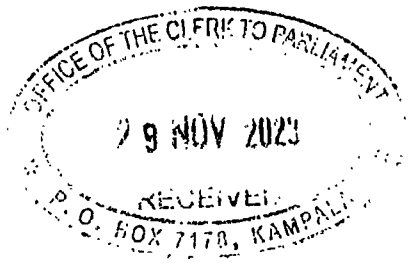
PARLIAMENT OF UGANDA



REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE JUDICATURE (AMENDMENT) BILL, 2023

OFFICE OF THE CLERK TO PARLIAMENT

PARLIAMENT BUILDING

KAMPALA-UGANDA

NOVEMBER, 2023

1.0. INTRODUCTION

On Wednesday 22nd November, 2023, a Bill entitled "The Judicature (Amendment) Bill, 2023" was in accordance with Rule 128 of the Rules of Procedure of Parliament, read for a first time and referred to the Committee on Legal and Parliamentary Affairs for scrutiny.

2.0. OBJECT OF THE BILL

The object of the Bill is to give effect to Articles 130 and 134 of the Constitution by prescribing additional number of Justices of the Supreme Court and Justices of the Court of Appeal.

The Bill further empowers Parliament to increase both the number of Justices of the Supreme Court and Justices of the Court of Appeal to such higher numbers as Parliament may by resolution prescribe.

3.0. METHODOLOGY

The Committee adopted the qualitative method in interacting with stakeholders whereby, the Committee only invited persons and entities whose mandate is connected to the exercise of judicial power in Uganda. The Committee met the following entities-

(a) The Ministry of Justice and Constitutional Affairs;
(b) The Judiciary;
(c) The Law Development Centre; and
(d) The Uganda Law Reform Commission.

The Committee also received written submissions from the Judicial Service Commission and the Uganda Law Society.

4.0. JUSTICES OF COURT OF APPEAL AND SUPREME COURT

Article 129 of Constitution of the Republic of Uganda, 1995 provides that judicial power in Uganda is exercised by courts of judicature which consist of—

(a) the Supreme Court of Uganda;
(b) the Court of Appeal of Uganda;
(c) the High Court of Uganda; and
(d) such subordinate courts as Parliament may by law establish, including qadhis' courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.

Article 129 (2) designates the Supreme Court, the Court of Appeal and the High Court of Uganda to be superior courts of record.

Article 130 of the Constitution provides for the Supreme Court of Uganda and its composition and requires that the Supreme Court is composed of the Chief Justice and such other number of Justices of the Supreme Court, not less than six, as Parliament may by law Prescribe. Article 130 is reproduced below-

> ***"130. Supreme Court of Uganda***
> ***The Supreme Court shall consist of—***
> ***(a) the Chief Justice; and***
> ***(b) such number of justices of the Supreme Court, not being less than six, as Parliament may by law prescribe."***

Article 134 of the Constitution provides for the Court of Appeal of Uganda and its composition and requires that the Court of Appeal is composed of the Deputy Chief Justice and such other number of Justices of the Court of Appeal, not less than seven, as Parliament may by law Prescribe. Article 134 is reproduced below-

> **"134. Court of Appeal of Uganda.**
> **(1) The Court of Appeal of Uganda shall consist of—**
> **(a) the Deputy Chief Justice; and**

(b) such number of justices of Appeal not being less than seven as Parliament may by law prescribe."

Articles 130 and 134 prescribe the minimum number of Justices of the Supreme Court and Court of Appeal being six and seven respectively and delegates to Parliament, the duty to prescribe the total number of Justices of the Court of Appeal and Supreme Court, by law.

As commanded by Articles 130 and 134 of the Constitution, Parliament enacted the Judicature Act, Cap. 13 to generally provide for matters relating to the judiciary, especially, the composition of the Court of Appeal and Supreme Court.

Section 3 of the Judicature Act gives effect to Article 130 of the Constitution and prescribes the composition of the Supreme Court to be 10 Justices and the Chief Justice, making a total of 11. Section 3 is reproduced below-

> ***"3. Supreme Court of Uganda***
> ***The Supreme Court shall consist of—***
> ***(a) the Chief Justice; and***
> ***(b) ten Justices of the Supreme Court."***

On the other hand, section **9 of the Judicature Act gives effect to Article 134 of the Constitution and prescribes** the composition of the Court of Appeal to consist of the Deputy Chief Justice and fourteen Justices of Appeal, making a total of 15. Section 9 is reproduced below-

> ***"9. Court of Appeal of Uganda***
> ***The Court of Appeal of Uganda shall consist of—***
> ***(a) the Deputy Chief Justice; and***
> ***(b) fourteen Justices of Appeal."***

5.0. ANALYSIS OF THE PROVISIONS OF THE BILL

This part of the report examines the amendments proposed by the Bill, its legality, effect and effectiveness to deal with the mischief it intends to cure. The Committee makes recommendations on each proposal of the Bill.

5.1. CLAUSE 1: INCREASE IN THE NUMBER OF JUSTICES OF SUPREME COURT

Clause 1 of the Bill proposes to amend section 3 of the Judicature Act by substituting it for the following-

> ***"3. Supreme Court of Uganda***
> ***The Supreme Court shall consist of—***
> ***(a) the Chief Justice; and***
> ***(b) twenty Justices of the Supreme Court or such higher number of Justices of the Supreme Court as Parliament may by resolution prescribe."***

Section 3 of the Judicature Act currently provides as follows-

> ***"3. Supreme Court of Uganda***
> ***The Supreme Court shall consist of—***
> ***(a) the Chief Justice; and***
> ***(b) ten Justices of the Supreme Court."***

The amendment to section 3 of the Judicature Act has the effect of-

(a) increasing the number of Justices of the Supreme Court, from 11, including the Chief Justice to 21 Justices; and

(b) changing the mode of prescribing the number of Justices of the Supreme Court from prescribing the number by legislation as is currently the case, to prescribing the number by resolution of Parliament.

The Ministry of Justice and Constitutional Affairs and the Judiciary justified the amendment on the need to effectively and efficiently deliver justice to the people of Uganda and to deal with case backlog in the Supreme Court. The Committee was informed by the Ministry of Justice and the Judiciary that the intention of increasing the number of justices from 10 to 21 is to create 3 panels in the Supreme Court, instead of the current 1 panel. These panels will be able to sit at the same time to expeditiously handle cases filed in the Supreme Court, thereby reducing on the huge case backlog that exists in the Supreme Court.

The Ministry of Justice and Constitutional Affairs, and the Judiciary explained that currently, there is a huge case backlog in courts of record and further explained that case backlog in the Supreme Court (cases that have been in Court for two and more years from the time of their registration) stands at 353 cases and pending cases, (cases that have been in court for less than two years from the date of their registration) stand at 792 cases as at 31st October, 2023. The table below shows the cases pending before the Supreme Court for the last 4 financial years.

Financial Year	**Registered Cases**	**Completed Cases**	**Pending cases**	**Back Log**
FY 2019/20	173	94	462	198
FY2020/21	209	102	614	286
FY 2021/22	212	92	688	333
FY 2022/23	143	62	695	323

Source: *The Judiciary*

The Ministry of Justice and Constitutional Affairs, and the Judiciary averred that the backlog at the Supreme Court requires more man power to deliver justice to the people of Uganda effectively, hence the proposed amendment to the Judicature Act, Cap. 13 in section 3 to increase the number of Justices of the

Supreme Court as envisaged by Article 130 of the Constitution, hence the proposed amendment.

The Minister of Justice while appearing before the Committee conceded that the proposed number in the Bill was high. He proposed to the Committee that the number can be reduced to four (4) Justices in addition to the current number of eleven (11).

The Committee has examined the Bill and presentations made on the matter and is of the considered opinion that the proposal to increase the number of Justices of the Supreme Court from the current 11 to 21 be rejected. In arriving at this decision, the Committee is of the opinion that, instead of appointing additional justices of the Supreme Court, case backlog experienced at the Supreme Court can be dealt with through the following measures -

(a) Appointment of justices at the Supreme Court in acting capacity under Article 142 (2) of the Constitution

Article 142 (1) of the Constitution empowers the President, acting on the advice of the Judicial Service Commission, to appoint Judicial officers in courts of record. On the other hand, Article 142 (2) also empowers the President, acting on the advice of the Judicial Service Commission, to appoint a person qualified for appointment as a justice of the Supreme Court or a Justice of Appeal or a Judge of the High Court to act as such a Justice or Judge, even though that person has attained the age prescribed for retirement in respect of that office.

Article 142 (2) is intended to enable the President fill positions in the Supreme Court, Court of Appeal and the High Court in situations where-

(a) the office of a justice of the Supreme Court or a justice of Appeal or a judge of the High Court is vacant;

(b) a justice of the Supreme Court or a justice of Appeal or a judge of the High Court is for any reason unable to perform the functions of his or her office; or

(c) the Chief Justice advises the Judicial Service Commission that the state of business in the Supreme Court, Court of Appeal or the High Court so requires.

The Committee is of the opinion that Article 142 (2) (c) can be invoked by the Chief Justice to appoint justices on the Supreme Court on temporary basis in order to deal with case backlog in the Supreme Court. The Committee observes that it is cheaper and more effective to appoint acting Justices at the Supreme Court to deal with the issue of case backlog since the acting justices are not entitled to retirement benefits and once case backlog is cleared, then the appointment of such persons is revoked, under article 142 (3) of the Constitution. This will therefore remove the need to appoint a high number of justices at the Supreme Court, and alleviate the increased costs associated with increasing the number of justices as proposed in the Bill.

The Committee is fortified in this opinion by the recommendation from the Judicial Service Commission which also recommended that instead of increasing the number of justices of the Supreme Court as proposed in the Bill, Government should consider appointing Justices on temporary basis as provided in article 142 (2) (c) of the Constitution. The Judicial Service Commission informed the Committee that the President had in the past appointed Judicial officers on temporary basis to deal with a specific need in the judiciary. This avenue has not be explored by Government before proposing to increase the number of justices of the Supreme Court.

The Committee has also examined the issue of case backlog and is of the considered opinion that the solution for case backlog at the Supreme Court is not increasing the number of Justices but creating efficiency in case management and reviewing the jurisdiction of the Supreme Court so that the Supreme Court only handles matters of law, thereby reducing the matters that can be filled by the Supreme Court.

(b) Review of the Jurisdiction of the Supreme Court

The Committee is aware that the jurisdiction of the Supreme Court is prescribed in Article 132 of the Constitution and section 4 and 5 of the Judicature Act. Under those provisions of the law, the jurisdiction of the Supreme Court is as follows-

(a) The Supreme Court is the final court of appeal and handles appeals from decisions of the Court of Appeal, while exercising its appellate jurisdiction from decisions of the High Court, or its original jurisdiction as a constitutional court;

(b) The Supreme Court has original jurisdiction in presidential petitions as prescribed in article 104 (2);

(c) The Supreme Court also has criminal jurisdiction in the case of an offence punishable by a sentence of death, on a matter of law or mixed law and fact, where-

(i) the Court of Appeal has confirmed a conviction and sentence of death passed by the High Court;

(ii) the High Court has acquitted an accused person, but the Court of Appeal has reversed that judgment and ordered the conviction of the accused;

(iii) where the High Court has convicted an accused person, but the Court of Appeal has reversed the conviction and ordered the acquittal of the accused;

(iv) where the Court of Appeal has confirmed the acquittal of an accused by the High Court.

The Committee is concerned that currently, all manner of matters can be appealed to the Supreme Court, including matters of fact, which should ordinarily be handled by lower courts. This creates case backlog in the Supreme

Court since the number of cases that are filled, exceed the capacity of the Supreme Court to dispense of them.

The Committee opines that the Supreme Court should only handle matters of law so that it can guide and set standards for lower courts on the application of such matters of law. The opinion of the Committee is informed by the practice in most Commonwealth jurisdictions where the Superior court in most countries only handles serious matters of law and in some cases, only matters that the Supreme Court finds to be of great public importance. The table below shows the different countries and the jurisdiction of their superior court-

COUNTRY	**JURISDICTION OF THE SUPERIOR COURT**
Kenya	Article 163 of the Constitution of Kenya, Supreme Court has exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of President. Appeals can only be as a matter of right, where the case involves interpretation or application of the Constitution or a matter certified by the Supreme Court or the Court of Appeal as one that involves a matter of general public importance.
South Africa	The Constitutional Court of South Africa is the Highest Court in South Africa and it deals with matters of general public importance in addition to constitutional matters.
NIGERIA	According to Section 230 to 236 of the 1999 Constitution of Nigeria, the Supreme Court Nigeria has original jurisdiction in any dispute between the federation and a state or between states if and in so far as that dispute involves any question

	(whether of law or fact) on which the existence or extent of a legal right depends. The Supreme Court has no jurisdiction in criminal matters.
GHANA	Article 129 of the Constitution of Ghana, 1992, the Supreme Court has jurisdiction in all matters relating to the enforcement or interpretation of this Constitution and all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution. It also has appellate jurisdiction as follows- (a) an appeal lies to the Supreme Court as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or (b) with the leave of the Court of Appeal, in any other cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.
INDIA	THE Supreme Court of India has exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law

	or of fact) on which the existence or extent of a legal right depends. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. Appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court in respect of any judgement, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution. Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies : (a) that the case involves a substantial question of law of general importance, and (b) that, in the opinion of the High Court, the said question needs to be decided by the Supreme Court.
United Kingdom	The Supreme Court: • is the final court of appeal for all United Kingdom civil cases, and criminal cases from England, Wales and Northern Ireland • hears appeals on arguable points of law of general public importance • concentrates on cases of the greatest public and constitutional importance
United States	Article III, Section II of the Constitution establishes the jurisdiction of the Supreme Court. The Court has original jurisdiction (a case is tried before the Court) over certain cases, e.g., suits between two or more

	states and/or cases involving ambassadors and other public ministers. The Court has appellate jurisdiction (the Court can hear the case on appeal) on almost any other case that involves a point of constitutional and/or federal law. The Supreme Court has a right to refuse to hear the cases.

From the above table, it is evident that the jurisdiction of the Supreme Court is limited to the most serious cases, those involving constitutional interpretation, matters of law and matters of great public importance.

It is the opinion of the Committee that instead of expanding the number of justices in the Supreme Court, the jurisdiction of the Supreme Court be reviewed in order to limit the cases that are filled at the Supreme Court.

(c) Establish a court case sieving system at the Supreme Court

The Committee is aware that due to the varied jurisdiction of the Supreme Court, certain matters that end up at the Supreme Court should not ordinarily be filled with the Supreme Court. These matters include matters of law that have been settled by the Supreme Court, thereby creating case backlog. This is because there is currently no system to sieve out matters that can be handled by the Supreme Court in order to ensure that the matters that are filled in the Supreme Court are matters deserving the attention of the Supreme Court.

The Committee is of the opinion that there is need to introduce a case sieving system at the Supreme Court to ensure that only matters of law and serious matters are referred to the Supreme Court, thereby wedding out matters that are not deserving to be heard by the Supreme Court.

The Committee is aware that a case sieving system is employed in a number of countries, including the United States of America and Denmark, and has been very instrumental in reducing frivolous and unnecessary cases that are filed in courts. The court sieving system ensures that only cases dealing with new and

novel matters are entertained by the Supreme Court, so that the Supreme Court dedicates it's time to serious matters of law.

(c) **Reviewing the pecuniary jurisdiction of the Magistrates courts**

The Committee notes that currently, Courts of record in Uganda are experiencing high instances of case backlog. The high cases of case backlog in the courts of record is attributed mainly on the low pecuniary jurisdiction of Magistrates' Courts which results in the filling of cases before courts of record, thereby creating case backlog in the courts of record.

The Committee is ware that Section 207 of the Magistrates Courts Act grants magistrate court pecuniary jurisdiction over matters of a value not exceeding Fifty million shillings in the case of Chief Magistrates and Twenty Million for Magistrate Grade I.

The stakeholders with whom the Committee interacted with recommended that that there is urgent need to review and expand the pecuniary jurisdiction of Magistrates Courts to ensure that cases which are currently filed at the High Court can be disposed of at the magisterial level, thereby reducing the case backlog in the courts of record.

The Committee is concerned that even if the number of justices of the Supreme Court is increased, those measures will not be successful in dealing with the issue of case backlog in the Supreme Court since the cases arising from the lower court will not be abated.

It is the opinion of the Committee that expanding the jurisdiction of magistrates Courts will therefore ease the work load of the Courts of Record and will release the courts to deal with the most deserving of cases instead of wasting time on matters which can easily be handled by lower courts.

(d) **Appointment of Court Administrators**

The Committee is aware that judicial officers in Uganda exercise both administrative and judicial functions which affect their productivity and efficient exercise of their judicial functions.

For instance, the Chief Justice is the head of the judiciary, sits on the Judiciary Committee, while other justices of the Supreme Court serve as inspectors of court, represent the judiciary on administrative bodies, are appointed by the President to serve on other institutions of Government and courts in other jurisdictions and international bodies and also perform many functions in addition to their judicial work, including human resources management, fiscal administration, case flow management, technology management, information management, jury management, space management, intergovernmental liaison, community relations, research and advisory services, and secretariat services.

The appointment, secondment and assignment of judicial officers to other international bodies and jurisdictions as well as the grant of administrative functions to justices of the Supreme Court and Court of Appeal takes away from those courts, valuable members and denies the court, the efficient and timely exercise of its functions, thereby affecting its productivity and creating case backlog.

The Committee is of the considered opinion that judicial officers, especially in the Courts of record should not be allocated administrative functions or allowed to take up paid positions in other jurisdictions in order to ensure that they dedicate their time to dealing with judicial work.

(e) **Introduction of performance management system**

Section 18 of the Administration of Judiciary Act, 2020 provides for the establishment of a Performance Management System.

The performance management system is intended to track and manage the performance of all judicial officers in a manner that is consistent and measureable to determine if they are productive and are contributing to the

strategic objectives of the judiciary. The performance management system would provide empirical information to inform Government on the optimal number of judicial officers at all levels and would give credence to the proposals made in the Bill.

The Committee notes that the Performance Management System has not been established in the judiciary, making it impossible for the Committee to decide on the optimal number of judicial officers across the entire judiciary, especially those in the Supreme Court. The lack of a Performance Management System makes it impossible to measure the output of judiciary, making all measures to deal with case backlog impossible to measure their effectiveness.

The Committee has also considered the practical and legal implications of the proposal to increase the number of justices of Supreme Court and finds that the proposal is not properly conceptualised. For instance-

(a) the Committee is concerned that increasing the number of justices of the Supreme Court will increase government expenditure. The Committee is aware that whereas Government issued a certificate of financial implications, the certificate does not take into account the additional costs required to make the additional justices effective in executing their mandates.

The Committee is aware that a Justice of the Supreme Court is entitled to certain facilities, including body guards, research officers, house helps and other persons who facilitate the justices to deliver on his or her mandate. These persons are paid from the consolidated fund since they are either staff of the judiciary service or public officers employed through the relevant laws. The costs associated with employing and paying the persons providing services to facilitate the additional justices were not considered yet they are astronomical and will burden the tax payer.
In addition, the committee is also concerned that whereas there is an increment in the justices of the Supreme Court, the other agencies that facilitate the judicial officers, such as state attorneys from the Office of the

DPP and the Attorney General's office who must attend court to prosecute matters before the Supreme Court are not planned for recruitment. This will make Justices of the Supreme Court redundant and ineffective to deal with case backlog since they will lack professionals to prosecute matters before court.

(b) the proposal to increase the Justices of the Supreme Court from 11 to 21 is not an international best practices and is not optimal for a Country like Uganda with a small population and constrained GDP. The Committee is aware that globally, there is coloration between the numbers of justices of the highest courts, the population density of the country and a country's GDP. The table below explains the matter in detail.

COUNTRY	POPULATION	GDP	NO OF SUPREME COURT JUSTICES	RATIO
Uganda	48 Million	$169 Billion	11	1: 4,300,000
Kenya	55 Million	$389 Billion	7	1:7,857,142
Tanzania	66 Million	$67.8 Billion	26[1]	1: 2,500,000
Nigeria	223 Million	$447 Billion	10	1: 22,300,000
Ghana	34 Million	$294 Billion	10	1: 3,400,000
South Africa	60 Million	$405 Billion	11	1:6,000,000
India	1.42 Billion	$3.65 Tn.	34	1:41,000,000
United Kingdom	67 Million	$3.33 Tn.	12	1:5,000,000
Australia	26 Million	$1.35 Tn.	7	1:3,700,000
USA	340 Million	$26.24 Tn.	9	1:37,000,000

The Committee observes that on average, most Commonwealth Countries have an average of 10 justices of the Supreme Court. The table

[1] The Highest Court in Tanzania is the Court of Appeal, hence the high number of judicial officers

also indicates that on average, the ratio of population to the justices is 1:5,000,000 people. Currently, the ratio of Supreme Court Justices to the population stands at 1:4,300,000, well within the global average. The Committee therefore finds that the number of Justices should be left at 11 since that number is an international best practice.

(c) The Committee is also concerned that the justification given by the Ministry of Justice and the Judiciary for expanding the number of justices, being the need to have 3 panels at the Supreme Court, will pose practical and constitutional challenges and may hinder the development of jurisprudence in Uganda.

The Committee notes that the Constitution, in article 132 (1) directs the Supreme Court to be the final Court of Appeal and is indeed the superior court in Uganda in all matters. The Committee is aware that Article 132 (4) of the Constitution directs that decisions of the Supreme Court have a binding effect on all courts in Uganda save that the Supreme Court can depart from its earlier decisions on a matter.

The Committee is concerned that the proposal to have more than one panel at the Supreme Court will result in decisions that may conflict on the same matter since the composition of each panel will be different. This will affect the court users since those conflicting decisions cannot be corrected by any other court owing to the fact that the Supreme Court is the highest court in Uganda, thereby affecting the development jurisprudence.

The Committee is also concerned that it is impractical to have more than one panel at the Supreme Court since article 131 (3) of the Constitution directs that the Chief Justice is to preside over the sitting of the Supreme Court, except in his or her absence, that the sitting is presided over by the most senior judge. The Committee is of the considered opinion that the proposal to have three panels at the Supreme Court needs to be reviewed due to its practical and constitutional ramifications.

(d) The Committee is also aware that in 2015, the then Chief Justice Hon. Justice Bart M. Katureebe instituted a Committee to, among others, identify the extent of the case backlog in the judiciary, identify and document the causes of the backlog, review current efforts to reduce the case backlog and make recommendations to address the existing backlog and stop the growth of a new backlog.

The Committee was composed of Hon. Justice Richard Buteera, Hon. Justice F. Egonda Ntende, Hon. Justice Dr. E Kitimbo Kisaakye, Hon. Justice Geoffrey Kiryabwire, Hon. Justice Mike Chibita , Hon. Justice Stephen Musota, Hon. Justice Dr. Henry Peter Adonyo , H/w. Paul Gadenya, Mr. Kagole Expedito Kivumbi, Mr. Francis Gimara, Mr. Sam Rogers Wairagala and Mr. Andrew Khaukha. The Committee made the following recommendations as far as case backlog is concerned-

(i) Maximise time spent in court: stakeholders recommended that Judges should spend their time more in the court room/chambers handling cases. As such any events which take judges out of court should happen in a specific season to avoid disrupting the ordinary working of court.

(ii) Improve performance of Judicial Officers and officers of court: it was recommended that attendance by Judicial Officers and officers of court must be strictly monitored and work ethic improved. That judiciary should put in place a system of rewards and sanction e.g. Judicial Officers who have not cleared their backlog should not be promoted. A reward might be in the form of a plaque recognising the achievement made to the institution or different individuals involved;

(iii) Staffing and Placement: More judges should be appointed and Judges should be allocated with more

reference to their area of expertise. Judges should not be transferred at short notice to avoid leaving part heard cases.

(iv) Jurisdiction; Expand the jurisdiction of the Magistrates' Courts so that they can handle more cases.

The Committee was not updated on how far the above cited recommendations have been implemented by the Judiciary in order to assess their effectiveness and form a basis for increasing the number of justices of the Supreme Court.

During the consultations, the Committee also undertook a comparative study from other jurisdictions on the issue of case backlog with the intension of getting best practices to inform the Committee recommendations. Many other jurisdictions have implemented measures that have reduced case backlog and increased efficiency. For instance-

In Kenya, a court census was carried out in 2013 and it resulted into the development of a case backlog reduction programme, including-

(i) Setting targets for Magistrates.

(ii) The implementation of a Judiciary Performance Management System, so that the efficiency and workload of each judge/court can be accurately assessed on a rolling basis.

(iii) The establishment of an Office of the Judiciary Ombudsman and a Court Users' Committee, to allow members of the public and other court users to register complaints.

(iv) The use of Alternative Dispute Resolution.

In England and Wales, the methods adopted included-

(i) Judges must sit a minimum number of "sitting days" (currently 210 per year for most criminal judges). Any training or administration they require must be carried out outside of these sitting days.

(ii) Robust case management powers. Judges are granted wide-ranging powers under the Criminal and Civil Procedure Rules to manage their cases. This includes the power to extend or shorten deadlines and dispense with procedural requirements.

(iii) Compulsory Pre-Action Protocols in civil matters aimed at identifying and narrowing the issues and encouraging settling where possible.

(iv) Extensive use of Alternative Dispute Resolution, including mandatory mediation before many types of civil cases can be listed for trial.

(v) Robust case management powers ensure that judges can overrule technical arguments (e.g. objections that a party has made an application under the wrong provision) and can arrange cases so that they are heard most efficiently.

In **India,** the Judiciary in India implemented a number of measures that included:

(a) The introduction of a "Five-plus-zero" initiative, under which cases pending for more than five years were prioritised until a zero dependency rate is achieved. It has been reported that backlog cases were reduced by 30% since the introduction of this policy.

(b) The establishment of fast-track courts to deal with pressing cases (e.g. rape cases) and with minor cases (e.g. bounced cheque claims).

(c) Doubled the number of judges in subordinate court.

In Singapore, the Judiciary implemented the following measure:

(a) The setting of benchmarks and Key Performance Indicators relating to judges and courts. A requirement that 85% of civil cases must be disposed of within 18 months;

(b) Monitoring the "clearance rate" (percentage of cases disposed as against cases filed in a given year). More frequent use of "unless orders" (under which a case will be dismissed unless a party takes a certain step by a given time);

(c) Automatic discontinuance where no step has been taken in the case for more than a year.

(d) The appointment of "Judicial Commissioners" (people drawn from the Bar and academia, appointed to the Bench for a fixed period); and

(e) The allocation of each case to a specific member of the administrative staff, who will handle all matters relating to the cases assigned to them, from the time the cases are commenced to the time the cases are disposed of.

The Committee finds that the above countries implemented administrative and legal measures to deal with case backlog without necessarily increasing the number of justices of their superior courts. The experience of these countries needs to be studied for Uganda to effectively deal with the issue of case backlog.

Recommendations

In light of the above, the Committee recommends as follows-

(a) Clause 1 of the Bill be deleted and the number of justices of the Supreme Court should be left at 11, including the Chief Justice;

(b) Government should consider appointing acting justices under Article 142 of the Constitution;

(c) Government should review the jurisdiction of the Supreme Court to ensure that the Supreme Court only handles matters of law and matters of great public importance;

(d) Government should appoint Justices of the Supreme Court in order to fill the vacant positions in the Supreme Court.

(e) Government should increase the pecuniary jurisdiction of the Magistrates Courts to remedy case backlog in the High Court and to enable Magistrate Courts determine civil disputes of higher values.

(f) **The Judiciary should establish a court case sieving system at the Supreme Court to review cases before they are filed in the Supreme Court;**

(g) **Government should appoint of Court Administrators and relieve the judicial officers from exercising administrative functions;**

(h) **In accordance with the Administration of Judiciary Act, 2020, Government should bar judicial officers from being appointed to positions outside the jurisdiction of Uganda except on international bodies to fill the national quota of personnel vacancies required to be filled by Uganda;**

(i) **The Chief Justice should, in accordance with section 18 of the Administration of Judiciary Act, 2020, establish a Performance Management System;**

(j) **Government should amend the Judicature Act, Cap. 13 to prescribe the duration within which vacancies in the judiciary are to be filled;**

(k) **The Chief Justice should, implement the recommendations of the report of the Case Backlog Reduction Committee, 2017 and further, formulate measures to improve the efficiency and productivity of the Supreme Court in order to improve case management.**

CLAUSE 2: INCREASE THE NUMBER OF JUSTICES OF APPEAL

Clause 2 of the Bill seeks to amend section 9 of the Judicature Act to increase the number of Justice of Appeal from 15 to 55. Clause 2 is reproduced below-

"9. Court of Appeal of Uganda
The Court of Appeal of Uganda shall consist of—
(a) the Deputy Chief Justice; and

(b) fifty five Justices of the Court of Appeal or such higher number of Justices of the Court of Appeal as Parliament may by resolution prescribe."

Section 9 of the Judicature Act currently prescribes a total number of 15 Justices of the Court of Appeal, including the Deputy Chief Justice. Section 9 is reproduced below-

"9. Court of Appeal of Uganda
The Court of Appeal of Uganda shall consist of—
(a) the Deputy Chief Justice; and
(b) fourteen Justices of Appeal."

The amendments to section 9 of the Judicature Act has the effect of-

(a) increasing the number of justices of the Supreme Court, from 15, including the Chief Justice to 56 Justices, including the Deputy Chief Justice; and

(b) changing the mode of prescribing the number of justices of the Court of Appeal from prescribing the number by legislation as is currently the case, to prescribing the number by resolution of Parliament.

The Judiciary justified the amendment on the need to effectively and efficiently deliver justice to the people of Uganda and to deal with case backlog in the Court of Appeal. The Committee was informed by the Judiciary that the intension of increasing the number of justices from 15 to 56 is to operationalize 8 regional courts of Appeal, two of which are planned in Mbarara and Gulu. The Judiciary opined that this will serve the people of Uganda better and cases will be concluded in a timely manner.

The Committee was further informed by the Judiciary that there currently exists a huge case backlog in the Court of Appeal which currently stands at 5,882 cases

and 9,888 pending cases. The table below shows backlog and pending cases before the Court of Appeal.

Financial Year	Registered Cases	Completed Cases	Pending cases	Back Log
FY 19/20	1308	975	7547	5078
FY20/21	1853	1504	7591	4,888
FY 21/22	1506	793	8250	4918
FY 22/23	1636	1099	8198	4837

The Committee has examined the proposal to increase the number of justices of Appeal from 15 to 56 and is of the considered opinion that the number proposed is high.

The Committee is aware that the intention of the Judiciary is to create regional Court of Appeals in the 4 regions of Uganda. The Committee is also aware that the quorum of the Court of Appeal is 3 justices, as required in article 135 (1) or 5 justices as required in article 137 (2) of the Constitution.

The Committee, guided by the quorum of the Court of Appeal/ Constitutional Court and the need to create 4 panels in the traditional regions of Uganda finds that the appropriate number of justices of Appeal should stand at 30.

This number has been arrived at by multiplying the requisite quorum of the Court of Appeal/ Constitutional court (5 justices) by the number of regions of Uganda which currently do not have constitutional court/courts of appeal (3 regions) and adding the current number of justices of the Court of Appeal, (15) to arrive at a total number of 30 justices.

The Committee takes cognizance of the important role played by the Court of Appeal in dispensing justice in Uganda. The Court of Appeal exercises jurisdiction over appeals from decisions of the High Court and is also the Court of first instance in Constitutional petitions. Therefore increasing the number of

justices will address the challenge of case backlog that currently affects the Court of Appeal.

Creating regional Court of Appeals will bring services closer to the people, reduce the time spent in determining appeals and reduce the cost of obtaining justice in Uganda by enabling witnesses and persons with disputes before the Court of Appeal seek and receive the services obtainable from the Court of Appeal at the region.

Whereas the Committee agrees with the proposal to increase the number of justices at the Court of Appeal, the proposal to to change the mode of prescribing the number of justices of the Court of Appeal from prescribing the number through by legislation as the case is, to prescribing the number by resolution of Parliament as proposed in the Bill has constitutional ramification and needs to be rethought.

It should be noted that Articles 130 and 134 of the Constitution prescribe the minimum number of Justices of the Court of Appeal and Supreme Court, being 7 and 6 respectively, and delegated Parliament the duty of enacting legislation to prescribe the maximum number of justices of Court of Appeal and Supreme Court. Parliament fulfilled this mandate under the provisions of section 3 and 9 of the Judicature Act wherein, Parliament prescribed the maximum number of justices of the Court of Appeal and Supreme Court.
The Bill now proposes in clause 1 and 2 to amend sections 3 and 9 to change the mode of determining the number of Justices of the Supreme Court and Court of Appeal from being prescribed by law to being determined by resolution.

It is the considered opinion of the Committee that the proposal to have the number of justices of the Supreme Court and Court of Appeal determined by resolution of Parliament contravenes article 130 and 134 since changes the mode of determining the number of Justices from being prescribed by law, to being prescribed by resolution of Parliament.

The Committee is concerned that the proposal to change the mode of determining the number of justices of Appeal and Supreme Court can be interpreted as a veiled attempt at amending, by infection, the provisions of Article 130 and 134 of the Constitution, action that is prohibited under article 259 of the Constitution.

The Committee notes that Article 259 of the Constitution only allows direct amendments to the constitution and guides that the Constitution shall not be amended except by an Act of Parliament, the sole purpose of which is to amend the Constitution, in accordance with the procedure laid out in chapter eighteen of the Constitution.

The amendments proposed to sections 3 and 9 will amount to an infectious amendment to the Constitution since the provisions will have varied the requirements in article 130 and 134 of the Constitution from enactment of legislation to resolution of Parliament.

The legislation that arises from such an infectious amendment to the Constitution was termed as "colourable legislation" in the landmark decision of the Supreme Court in the case of ***Paul K. Ssemogerere, Zachary Olum and Juliet Rainer Kafire vs. Attorney-General Constitutional Appeal No. 1 of 2002,*** wherein the Supreme Court declared section 5 of the Constitution (Amendment) Act 2000 as unconstitutional since it had the effect of amending Articles 28, 41(1) and 44(c) of the Constitution by implication and infection.

In discussing the effect of amendment of the Constitution by infection, court observed that amendment of a constitutional Article does not depend entirely on an express statement that the Article is being amended. It depends on the effect of the amending legislation on the Article. Oder JSC observed that-

> ***"Amendment of the Constitution is provided for by article 258 of the Constitution, the provisions of which are to the effect that the Constitution can only be amended if an Act of Parliament is passed for that purpose; the Act has the effect of adding to, varying or repealing any provision of the***

Constitution; and the Act has been passed in accordance with the provisions of Chapter Eighteen of the Constitution. To me, it follows that if an Act of Parliament has the effect of adding to, varying or repealing any provisions of the Constitution, then the Act must be said to have amended the affected article of the Constitution"

Oder JSC defined opined that "colourable legislation" occurs where a legislature lacking legislative power or subject to a constitutional prohibition may frame its legislation so as to make it appear to be within the legislative power or to be free from the constitutional prohibition. Such a law is colourable legislation, meaning thereby that while pretending to be a law in the exercise of undoubted power, it is, in fact, a law on a prohibited field"

Oder JSC found that "in the instant case, Act 13/2000, in my view, was a colourable legislation, by which Parliament sought to amend articles 28, 41, 44(c), 128 and 137 (1) and (3) of the Constitution without saying so. It did indirectly what it could not do directly, without complying with the Constitutional procedural requirements."

The Minister of Justice conceded to the findings of the Committee and recommended for the deletion of the offending words.

Recommendations

Clause 2 of the Bill stands part of the Bill albeit with amendment to paragraph (b) to substitute for 55 justices for 29 justices of the Court of Appeal/Constitutional Court.

The Committee also recommends that in order to enhance the effectiveness of the Justices of the Court of Appeal, Government should urgently recruit additional State Attorneysin the office of the DPP and the Attorney General.

6.0. CONCLUSION

Rt. Hon. Speaker and Honourable Members, the Committee recommends that the Judicature (Amendment) Bill, 2023 be passed into law subject to the attached proposed amendments.

I beg to report.

AMENDMENTS TO THE JUDICATURE (AMENDMENT) BILL, 2023

CLAUSE 1: AMENDMENT OF THE JUDICATURE ACT, CAP. 13

Delete clause 1

Justification

- *Increasing the number of justices of the Supreme Court from 11 to 21 will not solve case backlog in the Supreme Court since case backlog is caused not, by lack of justices of the Supreme Court, but by other matters including inefficiency, poor case management and the Jurisdiction of the Supreme Court which allows every matter to be referred to the Supreme Court.*
- *Increasing the justices of Supreme Court will result in a bloated bench, deter easy and efficient decision making and will increase the burden on the tax payers;*
- *Reviewing the jurisdiction of the Supreme Court, High Court and Magistrate Courts will result in a reduction in case backlog in the entire Judiciary and reap more benefits than increasing the number of justices of the Supreme Court.*

CLAUSE 2: SUBSTITUTION OF SECTION 9 OF PRINCIPAL ACT

For clause 2, there is substituted the following-

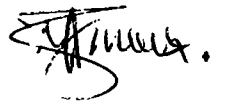
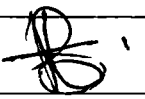
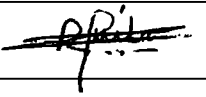
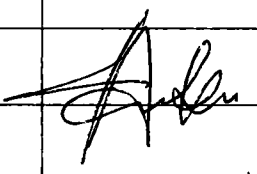
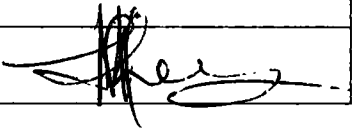
"2. Substitution of section 9 of principal Act
The principal Act is amended by substituting for section 9 the following—

"9. Court of Appeal of Uganda
The Court of Appeal of Uganda shall consist of—
(a) the Deputy Chief Justice; and
(b) twenty nine Justices of the Court of Appeal."

Justification
In light of the need to create a panel of 5 justices in each of the regions of Uganda which currently do not have permanent Courts of Appeal/ Constitutional Courts, to increase the

number of justices of court of Appeal / Constitutional Court from 15, including the Deputy Chief Justice to 30 Justices, including the Deputy Chief Justice.

SIGNATURE SHEET FOR THE REPORT OF THE COMMITTEE OF LEGAL AND PARLIAMENTARY AFFAIRS ON THE JUDICATURE (AMENDMENT) BILL,2023

NO.	NAMES	CONSTITUENCY	SIGNATURE
1	Hon. Rwakoojo Robina Gureme	Gomba West County	
2	Hon. Mutembuli Yusuf	Bunyole East	
3	Hon. Okiror Bosco	Usuk County	
4	Hon. Nkwasiibwe Zinkuratire Henry	Ruhaama County	
5	Hon. Odoi Benard	Youth Eastern	
6	Hon. Odoi Oywelowo Fox	West Budma North East	
7	Hon. Oseku Richard Oriebo	Kibale County	
8	Hon. Baka Stephen Mugabi	Bukooli County North	
9	Hon. Byarugaba Alex Bakunda	Isingiro South	
10	Hon. Kamusiime Caroline	DWR-Rukiga	
11	Hon. Okia Joanne Aniku	DWR Madi Okollo	
12	Hon. Remegio Achia	Pian	
13	Hon. Achayo Lodou	Ngora County	
14	Hon. Zijan David Livingstone	Butembe County	
15	Hon. Teira John	Bugabula North	

16	Hon. Silwany Solomon	Bukhooli Central	
17	Hon. Musigunzi Yona	Ntungamo Municipality	
18	Hon. Werikhe Christopher	Bubulo West	
19	Hon. Malende Shamim	DWR Kampala	
20	Hon. Lubega Medard Ssegona	Busiro East	
21	Hon Ssekitoleko Robert	Bamunanika County	
22	Hon. Ssemujju Ibrahim	Kira Municipality	
23	Hon. Adeke Ann Ebaju	DWR Soroti	
24	Hon. James Mugira	UPDF	
25	Hon. Asuman Basalirwa	Bugiri Municipality	
26	Hon. Alum Santa Sandra Ogwang	DWR Oyam	
27	Hon. Abdu Katuntu	Bugweri county	
28	Hon. Niwagaba Wilfred	Ndorwa County	