REPUBLIC OF UGANDA

JUSTICE FOR EVERYONE: *A MYTH OR REALITY?* FROM THE UGANDAN PERSPECTIVE

A KEYNOTE ADDRESS BY HON CHIEF JUSTICE OF UGANDA, MR JUSTICE BENJAMIN J ODOKI

AT

THE COMMONWEALTH MAGISTRATES AND JUDGES ASSOCIATION CONFERENCE

AT

SPEKE RESORT MUNYONYO KAMPALA, UGANDA

ON

11TH SEPTEMBER 2012.

A KEYNOTE ADDRESS BY HON CHIEF JUSTICE OF UGANDA MR JUSTICE BENJAMIN J ODOKI, AT THE COMMONWEALTH MAGISTRATES AND JUDGES ASSOCIATION CONFERENCE AT SPEKE RESORT MUNYONYO, KAMPALA, UGANDA, 11TH TO 15TH SEPTEMBER 2012

JUSTICE FOR EVERYONE: A MYTH OR REALITY? - FROM THE UGANDAN PERSPECTIVE

Introduction:

The keynote address will explore how Uganda has used the Sector wide approach to the rebuild the justice system from scratch to a functional justice system. The lessons learned in Uganda can offer solutions to other countries which are either rebuilding or strengthening their justice institutions to expand the frontiers of justice. Furthermore, the keynote address will explore how courts can use business models to increase internal efficiency and external responsiveness to reduce lead times for delivering justice.

You may all recall that Uganda went through political turmoil in the 1970s with the accession to power of the late Idi Amin Dada. Not only did Amin misrule the country, he tore down the rule of law and with it, destroyed rule of law institutions including the Judiciary, the Police and the Directorate of Public Prosecutions. Subsequent Governments, which followed in tow, did not rebuild the rule of law institutions, notwithstanding the fact that these institutions were being heralded as kingpins in revamping Uganda's economy.

By 1999, litigants were being forced to bring their own writing paper to court. The prisons were over congested - some carrying over 16 times their approved capacity. Police Cells were clogged with suspects awaiting trial. The courts were suffering under heavy backlogs. The average waiting time to be tried on a capital and petty charge averaged five years and two years respectively. Public confidence in the Judiciary was at its lowest.

1999, however, marked a significant turn around in Uganda. In that year, criminal justice institutions, weighed down by the break down in the rule of law decided to set up the Justice Law and Order Sector with the sole aim of initiating and implementing justice sector reforms to remove impediments to the delivery of justice. These reforms were driven in part by the chain-linked programme, which had been piloted in Masaka, one of the districts in Uganda. Under the Chain Linked programme, criminal justice agencies were brought together under one common loose organization to find solutions to systemic problems affecting the criminal justice system.

The Judiciary, the Directorate of Public Prosecutions, the Police Force, the Prisons Service and the probation services together with civic leaders met under the chair of the Judiciary to discuss and find low cost solutions to criminal justice problems such as delays, loss of files and corruption across the chain of justice. This was a fundamental departure from the routine, where each institution worked independently and was keen to point fingers at the other institution. The chain linked, emphasized open communication

between the institutions, cooperation and coordination in approaching systemic problems affecting the criminal justice system .The chain-linked programme worked so well in Masaka that within one year of its operation, justice institutions had solved most of their problems through communication, cooperation and coordination.

The lesson learned in the chain linked programme were:

1. That the delivery of justice was a system that was made up of different actors acting in concert with each other and that no actor was greater than the other. The success of one institution depended on the collective well-being of all.

2. That justice institutions by acting together could address systemic problems across the chain of justice.

3. That solutions to common justice problems of delay could be addressed by different institutions channeling their resources or priorities to streamlining processes and reducing on redundancies in the system.

4. That adopting a collaborative approach to justice delivered more dividends than institutions acting alone.

5. That a coordinated approach to resource mobilization and utilization maximized value for money.

6. That it was easier to innovate or find low cost solutions by acting in concert.

Motivated by the lessons learned in the chain linked programme, Government decided to set up the Justice Law and Order Sector to address the challenges of justice delivery. The Justice Law and Order Sector (JLOS) brings together all institutions involved in the administration of justice, maintenance of law and order as well as human rights. JLOS institutions include the Ministry of Justice and Constitutional Affairs, the Judiciary, the Directorate of Public Prosecutions, the Uganda Police Force, the Uganda Prisons Service among others. Collectively JLOS institutions strive to deliver justice to all.

JLOS is a sector wide approach with one common planning, budgeting and execution framework. JLOS institutions are run using a committee system. At the apex is the Leadership Committee, which is made up of cabinet ministers and heads of JLOS institutions. The Chief Justice chairs the Leadership Committee. The Leadership Committee is responsible for policy guidance and advocacy at the highest political level. The Steering Committee is made up of Permanent Secretaries of the different JLOS institutions. It is responsible for policy coordination and guidance. The Technical Committee is made up of technical officers. It is responsible for initiating policy and implementation of the investment plan. Thematic working groups, made up of experts from the institutions, support the Technical Committee. At a local level, there are the District Chain

Linked Committees, which are responsible for addressing challenges of justice delivery at the grass root level. A secretariat exists at the Ministry of Justice to coordinate the committees and all the JLOS programmes.

Operationally, JLOS institutions have one common strategic investment plan focused on promoting the rule of law through strengthened legal and policy frameworks for JLOS institutions; deepened access to justice and strengthened observance of accountability and human rights across the chain of justice.

Collectively, JLOS institutions identify and find solutions to justice delivery problems; mobilize resources for programmes, take a unified approach to defend and harness the rule of law; deal with development partners with one voice and address justice delivery from a results perspective.

JLOS institutions have set themselves to:

1. Increase public satisfaction in the delivery of justice
2. Increase the number of people who have access to laws
3. Increase public confidence in enforcement of existing laws
4. Increase the number of completed cases
5. Complete the chain of justice
6. Reduce the average length of time spent on remand
7. Reduce lead times for accessing justice services and generally improve public confidence in the delivery of justice.

Achievement of the above targets will help JLOS institutions to deepen access to justice for all, especially for the marginalized.

What lessons do we learn from the sector wide approach?

1. Promotes communication, coordination and cooperation among justice agencies.

2. The sector wide approach perceives justice from a systemic view and values all justice institutions as active participants in shaping the delivery of justice in Uganda.

3. The sector wide approach focuses more on attainment of impact and results than processes.

4. The sector wide approach ensures equitable growth of justice institutions by using affirmative action for the most disadvantaged institutions, which is not possible when institutions are left to grow on their own.

5. In a world of scarce resources, the sector wide approach helps institutions to prioritize resources for the common good of all.

6. The sector wide approach empowers institutions to find solutions to common problems instead of resorting to finger pointing or the blame game.

7. Sector wide approaches to justice delivery helps to pull together diverse functions and talents into a productive whole (sector)

8. The sector wide approach empowers institutions to benefit from synergies of inter dependence in the delivery of justice.

9. Sector wide approach enhances responsibility for results through peer review. Non-performing institutions are compelled to perform to avoid being shamed.

10. The collective success of all depends on the success of the individual institutions.

11. Sector wide approach maximized the benefits of the Government thinking and working as a whole to avoid systemic breakdown that have been witnessed in the environment and arms race, where countries took a lonely approach.

Whilst Uganda still faces challenges of building an effective justice for all, it, has been able through the sector wide approach to register the following results:

1. Disposal of cases has increased from 12% in 1999 to 48% while disposal of cases against registered cases is 144% in 2012. This indicates a significant reduction in the case backlog.

2. Congestion in prisons reduced from 500% to in 2005 to 192.5% in 2011

3. Crime rate reduced from 502 persons per 100,000 in 2007 to 302 persons per 100,000 in 2012.

4. Conviction rate for the Directorate of Public Prosecutions increased from 22% in 2000 to 53% in 2012, due to both improved prosecution skills and strengthened investigation methods.

5. Public Confidence in the administration of justice increased from 21% in 2005 to 60% in 2012.

6. Recidivism decreased from 72% in 1999 to 26% in 2012.

7. Collection of Non-Tax Revenue increased from U$ 5,000,000 in 2005 to U$ 30,000,000 in 2012.

The sector wide approach may not be the mantra for overcoming challenges in the delivery of justice but it offers a realistic chance for countries, which are rebuilding justice institutions to focus their collective energies on holistic reforms in the justice sector.

How can we make justice work for all beyond the sector wide approach?

Justice for Everyone – Managing Justice for results

There is growing concern that public sector institutions including the Judiciary are not delivering results. Public confidence in most Judiciaries is low because of inefficiency- giving room to growth of alternative dispute resolution mechanisms to fill the void left by the courts. The shrinking space and relevance of the courts in the arena of dispute resolution is a symptom of a deep-seated inefficiency within the justice system, which is perceived as being incapable of making decisions expeditiously.

Courts, like any other public institution, are under pressure to deliver results or else be rendered irrelevant. According to Andre de Waal,

This interest has grown even more because of the rapid changes in the competitive environment of companies, forcing them to ***"adapt faster and faster to growing international demands for flexibility and speed and to compete simultaneously on the basis of development cycle time, price, quality, flexibility, fast and reliable delivery, and after-sales support for their products"*** (Kasarda and Rondinelli, 1998). As a result of the changes in industry and society, governmental agencies too are subject to change. They have to rapidly reshape themselves into nimble and flexible organizations, which focus attention on the interests of stakeholders (Zeppou and Sotirakou, 2002; Pollitt, 2003)[1].

[1] Achieving high performance in the public sector, what needs to be done; a paper authored by Andre A De Waal

Unfortunately, public sector institutions are not changing fast enough and sometimes run more for the convenience of its employees than for their contribution and performance. Emphasis is put on processes rather than on results i.e. delivering justice. Whereas processes are very important in the attainment of justice, processes do not mean much for a woman who has been battered and is in search for remedy in the court.

Courts are funded by the taxpayers, and cannot therefore run away from results. Courts, therefore must[2]:

1. Improve the quality of public management – public judicial officers must become high performance managers – people who are guided by principles of client focus, continuous improvement and quality.

2. Bere solute on results, action oriented and decisive on taking against non-performers.

3. Innovate to serve their clients better.

4. Improve performance management systems.

[2] Supra 1

5. Improve process management within the courts through simplifications and alignment of processes to strengthen the courts to deliver results.

According to Peter Drucker[3], public institutions like the Judiciary can maximize results if they are disciplined about objectives, priorities and measurement of results.

Court resources must be pegged to results. For example, budgets for the court must go to the core business of the court, research on re-engineering processes and procedures to reduce lead-times for deciding cases. Use of technology should be expanded to assist in activities, which do not require the personal attendance of the judge or can assist the judge to do his work with ease.

But this requires judges to subject themselves to performance management, which was previously considered an affront on the independence of the Judiciary. Performance management as understood within the context of the Judiciary, includes activities, which ensure that goals are consistently being met in an effective and efficient manner. Performance management can focus on the performance of an organization, a department, employee, or even the processes to build a service, as well as many other areas. Court must adopt a results culture beyond usual case management, which has dominated judicial reform in the last twenty years. Infusing private sector principles in court administration may help courts to gradually

[3] Peter Drucker; The Practice of Management.

adopt a results based culture. Of course the court should not forget its cardinal duty of rendering a public duty in deserving cases because government cannot be run on a purely business model. But who said that, public services cannot be delivered at the most advantageous cost to the taxpayer?

Robust judicial performance is however, dependent on having an effective monitoring and evaluation framework – which provides a mechanism for measuring court, the out puts and inputs with clear indicators and targets at input, out put and outcome levels as well as guiding the allocation of scarce resources.

Satisfaction of public needs:

Traditionally the courts have delivered justice from a one-sided prescription model, where the judge administers justice from his or her perspective without involvement of the litigant. However, with the growth of social consciousness manifested in a strong human rights regime, democratization and public pressure, it has become imperative that justice should be administered in accordance with the norms and aspirations of the public. The public is diverse because of gender, color, groupings and other characterization and this calls for the judge to be mindful of these divisions.

As a starting point, the court must define the public (its stakeholders). Stakeholders are people who have a stake in the success and or failure of an organization. Success of any organization depends entirely on satisfying different stakeholders needs. According to Peter

Drucker[4], satisfaction of different stakeholders (customers) needs requires, in the context of the court to ask tough questions: what do stakeholders value? (However) What satisfies their needs, wants and aspirations is so complicated that stakeholders (customers) themselves can only answer it. And the first rule is that there are no irrational stakeholders (customers). Drucker goes on to say that the leadership of every organization should not try to guess at the answers but should always go to customers in a systematic quest for those answers[5].

In a justice setting there are internal and external stakeholders. Each of these stakeholders has a vested interest in the delivery of justice. The public expects the courts to resolves disputes expeditiously and in conformity with their norms, values and aspirations. The public expects the justice system to guarantee their safety and security of their property. On the other hand, the police and the prosecutors, have a stake in seeing that the courts assist them to fight crime.

Defining stakeholder needs would address the commonly forgotten needs of the vulnerable such as marginalized communities, minority rights, gender biases as well as meeting the needs of those who would never, under the prevailing circumstances, have their day in court without undue hindrance. Court programmes should be customized to meet the individual needs of the different stakeholders to address shortcomings in the justice system.

---

[4] Peter F Drucker and others: The Five Most Important Questions you will ever ask about your organization page 39

[5] Supra page 39.

Planning justice for the people:

Effective planning for justice requires the courts to address the demand side of justice i.e. planning with the objective of satisfying public needs.

No doubt, this will be a departure from the traditional planning model in most Governments, which has tended to place much emphasis on meeting the needs of the public from the perspective of the bureaucrats. Bureaucrats are in most cases divorced from the daily realities people go through to access justice because they are not a reservoir for public needs and are constrained by resources and other challenges from collecting relevant data about public needs. If courts are serious about meeting justice needs of the people and making justice for all a reality, then they ought to abandon the inward / supply based model of planning in favor of the outward / demand based model of planning. Demand based planning would satisfy the needs of the people and thus make justice more accessible.

The courts can engage the public through customer reviews, surveys, public debates, open days, research on changing justice needs in the community. Alternatively, the courts can engage the public through court user committees, whose main objective is to provide a forum for the public to interface with the courts.

Bridging the gap between the law and the people:

In all commonwealth jurisdictions, the law was bequeathed to us by colonization and as such the law has remained alien and

uncomfortable with the ways and customs of the people. Apathy and reluctance by the population to use the law to their advantage remains a challenge to deepening access to justice. Commonwealth countries have a compelling obligation to reduce the gap between the formal system and informal systems to create and promote greater understanding, appreciation, compliance and use of the law by the citizens. It stands to reason that if the written law is in conflict with the laws citizens live by, discontent, corruption, poverty, and violence are sure to follow[6].

The courts, must promote the indigenization of the law, so that the law reflects the settled values and norms of the community particularly on matters, which are peculiar to a given community.

The recent riots in the United Kingdom demonstrated challenges the legal regime, which is divorced from society, can face if it is not in tandem with settled principles of justice in society.

Commenting on the riots in the United Kingdom, the Minister for policing and criminal justice[7], called for deepening neighbor hood justice in addressing riots as the surest way of empowering communities to deal with social issues in the community.

---

[6] Hernando De Soto: The Mystery of Capital, page 92.

[7] Nick Herbert, Get a gavel; you are the law, The Sunday Times of the United Kingdom on 2nd October 2011

He said- the answer to managing social offences was not more money and more tired approaches but neighbourhood justice. He concluded that:

Neighborhood justice would not need the traditional court buildings. It would be dispensed in community centers and village halls, visible to the public and open to scrutiny. He added,

"Neighbourhood justice would not be an alternative to criminal justice system, but a return of power of justice to local communities to resolve less serious crimes quickly and rigorously".

We can similarly borrow examples from Rwanda, which used Gacaca courts to deal with crimes the formal system could never have resolved. In Uganda, the Local Council Court, on average handle 800,000 cases compared to about 200,000 cases, which are handled by the formal courts. What is most striking is that despite, accusations of informal courts not being human rights compliant more than 80% of the recipients in Uganda, say they are satisfied with informal courts because they are fast and people understand them.

If then customer satisfaction is central to acceptability of the legal system, it is imperative that countries pursuing deepening access to justice for all must consider greater use of informal systems for their simplicity, public acceptance and for being reflective of the settled ways of the community under which they are operating.

Judicial Communication – a dialogue between justice and the people:

Effective communication by the judge is essential in expanding the frontiers of justice to a vast majority of the population, which is excluded from the justice system by miscommunication by judges.

Judges have been accused of neglecting the basic tenets of communication by not paying too much attention to having their judgments and ruling effectively communicated to the public. Judges have been accused of speaking softly, being verbose and legalistic and mindless about the needs of the litigants. Some judgments are overloaded with information and yet others are complex to comprehend.

Information overloads create barriers to effective administration of justice. Judgments, which are badly drafted, are difficult to use as precedents and to implement.

If courts care about communicating effectively, then their judgments and the way they are delivered must meet the minimum levels of effective communication.
For, it must be observed that:

Communication that produces the desired effect or result is effective communication. It results in what the communicator wants[8].

Likewise, judges should pay special attention to the often-ignored non-verbal communication, which accounts for close to 83% of the received communication as opposed to only 7% of the verbal communication, which the litigants take in[9]. If, indeed, the interest of the court is to communicate effectively to the public, then greater use of non verbal means of communication including simplification of complicated procedures and laws should take the front among the many tools lined up to bring the public on board in the court house.

Courtroom facilities should enhance greater understanding of the courtroom infrastructure for the benefit of the public, who are excluded by the highly formalized court system. Making use of short documentaries to explain court procedures and processes- like is used at most airports to explain immigration and security procedures would make the justice system easy to use. In addition, using intermediaries to explain court processes to witnesses - such as children, victims of special crimes, would stop secondary

[8] http://en.wikipedia.org/wiki/Communication#Effective_Communication

[9] See also Wikipedia on Non Verbal Communication at: http://en.wikipedia.org/wiki/Nonverbal_communication#Clinical_studies_of_nonverbal_communication. "People are more likely to believe that the first things they learn are the truth."[2] When the other person or group is absorbing the message they are focused on the entire environment around them, meaning, the other person uses all five senses in the interaction. "Sight makes up 83% of the impact on the brain of information from the senses during a visual presentation. Taste makes up 1%, Hearing makes up 11%, smell 3% and touch 2%."[3]

stigmatization of these special interest groups and give them their special day in court

Accessibility of the law- let every one access and understand the law:

True observance of the rule law requires the law to be freely available to the citizens. According to Lord Bingham[10], there are three compelling reasons why the law must be accessible; -

1. First, the individual must know what not to do or do to avoid the pain of criminal penalty.

2. Second, if the individual is to claim the rights, which the civil law gives him, or to perform obligations, which it imposes on him, it is important that he must know what his rights and obligations are.

3. Thirdly, a body of accessible legal rules governing commercial rights and obligations generally promotes successful conduct of trade, investment and business.

The European Court of Human Rights[11], has observed that – the law must be adequately accessible…. A norm cannot be regarded as a ' law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct. He must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail[12].

10 Lord Justice Toulson in R vs. Chambers (2008) EWCA Crim2467, 17 October 2008

11 Sunday Times vs. United Kingdom, 1979 2 EHRR 245,271, Para 49.

Unfortunately, the reverse is true. Judges have complained that:

There is no comprehensive statue law database with hyperlinks, which would enable an intelligent person, by using a search engine, to find out all the legislation on a particular topic. This means that the courts are in many cases unable to discover what the law is, or was at the date with which the court is concerned, and are entirely dependent on the parties for being able to inform them of what were the relevant statutory provisions, which the court has to apply[13].

Yet availability of the law to the court and public is central to claiming justice for all.

Given that the law is not easily accessible to the public, this may now call, for a departure from the established principle in criminal law that ignorance of the law is no defense. This principle violates the rule of law, which requires the law to be available and understandable by the people. Common law jurisdictions need to take a leaf from Italy, where its constitutional court ruled that ignorance of the law may constitute an excuse for the citizen when the formulation of the law is such as to lead to obscure and contradictory results[14].

Legal aid:

The provision of legal aid to the most disadvantaged is central to deepening access to justice especially for the poor and marginalized.

[13] R vs. Chamber (2008) EWCA 2467, 17 October 2008

[14] Tom Bingham, the Rule of Law at page 42

Access to justice for the rural and urban poor as well as vulnerable persons is restricted due to poverty; access to lawyers is limited, especially in rural areas; and lack of basic knowledge on procedure of access to justice.

It is not deniable that legal aid is a service, which the modern state owes to its citizens as a matter of principle. It is part of the protection of the citizen's individuality, which, in our modern conception of relationship between the citizen and the State, can be claimed by those citizens who are too weak to protect themselves[15].

Commonwealth countries need therefore to prioritize the provision of legal aid to the indigent to make justice meaningful and empowering to the people.

Human Rights Based Approaches:

Administering justice in compliance with human rights based approaches will deepen access to justice for people who are excluded from the justice system.

Human rights based approaches consist of five core principles, which are vital in ensuring that people enjoy the full spectrum of human rights[16].

---

15 Dr. E J Cohn quoted in Tom Bingham, the Rule of Law at page 87.

16 http://www.ihrnetwork.org/what-are-hr-based-approaches_189.htm

The first principle is that all actions must be guided or should be in compliance with international and human rights law regime. In term of justice, justice must meet the minimum international law and national law standards as set out in international conventions and national constitutions.

Principle two, requires the court to empower court users to use the court and assert their rights to a fair trial, an effective remedy etc.

Principle three requires the courts to provide avenues for court users to participate meaningfully in the justice system.

Principle number four, requires the court to be accountable to the people and the law in administering justice

Last but not least, the court is obliged to administer justice without discrimination.

Innovation – Re inventing efficiency:

The drivers for innovation in the public sector are premised on the need to maximize value for money and reduce lead times for delivering justice. Thus the demand for courts to give maximum value to litigants has made innovation a central theme in the judicial management. Declining budgets for courts and the pressure to increase internal efficiency and external responsiveness in justice delivery coupled with demands for accountability has made

innovation, one of the principle vehicles for increasing judicial productivity.

Judicial Managers are questioning the old methods of doing work and are challenging the business as usual style that dominated the public sector for generations. Today, judicial managers must adopt a business approach in running courts so that courts are responsive to public needs. In particular, judicial manager must adopt a management style that promotes innovation – to avoid the inertia of adjusting to change in the public sector. According to business models used in companies to promote innovations, the courts must adopt the following culture to foster innovation.

Courts must to a great extent eliminate the blame game, encourage people to share insights, reward creative contributions, mandate managers to foster new ideas, picking the right team leader, encourage creativity, support winning ideas with resources and tapping the organization's networks[17].

Innovation must be geared at ensuring that **every** procedure should be designed for the person or party seeking justice: to facilitate just, speedy, and inexpensive access to an impartial judge and to a jury where appropriate[18].

[17] Michel Syrett, Successful Strategy Execution page 109

[18] Rebecca Love and Dirk Olim, Rebuilding Justice page 192.

Conclusion:

Courts can achieve the myth of justice for all by focusing on results and adding value to the men, women and children who walk through the courts or are affected by what the courts does. No doubt, this will call for a departure from the business as usual approach to a culture of results culture, continuous improvements and taking advantage of the positive forces of change. As echoed by one writer '**courts are built for service to the public … and every procedure should be designed for the person or party seeking justice: to facilitate just, speedy , and inexpensive access to an impartial judge'**[19].

[19] Supra 18, 192