

**THE EFFECTIVENESS OF THE BAR IN ENHANCING UGANDA'S JUDICIAL
ACCOUNTABILITY**

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BKS21B11/033

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF
UGANDA CHRISTIAN UNIVERSITY**

May, 2025



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DECLARATION

I, Barbara Namata, hereby declare that, this dissertation titled "*The Effectiveness of the Bar in Enhancing Uganda's Judicial Accountability*" is my original work and has not been presented to any university or institution for any academic award. Where secondary sources of information were used in this work, these have been acknowledged.

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APPROVAL

This dissertation titled "*The Effectiveness of the Bar in Enhancing Uganda's Judicial Accountability*" was written by Barbara Namata under my supervision and has been submitted for the award of the Bachelor's Degree in Law with approval as Uganda Christian University supervisors.

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Date: *26/05/25*

DEDICATION

To my Mother, Hon Beatrice Kabagenyi Mary Amooti.

Though you are no longer with us in person, your spirit, love, and guidance remain ever-present.

You touched our lives in countless ways, and your memory will forever be cherished.

From 06/12/1962 - 08/10/2024

Continue to Rest in Peace.

ACKNOWLEDGMENT

I extend my heartfelt gratitude to Dr. Kakooza for his invaluable supervision, guidance, and relentless advice throughout this journey. His support has been instrumental in shaping this work.

I also wish to sincerely thank the librarians, whose dedication and commitment, especially during the submission process, did not go unnoticed. Your assistance made a significant difference.

To my beloved children and Husband, thank you for your patience and understanding as I juggled my time between studies and family. Your love and support gave me strength when I needed it most.

Lastly, I am deeply grateful to my classmates of Stream B for their continued spirit of collaboration and information sharing. Your camaraderie and support were a source of encouragement all the way to the end.

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ABSTRACT

Judicial accountability is a key element that is increasingly gaining prominence across many parts of the world. It is a principle that emphasizes that judicial officers are held responsible for their omissions or commissions in line with their judicial duties. The principle of judicial accountability is a critical factor in fostering the independence and the integrity of courts. However, as the study has noted, the principle of judicial accountability is quite a contentious one, especially as regards to protecting the independence of the judiciary.

The study notes the critical role of the Bar Associations in promoting the accountability of courts in their jurisdictions. With regard to Uganda, it showcases the role the Uganda Law Society, which is the country's national Bar Association, has played in advancing the element of judicial accountability in the country. It observes the Association's role in the recruitment and the enforcement of discipline among judicial officers by virtue of its membership in the Judicial Service Commission, an avenue that allows it to hold judges to account for their actions and decisions. Additionally, the study also observes the critical role of the body in protecting and defending the judiciary against threats, attacks and unfair criticisms against judicial officers from the public and the Executive. These acts tend to erode public trust in the judiciary as well as erode and undermine the integrity of the courts.

The study identifies challenges of limited participation of the public in the recruitment of the judges, the unclear processes in the selection of the public representatives to the JSC, the poor relationship between the judiciary and the Uganda Law Society, and the lack of respect for the independence and the decisions of court as some of the hindrances to the advancement of judicial accountability in Uganda.

The study recommends the creation of avenues to provide room for public participation in the recruitment process of judicial officers, the development of guidelines for selection of a representative of the public's representative to the JSC, including Opposition members of Parliament in the JSC, improved relations between the Bar and the Bench, and respect of court decisions and processes by the Executive and the public.

CHAPTER ONE

GENERAL BACKGROUND

1.1 Introduction

Judicial accountability is a contentious subject that has ignited public debate globally. The contention has particularly been about how to balance between the judicial independence of the judicial officers on the one hand, and the need for them to ensure transparency and accountability on the other in the decisions that they make. While this dilemma persists, judicial accountability still remains a key element in enhancing the integrity of the judiciary and in strengthening the rule of law in any given country.

The term ‘Judicial accountability’ was defined to mean ‘the cost that a judge expects to incur in case his/her behavior, and/or decisions deviate too much from a generally recognized standard.’¹ The Law Reform Commission of Western Australia, defines the term to mean judges being answerable for their actions and decisions to those to whom they owe their allegiance.²

Ohamadike and Chukwuebuka did a study that explored how economic factors influence public attitudes towards transparent and accountable governance in Africa. They defined the term as the connection between citizens (the principal) and government or public officials (the agents) charged with the responsibility of

¹ See, Gladys Nakibuule v. Attorney General, Supreme Court Constitutional Appeal No. 02 of 2016, p.21.

² Project No.102 at <http://www.lrc.justice.wa.gov.au>, accessed on 22/12/17.

safeguarding the rights and aspirations of the populace.³ This connection translates into a social contract between the agents and the principal, with the latter having authority over the former for their actions and can impose sanctions on them, including removing them from their positions of power.

Judicial accountability contains a set of mechanisms and processes of holding judicial officials and courts responsible for their actions and decisions. These mechanisms can be internal and established within the institution, or external involving stakeholders outside the judicial systems such as the use of Parliament's oversight mechanisms. The concept of judicial accountability is grounded on the principle that judicial officers make decisions and act in line with the law and that their actions serve the law and public interest.

Accountability within the judicial institutions is a key element in fostering citizen confidence and trust in such bodies. Transparency International, an international anti-corruption watchdog, has observed that judicial accountability is a key element in ensuring the integrity of the judiciary, and particularly in countries where accountability in other branches of government is lacking.⁴ The critical aspect of judicial accountability in enhancing public trust in judicial systems has been emphasized in the Guide to Judicial Conduct as follows:

³ Nnaemeka Ohamadike and Emmanuel O. Chukwuebuka, 'Economic prosperity and public backing for transparent and accountable governance in Africa' (2024) Afro Barometer Working Paper No. 203, p.1 <<https://www.afrobarometer.org/wp-content/uploads/2024/04/WP203-Economic-prosperity-and-backing-for-accountable-governance-in-Africa-Afrobarometer-6april24.pdf>>.

⁴ Transparency International, 'Judicial Accountability and Discipline', Policy Position Paper No. 2 (2007), p. 2.

“We comprise a select part of an honorable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. The liberty and fortune of any citizen may someday depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations. ... If these standards are not effectively maintained, public confidence in the independence and trustworthiness of judges will erode and the administration of justice will be undermined.”⁵

The above-cited comment emphasizes the need for the judicial officers to ensure professionalism and standards in and outside the realm of their work as doing so potentially helps instill public trust and confidence in the judicial system.⁶

The Guide sets out key principles underpinning the element of judicial accountability: independence, impartiality, and consistency with legal authority.⁷ Within these elements, the judicial officer has considerable power and influence which should be matched with accountability for the exercise of that power. In other words, judicial

⁵ The Australasian Institute of Judicial Administration, *Guide to Judicial Conduct*, 3rd ed. Rev., (2003), p. 2, citing Thomas, *Judicial Ethics in Australia*, 3rd ed (2009), pp. 8-9

⁶ Ibid.

⁷ Ibid, p.5

officers should be accountable to the parties involved in the adjudication process, to the law, and to the community.⁸

In every jurisdiction, the Bar is a very fundamental actor in the administration of justice. The Bar includes lawyers and Advocates, who help the judges in administering the law. Countries and regions world over have Bar associations that promote the legal profession, advocate for the interests of lawyers, as well as promote ethical standards within the profession.

In Uganda, the Uganda Law Society (ULS) is the National Bar association that brings together all the lawyers and Advocates in the country. The body was established in 1956 by an Act of Parliament⁹ with the aim of fostering access to justice, promoting the rule of law and good governance in Uganda. The ULS has had a history of advocating for reforms in the judiciary, with a view of promoting accountability, transparency, independence and efficiency within the institution. For instance, the body has in the recent past advocated for reforms in the appointment of judges by calling for public consultations and participation in the vetting of such judicial officers.¹⁰ The body also strongly opposed the appointment of judges in acting

⁸ Gareth Griffith, 'Judicial Accountability', Background Paper No. 1, March 1998, p.9.

⁹ Cap. 305 Laws of Uganda, 7th Edition

¹⁰ 'Law Society speaks out Against appointment of 'Acting Judges' *The Independent*, September 22, 2023. <https://www.independent.co.ug/law-society-speaks-out-against-appointment-of-acting-judges/>.

capacity,¹¹ although such appointments were later declared unconstitutional by the Constitutional Court.¹²

The ULS plays a constructive role in the selection and vetting of judicial officers as well as in the enforcement of discipline among such officers by virtue of its membership on the Judicial Service Commission (JSC). The JSC is a constitutional body charged with the mandate of recruiting and regulating the conduct of judicial officers.¹³ The Commission comprises of 9 members, two of whom represent the ULS.¹⁴

For quite a long time, the process of nominating the ULS representatives to the JSC has not been clear. The process has been clothed in secrecy without any known procedure of how those interested apply for the slots, how they are vetted, and the procedure for selection — whether the process follows an election or it is just by appointment. This has always raised questions regarding whether the nominees actually represented the interests of the Association and whether they actually had the mandate and blessing of their constituency.

¹¹ Ibid.

¹² See *Kabumba Busingye & Andrew Karamagi v Attorney General*, (Constitutional Petition No. 5 of 2016) UGCC 2 (10 January 2023).

¹³ See Articles 146 and 1(1)(a) Constitution of the Republic of Uganda, 1995.

¹⁴ The membership is as follows: Chairperson and Deputy Chairperson who shall be persons qualified to be appointed as Justices of the Supreme Court, other than the Chief Justice, Deputy Chief Justice and Principal Judge; one person nominated by the Public Service Commission; two Advocates of over fifteen years of experience nominated by the ULS; one judge of the Supreme Court nominated by the President in consultation with the judges of the High Court and the Justices of the Court of Appeal and the Supreme Court; two non-lawyers nominated by the President; and the Attorney General as an ex-officio. See Article 146(2)(a) - (3).

In July 2023, one of the ULS members, Steven Kalali petitioned court challenging the selective appointment of ULS representatives to various statutory bodies, including the JSC, by the ULS leadership. In a ruling delivered on 2nd February 2024, the High Court declared that the practice was in breach of the 1956 ULS Act and the ULS Election Regulation of 2016.¹⁵ In compliance with the High Court ruling, the current ULS leadership, also known as the Radical New Bar, issued Executive Order RNB No. 2 of 2024, where they withdrew an appeal that had been filed by the then ULS leadership challenging the court decision. The Executive Order also recalled all their representatives from all the statutory bodies, including Ms. Ruth Sebatindira and Ms. Norah Matovu Winyi, who were the ULS representatives to the JSC. In the aftermath of this court ruling, the President of ULS, Isaac Ssemakadde, also expressed concerns about the criteria the President used in choosing the two representatives of the public to the JSC, vowing to petition court on this issue.

The question remains, do these developments, that is, the revision of the mode of selecting ULS representatives to the JSC in particular, present a ray of hope in ensuring judicial accountability in Uganda? Would this be a game-changer in pushing for reforms in the appointment of judicial officers and thus uphold their independence? This study therefore examines the effectiveness of the efforts and initiatives that have been made by ULS to promote judicial accountability in Uganda.

¹⁵ *Kalali Steven v Uganda Law Society*, HC Miscelleneous Cause No. 129 of 2023.

1.2 Statement of the Problem

The Judiciary is one of the three arms of the State upon which governments function in ensuring the governance of the country, the others being the legislature and the Executive. The judiciary is charged with the responsibility of dispensing justice through the resolution of disputes, providing legal interpretations, as well as upholding the rule of law in the country.

In Uganda, the mandate of the Judiciary is enshrined in Article 126(1) of the Constitution of Uganda, 1995, which 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 law and with the values, norms and aspiration of the people.” In adjudicating cases, Courts are charged with the responsibility of, among others, dispensing justice to all irrespective of their socio-economic status, and without delay. The Constitution, under Article 128, affirms the independence of the judiciary and protects it from any interference, control or direction from any person or authority.

Whereas the Constitution provides for the independence of the judiciary, there has been contention on how to balance the elements of accountability and transparency with the need to uphold the independence of the judiciary.¹⁶ The Judiciary has for so long been in the spotlight for the way it conducts its business of administering justice.

¹⁶ See, Francesco Contini & Richard Mohr ‘Reconciling Independence and accountability in Judicial Systems’ (2023) 3 *Utrecht Law Review*, p. 28, citing A.B. Atchison et al., ‘Judicial Independence and Judicial Accountability: A Selected Bibliography’, 1999 *Southern California Law Review* 3, pp. 723-810, and C. Guarnieri et al., *The Power of Judges*, 2002, p. 154; J.L. Waltman et al. (eds.), *The Political Role of Law Courts in Modern Democracies*, 1988, p. 1.

For instance, while appearing before the Legal and Parliamentary Affairs Committee to defend their budget for the Financial Year 2025 / 2026, the Judiciary was criticized for the way it handles bail applications for suspects. Hon. Abdu Katuntu, one of the Committee members, expressed concerns particularly about the lengthy adjournments given by the judicial officers, describing it as unprofessional and illegal conduct.¹⁷ Another Committee member, Hon. Medard Ssegona, was concerned whether the Judiciary has a system in place that periodically reviews the decisions of the judicial officers, considering the kind of decisions that are issued by courts.¹⁸ The concerns raised by the Parliamentary Committee members raise the need for judicial accountability mechanisms to ensure that judicial officers explain their actions.

This discourse is created on the one hand by the desire to preserve court's independence and on the other, the need to promote judicial accountability. There have been instances where some of the decisions of the judicial officers have rattled the public, with some judges being termed as partial and in other cases the decisions termed unfair.

For instance, in December 2023, President Yoweri Museveni, through a letter to the Chief Justice, expressed concern with a judge who had ordered for the auctioning of the properties of Uganda Muslim Supreme Council to offset the debts owed to a businessman, and urged him to intervene. This, in other words, meant to have the

¹⁷ Shamim Nabakooza, Judiciary faces scrutiny over the quality of justice, Nilepost, Wednesday, 03 April 2025. <https://nilepost.co.ug/top-stories/251608/judiciary-faces-scrutiny-over-quality-of-justice>.

¹⁸ Ibid.

order set aside. Additionally, in Ntugamo district, the Resident District Commissioner declined to appear before court to answer to charges of theft and house break-in, accusing the courts of corruption and not being ‘answerable to them.’

Amidst the accusations of impartiality and the concerns about the fairness and integrity of the decisions of the courts, the concern of this study is to identify and examine the judicial accountability mechanisms, which is a key tenet of constitutional democracy and the rule of law.

1.3 Objectives of the Study

1.3.1 General Objective

The general objective of this study is to examine the effectiveness of the Bar Association in promoting judicial accountability and transparency in Uganda.

1.3.2 Specific Objectives

- 1) To identify the role of ULS in enhancing judicial accountability in Uganda.
- 2) To examine the effectiveness of ULS in promoting judicial accountability in Uganda.
- 3) To explore the measures or initiatives that Bar Associations in other jurisdictions have instituted to promote judicial accountability so as to draw lessons for Uganda.
- 4) To propose recommendations to strengthen judicial accountability in Uganda.

1.4 Research Questions

- 1) What role does the Bar Association play in enhancing judicial accountability in Uganda?
- 2) How effective has the Bar Association been in promoting judicial accountability in Uganda?
- 3) What lessons can Uganda draw from the measures instituted by the Bar Associations in other jurisdictions?
- 4) What can be done to strengthen judicial accountability in Uganda?

1.5 Significance of the study

This study is significant in several ways. First, as an institution charged with adjudicating cases and dispensing justice, it is crucial that the Judiciary gathers the opinions of the external eyes so as to provide a reference point for improvement and this study helps the judiciary explore possibilities and avenues of putting in place mechanisms that promote and strengthen judicial accountability in Uganda.

Secondly, this study provides an original contribution on the role of the Bar association, the Uganda Law Society, in enhancing the upholding of judicial standards, ethics and behavior.

Thirdly, the study guides in the effective administration of justice in Uganda as the judicial officer is aware of areas of concern of the public pertaining to their conduct in the execution of their work.

1.6 Theoretical Framework

This study benefited from a number of theories developed by different scholars. First, is the regulatory theory developed by Richard Devlin and Adam Dodek.¹⁹ The theory examines the complex interplay of values, institutional norms, procedures, resources and outcomes, and emphasizes the ‘normativity, complexity, contextualism, hybridity and flux’ of judicial regulation.²⁰ This theory posits that regulation is a complex, multifaceted issue that goes beyond the traditional debate of independence versus accountability, utilizing a regulatory pyramid framework.²¹

This theoretical framework, proposed by Devlin and Dodek, may be termed as the regulatory approach. This approach is applauded for its emphasis on the goals, outcomes and implications of judicial regulation.²² The theory assumes that the constitutional and legal framework and the theoretical underpinnings are important, but so are the regulatory mechanisms, procedures, processes and practices.²³ This makes the approach outcome-driven, not exclusively driven by ideology or values.

This theoretical dynamism helps explore and assess how the regulatory norms are formulated and deployed across the regulatory landscape starting with recruitment, training, deployment, discipline, retirement and removal of judicial personnel. The

¹⁹ Richard Devlin & Adam Dodek, *Regulating Judges: Beyond Independence and Accountability* (Cheltenham, UK: Edward Elgar Publishing, 2016).

²⁰ Ibid.

²¹ Ibid.

²² Shivaraj S. Huchhanavar ‘Conceptualising Judicial Independence and Accountability from a Regulatory Perspective’ (2022) 2 *Oslo Law Review*, <https://doi.org/10.18261/olr.9.2.3>.

²³ Devlin & Dodek, *supra* note 19.

regulatory approach may also be deployed to explore and evaluate inter- and intra-branch interactions that have a bearing on regulatory outcomes. This approach enables, *inter alia*, a critical assessment of the implications of regulatory regimes for judicial independence, transparency, accountability and competence.

Second, is the dialogic judicial review theory developed by Dimitrios Kyritsis in his 2017 monograph, which emphasizes the principle of separation of powers and the role of the different institutions in the interpretation of the constitution and in decision making.²⁴ According to this theory, the aspect of judicial review, which is about scrutinizing the laws and actions of political branches such as the Executive and the Legislature, reflects an ongoing dialogue or interaction between the Judiciary and the other branches.²⁵ Through the initiation of applications for judicial review in the courts, courts dialogue with the political branches of governments. Through dialogue, a constitutional balance is created between the judiciary and the other branches, as opposed to one perceiving itself to be superior to the other.

Within the Common Law system, the courts pronounce themselves on the issues presented before them and the decisions lead to modification of government actions and practice. Important to note is that there can never be a complete state of independence - both in structure and shape - of the judiciary, as each branch contributes to the effective functioning of the other.

²⁴ Dimitrios Kyritsis, 'Where Our Protection Lies. Separation of Powers and Constitutional Review', Oxford University Press (2017).

²⁵ Ibid.

1.7 Justification of the Study

The Judiciary is a very crucial player in the development of Uganda as it ensures the administration of justice, and promotes the upholding of the rule of law and good governance. The institution plays a key role in resolving disputes and conflicts and ensuring human rights, thereby contributing to a stable society and environment that facilitates economic development to thrive. It also keeps the Executive in check by examining its decisions and actions as to whether they are in line with the law. Its crucial role and position in society demands of it to ensure that it serves justice to the people of Uganda by virtue of Article 126(1) of the Constitution of Uganda, 1995 that bestows upon it judicial power.

Because of the Judiciary's important role and the authority granted to it, it becomes crucial that the institution's actions and decisions are examined to assess whether they are in line with the prescribed laws, serve justice to the litigants, and whether they meet the aspirations of society. Any feeling or form of public dissatisfaction with the decisions of the judicial officers could potentially spell doom for the country, in terms of fomenting unrest and conflicts as people would resort to unlawful means to resolve misunderstandings and issues of contention. A 2023 Annual Crime Report of the Uganda Police Force observed the increase in the use of mob justice to settle disputes,²⁶ while the 2024 survey on Justice Needs and Satisfaction in Uganda revealed that only 10% of Ugandans resort to courts for dispute resolution.²⁷ As an institution that derives power from the people, the Judiciary is expected to be

²⁶ Uganda Police Force, Annual Crime Report 2022/2023 (2024).

²⁷ The Hague Institute for Innovation of Law, 'Justice Needs and Satisfaction Survey in Uganda' (2024), p. 108.

accountable to those who grant it such power so as to ensure that such power is not abused or exercised arbitrarily.

1.8 Scope of the Study

Geographical scope

This research covered Kampala, which hosts the Supreme Court, Court of Appeal, but also extended to the High Courts and Magistrate Courts spread in the other parts of the country. The study also covered the Uganda Law Society and its selected affiliate offices located in the various parts of the country.

Content scope

The study restricted itself to examining aspects related to judicial accountability, and the role that Uganda Law Society, which is the country's Bar Association, has played in strengthening judicial accountability and transparency in Uganda, in addition to exploring its effectiveness while exploring best practices of promoting judicial accountability from other jurisdictions so as can draw lessons for Uganda.

Time scope

This research covered the period from 1995, when the Constitution of Uganda, 1995 was promulgated which brought renewed hope in the constitutional and governance journey of the country, to 2024. This period is sufficient enough to examine the trends and developments that have occurred in far as promoting judicial accountability in Uganda is concerned. During this period, the judiciary has witnessed significant transformations ranging from the use of technology such as the Electronic

Court Case Management Information System (ECCMIS), the adoption of Alternative Dispute Resolution (ADR) mechanisms in court processes - such as Plea Bargaining, Small Claims Procedure (SCP), and mediation, to the creation of the Judiciary Integrity Committee, and the strengthening of the JSC.

1.9 Ethical Considerations

Ethical considerations is a key factor that to be considered before and in the course of conducting the study. The study ensures that all sources or authorities the researcher uses in the study are credited and properly cited. This helps in avoiding cases of plagiarism, as well as strengthen the credibility of this research work.

1.10 Anticipated limitations of the study

Methodological challenges: Since this research is majorly a desktop study and rely on secondary sources, this impacts on the reliability of the information as the absence of primary data from the ULS and the judiciary officials miss opportunity that would have helped in the triangulation of the primary information with the secondary information. The researcher makes efforts to access and make use of the latest and reliable information to provide as much information as possible so as to minimize the effects of not gathering primary information.

Secondly, the study identifies gaps that would have affected the findings in this research and point them out as areas to consider in future research projects.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

The literature is provided in relation to the research topic. It also presents the ideas of other scholars, policy makers, government, and non-government intervention in relation to the objectives of the study.

2.1 The role of the Bar in enhancing judicial accountability

The principle of judicial accountability has for a considerable period of time sparked debate within the public globally. While it is a known principle that every person should be held accountable for their actions, in the judiciary, this principle has to be contextualized in line with the notion that ensures that judicial officers make their decisions without fear or favour of anyone and that their independence is preserved.

In a paper delivered by Justice Ernest L. Sakala, the Chief Justice of Zambia, at the Southern Africa Judges Commission meeting held in Windhoek, Namibia, in August 2005, the Justice described the concept of judicial accountability to refer to the notion that judges who oversee a case and give judgment in that particular case account for their judicious and injudicious conduct.²⁸ He observed that the since the power bestowed upon judicial officers is derived from the people, they are free to critique the decisions of the courts, and that such as officers should account to the

²⁸ Justice Ernest L. Sakala, The Accountability of the Judiciary – Accountable to Whom? Is there such a Mechanism, paper presented at the Southern Africa Judges Commission meeting held in Windhoek, Namibia, 11 – 14 August 2005.

citizens, although not in the same fashion and manner like the other government institutions or agencies do.²⁹ While Justice Sakala's paper emphasizes the need for the judicial officers to account for actions - in this case, the judgments and decisions, on account of deriving the power from the people, it fails to provide how exactly such officials should account to the public without infringing the principle of judicial independence, which is a fundamental aspect is ensuring a strong judicial system.

Mahesh Nath, in his paper titled: *Judicial Accountability: The Present Contours and the Way Forward*, explores the concept of judicial accountability in the context of Judicial independence and observes the conundrum of ensuring the two concepts operating in the same space.³⁰ He notes that judicial accountability runs counter to the principle of separation of powers and rule of law concepts, and that creating formal judicial accountability mechanisms tasked with receiving complaints against judges would likely make judicial officers vulnerable and expose them to harassment and pressure. Mahesh further argued that accountability systems are inbuilt within the judicial processes and mechanisms, such as judicial officers hearing cases and making decisions based on the evidence presented by the litigants, cases being heard in public view, as well as the requirement for judges to provide reasons for their decisions and the appeal processes in cases litigants are dissatisfied with the decisions. While the processes elaborated by Mahesh are strong mechanisms for facilitating judicial accountability, he fails to recognise the aspect of political

²⁹ Ibid, p. 8.

³⁰ Mahesh Nath, 'Judicial Accountability: The Present Contours and the Way Forward' (2013). Available at SSRN: <https://ssrn.com/abstract=2294465> or <http://dx.doi.org/10.2139/ssrn.2294465>

interference, which could potentially also influence the decisions of the judicial officers, even when there is strong evidence to the contrary.

Abdulrasheed and Abdulyakeen have also emphasized the principle of separation of powers among the different branches of government and the importance of courts in deciding cases on constitutional principles.³¹ They observe that the constitutionalism principles can only work effectively if the judiciary's separation of powers and independence are successfully put in place, respected, and protected. The position advanced by the two authors is relevant in ensuring that the judiciary, as the third branch of the government, is allowed to make decisions based on constitutional principles and not on the whims or direction of anyone.

The 2030 Agenda for Sustainable Development provides governments with a renewed drive for developing institutions and processes that are more responsive to the needs of ordinary people, including the poor and marginalized, and that promote sustainable development.³² The 17 Sustainable Development Goals adopted by UN member states in September 2015 set a new and comprehensive agenda for political, economic, environmental, and social transformation within the next 15 years. Importantly, the 2030 Agenda prioritizes the aspect of effective governance both as an enabler for achieving all goals and as a goal in itself. It particularly focuses on reducing corruption, improving access to justice, and human rights protection, which elements

³¹ A. Abdulrasheed, 'An Appraisal of Charles De Montesquieu's Theory of Separation of Power within the Prisms of Power Relations among Structures of Government in Nigeria's Presidential System: The Dilemma and Critical Issues.' (2023) *FUDMA Journal of Management Sciences*, v.3 p.1-15.

³² UNDP, *A Transparent and Accountable Judiciary to Deliver Justice for all*. Bangladesh, India: UNDP (2016).

were not part of the Millennium Development Goals. SDG 16 aims at promoting peaceful and inclusive societies for sustainable development, universal access to justice and effective, accountable, and inclusive institutions.³³ This gives a new momentum to rethink approaches on how to promote a transparent and accountable judiciary to deliver justice for all. This calls for the need to develop integrated solutions that involving stakeholders in the justice sector and in anti-corruption work, while at the same time exploring avenues for community involvement.

Popular demands for social justice in Africa, as in the case in the rest of the world, are often embedded in calls for better governance, which often include transparency and accountability.³⁴ Due to the pervasive poor economic conditions in most African countries such as in Nigeria, this has resulted into deep-seated corruption, including within the judiciary, which has often resulted into poor service delivery.³⁵ Corruption within the judiciary could mean that who have the financial ability and can oil the wheels of justice can be assured of getting justice in their favour against those without the financial means to meet the demands of the judicial officers. Although Ohamadike and Chukwebuka's study point out corruption as one of the factors responsible for the poor service delivery within the judiciary, it fails to recognize the aspects of the political interference in judicial work, which also limits the independence of the judiciary.

³³ Ibid.

³⁴ N. Ohamadike and E. Chukwuebuka, 'Measuring political accountability in Africa using a multi-item index' (2014) *The Africa Governance Papers*, v.2(1), p.32-34.

³⁵ Ibid. See also, Ameh Ejekwonyilo, 'Corruption in Nigerian Judiciary is Extensive — UNODC', March 01, 2024. Retrieved from <https://www.premiumtimesng.com/news/top-news/673568-corruption-in-nigerian-judiciary-is-extensive-unodc.html?tztc=1>.

The Attorney General of Uganda has strongly emphasized the role of lawyers as the guardians of the law, and called for increased collaboration between the Executive and legislative, and judicial branches, noting its centrality in ensuring the proper functioning of the government.³⁶ He highlights the importance of each branch performing its role without prejudice to ensure effective governance.³⁷ He further notes that an ineffective justice system can have a negative impact on the population and erode the rule of law in the country, and calls increased interaction between the lawyers (the Bar) and the judiciary (the Bench) for the smooth administration of justice. He urged court users to utilise post-judicial remedies such as appeals in case they are dissatisfied with the court decisions, stating that this not only ensures the fair and just resolution of disputes but also contributes to the overall credibility and effectiveness of the legal system.³⁸

The judiciary has an essential role in adjudicating citizen contentions, intervening and resolving conflicts between individuals on the one hand with the state on other for upholding the law.³⁹ It is also charged with the responsibility of protecting the Constitution and promoting democratic values, interpreting the Constitution and other legislations, and of protecting citizens' and organizations' fundamental rights and freedoms. While courts are empowered with these responsibilities, it is critical that they execute their mandate in a fair and unfettered manner. An independent judicial system lays the foundation for promoting constitutionalism and the rule of

³⁶ Uganda Law Society Newsletter, Issue No. 16 (February 2014), p.7.

³⁷ Ibid.

³⁸ Ibid.

³⁹ JLOS *The State of the Rule of Law. A Review by Uganda Law Society of the State of the Rule of Law in Uganda*. Kampala Uganda: JLOS (2024).

law in a country. In Uganda's case, courts' independence is protected under Article 128, which shelters it against functioning under the control or direction of any person or authority.

Tyakagire and Aziz emphasize the independence of the judiciary, stating that it is a key element in functioning democracy.⁴⁰ The system within the judicial system is structured in a way that enables judicial officers to hear cases and issue judgments without any political bias. While Tyakagire and Aziz highlight what should be ideally the case, this is not always the practice. There has been noted political interferences in court matters and undermining of its powers, as the two cases — of the President writing to the Chief Justice about the attachment of the Muslim properties and the refusal of the RDC of Ntugamo district — cited above have demonstrated.

2.2 Factors affecting judicial accountability and transparency

Corruption within the judiciary is one the factors that has eroded public trust in the institution and undermined the rule of law. This factor has been attributed to be reason for the biased or unfair court decisions. Corruption, especially the form of bribery, is mostly common in the developing countries and in the developed economies as well. Corruption within Uganda's judiciary has been attributed to the low pay given to judicial officers, especially those at the rank of magistrates, and the limited knowledge among the suspects and plaintiffs on the legal systems and procedures, who because of being desperate offer bribes to judiciary staff to

⁴⁰ H. Tyakagire and S. Aziz, 'Judicial Independence: A Continued Political Interference in Recent Judicial Proceedings in Uganda' (2024) *International Journal for Multidisciplinary Research (IJFMR)*, V. 6 p.1-13.

circumvent the legal processes.⁴¹ While corruption is indeed a factor undermining judicial accountability, there are others that contribute to this malaise. These include factors such as political interference, judicial independence which protects judicial officers from explaining their actions, among others.

Kimuraheebwe emphasizes the aspect of security of tenure as a key element in ensuring that judges retain autonomy.⁴² This essential element is part of the appointment process of judicial officers. Judicial officers hired on permanent terms, which is the case in some countries like, in addition to the financial independence of the Judiciary, are critical elements in ensuring the independence of the judges. If a judicial officer is sure that his or her job is secure, this will motivate such a judge to dispense justice without fear or favour because he will not be interested in appeasing a particular person. Security of tenure for the judges is therefore a core factor in ensuring the effective dispensation of justice.

Ohamadike and Chukwuebuka, using a multilevel logistic regression analysis, observe that citizens of low developed economies, such as those in Africa, are likely to perceive transparent and accountable governance in judicial system as a means to address urgent economic issues, allowing them to get more from their government.⁴³ Conversely, economic prosperity can incentivize individuals to back a government that seems to be achieving results independently, diminishing citizens' insistence on

⁴¹ N. Bamulanzeki (2017). *Judges suspend Strikes as Government agrees to Increase Salaries*. Kampala: Observer.

⁴² JMV Kimuraheebwe (2022). Security and Fragility of Tenure of Public Servants Within the Legal Framework in Uganda. *African Journal of Law and Ethics*, 1-15.

⁴³ N. Ohamadike and E. Chukwuebuka. (2024). Measuring political accountability in Africa using a multi-item index. *The Africa Governance Papers*, v.2(1), p.32-34.

changes, such as government transparency and accountability. This perspective emerges from trust in the government's competence, which could cultivate complacency regarding the necessity of transparency and accountability. The logistic regression analysis showed that economic factors significantly influence attitudes.

Asiimwe notes that financial autonomy is fundamental element is promoting judicial independence..⁴⁴ Ensuring budgetary independence of the judiciary enables the institution to control its own funds and to expend such resources in its set priorities. The lack of financial independence by the judiciary makes the institution susceptible to interference by the Executive branch since the judicial institution has to tow a certain line, which is in most cases the Executive's favoured position, to be assured of some considerable level of funding from the government. While Assimwe's position is a valid one as can be noted from the practice in countries such as Uganda, where the judiciary relies on the allocations made by the government, he fails to examine the effect of other factors such as corruption, security of tenure, which as well impact on judicial accountability.

2.3 Challenges of the Bar in ensuring judicial accountability and transparency

Bar associations world over have a duty to ensure adherence to judicial standards, as well as to ensure that judicial officers are accountable for their actions. However, as has been noted above, ensuring accountability while at the same time preserving the

⁴⁴ J. Asiimwe. (2013). 'Towards Good Governance in Uganda: A Critical Analysis of the Role Played by Judiciary in Promoting Rule of law from a Constitutional Perspective.' Dar es Salaam: Dissertation, University of Dar es Salaam Tanzania.

independence of the judges requires navigating a delicate balance and yet the two are complementary. In Uganda, the need to ensure judiciary accountability by the ULS has brought the Bar Association and its members at a collision course with the Bench. Some of the members of the Bar such as Male Mabirizi have in fact been jailed for contempt of court on grounds that they had accused a judge for being bias and incompetent,⁴⁵ while the current ULS President was also convicted on a similar offence.⁴⁶

Judicial accountability has also been limited through the use of the law to gag any kind of discontentment that might arise about the conduct of the judicial officers and the institution in general. For instance, in India, the Contempt to Court Act, 1971 has been a tool that has been used to deter any kind of dissenting voices against the judiciary. The Act defines contempt as civil or criminal.⁴⁷ Civil contempt is defined to mean the willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.⁴⁸ Criminal contempt refers to the publication — whether by words, spoken or written, or by signs, or by visible representations, or otherwise — of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court ; or prejudices, or interferes or tends to interfere with the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of

⁴⁵ High Court Miscellaneous Application No. 843 of 2021.

⁴⁶ Mugisha Hashim Mugisha v. Isaac Kimezze *Ssemakadde* (Misc. Application No. 0059 of 2025).

⁴⁷ Section 2(a).

⁴⁸ Section 2(b).

justice in any other manner.⁴⁹ By this expansive definition, it presents a challenge for the public, or institution such as the country's Bar Association to express concern or makes statements of any sort of misconduct within the judiciary with getting into conflict with the law. It has also been stated that the judicial officers have taken advantage of this legal framework to silence the voices of critics who would have expressed concerns about the conduct of the judiciary and the judicial officers.⁵⁰

Additionally, the 'sub judice rule', a principle that bars any person from discussing a matter pending before court, has also been cited as a hindrance in ensuring judicial accountability.⁵¹ The basis of the sub judice rule is to protect the integrity of the court proceedings from any form of influence in line with the principle of independence of the judiciary so as to give room to the courts to deal with the legal issues filed before it.⁵² While on the one hand the principle's objective in as far as ensuring fair trial rights is a valid one, the principle has the effect of shielding judicial officers from any form of scrutiny and oversight from members of the public on the other, yet the comments and views from the public can potentially help correct judicial errors or actions in an ongoing case.

Openness and transparency in the appointment of judicial officers is a key element in ensuring judicial accountability. In some jurisdictions, the appointment of judicial

⁴⁹ Section 2(c).

⁵⁰ <https://www.lawteacher.net/free-law-essays/constitutional-law/problems-in-judicial-accountability-constitutional-law-essay.php>

⁵¹ Lorne Sossin and Valerie Crystal, A Comment on "No Comment": The Sub Judice Rule and the Accountability of Public Officials in the 21st Century (2013) 36-2 *Dalhousie Law Journal* 535, 2013 CanLII Docs 749, <<https://canlii.ca/t/t0zj>>, retrieved on 2025-05-04

⁵² Galia Schneebaum and Shai J. Lavi, 'The Riddle of Sub-Judice and the Modern Law of Contempt' (2015) *Critical Analysis of Law*.

officers is consultative in nature, involving the participation of the public,⁵³ while in others it is shrouded in secrecy. In Uganda, for instance, the appointment of the judicial officers follows a process that involves carrying out advertisements for vacant positions and those interested express interest. However, the process of vetting those who expressed interest does not provide room for the public to express their views on their suitability, let alone their credibility and record of service. Asiiimwe⁵⁴ and Kakaire and Kiyonga⁵⁵ have explored instances where the President Museveni has appointed judges to the Constitutional Court and Supreme Court, drawing praise for some of the choices, but also being criticized for ignoring some of the candidates recommended for appointment. While it is presumed that the non-appointment of some of the judges would be due to the credibility or integrity, this is just speculative. In fact, some, it is presumed, are not appointed due to concerns about their loyalty to the ruling government / party, the National Resistance Movement.⁵⁶ This concern would be addressed through ensuring the participation of the public in appointment of the judicial officers, which would be a form of ensuring judicial accountability.

⁵³ In Kenya, for instance, the vetting of contenders for top positions in the Judiciary — such as that of the Chief Justice and the Deputy Chief Justice — are subjected to public interviews, with the public allowed to raise concerns / opinions about their suitability for the roles.

⁵⁴ J. Asiiimwe 'Towards Good Governance in Uganda: A Critical Analysis of the Role Played by Judiciary in Promoting Rule of law from a Constitutional Perspective.' (2013) Dar es Salaam: Dissertation, University of Dar es Salaam Tanzania.

⁵⁵ S. Kakaire & D. Kiyonga, 'Museveni's Choice of Judges for Promotion Raises Questions' *Observer*, 16 September 2015.

⁵⁶ See Joe Oloka-Onyango, *When Court Do Politics: Public Interest Law and Litigation in East Africa*, New York: Cambridge Scholars Publishing (2017). Oloka-Onyango, quoting Prof. John Griffith, argues that neither impartiality nor independence necessarily involves neutrality; Judges are part of the machinery of authority within the State and as such cannot avoid the making of political decisions.

Huchhanavar, citing a paper presented by Chief Justice Spigelman in 2003 at the Worldwide Common Law Judiciary Conference, explains the ambiguity associated with defining the term ‘misbehavior’, arguing that clarifying the term and the elements within it would address the misconception between protecting judicial independence and responding to judicial misbehavior.⁵⁷ In the judiciary, the term is used interchangeably with that of ‘misconduct’ and it becomes problematic defining the elements that would fall under the act of misbehavior or misconduct. Similarly, Justice JB Thomas has observed that ‘it is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations’.⁵⁸ These standards of conduct can set out parameters of how the judges are expected to conduct themselves in court and in the private spaces and the sanctions for deviation from the set rules.

Stephen Norris cites precedents to illustrate problematic judicial conduct which is likely to lead to unfair processes or create conditions which compromise the likelihood of a fair trial.⁵⁹ Citing Justice Thomas and Justice Kirby, he outlines elements within the act of misconduct to include inappropriate conduct or comment, a failure to listen to both sides, judicial bullying, needless remarks, and excessive

⁵⁷ S. Huchhanavar ‘Conceptualising Judicial Independence and Accountability from a Regulatory Perspective’ (2022) *Oslo Law Review*, V. 9, No. 2 p. 110–148.

⁵⁸ J.B. Thomas, *Judicial Ethics in Australia* (Sydney, Law Book Company, 1988), p.7.

⁵⁹ Norris Stephen, ‘Judicial Conduct in Court’ (2006) *Journal of the Judicial Commission of NSW* 8: 39–79

judicial intervention through questioning.⁶⁰ However, legislation does not offer the type of clarity that these justices seek to address.

UNDP posits that institutions at the different stages of the justice system process all enjoy a certain degree of discretion in their decision-making and little external oversight.⁶¹ For instance, under the police, corrections officers and administrators are under the direct control of the government and therefore vulnerable to political interference. Even with both vertical and horizontal accountability mechanisms for oversight, the police force often shows a strong esprit de corps that makes oversight difficult. By comparison, the need for prosecutorial and judicial independence constrains the possibilities of formal horizontal accountability mechanisms, although it is the lack of independence from outside interference that coincides more often with systemic corruption in these institutions. The need for independence is often times fronted to counter calls for external accountability. Further, these institutions use professional terms that are not easily understood by everyone and this tends to constitute a barrier to public scrutiny.

The United Nations Convention against Corruption (UNCAC) cites the judiciary as one of key institution in preventing and countering corruption.⁶² Article 11 of the Convention imposes a duty on state parties to institute measures to strengthen integrity among members of the judiciary and prosecution services and to prevent

⁶⁰ Ibid, p.44

⁶¹ UNDP (2016). *A Transparent and Accountable Judiciary to Deliver Justice for all*. Bangladesh, India: UNDP.

⁶² UNDP (2016). *A Transparent and Accountable Judiciary to Deliver Justice for all*. Bangladesh, India: UNDP.

corruption among members of the judiciary and prosecutions services. To further strengthen ethical principles within the judiciary, the international community developed the Bangalore Principles of Judicial Conduct in 2002. The Bangalore Principles define normative standards for judicial conduct and they put in place a set of principles to promote judicial integrity. This study made reference to such standards and these formed the basis of promoting judicial accountability and transparency in Uganda.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter presents the research methodology that was employed for this study. It describes the procedures that were followed in conducting the study, including the research design, the study population, the sampling procedure, data collection methods and tools, and data analysis.

3.1 Research Methods

The study employed a qualitative research methodology in exploring the subject under investigation. A qualitative research methodology was useful in establishing and explaining in detail the aspects related to judicial accountability, with a particular focus on initiatives that have been instituted by the Bar Association of Uganda.

3.2 Research Design

The study employed a case study design to conduct an in-depth examination of the complexities underlying the aspect of judicial accountability in Uganda, with a particular focus on Bar-led initiatives. According to Creswell, a case study design allows for a detailed exploration of the complexities embedded within a particular subject of interest.⁶³ The case study design enabled the researcher to identify trends

⁶³ JW. Creswell (2014). *Research Design: Qualitative, Quantitative and Mixed Methods Approaches (4th ed.)*. . Washington DC USA: Thousand Oaks, CA: Sage.

about certain aspects on judicial accountability and allow for identification of challenges and solutions to improve the situation.

3.3 Research methods

Documentary review

This method involved reviewing and analyzing secondary data on judicial accountability and the role the Uganda Law Society has played in promoting the concept in the country. This information was obtained from newspapers, presentations made by various people on the subject, published journals and books, official government reports, reported and unreported cases, working papers, and from the internet sources.

3.4 Data Analysis

The information obtained from the secondary sources and data was analysed to identify trends and events on the subject of judicial accountability. It also analyzed the effect of the interventions that have been instituted by the judiciary to promote accountability among judicial officers. This assessment helped the researcher arrive at a conclusion as to whether such efforts have been successful or otherwise.

CHAPTER FOUR

THE LEGAL FOUNDATION FOR JUDICIAL ACCOUNTABILITY AT THE INTERNATIONAL, REGIONAL AND DOMESTIC LEVELS

4.0 Introduction

This section explores the foundation of the element of judicial accountability at the international, regional (specifically at the African level) and domestic levels. It examines both the soft and hard laws — such as Conventions, treaties, agreements, guidelines, codes, standards — within which the element of judicial accountability has been affirmed.

4.1 International level

International Covenant on Civil and Political Rights: The International Covenant on Civil and Political Rights (ICCPR) has provisions that promote judicial accountability among state parties. For instance, Article 14 of the Covenant guarantees everyone the right of equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. General Comment 32 of the Human Rights Committee (HRC), a body charged with the mandate to monitor the implementation of the provisions of the ICCPR among State parties, has elaborated on what constitutes the elements of competence, independence and impartiality of any judicial organ.⁶⁴ It observes that the element of independence encompasses aspects that relate to the procedure of appointment and

⁶⁴ Human Rights Committee, General Comment No. 32 on Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, paras. 19 – 21.

the qualifications of the judges, their security of tenure, and their actual independence from political interference by the executive branch and legislature.⁶⁵ The General Comment imposes a duty on the state parties to develop a legal framework that guarantees the independence of the judiciary, security of tenure and ensuring adequate resources to enable the effective functioning of the judicial organs.

Article 19 of the ICCPR also guarantees everyone the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, in any form or medium. This provision affords an opportunity to any person to freely express their opinions on several issues, including those that pertain to court decisions, thereby allowing members of society to scrutinize the performance of the judiciary as well as to promote accountability of the judicial body.

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT): The UNCAT is an international instrument that prohibits torture and other forms of ill-treatment or punishment and creates mechanisms within the instrument to monitor and hold state parties accountable for such violations. The instrument does not have an explicit provision that emphasizes the principle of judicial accountability, but its principles and obligations are critical in ensuring that the judicial bodies play a pivotal role in

⁶⁵ Ibid

preventing and addressing torture. Article 13 of the treaty enjoins state parties to ensure that victims of torture have a right to lodge complaints against such acts with the competent authorities, while Article 14 directs states to put in place mechanisms that enable victims of such acts to obtain redress and compensation for such acts. These competent authorities include courts of law, which are charged with the role of, among others, adjudicating cases of human rights violations such as torture. This provision implicitly means that judges have a role to play in preventing and redressing cases of torture through their decisions and the orders that they make in the cases of torture lodged before courts of law. Therefore, they can be held accountable for their decisions and orders, which may facilitate or fuel the commission of torture.

UN Convention Against Corruption: Adopted in 2003, the UN Convention Against Corruption is a global anti-corruption instrument that aims to promote and strengthen measures to prevent and combat corruption at both the international and national level. Relevant to the subject of judicial accountability is Article 11 of the Convention, which imposes a duty on state parties to put in place measures and rules to regulate the conduct of judicial officers. Further to this is Article 13 that guarantees the right of the society to participate in preventing and curbing corruption, including the freedom to seek, receive, publish and disseminate information concerning corruption. This provision grants an opportunity for the public to report cases of corruption among judicial officers, which contributes to strengthening judicial accountability and accountability among the judicial officers.

Universal Declaration of Human Rights: While the Universal Declaration of Human Rights (UDHR) does not explicitly mention the element of judicial accountability in its Articles, it however has some provisions that are relevant in promoting accountability of the judiciary to the public. For instance, Article 8 guarantees everyone the right to seek justice through the established national legal system for human rights violations. This provision provides every person an opportunity to challenge judicial decisions and to hold judges accountable for unfair decisions.

Additionally, Article 10 of the UDHR guarantees everyone the right to a fair trial. The aforementioned provision states that “everyone has the right to a fair and public hearing by an independent and impartial tribunal when determining their rights and obligations, or in the case of any criminal charge against them.” This provision helps to ensure a judiciary that is independent, neutral and unbiased and is free from any undue influence, interference or direction of any person or organ in the performance of its duties.

Article 19 of the UDHR guarantees everyone the right to freedom of opinion and expression, which includes the freedom to hold opinions without interference and the freedom to seek, receive and impart information and ideas through any media. This provision allows any person to comment on or to voice their opinions on issues such as judicial performance and decisions. This provision promotes public scrutiny and accountability of the judiciary.

The UN Basic Principles on the Independence of the Judiciary: Adopted in 1985, the UN Basic Principles on the Independence of the Judiciary (hereafter: ‘UN Basic Principles’) guide States on incorporating within their national jurisdictions elements that ensure a strong and independent judiciary. The elements outlined in the Basic Principles include aspects related to the independence of the judiciary, freedom of expression and association for judges, qualifications and selection processes, conditions of service, professional secrecy and immunity, and disciplinary procedures. In regard to the independence of the judiciary, the UN Basic Principles emphasize that this principle be enshrined within the state’s constitutions or laws. The UN Basic Principles further call for the impartiality of the judiciary in decision making, without undue influence or any inappropriate or unwarranted interference.

In relation to the judges’ rights to freedom of expression and association, the UN Basic Principles emphasizes that judges are entitled to these rights but with certain restrictions necessary for maintaining the dignity of the judicial office, impartiality and independence. Therefore, judicial officers are free to voice their opinions on any matters, but they should be mindful of the implications of their opinions on the office and the position they hold in society, and the role they play in adjudicating complaints.

With respect to qualifications and selection of judicial officers, the UN Basic Principles emphasize the element of ensuring standards in selecting judicial officers, including putting emphasis on qualifications and competence of such officers. The

Basic Principles further stress that any mode of selection of judicial officers that could be adopted should safeguard against appointments for improper or ill motives.

Important to note is that the principles elaborated in the UN Basic Principles provide a framework of ensuring an independent and strong judiciary that can be held accountable for its actions and decisions.

The Bangalore Principles on Judicial Conduct: The Bangalore Principles of Judicial Conduct provide a basis for developing national standards governing and regulating the ethical conduct of judicial officers. The Principles, according to the Preamble, are developed “to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct.”⁶⁶ The Principles highlight six basic components that are critical for a fair and an effective functioning judicial system. These six components are: independence, impartiality, integrity, propriety, equality, and competence and diligence.⁶⁷ In relation to independence, the Principles emphasize that the element of judicial independence is key factor in ensuring the rule of law and fair trial guarantees and that this has to be reflected at both the individual and institutional level. This safeguards judicial officers from undue influence and interference in decision making from litigants, the public, as well as from judicial colleagues.

⁶⁶ Preamble, Bangalore Principles of Judicial Conduct, 2000.

⁶⁷ See Value 1-6, *ibid.*

4.2 The African level

The African Charter on Human and Peoples' Rights: Adopted in 1981, the African Charter on Human and Peoples' Rights, also known as the Banjul Charter, is the main human rights instrument that promotes and protects human rights on the African continent. The treaty has some provisions that are relevant to promoting judicial accountability on the continent. For instance, Article 7(1) of the Charter provides that "Every individual shall have the right to have his cause heard. This comprises: (d) the right to be tried within a reasonable time by an impartial court or tribunal." The Charter, in Article 26, imposes a duty on the States to guarantee the independence of the courts. The two provisions affirm the elements of independence and impartiality of the judiciary, which are critical pillars in ensuring and promoting judicial accountability, the rule of law and the protection of human rights.

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003: Developed by the African Commission on Human and Peoples' Rights in 2003, the Guidelines aim to ensure that individuals have the right to a fair trial and legal assistance in Africa. The Guidelines outline a set of principles that are key in ensuring the right to a fair trial. These principles include: the right to fair and public hearings, the independence and impartiality of the judiciary, and the right to consult with and be represented by legal counsel. The Guidelines emphasize the right of any person to a fair and public hearing by a legally constituted competent, independent and impartial judicial body. They also urge for a speedy hearing, and reasons by the judicial officers for their decisions. The Guidelines urge the State to put in place

facilities that could enable the public and the media to attend and to follow proceedings before courts of law. These are very important elements in ensuring that the public monitor the court proceedings and this allows the public to scrutinize the cases before courts and also promotes judicial accountability by the judicial officers.

4.3 The domestic level - Uganda

Constitution of the Republic of Uganda, 1995: Uganda's legal framework has provision that promote judicial accountability and ethical conduct of judicial officers in the discharge of their duties. For instance, Article 126(1) of the Constitution of Uganda, 1995 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 law and with the values, norms and aspiration of the people." This provision imposes a duty on the judicial officers to account to the people from whom they derive judicial power and to ensure that they discharge the roles conferred to them in line with the law. Article 128 affirms the independence of the judiciary and protects it from any interference, control or direction from any person or authority in the discharge of its duties. Article 128(4) reinforces the independence of the judiciary by granting immunity to judicial officers for acts committed in line with their judicial duties. However, important to note is that this immunity does not shield them from accountability for acts that relate to abuse of judicial power.

The Administration of Judiciary Act Cap 4 is the flagship principal law that governs the administration of the judiciary. However, from the narrative established by its long title, the Act envisages fostering financial accountability of the judiciary at an

institutional perspective. The only coverage the Act focuses on judicial accountability as used in the sense of this research is the mandate, albeit faint, extended to the Inspectorate of courts to receive and process complaints against members of staff of the judiciary and to investigate complaints of maladministration of justice under Section 9 of the Act. The inspectorate is established under section 8.

On the other hand, *the Judicial Service Act Cap 87* merely operationalizes the mandate of the President and the JSC as under Articles 147 and 148 of the Constitution of Uganda on discharging a disciplinary mandate in the Judiciary. It doesn't unequivocally set the standards upon which this disciplinary mandate is to be dispelled, let alone appreciate judiciary accountability as a counterweight to judicial independence in the mainstream.

Although *the Advocates Act Cap 295* doesn't expressly provide for it as a duty of advocates to foster judicial accountability, the role of the bar in enhancing judicial accountability can be traced in the Advocates (Professional Conduct) Regulations under which Regulation 17 is clear to the effect that advocates are officers of the courts in the very first instance, and as such are vested with a paramount duty to uphold the integrity of courts for which judicial accountability is a terminal pillar.

In order to ensure discipline and uphold ethical standards among judicial officers, Article 146 of the Constitution establishes the Judicial Service Commission charged with the mandate of addressing concerns of behavior and misconduct of such officers and to ensure the independence of the judiciary. The JSC is also charged with the

responsibility of recruiting of judicial officers and for the general administration of the judiciary.

4.4 Conclusion

The element of judicial accountability is a key aspect in ensuring a strong and effective judicial system. Judicial accountability is an element that is grounded in the legal frameworks at the international and regional levels, as well as within Uganda's legal system. While in some of the instruments, the aspect is not explicitly stated in the provisions of such instruments, it can however be implied in their provisions, more so as they urge state parties and authorities to ensure in place competent, impartial and independent judicial bodies or tribunals to provide remedies, hear or adjudicate cases. Judicial accountability as a principle focuses on ensuring that judicial officers are held accountable for their actions and the decisions that they make, thereby instilling public trust and confidence in the processes of the judiciary.

CHAPTER FIVE

EXAMINING THE ROLE OF THE BAR IN PROMOTING JUDICIAL ACCOUNTABILITY IN UGANDA

5.0 Introduction

This chapter explores how the concept of judicial accountability has been actualized by the judicial officers in Uganda and how the Uganda Law Society has contributed to these efforts, if any. It explores how the concept was being implemented right from the pre-colonial times to the present. The chapter examines the aspect of judicial accountability using the Bangalore Principles of Judicial Conduct, 2022 as the basis for the ethical standards for judicial conduct.

5.1 Judicial accountability in the pre-colonial, colonial and the post-colonial times

5.1.1 Judicial accountability in the pre-colonial period

Before the advent of colonial rule, Uganda had a well-developed political and administrative system, including a well-established judicial system.⁶⁸ Each of the communities had its own distinct form of governance, with the rulers or chiefs of those communities wielding broad powers over the communities under their areas of control. For instance, in the south, especially in the kingdoms of Buganda, Bunyoro and Ankole, there existed a centralized system of governance, which was based on the monarchial model. In the north, which was predominantly composed of Nilotic-speaking communities such as the Acholi, the communities in such areas were

⁶⁸ See, RW Cannon, "Law, Bench and Bar in the Protectorate of Uganda", *International and Comparative Law Quarterly*, p. 878. Francis M. Ssekandi, "Autochthony: The Development of Law in Uganda" (1983) 1 *New York Law School Journal of International and Comparative Law*, p. 4.

organized along lineal lines into smaller clans, with the chiefs superintending over the different clans. In each of these communities, judicial functions were handled by the local leaders such as the kings, chiefs, elders and clan leaders and these presided over cases based on the customs and traditions of their communities.

One of the communities with a well-structured governance system was Buganda,⁶⁹ where the king (kabaka) held significant power, including authority to resolve disputes and to enforce decisions. Emphasizing Buganda's organized governance system, Apollo Makubuya observes that "the first European explorers and missionaries that arrived at the interior of Africa in the 19th century were surprised to find a kingdom [Buganda] with a sophisticated cultural and traditional system of governance that they had not seen elsewhere."⁷⁰ In line with his judicial duties, the king was supported by the clan leaders and elders, who assisted him in resolving disputes. These chiefs were appointed by the Kabaka and he had discretionary powers to dismiss any of them on grounds such as poor performance. In executing the judicial functions, the chiefs were not guided by any written laws, nor did they have any form of training to enable them effectively carry out judicial roles. Additionally, the chiefs exercised bias in some instances as a result of their strong allegiance to the King.

⁶⁹ Hizaamu Ramadhan, "Analysis of the pre-colonial, colonial and post-colonial bureaucracy of Buganda: The major milestones in its development" (2018) 12 *African Journal of Political Science and International Relations*, p. 103.

⁷⁰ See, Apollo N. Makubuya, *Protection, Patronage, or Plunder? The Secretive History and Politics of British Overrule in [B]Uganda*, Cambridge Publishing, citing Grant, J.A. (1863). *A Walk across Africa, or Domestic Scenes from my Nile Journal*. Edinburgh/London: W. Blackwood & Sons; and Speke, J.H. (1863). *Journal of the Discovery of the Source of the Nile*. Edinburgh/London: W. Blackwood & Sons.

Furthermore, like in other ancient African societies, the judicial proceedings did not have any legal representation by the lawyers as the parties to a dispute presented their cases directly to the chiefs and the king and they had to rely on their knowledge on the customs and traditions to argue out their case.⁷¹ However, in some limited instances, litigants were represented by either relatives or “champions-at-law” in customary cases.⁷² The King always consulted the elders who were knowledgeable in customary law for advice, which informed his decision in the cases brought before him.

Unfortunately, while the rulings of the chiefs would be appealed against,⁷³ those of the Kabaka could not as there were no mechanisms in place to review his decisions. His decisions were regarded as final and these were implemented by himself, or through his subordinates. It can be deduced that during this period, the element of judicial accountability was not one that was recognized or even considered critical as there were not systems in place that would check on aspects such as impartiality and independence of those charged with discharging justice, their selection criteria, training and qualifications, yet these are critical features of judicial accountability.

5.1.2 Judicial accountability during the colonial era

Uganda experienced minimal judicial accountability during the colonial period (1900 - 1962), with the colonial administration focusing more on entrenching its power and

⁷¹ Legal Education in Colonial Uganda: 1984 - 1962

⁷² Ibid, p.2

⁷³ Sekandi, op. cit, p. 5.

authority over the protectorate while providing very limited attention to establishing checks and balances on judicial authority. The judicial officers that were appointed in Uganda by the colonial administration at the time focused more on advancing the colonial agenda and interests than protecting indigenous peoples' rights.

Through the Uganda Order-in-Council of 1902,⁷⁴ the British created the High Court of Uganda, with jurisdiction over all civil and criminal matters in Uganda,⁷⁵ and other subordinate courts. This law created a dual legal system that allowed the existence and application of the native laws and customs alongside the British legal system. The law however restricted its application to only disputes involving natives as long as they were not in conflict with the principles of natural justice or morality.⁷⁶ In all matters involving natives, courts were to be guided by the native law and were required to determine such cases without undue regard to technicalities of procedure and without delay.⁷⁷ The Uganda Order-in-Council also granted the Commissioner unfettered power to remove any undesired person from the protectorate in the interest of peace, order and good governance.⁷⁸ However, the Commissioner's decision to deport or remove such undesired persons was not appealable before court.

These provisions reflect the lack of separation of powers, a key pillar in the rule of law, as all the power was granted to the Commissioner and there was not any avenue in place to review the decisions of the Commissioner. Additionally, majority of the

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⁷⁵ Uganda Order-in-Council, 1902, Article 15(1).

⁷⁶ Ibid, Article 20.

⁷⁷ Ibid.

⁷⁸ See *ibid*, Article 24 and 25.

staff in the judiciary, including its head — the Chief Justice, were all appointed by the colonial administration and as such there was not any semblance of independence of the institution. The limited powers of the courts to check the actions of the government, in addition to the lack of independence of the judicial officers, resulted in the rejection of many of the petitions for judicial review. These characteristics of the nature of the courts and the separation of the cases under the jurisdiction of each court, erode the aspect of judicial accountability, which emphasizes the principle of independence, impartiality, and having structures that provide room for review of administrative decisions.

5.1.3 Judicial accountability in the post-colonial period (1962 - 1985)

Uganda experienced some limited level of judicial accountability after attaining independence from the British colonial masters in 1962. This could be observed from the 1962 Independence Constitution, which among its provisions, provided for a framework that would guarantee the independence of the judiciary, including provisions on judicial appointments, security of tenure, and the removal of the judges.

The Constitution provided for the establishment of the High Court of Uganda⁷⁹ as the superior court of record,⁸⁰ headed by the Chief Justice.⁸¹ It also outlined separate modalities for the appointment of the Chief Justice and the other judges (who were

⁷⁹ Article 90.

⁸⁰ Article 90(2).

⁸¹ Article 90(3).

known as the “puisne judges”). The appointment of the former was to be made by President on the advice of the Prime Minister,⁸² while the latter were to be appointed by the President in consultation with the Judicial Service Commission.⁸³ The requirement to have the President consult with the Prime Minister on the appointment of the Chief Justice was purely based on the need to balance the political interests of the Uganda Peoples’ Congress and the Kabaka Yekka, both of which had entered into a political alliance that led to the formation of government in 1962.

The Constitution also set out the qualifications of judicial officers of the Court. For one to be appointed a judge, he or she was required to have prior experience as a judge in a court with jurisdiction to handle criminal and civil matters or appeals of such cases in any Commonwealth country or the Republic of Ireland. It also required one to meet the criteria that would allow him or her to practice as an advocate in such courts, which criteria should have been met in the not less than seven years.⁸⁴ It however created exceptions for certain individuals, who by virtue of their positions or offices they held, could not meet the set criteria such as those whose duties would not allow them to practice in courts, or due to similar circumstances could not attain practicing certificates.⁸⁵ Unfortunately, the law did not list a judicial officer’s integrity and past record of service as one of the grounds to consider in assessing the suitability of such officers for the role, yet these are critical elements which facilitate

⁸² Article 91(1)

⁸³ Article 91(2).

⁸⁴ Article 91(3)(i) – (iii).

⁸⁵ Article 91(b)(i) – (ii).

judicial accountability. These elements were however, listed among the grounds for the removal of the judicial officer,⁸⁶ which means that they apply to such officers while already in judicial service and not before joining service.

The Constitution also established the Judicial Service Commission⁸⁷ with a mandate to appoint Judicial officers, to exercise disciplinary control over such officers as well as to remove such officers.⁸⁸ The JSC comprised of the Chief Justice, as its Chairperson, a Minister appointed by the Prime Minister or the Attorney-General of Uganda in case of absence of a designated officer, a judge recommended by the Prime Minister in consultation with the Prime Minister, and one other member appointed by the President in line with the advice of the Prime Minister. As can be noted, all the nominated members were all political appointees, which did not provide room for the general public and any legal bodies to inform that process. The input of non-political appointees would help in informing the selection process, ensuring that competent and independent judicial officers are appointed to the Bench.

In terms of human rights guarantees, the Constitution provided for a right to fair hearing for any person charged with a criminal offence, including the right to a speedy trial by an independent and impartial court established by law.⁸⁹ This provision conferred on the State the duty to ensure availability of courts that carry

⁸⁶ Article 92(3).

⁸⁷ Article 97.

⁸⁸ Article 98.

⁸⁹ Article 24.

out judicial roles independently and impartially, and not to be subject to the control or direction of any person or institution.

Following the fall-out between the President and the Prime Minister in 1966, in what is commonly known as the 1966 Kabaka crisis, the latter, who wielded Executive power, overthrew the former leading him to flee the country, and later abrogated the 1962 Constitution, replacing it with the 1966 interim Constitution and subsequently the 1967 Constitution. The 1967 Constitution did not explicitly provide for judicial accountability although it emphasized the concept of an independent judiciary and recognized that judicial power derives from the people and should be exercised in their name. The 1967 Constitution curtailed judicial power as detention orders, which limited personal liberty, could not be questioned in any court of law.⁹⁰

The period between 1971 and 1980 saw Uganda placed under a military dictatorship, with the leadership at time ruling by military decrees with all executive and judicial powers vested in them and the military councils. This period was characterized by gross human rights violations and limited recourse to courts of law on account of such violations.⁹¹ The same state of affairs continued subsisting between the period 1980 - 1985, with increased cases of gross human rights violations. Even when the political environment was volatile at the time, some judicial officers tried to issue out decisions aimed at upholding the rule of law although their decisions were often undermined by the authorities.⁹²

⁹⁰ Ben Kiromba Twinimugisha "The role of the judiciary in the promotion of democracy in Uganda" (2009) 9 *African Human Rights Law Journal*, p. 2.

⁹¹ Ibid.

⁹² See *ibid*, p.2, citing the cases of *Kityo v Attorney-General* (1983) HCB 56 and *Re: Buregyeya* (1985) HCB 99

5.2 Judicial accountability in Uganda from 1995 to-date: Is it a case of new wine in an old bottle?

Following Uganda's turbulent political history characterized by the breakdown in the rule of law and constitutionalism, and the assumption to power of the National Resistance Movement, there was renewed hope that the country would return to a governance system that respects and adheres to the rule of law and constitutionalism. The promulgation of a new Constitution of Uganda in 1995 ushered in a new era in the governance and constitutional development of the country. It provides for a framework that guarantees the independence of the judiciary, their selection and appointment, security of tenure for judicial officers, and processes for their removal, which are critical elements in promoting judicial accountability. Despite these constitutional guarantees, challenges in ensuring judicial integrity persist as will be elaborated later in this chapter.

Article 126(1) of the Constitution of Uganda, 1995 recognizes that "Judicial power is derived from the people and shall be exercised by the Courts" and that such power shall be exercised "in the name of the people and in conformity with law and with the values, norms and aspiration of the people." Unlike the 1902 Order-in-Council and the periods of military dictatorship where power vested in His Majesty the King of England and the military leadership respectively, the 1995 Constitution courts derived

where the High Court ruled that the detention orders issued against the applicants were defective; and also citing J Oloka-Onyango 'Judicial power and constitutionalism in Uganda: A historical perspective' in M Mamadani & J Oloka-Onyango (eds) *Uganda: Studies in living conditions, popular movements and constitutionalism* (1994).

authority from the people. This provision imposes a duty on the courts to exercise such power in line with the interests of the people. The provision therefore imposes a corresponding duty on the judicial officers to account to the people who have granted them such power on how they have used it for the good of society. This form of accountability could be through making decisions and explaining those decisions in their rulings.

Article 128(1) emphasizes the independence of the judiciary and provides that, “courts shall, in the exercise of judicial power, be independent and shall not be subjected to the control or direction of any person or authority.” Article 128(2) prohibits any person or authority from interfering with the courts or judicial officers in the exercise of their judicial functions while Article 128(3) mandates all organs and agencies of the state to provide the courts with the necessary assistance to enable them effectively discharge their functions. These provisions protect the judicial officers from undue influence from any person, Executive or legislative branch, and ensures that they decide cases based on the law and evidence presented before the courts.

Judicial appointments in Uganda are largely managed by the Judicial Service Commission. Article 142 of the Constitution empowers the President, acting on the advice of the JSC, to appoint the Chief Justice, the Deputy Chief Justice, the Principal Judge, justices of the Supreme Court and the Court of Appeal and judges of the High Court.

5.3 The role of Uganda Law Society in promoting judicial accountability in Uganda

World over, Bar Associations have been formed as platforms that bring together lawyers in a particular jurisdiction for a common purpose or interests. In most cases, Bar Associations are formed principally to advance the interests of lawyers, promote professionalism within the legal profession, as well as to provide services to their membership, including capacity building services. Most importantly, Bar Associations have also been at the forefront of advancing and promoting the rule of law and constitutionalism in their countries or regions and playing the legal representation role for indigent and vulnerable persons.

In Uganda, the Uganda Law Society is the Bar Association of all lawyers in the country. Established by the Uganda Law Society Act of 1956,⁹³ the Association is guided by a mission, which is “to develop a skilled and empowered legal profession in execution of its statutory mandate to foster and improve access to and administration of justice as well as good governance in Uganda.”⁹⁴ It envisions to be “a proficient Bar Association in fostering access to justice, the rule of law and good governance in Uganda.”⁹⁵

The Uganda Law Society plays a role in the appointment process of judicial officers by virtue of its position on the Judicial Service Commission. As has been noted earlier in Chapter One of this study, ULS has representation on the JSC, a body responsible for

⁹³ Cap. 276.

⁹⁴ <https://uls.or.ug/history-mission/>

⁹⁵ Ibid.

the appointment and enforcement of discipline of judicial officers. While the overall appointment of the top judicial officers such as the Chief Justice, the Deputy Chief Justice, the Principal Judge, justices of the Supreme Court and the Court of Appeal and judges of the High Court rests with the President, the Association plays the role of ensuring that the appointments are based on merit and follow a process that is open and transparent. The Association has a duty to ensure that the candidates for the judicial positions have the required competences and qualifications, and that they are persons of integrity. Since the appointment process of judicial officers does not provide room for effective public participation, the ULS would introduce a process that involves gathering public views on the candidates as part of the due diligence process to assess their suitability for judicial roles, including gathering information about their past record of service, behavior and conduct. The information gathered would help provide an overall assessment of the nominated judicial officer on their suitability for the role.

The ULS has also been a strong defender of the independence of the judiciary, especially in cases where some of its decisions have been questioned. The judiciary has often times come under criticism by both the public and the Executive for some of its decisions. For instance, recently, the Supreme Court decision that declared the trial of civilians in the military courts unconstitutional was strongly condemned by the Executive arm, particularly President Museveni, who slammed the ruling and observed that “the country is not governed by judges” whom described as “foreign-oriented on

this matter.”⁹⁶ The ruling was also slammed by the Commander of the Defence Forces, Gen. Muhoozi Kainerugaba, who demanded for an apology from the justices of the Court for the decision, warning of unspecified consequences in case it didn’t come through.⁹⁷ Such attacks on the judiciary, especially from the Executive arm of the State, undermine public support for the courts, affects the proper functioning of the judiciary, and threatens the safety of the judicial officers.

In defence of the Supreme Court decision, the ULS, in line with section 3(d) and (e) of the ULS Act that mandates the body to assist the courts and the government in the proper administration of the law, issued a Guidance Note with recommendations to the Executive, Parliament and the UPDF and the security agencies on how to streamline the UPDF Act in conformity with the law and on the implementation of the ruling.⁹⁸ Additionally, the Association also assembled a team of lawyers to help analyse the law as well as guide on its implementation.⁹⁹ As judges are constrained by the rules that govern their conduct to defend themselves, Bar Associations have always stood out in their defence.

⁹⁶ See, “Museveni slams Supreme Court over ‘wrong’ decision stopping trial of civilians in military courts” Daily Monitor, Saturday, February 01, 2025, retrieved from <<https://www.monitor.co.ug/uganda/news/national/museveni-slams-supreme-court-over-wrong-decision-stopping-trial-of-civilians-in-military-courts-4909348>>.

⁹⁷ Shamim Nabakooza ‘Muhoozi Demands Apology over Supreme Court Ruling on Military Trials’ *Nile Post*, Sunday, February 16, 2025, retrieved from <<https://nilepost.co.ug/news/243229/muhoozi-demands-apology-over-supreme-court-ruling-on-military-trials>>.

⁹⁸ See Guidance Note, Supreme Court Ruling on Civillian Trials in Military Court: A Victory for Constitutionalism and the Rule of Law. Available at: <https://uls.or.ug/supreme-court-ruling-on-civilian-trials-in-military-courts-a-victory-for-constitutionalism-and-the-rule-of-law/>

⁹⁹ Christopher Kiiza, “Law Society Forms Think Tank to Review Supreme Court Ruling on Trial of Civilians in Military Court” *ChimpReports*, 6th February 2025. Available at <https://chimpreports.com/law-society-forms-think-tank-to-review-supreme-court-ruling-on-trial-of-civilians-in-military-court/>.

Justice Alito has underscored the role of the Bar Associations in defending the judges from attacks and unfair criticisms from different quarters of the public. He notes that because the courts are constrained by the codes that guide judicial conduct, they are unable to defend themselves, which void has to be filled by the Bar Association. He thus notes that,

We are being hammered daily, and I think quite unfairly in a lot of instances. And nobody, practically nobody, is defending us. The idea has always been that judges are not supposed to respond to criticisms, but if the courts are being unfairly attacked, the organized bar will come to their defense.¹⁰⁰

The above sentiment by Justice Alito emphasize the role of the Bar in defending courts from unfair attacks and criticisms from the public. However, this duty imposed on the Bar also has a confers upon the Bench a corresponding obligation to ensure that the decisions issued by the judicial officers are not as a result of undue influence, but are on the law and the evidence presented before them.

Other instances in which the court's independence has been grossly undermined included the 16 November 2005 and the 2007 invasion of the High Court at Kampala by the paramilitary outfit, commonly known as the Black Mamba, to re-arrest Rtd Col.

¹⁰⁰ See, Leslie C. Levin, 'Mere Words: The Role of Bar Organizations in Maintaining Public Support for the Judiciary' pp. 1-2, *citing* James Taranto & David B. Rifkin, Jr., Justice Samuel Alito: This Made Us Targets of Assassination, WALL ST. J. (Apr. 28, 2023). Retrieved from <http://lcp.law.duke.edu/>.

Dr. Kiiza Besigye and 22 other suspects who had been granted bail, thus forcing the then presiding Judge Edmund Ssempe Lugayizi to step down from the case. The ULS assembled a team of lawyers to, among others, challenge the acts of the security agencies at the court, which were deemed to violate the independence guarantees accorded to the judiciary. Another incident occurred in 2018 when rowdy gangs invaded Makindye Magistrates Court and caused violence under the watchful eyes of the police with the intention of obstructing the trial of the then Inspector General of police, Gen. Kale Kayihura. The ULS issued a statement condemning the acts and called for the prosecution of all those involved in the violent acts that disrupted the court processes.¹⁰¹ In June 2024, ULS condemned the re-arrest of the Busiki Member of Parliament (MP), Paul Akamba, who had been granted bail, by the security agents, with the then Association's President, Benard Oundo, describing the act as affront on the independence of the judiciary.¹⁰²

The above-mentioned instances demonstrate the efforts that ULS has taken to promote the rule of law as well as to protect the sanctity and the independence of the court. As has been elaborated above, the Bar Association has strongly expressed concerns about the blatant abuse of the law and highlighted incidents that interfere with and undermine judicial independence.

¹⁰¹ See, "Court Siege: Lawyers want Kayihura crowds prosecuted" New Vision Newspaper. Available at <https://www.newvision.co.ug/news/1432391/court-siege-lawyers-kayihura-crowd-prosecuted>.

¹⁰² Emmanuel Ngobi, "ULS, Opposition Condemns Brutal Arrest of NRM's Akamba Incommunicado Detention" *Nexus Media*, 15th June 2024. Available at <https://nexusmedia.ug/uls-opposition-condemns-brutal-arrest-of-nrms-akamba-incommunicado-detention/>.

The ULS has also promoted judicial accountability through legal education and sensitization to the public on the processes of the court and the appeal processes in case one is dissatisfied with the decisions. Creating awareness about the legal processes helps the court users to understand the legal system, as well as to detect cases of judicial impropriety, thereby strengthening accountability. While this is a laudable development, the provision of legal education is curtailed by limited resources to both the judiciary and ULS, which impacts on the level of sensitization of the people about the laws and the court processes.

Additionally, ULS has promoted judicial accountability through publishing periodic reports on the state of rule of law in the country. These reports cover several aspects that border on issues of rule of law, constitutionalism and the work of the courts. The issues covered in these reports and the recommendations proposed in the documents provide critical reference points for policymakers such as in the judiciary and the Executive to improve the state of affairs, including in areas that promote and strengthen judicial accountability.

The ULS has also promoted judicial accountability through engagement with the stakeholders from the government, judicial officers, and civil society. For instance, over the years, ULS has participated in the opening of the New Law Year, and has often been granted a slot to make a presentation. In the presentations made at these fora, the Bar Association has often called for strengthening of judicial accountability and independence, elimination of corruption, increase in the number of judicial

officers to address the problem of case backlog, and increased focus on the ensuring access to justice for indigent and vulnerable people. Such a platform enables ULS to advocate for issues that improve the justice system in Uganda and to bring to the attention of the judicial body matters of concern of the members of the Bar. However, due to the poor relations between the current ULS leadership and the Judiciary, the former were denied a platform to speak at this year's New Law Year. This denied ULS the opportunity to present issues that could inform reforms in the judiciary and lead to improvement in the status quo in as far as issues of judicial accountability are concerned.

5.4 Conclusion

Judicial accountability is a concept that has gained momentum in almost all jurisdictions. While all public bodies are required to account to the people, this has always been a problematic aspect in the case of the judiciary. The challenge has always been on how to ensure judicial accountability without overstepping into the realm of judicial independence, which is a key element in ensuring a strong judicial system. As has been noted from the sections above, Bar Associations play a crucial role in safeguarding the integrity and independence of the courts. As the case of ULS has demonstrated, Bar Associations can act as mouthpieces for the courts and speak out and engage on issues that would have ordinarily been dealt with by the judiciary. However, because of the Guidelines and Codes that prohibit judicial officers from speaking about such issues, the Bar Associations stand in to speak on their behalf. It is also important to ensure that there are good relations between the Bar and Bench as

judicial processes often require close and constant interaction between the two sides. Therefore, it can without doubt be concluded that ULS has significantly contributed to promoting judicial accountability through its activities, engagements and pronouncements on issues that relate to rule of law and good governance.

CHAPTER SIX

THE ROLE OF THE BAR ASSOCIATIONS IN STRENGTHENING JUDICIAL ACCOUNTABILITY IN OTHER JURISDICTIONS

6.0 Introduction

This chapter explores the element of judicial accountability in other jurisdictions and role the Bar associations in those particular jurisdictions have played in promoting this aspect. The chapter restricts itself to countries within the African continent with almost similar contexts and environment as that of Uganda so as to provide a good reference point for Uganda to draw lessons.

6.1 The case of Ghana

The Constitution of Ghana, 1992, just like that of Uganda and Kenya, vests judicial power in the country's judiciary.¹⁰³ It emphasizes the independence of the judiciary and protect it from control or direction of any person or authority.¹⁰⁴ It mandates all state organs to accord the courts all the support it needs to protect its independence, dignity, and effectiveness.¹⁰⁵ The constitution grants immunity to judicial officers for acts or omissions done by them in the execution of their judicial duties.¹⁰⁶ Article 146 provides for the removal of a judicial officer from office on grounds of, among others,

¹⁰³ Article 125, Constitution of Ghana, 1996.

¹⁰⁴ Article 127 *ibid.*

¹⁰⁵ Article 127(2) *ibid.*

¹⁰⁶ Article 127(3) *ibid.*

misconduct or misbehavior.¹⁰⁷ This provision provides the legal mechanism for holding judicial officers in Ghana accountable for their actions and decisions.

Like is the case elsewhere, the country's Bar Association — known as the Ghana Bar Association (GBA) — has played a crucial role in promoting judicial accountability in Ghana. For instance, the Association plays a role in the selection process of judicial officers by virtue of its position on the Judicial Council,¹⁰⁸ a body charged with the responsibility of proposing judicial reforms to improve the administration of justice, as well as assisting the Chief Justice in the performance of his duties.¹⁰⁹ It plays an advisory function to the President in the recruitment process of the Chief Justice, the other justices of the Supreme Court, and the justices of the Court of Appeal and of the High Court.¹¹⁰ It also plays an advisory role to the President in disciplinary matters involving any justice of a Superior Court, with the exception of the Chief Justice.¹¹¹ As a member of the Judicial Council, the Association is well placed to raise concerns about the integrity, conduct, behavior and record of service of applicant's for judicial roles.

However, the provision relating to the removal of the Chief Justice are currently under a legal test following the recent suspension of the country's head of the

¹⁰⁷ Article 146(1) *ibid.*

¹⁰⁸ Article 153(f) *ibid.*

¹⁰⁹ Article 154(1)(a) – (b) *ibid.*

¹¹⁰ See Article 144 *ibid.*

¹¹¹ Article 146(10)(b) *ibid.*

Judiciary by the President on allegations of misconduct.¹¹² The GBA has called for the revocation of the suspension, which it described as unconstitutional as it was carried out in the absence of a Statutory Instrument as required by Article 296 of the Constitution.¹¹³ The Bar Association thus urged for the development of the Regulations to guide the processes of removal of Superior Court justices.¹¹⁴ This case exemplifies the role of the Bar associations in defending the courts against arbitrary decisions, Executive interference and the erosion of judicial independence and integrity. Bar Associations in Uganda and elsewhere ought to borrow a leaf from the experience in Ghana and ensure they speak out against deviation from constitutional principles by the other arms of government and jealously seek to protect the supremacy of their country's constitutions.

In a related development, GBA in 2016 caused the investigation, arrest and prosecution of three journalists that had issued death threats via a local radio station, Montie FM, against judicial officers.¹¹⁵ These were sentenced to four months' imprisonment and a fine of GH¢10,000 (approximately \$2,500), while the owners of the radio station and the owner of the frequency were fined GH¢30,000 (\$7,600) and

¹¹² <https://www.graphic.com.gh/news/politics/this-is-why-ghana-bar-association-wants-suspension-of-chief-justice-to-be-revoked.html>.

¹¹³ Article 296 of the Constitution that, "Where in this Constitution or in any other law discretionary power is vested in any person or authority—

(a) that discretionary power shall be deemed to imply a duty to be fair and candid; (b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and (c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power."

¹¹⁴ Ibid.

¹¹⁵ See CitiFMonline 'GJA slams Montie FM panelists who threatened to kill judges' <https://www.modernghana.com/news/701871/gja-slams-montie-fm-panelists-who-threatened-to-kill-judges.html>.

GH¢30,000 respectively.¹¹⁶ The call by GBA for criminal liability of the journalists for issuing threats against the members of the Bench shows the role Bar Associations can play in defending the judicial officers and in fostering an environment that allows the judiciary to execute its constitutional role, free from intimidation. Directing threats and intimidating judicial officers affects how they work and their effectiveness thus comprising the principle of judicial accountability.

While the GBA has expressed support for constructive criticism against judicial officers or their decisions, it however cautions against directing abuses against such officers with the sole purpose of inciting public disaffection against them as this undermines the integrity of the judiciary.¹¹⁷ The perceptives show the conflict that exists around balancing the need to respect the public's right to freedom of expression as well as the need to protect the image and integrity of the court systems, both of which are critical elements for ensuring an accountable judiciary.

The GBA has also been a supporter of, and has spearheaded, initiatives that aim to promote judicial accountability in the country. It has supported calls for investigations against judicial impropriety and misconduct. For instance, in 2015, following a film documentary by an investigative journalist, Anas Aremeyaw Anas, which revealed widespread cases of corruption among judicial officers, including obtaining bribes to manipulate cases, the Bar Association called for investigations

¹¹⁶ See 'Ghana's Supreme Court jails radio panelists, journalist for threatening judges' <https://www.africanews.com/2016/07/27/ghana-s-supreme-court-jails-radio-panelists-journalist-for-threatening-judges/>.

¹¹⁷ See, Africa News 'Lawyers decry 'unfair' social media attacks on Ghanaian judges' <https://www.africanews.com/2016/06/30/lawyers-decry-unfair-social-media-attacks-on-ghanaian-judges>.

against the implicated officers, resulting in the dismissal of 30 of them from service.¹¹⁸

The GBA has also promoted the element of judicial accountability through conducting public sensitizations on the legal processes and procedures, advocating for legal reforms, as well as through forums that bring together the members of the Bar and the Bench. The GBA has been able to utilize these spaces to emphasize the importance of ensuring judicial independence, impartiality, as well as calling for stringent measures to address cases of corruption, which go a long way in building public trust in the courts and in ensuring their integrity.

6.2 Kenya

Before Kenya developed the 2010 Constitution, the country's judicial system was weak and often experienced interference from the Executive branch, with corruption allegations, the lack of accountability, and the loss of public trust in the judicial arm prominently standing out among the other challenges it faced.¹¹⁹ In fact, at the time, the judiciary was always perceived to be an extension of the Executive as the President wielded significant power in appointing judicial officers and he exerted control over the Judicial Service Commission (JSC), a body charged with recruiting

¹¹⁸ See 'Ghana suspends High Court judges after Anas Aremeyaw Anas' film', BBC News, 6 October 2015. Available at: <https://www.bbc.com/news/world-africa-34452768>. See also, 'Ghana: 20 judges sacked over corruption scandal'. Available at: <https://www.aa.com.tr/en/world/ghana-20-judges-sacked-over-corruption-scandal/487698>.

¹¹⁹ International Commission of Jurists 'Balancing Act: Judicial Accountability and Independence in Kenya's Legal Landscape' 03 January 2025. Available at: <https://icj-kenya.org/news/balancing-act-judicial-accountability-and-independence-in-kenyas-legal-landscape/>.

judges. Public trust in the judiciary was low and the courts were often perceived to be biased.¹²⁰

The enactment of the Constitution of 2010 saw Kenya introduce reforms to strengthen judicial independence and accountability in the country. The reforms included the establishment of the JSC charged with the functions of making judicial appointments and promotions based on the merit-based system, as well as exercising disciplinary actions against judicial misconduct.

Just like in Ghana, judicial authority in Kenya is derived from the people and is vested in and exercised by the courts.¹²¹ The Constitution also affirms the independence of the judiciary, and shields it from interference from the other branches of government.¹²² It provides for immunity for judicial officers in the performance of judicial functions.¹²³

The Constitution outlines grounds that may cause the removal of a judicial officer from his or her position. These include incompetence, gross misconduct or misbehaviour.¹²⁴ These elements provide the foundation for promoting judicial accountability in the country. The Constitution allows the JSC or any member of the public to raise a complaint against any judicial officer.¹²⁵ This provision strengthens

¹²⁰ Ibid.

¹²¹ Article 159(1), Constitution of Kenya, 2010.

¹²² Article 160, *ibid.*

¹²³ Article 160(5), *ibid.*

¹²⁴ Article 168(1)(a) – (e).

¹²⁵ Article 168(2).

the element of judicial accountability as members of the public have the opportunity to raise issues about the conduct or behavior of any judicial officer.

The Constitution further establishes the JSC¹²⁶ with the mandate of, among others, promoting and facilitating the independence and accountability of the judiciary,¹²⁷ including enforcing discipline among judicial officers.¹²⁸ The JSC comprises of members of the Executive, the judiciary, and the general public.¹²⁹ One such institution with representation in the JSC is the Law Society of Kenya (LSK), with two representatives. Unlike in Uganda where the ULS representatives to the country's JSC were appointed by the body's Executive before the recent court decision in *Kalaali v. ULS* that changed the status quo, in Kenya, the appointment of the LSK representatives to the country's JSC follows an election process, which is facilitated by LSK. This provides a form of legitimacy of such representatives to represent the interests of the lawyers' body.

Representation of the Bar Association to the JSC grants LSK the opportunity to make input to the appointment of judicial officers, as well as to ensure the enforcement of discipline among such officers. Just like in Uganda where the selection process of a representative of the public to the country's JSC is unknown, the same situation manifests in Kenya, only that Kenya has some safeguard that provides for the such an appointment to be approved by the National Assembly. Uganda ought to develop clear

¹²⁶ Article 171(1).

¹²⁷ Article 172(1).

¹²⁸ Article 171(c).

¹²⁹ Article 171(2)(a) – (h).

and comprehensive regulations to guide the process of selecting the representatives of the public to the JSC, away from the current practice where such representatives are appointed by the President without any publicly known procedure.

The recruitment process of judicial officers in Kenya provides room for public participation in the process, which is a critical factor in promoting judicial accountability.¹³⁰ Unlike in Uganda where such processes are concealed from the public, in Kenya, the information about the recruitment processes, including the names of the shortlisted applicants and the interviews, is made public, with members of the public allowed to submit in written form information about the applicant's conduct, behavior or record.¹³¹ This information helps the Commission in arriving at an informed decision about the suitability of the applicants for judicial roles. Applicants are also required to submit clearance certificates from the Credit Reference Bureau, Kenya Revenue Authority, the Directorate of Criminal Investigation, and LSK outlining the applicant's financial management obligations, their criminal record, and legal experience respectively.¹³² These requirements help in providing a broad assessment of the applicant's level of integrity, honesty, moral character and past record, which are fundamental features in promoting judicial accountability.

¹³⁰ Mercy Mwarah Deche, 'Recruitment of Judges in Kenya: The Intricacies of Gauging a Candidate's Integrity' (2023) 14(1) *International Journal for Court Administration*, p.7, DOI: <https://doi.org/10.36745/ijca.475>.

¹³¹ *Ibid*, p.8.

¹³² *Ibid*.

The LSK has also played a key role in defending the independence and integrity of the courts in the country against threats directed at judicial officers. Courts in Kenya have consistently come under sharp criticism and concerns from several quarters, including the members of the Bar, the Bench, the public and from the top-most level of the Executive arm of government, for corruption and in some cases about their decisions. For instance, while still serving as the Chief Justice of Kenya, Justice Willy Mutunga decried the high corruption practices within the country's judiciary.¹³³ Similarly, the then President of Kenya, Uhuru Kenyatta, citing a confidential report, expressed concerns about corruption within the country's judiciary, thus declining to appoint judicial officers recommended to him for appointment.¹³⁴

The current Kenyan President, William Ruto, has also recently accused the judiciary of corruption by alleging that the previously Kenyatta administration had a budget that was solely reserved for bribing judicial officers.¹³⁵ In defence of the judiciary, the Law Society of Kenya expressed concerns about the unsubstantiated comments of the president, describing them as intended to intimidate the judiciary to obtain favourable decisions.¹³⁶ In another development, in the aftermath of the Supreme Court ruling that nullified the 2017 Presidential Election in which he had been declared the winner, then President Kenyatta vowed to 'fix' the judiciary, describing

¹³³ See, Wangui Ngechu 'Mutunga says Judiciary becoming synonymous with graft, Citizen, 29 January 2016. See also, Kome Kimonyo, 'Too much corruption in Judiciary – Mutunga' *Citizen Digital*, 03 August 2015.

¹³⁴ See, Otieno Otieno 'Judiciary: Executive disrespecting court orders, trying to control us' *The East African*, Saturday, 13 June 2020.

¹³⁵ See, Joseph Muia, 'Uhuru's gov't had a budget for bribing courts, President Ruto claims as he tells off Judiciary' *Citizen Digital*, 09 January 2024.

¹³⁶ See, Otieno Otieno 'The problem with Kenya President Ruto attacks on the Judiciary' *The East African*, Monday, 08 January 2024.

the judges in the case a ‘crooks’.¹³⁷ In response to the remarks by Kenyatta, different actors, including the LSK, expressed concerns about the statements and cautioned him against attacking the judiciary and urged him to respect the decision of court.¹³⁸ Such statements, especially from the top-most leadership of the Executive, damage the reputation and the integrity of the judiciary, and undermine public trust in that branch of government.

6.3 The case of South Africa

Before South Africa adopted constitutional governance in 1994, the country was ruled under the apartheid system, a policy that promoted racial segregation and discrimination between the white minority and the black majority in South Africa. During the apartheid era, there were not any formal mechanisms of accountability for judicial officers in place, save for the informal ones that involved the Judge President or Chief Justice dealing with cases of judicial misconduct through the ‘word-in-ear’ method.¹³⁹ At the time, the judiciary had limited powers as it majorly focused on advancing the apartheid agenda using the law as a tool to entrench that policy in the country.¹⁴⁰ Judicial independence was an element that never existed at the time as the judiciary influenced most of the appointments in the judiciary.

¹³⁷ See, ‘Kenya election: Kenyatta vows to ‘fix’ court as win quashed’ *BBC News*, 2 September 2017.

¹³⁸ See ‘Law Society of Kenya, East Africa Law Society and COTU Warn President Uhuru Kenyatta After His Threats Against Supreme Court’.

¹³⁹ Genevieve Maujean ‘Too much process and too little accountability: The reality of judicial accountability in South Africa’. Available at: https://www.judgesmatter.co.za/wp-content/uploads/2023/12/Judges-Matter-Essay_Genevieve-Maujean.pdf.

¹⁴⁰ *Ibid.*

The enactment of a new Constitution in 1996 ushered in a new era of constitutionalism, the rule of law and good governance in the country. It emphasized the principle of separation of powers, creating the Executive, legislature and the judiciary branches. The new Constitution laid the foundation for promoting judicial accountability by providing guarantees for the independence and impartiality of the judiciary, the appointment of the judges, security of tenure, and the removal of judicial officers.

Judicial authority in South Africa is vested in the courts. The Constitution, under Article 165, provides for the independence of the courts and prohibits any person or organ of the State from interfering in their judicial functions. Article 165(4) directs the State organs to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness. This provision imposes a duty on the State to ensure that the courts are respected and trusted by the public, as this helps to give the institution legitimacy and to be highly regarded as a place they can refer to for justice.

The Constitution of South Africa establishes the Judicial Service Commission (JSC) with the mandate of recruiting judicial officers and investigating complaints of misconduct or misbehavior against them.¹⁴¹ The JSC comprises of 23 members drawn from the legislature, government and the legal fraternity. These include the Chief Justice, as its Chairperson; the President of the Supreme Court of Appeal and the

¹⁴¹ Article 178(5).

Judge President. Others include six representatives from the National Assembly, at least three of whom are Opposition members in Parliament, and two practicing advocates, one of whom represents the Law Society of South Africa (LSSA). Representation of the LSSA and the Opposition members of Parliament in this structure enables them to influence the appointment process of judicial officers and to ensure discipline among the officers.

The Constitution establishes a second layer of accountability in terms of judicial appointments by granting the Parliament the power to approve such appointments. It empowers the President to appoint judicial officers for the top positions — such as the Chief Justice, the Deputy Chief Justice, and the other judges of the Constitutional Court, in consultation with the Judicial Service Commission and the leaders of the Opposition parties in Parliament.¹⁴² Uganda should consider incorporating similar provisions in her legal framework so as to facilitate meaningful participation of Opposition political parties in the appointment of judicial officers. Whereas it could be argued that parliament, through its Parliamentary Appointments Committee that includes Opposition members of Parliament, assesses the suitability of the recommended Presidential nominees, this process is usually marred by political interests where the ruling parties uses its numerical strength to approve the nominees.

¹⁴² Article 174(3) and (4).

The Constitution also provides for the removal of judges on grounds of misconduct, incompetence and incapacity to perform their roles. While on the face of it, it might seem that the law grants JSC a high level of independence to determine the removal of a judge, however, this is not the case. The final decision on the removal of a judge rests with the National Assembly. This is problematic as political interests are likely to influence such a decision.

South Africa has in the past experienced cases of removal of judges from their positions due to gross misconduct. For instance, in March 2024, Judges Hlophe and Motata were dismissed from judicial service due to gross misconduct.¹⁴³ Whereas such disciplinary measures set a precedent and affirm the judiciary's zeal to clean 'its house', the processes leading to the final determination of the removal of judges are quite lengthy, sometimes taking several years due to bureaucratic procedures and appeals. The case of Judge Hlophe is one such case that took several years to conclude due to the frequent appeals by the accused person.¹⁴⁴ Such lengthy processes de-motivate the would-be petitioners to lodge cases of misconduct against judicial officers as they are not sure about the time the disciplinary proceedings will conduct. It therefore becomes critical that timelines for such proceedings are clearly set in the guidelines and strictly adhered to so as to build public confidence in the judicial accountability processes.

¹⁴³ See, Presidency of South Africa 'President Ramaphosa affirms removal of Judges Hlophe and Motata.' Available at <https://www.thepresidency.gov.za/president-ramaphosa-affirms-removal-judges-hlophe-and-motata>.

¹⁴⁴ See, 'It took 16 years but South Africa has impeached a senior judge – who is John Hlophe and what went wrong?' The Conversation, February 28, 2024. Available at <https://theconversation.com/it-took-16-years-but-south-africa-has-impeached-a-senior-judge-who-is-john-hlophe-and-what-went-wrong-224386>.

The LSSA has also defended the judiciary against unfair and ill-informed criticisms about its decisions thus protecting its independence and integrity. A case in point was in 2020 when the Supreme Court overturned a ruling in which two accused persons — Pieter Doorewaard and Phillip Schutte — had been found guilty of the murder of Mathlomola Jonas Mosweu in April 2017.¹⁴⁵ The Supreme Court decision angered the general public, with many questioning the motive of the judicial officers who heard the case.¹⁴⁶ In response to the criticism against the judiciary, the LSSA President cautioned the public against making such inflammatory statements against the Bench and advised the party dissatisfied with the court decision to appeal.¹⁴⁷ The intervention of the LSSA exemplifies the role of the Bar Associations in preserving the independence and sanctity of the courts, which ultimately promotes judicial independence. Additionally, through such advice and caution, the LSSA is able to educate the public on the processes of court thereby increasing the public's knowledge on such processes and thus enabling them to be able to hold the judicial officers to account for their decisions.

6.4 Conclusion

This section has examined the implementation of the aspect of judicial accountability in the countries of Ghana, Kenya and South Africa. The section revealed that all the countries of the three countries provide for mechanisms that promote the element of judicial accountability, in particular providing for principles of independence,

¹⁴⁵ Nomfundo Jele 'Law Society cautions against uninformed criticism of courts' 02 December 2020.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

appointments and removal of judicial officers. They all emphasize that fact that the courts derive authority from the people and impose a duty on the courts to exercise that power in accordance with the peoples' interests, aspirations and values. In all the three jurisdictions, the sections noted the critical role the Bar Associations play in advancing judicial accountability. Because of their position and role in society, it therefore becomes critical that they raise to the occasion and protect the image and integrity of the courts through measures promote ethical values and ensuring the effectiveness of the courts.

CHAPTER SEVEN

CONCLUSION AND RECOMMENDATIONS

7.0 Introduction

This section provides a conclusion and recommendations drawn from the study. The recommendations are drawn from the current situation in Uganda today in regard to judicial accountability, and the lessons drawn from South Africa, Ghana and Kenya on the subject.

7.1 Conclusion

Judicial accountability is a fundamental aspect that ensures that judicial officers are answerable for their actions and decisions. Judicial accountability is a critical element in ensuring public trust in the judiciary and helps in preventing abuse of power by judicial officers and is also key in ensuring the upholding of the rule of law.

The study has noted that whereas Uganda emphasizes the principles of judicial accountability in its constitutional provisions, which affirm the judiciary's independence and impartiality, as well as shielding it from undue influence and interference, there exists instances that undermine accountability by this branch of government. While the principle of independence is a strong pillar in ensuring the element of separation of powers, this has to be balanced with the aspect of accountability. Since the judiciary derives its power and authority from the people, it has a duty of accounting to such people from whom it gets that authority. This

therefore makes the balancing of the two elements — of independence and accountability — critical in order to advance the latter element without infringing on the former.

7.2 Recommendations

Both the Bar and the Bench should increase community awareness about the legal processes as a way of enabling the court users understand the laws and the court processes and procedures. In most of the cases, allegations of, for instance, corruption are levelled against judicial officers by the court users because they lack knowledge about the laws and how courts work in handling particular disputes. Therefore, providing court users with basic information about the laws and the court systems would help in ensuring that the users critic the courts, its processes and decisions based from an informed point of view, and would as well improve accountability of the courts since the judicial officers will now be dealing with an informed society.

Secondly, there is a need to adopt a balance between the principle of sub judice and the right to freedom of expression enshrined in Article 29 of the Constitution of Uganda, 1995 since this constitutional provision is critical in promoting judicial accountability. As noted in the study, the principle of sub judice prohibits any person from discussing cases pending before the courts of law, thereby preventing citizens from commenting or voicing their opinions on the proceedings. Some of the discussions could border on the errors within the judicial process, thereby providing

information that would help the judicial officer to take corrective measures to address the errors.

Thirdly, there is a need to increase the dissemination of the court decisions to the wider sections of the public as this element increases public trust in the judiciary and strengthens accountability of the courts to the public. While courts decisions are shared on the judiciary's legal information system, Uganda Legal Information Institute, and freely accessible online, the decisions are in English, in addition to the texts having legal jargons that the public may not be familiar with. This therefore necessitates the translation of the decisions into the local languages as well as breakdown of the legal jargons into simpler and understandable forms. Doing so will enable the local people understand the decisions as well as the reasons and spirit behind those decisions, thereby promoting judicial accountability.

Furthermore, avenues should be created to facilitate broader public and civil society participation in the recruitment processes for applicants for judicial positions. While the composition of the country's Judicial Service Commission includes representatives drawn from the public and ULS, this does not guarantee the effective participation of members of the public. In fact, there is no record of such representatives having consulted their constituencies (the community they represent) in any of such recruitments in the past. The collection of the views and feedback of the public will go a long way in providing critical information that would inform the decision of the JSC in recommending for appointment judicial officers of integrity and with

impeccable record of service, thereby instilling public hope, trust and confidence in the judiciary and ultimately ensuring an accountable judiciary.

The mode of selection of representatives of the general public to the country's JSC should be reviewed and a criterion to guide such appointments developed. The law should be revised to require that approval of such appointments to be made by parliament. Currently, the Constitution of Uganda, 1995 vests in the President the power to appoint the two members of the public. However, the criteria of their selection and what the President relies on to decide on whom to appoint is not known. The requirement for parliament to approve such appointment is to enable it act as an additional layer to guard against political manipulation in the process, and to shelve nominees from undue influence from the appointing authority in the course of executing their roles.

The Executive arm of government should respect courts and desist from making inflammatory and demeaning statements about the decisions made by the courts, but rather explore the avenues within the law to address their concerns. Inflammatory statements, including those laced with threats against judicial officers, erode the independence of the courts and influence the decisions the judicial officers make due to fear to make ruling that would not sit well with the Executive.

There is a need to improve the relationship between judiciary and the Uganda Law Society since the partnership of the two entities is an essential element in advancing

the accountability and integrity within the former. Recent developments have indicated a breakdown in the relationship between the two since the current ULS leadership assumed office. As the study has noted, the Bar plays a critical role in defending the judiciary against unfair criticism as well as defending its sanctity. Therefore, there is a need to address the contentious issues affecting the relationship between the two bodies as this potentially impacts on the element of ensuring accountability within the judiciary.

The Administration of Judiciary Act and the Judicial Service Act should be amended to adopt a clerical code of judicial accountability akin to the Uganda Judiciary Code of Conduct on the inherent tenets of impartiality, independence, propriety, diligence, integrity, and competence. This is a decent attempt not only to incline the mandate of the JSC towards a judicial accountability-based approach to discharging its disciplinary mandate, but also to establish the principles that comprise judicial accountability as existential counterweights to the nearly absolute independence of the judiciary. This shall broaden the space available for advocacy for judicial accountability on the side of the bar.

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