

JUDGES' SYMPOSIUM ON JUDICIAL INDEPENDENCE, ACCOUNTABILITY AND REFORM IN LESOTHO



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TOPIC:
FISCAL AUTONOMY AND
ACCOUNTABILITY AS A
GUARANTEE OF JUDICIAL
INDEPENDENCE: THE
UGANDA EXPERIENCE

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INTRODUCTION:

I thank ICJ, the organizers of the symposium, for inviting me to participate in this symposium in which core values of Judiciaries are discussed. I joined in this programme belatedly, so forgive me if I do not provide as much information as I should.

I was asked to speak about the Uganda experience in the area of Fiscal Autonomy and Accountability as a guarantee of judicial independence.

It is I think accepted, at least in theory, that in constitutional democracies, Judiciaries should be independent and accountable. Uganda is a constitutional democracy. The 1995 Constitution of Uganda has provisions regarding the independence of and accountability by the judiciary.

In November, 1997, Uganda Judicial Training Committee [JTC] organized an orientation Course for newly appointed Justices of the Supreme Court, Court of Appeal and Judges of the High Court of Uganda. The former Chief Justice of Tanzania, the late **Francis Nyalali** [RIP] graciously agreed to and did present a paper on the independence of the Judiciary and accountability. He had at that time been the head of the Judiciary in Tanzania for many years and he attached great importance to Judicial Independence, Judicial Accountability and Other core values of a judiciary in a constitutional democracy [Tanzania].

At the beginning of his presentation he summarized his views as follows:

*The principles of **Independence of the Judiciary and Accountability** are interlinked and inseparable. It is impossible to have one in any society without the other. On a closer examination, the concept and principle of Independence of the Judiciary appears to comprise four elements, namely, JUDICIAL INDEPENDENCE, JURIDICAL INDEPENDENCE, and ADMINISTRATIVE INDEPENDENCE AND BUDGETARY INDEPENDENCE. Judicial Independence relates to the decision making process; Juridical Independence relates to finality of decision; administrative Independence relates to autonomy of management of affairs, whereas budgetary Independence relates to self-accounting of funds.*

*The concept and principle of **accountability of the judiciary** also involves four elements, that is, JUDICIAL MANDATE, secondly, JUDICIAL RESPONSIBILITY, thirdly, JUDICIAL ETHICS and fourthly, JUDICIAL DISCIPLINE. Judicial mandate*

relates to the mission entrusted to judicial institution by the constitution; judicial responsibility relates the judicial work assigned to individual judicial officers and judicial discipline concerns the enforcement of judicial norms.

The need to uphold these values not only by Uganda but also by other states and judiciaries has been the subject of conferences followed by declarations such as the Harare Declaration of 1991 and Commonwealth [Latimer House] Principles on the Three Branches of Government, [November, 2003].

UGANDA EXPERIENCE

In so far as Uganda is concerned, Articles 126 and 128 and indeed 28(i) of the Constitution of 1995 set out these principles. Perhaps I ought to mention that the 1995 Constitution was a result of deliberate effort by authorities in Uganda at the time to produce a homemade constitution. The Government, or rather Parliament, set up a Constitutional Commission which for some years went around the country collecting the views of the people about the type and form of Constitution and Government. A constitutional Assembly, separate from Parliament, was elected by the people in 1994. That Assembly debated the recommendations of the Commission's report and adopted the new Constitution on 22nd September, 1995. The Constitution was described as *based on the principles of unity, peace, equality, democracy, freedom, social justice and progress.*

Permit me to reproduce the whole of Article 128 because what it contains reflects attributes of judicial independence. It also talks about self accountability by the judiciary.

“128. (1) *In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.*

(2) *No person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions.*

(3) *All organs and agencies of the State shall accord to the courts such assistance as may be required to ensure the effectiveness of the courts.*

(4) *A person exercising judicial power shall not be liable to any action or suit for any act or omission by that person in the exercise of judicial power.*

(5) *The administrative expenses of the judiciary, including all salaries, allowances, gratuities and pensions payable to or in respect of persons serving in the judiciary, shall be charged on the Consolidated Fund.*

(6) *The judiciary shall be self-accounting and may deal directly with the Ministry responsible for finance in relation to its finances.*

(7) The salary, allowances, privileges and retirement benefits and other conditions of service of a judicial officer or other person exercising judicial power shall not be varied to his or her disadvantage.

(8) The office of the Chief Justice, Deputy Chief Justice, Principal Judge, a Justice of the Supreme Court, a Justice of Appeal or a Judge of the High Court shall not be abolished when there is a substantive holder of that office”.

FISCAL AUTONOMY

The Status of Judiciary in Uganda

Clause (b) [*Supra*] says the Uganda Judiciary shall be self accounting. In ordinary language autonomy means independent. Self accounting and autonomy are not the same. The Clause confers upon the judiciary a self-accounting status. Such status if it is fully respected is necessary to sustain meaningful administrative autonomy. This means that the management and accounting of funds voted by the Uganda Parliament for the administration of justice is fully vested in the judiciary itself. It is the established practice for the annual estimates of revenue and expenditure of the judiciary to be prepared by the office of the Secretary to the Judiciary [the judiciary accounting officer] after consultations and negotiations within the judiciary and ultimately with government treasury officials. The Budget Act, 2001, requires every Ministry and self accounting institutions to submit their detailed estimates to the Ministry of Finance, Planning and Economic Development by 15th January and to the President by 15th February to enable the latter to analyse and consolidate for purposes of presentation to Parliament. In the case of judiciary, I understand that the estimates are forwarded to the President direct.

The Judiciary in Uganda operates a statutory vote and draws its money from the Consolidated Fund. One would be justified in saying that for any institution to be autonomous, it should be able to generate its own income and utilise it the way it deems fit. Though the Judiciary's funds are appropriated from the Consolidated Fund, it is the Executive arm of the state that collects all the taxes and mobilises all other resources utilised by the three arms of the state. The Judiciary is therefore not completely autonomous in the sense of financial autonomy. It expends its resources according to the targets and priorities set by the Judiciary agreed upon by both the Executive and the Judiciary in consultation with Parliament.

In utilisation of these funds the Judiciary is regulated by the Public Finance and Accountability Act, the Public Procurement & Disposal Act, Treasury Accounting Instructions and other Financial Regulations and Circulars that govern utilisation of government funds.

Proposal by Uganda Judiciary to the State

The Judiciary has proposed the Administration of Justice Bill to the State. The bill is intended to strengthen the independence and functional role of the Judiciary in the administration of justice and to de-link the Judiciary's core operational staff from the Ministry of Public Service. This bill also seeks to give financial autonomy to the Judiciary so that it's able to implement its mandate efficiently and effectively. In light of this therefore, it would be appropriate if future resource allocation to the Judiciary is matched with its expanded structure and roles.

Conclusion

The Judiciary in Uganda is semi autonomous. Although the appropriated funds are statutory and not subject to cuts from the Treasury, it does not control its realistic (ideal) budget and terms and conditions of service of its non judicial human resources.

I should add that for many years now judiciary is part of a sector wide Institution in Uganda called **Justice, Law and Order Sector [JLOS]**. When JLOS was initially created, basically because of external influence, the former Chief Justice Mr. Justice S.W. Wambuzi resisted it on the justifiable ground that putting together the judiciary and Ministries such as that of Justice and Departments such as Director of Public Prosecutions, Police & Prisons would affect the independence of the judiciary. Eventually, he reluctantly yielded to external pressure.

Until two years ago, for a number of years top judiciary administrators have complained openly about severe cuts in funding the judiciary. In September, 2007, the International Bar Association produced a report in which it quoted top judiciary Administrators as complaining that the judiciary was funded like a small department. The Officers pointed out the consequences of the poor funding of the judiciary. Consequences included accumulated case backlog. In the case of criminal justice, this meant that thousands of prisoners stayed in prison for many years without trial. Besides, there were delays in filling vacant judicial offices. There was delay in appointment of judges because appointment of new judges meant increase in expenditure such as purchase of vehicles for judges, remuneration and other facilities for new judges.

Again inadequate funding affected availability of physical structures. Up to last year, Uganda received substantial financial assistance from the Danish Agency for International Development [DANIDA] in areas like construction of many new Magistrates' Courts and improvement of existing up country High Court buildings. However the Court of Appeal cum Constitutional Court and the Supreme Court operate in rented buildings which is itself a reflection of inadequate funding of the judiciary.

In conclusion I would say that even though the judiciary in Uganda has a self accounting status, it is not fiscally autonomous.

ACCOUNTABILITY:

I have referred to the views of the late Chief Justice of Tanzania about what is meant by accountability. Accountability would include justification by the judiciary itself to the public for judiciary existence. It includes justification for getting taxpayers money. Article 126 of the Constitution is about the source of and exercise of judicial power. In my opinion the Article is about judiciary accountability.

Clause (1) it states thus-

“(1) Judicial power is derived from the people and shall be exercised by the courts

established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people”.

In Clause two it says:-

“(2) In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the

law, apply the following principles”—

- (a) justice shall be done to all irrespective of their social or economic status;*
- (b) justice shall not be delayed;*
- (c) adequate compensation shall be awarded to victims of wrongs;*
- (d) reconciliation between parties shall be promoted; and*
- (e) substantive justice shall be administered without undue regard to technicalities.*

These provisions indicate that even though judicial independence exists, the discharge of judicial functions should be in accordance with above standards. In addition to these, clause (1) of Article 28 imposes on the judiciary another very important duty namely **Fair Hearing**. It reads-

“ 28. (1) In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

Whereas performance of public office holders in Civil Service in Uganda is evaluated annually, this has not been the case for judges in Uganda. One main reason has been that such evaluation would amount to interference with judicial independence. However, the judiciary itself is aware of problems arising from lack of formal evaluation of performance by its judicial officers. So it set up a Judicial Integrity Committee [JIC]

whose duty is to ensure that Judicial Officers discharge duty and behave according to certain standards not only while performing judicial duties but in their personal and family life. In 2003, the Judicial Integrity Committee recommended to the judiciary and the judiciary, of all ranks, adopted the Uganda Code of Judicial Conduct. This details six Principles which Judicial Officers should observe namely; **Independence, Impartiality, Integrity, Propriety, Equality and Competence and Diligence.** Under competence and diligence judicial officers are expected to deliver judgments within **60 days** whenever judgments are reserved. **Peer Committees** were set up which together with JIC have a duty to promote awareness of the principles and rules set out in the code and to encourage all judicial officers to comply with those principles and rules. In short JIC and peers committees ensure that members of the judiciary render an account of themselves.

Finally, I should also mention that for about four years now, Magistrates [both professional and lay] are required to conduct the hearing of Criminal cases from day-to-day. This of course has some practical problems but the essence of the procedure is to expedite disposal of Criminal cases. This is a form of accountability.

Thank you.