

ROUNDTABLE ON STRENGTHENING JUDICIAL INDEPENDENCE IN UGANDA:

CHALLENGES AND PROSPECTS

Summary Report

6TH – 8TH AUGUST 2006

The Judicial Studies Institute (JSI) and the Foundation for Human Rights Initiative (FHRI)



FOUNDATION FOR HUMAN RIGHTS INITIATIVE (FHRI)



The FHRI human rights Advocacy Programme (2006 – 2008), seeks to promote respect for civil and political freedoms including; the right to life, liberty and security of person, freedom of expression, association and assembly, judicial independence and integrity, access to justice, humane treatment of detainees and the right to participate in local governance.

This program is founded on the principles of proactive engagement, effective partnership, quality and timely delivery of services, periodic review and sound management. The FHRI Three Year program objectives therefore are:

1. Promotion of human rights standards, norms and principles through human rights education.
2. Promotion of best practices in the administration of justice.
3. Campaign for freedom of expression, association and assembly including the media; right to life, liberty and security of person.
4. Improve criminal justice policy and respect for the rule of law and democratic governance.
5. Strengthen grass root groups to enhance political and public accountability.
6. Strengthen institutional capacity and sustainability.

FHRI wishes to thank the National Endowment for Democracy, NED for the financial support towards this Roundtable. In the same way FHRI would like to thank the Swedish International Development Agency, SIDA and HIVOS (Netherlands) for the kind support towards this event.

FHRI is indebted to the Judicial Studies Institute (JSI) and the Judicial Training Committee (JTC) who have continued to relent the necessary support to the FHRI Capacity Building for the Judiciary Programme over the years.

This Round table summary report is authored by Cara Viglucci with the support of Lai Lam Yip, Franzisca Zanker, Carita Thomas and Sheila Muwanga.

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TABLE OF CONTENTS

THE FOUNDATION FOR HUMAN RIGHTS INITIATIVE (FHRI)

ACKNOWLEDGEMENT

KEY NOTE ADDRESS

- **His Lordship The Hon. The Chief Justice of The Republic of Uganda**
The Hon Justice Benjamin Odoki

EXECUTIVE SUMMARY

INTRODUCTION

OPENING REMARKS

- *Livingstone Sewanyana,*
Executive Director, Foundation for Human Rights Initiative, FHRI
- *Hon. Justice J.W. Tsekooko*
Justice of the Supreme Court & Chairperson, Judicial Training Committee

PRESENTATIONS AND EMERGING ISSUES.

**Strengthening Judicial Independence and
Judicial Accountability in Uganda**
Hon. Justice Dr .Prof George Kanyeihamba,
Justice of the Supreme Court of Uganda

**Judicial Independence in Southern and East Africa:
A Comparative Study of Common Law Jurisdictions, August 2005:
Focus on the Ugandan Judiciary.**
Professor Hugh Corder,
Dean, Faculty of Law, University of Cape Town, South Africa:

Sentencing Options in Uganda: The need for reform?
Hon .Judge Eldad Mwangusya
Judge of the High Court of Uganda

Operationalizing the Constitutional Right to Bail: Challenges.
Hon. Justice Amos Twinomujuni.
Justice of the Court of Appeal of Uganda.

CLOSING REMARKS

- *Livingstone Sewanyana,*
Executive Director, Foundation for Human Rights Initiative, FHRI
- *Hon. Justice J.W. Tsekooko*
Justice of the Supreme Court & Chairperson, Judicial Training Committee
- *Hon. Lady Justice L. Kikonyogo*
The Hon. Deputy Chief Justice, Justice of the Court of Appeal
- *H.E Hon. Steven Browning*
The US Ambassador to Uganda

APPENDICES

- *Participants Evaluation*
- *List of Participants*
- *Agenda*
- *Newspaper Clippings on the Roundtable*

KEY NOTE ADDRESS

By

HIS LORDSHIP THE CHIEF JUSTICE OF THE REPUBLIC OF UGANDA
The Hon Justice Benjamin Odoki



“Vision for the Uganda Judiciary (2006-2011)”¹

His Lordship, Hon Justice Benjamin Odoki commenced his key note address by sharing with the distinguished participants, the vision and mission of the Uganda Judiciary which are embedded in the Strategic Plan of the Judiciary (2006- 2011).

The vision is a strong, independent judiciary that delivers justice in a society where the rule of law prevails, which can be attained through commitment and action. The mission on the other hand is to dispense justice to all Ugandans without any discrimination, as well as to continuously improve the judiciary's performance through development.

The Strategic plan also establishes core values that ensure fair and equal delivery of justice, such as: (1) respect for the rule of law; (2) independence, which requires security of tenure for judicial officers; (3) a financially autonomous judiciary; (4) the exercise of judicial power with integrity, impartiality, and credibility; (5) speedy and fair trials; (6) competence, effectiveness, efficiency, and accountability; and (7) access to justice.

Although the first strategic plan (2001-2006) faced a series of constraints in its implementation due to inadequate financial and human resources, facilities, and equipment , there were several achievements during the period including the creation of the Judicial Studies Institute; the installation of the Computerized Case Administration System (CCAS) in a number of urban courts in Kampala, Jinja, and Masaka; the revision of the role of the Court Bailiffs; and the campaign for law reform in the area of defilement, fees, fines, and jurisdiction of magistrates.

The key development priorities therefore for the Judiciary, 2006-2011 are:

- Strengthening Judicial Independence, through sensitization of all judicial personnel and lobbying for constitutional changes regarding financial autonomy and de-linking

¹ Summarized.

of support staff;

- Enhancing Access to Justice through improved service delivery including law reporting, strengthening libraries, and introducing civil sessions to reduce the backlog of civil matters in the High Court.
- Development of Human Resource by improving managerial efficiency through establishing a public relations office and reviewing the structure and staffing of the courts.
- Improve on the Infrastructure and facilities through the continued support of DANIDA and JLOS, this can help provide more office accommodation for the courts as well as a home for the Supreme Court and the Court of Appeal.
- Improve Effectiveness and Efficiency by creating more possibilities for the use of Alternative Dispute Resolution (ADR) in all High Court Divisions, Circuits, and the Magistrates' Court.
- Strengthening Ethics and Integrity through developing a code of conduct for staff, holding workshops to sensitize staff, and creating a system for evaluating judges' performance without interference upon judicial independence.

On strengthening judicial independence in Uganda, the Hon. Chief Justice stressed two issues that needed to be particularly addressed in Uganda including;

- Dealing with the delicate balance the judiciary needs to strike between the fight against terrorism and the defense and preservation of human rights and;
- The administration and financial autonomy of the courts, which is to date incomplete.

Concluding his key note address, the Hon Chief Justice called on all stake holders to provide the necessary support and commitment to the Judiciary. He specifically called on the Government of Uganda, to maintain the rule of law and good governance, and to improve financial and human resources allocated to the institution. This would enable the judiciary which has become a more powerful and visible governmental arm strengthen its independence and access justice to all without fear or favor.

The Hon Chief Justice thanked FHRI and the Judicial Studies Institute for its genuine show of support to the Ugandan Judiciary over the years and officially opened the Roundtable.

EXECUTIVE SUMMARY

These recommendations and emerging issues on Strengthening Judicial Independence in Uganda emerged from the two day discussions and reflect the coverage and extent of the discussions.

On Judicial Independence and Integrity.

- ∞ The Judiciary must ensure that the people of Uganda understand the concept of judicial independence.
- ∞ Allegations of corruption within the Judiciary must be reinforced by evidence. A careful self-examination of the judiciary should be undertaken to unearth the necessary evidence of corruption.
- ∞ Judges should assert their independence in their decisions.
- ∞ The appointment process of judicial officers should take into consideration the integrity of nominees.
- ∞ Terms and conditions of service of judicial officers should be improved in order to strengthen their independence and integrity.
- ∞ Collegiality between the branches of Government and within the judiciary is necessary in maintaining a strong judiciary.

On Enhancing Professionalism.

- ∞ The Judiciary should undertake a self examination of its own decisions in order to determine and inform its professional/training needs.
- ∞ The Judiciary should invest in publishing its decisions and Law Reporting.
- ∞ Judges should be allocated personal assistants to enhance their research capacities.

On Sentencing.

- ∞ The Supreme Court needs to dispense of the Appeal on the constitutionality of the Death Sentence to ensure proper sentencing.
- ∞ National consultations on the age of consent/defilement age need to be re-done.
- ∞ The definition of 'minor offenses' needs to be clarified.
- ∞ The Sentencing guidelines developed by the Uganda Law Review Commission should be

utilized by judicial officers.

- œ Guide lines on sentencing practices pending the determination of petitions on particular sentences need to be developed by the Judiciary.
- œ Public opinion in the sentencing process should be not ignored.
- œ Understanding of consideration of time spent on remand when sentencing needs to be enhanced.

On the Right to Bail and Illegal detention.

- œ There is need to sensitize judicial officers, both civil and military, on the present law relating to bail in order to ensure common understanding of the concept and human rights therein.
- œ The problem of Illegal detention needs to be seriously addressed to ensure respect of Constitutional rights to liberty and security of person.
- œ The Judiciary and Directorate of Public Prosecution should actively and urgently advocate for the closure of safe houses, which remain havens of torture and illegal detention.
- œ The Judiciary should explore ways of addressing illegal detention and detention without trial.
- œ The Foundation for Human Rights Initiative (FHRI) should create fora and opportunity for the Judiciary and law enforcement agencies responsible for maintaining and using safe houses to closely examine the occurrence of illegal detention and use of torture.

Introduction

The Foundation for Human Rights Initiative (FHRI) in partnership with the Judicial Studies Institute (JSI) successfully convened a Roundtable under the theme; 'Strengthening Judicial Independence in Uganda; Challenges and Prospects', from the 6th – 8th August 2006, at the magnificent Imperial Resort Beach Hotel, in Entebbe. This meeting builds on earlier conferences jointly held to promote a proactive, human rights friendly and assertive judiciary in Uganda.

This year, the Roundtable in a unique way examined the subject of judicial independence, focusing on strengthening judicial accountability, sentencing options in Uganda and the Constitutional right to bail as key ingredients in the attainment of Judicial independence. The Roundtable also greatly benefited from the findings of a study on judicial independence in East and Southern Africa conducted by the University of Cape Town, South Africa.

The meeting that attracted sixty five (65) delegates including; Justices of the Supreme Court and Court of Appeal, Judges of the High Court , Magistrates and Registrars , the Directorate of Public Prosecutions, Constitutional bodies , advocates and academia , representatives of Civil Society Organizations, development partners , the media and FHRI was graced in a special way by the presence of the Hon. The Chief Justice of Uganda, Hon. Justice Benjamin Odoki who shared his vision for the Judiciary (2006 – 2008) at the opening session and H. E the Ambassador of the United States of America to Uganda, Hon. Steven Browning who officiated at the closing on Tuesday 8th August 2006.

To facilitate discussions and share experiences on challenges and best practice in strengthening Judicial Independence, FHRI and the JSI invited distinguished Resource persons in the area of judicial independence and accountability to the Roundtable. In attendance were;

- Hon. Justice George Kanyeihamba, Justice of the Supreme Court of Uganda who shared on *Strengthening Judicial Independence and Judicial Accountability in Uganda*;
- Hon. Justice J. W Tsekooko, Justice of the Supreme Court and Chairperson of the Judicial Training Committee, *on Judicial Independence*;
- Professor Hugh Corder, Dean, Faculty of Law, University of Cape Town, *on Judicial Independence in Southern and East Africa*;
- Hon. Eldad Mwangusya, Judge of the High Court, *on Sentencing options in Uganda* and;
- Hon Justice Amos Twinomujuni, Justice of the Court of Appeal on *the Constitutional Right to Bail in Uganda*.

At the end of the Roundtable, recommendations towards strengthening judicial independence in Uganda were adopted.

This report thus summarizes the key discussions over the two days and attempts to capture suggestion, ideas and queries of participants with a view to strengthening judicial independence in Uganda.

OPENING REMARKS

*Livingstone Sewanyana,
Executive Director
Foundation for Human Rights Initiative, FHRI*

Mr. Livingstone Sewanyana welcomed the distinguished participants and Resource persons to the Roundtable which seeks to examine the theory and practice that impact on judicial independence in Uganda, a concept that heavily impacts on the democratic development process.

Quoting Alexander Hamilton, one of the founders of the US Constitution who underscored the concept of judicial independence, Mr. Sewanyana, urged the participants to examine judicial independence both at the institutional and individual level and assess whether the judiciary as a whole is independent as required in Article 128 of the Constitution and whether its sphere of authority is protected from un-due influence, overt or insidious of other government actors and whether judges are protected from the threat of reprisals among other issues.

He also urged participants to reflect on the invasion of the 'Black Mambas' in the High Court on the 14th November 2005, the continued detention of the 22 PRA suspects despite their being granted bail, involvement of the public in the appointment of judicial officers, the creation of a specialized division of human rights to complement the work of the Uganda Human Rights Commission and the possibility of promoting a system of periodic reviews of the judiciary as measures to enhance judicial independence, effectiveness and public confidence. He was optimistic that the forum would explore creative solutions to these emerging issues and adopt guarantees that are progressive for any future transgressions.

He, on behalf of FHRI thanked the National Endowment for Democracy, the Swedish International Development Agency, and HIVOS. (Netherlands) for their support towards the Roundtable and the Judicial Studies Institute /Judicial Training Committee for the continued support to FHRI programme for the Judiciary over the years.

*Hon. Justice J.W. Tsekooko
Justice of the Supreme Court &
Chairperson, Judicial Training Committee*

Hon. Justice J. Tsekooko welcomed the participants to the Roundtable which was organized jointly by the Judicial Studies Institute, the Judicial Training Committee and the Foundation for Human Rights Initiative (FHRI).

He underscored the importance of the collaboration between the Judiciary and FHRI in the area of human rights which had borne fruit and contributed tremendously in the judiciary's training efforts. He, in the same breath extended gratitude to FHRI for the consistent support in the very important area of continuing judicial education.

On the objective of such fora, the Hon. Justice acknowledged that such workshops and conferences jointly organized update judicial officers of all cadres on relevant current trends in the human rights discourse, which impacted on the effective performance of judicial officers. In this way, the capacity of judicial officers in the discharge of their judicial functions can be enhanced so that they can effectively deliver quality justice to the people of Uganda.

He recognized the presence of Prof. Hugh Corder from the University of Cape Town and all the distinguished Resource People who graciously accepted to lead discussions during the Roundtable.

He appreciated FHRI's efforts in raising resources to organize the Roundtable and thanked the Judicial Studies Institute coordinating the event with FHRI.

He then invited the Hon. Chief Justice to address the participants and to declare the Roundtable open.

Strengthening Judicial Independence and Judicial Accountability in Uganda.

*Hon. Justice Dr .Prof George Kanyeihamba²,
Justice of the Supreme Court of Uganda*

In Uganda, the source of judicial power is derived from the people, and its application is subject to the principles in the Constitution.³ The Ugandan courts have been very brave in the face of executive, political, and military assault on their office, and several heads of the judiciary have spoken out in defense of judicial independence.

The judiciary therefore has and must engage in a delicate balancing act that regulates the relationship amongst the three arms of Government and the public. The judiciary must also be accountable, which implies two concepts: first, the manner in which those who exercise judicial functions do so, and secondly, accountability for the way resources allocated for the administration of justice are utilized.⁴ Judges are public officers entrusted with public money, so it is essential to account for how these resources are used.

There is no judiciary in the world that is ideal, but it is useful to have a list of ideal characteristics to act as a litmus test for the profession. Further still, when seeking to strengthen the judiciary and its accountability, Uganda can also benefit from recommendations drawn up for the judiciary in Kenya and Swaziland. None the less, the ideal judiciary would be, among other things:

- Independent, courageous, self-accounting and incorruptible;
- Able to dispense justice impartially and fairly;
- Intolerant of corruption, incompetence or abuse of office and;
- Able to take a courageous stand on controversial issues.⁵

In Uganda there are deep-rooted patterns of corruption in the administration of justice. However, there have been no serious efforts to investigate the problem as a whole or deal with individual allegations. This should be undertaken in the open so decisions are made on errant officers regardless of the result.

The appointment, promotion, and discipline of judicial staff should also be conducted in a transparent way. Appointments should be advertised and stakeholders involved in the appointment process and once appointed, judicial officers should be guaranteed security of tenure. To this end, it is important to note that in order to strengthen the judiciary and make it more accountable, the Judicial Service Commission must be strengthened in order to ensure vigilance at the appointment stage as this is the only way the institution can ensure that a fearless, independent, accountable and worthwhile judiciary is in place. De-linking the Judiciary from the main stream Public Service to ensure complete independence of a self accounting institution would also be step in this direction.

² Also Judge of the African Court on Human and Peoples' Rights.

³ Constitution of the Republic of Uganda 1995, article 126.

⁴ Kanyeihamba, G. "Kanyeihamba's Commentaries on Law, Politics and Governance", p.68.

⁵ Ibid, pp.73-4.

Further, in order to strengthen judicial independence, Judges and magistrates should be encouraged to exercise their right to freedom of expression, individually or within peer committees. The Judiciary has many competent and capable members at all levels that can help formulate proposals and resolutions to improve the profession and contribute to the democratic development process. Monitoring performance with regard to dispensation of and access to justice by the Judiciary should be undertaken by civil society organizations and the media to ensure meaningful reflection and discussions on the gaps by judicial officers.

Lastly, the test of a judiciary's independence and accountability can be found in its decisions which will reflect the integrity of the men and women of the judiciary.

Emerging issues

- Reports of Legal Decisions; Are important because they promote accountability, ensure consistency, educate the public and inform choices to pursue appeals. Decisions must be accessible for the use by legal professionals and to aid the discussions on judicial independence from within the institution. The availability of law reports also ensures that lower court have access to precedents and professional guidance on key legal issues.
- Education of the Public; Public participation is crucial in strengthening judicial independence. The role of educating the public should be systematically undertaken by the Judiciary, the Uganda Human Rights Commission and Civil Society Organizations like FHRI.
- Public Involvement; Civil Society Organizations should be involved in the appointment process of judicial officers as well as in their performance evaluation in order to ensure judicial independence. However, this should not compromise judicial independence.
- Corruption; There is deep concern over the process of addressing corruption in the judiciary. There is also concern over the existence of allegations without proper evidentiary support. It is important that each and every allegation is pursued to its logical conclusion, resulting in dismissals of false accusations or in reprimand of erring judicial officers.
- Backlog of Cases; there is concern over the backlog of cases. How can the judiciary aid in resolving this issue? The use of Alternative Dispute Resolution (ADR) in courts, following the example of the Commercial Court, where ADR has resulted in increased case disposal rates overall should be advocated for within the Judiciary.
- Asset and Income Disclosure; should the media participate in ensuring that judicial officers abide by the provisions of the disclosure clause?
- Budget Management; The judiciary should be financially autonomous and not rely on legal fees to fund its budget. Relying on parliamentary approval of its budget also presents challenges to its independence.

**Judicial Independence in Southern and East Africa: A Comparative Study of
Common Law Jurisdictions, August 2005:
Focus on the Ugandan Judiciary.**

*Professor Hugh Corder,
Dean, Faculty of Law, University of Cape Town, South Africa:*

Judicial appointment methods, executive interference in the judicial process and allegations of corruption within the judiciary are central issues in the report on judicial independence in South and East Africa. The study undertaken in 2005 by the University of Cape Town is merely a first step in research efforts on judicial independence and should sit as a background to discussions on the same.

The study established 14 benchmarks drawing from the Universal Declaration of Human Rights (1948), to African Charter of Human and People's Rights (1981) and to the Bangalore Principles of Judicial Conduct (2002).

Reflecting on the benchmarks developed in the report, there is a unique relationship between judicial independence and judicial accountability which implies that while judges wield political authority they also form part of the check and balance system which deals with accountability. As a result there has been a global growing debate on where to draw the line between judicial accountability and judicial independence.

According to the report therefore, Uganda exhibited a number of strong points in relation judicial independence of the Ugandan Judiciary which include:

- The existence of formal safeguards and Statute law on Judicial Independence.
- The requirement for income and asset disclosure.
- The formalized structure of resource allocation by government and donor partners to bodies like the Judicial Service Commission, the Judicial Training Committee, and Judicial Studies Institute.
- The balancing process that considers demographics in the appointment process thus putting in place a regionally representative judiciary.
- Training and continuing legal education from within and outside the country has strengthened judicial independence.
- A Judicial Code of Conduct that mirrors the Bangalore Principles is praiseworthy.

- The existence of such fora that encourage judicial officers to engage in responsible and professional public discussions about topics like judicial independence is also commendable.

This notwithstanding, Uganda still has a number of areas that need to be improved in order to ensure judicial independence; some of these include:

- The heavy influence by the Executive on appointment process of Judges needs to be checked.
- A lack of openness in the appointments process within the Judicial Service Commission and the Parliamentary Appointments Committee.
- Human Resources Development needs critical attention.
- The Executive must respect Judicial Judgments. This is an area that needs great improvement.

On the whole, the Judiciary in Uganda must strive to maintain its independence and legitimacy. Key to this struggle is the need to maintain a strong and effective leadership within the judiciary that will provide direction and facilitate achievement of its vision.

Self-evaluation is critical and preferred, but when it fails, independent bodies have the right to criticize the judiciary. On the other hand, judiciary needs the understanding and support of the public, which should be continuously educated on issues of judicial concern.

Emerging issues

The presentation elicited comments on;

- *Available tools used in assessing and undertaking performance evaluations of Judicial officers;*
- *Best practices in establishing a financially autonomous judiciary and;*
- *The importance, extent, and reliability of public and media participation in preserving judicial independence.*

Sentencing Options in Uganda: The need for reform?⁶

*Hon .Judge Eldad Mwangusya
Judge of the High Court of Uganda*

The presentation highlighted areas of concern to both Judicial Officers and the public on issues of Sentencing in Uganda.

1. The Death Sentence

a) Mandatory Sentence?

The Death Sentence – The Constitutional Court decision in Susan Kigula and Others Constitutional Petition No.6 held that it was unconstitutional to make the death sentence mandatory. This decision is now subject of appeal in the Supreme Court. However while this appeal is pending, the High Court is expected to implement mandatory death sentences. However, when a convict is sentenced to a term of imprisonment, what happens if the Supreme Court finds that mandatory death sentences are not unconstitutional? There is therefore a need expeditiously finalize the Appeal in the Supreme Court on the Death Sentence in order to prevent such occurrences.

b) Discretionary

Defilement – Currently, cases of defilement form more than half of the number of cases tried by the High Court. There is no case however where an offender has been sentenced to death. It is rather the sentence of CAUTION that is becoming increasingly common. This sentence of a caution is viewed with a lot of consternation because it is difficult to comprehend that a person convicted of an offence punishable with death ends up being cautioned. Defilement is also one of the most difficult offenses to prove, and it presents frustrating problems including; victim's refusal to testify against their future husbands while some will actively try to frustrate the cases against the accused.

Thus the implementation of the numerous recommendations that have been developed for amendment of the law relating to the age of consent to sexual intercourse/defilement need to be considered. Further there are numerous examples of cases where discretionary sentencing is a benefit in defilement cases.

⁶ Hon. E. Mwangusya's presentation drew inspiration from a paper presented at the orientation seminar for newly appointed Judges in 1997 by the Hon. Justice B.J. Odoki (1997) on Sentencing in Uganda.

2. Imprisonment

a) Mandatory

Any person convicted of committing the offences of Embezzlement and Causing financial loss is liable on conviction to a term of imprisonment of not less than three years and not more than fourteen years.” The provision of a minimum sentence may be unnecessary restriction on the judicial discretion that would be exercised in sentencing and judicial officers need to discuss whether this restriction should exist.

b) Discretionary Sentences

The majority of the sentences provided are discretionary but measures may be required to avoid disparities of sentences by the same Court. Officials of the Directorate of Public Prosecutions have dubbed some judges as, ‘convicting judges’ and some who are dubbed ‘acquitting judges.’ Similarly there are those who are known to be lenient in sentences and those who give stiff ones. These disparities in the sentences prescribed by the judges may cause problems and thus the need to develop or adhere to sentencing guidelines which would be useful to reduce the incidence of varying sentences.

3. Fines

There are numerous ridiculous fines that call for revision.⁷

4. Community Service

The Community Service Act (Cap 115) provides remedy for over reliance on imprisonment as a form of sentence. Section 3(1) of the Community Service Act provides that, “*where a person is convicted of a minor offence, the Court may instead of sentencing that person to prison, make a community service order*”. Minor offence, ‘means an offence for which the Court may pass a sentence of not more than two years.’ This has been interpreted to mean the sentence in the mind of the sentencing magistrate rather than being definitive. Thus allowing Community Service as a sentencing option for certain crimes, there should be clear determination of what constitutes a minor offense. If the Community Service Act (Cap 115) is to be helpful therefore, the question of which crimes qualify as minor offenses needs resolution.

5 Children's Act Statute:

Section 104 of the Children Act (Cap 59) provides as follows;

⁷ Section 154(1) of the Penal Code Act provides that “Any man who has sexual intercourse with any married woman not being his wife is liable to imprisonment for a term not exceeding twelve (12) months or to a fine not exceeding Two Hundred Shillings; and in addition, the court shall order such than on first conviction to pay the aggrieved party compensation of Six Hundred Shillings, and on subsequent conviction compensation not exceeding, Twelve Hundred Shillings as may be ordered.” This is the one often cited case of fines that do not make any sense.

- a) Section 104 (1) A child shall be tried in the High Court for an offence with which the child is jointly charged with a person over eighteen years of age and for which only the High Court has jurisdiction.
- b) Where a child is tried jointly with an adult in the High Court, the child shall be remitted to the family and children court for an appropriate order to be made if the offence is proved against the child

The recommendation that a Court which tries a child should go ahead and make an appropriate order instead of remitting the case to another Court should be adopted for purposes of sentencing.

Emerging issues

The issues raised in the presentation were but a few considering the wide subject of sentencing. The views on the about the subject in Uganda are also wide and varied. Some of the issues raised during the meeting included;

- *Balancing the public's demands for harsh sentences.*
- *The question on the definition of 'minor offences'*
- *The inconsistencies arising from discretionary sentences needs to be avoided by issuing sentencing guidelines and increasing awareness of these guidelines among judicial officers .(Sentencing guidelines(2004) have been developed by the ULRC and issued by the CJ).*
- *The validity of the offence of defilement as it currently stands in our law books is very controversial. None the less, judicial officers in the exercise of their judicial function should be conscious of the fact that the objective of creating such an offence among other things is to protect the girl child.*

Operationalizing the Constitutional Right to Bail: Challenges.

Hon. Justice Amos Twinomujuni.
Justice of the Court of Appeal of Uganda.

Since the coming into force of the 1995 Constitution of Uganda, there exists within the legal fraternity, general confusion as to what the right to bail entails and to whether the provisions relating to bail found in the Magistrates Courts Act and the Trial of Indictments Act are consistent with the provisions of Article 23 (6) of the Constitution.

The right to bail is enshrined in Article 23(6) of the Ugandan Constitution and the meaning has been discussed in the High Court *Criminal Miscellaneous Application No.96 of 2005 Layman Yahaya vs. Uganda*⁸. And although there is no doubt that that Article 23 (6) creates a fundamental human right, like all fundamental rights and freedoms enshrined in Chapter four of our Constitution with the exception of those mentioned in Article 44⁹, the right to bail is not absolute. It is subject to the general limitations enshrined in Article 43 of the Constitution.¹⁰

Article 23 (6) creates two situations in which bail can be granted; it allows a person arrested for a criminal offence to apply to court to be released on bail and court may grant such a person bail on such conditions as the court considers reasonable.¹¹ Secondly, Article 23(6)(b) provides; ‘ *in the case of an offence which is triable by the High Court as well as by a Subordinate Court, if that person had been remanded in custody in respect of the offence for sixty days before trial that person shall be released on bail on such conditions as the court considers reasonable.*’

The Magistrates Courts Act (MCA) provides for operationalisation of the Right to Bail. Bail provisions under the Magistrates Courts Act (MCA) provided for in part IX sections 75 to 84 of the Act are meant to operationalise the constitutional right to bail in respect of cases triable by Magistrates Courts. There is however need to harmonize these provisions with the requirements of the Constitutions and are no longer consistent with Article 23 (6).¹²

Likewise, the Bail provisions under the Trial on Indictments Act (Cap 23) under Sections 14 to 21 are outdated and need to be harmonized with the Constitution.¹³ The only restrictions to the right to bail are only those specifically stated in Article 23 (6) of the Constitution.

The Bail provisions of Article 23 (6) (a) and (b) also apply to the courts (or disciplinary committees) set up by Parliament in the UPDF Act under the authority of Article 210 of the

⁸ Hon. Justice E.S Lugaizi discussed the meaning of the article in his judgment.

⁹ Provides for prohibition of derogation from particular human rights and freedoms.

¹⁰ Provides for general limitations on fundamental and other human rights and freedoms.

¹¹ Article 23(6) (a)

¹² See Section 76 of the MCA

¹³ See Sections 15 and 16 on power of refusal to grant bail and restrictions on period of pretrial remand.

Constitution.¹⁴ Any provision therefore under the Act that denies an accused person the right to fully take advantage of article 23 (6) (a) and (b) must be looked at with very high suspicion as it is likely to be unconstitutional.

In this regard however;

- Where a person is charged with an offence in a Military Court Martial, the power to grant bail is with that Court.
- Where the accused is charge in Military Court and the High Court as was the case of Besigye and 22 others, bail granted by the High Court to such a person is superior to any considerations in the Court Martial and the later court has no power to cancel it.
- Where bail is refused to a person charged before a Court Martial contrary to provisions of Article 23 (6), the MCA and the TID, then any aggrieved party can apply to the High Court and the High Court has the power to inquire into the matter and to release the accused in accordance with the law.

This be as it may, the Constitution and Parliament in their wisdom recognize the right of an accused to be released on bail and the power to release them is conferred on the Courts of Judicature outlined in Article 129 of the Constitution of which the military court is part of. Yet this power is being challenged by various functionaries of the Executive Branch of Government and thus a need to educate the masses and all others functionaries of Government on this fundamental right.

Emerging Issues

- *Powers of the Court Martial visa vie the High Court in the grant of bail.*
- *Petitions on habeas Corpus and their effect on the relationship between the Court Martial and High Court.*
- *Illegal detentions by security organs and law enforcement bodies and the need to speak out against their existence and operations.*
- *The grant of bail is currently very discretionary and there should be a common understanding among the judiciary on its meaning.*
- *Sensitization on the right to bail amongst judicial officers and the public to ensure respect of this right.*

¹⁴ Provides for Parliament to make laws regulating laws to regulate the UPDF.

CLOSING REMARKS

***Livingstone Sewanyana,
Executive Director
Foundation for Human Rights Initiative, FHRI***

Mr. Sewanyana extend his appreciation and gratitude to the participants for indulgence, excellent preparation and spirited discussions over the 1 ½ days on the subject of Judicial Independence.

He extended his appreciation to the distinguished resource persons who had taken time off to prepare and facilitate discussions during the roundtable.

He thanked the donor partners present for participating in the Roundtable which was a show of confidence to the work of the Foundation. He in particular extended appreciation to the National Endowment for Democracy, SIDA and HIVOS (Netherlands) for supporting the event.

He, in a special way thanked the US Ambassador to Uganda, H.E Steven Browning for honoring the event with his presence and accepting to officiate at the Closing of the Roundtable.

He was confident that the discussions and recommendations developed during the roundtable would go along way in strengthening Judicial Independence in Uganda and promised to pursue them together with the Judicial Studies Institute and the Judicial Training Committee. *He extended appreciation to the FHRI team for successfully organizing the event.*

***Hon. Justice J.W. Tsekooko
Justice of the Supreme Court &
Chairperson, Judicial Training Committee***

Hon. Justice J. Tsekooko expressed his satisfaction to the productive partnership between the Judiciary and FHRI.

The Hon. Justice enumerated the issues that had been discussed and examined during the Roundtable which were very useful and frank. The Roundtable participants with the facilitation of eminent speakers and resource persons had generated recommendations pertaining to strengthening judicial independence, sentencing and bail which would if considered, provide a useful tool to strengthening judicial independence in Uganda and was confident that the participants would use the knowledge acquired to better their professional carriers.

CLOSING REMARKS

*Hon. Lady Justice L. Kikonyogo
The Hon. Deputy Chief Justice
Justice of the Court of Appeal*

She thanked H.E Hon. Steven Browning for gracing the occasion with his presence. She thanked the Foundation for Human Rights Initiative and the Judicial Training Committee / Judicial Studies Institute for organizing this very relevant Roundtable on Strengthening Judicial Independence.

She then invited H.E Steven Browning to make his closing remarks and officially close the Roundtable.

*H.E Steven Browning
US Ambassador to Uganda*

H.E Steven Browning thanked Mr. Sewanyana and FHRI for the invitation to speak at the Roundtable.

The Ambassador acknowledged Mr. Sewanyana's and FHRI's courage and commitment to defending human rights which have long been held in high regard by the US Embassy which has had a long and fruitful relationship with the Foundation for Human Rights Initiative.

H. E Steven Browning also made special mention of the National Endowment for Democracy (NED) that is sponsoring the important event, refereeing to the Organization as a particularly unique American institution which was formed in the mid 1980s as a means to strengthen democratic institutions through non-governmental efforts. And although it receives funding from the US Government, the Endowment has an independent Board of Directors who set policy and decide on budget use. In his view, supporting the work of organizations such as FHRI, NED has chosen a correct approach of promoting the development of democratic institutions.

On the theme of the Roundtable, H.E Steven Browning underscored the role and importance of an independent judiciary in building democratic institutions and good governance. An independent judiciary is the custodian and referee for the rule of law - a fundamental principle for democracy in the US and in Uganda.

An independent and effective judiciary must therefore be seen to be fair, impartial, and impervious to political or other outside pressures and from fairness follows predictability, integrity and decency. It is thus frequent that it is the judiciary that protects the public from unfairness, even in the face of direct opposition from the other two branches of government.

Sharing on the experiences from the United States, the Ambassador referred to the Judiciary in the US as an important body that has played an important role in ensuring progressive social change and is a critical piece in the check and balance system. The Ugandan Judiciary should therefore follow suit as it is already attempting.

However, an independent judiciary does not just happen. It must be provided with sufficient resources and when necessary, it must be protected so that it can fulfill its role. It does not service the judiciary or the public interest when courts are on the receiving end of political threats; judges are threatened with removal or when courts are not given inadequate resources to do their jobs.

None the less, leaders in the Ugandan Judiciary have demonstrated great courage and independence in recent years. The Supreme Court, Constitutional Court and High Court have all made rulings that at times were not popular with officials in power or with popular sentiment. This commitment to the principles of justice and the rule of law is commendable and should not shrink.

On corruption and integrity in Uganda, H.E Steven Browning reiterated the key role the Ugandan Judiciary must play in the fight against corruption. However the courts alone cannot excise the cancer of corruption from society. A mindful legislature must enact anti corruption laws with harsh penalties for violators while the executive must diligently enforce the anti-corruption laws and an independent judiciary, the courage to convict.

Again, the Ambassador reiterated the importance of such fora as the Roundtable organized by FHRI which provide an important opportunity and perhaps inspiration to leaders in civil society and the judiciary to live out the principles underlying Uganda's Constitution!

He then declared the roundtable on strengthening judicial independence closed.

Participants' Evaluation

√ *What has been the most valuable subject you have learnt throughout the Roundtable?*

- Sentencing options in Uganda and the need for Reform was rated very highly. The subject on the Right to Bail was equally rated highly.
- The subject on Judicial Independence and Accountability; the frank and honest discussions on the Judiciary in Uganda, its independence and the challenges to this independence were also underscored.
- The study findings on Judicial Independence by the University of Cape Town uniquely augmented the discussions on judicial independence and accountability in Uganda.

√ *What are you going to do better in your daily work?*

Participants felt that they would;

- Work towards strengthening their independence as judicial officers.
- Interpret Bail more liberally.
- Read and understand the human rights provisions in the 1995 Constitution of Uganda.
- Prepare Judgments expeditiously.
- Be more human rights friendly and activist.
- Consider various alternatives to sentencing.
- Speak out and pronounce themselves on illegal detentions and the violation of freedom from Torture.

√ *What kind of Resources will you need to do the above better?*

Most judicial officers felt they needed more human and financial resources to enable them perform their tasks better. The importance of networking within the JLOS institutions and Human Rights Organizations was underscored while the need for judicial officers to access to reading materials/library to improve on their quality of work was recommended.

√ *In-house Administrative arrangements.*

The organizational arrangement of the Roundtable by FHRI and the JSI was perfect!

List of Participants

JUDGES

No.	Name	Address
1.	Hon. Justice Benjamin Odoki	The Chief Justice of the Republic of Uganda Supreme Court of Uganda P. O. Box 6679 MENGO
2.	Hon. Lady Justice Letitia Kikonyogo	The Deputy Chief Justice of the Republic of Uganda Court of Appeal P. O. Box 7085 KAMPALA jkavuma@judicature.org.ug joikavuma@yahoo.com 0752648150 0752258575
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11.	Hon. Judge John Bosco A. Katusi	Resident Judge - Mbale High Court of Uganda P. O. Box 7085 KAMPALA
12.	Hon Judge Mary Stella Arach Amoko	Head, Civil Division High Court of Uganda P.O Box 7085 Kampala Tel: 0772452150
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16.	Hon. Judge Lamek Mukasa Nsubuga	Commercial Court High Court of Uganda P. O. Box 7085 KAMPALA
17.	Hon. Justice Stephen George Engwau	Justice of the Court of Appeal Justice court of Appeal Box 7085 Kampala jengwau@hotmail.com Tel: 041258520

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Agenda

Sunday 6th August 2006

5.00pm *Arrival of participants*

7.00 *Dinner*

Monday 7th August 2006

7.00am *Breakfast*

8.30 – 9.00 *Registration of participants and invited guests*

9.00 – 11.00 **Opening Ceremony**

9.00 – 9.15 Welcome Remarks and Practical matters, *FHRI*

9.15 – 9.30 Welcome and Introductory remarks
Livingstone Sewanyana
Executive Director, FHRI

9.30 – 9.45 Opening remarks.
Hon. Justice J.W. Tsekooko
Chairman, Judicial Training Committee

9.45– 10.30 **Key note Address:**
Vision for the Uganda Judiciary (2006 – 2011)

Chief Guest: *Hon. Justice Benjamin Odoki*
His Lordship The Chief Justice of the Republic of Uganda

10.30 – 11.00 *Discussions*

11.00 – 11.15 *Group Photograph*

11.15 – 11.45 *Tea/Coffee Break*

11.45 – 12.30pm *Strengthening Judicial Independence and Judicial Accountability in Uganda.*
Hon. Justice George Kanyeihamba
Justice of the Supreme Court of Uganda

12.30 – 1.00pm *Discussions*

1.00pm – 2.30pm *Lunch*

2.30 – 3.30pm *Judicial Independence in Southern and East Africa: A Comparative Study of Common Law Jurisdictions, August 2005: Focus on the Ugandan Judiciary.*
Professor Hugh Corder Dean, Faculty of Law, University of Cape Town

3.30 – 4.15pm *Discussions*

4.15pm *Tea/Coffee Break*

6.30pm ***Cocktail Reception***

Tuesday 8th August 2006

7.00am – 9.00am	<i>Breakfast</i>
9.00 – 9.15	Emerging issues and Recommendations from previous day <i>Rapporteur</i>
9.15 – 12.00pm	<u>Panel discussion on Alternatives to Imprisonment in Uganda.</u> Sentencing options in Uganda; The need for reform? <i>Hon. Eldad Mwangusya</i> <i>Judge of the High Court</i> Operationalising the Constitutional Right to Bail: Challenges <i>Hon. Justice Amos Twinomujuni</i> <i>Justice of the Court of Appeal</i>
12.00– 12.30	Discussions
12.30 – 12.45	Tea/Coffee Break
12.45 – 1.00	Recommendations and emerging issues
1.00	<u>Closing Session</u> ☞ Foundation for Human Rights Initiative (FHRI) ☞ Judicial Studies Institute/Judicial Training Committee ☞ <u>Chief Guest:</u> <i>H.E Hon. Steven Browning</i> <i>Ambassador of the United States of America to Uganda.</i>
2.00	Lunch
3.00	Departure

***END**

Newspaper clippings