JUSTICE LAW AND ORDER SECTOR
UGANDA

SECTOR WIDE APPROACH IN JUSTICE LAW AND ORDER: THE UGANDA EXPERIENCE

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INTRODUCTION

I would like to thank the Uganda Law Reform Commission and ALRAESA for inviting me to present a paper and participate in this annual conference. The ALRAESA stands for ideals that are critical to the JLOS particularly as it contributes to protection of human rights, maintenance of the rule of law, constitutionalism and good governance, which are priorities or objectives of the JLOS. We are therefore proud to associate with ALRAESA and hope that this is a beginning of a long term partnership.

I have been requested to present a paper on Sector Wide Approach in Justice Law and Order: The Ugandan Experience, which must be discussed in the context of the theme Fusion of Legal Systems and Concepts in Africa. In this respect therefore, I will not only describe to you the JLOS, but also illustrate how and to what extent the sector wide approach promotes and facilitates the fusion of legal systems and concepts in Uganda. Furthermore, I will particularly focus on how law reform is catered for in the sector wide approach.

REFLECTIONS ON UGANDA’S LEGAL SYSTEM

Africa has diverse legal systems with each system having its own strengths and weaknesses. While some countries have a civil law system, e.g. South Africa, Mozambique, Rwanda, Namibia, Angola and Burudi, other countries have a common law system e.g. Tanzania, Kenyi, Malawi, Zambia, Zimbabwe and Uganda. Given the immediacy of the colonial past, it comes as no surprise that English ideas and values prevail in Ugandan law. Among the main conduits by which English values have hitherto been introduced are Statutes modeled on English ones or directing the application of English law. The principles of English common law (including doctrines of equity) were also applied and when Uganda gained her independence in 1962, this law was still enforced to prevent creation of a lacuna.

Law Applicable

Every legal system has norms or codes laying down minimum standards and requirements to regulate behavior and conduct. The Judicature Act, 1996 provides the law directly applicable in Uganda and these include statutory and case law, common law, doctrines of equity and customary law. The Constitution is very key. Since her independence in 1962 Uganda has adopted three Constitutions notably, the 1962 Constitution; the 1967 Constitution that permitted Parliament to pass law without the concurrence of the President but also authorized the President to legislate by decree and the 1995, which was promulgated against guidelines and minimum requirements that conformed to conventional constitutional virtues through separation of powers and imposition of checks and balances - a diversion from Parliamentary supremacy in the British Westminster tradition. Arguably, this Constitution is very progressive in content and because it was based majorly on the views and experience of Ugandans.

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1 S.16 and 17 Judicature Act, 1996
The constitution in Uganda is the supreme law of the country and every law or custom that is in conflict is null and void to the extent of the inconsistency. The other written law comprises statutes/Acts of Parliament and Statutory Instruments. Having been adopted from Britain as far back as the 1960’s the challenges of Uganda’s existing law are that many are obsolete, archaic and potentially unconstitutional and the amendments so far made have not been systematic but spontaneous, sometimes in piecemeal and in response to socio-economic concerns e.g. Penal Code on defilement and embezzlement; and sometimes as a result of challenges of law in public interest through which courts have declared such law as void or unconstitutional. Clearly, a lot of Uganda’s, legal system is still littered with draconian and repugnant legislation, customary and religious law contrary to the Constitution. Until they are declared so, that law is still applicable.

Common law and the doctrines of Equity are two branches of law that are applied concurrently in Uganda. However, where there is a conflict of the two, the rules of equity prevail. Customary law as another branch of applicable law in Uganda ranks third in hierarchy. However, it cannot be enforced if it is repugnant to natural justice, equity or good conscience or if it is incompatible with written law.

**Enforcement Mechanism in the Legal System**

If the law gives legal rights people must of necessity have a means to vindicate or maintain it and a remedy if they injured in the exercise or enjoyment of it. It is indeed vain to imagine a right without a remedy because want of a right and want of remedy are reciprocal. The very essence of a legal system consist the right of individuals to claim the protection of the laws whenever they are breached. It is therefore one thing to have laws and another to have fully functioning mechanisms to enforce the law when required.

**Judiciary**

One of the main institutions in any legal system is its judiciary. In Uganda the Constitution provides for and guarantees the independence of the judiciary. The highest court in the land is the Supreme Court. Next in hierarchy is the Court of Appeal that handles appeals from the High Court but it also sits as the Constitutional Court in determining matters that require Constitutional interpretation. The High Court of Uganda has unlimited original jurisdiction. The judges are appointed by the President on recommendation of the Judicial Service Commission and approval of Parliament. As in any common law system, they are appointed from among lawyers. The system for appointing judges has proved of central importance in guaranteeing the independence of the Judiciary coupled with factors like security of tenure.

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2 Article 2(1) (2) and Article 137(3) Constitution
3 Offence of embezzlement under the Penal Code has been amended to allow court require the accused if found guilty to refund the amount embezzled.
4 S.14(c ) Judicature Act
5 Article 134 and 137 of the Constitution
6 Article 138 Constitution
Below the High Court are the Magistrates’ Courts, in a hierarchy of four. A Chief Magistrates Court controls a magisterial area ranging between two or four districts. Grade I Magistrates courts handle appeals from the Local Council Courts and it creates a link between the informal and formal courts, while the Magistrates Grade II found at the county level and currently being phased out, also function as Family and Children’s Court. Specialized courts or tribunals have also been established e.g. Industrial Court, Tax Appeals Tribunal, NPART Tribunal, Land Tribunals and the Human Rights Tribunal.

Uganda also has a parallel judicial system for the military with a hierarchy of courts established under the NRA Act and Regulations. The only link from the military system to the mainstream judicial system arises from an appeal from the Court Martial Appeal Court (is the highest appeal court in the military system) to the Supreme Court where a death sentence or life imprisonment has been maintained.

The role of the Judiciary is to settle disputes and offer redress to aggrieved persons but its role extends to interpretation and development of law by creative interpretative presumption bearing in mind that the purpose of every statute is to further the basic values of the legal systems. The ability however of judicial systems to function largely depend on the basis upon which the claims are brought to court under civil and criminal law. The Judiciary has a very detailed network of legal norms to review administrative decision of the legislature or the executive; adjudicate disputes between individuals and claims in the public interest and review legislation against the Constitution. Therefore concepts such as reasonableness, proportionality, fairness, public good and public health etc., is frequently used and balanced where they are competing values. Through the judgments, the Judiciary therefore restates and clarifies the scope of the Constitution and other written law, common law, equity and custom.

The common law doctrine of precedent applies in Uganda. Each court in the judicial hierarchy is therefore bound by the principles established by prior decisions of courts above it in the hierarchy. The Supreme Court is the highest court in Uganda and it normally treats its decisions as binding on it although it can depart from its earlier decisions if it thinks right to do so. All other courts i.e. the Court of Appeal, the High Court and the Magistrates Courts as well as judicial and quasi judicial tribunals are bound to follow the decisions of the Supreme Court on questions of law. The rigidity of this doctrine is justified on the ground that it ensures the element of predictability and uniformity that are essential to a system of law.

In 1988, the NRM government substantially changed grass roots adjudication by giving judicial powers over civil disputes, which until then had been exercised by chiefs to elected resistance committees in each village, parish and sub county. The local court system placed petty and customary conflicts in the hands of democratically chosen officials, and indeed received broad popular support. The power of the courts ranged from apologies and reconciliation to compensation and fines, presenting an informal justice system familiar to the ordinary person.

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7 S. 14 and 16 Children’s Act, 1996
8 Commission of Inquiry into Local Government
Legal Practitioners

A legal system will be of little benefit or value to people unless they are able to make use of it. Low literacy levels in Uganda and a larger proportion of people living in poverty render the law with the social benefits it brings largely unheard of and under utilized. The legal system, particularly courts can be accessed with the assistance of lawyers or legal practitioners. However, the glaring challenges of few legal practitioners compared to the population and expensive legal services or reluctance of providing legal services to the rural poor makes this impossible. Similarly, the right to legal representation is narrow in scope and is accessed by an accused shortly before trial begins while legal aid is currently not firmly rooted in the framework of justice.

For long, the effect of University law programs in Uganda in practical terms qualifies lawyers for limited practice. An area of expertise e.g. commercial law expertise is minimal because of the generality in the legal education. It is imperative that the content of the program is reviewed. In formulating curricula and deciding on course content, all law schools should take into account the kind of legal system existing and applicable. They should endeavor to ensure that students acquire skills appropriate to the efficient and effective practice of law and strive to inculcate ethical values. The law schools today also face the challenge of implementing major changes to ensure that they keep pace with domestic, regional and global trends e.g. a change from conventional lawyering of litigation and profit making to participating in alternative dispute resolution methods, advocacy, lobbying, law reform, legal and civic education that are critical in harnessing the legal system.

Justice Law and Order – Historical Context

The context within which the justice system in Uganda is can be characterized by two factors – the extent of poverty and the impact of decades of civil unrest. From 1966 to 1986 there was political, civil and economic regression in Uganda resulting into the breakdown of the functions of the state including the maintenance of law and order. Lack of civil authority made it impossible for the justice system to function. Institutions did not have adequate financial resource to function, staff were demoralized and resulted into acts of corruption, Consequently, there was loss of public confidence in the justice system illustrated by a high incidence of mob justice.

To give an accurate impression of this, the sector undertook baseline user perception surveys. Studies and reviews of the criminal justice system in 1999 identified factors that constrained the proper functioning of the sub sector institutions. Overall, the institutional and systemic constraints identified as affecting the ‘supply side’ of criminal and civil justice included corrupt practices, case backlog inefficiencies and lack of effective procedural guidelines and court performance standards, lack of effective planning and budgeting, lack of adequate transport, basic office equipment and insufficient or unsuitable office/court accommodation.

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There were constraints specific to the criminal justice sub-sector e.g. inadequate prison and police facilities as well as antiquated methods and tools of investigation and prosecution. Investigations by police were slow and often incomplete, sentences imposed by the courts were sometimes perceived as too lenient and too slow and both were susceptible to, and plagued by corruption. Where justice did not appear to be delivered, the public often times took the law into their own hands by lynching suspects. Furthermore, because there was a well-founded expectation of ineffective prosecution, there were few guilty pleas by offenders, who preferred to take a chance on the high probability of acquittal. This combined with lengthy court delays, a high backlog of cases and an ineffectual bail system, resulted in a disproportionate number of remand prisoners who comprise the majority of those incarcerated in Ugandan prisons.

Similarly, pursuit of civil claims met with long delays, corruption and a low likelihood of enforcement of any judgment obtained. In respect to commercial justice, commerce in Uganda had for decades been limited, with an underdeveloped commercial justice system and similar problems of backlog, inefficiencies and corruption. When Government defined the policy framework under the GoU Medium Term Competitiveness Strategy for the Private Sector (MTCS), commercial justice was identified as a priority area for private sector growth and a study\(^\text{10}\) pointed out key obstacles to the making and enforcement of commercial contracts including backlog in court, inefficiencies and corruption in key institutions as well as lack of commercial awareness in courts. On the basis of this study, a programme was developed for reform of commercial justice with four key areas for intervention.

These systemic constraints were compounded by the absence of a clear policy framework, limited capital and infrastructure investment and decreasing funding levels from government, impunity and lack of accountability to the public for human rights violations, corrupt practices and limited information exchange contributed to serious service delivery problems e.g. management of suspects from arrest to discharge or operational legal systems to enforce contracts and enable debt collection.

On the ‘demand side’ of justice, other obstacles related directly to the end-users of the agencies. The status quo remained in part due to weak ‘demand side’ especially by the poor, unable to demand change. Illiteracy and ignorance of rights of the technical procedures, cultural and gender-based obstacles, corruption and a weak financial and economic base made criminal defence or civil litigation unaffordable, thus undermining public confidence in the state of the legal system. Confidence was severely eroded contributing to a negative cycle. In these circumstances, there was no effective access to justice for all – as even illustrated through the rich having to purchase justice at a high cost.\(^\text{11}\)

\(^{10}\) Uganda Commercial Justice Study, Justice Odoki, Clare Manuel, Richard Hooper 1999

\(^{11}\) See Desk Study on Access to Justice for the Poor in Uganda, March 2004 by Allen Asiimer and Internal Study of Results of Danida Support to Support to the Judiciary Project Phase 1 and 11, April 2004 by Nordic Consulting Group (U) Ltd
The National Resistance Movement (NRM) in 1986 saw Uganda become a party to all major international treaties defining an effective system of justice, law and order. Coupled with the minimum standards in the 1995 Constitution and systemic problems in administration of justice, Uganda set in motion changes to illustrate her compliance with the treaty standards to realize the ideal.

**Origin of the Sector wide Approach to Justice, law and Order**

As far back as the late 1980’s and early 1990’s development partners invested in institutions carrying out *de jure or de facto* functions relating to law enforcement or the administration of justice. However, support was provided to individual agencies with minimal cooperation between the agencies. The traditional institutional approach with different development partners working with different agencies was adopted.

The challenge with this approach was that while investment and effort was extensive, the impact was limited. Studies undertaken to analyse this situation contributed to identifying roles, strengths and weaknesses of respective institutions and a provision of a broad road map of the sector was made as a basis for priority setting. While better coordination to institutional approach was being considered, other initiatives such as Chain Linked Initiative was designed to improve coordination, communication and cooperation across the criminal justice agencies (Police, Prisons, DPP, Judiciary, Probation and Welfare services) and identify best practice. The individual agencies worked closely coordinating and exchanging management information alongside the identification and implementation of performance standards and procedural guidelines.

The Chain Linked Initiative pilot showed that the justice agencies were all part of the same chain that makes up the process of administration of justice and that they all stood to benefit from working more closely together and in sharing information. Some of the immediate benefits included identification and withdrawal of 600 *deadwood* cases by the Director Public Prosecution, joint prison visits with agreed action in relation to identification of priority prisoners and release of those found to be unlawfully imprisoned; development and distribution of agreed performance standards for different stages in the administration of justice process and joint meetings to weed out cases and coordinate the scheduling of trials. A parallel success to the Chain Linked Initiative was the Case Backlog Project that brought the relevant agencies together to exchange information and identify the resources required to reduce the backlog of criminal cases (at the High Court) and devise systems and procedures to ensure that the backlog is not repeated. Undeniably, the chain linked initiative and Case Backlog project paved the way introducing a coordinated approach to planning and budgeting on a national, sectoral level for justice, law and order.

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12 Notably, the International Covenant on Civil and Political Rights, 1966; Economic Social and Cultural Rights, 1966; Covenant on the Rights of the Child, 1989; Convention against Torture and other Ill Treatment, 1985
13 DFID, Uganda Police Force; Danida – Judiciary; Netherlands - Directorate Public Prosecutions; Germany - Uganda Prison Service; Norway - Uganda Law Society; Austria - Uganda Law Reform Commission
In November 1999 a meeting of high level policy and political decision makers in the justice sector considered defining the legal sector in broad terms with six areas of action: civil and commercial justice, criminal justice, good governance and human rights; law making, law revision and reform; legal services and legal education, training and research. This wide definition presented difficulty in working out clear objectives and also increased the number of potential GoU stakeholders which would prove unmanageable. The need to prioritize was critical resulting into focusing on strengthening efficiency and effectiveness of criminal and commercial justice systems in the medium term. This narrowed the sector definition to specifically exclude good governance as a singular issue and focus on “core” legal issue. The more tightly focused program particularly at institutional level would nonetheless ultimately address good governance issues. It was also agreed to align the justice sector with government’s policy on poverty eradication. The successful implementation of the sectoral approaches in areas of health and education meant that if the sectoral approach was adopted in justice law and order, it would significantly improve financial requirements before Ministry of Finance. Similarly, this implied that a policy and institutional framework was necessary to facilitate the reform process.

JLOS Policy and Institutional Framework

The national development strategy for Uganda is enshrined in the Poverty Eradication Action Plan (PEAP) which guides government policy formulation since 1997. The JLOS was conceived with the overall objective of improving the administration of justice, through coordinated program planning, budgeting, implementation, monitoring and evaluation of all sector institutions, along a Strategic Investment Plan 2001-2006 (SIP). The JLOS goal is to improve safety of the person, security of property and access to justice that are prerequisites for a strong economic environment conducive for private sector development and beneficial to the poor and vulnerable. The policy objectives of the JLOS are foster a human rights culture across JLOS institutions, promote the rule of law; secure access to justice for all people, particularly the poor and other marginalized groups; amendment of laws and legislation that are discriminatory; ensure significant reduction in incidence in crime, particularly those perceived as serious crime; promote principles of crime prevention, as well as enforcement; encourage grassroots voices and community involvement across JLOS institutions and strengthen structure for commercial justice, particularly at grass root level; thus contributing to the PEAP.

The strategic objectives supported through the sector wide approach is a complex task involving a shift of focus from institutional interests to sector wide interests, with the corollary shift in resources that such decision making implies. The sector wide approach therefore requires that institutional priorities or plans should not form the basis for defining areas for support and priorities under the sector wide plan. Instead what is needed is a participatory process to define sectoral priorities, followed by planning of institutional contributions to realize those priorities. The sector wide approach currently brings together, ten institutions.15

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Commercial Justice Reform Program

The commercial justice reform program of JLOS addresses the inputs needed to make all components of the system function i.e. the companies registry, the Land Registry, the courts, enforcement agencies, the legal profession and the regulatory framework. The programs strategic objective to improve the ability of the private sector to make and enforce commercial contracts by ensuring that commercial courts are accessible to all businesses and the process of commercial cases is handled expeditiously and in a just manner. Support functions to any business environment under commercial registries i.e. companies and land registries are vital and therefore warranted reforms to ensure their improved efficiency and transparency. Enforceability of contracts is also not possible if the regulatory framework is not conducive. The program aims at reforming commercial laws with a sustainable process to ensure business friendly laws and regulations. Interventions have also been made at strengthening the legal profession to enhance access to legal advice and representation since commercial lawyers are key actors in the commercial justice system.

Criminal Justice Reform Program

One of the key result areas for criminal justice reform is legal services reform which aims to improve accountability, monitoring and coordination across the sector through implementation of codes of conduct and performance standards/guidelines, protection of rights of particularly vulnerable groups e.g. juveniles and rationalized and cost effective legal representation.

JLOS intervention to improve access to justice aims at promoting the right to access functioning courts and services, particularly by the vulnerable. Key actions involve infrastructural reform to increase physical access to JLOS institution and services. More so, to enhance equitable access for women and juveniles, attention has been laid to increasing capacity of Local Council Courts in equitable application of law, increasing functionality of the Family and Children’s Court and strengthening legal aid, lowering the cost of administration of justice and inaccessible justice to the poor. This component involves JLOS support to organization and human resource development to improve institutional efficiency and effectiveness as well as generation of efficiency gains to increase the resource envelope for operations.

The criminal justice reform program also recognized the need to strengthen the demand side for justice, especially by increasing human rights awareness of the poor but also within the JLOS institutions because alleged claims of human rights violations were not only systemic but arose from attitudes of officials. Focusing on civic and legal education especially for the poor, legal literacy and observation of human rights would contribute to improving the quality of justice. It is also anticipated that reform of criminal laws under the program will promote the rule of law and increase respect for human rights thus also leading to improved quality of justice.

Commission (JSC), Directorate Public Prosecution. In commercial justice there is the Tax Appeals Tribunal, Commercial Court, Uganda Law Society, JSC, ULRC, CADER
Structures of JLOS

Under the strategic investment plan, management of the program was to encompass a number of tiers including a National Council, the Steering Committee, Technical Committee and Access to Justice Committees at district level. Although the national council was not established, a Leadership Committee evolved comprising of the Chief Justice (Chair), the Minister of Justice and Constitutional Affairs and the Minister of Internal Affairs. The committee provides JLOS the political support and policy guidance across the sector.

Steering Committee

A Steering Committee comprising officials at the highest level of each JLOS institution and the Ministry of Finance, Planning and Economic Development (MoFPED) is responsible for monitoring policy coordination across the sector.\textsuperscript{16} The Steering Committee takes decisions based on recommendations of matters from the Technical Committee. However, JLOS decision-making can be strengthened by ensuring the peer review is routine, robust and systematic. This means that the processes must ensure that evidence is systematically used as the basis for decision making with supply of relevant data to management and at the Technical Committee stage before the decision is taken. Once decisions are made by the Steering Committee follow-up is largely left to the secretariat, which has played an important role in identifying issues, calling meetings, preparing the agendas and following up decisions with the technical committee for implementation.

Technical Committee

The Technical Committee was envisaged as responsible for implementation of the JLOS program and this has largely been through its two sub-committees - commercial justice and de-regulation and the criminal justice.\textsuperscript{17} It comprises senior and middle management from the JLOS institutions with a representative of the Ministry of Public Service and MoFPED. The sub-committees have had the benefit of relatively consistent participation by officials thus sustaining the program. The necessity of two distinct sub committees in the first phase is understood. However, as the sector grows, there is need for closer coordination and interaction between the committees through more regular meetings of the overall Technical Committee so as to strengthen the sectoral approach. In the commercial justice sub-committee representatives from the private sector comprise the membership as key stakeholders the commercial justice system. While there is only one non government representative i.e. Uganda Law society to represent the network of legal aid providers, there is no equivalent input from key stakeholders in the criminal justice sub committee.

In such a program, it is imperative that the agenda is not over-loaded by financial issues alone but implementation issues. Therefore, the reporting process should not be

\textsuperscript{16} Meet once every two months or when matters for policy discussion arise
\textsuperscript{17} Meetings held once in two weeks or weekly if there is an agenda.
predominantly focused on reporting to donors, rather to each other. Peer review should be enhanced on matters e.g. priority setting, work plan and progress reports. While on one hand each institution needs to maintain its independence, it is critical to realize that the sectoral approach dictates that each institution should be able to monitor the others performance. The Technical Committee meetings enhance this.

Working Groups

The sector plan did not envisage working groups/committees. But six committees have evolved to address key issues and to support the Technical committee in follow up and implementation. The working groups invariably ensure frank discussion at working level without the protocol of silence in front of more senior civil service supervisors and they also ensure that crosscutting issues are addressed. The approach adopted is that the working groups are sectoral and do not represent the views of only one or selected JLOS institutions. In principle, working groups are a practical addition to the JLOS structures. However, they must be strengthened to meet their potential of ensuring frank, hand-on discussion at working level.

JLOS Secretariat

In addition to the three tier management structure, a modest semi autonomous secretariat was planned for and is established. It is institutionally housed within the MoJCA and reports to the Solicitor General (chair of steering committee). Nevertheless, the secretariat still maintains a measure of independence by reporting to all sector institutions at the Technical and Steering committees. The secretariat comprises three advisors and it plans for the program, manages program funds, services and fosters vertical and horizontal linkages within JLOS structures, supports preparation of progress reports, follows up on implementation of undertakings, provides advisory skills, builds consensus within JLOS and nurtures the relationship of government and donors. The secretariat workload is very heavy and increased staffing is necessary if it is to function effectively.

One of the key issues identified in JLOS and currently functioning is the establishment of Policy and Planning Units (PPUs) within the different institutions to spearhead the process of planning and development at the institutional and sectoral level. Once the PPUs are fully and adequately staffed, they would relieve the secretariat in policy formulation and articulation, planning, internal monitoring, financial and report writing. It is important therefore to have strong PPUs with clear terms of reference, a shared vision for the sector and a strong working relationships from the Technical committee to the institutions if such a program is to evolve significantly.

National Justice Forum

The strategic investment plan envisaged that a national forum on Justice Law and Order would be held annually to bring together primary and secondary stakeholders to debate JLOS issues and concerns thus providing an important link between government and civil

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18 Budget Working Group, Gender Working Group, HIV/AIDS Working Group, Juvenile Justice, Poverty and Publicity Committee
society. So far one national justice forum was held in April 2005 which was an opportunity for debate, to develop awareness of the importance of JLOS reform among the wider public, to work towards an informed constituency in support of reforms and to encourage government allocate the necessary resource. It is vital for the forum to be understood widely as part of a strategy to involve local level officials and communities and enhance vertical communication through JLOS structures, in priority setting, planning or monitoring and evaluation.

Overview of JLOS Achievements and Challenges

The first half of the implementation phase of the SIP has been extremely positive with considerable achievements, which I will discuss under thematic areas. Enormous effort has been applied by the institutions, the management structures, secretariat and donors.

Improved Access to Justice

A lot of focus so far has been on geographical coverage by key JLOS institutions. There has been infrastructural development to de-concentre the institutions aimed at limiting distances to be traveled to access services. Therefore JLOS has constructed regional offices of the DPP and MoJCA, courts and constructed and renovated prisons, remand homes, police posts/stations/detention cells for juveniles to provide more humane conditions of detention, contribute to decongestion. In addition, basic infrastructure e.g. vehicles, communication equipment and residential buildings particularly for the Police, Prison lower cadre staff has been made to enable more effective operation of the institutions. Although progress in construction has been impressive, the need for further de-concentration to address accessibility to services by JLOS remains enormous, especially in northern Uganda and the Karamoja area where service delivery has for a long time been hindered by conflict. JLOS is therefore to develop a strategy for conflict and post conflict areas.

Beyond improving physical representation of JLOS, there is need to continue to assess the ratios of distribution of JLOS personnel to the population, while taking into account factors such as crime. It is in this respect, that the sector prioritizes the phased recruitment of staff to meet the ideal ratios in the long term, and to increase access through faster case investigation, prosecution and adjudication. Progress to date includes an annual recruitment of at least 500 prison warders/wardresses and 500 police officers, 26 Grade 1 Magistrates, 5 Judges and 60 State Attorneys. The impact of this has, for example, improved the ratio of staff prisoner ration to 1:6 towards the targeted 1:3 international standard. Achievements in the functionality of the Family and Children’s’ court increased to over 40% with an increase of probation and welfare officers from one or no officer per district in 2001 to one officer per district and at least two officers in 20 districts in 2003.

The Local Council Courts were identified as critical to the improvement of access to justice particularly for women and children. In administering justice, if the courts are to function professionally and effectively, they should be competent to manage the courts. Not only are members of the court part of the executive, but they do not have legal training or sufficient knowledge of law. Through support of UNDP and JLOS, user-friendly guidelines were drawn as a basis for training and so far 81,595 LCC officials have been trained. The
task ahead is for these courts to be systematic and standardized in their roles, functions, jurisdiction and procedures as well as for them to be sensitive to gender, human rights and rules of natural justice. This calls for their supervision by the Judiciary as a contributing factor to standardisation.

The immediate impact of de-concentration of services can be seen through improved use of the formal justice systems by civil society especially through provision of legal aid. One of the issues that JLOS is concerned about is the limited access to justice due to lack of, inadequate or expensive legal representation. JLOS recognizes that in strengthening the existing legal aid services, access to justice including access to legal advice and services and realization of rights as fundamental preconditions of social justice would be enhanced. Legal aid covers very limited area in the JLOS program. To improve and expound coverage of legal aid services, amendment and enforcement of the Advocates Act to ensure all advocates provide pro bono and legal aid services; increased geographical coverage of legal aid clinics by civil society organizations and a regulatory framework for legal aid by Uganda Law Council will all be addressed under the Legal Aid Basket Fund managed by DANIDA. The role of legal aid service providers will improve and further the objectives of the JLOS. Evidence of impact will therefore become available operationalisation of the fund. The challenge for the JLOS is to draw stronger and refined partnerships with civil society organizations, especially through the structures of the basket fund to ensure that concerns of JLOS are responded to.

The premises that housed the commercial court were not custom build for a courthouse and this has hampered service delivery largely due to limited facilities. Currently a purpose built commercial court is under construction in Kampala and it will be commissioned at the end of 2005. In a bid to enhance dialogue with its users, the commercial court established the Commercial Court Users Committee to provide a unique forum for frank exchange of ideas between the court, commercial lawyers, the private sector, academia and donors and means for improvement. It has enhanced transparency and accountability of the court, and provides a valuable forum for the private sector to air its concerns and issues about the commercial justice sub sector. The sector needs to increase awareness on the role and existence of the commercial court among the private sector and ensure that the court is accessible by the public as a whole and not only the private sector.

**Improved Efficiency and Effectiveness of Justice**

Efficiency and effectiveness presupposes that the program is making considerable impact. However, an assessment of progress in terms of impact is clearly premature given the short period of implementation of the strategic investment plan. Inspite this, the program’s intention is to improve throughput of cases at reduced cost to the sector. In this respect, JLOS institutions all now have strategic plans. To ensure result oriented management, the sector has formulated codes of conduct to guide the operations of officers. Implementation of management information systems has been developed with the Judiciary and DPP having computerized case management systems. While the data bases need to be perfected

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19 Executive Director of the Uganda Investment Authority, The Impact of Operations of the Commercial Court on Investment, February 9, 2004
and upgraded to institutional systems they are able to generate crime statistics, prisons census and annual reports.

Human resource development is also key - special training has been undertaken in financial management and specialized areas e.g. legislative drafting, criminal investigation (forensic), strengthening of the legal profession e.g. training of commercial lawyers from the private and public service, notably introduction of management strategies for support staff and through which a training program has been developed to address identified gaps in key competencies for all support staff the commercial court, has e.g. contributed to a slight reduction in user perception of corruption at the commercial court from 27% at the baseline survey to 26% in 2004 of the private sector, and 31% to 25% of lawyers interviewed. However, poor terms and conditions of service for JLOS staff e.g. a low salary and standard of living is critical to the success of the reforms. Given that institutions are only as good as the personnel who run them, pay reform and better standards of living must form part of human resource development.

To increase the clearance rate of criminal cases in the High Court and Court of Appeal, thus reducing backlog and delays in delivery of justice, JLOS undertook to review legislation to increase jurisdiction of lower courts to enable them handle more cases at less cost and to improve capacity of LCC to competently adjudicate cases. However, altering of jurisdiction has not been possible owing to challenges of law reform. Inspite this though, through continued coordination of Chain Linked and implementation of cases backlog project, JLOS registered reduction in length of stay on remand from an average of 24 months to less than 15 months for serious offences. There is a reduction in the number of persons staying on remand beyond constitutional period from 39% to 1% and 23% to 10% for serious offences and petty offences respectively. There is also a reduction in time spent on remand after committal e.g. from 5% of committals that had stayed beyond 3 years in 1998 to only 2% as at 2003. The countrywide rollout of community service has also contributed to this, by giving an opportunity to divert 2,670 offenders from prison thus mitigating the poor prison conditions. JLOS registers increasing trend of arrest based on evidence, as may be indicated by increasing rate of conviction compared to acquittals. More so, there is also a reduction in the number of files lost between DPP and Police arising from improved information management.

The backlog of commercial cases before the court was initially reduced following the development of innovative approaches to reform and speedier disposal of cases as compared to the general judiciary system. There has been significant increase in the number of mediations initiated by CADER particularly in 2004 following the introduction of compulsory mediation in September 2003 under the Mediation Pilot Project. The challenge is to see an increase in the rate of settlement from 25%. Unlike mediation, arbitration has been perceived as lengthy as the court process, quite technical and more expensive bearing in mind that the parties have to pay the arbitrator and the premises where arbitration takes place. The domestic arbitration market in Uganda is currently

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20 Personnel Management System Consultancy 2003
21 Follow Up survey undertaken by K2 Research Ltd. April to June 2004
22 JLOS Mid Term Evaluation Report, December 2004
young with lack of qualified arbitrators who enjoy the trust of the parties. Furthermore, considering that the arbitration is self-enclosed with no opportunity for appeal, legal practitioners vie this as unattractive.

Similar to arbitration, legal practitioners regard mediation as another unnecessary step in the legal process and because CADER uses recent law graduates as mediators, they are not trusted and do not command the necessary respect from senior practitioners. Lack of senior mediators discourages the effective use of mediation and this limits the success of use of ADR, more so since the litigants can revert back to mainstream litigation where mediation failed. JLOS needs to engage law schools to fully integrate ADR training for all law students to yield results in the long term when the students are eventually the senior practitioners in which ADR is seen as part of the mainstream litigation process. Nevertheless, there has been a reduction in multiple adjournments to an average of 1.69 adjournments per case in May 2004 and faster disposal of cases average of 9 months per case from 12 months in June 2002. The court has therefore made much progress in developing an efficient, effective and transparent disposal of cases that needs to be sustained.

A case can only be considered fully complete when judgment has been delivered and enforcement. Delays in delivery and enforcement of judgments, partly due to limited capacity at the commercial court have not matched the 40% increase in the disposal rate of case delivery of judgments. The challenge of delayed delivery of judgments extends to other divisions of the judiciary and the Chief Justice’s directive to have judgments delivered within 60 days of submissions will address the problem. To the users of courts, the enforcement of judgments by bailiffs is critical in building confidence in the legal system. Therefore the regulation of Court Bailiffs is under review to improve the system characterized by inefficient and corrupt system with bailiffs acting largely unsupervised thus causing poor enforcement of judgments.

**Improved Quality of Justice**

1. **Improved Civic and Legal Education**

In addressing the demand side for justice, some JLOS institution have established help and complaints desks e.g. DPP, Police, Prisons and Judiciary, while a number of workshops, radio and television programs have been held to inform the public about JLOS and to create awareness on legal and human rights. Publications e.g. training manuals and brochures have given useful guide to users. The challenge for JLOS is to improve quality of and increase publicity of JLOS, what it does and what minimum standards the public should expect of JLOS. Therefore, the methods/medium and language we use must be reviewed to expound our target group to reach and empower the poor and vulnerable access justice if JLOS is to contribute towards poverty eradication. In this regard, the importance of a structured and stronger partnership with civil society and other institutions cannot be underscored.

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23 Note that more senior retired judges and prominent legal practitioners are taking on the role of Arbitrators and their rates are as high as U.shs.1,000,000= per day.

24 MTE Report December 2004
The commercial court is in the process of publishing commercial Court Users Guide to explain to users and potential users of the court the procedure of the court, in simple terms. In addition the court is currently reviewing its rules of procedure in order to simplify them as far as possible or improve them in other ways to avert possible corrupt practices among staff and lengthy court procedures. The program supports the Judicial Service Commission in raising awareness of the role of the commercial justice reform program for investment promotion in Uganda.

2. Law Reform

The Constitution serves as a vital spur to the development of enabling law. It requires Parliament to make appropriate enabling law to expound on the Constitutional ideals. Since 1995 Parliament has enacted some laws that are indeed detailed, comprehensive and focused, e.g. the Children’s Act, 1996 and the Land Act 1998, but the absence of enabling legislation has rendered the legal system weak and ineffective.25

Further more, the Judicature Act is silent on application of international law while the status of ratified international and regional instruments requires that Uganda implement the provisions of treaties. The provisions of ratified treaties do not become national law unless they have been enacted as legislation, a process that is entirely distinct from the act of ratification.26 In demonstrating measurable progress in domesticating international provisions, which otherwise renders international law non binding but persuasive, this calls for a procedure to scrutinize existing and draft legislation to ensure that they conform to the treaties. JLOS has undertaken to promote the rule of law and to increase respect for human rights if quality of justice is to improve – this process is spearheaded by the ULRC.

As far back as 1997, reform of commercial laws has been ongoing and bills tabled before Parliament but over 18 of these laws are pending at different stages of law reform.27 The huge volume of laws coupled with the workload of the law reform process involving consultations, studies and research, drafting and preparation of bills, lobbying and advocacy and sensitization has been set back by delays in the law reform process between Cabinet and Parliament. Not only is the task huge and resources limited, but the context within which law reform falls is complex and is dependant on other external exigencies that dictate the pace of legislative reform for which the ULRC has no control over. It is no wonder therefore that the legislation has not been amended significantly. Therefore we still apply bad laws except where court had pronounced itself on particular legislation. There is therefore need to expedite the process considering that law reform impacts on the success of other program areas e.g. enhancing efficiency and effectiveness and lowering costs of administration of justice through alteration of jurisdiction.28 Until there is necessary political impetus through the Parliamentary process and systematic lobbying of

25 Domestic Relations Bill is still pending and renders law on family related issues weak
26 Alston and Steiner International Human Rights Law, p.727
27 Funded by World Bank and Austrian Government Mid Term Evaluation, p. 56
28 Increase monetary jurisdiction of LCC (LCC Bill); Amendment of the Magistrates Courts Act and Trial on Indictment Decree to give jurisdiction over defilement cases whose suspects make up the majority of persons on remand, to Chief Magistrates was completed and awaits to be passed by Parliament;
Government and Parliament to fast reach the crucial bills, outdated and inadequate laws are key constraints to the legal system and any reform initiative.

**Process Achievements and Challenges**

At process level, there has been added value of the sector-wide approach as opposed to institution based service delivery or project support. Though this central success, there is improved coordination, communication and cooperation among JLOS institutions. There has also been consensus built in a group of over ten institutions with independent priorities and interests working together to ensure that the common goal is achieved. It has furthered key management processes leading to coherent and efficient development of the program with better coordinated planning and budgeting. Similar progress has been achieved in JLOS-Donor communication and relationship that have been nurtured and strengthened through semi annual reviews of the sector, GoU-Donor liaison meetings as well as having designated development partner contacts to each JLOS institution.

The nature of the JLOS reform program is not possible without funding. The PEAP also underpins government’s resource allocation to poverty reduction. Sector wide strategies must therefore be consistent with overall national objectives including poverty eradication. Although JLOS institutions have funds directly to their budgets, they also access funds from the special fund contributed to by donors specifically for the reform program. JLOS has been affected by budget cuts which disrupt program activities. However, since FY2004/05 the program funds are PAF protected, thus protecting funds from budget cuts. Budget cuts and delayed release of funds have necessitated regular prioritization of activities in the course of a year. On the whole JLOS needs to develop further its political lobbying in the national budgeting process for increased funding, a result which is achievable through the strengthened bargaining position that the sector wide approach brings. The perception of the sector wide approach to justice law and order is gradually shifting from that as a funding mechanism to a process through which change is generated. JLOS is at a watershed at which this must be continually clarified.

The JLOS structures have been established with a secretariat to facilitate the structure. The challenge JLOS has is to review the composition, terms of reference and frequency of meetings of the committees to ensure effective participation at all levels with workable vertical and horizontal linkages, to augment ownership of the program among institutions. The capacity of the secretariat is also under consideration, particularly so when the sector has taken the decision to widen the scope of the program to include family justice and land tribunals in the five years leading to FY2010/2011. An independent secretariat with very clear terms of reference is desired and should be aspired for if a sector wide program is to achieve continuity and focus.

Mechanisms for planning and assessing progress though research and studies to guide reforms, budget framework papers, progress reports and semi-annual review have all been valuable to the sector. The surveys conducted have also contributed to monitoring JLOS progress. Beyond vital process achievements, JLOS reporting has largely and naturally

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29 SWAP Development Fund, CJRP and Case Backlog
30 Poverty Action Funds (
focused on outputs in the areas of access to justice, efficiency and effectiveness of justice, and quality of justice. The lack of a strong functional JLOS monitoring and evaluation system with impact indicators has meant that progress has been measured in terms of outputs that JLOS perceives as contributing to improvements in access, efficiency, effectiveness and quality of justice. JLOS has tended to assume the outcome from what is intended to achieve rather than having demonstrated it through actual impact. The strengthened sector wide indicators to be embedded in the second SIP will contribute greatly to guaranteeing JLOS a more focused and impact oriented approach to the reform process. This further implies that there must be an acceptable functional monitoring and evaluation framework that should also be embedded with the plan to ensure value for money.

**Conclusion**

The sector wide approach indeed has added value to improvements in justice law and order in Uganda. In the midst of glaring challenges and the need to improve on critical aspects e.g. improving partnerships with external stakeholders, increasing funding levels, strengthening the monitoring and evaluation framework, the sector should sustain what it started e.g. nurturing the structures to enhance coordination and cooperation. As JLOS moves into the second phase of the program, there is no doubt the importance and the potential impact of what has begun and what will be carried on.