



ACCESS TO JUSTICE AND THE RULE OF LAW

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**The views expressed in this paper are those of the author and do not
necessarily reflect the views of
the Commission on Legal Empowerment of the Poor**

List of Acronyms

APIR	Annual PEAP Implementation Review
CLEP	Commission on Legal Empowerment of the Poor
CSO	Civil Society Organisation
DANIDA	Danish International Development Agency
DFID	Department for International Development
EC	European Commission
FY	Financial Year
GoU	Government of Uganda
HDI	Human Development Index
HIV	Human Immunodeficiency Virus
ICT	Information Communication Technology
ILI	International Law Institute
IDP	Internally Displaced Person
MDG	Millennium Development Goal
M&E	Monitoring & Evaluation
MoFPED	Ministry of Finance, Planning and Economic Development
MoLG	Ministry of Local Government
MoU	Memorandum of Understanding
MTR	Mid- Term Review
MTEF	Medium Term Expenditure Framework
NGO	Non-Governmental Organisation
PAEG	Project Appraisal and Evaluation Group
PAF	Poverty Action Fund
PEAP	Poverty Eradication Action Plan
SWAp	Sector Wide Approach
SWG	Sector Working Group
TA	Technical Adviser
UJAS	Uganda Joint Assistance Strategy
UN	United Nations
UNDP	United Nations Development Programme
UPPAP	Uganda Participatory Poverty Assessment Project
USAID	United States Agency for International Development
WB	World Bank

Map of Uganda.



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1.0 Introduction

This working paper¹ will focus on Access to Justice and the Rule of Law in Uganda and has been prepared for the United Nations Commission on Legal Empowerment of the Poor (Legal Empowerment). The paper will form the background for the subsequent focus group meetings at ILI-Uganda. This will be followed by a National Conference which be held in November, 2006 in Kampala, the outcome of which will feed into regional and global meetings to be organised by Legal Empowerment. The paper will start out with methodology and scope, set the scene through a brief historical expose of Uganda, lay down some basis facts and figures on Uganda, define key concepts, discuss the Justice, Law and Order Sector (JLOS) as a case study, look at the interface between poverty and access to justice/rule of law, examine whether the JLOS reform process is transparent and participatory².

The paper will in addition look at access to dispute resolution mechanisms by the poor and indigenous peoples. The public administration challenges shall be discussed as well the key ingredients of success for a reform program targeting access to justice and the rule of law. The paper shall conclude with some reflections drawn from the length and breadth of the paper³. The paper therefore is meant to assist and guide Legal Empowerment in achieving its mandate and goals. The terms of reference are contained in appendix 1.

1.1. The Methodology and Scope.

In putting together this paper, a combination of descriptive and analytical modalities has been used. In carrying out this study, the descriptive approach through reviewing available literature has been relied on for the greater part. In the concluding sections of the paper a prescriptive *modus operandi* will be employed. In this part of the paper a number of suggestions, proposals and recommendations will be put forward aimed at guiding Legal Empowerment achieve its stated objectives. In addition the use of

¹ The views in this paper are the authors and do not necessarily represent those of the International Law Institute

² The Justice, Law and Order Sector (JLOS) is the mandated sector that deals with *interalia*, access to Justice and rule of law issues.

³ The discussion in this paper is not exhaustive due to the time limitations.

unstructured interviews, focus group discussions and electronic sources has been employed.

The paper will restrict itself to a discussion of access to Justice and the rule of law with special focus on the poor. The Justice, Law and Order Sector of Uganda will be the primary centre of focus. The terms of reference and CLEP mandate have been a guiding factor in the defining the parameters of this paper.

2.0 Setting the Scene: Historical context/ Background.

In its 43 years of existence Uganda has seen seismic changes in its political governance with no less than 8 different regimes in power. The profile of these regimes is quite diverse ranging from duly elected governments to brutal dictatorial military regimes⁴.

In order to understand the context within which the justice system in Uganda operates, one has to take into account two dominant factors: the extent of poverty and the impact of decades of civil unrest.⁵ After almost two decades (1966-1986) of political, civil and economic regression in Uganda, the country faced an almost total 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. Consequently there was loss of public confidence in the justice system illustrated by for example by a high incidence of 'mob justice'.

The justice sector suffered from severe lack of finance, demoralized staff who accepted bribes and delivery of low quality service. Institutions lacked the infrastructure, logistics, personnel and proper legal and policy direction to effectively execute their functions. In these circumstances, there was no effective access to justice for all persons – even the rich had to 'purchase' it at high cost.⁶ In fact there was a common saying that amply

⁴ For further details regarding the historical governance of Uganda refer to The Uganda Commission of Inquiry into Violations of Human Rights. 1994. "Pearl of Blood.- Summary of the report of the Uganda Commission of Inquiry into the Violation of Human Rights" Kampala pages 5-8

⁵ J/LOS Strategic Investment Plan, situational analysis, p.5.

⁶ See for example *Internal Study of Results of Danida Support to Support to the Judiciary Project Phase I and II* (draft report) April 2004, by Stella Mukasa, Nordic Consulting Group (U) Ltd; *Desk Study on Access to Justice for the Poor in Uganda*, March 2004, prepared by Allen Asiimwe as background information for the Formulation Mission of the Danida *Access to Justice Programme*.

encapsulates the times: “*Why hire a lawyer when you can buy the Judge*”. It can be said that during this time Uganda presented all the major symptoms of a failed state.

Over the past two decades various interventions culminated in a sector-wide approach, whose origins are briefly outlined in the coming sections of this paper. In parallel to government of Uganda (GoU) efforts there have also been interventions by civil society actors working to create awareness of legal rights and procedures for redress.

3.0. Uganda at a Glance: Fact File

Uganda has a population of approximately 27 million people constituted into 56 ethnic groups⁷. These ethnic groups can be categorized into four broad groups namely (1) the Bantu (2) the Nilotics (3) Nilo- Hamites and the (4) Sudanic peoples. Each of these 4 groups speaks a language different from each other which is not understandable by each⁸.

In Uganda just like several African nation states ethnicity and religion have played a pivotal role in shaping the socio- political landscape and have been a cause of division and conflict. This can in part be explained by the fact that the creation of the nation state of Uganda did not come about through a conscious and deliberate meeting of the minds of these ethnic groups over common aspirations but rather it was a creation of the British whose legacy has never quite shaken off 43 years on.

Uganda in the recently launched United Nations Development Program (UNDP) Human Development Report 2006 was ranked 145th out of 177 countries in the Human Development Index (HDI)⁹. The HDI focuses on three dimensions of human

⁷ See the Uganda National House hold Census 2002 which projects that the mid year population for 2004 should be about 26.3m and Constitution of Uganda 1995, third schedule for the population numbers and list of indigenous communities respectively. The results of the census is highly reliable though there have been changes since 2002. In addition the insecurity in Northern Uganda may have affected the accuracy of some of the findings.

⁸ The 2002 national census paints the following religious demographic – Roman Catholics (41.9%) Protestants (Anglican – 35.9%) Moslems (12.1%), Pentecostals (4.6%), Seventh Day Adventist (1.5%), other Christians (1.2%) traditionalists (1.0%), non Christians (1.7%) and Orthodox (0.1 %) ⁸

⁹ See United National Development Program 2006 Human Development Report, *Beyond Scarcity: Power, poverty and the global water crisis* page 285.

development: life expectancy, school enrolment and literacy, and income¹⁰. Uganda has this year maintained its position in the 'Medium Human Development' category. The life expectancy is 48.4 years, the Gross Domestic Product (GDP) per capita of US\$ 1,478 and adult literacy rate stands at 66.8%¹¹. The country is divided into about 80 districts that vary in size and population. The poverty rate now stands at 38%¹²

4.0. Definition of key concepts i.e. Access to Justice and Rule of Law, the poor, Indigenous People's

This section of the paper is devoted to defining some key concepts that are central to this work. It is essential for context purposes to define these concepts.

4.1. Access to Justice

From a purely literal point of view, access to justice can be perceived as mere contact or right to entry or right to use the justice system by citizens. In the context of this paper, access to justice is conceived in a holistic or comprehensive manner to include all aspects of contact, entry and use of the legal system. In this regard this paper will view access to Justice at 4 levels:

1. Physical Access- that is how close the users (in this case the poor) are to justice institutions;
2. Financial Access- how affordable legal services are to the users;
3. Technical Access- how comfortable the poor are with the legal language and procedural requirement This also includes how the poor are treated; and
4. Psychological Access – this refers to whether the poor feel confident enough to engage with the Justice Agencies.

¹⁰ Although the HDI is a useful starting point, it is important to remember that the concept of human development is much broader and more complex than any summary measure can capture, even when supplemented by other indices. The HDI is not a comprehensive measure. It does not include important aspects of human development, notably the ability to participate in the decisions that affect one's life and to enjoy the respect of others in the community. For further analysis on the efficacy of the HDI see annex 1 of report on page 63-65

¹¹ Human Development Report 2006 page 285

¹² Uganda National Household Survey 2003/4.

4.2. Rule of Law

The rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedure decided by government. The principle is intended to be a safeguard against arbitrary governance¹³

In commonwealth law jurisdictions like Uganda, the most famous and often referred to concept of the rule of law is an exposition of the concept as espoused by Albert Dicey. He identified three principles of the rule of law which included:

“(1) the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power; (2) equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts; and (3) the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts”

4.3. Poverty

Poverty has many dimensions both material and non-monetary. The World Bank using the monetary dimension defines a poor person as one living on less than US\$ 2 a day. The Ugandan Ministry of Finance on the other hand defines poverty as the lack of basic needs and services such as food, clothing, bedding, shelter, basic health and education¹⁴. In addition, poverty is equated to powerlessness, physical insecurity, lack of access to land, poor health, which has been drastically exacerbated by the AIDS epidemic, low levels of education, disempowerment, a heavy burden of work or unemployment, isolation, and either inadequate or vulnerable access to social capital. Poverty also manifests itself across the age, gender and rural-urban divide with the children and women most afflicted by poverty.

¹³ See Wikipedia available at http://en.wikipedia.org/wiki/Rule_of_law as of 17th October 2006. The principle is intended to be a safeguard against arbitrary governance. [Samuel Rutherford](#) was one of the first modern authors to give the principle theoretical foundations in *Lex, Rex* (1644), and later [Montesquieu](#) in *The Spirit of the Laws* (1748).

¹⁴ Ministry of Finance Planning and Economic Development, December 2002: *Second Participatory Poverty Assessment Report- Deepening the Understanding of Poverty*, page XI

The Poor Persons Defence Act does not define a poor person but rather bestows the discretion on the presiding magistrate or Judge to make the call when the means of the prisoner are insufficient to enable him obtain legal representation. In this situation an advocate will be assigned to him or her¹⁵. For purposes of this paper, a poor person is that person that cannot afford legal representation.

5.0. The Justice, Law and Order Sector (JLOS) in Uganda as a case study

5.1. Background

As noted above, in the late 1980's, Uganda was emerging from a dark period and what some have termed a “*diplomatic deep freeze*”. Uganda begun to attract development assistance to help it revamp its economy. The Justice institutions in the early 90's were supported in an ad hoc manner by a handful of development partners¹⁶. Table 1 below shows this support.

Table1. Development Partner Support to the Justice Institutions.

Donor	Agency supported
DFID	Police
Danida	Judiciary
Netherlands	DPP
Germany	Prisons
Norway	Law Society
Austria	Uganda Law Reform Commission

Source: Medium Term Evaluation of Justice, Law and Order Report

Around 1999 the idea of setting up a Justice Sector Wide Approach (Swap) was hatched by some development partners. They took the cue from the government of Uganda's stated preference for Swaps as the most favourable modality of aid delivery as opposed to projects. As a result a number of studies were undertaken to assess the situation on the ground so as to inform the creation and direction of the JLOS Swap¹⁷.

¹⁵ The Poor Persons Defence Act, No 8 of 1998. It has provisions for the defence of poor persons committed for trial before the High Court. Article 3 bestows discretion on the magistrate or Judge.

¹⁶ The Medium Term Evaluation of JLOS report notes that support was provided to individual agencies and there was little co-operation between institutions. The approach was the traditional institutional approach with different donors working with different agencies. Pg 17

¹⁷ For a detailed background account see pages 16 – 23 of the MTE report *ibid*

The *1995 Crown Agents Report* (Volume I and II) and the *Review of Uganda's Criminal Justice System 1999* assessed the institutions central to the criminal justice system and identified the factors that constrained the proper functioning of the sub-sector's institutions.

Overall, the institutional and systemic constraints identified as affecting the 'supply side' of criminal and civil justice included corrupt practices, lengthy court delays, case backlogs, 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.

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

In addition to such institutional and systemic obstacles, others were identified which relate directly to the end-users of the agencies, the 'demand side'. The status quo remained in part due to a weak 'demand side', especially by the poor, unable to demand change. Obstacles include illiteracy and ignorance of rights, of the technical procedures, cultural and gender-based obstacles, corruption, and a weak financial and economic base making criminal defence or civil litigation unaffordable. Of crucial importance is the impact of the obstacles summarised above on undermining that public confidence in the state justice system (both criminal and civil). Confidence was severely eroded, contributing to the negative cycle.

A mid term evaluation of JLOS established that at process level, the central success of implementation of JLOS to date has been the establishment of the Three C's: Increased co-ordination, communication and co-operation through specific mechanisms. The report highlights a number of achievements which are contained in appendix2.

5.2. Why support Access to Justice and the Rule of Law

Good governance has increasingly been recognised as a crucial prerequisite for development effectiveness and the growth that it fosters. Kaufmann, Kraay and Zoido-Lobaton, for example, found a large, significant, and causal relationship between the rule of law and the income of nations (and also between the rule of law, higher literacy and reduced infant mortality)¹⁸. In its equity (or inequity) aspects, the rule of law also effects empowerment: if poor people can obtain impartial justice, their freedom is enhanced. Enhanced women's rights and participation is important in this regard.

The term 'Justice, Law and Order' refers to the regulatory framework for maintaining law and order and the administration of justice in society. In terms of the latter, there is a temptation to equate the judiciary with the entire legal system, and to look to judges to serve as the primary guardians of probity and fairness. While the judicial role is of clear importance, other interlocutors such as the Directorate of Public Prosecutions (DPP), prison and police service, law reform institutions, policy and law makers, and so on, play key roles in ensuring that judgements are by "rule of law" and also by "rule of reason". It is also recognised that where there is a strong support for constitutionalism and an independent judiciary, there is a need for laws that are suited to the needs of the poor both in form and content.

One of the main reasons that the legal system is not better adapted to protecting the poor from abuse in Africa is that the substantive laws applied by the courts are out of date, or still carry the stamp of colonial authoritarian rule. The legal system and rules were completely alien to the African Society, difficult to understand and accept. Nevertheless, the society was forced to adopt the system. This in great part explains why today most African Societies do not believe in, or have confidence in this "foreign" legal system.

¹⁸ Kaufmann, D. & Kraay, A. & Zoido-Lobaton, P., 1999. "[Aggregating Governance Indicators](#)," Paper 2195, World Bank - Country Economics Department.

5.3. The Birth of the Justice, Law and Order Sector.

In November 1999, a meeting of high level policy and political decision-makers in the justice sector (referred to as the “Mamba Point” meeting) decided to align the justice sector with GoU policy on poverty eradication (PEAP) and to focus on moving forward in two reform areas - Criminal and Commercial Justice reform – in the medium-term. Significantly, one of the prime movers of the initiative was the Ministry of Finance, impatient with each Government institution having separate ‘shopping lists’ without reference to the other inter-related institutions. This followed the successful implementation of sectoral approaches in other areas such as Health and Education. The J Law and Order Sector underpinned by a Strategic Investment Plan was born.

JLOS is the first such sector of its kind in Africa and aims to support the promotion of the rule of law and to increase public confidence in the criminal, commercial, land and family justice systems. JLOS brings together 14 institutions under three primary agencies; the Ministry of Justice, the Ministry of Internal Affairs and the Judiciary¹⁹. The poor are the stated primary target of the JLOS reform effort.

The ability of the private sector to make and enforce commercial contracts, the improved safety of the person, security of property and access to justice ensures a strong economic environment to encourage private sector development and benefits poor and vulnerable people especially women and children

The mission of the sector is to “*enable all to live in a just and safe society*”²⁰. A strategic Investment plan (SIP II) has been developed that sets out the broad policy interventions of the sector²¹. The SIP outlines 5 key result areas which include: (1) promoting the rule of law and due process; (2) fostering a human rights culture across all JLOS institutions; (3) enhancing access to Justice for all especially the marginalised and the poor; (4) reducing incidence of crime promoting the safety of the person and security of property;

¹⁹ See <http://www.jlos.go.ug/> as of 17th October 2006

²⁰ The complete list of 11 institutions can also be found at <http://www.jlos.go.ug> as of 17th October 2006

²¹ The Plan established the Government’s commitment to a coordinated sector wider reform policy. JLOS is composed of the Ministry of Justice, Ministry of Internal Affairs, The Judiciary, Uganda Prison Services, Uganda Police Force, Director Public Prosecutions, Judicial Service Commission, Uganda Law Reform Commission, Ministry of Gender, Labour and Social Development, Ministry of Local Government.

and (5) Promoting economic development. An elaborate management structure has been put in place to manage and oversee the reform process. See appendix 3 for the summary of the JLOS SIP II.

Under the JLOS SIP II one of the key result areas is to enhance access to Justice for all particularly for the poor and marginalised²². The sector has undertaken to do the following in a bid to achieve this result. See appendix 4 for the JLOS work plan 2006/7.

- Ensure more rationalised physical access and available institutions at administrative level and based on demographic factors in a phased manner;
- Minimise financial bottlenecks hampering access to Justice;
- Promote Alternative Dispute Resolutions mechanisms and innovative approaches to enhance access to Justice;
- Strengthen the capacity and role of Local Council Courts (Executive Council Courts);
- Enhance the quality of Justice; and
- Minimise technicalities that hamper access to Justice.

JLOS intends to adopt the following strategies to achieve the above key results:

(Table 2: JLOS strategy to foster Access to Justice)

- | |
|---|
| <ul style="list-style-type: none">▪ Rationalised de-concentration of service through infra structure and institutional retooling;▪ Phased recruitment and training of staff to address the ratios of distribution of JLOS personnel to the population and reduce case load per member of staff;▪ Reduce case backlog through an agreed strategy;▪ Strengthen the chain linked program at local levels;▪ Ensure and strengthen Legal Aid Services;▪ Strengthen Local Council Courts (Executive Council Courts);▪ Ensure and strengthen Alternative Dispute Resolution Mechanisms;▪ Support alternatives to custodial sentences for example the Community Service Program;▪ Civic Education and publication of information, communication and educational materials to address the demand side of Justice; and |
|---|

²² Justice, Law and Order Sector Strategic Investment Plan (SIP II) 2006

- Organisation development of sector institutions

With regard to the rule of law, JLOS has as, one of its key result areas, the promotion of the rule of law and due process²³. Under this key result area JLOS intends to:

- Ensure certainty of laws and predictability of procedures;
- Foster independence of the Judiciary;
- Enhance due process; and
- Enhance accountability and ethics in JLOS institutions.

In pursuit of achieving these results JLOS is going to use the following strategies and interventions;

(Table 3: JLOS strategies to promote the Rule of Law and Due Process)

- Law Reform and law revision
- Support activities that promote staff accountability for results through for example enforcement of codes of conduct and putting in place functioning complaints systems
- Internal competency building on rule of law and due process
- Case law reporting
- Capacity building in law reform and legislative drafting through phasing out legislative drafting experts and increase local capacity
- Simplification of laws and procedures

5.4. How Transparent and Participatory is the JLOS Reform Process?

As noted earlier the JLOS agenda is driven by the Strategic Investment plan and overseen by an array of management structures. It must be said that the development of the SIP I and II was participatory to a large extent. A large number of stakeholders from government, civil society, private sector and the academia were consulted. However the depth of this consultation and whether the poor were actually involved is questionable.

²³ Justice, Law and Order Sector Strategic Investment Plan (SIP II) 2006

In addition JLOS holds two bi-annual reviews, to which a wide range of stakeholders including civil society are invited. Furthermore, civil society is represented in the various working groups of JLOS. The civil society groups invited are those working in the relevant areas of criminal, commercial, land, children, gender and environmental justice. It therefore can be said that to some extent the poor have entry points, the extent and depth of which still needs to be worked on.

While very elaborate review and monitoring mechanisms have been put in place some may consider them not “poor friendly.” The poor are not represented in joint reviews or policy discussions. This may be expected as the poor lack the requisite tools to effectively engage in these processes.

5.5. Access to Dispute Resolutions Mechanisms by the Poor

In defining access to justice earlier on in the paper, a holistic all embracing definition was used. Access was viewed from the multi faceted dimension of physical, technical, financial and psychological. JLOS has made a number of efforts to address the physical access side of the equation. A number of courts and Justice Institutions have been opened up country wide though much more has to be done. Table 4 below shows the access to various Justice Institutions. It is evident that the most accessed institutions are the informal justice institutions as compared to the formal justice ones.

Table 4: Percentage Distribution of Households by Distance to Nearest Institution/Court

Institution	less than 1km	1 - 5km	>than 5 - 10km	more than 10km	Total
Customary courts	62.2	28.6	3.6	5.6	100.0
LCI	67.0	32.2	0.4	0.4	100.0
LCII	28.6	62.4	7.0	2.0	100.0
LCIII	12.4	51.7	22.4	13.5	100.0
Local administration police	10.5	50.0	22.6	16.8	100.0
Central police	8.2	37.4	20.6	33.7	100.0
Prisons	3.9	28.1	21.0	47.0	100.0
Magistrates court	4.3	28.6	18.3	48.8	100.0
District Land Tribunal	3.0	18.9	12.2	66.0	100.0
High court	1.3	12.4	6.3	79.9	100.0

Source: National Service Delivery Survey 2004

It is evident from the above table that the Local Council Courts (Executive Council Courts) are the courts of first choice or instant for most Ugandans. A recent joint survey on operations of Local Council Courts and Legal Aid Providers confirms this²⁴. These courts are the most accessible and people have confidence in them compared to the main stream courts²⁵. In the recommendation section of this paper we shall be recommending that these courts be strengthened.

In addition, if we view access from the supply side we shall notice big gaps. For example with regard to the police, we have about 16,000 police for a population of 27 million meaning that the ratio 1: 1600 well below the international ratio of 1:500. We have 1:6 prisoner/warder ratios well below the international of 1:3. In the Judiciary we have about 414 members of the bench at various levels²⁶. On the prosecution side, there are 71 State Attorneys and 162 State Prosecutors.²⁷

One problematic area in terms of access for the poor to dispute resolutions mechanism is the technical nature of the proceedings. The official language of the courts and government agencies is English. While provision for interpreters is there, most ordinary people cannot follow court proceedings or even read the various laws. This is further compounded by lack of filing fees especially in civil matters. It was recently revealed that many people cannot obtain letters of administration to administer estates of deceased person due to lack of filing fees of Ushs 300,000 (about 150 US\$).²⁸ Furthermore, the few existing lawyers charge an average of the same amount above to open a file which most Ugandans cannot afford.

²⁴ Legal Aid Basket Fund and UNPD/UNCDF, June [draft] 2006: Joint survey on operations of Local Council Courts and Legal Aid Providers, pages 9-10

²⁵ This was the overwhelming view of the 20 participants in the focus group discussion held on 10th November 2006.

²⁶ Supreme court Justices 6, court of appeal Justices 8, High Court Judges 27, Chief Magistrates 23, Magistrates Grade 102, Magistrates Grade 2, 248. Figures obtained from JLOS as of June 2006.

²⁷ Justice, Law and Order Institutional reports June 2006.

²⁸ This was revealed during a meeting with the Administrator General in her office on 12th October 2006.

Another obstacle to access that exists is the psychological barrier. This barrier has been created over the years by oppressive regimes and a general lack of trust of the people in state agencies. There is a general fear of approaching Justice agencies coupled with a belief that Justice will not be obtained for a whole host of reasons, corruption top on the list. This is a powerful barrier even to free and accessible justice agencies. A study on Gender and Access to Justice in Uganda notes that “the *feeling of powerlessness and inability to influence things around you is a common denominator of effects of gender oppression and poverty*²⁹”

In response to the problem of access to Justice for the poor, a number of development partners are supporting the provision of legal aid to the poor via a Legal Aid Basket Fund(LABF).³⁰ Its role is to operate in the interim as a funding mechanism which aims to serve dual purposes of complementing on-going justice sector reforms through innovative affordable models of legal aid delivery and also seeks to pave way for a sustainable provision of legal aid at the national level. The 2006/07 – 2009/10 strategy aims at improving access to justice for all the poor through provision of legal aid services in a sustainable manner with a view to national coverage.³¹ See appendix 5 for the summary of the strategy. This is meant to supplement the poorly funded state brief system run by the State.³²

6.0. Indigenous Peoples and Access to Justice

Indigenous peoples and minorities are often “*forgotten people*” and excluded for reform interventions. They will therefore tend to rely and resort to their traditional norms and dispute resolution mechanisms. The Bakojo of Uganda fit this bill despite have

²⁹ Justice, Law and Order Sector March 2002, A Desk Review of Gender and Access to Justice in Uganda, page 21.

³⁰ Denmark, Ireland, Netherlands support the legal aid basket fund.

³¹ See. Legal Aid Strategy 2006- 2010. Its two immediate objectives are:

- Coverage of adequate and affordable legal aid improved based on innovative, coordinated and tested models
- CSOs effectively advocate for access to justice for the poor

³² A state brief system is where a government appointed lawyer will be made available to those accused of capital offences. However the system is poorly funded and not many have access to these lawyers.

constitutional protection³³. They hardly access the formal justice systems and the rule of law in their areas is very minimal. They will use their own traditional dispute resolution mechanisms and not the formal system.

7.0. The Public Administration Challenge

One of the major challenges the poor meet is an insensitive public administration. While public servants are meant to serve the people, they often believe they are “assisting” or helping the poor as a favour. The typical public servant is educated and probably not highly paid. They feel distant from the poor and often do not want to engage with them and particularly sideline women and marginalised groups. It is a common site to find several people lined up or sitting in the corridors of some Justice agencies waiting to be assisted.

A feature that is quite prevalent through the rank and file of the public service is the lack of an accountability culture to the people. As mentioned above there is little recognition that public servants are, or should be, accountable to the people - especially the poor. It is therefore not uncommon to find that there are hardly any output/impact indicators for most institutions. JLOS is in the process signing off sector wide indicators and each institutional is development institutional indicators.

The lack of monitoring and evaluation (M&E) across institutions is another challenge. They are weak M& E processes in place which further muddles the situation. When this is coupled with the above challenges the picture becomes even more blurred.

The question of efficient use of resources is a big challenge. When the expenditure patterns are critically examined it will be quickly realised that the question of efficient recourse utilisation is lacking. In addition to this there is the problem of efficiency of the system. While it is easy to build the infrastructure people must be able to get an efficient, certain and predictable service. This is still lacking. The advice of a focus group

³³ Article 36 of the Constitution of Uganda 1995 (as amended) provides that, “ Minorities have a right to participate in decision making processes and their views and interests shall be taken into account in the making of national plans and programmes”

participant sums it well: “*We need to change the way we do things*”³⁴ In order to have improved public administration, it is essential to have a motivated, accountable and driven public administration that is closely and constantly monitored.

8.0. The Rule of Law

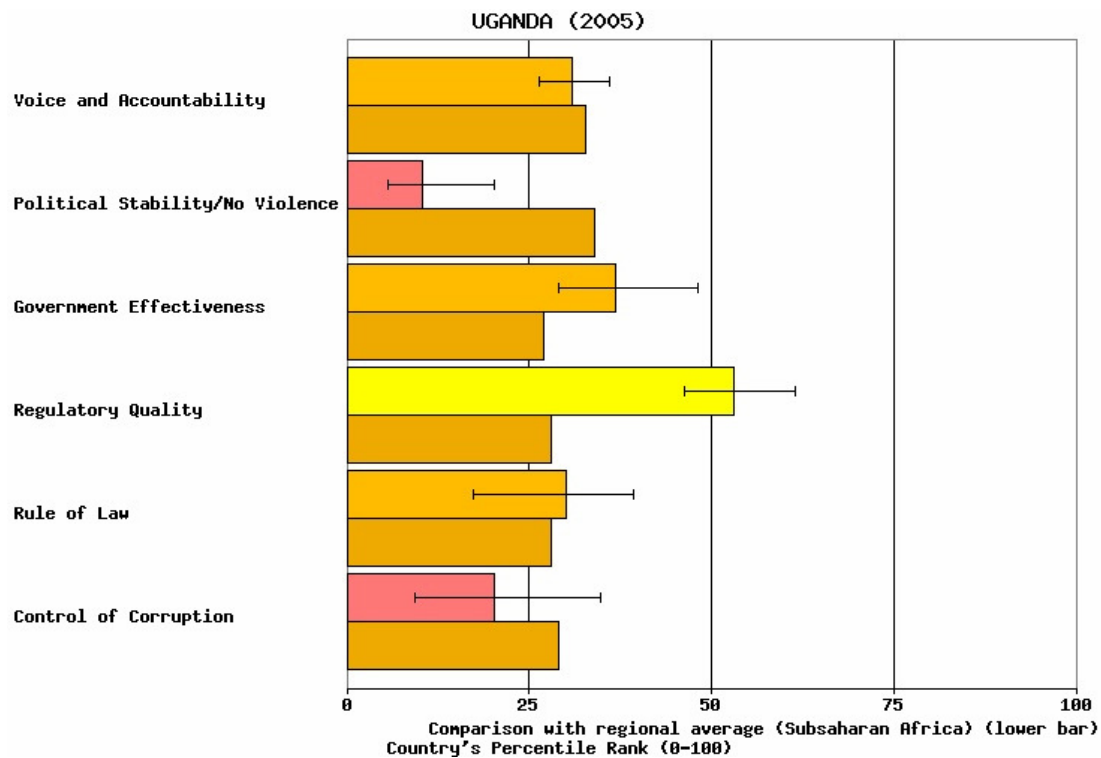
The rule of law as defined earlier has equality before the law as one of its central strands. Uganda has recently been the subject a report that *inter alia* measures the extent of the rule of law. The World Bank in its recent report, *Governance Matters*, rated Uganda in six areas rule of law being one of them. The Worldwide Governance Indicators 1996-2005³⁵ are an attempt to measure governance using the following six dimensions: Voice and accountability; Political Stability and Absence of Violence; Government Effectiveness; Regulatory Quality; Rule of Law; and Control of Corruption. The methodology is being refined each year, and although there are still some deficiencies (and the margin of error is relatively wide), it does provide a useful composite indicator for the critical areas of governance across a wide range of countries and time periods.

The 2006 Worldwide Governance Indicators report shows Uganda ranking well above the Sub Sahara Africa average in government effectiveness and regulatory quality, and comparable in terms of rule of law and voice and accountability. In political stability and absence of violence, and control of corruption, Uganda fares poorly in the recent data in comparison with the rest of Sub Sahara Africa (see Figure 1 below).

³⁴ Comment of a focus group participant, Ms. Evelyn Edroma, made on 10th November 2006.

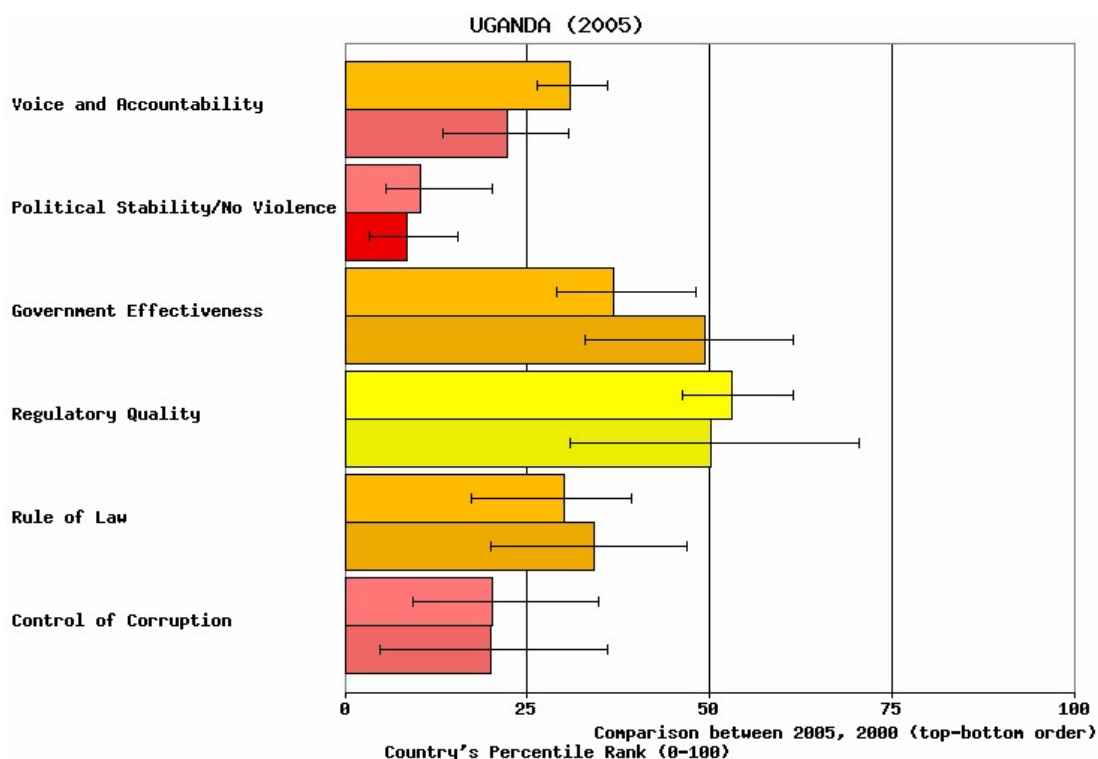
³⁵ [Kaufmann D., A. Kraay, and M. Mastruzzi 2006: Governance Matters V: Governance Indicators for 1996-2005.](#)

Figure 1 Uganda: Governance Compared with Sub Saharan Africa



Key: 0 represents the worst and 100 the best. Uganda is the top bar, Sub Saharan Africa average is the bottom. The thin black line indicates the margin of error.

Figure 2. Uganda 2000 and 2005.



From the above chart it is clear that in the area of rule of law, there has been some slippage. Uganda is also lagging behind in some areas when one considers progress over time, with reversals in government effectiveness and rule of law between 2000 and 2005, and slow or stunted progress in the other areas (see Figure 2). The continuing conflict in Northern Uganda and Karamoja, the uncertainty surrounding the 2006 parliamentary and presidential elections, the at times halting transition to a multiparty democracy, and the perceived lack of political will in tackling corruption will all have been factors in this. Cumulatively, the results present both a bleak picture of the governance situation in Uganda at the present, which forms the background for support as well as a compelling argument for well targeted support for good governance, which will need to underpin the development gains that have been attained and are aimed for in Uganda.

Examples in recent times where the rule of law has come under threat constitutes of two instances which stand out as glaring examples of the executive and its agents trampling on the independence of the Judiciary and the rule of law. The first instance refers to President Museveni instructing the Chief Justice and other senior members of the Judiciary to refrain from issuing land eviction orders. The second instance is in respect of members of the military who invaded the High Court where there was an ongoing hearing of a case in respect of Kiiza Besigye the leader of the Forum for Democratic Change (FDC) and a Presidential Candidate in the upcoming elections.

The Judiciary has since come out strongly opposed this affront on its independence and it is worthwhile quoting parts of this response. The Principal Judge, Justice J.Ogoola, in respect of the first instance regarding the land evictions, in a workshop for personnel of the land tribunals advised them:

“As the Principal Judge, I wish to express my own sentiments about all this. The Constitution of Uganda and the laws of this country do not allow me to direct you as to how you are to exercise your judicial functions and to judge cases that come before you or as to how you are to interpret or apply law of this land. My role and that of the Chief Justice is an administrative role. The independence of the Judiciary and the rule of law, the judicial oath that you swore and your own personal and professional conscience are the pillars upon which you are to exercise your judicial functions,. But in all this allow nobody- not the principal judge, not the chief justice, not the head of the land division and not the government - to direct or influence the exercise of your judicial function³⁶”

In respect of the military invading the High Court the Principal Judge referred to the incident as “the most naked and grotesque violation of the twin doctrines of the rule of law and the independence of the Judiciary” He goes further to refer to the raping of the Judiciary³⁷. The position of the Principal Judge is echoed by a public statement issued by the Judiciary which strongly condemned the deployment of military and other security personnel and calls upon the executive

³⁶ See full speech reproduced in article “Uganda military rapes the temple of Justice”. Sunday Monitor November 20, 2005 at page 28.

³⁷ Article “Uganda military rapes the temple of Justice”. Sunday Monitor November 20, 2005 at page 28.

arm of government to abide by its constitutional obligation to uphold and promote principles of the rule of law and Judicial independence³⁸.

9.0. Interface between Access to Justice/Rule of Law and Poverty

“African poverty and stagnation is the greatest tragedy of our time. Poverty on such a scale demands a forceful response. And Africa – at country, regional, and continental levels – is creating much stronger foundations for tackling its problems. Recent years have seen improvements in economic growth and in governance. But Africa needs more of both if it is to make serious inroads into poverty” (Commission for Africa Report, 2005).

One useful starting point in trying to unravel and determine the status of Uganda’s efforts to promote access to Justice and the rule of law as the basis for poverty reduction and the attainment of sustainable development is the Poverty Eradication Action Plan (PEAP)³⁹ which is the main development framework in Uganda. The PEAP acknowledges that Uganda is participating in regional initiatives such as the New Economic Partnership for Africa (NEPAD) and the APRM and underscores that participation in these initiatives is among its priority actions⁴⁰.

The PEAP provides an overarching framework to guide public action to eradicate poverty. It outlines the participatory processes underpinning the development of the PEAP strategy, provides a poverty diagnosis and presents policy measures, sector plans, costing and a results oriented policy matrix for sustainable economic growth and poverty reduction over the medium term (5 years 2004- 2008).

Five pillars underpin the PEAP (1) Economic Management (2) Production, Competitiveness and incomes (3) Security, conflict resolution and disaster management (4) Good Governance and (5) Human Development. Each sector of Government like Justice, Law and order, health and security is situated as far as possible under each of these pillars. The sectors are therefore the first port of call in determining the current state of play in the democratic and good political governance arena. Pillar 4 on Good

³⁸ See full statement, “A statement by the Judiciary on the recent siege of the High Court by Security Personnel” New Vision, Friday December 23, 2005 page 21.

³⁹ Ministry of Finance, Planning and Economic Development December 2004. Poverty Eradication Action Plan (PEAP) 2004/5-2007/8 also available at <http://www.fiance.go.ug> as of 27th December 2005.

⁴⁰ PEAP page 10 and 120 -121

Governance is of particular relevance to this paper. Of course this is not to say that other pillars of the PEAP and sources are not relevant. Under Pillar 4, there are four core priorities, (1) ensuring respect for human rights (2) pursuing democratization (3) making government structures affordable, transparent and efficient and (4) providing a good judicial system are stated.

It is now common ground among development theorists that unchecked abuses of political power can undermine growth⁴¹ There is also renewed support for the nineteenth century proposition that the rule of law is an essential precondition for a prosperous economy organised on market principles⁴². The rule of law, it is argued, not only ensures life and personal security, it also provides a stable framework of rights and obligations which can help to reduce political risk to investors and to cut down transaction costs. A legal system which protects property rights and enforces contractual obligations also fosters the development of markets in land, labour, and capital, thereby enhancing economic efficiency. The 1997 *World Development Report* concluded that markets cannot exist without effective property rights, and that effective property rights depend upon fulfilling three conditions:

- a) 'protection from theft, violence, and other acts of predation';
- b) 'protection from arbitrary government actions – ranging from unpredictable, ad hoc regulations and taxes to outright corruption – that disrupt business activity'; and
- c) 'a reasonably fair and predictable judiciary'⁴³.

Micheal Anderson discusses a number of very revealing circumstances that the poor find themselves which resonate with the situation in Uganda. These include:

- The poor are more likely to be subjected to arbitrary treatment, intimidation and humiliation by government officials. For the poor, this pattern discourages use of government services, absorbs otherwise productive time, and may contribute to depression and other forms of mental illness.

⁴¹ World Bank 1997, *World Development Report* chapter 1 and 6. Extract from Michael Anderson, “Access to Justice and legal Process@ Making Legal Institutions Responsive to Poor People in LDC’s”

⁴² Max Weber [1922] (1968). *Economy and Society* 2 Vols. Eds. Guenhter Roth and Claus Wittich (Berkeley: University of California Press)

⁴³ See World Bank (1997:41)

- The poor are at greater risk of losing their property to either public or private theft. It is not unknown for government officials to arbitrarily seize part of the harvest for personal use, to confiscate goods from urban street merchants, or have land registered in their own names during the course of land reform initiatives. This was found in a recent study looking at the impact of political corruption on Resource Allocation and Service Delivery in Local Governments in Uganda commissioned by Transparency International – Uganda comes to similar conclusions that forms of corruption such as influence peddling, diversion of resources, bogus claims collision bribery, and political interference have adversely affected service delivery at Local Government level⁴⁴.
- Living in situations of persistent insecurity, the poor are prone to short-term economic decision-making and lack the necessary level of trust to accumulate, invest, or take risks in business. The precise impact of lawlessness takes many different forms, and it is often the overlapping effects of several factors at once creates the greatest impact⁴⁵.The impact of conflict and the attendant insecurity in Northern Uganda have been discussed in the following section of the paper.

Two examples can illustrate this with relation to Uganda's poor. The first is the remand problem in Uganda. At present the Uganda Prison system is grappling with a huge overcrowding situation with about 19,000 prisoners incarcerated in structures built in the 1930's for less than a third of the present population. Over 60% of these are on remand awaiting trial and do not have access to legal representation⁴⁶. In most case they have spent over 3 years on remand which is clear breach of the Constitutional provisions. Most of the accused persons on remand are poor.

⁴⁴ Transparency International – Uganda Chapter .2005. Impact of political corruption on Resource Allocation and Service Delivery in Local Governments in Uganda page 4.

⁴⁵ See Michael Anderson Ibid page 3-4.

⁴⁶ Uganda Prison Service,2005, Prison Census. It is reported that as of 5th September 2005, there was a prisoner population of 19,321 of which 60% where on remand (11,103 males and 494 females) and 40% convicted (7,483 males and 241 females)

The second example relates to the question of bail. In the recent past there is a high profile case, *Uganda vs. Col (Rtd) Dr Kiiza Besigye and 22 others*⁴⁷. The principal accused, Kizza Besigye, was eventually granted bail while 14 of his co-accused remain in custody despite having been granted bail⁴⁸. This is a clear violation of the rule of law principle.

10.0. Conflict, Poverty and Access to Justice/Rule of law.

Uganda is no stranger to conflict. The country has mainly plagued by intra state conflicts and violence since independence. The Refugee Law Project suggests that from Idi Amin's military coup in 1971 they have been 14 insurgencies since Yoweri Museveni's National Resistance Army/Movement took power⁴⁹. The longest and most protracted conflict that has beleaguered the county is the 19 year old ongoing civil war in Northern Uganda (See Map on page iii) ⁵⁰. In addition there also has been conflict in Karamoja in Northern Eastern Uganda. In conflict situations poverty is more extreme and access to

⁴⁷ *Uganda vs. Col (Rtd) Dr Kiiza Besigye and 22 others*. Court Case No 955/2004 :Kizza Besigye was one of the key opponents to President Museveni in the February Presidential Elections.

⁴⁸ On the 16th of November 2005, Justice Lugayisi (then the trial Judge) granted bail to 14 of the 22 co-accused persons in the Besigye trial. The 14 were unable and /or prevented from having their bail papers signed and all attempts by their lawyers to secure production warrants which would allow the accused to be produced before the registrar of the criminal division to process their bail had been frustrated by the state.

When the case came up for hearing on 15th February 2006 before Justice Kagaba, the defence lawyers raised the issue of bail. They pointed that despite an earlier decision granting bail the accused persons still remained in custody which was a violation of their rights and constitutional guarantees. Justice Kagaba ruled that the accused persons should be released on bail if they satisfied the bail conditions. Subsequently the sureties of the accused persons signed the bail papers but the police and prison officials present at the court informed the defence team and the 14 accused that after consultations and in view of the Military Court marital warrants the accused would not be released on bail. The accused were subsequently taken back to Luzira notwithstanding the Judges directive. The accused persons are still in custody despite having been granted bail.

⁴⁹ Refugee Law Project, 2004." Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda." Working paper No. 11. The paper provides a detailed account of the war in Northern Uganda and on 4 outlines the 14 insurgencies which include, Uganda Peoples Democratic Army, Uganda People's Army, Holy Spirit Movement, Uganda National Rescue Fronts 1 and II, Allied Democratic Forces, Lord's Resistance Army, People's Redemption Army,, Ugandan National Democratic Alliance, Uganda National Liberation Army, Severino's Lukoya's Lords Army, Uganda Christian Democratic Army, West Nile Bank Front and the rebellion of Dan Opiro in Apac.

⁵⁰ The Northern Uganda conflict began with the Uganda National Liberation Army and the Uganda Peoples Democratic Army in 1986 when Museveni took power. Kony later founded the Lords Resistance Army in 1987.

Justice and rule of law is almost non-existent. This to a large extent has been the case in Northern Uganda. There is hardly any presence of Justice Institutions with the military assuming most civil functions. JLOS is developing plans to respond to this situation through initiatives like the Northern Uganda Recovery and Development Program (PRDP).

In response to this formal justice lacunae people have resorted to applying traditional law before traditional justice dispute resolution mechanism. For example, there are reported instances of families opting to seek compensation in form of money or cows for their daughter who has allegedly been defiled as opposed to filing a formal criminal case.

11.0. The way forward: Success Ingredients

In the ensuing part of the paper a number of success ingredients are put forward to ensure that the poor access Justice and there is rule of law.

There is need for strong political will and commitment from government leadership to push for the rights of the poor. Experience has shown that this commitment is required if any reforms are to be carried forward and through. In the case of JLOS there were a number of drivers of change in the top leadership echelons that pushed the reform agenda. The reverse is true that is with this support and commitment any reform program is a dead duck in the water.

There is a need to move from theory to praxis. Many JLOS policies like SIP II contain commitments to the rule of law and access to Justice for the poor. There is need to translate these paper commitments into reality. In sections of this paper a number of strategies have been identified to target the poor. One of the participants in the focus group discussion aptly put it by saying that, "we need to talk less and do more" It remains to be seen whether these stipulations will be translated into practise over the next 3 years.

The poor should be encouraged to organise themselves so as to engage with possible entry points to articulate their concerns. These include policy formulation, joint reviews, monitoring and evaluation of program. At the moment one of the challenges is the lack of an organised group or entity to engage with. The poor need to get organised and engage with the system in order for their needs to be recognised.

On the other hand JLOS should be proactive and seek out the poor through the use of an array of modalities such as client charters, citizen/user score cards, users committee and surveys. Waiting for the poor to get organised might not yield results and therefore there is need to reach out to them.

There is need to train and sensitize the public servants to be user friendly. As noted earlier the public administration and service is not poor sensitive and therefore there is need to train and sensitive the public officials within the Justice system. For example a course could be introduced into the training curriculum of lawyers, police and prisons officers. This has been started at the Law Development Centre, where law students attending a bar course for one year are through the clinical legal education program run by the Legal Aid Clinic are exposed to indigent accused persons in prison. This is a bid to sensitise the law students about the plight of thousands of poor persons embroiled in the legal system⁵¹.

The laws and regulations should be simplified and translated into local languages. Even with an adult literacy rate of 66.8%, the vast majority of Ugandans cannot not read or even access the laws which are written in English. There is need therefore to simplify and translated these laws t make them understandable to most. The Judicial Service Commission recently under its National Civic Education mandate launched a citizen handbook which is an attempt to simplify the legal process for the ordinary Ugandans to understand.

There should be massive civic education and sensitisation of the people on their rights and duties. An informed population is an empowered one. There is need to ensure that people know their rights and duties together with where they can claim or enforce them.

Government should put in place Legal Aid Schemes to assist the poor. At the moment there is a limping State brief system targeting capital offenders and the legal aid basket fund supported by development partners. The government needs to step up to the plate and fund a nation wide legal aid scheme just like the one in South Africa.

Government should avail resources human and financial to enable institutions deliver on their mandates. One of the biggest constraints facing the Justice agencies is lack of resources. There is need to provide adequate resources and ensure that they are used efficiently. This is to say that resources alone are not the answer. Throwing money at the problem without asking how it is being used will achieve nothing.

Specific Justice Sector responses to conflict areas are needed to ensure access to Justice and rule of law for persons affected by conflict. As noted earlier, Northern Uganda has been afflicted by civil unrest for the last 20 years. The Justice system is barely functional with the army performing most civil/police functions. It is therefore critical that the sector designs appropriate responses to deal with this situation and this is already happening.

Measures should be put in place to deal with corruption which is one of the main threats to Access to Justice and rule of law. Corruption is a reality in Uganda and the Justice sector is therefore no exception. The Second National Integrity Survey carried out by the Inspectorate of Government bears testimony to this. It is incumbent therefore that anti corruption measures be put in place to fight this vice. For example complaints desks can be set up and codes of conduct adopted as has been done in the Judiciary.

⁵¹ The author was one of team at the Legal Aid Clinic at the Law Development Center that started and run the Clinical Legal Education Program.

In addition to the above the JLOS mid term evaluation report puts forward a number of insightful recommendations that are pertinent to the theme of this paper which are reproduced below:

► **Build change from local to national:**

- ❖ Build an internal constituency for change at all levels by allocating time and resources to enhance the focus on systematic training, motivation, commitment to common goal, feedback and involvement in decision-making, drawing lessons from *The Chain Linked* Pilot and Community Service.
- ❖ Promote teamwork, motivation and solidarity; personal commitment & accountability; voluntarism and pride and reward creativity for low cost priorities
- ❖ Re-focus efforts to address root causes (crime prevention, penal policy e.g. recidivism and prison education, strategy against corruption), low-cost strategies or efficiency savings
- ❖ Encourage united sector-wide:
 - a) advocacy (e.g. public service pay reform, conditions of service)
 - b) solidarity (e.g. political interference or attacks on independence of the judiciary) and
 - c) peer review (especially for urgent matters such as prevention of torture or food crisis in Arua prisons)
- ❖ Create alliances with other sectors and co-ordinate with other actors as needed

► **Enhance local support and impact:**

- ❖ Strengthen local level accompaniment and communication for J/LOS mechanisms; with local mentoring and monitoring for evidence-based decisions
- ❖ Enhance focus on Local Council Courts and local government level. Increase dialogue and partnership between J/LOS institutions and Local Governments - taking place at local level. Create concrete links between local council courts and J/LOS including Community Service; sensitise Local Governments in a systematic way about J/LOS local committees and the importance of their feedback on performance of J/LOS at local level
- ❖ Introduce a holistic approach to civil justice reform. Improved efficiency in commercial cases at High Court level should gain momentum through reform at magistrates and lower courts level, including the introduction of a small claims track.

► **Promote sustainability by strengthening both ‘supply’ and ‘demand’:**

- ❖ Foster the greatest catalyst to increased efficiency - accountability - including an informed and organised public demand. Promote inclusion, participation and transparency at all levels; combine ‘supply side’ strengthening of institutions with strengthening informed public ‘demand’ for change at local and national level. Promote direct accountability for change locally as part of sectoral monitoring and evaluation; Introduce effective, streamlined complaints and other mechanisms for feedback from the full range of users.⁵²

⁵²Such as victims and witnesses of crime, those on remand, those serving sentences, civil litigants, etc. as well as mechanisms for wider community feedback, central to planning for SIP II

12. Recommendations: What Legal Empowerment should bear in mind?

In the event that Legal Empowerment decides to support access to Justice and rule of law reform in Uganda, there a number of factors and conditions that ought to take cognizance of.

JLOS which is the primary centre for rolling out access to justice and rule of law reforms is in place and being supported. This support has and is pegged to the **Strategic Investment Plan** of the sector which has recently been revised and will soon be launched. It is therefore essential that any support to JLOS institutions is part of the JLOS strategic Investment plan (SIP II) and their respective institutional plans. This will ensure that any support given is part of the existing plan and priority areas identified by the sector.

In addition JLOS operates under the **Medium Term Expenditure Framework** (MTEF) which establishes resource ceilings for each sector JLOS inclusive. In principle once the ceilings for a particular financial year are established any additional funds received by JLOS will lead to corresponding cut. In short there should be no additional funds to the sector save for supplementary allocations that may be requested. It is therefore essential that all the intended resources of this program are embedded within the JLOS MTEF accurately to avoid penalising the sector as a whole for any additional funds channelled to the Police or prisons. For example in the recent MTEF budget projection figures from the Ministry of Finance, Planning and Economic Development (MoFPED) both Uganda Prisons and Uganda Police there is no allocation for donor projects and the total allocation to JLOS for financial year 2006/7 including donor projects is Uganda Shillings 195.58 billion⁵³. Legal Empowerment would have to liaise with the MoFPED over this issue. It is also equally important that the budget figures for each institution under the program are outlined and known.

⁵³ Ministry of Finance, Planning and Economic Development, June 2006, Medium term expenditure framework

An issue that will also confront Legal Empowerment is the modality of support. The choice is between providing project or budget support. The government of Uganda has indicated in the partnership principles agreed with its development partners that budget support is the preferred modality of support. In view of the MTEF concerns outlined above it would be ideal that any support given is via the budget support route. However project support too is plausible so long as the support given is align to the JLOS SIP and included in the MTEF.

Should Legal Empowerment want to support civil society organisations, it should note that there is a legal aid strategy supported by development already in place. It is therefore important that any intervention does not overlap with the support provided under the Legal Aid Strategy supported via a basket fund comprised of Denmark and Norway with Sweden and Ireland possibly joining in 2006.

From a management point of view it would be ideal for Legal Empowerment to establish field presence in Uganda and engage with the existing support structures like the development partner groups sector working groups. If this is not tenable, use of partnerships with UN family agencies like the Office of the High Commissioner for Human Rights or UNDP could be explored.

It is therefore important for Legal Empowerment to note that there already existing programs and structures to support access to Justice and rule of law reforms. In view of this any support should compliment rather than duplicate existing support and caution should be exercised not to create parallel systems of support that are not align or harmonise with existing plans.

13. Concluding Reflections.

There is no doubt that there is a relationship between development and Access to Justice and the Rule of Law. Poverty can act and often does act as catalyst to deny access to Justice and the non applicability of the rule of law. The poor tend to be the powerless and most vulnerable. It should be borne in mind that a justice system can be effective and efficient without protecting the interests of the poor. The system may have

impressive throughput of cases – but in fact serve only the interest of those who are informed or who can afford to pay or bribe. It is therefore essential that countries like Uganda with a poverty rate of 38% take deliberate and resolute measures to ensure that all Justice Reforms have the poor at their core and the justice system is re-balanced in favour of the poor.

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1. Uganda vs. Col (Rtd) Dr Kiiza Besigye and 22 others. Court Case No 955/2004

D. KEY WEBSITES

	INSTITUTION	WEBSITE
1.	East African Community	http://www.eac.int/
2.	Electoral Commission	Http://www.ec.or.ug
3.	Foundation for Human Rights Initiative	http://www.fhri.or.ug/
4.	Human Rights Watch	http://www.hrw.org/
5.	Inspectorate of Government	http://www.igg.go.ug/
7.	Justice, Law and Order Sector	http://www.jlos.ug.ug
8.	Ministry of Defence	http://www.defenceuganda.mil.ug/defence
9.	Ministry of Education	http://www.education.go.ug/
10.	Ministry of Finance, Planning & Economic Development	http://www.finance.go.ug
11.	Ministry of Health	http://www.health.go.ug/.
12.	Ministry of Local Government	http://www.molg.go.ug/
13.	Ministry of Public Service	http://www.publicservice.go.ug/
14.	NEPAD	http://www.nepad.org/
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24. Office of the Human Rights Commissioner for Human Rights <http://www.ohchr.org>

Appendix 1 : Terms of Reference.

Background

The role of the HLCLEP is to create an enabling environment for legal empowerment. It aims to:

- Generate political support for broad reforms that will ensure the legal inclusion and empowerment for the poor;
- Explore ways for the poor to secure broader access to legal, fungible property rights for their assets, thereby improving their ability to generate “bottom-up” economic and social rewards, and poverty reduction;
- Examine ways to provide broad access to legal systems and formal structures that can best promote economic growth by helping the poor to increase productivity, limit risks, protect economic achievements, and leverage property to access credit and capital;
- Identify ways for the Commission’s work to support, and bridge any gaps with, other development approaches, including conflict prevention, gender equity, good governance, policies of inclusion, administration of justice, legal enforcement, capital formation, provision of services, access to credit, sustainable environmental management, and investment in public infrastructure; and
- Develop an inventory of experiences to date of reforms to promote asset security, based on the work of governments, civil society, international organizations, NGOs, and the private sector throughout the world; and Produce and disseminate a comprehensive set of practical, adaptable tools that will guide policymakers’ reform efforts at the country level.

The National Process will rotate around the four (4) themes within HLCLEP’s mandate: Access to Justice and the Rule of Law; Property Rights; Labour Rights and Entrepreneurship. In view of that, the four working papers and subsequent focus groups will fall under these areas.

Working Paper: Access to Justice and the Rule of Law

The Working Paper on Access to Justice and the Rule of Law in Uganda should be between 20 – 30 pages (not including the bibliography) and should be submitted on later than **Wednesday, 27 September, 2006**. The paper should be written keeping in mind the mandate and role of the HLCLEP, as well as addressing the questions below:

- What reforms are necessary to develop transparent legal and institutional arrangements in which the poor have confidence, can access justice, and which will generally contribute to a culture of fairness, equity and rule of law?

- How can citizens and grassroots organizations participate successfully in a transparent reform process? How can their priorities, needs and concerns be heard and incorporated into proposals and actions using various tools of participatory governance (for instance, public forums/hearings, surveys, citizen report cards, etc)?
- How can dispute resolution mechanisms support poor people's access to rights in affordable and locally appropriate ways?
- What special considerations should be given to indigenous peoples' issues, including their customary norms, traditions, and legal structures? What barriers preclude them (linguistic, geographic) from accessing the formal or national legal and judicial structures? Does the national government issue indigenous peoples the necessary identity papers or documentation, or recognize the local equivalents, to ensure their access to legal and judicial institutions?
- How can improved public administration contribute to transparency and accountability, and increase public trust in the formal economic system?
- What factors and conditions (enabling environment) external to the focus of the Commission's work should be addressed to ensure success (e.g. corruption)?

The research should be based on all the available literature sources in the subject matter, as well as interviews and other information gathering mechanisms deemed necessary to collect pertinent information or observations from relevant actors (including academics and representatives from civil society and the government involved in the sector). Papers may include appropriate case studies.

Papers should have an Executive Summary highlighting relevant key issues and summarizing the findings of the author's research and literature review.

Appendix 2. Achievements of the Justice, Law and Order Sector. Extracted from the Medium Term Evaluation of the Justice, Law and Order Sector.

- Reduced suspicion and resort to mutual blaming between J/LOS-institutions; replaced by increased appreciation and recognition of each other's problems
- An atmosphere conducive to peer review essential for accountability as well as openness to self-criticism which is the foundation for effective learning. A strong example of multi-institutional analysis is the 2003 Uganda Prison Census. The data was analysed for some human rights implications as well as for specific implications for improving the criminal Case Backlog Project. One of the conclusions is that Community Service alone will not result in decongestion of Uganda's prisons.
- Identification of many J/LOS-wide policy issues for reform, including key studies e.g. legislative reform in both criminal and commercial areas; shortfalls in human resource capacity, financial management.
- Strengthened institutions in the areas of strategic planning including preparations for enhanced Policy and Planning Units, development of institutional strategic plans; budgeting; progress reporting; infrastructural investment (including equipment)
- Foundations laid for effective data collection for evidence based planning. For example, this foundation includes the initial criminal and commercial baseline surveys; Case Management systems in DPP and Judiciary and the 2003 prison census.
- Speedier processes in Commercial Court under new rules of procedure
- Establishment of pilot projects e.g. Case backlog, and Mediation Pilot Project in Commercial Court
- Recent steps taken to operationalise the Uganda Services Registration Bureau Act that will see the Company Registry transformed into a semi autonomous organisation
- Similar progress has been achieved regarding donor co-ordination as well as strengthened J/LOS-donor communication and relationships. For example GoU-Donor liaison meetings, twice-yearly review process, allocation of development partner to each institution). These are considered further in Chapter 5 on Donor relations.
- There are indications that the J/LOS process has strengthened the collective bargaining position of J/LOS institutions vis à vis GoU. For example J/LOS successfully made the case for criminal Case Backlog budget protection through the Poverty Action Fund. More recently, PAF protection for the SWAP Development fund and Commercial Justice Reform Programme has been announced by GoU for the FY 2004/5.
- However, funding for J/LOS has not kept pace with inflation since the launch of SIP, and a sectoral approach should lead to more GoU funding and better efficiency.

Appendix 3. The Justice Law and Order Sector Second Strategic Investment Plan (Short Version)

The Justice Law and Order Sector Second Strategic Investment Plan (JLOS SIP II) consolidates progress and builds upon processes undertaken in the first JLOS Strategic Investment Plan launched in November 2001 (SIP I). The JLOS SIP II purpose is: 'to improve the safety of the person, security of property and access to justice in order to encourage economic development and benefit poor and vulnerable people'

Objectives

To achieve this purpose, five sector objectives have been identified as below:

1. To promote Rule of Law and Due Process
2. To foster a Human Rights Culture across JLOS institutions
3. To enhance Access to Justice for all particularly for the poor and marginalised
4. To reduce the incidence of Crime and promote Safety of the Person and Security of Property
5. To enhance JLOS contribution to economic development

Description of components

The plan addresses poverty eradication directly through pillars 2, 3 and 4 of the PEAP, 2004 which have been translated into the Sector purpose and key result areas. The four focus areas for SIP II are Criminal Justice, Commercial Justice, Land Justice and Family Justice.

The key aspects to the strategy for implementing the plan are:

1. Strengthening Advocacy to promote JLOS Reforms

JLOS will invest in advocacy to enlist support for the reforms through the Parliament Leadership Committee.

2. Integration of cross-cutting issues

Cross-cutting issues of relevance to be addressed within SIP II include poverty, conflict and internal displacement of people, HIV/AIDS, gender-based discrimination and inequality, environment, juveniles, disability, governance, and rights of ethnic minorities.

3. Utilizing Inter-sectoral linkages and collaboration

JLOS will liaise with other stakeholders through existing fora, and through structured mechanisms such as the UHRC and the Accountability sector. JLOS has prioritised which relationships to foster and how. These relationships are intended for sharing information, creating accountability, creative solution-generation and grass-roots co-operation.

4. Effective participation of CSOs and the Private Sector

As a basis for their involvement, JLOS, CSOs and the Private Sector will collaborate in the development of Partnership Principles to guide their participation in SIP II.

5. Enhancing Community Involvement

JLOS seeks to enhance this participation through a rights based approach. JLOS SIP II also addresses key hindrances to public participation.

6. Enhancing service delivery in conflict areas

JLOS will promote simple initiatives for more effective results in the short –term and will work through ongoing initiatives such as the National Resettlement and Re-integration Strategy spearhead by the Office of the Prime Minister (OPM).

JLOS will undertake key activities highlighted under five Key Result Areas that have been developed. A number of initiatives from SIP I will be rolled over into SIP II. These include on-going studies, expanding programmes, construction of offices, recruitment of staff and law reforms.

Management arrangements

The management structure is reflected at two integrated levels – national and district. At national level, the structure comprises a Leadership Committee as the apex body, supported by a Steering Committee, Technical Committee, JLOS Coordination Committees (at district level) and working groups. Other entities within the structure include the JLOS Development Partner Group, the National JLOS Forum, as well as JLOS institutional Policy & Planning units (PPUs).

At the community level JLOS is represented by the **JLOS Coordination Committee (JCC)** based in each district with a key aim to enhance case management and reduce case backlog. **The JCC** comprises the existing multitude of JLOS committees at the district level (including the Chain Linked and the Community Service) and will be based on the existing District Community Service Committees (established by statute).

Key management processes include the JLOS Forum, programme management carried out by the Secretariat, meetings of the various committees in the management structure, the coordination and communication between JLOS management structures and the Joint GOU- Development Partner Review

Monitoring and Evaluation

The JLOS log-frame provides the basic M&E framework– and its indicators provide the essential tools for carrying out the M&E activities. The JLOS M&E framework will be linked to the National Integrated Monitoring and Evaluation System (NIMES) under the Office of the Prime Minister so as to enable tracking of progress and JLOS contribution to the PEAP.

Institutional reports will form the basis of tracking achievement and JLOS will develop a standardised reporting method across all the JLOS institutions. Periodic progress reports will be submitted half yearly and these will form the discussion basis for the Joint GoU- Donor Technical Meetings before the semi-annual Joint GoU-Donor review.

Appendix 4. JLOS annual Work plan 2006/7



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Work Plan 2006-07.xls

Appendix 5: LEGAL AID BASKET FUND STRATEGY 2006/07 – 2009/10

(Short Version)

The role of the Legal Aid Basket Fund (LABF) is to operate in the interim as a funding mechanism which aims to serve dual purposes of complementing on-going justice sector reforms through innovative affordable models of legal aid delivery and also seeks to pave way for a sustainable provision of legal aid at the national level. The 2006/07 – 2009/10 strategy aims at improving access to justice for all the poor through provision of legal aid services in a sustainable manner with a view to national coverage.

Objectives

The two immediate objectives of the LABF strategy are:

- Coverage of adequate and affordable legal aid improved based on innovative, coordinated and tested models
- CSOs effectively advocate for access to justice for the poor

Description of Components

LABF defines legal aid as: 'legal services provided to disadvantaged persons and people who cannot afford such services so that justice is ensured through access. These services are to be provided for free or at a minimal cost.' The Fund targets interventions within criminal justice, land justice and family justice. Within these focus areas, actual interventions have been identified on output level and these include:

- Holistic low cost clinic/justice centre models tested
- Models of linking paralegal interventions, ADR and local council courts tested
- Paralegal Advisory Services Project reaching 25% of Central Government Prisons by 2007
- State Brief system evaluated and strategy for future State Brief delivery identified
- Models for coordination and delivery of public defence tested
- Functioning Pro Bono service delivery system in place
- Well functioning coordinating CSO structures
- Increased capacity of CSOs to translate knowledge within their area of operation into advocacy activities targeted at structural change
- Modalities for information sharing between CSOs/CSOs and CSOs/formal sector implemented

Management arrangements

The Donor Group is the highest policy making body charged with approving all major planning documents and financial and performance oriented reporting.

The Advisory Group consists of a broad spectre of civil society organisations, JLOS stakeholders and development partners each with an interest in the area of legal aid. The group is designed as a think tank for the fund and provides advice on strategic direction, priorities and updates on the current situation of legal aid service provision in Uganda.

Danida (Royal Danish Embassy) is currently the lead partner of the fund, ultimately responsible for the daily management of the fund. Danida Human Rights and Good Governance Office is the office to which the Royal Danish Embassy has delegated the management of the fund.

Monitoring and Evaluations

Internally for the Fund, Monitoring and Evaluation will continue to be outsourced to an independent service provider. As the law council is charged with the monitoring of legal aid services, funds are further reserved for the purpose of enabling the Law Council to better carry out their function as mandated.

Monitoring and evaluation results will be shared broadly and systemic review processes will be utilised (if feasible linked to JLOS processes) involving a broader range of stakeholders.

Documenting and sharing lessons learned are considered key to the development of legal aid in Uganda in the medium term

An effective and compelling system for the quality of legal aid will include focus on client satisfaction, peer assessment and case outcomes.