

The seal of the Judiciary of Kenya is a circular emblem. It features a central shield with a scale of justice, a book, and a sword. The shield is surrounded by a wreath and a banner at the bottom. The text "JUDICIARY OF KENYA" is inscribed around the perimeter of the seal. The seal is rendered in a light purple and yellow color scheme.

# THE ROLE OF THE INSPECTORATE IN PROMOTING GOOD GOVERNANCE IN THE JUDICIARY

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**Hon Justice David K Wangutusi**

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# **INSTRUMENTS AROUND CREATION OF THE INSPECTORATE OF COURTS**

## **1. THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995**

Article 133(1)(b)

The Chief Justice may issue orders and directions to the courts necessary for the proper and efficient administration of justice.

## **2. THE CONSTITUTION (INSPECTORATE OF COURTS) (PRACTICE) DIRECTIONS NO.15 OF 2015**

Direction 3: Purpose of the Direction is –

- (a) To re-organise and empower the Inspectorate; and
- (b) To provide for the effective and efficient inspection of the Courts of Judicature

## **ROLE OF THE INSPECTORATE FUNCTION:**

The concept of governance is as old as human civilization. It simply means the process of decision making and the process by which decisions are implemented. From this, evolved the ideology of "Good Governance", as opposed to mere governance, as the umbrella concept encompassing within it a system of governance that is able to unequivocally discover the basic values of the society where standards concern economic, political and socio-cultural issues including those involving human rights, and it follows the same through an accountable and upright administration.

In his paper, "*Role of Judiciary in Good Governance*," former Chief Justice of India, Justice Y.K Sabharwal wrote that good governance signifies the way an administration improves the standard of living of the members of its society by creating and making available the basic amenities of life; providing its people security and the opportunity to better their lot; instill hope in their heart for a promising future; providing, on an equal & equitable basis, access to opportunities for personal growth; affording participation and capacity to influence, in the decision-making in public affairs; sustaining a responsive judicial system which dispenses justice on merits in a fair, unbiased and meaningful manner; and maintaining accountability and honesty in each wing or functionary of the Government.

The foregoing to me properly describes the attributes of Good Governance as stated by the United Nation's Commission on Human Rights, which include transparency, responsibility, accountability, participation and responsiveness to the needs of the people. Good governance is thus linked to an enabling environment conducive to the enjoyment of Human Rights and promoting growth and sustainable human development. In my view, good governance in the Judiciary would require an enabling environment conducive to not only quick case disposal but also of good quality.

I must say that the Honourable Chief Justice of Uganda was much alive to the foregoing when he included aspects of these attributes in the The Constitution (Inspectorate of Courts)(Practice) Directions 2015. It is in line with these key attributes, that is, transparency, responsibility, accountability among others, that I will now examine the Role of The Inspectorate in the Judiciary.

The objectives of the Inspectorate are set out in Direction 6 of The Constitution (Inspectorate of Courts)(Practice) Directions 2015 and they are: to promote good governance in the Judiciary, to promote the highest standards of integrity among the staff of the Judiciary, to ensure compliance with Constitutional and statutory standards and the charter of the Judiciary, to promote quality assurance in the administration of justice and to work with the Justice, Law and Order Sector institutions to strengthen integrity in the administration of justice.

In the performance of the above objectives, the Inspectorate performs the following functions: -

- Receive and process internal and external complaints against any staff of the Judiciary;
- Investigate cases of maladministration of justice or any matter within its mandate, either on its own motion or on the direction of the Chief Justice or any member of the Senior Management team of the Judiciary;
- Examine and take custody of any judicial and administration records necessary for its investigation;
- Conduct regular court inspections;
- Take remedial action as appropriate, during inspection to correct cases of maladministration in the Judiciary;
- Evaluate the performance of Magistrates and other judicial staff.
- Enforce the Judicial Code of Conduct and the Public Service Code of Conduct in the Judiciary;
- Identify performance bottlenecks that impede effective delivery of justice;
- Analyse court returns to determine the efficiency of court operations;
- Produce and disseminate information about the operations of the courts by interfacing and sensitizing stakeholders and the general public on the administration of justice

The goal of the Inspectorate is to improve the interaction between the bodies of the judiciary, to increase professionalism and thus the effectiveness in its administration, to increase transparency of their activity, and to promote confidence of citizens and the business sector in it because in so doing, good governance will be implemented.

The Inspectorate must therefore advocate for the following practices in order to effectively fulfill their role in promoting good governance:

- For an inspector to be effective, he must be independent from external influences. He must be seen to be working freely by the Public and the people he inspects.
- He must be innovative and endeavor to improve the services of the Inspectorate. The Public must know that inspection is going on and the recommendations of the Inspection are being instituted so that the public can clearly see that inspection delivers benefits.
- Inspection should promote value for money. In its narrow sense, value for money is defined as a concept associated with deployment of resources vis a vis realization of some expected outcome. The Government provides money for running the Judiciary and its core duty of case disposal. Many critics have said the money spent on administration of justice is quite a lot. In some cases, one may say that money meant for 30 cases would have been wasted if only 6 cases are disposed off. The Inspectorate should therefore be in a

position to find out the rate of case disposal and establish whether there is value for money.

- Inspection should therefore focus on outcomes. It must strive to the improvement of the core duties of the judiciary. It should sit in the user's seat and take a user perspective. The inspectorate should encourage self assessment by Judicial Officers, managers in the Judiciary and other Judiciary staff. Its methods of work must be transparent.
- A good inspector must exhibit a continual learning from experience and be prepared to take the risk of annoying those who do not want the truth; only then would there be transparency, the bedrock of good governance in this pillar of the State.
- Inspection should pursue the purpose of improvement; This means building a performance improvement agenda that is comprehensive, realistic and focused on the achievement of better outcomes for all of those who use the services provided. For example, working in partnership with other Inspection organisations to provide assurance that the ways in which people are treated within the system here are in line with good standards and practices adopted elsewhere.
- Inspection should rely on evidence impartially, disclose criteria used to reach judgment, be open about the processes involved and continually learn from experience. One of the difficulties that may harm

inspections and enforcement in many cases is the lack of clarity: who can inspect what, with which rights and authorities, and what are the rights and obligations of regulated subjects, are all points which are often unclear to most involved. It should ensure proper organisation of inspection visits and establish clear requirements for each step of the inspection process. This includes clarifying who has authority to appoint an inspection visit, which documentation an inspector should present upon inspection, how the visit should be concluded, what the mechanism is for taking evidence during investigation of complaints, criteria used to reach judgment and who has authority to impose sanctions. Inspection follow-ups should also be covered, so that implementation of improvement notices and inspectorate recommendations are checked systematically for example remotely by mail or phone in most cases with limited risk and good prior compliance, or on site physical follow-ups in higher risk cases.

It is important to note that delivery of justice is the responsibility of all the participants in the Judiciary. For that matter, they should remain in line with the ideals attendant thereto. This is ensured by an active Inspectorate.

The primary requirement of good governance in the Judiciary is that all the divisions and departments perform their role fully and effectively. This can only be acquired if there is a shared agenda between the inspected court systems and the Inspectorate, around securing improvement in how services



are delivered and transparency in the processes involved. This provides assurance to the public, holds the Judiciary to account for their performance and helps to make improvements to services.

## **REFERENCES:**

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