

**EPISTOLARY JURISDICTION: A MEANS OF MAKING COURTS RESPONSIVE  
TO THE NEEDS OF THE POOR IN UGANDA**

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BY

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## DECLARATION

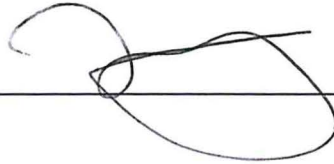
I, NAMAWEJJE BARBRA JUSTINE, do hereby declare that this is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

SIGNED NBJ:

DATE 21<sup>st</sup> March 2019

This dissertation has been submitted for examination with my approval as the University Supervisor.

SIGNED



DATE

21 March 2019

## ABSTRACT

The objective of this study to suggest the adoption of epistolary jurisdiction by the courts in Uganda to improve access to justice for persons living in poverty. Of the 37.7 million people living in Uganda, 10 million are living below the poverty line and as a result they are unable to access quality services such as transport, food, water, communication and legal services. In the previous years, the government of Uganda has tried to improve access to justice for the Ugandan population but often times these efforts exclude poor persons. A number of legislations have been enacted to enhance access to justice but these are in favor of only certain marginalised groups such as the disabled, women and children. Poor people are left out of the picture.

A number of legal aid centres have also been set up but these centres operate in only 30 out of the 127 districts in the country. Additionally, legislation in Uganda has failed to recognise legal aid as a fundamental right and the government has not approved any legal aid policy. However persons living in poverty still face a number of obstacles in accessing justice and often times they are forced to give up. Most poor people actually prefer informal justice mechanisms because they have no confidence in the Ugandan courts.

Using the example of India's epistolary jurisdiction, this study asserts that epistolary jurisdiction in Uganda will improve access to justice for persons living in poverty. And concludes that the courts in Uganda should adopt epistolary jurisdiction as a means of lobbying and advocating for the right of persons living in poverty to access justice.

## LIST OF ABBREVIATIONS

UBOS	Uganda Bureau of Statistics
UN	United Nations
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
OHCHR	Office of the United Nations High Commissioner for Human Rights

## LIST OF CASES

*Anil Yadav and others v State of Bihar* (1982) 3 SCR 533

*Bandhua Mukti Morcha v Union of India and others* (1997) 10 SCC 549

*Darshan Mashi alias Rehmatay v State* PLD 1990 SC 513

*Faustina Pereira v State* (2001) 53 DLR 414

*Fertilizers Corporation Kamgar Union v Union of India* AIR 1981 SC 344

*Gideon v Wainwright* (1963) 732 US 335

*Hussainara Khatoon v Home Secretary of Bihar* AIR 1979 SC 1360

*Rural Litigation and Entitlement Kendra v State of Uttar Pradesh* (1985) 2 SCC 431

*Sheela Barse v State of Maharashtra* (1983) 2 SCC 96

*SP Gupta v Union of India* AIR 1982 SC 149

*Sunil Batra II v Delhi Administration* (1980) AIR 1579

*Upendra Baxi (Dr) v State of UP* (1983) 2 SCC 308

## LIST OF LEGAL INSTRUMENTS

Advocates (Legal aid to indigent persons regulations) 2007

Advocates (Remuneration and taxation of costs) rules

Civil Procedure Act of Uganda (1929)

Civil Procedure Rules of Uganda

Constitution of Kenya (Protection of rights and fundamental freedoms) Practice and procedure rules, 2013

Constitution of Uganda (1995)

Poor Persons Defence Act of Uganda

Pro-bono (Services to indigent persons) regulations (2009)

Supreme Court of India, Compilation of guidelines to be followed for entertaining letters/ petitions received in this court as public interest litigation.

Trial on Indictment Act of Uganda

UN Standard Minimum Rules for Treatment of Prisoners

## CHAPTER 1: INTRODUCTION

### 1.1 Background of the study

“Poverty is defined as a circumstance that causes persistent lack of resources, capabilities, choices and the power essential for the enjoyment of a satisfactory standard of living and other civil, cultural, economic, political and social rights”.<sup>1</sup>

According to the Uganda Bureau of Statistics the number of persons living below the poverty line as per 2016/17 stands at 10 million, which implies that 27% of the Ugandans are living in poverty.<sup>2</sup> Poverty is one of the most serious challenges to the realization of human rights in the world since people living in poverty are frequently incapable of voicing their needs, let alone pursue remedies against injustices they face.<sup>3</sup> Generally poor persons almost certainly see their rights being violated, and are least likely to enforce them.<sup>4</sup> This is because of the obstacles that they face such as; the high costs associated with courts, the complexity of the court procedures yet most people living in poverty are illiterate and lack the education and information about the courts, lack of assertiveness about their rights, corruption, inefficient administration of justice and the lack of confidence in the justice delivery system mainly because of bias, discrimination and the abuse of their rights.<sup>5</sup>

The government of Uganda has signed numerous regional and international instruments that pursue to guarantee access to justice and it has also put in place domestic legislation to address the issue. These include the constitution of Uganda<sup>6</sup>, the provision for pauper suits under the Civil Procedure Rules<sup>7</sup>, state provided legal assistance where the government provides legal aid to

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<sup>1</sup> Legal Aid Service Providers Network, *Access to justice for the poor, marginalised and vulnerable people of Uganda*, 2015, 34.

<sup>2</sup> <http://www.newvision.co.ug/new-vision/news/1462490/poverty-figures-uganda>, on 20 January 2018.

<sup>3</sup> UNGA, *Legal empowerment of the poor and eradication of poverty, report of the secretary general*, July 2009, A/64/133, 3.

<sup>4</sup> Brems E, ‘Human rights enforcement by people living in poverty: access to justice in Nigeria’, 54 *Journal of African law* (2010), 258.

<sup>5</sup> Gargarella R, “Too far removed from the people” Access to justice for the poor: the case of Latin America’, Universidad Torcuato Di Tella, 2-5, here: [https://www.ucl.ac.uk/dpu-projects/drivers\\_urb\\_change/urb\\_society/pdf\\_violence\\_rights/gargarella\\_removed\\_from\\_people.pdf](https://www.ucl.ac.uk/dpu-projects/drivers_urb_change/urb_society/pdf_violence_rights/gargarella_removed_from_people.pdf) on 20 January 2018.

<sup>6</sup> Article 28, *Constitution of Uganda* (1995).

<sup>7</sup> Order XXXIII, *Civil Procedure Rules* (Statutory Instrument 71-1).

people through; The Poor Persons Defence Act<sup>8</sup> and the Advocates (Amendment) Act<sup>9</sup>, state brief schemes where advocates are expected to take on cases with negligible funds and means, the pro bono legal scheme<sup>10</sup> and the establishment of justice centres.<sup>11</sup>

However the legislation and policies in place are not sufficient to deal with this issue. The United Nations report on eradication of poverty emphasised the fact that even with laws that ensure protection of the rights of the poor, they are often too vague and expensive for them to access<sup>12</sup> and therefore it is necessary to ensure that justice mechanisms put in place are adequate and equitable for the poor<sup>13</sup>.

In ensuring that adequate and equitable justice mechanisms are in force in any country, the judiciary has a huge role to play in fighting the problems faced in accessing justice specifically for the poor. This because improving access to justice requires judicial reforms in the entire justice system.<sup>14</sup> As one of the ways of improving access to justice, some countries have adopted epistolary jurisdiction where a person approaches the court on behalf of a disadvantaged person/ persons through the use of informal documentation.

For example the Indian courts have adopted epistolary jurisdiction. Epistolary jurisdiction is an innovation of the judges as part of judicial activism because it involves the courts turning their attention towards the challenges so as to secure justice for everyone.<sup>15</sup> Therefore through epistolary jurisdiction the courts will achieve a major development in bringing justice closer to the larger masses of people thus making courts a symbol of hope for many deprived and vulnerable people.<sup>16</sup>

## 1.2 Statement of the Problem

Notwithstanding the availability of numerous legislations towards the improvement of access to justice, people living in poverty still meet a number of obstacles that stand in their way of accessing

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<sup>8</sup> Section 1, Chapter 20, *Poor Persons Defence Act* (Uganda).

<sup>9</sup> Act No. 27 of 2002.

<sup>10</sup> Section 21, *Pro-bono (services to indigent persons)*, Regulations number 39 of 2009.

<sup>11</sup> Legal Aid Service Providers Network, "*Access to justice for the poor, marginalised and vulnerable people of Uganda*", 73.

<sup>12</sup> UNGA, *Legal empowerment of the poor and eradication of poverty*, 2.

<sup>13</sup> UNGA, *Legal empowerment of the poor and eradication of poverty*, 16.

<sup>14</sup> Brems E, 'Human rights enforcement by people living in poverty: access to justice in Nigeria', 270.

<sup>15</sup> Bhagwatti PN, Dias CJ, 'The Judiciary in India: A Hunger and Thirst for Justice', 5 *NUJS Law Review* (2012), 178.

<sup>16</sup> Bhagwatti PN, 'The Judiciary in India: A Hunger and Thirst for Justice', 178.

justice.<sup>17</sup> Yet it is really the poor who need the court's protection in safeguarding the enjoyment of their rights.<sup>18</sup> Therefore there is need to deal with this issue using other mechanisms, such as epistolary jurisdiction since the poor need a judicial system that is accessible to them and that will make their rights enforceable, practical and meaningful.<sup>19</sup>

### 1.3 Statement of objectives

The following are the objectives of this research study:

- To find out which factors negatively affect access to justice by the poor in Uganda.
- To determine the impact epistolary jurisdiction will have on access to justice by the poor in Uganda.
- To determine whether India's epistolary jurisdiction experience can be a lesson to the Ugandan courts.

### 1.4 Hypothesis

This research study tests the following hypotheses:

- a) That obstacles such as the complexity of the court procedure, illiteracy, high court fees, high transport costs, ignorance of the law, the strict application of locus standi rule, lack of assertiveness, inefficient administration of justice, corruption and the lack of confidence in the judicial system by the public, have negatively impacted on the ability of the poor people in Uganda to access justice.
- b) That by relaxing the doctrine of standing, departing from the adversarial mode of judicial proceedings, protecting and realising the right to effective remedies and strengthening the investigative reach of the courts<sup>20</sup>, epistolary jurisdiction will improve the access to justice by the poor people in Uganda.
- c) That if Uganda adopts epistolary jurisdiction along the lines of India, Uganda will reduce the obstacles that have negatively impacted on the right to access justice thus leading to an increase in access to justice by the poor people.

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<sup>17</sup> Brems E, 'Human rights enforcement by people living in poverty: access to justice in Nigeria', 263.

<sup>18</sup> Baxi U, 'Taking suffering seriously: social action litigation in the supreme court of India', 4 *Third world legal studies*, 6(1985), 112.

<sup>19</sup> UNGA, *Legal empowerment of the poor and eradication of poverty*, 7.

<sup>20</sup> Bhagwatti PN, 'The Judiciary in India: A Hunger and Thirst for Justice', 184- 186.

## 1.5 Research questions

This study answers the following questions:

- a) Whether any obstacles have impacted on the access to justice by the poor people in Uganda?
- b) Whether epistolary jurisdiction can improve access to justice in Uganda?
- c) Whether Uganda can learn from India's experience with epistolary jurisdiction?

## 1.6 Justification of the study

This study proves that there's need for the judiciary in Uganda to make reform so as to improve access to justice by the poor. This study analyses the obstacles poor people face in accessing justice and in doing so it proves that judicial reform in the lines of epistolary jurisdiction may mitigate the obstacles faced by poor people in accessing justice.

This study is relevant because it proves there is a research gap in the field of epistolary jurisdiction and how it can be used to improve access to justice by the poor in Uganda. This is so because no research paper has been written about how epistolary jurisdiction can improve access to justice in Uganda. Therefore this study explores the realm of epistolary jurisdiction, its viability and whether it can be incorporated in the judicial system of Uganda.

This study is also relevant because it can be used by the judiciary of Uganda to come up with an appropriate judicial framework and policy for the applicability of epistolary jurisdiction in the courts of law.

## 1.7 Theoretical framework

This study is guided by a number of theories which include the following; John Rawls' theory of justice. According to John Rawls justice implies fairness.<sup>21</sup> Rawls argues that the notion of justice requires the maximization of liberty subject only to constraints necessary for the protection of

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<sup>21</sup> Okin SM, 'Justice as fairness: for whom?' in Freeman M, *Lloyd's Introduction to jurisprudence*, Sweet & Maxwell, 2014, 582-592.

liberty, the equality for all persons and the fair equality of opportunity together with the elimination of all inequalities of opportunity grounded on wealth or birth.<sup>22</sup>

This study is guided by this theory due to the fact that if justice demands for a fair and equal opportunity for all, then even the poor people in society ought to have an equal access to courts which enhances their access to justice. Additionally, if justice requires that all inequalities of opportunity grounded on birth or wealth be eliminated for justice to be achieved then courts ought to find new ways of eliminating such inequalities by using mechanisms such as epistolary jurisdiction.

Oliver Holmes' legal realism theory also guides this study. Oliver Holmes postulates that law constitutes of what is decided by the courts<sup>23</sup> and that legal rules are based on judicial decisions which are given in interest of the larger society. This study argues that if what constitutes of law is what is decided by the courts then the courts should have no problem in exercising their discretion by imposing new mechanisms such as epistolary jurisdiction which is a judge- led and judge- induced process to improve access to justice by the poor.

#### 1.8 Literature review

While the Ugandan government has strained to improve the access of justice by the poor people, there's still need for more to be done because many poor people still face challenges in accessing justice.

Firstly, the Legal Aid Service Providers Network while assessing access to justice for the poor, marginalised and vulnerable people in Uganda, noted that the status of poor persons in an extremely monetised justice system, the adversarial system of justice together with a strong emphasis on procedures and rules only increase uncertainties of further marginalisation or re-victimisation among the poor. In such a situation many poor people are left to their own devices and many abandon pursuing legal means to promote their welfare or protect themselves and

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<sup>22</sup> Freeman M, *Lloyd's introduction to jurisprudence*, Sweet & Maxwell, 2014, 482.

<sup>23</sup> Freeman M, *Lloyd's introduction to jurisprudence*, 826.

therefore there is need to offer applicable and approachable services at all levels as well as remove all barriers to justice that are precarious to the well- being and rights of the poor.<sup>24</sup>

The Avocats San Frontiers assert that since access to justice is closely linked to poverty reduction, both human rights and poverty reduction cannot be realised without access to an efficient remedy and this is because people living in extreme poverty live in a state of disempowerment in which most of their basic human rights are nearly impossible to realise.<sup>25</sup>

Eva Brems argues that people living in poverty are most likely to see their human rights violated and least likely to enforce their rights since the enforcement of their human rights is the exception rather than the rule and therefore the judiciary in developing countries has a crucial role to play in fighting human rights violation specifically those affecting people living in poverty. He particularly suggests public interest litigation, as practiced in India, as one of the judicial reforms that need to be place in order to improve access to justice for the poor.<sup>26</sup>

Justice P N Bhagwati, asserts that the poor regard the law as something mysterious and hostile and not as a positive social device for changing the socio- economic order and improving their conditions by conferring rights and benefits on them, and as a result the legal system has lost its credibility in their eyes.<sup>27</sup> He also contends that where there is so much poverty any insistence on a rigid formula of proceedings for the enforcement of a fundamental right would become self-defeating because it would place the enforcement of these rights beyond the reach of the common man and strict adherence to the adversarial procedure can sometimes leads to an injustice. He suggests that when the poor come before the court it is always necessary for the courts too depart from the adversarial procedure and to evolve a new procedure, epistolary jurisdiction, so as to secure the enforcement of their rights.<sup>28</sup>

On the other hand, Justice Pathak claims that even if epistolary jurisdiction creates opportunities for disadvantaged groups of people to gain access to justice, the practice of invoking the

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<sup>24</sup> Legal Aid Service Providers Network, *Access to justice for the poor, marginalised and vulnerable people of Uganda*, 13.

<sup>25</sup> Avocats San Frontieres, *The obstacles people living in extreme poverty face in accessing justice*, 5.

<sup>26</sup> Brems E, 'Human rights enforcement by people living in poverty: access to justice in Nigeria', 272.

<sup>27</sup> *Hussainara Khatoon and others v Home Secretary, state of Bihar, Patna*, 1979 SCR (3) 532.

<sup>28</sup> *Bandhua Mukti Morcha v Union of India and others*, 1984 SCR (2) 67.

jurisdiction of the court by a simple letter has an inherent grave danger and this is because sometimes these letter may in fact have been employed mala fide, as an instrument of black mail or coercion which amount to an abuse of the court process.<sup>29</sup>

#### 1.9 Research design and methodology

The study explores the use of secondary sources of data such as textbooks, journal articles, statute, case law and the internet.

The research designs used in this study is the correlational and case study design. The study aims at assessing the relationship between epistolary jurisdiction and access to justice and how the two affect each other therefore making the study correlational.

The Case study approach to the problem at hand is chosen because it gives one a detailed and focused approach to the question at hand. Uganda is the case study in this research.

#### 1.10 Limitations

There is no developed data base with the exact required information and as a result there are limited resources that directly speak to the issue at hand.

There is no time to carry out a completely comprehensive research as there is a deadline for the submission of this research.

This study is limited to Uganda, although examples from other jurisdictions such as India may be drawn.

This study is limited to only poor persons in Uganda, other groups of marginalised people have been neglected.

#### 1.11 Chapter breakdown

This research study will be completed in four chapters.

### **Chapter 1: Introduction**

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<sup>29</sup> *Bandhua Mukti Morcha v Union of India and others.*

Chapter one gives a general introduction to the research study by giving a background to this study, identifying the research problem, justifying the research and giving a general overview of what the research will entail.

## **Chapter 2: Obstacles negatively impacting on the ability of the poor to access justice in Uganda**

Chapter two gives an analysis of the obstacles that have negatively impacted on the ability of the poor to access justice in Uganda. The chapter expounds on each of the identified obstacles and how the obstacles can be approached so as to improve access to justice.

## **Chapter 3: Epistolary jurisdiction as a means of improving access to justice by the poor in Uganda**

Chapter three analyses the concept of epistolary jurisdiction, whether it can be applied in Uganda effectively and how epistolary jurisdiction shall improve the access to justice by the poor in Uganda.

## **Chapter 4: The application of epistolary jurisdiction in India**

Chapter four explores the history and application of epistolary jurisdiction in India and the possibility of reducing the obstacles faced by the poor in accessing justice in Uganda, if Uganda adopts epistolary jurisdiction along the lines of India.

## **Chapter 5: Recommendations and conclusion**

Chapter five presents recommendations to the judiciary in Uganda on the issue of access to justice by the poor in Uganda and the use of epistolary jurisdiction.

### 1.12 Time line/duration

This research paper shall take 6 months to complete.

## CHAPTER 2: OBSTACLES NEGATIVELY IMPACTING ON THE ABILITY OF THE POOR TO ACCESS JUSTICE IN UGANDA

### 2.1 Introduction

One of the most noticeable impacts of poverty in Uganda is the inability of the poor people to access justice using formal mechanisms. This has attracted numerous political and academic discourses about how to improve access to justice for persons living in poverty in Uganda. This research paper is certainly one of those academic discourses. As had been identified in chapter one of this research, despite the availability of numerous legislations and efforts by the government of Uganda to improve access to justice persons living in poverty still meet a number of barriers in trying to access justice.

In this chapter, we go on a quest to explore which obstacles negatively impact on poor persons' right to access justice. This will aid in testing the first hypothesis of this study: that a number of obstacles have negatively impacted on the ability of poor people to access justice. To achieve this, this chapter is split into three sections. Section one offers an outline of the social-economic situation of the poor in Uganda. Section two provides an overview of the concept access to justice and its relationship with poverty. And section three deals with the obstacles that have negatively impacted on the ability of persons living in poverty to access justice. This section provides an in depth analysis of the obstacles that warrant urgent consideration into the issue of access to justice by poor people. These include; complexity of the court procedure, illiteracy, the strict application of the locus standi rule, corruption, the lack of assertiveness by the public about their rights and the serious backlog of cases within the courts. Lastly, the chapter draws conclusions and makes several recommendations by making a strong case for legal empowerment of persons living in poverty in Uganda.

### 2.2 Social economic situation of the poor in Uganda

In the past two decades, Uganda has made significant social and economic progress even though the country remains one of the poorest. Uganda's Human Development Index<sup>30</sup> in 2014 was placed 164 of the 187 countries that were used in the survey and that signifies a challenge within the

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<sup>30</sup> UNDP, *Human Development Report 2014*, 162.

country. The Uganda poverty status report of 2014<sup>31</sup> noted that there are still barriers negatively impacting the distribution of quality basic services such as transport, education, communication, legal services and administration even though progress in general terms has been made within the country.<sup>32</sup>

According to the Uganda Bureau of Statistics during the period of 2012/13- 2017/18, the percentage of the population living in poverty increased from 20% to 27% which implies that about ten million of the thirty seven million Ugandans are living in poverty.<sup>33</sup> The report noted that poverty rates remained higher in rural areas compared to the urban areas. In the rural areas, persons living below the poverty line represent about 31% of the population compared to the 15% in urban areas<sup>34</sup>. The survey conducted revealed a number of factors as being common among poor persons within Uganda such as; the fact that most of them had not attained educational attainment and they came from households where the head of the house had also not received a formal education; the fact that households residing in the northern region of Uganda were mostly likely to be poor<sup>35</sup>; the fact that the poor people prefer informal justice mechanisms such as traditional leaders and local councils as opposed to the formal justice system<sup>36</sup>; poor persons mainly come from households headed by subsistence farmers and those that are dependent on agri-business as their key source of revenue<sup>37</sup>; and that the frequent changes in consumer prices of commodities greatly reduces disposable income for the poor and it negatively impacts on poor people's welfare. For persons living in poverty it is very difficult to access justice as most of them cannot afford to pay for the legal services. This will be expounded on in Section 2.4 of this chapter.

Additionally, even though the constitution of Uganda affirms that the state shall take affirmative action in favor of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them<sup>38</sup>. The constitution recognises a narrow set of marginalised people, which is those

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<sup>31</sup> Ministry of Finance, Planning and Economic Development, *Uganda Poverty Status Report 2014*, 2014, 4.

<sup>32</sup> Uganda Law Society, *Strategic Plan 2017-2021*, 2017, 3.

<sup>33</sup> Uganda Bureau of Statistics (UBOS), *Uganda National Household Survey 2016/17 report*, 2018, 84.

<sup>34</sup> Uganda Bureau of Statistics, *Uganda National Household Survey 2016/17 report*, 85.

<sup>35</sup> Uganda Bureau of Statistics, *Uganda National Household Survey 2016/17 report*, 104.

<sup>36</sup> Uganda Law Society, *Strategic Plan 2017- 2021*, 10.

<sup>37</sup> Uganda Bureau of Statistics, *Uganda National Household Survey 2016/17 report*, 91.

<sup>38</sup> Article 32, *Constitution of Uganda* (1995).

marginalised on basis of gender, age, disability, by a reason created by history, tradition or custom, and this fails to take into account the fact that the poor are marginalised and therefore need affirmative action in order to redress the injustices poor people meet. Owing to the mere fact that people living in poverty reside mainly in rural areas, they do not have the means to pay for the services of legal personnel and most of them have not received formal education therefore making access to justice a myth to them.

### 2.3 Access to justice

In the present generation, access to justice remains one of most essential and widely uttered principle under international law, constitutions and various laws of states. Access to justice is both a vital element for the promotion and protection of human rights and a fundamental human right. Without it persons living in poverty are denied an opportunity to challenge crimes, human rights violations or even an opportunity to claim their rights.<sup>39</sup>

Access to justice can be viewed as being two dimensional, and intended to remove de facto and de jure barriers to obtaining effective remedies. One is the procedural aspect: access to courts, lawyers and law enforcement agencies- this is important for making the justice system more user friendly, effective and accessible. The second aspect is substantive justice. Substantive justice looks at the fairness of the legal system and procedures and laws in place, that is to say, access to just outcomes.<sup>40</sup>

Uganda has enacted and ratified numerous legal instruments that promote access to justice such as: The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, UN Convention on the Rights of the Child, The Convention on the Elimination of All Forms of Discrimination against Women, The African Charter on Human and Peoples' Rights, the Resolution on the Right to Fair Trial and Legal Aid in Africa (Dakar Declaration) and the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa 2004. National Policy framework includes the

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<sup>39</sup> UNGA, *Report of the special rapporteur on extreme poverty and human rights*, A/67/278, 9<sup>th</sup> August 2012, 3.

<sup>40</sup> Legal Aid Service Providers Network, *Access to justice for the poor, marginalised and vulnerable people of Uganda*, 20.

1995 Constitution of Uganda, the National Development Plan, JLOS Strategic Investment Plan SIP III, the Civil Procedure Act and Rules and the Legal Aid Act.

Even with all these legislations, poor people in Uganda have not been able to access justice over the past years. If access to justice is to be attained individuals and groups must be aware that their legal rights are affected, know of sources of advice and assistance, and be able to expeditiously access to courts at a price within their reach.<sup>41</sup> For most poor people these conditions for the achievement of justice are still a dream that needs to be realised. Access to justice by the poor is also very key towards eliminating poverty eradication, improving self- empowerment and improving accessing to justice in Uganda. As the United Nations Development Programme accurately noted:

Access to justice is essential for poverty eradication and human development for the following reasons: Firstly, groups such as the poor who suffer from discrimination, also often fall victim to criminal and illegal acts, including human rights violations. Because of their vulnerability, they are more likely to be victims of fraud, theft, sexual or economic exploitation, violence, torture or murder. Secondly, crime and illegality are likely to have a greater impact on poor and disadvantaged people's lives, as it is harder for them to obtain redress. As a result, they may fall further into poverty. Thirdly, justice mechanisms can be used as tools to overcome deprivation by ensuring, for instance, access to education by girls and minorities. Lastly, fair and effective justice systems are the best way to reduce the risks associated with violent conflict.<sup>42</sup>

2. 4 Obstacles negatively impacting on the ability of poor people in Uganda to access justice

**Inadequate legal framework to protect the rights of the poor.** The report of the Special Rapporteur Magdalena Sepulveda on extreme poverty and human rights states accurately that laws have a tendency of reflecting and emphasizing the rights and interests of the powerful. This is in view of the fact that many laws are inherently biased against the poor and they do not recognise or prioritise the abuses/sufferings of the poor thus leading to a disproportionately harsh impact on

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<sup>41</sup> Cranston R, *How the law works*, Oxford University Press, 2006, 4.

<sup>42</sup> UNDP, *Programming for justice: Access for all*, 2005, 3.

them<sup>43</sup>. The legal framework in Uganda is not in any way unique to the phenomenon stated due to the following laws: The constitution of Uganda provides for free legal representation only in cases where the maximum penalty is death or life imprisonment. This therefore limit the cases in which an individual can apply for free legal assistance and as a result many poor people are left out of the justice system.<sup>44</sup> The Poor Persons Defence Act accommodates only poor prisoners committed for trial this essentially focuses on the rights of the accused persons committed for trial and neglects other poor persons such as victims of exploitation, crime and abuse<sup>45</sup>. In this act legal aid is limited to criminal proceedings only and this makes it so exclusionary<sup>46</sup>. The Trial on Indictment Act states that a person accused of an offence before the High Court should be defended by an advocate, at his or her own expense as of right<sup>47</sup>, this particular statute does not take into account that some accused persons cannot afford the services of an advocate therefore discriminating against the poor.

The Advocates (Legal Aid to Indigent Persons Regulations) states that a legal aid provider may in granting legal aid to any person may oblige the client to provide some funds for the cost of that legal aid.<sup>48</sup> Ironically most people resort to legal aid because they cannot afford the high costs of the litigation process and therefore if a price is placed on the legal aid most poor people are put at a disadvantage. The regulations also provide a list of persons that shall be given priority in the provision of legal aid.<sup>49</sup> This list does not include the poor and exclusion of the poor from the priority list simply indicates a clear disregard of the fact that poor people face a difficult in accessing justice. The pro-bono legal scheme by the Uganda Law Society provides for free legal services by advocate where by each advocate is required to either pay money or provide forty hours of pro-bono services every year<sup>50</sup> yet 40 hours is not enough time for an advocate to assist a client as some cases even last for 10 years which automatically puts the poor man at a disadvantage. Even the free justice centres established by the Uganda Law Society run in only 30 of the 127

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<sup>43</sup> UNGA, *Report of the special rapporteur on extreme poverty and human rights*, 8- 9.

<sup>44</sup> Article 28(3)(e), *Constitution of Uganda*, (1995)

<sup>45</sup> Section 1, Chapter 20, *Poor Persons Defence Act* (Uganda) defines a prisoner as a poor person committed for trial.

<sup>46</sup> Uganda Law Society, *Legal aid project of the Uganda Law Society annual report*, 2017, 14.

<sup>47</sup> Section 55, Chapter 23, *Trial on Indictment Act* (Uganda).

<sup>48</sup> Section 29, *Advocates (Legal Aid to Indigent Persons Regulations)*, 2007.

<sup>49</sup> Section 25, *Advocates (Legal Aid to Indigent Persons Regulations)*, 2007.

<sup>50</sup> Section 21, *Pro- Bono (Services to Indigent Persons)*, Regulations No. 39 of 2009.

districts in the country putting many poor people at a disadvantage as most districts are not covered in the program. All of these laws prove that there is need for reform in the area of the legal and institutional framework in order for the legal system to accommodate everyone including persons living in poverty and one of the ways in which this can be done is through epistolary jurisdiction.

**Complexity of the court procedure**, many of the poor people within the country have not received any legal education and as a result they face a challenge in understanding the complex court procedures. For instance to institute a civil suit one is required to draft a number of documents and for a criminal proceeding one is required to report the case first at the police and a charge sheet is drawn, for a person without any educational background or legal knowledge instituting a suit then becomes a challenge to them. The formality within the courts also complicates the court procedure for the poor. Often time poor people are left in the dark while navigating a judicial system they do not understand. Usually persons living in poverty are unfamiliar with the legal jargon and mainstream languages used in courts, the time restrictions within the courts, the statutes being used and all the paperwork involved in the court process and this deters the poor from seeking justice under formal systems.<sup>51</sup> For example Order VII of the Civil Procedure rules of Uganda establishes a specific format and content that a plaint should contain such as the name of the court in which the suit is brought, the name and place of residence of the plaintiff, facts showing that the court has jurisdiction and many more which a poor illiterate man who wants to institute a civil suit might not even know and as a result put him at a disadvantage of filing the case before the wrong court.

Persons living in poverty are also unfamiliar with the high level of evidential proof required during court trials and this affects their cases. And they lack the financial resources to support their cases, time to find required evidence and understanding of the law and the legal opinions of the courts<sup>52</sup>. For instance it is hard for a poor person to obtain the opinion of an expert as evidence or even collect the evidence required for his case without the assistance of legal personnel which as a result will disadvantage the poor man. Therefore in order for the judiciary to assist the poor people deal with the problems they face due to the complexity of the court procedure in Uganda needs to adopt

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<sup>51</sup> UNGA, *Report of the special rapporteur on extreme poverty and human rights*, 16.

<sup>52</sup> UNGA, *Report of the special rapporteur on extreme poverty and human rights*, 17.

new mechanisms such as epistolary jurisdiction that are user friendly and will enable the poor man understand the complex court processes.

**Illiteracy**, education and literacy empower citizens through growing their ability to understand and enforce their rights. However illiteracy and lack of an education on the other hand reduce one's access to economic resources and one's capacity to understand and enforce his rights resulting in lower levels of access to justice<sup>53</sup>. Poor people in most cases cannot afford basic education which makes them illiterate and this has a great negative impact on their awareness of their rights and access to legal advice and representation as they have insufficient knowledge of the legal information available to them.

**The cost of obtaining justice is very expensive.** Persons living in poverty usually cannot afford to pay court fees that are necessary to facilitate their cases, they cannot afford the transport fees to enable them travel to the courts for the hearing of their cases and similarly he cannot afford to pay for the services of a lawyer to enable them deal with their cases and as a result most poor people give up on the chase for justice. For instance the Advocates (Remuneration and Taxation of Costs) Rules provide for extremely high prices for the services of an advocate which most poor people cannot afford. The fee for drawing up a contract is 100,000 shillings<sup>54</sup>; instructions to search the register cost 80,000<sup>55</sup>; instructions to enter opposition or to defend proceedings costs 500,000<sup>56</sup>; attendance before the registrar conducting opposition or rectification proceedings cost 150,000 for every whole day and 75,000 for every half day<sup>57</sup>; transport to be paid to an advocate for every day of not less than six hours is 300,000 and for time less than six hours is 50,000 per hour<sup>58</sup>. These prices and many others not included here are very high and most poor people cannot afford them and as a result they are forced to give up on their right to access justice. It is also necessary to

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<sup>53</sup> Bingham Centre for the Rule of Law, *International Access to Justice: Barriers and Solutions*, October 2014, 17.

<sup>54</sup> Section 3, third schedule, *Advocates (Remuneration and Taxation of Costs) Rules* (Statutory Instrument No. 267-4 of 2000)

<sup>55</sup> Section 8(a), fourth schedule, *Advocates (Remuneration and Taxation of Costs) Rules* (Statutory Instrument No. 267-4 of 2000)

<sup>56</sup> Section 9(a), fourth schedule, *Advocates (Remuneration and Taxation of Costs) Rules* (Statutory Instrument No. 267-4 of 2000)

<sup>57</sup> Section 9(b), fourth schedule, *Advocates (Remuneration and Taxation of Costs) Rules* (Statutory Instrument No. 267-4 of 2000)

<sup>58</sup> Section 4(a), fifth schedule, *Advocates (Remuneration and Taxation of Costs) Rules* (Statutory Instrument No. 267-4 of 2000)

quote respected statements of judges in agreement of the view that if a poor man is charged with crime there is a likelihood of not being able to afford a lawyer and thus the poor man would be denied justice. Justice Black observed in *Gideon v Wainwright*:

Not only those precedents but also reason and reflection require us to recognise that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him.<sup>59</sup>

**The physical accessibility of the courts** also remains a constraint to the poor man as in most situations they have to travel long distances before they can reach a court or any institution willing to provide legal aid. For example the courts of highest record in Uganda which is the Court of Appeal and the Supreme Court only sit in Kampala which is the capital city of the country. Yet Kampala in comparison to all other districts in the nation is the richest and therefore has the lowest level of poverty which puts other poor people in other districts of the country at a disadvantage as they will not be able to access the courts of highest record easily. The Justice, Law and Order Sector in Uganda has tried to deal with this difficult by establishing justice centers in the country but these justice centres are only operational in thirty out of the one hundred and twenty seven districts in the country<sup>60</sup>.

**The corruption threat**, corruption has a tendency of challenging the full dependability of the outcomes from the judicial system therefore threatening access to justice by many Ugandans. This is because some of the rich and influential persons within the country buy their way out of crime which promotes a sense of discrimination and bias against those unable to bribe relevant authorities, accommodate or afford such unethical practices. For instance it is a common practice for the rich to bribe the Local Council I chairman (LC I) in order to block a hearing or the

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<sup>59</sup> 372 US 335.

<sup>60</sup> Legal Aid Service Providers Network, *Access to justice for the poor, marginalised and vulnerable people of Uganda*, 73.

forwarding of a case to the higher authorities for redress. A recent National Service Delivery Survey conducted in 2015 actually confirms the high levels of corruption within the country. The report indicated that of the respondents questioned for the survey 52% admitted to giving facilitation to the Uganda Police and 52% to the Magistrate courts need to hasten their services<sup>61</sup>.

The mere fact that the structure of the justice system guarantees that those with financial and social resources are able to access the justice system with great effectiveness and efficiency is another challenge brought about by corruption. This is brought about due to the fact that poor people usually cannot afford to pay requested bribes for services that should be free and thus their cases are delayed, denied or discontinued. Such practices then not only deny the poor access to justice also discourage them from accessing the justice system because they know they cannot afford to bribe the judicial officers<sup>62</sup>. In order to deal with the issue of corruption within the judicial system more accountability and transparency need to be enforced in Uganda so as to ensure judicial officers are held accountable for their actions.

**Lack of confidence in the legal system by the poor**, the poor in their contact with the legal system have always regarded the law as mysterious, oppressive and forbidding- always taking something away from them. The law for the poor is not a social device for changing socio-economic order since no rights or benefits of the law are conferred to the poor. As a result the judicial system has lost its credibility in the eyes of the weaker sects of the community such as the poor.<sup>63</sup> There is a general bias amongst the poor that to obtain justice, one needs to be rich. This is because the judicial system is filled with many technicalities which leads to a low level of public trust in the courts and a decline in the citizens' willingness to use the courts to protect their rights<sup>64</sup>. People living in poverty usually view the law as an instrument of oppression and therefore do not access the courts of law willingly unless they are forced into it as an accused or defendant in a lawsuit.<sup>65</sup> This lack of confidence in the judicial system then makes it difficult for rule of law to prevail in the country as rule of law means little in the absence of judicial institutions able to deliver justice

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<sup>61</sup> UBOS, *National Service Delivery Survey 2015 report*, 2016, 216.

<sup>62</sup> Legal Aid Service Providers Network, *Access to justice for the poor, marginalised and vulnerable people of Uganda*, 84.

<sup>63</sup> Justice PN Bhagwati in *Hussainara Khatoun & others v Home Secretary, State of Bihar*, [1979 AIR 1369], 2.

<sup>64</sup> UNGA, *Report of the special rapporteur on extreme poverty and human rights*, 7.

<sup>65</sup> Brems E, 'Human rights enforcement by people living in poverty: Access to justice in Nigeria', 263.

expeditiously, fairly and effectively and if the legal system does not work people tend to resort to self-help.<sup>66</sup>

**Lack of awareness about other justice options.** The role of the other justice options which might be referred to as informal justice mechanisms in deepening access to justice is usually neglected, yet if the poor man had knowledge about mechanisms such as negotiation, mediation, arbitration, conciliation, facilitation, ombudsman, early neutral evaluation and traditional alternative dispute mechanisms. These mechanisms are better than the traditional justice system, the courts, because they are relatively inexpensive, they maintain a good relationship between the parties, they are private as opposed to the public trials, they are not as formal as court systems and therefore people may feel less intimidated to approach them, they are faster than the court process and they focus on resolving the conflict between the parties. Because the poor man is usually uneducated and illiterate he has no legal knowledge and will not be able to access justice because he thinks justice is only through the courts of law and no other avenue can help him. In order to make sure persons living in poverty take advantage of the courts as they are not aware of other justice options, people friendly processes need to be adopted by the judiciary since it is the primary justice provider to the poor.

**Serious backlog of cases,** due to the heavy workload in the courts of law, judicial officers complain of not having enough time to adequately peruse files or prepare court hearings. As a result, there is a huge backlog of cases that has led to excessive periods of pre-trial detention and denial of justice. There exists a severe shortage in the number of public prosecutors, state attorneys, magistrates and judges in most parts of the country and even though the government through the Justice, Law and Order Sector (JLOS) has introduced measures to reduce the case backlog and to increase access to justice there is still a major case backlog in most of the courts within the country.<sup>67</sup>

As properly stated by Hassan B Jallow in his book *Journey for Justice*;

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<sup>66</sup> Hassan BJ, *Journey for Justice*, Author House, 2012,265.

<sup>67</sup>OHCHR, *Access to justice in Northern Uganda*, 2008, 6.

Much of the effectiveness of the machinery of justice is judged on the basis of expedition. Do the wheels of the machinery turn too slowly? Is there incessant, unreasonable, avoidable and unacceptable delay?<sup>68</sup>

The concern with delay is due essentially to the perception that in the final analysis it affects the quality of justice. The longer, it is believed, it takes to conclude a case, the less certain one is about the quality of the outcome in terms of fairness and justice. And even the preservation of the integrity of the evidence in the face of extended delay becomes problematic.”<sup>69</sup>

According to Hassan B Jallow, the problem of delay must be placed in its proper context because the nature of the legal process is such that some degree of delay is inevitable. And speedily dispensed justice may carry as many risks as the delayed justice. However in eliminating delay from the justice system the objective must always be to eliminate excessive, avoidable and unreasonable delay and to contain it within reasonable bounds. The problem of delay has to be dealt with without compromising the quality of justice.<sup>70</sup>

### **Restrictive rules of ‘standing’**

Standing’ is fundamental to access to justice. Standing is a party’s right to make a legal claim. In essence, the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. Often the argument is improperly used that restrictive rules of standing guard against a flood of litigation or against damaging and meddlesome interference<sup>71</sup>.

Poor persons are in most cases not aware about the strict application of the rules of standing and so they are usually left out of the judicial system. In order for the right of access to justice to be effective, the rules on standing should be adequate to allow any member of the public having an interest in the matter to have the right to make a legal claim<sup>72</sup>.

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<sup>68</sup> Hassan BJ, *Journey for Justice*, 268.

<sup>69</sup> Hassan BJ, *Journey for Justice*, 268.

<sup>70</sup> Hassan BJ, *Journey for Justice*, 269.

<sup>71</sup> UNDP, *Programming for justice: Access for all*, 87.

<sup>72</sup> UNDP, *Programming for justice: Access for all*, 88.

## 2.5 Conclusion

In this chapter, the first hypothesis of this study was tested. This was that obstacles such as the complexity of the court procedures, illiteracy, inadequate legal framework for the protection of the rights of the poor and many others have negatively impacted on the ability of the poor people in Uganda. It has been very clear through this chapter that indeed poor persons are at a disadvantage when it comes to accessing justice as they face a number of both institutional and non-institutional obstacles. This therefore implies that there's need for change within the judicial system in order to assist the people. The Judiciary should therefore embark on legal empowerment of persons living in poverty. As legal empowerment is central to people's ability to seek and demand remedies from the justice system and different approaches can be adopted to ensure that persons living in poverty have the means to demand justice.<sup>73</sup> This study proposes that the judiciary should adopt epistolary jurisdiction as a means of legally empowering persons living in poverty. The concept of epistolary jurisdiction will be expounded in the next chapter, chapter 3.

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<sup>73</sup> UNDP, *Programming for justice: Access for all*, 137.

## CHAPTER 3: EPISTOLARY JURISDICTION AS A MEANS OF IMPROVING ACCESS TO JUSTICE BY THE POOR IN UGANDA

### 3.1 Introduction

*Where there is so much of poverty, ignorance, illiteracy, deprivation and exploitation of rights, any insistence on a rigid formula of proceedings for enforcement of a fundamental right would become self-defeating because it would place enforcement of fundamental rights beyond the reach of the common man and the entire remedy for enforcement of rights granted in the constitution would become a mere rope of sand so far as the large masses of people in a country are concerned<sup>74</sup>.*

These are remarks from the obiter dicta of an Indian case, *Bandhua Mukti Morcha v Union of India and others*. These remarks clearly capture the need for legal empowerment and reform in jurisdictions where persons encounter challenges in accessing justice and they give a go-ahead for the application of epistolary jurisdiction in such jurisdictions. In the previous chapter, the obstacles faced by persons living in poverty in Uganda in accessing justice were discussed. In that discussion, we came to a conclusion that most, if not all, of the obstacles identified could be mitigated if the courts of law take necessary measures towards the fulfillment of poor persons' right to access justice as enshrined within the laws of Uganda. In concluding chapter two, I suggested epistolary jurisdiction as a way in which courts can embark on legal empowerment for persons living in poverty.

In this chapter, we go on a quest to explore the concept of epistolary jurisdiction. This will aid in testing the second hypothesis and in answering the second research question of this study- on whether epistolary jurisdiction can improve access to justice for persons living in poverty in Uganda. To achieve this, this chapter is divided into two sections. The first section deals with the concept of epistolary jurisdiction and it gives a detailed explanation of what epistolary jurisdiction is and its history. And the second section justifies the need for epistolary jurisdiction in improving access to justice by the poor in Uganda.

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<sup>74</sup> *Bandhua Mukti Morcha v Union of India & others*, 7.

### 3.2 Epistolary jurisdiction

The word epistolary is derived from the Greek word epistle which means writing a letter. Epistolary jurisdiction refers to means through which individuals or groups of people can approach the courts for violation of fundamental rights seeking redress by means of informal documentation such as letters, postcards, newspapers articles and telegrams amongst others and the informal documentation addressed to the court are treated as sufficient for the court to take up the matter thus making it a writ petition.

Epistolary jurisdiction refers to where the court can be moved by just addressing a letter on behalf of the disadvantaged class of persons<sup>75</sup>.

#### 3.2.1 History of epistolary jurisdiction

Epistolary jurisdiction was first applied in the United States Supreme Court in the case of *Gideon v Wainwright* in 1963 where it was held that states were required to provide legal counsel to indigent defendants charged with a felony. In this case, the applicant Mr. Gideon from his cell at the Florida state prison and with the use of the prison library, writing in pencil appealed to the United States Supreme Court against the Secretary of the Florida department of Corrections for denying him legal assistance and his postcard to the Supreme Court was treated as a petition.<sup>76</sup>

Despite the fact that the United States of America kick started the use of epistolary jurisdiction it has been best developed and used in India. From the late 1970s onwards the Indian courts began this unique form of judicial activism and Justice Bhagwati and Krishna Iyer were the frontiers of this novel system. The judges had noted that in India the administrative machinery was too apathetic towards citizens' problems and therefore it became nearly impossible for the citizens specifically the poor persons to seek judicial relief. The judges stipulated that if a person's fundamental rights are violated, then it might be brought to the attention of the courts by any concerned citizen through public interest litigation. And out of the development of public interest litigation, the concept of epistolary jurisdiction in India evolved<sup>77</sup>.

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<sup>75</sup>Bhagwati PN, 'The judiciary in India: A hunger and thirst for justice', 185.

<sup>76</sup>372 US 335(1963).

<sup>77</sup>Verma A, 'Taking justice outside the courts: judicial activism in India', 40 *Howard Journal*, 2 (2001), 152.

Epistolary jurisdiction was developed to simplify the procedure of public interest litigation since the judges were receiving a number of matters of public interest, therefore the judges ruled that petitions could be raised by writing even a letter to the judge or even through a newspaper article.<sup>78</sup> Though epistolary jurisdiction, the Supreme Court of India was able to reform the procedural laws and make them less burdensome to the individuals because the court had deemed it was unfair that a petitioner should have to incur the expenses of drafting a formal petition yet most of the petitioners were poor<sup>79</sup>. And because of the development of epistolary jurisdiction, for the very first time the courts were thrown open to the poor and disadvantaged groups of people and they began to feel that there was an institution to which they could turn for redress against exploitation and injustice<sup>80</sup>.

The term epistolary jurisdiction in the Indian courts was first used in the *Fertilizers Corporation Kamgar Union* case<sup>81</sup> and it was used to refer to petitions sent as letters. Other than letters, newspaper articles have also been utilised to institute legal action in India. For example, in the *Hussainara Khatoon* case<sup>82</sup> a significant case that dealt with the rights of the prisoners to have a speedy trial. Before the institution of this case, several newspaper articles had suggested that there were a large number of prisoners on remand who had spent more time behind bars than prescribed by the maximum punishment upon conviction. After the problems faced by these prisoners had been highlighted by several newspaper articles then brought to the attention of the Supreme Court of India through a petition, Justice Bhagwati and other members of the supreme court accepted these reports as a basis for a writ and passed orders for the release of under-trial prisoners<sup>83</sup>.

The rationale for the use of epistolary jurisdiction in India has also been given by the Indian Courts on so many occasions but in the *SP Gupta v Union of India*<sup>84</sup> case it was well captured. The judges asserted that:

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<sup>78</sup>Verma A, 'Taking justice outside the courts: judicial activism in India', 151.

<sup>79</sup>Bhagwati PN, 'The judiciary in India: A hunger and thirst for justice', 185.

<sup>80</sup>Bhagwati PN, 'The judiciary in India: A hunger and thirst for justice', 185.

<sup>81</sup>*Fertilizers Corporation Kamgar Union v Union of India*, AIR 1981 SC 344.

<sup>82</sup>*Hussainara Khatoon v Home Secretary of Bihar*, AIR 1979 SC 1360.

<sup>83</sup>Verma A, 'Taking justice outside the courts: judicial activism in India', 154.

<sup>84</sup>AIR 1982 SC 149.

“It must not be forgotten that procedure is but a handmaiden of justice and the cause of justice cannot be allowed to be thwarted by any procedural technicalities, therefore the courts will treat the letter of an individual as a writ petition and act upon it”<sup>85</sup>

Because India has provided a good example to other countries on how access to justice can be improved a number of countries have adopted epistolary jurisdiction and these countries include; Kenya, South Africa, Pakistan and Bangladesh. For example, in 2013 Kenya for the first time coined the concept epistolary jurisdiction in their procedural rules<sup>86</sup> governing the judiciary. Rule 10 of the Mutunga rules states that “subject to rule 9 and 10, the court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.” Informal documentation under rule 2 of the Mutunga rules is defined as any legible document in any language that is simple, does not conform to any particular form or rules of grammar and conveys information.<sup>87</sup>

In Pakistan the case of *Darshan Mashi alias Rehmatay v State* was the first example of epistolary jurisdiction exercised by the apex court<sup>88</sup>. In this case bonded laborers addressed a telegram to the Chief Justice of Pakistan with the following words;

“We plead for protection and bread for our family we are brick kiln bonded laborers. We have been set at liberty through the court. And now three among us have been abducted by our owners. Our children and women are living in danger ... we are hiding like animals...”<sup>89</sup>

The received telegram was treated as write petition and proceeding was initiated to redress the bonded laborers. The court rules that the form of work in brick kiln was forced labour and that court could in its original jurisdiction enforce the rights of the laborers<sup>90</sup>. This case was also treated by the case as a non-adversarial litigation and court opined that where there was no formal

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<sup>85</sup>Verma A, 'Taking justice outside the courts: judicial activism in India', 152.

<sup>86</sup> *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, legal notice No. 177 of 2013.

<sup>87</sup> Paranta E, 'Access to justice: epistolary jurisdiction as a means of improving access to justice in Kenya', Published LLB dissertation, 8th January 2016, 24.

<sup>88</sup> Ullah A, 'Public interest litigation: a constitutional regime to access to justice in Pakistan', 19 *Journal of Pakistan Vision*, 2(2018), 4.

<sup>89</sup> *Darshan Mashi v State*, PLD 1990 SC 513, 519.

<sup>90</sup> McCracken R, Sheik SK, 'Standing and fundamental rights: a South Asian perspective', 7 *Judicial Review Journal*, 3(2002), 172.

complainant, accused or contesting party, as was the case, no one should be reckoned as victorious<sup>91</sup>. And in Bangladesh the case of *Faustina Pereira v State*<sup>92</sup> was the first case in which the court exercised their epistolary jurisdiction. This case was based on a letter written to the Chief Justice of Bangladesh to bring his attention to the plight of foreign prisoners in the Dhaka Central Jail for years despite having served out their sentences. The Chief Justice then directed the High Court Division to place the matter before them and take appropriate action. This case justifies the use of epistolary jurisdiction because as a result of this case not only the foreign prisoners in the prison but also 822 detainees were directed to be released from different jails of Bangladesh whose terms had expired. And even though epistolary jurisdiction has not been adequately exploited in Bangladesh the fact that epistolary jurisdiction enables the upholding of human rights cannot be overlooked.<sup>93</sup>

### 3.3 Why should epistolary jurisdiction be adopted?

Over the years it is becoming increasingly obvious that the problems of the poor people are qualitatively different from the issues that have been handed by the courts so far. The traditional adversarial system employed by the courts has been found wholly inappropriate to tackle the problems faced by the poor therefore the courts are being called upon to come up with new methods, fashion new tools and evolve new strategies for the purpose of finding a solution to the problems.<sup>94</sup> Epistolary jurisdiction is one of the ways in which courts can respond to the problems encountered by the poor people in accessing justice. In jurisdictions where the courts have adopted epistolary jurisdiction it has been use in ensuring that access to justice is achieved by all their citizens and this is due to the following reasons:

Strict adherence to the traditional adversarial procedure of the courts can sometimes lead to injustice, particularly where the parties are not on the same level socially and economically.<sup>95</sup> Therefore it is ideal for courts to depart from the adversarial procedure and develop new procedures such as epistolary jurisdiction for the purpose of securing enforcement of fundamental

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<sup>91</sup> Ullah A, 'Public interest litigation: a constitutional regime to access to justice in Pakistan', 5.

<sup>92</sup> 2001 53 DLR 414

<sup>93</sup> 'Justice Rahman A, Upholding human rights of the poor: epistolary jurisdiction could be instrumental' [http://www.hrpb.org.bd/images/frontImages/Justice\\_A\\_F\\_M\\_Abdur\\_Rahman.pdf](http://www.hrpb.org.bd/images/frontImages/Justice_A_F_M_Abdur_Rahman.pdf) on 10 January 2019.

<sup>94</sup> Bhagwati PN, 'The challenge to the profession by the judiciary', 80 *Law & Just Christian Law Review*, 42(1984), 47.

<sup>95</sup> *Bandhua Mukti Morcha v Union of India and others*, 9.

rights for the poor. Where one party to the litigation belongs to a poor and deprived section of the community he is bound to be at a disadvantage as against a strong and powerful opponent. Under the adversary system, it may be difficult for the poor man to get competent legal representation or produce relevant evidence before the court. As it had been noted by the Supreme Court of India strict adherence to traditional adversarial procedure leaves the courts for only the wealthy. As it becomes impossible for the poor to approach the court because they lack the awareness, assertiveness and access to the mechanisms required to enforce their rights.<sup>96</sup> Therefore, there is need for the courts to utilise their powers to devise new tools that will bring justice to socially and economically disadvantaged groups such as epistolary jurisdiction.

Through the liberalization of the rule of locus standi, epistolary jurisdiction has opened doors of the court to large masses of people, who due to poverty and/or ignorance were unable to access the judicial process<sup>97</sup>. Traditionally the rule with regard to standing is that judicial redress is only available to a person that has suffered a legal injury by reason of violation of his legal right or who is likely to suffer a legal injury by reason of a threatened violation of his legal right. The traditional rule of standing is very narrow and rigid<sup>98</sup> as it discourages a number of people from accessing justice. Yet in many countries, access to justice is already being restricted by social and economic constraints therefore it is very necessary to promote innovations such as epistolary jurisdiction so that large masses of people deprived of their rights get to enjoy them and make these rights meaningful for them instead of remaining mere empty hopes<sup>99</sup>.

Epistolary jurisdiction redeems the faith of the people in the Constitution as it promises that justice is a right, not a privilege. As was the case in India, epistolary jurisdiction came into existence as a response to a problem encountered in India. Namely that of the continued existence of a large number of groups of people who were subjected to exploitation, injustice and even violence<sup>100</sup>. For the vast masses of people affected by poverty and had been subjected to exploitation and injustice, justice was an illusion as they were unable to access the judicial system

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<sup>96</sup> Bhagwati PN, 'The judiciary in India: A hunger and thirst for justice', 177.

<sup>97</sup> Bhagwati PN, 'The judiciary in India: A hunger and thirst for justice', 177.

<sup>98</sup> *SP Gupta v Union of India and another*, 1981 AIR 149, 12.

<sup>99</sup> *SP Gupta v Union of India and another*, 10.

<sup>100</sup> Bhagwati PN, 'The judiciary in India: A hunger and thirst for justice', 173.

for redress. In light of this deplorable situation, the judiciary in India adopted epistolary jurisdiction as one of the ways in which justice could be served to all categories of people<sup>101</sup>.

Epistolary jurisdiction strengthens the investigative reach of the courts, this is because as the courts allow for cases to be instituted through the use of informal documentation. The courts need to be keen about the documentation received and this will strengthen its investigative reach. When the courts of law allow for epistolary jurisdiction to be adopted, some members of the public might abuse this innovation by instituting vexatious and frivolous actions but because this is expected when procedural laws are relaxed. Jurisdictions like India have established commissions and have issued guidelines on the use of epistolary jurisdiction so as to ensure that the process is not abused. For example in the case of *Sunil Batra v Delhi Administration*, the court was forced to investigate the prisoners' conditions at Tihar prison when a letter was written by a prisoner Batra, complaining of a brutal assault by a head warden on another prisoner Prem Chand<sup>102</sup>.

Epistolary jurisdiction makes access to justice affordable. The nature of epistolary jurisdiction is that it allows for people to reach the courts seeking redress through informal documentation such as letters, postcards and newspaper articles. These informal documentations can be written by any member of the public. This implies that members of the public that cannot afford the services of legal personnel to help them institute suits and members of the public that cannot afford to pay for the filing fees required for the institution of suits at the court registry will also have a chance to access justice through epistolary jurisdiction.

### 3.3.1 Criticisms raised against epistolary jurisdiction

Criticisms have been raised against epistolary jurisdiction by many acclaimed scholars, senior practitioners and sitting judges. The principle criticism raised is that the dilution of the requirement of 'locus standi' due to epistolary jurisdiction has opened up the flood gates for frivolous cases that either involve the litigants' private interests or are vehicles for gaining publicity rather than seeking justice for disadvantaged groups. Justice Das commented on the fact that some litigants

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<sup>101</sup> Sujoria A, 'Introduction of epistolary jurisdiction by the supreme court in India: how far successful', Unpublished paper, Hidayatullah National Law University, 2016, 23.

<sup>102</sup> 1980 AIR 1579, 1980 SCR (2) 557, 7.

will use epistolary jurisdiction to gain publicity and not for the purposes of advancing access to justice when he stated sarcastically that:

“The courts have virtually invited all citizens from every corner of the country to drop a postcard alleging a grievance, real or imaginary and a writ will be issued. If the individual does not come forward, there are non-descript lawyers, overnight social forums and pseudo-journalists who would initiate proceedings whatever be the final result. In the process, they do not stand to lose anything, they get their publicity in the name of human rights and freedom of press, besides putting a spoke in the wheel of the establishment.”<sup>103</sup>

Epistolary jurisdiction detracts from the constitutional principle of separation of powers. By allowing the courts to arbitrarily interfere with policy choices made by the executive and the legislative.<sup>104</sup> To some it appears that epistolary jurisdiction imposes an additional ‘gate-keeping’ role<sup>105</sup> which impedes the efficiency of the courts due to the increasing case load before the appellate courts.

Overruling these and all other criticisms of this innovation, epistolary jurisdiction, a case has been made by many scholars and jurists while focusing on the main rationale of epistolary jurisdiction. It has been reiterated on a number of occasions that epistolary jurisdiction is court’s view to bring justice within the easy reach of the poor and disadvantaged sections of society. And where there is inequality in society, judges must take proactive steps to protect the interests of those who do not have a voice in society and do not have the means or information to move the courts.<sup>106</sup>

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<sup>103</sup> Bakhshish S, *Law in India and weaker sections: a judicial perspective*, Justice and Social Order in India, New Delhi: Intellectual Publishing House, 1984, 207.

<sup>104</sup> ‘Growth of public interest in India, address by Justice Balakrishnan KG, chief justice of India at the Singapore Academy of Law, fifteenth annual lecture’, 8 October 2008, 370  
[http://shodhganga.inflibnet.ac.in/bitstream/10603/39837/16/16\\_annexure.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/39837/16/16_annexure.pdf) on 17 January 2019.

<sup>105</sup> Verma A, ‘Taking justice outside the courts: judicial activism in India’, 153.

<sup>106</sup> ‘Growth of public interest in India, address by Justice Balakrishnan KG, chief justice of India at the Singapore Academy of Law, fifteenth annual lecture’, 8 October 2008, 372  
[http://shodhganga.inflibnet.ac.in/bitstream/10603/39837/16/16\\_annexure.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/39837/16/16_annexure.pdf) on 17 January 2019.

### 3.4 Conclusion

At the conclusion of chapter 2, epistolary jurisdiction was suggested as a means of providing legal empowerment to persons living in poverty in Uganda. This chapter picked up on that suggestion and explored the concept, epistolary jurisdiction. In this chapter we sought to answer the second research question of this study on whether epistolary jurisdiction can improve access to justice in Uganda. In the chapter, a detailed explanation into the concept of epistolary jurisdiction and its history has been given. A case has been made for epistolary jurisdiction as it will enable poor people access the courts and the criticisms raised against the use of epistolary jurisdiction have also been highlighted. As it has been discussed in this chapter, the benefits of epistolary jurisdiction outweigh the criticisms that have been raised against it and therefore epistolary jurisdiction should indeed be adopted by the courts in Uganda. If epistolary jurisdiction is to be adopted is there a way in which it should be adopted? This is the question the next chapter answers by looking at the exercise of epistolary jurisdiction in the India courts.

## CHAPTER FOUR: THE APPLICATION OF EPISTOLARY JURISDICTION IN INDIA

### 4.1 Introduction

*Even while retaining the adversary system, some changes may be effected whereby the judge is given a greater participatory role in the trial so as to place the poor, as far as possible, on a footing of equality with the rich in administration of justice.*

This observation was made by Justice P. N Bhagwati in a report on legal aid published in 1971.<sup>107</sup> These remarks justify the exercise of epistolary jurisdiction in India as they prove the need to devise new tools and remedies by the courts for purposes of ensuring access to justice. In the previous chapter, the concept of epistolary jurisdiction was discussed at length. And in this chapter the final hypothesis of this study will be tested- that if Uganda adopts epistolary jurisdiction along the lines of India, Uganda will be able to reduce the obstacles that have negatively impacted on the right to access justice by the poor. To achieve this this chapter first deals with the exercise of epistolary jurisdiction by the Indian courts and how they have managed to maintain the successful operation of epistolary jurisdiction. Secondly the role of the courts in Uganda in promoting epistolary jurisdiction is discussed, this is in an effort to prove that the courts in Uganda need to adopt epistolary jurisdiction along the lines of the Indian courts and lastly section 4.4 concludes this chapter.

### 4.2 Exercise of epistolary jurisdiction in India

Epistolary jurisdiction was born in India as a result of the growth of public Interest litigation. As identified in chapter three the development and exercise of epistolary jurisdiction in India started in the late 1970s in the Indian courts. Epistolary jurisdiction in India was mainly championed by Justice Bhagwati and Justice Krishna Iyer after they realised that it had become nearly impossible for the Indian citizens to seek judicial relief.

One of the major challenges the Indian citizens had faced in accessing justice was the inability to reach the courts due to the numerous formal requirements that were associated with filing a case. The supreme court of India thus decided to do away with some of the formal requirements. The court did so by deciding that a postcard, a letter, a telegram or even a newspaper article can be

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<sup>107</sup> Desai A, Muralidhar S, 'Public Interest Litigation: Potential and Problems', in Kirpal BN (eds), *Supreme but not infallible*, New Delhi Oxford University Press, 2000, 161.

treated as a legitimate petition. “And it is this ‘epistolary jurisdiction’ for which the Indian Supreme Court is most famous.”<sup>108</sup> Owing to the fact that even a postcard was enough to gain access to the courts a number of cases were then brought to the courts. Some of the cases that were brought forward include:

In *Sunil Batra II v. Delhi Administration*<sup>109</sup>, Batra wrote a letter on behalf of another prisoner to the Chief Justice alleging that another prisoner was being tortured by the jail warden to extract money from his relatives. The Court appointed an amicus curiae to investigate this allegation. This investigation revealed that the prisoner was brutally tortured by the jail warden. Taking note of these facts, the Court passed detailed orders directing that the Superintendent of the Police prevent any further corporal punishment to the prisoner. It also ordered that lawyers nominated by the subordinate courts, High Courts, and the Supreme Court be given all facilities for interviews, visits, and confidential communication with prisoners concerning discipline and security considerations. Finally, the Court also provided that the state prepare a prisoner’s handbook and comply with the United Nations Standard Minimum Rules for Treatment of Prisoners.

In *Upendra Baxi (Dr) v State of UP*<sup>110</sup>, two law professors of the Delhi University addressed a letter to the court seeking enforcement of the constitutional rights of the inmates under Article 21 of the Indian Constitution. They urged for the improvement of the living conditions in the protective homes so that the inmates can live with human dignity in the homes. And the court treated their letter as a writ petition when it permitted the two professors to maintain an action for purposes of enforcing the constitutional right of the inmates.

In *Sheela Barse v. State of Maharashtra*<sup>111</sup>, a journalist (Sheela Barse), in a letter addressed to the Chief Justice, stated that some women prisoners had been assaulted and tortured by the police while in custody. This letter was treated as a writ petition and the court directed the Legal Aid Committee of the State of Maharashtra to provide legal aid to the under-trial women prisoners and

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<sup>108</sup>Guruswamy M, Aspatwar B, Access to justice in India: The jurisprudence (and self-perception) of the Supreme Court’, 2013, 20. Accessed at SSRN: <http://ssrn.com/abstract=2498459> on 10 December 2018.

<sup>109</sup> (1978) 4 SCC 494.

<sup>110</sup> (1983) 2 SCC 308.

<sup>111</sup> (1983) 2 SCC 96.

to have separate lock-ups for women, with only female guards, among the many other orders it passed in this case.

In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*<sup>112</sup>, exercising its epistolary jurisdiction, the Supreme Court registered a letter from an environmental protection group as a writ petition. This letter alleged that illegal mining the northern part of India adversely affected the ecology of the area. The Supreme Court constituted a committee to examine whether the safety standards laid down in the law governing mining activity were being followed and also whether there was any danger of landslide because of the quarrying activities. The Court also constituted an expert committee to investigate the issue of ecological disturbance, and air, water, and environmental pollution caused by the quarrying operations.

In *Anil Yadav and others v State of Bihar and another*<sup>113</sup>, newspaper reports exposed the brutalities of the police by revealing that about 33 accused had lost their eyesight due to pouring of acid into their eyes by the police of Bihar. Through interim orders, Supreme Court directed the government to bring the blinded men to Delhi for medical treatment. It also ordered speedy prosecution of the guilty policemen. The court also provided right to free legal aid as a fundamental right to every accused.

As was demonstrated in the above cases but also in several others, of considerable import to the epistolary jurisdiction jurisprudence, the work of the Supreme Court in turning what were originally the non-justiciable provisions of the constitution into justiciable rights was to ensure that disadvantaged groups in society could find justice.<sup>114</sup> Even though epistolary jurisdiction is now less frequently used by the Indian courts a number of measures were adopted by the Indian courts to ensure the successful operation of epistolary jurisdiction.

The scope of epistolary jurisdiction in India has been limited. Any letter petition brought to the courts outside the listed categories of cases that are accepted is not considered by the courts and no relief is granted to the victim. This enables the Indian courts to reduce the case backlog and

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<sup>112</sup> (1985) 2 SCC 431.

<sup>113</sup> (1982) SCR 3 533.

<sup>114</sup> Onyango JO, *When courts do politics: public interest litigation in East Africa*, Cambridge Scholars Publishing, 2017, 92-93.

minimise on the abuse of the epistolary jurisdiction therefore enabling the courts to be more efficient. The accepted categories of cases are:

- “(1) bonded labor matters;
- (2) Neglected children;
- (3) Nonpayment of wages to workers and exploitation of casual workers and complaints of violation of labour laws (except in individual cases);
- (4) petitions from jails complaining of harassment, for (premature release) and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right;
- (5) Petitions against police for refusing to register a case, harassment by police and death in police custody;
- (6) Petitions against atrocities on women, in particular harassment of brides, bride-burning, rape, murder, kidnapping, etc.
- (7) Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to Scheduled Caste and Scheduled Tribes and economically backward classes;
- (8) petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wildlife, and other matters of public importance and
- (9) Petitions from riot victims;
- (10) Family pension.”<sup>115</sup>

Public interest cells have been established at the courts in India and these cells play a great role in ensuring the proper exercise of epistolary jurisdiction. For instance at high court level, the Delhi High Court (Public Interest Rules) 2000 provide for the constitution of a public interest cell also known as a PIL cell. The duty of the public interest cell is to receive letter- petitions from

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<sup>115</sup> Supreme Court of India, Compilation of guidelines to be followed for entertaining letters/ petitions received in this court as public interest litigation.

individuals and look into the petitions. All letter petitions are received are first screened and only petitions as are covered by the accepted categories of cases will be placed before a judge nominated by the Chief Justice of India for directions and after which the case will be listed before the bench concerned. The PIL cell is very important because it filters the received petitions so as to ensure that the courts deal with only appropriate cases.

In 1986, the Chief Justice of India formulated a number of principles that ought to be followed in the exercise of epistolary jurisdiction. These principles guide the courts in the exercise of their mandate and help deal with some of the problems that may arise in a jurisdiction due to the use of epistolary jurisdiction. The principles are:

1. To invoke epistolary jurisdiction the informal petition must be addressed to the court and not to a specific judge.
2. The informal petition should only be treated as a writ petition if it is lodged on behalf of socially in advanced people or a class of people that suffered from any sort of disability monetary or physical.
3. There should be a public distress cell within the Supreme Court administration, which will consider these informal petitions and send the same to the appropriate bench for consideration of the same as writ by the judges on their leave.
4. When any such informal petition on behalf of people in taken as writ, general notification in the newspaper must be made allowing impleading parties in the writ either in favor or against the cause.
5. The court shall appoint amicus curia in the case and on public hearing decide the matter.
6. If any of the judge desires to act on any information published in the newspaper he must act through the Chief Justice. <sup>116</sup>

These principles and rules have enabled the proper exercise of epistolary jurisdiction in India and act as an example of how epistolary jurisdiction can be efficiently applied to increase access to

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<sup>116</sup>[https://www.google.com/url?q=http://www.hrbp.org.bd/images/frontImages/Justice\\_A\\_F\\_M\\_Abdur\\_Rahman.pdf&sa=D&ust=1549604967280000&usg=AFQjCNH3gLyfJMxv5zsmJdZAOwBulXdSiA](https://www.google.com/url?q=http://www.hrbp.org.bd/images/frontImages/Justice_A_F_M_Abdur_Rahman.pdf&sa=D&ust=1549604967280000&usg=AFQjCNH3gLyfJMxv5zsmJdZAOwBulXdSiA) on 20 January 2019.

justice without misusing the process. This therefore warrants a look into the role courts in Uganda can play so as to enable the adoption of this benevolent innovation into their judicial system.

#### 4.3 The role of the courts in promoting epistolary jurisdiction

From the discussion in section 4.2 it is quite clear that epistolary jurisdiction has been a success in India because the courts in India have adopted measures and principles to govern the exercise of epistolary jurisdiction. And because of the adoption of these measures the issues raised by the critics of epistolary jurisdiction have been dealt with, therefore if Uganda is to adopt epistolary jurisdiction the following lessons, as seen from India's case, would be beneficial to them:

**Public interest cells should be set up at courts to accommodate the proper exercise of epistolary jurisdiction.** The role of these cells would be to receive any informal documentation sent to the courts and establish whether it satisfies the establishment of a case. This is so as to avoid situations where the courts become a market place, where each and every person can access them without control thus leading to the abuse of the powers of the court. Additionally, owing to the fact that public interest cells receive the informal documentation, this will improve access to justice for the poor because they will be sure of where they can address their petitions if the need arises.

**The scope of epistolary jurisdiction should be limited.** The judiciary in Uganda should criticise analyse the types of cases they usually receive from the general public and thereafter come up with the scope of epistolary jurisdiction. This has been done by India and it has been very efficient in promoting the proper exercise of epistolary jurisdiction since it cannot be used in every case. This has also helped reduce the case backlog for the Indian judiciary since the courts have decided that only a certain category of cases will be brought to the courts by the use of epistolary jurisdiction. Therefore if epistolary jurisdiction is to be a success the courts in Uganda need to clearly establish the scope of epistolary jurisdiction just like the Indian courts did.

**Rules and principles governing the application of epistolary jurisdiction should be established.** For epistolary jurisdiction to be a success in Uganda, the courts need to come up with rules and principles that govern its application and this will enable the proper exercise of this innovation. In India, for example, the rules and principles established include things like: the

informal petition should not be addressed to a such judge but to the general court and this solves the problem of bias of the judges towards cases; the informal petition is only accepted if its brought on behalf of a disadvantaged person or a disadvantaged group of persons and this deals with the issue of abuse of the epistolary process by people that can afford to access the courts without any barrier; and where a judge wishes to establish a case on the basis of a newspaper article he should inform the Chief Justice first and this also is to deal with the issue of bias towards the people involved in the case.

*“Law does not stand still. It moves continually. Once this is recognized, the task of the Judge is put on a higher plane. He must consciously seek to mold the law so as to serve the needs of the time”*. Lord Denning once beautifully stated.<sup>117</sup>

The role of the courts in Uganda in ensuring that justice due to every individual is served cannot be overly emphasized. The judiciary and in particular the courts must intercede on behalf of individuals and disadvantaged groups of people such as the poor, so as to ensure that the law is not stagnant, accessibility of the courts is efficient and that justice is done<sup>118</sup>. Primarily the role of the courts is to interpret the constitution of the land and other legislations. This very process of interpretation is necessary if the courts would like to make significant changes in the manner in which social problems such as poverty are addressed in society. In this section focus will be drawn to Article 126 of the constitution of Uganda and its interpretation advances epistolary jurisdiction. Article 126 provides for principles that the courts should apply in the exercise of their judicial powers which are the following-

- 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;

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<sup>117</sup> ‘ Qaiser KH, Public interest litigation and the role of judiciary’  
<http://www.supremecourt.gov.pk/ijc/articles/17/5.pdf> on 20 January 2019.

<sup>118</sup> Woolf L, *The Pursuit of justice*, Oxford University Press, 2008, 195.

e) Substantive justice shall be administered without undue regard to technicalities.<sup>119</sup>”

These principles when carefully studied are all in support of legal innovations such as epistolary jurisdiction. Principle one places an obligation on the courts to help those who need the assistance of the courts to obtain access to justice. Courts must therefore intercede on behalf of individuals such as the poor because the path to obtaining justice through other mechanisms such as amendment of legislation is often times blocked for such groups of people<sup>120</sup>. One such a way of interceding on behalf of individuals is through the introduction of epistolary jurisdiction which will ensure that justice is done to all irrespective of their social or economic status.

Principle two deals with delay of justice, as had been pointed out in chapter two of this research paper often times justice is delayed for the poor people because they cannot afford the costs that come with the exercise of justice such as advocates’ fees, transport fees and filing fees. This causes many poor people to give up on their pursuit for justice. But with the introduction of epistolary jurisdiction some of the costs incurred by the poor in the courts will be reduced such as filing fees, due to the fact that with epistolary jurisdiction any informal documentation such as newspaper articles, posts and letters can be treated as a writ and the court will act upon them to institute legal proceedings therefore fulfilling its principle of justice shall not be delayed.

Principle three deals with the reward of adequate compensation to victims of wrongs but, it is important to remember that this adequate compensation will not be achieved if certain groups of the people, who might be victims of wrongs, do not even have access to the courts of law that offer this compensation. And one of the ways through which the courts can ensure that all victims of wrongs get adequate compensation is through the use of epistolary jurisdiction.

It is the role of the court to direct litigants to the correct forum in which to resolve their disputes and in doing so principle four<sup>121</sup> will be complied with. Even though, epistolary jurisdiction does not directly promote reconciliation between the parties, it could lead to reconciliation between them when the dispute is resolved.

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<sup>119</sup> Article 126 (2) (a -e), Constitution of Uganda (1995).

<sup>120</sup> Gnagi W, *Saving the constitution from the courts*, University of Oklahoma Press, 1995, 215.

<sup>121</sup> Principle four as in Article 126(2) (d) of the Constitution of Uganda(1995) states that reconciliation between parties shall be promoted.

Principle five clearly states that substantive justice shall be administered without undue regard to technicalities. As a custodian of the law, it is the role of the courts to ensure at all times that justice is administered to all who come before it. The rationale behind this principle is that it was brought into place to cure the problem of dismissal of cases based on mere procedural technicalities which could be rectified.

“When parties approach the court with a dispute, they do so acknowledging the fact that the court is the proper forum for amicable dispute resolution based on the laws of the land. The aspiration of the litigants is that they will always have the courts as a resort for the enforcement and protection of their rights. Therefore, when cases were dismissed on technicalities of procedure, the litigant were driven from the judgement seat before their complaint were investigated<sup>122</sup>”.

Unlike other arms of government, the courts directly interact with the people within a country and a constantly aware of the needs of the people within their countries. Article 126 of the constitution of Uganda provides for principles that courts should follow in the administration of justice. And as has been discussed in this sections these principles all warranty the adoption of epistolary jurisdiction in Uganda in order for the courts to be able to carry out their constitutional mandate.

#### 4.4 Conclusion

In this chapter the research question - whether Uganda can learn from Indian’s experience with epistolary jurisdiction was answered in affirmative. In section one of the chapter the exercise of epistolary jurisdiction in India was discussed and in section two the lessons, courts in Uganda can learn from the exercise of epistolary jurisdiction in India and the role of the courts in promoting the exercise of epistolary jurisdiction were discussed. From the discussion in this chapter and from the previous chapters, it is indeed clear that epistolary jurisdiction will improve access to justice for persons living in poverty in Uganda if it adopted along the lines of the Indian courts’ epistolary jurisdiction.

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<sup>122</sup> Wanjala SJ, ‘Substantive justice over procedural law in Kenya; Gains under the 2010 constitution dispensation’, published LLB dissertation paper, Strathmore University, 2017, 23-24.

## CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Introduction

Poor people all over the world suffer from a lot of discrimination and often times fall victim to criminal and illegal acts including human rights violations. Because of their vulnerability, they are more likely to suffer the severest human rights violations and not be able to adequately voice their needs or even seek redress against the injustices they face. Considering this injustice, the objective of this research study was to prove that epistolary jurisdiction as has been used for so many years in the Indian courts can improve access to justice for the poor people in Uganda.

In chapter one of this study, this research was introduced. A general background of the study was given, the research problem was stated, this study was justified and the limitations of the study were identified. Additionally the theories this study relies on were given and the research questions and hypotheses of the study were also identified. This study had three hypotheses and each hypothesis was tested in a separate chapter.

Chapter two tested the hypothesis that obstacles such as the complexity of the court procedure, inadequate legal framework to protect the rights of the poor, illiteracy and the strict application of the locus standi rule, have negatively impacted on the ability of poor people in Uganda to access justice. To test this assumption, in the chapter we started with a brief analysis of the socio-economic situation of the poor in Uganda, the meaning of access to justice and its relationship with poverty. Then a number of obstacles to accessing justice were discussed. In this discussion, we discovered that it is indeed true that obstacles negatively impact on the ability of poor persons to access justice. And that most, if not all of the obstacles identified can be dealt with if the judiciary in Uganda empowers the poor through the adoption of epistolary jurisdiction.

In chapter three the hypothesis tested was whether by relaxing the doctrine of standing, departing from the adversarial mode of judicial proceedings and strengthening the investigative reach of the courts, epistolary jurisdiction will improve access to justice for the poor in Uganda. This chapter defined epistolary jurisdiction and looked into the history of epistolary jurisdiction. It was observed that the first case in which epistolary jurisdiction was exercised was in *Gideon v*

Wainwright, an American case. And that a number of jurisdictions such as Kenya, Pakistan and Bangladesh have adopted epistolary jurisdiction even though India's epistolary jurisdiction is the best example for the proper exercise of epistolary jurisdiction. In this chapter reasons for the adoption of epistolary jurisdiction were also given and the criticisms that have been raised against this judicial innovation were identified. This chapter concluded with the advocating for the adoption of epistolary jurisdiction because it will lead to the realization of effective remedies, it will strengthen the investigative reach of the courts, it will relax the strict application of the doctrine of standing and it will improve access to justice for the poor.

In chapter four the final hypothesis of this study was tested which was that if Uganda adopts epistolary jurisdiction along the lines of India, it will be able to reduce the obstacles that have negatively impacted on the ability of poor people to access justice. To test this hypothesis, the exercise of epistolary jurisdiction in India was explored and the role courts in Uganda can play towards the promotion of epistolary jurisdiction in Uganda was also highlighted.

This is where this chapter picks up from by making recommendations to the judiciary in Uganda and subsequently concluding this research.

## 5.2 Recommendations

**5.2.1 Consider and adopt epistolary jurisdiction as a means of improving access to justice for the poor.** Learning from India's experience the judiciary in Uganda through the courts should adopt epistolary jurisdiction. In India due to epistolary jurisdiction, the courts have been able to progressively advance the interests of the marginalised and underprivileged in society. This was done through the continuous advancement of the protection of civil liberties, the guarantee of socio-economic entitlements and through ensuring accountability of public institutions through the use of epistolary jurisdiction. Considering the numerous benefits the judiciary in India has been able to achieve, the courts in Uganda should consider the adoption of epistolary jurisdiction so as to improve access to justice for persons living in poverty in Uganda.

**5.2.2 Conduct further research into other justice mechanisms that will improve access to justice in Uganda.** These justice mechanisms could for example be alternative dispute resolution mechanisms such as negotiation, mediation, arbitration and traditional justice mechanisms. These

mechanisms alongside epistolary jurisdiction will lead to the improvement of access to justice for not only the poor but for the general population of Ugandans.

**5.2.3 Strengthening institutional capacity of the courts.** Access to justice in any country is best achieved when corresponding institutions such as the courts are equally vested in ensuring access to justice is achieved. The courts in Uganda can ensure this through strengthening coordination among the courts and through continuous expansion of the continuum of access to justice. This can be done through the adoption of epistolary jurisdiction. The adoption of epistolary jurisdiction will as a result build back the trust of people in the judicial system, strengthen its credibility and its capacity as an institution.

### 5.3 Conclusion

Primarily, poor people are often time victims of exclusion, exploitation and marginalisation which makes their socio- economic situation worse. In contact with the law, poor people are faced with a number of barriers and this negatively impacts on the ability of poor peoples to access justice. Without effective, inclusive and affordable access to justice mechanisms such as epistolary jurisdiction, poor people in Uganda will continue to be denied the opportunity to claim, enjoy or reassert their rights or challenge breaches. This dissertation hopes that the recommendations suggested in this study will pave way for the adoption of epistolary jurisdiction in Uganda for the sake of the realization of the right to access justice for the poor in Uganda.

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