



The Judicial Service Commission

People's Bridge to Justice



PRESENTATION AT THE 21ST ANNUAL JUDGES' CONFERENCE

ON

EXPLORING THE EFFICIENCY AND EFFECTIVENESS OF THE JUDICIAL SERVICE COMMISSION IN STRENGTHENING ETHICS AND INTEGRITY IN THE UGANDA JUDICIARY

1. Introduction

The Judicial Service Commission (the Commission) is an independent constitutional body established under Article 146(1) of the 1995 Constitution of the Republic of Uganda (the Constitution). The Commission, as one of the institutions in the Justice Law and Order Sector (JLOS), a sector, that has the responsibility of contributing to the promotion of the observance of the rule of law, public order, the administration of justice, good governance and the promotion, protection and observance of human rights, in the country.

The **functions** of the Judicial Service Commission are set out in Article 147 of the Constitution.

These include: -

- 1) (a) **Appointment function:** - To render advise to the President in the exercise of the President's power to appoint officers specified in sub clause (3). These are: ***the Chief Justice, Deputy Chief Justice, the Principal Judge, a Justice of the Supreme Court, Justice of the Court of Appeal, Judge of the High Court, the Chief Registrar and a Registrar. The exercise of this power includes the power to confirm appointments, to exercise disciplinary control over such persons and to remove them from office.***

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- (b) Appointment of other Judicial officers, their confirmations, disciplinary control and their removal from office. These are the: Deputy Registrars, Assistant

Registrars, Chief Magistrates, Senior Principal Magistrate Grade 1, Principal Magistrate Grade 1, Senior Magistrate Grade 1 and Magistrate Grade 1 and Magistrates Grade 2.

(c) Appointment of Staff of the Judiciary, the discipline and removal of such staff and their removal.

2) Review function -to review and make recommendations on the terms and conditions of service of Judges, other judicial officers and staff of the Judiciary.

3) Education function- to prepare and implement programmes for the education of and for the dissemination of information to judicial officers and the public about law and the administration of justice.

4) Public Complaints function-to receive and process people's recommendations and complaints, concerning the judiciary and the administration of justice.

5) Advisory function-to advise the Government on improving the administration of justice.

The Commission's membership is constituted of a Chairperson, the only full-time member; a Deputy Chairperson; 1 member representing the Judiciary; 2 members representing the Uganda Law Society; 2 members representing the public; 1 member representing the Public Service Commission; and the Attorney General as an *ex-officio* member.

The Commission's vision is "***An effective, responsive and efficient judicial service.***" The mission of the Commission is "***To foster an accountable and effective judicial service through competence based recruitment, disciplinary control, stakeholder engagement, public and judicial education***"; while its work theme is, '***The people's bridge to justice***'; an illustration of its mandate to act as link between the people and the Judiciary.

The Commission's **strategic objectives** are:

- 1) Identify suitable persons for appointment as Judicial and non-Judicial Officers for all levels of the Courts of Judicature;
- 2) Review and make recommendations on the terms and conditions of service of Judicial and non-Judicial Officers;

- 3) Prepare and implement judicial and public legal education programmes;
- 4) Exercise disciplinary control over Judicial and non-Judicial Officers in accordance with the set ethical standards and codes of conduct;
- 5) Process people's recommendations and complaints concerning the Judiciary and the administration of justice;
- 6) Strengthen the institutional capacity of JSC to deliver on its mandate.

Context for this presentation – Facts and figures

Judiciary

The Judiciary, as established under Article 126 (1) of the Constitution, is the guardian of the rule of Law, the guarantor of equality before the law, the protector of human rights and freedoms, with powers to interpret the Constitution, enforce its application and grant remedies through judicial review of administrative actions and decisions.

The following are some vital facts and figures relating to the Judiciary and the Commission, that relevant to this presentation;

1. Judge to population ratio

- Number of judicial officers is 386.
- The Number of non-judicial officers is 1312.
- For a population of 40 million Ugandans this translates into a judge to population ratio of 1 judicial officer for every 100, 000 people.
- **Kenya** with a population of 48 million has a judge to population ratio of 1 judicial officer to 78, 303 people.
- **Ghana** with a population of with a population is 28 million has a judge to population ration of 1 judicial officer to 88, 050 people.
- **Canada** with a population of about 35 million has 1 judicial officer for 5, 000 people.
- **Australia** with about 23, 000, 000 people has 1 judicial officer for every 23, 000.
- **Kenya** has 7 Justices of the Supreme Court; 35 Justices of the Court of Appeal; and 150 High Court Judges.
- **Ghana** has 15 Supreme Court Judges, 29 Court of Appeal Judges, and High Court 108 Judges.

Comparative figures on the Judicial Officer to Population Ratio in Uganda, Kenya and Ghana

Country	Justices of the Supreme Court	Justices of the Court of Appeal	Judges of the High Court	Other Judicial Officers ¹	Number of Judicial Officers	Total Population	Judge to Population ratio
Uganda	11	15	51	323	400	40 million	1:100,000
Kenya	7	35	150	421	613	48 million	1:78, 303
Ghana	15	29	96 ²	178 ³	318	28 million	1:88, 050

These numbers translate into an unrealistic caseload for a judicial officer and backlog. For instance, the Court of Appeal has a caseload of 690 cases per Justice with only about 11 Justices in active service; and a caseload of about 7,585 cases.

For the High Court, there are about 48, 000 pending cases with some 26, 769 cases categorised as backlog of two years or more. The Land Division alone, a single Judge has a caseload of 1500 cases and yet the annual target for a High Court Judge are 300 cases per year.

The Commission, which has an oversight and supervisory role over the Judiciary, has a staff compliment of 90 out of an approved staff compliment of 112. This is the staff compliment before the constitutional amendment covering the management of non-judicial officers.

The current Judge to population ratio of 1 judicial officer to 104, 000 is lean for effective service delivery for the people of Uganda; and could provide an environment that is not conducive for effective service delivery.

¹ This number includes Registrars, Deputy Registrars, Assistant Registrars, Chief Magistrates as well as Magistrates Grade I & II. It consists of 8 Registrars, 28 Deputy Registrars, 13 Assistant Registrars, 47 Chief Magistrates, 194 Magistrates Grade I and 33 Magistrates Grade II.

² As at 2015/16, Ghana had 108 Judges of the High Court.

³ This number includes 64 Circuit Judges (An equivalent of Chief Magistrates) and 114 Professional Magistrates (The Judicial Service of Ghana Annual Report 2015/16)

For an arm of government, this judiciary to population ratio should be compared to that of Parliament where Member of Parliament to population ratio stands at 1 MP: 80,000 people.

There is need to have a realistic Judge to population ratio as well as Judge to staff ratio in order to deal with efficient administration of justice. (The recent resolution to enlarge the number of High Court Judges from 51 to 82 is one of the measures).

The Judiciary and Commission have human resource constraints that impact service delivery.

2. The budget

The Judicial budget is 128 billion shillings from budgetary estimates of 320 billion. 40 million is for operations. What is received is not 50% of what is required.

For the JSC, the budget is 9 billion shillings enhanced from 3 billion shillings. The Commission's budgetary estimates to be able to discharge its mandate is Uganda shillings 46, 790, 156, 000.

Judicial sector-The Way forward.

The proposal is that the Judiciary and the Judicial Service Commission should constitute a Judicial Sector for budgeting purposes. The Judicial Sub sector (Chap 8 institutions) to pitch and lobby for the budgetary estimates without revision in terms of article 155(3) of the Constitution, to benefit from non-revision of such estimates.

3. Terms and conditions of service

A High Court in Uganda earns a salary of about 9 million; while a High Court Judge in Kenya earns 5, 469 US dollars (about 20 million).

A Tribunal Judge in the UK earns about 108, 000 pounds a year which translates into about 9, 000 pounds a month (about 40, 000, 000 Uganda shillings).

A circuit Judge earns about 134, 000 pounds;

High Court Judge earns 181, 000 pounds;

Heads of Divisions earn 217, 000 pounds;

Chief Justice 252, 000 pounds.

Kenya, a High Court Judge's entry package is 657, 426 Kenya shillings; and it is capped at 907, 279 Kenya shillings;

A Court of Appeal Judge's entry package is Kenya shillings 689, 224; and it is capped at 1, 122, 759; while a Justice of Supreme the Court's entry package is Kenya shillings 792, 000 and capped at 1, 218, 535.

The Kenya Chief Justice earns 1, 380, 351; while the Deputy Chief Justice earns 821, 833; and capped at 1, 233, 536.

In comparison:

The Uganda Chief Justice earns 20 million;

Deputy Chief Justice earns 18 million;

Principle Judge earns 10, 018, 796;

Supreme Court Judge earns 9, 688, 506;

Court of Appeal Judge earns 9, 358, 216 million;

High Court Judge earns 9, 026, 743 million.

The remuneration for the Ugandan bench is quite low given the responsibilities of judicial office; hence the need to insulate judicial officers from temptation from unethical conduct and behaviour.

The remuneration for the members of the Commission and staff is much lower than the judiciary on account of tax free benefit to judicial officers.

It is our position that the emoluments of the Judiciary and the commission be enhanced to a compensation that is commensurate to their constitutional functions.

2. The Ethical and Integrity Foundation for Judicial Service in the Judiciary

Ethics is defined as the discipline of dealing with what is good and bad and with moral duty and obligation.⁴

⁴ Webster's dictionary 7th Edition

Ethics, is defined in the Code of Conduct and Ethics for the Uganda Public Service as “A code of Morals applicable in the Public Service”,⁵ while Integrity is a guiding principle by which, “A public officer shall be honest and open in conducting public affairs.”⁶

Dr Steve Ogan, defines Integrity as “The uprightness of character, trustworthiness of actions, responsibility and commitment.”⁷

Article 149 of the Constitution provides for the Judicial Oath, which establishes the ethical and integrity foundation for judicial service, in the judiciary.

“Every judicial officer shall, before assuming the duties of his or her office take and subscribe the oath of allegiance and the judicial oath...”

The judicial oath is set out in the fourth schedule to the Constitution. It reads thus;

“I ...swear in the name of the Almighty God/Solemnly affirm, that I will well and truly, exercise the judicial functions entrusted to me and will do right to all manner of people in accordance with the Constitution of the Republic of Uganda as by law established and in accordance with the laws and usage of the Republic of Uganda without fear or favour, affection or ill will.”⁸

OTHER PROVISIONS OF THE LAW

The **Judicial Service Act (Cap 14, laws of Uganda)** and **Regulations** made thereunder provide a mechanism, by which the Commission enforces discipline of judicial officers in the:

- a) Performance and observance of their work;
- b) The management of complaints that are received from persons or parties aggrieved by a matter done or decision taken, with respect to the administration of Justice, or operation of courts or concerning the conduct of a judicial officer or any person performing judicial functions;

⁵ Definition of ethics, The Code of Conduct and Ethics for the Uganda Public Service, p. 4

⁶ Guiding Principles of the Code of Conduct and Ethics, The Code of Conduct and Ethics for the Uganda Public Service, p. 8

⁷ Dr. Steve Ogan, ‘Ethical standards for the incorruptible Judge: Foundation for judicial impartiality (2012)’

⁸ Fourth schedule to the 1995 Uganda Constitution

c), the institution of disciplinary proceedings, against an errant judicial officer, once, a prima facie case, has been made out or the referral of the question of whether a judicial officer, should be removed, to the appointing authority.

The Judicial Service Commission, Regulations SI 87 of 2005, Regulation 23, thereof, sets out, 14 disciplinary offences, that provide an ethical and integrity check list for all judicial officers to take note of and to strive to comply with the performance standards set in order to meet the expectations of the people and other stakeholders.

The Judicial Service (Complaints and Disciplinary Proceedings) Regulations No. 88/2005, particular, regulation 5 (3) thereof, sets out the grounds upon which complaints may be lodged against Judicial Officers. These include: improper conduct, corruption and abuse of office, neglect of duty and maladministration of justice.

The Uganda Code of Judicial Conduct contains the principles and rules that provide guidance for regulating judicial conduct and performance of duty by judicial officers.

The Principle of Integrity, in the Uganda Code of Judicial Conduct, provides that:

“Integrity is central to the proper discharge of the judicial office. The behaviour and conduct of a Judicial Officer must re-affirm the people’s faith in the integrity of the Judiciary”.⁹

The test is whether a judicial officer, in his or her conduct, in the performance of his or her duties or in the conduct of his or her personal affairs, is above reproach in the view of a reasonable fair –minded and informed person.

It is critical to recognize that the public’s respect and acceptance of judicial authority, depends on the proper manner in which the administration of justice is conducted, by judicial officers.

In order to enhance and maintain public confidence in the Judiciary, at the individual and institutional level, it is imperative for judicial officers, to respect and honour, the judicial office, as public trust. We are reminded that **“Integrity is the Bedrock of the Administration of Justice”**.

⁹ Principle 3 of the Uganda Code of Judicial Conduct

The Bangalore Principles of Judicial Conduct¹⁰ equally provides that the principle of integrity is essential for a Judicial Officer to adequately discharge their duty.¹¹ This principle requires a Judicial Officer's conduct to be beyond reproach in the eyes of a reasonable observer.¹² A Judicial Officer is, therefore, expected to exhibit and promote high standards of judicial and personal integrity at all times.¹³ *The Bangalore Principles* emphasize that the people's faith in the integrity of the Judiciary is hinged upon the behavior and conduct of a Judicial Officer's;¹⁴ hence the adage:

'Justice must not merely be done but must also be seen to be done'

There is no doubt that the strengthening of ethics and integrity of all judicial officers, in the conduct of their judicial functions, in the judiciary, is of critical importance for the proper administration of justice, in upholding the rule of law, and in maintaining public confidence in the judiciary.

3. EXPLORING THE EFFICIENCY AND EFFECTIVENESS OF THE JUDICIAL SERVICE COMMISSION IN STRENGTHENING ETHICS AND INTEGRITY IN THE UGANDA JUDICIARY -THE STRATEGY

Efficiency, under the Code of Conduct and Ethics for the Uganda Public service, is the principle by which, a public officer (Institution), endeavours to optimally use resource's including time in the attainment of organisational objectives, targets or tasks, "while Effectiveness, is when a public officer (institution) strives to achieve the intended results in terms of quality and quantity, in accordance with set targets and performance standards for service delivery".

The Strategy

This presentation will cover JSC's strategy in four segments:

- a) Disciplinary Control.

¹⁰ These Bangalore Principles of Judicial Conduct are applicable through the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

¹¹ Value 3 under the Bangalore Principles

¹² Principle 3.2. of the Uganda Code of Judicial Conduct; Value 3.1 under the Bangalore Principles

¹³ Principle 3.3. Uganda Code of Judicial Conduct under the Bangalore Principles

¹⁴ Principle 3.2. of the Uganda Code of Judicial Conduct; Value 3.2 under the Bangalore Principles

- b) Improved Institutional capacity to discharge wide mandate.
- c) Appointment/promotions function for judicial officers and non-judicial officers
- d) Annual performance assessment

We pursue a multi-faceted strategy and approach, to strengthen the observance of Ethics and Integrity in the Judiciary, by judicial officers and Non-judicial officers.

a) **Disciplinary Control.**

We pursue two approaches to this function; The **First approach**, is through pursuing voluntary compliance for the observance of ethical and integrity values on the part of judicial officers, through a number of sensitizations programs and court inspections. The second approach, is through invoking enforcement measures, through the conduct of disciplinary proceedings to exact compliance and secure a deterrence.

Voluntary compliance is driven through sensitizations programs conducted covering interaction with judicial officers, court inspections, Television and radio talk shows, performance management workshops, raising awareness of the common grounds of complaints that are received generally from the public and the publication of our decisions on sanctions.

The other feature of this approach is raising the awareness of the members of the public, of the complaints mechanism, procedures and the grounds of complaint and the full range of disciplinary offences, for which a judicial officer can be sanctioned, through public baraazas, school, prisons and police sensitization programs.

Empowering the people raises their capacity to appreciate what is ethical and what is not and the proper or improper manner by which the administration of justice is being conducted, by judicial officers, in their local areas. In this way, the people are empowered to assert their rights and freedoms that are guaranteed in the various laws.

The **second approach** is for the Commission to undertake enforcement measures when, it has been determined, upon investigation undertaken, that a judicial officer has erred in the performance of his/her duties, and that there is a prima facie case for the conduct of disciplinary proceeding, on a particular charge.

In the investigation of complaints made against judicial officers, generally, the Commission, is acutely aware, of the legitimate need for a judicial officer, by reason of the nature of the

Judicial office, to be afforded protection from frivolous, vexatious, or unsubstantiated accusations; and to be accorded due process of law in the resolution of complaints against him or her.

The Commission is determined to conduct the investigation of complaints in a timely and expeditious manner, in order for any judicial officer, found at fault, after due process, to be sanctioned or vindicated as the case will be, so that public confidence, in the judiciary, that is so critical for the proper administration of justice and the effectiveness of judicial authority, maintained.

b) Improved Institutional Capacity to discharge wide mandate.

The measures that have been taken, adopted or pursued, by the Commission, include;

- a) The transformation of the Commission to full time membership.
- b) The review of the internal reorganization and institutional set up of the Commission to make it fit for purpose and responsive to the demands of all public and stakeholders.
- c) The setup of regional offices to offer a regional presence and service that is closer to the people for instance Moroto office.
- d) To offer more than one disciplinary committee panel to expedite disciplinary proceedings and to consider the use of boards to deal with some complaints from the lower bench.
- e) The setup of a dedicated investigation unit with some forensic capability to investigate complex cases of corruption, deal with emerging trends, and sophistication in the conduct of some errant judicial officers.
- f) The recruitment and deployment of 3 senior Legal officers and 14 Legal officers in our technical directorates.
- g) The automation of the public complaints system for tracking of cases, investigation and outcome.
- h) The partnership with the Inspectorate of courts and other agencies of Government, and civil society organizations, in the investigation of cases and in the conduct of other enforcement measures.
- i) The development of investigation, prosecution and sanctioning guidelines to guide investigators and prosecutors and achieve consistency in the sanctions regime.

- j) On account of the nature of the judicial office to pursue investigations with sensitivity and confidentiality, in order to protect the judicial officer and the institution from reputational damage arising from unsubstantiated accusations.
- k) To publish the outcome of our decisions for deterrent effect and vindicate judicial officers, not found at fault, as the case maybe.
- l) Revision of the Citizens Handbook that seeks to empower the members of the public to assert their rights in securing the proper administration of justice and in carrying out the oversight role over the performance and conduct of judicial officers in their local areas together with the commission and other agencies.
- m) The review of the Judicial Service (Complaints and Disciplinary Proceedings) Regulations No. 88/2005 relating to disciplinary action for all Judicial Officers. The review will also incorporate the management of disciplinary processes for non-judicial officers.
- n) Undertaken benchmarking visits to other jurisdictions to enhance the capacity of members of the commission and technical officers and expose them to international best practices.
- 1) Submitted proposals on enhancement of the terms and conditions of service for all Judicial Officers, covering salary, housing, medical allowances, provision of security and transport. The periodic adjustment of remuneration to take into account of inflation, and other factors, is critical in driving devotion, commitment and motivation amongst judicial and non-judicial officers.
- o) Efforts at the improvement of the terms and conditions of service of the Members and Staff of the Judicial Service Commission.

c) Appointment/promotions Function for Judicial Officers and Non-Judicial Officers

The appointment of persons of integrity to the Judiciary strengthens the ethical and integrity foundation of the judiciary.

The Judicial Service Commission Regulations No 87 of 2005, Regulation set out the matters to be considered on appointment, which cover some 11 set qualities.

- a) Regard to high standard of independence;
- b) Propriety;
- c) Integrity;

- d) Impartiality;
- e) Equality;
- f) Competence;
- g) Diligence;
- h) Qualification;
- i) Merit;
- j) Experience;
- k) Relating to the appointment of Judicial Officers already in service, all the above qualities before seniority.

It is on the basis of the qualities that the Commission formulates an Assessment Criteria for candidates.

The said regulations are, however, under review.¹⁵ We are reviewing our Eligibility and Selection Criteria to provide for the following measures to be observed before the conduct of Competency based interviews and face to face sessions with the candidates through:

- a) Background character checks;
- b) Performance, merit and competency assessment framework;
- c) Consultation with other stakeholders;
- d) A self -assessment write up by each candidate on any of the competences to be considered.

For the Merit and Competency assessment, a competency framework will be put together setting out all the competences, for judicial and/or administrative responsibilities, against which the candidates will write a self-assessment, on each competency or skill set, to be submitted to the Commission, before the interview sessions, are conducted.

d) Annual Performance Assessment

¹⁵ The Commonwealth Latimer House Principles (Latimer Guidelines) on the Appointment, Tenure and Removal of Judges under the Commonwealth shall be referred to.

In a bid to promote performance culture and accountability in the Judiciary, the Commission will require annual performance returns of all Judicial Officers to be filed with at the end of each year.

The Commission will maintain its own databank on assessment of each Judicial Officer independently.

The Judicial Enhancement Tool on Performance will be an objective tool for promotion, training and rewards system which the JSC looks forward to be closely associated with.

The performance assessment once verified will be published to all stakeholders.

4. The JSC We Deserve: Looking into the Future

The Commission is steadfast in the attainment of all its objectives through the transformation of the Commission into an effective and efficient Commission. This effort will help in strengthening the ethics and integrity profile of judicial and Non- judicial officers in the Judiciary.

The measures undertaken by the Commission will help achieve these objectives with the support of all stakeholders.

For God and My Country

Justice Benjamin Isingoma Kabiito
CHAIRPERSON
JUDICIAL SERVICE COMMISSION