



Judicial Independence

&

Judicial Accountability

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The People's Bridge to Justice



Summary of the Presentation

- The legal regime governing judicial independence and accountability;
- An examination of the concepts of judicial independence and accountability;
- Opportunities for enhancement of judicial independence and accountability;
- Other mechanisms for the promotion of judicial independence and accountability;
- Is there a clash of concepts?; and JSC's position on this.



Introduction

- The Judiciary is an arm of government.
- The Judiciary is charged with a duty to:
 - ❖ Adjudicate disputes;
 - ❖ Protect and promote the observance of human rights and freedoms;
 - ❖ Offer a remedy of judicial review on any administrative action;
 - ❖ Ensure proper administration of justice; and
 - ❖ Strengthen observance of the rule of law.



The Legal regime Governing the Concepts of Judicial Independence & Accountability

- The Uganda Constitution;
- Judicial Service Act, 2005;
- The Judicial Service Commission Regulations SI No. 87 of 2005;
- The Judicial Service Commission (Complaints and Disciplinary Proceedings) Regulations, SI No. 88 of 2005;
- Administration of Judiciary Act, 2020;
- Public Service Act, 2008;
- UN Basic Principles on the Independence of the Judiciary;



Legal regime cont'd

- Uganda Code of Judicial Conduct;
- Uganda Public Service Standing Orders, 2010;
- Code of Conduct and Ethics for Uganda Public Service;
- Administrative instructions.



JUDICIAL INDEPENDENCE



Foundations for Independence of the Judiciary

- 1) Asserted in Article 128(1) of the Constitution on independence of courts;
- 2) None interference with the courts or judicial officers in the exercise of judicial functions.- Article 128(2);
- 3) Assistance to be rendered to the Courts by organs and agencies to ensure effectiveness- Article 128(3);
- 4) Protection of judicial officers against personal liability - Article 128(4);





Foundations...

- 5) Administrative expenses are charged on the consolidated fund.- Article 128(5);
- 6) Self-accounting status of the Judiciary - Article 128(6);
- 7) No variation of terms and conditions of service to the disadvantage of a judicial officer.- Article 128(7);
- 8) Protection of judicial officers from being abolished when there is a substantive holder of the office –Article 128(8);
- 9) Enactment of the Administration of the Judiciary Act.
- 10) The Judicial Oath;
- 11) The Uganda Code of Judicial Conduct.



The Judicial Oath

“I ...swear in the name of the Almighty God/Solemnly affirm, that I will well and truly, exercise the judicial functions entrusted to me and will do right to all manner of people in accordance with the Constitution of the Republic of Uganda as by law established and in accordance with the laws and usage of the Republic of Uganda without fear or favour, affection or ill will”.



The Question of Judicial Immunity

- Judicial immunity is the foundation for independence of the Judiciary.
- It gives full protection to Judicial Officers in the discharge of their judicial function.
- Judicial immunity flows from the judicial oath so that there is no fear or favour in the discharge of judicial function.
- **See:** *H/W Aggrey Bwire vs. AG & Judicial Service Commission, SCCA No. 8 of 2010*

H/W Aggrey Bwire vs. AG & Judicial Service Commission, SCCA No. 8 of 2010

Kitumba, JSC, held that:

“Judicial independence or immunity is not a privilege of the individual judicial officer. It is the responsibility imposed on each officer to enable him or her to adjudicate a dispute honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone”.



Threats to Judicial Independence

- Adverse press coverage of matters handled by the Judiciary;
- Public condemnation of Judges/judicial officers from some quarters of Government;
- Adverse social media coverage of Court decisions and commentaries.
- Lawyers, who are officers of court, running press and media discussions on court decisions in disregard to the *sub judice* rule with cases still subject to due process.
- Peer pressure among senior colleagues in the Judiciary;
- Pressure from stakeholders within the magisterial area;



Threats...

- Pressure from donors who contribute to the Judiciary fund.
- Inadequate provision of funds or release of funds over a period of time e.g. locus visits. It should be noted that in some jurisdictions, a percentage of the budget is earmarked for the Judiciary.
- Rating of individual judges performance through a private performance scorecard report e.g. the Judiciary Scorecard Report 2019, compiled by Centre for Public Interest Law, an institution outside the Judiciary using statistical methods that are not significant or reliable.
- Poor professional conduct and ethics of lawyers as officers of the court.



Judicial Accountability



Accountability in the Judiciary

- Article 126 of the Constitution provides for judicial accountability.

“Judicial power is derived from the people and shall be exercised by the courts established under the Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people”.



Accountability Principles Under the Uganda Code of Judicial Conduct

- **Impartiality:** which is the essence of the judicial function and applies to the making of a decision and to the process by which the decision is made;
- **Integrity:** which is central to the proper discharge of the judicial officer and is the bed rock of the Administration of Justice;
- **Propriety:** which is essential to the performance of all activities of a judicial officer.;
- **Equality:** which is a requirement to accord equal treatment to all persons who appear in court,
- **Competence and Diligence:** which are prerequisites to the performance of the judicial office.



- Articles 147(1)(a), of the Constitution provides for the Commission to render advice to the President in respect to his power to exercise disciplinary control and removal from office of specified officers in the Judiciary.
- Articles 148 and 148A of the Constitution provide for the Commission to exercise disciplinary control over other judicial officers and staff of the Judiciary.
- Section 14 of the Administration of the Judiciary Act provides for the standards of service, as being in accordance with the Constitution; and to uphold the Uganda Code of Judicial Conduct and promote honesty, integrity and transparency in the service.



The JSC's Role in Promoting Judicial Independence & Accountability



The Role of the Judicial Service Commission

- 1. Appointment and Disciplinary Functions:** Rendering advise to the President in respect to the appointment of specified officers in the judiciary; to effect the appointment for the other judicial officers and staff of the judiciary and the discipline and removal of such officers.
- 2. Review Function:** To review and make recommendations on the terms and conditions of service of Judges, other judicial officers and staff of the Judiciary Service.
- 3. Education Function:** To prepare and implement programmes for the education of and for the dissemination of information to judicial officers and the public about law and the administration of justice.



4. **Complaints Management Function:** To receive and process people's recommendations and complaints, concerning the judiciary and the administration of justice.

5. **Advisory Function:** To advise the Government on ways of improving the administration of justice.



The Legal regime governing the JSC Disciplinary Process

Upon appointment, Judicial Officers are subject to the following legal regime:

- The Constitution;
- The Public Service Act Cap 282;
- Judicial Service Act (Chapter 14) and regulations made thereunder;
- Public Service Standing Orders; and
- Administrative instructions.



Provisions Relating to Conduct of Judicial Officers

- **Article 144(2) of the Constitution** provides for the grounds for removal from office of a judicial officer of the higher bench, covering misbehaviour or misconduct and incompetence.
- **The Judicial Service (Complaints and Disciplinary Proceedings) Regulations No. 88/2005, Regulation 5 (3),** thereof, sets out the grounds upon which complaints may be lodged against Judicial Officers. They include:
 - a) Improper conduct;
 - b) Corruption and abuse of office;
 - c) Neglect of duty; or
 - d) Maladministration of justice.



Disciplinary Offences

The Judicial Service Commission, Regulations SI 87 of 2005

Regulation 23 covers 14 disciplinary offences that a judicial officer is subject to and include:

- a) Conducts himself or herself in any manner prejudicial to the good image, honour, dignity and reputation of the service;
- b) Practices favoritism, nepotism or corruption whether for personal advantage or gain or that of any other person;
- c) Practices discrimination whether on the basis of sex, race, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability;



Offences cont'd

- d) Is a habitual late comer or absents or absconds from duty without reasonable excuse;
- e) Is insubordinate, rude, abusive, and disrespectful or uses vulgar language;
- f) Is lazy or produces poor standard work;
- g) is untrustworthy or lacks integrity in public or private transactions;
- h) Engages in private interests at the expense of his or her official duties;
- i) Divulges official information to unauthorised persons;
- j) Acts in contravention of the Code of Judicial Conduct, the Judicial Oath or any other oath taken by the judicial officer;



Offences cont'd

- k) Is convicted of a criminal offence by a court of law;
- l) Disregards the chain of command in his or her place of employment without reasonable excuse;
- m) Abuses judicial authority; or
- n) In any way contravenes any provisions of the law, Uganda Government Standing Orders or any other instructions relating to the discipline of judicial officers.

Examples of disciplinary offences

- Delayed delivery of judgments and rulings;
- Delays in refund of cash bail;
- Solicitation of bribes;
- Receiving of bribes
- Lack of integrity in private financial transactions.
- Insubordinate
- Absenteeism





Sanctions for Disciplinary Offences

Regulation 31(1) of the Judicial Service Commission Regulations no. 87/2005 provides for the following sanctions:

- a) Dismissal;
- b) Suspension;
- c) Reduction in rank;
- d) Order for a written undertaking from the officer not to repeat the offence;
- e) Reduction in salary;
- f) Stoppage of increments;
- g) Deferment of increments;
- h) Severe reprimand;
- i) Order payment of compensation.
- j) The recovery of the cost or part of the cost of any loss or damage caused by default or negligence whether by deduction from salary or gratuity or otherwise.



Promotion of Judicial Independence & Accountability of the Judiciary



What has been done

- The Commission made submissions to Cabinet for the amendment of the JSC Act and the regulations thereunder
- Periodic inspections of Courts and allied JLOS institutions such as Prisons.
- Operationalisation of the Administration of Judiciary Act.
- Setting up of the JSC Anti-corruption Committee and the putting in place of an Anti-corruption policy and strategy to promote the combatting of corruption in the Judiciary.
- Education and training of judicial officers and members of the public to raise awareness and empowerment.



What is being proposed

- The strengthening of linkages between the Commission and the internal disciplinary mechanism of the Judiciary.
- Review of the composition of the Commission to make it more permanent and strengthen its efforts towards effectively discharging its functions.
- Formation of alliances with other anti-corruption agencies.
- Setting up of the JSC academy with the objective of training stakeholders.
- Profiling of judicial officers for purposes of tracing and assembling evidence that can be used for disciplinary action and sanctions to be invoked.



Institutional measures that need to be addressed

- Article 127 of the Constitution is yet to be operationalised. Article 127 provides for participation of people in the administration of justice.
- Funds for the Judiciary should be guaranteed in the Constitution.
- Reinforcement of judicial independence by ensuring respect for the *sub judice* rule and limiting discussions on matters being handled by courts of law.
- The involvement of JSC in the monitoring of performance of Judicial Officers.



**Is there a clash of concepts?
How does the Commission
recognise the concepts of
independence and assert
accountability?**



- Consideration of the complaint first and investigation thereof will determine whether it falls within the criteria for admissibility of complaints; and it is not a matter within the exercise of a judicial officer's discretion, for which a remedy is an appeal or review or revision process.
- A complaint must pass the admissibility criteria as set out in regulation 11 of the JSC Regulations no. 88/2005. That is, it must:
 - relate to the administration of justice or operations of the courts;
 - deal with the conduct of a judicial officer or any other persons performing judicial functions; or
 - not be manifestly frivolous, vexatious, unwarranted or unfounded in law.



- A complaint must be rejected if the complainant can secure a remedy for the complaint through court by way of appeal of judgment or review or revision of orders.
- The nature of the complaint and its thorough investigation indicate what is the purpose or intention of the complainant.
- Upon consideration, the Commission must decide whether there is a prima facie case established against the Judicial Officer before a disciplinary hearing is conducted.
 - Rules of natural justice apply (section 12 of the JSC Act)
 - Regulation 18 provides for the right of appeal to a panel of three judges of the High Court against a decision of the Commission



- The Uganda Code of Judicial Conduct has an important safeguard in respect to the promotion and enforcement of the Code.
- There is need to afford protection to Judicial Officers by reason of the nature of the judicial office from vexatious or unsubstantiated accusations and to afford them due process in the resolution of complaints against them.
- The members of the public, stakeholders in the Justice Law and Order Sector and the Commission have a critical role to play as we all work to regulate judicial conduct.



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