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## COMBATING JUDICIAL CORRUPTION IN UGANDA

Cynthia A. Baldwin  
Wolfensohn Center for Development  
The Brookings Institution

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THE BROOKINGS INSTITUTION  
1775 MASSACHUSETTS AVE., NW  
WASHINGTON, DC 20036

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This paper is truly a labor of love—love of the rule of law, love of education and love of Uganda. I have been traveling to countries predominately in eastern and southern Africa since 1994 when I was a Fulbright Lecturer on the Law Faculty at the University of Zimbabwe and worked with the Supreme Court researching issues of due process. The problems outlined herein are problems shared by most developing countries and even some countries that are considered developed.

## Abstract

A constitution is only as good as the people who respect and abide by it. People can only respect and abide by it if they know it. The first step of leaders who want to move from democracy to dictatorship is to either change the constitution or try to keep people ignorant of what is in the constitution. People cannot clamor for rights about which they have no knowledge. And, of course, the one branch of government which is consistent in its protection of the constitution and the rule of law is the judiciary. Unfortunately, in many developing countries, the judiciary is weak, corrupt and without independence. And since people do not understand their right to a strong, honest and independent judiciary, they do not demand change.

It is time to give up band-aid approaches to long-term problems of judicial weakness and corruption. It is time to realize that the solutions may also have to be long term. This paper addresses the institution of methods that may take as much as a generation to instill, but will be sustained. It is imperative to educate a nation's citizenry as to their rights and responsibilities and to continue to educate the judiciary as to its role and the institution of best practices within the judiciary.

A four-part approach to control judicial corruption in Uganda includes: reform of judicial governance; continuing education of the judiciary; enhanced judicial independence through budget and staff control; and introduction of public civic education.

## Challenges to the Judiciary in Uganda

Uganda's history under Idi Amin is well known, but the country has come a long way from that past. Members of the High Court and Supreme Court and many of the judicial officers are committed to changing the judiciary for the better, but even more than that, they want to change the country for the better.

In his 2004 speech before the Seventh Biennial Conference of the International Association of Women Judges in Uganda, Jotham Tumwesigye, Inspector General of the Government<sup>1</sup>, stated five causes for corruption in the Ugandan Judiciary: poor remuneration, inadequate supervision of magistrates, public ignorance about the judiciary and how to report corruption, the bribing of court clerks by lawyers, and inadequate judicial accountability (which appears to be an attack on judicial independence). This paper addresses three of those five concerns—inadequate supervision of magistrates, public ignorance about the judiciary and how to report corruption and the bribing of court clerks by lawyers.

It is imperative to note that civic education of the general populace as well as the continuing education of those who dedicate themselves to public service, in this case the judiciary, is mandatory in order to eradicate corruption. The creation of a workable, sustainable model to fight corruption involves both educational programs within the elementary and secondary curricula including, *inter alia*, the rule of law

and civics and continuing and consistent training programs for the judiciary and for court employees at all levels.

There is definitely consensus among all of the parties interviewed that corruption exists at some level of the judiciary and that judicial education with an ethics component will be helpful in its eradication. There is also consensus among judicial officers that the public perception is that the judiciary is corrupt. Studies done by the judiciary<sup>2</sup> indicate that people perceive that the level of ethics in the public sector is low, while the level of corruption is high. The judiciary agrees that there are corrupt individuals in its ranks but does not believe that the institution is corrupt. The perception may be more wide spread than the reality because the public understands neither the role of the judiciary nor its rights and responsibilities under the Ugandan Constitution.<sup>3</sup>

In addition, there is consensus that there is a need for general awareness of the government and governance. Chief Justice Odoki indicated that he tried to create a joint program with the judiciary, NGOs and others in order to educate the citizenry. The result was the suggestion that a human rights/constitutional law course would be formulated and instituted on the primary level. It appears that it was not instituted at that time. He also indicated that he thought this was the right time both politically and educationally to institute programs in the schools.

One member of the High Court said, “It is not enough to know the arms of government; one must have knowledge of the workings. It should be imparted from childhood.” Another stated, “When government goes wrong, people must know what to do.” Several judges emphasized that political ideology must be kept out of whatever civic courses are taught in the schools. People in the judiciary and in education believe that the courses should be more practical than philosophical. The realization that education about governmental processes is important seems to be gaining wider acceptance. The Uganda Revenue Authority now has a program to go into the rural areas and teach why taxation is important.

Changes need to occur in four areas—judicial governance, continuing education of the judiciary, budget control for the judiciary and public education. Pragmatic reforms in these four areas form an approach which, if sustained for a period of a few years, will improve the quality of the judiciary and reduce the prevalence of corruption.

## Four Approaches to Combat Judicial Corruption

### Judicial Governance

It is important to understand that Ugandan political officials and members of the judiciary are well aware of the corruptive influences that can and do affect the judiciary. The judiciary has established several agencies within the institution to combat corruption.<sup>4</sup> This is in addition to the many NGOs that have been established with the same goals. In Uganda, the judges are appointed by the president upon the recommendation of the Judicial Service Commission.

The Judicial Service Commission was established by Article 146 of the Ugandan Constitution, and enacted by the Judicial Service Act in 1997. Its articulated mission “is to establish and maintain

an independent and efficient machinery for administering justice for all in Uganda through recruiting, training and disciplining judicial officers and promotion of public awareness and access.” The chief justice, deputy chief justice and the principal judge are specifically excluded from serving on the Commission. The membership consists of a chairperson and a deputy chairperson, both of whom must be qualified to be appointed as justices of the Supreme Court; a public service commission nominee; two advocates who must have at least 15 years at the bar nominated by the Ugandan Law Society; a judge of the Supreme Court who is nominated by the president in consultation with the judges of the superior courts; two lay members nominated by the president and the attorney general who is ex-officio.

In his keynote address to the 5<sup>th</sup> Joint Government of Uganda-Donor Review in June, 2003, Chief Justice Odoki spoke of the establishment of a Judicial Integrity Committee to work with “judicial officers in other commonwealth jurisdictions, to formulate performance standards, and to monitor and evaluate the integrity of our judicial officers.” Although limited public information exists about this group, the Committee published the Uganda Code of Judicial Conduct in 2003. It appears to be headed by a Supreme Court justice and deals primarily with ethics in the judiciary although there appears to also be a public relations function in that it also elicits public perception of the judiciary.

The other institutionalized anti-corruption arm of the judicature in Uganda is headed by registrar/inspector of courts and is commonly referred to as the “Inspectorate.”<sup>5</sup> The Inspectorate evaluates the judiciary and judicial staff as well as investigating complaints from the public. The Inspectorate also incorporates a Public Relations Office; however, information is distributed only in the courts because it is prohibitively expensive to produce enough materials for mass distribution. While complaints are made to the Inspectorate and investigated by the Inspectorate, the Judicial Service Commission handles all discipline.

The rationale for creating all of these agencies to affect an independent and efficient judiciary is admirable, but the result is expensive and chaotic. All of these agencies erode resources, while duplicating services. In fact, the constitutionally established Judicial Service Commission could accomplish all of the above enumerated purposes under its auspices. Under its broad mission, it could formulate performance standards, monitor and evaluate judicial integrity, evaluate the judiciary and judicial staff, investigate complaints about the judiciary from the public, and produce and disseminate information about the judiciary and the courts to the public—eliminating the need for the Judicial Integrity Committee and the Inspectorate. The consolidation of these purposes under the Commission would not only save money but provide greater coordination and reduce redundancy. Two other challenges—the proverbial right hand not knowing what the left hand is doing and the control of turf—would also be alleviated. The Commission could establish committees, if necessary, to do the actual work in various areas, but everything affecting the judiciary would be under one umbrella.

There is currently a debate in Uganda as there is in many developed nations as to whether judicial independence means no judicial accountability. This is especially prevalent in discussions concerning delay within the court system. The judiciary must learn to develop and use the tools to assure that cases are heard timely and that judgments are delivered timely. The Commission could be extremely helpful in formulating methods to improve timeliness, and could work with the Judicial Studies Institute to implement programs to assist the judiciary with the above.



## Continuing Education of the Judiciary

The Judicial Studies Institute is an integral part of the judicature and has a staff of 10. Continuing judicial education is voluntary, not mandatory. It is, however, strongly suggested by the Supreme Court that the judiciary participate. The Institute does not have a facility dedicated to it and it is presently renting space outside of downtown Kampala in an engineering building in Nakowa. The goal, however is to build a dedicated facility.

The courses are taught, not only by Ugandan instructors, but also by experts from other countries, predominantly in eastern Africa. Every year for a two-week period, the Royal Institute, which is based in London, but has an office in Kampala, trains the trainers. The actual judicial training may be donor-selected, that is, the course to be taught is selected by the organization that is paying for the training, or the curricula can be suggested by the judges or based on new legislation that has been passed. The largest class size consists of around 35 people and the class usually runs three to four days. The training for new judges is usually two weeks in length. The judges evaluate the courses at the end.

All other court employees receive an introductory three-day training. This is extremely important because court employees comprise the first line of the courts and can reflect well or poorly on the judiciary. Supervisors grade court employees every year. However, it is unclear whether an employee whose performance is consistently below standard has to repeat the course or take additional courses. Employees don't appear to be disciplined or terminated based on poor performance. The public sees a connection between judicial corruption and delay in the courts. The Institute is very concerned about the public perception of the judiciary and judicial responsiveness and governance are being examined as additional areas to include in the curricula.

The Institute's fiscal year runs from July to June. 2007 was the last year of a three-year funding period sponsored by a Danish organization. In June 2007, the officials of the Institute were trying to identify new funding sources and were just beginning to write new grant proposals other than the one to the Ugandan Supreme Court. The Ugandan government (including the judiciary) has not committed to funding the Institute after the Danish funding terminates. The assistant registrar for research and training had just sent an estimated budget for 2007-2008 requesting total funding of 312,053,000 Ugandan shillings.<sup>6</sup> There was widespread concern that there would not be continued funding.

For the most part, good intentions are present in all of the parties who have neither the power nor the resources to implement the projects or changes. For those who have the power and the resources, continuing judicial education does not appear to be enough of a priority to invest the necessary money to keep it viable. The very location of the present facility for judicial education indicates its lack of priority. The lack of updated technology and computer support is another indication and the dearth of staff is a definite indication.

If the program is either relocated onto the premises of or in close proximity to the law school at Makerere University, it is possible to establish a viable continuing judicial education program on a smaller budget. In this manner, there could be a common use of facilities and faculty. The Supreme Court must emphasize the importance of continuing judicial education by underwriting the Institute, at least in part, instead of depending on outside supporters who provide short term funding with donor-direction of the curricula. If other donors see that the Court is sustaining its own judicial education programming, they will more likely continue to offer financial and in-kind resources.

Because the Ugandan continuing judicial education program relies heavily on third party support, negative attributes arise from these relationships. First, Ugandans have little control of the programming; therefore, it is difficult to emphasize the content that may be important and relevant specifically to Uganda. For example, while legal education should be relevant to the roles played by law school graduates, the Law Development Centre focuses on teaching students to be advocates although some students become judicial officers immediately after graduation. Novice judicial officers are often sent to more senior officers of the judiciary for training, comparable to preceptorship programs that used to abound in the United States prior to 1960. There is no specialized program for new judicial officers at the Institute. The type of training a new judicial officer receives therefore depends on the educational background, temperament and commitment of the senior person. Secondly, there is some dependence on faculty being provided by other East African countries, which may also have some impact on the programming. Third, there is a certain amount of complacency present when others are financially supporting the education. While the Danes were supporting the program for the last few years, there is no evidence that the Institute or the Supreme Court was actively searching for other methods of future funding or setting aside monies for funding. All of the above may impact the quality of the programming available and the apathy of the judiciary about attending. Although everyone connected with the judiciary professes to be extremely concerned about corruption in the judiciary and the popular image of the judiciary, there is still a lack of commitment to even the simpler solutions. A clearer commitment to such solutions, and in particular, better coordination through the Judicial Service Commission, is imperative.

### Budget and Staff Control

Budget and staff control is not only inherent to the previously mentioned challenges, but also seriously limits judiciary operations. Although, it is a separate branch of government, and is supposed to control its own budget; in reality, the executive branch controls the budget. As a result, not only judicial education, but also judicial remuneration is woefully underfunded. Stories are rampant that although judicial salaries for the High Court, the Court of Appeals, and the Supreme Court were raised, the salaries for judicial officers have not been raised in twelve years. Of course, this leads to another stated reason for judicial corruption—insufficient compensation. Young judicial officers are returning to school in order to leave the judiciary and enter other professions. Others are teaching and running businesses in addition to being in the judiciary in order to make ends meet. In Uganda, the judiciary is a career in and of itself. A young law-trained person may enter the judiciary as a magistrate and work his or her way from there to chief magistrate, registrar, chief registrar, and then to the High Court as a judge. The judicial staff, in addition to the budget, is not within the control of the judiciary. They are under the control of the Public Service Commission.<sup>7</sup> In order for the judiciary to be truly independent, it must have control of its budget and control of its staff.

### Public Civic Education

But it is not enough to try and strengthen the judiciary on the “supply” side through improved governance, judicial education and improved control over budget and staff. These measures need to be complemented by creating an effective “demand” for a better judiciary. This means people have to be educated to understand that they are entitled to an effective judicial system and must be encouraged to demand it through political and grass-roots action. This is the purpose of civic education.

In order to promote and perpetuate a democratic society, it is necessary to prepare young people to be informed, responsible citizens. That job must fall to the schools. Not only must citizens realize the duties of each branch of government but also they must realize their own responsibilities, not the least of which is vigilance. Someone once said that freedom is a two-sided coin with privilege on one side and responsibility on the other. The more information that a citizenry possesses, the more unlikely is it that the citizens will permit a government to take or even reduce the rights that they possess. Various people related that the Ugandan curricula contained something like civics courses at one time, but these evolved into what were called political education courses. These political education courses were ideological in nature, designed to turn out people with certain political viewpoints. Of course, that is no longer the case because these courses as well as uncontaminated civics courses were eliminated.

As complex as the judicial education problem may be, the prospect of changing the curricula to include on both the primary and secondary levels, core courses on governance and citizenship is even more complex. It is important to understand the Ugandan educational system in order to understand the difficulty of curriculum change. The lack of resources having a corrosive effect on the judiciary is also undermining the educational system in Uganda, as it is trying to achieve free public education. Since 1997, Uganda has offered free education in all public primary schools. In January 2007, Uganda began to implement a free universal secondary program in 700 public schools and 280 private schools, although parents would still be responsible for paying boarding costs and medical care costs. Students have to sit for the Primary Leaving Examination to be eligible for participation. The cost of the program for a year is estimated to be 30 billion Ugandan shillings (\$17.2 million USD). 7.3 billion Ugandan shillings (\$4.2 million USD) were released for the public and private schools included in the program.

There are presently seven million children on the primary level and one million on the secondary level in Uganda. Students in Uganda attend school for 13 years, seven years on the primary level, four years on the lower secondary level and two years on the upper secondary level. Uganda currently ranks 145<sup>th</sup> on the United Nations Human Development Index, which measures income, education and life expectancy, out of 177 countries.

While the institution of universal free education was first perceived as good, there are problems. The number of children attending “public” schools escalated dramatically, while the number and size of facilities and the number of teachers have not changed. In many parts of Uganda, children are attending school in shifts because of the lack of space and teachers. Although the government reports universal education is more effective, it proves to be free but of poor quality. In retrospect, it might have been better to gradually institute universal free education beginning on the primary level with those who were entering the system and prorate fees for the students already in the system. In this way, money would continue to be available to support the system and the fees would still be more affordable for those in the system before the institution of universal free education. However, that is the proverbial water over the dam.

In addition to changing to universal free education, the Ministry of Education set a schedule to institute new thematic curricula for both the primary and secondary levels. As far back as 1992, the Government White Paper on the Education Policy Review Commission Report was issued and articulated six (6) major aims:



1. To promote understanding and appreciation of the value of national unity, patriotism and cultural heritage, with due consideration to international relations and beneficial interdependence;
2. To inculcate moral, ethical and spiritual values in the individual and to develop self-discipline, integrity, tolerance and human fellowship;
3. To inculcate into Ugandans a sense of service, duty and leadership for participation in civic, social and national affairs through group activities in educational institutions and the community;
4. To promote scientific, technical and cultural knowledge, skills and attitudes needed to enhance individual and national development;
5. To eradicate illiteracy and equip the individual with basic skills and knowledge to exploit the environment for self-development as well as national development; for better health, nutrition and family life, and the capacity for continued learning; and
6. To equip the learners with the ability to contribute to the building of an integrated, self-sustaining and independent national economy.

It can be argued that three of the six aims directly relate to the institution of civics-type courses into the core curricula for both the primary and secondary levels and the other three, at least, are peripheral to that type of course. The lack of resources is again the primary problem and even in the Ministry of Education, corruption rears its ugly head in order to compound the problems. Donor-supported funds given to the Ministry of Education from 2002-2004 and earmarked for the building of classrooms have been used to build “only slightly more than half of those it said it had the money to build.”<sup>8</sup> While Uganda is dependent on donors to continue to contribute funds for improvement of its educational system, unless the government develops, implements and enforces a policy making recipients of these funds accountable (including the government officials), these funds will not continue to be available.

Until the citizens of Uganda realize what their rights and responsibilities are under their constitution and other laws, they cannot enforce those rights nor live up to those responsibilities. This is a long-term, but imperative process. It may take a generation to see any results of the educational processes outlined in this paper; however, if Uganda does not begin now, it will take even longer.

While materials are difficult to access and new curricula are difficult to establish, technical support is almost nonexistent. Fewer than 10 percent of the schools have computers for the students and they do not work all the time due to the lack of electricity in many parts of Uganda and the frequent black or brown-outs. The Ministry, however, identified its greatest need as that of material support. One of the largest drains on educational funding is the purchase of textbooks, which are very expensive since there is no publisher in Uganda. Some creative options must be considered to get textbooks at a more reasonable cost so they can be accessible to more students. One use of grant funding might be to establish a low-cost internal computerized publishing center to provide supplemental materials written by teachers and staff especially for the variety of elective classes offered. It is also important to establish regional school libraries where books are available to either read on site or to borrow. It would be better

to have either a library or computer center available in each school, but that definitely is not feasible at this time.

It is generally recognized in the Ugandan educational community that there is a need to integrate aspects of civic education, governance and geography into the core curricula on the primary and secondary levels. As in other cases, monetary support is desperately needed within the Ministry of Education in order to institute the planned curricular changes and to get the needed material support. At the present time, 50 percent of the Ministry's budget is allocated to salaries, and at that, teachers are severely underpaid.

Although the two years of college education necessary to be a primary teacher are provided free of charge, primary teachers make only the equivalent of \$100 per month. Those wanting to become secondary teachers must pay for the other two years of college education, although government sponsorship is available on the graduate level if one does well. For this extra effort in order to teach on the secondary level, one makes the equivalent of \$200 per month.

It is time for the Ministry of Education to perform a comprehensive audit of facilities, programs and personnel as well as working to bring about uniformity between urban and rural educational programs. Of course, universal education is desirable, but its implementation would have been more fiscally responsible if done over several years.

As part of the reform of the school system, the early introduction of a thorough civic education course is essential to long-term improvement in judicial performance. Until the citizens of Uganda and any other constitutional entity realize that their rights and responsibilities are inextricably tied to the legal framework of which the constitution is the keystone, they will not possess the tools to enforce those rights nor live up to those responsibilities.

## Recommendations

The following four recommendations need to be implemented as part of the Ugandan government's strategic plan.

1. Allocate consistent sources of funds, both internally and externally, to the judicial system and to education.

Uganda must prepare to fund its own governmental programs and initiatives from its own tax resources. No government can fund its programs from grant to grant. It is difficult to keep initiatives going when each funding source has new directives and demands. Even when programs are funded by grants, the government should be setting aside matching funds to be invested in order to pay for programs and initiatives when grants run out.

2. Coordinate efforts.

The Ugandan government has recognized the importance of ridding itself of corruptive influences. However, there are too many agencies and entities working on anti-corruption programs within the judiciary. These efforts are both costly and redundant. The Judicial Service Commission established

by the Ugandan Constitution has the capacity to be the umbrella organization to coordinate “recruiting, training and disciplining judicial officers and promotion of public awareness and access” as stated in its mission. Committees can be established as needed, but under its auspices.

3. Reinforce the concept of an independent judiciary.

An independent judiciary must have control of its budget and staff; must establish and control its own educational programs; and must be paid adequate remuneration. An independent judiciary is also accountable to the citizenry.

4. Mandate public civic education on both the primary and the secondary levels.

The most neglected aspect, civic education, must be mandatory and ongoing to make a societal difference. If education is a priority, it must be treated as one and both programs and teachers must be properly funded.

Bringing about these changes is a long-term, mandatory process. If the recommendations contained in these four areas can be incorporated into the government’s strategic planning, Uganda will be making the first steps to prepare its citizens to be informed and responsible caretakers of their constitutional rights.



## Endnotes

1. Tackling the Problem of Corruption in the Judiciary, Jotham Tumwesigye, Inspector General of Government, May 11, 2004.
2. The Registrar/ Inspector of the Courts traditionally do these studies.
3. The Ugandan Constitution was adopted in 1995. Chapters 3 and 4 address citizenship and protection of human rights and Chapter 8 specifically addresses the judiciary.
4. "The state of corruption: a case study of Uganda," *Third World Quarterly*, Vol. 20, Issue 3 June 1999, pp.515-536.
5. Registrars are a level of the judiciary one step below judges. They are responsible for the general administration of the courts. The Chief Registrar controls the manager registrars and is also the official spokesperson for the judiciary.
6. At the exchange rate in July 2007, it is about \$186,078.
7. Mandated by Section 165 et seq of the Ugandan Constitution.
8. Nelson Kasfir, "Country Report-Uganda, Countries at the Crossroads," 2006, p.10 <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan016208.pdf>

Cynthia Baldwin is a Guest Scholar at the Wolfensohn Center for Development at Brookings, retired Justice on the Pennsylvania Supreme Court and a partner with Duane Morris LLP.

