

The Republic of Uganda

OAG



Office of the Auditor General

**VALUE FOR MONEY AUDIT REPORT
ON DISPOSING OF CASES IN THE JUDICIARY**



The High Court of Uganda, Kampala

**Prepared By
Office of the Auditor-General
P.O. Box 7083
Kampala**

March, 2011

TABLE OF CONTENTS

| | <u>Page</u> |
|--|--------------------|
| TABLE OF CONTENTS | i |
| LIST OF TABLES, FIGURES AND PICTURES | iii |
| LIST OF ABBREVIATIONS | iv |
| EXECUTIVE SUMMARY | v |
| CHAPTER 1 INTRODUCTION | 1 |
| 1.1 Background to the Audit | 1 |
| 1.2 Description of the Audit Area | 2 |
| 1.3 Statutory Mandate | 3 |
| 1.4 Vision, Mission, Goals and Objectives | 3 |
| 1.5 Major Activities | 4 |
| 1.6 Organisation Structure | 4 |
| 1.7 Financing | 5 |
| 1.8 Scope | 6 |
| CHAPTER 2 METHODOLOGY | 7 |
| 2.1 Document Review | 7 |
| 2.2 Interviews | 7 |
| 2.3 Inspection | 7 |
| CHAPTER 3 SYSTEMS AND PROCESSES MANAGEMENT OF CASES | 8 |
| 3.1 Roles and Responsibilities of Key Players | 8 |
| 3.2 Key Processes | 11 |
| CHAPTER 4 FINDINGS | 19 |
| 4.1 TIMELY DISPENSATION OF JUSTICE | 19 |
| 4.1.1 Time for Completion of Cases | 19 |
| 4.2 COURT PROCEDURES | 19 |
| 4.2.1 Delivering Summons to Defendants | 19 |

| | | |
|----------------------------------|--|-----------|
| 4.2.2 | Filing Defence | 20 |
| 4.2.3 | Holding Scheduling Conferences | 21 |
| 4.2.4 | Mediation | 22 |
| 4.2.5 | Adjournments | 25 |
| 4.2.6 | Delivering Judgment | 26 |
| 4.3 | ICT INFRASTRUCTURE | 27 |
| 4.3.1 | Recording of Court Proceedings | 27 |
| 4.3.2 | Adoption and use of CCAS in Management of Cases | 28 |
| 4.4 | STAFFING | 30 |
| 4.4.1 | Filling of Vacant Posts | 30 |
| 4.4.2 | ADR Training and Sensitisation | 32 |
| 4.5 | MONITORING AND EVALUATION OF PERFORMANCE | 33 |
| 4.5.1 | Staff Performance | 33 |
| 4.5.2 | Court Inspectorate Function | 34 |
| 4.5.3 | Coordination of Stakeholders in Justice System | 35 |
| CHAPTER 5 | CONCLUSIONS | 36 |
| CHAPTER 6 | RECOMMENDATIONS | 38 |
| GLOSSARY OF TERMS | | 42 |
| <u>LIST OF APPENDICES</u> | | |
| Appendix (i) | Organisation Chart | |
| Appendix (ii) | List of Documents obtained and reviewed during audit | |
| Appendix (iii) | Analysis of Adjournments for selected cases | |

| <u>List of Tables</u> | <u>Page:</u> |
|--|---------------------|
| Table 1: Number of deaths reported and prosecuted as a result of mob justice | 2 |
| Table 2: Sources of Judiciary Funds - 2006/07 to 2009/10 | 6 |
| Table 3: Staffing position in the Judiciary for Judges and Magistrates | 30 |

List of Figures:

| | |
|--|----|
| Figure 1: Case Backlog from 2006/07 to 2009/2010 | 1 |
| Figure 2: Time taken to complete Mediation | 23 |
| Figure 3: Status of cases filed for mediation in the High Court Commercial Division | 23 |
| Figure 4: Growth rate of Cases Filed, Disposed and staff in position for the period - 2007/08 to 2009/10 | 32 |

List of Pictures:

| <u>List of Pictures:</u> | <u>Page:</u> |
|---|---------------------|
| Picture 1: Case files kept in exhibits room | 29 |
| Picture 2: Case files on the floor | 29 |

ABBREVIATIONS:

| | |
|---------|--|
| ADR | Alternative Dispute Resolution |
| bn | Billion |
| CADER | Centre for Arbitration and Dispute Resolution |
| CCAS | Court Case Administration System |
| CCIS | Court Case Information System |
| CM | Chief Magistrate |
| CRTS | Court Recording and Transcription System |
| DCC | District Coordination Committees |
| DPP | Directorate of Public Prosecutions |
| EFT | Electronic Filing System |
| FCC | Family and Children Court |
| FY | Financial Year |
| GAL | Government Analytical Laboratory |
| ICT | Information and Communications Technology |
| INTOSAI | International Organisation of Supreme Audit Institutions |
| IT | Information Technology |
| JLOS | Justice Law and Order Sector |
| JSC | Judicial Service Commission |
| LC | Local Council |
| MIS | Management Information System |
| OAG | Office of the Auditor-General |
| OIS | Operation Information System |
| RSA | Resident State Attorney |
| Ug Shs | Shillings |
| SI | Statutory Instrument |
| SWAP | Sector Wide Approach |
| URA | Uganda Revenue Authority |
| VFM | Value for Money |

EXECUTIVE SUMMARY

Introduction:

This Value for Money (VFM) audit on Disposing of Cases by the Judiciary was conducted in accordance with Article 163(3) of the 1995 Constitution of the Republic of Uganda. This mandate is amplified by Section 21(1) of the National Audit Act 2008 which requires the Auditor-General to carry out VFM audits for purposes of establishing economy, efficiency and effectiveness in the operations of any department or ministry.

The Judiciary is a creation of Article 126 of the 1995 Constitution of the Republic of Uganda as the third arm of State under the doctrine of separation of powers, whose major role is to dispense justice to all people in Uganda, through timely adjudication of disputes without discrimination.

The Office of the Auditor-General (OAG) instituted a VFM audit to assess the performance of the Judiciary in regard to disposing of cases, to identify the challenges, if any and provide possible recommendations to mitigate them.

The audit was conducted in accordance with International Organisation of Supreme Audit Institutions (INTOSAI) Auditing Standards and Guidelines. The focus of the audit was on timely disposal of cases. The areas covered by the audit included the Judiciary headquarters in Kampala, the High Court in Kampala and the Commercial Division of the High Court. Other High Courts Circuits selected included: Soroti, for the Eastern Region, Gulu, for the Northern Region and Masindi for the Western Region. The Magistrates Courts visited included: Mubende, Luwero and Masaka for the Central Region, Jinja, Mbale and Tororo for the Eastern Region, Nebbi, Arua, Lira and Kitgum for the Northern Region and Fort-Portal, Bushenyi and Kasese for the Western Region.

To collect data, we reviewed documents, conducted interviews and carried out physical inspection/observation of court facilities and premises. This audit report covers four financial years from July 2006 to June 2010.

Audit Findings:

The following audit observations were made:

Timely dispensation of Justice:

Time for completion of Cases:

The judiciary is experiencing delays in completing cases within the stipulated time, leading to case backlogs in courts. The delays have been attributed to the following challenges in the Judiciary.

Court Procedures:

Delivering Summons to defendants:

Courts are experiencing delays in delivering summons to defendants and in some instances summons are not delivered at all. There is lack of clarity as to who meets the costs of delivering summons which in turn leads to delays in court proceedings.

Filing Defence:

The audit noted that the Written Statements of Defence are not filed in a timely manner and at times not filed at all, causing delays in hearing cases and resulting in ex-parte judgments.

Holding Scheduling Conferences:

Scheduling Conferences are not held by some courts as required, save for the Commercial Court Division and other Circuits of the High Court. Failure to hold scheduling conferences impairs speedy trials where there are no lawyers.

Mediation:

Mediation is not conducted in all courts apart from the Commercial Court Division of the High Court. The time taken to hold mediation in certain instances exceeds the mandatory 30 days and some cases fail the mediation process. Limited application of mediation by the courts denies parties an opportunity of reaching an amicable settlement.

Adjournments:

There are frequent adjournments made in court, the adjournments are recorded on the files but not all the reasons for such adjournments are recorded on case files. Frequent adjournments lead to wastage of court resources, frustration and costs to litigants. This ultimately results in delay in completion of cases in court.

Delivering Judgment:

The audit noted that after the hearing of cases was completed, judgments were not delivered within the stipulated 60 days, which may lead to delayed justice and, subsequently, case backlog in courts.

Information and Communications Technology (ICT) Infrastructure:

Recording of Court Proceedings:

The Judiciary has not been able to acquire Court Recording and Transcription Systems for use in all Courts. Court recording equipments were being used only at the Commercial Court Division of

the High Court. It was noted that manual recording systems are widely used, resulting in delays in hearing and disposing of cases.

Adoption and use of Court Case Administration System (CCAS) in Management of Cases:

The Judiciary has not rolled out CCAS to all magisterial areas thus limiting the easy management of case files. The manual filing system which is widely used in courts is characterised by challenges in filing, storage and retrieval of case files, which leads to misplacement/loss of files of adjournments; thereby denying litigants timely justice.

Staffing:

Filling of Vacant Posts:

The Judiciary does not have enough staff to execute its mandate. The audit noted that the staff growth rate was decreasing in the years under review, while the number of cases filed was increasing. This may lead to compromise of service delivery and subsequently case backlogs.

Alternative Dispute Resolution (ADR) Training and Sensitization:

The Judiciary has not been able to have formal arrangements of training staff and sensitising the public on the use of ADR, this limits awareness of ADR and encourages the use of adversarial procedures, and consequentially increases case backlog.

Monitoring and Evaluation of Performance:

Staff Performance:

It was noted during the audit, that traditional Civil Servants and other Judicial Officers are appraised through the public service appraisal system, but there is no system in place to appraise Judges, making it difficult to assess their performance and making them accountable in view of the ever-increasing case backlog and public complaints.

Court Inspectorate Function:

The Audit observed that the inspectorate department does not have adequate staff to execute its responsibilities, making it difficult for the department to make timely response to complaints, to enhance ethics and integrity in the judiciary.

Coordination of Stakeholders in the Justice System:

It was noted that joint meetings are held under the District Coordinating Committee (DCC)/chain-linked initiative to improve working relations; however, they are not conducted monthly as

required. Follow-up of jointly agreed upon strategies by the various agencies /stakeholders becomes difficult.

Recommendations:

Delivering Summons to Defendants:

- The court should ensure that the responsibility of facilitating Process Servers is streamlined to avoid delays.
- Penalties should be put in place to deter process servers making false affidavits.
- Only people with a reputable record of reliability in delivering summons to the right people in the right destinations should be registered as court process servers.
- The Judiciary should also conduct regular training of process servers to enhance their capacity.

Filing Defence:

- The Judiciary should improve coordination with paralegals, legal aid clinics and encourage volunteers through legal associations and advocates to help more people and sensitise them about the importance of making written statements of defence and to help the poor who may not afford legal services.
- Courts should also ensure that parties are properly served before ex-parte judgments are made.

Holding Scheduling Conferences:

- The Judiciary should sensitize judicial officers at all levels and advocates on the use of scheduling conferences in courts to speed up trial of cases.
- Parties that are not represented should be encouraged to use services of legal aid clinics where non-representation are cited as a hindrance to holding scheduling conferences.

Mediation:

- The Judiciary should spearhead efforts and collaborate with the Judicial Service Commission (JSC) and the Centre for Arbitration and Dispute Resolution (CADER) to sensitise the litigants, advocates and the public about the benefits of mediation as a method of resolving disputes.
- The Judiciary should train and sensitize judicial officers on the use and benefits of mediation. Rules to regulate the process should be put in place to guide officers in all Courts of Judicature.

- The Judiciary should also make a proactive arrangement of ensuring that trained mediators are availed to operationalize mediation in all courts. Management should have a comprehensive arrangement to fast track the process of rolling out mediation to all courts.

Adjournments:

- The Judiciary should put in place detailed procedures of handling adjournments to eradicate unnecessary delays.
- Requests for adjournments made in good faith should be done in writing and agreed upon by all parties with their advocates.
- The judiciary should design a mechanism of facilitating witnesses promptly to enable them to attend Court sessions as scheduled.

Delivering Judgments:

- Management should ensure that the practice of judgment on notice is discouraged and the set timelines for delivering judgment adhered to.
- Courts should be facilitated and encouraged to make use of internet for delivery of well researched judgments.
- The High Court Inspectorate should ensure that follow-up is made on cases where hearing and submissions are complete for prompt judgment.
- Regular reporting and monitoring of the progress of cases from filing, hearing to final disposal should be emphasised and corrective measures taken through early and continuous intervention to reduce unreasonable delay.

Recording of Court Proceedings:

- The Judiciary should expedite and prioritise the acquisition of court recording and transcription equipments.

Adoption and use of Court Case Administration System (CCAS) in the Management of Cases:

- Management should expedite the process of upgrading CCAS/CCMS to handle e-forms, electronic data processing and Electronic Filing Systems (EFS).
- A comprehensive roll-out plan should be designed to ensure that all magisterial areas are served by the CCAS.
- Management should train and sensitize staff that interface with CCAS to improve acceptability and use of the system.

- Management should train court clerks in customer care skills, IT, file and records management to improve the image of the Judiciary and timely management of cases.

Filling of Vacant Posts:

- Management should ensure that efforts are made expeditiously, to fill all vacant posts with quality staff (e.g. Court Inspectorate) to avoid backlog of cases.
- Adequate contingency plans should always be put in place before judicial officers are released on secondment outside the Judiciary.

Alternative Dispute Resolution (ADR) Training and Sensitization:

- The Judiciary should sensitise judicial officers and advocates on use of Alternative Dispute Resolution (ADR) to help them apply it as a mechanism for justice delivery and a viable tool of shifting from litigation to dispute resolution, with an ultimate goal of enhancing harmony among the litigants.

Staff Performance:

- Management should expedite the process of developing an appropriate system to assess the performance of Judges/judicial officers.

Court Inspectorate Function:

- Management should put in place a proactive system of reviewing and acting upon court inspectorate recommendations.

Coordination of Stakeholders in the Justice System:

- All stakeholders in the justice system (e.g. Prisons, Police and the DPP) should ensure that monthly meetings are held to improve the level of communication, coordination and cooperation.

CHAPTER 1
INTRODUCTION

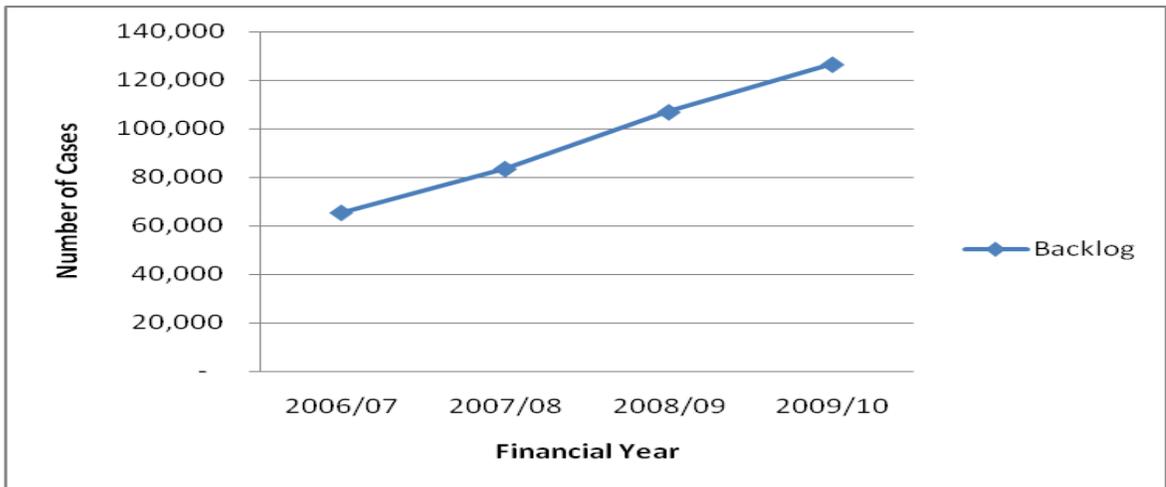
1.1 Background to the Audit:

This Value for Money audit on Management of Cases by the Judiciary was conducted in accordance with Article 163(3) of the 1995 Constitution of the Republic of Uganda. This mandate is amplified by Section 21(1) of the National Audit Act 2008 which requires the Auditor-General to carry out value for money audits for purposes of establishing economy, efficiency and effectiveness in the operations of any department or ministry.

Motivation:

Over the past four years, the Judiciary has had a challenge in clearing pending Court cases. The case backlog has increased from 65,423 in 2006/07 to 126,521 in 2009/10 as shown in Figure 1 below.

Figure 1: Case Backlog from 2006/07 to 2009/10.



Source: Judiciary CCAS Summary Performance Reports.

This trend contradicts the judiciary's mission¹ since justice has not been dispensed to all people in Uganda in a timely manner. People seeking justice may despair and lose confidence in the judicial system. The rampant acts of mob-justice by the population may in part, be an expression of the dissatisfaction of the people who had been denied justice. A total of 986 people were killed in mob action in Uganda between 2007 and 2009 as shown in Table 1 below.

¹ To dispense justice to all people in Uganda, through timely adjudication of disputes without discrimination.

Table 1: Number of deaths reported as a result of mob-justice for the Years 2007 to 2009.

| Case/Year | 2007 | 2008 | 2009 |
|------------------|-------------|-------------|-------------|
| Reported Cases | 286 | 368 | 332 |

Source: Uganda Bureau of Statistics, Statistical Abstract 2010 – Table 2.7 B.

Apart from the inability to dispense justice on time, increased pending cases negatively impact on the management of prisons as evidenced by overcrowding in Uganda Prisons which stood at 212% in June 2009. Of the 30,000 prisoners, 60% were on remand, implying that their trials were still pending.

Delays in disposing of cases in the Judiciary are attributed to poor filing system, frequent adjournments, and limited application of Alternative Dispute Resolution (ADR) mechanisms, inadequate staff and poor monitoring, among others.

It is against this background that the Office of the Auditor General decided to carry out a Value for Money audit to verify the challenges, analyse their causes and make recommendations to address them.

1.2 Description of the Audit Area:

The Judiciary is a creation of the 1995 Uganda Constitution of the Republic of Uganda under chapter 8 Articles 126 to 150. The Judiciary is the third arm of Government under the doctrine of separation of powers. The other two are: the legislature, which makes laws; and the executive; which enforces them.

The judicial power of the Uganda Government is exercised by Courts of Judicature, consisting of the Supreme Court, Court of Appeal/Constitutional Court, and the High Court, (the 3 are superior Courts of record) and other subordinate Courts established by Parliament which include: Chief Magistrates Courts, Grade I Magistrate's Courts, Grade II Magistrate's Courts, the Local Council Courts and Family and Children Courts (FCC).

To improve delivery of quality justice to all areas of Uganda, 12 High Court Circuits have been created and they include the following: Kampala High Court, Nakawa, Mbarara, Fort Portal, Jinja, Gulu, Masindi, Kabale, Mbale, Masaka, Arua and Soroti. This is also intended to ensure that there is no part of the country, which is more than 150 Kilometres from a High Court Circuit.

Administrative Divisions of the High Court:

The work and operations of the High Court are concentrated in the Administrative Divisions which are the basic administrative and professional units of the High Court. Divisions are specialized units, with clearly demarcated jurisdiction over the nature and kind of cases handled in each of them. Each Division has a substantial measure of autonomy in the sense that each has its own independent registry headed by its own Registrars and assisted by its own specially designated support staff. These Divisions include: the Commercial Division, the Land Division, the Family Division, the Civil Division, the Criminal Division, the Anti-Corruption Court and the War Crimes Division.

1.3 Statutory Mandate:

The Mandate of the Judiciary is as enshrined in Article 126 (1) of the Constitution of the Republic of Uganda which states that 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 the laws and with the values, norms and aspirations of the people.

1.4 Vision, Mission Statement, and Strategic Objectives:

The vision, mission, goals and objectives of the Judiciary are stated as follows:

Vision:

"To have a strong and independent judiciary that delivers and is seen by the people to deliver justice and contribute to economic, social and political transformation of society based on the rule of law."

Mission Statement:

"To dispense justice to all people in Uganda, through timely adjudication of disputes without discrimination"

Strategic Objectives:

- To ensure that justice shall be done to all irrespective of their social or economic status;
- To ensure that justice is not delayed;
- To ensure that adequate compensation is awarded to victims of wrong;
- To promote reconciliation between parties, and
- To ensure that substantive justice is administered without undue regard to technicalities.

1.5 Major Activities:

The major activities of the Judiciary are as follows:

- Administer justice through resolving disputes between citizen and citizen and between the State and citizens;
- Interpret the Constitution and the laws of Uganda, promote the rule of law and contribute to the maintenance of order in society;
- Protect the human rights of individuals and groups;
- Initiate, develop and implement training programmes for the development of the Judiciary staff;
- Contribute to the enforcement of law and order,
- Enrol and license advocates;
- License and discipline Court brokers/bailiffs;
- Keep custody of laws enacted as well as disseminate legal literature;
- Receive Government revenue accruing from Courts; and
- Introduce modalities for out of Court dispute resolutions to reduce the burden of cases on the Courts.

1.6 Organisation Structure:

The Chief Justice is the Head of the Judiciary responsible for the administration and supervision of all Courts in Uganda and may issue orders and directions to the Courts that are necessary for the proper and efficient administration of justice. He/she also heads the Supreme Court.

Four (4) top officials from the management team responsible for specific areas assist the Chief Justice, namely:

- Deputy Chief Justice responsible for Court of Appeal/Constitutional Court.
- Principal Judge responsible for supervision of High Court and all lower Courts.
- Chief Registrar responsible for administration of Courts in terms of confirmation, deployment, promotion and discipline of Judicial Officers,
- Secretary to Judiciary – Accounting Officer and responsible for general administration and welfare of the Judiciary.

An organisation structure summarising the above relationships is attached as appendix (i).

The Chief Registrar, who is at the level of Permanent Secretary, and is assisted by a management team of Registrars, carries out the management of the Judiciary on a day-to-day basis. Registrars are ordinarily drawn from the cadre of Magistrates in the lower Judiciary. They include Registrars of the Supreme Court, Court of Appeal, the High Court, Research and Training, the Inspector of Courts, Registrar Planning and Development, and Deputy and Assistant Registrars. Some managerial functions are delegated to committees composed of members of the Judiciary management. The Chief Registrar and the Secretary to Judiciary are parallel centres of authority at the level of Permanent Secretary, with the Chief Registrar heading the technical branch consisting of judicial officers and the Secretary to Judiciary heading the Administration and Finance. There is in effect a split between the management of judicial and administrative staff, even though both sets of staff work on similar activities on a day-to-day basis.

Resident Judges are responsible to the Principle Judge and are facilitated to handle managerial responsibilities in their areas of jurisdiction. Some Judges exercise substantial influence in certain areas by virtue of their appointment on adhoc committees, such as the Judicial Training Committee, the Judicial Integrity Committee and the IT Implementation Subcommittee, among others. Some Judges are appointed as Chair of Commissions of Inquiry or other Commissions or Committees outside the Judiciary. Resident High Court Judges in upcountry Court stations may but are not obliged to supervise subordinate Courts within their jurisdictions. Deputy Registrars in up-country Court stations are generally responsible for the management of the Resident High Court stations. Chief Magistrates are both the judicial and administrative managers of their Court stations (except where Deputy Registrars are posted), including the subordinate Courts within their chief magisterial areas.

1.7 Financing:

The Judiciary is funded by the Government of Uganda and development partners under the Justice Law and Order Sector (JLOS)/Sector Wide Approach (SWAP) Programme which include: the Government of Denmark, the Government of Netherlands, the European Union, the Government of Austria, the World Bank, the Government of the United Kingdom, the Government of Norway, the Government of Sweden, the

Government of Ireland and the Government of Germany. The details of funding by source are summarized in Table 2 below:

Table 2: Sources of Judiciary Funds – 2006/07 to 2009/10

| Source/Financial Year | 2006/07 (Shs in bn) | 2007/08 (Shs in bn) | 2008/09 (Shs in bn) | 2009/10 (Shs in bn) |
|------------------------------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|
| GoU Funds | 24.33 | 33.29 | 45.63 | 51.2 |
| Donor Funds | 6.74 | 4.21 | 1.33 | 1.34 |
| TOTAL | 31.07 | 37.50 | 46.96 | 52.54 |

Source: Judiciary Financial Statements for 2006/07 to 2009/10 and Ministry of Justice and Constitutional Affairs Policy Statement 2009/10.

1.8 Scope:

The audit which focused on the Management of Cases in the Judiciary covered four financial years from July 2006 to June 2010. It covered the Judiciary headquarters in Kampala, the High Court in Kampala and the Commercial Division of the High Court. Other High Courts Circuits selected included: Soroti, for the Eastern Region, Gulu, for the Northern Region and Masindi for the Western Region. The country was stratified into 4 regions: (Central, Western, Eastern and Northern Region) to provide a balanced opinion. Magistrates Courts were also randomly selected from the 4 regions/strata as follows: Mubende, Luwero and Masaka for the Central Region, Jinja, Mbale and Tororo for the Eastern Region, Nebbi, Arua, Lira and Kitgum for the Northern Region and Fort-Portal, Bushenyi and Kasese for the Western Region.

For purposes of this audit, the processes studied start at the time of filing a case up to when judgment is delivered.

CHAPTER 2

METHODOLOGY

The audit was conducted in accordance with International Organisation of Supreme Audit Institutions (INTOSAI) Auditing Standards and OAG Audit VFM Manual. Those Standards require that a Performance/VFM Audit should be planned in a manner which ensures that an audit of high quality is carried out in an economic, efficient and effective way and in a timely manner. In collecting data from the field, the team reviewed documents, carried out interviews and physical inspection/observation of the facilities.

2.1 Document review:

The team obtained and reviewed the documents shown in Appendix (ii), to obtain information relating to the legal framework and mandate of the Judiciary, assess financial performance, obtain the organisation mandate, Vision, Mission, Goals and Objectives, financial forecasts and performance for the period under review.

2.2 Interviews:

The team interviewed the Chief Registrar, Registrar High Court, Kampala, Deputy Registrar Commercial Court Division, Deputy Registrar High Court Circuits in Soroti, Gulu and Masindi. The team also interviewed the Chief Magistrates of Mubende, Luwero, Masaka, Jinja, Mbale, Tororo, Nebbi, Arua, Lira and Kitgum, Fort-Portal, Bushenyi and Kasese. Court Clerks/Process Servers in the respective Courts above were also interviewed. Other officers interviewed included the Principal Personnel Officer and the Head, Information Technology based at the headquarters.

2.3 Inspection:

The team inspected High Court Circuits and Magistrates Courts to assess the suitability and stock of Libraries, existing condition and usage of computing and recording equipment, filing, recording and management of Court registries.

CHAPTER 3

SYSTEMS AND PROCESSES IN MANAGEMENT OF CASES

3.1 Roles and Responsibilities of Key Players:

Uganda Police Force:

The Uganda Police Force is the principal State body established under Article 211 of the 1995 Constitution and Section 2 of the Police Act Chapter 303 with the responsibility of preserving law and order. Its other constitutional functions include: the protection of life and property, the prevention and detection of crime and cooperation with the civilian authority, other lawful security organs and the population in general for the maintenance of order, peace and tranquillity in Uganda. The police have powers to search, investigate and arrest suspects. They also have powers to give a police bond, which should not be paid for.

Directorate of Public Prosecutions:

The Directorate of Public Prosecutions (DPP) is a public office established under Article 120 of the 1995 Constitution of Uganda. It is responsible for the prosecution of all criminal cases in the country. It has power to direct the Police to investigate any information of a criminal nature and report back to the Directorate. The DPP has offices in many of the districts of Uganda. These offices are referred to as offices of the Resident State Attorney (RSA).

Uganda Prisons Service:

Uganda Prisons Service is established under Article 215 of the 1995 Constitution and Section 3 of the Prisons Act, 2006. It is part of the integrated justice system responsible for the safe, secure and humane custody of prisoners who are sentenced to imprisonment and individuals who are remanded by the Courts of Uganda. Besides custody, the Prisons Service is responsible for providing social rehabilitation of prisoners in preparation for their integration back to the communities upon completion of their sentences. Rehabilitation includes providing prisoners with skills (industrial and agricultural) which they will find useful once out of prison.

Ministry of Justice and Constitutional Affairs:

The Ministry of Justice and Constitutional Affairs provides legal advice and legal services to the Government. It also gives support to the legal framework for good governance as well as technical advice on matters of Government and interpretation of the Constitution and other laws. The Solicitor General represents Government in Civil matters.

Judicial Service Commission:

The Judicial Service Commission is established under Article 146 of the 1995 Uganda Constitution. The recruitment and promotion of judicial staff in the Judiciary is the responsibility of the Judicial Service Commission (JSC). The JSC is also charged with the responsibility of exercising disciplinary control over persons holding or acting in such offices and to remove such persons from offices. When the Commission executes those functions the rules of natural justice are observed. The officer to be disciplined is informed of the charges laid against him/her and is allowed to defend himself/herself. He/she may be represented by an advocate and has a right to cross-examine any witness who gives evidence against him or her. In case of the Chief Justice, Deputy Chief Justice, the Principal Judge, Justices of the Supreme Court, Justices of Appeal and High Court Judges, the Commission advises the President if necessary, to set up a tribunal to remove those in office on the grounds laid down in the Constitution. They include inability to perform the functions of the office arising from infirmity of body or mind, misbehaviour or misconduct and incompetence.

Centre for Arbitration and Dispute Resolution (CADER):

The Centre for Arbitration and Dispute Resolution (CADER) was established under section 67(1) of the Arbitration and Conciliation Act chapter 4 with a view to promoting the use of alternative methods of resolving disputes through the use of methods such as arbitration, mediation and conciliation.

Local Council Courts:

The Local Council Courts (LC Courts) are Courts established by section 3 of the Local Council Courts Act, 2006. They are set up at village, parish, sub-county, Town and Division level. There are three grades of local council Courts, namely: Local Council Court I, Local Council Court II and Local Council Court III. There are no LC IV and LC V Courts.

These Courts are presided over by lay people in elective positions. However, these Courts are expected to follow the key principles that must be observed in the administration of justice, such as principles of natural justice, equality before the law and fairness. In handling cases arising out of customary practices, LC Courts should be mindful that the Constitution forbids customs or practices that discriminate against people on the grounds of sex, religion, clan, race, colour, ethnic origin or social or economic standing, political opinion or disability.

Among the LC Courts, only the LC I Courts have original jurisdiction. This means that when a person has to file a case in the LC Court, he or she should begin in the LCI Court. LC II and LC III Courts only have power to hear appeals. When a party to a case is not satisfied with a decision of the LC I Court, the party may appeal to the LC II Court. If one is still not satisfied with the decision of the LC II Court, he or she is free to appeal to the LC III Court. Should one of the parties still not be satisfied with the LC III Court, such a party has the right to appeal to the Chief Magistrate's Court.

The High Court Inspectorate:

The High Court Inspectorate is headed by a Registrar. Its role is to have in place appropriate machinery for inspection of Courts and evaluation of the performance of Magistrates and other Judicial Officers. There are 5 main areas of Inspectorate activity, namely: field inspections, investigation and evaluation of complaints from the public, post inspection reviews, regular liaison with Chief Magistrates and joint inspection activity with other justice inspectorates and the administration and finance departments of the Judiciary.

Judges/Magistrates:

These preside over cases, scheduling (pre-trial conferences), set timetables and deliver judgment. After judgment, the magistrates determine the bill of costs and execution of the judgment. However, the decisions made by the Judges are enforced by Registrars.

Registrars:

The Administration of the High Courts is in the hands of the Registrars who are assisted by Deputy Registrars and Assistant Registrars in the running of Registries. Registrars and Deputy Registrars also have judicial powers within their respective areas of jurisdiction, under the provisions of Order 46 of the Civil Procedures Rules. These Rules empower Registrars to take all preliminary steps before trial and hear all interlocutory applications.

Advocates:

These represent their clients in court, help them to explain and present their views in court, serving their best interests. They also help clients in filing important documents like written statements of defence, attending scheduling conferences where technicalities are sorted out and important issues agreed upon.

Judiciary ICT Section:

The section is charged with providing technical support services in form of computer repair, maintenance, and troubleshooting, help desk and user assistance. Management of CCAS and Court Recording and Transcription System (CRTS) is the responsibility of this section.

3.2 Key Process:

i. Civil Cases:

The civil justice process is the system that exists to settle disputes between citizens (individuals, organizations and government). The burden of proof in a civil case is on the balance of probabilities. The aggrieved party has a duty to file the case. The processes of which are as follows:

Registering a case:

In civil matters, the person who has a claim (plaintiff) against someone else (defendant), registers a case with the Courts registry. The registry opens a file for the case. The case should be filed in a Court which has the jurisdiction to hear the matter.

Payment of fees:

Before a Plaint or any other pleadings can be accepted as properly filed in the Court, the Plaintiff is required to pay filing fees computed by the registry staff based on a schedule set by the Court. These fees are paid to Uganda Revenue Authority (URA) through the bank or where there are no banks, it is paid to the cashier of the Court who issues an official receipt to the person paying the fees. The fees vary from case to case depending on the subject matter of the case and the monetary value of the claim. Court clerks usually assess the fees and are guided by a fees schedule.

Allocating a number:

Registry staff gives the case a suit number and forwards the file to the Registrar or Chief Magistrate for consideration and allocation.

Issue of summons:

Summons are delivered/served on the defendant in the case by the plaintiff. The plaintiff must take to the defendant a copy of the summons and the plaint. A plaintiff may request a Court clerk (process server) to deliver the summons to the defendant on his or her behalf.

When summons are served, the one who delivers them has to sign and file an affidavit of service.

Filing defence:

The defendant then drafts and submits a written statement of defence within 21 days for individuals, entities and non-statutory corporations. Defence by government and statutory corporations should be submitted within 30 days or 45 days on notice (Rule 11 Civil Procedure (Government Proceedings) Act 77-1).

Mediation:

If appropriate, the case is referred for mediation which should be completed within 30 days. If mediation is successful, the case will be settled, if not, it proceeds for scheduling.

Scheduling conference:

A date for a scheduling conference is fixed by the court and the parties or their advocates. A notice detailing the date and time of the scheduling conference is signed and issued by the Registrar and given to all parties in the suit. A file is forwarded to the relevant Judge/Magistrate to enable him/her study the case prior to the scheduling conference. This conference is held within twenty-eight (28) days from the date when the last reply/rejoinder was filed in Court. However, the Court is empowered to extend this time where sufficient reasons are given. The scheduling conference is used to discuss the facts, issues, the law applicable and evidential matters; and to ascertain whether the parties have complied with the requirements of going for mediation or tried out other Alternative Dispute Resolution (ADR) Methods. As agreements may be reached at the Scheduling Conference, the Judges require that other than the Advocates retained in the cases, the parties or their representatives who can make binding decisions, attend the Scheduling Conference. Where settlement is not possible, the Judge/Magistrate sets a timetable for the hearing of the case.

Hearing:

The hearing begins with the plaintiff's lawyers stating the facts, issues and summary evidence to be adduced in court. In response, the defendant's lawyer presents his/her case. Most of the evidence is usually oral, but the parties will also introduce documentary evidence that may be relevant to the merits of the case. After all the evidence has been adduced and recorded by court, both sides make closing arguments, in which each lawyer persuades court

to give judgement in his/her favour. The Judge/Magistrate can ask each lawyer to file written submission in court and then the date for giving judgement is set.

Judgment:

Following the hearing (where parties or through their lawyers make submissions after hearing either in writing or orally), the Judge/Magistrate then takes the evidence and renders a decision as to who is right and the judgment ought to be given within 60 days.

Decree and Bill of Costs:

A successful party extracts a decree from the Judgment. S/he serves a copy of the decree on the opposite party for approval (signature). The successful party will lodge copies of the decree with the Registrar for signing and appending a court seal. A bill of costs, certificate of taxation and taxation hearing notices are sent to the Registrar. The court will then fix a taxation hearing date on the taxation hearing notices which will then be served to the parties. After taxation the Registrar will issue a certificate of taxation.

Execution:

The judgement debtor is served the decree, certificate of taxation and the taxed bill of costs together with the demand for payment. If the losing party fails to pay all sums due, the successful party can apply for execution of the decree. The Registrar issues a warrant of execution and appoints a bailiff to recover the sums owed. After execution, details of the money/property recovered are given to the Court together with any actual money recovered. The money is then given to the successful party to the case.

Appeal:

The losing party has the right to appeal the decision to a superior Court. The role of the Appellate Court is to examine the record of proceedings of the lower Court and evaluate the evidence that was adduced in the said proceedings. The record of proceedings in the lower court and all documentation for the appeal are filed by the appellant in the appellant court. The appellate Court does not conduct a new trial. Instead, it usually hears oral arguments from the attorneys for both sides. After hearing the arguments and reviewing the record, the Court will either affirm or reverse the lower Court decision (it can affirm some parts and reverse others). In some cases, it will return the proceedings to the lower Court for a re-trial. However, if it refuses to set aside the decision, then the decision of the lower Court will be final.

An appeal from the Court of Appeal can be made to a final appellate Court (Supreme Court). As with any Appellate Court, the Supreme Court will review the record, hear oral arguments (if necessary), and render a decision. All decisions of the Supreme Court are final. The East African Court of Justice, however, is the Appellate Court for human rights cases.

ii. Criminal Cases:

The criminal justice process is the system that exists to try people for crimes for which they have been charged. The burden of proof in a criminal case is on the State and it requires proof of the crime beyond reasonable doubt.

Generally, the criminal justice process may involve investigation, search, interrogation, arrest, plea, negotiation, trial, verdict/judgment and or appeal. Investigations may be initiated by the police as they observe, say, in traffic offences, or a case may be reported to police. Following an arrest, the police has 48 hours during which they must either charge the person with a crime or release them.

A trial begins by an accused person being brought before Court, informed of the accusations against him or her and then asked to plead to the allegations.

To plead to an accusation is to be asked by a judicial officer whether one admits or denies the accusation against him or her. This means that they must say whether they plead "guilty" or "not guilty". The accused may also plead that "he/she has previously been acquitted or convicted, or pardoned by the President" on the same offence. Where the accused pleads guilty, the Magistrate must record the words of the accused in pleading guilty. The Magistrate should ensure that the accused has understood the nature of the charges.

If the Magistrate is satisfied that the accused is guilty, he/she may find the accused guilty on what he or she has said. There is no need for a further trial. If the Magistrate is not satisfied, he or she will record a plea of "not guilty". Where the accused pleads not guilty, the Magistrate continues with the trial process. Where the accused pleads not guilty but the case cannot be concluded on the same day or if the magistrate has no powers to hear the case (like treason, murder, defilement, rape and robbery with violence), the accused person will be sent on remand.

Application for bail:

An accused person who pleads not guilty has a right to apply for bail. It is also a legal duty under the Magistrates Courts Act, for magistrates to inform the accused of their right to bail. The application for bail before a magistrate should be made promptly before the magistrate makes the decision to remand the accused person. For cases where bail can only be given by the High Court, it is the duty of the magistrate to inform the accused person that he or she has a right to apply for bail in the High Court.

Where the accused has pleaded not guilty but the prosecutor states that investigations are not yet completed, the Court will fix the case for mention. Mentioning a case is when the accused comes back to Court and is informed about the status of his or her case, for instance, whether investigations have been concluded or not. Where investigations are completed, the Court fixes the case for hearing. On the hearing date, the prosecution will begin by calling witnesses for the State to show that the accused committed the offence for which he or she is charged. The prosecutor will ask each witness to tell the Court what he or she knows about the case - that is to give evidence. After each prosecution witness' evidence, the accused or his or her lawyer will have a chance to ask each witness questions (called "cross-examination"). The aim of cross-examination is to obtain evidence from the witness to support the accused's case, or to show that the witness is not telling the truth.

After cross-examination of each of the State's witnesses by the accused or his or her lawyer, the prosecutor may ask the witnesses further questions (called "re-examination"). The aim of re-examination is to clear up or confirm answers that were made and looked untrue or unreliable in cross-examination. The Court may also ask questions to get clarifications. After the prosecutor has called all the State witnesses and each has been cross-examined and re-examined, the prosecutor closes the State's case. This means that the prosecutor thinks that he or she has proved the State's case and it is the turn of the accused to present his or her case.

Procedure at close of prosecution case

After the prosecution has stated and closed its case and it appears to the Court that the facts stated do not seem to prove or support the charges against the accused, the Court dismisses the case without putting the accused to his or her defence. In other words, the Court will be of the view that the accused should not be bothered in making replies to charges that have not been proved by the State. If it appears to Court that a case is made out against the

accused person the Court shall inform him of the three options available to him that is, a right to give evidence on oath of the witness box and if he or she does so will be liable to cross examination, to make a statement not on oath from the dock, or a right to remain silent.

An accused person has a right to call witnesses. Court shall ask the accused if he or she has any witnesses to examine or other evidence to give in his or her defence. The accused or his or her lawyer then calls witnesses to give evidence for the defence. The first witness to be called will usually be the accused if he or she is going to give evidence. The prosecutor may cross-examine each witness and then the accused (or defence lawyer) may re-examine each witness. The Court may also ask questions. After the defence witnesses have been called, cross-examined, and re-examined, the accused (or the defence lawyer) closes the case for the defence. This means that the defence does not intend to call any more witnesses.

The prosecutor sums up the State's case giving reasons why the accused should be found guilty. The accused (or the defence lawyer) then presents arguments, giving reasons why the accused should be found not guilty.

The role of assessors in the High Court:

In criminal trials, the judge gives a brief and asks the opinion of the assessors before giving his or her judgment on matters of fact and not law. Unlike in jurisdictions with a jury system, the opinion of the assessors is not binding on a Judge in Uganda. This means that a Judge in a criminal trial may make a decision different from the opinion of the assessors. In such a case, the Judge must write reasons for disagreeing with the opinion of the assessors.

Judgment:

A judicial officer then gives a judgment. Where the judicial officer finds the accused guilty, he/she then proceeds to convict the accused. Where the accused is not found guilty, he/she is acquitted. Where the accused is found guilty, the prosecution addresses Court on what nature of punishment the accused should receive. The Court has a duty to ask him or her, what the Court should take into account before passing sentence (punishment). It is at this stage that the accused may plead for mercy and leniency from Court in deciding the kind of punishment.

The accused may beg for mercy by stating any or all of the following reasons as may be applicable to his/ her situation: that he/she regrets committing the offence, that he/she is a

first offender, that he/she has young children to look after who will suffer if he/she is sent to prison, that he/she is of poor health or giving any other good reason. By giving any or all of the above reasons, the accused is said to be mitigating his or her sentence.

Sentence:

The Magistrate then sentences the accused taking into account the mitigating and aggravating factors. If the accused is dissatisfied with his or her conviction and or sentence, he/she can file an appeal to a higher Court within 14 days. By filing an appeal, the convicted person wants a higher Court to look at the case again. Where an accused is acquitted, the State may also appeal.

Preliminary procedure in cases to be tried by the High Court

Cases that carry a death penalty can only be tried by the High Court. Such cases include treason, murder, defilement, rape and robbery with violence. However, before the trial in the High Court, the accused must be charged in a Magistrate's Court. This is when the statement of the offence is read out to the accused. The written statement of the offence in a case to be tried in the High Court is referred to as an indictment. The Magistrate's Court explains to the accused that it has no powers to hear the case. The Court advises the accused not to say whether he or she accepts or denies having committed the offence. The Magistrate's Court also informs the accused that if he/she wants to apply for bail, the application must be made to the High Court. The accused is then remanded.

The DPP must then prepare a summary of the case that he/she proposes to produce at the trial in the High Court. The summary of the case is read out to the accused in the Magistrate's Court. These proceedings also show that all Police investigations are complete and the State is ready to try the accused. This is referred to as committing the accused to the High Court.

Alternative Dispute Resolution (ADR): Mediation is a method of dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. It is a process by which parties submit their dispute to a neutral third party (the mediator) who works with them to reach a settlement of their dispute. When the parties reach an agreement resolving some or all of the issues in dispute, they reduce the terms to writing and put them in the form of a consent judgment, which is signed by the parties and filed in the Court, to be enforced like any other judgment of the Court. All

information arising out of or in connection with the Mediation process is not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings. Neither the Mediator nor his/her staff may be called as witnesses in any litigation or other proceedings touching the same subject matter. The details of the Settlement Agreement are confidential and may not be disclosed to third parties or a Court Order. If there is no agreement, the mediator writes a report and refers the matter back to the Court to be assigned to and heard by a Judge.

CCAS Software

The Judiciary has in place a system for facilitating the registration and retrieval of Court case information called the Court Case Administration System (CCAS). Its main outputs are: templates for various legal documents that are regularly produced by the Courts, cause list - the public Court sittings schedule, proceedings reports - brief summaries of cases, pending cases reports - specifying all pending cases per judicial officer, completed cases reports - specifying all cases closed in a particular period per judicial officer and statistical reports listing the number of cases at each stage of the judicial process and the time they have been at that stage. Thus, the CCAS can be used for allocating cases and for reporting on workload, per Court and per judicial officer. Its main perceived benefits are: more efficient administration and maintenance of Court records, improved monitoring of the status and progress of Court cases by Chief Magistrates and High Court managers, improved security of Court case information, reduced time for the hearing of cases, easier exchange of information between Courts, more transparency in expenditures, better planning, budgeting and evaluation of the Judiciary's work. The CCAS has been piloted in four Courts in Kampala: the Court of Appeal, the High Court, and the Chief Magistrates' Courts of Mengo and Buganda Road. In order to fully integrate CCAS into the management of the Judiciary, the following steps have been taken: The design of a Management Information System (MIS) incorporating the following main Operational Information Systems (OISs):

- **Legal Section:** with Research and Training, Inspector of Courts, Court Case Information System (CCIS) reports, and MIS reports as sub-sections;
- **Finance Section:** with allocations of Data Entry, Revenue Data Entry, Expenditure Data Entry as sub-sections; and
- **Administration Section:** with Estates, Personnel, and Transport as sub-sections.

CHAPTER 4

FINDINGS

4.1 TIMELY DISPENSATION OF JUSTICE:

4.1.1 Time for completion of Cases:

The civil suits filed in the Court should be completed and Judgments rendered not later than 24 months from the date of filing.² For criminal proceedings, non-capital offences should take less than 3 months. The maximum targeted time for completion of capital cases should be 12 months after committal.³

The audit observed that not all cases were completed within the stipulated time.

Civil Cases:

A review of 9,460 case files of civil suits handled between July 2006 and June 2010 revealed that 7,889 (83%) had been completed within the stipulated 24 months while the 1,571 (17%) case files aged between 2 years to 20 years back.

Criminal Cases:

A review of 38,734 case files of criminal cases handled July 2006 to June 2010 also revealed that only 7,152 (18%) had been completed within the stipulated 12 months while 31,582 (82%) case files aged between 2 years to 20 years back.

The delays in completing cases within the stipulated time was attributed to the challenges regarding court procedures, ICT infrastructure, staffing and monitoring and evaluation of performance as explained in the paragraphs that follow.

4.2 COURT PROCEDURES:

4.2.1 Delivering Summons to Defendants:

Summons must be delivered to the defendant in broad day light by a Court process server or pinned at the door of the house where the defendant last resided or placed in the newspapers with permission of Court.⁴

² Judiciary Staff Handbook Page 136.

³ Judiciary Staff Handbook Page 56.

⁴ Order 5 Rule 18, Sub-Rule 1 Of the Civil Procedure Rules Statutory Instrument 71-1

During audit, it was established that Court process servers are responsible for delivering summons to defendants or, where parties are represented by lawyers, summons are delivered by process servers of those advocates. In criminal matters, the state is obliged to pay the costs of delivering summons but in civil matters the parties meet the costs. It was also noted that the plaintiffs in civil cases were responsible for payment of the costs of delivering summons to the defendants, but in some of the cases, the Courts facilitated the process servers to serve the defendants.

We observed that there were instances where summons were not delivered or where there was delay in service.

Interviews conducted with Assistant Registrars, Chief Magistrates and Court Process Servers in 17 stations visited revealed that the delays or failure to deliver summons were attributed to lack of facilitation/transport (43%), hard-to-reach areas (12%), hostile defendants (31%) and dishonest process servers who file false affidavits (14%). Some plaintiffs were also reluctant to pay costs of serving summons as they interpret payment of facilitation to Court process servers as a form of inducement or bribe.

Management informed us that effecting service of summons and other court documents is supposed to be met by individual courts through the operational fund, but these costs sometimes, exceed available funds.

Failure to serve defendants as required results in ex-parte judgments which deny defendants their right to a fair hearing. This also leads to appeals, and delayed justice.

4.2.2 Filing Defence:

A defendant (individuals, entities and non-statutory corporation) is required to file a written statement of defence within 15 days⁵ and 30 days⁶ for government and statutory corporation.

During audit it was observed that there were delays or failure by some of the defendants to file written statements of defence within the stipulated 15 days.

The analysis of 40 selected case files in Masindi High Court Circuit and Lira C/M Court revealed that on average it took 48 days and 12 days, respectively, to file written

⁵ Order 8 Rule 1 Sub-Rule 2 Of the Civil Procedure Rules Statutory Instrument 71-1

⁶ Order 8 Rule 11, Of the Civil Procedure Rules (Government Proceedings) Statutory Instrument 77-1

statements of defence against the stipulated 15 days, indicating that while filing defence is done in time in some instances, delays were also experienced at these courts.

In addition, a test-check of 133 selected files in 8 Courts (Soroti High Court, Kitgum, Luwero, Lira, Tororo, Jinja, Nebbi and Arua Chief Magistrates courts) revealed that 40% did not have written statements of defence.

The reasons advanced by management for delays and failure to submit written statements of defence were: improper service of summons to the defendants, lack of legal representation or lack of knowledge and skill by the defendants in drafting statements admissible in Courts of law.

Management however informed us that much as it is the responsibility of the person on whom service is effected to file defence within agreed time frames, the Judiciary has piloted Justice Centres in Tororo and Lira Chief Magistrates courts with a National Coordination office in Kampala in the last quarter of 2010 to serve the Districts of Bukwa, Bududa, Manafwa, Busia, Palisa Butaleja, Namutumba, Bugiri, Iganda, Amolatar, Pader, Apac, Kitgum, Oyam, Dokolo, Kaberamaido and Kotido with an objective of making legal aid easily accessible to the most deserving population. This is in addition to the Legal Aid Project of the Uganda Law Society which provides legal aid services to the poor and indigent.

The failure to respond to a claim with a statement of defence can result into delays in hearing cases and delivering justice. It also exposes people to legal liability, as it can be argued that non-response constitutes an admission, and new facts cannot be introduced in the trial if they were not discussed in a statement of defence. The defendants are also denied their right to fair hearing in case of ex-parte judgments.

4.2.3 Holding Scheduling Conferences:

A mandatory scheduling conference should be held within 28 days from the date when the last reply or rejoinder was filed in Court.⁷

Audit revealed that the 28 day rule was not strictly observed. A sample of 88 case files reviewed in Luwero, Kitgum, Lira, Kasese and Mubende, revealed that 37 of them (representing 42%) did not have evidence recorded to show that such conferences were

⁷ Order 12 Rule 1, Sub-Rule 1 Of the Civil Procedure Rules Statutory Instrument 71-1

held. The practice of holding scheduling conferences was found mainly in the Commercial Court Division and other Circuits of the High Court.

The interview with the Chief Magistrates in the Courts visited indicated that, on average the time taken to schedule a conference varies from 2 weeks to 3 months depending on the response from both parties, such as filing of defence and key documents that Court may require from litigants.

Failure to hold scheduling conferences was attributed to limited public awareness of this procedure and in cases where the litigants were not represented. Delays in delivering summons and filing written statements of defence also hold up the process of holding scheduling conferences.

Management observed that while unrepresented litigants pose a challenge in holding scheduling conferences, the right to be heard is inherent and the litigants have a right to appear in civil proceedings with or without legal representation. They also indicated that apart from collaborating with the Uganda Law Society in training and sensitising advocates to cope with changing laws and procedures, the Judicial Studies Institute trains judicial officers in procedural laws and on how to proceed with this requirement.

The benefit of speedy trial in Courts through a coordinated pre-trial plan may not be achieved where scheduling conferences delay or are not held at all, especially where parties are not represented by lawyers. Cases take long during trial when scheduling conferences are not properly conducted and the issues not understood early by the plaintiff, defendant, their advocates and the court. This further encourages prevalence of adversarial systems of litigation and resolution of disputes. This ultimately becomes costly to the litigants, takes more court time, effort and money which would have otherwise been saved if scheduling conferences were held as required.

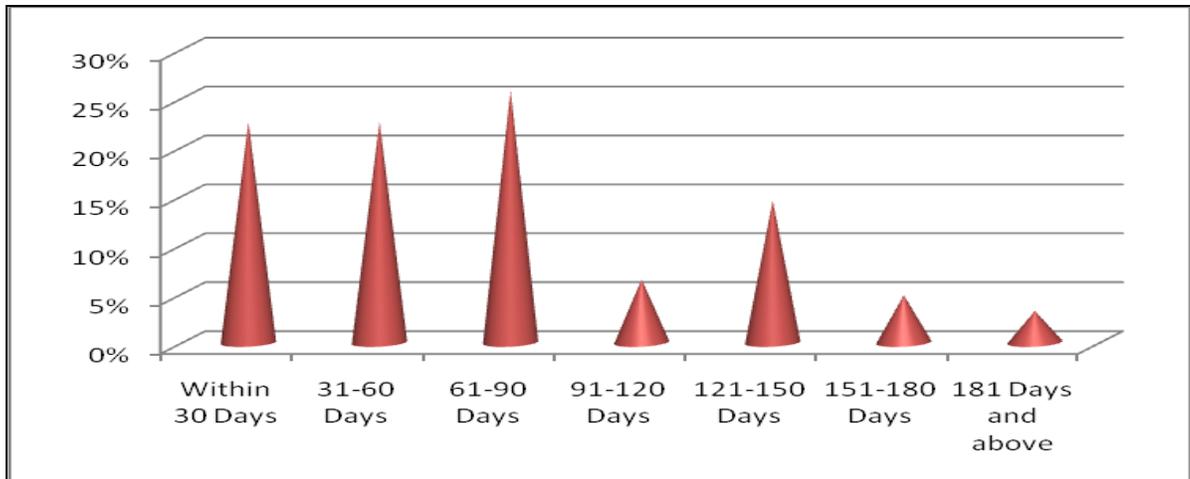
4.2.4 Mediation:

After receiving a plaint and written statement of defence, the Court refers the case for mediation which should be completed within 30 days.⁸

⁸ Statutory Instrument 32 of 2007 - Mediation Rules for Commercial Division - S. 11 page 734.

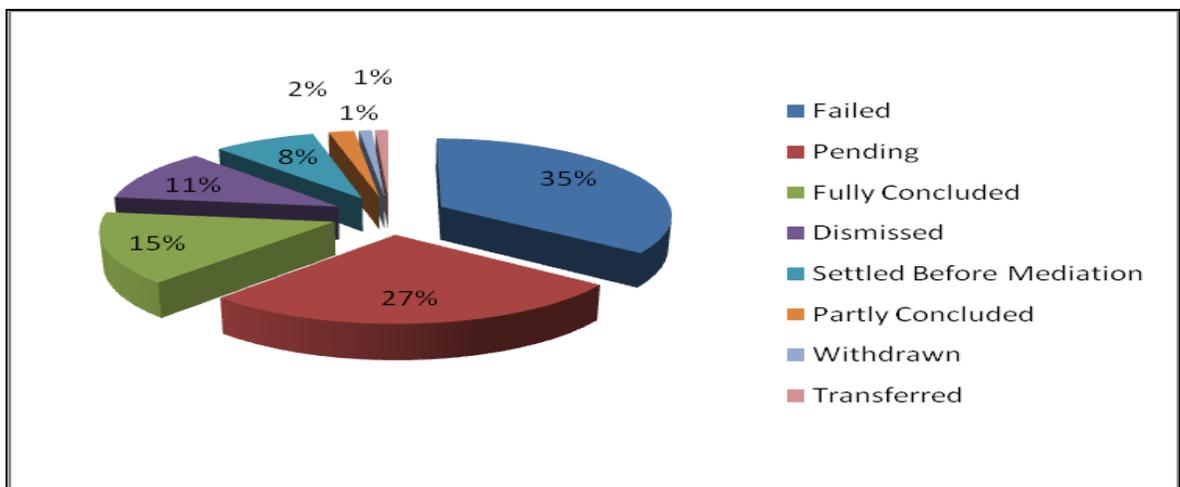
The audit noted that mediation had been piloted only in the Commercial Court Division of the High Court with guidance of trained mediators although the Chief Magistrates were also encouraged to apply mediation in their areas of jurisdiction. A review of the 62 completed mediation cases revealed that time for completion of mediation procedures ranged from 1 to more than 180 days as compared to the stipulated 30 days. Only 22% of the cases had been concluded within 30 days as shown in Figure 2 below.

Figure 2: Time taken to complete mediation:



In the commercial Division of the High Court, analysis of cases referred for mediation in 2010 revealed that out of 407 cases filed 35% failed, 27% were still pending, only 15% had been fully concluded, 11% were dismissed, 8% had been settled before mediation 2% partly concluded, 1% withdrawn and 1% had been transferred to other courts at the time of audit as shown in the figure 3 below.

Figure 3: Status of Cases Filed for Mediation in the High Court Commercial Division - for the year 2010:



It was noted, however, that ADR was not very effective as parties prefer the normal Court system to mediation. Through interviews with management, it was revealed that the success of mediation is impaired by the limited awareness by the litigants and the public on the benefits and procedures of mediation. Filing a multiplicity of appeals, and several applications, sometimes in different Courts, nature of a given case (some cases may contain criminal issues like forgery requiring an opinion from the criminal Court) also limit the success of mediation.

Advocates also frustrate mediation since they charge clients fees depending on the duration/length of the trial as it is perceived that speedy trial through mediation reduces the time a lawyer handles a given case.

Apart from the mediation rules developed specifically for the Commercial Court Division of the High Court, other Courts lack rules to guide them in handling mediation.

Lack of trained mediators was another reason for limited application of ADR/mediation in other Courts. While the Judiciary has 11 trained mediators at the Commercial Court Division where mediation was piloted, the rest of the courts do not have mediators because the exercise has not yet been rolled out.

Management informed us that a Registrar in charge of mediation has been appointed and one of his responsibilities is to ensure that mediation and other initiatives like plea bargaining for criminal cases are rolled out to all courts. Plans are also underway to have another project on *Small Claims Procedure* where the monetary value involved is less all gearing to reducing the number of cases pending in courts and saving litigant's time and money.

The weaknesses in the application of mediation increase the workload for judicial officers and, consequently, the burden of case backlog in the Judiciary. Besides, prolonged legal processes strain relations between the parties and deprive them of an opportunity to participate in resolving disputes among themselves amicably. The inability to apply mediation in courts escalates costs to litigants, delays justice and increases case backlog.

4.2.5 Adjournments:

Court should adjourn only if sufficient cause is shown.⁹ The frequency of adjournments should be minimized and reason(s) for adjournment recorded.¹⁰

We observed that adjournments were frequent and the reasons were seldom recorded on case files.

A test-check of 20 case files revealed that there was, on average, 10 adjournments per case in a period of 11 months as shown in Appendix (iii). The case files reviewed indicated that adjournments were recorded on files but the reasons for such adjournments were not always recorded, save for some advocates who wrote specifically requesting for such adjournments. Granting of adjournments, however, remains the discretion of the trial Judge/Magistrate.

According to the documents reviewed and interviews with management, the reasons for adjournments included: absence of one or both parties to the suit, absence and requests by lawyers who are representing litigants in higher Court (which take precedence over lower Courts), unprepared lawyers, or absence of presiding judicial officers. The audit also established that lack of detailed procedures to regulate legal practitioners and judicial officers on how to manage adjournments was another cause for adjournments. In criminal cases, adjournments arise out of absence of witnesses from Court proceedings due to lack of facilitation by the trial Courts yet their evidence is crucial for the progress of criminal cases, like: murder, defilement or rape where the evidence of medical experts is considered vital. Delays in investigation and review of criminal case files by the DPP and the Police also lead to adjournments. Prisons authorities also fail to completely produce or produce prisoners late in court. Misplacement/loss of court files was another reason advanced for adjournments.

Advocates also contribute to adjournments by accepting too many cases and emphasising legal arguments and technicalities; taking advantage of the loopholes in the system; using adjournments to buy time; and not employing mediation as the first attempt at resolving the dispute.

⁹ Order 17 Rule 1, Sub-Rule 1 Of the Civil Procedure Rules Statutory Instrument 71-1

¹⁰ Performance Standards and Guidelines for Criminal Justice Agencies in Uganda

Management informed us that the Judiciary, JLOS institutions and the lawyers held a joint meeting on 27th January 2011 to discuss ways of expediting the delivery of justice by coming up with best practices on preparation of cases; dealing with interlocutory applications; adjournments; time management; elimination of corruption in the legal and judicial process; and improvement of communication; coordination and cooperation among all the stakeholders. It was also agreed that the meeting will be held once a year to eliminate unnecessary delays in the disposal of cases. Other initiatives by the Judiciary to curb adjournments include hearing cases by sessions, and the quick-win backlog reduction strategy under JLOS.

Adjournments delay Court proceedings and also lead to a backlog of cases. The litigants may also lose faith in the Court system. Besides, adjournments are costly to the litigants who incur legal expenses, transport and time even when a Court session has not taken place. For criminal cases, adjournments and subsequent delays translate into congestion in prisons. Besides, adjournments create unpredictability and encourage a culture of unpreparedness by parties, their lawyers and judicial officers, which delays settlements and wastes court resources. Adjournments also compromise the objective of administering justice without undue regard to technicalities.

4.2.6 Delivering Judgments:

The Court must deliver judgment within 60 days from the close of hearing submissions.¹¹

The audit observed that not all the judgments had been delivered within the stipulated time.

A sample of 11 case files reviewed in Jinja High Court and Fort-Portal Chief Magistrates Courts revealed that in 55% of the cases, judgment was delivered within 60 days after close of submissions while 45% of the cases exceeded the required time.

Review of documents, interviews and inspection of court facilities revealed that the delays in delivering judgment were due to lack of relevant reference materials like Statutory Instruments, Civil Procedure Rules, copies of new legislation, and the internet to help them read and make research-based judgments. Where libraries existed, some of the Courts did not have librarians to manage them. In some of the cases, judgment on notice

¹¹ The Uganda Code of Judicial Conduct rule 6.2, Simplified Court Users Guide [paragraph 7],

contributed to the delays where the litigants had no hope as to when judgment would be made since the date of delivering judgment was at the discretion of a presiding judicial officer. Transfer of Judicial Officers and those attending various courses also affects the time of delivering judgment.

When judgment is not delivered in time, there is delayed justice and, subsequently increased case backlog in courts.

4.3 ICT INFRASTRUCTURE:

4.3.1 Recording of Court Proceedings:

The Judiciary should have acquired and implemented an Application for Digital Video Court Recording by 2008.¹² The use of recording equipment was intended to reduce trial time, cut back court waiting time and reduce the backlog of cases in the Judiciary.

The Video Court Recording Application had not been acquired and implemented as planned.

Through document review, interviews with management and inspection of court facilities, we noted that the Judiciary initially acquired recording equipment through donations in 1995. These were installed in the Commercial Court Division, Family Court and the Supreme Court. New digital equipment was donated to the Anti-Corruption Court in 2009. The Supreme Court, Court of Appeal, the 12 High court Circuits and the remaining 5 Divisions of the Courts and all the 38 magisterial areas did not have any Court Recording and Transcription System (CRTS) at all. During the inspection of the Commercial Court Division, it was established that of the 6 recording and transcription equipment, 3 of them were functional while 3 were not. Even the functionality of the 3 operational machines has been impaired because they are analogue (cassette tape recording systems), obsolete and incompatible with the latest technology.

Through interviews, management attributed the failure to acquire and implement a Court Recording and Transcription System (CRTS) to lack of skilled transcribers and funds to procure modern equipment. Management, however, indicated that new equipment will be procured for the High Court Divisions in FY 2010/11 with assistance from JLOS. They also indicated that the procurement process to acquire equipment in the first phase for the

¹² The Judiciary ICT Strategy 2009 – 2013 paragraph 2.1.12 (16).

Supreme Court, Court of Appeal and all the 11 High Court Circuits in upcountry stations is already underway. Magisterial areas and Judges Chambers will, however, be covered in the second phase expected to commence in 2011/2012 to overcome existing challenges.

The use of digital video court recording equipment would lessen the practical difficulty for a person listening to proceedings in the Court, writing and observing at the same time with maximum concentration, speed and perfection. In New Zealand, for example, use of digital recording and transcription technology was estimated to reduce trial times by between 20% to 30%. When the system was used in a specific murder case, trial time was reduced by 50% (from 8 weeks to 4 weeks).¹³ Manual recording of proceedings has the potential of producing inaccurate documentation which can lead to an innocent party losing his/her freedom or throwing out a case, thus causing a rightfully accused person to be freed.

4.3.2 Adoption and use of CCAS in Management of Cases:

By 2008, the Judiciary was supposed to have changed from manual processing registration to electronic e-forms and electronic file management.¹⁴

The audit established that the Judiciary has not fully adapted the use of electronic e-forms and electronic file management in the processing of cases in all courts.

We observed that currently, the Judiciary is only implementing CCAS in the Court of Appeal, some High court circuits and Divisions and magisterial areas. It has also been implemented in 50% of the High Court Circuits, namely: Jinja, Masaka, Lira, Arua, Gulu, Soroti and all the High Court Divisions in Kampala (Civil, Criminal, Family, Commercial, Land, Anti-corruption and War-crimes). Others implementing CCAS include Chief Magistrates Courts (21%) and the Planning Registry. These are linked to the Kampala Data Centre via internet. However, other Courts use stand-alone computers to record transactions in CCAS, but send copies of data manually to the Kampala Data centre. The rest are not connected to CCAS at all. At the time of carrying out the audit, management had solicited for Consultancy services for designing, supply and installation of a Computerised Court Case Management System (CCMS) and to upgrade CCAS to required

¹³ New Zealand Parliament (Hansard Debates) Questions for oral answers – Questions to Ministers Vol. 645 Page 14683 of 6th March 2008. [www.parliament.nz].

¹⁴ The Judiciary ICT Strategy 2009 – 2013 paragraph 2.1.12 (1)

specifications. However, rolling out the system to all magisterial areas may not be immediate.

Audit noted that the management of court files remained a challenge. Court registries had challenges of filing, storage, and retrieval of case files. Records of court proceedings found in case files were not fastened, the movement of file from the registry to the chambers were not recorded (except in Fort-Portal where a file movement record was maintained), storage space and arrangement of files was not organised as some files were bundled together or kept in exhibits room or on the floor even when some of them were still active (Picture 1 and Picture 2 below). Audit revealed that non-registry staff like police officers and prisons staff had free access to case files and records in the registry. It was also observed that it took the registry staff on average between 35 minutes to 2 hours to retrieve the files requested for, while others were not availed at all.



Picture 1: Case files kept in exhibits room. OAG Photo taken in Masaka, Chief Magistrates Court Exhibit's room on 14th September 2010 at 12.13pm.



Picture 2: Case files kept on the floor. OAG Photo taken in Masaka, Chief Magistrates Court Registry on 14th September 2010 at 9.22am.

It was also established through interviews that even where Courts are connected to CCAS, its use is impaired by lack of full-time data entry clerks in upcountry stations inadequate IT training, change of management, lack of computers, power interruptions and limited IT support from the headquarters to the various Courts across the country. The cost involved in installation was highlighted as another reason for delays in rolling out the system to all magisterial areas.

The failure to computerise has deprived the Judiciary of the benefits of a computerised system which may include, among others: improved monitoring of the status and progress of Court cases by Judges, Chief Magistrates, Registrars and other managers;

improved security of Court case information; reduced time for the hearing of cases; easier exchange of information between Courts; more transparency in expenditures; and better informed planning; budgeting and evaluation of the Judiciary's work can be realised from the use of CCAS, if applied in all magisterial areas. Besides, management would monitor the progress of cases and staff performance. Inadequacies in the current manual system have contributed to delays or misplacement/loss of case files by court clerks erroneously or deliberately. This, consequently, leads to adjournments, wastage of court resources and denies the litigants timely justice.

4.4 STAFFING:

4.4.1 Filling Vacant Posts:

By the end of 2009/10 at least 95% of established Judiciary posts (Judicial and non-judicial) should have been filled both at headquarters and all Courts.¹⁵

We observed that all positions in the approved structure of the Judiciary had not been filled at the time of completing the audit (November 2010). In the entire Judiciary, of the 1,348 approved posts, only 980 or 73% had been filled leaving 27% of the posts vacant.

For the judicial officers directly presiding over cases, the posts of Judges and Magistrate Grade II were the most affected. While vacancies for Judges stood at 37% in 2006/07 33% in 2007/08 and 15% in 2008/09, vacancies for Magistrates Grade II deteriorated from 32% to 40% and 49% of the approved posts in the respective years as shown in table 3 below.

Table 3: Staffing position of the Judiciary for positions of Judges and Magistrates for the period 2006/07 to 2009/10:

| Position/Year | 2006/07 | | | 2007/08 | | | 2008/09 | | | 2009/10* | | |
|------------------|------------|------------|-------------|------------|------------|-------------|------------|------------|-------------|------------|------------|-------------|
| | Approved | Filled | %age vacant |
| Judges | 51 | 32 | 37% | 67 | 45 | 33% | 67 | 57 | 15% | 65 | 62 | 5% |
| Chief Magistrate | 29 | 22 | 24% | 29 | 25 | 14% | 38 | 28 | 26% | 40 | 44 | -10% |
| Magistrates GI | 76 | 98 | -29% | 76 | 94 | -24% | 105 | 105 | 0% | 113 | 85 | 25% |
| Magistrates GII | 247 | 167 | 32% | 247 | 149 | 40% | 228 | 116 | 49% | 97 | 88 | 9% |
| Total | 403 | 319 | 21% | 419 | 313 | 25% | 438 | 306 | 30% | 315 | 279 | 11% |

Source: OAG Analysis of Judiciary Policy Statement 2006/07 to 2009/10. *2009/10 Staffing position (Summary) as of November, 2010.

¹⁵ Courts of Judicature Strategic Plan and Development Programme 2006/7 - 2010/11 pg 22.

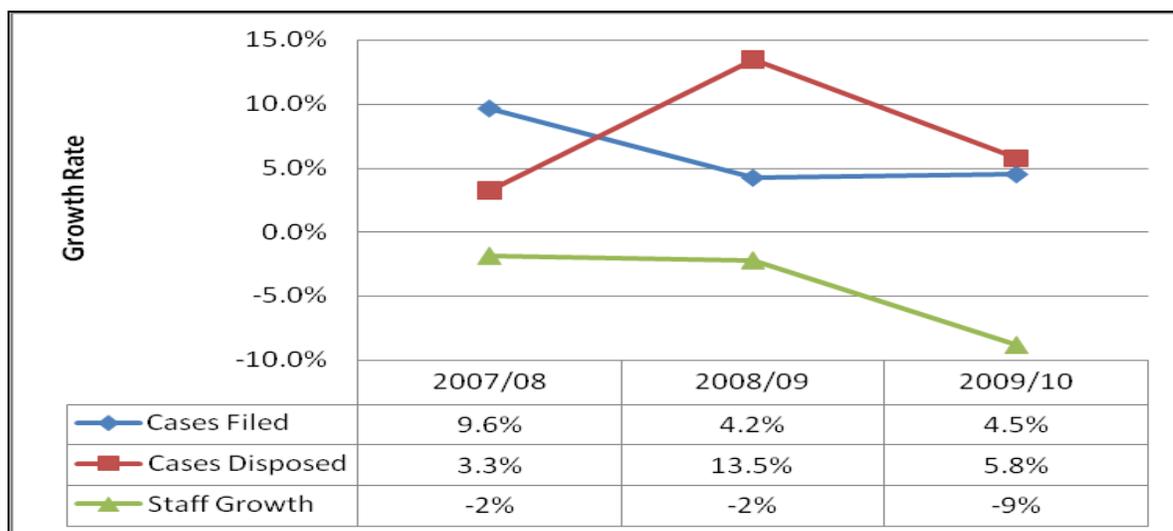
The number of districts currently stands at 112 and each district is expected to have at least a Magistrate Grade I. The existing number of magistrates cannot cover all stations, implying that over 24% of districts are not served with Magistrates at all.

Management attributed the failure to fill the positions of Magistrates Grade II to the fact that the grade is being phased out. It is a deliberate policy to professionalise the bench where posts of Magistrate Grade II are traded-off with Magistrate Grade I on a 2:1 ratio. Regarding the unfilled posts of Judges, management indicated that their appointment is a prerogative of the President, while the posts of Chief Magistrates were mainly affected by the increased number of districts that are created from time to time.

The audit revealed that the Judiciary does not have a benchmark for determining the number of cases a judicial officer can handle because they were unable to predict the number of cases that would be filed in courts in a given period, making planning and allocation of work to individual judicial officers difficult. However, considering that there are 142,918 pending cases as at the June 2010 FY, against 279 judicial officers directly presiding over these cases, then the ratio of judicial officers to cases is 1 officer to 512 cases. The practice of seconding Judges to other assignments, which take an unspecified number of years, without a replacement plan was also contributing to staff gaps in the Judiciary as they cannot be replaced. At the time of audit, 4 Judges (representing 6% of filled posts of Judges) had been seconded for work outside the Judiciary.

The unfilled posts impair service delivery in Courts, increase backlog of cases and exert undue pressure on existing staff as shown in the graph below where the growth rate of presiding Judges and Magistrates continues to decline far below the cases filed and disposed of as shown in figure 4 below.

Figure 4: Growth rate of Cases Filed, Disposed and Staff in Position for the period 2007/08 to 2009/10.



Where the caseload increases without corresponding recruitment of staff, the effect on society comes through in overcrowded jails, backlogs and long waiting time for simple cases to be disposed. This consequently reduces public confidence and trust in the court system.

4.4.2 Alternative Dispute Resolution (ADR) Training and Sensitization:

The Judiciary is required to train staff and enhance the awareness of the public and users on benefits of ADR.¹⁶

Audit noted that the Judiciary does not have a formal arrangement of training and sensitising Judicial Officers on ADR (apart from the Commercial Court staff) as a method of resolving conflicts.

There is also no specific work-plan or budget for public sensitisation on ADR, but the public relations office creates awareness campaigns on ADR whenever conducting other public relations activities and radio programs on the Judiciary.

Management attributed limited training and sensitisation to lack of specific programmes/course units designed for ADR by the Judicial Studies Institute which is charged with the responsibility of training Judicial Officers. ADR is only included as a topic in civil procedures during the induction of new officers and not as a course unit because of limited funding. ADR is not fully embraced by other Courts, especially Magistrates

¹⁶ Courts of Judicature Strategic Plan and Development Programme 2006/07 - 2010/11 key result area 3.4

Courts, because the judicial officers do not have specific training skills in handling ADR. Lack of prioritisation of this activity cannot be ruled out under the circumstances.

The limited awareness on ADR led to low levels of mediation with a failure rate standing at 35% (in 4.2.4 above). When the public fails to adopt use of ADR in resolving conflicts, adversarial procedures thrive and hence a backlog of cases results.

4.5 MONITORING AND EVALUATION OF PERFORMANCE:

4.5.1 Staff Performance:

The Public Service Standing Orders require that Staff Performance Appraisal reports should be completed by responsible officers on all officers holding established posts both pensionable and non-pensionable regardless of rank.¹⁷ Each officer is supposed to develop a performance plan at the beginning of the assessment period which should provide the criteria for the appraisal.

We found out that not all judicial officers holding established posts had been appraised. The audit established that apart from judicial officers and other cadres in the traditional public services, the judiciary does not have a system in place to appraise the performance of Judges. The audit team was informed that plans are underway to engage a Consultant who will design a specialised system of appraising Judges and other judicial officers.

Lack of uniformity and complexity of cases handled by Judges and the independence of the Judiciary were advanced by management through interviews as the main reasons for not conducting performance appraisal for Judges. It was also indicated that in the Supreme Court and Court of Appeal where Judges sit in a quorum, group assessment would not be appropriate.

The existence of a system of appraising performance would enable the Judges to maximise their potential for excellence through self improvement as it would be more readily possible to determine specific skill improvement and training and development needs. Lack of assessment to measure productivity, quality of work, skills, willingness to take initiatives, decision-making, interaction with colleagues, relations with litigants, professional development, ethics, ability to train and mentor others and involvement in

¹⁷ Public Service Standing Orders Volume 1 part A-c page 61.

the court's operation may ultimately impact on the quality of service and timely dispensation of justice.

4.5.2 Court Inspectorate Function:

To enhance the capacity of the Inspectorate, strengthen ethics and integrity in the Judiciary a resolution was passed in December 2000, approving the establishment of a Court Inspectorate of 7 people.¹⁸

The audit revealed that not all the 7 positions had been filled at the time of audit.

The inspectorate department had only 3 members of staff at the time of audit. This in effect leaves 4 posts vacant or 57% unfilled posts. As a support department charged with inspecting Courts, investigating complaints, evaluating the performance of magistrates to improve the quality of service and efficiency in all magisterial areas, the current staff numbers do not match the task, given the fact that the number of magisterial areas keeps increasing from time to time.

In addition, it was established that the department lacks transport to carry out inspections as required. Even the recommendations made in the inspection reports are not always acted upon as the process is slow. Interviews with the management in the Court Inspectorate revealed that the department does not have powers to take prompt action even where there is evidence against errant officers such as absenteeism, drunkenness, late coming or non-issuance of receipts for bail money.

Management explained that the Ministry of Public Service has plans to restructure the entire Judiciary which will enable them to have appropriate numbers of posts and fill existing vacancies. A bill has been drafted (Administration of Justice Bill) and presented to Parliament. This bill once enacted is expected to, among other things; enable the Judiciary to determine its own appropriate staff levels. The Resident Judges in each region supervise courts within their circuits. The Deputy Registrars and Assistant Registrars have also been designated at the circuits as sub-inspectors while the Chief Magistrates exercise supervisory powers over Magistrates Grade I, Magistrates Grade II and support staff in their areas of jurisdiction.

¹⁸ Judiciary Staff Handbook page 67 paragraph 5.2 and page 47 paragraph 3.12.

4.5.3 Coordination of Stakeholders in the Justice System:

Joint Inter-agency meetings among relevant staff should be held at least once a month to coordinate the activities of the agencies involved in the justice system.¹⁹

The audit revealed that joint meetings were held with the support of JLOS under the Chain-Linked initiative but not on a monthly basis.

Through interviews, 50% of the respondents said that meetings are held monthly, 13% hold meetings once every 2 months and 38% meet quarterly. We also observed that prisons do not submit monthly returns. Some reports were not in the format of the prison returns but rather in the form of transfer of prisoners from one station to another.

A review of the minutes of the Districts Coordinating Committee/Chain-Linked meetings revealed that there were challenges of facilitating expert witnesses, like doctors, in defilement or murder cases; police were failing to produce suspects within 48 hours; there were interferences by local leaders when bail was granted to hard core criminals as a means of reducing congestion in prisons; there was failure to produce suspects in court on appointed dates; delayed investigations, failure to attach medical records supporting evidence of age of juvenile offenders and in defilement cases as some hindrances to delivering justice in time.

The Judicial Officers interviewed stated that the delays in holding monthly inter-agency meetings were linked to timing and receipt of funds at the stations. The non-submission of monthly Prison returns was attributed to laxity of the Officers in Charge of Prisons staff. While monthly prison reports were strictly submitted to the CGP, copies were not made to the RSA and the C/M.

The failure to coordinate with agencies in the justice system denies the various players an opportunity to network and appreciate the challenges encountered by other departments in the execution of their work. It may also lead to lack of follow-up on agreed action points among the agencies in the criminal justice system, thus increasing the number of remand prisoners and congestion in prisons, which stood at 212% by June 2009. This also contributes to the backlog of cases and delayed justice.

¹⁹ Performance Standards and Guidelines for Criminal Justice Agencies in Uganda

CHAPTER 5

CONCLUSIONS

From the audit findings outlined above, the following conclusions were made to highlight the opinions observed in the course of the audit.

5.1 TIMELY DISPENSATION OF JUSTICE:

5.1.1 Time for completion of Cases:

The Judiciary is experiencing delays in completing cases within the stipulated time. This leads to case backlog in courts.

5.2 COURT PROCEDURES:

5.2.1 Delivering Summons to Defendants:

The courts are experiencing delays in delivering summons on time and this delays the court process. There is lack of clarity as to who should meet the costs of delivering summons.

5.2.2 Filing Defence:

Written statements of defence are not filed in a timely manner and at times not filed at all, resulting in delay and denial of justice.

5.2.3 Holding Scheduling Conferences:

Scheduling conferences are not conducted as required in some courts. This impairs speedy trial of cases where there are no lawyers.

5.2.4 Mediation:

Mediation is not conducted in all civil Courts apart from the Commercial Court Division of the High Court. The period taken to hold mediation in certain instances exceeds the mandatory 30 days. This denies parties an opportunity to reach an amicable settlement. Besides, limited application of mediation delays cases and increases case backlog.

5.2.5 Adjournments:

There are frequent adjournments in courts and not all the reasons for such adjournments are recorded on case files. Adjournments lead to delays and wastage in terms of court resources, frustration and costs to litigants.

5.2.6 Delivering Judgments:

Not all judgments were delivered within the stipulated 60 days. This further delays justice and increases case backlog.

5.3 ICT INFRASTRUCTURE:

5.3.1 Recording of Court Proceedings:

The Judiciary does not have a Court Recording and Transcription System in all Courts. Manual recording systems are widely used, resulting in delays in hearing and disposing of cases.

5.3.2 Adoption and use of CCAS in Management of Cases:

CCAS has not been rolled out to all magisterial areas thus limiting the easy management of case files. The manual filing system widely used in courts is characterised by challenges in filing, storage and retrieval of case files which leads to loss of files, adjournments and denies litigants timely justice.

5.4 STAFFING:

5.4.1 Filling of Vacant Posts:

The Judiciary does not have enough staff to execute its mandate. This increases case backlog and compromises the quality of service delivery.

5.4.2 ADR Training and Sensitization:

The Judiciary's failure to have formal arrangements of training staff and sensitising the public on the use of ADR limits awareness of ADR and encourages the use of adversarial procedures, and increases case backlog.

5.5 MONITORING AND EVALUATION OF PERFORMANCE:

5.5.1 Staff Performance:

Apart from traditional Civil Servants and Judicial Officers of the lower courts, the Judiciary does not have a system of appraising Judges, making it difficult to assess their performance and make them accountable in view of the ever-increasing case backlog and public complaints.

5.5.2 Court Inspectorate Function:

The inspectorate department does not have adequate staff to execute its responsibilities. Enhancing ethics, integrity and timely response to complaints becomes difficult.

5.5.3 Coordination of Stakeholders in the Justice System:

While joint meetings are held under the chain-linked arrangement to improve working relations, they are not conducted monthly as required. Follow-up on jointly agreed strategies becomes difficult.

CHAPTER 6

RECOMMENDATIONS

Based on the findings and conclusions presented above, the following recommendations aimed at addressing the existing deficiencies have been suggested.

6.2 COURT PROCEDURES:

6.2.1 Delivering Summons to Defendants:

- The court should ensure that the responsibility of facilitating Process Servers is streamlined to avoid delays.
- Penalties should be put in place to deter process servers making false affidavits.
- Only people with a reputable record of reliability in delivering summons to the right people in the right destinations should be registered as court process servers.
- The Judiciary should also conduct regular training of process servers to enhance their capacity.

6.2.2 Filing Defence:

- The Judiciary should improve coordination with paralegals, legal aid clinics and encourage volunteers through legal associations and advocates to help more people and sensitise them about the importance of making written statements of defence and to help the poor who may not afford legal services.
- Courts should also ensure that parties are properly served before ex-parte judgments are made

6.2.3 Holding Scheduling Conferences:

- The Judiciary should sensitize judicial officers at all levels and advocates on the use of scheduling conferences in courts to speed up trial of cases.
- Parties that are not represented should be encouraged to use services of legal aid clinics where non-representation are cited as a hindrance to holding scheduling conferences.

6.2.4 Mediation:

- The Judiciary should spearhead efforts and collaborate with the Judicial Service Commission (JSC) and the Centre for Arbitration and Dispute Resolution (CADER) to

sensitise the litigants, advocates and the public about the benefits of mediation as a method of resolving disputes.

- The Judiciary should train and sensitize judicial officers on the use and benefits of mediation. Rules to regulate the process should be put in place to guide officers in all Courts of Judicature.
- The Judiciary should also make a proactive arrangement of ensuring that trained mediators are availed to operationalise mediation in all courts. Management should have a comprehensive arrangement to fast track the process of rolling out mediation to all courts.

6.2.5 Adjournments:

- The Judiciary should put in place detailed procedures of handling adjournments to eradicate unnecessary delays.
- Requests for adjournments made in good faith should be done in writing and agreed upon by all parties with their advocates.
- The judiciary should design a mechanism of facilitating witnesses promptly to enable them to attend Court sessions as scheduled.

6.2.6 Delivering Judgments:

- Management should ensure that the practice of judgment on notice is discouraged and the set timelines for delivering judgment adhered to.
- Courts should be facilitated and encouraged to make use of internet for delivery of well researched judgments.
- The High Court Inspectorate should ensure that follow-up is made on cases where hearing and submissions are complete for prompt judgment.
- Regular reporting and monitoring of the progress of cases from filing, hearing to final disposal should be emphasised and corrective measures taken through early and continuous intervention to reduce unreasonable delay.

6.3 ICT INFRASTRUCTURE:

6.3.1 Recording of Court Proceedings:

- The Judiciary should expedite and prioritise the acquisition of court recording and transcription equipments.

6.3.2 Adoption and use of CCAS in Management of Cases:

- Management should expedite the process of upgrading CCAS/CCMS to handle e-forms, electronic data processing and Electronic Filing Systems (EFS).
- A comprehensive roll-out plan should be designed to ensure that all magisterial areas are served by the CCAS.
- Management should train and sensitize staff that interface with CCAS to improve acceptability and use of the system.
- Management should train court clerks in customer care skills, IT, file and records management to improve the image of the Judiciary and timely management of cases.

6.4 STAFFING:

6.4.1 Filling of Vacant Posts:

- Management should ensure that efforts are made expeditiously, to fill all vacant posts with quality staff (e.g. Court Inspectorate) to avoid backlog of cases.
- Adequate contingency plans should always be put in place before judicial officers are released on secondment outside the Judiciary.

6.4.2 ADR Training and Sensitization:

- The Judiciary should sensitise judicial officers and advocates on use of Alternative Dispute Resolution (ADR) to help them apply it as a mechanism for justice delivery and a viable tool of shifting from litigation to dispute resolution, with an ultimate goal of enhancing harmony among the litigants.

6.5 MONITORING AND EVALUATION OF PERFORMANCE:

6.5.1 Staff Performance:

- Management should expedite the process of developing an appropriate system to assess the performance of Judges/judicial officers.

6.5.2 Court Inspectorate Function:

- Management should put in place a proactive system of reviewing and acting upon court inspectorate recommendations.

6.5.3 Coordination of Stakeholders in the Justice System:

- All stakeholders in the justice system (e.g. Prisons, Police and the DPP) should ensure that monthly meetings are held to improve the level of communication, coordination and cooperation.

John F. S. Muwanga
AUDITOR GENERAL

KAMPALA

9th March, 2011

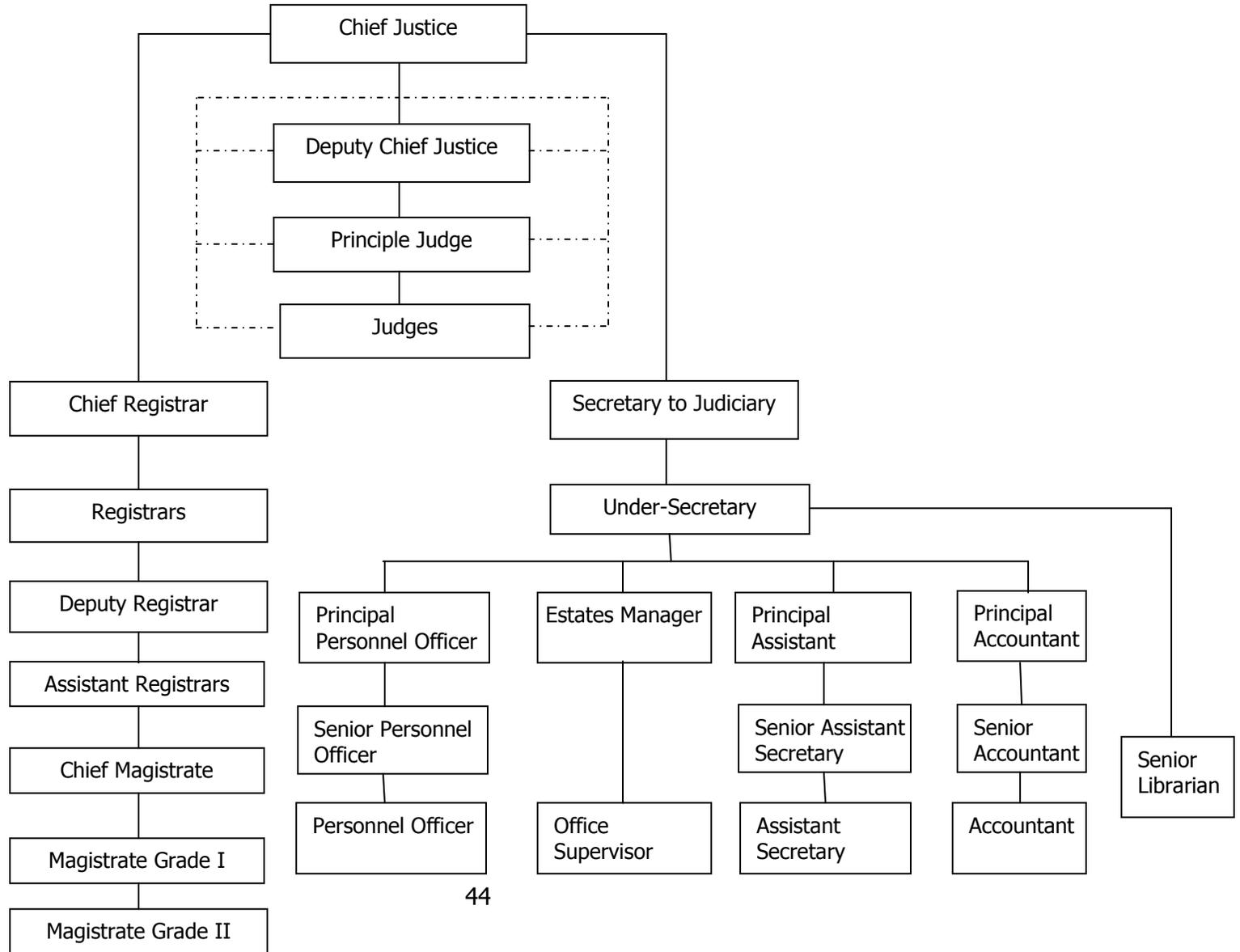
GLOSSARY OF TERMS:

| | |
|-----------------------------|--|
| Auctioneer: | An Auctioneer or a person who carries out business of an Auctioneer is defined as one who inter alia sells or offers for sale any movable or immovable property at any sale or auction. |
| Backlog: | Every Civil Suit older than 24 months shall be regarded as backlog and qualify to be fast tracked in the system for expedited disposal. |
| Bail: | Security, usually a sum of money, exchanged for the release of an arrested person as a guarantee of that person's appearance for trial. |
| Caseflow Management: | A coordinated management by the court of the processes and resources necessary to move each case from filing to disposition, whether that disposition ultimately is by settlement, guilty plea, dismissal, trial, or other method. |
| Cause: | A matter to be resolved in a Court of law. |
| Civil Case: | A court proceeding which involves legal issues between individuals/organizations/governments; court proceedings other than criminal matters. |
| Criminal Case: | A case brought by the government against an individual accused of committing a crime. Acts that are seen as harmful to society are crimes. Only the state can bring a criminal case to court. |
| Court Bailiff: | A Court Bailiff is a person charged with the duty of executing Court orders. |
| Defendant: | A person against whom a civil suit has been instituted in a court with competent jurisdiction. |
| Ex-parte: | Is a Latin Legal term meaning "from (by or for) one party". An <i>ex parte</i> decision is one decided by a Judge without requiring all of the parties to the case to be present. |

| | |
|--------------------------------------|--|
| Interlocutory Application: | An application/Proceeding taken during the course of, and incidental to a trial; housekeeping order that relates to the process of the trial as opposed to the substance of the pleadings. |
| Mediation: | A method of dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution. |
| Plaint: | A document filed by a plaintiff to institute a civil suit. |
| Plaintiff: | A person who has instituted a civil suit against another. |
| Rejoinder: | A pleading in common law, made by the defendant to answer a replication by the plaintiff. |
| Scheduling Conference: | It is a pre-trial court meeting between the judge/magistrate, the parties to a suit and their lawyers to determine how the case will proceed and/explore the possibilities of settlement. |
| Summons: | A court command to the defendant to file a defence and appear for court proceedings. |
| Written Statement Of Defence: | It is the defendant's written reply to the claims of the plaintiff. |

Appendix (i)

COURTS OF JUDICATURE ORGANISATION STRUCTURE



Appendix (ii)

List of Documents Obtained and Reviewed during audit.

| Document | Purpose |
|---|--|
| The 1995 Constitution of the Republic of Uganda | To ascertain establishment, mandate and functions of Judiciary. |
| The Judicature Act Cap 13 | Obtain mandate, functions of Judiciary and enabling laws. |
| The Judiciary Staff Handbook | Get an understanding of the Historical background, and organizational structure of the judiciary. |
| The Civil Procedure Act Chapter 71 and Civil Procedure Rules Statutory Instrument 71-1. | To understand the procedures followed in handling civil cases. |
| The Criminal Procedure Code Act Chapter 116 | To understand the procedures in conducting criminal proceedings. |
| The Judiciary Strategic Plan and Investment (July 2007 to June 2011) | Obtain the judiciary's major activities, Mission, Vision, and strategic objectives. |
| The Judiciary Budget Estimates and Final Accounts (2006/07, 2007/08 and 2008/09) | To establish how the Judiciary operations are funded. |
| The Judiciary Annual Reports | To obtain information on the judiciary performance against set targets, challenges faced by judiciary in its operations. |
| JLOS Citizens Handbook | To obtain information on operations of key-players in the sector over the period. |
| JSC Citizens Handbook | To obtain information on operations of key-players in the sector over the period, and processes in the justice system in Uganda. |
| Judiciary Monthly Bulletins | To obtain updates and news on key JLOS operations over the period. |

Appendix (iii)

Analysis of Adjourments for selected Cases

| Serial Number | Number of adjourments per case | Case Duration (months) |
|----------------|--------------------------------|------------------------|
| 1 | 9 | 5 |
| 2 | 17 | 9 |
| 3 | 24 | 8 |
| 4 | 17 | 6 |
| 5 | 5 | 3 |
| 6 | 6 | 9 |
| 7 | 6 | 3 |
| 8 | 6 | 5 |
| 9 | 19 | 26 |
| 10 | 5 | 12 |
| 11 | 11 | 8 |
| 12 | 10 | 8 |
| 13 | 2 | 14 |
| 14 | 5 | 11 |
| 15 | 2 | 9 |
| 16 | 6 | 11 |
| 17 | 19 | 22 |
| 18 | 4 | 4 |
| 19 | 7 | 9 |
| 20 | 15 | 28 |
| Total | 195 | 210 |
| Average | 10 | 11 |