an accommodative interpretation of the

¹⁴⁶ UN General Assembly 'Report of the United Nations High Commissioner for Human Rights: Access to justice for children' (2013).

¹⁴⁷ Article 2 & 3 CEDAW.

¹⁴⁸ CEDAW Committee 'General Recommendation 33 On women's access to justice' (2015) Para 1 & 2.

¹⁴⁹ The Uganda Judiciary *Women's access to justice in Uganda* (2016) 129-137.

¹⁵⁰ C Heyns & M Killander 'The African regional human rights system' in *international protection of human rights: Achievements and challenges* (2006) 512-514.

declaration to probably be understood as stipulating a duty for the state to provide legal aid services to other persons, such as victims of certain crimes and persons with certain civil claims.

Further, the Dakar Declaration recommends that state parties to the African Charter urgently examine ways in which legal assistance could be extended to indigent accused persons, including through adequately funded public defender and legal aid schemes. Among others it also recommends that the state parties in collaboration with bar associations and NGOs enable innovative and additional legal assistance programs to be established including allowing paralegals to provide legal assistance to indigent suspects at the pre-trial stage and pro bono representation for accused in criminal proceedings and it clearly articulates a need for the state parties to encourage “the contribution of the judiciary, human rights NGOs and professional associations in delivering legal aid.

Further commitments to addressing access to justice challenges at the international fora saw political leaders recognising access to justice as one of the SDGs to be achieved by 2030. The SDGs represent the global collective efforts to address contemporary challenges on poverty, hunger, and human rights enlisted in the form of 17 goals and 69 strategies. Goal 16 which focuses on peace, justice, and strong institutions recognises access to justice challenges as a threat to sustainable development making it target 16.3 in ensuring access to justice for all.

Given this background, international human rights frameworks recognise the use of technologies for justice. For example, the UN Charter of Economic Rights and Duties of States provides for co-operation in sharing the benefit of technologies and their transfer to developing countries.¹⁵¹ Equally, the UN Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind calls on states to

¹⁵¹ Article 13.

prevent the use of technologies in limiting the enjoyment of human rights,¹⁵² and this includes the right to access to justice.

For non-state actors, principle 4 of the UN Guiding Principles on the Age of Technology obligates corporations to exercise due diligence while advancing technologies and must have risk mitigation strategies. Additionally, article 66(2) of the Agreement on Trade-related aspects of Intellectual Property Rights (TRIPs Agreement) obligates developed countries to encourage enterprises in their territories to transfer technology to least developed countries. This provision enables countries like Uganda to create a sound and viable technological base, which can be used for accessing justice. However, the effectiveness of the implementation of this provision depends on the terms and conditions under which the transfer of technology takes place.¹⁵³ Regrettably, Ugandans cannot benefit from this provision since the GoU has placed a ban on the use of Facebook since 2021.¹⁵⁴

Equally, Aspiration#3 of the AU Agenda 2063 states that by 2063, Africa should attain affordable and timely access to justice for all.¹⁵⁵ And Aspiration#1 recognises the role of science, technology, and innovation in helping Africa achieve sustainable development.¹⁵⁶ Since access to justice is a development goal, it implies that the AU Agenda supports the use of access to justice technologies.

However, the above legal frameworks do not expressly provide for access to justice technologies which poses a challenge in placing obligations on duty-bearers in Uganda.

¹⁵² Article 2.

¹⁵³ C Carlos 'Review of the TRIPs Agreement: Fostering the transfer of technology to developing countries' (1999) 2(6) *The Journal of World Intellectual Property* 939-960.

¹⁵⁴ AA Wadero 'Facebook to remain shut as govt talks with tech giant stall' *Monitor* 12 August 2022

¹⁵⁵ AU Agenda 2063, 'The Africa We Want' (2015) 33-35.

¹⁵⁶ Agenda 2063 (n 155 above) 30.

3.4 National legal framework on access to justice technologies in Uganda

The Ugandan Constitution *prima facie* reflects the progressive aspirations of the international human rights systems in Chapter four which is dedicated to the protection of human rights. Notably, the provisions of article 50 guarantees remedy for human rights violations, it reads:

Any person who claims that his or her fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation.

Furthermore, article 126(1) obligates the judiciary to interpret the laws and act in conformity with the laws and wills of the people. Article 126 (2) lays down the principles that govern courts in the exercise of judicial powers as follows:

In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles– (a) justice shall be done to all irrespective of their social or economic status; (b) justice shall not be delayed; (c) adequate compensation shall be awarded to victims of wrongs; (d) reconciliation between parties shall be promoted; (e) substantive justice shall be administered without undue regard to technicalities.

Relatedly, the constitution recognised the role of the executive in access to justice. Article 120 establishes the Office of the Director of Public Prosecution (ODPP) to ensure criminal justice by prosecuting crimes committed in Uganda. Article 120(5) obligates the DPP to act in the public interest, and the interest of justice and to prevent abuse of legal processes in prosecutions. However, criminal prosecution in Uganda registers failures of poor investigation, bribery, and loss of criminal record files and evidence.¹⁵⁷ This accounts for the high rate of mob justice since the public abhors court procedures.¹⁵⁸

Article 28 of the Constitution remains at the heart of access to justice in Uganda. As an anchor for procedural and substantive access to justice, article 28 guarantees the right to a fair, speedy, and public hearing

¹⁵⁷ T Independent 'Prosecutor arraigned in court over UGX 1.5million bribe' *The Independent Uganda*, 17 March 2022 <<https://www.independent.co.ug/prosecutor-arraigned-in-court-over-ugx-1-5million-bribe/>> accessed 19 October 2022.

¹⁵⁸ SS Mutabazi *Mob Justice in Uganda: Lack of faith in the judicial process: Communities taking the law in their hands* (2012) 14.

and it entitles an individual charged with a capital offence free legal representation at the expense of the State.¹⁵⁹ However, free legal representation under the SBS simply allocates an advocate to the accused person hence limiting the accused person's right to choose a lawyer.

The provision of article 127 guarantees the participation of people in the administration of justice in open court. However, instances, where proceedings are conducted in the judge's chambers, limit public participation. Whereas judicial independence is provided under article 128, the reality is that the Ugandan judiciary is faced with excessive interference by the executive.¹⁶⁰ Notable examples are when suspects are re-arrested by the military after their release on bail by courts.¹⁶¹

On the use of technologies, Objective XI of the National Objectives and Directive Principles of State Policy provides that Uganda shall stimulate technological and scientific development by adopting appropriate policies and laws. Notably, Odoki argues that the National Objectives as a link between the state and societies make the state more responsive to their social needs.¹⁶²

Other than the Constitution, laws made by parliament under article 79(1) of the Constitution provide for access to justice. For example, the Poor Persons Defence Act replicates article 28 of the Constitution to guarantee indigent persons the right to free legal representation. Similarly, section 15A of the Advocate Act 2002 whose provision is read together with the Advocates (Pro-bono Services to Indigent Persons) Regulations 2009 requires all advocates to give pro-bono services for at least forty hours per year or pay money in lieu thereof. And the Advocates (Student Practice) Regulation 2004 allows LDC students to provide legal aid in Magistrates Courts under the supervision of a practising advocate.¹⁶³

¹⁵⁹ Article 28(3)(e).

¹⁶⁰ A Ssensikombi 'The independence of the judiciary: An Assessment of the reality of constitutional doctrine in Uganda' (2017) 5.

¹⁶¹ E Biryabarema 'Ugandan author and Museveni critic re-arrested after freedom ruling' *Reuters* 25 January 2022.

¹⁶² BJ Odoki *The search for national consensus: The making of the 1995 Constitution* (2005) 299.

¹⁶³ Reg 3-9.

Equally, the Civil Procedure Rules (CPR) recognises the legal status of minors and persons of unsound mind to sue and defend a civil suit through next of friend or *guardian ad litem*.¹⁶⁴ It also recognises and exempts paupers from paying court fees.¹⁶⁵ However, the challenges of pauper suits come with proof of impecuniosity and the tedious pauper application which makes it difficult for indigent justice seekers to institute suits without pursuing further legal costs.

Other laws establish and regulate access to justice institutions. The Magistrates' Courts Act establishes the Magistrates Court and the Labour Disputes (Arbitration and Settlement) Act establishes the Industrial Court for labour-related disputes. In 2019, the Human Rights Enforcement Act made the UHRC and High Court platforms for seeking redress for human rights violations and the Local Council Court Act (LCCA) establishes the local council courts to resolve disputes at the grassroots level.¹⁶⁶

Much as the national laws on access to justice exists on paper, their ineffective implementation leaves a huge gap between the law and practices.¹⁶⁷ The reality is that legal aid service provision, decentralising, and administration of court require a considerable amount of funding, and the GoU has not committed adequate funds to implement these laws.¹⁶⁸ This has even hampered the provision of accommodative facilities for PWDs in courts.

On the use of access to justice technology, the National Information Technology Authority Act (NITA-U) regulates the use, development, and regulation of technology in all public institutions including the courts.¹⁶⁹ The Electronic Transaction Act facilitates the use of electronic tools and section 5 provides for the admissibility of electronic or digital evidence whose information is wholly or partly in the form of a data message in courts. And section 274 of the Companies Act recognises the service of court processes electronically through email.

¹⁶⁴ Order 32 Rules 1 & 2 CPR.

¹⁶⁵ Order 33 CPR.

¹⁶⁶ Secs 3, 9 & 24 LCCA.

¹⁶⁷ n 7 above.

¹⁶⁸ n 53 above.

¹⁶⁹ Secs 5(a) – (f) NITA-U.

3.5 The role of duty-bearers in ensuring a HRBA to access justice technologies in Uganda

As previously discussed, the central aspect of a HRBA lies in situating rights-holders in the design and deployment of access to justice technologies however this cannot be achieved without duty-bearers. Central to the idea of human rights is establishing and sustaining the relationship between the rights-holder and the duty-bearer.

In this regard, a duty-bearer is the person(s), actor(s) or institution(s) which have a particular obligation(s) and responsibilities in relation to the realisation of a right and to abstain from human rights violations, such as the right to access to justice.¹⁷⁰ The term is most commonly used to refer to State actors and when a state has ratified a treaty that guarantees the right, it has the obligation to respect, protect, and fulfil the right enshrined in the provisions of that treaty.¹⁷¹

According to international law, other actors also have responsibilities in upholding the right to access to justice: multilateral intergovernmental agencies in providing technical and financial assistance; international financial institutions in their policies, credit agreements, structural adjustment programs, and measures taken in response to the debt crisis; private businesses also have the responsibility to respect human rights and avoid infringing on the rights of others; civil society plays a crucial role in promoting the right to education and holding the State accountable for its obligations; and parents have the similar responsibility over their children.¹⁷²

As actors having a particular obligation(s) concerning the realisation of a right,¹⁷³ duty-bearers include state actors and non-state actors.¹⁷⁴ In the context of this min-dissertation, state actors include persons or institutions that act

¹⁷⁰ W Vandenhoe & W van Genugten 'Introduction: an emerging multi-duty-bearer human rights regime?' *Challenging Territoriality in Human Rights Law* (2015) 1.

DP Mirembe *et al*, 'Using ICTs to enhance duty bearer accountability and transparency to citizens in Eastern and Northern Uganda' (2019) 3 *International Journal of Information Technology, Communications and Convergence* 228.

¹⁷² Vandenhoe (n 170 above) 3-5.

¹⁷³ R Hammonds *et al* 'Reconceptualizing human rights duty-bearers' *The SAGE Handbook of Human Rights* 2 (2014) 1031-1046.

¹⁷⁴ N Blanchet-Cohen & C Bedeaux 'Towards a rights-based approach to youth programs: Duty-bearers' perspectives' (2014) 38

on behalf of the executive, judiciary, and legislature as arms of the GoU in ensuring access to justice technologies for rights-holders. These include the parliament; the executive through ministries, the ODPP, the Uganda Police; and the judiciary through courts, JLOS, and other institutions established by law.

Concerning the role of state actors as primary duty-bearers, Beitz noted that ‘...the central idea of international human rights is that states are responsible for satisfying certain conditions in their treatment of their people...’¹⁷⁵ However, Beitz’s point can also be extended towards non-state actors as duty-bearers. Berkes defines non-state actors as private entities that are outside the control of a sovereign government.¹⁷⁶ She argued that when non-state actors impose human rights obligations on themselves, they instigate similar duties as that of the state.¹⁷⁷

There are several non-state actors in Uganda that ensure access to justice technologies including NGOs, CSOs, LSPs, entrepreneurs; and individuals can be evaluated as duty-bearers.¹⁷⁸ Given this background, the roles of state actors and non-state actors in ensuring a HRBA to access to justice technologies are discussed below.

3.5.1 The role of state actors in Uganda

The benefits of technology in aiding communication, executing tasks, administration, and service delivery in many countries are finding roots in Uganda. To catch up with the pace of technology, the GOU introduced e-Government to harness the use of ICT in service delivery, governance, and the development of Uganda.¹⁷⁹ This laid a foundation for the use of technology for Ugandan duty-bearers including those in the justice sector.¹⁸⁰ With that, the three arms of government in Uganda ensure a HRBA to access to justice technologies as follows;

Children and Youth Services Review 75.

¹⁷⁵ C Beitz *The Idea of Human Rights* (2009) 13. See: Art 2(1), (2) & (3) ICCPR; Art 2(1), (2) & (3) ICESCR.

¹⁷⁶ A Berkes ‘The Human rights obligations of non-state actors’ *International Human Rights Law Beyond State Territorial Control* (2021) 15.

¹⁷⁷ As above.

¹⁷⁸ A Gosselin ‘Global poverty and responsibility: Identifying the duty-bearers of human rights’ (2006) 8 *Human Rights Review* 39.

¹⁷⁹ J Ssempebwa & M Lubulwa ‘E-government for development: Implementation challenges of Uganda’s national backbone infrastructure project and key lessons’ (2011) *IST-Africa Conference Proceedings* 3-4.

¹⁸⁰ Ministry of ICT & National Guidance ‘Uganda e-Government Master Plan’ (2012) 1-7.

Executive role

The executive established under Chapter seven of the Constitution comprises of cabinet and state ministries that formulate and implement policies. In ensuring access to justice technologies, the MoICT set up digital technology initiatives, the 'Digital Transformation Centre' and 'Support for Innovations' to support innovators whose technological solutions address social problems and improve service delivery with funds and research opportunities.¹⁸¹ However, the MoICT has not been transparent in choosing the innovators for the funding opportunities. Selection processes are politicised with allegations of tribalism, nepotism, and corruption.¹⁸² This excludes rights-holders from meaningful participation in opportunities and exhibits failure in accountability. Besides banning social media platforms like Facebook, the executive places high tariffs on internet services and frequently issues directives to telecommunication companies to shutdown the internet.¹⁸³ These limits the participation of rights-holders on access to justice technologies.

Equally, the ODPP launched the Prosecution Case Management System (PROCAMIS) to capture, store and update records of suspects and case details online.¹⁸⁴ PROCAMIS posts this information to an online database that can be accessed by defence lawyers. In conjunction with the Uganda Police, biometrics of suspects are always captured while in detention. However, few people know of PROCAMIS and the suspects are not given reasons for capturing their biometrics which violates their rights to privacy.¹⁸⁵ To date, PROCAMIS is a silent technology after taxpayer's revenue of 10 billion Uganda Shillings was spent to design it.¹⁸⁶

¹⁸¹ 'Support for Innovation - Ministry of ICT & National Guidance' <<https://ict.go.ug/initiatives/support-for-innovation/>> accessed 5 September 2022.

¹⁸² R Todwong 'Ugandans disgusted by corruption, nepotism in government' *Monitor*, 12 January 2021.

¹⁸³ N Bhalla & A McCool '100 hours in the dark: How an election internet blackout hit poor Ugandans' *Reuters* 20 January 2021.

¹⁸⁴ K Reagan 'The launching of ODPP computerised prosecution case management system (PROCAMIS)' *ODPP* 03 April 2018.

¹⁸⁵ D Kimathi 'DPP on spot over delayed prosecution case management system implementation' *ChimpReports* 26 August 2019.

¹⁸⁶ As above.

Legislative role

The parliament of Uganda as established under article 77 of the Constitution has the power to legislate on access to justice technologies. As a process of making such laws, the members of parliament (MPs) ensure that rights-holders participate through public consultations. Upon consultations, MPs must debate the bill according to the wills of rights-holders in a parliamentary sitting. During the drafting of these laws, parliament ensures they are human rights compliant and as discussed above, parliament has enacted some laws on access to justice.

However, there are no laws enacted by parliament on access to justice technologies leaving gaps in situating duty-bearers and their obligations. Regrettably, parliament does not prioritise legislating laws on the needs of the citizens. This is seen by the snail speed on the National Legal Aids Bill which has not been passed into law since 2011.¹⁸⁷ Yet the Computer Misuse Bill 2022, has been assented to at a faster pace.¹⁸⁸

Additionally, MPs ensure accountability by giving or collecting rights-holders' feedback through their 'pigeonhole' in the parliament building and the rights-holders face difficulties in accessing MPs since most of them live in Kampala and their upcountry offices are always closed. This makes it difficult for those living in rural areas to fully participate in the legislative process regarding access to justice technologies.

Judicial role

The judiciary is established under chapter eight of the Ugandan Constitution with the power to administer justice. Through the e-Government policy, the judiciary embraced the use of ICT for 'e-justice'.¹⁸⁹ According to Kitoogo and Bitwayiki, e-justice seeks to improve service delivery and collaboration between all justice players through ICT.¹⁹⁰ To ensure the use of access to justice technologies, the judiciary issued the Judicature (Visual-Audio Link) Rules, 2016 (VA Rules) as a court visual-audio link channel for hearing and determining disputes online, and the

¹⁸⁷ K Kazibwe 'Uganda: MPs, CSOs awaken plans to table national legal aid bill before Parliament again' *AllAfrica* 31 May 2022.

¹⁸⁸ **As above.**

¹⁸⁹ E-Government Master Plan (n 180 above) 113.

¹⁹⁰ FE Kitoogo & C Bitwayiki *E-Justice implementation at a national scale - Uganda* (2010) 1-3.

Constitution (Integration of ICT into the Adjudication process for courts of Judicature) (Practice Directions) to facilitate the use of technology in courts.¹⁹¹ In that Practice Direction, Rule 5 reads that:

In every judicial proceeding, the court and the parties to the case may, as much as possible, use technology to expedite the proceedings and make them more efficient and effective.

In exercising its roles, the High Court of Uganda in *Male Mabirizi v Attorney General of Uganda*,¹⁹² re-affirmed the use of technology. The application sought orders for setting aside Miscellaneous Application No. 843/2021 which was served through an email. The applicant argued that service by email is not one of the modes provided by the CPR. In the ruling, the court reasoned that Order 5 Rule 1 of the CPR granted the court powers to make orders for substitute service to a party in such other manners as the court thinks fit.

A similar progressive interpretation was in *Waira James v Kubeketerya James & Electoral Commission*,¹⁹³ where a court clerk served a summon via WhatsApp and it showed a 'blue tick' on the sender's phone.¹⁹⁴ The court in its ruling noted that having a 'blue tick' on the sender's end was indicative that the WhatsApp message had been seen and held it as an effective service. The court ordered the Registrar to post the ruling of this Petition onto the WhatsApp groups of Advocates.¹⁹⁵ Logically, one would question why the above controversies would exist if the public were aware or widely participated before the deployment of these technologies. This implies the judiciary does not actively engage the rights-holders for the technologies it adopts.

Additionally, the judiciary adopted the Electronic Court Case Management Information System (ECCMIS) to facilitate e-filing in court, e-payment, mobile phone access via Short Message Service (SMS), Unstructured Supplementary Service Data (USSD), and email.¹⁹⁶ ECCMIS implementation report shows that no public

¹⁹¹ Objective 3(a) and Rule 5 & 5(a).

¹⁹² High Court Mics. Application No. 918/2021

¹⁹³ Election Petition Application No. 16 & 17 of 2021.

¹⁹⁴ A blue tick is one of the primary features of WhatsApp, a messaging application, which lets the sender know if the receiver has seen the message or not.

¹⁹⁵ *Waira* Case (n 193 above) para. 390.

¹⁹⁶ The Judiciary 'About ECCMIS' <<http://judiciary.go.ug/data/smenu/143/About%20ECCMIS.html>> accessed 8 September 2022.

consultation or training was done before it is launched.¹⁹⁷ Currently, ECCMIS is being launched in the central region of Uganda which implies that courts in the other 3 regions are not prioritised and are being excluded from the benefits of ECCMIS. Although the Uganda Judiciary rushed to deploy ECCMIS, the judiciary decries poor funding from the GoU.¹⁹⁸ As such, there is a likelihood of delay in decentralising these technologies to other regions.

3.5.2 The role of non-state actors in Uganda

The future of access to justice in Uganda can be largely credited to non-state actors who have been instrumental in advancing legal aid services to rights-holders. They equally pioneered the deployment of access to justice technologies as a strategy for narrowing justice gaps in Uganda.¹⁹⁹ As such, non-state actors in Uganda have mixed roles, for example, a CSOs may be a LSP and an innovator at the same time or vice-versa, and their roles are discussed below;

Legal start-ups' role (innovators)

Legal start-ups develop access to justice technologies either from scratch or by remodelling existing technologies for accessing justice. As a result, several mobile and web-based applications have been streamlined for accessing justice. For example, the ULS developed a legal aid mobile app, 'PulidaWo' that facilitates a 24-hours interaction between rights-holders and advocates.²⁰⁰ Equally, the legal podcast, a remodelled innovation by Legal Hub Uganda provides audio legal information to rights-holders in English and the local languages of Luganda, Acholi, and Ateso. The audio clip is compatible with social media sharing, compact discs (CDs), transferable between users via Bluetooth and USB stick, and is played on partner radio stations. In the last minutes of each podcast, Legal Hub's telephone contacts read out to the listeners for feedback purposes.

¹⁹⁷ The Judiciary 'ECCMIS monthly implementation review report March 2022' 21 April 2022.

¹⁹⁸ Kabanza (n 71 above).

¹⁹⁹ HiiL (n 18 above).

²⁰⁰ N Mwambazi 'Uganda Law Society launches "PulidaWo" app to provide free legal services to poor Ugandans' *Matooke Republic* 28 June 2019.

The specification of Legal Hub's podcast fairly depicts a HRBA to access to justice technologies. Through it, rights-holders are to a larger extent ensured participation and accountability through the feedback. Its wide means of sharing, enable rights-holders without smartphones to access the podcast using a simple phone, or radio which is an inclusive means of empowering rights-holders with legal information. Regrettably, the ULS app operates in English language yet 98% of rights-holder in rural areas of Uganda hardly comprehend English.²⁰¹ This resonates with Brescia's arguments that the reliance on digital systems for the delivery of legal services requires it to be presented in ways that are 'fluent to the user'.²⁰² Equally, the app requires electricity and internet to function,²⁰³ which are arduous in Uganda's electricity distribution gap of 85%,²⁰⁴ and uneven network coverage.²⁰⁵ Upon finding a lawyer, the legal fee is as high as that charged to a walk-in client hence not fit for indigent justice seekers.

Legal service providers' role

Practices adopted by LSPs including lawyers, CSOs, and legal start-ups demonstrate how they use videoconferencing technologies of Skype, Zoom, and Google Meet to interview clients, resolve disputes and negotiate.²⁰⁶ Equally, lawyers use ODR to resolve commercial and other non-contentious disputes.²⁰⁷ The ODR replicates the ADR mechanisms in resolving disputes which ensures access to justice through e-negotiations, e-mediation, and e-arbitrations.²⁰⁸ Equally, LSPs use mobile services of SMS, USSD, and toll-free services to ensure access to justice.²⁰⁹ For example, Lawyers 4 Farmers (L4F) provides legal information, guidance, and response to

²⁰¹ M Bikala 'Literacy campaign starts in rural areas' *New Vision* 13 September 2022.

²⁰² Brescia (n 38 above) 62.

²⁰³ WS Baer *et al* *Electricity requirements for a digital society* (2002) 1-5.

²⁰⁴ USAID 'Uganda electricity supply acceleration increases energy access in Uganda' (2022) 1.

²⁰⁵ Research ICT Africa 'The state of ICT in Uganda' (2019) iv.

²⁰⁶ B Mukasa 'Technology & the law practice: Emerging trends and opportunities' *Kampala Associated Advocates* 23 January 2020.

²⁰⁷ R Cupido 'ODR: An African perspective' (2016) 2 *Scientific Cooperations International Journal of Law and Politics* 26.

²⁰⁸ E Zlantanska & JC Betancourt 'ODR: What Is It, and Is It the Way Forward?' (2013) 79 *International Journal of Arbitrators* 256.

²⁰⁹ B Bafana 'Uganda: Lawyers go digital to reach women farmers' (2019) 92 *Spore* 26-28.

legal problems of farmers via SMS for less than 1 Euro.²¹⁰ However, L4F's technology discriminates against the wide section of non-farmers that face similar or more pressing justice challenges in Uganda.²¹¹

Another possible challenge for such service is the provision of section 74 (1)(f) of the Advocate Act which prohibits advocates from advertising their professional service. By usage, the provision of legal services through the PulidaWo App displays particulars of a lawyer including the name, area of specialisation, and the legal fee which amounts to an advert. This subjects an advocate to disciplinary action before the Law Council who upon a hearing may nullify their practising certificate. As of 2021, only 54 advocates had enrolled for the PulidaWo app.²¹² Meaning that the 5950 advocates fear conflicting with the law.

3.8 Conclusion

This chapter discussed the legislative framework for access to justice technologies and found that the frameworks guarantee Ugandan rights-holders the right to access justice and establishes obligations for duty-bearers in Uganda. It found that the frameworks have no express provision for access to justice technologies and calls for a progressive and accommodative interpretation of these laws. Equally, the chapter calls for the repeal of sections 74(f) of the Advocate Act, and amendment of the CPR by adding provisions on access to justice technologies. The next chapter examines how duty-bearers in other jurisdictions ensure a HRBA to access to justice technologies and the lessons Uganda can draw from them.

²¹⁰ As above.

²¹¹ As above.

²¹² ULS 'Legal aid project annual report' (2021) 25.

CHAPTER FOUR:

A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE TECHNOLOGIES IN THE UNITED KINGDOM AND NIGERIA: LESSONS FOR UGANDA

4.1 Introduction

This chapter seeks to draw lessons from Nigeria and the United Kingdom on how to ensure a HRBA to access to justice technologies for Uganda. It argues that in spite of the presence of various attempts of achieving access to justice technologies, the Ugandan legal regime and practices has not adequately kept pace with a HRBA hence the experiences of Nigeria and the UK will be examined so as to draw lessons for Uganda. This mini-dissertation chose Nigeria and the UK because they are among the leading countries using access to justice technologies in Europe and Africa respectively,²¹⁵ and with a similar legal system as that of Uganda. Therefore, drawing lessons from both can benefit Uganda.

Addressing the third research sub-question on: what can Uganda learn from duty-bearers in Nigeria and the UK on how to ensure such an approach? This chapter is divided into five sections. The first section introduces the chapter, and the second and third sections discuss the role of duty-bearers in Nigeria and the UK respectively. The fourth section makes a comparative analysis to identify the differences and similarities among the countries. The fifth section discusses the lessons that Uganda can learn from both countries and the sixth section concludes by discussing the potential outcomes of a HRBA to access to justice technologies in ensuring effective access to justice in Uganda.

This chapter further contends that for a HRBA to access to justice technologies to be adequately implemented in a country like Uganda, a mere comprehensive law is insufficient. There is the need for sectorial and

²¹⁵ The UK Government 'UK tech sector achieves best year ever as success feeds cities outside London' (2021)
<<https://www.gov.uk/government/news/uk-tech-sector-achieves-best-year-ever-as-success-feeds-cities-outside-london>>

institutional reforms. Most of all, the rights-holders must be carried along. Consequently, issues of implementation and enforcement of the lessons from Nigeria and the UK will form the crux of this chapter.

4.2 The role of duty-bearers in ensuring a HRBA to access to justice technologies in the UK

Since 2007, access to justice technologies platforms in the UK emerged to solve marriage, landlord-tenant, and civil disputes.²¹⁴ To date, they are provided by state and non-state actors working with a common idea to improve access to justice. The state actors include persons or institutions acting on behalf of the UK government under the executive, legislative, and judiciary while the non-state actors include LSPs and start-ups. Their roles in ensuring a HRBA to access to justice technologies are discussed as below;

4.2.1 The role of State actors in the UK

State actors in the UK including the executive, judiciary, and the UK Parliament who have formulated policies, legislated, and deployed technologies in fulfilling their access to justice obligations.

Executive role

The UK executive comprises of the Crown (His Majesty's Government) and the UK Government, and their role is to formulate and implement policies. On access to justice technology, the executive formulated and implemented policies as strategies to ensure a HRBA access to justice technologies. The 2020 Digital Strategy acknowledges that technology must be used to push for SDG and the promotion of human rights.²¹⁵ It ensures that everyone can access digital tools, skills, and participates in digital programs like the access to justice technologies. By implementation, the executive invested £2.5 million in training initiatives, 'Widening Digital Participation' to empower rights-holders with digital skills and this trained about 150,000 individuals with digital skills which empowers them to use access to justice technologies independently.²¹⁶ Equally, the executive invested £25 million

²¹⁴ SP de Souza & M Spohr *Technology, Innovation and Access to Justice: Dialogues on the Future of Law* (2021) 4-5.

²¹⁵ The UK Government 'UK Digital Strategy 2022' (2022) 74.

²¹⁶ UK Digital Strategy (n 215 above) 16.

in digital infrastructures to support innovators with funds and research to innovate human rights compliant technologies.²¹⁷

To regulate technological development, the Technology Code of Practice (TCoP) was formulated by the executive as criteria for designing and building technology.²¹⁸ The TCoP ensures that all technology projects and programs including that of access to justice technologies align with each code. Code 1 calls for innovators to understand their users and their needs through consultations; Code 2 provides that technologies should be accessible and inclusive for all users while Code 3 calls for technologies' open use to ensure transparency, flexibility, and countability.²¹⁹ Additionally, Code 7 calls for the protection of users' rights to privacy, and Code 13 states that technologies must meet service standards including that of human rights and this presents the wholesome PANEL principles.

Relatedly, the UK Police as part of the Executive partnered with courts to establish a 24-hour online plea service for people charged with traffic offences to take pleas over any internet enabled-device and on mobile phones. This platform makes it possible for those without internet-supported devices to take pleas online, which is inclusive for users.²²⁰

Equally, UK scholars in government universities also weighed in on the future of AI. Oswald from Northumbria University theorised three pillars approach of trust, accountability, and participation as prerequisites for the effective use of AI in England and Wales.²²¹ He indicated that non-adherence to these approaches could exhibit failures of AI which leads to not just operational defects or inefficiencies, but miscarriages of justice. He

²¹⁷ As above.

²¹⁸ The UK Government 'Guidance: The Technology Code of Practice' 2021.

²¹⁹ As above.

²²⁰ 'Online plea service for traffic offences' (GOV.UK) <<https://www.gov.uk/government/news/online-plea-service-for-traffic-offences>> accessed 14 November 2022.

²²¹ M Oswald 'A three-pillar approach to achieving trustworthy and accountable use of AI and emerging technology in policing in England and Wales: Lessons from the West midlands model' (2021) *European Journal of Law and Technology* 1.

added that if such weaknesses are exposed, it can instigate low levels and negative trends of public trust in relevant technology.

Legislative role

The UK Parliament has two houses, the House of Commons and the House of Lords. They make laws and ensure accountability by scrutinising the executive. In ensuring a HRBA access to justice technologies, both houses have had an input in making laws that conform to human rights principles. For example, the House of Commons enacted the Criminal Justice Act 2003 where section 51 allows witnesses to give evidence by live link if the court is satisfied that it is in the interest of efficient or effective administration of justice.

Equally, the Coronavirus Act of 2020 provides for the use of technology in UK courts. Section 97 amended provisions of existing laws to accommodate the use of technologies through video or audio-enabled hearing, and telephone or video conferencing facilities for criminal, family, and civil hearings. Most importantly, section 98 guaranteed public participation in proceedings conducted by video or audio technology of courts. And section 99 repealed the provisions of section 41 of the Criminal Justice Act and the Contempt of Court Act 1981 that had placed restrictions on photographs and sound recordings in courts to accommodate the use of technology in courts.

With the growing use of artificial intelligence (AI) for decision-making in the UK, the House of Lords established its Artificial Intelligence Committee to monitor AI. The committee in their reports recommended that ethics and user participation should be placed at the centre of AI's development and use in the UK.²²²

Judiciary role

The UK Judiciary is made up of judges, magistrates, and tribunals in His Majesty's Courts and Tribunal Service (HMCTS). On technological advancement, video links have been used in UK criminal courts as early as 2002. The Judiciary Strategy 2016, aimed at developing court technologies that are just, proportionate and accessible to

²²² Artificial Intelligence Committee, AI in the UK: ready, willing and able? (Report of Session 2017–19, House of Lords Paper 100.

everyone.²²³ In implementing the strategy, HMCTS invested one-billion-pound sterling to modernise the UK courts with technologies that support online access.²²⁴

As of 2020, the HMCTS increased the use of communication technologies through the Video Hearings Service (VHS) to facilitate remote hearings through the Cloud Video Platform (CVP), Skype, Teams, and video or audio hearing services.²²⁵ In ensuring an effective online hearing, the strategy enables lawyers, parties, and witnesses to participate in the hearing by telephone and videoconferencing for users without the internet. To empower rights-holders, the strategy ensures the training of non-lawyers on court technology to help ordinary people resolve their issues without the need for legal representation.²²⁶

Furthermore, the judiciary set up the Crown Court Information Tool (CCIT) to publish information and data on the court processes including the types and statistics of cases heard in-person and online at each court, for pending cases and those that were adjourned.²²⁷ With such open data in the justice system, the performance of access to justice technologies by courts can be properly scrutinised which is the essence of accountability.

With the outbreak of COVID-19, the Judiciary issued the UK COVID-19: National Guidance for the Family Court 2020 and the Remote Access to Court Protection Guidance 2020 to ensure the use of technologies. This was followed by a survey conducted by HMCTS in 2020 to assess the impact of court technologies in the UK.²²⁸ It found out that three in five public users surveyed (60%) attended their hearing remotely, compared to 40% who attended in person and that the likelihood of attending a hearing remotely was heavily influenced by jurisdiction.

²²³ The UK Judiciary 'Strategy: Transforming our justice system' (2016) 3.

²²⁴ The UK Judiciary (n 223 above) 5.

²²⁵ As above.

²²⁶ As above.

²²⁷ n 223 above, 10.

²²⁸ HCMTs 'Evaluation of remote hearing' 2020

Most Crown and Magistrates' court users attended in person (87% and 91% respectively). In contrast, most tribunals and family court users attended remotely (96% and 86% respectively).²²⁹

In handling controversies arising from access to justice technologies, the UK court having the common law system makes it easy for a judge to apply and adapt existing principles or set precedents to new challenges which have ensured certainty in adapting to the fast-changing technologies. In the case of *JK v MK, E-Negotiation Ltd & The Queen's Protector*,²³⁰ family law lawyers instituted a suit against the Amicable Divorce App challenging their legality on allegations that their App disrupts the divorce market. Justice Mostyn held that the role of Amicable App in assisting a couple to deal with their divorce did not involve a conflict of interest or doing things that are forbidden to non-lawyers, 'reserved legal activity' and it does not transgress the Legal Services Act of 2007. On the lawfulness of their activity, he noted that;

There can be no doubt that the initiative of Amicable has greatly improved access to justice for many people effectively disenfranchised from the legal process by the near-total withdrawal of legal aid from private family law proceedings, and whilst unregulated, Amicable provided a clear social benefit...²³¹

This case resolved the existing uncertainties and criticism on the potentials that access to justice technology offer to the rights-holders in the UK.

4.2.2 The role of non-state actors in the UK

Legal innovator's role

UK legal innovators categorise into document automation,²³² practice management, legal research and education, ODR, e-Discovery, and analytics design technologies in form of web-based and mobile applications, AI, chat services, telephone services, and videoconferencing for justice.²³³ For example, the online application CourtNav

²²⁹ HCMTS (n 228 above) 25.

²³⁰ [2020] EWFC 2.

²³¹ As above.

²³² J Goodman 'The UK legal tech scene' in M. Hartung (ed.) *Legal Tech* (2018) 67-74.

²³³ R Dipsham & R Strom 'Law Firms Are Investing in Tech Before It Overtakes Them', *Daily Business Review* (2018).

assists litigants in filling out court forms and online legal consultations.²³⁴ Equally, the Amicable Divorce App facilitates the collection and distribution of information between separating couples without a lawyer. This free App has simplified the divorce process.²³⁵ The above technologies enable frontline services for clients that legally empower them through legal information, advice, and improving users' interaction methods.²³⁶

For instance, LawBot, a chatbot that covers 26 criminal offenses, guides users through a series of questions to identify a similar offense they may be facing, such as harassment, and then creates an editable letter to send to law enforcement or legal service providers to advance the case.²³⁷ This is a great example of how a chatbot may perform an initial consultation with a user, accumulate pertinent information about their situation, analyse it, and put together pertinent legal information for them as they seek legal guidance and assistance. Additionally, the chatbot could assess a case's likelihood of success using AI and predictive analytics, which could help users avoid expensive litigation and persuade them to look for other forms of redress or resolution. It could also offer advice on how to strengthen their legal arguments in court.²³⁸

Legal Service Providers' role

As non-state actors, the UK CSOs, NGOs, solicitors, and professional bodies under the umbrella of legal service providers deploy access to justice technologies.²³⁹ For example, the UK Law Society's adopted technologies that enable users to 'Listen, Read and Watch' as an inclusive approach to eliminating discrimination. Their access to justice technologies has been developed following their 'Innovation Blueprint' that calls for a human-centric

²³⁴ N Hilborne 'Courtnav set for expansion as it wins access to justice award' (2015) *Legal Futures* 14.

²³⁵ K Daly & P Wilson 'About Us Amicable Divorce' <<https://amicable.io/about-amicable>> accessed 4 October 2022.

²³⁶ UK Law Society 'Technology, Access to Justice and Rule of Law' (2019) 9.

²³⁷ Joanna Goodman, 'Legal technology: the rise of chatbots' (The Law Society Gazette 20 March 2017) <<https://www.lawgazette.co.uk/features/legal-technology-the-rise-of-the-chatbots/5060310.article>> accessed 12 November 2022.

²³⁸ Alison Wilkinson 'How AI is revolutionising legal research' (Kira Systems 13 April 2020) <<https://kirasystems.com/blog/how-ai-is-revolutionizing-legal-research/>> accessed 12 November 2022.

²³⁹ Roger Smith, 'How Technology Can Help Legal Aid Services Run More Efficiently: A technologist's view' *Law Technology and Access to Justice*, 21 June 2018

innovation developed based on users' legal needs.²⁴⁰ The Innovation Blueprint lays sets of questions that are condition precedents to an innovators' technological solutions, which are:

- (1) Who are our users?
- (2) What problems do our user's experience?
- (3) Can we solve these problems? If so, how?
- (4) Are there any incremental changes we can make before carrying out an organisational-wide innovation project?
- (5) How will we engage our users during design, development, and deployment stages in the innovation process?
- (6) What is the ideal user journey to facilitate ease of access to our users? How does this user journey fit in with our existing user journeys?
- and (7) How do we ensure all our users, including vulnerable person(s), are able to understand and use this innovation?²⁴¹

Equally, the UK Solicitor Regulatory Authority issued an Ethics Handbook and Data Protection Toolkit that regulates solicitors, innovators, and lawyers on user data protection. This was followed by the Justice User Development Journey, an initiative for innovators to pitch and compare their solutions. It aims at reducing duplication and repetition of legal apps in the UK.²⁴²

4.2.3 The potentials and challenges of using access to justice technologies in the UK

Generally, access to justice technologies has improved communication with clients, informed and advised the public on laws, and reduced the costs of accessing justice in the UK.²⁴³ Equally, the online hearing has increased the number of hearings from 31 538 in Q1 2020/2021 to 86 008 in Q4 2020/2021. A report shows that between March 2020 to May 2021, the UK courts received 1.13 million criminal cases and disposed of 1.04 million; and 1.30 million civil cases of which 1.05 million were settled online.²⁴⁴

On the contrary, the UK face barriers of adult digital illiteracy,²⁴⁵ duplication of technologies, and over 73% of its population have no trust in sharing their data,²⁴⁶ which to a smaller extent makes access to justice technologies ineffective. Equally, Hynes noted that using technology in the UK courts has in some instances not

²⁴⁰ UK Law Society (n 236 above) 37.

²⁴¹ As above.

²⁴² n 236 above, 23.

²⁴³ L Boulton 'Top 10 innovative lawyers: the legal profession embraces the future' *Financial Times* 4 October 2018.

²⁴⁴ G Sturge 'Court Statistics for England & Wales' House of Commons Library (2021) 7-8.

²⁴⁵ N Bryom 'Developing the detail: Evaluating the impact of court reforms in England & Wales on access to justice' (2019) 16.

²⁴⁶ Office of National Statistics 'Exploring UK Digital Divide' (2019) 18.

yielded the same result as compared to the in-person hearing. He pointed out how immigration detainees receive different outcomes in online hearings as compared to in-person hearing.²⁴⁷

Relatedly, the Bail Observation Project observed that online hearing is a systematic failure. They reported that 50% of 211 bail applications heard online were rejected compared to 22% heard in-person.²⁴⁸ However, this does not mean that online hearing processes always deliver undesired results in all contexts.

4.3 The role of duty-bearers in ensuring a HRBA to access to justice technologies in Nigeria

Besides being the largest economy in Africa, Nigeria is also a forefront country in technological advancement.²⁴⁹ This is evident by the 18.44% contribution of the ICT sector to Nigeria's GDP in the 2nd quarter of 2022,²⁵⁰ and by it being the biggest technology market on the continent with 90 tech hubs followed by South Africa's 78 and Egypt's 56.²⁵¹ This continued growth demonstrates the strides made by Nigeria in establishing essential ICT infrastructure for both large and small firms that integrate and deliver cross-cutting services in healthcare, finance, e-commerce, and e-justice.²⁵²

Buttressing technologies for e-justice made it possible for Nigerian duty-bearers to use online hearings in courts, ODR, web and mobile legal apps, among others in delivering justice to rights-holders.²⁵³

²⁴⁷ Jo Hynes 'Hello Dungavel: Observation on the use of video link technology in immigration bail hearing' *UK Administration Justice Institution* 6 May 2019 para 3.

²⁴⁸ B MacKeith & B Walker 'Still a Travesty: Justice in immigration bail hearings' (2013) 17-20.

²⁴⁹ E Ukanwa 'Despite challenges, Nigeria major global supplier of tech talents' *Vanguard News* 7 September 2022.

²⁵⁰ National Bureau of Statistics 'Nigeria GDP Report Q2 (2022) < <https://nigerianstat.gov.ng/download/1241219> > accessed 19 October 2022.

²⁵¹ T Shapshak 'Africa now has 643 tech-hubs which play "Pivotal" role for business' *Forbes*. October 30, 2019.

²⁵² V Ramachandran *et al* 'The new economy of Africa: Opportunities for Nigeria's emerging technology sector' (2019) *Center for Global Development Washington*.

²⁵³ O Olugasa & D Abimbola 'Remote court proceedings in Nigeria: Justice online or justice on the line' (2022) 13(2) *International Journal for Court Administration* 15.

4.3.1 The role of state actors in Nigeria

Executive role

In ensuring sound policies on access to justice technologies, the executive formulated the National Digital Economy Policy and Strategy 2020. One of the strategy's pillars aims at equipping 95% of Nigerians with digital skills by 2030.²⁵⁴ This is being implemented by training students and youths in Lagos, Abuja, and Anambra with ICT skills that digitally empower them to ably use access to justice technologies.²⁵⁵ But the challenge is that this is not being implemented in other rural areas of Nigeria.

Additionally, the executive through the National Information Technology Development Agency (NITDA) issued the Guideline for Nigerian Content Development in Information and Communication Technology to regulate all locally designed technology. It requires an innovator to obtain a license from the government every two years and ensures safety by tracking the origins of technologies deployed in Nigeria. This ensures Nigerian rights-holders safe and legally grounded access to justice technologies that hold innovators to account.

Legislative role

The Nigerian National Assembly enacted laws on technologies that are accommodative for access to justice technologies. For example, the National Office for Technology Acquisition and Promotion Act (NOTAP) ensures registration of contractual transfer of foreign technologies in Nigeria with the government and this makes the regulation of foreign technologies like Facebook that are being used for accessing justice in Nigeria easy. It also ensures that the foreign provider of access to justice technologies are held accountable upon their registration in Nigeria.

²⁵⁴ Federal Ministry of Communications and Digital Economy 'National Digital Economy Policy and Strategy 2020.

²⁵⁵ 'Nigerian Government commences ICT training programme for school pupils' *Transcontinental Times* 6 September 2021 <<https://www.transcontinentaltimes.com/nigerian-government-commences-ict-training-programme-for-school-pupils/>> accessed 21 October 2022.

Judiciary role

The judicial authority of the Nigerian Federation is vested in the courts under Section 6 of the 1999 Nigerian Constitution. And this establishes several courts including the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the FCT Abuja, the High Court of the States, the Customary Court of Appeal of the FCT, the Shariah Court of Appeal of the FCT, the Customary Court of Appeal of the States, and the Shariah Court of Appeal of the States. The enormous responsibilities captured in this provision obligates these courts to have the capacity to provide timely and appropriate justice to the Nigerians.

Whereas the use of technology for accessing justice is not expressly provided in the Nigerian Constitution, its foundation in the Nigerian Judiciary was in Information Technology Policy Document 2012, issued to facilitate the use of ICT in justice administration. As a result, the judiciary issued practice directions to accommodate electronically generated documents to be admitted as evidence,²⁵⁶ and the ones on electronic service and signatures.²⁵⁷ Following the outbreak of COVID-19, the National Judicial Council issued a Guideline for Court Virtual Sittings (Virtual Sitting Guideline) that was implemented in some of the 36 states in Nigeria through Practice Directions (PDs). For comparison, interest is taken in the PDs issued by the Judiciary of Lagos,²⁵⁸ Abuja,²⁵⁹ and Ogun States,²⁶⁰ as a response to the Virtual Sitting Guideline and use of technology in court.²⁶¹

Filing and service of court documents in Lagos, Abuja, and Ogun states were possible through email, WhatsApp, and any other means that recognised proof of delivery of email as an acceptable proof of service.²⁶² However, the gaps in the PDs of Lagos, Abuja, and Ogun States conflicted with their Civil Procedure Rules where services used to be in person and the PDs did not specify who should serve electronically.²⁶³ Equally, virtual or

²⁵⁶ Sec 82 Nigerian Evidence Act, 2011.

²⁵⁷ The Court of Appeal (Fast Track) Practice Direction 2014 (Nigeria)

²⁵⁸ Lagos State Practice Direction for Remote Hearing, 2020 (LSPD).

²⁵⁹ Federal Capital Territory COVID-19 Practice Direction 2020 (FCTPD).

²⁶⁰ Ogun State Practice Direction No.2 of 2020 (OSPD).

²⁶¹ Secs 6-10 LSPD; sec 4 OSPD; and Part-F FCTPD.

²⁶² Sec 11 LSPD; sec 5 OSPD; and Part-D FCTPD.

²⁶³ Order 5 Rules Civil Procedure Rules of Lagos 2009; Order 7 Rule 8 High Court Civil Procedure Rules of Abuja.

online hearing through Zoom, Google Meet, Skype, and other videoconferencing platforms established by the courts of Lagos, Abuja, and Ogun States of Nigeria was facilitated.²⁶⁴

4.3.2 The role of non-state actors in Nigeria

Legal innovator's role

Several innovators have developed access to justice technologies in Nigeria as an initiative to narrow the access to justice gaps.²⁶⁵ Pledge 51 for example developed a free mobile phone app that provides access to the Nigerian Constitution. Similarly, the JustEase App by LawPavillion with an e-library of laws of Nigeria helps in reporting a crime or violations and these apps are available for easy download on Google Play with a review option for users' feedback. This ensures free access to justice technologies that empower Nigerian rights-holders with legal information through an accountable platform.

Apparently, LawPavillion in partnership with the Nigerian judiciary is developing technologies including AI Document Review, AI Appellate Feedback System for Judges (AFSJ), and AI Modelling and Profiling for Nigerian courts. In the Biennial Judge Conference 2021, LawPavillion was invited to explain how AI would operate in court. Among other things, the CEO of LawPavillion, Olugasa, stated that;

...the solutions in the AI are those that were made by Nigerians for Nigerians, and its prospects are to help solve some of the challenges facing the country's justice sector...²⁶⁶

The above response made by Olugasa portrays the principles of participation, non-discrimination, and empowerment in practice. The phrase, '...made by Nigerians for Nigerians...' implies that Nigerian rights-holders have an input in the AI development and this resonates with Okoye's views that purposely-built technological

²⁶⁴ Secs 6-7 OSPD; sec 13 LSPD; and Part-F FCTPD.

²⁶⁵ H Doma 'Enhancing Justice administration in Nigeria through ICT' (2016) 32 *J Marshall Info. Tech & Privacy* 89.

²⁶⁶ 'Nigerian judges set to use A.I. in justice delivery, with LawPavillion' *ThisDayLive* 10 November 2021
<<https://www.thisdaylive.com/index.php/2021/11/09/nigerian-judges-set-to-use-a-i-in-justice-delivery-with-lawpavillion/>>
accessed 20 September 2022.

solutions have the potential of improving access to justice.²⁶⁷ This partnership replicates the indicators laid by Hagan on participatory design. And such indicators include active consultation and collaboration with a wide range of stakeholders, understanding their perspectives, incorporating their priorities into innovation, and asking people who are meant to use the solutions to help identify areas of reform.²⁶⁸

LawPavillion by engaging the public in the conference to openly explain the prospects of an upcoming AI technology signifies the extent to which Nigerian duty-bearers consider rights-holders participation before deploying access to justice technologies. However, this does not speak for all duty-bearers or mean that all access to justice technologies in Nigeria are developed using the same trend.

Legal service providers' role

LSPs in Nigeria use ODR to resolve commercial, domestic, and other civil disputes. Ononogbu noted that Africa, in particular, Nigeria is uniquely positioned to adopt the ODR technologies because of the rise of e-commerce.²⁶⁹ Nigeria's large economy,²⁷⁰ facilitates e-commerce platforms like Jumia, Jiji, Kara, and Konga,²⁷¹ where commercial disputes arise from online transactions and ODR has the potential of resolving such disputes easily, faster, and cheaply. With reputable institutions like Lagos State's Lagos Arbitration Court, it serves as the focal point for resolving online and e-commerce claims via ODR.²⁷²

CRALI launched its flagship initiative, Know Your Rights Nigeria app to reach more Nigerians and break barriers posed by language and location. The app is available on Google's Android and Apple's iOS app stores covering fundamental human rights provided by the Nigerian Constitution including personal liberty, property, fair hearing, freedom of expression and movement and discrimination. Under each right, the app tries to ask questions

²⁶⁷ R Okoye 'Purpose-built-technology solutions'll improve access to justice' *LawCareNigeria* 19 August 2020 <<https://lawcarenigeria.com/purpose-built-technology-solutionsll-improve-access-to-justice/>> accessed 20 September 2022.

²⁶⁸ M Hagan 'Participatory design for innovation in access to justice' (2019) 148 *Daedalus* 122.

²⁶⁹ I Ononogbu 'Transformation of dispute resolution in Africa' (2015) 2 *International Journal of Online Dispute Resolution* 82.

²⁷⁰ R Olurounbi 'Africa's largest economy, Nigeria, tops growth forecast' *Al Jazeera* 17 February 2022.

²⁷¹ V Okeowo 'Top 10 eCommerce Website in Nigeria 2022' *TechEconomy Nigeria* 17 January 2022.

²⁷² Ononogbu (n 269 above) 83-85.

that address everyday challenges and concerns among Nigerians. For example, under ‘My right to property’, one of the questions is: what are my rights as a tenant in Nigeria? Once a user taps this question, a detailed explanation pops up in contents in English or pidgin English, and in major local languages like Hausa, Igbo and Yoruba. The app equally links users through the chat option to over 50 lawyers who are available to take questions and follow-up on complaints.

The context of access to justice technologies in Nigeria also include the often-over-looked mediums of television and radio which provide legal and non-legal forms of education.²⁷³ The idea of integrating legal information into popular entertainment has developed by the LSPs in Nigeria who use radio shows to broadcast and publicise the availability of legal services and community paralegals to persons who may feel intimidated by the justice institutions and its complex processes.²⁷⁴ For instance, a radio programme was created to inform the general public and women about rights by members of the International Federation of Women Lawyers (FIDA).

In Western Nigeria (Osun State) the Public Defender and Centre for Citizens Rights (PD&CR) provides free legal representation for women, children and the poor. It also uses radio and television programmes to educate the public about their rights. As a result, over 400 people have accessed the PD&CR office. However, in a state of four million people, the office is small (with just six lawyers) and litigation is costly.

Following the same trend, Nollywood, a famous Nigerian film industry provide a platform for raising awareness and discussing sensitive issues such as gender-based violence through the use of documentary film series and movies which are broadcast on Nigerian local television stations. This has potentially addressed sensitive issues such as promoting gender equality and women’s empowerment in Nigeria.

²⁷³ S Herbert ‘*Improving access to justice through information and communication technologies*’ GSDRC Helpdesk Research Report (2015) 3.

²⁷⁴ Adetayo (n 275 above)

4.3.3 The potentials and challenges of using access to justice technologies in Nigeria

The above-stated access to justice technologies has improved access to justice, staff proficiency, and efficiency in courts and law firms in Nigeria.²⁷⁵ It has checked and partially reduced corruption in the justice sector of Nigeria since rights-holders have limited or possibly no physical interface with court staff who may ask for bribes.²⁷⁶ Legal information shared online has legally empowered Nigerians, opened a platform for the silent voices of victims,²⁷⁷ and enhanced legal research, and justice seekers connected easily with lawyers. This provided an alternative means of resolving disputes besides the Nigerian courts.²⁷⁸

Launching a radio or television initiative by LSPs in Nigeria is relatively costless and has empowered minorities in being proactive in claiming their rights. Furthermore, the possibility of having guest speakers from NGOs and legal experts like FIDA Nigeria has greatly improve the quality of the rights discussions on the various radio talk shows held in Nigeria. Equally, the videos and documentary aired on Nigerian local televisions has provided self-help resources that have become a very good means of helping underrepresented communities of rights-holders to understand their legal rights and be empowered with legal procedure skills to file legal disputes on their own.

Conversely, Nigeria faces challenges of infrastructural hindrances, digital illiteracy, and underfunding from the government. Technological duplications are rampant, with over 10 Nigerian Constitution apps that breed competition among innovators and this confuses the users. Notably, gaining national consensus on the adoption of technology from the 36 states was challenging as few states implemented the guideline on the use of technology in courts since 2020.

²⁷⁵ Doma (n 265 above) 98.

²⁷⁶ M Adetokunbo 'Corrupt judges harmful to Nigeria, says Chief Justice of Nigeria' *Sahara Report* 9 February 2012

²⁷⁷ O Adetayo 'The radio show championing justice for abuse victims in Nigeria' <<https://www.aljazeera.com/features/2022/5/1/the-radio-show-championing-justice-for-abuse-victims-in-nigeria>> accessed 14 November 2022.

²⁷⁸ n 265 above, 99-100.

4.4 Comparative analysis and lessons for Uganda

This section compares the HRBA practices in the UK, Nigeria, and Uganda and the lessons that Uganda can draw from the Nigerian and UK experiences.

4.4.1 Points of similarities and differences between the UK, Nigeria, and Uganda

From the previous section, some similarities and differences in the roles of duty-bearers in ensuring a HRBA to access to justice technologies in Nigeria, the UK, and Uganda were identified.

A point of similarity shows that access to justice is a challenge for Nigeria, the UK and Uganda, and their duty-bearers deploy access to justice technologies as a strategy to narrow those gaps. It equally relays that non-state actors are the innovators for access to justice technologies, widely used in urban areas. Further similarity portrays a positive response and support by the governments in funding innovations, research, legislating, and deploying of access to justice technologies in each of the three countries.

On the other hand, the point of divergence shows that Ugandan duty-bearers do not consider rights-holders' participation before the deployment of access to justice technologies. Furthermore, the UK has sound laws and policies regulating the development and deployment of access to justice technologies and has invested adequate funding towards the technologies and this signifies legislation gaps in Nigeria and Uganda on access to justice technologies. Equally, the UK's access to justice technologies applies to criminal and civil cases unlike that of Nigeria and Uganda which only applies to non-contentious civil matters.²⁷⁹ The Nigerian and the UK government do not shutdown internet like the Ugandan government which does not limit the participation of rights-holders on the use of access to justice technologies.

Lastly, the comparison presents that the UK and Nigeria began a progressive development of their access to justice digital technologies in 2002 and 2012 respectively, almost 20 years ago and their innovators designed

²⁷⁹ n 218 above.

the technologies with rights-holders participation, unlike Uganda. The Nigerian experience presented a steady process of developing AI technologies for court by LawPavillion which comprises of open public conferences and mock trials to ensure that the future of AI in decision-making is effective in Nigeria. The foregoing analysis presents that Nigeria and the UK fairly implement a HRBA to access to justice technologies as compared to Uganda.

4.4.2 Lessons for Uganda from the experiences of the UK and Nigeria

From the above comparison, Uganda can gain a wealth of knowledge from Nigeria and the UK to ensure a HRBA to access to justice technologies.

Adopting a HRBA to access to justice technologies

By drawing lessons from Nigeria and UK, Ugandan duty-bearers can advance the participation of rights-holders before the deployment of access to justice technologies. This can be through public engagements and conferences as is being done by LawPavillion in Nigeria. And by formulating guidelines like that of the UK Law Society's Innovation Blueprint, access to justice technologies will be made with an understanding of the user. For example, having knowledge of low-income users requires lite apps with a low consumption rate of data, storage, and in the user's local language. As a result, no rights-holder will be excluded and the apps in their local language will enhance their understanding and user-ability of the technologies.

Ugandan duty-bearers can draw lessons from the UK to ensure accountable access to justice technologies by conducting surveys and providing a user feedback platform. Lessons can be drawn from the UK on the CCIT platform that accounts for the cases that have been resolved by court technologies. Relatedly, Uganda can conduct surveys on access to justice technologies as done by the HCMT to collect users' feedback for improvement. When Uganda adopts this, it will ensure rights-holders access to an effective and meaningful platform for accountability as that of the UK.

Furthermore, Ugandan duty-bearers can ensure non-discrimination by deploying technological tools that are inclusive for all rights-holders. For instance, developing justice apps limited to iOS is discriminative. iOS devices

are expensive and not user-friendly to a layperson as compared to android devices. Drawing lessons from the UK's Amicable Divorce App, duty-bearers in Uganda can design offline and online apps in multiple versions for desktop, web, android, iOS, and SMS and USSD supported phones. This has the potential of dismantling discriminatory practices and it ensures that access to justice technologies fits a vast diversity of rights-holders in Uganda.

Additionally, Ugandan duty-bearers can ensure that access to justice technologies empowers rights-holders by developing self-helping websites and apps. This will enable a layperson with legal needs to access basic information on the substantive and procedural law and become an independent decision-maker in dealing with their legal needs. For example, the Nigerian JustEase App by LawPavillon provides free templates of legal documents and legal information that can be accessed and customised by rights-holders. If Uganda adopts this, rights-holders will be able to file suits on their own.

On legality, the executive of Uganda can draw lessons from the UK's TCoP that regulates, holds to account, and checks the ethical conduct of duty-bearers. Equally, the Parliament of Uganda can repeal conflicting provisions of existing laws like section 74 of the Advocate Act to accommodate the use of access to justice technologies by lawyers as done by the UK's House of Commons under section 99 of the Coronavirus Act of 2020 that repealed section 41 of the Criminal Justice Act to facilitate the use of technologies in court.

Besides the above, Uganda can study the prospects of online plea-taking from the UK for its traffic offences. However, on AI, Uganda can learn from Nigeria that there is no need for fast-tracking AI technologies for court. As discussed above, Nigeria's progression towards AI for the court is in phases having several mock trials before they are deployed to determine the fate of justice.

However, this mini-dissertation warns Uganda that adopting AI for decision-making at this stage will undermine the personal competence of judges and lawyers. Additionally, AI has replaced and left people with no jobs in some sectors of the UK and this may be the case for Uganda's legal sector.²⁸⁰ Most importantly, AI raises

²⁸⁰ E Winick 'Lawyer-bots are shaking up jobs' *MIT Technology Review* (2017) para 1-3.

ethical problems,²⁸¹ and besides being biased, it does not possess the human ability to exhibit fairness, rationality, and objectivity in considerable circumstances,²⁸² and it cannot be held accountable for the erroneous decisions it makes.²⁸³ With the prevailing presumption that AI is perfect,²⁸⁴ adopting it in Uganda courts for decision-making will exhibit eminent controversies for the errors it makes. For example, an appeal to a higher court against AI's decision in a lower court will appear as if AIs are in conflict and the spillover effect of this may affect rights-holders' right to appeal.

4.5 Potential outcomes of adopting a HRBA to access to justice technologies in Uganda

Adopting a HRBA to access to justice technologies can potentially advance pathways to justice.²⁸⁵ This shift makes it possible for duty bearers in Uganda to improve access to justice delivery. The potential outcomes are discussed below.

With a HRBA to access to justice technologies, rights-holders can file, serve and attend proceedings online. This saves them the costs and expenditures related to transport, stationery, and printing, hence helping rights-holders to resolve disputes cheaply.²⁸⁶ Equally, creating and sharing of legal information in the form of online PDF laws, digital flyers, blogs, factsheets, how-to-guide, videos, and podcasts ensures rights-holders access to cheap legal information that empowers them.²⁸⁷

With a HRBA to access to justice technologies, right-holders in Uganda have alternative avenues for seeking justice. With ODR, rights-holders can resolve their disputes cheaply at the comfort of their homes.²⁸⁸ By impact, Bafana reported that through mobile services of SMS and toll-free women got access to lawyers who

²⁸¹ M Coeckelbergh *AI Ethics* (2020) 3-9.

²⁸² M Gideon & C O'Neil 'Hiring algorithms are not neutral' *Harvard Business Review* (2016) 9.

²⁸³ M Taddeo & L Floridi 'How AI can be a Force for good' (2018) 361 *Science* 751-752.

²⁸⁴ M Hidebrandt 'Law as Computation in era of artificial legal intelligence: Speaking law to the power of statistics' (2018) 68 *University of Toronto Law Journal* 12.

²⁸⁵ J Osekeny 'Implication of digitization of the courtroom' *The Monitor* 14 April 2022.

²⁸⁶ Osekeny (n 283 above).

²⁸⁷ D Poulin 'Open access to law in developing countries' (2004) 9 *First Monday* 8-9.

²⁸⁸ n 283 above.

secured their properties via mediation during the COVID-19 lockdowns.²⁸⁹ These present multi-choice avenues for rights-holders when courts are not accessible.

HRBA to access to justice technologies makes reporting of human rights violations to authorities and adducing evidence in court easy. Through digital means, rights-holders can record video scenes of human rights violations, post them on social media and equally present them in court as pre-recorded evidence.²⁹⁰ A recent tweet in Uganda showed a video of a mother beating her child which led to her arrest by the Uganda Police.²⁹¹ This technology breaks the silence of victims who continue to suffer abuse due to knowledge gaps of reporting mechanisms yet such silence accounts for the unreported violence against women in the rural areas of Uganda.²⁹² From this lens, the technology puts an end to impunity because the perpetrators are brought to the limelight and punished. This equally reduces the need for a victim to take a stand in front of their abuser hence limiting the risk of trauma reflections and instilling confidence in victims while testifying online.

Digital technologies narrow geographical barriers that hinder rights-holders from navigating their way to the justice system.²⁹³ With the web-based application, ODR, and online hearings individuals living in remote areas, PWDs, and the elderly with mobility challenges can access court, file, resolve disputes and get legal information virtually which advances their pathways to justice.²⁹⁴

Generally, it promotes efficiency in justice delivery as rights-holders can file claims online,²⁹⁵ and simplifies tasks in court. With that, a judge can easily write and deliver judgments with computers, record and annotates

²⁸⁹ Bafana (n 201 above).

²⁹⁰ As above

²⁹¹ W Kamusiime 'Mother to be charged to court with torture of her 2-year-old daughter' *Uganda Police Force*, 5 September 2022 <<https://www.upf.go.ug/mother-to-be-charged-to-court-with-torture-of-her-2-year-old-daughter/>> accessed 12 September 2022.

²⁹² C Holmes 'The Justice-seeking power of women who experience sexual violence in Uganda' [2015] *Independent Study Project (ISP) Collection 23*.

²⁹³ Holmes (n 290 above) 23-25.

²⁹⁴ D Mckimmie 'Online dispute resolution & electronic hearing' (2017) 1 *Norton Rose Fulbright* para 3.

²⁹⁵ Osekeny (n 281 above).

hearing sessions. And the court registrars and clerks can store documents electronically which halts the loss of physical files – a malpractice common in Ugandan courts.²⁹⁶

The flexibility of digital technologies made it possible for duty-bearers to resolve disputes during the COVID-19 lockdown which reduced the case backlogs.²⁹⁷ This means that with the outbreak of any future calamity of such nature, Uganda is ready to continue delivering justice to its people. Equally, social media has been an informal oversight mechanism for whistleblowing which improves transparency and accountability of the justice system. Lastly, technology enhances communication between LSPs and justice seekers and makes desktop legal research easier and cheaper.

4.6 Conclusion

This chapter discussed how duty-bearers in Nigeria and UK ensure a HRBA to access to justice technologies. It found that their roles fairly depict a HRBA, and some of their experiences were considered as lessons for Uganda. The chapter went on to discuss the potential of access to justice technologies and concluded that Uganda needs to adopt a HRBA access to justice technologies to narrow its access to justice gaps and this formed the basis for recommendations. Therefore, the next chapter proceeds to discuss the summary, recommendations, and conclusions for this mini-dissertation.

²⁹⁶ n 268 above.

²⁹⁷ Nanima (n 40 above) 408-407.

CHAPTER FIVE: SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

The previous discussions contributed to the debate on the role of duty-bearers in ensuring a HRBA to access to justice technologies in Uganda. It equally interrogated the extent to which a HRBA ensures effective access to justice in Uganda and highlighted some of the access to justice technologies that duty-bearers have deployed to ensure access to justice for rights-holders in Uganda. It presented the argument that Ugandan duty-bearers in ensuring access to justice technologies do not comply with human rights standards, and the mini-dissertation drew lessons from Nigeria and the UK. To achieve this, the mini-dissertation responded to the main research question, how can a HRBA to digital technologies ensure effective access to justice in Uganda, with three sub-research questions.

As a result, the mini-dissertation is organised into five chapters. Chapter one introduced the topic of study, while chapters two to four focused on responding to each sub-research question. Wrapping up the mini-dissertation, this chapter summarises the mini-dissertation, proffers recommendations, and concludes.

5.2 Summary of findings

Chapter two responded to the first sub-question by analysing the conceptual basis of access to justice and its relationship with the HRBA and digital technologies in Uganda. The chapter found that the scope of access to justice is being expanded by the use of technology. It also found that access to justice technologies is one of the developmental agenda in SDGs 16.3 and 9 which are achievable through a HRBA. By analysing five HRBA principles, it presented a picture of how a HRBA to access to justice technology should look like in the Ugandan context.

Chapter three responded to the second sub-question by analysing the legislative frameworks for access to justice technologies in Uganda and pointed out the gaps in those laws. It showed the distinction between duty-bearers and rights-holders, duty-bearers' obligation, and found that their role does not ensure the rights-holder a HRBA to access to justice.

Chapter four comparatively analysed the experiences in Nigeria and UK by assessing how their duty-bearers fare in using access to justice technologies. The chapter found that the UK's experience depicts a HRBA to access to justice technologies, and that for Nigeria is slightly fair compared to that of Uganda. It also discussed the lessons that Uganda can learn from Nigeria and the UK and the potential outcomes of a HRBA to access to justice technologies in ensuring effective access to justice.

5.3 Recommendations

Despite the identified gaps inhibiting access to justice technologies in Uganda, there is still room for improvement considering its progress. This mini-dissertation acknowledges that there is an opportunity for Uganda to build a sustainable, coherent, and effective framework that would enhance access to justice for all, and this requires the HRBA's holistic approach. For Uganda to ensure a HRBA to access to justice through digital technologies, several recommendations tailored towards specific actors as listed below:

5.3.1 State actors in Uganda

The Executive

The executive through its ministries, JLOS, should raise awareness of the potential that digital technological tools can have in enhancing their access to justice. This can be through radio-talk shows, community sensitisation, or outreaches. The executive should prioritise the development of ICTs, electricity, network connectivity, and their wide coverage in the rural areas of Uganda that remain excluded from the benefits of access to justice technologies.

Equally, government programs on innovation, ICT training, and piloting of digital technologies of courts, among others, should include rural areas. A fair tax rate should be imposed on digital tools like phones to ensure access by indigent persons. Lastly, should stop shutting down the internet and the illegal social media that affect tools for access to justice.

The Legislature

The parliament of Uganda should enact substantive laws to complement the PDs and policies issued by courts on the use of access to justice technologies. The laws must conform to the standards enshrined in the international human rights instruments which Uganda has obligations to comply with. Among others, the legislation should define the context of using access to justice technologies and establish the role of duty-bearers, their duties, and liabilities, and how rights-holders can access them.

Furthermore, parliament should fast-track the passing of the Legal Aid Bill of Uganda into law to remedy the gaps in the legal framework to harmonise a clear provision on access to justice technologies. It should repeal conflicting provisions in section 74 of the Advocates Act that bar lawyers from advertising their services online.

5.3.2 Non-state actors in Uganda

Civil Society Organisations (CSOs)

CSOs in Uganda should collaborate and develop a strong working partnership with those other duty-bearers whose access to justice expectations are aligned. By drawing lessons from Nigeria on the partnership between the Nigerian Judiciary and LawPavillion, Ugandan CSOs will have the opportunity to pool resources and exhibit a joint commitment to resolving the justice gap through cross-sectoral partnerships. This will reduce unhealthy competition and the duplication of access to justice technologies.

International and local donors

Donors should increase funding, training, and mentorship program for innovators who design and develop digital solutions for accessing justice. Equally, they should observe their autonomy and not interfere with their integral operation so that they come up with technologies that meet the interest of the public. Donors should also cease funding innovations that do not conform to human rights standards of inclusion, and participation among others.

Start-ups

Innovators need to build trust with the end-users either through face-to-face engagements or through known government and CSOs entities. They should ensure that they understand the local context of the problems, risks, and how to address or mitigate them.

On costs, they need to carefully consider who will pay for their digital solution because pricing the services will not only reduce the required number of users but also exclude the lower income groups. Even when some rights-holders may be willing to pay for them, they might need to be subsidised by donors, CSOs, the government, or by other revenue streams so that the marginalised groups can benefit from it. Lastly, they must ensure that technological solutions do not discriminate any rights-holder from using it to access the justice system on resource and user-ability.

Law institutions

The Uganda Law Council, being the regulator of legal education in Uganda should ensure that law schools in Uganda incorporate ICTs, Cyber, and Innovation Laws as part of their curriculum to train and familiarised future lawyers with technology. Through such pieces of training, lawyers will get to know that access to justice technologies is not a replacement for their need for face-to-face services, but it is being used to complement the existing justice system. This results into a positive mindset change for the wide use of access to justice technologies.

5.4 Concluding Remarks

Uganda's scramble for access to justice technologies during COVID-19 was a missed opportunity for developing sound laws underpinned by human rights. As a result, its laws and practices that inform the duty-bearer's role in ensuring access to justice technologies do not contextualise the holistic picture of HRBA.

It is rather disappointing that they failed to recognise rights-holders' participation before the deployment of technologies that affects their fate for justice. Yet by reviewing other countries, the mini-dissertation found that the Nigerian and UK experiences fairly ensure the participation of rightsholders which presents a credible area of action and lessons for Uganda. However, it is incumbent upon Uganda to implement those lessons.

Most importantly, Uganda should note that access to justice is not limited to lawyers or the courts – it involves from a wide spectrum of state and non-state actors. And for the actors hesitant about adopting technology, Rawlinson warns that;

The market will kill those who do not adapt. They are the ones who should be scared of machines. For them, the robots are coming. The really wise lawyers, they know it's not one versus the other...²⁹⁸

Therefore, as access to justice technologies evolve and disrupts the old practice, duty-bearers should strategically position themselves to maximise it by being innovative and progressive. Equally, laws and tools for access to justice technologies must put consultations with rights-holders at the centre. This is attainable when a HRBA to access to justice technologies is properly implemented in Uganda.

[Word Count: 19 999]

²⁹⁸ P Rawlinson 'Will lawyers become extinct in the age of automation?' *World Economic Forum* 29 March 2018

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