



**OPENING REMARKS BY THE HON THE CHIEF JUSTICE AT THE
VALIDATION WORKSHOP FOR THE DRAFT NATIONAL LEGAL
AID POLICY AT SPEKE RESORT MUNYONYO, KAMPALA ON
16TH FEBERUARY 2012**

Hon Minister of Justice and Constitutional Affairs

Hon Minister of Internal Affairs

Hon Attorney General

My Lords, Justices and Judges of the Courts of Judicature

Your Excellencies, Members of the Diplomatic Corp

Hon Ministers of State present

Hon Members of Parliament

Heads of JLOS Institutions

Your Worships

Members of Civil Society Organisations

Distinguished participants

Ladies and Gentlemen.

It gives me great pleasure to address you today on a subject that is very important to me. The well known legal maxim provides that ***“Ignorance of the law is no defense”***. This is an acceptable notion in an ideal world where all people have the means to effect their rights.

The reality however, is that the most vulnerable in the society are, through no fault of their own, inevitably victims of this maxim.

Article 21 (1) of the Constitution provides that,

“All persons are equal before and under the law and in all spheres of political, economical, social and cultural life and in every other respect and shall enjoy equal protection of the law”.

This is a cardinal principle of our laws and should ideally form the basis of our justice system. The pursuit of the rule of law not only seeks to maintain law and order but also ensures that all persons especially the vulnerable are guaranteed equal protection by the law and are provided with a level ground on which to enforce their rights.

In pursuit of equality, affirmative action for the most vulnerable is acceptable and in the quest for equality before and under the law, a national legal aid scheme would present a strong policy aimed at redressing imbalances and should be robustly supported.

The concept of legal aid has historically, been viewed as a means of attaining equality before the law, primarily in criminal matters, where the accused has no choice but to defend themselves against the State and faces the possibility of loss of liberty. This is a noble endeavour and it is important that the provision of legal representation is strengthened further.

Our Constitution provides that every person who is charged with a criminal offence that carries a sentence of death or imprisonment for life shall be entitled to legal representation by the State. This was made to strengthen provisions under the Poor Persons Defence Act. The Constitution further provides that every person who is charged with a criminal offence, shall be given adequate time and facilities for the preparation of his or her defence.

Article 28 (3) (c) beckons us to look beyond the current State Brief scheme and consider legal aid to all persons within the criminal justice system, regardless of the charges that they are facing. It calls

on the justice system to ensure that everyone is facilitated to stand on an equal footing with the State when they are charged with a criminal offence. This necessitates the appropriate structure and funding towards a public defender to represent persons in such instances. Let us take this opportunity to consider the creation of an entity that can serve in this capacity and in so doing give full effect to the provisions of Article 28 of the Constitution.

To give effect to the provisions of the Constitution, there is need to establish the office of a Public Defender that shall be charged with managing State provision of legal assistance to all persons in need. Aware that the State does not have the monopoly and resources to meet all the demands and aware of the potential of other legal aid service providers to fill the gap, it is important that a clear regulatory framework is put in place to regulate provision of legal aid in Uganda.

The concept of legal aid has at the international level been broadened considerably beyond just legal representation, to include legal aid as a concern of access to justice in both criminal and non-criminal matters.

In the United States, the war on poverty initiated by President Lyndon B. Johnson focused on the elimination of poverty and not just the provision of legal services to non-paying clients as part of the legal aid scheme¹. Legal services were targeted at meeting the current needs of the poor in realization of the fact that they faced, ***“a host of laws, powers and abuses of power that fee paying clients did not.”*** The goal of access to justice is to attain substantive equality which recognizes the structural discrimination of the poor. In light of Articles 21 and 23 of the Constitution, we need to ensure that our legal aid programmes move beyond those currently provided by the State. Services provided to the most vulnerable should match the quality of services accessed by the most privileged, but this calls for a comprehensive and well funded national policy on Legal Aid.

¹ Eileen Skinnider – The Responsibility of States to provide Legal Aid, - Paper for the Legal Aid Conference, Beijing China, March 1999.

The Justice Law and Order Sector is obliged to promote rule of law and in so doing ensures that the legal aid policy regime addresses the needs of the people and that all persons are supported to access justice, particularly the most vulnerable members of society. This includes supporting them to understand the law and claim and enforce their rights when necessary. The provision of legal aid is therefore a critical aspect of deepening access to justice to all especially the vulnerable.

The development of a national policy on legal aid is an important step in strengthening justice delivery. It is my hope that this Policy will provide a framework for the systematic and holistic delivery of legal aid by non-State Actors and importantly for the enhancement of the provision of legal aid by the State. This policy should guide the State in broadening the services that it currently offers principally under the State Briefs scheme to cover all aspects of legal aid, including legal assistance and legal representation in non-criminal matters.

The policy should also provide the framework for quality control in service delivery. Those in need should be provided with a structure that enables them receive quality assistance in protecting their rights and enforcing their claims. However to do this adequate resources must be provided to support the policy. The policy should therefore provide a firm foundation for the management, regulation and re-sourcing of legal aid services in line with our legal obligations and the demands of the people we serve.

It is my considered view therefore that the draft policy that we are going to consider today should provide a strong framework, within the structures of Government to regulate and manage the provision of legal aid in Uganda.

Additionally, the policy should provide for and support the appropriate structures for the provision of legal aid services by the State and support the continuation of legal aid services provision by non-state actors who have proven to be a valuable resource in ensuring the services reach all corners of the society. They have also provided critical specialized skills in particular areas of law and this should continue to be promoted.

The policy should guide all service providers on the areas, both geographical and substantive that should be covered by the legal aid scheme. It should also provide the parameters for the determination of vulnerability so as to ensure some degree of uniformity in service delivery.

Above all, the policy should guide the mobilization of resources and strategic allocation of resources to guarantee the successful implementation of a national Legal Aid Policy. These should be the guiding pillars of the national legal aid scheme that will lay the ground for the strengthening of the rule of law and enforcement of rights.

You are gathered here as key stakeholders and resource persons in this field and I believe that this process that we are undertaking today will greatly enrich the draft policy and ensure that we have in place a legal regime that supports legal aid services but more importantly ensures justice for all.

I thank you for taking the time to come and support the Sector in this important process and I trust that we shall continue to work in partnership to ensure that this policy comes to fruition.

It now gives me great pleasure to officially open this validation workshop.

I wish you fruitful deliberations.