Enhancing access to justice through the concert between formal and informal justice

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1. INTRODUCTION

According to the United Nations General Assembly the “access to justice is a fundamental right in itself and essential for the protection and promotion of all other civil, cultural, economic, political and social rights” (UNGA, 2012, p. 2). Thus, regarded as an important and fundamental human right, the access to justice must be studied as a way to promote the protection of the rights that are inherent to the human person. This article seeks to characterize the importance of the access to justice as well as the causes and consequences of its lack.

Justice must be accessible to all people, but there are many examples that show that the access to justice is deficient. In this situation the poor, the disadvantaged and the marginalized are the groups that suffer more with the lack of justice (UNGA, 2012). The high prices of lawyers, the distance to the courts, distrust in the judicial system and corruption are some factors that explain the difficulty of the population to use the judicial system. When population cannot reach the justice, they cannot reach their own rights and protect themselves from crimes, abuses and human rights violations (UNGA, 2012).

Nevertheless, experience shows that there are ways to enhance the access to justice, helping the poor reach their rights. International Organizations, Non-Governmental Organizations and Governments can play an important role while promoting programs that help making justice systems more accessible (WB, 2013). National policies that can improve the access to justice, such as the reforms of the judiciary system, the improvement of judiciary’s infrastructure and the improvement of informal justice systems (IJS) as customary law or religious courts are a way to reach those who have no access to justice (WOJKOWSKA, 2006).
This article is divided in five main sections. Firstly, the relation between justice and human rights will be discussed. Secondly, the causes of the lack of access to justice will be characterized according to economic, social and judicial perspectives. Thirdly, some consequences of the absence of justice will be presented, focusing on the African groups and states which are mostly affected by this situation. After this, two ways to improve the access to justice will be discussed: the performance of international organizations and the confluence of formal and informal justice systems. Finally, the case of Malawi will be presented to exemplify some of the points discussed in the article.

2. Justice as a Human Right

Justice is considered a fundamental right to enable fairness and equality to people around the world. The ways to seek justice can be distinguished between formal and informal, and each one has its own procedures.

2.1. What is justice?

Justice is an embracing term that can be used in many situations. According to John Rawls’s “Theory of the Justice” (1971), justice is the principle that “free and rational persons, concerned to further their own interests, would accept in an initial position of equality as defining the fundamental terms of their association” (RAWLS, 1971, p. 11). This means that people who are concerned not only with their own interests are able to accept a position of equality as a basis of their social relations. He defends that the basic structure of society, which is composed by the institutions11 that can distribute fundamental rights and obligations and that can also set the division of advantages regarding social cooperation, is the primary matter of justice (RAWLS, 1971).

Moreover, Cooray (1985) has presented a simple definition of justice: “resolution of conflicts between individuals” (COORAY, 1985). Applying this concept in social life is not easy because it is complex to define where justice lies in each situation. Besides, in an unfair scenario, a full restitution may be impossible. Cooray (1985) gives as an example that reflects how defining justice can

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11 According to Hedley Bull, institutions are cooperative arrangements between actors that commonly pursue the maintaining of order and structure in a system (BULL, 2002). These arrangements can be for wide or restrict purposes in regional or global systems (PECEQUILO, 2012).
be difficult the cases of life loss: how can a court of justice repair it to the individual and to his family (COORAY, 1985)? A perfect justice can be logically impossible equally in other cases. In some situations there are legitimate and conflicting interests on both sides, and it is hard to determine right or wrong sides. Cooray affirms that “Justice requires that the best interest should prevail, but that does not mean that there is no merit in the inferior interest” (COORAY, 1985).

As already seen, justice has as its main objective the resolution of conflicts. This objective can be pursued through the adoption of alternative ways beyond formal justice, which can become easier and more familiar to regional groups (TRISTÃO; FACHIN, 2009). The formal judicial system, which is provided by the State, should not be the only option to solve conflicts (TRISTÃO; FACHIN, 2009). Population needs to have access to mechanisms that are legitimate and that fulfill their expectations, so there must be other ways to promote expansion and effective access to justice in a more articulate and comprehensive way (TRISTÃO; FACHIN, 2009). “[…] Changes in the structure of courts or the creation of new courts, the use of paraprofessionals or lay people, both as judges and as advocates are possibilities that can improve access to justice” (CAPPELLETTI; GARTH, 1988, p. 70-1).

There are two different mechanisms of promotion of justice, the formal and informal one. The classic formal judicial system, according to the concept of Ewa Wojkowska (2006), is a system that “involves civil and criminal justice and includes formal state-based justice institutions and procedures, such as police, prosecution, courts (religious and secular) and custodial measures” (WOJKOWSKA, 2006, p. 9).

The definition of Informal Justice Systems (IJS) is more complicated because different models of non-state justice with different characteristics need to be taken into account. However, the IJS can be understood as judicial mechanisms based on tribal and customary structures; religious and local authorities; and communitarian forums (UNW; UNICEF; UNDP, n.d.).

More than a differentiation between state and non-state, these systems can be classified within a scale of formality and informality. The different degrees of acknowledgement and state interaction, state supervision, accountability and normative structures help to determine whether a judicial system is formal or informal (UNW; UNICEF; UNDP, n.d.).

Within countries with deficient access to justice, both of these forms present benefits and disadvantages. The formal justice,
certain African countries, presents infrastructure problems because the access to rural regions is limited (few courts for many cases) and do not reach the entire population, mainly the rural and poor people (PRI, 2000). Furthermore, the means of conflict resolution do not use restorative methods, which do not correspond to the expectation of the population. Besides, the formal justice framework is complicated and strange for the citizens; for example, the language used within the courts can be unknown to the population (PRI, 2000).

There is a tendency of the poor population to do not use the formal justice systems because of the mistrust of the law along with a lack of legitimacy, the duration of the trial and the lack of understanding (different language and formal procedures) (WOJKOWSKA, 2006). The unfamiliar relations of power that turns the formal justice systems uncomfortable, the difficulties of accessibility (financial and physical) and the problems that a formal justice trial can develop between the parties are others causes of the lack of use of formal justice systems by the poor (WOJKOWSKA, 2006, p. 13).

The informal justice systems present strengths and weakness as well. The IJS proceedings are quick and occur near the parties. They are managed in the own language of the people bringing more intelligibility for the proceeding (PRI, 2000). The main focus of the IJS is not the punishment of the offender, but the improving in the “consensus, reconciliation and social harmony” (WOJKOWSKA, 2006, p. 17). This is a very important characteristic, mainly in situations where the cases happens in small villages with huge social and economic cooperation between the people. The IJS have also social legitimacy and authority because it represents local social norms and it is linked to the community. The proximity to the community allows the informal systems of justice to find practical solutions to the problems more quickly than the formal systems (WOJKOWSKA, 2006).

The economical approach has an important impact on the IJS, as mentioned above. As stated by the United Nations Entity for Gender Equality and the Empowerment of Women (UNW), the United Natios Children’s Fund (UNICEF) and the United Nations Development Programme (UNDP) (n.d.): “A preference for IJS associated with restorative justice outcomes, such as compensation,

2 Restorative methods “focuses on restoring the victim, the perpetrator and the surrounding society to a preexisting or desired balance” (UNW; UNICEF; UNDP, n.d., p. 44). The use of restorative methods is “the most appropriated form of justice in small-scale societies with multiplex relationships (ones in which there are close relationships that are based on economic and social dependence and which intersect with ties of kinship).” (UNW; UNICEF; UNDP, n.d., p. 75-76).
is very significant in many poor societies for important economic reasons” (UNW; UNICEF; UNDP, n.d., p. 81). The ways in which the IJS promote the reconciliation between the parties, compensation of the caused damage, restoration and rehabilitation of the social equilibrium provide more legitimacy for the court, keep the community united and reduce the costs of prisons that the state would have (PRI, 2000). They also maintain the local economy active, because they do not make the families of the parties destitute of an economically important member (UNW; UNICEF; UNDP, n.d.). Furthermore, the IJS are usually free of charge or are affordable to the poor people, as sometimes “the cost of processing a case would exceed the costs of whatever was at stake” in formal system (WOJKOWSKA, 2006, p.19).

Nevertheless, the informal justice systems have weakness that must be understood and analyzed too. Some inequalities of gender, age or status can be perpetuated inside the informal courts (PRI, 2000, p.127). The principle of “innocent until proven guilty” is not the rule once the past of the accused or the political situation and the power of family of one of the parties can be taken into account (PRI, 2000). Cases of bribery are common in some IJS, but other important weaknesses of the IJS are the cases of physical and brutal punishments that still happen (PRI, 2000).

There are yet others weaknesses such as the lack of accountability; the friction between formal and informal justice systems (IJS can restrict the access to all the rights that an individual has in the formal systems of justice) and the incapacity to deal with government issues or serious crimes (WOJKOWSKA, 2006). One important weakness is the non-adherence to human rights such as the cruel punishments, accompanied by the impediment of the offender to be heard at the court and the subordination of women and child (WOJKOWSKA, 2006).

2.2. Human Rights in the International Society

The Universal Declaration of Human Rights (UDHR) was adopted in 1948, after the occurrence of crimes against peace and humanity during World War II, with the purpose of protecting human rights and fundamental freedoms (UN, 1948). It demonstrates a huge progress once the Declaration represented the first global expression of rights in which all human beings were included (UN, 1948). The UDHR proposes that all human rights have to be preserved for the development of every citizen in the world in their most particular and social life (SHIMAN, 1993). Its preamble
declares that: “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world” (UN, 1948).

The influence of the UDHR has been substantial. Even though it is a declaration, not a treaty, it has been adopted in its principles or has influenced more than 185 national constitutions (SHIMAN, 1993). The Declaration principles are requested by people who live in situations like slavery, famine, and which need their governments to recognize and protect their rights not only to ensure their subsistence but also to provide a decent life, with all rights guaranteed (SHIMAN, 1993).

An event that showed to the international society that not only the rights to life and individual freedom are important, but also that justice is fundamental to the UDHR, was the 60th anniversary of the Declaration celebrated in 2008. It had a year-long campaign around the theme “Dignity and Justice for all of us”. The anniversary reminded people that “in a world still reeling from the horrors of the Second World War, the Declaration was the first global statement of what we now take for granted -- the inherent dignity and equality of all human beings” (KI-MOON, 2008). Justice and access to justice should be remembered – as they were during the events that occurred in 2008 – as an important part of the UDHR, without which it could lose its meaning (Office of the High Commissioner for Human Rights [OHCHR], 2008). Furthermore, the article 10 of the UDHR asserts that in a state based on justice: “Everyone 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 the basis of any criminal charge against him” (UN, 1948).

The article 10 is in accordance with article 2, which clearly defines that “everyone is equal, without distinction of any kind, such as race, color, sex, language, religion, political opinion or any other nature, national or social origin, property, birth or other status” (UN, 1948). This means that no one can be treated in a different way, since the judicial system has the obligation of being impartial, thus no distinction can hinder someone’s right to a fair judgment (UN, 1948). Under these circumstances, the entire

3 Treaty: Binding agreement between states; used synonymously with Convention and Covenant. Treaties are stronger than Declarations because they are legally binding for governments that have signed them. When the UN General Assembly adopts a treaty, it creates international norms and standards. Once a treaty is adopted by the UN General Assembly, Member States can then ratify the treaty, promising to uphold it. Governments that violate the standards set forth in a convention can then be censured by the UN (FLOWERS, 1998).
procedure is also linked with the right of trial within a reasonable time (UN, 1948).

2.3. The relation between Justice and Human Rights

Justice is considered as a human right because it is seen as an important mean to reach dignity. Individuals around the globe undergo situations of conflict and of constant violation of their rights and somehow these need to be repaired (OHCHR, 2012). Without an equal and fair judicial system, people can decay and become defenseless with no chance to contest the right of having a reasonable life. Rights are meaningless without the means to seek reparation for their violation (OHCHR, 2012).

The United Nations Development Programme (UNDP) explains that the poor and marginalized are too often denied the ability to seek remedies in a fair justice system. UNDP promotes effective, responsive, accessible and fair justice systems as pillars of democratic governance (UNDP, n.d).

Without a decent support from the government, poor people may suffer when trying to reach justice. In a reasonable judicial system, based on democracy, people can access justice by submitting their demands to both formal and informal judicial systems in an attempt to have a better life.

The Global Programme Annual Report of 2011 from the UNDP defines the Rule of Law as a quality of a “state in which individuals, communities and governments submit to, obey, and are regulated consistently by law, and not arbitrary action by an individual or a group of individuals” (UNDP, 2011, p. 2). It also sets that “the Rule of Law is critical to enable development in conflict-affected and fragile countries” (UNDP, 2011, p. 2). The Rule of Law doctrine is in use for over a century and is fairly well recognized at the formal level (UNDP, 2011). Since there has been an apparent decline in trust in the political process, it has been argued that the Rule of Law should be a cornerstone of any effort to rebuild trust in political institutions and revitalize engagement in the democratic process (UNDP, 2011). This could be considered as Confidence-building Measures4 (UNDP, 2011).

4 “The Second Review Conference (1986) agreed to the voluntary exchange of Confidence-building Measures (CBMs) in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions and in order to improve international cooperation in the
In the absence of access to justice, people are unable to fully exercise their rights and to challenge many kinds of discrimination (UNDP, n.d). Rule of Law provides to states justice and security. When there is Rule of Law, access to justice must be guaranteed, contributing to an enabling environment for achieving the Millennium Development Goals5 (MDGs) (UNDP, n.d). These goals can encourage political and economic growth and help create a safe and secure environment for restoration of rights after situations in conflict-affected areas (UNDP, 2011).

Gutto (2002) has a clear definition of the concept of Rule of Law which affirms that:

The Rule of Law is a situation in which a state is in conformity, submission or legally connected with the law and to agreements with regulations and obligations at national, regional and international level that are relevant to the social needs and aspirations of society. [...] It is required the presence of institutions for law appliance that have the capacity to enforce the laws or agreements and that are independent and impartial (GUTTO, 2002, p. 7).

Gutto (2002) also explains that society as a whole should have a commitment and reasonable degrees of understanding of the need for permanent reform and improvement in the laws and agreements and the enforcement mechanisms at the national, regional and international levels (GUTTO, 2002).

According to UNDP Annual Report, situations with generalized and organized violence, mainly "caused by criminal activity or conflict, lead to insecurity, abuse and perceptions of injustice" (UNDP, 2011, p.2). In these cases the UNDP requires changes at many levels and asserts that:

A rapid restoration of the Rule of Law, including access to justice and improved community security can prevent violence, help societies deal with the legacy and bitterness of conflict and ultimately provide the foundations for building inclusive, well-governed societies that can maintain stability (UNDP, 2011, p.2).

field of peaceful biological activities’ "(UNOG, n.d.).

5 "The eight Millennium Development Goals (MDGs) – which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – form a blueprint agreed to by all the world’s countries and all the world’s leading development institutions. They have galvanized unprecedented efforts to meet the needs of the world’s poorest" (UN, n.d.).
The enforcement of laws and the access to justice are fundamental rights themselves, and the most difficult part of this issue is to assure that courts and legal procedures are open to everyone, independently of their prosperity or circumstances. Justice should be seen as an end to be pursued by those who are under the jurisdiction of the law and therefore should be widely guaranteed to citizens (TRISTÃO; FACHIN, 2009).

Access to justice is a mean to exercise citizenship, and it is strongly connected with democracy (TRISTÃO; FACHIN, 2009). Only with the expansion of access to justice it is possible to be positive that democracy is being effectively built in accordance with the expectations of society. Access to justice should include several means of pacification of conflicts, as well as the tools to reach a qualified, fast, safe and fair judicial system (TRISTÃO; FACHIN, 2009).

Thus, according to the United Nations General Assembly (2005) all these concepts are important, since Rule of Law, human rights and democracy must be protected and increasingly promoted. All these values are fundamental to reach a world of justice, to increase opportunity and to obtain stability (UNGA, 2005).

3. The causes of the absence of access to justice

The need of access to justice is not restricted to a single political community as it is seen as a necessary mechanism to attenuate social, economic and structural common failures found in many countries (YOUNG, 2006). Thus, access to justice expands beyond the political framework; it remains in a cosmopolitan level that connects people and reveals processes of shared responsibility between society, its institutions and governments to provide justice for all. In this sense, there should be ways to improve existing political institutions and to build new ones which consider the reality of each population and their real needs, since “political institutions are the response to these obligations rather than their basis” (YOUNG, 2006, p. 102).

Nevertheless, what is noticed is that the lack of access to justice occurs mainly because of institutions’ non-response to their obligations of promoting justice and also because they often restrict people’s voices (YOUNG, 2006). Focusing on African reality, a huge amount of implications must be considered, which only makes the problem more complex. Social and economic disparities, as well as historical characteristics ingrown in Africa’s scenario represent great obstacles to the improvement of these institutions (ANDRADE, 2001).
Thus, the section below aims to explain, in a more general view, the reasons for non-efficient access of justice in African countries, their causes and mutual relations.

3.1. Judicial System Structure

The actual arrangements of judicial systems in Africa reflect the historical evolution of the continent’s social and political organizations (ANDRADE, 2001). During the pre-colonial era, in many African tribes the decision-making process was guided by the communitarian ideal of shared responsibilities and rights, tribe chiefs coordinated principles that were consentingly followed, and the notion of frontiers was barely accurate (ANDRADE, 2001). Most communities lived internally within an organic atmosphere, even though beyond their limits there might have existed tribe dissensus, most of them solved by those traditional decision systems (ANDRADE, 2001). However, it was in the nineteenth century that such atmosphere was completely transformed. The beginning of colonial process brought disruption for African tribes’ settled law. When introducing western law in Africa, the continent became divided between the newly formal and imposed system and the traditional and inherited pre-colonial system. By the influence of a majority of European colonizers, whose formal systems were widely adopted as transcriptions, the traditional law lost its preponderance (ANDRADE, 2001).

The next century saw Africa’s reborn after decades of colonialism. To reinforce the independence process, pan-African ideology and authoritarianism were able to flourish in politics (ANDRADE, 2001). African countries felt excluded of the international scenario and used that as an argument for its non-observance of international human rights treaties. As state’s arbitrariness took place,

6 This communal vision can be found in the South African tribal concept “Ubuntu”, defined as “the potential for being human, to value the good of the community above self-interest” (CHAPLIN, n.d., p.1).

7 “Cameroon has a unique legal system, which is reminiscent of its colonial past. It is referred to as a bi-jural country, which alludes to the dual application of the French and English legal traditions. While French-oriented civil law applies in eight provinces of the country, English common law applies in the remaining two English-speaking provinces. Notwithstanding the dual legal system, lawyers are free to appear in court in any part of the country, provided that they can express themselves in the language used by that court. Alongside the two foreign traditions lies the customary law, which constitutes a host of traditional rules and norms” (PENAL REFORM INTERNATIONAL [PRI], 2007, p.153).

8 When the United Nations was created, only four African states have proclaimed independence: Egypt, Liberia, Ethiopia and South Africa (ANDRADE, 2001).
population was impelled to put their efforts on reconstructing more favorable legal systems. Traditional systems (tribal or religious) gained more attention whilst many informal systems were created due to people’s demand (ANDRADE, 2001). For example,

[…] in most African countries, the formal (state) justice system functions alongside traditional and informal (non-state) justice systems. The first is tied to the legal traditions and values inherited from the colonial past—the English common-law system in east and parts of central Africa, the Roman-Dutch system in southern Africa, or the codified civil law systems in the west. “Traditional” systems are tied to the traditions and values passed down from generation to generation as customary law regulating life in village communities. “Informal” systems are non-state justice systems, like alternative dispute resolution (ADR) fora, established by non-governmental organizations or faith-based groups. Finally, in the Sudan and northern Nigeria, Sharia law operates as the primary law of the land; it seeks to regulate human intercourse within a moral and religious framework that is written in a poetic rather than legal style and open to varying interpretations ⁹ (PRIa, 2007, p.4).

However, the reinforcement of African states’ self-interests’ defense only occurred by the 1980’s ¹⁰. It was in 1978 that Nigeria moved a resolution adopted by the United Nations Human Rights Council requiring assistance to establish regional human rights institutions (ANDRADE, 2001). The African Charter on Human and People's Rights was approved in 1981, calling for judicial instruments different from American and European Conventions on Human Rights, i.e., focusing on African real needs of an independent judicial system and inclusion of economic, social and culture issues in law (ANDRADE, 2001). In spite of criticisms¹¹ coming from international organizations and NGOs, the African Charter on Human and People's Rights entered into force only in

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⁹ “Sharia [Islamic] law as practiced in the northern states of Nigeria and the Sudan endorses corporal punishment, especially as concerns young offenders” (PRI, 2007, p. 18).

¹⁰ Changes that reduced the focus on the non-interference principle occurred both inside and outside states. Internally, three dictatorial governs came down in 1978: the one of Emperor Jean Bokassa, from Central African Republic; the one of PresidentNguêma Macias, from Equatorial Guinea; and the one of General Idi Amin Dada, from Uganda. Externally, current US President Jimmy Carter introduced in 1979 the notion of “human rights crusade” as part of North-American foreign policy (ANDRADE, 2001).

¹¹ Some of those criticisms are related to the African Charter principle of non-interference on domestic policies, which gives Heads of states full responsibility for human rights issues and consequently puts aside possibilities of international aid (ANDRADE, 2001).
October 21, 1986 (ANDRADE, 2001).

Despite all efforts to promote Africa’s voice in international decisions, formal justice systems find barriers to effective and successful functioning. Those barriers, beyond all historical consequences, are related to aspects such as political interests deep-rooted in legislatives processes, potentiality for corruption, biased legislations that ignore the demands of minorities (e.g. underprivileged population, women, children, elderly etc.) and cumbersome mechanisms of justice (OHCHR, 2012).

Political pluralism has constant influence on justice issues. During the last decades, its influence was stressed by the emergence of minorities. African political elites, whose ancient vision of a patriarchal and colonial society was not extinct, attempted to maintain control of legislative process by seizing monopoly on the interpretation of traditional law into formal law (MUKHOPADHYAY; QUINTERO, 2008).

On the other hand, the absence of solid political structures can also damage the judicial system’s well-functioning by creating a locus for the spreading of corruption\(^\text{12}\), motivating exodus of legal representatives and judges and imposing cumbersome remedies and sanctions (OHCHR, 2012). In the Democratic Republic of the Congo (DRC), for instance, the lack of central government and the resulting civil war were key factors for the ruin of the country’s judicial system (PRI, 2007). According to Adam Staplenton (2007):

In the eastern province of South Kivu, which continues to experience conflict, there are some forty lawyers, all of whom are based either in Bukavu or in Uvira. Just two functioning courts (in Bukavu and Uvira) serve an estimated population of one million persons. Due to the absence of courts, most people apply to their chiefs and elders for settlement of disputes and judgment even in serious criminal matters, and only apply to the state justice system when they need an official stamp (e.g. in civil matters concerning guardianship and adoption). However, due to the displacement of communities and corruption of traditional chiefs and elders, NGOs and faith groups have developed new mechanisms to assist people in resolving their disputes (PRIa, 2007, p.19).

Since the adoption of the African Charter, African countries have been seeking to develop more effective mechanisms of justice and legal aid as the existing ones can only provide part of the

\(^{12}\) Allegations of institutionalized corruption within the judicial system are common in most countries and substantiated in some (PRI, 2007, p.8).
demand that is required (PRIa, 2007). Hence, the access to justice is restricted and this restriction impacts mainly on marginalized people. Rural inhabitants, poor and other minorities currently have difficulties dealing with bureaucracies\textsuperscript{13} and low voice in the rule of law, in addition to being inserted in a scenario of inadequate law and unwieldy judicial apparatus (PRIa, 2007). In this sense, governments have the responsibility to grab social demands in order to guarantee satisfactory results for the people who ask for proper formal systems services of justice.

3.2. Economic Causes

Deriving from structural deficiencies of the judicial system, economic and financial obstacles can be seen as aggravators for the problem of the access to justice (PRIa, 2007). One of the main causes is the lack of resources and their inefficient allocation in the judicial system. The high prices of legal representation, the required administrative fees and mobility costs are related to a slow-pace, corrupt and geographically centralized structure that increases underserved population's resistance to ask for justice in legal courts (PRIa, 2007).

As stated by the Office of the United Nations High Commissioner for Human Rights, “poor functioning of the justice system particularly affects the poor, because pursuing justice requires a much greater effort and investment in terms of money and time for them, while their chances of a just and favorable outcome are worse” (OHCHR, 2012, p. 6). Furthermore, the bureaucracy creates unnecessary delays in judicial process and poor people face the drain of money as well as the risk of losing their jobs. All these barriers seem wasteful as the burden of the negative results trespass the satisfaction of succeeding judicially (PRI, 2007).

Alongside mobility costs, during the judicial process, population is obliged to pay innumerable fees\textsuperscript{14} and also be responsible for indirect costs, such as to get legal documents, find witnesses, hire

\textsuperscript{13} “In Angola, the government does not provide a legal aid department. While the law provides for legal assistance (Lei da Assistência Judiciária 15/95 de 10 de Novembro), an indigent accused must prove his or her economic status by making an ‘atestado de pobreza’ (statement of poverty) which the accused can obtain from the local administrator and present to the presiding judge” (PRI, 2007, p.11).

\textsuperscript{14} In the Democratic Republic of the Congo (DRC), “[t]o open a dossier in the tribunal costs $15. To type up the pleadings costs $5 and for service on the party $5. Once the tribunal is seized of the matter, the costs continue ($5–$20 to visit the village, etc). Costs are high and judgments drag out because each step and hearing has a cost since this is the only source of revenue for court personnel” (PRIa, 2007, p. 19).
private legal aid, ask for photocopies and phone calls (OHCHR, 2012). Trying to lessen those economic obstacles, NGO’s, churches and society groups develop ways to recruit and instruct local people, although it may be yet in short supply (PRI, 2007).

Shortfalls in the judicial system and related services’ financing can be seen as gaps where corruption is installed. Constant bribing enables more successful access to justice and even the certainty of favorable outcomes for those with financial and social capital (OHCHR, 2012). In this sense, the already short-staffed courthouses suffer qualitatively with a sharp decrease of legitimacy. Poor people are, as always, the most disadvantaged.

3.3. Social Causes

On a societal level, the access to justice is injured mainly by the lack of information for both authorities and population. Guidance to obtain judicial help from law enforcement officers reveals itself insufficient as “often, police officers, court staff and other justice sector personnel reflect the discriminatory attitudes of the wider society and are not adequately trained to perform their roles without discrimination or bias against persons living in poverty” (OHCHR, 2012, p.11).

Consequently, there is excessive and arbitrary use of detention and incarceration, restrictions of legal awareness, inexistence of aid and, alongside poverty, discrimination of ethnic groups, gender\textsuperscript{15} or disabled (PRI, 2007).

According to the International Covenant on Economic, Social and Cultural Rights (1976) and the International Covenant on Civil and Political Rights (1976), states have an obligation to guarantee access to information without any discrimination. Nonetheless, besides making information accessible\textsuperscript{16}, conditions must be created for people to act based on the public domain information (OHCHR, 2012). However, financial, geographical, technological or linguistic barriers faced by underserved population distress the access to justice (OHCHR, 2012).

Yet the tension between formal and informal mechanisms of justice can bring new implications. On one hand, cultural tradi-

\textsuperscript{15} “In some contexts, there are strong cultural norms against women speaking on their own behalf in disputes” (OHCHR, 2012, p.7).

\textsuperscript{16} “In the context of access to justice, it is requires, for example, that states proactively inform the public about new or changing laws, and make legal materials, such as laws, judgements [sic.], trial transcripts and adjudication procedures, available and reasonably accessible” (OHCHR, 2012, p. 8).
tions may differ from what is advocated by formal justice, causing fear of community reprisal for those who ask for legal representation (OHCHR, 2012). On the other hand, law societies and judicial officers

far from seeking to share their ‘magical knowledge’ […] to enable greater access for the ordinary person, condemn any reform they [the poor] perceive to be […] an erosion of judicial independence and unconstitutional (PRI, 2007, p. 6).

Beyond all efforts of integration of both mechanisms, African social mosaic brings complexity to the fight against judicial discrimination. Nonetheless, as a matter of human rights, this complexity must be overtaken to implement an adequate Judicial System structure and conditions for minorities to benefit from the access to justice (PRI, 2007).

4. The mostly affected for the lack of access to justice

As explained above, the Charter of United Nations, signed in 1945, already claimed for a wider access to justice for all people. Thus, bearing in mind that justice is a fundamental human right and considering the UN Charter, the importance of a greater access to justice is undeniable.

There are, despite the effort of UN and other organizations (governmental and non-governmental), a great amount of people who still do not have access to a fair judicial system (CARLSSON, 2013). According to Bowd (2009) we should analyze “the equity with which those from differing backgrounds are able to gain from the justice delivery system” (BOWD, 2009, p. 1). Regarding this excerpt, two aspects must be considered: the first is the necessity to understand the concepts of “equity”, “equality” and “fairness” referring to access to justice; the second aspect is to highlight which groups are those who are mostly affected by the lack of access to justice.

Hay (1995) explains that these three concepts are closely related. Equity “is achieved if a distribution results from informed individuals choosing over equal choice sets” (HAY, 1995, p.502). In other words, it means that equal choices will be provided to all citizens. Equality or formal equality “requires that like benefits (or burdens) are enjoyed (or suffered) by like persons” (HAY, 1995, p.502).

The difference between formal equality and procedural fairness, according to Hay (1995), lies in the aspect that the rules may
be, on this basis, subject to criticism and “it may be concluded that certain rules, however fairly and consistently applied, are nevertheless unjust because they result in disproportionate benefits or burdens” (HAY, 1995, p. 502). Finally, procedural fairness is understood as the proper adherence to the rules relevant to a procedure and, by extension, as the correct application (and thus the uniform application) of such rules to all cases which are alike within the terms of the rules in a way which is consistent, non-arbitrary and even-handed (BARRY, 1990; CAMPBEL, 1973 apud HAY, 1995, p. 502).

There should be, therefore, rules – formal or informal, explicit or implicit – that may be applied to all individuals consistently (HAY, 1995).

Bearing these concepts in mind, it is evident that a fair access to justice implies that all individuals have access to the same rules, the same conditions to access to tribunals and, mainly, the access to tribunals that judges equally any individual in the same way (BOWD, 2009). Regarding these necessities, it is possible to identify which groups are the mostly affected by the lack of access to justice: women, the poor and the citizens of failed states (BOWD, 2009).

It is also important to stress that in most African countries there are two types of judicial systems: the formal and the informal or traditional justice (BOWD, 2009). The informal or traditional justice have a particular characteristic that should be highlighted for a better understanding of this section: informal systems “do not recognize international treaties, protocols and conventions and therefore do not guarantee certain human rights, instead promoting group rights over individual rights” (MUKHOPADHYAY; QUINTERO, 2008, p.3).

4.1. Lack of access to justice by women

Women have been seen as the most fragile group when observing the lack of access to justice. This group is one of the most affected for numerous causes. The most important factors are the greater incidence of illiteracy and poverty among women, the inherent inequality to the treatment of men and women at the formal and informal courts and a judicial system made by and for men (MUKHOPADHYAY; QUINTERO, 2008).

The effects of poverty and how it contributes to the lack of access to justice will be better explained in the next subsection, but
what is important to bear in mind is that the poverty and illiteracy in Africa is structural and affects mostly women. As Bowd (2009) asserts, female adult illiteracy constitutes “61, 63 and 63 per cent of adult illiteracy in Sierra Leone, Tanzania and Zambia respectively” (BOWD, 2009, p.2). Also, being poor in most cases implies that the woman’s residence is far from the courts (mostly localized at the urban centers) which turns the access to them even harder, given that they cannot afford to travel long distances (MUKHOPADHYAY; QUINTERO, 2008).

Another factor of gender inequality is that traditional and formal systems of justice are intrinsically favorable to men, as those who compose the organisms and the make the rules are mostly men (MUKHOPADHYAY; QUINTERO, 2008).

The power to decide at this level lies with male elders and spouses often jeopardizing women’s chances of getting a fair hearing. (…) The people with the power to arbitrate and decide are village chiefs, religious and/or traditional chiefs and again they are mostly men. Only the remaining ten percent of cases enters the state system and here too gender biases in the law and judicial process prevent women’s claims receiving a fair hearing (MUKHOPADHYAY; QUINTERO, 2008, p.3).

Besides, the rules are not for women either. Even if a woman was able to overcome the financial barriers, the decisions favorable to women are hampered by the judges and they are supported by the law (MUKHOPADHYAY; QUINTERO, 2008). In other words, even if and when women do get to the institutions of justice they are unlikely to be treated equally (…) the law itself may be against women’s interests or the rules of evidence are such that women are unable to provide them (MUKHOPADHYAY; QUINTERO, 2008, p.4).

Once the problem is detected, it is important to stress that there is a solution, though it may not be simple or widely applicable. What many lawyers and human right activists highlight is that a law reform is imperative, albeit it is still a challenge (MUKHOPADHYAY; QUINTERO, 2008, p.4). It is important, thus, to achieve gender equal positive outcomes focusing in a reform both in law and in the way of thinking about the particularities women and men experience: “This in turn will allow us to think about how to shift the conceptual boundaries of the law to make it possible to understand women’s experience and deliver just outcomes”
Gender inequality in the systems of justice is a product of socialization, therefore, that can be changed with education measures (MUKHOPADHYAY; QUINTERO, 2008). In addition, the fact that “the processes and outcomes of justice are gendered is not exclusively an African phenomenon but is recognized worldwide and has been the subject of legal research since the 1970s” (MUKHOPADHYAY; QUINTERO, 2008, p.5). Therefore, there is not a perfect solution to the problem, but while it has been broadly studied, the theme is increasingly present in the international agenda, which may contribute to a durable solution (MUKHOPADHYAY; QUINTERO, 2008).

4.2. Lack of access to justice for the poor

As showed above, the greater challenge to the access to justice is poverty. It is important to understand that the access to justice is more difficult because poverty usually implies in other factors such as illiteracy, lack of information about the law and the judicial system, unawareness and discrimination and lack of capital to access the traditional justice system (BOWD, 2009). Besides, these are not challenges exclusive of the formal justice, but also of the informal justice.

The illiteracy and lack of access to information is one of the greater challenges to the access to justice (BOWD, 2009). The poorest tend to have less information about the judicial system and tend not to have access to a proper education, which makes them intimidated by the formal justice (BOWD, 2009). The poor are rarely aware about their civil and human rights, once “basic understanding regarding the law is not forthcoming in many areas and this not only presents a danger in terms of unwittingly breaking the law, but also through ignorance over civil and human rights” (BOWD, 2009, p.2).

Unawareness and discrimination also let the poorest more vulnerable. The poorest may end up not seeking justice once they fear being stigmatized or discriminated against or fear sanction or retaliation from more powerful groups within or outside their community (OHCHR, 2012, p.6). Moreover, while being unaware about the law and judicial procedures, poor citizens “are more likely to fall victim to criminal or illegal acts, including sexual or economic exploitation, violence, torture and murder” (OHCHR, 2012, p.3).

The lack of resources to access courts is also an important
factor. The poorest usually need to invest more in terms of time and money since they more often live far from the courts. Besides, they have to afford “the cost of legal advice, administrative fees and other collateral costs” (OHCHR, 2012, p.6). Nevertheless, that leads to a wider and more effective access to justice to the ones who can afford it (BOWD, 2009). Thus, the proximity to informal justice, that is mainly rural-based, is one important factor for the choice of informal justice over formal justice, mainly urban-based and seen as more rigid (BOWD, 2009).

Therefore, bearing these factors in mind, it is clear that the reform of the judiciary system must be done not only to assure the fulfillment of all citizens’ human rights but also to help eradicate poverty. This goal requires not only the improvement of the access to housing, food, education, health services, water and sanitation, but also requires ensuring that persons living in poverty have the resources, capabilities, choices, security and power necessary to enjoy the whole spectrum of human rights (OHCHR, 2012, p.3).

4.3. Failed states

Both groups above encompass the individual level. This section, differently, will present how the state level reverberates in the lives of its citizens when the state is no longer able to carry out its functions. Failed states, as defined by Thurer (1999), “are invariably the product of a collapse of the power structures providing political support for law and order, a process generally triggered and accompanied by “anarchic” forms of internal violence” (THURER, 2007, para. 1).

Failed states represent a threat to the fulfillment of their citizens’ civil and human rights once “the challenges of weak delivery institutions and inadequate human resources are aggravated by chronic under-resourcing and corruption” (BOWD, 2009, p.3). Besides, great part of the population does not have a fair access to legal systems, which end up being a tool to the maintenance of the elite in powerful positions and of a status quo which benefits them (BOWD, 2009).

Considering two characteristics of failed states described by Thurer (1999), the collapse of the core of government and the brutality and intensity of the violence used, it becomes clear that, in these states, these integrity and respect for citizen’s rights are not a reality (THURER, 1999):
The first of these is the collapse of the core of government, which Max Weber rightly described as “monopoly of power”. In such states, the police, judiciary and other bodies serving to maintain law and order have either ceased to exist or are no longer able to operate. In many cases, they are used for purposes other than those for which they were intended. (…) The second typical feature of a “failed State” is the brutality and intensity of the violence used.(…) These internal conflicts are characterized by a highly unpredictable and explosive dynamic of their own, as well as by a radicalization of violence, the irrationality of which stands in stark contrast to the politically guided and systematically escalated use of military force for which the mechanisms and instruments laid down in the UN Charter for the limitation and control of conflicts on the international level were designed (THURER, 1999, p.4).

Also, failed states with its weak institutions are hardly able to promote a fair and equal access to justice to its citizens. This lack of access to justice has serious consequences such as the increase of corruption and poverty and the decrease of criminal convictions, as well as of confidence in government (BOWD, 2009).

5. Promoting access to justice

Understanding who is more affected by the lack of justice and which are the impacts in the economic, political and social scopes, is important to highlight the measures that have been taken by international organizations (governmental and non-governmental), focusing on the actions which are concentrated in African countries.

5.1. International level

At the international level, several actions from different international organizations (governmental and non-governmental) have been taken to enhance the access to justice around the world. In the war against poverty, justice, human rights and the rule of law have been recognized as weapons as powerful as healthcare, education and housing (CARLSSON, 2012). Bearing that in mind, it is clear that the demand for a wider access to justice is achieving a broader space in the international agenda, thus engendering the development of programs and projects carried out by both governmental and non-governmental organizations. There are numerous actions and programs of organizations that aim to enhance the access to justice, and in this section the ones from the World Bank,
The Kenyan Section of the International Commission of Jurists and the Malian government will be analyzed.

Accepting that an equal and effective access to justice is essential to good governance and sustainable development, the World Bank (WB) has developed programs such as the Justice for the Poor (J4P). This program focuses on a perspective of the poor and the marginalized and seeks to enhance the delivery of justice services and to support sustainable and equitable development processes, in order to “manage grievance and conflict stresses effectively” (WB, 2013, p.1). The program covers Asian and African countries such as Timor-Leste, Papua New Guinea, Vanuatu, Solomon Islands, Sierra Leone, Kenya and Nigeria.

An example of a program of a non-governmental organization is the Access to Justice (A2J). This program is promoted by The Kenyan Section of the International Commission of Jurists (ICJ Kenya), which is currently implementing activities within areas contained at its Strategic Plan 2011-2015. The goal of A2J is to promote access to the courts of law in Kenya and Africa. The focusing themes are rule of law and human rights with a view to constitutionalism. Thus, A2J “promotes access to justice through advocating for an independent and accountable judiciary in Kenya and in the region” (ICJ-Kenia, [2014]).

Governments also develop programs that aim to promote a wider access to justice. The Malian government and its international partners initiated in 2000 a Ten-Year Program for Reform of the Justice Sector (Programme Décennal de Développement de la Justice [PRODEJ]). This program seeks to promote the development of the country, strengthen rule of law and guarantee social peace. In 2009, the operating plan for PRODEJ for 2010-2014 was adopted and reinforced the program (AMERICAN BAR ASSOCIATION, 2012). One important observation is that PRODEJ considers access to justice “a fundamental right that determines the exercise of all other rights” (AMERICAN BAR ASSOCIATION, 2012, p.5).

These are few examples of organizations that develop projects and programs seeking the promotion of a wider and equal access to justice all around the world. Nevertheless, these initiatives are complemented by action in the national level, which will be better explained in the next subsection.

5.2. National Level

The access to justice can be improved by internal politics. Many countries, mainly in Africa, Latin America and Asia, pres-
ent informal justice systems (IJS) (WOJKOWSKA, 2006). Due to this situation, one of the politics that can be implemented to improve the access to justice is the association between the formal justice systems and the informal ones.

In the section 2.1 of this article, the aspects of the IJS and the formal justice systems were discuss and it was concluded that “engaging with informal justice systems is nevertheless necessary for enhancing access to justice for the poor and the disadvantaged” (WOJKOWSKA, 2006, p. 24).

The confluence of IJS and formal justice systems as a form of enhance the access to justice, can be understood as a form to enhance the human rights too:

Providing accessible justice is a state obligation under international human rights standards, but this obligation does not require that all justice be provided through formal justice systems. If done in ways to respect and uphold the human rights, the provision of justice through IJS is not against human rights standards and IJS can be a mechanism to enhance the fulfilment of human rights obligations by delivering accessible justice to individuals and communities where the formal justice does not have the capacity or geographical reach (UNW; UNICEF; UNDP, n.d., p. 11).

The question that remains is why the association between IJS and the formal justice systems can improve the access to justice? Firstly, the reforms of the formal justice systems, which could help to improve the access to justice, are too slow (in some cases it could take many years). Bearing in mind that great part of the population, including the poor and the disadvantaged, search for informal courts, the investment only in formal systems is not enough to reach all the individuals (WOJKOWSKA, 2006). The IJS present huge benefits that cannot be ignored. Reforms of the justice systems of countries that have informal ways of justice must encourage the use of IJS besides the use of formal justice systems (WOJKOWSKA, 2006).

Any process to improve the judicial system of a country must take into account a broader strategy that considers the strengths and weaknesses of both formal and informal justice systems. Mainly, any process must take the human rights into account,
therefore principles of participation\textsuperscript{17}, accountability\textsuperscript{18}, non-discrimination\textsuperscript{19} (gender and age) and prohibition of physical punishments, for example, must be respected (WOJKOWSKA, 2006).

However, the way to associate these kinds of justice is not easy. One way to associate them is the “incorporation”. However, the full incorporation of the IJS by the formal system is not the better way to improve the access to justice. This kind of politic “undermines the positive attributes of the informal system. The voluntary nature of the process is undermined by the presence of state coercion” (PRI, 2000, p.129). The codification also restrains the fluidity and development of the customary justice systems. The “incorporation” may suppress the cultural diversity and press the IJS on account of the top-down hierarchy (WOJKOWSKA, 2006).

The most advisable way to associate them is called “co-existence”. The “co-existence” process of association:

[...] allows the informal mechanisms to exist independently of the formal state structures while embedding them in low-level surveillance and accountability mechanisms and allowing for cross-refer- rals. (...) The state may require informal justice systems to comply with human rights standards or constitutional provisions. (...) Jurisdictions are divided along clearly defined boundaries and neither system may assume jurisdiction over the matters within the jurisdiction of the other system (WOJKOWSKA, 2006, p. 28-29).

The positive points of the “co-existence” are the improvement of human rights inside the IJS, which helps the access of the human rights by the poor, marginalized and disadvantaged people. Another benefit is that the jurisdiction of each justice system becomes clearer; the relationship between formal and informal justices can improve the effectiveness of each of them (WOJKOWSKA, 2006, p. 28). The “co-existence” has weaknesses too. The formal justice could undermine the authority of IJS because it impedes its self-regulation; the IJS can be viewed as a ‘second-class justice’ and not follow the human rights; and the interference of the state may change the relations between the IJS leaders and

\textsuperscript{17} Participation: “be voluntary and not compel people to use them (the judicial systems); be accepted by the community; be open to public participation in the decision-making process” (WOJKOWSKA, 2006, p.10).

\textsuperscript{18} Accountability: “be open to some form of regulation and review” (WOJKOWSKA, 2006, p.10).

\textsuperscript{19} Non-discrimination: “be non-discriminatory on the basis of sex or any other status” (WOJKOWSKA, 2006, p.10).
their communities. Nevertheless, the association by “co-existence” must be encouraged in the name of the access to justice (WOJKOWSKA, 2006). In the next session, a case study will present an example of improvement of access to justice by the confluence of the international and national perspectives to enhance the access to justice.

6. Case Study

Located in the southern Africa, the Republic of Malawi is bordered by Tanzania, Mozambique and Zambia. With a population of 13,066,320 people, the economy of this country is mainly of subsistence agriculture (UNW; UNICEF; UNDP, n.d.). The situation of the justice system within Malawi, with a huge presence of IJS and many tentative to improve the access to justice, allows us to take the Malawian situation into a case study.

6.1. The situation of justice in Malawi

After the independency of Great Britain in 1964, Malawi was governed by President Banda who introduced the system of autocratic one-party rule (UNW; UNICEF; UNDP, n.d.). This system persisted until 1994, when Banda left the presidency and a new government system was implemented with the emerging of a new constitution (UNW; UNICEF; UNDP, n.d.). The new constitution of Malawi brought democracy and principles of rule of law, such as the independence of judiciary and non-discrimination (UNW; UNICEF; UNDP, n.d., p.304). Essentially, the constitution was considered a “modern, progressive and ambitious document that lays out a comprehensive set of human rights” (UNW; UNICEF; UNDP, n.d., p. 305).

The constitution of 1994 recognized the informal justice and its importance to the Malawian justice system, confirming its force of law. The constitution also protected the women’s rights and encouraged their participation in the society; and regulated the children’s rights (UNW; UNICEF; UNDP, n.d., p. 305). In the justice perspective, the constitution brought the protection to the right of access to courts, equality, remedy for violations, besides “all of the complex of rights concerning liberty and security of the person and to fair trial” (UNW; UNICEF; UNDP, n.d., p. 305).

The justice sector reform is one of the major changes of the constitution of 1994. The abolition of the regional “Traditional
Courts”20 and “National Traditional Appeal Courts” followed by the integration of all “Traditional Courts” into formal judiciary system was the main juridical change of this constitution (SCHARF et al, 2002). The constitution did not improve the formal juridical system of Malawi. In all country, there were only 300 qualified lawyers, of whom just a few practiced the profession. In 2006, only 26 of the magistrates were professionally qualified lawyers (UNW; UNICEF; UNDP, n.d.). The courts were far from the villages; there was no accommodation to the magistrates in remote areas; the infrastructure problems and the lack of transportation restrained the access of the magistrates to rural villages and there were also many other problems (UNW; UNICEF; UNDP, n.d.).

The integration of the “Traditional Courts” into formal judiciary system created many problems. The process was not made in a harmonious way, creating misunderstandings between jurisdictions; the “Traditional Courts” were abolished but the constitution established its preservation; the incorporation brought problems to the Malawian rule of law and judicial competence; and the abolition increased the lack of access to justice, mainly for the rural population (SCHARF et al, 2002).

The judicial system also had to deal with the appeals problem, since all the appeals, including of the lowest grades, had to be sent to the Highest Court, which made the process much longer and complex (SCHARF et al, 2002). The lack of knowledge about customary law impeded the full action of the magistrates in IJS cases (SCHARF et al, 2002). As stated by Scharf et al (2002): “The fusion of courts resulted into the unfortunate situation whereby courts with were closest to the people were left with no jurisdiction to handle the bulk of cases that concern them” (SCHARF et al, 2002, p.6). The constitutional transformation of the formal justice system was unable to improve the access to justice in Malawi due to structural problems of justice system, misapplication of the constitutional rules, lack of programs to develop the magistrates into the customary law and misunderstandings about jurisdictions between customary and formal justice (SCHARF et al, 2002).

One of the reasons that IJS are more familiar to poor people is because of its proximity, without the huge difficulties of accessing the formal courts, as explained before (WOJKOWSKA, 2006). In 2000, there were 20, 984 customary justice forums in Malawi.

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20 Traditional Courts were customary courts recognized by the government of Malawi. The Traditional Courts utilized “customary law of an ethnic group in a particular locality in civil cases and criminal cases, as long as this did not conflict with statutory law” (KAUNDA, 2011, p. 27).
while 217 courts centers of the formal justice system (SCHARF et al, 2002). Malawi presents two different types of IJS. The first one is the “Pabwalo” (north of the country), a system of dispute resolution by traditional authorities; and the other type is mediator system that help the population resolve their own questions (UNW; UNICEF; UNDP, n.d.).

6.2. Promoting Justice in Malawi

The improvement of the access to justice in Malawi could be described in two ways: the internal actions of the government of Malawi and the programs of international organizations and foreign countries.

The main policies were implemented in 2011. The first intervention of the state was the new Legal Aid Act. This act aimed to provide more access to justice to the poor (KAUNDA, 2011, p. 32). The main propositions of the Legal Aid Bill were the provision of information and education to the population; recognition of Alternative Dispute Resolutions, senior law students and civil society organizations; improvement of the justice infrastructure; and improvement of the fund designated to justice (KAUNDA, 2011).

The other intervention was the Local Courts Aid. According to this law, the informal justice systems were incorporated by the state justice by a decentralization process (KAUNDA, 2011, p.43). This bill searched to improve the conditions of IJS inside Malawi. The bill established that civil and minor criminal cases could be judged by the IJS; that the IJS should regard the constitution and the human rights; that the Chief Justice would supervision the IJS; and that the appeals continued to be send to the High Court (KAUNDA, 2011).

The other way to improve the access to justice in Malawi was made by international programs (KAUNDA, 2011, p. 52). In this case, we can emphasize the performance of the United Nations Development Program, which act in Malawi promoting informal justice systems (KAUNDA, 2011). The United Kingdom for International Development, which focus on the informal justice systems as a way to improve the access to justice as well as a way to reduce the poverty, and the World Bank, which focuses its actions towards the poor, understand that the structures inside the villages should be analyzed to improve the access to justice to the poor and the marginalized (KAUNDA, 2011).
6.3. Results and the actual situation

The Malawian case “presents an example of a comparatively large programmatic focus on traditional chiefs as IJS providers as well as of significant work in law reform in areas of relevance to IJS and the majority of Malawians” (UNW; UNICEF; UNDP, n.d., p. 337).

The public interventions and the international programs have recently been applied but the results should be positives if all propositions are implemented. The main aspect of the Malawian program is the recognition of informal justice systems (UNW; UNICEF; UNDP, n.d.).

Nevertheless, the actual improvement of the access to justice in Malawi depends on the enhancement of the educational system, including explanations about the justice system and consultancy to the people, “facilitating the inclusion” (KAUNDA, 2011, p. 85). Support the IJS as well as the chiefs and judges and share experiences with other countries in Africa that have similar justice situations are other ways to help the enhance of access to justice for the poor (KAUNDA, 2011).

7. Conclusion

One of the central objective of the international agenda is the eradication of the extreme poverty and, as Carlsson (2013) said, “we need justice and the rule of law if we are serious about eradicating poverty and building a better world” (CARLSSON, 2013, para. 10). Therefore, bearing in mind that the access to justice is a way to enhance the fulfillment of the human rights and a fundamental human right itself, this issue has been increasingly present in the international agenda (CARLSSON, 2013).

It is important to observe that the lack of access to justice does not impact only the social level but also the economic level and these impacts are mainly caused by structural deficiencies of the judicial system (OHCHR, 2012). Besides, it is also worth noting that there are groups which are more affected than others, and these should be the focus of the policies that aim to enhance the access to justice.

The women, the poor and the citizens of failed states are constantly excluded to the access to a fair judicial process. This problem have different causes – the women are constrained by a sexist society; the poor are denied the access to legal representation and access to tribunals because of its high costs and also because of
people’s illiteracy; and citizens of failed states suffer with the corruption and the disregard of their Government in ensuring their political and civil rights.

Highlighting the importance to solve the problem of lack of access to justice, the last section of this article pointed some programs and how some international and national organizations are promoting actions aiming at the resolution of this problem. To a better understanding, the Malawian case was discussed as one case that illustrates the relation between the traditional system of justice and the formal one.

Therefore, this article brings the problem of the access to justice mainly in African countries and stresses the measures that have been taken to solve this question. The focus of this article, nevertheless, is to understand how the connection between formal and informal systems of justice may be an effective and practicable way to resolve the problem of the lack of access to justice.

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