



EUROPEAN UNION



Gender Transformation & Empowerment

THE ROLE OF THE THREE ARMS OF GOVERNMENT IN SERVICE DELIVERY

A GUIDE FOR DUTY BEARERS AND RIGHTS HOLDERS



August 2012

This publication is copyrighted, nevertheless, UWONET encourages its use, however, when using it, please acknowledge UWONET.

Edited by: Rita Aciro-Lakor

THE ROLE OF THE THREE ARMS OF GOVERNMENT IN SERVICE DELIVERY

A GUIDE FOR DUTY BEARERS AND RIGHTS HOLDERS

August 2012

Acknowledgement

UWONET would like to thank the resource person Ms. Lillian Kiwanuka for compiling this very important piece of information. The support given to the resource person by the secretariat especially by the programme officer Ms. Gertrude Kabanyoro and Ms. Rita Aciro-Lakor, the Executive Director is sincerely appreciated.

Special appreciation goes to the European Union(EU) through the Democratic Governance and Accountability Programme(DGAP) for the technical and financial support.

To all our partners at the district level, our sincere appreciate.



Contents

Acknowledgement	ii
1.0. INTRODUCTION AND BACKGROUND	1
1.1. The Executive arm of Government	2
1.2. The President	2
1.3. Roles and functions of the President	2
1.4. Removal of the President	4
1.5. Procedure to be followed for removal on grounds of abuse of office or misconduct	5
1.6. Procedure to be followed for removal on grounds of mental incapacity	6
2.0. THE CABINET	7
2.1. Cabinet make up, structure and functions	7
2.2. Vote of censure	8
2.3. Other key players within the executive	9
3.0 THE LEGISLATURE	10
3.1. The Parliament	10
3.2. Functions of Parliament	10
3.2.1. Law-Making role	10
3.2.2. Private Members Bills	11
3.2.3. Committees of Parliament	12
3.2.4. Standing Committees:	12
3.2.5. Sessional Committees	15
3.2.6. Select Committees	15
3.2.7. Ad Hoc Committees	16
3.2.8. Functions of committees.....	16

4.0.	OTHER KEY ROLES OF PARLIAMENT	18
4.1.	Oversight role	18
4.1.1.	Public Funds and operations of public bodies	18
4.1.2.	Public interface	18
4.1.3.	Government Policy	19
4.1.4.	Investigations and enquiries	19
4.2.	Constituency Service Activity	20
4.3.	Party Responsibilities	20
4.3.1.	Right of recall	21
5.0.	ADMINISTRATION OF JUSTICE.....	23
5.1.	The Judiciary.....	23
5.2.	Exercise of Judicial Power.....	23
5.2.1.	The functions of the Judiciary	23
5.2.2.	Principles that the courts are to follow when deciding cases: ..	24
5.2.3.	The Courts of Judicature.....	24
5.2.4.	The Supreme Court	24
5.2.5.	Jurisdiction of the Supreme Court.....	25
5.3.	Court of Appeal of Uganda.....	25
5.4.	High Court of Uganda.....	26
5.4.1.	Jurisdiction	26
5.4.2.	Divisions of the High Court	26
5.4.3.	Hearing of election cases	26
5.5.	Magistrates Courts	27
5.6.	The Judicial Service Commission	27
6.0.	Appointment of other judicial officers	28
6.1.	Local Council (Executive Committee) Courts	28
7.0.	Conclusion	29
	Glossary of terms	30
	Bibliography	31

1.0. INTRODUCTION AND BACKGROUND

Uganda is a democratic state. One of the standards of democracy is separation of powers which divides the institutions of government into three branches: Legislative, Executive and Judicial: the legislature makes the laws; the executive put the laws into operation; and the judiciary interprets the laws.

The powers and functions of each of these arms of Government are separate and carried out by separate personnel. None of these independent agencies is able to exercise complete authority, because each of them depends on the other. The three branches act as checks and balances on each other and keep the others from operating above their power. The Government of Uganda has taken significant measures to develop laws, policies and institutions which allow for efficient service delivery in each of these arms of Government.

One of the key questions however is whether the rights holders can enforce their rights and how they can use their capacities to demand for efficient service delivery from the duty bearers within these organs.

A key aspect of social accountability is ensuring the duty bearers and rights holders are aware of the roles and duties of duty bearers and that the expectations that the rights holders hold towards the duty bearers are clarified.

This Handbook will highlight the role of some of the key duty bearers within these organs of Government in service delivery, and how they can be made to fulfil their obligations towards the rights holders.

This Guide will consider three major categories. Members of Parliament (Legislature). The Executive and the Judiciary. These categories of duty bearers have been identified because of their unique position as part of the central Government with clear service delivery functions and obligations.

1.1. The Executive arm of Government

The executive arm of government (President, Ministers and heads of statutory bodies) is the only body responsible for the daily administration of the state.

To carry out this function, the members of the executive, enforce the law and Government Policy .

1.2. The President

The President is the top most executive. Even as the head of state, the authority and actions of the President should be done in observance of the Constitution and the laws of Uganda¹.

The election of the President is through a secret ballot² by persons above the age of 18.

All citizens of Uganda, above the age of 18 are eligible to vote.

For a person to vote they must be a registered voter³.

1.3. Roles and functions of the President

The President is under a duty to ensure that the country is run according to the Constitution and all the laws made under it.

He is also under a duty to encourage other executives including Ministers and top Government executives follow the same standard in running the affairs of Uganda.

The President is also under a duty to promote the welfare of citizens and protect the borders of Uganda⁴.

1 Article 99(1) Constitution of the Republic of Uganda 1995.

2 Article 103(1) Constitution.

3 Section 19(1) and (2) Electoral Commission Act Cap 140.

4 Article 99(1) and (2) of the Constitution.



The other official positions held by the President include; the Head of State, Head of Government and Commander-in-Chief of the Uganda Peoples' Defence Forces.⁵

These roles specifically require the President to carry out the following duties;

- a. Head of Government: overseeing the administration of the state , enforcing the law and promoting of national security⁶
- b. Commander in chief: commanding the state's armed forces and determining military policy⁷.
- c. Ceremonial head of the Republic of Uganda; the President receives foreign ambassadors and other public officials⁸; the President may personally participate in conferences to discuss economic and political issues and make agreements with them.
- d. Under the Constitution, the President is the executive official primarily responsible for appointment of and cabinet ministers, chief executives⁹, ministers¹⁰, ambassadors, consuls, and diplomats to foreign missions abroad¹¹, these appointments are subject to confirmation by the Parliament.

5 Article 98(1) and (2) Constitution.

6 Article 219. There shall be a National Security Council which shall consist of the President as chairperson and such other members as Parliament may determine.

7 Article 124(1) The President may, with the approval of Parliament, declare that a state of war exists between Uganda and any other country.

8 Article 122(2) The President may receive envoys accredited to Uganda.

9 These include the Auditor General Article 163(1),, Inspector General of Police Article 213(1), Commissioner of Prisons (Article 216), Members of the Judiciary, heads of Constitutional Commissions etc

10 Article 113(1) of the Constitution.

11 Article 122(1) The President may, with the approval of Parliament, appoint ambassadors and heads of diplomatic missions.

- e. Assenting to legislation¹² ; a Bill passed by Parliament is passed to the President for assent.
- f. Foreign policy; the President decides whether to recognize new nations and new governments, and negotiates treaties with other nations, which become binding on the Uganda when approved by Parliament¹³.

1.4. Removal of the President¹⁴

The President may be removed from office. This can only be done where he or she is said to have committed any of the following;

- a. Abuse of office
- b. Willful violation of the oath of allegiance and the Presidential oath
- c. Willful violation of any provision of the Constitution; or
- d. Misconduct or misbehavior which includes;
 - i. conduct in a manner which brings or is likely to bring the office of President into hatred, ridicule, contempt or disrepute; or
 - ii. dishonest act(s) or omission(s) that are harmful to the economy or security of Uganda; or
 - iii. Physical or mental incapacity that may make him or her incapable of doing his or her work.

12 (1) Subject to the provisions of this Constitution, the power of Parliament to make laws shall be exercised through Bills passed by Parliament and assented to by the President.

(2) A Bill passed by Parliament shall, as soon as possible, be presented to the President for assent.

13 Article 123(1).

14 Article 107



1.5. Procedure to be followed for removal on grounds of abuse of office or misconduct

Members of Parliament are charged with the duty of removing a President. Where some of them hold the view that the President has behaved in a manner that amounts to abuse of office. The following action is to be taken;

1. The members of Parliament provide a notice to the speaker in writing signed by more than one-third of them.
2. The notice should state that they intend to move a motion in Parliament for the removal of the President on any of the charges above.
3. The notice should set out the particulars of the charge supported by the necessary documents which have proof of the claim that the conduct of the President should be investigated.
4. The Speaker shall, within twenty-four hours after receipt of the notice submit a copy to the President and the Chief Justice.
5. The Chief Justice shall, within seven days after receipt of the notice set up a tribunal made up of three justices of the Supreme Court to investigate the allegation.
6. The tribunal shall report its findings to Parliament stating whether or not there is a case for the removal of the President.
7. The President may appear at the proceedings of the tribunal and to be represented there by a lawyer or other expert or person of his or her choice.
8. If the tribunal determines that there is a case made out for the removal of the President then Parliament may pass the resolution supported by the votes of not less than two-thirds of all members of Parliament.
9. Where this is done, the President shall cease to hold **office**.

1.6. Procedure to be followed for removal on grounds of mental incapacity

1. For the purposes of the removal of the President on grounds of physical or mental incapacity the same procedure as above shall apply except that
2. The Chief Justice shall, within seven days after receiving the notice consult with the professional head of the medical services in Uganda and constitute a medical board of five qualified and renowned medical specialists to examine the President in respect of the alleged mental incapacity and to report its findings to Parliament.
3. The Chief Justice shall, within twenty-four hours after constituting the medical board, inform the President accordingly, and the President shall submit himself or herself to the medical board for examination within seven days.
4. If the medical board determines that the President is unable to perform the functions of the office of President, by reason of physical or mental incapacity and Parliament passes the resolution for the removal of the President supported by the votes of not less than two-thirds of all the members of Parliament, the President shall cease to hold office.



2.0. THE CABINET

2.1. Cabinet make up, structure and functions

The Cabinet of Uganda consists of the President, the Vice President and Ministers.

Their role is to determine, formulate and implement the policy of the Government.¹⁵

In Uganda, cabinet ministers are appointed from among sitting members of Parliament and remain members of Parliament while serving in the cabinet.

In some cases, persons qualified to be elected members of Parliament may also be appointed.¹⁶

Cabinet performs as an official advisor to the President offering opinions and advice on legal and policy decisions.

The Cabinet collectively decides the government's policy direction, especially in regard to legislation passed by the parliament.

Another role of cabinet officials is to administer government departments. Each cabinet Minister holds a specific portfolio of government duties including Lands, Finance, Education, health etc.

The day-to-day role of most cabinet members is to serve as the head of a Government Department to whom all other employees in that department report.

The President may, with the approval of Parliament, appoint other Ministers to assist Cabinet Ministers in the performance of their functions¹⁷.

¹⁵ Article 111 (1),(2) and (3) of the Constitution.

¹⁶ Article 113(1)

¹⁷ Article 114(1)

Ministers are individually accountable to the President for the administration of their Ministries¹⁸.

2.2 Vote of censure¹⁹

One of the ways in which a Minister's actions may be checked by Parliament is through Censure.

Censuring is a formal open and public condemnation of an individual's behaviour or shortcomings in the performance of their functions that may result in their removal from office.

When a vote of censure is passed against a Minister, the President may take appropriate action in the matter if the Minister does not resign his or her office.

Proceedings for censure of a Minister begin with a petition to the President through the Speaker signed by one-third or more of all members of Parliament.

In the Petition, the Members of Parliament give notice that they are dissatisfied with the conduct or performance of the Minister and intend to move a motion for a resolution of censure.

The petition also spells out the detailed grounds and evidence to support the motion.

When the President receives the petition, he or she shall give a copy to the Minister against whom the petition has been made.

The motion for the resolution of censure shall be debated after thirty days from the date on which the petition was sent to the President.

The Minister in respect of whom a vote of censure is debated is entitled during the debate to be heard in his or her defense.

When the Speaker is satisfied with the proceedings, the person who is being censured is called upon to answer issues raised in the debate.

18 Article 117

19 Article 118

Thereafter the chief petitioner winds up debate²⁰.

After the general debate, the House votes on the Motion and if more than half of all the Members of Parliament are in agreement with the motion for censure, the Speaker shall inform the President of this fact within twenty four hours from the time the Motion was voted upon.²¹

The vote on the censure motion is a vote of no confidence in the Minister that results in him or her losing their position as Minister.

Where members of the public feel that a Ministers conduct warrants censure, they may appeal to their Members of Parliament to take on the motion for censure.

2.3. Other key players within the executive

The executive function of the President is supported by other top leadership positions in the executive and they include:

- i. The Prime Minister who oversees the cabinet
- i. The foreign minister who oversees the state's ambassadors, and manages foreign policy and
- ii. Other non elected public employees appointed by the President on approval by Parliament.

20 Rule 86 (5) Rules Of Procedure For The Parliament Of Uganda

21 Rule 84(11) Rules Of Procedure For The Parliament Of Uganda

3.0 THE LEGISLATURE

The Parliament of Uganda is charged with the duty of making laws on any matter for the peace, order, development and good governance of Uganda.

3.1. The Parliament

The Parliament of Uganda has power and duty to:

- a. Make laws on any matter,
- b. Protect the Constitution and;
- c. Promote the democratic governance of Uganda.

The Parliament of Uganda is made up of 375 seats of; 238 members elected by popular vote, 112 women directly elected, 25 representatives nominated by legally established special interest groups (army 10, disabled 5, youth 5, labour 5), and of additional ex-officio members nominated by the President .

The Vice President and Ministers if not already elected members of Parliament, serve as ex officio members of Parliament²².

Members of Parliament in Uganda serve for a five-year term

3.2. Functions of Parliament

3.2.1. Law-Making role

The Constitution of Uganda empowers Parliament to make laws on any matter for peace, order, development and good governance of Uganda²³.

In Uganda, public servants like officials from the First Parliamentary Counsel and the Uganda Law Reform Commission and cabinet ministers have the direct responsibility for drafting new legislation.

²² without the right to vote on any issue requiring a vote in Parliament.

²³ Article 79

MPs influence legislation through debates in Parliament during committee meetings to examine legislation²⁴. The key role of Members of Parliament (MP's) in law making is to;

- i. Consider Bills that are presented before Parliament
- ii. Make additions or remove proposals that may work against the interests of the people.
- iii. Pass legislation that they feel is in line with the Constitutions and will bring about a positive change.

3.2.2. Private Members Bills

MPs can also introduce legislation of their own, through private members Bills²⁵. Private Members' Bills are used as a means of drawing attention to issues that require legislation in the hope that they may subsequently be taken on by the government²⁶.

Examples of recently debated private members Bills include the Anti-Homosexuality Bill and the HIV/AIDS Prevention and Control Bill, the Trafficking in Persons Act and the Female Genital Mutilation Act.

Every Member of Parliament may move a private members Bill.

A Member moving a private members Bill should be given assistance by the department of Government whose area of operation is affected by the Bill. The HIV Prevention and Control Bill was greatly supported by the Ministry of Health and the Uganda Law Reform Commission.

The office of the Attorney General is under an obligation to assist a Member moving the private members Bill professional assistance in the drafting of the Bill.

24 Stephen Charles Kaduuli , Operational Roles of Ugandan Members Of Parliament, Africa Leadership Institute 2008.

25 Article 94 (4) (b). The right to move a private member's Bill is regulated under Article 93 (a) i-iv and (b).

26 Kaduuli at page 3

3.2.3. Committees of Parliament

Much of the work of Parliament is undertaken by committees made up of 5 to 25 MPs. The Committees include standing and sessional committees.

These committees examine issues brought to Parliament in detail depending on their function and mandate.

They also consider government policy and proposed new laws.

Members of Parliament are free to enrol on at least two committees. One standing committee and one sessional committee.

3.2.4. Standing Committees²⁷:

There are 11 standing Committees and each of the members of these committees is responsible for carrying out the specific functions of the Committee as follows;

- a. **The Public Accounts Committee²⁸**; examines the audited accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure of the Central Government and the Judiciary. The Chairperson of the Public Accounts Committee scrutinises and guides the debate of the Auditor-General's report by the House.
- b. **The Committee on Rules, Privileges and Discipline²⁹**; enquires into any complaint of contempt of Parliament or breach of privilege or any matter of privilege which may be referred to it and recommends to the House the action to be taken.
- c. **The Committee on the National Economy³⁰**; reviews, considers, and scrutinizes all matters relating to National Economy generally, finance and any other matter referred to it by the House.
- d. **The Committee on Appointments³¹**; Is responsible for approving

27 Rule 121(1) Rules of Procedure, Parliament of Uganda.

28 Rule 134 Rules of Procedure, Parliament of Uganda

29 Rule 135 Rules of Procedure, Parliament of Uganda

30 Rule 138 Rules of Procedure, Parliament of Uganda

31 Rule 139 Rules of Procedure, Parliament of Uganda

on behalf of Parliament, the appointment of persons nominated for appointment by the President under the Constitution or any other appointment required to be approved by Parliament under any law.

- e. **The Committee on Government Assurances;** Scrutinises the assurances, promises and undertakings given by Ministers and other agents of Government in Parliament from time to time and report on;
 - i. The extent to which those assurances, promises and undertakings, have been implemented; and
 - ii. Where implemented whether the implementation has taken place within the minimum time necessary for the purpose.
- f. **The Committee on Commissions, Statutory Authorities and State Enterprises**³²; Examines the reports and audited accounts of Statutory Authorities, Corporations and public enterprises and in the context of their autonomy and efficiency, to ascertain whether their operations are being managed in accordance with the required competence and where applicable in accordance with sound business principles and prudent commercial practices;
- g. **The Committee on Equal Opportunities**³³; Monitors and promotes measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of all peoples including the marginalized groups on the basis of gender, age (elderly, youth, children) disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances which exist against them.
- h. **The Committee on HIV/AIDS and related matters**³⁴; Coordinates HIV/AIDS activities of Parliament and provides a link between Parliament with the Uganda AIDS Commission in combating the epidemic in Uganda;
- i. **The Committee on Science and Technology**³⁵; reviews, discusses and makes recommendations on scientific and technological content

32 Rule 147 Rules of Procedure, Parliament of Uganda

33 Rule 150 Rules of Procedure, Parliament of Uganda

34 Rule 151 Rules of Procedure, Parliament of Uganda

35 Rule 152 Rules of Procedure, Parliament of Uganda

of all Bills laid before Parliament; initiates Bills on strategic issues of science and technology for national development and continuously monitors, evaluates and assesses activities in public institutions and any other bodies engaged in national science and technology development.

- j. **The Budget Committee³⁶**; considers the national Budget and compile amendments and refer them to the relevant Committees and carries out other functions relating to the national Budget as may be assigned to it by Parliament or any Act.
- k. **The committee on Local Government Accounts³⁷**; Examines the audited accounts in relation to the report laid before Parliament by the Minister for Local Government showing the appropriation of the sums granted by Parliament to Local Governments. The Committee reports to Parliament twice a year.

The rules of procedure of the parliament of Uganda establish four (4) committees to carry out the work of scrutinizing the audited accounts of various institutions. These include; the Public Accounts Committee (PAC), Local Government Accounts Committee (LGAC), Committee on Government Assurances (GA), Committee on Commissions and Statutory Enterprises (COSASE).

The four Standing Committees which handle Public Accounts are chaired by the opposition in the House. This is meant to ensure effective scrutiny of all audited accounts.

Where a member of the public feels that a certain issue such as mismanagement of funds at the local Government level, or that certain commitments and pledges by Government Minister have not been fulfilled then they can raise the issue for investigation with a specific committee through a letter or direct interface with the chairperson of the committee or any of the members.

36 Rule 149 Rules of Procedure, Parliament of Uganda

37 Rule 148 Rules of Procedure, Parliament of Uganda

3.2.5. Sessional Committees

Sessional Committees have the following functions-

- (a) To examine and comment on policy matters affecting the Ministries covered by them;
- (b) To initiate or evaluate action programmes of those Ministries and Sectors and to make appropriate recommendations on them;
- (c) To examine critically Bills brought by Government before the House before they are debated;
- (d) To examine critically Government recurrent and capital budget estimates and make recommendations on them for the general debate in the House;
- (e) To monitor the performance of Ministries and Departments; and
- (f) To ensure Government compliance.

They include; The Committee on Information and Communication Technology; Committee on Defence and Internal Affairs; Committee on Physical Infrastructure; Committee on Gender, Labour and Social Development; Committee on Finance, Planning and Economic Development; Committee on Social Services; Committee on Foreign Affairs, Committee on Presidential Affairs, Committee on Legal and Parliamentary Affairs; Committee on Public Service and Local Government; Committee on Agriculture, Animal Industry and Fisheries; Committee on Natural Resources; and Committee on Tourism, Trade and Industry.

Similarly it is possible for a member of the public to initiate dialogue with the members of these committees on areas of concern.

3.2.6. Select Committees

Parliament may, at any time, upon a motion appoint a Select Committee to be nominated by the Speaker, for the consideration of such matters as the House may refer to the Committee and to report on any such matter to the House.

3.2.7. Ad Hoc Committees

Parliament may at any time, by resolution, appoint an Ad Hoc Committee to investigate any matter of public importance that does not come under the jurisdiction of any Standing or Sessional Committee or has not been dealt with by a Select Committee.

3.2.8. Functions of committees³⁸

Standing Committees have a two and a half year term and Sessional Committee have a one year (a session of Parliament) term. The general functions of Committees in addition to their specific functions under the Rules are:

- (a) to discuss and make recommendations on Bills laid before Parliament;
- (b) to initiate any Bill within their respective areas of competence;
- (c) to assess and evaluate activities of Government and other bodies;
- (d) to carry out relevant research in their respective fields; and
- (e) to report to Parliament on their functions.

Committees do not normally address legislation in principle, but are restricted to its detailed fine tuning.

The committees cover most of the aspects of public administration and service delivery and are required to concentrate on the scrutiny of policy, budgets, accountability, undertakings and monitoring and evaluation.

MP's on the various Committees are under a duty to follow up service delivery, identify the gaps and devise means to close the loopholes.

They are also under a duty to monitor the progress of Government Programs like NAADS to see for instance how many farmers have benefited from the program within their constituency. They should be able to find out about the challenges other farmers are facing and pass the information on to policy makers for solutions.

38 Article 90(3) of the Constitution

Another example would be to follow up on the progress of borehole construction and repair in their constituencies. This could also be followed up in the budgeting process to ensure that funds are availed for the implementation of the borehole construction.

Another role that a MP can play is to Monitor Service Delivery in coordination with the office of the Regional District Commander whose Constitutional role it is to monitor the implementation of Government programs.

Another Key function played by Mp s in Service Delivery is to scrutinise the different Budgets of Public Institutions and highlight whether or not the money for services is being put to the best use possible within the Constituency.

Within the Committees, adequate representation is given to the political parties to give their point of views on national issues. Most importantly, the committees work together to improve service delivery in spite of their different political affiliations.

4.0. OTHER KEY ROLES OF PARLIAMENT

4.1. Oversight role

4.1.1. Public Funds and operations of public bodies

Parliament has powers to oversee the use of public funds.

Article 164 makes Permanent Secretaries accountable to Parliament for funds in their ministries and empowers MPs to monitor all expenditure of public funds.

Every year, Parliament, through committees, considers the details of how money that was given to Government Departments has been spent in service delivery.

The committee members may question ministers and public service officials in the course of committee deliberations of how the money was spent and why it was spent in a particular manner.

These checks and balances ensure that Government funds are well spent.

A member of the public may write to a specific committee raising concern about the inefficiency or failure by a particular Government body to deliver services.

The Committee has powers to call a Minister or Civil servant responsible in a particular field to explain the details in response to a report or a query by a member of the public.

4.1.2. Public interface

Parliamentarians may also call press conferences to state their positions to the public on various national issues including the President's State of the Nation Address which occurs at the commencement of each parliamentary session; and the debates on the Budget and supply, during which the Government must defend its overall priorities and administrative record³⁹.

39 Kaduuli at page 4

4.1.3. Government Policy

MPs can influence government policy by participating in committees which review government department activities and spending, and legislation. Government MPs also raise policy issues in caucus meetings of their own party and can lobby cabinet ministers to make certain policy decisions that promote service delivery.⁴⁰

4.1.4 Investigations and enquiries

Members of Parliament also have the power to direct questions at Government Ministers to raise issues pertaining to protection of their constituents' rights and promotion of their interests⁴¹.

A minister may be called upon to attend a sitting of the House to answer questions⁴².

The people of Uganda have a right to petition parliament through their MPs. A Member of Parliament may raise a matter of national importance on the floor through the Speaker.

With the leave of the Speaker, a Member may make a statement on any matter of urgent public importance relating to the functions of the House⁴³. A case in point is the resolution by legislators to halt the execution of further oil contracts pending the passing of the necessary laws⁴⁴.

40 Supra at page 5

41 Rules of Procedure nos. 31, 33, 35, 36 and 37

42 Rule 25 Rules of Procedure

43 Rule 36(1)

44 "Stop Oil Deals , MP's order Government" New Vision, Wednesday October 12, 2011.

4.2. Constituency Service Activity

MPs are expected to make known grievances of their constituents and seek remedies. This requires them to be in constant touch with the constituents.

This requires the direct and personal involvement of the MP through attending meetings in their Constituencies. Members of Parliament are given funds for transportation to their home districts to carry out these consultations.

A Member of Parliament may attend meetings of a Local Council in his or her constituency to obtain the necessary information.

Examples include contacting Ministers or public service officials, or using time in the House, to make known grievances of an individual constituent and seek remedies⁴⁵.

MPs are obligated to attend plenary sessions. These meetings provide members with an opportunity to present the views of their constituents, raise new issues and debate.

They may also channel the views and concerns of the public in general and those of their respective constituents to the executive for attention and redress through motions, petitions, oral and supplementary questions.

Constitutionally MPs represent the regional and local concerns of the constituents in Parliament. In practice, however, they are supposed to solve problems for constituents on a wide variety of government matters - from checking on individual problems with government departments to providing information on government programs and policies.

4.3 Party Responsibilities

MPs are involved in the intra-parliamentary party, shadow cabinets, *ad hoc* working groups and participate in electoral, leadership selection processes and national campaigns among other functions.

All party members also participate in the party caucus itself, and in the regional and issue-based caucuses.

45 Kaduuli at page 5

Opposition Members, in raising criticism against the legislation and policy of the Central Government contribute to substantive improvements as debates generate information that is needed by the public and accountability.

The role of opposition Members of Parliament is to identify the weaknesses of government Bills, and critically survey the implementation of Government activities and policies.

What happens where a Constituency is not satisfied with the performance of A Member of Parliament?

4.3.1. Right of recall⁴⁶

The electorate or an interest group within a constituency of any Member of Parliament may exercise their right to recall their Member of Parliament before the expiry of the term of Parliament on grounds of;

physical or mental incapacity rendering that member incapable of performing the functions of the office;

misconduct or misbehavior likely to bring hatred, ridicule, contempt or disrepute to the office or;

persistent deserting of the electorate without reasonable cause.

The recall of a Member of Parliament is done as follows;

One or more of the Constituents may write a petition setting out the any of the above grounds as the reason for recalling their MP.

The petition should be signed by at least two-thirds of the registered voters of the constituency or of the interest group that raises the matter.

The petition is then delivered to the speaker.

46 Article 84

On receipt of the petition, the Speaker shall, within seven days require the Electoral Commission to conduct a public inquiry into the matters alleged in the petition

The Electoral Commission shall expeditiously conduct the necessary inquiry and report its findings to the Speaker.

The Speaker shall declare the seat vacant, if the Electoral Commission reports that it is satisfied from the inquiry, with the genuineness of the petition; or declare immediately that the petition was unjustified.

5.0. ADMINISTRATION OF JUSTICE

5.1. The Judiciary

The Judiciary (also known as the judicial system) is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes.

Under the doctrine of the separation of powers, the judiciary generally does not make law but rather interprets law and applies it to the facts of each case. This branch of the state is often tasked with ensuring equal justice under law.

It consists of a court of final appeal called the Supreme Court a Constitutional court, together with lower courts including a High Court and Magistrate Courts.

5.2. Exercise of Judicial Power

5.2.1. The functions of the Judiciary

These include the following

- a. **To adjudicate civil and criminal cases:** In Uganda civil and criminal matters are handled by the lower Magistrate courts (Grade One and Grade II and Chief Magistrates) and the superior courts of record on Appeal⁴⁷.
- b. **To interpret the Constitution and the laws:** In Uganda, the judiciary has the power to pronounce laws null and void. The Constitutional Court may annul the law that is incompatible with the the provisions of the Constitution.
- c. To promote human rights, social justice and morality; The constitution stipulates that judicial power is derived from the people and shall be exercised by the courts in the name of the people and in conformity with law and with the values, norms and aspirations of the people⁴⁸.

47 Sections 161 and 207 of the Magistrates Court Act cap 16.

48 Article 126(1)

5.2.2. Principles that the courts are to follow when deciding cases⁴⁹:

- a. Justice must be done to all irrespective of their social or economic status;
- b. Justice must not be delayed;
- c. Adequate compensation must be awarded to victims of wrongs;
- d. Reconciliation between parties should be promoted and
- e. Substantive justice must be administered without undue regard to technicalities.

5.2.3. The Courts of Judicature

(1) The judicial power of Uganda shall be exercised by the courts of Judicature which shall consist of;

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

5.2.4. The Supreme Court

The Supreme Court is the final court of Appeal in Uganda. It decides civil and criminal cases on appeal from lower courts.

Supreme Court only handles a direct petition where the matter is pertaining to a Presidential election.

The Supreme Court is constituted by the Chief Justice and not less than six Justices⁵⁰.

49 Article 126(2)

50 Section 3 of the Judicature Act Cap 13

Five Justices are sufficient to hear most cases, but when hearing appeals from decisions of the Court of Appeal, a full bench of seven justices has to be present.

The decisions of the Supreme Court form precedents that all lower courts are required to follow.

The Supreme Court is the final court of appeal.

5.2.5. Jurisdiction of the Supreme Court

Appeals from the decisions of Court of Appeal shall go to the Supreme Court.⁵¹

5.3. Court of Appeal of Uganda.⁵²

This court handles appeals from the High Court.

When constituted as a Constitutional Court, the Court of Appeal determines any question regarding the interpretation of the Constitution⁵³

The Court of Appeal consists of the Deputy Chief Justice and Justices of Appeal who may not be less than seven.

Cases coming before the Court of Appeal may be decided by a single Justice⁵⁴.

Any person dissatisfied with the decision of a single Justice of Appeal is, however, entitled to have the matter determined by a bench of three Justices of Appeal, which may confirm, vary or reverse the decision he or she made earlier.⁵⁵

A case decided by the Court of Appeal can also be appealed to the Supreme Court, but the Court of Appeal is the final court in election petitions filed for Parliamentary elections or elections under the Local Government Act.

51 Section 4 of the Judicature Act

52 Article 137 of the Constitution

53 Article 137(1)

54 Section 12(1) Judicature Act.

55 Section 12(2) Judicature Act

When deciding cases as a Constitutional Court it sits with a bench of five justices.

5.4. High Court of Uganda⁵⁶.

5.4.1. Jurisdiction

The High Court of Uganda has unlimited original jurisdiction, which means that it can try any case of any value or crime of any magnitude.

Appeals from all Magistrates Courts go to the High Court.

The High Court is headed by the Honourable Principal Judge who is responsible for the administration of the court and has supervisory powers over Magistrate's courts⁵⁷.

5.4.2. Divisions of the High Court

The High Court has five Divisions: the Civil Division, the Commercial Division, the Family Division, the Land Division and the Criminal Division.

Most of the business of the High Court is conducted at its headquarters in Kampala, but with the decentralisation of the High Court, its services are now obtained at its circuits at Fort Portal, Gulu, Jinja, Masaka, Mbale, Mbarara and Nakawa⁵⁸.

5.4.3. Hearing of election cases⁵⁹

The High Court has power to determine any question whether; the seat of a Member of Parliament has become vacant; a person has been validly elected a Member of Parliament or a person has been validly elected as Speaker or Deputy Speaker; or even where a person has been elected but has vacated that office⁶⁰.

56 Article 138 of the Constitution

57 The Legal and Institutional Context of the 2006 elections in Uganda <http://www.cmi.no/pdf/?file=/uganda/doc/court-administration-uganda-october-05.pdf>

58 *ibid*

59 Article 140 of the Constitution

60 Article 86(1)

The High Court shall proceed to hear and determine the question as quickly as possible and may, for that purpose, suspend any other matter pending before it.

5.5. Magistrates Courts

The majority of the civil and criminal cases in Uganda are handled by Magistrate's Courts.

There are three levels of Magistrates courts: Chief Magistrates, Magistrates Grade I and Magistrates Grade II.

These are subordinate courts whose decisions are subject to review by the High Court.

Presently the country is divided into 26 Chief Magisterial areas administered by Chief Magistrates who have general powers of supervision over all magisterial courts within the area of their jurisdiction⁶¹.

5.6. The Judicial Service Commission

The Commission is mandated to appoint persons to hold or act in any judicial office except for the Chief Justice , Deputy Chief Justice, Principal Judge, justices of the Supreme Court, Justices of Appeal and High Court Judges.

The Commission is also mandated to hear disciplinary matters relating to judicial officers and make recommendations for the relevant disciplinary action to be taken against them⁶².

61 The Legal and Institutional Context of the 2006 elections in Uganda <http://www.cmi.no/pdf/?file=/uganda/doc/court-administration-uganda-october-05.pdf>

62 Article 148 of the Constitution.

6.0. Appointment of other judicial officers.

The Judicial Service Commission may appoint persons to hold or act in any judicial office other than the offices specified in article 147(3) of the Constitution⁶³ and confirm appointments.

They also exercise disciplinary control over persons holding or acting in judicial capacity and remove such persons from office where cases of indiscipline are successfully proved against them.

6.1. Local Council (Executive Committee) Courts

These are established under the Executive Committees (Judicial Powers) Act.⁶⁴

They handle light cases involving children, light civil matters in their areas of jurisdiction, infringement of byelaws duly made under the Local Government Act and some cases of domestic violence.⁶⁵

The Executive Committee Court is duly constituted when it is sitting with not less than five members.⁶⁵ There are three levels of operation for the Executive Committee courts – sub county, parish and village level.

Appeals from the sub county executive Committee court lie with the Chief Magistrate and, if the appeal involves a substantial question of law or appears to have caused a substantial Miscarriage of justice, to the High Court.⁶⁶

63 See 1.8.0. above.

64 Cap 8.

65 Section 5 Executive Committee (Judicial) Powers Act and the Domestic Violence Act.

66 Section 28 *ibid*.

7.0. Conclusion

Separation of powers can potentially ensure that each of the three branches of governance, namely the executive, legislature and judiciary, are separated and therefore not able to interfere with one another.

Whereas Uganda is a developing country, the structures in place offer a realistic framework upon which proper institutional development can follow.

Key to the advancement of real development is the awareness and appreciation among the duty bearers of their roles in the overall picture of developing Uganda.

It is also equally important that the citizens are aware of the role of the duty bearers in order to demand proper services from them.

Knowledge of the rights of citizens and duties of duty bearers is a foundation for better service delivery as the general public is aware of who is responsible for fulfilling which function and the extent of their responsibilities towards them.

Clarity of roles and duties would enable end users to oversee the work of duty bearers and ensure accountability progress and efficiency in service delivery in Uganda.

Glossary of terms

1. **Censure:** An official rebuke, as by a Parliament of one of its members
2. **Prima facie** - there is enough evidence for there to be a case to answer.
3. **Private Members Bill:** Most Bills are proposed by the government. However, a private members Bill is different because it does not have formal Government backing. It is usually introduced by a Member of Parliament who is not acting on behalf of the executive government.
4. **Unicameral National Assembly;** The practice of having one parliamentary chamber.



Bibliography

Laws, Statutes and Rules

The Constitution of the Republic of Uganda 1995

Domestic Violence Act

Electoral Commission Act Cap 140

Executive Committee (Judicial) Powers Act Cap.8.

Judicature Act Cap 13

Magistrates Court Act Cap 16

Local Government Act Cap 243

Rules of Procedure for the Parliament of Uganda

Internet Resources

The Legal and Institutional Context of the 2006 elections in Uganda <http://www.cmi.no/pdf/?file=/uganda/doc/court-administration-uganda-october-05.pdf>

Graham Spindler "Separation of Powers: Doctrine and Practice"

<http://www.parliament.nsw.gov.au/Prod/parlment/publications.nsf/key/SeparationofPowers>.

Articles

Stephen Charles Kaduuli, Operational Roles of Ugandan Members of Parliament, Africa Leadership Institute 2008.

About UWONET

Uganda Women's Network-UWONET, is an advocacy and lobby network comprising of 16 national women's organizations, institutions and 9 individuals. It was established in 1993 to provide space for collective engagement of organizations advocating for women's rights especially the eradication of gender based discrimination.

Vision

A Ugandan society free of all forms of gender based discrimination

Mission

To coordinate collective action among members and other stakeholders through networking, capacity building, resource mobilization, policy research and advocacy for the attainment of gender equality in Uganda

“This document has been produced with the financial assistance of the European Union through Democratic Governance and Accountability Programme (DGAP). The contents of this document are the sole responsibility of Uganda Women’s Network (UWONET) and can under no circumstances be regarded as reflecting the position of the European Union.”

Contact;

The Executive Director

Uganda Women’s Network

Plot 198 Old Kiira Road Ntinda - Kampala, Uganda

Phone: +256 414 286 539,

Email: info@uwonet.or.ug

Website: www.uwonet.or.ug

Blog: <http://uwonetnews.blogspot.com>

Facebook: <http://www.facebook.com/uwonet>

Twitter: [@uwonet](https://twitter.com/uwonet)