

**ISSN: 1684-260X**

A publication of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (formerly Community Law Centre), University of the Western Cape.

## EDITORS

### CHIEF EDITOR

Prof Ebenezer Durojaye

### CO-EDITOR

Gladys Mirugi-Mukundi

### GUEST EDITORS

Gladys Mirugi-Mukundi

---

## ESR REVIEW ONLINE

<https://dullahomarinstitute.org.za/socio-economic-rights/esr-review>

---

## PRODUCTION

The *ESR Review* is produced by the SocioEconomic Rights Project of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights, with the financial assistance of AmplifyChange and CS Mott Foundation.

The contents of the ESR Review are the sole responsibility of the Socio-Economic Rights Project and can under no circumstances be regarded as reflecting the position of the AmplifyChange or CS Mott Foundation.

---

## CONTACT

### Socio-Economic Rights Project

Dullah Omar Institute for Constitutional Law, Governance and Human Rights.

University of the Western Cape, New Social Sciences Building. Private Bag X17, Bellville, 7535

**Tel:** (021) 959 2950

**Fax:** (021) 959 2411

**Email:** [serp@uwc.ac.za](mailto:serp@uwc.ac.za)

**Website:** <https://dullahomarinstitute.org.za>

# Contents

---

## 03 EDITORIAL

---

### 04 FEATURE 1

Access to Justice for African Migrants in South Africa

---

### 09 FEATURE 2

Leaving Nobody Behind: The Access-to-Justice Challenges of Refugees in Uganda

---

### 14 CASE REVIEW

The Implications of *Nandutu and Others v Minister of Home Affairs and Others*

---

### 19 EVENT 1

A Side Event at the United Nations High Level Political Forum (HLPF) (New York, 16 July 2019)

---

### 23 EVENT 2

A Side Event at the African Commission on Human and Peoples' Rights (ACHPR) (Banjul the Gambia, 20 October 2019)

# Editorial

---

Welcome to the fourth issue *ESR Review* in 2019 – the first in a series of special issues on access to justice.

2019 was known as the year of justice. For the first time, Sustainable Development Goal 16 (SDG 16) was reviewed, at the High-Level Political Forum in July 2019. Governments made a commitment to ensuring ‘equal access to justice for all’ by 2030, in addition to which 47 countries reported on their progress on SDG 16 in presentations on their voluntary national reviews (VNRs). SDG 16 seeks 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’.

The High-Level Political Forum is an annual event hosted by the United Nations (UN) Economic and Social Council (ECOSOC) at the UN in New York to review progress on the SDGs. This special issue is inspired by the inaugural evaluation of progress made by UN member states in implementing SDG 16. The issue aims to offer critical insights and recommendations about the links between the African Union’s Agenda 2063 and Agenda 2030 regarding access to justice, the rule of law, human rights and democratic governance.

SDG 16 – in particular its target 16.3 (promote the rule of law at the national and international levels and ensure equal access to justice for all) – is relevant to migration. It calls on states to ‘[improve] access to justice, due process and equal legal treatment to address the needs and human rights of all migrant groups, including migrant workers, irregular migrants, victims of trafficking, asylum seekers and refugees, and as part of addressing the drivers of migration and displacement’.

In appreciation of the fact that non-citizens often struggle to access justice, this special issue of *ESR Review* focuses on access to justice for migrants, with two articles and a case review that deal with the matter in relation to economic and social cultural rights.

The first feature article, by Michelle Rufaro Maziwisa, analyses the integration of refugees and asylum-seekers into South Africa and their access to justice. The article pays particular attention to the interaction of migrants with the police and Department of Home Affairs, taking into account the intersectional inequalities and vulnerabilities of women.

The second feature, by Colman Ntungwerisho, foregrounds the challenges that refugees in Uganda face in their pursuit for justice and suggests various solutions. Ntungwerisho maintains that while Uganda has progressive laws and policies relating to refugees, resource constraints mean that most of the country’s efforts are directed towards refugees’ immediate needs for legal recognition, food and shelter, in the process side-lining other vital rights such as access to justice. In keeping with the SDGs’ spirit of ‘leaving nobody behind’, Ntungwerisho argues that it is necessary as well as to address refugees’ needs for access to justice.

All countries regulate the entry and exit of visitors from outside. In a case review, Obdiah Mawodza dissects a recent decision by the South African Constitutional Court decision, *Nandutu and Others v. Minister of Home Affairs and Others* (CCT114/18) [2019]. This case entailed a challenge to regulation 9(9)(a) of the Immigration Act 13 of 2002, which is administered by the Department of Home Affairs. The implication of the judgement is that spouses and children of South African citizens or permanent residents would not have to depart from South Africa in future when applying for a change in visitor’s visa status.

In the events section, we highlight two side events on the theme of access to justice. In July 2019, the Dullah Omar Institute, in conjunction with the governments of South Africa and Indonesia, along with the African Centre of Excellence for Access (South Africa) to Justice and other partners, hosted a side event at the UN High-level Political Forum on Sustainable Development. In October 2019, the Dullah Omar Institute, again in conjunction with the African Centre of Excellence for Access to Justice (South Africa), hosted a side event at a meeting of the African Commission on Human and Peoples’ Rights (ACHPR).

We thank our anonymous peer reviewer as well as our guest contributors, and hope that readers find this issue stimulating and useful.

---

***Gladys Mirugi-Mukundi***  
**Co-Editor**