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Questionnaire
Reply by the Supreme Court of Uganda

Questionnaire

A. Court description

Introduction

The Supreme Court is the highest court in the land and the final court of appeal. It is also the appellate Constitutional Court.

I. Basic texts

The Supreme Court derives its powers from the Constitution of Uganda.

II. Composition, procedure and organisation

According to Article 131 of the Constitution, the Supreme Court is duly constituted at any sitting if it consists of an uneven number not being less than five members of the court. When hearing appeals from decisions of the Court of Appeal sitting as a Constitutional Court, the Supreme Court consists of a full bench of all members of the Supreme Court; and where any of them is not able to attend, the President, for that purpose, appoints an acting justice to sit in his or her place.

The Chief Justice presides at each sitting of the Supreme Court, and in the absence of the Chief Justice, the most senior member of the court as constituted shall preside.

Amendments were made through The Judicature (Amendment) Act 2011, which now states that the Supreme Court of Uganda shall consist of the Chief Justice and ten Justices of the Supreme Court.

III. Jurisdiction/ Powers

The Supreme Court is the final court of appeal.

An appeal lies to the Supreme Court from such decisions of the Court of Appeal as are prescribed by law.

Any party aggrieved by a decision of the Court of Appeal sitting as a constitutional court is entitled to appeal to the Supreme Court against the decision.

The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.

IV. Nature and effects of judgment

The Judicature (Supreme Court) Rules, S 31 states that:

‘On any appeal the court may, so far as its jurisdiction permits, confirm, reverse or vary the decision of the Court of Appeal with such directions as may be appropriate, or order the hearing of the appeal before the Court of Appeal and as the justices of the case demands, the court may order a trial de novo in the court of first instance, including a constitutional matter and may make any necessary, incidental or consequential orders as to costs.’

The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.

The decisions of the Supreme Court are final but the Court may correct any error or arithmetical mistake to give effect to its decision.

Conclusion

B. Social integration

1. Challenges of social integration in a globalised world

1.1 What challenges has your Court encountered in the past, for example in the field of asylum law, taxation law or social security law?

The Constitutional Court has not handled matters relating to asylum or social security law. However in regards to taxation law, in **Commissioner General v Meera Investments** SCCA 22/2007, the court dealt with the matter of whether the Commissioner General of the Uganda Revenue Authority, a statutory body could be sued under their official capacity. It involved reconciling two seemingly conflicting provisions in the Uganda Revenue Authority Act and the Income Tax Act. The court eventually ruled that since the Commissioner General could sue and maintain a suit in their official capacity, he/she should be able to be sued.

1.2 How were issues of social integration or conflict transformed into legal issues?

1.3 Is there a trend towards an increase in cases on legal issues relating to social integration? If so, what were the dominant questions before your Court in the past and what are they at present?

The Constitutional Court has mostly dealt with cases involving human rights issues, whether in relation to freedom of speech, equality before the law, the right to bail. The court continues to mostly handle such issues, related to fundamental rights and freedoms.

2. International standards for social integration

2.1 What are the international influences on the Constitution regarding issues of social integration/social issues?

Uganda as a member of the United Nations (UN) and the African Union has ratified many international instruments dealing with social issue and social integration and has therefore made a binding commitment to adhere to the standards laid down in the documents. Some of these include the Universal Declaration on Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The African Charter on Human and Peoples’ Rights.

The Constitution states that:

XXVIII. Foreign policy objectives.

(i) *The foreign policy of Uganda shall be based on the principles of—
promotion of the national interest of Uganda; respect for international law and treaty obligations; peaceful coexistence and nonalignment; settlement of international disputes by peaceful means; opposition to all forms of domination, racism and other forms of oppression and exploitation.*

When deciding cases, the Constitutional court may also be persuaded by decisions of superior courts of other countries with similar jurisdictions (e.g. Commonwealth countries) however it is not bound by them. It may also be persuaded by decisions of international human rights courts like the European Court of Human Rights (ECHR).

2.2 Does your court apply specific provisions on social integration that have an international source or background?

Court will make reference to relevant and appropriate international treaties, customs or conventions as long as they have been ratified by the state.

2.3 Does your Court directly apply international instruments in the field of social integration?

As a member of the United Nations and various other international bodies, Uganda has ratified several international treaties which it is therefore bound by. The recognised principle is that the Court will interpret national laws in conformity with those international obligations. However, there is no provision in the Constitution that expressly requires Court to refer to international law or foreign law (unlike for example the Constitution of the Republic of South Africa which states that '*Customary international law is the law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.*')

2.4 Does your Court implicitly take account of international instruments or expressly refer to them in the application of Constitutional law?

There have been several instances in which the Constitutional Court expressly took notice of international instruments to which Uganda is a party. For example, in the landmark case of **Charles Onyango-Obbo & Andrew Mujuni Mwenda v A.G Constitutional Appeal No.2 of 2002**, which was a petition brought by two practicing journalists who were invoking constitutional protection for the freedom of the press. In their ruling, the Supreme Court sitting as the appellate Constitutional Court had recourse to various international human rights instruments. The Hon Justices relied on Article 9 of the African Charter on Human and Peoples' Rights. Making reference to the African Commission which adopted the Declaration of Principles of Freedom of Expression in Africa, they recalled that Africa states had agreed to guarantee the freedom of expression and information as a fundamental and inalienable human right and an indispensable component of democracy. They also had recourse to the International Covenant on Civil and Political Rights (ICCPR) which provides that everyone has the right to hold opinions without interference.

Since then the Constitutional Court has consistently made reference to international legal instruments when necessary such as the International Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) as well as the Maputo Protocol on the Rights of Women in Africa in **Uganda Association of Women Lawyers & 2 Others v Attorney General, Constitutional Petition No.2 of 2003** and the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR) in **Susan Kigula & 417 Others v A.G** which was a case concerning the right to life (the death penalty).

2.5 Has your Court ever encountered conflicts between the standards applicable on the national and on the international level? If so, how are these conflicts solved?

In *Susan Kigula & 417 Others v Attorney General* Constitutional Appeal No. 3/2006 (SC), made explicit references to international human rights law in arriving at its decision on the death penalty. The Court referred to the preamble and Articles 3(rights) and 5(freedom from torture) of the Universal Declaration of Human Rights (UDHR) and held that they did not abolish the death penalty.

The Court also referred to Articles 6(1), (2) and (4) and 7 of the International Covenant on Civil and Political Rights (ICCPR) and held that those provisions do not abolish the death penalty but require that the right to life should not be arbitrarily taken away and the Court therefore decided that the execution of the death penalty does not amount to torture. The Court also held that those articles 'are in *pari material* with articles 22(1) and 24 of the Constitution of Uganda. The Court also noted that 'had the framers (of Uganda's Constitution) intended to provide for a non-derogable right to life, they would have so provided expressly'. The Court then concluded that Article 22(1) of the Constitution 'clearly...conforms to the international human rights instruments...particularly the ICCPR.

3. Constitutional instruments enhancing/dealing with/for social integration

3.1 What kind of constitutional law does your Court apply in cases of social integration – e.g fundamental rights, principles of the Constitutional (“social state”) (“objective law”)

3.2 In cases where there is access of individuals to the Constitutional Court: to what extent can the various types of constitutional law provisions be invoked by individuals?

Any person who is aggrieved by any law, act or omission by any person or authority that they feel is inconsistent with or in contravention of the Constitution may bring the matter before the Constitutional Court.

Where any question as to the interpretation of this Constitution arises in during the proceedings in a court of law other than a field court martial, the court may, if it is of the opinion that the question involves a substantial question of law; and shall, if any party to the proceedings requests it to do so, refer the question to the constitutional court for decision

3.3 Does your Court have direct competence to deal with social groups in conflict (possible mediated by individuals as claimants/applicants)?

Since any person can bring a petition before the Courts, this has been taken to include groups as well.

Article 50 of Uganda's Constitution which deals with the '**Enforcement of rights and freedoms by courts**' states that:

'Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

Any person or organisation may bring an action against the violation of another person's or group's human rights.'

This provision referring to 'any person or organisation' opened up the legal landscape in Uganda to include 'public interest litigation', a concept that was not available prior to the 1995 Constitutional amendment.

In **Ismail Serugo v Kampala City Council**, Constitutional Appeal No.2/98, the Court stated that:

“A petition brought under this provision (Article 137(3)) in my opinion, sufficiently discloses a cause of action, if it describes the act or omission complained of, and shows the provision of the Constitution with which the act or omission is alleged to have been contravened by act or omission and prays for a declaration to that effect.”

Since then there have been many public interest suits brought before the courts. These are usually brought against the government. It has thus far been uncommon to have cases brought by social groups in conflict.

3.4 How does your Court settle social conflicts, when such cases are brought before it (e.g by annulling legal provisions or by not applying them when they contradict the principle of equality and non-discrimination)?

137. Questions as to the interpretation of the Constitution.

Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the constitutional court.

When sitting as a constitutional court, the Court of Appeal shall consist of a bench of five members of that court.

A person who alleges that—

(a) an Act of Parliament or any other law or anything in or done under the authority of any law; or

(b) any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the constitutional court for a declaration to that effect, and for redress where appropriate.

(4) Where upon determination of the petition under clause (3) of this article the constitutional court considers that there is need for redress in addition to the declaration sought, the constitutional court may—

grant an order of redress; or

refer the matter to the High Court to investigate and determine the appropriate redress.

(5) Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, the court—

(a) may, if it is of the opinion that the question involves a substantial question of law; and

(b) shall, if any party to the proceedings requests it to do so, refer the question to the constitutional court for decision in accordance with clause (1) of this article.

Where any question is referred to the constitutional court under clause (5) of this article, the constitutional court shall give its decision on the question, and the court in which the question arises shall dispose of the case in accordance with that decision.

Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.

According to the **Judicature (Rules of the Constitutional Court) (Petitions for Declarations under Article 137 of the Constitution) Directions**, s4, the Court may

- a) *Grant a declaration that an Act of Parliament or any other law or anything in or done under the authority of any law is inconsistent with the Constitution;*
- b) *Grant a declaration that any act or omission by any person or authority is inconsistent with or in contravention of a provision of the Constitution;*
- c) *Grant an order of redress; or*

- d) *Refer the matter to the High Court to investigate and determine the appropriate redress.*

The Constitutional Court has therefore on several occasions annulled legal provisions that they deemed discriminatory and contrary to the spirit and provisions of the Constitution.

In ***Uganda Association of Women Lawyers & 2 Others v A.G*** (Constitutional Petition No.2 of 2003), the Constitutional Court held that provisions in the Divorce Act which discriminated between husbands and wives on the grounds for divorce and the reliefs given subsequent to divorce, were discriminatory and therefore contrary to Article 21 of the Constitution which states that all persons are equal before the law. Similarly in ***Law & Advocacy for Women in Uganda v A.G.*** Constitutional Petitions No. 13/2005 and 05/2006 the Constitutional Court held that the provisions of s. 154 of the Penal Code Act which made adultery by a married woman with any many criminal, while adultery by a married man with any unmarried woman was not criminalised, was discriminatory against women and therefore unconstitutional.

3.5 Can your Court act preventively to avoid social conflict e.g by providing a specific interpretation, which has to be applied by all state bodies?

The Constitutional Court can only act when a petition is brought before it or the matter is referred to it from another Court. It does not give advisory opinions.

4. The role of constitutional justice in social integration

4.1 Does your Constitution enable your Court to act effectively in settling or avoiding social conflict?

The Constitution states that '*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 law and with the values, norms and aspirations of the people*'(Article 126). It also goes on to state that '*justice shall be done to all irrespective of their social or economic status.*' The independence of the judiciary is also strongly highlighted and has been a core principle of the judiciary. It has allowed it act without fear or favour in settling disputes.

4.2 Does your Court *de facto* act as 'social mediator', or/and has such a role been attributed to it?

Courts may be deemed as the main social mediators since this is a main feature of their functions. Courts are there to adjudicate between parties in conformity with the laws and principles of the land. One of the ways this is done is through judicial mediation. In Uganda, we have been working to develop mediation as a first resort in dispute resolution as it is less expensive, takes a shorter period and provides for a win-win scenario for both parties thereby also allowing for the repair and restoration of relationships.

Art 126 of the Constitution states that '*reconciliation between parties shall be promoted*'

4.3 Have there been cases, when social actors, political parties could not find any agreement, they would 'send' the issue to your Court which had to find a 'legal' solution, which normally should have been found in the political arena?

Most disputes which cannot be resolved through social or political negotiations are normally referred to the Court for a 'legal' solution.