

# **Comparative Appellate Justice Systems: From Administration to Adjudication**

## **Discussion on Strengthening the Courts and Improving the Fair Administration of Justice**

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While there is no standard or fixed definition of Rule of Law, there are criteria that are part of a shared concept.

The term Rule of Law embodies the basic principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights.

Implicit in Rule of Law is the notion that government authority may only be exercised in accordance with written laws, which were adopted through established procedures. This principle is an important safeguard against arbitrary rulings in individual cases.

A predictable legal system with fair, transparent, and effective judicial institutions is essential to the protection of citizens against the arbitrary use of state authority and lawless acts of individuals and organizations. Without Rule of Law, the executive and legislative branches would operate without meaningful checks

and balances, free and fair elections would be compromised, and civil society would erode. There would be no predictive outcomes or expectations.

Thus, it is important to have strong, stable and effective written laws that are applied uniformly to all persons. Laws should not be made in respect of particular persons.

It is important to remember that laws are not self-executing.

Some common criteria for Rule of Law include:

- 1) Independent and impartial judiciary;
- 2) Laws that are public and written;
- 3) The absence of laws that apply only to particular persons or classes;
- 4) The absence of retroactive laws;
- 5) Judicial accountability and transparency; and
- 6) Judicial review.

Stated differently, Rule of Law contemplates:

- 1) Government decisions are made according to written law and rules;
- 2) Government sanctions cannot be made up after the fact (ex post facto);
- 3) Rules are applied, as much as possible, consistently to all;
- 4) Courts provide citizens consistent, written process (due process)

before life, liberty, or property is taken; and

5) Courts provide reasons based upon the law for their decisions.

Today, I want to discuss with you some of the basic tenets of the Rule of Law as it relates to the judiciary, and some of the threats.

### Independent Judiciary (Judicial Independence)

An independent judiciary is essential in a democracy governed by the Rule of Law. The people create constitutions that identify their individual rights, empower legislatures to make laws consistent with the terms of those constitutions, and authorize executives to faithfully execute the laws that legislatures make. Those laws are to protect everyone; the rich, the poor, the majority and the minority, the powerful and the powerless. The administration of justice therefore cannot be a popularity contest. Judges must be in a position to decide matters purely based on the law, without external pressure or influence and without regard for public opinion, praise, or criticism. Why is this so important? One of the most compelling examples is In 2004, the United States marked the 50<sup>th</sup> anniversary of the seminal case Brown v. Board of Education, which outlawed state sanctioned segregation in public schools. This decision required courageous, independent judges to declare what the laws were, even though high public opinion was contrary.

To have an independent judiciary:

- 1) Judges must uphold the Rule of Law;
- 2) Judges must be independent - unswayed by interest groups, public officials, powerful private citizens, or collective public opinions. As a branch of government, the judiciary must be strong enough to resist institutional encroachment from other branches of government;
- 3) Judges must be impartial in their interpretation of the laws.  
Example - Judge appointed by a president from the opposite party.
- 4) Judges must possess the appropriate temperament and character;
- 5) Judges must possess the appropriate capabilities and credentials;
- 6) Judges must perform their duties in a manner that justifies public faith and confidence in the courts. Judicial independence must be tempered by judicial accountability. There should be a process to review and consider allegations of misconduct and impose discipline in appropriate cases; and
- 7) Judicial officers should have the confidence of the public.

Even if judges follow the Rules of Law to the letter, it is important that the public perceives them as doing so. Appearances matter because the public's perception of how the courts are performing affects the extent of public confidence

in those courts.

The need for public confidence and support for the judicial branch is most critical, inasmuch as by virtue of its independence it is less directly accountable to the electorate and therefore most vulnerable to public suspicion. Judges must conduct themselves in an appropriate manner to promote respect for the Rule of Law.

There should be a strong written ethics code for judges.

Review Judicial Canons (Uganda and United States)

### Independent Bar

- 1) Respect for courts;
- 2) Code of Professional Conduct;
- 3) Adequate Training;
- 4) Adequate Compensation;
- 5) Must be free to advocate unpopular causes; and
- 6) Pro bono

### Equal Treatment Under Law

§Strong anti-discrimination law

§Strong Enforcement

\$Training for court personnel

## Access to Justice

- §Courts must endeavor to serve all
- §Self-examination and introspection
- §Costs and delay (Barriers to Access)
- §Pro bono and legal services

## Transparency and Accountability

- §Public courts
- §Public trial
- §Public records
- §Written decisions where appropriate
- §Reasoned (explained rational) for decision

## Competence of Bench and Bar

- §Continuing Judicial education and Legal education training;
- §Mentor program for young lawyers;
- §Bar Associations
- §Judicial Education

## Strong Laws and Court Rules

Role of:

- §Judicial Branch

§Executive Branch

§Legislative Branch

### Public Outreach

§Judges must play a role in educating the public about the law.

§Judges must work with other appropriate institutions for strong courts:

- Funding
- Salary
- Staff
- Credibility
- Prominence
- Independence

### Reduce Delay and Backlogs

§Case Management

§Court resources

### ADR

§Mediation

§Arbitration

§Summary Trials

§Early neutral evaluation



## CONCLUSION

While courts come in all shapes, sizes, and structures, they must share a common denominator, a shared mission -- the fair administration of justice. Every judge, every day, must approach the task of delivering equal justice under law with new vigor, new vision, and a strong commitment to the goal of creating a fair and just society. I say again, neither rules nor laws are self-executing. Judges are servant leaders and must embrace that role, if justice is truly to prevail. Whether or not the goal is reached is in your hands! The judges and the people of Uganda will determine the type of court system that meets the needs of Uganda now and going forward into the future. I am confident that the future of the Ugandan Judicial System, under leadership of Chief Justice Kartureebe, is strong, competent, service oriented, flexible, bright, and Mission Focused! You must create public trust and confidence in the courts

Your courts must become as the D. C. Courts: Open to All, Trusted by All, Committed to Justice for All!

