KEY NOTE ADDRESS BY HON. JUSTICE BART M. KATUREEBE, CHIEF JUSTICE AT THE JUDICIAL SYMPOSIUM ON HUMAN RIGHTS IN THE CONTEXT OF CRIMINAL JUSTICE HELD ON THE 15TH TO 17TH NOVEMBER, 2017 AT LAKE VICTORIA SERENA HOTEL, KIGO

My Lords,

The United Nations High Commissioner for Human Rights,

Country Representative, Office of the High Commissioner for Human Rights,

Chairman of the Governing Board of African Judges and Jurists Forum,

Representative of the International Committee of Jurists,

Distinguished Participants,

Ladies and Gentlemen.

Introduction

I am pleased to have been invited to address this forum on the theme: **Human Rights in the Context of Criminal Justice – Rethinking the Workings of the Justice Process in Uganda**. The promotion and observance of human rights is at the centre of good governance, democracy and the rule of law. Good governance requires fair legal frameworks that are enforced impartially. It also requires full protection of human rights, particularly those of minorities. Impartial enforcement of laws requires independent, impartial and incorruptible institutions.

On its part, the rule of law operates on the notion that no one is above the law. The most important application of the rule of law is the principle that governmental authority is legitimately exercised only in accordance with written and publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. The principle is intended to be a safeguard against arbitrary governance,

whether by a totalitarian leader or by mob rule. Thus, the rule of law is hostile both to dictatorship and to anarchy.[1]

Human rights are brought to bear through various international human rights instruments starting with the Universal Declaration of Human Rights, 1948.

Human rights and the Law

The 1948 Universal Declaration of Human Rights (UDHR) sets the stage for the entry of human rights into the domain of criminal law. Under the declaration, *everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law*.[2] The declaration also prohibits arbitrary arrest or detention.[3] Further, *everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*[4] And finally in this regard, *everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence*; and *no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*[5]

The foregoing provisions in the UDHR, which I have chosen to reproduce, initiated the entry of human rights into criminal law and justice. As such

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[1] *Wikipedia,* the *Free Encyclopaedia*.

[2] Universal Declaration of Human Rights (UDHR), article 8.

[3] UDHR, article 9.

[4] UDHR, article 10.

[5] UDHR, article 11.

criminal investigations, prosecution, trial, sentence and execution of sentences must, as an obligation, pass the human rights test.

It was therefore upon the above background that the International Covenant on Civil and Political Rights (ICCPR) was made. The ICCPR strengthened the position set up by the UDHR and is, indeed, considered the bedrock of human rights[6]. It constitutes the international Bill of Rights from which we draw our own Bill of Rights as set out under chapter four of the 1995 Constitution of Uganda.

The Bill of Rights as entrenched in the Ugandan Constitution was further informed by the provisions in the African Charter for Human and Peoples Rights[7]. The East African Treaty[8] also complements this set up.

The Constitution of the Republic of Uganda not only incorporates the Bill of Rights but also saves Uganda's obligations in respect of any treaty, agreement or convention as provided for under article 287 of the Constitution. Chapter 4 of the Constitution sets out an elaborate Bill of Rights but of particular importance to criminal law and justice are articles 22 (on protection of right to life); article 23 (on protection of personal liberty); article 24 (on respect for human dignity and protection from inhuman treatment); and article 28 (on the right to a fair hearing).

The right to a fair hearing, for example, has been subject of interpretation in a number of cases. One such case is **Uganda Law Society & Anor v The Attorney General (Constitutional Petitions No. 2 & No. 8 of 2002).** The facts and circumstances of this case are of peculiar interest. Briefly, on 25th March 2002, two soldiers of the Uganda Peoples Defence Forces, were

[6] See particularly articles 6, 9, 10, 14 and 15 thereof which entrench human rights into criminal law and justice.

[7] Particularly article 7 thereof.

[8] Particularly article 6 (d) of the Treaty for the Establishment of the East African Community, 1999 *(as amended on 14th December, 2006 and 20th August, 2007).*

indicted, tried and executed on the same day for the murder of three civilians in Kotido District in North Eastern Uganda. The petitioners filed these two petitions seeking declarations that the entire process was unconstitutional.

The case for the petitioners was that the soldiers who were executed never received a fair trial as stipulated by articles 28 and 44 of the Constitution. It was submitted that under those articles, the soldiers were entitled to a fair and speedy hearing before an independent and impartial tribunal. However, the trial was too speedy that it was not possible to give the accused persons the safeguards they were entitled to. The trial took less than three hours. The accused were not given time or facilities to enable them prepare for their trial. They were not allowed to be represented by counsel of their choice or any lawyer at all. That they were not accorded services of an interpreter and were not allowed to call witnesses or to cross examine them. That all this was in breach of clear constitutional provisions contained in article 28 of the Constitution and the African Charter on Human and Peoples' Rights. It was also argued that the Field Court Martial which tried the soldiers was neither independent nor impartial because its chairman was the commanding officer who was involved in investigations and the rest of the members of the Court were his junior officers who could not be expected to think independently from their commander.

The Constitutional Court [per Twinomujuni JA] held as follows:

> **"... the Kotido trial was conducted in total contravention of the provisions of article 28 (3) (e) of the Constitution of Uganda. I have mentioned above that article 28 of the Constitution is a package of protections to accused persons in order to guarantee them a fair hearing. If anyone of them is denied, then the trial cannot be said to be fair. Article 44 (c) of the Constitution states that a right to a fair hearing is absolute. It must never be denied in any circumstances whatsoever. In this case the soldiers were tried and executed without according them virtually all basic human rights**

guaranteed by articles 28 and 44(c) of the Constitution. It was a denial of natural justice precedented only by military trials of President Idd Amin era".

The Court concluded that the execution of the two soldiers at the orders of a Field Court Martial was illegal, unlawful and unconstitutional.

Unfortunately it was irreversible!

The right to personal liberty has also been subject of court interpretation in a number of cases. Of particular interest is a decision of the East African Court of Justice which intertwined the right to personal liberty with the rule of law and the independence of the Judiciary. This was in the case of **Katabazi and others v Secretary-General of the East African Community and Another (2007) AHRLR 119 (EAC 2007).**

This was a reference to the East African Court of Justice by sixteen persons against the Secretary-General of the East African Community as the 1st respondent and the Attorney-General of Uganda as the 2nd respondent. The story of the claimants was that during the last quarter of 2004, they were charged with treason and misprision of treason and consequently they were remanded in custody. However, on 16 November 2006, the High Court granted bail to fourteen of them. Immediately thereafter the High Court was surrounded by security personnel who interfered with the preparation of bail documents and the fourteen were re-arrested and taken back to jail.

On 24 November 2006 all the claimants were taken before a military General Court Martial and were charged with offences of unlawful possession of firearms and terrorism. Both offences were based on the same facts as the previous charges for which they had been granted bail by the High Court. All claimants were again remanded in prison by the General Court Martial. The Uganda Law Society went to the Constitutional Court of Uganda, challenging the interference in the court process by the security personnel and also the

constitutionality of conducting prosecutions simultaneously in civilian and military courts. The Constitutional Court ruled that the interference was unconstitutional.

Despite that decision of the Constitutional Court, the complainants were not released from detention and hence this reference. The issue was whether the acts complained of were a violation of the rule of law and, therefore, an infringement of the Treaty for the establishment of the East African Community. The Court held:

> **We, therefore, hold that the intervention by the armed security agents of Uganda to prevent the execution of a lawful court order violated the principle of the rule of law and consequently contravened the Treaty. Abiding by the court decision is the cornerstone of the independence of the judiciary which is one of the principles of the observation of the rule of law.**

These cases underscore the point that issues of human rights and the rule of law feature in the day to day conduct of affairs under criminal justice starting from investigation, prosecution, trial, sentencing and execution of sentences.

Challenges in the administration of Criminal Justice in Uganda

In the course of administration of criminal justice, the Judiciary and other law and justice agencies face a number of challenges in enforcing human rights. Most challenges manifest in failure to adhere to international human rights standards. This is due to lack of effective institutional mechanisms. We are faced with poor investigation of criminal cases, weak forensic evidence gathering and analysis machinery, inadequate training of action officers in the entire Justice, Law and Order Sector (JLOS), among others. Presence of one such shortcoming in any of the JLOS institutions has a significant negative effect over the other institutions since the justice system is a chain. No institution can execute its mandate in isolation.

Such weaknesses have led to failure of cases due to poor investigations; prolonged stay on remand; over-congestion in prisons; all of which are in contravention of the human rights of victims and accused persons respectively.

The other challenge is absence of legal aid or a public defender system. For proper observance of the rights of an accused person, he/she should be entitled to and indeed availed with legal representation from the point of arrest throughout the case process. Currently in Uganda, an accused person is only entitled to provision of legal aid by the state if he/she is charged with an offence punishable either by death or life imprisonment through a system known as state brief.

However apart from the narrow coverage of this system, this service is not provided early enough. Advocates are only availed to accused persons after cause listing of their cases for trial. It should be noted that by then, an accused person has spent an average of about 4 years on remand. For all that period, all the accused has heard in terms of forming his/her defence are the distortions peddled by purportedly more experienced inmates. Such an accused person cannot open up to a stranger in the name of an advocate. Furthermore, many advocates who accept to take on cases under the arrangement are either not the best or do not put in their best of input.

The provision of the advocate on state brief therefore remains a mere legal formality. Then we have to bear in mind the majority court users who have no access to legal aid at all.

The system is further faced with the problem of increased sophistication with which crimes are committed occasioned by advancement in ICT and changing social-economic trends. Cyber-crimes, trafficking in persons, corruption, fraud, money laundering, among other white collar crimes, are often committed with a lot of sophistication yet the persons meant to fight the same have little or no specialised training in these areas. This impedes

effective administration of criminal justice and fetters the rights of persons affected by such offences.

Rethinking the Workings of the Justice Process in Uganda

In light of the foregoing, it is important for the JLOS institutions to up their act if we are to register improvement in the administration of criminal justice. We need to develop a criminal justice system that places human rights and the rule of law at the forefront. I believe we need to begin with some crucial legal reforms. As we are all aware, our criminal laws and procedures are imported from England. We have done very little to adjust these laws to the local circumstances pertaining in our society. Most of the laws had colonial motives at the time they were made. As such many of them do not pass the human rights test. Some offences call for de-criminization; while some procedures need to be modified to suit prevailing circumstances. These should be identified, discussed, and agreed upon during this symposium and followed up hereafter.

The other way the criminal justice system can be improved is through coming up with and implementing innovative practices. In the Judiciary, we have so far made reasonable progress in the use of plea bargaining and sentencing guidelines. Through plea bargaining, we have been able to reduce the remand population in prisons thereby decongesting the overcrowded prisons in Uganda. Since inception of the programme in 2014 as a pilot, over 12,000 criminal cases have been disposed of through this process. The process makes it possible for suspects who want to plead guilty to do so at the earliest possible opportunity. It is also one way of promoting reconciliation between parties in accordance with our constitutional provisions[9]. This contributes to the promotion of the human rights of offenders and victims if well managed.

Sentencing guidelines have been instrumental in creating uniformity, consistency and predictability in sentencing patterns. This, in a way,

[9] Article 126 (2) (d) of the Constitution of the Republic of Uganda, 1995.

encourages plea bargaining hence improved productivity. We need greater training of stakeholders to make use of the guidelines more effectively. Of particular importance, judicial officers should be oriented to develop and follow a human rights based approach in sentencing.

The Judiciary and JLOS in general have also made use of ICT to improve the administration of criminal justice. A case in point is the use of video link technology in cases involving child victims of sexual offences. This is a powerful tool for protection of the rights of children who are enabled to go through a criminal trial without having physical confrontation with their alleged tormentors. We intend to extend this facility, which started as a pilot, countrywide with time. We also intend to connect with Luzira and other prisons using the same technology. We are also in the process of implementing full automation of the court process. This will assist in the elimination of unnecessary delays, cut out opportunistic corruption, eliminate the problem of misplaced or lost files, cut out systemic inefficiencies and achieve a faster resolution of court cases. If these benefits are realised, the positive impact on observance of human rights will be tremendous.

Strengthening mechanisms to fight sexual and gender based violence is another initiative by the Judiciary and the entire sector. With the help of our development partners, gender based training has been undertaken by many, if not all, judicial officers, among other justice actors. Some time back, a Gender Bench Book on Access to Justice by Women in Uganda was launched. Another Commonwealth Judicial Bench Book on Violence against Women and Girls in East Africa was also launched last year. The significance of these bench books is the provision of tools to judicial officers to understand and better interpret laws to foster greater access to justice. It is an effective way of equipping judicial officers with human rights lenses.

Conclusion

Rethinking the way the criminal justice system works requires more than institutional and legal changes. It calls for a change of attitude on the part of the justice actors. It requires continuous training and judicial activism on the part of judicial officers to have human rights lenses whenever accused persons or victims appear before them. Every process undertaken should be assessed for human rights compliance.

Thank you for listening to me.

Bart M. Katureebe
CHIEF JUSTICE