

**PROMOTING THE RULE OF LAW THROUGH JUDICIAL
ACCOUNTABILITY AND EXCELLENCE**

**REMARKS BY JUSTICE BART M. KATUREEBE,
CHIEF JUSTICE OF UGANDA**

AT

THE 18TH ANNUAL JUDGES CONFERENCE HELD

AT

**THE COMMONWEALTH SPEKE RESORT
MUNYONYO, KAMPALA**

FROM

19TH - 22ND JANUARY 2016

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The Rt. Honorable Prime Minister of Uganda

The Hon the Deputy Chief Justice of Uganda

The Hon Justice Kihara Kariuki, President of the Court of Appeal representing the Chief Justice of Kenya

The Hon the Principal Judge

The Justices of the Supreme Court

The Justices of the Court of Appeal

The Judges of the High Court

The Head of Public Service and Secretary to Cabinet

Retired Judges

The Solicitor General

The Commissioner General of Uganda Prisons Service

The inspector General of Police

The Secretary to the Judiciary

The Chief Registrar

Chairpersons of Statutory Commissions

Heads and members of JLOS Institutions

Yours Worships

Invited Guests

Ladies and Gentlemen

It is a great honour for me to welcome you to the 18th Annual Judges Conference, which brings Judges together to discuss the performance of the Judiciary and pertinent issues affecting the administration of justice. The Conference is coming early in the year and it is only fitting that I wish each of you a prosperous 2016. I hope that the New Year will be

one of self fulfillment, contentment and bring joy to our lives, both at home and at work.

This morning we are blessed to have the Rt. Honourable Prime Minister as our Chief Guest. We were also honoured and privileged to have the Hon. Justice Paul Kihara Kariuki representing the Chief Justice of Kenya as our keynote speaker. We are honoured to have Judge Donald Bernice, a Justice of the United States Court of Appeal, Sixth Circuit as our Guest Speaker.

I am pleased to welcome the Rt. Honourable Prime Minister to this Conference and to thank him for kindly accepting to preside and speak to the Judges despite his extremely busy schedule. The Rt. Honourable Prime Minister has throughout his political career been true to the belief that Government only functions well, when the three organs of the State work in harmony and score in one goal post for the common good of all.

I want to very warmly welcome Justice Paul Kihara Kariuki, representing the Chief Justice of Kenya to Uganda. Your Honour, I am grateful that you accepted to speak to us on the important subject of judicial accountability and its implications on the administration of justice. Kenya has undertaken bold reforms in the Judiciary which appear to have restored public confidence in the Judiciary in that Country. We are convinced that we in Uganda can and should learn from the experiences of our neighbor and Partner in the East African Community.

In a very special way, I would like to recognize and welcome Judge Bernice Donald, a Justice of the United States Court of Appeals for the Sixth Circuit, who is more than a friend of Uganda. Justice Donald, in 2014, conducted excellent training for Ugandan appellate Justices in Washington DC. We all remember her for the practical approach to justice issues that should be of interest to individual Judges and Judiciaries interested in implementing cost effective and simple life changing approaches to reforming justice. Your Honour, I hope through interactions with us over the next few days, you will be able to assess whether your students learned anything from you.

I hope that our two special visitors will find some time to enjoy the beautiful weather, and all the famed attributes of Uganda that led Sir Winston Churchill to describe it as "The Pearl of Africa."

Rt. Honourable Prime Minister, our relationship with the Executive and the Legislature has been excellent despite the occasional tensions. Our relationship continues to be defined by mutual respect, openness and candidness, with a common understanding that each organ of the State has a unique way to contribute to the development of the State in Uganda. We all must appreciate the crucial role played by each of the three branches of Government and the need to accord each branch due respect for its independence. The independence of the Judiciary in particular must be above reproach if the people of this Country are to continue to have confidence in the administration of Justice. Let us all appreciate that the administration of Justice is a cornerstone of good governance, which in turn is a requisite for development.

In the recent past, the Executive has focused some attention on the Judiciary and its most pressing problems. I would like to thank H.E The President for honoring his promise to improve the remuneration of Judges. Recently, the Government provided an extra 5.3 billion shillings which has enabled the Judiciary to double housing and medical allowances for Judges and increase salaries for other Judiciary staff by ten percent. This obviously is not adequate. The salaries of the lower bench need to be attended to and raised so as to financially secure these Judicial officers. I hope that Government will continue to prioritize improving the climate for administration of justice in Uganda and remunerating Judiciary staff well.

Secondly, I commend H.E The President for appointing 6 Justices of Appeal and 6 Justices of the Supreme Court. With these appointments, the courts will be able to improve service delivery in the administration of justice. I am hopeful that H.E the President will soon appoint 16 Judges of the High Court to fill the existing vacancies in the High Court. We also appeal to you Rt. Hon. Prime Minister to champion the presentation of a Resolution in Parliament to increase the number of High Court Judges from 51 to 82.

Rt. Hon. Prime Ministers, there remains the issue of the Judiciary Administration Bill. This Bill has been pending for an unreasonable length of time. It is high time that it is given the priority it deserves.

The 18th Annual Judges Conference

This year's Annual Judges Conference is special in a number of ways. It is the first Conference that will be addressed by the Chief Justice from Tanzania, President from the Court of Appeal from Kenya, a Judge of the Federal Court of Appeals from Washington, DC and other distinguished speakers from other institutions other than the Judiciary.

The choice of the speakers was intended to raise the level of debate in the Judiciary and expose Judges to global and regional best practices, especially from regions that have made remarkable progress in improving the speed and quality of the administration of justice through organic evolution, sheer hard work, innovation and judicial reform. We stand to learn from Kenya, Tanzania, Singapore and the United States of America, whose experience will permeate the proceedings of the Conference.

We also stand to share our excellent reforms with our brothers in Kenya and Tanzania in the area of plea bargaining, small claims procedure, taking of evidence by Video Link, commercial justice and collaboration in the justice sector.

The Business of the Court in 2015

Rt. Honourable Prime Minister, the courts were very busy in the last Financial Year. For the first time in our history, the courts disposed of

150,052 cases and for the first time, the pending cases were less than the disposed of cases. In terms of case backlog reduction, we were able to resolve most pending cases and new cases. I thank all Judicial Officers and other JLOS staff for the hard work and sacrifice that generated this impressive performance. I look forward to working with you in the New Year to further transform the Judiciary with the view of improving efficiency in the administration of Justice, in order to promote investment and public confidence in the administration of Justice.

I call upon Government to improve and offer competitive terms of service for judicial officers and Judiciary staff, which are at the core of improved service delivery in the Judiciary.

The theme of the Conference

The theme for the Conference is **Promoting the Rule of Law through Judicial Accountability and Excellence**. This theme was chosen to celebrate the benefits of the rule of law to humanity and examine contributions that institutions like the Judiciary can make to deepen the rule of law in the world.

According to the United Nations, the rule of law refers:

To a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure

adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."
(S/2004/616)

The rule of law emphasizes freedom, equality, solidarity, tolerance, and respect for the environment and shared responsibilities by all towards humanity. Its benefits to humanity include peace, stability, and respect for fundamental freedoms, good governance and equal protection.

The rule of law is not a self-effecting concept and therefore requires a strong, independent and accountable Judiciary to uphold and enforce it, regardless of the level of development of a particular country. Judges should be able to speak with the full confidence of the law without getting worried about noncompliance with their decisions.

As Judges, we can only do our job well in promoting the rule of law by, among other things, doing our work well and accepting restraints imposed on us by the doctrine of accountability in article 126 of the Constitution.

Article 126(1) provides 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 values, norms and aspirations of the people.

According to the Latimer House principles on the accountability of and the relationship between the three branches of Government:

Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the Judiciary as one of the three pillars upon which a responsible government relies.

Rebecca and Olin have argued in their book – *Rebuilding Justice* “that **the justice system is fundamental to our democracy. The courts are the counterweight to the other two branches of government, assuring that no branch becomes overzealous. Our founders specifically established a system of government that is not pure majoritarian rule; rather, it is a system that focuses on protecting the rights of individuals – even against the majority if need be. The courts are the last line of defense for those rights - safeguard.**”

This quote is as true of the USA as it is of Uganda. Our Constitution has vested Judicial Power in the Courts and the Courts have also been given the mandate to interpret the Constitution and even review legislative and executive actions. This is enormous power given to the branch that neither controls the sword nor the purse. But this also places enormous responsibility on the Judiciary. The decisions of the Judiciary must meet

with Public confidence and respect. How then do we as Judges ensure that the Public continues to trust us and our decisions? This question has been answered by the Chief Justice of Singapore in a paper entitled "The Integrity of Judges" presented to the Biennial Conference of Chief Justices of Asia and the Pacific (2013). [See "CORE VALUES OF AN EFFECTIVE JUDICIARY" at Page 5] He opined as follows:-

"If we stop to think about it, it is nothing short of remarkable that society in general accepts what judges say justice is according to the law. What accounts of this? Why do our fellow citizens repose such trust in the Judiciary, an unelected and democratically-unaccountable body? Part of the answer lies in the qualitative advantage a judge is supposed to have over the ordinary citizen who lacks the requisite legal knowledge and expertise to check the rightness of a decision; we are expected to know and correctly apply the law. However, no matter how learned in the law, how logically impeccable or how intellectually forceful our judgments are, all of this will come to naught if the very source of these decisions, the Judiciary, is perceived by the public as being *untrustworthy*. I suggest that this is the bedrock on which we must stand. Society accepts our judgments because they trust us and because they expect and believe that we will be the incorruptible guardians of the law; ultimately that we are men and women of *integrity*. On this analysis, judicial integrity is the basis upon which our legitimacy as an institution is founded in the eyes of the

community and it is the condition for public acceptance of our authority.”

I must state with full humility that I fully concur with the above statements. We in Uganda need to think deeply about the sage words.

The Courts lacking the purse and sword as they are, have therefore got an uphill task to help the public achieve full realization of the rule of law in an open and democratic country, like Uganda.

The Uganda Judiciary has and continues to play its rightful role in upholding the rule of law as demonstrated by the increasing rate of case disposal, adjudication of high profile cases without fear and/ or favour and for acting against the excesses of the other organs of the state through its adjudicative role. We must continue in that spirit with even greater vigour so that the independence of the Judiciary is fully entrenched in this country. Anything short of that would undermine the Rule of Law. In discussing the theme of this Conference, we should seriously think about our duty and role in the preservation of the Rule of Law.

The threats to the Rule of Law in Uganda

Limited access to justice for the vulnerable remains the single most challenge undermining the rule of law in Uganda despite tremendous strides in the administration of justice. According to a JLOS baseline survey access to courts was found to be a paltry 6.45% as compared to local council courts that stood at an average of 69.1%. As of last year,

we completed 150,052 cases but we left 114,512 cases pending in the system. With these figures, less than 25% of the population trust the courts with the most vulnerable holding the view that justice serves only the rich.

Our timelines for case disposal, though improving, sadly remain below the international best practice of resolving disputes under one year. On average, it takes the Supreme Court 1200 days to resolve an appeal; the Court of Appeal 700 days to resolve an appeal. In the High Court it takes 740 days to resolve a case. For Magistrates, it takes 275 days to resolve a case. Appeals in the High Court take more than 1600 days to resolve. We need affirmative action to reduce these worrying destructive timelines if we are to improve access of the courts to the poor.

On the side of certainty of judicial proceedings and processes we score poorly. In Uganda, case schedules are not certain and most Judgments are still delivered on notice and even where notice is given, timelines are hardly complied with. Cases are adjourned liberally despite clear rules under the Case Management Regime which discourages unmeritorious adjournment. It is no wonder that many people perceive our system as weak, unpredictable, discriminatory and unreliable and a major drawback to positioning Uganda as a safe destination for investment, tourism and a safe place to grow in.

We cannot in this era of great advancement in technology and improvements in case management across the globe, allow our Justice

system to be inefficient. I therefore propose to make the following changes in the way we administer justice in Uganda.

Priorities for 2016

National Court Case Census :

Recently we carried out a National Court Case Census to determine how many cases were pending in the Judiciary with emphasis on, among others, how long the cases have been in the system and establish the reasons for the delay, with the view of making proposals to better the adjudication process in our country. As of now, a team led by the Hon Justice Henry Peter Adonyo is finalizing the report. However, preliminary findings indicate that we have 114,512 active cases at different stages of hearing and many of these cases can be weeded out because they do not deserve to be in the courts. In addition, preliminary findings reveal that most of the civil cases are made up of interlocutory applications that can easily be handled through expedited hearing and allocating them to registrars to deal with them.

Equally, we identified courts with a lot of cases and identified courts with very little work and some, non-operational. Armed with this information, we are going to design a comprehensive case backlog reduction strategy to tackle the existing case backlog through targeted clearance of old cases, weeding out of unmeritorious cases, deployment of staff based on case load and targets and heightened use of plea bargaining to address the huge case load of capital cases in the High

Court. Case backlog clearance will be combined with other interventions to improve the performance of the Judiciary.

Ladies and Gentlemen, there is no doubt that there is a problem in case management, I have instructed Justice Adonyo and his Committee to make proposals for a Practice Direction in this regard.

On this note, let me take this opportunity to thank Justice Henry Peter Adonyo, Chair of the Committee on the Judiciary Court Census and his team for a job well done and My Lord the Hon the Principal Judge for spearheading the Monitoring and evaluation team that monitored the two day census activity and their Lordships and Worships who stayed at their stations to participate in the exercise.

I also wish to thank the Executive Director of the Uganda Bureau of Statistics Mr. Ben Mungyereza for offering technical support to the team that carried out the exercise. I am sure without this input the challenges would have been enormous.

Ladies and Gentlemen, there were no resources to undertake this exercise; however when I talked to the Secretary to the Judiciary, she looked for the money and I thank her for that.

Streamlining management of appeals :

In the Supreme Court, the Court will sit throughout the year to deal with all the business in the court. The Rules of the Supreme Court are to be

amended to limit timelines for arguing appeals **(this work is in progress by the Justice Tsekooko Committee on Reform of Civil and Criminal Laws)**).

It is proposed that all appeals will be filed with written submissions and oral arguments will be limited to not more than one hour per appeal. Oral arguments will only be limited to clarifications by counsel on points which are not clear. Dates for delivery of judgments will be communicated at the end of the trial, except in exceptional circumstances, where the parties will be notified within two weeks.

Internally within the court, Justices who are tasked with writing draft judgments of the court will be given a specified number of days to generate drafts. Responses to the drafts by the other members of the Coram shall be done also within a specified period. My goal is to have judgments of the Supreme Court out in less than 90 days but in any case not later than 180 days. Selection of the Coram of Justices to hear cases will be made in such a way as to promote transparency in the administration of justice. Adjournments and ill preparation of counsel and records will be severely discouraged to promote procedural efficiency. These innovations will equally apply to the Court of Appeal to improve the efficiency and performance of the court.

Reducing Red tape and Bureaucracy in the administration of Justice :

I intend to pro-actively use Article 133 (1) of the Constitution to enhance efficiency in the administration of justice in Uganda through issuance of Orders and Directions, especially, in reducing red tape, bureaucracy, maladministration of justice and inefficiency. The makers of the Constitution in enacting this provision, were motivated by the need to streamline the administration of justice and give the Chief Justice Powers to deal with people's concerns about the Judiciary which included delay of justice, discrimination, indiscipline and impunity by judicial officers and other vices in the administration of justice.

Revolutionalising hearing of interlocutory applications :

Simplifying, limiting and easing hearing of interlocutory applications which constitute 60% of civil cases throughout all the courts is to be prioritized through the reform of the Civil Procedure Rules. The goal should be to clear applications within a short time and at the least cost to the parties. Consequently, the Civil Procedure Rules are to be amended to provide for filing of applications and responses with written submission to limit oral hearings. Judges and Registrars are to be empowered under the same amendment to dispose the applications with or without hearing the parties except where the justice of the case demands oral arguments. Through this procedure, we hope to dispose of cases promptly and reserve the limited court time for hearing of substantive applications. That said, the Rules will have inbuilt safeguards to prevent abuse of court process by all the officers of the court.

Efficient utilization of judicial time:

We lose a lot of judicial time on travels abroad and attending workshops/seminars that are not essential or do not add value to the courts. Consequently, judicial officers, will be allowed to travel abroad if the judicial calendar permits. Priority must be given to adjudication of cases.

The Deputy Chief Justice, the Principal Judge and the Chief Registrar will have to clear individual officers before making submissions to the Chief Justice for the final clearance. In the same vein, funding for foreign travel, which has in the past eaten into the operational budget of the Judiciary will be minimised and savings applied to funding court sessions and operations. The Judicial Studies Institute through the Judicial Training Committee should issue a training timetable for the year, which shall guide all the courts. Training activities outside the Judicial training calendar will be minimised, to discourage incessant movement of judicial officers from courts to training venues.

Institutionalizing Targets for Judicial Officers:

Each judicial officer will have to meet their targets which have been set. For ease of reference, the target for the Supreme Court is 80 appeals and Court of Appeal 600 appeals. The target for a High Court Judge is 300 cases; a Registrar 400 cases, a Chief Magistrate 600 - this target has been adjusted from the previous target of 800 cases; Magistrate Grade I, 400 cases and new magistrate 300 cases. The Registry of

Performance Management, together with the Registry for Magistrates Affairs, will be tasked with generating data for following up the targets. Resources are to be provided for the courts to meet the targets, although I must emphasize that courts should employ cost neutral innovations and timely decision making to deal with most of the business before the courts.

Performance management:

Performance management is to be rolled out soon in the Supreme Court, Court of Appeal, the High Court and some selected Magistrates Courts in the country. Funding for the roll out will be sourced from the Government of Uganda as Danida funds will not be available until 2017.

Filling Existing Vacancies and Engagement of Acting Judges :

All existing vacancies are to be filled in the service especially in the High Court where there are 16 vacancies, the Court of Appeal 2 vacancies and the Supreme Court 2 vacancies. To this effect, I am grateful to Ministry of Finance for providing ten billion shillings in the next financial year for recruitment of Judges. The Judicial Service Commission has appointed 56 Magistrates Grade I and one Senior Magistrate Grade I. A Cabinet Memorandum seeking the recruitment of acting judges and retention of retired judges will be presented to Cabinet by the Ministry of Justice and Constitutional Affairs. My goal is to engage acting Judges to deal with the high number of pending cases in the Court of Appeal and to some extent, the High Court.

Strengthening the Inspectorate of Courts:

The Inspectorate of Courts has been strengthened with the appointment of Justice of Supreme Court as the Chief Inspector and other Sub Inspectors of Courts to, among others, identify and correct inefficiencies in courts; investigate noncompliance with statutory provisions; investigate cases of incompetence by judicial officers to improve the quality of justice and eliminate judicial impunity which is slowly creeping in courts that were hitherto considered safe. The scope of the reformed inspectorate is to be discussed in the Conference.

Public Outreach:

Judges in the Circuits will be expected to have at least two court open days in the year to engage and reach out to the public to bridge the gap between the people and the courts. In my upcountry trips I have noticed that the courts can repair the damaged relationships with the public and improve public confidence in the Judiciary by listening to the people and solving some of their problems as can be seen from the experiences of courts that have close ties with the community.

Public outreaches will be promoted because it has been established that the public **have an important role to play in helping the justice system to identify, priorities, and solve local problems. Actively engaging citizens helps improve public trust in the justice system. Greater trust, in turn, helps people safer, foster laws**

abiding behavior, and makes members of the public more willing to cooperate in pursuit of justice. We shall use our elaborate network under the Justice Law and Order Sector to engage the public; in particular to root out petty corruption that is undermining public confidence in the Judiciary and weakening the rule of law.

Establishment of Technical support to the Judiciary on Law Reform:

I have also established an office with support from the Uganda Law Reform Commission, which has seconded one of its officers, Mr. Khaukha Andrew as Technical Advisor to the Judiciary on law reform, to be able to follow up on the issues of law reform. Quite often, on occasions like this, we make recommendations on law reform and there is no one to make a follow up on them. In addition we have law reform programmes that we have embraced like plea bargaining and sentencing guidelines that need constant monitoring and feedback. The presence of a Technical Advisor will help us a great deal.

Knowledge transfer from the USA to Uganda - Memorandum of Understanding between the Judiciary and Pepperdine University:

Rt. Hon Prime Minister and fellow participants, the Judiciary has since 2008 been closely working on a number of initiatives with Pepperdine University in the United States of America. The initiatives include; capacity building in the areas of alternative dispute solution, mediation,

plea bargaining, Internship and externship programmes, among others. We shall continue to work with Pepperdine University to expand and develop programmes in the area of access to justice through knowledge transfer from the United States of America to Uganda and developing local initiatives to deal with case backlog.

Last but not least, I would like to thank the Judicial Studies Institute and the Judicial Training Committee together with the administration for arranging the Conference. Arranging and assembling a Conference of this kind can be challenging given the high level nature of the event.

You have done it well and deserve our deserved gratitude.

I wish you a successful Conference.

For God and My Country!

It is now my singular honor to invite the Rt. Hon Prime Minister to address and officially open the Judges Conference.

Bart M. Katureebe

CHIEF JUSTICE