

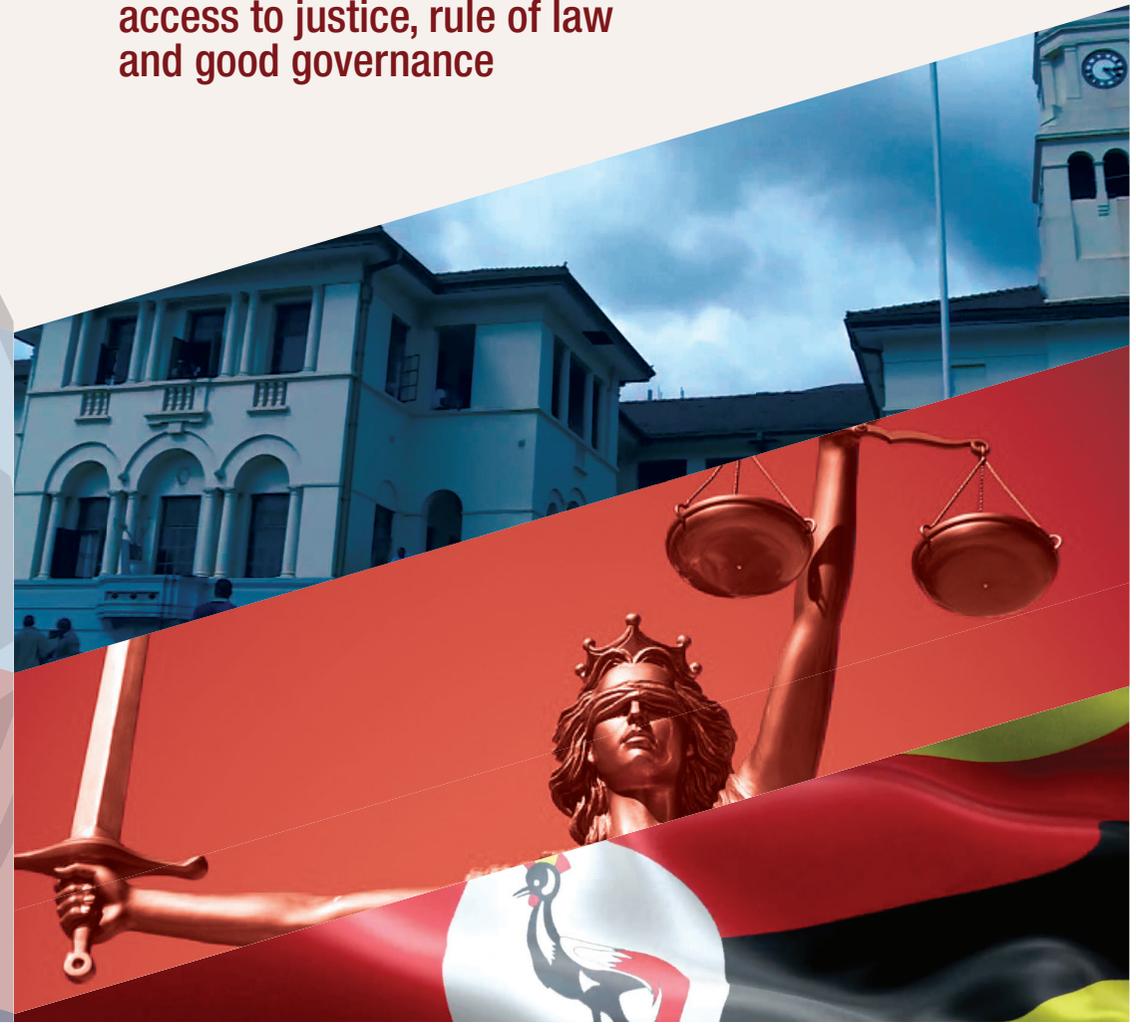
FACT SHEET

Promoting judicial
independence to improve
access to justice, rule of law
and good governance



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What you need to know about the proposed Administration of Justice Bill

Executive Summary

The 1995, Constitution of Uganda, reinforces the principle of separation of powers by creating and spelling out the mandate, roles and structure of the Executive, Legislature and Judiciary as the arms of Government. The intention of the doctrine of separation of powers is to foster independence of each arm of government to enable the principle of complementary rather than being competitive of each other. In its current state, the Judiciary's independence is often undermined by lack of institutional autonomy in structure and resourcing; appointment of the judicial officers being made by the Executive, lack of sufficient resources with persistent budget cuts; limited number of judicial officers which is one of the reasons for case backlog in courts; delay in appointing judicial officers; poor remuneration that has facilitated corruption incidences, among others. This current state of affairs relegates the Judiciary to a department of the Government rather than an arm of Government. In addition, absence of a specific law to operationalize Chapter 8 of the Constitution affects the ability of the Judiciary to motivate and attract worthwhile professionals, improve standards and consolidate achievements made in reducing case backlog and corruption in the administration of Justice which has become a deep reaching challenge.

Thus, the Administration of the Judiciary Bill 2018 if enacted into law will be vital in addressing matters of autonomy, remuneration and retirement for the Judiciary.

This fact sheet therefore makes a case for the need of the proposed Administration of the Judiciary Law. The Administration of the Judiciary Bill 2018 therefore seeks to strengthen the Judiciary as an institution and its structures.

Salient provisions of the law

- Administration of the Judiciary where the Chief justice is responsible for the overall administration and supervision of all courts(S.3)
- Establishment of administrative judiciary council (s.5)
- Judicial training institute (s.19)
- Provides for Retirement Benefits for Judicial Officers under Part VIII (section 21-28).
- Funding of the Judiciary (s.29) Books of account (s.34), among others.

To note:

An independent judicial system is the guardian of rule of law, equality before the law and protector of human rights and freedoms” The Bill if enacted into law will support the Judiciary fulfill its mission “To be an independent, competent, trusted and accountable Judiciary that administers justice to all.” A strong Judiciary supports to strengthen the economy of the country and faster attainment of vision 2040.

Join efforts advocating for expeditious passing of the law, read the bill and provide your input for its improvement. Justice should be accessed by all

- The proposed law provides for formal recognition of the Secretary to the Judiciary and gives him or her functions similar to those of Permanent Secretaries under article 174 of the Constitution and section 10 of the Public Service Act, 2008.
- If the law is enacted it will improve efficiency in administration of justice in the country.
- The law if passed will empower the Judiciary to recruit, remunerate and discipline officers and enhance benefits of serving and retiring judicial officers to leave with their full benefits and hence motivate them to serve.
- The law will improve access to justice for all and strengthens the rule of law in Uganda.
- The law will support Judiciary to effectively deal with errant or corrupt officers and restore public confidence.

A well facilitated Judiciary helps to reduce corruption tendencies

Key aspects of the Administration of the Judiciary Bill 2018

The Bill was approved by Cabinet on the 23rd January 2018 and it is now waiting to be tabled before Parliament for debating

Objectives of the Administration of the Judiciary Bill 2018 are:

- To operationalise Chapter Eight of the Constitution relating to the Judiciary which provides exercise of judicial power in Article 126; Art 127 which provides for participation of people; Art 128 which provides for the independence of the Judiciary and structure of the courts, amongst others
- To facilitate the improvement of the efficiency and effectiveness of the courts of judicature;
- To establish the Judiciary Advisory Committee that will advise the Chief Justice in the administration of the Judiciary and justice;
- To strengthen the independence of the courts in accordance with the Constitution;
- To streamline the administration of the courts;
- To facilitate a judicial process that is committed to the expeditious determination of disputes;
- To establish the Judicial Training Institute, Registries/Directories; and
- To provide for the retirement benefits of judicial officers.

About the Judiciary

The Judiciary is the third arm of Government established under Article 126 of the Constitution 1995 of the Republic of Uganda.

The Judiciary's mandate

Article 126 of the Constitution states 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 law and with the values, norms and aspirations of the people.”*

Clause 2 provides that: in adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles—

- Justice shall be done to all irrespective of their social or economic status;
- Justice shall not be delayed;
- Adequate compensation shall be awarded to victims of wrongs;
- Reconciliation between parties shall be promoted; and
- Substantive justice shall be administered without undue regard to technicalities.

Articles 128 states *“In exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.”*

Article 128(6) *“they shall be self-accounting and may deal directly with the ministry responsible for finance in relation to its finances.”*

COURTS IN UGANDA

The current Court structure consists of the Supreme Court at the top, a Court of Appeal/ Constitutional Court, the High Court which are courts of records, as well as the Magistrates Courts which are subordinate courts headed by the Chief Magistrate.

In place are administrative courts like the Industrial court, tribunals like Tax Appeals Tribunal and the Human rights Tribunal; the Local Council Courts established under the Local Council Court Act, 2006.

This fact sheet focuses on the Courts of Judicature from the Magistrate's court to the Supreme Court as explained below:

The Supreme Court

- The Supreme Court is established by Article 130 of the Constitution and is the final court of Appeal in Uganda.
- It is the highest court of the land in Uganda. The decisions of the Supreme Court form precedents followed by all lower courts.

- It has no original jurisdiction save as conferred by law to handle Presidential Election petitions under Article 104 of the Constitution and s59 of the Presidential Elections Act, 2005 on challenging Presidential election as court of first and final incident. The Court is constituted by the Chief Justice with less than seven justices, as Parliament may by law prescribe.
- It is duly constituted at any sitting by five Justices, but when hearing appeals from decisions of the Court of Appeal, a full bench of justices has to be present.
- Currently Parliament has increased the number of justice to ten (10) excluding the Chief Justice.

Court of Appeal / Constitutional Court

- This court serves in two jurisdiction capacities, first as Court Of Appeal but it is also convened as a constitutional court to determine matters of Constitutional interpretation.
- Article 134 established the structure of the Court of Appeal which consists of: The Deputy Chief Justice, and such number of Justices of Appeal not being less than seven as Parliament may by law prescribe. This has been increased to fourteen.
- The Court Appeal is the second Court of record, inter-positioned between the Supreme Court and the High Court.
- The Court of Appeal has appellate jurisdiction over the High Court.
- It is not a Court of first instance except when hearing constitutional cases since it is also the Constitutional Court.
- The Court Of Appeal has only 9 (nine) active Judges.

High Court

- The High Court of Uganda is established by Article 138 of the Constitution.
- It is the third court of record in order of hierarchy and has unlimited original jurisdiction. This means that it can try any case of any value or crime of any magnitude in Uganda.
- Appeals from all Magistrates Courts go to the High Court.
- The High Court is headed by the Honourable Principal Judge with has general supervisory powers over Magistrate's Courts.
- The High Court conducts most of its business at its headquarters but with the decentralization of the High Court circuits.
- The current high court circuits are 14 in total and they include Mubende,

most corrupt justice institutions which undermines independence and public confidence in the Judiciary.

- The judiciary has no power to appoint and discipline its support staff a situation which has made it vulnerable to poor work ethics and corruption perpetuated at that level.
- Instances of political interference and directives from political arms which erodes independence of the judiciary and subsequently erodes respect for rule of law. The execution court orders of court for example are first vetted by the Police Unit in charge of execution.
- There is continuing loss of public confidence in the Judiciary due to delays to resolve disputes which has increased lawlessness manifested in violence and mob justice.

Justification for proposed Administration of the Judiciary Bill 2018

“The preservation of separateness and integrity of the judicial branch and the guarantee of its freedoms from unwarranted intrusions by or even intertwining with the legislative and executive branches, this is independence. He added that when judges reverse their decisions in the wake of political or media criticism, the judiciary as an institution is presented as unacceptably supine, when judges are exposed to removal from office at the behest of politicians who dislike their decisions they are highly vulnerable to the improper pressure that diminishes their real neutrality. When judges are submitted to unrelenting political attacks by people who would know better there is a danger that the public will draw from the silence of the judges an implication that the criticism was justified” – CHIEF JUSTICE DIXON OF CANADA, 1986

Article 128 of the Constitution on Independence of the judiciary states.

“In the exercise of judicial power, the Courts shall be independent and shall not be subject to the control or direction of any person or authority.”

The law is now a bill called “Administration of the Justice Bill 2012”.

- The proposed law will operationalize Article 128 in the Constitution that empowers the Judiciary as an independent arm of government.
- The law will give effective control of resources related to administration of justice to the judiciary, allow the institution and individual judicial officers to be autonomous, independent and self-accountable with sufficient human and financial resources as envisaged under the law.
- The proposed law provides for the administration of the Judiciary by the Chief Justice who may, in consultation with the Judicial Service Commission, create, classify, change and abolish offices within the judicial service for efficient functioning of the Judiciary.

- The current number of judicial officers faces great difficulty in the dispensation of justice with the judge to population ratio standing at 1:720,000, a figure that our current system has failed to balance. Backlog cannot be addressed with few judicial officers vis-a-vis the influx of cases. According to the Case Backlog reduction Committee report of 31st January 2017, Case backlog stands at 155,400 cases at all levels. Of these numbers, 44% are criminal cases, civil cases constituted 33%, 14% land cases and 3 family cases.



- Insufficient funding makes it impossible to expedite disposal of cases in this financial year 2018/2019, the Judiciary is allocated UGX 132.21 Billions compared with the Legislature that is allocated UGX 483.75 Billions.¹

The judiciary is allocated **UGX 132.21 billion** compared to **UGX 483.75 billion** allocated to the legislature



Judiciary



Legislature

- The courts operate the Trial by Sessions of next convenient high court session which negate the fundamental rights of a fair and speedy trial under Article 28 of the Constitution and causes many of the inmates to overstay on remand beyond statutory period.
- The Afro barometer report 2016 ranked the Police and Judiciary as the

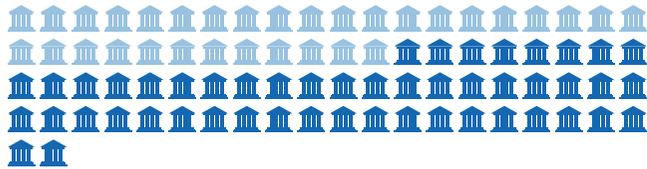
¹ Budget Speech For Fiscal Year 2018/19 Delivered at the Meeting of the 3rd Session of the 10th Parliament of Uganda on, Thursday, 14th June 2018 at the Kampala Serena International Conference Centre By Hon. Matia Kasaija (MP) Minister of Finance, Planning and Economic Development.

Fort portal, Masindi, Masaka, Mukono, Mbarara, Kabale, Mbale, Soroti, Lira, Gulu, Arua, Jinja and Mpigi.

- The High court operates a centralized division system created by the practices direction issued by the Chief Justice. The current divisions include: Civil, Commercial, Family, Criminal, Land, Execution and Bailiffs Division, the International Crimes Court and the Anti-Corruption Divisions.
- Its current approved posts of judges are 51 judges including the Principal Judge. It is hoped that the Parliamentary resolution to increase this number to 82 will soon be operationalized.

Magistrate Courts

- These courts handle the bulk of cases in Uganda with both civil jurisdiction in accordance with section 207 and criminal jurisdiction in accordance with sections 161 on Criminal jurisdiction of magistrates and 162 on sentencing powers.
- Chief Magistrates under its civil jurisdiction may try any suit whose subject matter in dispute does not exceed fifty million shillings and has unlimited jurisdiction in disputes relating to conversion, damage to property or trespass and under criminal jurisdiction it may try any offence other than an offence in respect of which the maximum penalty is death and may pass any sentence authorised by law including life imprisonment.
- Magistrates Grade I may try any civil suit where the value of the subject matter does not exceed twenty million shillings; and may try any criminal offence other than an offence in respect of which the maximum penalty is death or imprisonment and may pass a sentence of imprisonment for a period not exceeding ten years or a fine not exceeding one million shillings or both such imprisonment and fine;
- The Magistrates Grade II. This has jurisdiction where the value of the subject matter in dispute does not exceed five hundred thousand shillings; and under criminal jurisdiction it may pass a sentence of imprisonment for a period not exceeding three years or a fine not exceeding five hundred thousand shillings or both such imprisonment and fine; Magistrate Grade II courts which are manned by holders of a diploma in law is currently undergoing a gradual phasing out by the judiciary.
- According to the Magistrates Courts (Magisterial Areas) Instrument, 2017, the operational Magisterial areas are 39 out of the planned 82. Each magisterial area has a Chief Magistrate and a number of Grade I Magistrates under his/her supervision.



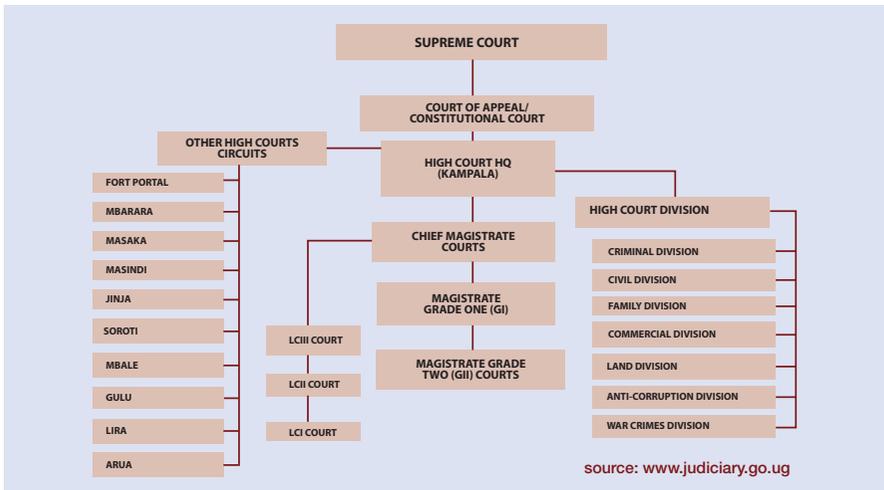
32 out of the planned 82 magisterial areas are operational

- The Judiciary also supervises the Local Council courts recently reconstituted by election of local council leaders as well as tribunals.

Note:

Given the increasing case back long economic and population growth, the magistrate’s court jurisdiction need to be revised to be higher than what it is now

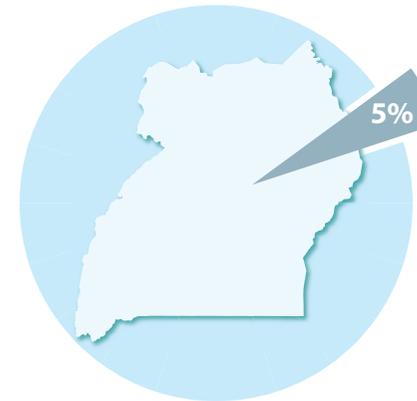
Court structure illustrated



source: www.judiciary.go.ug

What are the Challenges related to Administration of Justice in Uganda?

- According to the 2016 survey carried out by HiiL titled ‘Justice needs in Uganda, in the last four years, **nearly nine (9) out of ten (10)** Ugandans required access of some kind to the justice system, but their needs were not being met. Only 5% of Ugandans are said to have accessed courts of law.

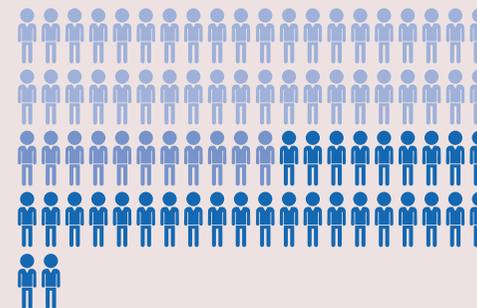


Only 5% of Ugandans are said to have accessed courts in a survey carried out by HiiL in 2016

- Article 128 (5) provides for the administrative expenses of the judiciary, including all salaries, allowances, gratuities and pensions for people serving the judiciary. The Judiciary under Article 128(5) & (6) of the Constitution is an autonomous institution whose budget is not subject to budget cuts. The Judiciary lacks a legal framework to operationalize this, currently, the Judiciary’s annual budget approval has to be first subjected to the Ministry of Justice’s adjustments instead of them handling it directly.

The Chief Magistrate circuits were increased, however they have not been operationalized due to lack of resources. The planned structure for magisterial areas is 82 according to the Schedule to the Magistrates Courts (Magisterial Areas) Instrument, 2017 but only 39 are operational.

- The planned structure for Judges as approved by Parliament is 82 but only 51 have been appointed and working, not forgetting that a number keep on retiring without immediate replacement.



51 out of **82** required judges are deployed

- There is increasing case back log due to fewer judicial officers and lack of operational resources.