

# Critical Examination of the Autonomy and Challenges of the Judiciary in Uganda

Ssekisaka Viane

School of Law Kampala International University, Uganda

---

## ABSTRACT

The study examines the autonomy and challenges of the judiciary in Uganda. Judicial Independence is a hard-earned value that is cardinal to the promotion and protection of justice, and an incentive for economic development by promoting investor confidence in the judicial system, by analogy it is the oxygen of an active and inspiring judiciary; it is a lubricant of judicial machinery. To this end as a value it must be jealously nurtured, protected and promoted. Otherwise abuse or misuse of Judicial Independence may have results that are too ghastly to contemplate. Whilst criticism of judicial decisions should be possible in a democratic society, the Executive should respect the boundaries of the separation of powers and the independence of the judiciary. It is in this light that the Ugandan people should assess their government's performance by the standards reflected in the Constitution and the human rights treaties the government has undertaken to respect. A history of past atrocities should not limit the horizons of Ugandan society or the aspirations of the government in bringing about democracy.

**Keywords:** Executive, Judicial independence, Legislature, Rule of law, Separation of power.

---

## INTRODUCTION

The historical development of judicial independence in the United Kingdom began with the history of Courts known as *Cura Regis*[1], i.e. the King with his close advisors presided over all cases, judicial functions were centralized. This developed into a central body of five judges charged to hear all suits within the confine of the *Cura Regis*. But certain cases were reserved for the personal attention of the King. This group of five judges developed into a Court of Common Pleas. This was confirmed by Magna Carta in 1215 [2, 3], it was therefore ordained that "Common Pleas shall not follow our courts but shall be held in some places". The Courts of Common Pleas gave rise to other common law courts, including the Court of Chancery. However, the King and his Council still exerted its influence on courts and could give directives to the courts on how to decide cases.

However, the Statute of Northampton of 1328[4] ended this practice of the King deciding the manner of deciding cases. Thereafter, the judges with time became independent. Nevertheless, the King alone appointed judges and had the power to revoke the appointment of judges at his pleasure (*durante bene placito* - at the King's pleasure as grantor). By the end of the 17th century, the English

Judiciary plagued with bribery and corruption sank to its lowest ebb, prompting King William the III to sack all judges he considered incompetent and undesirable, the Act of Settlement of 1701[5] was enacted. This Act stated that judges' commission shall in future be made *quam diu se bene gesserint* (as long as the judges behave well). The Act of Settlement of 1701 also provided that judges could only be removed from office upon an address of both Houses of Parliament, this significantly marked the beginning of protecting judicial Independence. Coming to British colonies and protectorates, the judiciary was part of the colonial civil service, or rather its "special branch". It was, therefore, a career job in which appointment to judgeship rested largely on promotion from the Magistracy or from some other positions in the judicial or legal departments[6]. For example, the office of Attorney-General in the colonial legal service had always been a stepping stone to judgeship, and it could be said that the majority of those who had held the office of Attorney-General were eventually promoted to the Bench. The appointment of judges was in the hands of the Executive, the Governor, acting on the instructions of the Secretary of State for the Colonies in London

and like other civil servants, Judges and Magistrates held office during Her Majesty's pleasure. Prima facie there is inherently nothing wrong with this selection process. However, what is objectionable is the perception that such appointments were on political grounds[7].

As a run up to Post Colonialism, experiences of World War II increased calls for human rights protection cascading the notion of Judicial Independence. As such the notion and concept of judicial independence was enshrined in almost all the constitutions of former colonies. And Post De-Colonization, it was no longer desirable to rest the matter entirely on practice and tradition. A constitutional guarantee was felt to be of utmost importance by the majority. The sealer community equally wanted constitutional guarantees so that what was acquired as a result of their privileged position, in the colonial state, was not expropriated in the post-colonial-state. Being in the minority, the settler community viewed its position with considerable apprehension; and demanded constitutional protection of their rights. Obviously, it would not have been enough to rhetorically guarantee their rights in the Constitution in the absence of Judicial Independence to enforce their rights and liberties impartially between the individuals and the majority controlled Executive [8].

Even after independence the judiciary in most former colonies has remained to some extent a career job, for appointments have so far depended almost as much on promotion via the Magistracy, Chief Registrarship, Solicitor-Generalship and Attorney-Generalship as well as on direct elevation from the Bar. Some pundits have criticized this system of promotion on the ground that it is bound to induce in the mind of the person expecting that promotion some kind of fear, respect and loyalty for authority which he/she considers will have to promote him[9]. So in order for the judiciary to be credible and transparent, and for the members of the public to have confidence in the judiciary as a service provider as well as being guardian of law and established usages, the regime regulating the appointment of its members of the Judiciary is of vital consideration[10].

The historical perspective is not the any way intended to apportion blame for our present challenges, but should invariably help us understand where we are coming from in order to shape our on-going respective judicial reforms and avoid anomalies of the past and confront the challenges of the modern era and age of globalization; an era in which advancement and access to an avalanche of information technology and social media, has put the judiciary under intense microscopic watch irrespective of physical borders. Constructive use of this tool is indeed inescapable and welcome; however, its abuse

has potential to undermine judicial independence in particular independent judgment[11].

The Judiciary is an arm of the state established under Chapter Eight of the Constitution of Uganda 1995 (as amended) with the constitutional mandate to administer justice through the resolution of disputes, the interpretation of the Constitution and the laws of Uganda, to promote the rule of law, ensure respect for human rights and contribute to the maintenance of order in society. This mandate places the Judiciary at the heart of the administration of justice because it settles disputes between individuals and/or organizations and it conducts trials when violations of law are presented[12].

The 1995 Constitution redefined the Structure of the Courts to consist of the following Courts: Supreme Court, Court of Appeal/Constitutional Court, High Court and subordinate courts. In the exercise of its Constitutional mandate, Article 126(2) of the Constitution spells out five principles to be followed in the administration of justice, namely: 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 wrong, reconciliation between parties shall be promoted and substantive justice shall be administered without undue regard to technicalities[12].

One of the pillars of rule of law in the modern state is the division of powers, with the vesting of legislative, executive and judiciary authority in different branches or bodies of government responsible for different functions. The relationship and interaction between parliaments and the judiciary is central to good governance and key to ensuring a culture of rule of law and justice: parliaments promulgating laws on the one hand, and judges interpreting, validating and applying them on the other[13].

Despite the need for separation of power, the judiciary in Uganda since independence in 1962 has not effectively executed its functions as stipulated in the 1995 constitution due to interference, constant attacks and undermining of its legitimacy from other state agencies and organs[14]. The Executive has been vocal in criticizing judicial decisions as evidence suggests that the Ugandan Government has gone beyond legitimate criticism of court decisions and has intimidated individual members of the judiciary[15]. Further, the President announced that he will suspend judges (although he does not have the constitutional power to do so. This sent a powerful message to civil society suggesting that he controls the courts. By failing to comply with court orders the government has contributed to the erosion of the independent decision-making authority of the

Judiciary, and has thus put in jeopardy the rule of law in Uganda. It is against this background that a researcher sought to investigate the adequacy and challenges of the judiciary in Uganda.

#### **Independence of the judiciary**

One of the pillars of rule of law in the modern state is the division of powers, with the vesting of legislative, executive and judiciary authority in different branches or bodies of government responsible for different functions. The relationship and interaction between parliaments and the judiciary is central to good governance and key to ensuring a culture of rule of law and justice: parliaments promulgating laws on the one hand, and judges interpreting, validating and applying them on the other. Parliaments develop rules for the selection or removal of judges, and often have budgetary authority to allocate financial and other resources to the judiciary and justice sector[13].

In today's troubled international order in which human rights and the rule of law are under increasing pressure, well-established principles of international law are being threatened. Where the courts are controlled by the executive branch, democratically elected parliaments may be dismissed and their powers usurped by the executive. In countries with dysfunctional legislatures, judicial appointments and confirmation processes may be unduly politicized. An independent judiciary is essential to safeguarding the mandates of other branches of government and, where necessary, holding them to account and preventing executive or legislative initiatives that are outside the bounds of national constitutional frameworks or inconsistent with international standards[16].

Independent judges ensure fair and equal treatment for all: fair trials; equality before the courts; guarantees of due process of law; access to justice and legal aid; independence, integrity and impartiality of judges and prosecutors; preventing impunity for human rights violations; and restrictions on lawyers and their work. Independent judiciaries can counter pressure, threats, attacks and intimidation on prosecutors and judges. At the same time, "independent" judiciaries that do not respect the boundaries of their own mandate and functions may find themselves encroaching on the roles of parliaments and executives and accused of inappropriate "judicial activism"[17].

Courts are central institutions in any society. The judiciary's primary role is anchored on a root concept employed in most societies of resolving conflicts. The core theory cutting across cultural lines, appears to be that where two persons come into conflict, which inter se they cannot resolve, one solution appealing to common sense is to call upon a third party for assistance in achieving a resolution. This universally simple but significant

social invention of the triads is discoverable in and employed by all societies. No society fails to employ it. And from its overwhelming appeal to common sense stems the basic political legitimacy of courts everywhere[18].

#### **Checks and balances: independence of judiciary and parliaments**

How parliaments and the judiciary can maintain independence with one another and with the executive branch of government – while respecting the boundaries of their mandates. An independent judiciary is essential to preventing executive initiatives that are outside the bounds of national constitutional frameworks or inconsistent with international standards. Judiciaries that encroach on the roles of the executive and legislative branches of government are often accused of juristocracy [19].

In many courts, judges are engaged in creative interpretation if the constitution isn't specific. Judges become lawmakers when they do this, which raises all kinds of questions of accountability." In terms of judicial selection and appointment process, many countries, parliaments hold a measure of control over the judiciary through the selection process as well as through budgetary authority. In countries with dysfunctional legislatures and an overreaching executive, judicial appointments and confirmation processes may be unduly politicized[20].

The separation of powers is a fundamental element of good governance and the rule of law. And while the balance of powers between the judiciary and other branches of government is inherently delicate, speakers noted the increasing threats to independent judiciaries in recent months as the political environment in some countries has become ever more polarized[21]. An independent judiciary is essential to preventing executive initiatives that are outside the bounds of national constitutional frameworks or inconsistent with international standards. In a prominent public interest case in Uganda, a member of parliament challenged the President's appointment of a retired judge as interim Chief Justice, arguing that it was unconstitutional[22].

#### **International Standards**

Uganda is bound by universal and regional human rights law to guarantee the independence of the Judiciary. Article 14(1) of the ICCPR[23] states that 'all persons shall be equal before the courts and tribunals' and that 'in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'. Article 2(3) of the ICCPR imposes a positive obligation on the State to

ensure that the right to a remedy is 'determined by competent judicial, legal or administrative authorities' and 'to develop the possibilities of judicial remedy'. In its General Comment No 13, the UN Human Rights Committee[24] specifies that the independence of courts comprises such issues as 'the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the Judiciary from the executive branch and the legislative'.

Article 7(1) of the ACHPR[25] provides that 'every individual shall have the right to have his cause heard, which comprises, in particular, '(b) the right to be presumed innocent until proven guilty by a competent court or tribunal,' and, '(d) the right to be tried within a reasonable time by an impartial court or tribunal'. The African Commission on Human and People's Rights[26] has emphasized the importance of Article 7 by holding that it 'should be considered non-derogable since it provides 'minimum protection to citizens'. Article 26 of the ACHPR provides that States Parties shall have a duty to guarantee the independence of the courts.

Uganda is also a member of the East African Community (EAC)[27], an international organization which aims at establishing 'a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the Partner States'. Article 7(2) of the EAC Treaty[27] provides for principles to be observed by the member States themselves. Under this provision, the member States undertake 'to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights'. The EAC Treaty established the East African Court of Justice, the role of which is to 'ensure the adherence to law in the interpretation and application of and compliance with' the EAC Treaty. Arguably, the East African Court of Justice is therefore competent to look into issues concerning the rule of law in member States.

Uganda also has obligations under the Cotonou Agreement to promote and protect democratic principles and the rule of law. In particular, Article 9 provides that 'respect for human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable

development[28]. The Parties are obliged to promote and protect human rights, democratic principles and the rule of law which are stated under Article 9 to be 'essential elements of this agreement'. Customary international law, for the purposes of this report also considered relevant benchmarks. The UN Basic Principles on the Independence of the Judiciary provide inter alia that the government has a duty to respect and observe the independence of the Judiciary (Principle I); that their term of office, independence, security, adequate remuneration, conditions of service, pensions, and the age of retirement must all be adequately secured by law (Principle I); and that any complaint against a judge must be tried expeditiously and fairly under an appropriate procedure (Principle 17). It is also the duty of each Member State to provide adequate resources to enable the Judiciary to properly perform its functions (Principle 7). The Basic Principles on the Independence of the Judiciary were endorsed by the United Nations' General Assembly in two resolutions which were adopted unanimously, including by Uganda[10]. The ACHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa[10], provide inter alia that the independence of judicial bodies and officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities (Clause 4(a)), that any method of judicial selection shall safeguard the independence and impartiality of the Judiciary (Clause 4(h)), and that judges or members of judicial bodies shall have security of tenure (Clause 4(1)).

### **National legal frameworks**

#### ***Constitution of Republic of Uganda 1995***

The 1995 Constitution[12] redefined the Structure of the Courts to consist of the following Courts: Supreme Court, Court of Appeal/Constitutional Court, High Court and subordinate courts. In the exercise of its Constitutional mandate, Article 126(2) of the Constitution spells out five principles to be followed in the administration of justice, namely: 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 wrong, reconciliation between parties shall be promoted and substantive justice shall be administered without undue regard to technicalities[29]. Constitution and certain laws enacted by Parliament set out generally the functions of courts including the Supreme Court. Thus- Article 126 of the Constitution spells out exercise of judicial powers as follows:

"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 law and with the values, norms and aspirations of the people. 2) In adjudicating cases of



both a civil and criminal nature, the courts shall, subject to the law, apply the following principles- a) justice shall be done to all irrespective of their social or economic status; b) justice shall not be delayed; c) adequate compensation shall be awarded to victims of wrongs; d) reconciliation between parties shall be promoted; and e) substantive justice shall be administered without undue regard to technicalities”[12].

**Judicature Act 2007**

The Judicature Act[30] provides that the High Court has the right to enforce the observance of existing customs which are not repugnant to natural justice, equity and good conscience and which are not incompatible either directly or by necessary implication with any written law. Under the laws that established them, LCCs and Land Tribunals also have the power to enforce customary law and practices. Composition of the supreme court: By the Judicature (Amendment) Act 2007), which amended S.3 of the Judicature Act and Article 130 of the Constitution, now the Supreme Court consists of eleven (11) Justices of Supreme Court inclusive of the Chief Justice.

Under article 13 I (2) of the Constitution, when hearing appeals from decisions of the Court of Appeal sitting as a constitutional court, the

Judicial Independence is a hard-earned value that is cardinal to the promotion and protection of justice, and an incentive for economic development by promoting investor confidence in the judicial system, by analogy it is the oxygen of an active and inspiring judiciary; it is a lubricant of judicial machinery. To this end as a value it must be jealously nurtured, protected and promoted. Otherwise abuse or misuse of Judicial Independence may have results that are too ghastly to contemplate. Whilst criticism of judicial decisions should be possible in a democratic society, the Executive should respect the boundaries of the separation of powers and the independence of the judiciary. It is in this light that the Ugandan people should assess their government's performance by the standards reflected in the Constitution and the human rights treaties the government has undertaken to respect. A history of past atrocities

Supreme Court shall consist of a full bench of all the members of the Supreme Court; and where any of them is not able to attend, the President shall, for that purpose, appoint an acting justice under article 142(2) of this Constitution" Under article 131 (3) of the Constitution. The Chief Justice presides at each sitting of the Supreme Court and in his absence; the most senior member of the court as constituted presides.

**The Local Courts Act, 2006**

This Act replaced the Executive Committees (Judicial Powers) Act with a view to addressing various weaknesses identified in that Act's operation. The Local Courts Act, 2006[30] defines the qualifications of LC office-holders, for instance requiring LC I and LC II court officials to be able to read and write in English, to ensure they can keep records. This is expected to facilitate supervision by the Chief Magistrates. The Act also enhances female representation by providing those two members or the town, division and sub-county courts shall be women. It introduces guidelines on court procedure, regulations concerning the collection and use of fees, community service as a sentencing option and separates the LCC at Sub-County and Town level from the Executive Committee of the local government.

**CONCLUSION**

should not limit the horizons of Ugandan society or the aspirations of the government in bringing about democracy. More so, the Uganda Government must respect the separation of powers between the executive, legislature and judiciary which is so critical in upholding democracy and the rule of law. Furthermore, the researcher urges the government of Uganda to abide by judicial decisions which is fundamental to the maintenance of the rule of law. Any disagreement over court decisions should be settled within the channels provided for by law. Finally, while criticism of judicial decisions should be possible in a democratic society, the Executive should respect the boundaries of the separation of powers and the independence of the judiciary. Any criticism of judicial decisions should not amount to pressure, influence or harassment of the judiciary. The researcher urges the government to refrain from attacking judges personally.

**REFERENCES**

<p>1.1. Overview of the judiciary, <a href="https://www.judiciary.uk/about-the-judiciary/history-of-the-judiciary-in-england-and-wales/history-of-the-judiciary/">https://www.judiciary.uk/about-the-judiciary/history-of-the-judiciary-in-england-and-wales/history-of-the-judiciary/</a></p> <p>2. Court of King's Bench (England), <a href="https://en.wikipedia.org/w/index.php?title=Court_of_King%27s_Bench_(England)&amp;oldid=1189646193">https://en.wikipedia.org/w/index.php?title=Court_of_King%27s_Bench_(England)&amp;oldid=1189646193</a>, (2023)</p> <p>3. Curia Regis   English law   Britannica, <a href="https://www.britannica.com/topic/Curia-Regis">https://www.britannica.com/topic/Curia-</a></p>	<p>Regis</p> <p>4. Statute of Northampton - Wikipedia, <a href="https://en.wikipedia.org/wiki/Statute_of_Northampton">https://en.wikipedia.org/wiki/Statute_of_Northampton</a></p> <p>5. 1701 Act of Settlement, <a href="https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentary-authority/revolution/collections1/parliamentary-collections/act-of-settlement/">https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentary-authority/revolution/collections1/parliamentary-collections/act-of-settlement/</a></p> <p>6. Kenelm Chillingly, by Edward Bulwer Lytton,</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

- <https://www.gutenberg.org/files/7658/7658-h/7658-h.htm>
7. Judicial Structure, <https://judiciary.go.ug/data/smenu/93/Judicial%20Structure.html>
  8. KABUMBA, D.B.: Judicial independence in Uganda: Myths, facts and realities, <https://www.observer.ug/index.php/viewpoint/80600-judicial-independence-in-uganda-myths-facts-and-realities>
  9. New challenges to judicial independence in Uganda - AfricanLII, <https://africanlii.org/articles/2024-01-11/carmel-rickard/new-challenges-to-judicial-independence-in-uganda>
  10. Basic principles of IHL - Diakonia International Humanitarian Law Centre, <https://www.diakonia.se/ihl/resources/international-humanitarian-law/basic-principles-ihl/>
  11. Problems of conceptualization and definition in African history with reference to some social and political institutions - UNESCO DigitalLibrary, <https://unesdoc.unesco.org/ark:/48223/pf0000067131>
  12. Constitutional history of Uganda, <https://constitutionnet.org/country/uganda>
  13. Separation of Powers: An Overview, <https://www.ncsl.org/about/state-legislatures/separation-of-powers-an-overview>
  14. HOSTILE TO DEMOCRACY, <https://www.hrw.org/reports/1999/uganda/Uganweb-12.htm>
  15. Executive interference in Ugandan court decisions continues – this time by the justice minister-AfricanLII, <https://africanlii.org/articles/2024-03-21/carmel-rickard/executive-interference-in-ugandan-court-decisions-continues-this-time-by-the-justice-minister>
  16. The global assault on rule of law | International Bar Association, <https://www.ibanet.org/The-global-assault-on-rule-of-law>
  17. Leelakrishnan, P., S., M.: Procedural Fairness in Administrative Decision-Making: Approach of the Supreme Court in a Decade. *Journal of the Indian Law Institute*. 59, 335–355 (2017)
  18. The Role of Courts in Our Society, [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/2016-17-vol-42/vol-42-no-3/introduction-the-role-of-courts-in-our-society/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2016-17-vol-42/vol-42-no-3/introduction-the-role-of-courts-in-our-society/)
  19. Checks and balances | Definition, History, & Facts | Britannica, <https://www.britannica.com/topic/checks-and-balances>
  20. What is Judicial Independence | The Judicial LearningCenter, <https://judiciallearningcenter.org/judicial-independence/>
  21. First Principles: the Rule of Law and Separation of Powers | Constitutional Justice: A Liberal Theory of the Rule of Law | Oxford Academic, <https://academic.oup.com/book/11972/chapter-abstract/161205940?redirectedFrom=fulltext>
  22. Why we need an independent Judiciary | Monitor, <https://www.monitor.co.ug/uganda/magazines/people-power/why-we-need-an-independent-judiciary-4536222>
  23. International Covenant on Civil and Political Rights | OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
  24. CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, <https://www.refworld.org/legal/general/hrc/1984/en/20752>
  25. Welcome, <https://achpr.au.int/en>
  26. Overview of EAC, <https://www.eac.int/overview-of-eac>
  27. Ambiguities in the EU's rights-based approach to liberal order | International Affairs | Oxford Academic, <https://academic.oup.com/ia/article/99/6/2241/7337074>
  28. Mujuzi, J.D.: The Trial of Civilians Before Courts Martial in Uganda: Analysing the Jurisprudence of Ugandan Courts in the Light of the Drafting History of Articles 129(1)(d) and 120(a) of the Constitution. *Potchefstroom Electronic Law Journal (PELJ)*. 25, 1–32 (2022). <https://doi.org/10.17159/1727-3781/2022/v25i0a12023>
  29. Judicature Act. (2020)
  30. Local Council Courts Act, 2006 - ULII, <https://ulii.org/akn/ug/act/2006/13/eng@2006-06-08>

**CITE AS: Ssekisaka Viane (2024). Critical Examination of the Autonomy and Challenges of the Judiciary in Uganda. IDOSR JOURNAL OF CURRENT ISSUES IN ARTS AND HUMANITIES 10(1):43-49. <https://doi.org/10.59298/IDOSRJCIAH/2024/101.5056004>**