

The role of the Judiciary in support of the Domestic Resource Mobilization in Uganda

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INTRODUCTION

The **Judiciary's mandate** is found in Article 126 (1) of the Constitution of the Republic of Uganda: "Judicial Power is derived from the people and shall be exercised by the Courts established under this Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people." Article 126 (2) outlines the following principles that should be applied when adjudicating cases:-

Justice shall be done to all **irrespective of their social or economic status;**

Justice shall **not be delayed;**

Adequate compensation shall be awarded to victims of wrongs;

Reconciliation between parties shall be promoted; and

In addition, Article 128(1) states that; "In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority".

Objectives

The primary objective of the Judiciary is to provide a mechanism for peaceful settlement of disputes through a rule based settlement mechanism, where aggrieved persons have a level playing field to present and argue their cases before an impartial judicial officer/ tribunal instead of resorting to extra judicial methods that predate the rule of law.

The specific Objectives of the Judiciary include;

- To ensure that Justice is done to all irrespective of their social or economic status.
- To ensure that Justice is administered in a timely manner without delay.
- To ensure that adequate compensation is awarded to victims of wrongs.
- To promote reconciliation between parties.
- To administer substantive Justice without undue regard to technicalities.

Functions

The main functions of the Judiciary are to:

- Administer justice through resolving disputes between Citizen and Citizen and between the State and Citizen;
- Interpret the Constitution and the laws of Uganda;
- Promote the rule of law and to contribute to the maintenance of order in society;
- Safeguard the Constitution and uphold democratic principles;
- Protect human rights of individuals and groups.

Judiciary and Rule of Law

It should be recognized that the judiciary as a key stakeholder in support of the domestic resource mobilization must ensure the **Rule of Law** for economic development. The role of the judiciary in promoting national development is thus of the greatest importance. For instance, the judiciary, particularly at a national level, is faced with the task of explaining how the country's laws are contributing to and facilitating sustainable development. Therefore, economic and social development greatly depends on an effective legal and judicial system.

For instance, it is believed that the rule of law is in effect when there are:

- **Meaningful and enforceable laws** (that means transparency, fairness, predictability in court decisions and confidence);
- **When there are enforceable contracts** (so that there's promotion of business and commerce);
- **When there is basic security** (that means personal safety and protection of property, and an independent judiciary that safeguards both); and
- **When there is access to justice** (that means concrete ways to invoke that safeguard).

If we have these elements in Uganda, the government can regulate the economy and empower private individuals to contribute to economic development by confidently engaging in business, investments, and other transactions. This in turn fosters domestic and foreign investment, the creation of jobs, and the reduction of poverty.

Development of Conducive Business Environment to Support Domestic Resource Mobilisation.

A strong Judiciary is also needed to provide the stability needed for the economy to grow. A viable and vibrant legal and judicial regime catalyzes, attracts and retains investment and credit. Clean investors are more willing to invest in countries where they can rely on the Judiciary to protect their hard earned investments.

The Judiciary will play a critical role of improving the legal, policy and regulatory environment that is conducive for doing business to create wealth and employment through determination of disputes expeditiously which will in turn support the domestic resource mobilization in Uganda.

A number of studies by the World Bank (*World Development Report 2005*) have presented evidence to show that; there are positive economic benefits of strong effective judiciaries; the degree of judicial independence is correlated with economic growth; competence of courts of law affects comparative economic competitiveness; better performing courts lead to more developed credit markets; and, a stronger judiciary is associated with more rapid growth of small firms as well as with larger firms in the economy.

A symptom of dysfunctionality of a judiciary lies in the size of the backlog of cases. Backlogs are of course related to times to disposition and other measures of delays, but backlogs are important in themselves because they lead to a lack of public confidence in a country's judiciary and to a hesitancy to rely on the judiciary in business planning.

The effectiveness of our judicial system will contribute towards making Uganda more credit worthy. Absence of investor or creditor's confidence would mean that the domestic resource mobilization will be seriously affected because a

dysfunctional judiciary is an obstacle for cheap credit and financing due to the difficulty of enforcing contracts in case of breach. For example studies from Argentina and Brazil by the World Bank (*World Development Report 2005*) show that firms doing business in provinces/ areas with better-performing courts enjoy greater access to credit. This will foster economic growth and investors will apply the resources to increase production which will support the domestic resource mobilization.

The Judiciary is also a very vital stakeholder in the preservation of peace and guaranteeing national security which are key pillars for national development. This entails defending and protecting people and their properties, the sovereignty and territorial integrity of Uganda, as well as ensuring peace and security for socio-economic development. Through ensuring and enforcing the rule of law, the Judiciary is expected to continue contributing towards the promotion of peace and national security in Uganda which in turn supports the domestic resource mobilization.

The Judiciary therefore, will be very vital in support of the domestic resource mobilisation through **enhancing access to Justice** particularly for vulnerable persons and fighting corruption in order to strengthen Uganda's competitiveness for wealth creation and inclusive growth. The Judiciary has come up with innovations such as small claims procedure which has unlocked a lot of money from the small disputes.

Under the Small Claims Procedure, Magistrate courts handle claims of less than approximately USD 2,800. Most disputes are disposed of in less than one month. The procedure has been instrumental in assisting the poor individuals, and the small and medium enterprises to recover debts and enforce simple contracts. At the moment, owing to its success rate, filings under the Small Claims Procedure have overtaken that in ordinary civil suits, in respect to cases under the same threshold, demonstrating its effectiveness and acceptability by the public, who have found the procedure user friendly, cheap, accessible and one they can use without the rigors of legal representation.

Independence of the Judiciary is key in promoting confidence of the public in the judicial system. It is important to promote both structural independence and

behavioral independence. The former term, refers to the way in which government is constitutionally structured: does that structure lend itself to independence? The latter is more far-reaching. Are individual judges independent—that is, not just dispassionate and free from bias, but willing to take difficult positions, to resist corruption, and to make truly independent decisions? This will have far reaching effects in promoting the development of our country because it will either make or break present and future investment decisions in our country.

It is important to emphasize the principle of the separation of powers. The Constitution set up three separate arms of government that is Executive, Parliament and the Judiciary for purposes of ensuring checks and balances in the exercise of power. The Judiciary should continue exercising this mandate so as to promote stability in our country and hence ensuring the necessary environment for development. It such exercise of power that will support domestic resource mobilization thriving under the rule of law.

The interpretations placed on language by administrators and courts are one of the determinants of how much the tax payer must pay. The taxpayers will always seek to limit the amount of tax that they must pay and hence evade or avoid payment of taxes. Therefore, widespread corruption, bribery, smuggling, falsification of documents, under-declaring of goods and income tax fraud in the tax system have undermined domestic resource mobilization in Uganda. The above if not subjected to litigation by way of prosecution or interpretation of laws in the courts will affect the government activities, thus the need to find ways in which to strengthen compliance in the country.

It bears emphasis that sometimes the law is unclear, sometimes it is clear but not known to the taxpayer, sometimes the law is clear but the administration effectively ignores a particular transaction or activity. This will invite the judiciary to interpret the law or apply of the law in order to give full effect and thus improve the domestic resource mobilization.

Tax administration must be constantly vigilant to unearth devious schemes of clever taxpayers aimed at avoiding taxes, and to study the impact of any judicial decisions which are prejudicial to the interests of revenue and which may require legislative amendments to clarify the legislative intent.

Independent, accessible, and efficient review mechanisms safeguard a taxpayer's right to challenge a tax assessment and receive a fair hearing in a timely manner. In Uganda, this process is enshrined in the legal framework and taxpayers can dispute: (i) the accuracy of the facts used by the auditor, (ii) the correctness of interpretation of the tax law, and (iii) the amount of penalties imposed by URA. URA has adopted a tiered review mechanism, starting with submission to the internal Objections and Appeals Unit (OAU) for an administrative review. Where a taxpayer is dissatisfied with the outcome of an administrative review, the case may be escalated to the Tax Appeals Tribunal (TAT). After TAT, taxpayers can seek further redress by going to the High Court. This process of resolving a tax dispute will go a long way in enhancing support of the domestic resource mobilization.

Conclusion:

In conclusion, the Judiciary plays a critical role in supporting domestic resource mobilization and will always be at the forefront of ensuring sustainable development for Uganda. Dispensation of Justice is also vital for maintaining law and order and peace in the society. As it has been said, 'if you want peace work for Justice.' In fact the foundation of civilization sustainable development rests on a just society based on the rule of law.

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