



SCHOOL OF LAW

**EXAMINING THE ROLE OF THE JUDICIAL SERVICE
COMMISSION IN COMBATING CORRUPTION IN
THE JUDICIARY IN UGANDA**

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December 2025

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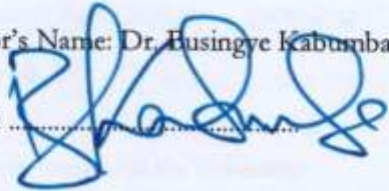
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DEDICATION

To our daughter Hannah aka Hannie Bear. Your joy and curiosity inspire me every day. This thesis is dedicated to you, with all my love.

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ACCU	Anti-Corruption Coalition Uganda
AU	African Union
CEPIL	Centre for Public Interest Law
CSO	Civil Society Organisation
DPP	Director of Public Prosecutions
FAO	Food and Agriculture Organisation
ICCPR	International Covenant on Civil and Political Rights
IG	Inspectorate of Government
IGG	Inspector General of Government
JLOS	Justice, Law and Order Sector
JSC	Judicial Service Commission
NACS	National Anti-Corruption Strategy
NGO	Non-Governmental Organisation
NRM	National Resistance Movement
TI	Transparency International
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime

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Local Governments Act, Cap 138

United States of America

U.S. Constitution, 1787
Civil Rights Act, 1964
Voting Rights Act, 1965
Freedom of Information Act, 1966
Foreign Corrupt Practices Act, 1977 (FCPA)
Sarbanes–Oxley Act, 2002
USA PATRIOT Act, 2001
Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010

United Kingdom

Magna Carta, 1215 (foundational constitutional charter)
Bill of Rights, 1689
Human Rights Act, 1998
Bribery Act, 2010
Freedom of Information Act, 2000
Constitutional Reform Act, 2005 (created UK Supreme Court & redefined Lord Chancellor role)
Data Protection Act, 2018 (aligned with GDPR)

India

Constitution of India, 1950
Prevention of Corruption Act, 1988
Right to Information Act, 2005

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South Africa

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Kenya

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The Burgh House Principles on the Independence of the International Judiciary, 2004

Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government, 2004

Magna Carta of Judges (Consultative Council of European Judges), 2010

United Nations Convention Against Corruption (UNCAC), 2003

ABSTRACT

This dissertation examines the role of Uganda's Judicial Service Commission (JSC) in combating judicial corruption, a pervasive issue that undermines the rule of law and public trust in the judiciary among other things. Despite being endowed by the 1995 Constitution to ensure integrity within the judiciary, the JSC's effectiveness remains deeply contested. The research employed a mixed-methods approach, combining a doctrinal analysis of legal frameworks with qualitative insights from key informant interviews thereby providing a multi-faceted perspective on the Commission's operations. The analysis reveals that the JSC has established a two-pronged strategy against corruption. Its preventive mechanisms include public education campaigns, sensitisation workshops and a rigorous vetting process for recruiting judicial officers while reactive measures involve a formal complaints system and disciplinary proceedings that can lead to different sanctions including dismissal.

However, the study identifies critical challenges that cripple the JSC's efficacy. Paramount issues include the enduring executive influence over the Commission reflected in the appointment process of its members and the President's role in judicial appointments, operational weaknesses such as the part-time status of most commissioners, severe underfunding and reliance on manual systems for handling complaints. This thesis argues that the fight against judicial corruption requires more than a legal mandate; it demands genuine institutional autonomy, enhanced operational capacity and a transparent, consistent application of disciplinary measures across all levels of the judiciary. This research contributes to the discourse on judicial governance by highlighting the complex realities that constrain constitutional bodies in transitional democracies and offers pragmatic recommendations for strengthening judicial accountability in Uganda.

Keywords: Judicial Service Commission, Judicial Corruption, Uganda, Anti-Corruption, Rule of Law, Accountability.

CHAPTER ONE

INTRODUCTION

- 1.1 Introduction
- 1.2 Background
- 1.3 Statement of the Problem
- 1.4 Research Objective
- 1.5 Research Questions
- 1.6 Significance of the Research
- 1.7 Scope of the Study
- 1.8 Theoretical Framework
- 1.9 Methodology
- 1.10 Literature Review
- 1.11 Ethical Considerations
- 1.12 Limitations
- 1.13 Chapter Synopsis

1.1 Introduction

In recent years, corruption has gained significant attention. In both developed and developing countries, governments have collapsed, prominent politicians have lost their positions, and entire political classes have been replaced. Corruption is widely recognised as the misuse of public office or entrusted authority for personal or third-party gain. According to the world bank¹, Corruption occurs when a position of trust is exploited to gain private benefits beyond the position holder's entitlement. Attempts to influence the position holder, through bribes or exchanging favors, to receive special treatment not available to others is also a form of corruption, even if the gain is not explicitly illegal. The corruption process can be facilitated by both the absence of rules and the presence of cumbersome or excessive rules.

Judicial corruption is a widespread issue that affects countries across the globe and is not limited to any particular nation or region. As a form of corruption, Judicial corruption has been defined as including all forms of inappropriate influence that may damage the impartiality of justice, and may involve any actor within the justice system, including but not limited to judicial officers,

¹ The World Bank 'Helping Countries Combat Corruption: The Role of the World Bank' (1997) *Washington, D.C.*

lawyers, administrative court staff and litigants.² Uganda is one such country grappling with this problem where the judiciary is constantly accused of being one of the most corrupt institutions in the country.

1.2 Background

The 1995 Constitution established Uganda as a republic with an executive, legislative, and judiciary branch. The judiciary, established under chapter 8 of the constitution³ is charged with the responsibility of adjudicating civil and criminal disputes and interpretation of the different laws among other roles. In the exercise of its judicial power, the courts are independent that is to say, not under the control or direction of any person or authority.⁴ According to Kanyeihamba⁵, judicial independence refers to the concept that the courts and judges can operate without bias or influence from any individual or authority. It should not be confused with the limitation of jurisdiction.

However, judicial independence does not mean that the judiciary is above the law or immune from accountability. In a democratic system, the judiciary is ultimately accountable to the people of Uganda from whom it derives its powers. Judicial accountability is vital when some judicial officers undermine independence through corruption or intentional case delays. Many judges are corrupt, while others, out of laziness, take years to deliver judgments, delaying justice for those who trust the judiciary. This has led to public disdain for the institution and certain judicial officers⁶.

The role and importance of the judiciary in a country's governance structure cannot be overstated, regardless of the type of government in place whether it is a democracy, autocracy, military regime, or monarchy. The researcher concurs with Aguda⁷ that the judiciary holds a pre-eminent role in any democracy, its strength measured by its ability to uphold justice above other government branches. The judiciary's authority stems from the Constitution. The Citizen's handbook emphasises the Judiciary's role in upholding the rule of law, ensuring equality and

² S Gloppen 'Courts, Corruption and Judicial Independence (2013) Søreide, Tina, & Williams, Aled. (Eds.) 68-75 *Corruption, Grabbing and Development: Real World Challenges. Edward Elgar Publishing (A chapter in an edited book).*

³ The Constitution of the Republic of Uganda 1995 (As Amended) Article 126(2).

⁴ Constitution (n 3 above) Article 128.

⁵ GW Kanyeihamba Paper presented at the 5th Annual Judges Conferences at the Botanical Beach Hotel Entebbe 2001.

⁶ A Ssensikombi 'The Independence of the Judiciary: An Assessment of the Reality of the Constitutional Doctrine in Uganda' (2017) Retrieved at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2984300.

⁷ TA Aguda 'The Judiciary in Africa' (1985) Vol 9, No. 1. *The Fletcher School of Law and Diplomacy.*

protection of human rights in Uganda.⁸ Given its critical role in national development, judges wielding life-and-death powers must maintain the highest integrity.

Judges who engage in corruption are incapable of upholding the law or delivering fair and unbiased justice to all individuals without being influenced by personal interests. Furthermore, if the judiciary is persistently undermined by other branches of government or the public through widespread accusations, it will lack the confidence to administer justice. A judiciary that is perceived as tainted by corruption, the abuse of power, or incompetence is unlikely to carry out its responsibilities with enthusiasm or effectiveness.

Accusing the judiciary of corruption as the case is in Uganda is a very serious allegation. As mentioned previously, this may be more a matter of public perception than reality. However, the saying that "there is no smoke without fire" suggests that where there are persistent accusations of corruption, there is likely at least some truth to them. Corruption undermines society's moral foundation and violates the social and economic rights of the poor and vulnerable. Resources stolen by a few cannot benefit the desperate majority.

The Chief Justice of Uganda has acknowledged that the ongoing issue of corruption, whether real or perceived, continues to undermine public confidence in the country's justice system. Despite efforts to combat judicial corruption, it remains a prevalent problem. The percentage of Ugandans who perceive that most or all judicial officers are corrupt increased by 27% between 2012 and 2024.⁹ This figure is deeply concerning, especially given that the Judicial Service Commission is the very body entrusted with the responsibility of fighting corruption within the courts. The persistence of such high levels of corruption casts serious doubts on the effectiveness of the JSC's anti-corruption efforts and its ability to uphold the integrity and credibility of the judicial sector in the eyes of the Ugandan public.

The Commission was established to provide oversight over the judiciary ensuring that the judiciary is accountable to the people from whom judicial power derives. The Commission's role in this regard include ensuring accountability by receiving and processing complaints, recruitment of competent and morally upright judicial officers and rendering advice to the government on how the administration of justice can be improved among others¹⁰. With 386

⁸ Judicial Service Commission 'A Citizen's Handbook on Law and Administration of Justice in Uganda (2020) Fourth Edition 4 Available at https://www.jsc.go.ug/sites/default/files/Citizens%27_Handbook_English_Version.pdf.

⁹ Afro Barometer 'Ugandans dissatisfied with government efforts against corruption but fear retaliation if they speak out' (2025) 2 Accessed at <https://www.afrobarometer.org/wp-content/uploads/2025/02/AD942-Ugandans-dissatisfied-with-government-anti-corruption-efforts-Afrobarometer-4feb25.pdf>.

¹⁰ Constitution (n 3 above) Article 147.

judicial officers and 1312 non-judicial officers serving a population of 45.9 million¹¹, the judge to population ratio stands at 1:100,000 indicating a challenge in effective service delivery. Further, the Commission operates with a staff complement of 102 out of an approved 196¹² further straining service delivery.

1.3 Statement of the Problem

Allegations of corruption among judicial officers and staff in Uganda's Judiciary are widespread, undermining the integrity of the justice system. Many court officials are accused of being corrupt, inefficient, and intolerant of criticism, which hampers justice administration.¹³ The Afro barometer Report indicates that 56% of the population believes most judges and magistrates are corrupt, reflecting a troubling increase since 2017.¹⁴ Additionally, 72% of Ugandans are dissatisfied with the government's efforts to combat corruption.¹⁵ The Inspectorate of Government's reports show that the Judiciary was the 11th most complained about institution in early 2023 and ranked 10th later that year¹⁶. If this trend continues, there is a risk of lawlessness as the public may resort to mob justice when denied proper legal remedies.¹⁷

The JSC's efforts to combat corruption in the judiciary of Uganda is grounded in the country's robust legal and institutional framework. Established as an independent institution under Article 146 of the Constitution, the JSC is mandated by Article 147 of the Constitution to provide broad oversight functions in relation to services delivered to the people judiciary. Its core functions which include appointment, discipline and removal of judicial officers inherently include addressing corruption as a form of misconduct. However, there exists gaps in the mechanism employed by the Commission which shortcoming undermines the JSC's commitment to foster an accountable and effective judicial service. Furthermore, currently, there are four agencies responsible for evaluating the integrity of judicial officers, including the Judicial Integrity Committee, the Judiciary Council, the Inspectorate of Courts, and the JSC, leading to resource erosion and service duplication.

¹¹ According to the Uganda Bureau of Statistics available at <https://www.ubos.org/>.

¹² Judicial Service Commission Annual Performance Report FY 2023/2024, 12. Accessed at https://www.jsc.go.ug/sites/default/files/Annual_Report_FY_2023_2024.pdf.

¹³ J Tumwesigye 'Tackling the Problem of Corruption in the Judiciary' (2004) A paper presented on 11th May 2004 at the Seventh Biennial Conference of the International Women Judges in Entebbe, Uganda, on a panel entitled "Corruption and Its Cures.

¹⁴ Afro Barometer 'Access to justice? As public trust in courts declines, many Ugandans have their doubts' (2024). Dispatch No. 821

¹⁵ Afro Barometer 'Ugandans dissatisfied with government efforts against corruption but fear retaliation if they speak out' (2025) Dispatch No. 942, 2.

¹⁶ Inspectorate of Government 'Increasing Citizen's Trust in Public Office' (2023) Bi Annual Report to Parliament 57.

¹⁷ J Atukwasa, BC Basheka & PW Gadenya 'The effect of corruption on administration of justice in Uganda: Lessons from two chief magistrates' courts in Kampala and Mukono districts (2012) African Journal of Public Affairs volume 5 Number 3 3.

1.4 Research objectives

1.4.1 General objective

The aim of this research is to examine the role of the Judicial Service Commission (JSC) in combating corruption within the judiciary in Uganda.

1.4.2 Specific objectives

- i. To evaluate the legal framework governing the JSC and its anti-corruption mandate;
- ii. To analyse the mechanisms employed by the JSC in identifying and addressing corruption within the judiciary;
- iii. To examine the role of the JSC in combating corruption in the judiciary in Uganda and;
- iv. To analyse how the Judicial Service Commission in selected jurisdictions has dealt with corruption in their judiciaries.

1.5 Research Questions

- i. What is the legal framework governing the Judicial Service Commission and its anti-corruption mandate in Uganda?;
- ii. What mechanisms does the Judicial Service Commission employ to identify and address corruption within the Ugandan judiciary?;
- iii. How effective is the JSC in combating corruption within the Ugandan judiciary? and
- iv. How has the Judicial Service Commissions (or similar judicial oversight bodies) in other jurisdictions dealt with the issue of corruption within their respective judiciaries and what lessons can be drawn for the Ugandan context?

1.6 Significance of the Study

The existence of corrupt judicial officers severely undermines public trust in the judiciary's ability to make impartial and independent decisions based solely on the law and evidence, without undue influence from third parties. In a thriving democracy, it is of paramount importance that the public has confidence in the moral authority and integrity of the judicial system. The courts must serve as a sanctuary where every citizen, regardless of their social or economic status, can seek protection for their legal rights when they are in conflict with the interests of the wealthy and powerful in society. Therefore, understanding how the Judicial Service Commission is addressing corruption and evaluating the effectiveness of its efforts, is crucial to ensuring the strength and legitimacy of the judiciary - an institution that must remain above reproach in order to fulfill its vital role in a democratic society.

1.7 Scope of the Study

The study covered the legal framework governing the JSC's anti-corruption mandate in Uganda. It also included an analysis of the mechanisms employed by the JSC in identifying and addressing corruption within the judiciary. Additionally, the study assessed how Judicial Service Commissions of selected jurisdictions have addressed corruption within their judiciaries and made recommendations for improving the work of the JSC in Uganda.

1.8 Theoretical Framework

There are a number of theories that have been put across by scholars which explains why corruption is persistent and these include the principle agent theory, the collective action theory and the institutional theory among others. For my research on the role of the JSC in combating corruption in the judiciary, I will specifically utilize institutional theory. While other theories, such as principal-agent theory and collective action theory provide insights into corruption, institutional theory is particularly relevant as it focuses on the impact of formal structures, rules, and norms within organizations.

1.8.1 Institutional theory

Institutional theory, or institutionalism, explains public sector corruption through the lens of institutional characteristics like established rule of law, clear anti-corruption norms, and independent anti-corruption bodies with enforcement authority. It examines how structures, schemes, rules, and routines become authoritative guidelines for social behavior."¹⁸. Institutional theory highlights the social context of corruption, offering a framework to understand how it becomes entrenched in organisations, institutions, and society despite anti-corruption measures. It considers corruption as influenced by the character, design, and transparency of political systems and institutions, while recognising the complex interplay between corruption, institutions, political systems, culture, and gender¹⁹. It can be used to understand how the institutional framework of the JSC and the broader judiciary in Uganda shapes the fight against corruption. It focuses on the formal and informal rules, norms, and practices that guide behavior within the judiciary. By examining the institutional context, the study can assess how these factors either facilitate or hinder the JSC's efforts to combat corruption effectively.

1.9 Research Methodology

¹⁸ WR Scott 'Institutional theory: Contributing to a theoretical research program' (2004) In J. T. Scholz & B. H. J. Schneider (Eds.), *Redefining Public Sector Unionism: UNISON and the Future of Trade Unions* (pp. 21-45).

¹⁹ B Debski 'Corruption in Europe: A Comparative Study of Public Officials' Perceptions in 28 European Countries' (2018) *Routledge*.

This section outlines the methods used in the study, including the research design, study area, population, sample size and selection, sampling techniques and procedures, data collection methods, instruments and procedures, questionnaire pre-testing, data analysis, and variable measurement.

1.9.1 Research Design

The study employed a combination of doctrinal research and qualitative data collection although it was mainly doctrinal in nature. This approach involved analyzing legal texts, statutes and case law while also gathering insights from key informants through key informant interviews. By integrating legal analysis which included comparative analysis with select jurisdictions together with direct perspectives from informants, the researcher provided a deeper and more comprehensive understanding of the effectiveness of the JSC in combating corruption in the judiciary

1.9.2 Study population

A study population refers to the entire group of subjects or the overall environment that the researcher is interested in investigating.²⁰ Given that the study population is quite large, a sample size was chosen from this population to represent the perspectives of the whole group. The study population comprised of members of the Judicial Service Commission both current and past, Permanent Secretary of the Judicial Service Commission, staff of the Inspectorate of Government, members of the Civil Society organizations, judicial officers and the academia.

1.9.3 Sample size

Sample size refers to the number of participants selected for a study to represent a larger population. In this research, a sample size of thirteen (13) key informants was chosen to provide focused and insightful perspectives on the topic under investigation. These informants were selected based on their expertise in the relevant field of investigation, ensuring that their insights were both valuable and pertinent. Additionally, their willingness to participate was a critical factor in the selection process allowing the researcher to gather meaningful contributions. This approach allowed the researcher to capture the views of knowledgeable individuals while maintaining a manageable sample size for thorough analysis.

²⁰ WK Oso & D Onen 'A General Guide to Writing Research Proposals and Report' Makerere University (2008) 42.

Table A: Selection of study participants and sample size

Members of the Commission	2
Staff of the Commission	3
Judicial Officer	1
Staff from the Inspectorate of Government	1
Civil Society Organizations	3
Justice, Law and Order Sector Secretariat	1
Legal Practitioner	1
Uganda Law Society Secretariat	1

1.9.4 Data collection

Data collection involved gathering insights from the selected sample of thirteen (13) key informants. The researcher utilised semi-structured interviews as the primary method of data collection allowing for in-depth exploration of the informant's perspectives. This approach further facilitated a conversational atmosphere encouraging participants to share their thoughts on the topic under investigation. The researcher was able to gather rich qualitative data that provided a comprehensive understanding on the effectiveness of the JSC in combating corruption in the judiciary. Additionally, the researcher collected data through desk review of relevant documents such as legislations, reports, publications and case laws among others.

1.9.5 Data Collection Instruments

The research collected primary data through key informant interviews. Key informant interview guides were developed by the researcher and reviewed by the supervisor for content validity before they were administered to respondent. The data tool collected information on the participants demographic characteristics, general knowledge on the JSC, assessment of the effectiveness of the JSC in combating judicial corruption and recommendations for improvement among others. During the key informant interviews, the researcher recorded responses from participants on voice recorder which were later transcribed into scripts.

1.9.6 Data Management, Analysis and Transcription

In most cases, the researcher recorded respondents' answers during interviews sometimes taking notes and other times using audio recordings. Once the interviews were completed and data collected, the recordings were transcribed in English. The researcher thoroughly reviewed these transcriptions to gain a deeper understanding of the respondents' views and perceptions relevant to the study. The transcriptions were then imported into ATLAS TI for qualitative analysis. Each script underwent content analysis using an open-coding technique to identify themes and sub-themes within the text.

The researcher set simple well defined questions which were refined as field work was ongoing. Responses obtained from respondents not only informed the best way to ask certain questions but also which respondents to interview next. During interviews, notes were taken as well as interview recorded which was transcribed verbatim at the end of each day.

1.9.7 Researcher positionality

The researcher, a legal officer at the JSC, focuses on evaluating complaints, providing legal opinions, prosecuting errant judicial officers and implementing the JSC's anti-corruption strategy. This role has motivated the researcher to examine the shortcomings in the mechanisms for combating corruption as well as the challenges outside the legal framework that hinder their effectiveness. Holding a position within the JSC has facilitated the identification of potential respondents for the study and expanded the researcher's understanding of the topic enhancing the ethical considerations involved. However, this positionality also presented challenges including the risk of personal biases influencing the research findings. To mitigate this, the researcher prioritized obtaining informed consent from respondents ensuring that participation was voluntary and opinions were freely expressed. This approach allowed for an unbiased collection of data while respecting the integrity of the research process.

1.9.8 Ethical considerations

According to the Ethical Guidelines of the Social Research Association,²¹ key ethical considerations in research include avoiding harm to participants, obtaining informed consent, respecting privacy and protecting participants' interests. Confidentiality was prioritized to ensure that participants could respond without concerns and the researcher took great care to protect against any potential harm by maintaining the anonymity of respondents. Participants' identities have been kept confidential except for those who consented to be named.

²¹ As above 24.

To ensure informed consent, the researcher provided clear and meaningful explanations of the research's scope, its purpose including who is conducting and funding it and emphasized that it is for academic purposes. Participation was entirely voluntary with all participants agreeing to participate before any interviews or related activities commenced. The data collected and the study findings will be used solely for academic purposes or publication and participants will have the opportunity to receive the findings during the dissemination process.

1.9.9 Limitations

One significant limitation of my doctrinal research conducted over two semesters is the restricted time frame which hindered my ability to delve into complex legal principles. While I aimed to analyse a wide range of statutes and case law, the limited duration resulted into a more superficial examination than I intended. Additionally, reliance on mostly online data bases may have constraint the diversity of perspectives included in my analysis. Finally, the generalisability of the findings to other national contexts may also be a concern, as the institutional frameworks and anti-corruption dynamics may differ across countries.

1.10 Literature Review

The Judicial Service Commission was established as an independent institution under Article 146 of the Constitution. It was established to actualise the independence of the judiciary as an arm of government. The Commission plays a crucial role in ensuring that the Ugandan judiciary is held accountability. By overseeing the recruitment of judicial officers, exercising disciplinary control over judicial officers and staff of the judiciary, the Commission helps maintain a high standard of professionalism and ethical conduct within the judiciary.

This section provides a review of literature on the role of the Judicial Service Commission in combating corruption in the Judiciary. The literature is presented in relation to the objectives that guided this study. This review begins by defining judicial corruption and contextualizing it within global frameworks before delving into the JCS's mandate in executing its responsibilities. The review also seeks to identify gaps in the current research and highlight areas for future inquiry ultimately underscoring the significance of a vibrant institution that offers oversight mandate over any judiciary world over.

1.10.1 Concept of Corruption in the Judiciary

Corruption is a significant impediment that undermines Uganda's development prospects, both in the immediate and long-term future²². It is a major challenge that hinders the country's ability to make progress and achieve its developmental goals. According to the IG report of 2021²³, Uganda loses around 9.4 trillion Shillings annually due to corruption. This loss is tied to various corrupt practices, such as bribery, mismanagement in procurement, inflated payrolls, tax evasion, and the theft of government drugs. Furthermore, a national survey conducted by the Uganda Bureau of Statistics in 2021 showed that Ugandans perceive bribery and embezzlement as the most prevalent forms of corruption in the public sector,²⁴ which they attribute to greed.

Corruption in the judiciary is only one form of a broader phenomenon of corruption and it is defined as the inappropriate influence on the impartiality of the judicial process by any actor within the system²⁵. Judicial corruption is a particularly insidious problem. When the judiciary, which is meant to uphold the rule of law, is itself tainted by corruption, anti-corruption efforts are deprived of crucial measures needed to increase the risks and decrease the incentives for corrupt acts as well as to punish such behavior²⁶. The resulting distortions, including the impunity afforded to corrupt individuals, undermine the rule of law, breed public skepticism about the integrity of the government, and thus impair the essential capacities required for sound economic, social and political development.

Indeed, corruption's negative effect on society has reached near consensus as was noted by Karin and Lars²⁷. Corruption undermines democratic decisions, slows economic growth, hinders resource and wealth redistribution, particularly harming the less affluent, and broadly erodes societal trust.²⁸ Judicial corruption challenges the notion that corruption is victimless as it disproportionately affects claimants or defendants who lack the financial means or moral desire to improperly influence court proceedings. Therefore, it is crucial to tackle judicial corruption because it is more apparent and significantly impacts societal integrity. Addressing this issue is

²² Inspectorate of Government 'The cost of Corruption In Uganda' (2021) 5 Accessed at https://www.igg.go.ug/media/files/publications/Cost_of_Corruption_Popular_Version.pdf.

²³ As above.

²⁴ Ethics and Integrity 'Prevalence of Corruption in Uganda 2022/2023 Report (2023) 1 Available at <https://www.dei.go.ug/prevalencereport.pdf>.

²⁵ Transparency International 'Global Corruption Report 2007. Corruption in Judicial Systems' (2007) xxi At https://images.transparencycdn.org/images/2007_GCR_EN.pdf.

²⁶ United States Agency for International Development (USAID) Office of Democracy and Governance 'Reducing Corruption in the Judiciary' (2009) 17.

²⁷ KH Pedersen and L Johannsen 'When corruption hits the Judiciary. A global perspective on access to justice and corruption' (2023) 4 *Oñati Socio-Legal Series* Volume 13 Issue 4 (2023) 1258–1280 Access To Justice From A Multi-Disciplinary And Socio-Legal Perspective: Barriers And Facilitators.

²⁸ Pedersen and Johannsen (n 27 above).

essential for societies aiming to achieve the ideals articulated by Fukuyama²⁹ and Mungiu-Pippidi³⁰ of becoming prosperous inclusive trusting and honest akin to “getting to Denmark”.

The Ugandan government has taken significant measures to address corruption, including enacting various laws and establishing several institutions to combat the problem. The legal framework consists of the 1995 Constitution, the Inspectorate of Government Act, the Leadership Code Act, the Public Procurement and Disposal of Public Assets Act, the National Audit Act, the Anti-Corruption Act, the Whistleblowers Protection Act, the Public Finance Management Act, and numerous other statutes. Additionally, the government has set up institutions such as the Inspectorate of Government, the Office of the Director of Public Prosecutions, the Office of the Auditor General, the Criminal Investigations Directorate, the Public Procurement and Disposal of Public Assets Authority, the Uganda Revenue Authority, the Financial Intelligence Authority, the State House Anti-Corruption Unit and the Directorate for Ethics and Integrity, which coordinates the efforts of these anti-corruption agencies.³¹

Despite the above, corruption continues to prevail within the country. According to the Afro Barometer Report, a significant portion of the population (56%) believes that most or all judges and magistrates are corrupt, indicating a troubling increase of 13 percentage points since 2017.³² Furthermore, nearly 72% of Ugandans express dissatisfaction with the government's performance in tackling corruption,³³ reflecting widespread frustration with the effectiveness of anti-corruption initiatives. This finding buttresses the Transparency International finding that the police and the judiciary are the two most corrupt institutions in Uganda.

According to Gray and Kaufmann³⁴, corruption can be broadly defined as the use of public office for private gain, including activities such as bribery, extortion, fraud, embezzlement and appropriation of public assets for private use. Judicial corruption extends beyond judges accepting bribes, encompassing all forms of improper influence that compromise justice's impartiality. It involves various actors within the justice system, including lawyers and administrative support staff³⁵. Widespread corruption especially in the judiciary has been of great concern and has led to academic investigations on the topic. However, there exists significant

²⁹ F Fukuyama ‘The origins of political order: From pre human times to the French Revolution’ (2011) *New York: Farrar, Straus and Giroux*.

³⁰ A Mungiu-Pippidi ‘Becoming Denmark: Historical designs of corruption control’ (2013) *Social Research: An International Quarterly* 80(4) 1259–1286.

³¹ Directorate of Ethics and Integrity ‘Prevalence of Corruption in Uganda’ 2022/2023 Report (2023) 1 Accessed at <https://www.dei.go.ug/prevalencereport.pdf>.

³² Afro Barometer ‘Access to justice? As public trust in courts declines, many Ugandans have their doubts’ (2024). Dispatch No. 821.

³³ Afro Barometer ‘Ugandans dissatisfied with government efforts against corruption but fear retaliation if they speak out’ (2025) Dispatch No. 942, 2.

³⁴ CW Gray & D Kaufmann ‘Corruption and development. Finance & Development’ (1998) 35(1) 7-10.

³⁵ Gloppen (n 2 above) 68-75

gaps regarding the specific mechanisms and strategies the JSC can employ to effectively combat corruption. This study aims to fill that gap by assessing the JSC's practices and challenges in overseeing the entire judicial system.

Mubangizi in 'A human rights based approach to fighting corruption in Uganda and South Africa: Shared perspectives and comparative lessons'³⁶, provides a comparative analysis of anti-corruption efforts in Uganda and South Africa, two transitional societies with similar histories of apartheid, oppression, and colonial rule. The author examines the constitutional and legislative frameworks for combating corruption in each country, highlighting their shared perspectives, approaches, and good practices. Lastly, the author argues that cross-national comparative research can offer deeper insights into how different political, cultural, and socio-economic contexts shape anti-corruption measures, and calls for a human rights-based approach that empowers citizens to demand transparency and accountability from their elected representatives and public officials. However, the author does not make specific reference to corruption in the judiciary in either jurisdictions neither does he make proposals for the Judicial Service Commission which is a key institution in fighting corruption by providing oversight mandate over the judiciary in both jurisdictions.

Further, in the book "*Corruption, Grabbing and Development: Real World Challenges*", Gloppen in the chapter 'Courts, Corruption and Judicial Independence' explored the different facets of corruption in the judicial sector and how this undermines the real and perceived independence of the judiciary and threatens the very core of the judicial function,³⁷ explored how anti-corruption measures may jeopardize the independence of the judiciary and proposed the common approaches to discuss the corruption. Gloppen proposed various anti-corruption measures such as improving material conditions for judicial personnel, normative change in attitudes towards bribery and establishing disciplinary and accountability systems.³⁸ However, the literature does not fully address the challenges faced by the Judicial Service Commission in implementing these proposals.

Additionally, Gloppen attempted to investigate the causes of petty corruption (taking bribes for example) and undue political influence as another form of corruption which mainly emanates from judicial appointments by the executive and undue influence via the internal judicial hierarchy.³⁹ He proposed improvement in material conditions for judicial personnel and administrative staff, normative change in the attitude towards bribes especially within the legal

³⁶ JC Mubangizi 'A Human Rights based approach to fighting corruption in Uganda and South Africa. Shared perspectives and Comparative Lessons' (20210) Vol 24 *Law, Democracy & Development*.

³⁷ Gloppen (n 2 above) 69.

³⁸ Gloppen (n 2 above) 74.

³⁹ Gloppen (n 2 above) 72.

professionals but also in society generally, preventive procedural measures for example during filing cases and allocation of files and disciplinary/accountability systems where the public can report corruption cases, they are investigated and errant officers sanctioned as ways of addressing petty corruption. However, the author did not consider the challenges faced in implementing these proposals. This study will hence consider the challenges faced by the Commission which has been trying to implement some of those proposals already.

According to a survey by transparency international⁴⁰, 31-45% of respondents in Uganda reported having paid a bribe in court. This implies that those who cannot afford to bribe the system may struggle to access justice. The Afro barometer survey also indicates a worsening perception of corruption in the judiciary, with 56% of respondents believing that most judges and magistrates are corrupt.⁴¹ These statistics not only reveal real corruption but also contribute to the perception that judicial officers are corrupt. Furthermore, the behavior of some judges, who appear to favor certain parties, raises concerns of potential corruption, as the favored party may have provided something of value to the judge.

The CEPIL Report on the State of the Judiciary and Corruption highlights the most common forms of corruption within the judiciary.⁴² These include the payment of bribes sought after by clerks and magistrates, or offered by the accused, litigant, or lawyer to influence decisions. Other forms include the swearing of false documents, soliciting and receiving favorable treatment, and forging court documents, particularly at court registries. By outlining the forms of corruption, the report provides context for understanding the specific challenges the JSC faces. It provides areas where oversight is urgently needed allowing the JSC to tailor its strategies and interventions effectively.

The research also relied on the five (5) causes of corruption in the judiciary in Uganda presented by Baldwin. The five causes of judicial corruption identified are low remuneration, inadequate supervision of magistrates, public ignorance about the judiciary and reporting corruption, lawyers bribing court clerks and insufficient judicial accountability.⁴³ Some of the causes have been since addressed like improving the remuneration of judicial officers. However, whether that has been able to reduce corruption in the judicial system is one of the objectives of this research.

⁴⁰ Transparency International (n 31 above) 20.

⁴¹ Afro Barometer 'Access to justice? As public trust in courts declines, many Ugandans have their doubts' (2024). Dispatch No 821 2 Accessed at <https://www.afrobarometer.org/wp-content/uploads/2024/07/AD821-Access-to-justice-Ugandans-have-their-doubts-Afrobarometer-19july24.pdf>.

⁴² Center for Public Interest Law 'In Dire Straits? State of the Judiciary Report' (2016) 23. Accessed at https://cepiluganda.org/wp-content/uploads/2021/10/CEPIL_State_of_the_Judiciary_Report_2016.pdf.

⁴³ CA Baldwin 'Combating corruption in Uganda' (2009) *Brookings Global Economy and Development* Policy Brief 2009-03 Global views 3.

Further, this study has also considered the unpublished PhD thesis of Masumba⁴⁴ entitled ‘The Investigation and Prosecution of Corruption in Uganda’ which study examined the challenges faced in the investigation and prosecution of corruption in Uganda highlighting the potential for private prosecution as a creative legal mechanism to address corruption. It found that effective prosecution requires skilled investigators to gather compelling evidence as the likelihood of securing convictions for corruption is low without proper investigation report. The study also noted that while Uganda’s legal system allows for private prosecutions, significant gaps exist such as the lack of clear grounds by the Director of Public Prosecutions to grant consent for these prosecutions and the absence of robust legal framework for appealing magistrate decisions in private cases.

Moreover, the research revealed that although corruption has escalated, Uganda’s anti-corruption mechanisms have not adapted accordingly. It stressed the need for legal reforms to enhance the effectiveness of private prosecutions including amendments that would require the DPP to take over a case only with the private prosecutors consent and provisions for appeal. The study also suggested that Civil Society Organisations could play a pivotal role by establishing units focused on private prosecutions particularly against powerful figures who might evade public scrutiny. The study however does not tackle the role of the JSC in combating corruption within the Ugandan judiciary.

Pearson⁴⁵ in her work ‘An International Human Rights Approach to Corruption’, suggests a new perspective on addressing corruption arguing that it has traditionally been viewed only as a political and economic issue which she finds inadequate and potentially misleading. She emphasises that corruption significantly undermines fundamental human rights equating tolerance of corruption with a direct violation of these rights. While she advocates for the integration of international human rights mechanisms in combating corruption, her approach overlooks the crucial role that constitutional bodies like the JSC can play in addressing corruption within the judiciary itself. Specifically, she fails to acknowledge how the JSC could utilise its disciplinary oversight and sanctioning powers to combat corruption effectively within this constitutional institution thereby limiting the scope of her proposed solutions.

Lastly, this research examines Jayawickrama's presentation on ‘Combating Judicial Corruption’⁴⁶, which delves into various forms of corruption in the judiciary and the impact of public

⁴⁴ DW Masumba (2021) ‘The Investigation and Prosecution of Corruption in Uganda’ unpublished PHD thesis The University of Western Cape South Africa.

⁴⁵ Z Pearson ‘An International Human Rights Approach to Corruption’ (2001).

⁴⁶ N Javawickramal A paper presented at the Commonwealth Judicial Colloquium on Combating Corruption Within the Judiciary held in Limassol Cyprus from 25 to 27 June 2002.

perception. Jayawickrama emphasises the importance of identifying and addressing the reasons behind negative perceptions, regardless of their accuracy. He suggests establishing an independent mechanism to investigate public complaints, protect whistle blowers, and remedy the image of the judiciary. Furthermore, he highlights the usefulness of the Bangalore Draft of the Code of Judicial Conduct as a self-regulating tool to combat grand and political corruption. Notably, the Uganda Code of Judicial Conduct, based on the Bangalore Draft, is being implemented by the Judicial Service Commission to tackle corruption within Uganda's judiciary.

1.10.2 Legal Framework Governing Anti-Corruption Mechanisms of the Judicial Service Commission

The Judicial Service Commission, established under Article 146(1) of Uganda's 1995 Constitution, is an independent constitutional body. As part of the Justice Law and Order Sector (JLOS), it contributes to promoting the rule of law, public order, justice administration, good governance, and the protection and observance of human rights in Uganda.

The Anti-Corruption policy in Uganda is governed by several key legal frameworks. These include the Constitution of Uganda, 1995, which establishes the organs and institutions of government and provides guidance on the Leadership Code of Conduct and accountability. The Anti-Corruption Act, 2009, defines corruption, sets offenses and penalties, and outlines the powers of the Inspector General of Government and the Director of Public Prosecutions. The Leadership Code Act, 2002, requires leaders to declare their incomes and assets and sets enforcement mechanisms. The Inspectorate of Government Act, 2002, promotes adherence to the rule of law, eliminates corruption, and investigates misconduct of public officers. Other laws include the Access to Information Act, 2005, the Whistleblowers Protection Act, 2010, the Local Governments Act, CAP 138, the Uganda Police Act, 2006, the Budget Act, 2001, the Public Finance and Accountability Act, 2003, and the Public Procurement and Disposal of Public Assets Act, 2003.

Additionally, the National Anti-Corruption Strategy (NACS) aims to enhance accountability, transparency, and integrity in public service by setting strategic objectives such as effective political leadership, increased public demand for accountability, and enhanced compliance and accountability by public service organisations. Other relevant legislation and policies include; The Public Service Act, 2008; The Regulation of Interception of Communications Act, 2010; The National Audit Act, 2008; The Public Finance Management Regulations, 2016, The Local Governments Financial and Accounting Regulations, 2007; The Public Service Commission

Regulations, 2009 and The Public Service Standing Orders, 2021. The JLOS Anti-Corruption Strategy aligns with these frameworks to ensure effective implementation.

Mwiza in the article ‘spotlight on the Guardians of the Gatekeepers; An Assessment of the Judicial Service Commission of Malawi’⁴⁷ assessed the JSC of Malawi in two areas namely examining the normative framework that established the Commission and evaluated its performance since 1994. Additionally, the author considered whether the JSC should be subject to judicial oversight in its functions. The article explored the judiciary’s role in a constitutional democracy, followed by a discussion of the JSC’s general functions and its specific mandate in ensuring constitutionalism. However, there is a lack of a comprehensive study specifically focused on the JSC’s effectiveness in combating corruption as most research tends to emphasise judicial independence and judicial appointments.

Okogbule,⁴⁸ examined the adequacy of Nigeria’s legal and institutional mechanisms for combating corruption. His research established that although the government has initiated efforts by creating several institutions to address this pervasive issue, significant gaps remain in ensuring these institutions meet the expectations of both the government and the citizenry. He highlighted that despite the existence of various legal provisions for decades, their effectiveness has been undermined by substantial changes in Nigeria’s socio-economic and political will as well as a notable lack of political will to enforce these laws. While Okogbule’s work provides a thorough assessment of the legal and institutional frameworks aimed at combating corruption, it does not specifically address the legal framework governing judicial councils in this context. This omission is critical, as judicial councils play a crucial role in maintaining accountability within the judiciary and can significantly influence anti-corruption efforts. Therefore, further exploration of how these councils can be empowered within the existing legal framework is necessary to enhance the overall effectiveness of Uganda’s fight against judicial corruption.

This research also examined Sharpe’s overview of Corruption and Anti-Corruption efforts in Uganda, focusing on the legal and institutional frameworks in place⁴⁹. She addressed various forms of corruption including petty⁵⁰, grand and political corruption and evaluated both international and national legal responses to these issues. Additionally, Sharpe highlighted the roles of statutory institutions and other stakeholders in the fight against corruption. However,

⁴⁷ MJ Nkhata ‘spotlight on the Guardians of the Gatekeepers; An Assessment of the Judicial Service Commission of Malawi’ (2018) *Comparative and International Law Journal of Southern Africa* 66.

⁴⁸ NS Okogbule ‘An appraisal of the legal and institutional framework for combating corruption Nigeria’ (2006) *Journal of Financial Crime* 92.

⁴⁹ R Sharpe ‘Overview of Corruption and Anti-Corruption in Uganda: The Legal and Institutional Framework’ (2018) 26(4) *African Journal of International and Comparative Law* 567–589, 575-577.

⁵⁰ Sharpe (n 49 above) 570.

her work does not address judicial corruption or the JS specifically nor does it discuss the legal framework that enables the JSC to combat corruption effectively.

Further, Dimitrijević discusses the international framework on corruption highlighting various global standards and best practices designed to enhance accountability and transparency within judicial systems.⁵¹ This framework underscores the importance of independent oversight mechanisms in preventing and addressing corruption. However, the article presents a significant gap in its analysis regarding the specific applicability of these international standards to the Ugandan context, where political interference and local dynamics profoundly influence anti-corruption efforts. This current research aims to address this gap by examining how the JSC in Uganda can effectively adapt these global frameworks to combat judicial corruption. By focusing on the unique challenges faced in Uganda, the study seeks to provide actionable insights that align international best practices with local realities, enhancing the JSC's effectiveness in promoting integrity within the judiciary.

Nyangoma in her article 'Assessing the role of Anti-Corruption legal systems in fostering investment in Uganda'⁵² outlines Uganda's comprehensive legal and institutional framework for combating corruption particularly to promote investment. It highlights several domestic statutes besides the institutional framework which consists of bodies like the inspectorate of government and the Anti-Corruption Division of the High Court coordinated under the Inter-Agency Forum. Additionally, the article discusses regional measures which promote good governance and anti-corruption initiatives. This article is notably limited in its exploration of specific mechanisms and strategies employed by the JSC particularly in the context of judicial corruption. This research will not only provide insights into JSC's role but also offer practical recommendations for strengthening its oversight functions in the face of systemic challenges.

Additionally, Muhuma whose work this research has utilised states that the NRM government of Uganda established a good governance framework in the 1990s aimed at combating corruption through various legal and institutional initiatives.⁵³ Key legislation, such as the Anti-Corruption Act of 2009, expanded the definition of corruption to align with international conventions, addressing private sector corruption and enhancing the legal basis for anti-corruption efforts. Alongside these laws, new institutions were created, including the Anti-Corruption Court and the Directorate of Ethics and Integrity, to coordinate anti-corruption activities. Despite this

⁵¹ D Dimitrijević 'The International Legal Framework against Corruption' (2023) *Institute of International Politics and Economics, Belgrade, Serbia*.

⁵² CA Nyangoma 'Assessing the role of Anti-Corruption legal systems in fostering investment in Uganda' (2024) *KAS African Law Study Library* 608-611.

⁵³ W Muhumuza 'The politics of anti-corruption reforms and reversals in Uganda's changing political terrain' (2016) *Economic and Political Studies* 67-69.

elaborate framework and a policy of ‘Zero Tolerance to Corruption,’ public skepticism remains high due to the persistent corruption in service delivery and inadequate support for anti-corruption institutions in terms of funding and capacity building. This disconnect between government commitments and public perception highlights a critical gap in the effectiveness of Uganda's anti-corruption initiatives.

The above literature is relevant in as far as it provides a comprehensive overview of the legal and institutional frameworks established to address corruption. By detailing the various laws and anti-corruption institutions created by the NRM government, the literature contextualizes the JSC's mandate within a broader anti-corruption strategy. It highlights the challenges facing these institutions, such as public skepticism and inadequate support which directly impact the JSC's effectiveness. Understanding these dynamics is crucial for analysing how the JSC can navigate the existing institutional framework, enhance judicial accountability and contribute to the fight against corruption within the judicial system.

Lastly, Okok and Ssentongo⁵⁴ emphasise that Uganda has established a robust anti-corruption legal framework, supported by both international conventions like the UNCAC and comprehensive domestic laws, including the Anti-Corruption Act of 2009. However, despite these legal instruments, effective implementation remains a significant challenge, contributing to the persistent corruption in the judiciary and other sectors. The penalties for corruption, while deterrent for minor offences, are perceived as lenient for grand corruption, creating an environment where corrupt practices can thrive. The enforcement of these laws is further complicated by the corruption within the very institutions responsible for upholding them thereby undermining public trust and legal efficacy. This literature is relevant to the current study as it highlights the systemic challenges and gaps in the legal framework that the JSC must navigate. Understanding these dynamics will inform the analysis of the JSC's effectiveness in promoting accountability and integrity within Uganda's judicial system.

1.10.3 Mechanisms employed by the JSC in identifying and addressing Corruption within the Judiciary

In Uganda, the legal framework establishing the Commission grants it a significant role in the fight against corruption. The Commission is empowered under the Constitution of Uganda to ensure the efficient administration of justice, including the discipline, removal, and appointment of judicial officers. In the context of anti-corruption efforts, the JSC is tasked with promoting integrity and ethical conduct within the judiciary. It has the authority to investigate complaints of

⁵⁴ S Okok and JS Ssentongo ‘ Rethinking Anti-Corruption Strategies in Uganda: An Ethical Reflection’ (2020) *African Journal of Governance and Development* Vol 9 No 1 73-75.

misconduct against judicial officers, including corruption-related allegations. Additionally, the JSC plays a key role in safeguarding the independence of the judiciary, which is crucial for combating corruption within the justice system. The legal framework provides the JSC with the necessary powers and responsibilities to uphold the rule of law and integrity within the judiciary, contributing to the broader anti-corruption mandate in Uganda.

The Commission employs a dual approach to combat corruption in Uganda encompassing both preventive and reactionary strategies. On the preventive side, the Commission has implemented mechanisms aimed at raising public awareness about corruption and encouraging citizen engagement in the fight against it. This includes initiatives such as live radio talk shows, workshops, the publication and distribution of informative materials and prison sensitisation programs. These efforts are designed to empower the public and foster a culture of accountability and vigilance regarding corrupt practices.

In terms of reactionary measures, the Commission maintains disciplinary oversight over judicial officers accused of misconduct. The Commission actively receives and processes complaints against these officers and other staff of the judiciary ensuring that allegations are thoroughly investigated. When misconduct is substantiated, the Commission imposes a range of sanctions from cautions to dismissal depending on the severity of the offence. This comprehensive approach not only addresses instances of corruption but also reinforces the importance of integrity within the judiciary thereby contributing to a more transparent and accountable legal system in Uganda.

The Anti-Corruption Coalition Uganda on the JSC's complaints handling mechanism aims to enhance the visibility and scrutiny surrounding the Judicial Service Commission's role in receiving and addressing complaints from the public. It evaluated whether the Commission has effectively fulfilled its responsibilities regarding complaints against errant judicial officers and identifies any existing gaps in its processes⁵⁵. Additionally, the report addresses the pressing issue of case backlogs and explores potential remedies that the JSC can implement to alleviate this problem.⁵⁶ However, it is important to note that the report's focus is somewhat limited as it does not adequately consider the Commission's dual role in employing both preventative and reactive mechanisms to combat corruption within the judiciary. This oversight highlights the need for a more comprehensive examination of the Commission's function in this study.

⁵⁵ Anti-Corruption Coalition Uganda 'Watching the Watchdog: A Critical Look into the Judicial Service Commission's Complaints Handling Mechanism (2016) 14.

⁵⁶ ACCU (n 55 above) 19-20.

Asiimwe examines the measures implemented to address corruption in Uganda and contends that despite the political leadership's emphasis on a policy of zero tolerance, corruption remains deeply entrenched and widespread.⁵⁷ He criticises the current political regime and the existing anti-corruption mechanism for concentrating primarily on minor bureaucratic corruption while neglecting significant political corruption.⁵⁸ To effectively combat corruption in Uganda, he calls for deeper democratisation, heightened political activism and initiatives aimed at strengthening institutional capacity.

Similarly, Tangri and Mwenda⁵⁹ analyse the anti-corruption efforts in Uganda and highlight that many anti-corruption institutions are heavily influenced by political actors. They argue that this political interference renders these institutions ineffective in tackling corruption particularly when it involves powerful politicians. Both perspectives emphasise the need for a more robust and independent approach to combating corruption in order to achieve meaningful progress. This context is crucial for assessing the challenges in enforcing accountability in the judiciary especially among judges. The fact that judges are political appointees although they are appointed on the recommendation of the JSC and approval of Parliament adds another layer of complexity as this relationship may hinder the JSC's ability to function independently and impartially.

According to Kagaba,⁶⁰ there are several mechanisms for fighting corruption within the judiciary, emphasising that transferring implicated judicial officers should be avoided as it merely shifts corruption rather than addressing it. She advocates for the rotation of clerks to prevent them from becoming complacent and corrupt over time, suggesting that a lack of movement can lead to a culture of untouchability. The author stresses the importance of expeditious handling of corruption cases by the Judicial Service Commission (JSC) to demonstrate a zero-tolerance stance and reduce case backlogs. Additionally, merit-based promotions and better remuneration for judicial officers are proposed as strategies to enhance integrity and reduce corruption. However, the author does not fully articulate the specific role of the JSC in implementing these mechanisms. While it mentions the need for public outreach and better public relations, it lacks a detailed analysis of how the JSC can effectively enforce these recommendations or assess its current practices against established standards. Moreover, it does not discuss the potential challenges the JSC may face in combating corruption or the effectiveness of its existing measures. This gap indicates a need for a more comprehensive exploration of the JSC's responsibilities and its capacity to drive systemic change within the judiciary.

⁵⁷ GB Asiimwe 'Of Extensive and Elusive Corruption in Uganda: (2013). Neo-Patronage, Power and Narrow Interests' (2013) 56(2) *African Studies Review* 129-144 133.

⁵⁸ Asiimwe (n 57 above) 139.

⁵⁹ R Tangri & AM Mwenda 'Politics, Donors and the Ineffectiveness of Anti-Corruption Institutions in Uganda' (2006) 103 *Journal of Modern African Studies* 101-124.

⁶⁰ C Kagaba 'Fighting Real and Perceived Corruption in the Uganda Judiciary'.

Further, looking at the Handbook on Fighting Corruption, the Center for Democracy and Governance,⁶¹ advocates for enforcing transparency, oversight and sanctions as essential anti-corruption measures to improve accountability. It argues that accountability involves both the detection and sanctioning of corruption within public service where detection focuses on strengthening oversight and sanctioning refers to implementing criminal and administrative penalties along with improving judicial processes and electoral accountability. However, the text does not clarify whether the proposed administrative sanctions include disciplinary measures. Moreover, the author offers only a broad policy perspective on addressing corruption leaving a gap in the literature regarding the specific mechanisms employed by the JSC to combat corruption within the judiciary. This gap highlights the need for a more detailed examination of the JSC's role and effectiveness in this context.

Similarly, the research considered the work of Kiboi and Gahbon on the effectiveness of Institutional Anti-Corruption Strategies on Prosecution of Corruption Cases in Public Sector in Kenya⁶² which in essence discussed how anti-corruption strategies influence the capacity of institutions in addressing corruption. The research established that despite establishment of institutional frameworks, prosecution of corruption is hampered among others by political interference and poor coordination among agencies. While this literature refers to establishment of an anti-corruption strategy, the JSC currently is in the process of developing one. Secondly, while the JSC currently relies on its regulations to address misconduct among judicial officers through prosecution, there is no analysis on how the challenges identified by Kiobi & Gabhon like political interference affect the effectiveness of the JSC's prosecution mechanism. This gap necessitates a focused examination of the JSC's evolving strategy and the contextual barriers it faces which would provide valuable insights for enhancing its capacity to combat corruption effectively within the judiciary.

Additionally, the Anti-Corruption Coalition Uganda in its report titled 'Watching the Watchdog: A critical look at the JSC Complainants Handling Mechanism'⁶³ found that the JSC is struggling to fulfil its constitutional mandate due to various challenges. The report emphasises the urgent need to address the Commission's human resource, financial and structural deficits suggesting

⁶¹ The Centre for Democracy and Governance 'Handbook on Fighting Corruption' (1999) *US Agency for International Development* 9.

⁶² WK Kiboi and YK Gahbon 'Effectiveness of Institutional Anti-Corruption Strategies on Prosecution of Corruption Cases in Public Sector in Kenya' (2025) *International Journal of Research and Innovation in Social Sciences* Volume IX Issue VII. Accessed at https://www.researchgate.net/profile/Yasin-Kuso/publication/394425733_Effectiveness_of_Institutional_Anti-Corruption_Strategies_on_Prosecution_of_Corruption_Cases_in_Public_Sector_in_Kenya/links/689903e49a3902639b87bf19/Effectiveness-of-Institutional-Anti-Corruption-Strategies-on-Prosecution-of-Corruption-Cases-in-Public-Sector-in-Kenya.pdf.

⁶³ ACCU (n 55 above) 20.

that a constitutional amendment is necessary to improve its structure and composition. Additionally, it highlights the pressing issue of a significant case backlog which requires multifaceted approach to resolve. Without these improvements, public confidence in the JSC as a partner in the administration of justice is at risk of deteriorating. This context underscores the need for the present research on the role of the JSC in combating corruption in the judiciary.

Manyatera and Fombad in ‘An assessment of the Judicial Service Commission in Zimbabwe’s new Constitution’⁶⁴ examine the role of the JSC in Zimbabwe’s judicial reform particularly following the country’s turmoil over the past two decades. The work assesses how the new Constitution and the JSC aim to restore the credibility of the judiciary emphasising the importance of judicial selection mechanisms that contribute to an independent judiciary. By evaluating the JSC against internationally recognised benchmarks, the authors highlight the significance of its composition, member appointments and operating procedures in enhancing integrity and combating corruption. While the analysis provides valuable insights into the structure and functions of the JSC in Zimbabwe, it raises questions about the applicability of these findings to Uganda’s unique legal and political environment. There is a need to investigate whether similar reforms and effective implementation of the JSC can address corruption in Uganda’s judiciary, as well as to explore the specific challenges and opportunities that may arise in this context.

Further, the researcher also referred to the unpublished master’s thesis of Luleti entitled “A critical analysis of the role played by the Judicial Service Commission in preventing and combating corruption in Uganda’s Judiciary”⁶⁵ in which work the author explores how the Judicial Service Commission prevents corruption and addresses corruption related complaints. He discusses various mechanisms employed by the JSC such as dismissal from service to tackle instances of corruption where prevention measures fail. However, Luleti’s work does not evaluate the JSC against established benchmarks and best practices. As a result, despite the thesis’ intention to assess the effectiveness, it ultimately falls short of providing a comprehensive critical analysis of the JSC’s role in combating corruption.

Sasmita⁶⁶ discusses the critical role of the Judicial Service Commission as a supervisory body within the judicial profession particularly in overseeing judges who are essential to the judicial

⁶⁴ G Manyatera and C M Fombad ‘An assessment of the Judicial Service Commission in Zimbabwe’s new Constitution’ (2014) *The Comparative and International Law Journal of South Africa* Vol. 47 No. 1, 89-108. Accessed at <https://www.jstor.org/stable/24585818?seq=1>.

⁶⁵ J Luleti ‘A (2024) Critical Analysis of the Role Played by the Judicial Service Commission in Preventing and Combating Corruption in Uganda’s Judiciary Unpublished Master thesis.

⁶⁶ S Sasmita ‘The Importance of Enhancing the Role of the Judicial Service Commission in Enforcing the Code of Ethics and Guidelines for Judicial Conduct (2025) *Jurnal Ilmu Hukum Kyadiren* Vol 6 No 2 26-35. Accessed at <https://journal.stihbiak.ac.id/index.php/kyadiren/article/view/215/252>.

system. Established as an independent state institution within Indonesia's governance framework, the Commission holds the authority to propose appointments of Supreme Court Justices to the House of Representatives and to monitor the conduct of both Supreme Court Justices and lower-level judges. To fulfill its mandate, the Commission aims to instill legal principles in judges ensuring their decisions reflect societal expectations of justice. She discussed the ethical codes and guidelines which were developed to foster accountability. Lastly, she recommended strengthening the role and scope of the Judicial Service Commission by expanding its authority to include stricter sanctions and enhanced oversight beyond judges.

Gumisiriza and Mukobi⁶⁷ assessed the effectiveness of anti-corruption measures in Uganda addressing the issue of corruption from a broader perspective. They highlighted that, despite the presence of multi-corruption agencies, laws and initiatives, corruption remains widespread in the country. Their recommendations included adopting new technologies for anonymous reporting of corruption and reducing human interaction at service delivery points particularly within the police and judiciary. However, significant gaps remain particularly regarding the effectiveness of the mechanisms implemented by the Judicial Service Commission in combating corruption, warranting further investigation in this area.

In their work, 'Fighting Corruption in African Context: Our Collective Responsibility', Jones et al⁶⁸ assert that the responsibility of combating corruption cannot solely rest on a single institution. Instead, it necessitates a collaborative effort involving all stakeholders engaged in the anti-corruption movement. Central to this collective responsibility is the political will and moral leadership that is committed and capable of effectively eradicating corruption. This commitment must be supported by strong, accountable institutions dedicated to addressing the issue. While their literature emphasise the necessity of a collective approach to combating corruption, it lacks a focused analysis on the specific role of the JSC and the measurable impact of its anti-corruption efforts within the judiciary.

Jared Saxton in his article 'Corruption in Uganda'⁶⁹ examines the effectiveness of existing Anti-Corruption strategies. He argues that the laws are insufficiently stringent, with fines set so low that they fail to deter individuals from engaging in corrupt practices. Saxton highlights the paradox of corruption within law enforcement agencies which are tasked with combating

⁶⁷ P Gumisiriza and R Mukobi 'Effectiveness of anti-corruption measures in Uganda' (2019) *Rule of Law and Anti-Corruption Center Journal*. Accessed at <https://www.qscience.com/content/journals/10.5339/rolacc.2019.8?crawler=true>.

⁶⁸ C Jones, P Pillay and I Hassan 'Fighting Corruption in African Contexts: Our Collective Responsibility' (2020) *Cambridge Scholars Publishing*. Accessed at <https://dokumen.pub/fighting-corruption-in-african-contexts-our-collective-responsibility-1nbsped-9781527554566-9781527550391.html>.

⁶⁹ J Saxton 'Corruption in Uganda' (2022) *Ballard Brief Volume 22 Issue 2*. Accessed at <https://scholarsarchive.byu.edu/ballardbrief/vol2022/iss2/2/>.

corruption yet are themselves tainted by it thereby exacerbating the problem in Uganda. Notably, he omits the JSC from his discussion of institutions responsible for fighting corruption. This oversight underscores the significance of this study particularly as regards the ineffectiveness of current mechanisms and institutions. Lastly, Saxton acknowledges the corruption within the judiciary which accentuates the need for research focused on the role of the JSC in combating corruption effectively.

Lastly, Garoupa and Ginsburg⁷⁰ assert that the establishment of Judicial Service Commissions (JSCs) is a significant global trend and can be viewed as a best practice internationally. However, they also point out that there is limited understanding of JSCs and their impact on crucial aspects such as judicial independence and accountability. To effectively comprehend how a JSC functions, it is essential to consider the unique characteristics of each specific commission before drawing broad conclusions. This highlights the need for independent research focused on examining the role of the Judicial Service Commission in combating corruption within the Ugandan judiciary, as there are notable gaps in the existing literature. Such an investigation is vital to uncover how the JSC can enhance accountability and integrity in the judiciary, ultimately contributing to a more transparent legal system in Uganda.

1.10.4 Conclusion

While there is a wealth of information on corruption in Uganda especially in the public sector, there is scanty information about the role of the Judicial Service Commission in combating corruption in the judiciary. Several scholars have explored the different facets of corruption in the judicial sector and how it undermines the real and perceived independence of the judiciary. The gaps identified in the literature review highlight the need for more comprehensive strategies to combat corruption, particularly in the judiciary.

While there has been an increase in theoretical and empirical literature on corruption and its economic impacts, there is still a lack of specific, targeted measures to address the issue effectively. Additionally, the high prevalence of bribery reported in Uganda's courts highlights the urgent need for reforms to ensure equal access to justice for all, regardless of financial means. The perception of corruption in the judiciary also indicates a lack of trust in the system, underscoring the importance of transparency and accountability measures. Furthermore, the behavior of some judges favoring certain parties raises concerns about potential corruption, suggesting a need for stronger mechanisms to prevent and address judicial misconduct.

⁷⁰ N Garoupa and T Ginsburg 'Guarding the Guardians: Judicial Councils and Judicial Independence' (2009) *American Journal of Comparative Law* (57)1 119.

1.11 Chapter Synopsis

This study comprised of six chapters as outlined below;

Chapter One introduces the research topic and the overall research concept. It gives a background of corruption generally and also corruption in the judiciary in particular. This chapter also considers the research objectives, the research questions, the existing literature on the judicial corruption and how the research was conducted.

Chapter Two presents the international and regional frameworks for establishing ideal institutions for providing oversight over the judiciary. The chapter discusses key international treaties and conventions which underscore the importance of judicial independence and accountability. By analysing various models and best practices from different jurisdictions, the chapter aims to identify essential principles and mechanisms that can enhance the oversight mechanism of judicial institutions.

Chapter Three discusses the legal and statutory framework governing the Judicial Service Commissions anti-corruption interventions or strategies. This chapter analysis the historical development of the Commission as an independent institution under the 1995 Constitution. The chapter also looks at the structural framework of the Commission and how the Commission carries out its day to day work.

Chapter Four examines the role of the JSC in combating corruption in the judiciary. The chapter analyses the policies and strategies employed by the Commission to identify, investigate and address instances of corruption. It further analyses the challenges faced by the Commission in executing its mandate.

Chapter Five compares how the Judicial Service Commissions (or similar judicial oversight bodies) in other jurisdictions have dealt with the issue of corruption within their respective judiciaries, and what lessons can be drawn for the Ugandan context.

Chapter Six draws conclusions from the study and makes recommendations on strategic interventions by the Commission to combat corruption in the judiciary based on the best practices from selected jurisdictions.

CHAPTER TWO

INTERNATIONAL AND REGIONAL FRAMEWORK ON JUDICIAL OVERSIGHT

- 2.1 Introduction
- 2.2 International Frameworks
- 2.3 Regional Frameworks
- 2.4 Sub-Regional Frameworks
- 2.5 Soft Law Instruments
- 2.6 Conclusion

2.1 Introduction

A well-functioning judicial system and the fundamental right to a fair trial rely on an independent judiciary. Corrupt practices often undermine many of the core principles and the rule of law. When these principles are properly upheld, corruption has no place within the judiciary. As the ultimate guardian of justice, human rights, economic progress and equitable dispute resolution, the judiciary plays a vital role in combating transactional organised crime. Thus, eliminating corruption in the judiciary is of utmost importance.¹ However, the growing complexity of legal issues and the risk of judicial overreach emphasise the need for a strong oversight mechanism². In this regard, numerous countries have opted to establish Judicial Councils or similar institutions.

It is essential that the Judicial Council or Commission is not only well structured but also functions effectively to fulfil its mandate of ensuring integrity and accountability of judicial officers. This chapter will explore the international and regional frameworks that aim to establish ideal oversight mechanisms for the judiciary and assess how the Judicial Service Commission's capabilities align with these frameworks for enhancing judicial oversight.

Judicial Councils, sometimes referred to as Judicial Commissions are institutions which transferred various decision making powers regarding judicial self-governance from politicians to

¹ A Arvidson & E Folkesson 'Corruption in the Judiciary. Balancing Accountability and Judicial Independence (2010) 32 Accessed at <https://www.diva-portal.org/smash/get/diva2:321290/FULLTEXT01.pdf>.

² S Suparto, K Hyeonsoo, D Hardiago and RF Syafrinaldi 'Enhancing External Oversight of Constitutional Judges: A study on the role of the Judicial Service Commission in Indonesia and South Korea' (2024) *Lex Scientia Law Review* Vol. 8 Issue 1 (517-560), 546.

judges and political nominees.³ These Councils represent a middle ground between allowing judges to select their own successors and maintaining internal responsibility for judicial discipline and the alternative of complete political control over appointments, disciplines and promotions. The terminologies used for these bodies varies globally. In other jurisdictions, they may be called Judicial Councils, Merit Commissions or Judicial Appointment Commissions. For purposes of this research, we shall refer to them as judicial councils. Further, while their mandates and functions are largely similar, their structures can differ from one country to another.

2.2 International Framework

Institutions of judicial oversight are important facilitators in achieving compliance with the ideals of an independent and impartial judiciary, as enshrined in a number of international and regional legal instruments. Overseeing bodies assess compliance with fair trial standards, investigate allegations of judicial misconduct, and ensure good practices by recommending guidelines and training materials. Through ensuring judges adhere to these basic principles, oversight organisations become important actors in achieving the ambitions of international as well as regional judicial systems.

International agreements have been made to clarify the definition and limits of judicial independence. Although these agreements reinforce the need for judicial autonomy, they also clarify its limits and scope, emphasizing the need to have adequate checks on the judiciary. By creating substantive guidelines that govern judicial conduct, these frameworks aim to insulate the judiciary from outside influences, thus strengthening public confidence in the judiciary's ability to deliver justice competently.

2.2.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) requires State parties to ensure a legal regime that assures access to justice in a free and democratic society. This requirement obliges the judiciary to uphold basic professional integrity and impartiality in promoting the well-being of humanity.⁴ Consequently, any national government or judicial actions that intentionally violate an individual's right to justice contradict the UDHR's goal of protecting human dignity. Therefore, oversight of the judiciary becomes crucial in upholding human rights since an independent judiciary is essential for countering undue influence, ensuring equality and providing remedies.

³ M Urbániko and K Šipulova 'Failed Expectations: Does the Establishment of Judicial Councils Enhance Confidence in Courts?' (2018) *German Law Journal* Vo. 19 No. 07, 2106.

⁴ See Articles 7 & 10 of the Universal Declaration of Human Rights on right to equality before the law, right to a remedy by a competent tribunal and the right to fair public hearing.

When we consider the potential influences that could compromise a judge's fairness for example a judge who must pledge allegiance to a leader for their political position,⁵ one who is underpaid and thus susceptible to bribery or judges who have particular views against certain groups or believe in the inferiority of women, we would not be comfortable presenting a case before such a judge. Guarantees of judicial independence and fairness whether structural, legal or individual are thus vital for ensuring that everyone has access to a fair hearing regardless of circumstances.

Although the UDHR is not legally binding, its principles have been progressively incorporated into various international human rights instruments⁶ which many countries including Uganda have ratified. As a result, the UDHR is applauded for establishing fundamental principles that promote judicial independence and accountability. The Commission is tasked with monitoring judicial conduct and providing mechanisms for addressing misconduct therefore the UDHR's emphasis on human rights and equality serve as a guiding framework for such oversight bodies to uphold justice and protect citizens from vices like judicial corruption.

2.2.2 The Universal Charter of Judges

The Universal Charter of Judges does not specifically mandate the establishment of a Judicial Council or Service Commission. However, the charter emphasises that the selection and appointment of judges must adhere to objective and transparent criteria grounded in appropriate professional qualifications.⁷ In cases where these criteria are not met through established practices, the selection process should be conducted by an independent body that includes significant representation from the judiciary⁸.

In Uganda, the Constitution provides that the Chief Justice, Deputy Chief Justice, Justices of the Supreme Court, Justices of the Court of Appeal and Judges of the High Court shall be appointed by the President acting on the advice of the Judicial Service Commission.⁹ The Constitution is then followed by the Universal Charter of Judges because it provides guidelines in selecting judges. But the manner of selecting judges has adversely affected independence of courts and separation of powers.

⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR) 'Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers' (1998) 116 Accessed at <https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter4en.pdf>.

⁶ European Parliament 'At a Glance: The Universal Declaration on Human Rights and its relevance for the European Union' Accessed at [https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS_ATAG\(2018\)628295_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS_ATAG(2018)628295_EN.pdf).

⁷ The Universal Charter of Judges (1999) Article 9.

⁸ As above.

⁹ Constitution of the Republic of Uganda (1995) Article 147.

The Charter states that judges must adhere to high ethical principles, and there will be means to verify that they do not commit any misconduct.¹⁰ This indicates that the JSC is in charge of monitoring judges' conduct¹¹ and acting when necessary. By establishing the criteria for the selection of judges and the codes of their conduct, the JSC is able to make the courts more independent and truthful, with less scope for corruption. Ultimately, the Universal Charter of Judges grants the JSC authority to formulate a clearer and more accountable legal system, which contributes to more trust with society and the enforcement of the rule of law.

2.2.3 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights is an international agreement and has to be observed by law.¹² It is an indication of just how valuable the right of a fair trial is because a country's courts are supposed to uphold human rights.¹³ Courts in a nation do so by abiding by the rule of law and ensuring that laws enacted by lawmakers are consistent with the constitution, and government action is consistent with the laws in place. To effectively carry out this duty, it is essential to shield the judiciary from undue interference.

The ICCPR emphasises judicial independence through several key provisions. Article 14(3)¹⁴ guarantees that an accused person is entitled to minimum protections for their defense in full equality. Article 2¹⁵ states that any claims of rights violations recognised by the Covenant must be addressed by the competent judicial, administrative or legislative authorities or by any other relevant authority within the state's legal framework. Article 26¹⁶ asserts that all individuals are equal before the law and entitled to equal protection without discrimination. Furthermore, the Covenant affirms the right to access the courts and seek legal protection¹⁷ highlighting judicial independence as a crucial safeguard against arbitrary actions by state authorities.

The United Nations Human Rights Committee has created an important document called General Comment No. 32¹⁸ which offers an authoritative interpretation of this binding Article. This commentary provides a significant explanation of the right to a fair trial and emphasises that even countries that have not signed the ICCPR are still obligated to uphold this right as it is

¹⁰ Article 11 (n 9 above).

¹¹ Article 147 (n 9 above).

¹² O Awawda 'Assessment of De Jure Judicial Independence of Constitutional court according to international Guidelines' (2024) *Constitutional Review* (2024) Vol 10 No 1 207.

¹³ L Hilbink 'The Origins of positive Judicial Independence (2012) *World Politics* 64 No 4 587.

¹⁴ International Covenant on Civil and Political Rights March 1976 Art 14(3).

¹⁵ ICCPR (n 14 above) Art 2.

¹⁶ As above.

¹⁷ ICCPR (n 14 above) Art 14.

¹⁸ United Nations Human Rights Committee 'General Comment No 32 Article 14 Right to equality before courts and tribunals and to a fair trial UN Doc CCPR/C/GC/32 (23 August 2007) [3].

considered part of customary international law.¹⁹ In addition, the Covenant establishes the right to access court and invoke the law's protection emphasising the independence of the judiciary as an essential guarantee against arbitrariness on the part of state officials exceptions.²⁰ The United Nations Human Rights Committee has authored a seminal document known as General Comment No. 32 that is an authoritative interpretation of this binding Article.²¹

The commentary gives a profound explanation of the right to a fair trial and points out that even states that have not ratified the ICCPR are nonetheless bound to respect this right since it is regarded as a part of customary international law. Moreover, the Committee stated categorically that the right to be tried by an independent and impartial tribunal is an absolute right that is not subject to any exception. This right is applicable everywhere, in all situations and in all courts. This doctrine is of considerable relevance to the role of Judicial Service Commissions which have the mandate to ensure that judicial appointments and conduct are such that they preserve the independence and impartiality required for fair trial. By guaranteeing that the judiciary observes these rights, Judicial Service Commissions safeguard the rights of individuals in the legal process.

ICCPR and its focus on judicial independence reaffirms the importance of an impartial and independent judiciary. The JSC is mandated with ensuring that judicial conduct and appointments are in line with these ideals. This role is important in ensuring the rule of law and defending individual rights since it enables the judiciary to function free of corruption and its attendant undue influence. In addition, the JSC is instrumental in enforcing the assurances of fair trial guarantees as embedded in the ICCPR so that all persons are accorded equal treatment in accordance with the law. In this manner, the JSC not only assists in the integrity of the judiciary but also promotes public faith in the legal system and in so doing promotes its effectiveness in the fight against corruption.

2.2.4 United Nations Convention Against Corruption

The United Nations Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. It was drafted and negotiated in Vienna, Austria in 2002-2003 and subsequently adopted by the United Nations General Assembly on 31 October 2003²²

¹⁹ K G Bass and S Choudhry 'Constitutional Review in New Democracies' (2013) *International IDEA* 4.

²⁰ Communication No. 263/1987 (Adopted in 1992) in UN doc GAOR A/48/40 Vol 2 20.

²¹ Office of the United Nations High Commission for Human Rights (OHCHR) 'Independence and Impartiality of Judges, Prosecutors and Lawyers' (1998) Human Rights in the Administration of Justice A Manual on Human Rights for Judges, Prosecutors and Lawyers 118 Accessed at <https://www.ohchr.org/sites/default/files/Documents/Publications/training9chapter4en.pdf>.

²² United Nations Office on Drugs and Crimes. 'Learn about UNCAC' Available at <https://www.unodc.org/corruption/en/uncac/learn-about-uncac.html>.

uniting 172 states in the fight against corruption.²³ The Convention is crucial in bringing countries together to combat corruption and promoting international cooperation. At the national level, the Convention has played a key role in driving anti-corruption reforms leading to significant modifications in legislative and institutional frameworks and enhancing international cooperation in cross border cases and asset recovery.

Some of the key provisions of the UNCAC that are relevant to the prosecution of corruption include Article 11(2), which requires member states to establish the independence of prosecution services. Article 30 also provides for state parties to UNCAC to establish laws and procedures that facilitate the prosecution, adjudication and sanctioning of the perpetrators of corruption.²⁴ The provisions of the UNCAC have been domesticated into law by amending the current law.²⁵ New Acts of Parliament have also been enacted²⁶ aligning with the provisions of UNCAC.

Additionally, the UNCAC emphasises the importance of encouraging active participation from citizens and institutions including NGOs.²⁷ It highlights the need for transparency by advocating for the public disclosure of information about corrupt public officials which is essential for holding them accountable through prosecution. Judicial corruption significantly hinders social and economic development particularly affecting economically disadvantaged individuals who rely on public services. Moreover, UNCAC seeks to deter public officials from soliciting or accepting bribes and criminalizes those who offer bribes for unfair advantages.²⁸ Lastly, the convention requires State parties to establish legal mechanisms to criminalise the acceptance of bribes by public officials and to prosecute those who attempt to offer such bribes.²⁹

Promoting transparency and encouraging active participation from citizens and institutions including NGOs fosters an environment where accountability is paramount in the fight against judicial corruption. The emphasis on public disclosure of information regarding corrupt officials is essential for prosecuting wrong doing and restoring public trust in the judiciary. Additionally, the Convention's provisions aimed at deterring bribery and penalising those who seek unfair advantages create a framework for Judicial Service Commissions to enforce ethical standards within the judicial system. By aligning their practices with the principles outlined in the UNCAC,

²³ V Topchii, S Zadereiko, G Didkivska, O Bodunova and D Shevchenko 'International Anti-Corruption Standards' (2021) *Baltic Journal of Economic Studies* Vol 7 No 5 284.

²⁴ Article 30 (1)-(10) of the UNCAC.

²⁵ See the Anti-Corruption Act 2009.

²⁶ See for example the Anti-Money Laundering Act and the Whistle-Blowers Act which have domesticated Article 14 & 23 of the UNCAC on Money Laundering and Article 40 of the UNCAC on Bank Secrecy Also see Article 31 of the UNCAC on freezing, seizure and confiscation of proceeds of corruption, which have been domesticated in sections 37 53-62 63-66 of the Anti-Corruption Act.

²⁷ United Nations Convention Against Corruption 2003 Art 13(1).

²⁸ UNCA (n 27 above) Art 15(a) & (b).

²⁹ As above.

Judicial Service Commissions can effectively combat corruption ensuring that the judiciary remains independent and committed to upholding the rights of citizens.

2.2.5 The United Nations Basic Principles on the Independence of Judiciary

The UN Basic Principles on the Independence of the Judiciary establish the minimum standards that must be upheld by any national judiciary to ensure that rights such as equality before the law, the presumption of innocence and the right to a fair and public hearing are fully realised. These principles aim to enhance judicial independence, instill public confidence in judicial systems and promote the fulfillment of rights enshrined in international, regional and national instruments. The first principle of the UN Basic Principles on the independence of the judiciary is to the effect that the independence of the judiciary must be guaranteed by the state and enshrined in the country's Constitution or laws.³⁰ It is the responsibility of all government and other institutions to respect and uphold this independence.

These principles recognise the crucial role that judges play in administering justice emphasizing that judicial independence is vital since judges are responsible for making final decisions regarding the lives, freedoms, rights, duties and properties of citizens. Therefore, national jurisdictions should make every effort to ensure the independence of their judiciaries as it is essential for upholding justice and protecting individual rights.³¹ In Uganda, the Constitution provides that in the exercise of judicial powers, the courts shall be independent and not under the control or direction of any person or authority³².

These should be read together with the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary adopted by the General Assembly in Resolution 44/162 of 15th December, 1989. The draft principles reinforce the essential role of the judicial independence in safeguarding justice and the rule of law. They emphasise that all states must adopt and implement these principles within their legal systems ensuring that judicial processes are consistent with the ideals of independence and impartiality.³³ Lastly, the procedures highlight the importance of transparency and education regarding judicial independence. States are mandated to publicise the Basic Principles widely ensuring that judges, legal professionals

³⁰ United Nations Basic Principles on the Independence of the Judiciary Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September, 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 Hereinafter *UN Basic Principles*.

³¹ As above.

³² The Constitution (n 9 above) Art 128(1).

³³ International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors (2009) Practitioners Guide 96.

and the general public are informed of their significance.³⁴ This approach not only fosters a culture of respect for judicial independence but also empowers various stakeholders to advocate for its principles within the justice system.

2.2.6 United Nations Human Rights Committee, General Comment No. 32

The United Nations Human Rights Committee issues General Comments that give authoritative interpretations of the rights enumerated in the ICCPR. Similarly, the Committee on Economic, Social and Cultural Rights issues interpretations under the International Covenant on Economic, Social and Cultural Rights. Though it is worthwhile to mention here that these General Comments have no legal binding force, they clarify the legally binding obligations that the rights included in the ICCPR place upon the states that are parties to the Covenant. These comments thus serve as a vital tool for the understanding of the state obligations and responsibilities under the ICCPR.³⁵

General Comment No. 32 deals with the fair trial rights under Article 14 of the ICCPR, highlighting fundamental principles required in the administration of justice and judicial independence. This Article prescribes essential elements such as the right to a fair hearing by a competent, independent, and impartial tribunal, which are crucial in the fight against judicial corruption. In judicial corruption, these principles enshrined in General Comment No. 32 provide a vital framework for states to evaluate and enhance their legal system. Whenever judicial independence is violated, the integrity of the legal process as a whole is in jeopardy. Corruption may occur in different forms, including bribery or improper influence over judges, that compromises impartiality crucial for a fair trial. By following guidelines stipulated in General Comment No. 32, states are motivated to adopt measures strengthening judicial independence, such as transparent procedures for the appointment of judges, proper training, and accountability mechanisms.

In addition, the remark emphasises having public trust in the judiciary. When citizens view the judicial system as being corrupt, they lose their trust, resulting in no faith in legal processes. This can lead to underreporting of crimes, decreased collaboration with law enforcement agencies, and a general undermining of the rule of law. Thus, ensuring adherence to the rights under Article 14 is not only a matter of law but a crucial step in building a culture of integrity and accountability within the judiciary. In conclusion, General Comment No. 32 gives crucial advice

³⁴ As above.

³⁵ S Choudhry 'International standards for the independence of the judiciary' (2013) *The Center for Constitutional Transitions at NYU Law and Democracy Reporting International*. Briefing Paper 41 5 Accessed at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3025990.

to states in the fight against judicial corruption through supporting the requirements of fair trial rights and judicial independence.

2.2.7 Rapporteur's Annual Reports and Missions

The United Nations Human Rights Council appoints Special Rapporteurs to concentrate on specific human rights issues, whether themed or by country. Since 1994, there has been a Special Rapporteur on the Independence of Judges and Lawyers, who presents Annual Reports detailing findings relevant to judicial independence.³⁶ In addition to these reports, the Special Rapporteur undertakes occasional missions to countries, producing in-depth case studies relating to the judicial and legal systems in those states. These assessments determine the extent to which these institutions respect principles of judicial independence. The reports not only provide observations on best practices but also shine a light on deficiencies in national judicial systems that undermine independence. Such appraisals are crucial for identifying areas where judicial corruption can thrive, making suggestions for improvement.

Additionally, reports of several thematic Special Rapporteurs offer important insights as soft law materials regarding judicial independence. For example, the Special Rapporteur on the Promotion and Protection of Human Rights has developed Draft Principles governing the administration of justice, including military courts. These principles may serve as standards for enhancing judicial integrity and combating corruption, thus ensuring that even specialised judicial bodies adhere to principles of fairness and independence.

In the fight against judicial corruption, the Special Rapporteur's work is critical. Through their in-depth review of judicial systems and their recommendations, such reports can assist states in recognising weaknesses that permit corruption to take hold. Enhancing the independence of judges and attorneys is a key factor in guaranteeing that the justice system is free from prejudice or outside influences. Finally, the lessons learned through such reports can make a substantial contribution towards promoting a culture of accountability and transparency within judicial bodies, assisting in upholding the rule of law.

2.3 Regional Framework

Regional instruments on judicial independence play a key role in shaping the governance of judiciaries in various jurisdictions. These instruments, established through treaties, conventions, and agreements, provide a structured approach to guaranteeing that judges work free from outside pressures and influences. In promoting standards on judicial appointments, security of

³⁶ Choudhry (n 35 above) 5.

tenure, and accountability mechanisms, regional instruments not only enhance the credibility of the judiciary but also assist in the rule of law and the protection of human rights within their regions. With countries increasingly recognizing the importance of an independent judiciary, these regional instruments serve as important references and best practices that foster a culture of judicial independence vital for democratic governance.

Regional instruments such as the European Convention on Human Rights and the American Convention on Human Rights play a crucial role in upholding judicial independence and impartiality. The European Convention emphasizes the right to a fair hearing before an independent tribunal, establishing criteria for judicial appointments that ensure judges operate free from external pressures. This adherence to independence not only enhances the legitimacy of the court's decisions but also informs the practices of the Judicial Service Commission (JSC) in its efforts to prevent judicial corruption and promote accountability. Similarly, the American Convention mandates that individuals have access to competent courts, highlighting the necessity for impartial tribunals. The Inter-American Court reinforces this by ensuring that victims are afforded the opportunity to present their claims effectively, further supporting the JSC's role in maintaining high standards for judicial appointments.

Moreover, instruments like the Charter of Fundamental Rights of the European Union and the European Charter on the Statute for Judges establish comprehensive frameworks for judicial governance. The EU Charter guarantees the right to effective remedies and legal aid, fostering access to justice while encouraging cross-border cooperation and a shared judicial culture. The European Charter outlines essential provisions for judicial appointments and protections against external influences, thereby bolstering public confidence in the judiciary. Together, these regional instruments create benchmarks that guide the JSC in fostering an independent judiciary, ultimately facilitating fair legal processes and reducing corruption within the judicial system across member states.

These declarations are non-binding and thus have a status similar to that of the United Nations Basic Principles and Guidelines. Although they represent the views of regional international organisations rather than the global international community, they still provide valuable insights into the universal aspects of judicial independence. Additionally, they help clarify the concept of judicial independence within specific regional contexts.

2.3.1 Summary of Other Regional Instruments

The African Charter on Human and Peoples' Rights establishes distinct principles of judicial independence and impartiality, affirming every individual's right to a fair hearing by an impartial tribunal. Article 26 mandates state parties to ensure judicial independence, which the African Commission has further emphasized through resolutions that call for the repeal of laws undermining this independence, especially regarding judge appointments. The Commission advocates for adequate resources and suitable working conditions for judges to enhance their effectiveness. These provisions not only support the judiciary in maintaining accountability and integrity but also empower the JSC to foster an environment free from corruption, promoting fairness in legal proceedings.

The African Union Convention on Preventing and Combating Corruption underscores the importance of regional cooperation in eliminating corruption in both the public and private sectors. By demanding that member states create transparent systems and uphold accountability, the Convention serves as a critical framework for combating systemic corruption. It requires active participation from national institutions, including the JSC, in promoting ethical conduct and judicial integrity. Additionally, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa stress the necessity for transparent judicial appointments and security of tenure for judges, ensuring their independence from government influence. Collectively, these instruments reinforce the rule of law and the protection of human rights, enhancing public trust in the judiciary and fostering effective governance across the continent.

2.4 Sub-Regional Framework

Sub regional frameworks establish common standards and guidelines that are unique to the legal and cultural contexts of member states. These frameworks aim at enhancing the autonomy and impartiality of the judiciary by incorporating principles drawn from international best practices and regional agreements fostering collaboration among countries to address the challenges such as judicial corruption and the politicisation of the judiciary.

2.4.1 East African Community Treaty

Uganda is a member of the East African Community, an international organisation focused on creating a Customs Union, a Common Market, a Monetary Union and ultimately a political federation to enhance and regulate political and other relationships among Partner States. Article 7(2) of the Treaty outlines principles that member states must uphold committing them to good governance which includes democracy, the rule of law, social justice and the protection of universally recognised human rights. Additionally, the EAC Treaty established the East African

Court of Justice tasked with ensuring the compliance with the law in the interpretation and application of the Treaty.

2.4.2 East African Community (EAC) Integrity and Anti-Corruption Act

The EAC Integrity and Anti-Corruption Act was passed in 2021 with the objective of promoting good governance, transparency and accountability in the organs and institutions of the East African Community. The Act also seeks to promote integrity and ethical values in the EAC entities, strengthen the legislative framework for the prevention and combating of corruption in the region and promote cooperation between national anti-corruption agencies in their quest to prevent corruption and related matters. For the JSC, the Act helps to fight judicial corruption by setting out guidelines and standards that encourage ethical behavior among judicial officers.

The East African Community (EAC) Integrity and Anti-Corruption Act fosters vital cooperation among national anti-corruption agencies, paving the way for a cohesive strategy to combat corruption within the judiciary. For Uganda's Judicial Service Commission, this translates into strengthened partnerships with regional organisations and stakeholders, facilitating the exchange of best practices and the pooling of resources to address judicial corruption effectively. Such collaboration enhances the efficiency of investigations and interventions when corruption is suspected, ensuring judicial officers are held accountable for their actions. By leveraging the provisions of the EAC Integrity and Anti-Corruption Act, the Judicial Service Commission can significantly advance its efforts to build a more transparent and accountable judicial system, thereby reinforcing the rule of law in Uganda.

2.5 Other Instruments

Judicial independence is extremely important for a fair legal system. There are a few principles, like the Bangalore Principles and Latimer House Principles, which indicate how important it is. These principles are not laws and hence cannot be legally applied, but they have significantly affected judicial reforms and legislation all over the world. They request states to make their legal systems conducive to judicial independence. This adaptation is critical to combat judicial corruption, as an independent court can make impartial judgments without external pressures or influences. By promoting transparency, accountability and integrity within the judiciary, these principles play a vital role in fostering public confidence in the legal system and ensuring the effective administration of justice.

2.5.1 The Bangalore Principles of Judicial Conduct

The Bangalore Principles were established to complement the UN Basic Principles on the Independence of the Judiciary. The Bangalore Principles have since proven to be a valuable foundation for establishing domestic standards and regulations regarding the professional conduct of judges. Many states view the guidance offered in these Principles as an essential resource for enhancing judges' independence, impartiality, integrity, propriety, competence and diligence while also ensuring equal treatment for all individuals in court³⁷. Under each value, the principles describe specific considerations and situations of which judges should be aware in order to ensure the maintenance of, and public confidence in, judicial integrity³⁸. In Uganda, all the six principles of the Bangalore have been embodied in the Uganda Code of Judicial Conduct as required by the UNCAC³⁹.

Regarding independence, the Bangalore Principles state that judicial independence is foundational to the law and a critical guarantee of a fair trial. Judges must exemplify this independence both individually and institutionally exercising their functions based on their own evaluation of the facts and in alignment with legal principles free from any external influences, pressures or interferences. This independence extends to their decisions which must be made without regard to the opinions or actions of fellow judges. Furthermore, the Code of Judicial Ethics emphasises that the judges should actively promote and support the necessary safeguards to fulfill their duties thereby strengthening both the institutional and functional independence of the judiciary.

The Bangalore Principles were developed in response to widespread public outcry in various countries regarding the pervasive corruption within the court systems which resulted in a loss of public confidence in the courts' ability to resolve disputes⁴⁰. These Principles have since been adopted as model codes of judicial conduct in numerous nations⁴¹. The Bangalore Principles outline six key ideals for judicial officers to uphold while performing their duties. These include independence, impartiality, integrity, equality, propriety and competence and diligence.

A major challenge in implementing the Bangalore Principle is that the principles are a soft international law hence not binding on states parties. It has been stated that the principles are

³⁷ J Ogoola 'Applicability of the Bangalore Principles to the Ugandan Judiciary as a Tool for Improving Judicial Ethics and Accountability' Annual Judges Conference A paper presented at the 21st Annual Judges Conference. (2021). Available

[https://judiciary.go.ug/files/downloads/Applicability%20of%20the%20Bangalore%20Principles%20to%20the%20Ugandan%20Judiciary%20as%20a%20Tool%20for%20Improving%20Judicial%20Ethics%20and%20Accountability%20by%20Hon.%20Justice%20\(Rtd\)%20James%20Ogoola%20-%20AJC%202019.pdf](https://judiciary.go.ug/files/downloads/Applicability%20of%20the%20Bangalore%20Principles%20to%20the%20Ugandan%20Judiciary%20as%20a%20Tool%20for%20Improving%20Judicial%20Ethics%20and%20Accountability%20by%20Hon.%20Justice%20(Rtd)%20James%20Ogoola%20-%20AJC%202019.pdf).

³⁸ G Mayne 'Judicial Integrity: The Accountability gap and the Bangalore Principles' 42.

³⁹ Article 8 (2) of UNCAC provides that each State Party shall endeavor to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions.

⁴⁰ International Council on Human Rights Policy and Transparency International (2009) 35.

⁴¹ As above.

primarily aimed at judiciaries for implementation and enforcement rather than the state⁴². This results in a significant weakness in their enforcement as the principles are not part of a binding document under international law. Instead they serve as guidance for members of the judiciary rather than establishing directly enforceable standards of behaviors which limit their potential impact on enhancing judicial conduct. However, the Uganda Code of Judicial Conduct is a replica of the Bangalore Principles since it provides for the same principles of judicial conduct as provided for in the Bangalore Principles.

2.5.2 UN Basic Principles on the Independence of the Judiciary

The Basic Principles emphasise the need for the state to guarantee the independence of the judiciary and for this principle to be embodied in the Constitution or law of the country. According to the basic principles, the State shall ensure the independence of the judiciary, as outlined in the Constitution or law. All governmental bodies and institutions are responsible for respecting and upholding this independence. The judiciary is tasked with making impartial decisions based on facts and legal principles free from any form of undue influence, coercion, threats or interference whether direct or indirect.

The judiciary holds the exclusive jurisdiction over judicial matters and determines its competence as defined by law. There must be no improper interference with judicial proceedings and court decisions should not be subject to revision except as allowed by law for review or adjustment by competent authorities. Everyone has the right to be tried in ordinary courts using recognized legal processes and no alternative tribunals that bypass these established procedures should be formed. Furthermore, the judiciary is obligated to ensure fair proceedings and protect the rights of all parties involved. It is also the responsibility of each member state to provide sufficient resources for the judiciary to effectively carry out its duties.

2.5.3 Centre for the Independence of Judges and Lawyers (CIJL) Policy Framework for Preventing and Eliminating Corruption and Ensuring Impartiality of the Judicial System

The CIJL emphasises that the integrity of the judicial system is vital for upholding a democratic society as it ensures the application of the rule of law and the protection of human rights. An impartial judiciary is essential, without it the democratic foundations of society may be compromised. To effectively carry out its responsibilities, the judicial system must operate

⁴² Ogoola (n 37 above).

independently and impartially, making decisions based on evidence and the law. Any external influence on judicial making is deemed a form of corruption.⁴³

In its 9th annual report, “Attacks on Justice” the CIJL conducted research across 48 countries and found that judicial corruption is widespread in 30 of them while only 6 countries seem less affected.⁴⁴ With the recognition of corruption’s detrimental impact on the rule of law and human rights, the CIJL organised a meeting to develop policies aimed at preventing and combating judicial corruption. This policy framework encompasses not just judges but also all individuals exercising judicial power and court staff, as their roles are crucial for maintaining judicial impartiality. Moreover, the framework acknowledges that efforts to address corruption in the judiciary must be integrated with wider initiatives aimed at combating corruption in both government and the private sector.

2.5.4 International Bar Association (IBA) Minimum Standards of Judicial Independence

According to the IBA minimum standards of judicial independence, judges must enjoy substantive independence to effectively fulfill their roles. It provides for personal independence which refers to the assurance that the terms and conditions of judicial service are secure enough to protect judges from executive control. This means that judges should not face external pressures that could influence their decision making. On the other hand, substantive independence ensures that judges are only guided by the law and their own conscience when performing their judicial duties free from any external influence or intimidation.⁴⁵

Moreover the judiciary as a collective body must maintain autonomy from the executive branch. While the executive or legislature can participate in the appointment and promotion of judges, this involvement should not compromise judicial independence. Appointments should be primarily managed by a judicial body that predominately consists of members from the judiciary and legal profession. In jurisdictions where historical precedents allow for non-judicial bodies to handle such matters effectively, this practice may also be acceptable. Additionally, any disciplinary actions against judges should be initiated by the executive but the adjudication of these matters must rest with an independent body ideally a judicial tribunal. This ensures that the

⁴³ Centre for the Independence of Judges and Lawyers Year Book ‘Strengthening Judicial Independence: Eliminating Judicial Corruption (2000). Robert D Nicholson (Eds) Vol IX 127 Accessed at <https://www.icj.org/wp-content/uploads/2001/02/CIJL-Yearbook-strengthening-judicial-independence-+-corruption-IX-2000-eng.pdf>.

⁴⁴ As above.

⁴⁵ International Bar Association Minimum Standards of Judicial Independence (1982) Principle 1.

power to remove a judge is handled with impartiality and fairness typically upon recommendations from a judicial commission.⁴⁶

2.5.5 Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence

The Latimer House Principles emphasise the importance of judicial independence through several key areas. Firstly, the judicial appointment process should be independent and merit based, ideally involving a judicial services commission to ensure the selection of qualified judges.⁴⁷ This process should promote gender balance and address historical discrimination. Appointments should generally be permanent with a focus on maintaining security of tenure and all judicial vacancies be publicly advertised.⁴⁸

Secondly, adequate and sustainable funding is essential for the judiciary to function effectively. This funding must be protected from misuse and not used to exert control over judicial operations. Judges are to be trained with proper salaries decided by an independent authority so that the value of their salaries is maintained. Emphasis must be placed on continuing judicial education and training with legal awareness to be imparted on social matters. A Code of Ethics is to be framed so that accountability is increased and any disciplinary proceeding against judges is fair and transparent with the right of defence available to the judges. The principles also call for the existence of an independent legal profession and accessible legal aid to disadvantaged persons.

2.5.6 Commonwealth Principles on the accountability of and the Relationship between the Three branches of Government

The Commonwealth principles on the accountability of and the relationship between the three arms of government highlights the essential importance of judicial independence in the governance structure of commonwealth nations. It holds that Parliaments, Executives and Judiciaries all have crucial roles to play in ensuring the rule of law, advancing human rights and guaranteeing good governance marked by integrity and accountability. The interaction between the Parliament and the judiciary must be founded on mutual respect for their respective

⁴⁶S Gass, R Kiener and T Stadelmann 'Standards on Judicial Independence' (Eds) (2012) 352 Accessed at <https://www.booklooker.de/B%C3%BCcher/Stephan-Gass+Standards-on-judicial-independence/isbn/9783905742916>.

⁴⁷Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence (1998) Principle 1 states that Jurisdictions should have an appropriate independent process in place for judicial appointments. where no independent system already exists, appointments should be made by a judicial services commission (established by the Constitution or by statute) or by an appropriate officer of state acting on the recommendation of such a commission.

⁴⁸As above 221.

functions; law making for Parliament and law interpretation for the judiciary, complementing each other to reinforce the rule of law.

Additionally, an independent, impartial, and competent judiciary is said to be vital to uphold the rule of law and foster public confidence in the judiciary. To achieve this ambition, judicial appointments must follow clearly established criteria and an open process that promotes equality, merit-based selection, and gender balance. Adequate security of tenure and remuneration must be ensured to protect judicial independence, alongside sufficient resources for the judicial system to function effectively. Interactions between the executive and judiciary should not compromise this independence, and judges should only face suspension or removal for clear reasons of incapacity or misconduct. Overall, the statement highlights that a strong, independent judiciary, supported by an effective legal profession, is fundamental to maintaining justice and the rule of law.

2.6 Conclusion

While the majority of international instruments that define standards for judicial independence are categorised as soft law rather than binding hard law, they still hold considerable legal significance. This importance stems from their recognition as customary international law which is established through consistent state practices and the accompanying legal opinions that support them. Together, these tools reinforce the legal framework governing judicial review as well as express a normative consensus that exists across nations. The consensus creates an advanced environment within which individuals who seek to challenge the principles of conflicting opinions are placed.

Judicial Councils are critical bodies that protect judges from executive intrusions into appointment processes while, at the same time, enforcing accountability. The need for Judicial Commissions is patent, since the judiciary needs to retain its independence vis-a-vis the other two branches of government so that it can efficiently insure the integrity of the principle of separation of powers. This independence ensures that judicial officers and their auxiliary staff are insulated from capricious acts by different branches of government. Among the several assignments given to Judicial Councils is this specific function, which is necessary to promote self-regulation by the judiciary as an independent branch of government. Unfortunately, Judicial Councils are but part of an overall judicial reform strategy. This multi-pronged campaign needs to address several other problems, with main emphasis necessary regarding access to justice, enforcement of judicial decrees, and combating corruption.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING THE JUDICIAL SERVICE COMMISSION

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3.1 Introduction

The Judicial Service Commission, an independent body established under the Constitution of the Republic of Uganda,¹ is part of the Justice Law and Order Sector (JLOS). It contributes to promoting the rule of law, public order, justice administration, good governance, and the protection and observance of human rights in Uganda. Hence, the Commission is a tier two anti-corruption institution that offers an oversight role over the judiciary.

The evolution of the JSC has been shaped by historical contexts from colonial legacies to contemporary governance models reflecting the changing dynamics of legal systems. This chapter will explore the JSC's establishment under various constitutions, its governance and organisational structure and the specific functions it performs to uphold judicial standards. Moreover, the chapter will examine the significance of the JSC's role in recruitment, disciplinary control as well as public education. By understanding the legal and institutional framework governing the JSC, we can better appreciate its critical contribution to a fair and impartial and trustworthy judicial system in Uganda.

3.2 Historical Evolution of the JSC

The historical evolution of the JSC in Uganda reflects significant changes in governance and judicial administration from the colonial period to the present. During the colonial era (1894-

¹ The Constitution of the Republic of Uganda 1995 (As Amended) Article 146(1).

1962), Uganda lacked a formal constitutional identity and the British government exercised substantial control over judicial appointments and administration through the Commissioner. With the authority to create laws and appoint judges, the Commissioner operated with considerable discretion resulting in a system where individual judges wielded more power than institutional frameworks.

Following Uganda's independence in 1962, the JSC was formally established under the Independence Constitution marking a shift towards a more structured approach to judicial appointments and oversight.² Comprising key judicial and governmental figures, the JSC was tasked with appointing various judicial officers and advising the President on judicial matters. This period saw the consolidation of power within the JSC, which gained responsibilities for not just appointments but also disciplinary control over judicial officers. However, the subsequent 1966 Constitution maintained the JSC's role while modifying its memberships further entrenching its authority in the judicial landscape.

The 1995 Constitution marked a pivotal expansion of the JSC's mandate transforming it into a more independent institution with broader responsibilities. This modern JSC not only oversees the appointment and discipline of judicial officers but also promotes transparency and accountability within the judiciary. It plays an essential role in training and developing judicial personnel reflecting an evolving understanding of the judiciary's role in society. The recommendations from the 1988 Constitutional Commission emphasized the need for a more inclusive and accountable JSC leading to its current composition and functions as outlined in Articles 146 to 151 of the Constitution.

Despite these legal reforms, empirical data reveal that challenges associated with executive interference remain deeply entrenched. For instance, a respondent noted that while the Commission is theoretically independent, in practice, the Attorney General's office continues to exert considerable influence over JSC decisions, particularly regarding appointments and disciplinary procedures.⁶ This concern mirrors the views of other stakeholders who question the integrity of some appointments, citing opaque recruitment processes and limited public scrutiny.⁷ According to that respondent, civil society actors have repeatedly raised concerns that individuals with questionable ethical profiles continue to be recruited into the judiciary, often due to weak background checks and limited stakeholder involvement.⁸

Thus, while the legal evolution of the JSC reflects commendable constitutional progress, the practical realities—such as executive dominance, lack of transparency, and limited civic

² The Independence Constitution of Uganda (1962), Article 97(1).

engagement—have slowed the attainment of full institutional independence. These empirical insights demonstrate that the historical struggle for judicial independence is not merely legal but also socio-political, requiring continuous reform and vigilance.

3.2.1 JSC during the Colonial Period 1894-1962

Prior to 1984, the territory now recognised as Uganda did not have a formal constitutional identity despite its various regions existing long before its designation. It was in that year that the British government proclaimed Uganda as a British Protectorate marking the official establishment of Uganda as an administrative entity. The declaration by the British Government albeit made with hesitation brought Uganda under the jurisdiction of “the Africa-order-in-Council, 1889 which authorised the local consul to establish local jurisdiction under which he was to exercise considerable executive, judicial and administrative powers”.³

The 1902 Order in Council began with a preamble stating that “whereas, through treaty, grant, usage, sufferance and other lawful means, His Majesty holds power and jurisdiction in the Uganda Protectorate, now therefore by virtue of the authority granted by the Foreign Jurisdiction Act, it is ordered that this Order outlined the territorial boundaries of the Protectorate and its administrative divisions granting the Crown via a Secretary of State the authority to declare which areas could be included in or excluded from the Protectorate as desired.

Provisions for the administration of Uganda were established designating an officer known as the Commissioner who would be supported by Deputy Commissioner and other officials. The Commissioner was endowed with the powers of the Government of Uganda and was to authenticate his actions with an Official seal. All rights related to crown land as well as unclaimed mines and minerals were vested in him. He also had the prerogative of mercy exercised in the name of the Crown. Any laws, proclamations, regulations or notifications were to be published in the Gazette through other means deemed appropriate by the Commissioner.⁴

To this effect, the Commissioner was authorized to create laws, rules and regulations. Article 12 of the Ordinance stated that the Commissioner could enact Ordinances for the administration of justice, revenue collection and the overall governance of Uganda.⁵ In exercising these legislative powers, the Commissioner was bound only by the general or specific instructions from the Secretary of State in London. He was to respect existing native laws and customs provided they

³ GW Kanyeihamba ‘Constitutional and Political History of Uganda: From 1894 to present’ (2010) *Law Africa Publishing (K) Limited* 6.

⁴ Kanyeihamba (n 3 above) 8.

⁵ Uganda Order in Council (1902) Article 12.

did not contradict British notions of justice or morality. Additionally, he could apply laws from the United Kingdom, India or other colonies to Uganda with specified examples and modifications.⁶

In conjunction with the laws established by the Commissioner, those listed in the First Schedule of the Foreign Jurisdiction Act of 1890 were applicable to Uganda as if it were a colony or possession subject to the Uganda Order in Council and its exceptions and modifications. Article 15 of the Order⁷ established a High Court known as His Majesty's High Court of Uganda which possessed full civil and criminal jurisdiction over all cases and individuals in Uganda. Judges of this court were appointed and dismissed at the discretion of His Majesty, the King of England.

Additionally, the Commissioner was empowered to create subordinate courts including those with special jurisdiction and to regulate appeals to and from these courts and the High Court through Ordinances. Article 10⁸ granted the Commissioner the authority to appoint, discipline and dismiss public officers, magistrates, judges (excluding High Court judges), court registrars, principal officers, clerks and subordinate court officers. The High Court was also authorized to formulate rules, with the Commissioner's approval, governing court practices, procedures, fees and the conditions under which lawyers could operate in Uganda. An authenticated version of these rules was to be submitted to the Secretary of State after the Commissioner's approval. The Commissioner enjoyed personal and propriety immunity from legal proceedings while the Government of Uganda was held liable for actions taken by its officers under Article 23 of the Order.

During the colonial era, most power and authority resided with individual judges rather than within institutional frameworks. A functionalist approach provided greater flexibility and allowed for manipulation of the law. Judges were integrated into the colonial civil service and usually progressed through a promotion system. This bureaucratic arrangement compromised their independence as judges were motivated to secure their positions and advancements through the executive's influence. Consequently, judicial independence for colonial judges was significantly limited and instances of the courts attempting to hold the governor accountable extremely rare⁹.

According to *Alexander*,¹⁰ in Kenya, Uganda and Tanzania, Judicial Service Commissions were not integral to the colonial judicial administration. During that period, the appointment of

⁶ Kanyeihamba (n 3 above) 9.

⁷ Article 15 (n 5 above).

⁸ Article 10 (n 5 above).

⁹ RL Ellett 'Courts and the Emergence of Statehood in Post-Colonial Africa' (2012) 347 *NILQ* 36(3) 343-63.

¹⁰ MA Saba 'The Constitutional Role of Judicial Service Commission in Protecting the Independence of the Judiciary' (2019) 106 *KAS Kenyan Law Study Library*.

judicial officers was solely the responsibility of the governor and in some cases it fell under the authority of the reigning monarch. These Commissions were subsequently established in the constitutions of these countries through their independence constitutions.

Regarding the administration of justice, the Orders established the position of a Principal Judge to lead the judiciary in scenarios where multiple judges were appointed or another title approved by the Secretary of State could be used.¹¹ Additionally, the High Court was granted authority with the Commissioner's approval to create rules governing the practices and procedures of both the High Court and all subordinate courts.¹²

It is important to note that upon gaining independence, the nationalist governments that took power in British colonies across Africa operated within a framework established by constitutions negotiated between both parties. This indicates that the independence of any British colony was always preceded by constitutional discussions between nationalist leaders and departing colonial authorities. The British mandated that most of its colonies include provisions in their independence constitutions that limited government powers and introduced enforceable Bills of Rights to protect human rights and fundamental freedoms¹³.

3.2.2 JSC under the 1962 Independence Constitution and the 1966 Constitution

The 1962 Constitution established the Judicial Service Commission under Article 97(1).¹⁴ The commission was composed of four members: the Chief Justice who served as the chairperson, a minister designated by the Prime Minister (or the Attorney General if no minister was designated), a puisne judge designated by the President acting on the advice of the Prime Minister, and one other member appointed by the President acting on the advice of the Prime Minister. The Judicial Service Commission was responsible for appointing the Registrar or the Deputy Registrar of the High Court of Uganda, the Registrar or Deputy Registrar of the High Court of Buganda, the Senior Resident Magistrate or Resident Magistrate and such other officer empowered to preside in or to be a member of any court of law and such offices connected with any such court other than the High Court of Uganda and the High Court of Buganda.¹⁵

The Commission was further vested with the authority to advise the President on the exercise of their powers to appoint puisne judges, while the Chief Justice was appointed by the President on

¹¹ Article 17(3) (n 5 above).

¹² Article 22(1) (n 5 above).

¹³ JE Ruhangisa 'Human Rights in Tanzania: The Role of the Judiciary' A Thesis Submitted to the University of London for the Degree of Doctor of Philosophy Law Department School of Oriental and African Studies 46.

¹⁴ Article 97(1)(a) (n 2 above).

¹⁵ Article 98 (5) (n 2 above).

the advice of the Prime Minister. Additionally, Article 98(1)¹⁶ made the JSC responsible for appointing other judicial officers. Beyond the appointment and recruitment functions, the commission was also granted powers to exercise disciplinary control over persons holding these offices and to remove such persons from office. The end of the Independence Constitution resulted in the establishment of the 1966 Interim Constitution which was enacted following Milton Obote's overthrow of the government that same year and the subsequent insurgency.¹⁷ The Judicial Service Commission was maintained with some modifications to its membership. The Chief Justice continued to serve as its chairperson joined by the Attorney General, a Puisne Judge appointed by the President upon the Chief Justice's recommendation and another member selected by the President with Cabinet advice.¹⁸

The Commission's responsibilities included appointing the Chief Registrar or Deputy Registrar of the High Court, the Chief Magistrate, Magistrates, Senior Resident Magistrate or Resident Magistrate as well as other officials authorised to preside over or serve on any court of law apart from the High Court.¹⁹ To fulfil its mandate, the Judicial Service Commission was granted the authority to confirm appointments, exercise disciplinary control over individuals in these roles and even remove them from office.²⁰

3.2.3 JSC under the 1967 Constitution

Under the 1967 Constitution, the Commission was provided for in Part III of Chapter VIII of the Constitution. Article 90²¹ states that there shall be a Judicial Service Commission constituting of the Chief Justice who shall be the chairperson²², the Attorney General²³ and such other members not exceeding three as appointed by the president²⁴. The members of the Commission are appointed by the President and a person must possess the qualifications prescribed in Article 84(3)²⁵ in order to be eligible for appointment to the JSC. Secondly, the term of office for a JSC member appointed by the President is four years, after which they shall vacate their position²⁶.

The Constitution also outlines the grounds for removal of a JSC member appointed by the President. The President may only remove such a member from office due to their inability to

¹⁶ Article 98 (1) (n 2 above).

¹⁷ J Kamugisha 'The Evolution of the Court System In Uganda. Pre-Colonial Uganda To-date' *Sui Generis Publishing House* 22.

¹⁸ The Pigeonhole Constitution of Uganda (1967) Article 97.

¹⁹ Article 98 (3) (n 18 above).

²⁰ Article 98(1) (n 18 above).

²¹ The Constitution of the Republic of Uganda 1967 Article 90 (1).

²² Article 90 (1) (a) (n 21 above).

²³ Article 90 (1) (b) (n 21 above).

²⁴ Article 90 (1) (c) (n 21 above).

²⁵ Article 90 (2) (a) (n 21 above).

²⁶ Article 90 (2) (b) (n 21 above).

discharge the functions of their office, whether arising from infirmity of mind or body or any other cause, or for misbehavior²⁷.

Furthermore, the Constitution vests the power to appoint, confirm appointments, exercise disciplinary control, and remove persons holding or acting in certain judicial offices in the President, acting on the advice of the Judicial Service Commission²⁸. These offices include the Chief Registrar or Deputy Registrar of the High Court, the Chief Magistrate or Magistrate of any Grade, and other judicial offices as prescribed by Parliament. The functions of the President and the JSC in this regard shall be carried out in accordance with any provisions made by Parliament for regulating and facilitating the discharge of these duties²⁹.

3.2.4 JSC under the 1995 Constitution

The Commission established under the 1962 and 1967 Constitutions had a much more limited role compared to the JSC that was later introduced in the 1995 Constitution. While the old JSC was primarily responsible for overseeing the appointment, the modern JSC has taken on a significantly broader mandate. The 2005 Constitutional Amendment expanded its powers to disciplining judicial officers besides ensuring a merit based judicial appointment.³⁰ In addition to these core functions, the 1995 JSC serves as a vital link between the judiciary and the public, fostering transparency and accountability. Furthermore, the Commission is now tasked with providing training and professional development for judges, ensuring the continuous improvement of the judicial system. This expanded role reflects the evolving nature of the JSC and its growing importance in safeguarding the independence and effectiveness of the judiciary in Uganda.

The outlook of the modern Commission can be traced back to the Report of the Constitutional Commission of 1988 established by the National Resistance Council which was tasked with reviewing the 1967 Constitution and coming up with a new one. The Constitutional Commission recommended that the JSC should be enlarged³¹ to include prominent lawyers elected by the Uganda Law Society³² and two members of the Public Service Commission³³ besides enhancing the appointing powers to include the appointment of Registrars and Magistrates and receiving

²⁷ Article 90 (2) (c) (n 21 above).

²⁸ Article 91(1) (n 21 above).

²⁹ Article 91(2) (n 21 above).

³⁰ PLO Lumumba 'Positioning Uganda's Judiciary to Contribute to Social and Economic Transformation' (2025) A Paper presented at the Annual Judges' Conference held in Kampala on 14th February 2025 10. Available at <https://judiciary.go.ug/files/downloads/Positioning%20Uganda's%20Judiciary%20to%20Contribute%20to%20Social%20and%20Economic%20Transformation%20-%20Paper%20by%20Prof.%20Lumumba.pdf>.

³¹ Report of the Constitutional Commission (1993) Para 203(a).

³² Para 203 (a)(iv) (n 31 above).

³³ Para 203 (a)(vi) (n 31 above).

people's complaints concerning legal systems and advising government on the necessary measures to take³⁴.

The current Judicial Service Commission is established under Article 146³⁵ of the Constitution as an independent institution. The Commission is a specialised body with extensive oversight responsibilities regarding the judiciary's services to the public. Its mandates and functions are outlined in Articles 146 to 151 of the Constitution. Article 146 specifies that the Commission comprises of nine (09) members who are appointed by the President with the approval of parliament³⁶. This include the Chairperson and Deputy Chairperson who shall be persons qualified to be appointed as justices of the supreme of Uganda³⁷. The other members of the Commission one person nominated by the Public Service Commission³⁸, two senior advocates nominated by the Uganda Law Society³⁹, a judge of the Supreme Court⁴⁰, two members of the public.⁴¹ Additionally, the Attorney General serves as an ex officio member⁴² and the Secretary to the Commission is appointed by the President as specified in Article 146(8) of the Constitution.

3.3 Composition of the JSC

As earlier stated, the Commission comprises nine members endowed with the authority to enhance the efficiency and effectiveness of justice administration in Uganda. The Commissioners are selected for their integrity and exemplary character. The Chairperson of the JSC is Hon. Judge of the High Court deputised by another Hon. Judge of the High Court too. The other members of the Commission include a Justice of the Supreme Court, the Attorney General of Uganda who is also an ex officio member of the Commission, a member representing the Public Service Commission and two members representing the general public. It should be noted that currently, the Uganda Law is not represented on the Commission as stipulated by the Constitution.

The Chairperson of the Commission holds a full time position while other members are part time Commissioners.⁴³ Several respondents underscored that the part-time nature of the Commission's membership significantly impairs its effectiveness in handling the expanded

³⁴ Para 204 (e) & (f) (n 31 above).

³⁵ Article 146(1) (n 1 above).

³⁶ Article 146(2) (n 1 above).

³⁷ Article 146(2)(a) (n 1 above).

³⁸ Article 146(2)(b) (n 1 above).

³⁹ Article 146(2)(c) (n 1 above).

⁴⁰ Article 146(2)(d) (n 1 above).

⁴¹ Article 146(2)(e) (n 1 above).

⁴² Article 146(3) (n 1 above).

⁴³ Article 146(6) (n 1 above).

mandate. One of the respondents noted, “Only the Chairperson is full time. How can the Commission handle complaints of the expanded mandate with the part-time nature of the Commission?”⁴⁴ This view was echoed by another respondent who emphasised that unlike other permanent tribunals such as the Uganda Human Rights Commission (UHRC) and the Leadership Code Tribunal, the JSC lacks the institutional capacity to address its workload consistently, especially disciplinary complaints.⁴⁵

Moreover, challenges with internal organisation and operational tools were raised. A respondent lamented that the Commission still receives and records complaints manually, stating, “We are still hand-recording complaints... the human hand is still prevalent... we don’t have an electronic database of all our staff.”⁴⁶ Such outdated processes, combined with a lack of technological infrastructure, slow the handling of complaints and reduce transparency. According to one of the respondents, this inefficiency coupled with delayed or no feedback has caused court users to lose confidence in the institution.⁴⁷

Additionally, the absence of fully staffed regional offices limits accessibility and inclusivity. As a respondent noted, “The JSC must be seen not as a Kampala-based institution but one that serves the entire country.”⁴⁸ The idea of decentralising or strengthening regional structures was a shared sentiment, given that public confidence depends not only on justice being done but also on it being seen to be done and accessible to all.

JSC members are appointed for a four year term and may be reappointed only once. After this, they must leave office.⁴⁹ Additionally, a member can be dismissed by the President due to incapacity whether physical or mental or for reasons such as misbehavior, misconduct or incompetence.⁵⁰ The Commission also includes a technical division led by a Secretary who is appointed by the President based on recommendations of the Public Service Commission.⁵¹

The appointment process for members of the JSC has been a source of significant concern, as it appears to violate the fundamental principle of separation of powers. The appointing authority, the President, has been criticised for selecting individuals who already hold positions within the judiciary, which is itself a separate arm of government, and appointing them to serve under the

⁴⁴ Interview with His Lordship Dr. Douglas Singiza Chairperson of the Judicial Service Commission (Kingdom Kampala 29 July 2025).

⁴⁵ Interview with MA Anti-Corruption Coalition Uganda (Ntinda 9 April 2025).

⁴⁶ Interview with His Lordship Dr. Douglas Singiza Chairperson of the Judicial Service Commission (Kingdom Kampala 29 July 2025).

⁴⁷ Interview with CA Uganda Law Society (Kampala 16 April 2025).

⁴⁸ Interview with MM JLOS Secretariat (Kampala 1 April 2025).

⁴⁹ Article 146(6) (n 1 above).

⁵⁰ Article 146(7)(a) (n 1 above).

⁵¹ Article 146(7)(c) (n 1 above).

executive branch. This perceived lack of independence and objectivity in the selection process has raised serious questions about the impartiality and credibility of the Judicial Service Commission.

The issue regarding appointment of sitting judicial officers being appointed to any other executive or constitutional office prior to resigning their offices has been a subject of court. And the Constitutional Court in the case of *Bob Kasango vs Attorney General & Another*⁵² held this practice as unconstitutional and in contravention of Article 223(4) of the Constitution. It was also stated that this decision applies mutatis mutandis to all such appointments for example as the case was in the appointment of Lady Justice Faith Mwendha as the Inspector General of Government.

The perceived lack of institutional independence within the JSC was a recurring concern among key stakeholders. A respondent, for instance, noted that “the Commission may not be independent in terms of the decisions it makes, given the influence that comes from the executive through the Attorney General.”⁵³ He argued that even when disciplinary recommendations are made, these may be stifled or redirected through the executive filter, thus weakening internal autonomy. This perception aligns with another respondent’s observations that “corruption exists even within the Commission itself,” making the idea of internal oversight questionable in the public’s eyes.⁵⁴ According to her, this undermines trust in the Commission’s ability to independently evaluate and discipline judicial officers.

One of the respondents confirmed that structural deficiencies, particularly the part-time status of most Commissioners, further compromise autonomy. “Only the Chairperson is full time... how can the Commission handle complaints of the expanded mandate?”⁵⁵ In addition to human resource limitations, the respondent criticized the duplication of functions between the Judiciary’s internal disciplinary arms and the Commission, warning that “the evidence gets tampered with... a lot of complaints are already investigated by the judiciary and again re-investigated by the Commission.”⁵⁶ Further concern came from another respondent, who candidly observed that “even the JSC is corrupt, so how does it discipline others for corruption?”⁵⁷ He stressed the need for the Commission to lead by example, both in terms of transparency and public confidence.

⁵² Constitutional Petition No.16 of 2016

⁵³ Interview with MA Anti-Corruption Coalition Uganda (Ntinda 9 April 2025).

⁵⁴ Interview with CA Uganda Law Society (Kampala 16 April 2025).

⁵⁵ Interview with His Lordship Dr. Douglas Singiza Chairperson of the Judicial Service Commission (Kingdom Kampala 29 July 2025).

⁵⁶ As above.

⁵⁷ Interview with MM Mukono Courts (Buganda Road) 22 April 2025).

The continued appointment of sitting members of the bench as Chairperson and deputy chairperson by the executive blurs the boundaries between the three arms of government which undermines public trust in the Commission's ability to function as a neutral and effective oversight body. As such, the composition and selection of the Judicial Service Commission membership merits careful scrutiny and reform to ensure it upholds the constitutional principles of checks and balances and judicial independence.

Further complicating the matter, the nomination of JSC members by the Uganda Law Society has also come under attack by some members of the legal community, who have questioned the representativeness and legitimacy of this process. These ongoing debates and criticisms highlight the need for greater transparency, accountability, and adherence to clear, objective criteria in the appointment and nomination of Judicial Service Commission members to ensure the integrity and credibility of this crucial oversight body.

In the case of *Kalali Steven v Uganda Law Society*⁵⁸, the applicant, who was a member of the respondent body (the Uganda Law Society), challenged the method used by the respondent to nominate its representatives to serve on various statutory bodies, including the Judicial Service Commission. The Court found that the respondent's governing body, the Council, was unilaterally nominating its own members to these positions, without the involvement of the broader membership of the Uganda Law Society. The Court ruled that this mode of nomination was illegal and contrary to the provisions of the Uganda Law Society Act, which requires the members of the Society to actively participate in the selection or election of such representatives at a general meeting.

The Court emphasised that this lack of member participation in the nomination process meant that the interests of the Uganda Law Society members may not have been effectively represented on these statutory bodies, as was originally envisaged in the Constitutional Commission's recommendations. The Court's decision highlighted the need for the Uganda Law Society to adhere to its own governing laws and regulations to ensure the proper and legitimate representation of its members on key institutions like the Judicial Service Commission.

Following the judgement in the Steven Kalali case and the impending end of the ULS representatives' term on the JSC, the Uganda Law Society convened an extra ordinary general assembly to elect representatives to the JSC for the first time since the society's inception. This process aimed to uphold the democracy and the rule of law however, it was halted by the High Court in the consolidated case of *Mugisha Hashim Mugisha & Pheona Nabasa Wall vs Uganda Law*

⁵⁸ High Court Miscellaneous Cause No. 129 of 2023.

*Society and others*⁵⁹ which sought to nullify the nomination process for candidates representing the ULS on the JSC.

As of now, the issue of nominating representatives of the Uganda Law Society to the JSC remains unresolved despite the expiration of the two ULS representatives' terms. This situation hinders the functionality of the JSC as its membership may not be fully constituted given the ongoing legal disputes. Such delays raise concerns about the rule of law in Uganda and its implications for governance and judicial oversight. The absence of elected representatives from the ULS compromises the effectiveness of the Commission and raises concerns about its ability to operate efficiently. Such circumstances diminish public confidence in the legal system highlighting the urgent need for a resolution to restore proper functioning of the JSC.

3.4 Functions of the Judicial Service Commission

The Judicial Service Commission in Uganda is vested with a broad range of important functions under Article 147 of the constitution. These include advising the President on appointments, disciplinary control, and removal from office of key judicial officers such as the Chief Justice, Deputy Chief Justice, Principal Judge, Justices of the Supreme Court and Court of Appeal, and Judges of the High Court, the Chief Registrar and a Registrar⁶⁰. The Commission also has the authority to appoint, confirm, discipline, and remove from office the Deputy Registrar, Assistant Registrars, Chief Magistrates, Magistrate Grade 1⁶¹ as well as the staff of the judiciary⁶², such as court clerks.

In addition, the Judicial Service Commission is tasked with reviewing and making recommendations on the terms and conditions of service of judicial officers⁶³. It is also responsible for carrying out public and judicial education programs about the law and administration of justice⁶⁴, receiving and processing public recommendations and complaints concerning the judiciary and the administration of justice⁶⁵, and advising the Government on improving the overall administration of justice⁶⁶. This broad mandate underscores the critical role the Judicial Service Commission plays in upholding the independence, integrity, and effectiveness of Uganda's judicial system.

⁵⁹ Miscellaneous Applications No. 1243 & 1262 of 2024.

⁶⁰ Article 147(3)(a) & (b) (n 1 above).

⁶¹ Article 148 (n 1 above).

⁶² Article 148A (n 1 above).

⁶³ Article 147(1)(b) (n 1 above).

⁶⁴ Article 147(1)(c) (n 1 above).

⁶⁵ Article 147(1)(d) (n 1 above).

⁶⁶ Article 147(1)(e) (n 1 above).

Despite the expansive accountability mandate given to the Commission, most interviewees questioned the practical effectiveness of its disciplinary systems and complaint procedures. A respondent commended the presence of disciplinary infrastructure, noting that “JSC has complaints handling mechanisms and procedures in place... [and] can cause an inquiry and therefore a hearing to hold those accountable.”⁶⁷ However, he also cautioned that the scope of accountability is restricted by a broader ecosystem of impunity, where “corruption is glorified by the public and chain actors.”⁶⁸

A deeper concern expressed by several informants, especially by civil society, was the selectivity in enforcement. As one respondent stated, “disciplinary action is more elaborate for the lower bench... but this does not happen often for the higher bench.”⁶⁹ He referenced the limited action against senior judicial officers and emphasized the JSC’s silence on reported cases, especially where the individuals involved hold political significance. Similarly, another respondent argued that “corruption thrives in darkness... the JSC should publicize sanctions so others can learn.”⁷⁰ This sentiment was echoed by the Chairperson of the Commission, who admitted that “very few judges from the higher bench have been sanctioned... yet there is a backlog of cases.”⁷¹

Moreover, another respondent noted that a major accountability failure is the lack of feedback to both complainants and the public. “Many court users do not know where to locate the Commission... the Commission should give feedback on disciplinary outcomes,”⁷² she urged, pointing out that transparency is a necessary precondition for credibility. If the JSC is to fulfill its accountability role effectively, respondents agreed that public engagement, equal enforcement of rules, and feedback mechanisms must become central priorities.

The gatekeeping function of the JSC in recruitment was repeatedly highlighted by stakeholders as a pivotal preventive mechanism against corruption. A respondent explained that “the JSC tries to sieve through candidates that are not only technically competent... but also have the ethical standing that enables them to serve with impartiality and integrity.”⁷³ This function is not only administrative but ethical, acting as the first barrier against indiscipline. However, other respondents criticized the opaque and non-meritocratic nature of the recruitment process. One respondent remarked that “there is a lot of soliciting for money during recruitment... applicants

⁶⁷ Interview with MM JLOS Secretariat (Kampala 1 April 2025).

⁶⁸ As above.

⁶⁹ Interview with MA Anti-Corruption Coalition Uganda (Ntinda 9 April 2025).

⁷⁰ Interview with PW Transparency International Uganda (Kampala 9 April 2025).

⁷¹ Interview with His Lordship Dr. Douglas Singiza Chairperson of the Judicial Service Commission (Kingdom Kampala 29 July 2025).

⁷² Interview with CA Uganda Law Society (Kampala 16 April 2025).

⁷³ Interview with MM JLOS Secretariat (Kampala 1 April 2025).

pay between 30 to 300 million to become a judge.”⁷⁴ These concerns were also echoed by another respondent who stated bluntly that the Commission appoints people based on “know who, not know how,” alleging widespread bribery in the appointment process.⁷⁵ The Commission’s credibility, therefore, risks being undermined by perceived internal corruption and political interference, especially when such processes are not open to public scrutiny.

Respondents also expressed concerns about the disciplinary function of the JSC. Although the JSC has sanctioned several judicial officers from the lower bench, there remains reluctance or selective prosecution when it comes to judges from the higher bench. A respondent noted, “disciplinary action is more elaborate for the lower bench... but this does not happen often for the higher bench.”⁷⁶ This inconsistency, according to other informants, reflects both external executive influence and internal institutional weaknesses. The case of Justice Kisakye was cited by several informants as the only exception where a tribunal was set up against a senior judge yet even that was marred by political undertones.⁷⁷

Additionally, stakeholders commented on the JSC's role in public education and complaints handling. According to a respondent, “the JSC has fallen short on publicity... sanctions should be publicised more to create deterrence among judicial officers and court users.”⁷⁸ This lack of transparency and limited feedback to complainants was a persistent complaint across multiple interviews. The consensus was clear: without greater public visibility, timely feedback, and consistent application of sanctions, the Commission’s role in promoting accountability risks being seen as performative rather than impactful.

In the case of *Attorney General vs Uganda Law Society*,⁷⁹ the court reaffirmed the role of the Judicial Service Commission. The case sought to prevent the Respondent from discussing alleged judicial misconduct, incompetence, bias and irregularities involving His Lordship Jesse Byaruhanga which threatened the rights of individuals affected by the Tilenga Project. The petition, initiated by some members, requested the Respondent to convene an extra-ordinary general assembly. The court allowed the application and granted a permanent injunction against the Respondent from holding any extra ordinary general assembly.

The court believed that Article 147(1)(d) of the Constitution of Uganda outlines the functions of the Judicial Service Commission which include receiving and processing public

⁷⁴ Interview with CA Uganda Law Society (Kampala 16 April 2025).

⁷⁵ Interview with MM Mukono Courts (Buganda Road) 22 April 2025.

⁷⁶ Interview with MA Anti-Corruption Coalition Uganda (Ntinda 9 April 2025).

⁷⁷ As above.

⁷⁸ Interview with PW Transparency International Uganda (Kampala 9 April 2025).

⁷⁹ Miscellaneous Cause No. 08 of 2024 (2024) UGHCCD .

recommendations and complaints regarding the judiciary and the administration of justice thereby serving as a link between the people and the judiciary. Consequently, it is clear that the authority to address complaints and discipline judicial officers belongs exclusively to the Judicial Service Commission, not any other entity. Therefore, the Respondent's decision to convene a meeting with an agenda outside its mandated responsibilities constitutes an illegality which is subject of judicial review.

3.4.1 Advising the President on the Appointment of Judges

The JSC is mandated to advise the President on appointment of persons to the higher bench. These category of judicial officers include the Chief Justice, Deputy Chief Justice, the Principal Judge, Justices of the Supreme Court, Justices of Appeal, High Court Judges, the Chief Registrar and Registrars.⁸⁰ It is important to note that these judicial officers are appointed by the President on the advice of the JSC and approval of Parliament with the exception of the Chief Registrar and other Registrars who do not require approval of Parliament.

The situation regarding the appointment of judicial officers to the higher bench has raised concerns in the recent past. A case in point was what happened in 2020. The position of the Chief Justice of Uganda fell vacant following the retirement of the then Chief Justice Bart Katureebe. Subsequently, the JSC called for suitable candidates to apply and fill the position. Following interviews conducted by the Commission, three candidates were nominated for appointment including the then Deputy Chief Justice. The President went ahead and appointed the Deputy Chief Justice as the Chief Justice of Uganda thereby creating yet another vacancy for the Deputy Chief Justice.

However, instead of the President awaiting the JSC to follow due process and recommend candidates to be appointed as Deputy Chief Justice as it is required by law, the President appointed a candidate whose names had earlier been submitted for Chief Justice as the Deputy Chief Justice of Uganda. This action raised concerns about the executive overstepping its powers thereby undermining the independence of both the JSC and the judiciary. The President's actions were contested in the case of *Citizen Alert Foundation vs Attorney General & 2 others*.⁸¹ The High Court dismissed the case concluding that the President did not commit any error. In its ruling, the court held that;

“The appointment..... was an act involving the other arms of government which applied their mind to the exercise of power and followed the law as prescribed. It should not be

⁸⁰ Article 147(1)(a) (n 1 above).

⁸¹ Miscellaneous Cause No. 339 of 2020 (2022) UGHCCD.

interfered with in absence of justification or any breaches of the law. There was advice duly rendered to the President to appoint the 3rd Respondent for the top most position in the Judiciary of Chief Justice and in exercise of his prerogative powers, the President opted to act on the advice to appoint him to the position of Deputy Chief Justice. The court will not lightly presume abuse or misuse of power and will make allowance for the fact that the decision-making authority is the best judge of the situation...”

The decision above suggests that the President’s action could set a precedent allowing him to use lists intended for higher positions to appoint individuals to other judicial roles without due processes or recommendations from the JSC. Such actions undermine the JSC’s independence and authority creating a situation where appointments could be made without candidates actively seeking those roles. This unfortunate situation emphasizes the need for limiting the executive’s role in judicial appointments in order to maintain the integrity of the judicial system.

3.4.2 Recruitment of Judicial Officers and Other Staff of the Judiciary

The JSC's recruitment and appointment responsibilities take a multi-faceted approach - it advises the President on the appointment and confirmation of certain high-ranking judicial officers, it directly appoints all other judicial and non-judicial staff not appointed by the President, and it also plays a key role in the appointment of chairpersons, heads, and staff of various quasi-judicial bodies.

Article 147(1)(a)⁸² states that the Judicial Service Commission shall advise the President on appointments to offices specified in clause (3), including confirming appointments, exercising disciplinary control, and removing persons from office. The offices listed in clause (3) are the offices of “the Chief Justice, the Deputy Chief Justice, the Principal Judge, a justice of the Supreme Court, a justice of Appeal and a judge of the High Court and the office of the Chief Registrar and a registrar”⁸³.

The Commission plays a crucial role in the appointment of high-level judicial officers, even though the final appointment is made by the President. The process begins with the Commission issuing a call for applications or advertisements to solicit qualified candidates for these positions. The Commission then undertakes a thorough screening and interview process to identify the most suitable candidates. Following this, the Commission members deliberate and nominate the most qualified individuals, whose names are subsequently forwarded to the President for the final appointment.

⁸² Article 147(1)(a) (n 1 above).

⁸³Article 147(3) (n 1 above).

The major challenge with the above mode of appointment of judicial officers, is the risk of political influence or interference. Since the President retains the ultimate appointing authority, there is a possibility that political considerations could sway the selection process, rather than strictly merit-based criteria. This could undermine the independence and integrity of the judiciary if individuals are appointed based on their political affiliations or allegiances rather than their qualifications and suitability for the judicial role. Maintaining a truly impartial, merit-based appointment process is crucial for ensuring the public's trust in the judiciary, and this can be a delicate balance when the executive branch holds the final appointment power.

While the appointment process for high-ranking judicial officers, wherein the President retains the final appointing authority despite the Judicial Service Commission's nomination, may present a potential vulnerability to political influence, it is important to note that the process does not operate in reverse. The executive branch cannot unilaterally identify and initiate the appointment of a candidate. Rather, the President can only approve from the list of nominees forwarded by the Judicial Service Commission following their rigorous screening and selection process. This structural safeguard helps to mitigate the risk of political interference, as the Commission retains the primary responsibility for identifying and recommending the most qualified and suitable candidates for these critical judicial positions.

The above safeguard was demonstrated in the case of *Hon. Gerlad Kafureeka Karuhanga Vs A.G*⁸⁴ when in 2013, the President attempted to reappoint the then-retiring Chief Justice Benjamin Odoki to continue serving in an acting capacity, despite Odoki having reached the mandatory retirement age of 70 years. The President directly wrote to the Judicial Service Commission, advising them to recommend Odoki's reappointment. The President's attempted reappointment was ultimately deemed illegal and unconstitutional by the Constitutional Court.

The court held that;

“...under Article 142, the Constitution provides for a tripartite procedure in which the Judicial Service Commission is required to compose a list of nominees and submit the list to the President. The President then makes appointments from this list and sends the names to Parliament for approval. The President can only appoint a Judicial Officer from a list the Judicial Service Commission provides. It is therefore my considered opinion that the President cannot initiate the process of appointing any particular individual to judicial office. To allow such a process would be to undermine the independence of the

⁸⁴ Constitutional Petition No. 39 of 2013.

Commission and in a way subject it to the direction or control of the Executive Arm of Government, contrary to Article 147 (2) of the Constitution”.

The same position was upheld in the case of *Simon Peter Ochieng and John Tusiime v. Attorney General of Uganda*,⁸⁵ the East African Court of Justice ruled on the applicants’ claim that the number of judges in Uganda’s Supreme Court, Court of Appeal, and High Court is legally established, and the President’s refusal to fill vacant positions was unconstitutional, illegal, and violated Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community. The applicants argued that this refusal undermined judicial efficacy by causing a lack of quorum, overloading existing judges, delaying case adjudication, and abusing bail relief. These two decisions of the court reinforce the role of the Commission in the appointment of judicial officers and protecting the independence of the judiciary.

As previously mentioned, the Judicial Service Commission's appointment responsibilities go beyond merely advising the President on high-ranking judicial positions. Building on the earlier points, the Constitution grants the JSC the direct authority to appoint and confirm all other judicial officers, such as Deputy Registrars, Assistant Registrars, Chief Magistrates, and Magistrate Grade one.⁸⁶ Furthermore, in 2015, the JSC's mandate was expanded through a constitutional amendment to include the appointment of non-judicial staff within the Judiciary as well, as specified in Article 148A. This expanded role of the JSC in appointing both judicial and non-judicial personnel is further reinforced in the Administration of the Judiciary Act⁸⁷.

Lastly, the third component of the Commission’s tripartite role in appointment of Judicial Officers extends beyond its core responsibilities within the judiciary. Under various legislative provisions, the Commission's advisory role has been expanded to include participation in the appointment processes for leadership positions in other specialised tribunals and adjudicatory bodies.

For instance, the Electricity Act⁸⁸ requires the Minister to consult the JSC in appointing the Chairperson, Vice Chairperson, and Registrar of the Electricity Disputes Tribunal. Similarly, the Uganda Communications Act⁸⁹ empowers the JSC to recommend individuals for appointment as the Chairperson and members of the Uganda Communications Tribunal. The Tax Appeals

⁸⁵Reference No. 11 of 2013 [2015] EACJ 39

⁸⁶ Article 148 (n 1 above).

⁸⁷ The Administration of the Judiciary Act (2020) Section 13 (2) & (3).

⁸⁸ Electricity Act (1999) Section 94.

⁸⁹ Uganda Communications Act (2013) Section 60(1).

Tribunal Act⁹⁰ also mandates the Minister responsible for finance to consult the JSC when appointing the Chairperson of the Tax Appeals Tribunal.

Furthermore, the Labor Disputes (Arbitration and Settlement) Act⁹¹ provides for the President to appoint the Chief Judge and Judges of the Industrial Court based on the recommendation of the JSC. Likewise, the Public Procurement and Disposal of Public Assets Act⁹² stipulates that the Minister of Finance must consult the JSC Chairperson when appointing the Chairperson of the Public Procurement and Disposal of Public Assets Appeal Tribunal. This expanded role of the Judicial Service Commission in shaping the composition of these ancillary dispute resolution mechanisms tribunals further underscores the Commission's broader mandate to safeguard the integrity and independence of the overall justice system.

3.4.3 Exercising Disciplinary Control over Staff of the Judiciary

The JSC Regulations, Uganda Code of Judicial Conduct and Public Service Standing Orders all stipulate that judicial officers and staff of the judiciary shall perform their duties with integrity and shall behave in a manner that portrays impartiality and shall restrain from behavior that tarnishes the good image and reputation of the judiciary service. In the event of any breaches against the aforementioned laws, the Commission is mandated to take disciplinary measures against such officers whose outcome may include dismissal from service. The Judicial Code of Conduct in Uganda closely aligns with the Public Service Standing Orders, 2011.

Distinctly, the procedures followed by the Commission in regard to removal of judges from office is different from the procedures for dismissal of other staff of the judiciary. Removal of judges is by the president, who also is the appointing authority. The role of the Commission in this process is to investigate the complaint, establish a prima facie case of judicial misconduct and refer the matter to the president who establishes an independent tribunal to handle the matter further as was the landmark case of *Hon Justice Anup Singh v Attorney General*⁹³, where the Court of Appeal established important limitations on the JSC's power to recommend the removal of a judge.

The court ruled that before the JSC can advise the President to establish a tribunal to remove a judge, it must first determine that there is a prima facie case against the judicial officer that warrants such action. Crucially, the court held that in making this preliminary assessment, the JSC must adhere to the principles of natural justice and afford the judge the opportunity to

⁹⁰Tax Appeals Tribunal (Amendment) Act (2018) Section 3(1).

⁹¹ Labor Disputes (Arbitration and Settlement) Act (2016) Section 10(2).

⁹²Public Procurement and Disposal of Assets Act (2023) As Amended Section 91B(5).

⁹³ Civil Appeal No 91 of 2012.

present their defense before an independent and impartial Commission. However, the court clarified that at this initial stage, the judge may not have the right to cross-examine witnesses, as those procedural protections would be available during the subsequent tribunal hearing that determines the final matter of removal.

The Commission's dual role of exercising disciplinary control over judges while also having to refer cases of judicial removal to the appointing authority, the President, creates a potential risk of undermining the Commission's independence. The requirement to ultimately defer to the President a complaint for removal from office of a judge could compel the JSC to align its recommendations with the preferences of the executive branch, rather than making fully impartial assessments. Furthermore, the President's position as the appointing authority for senior judicial officers could lead to a power imbalance, where the JSC may be hesitant to take strong disciplinary action against judges with close ties to the executive, thereby blurring the lines between the judiciary's disciplinary processes and the executive's appointment and removal powers, and potentially eroding public confidence in the impartiality and integrity of the judicial system.

3.4.4 Review and Make Recommendations on terms of service

Under Article 147 of the Constitution⁹⁴, the Commission is responsible for recommending improvements to the condition of service for judicial officers and staff reflecting the expanded mandate that now includes the recruitment and discipline of all judiciary personnel. Over the years, the terms of service for judicial officers have significantly improved. The current Chair of the JSC highlighted this progress noting that when they advised for twenty eight (28) Grade One Magistrate Positions, they received 1,078 applications indicating that the judiciary has become an attractive career destination.⁹⁵ Justice Kabiito attributed the increased interest in the judiciary jobs to the good pay that comes along with it making judicial officers among the top paid public servants in the country.

Under the salary structure for judicial officers for the fiscal year 2024/2025, Grade Two Magistrates to Chief Magistrates earn between Shs. 3 million and Shs. 9.8 million, while High Court judges receive over Shs. 23 million. Judges at the Court of Appeal earn more than Shs. 24 million, and those at the Supreme Court earn over Shs. 25 million monthly, all tax-free,⁹⁶ along

⁹⁴ Article 147(1)(b) (n 1 above).

⁹⁵Daily Monitor 'Justice Kabiito's tenure at JSC to end on Jan 21' Monitor publications online Assessed at <https://www.monitor.co.ug/uganda/news/national/justice-kabiito-s-tenure-at-jsc-to-end-on-jan-21-4882312>.

⁹⁶Circular Standing Instruction (CSI) No. 14 of 2024- Salary Structure for Financial Year 2024/2025 Assessed at <https://www.publicservice.go.ug/download/circular-standing-instruction-csi-14-of-2024-salary-structure-for-financial-year-2024-2025/>.

with additional benefits such as housing, security at work and home, airtime, and medical allowances. Moreover, the new Administration of the Judiciary Act stipulates that all retired judicial officers receive 85% of their last monthly salary while in service, with the Chief Justice and Deputy Chief Justice receiving 100% of their former salaries upon retirement.⁹⁷

The JSC now faces the challenge of improving the conditions for other judiciary staff such as clerks and process servers. These staff members are currently on a different salary schedule from judicial officers which needs to be aligned. Additionally, it is believed that the poor conditions of service for administrative staff who make up more than half of the judiciary's workforce contribute to the rampant corruption within the system.

Lastly, another role of the JSC is enhancing the conditions of service for judicial officers involving management of retirement benefits. A judicial officer may receive retirement benefits if they retire on medical grounds provided they present satisfactory medical evidence to the JSC supported by the medical board indicating an inability to perform their duties due to permanent infirmity. Additionally, retirement for senior positions such as Chief Justice, Deputy Chief Justice, Principal Judge, Supreme Court Justice, Court of Appeal Justice or High Court Judge requires the President's consent based on the JSC's advice. For Magistrate's, retirement also necessitates the JSC's approval.⁹⁸

Regarding this mandate, the High Court ruled that the authority to recommend terms and conditions of service for judiciary staff does not solely belong to the commission and the Chief Justice is not required to consult the Judicial Service Commission before making those recommendations. This was in the case of *Kwezira vs Attorney General*,⁹⁹ wherein the applicant sought a declaration that the Chief Justice's failure to prepare the judiciary's expenditure estimates in line with the Judicial Service Commission's (JSC) recommendations on judicial officers' terms and conditions violated Articles 8A, 147(1)(b), and 155 of the Constitution. The court held that, under Articles 155(2) and 147(1)(b), the Chief Justice is not obligated to seek JSC recommendations before preparing the judiciary's annual expenditure estimates.

3.4.5 Public Education and Research

The Commission's mandate on public education is rooted in the recommendations of the Justice Odoki Constitutional Commission¹⁰⁰. One key aspect of this responsibility is to educate two critical stakeholder groups about the law and the administration of justice that is the general

⁹⁷ See second schedule to the Administration of Judiciary Act (n 87 above).

⁹⁸ Section 27 (n 87 above).

⁹⁹ Constitutional Petition No. 12 of 2019 (2023) UGCC 7.

¹⁰⁰ Paragraph 17.80 (n 31 above) 454.

public and the judicial officers themselves¹⁰¹. The Constitutional Commission recognised that the complexity of laws and their technical legal language posed a significant barrier to public understanding, leading to widespread ignorance of the very laws people were expected to follow. As such, the JSC is tasked with developing and implementing educational programs to address this gap, targeting both the judiciary and the general populace.

The Commission has adopted a multi-pronged approach to fulfill its mandate of educating the public and judicial officers on matters of law and justice administration. First, the Commission has undertaken regular radio talk shows broadcast across the country, using this platform to discuss various aspects of the law and legal processes. Secondly, the JSC has organized workshops and stakeholder engagement forums to directly interface with different community groups and deliver tailored legal education. Additionally, the Commission has conducted outreach programs in prisons and schools, using these settings to sensitise the public on relevant laws and legal procedures.¹⁰² The JSC has also undertaken mobile complaint handling sessions, using these as an opportunity to provide on-the-spot legal information and guidance to citizens.

Finally, the Commission has produced and disseminated a variety of information, education, and communication (IEC) materials, including brochures covering topics such as land law, succession, domestic violence, and children's rights. These publications have served as valuable resources for enhancing public awareness and understanding of the law. Through this diverse array of educational initiatives, the Commission has worked to bridge the knowledge gap and empower both the general public with a stronger grasp of the legal landscape and their rights and responsibilities within it.

However, as regards training of Judicial Officers, the Judiciary has also established a parallel institution, the Judicial Training Institute, with a core mandate of providing specialised and continuous education to members of the judicial service. This duplication of roles between the JSC and the Judicial Training Institute raises concerns about the efficient utilisation of public resources and the potential for overlap or gaps in the provision of legal education.

Nonetheless, the JSC's responsibility to engage in public and judicial education remains an important part of its overall mission to safeguard the integrity and independence of the justice system. By equipping both the public and judicial officers with a stronger understanding of the law, the Commission aims to enhance transparency, accountability, and the effective administration of justice.

¹⁰¹ Article 147(19(d) (n 1 above).

¹⁰² Judicial Service Commission 'Second Strategic Plan 2020/21-2024/25.

3.5 Organisation Structure of the JSC

The JSC has a secretariat which is tasked with supporting the Commission in fulfilling its constitutional responsibilities. The secretariat is led by the Permanent Secretary/Secretary to the Commission whose role encompasses organising the Commission's operations, advising the Chairperson and members on Commission matters, implementing government policies through Commission programs, ensuring appropriate use of funds according to the approved budget, executing policy decisions, managing daily operations and staff, arranging meetings and recording minutes of decisions and proceedings. Additionally, the Secretary may undertake any other functions assigned by the Commission.¹⁰³

The secretariat is headed by the Permanent Secretary/Secretary. The Secretary is appointed by the President on the advice of the Public Service Commission, in accordance with the Constitution¹⁰⁴. The Secretary is responsible for a variety of duties, including organising the operations of the JSC, implementing government policies through Commission programs, ensuring proper expenditure of funds, implementing policy decisions, managing the daily administration and staff of the Commission, maintaining records of all decisions and proceedings, advising the Chairperson and members, and performing any other functions assigned by the Commission. Furthermore, the Commission is authorised to have additional officers and employees under its Secretariat in order to execute its mandate. These employees are considered public officers¹⁰⁵.

3.5.1 Committees of the Commission

The Commission executes its mandate through the nine members and the Commission Secretariat. The members perform their roles through committees which exercise a delegated mandate of the Commission¹⁰⁶ while the secretariat works through Directorates. The committees are established in accordance with the roles of the JSC and report directly to the Commission. They include the Disciplinary Affairs Committee, Search and Recruitment Committee, Legal Education, Public Affairs and Research Committee and the Anti-Corruption Committee¹⁰⁷.

The various committees of the Judicial Service Commission (JSC) are aligned with the different Directorates, and their mandate includes formulating policy frameworks for their respective areas of focus, determining the implementation strategy and work plans, supervising and

¹⁰³ Judicial Service Commission Annual Performance Report FY 2023/2024 8.

¹⁰⁴ Judicial Service Act (1997) Section 7.

¹⁰⁵ Section 8 (n 104 above).

¹⁰⁶ Judicial Service Commission Second Strategic Plan 2020/21-2024/25.

¹⁰⁷ Judicial Service Commission Annual Report 2022/2023 4.

overseeing the execution of programs, plans, and activities by the corresponding Directorates, and providing periodic reports and recommendations for the Commission's consideration and approval, thereby guiding the strategic direction, operations, and performance of their aligned Directorates and reporting back to the full Commission¹⁰⁸.

3.5.1.1. Search and Recruitment Committee

The Search and Recruitment Committee of the Judicial Service Commission is responsible for developing the policies and processes related to the timely identification and recruitment of suitable candidates for judicial officers and judiciary staff positions, including the requirement of thorough background checks and vetting of all prospective appointees. The Committee further reviews judicial recruitment declarations and makes recommendations for the Judicial Service Commission's consideration. It also evaluates requests for service confirmation, acting positions, study leave, and other human resource matters from the judiciary, government ministries, agencies, and tribunals, ensuring alignment with its mandate.¹⁰⁹

3.5.1.2. Education and Public Affairs Committee

The Public Education Committee, supported by staff from the Directorate of Legal Education, Public Affairs and Research, works on the policy and processes for the preparation of information and programs for the education and dissemination of information to the judicial officers and the public about the law and administration of justice and research proposals to be undertaken. Members of the Committee participate in some of the public and judicial education activities organised by the Commission.¹¹⁰

3.5.1.3. Disciplinary Committee

The Disciplinary Affairs Committee of the Commission is responsible for reviewing investigation reports on complaints lodged, evaluating the findings, and then providing a report to the full Commission with recommendations on the appropriate course of action to take. Additionally, the Disciplinary Affairs Committee conducts disciplinary hearings as necessary to address any issues or allegations brought before the committee.¹¹¹ In the execution of its mandate, the Disciplinary Committee is supported by staff from the Directorate of Complaints, Investigations and Disciplinary Affairs.

¹⁰⁸ Annual Report (n 107 above).

¹⁰⁹ Annual Report (n 107 above) 5.

¹¹⁰ Annual Report (n 107 above) 5.

¹¹¹ Annual Report (n 107 above) 4.

3.5.1.4. Anti-Corruption Committee

The Anti-Corruption Committee of the Judicial Service Commission develops policies, strategies, and methods to combat corruption, maladministration of justice, and abuse of office within the judiciary. It ensures the Commission's internal anti-corruption policies, objectives, and action plans are effectively enforced and implemented.¹¹² Further, the Committee is in the process of coming up with an Anti-Corruption Influencing Strategy aimed at establishing a robust system for identifying and addressing corruption and collaborating with other government bodies and civil society organisations in a unified front against corruption in the judiciary.

3.5.2 Directorates at the Commission

In its current structure, the Commission Secretariat has two Directorates and several Departments under the Directorates, which work alongside the Secretary to support the overall operations and functions of the Commission.¹¹³ The Directorates are headed by Registrars while departments are headed by Deputy Registrars. The Commission is also in the process of establishing regional offices to take services closer to the people of Uganda. Three regional offices have already been established in Moroto, Mbarara and Masaka districts.¹¹⁴

3.5.2.1. Directorate of LEPAR

The Directorate of LEPAR plays a crucial role within the Judicial Service Commission's structure. This Directorate is headed by a Registrar and is divided into two key departments - the Department of Legal Education and Public Affairs, as well as the Department of Research and Publication. Each of these departments is further led by a Deputy Registrar¹¹⁵.

In terms of the Directorate's responsibilities, it is tasked with a wide range of functions. Firstly, the Directorate is responsible for preparing and implementing programs aimed at disseminating information and educating judicial officers, judiciary staff, and the general public about the law and the administration of justice. Additionally, the Directorate provides a platform for the public to voice their concerns regarding the law and the administration of justice, ensuring that these concerns are addressed and that feedback is provided.

Furthermore, the Directorate undertakes important research activities to support the Commission's work, inform reviews of judicial officers' terms and conditions, and advise the

¹¹² Annual Report (n 107 above) 6.

¹¹³ Annual Report (n 107 above) 8.

¹¹⁴ Annual Report (n 107 above) 60.

¹¹⁵ Judicial Service Commission Second Strategic Plan (SPII) 2020/21-2024/25.

government on ways to improve the administration of justice. The Directorate also handles public relations functions related to its activities and programs, oversees the operations of the JLOS radio, coordinates the Judicial Service Commission Academy, and manages the Commission's library/resource centers that provide public access to legal materials and laws.

Building on the earlier overview, the Directorate of LEPAR is divided into two key departments that carry out its core responsibilities.¹¹⁶ The Department of Legal Education and Public Affairs plays a central role in this regard. Specifically, this department is tasked with preparing and implementing programs aimed at informing and educating judicial officers, other judiciary staff, and the general public about the law and the administration of justice. It is also responsible for developing and disseminating informational, educational, and communication materials, as well as implementing the Directorate's work plan at the regional and district levels.

Furthermore, the Department of Legal Education and Public Affairs provides a platform for the Judicial Service Commission to serve as an effective link between the public and the judiciary. Additionally, this department oversees the operations of the Commission's Academy, prepares and conducts induction programs for newly appointed judicial officers and judiciary staff, handles the Commission's public relations functions, and manages the Call Center that receives inquiries from the public, offering appropriate advice, guidance, and assistance.

The Department of Research and Publication, the other division within the Directorate of LEPAR, also plays a crucial role in carrying out the Directorate's responsibilities. This department is tasked with undertaking relevant research to support the work of the Judicial Service Commission, with the aim of informing the periodic review of judicial officers' terms and conditions, as well as advising the government on ways to improve the administration of justice. Additionally, the Department of Research and Publication is responsible for publishing educational, informational, and communication materials related to the law and the administration of justice¹¹⁷.

This department also oversees the operations of the JLOS radio, coordinating its activities with various stakeholders and the public. Furthermore, the Department of Research and Publication is charged with coordinating the operations of the Judicial Service Commission Academy and managing the establishment and functioning of the Commission's library and resource centers, which provide public access to legal materials and the laws of Uganda¹¹⁸.

¹¹⁶Annual Report (n 107 above) 7.

¹¹⁷Annual Report (n 107 above) 7.

¹¹⁸Annual Report (n 107 above) 7.

3.5.2.2. Directorate of Complaints, Investigations and Disciplinary (CIDA)

The Directorate of CIDA is headed by the Registrar and is divided into three departments - Complaints and Investigations, Disciplinary Affairs, and Anti-Corruption & Inspections, each led by a Deputy Registrar. The staff of the Directorate also includes Principal Legal Officers, Senior Legal Officers, Legal Officers, and Legal Clerks.

The primary responsibilities of the CIDA Directorate are to receive and process public complaints and recommendations related to the judiciary and the administration of justice, conduct investigations on these complaints and alleged instances of maladministration, and facilitate the Commission's disciplinary proceedings against judicial officers, judiciary staff, and officials of other quasi-judicial institutions. Additionally, the Directorate is tasked with conducting court and quasi-judicial institution inspections, supervising the performance of judicial officers and judiciary staff, and carrying out anti-corruption prevention, combat, and enforcement measures within the judiciary.

The Complaints and Investigations Department is responsible for receiving and processing public complaints, conducting timely investigations, and preparing reports for the Commission's Disciplinary Committee. It also promotes alternative dispute resolution mechanisms, such as mediation, to facilitate the expeditious settlement of complaints besides coordinating with other government agencies like the Police, the Inspectorate of Government, the Directorate of Public Prosecution among others in the investigation of complaints against judicial officers and staff of the judiciary and preparing investigation reports for consideration by the Disciplinary Committee¹¹⁹.

The Disciplinary Affairs Department ensures the effective and efficient prosecution of cases brought before the Commission. It provides technical support to the Disciplinary Committee, arranges its meetings, and liaises with the Attorney General's Chambers for the defence or prosecution of cases¹²⁰.

The Anti-Corruption and Inspections Department is responsible for initiating anti-corruption policies and objectives, monitoring adherence to relevant laws and regulations, and addressing, coordinating, and implementing anti-corruption measures in the judiciary and other quasi-judicial institutions. This department also conducts periodic court inspections to ensure compliance with set standards and monitor the dispensation of justice. It engages the public on ways to combat corruption and maladministration, and ensures the implementation of the Commission's

¹¹⁹Annual Report (n 107 above) 8.

¹²⁰As above.

recommendations on anti-corruption measures. Finally, the Anti-Corruption and Inspections Department coordinates the regional offices on corruption-related issues, provides statistical information on the Commission's activities and performance, and develops the Commission's internal anti-corruption policy, objectives, and action plan¹²¹.

3.6 Legal Framework on Combating Corruption

The Commission's role in combatting and preventing corruption stems from its constitutional mandate of recruiting and regulating the conduct of judicial officers and non-judicial staff of the Judiciary as provided for under Article 147 (1) (d) and 148A of the Constitution. This mandate also includes the receipt and processing of complaints concerning corruption in the Judiciary. Whereas the Judicial Service Commission Regulations do not define corruption, the definition and elements of corruption as it appears in the Anti-Corruption Act have been adopted by the Commission in its effort to combat this vice.

According to a respondent, a key reform pursued by the 7th Commission involved amending problematic disciplinary regulations particularly Regulation 40. "The regulation did not provide that receiving a bribe is an offence that could lead to a dismissal... my first initiative together with other members of the 7th Commission is to have this regulation amended," he stated.¹²² These amendments were later submitted to the First Parliamentary Counsel. The respondent also highlighted efforts to restructure the Commission's complaints handling system to prevent premature interference in cases: "We found that a good number of complaints could be compromised at the base... we revised this pyramid so that the control is with the chairperson."¹²³

Beyond regulatory reform, respondents also raised doubts about the actual implementation of this framework. According to one respondent "even transfers that are conducted as an initiative to prevent corruption are selective and politicised."¹²⁴ Another respondent added that "the process of recruitment is not open and known to the general public... sometimes even JOs are surprised to see the caliber of people joining the bench."¹²⁵ These observations question whether the legal framework, though expanded, is substantively achieving the JSC's anti-corruption goals.

¹²¹As above.

¹²² Interview with His Lordship Dr. Douglas Singiza Chairperson of the Judicial Service Commission (Kingdom Kampala 29 July 2025).

¹²³ As above.

¹²⁴ Interview with CA Uganda Law Society (Kampala 16 April 2025).

¹²⁵ Interview with MA Anti-Corruption Coalition Uganda (Ntinda 9 April 2025)

Moreover, the lack of transparent vetting procedures continues to challenge public trust. Respondents stated that “applicants pay 200–300 million to become a judge,”¹²⁶ pointing to systemic loopholes and elite capture. The Commission's inability to enforce regulations equally at all levels has thus rendered the legal framework partially effective, with enforcement undermined by executive influence, secrecy, and selective justice.

Corruption being a global challenge with extensive implications that necessitates a collaborative effort from all state parties to eradicate it. This requires the implementation of legal and policy frameworks designed to combat corruption alongside the establishment of Codes of conduct for public officials including those within the judicial service. Specifically concerning the judicial service, various legal and policy frameworks and codes of conduct have been established to address this issue. These frameworks operate at national, regional and international levels which will be explored below.

The Anti-Corruption Act¹²⁷ defines corruption as a range of actions involving public officials including the solicitation or acceptance of gifts or benefits in exchange for actions related to their public duties¹²⁸ as well as the offering or granting of such advantages¹²⁹. It also encompasses the misuse of state property for personal gain¹³⁰, undue influence over decision-making¹³¹ and the fraudulent acquisition or concealment of property obtained through corrupt acts¹³². Additionally, the Act addresses participation in corrupt activities as a principal or accomplice¹³³ and any actions taken by public officials to illicitly secure benefits for themselves or others including neglect of duty¹³⁴.

3.6.1 The 1995 Constitution of Uganda

The Constitution requires that all public offices be held in trust for the people of Uganda and that all persons holding positions of leadership and responsibility be answerable to the people in the course of their work¹³⁵. The Constitution further requires that all measures be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding

¹²⁶ Interview with MM Mukono Courts (Buganda Road) 22 April 2025).

¹²⁷ Anti-Corruption Act (2009) Section 2.

¹²⁸ As above Section 2 (a).

¹²⁹ As above Section 2(b).

¹³⁰ As above Section 2 (c).

¹³¹ As above Section 2 (d).

¹³² As above Section 2 (f).

¹³³ As above Section 2 (g).

¹³⁴ As above Section 2 (i).

¹³⁵ Objective XXVI (i) & (ii) of the National Objectives and Directive Principles of State Policy (n 1 above).

political and other public offices¹³⁶. All citizens are obliged to defend the Constitution at all times¹³⁷ and to combat corruption and misuse or wastage of public resources¹³⁸.

3.6.2 Judicial Service Act, 1997

The Judicial Service Act regulates and facilitates the discharge by the President and the Judicial Service Commission of their functions under chapter 8 of the Constitution as enshrined in Articles 147, 148 and 148A of the Uganda Constitution as amended¹³⁹. The Judicial Service Act empowers the Commission to make regulations for the discharge of its functions under the Constitution and the Act¹⁴⁰. It is on this basis that regulations were made to govern its operations and the conduct of its disciplinary mandate over judicial officers.

3.6.3 Administration of Judiciary Act, Cap 4 of 2020

The Administration of Judiciary Act implements the provisions of Chapter Eight of the constitution and aims to ensure the effective and efficient administration of the judiciary. The Act seeks to bolster the independence of the Judiciary by streamlining the provision and management of funds and offering terminal benefits to Judicial officers thereby reducing their susceptibility to corruption and promoting ethical behavior. It establishes financial autonomy for the Judiciary separating it from the budgeting process overseen by the Ministry of Justice and Constitutional Affairs. Additionally, the Act creates the Inspectorate of Courts as an internal mechanism for receiving and addressing both internal and external complaints against judiciary staff.

Furthermore, the Administration of Judiciary Act separates Judiciary staff from the Public Service Commission¹⁴¹ allowing the Judicial Service Commission to handle their recruitment and disciplinary matters. If Judiciary staff are accused of corrupt practices, the Commission is empowered to investigate and prosecute them and appropriate sanctions can be imposed if they are found guilty of misconduct.

3.6.4 Anti-Corruption Act, Cap 116

The Anti-Corruption Act defines various acts of corruption and it applies to all individuals serving in both the private and public sectors. Its primary aim is to effectively prevent corruption by specifying offences and establishing penalties for engaging in corrupt activities. Additionally,

¹³⁶ Objective XXVI (iii) (n 1 above).

¹³⁷ Article 3(4) (n 1 above).

¹³⁸ Article 17(1)(i) (n 1 above).

¹³⁹ Section 5 (n 104 above).

¹⁴⁰ Section 27 (n 104 above).

¹⁴¹ Section 13(3) (n 87 above).

the Act outlines the powers of the Inspector General of Government and the Director of Public Prosecutions in addressing corruption related complaints.

A challenge arises from the interplay between the Judicial Service commission Regulations and the Anti-Corruption Act. While the Regulations stipulate that a judicial officer commits a disciplinary offence by contravening any laws or directives related to judicial conduct, the Anti-corruption Act specifies that prosecutions for such offences can only be initiated with the consent of the Director of Public Prosecutions or the Inspector General of Government. Although an individual may be arrested or a warrant issued without this consent, no further legal action can proceed until it is obtained. This requirement creates a potential obstacle in addressing disciplinary violations and corruption effectively within the judiciary.

3.6.5 The Leadership Code Act, Cap 33

The Leadership Code Act is an Act which establishes a minimum standard of behavior and conduct for leaders, mandates the declaration of their assets, incomes and liabilities. The Act also implements an effective enforcement mechanism against leaders who breach the Code. Additionally, the Act regulates ethical behavior by public officials. It also regulates issues with regard to conflict of interest, receipt of gifts and other related conduct that a public official should not engage into¹⁴².

The Leadership Code of Conduct derives its mandate from the Constitution which empowers parliament to establish a Leadership Code of Conduct¹⁴³ for a certain category of officers. The Code is meant to prohibit conduct that is likely to compromise the honesty, impartiality and integrity of specified officers¹⁴⁴, likely to lead to corruption in public affairs¹⁴⁵, or which is detrimental to the public good and welfare or good governance¹⁴⁶. The Leadership Code applies to and is binding on judicial officers as they are categorised as leaders according to Section 2(1) and the second schedule to the Code.

3.6.6 The Whistle Blowers Protection Act, Cap 34

The Whistle Blowers Act, 2010 establishes a framework that allows whistleblowers to report corruption in Uganda. The Act provides for a system of rewards and protections for individuals who jeopardise their safety to share information that anti-corruption agencies might not be able

¹⁴² DW Musumba (2021) 'The Investigation and Prosecution of Corruption in Uganda' unpublished PHD thesis The University of Western Cape 101.

¹⁴³ Article 233(1) (n 1 above).

¹⁴⁴ Article 233(2)(b)(i) (n 1 above).

¹⁴⁵ Article 233(2)(b)(ii) (n 1 above).

¹⁴⁶ Article 233(2)(b)(iii) (n 1 above).

to obtain due to the clandestine nature of corrupt activities. In accordance with its mandate to combat corruption, the Commission is empowered by the Whistle Blower Protection Act which was further enhanced by the Whistle Blower Protection Regulations established by the Minister in 2015.

These regulations broaden the range of institutions to which whistle blowers can report corruption including the Office of the Auditor General, the Public Procurement and Disposal of Public Assets Authority and the Uganda Revenue Authority alongside the Judicial Service Commission¹⁴⁷. Additionally, the regulations provide standardised forms for whistleblowers to utilise when making both internal and external disclosures¹⁴⁸ thereby facilitating the reporting process and strengthening the Commission's role in the fight against corruption.

A significant challenge to the Commission in utilising the Regulations to combat corruption is the lack of effective publicity surrounding these regulations. According to an assessment conducted by *Dan Ngabirano*¹⁴⁹, although copies were provided by the Directorate of Ethics and Integrity during the study, interviews conducted with the various stakeholders from both government and civil society revealed that the regulations are not well known. None of the respondents outside the Directorate were aware of their existence highlighting a crucial gap in awareness that hinders the Commission's efforts to leverage these regulations in the fight against corruption.

3.6.7 The Judicial Service Commission Regulations, 2025

The Judicial Service Commission Regulations provide for the general functioning of the Commission. In particular, part V of the Regulation provides for discipline, disciplinary procedures and actions against staff of the judiciary. This Regulation mandates the Commission to combat corruption in the judiciary by categorising specific offences for which judicial officers may commit disciplinary violations. Specifically, Regulation 38(b) identifies corruption as one of the grounds for lodging a complaint at the Commission. Although the Regulation do not define corruption, it makes reference to commission of offences under the Anti-Corruption Act, Leadership Code Act and Penal Code Act as constituting misconduct¹⁵⁰ for which the Commission can take disciplinary action against any staff of the judiciary.

3.6.8 Uganda Public Service Standing Orders, 2021

¹⁴⁷ Whistle Blowers Protection Regulations (2015) Regulation 3.

¹⁴⁸ Regulations 4 & 5 (n 147 above).

¹⁴⁹ D Ngabirano 'Assessing the Status of Implementation of the Whistle Blowers Protection Act & the Leadership Code Act (As Amended) (20) 23 Assessed at <https://accu.or.ug/wp-content/uploads/2023/08/Final-Assessment-of-the-Implementation-of-Selected-Anti-Corruption-Laws.pdf>.

¹⁵⁰ Judicial Service Commission Regulations (2025) Regulation 40(5)(a).

The Uganda Public Service Standing Orders serves as a comprehensive document governing the managing of the Public Service and addressing terms and conditions of service for all public officers. These standing orders outline the appointment process for public officers, detailing their roles and obligations and expected conduct while in service. In addition to adhering to the standing orders, public officers are also required to follow the Code of Conduct and Ethics for Uganda Public Service.

The Standing Orders mandate public officers to uphold a high standard of personal conduct and integrity in both public and private life and to serve the general public diligently. Officers are expected to remain loyal to the government and implement policies impartially ensuring the efficient use of public resources. They must also adhere to relevant professional codes of ethics. Importantly, the standing orders identify corruption as a form of misconduct warranting disciplinary action¹⁵¹, categorizing it as an act of moral turpitude. Misconduct is further defined to include any actions or omissions that are contrary to public interest.

3.6.9 Uganda Code of Conduct for Judicial Officers

The Uganda Code of Conduct for judicial officers sets out the rules and principles for regulating the professional conduct of judicial officers. The Code provides for six (6) principles of equality, impartiality, integrity, independence, propriety, diligence and competence which must be observed by all judicial officers. It is paramount to note that the principles outlined in the Code are incorporated into the Judicial Service Commission Regulations. While the offences for which a judicial officer can be subjected to disciplinary action by the Commission are laid out in Regulations 40 (2), Regulation 40 (5) (d) states that a judicial officer who violates the Code of Judicial Conduct, the Judicial Oath or any other oath taken by them commits a disciplinary offence.

However, the Code of Conduct has been criticised for its limited application to only judicial officers on the lower bench.

“.....This is because rarely are judges brought to account before the JSC given the legal regime that is provided for in Article 144(3) & (4) of the Constitution of Uganda for the removal of judges from office. This is regardless of the fact that Article 147(1)(a) provides that the JSC shall have disciplinary power and control over the persons and to

¹⁵¹ Uganda Public Service Standing Orders (2021) Sections F-a.

remove from office the persons specified in Article 147(3). The clause include all judges and justices and registrars.....¹⁵².

3.6.10 Code of Conduct and Ethics for the Uganda Public Service, 2005

The Code of Conduct and Ethics for the Uganda Public Service outlines the standards of behavior expected from public officers. The preface emphasizes that while there are specific ethical obligations and codes of conduct for various professions within the public service such as Education, Medical, Judicial, Engineering and Accounting, the Public Service Code of Conduct and Ethics is founded on ethical standards that apply across the entire public service.

The Principles outline in the Public Service Code of Conduct are presented in greater details in the Code of Judicial Conduct. These principles include accountability, decency, discipline, effectiveness, efficiency, impartiality, integrity, loyalty, professionalism, selflessness and transparency. While integrity is explicitly mentioned in the Code of Judicial Conduct, the other principles can be inferred from the five principles contained within the Code. Thus, the Code of Conduct and Ethics for the Uganda Public Service is pertinent to the discipline of judicial officers.

3.6.11 Third National Development Plan, 2020/21 – 2024/25

The third National Development Plan is a national policy running for a period of 5 years (2020/2021 to 2024/2025) with a multi-sectoral approach which is relevant to the Commission in its efforts to combat corruption. Within the governance and security programme to which the Commission is aligned, the NDP III aims to improve the corruption perception from 26% to 35%¹⁵³. To achieve this goal, the plan outlines specific requirements for the Commission including the simplification, translation and dissemination of laws, policies and standards¹⁵⁴. Additionally, the NDP III emphasises the need to enhance public demand for accountability¹⁵⁵, strengthen the prevention, detection and elimination of corruption¹⁵⁶ and integrate anti-corruption initiatives such as Transparency, Accountability and Anti-Corruption (TAAC) into the Commission's plans, projects, programs and budgets¹⁵⁷.

¹⁵² IK Mulyagonja 'The Relevance and Enforcement of the Judicial Code of Conduct, Public Service Code of Conduct and the Leadership Code of Conduct to Judicial Officers (2019) A Paper presented at the 21st Annual Judges Conference Kampala. Accessed at

<https://judiciary.go.ug/files/downloads/Judicial%20Code%20of%20Conduct%20Public%20by%20Hon.%20Lady%20Justice%20Irene%20K%20Mulyagonja%20IGG%20-%20AJC%202019.pdf>.

¹⁵³ National Development Plan III 2020/21-2024/5 (2020) 191 Accessed at https://www.npa.go.ug/wp-content/uploads/2023/03/NDPIII-Finale_Compressed.pdf.

¹⁵⁴ As above Objective 2 (3).

¹⁵⁵ As above Objective 5 (2).

¹⁵⁶ As above Objective 5 (3).

¹⁵⁷ As above Objective 5 (6).

3.6.12 National Anti-Corruption Strategy (2019/20 – 2023/24)

The National Anti-Corruption Strategy (NACS) serves as a five year planning framework aimed at significantly enhancing accountability and reducing corruption levels in Uganda. It addresses Anti-Corruption policy within a national context, guiding policies and programs while setting an ambitious agenda for a public service that values integrity, transparency and accountability. The NACS is built around several strategic objectives including the promotion of effective political leadership in the fight against corruption, increasing public demand for accountability and rejection of corrupt practices, ensuring effective enforcement of anti-corruption measures and enhancing compliance and accountability within public service institutions¹⁵⁸.

The strategy operates under the Zero Tolerance to Corruption Policy which was established by the President in 2006. The current strategy requires government institutions to have their own templates for combating and preventing corruption. It is expected that these templates are specific and driven to respond to the corruption challenge.

3.6.13 Zero Tolerance to Corruption Policy, 2018

The Zero Tolerance to Corruption Policy (ZTCP) aims to revitalise and realign strategies for combating corruption in Uganda. The Policy focuses on ensuring prompt and decisive responses to corrupt practices, promoting ethical conduct and societal moral values and reinforcing the social fabric¹⁵⁹. The ZTCP is designed to prevent and address incidents of corruption at all levels of society while providing clear policy direction for anti-corruption agencies, ministries, departments, local governments and other stakeholders to effectively manage and eliminate corruption.

Under the ZTCP, the government established a three-tier institutional framework to ensure the efficient and effective use of public resources while promoting transparency and accountability. Various institutions are part of the Inter-Agency Forum (IAF) for enhanced collaboration and coordination while others are included in the Accountability Sector (AS) and the Justice, Law and Order Sector (JLOS) as part of the Sector Wide Approach (SWAP)¹⁶⁰. The Commission on the other hand is listed among institutions that play a crucial role of providing oversight in the fight against corruption.¹⁶¹

3.7 Accountability of the Guardian. Who Oversees the JSC?

¹⁵⁸ Justice Law and Order Sector (JLOS) Anti-Corruption Strategy (2012) 9.

¹⁵⁹ Zero Tolerance to Corruption Policy (2018) 1.

¹⁶⁰ Zero Tolerance to Corruption (n 159 above) 12.

¹⁶¹ Zero Tolerance to Corruption (n 159 above) 13.

The Judicial Service Commission plays a vital role in ensuring the integrity of the judiciary and as such it is expected to uphold high ethical standards. To effectively fulfill this role, the laws and regulations governing the Commission must incorporate robust accountability mechanisms. However, a significant concern arises from the perceived lack of accountability among Council members. For instance, when the process of selecting judges and appointing other judicial officers seems arbitrary, the absence of clear policies and procedures to ensure accountability raises questions about the Councils decisions.

While the independence of the judiciary has been widely researched on a global scale, judicial accountability has received considerably less attention. This trend is also evident in Uganda, where similar gaps exist. Furthermore, there is even less scholarly focus on the accountability of JSCs in countries where they operate. For a JSC to effectively foster an independent and accountable judiciary, it must itself be both independent and accountable.¹⁶² As will be discussed, the independence of a JSC can be influenced by its legal status, compositions and other factors.

Ensuring the transparency of judicial councils has become essential for defining what constitutes an effective judicial council. These councils have a responsibility to the public that includes transparency, accountability and regular reporting. It is crucial that their actions are transparent with all decisions regarding judicial carriers being well reasoned and publicly accessible. Additionally, councils should regularly publish reports on their activities and make them widely available to promote accountability and trust.¹⁶³

First, Article 164 specifies that the Permanent Secretary or Accounting Officer responsible for a Ministry or Department must account to Parliament for the financial resources allocated to that entity. This provision emphasises the expectation that these officials will be held accountable for any misappropriation of funds potentially requiring them to rectify any losses incurred. Additionally, Article 79(3) provides that Parliament shall protect this Constitution and the democratic governance of Uganda. When read together, these two Articles emphasise the responsibility of the Parliament in holding the Commission accountable while it carries out its constitutional mandate of exercising oversight control on the judiciary.

However, it has been argued that accountability mechanisms for judicial councils should incorporate public involvement in council proceedings and oversight of their conduct. Civil society's role in monitoring and reporting on the councils activities can significantly enhance the

¹⁶²M Nkhata 'Spotlight on the Guardians of the Gatekeepers: An Assessment of the Judicial Service Commission of Malawi' (2018) *Comparative and International Law Journal of Southern Africa* Vol 51 No 1 66-96 82.

¹⁶³ Opinion No. 10 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society (2007) Adopted by the CCJE at its 8th meeting (Strasbourg, 21-21 November 2007) especially Section 6.

transparency and quality of its decisions. However, many councils in developing and transitioning democracies have not established effective channels for civil society engagement and oversight. This lack of participation and control has fostered public distrust in the judiciary and the judicial councils themselves.¹⁶⁴

This situation reflects a similar challenge faced by the JSC which also struggles with inadequate public participation and oversight in its operation. Just as many Councils in developing countries have failed to engage civil society effectively, the JSC encounters obstacles in fostering accountability and transparency. The lack of mechanisms for public involvement has led to growing mistrust in the Commission and the judiciary as a whole. Ultimately, both institutions must address these accountability issues to restore public confidence and ensure effective governance.

Another method to hold the Commission accountable is by filing court applications for judicial review to redress any wrongs committed by the Commission. Judicial review is a court's authority to examine actions of other government branches or levels, particularly to invalidate legislative or executive actions deemed unconstitutional. It also includes a court's review of factual or legal findings by lower courts or administrative bodies.¹⁶⁵ To foster the rule of law in the country, it is crucial to have an effective control and redress system overseeing the Administration. This approach is essential for instilling responsibility and accountability within the administration ensuring it acts in accordance with the law. judicial review, as a component of Administrative Law provides a mechanism for oversight and enables individuals to seek remedies and relief when their legal rights or interests are violated by administrative actions.

According to Wade & Forsyth¹⁶⁶, "Judicial review thus is a fundamental mechanism of keeping public authorities within due bounds and for upholding the rule of law". When an individual feels wronged by the Administration due to a violation of their rights or loss of their interests, they seek a remedy to vindicate those rights and address their grievances. One of the most important and intricate aspects of judicial review involves the judicial oversight of administrative actions along with the remedies and relief available through the courts for individuals harmed by improper or unjust administrative actions taken in the exercise of their authority.

In the case of *His Worship Kaweesa Godfrey vs the Attorney General of Uganda*,¹⁶⁷ the High Court held that courts have increasingly sought to bring administrative bodies under their oversight. The

¹⁶⁴ A Violaine and E Sandra 'Global Best Practices: Judicial Councils. Lessons Learnt from Europe and Latin America' (2004) in Keith Henderson (Ed.) *IFES Rule of Law White Paper Series*.

¹⁶⁵ T Reuters 'The Black's Law Dictionary' (2019) 11th Edition 1013.

¹⁶⁶ Wade and Forsyth 'Administrative Law' (2000) 8th Edition 34.

¹⁶⁷ Miscellaneous Cause No. 14 of 2020.

court emphasised that without judicial control and legal discipline, these bodies risk acting arbitrarily. Judicial oversight of public power is crucial to prevent unchecked authority and ensure accountability.

3.8 Mechanisms for Ensuring the Independence of the Judicial Service Commission

The primary role of a Commission should be to identify and nominate the most qualified candidates for judicial positions free from political influence. If politics are allowed to intervene, the Commission risks becoming merely a superfluous element in a political process. The Commission has distinct objectives that is to find the best suited candidates for judicial roles and present their nominations to the appointing authority for judicial positions on the higher bench, appoint judicial officers to the bench and exercise disciplinary control over errant judicial officers and remove them from office. For the Commission to fulfill its responsibilities effectively, it must operate independently.

Independence encompasses both external and internal dimensions which are crucial for the effectiveness of the Commission and the institution it oversees. Distributing power among a more diverse and representative group for example not only enhances democratic principles but also fosters a significant degree of independence within the Commission. This arrangement allows the Commission to function as a valuable and distinct element of judicial selection process rather than merely a procedural formality.¹⁶⁸ Additionally, to succeed in this capacity, it is essential for the Commission to cultivate and maintain public support as this reinforces its legitimacy and efficacy in the eyes of the community it serves.

Firstly, the legislative framework specifically the Constitution, stipulates that the Commission shall operate independently and not be subject to the control or direction of any individual or authority. This provision creates institutional independence over the Commission which is a crucial step towards ensuring the independence of the Commission. Additionally, the Judicial Service Commission Regulations grants the Commission the autonomy to regulate its own operations further enhancing its independence in conducting its business hence allowing for some autonomy over its work.

While the existing legislative frameworks aim to establish the independence of the JSC, they may not be adequate in practice. Public dissatisfaction has repeatedly surfaced regarding the Commission's decisions particularly concerning the appointment of judicial officers. To enhance its credibility and effectiveness, the Commission should pursue additional forms of

¹⁶⁸ JA Colquitt 'Rethinking Judicial Nominating Commissions: Independence, Accountability and Public Support' (2007) *Fordham Urban Law Journal* 34 No 1 77-124.

independence like financial autonomy. Securing adequate funding would enable the Commission to conduct its activities more effectively and transparently fostering greater trust and confidence among the public in its decision making process.

Another example of external influence in the JSC is the practice where the President appoints members to the Judicial Service Commission which then nominates candidates for the higher judicial positions only for the President to appoint them. This process is fraught with redundancy and inefficiency as it allows the executive to exert indirect control over the Commission. To address this issue, reforms should be implemented to ensure greater independence for the JSC, minimising political interference and enhancing integrity of the judicial appointment process.

3.9 Conclusion

The JSC as established under the 1995 Constitution plays a crucial role in ensuring that quality and timely judicial services are offered to the people of Uganda. However, this objective is being undermined by the wide spread corruption that has infiltrated the judiciary and other government institutions. This persistent issue not only affects public trust but also hampers the effective delivery of justice highlighting the urgent need for reform within the system. To combat corruption effectively, the JSC must leverage the existing legislative framework designed to address this challenge. By actively implementing and enforcing anti-corruption measures, the Commission can restore integrity within the judiciary and enhance public confidence in its operations.

In sum, while the legal and institutional framework governing the Judicial Service Commission reflects a well-articulated constitutional mandate, stakeholder interviews suggest a wide disconnect between formal powers and functional reality. Across the board, informants highlighted persistent executive interference, internal corruption, limited feedback mechanisms and inadequate public engagement. The part-time nature of Commissioners, reliance on outdated complaint handling systems and selective disciplinary action particularly undermine the Commission's credibility. Ultimately, the Commission's potential to combat judicial corruption depends not just on structural legality but also on operational transparency, stakeholder coordination, and political will to insulate it from elite influence.

CHAPTER FOUR

THE ROLE OF THE JUDICIAL SERVICE COMMISSION IN COMBATING CORRUPTION IN THE JUDICIARY

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4.1 Introduction

The Commission plays a central role in addressing corruption within the judiciary, as it is constitutionally empowered to oversee the conduct of judicial officers. While the JSC has undertaken efforts to address this challenge, including taking disciplinary action against errant officials and conducting public awareness campaigns on judicial corruption, there remains a perception that the Commission's efforts have fallen short. Some critics have argued that the JSC has been lackluster in its approach to lifting the judiciary out of the grip of graft, suggesting that there is still significant room for improvement in the Commission's ability to effectively tackle this persistent problem.¹

This chapter focuses on the role of the JSC in combating corruption within the judiciary, detailing the proactive and reactive measures the Commission has implemented to address this issue. It examines the various initiatives undertaken by the JSC such as disciplinary actions against corrupt judicial officers and public awareness campaigns aimed at highlighting the impacts of judicial corruption. Despite these efforts, the chapter also addresses the challenges the JSC has faced including criticisms regarding its effectiveness and the ongoing perception that its actions have not sufficiently curbed judicial corruption.

¹ Anti-Corruption Coalition of Uganda 'Watching the watchdog: A critical Look into the Judicial Service Commission's Complaint Handling Mechanisms' (2016) 6.

4.2 Judicial Corruption in Uganda

Judicial corruption in the context of this research refers to corrupt activities involving judges, prosecutors, public defenders, court officials and lawyers who play integral roles in the judicial system. It encompasses actions that undermine the integrity of the judiciary aligning with the broader definition of corruption as the abuse of entrusted power for personal gain.² Judicial corruption can manifest in various ways and involve numerous participants. Forms of corruption can include bribery, embezzlement of public funds or assets, nepotism, political interference, criminal extortion and internal pressures within the judiciary. This corruption can further range from petty acts to significant abuses and may be isolated incidents or deeply rooted within a widespread culture of privilege and inequality.³

Allegations of corruption among judicial officers and staff have been prevalent despite efforts to promote integrity in service delivery. According Afro Barometer, nearly half of the Ugandans surveyed regarded the judiciary as corrupt⁴ with many who had dealings with the court admitting to having paid bribes. A 2017 report from the Inspectorate of Government placed the judiciary as the ninth most corrupt institution in the country.⁵ Further, a 2019 Afro barometer survey indicated that 43% of Ugandan respondents believed that most judges and magistrates were corrupt⁶ while 78% felt that the government was not effectively tackling corruption.⁷ More recently, it was reported that Uganda has failed to make any progress in the fight against corruption putting it among the 30 most corrupt countries across the globe.⁸

The former Chief Justice Wambuzi identifies two forms of corruption within the judiciary that is real and perceived corruption. He notes that some individuals may falsely accuse judges of corruption simply because they are dissatisfied with the outcome of their cases. Reflecting on his experiences, he recalls instances where losing parties instead of expressing their gratitude for the court's authority, resorted to allegations of corruption. This shift in behavior extends beyond

² S Gloppen 'Courts, Corruption and Judicial Independence' Søreide, Tina, & Williams Aled (Eds.) Corruption, Grabbing and Development: Real World Challenges. Edward Elgar Publishing (A chapter in an edited book) (2013) 69 Accessed at <https://www.cmi.no/publications/file/5091-courts-corruption-and-judicial-independence.pdf>.

³ United States Agency for International Development (USAID) 'Reducing Corruption in the Judiciary (2009) USAID Program Brief 5.

⁴ Afro Barometer 'Access to justice? As public trust in courts declines, many Ugandans have their doubts' (2024) Dispatch No. 821 2 Accessed at <https://www.afrobarometer.org/wp-content/uploads/2024/07/AD821-Access-to-justice-Ugandans-have-their-doubts-Afrobarometer-19july24.pdf>.

⁵ Inspectorate of Government 'Bi-Annual Inspectorate of Government Performance Report to Parliament (January -June 2017) 80 Accessed at https://www.igg.go.ug/media/files/publications/IG_Performance_Report_January_to_June_2017.pdf.

⁶ Transparency International 'Global Corruption Barometer Africa 2019: Citizens' Views and Experiences of Corruption' (2019) 58.

⁷ As above.

⁸ Daily Monitor 'Uganda stagnates again in global corruption ranking' (2024) The daily monitor online paper <https://www.monitor.co.ug/uganda/news/national/uganda-stagnates-again-in-global-corruption-ranking-4509350>.

individuals to encompass institutional and governmental levels, where praise for the judiciary is common when the government prevails in court but accusations of corruption arise when it loses.⁹

Wambuzi provides a striking example of real corruption revealing how a High Court Judge was alleged to have solicited a portion of damages awarded to successful litigants. Such conduct not only undermines the integrity of the judiciary but also raises the possibility of inflated damages as judges might manipulate outcomes to secure a larger share. When confronted with the allegations, the judge initially denied any wrongdoing but later admitted to the truth of the claims illustrating the gravity of misconduct that can exist within judicial ranks.¹⁰

Moreover, Wambuzi highlights corruption perpetuated by support staff particularly court clerks who exploit their positions to solicit bribes from winning parties. These clerks would approach litigants falsely claiming to be acting on behalf of judges or magistrates, asking for money in exchange for favorable verdicts. This creates a troubling dynamic where the integrity of judicial decisions is compromised making it difficult for litigants to believe that their case was won solely on merit rather than through corrupt practices. Such scenarios illustrate a significant challenge to the rule of law and the public's trust in the judiciary.¹¹

Judicial corruption is a particularly damaging issue. When the judiciary tasked with upholding the rule of law is compromised, it undermines the effectiveness of the anti-corruption strategies by failing to enhance the risks associated with corrupt behavior and to impose appropriate penalties for such actions. This creates distortions in the system allowing corrupt individuals to act with impunity eroding public trust in the government integrity and hindering vital economic, social and political progress. On the other hand, enhancing judicial integrity and the capacity to fight corruption can yield significant positive outcomes.¹²

Integrity is fundamental to judicial service and the role of a judicial officer is a revered one. Judicial officials hold their positions in trust for the public, granting them significant authority over those who come before them.¹³ As guardians of the law, they are expected to adjudicate matters fairly and fulfil their responsibilities in accordance with the judicial oath which mandates that they perform their duties without bias, favoritism or hostility. This oath is taken upon their appointment prior to beginning work. When some judicial officers engage in corrupt practices, it

⁹ WS Wambuzi 'The Odyssey of a Judicial Career in Precarious Times: My Trials and Triumphs as a Three-Time Chief Justice of Uganda' (2014) Aberdeen: *Cross House Books* 95.

¹⁰ As above.

¹¹ Wambuzi (n 9 above) 117.

¹² USAID (n 3 above) 2.

¹³ EL Felter 'Accountability in the Administrative Law Judiciary: The Right and The Wrong Kind' *Denver University Law Review* Vol. 86 1 2.

undermines the legitimacy of the judiciary and fosters a culture of impunity. Such corruption diminishes the credibility of the courts and erodes public trust in their impartiality ultimately affecting the administration of justice and the rule of law in areas like dispute resolution, law enforcement and the protection of human rights.¹⁴ The judiciary, as the ultimate guardian of individual rights, must combat corruption rather than contribute to it.¹⁵

4.2.1 Forms of Judicial Corruption

Bribery occurs when an individual promises, offers or gives an undue advantage to a public official either directly or indirectly to influence their official duties. This practice also encompasses the solicitation and acceptance of such advantages by the official in question. Notably, the benefit can extend to the judicial officer, a third party or an organisation.¹⁶ In its most extreme form, bribery manifests when court officials or judges are improperly influenced by incentives that affect their decisions.

Secondly, embezzlement involves the theft of resources by individuals who have been entrusted with their management and control. This form of corruption not only deprives the public of essential resources but also erodes trust in public institutions. When those in positions of authority exploit their access for personal gain, it creates a significant barrier to effective governance.¹⁷ For example, court clerks who siphon off funds from court fees for personal gain depriving the judiciary of necessary resources for its operations.

Another form of judicial corruption is fraud which encompasses deceptive actions by a judicial officer, another individual or an entity that misleads others into providing benefits that would not normally be available. An example of fraud could be a court official forging court documents to create an illusion of its existence allowing them to claim fees for services never rendered. This manipulation of trust distorts the functioning of the judiciary and diverts resources away from their rightful uses.¹⁸

Furthermore, extortion involves coercing an individual or entity to provide a benefit to a public servant in exchange for performing or neglecting specific actions. This form of corruption exploits power dynamics, often leaving victims feeling powerless and undermining the ethical standards expected of public officials.¹⁹ In addition, abuse of power occurs when a public servant

¹⁴Gloppen (n 2 above) 68.

¹⁵ United Nations Convention Against Corruption (UNCAC) (2003) Article 11 G.A Res. 58/4 U.N Doc, A/58/4 (November 21, 2003), Available at https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

¹⁶ Justice Law and Order Sector (JLOS) Anti-Corruption Strategy (2012) 4.

¹⁷ As above.

¹⁸ JLSO (n 16 above) 5.

¹⁹ As above.

improperly uses their authority to benefit another individual or entity or to discriminate against others. Such misuse of power can severely compromise the integrity of public service, leading to a loss of faith in the systems designed to protect citizens' rights.²⁰

While not directly classified as corruption, conflicts of interest can lead to corrupt practices and seriously harm public confidence in institutions. A conflict arises when a public servant is involved in decision-making that affects their own interests or those of a related party. For instance, a public servant might award a contract to a company where their partner holds a directorship. This scenario highlights the potential for compromised decision-making and the erosion of fairness in public service.²¹

Moreover, insider trading and the abuse of privileged information involve utilizing confidential information gained through one's position to provide an unfair advantage to another party or to benefit oneself. Such actions violate the principles of fairness and transparency, further undermining public trust in the judicial system. Additionally, favoritism refers to the allocation of services or resources based on personal affiliations, such as ethnic, religious, or political ties. This practice compromises the fairness of public service and can lead to widespread distrust among citizens, as decisions may appear biased rather than based on merit.²²

Lastly, nepotism involves a public servant ensuring that family members receive appointments or contracts within the public service, regardless of their qualifications compared to other candidates. For example, a department head may appoint a relative to a position despite the presence of more qualified applicants. This practice mirrors conflict of interest and favoritism, further eroding public trust in the integrity of governmental institutions and highlighting the need for reforms to ensure fairness and accountability in public service.²³

4.2.2 Causes of Judicial Corruption

According to the Annual Performance Report of Judiciary, the Chief Justice received 117 complaints during court visits and among the complaints addressed, tendencies of corruption were notably prevalent particularly among support staff in the courts.²⁴ The Chief Registrar also conducted five (05) meetings with Registrars and Magistrates to evaluate and enhance performance, share effective case management practices and develop strategies to combat corruption within the courts among other things.²⁵ Additionally, the Hon. Principal Judge

²⁰ As above.

²¹ As above.

²² As above.

²³ As above.

²⁴ Judiciary Annual Performance Report (2023/2024) 74 Accessed at <https://judiciary.go.ug/>.

²⁵ Judiciary (n 24 above) 104.

received and responded to a total of 1,242 complaints. Most of the complaints pertained to among other things corruption.²⁶

Judicial corruption is particularly challenging to assess especially when it involves judges as recipients of bribes. This difficulty may explain why organisations like Transparency International lack a dedicated focus on judicial corruption and why there is limited literature on the topic despite the widespread attention corruption receives in discussions about good governance.²⁷ The scarcity of information is striking given the numerous reports, books, workshops and lectures addressing corruption in general.

One key reason for the difficulty in evaluating judicial corruption is the triadic nature of the judicial process which involves three parties; the judge and two opposing litigants. Unlike other competitive scenarios such as tender processes, litigation is unique because it arises from the parties' inability to resolve their disputes independently. A party that pays a bribe is likely to conceal this action to protect their interests in future proceedings. Consequently, those involved in this triad often prefer to keep discussions about corruption private especially while their relationships remain active or where there is a chance of future interactions.²⁸

Nevertheless, several factors have been identified as contributing to judicial corruption in Uganda and these will be explored below. Key elements such as inadequate salaries especially for administrative staff, lack of oversight and the influence of external pressures can create an environment where corruption thrives. Additionally, a culture of impunity and insufficient accountability mechanisms further exacerbate the problem. Understanding these underlying causes is crucial for addressing judicial corruption effectively and implementing meaningful reforms.

First, the slow resolution of cases and the resulting backlog contribute to corruption. The low disposal rate, which is partly due to insufficient human and financial resources allocated to the judiciary, creates openings for corrupt practices. Litigants seeking timely resolutions may be tempted to pay bribes for expedited handling of their cases, while unscrupulous judicial officers may exploit this situation to extract money. According to the judiciary's annual report for the fiscal year 2021/2022, it takes an average of 901 days to resolve a case. In the FY 2023/24, for

²⁶ Judiciary (n 24 above) 74.

²⁷ A Bedner 'Judicial Corruption; Some Consequences, Causes and Remedies' (2002) Centre for International Legal Cooperation 1 Accessed at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=f5de2d14da0c69e7957bb9a94196ccd775201374>.

²⁸ As above.

instance, the Supreme Court took an average of 1,043 days to complete cases before it.²⁹ Further, 26.3% of the cases in the system in FY 2023/24 were considered backlog cases.³⁰

The low remuneration of non-judicial officers has also been identified as a major cause of corruption. According to the 2020 JLOS Corruption Risk Assessment, lower court officers in the registry are more prone to corruption because of their relatively low pay. Some officers of the court earn a monthly basic salary of less than UGX 215,000/= from which they are expected to support their families. This low pay creates financial constraint and fosters a culture where unethical behavior is normalised. Addressing the salary of administrative staff is essential in mitigating the risks of corruption in the judiciary.

Another cause of corruption would be judicial discretion. When judicial officers have broad latitude in decision making, it creates opportunities for biased or arbitrary rulings especially if there are insufficient checks and balances. This discretion may lead to favoritism or the acceptance of bribes in exchange of favorable outcomes. Furthermore, lack of clear guidelines can make it difficult to hold judges accountable for their decisions fostering an environment where corrupt practices thrive.

Stereotypes and bias against the justice system. The perception that justice is for sale creates tremendous lack of trust in the justice system as well as uncertainty about outcomes of judicial proceedings. These stereotypes create social pressure and fuel the prevalence of bribery as a way of assurance for outcomes. While many of these perceptions are unfounded, they create a barrier to justice and the environment that can be exploited by deviant judicial staff. Hence the common phrases heard in the public arena that a poor person can never win a case in courts of law.

Further, inadequate knowledge of the judicial system among court users about the laws has also contributed to the corruption. This coupled with the extraneous procedures used by the police, Directorate of Public Prosecution (DPP) creates room for manipulation. Such lack of basic knowledge may also lead the court users to inaccurate characterisation of some inefficiencies and incompetence of some members of staff of the judiciary as corruption which in turn reinforces the perception that justice is for sale.

The contribution of other justice chain institutions to corruption in the judiciary should not be under looked. Patterns of collusion exist among actors who are connected by their roles in the judicial system. For instance, links among criminal justice actors including the police officer, State Attorney of the DPP, Defence Lawyer, Prison officer, judicial officer and court clerks are

²⁹ Judiciary (n 24 above) 28.

³⁰ Judiciary (n 24 above) 17.

often identified as hot spots for collusion. These linked players create syndicates that are in some cases pivoted around the courts. In some cases, lawyers collude with the prosecution to decide the outcome of a case or to charge clients “judge fees” which are bribes that quite often include some extra for themselves. In some case, evidence is deliberately lost or compromised or a case file “disappears”.

Additionally, moral decadence and prevalence of corruption across sectors and other government institutions. The widespread moral decadence and high levels of corruption across the Ugandan society directly impacts on corruption in the judiciary. With an average corruption perception rating of 26.5% for the past six (06) years by Transparency International, there is a fundamental challenge of corruption in Uganda. The Centre for Public Interest Law (CEPIL) in the state of the Judiciary Report noted that corruption in the judiciary cannot be tackled in isolation since it is a mirror of the general breakdown in society.³¹ Indeed, Dr. Pius Birigimana has argued that Uganda’s social structure today has seen a widespread pragmatism in which no one can lay a claim to hold higher moral ground.³²

Greed also remains a major cause of corruption. The underlying anthropological cause of greed is the inherent human impulse to satisfy oneself through ways that are not subject to personal integrity. Greed is rated as a major cause of bribery at 69.4% by the Inspectorate of Government.³³ The increased levels of greed are largely a result of the desire to accumulate wealth in the quickest time possible irrespective of the means and legitimacy of the process.

Lack of technological resources such as modern databases for recording judgments can contribute to judicial corruption by allowing corrupt practices to remain undetected.³⁴ Inadequate computer systems can impede court processes leading to delays that may incentivise individuals to resort to bribery to expedite their cases and gain preferential treatment. To address this issue, the judiciary introduced the Electronic Case Management Information System (ECCMIS) aimed at reducing human intervention in case handling, particularly during the filing of court documents and the scheduling of hearings—common points of corruption among court officials. However, the rollout of ECCMIS has been limited, with implementation occurring in only eight courts, including the Supreme Court, Court of Appeal, and four High Court Divisions, as well as Luwero High Court and Mengo Chief Magistrates Court during the fiscal

³¹ The Centre for Public Interest Law ‘In Dire Straits? The State of the Judiciary Report (2016) 26 Available at https://judiciary.go.ug/files/downloads/SOJ%20Four%20Final%20Report_V5_Final_12P.pdf.

³²P Bigirimana ‘A Tale of Wolves in Sheep’s Clothing’ (2014).

³³ Inspectorate of Government National Integrity Survey III (2013).

³⁴A Arvidsson and E Follkseeon ‘Corruption in the Judiciary. Balancing Accountability and Judicial Independence (2010) 7 Accessed at <https://www.diva-portal.org/smash/get/diva2:321290/FULLTEXT01.pdf>.

year 2023/24.³⁵ While user training was conducted in an additional 18 court stations, this coverage remains insufficient relative to the total number of courts. Consequently, the limited implementation of ECCMIS allows for ongoing human conduct that perpetuates allegations of corruption within the judiciary.

Lastly, Weak oversight by the JSC, which is responsible for regulating the judiciary, can significantly contribute to corruption. Stakeholders consistently pointed to a number of recurring obstacles that limit the Commission’s ability to execute its anti-corruption mandate effectively. The Chairperson to the Commission, emphasized the lack of full-time personnel, noting: “Only the Chairperson is full-time. Yet we’re expected to handle all complaints from across the judiciary, including a rapidly expanding cadre of judicial officers.”³⁶ He also highlighted outdated infrastructure: “We still receive complaints in handwritten form and have no centralized electronic database to track complaints in real-time.”³⁷

A respondent underscored regulatory weaknesses, pointing specifically to the previous version of Regulation 40, which failed to categorise receiving bribes as an offense warranting dismissal.³⁸ He confirmed that amendments have been submitted to the First Parliamentary Counsel to address this.³⁹ Another respondent echoed this concern, saying, “We can only discipline as far as the law allows. When the regulations are weak, impunity thrives.”⁴⁰ The respondent warned of institutional overlap: “You find the same complaint being handled by the JSC, the Inspectorate, the Judiciary’s DC, and the PJ’s office by the time it reaches the Commission, the trail is cold.”⁴¹

Stakeholders shared mixed reviews regarding the strength and effectiveness of inter-institutional collaboration. The Chairperson of the Commission acknowledged existing efforts but admitted: “The reality is, each institution often works in a silo. We lack formalized Memoranda of Understanding with key agencies, which leads to delays, duplications, or contradictory actions.”⁴² A respondent noted a lack of synergy between administrative and criminal investigations: “You find that one office disciplines an officer administratively while another prosecutes criminally, and there's no information sharing.”⁴³

From a civil society perspective, A respondent called for an institutionalized framework for cooperation, stressing that “ad hoc collaboration is ineffective. We need joint trainings, shared

³⁵ Judiciary (n 24 above) 94.

³⁶ Interview with Dr Douglas Singiza Chairperson of the JSC (Kampala Uganda 10 June 2025).

³⁷ As above.

³⁸ Interview with JO (Kampala Uganda 13 June 2025).

³⁹ As above.

⁴⁰ Interview with JMA (Kampala Uganda 11 June 2025).

⁴¹ Interview with JO (Kampala Uganda 14 June 2025).

⁴² Interview with Dr Douglas Singiza Chairperson of the JSC (Kampala Uganda 10 June 2025).

⁴³ Interview with JO (Kampala Uganda 14 June 2025).

case management systems, and coordinated public awareness campaigns.”⁴⁴ Another respondent echoed this, suggesting that regular inter-agency review meetings could reduce redundancy and increase the pace of resolution.⁴⁵

In terms of recruitment and vetting, a respondent proposed that the JSC should liaise more with the Public Service Commission and Police Intelligence to ensure that shortlisted candidates are free of integrity flags.⁴⁶ This view resonates with data from the field codebook, where collaboration challenges were coded under the theme “institutional fragmentation.”

These insights reveal that while collaboration is recognised as critical, its current execution is inconsistent and informal. The absence of structured, binding cooperation arrangements among key institutions severely undercuts the Commission’s ability to respond holistically to corruption within the judiciary.

This pattern of challenges ranging from weak enforcement tools and institutional overlap to underfunding and poor data systems was also reflected in the field codebook under themes like *capacity gaps*, *fragmented mandates*, and *weak regulatory tools*. The multiplicity of voices affirms that without systemic reform, the Commission's fight against corruption risks becoming performative.

As the judiciary has expanded over the years, the JSC has remained small and poorly funded, limiting its ability to effectively monitor judicial conduct and ensure accountability. In FY 2023/24, 121 judicial officers were recruited⁴⁷ and proportions of areas designated with operational courts improved from 70% in FY 2022/23 to 77.21% in FY 2023/24.⁴⁸ This lack of oversight creates an environment where unethical behavior can go unchecked, allowing corrupt practices to flourish. Without sufficient resources and authority to investigate complaints or enforce standards, the JSC's diminished capacity to oversee judicial operations can lead to increased incidences of corruption and a decline in public trust in the judicial system.

4.3 Mechanisms for Combating Judicial Corruption

According to Gloppen, judicial corruption is a complex and multifaceted phenomenon that requires a diverse range of responses⁴⁹ and he proposes four ways of fighting petty corruption in the judiciary which include improvement in material conditions for judicial personnel and staff,

⁴⁴ Interview with CA (Kampala Uganda 13 June 2025).

⁴⁵ Interview with BW (Kampala Uganda 14 June 2025).

⁴⁶ Interview with PW (Kampala Uganda 12 June 2025).

⁴⁷ Judiciary (n 24 above) 99.

⁴⁸ Judiciary (n 24 above) 16.

⁴⁹ Gloppen (n 2 above) 73.

normative change in the attitude towards bribery in the corruption, preventive procedural measures and disciplinary/accountability systems.⁵⁰

Presently, the Commission employs a two-pronged approach in its efforts to combat corruption within the judiciary - a combination of preventive and reactionary mechanisms. On the preventive front, the Commission has invested heavily in public awareness and education initiatives. Through regular radio and television programs, the JSC sensitises citizens on their rights, the judicial process, and how to report any misconduct or irregularities. The Commission also organises workshops and stakeholder engagements to directly empower communities to be active watchdogs, holding judicial officers accountable and demanding higher standards of integrity. This preventive strategy seeks to equip the public with the knowledge and confidence to engage with the justice system and call out any signs of corruption.

Alongside these proactive measures, the Commission also wields reactive tools to address confirmed cases of corruption. Upon receiving formal complaints or encountering reports of misconduct through media channels, the Commission initiates disciplinary proceedings against errant judicial officers and staff of the judiciary. This can culminate in sanctions ranging from warnings and suspensions to the termination of employment for those found guilty of graft or abuse of office. The Commission's ability to swiftly investigate and mete out consequences for corrupt practices sends a strong deterrent signal and underscores its commitment to maintaining the integrity of the judiciary.

The perceived effectiveness of the Judicial Service Commission's anti-corruption mechanisms varied across stakeholders. A seasoned judicial officer, observed that while systems are in place, “implementation is inconsistent, some complaints are acted upon swiftly, others just disappear in the system.”⁵¹ This perception was echoed by another respondent, who described the disciplinary processes as “largely reactive rather than proactive,” noting that “the public rarely sees tangible outcomes unless a case has gained media traction.”⁵²

A civic rights activist acknowledged the role of the Commission but questioned its independence, remarking: “It is hard to be fully effective when your operations depend heavily on another arm of government.”⁵³ Similarly, another civic rights advocate, stated: “Most complainants we speak to feel discouraged because they never get feedback on their cases the JSC needs to close that loop.”⁵⁴

⁵⁰ Gloppen (n 2 above) 74-75.

⁵¹ Interview with MA (Kampala Uganda 13 June 2025).

⁵² Interview with BW (Kampala, Uganda, 14 June 2025).

⁵³ Interview with PW (Kampala Uganda 12 June 2025).

⁵⁴ Interview with MA (Kampala Uganda 12 June 2025).

On a more optimistic note, the Chairperson of the Commission, argued that effectiveness should be assessed not just in disciplinary outcomes but in the deterrent effect. “Our very presence and monitoring activities have put judicial officers on alert,” he noted.⁵⁵ Another respondent, from a civil society group, supported this, highlighting improvements in recruitment transparency: “We now see calls for applications publicly advertised and vetting done with more scrutiny.”⁵⁶

However, a legal practitioner, noted a gap between form and substance: “You can have structures, strategies, and codes, but if there is no swift follow-up, corruption simply mutates into more subtle forms.”⁵⁷ This reinforces a pattern in the data while several reforms have been instituted, their efficacy remains uneven across districts, especially where JSC presence is minimal or irregular.

4.3.1 Preventive Mechanisms

Recognising the critical importance of an independent judiciary in the fight against corruption, the UN Convention against Corruption calls on State Parties to take measures to strengthen the integrity and prevent corruption among members of the judiciary. This must be done while respecting the fundamental principles of the legal system and without compromising the independence of the judiciary⁵⁸. The measures envisioned by the Convention may include establishing codes of conduct or other rules governing the behavior and actions of judicial officers. The aim is to proactively reinforce the ethical standards and accountability of those entrusted with the administration of justice, thereby reducing the opportunities for corruption to take root within the judicial system.

The Zero Tolerance to Corruption Policy emphasises the importance of preventive measures in combating corruption, highlighting the need to strengthen public demand for accountability and transparency from duty-bearing institutions and individuals, as well as encouraging their active participation in the fight against corruption⁵⁹. This policy underscores the critical role of public mobilisation, education, and sensitisation campaigns in raising awareness and increasing citizen engagement in the anti-corruption effort, recognising that these measures are vital in fostering a culture of integrity and social accountability across all levels of government and society.

On the preventive side, the Commission places a strong emphasis on the recruitment and vetting of morally upright individuals to join the judiciary, ensuring that the institution is staffed by

⁵⁵ Interview with Dr Douglas Singiza Chairperson of the JSC (Kampala Uganda 10 June 2025).

⁵⁶ Interview with CA (Kampala Uganda 13 June 2025).

⁵⁷ Interview with MM (Kampala Uganda 13 June 2025).

⁵⁸ UNCAC (n 15 above) Article 11.

⁵⁹Zero Tolerance to Corruption Policy (2019) Principle 2.4 Available at https://www.igg.go.ug/media/files/publications/Zero_Tolerance_to_Corruption_Policy_ZTP_2019.pdf.

personnel committed to integrity. Additionally, the Commission engages in public education and awareness campaigns, empowering citizens to be active watchdogs and hold judicial officers accountable. This preventive approach is complemented by the Commission's oversight role, which involves the close monitoring of judiciary services to identify and address any signs of corruption before they take root.

The most prominent preventive mechanism cited by interviewees was the JSC's gatekeeping role in recruitment. Key informants consistently emphasised that the JSC screens candidates not only for technical competence but also for moral and ethical suitability. According to a senior official from the JLOS Secretariat: "Trying to sieve through candidates that are not only technically competent but objective in the law but also have the ethical standing... that gatekeeper function is critical."⁶⁰

This role is exercised through background checks, review of performance appraisals, consultation of former employers, and face-to-face interactions with candidates. One commissioner confirmed that such checks have prevented the appointment of individuals with questionable integrity, including the rescission of a State Attorney's appointment due to adverse findings.⁶¹

In addition to recruitment, the JSC has developed and implemented an internal anti-corruption strategy, which is still undergoing refinement. The Commission has also institutionalised public legal education campaigns, both through traditional platforms (e.g., barazas, radio, and TV) and social media. These efforts are aimed at building public awareness of judicial accountability and encouraging civic participation in anti-corruption efforts. Furthermore, the Commission has formally established an Anti-Corruption Department and an Anti-Corruption Committee. These structures have the dedicated mandate of developing strategies and overseeing investigations involving judicial misconduct.⁶² "We have an anti-corruption committee that comes up with strategies. They're in the process of launching a comprehensive JSC anti-corruption strategy."⁶³

4.3.2 Public Education and Awareness Campaigns

The Commission employs various methods to conduct public education and awareness campaigns aimed at empowering citizens to demand quality services and accountability from the judiciary. One significant approach is through live radio talk shows, during which the Commission engages the public on various legal topics. In the 2023/2024 Financial Year, the

⁶⁰ MM Key Informant Interview (JLOS Secretariat 1 April 2025).

⁶¹ JW Key Informant Interview (Kingdom Kampala 12 May 2025).

⁶² JMA, Key Informant Interview (Kingdom Kampala 9 May 2025).

⁶³ JO Key Informant Interview (Kingdom Kampala 6 May 2025).

Commission hosted 186 live talk shows nationwide⁶⁴, covering subjects such as the JSC's complaints management system, manifestations of corruption in the judiciary, the mandate of the Judicial Service Commission, key aspects of land law, and an overview of the criminal justice system, particularly focusing on bail, which is often associated with corruption, among other topics.

These talk shows provide an interactive platform for the public to call in and ask questions or share comments, allowing the Commission to gather valuable feedback on how to strengthen the administration of justice. This engagement also encourages citizens to report issues or share information regarding judicial services within their communities, thereby enhancing transparency and accountability in the judicial system.

These institutional initiatives were corroborated by multiple key informants who highlighted both operational and strategic measures taken by the JSC. A respondent emphasized that “we have not just established systems for complaints, but are also reviewing our enforcement and sanctions policy to ensure consistency in handling corruption-related cases.”⁶⁵ A respondent added that part of the strategy includes “transparent shortlisting and interviewing processes” to curb nepotism and conflict of interest during recruitment.⁶⁶

A staff of the Commission asserted that “bringing justice services closer to the people through regional JSC offices is a strong move against impunity.”⁶⁷ Similarly, another staff of the Commission applauded the Commission’s push for recruiting “competent officers with integrity,” while stressing that follow-up must match these good intentions.⁶⁸

Such stakeholder insights validate the thematic codes of: transparency in recruitment, stakeholder collaboration, complaints management, and capacity building all of which were prominent in the field data. The alignment between what is codified and what practitioners experience suggests the JSC has indeed institutionalized several reforms, though implementation gaps remain.

Another tool for public education is media engagement. Media engagements involve the Commission's team of educators and public relations officers interacting with media practitioners in various districts and regions to raise awareness about the Commission's mandate in the administration of justice. These sessions clarify any issues related to the judicial system and

⁶⁴ Judicial Service Commission Annual Performance Report FY 2023/2024.

⁶⁵ Interview with JO (Kampala Uganda 13 June 2025).

⁶⁶ Interview with JMA (Kampala Uganda 11 June 2025).

⁶⁷ Interview with JM (Kampala Uganda 14 June 2025).

⁶⁸ Interview with PAK (Kampala Uganda 12 June 2025).

promote accurate reporting on matters concerning formal justice in Uganda. Additionally, they emphasise the critical role of the media in ensuring justice and accountability.

In the recent initiative, the Commission conducted six media engagements in the districts of Kisoro, Rukungiri, Busia, Tororo, Mbale, and Kapchorwa⁶⁹, bringing together stakeholders from both print and broadcast media. These engagements enable the JSC to foster a collaborative relationship with media professionals, ensuring that they are well-informed about the judiciary's functions and challenges. By enhancing the media's understanding of the justice system, the Commission aims to promote responsible journalism, improve public discourse on legal issues, and ultimately contribute to a more transparent and accountable judiciary in Uganda.

Thirdly, the Commission uses the Anti-Corruption workshops. This is a stakeholder engagement held at the district level which discusses majorly corruption in the judiciary. The anti-corruption workshops aim to sensitise local leaders on corruption in the judiciary, how it manifests, risks of corruption, effects and strategies to combat the same. During these workshops, the Commission also gathers recommendations from the local leaders on how this vice can be addressed. The Anti-corruption workshops are quarterly activities that bring together representatives of different stakeholders in the district. The participants include the Resident District Commissioner, the Chief Administrative Officer, Political leadership of the district, cultural and religious leaders, actors from the Non-governmental organizations among others. In the recent financial year, the Commission conducted 06 workshops in the districts of Kaliro, Namayingo, Hoima, Masindi, Mbale and Manafwa⁷⁰ where at least 100 participants attended from each district.

Sensitisation of prison inmates has been and continues to be one of the preventive ways of addressing corruption by empowering suspects to demand for an accountable judiciary. During the FY 2022/2023, Criminal cases had the highest number of cases registered in the judiciary standing at 50.59%⁷¹, with all such cases initiated by the police. However, the police force is often regarded as one of the most corrupt institutions in the country⁷². Compounding this issue, the Directorate of Public Prosecutions (DPP), responsible for prosecuting these cases, has also faced allegations of corruption. This pervasive corruption undermines the integrity of the judicial system, highlighting the need for the Commission to conduct sensitization programs for prison inmates. Given that inmates constitute a significant portion of court users, empowering them to demand accountability from the judiciary is crucial for fostering a more transparent and just legal system.

⁶⁹ Judicial Service Commission (n 64 above).

⁷⁰ Judicial Service Commission (n 64 above).

⁷¹ Judiciary Annual Performance Report FY 2022/2023.

⁷² New Vision ' The Uganda Police (UPF) has again emerged as the most corrupt institution in Uganda Feb 25 (2021) Available at https://www.newvision.co.ug/category/news/police-ranked-top-corrupt-institution-again-NV_92260.

Through this initiative, the Commission sensitised hundreds of inmates in Lira, Fort Portal, Mbale, Koboko, Masaka Nakifuma, Kasangati, Kauga, Kibaale, Kiboga, Mbarara, Butaleja, Tororo, Palisa, Kyegegwa, Arua, Ragyem, Kitalya and Buwama prisons⁷³. The topics of discussion included bail applications, types of bail, how to pay for cash bail, claim for refund of bail money, an overview of the criminal justice system among others.

Lastly, the Commission has also printed and disseminated IEC materials. The Commission successfully produced 56,111 brochures covering topics such as the JSC's mandate, resolution of land disputes, domestic violence, children's rights, sexual offenses, local council courts, and a guide to the rights of prison inmates. Additionally, the Citizen's Handbook, which provides essential legal information and outlines the services available from various justice, law, and order institutions, saw the Commission print and distribute 1,000 copies⁷⁴. It is crucial to highlight that IEC materials are often translated in different local languages spoken across the country. Thus, by providing essential legal knowledge, these materials enable individuals to understand their rights and hold the judicial system accountable, fostering a more informed and engaged citizenry.

4.3.3 Monitoring of Judiciary Staff

The Commission conducts routine, impromptu monitoring on courts across the country. The intended outcome of the monitoring is twofold. First, the exercise informs the Commission in its mandate to render advice to the executive on how administration of justice can be improved. But most importantly, this exercise acts as a tool to fight corruption. First, routine monitoring provides a platform for feedback from court users allowing concerns about corruption or inefficiencies to be addressed promptly. Secondly, insights gained from the monitoring exercise also feeds into the judicial training programme by highlighting areas of concerns.

The monitoring of courts falls under the mandates of the department of Anti-Corruption and inspections. For the Financial Year 2023/24, the department conducted impromptu monitoring in 29 magisterial areas, 05 High Court Circuits and at the Court of Appeal⁷⁵.

4.3.4 Recruitment and Vetting of Staff of the Judiciary

The third preventive approach of combating corruption in the judiciary is by recruitment of staff who are qualified and fit to serve in the judiciary service. This mandate is executed by the Search and Recruitment Committee on behalf of the Commission. According to the Judicial Service Commission Regulations, the Commission shall have regard to the maintenance of the high

⁷³ Judicial Service Commission (n 64 above).

⁷⁴ Judicial Service Commission (n 64 above).

⁷⁵ Judicial Service Commission (n 64 above).

standard of independence, propriety, integrity, impartiality, equality, competence and diligence required of a judicial officer and shall take into account the qualification, merit and experience of a candidate during the appointment process.⁷⁶ In that regard, the Commission is expected to consult with other entities or persons so that it may arrive at the most suitable candidates.

The Search and Recruitment committee is however faced with a major challenge of identifying suitable candidates not only based on academic qualifications but moral uprightness. It is uncertain whether the Committee has successfully carried out that responsibility as the moral integrity of a candidate is difficult to assess. In July 2023⁷⁷, the country woke up to the news that a one Ssemwogerere Musa, who had recently been appointed as a magistrate Grade One by the Commission had been involved in examination malpractice at the Law Development Centre Campus in Lira district. This is a clear indication that academic qualification and passing of interviews are insufficient in identifying the right judicial officers.

Further to this, judicial officers on the higher bench have been recruited in acting capacities for a two year period before they could be confirmed on permanent appointment. According to a report commissioned by the Judicial Conference in Australia⁷⁸, “the most frequently cited concern raised by the appointment of Temporary Judicial Officers is that such appointments have the potential to undermine the separation of powers, and particularly the independence of the judicial branch from the political branches”. This kind of appointment of judicial officers was challenged in the case of *Dr. Busingye Kabumba & Andrew Karamagi*⁷⁹ for contravening the notion of security of tenure for judicial officers and undermining the provisions of Articles 2, 128, 138, 142, 144 and 147 of the Constitution.

The court while resolving the issue of whether the appointment of judicial officers contravenes the provisions of the Constitution on the security of tenure of judges noted that Judicial independence and security of tenure are emphasised in various UN resolutions and international guidelines, which, while not legally binding, serve as important soft law principles. Principle 11 of the UN Basic Principles on the Independence of the Judiciary asserts that judges' terms should be protected by law, and Principle 12 mandates that member states ensure judges' tenure until a mandatory retirement age or the end of their term. Together, these principles advocate for clearly defined legal frameworks regarding judges' appointments and terms, aligning with the principle of legal certainty. Additionally, the IBA Minimum Standards of Judicial Independence

⁷⁶ Judicial Service Commission Regulation (2025) Regulation 28 (1).

⁷⁷ The Daily Monitor ‘JSC to meet over magistrate caught sitting exams for another’ 1st Aug 2023 Available at <https://www.monitor.co.ug/uganda/news/national/jsc-to-meet-over-magistrate-caught-sitting-exams-for-another-person-4323534>.

⁷⁸ Judicial Conference of Australia ‘Temporary Judicial Officers in Australia’ (2017) 25.

⁷⁹ Constitutional Petition No. 15 of 2022.

criticizes the practice of appointing judges on probationary periods, except in systems where practical experience is not a prerequisite for such appointments.

The court ultimately ruled that appointing High Court judges in an acting capacity for two years violates Articles 128, 138, 142, and 144 of the Constitution, rendering such appointments unconstitutional. This, in turn, undermines the supremacy of the Constitution and contravenes Article 2(1). However, the decision of the court was appealed by the Attorney General and therefore the legality of the appointment of judicial officers in acting capacity awaits the pronouncement of the supreme court.

Recently, the President appointed twenty one High Court Judges in an acting capacity⁸⁰ ignoring the Constitutional Court's declarations. While it can be argued that the decision is under appeal and the Supreme Court has yet to rule on it, it is concerning that the executive branch has shown no regard for this situation. Such actions, which bypass the necessary oversight from other branches of government particularly the judiciary severely undermine the principle of rule of law in Uganda. It should further be noted that the appeal has been before the Supreme Court since 2023. The Supreme Court's grant of stay of execution in this case combined with the failure to resolve the appeal for over two years presents a significant challenge to the appointment process.

By the end of June 2024, the Commission made significant strides in fulfilling its recruitment mandate. Following the Commission's recommendations, the President appointed two Justices to the Supreme Court, three Justices to the Court of Appeal and eleven Judges to the High Court. Additionally, the Commission appointed seven Deputy Registrars, eight Assistant Registrars, Two Chief Magistrates, one Principal Magistrate Grade One, two Senior Magistrate Grade one and 113 Magistrate Grade one⁸¹. Background checks were conducted for these candidates ensuring a thorough vetting process⁸².

In line with its expanded mandate to recruit non-judicial officers introduced by Article 148A of the Constitution, the Commission appointed 413 administrative staff for various roles including Human resource services and court clerks⁸³. The Commission also confirmed 171 administrative staff following successful completion of their probation periods⁸⁴. Furthermore, the Commission approved early retirement of one Chief Magistrate and lifted the interdiction of a Magistrate Grade one demonstrating its ongoing commitment to maintaining a competent judiciary.

⁸⁰ The Daily Monitor ' Museveni appoints Flavian Zeija Deputy Chief Justice' (2025) Accessed at <https://www.monitor.co.ug/uganda/news/national/museveni-appoints-flavian-zeija-deputy-chief-justice-4916836>.

⁸¹ Judicial Service Commission (n 64 above).

⁸² Judicial Service Commission (n 64 above).

⁸³ Judicial Service Commission (n 64 above).

⁸⁴ Judicial Service Commission (n 64 above).

4.3.5 Establishment of Regional Offices

The Commission has established 3 regional offices in the districts of Moroto, Mbarara and Masaka. The Commission further plans to establish another 3 offices in Arua, Gulu and Mbale. The regional offices are led by Principal Legal Officers supported by a team that includes a Senior Legal Officer, a Legal Officer and other support staff. These offices were established to take the Commission's services closer to the citizens but particularly to empower them through various sensitisation programs. While the regional offices are responsible for receiving complaints and providing legal advice to clients, it is important to note that they do not conduct evaluations or investigations of these complaints. Instead, such complaints are forwarded to the Commission for further management.

4.3.6 Reactive Mechanism

The reactive strategy addresses incidents of corruption by first criminalising corrupt behaviors through laws that define specific offences and outline the penalties for those convicted. However, criminalisation alone is insufficient; the strategy also necessitates the prosecution of individuals involved in such conduct, ensuring that the minimum standards for a fair trial are upheld throughout the process. Prosecution may also involve issuing orders, such as barring convicts from holding public office for a specified duration. Furthermore, this strategy includes judicial orders to freeze and confiscate assets acquired through corrupt activities.

Chapter III of the Convention⁸⁵ requires state parties to establish criminal and other offences to cover a wide range of acts of corruption if these are not already crimes under domestic law. The offences criminalised by the Convention include the promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties and the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties⁸⁶.

Additionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position⁸⁷ and the abuse of functions or position⁸⁷ by a public official in the discharge of his

⁸⁵ UNCAC (n 15 above).

⁸⁶ UNCAC Article 15 (n 15 above).

⁸⁷ UNCAC Article 17 (n 15 above).

or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity⁸⁸.

The Judicial Service Commission Regulations which operationalized the Judicial Service Act and provides for how the Act can be implemented stipulates that a complaint against a Judicial officer may be based on among others; improper conduct, corruption and abuse of office, neglect of duty or mal-administration of justice.⁸⁹ Corruption while an independent offence, often times manifests through other disciplinary offences. To this end, Part V of the same regulations provides for a number of disciplinary offences that can be committed by judicial officers in the course of their duties. Key to these disciplinary offences are soliciting or receiving a bribe,⁹⁰ commission of offences under the Anti-Corruption Act, the Leadership Code Act and the Penal Code Act⁹¹, abuse of judicial authority⁹², contravention of the Code of Judicial Conduct, the Judicial Oath or any other oath taken by the judicial officer⁹³.

The responsibility of exercising disciplinary control is executed by the Disciplinary Committee on behalf of the Commission. The Disciplinary Committee is charged with considering investigation reports on complaints lodged, conducting disciplinary hearings and rendering a report to the Commission with recommendations on the proposed course of action⁹⁴. The Disciplinary Committee is composed by 5 Members of the Commission.

In Financial Year 2023/24⁹⁵, a total of 113 complaint cases were handled at the Committee. The Committee also prepared reports on 110 of those cases and these reports were considered by the Commission before the end of the reporting period. The complaints handled during this period ranged from corruption to abuse of judicial authority and absenteeism from duty. Other disciplinary offences included acting in contravention of the Code of Judicial conduct, conduct prejudicial to the good image, honor, dignity and reputation of the service, laziness, producing poor standard work and insubordination among others.

The Commission has recently implemented a mobile complaint handling program to enhance its existing mechanism, which primarily relies on individuals lodging complaints at the registry. By introducing this mobile initiative, the Commission aims to engage more directly with the public allowing it to receive complaints and recommendations from citizens in their respective districts.

⁸⁸ UNCAC Article 19 (n 15 above).

⁸⁹ Regulation 38 (n 76 above).

⁹⁰ Regulation 40(2)(l) (n 76 above).

⁹¹ Regulation 40(5)(a) (n 76 above).

⁹² Regulation 40(2)(w) (n 76 above).

⁹³ Regulation 40(5)(d) (n 76 above).

⁹⁴ Judicial Service Commission 'The Second Strategic Plan' (2020).

⁹⁵ Judicial Service Commission (n 64 above).

The mobile complaint handling initiative was introduced in the 2022/2023 financial year and is carried out by the Complaints and Investigations Department.

During the recent financial year⁹⁶, the department of Complaints and Investigations conducted five (05) mobile outreaches under the mobile complaints handling initiative. These were conducted in the districts of Mubende, Masindi, Iganga, Kabale and Soroti where 5, 094 participants were attended to. While certain complaints such as missing files and delays in the disposal of cases can be addressed by the field team, more serious complaints requiring in-depth investigations are returned from the field. These cases are subsequently forwarded through the Registrar of CIDA to the Department of Disciplinary Affairs. Here, they undergo formal processes of evaluation, investigation and review by the Disciplinary Committee.

4.3.7 Interdiction

Interdiction is a preliminary step or action taken to safeguard the integrity of the judicial system and ensure that the functions of the office are not compromised during ongoing investigations. The Regulations outline the circumstances under which a judicial officer other than a judge may be interdicted from performing their official duties. If the Chief Registrar or responsible officer determines that public interest necessitates such action particularly in cases where disciplinary or criminal proceedings are eminent, the officer has the authority to impose an interdiction.⁹⁷

Additionally, if the Commission possesses evidence related to a judicial officer's misconduct, it can instruct the Chief Registrar or the responsible officer to interdict that individual⁹⁸. This directive emphasises the Commission's role in overseeing judicial conduct and maintaining accountability within the judiciary. By allowing for interdictions in these circumstances, the Regulations establish a mechanism to safeguard public confidence in the judicial process while ensuring that appropriate actions are taken against judicial officers whose conduct may undermine the integrity of the system.

Judicial officers have frequently contested their suspensions, primarily arguing that they have remained interdicted for extended periods that exceed the legal time limits established by law. Public Service Standing Orders provide that the responsible officer has three months to complete investigations for cases not involving the Police and Courts and six months for cases that do involve them. They must then refer the case to the appropriate service commission along with recommendations for action and the necessary supporting documents.⁹⁹

⁹⁶ Judicial Service Commission (n 64 above).

⁹⁷ Regulation 70(1) (n 76 above).

⁹⁸ Regulation 70(2) (n 76 above).

⁹⁹ Public Service Standing Orders (2010) Section 8 of Part (F-s).

In the case of *Magomu Nasur vs Attorney General*,¹⁰⁰ the applicant challenged his interdiction stating that it was arbitrary and contrary to law and that investigations against him should have been concluded within 3 months from the date of his interdiction and yet 3 months had elapsed without him being summoned by the Judicial Service Commission. The court guided on considerations for interdiction and held that any decision to suspend a judicial officer should be based on two key factors that is, it must serve public interest and that there should be reasonable or objective grounds to suspect that the officer has committed an offence or serious misconduct.

The court further clarified that on the role of the Chief Registrar and held that the period of either 3 or 6 months stated in the Regulations cease to apply once the Chief Registrar has concluded investigations and forwarded the judicial officer to the Judicial Service Commission. The JSC's disciplinary proceedings are not limited to that time period and interdictions remain in place until the proceedings are concluded at which point the JSC informs the Chief Registrar whether the interdiction should be lifted or not.

Further, in the case of *Aggrey Bwire vs Attorney General*,¹⁰¹ the court cited Regulation 25¹⁰² which states that what the Commission requires before interdiction are facts relating to the misconduct. Justice Kitumba held that an argument that investigations should precede interdiction is not tenable. She further held that there is no need for a person to be heard even by the Judicial Service Commission before interdiction.

4.3.8 Corrective Measures

Corrective initiatives primarily revolve around the JSC's disciplinary function. The Commission has exercised this mandate through investigations, hearings, and sanctions. Disciplinary measures range from dismissals and interdictions to retirement in public interest, depending on the severity of misconduct. Some interviewees acknowledged that such actions, though infrequent, have had a deterrent effect on judicial officers: "We have passed some sanctions which are acting as deterrents. These sanctions have caused some fear and we believe it will reduce corruption."¹⁰³

Nonetheless, it was widely noted that these disciplinary measures are selectively applied, with a strong focus on the lower bench. Many key informants criticised the lack of action against high-ranking judicial officers, arguing that this undermines the public's confidence in the JSC's impartiality.¹⁰⁴ The disciplinary case against Justice Esther Kisakye the first Supreme Court judge

¹⁰⁰ Miscellaneous Cause No. 312 of 2020.

¹⁰¹ Civil Appeal No. 8 of 2010.

¹⁰² Regulation 70 (n 76 above).

¹⁰³ JO Key Informant Interview (Kingdom Kampala 6 May 2025).

¹⁰⁴ MA Key Informant Interview (ACCU Ntinda 9 April 2025).

to face a tribunal under the 1995 Constitution was cited as a landmark development, although some questioned the political motivations behind it.¹⁰⁵ The JSC has also recommended the transfer of errant officers, participated in dialogues with judicial officers, and published outcomes of disciplinary decisions. These efforts reflect an attempt to institutionalise a culture of transparency and ethical conduct within the judiciary.

4.3.9 Stakeholder Engagement

The JSC has undertaken several initiatives to work with other actors in the justice sector. Interviewees mentioned joint civic education campaigns, consultation with stakeholders during recruitment, and collaboration on case referrals. For example, the Commission engages with the Uganda Law Society (ULS) during the vetting of lawyers applying to join the judiciary.¹⁰⁶ Additionally, the JSC has received case referrals from the IGG and deployed CID officers from the Uganda Police to assist with investigations.¹⁰⁷ Some collaborations were also recorded with CSOs such as LASPNET, which has supported court monitoring initiatives and whistleblowing campaigns. According to a commissioner; “We collaborate well with LASPNET and IGG. CID officers help us access telecom and banking records during investigations.”¹⁰⁸ However, many interviewees indicated that these engagements are sporadic and largely ad hoc rather than institutionalised through standing frameworks or memoranda of understanding.

Despite the existence of some partnerships, most respondents were critical of the JSC’s stakeholder engagement. Several interviewees described the JSC as a “closed” institution, especially compared to bodies like the Office of the Auditor General (OAG) or the State House Anti-Corruption Unit, which are more open to collaboration.¹⁰⁹ “Unlike the OAG or DEI, the JSC is not very forthcoming. It doesn’t actively seek out partnerships or provide feedback.”¹¹⁰

Another key concern was the lack of systematic interaction with stakeholders, including missed opportunities for joint programming, resource mobilisation, and knowledge sharing. Some CSO actors observed that they are only invited to activities at the implementation phase, but not during conceptualisation or design, thus limiting ownership and effectiveness “We need to sit at the table from the start not just be invited when activities are already planned.”¹¹¹ Further, stakeholder forums previously organised by the JSC appear to have become dormant, and many

¹⁰⁵ CA Key Informant Interview (Uganda Law Society 16 April 2025).

¹⁰⁶ MA Key Informant Interview (ACCU Ntinda 9 April 2025).

¹⁰⁷ MA Key Informant Interview (Supreme Court Kampala 29 April 2025).

¹⁰⁸ JM Key Informant Interview (Kingdom Kampala 12 May 2025).

¹⁰⁹ JMA Key Informant Interview (Kingdom Kampala 9 May 2025).

¹¹⁰ PAK Key Informant Interview (Kingdom Kampala 16 May 2025).

¹¹¹ PW Key Informant Interview (Transparency International Uganda 9 April 2025).

respondents called for their revival and expansion, including invitations to the media, bar associations, investigative journalists, and community-based organizations.¹¹²

4.4 Effectiveness of JSC Mechanisms in Combating Corruption

Respondents acknowledged several mechanisms as relatively effective, particularly those targeting entry-level officers and general public awareness. The gatekeeping function in recruitment was praised for its ability to filter out unqualified or unethical candidates through thorough background checks and face-to-face vetting: “The kind of training and scrutiny at entry point has helped. Some appointments have even been rescinded where red flags are found.”¹¹³ Similarly, disciplinary measures at the lower bench have been viewed as effective deterrents. Interviewees cited examples of magistrates being demoted or dismissed, which reportedly instilled fear among others who may consider engaging in corrupt practices.¹¹⁴ A few informants noted that sanctions, when publicized, increase accountability and signal a shift toward transparency: “We have seen judicial officers disbanded, demoted... and these are welcome steps.”¹¹⁵ The public complaints system, when functional, has allowed court users to report malpractices. The use of radio, suggestion boxes, and mobile complaint centres was also credited for improving access to reporting channels, especially in districts with limited internet or legal literacy.¹¹⁶

Despite the existence of various mechanisms, most interviewees observed that their impact remains limited, especially when measured against the scale and complexity of judicial corruption. Several reasons were advanced:

4.4.1 Selective Application of Mechanisms

Many informants highlighted that JSC’s disciplinary function is primarily exercised against magistrates and lower-ranking officers, while senior judicial officers are rarely sanctioned. This disparity, according to respondents, breeds public scepticism and mistrust in the institution’s impartiality. “Disciplinary measures only affect the lower bench. What about the top? That creates a shadow of doubt in terms of effectiveness.”¹¹⁷

External Influence and Institutional Constraints: The JSC’s independence in decision-making is constrained by executive interference, particularly through the role of the Attorney General and

¹¹² CA Key Informant Interview (Uganda Law Society 16 April 2025).

¹¹³ MM Key Informant Interview (JLOS Secretariat 1 April 2025).

¹¹⁴ JO Key Informant Interview (Kingdom Kampala 6 May 2025)

¹¹⁵ MM Key Informant Interview (JLOS Secretariat 1 April 2025).

¹¹⁶ PAK Key Informant Interview (Kingdom Kampala 16 May 2025).

¹¹⁷ MA Key Informant Interview (ACCU Ntinda 9 April 2025).

the President in approving appointments and constituting tribunals. This, in turn, undermines the autonomy of the Commission and hampers its ability to apply sanctions without fear or favour.¹¹⁸ “The JSC cannot take decisions without the AG’s approval. That affects how far they can go in disciplining senior judges.”¹¹⁹

4.4.2 Lack of Timely Feedback and Follow-Through

Another recurring concern was the slow processing of complaints and lack of timely communication with complainants. This contributes to public apathy, with many court users opting not to report corruption due to the belief that nothing will come of it. “Court users have lost confidence in the JSC because they report and get no feedback. That’s discouraging.”¹²⁰ The time lag in investigating and concluding cases has also diminished the deterrent effect of sanctions, particularly where disciplinary cases drag on for years without resolution.¹²¹

4.4.3 Systemic Corruption Across the Justice Chain

Several respondents argued that JSC mechanisms are ineffective because corruption is not limited to the judiciary, but rather exists as a syndicate involving ODPP, Police, Prison authorities, and even lawyers and court clerks. Addressing only the judiciary therefore produces limited results. “You can’t treat cancer in one part of the body when the entire system is infected... corruption is a syndicate.”¹²²

4.4.4 Public Complicity and Normalization of Bribery

Multiple respondents observed that some court users are willing participants in corrupt transactions, making it hard to track or deter misconduct. In such cases, corruption becomes normalized, and even when sanctions are issued, they are not enough to undo systemic tolerance of bribery. “Corruption is a crime of reciprocity. People instigate, tempt, and even justify it. That makes enforcement harder.”¹²³

The interviews reveal that while certain mechanisms especially recruitment, civic education, and lower bench discipline are moderately effective, the JSC’s overall impact remains constrained by structural, operational, and political challenges. A lack of public trust, inadequate transparency in high-profile cases and the broader culture of corruption within the justice system continue to undermine progress.

¹¹⁸ MA Key Informant Interview (Supreme Court Kampala 29 April 2025).

¹¹⁹ MA Key Informant Interview (ACCU Ntinda 9 April 2025).

¹²⁰ CA Key Informant Interview (Uganda Law Society 16 April 2025).

¹²¹ MA Key Informant Interview (Supreme Court Kampala 29 April 2025).

¹²² MM Key Informant Interview (JLOS Secretariat 1 April 2025).

¹²³ BW, Key Informant Interview (LASPNET Offices 5 May 2025).

4.5 The Disciplinary Process for Addressing Corruption Complaints

Article 147(1)(d)¹²⁴ mandates the Commission to receive and process recommendations and complaints from the people concerning the judiciary and administration of justice. Consequently, the Commission is the steward of professionalism and discipline among judicial officers and other staff of the judiciary. The Judicial Service (Complaints and Disciplinary Proceedings) Regulations outline the types of kinds that are disciplinary offences. These include improper conduct, corruption and abuse of office and mal-administration of justice¹²⁵ which involves a deliberate failure to ensure that justice is served.

Complaints submitted to the Commission are directed to the Secretary/ Permanent Secretary. And lodged at the Commission's registry. Upon receipt, each complaint goes through a systematic process. Initially, the Secretary forwards the complaint to the Registrar, CIDA. Subsequently, the complaints are assigned to Legal Officers by the Head of the Disciplinary Affairs Department. At this stage, the Legal Officers are tasked with evaluating the complaint against the established Regulations to determine whether they meet the admissibility criteria set by the Commission.

Secondly, If the Legal Officers conclude that the complaints were filed within three years of the alleged misconduct, that they pertain to a judicial officer or a staff of the judiciary and that they disclose one or more of the disciplinary offences outlined in the regulations, the complaints are then forwarded to the Head of the Department of Complaints and Investigations via the Registrar, CIDA. The Department of Complaints and Investigations as earlier mentioned is tasked with conducting timely investigations and preparing reports for the Commission's Disciplinary Committee. The investigation process includes reviewing documents filed by both parties in a matter, interviewing the complainant, concerned judicial officer or other staff of the judiciary¹²⁶ and the investigations may be conducted by any other person or institution authorised by the Commission.¹²⁷

In the third stage, the complaints are submitted to the Disciplinary Committee for consideration of the investigation report. This process allows the Committee to assess whether there is a prima facie case of judicial misconduct against the officers. If a prima facie case of judicial misconduct is established against the officers, they are summoned to appear before the Committee to respond to the charges. However, prior to the scheduled hearing date, the officers must be

¹²⁴ Constitution of the Republic of Uganda (1995) Article 147(1)(d).

¹²⁵ Judicial Service (Complaints & Disciplinary Proceedings) Regulations (2005) Regulation 5.

¹²⁶ Regulation 58 (n 76 above).

¹²⁷ Regulation 57(3) (n 76 above).

served with the charge sheets, the investigation reports and any other evidence the Commission has against them at least 14 days in advance¹²⁸.

The last process follows the conclusion of hearing of the complaint by the Committee whereupon the Committee submits a comprehensive report to the Commission. This report outlines the entire process involved in the proceedings and includes the Committee's recommendations regarding the appropriate sanctions to be imposed on the judicial officer in question. However, it should be pointed out that the Regulations do not provide for this practice. The Regulation states that after the Disciplinary Committee has heard the evidence and submission of both parties, it shall give notice of the date and time at which it shall render its decision.¹²⁹

The interpretation of this Regulation may suggest that the Disciplinary Committee has the final authority regarding the fate of a judicial officer. However, this is not accurate as the Committee operates under delegated authority from the Commission and is required to report back to the Commission for a final decision. This ambiguity has been leveraged by judicial officers and regrettably, the courts have often sided with these officers in such interpretations.

In the case of *Birungi Herbert vs Attorney General & Judicial Service Commission*¹³⁰, an application for judicial review of the decisions of the second respondent in dismissing the applicant from the judicial service. One of the issues that the court had to determine in this matter was whether the Commission could dismiss the applicant from service after the Disciplinary Committee recommended severe reprimand. The High Court in finding that the Commission acted irrationally in dismissing the applicant when the Disciplinary Committee had recommended a severe reprimand held that the Commission had no power to impose a punishment that had not been presented by its Disciplinary Committee.

This same reasoning has recently been followed in another case of *Nakibinge Lafif Abubakar Vs Attorney General*¹³¹, the court held that the rules of natural justice require that a person who has been subjected to an inquiry by a particular body, in this case the Disciplinary Committee of the Commission, cannot be subjected to sanctions that were not part of the report of the relevant Committee without being notified, informed of the reasons of the departure and asked to respond to the circumstances leading to the departure. Such would tantamount to conducting proceedings by ambush which defies the rules of natural justice and the constitutional right to a fair hearing; both under common law and as provided for under Article 28 of the Constitution.

¹²⁸ Regulation 60 (n 76 above).

¹²⁹ Regulation 64 (n 76 above).

¹³⁰ Miscellaneous Cause No. 57 of 2016.

¹³¹ Miscellaneous Cause No. 106 of 2023.

This decision has significant implications for the authority and processes of exercising disciplinary control over the judicial officers by the Commission. The court reinforced the principle that the Commission must adhere to the recommendations of its own disciplinary Committee. This ruling establishes a precedent that limits Commission's punitive power ensuring that its actions must align with the finding and recommendations of the Disciplinary Committee. Unfortunately, this issue has not been tested in the higher courts by way of appeal of the above decisions of the High Court.

The research however notes that the court's stance on disciplinary actions taken by the JSC has been inconsistent. In the case of *Agaba John vs Attorney General*,¹³² the Disciplinary Committee recommended a severe reprimand after finding him guilty of the charges. However, the JSC chose to retire him in public interest instead. The court found it unreasonable for Agaba to argue that the Committee's recommendation of a severe reprimand precluded the Commission from imposing a more severe sanction such as reprimand.

The court held that the Committee is not an independent body, it operates as part of the JSC. The Committee hears complaints and makes recommendations but the ultimate decision rests with the Commission. In this case, the Commission decided to retire the petitioner and communicated that decision in writing. The petitioner only learnt of the Committee's recommendation for a severe reprimand when he requested a copy of the proceedings. There was no evidence to suggest that he had already been punished with a severe reprimand before facing the retirement sanction.

The researcher emphasizes the urgent need for clarity and consistency in the disciplinary processes of the JSC. The existing ambiguities in the regulations have allowed for misinterpretations that undermine the principles of natural justice and fair hearing. While the recent court rulings have reinforced the necessity for the Commission to adhere to the recommendations of its Disciplinary Committee, the lack of higher court challenges leaves room for continued exploitation of these inconsistencies. Therefore, establishing clearer guidelines and ensuring robust judicial oversight is essential for maintaining the integrity and accountability of the judicial system.

4.5.1 Receiving of a complaint

Under the Regulations, a complaint may be submitted to the Commission in one of two ways. These are; by delivering a written complaint to the Commission's headquarters or any other designated location or by providing an oral complaint to the desk officer or another authorised

¹³² Constitutional Petition No. 42 of 2016.

representative of the Commission,¹³³ who will then document the complaint in writing and ask the complainant to date and sign it. The complaint should be in English or in a local language, which should be translated into English; the vernacular complaint is forwarded to the Commission together with the translated copy. The complainant may indicate the names and addresses of possible witness. Prior to reviewing a complaint, the Commission may request that the complainant provide additional information and document deemed necessary for the case.¹³⁴ Complaints may be filed against various categories of judicial officers including Chief Justice, Deputy Chief Justice, Principal Judge and Justices and Judges of the higher bench.¹³⁵ Additionally, complaints may be directed against the Chief Registrar or any court Registrar,¹³⁶ Magistrates of different ranks¹³⁷ as well as administrative and other staff of the judiciary.¹³⁸

4.5.2 Rejection of complaints

Upon receiving a complaint, an officer or any person designated by the Commission may reject it if the complaint is unrelated to the administration of justice or the operations of courts, does not pertain to the conduct of a judicial officer or any individual performing judicial functions¹³⁹ and is clearly frivolous, vexatious, malicious, unwarranted or legally unfounded¹⁴⁰. When a complaint is rejected, the Commission will provide the complainant with a written explanation detailing the reasons for the rejection.¹⁴¹ If the complaint falls outside the Commission's jurisdiction, it will be forwarded to the appropriate body or authority for further handling.

A significant number of complaints submitted to the Commission are dismissed during the evaluation stage. This occurs primarily because these complaints fall outside the Commission's jurisdiction. For instance, many complainants request that the Commission act as an appellate court, seeking to review the decisions of judicial officers on the grounds that officers misapplied the law or misinterpreted the facts, resulting in incorrect rulings/judgments. These complaints are often submitted by dissatisfied litigants especially in emotionally charged cases like child custody. During the financial year 2023/2024, 238 out of 405 complaints were found to have had no merit and therefore were closed¹⁴².

¹³³ Regulation 49 (n 76 above).

¹³⁴ Anti-Corruption Coalition Uganda (n 1 above).

¹³⁵ Regulation 39 (a) & (b) (n 79 above).

¹³⁶ Regulation 39 (c) (n 76 above).

¹³⁷ Regulation 39 (d) (n 76 above).

¹³⁸ Regulation 39 (e) (n 76 above).

¹³⁹ Regulation 52 (1) (b) (n 76 above).

¹⁴⁰ Regulation 52 (1) (c) (n 76 above).

¹⁴¹ Regulation 52 (2) (n 76 above).

¹⁴² Judicial Service Commission (n 64 above).

As it was rightly noted by Cynthia Gray, disappointed litigants cannot bypass the appellate process established by the Constitution by filing a complaint with the Commission as an alternative to an appeal.¹⁴³ Furthermore, the authority of conduct commissions is intentionally restricted to safeguard the independence of the judiciary. Judges must be able to make decisions that may elicit complaints without the fear of disciplinary action from the Commission.

In the case of *Attorney General Vs Gladys Nakibuule Kisekka*¹⁴⁴, wherein the Respondent, a Deputy Registrar issued a decree pursuant to a default judgment in HCCS No. 2006/2008 and issued a warrant of attachment in respect of the same matter. However, the Respondent received a complaint from the lawyers in the matter objecting to the attachment of some plots in the warrant of attachment. Subsequently, the Respondent recalled the warrant in respect of the property in issue to avoid unnecessary objective proceedings. The judgment creditor subsequently lodged a complaint against the Respondent with the Judicial Service Commission about the recall of the warrants alleging fraudulent frustration of the execution process. The Judicial Service Commission charged the Respondent with abuse of judicial authority and acting in contravention of the Code of Judicial Conduct.

Justice professor Lillian Tibatemwa-Erikikubinza relying on the decision of the Tennessee Supreme Court in the *Oberholzer vs Commission on Judicial Performance* case held that a judge's legal error is not ordinarily misconduct warranting disciplinary action held that ".....from the above definitions, I conclude that what constitutes abuse of judicial authority is improper/inappropriate use of the power of judicial officer. This must be differentiated from a judicial officer's error in law which can only be the subject of appeal....."

From the foregoing, it can be seen that the Commission plays an important role in striking the balance between judicial independence and judicial accountability. Whereas the Commission has the mandate to exercise disciplinary control over judicial officers for a range of misconducts, the Commission does not exercise this mandate on complaints that attempt to use it as an alternative to the established appellate system especially in emotionally charged cases where dissatisfaction with judicial decision is common.

4.5.3 Identification of corruption cases

Section 2 of the Anti-Corruption Act¹⁴⁵ defines corruption as a series of actions involving public officials. This includes the solicitation and acceptance of gifts or benefits whether directly or

¹⁴³ G. Cynthia 'How Judicial Conduct Commissions Work' (2007) *The Justice System Journal* Volume 28 Number 3 408.

¹⁴⁴ Constitutional Appeal No. 02 Of 2016.

¹⁴⁵ Anti-Corruption Act (2010) section 2.

indirectly in exchange for actions or omissions related to their public duties. It also encompasses the offering or granting of similar goods or advantages to public officials for the same purpose. Furthermore, corruption involves the diversion or misuse of state property, funds or securities by a public official for personal gain or the benefit of a third party. Additionally, it includes the provision of undue advantages to individuals in the private sector to influence their actions or decisions as well as attempts to exert improper influence over public or private decision makers.

The definition extends to fraudulent activities involving the acquisition, use or concealment of property obtained through corrupt means. It also covers participation in corrupt acts as such a principle, co-principle or accomplice as well as any conspiracy to commit such acts. Moreover, any actions taken by public officials that are intended to illicitly secure benefits for themselves or others along with neglect of their duties are considered corrupt practices under this legislation.

Neither the Judicial Service Commission Regulations which provides for disciplinary offences against judicial officers nor the Judicial Service (Complaints and Disciplinary Proceedings) Regulations which provide for the bases upon which a complaint may be made to the Commission define corruption or outline the forms of corruption. However, the Commission in identifying corruption instances makes reference to the primary legislation against corruption. Additionally, the Commission takes cognisance of acts or omissions which are either a manifestation of corruption or a risk for corruption.

Corruption within the judicial service has manifested in numerous ways, significantly impacting the judiciary's integrity. One such manifestation is when judicial officers handle cases that exceed their permitted pecuniary jurisdiction. This can also include the granting of unmerited orders. Additionally, some officers have been known to borrow money from litigants involved in cases before them thus compromising their impartiality. Furthermore, there are instances when some judicial officers disregard established practice directives such as failing to visit locus quo which is essential for fair trial processes.

Another risk of corruption involves judicial officers meeting one party in a case while excluding the other party or relevant court officials like clerks hence creating an imbalance in the proceedings. Abuse of judicial authority¹⁴⁶ when excessive costs or compensations are granted allowing judicial officers to benefit financially from their decisions. Moreover, fraudulent practices such as diverting session funds for unauthorised use and colluding with court bailiffs

¹⁴⁶ JLOS (n 16 above) 5.

highlight the extend of corruption. Soliciting and accepting bribes¹⁴⁷ are common practices as is extorting litigants by hiding court files to manipulate bail decisions or case listing.

The integrity of judiciary is further compromised by practices such as recording cash bail as non cash without proper documentation, failing to issue receipts for bail and unjustly dismissing cases due to non-appearance of a party without evidence of effective service. Additional issues include the distortion or removal of court records, unauthorised use of collected revenue and unlawful employment of relatives within the courts. Other troubling manifestations are delays in executing court orders, lack of public access to court records, unusual variations in sentencing and unjustified acquittals. These behaviors collectively erode public trust and highlight the urgent need for reforms within the judicial system.

4.5.4 Investigation of Corruption Cases

The Commission investigates complaints of alleged judicial misconducts which include corruption and abuse of judicial authority. Investigations seek to discover relevant evidence to prove or disprove a particular misconduct. Investigations are conducted by the department of complaints and investigations. However, it should be noted that investigations conducted by the Commission are administrative as opposed to rigorous criminal investigations by police and other agencies.¹⁴⁸

All complaints are investigated in the same manner regardless of whether the complaint is corruption related or touches on any other misconduct. It should further be noted that the investigation must be a thorough investigation and not desk analysis. The court in the case of *Mafabi Richard vs Attorney General*¹⁴⁹ stated that a mere assessment of a complaint, report by IGG and comments by the appellant is not an investigation envisaged by the Regulations. During the financial year 2023/2024, a total of 170 complaints against judicial officers and other staff of the judiciary were investigated with three pending investigations.¹⁵⁰ Unfortunately, the annual performance report does not indicate how many of those complaints were corruption related complaints.

The greatest challenge in investigating corruption complaints lies in gathering sufficient evidence to substantiate these cases. This difficulty arises from the constantly evolving nature of corruption which becomes increasingly sophisticated over time. In the case of *Watima John vs*

¹⁴⁷ As above.

¹⁴⁸ Judicial Service Commission Investigator's Guide 3.

¹⁴⁹ Constitutional Petition No. 0014/2012.

¹⁵⁰ Judicial Service Commission (n 64 above) 23.

*Judicial Service Commission*¹⁵¹, the appellant being dissatisfied with the decision of the Commission to dismiss him from service appealed to the High Court on the ground that the evidence on record was poorly evaluated among other things. In this case it had been alleged that the appellant having heard Budaka Civil Suit No.19 of 2003 to conclusion, refused to execute the decree therein because the defendant had not given him 25% of the value of the decretal sum. The High Court in overturning the decision of the Commission stated that there was not enough evidence to support this charge.

4.5.5 Prosecution of Corruption Cases

Where a complaint has been fully investigated and a report prepared, the complaint is brought before the Disciplinary Committee for consideration. Once the Committee establishes a prima facie case of judicial misconduct against the officer, the case is scheduled for hearing. At every disciplinary hearing, the Committee shall be constituted by at least two members nominated to serve on the same Committee although the Committee consists of five members in total¹⁵². Further, in addressing issues of discipline and removal of judicial officers, the Commission shall adhere to the principles of natural justice.¹⁵³

Article 28 of the Constitution¹⁵⁴ requires that in the determination of civil rights and obligations or in the hearing of any criminal charges, a person shall be entitled to a speedy hearing by an independent and impartial tribunal. In the case of *Nakibinge Vs Attorney General*¹⁵⁵, Justice Wamala stated that under the law, where a person is charged with an offence, the charge must be read to the person who must express that he/she has properly understood the charge. Where a person pleads guilty to the charge, the court or tribunal must be satisfied that the plea is made voluntarily and is unequivocal. A plea of guilty is void if it is induced by promises or threats which deprive it of the character of a voluntary act.

The right to a fair hearing in administrative decisions has now been made constitutional under Article 42 of the Constitution, which provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and a right to apply to a court of law in respect of any administrative decision taken against him. The right to a fair hearing connotes a hearing by an impartial and disinterested tribunal; a proceeding which hears before it condemns, which proceeds upon inquiry, and renders judgment only upon consideration of evidence and facts as a whole. The law requires that a fair hearing must be

¹⁵¹ Civil Appeal No. 51 of 2008.

¹⁵² Regulation 16 (1) & (2) (n 76 above).

¹⁵³ Regulation 68 (n 76 above).

¹⁵⁴ Article 28 (n 124 above).

¹⁵⁵ Miscellaneous Cause No. 106/2023.

afforded in all cases and in very clear and unambiguous terms as was stated in the case of *Twinomugisha Moses versus Rift Valley Railways (U) Limited*¹⁵⁶.

However, disciplinary proceedings are often inquisitorial and the Commission is not required to adhere to the standards in criminal proceedings. It was noted by the Justices of Appeal in the case of *Maruk Joshua vs the Attorney General & Judicial Service Commission*¹⁵⁷ that even so, we are strongly persuaded that the Commission sits as a disciplinary body and not a criminal court. Thus, the principles for criminal trials which for example require that evidence on each count is received and considered separately and that a definite verdict given on each would not apply.

Another issue concerning the disciplinary hearings before the Commission is whether allocutus is part of the proceedings and thus mandatory as it is in criminal cases. It is important to note that since the Commission is not a criminal court, the requirement of mitigating sentence does not necessarily apply. This was one of the issues that the High Court had to determine in the case of *Gerard M. Ssekagya vs Judicial Service Commission*¹⁵⁸. In this case, the appellant having been dismissed from service on two counts of conduct prejudicial to the good image, honor and dignity of the service when he solicited Ugx 204,000/= in order to act in favor of one of the parties in a matter before him and when he solicited and received Ugx 120,000/= to visit locus in quo. The High court held that proceedings before the Disciplinary Committee are not criminal proceedings such that an affected person must be given an opportunity to give allocutus upon being convicted as charged. The disciplinary proceedings of the Committee were those of an administrative body and not a court of law. The appellant's right to fair hearing under natural justice was not in any way infringed.

Further, there is a growing concern regarding the prolonged hearings of disciplinary cases. The Judicial Service (Complaints & Disciplinary Proceedings) Regulations do not specify a timeframe for the Commission to resolve a complaint. However, in the case of *Mafabi Richard vs Attorney General*¹⁵⁹, the court ruled in favor of the petitioner acknowledging that the Judicial Service Commission took an excessively long time to conclude proceedings for a complaint received in 2005 which remained unresolved until July, 2012.

Another challenge in prosecuting corruption complaints involves errant judicial officers resolving issues directly with complainants leading to withdrawals of complaints under the pretence of lost interest. While the Regulations permit the Commission to initiate an inquiry or investigation into a judicial officer of the lower bench or other staff of the judiciary on its own

¹⁵⁶ HCCS No. 212/2009, 22.

¹⁵⁷ Consolidated Civil Appeals No. 148 & 149 of 2015.

¹⁵⁸ Civil Appeal No 55 of 2013.

¹⁵⁹ Constitutional Petition No. 0014 of 2012.

accord,¹⁶⁰ this situation raises concerns about the Commission acting as both the complainant and judge in its own case. Further, according to the Regulation, such initiation is only against judicial officers of the lower bench or other staff of the judiciary. This discriminative and dual role necessitates clarification from a court of record to ensure accountability and fair process.

A related issue is the absence of clear guidelines for managing allegations against judicial officers when another government institution such as the Inspectorate of Government is involved in investigating corruption. This lack of guidelines creates confusion over jurisdiction and accountability complicating the handling of such cases. In the case of *Ndangwa Richard vs Attorney General*,¹⁶¹ the court ruled that the Permanent Secretary of the Ministry of Public Service acted irrationally in rescinding the applicant's early retirement which had been granted in 2016 without any evidence of pending disciplinary proceedings.

In this case, the applicant was accused of corruption and abuse of office by the Inspectorate of Government (IGG) in 2016 and after negotiations, was allowed to retire early from the judiciary without benefits before reaching the mandatory retirement age of 60. He officially retired on 30th June, 2016 at the age of 47 leading to the discontinuation of criminal charges against him. However, in May 2017, he received a letter from the JSC asking him to respond to allegations made against him to which he replied that the Commission lacked jurisdiction since he was no longer a public servant. On May 9th, 2017, the Public Service Commission unilaterally withdrew his retirement based on the false premise of a pending disciplinary case without providing a hearing. Since his discharge from criminal proceedings, the judiciary has not redeployed him or assigned any duties prompting the applicant to argue that the decision to withdraw his retirement was illegal, irrational and violated principles of natural justice.

The court emphasised that the applicant had not been assigned any judicial duties since his retirement was accepted, confirming his status as retired. The court deemed the Permanent Secretary's actions as violating the principles of the rule of law as withdrawing retirement benefits after acceptance was both unfair and unjustified. The judgment highlighted the need for clearer guidelines in managing the retirement of judicial officers to prevent similar administrative irregularities in the future.

4.5.6 Burden and Standard of proof in disciplinary proceedings

In criminal cases, the fundamental principle dictates that a person cannot be convicted of a crime unless the state demonstrates their guilt beyond a reasonable doubt. The burden of proof

¹⁶⁰ Regulation 48 (2) (n 76 above).

¹⁶¹ Miscellaneous Cause No. 244 of 2017.

does not fall on the accused to establish their innocence. In Uganda, this presumption of innocence is enshrined as a constitution right under article 28 of the Constitution. Likewise, established common law holds that any burden placed on the defense excluding insanity defenses only require the defence to provide sufficient evidence to raise a question regarding the proof or disproof of relevant facts. A similar principle applies in civil proceedings. According to the Evidence Act, the party asserting the existence of certain facts bears the responsibility to prove them¹⁶² although the standard of proof differs between civil and criminal matters.

As previously mentioned, the principles of burden and standard of proof do not rigidly apply to the Commission as they do in a court setting. The Commission functions not as a court but as a disciplinary body that is authorised to establish its own procedures for conducting disciplinary hearings¹⁶³. This was the position of court in the above mentioned case of Maruk Joshua wherein the court held that;

“...although the law creating the JSC is silent on that point, the Supreme Court has clarified that the JSC is not a court of law and as such their proceedings do not culminate into a civil judgment. Similarly, the JSC which is a disciplinary body does not sit as a criminal court. For that reason, under Section 8 of the Judicial Service Act, the JSC is empowered to regulate their procedure. It is emphasised that in doing so, they must follow the general principles of law applicable in Uganda including respect for due process. However, since hearing of a complaint is commenced by preferring charges, disciplinary proceedings against the appellant took on many of the characteristics of a criminal trial. Even so, disciplinary proceedings cannot be deemed to be a criminal trial because a public officer can be charged for the same facts in disciplinary proceedings under criminal law...”

Similarly, the industrial court in *Irene Rebecca Nassuna vs Equity Bank*¹⁶⁴ held that the standard of proof in disciplinary proceedings is lower than that in a court of law. It has also been held by the Supreme Court of India, in *Union of India vs. Sardar Bahadur*,¹⁶⁵ that; a disciplinary proceeding is not a criminal trial and that the standard of proof required in a disciplinary inquiry is that of preponderance of probability and not proof beyond reasonable doubt, which is the proof required in a criminal trial.

¹⁶² Evidence Act Cap 8 (2023) Section 102.

¹⁶³ Judicial Service Act (1997) Section 9(8).

¹⁶⁴ Labor Dispute Claim No 6/2014 arising from CS No 35/2010.

¹⁶⁵ 1972 SLR SC 355.

Consequently, regardless of the nature of the proceedings, there is no statutory obligation for the Commission to prove its case beyond a reasonable doubt. According to the JSC Regulations, it is sufficient for transparent investigations to be conducted, for the respondent to be informed of the charges against him/her and for them to be given the opportunity to prepare and present their defence. Unlike criminal proceedings, there is no requirement for the Commission to meet the standard of proof beyond a reasonable doubt. Under the Regulations, a decision will be rendered after both parties have been heard and since the decision must be reached either unanimously or by majority vote, it can be concluded that the decision is based on the preponderance of evidence.

4.5.7 Sanctions

The Regulations provide for a number of disciplinary penalties that may be imposed on a judicial officer after they have been found guilty of a judicial misconduct¹⁶⁶. The penalties range from an order of a written undertaking from the officer not to repeat the offence, reduction in salary, stoppage of increments, deferment of increments, order of compensation, recovery of the cost or part of the cost of any loss or damage caused by default or negligence by the judicial officer, reprimand and severe reprimand. The Commission also has the powers to dismiss from service¹⁶⁷ judicial officers found guilty of judicial misconduct.

In 2023, the Commission dismissed two judicial officers from service. Two judicial officers, Her Worship Agnes Napiyo and His Worship Kavuma Mugaga after they were found guilty of corruption.¹⁶⁸ The Commission also imposed other sanctions including reprimanding one judicial officer, retiring another in public interest and suspending two others. Choosing the appropriate sanction involves assessing the specific circumstances of each case, taking into account the officers previous conduct, the impact of their actions, their length of service and whether the misconduct is an isolated incidence or a part of a broader pattern.¹⁶⁹ At the Commission, the Committee is guided by the previous records of the judicial officer implicated, losses occasioned by their misconduct, length of service in the judiciary and whether the misconduct is an isolated incidence or a pattern of conduct by the judicial officer in question.

¹⁶⁶ Regulation 41 (n 76 above).

¹⁶⁷ Regulation 41(1)(a) (n 76 above).

¹⁶⁸ Daily Monitor 'Two Judicial Officers dismissed from service over corruption' 2023 Available at <https://www.monitor.co.ug/uganda/news/national/2-judicial-officers-dismissed-from-service-over-corruption-4158018>.

¹⁶⁹ Gray (n 146 above) 416.

Recently, the JSC dismissed Deputy Registrar Cissy Mudhasi Kawuma and Magistrate Ruth Nabasa for serious misconduct.¹⁷⁰ Kawuma was found guilty of abusing judicial authority by ordering the attachment of bank accounts without due process resulting in over Ugx 400 million in financial losses to the Uganda Nurses and Midwives Council. Nabaasa mishandled a case outside her jurisdiction leading financial loss for one party. These actions demonstrate the JSC's commitment to holding judicial officers accountable and underscore its role in combating corruption in the judiciary.

4.5.8 Appeals

The Regulations stipulate that a judicial officer who is dissatisfied with the Commission's decision may appeal to a panel of three High Court Judges while other staff of the judiciary equally dissatisfied with the Commission's decision may appeal to a High Court Judge.¹⁷¹ However, this appeal must be filed within 30 days from the date the Commission's decision is communicated to the officer.¹⁷² The appeal does not only look at the decision making process but also the merits of the decision taken.

It should be noted that it is only the final decision of the Commission which can be a subject of appeal. This issue was discussed by the court in the case of *His Worship Kaweesa Godfrey vs Attorney General*¹⁷³, where the applicant had applied for a judicial review of the Disciplinary Committee's decision to overrule all the preliminary objections he had raised regarding the disciplinary process. The court was of the view that any preliminary decision like overruling preliminary objections by the Judicial Service Commission is not challengeable under similar circumstances by way of judicial review. The applicant had to wait for the final determination or ruling of the Disciplinary Committee and either choose between making an appeal or making an application for judicial review. The issue of appeal is not without challenge.

The first challenge concerns judicial officers seeking judicial review after a sanction has been imposed on them rather than appeal the decision of the Commission to a panel of three judges as stipulated by the Regulations. While the Commission operates as an administrative body and applications for judicial review stem from decisions made by such bodies, the rules governing judicial review necessitate the exhaustion of internal remedies first. One of these internal remedies as outlined in the Judicial Service (Complaints and Disciplinary Proceedings)

¹⁷⁰ The Daily Monitor 'Deputy Registrar, Chief Magistrate dismissed from judicial service' (2025) Accessed at <https://www.monitor.co.ug/uganda/news/national/deputy-registrar-chief-magistrate-dismissed-from-judicial-service-4910910>.

¹⁷¹ Regulation 67 (n 76 above).

¹⁷² As above.

¹⁷³ Miscellaneous Cause No. 14 of 2020.

Regulations is the right of appeal. Therefore, it is incorrect for individuals dissatisfied with the Commission's decisions to pursue judicial review in court as opposed to lodging an appeal.

This was the position of the High Court in the *Kaweesa Godfrey case*¹⁷⁴ where Justice Musa Sekaana held that while this court agrees with the applicant that it has original jurisdiction to consider challenges under the Judicial Service Commission Act through judicial review, it disagrees that a preliminary decision such as in this case can be contested under similar circumstances via judicial review. The applicant should have waited for the final determination or ruling of the Disciplinary Committee before deciding whether to appeal or seek judicial review.

Furthermore, court stated that Regulation 18 grants the applicant the right to appeal which will be reviewed by a panel of three judges. This appeal examines not only the decision-making process but also the merits of the decision itself. In the court's opinion, this provides a more effective remedy than judicial review which does not assess the merits of the decision. Consequently, the appeal would lead to a definitive resolution of the issue, something that a judicial review application would not achieve.

Unfortunately, the jurisprudence from the High Court does not clarify this issue. There have been instances where the High Court erroneously permitted applications for judicial review instead of directing parties to pursue an appeal. An example is the recent decision of the High Court of *Nakibinge Latif Abubakar vs Attorney General*¹⁷⁵, the court held;

‘.....the amenability of this application for judicial review is not in issue. There is thus no dispute that the decision sought to be challenged is a decision made by a public body in a public law matter. Equally no contention was raised as to whether the Applicant had any alternative remedies under the law that he ought to have exhausted and he did not. As such, the application is properly before the Court for judicial review....’

The court justified its decision on the grounds that the application for judicial review had not been opposed by the respondent deeming it tenable before the court. However, it is essential for the courts to exercise their authority by going beyond the actions or inactions of the parties involved when making their decisions. The judiciary should consider the broader implications and legal principles at play rather than simply accepting unchallenged applications.

Conversely, there are also cases where the High Court dismissed applications for judicial review indicating a lack of persuasion by the arguments presented. A case in point is another recent

¹⁷⁴ As above.

¹⁷⁵ Miscellaneous Cause No. 106 of 2023.

decision of the High Court in the case of *Opio Belmos vs Attorney General*¹⁷⁶, where the applicant challenged the prolonged disciplinary proceedings against him by the Commission through an application for judicial review. The court determined that the applicant improperly submitted the application by bypassing the necessary requirements for judicial review, specifically the stipulation that he must file application within three months from the date the grounds for it first arose. The court further noted that the applicant had not exhausted the internal remedies provided for under the JSC Act that is appeal against the decision of the commission.

Secondly, there is a legal dilemma concerning the possibility of a second appeal to the Court of Appeal from the decisions of the High Court. In the case of *Her Worship Balintuma Grace vs Attorney General*,¹⁷⁷ which was a second appeal from the decision of a panel of three judges at the High Court affirming the dismissal of the applicant from judiciary service on several grounds including that the High Court failed to find that proceedings before the JSC were tainted with bias and falsehoods, the Court of Appeal dismissed the appeal on the issue that the court had no jurisdiction. The court held that an appeal is a creature of statute and a review of the Judicial Service Commission (Complaints and Disciplinary) Proceedings Regulations reveals that there is no provision for appealing a High Court decision to the Court of Appeal.

The same reasoning regarding right of appeal was issued by the Supreme Court in the case of *2nd Lt Ogwang Ambrose vs Uganda*¹⁷⁸ wherein the court reiterated that an appeal is a creature of statute and held that where the legislature did not provide for an appeal in the Uganda People Defence Forces Act, 2005 or by other law in force in Uganda, a Minister cannot introduce jurisdiction by way of regulation. The preliminary objection is upheld. In the result we find that the Court of Appeal was devoid of jurisdiction to entertain an appeal from Court Martial Appeals Court. Although this two decisions maybe distinguishable, they both create a legal challenge as far as handling appeals from administrative tribunals are concerned.

This challenge is as a result of a departure from the decision of the same court in the case of *Maruk Joshua vs Attorney General & Judicial Service Commission*.¹⁷⁹ The respondent in this matter raised a preliminary objection to the effect that the grounds of appeal offended section 74 of the Civil Procedure Act (CPA) which restricts grounds of appeal on a second appeal only to matters of law. The Learned Justices of the Court of Appeal in overruling this preliminary objection found that the JSC is an administrative body whose decisions are classified as administrative orders not decrees as defined by section 2 of the CPA. The court went ahead to state that

¹⁷⁶ Miscellaneous Cause No. 183 of 2020.

¹⁷⁷ Civil Appeal No. 65 of 2021.

¹⁷⁸ (2024) UGSC 45.

¹⁷⁹ Consolidated Civil Appeals No. 148 and 149 of 2015 (2023) UGCA 118.

although the High Court's proceedings originated from a memorandum of appeal, it operates as the court of instance, with its decisions being subject to appeal under section 66 CPA.

It is essential to refer to the CPA which provides that unless otherwise expressly provided for, an appeal shall lie from the decrees or any part of the decrees and from the orders of the High Court to the Court of Appeal.¹⁸⁰ However, this provision of the CPA has since been superseded by the Constitution and the Judicature Act.¹⁸¹ The Constitution provides that an appeal shall lie to the Court of Appeal from the decisions of the High Court as may be prescribed by law.¹⁸² The Judicature Act worded in a similar way stipulates that an appeal shall lie to the Court of Appeal from the decisions of the High Court prescribed by the Constitution, this Act or any other law.¹⁸³

The provisions indicate that no decision of the JSC can be appealed to the Court of Appeal as the Statute does not grant this right. However, the question arises about the validity of an appeal right included in the Regulations rather than the parent Act, which the Supreme Court deemed irregular in the *2nd Lt Ogwang Ambrose* case. This inconsistencies in court decisions raises important concerns regarding the legal framework for appeals from administrative bodies and underscores the necessity for clear legislative guidelines on this matter.

4.6 Judicial Independence vs Accountability

In examining the role of the JSC in combating corruption in the judiciary, it is essential to understand the fundamental principles that underpin the effective functioning of the judiciary. the separation of powers serves as the cornerstone delineating the distinct roles of the legislative, executive and judicial branches thereby safeguarding judicial independence. This independence is further reinforced by the doctrine of judicial independence which protects judges from liability for their judicial actions allowing them to make decisions free from external pressure. However, judicial independence must be balanced with judicial accountability ensuring that judges remain answerable for their conduct while upholding the rule of law.

4.6.1 Separation of Powers

The principle of an independent judiciary derives from the basic principle of rule of law in particular the principle of separation of powers. The principle of separation of power is the

¹⁸⁰ Civil Procedure Act (2000) Section 66.

¹⁸¹ *Dolomite Engineering's Services Limited vs Equity Bank*. Civil Appeal No. 110 of 2015 (2022) UGCA 281.

¹⁸² Article 134(2) (n 124 above).

¹⁸³ Judicature Act Cap 16 Section 10.

cornerstone of an independent and impartial judicial system¹⁸⁴. The principle of separation of power means that there should be a clear distinction of functions between the three organs of the state and there should also be a check and balance.

The principle of separation of power requires that the holders of the three branches of government must be separate individuals, that one of three does not control the work of the other or that one organ of government should not exercise the powers of another. However, a complete separation of powers in the sense of a distribution of the 3 functions of government among 3 independent sets of organs with no overlapping or coordination would (even if theoretically possible) bring government to a standstill. What the doctrine must be taken to advocate is the prevention of tyranny of the conferment of too much power on anyone person or body and the check of one power by another¹⁸⁵.

Although the application of the principle of separation of powers has evolved over the years, it remains significant in two key ways. One of its primary functions is to guarantee the independence of the judiciary by enabling individual judges to operate independently from other public authorities¹⁸⁶. In this regard, the guarantee of judicial independence is the establishment of Judicial Service Commissions that operate separately from the executive and are responsible for the administrative management of the judiciary. This system, which originated in France in 1948 has been widely adopted in various countries¹⁸⁷. By placing the administrative and financial aspects of the court system under the authority of an independent body, this framework ensures that these functions remain beyond the control of the executive thereby reinforcing the principle of separation of powers.

In the case of *Major General David Tinyefuza vs. Attorney General*,¹⁸⁸ the Supreme Court affirmed that Uganda's constitutional framework consists of three branches: Parliament, the Executive, and the Judiciary. Justice Kanyeihamba noted that the Constitution delineates distinct roles for each of these branches, granting them unique characteristics and the independence to exercise their powers. The doctrine of separation of powers stipulates that courts should avoid intervening in areas outside their designated authority unless there are compelling circumstances that require them to assess the constitutionality or legality of actions, or to protect individual liberties that are currently denied or at imminent risk.

¹⁸⁴ J Zeitune 'International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors. A Practitioners' Guide Series No. 1 International Community of Jurists Geneva Switzerland.

¹⁸⁵ HO Phillips and P Jackson 'Constitutional and Administrative Law' (2001) 12 *Sweet and Maxwell 8th Edition*.

¹⁸⁶ LL Guerra 'The Judiciary and the Separation of Powers' (2000) *European Commission for Democracy through Law 21* Accessed at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU\(2000\)021-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU(2000)021-e).

¹⁸⁷ As above.

¹⁸⁸ Constitutional Petition No. 1 of 1997.

These views on separation of powers were echoed in the case of *Murangira vs Attorney General*¹⁸⁹ where the petitioner sought for a declaration that the Public Accounts Committee of Parliament and Parliament by their observation, recommendations and resolutions purported to veto the powers of the High Court in Civil Suit No. 003 of 2009 and Court of Appeal Civil Appeal No. 80 of 2009 contrary to Articles 2, 92 and 128 of the Constitution, are ultra vires and an attempt by Parliament to usurp the powers of the Judiciary contrary to the doctrines of separation of powers and independence of the judiciary among others. The Supreme Court accepted the Petitioner's contention that the observations and recommendations of Parliament were an attempt to usurp the powers of the judiciary contrary to the doctrines of separation of powers and the independence of the judiciary.

In Uganda, the administration of justice is the responsibility of the judiciary which operates under the oversight of the Judicial Service Commission. The Commission is tasked with the overseeing the judiciary's functions, appointing lower court judicial officers, advising the president on suitable candidates for higher judicial positions and receiving and processing public complaints and recommendations regarding the administration of justice among other things. Such a framework underscores the relevance of separation of powers ensuring judicial independence while maintaining necessary oversight through the Judicial Service Commission.

4.6.2 Judicial Independence

Judicial independence holds particular importance in its relevance to the judiciary and has been extensively explored by both courts and scholars. In the case of *Valente vs The Queen*¹⁹⁰, Le Dain J observed that the constitutional principle has two major elements, the individual element and institutional element. These two aspects are to the effect that the judiciary should have a degree of organisational separation from other branches of government and decisional independence ensures that individual judges can make rulings based solely on the facts and the law free from any pressure or interference.

The aim of judicial independence is to safeguard judicial decision making from intimidation and interference as was stated in the case of *Pullman vs Allen*¹⁹¹ ensuring that judicial officers can impartially and independently decide cases without interference from any outside party including the government, individuals or other judicial officers¹⁹². However, this independence does not imply that judges are not subject to certain controls¹⁹³. The constitutional tradition establishes

¹⁸⁹ Constitutional Petition No. 7 of 2014.

¹⁹⁰ (1985)2 S.C.R 673.

¹⁹¹ Supreme Court of the United States (1984) 466 U.S 522.

¹⁹² Supreme Court of Canada (1987) LRC (Const) 180 at 188.

¹⁹³ Guerra (n 186 above).

several constraints on the judges' actions resulting in substantial limitations. These constraints include that the judges' actions be conducted publicly and that their decisions can be reviewed by higher courts among other constraints.

Institutional independence is a vital aspect of judicial independence requiring the judiciary and judges to fulfill their constitutional responsibility to administer justice without fear. This independence is realised when the judiciary is protected from external influences which can be realised through effective legislative and institutional frameworks. Uganda's legislative framework has established safeguards to promote both institutional judicial independence and accountability reinforcing the judiciary's ability to operate without external pressures.

The 1995 Constitution lays the foundation for judicial independence. Article 128(1) is to the effect that courts shall be independent and not subject to the control or direction of any person or authority while exercising judicial power. This provision protects the judiciary from external influences allowing judges to make impartial decisions based solely on the law and facts of each case thereby upholding the integrity of the judicial system.

Further, judicial self-administration has been realised with the recent establishment of the Administration of the Judiciary Act. The Act aims to enhance the financial independence of the judiciary which is expected to improve its performance by eliminating external influences on the administration of justice. The Act creates a judiciary fund¹⁹⁴ which constitutes of monies appropriated by parliament for the judiciary¹⁹⁵, grants and donations approved by the minister of finance¹⁹⁶ and other moneys received by the judiciary in carrying out its functions¹⁹⁷. This is a welcome provision that will separate judiciary funds from those of the Justice, Law and Order Sector allowing for independent planning and ensuring that funds for judiciary activities are allocated adequately and promptly.¹⁹⁸

Furthering the goal of financial autonomy, the court in the case of *Krispus Ayena Odongo vs Attorney General & Parliamentary Commission*¹⁹⁹ where in the petitioner challenged the process of subjecting the funding of judiciary to the appropriation as it compromises the independence of the judiciary and subjects it to control by other arms of the state such as the Executive. The court held among other things that

¹⁹⁴ Administration of Judiciary Act 2020 Section 35(1).

¹⁹⁵ As above Section 33(a).

¹⁹⁶ As above Section 33(b).

¹⁹⁷ As above Section 33(c).

¹⁹⁸ SG Atim 'On the highway to Judiciary independence and efficiency in Uganda? The Administration of the Judiciary Act 2020' (2020) ResearchGate Accessed at <https://www.researchgate.net/publication/371685841>.

¹⁹⁹ Constitutional Petition No. 30 of 2017.

‘.....the judiciary should be permitted and is entitled to present its budget to the President for laying before parliament without amendment and only with the comments of the President to accompany it. (sic) It is the Judicial Service Commission to make recommendations with regards to the administration expenses of the judiciary in terms of salaries, allowances, gratuities and pensions payable in respect of persons serving in the judiciary and which expenses are charged on the consolidated fund. Unlike Parliament, such expenses have not been enacted in an Act of Parliament. This does not stop the Judiciary from dealing with the Ministry responsible for Finance in respect of its finances without interference....’²⁰⁰

From the foregoing, it can be concluded that this framework of making the judiciary self-accounting facilitates independent planning and timely allocation of resources for judicial activities. Furthermore, the court’s ruling in the *Krispus case*²⁰¹ underscores the importance of allowing the judiciary to present its budget directly to the president without amendments thereby reinforcing its autonomy from other arms of the government.

Individual independence on the other hand refers to the ability of individual judges to make their rulings or judgments based solely on the facts and the law without facing any pressures or interference from external sources. There are at least two avenues for securing the individual independence of judges²⁰². First, judges need protection from potential reprisals and a secure tenure to ensure that fear does not impact their decision making while the selection process and ethical standards should be designed to reduce the likelihood of corruption and external pressure. Additionally, security in emoluments which guarantees that judges receive their salaries and benefits without any risk of arbitrary reductions.

Article 128(1) of the Constitution which provides for independence of the judiciary is reinforced by other provisions which stipulate that judicial officers are immune from civil and criminal actions arising from actions or omissions during the exercise of judicial power²⁰³. Further, the security of tenure of judges has also been ensured by a provision that their salaries shall be drawn from the consolidated fund²⁰⁴ and their salaries and other benefits should not be varied to their disadvantage²⁰⁵.

²⁰⁰ Krispus case (n 199 above).

²⁰¹ As above.

²⁰² SD O’Conner ‘Judicial Accountability Must Safeguard Not Threaten Judicial Independence (2008) An introduction *Denver University Law Review Vol 85 No. 1 1-6, 2.*

²⁰³ Article 128(4) (n 124 above).

²⁰⁴ Article 128(5) (n 124 above).

²⁰⁵ Article 128(7) (n 124 above).

Lastly, judges are appointed by the President on the recommendation of the Commission and with the approval of parliament. They can only be removed from their positions if a special tribunal determines that the judge is unable to perform their duties due to physical or mental incapacity or the judge is found guilty of misconduct, misbehavior or incompetence hence strengthening the independence of the judiciary. Collectively, these measures enhance the independence and effectiveness of the judiciary in Uganda ensuring that it can fulfil its critical role of upholding justice and the rule of law.

However, judicial independence has come under attack in Uganda in several instances. The most recent attack followed the decision of the Supreme Court in the case of *Attorney General vs Kabaziguruka*.²⁰⁶ The Attorney General appealed the Constitutional Court's ruling that sections 119(1)(h) and 119(1)(i) of the Uganda Peoples' Defence Forces Act (UPDF Act) cap 307 were unconstitutional for subjecting civilians to military tribunals. The respondent, a Member of Parliament had been charged before the General Court Martial (GCM) claiming this violated Articles 28, 126, 129 and 210 of the Constitution which protects fair trial rights, judicial independence and separation of powers.

The Constitutional Court ruled in his favor stating that military courts, as non-judicial bodies did not have the jurisdiction over civilians. The Supreme Court upheld this decision confirming that military courts are not part of the judiciary as per Article 129 and lack the independence necessary for a fair trial under Article 28. It concluded that the Parliament cannot assign military jurisdiction over the civilians in violation of constitutional provisions. The appeal was dismissed and costs were awarded to the respondent.

The day after the judgement was announced, the Head of State publicly criticised the judiciary, undermining its authority and the principle of separation of powers. The President said he was sorry to hear of the wrong decision by the Supreme Court adding that the judges are allies of the western world. He further stated that; "this country is not governed by judges. It is (the country) governed by the People-all of us Ugandans who are old enough to vote. In the matter of the constitution and other legislations, we govern ourselves by having a Referenda or Constitutional Amendments or amendment of the laws by Parliament....."²⁰⁷ The President's statement not only brings confusion but threatens the independence of the judiciary and the rule of law.

²⁰⁶ Constitutional Appeal No. 2 of 2021 (2025) UGSC 1.

²⁰⁷ The Daily Monitor 'Museveni slams Supreme Court over "wrong" decision stopping trial of civilians in military courts (2025) Accessed at <https://www.monitor.co.ug/uganda/news/national/museveni-slams-supreme-court-over-wrong-decision-stopping-trial-of-civilians-in-military-courts-4909348>.

4.6.3 Judicial Immunity

Judicial immunity is a common law doctrine which established that a judge has complete judicial immunity from civil lawsuits when the judge has acted within their subject matter jurisdiction and the action in question qualifies as a judicial act²⁰⁸. In Uganda, Judicial Immunity is now both a constitutional and statutory provision having been enshrined in the Constitution to that effect that a person exercising judicial power shall not be liable for any action or suit for any act or omission. Likewise, the Judicature Act states that a judge or any individual performing judicial duties cannot be sued in a civil court for actions taken or ordered in the course of fulfilling their judicial duties regardless of whether those actions fall within their jurisdiction.²⁰⁹

Under common law, a judge can be held liable for judicial actions taken without jurisdiction or for administrative decisions made outside of their official duties such as hiring and firing. However, the Judicature Act protects all actions of a judicial nature regardless of whether they fall within the judge's jurisdiction.²¹⁰ Further, a judicial act which qualifies for immunity is one that takes place while the judge is adjudicating a dispute. Whether an action is deemed judicial depends on the nature of the act specifically if it is a function typically performed by a judge and the expectations of the parties involved particularly whether they interacted with the judge in their official judicial capacity.

As stated in the *Aggrey Bwire case*²¹¹, Judicial Independence or Immunity is not the privilege of the judicial officer rather it is for the benefit of the public whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences as stated by court in the case of *Opiyo Joseph Otiiti vs M/S Oyet & Co. Advocates and 4 others*²¹². Actions that exceed but do not completely lack jurisdiction are also protected by judicial immunity. Even serious procedural errors as well as malice and corruption do not negate a judge's jurisdiction.

This was considered by the court in the case of *Cissy Kawuma Mudhasi vs Attorney General*²¹³ where the Applicant challenged the legality of criminal investigations into her judicial work being conducted by the Uganda Police Force and the State House Anti-Corruption Unit. The court granted the Applicant a temporary injunction restraining the ongoing investigations into the judicial work. The court stated that the Applicant has satisfied this court that there is a prima facie case arising out of a violation of her constitutional rights and specifically her right not to be

²⁰⁸ T M. Stengel 'Absolute Judicial Immunity Makes Absolutely No Sense: An Argument for an Exception to Judicial Immunity' (2012)1074 *Temple Law Review* Vol. 84.

²⁰⁹ Section 46(1) (n 183 above).

²¹⁰ As above.

²¹¹ *Aggrey Bwire* (n 104 above).

²¹² Civil Suit No. 0019 of 2016.

²¹³ Civil Miscellaneous Application No. 470 of 2021.

prosecuted or held liable for any action or suit for any act or omission in exercise of judicial power under Article 128(4) of the Constitution. Further, that the actions of the respondent agents are a threat to the applicant's constitutional rights, this court as a custodian of the Constitution ought to issue orders that would ensure that the Constitution is not violated since the alleged violation will not be atoned for in damages or be adequately compensated with any amount of money or earthly possessions

As opined by Prof. Lillian Tibatemwa-Ekirikubinza in the *Gladys Nakibuule case*²¹⁴, judicial immunity does not apply when a body constitutionally authorised to investigate the appropriateness of a judicial act effectively exercises its mandate thereby invoking the principle of judicial accountability. This is because judicial independence and immunity are meant to protect against public scrutiny. They do not exempt a judicial officer from accountability. In a democratic society, it is essential that every individual or authority exercising power is answerable for their actions. Therefore, judicial accountability like judicial independence is recognized as a fundamental concept of the rule of law.

4.6.4 Judicial Accountability

According to the Law Reforms Commission of Western Australia's Report on Complaints against the Judiciary,²¹⁵ judicial accountability is defined as the potential consequences a judge may face if their behavior or decisions significantly diverge from widely accepted standards. The principle emphasizes that judges are responsible for their actions and decisions to the community they serve and to whom they owe their allegiance.

The Constitution further enhances judicial accountability by establishing that judicial power originates from the people.²¹⁶ This means that judges exercise their authority in a manner that aligns with the values and aspirations of the community. As such, judges are not only expected to uphold the rule of law but are also held accountable for their decisions and actions to the people they serve²¹⁷. This accountability fosters trust in the judiciary ensuring that judges are responsive to the needs and expectations of the society.

²¹⁴ The Law Reform Commission of Western Australia 'Complaints Against Judiciary Project 102 Final Report' (2013) 13.

²¹⁵ As above.

²¹⁶ Article 126 (n 124 above).

²¹⁷ P Mugambwa. Presentation at the 23rd Commonwealth Judges Conference (2023) 27 Accessed at https://www.commonwealthlawyers.com/wp-content/uploads/2023/04/JUSTICE_PAUL_MUGAMBA_PRESENTATION.pdf.

Acknowledging the perceived conflict between judicial independence and accountability, Justice Michael Kirby of the High Court of Australia²¹⁸ aptly posed the critical question; How can accountability be enhanced without undermining the commitment of judges and society to the principles of judicial independence? One effective approach is the establishment of an independent Judicial Service Commission which according to the Constitution²¹⁹, operates free from the control of any individual or authority in its oversight of the judiciary in Uganda.

A second aspect is that proceedings before the Commission do not culminate into civil suits as the Commission is not a court. It can be urged that a judge while acting within their powers might behave in such a perverse or irrational manner that their actions should not be considered as judicial acts at all. In such instances, removal from office could be a viable remedy. Conversely, an appellate court lacks the authority to discipline a judicial officer and when a party appeals a decision made by a judicial officer, they are not alleging abuse of judicial authority. What therefore must be emphasised is that in a bid to protect judicial independence and judicial officers from uncalled for disciplinary action for judicial decisions, judicial accountability should not be undermined²²⁰.

The Constitution acknowledges the necessity of balancing independence and accountability through Article 128 which grants judicial officers independence and immunity while Articles 147 & 148 empower the Commission to maintain disciplinary control over them. While independence fosters judicial courage, accountability reinforces the integrity that judicial officers exhibit in their exercise of judicial discretion. Therefore, achieving proper balance between the two principles is important and that must be understood as the intention of the framers of the Constitution.

4.6.5 Balancing Judicial Independence and Judicial Accountability

Judicial Independence is the concept that the judiciary should be independent of the other branches of government. That is, the courts should not be subject to the improper influence from the other branches of government or from private or partisan interests. Judicial independence as a concept pertains to the mindset of the judge as well as institutional arrangements that supports this mindset. Such institutional arrangements include constitutional protections for job security and remuneration, provisions for removal from office only in cases of misconduct or mental or physical incapacity and safeguards against frivolous law suits initiated

²¹⁸ M Kirby. A lecture delivered in Brisbane at the University of Queensland 2001.

²¹⁹ Article 147 (n 124 above).

²²⁰ Kirby (n 218 above) 32.

by dissatisfied parties. According to *Justice Irene Mulyagonja*²²¹, judicial independence is the right enjoyed by people when they invoke the jurisdiction of the courts seeking and expecting justice. It is not a privilege accorded to judicial officers and the judiciary.

The concept of Judicial Independence enjoys international recognition as highlighted in various human rights instruments. The Universal Declaration of Human Rights²²² reflects this by stating that everyone is entitled to a fair and public hearing by an independent and impartial tribunal regarding their rights and obligations as well as any criminal charges against them. Similarly, the International Covenant on Civil and Political Rights²²³ reinforces this principle by asserting that all individuals are equal before the courts and are entitled to a fair hearing by an independent and impartial tribunal established by law.

In Uganda, institutional independence of the Judiciary is guaranteed by the Constitution²²⁴. Article 182(1) emphasises that a judicial officer shall exercise judicial function independently based on his or her assessment of the facts and a thorough understanding of the law free from any direct or indirect influences, inducements, pressures, threats or interference from any source or for any reason. The Constitution prohibits any individual or authority from interfering with the courts or judicial officers in performing their judicial duties. These provisions have been implemented through the Administration of Judiciary Act which also ensures the financial autonomy of the Judiciary thereby reinforcing its independence.

In the case of *John Imaniraguha vs Uganda Revenue Authority*²²⁵, wherein the applicant challenged the recall of garnishee order nisi issued by a Deputy Registrar issued in an execution application to allow recover of money from the respondent's bank accounts on the instruction of the principal judge. Justice Mubiru in allowing the application and setting aside the order recalling the garnish nisi stated that;

‘.....there is need to maintain the courts’ decisional independence in the face of administrative power. Judicial officers should not be afraid of the effect, an unpopular but legally sound decision, might have on their transfer, elevation, confirmation, promotion or appointment. Unless decisional independence is guaranteed, this would create a temptation for Judicial officers to make decisions based on how it would be

²²¹ I Mulyagonja ‘The Relevance and Enforcement of the Judicial Code of Conduct, Public Service Code of Conduct and the Leadership Code Act to Judicial Officers’ (2019) A paper presented at the 21st Annual Judges Conference.

²²² Universal Declaration of Human Rights (1948) Article 10
https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

²²³ International Covenant on Civil and Political Rights (ICCPR) Article 14.

²²⁴ Article 128(1) & (2) (n 124 above).

²²⁵ Miscellaneous Application No. 2770 of 2023.

perceived by those in power from time to time without regard for the law. The Judicial officers' duty is to apply the law as he or she understands it....'

However, judicial power like any other power is granted on trust. Given the protections afforded to judicial officers, the public expects accountability for their responsibilities. To that effect, it has been observed that judicial independence and judicial accountability are two sides of the same coin. An accountable judiciary lacking independence is ineffective and fragile while an independent judiciary without accountability poses significant risks²²⁶. It is therefore crucial to strike a balance between the need for judicial officers to maintain autonomy in their decision making and independence from external influences while also ensuring accountability to the community. This necessity is why the Bangalore Principles of Judicial Conduct were established.

The key issue is determining the boundary between judicial independence and accountability. A recent High Court decision in *Mugisha Hashim Mugisha vs Semakade Isaac*²²⁷ that cited contempt of court and sentenced the sitting President of Uganda Law Society has reignited this debate. In its ruling, the High Court emphasised the importance of judicial independence by stating that the threat to judicial independence from personal attacks on judicial officers and the spread of misinformation about them and court decisions particularly via social media must be addressed. Inappropriate and dangerous statements such as those tweeted by the respondent undermine the rule of law and should be penalised.

This judgment followed threats by the Chief Justice during the New Year Law opening that individuals attacking judicial officers would bear the consequences of their action.²²⁸ The timing of this decision therefore raises questions on whether the judiciary is misusing independence as a push back from the public who are demanding accountability from it. Thus, fostering an environment where judicial officers can perform their duties without fear of reprisals yet remain answerable to the community is vital for the health of the rule of law.

4.7 Challenges in Combating Judicial Corruption

Despite significant reforms aimed at strengthening the Commission, challenges persist within both the statutory framework and practical implementation which hinders the Commission's efforts in combatting corruption within the judiciary. First, the staff structure of the Commission. The Commission underwent restructuring in the financial year 2020/2021 to

²²⁶ SS Burbank 'What do we mean by Judicial Independence?' (2003) 325 *Ohio State Law Journal* Vol 64 No 1 323-340 Hein online.

²²⁷ Miscellaneous Application No. 0059 OF 2025.

²²⁸ The Nile Post 'CJ Dollo Slams ULS Radicals, Blocks Ssemakadde From Speaking' (2025) Accessed at <https://nilepost.co.ug/justice-law-and-order/241660/cj-dollo-slams-uls-radicals-blocks-ssemakadde-from-speaking>.

accommodate its expanded mandate increasing its staff from 112 to 142 members. Furthermore, in May 2024, the Public Service approved the establishment of six regional offices raising the staff count to 196. However, by the end of the 2023/2024 financial year, the Commission had filled 102 out of the 196 approved positions resulting in a staffing level of 52%²²⁹.

The staffing level of the Commission as it is poses challenges in combating corruption in an expanding judiciary. As the judiciary continues to grow, the demand for thorough and timely responses to corruption allegations increases requiring more personnel to handle the rising caseload. However, with slightly half of the approved positions filled, the Commission's capacity to monitor judicial conduct, investigate complaints, implement necessary oversight measures is limited. This shortfall will ultimately result in a diminished ability by the Commission to uphold accountability and transparency within the judicial system thereby undermining efforts to combat corruption.

Several interviewees highlighted that the JSC has only three regional offices, which is insufficient to serve the entire country. This geographical limitation reduces accessibility for rural court users, and delays investigations. "There is no sufficient regional presence... complaints from upcountry areas take long to reach the Commission."²³⁰ Respondents expressed concern about the JSC's operational dependence on the executive, especially through the Attorney General (AG). Decisions on appointments, promotions, and the constitution of disciplinary tribunals reportedly require the AG's approval, which raises questions about impartiality. "The JSC cannot act independently. The AG must approve their decisions... this affects their credibility."²³¹ Some also noted executive influence in appointments, especially for senior judicial officers, limiting the JSC's autonomy in disciplinary matters.²³²

The existing staffing gap is further exacerbated by the recent expansion of the mandate of the Commission to include the recruitment and disciplinary oversight of administrative staff within the judiciary. This additional responsibility stretches the already limited resources and personnel of the Commission making it even more challenging to effectively investigate and address corruption cases. As the Commission is tasked with more extensive duties without a corresponding increase in capacity, its ability to focus on combating corruption and ensuring accountability among judicial officers may be compromised ultimately hindering its overall effectiveness.

²²⁹ Judicial Service Commission (n 64 above) 13.

²³⁰ MA Key Informant Interview (ACCU Ntinda 9 April 2025).

²³¹ As above.

²³² MA Key Informant Interview (Supreme Court Kampala 29 April 2025).

Secondly, budgetary constraints or limited resources. The Commission's capacity to facilitate handling of public complaints is hampered by a small resource envelope which despite growing over the years is still far below the requirements of a body that needs at least shs6billion to fully execute its constitutional mandate²³³. A limited budget leads to inadequate staffing, reduced operational capacity and inability to invest in the necessary resources and technology for monitoring judicial conduct. This is further exacerbated by the ever-evolving nature of corruption which demands that the commission continuously adapt its strategies, enhances its investigative capacities and monitors emerging trends in corruption practices to effectively uphold the integrity within the judiciary.

Respondents observed that anti-corruption investigations are resource-intensive, requiring trained staff, transport, logistics, and forensic tools, all of which are chronically underfunded: "Even the approved budget is often cut. Since 2022, only two new vehicles have been procured and most existing ones are obsolete."²³⁴ The lack of funding also affects the Commission's ability to recruit specialised staff, such as forensic investigators, intelligence analysts, and data technicians.²³⁵ The Commission reportedly lacks basic logistical support such as modern IT systems, secure evidence storage, and surveillance tools. Additionally, whistleblower protection mechanisms are either weak or nonexistent, discouraging people from reporting corruption.²³⁶

Another challenge is the part time nature of the Commission. The Commission by its structure operates with Members of the Commission whose nature of engagement at the Commission is part time with exception of the Chairperson²³⁷. This composition has led to difficulties in fulfilling the Commission's constitutional and statutory mandate in a timely and effective manner. The matter is currently pending the consideration of the Ministry of Justice and Constitutional Affairs regarding the cabinet memorandum outlining the principles and objectives for the proposed amendments to the Constitutional provisions of the Commission as well as the Judicial Service Act and the Regulations.²³⁸ One commissioner remarked: "Only the Chairperson is full-time... yet we now handle both judicial and administrative staff, but the structure has remained the same."²³⁹ The static structure of the JSC has not evolved to match the expanded judiciary, which now comprises over 5,000 officers. This mismatch has strained the Commission's capacity to investigate and discipline officers at scale.²⁴⁰

²³³ Anti-Corruption Coalition Uganda (n 134 above) 18.

²³⁴ JM Key Informant Interview (Kingdom Kampala 12 May 2025).

²³⁵ JMA Key Informant Interview (Kingdom Kampala 9 May 2025).

²³⁶ As above.

²³⁷ Article 147(6) (n 124 above).

²³⁸ Judicial Service Commission (n 67 above) 59.

²³⁹ JO Key Informant Interview (Kingdom Kampala 6 May 2025).

²⁴⁰ JM Key Informant Interview (Kingdom Kampala 12 May 2025).

Fourthly, the Commission lacks the capacity to adequately investigate increasingly sophisticated corruption cases. As corruption schemes evolve and become more complex, the Commission's current resources and expertise may fall short hindering its ability to conduct thorough and effective investigations. This deficiency not only limits the Commission's capacity to hold judicial officers accountable but also undermines public confidence in Commission's ability to combat corruption. This challenge is exacerbated by the Commission's reliance on traditional methods such as walk in clients and toll-free phone calls for reporting corruption. These outdated mechanisms fail to address the complex nature of corruption issues the Commission faces.

Another challenge is the limited capacity of both the staff and the members of the Commission to tackle judicial corruption. Besides the existing gaps in the staffing level at the Commission and the part time nature of the work of the Commissioners, there is also the problem of lack of specialized training and expertise among the team which may hinder effective investigations and effective enforcement of anti-corruption measures. "Our staff need to be trained to think like investigators. These are not normal cases. We need forensic and covert skills."²⁴¹ Although the investigation team at the Commission liaises with the Directorate of Investigations in police for technical assistance where need be, it should be remembered that the staff of the Commission who work in the Department of Complaints and Investigations are lawyers and they do most of the work most of the time.

The low public confidence in the judiciary discourages some individuals from reporting corruption cases for fear of retaliation or ineffectiveness. An Afro barometer survey²⁴² reveals that approximately two-thirds (65%) of Ugandans believe people are "often" or "always" treated unequally under the law. Six in ten (61%) report that officials who break the law frequently go unpunished. A majority (56%) state that judges and magistrates "often" or "always" decide cases based on the influence of powerful individuals rather than the law. In an earlier report, it was indicated that 81% of Ugandans believe that citizens who report corruption to authorities risk negative consequences.²⁴³

Public perception of the JSC reveals a landscape of both hope and disappointment. A respondent, stated: "The public often sees the Commission as distant physically and emotionally. Many rural citizens don't even know where to report complaints, and when they do, feedback

²⁴¹ PAK Key Informant Interview (Kingdom Kampala 16 May 2025).

²⁴² Afro Barometer 'Access to justice? As public trust in courts decline, many Ugandans have their doubts' (2024) Dispatch No 82 Accessed at <https://www.afrobarometer.org/wp-content/uploads/2024/07/AD821-Access-to-justice-Ugandans-have-their-doubts-Afrobarometer-19july24.pdf>.

²⁴³ Afro Barometer 'Ugandans see corruption as a growing problem, fear retaliation if they report' (2023) Accessed at https://www.afrobarometer.org/wp-content/uploads/2023/03/R9_News-release-Ugandans-see-corruption-as-a-growing-problem-Afrobarometer-bh-1march23.pdf.

rarely comes.”²⁴⁴ This aligns with the data where respondents repeatedly mentioned limited public awareness and inaccessibility. Another respondent similarly observed that “urban elites are more aware and can access JSC services, but the Commission remains invisible to many upcountry litigants.”²⁴⁵

Yet, not all views were negative. A staff of the Commission emphasized the role of media in shaping perception: “The media portrayal of the Commission often focuses on high-profile suspensions, which helps project a tough stance on corruption even if day-to-day operations are less visible.”²⁴⁶ Another staff of the Commission added that “we’re beginning to receive more community-based complaints this shows the public is slowly recognizing us as a functional institution.”²⁴⁷ Meanwhile, a respondent cautioned that “when complainants never receive updates or see corrupt judges walk free, the public starts to view the JSC as a rubber stamp.”²⁴⁸

These divergent perceptions suggest a legitimacy gap between the Commission’s formal role and its visibility or impact at the grassroots. A sustained strategy of public engagement, transparency in disciplinary outcomes, and timely feedback loops would be necessary to rebuild and retain public confidence in the JSC’s anti-corruption mandate.

Respondents emphasised that the limited mandate of the JSC, especially in relation to the higher judiciary, creates a major obstacle. For instance, while the Commission can recommend disciplinary action, it lacks power to directly sanction judges at higher levels. “JSC can’t fully act on judges of the higher bench. That power lies with the President. This delays or kills many cases.”²⁴⁹ Some interviewees also pointed out that the regulations guiding investigations are vague, lacking clear timelines or evidentiary standards.²⁵⁰

There were multiple allegations of corruption within the JSC itself, particularly during recruitment and promotion exercises. Some interviewees alleged that candidates paid substantial bribes ranging from 30 to 300 million Ugandan shillings to be appointed to judicial offices: “Applicants pay millions to be appointed as judges... unless you're highly connected, you won't make it.”²⁵¹ This undermines the JSC’s moral authority, and discourages court users from reporting corruption.

²⁴⁴ Interview with MA (Kampala Uganda 12 June 2025).

²⁴⁵ Interview with CA (Kampala Uganda 13 June 2025).

²⁴⁶ Interview with PAK (Kampala Uganda 12 June 2025).

²⁴⁷ Interview with JMA (Kampala Uganda 11 June 2025).

²⁴⁸ Interview with PW (Kampala Uganda 12 June 2025).

²⁴⁹ MA Key Informant Interview (Supreme Court Kampala 29 April 2025).

²⁵⁰ PAK Key Informant Interview (Kingdom Kampala 16 May 2025).

²⁵¹ MM Key Informant Interview (Mukono Courts 22 April 2025).

Respondents reported that judicial corruption is part of a syndicate involving ODPP, police, lawyers, and court clerks. Isolated efforts by the JSC are therefore unlikely to succeed. Moreover, corruption methods are evolving, bribes are now given via third-party agents or through coded transactions such as fuel station credits.²⁵² “Judicial officers even fly abroad to receive bribes. Others use agents to collect money on their behalf.”²⁵³ Interviewees also observed that many court users are unwilling to report corruption either because they benefit from it or fear reprisals. This severely limits the Commission’s ability to detect wrongdoing. “People are afraid to report... others are part of the problem. Corruption is a reciprocal crime.”²⁵⁴

4.8 Conclusion

The Commission holds a very challenging position within the justice system. The public often criticises it for the high rate of complaints dismissal alleging that it is merely covering up judicial misconduct. The media only highlights their activities in the context of a scandal portraying them as secretive. Additionally, some judicial officers accuse the Commission of witch-hunting. Nonetheless, the Commission continues to receive and review hundreds of complaints every year against judicial officers and staff of the judiciary. The Commission strives to reach a balance between judicial independence and judicial accountability through its confidential and thorough investigation of complaints brought to its attention. The findings reveal that the JSC faces formidable, multi-layered challenges in combating judicial corruption. These range from internal institutional weaknesses and logistical constraints, to executive interference, legal gaps, and societal attitudes that normalise bribery. Without addressing these challenges, even the best-intentioned anti-corruption mechanisms risk ineffectiveness.

The Commission’s effectiveness in combating corruption hinges on several factors that require continuous attention and improvement. While it has made significant strides in addressing judicial corruption through various initiatives, much work remains to be done to ensure that these efforts translate into meaningful change. One of the primary areas that needs enhancement is the Commission’s capabilities, which not only includes increasing staffing and resources but also providing training for personnel to stay abreast in best practices in anti-corruption measures. Additionally, improving reporting mechanism is essential. This involves creating user-friendly platforms for the public to report corruption anonymously and ensuring that these reports are acted on promptly.

²⁵² BW Key Informant Interview (LASPNET Offices 5 May 2025).

²⁵³ JM Key Informant Interview (Kingdom Kampala 12 May 2025).

²⁵⁴ MM Key Informant Interview (JLOS Secretariat 1 April 2025).

CHAPTER FIVE

COMPARATIVE ANALYSIS WITH OTHER JURISDICTIONS AND BEST PRACTICES

5.1	Introduction
5.2	Selected Jurisdictions
5.2.1	Kenya
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5.3	Analysis of Emerging issues
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5.1 Introduction

For the judiciary to serve its purpose in court proceedings, society and the various branches of government, independence and impartiality must be safeguarded. This can be accomplished by ensuring that appointments, disciplinary exercises and dismissal of judges are insulated from political influences. Such separation not only enhances the integrity of the judiciary but is also believed to improve overall professional competence and quality of judicial decisions. Across the globe, many countries have established specialised bodies often referred to as judicial councils or judicial service commissions as a means to achieve these objectives making the examination of their structures and practices particularly valuable to understanding effective judicial governance. A comparative study thus aims to expand ones view point by allowing one to grasp how others perceive the world and function within the societies they have established in the past or are developing for the future.¹

5.2 Selected Jurisdictions

Judicial Service Commissions as earlier stated in this work go by different names. In some jurisdictions they are referred to as Judicial Councils while in others, they are referred to as Merit Councils. However, their mandates across the global are very similar especially the mandate of appointment of judicial officers which includes both judges and magistrates. By definition,

¹ C Baar 'Comparative Perspectives on Judicial Selection Processes in Appointing Judges' (1991) Philosophy, Politics and Practices *Ontario Law Reform Commission* 143.

Judicial Councils are recognized as an international best practice aimed at promoting judicial independence and ensuring external accountability². Historically, Judicial Councils originated in civil law countries particularly France and later Italy. However, they are now recognized and accepted in both civil and common law countries. Further, Judicial Councils are found in developed as well as developing countries.³

The significance of an independent and impartial judiciary as a cornerstone of the rule of law in contemporary democratic societies is underscored through a comparative analysis of best practices. This examination focuses on the Judicial Councils in four selected jurisdictions; Kenya, South Africa, United Kingdom, Ghana, Nigeria and Zimbabwe. These examples showcase the functioning of Judicial Councils in both established democracies and developing nations that follow the common law systems. The four jurisdictions have been selected for their varying yet notable successes and challenges in judicial integrity. Kenya and South Africa have made significant strides in reforming their judicial systems to enhance transparency and accountability, often serving as regional examples for anti-corruption efforts. The UK, with its long-established judicial framework and robust mechanisms for judicial oversight, provides insights into best practices for maintaining judicial independence. Ghana, recognized for its vibrant democracy and commitment to judicial reform, offers a compelling contrast to Uganda, illustrating how effective judicial councils can significantly mitigate corruption. Nigeria, despite facing persistent challenges has implemented various reforms aimed at improving judicial accountability while Zimbabwe presents a case of the complexities involved in judicial accountabilities amidst political pressures. Together, these countries serve as models for evaluating the efficacy of institutional frameworks in combating judicial corruption and improving justice delivery.

5.2.1 Kenya

Before the 2010 Constitution was adopted, the Kenyan judiciary faced significant challenges that were brought to light by a report from the Integrity and Anti-Corruption Committee which underscored the problems within the judiciary⁴. The report documented various instances of corruption among judicial officers and took the unprecedented step of naming those involved. A total of 105 judicial officers including 23 judges and 82 magistrates were accused of offenses such as demanding and accepting cash bribes, sexual favors and free transportation in exchange

² N Garoupa & Tom Ginsburg 'Guarding The Guardians: Judicial Councils And Judicial Independence' (2009) 57 *AMJCL* 103 103-104.

³ K Malleson 'Introduction. In *Appointing Judges in an age of Judicial Power*' (2006) (Kate Malleson & Peter Russell eds) 3 7.

⁴ SW Ndiho 'Questioning the Judicial Service Commission's role in curbing corruption among judicial officers' (2018) Unreported LLM thesis 27.

for biased rulings⁵. However, these reforms were implemented with minimal input from the JSC which was constitutionally tasked with the responsibility of removal of judicial officers⁶.

The JSC of Kenya is established under Article 171 of the new Constitution of Kenya, 2010 and has an important mandate to promote and enhance a well-functioning judiciary free from corruption and other malpractices that are an impediment against realisation of justice. Tasked with the primary responsibility of ensuring the independence and accountability of the judiciary, the Commission aims to promote an efficient, effective and transparent judicial system⁷. To achieve this objective, the Constitution envisions the Commission as an independent and accountable constitutional body which is also mandated to regulate its proceedings in exercising the powers given to it under the Constitution.

The Commission is composed of various members to ensure diverse representation. It includes the Chief Justice as the Chairperson⁸, One Supreme Court Judge⁹, One Court of Appeal Judge¹⁰, One High Court Judge and one Magistrate elected by the Judges and Magistrate's Association¹¹. Additionally, the Attorney General is a member¹² along with two other Advocates with at least fifteen (15) years of experience elected by the regulatory body for advocates¹³. The Commission also includes one nominee from the Public Service Commission¹⁴ and two representatives from the Public appointed by the President with National Assembly Approval¹⁵. Further, the Chief Registrar of the Judiciary serves as the Commission's Secretary¹⁶ and members except for the Chief Justice and Attorney General, serve a five year term with eligibility for one additional term¹⁷.

The mandate of the JSC Kenya is to promote and ensure the independence and accountability of the judiciary while facilitating the efficient, effective and transparent administration of justice¹⁸. This includes recommending judicial appointments of judges to the President¹⁹, reviewing and recommending conditions of service for judges and judicial officers²⁰ and appointing,

⁵ Report of the Integrity and Anti-Corruption Committee 'An Anatomy of Corruption in Kenya'

⁶ Ndiho (n 4 above).

⁷ The Constitution of the Republic of Kenya 2010 Article 172(1).

⁸ As above Article 171(2)(a).

⁹ As above Article 171(2)(b).

¹⁰ As above Article 171(2)(c).

¹¹ As above Article 171(2)(d).

¹² As above Article 171(2)(e).

¹³ As above Article 171(2)(f).

¹⁴ As above Article 171(2)(g).

¹⁵ As above Article 171(2)(h).

¹⁶ As above Article 171(3).

¹⁷ As above Article 171(4).

¹⁸ As above Article 172(1).

¹⁹ As above Article 172(19(a)).

²⁰ As above Article 172(19(b)).

investigating and disciplining registrars, magistrates and other judicial staff²¹. Additionally, the JSC is responsible for developing and implementing ongoing education and training programs for judges and judicial officers²² as well as advising the national government on enhancing the efficiency of the justice administration.²³

5.2.1.1 Mechanisms for Combating Judicial Corruption

At the start of 2024, Kenya's President William Ruto took a strong stance against corruption targeting the judiciary with accusations of corruption and collusion. He claimed that the judiciary had been compromised to undermine his initiatives such as housing and other government programs²⁴. In response, the Commission issued an official statement reflecting concerns about a potential regression to a time when the judiciary served the executive. The JSC expressed alarm at the public criticism and vilification directed at the judiciary for decisions deemed contrary to state policies and reaffirmed the judiciary's independence.

These statements alleging that the Kenyan judiciary is corrupt underscore the crucial role of the JSC as the guardian of judicial accountability in addressing complaints against judicial officers and combating corruption within the judiciary. The Constitution provides for the mandate of the Commission and it is to the effect that the Commission is responsible for appointing, receiving complaints about, investigating and disciplining registrars, magistrates, other judicial officers and other staff of the judiciary including the authority to remove them from their positions.²⁵ Finally, the Constitution empowers the JSC to conduct investigations independently or based on public complaints, perform conciliation, mediation, and negotiation, recruit its own staff, and issue summons to witnesses to aid its investigations.²⁶

By allowing the public to report unethical behavior or corruption, the Constitution ensures that judicial officers are held accountable for their actions. This process not only deters corrupt practices by fostering a culture of scrutiny but also enables the JSC to investigate and address issues effectively thereby reinforcing public confidence in the judiciary. The Commission handled a total of 141 petitions against judges which included 100 new petitions and 41 petitions brought forward from the previous FY.²⁷

²¹ As above Article 172(19(c)).

²² As above Article 172(19(d)).

²³ As above Article 172(19(e)).

²⁴ African Legal Information 'Tensions high in Kenya as President attacks judiciary' Accessed at <https://africanlii.org/articles/2024-01-11/carmel-rickard/tensions-high-in-kenya-as-president-attacks-judiciary>.

²⁵ Article 172(1) (n 7 above).

²⁶ Article 252 (n 7 above).

²⁷ Judicial Service Commission of Kenya Annual Report Financial Year 2023-2024.

The breakdown of cases highlights significant concerns within the judiciary with 75 cases of gross misconduct or misbehavior including issues like granting ex parte orders delays in ruling and hostility towards litigants. Additionally, 51 cases were related to breaches of the Code of Conduct encompassing actions such as withholding court files soliciting bribes and exhibiting bias. Furthermore, there were 15 petitions categorised under incompetence involving judges entertaining matters without jurisdiction, overturning orders from higher courts and issuing conflicting rulings.²⁸

It is further reported that out of the 141 petitions, 70 petitions were resolved while 71 petitions submitted towards the end of the financial year are still pending investigations and hearings by the Commission panel. A comparative summary of the petitions filed against judges in the FY 2023/2024 and FY 2022/2023 reflect an increase by 100% attributed to the increased public awareness of the commissions complaint handling processes and procedures. The doubling of petitions compared to the previous financial year attributed to the increased public awareness of the Commission's complaint handling processes and procedures,²⁹ suggests that citizens are increasingly willing to hold judicial officers accountable.

This heightened engagement underscores the JSC's crucial mandate to exercise disciplinary control over judges. However, the number of unsolved petitions raises concerns about the Commission's efficiency and effectiveness in addressing issues of misconduct which may further impact trust in the judiciary's integrity. The JSC must enhance its mechanisms for investigating and resolving complaints to reinforce its role as guardian of judicial accountability. Additionally, the report lacks clarification on how the 70 resolved petitions were handled and there is no indication of any disciplinary sanction taken against judges involved in those cases.

Since the 2010 reforms, a number of tribunals have recommended the removal of judges. In August 2012, a tribunal investigating the then Deputy Chief Justice Nancy Baraza concluded that her actions constituted a gross misconduct leading to her removal from office. Similarly, in September, 2016, a tribunal found that Justice Joseph Mbalu Mutava of the High Court had engaged in gross misconduct also recommending his removal to the President. The Petitioner, a judge of the High Court challenged the decision of the tribunal in the case of *Joseph Mbalu Mutava vs The Tribunal appointed to Investigate the Conduct of Justice Joseph Mbalu Mutava, Judge of the High Court of Kenya*.³⁰

²⁸ As above.

²⁹ As above.

³⁰ Petition 15 B of 2016. (2019) KESC 49 (KLR) (Civ) (12 March 2019).

The Petitioner appointed as a judge of the High Court of Kenya on August 23, 2011, faced multiple complaints lodged with the Judicial Service Commission between March 2012 and March 2013. In response, the JSC formed a committee that on May 17th 2013 recommended that three of the thirteen complaints warranted grounds for potential removal. Subsequently, the JSC petitioned President Uhuru Kenyatta to suspend the petitioner and appoint a tribunal to investigate allegations of gross misconduct. The President acted accordingly appointing tribunal members. The petitioner challenged the JSC's actions in the High Court claiming a lack of fair hearing among others. The petition was dismissed. The tribunal's conclusions concerning allegations of gross misconduct in violation of Article 168(1) of the Constitution and the petitioner was eventually removed from office.

The Supreme Court in affirming the recommendation of the tribunal for removal of the Petitioner from judiciary service held among others that while handling cases, judges were presumed to be independent and to act without being controlled by anyone. Judges must ensure their conduct is irreproachable to a reasonable observer, upholding the principle that justice must not only be done but be seen to be done. By ensuring that judges are held accountable, the JSC plays a crucial role in combating corruption within the judiciary as it can take action against those whose conduct undermines the perception of justice.

More recently, another High Court judge was removed from office by the President based on the recommendation of a tribunal that investigated his conduct. However, prior to his final removal, the actions and decisions of the tribunal were challenged in the Supreme Court. This was in the case of *Hon. Justice Said Juma Chitembwe vs The Tribunal Appointed to Investigate into the conduct of the Hon. Justice Said Juma Chitembwe, Judge of the High Court*³¹ on allegations of lack of accountability, involvement in corrupt practices and impropriety contrary to “Articles 10, 75 and 168(1) of the Constitution and Regulations 13(1)(a), 14(1)(a), 14(1)(b), 14(3) and (30) of the Code of Conduct and Ethics”. The Supreme Court upheld the Tribunal's conclusion, dismissing the Petition of Appeal, as the evidence showed the petitioner's conduct violated the Code of Conduct and Ethics, constituting gross misconduct or misbehavior under Article 168(1)(b) and (e) of the Constitution.

In light of the discussions on removal of judges as a mechanism to combat corruption within the judiciary, it can be argued that the JSC has made notable strides in promoting accountability and integrity in the judiciary. It has successfully addressed a number of complaints against judges leading to the removal of at least three judges found guilty of gross misconduct thereby reinforcing public trust in the judicial system. The increase in petitions filed with the

³¹ SC Petition No. E001 of 2023.

Commission from 43 petitions in 2022/2023 to 100 petitions in 2023/2024 high lights public engagement and awareness of the Commission’s processes indicating that citizens are more willing to hold judges accountable for their actions. Additionally, the formation of tribunals to investigate allegations against judges demonstrates commitment to ensuring that judicial misconduct is thoroughly examined and addressed. These steps signify a positive step toward restoring confidence in the judiciary and upholding the rule of law.

In regards to appointment, discipline and removal of magistrates, registrars and other judiciary staff, the JSC holds exclusive authority. However, the Commission can only initiate disciplinary proceedings or removal of judicial staff after the Chief Justice conducts a preliminary investigation which reveals the staff member has not adequately responded to the allegations to the Chief Justice’s satisfaction.³² In the financial year 2023/2024, the JSC received and processed seven (07) disciplinary cases against judicial officers, three (03) of which were concluded while four (04) are pending investigation and hearing before the Commission. Out of the three concluded cases, one judicial officer was dismissed from service.³³ It should be noted that in the previous year, the Commission also received seven (07) complaints against judicial officers which were all handled and concluded within the reporting period.³⁴

The substantial rise in petitions against judges from 43 in 2023 to 100 in 2024 indicates an increasing public awareness and willingness to engage with the JSC regarding judicial accountability, suggesting that citizens recognise the importance of holding judges accountable for misconduct. In contrast, the consistently low number of complaints against magistrates and registrars (only 7 in both years) and 26 cases against judicial staff in 2023/2024 out of over 5,000 staff raises concerns about the public's perception and reporting mechanisms for these lower-ranking officials. The JSC's exclusive authority over the discipline and removal of magistrates, contingent upon a preliminary investigation by the Chief Justice, may hinder accountability, as it places significant reliance on the Chief Justice’s action. This disparity highlights the need for the JSC to enhance its processes for addressing complaints across all judicial officers, ensuring that the entire judiciary adheres to high standards of conduct.

Additionally, as part of its mandate, the Commission is responsible for identifying and vetting candidates for judicial appointments ensuring that appointments are made based on merit, professional qualifications and moral character.³⁵ According to the Annual Report 2023/2024, the recruitment process includes a transparent and competitive recruitment procedure to foster

³² WK Ochieng ‘The Composition, functions and accountability of the Judicial Service Commission from a Comparative Perspective’ (2016) *Judicial Accountability in the New Constitutional Order* Jill Cottrell Ghai (Eds) 16.

³³ JSC Kenya Annual Report (n 27 above).

³⁴ JSC Kenya Annual Report (n 27 above).

³⁵JSC Kenya Annual Report (n 27 above)18.

public trust in the judiciary. Further, it is stated that the recruitment process starts with assessing the current staffing establishment and identifying the judiciary's overall human resource needs which analysis highlights staffing gaps, workload distribution issues and critical areas needing additional personnel helping guide decisions on appointing new judicial officers and judicial staff.

The recruitment process employed by the JSC underscores its commitment on combating corruption in the judiciary by prioritising the selection of candidates based on integrity, moral character and professional qualifications. The transparent and participatory nature of the recruitment starting with public announcements in official publications and extending to media advertisements fosters public trust and encourages broad engagement. The requirement for applicants to submit various clearances such as Tax Compliance and Certificates of Good Conduct further reinforces the integrity checks essential for judicial appointments. By inviting public feedback and conducting thorough vetting through consultations with relevant bodies, the JSC ensures that candidates undergo rigorous scrutiny throughout the process. This multifaceted approach not only aims to secure a judiciary composed of competent and ethical individual but also promotes accountability and transparency essential components in the fight against corruption within the judicial system.

However, the recruitment process described above is not without flaws and vulnerabilities. According to *Mercy Mwarah Deche*, while the laws regarding the integrity are clear, the procedural rules and regulations are often ambiguous creating challenges in implementation.³⁶ Commissioners may understand the concept of integrity well but lack effective methods for assessing it in individual candidates. This gap can be attributed to various factors including limited legal precedents, inadequate capacity, lack of peer review mechanisms, an over reliance on state agencies for information, potential manipulation of integrity assessments, executive interference and a general absence of political will.³⁷ Such issues can undermine the effectiveness of the process and the overall goal of ensuring a corruption free judiciary.

Furthermore, the JSC's recent achievements in reviewing the remuneration and benefits for judges and judicial officers can significantly contribute to fostering a corruption free judiciary. By enhancing financial initiatives through the updated SRC Circular Ref No. SRC/TS/24/3 effective November, 2023, the Commission has taken a crucial step in ensuring that state officers in the judiciary are adequately compensated.³⁸ This improvement not only reflects a commitment to fair treatment but also helps to minimise the temptation for corruption by providing judges

³⁶ M M Deche 'Recruitment of Judges in Kenya; The Intricacies of Gauging a Candidates Integrity' (2023) 14(1) *International Journal For Court Administration* 4 DOI: <https://doi.org/10.36745/ijca.475>.

³⁷ As above.

³⁸ JSC Kenya Annual Report (n 27 above)23.

with sufficient financial security. Additionally, the approval of club memberships for judges and ongoing discussions with the Salaries and Remunerations Commission on additional benefits demonstrate the commission's dedication to improving the overall terms and conditions for judicial officers. These initiatives collectively reinforce the integrity of the judiciary by promoting a professional environment where judges can perform their duties without undue financial pressures.

Despite the positive strides made by the JSC in transforming the Kenyan judiciary, a significant portion of the population still perceive corruption among judges and magistrates according to the latest Afro barometer survey.³⁹ While many Kenyans express trust in the courts, the proportion of citizens believing that most or all judges are corrupt has risen from 2016 to 2019. This mistrust is particularly pronounced among better educated individuals and urban residents. Against the backdrop of ongoing corruption scandals that have called the integrity of Kenya's judicial system into question, these findings underscore the persistent challenges the JSC faces in its efforts to implement its mandate under the 2010 Constitution.

5.2.2 South Africa

The Commission is a constitutional entity established under section 178 of the Constitution of South Africa⁴⁰. The Commission's primary responsibilities include interviewing candidates for judicial appointments and advising the president on suitable candidates as well as providing a list of candidates for appointments to the constitutional court. Additionally, the Commission addresses specific complaints against judges through the Judicial Conduct Committee or Judicial Conduct Tribunals established under the JSC Act and it handles complaints referred to it by these bodies. Furthermore, it advises the national government on concerns related to the judiciary or the administration of justice although it must convene without certain designated members when discussing issues other than judicial appointments.⁴¹

The Commission is composed of various key members including the Chief Justice who chairs its meetings⁴² and the President of the Supreme Court of Appeal⁴³. Additionally, it includes one Judge President designated by the Judges' President⁴⁴ and a cabinet member responsible for the administration of justice or an alternate appointed by that member⁴⁵. The Commission also features two practicing advocates and two practicing attorneys both nominated within their

³⁹ Afro Barometer News Release 'Overwhelming Majority of Kenyans see Corruption in the Judiciary' (2021).

⁴⁰ Constitution of the Republic of South Africa 1996.

⁴¹ Section 178(5) (n 40 above).

⁴² Section 178(a), (n 40 above).

⁴³ Section 178(b) (n 40 above).

⁴⁴ Section 178(c) (n 40 above).

⁴⁵ Section 178(d) (n 40 above).

respective professions and appointed by the president to represent the legal community as a whole. Furthermore, it includes one law teacher designated by faculty from South African universities, six individuals chosen by the National Assembly (with at least 3 being members of opposition parties), four permanent delegates from the National Council of Provinces designated by the Council with support from at least six provinces and four individuals appointed by the President after consulting with leaders of all parties in the National Assembly⁴⁶.

5.2.2.1 Mechanisms for Combating Corruption

Judicial corruption poses a significant challenge in South Africa as highlighted by *Prof. John Mark Iyi*, director of the African Centre for Transnational Criminal Justice. During a recent webinar, he emphasised the judiciary's crucial role as a temple of justice and the last refuge of ordinary citizens. He also noted that sub-Saharan Africa has long struggled with this issue stressing that even minor corruption can severely damage the credibility of the judiciary, hinder justice administration and threaten democratic values and human rights. Consequently, it is imperative that the judiciary and all stakeholders remain vigilant to uphold judicial independence and prevent corrupt practices⁴⁷.

The Provisions outlined in Chapter 2 of the JSC Act establish oversight mechanisms for judicial conduct and ensure the accountability of judicial officers. The provisions are to the effect that individuals can submit complaints to the Chairperson of the Committee (Judicial Conduct Committee) who must address these complaints according to established procedures⁴⁸. If a complaint falls under specific guidelines, the Chairperson may delegate the matter to a Head of Court except when the complaint is that Head of Court. Complaints must be supported by an affidavit detailing the nature and basis of the allegations which can include issues like incapacity, gross incompetence, violations of the Code of Judicial Conduct or any conduct that undermines the integrity and effectiveness of the judiciary⁴⁹.

During the 2022/23 financial year, 93 complaints were received by the Commission against judges out of which 40 cases were resolved while 53 cases were carried to the next financial year for further management⁵⁰. These complaints were resolved within an average of 4.1 months⁵¹. By resolving these complaints in a timely manner, the Commission demonstrates its commitment to transparency and accountability. This not only promotes trust in the judicial

⁴⁶ Section 178(j) (n 40 above).

Corruption Watch 'Addressing Judicial Corruption in South Africa Accessed at <https://www.corruptionwatch.org.za/addressing-judicial-corruption-in-south-africa/>.

⁴⁸) Judicial Service Commission Act 9 of 1994 Section 14 (1) & (2).

⁴⁹ As above Section 14(4).

⁵⁰ Judicial Service Commission Annual Report (2022-2023) Office of the Chief Justice, Republic of South Africa 21.

⁵¹ As above.

system but also serves as a deterrent against misconduct as judges know they are subject to scrutiny.

Another mechanism for combating corruption stemming from the Commission's constitutional mandate is the rigorous and transparent recruitment process that ensures only qualified and trustworthy individuals are recommended for judicial positions thereby enhancing public trust in the judiciary and the administration of justice. The thorough vetting as will be discussed shortly not only scrutinises the candidate's qualifications but also assesses their integrity and ethical standards which are crucial for maintaining judicial independence.

In South Africa, the judicial selection and appointment process starts with the Commission announcing the available judicial positions⁵². Each nomination must be accompanied by the candidate's written acceptance and curriculum vitae. These submissions are then reviewed by the screening committee, a temporary sub-committee of the Commission which compiles a shortlist of the candidates. At this stage, all Commission members can also propose additional candidates they believe should be considered for the shortlist. The screening committee ensures that the shortlist includes all qualified candidates⁵³.

Once the shortlist is finalised, it is reviewed by all Commission members who can suggest names of any additional nominated candidates not included in the initial list. After the JSC approves the list, it is published and shared with relevant organisations such as the Law Society of South Africa and the Black Lawyers Association. Following this, the Commission conducts public interviews with the nominees, gathers feedback from interested parties and then privately deliberates to select candidates for recommendation. The Commission informs the President of its choices providing reasons for each selection and publicly announces its recommendations⁵⁴. The process for recommending candidates to the Supreme Court of Appeal and High Courts is similar although the JSC is not required to explain its recommendations to the President in those cases⁵⁵.

In the 2022/23 period, the Commission addressed thirty-three vacancies in the Superior Courts conducting interviews and advising the President on potential judicial appointments. The Commission recommended twenty-five candidates however, the President appointed only

⁵² A Tilley & Z Ndlebe 'Judicial Appointments in South Africa' (2021) *Br J Am Leg Studies* 10(3) (2021) DOI: 10.2478/bjals-2021-0013.

⁵³ South African Judiciary The Procedure for the Selection of Candidates for Appointment as Judges' Accessed at <https://judiciary.org.za>.

⁵⁴ As above.

⁵⁵ A Gordon & d Bruce 'Transformation and the Independence of the Judiciary in South Africa' (2016) Accessed at <https://biblioteca.cejamericas.org/bitstream/handle/2015/3650/Transformation-and-the-Independence-of-the-Judiciary-in-South-Africa.pdf?sequence=1&isAllowed=y>.

twenty-four judges as the appointment of Judge President for the Limpopo Division of the High Court was postponed due to ongoing litigation regarding the Commission's advice. Initially, the Commission was unable to recommend candidates for eight vacancies but by October, 2022 it successfully filled two of these positions leaving six vacancies unfilled due to a lack of qualified candidates⁵⁶.

The judicial selection and appointment process in South Africa is designed to ensure that qualified individuals are identified as judicial officers thereby enhancing the quality of justice and mitigating risks like corruption. The comprehensive selection process while seemingly lengthy, promotes transparency and public trust by involving various stakeholders and allowing for public input through interviews and feedback. This openness further helps to ensure that candidates are not only qualified but also viewed as credible and worthy by the community they will serve.

Additionally, the rigorous vetting and collaborative nature of the process minimises the risk of appointing individuals with questionable integrity thereby reducing the potential for corruption within the judiciary. By encouraging multiple levels of scrutiny and allowing for input from legal associations, the process helps to uphold high standards of judicial conduct. Ultimately, this thorough approach enhances the overall quality of justice delivered as it ensures that only the most capable and ethical individuals are entrusted with such critical responsibilities.

The Judicial Service Commission of South Africa while influenced by similar bodies in other countries emerged from a political compromise that gives it distinct characteristics. Notably, its large membership includes many political appointees with no lay members involved which sets it apart from other Commissions. Additionally, its diverse responsibilities extend beyond judicial selection. The Commission is tasked with addressing issues of judicial incapacity, incompetence or misconduct as needed and it also provides advisory support to the government on matters concerning the judiciary and justice administration. This multifaceted role positions the Commission as a critical institution in maintaining the integrity and effectiveness of South Africa's judicial system.

5.2.3 Ghana

In Ghana, the institution responsible for judicial oversight is the Judicial Council (JC) established under Article 153 of the Constitution.⁵⁷ This council comprises of 17 members including six judicial representatives such as the Chief Justice who chairs the council, the Judge Advocate General of the Ghana Armed Forces and other judges selected from various levels of the court

⁵⁶ Judicial service Commission of South Africa Annual Report (n 50 above).

⁵⁷ Constitution of the Republic of Ghana 1992 Article 153.

system. Additionally, the council includes the Attorney General, two representatives from the Ghana Bar Association, the Head of the Legal Directorate of the Police Services, the Editor of the Ghana Law Reports, a representative nominated by the Judicial Service Staff Association, a Chief elected by the National House of Chiefs and four lay persons appointed by the President.

The JC of Ghana primarily serves an advisory role. Its main responsibility is to recommend necessary judicial reforms to the Government aimed at enhancing the effective operation of the judiciary thereby supporting the Hon. Lady Chief Justice in her responsibilities. To facilitate these functions, the Council is authorised by law to form committees as needed to address any matters related to the judiciary. additionally, the Council provides advice on the appointment and removal of judges and other judicial service staff. All superior court judges with the exception of the Chief Justice are appointed by the President on the recommendations of the JC.⁵⁸

While the President is expected to act on the advice of the JC regarding judicial appointments,⁵⁹ this advice is not legally binding.⁶⁰ For appointments to the Supreme Court including that of the Chief Justice, the President consults with the Council of State, an advisory body made up of twenty six distinguished public figures -11 appointed directly by the President and 10 elected regionally. At least one former Chief Justice must be included among its members.

Further, when parliamentary approval is required for Supreme Court nominees, the Appointments Committee and the Judiciary Committee jointly investigate the candidates and present their findings to Parliament. Members of Parliament then conduct a secret ballot and nominees who receive at least 50% of the votes cast are approved.⁶¹ This multi-layered process underscores the complex interplay between various institutions in ensuring the independence and effectiveness of the judiciary in Ghana.

While the Judicial Service Commission of Uganda currently plays a limited role in nominating candidates following a brief interaction/ interviews with shortlisted candidates, adopting a more comprehensive approach similar to Ghana's could enhance transparency and accountability. By involving a broader array of stakeholders including representatives from civil society, Uganda could strengthen its judicial appointments framework. Furthermore, ensuring that the Commission's recommendations are given significant weight in the appointment process could

⁵⁸ Judicial Service Commission of Ghana Annual Report 2017-2018.

⁵⁹ Article 144 (n 57 above).

⁶⁰ J. van Zyl Smith 'The Appointment, Tenure and Removal of Judges under Common Law Principles: A Compendium and Analysis of Best Practices' (2015) Bingham Centre for the Rule of Law Published by the *British Institute of International and Comparative Law* 186.

⁶¹ Standing Orders of Parliament Order 169.

foster greater public trust in the judiciary ultimately promoting an independent and competent legal system that is better equipped to uphold the rule of law.

According to the Constitution, judges can only be dismissed from their positions for specific reasons such as misconduct, incompetence or inability to perform their duties due to physical or mental incapacity.⁶² When a petition for a judge's removal is submitted, it is directed to the President who must then forward it to the Chief Justice if it pertains to a judge other than themselves. Upon receiving the petition, the Chief Justice evaluates whether there is a prima facie case against the judge. If so, an ad hoc committee is formed consisting of three judicial members appointed by the JC and two additional individuals who are neither members of the Council of State, members of Parliament nor lawyers appointed based on the Chief Justice's advice from the Council of State.

In cases involving the Chief Justice, if a removal petition is presented to the President, they will consult with the Council of State to establish a similar ad hoc committee. The Supreme Court of Ghana in the case of *Agyei Twum vs Attorney General and Bright Akwetey*,⁶³ clarified that it is implicit that the President, in consultation with the Council of State, must assess whether there is a prima facie case against the Chief Justice. This committee will comprise two Supreme Court justices and three additional individuals who meet the same criteria as those for the other judges.

During the proceedings of the ad hoc committee, the President following the advice of the Council of State for the Chief Justice or that of the JC for other judges has the authority to suspend the judge in question until the proceedings conclude. These proceedings are conducted in camera ensuring the confidentiality and the judge facing removal has the right to defend themselves either personally or through legal counsel or another expert of their choice. Ultimately, the President must adhere to the committee's recommendations regarding the judge's removal from office.

5.2.3.1 Mechanisms for Combating Corruption

A major corruption scandal within Ghana's judiciary was uncovered by investigative journalist Anas Aremeywa Anas. His undercover work revealed extensive corrupt practices resulting in the suspension of twenty two (22) circuit judges and magistrates as well as investigations into twelve High Court judges.⁶⁴ This incident highlighted the pervasive and systemic corruption within the

⁶² Constitution of the Republic of Ghana 1992 Article 146(1).

⁶³ (2005-2006) SCGLR 732.

⁶⁴ A Akpalu 'Tackling Judicial Corruption in Ghana: A Path Forward for the Mahama Administration' (2024) Accessed at <https://www.modernghana.com/news/1367787/tackling-judicial-corruption-in-ghana-a-path-forw.html>.

judicial system emphasizing the critical role of the Judicial Service Commission in addressing such issues and promoting accountability.

In response to the scandal, the Chief Justice of Ghana announced the implementation of a two year Anti-Corruption Action Plan for the judiciary and the Judicial Service Commission. This plan emphasised the Commission's commitment to eradicating corruption as highlighted in its slogan; "we will uproot corruption wherever it is found."⁶⁵ The Chief Justice further noted that the Commission had already initiated several measures⁶⁶ to tackle corruption and pledges to continue these efforts with determination. The presentation of this Anti-Corruption Action Plan 2017-2019 serves to inform the public and invite accountability reflecting the Commission's strong commitment to combating corruption within the judiciary.

One of the key mechanisms for combating judicial corruption is the implementation of existing regulations that relate to judicial conduct. These regulations include the Judicial Service Act of 1960, Judicial Service Regulations 1963, the Code of Ethics for employees of the Judicial Service Commission and the Code of Conduct for Judges and Magistrates among others. These regulations establish essential guidelines and ensure that judicial officers act in a manner that fosters public confidence in the judiciary's integrity and impartiality while also imposing necessary restrictions to avoid appearances of bias or partiality in their relations and conduct.

Restrictions on judge's conduct include judges being required to avoid engaging in excessively close relationships with individuals who may appear before them in court as such associations could create perceived biases.⁶⁷ This approach aims to minimise the opportunities for corruption by implementing situational crime prevention strategies.⁶⁸ As stated by *Moses Agaawena Amangnya*;

‘.....limiting judge's access to and interactions with the public and commercial engagement through regulation of judicial conduct is an anti-corruption measure that addresses the SCP strategies of changing efforts, increasing risks, reducing rewards and removing provocations and excuses....’

By regulating judicial conduct, the system seeks to limit judge's interaction with the public and their involvement in commercial activities thereby reducing the chances of corrupt exchanges. These regulations also increase the difficulty for court users to bribe judicial officials and

⁶⁵ The Judiciary of Ghana 'Anti-Corruption Action Plan 2017-2019-Uprooting corruption wherever it is found' (2017) 2.

⁶⁶ (As above) 3.

⁶⁷ Judicial Service of Ghana 2005a Rule 2(b).

⁶⁸ MA Amangnya 'Unintended Consequences of Well-meaning Measures to Curb Corruption in Ghana: Regulating Judicial Conduct' (2022) *Crime, Law and Social Change* *Springer Nature Link* 154 Accessed at <https://heinonline.org/HOL/Print?collection=journals&handle=hein.journals/crmlsc79&id=150>.

diminish the potential rewards for such actions thereby disrupting mechanisms which allow corruption to occur within the judicial system.

Another mechanism is enforcement of disciplinary proceedings. The Judicial Service Act and the Judicial Service Regulations have explicit provisions on disciplinary procedures, penalties and reporting requirements. Judicial officers accused of violating these regulations are subjected to formal or summary inquiries which may lead to various sanctions. These can include criminal prosecution, dismissal, removal from office, interdiction, demotion in rank and salary, withholding of salary, suspension and freezing of salary increments.⁶⁹ Additionally, the Code of Conduct for Employees of the Judicial Service specifies further sanctions such as removal from leadership positions and warnings among others.⁷⁰ Judges found in violation of these Acts and Regulations face penalties as determined by the laws with the severity of the sanctions corresponding to the seriousness of the infraction.

The recent media revelations that resulted in significant and appropriate penalties for certain members of the judiciary have acted as a deterrent prompting many corrupt officials to reconsider their actions. Additionally, judicial reforms such as the paperless court initiative, the Justice for All Programme and the Anti-corruption Action Plan have contributed to better case management, reduced trial durations and fostered key principles like integrity, transparency, accountability and responsiveness to corruption complaints within the judicial system.⁷¹ As a result, there has been a slight decrease in judicial corruption although the judiciary's tarnished reputation in the eyes of the public remains to be fully restored.⁷²

5.2.4 The United Kingdom

The judiciary oversight mechanism in the UK is shaped by the Constitutional Reform Act (CRA), 2005 which established the independence of the judiciary and reformed the judicial appointment process. One of the key developments from this Act is the establishment of the Judicial Appointment Council (JAC) in England and Wales,⁷³ the Northern Ireland Judicial

⁶⁹ Amangnya (n 68 above) 157.

⁷⁰ Judicial Service of Ghana 2005b Rule 7c.

⁷¹ GH Benson 'Justice for Gains, a Potential Threat to National Security-a Tortuous Trip to Ghana' (2023) *HSOA Journal of Forensic, Legal and Investigative Science*.

⁷² Benson (n 71 above).

⁷³ Constitutional Reform Act section 61 and Schedule 12.

Appointments Commission in Northern Ireland⁷⁴ and the Judicial Appointments Board for Scotland in Scotland.⁷⁵ The JAC was created to enhance the transparency and accountability of the judicial appointments process. As an independent body, the JAC is responsible for selecting candidates for judicial positions in courts and tribunals across England and Wales as well as for certain tribunals that have UK-wide jurisdiction. Additionally, the JAC plays a vital role in the selection of high ranking judicial officials including the Lord Chief Justice, Heads of Division, Lords Justices of Appeal and the Senior President of Tribunals.

Judicial appointments to the UK Supreme Court are conducted by the Crown based on the Prime Minister's recommendation. However, the Prime Minister can only suggest candidates whose names have been put forward by the Lord Chancellor. The Lord Chancellor is responsible for notifying the Prime Minister about candidates selected by a five member selection commission. This commission comprises of two senior judges, one of whom is typically the President of the Supreme Court unless the vacancy pertains to that position. Additionally, there is one member representing each of the judicial appointments bodies for England and Wales, Scotland and Northern Ireland.⁷⁶

The Lord Chancellor has specific powers regarding the selection process. They may reject a selected candidate once and can request the commission to reconsider its choice. However, after this, the Lord Chancellor must present a name that has been selected by the commission for that particular vacancy to the Prime Minister, provided it has not been previously rejected. The grounds for rejecting a candidate or reconsideration are strictly defined and if the Lord Chancellor exercises either of these powers, they are obligated to provide written reasons to the commission.⁷⁷

In England and Wales, appointments to the Court of Appeal and High Court also follow a structured process. The Crown makes these appointments based on the Lord Chancellor's recommendations which are derived from candidates selected by the JAC in the case of puisne judges of the High Court. For appointments to the UK Supreme Court, the Lord Chancellor may reject a selected candidate once and can request reconsideration before recommending one of the candidates who has not been previously dismissed.⁷⁸ This process ensures judicial appointments maintain a level of scrutiny and accountability. The Commission is composed of fifteen members including seven judicial representatives; one Lord Justice of Appeal, one puisne Judge from the High Court, one senior tribunal office holder, a circuit judge, a district judge, one

⁷⁴ Justice (Northern Ireland) Act 2002 section 3.

⁷⁵ Judiciary and Courts (Scotland) Act 2008 section 9 and Schedule 1.

⁷⁶ See Constitutional Reform Act Part 3 and Schedule 8; Supreme Court (Judicial Appointments) Regulations 2013.

⁷⁷ Supreme Court (Judicial Appointments) Regulations 2013.

⁷⁸ Part 4 an Regulations 2013 (n 73 above).

judge from a first tier tribunal or an employment judge and one non-legally qualified judicial member. Additionally, the Commission includes two practicing or employed lawyers and six lay members, one of whom serves as the chair.

In Northern Ireland, judges of the High Court are chosen by the Northern Ireland Judicial Appointment Commission (NIJAC) and appointed by the Crown based on the Lord Chancellor's recommendation.⁷⁹ The NIJAC is made up of thirteen members which includes six judicial members, a barrister and a solicitor nominated by the General Council of the Bar and the Law Society of Northern Ireland respectively along with five lay members. All members are appointed jointly by the First Minister and Deputy First Minister.⁸⁰ Justices of the Court of Appeal and the Lord Chief Justice are appointed by the Crown on the Prime Minister's recommendation following consultations with the senior judiciary and the NIJAC.⁸¹

Further, in Scotland, the Judicial Appointments Board for Scotland (JABS) is responsible for selecting candidates for appointments made by the Crown based on the based First Minister's recommendation. The JABS is made up of twelve members including four judicial officers, one practicing advocate, one solicitor and six lay members appointed by the Scottish Ministers.⁸² When it comes to selecting the Lord President and the Lord Justice Clerk, the First Minister is only required to consider recommendations from an advisory panel which includes the chair of the JABS, one lay member and two senior judges.⁸³ For other appointments, the First Minister must choose a candidate recommended by the JABS. However, the First Minister has the authority to reject a candidate and request an additional recommendation from the JABS which could be the same candidate or a different one.⁸⁴ If the First Minister does not accept a recommended candidate, they must provide reasons to the Board.

5.2.4.1 Mechanisms for Combating Corruption

One of the mechanisms for combatting corruption within the UK is the exercise of disciplinary control over judicial officers. Individuals dissatisfied with a judicial decision have the right to appeal but they can also lodge complaints regarding a judge's personal conduct.⁸⁵ Matters regarding such concerns are escalated to a more Senior judge for High Court judges or to a Presiding judge for circuit judges. In cases of serious misconduct, the relevant Head of Division

⁷⁹ Section 5 and Schedules 1 and 3 (n 74 above).

⁸⁰ Section 3 (n 74 above).

⁸¹ Section 12 (n 74 above).

⁸² Judiciary and Courts (Scotland) Act 2008, Schedule 1.

⁸³ As above Section 19 and Schedule 2.

⁸⁴ As above Section 10 and 11.

⁸⁵ Courts and Tribunals Judiciary 'Judicial Conduct' Accessed at <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jud-acc-ind/jud-conduct/>.

or Presiding Judge refers the issue to the Lord Chief Justice and the Lord Chancellor ensuring accountability for individual judges.

A key principle of the judicial disciplinary system is that sanctions must be imposed when a judicial office-holder is found guilty of misconduct. The Lord Chancellor and the Lady Chief Justice, or a senior judge acting on their behalf, have the exclusive authority to determine these sanctions, which range from formal advice to removal from office as outlined in the Constitutional Reform Act 2005. The severity of the sanction depends on various factors, including the seriousness of the misconduct, the office-holder's acceptance of responsibility, its impact on others or the judiciary's reputation, personal issues affecting behavior, and any previous disciplinary records. Sanctions are publicly disclosed and remain on an individual's record indefinitely.⁸⁶ In the 2022-23 period, there were 36 misconduct cases among magistrates with 6 receiving formal advice, 11 formal warnings, 1 reprimand, and 4 being removed from their positions, totaling 22 cases.⁸⁷

The joint responsibility of the Lord Chief Justice and the Lord Chancellor is essential in addressing complaints about judges' conduct in England and Wales as well as some judges in Scotland and Northern Ireland. Established on April 3, 2006, the Office for Judicial Complaints now the Judicial Complaints Investigations Office manages these complaints and assists both authorities in fulfilling their duties. Complaints are initially directed to the Judicial Complaints Investigations Office, which determines their validity within the disciplinary framework. It's noteworthy that more than half of these complaints pertain to judicial decisions rather than conduct,⁸⁸ which is a crucial distinction. For Tribunal judges, complaints are typically addressed to the President of the relevant Tribunal, reflecting a tailored approach to different judicial structures.

When a complaint about judicial conduct is received,⁸⁹ it is evaluated by a nominated judge,⁸⁹ who then may recommend action to the Lord Chief Justice and the Lord Chancellor or refer the case to an investigating judge. Ultimately, the decision on the appropriate course of action rests with the Lord Chief Justice and Lord Chancellor. The judge subject to the complaint has the right to present their case at every stage, and if dissatisfied with the outcome, can escalate the matter to a Review Body.

⁸⁶ Judicial Complaints Investigations Office Annual Report 2022-2023 16.

⁸⁷ Above.

⁸⁸ Courts and Tribunals Judiciary (n 85 above).

⁸⁹ The Judicial Discipline (Prescribed Procedures) Regulations (2023) Regulation 8.

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In the case of magistrates, who number around 30,000, complaints are handled by Advisory Committees specific to magistrates, which then recommend actions to the Lord Chief Justice and the Lord Chancellor. Additionally, the Judicial Appointments and Conduct Ombudsman reviews the complaint handling process, ensuring proper investigation and addressing any maladministration. However, the Ombudsman does not have the authority to reconsider the original complaint about a judge's conduct, emphasising the structured nature of judicial accountability.

The Lord Chief Justice possesses the authority to issue formal advice, warnings, or reprimands to judges, and in certain situations, can suspend them from office. However, such actions require consensus between the Lord Chancellor and the Lord Chief Justice. While this involvement of a government minister in judicial discipline may seem to challenge the principle of judicial independence, it actually serves to prevent any perception that judges might hesitate to discipline peers. Moreover, sharing this responsibility between the Lord Chief Justice and the Lord Chancellor safeguards against any potential political motivations influencing disciplinary actions, thereby reinforcing judicial independence and the rule of law.

Judges in the UK have occasionally been labelled “as enemies of the people”⁹¹ and while instances of gross misconduct⁹² or corruption are rare,⁹³ they still raise concerns. Furthermore, judges often face accusations of encroaching upon political matters through activist decisions

⁹⁰ Regulation 6(1) (n 89 above).

⁹¹ J Slack, ‘Enemies of the people: Fury over “out of touch” judges who have “declared war on democracy” by defying 17.4m Brexit voters and who could trigger constitutional crisis’ (2016) *Daily Mail*.

⁹² S Murphy-Bates ‘High Court judge who complained about his lost luggage during £3billion British Airways case retires a week before disciplinary case’ (October 2017) *Daily Mail*.

⁹³ Dejevsky, ‘Serious corruption has happened in our justice system and the penalties could stand to be harsher’ (2015).

and extensive judicial reviews. Although the JAC and JCIO cannot address every allegation or accountability demand, they are essential for addressing some accountability needs. For these bodies to be effective, regulatory framework must be carefully structured to uphold judicial independence while also emphasising the fundamental principles of accountability. The conceptual foundations of these regulatory regimes are crucial as they not only determine their efficacy but also impose necessary functional and procedural limits.

5.2.5 Nigeria

The National Judicial Council (NJC) in Nigeria is established by the Constitution and consists of twenty four members including seventeen judicial members such as the Chief Justice, other senior judges and retired judges along with representatives from the Nigerian Bar Association and Presidential appointees.⁹⁴ This diverse composition ensures that the NJC encompasses a wide range of legal expertise and perspectives making it the primary advisory body responsible for recommending candidates for judicial appointments to both federal and state courts. The NJC plays the role of maintaining the integrity and independence of the judiciary by providing oversight and recommendations based on merit.

Additionally, Nigeria has a Federal Service Commission and State Judicial Service Commission in each state which consist of nine and eight members respectively. These Commissions advise the NJC on judicial appointments at their respective levels ensuring a collective approach to the appointment process. For significant judicial positions such as Supreme Court judges and Heads of Federal Courts, confirmation is required from the Federal Senate while State Chief Judges must be confirmed by the state House of Assembly. This multifaceted structure reinforces accountability and transparency in judicial appointments.

The 1999 Constitution safeguards the tenure of judicial officers until their retirement. However, this protection is not absolute. There are circumstances under which a judicial officer may be removed from their position such as termination by the President or Governor. Importantly, a judicial officer cannot be dismissed for reasons other than those specified in the Constitution. Accordingly, the grounds for removal include the inability to perform their official duties, misconduct or violations of the established Code of Conduct. This framework reinforces judicial accountability by ensuring that judicial officers who breach the Code of Conduct are held to account.

The misconduct that can warrant the removal of a judicial officer must significantly affect how the public perceives them in their role. This includes actions related to the performance of their

⁹⁴ Constitution of the Federal Republic of Nigeria (1999) Article 153(1)(i).

judicial duties and their overall reputation as a judicial officer. Examples of such misconduct encompass corruption, abuse of office, criminal convictions and drunkenness. Additionally, the grounds for removal are not restricted solely to professional, they may also involve behaviors in the officer's personal life that could damage public trust in their integrity as judicial officers.⁹⁵ This framework ultimately contributes to the fight against corruption in the judiciary and enhancing public trust in the judicial system.

Further, the Conduct of judicial officers in Nigeria is governed by two primary statutes. The Code of Conduct for Public officers and the Code of Conduct for Judicial Officers. It is generally asserted that violations of either of these Codes by a judicial officer can justify their removal from office. The Code of Conduct for Public Officers applies broadly to all Public Officials in Nigeria prohibiting actions such as soliciting or accepting gifts related to their official duties. Additionally, this Code restricts certain behaviors related to their official duties. Additionally, this Code restricts certain behavior even after retirement for example, the Chief Justice of Nigeria is not permitted to accept employment with a foreign company post retirement.

The Code of Conduct for judicial officers specifically regulates the behavior of judges while they are in active service aiming to uphold the integrity of the judiciary and foster public confidence. This Code contains provisions similar to those found in the Code of Conduct for Public Officers. Judicial officers are required to adhere to the Constitution and other relevant laws while performing their judicial functions. They must avoid any abuse of power and maintain the highest standard of decorum during court proceedings among others.

The NJC plays a crucial role in the disciplinary process for judicial officers as outlined in Section 292 and the Third Schedule of the 1999 Constitution. No judicial officer including the Chief Judge of a State can be removed from office without the prior recommendation from the NJC. The Council has the exclusive authority to receive complaints against all judicial officers in Nigeria, investigate these complaints and make recommendations to either the President or the State Governor regarding the removal of the officer in question. Furthermore, the Senate or the House of Assembly must approve the removal of heads of courts only after receiving the NJC's recommendation. This process ensures that any disciplinary action taken against judicial officers is conducted fairly and follows a structured legal framework.

The perception of Nigerians regarding judicial corruption is largely negative as most individuals disapprove of financial influence in court cases. However, survey data indicates a widespread

⁹⁵ F Olorunoyi 'Fighting Judicial Corruption in Recent Nigerian History: Trends, Emerging Legal Matters and Prospect' (2017) *Nigerian Law Journal* 20(2) 426-454 431.

believe that judges frequently accept bribes in exchange for favorable rulings.⁹⁶ This expectation of corrupt behavior may be further fueled by the National Judicial Council's poor track record in disciplining judges coupled with the significant discretionary powers held by the country's Chief Justice.⁹⁷ For instance, from 2000 to 2022, the NJC addressed only 941 complaints against judges within Nigeria's judicial system which encompasses 10 levels. Of the 919 cases that were resolved, only 129 judges were found guilty and faced penalties.⁹⁸

As earlier stated, the perception of the Nigerians about corruption in the judiciary is exacerbated by the too much discretionary powers vested upon the Chief Justice. The Chief Justice of Nigeria is the chairperson of the NJC which oversees both the appointment and disciplining of judges. He is equally the chair of the FJSC. Further, the Chief Justice appoints over 80% of members of the NJC and 60% of the FJSC. As *Justice Dattijo* noted,

‘..... a person with absolute powers, it is said, corrupts easily and absolutely. As chair of NJC, FJSC, NJI & LPPC, appointments as council and board and committee members are at his pleasure. He neither confers with fellow justices nor seeks their counsel or input on any matters related to these bodies. He has both the final and the only say. This needs to change. Continued denial of the existence of this threatening anomaly weakens effective judicial oversight in the country’⁹⁹

The role of the NJC in combating corruption within Nigeria's judiciary raises significant concerns given its limited effectiveness in addressing misconduct among judges. The concentration of power in the hands of the Chief Justice who chairs both the NJC and the FJSC creates a system ripe for potential abuse. With the Chief Justice appointing a substantial majority of the NJC members and having unilateral authority over judicial appointments and disciplinary actions, the framework lacks the necessary checks and balances. This situation undermines accountability and transparency suggesting that the NJC may not be an exemplary model for the JSC in Uganda.

Never the less, Uganda can learn from Nigeria's proactive approach to judicial accountability, particularly in the swift handling of corruption allegations against judicial officials. The rapid investigation and arrest of a sitting Chief Justice in Nigeria, following breaches of the code of

⁹⁶ LK Hoffmann ‘Tackling Judicial Bribery and Procurement Fraud in Nigeria: How Harnessing Public Disapproval can enable collective action against corruption’ (2024) Research Paper Africa Program.

⁹⁷ OD Akinkugbe ‘The Politics of Regulating and Disciplining Judges in Nigeria’ (2021) in Devlin R and Wildeman S (2021) (eds), *Disciplining Judges: Contemporary Challenges and Controversies*, Cheltenham: Edward Elgar Publishing 254.

⁹⁸ As above.

⁹⁹ See Full Text Of Justice Dattijo's Speech On CJN's Powers, State Of The Judiciary, Other Matters' Channels TV, 27 October 2023 <https://www.channelstv.com/2023/10/27/full-text-of-justice-dattijos-speech-on-cjns-powers-state-of-the-judiciary-other-matters>.

conduct,¹⁰⁰ demonstrate a strong commitment to upholding ethical standards and maintaining public trust in the judiciary. By adopting similar practices, Uganda could reinforce the importance of its Code of Conduct and promote accountability among judges. This would not only highlight the consequences of unethical behavior but also help restore public confidence in the judicial system by showing that no one is above the law, regardless of their position.

5.2.6 Zimbabwe

The judiciary in Zimbabwe has faced significant challenges over the past two decades primarily stemming from its judicial appointment process. Following the political developments after 2000, concerns arose that the executive was filling the judiciary with political appointees further eroding public trust. The political turmoil of the last decade intensified demands for judicial reforms particularly regarding the appointment of judges. As a result, the judiciary became a focal point for reform during the constitutional drafting process that ultimately led to the adoption of the new constitution.

The current Judicial Service Commission was established under Sections 189 to 191 of the 2013 Constitution of Zimbabwe. Section 189 provides that there shall be a thirteen member Judicial Service Commission headed by the Chief Justice. Other members of the commission are other judicial members and lawyers nominated by their association among others. The commission is mandated to “promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice in Zimbabwe and has all the powers needed for this purpose”.¹⁰¹ Additionally, the government is now constitutionally required to consider the Commissions advice on issues pertaining to the judiciary and the administration of justice.¹⁰²

Section 180 of the Constitution¹⁰³ outlines the appointment process for judicial officers stating that the Chief Justice, Deputy Chief Justice, Judge President of the High and all other judges are appointed by the President. To initiate a judicial appointment, the Judicial Service Commission must first advertise the position, invite nominations from both the President and the public, conduct public interviews for candidates, prepare a shortlist of three qualified nominees and submit this list to the President who is then required to appoint one of the nominees.¹⁰⁴

¹⁰⁰ SG Ediagbonuvie ‘Fighting Judicial Corruption in Nigeria’ (2024) *Global Journal of Politics and Law Research* Vol 12 No. 6 44-63 55.

¹⁰¹ The Constitution of Zimbabwe 2013 Section 190(1).

¹⁰² As above.

¹⁰³ Section 180 (n 101 above).

¹⁰⁴ Constitution of Zimbabwe Amendment (No.2) Act 2013 Section 180 (2) (a)-(e).

This procedure enhances transparency and fairness in judicial appointments. The JSC, an independent body composed of various legal professionals and representatives, oversees the selection process. All candidates are treated equally during interviews which include a written assessment followed by oral questioning, ensuring that appointments are based on merit. The criteria for selection are clearly defined in the Constitution requiring candidates to demonstrate independence, integrity and extensive legal knowledge. Additionally, the JSC actively involves the public by advertising vacancies and allowing nominations thereby fostering accountability and ensuring the selection process reflects a diverse range of perspectives.

The outlined appointment process for judicial officers reflects the crucial role of the Judicial Service Commission in combating corruption within the judiciary by promoting transparency, accountability and merit based selection. By establishing a structured procedure that includes public advertisements, open nominations and rigorous interviews, the JSC mitigates the risk of nepotism and bias ensuring that only qualified individuals with a commitment to integrity are appointed. This systematic approach not only enhances public confidence in the judiciary but also reinforces the expectation that judicial officers uphold high ethical standards thereby actively contributing to the fight against corruption within the legal system.

According to the Chief Justice, the Zimbabwean framework for selecting and appointing judges marks a significant advancement in the judicial system. It addresses a crucial public interest issue with a commitment to transparency and public participation. This appointment process demonstrates a strong if not complete adherence to the Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers. The model's effectiveness lies in its ability to restrict executive power while encouraging public engagement in the selection process.¹⁰⁵

Further, according to Transparency International Zimbabwe, the Judicial Service Commission has committed to address corruption within the judiciary. The report indicated 19 judicial officers and court officials were convicted, two acquitted and twenty four cases still pending trial.¹⁰⁶ This commitment represents a significant stride in promoting integrity within the legal system. By taking decisive action against wrongdoing, the JSC reinforces its authority and fosters public confidence in the judiciary ultimately contributing to a more transparent and accountable legal framework.

¹⁰⁵ L Malaba 'The Merit Based system for Judicial Appointment. Presentation by the Hon. Chief Justice of the Republic of Zimbabwe at the Southern African Chief Justices' Forum Conference and Annual General Meeting 2019 Accessed at <https://www.jsc.org.zw/page/publications>.

¹⁰⁶ Transparency International Zimbabwe 'Judicial Corruption in Zimbabwe' A 2020 Publication by Transparency International Zimbabwe.

Additionally, the government has initiated a significant transformation within its judiciary leading to a new characterised by exceptional efficiency and transparency which enhances the nation's legal system on international level central to this is the Integrated Electronic Case Management System (IECMS), an innovative tool designed to automate and simplify the entire process of legal cases from filing through to resolution and appeals. To facilitate the effective implementation of the IECMS, the Judicial Service Commission has emphasised the importance of thorough training and development for legal personnel. The efforts made last year have produced positive outcomes, improving the skills of judicial officers and support staff. This year, the JSC remains steadfast in its commitment to ongoing improvement continuing to prioritise training as a key strategic focus according to the Herald.¹⁰⁷

This achievement is a significant plus for the JSC in its fight against corruption within the judiciary as the implementation of the IECMS foster greater efficiency and transparency in the legal process. By automating and streamlining the entire lifecycle of legal cases from filing to resolution and appeal, the IECMS, minimises opportunities for corrupt practices and enhances accountability. The JSC's emphasis on comprehensive training and development for legal officers has further strengthened the skills of judicial staff improving their competence and effectiveness. With a continued commitment to training as a strategic priority, the JSC is well-positioned to maintain progress in combating corruption ultimately ensuring a more reliable system.

5.3 Analysis of Emerging Issues

Corruption in the judiciary is a significant challenge faced by many legal systems worldwide. Judicial councils which are tasked with ensuring an efficient and effective judiciary are under increasing pressure to tackle this pervasive issue. Their effectiveness in combating corruption depends on several factors including their composition, appointment processes, the breadth of their mandate and the integration of technology. These elements play a key role in determining how well these councils can fulfill their responsibilities and promote integrity within the judicial system.

5.3.1 Diverse Representation

One of the cross-cutting issues identified is diverse representation within the Judicial Service Commission which is crucial for effectively combating corruption in the judiciary. For example, South Africa, Nigeria, Zimbabwe and Ghana have Judicial Service Commission's that include

¹⁰⁷ The Herald 'Courts deliver stellar performance in 2023' Assessed at <https://www.herald.co.zw/courts-deliver-stellar-performance-in-2023/#>.

members such as law educators nominated by relevant institutions and representatives from cultural organisations. This diversity fosters a wide range of perspectives and approaches in tackling corruption ensuring that the Commission can address issues from multiple angles. Additionally, a well-structured JSC plays a crucial role in appointing qualified judicial officers and rigorously disciplining those who engage in misconduct. By incorporating varied insights and expertise, the JSC can enhance accountability and integrity within the judiciary ultimately contributing to a more effective fight against corruption.

5.3.2 Rigorous and Transparent Recruitment Mechanisms

Secondly, implementing a rigorous and transparent recruitment mechanism particularly for positions on the higher bench is essential in combating corruption. Drawing from models in South Africa, Kenya and the United Kingdom, this process should involve soliciting opinions from law societies regarding potential candidates. Moreover, it is crucial to limit the executive's role in the appointment process. If the Executive must be involved, it should be restricted to selecting candidates solely from a pre-approved list, providing written justifications for any rejections and refraining from dismissing candidates who are resubmitted after a thorough vetting process. Such rigorous and transparent recruitment practices not only bolster public confidence in the judiciary but also reduce opportunities for corrupt influence by ensuring that only qualified, morally upright and deserving individuals ascend to the bench. This enhances accountability and integrity ultimately contributing to a more trustworthy judicial system.

Furthermore, the UK's rigorous processes for candidate selection and the ability to request reconsideration of candidates highlight the need for clear guidelines within the judicial appointment systems in Uganda. By considering the implementation of defined grounds for rejection and encouraging a review process, the Commission could mitigate the risk of corruption and favoritism in judicial appointments. Establishing an advisory panel or similar body to assist in the selection of high ranking judicial officers could provide additional checks and balances ultimately contributing to a more robust and trust worthy judicial system.

In exploring the effectiveness of JSCs in combating corruption within the judiciary, the comparative analysis reveals several emerging issues that warrant attention. As different countries implement varied models and practices, key themes such as diverse representation, transparent recruitment processes and the balance of power between Executive and judicial appointments become increasingly significant. These themes not only highlight the strengths and weaknesses of existing frameworks but also underscore the need for adaptive strategies that can better address the evolving challenges of judicial integrity. By examining these emerging issues, we can

identify best practices and innovative approaches that can enhance the role of JSCs in fostering accountability and trust in the judicial system.

5.3.3 Executive Formation of Tribunals to Examine Judicial Misconduct

An emerging concern in the fight against judicial corruption is the appointment of tribunals to investigate judges' misconduct by the President or head of the Executive. This practice undermines the independence of the Judicial Service Commission which should have the exclusive authority to appoint and discipline judges as an autonomous institution. Unfortunately, in many jurisdictions including Uganda and Kenya, the President, who heads the executive branch also appoints the tribunals responsible for investigating judicial misconduct. This dual role creates a conflict of interest as the executive's influence over disciplinary matters compromises the JSC's mandate to ensure accountability among judicial officers. Such interference can erode public confidence in the judiciary and impede effective oversight highlighting the urgent need to reinforce the independence of the JSC in managing judicial appointments and disciplinary actions.

5.3.4 Judicial Service Commissions led by Chief Justices or Judges

Another concern is the fact that in some jurisdictions, the JSC is headed by the Chief Justice who is also the head of the judiciary. This dual role creates a conflict of interest as the chair may be inclined to support errant judicial officers thereby compromising the Commission's ability to exercise effective disciplinary control. This practice is prevalent in many jurisdictions including Kenya, South Africa and Nigeria where the overlap in the leadership roles raises concerns about impartiality and accountability. In Uganda, the situation is slightly different as the Commission is chaired by a High Court judge appointed by the President which still poses challenges to independence. Such structural conflict hinder the JSC's mission to supervise the judiciary effectively and undermine public trust in the integrity of judicial oversight highlighting the need for reforms that ensure greater separation between judicial leadership and disciplinary.

The concern regarding the JSC being chaired by the Chief Justice significantly affects its role in combating corruption within the judiciary by undermining its independence and efficacy. When the head of the judiciary also leads the Commission responsible for supervising judicial conduct, it creates an inherent conflict of interest that may lead to biased decision-making in disciplinary matters. This dual role can also result in a reluctance to hold errant judicial officers accountable thereby eroding the JSC's authority and credibility. Consequently, public confidence in the judiciary diminishes and the perceived lack of impartial oversight enables corruption to persist unchecked. For the JSC to effectively combat corruption, it is crucial to establish clear

boundaries that separates its leadership from judicial governance to ensure unbiased and rigorous enforcement of disciplinary standards.

5.3.5 Executive Appointment of Commission Members

Furthermore, is the issue of the substantial appointment of the Commission members by the President. With a significant number of members appointed by the President, the potential for political influence over the Commission's decisions increases thereby undermining its independence. In Uganda, the President holds significant influence over the composition of the Judicial Service Commission although this power is balanced by the necessity of parliamentary approvals for appointments. A JSC that is largely made up of political appointees is less likely to independently evaluate the qualifications of potential judicial candidates often aligning its decision with the interests of their political leaders¹⁰⁸. Additionally, this can lead to lack of accountability as JSC members may feel beholden to the executive rather than prioritising their mandate to uphold judicial integrity. Such arrangement erodes public trust in the JSC's ability to impartially oversee judicial conduct and effectively combat corruption necessitating reforms to ensure a more balanced and independent composition that can operate free from political pressures.

5.3.6 Restricted Function of Judicial Service Commissions

The limited role of the JSC in many jurisdictions significantly impacts its effectiveness in combating corruption within the judiciary. When the JSC's authority is restricted whether through inadequate powers to investigate, limited oversight capabilities or constraints on disciplinary measures, it hampers its ability to enforce accountability and uphold judicial standards. This limitation often results in a reactive rather than proactive approach to corruption allowing unethical behavior to flourish without appropriate checks. Furthermore, a constrained JSC may struggle to implement comprehensive reforms necessary for fostering a culture of integrity and transparency within the judiciary. As a result, the public perception of judicial integrity diminishes further entrenching corruption and undermining the JSC's fundamental mission to ensure a fair and impartial judicial system. To enhance its effectiveness, it is crucial for the JSC to be empowered with a robust mandate that enables it to actively combat corruption and promote accountability within the judiciary.

5.4 Conclusion

¹⁰⁸ W K Ochieng 'The Composition, functions and accountability of the Judicial Service Commission from a Comparative Perspective' (2016) *Judicial Accountability in the New Constitutional Order*. Jill Cottrell Ghai (Eds) 16.

While the Commission plays a vital role in combating corruption within the judiciary by vetting and recommending competent and morally upright candidates for judicial positions as well as exercising disciplinary control over errant judicial officers, its effectiveness is significantly constrained. Factors such as limited authority, the influence of the executive branch on Commission decisions due to its composition and conflicts of interest arising from overlapping roles impede the JSC's ability to fulfill its constitutional mandate. These challenges not only weaken the JSC's capacity to enforce accountability but also diminish public trust in the integrity of the judicial system.

To enhance the effectiveness of the JSC in the fight against corruption it is essential to implement reforms that strengthen its independence and broaden its mandate. Ensuring a more balanced composition that minimises executive influence along with granting the JSC greater authority to investigate and discipline judicial officers, will empower it to operate more effectively. By addressing these emerging concerns, the JSC can better fulfill its crucial role in promoting transparency and accountability within the judiciary ultimately fostering a more just and trustworthy legal system.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

- 6.1 Introduction
- 6.2 Conclusions
- 6.3 Recommendations
- 6.4 Implications and Areas for further research

6.1 Introduction

This last chapter summarises the main findings of the study emphasising the general trends that surfaced and suggesting both conceptual and practical directions for further work. It separates the task into two main parts. The study's main themes, the problem context, the global and regional frameworks, Uganda's institutional and legal responses, the realities of practice and the lessons learned from other jurisdictions are all covered in the first set of conclusions which sums up the investigation. These conclusions are offered cohesively as interconnected thoughts that provide a comprehensive picture of the topic rather than as discrete results.

The chapter's second section lays out proposals that are arranged into distinct threads that include institutions, practice, policy and legislation. These recommendations, which are meant to encourage reforms that are both practical and revolutionary, are based on the facts and analysis gathered during the research. In addition to filling up the gaps that have been found, the recommendations also seek to strengthen existing areas of strength and offer fresh viewpoints that may enhance long-term efficacy.

The chapter concludes by pointing up areas that require more investigation and discussion. These are problems that go outside the current study's purview but are nevertheless essential to advancing knowledge and maintaining advancement. The chapter aims to conclude the study in this way while also providing opportunities for further research and improvement.

6.2 Conclusions

The research underscores the importance of an independent and accountable judiciary as a temple of justice. It is expected that the courts would be a beacon of hope where all citizens can seek remedy without fear or favor. However, data from integrity reports and public polls indicates that bribery, case delays, missing court files, abuse of judicial authority and executive meddling among others are some of the ongoing activities that undercut this expectation in

Uganda. These facts cause litigants not only actual injury but also the equally harmful impression that justice is for sale and hence a preserve for the rich or connected. Therefore bolstering judicial integrity as the first line of defence against corruption is a crucial subject. This entails not just disciplinary supervision but also establishing the conditions necessary for honesty to flourish such as sufficient judicial resources, open and transparent processes, promotions based on merit and an accountable culture. For the judiciary to regain trust in the eyes of the Ugandan people, the Judicial Service Commission, which is the constitutionally designated guardian of accountability, must be at the forefront in fostering these foundations.

6.2.1 International and Regional legal framework

One of the study's most important takeaways is that maintaining judicial integrity requires being rooted in a network of regional and international standards. These standards are derived from both formal legal frameworks and informal guidelines. Although sometimes referred to as ‘soft law,’ informal guidelines also offer authoritative principles that influence how judicial systems define accountability, independence and impartiality. The expectation that justice should not only be done but seen to be done without fear, favor or undue influence is expressed in a number of documents including the Bangalore Principles, the UN Convention Against Corruption, the ICCPR and the Universal Declaration of Human Rights among others.

These frameworks maintain that the court is the defender of equity, justice and dignity in addition to its duty in settling conflicts. They aim to strike a balance between independence and responsibility by ensuring open and transparent appointment processes, tenure protection and accountability systems. They also emphasise how judicial corruption violates international commitments and is not only a domestic issue but compromised courts jeopardize international rule of law and human rights. These provisions thus establish a framework which obligates the JSC to oversee judicial conduct, implement ethical standards and enforce disciplinary measures against corrupt practices.

These same principles are upheld at the regional level for example in the African context by the African Charter on Human and Peoples’ Rights and the AU Convention on Preventing and Combating Corruption. These instruments put pressure on states to remove legal restrictions that jeopardise judicial independence, provide courts with sufficient funding, and ensure that judges operate in an environment free from excessive pressure. In a similar vein, sub-regional organisations like the East African Community establish common criteria for honesty and accountability.

In conclusion, the international and regional frameworks form the basis for judicial monitoring as an institutional protection against both internal misbehavior and external political meddling, and it is not a luxury. Here, Judicial Commissions and Councils stand out as the institutional representation of these values bridging the gap between accountability and independence. Lastly, the guidelines also serve as a reminder that these organizations by themselves are not enough, they need to be a part of a larger reform ecosystem that supports fair procedures, transparency and access to justice. In the absence of such, supervision runs the risk of becoming symbolic rather than revolutionary.

6.2.2 National Legal and Institutional Framework

A wide range of Anti-Corruption and stewardship powers over nominations, punishment, service conditions, legal education and complaints are granted to the JSC by Uganda's legislative framework. The framework establishes unambiguous norms of independence, propriety and accountability and is based on constitutional principles, the Administration of the Judiciary Act, Anti-Corruption laws, Leadership Codes and whistleblower rights. However, the JSC's internal capacity limitations, procedural overlaps among agencies and executive control in senior judge selections and removals all undermine its efficacy. These shortcomings are brought to light by the appointments-discipline relationship. Despite the JSC's responsibility for merit-based hiring and disciplinary screening, presidential confirmation and executive-led removal tribunals open doors for political influence, undermining judicial independence and the deterrent power of sanctions.

The implementation of Uganda's comprehensive Anti-Corruption toolkit which includes statutory offences, disciplinary regulations, whistleblower channels, asset declaration standards and national strategies is hampered by inconsistent consent requirements, conflicting mandates, and inadequate transparency procedures. Evidence from interviews suggests that selective sanctions targeted at lower courts, rent-seeking in hiring and a lack of public comment are all caused by enforcement and visibility gaps rather than a lack of rules. Part-time commissioners, paper-heavy procedures, and inadequate digital record-keeping are examples of institutional flaws that further undermine trust, while unresolved governance problems like unequal staff compensation and contentious nominations feed mistrust. Thus, the framework is not intrinsically flawed rather, its legitimacy hinges on addressing executive weaknesses, professionalising processes and radicalising transparency to ensure that publicity, power, and process all work together to ensure integrity by design.

6.2.3 The role of the JSC in combating corruption in the Judiciary

The JSC's actual work experience shows that there is still a significant gap between the design of the constitution and its actual implementation. The Commission is portrayed as a stronghold against judicial corruption on paper but in reality, it functions under restrictions that reduce its efficacy. Whereas the JSC has made progress in resolving minor infractions and increasing public awareness of judicial integrity, structural flaws still exist that restrict its transformational potential according to data from complaints handling, disciplinary actions and oversight missions.

Investigating and resolving complaints is one of the most obvious difficulties. Only a small percentage of the numerous complains that are received result in disciplinary actions being taken against errand officers. This attrition is explained by procedural bottlenecks, inadequate finance, bad record administration and perhaps an unwillingness to challenge top officials rather than a lack of mandate. As a result, accusations of selective justice are fueled by an accountability system that seems to be more active against subordinate workers than higher judicial officers. Discipline's deterrent effect is diminished in such a setting because the public views inconsistency as acceptance of corruption at the highest levels.

Additionally, the Commission has tried to use inspection and outreach as preventative measures. Campaigns for public awareness, workshops on integrity promotion, and inspections show that it is acknowledged that combating corruption requires not just enforcing laws but also fostering an integrity-based society. However, due to a lack of systematic follow-up and limited resources, these attempts have remained intermittent. Outreach has the risk of becoming symbolic and providing awareness without long-term effect if it is not regularly monitored.

In addition, institutional capability limits efficacy. The JSC's operational independence is nonetheless constrained by its continued reliance on the national budget. Lack of personnel compromises the thoroughness and promptness of investigations, particularly in investigative units. Deficits in technology, especially in the areas of case monitoring and record-keeping, increase the likelihood of lost or altered data and exacerbate delays. The public's inability to readily monitor progress in the absence of digital transparency mechanisms feeds into the belief that complaints 'disappear' within the organisation.

These facts reveal a more profound reality. The JSC is still caught in a battle between promise and performance. Even though the JSC represents the constitutional goal of an honest and open judiciary accountable to the people of Uganda, the Commission's work will not gain the legitimacy required to rebuild public trust in Uganda's judicial system unless it can fortify its investigative apparatus, shield its procedures from political and hierarchical influences and clearly enforce discipline equally across all levels.

6.2.4 Lessons from other Jurisdictions

It is evident from the comparative analysis that Uganda is not the only country that struggles with the conflict between judicial accountability and independence. With differing degrees of effectiveness, monitoring agencies have been established in nations including Kenya, Ghana, South Africa and the United Kingdom to handle comparable problems. These examples point to potential changes that Uganda's JSC should make to better carry out its constitutional mandate.

The 2010 Constitution brought about changes in Kenya that granted the Judicial Service Commission more authority over hiring, disciplining, and interacting with the public. Due in part to an open hiring procedure and the active participation of civil society, the Commission has been able to establish itself as a visible defender of integrity despite political challenges. This illustrates the importance of participatory methods and the requirement that accountability transcend internal procedures and enters the public sphere. In contrast, Ghana's Judicial Council serves as an example of the limits of change when administrative power and financial limitations are not restrained. Corruption allegations in Ghana's court have frequently shown flaws in complaint resolution and investigation processes, highlighting the inability of legal authorities to maintain public confidence in the absence of independence or sufficient resources.

The Judicial Service Commission of South Africa exhibits both advantages and disadvantages. Pluralism and legitimacy are guaranteed by its diverse membership, which includes intellectual, legal, and political players. Appointment disputes, particularly those involving accusations of politicisation, show that composition by itself does not ensure objectivity. Nonetheless, Uganda should learn from South Africa's example of how a culture of accountability can be established via regularised public interviews, published decisions, and open discussion. Another component is demonstrated by the UK's Judicial Appointments Commission, which provides protection from political meddling through a transparent, professionalised, merit-based system that is governed by norms. Its experience shows that public trust in oversight organisations is higher when they are open to inspection, have enough resources, and follow consistent procedures.

These countries teach us that constitutional design is not the only factor that contributes to legitimacy. It calls for a purposeful fusion of autonomy, openness, sufficient funding, and a culture of impartial enforcement. This entails not just improving Uganda's JSC's official mandate but also changing the way it interacts with the public, responds to grievances, and enforces discipline at all levels. Effective monitoring organisations must appear both fair and tough in order to preserve the credibility of the judiciary, according to comparative practice.

6.3 Recommendations

The study makes recommendations drawn from best practices from other jurisdictions as well as insights gathered from key informants interviewed during this study. These recommendations are crucial for strengthening the role of the JSC in the fight against corruption within the judiciary. Implementing these recommendations is essential in creating a robust framework that not only addresses the current challenges faced by the JSC as discussed already but also fosters a culture of integrity in the judiciary.

6.3.1 Legal and Constitutional Reforms for the JSC

The proposal for legislative amendment aims to modify both the Constitution and the Judicial Service Commission Act. The Constitution serves as the Supreme law from which the JSC derives its authority. Currently, the Constitution outlines a narrow mandate for the JSC which limits its effectiveness in overseeing judicial affairs necessitating a need to expand this mandate to better fulfill its role. Further, it is crucial to provide for the financial autonomy of the Commission by law.

6.3.1.1 Enhance the Mandate of the JSC

Despite the JSC's responsibility to screen and recommend suitable candidates for appointment, Uganda's present system provides that the President has the final say in the appointment of judges. Both the idea and the actuality of independence are compromised by this arrangement. In order to rebalance this authority and guarantee that the JSC's recommendations are legally enforceable or at the very least, restrict executive discretion or influence on appointment, a constitutional change should be sought. A change of this kind would align Uganda with countries such as Kenya and the UK, where nominations are protected from executive power by explicit legislative protections.

Secondly, to ensure accountability in the judiciary, the JSC must fully exercise disciplinary control over the judges. The existing practice of referring cases to executive-constituted tribunals delays accountability and invites for political interference which has led the public to perceive the JSC as not taking action against high court judges. Without needless executive hand-offs, legal change should enable the JSC to resolve disciplinary proceedings against all juridical officers subject to review by courts of judicature or an independent tribunal. This approach would reinforce the idea that wrongdoing is dealt with within the institutional framework of the JSC as the institution mandated by the Constitution to do so.

6.3.12 Establish a full time Commission

The Commission should transition from part time to full time Commission. Currently, only the Chairperson of the JSC among the nine (09) members of the Commission is a full time member. While the Commission's staff are full time staff, the execution of its mandates through standing committees requires the dedicated attention of all its members. Transitioning to a full time commission will enhance the Commission's effectiveness in fulfilling its responsibilities which have expanded due to the growth of the judiciary and the recent mandate to recruit and discipline judiciary support staff. This recommendation is reinforced by the fact that the mandate of the Commission has been broadened to recruiting and exercising disciplinary control over other staff of the judiciary. A part time Commission cannot effectively fulfill these broad mandate

6.3.13 Provide for financial autonomy of the Commission

The JSC's ability to take autonomous action is constrained by its dependence on the national budget process. The Commission would be shielded from budgetary manipulation by a constitutional or legislative guarantee of financial autonomy akin to those for Parliament and the Auditor General. Legislation requiring multi-year financial planning drawn from the national budget should be added to this in order to guarantee ongoing funding for outreach, investigations and technological advancements thereby enhancing the Commission's current efforts to combat corruption within the judiciary. Without sufficient resources, no monitoring body can operate efficiently. For essential operations including outreach, staff development and investigations, the JSC ought to establish a safeguarded funding line. Long-term planning would be possible with multi-year financing agreements and reach would be increased with designated funds for regional offices and technology.

6.3.14 Revise appointment of members of the Commission

Insulating the JSC from political interferences with its activities is key to building the independence of the institution. In order to achieve this, the JSC's makeup should be examined. Excessive executive domination damages credibility even when wide representation is achieved. Further, a JSC that is largely made up of political appointees is less likely to independently evaluate the qualifications of potential judicial candidates often aligning its decisions with the interests of the executive. Legitimation would be improved by a balanced membership that comprises of judicial officials, civic society and professional groups more room without veering into politicisation. South Africa's varied commission approach fosters inclusivity leading to a more balanced and fair Commission decisions.

6.3.2 Institutional and Governance Reforms for the JSC

Institutional and governance reforms are crucial for enhancing the effectiveness of the JSC. These reforms include a deliberate effort to create more visibility of the Commission through proactive communication channels, use of technology to bolster anti-corruption efforts and establishing a robust complaints handling mechanism that prioritises a short turnaround time for processing complaints and timely feedback to complaints.

6.3.2.1 Harness technology in fighting corruption

Harnessing technology in the fight against corruption is crucial for the JSC as corruption has become increasingly sophisticated. Traditional methods of corruption such as direct cash exchanges are being replaced by more complex schemes that involve agents and transactions conducted through online or mobile platforms. This evolution demands that the JSC adapt more innovative technological solutions to effectively combat corruption. One key strategy is to secure online platform for community reporting which allows citizens to report instances of judicial misconduct easily and anonymously fostering greater public involvement in the fight against corruption. Actively engaging with communities through social media platforms can also facilitate real time information flow. The JSC can use these channels to disseminate information about reporting mechanisms, raise awareness about corruption issues and encourage public dialogue. This engagement not only empowers citizens but also helps the JSC gather insights into emerging corruption trends and patterns.

Another way of harnessing technology is the implementation of electronic case management systems. By digitalising case files and making tracking accessible, the JSC can monitor the time spent processing each complaint. Currently, there are complaints that the JSC's turnaround time for handling complaints which is often perceived as excessively lengthy. This delay can lead to frustration among complainants who may eventually lose interest in their cases or choose to withdraw their complaints altogether. With an electronic case management system in place, the JSC can establish clear timelines for each phase of complaint processing ensuring that cases are handled promptly and transparently.

6.3.2.2 Creating visibility of the JSC

Further, since the majority of the JSC's present operations are based in Kampala, many people have no or limited access to the institution. Although the JSC has opened three regional offices in Mbarara, Masaka and Moroto, they are not sufficient to bringing the institution closer to the people. Accessibility should be increased by establishing regional liaison offices or collaborating

with High Court circuits. In addition to boosting public trust, this would produce more timely intelligence on local misbehavior.

Further, the JSC has to establish an open culture in addition to internal changes. Accountability would be normalised via the Commission's open engagement with the judiciary, legal profession, civil society and the public through the annual "State of Judicial Integrity" conferences. These forums ought to highlight improvements, report on trends and offer a place for discussing systemic issues. Although constitutional amendments are preferable, governance-level measures like implementing multi-year budgeting and ring-fencing resources for disciplinary procedures can also help the JSC become more independent. In order to prevent internal abuse and guarantee that resources are handled responsibly, the JSC should establish an independent Audit and Risk Committee.

6.3.2.3 Establish a robust complaints handling mechanism

A transparent, uniform process for accepting and categorising complaints should be established by the JSC as a way of its case handling mechanisms. This should be coupled with use of technology to achieve efficiency. Public trust would be increased and delays would be decreased by implementing online submission portals, complaint forms that are easy to use and a triage system that ranks cases according to severity and giving timely feedback to complainants about the progress or actions taken on their complaints. Research shows that top judges routinely evade responsibility whereas lower-level officers are more likely to face disciplinary action. To ensure that no complaint is rejected based on a person's status, the JSC must implement procedural safeguards.

Further, suspicion of selective enforcement which is fueled by the JSC's current seldom publication of the justification for its disciplinary decisions should be addressed. Decisions ought to be publicised in yearly reports and contain written justifications which should be suitably anonymised as needed. Reasoning transparency is essential for institutional memory and judicial learning in addition to public trust.

6.3.3 Strengthen Capacity of the JSC

To enhance the efficiency of the Judicial Service Commission as a public institution, it is essential to provide support and technical assistance aimed at strengthening its operational capacity. This includes equipping the Commission with the necessary resources and facilities to effectively carry out its functions. Sufficient funding can facilitate ongoing training and capacity building initiatives for JSC members and staff.

6.3.3.1 Establishment of a fully-fledged Investigations Department

At the moment, employees without specialised training in investigations manage a large portion of the JSC's disciplinary and complaints work. The quality and speed of investigations would be improved by creating a special Directorate of Judicial Integrity manned by forensic accountants, legal researchers and skilled detectives. Through institutionalising such knowledge and skills, ad hoc support from institutions like police as is the current arrangement would be used less frequently and procedural backlogs that undermine trust would be reduced. These would also improve the quality of investigations leading to more sanctions which in turn rebuilds public trust in the JSC.

6.3.3.2 Enhanced Capacity of Members and Staff

Capacity is both technical and ethical. If commissioners and employees want to be respected, they must be beyond reproach. Integrity within the organization would be established by establishing a code of conduct for JSC members that is supported by internal oversight and punishments for noncompliance. The proficiency of the JSC's Commissioners and employees determines how successful it is. It is crucial to have regular training in ethics, forensic accounting, complaint handling and investigation tactics. JSC employees should be exposed to best practices and guarantee that investigations adhere to professional standards through partnerships with regional and international judicial training institutions.

The JSC's present lean secretariat makes it difficult for it to manage the amount of inspections and complaints. Case backlogs might be decreased and workloads more fairly distributed by increasing the number of qualified investigators, attorneys and administrative personnel. This expansion is essential especially in light of the significant growth within the judiciary. For instance, the number of high court judges has risen from 83 to 151 and a new statutory instrument has established 38 High Court Circuits compared to only 20 previously. With additional judicial officers and support staff being recruited, the demand for effective oversight has never been greater. In addition to expanding the JSC's reach, decentralising capacity-building through the training of regional liaison officers would enable it to customise answers to difficulties unique to a given setting. It would expedite procedures and lessen the Commission's core burden if offices outside of Kampala were given the authority to conduct preliminary inquiries.

6.3.4 Transparency and Public Accountability Reforms for the JSC

To address the current criticisms regarding its perceived opacity, the JSC should take proactive steps to increase transparency and public engagement. Being transparent is one of the best ways to foster trust. In an annual “Judicial Integrity Report,” the JSC need to release anonymized summaries of complaint numbers, recruiting choices and disciplinary results. This would demonstrate to the public that grievances are not ignored and that constant action is done. Secondly, the JSC should consider using public interviews for higher judicial seats as is done in South Africa to lessen the impression that judicial selections are secretive. This would increase legitimacy, enable merit analysis, and show that selections are made based on ability rather than favoritism.

The Commission has to provide channels for public requests for information and encourage the public to participate in its activities. Regular public discussions on judicial integrity would also aid in demythologizing its operations and fostering a closer relationship between the people and the legal system. Additionally, the JSC should be accountable for how it spends money allocated to it in addition to processing cases. Publicising budget performance reports and audited accounts will deter suspicions of abuse inside the Commission and serve as a model for the larger court. The JSC should also be required by law to release yearly integrity reports that include data on complaints received, investigations completed and punishments levied. Uganda would be in line with best practices in South Africa and the UK, where transparency measures have improved confidence in judge nominations and punishment, if publishing were required.

6.3.5 Cooperation between the Commission and the Judiciary

Both the JSC and judiciary must collaborate effectively to tackle corruption within the judicial system necessitating increased cooperation between the two institutions. While the judiciary has made strides in promoting zero tolerance to corruption by among others developing an anti-corruption strategy, sensitising court users through awareness campaigns and establishing an independent internal disciplinary committee, issues of both actual and perceived corruption continue to persist.

To address these ongoing challenges, there must be deliberate and concerted efforts between both the judiciary and the JSC. This collaboration could involve joint training programs focused on ethical practices and anti-corruption measures, regular workshops to evaluate the effectiveness of existing strategies and shared platforms for reporting and addressing complaints. Additionally, both institutions should work together to enhance communication with the public about the steps being taken to combat corruption thereby reinforcing transparency and accountability.

6.3.6 Driving a social perception change

Surveys over the years have shown that the judiciary in Uganda is perceived as one of the most difficult to navigate. Many believe that the people cannot win a case, a notion that while not entirely accurate, persists particularly among those lacking resources such as knowledge, finances or time. This perception highlights inequality within the justice system where the wealthy and powerful have an advantage over the less fortunate. As a result, many legal disputes including criminal cases are often not addressed through the formal channels like police or courts leading to mob justice, ongoing community conflicts and a culture of impunity.

Secondly, in a community that glorifies corruption, where many individuals have achieved desired outcomes through corrupt practices and firmly believe that accessing timely and quality services is difficult without engaging in corruption, driving a mindset change becomes essential. This shift in perception is crucial for achieving meaningful and holistic results in the fight against corruption and for fostering a culture of integrity and accountability. Additionally, social perception change aims to shift perceptions on how individuals view corruption as an accepted norm to an intolerable act that undermines justice and fairness. To effectively implement a mindset change, the Commission must employ a comprehensive strategy that includes education, awareness and community engagement. Public awareness campaigns are essential for informing citizens about the detrimental effects of corruption and the importance of integrity within the judiciary.

6.3.7 Collaboration with other institutions

Judicial corruption involves a network of actors and if the JSC solely focuses on its mandate to combat corruption without engaging other stakeholders, its efforts may fall short. For instance, while the JSC disciplines judicial officers involved in graft, similar actions should also target state attorneys, advocates, and police officers who often participate in corrupt activities. Furthermore, the general public, which sometimes initiates corruption by believing they can bribe their way out, must not be overlooked. Institutions like the Inspectorate General of Government and the State House Anti-Corruption Unit should also work to prosecute these offenders concurrently.

By working together, the different entities especially those in the Justice, Law and Order Sector (JLOS) can create a comprehensive approach to tackle corruption at all levels ensuring that all actors involved in corrupt practices are held accountable. This unified effort not only enhances the enforcement of disciplinary measures but also fosters a culture of integrity within the judiciary. Additionally, involving the general public in anti-corruption initiatives can raise awareness and discourage corrupt behaviors ultimately leading to a more transparent and

accountable judicial system. Partnerships must also be utilised in capacity-building. Working together with inspectorates, international judicial councils and anti-corruption organizations can provide fresh approaches, technical assistance and comparison standards. Uganda's procedures would be improved and isolation would be lessened through exchange programs with organisations like the South African JSC or the UK Judicial Appointments Commission.

6.4 Implications and Areas for Further Research

The study's conclusions have significant ramifications for Uganda's governing environment. The understanding that the Judicial Service Commission is a constitutional protection for the integrity of justice itself, rather than merely an administrative agency, is at the core of the study. Therefore, strengthening the JSC is a democratic imperative rather than a technological choice. The Commission can restore trust in the judiciary as the protector of justice and rights if it functions independently, openly and with adequate capability. In contrast, Uganda's broader rule of law initiative will continue to stutter if it is limited by executive domination, a lack of resources and opaque procedures.

This has several immediate ramifications. First and foremost, judicial supervision changes need to be comprehensive, incorporating institutional development, cultural shifts, reduction of corruption and legal revisions. If larger governance dynamics like political meddling, inadequate financing or a lack of public trust are not addressed, narrow technological solutions won't be enough. Second, it is important to remember that the JSC is a component of a justice ecosystem that also includes civil society, the Law Council, the Inspectorate of Government, and the Anti-Corruption Court. For integrity to be maintained at every link in the judicial chain, coordination between these players is essential. Last but not least, openness is a reform in and of itself. Through making its procedures public, the JSC may gain credibility while addressing its structural flaws.

The research also identifies areas that may benefit from more investigation. One topic is the political economics of Ugandan judicial nominations, which examines how elite agreements, patronage and unofficial networks influence results outside of the official regulations. Another is comparative institutional design, which explains why certain African oversight organizations like Kenya's JSC, have established clear authority while others continue to function as supporting actors. Since the legitimacy of the court is ultimately determined by the trust or distrust of the people, more research might also examine grassroots popular opinions of judicial corruption. Lastly, future studies should examine how digital technologies affect judicial oversight,

specifically if new developments like e-dockets or online complaint mechanisms may increase openness without jeopardising anonymity.

In conclusion, while this study has offered a focused examination of the JSC's role in addressing judicial corruption, it also opens broader questions about institutional coordination, public engagement, technological innovation, and behavioral integrity in the justice sector. Addressing these areas through future research would not only enrich academic discourse but also inform evidence-based reforms to improve transparency, accountability, and public confidence in Uganda's judiciary.

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APPENDIX

Appendix 1: Interview Guide

INTERVIEW GUIDE

1.1 Introduction of Interviewer

Interviewer's Name: Asitolo Kizayo Agnes

Contact: 0753509472/0788723715

Affiliation: Makerere University, School of Law

Course: Master of Laws (LLM)

Date of the Interview:

1.2 Topic

Examining The Role Of The Judicial Service Commission In Combating Corruption In The Judiciary In Uganda.

1.3 Background and Purpose of the study

The persistence of corruption within the Ugandan judicial system, despite the existence of various legal and policy mechanisms designed to combat it, has led scholars to question the genuine political will to address this issue. While corruption in general is undesirable, its infiltration into the very justice system that should serve as a bulwark against such misconduct is especially devastating across all sectors of society. Corruption reduces the courts' credibility and also erodes trust in the courts' impartiality; thereby impacting the administration of justice and the rule of law covering dispute resolution, law enforcement and protection of human rights.

This research aims to examine the role of the Judicial Service Commission in combating corruption in the Ugandan Judiciary. Through your participation, this research will add to the body of knowledge and make recommendations for enhancing the role of the Commission.

1.4 Confidentiality

This interview is completely an informative exercise that will take approximately 30 minutes. The objective of the interview is to obtain information from relevant stakeholders such as yourself on the effectiveness of the role of the JSC in combating corruption in Uganda. Your personal data and your answers to questions will be kept confidential and shall be used for purposes of compiling a dissertation on the above research.

1.5 Interview Questions

1. Name of the interviewee?.....
2. Name of the institution and the designation of the interviewee?.....
3. Can you provide examples of specific programs or initiatives the JSC has undertaken to address corruption within the judiciary?.....
4. In your opinion, how effective has the JSC been in combating corruption in the judiciary?.....
5. What are the main challenges the JSC encounters in its efforts to combat corruption in the judiciary?.....
6. How can the JSC better engage with other stakeholders in fighting corruption?.....
7. What are the recommendations for the Judicial Service Commission in executing its mandate of combating corruption in the judiciary?.....
8. Do you have additional insights or comments regarding the role of the JSC in combating corruption within the judiciary?.....