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# Lex:lead Group annual scholarship competition **2019**

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## 2019

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## Lex:lead Group annual scholarship competition

The following articles were the winning submissions in the 2019 Lex:lead annual scholarship competition. Winners were decided by a panel of international judges, lawyers and academics, judged independently.

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# How can access to justice reduce poverty and support economic development?

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## Introduction

There is undoubtedly a direct link between the rule of law and economic development. Although other factors have contributed too, it is not for naught that the Western world, where the rule of law has prevailed for a longer time, has experienced accelerated economic growth and development. Juxtaposed against other regional blocs, such as Africa, where the rule of law has been continually undermined, the inequality in the level of economic development is clear. Access to justice as an important element of democratic governance is a powerful tool with the potential to tackle the global issue of poverty and to bridge the gaps in economic inequality. This paper seeks to discuss the link between access to justice and economic development, and to suggest ways of improving the latter by strengthening the former, with a focus on developing countries.

## Poverty and economic development

Poverty, as a global phenomenon, has many more faces than pictures of barefoot African children in tattered clothing with outstretched arms, or those of refugees sitting dejectedly in a camp as is so often depicted in the mainstream media. The Global Multidimensional Poverty Index (MPI) provides a comprehensive and in-depth picture of global poverty based on ten indicators relating to health, education and living standards.<sup>1</sup> This index complements the international \$1.90-a-day poverty rate by showing the nature and extent of overlapping deprivations for each person,<sup>2</sup> thus extending the definition of poverty past income to other important indicators. In 2010, the world attained the first Millennium Development Goal target – to cut the 1990 poverty rate in half by 2015 – five years ahead of schedule.<sup>3</sup> Thus, some progress has been made in alleviating global poverty, but the adoption of Sustainable Development Goal (SDG) 1

on the elimination of poverty in all forms is indicative of an international recognition that the problem is far from over.

Economic development, a term broader than economic growth, has been described as the process of improving the economic wellbeing and quality of life of a nation, region or local community.<sup>4</sup> The term has evolved in its assessment based on narrow indicators, such as per capita income, to broader indicators, such as life expectancy and poverty levels. Thus, the United Nations Development Programme (UNDP) introduced the Human Development Index as a standard for measuring economic development in the areas of per capita income, health and education, basing the index on three equally weighted components of economic development: longevity, knowledge and standard of living.<sup>5</sup>

## Access to justice

Access to justice has evolved from the traditional sense of a mere right to litigation and access to courts<sup>6</sup> to a more progressive all-encompassing term. The term now covers the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.<sup>7</sup> From a broader perspective, access to justice is both a process and a goal,<sup>8</sup> depicting the extent of the procedural safeguards and substantive results needed to be examined in expanding the scope of access to justice. For the purposes of this essay, the broader sense of the term shall be adopted.

The UNDP has described access to justice as ‘a basic human right as well as an indispensable means to combat poverty, prevent and resolve conflicts’.<sup>9</sup> In recognition of the importance of the right of access to justice, several international instruments on different levels, both regional and global, have made provision for it. The Universal

Declaration of Human Rights,<sup>10</sup> International Covenant on Civil and Political Rights (ICCPR),<sup>11</sup> European Convention on Human Rights (ECHR),<sup>12</sup> African Charter on Human and Peoples' Rights (ACHPR)<sup>13</sup> and many national constitutions enshrine it in their texts.

The link between access to justice and sustainable development was further reinforced with the adoption of SDG 16<sup>14</sup> on peace, justice and strong institutions. In addition, this writer argues that access to justice is closely connected to the implementation of other SDGs, such as Goal 1 on poverty eradication, Goal 5 on gender inequality and Goal 10 on reduced inequalities. Access to justice is undoubtedly relevant to economic development as it provides legal certainty and predictability, and puts trust in the justice systems. These translate into a favourable business and investment climate, and ensure property protection rights and national competitiveness, all of which, in the long term, lead to more inclusive growth and citizen wellbeing.<sup>15</sup> The connection between access to justice and economic development is further highlighted by the pernicious effects that arise from an inability of citizenry to overcome barriers to justice, such as inadequate resources, social prejudices and cumbersome bureaucratic practices. Such barriers perpetuate the cycle of poverty and helplessness. Therefore, any attempt to improve access to justice, with the corresponding aim of promoting economic development, must address the needs of the poor and marginalised.

### **The way forward**

In order to improve access to justice and trigger a corresponding growth in economic development in developing countries, this writer recommends prison and penal reform, reform through legal education and public sensitisation, and improving the scope of indicators and data collection on access to justice.

#### *Prison and penal reform*

Custodial sentencing disproportionately affects individuals and families living in poverty. In most developing countries, where the rate of state assistance to the indigent is low, the incarceration of breadwinners directly affects the finances of the family unit.<sup>16</sup> In such developing

countries, the scope of non-custodial sentencing and restorative justice modules are not as well explored as they could be. The potential for impact is massive since large populations of the indigent live in rural areas.

There is the need for developing countries, especially in Sub-Saharan Africa, to strengthen and expand existing restorative justice modules, based on Afrocentric communal value systems and traditional institutions. For instance, although Ghana provides for victim-offender mediation under section 73 of its Courts Act, 1993 (Act 459), the scope prescribed is very limited. The laws currently do not make provision for community service and other modern alternatives to custodial sentencing. Such alternative punishments like community service can allow developing countries to make use of the teeming human resources that will otherwise remain locked in prison cells. States can leverage the skills of convicted craftsmen, artisans and even professionals to assist in promoting economic development.

Indeed, prison reform, including social reintegration programmes and literacy programmes, have helped to reduce poverty in places like Central America.<sup>17</sup> The education and training of prisoners reduces recidivism, and improves skill sets and earning capacity, thus creating better opportunities for financial gain for prisoners and their families. The writer proposes that a uniform set of guidelines for traditional or indigenous restorative justice modules be created, tailored to regional blocs such as Sub-Saharan Africa. This will increase recognition and support for such systems, which can create a better enabling environment for small-scale businesses, agri-businesses and petty trading to flourish, thus turning the tide of economic progress in many rural areas. In support, regional groups such as the Economic Community of West African States (ECOWAS) and African Union (AU) can promote the use of such guidelines and other measures to spearhead wider penal reform to promote economic development.

#### *Legal aid and informal education*

One of the barriers to access to justice in developing countries is the lack of information and proper legal advice on human rights.<sup>18</sup> Thus, to manage the issue of limited human resources and understaffed legal clinics, developing countries should



## HOW CAN ACCESS TO JUSTICE REDUCE POVERTY AND SUPPORT ECONOMIC DEVELOPMENT?

harness the potential of law students and legal trainees in providing free services and education to the poor and marginalised. Innovative approaches to incentivising students to participate in legal aid initiatives include receiving extra credit for pro bono work, eligibility for tuition subsidies and grants based on legal aid work done. States like New York have instituted a pro bono requirement, where persons applying for admission to the Bar must file an affidavit showing that they have performed at least 50 hours of pro bono service.<sup>19</sup> Other helpful strategies may include awarding honours and certificates to students who actively participate in informal education schemes in their communities. Where students are eligible for tuition subsidies and scholarship grants based on work done in legal aid, it allows students from poor homes and communities the opportunity to access better platforms available in law school while giving back to their communities. This can increase the number of applications from poorer communities, thus bettering the prospects of individuals and the community at large.

Regional blocs may agree to attach a higher level of accreditation to educational institutions who partner with legal aid clinics and produce students who complete a substantial amount of case disposal. The benefits of such schemes are enormous. In Sierra Leone, an Oxford University study showed that a programme placing paralegals in prisons to provide free legal services has reduced the number of prisoners held on remand by 20 per cent, and increased the percentage of those gaining access to bail by 13 per cent. It also showed that placing only two paralegals at each police station managed to provide basic legal advice to 70 per cent of detainees.<sup>20</sup>

It is also suggested that legal education and outreach programmes in developing countries should adopt informal education approaches to cater for illiterate and semi-illiterate populations. Avoidance of the legal system due to fear or a sense of futility of purpose is listed as one of the barriers to access to justice.<sup>21</sup> Under issues of inheritance and succession, which are prevalent in Sub-Saharan Africa due to traditional values and systems, women who are aware of the law and their rights sometimes nonetheless remain silent for fear of spiritual reprisals and social prejudices of betraying the family.<sup>22</sup> These legitimate concerns pertinent to certain states and communities are mostly overlooked in public education and outreach. They must be addressed to encourage the

assertion of rights. In fact, in this writer's opinion, the assertion of spousal rights by women in traditional societies alone is sure to improve the finances of many nuclear, single-parent family units and to promote economic development.

### *Inclusive indicators and data collection*

There has been agitation and activism for the official indicators of SDG 16 to include access to civil justice in addition to criminal justice.<sup>23</sup> Data collected by the World Justice Project on access to civil justice demonstrates the usefulness of such data and the effect of its inclusion in the indicators to accurately measure the extent to which SDG 16 has been achieved.<sup>24</sup>

In the same vein, this writer proposes that the level of inclusion in indicators should be expanded to include access to justice from the viewpoints of marginalised groups. Of course, what constitutes a 'marginalised group' can differ from region to region. For instance, in certain parts of Africa, such as Tanzania and Uganda, persons with albinism form a marginalised group who suffer human rights abuses.<sup>25</sup> Regional indicators that take into account such special groups will better inform leaders and stakeholders in decision-making to avoid perpetuating further marginalisation. Failure to adequately capture the obstacles of marginalised groups will affect the substantive improvement of the right of access to justice. This is crucial as marginalised groups often fall within the indigent population, and a failure to address justiciable issues affecting them keeps them trapped in the cycle of poverty.

Female students in West African universities may be another marginalised group. A recent BBC documentary on *Sex for Grades* brought to light the preying on of female students by some lecturers.<sup>26</sup> These students, in this instance, faced major obstacles to their right of access to justice. This is because many victims were hesitant or failed to access legal and administrative channels for redress due to reports of inaction and victimisation upon complaint, fear of consequences, the power dynamics at play, and social and traditional prejudices, which fuel a vibrant victim-blaming culture. The futility of pursuing remedies caused some victims to accept their failed grades and, in some instances, led to victims dropping out of school to avoid further harassment. Through no fault of their own, their academic aspirations were cut short, thus affecting their earning capacities, which has a direct bearing

on their chances of economic development. In response to the scandal, Nigeria has introduced an anti-sexual harassment bill. This reveals the compelling effect of information gathering and personal stories of the oppressed in necessitating change.

Data collection plays an important role in building the right to access justice movement.<sup>27</sup> It is important, especially in developing countries, to ensure that the scope of data collection is widened to include the challenges and obstacles faced by marginalised groups in a particular country to ensure an accurate reflection of access to justice to these groups. There is the need to open communication channels for victims in these groups for easy reporting and identification of injustices. These communication channels must exist in safe spaces to allow affected persons to readily use these channels without fear. Members of these groups are undoubtedly the best people to inform on the barriers that prevent their access to justice. Only with the knowledge of these barriers can states properly strategise to eradicate them and improve access to justice. This leads to the empowerment of the marginalised with respect to access to justice, resulting in wider social inclusion, an enabling environment to utilise opportunities and increased openings for personal development, thus resulting in an economic boost for persons affected and their families. For instance, as a result of the BBC video, reactions on Twitter and other social media platforms showed many female tertiary students in Nigeria expressing their joy in finally having the chance to continue their education in a safe space, allowing for more innovation and self-betterment.

### Conclusion

In conclusion, it is evident that access to justice can propel many communities and nations forward in the quest to fight global poverty. The use of legal and informal education to address the needs of the poor, the importance of inclusive indicators and accurate data collection, and the promotion of penal and prison reform are just a few recommendations proposed in the fight against poverty. Certainly, access to justice is a useful tool to not only better governance and rule of law across the world but also to facilitate poverty alleviation and the promotion of economic development.

### Notes

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The sponsor supporting Maame Yaa Boatemaa Ohene-Bonsu's award is Hon. Dame Linda Dobbs DBE QC



# How can access to justice reduce poverty and support economic development?

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## Introduction

*'My work with the poor and the incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice'*  
– Bryan Stevenson<sup>1</sup>

Reducing poverty and enhancing economic development have been global ambitions since the creation of the Millennium Development Goals (MDGs) which have now evolved into the Sustainable Development Goals (SDGs). The SDGs are the global manifesto agreed by 193 countries aiming to end poverty by 2030, and they outline how the world will achieve these two broad goals, one of which is increasing access to justice. This essay will define the key terms under analysis. It will then discuss the link between access to justice, poverty reduction and economic development, and highlight key manifestations of the impact of access to justice on poverty reduction and economic development. Finally, it will go on to suggest ways in which increasing access to justice for all can bring more people above the poverty line and support economic development generally.

## Definitions: access to justice, poverty and economic development

Access to justice is the ability of a person to obtain a legal remedy from a court of law whether formal or informal.<sup>2</sup> Access to justice is one of the hallmarks of the rule of law, which holds that everybody is subject to the law and enjoys its equal protection.

The most widely held definition of absolute poverty measures poverty in economic terms – earning less than \$1.90 a day.<sup>3</sup> On the other hand, economic development is a 'process of creating and utilizing physical, human, financial, and social assets to generate improved and broadly shared economic well-being and quality of life for a community or region'.<sup>4</sup> A country's economic development is largely measured by its gross domestic

product (GDP). However, this method of measuring economic development does not account for factors like access to justice,<sup>5</sup> although a lack of access to justice is an important dimension of poverty.<sup>6</sup>

## Linking access to justice to poverty reduction and economic development

There are both cause and effect dimensions to an analysis of the link between access to justice and poverty. On the one hand, poverty may be the underlying reason that many people are denied access to justice; although conversely poverty may be the result of failure to access justice. Since the move away from a one-dimensional definition of poverty, the link between access to justice and poverty reduction or economic development is now well established. The best evidence of this is SDG 16, which aims to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'. According to a 2013 World Bank report, access to justice 'provides an enabling condition for development by establishing the basic social order and security required for other development activities to proceed'.<sup>7</sup>

The United Nations Development Programme has also reported that 'despite the critical role access to justice plays in allowing citizens to unlock their economic potential, global investment in access to justice at a national and global level has been decreasing for the last 10 years'.<sup>8</sup> It is estimated that more than 1.2 billion people live in areas affected by conflict and fragility.<sup>9</sup> The Organisation for Economic Cooperation and Development (OECD) has defined fragility to include dimensions such as violence, justice and institutions (including effective governments and regulatory bodies). The current rate of institution building

and conflict reduction is so slow that if it continues at this pace, nearly half a billion people could remain below US\$1.25 per day by 2030.<sup>10</sup> Increasing access to justice for all should therefore be done as a matter of urgency if the 2030 SDGs' ambition to leave nobody behind is to be achieved.

In analysing the impact of access to justice on poverty reduction and economic development, this essay will primarily consider four themes. These are land rights; the rights of vulnerable groups, like women and refugees; the cost of justice; and that of accountable and effective institutions.

### Land rights

According to the African Development Bank, agriculture is the backbone of the African continent and accounts for about a third of its total GDP employing 65–70 per cent of the total workforce.<sup>11</sup> The type of farming practiced is predominantly on a subsistence scale, with families cultivating what is sufficient to feed them and, if there is any produce left over, it is sold. Therefore, for many people in rural communities, their position above or below the poverty line is directly dependent on land ownership and the security of their occupancy of such land. However, most of the land in rural areas is not titled and therefore there is little to no legal protection for such land. In addition, it is difficult for owners of untitled land to access credit from financial institutions.

### Rights of vulnerable groups, like women and refugees

Increasing access to justice for women has been projected to have an exponential effect on economic development for all. The World Economic Forum has reported that women account for nearly half of the world's smallholder farmers and produce 70 per cent of Africa's food yet less than 20 per cent of land in the world is owned by women.<sup>12</sup> The roadblocks to women owning land include cultural customs that do not allow them to inherit property of their fathers or husbands. As a result, they are forced to depend on their sons or brothers. Non-ownership of the factors of production, like land, also renders women unable to access credit, and this too limits their economic potential. Furthermore, the law inadequately protects women from the sale of family land without their consent. The lack of a legal stake in the land that the women cultivate

means that their husbands or others can deal with the land as they please, including selling it without consulting them. Such actions can threaten the food security of the home as it is women who are often in charge of feeding and nourishing the household.

The African continent is at the centre of the global refugee crisis as both a source and host of refugees. As a result of the escalation of civil wars in Nigeria, South Sudan, Democratic Republic of Congo and Libya in recent years, among others, there has been an influx of refugees in countries such as Ethiopia and Uganda. For refugees, some measure of access to justice means not just legal recognition and non-refoulement (not being returned) but also the right to work by granting them work permits, and supporting programmes that provide psycho-social support and integration into the host communities, along with fulfilment of their rights to education and healthcare, among others. When any of these rights is neglected, refugees perpetuate in a state of fragility encumbered by poverty and dependence on humanitarian aid programs.

### The cost of justice

There are often high legal costs associated with accessing justice. As a result, the party that fails to access justice is condemned to even more poverty. Legal services are still very commercialised, with just a handful of legal aid service providers. Expenses such as high legal fees and filing fees prevent the poor from accessing courts of law where they could obtain remedies for their grievances. As a result, those who are oppressed and marginalised often suffer injustice without any avenue to a remedy. For instance, a poor person who is threatened with an illegal eviction from his/her plot of land by a mining corporation or wealthy individual may not be able to seek the protection of the law because of the high costs of hiring lawyers, long distances to the courts of law in the case of rural areas and ignorance of their rights or remedies. Even where legal aid services exist, not knowing these resources are available will deny the affected persons access to justice.

### Accountable and efficient institutions

The World Bank has reported that corruption, bribery, theft and tax evasion cost developing countries around \$1.26tn per year, a sum of money that could be used to lift those who are living on less than \$1.25 a day above that threshold for at least six years.<sup>13</sup>



## HOW CAN ACCESS TO JUSTICE REDUCE POVERTY AND SUPPORT ECONOMIC DEVELOPMENT?

A corrupt and inefficient justice system undermines investor confidence in the ability of the courts to deliver impartial judgments in cases arising out of commercial disputes, which has the further effect of limiting investment in a country. Eventually, this has a negative impact on the country's economic development and on accompanying opportunities, like job creation and greater tax revenues that come from increased investment. Access to justice is also hampered by institutional inefficiencies in institutions that are charged with delivering justice. For instance, many countries grapple with the problem of case backlog, where it takes a long time for cases to be decided.

### **The way forward: improving access to justice to reduce poverty and support economic development**

#### *Land rights*

As land ownership is crucial to the reduction of poverty, governments, especially in the Global South, should subsidise the process of obtaining land titles for land, especially that which is located in rural areas. Creating land titles for interests in land enhances the legal protections of its owners and increases its value should they decide to sell it.

In addition, governments, developing partners and financial institutions like the World Bank and African Development Bank that fund activities such as infrastructure development and mining, should put in place conditions that the free, prior and informed consent of local communities is obtained before they provide funding to government entities and corporations.

#### **Access to justice for women**

This essay proposes that laws that guarantee women a stake in family land and establish a requirement for spousal consent before such land is sold, loaned or mortgaged, should also be widely enacted. Such measures will provide greater protection for women's land rights, ensure that women have more control over providing for their children and families and lastly, help women become equal partners in the management of family property, which is a key resource in the reduction of household poverty.

#### **Access to justice for refugees**

To reduce poverty among refugees, equal attention should be paid to addressing their socio-economic needs on the same footing as their protection needs. This essay therefore proposes that countries enact laws that are less restrictive. To be specific, these laws should attempt to mirror the Ugandan Refugee Act, which is hailed as one of the most progressive in the world.<sup>14</sup> The Ugandan Refugee Act recognises a right of refugees to work, and grants access to education and health facilities as well. As a result of the greater economic opportunities that refugees are presented with, they become active participants in their local economies, and can support themselves and escape the hardships of poverty.

#### **Decreasing the cost of justice**

Non-governmental organisations (NGOs) that promote social justice, academics and other individuals should embrace public interest litigation, where a few persons who have the resources can petition courts of law on behalf of poor and marginalised people. For instance, in the case of *SERAC v Nigeria*, the African Commission on Human and Peoples' Rights delivered a landmark judgment in favour of the Social and Economic Rights Action Center (SERAC) that exposed human rights violations of the Nigerian Government where it was working with multinational oil companies to degrade the environment, among other things.<sup>15</sup>

Besides this, legal aid service providers should be supported to increase the reach and scope of their services. National bar associations should also encourage their members to increase the amount of time they dedicate to social justice causes or provision of pro bono legal services to those who cannot afford to pay for legal services.

#### **Accountable and efficient justice systems**

In order to fight corruption, governments should increase the punitive measures for corrupt officials and those who offer bribes. In addition, funding for justice institutions, like the judiciary and the police, should be increased. Such funding would facilitate the recruitment of more judicial officers and offer better facilitation for them. As a result, there would be greater efficiency of the judiciary.

Furthermore, the judiciary should adopt information technology (IT) in its operations to increase access to justice. For instance, in Ghana and Kenya, the judiciary have adopted electronic case management systems and videoconferencing technology, among others.<sup>16</sup> The electronic service includes processes like case filing, allocation of hearing dates, case reporting payment of court fees via mobile money and notification of adjournments using an instant short message service (SMS). In Kenya, technology has been used to great effect to reduce case backlog and ensure that justice is delivered in a timely manner.<sup>17</sup> All these initiatives make it easier to access justice.

Other innovative measures that could be adopted are mobile courts for refugees, where the court sessions are taken out of the court premises and held in refugee settlements. This would help the poor refugees who can't afford transport to courts to have their cases heard because technology reduces the geographical distance between litigants and the court premises.

### Conclusion

In a nutshell, this essay has shown the link between access to justice and poverty reduction and economic development. With the aid of examples, it has contended that access to justice cannot be divorced from poverty reduction, and that investments in access to justice are not only justifiable but also urgent. While focusing on the four major themes of land rights, women and refugee rights, cost of justice, and accountable and efficient institutions, it has argued that improving the ability to access justice for all eventually leads to poverty reduction and sustainable development. Finally, the essay has suggested ways in which access to justice can be improved. Ultimately it is true that 'the opposite of poverty is not wealth, the opposite of poverty is justice'.<sup>18</sup>

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# How can access to justice reduce poverty and support economic development?

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## Introduction

Access to justice is the most pressing justice issue today. It has been identified as a basic principle of the rule of law, which is a basic precondition for sustainable economic development. Access to this rule of law has been seen as a necessity in fostering many aspects of development. Further, to reinforce this, the international community has, for the first time, agreed on international targets for justice.<sup>1</sup> Access to justice has therefore assumed its place in the United Nations Sustainable Development Goals (SDG).<sup>2</sup> SDG 16.3 commits the international community to 'promote the rule of law at the national and international levels and to ensure equal access to justice for all by 2030'.<sup>3</sup> The SDGs provide a unique opportunity to reflect on how national governments can ensure that economic growth, development and poverty reduction strategies integrate access to justice and legal empowerment initiatives.

The aim of this paper is to discuss how the access to justice can help reduce poverty and achieve economic development. It will achieve this by first defining key concepts: justice, poverty and economic development. Thereafter, this paper will give an analysis showing the effect on access to justice on poverty and economic development. Further, it will highlight some challenges in obtaining access to justice and recommendations. Thereafter a conclusion will be drawn.

## Justice

People often associate justice with crime. However, justice is an ever-changing subjective process of assessing the fairness of relations between individuals and groups of people. Further, even philosophers, including Plato and Aristotle, have wrestled with trying to define justice for centuries, dating as far back as 600BC. Aristotle, in an attempt to define justice, held that it is 'that virtue of the soul which is distributive according to desert.'

Aristotle's reflections aside, legal documents have since defined justice as the application of the law to govern, and the use of infrastructures to administer justice: the courts and magistrates.<sup>4</sup>

## Poverty

Poverty has many manifestations. There is no one agreed definition; generally, however, poverty can be defined as a deprivation or lack of what is necessary for material wellbeing. Historically, poverty has been defined in monetary terms using income or consumption levels.<sup>5</sup> The Beijing Platform for Action recognised that 'poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments, social discrimination and exclusion. It is also characterized by a lack of participation in decision making and in civil, social and cultural life'.<sup>6</sup> Therefore, while the economic dimension remains central, other factors important to defining poverty include a lack of opportunities, multiple vulnerabilities and social exclusion. Apart from the economic definition of poverty, other approaches to conceptualise poverty have also been taken, such as the basic needs approach, a capabilities approach, human development approach and multidimensional poverty approach.<sup>7</sup> Further, because of the multidimensionality of the concept poverty, it possesses notions of absolute and relative poverty and points to the need to differentiate poor people by gender, age, origin or ethnicity, and occupational status. What can be poverty to one may therefore not be poverty to another.

*Economic development*

Simply put, economic development means improving the living standards of people. Economic development is further considered to be the strengthening of autonomy and substantive freedoms, which enable individuals to more fully participate in economic life. Thus, economic development occurs when individuals have the opportunity to develop the capacities that allow them to actively engage in and contribute to the economy. Economic development is, however, often confused with economic growth. These two concepts be distinguished. While economic growth is simply an increase in aggregate output, economic development, on the other hand, is concerned with qualitative improvements, introduction of new goods and services, entrepreneurship and the dynamics of innovation.<sup>8</sup> Economic development is about positioning the economy on a higher growth trajectory. Although it is possible to have growth without development, economic growth is a key driver of economic development and can therefore be a factor in poverty reduction, as well as the economic development of lower income nations and ensuring our economic future.<sup>9</sup>

**How access to justice mechanisms can reduce poverty and support economic development**

Access to justice supports and is supported by a human rights approach to development. It has been recognised as a fundamental right and as a key means to defend other rights. Access to justice also has not one universally accepted definition; however, it has proven to be closely linked to human development. First, access to justice is fundamental to the establishment and maintenance of the rule of law as it enables people to have their voices heard and to exercise their legal rights.<sup>10</sup> Access to justice is also a key factor in promoting people's empowerment and securing access to equal human dignity. It is therefore much more than improving an individual's access to courts or guaranteeing legal representation, and it must be defined in terms of ensuring that legal and judicial systems are just and equitable.

There is also a link between access to justice and poverty reduction. This is because access to justice is a crucial element in tackling the root causes of poverty, exclusion and vulnerability.<sup>11</sup> For example, groups such as

the poor and disadvantaged often fall victim to criminal and illegal acts. As a result of this vulnerability, they are more susceptible to becoming victims of theft, fraud, sexual or economic exploitation, violence, torture or murder.<sup>12</sup> When they are involved in these crimes, it leads to situations such as incarceration, unemployment or death, which are also some of the causes of poverty. Therefore, if these disadvantaged groups have access to justice systems, they will be less likely to go down an unlawful path and consequently, when crime levels reduce, poverty levels decrease and this supports economic development.

Access to justice, as well as being a central element of SDG 16, is crucial to implementing many of the other SDGs, such as eradicating poverty and hunger (SDG 1 and SDG 2). It gives farmers and other agrarian communities the tools they need to improve their tenure security; this has shown to lead to more productive investment.<sup>13</sup> In the Philippines, for example, surveys carried out by the Asian Development Bank showed that communities with access to legal support and regulatory reforms resulted in residents with higher levels of productivity, higher income and more investment in their farms.<sup>14</sup>

*Reduction of inequality*

Ideally, access to justice entails fair access to equal chances and equality. Equality is noticeable in Article 1 of the UN human rights charter, which reads, '[a]ll human beings are born free and equal in dignity and rights'; in Article 7, '[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law'; and in Article 10, '[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'.<sup>15</sup> In another forum, in a bid to tackle inequality, the European Union has taken steps by promoting the rule of law, including access to justice and legal protection. Rising inequality has been detrimental to low-income families by depriving them of a fair share of economic resources. Equal access to justice will enable every person to have equal opportunities in accessing the justice system regardless of their status. More often than not, poor people have been seen to be disadvantaged when it comes to accessing the courts. Statistics have shown that approximately 4 billion people worldwide



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live outside the protection of the law, mostly because they are poor and marginalised within their societies.<sup>16</sup> Also, because of high court fees and legal representation, the poor are unable to access the courts, and this has cleared a margin between rich and poor as, consequently, only the rich have access to the courts. True access to justice would therefore enable every person in society, regardless of being rich or poor, to be able to bring their grievances to court. When this inequality is narrowed, this brings about human development and the poor are able to realise their rights at law, and thus they can protect themselves from exploitation and their poverty levels reduce.

### *Increases faith in the justice system and reduces crime*

Access to justice has many ripple effects. One is that when people have access to the justice system, it increases their faith in it. This is important because most who engage in criminal activity do not believe that they will get justice by following the proper channels of law enforcement. Some, therefore, opt to take matters 'into their own hands' or accept unjust settlements. The end result is often incarceration, which entails that they are imprisoned and hence cannot find sources of income to provide for themselves or their families, which then increases the poverty levels in the home. Additionally, if the parents are imprisoned, this can lead to child-headed households, with most children incapable of providing basic needs for the household, increasing the levels of deprivation. Where there is due access to justice, therefore, this will increase faith in the justice system, lowering crime levels, reducing poverty and promoting economic development.

### *Attracts foreign direct investment*

States that have poorly functioning legal systems and poor crime controls deter investors, so that economic development also suffers. The World Bank has pointed out that crime and violence have emerged in recent years as major obstacles to development objectives.<sup>17</sup> It is argued that foreign investors look to invest where there is efficiency and certainty. Also, that the ideal legal system for attracting high levels of foreign direct investment (FDI) is efficiency. Likewise, there also exists a broad international consensus that

deficiencies in the law-making process, enforcement and judicial interpretation of laws in developing countries can result in uncertainty. Access to justice therefore brings about a level of certainty that helps attract FDI, which consequently supports economic development. Further, FDI studies have suggested that the protection of property rights is of importance to foreign investors, and strong and effective courts can reassure investors that a host country's government will respect their property rights.<sup>18</sup> Additionally, effective court systems provide convenient and relatively low-cost venues for investors to protect property rights and enforce contracts in commercial transactions. Foreign investors' gauge whether the economy of a nation they are interested in investing in is on a path of prosperity and growth. This is typically dependent on whether governments can give credible commitments that it will uphold the rule of law, that property rights will be respected, and that there will be equal access to justice.<sup>19</sup>

In addition, strong courts and adherence to the rule of law also contribute to political stability, which is a great concern for foreign investors. This is because political stability provides certainty and predictability for investors.<sup>20</sup> Access to justice therefore attracts foreign investment and promotes FDI. Studies increasingly have shown that low crime rates have a great impact on FDI. Both foreign and domestic investors are deterred by high levels of criminal activity. Higher crime rates may reduce the competitiveness of firms, distort resource allocation and create uncertainty in the economy.<sup>21</sup>

Further, in fostering economic development, strong access to justice mechanisms help people have access to good legal advice. This can save money in the long term in addition to helping people achieve their aims. This is because if people have realistic expectations and proper legal advice, they are more likely to make more sensible decisions about avenues of litigation, whether civil or criminal. Access to justice is also very important because justice systems can be used as tools to overcome deprivation, for instance, by developing jurisprudence on social and economic rights. The realisation of these rights is essential to development and the institutions are important to the protection of the interests of individuals.

### Challenges and recommendations

A major challenge to access to justice is lack of education and legal illiteracy. While it is critical that laws are put in place to uphold justice, this in itself is insufficient unless every citizen is also given the opportunity to know the laws governing them and to be educated so that they understand the laws. Knowing the laws enables people to benefit from their protections. For instance, if people are unaware of laws governing the building of houses, they may build their homes on either illegally occupied land or in violation of local planning regulations. In rural Afghanistan, for instance, illiteracy is a deterrent to people from using the state justice system, which is based on written law. Afghans no doubt find the customary legal system based on oral tradition less intimidating.<sup>22</sup>

Another obstacle to access to justice is inadequate legal representation. Access to justice should be made more affordable, so that it is attainable for both poor and rich. Justice systems should provide remedies that minimise the difficulties that poor and disadvantaged people have in obtaining redress. This is because if they do not have adequate access to redress, they often fall further into poverty. Access to counsel and legal aid are mechanisms developed in this respect. Legal aid is organised differently depending on whether it is civil or criminal issue. With regard to criminal justice, the law requires states to provide lawyers for poor litigants; judges organise legal aid and appoint lawyers depending on their qualifications and availability. In December 2012, the General Assembly unanimously adopted the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. This was the first international instrument on the right to legal aid. In a bid to strengthen access to justice, the UN system works with national partners to develop national strategic plans for justice reform and service delivery.<sup>23</sup> In some countries, paralegals work on a voluntary basis or are lowly paid for legal advice. In the United Kingdom, the Citizens Advice Bureau fulfils this public role.

Further, another limitation to access to justice is gender bias and other barriers in legal systems. Legal systems have been proven to have inadequacies in existing laws that fail to protect minorities, such as women, children, the poor, the disabled, the illiterate and other disadvantaged people. Equal access to

justice mechanisms can be used to overcome deprivation by tackling gender bias. This can be achieved by ensuring, for example, that girls and minorities have access to education. Other barriers in the legal systems can be tackled by developing jurisprudence on access to food, health and other economic, cultural or social human rights.<sup>24</sup>

### Conclusion

In conclusion, the essay has endeavoured to lay bare that access to justice plays a vital role in the reduction of poverty as well as supporting economic development. Equal access to justice reduces inequality, increases faith in the justice system, reduces crime and also attracts FDI. However, there are also challenges in obtaining access to justice. The essay has gone further to mention some of these obstacles and some recommendations on how these challenges can be tackled, such as, increasing access to education and legal literacy, and adequate legal representation, as well as tackling gender bias. It is also key to note that if there is to be progress in overcoming extreme poverty, the poor must be able to enjoy access to the rule of law, failure to which, money and resources will continue to flow towards the powerful and poverty will never reduce.

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# How can access to justice reduce poverty and support economic development?

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## Introduction

Access to justice, poverty and economic development are inextricably linked. The main aim of this essay is to explicate how access to justice can reduce poverty and support economic development. The essay shall begin by defining access to justice, detailing what it entails. This will be followed by an explanation of poverty and economic development, and the interrelation between poverty reduction and economic development. Thereafter, the essay shall set out how access to justice can help lessen poverty and support economic development.

## What is access to justice?

It is first prudent to give an understanding of what justice entails, notably as the term justice can have diverse meanings. Arguably, this is because it is a multidisciplinary phenomenon and that carries through across societal sectors rather than being peculiar to just one discipline.<sup>1</sup> In fact, it is generally agreed that justice is an ever-changing, subjective process of assessing "fairness" in the relationships

between people.<sup>2</sup> This means that, there is no set standard to measure against in determining what justice really entails. Different societies, cultures and religions have varying understandings of what amounts to justice. That notwithstanding, one meaning is that justice has been defined as a fair and proper administration of law.<sup>3</sup> In ordinary terms, it is considered to be the quality of being just. From these two vantages, it is a sense of clear that justice generally entails fairness and the due application of the law.

Access to justice is a basic principle of the rule of law. It is generally understood to be the ability of people to seek and obtain a remedy through institutions of justice and in conformity with human rights standards.<sup>4</sup> The United Nations Development Programme (UNDP) has provided guidance that 'access to justice must be defined in terms of ensuring that legal and judicial outcomes are just and equitable'.<sup>5</sup> In the absence of access to justice, people are unable to have their voice heard, to exercise their rights, challenge discrimination or to hold decision-makers accountable.<sup>6</sup> Tenets of access to justice, such as fairness and equality, are the motivations to rights, such as

the right to be heard, the right to be informed of the nature of an offence with which one is charged, the right of access to courts of law which are fair, impartial and independent, and the right to a well-reasoned and expeditiously delivered judgment. It also includes the right to benefit from one's judgment through execution.<sup>7</sup>

In light of the foregoing, it is vital to note that this essay takes a holistic approach in the interpretation of access to justice by understanding access to justice to also include the formulation, interpretation and implementation of legislation. It is the contention of this essay that access to justice cannot only be limited to court procedures and judicial outcomes but is a broad concept that also encompasses a range of procedures prior to resort to the need for a legal dispute resolution through court systems.

### **The relationship between poverty reduction and economic development**

Poverty, like justice, is a multifaceted phenomenon. The definitions of poverty generally depend on individuals or groups of people and how they are affected by it.<sup>8</sup> Poverty usually refers to a core set of human deprivations or a state of being by which one lacks a certain amount of material possessions or money.<sup>9</sup> It can apply to an individual, group of people, nation or region.<sup>10</sup> Poverty can be identified from three perspectives: the income perspective, the basic needs perspective and the capability functioning perspective.<sup>11</sup> The World Bank explains that the income perspective entails that poverty is measured by comparing an individual's income or consumption with some defined threshold below which they are considered poor.<sup>12</sup> The basic needs perspective asks whether people are able to obtain basic needs such as food, shelter, healthcare and education; a person is considered poor if unable to obtain these needs.<sup>13</sup> The capability functioning perspective is said to be the broadest approach to wellbeing, argued to come from the 'capability' to function in society. In this light, poverty arises when people lack key capabilities.<sup>14</sup>

The International Economic Development Council (IEDC)<sup>15</sup> cautions that economic development also has no single definition as it incorporates different strands. It describes economic development as the process that influences growth and restructuring of an economy to enhance the economic wellbeing

of a community. Economic development is further defined as the qualitative measure of progress in an economy, which usually refers to the adoption of new technologies, to a transition from an agriculture-based to an industry-based economy, and general improvement in living standards.<sup>16</sup> Although closely related, economic development is distinct from economic growth in that economic growth is simply an increase over time in a per capita output of material goods, whereas economic development is a broader concept whose essential, but not sole, element is economic growth.<sup>17</sup>

Against that background, the relationship between poverty reduction and economic development is such that economic growth, which is a key element of economic development, is the most powerful instrument for reducing poverty and improving the quality of life of people. The extent to which a given rate of economic growth affects poverty levels is strongly influenced by factors such as a country's institutional structure and its policies.<sup>18</sup>

### **How access to justice can reduce poverty and support economic development**

#### *Defeating structural inequalities*

At the heart of poverty is deprivation. As such, poverty can be reduced when the deprivation is reduced. Access to justice can defeat structural inequalities that negatively impact ways of life and spearhead deprivation. The ability of poor people to 'fight' for what belongs to them and to challenge systems of oppression through courts of law is a significant means by which poverty can be reduced. For instance, in cases of land disputes between multinational companies and poor indigenous people (e.g., the Penan people of Borneo's Sarawak State in Malaysia, the indigenous Sami people who have traditionally lived off herding and fishing in the Arctic, and the people of the Macha village in Zambia), without access to justice, are subjected to unfair procedures that deprive them of their natural habitats and in turn propagate poverty. As such, establishing a system of justice that treats everyone equally without bias towards status can help to eliminate poverty.

In light of the foregoing rationale, Dicey stated that, for justice to be accessible, ordinary courts should administer the law without partiality between governmental officials



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and ordinary citizens, adding that the law should be applied universally without the influence of political or economic privileges.<sup>19</sup> In elaborating further on access to justice, he considered equality before the law as synonymous with both legal equality and the equal application of law to *all classes* by ordinary courts of law.<sup>20</sup> In explaining the link between access to justice and poverty, American social justice activist Bryan Stevenson states that 'the opposite of poverty is not wealth but justice'.<sup>21</sup> This observation understands that limited access to justice weakens individuals and communities from claiming their rights and defending themselves from injustice and ultimately makes poverty more likely.

Access to justice through principles such as equality before the law commands that *all people* are subject to the same laws for justice.<sup>22</sup> From the foregoing, it is evident that the 'bedrock' of access to justice is to subject all classes or people to the same laws without favour, privilege or disadvantage. This disposition is essential for the reduction of poverty in that it functions to protect the poor and give an equal legal basis of protection and dispute resolution.

### *Empowerment of poor people through legal services*

A society with a robust access to justice system should ensure that its citizens know their rights and are informed about the steps they can take to protect their rights.<sup>23</sup> Above this, there should not be discrimination of any kind in the judicial process, people should be capable of effectively going to court, should not encounter prohibitive procedural costs in terms of either money or time.<sup>24</sup> Against the foregoing, one of the undisputed barriers to access to justice for poor people is the high costs associated with legal representation and court fees. As such, if policies are put in place to ensure free or affordable access to legal representation, a bridge would be built between access to justice and poverty.

A country can have a very well defined legal system and legal rules, but if these are not accessible for the majority of the people either because of high costs, long delays or lack of translation in relevant languages, then the legal system and rules will have a very limited impact on economic activity. For instance, although

both France and Senegal have broadly similar laws, because of marked differences in the effectiveness of access to justice between their systems, each has very different rates of economic development.<sup>25</sup> Notably, in most Third World countries, small and medium-sized enterprises are large contributors to economic growth; as such, if legal systems and rules are accessible enough for these enterprises, it will have a direct bearing on poverty reduction and economic development.

### *Levelling the economic 'playing field' through the formulation or amendment of local laws to ensure non-discrimination*

Poverty as a multifaceted issue affects marginalised groups such as women, children, persons with disabilities and other minority groups.<sup>26</sup> Historically, long-standing laws functioned to discriminate against marginalised groups including in employment and other economic activities that can be tools to defeat poverty. Of relevance, the World Bank Group reports that 82 per cent of people living in extreme poverty in Africa live in rural areas and that most of these are women. The persistence of inequality between men and women makes poverty reduction difficult.<sup>27</sup>

Notably, the trend in recent decades to amend laws across many countries to be more inclusive, there has been an upward shift in the poverty status of marginalised groups. For instance, Barbara Murray, a senior disability specialist with the International Labour Organization, when commenting on the employment, social policy, inclusion and the impact of the Convention on the Rights of Persons with Disabilities (CRPD), said that there have been a number of new approaches developed in employment that help people with disabilities to move from a very segregated setting to a more open labour market.<sup>28</sup>

It is therefore the assertion of this essay that the continued formulation and amendment of laws to ensure non-discrimination is an important avenue to increase access to justice that undisputedly functions to reduce poverty and support economic development.

*Simplification of regulatory legislation and ensuring the efficiency of bodies, thereby fostering economic activities*

With the understanding that economic development entails a transition from a lower to a higher economic base, it is inevitable that, for this transition to take place, a functional regulatory system and an effective justice structure for disputes are essential.

The drivers of economic development are largely dependent on legal regulations and procedures. Illustratively, the IECD<sup>29</sup> describes economic development as encompassing three major areas. First, policies that the government undertakes to meet broad economic objectives, including inflation control, high employment rates and sustainable growth. Second, policies and programmes to provide services, including building highways, managing parks and providing medical access to the disadvantaged. Third, policies and programmes directed at improving the business climate through business finance, marketing, neighbourhood development, business retention and expansion, technology transfer, real estate development and others. Studies have shown that countries with effective access to justice are likely to have a thriving economy.<sup>30</sup>

Illustratively, in Zambia, procedures, such as the formation of companies or registration of business names, are subject to the Companies Act and regulated by the Patents and Companies Registration Agency (PACRA). A similar procedure in South Africa is undertaken through the Companies and Intellectual Property Commission (CIPC). A step in the right direction in these instances would ensure that such legal procedures lack unnecessary complexity. The simplification of over-burdensome procedures would also encourage economic activity, such as entrepreneurship and other industry-related activities.

*Setting just and fair judicial precedents to strengthen the economic environment and act as a guide in disputes*

Strengthening the justice structure governing activities that contribute to the economic development of a country in turn strengthens economic development. A case in point is in instances of legal disputes with bodies that regulate economic development, such as the Zambia Revenue Authority,

South African Revenue Service or Federal Inland Revenue Service of Nigeria. From this perspective, access to justice supports economic development in that it demands the enablement of people to seek and obtain remedies through justice institutions in conformity with human rights standards. When people are able to access courts or tribunals without fearing barriers to justice, such as exorbitant fees, difficult and opaque procedures and a lack of confidence in the judges' impartiality, they will be able to further confidently carry out activities that contribute to economic development.

Access to justice fosters entrepreneurship, credit, agricultural and industrial activities, which all lead to more economic development. Furthermore, if judicial institutions are functioning well, the common law principles of judge-made law operate to establish self-regulating modalities for economic transactions.<sup>31</sup> This means that, as every country has its laws and its struggles, if the judicial institutions are operating in a just and proper manner, they set positive precedents that serve as a guide for further economic activity in that country.

*Preserving revenue by strengthening laws that curb crimes against the economy*

The relationship between strong laws and economic development leading to poverty reduction cannot be overemphasised. Critical systems of the nation that have a direct impact on the livelihood of people are regulated by legislation. A practical example is tax legislation. Tax laws are a good example as they are a primary vehicle through which countries collect and redistribute revenues for the greater benefit. When administered well, there may be few disputes over revenue collection and their equitable distribution towards developmental projects. Further, if legislation, such as tax legislation, is easy to understand, it reduces conflict and possibilities of tax evasion.

Furthermore, having stringent legal measures that protect the economy from crimes, such as illicit financial flows that have a direct negative bearing on the economy, is one way in which access to justice can reduce poverty and support economic development. To support this assertion, by way of example, the Civil Society for Poverty Reduction in Zambia has contended that illicit financial flows are rampant in the country due to a lack of consistency in government policies and in



## HOW CAN ACCESS TO JUSTICE REDUCE POVERTY AND SUPPORT ECONOMIC DEVELOPMENT?

efforts to combat the scourge.<sup>32</sup> The negative impact these crimes have on the economy and on the general wellbeing of the people cannot be overstated; if stopped, moneys lost to illicit financial flows can be redirected to developmental projects, such as the building of schools, its healthcare facilities, and food preservation and distribution.

### Conclusion

In summation, this essay has emphasised the existing links between access to justice, poverty reduction and economic development. It has further explained the concept of access to justice, detailing that it entails fairness and equality before the law, the simplification of legislation, the affordability of legal fees and the possibility of an audience before an impartial judge, among other things. The essay then explained that access to justice reduces poverty in that it gives a platform for poor people to challenge systems of oppression exemplified in instances of land disputes between large corporations and indigenous people. Additionally, the essay posits that access to justice can support economic development in that some of the factors limiting development, such as crimes against the economy in instances of illicit financial flows, which helped by a lack of access to justice, need to be dismantled. Furthermore, if judicial institutions operate in the interest of justice when delivering judgments in economic disputes, they would be the 'limelight' that would guide economic activities and encourage, or indeed support, economic development. It is therefore the resounding affirmation of this essay that access to justice can reduce poverty and contribute to economic development.

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# How can access to justice reduce poverty and support economic development?

## Introduction

Justice and poverty are often treated as distinct concepts, when in fact poor people are the most vulnerable to all forms of crime and civil conflict, with justice often more out of reach because of their poverty. It has been argued that the opposite of poverty is not wealth, in fact, but justice.<sup>1</sup> This would not come as a surprise to the 2,000 people who were residents of Chingola, Zambia, whose only source of water was a stream in which Konkola Copper Mines were discharging the effluence of its mining operations. Although this caused great pain and suffering to Chingola residents, they hadn't the means to obtain redress in court.<sup>2</sup> There is thus an undeniable link between access to justice and poverty; illustratively, an economy cannot sustain itself where there is no sanctity of contract where a deed of ownership is not worth the paper it is written on, or where disputes are resolved in a trial motivated by power rather than weighing the justice of competing claims. Clearly the rule of law is a basic precondition of economic development.<sup>3</sup>

It is against this background that this essay seeks to discuss how access to justice can reduce poverty and support economic development. This paper focuses on the importance of justice in improving the lives of poor people. To begin with, the essay examines the meaning of the concept of access to justice, while highlighting the factors that enhance and impede access to justice. It will then proceed to make strong arguments for how access to justice can alleviate poverty and be a propelling force to economic development. Finally a conclusion will be drawn.

## The concept of access to justice

It is necessary at the outset to examine the concept of access to justice. Various explanations have been given to define this concept; one such definition is that access to justice is 'the right of individuals and groups to obtain a quick, effective and fair

response to protect their rights, prevent or solve disputes and control the abuse of power, through a transparent and efficient process, in which mechanisms are available, affordable and accountable'.<sup>4</sup> Without an efficient (and affordable) legal system, there can be no true access to justice.

The concept of access to justice rests on three important foundations: (1) substantive law; (2) legal institutions; and (3) legal services. First, the substantive law must advance appropriate norms that promote productivity, efficiency and social justice. Second, the institutions that develop, apply and enforce the law, especially, but not exclusively, the courts, must be competent, impartial, efficient and effective. Third, people using the legal system must be able to rely on an efficient and equitable system for producing and allocating legal services.<sup>5</sup> The threefold categorisation of access to justice should not obscure the fact that these aspects of access to legal justice are interdependent. The first two foundations of access to legal justice emphasise the element of 'access'. In relation to the third foundation, it must be understood that people cannot use the legal system effectively without the assistance of specialist legal service providers. Unfortunately, in many developing countries, despite the availability of legal service providers, the costs of legal fees are very expensive, consequently deterring the poor from litigation. All in all, the main focus with regard access to justice is the creation of an efficient, effective justice system for delivering legal services.<sup>6</sup>

Simply put, access to justice means that, 'where people do need help, there are effective solutions available'.<sup>7</sup> Accordingly, justice must be accessible for all without discrimination; extrapolations show that in societies with some legal protections available, those who lack the necessary resources for access to the legal system are often denied these safeguards.<sup>8</sup> It is often difficult for the poorest and most vulnerable to access justice because of numerous barriers.



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The factors that impede access to justice include, inter alia, poverty and lack of resources, delays in delivering judgments, escalating costs of litigation, corruption, low awareness levels about the availability of formal justice mechanisms and undue regard to procedural technicalities. A related impediment to justice is that many poor people do not use the legal system because they believe, often correctly, that the legal system will not be an effective remedy for their problems. There are a plethora of other factors that limit access to justice; however, the aforementioned reasons, make it evident that many people are not enjoying the protections or opportunities afforded by the law in resolving their disputes and are unable thereby to advance their interests.

### **Eradicating poverty through access to justice**

The concurrence of poverty, hunger and income inequalities continue as phenomena inherent to the developing world, and for decades now, the elimination of poverty, and of income inequality have defined many states' development policy objectives.<sup>9</sup> Illustratively, the Millennium Development Goals (MDGs) offered a global framework for reducing poverty; however, the MDGs were of a limited focus. More recently, access to justice has been identified as an essential component of a strong new development agenda.<sup>10</sup> The next part of the paper shall clarify how access to justice directly reduces poverty and supports sustainable economic development.

From the understanding that, in most developing countries, justice is largely inaccessible, research has shown that poor people, including children and particularly including women, often fail to obtain protection from the formal justice system. The more well-to-do, by contrast, gain more from a formal dispute settlement system because they can afford to employ a team to monitor cases, to safeguard their rights and to enforce their rights.<sup>11</sup> This further widens wealth and income inequality. All people have a right to benefit from the opportunities offered by dispute settlement procedures<sup>12</sup> and therefore, must have access to justice.

Poverty problems are often linked to income distribution, inequality is measured by the personal distribution of income, and for many individuals, their income is derived solely from employment.<sup>13</sup> As a result,

obstacles to employment are an insidious cause of poverty. The foremost argument for improving access to justice as a means to alleviate poverty, therefore, is with respect to employment matters because employment relations affect the livelihood of individuals aware that, in many developing countries, the reality is that fair and reasonable paying jobs are scarce. Furthermore, 'the employer is always in a stronger position than the employee and therefore, the safeguarding of employees rights must be based on a favourable interpretation of the principles of employment law'.<sup>14</sup> It is because of the severe personal consequences that befall an employee whose employment is terminated wrongfully or unfairly without any fault or misconduct on his/her part, or in a situation where the conditions of service are unilaterally downgraded by the employer without his/her consent, that he/she needs access to justice to safeguard the source of income upon which he/she depends for survival.

Another reason to improve access to justice is with regard to the economic effects of incarceration. Beyond the deprivation of liberty that coincides with an arrest, incarceration also affects that individual's economic productivity. First, in most jobs, wages are determined by the number of hours worked; thus, an arrest affects the individual's remuneration. Sadly, the poor have been known to lack working sureties and resources with which to bail themselves out.<sup>15</sup> In such situations, institutions aimed at enhancing access to justice ought to provide legal aid to persons with insufficient means to engage representation. Unfortunately, the reality is that many of these institutions are constrained by administrative and logistical (and funding) problems meaning that legal aid is unavailable to many indigent persons, especially in rural areas.<sup>16</sup>

A third argument for making justice more accessible is that enhancing accountability for and justiciability of economic, social and cultural rights can combat inequality and poverty. This is from the understanding that human rights and economic development are distinct yet related concepts.<sup>17</sup> Social, economic and cultural rights as contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR) include, inter alia, the right to work and the right to an adequate standard of living.<sup>18</sup> However, the influence of the ICESCR remains minimal in developing countries, largely due to the monist and dualist approaches to

international treaties. Arguably, if these rights are better promoted and protected they can have the effect of alleviating poverty and boosting economic development through the important obligations they impose on states.

A fourth argument in making justice available relates to the problem of loss of property after the death of a breadwinner. All people have experienced death in one way or another. In Africa, when a person dies intestate, the distribution is often done traditionally, and more often than not, the deceased's estate is shared among relatives, leaving out the wife and children; this problem is identified as 'property grabbing'.<sup>19</sup> Through greater access to justice, both children and women can be protected from unscrupulous relatives who decide to misuse the deceased's property.<sup>20</sup>

Another argument for making justice accessible to everyone is with respect to international trade. International trade boosts economic development and in turn alleviates poverty; through economic integration, unemployment is reduced, business development is enhanced and there is more trade to boost economic growth.<sup>21</sup> International trade is usually done through regional trade agreements (RTA) negotiated by two or more countries. In these circumstances, disputes are bound to arise. Thus, in the instance of discord, there is a need for genuinely fair rules of trade and an impartial dispute resolution body, the World Trade Organization (WTO) serves this purpose. To the contrary, however, the WTO system has been criticised for reflecting power-based relationships,<sup>22</sup> where developed countries gain more out of the dispute settlement system, while developing countries do not benefit from the system. Notably, an impartial dispute settlement system based on legal rules is more advantageous to developing countries because it enables them to benefit from the opportunities offered by the dispute settlement procedures, for example, due compensation can mitigate a huge financial loss.

The United Nations' 2030 Agenda for Sustainable Development calls for equal access to justice for all. This indicates that accessible justice is a vital part of development. Through it, people protect

their wellbeing, safeguard their rights and enforce their entitlements. The essay has argued that access to justice directly reduces poverty and facilitates positive measurable development outcomes. While it is important that we recognise the limits of law, we must also not fail to promote justice for all by providing grassroots legal advice to communities that would otherwise be left out. Research has shown limited access to justice among poor people perpetuates poverty. Therefore, 'if serious progress is ever going to be achieved in overcoming extreme poverty, the poor must enjoy the rule of law and functioning institutions of justice otherwise money will continue to flow towards the powerful'.<sup>23</sup>

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# How can access to justice reduce poverty and support economic development?

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Access to justice is the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances. It involves normative legal protection, legal awareness, legal aid, counsel, adjudication, enforcement and civil society oversight.<sup>1</sup> The Declaration of the High-level Meeting on the Rule of Law emphasises the right of equal access to justice for all, including members of vulnerable groups, and reaffirmed the commitment of Member States to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all.<sup>2</sup>

Access to justice is a broad concept that defies easy definition. It includes the enshrinement of rights in the law; an awareness of and understanding of the law; the easy availability of information pertinent to one's rights; equal right to the protection of those rights

by the law enforcement agencies; easy access to the justice system particularly the formal adjudicatory processes; the availability of a physical legal infrastructure; the affordability of legal services; provision of a conducive environment within the judicial system; the expeditious disposal of cases; and the enforcement of judicial decisions without delay.<sup>3</sup>

Poverty, to examine this concept too, is essentially a situation in which one is unable to reach minimal standards of living in the economy in which he/she lives. It involves a failure to access basic needs, like clothing, shelter and food.

Contrasted with economic development, development is a process by which economic transformation is realised. It involves expanding the gross domestic product of a country and in turn, results in improved standards of living.

Far from being a luxury that the poor can live without, effective legal rights are a necessity for everyone. Poor people to be excluded from the protections of the law is not just desperately unfair, it denies people an opportunity to improve their lives, and entrenches low standards in poor countries. Access to justice is an inalienable right for everyone and is crystallised in the concept of *jus cogens*.

The right of access to fair and impartial courts is indeed foundational to the stability of an orderly society. It ensures the peaceful, regulated and institutionalised mechanisms to resolve disputes, without resorting to self-help. The right of access to court is a bulwark against vigilantism, and the chaos and anarchy that it causes. Construed in this context of the rule of law and the principle against self-help in particular, access to court is of cardinal importance. As a result, very powerful considerations would be required for its limitation to be reasonable and justifiable.<sup>4</sup>

As an international concern, in the United Nations Resolution adopted by the General Assembly, under Article 14, the UN emphasises the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights, and in this regard, we commit to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.<sup>5</sup>

Still on the international level, Sustainable Development Goal (SDG) 16 is to the following effect: promote peaceful and inclusive societies for sustainable development; to provide access to justice for all; and to build effective, accountable and inclusive institutions at all levels, with basic targets, such as to promote the rule of law at the national and international levels, to ensure equal access to justice for all, to ensure public access to information and to protect fundamental freedoms, in accordance with national legislation and international agreements, and as well as to promote and enforce non-discriminatory laws and policies for sustainable development.

Based on an understanding of access to justice, poverty reduction and economic development, access to justice from the Ugandan perspective can lead to poverty reduction and support economic development in the following ways.

Translation of laws into a local language as a tool of access to justice promotes economic

development and reduction of poverty.

The constitution of the Republic of Uganda provides for the promotion of public awareness of the constitution.<sup>6</sup> Public awareness of Ugandan laws is basically a mandate of the state. This is generally to facilitate access to justice, especially to the illiterate who may not be able to read or understand the formal language. In turn, this can promote individual awareness of rights and duties as citizens. It also promotes individual knowledge on how to enforce such rights when there is a breach either by the state itself or by an individual. In the process of enforcing these rights, the protection of property is observed, unnecessary expenses are avoided and investment can be realised in the long run, hence reducing poverty and promoting economic development.

The Justice Law and Order Sector (JLOS) is a sector-wide approach adopted by the Government of Uganda to bring institutions together with the closely linked mandates of administering justice and maintaining law and order and human rights to develop a common vision and policy framework, unified objectives, and to plan over the medium term. It focuses on a holistic approach to improving access to and the administration of justice through this sector-wide approach to planning, budgeting, programme implementation, monitoring and evaluation. Among other missions, the sector is based on a mission to improve the safety of the person, the security of property, the observance of human rights and access to justice in support of accelerating growth, employment and prosperity.

The advertisement of legal services as a tool of access to justice also helps to promote economic development and poverty reduction. In the Kenyan case of *Okenyo Ombwansa George & Another v Attorney General & 2 Others*,<sup>7</sup> in which the petitioners challenged the constitutionality of the laws prohibiting the advertisement of legal services on grounds, inter alia, that it denies the community access to justice, the court agreed and held that the consequence of non-advertisement by advocates is that the public is left in the dark and thus denies them public access to justice, which is a right guaranteed under Article 48 of the Kenyan Constitution, obligating the state to ensure access to justice to all persons. A law that denies the public information and therefore access to justice is unconstitutional.

Advertising legal services make the community aware of the existence of such services. This has an economic impact too, by



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increasing the market by encouraging greater use of advocates, thereby promoting both job growth and productivity to meet increased demand and enable investment in other sectors. In so doing, a gradual reduction in poverty can be achieved and economic development stimulated.

The principle of presumption of innocence in relation to the accused persons as a tool of access to justice also promotes economic development and leads to poverty eradication. Article 28(3) (a) of the Kenyan Constitution provides that every person charged with a criminal offence shall be presumed to be innocent until proven guilty or until that person pleads guilty.<sup>8</sup> The presumption of innocence protects suspects from mob justice as it calls for a full trial, which is an element that points to access to courts. This protects innocent individuals from being lynched by an angry mob and saves the states resources that would be used to investigate crimes involved in mob justice, thereby creating room for government investments in other economic boost projects, like infrastructure, educational facilities and industrialisation, which enhances job opportunities and technological development, hence improving people's standards of living and promoting economic development.

Legal aid activities, such as advancing free legal services to indigent people in a bid to promote access to justice also play a crucial role in the eradication of poverty and promotion of economic development. Legal aid organisations such as the Muslim Centre for Justice and Law, Centre for Legal Aid, Justice Centres Uganda and many others have fostered a public awareness of individual rights. These organisations have also led to the creation of employment opportunities for both professionals and non-professionals, and other economic utilities. This can increase individual employee incomes, thereby freeing up possibilities to invest in the economy. In turn, poverty can be lessened and economic development realised.

The independence of the judiciary and equitable outcomes in court decision-making also improves economic development. As a tool of access to justice, equality of outcome is that, given the same opportunity and privilege, two people should end up in the same position. The Ugandan Constitution under Article 128 provides for the independence of the judiciary.<sup>9</sup> It is intended to promote public trust in

the judiciary. The maintenance of judicial independence as enshrined in Article 128 depends on public support for the judicial process to run effectively and independently. It is the public respect for that principle that sustains it. The public means that the government reinforces and facilitates the effectiveness of independence.<sup>10</sup>

In the U.S. case of *Evans v Gore*,<sup>11</sup> the U.S. Supreme Court highlighted John Marshall, a famous 19th century lawyer, as intimating that it is to the last degree important that a judicial officer should be rendered perfectly and completely independent with nothing to influence or control him but God and his conscience. To him, one of the worst things that can exist is an ignorant, corrupt and dependent judiciary. Given this background on the independence of the judicial, the creation of the commercial court and commercial laws, such as the Companies Act, regulates economic disputes, which creates a great impact on economic investment and development by encouraging individuals with disputes of a commercial nature to refer such disputes to the courts and arbitration centres. As a result, multimillion dollar investments are saved, and there is continuous investment and production, and thus continuity in employment opportunities, hence poverty reduction and economic development.

The right to education as a core element of access to justice can also lead to reduction of poverty and support economic development. Education promotes awareness of not only individual rights but also results in the exposure of the individual to different trends of development. According to Ilhan Ozturk, education, in every sense, is one of the fundamental factors of development; no country can achieve sustainable economic development without substantial investment in human capital. He further stated that education enriches people's understanding of themselves and the world. It improves the quality of their lives and leads to broad social benefits to individuals and society. Education raises people's productivity and creativity, and promotes entrepreneurship and technological advances.<sup>12</sup> The improved technology that results from education leads to improvement in the means of production, thereby increasing output and encouraging export. This increases people's income and promotes investments in other sectors of the economy, hence resulting in poverty reduction and supporting economic development.

In conclusion, access to justice is based on the basic principle that people should be able to rely on a fair and correct application of the law, and it is closely related to adjudicative procedures, public procedures before courts and other procedures, like arbitration. The basic link between access to justice, poverty reduction and economic development is typically dependent on the results of court's decisions and its impact on the economic activities of the state. The awareness of individual rights and access to legal facilities, like free legal services, is the backbone of poverty reduction and economic development in a country like Uganda.

**Notes**

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# How can access to justice reduce poverty and support economic development?

*'1.3 Billion people on this planet live in extreme poverty. That is 1.3 billion faces with smiles, tears, hopes and aspirations'.*  
Justine Lucas.

**Introduction**

In the southeastern part of Africa lies a sweet potato-shaped country called Malawi. Despite being known as the warm heart of Africa, the country ranks as one of the very poorest in the world.<sup>1</sup> Nearly 53 per cent of its population live in poverty and 85 per cent live in rural areas where poverty perpetuates.<sup>2</sup> There have been many attempts to fight poverty and improve the country's economic development. One of the ways this can be helped is by ensuring access to justice.<sup>3</sup> This is therefore a

discussion on how access to justice can reduce poverty and support economic development.

In order to engage in a more practical rather than abstract discussion, this paper is contextualised to Malawi as a case study. However, the points discussed can also be made in reference to other countries in a similar situation. Its objective is achieved as follows: First, the paper lays out the conceptual understanding of the terms access to justice, poverty and economic development. From there, the paper argues that access to justice can reduce poverty by generally protecting the human rights that are core to poverty reduction and economic development, protecting marginalised groups against inequality, holding different public functionaries to account, and taking steps to ensure peace and security. Lastly, the paper



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gives recommendations on how these points can be progressively realised in a developing country such as Malawi.

### Conceptual understanding

#### Access to justice

The sea of jurisprudence shows that the concept of justice, let alone access to it, has many faces depending on the proponents. Socialists such as Karl Marx understand justice simply as equality.<sup>4</sup> However, without diving deep into theories of justice, access to justice can be provided for under written law. In Malawi, the right to access to justice is provided for in the Constitution.<sup>5</sup> It has two strands. First, it entails the right of *access to any court of law*, or any other tribunal with jurisdiction, for the final settlement of legal issues.<sup>6</sup> The second strand entails the right to an *effective remedy* by a court of law or tribunal *for acts violating the rights and freedoms granted the Constitution or any other law* [emphasis author's own].<sup>7</sup> This paper adopts the constitutional approach to access to justice. This is on account that, in Malawi, the Constitution is the supreme law of the land. Any law or decision that is inconsistent with it is invalid to the extent of such inconsistency.<sup>8</sup> A constitutional definition would therefore put great weight on the term by giving it legal backing. Hence, access to justice must be understood as the capability of people to access the courts or any tribunal in order to enforce their constitutionally guaranteed rights that are core to poverty reduction and to economic development.

#### Poverty

Poverty, too, has been defined in different ways. Some, unhelpfully, define it as 'the state of being extremely poor'.<sup>9</sup> Magdalena Sepúlveda Carmona and Kate Donal, however, observe that poverty is a multidimensional phenomenon.<sup>10</sup> It includes social, political and economic inequalities. They further argue that a human rights perspective of poverty takes a broader definition. It takes into account not only low income levels and poor access to housing, food, education, health services, and water and sanitation, but also a lack of resources, limited capabilities, choices, security and the power necessary to enjoy the whole spectrum of human rights afforded to people.<sup>11</sup> This paper adopts this broader definition by

Carmona and Donal. This is so because our definition of access to justice also centres on human rights. It would therefore be prudent for us to simply play this game of match.

#### Economic development

The Cambridge Dictionary defines economic development as a process in which an economy grows or changes and becomes more advanced, especially when economic and social conditions are improved.<sup>12</sup> This paper will be guided by this definition, with a minor addition. The improvement must be in regards to both the citizens' social and economic welfare and that of the nation.

### Access to justice, poverty reduction and economic development

Having laid our foundations on an understanding of the requisite terms, access to justice can reduce poverty and support economic development in numerous ways. To begin with, from the definitions above, it can be inferred that access to justice acts as a watchdog against exploitation of people's rights that are guaranteed both domestically and internationally. Malawi is a state party to different human rights conventions, such as the International Covenant on Economic, Social and Cultural Rights. Further, its Constitution contains a bill of rights, which guarantees different entitlements, such as the right to equality and non-discrimination, the right to property, the right to economic activity, the right to development, to freedom of movement and the right to access to information.<sup>13</sup> All these rights must be protected by the state, and one of the state organs responsible for protecting citizen's rights is the court. When everyone has equal and easy access to the courts, people's disputes concerning violations of their rights can be effectively and efficiently settled. Of particular importance is how the protection and realisation of these rights through easy access to justice can be argued to be core to an individual's and nation's economic development. A good example is the Malawi case of *Mayeso Gwanda v State* (Constitutional Cause No 5 of 2015 [2017] MWHC 23), where the applicant was arrested by the police at 0400. He was charged with being a rogue under section 184(1)(c) of the Penal Code. However, it was the applicant's story that he was merely a trader who woke up early in the morning to go to his place of business.

It was observed by the court that the law on rogues and vagabonds violated different human rights. It was discriminatory in that only those who appeared suspicious because of their poverty or economic status were targeted. The accused's rights to freedom of movement were also violated by the arrest. The court stressed that this law targeted poor pedestrians because, had the applicant had a motor vehicle, it was unlikely that he would have been in that situation. It further pointed out that these rights are core to the economic development of the people as they ensure that even the poor should be able to commute and earn a living. Hence, ensuring equal and easy access to justice to all, particularly access to the courts, helps them to exercise their rights, which are core to poverty reduction and economic development.

Second, access to justice can reduce poverty and support economic development by ensuring the protection and equal treatment of vulnerable groups. It was observed that there are discriminatory patterns within most countries towards marginalised segments of society.<sup>14</sup> This is commonly women and children, ethnic minorities, indigenous peoples, undocumented migrants or those living in rural areas. These groups face exclusion from accessing justice on an equal footing with the most privileged groups of the population. As such, persons living in poverty under these groups are often prevented from claiming, enforcing and contesting violations of their rights. Taking women as an example, a recent report by the Malawi Human Rights Commission unveiled the sad and shameful conduct by law enforcers. The report revealed that 13 women were raped, one girl was defiled and three underaged girls were sexually assaulted in police custody.<sup>15</sup> The police play an important role in protecting its citizens and their rights and freedoms, yet women have at times faced a gross and indecent violation of their rights in the hands of these law enforcers. Scenarios like these are heartbreaking as they form a thick barrier preventing access to justice. Noting that access to justice gives a chance to marginalised groups to challenge threats to their human rights, core to economic development, it is important for states to make sure that institutions are effective.

Furthermore, access to justice can ensure that different stake holders that are key to poverty reduction and economic development are held to account. It can be argued that the state is one such major stakeholder. This is on account

that it has better financial muscle through its public funds from taxes and international aid. On that note, it is important to highlight that, in Malawi, it is a constitutional principle that public functionaries hold their power on trust for the people of Malawi. Such trust is to be maintained through an open, accountable and transparent government (section 12, Malawi Constitution). As such, public officials must at all times be transparent and accountable to how they exercise their power. It is distressing to see public officials turning the government into nothing but a vehicle to self-enrichment. In 2013, Malawi's government funds were misappropriated in what was called the cashgate scandal.<sup>16</sup> Stockpiles of cash were found in public officials' homes and vehicles.<sup>17</sup> An audit revealed that the scandal, which dated back to 2009, came to US\$356m.<sup>18</sup> Sadly, society bore the cost as foreign donors withdrew aid to Malawi. Goods and services also drastically increased in price due to high inflation.<sup>19</sup> It has been observed that in a scenario like this, the poor suffer the most because the economic gap widens. The poor get poorer and the rich get richer.<sup>20</sup> Be that as it may, the government officials responsible for embezzling government funds were dealt with and held accountable by the court. Thus, access to the courts and effective remedies in this situation entailed that misappropriated public/government funds that were meant for development were accounted for. It goes without saying that, where funds are being used for the purpose that they were meant to serve, that country's poverty is likely to reduce and its economy to develop.

Lastly, as peace is a recipe for economic development, access to justice can reduce violence and conflict. It has been observed that only a few actually benefit from conflict,<sup>21</sup> whereas the majority of those involved suffer both physically and economically.<sup>22</sup> Indeed, the warm heart of Africa has had its share of heart attacks. In 2019, Malawi held a tripartite election in which the incumbent Arthur Peter Mutharika was sworn in for a second term of office. Dissatisfied with the way the elections were conducted, the opposition political party refused to recognise the outcome.<sup>23</sup> It swore that it would hold this view, even if it meant spilling blood.<sup>24</sup> The nation was fragile as different people had different interests at stake. However, it has not yet experienced such a pool of blood. This is so because the parties were able to access the courts and file a petition challenging the results of the presidential election in a court of law. Hence, instead of people taking up matters in their own hands, the courts can act, and acted,



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as sober and impartial arbiters where situations are marred with emotions. This peaceful dispute resolution ensures continuation of peace, which as noticed, has economic benefits.

### Recommendations

The above discussion highlights how access to justice can reduce poverty and enhance economic development. However, we would be nothing but headless chickens if we were not to suggest how such access to justice can be achieved. The paper briefly recommends the following.

First, states must ensure that there is physical access to the courts themselves. It was observed that, in Malawi, the High Court, which is a court of both appellate and original jurisdiction, is only found in major cities, yet the majority of the population is rural. The subordinate courts that are found in most rural areas are either not operational at all, understaffed or underfunded.<sup>25</sup> Hence it is important for states to ensure access to these tribunals. In H Smith's words, 'we can end the existing denial of justice to the poor if we can secure an administration of justice which shall be accessible to every person no matter how humble'.<sup>26</sup>

Further, states can also ratify international agreements to allow for an international platform for dispute settlement. This includes the African Charter on Human and Peoples' Rights and its additional protocols. This would ensure that, where domestic remedies fail, citizens are able to seek redress internationally.

Lastly, there must be widespread access to legal information. This includes legal literacy by making people aware of their rights so that they can challenge conduct that is detrimental to their economic well being. Noticing that the law and its procedures can be very technical, the law can be made more accessible by providing for legal representation where the interests of justice demand. This can be achieved by making institutions available, such as the Legal Aid Bureau.

### Conclusion

An African icon, Nelson Mandela, once said, '[o]vercoming poverty is not a gesture of charity. It is an act of justice. Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.' Indeed,

when access to justice is guaranteed, human rights are better protected, vulnerable groups able to quench their thirst from the waters of equality, government officials are held to account, and peace sprouts like flowers in spring. All these are recipes that contribute to poverty reduction and economic development. Only then will people say that in the south-eastern part of Africa lies a sweet potato-shaped country. And in that country is justice.

### Notes

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- 11 See n 3 above, p 7.
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# How can access to justice reduce poverty and support economic development?

## Introduction

The provision of accessible justice is a state obligation under international human rights standards.<sup>1</sup> This is because justice is essential to tenets of life. Thomas Hobbes stated that access to justice improves the state of things because, without it, man would return to his or her state of nature, which is chaotic.<sup>2</sup> Therefore, this essay will explain how access to justice can reduce poverty and support economic development from a legal perspective. As an outline, the essay will define first justice, set out an understanding of access to justice, describe the nexus between justice and poverty, and deliberate the state of injustice and insights on access to justice.

## Definition of justice

Justice can be defined as that which construes a certain amount of fairness or correctness.<sup>3</sup> An analysis of this definition shows that it encompasses Aristotle's conception of justice as to be categorised into distributive justice and corrective justice. The definition has the element of correctness or fairness in distribution and compensation. The state of fairness and correctness in resource allocation and restoration of equality is what constitutes justice.

Furthermore, justice is often associated with the law. The Malawian Constitution makes reference to justice in section 41, section 43, section 60 subsection 4, section 86 subsection 2 and section 123 subsection 1.<sup>4</sup> The Constitutions of Mozambique, South Africa and Tanzania make reference to justice in their preambles.<sup>5</sup> It can be noted from how it has been used in these various constitutions and provisions that justice is contextual and that it does not refer to one thing. J W Harris in his book *Legal Philosophies* argued that justice is understood in three senses. These are justice as inherent in the law; justice as contrasted with the law; and justice as a measure of the validity of the law.<sup>6</sup> These senses advance

the idea that the demand for justice can be made in the form of a legal or moral claim. In some instances, the moral claim can be justice as contrasted in the law. This is the understanding of justice that will be used in this paper.

## The understanding of access to justice

Similar to justice, the definitions of access to justice vary from society to society. However, every society's justice system requires an effective supply of judicial services by state and non-state entities, and of effective demand for those legal services by people who trust the system enough to use it. As such, the focus in contextual definitions of access to justice is on what the users of the system want.<sup>7</sup>

Some of the elements of accessible justice have been deduced to be the independence and autonomy of courts and other judicial institutions; the availability of just laws that accord with popular conceptions of justice and international human rights standards; the availability of procedural rules that provide for the speedy, fair and effective disposal of cases; the availability of robust well managed institutions free of corruption and effectively delivering services; the availability of appropriate and accessible legal services. The government should be legally accountable with institutions that redress officials who act abusively; and the availability of mediating civil society organisations that can help to formulate demands, conduct advocacy and bring representative cases on behalf of low income or disadvantaged groups can also help.<sup>8</sup> These elements interact with each other and are to a large extent mutually interdependent.

In addition to this, access to justice extends to 'traditional' justice. Traditional systems of justice have to be more accessible and appropriate. Such systems have to provide for the fair treatment for women and children rather than perpetuating a patriarchal nature.



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Supporting the legal aid services provided in areas where traditional justice systems are prominent also helps to have effective access to legal representation, and improves legal services to the poor and other disadvantaged groups.

### The nexus between access to justice and poverty

Poverty reduction is an important goal for many countries, but it requires a comprehensive approach.<sup>9</sup> The goal goes beyond 'simply increasing income levels to creating conditions in which all humans lead healthy lives with sufficient food, shelter, clothing, and dignity, self-esteem, participation in the society'.<sup>10</sup> This paper posits that promoting access to justice is part of a comprehensive approach in improving the political, socio-cultural, economic, human and protective capabilities of the poor, thereby assisting in reducing poverty.

Poverty, it must be noted, emanates from disadvantageous conditions and discrimination against economically and socially vulnerable people. This both causes and perpetuates poverty.<sup>11</sup> As such, access to justice can improve capabilities of the poor. Access to justice changes the environmental surroundings of the poor and thus it is one step toward breaking the vicious cycle of poverty.<sup>12</sup>

The paper has advanced that justice is associated with the law; as such, the principle of the rule of law helps to encourage economic growth and investment. This is because the rule of the law promotes judicial effectiveness; an effective justice sector promotes better livelihoods for poor people and the protection of rights of potential investors. The rule of law also constrains the arbitrary exercise of state power, safeguards against corruption and promotes fairness in resolving disputes and preventing conflict.<sup>13</sup> These in turn promote economic growth and reduce poverty.

### The state of injustice

Many countries see poverty levels rising because their justice systems are remote, unaffordable, slow or hard for ordinary people to understand, which works to deny them legal protection and do not meet their legitimate needs.<sup>14</sup> In many countries, legitimate grievances against the government, a business, a private individual or a member of the family cannot be resolved quickly and effectively.<sup>15</sup> In addition to this, many institutions are poorly managed, corrupt or

ineffective in delivering services needed by the poor and other disadvantaged groups.<sup>16</sup> A perpetuating state of injustice deepens poverty levels because it stymies avenues that can promote economic development.

### Insights on access to justice

The establishment of laws that promote the advancement of economic institutions is one of the ways that access to justice can reduce poverty. When these laws are provided, they allow *de jure* economic advancement and also *de facto* economic advancement. This reduces poverty because the laws provide space for such improvement.

Furthermore, as access to justice improves the relationship in this way, it creates incentives that motivate potential investors, entrepreneurs and encourages the hardworking spirit of its citizens.<sup>17</sup> Potential investors, entrepreneurs and other workers pursue their economic avenues, confidently, in countries where the justice system ensures sanctity of contracts and deeds of ownership. As such, there will be individual as well as national economic development in a country where there is access to justice, and poverty is addressed through the social protection schemes, payments, skill training and access to credit, public benefits and entrepreneurship.

In addition to this, the effectiveness of the courts also has a bearing on the working classes as well as investors in a country. A judicial system that is sensitive to the disadvantages of people is at the core of access to justice. Some of the remedies that access to justice provide against these disadvantages may be the use of local languages, allowing people to give evidence in narrative form, appointing people from the community to sit as lay magistrates, establishing mobile courts to service rural communities, providing information about the courts to the public, improving case flow management by the computerisation of court records and the strengthening court administration, awareness-raising for judges in new developments affecting juvenile justice, providing alternatives to prison, and better coordination between courts and other agencies.<sup>18</sup> These strategies help protect the human rights of both workers and employers; this develops economic standards.

This provision of legal protection and legal services provided by lawyers, paralegals, mediators or traditional advisers ensures the fair resolution of disputes over family relations,

inheritance, land, unpaid wages and other economic grievances.<sup>19</sup> It thus prevents financial problems from becoming a crisis and it prevents arbitrary deprivation of property by the government or corrupt government officials.

Lastly, the feminist perspective is also important, supporting that access to justice can reduce poverty and elevate economic development. Recognising the patriarchal impact on the law that puts women at a disadvantage in the economic sector can help to redress this situation.<sup>20</sup> A nation has both males and females as significant players towards its development. Therefore, patriarchy is a detriment that affects the female counterpart's contribution to their individual as well as national economic development. This is what feminists advance to be the major contributor to poverty. Most economic aspects (property ownership and employment) are regulated by the law; access to justice provides that the law discards patriarchy and promotes fairness for both females and males in these avenues.

### Conclusion

In a nutshell, justice and poverty cannot be treated as distinct concepts; in fact, injustice is a root of poverty. This paper has advanced that access to justice promotes the proliferation of different economic avenues, it facilitates and cements the protection of rights of parties involved, and reduces corruption and vices.

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# How can access to justice help to reduce poverty and support economic development?

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## Introduction

It has been said that the opposite of poverty is not wealth but is justice.<sup>1</sup> A limited access to justice disempowers people from claiming their rights and defending themselves against injustice, relegating them to poverty and to underdevelopment.<sup>2</sup> By contrast, access to justice is associated with economic growth and investment, as well as equity and social justice. According to Sustainable Development Goal 16.3, nations and states are mandated to promote and ensure equal access to justice for all by 2030. Against this background, a careful reading of how access to justice reduces poverty and supports economic development is undertaken. Access to justice under this view is an important pillar to economic development and poverty reduction. In addition, access to justice is also described as one of the five peace-building and state-building pillars.<sup>3</sup>

## Defining access to justice, poverty and economic development

Before delving into systematic analysis, the paper proceeds by defining three terms central to the essay, namely access to justice, poverty and economic development. To begin with is the concept of 'access to justice'. Access to justice is not generally defined in relevant legal texts.<sup>4</sup> As a result, usage of the term is mostly broad, covering various general aspects, such as access to a court, fair trial and legal aid, among others.<sup>5</sup> According to an article by the Organisation for Economic Co-operation and Development (OECD) in conjunction with the Open Society Foundation,<sup>6</sup> the expression 'access to justice' serves two basic purposes of the legal system as highlighted below. First, access to justice means that the legal system must be equally accessible to all.<sup>7</sup> What this means is that claimants must not be impeded or restricted by procedural rules and practicalities inherent to the legal system, such as litigation costs, the availability of legal aid or

access to legal representation, to bring claims before a court of law.<sup>8</sup> Second, access to justice also means that the legal system must lead to results that are 'individually and socially just'.<sup>9</sup>

Access to justice is two-fold: either effective or restricted. Effective access to justice is invaluable; it is considered a fundamental right without which other rights cannot be actualised. The right is also recognised as encompassing a number of core human rights, such as the right to a fair trial and the right to an effective remedy, access to information, public participation in decision-making and access to justice in environmental matters.<sup>10</sup> Access to justice for all necessarily involves two key features. First, it involves scaled-up services to provide advice and assistance to victims and people involved in disputes and conflicts. Second, it also involves improving the institutional framework for resolving disputes, conflicts and crimes. Both aspects need to be addressed. Just focusing on access to advice and assistance without improving institutions will result in people knowing their rights and how to demand them, but looking to a system that cannot deliver. Similarly, just focusing on institutional development without enabling access to the justice system will fail to deliver equal access to justice for all.<sup>11</sup>

Turning to the concept of poverty, discussions on the discourse of poverty and poverty reduction have been the subject of considerable discussion in society. According to the World Bank,<sup>12</sup> poverty is the deprivation of wellbeing, and comprises many dimensions, which include low income, the inability to acquire basic goods and services necessary for survival with dignity, and low levels of health and education.<sup>13</sup> This definition is similar to the Overseas Development Institute (ODI)'s 2009 definition which defines poverty as a sense of helplessness, dependence and a lack of opportunities, self-confidence and self-respect on the part of the poor. A common thread

that runs through the above two definitions is that poverty can be said to be a condition of lacking the basic necessities of life, such as food, shelter, educational and health needs.

As regards economic development, the World Bank's *World Development Report* (Oxford University and World Bank, 2000)<sup>14</sup> defines economic development as an increase in the economic standard of living of a country's population, with constant growth from a stagnant state to a higher level of equilibrium. It implies increases in income, savings and investment, along with improvements to the socio-economic structure of a country.

### **Ways in which access to justice helps to reduce poverty and support economic development**

Access to justice reduces poverty in a number of ways. Some of the ways are highlighted below.

First, effective access to justice ensures that the poor and marginalised do not spend the little they have on procedural needs in the justice system. It is a palpable fact that the pursuit of justice is often costly because of the legal fees involved, including the cost of hiring lawyers and court fees. One of the tenets of increasing access to justice is the greater provision of legal aid to the poor.<sup>15</sup> This can be immensely beneficial to the poor opens up channels to redirecting the finances they have to meeting their basic needs, as opposed to spending cutting into their resources for litigation. A case in point is the legal aid programme in Jordan, supported by the World Bank and Japan and implemented by the Jordanian civil society organisation (CSO) Justice Center for Legal Aid (JCLA).<sup>16</sup> This programme sheds some light on the link between justice sector services, like legal aid, and poverty. In 2012, the JCLA, in cooperation with the Department of Statistics of Jordan, conducted a 10,000-household survey solely on the justice sector: the Statistical Survey on the Volume of Demand of Legal Aid Services. The survey found that the poor and near-poor are more likely to face legal problems, with the bottom half of the expenditure distribution accounting for 68 per cent of reported disputes. From the observations of the study, the provision of free legal aid would allow the poor to access justice and direct their finances to other basic needs, hence reducing their poverty.

Second, increased access to justice encourages investors to establish their

business in a country.<sup>17</sup> A country that ensures effective and non-discriminatory access to justice motivates local and foreign business players to set their businesses as they are assured of security and continuity of their business. When more and more companies and individuals set up business in a country, there is economic development in that country as revenue is generated from such companies. In addition, such investments will also normally come with job opportunities for locals. Such jobs enable citizens to reduce their poverty as they will meet their basic needs from the salaries they will get.

Third, effective access to justice and respect for the rule of law will also promote economic development as it may attract donors.<sup>18</sup> There is a long history of donor engagement and access to justice. Some donors only provide donations or caritas to countries that provide access to justice, observe the rule of law and human rights. Bearing in mind that donor support funds make a substantial contribution to the annual budget of most developing countries, donor support is important and has a lasting positive impact on the economy of many developing countries. With such support, countries have initiated a number of poverty eradication programmes, which have ameliorated the suffering of poor people in many societies. Conclusively, effective access to justice will attract donors who fund poverty reduction programmes and some programmes that promote economic development of citizens and the country at large.

What is more is that effective access to justice provides legal empowerment to people. It gives farmers and other agrarian communities the tools they need to improve their tenure security. Tenure security has been shown to lead to more productive investment. Such investment is laudable as it enables farmers to fend for their daily needs, thereby reducing their poverty. Similarly, the ability to access and enforce regulatory frameworks helps to determine whether contracts, labour and environmental standards are respected in practice.<sup>19</sup> Effective access to justice will enable workers to push for their rights and demand pay commensurate with their work. This will accord them good economic conditions. In the Philippines, for example, survey results by the Asian Development Bank<sup>20</sup> showed that in communities with legal support, regulatory reforms resulted in residents with higher levels of productivity,



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higher income, more disposable income, and more investment in their farms.

In addition, access to justice also provides legal empowerment to women and helps translate legal guarantees of gender equality into real improvements in the daily lives of women.<sup>21</sup> This is done by supporting women in protecting themselves from domestic violence, sharing in benefits from natural resources, retaining control over loans taken out in their name, and accessing inheritance or property upon divorce. In Bangladesh,<sup>22</sup> providing access to justice for women reduced the illegal practice of dowry payment and increased women's cash savings for emergencies, compared with other communities without legal help, according to the Asian Development Bank. Conclusively, access to justice provides legal empowerment to the disadvantaged. With such empowerment, the marginalised are able to challenge societies' conventions and are placed on a pedestal that allows them financial freedom. When more people are financially stable, the gross domestic product (GDP) per capita increases. This results in economic development.

### Conclusion

From the foregoing discussion, it is apparent that effective access to justice will elevate the poor to prosperity. The paper has also revealed that access to justice will, in the long run, lead to improvement in economic development. Among other things, effective access to justice will encourage investment and donor support needed to elevate poor societies from poverty and underdevelopment to economic prosperity. Furthermore, effective access to justice will also ensure that poor people are able to defend their rights and that they do not have to spend more on litigation costs; a development that will entail that they direct their resources to the fight against poverty.

### Notes

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## How can access to justice reduce poverty and support economic development?

In this chapter, I will be introducing the concept of access to justice and, as a requirement of the rule of law, define concepts of access to justice and the rule of law, discuss states' obligations nationally and internationally, and briefly mention human rights instruments around the world and how the requirement of the rule of law is assessed. I also introduce a key area of administrative law.

Access to justice around the world brings up a major discussion of the underlying issues of the rule of law and access to the justice system, that is, the courts, legal representation, access to legal aid and other forms of redress. It also highlights the strengths and weaknesses of a nation's justice system in its strides in upholding a key important constitutional principle of the rule of law. Access to justice also sheds a light on marginalised and vulnerable groups, such as women, girls and individuals who can't afford the costs, and struggle to understand the processes of redress in settling their grievances.

Access to justice also brings up issues of domestic abuse, rape, access to legal representation to those incarcerated because they didn't have a free and fair trial, prolonged trials, and an indefinite prison time for those suffering from miscarriages of justice in the form of inadequate legal representation and lack of evidence by the prosecutors and police.

Institutional and individual independence on the part of magistrates or judges in determining or hearing these cases from undue influence by the executive branch or the legislative branch of government also plays another role in securing access to justice.

As a further requirement of the rule of law, the state must comply with its obligations in international law as in national law. Obligations under international law include international treaties, such as the Universal Declaration of Human Rights, African Charter on Human and People's Rights and European Convention on Human Rights, to name a few.

Obligations under national law include constitutions, Acts of Parliament, and observance of the constitutional principles.

What all these instruments have in common is that rights are protected and guaranteed, such as rights prohibiting discrimination, the right to life, rights prohibiting torture, prohibiting inhumane and degrading treatment, protecting freedom of movement, speech, association, the right to a free and fair trial, and access to legal representation, with the state providing representation for those who can't afford it, and the right to put up a defence when accused and the right to cross-examine your accusers.

What is access to justice? Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voices heard, to exercise their rights, challenge discrimination or hold decision-makers accountable. The Declaration of the High-level Meeting on the Rule of Law emphasises the right of equal access to justice for all, including members of vulnerable groups, and reaffirmed the commitment of its Member States to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all (paragraphs 14 and 15).

The United Nations' activities in support of Member States' efforts to ensure access to justice are a core component of the work in the area of the rule of law. The delivery of justice should be impartial and non-discriminatory. In the Declaration of the High-Level Meeting on the Rule of Law, Member States highlighted the independence of the judicial system, together with its impartiality and integrity, as an essential prerequisite for upholding the rule of law and for ensuring that there is no discrimination in the administration of justice (paragraph 13).<sup>1</sup>

The World Justice Project (WJP) assesses the extent to which different states around the world meet the requirements of the rule of law. The WJP argues that the rule



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of law matters because it is the underlying framework of rules and rights that make prosperous and fair societies possible. The rule of law is a system in which no one, including the government, is above the law; where laws protect fundamental rights; and where *justice is accessible to all*. Where the rule of law is weak, medicines fail to reach health facilities, criminal violence goes unchecked, laws are applied unequally across societies and foreign investment is held back. Effective rule of law helps reduce corruption, improve public health, enhance education, alleviate poverty and protect people from injustices and from dangers large and small. Strengthening the rule of law is a major goal of governments, donors, businesses and civil society organisations around the world.<sup>2</sup>

There is more to access to justice than the traditional notion of access to justice in my region, and what the government, legal aid and non-governmental organisations or access to justice programmes/legal clinics write for funding for, or in the areas of government keeping to their international commitments and upholding valuable constitutional principles, such as separation of powers, preventing the executive from asserting affluence and influence on the judicial process, and the rule of law.

Another key area in which access to justice is lacking, especially in many parts of Africa, is the area of administrative law. As mentioned earlier, there is more to the traditional notion of access to justice, if access to justice is going to reduce poverty and support economic development and emphasis needs to be placed on administrative law in Africa, especially in holding public and private bodies with a public function accountable. How strange that practitioners, especially lawyers, are afraid to speak up about injustices, or challenge decisions made by public bodies and officials on grounds of illegality, irrationality and proportionality.

Our civil society groups and human rights organisations in Africa, as compared with the work they do overseas in challenging oppressive regimes and ensuring countries keep to their international commitments to the rule of law and access to justice, are most times dormant or silent, compromised and don't pursue these access to justice injustices within their mandates.

In this chapter is a brief discussion about poverty on a global scale, a definition of poverty, statistics about poverty and a discussion about the Sustainable Development Goals (SDGs).

Poverty is a key problem in the world for which ways and means are being devised to eradicate it on a global level. For the purpose of this paper, I will focus my definition, statistics and discussion of this area on the UN Ending Poverty Paper to provide an adequate representation of the data and research in this area by the UN to reflect the conditions that affect the social, economic and political life of citizens around the world.<sup>3</sup>

Poverty entails more than a lack of income and productive resources to ensure sustainable livelihoods. Its manifestations include hunger and malnutrition, limited access to education and other basic services, social discrimination and exclusion, as well as a lack of participation in decision-making. In 2015, more than 736 million people lived below the international poverty line. Around ten per cent of the world population is living in extreme poverty and struggling to fulfil the most basic needs, like health, education, and access to water and sanitation, to name a few. Moreover, there are 122 women aged 25 to 34 living in poverty for every 100 men of the same age group, and more than 160 million children at risk of continuing to live in extreme poverty by 2030. Ending poverty in all its forms is the first of the 17 SDGs of the 2030 Agenda for Sustainable Development.<sup>4</sup>

The SDGs' main reference to combatting poverty is made in target 1.A: 'Ensure significant mobilization of resources from a variety of sources, including through enhanced development cooperation, in order to provide adequate and predictable means for developing countries, in particular least developed countries, to implement programme and policies to end poverty in all its dimensions.'<sup>5</sup>

The SDGs also aim to create sound policy frameworks at national and regional levels based on pro-poor and gender-sensitive development strategies to ensure that, by 2030, all men and women have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.<sup>6</sup>

For the purpose of access to justice, it is of key importance that men and women have equal rights to economic and access to basic services to level the gap created by discrimination, and the problems it poses to access to justice and reducing poverty for economic development.

Also reflecting this reality in my context and my continent, poverty plays a key role

in access to justice, which is quite ironic taking into consideration the concept that justice is for sale in terms of the aspect of cost to initiate litigation, court fees and legal settlements. For argument's sake, someone might ask, what about the other means of redress, like alternative dispute resolution processes, commonly known as ADRs? All involve cost as the process is supervised by the courts in advanced Western jurisdictions. Back to our reality, in most parts of Africa, these means are available only theoretically, but in practice are not attainable because the machinery or bodies put in place for these forms of access to justice are not effective because of a whole lot of reasons, to name a few: lack of funding, a grey area that practitioners don't see as lucrative, or practitioners are totally ignorant about the existence and importance of these other forms and how they cushion justice systems in swiftly handling issues between aggrieved person. Also they are of key importance because of time management; they take less time compared with the courts, which are overloaded with a backlog of huge case loads and case management in reaching a decision.

In this segment, I will briefly give a definition of economic development. According to the UN Development Programme (UNDP), economic development can be defined as follows.

In simple terms, economic development means improving the living standards of people. The UNDP's Human Development Index measures economic development using three basic dimensions: the ability to lead a long and healthy life, measured by life expectancy at birth; the ability to acquire knowledge, measured by mean years of schooling and expected years of schooling; and the ability to achieve a decent standard of living, measured by gross national income per capita.<sup>7</sup>

More recently, there has been a trend of measuring other areas vital to a nation in assessing economic development rather than just its gross national income or gross domestic product: women's empowerment and participation in decision-making processes, women's representation in parliament, health indicators and more recently, participation in the technological sectors.

Access to justice has a key role in ensuring economic development, in the context of equality in creating a level playing field in areas of equal pay for men and women, and equal opportunities.

## Recommendations

In societies with some legal protections, those who lack the resources for or access to the legal system are often denied these safeguards. It's estimated that four billion people around the world do not enjoy the protections afforded by law. If serious progress is ever going to be achieved in overcoming extreme poverty, the poor must enjoy the rule of law and functioning institutions of justice, otherwise money will continue to flow towards the powerful.<sup>8</sup>

The following measures are recommended to ensure that access to justice reduces poverty and supports economic development.

### *Judicial independence*

Judicial independence is key to ensuring the reduction of poverty and support for economic development through access to justice. The judiciary in general needs to have individual and institutional independence in carrying out its functions, and be free from fear or favouritism. This will also boost public confidence in the judicial system in delivering justice. With judicial independence, one can be confident enough that the rule of law will be upheld and cases will be decided on their merits alone. This independence guarantees the courts independence in holding the government accountable, and members of the public for breaking the law.

### *Accountability*

Accountability plays an important role in reducing poverty and supporting economic development by holding decision-makers accountable for their actions. This ensures proper decision-making and transparency on the part of decision-makers. Public authorities will ensure that the decision-making process follows the letter of the law and not arbitrary judgement.

Parliaments play a key role in holding decision-makers accountable by calling them in for questioning before parliamentary committees of inquiry and investigations to determine the conduct of the officials in question.

Courts have a role through judicial review to determine whether the decision-maker's actions satisfied judicial review grounds of illegality, irrationality and procedural impropriety.

Also, the ombudsman has a key role by looking into the decisions of decision-makers and grievances put forward by members of the public.



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### *Challenging discrimination*

Challenging discrimination along lines of tribe, gender, religion and race is key to ensuring access to justice to reduce poverty and support economic development. Decisions made by the government or institutions must not be discriminatory in effect, their application must, most times, bridge the divide by involving bipartisan support to pass a nationwide policy that's beneficial to the nation as a whole rather than political bases. Individuals should be able to take authorities, employers or members of the public to court and hold them accountable for discriminating against them.

### *Fight against corruption*

The fight against corruption is also of great importance, such as the fight against corruption in high places. It is key to access to justice, reducing poverty and supporting economic development nationwide. Perpetrators of this repugnant crime need to be held accountable by the law regardless of their status in society, and the law should take its due course.

The poorest and most vulnerable instead live at risk of losing their homes or the land upon which they depend for survival. They are exploited by corrupt government officials or local power brokers who use money or force to take what they want. When poor communities cannot seek justice for their grievances, the resulting anger can spill over into violence.<sup>9</sup>

In conclusion, it is ascertainable that access to justice is a fundamental requirement to reduce poverty and support

economic development, and it ensures that the justice system is independent, decision-makers are held accountable for their decisions, challenges discrimination, and fights corruption on all fronts. It ensures that societies adhere to the rule of law, and ensures equality of all under the law. Countries that have suffered devastating wars as a result of people taking the law into their own hands know that access to justice failed them by allowing unaccountable administrations to have blatant disrespect for the rule of law and access to justice. Access to justice helps not only in alleviating poverty and supporting economic development but also in ensuring peace and the continuing growth of a nation.

### Notes

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# How can access to justice reduce poverty and support economic development?

## Introduction

Access to justice is a topic that has attracted much attention from different stakeholders all over the world today. However, there is no common concept as to what access to justice clearly entails.<sup>1</sup> As such, there are different understandings of the access to justice concept. Access to justice has largely been equated with access to lawyers and courts.<sup>2</sup> An individual's ability to have access to courts or legal representation is what is termed access to justice. It is argued that a society with a high level of access to justice should enable the majority of its citizens to know their rights and provide them with information on which steps to take to introduce a plaint or defend themselves against it; they should not face discrimination of any kind along the judicial process; they should be able to go effectively to court, meet the legal staff and exchange with them; and they should face a procedural cost that is not prohibitive both in terms of money and time.<sup>3</sup> The description of access above only focuses on the effective procedure to ensure an improved process of access to justice. The procedure described is important in making the legal system more efficient, user-friendly and accessible.<sup>4</sup> A fair process is significant; however, justice is far more than just a fair process. It is within the ambit of this essay therefore to discuss how access to justice can reduce poverty and support economic development.

## What is access to justice?

Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.<sup>5</sup> The European Convention on Human Rights refers to access to justice as the right to a fair trial<sup>6</sup> and the right to an effective remedy.<sup>7</sup> Under General Comment No 32, the concept of access to justice is referred to as the right to equality before courts and tribunals, and the right to a fair trial.<sup>8</sup> The definitions

of access to justice above are narrow in nature because they focus more on access to court and being able to get a remedy. From a broader perspective, access to justice refers to all measures that may improve access to courts, legal representation and alternative dispute resolution; and access to or action by equality bodies and ombudsman institutions aimed at bridging the gap between the law and de facto enjoyment of rights by individuals.<sup>9</sup> From this broader aspect, access to justice does not only imply the right to an effective remedy, the right to equal access to courts, the right to a fair trial or the right to legal aid for those who lack sufficient resources, nor does it only refer to the initial stage of bringing a legal case to obtain redress against the violation of a right.<sup>10</sup> The assertions above serve to enlighten one that access to justice is really a broader concept, hence there are different understandings. It is worth taking note that access to justice is a descriptive expression rather than a legal concept.<sup>11</sup> Though such is the case, this essay will employ the broader aspect of access to justice. This is so because the broader concept helps to discover more elements that add up to access to justice.

Though there are contrasting views on what access to justice means, it is however agreed that justice is a basic good in a society in which every woman, man and child should have access, regardless of how much money they have or who they know; just like food, shelter and medical care, justice is a basic social good.<sup>12</sup>

## Poverty reduction and economic development

Poverty is described as a generalised lack or a state of being without essential goods and services.<sup>13</sup> Poor people are deprived of essential goods and services to live a normal life. Poverty is the gravest human rights challenge that the world is facing today. Notice should be taken that 40 per cent of the world's population is living with the reality



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or the threat of extreme poverty. This reveals therefore that a lot of people face poverty, to which attention must be paid. Though much has been said on how to achieve poverty reduction in developing countries, there is a lack of literature on what is meant by poverty reduction. Poverty reduction is often used as a shorthand for promoting economic growth that will permanently lift as many people as possible over the poverty line.<sup>14</sup>

Economic development is the expansion of capacities that contribute to the advancement of society through the realisation of individual, firm and community potential.<sup>15</sup> Economic development is measured by a sustained increase in prosperity and quality of life through innovation, lowered transaction costs and the utilisation of capabilities towards the responsible production and diffusion of goods and services.<sup>16</sup> Typically, economic development can be described in terms of objectives. The objectives are most commonly described as the creation of jobs and wealth, and the improvement of the quality of life.<sup>17</sup> Economic development can also be described as a process that influences the growth and restructuring of an economy to enhance the economic wellbeing of a community.<sup>18</sup> Economic development requires effective institutions grounded in the norms of openness, tolerance for risk, appreciation for diversity and confidence in the realisation of mutual gain for the public and private sectors.<sup>19</sup> Economic development therefore is an essential tool for creating favourable conditions for economic growth and for ensuring an economic future that will enable the reduction of poverty, especially in developing countries.

### **The link between access to justice, poverty reduction and economic development**

Most governments around the world treat justice and poverty as distinct concepts. Poverty is addressed through higher incomes; justice, on the other hand, is the domain of judges and lawyers.<sup>20</sup> Hence, there is a greater need to bridge the two if they are to be effectively dealt with. Where there is no access to justice, persons living in poverty are unable to claim their rights or challenge crimes, abuses or violations committed against them, trapping them in a cycle of impunity, deprivation and exclusion.<sup>21</sup> Justice systems, both formal and informal institutions, help to address breaches of law and facilitate peaceful contests over rights and obligations, and most importantly,

they ensure that there is an effective delivery of health, education or other social services by allocating entitlements and providing avenues for citizens to seek redress in the event of a breach.<sup>22</sup> They promote executive accountability, deter arbitrary decision-making and advance equality. Justice systems mitigate conflict, deter and punish criminal activity, and provide outlets for the redress of grievances. Access to justice is a fundamental right in itself that states have the obligation to guarantee. Access to justice is also an essential prerequisite for the protection and promotion of all other civil, economic, political and social rights.<sup>23</sup> Where there is access to justice, people are empowered to fight against poverty in various ways. Thus, access to justice is an empowering mechanism for poverty reduction. Access to justice does not only affect poverty reduction, but also economic development. The opposite of poverty is argued to be justice, the idea to which I do subscribe.<sup>24</sup> A lack of access to justice is itself a central dimension of poverty. However, it is an enabling condition for development by establishing the basic social order and security required for other development activities to proceed. The critical role that access to justice access plays is to allow citizens to unlock their economic potential.<sup>25</sup> This therefore answers the question as to why, in 2015, world leaders included and recognised access to justice in the United Nations Sustainable Development Goals as an essential element for economic growth, human wellbeing and development in all countries.

Having shown the link between access to justice and the concepts of poverty reduction and economic development, a clear link between poverty reduction and economic development has not been shown. This part therefore is intended to do such work. It should be mentioned at the outset that poverty reduction is not development.<sup>26</sup> For example, economic growth in developing countries, especially in the least developed countries, has been often tied to price increases in global markets for their commodity exports, but this has not translated into poverty reduction.<sup>27</sup> However, the true standing of the two concepts is that poverty reduction is the aftermath of successful economic development not a replacement of it. Having said that, however, access to justice is an overriding concept that affects both poverty reduction and economic development. After this discussion, the question as to how access to justice can reduce poverty and support economic development

remains unanswered. Answering the question above is what remains in this essay.

### **Can access to justice really reduce poverty and support economic development?**

The answer to the question above is yes. Access to justice is a tool for poverty reduction and for supporting economic development. However, there are barriers to access to justice. Examples of barriers to access to justice are prohibitive costs of using the system; a lack of available and affordable legal representation; the abuse of authority and powers resulting in unlawful searches, seizures, detention and imprisonment; and the weak enforcement of laws and implementation of orders and decrees and inadequacies in existing laws that fail to effectively protect women, children, poor and other disadvantaged people, including those with disabilities and low levels of literacy. The list is not exhaustive because there are many challenges that hinder access to justice. If there is no access to justice, it automatically results in a failure to reduce poverty and no economic development in the end. This means that the poor will continue being excluded from having access to justice. Dealing with the barriers to access to justice means opening a wide door to poverty reduction and supporting economic development. Below is a discussion on what should be done in order to deal with the barriers to access to justice in order to reduce poverty and ensure economic development. Since, however, there are challenges in accessing justice, others (those better off, for example) generally have greater recourse to justice. As such the suggested ways are there to help in taking access to justice to a level where everyone can easily have access to justice.

First, access to justice can be improved by conducting awareness campaigns on peoples' legal rights, and on available services and procedures. Limited legal capability, including awareness and understanding of the justice system by citizens and the availability, type and scope of legal services is a high barrier in many developing countries. Though legal awareness is one of the most effective tools for fighting injustice, many people, especially the poor, not only fail to understand what access to justice means, but also why access to justice is important to them. A lack of knowledge of one's rights and entitlements under the law robs the poor and other disadvantaged people of the ability to seek available remedies for injustices

wreaked upon them.<sup>28</sup> They are also entitled to be informed of the kind of remedies available for any form of injustice. It is through heightened awareness or civic education campaigns that the masses will be enlightened not only on how to seek courts' help for dispute resolution, but also that they are the holders of rights. It remains therefore to say that both governments and non-government actors have a role to ensure the public is informed of its rights and entitlements.

Second, the increase and availability of legal aid services is another way of making justice more accessible. Prohibitive costs of using the justice system and a lack of available and affordable legal representation has been a prevalent problem in many countries.<sup>29</sup> As such, many poor people have been denied access to justice due to the lack of monetary resources. The increase and availability of legal aid services are there to deal with the high costs of legal services and representation, providing an opportunity for the indigent to have access to justice. Be that as it may, the provision of legal aid services is challenged in a number of ways.<sup>30</sup> For instance, there is frequently underfunding due to high demand for services by large numbers of people; in some jurisdictions, legal aid is predominantly available in criminal matters, less in family and other civil matters. Although there is far greater demand for legal aid services, a few countries are providing legal aid for disputes. If access to justice is to be improved effectively, governments need to ensure that the problems faced in the provision of legal aid services are dealt with, if not minimised, or access to justice will remain unaffordable and out of reach.

Even the geographical distribution of legal and judicial services is of great significance as far as access to justice is concerned. Uneven geographical accessibility of legal and judicial services is often a hindrance to access to justice. Court houses and police stations may only exist in urban, populated areas, leaving the rest of the country without proper access to the formal justice system.<sup>31</sup> This reveals that those people who are living in remote areas, away from urban areas where courts and legal services are easily accessible, will often find it hard to find formal legal services. Ensuring that there is a more even distribution of legal and judicial services will provide a chance for poor people living in rural areas to have access to justice. Some countries do involve the use of mobile courts and they may be used in emergencies to deal with the most acute needs to provide a long-term solution



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to endemic access to justice challenges. This way is not satisfactory because some areas are difficult to travel to due to a lack of proper roads. However, those living in remote areas may need these services the most, given that these groups tend to have higher vulnerability to legal problems.<sup>32</sup> Therefore, governments have an obligation to increase their budget allocation to promote access to justice to poor people living in rural areas because access to justice is like a key that unlocks the exercise of economic-related rights that are a vehicle for poverty reduction.

Furthermore, the existence of adequate laws act as a tool for improving access to justice. Adequate laws provide a legal standing in formal or traditional laws, which involves the development of capacities to ensure that the rights of disadvantaged people are recognised within the scope of justice systems, thus giving entitlement to remedies through either formal or traditional mechanisms.<sup>33</sup> They ensure legal protection, which determines the legal basis for all other support areas on access to justice. Adequate law must provide for legal protection to everyone, including disadvantaged and marginalised groups.<sup>34</sup> The development of capacities for enforcing orders, decisions and settlements emerge from formal or traditional adjudication. The law should be at the forefront in outlining how every individual should be protected by the law to ensure access to justice. If the laws of a country are not sufficient to ensure access to justice by all persons, then governments have a duty to take measures that will ensure the availability of such laws.

Lastly, judicial independence is another way of improving access to justice. A judiciary that is strong and impartial is a cornerstone of access to justice. Thus, the judiciary should be free from corruption, discrimination and other endeavours that may create mistrust from the public. If the judiciary is incompetent in the delivery of its services, people will run away from its services and hence be unable to have access to justice. If the police and courts, for instance, have a reputation for corruption, the public will neither trust nor use the justice system, thereby crippling the rule of law.<sup>35</sup> Lack of public trust in the formal judicial system leads to the seeking of alternative dispute resolution, which may not necessarily help people to access justice.<sup>36</sup> Judicial independence is crucial for an effective judiciary. The judiciary must be impartial in

the application of the law, and be able to govern itself without external interference, unless required by the law.

### Conclusion

The essay has shown that access to justice can reduce poverty and support economic development. In a nutshell, improving access to justice is increasingly recognised as a critical dimension of inclusive economic growth. By contrast, lack of access to justice can be both the result and a cause of poverty. The inability to obtain legal and justice services has a negative impact on the poor and other disadvantaged groups due to the unavailability of economic resources. This then disables them from enforcing their rights. As such, solving the legal problems that prevent access to justice may increase access to economic opportunity, and increase human potential, thereby influencing poverty reduction. Addressing legal problems and access to justice can result in inclusive economic growth, for instance, by creating jobs and promoting business activity. It can therefore be difficult to deny that access to justice can be instrumental in helping people move out of poverty and can enable them to have equal access to economic opportunities.

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# How can access to justice reduce poverty and support economic development?

Access to justice can be defined as efforts to seek and obtain justice, and to use the legal system to improve one's life.<sup>1</sup> A question that always rises is, does anyone have equal access to justice? The answer is in the negative. Article 7 of the United Nations Universal Declaration of Human Rights states that: 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.'

Despite this being the case, not everyone is equally protected under the law due to several problems discussed in this paper that have also, inter alia, led to entrenched poverty worldwide. This paper therefore argues whether access to justice can help in

reducing poverty and support economic development.

First and foremost is the issue of the cost of legal advice and representation, which tends to bar access to justice. Lawyers almost the world over provide representation in exchange for a fixed cost, irrespective of the number of complexities the matters involve.<sup>2</sup> It has to be emphasised, however, that not everyone can afford to pay a lawyer's fixed amount of money to be represented in court on his/her case, despite this being a constitutional right, due to the poor status of a large percentage of people in society. This entails that, no matter how much one pleads with the lawyer to be represented in court for a lower amount, the lawyer may only reluctantly accept and badly prepare for the case at hand, a thing that can deter people who feel that they have a case to bring



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to court but can't afford a lawyer. This was showcased in the Malawian High Court case of *Macleod v Ntchisi District Assembly*<sup>3</sup> where the plaintiff's case was dismissed, not because she did not deserve damages, but because she failed to get a lawyer to prepare a good case for her; in turn, she did it herself and lost the case because it was badly prepared, costing her millions of the local currency. However, the introduction of free legal aid services has proved to deal with this problem since it has maintained energy and hope in those in need.<sup>4</sup> It is in my submission that governments have to raise salaries given to those lawyers who work in legal aid services since this will make them work with a whole heart and will lead to more people having the chance to be represented by a lawyer. If anyone can have access to a lawyer, surely that would prevent perpetrators from exploiting those of a lower status than them, in turn bringing peace in society. Where there is peace there is unity. Even though this wouldn't make governments crime free, at least it would create a safe environment for everyone to do his/her work effectively in trying to survive in society.

Another burning issue barring access to justice is the accessibility of the courts. In the Nigerian case of *Apugo v Nwoke*,<sup>5</sup> the court stated that 'access to court is a constitutional right which can only be taken away by a clear provision in the constitution. It can not be taken away by implication or speculation by the courts.'

This showcases that everybody has the right to bring a matter to court, no matter the circumstances. This is not the case though, since most areas in the world that are affected by high poverty levels rarely have a court nearby. There are several reasons for this: the reluctance of qualified judges to dwell in such poor areas that mostly have poor road networks, electrical problems, poor network service delivery or accessibility of the said areas for bringing in developments.<sup>6</sup> In Malawi, for example, the country used to have traditional courts back in the 20th century, but they are now extinct, without being replaced.<sup>7</sup> This has left a lot of people in remote areas without access to the courts since the nearest courts are located far from their areas.<sup>8</sup> It is herein argued that having access to courts is a very important aspect of our lives. This is portrayed in the Malawian judicial review case of *Lunguzi v Attorney General*,<sup>9</sup> where the applicant in this case was wrongfully relieved of his duties as the

Inspector General of Police. The court found that the respondents wrongfully removed the applicant from his office and it declared that he should be reinstated. Now assuming that the applicant in this case had no access to the court after he was sacked, it would have been totally impossible for him to get back his job. This would have led to poverty in his family if that was the only job they depended on for income, and his children would stop going to school since he would not be able to cater for their school fees, affecting the future of the country since, by then, going to school was a great achievement in Malawi and the country depended on you. By having access to the court, as he did, he was given back his job, which also means that the government would gain tax from his salary, which is used for different things in ensuring the development of a country, showcasing that having access to courts is an essential need for driving a society's economy forward and ensuring peace and harmony; hence, it is important that a country should try all means possible to build courts and assign judges all over for maximum access to justice worldwide.

Where people do not have access to justice, challenging discriminatory sentiment, as well as holding corrupt leaders accountable for their corrupt acts, becomes a problem. Corruption plays a crucial role in fostering staggering poverty and broken economic systems.<sup>10</sup> This so because all the aid money for implementing development projects ends up in the pockets of those managing the programmes, who take advantage of the probably illiterate subjects who do not even follow the activities of higher offices. If everyone could have access to justice, this would no longer be a problem since those who embezzle public funds will know that practicing the act will put them in danger of losing their office and being convicted because their subjects won't be there to listen to their lamentations of mercy. This in turn would let the money do its intended job, and development would shoot up in such countries. A good example is Africa, which receives a lot of money in the form of donor aid, but mostly the money does not do the job it is intended to do since it ends up in the pockets of those in government.

Similarly, in discrimination cases. It is so sad to note that discrimination still happens in the modern world, whether in the form of sex, race or colour; a lot of people suffer from discrimination, whether in the form of words or actions. The recent case is of

Winchester College and Dulwich College, both private schools, which were reportedly offered over £1m in total for the scholarship fees of underprivileged white boys from the United Kingdom.<sup>11</sup> Imagine a whole lot of money meant for only white boys and not black or other races of boys. This kind of discrimination will keep bringing countries down since only a few of a chosen colour or race would be beneficiaries and benefiting from such acts, leaving the rest in the problem trying to be solved. If everyone would have equal treatment before the law and have the same opportunities to access justice, institutions' discrimination would be history. People would work together, despite their differences, and together in solidarity we can work to end poverty and offer each other jobs on merit, which would boost our economic systems, both in terms of tax and new developments taking place.

Another point is that legal advocates and court systems should be isolated from politics and its influences.<sup>12</sup> To quote American social justice activist Bryan Stevenson, 'the opposite of poverty is not wealth, but justice'.<sup>13</sup> Our system tends to eradicate poverty by means of implementing development programmes through parliament, while lawyers out there are busy acting as protectors of legal principles instead of acting as agents of development.<sup>14</sup> One can initiate a development programme, but as long as there is no transparency, trust and accountability in the absence of justice, all those programmes are in vain. If lawyers could work hand in hand with the people on the ground to bring those who take advantage of the poor to book, I am very sure poverty would be history in this world. Different organisations have been trying to eradicate poverty in the world for decades, but there has been no significant change, simply because, in my thinking, there is no access to justice for those who are selected to be helped but keep on suffering and have nowhere to report their cases.

Lack of knowledge of the law tends to be another issue that contributes to poverty and hinders economic development. A lot of people in poor nations know nothing about their rights and protection under the rule of law.<sup>15</sup> Only very few who have had the chance to participate in an education system have some knowledge of the rights that are supposed to be enjoyed by them. The poor always suffer; to quote Michael Todaro, 'often these impoverished people suffer from undernutrition and poor health, have little or

no literacy, live in environmentally degraded areas, have little political voice, are socially excluded, and attempt to earn a meager living on small and marginal farms (or as day laborers) or in dilapidated urban slums'.<sup>16</sup>

Now, imagine these people losing their land and housing, either forcefully or by being given money by those who know that they won't be sued or reported anywhere by the people that they are exploiting. It is because of this that, in many societies, the poor think that they are not the same as the rich, yet the rule of law says everyone is equal under the law.<sup>17</sup> So when poor communities cannot reach justice for their grievances, they turn to violence.<sup>18</sup> It is the same violence that results in wars sometimes, which destroys what they have worked for in the past years, making them poorer and poorer. If basic law can be taught at primary schools, I am very sure that everyone would feel very safe in society and issues of exploitation would suffer a great decrease, which means that everyone would enjoy what they have, there would be less violence and peace would reign. Countries would be able to build on their developments on and on without anything setting them back.

The high crime rate in developing countries also proves to be a high contributor to poverty and poor development of the economy. Imagine a country well known for different kinds of crimes; it's very unlikely that tourists would visit it. If a country has an increase in its crime rate, in my view, there must be something wrong with its justice system. It's either that people have lost trust in the system and have stopped cooperating with it or the system is corrupt as a whole. States where the legal system and crime control are poor are unattractive to investors, so economic growth suffers. Poor people tend to rely on customary justice systems rather than formal legal ones because they are quicker, cheaper and closer to home. However, they also tend to be more partial and discriminatory.<sup>19</sup> Instead of operating different kinds of businesses or other economical activities, people will be busy playing a role in mob justice if they have no access to the national justice systems.

To sum up, it is of very crucial importance that governments worldwide and all organisations that are trying to eradicate poverty work hand in hand to ensure that the rule of law is really operating in practice and not just in theory. Most nations are poor not because the money being given in aid is not enough but because they are being



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exploited by those in the higher authorities. If justice can be accessed by everybody, such exploitation will be history, and it is my recommendation that this issue be looked into and taken seriously for the betterment of the generations to come.

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# How can access to justice reduce poverty and support economic development?

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## Introduction

Access to justice (A2J) is the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.<sup>1</sup> A2J denotes improving an individual's access to courts and guaranteeing legal representation, but as will be shown below, its implications are so far reaching that they affect nearly all the economic, social and political aspects of life.<sup>2</sup> For decades, the primary legal framework for A2J has been the International Bill of Human Rights and the promotion of A2J has been a preserve of justice departments or ministries.<sup>3</sup> On the other hand, development policies have been a preoccupation of ministries or departments for development. The concepts of poverty<sup>4</sup> and economic development<sup>5</sup> on the one hand, and A2J on the other hand have been largely taken to be mutually exclusive.

Fortunately, there is a paradigm shift towards acknowledging the interaction between poverty and legal needs; presently it is more often urged that the opposite of poverty is not wealth, but justice. In 2015, the United Nations adopted 17 Sustainable Development Goals (SDGs) to build on the Millennium Development Goals (MDGs) of 2000.<sup>6</sup> The SDGs aim at addressing the root causes of poverty and the universal need for development that works for all people.<sup>7</sup> A purposive construction of these SDGs leads to the conclusion that A2J is inextricably interwoven with the other goals and targets under the SDGs.<sup>8</sup> It behooves us therefore, to examine the potential that A2J holds in reducing poverty and supporting economic development.

## Potential of A2J

### Rule of law

Authoritarian regimes in most developing countries plunder the national wealth

with impunity. Almost by definition there is an absence of the rule of law. As a result, people can neither claim their rights nor hold their leaders to account. Target 16.3 of the SDGs aims to promote the rule of law at national and international levels, and to ensure A2J for all. Aspirationally, the rule of law means that no person can lawfully be made to suffer in goods or body except for a distinct breach of law and no person is above the law.<sup>9</sup> The lawlessness of corrupt leaders is common knowledge and yet they carry on as though they were above the law. Ensuring A2J would have an impact on the ease with which the end-user or the justice seeker approaches adjudicatory institutions to pursue remedies against his/her leaders. It also envisions the amount of fairness that the justice seeker will experience and perceive in that process.<sup>10</sup> Possible processes include: prosecution in domestic courts; referring situations to the International Criminal Court (ICC) where they hold jurisdiction; involving monitoring bodies created under international treaties; and challenging election results in domestic courts.

#### *Access to information*

The citizens of some nations have surrendered certain rights in exchange for the protection of the remainder by their governments.<sup>11</sup> In many developing countries, governments are performing poorly and often attempt to cover up the truth by limiting access to information. A population is often kept in the dark when it comes to the debt crisis in their country, the true state of peace and security, the extent of human rights violations and the state of policies crucial for financial sector and economic development. To make the justice seeker comfortable that the process is fair, access to information is essential. Studies have shown that litigants who use powerless language, often characterised by non-assertiveness, deference and subordination, are less frequently believed than their more powerful counterparts.<sup>12</sup> In order to cure this imbalance, target 16.10 of the SDGs emphasises public access to information as the single most efficient way to protect fundamental freedoms. The *SDGs Report 2019* shows that as a result of this target, 'binding laws and policies giving individuals the right to access information held by public authorities have been adopted

by 125 countries... Expert assessments, however, suggest that in many cases, the legal framework could be improved.'<sup>13</sup> A2J implies that, potentially, stronger parties like the state be compelled to provide information in their possession on the state of the economy. Barriers to public scrutiny of development and poverty reduction policies of the state, such as the political question doctrine,<sup>14</sup> can be tempered to grant citizens access to courts on issues of economic development and to allow them greater control on what the strategy for poverty reduction and economic development should be.

#### *Peace and security*

The prevalence of organised crime in present times is so pronounced that in places it is blurring the distinction between times of peace and times of war.<sup>15</sup> Global crime syndicates engaged in trafficking drugs, human beings and destroying biodiversity, among other things, often engage state authorities in armed confrontations.<sup>16</sup> The wealth, weapons and organisation of these criminals can make them superior to local police forces.<sup>17</sup> According to the *World Development Report 2009*, migration, growth of cities and product specialisation are the major drivers of economic growth in this century.<sup>18</sup> War, however, has led to migration, exposing refugees to extreme poverty situations. In the year 2018, the number of people fleeing war and conflicts exceeded 70 million. SDG 16 aims at ensuring A2J for all through accomplishing specific targets: Targets 16.1 and 16.4 of the SDGs are to end all forms of extreme violence and related deaths, as well as to reduce illicit flows of arms and finances for organised crime. These targets are a rational interpretation of the potential of A2J in restoring peace and security. In terms of economic development, peace provides a conducive environment for economic activities; consequential outcomes of unrest, such as physical incapacitation, the subjugation of vulnerable groups, and increased homicide rates and anarchy, are deleterious to gains achieved in the development of a nation. Peace helps ensure that the economy is wrested from the control of mafia-like syndicates and entrusted to a legitimate government. It promotes the three indicators of development identified by the report above.



## HOW CAN ACCESS TO JUSTICE REDUCE POVERTY AND SUPPORT ECONOMIC DEVELOPMENT?

### *Business laws and access to factors of production*

Over four billion people in the world live outside the operation of the law.<sup>19</sup> The majority of these do not enter into contracts simply because there is no certainty as to the reliability and enforceability of those contracts. Efficient creditor rights systems, for instance, lead to financial system stability.<sup>20</sup> For the said four billion, A2J would mean that they will undertake business transactions and have viable options for dispute avoidance, dispute resolution and dispute containment. A2J for such people would enable them to execute and register their contracts, and seek the intervention of courts and tribunals in resolving any disputes that arise. This would lead to a favourable environment for business transactions and economic development.

73 per cent of children under five years of age worldwide are not registered,<sup>21</sup> yet a legal identity gained as a result of birth registration enables one to access social services and legal services. Many citizens of developing countries do not have access to credit because of lack of collateral. They have customary land that is not duly registered and they cannot use it as collateral to access finances from financial institutions. Similarly, repressive laws deprive vulnerable groups like women of rights to land that would aid in poverty reduction.<sup>22</sup> The poor education systems of these countries have led to low skill levels for gainful employment and innovation towards poverty reduction.

A2J comes in to ensure that regressive laws are revised to entitle vulnerable groups to rights pertaining to land. In addition, A2J means the recognition of all kinds of properties of the populations as substantial collateral for access to credit. Finally, A2J would insinuate that the education system is revised to equip the population with relevant skills for contemporary 21st century circumstances. SDG 16.9 aims at the provision of legal identity for all by 2030; SDG 16.b aims at the promotion and enforcement of non-discriminatory laws for sustainable development. These pre-empt the relevance of A2J, as it can potentially ensure laws to elevate vulnerable persons, to recognise the legality of all asset classes and to provide relevant training to the population.

### **Innovative approaches**

In order for A2J to attain the desired impact, innovation is necessary to generate appropriate approaches. Innovation can manifest in the way of organisational change, that is, new ways of conceptualising, governing and regulating institutions concerned with both justice and development. Second, there is policy innovation in such a way that new services are created to disrupt the sector. In the context of A2J, innovation should enable citizens to circumvent the geographical, linguistic, financial, cultural and educational barriers to A2J. In addition, these innovations should make sure that the A2J achieves leads to sustainable and inclusive development. It is only when these criteria are fulfilled that the potential of A2J to reduce poverty and support economic development as enunciated above can be realised. The following are innovative approaches to A2J that can attain the desired economic results.

### *Linking justice and anti-poverty programmes*

This is achieved through integrating mechanisms of agencies concerned with finding out the development needs of the population with those concerned with justice needs in order to come up with a single comprehensive system. This would examine indicators, such as the quality of life, in relation to the people's access to social services and living conditions. This would be supplemented by exploring the legal problems of the people, where they seek advice and the mechanisms of resolution. Such an approach would set us on a path towards development that is inclusive, just and widely spread. An example is the Effective Access to Justice Index being employed by the Government of Colombia.

The practical aspect of this approach is such that policy-makers and law enforcers will identify legal solutions to the poor living conditions of poor people. For example, it could be an issue to do with rights to land ownership or failure to offer substantial collateral for credit access. The government would then adjust the land law appropriately, thus solving a legal challenge and a development concern with one action.

### *Multi-sectoral approach*

This is a sector-wide approach that aims at increasing the efficiency, outreach, fairness

and scope of all institutions involved in administering justice or ensuring economic growth in the country. SDG 16.3 envisages access to the criminal justice system, victim reporting and reduction of congestion in jailhouses. Therefore, increased A2J in the courts could lead to overcrowding of prisons if the prison sector is not addressed in the reform. Prison time leads to the inability of one to be productive. Therefore governments have undertaken to equip prisoners with skills such that they are productive upon regaining freedom. Such an approach could address the lack of adequate skills in the population. Such skills, such as agricultural management, carpentry, hairdressing and tailoring, among others, could be attained. On the outside, criminal elements could be eliminated by taking up community policing and supporting vigilante groups in gang-troubled areas.

#### *Balancing demand and supply-side issues*

Supply-side issues in A2J and poverty reduction pertain to the mandate of state and non-state actors, for instance, to address infrastructure issues and systemic bottlenecks, to mention but a few. Demand-side issues concern the justice seeker or persons living in poverty, namely their ability to understand their rights and claim remedies from relevant institutions, and the role of institutions charged with poverty reduction and economic development. It follows that if there is an overemphasis on the supply side, institutions and infrastructure may be set up without any remarkable impact on the life of the poor in need of justice. There will also be an equal need to eradicate knowledge poverty.

This can be conflated with timeless methods employed singly by the development and justice departments of nations. To ensure A2J, measures include legal empowerment, one stop-shop centres for justice solutions, approaches targeted at peculiar justice issues like drug-related legal problems and the unbundling of legal services to enable clients to do a great deal of self-help before engaging professionals, among others. The departments concerned with development have favoured austerity measures, foreign direct investment, foreign aid, natural resource exploitation and the improvement of human resource. The strengths and weaknesses of these favoured approaches must be considered; the forked approach that creates a distinction between development, and poverty reduction and justice should be abandoned. This will result in the reduction of poverty as a direct result of A2J.

#### **Conclusion**

In spite of the fact that under SDG 17 the strengthening of the means of implementation of the SDGs is a standalone goal, *SDGs Report 2019* is a damning assessment of global performance. The world is neither on track to eradicate poverty nor to ensure A2J for all by 2020. The immense potential that A2J holds for poverty reduction and economic development remains a mirage beyond our reach. Yet with a little more ingenuity and political willingness in the approaches taken, A2J perchance will result in poverty reduction and economic development by 2030!

#### **Notes**

- 1 See [www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice](http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice) accessed 30 December 2019.
- 2 Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Justice Canada 2009).
- 3 Peter Chapman, 'How Access to Justice Helps to Fight Poverty' (2018) [www.opensocietyfoundations.org/voices](http://www.opensocietyfoundations.org/voices) accessed 30 December 2019.
- 4 Poverty is 'the inability to meet basic necessities of life, poor access and quality of social services and inadequate infrastructure'. See *Uganda Participatory Poverty Assessment Project* 2002, p 17.
- 5 Economic development refers to 'the process of creating and utilizing physical, human, financial and social assets to generate improved and broadly shared economic well-being and quality of life for a community'. See Karl F Seidman, *Economic Development Finance* (Sage Publications 2005), p 5.
- 6 United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1 [www.sustainabledevelopment.un.org](http://www.sustainabledevelopment.un.org) accessed 29 December 2019.
- 7 OECD and Open Society Foundation, *Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All* (2016).
- 8 *Ibid.*
- 9 Albert Venn Dicey, *Introduction to the Law of the Constitution* (Macmillan 1885).
- 10 John Rawls, *A Theory of Justice* (Cambridge University Press 1971).
- 11 Jean-Jacques Rousseau, *The Social Contract* (Cambridge University Press 1762).
- 12 Rebecca L Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality* (2008) 34 *Annual Review of Sociology* 339.
- 13 António Guterres, *The Sustainable Development Goals Report 2019* (United Nations 2019).
- 14 The political question doctrine states that 'some questions, in their nature, are fundamentally political and not legal. If such a question is brought before court, court will refuse to hear that case and claim that it does not have jurisdiction. It will leave that question to some aspect of the political process to settle it out.' See John E Finn, *Civil Liberties and the Bill of Rights* (The Teaching Company 2016), p 55. In the Ugandan case of *CEHURD v AG* Constitutional petition No 16 of 2011, this doctrine was used to deny citizens a say in the public health policy of the country.
- 15 Jessie Banfield et al, *Organised Crime, Violent Conflict and Fragile Situations Assessing Relationships through a Review of USAID Programmes* (USAID 2015).
- 16 *Ibid.*
- 17 *Ibid.*



## HOW CAN ACCESS TO JUSTICE REDUCE POVERTY AND SUPPORT ECONOMIC DEVELOPMENT?

- 18 Robert B Zoellick, *World Development Report 2009: Reshaping the Economic Geography* (World Bank 2009).  
19 See n 7 above, p 13.  
20 Gordon W Johnson, *The Principles and Guidelines for Effective Insolvency and Creditor Rights Systems*, World Bank 2001).  
21 See n 13 above, p 56.  
22 See n7 above, p 18.

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# How can access to justice reduce poverty and support economic development?

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**T**here is a relationship between justice and economic development.

Its presence or lack thereof has a positive or negative impact on the economic development of a country. Hence the essence of this essay is to illustrate how access to justice can reduce poverty and support economic development. The essay will seek to define the key terms and show the social and economic impacts of access to justice.

Justice is fairness in the way that people are treated and the maintenance or administration of what is just, especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments.<sup>1</sup>

Poverty is a state of one who lacks money or material possessions, and a state or condition in which a person or community lacks the financial resources and essentials for a minimum standard of living.<sup>2</sup>

There is no universally accepted definition of economic development as it is a multifaceted concept. *Economic development* is the process by which people in a country become wealthier, healthier and better educated, and enjoy better quality housing. The concept of economic development is also used as a synonym to economic growth, but the concept generally involves a change in a country's economy involving qualitative as well as quantitative improvements. Quantitative improvements are concerned with the monetary value of the economy in terms of the gross domestic product (GDP), gross national product (GNP) and per capita income among other standard measures of the economy. Qualitative means the quality of

life that the people in a country are subjected to in terms of the health services, housing and sanitation, among other indicators of economic development.<sup>3</sup>

Access to justice is an important component in the reduction of poverty and in supporting economic development. It is a basic principle of the rule of law. There is a strong link between poverty reduction and access to justice because being poor and marginalised translates into a deprivation of choices, opportunities, access to basic resources and a voice in decision-making. Once there is sustained access to justice for all people regardless of gender, race, religion, age, class or creed, this move complements economic development as all people and their properties are secured and protected from their violation. Access to justice enhances poverty reduction and accountability. Leaders are held accountable for the use of funds, which leads to increased confidence in public authority and tends to reduce corruption as people respect the rule of law.<sup>4</sup>

According to the United States Institute of Peace, access to justice is more than just improving an individual's access to courts or guaranteeing legal representation; it is the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards. Access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement and civil society oversight. Access to justice supports sustainable peace by affording the population a more attractive alternative to violence in resolving personal and political disputes.<sup>5</sup>

Access to justice can be achieved through equal access, where groups of people in society suffer no discrimination. The most disadvantaged groups are the poor, women, children, minorities, and persons living with disabilities and HIV/AIDS. Equal preference increases their welfare in society and leads to poverty reduction as their concerns and grievances are heard, and this way, the appropriate remedies are administered as the informal and traditional mechanisms of justice are usually more accessible to the poor and disadvantaged people, and may have the potential to provide speedy, affordable and meaningful remedies to the poor and disadvantaged. Traditional systems are made to evolve toward serving justice in the full respect of international human rights standards, such as gender equality, non-discrimination for reasons of age or social status, respect for life and due process guarantees for criminal defendants. Then these categories of people are exempted from poverty as their grievances are heard in all fairness exempt from subjective biases if they follow formal mechanisms.<sup>6</sup>

The provision of police stations and courthouses, adequate court and police personnel, logistical support and public information capacity, even in far flung areas of the country, is a plus to poverty reduction as the day-to-day disputes that arise are addressed by these authorities before they can escalate into serious claims of death due to gender-based violence or loss of property due to property grabbing. They also prevent court proceedings from being delayed as the delays translate into long unproductive hours off trial, and huge amounts in legal fees. With increased physical access to justice, people do not have to travel long distances or pay huge costs for transportation to access these facilities, which can be a deterrent to accessing these services as there are adequate structures in their catchment areas to attend to the claims and provide remedies in good time. Thus, access to justice enhances productivity and efficiency as claims and settlements, including monetary ones, are made speedily and necessary investments are made from the monetary claims. The expenditure that was to be spent on usually exorbitant legal fees is spent on other basic needs that increase the welfare of these poor people and improve their living conditions.<sup>7</sup>

While improving the number of courtrooms or legal staff is important, it does not mean that it alone constitutes access to justice. Instead, the quality and quantity of justice is equally important to poverty reduction. A judicial system affordable, speedy and easy to understand enhances legal protection. Qualified staff and better work conditions enhance quality. A linguistically accessible justice system with local language proceedings or provisions of interpretation allows affected individuals to fully express their grievances and prevents the content of grievances from being diluted by translations. This approach supports access to justice, even for the illiterate and marginalised in society, providing a platform for the voiceless to be heard and thereby creating an enabling environment where people do not need to fear to air their grievances. This increases the level of confidence that the people have in the judicial system.<sup>8</sup>

The poor often cannot afford to pay for legal fees that go with the court proceedings; as such, the government looks into the social welfare of these people and sets aside a budget in order to subsidise these fees. This in turn makes justice accessible to all people regardless of their socio-economic status in society. With this aid in place, the poor can take on the seemingly wealthy, who would otherwise have trampled on their rights because they now have free legal aid. This reduces inequality in the nation as the playing field is made level with no unfair advantage on the socio-economic front. This saves on the meagre resources that poor people have, and when the compensation from the trials that the poor people win is given to them, their welfare is increased in society. Such acts stand as a deterrent to other would-be wealthy offenders in society when news of the poor having legal representation and winning court cases is spread, and in effect, this reduces the inequality that the poor would otherwise go through.<sup>9</sup>

The citizens in a country have the right to freely go about their daily activities and make the most out of their opportunities. But this is only possible if the institutions of justice and law protect them. Poor farmers cannot be expected to make long-term farm investments on their land if they are not assured of their possession of the land through land tenure agreements and title deeds. As such the provision of these services through access to justice for farmers brings in a sense of security and assurance, and hence encourages



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investments that would ensure sustainable farming practices that preserve the soil, and use only organic fertilizers and herbicides. This affects sustained food security in the country as most farming is done by poor people who would be able to have food themselves, sell the excess and earn income from it. This improves household incomes, increases the choices that are available to the poor and increases their standard of living. The excess food may also be sold to foreign countries and earn foreign exchange for the country, which improves the balance of payment and trade, which are measures of a country's export standing, and ultimately, the GDP. With increased foreign reserves, the country enjoys a sustainably strong currency, which is very important for purchasing goods and services that might not already exist in the country but are needed for the production of various output in the many various sectors of the economy, like farming inputs, implements for the agricultural sector and drugs for the health sector, as well as heavy machinery for the infrastructure and mining sectors.<sup>10</sup>

Besides poor people being certain of the security of their investments, access to justice is still an integral component, even in foreign direct investment (FDI) because investors make their decisions to invest in a country based on how favourable the laws are towards investment, as well as their access to justice in the case of any disputes that may arise during the tenure of their investment(s). When access to justice is irrespective of nationality, race or any other trivial criteria aside from what is stated in the laws of the land, it stands to attract and encourage foreign investors, like huge multinational corporations, to continually invest in a country. This leads to increased employment in the country even for women and youths, who are mostly at a disadvantage in terms of economic empowerment, which does a legion of good for increased revenue collection through taxes.

A broadened tax base has the effect of not burdening the working few with huge taxes but instead reduces this burden by distributing it evenly among the labour force, which in turn reduces the acts of tax evasion, which are detrimental to the welfare of society. Such investments have a ripple effect on the economy as many industries are involved in the establishment and operations of such investments in terms of the supply of raw materials for production, transportation of finished products, marketing and advertisement

for awareness of the product, and banking and financial services, as well as infrastructure for the property on which these firms will be housed. Once established, these firms also increase the social welfare of people within and sometimes without the jurisdiction of their operations through supporting local sports leagues, and construction and rehabilitation of health and educational facilities, among many other social cooperative acts.<sup>11</sup>

Concerning the quality of access to justice, learned and professional staff both in the courts and police will preside over matters with utmost precision and dispense justice. This prevents unfair judgments that translate into wrong imprisonments, and dismissals in cases of those that are laid off on the grounds of being HIV positive. This usually deprives society of its breadwinners, invaluable skilled workers and energetic labour of youths, thereby plunging many families and society deep into poverty. As such, access to justice aids the economy as it ensures that only those that reduce societal welfare are held in prisons and those that promote its welfare are retained for continued economic growth.<sup>12</sup>

Ending this discourse, there is a need for the government and other stakeholders to ensure sustained capacity building in order to increase access to justice. This improves the social and economic structures of a country, and helps to alleviate poverty and enhance economic development and growth.

### Notes

- 1 'Justice', *Merriam-Webster Dictionary* [www.merriam-webster.com/dictionary/justice](http://www.merriam-webster.com/dictionary/justice) accessed 30 December 2019.
- 2 'Poverty', *Merriam-Webster Dictionary* [www.merriam-webster.com/dictionary/poverty](http://www.merriam-webster.com/dictionary/poverty) accessed 30 December 2019.
- 3 'Economic Development', *Encyclopaedia Britannica* [www.britannica.com/topic/economic-development](http://www.britannica.com/topic/economic-development) accessed 30 December 2019.
- 4 United Nations Development Programme (UNDP), *Access to Justice: Practical Note* (2004).
- 5 United States Institute of Peace, Washington, DC [www.usip.org](http://www.usip.org), [www.usip.org/guiding-principles-stabilisation-and-reconstruction-the-web-version/rule-law/access-justice](http://www.usip.org/guiding-principles-stabilisation-and-reconstruction-the-web-version/rule-law/access-justice) accessed 30 December 2019.
- 6 UNDP (2002), *UNDP's Role in Access to Justice*, Oslo, Norway.
- 7 UNDP (2007), *Judicial Reform: Strengthening Access to Justice by the Disadvantaged*.
- 8 *Ibid.*
- 9 See n 4 above.
- 10 Department for International Development, *Justice and Poverty Reduction* (Red house Lane Communications 2000).
- 11 *Ibid.*
- 12 UN Office on Drugs and Crime, 'United Nations to Help Extend Legal Aid in the Criminal Justice System' (2012).

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## How can access to justice reduce poverty and support economic development?

Assume that there exists a low-income country called Nzara. In this country is an impecunious man, Babajena, with two wives and seven children. He inherited a piece of land from his late father, but he could not use it because of a pending legal dispute over that piece of land. For many years, this piece of land was a lifeline for his father's family and his own family. Babajena has given up on the dispute because the court in which the dispute is being heard is 350 kilometres away and it 'costs the earth' to access this court. As a result, he has fallen sick. His young children are facing malnutrition and require medical attention. Babajena is now bankrupt. He wishes that the court was closer to him and that he was clever enough to understand court papers. All he does is yearn for justice. The preceding narrative is an indication of the manner in which access to justice is tied to poverty. Without access to justice, human beings will be engulfed by their endless disputations. As such, this paper will examine the concept of access to justice and its relationship with poverty and justice, and show how it can be used to enhance economic development and reduce poverty.

### The legal concept of access to justice

It is important to define the legal concept of 'access to justice' as it is at the heart of the present discussion. As reference will be made to 'access to justice', it is important to cover the ambit of the concept. In the ordinary sense, access to justice has been likened to access to courts. Trevor C Farrow affirms this position as he suggests that access to justice has been equated largely with access to lawyers and courts.<sup>1</sup> Linn Hammergren cited by Vivek Maru amplifies the concept of access to justice as follows: '[T]he right of access, in its amplest sense, does not refer to specific cases and users, but rather to participation in the individual and collective

benefits accruing from society's provision of the best, and most equitably delivered, justice service it can render.'<sup>2</sup>

Another helpful definition of the concept is provided by L Bhansali quoted by Rodgers Matsikidze in the following terms: 'Access to justice can be defined as the right of individuals and groups to obtain a quick, effective and fair response to protect their rights, prevent or solve disputes and control the abuse of power through a transparent efficient process in which mechanisms are available, affordable and accountable.'<sup>3</sup>

It therefore becomes clear that, while access to efficient courts is intrinsic to the concept of access to justice, the concept transcends mere access to courts. It encompasses the provision of various reachable, affordable and operational mechanisms to resolve justiciable issues faced by individuals. This concept is so important that it is provided by a number of international instruments and domestic legislation alike. The International Covenant on Civil and Political Rights provides in Article 14(1) that '[a]ll persons shall be equal before the courts and tribunals'. Elsewhere in the African Charter on Human and Peoples' Rights, legal right to access to justice is provided for in Article 7(1) as follows: 'Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.'

The wording of Article 7 of the African Charter on Human and Peoples' Rights presents the procedural nature of the concept



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of access to justice rather than the substantive content of justice itself. Further, from the foregoing, what becomes clear is that the concept of access to justice is a living, legal concept that has its life as a human right. Further, this right has been expressed in various legal instruments and, in recent years, has become recognised as a Sustainable Development Goal (SDG).<sup>4</sup>

Everybody needs access to justice. As Farrow suggests, 'over the course of a lifetime almost everyone will confront a justiciable problem'.<sup>5</sup> Farrow further suggests that access to justice 'is the most pressing justice issue today'.<sup>6</sup> Indeed, because access to justice is the most pressing issue today, it becomes imperative to assess, especially in relation to the ordinary person and business alike, particularly in a developing country, how important it is. Presumably, based on the need for access to justice and the rule of law, the United Kingdom's Department for International Development in its paper 'Growth: Building Jobs and Prosperity in Developing Countries' (2008), suggests that '*[t]he business environment needs to have safeguards that ensure that the returns of investment will be collected by investors.*' Political instability, corruption and crime can all threaten potential returns and make investment unattractive and thus damage the prospects for growth. The cost of crime and the cost of security as a percentage of sales are particularly high in low-income regions such as sub-Saharan Africa'.<sup>7</sup>

The problems set out in the above excerpt from the UK Department for International Development are typically remedied by the rule of law through access to justice. Issues such as the problem of crime to businesses, respect of property rights and remedies for the resolution of contractual disputes therefore show how access to justice has a direct impact on economic development, as further discussed below.

### **The relationship between access to justice, reduction of poverty and economic development**

There is consensus that access to justice reduces poverty and fosters economic development. Likewise, there is no doubt that a lack of access to justice is a catalyst for deepening poverty and stalling economic development. Deficiencies in mechanisms for access to justice have led to the emergence

of startling statistics on its effect to justice seekers around the world. This is why '[t]he United Nations (UN) Commission on Legal Empowerment of the Poor (2008) argued that 4 billion people worldwide were "robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law"'.<sup>8</sup> The problem of inadequate access to justice is therefore amplified so that it compels one to engage with the reality of poverty and economic development. A surprising number of people worldwide, especially in low-income countries, have huge unmet legal needs. These needs render them poorer, and collectively lead to economic relapse. It thus arises that a greater understanding of the relationship between poverty and economic development vis-à-vis access to justice is required.

To properly construe this relationship, it is necessary to define poverty. According to the *World Development Report 2000/2001*, poverty is construed as encompassing not only material deprivation (measured by an appropriate concept of income or consumption) but also low achievements in education and health.<sup>9</sup> Farrow suggests that it is a fact that vulnerable populations are more prone to legal problems.<sup>10</sup> As such, the poor are affected by a lack of access to justice. On the other hand, economic development is defined as 'the process by which the emerging economies become advanced economies. In other words, the process by which countries with low living standards become nations with high living standards. Economic development also refers to the process by which the overall health, well-being, and academic level the general population improves.'<sup>11</sup> The UK Department for International Development paper mentioned above on economic growth suggests that economic growth creates jobs, drives human development, and improves education and health. According to Maru, 'Economists – and the experiences of nations – differ as to which causes which, or which comes first, but there is some consensus that a healthy economy is characterized by effective rule of law, and in particular by an environment in which firms can predictably enforce contracts'.<sup>12</sup> Marcus Manuel and Clare Manuel added that '[i]mproved access to justice is a clear enabler for many Sustainable Development Goals. Access to justice is associated with economic growth and investment as well as equity and social justice. *A functioning commercial justice system provides the foundations for a modern financial sector,*

and emerging evidence suggests particular benefits for women's ability to access finance<sup>13</sup> [emphasis author's own].

The excerpts show that access to justice directly impacts reduction of poverty and economic development. It therefore becomes necessary to explore the challenges that arise as a result of a lack of access to justice. Farrow provides a lucid explanation. He suggests that '[h]aving unresolved family, racial, employment, discrimination, housing or other legal problems will tend to lead, as we know, to further legal and other social and health related problems. When we take into account these clustering and cumulative negative effects of not resolving legal problems, the cost to society – individually and collectively – is significant.<sup>14</sup>

The nature of the problems associated with a lack of access to justice are explained by the Organisation for Economic Co-operation and Development (OECD) Expert Roundtable Background notes on Equal Access to Justice (October 2015), which states at page 3 that '[i]n addition, inability to resolve legal problems may diminish access to economic opportunity, reinforce the poverty trap, and undermine human potential, which could affect [economic] growth'. From this perspective, statistics involving a UK study that found that unresolved legal problems cost individuals and the public £13bn over a three-year period<sup>15</sup> become relevant.

It has been established that access to justice is a living legal concept and exists in law as a fundamental human right. It has also been established that access to justice directly affects poverty and enhances economic development; the question of how 'access to justice' reduces poverty and supports economic development becomes key. It must be appreciated that the question already affirms that access to justice reduces poverty and supports economic development. The outstanding aspect would therefore be the 'how' part. This essay therefore proceeds to suggest the ways in which access to justice may be used to reduce poverty and support economic development.

#### **Incorporating mechanisms for access to justice in private and public institutions**

One way of ensuring that access to justice enhances economic development and

reduces poverty is to incorporate mechanisms for access to justice in private and public institutions. This implies that there will be dispute resolution mechanisms in both the public sector, such as government agencies, the courts and state-owned enterprises, as well as the private sector, such as private companies and non-governmental organisations. In the public sector, complaints mechanisms that leave room for arbitration must be established. Likewise, in the private sector, complaints mechanisms and 'in-house' resolution mechanisms are helpful. For example, private companies must have robust ways of resolving labour disputes and giving effect to legal rights. This way, everyone will have a platform to access justice. Legal rights and contractual rights will be given greater effect. In the public sector, one way of doing this is to reform court systems by curtailing complicated procedures. Additionally, laws may be enacted to ensure that private companies compulsorily establish mechanisms that allow access to justice and provide tax rebate incentives to those that increase the awareness of access to justice. Maru commented that '[i]mproving the legal environment for private firms is undoubtedly important. And a better functioning judiciary benefits all citizens by strengthening the rule of law.<sup>16</sup> Administrative reform mechanisms are also helpful in ensuring greater access to justice. Lars Bergling et al suggested that '[a]dministrative redress procedures are critical to ensuring equitable delivery of social services, as they provide remedies to acts of discrimination within line-ministries and local government offices'.<sup>17</sup>

Closely related to this is the inclusion of other actors in the provision of access to justice. Non-governmental organisations, such as the Open Society Foundation and the Global Forum on Law are key in interfacing poorer communities with justice. More importantly, communities must be encouraged to champion their own cause for access to justice. To this end, Maru proposes that access to justice reforms have a greater chance of success when they grow out of local initiative, as seen in the partnership with Ecuadoran bar associations to train public defenders.<sup>18</sup>

#### **Expediting court processes**

In many countries, court processes are complicated. Many cases die in the hands of the formalism and rigidity of courts and



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court rules. This tremendously curtails access to justice. Lord Woolf quoted by Matsikidze suggests that one of the principles of an effective justice system is that it should deal with cases with reasonable speed.<sup>19</sup> In fact studies over about a 100 countries show that increasing the number of judges in a country as a mechanism to enhance access to justice has the effect of supporting economic development. Studies by Arnaud Deseau et al, also show that increasing access to justice by one per cent increases GDP per capita growth rate by 0.86.<sup>20</sup> This shows that improving access to justice mechanisms to become quicker directly enhances economic development.

### Contextualising access to justice

Many countries, particularly African countries, have 'borrowed justice systems'. In many cases, these systems are a relic of colonial regimes. Deseau et al in their work suggest an example of this when they state that, even though France and Senegal (a former French colony) have very similar law codes, the effective access to justice (ATJ) of citizens in both states is significantly different, leading thus to different economic outcomes.<sup>21</sup> This is probably because the justice system in Senegal is incongruent to the needs of native Senegalese people, and such a phenomenon goes contrary to proper access to justice. Farrow states that an accessible justice system must be one that understands and can embrace the importance of social context for those who use it, particularly for the increasingly diverse communities that the system is designed to serve.<sup>22</sup> No wonder Lord Woolf submits that, access to justice means that a justice system should be understandable to those who use it.<sup>23</sup> By contextualising access to justice, a justice system is modelled to suit the needs of those that use it, including juristic persons such as businesses. Examples of contextualised access to justice systems are that court rules are translated into many languages and there are mechanisms for suing as a pauper. Additionally, here, informal means of dispute resolution are preferred and a government should make them available.

### Education and awareness

A lack of knowledge about rights and the procedures to enforce them hampers access to justice greatly. According to Alex

Brenninkmeijer (National Ombudsman of the Netherlands), one of the problems relating to access to justice is complexity of the adjudication process.<sup>24</sup> Most people generally feel alienated from the justice system. Farrow posits that alienation is the sense often related to a lack of knowledge and understanding.<sup>25</sup> Education and awareness are thus effective means to ensure that access to justice aids economic development. This can be done through websites, roadshows on access to justice, billboards, including concepts of access to justice in high school curriculums, infomercials and legal training workshops for communities. Maru provides an example of successful education programmes, such as the one in Cambodia, where the Justice for the Poor Programme has supported training on media law and freedom of expression at the Cambodian Communications Institute (part of the Department of Media and Communications, Royal University of Phnom Penh).<sup>26</sup>

### Integrating access to justice with technology

Integrating access to justice with technology is a key way of ensuring that it reduces poverty and aids economic development. Technology may be used to aid problems faced in many low income countries, such as lack of access to the police. This may include using the internet to contact the police and alert them of crime. Additionally, other technology, such as recorders and transcription devices, may be used to help in expediting the completion of cases.

### Alternative dispute resolution

Formal means of dispute resolution are those that rely on state institutions, such as courts, and are manned by public judges and judicial officers. The OECD Expert Roundtable Background notes on Equal Access to Justice (October, 2015) states at page 5 that there is growing evidence that the public often cannot afford to resolve their legal problems through the formal processes in courts across many countries. This problem for the public is compounded by the complexity of adjudication referred to by Brenninkmeijer. M Manuel and C Manuel quoting Harper note that formal justice may be complex, remote and inaccessible – geographically, linguistically, culturally and financially, and in some cases, lacking in legitimacy. Local,

traditional and informal justice systems may have more legitimacy and be more accessible, but (as with formal justice systems) there are concerns about the quality of justice dispensed, particularly for vulnerable and marginalised groups, including women and children.<sup>27</sup> Though they may be inherent problems in implementing local, traditional and informal justice systems, these problems are not insurmountable and can be resolved. The use of alternative means of dispute resolution ensures that increased access to justice will therefore aid economic development. In fact, Maru states that such means of dispute resolution have three potential advantages: they may be less expensive, less slow and less acrimonious.<sup>28</sup>

#### Legal aid and increasing funding for access to justice

Another way of ensuring that access to justice continues to be relevant in the reduction of poverty and in supporting economic development is increasing funding for access to justice and continuing to support legal aid initiatives. M Manuel and C Manuel remark that if the ambition of Sustainable Development Goal 16.3 is to be met, a sea change is needed in donor engagement – both in terms of the quantity of donor funds and the quality of donor programming.<sup>29</sup> As Lord Woolf cited by Matsikidze puts it, this is because an effective justice system should be effective: adequately resourced and organised so as to give effect to the above principles. This cannot happen unless there is intentional support of access to justice. It is submitted that the first step in ensuring a well-resourced access to justice system that in turn aids economic growth is to provide legal aid. Again, Maru provides a helpful example of legal aid initiatives by the World Bank in Tanzania. Maru, at page 7, makes reference to an International Development Fund (IDF) grant in Tanzania that assisted the Tanzanian Women Lawyers' Association to strengthen an existing urban legal aid centre in Dar es Salaam and open an additional one in Arusha. Strengthening legal aid suggests that there is sponsorship of counsel to competently act on behalf of the indigent in resolving their legal problems. In regard to donor funding of access to justice, M Manuel and C Manuel establish that '[l]ow-income countries receive much less support. Only

three post-conflict low-income countries received more than \$20 million a year in 2016: Afghanistan, Haiti and Liberia. In the other 28 low-income countries the average (median) aid for justice in 2016 was just \$0.25 per person per year. Aid for education and for health is 15 and 50 times this amount respectively – \$3.8 and \$12.8 per person per year.<sup>30</sup>

The writers further state that if low-income countries were prioritised within this global total to the same extent that they are for aid to education and health, there would be a nine-fold increase in justice aid to \$2.3 per person per year.<sup>31</sup> This becomes a loud call to donors to step up their efforts in ending poverty by increasing funding for access to justice.

In conclusion, it has been established that access to justice is a real concept that has found its expression in both domestic and international law instruments as well as the Sustainable Development Goals of the United Nations. Further, while there is incontrovertible evidence that access to justice causes economic growth, the lack of access to justice is costly to both states and individuals. This suggests that should nations wish to continue developing and end poverty, they must seriously address issues of access to justice in their countries as there is a link between access to justice and economic development. This essay discusses some of the ways of enhancing the manner in which access to justice reduces poverty and supports economic development. These include incorporating mechanisms for access to justice in private and public institutions, expediting court processes, contextualising access to justice, education and awareness, integrating access to justice with technology, alternative dispute resolution methods legal aid and increasing funding for access to justice. There is no doubt whatsoever that proper access to justice will yield befitting economic development.

#### Notes

- 1 See Trevor C Farrow, 'What is Access to Justice?' (2014) 12 Osgoode Legal Studies Research Paper Series 15 <http://digitalcommons.osgoode.yorku.ca/olsrps/12> accessed 11 December 2019.
- 2 See Vivek Maru, 'Access to Justice and Legal Empowerment: A Review of World Bank Practice' (2010) 2(2) Hague Journal on the Rule of Law 259.



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- 3 See Rodgers Matsikidze, 'The Civil Procedure in the Magistrates Court of Zimbabwe: A Denial of Justice to Self-Actors?' Master's Thesis, University of Zimbabwe, 2014, p 24.
- 4 See Sustainable Development Goal 16.3 of the United Nations Sustainable Development Goals.
- 5 See n 1 above, p 6.
- 6 *Ibid*, p 2.
- 7 See [www.eldis.org/document/A37900](http://www.eldis.org/document/A37900) accessed 11 December 2019.
- 8 Marcus Manuel and Clare Manuel, 'Achieving Equal Access to Justice for All by 2030: Lessons from Global Funds' Working Paper 537, July 2018 p 8 [www.odi.org/publications/11161-achieving-equal-access-justice-all-2030-lessons-global-funds](http://www.odi.org/publications/11161-achieving-equal-access-justice-all-2030-lessons-global-funds) accessed 11 December 2019.
- 9 See Ravi Kanbur, Christina Malmberg Calvo, Monica Das Gupta; Christiaan Grootaert, Victoria Kwakwa and Nora Lustig, *World Development Report 2000/2001: Attacking Poverty* (World Bank Group 2000) <https://documents.worldbank.org/curated/en/230351468332946759/World-development-report-2000-2001-attacking-poverty> accessed 11 December 2019.
- 10 See n 1 above, p 7. Also consider fn 14 on the same page.
- 11 Market Business News, 'What is Economic Development? Definition and Examples' <https://marketbusinessnews.com/financial/glossary/economic-development/> accessed 31 December 2019.
- 12 See n 2 above.
- 13 See n 8 above.
- 14 See n 1 above, p 30.
- 15 See Pascoe Pleasence, Nigel J Balmer and Rebecca L Sandefur, *Paths to Justice: A past, present and future roadmap* (UCL Centre for Empirical Legal Studies, 2013) p 118.
- 16 See n 2 above, p 4.
- 17 Lars Bejstam Bergling, Jenny Ederlov, Erik Wennerstrom and Richard Zajac Sannerholm. *Rule of Law and Public Administration: Problems and Ways Ahead in Peace Building and Development* (Folke Bernadotte: Academy 2008).
- 18 See n 2 above, p 18.
- 19 See n 3 above, p 62.
- 20 Arnaud Deseau, Adam Levai and Michèle Schmiegelow, *Access to Justice and Economic Development: Evidence from an International Panel Dataset*, Discussion Paper 2019-09, p 23 <https://ideas.repec.org/p/ctl/louvir/2019009> accessed 31 March 2020.
- 21 *Ibid*, p 1.
- 22 See n 1 above, p 29.
- 23 See n 3 above, p 62.
- 24 See Alex Brenninkmeijer, 'Panel B: Access to Justice: Bridging the Gap between Principle and Practice Setting the Context' [www.innovations.harvard.edu/improving-access-public-services](http://www.innovations.harvard.edu/improving-access-public-services) accessed 31 December 2019.
- 25 See n 1 above, p 21.
- 26 See n 2 above, p 10.
- 27 See n 8 above, p 9.
- 28 See n 2 above, p 12.
- 29 See n 8 above, p 16.
- 30 *Ibid*, p 10.
- 31 *Ibid*, p 11.

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