



Uganda

Legal and Judicial Sector Study

Report

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Table of Contents

TABLE OF CONTENTS	1
ACRONYMS AND ABBREVIATIONS.....	3
A. EXECUTIVE SUMMARY.....	1
OBJECTIVES AND PURPOSE	1
METHODOLOGY	1
SCOPE OF THE STUDY	1
REPORT STRUCTURE.....	2
CONTEXT.....	3
OVERALL FINDINGS	3
FINDINGS ON IMPLEMENTATION OF THE JLOS SIP	4
B. INTRODUCTION.....	7
POLITICAL CLIMATE.....	7
ECONOMIC AND DEMOGRAPHIC DATA	8
JUSTICE, LAW AND ORDER IN THE PEAP	9
OBJECTIVES AND PURPOSE	10
SCOPE.....	10
METHODOLOGY.....	11
1. THE JUSTICE, LAW AND ORDER SECTOR	12
1.1. HISTORY OF THE JLOS.....	12
1.2. THE JLOS INVESTMENT PLAN I: GOALS, PURPOSES AND ACTIONS.....	13
1.3. TRANSITION INTO SIP II.....	15
1.4. OBJECTIVES OF SIP II	15
1.5. MANAGEMENT AND COORDINATION OF THE JLOS.....	17
1.6. PREVIOUS REVIEWS OF THE SIP	20
2. SECTOR INSTITUTIONS: MANDATES AND ISSUES	22
2.1. THE MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS (“MOJCA”)	22
2.2. ADMINISTRATOR GENERAL’S DEPARTMENT	22
2.3. UGANDA LAW COUNCIL.....	26
2.4. THE DIRECTORATE OF PUBLIC PROSECUTIONS (“DPP”)	28
2.5. THE MINISTRY OF INTERNAL AFFAIRS.....	29
2.6. COMMUNITY SERVICE PROGRAMME	29
2.7. DIRECTORATE OF IMMIGRATION	30
2.8. GOVERNMENT ANALYTICAL LABORATORY (“GAL”).....	30
2.9. AMNESTY COMMISSION.....	31
2.10. THE UGANDA POLICE FORCE (“UPF”).....	31
2.11. THE UGANDA PRISONS SERVICE.....	32
2.12. UGANDA JUDICIARY	33
2.13. THE JUDICIAL STUDIES INSTITUTE (“JSI”)	42
2.14. JUDICIAL SERVICE COMMISSION (“JSC”).....	43
2.15. THE UGANDA LAW REFORM COMMISSION (“ULRC”).....	44
2.16. MINISTRY OF LOCAL GOVERNMENT – LOCAL COUNCIL COURTS	44
2.17. MINISTRY OF GENDER LABOUR AND SOCIAL DEVELOPMENT – PROBATION SERVICES (“MGLSD”).....	47
3. ADEQUACY AND RELEVANCE OF LEGAL EDUCATION AND TRAINING	48
3.1. INTRODUCTION: HISTORY OF LEGAL EDUCATION IN UGANDA.....	48
3.2. LEGAL EDUCATION IN UGANDA TODAY	49
4. IMPLEMENTATION OF JLOS INVESTMENT PLAN	55

4.2.	COMMERCIAL JUSTICE REFORM PROGRAMME (“CJRP”)	61
4.3.	ALTERNATIVE DISPUTE RESOLUTION AT CADER	65
4.4.	TAX APPEALS TRIBUNAL (“TAT”)	68
4.5.	UGANDA REGISTRATION SERVICES BUREAU (“URSB”)	69
4.6.	THE PRIORITIZATION OF THE COMMERCIAL COURT	69
4.7.	LEGAL PROFESSION AND LEGAL EDUCATION IN COMMERCIAL LAW	70
4.8.	LAND JUSTICE REFORM	71
4.9.	FAMILY JUSTICE REFORM	72
4.10.	OVERALL EXAMINATION OF THE SIP: QUALITY, SCOPE & PRIORITIES	73
5.	ACCESS TO JUSTICE AND THE JLOS INSTITUTIONS	75
5.1.	COMPARISON OF ACCESSIBILITY OF THE VARIOUS COURTS	75
5.2.	ACCESSIBILITY OF THE LEGAL SYSTEM	80
5.3.	GENDER AND ACCESS TO JUSTICE	81
5.4.	CONFLICT AND ACCESS TO JUSTICE	82
6.	ROLE OF NON-STATE ACTORS IN SIP IMPLEMENTATION	87
6.1.	RELEVANCE OF SIP I OBJECTIVES TO NON-STATE ACTORS	87
6.2.	CIVIL SOCIETY ORGANIZATIONS (“CSOs”)	87
6.3.	THE PRIVATE SECTOR	90
7.	FINANCING OF THE SIP	92
7.1.	POLICY FRAMEWORK	92
7.2.	SECTORAL ALLOCATIONS	93
7.3.	FINANCIAL PERFORMANCE OF THE JLOS	94
8.	CONCLUSIONS AND RECOMMENDATIONS	97
8.1.	THE COMMERCIAL COURT AND CADER	97
8.2.	LEGAL EDUCATION AND TRAINING	98
8.3.	ACCESS TO JUSTICE FOR THE POOR	99
	APPENDICES	101
	APPENDIX A	102
	APPENDIX B	104
	APPENDIX C	105
	APPENDIX D	107
	APPENDIX E	108
	REFERENCES	109
	LIST OF INTERVIEWEES	111

Acronyms and Abbreviations

AG	Attorney General
CADER	Centre for Arbitration and Dispute Resolution
CAO	Chief Administrative Officer
CCAS	Court Case Administration System
CCUC	Commercial Court Users’ Committee
CG	Consultative Group
CJR	Criminal Justice Reform
CJRP	Commercial Justice Reform Programme
CJS	Criminal Justice System
CMC	Case Management Committee
Dip. LP	Diploma in Legal Practice
DPP	Directorate of Public Prosecutions
EOC	Equal Opportunities Commission
FCC(s)	Family and Children Court(s)
FIDA-U	Uganda Association of Women Lawyers
FMS	Financial Management Specialist
FCPU	Family and Child Protection Unit (Uganda Police)
GoU	Government of Uganda
HCB	High Court Bulletin
IDPs	International Development Partners
IG	Inspectorate of Government

IGG	Inspector General of Government
ILI	International Law Institute (Uganda Centre for Legal Excellence)
IOC	Inspector of Courts
JCC	JLOS Coordination Committee
JLOS	Justice, Law and Order Sector
JLOS MTE	Justice, Law and Order Strategic Investment Plan Medium Term Evaluation 2001/2-2005/6
JLOS MTE	Medium Term Evaluation of the JLOS
JSC	Judicial Services Commission
JSI	Judicial Training Institute
JSP	Strategic Plan for the Uganda Judiciary
LA98	Land Act 1998
LASP	Legal Aid Service Provider(s)
LASPNET	Legal Aid Service Providers Network
LCC(s)	Local Council Court(s)
LDC	Law Development Centre, Kampala
LL.B	Bachelor of Laws
LOU	Laws of Uganda
LSSP	Land Sector Strategic Plan
LTs	Land Tribunals
Makerere FOL	Faculty of Law of Makerere University Kampala
MIS	Management Information Systems
MoFPED	Ministry of Finance, Planning & Economic Development

MoGLSD	Ministry of Gender, Labour and Social Development
MoJCA	Ministry of Justice and Constitutional Affairs
MoPSCA	Ministry of Public Service and Cabinet Affairs
MoWLE	Ministry of Water, Lands and Environment
MPP	Mediation Pilot Project
MTCS	Medium-Term Competitiveness Strategy
MTEF	Medium Term Expenditure Framework
NCSP	National Community Service Programme
NTR	Non Tax Revenue
PDAU	Public Defender Association of Uganda
PEAP	Poverty Eradication Action Plan
PMTCT	Prevention of Mother to Child Transmission
PPU	Policy and Planning Unit
PRSC(s)	Poverty Reduction Support Credits
PS	Permanent Secretary
PSFU	Private Sector Foundation of Uganda
RT	Registrar of Titles
SC	Steering Committee
SIP II	Sector Investment Plan, (for the JLOS)Phase 2
SIP I	Strategic Investment Plan (for the JLOS), Phase 1
SJP	Strengthening the Judiciary Project
STA	Senior Technical Advisor
TAT	Tax Appeals Tribunal
TC	Technical Committee

UHRC	Uganda Human Rights Commission
ULC	Uganda Law Council
ULR	Uganda Law Reports
ULRC	Uganda Law Reform Commission
ULS	Uganda Law Society
UPDS	Uganda Public Defender Scheme
UPF	Uganda Police Force
UPPA II	
UPS	Uganda Prisons Service
VCT	Voluntary Counselling and Testing
WG	Working Group
GAL	Government Analytical Laboratory
NEMA	National Environment Management Authority
URA	Uganda Revenue Authority
UNBS	Uganda National Bureau of Standards

Acknowledgements

This study was initially conceived as an assessment of the Uganda Justice Law and Order Sector (JLOS), and was undertaken in 2005 by a core team led by Minneh M. Kane (Legal and Judicial Reform Practice Group of the Legal Vice Presidency). The work was updated into this Report by a team led by Edith Ruguru Mwenda (Africa Practice Group, Legal Vice Presidency) in 2007-2008. Both the initial study and the update which have culminated in this Report have been carried out with the help of a Uganda based consultant, now Lady Justice Irene Mulyagonja Kakooza, and the support of Barbara K. Magezi Ndamira (Africa Region, Public Sector Reform and Capacity). The study is indicative of the development in the sector to the period March 2008.

Contributions were provided by a wide range of stakeholders in Uganda, and specifically the individuals whose names appear at the Appendix to this Report, including judicial and court officials, judges, magistrates, legal practitioners, the Law Society of Uganda, and the Faculty of Law at Makerere University, among others: Hon. Justice Benjamin Odoki (Chief Justice of Uganda), Hon. Justice Ogoola, Principal Judge (High Court), Hon. Justice G. Kiyabwire, Commercial Court Division, Hon. Justice S. Manyindo, Chairman, Judicial Service Commission, Hon. Fred Ruhindi, Deputy Attorney General/Minister of State for Justice and Constitutional Affairs, Dr. Sylvia Tamale, Dean, Faculty of Law (Makerere University), Mrs. Jane Kiggundu, Acting Solicitor General, His Worship Lawrence Gidudu, Chief Registrar (Courts of Judicature), and Ms. Evelyn Edroma, Senior Technical Advisor (Ministry of Justice and Constitutional Affairs).

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A. Executive Summary

Objectives and Purpose

The objective of the original study was to gather information and analysis in order to: (a) share learning on the successful aspects of the JLOS-SIP I with other institutions within Uganda and with other countries undertaking or planning to undertake similar reforms; (b) identify remaining challenges in the sector; and (c) explore how the World Bank can support the ongoing process without detracting from the successful sector wide approach. This update builds on the findings of the study and presents the lessons learnt from SIP I, the development of SIP II, successes that have been achieved in its implementation, and the remaining challenges.

Overall, the study evaluated the efforts currently undertaken by GoU, the private sector, civil society, and International Development Partners (IDPs) under SIP I and II. The results of the 2005 study were used to stimulate a participatory discussion among interested parties. The study was updated in June 2007 and final consultations with the government were held in March 2008. The report is primarily intended for use by the World Bank to inform its continuing program in Uganda. The study team acknowledges the excellent input and support received from the Government of Uganda, , and would like to note that the information provided in the report reflect the development in the sector at the time of the final consultations on the report in March 2008.

Methodology

This study which was conceived as an assessment was conducted in two parts. The first part was a desk review and analysis of studies and reports related to the JLOS and its institutions. The second part consisted of one-on-one interviews with representatives of institutions of the JLOS, Civil Society Organisations (CSOs), the private sector and IDPs supporting the JLOS, followed by a search and analysis of relevant statistical information. This report was discussed with key stakeholders in the justice sector in 2005. The final report incorporated the comments raised during those consultations and the report was further updated in June 2007, with a limited group of stakeholders consulted at that time on key JLOS issues. The consultations with the government on the updated report were held in March 2008.

Scope of the Study

This study examines and evaluates developments in the JLOS institutions, noting both the achievements and continuing challenges of reform under SIP I and SIP II. It pays particular attention to the SIP guidelines and objectives and to the outstanding challenges described in various reviews of the JLOS institutions, more specifically: (a) the Commercial Court; (b) the impact of the establishment of the Centre for Arbitration and Dispute Resolution on case backlogs; (c) the adequacy of legal education to meet the needs of the sector in view of recent reforms, and (d) the provision of legal aid services to the poor to increase their access to justice.

The study also touches on the challenges identified by the JLOS MTE, which warranted detailed study and which informed the development of SIP II. They include law reform, legal education, access to justice for the poor and particularly in the conflicted areas of Uganda. In addition, Administrator General's Department, having been left out of SIP I and its evaluation, is described and evaluated in some detail.

JLOS's largest components involve the Criminal Justice Reform Programme, which was reviewed in great detail by the MTE. Its main challenges relate to the enforcement of human rights and law reform: two challenges that cut across the whole of the JLOS. This study did not place much emphasis on Criminal Justice Reform Programme, save in as far as it related to the issue of access to justice, in the areas of the country that were still experiencing armed conflict, where the JLOS institutions had limited presence at the time. However, the study included a technical opinion on the quality, scope and priorities set by JLOS SIP I within the Commercial Justice Reform Programme, the Criminal Justice Reform Programme as well as the two new programmes areas introduced in SIP II relating to Family and Land Justice. The study makes reference to Criminal Justice Reform Program in outline, but it does not provide an analysis of the departments of Police, Prosecutions and Prisons, although the study team understands that the three institutions are a core part of the JLOS.

Report Structure

Part B begins with a brief introduction to Uganda's economy, population, political climate and the development issues that concern the justice sector. It establishes the links between the justice sector programmes and Uganda's poverty reduction strategy, the Poverty Eradication Action Plan (PEAP). **Chapter One** describes the JLOS and its investment plans (SIP I and SIP II). **Chapter Two** gives detailed descriptions of each sector institution, including the Uganda Law Council the statutory regulatory body for the legal profession, and key issues that concern the sector for each institution. **Chapter Three** deals with legal education and describes the Faculty of Law at Makerere University and the Law Development Centre. **Chapter Four** provides a review and technical opinion on the scope and quality of the JLOS programme as well as on the quality of the Family and Land Justice components of the JLOS Programmes introduced by SIP II. **Chapter Five** deals with access to justice in Uganda, describing the various dispute resolution fora for accessing justice for all people in Uganda with particular emphasis on the poor and vulnerable, and cross-cutting issues identified by the sector and emphasised in SIP II such as poverty, gender, HIV/AIDS and conflict.

In **Chapter Six** describes the role played by non-state actors in advancing access to justice for the poor and vulnerable, focusing on the respective efforts and the relationship between CSOs allied with JLOS and the JLOS institutions in improving access to justice. **Chapter Seven** briefly addresses the financing of the JLOS SIP and gives some information on the proposed funding mechanisms for SIP II. **Chapter Eight** presents some conclusions about the JLOS and recommendations for further reforms and summarizes the recommendations made as a result of the study in the short-, medium- and long-term..

Context

A number of contextual factors are important to consider for their impact on the development of the justice sector in Uganda. They include the high levels of poverty in Uganda, making it one of the poorest countries in the world; the civil war which has ravaged the North of the country for over 20 years; Uganda's high dependence on overseas development assistance in the face of serious allegations of government corruption and misuse of public funds; and the pressure put on justice sector institutions, the courts in particular, by recent political events. More recently, these have included amendments to the constitution governing the political system, to allow for multi-party democracy, and extending the term limits of the President; the most recent election and contestation of results in the courts and allegations of government and police violence and intimidation against opposition leaders; and violent demonstrations arising from a government announcement to cede parts of Mabira forest to a foreign enterprise.

Overall findings

Relative to the constraints that sector institutions face, and the social, economic and political environment within which the SIP I is being implemented, SIP I's successes are impressive. Perhaps the biggest challenge for the sector institutions by the end of the implementation of SIP I was to start truly identifying themselves as part of a sector. Reports from the JLOS Steering Committee in 2008 indicated that sector institutions' perception of the JLOS had improved during implementation of SIP II which commenced in February 2007. They now appreciate the JLOS SWAp as a coordination and communication mechanism and not merely as a funding mechanism. And because the coordination is anchored by a budget, the SWAp is also a means of channelling aid in a coherent and predictable manner.

The JLOS continues to deal with the sector issues identified in the PEAP and the various analytic studies that were carried out before inception of the JLOS. Attention was paid to the pertinent issues such as the persistent and rampant abuse of human rights that caused lack of confidence in the justice delivery institutions.

Based on the evaluation of SIP I, the objectives of the SIP were reframed and improved in SIP II to reflect the need to improve access to justice for the poor and better to respond to a larger proportion of the population of Uganda (mostly poor and marginalised). In response the JLOS has reorganized its priorities, shifting its focus from commercial and criminal justice, and including two new programme areas on land and family justice. In this regard therefore, there is need for continued commitment in implementation of SIP II to ensure sustainability. The recommendations of this report are made in this light.

Civic and legal education

The JLOS has carried out civic and legal education campaigns through its Publicity Committee in order to create awareness about its existence and activities, as well as create awareness about how services can be obtained by the public from its institutions. Legal rights NGOs also have diverse experiences and have always delivered civic and legal education to the public as a sub-component of their efforts to deliver legal aid. These groups however were not sufficiently utilised by JLOS to this end, during implementation of SIP I. SIP II recognises the role of human and legal rights NGOs by

including them in its framework for action and on relevant Working Groups. The Legal Aid Basket Fund (LABF) mechanism started its operations in 2007 and several NGOs have received funding for their activities from LABF.

Coordination, communication and cooperation

Overall, by the end of implementation of SIP I, the JLOS had facilitated better coordination, communication and cooperation among sector institutions, thus enhancing service delivery within the sector. Evaluation of SIP I indicated a need for identification of linkages of the sector to other institutions and sectors that might contribute to and add value to the achievement of SIP objectives. SIP II therefore has a more deliberate strategy to take advantage of inter-sector linkages and collaboration. The sector also needs to be strengthened in gathering and using data to monitor performance and detect trends.

Findings on implementation of the JLOS SIP

A key achievement of SIP I was that all JLOS institutions had mandates that derive from the SIP. Several of the institutions had formulated them consistent with SIP I and, as far as was practically achievable, were following such plans.

Criminal Justice

During the implementation of SIP I, the Criminal Justice Reform Programme registered improvement in efficiency and effectiveness through the implementation of the Chain Linked Initiative, which coordinated activities of key institutions involved in the criminal justice system. The Initiative resulted in the formulation of guidelines for the management of cases in the criminal justice system.

There were substantial infrastructure improvements that brought JLOS institutions closer to the users, particularly the construction of courts and police stations. However, there was limited development in the case of prisons: current infrastructure has not matched improvements in sector efficiency and the increased levels of crime. Prisons continue to be overcrowded and with conditions well below the required international standards. A number of strategies have been put in place to deal with congestion and disease control in prisons. These include lowering the jurisdiction for some offences to the magistrates courts and alternative custodial sentences e.g community service and through use of paralegal advisory services to enable suspects link to the outside world and access bail easily. However effects of these interventions have either been limited or have yet to be measured, while efforts of the Uganda Prison Service to put in place a strategy to deal with tuberculosis infections, caused by high rates of HIV/AIDS in the prison population, has not been implemented due to shortage of funds.

Staff retention remains a challenge in many of the JLOS institutions including the police, prisons and MOJCA.

Commercial Justice Reform Programme

The most significant success of the Commercial Justice Reform Programme during SIP I was the establishment of the Commercial Court. Improved administration of staff and better case management resulted in a significant reduction of case backlog. Both this and

the establishment of a Court Users Committee resulted in the reduction of the perception of corruption of support staff at the court. The introduction of court annexed mediation at CADER contributed to the enhancement of service provision by the court by expediting the disposal of cases through ADR. The court recorded more settlements before trial after mediation at CADER (about 21% of cases referred to CADER settled at mediation). However, the sustainability of CADER was uncertain under SIP I and remains so under SIP II due to lack of funds, with a proposal now to integrate CADER into the JLOS and have a vote for it from the national budget.

Law Reform

Sector institutions made commendable efforts to identify laws that affect the activities of the sector which need reform. The Directorate of the First Parliamentary Counsel in the MoJCA and the Uganda Law Reform Commission continue to ensure that laws are revised and Bills drafted for enactment, and that current laws are amended. During implementation of SIP I, the process was found to be extremely slow. However, over the years the sector has identified several pieces of legislation which if enacted would improve its performance.¹ The reform of the land registry, a priority under the Commercial Justice Reform Programme which SIP I was unable to achieve during its implementation, will be the focus of a new SIP II program on land justice reform.

Human Resource Development

By the end of implementation of SIP I, most sector institutions had identified training needs. JLOS provided funds for training in some institutions, while others seemed not to be benefiting from this arrangement in spite of their great need. There was also great need for human rights training for most sector institutions, and efforts to provide this training were fragmented and irregular.

SIP II thus lays emphasis on human rights and has as one of its main objectives fostering a human rights culture across JLOS institutions. JLOS plans to draw up a more sequenced sector wide human rights training programme which will be supported by the SWAp development fund in addition to programmes undertaken by specific institutions.

SIP I did not pay adequate attention to the needs of the sector in terms of legal education and there were no formal links with the legal education training institutions except in as far as the Law Development Centre was an allied institution to the JLOS. Legal education institutions have been faced with increasing numbers of students admitted to the institutions, without a commensurate expansion in their facilities and human resources. This has been compounded by concerns over the lack of basic skills of large numbers of students admitted to fulfil the course requirements and in turn high failure rates as well as the reported inability of graduates to meet expectations of employers within both the justice sector and the private sector.

¹ For example in F/Y 2006/2007 the legislative agenda included 16 laws which are contained in Appendix D. Other relevant Bills are either still pending before or await approval from Parliament. The JLOS institutions have developed a system for tracking bills initiated by the sector, as well as skills for lobbying for enactment of laws that affect the sector.

Access to Justice for the Poor and Vulnerable

During implementation of SIP I the JLOS had very limited presence in the conflict affected areas of the country and the roll out of reforms to these areas presented a challenge due to insecurity and breakdown of infrastructure. Following the cessation of hostilities, the sector institutions drew up a programme that prioritises provision of services to these areas, with financial commitments from the sector and JLOS partners, while communities in these areas have in addition put in place innovative measures² to ensure that, as far as is reasonably practicable, law and order is maintained.

Equitable access to justice for women and children remains a challenge. Key constraints identified by the end of SIP I were limitations in the LCCs, the Family and Children Courts (FCCs), and Probation and Social Welfare Services. SIP II brought family justice into the JLOS programme, with programs in this area to use the results of a land and family justice study commissioned in 2007 as a baseline, and be handled in a “chain linked” manner.

A significant proportion of legal aid in Uganda is still provided by NGOs supported by donors. Although the NGOs have formed themselves into an umbrella organisation, the Legal Aid Service Providers Network (LASPNET) and donors have established a Legal Aid Basket Fund, the process of phasing out the old systems of uncoordinated funding and establishing the basket fund mechanism is taking longer than had been anticipated. The establishment of regulations for legal aid and paralegals was completed in 2007.

The LCCs were established to be a suitable structure to facilitate the improvement of access to justice for all people in Uganda, especially the poor and vulnerable. However, the administration and monitoring and evaluation of the work of LCCs continues to be a challenge for the sector. The Local Council Courts Act was enacted in 2006 and regulations to aid its implementation in terms of fees payable, procedures in the courts and costs awarded by the courts came into force in September 2007. There have been efforts to educate LC officials on principles of natural justice and human rights in order to improve the quality of justice dispensed by the LCCs.

Land Tribunals (LTs) were expected to be a suitable innovation for improving access to justice for the poor, but proved to be expensive to manage: they also experienced difficulties in their supervision and monitoring and compounded the backlog of disputes over land due to their inefficient management. Their operations were suspended in 2006 with disputes pending before them transferred to the magistrates courts. It is not yet clear whether LTs will be reinstated as part of the justice system. A strategy for improving land justice is yet to be put in place under the new programme area of land justice.

² These include the reversion to customary law and the extensive use of the Local Council system.

B. Introduction

This introductory chapter contains basic political, economic and demographic facts that are relevant to the Justice, Law and Order Sector (JLOS), including current political issues that have an impact on the administration of justice and good governance. It further lays out the objectives and scope of this study, the methodology that was employed to gather information and the structure of the report.

Political Climate

Since independence from Britain in 1962, Uganda had never had a truly peaceful transition in political leadership. The current government of President Yoweri Museveni operated under a “no party” political system, which was termed the National Resistance Movement, from 1986 until 2005. A new Constitution was introduced in 1995 which resulted in the improvement in governance and greater recognition of principles of human rights, and in particular the advancement of the rights of women to participate in governance and all aspects of national life. The following year, elections were held and President Museveni was re-elected by a comfortable majority in what were considered to be relatively free and fair elections, and re-elected in 2001.

President Museveni’s second term as President ended in June 2006. This placed Uganda in a situation that Ugandans referred to as “the transition phase”. Two immediate questions were whether to retain the Movement system or amend the Constitution to allow for a multi party political system, and whether to further amend the Constitution to remove presidential term limits. The first question was decided in July 2005 when, through a national referendum, Ugandans opted to return to a multi party system (this same question was voted on and rejected in a 2000 referendum). The issue of term limits was decided in August 2005 when Parliament voted to amend the Constitution to lift Presidential term limits. Yoweri Museveni then sought and obtained a third term in office as president in 2006.

Events during the “transition phase” had a direct impact on justice sector institutions. The main opposition candidate Colonel (Retired) Dr. Kiiza Besigye was arrested in October 2005 for treason and rape and was later charged for treason with 22 others in what was considered a highly politicised case. On two occasions since the High Court was besieged by police during bail hearings involving this case.³ These incidents have given rise to fears that the sector institutions were getting into a habit of clashing over the issue of bail to this particular group. Judges had been in a situation where they had to hold court proceedings with armed security waiting outside the court to arrest suspects. The independence of the judiciary and the rule of law were put to test. In response, the Judiciary called a one week sit down strike and in solidarity with the Judiciary, the Uganda Law Society also called a three day strike.

³ Notably, in November 2005 when Dr. Besigye and his co-accused appeared before the court on a bail application, the High Court was besieged by armed men dressed in black who were said to have been stationed at the court to prevent the escape of the accused persons. The groups have been popularly referred to by the press as the „black mambas.“

Violent public rallies and demonstrations occurred in Kampala and elsewhere in April and May of 2007 threatening another political crisis. The riots were sparked by GoU's proposal at the beginning of 2006 to giveaway part of the Mabira Central Forest Reserve⁴ to a sugar cane corporation that is a joint venture between government and a Ugandan proprietor of Indian descent. A peaceful demonstration against the proposal turned violent resulting in the death of three persons including an Indian national. Property was looted and vandalised. A subsequent demonstration over the same issue resulted in the arrest of three Members of Parliament who were imprisoned for several days. The proposal to giveaway part of Mabira Reserve has been linked to other earlier land giveaways especially targeting forests.⁵ Political action over the land giveaways surprisingly resulted into the first area of consensus between the fledgling opposition in Parliament and MPs from the ruling party because it was considered a strategic national issue. Issues of land reform remain front and central as is discussed in Section 4.9 below.

Other factors currently posing a challenge to political leadership include the prosecution of NRM stalwarts⁶ implicated in the loss of public funds given for an immunization programme and tuberculosis; the implication of State House in the misuse of funds;⁷ the incessant power cuts and the spiraling of fuel prices. An effect has also been felt from the 2007 Presidential and Parliamentary Elections which resulted in violence across Kenya, with the fear that if the 2011 elections are not managed in a fair and transparent manner, the ripples of violence based on tribal lines may spread to Uganda.

Economic and Demographic Data

Uganda is one of the poorest countries in the world, though it has undergone impressive macroeconomic growth and stability during the past decade averaging an annual 7% increase in GDP per capita. However, high fertility rates and fast population growth are threatening to wipe out the benefits of improved social spending. In 2006, GoU announced that prospecting for oil had been successful and the economy may soon experience a boost from oil revenue. It is now expected that oil drilling will start by 2010 and the three wells are expected to produce up to 14,000 barrels of oil per day.⁸

About 44% of Uganda's population lives on less than a dollar a day. According to estimates by the Uganda Bureau of Statistics⁹, there are now about 26.8m people in Uganda. With an estimated population growth rate of 3.3%, one of the highest in the world, this population is expected to double in the next 21 years. The Uganda Participatory

⁴ A protected natural forest reserve about 54 kilometres from Kampala and 20 kilometres from Jinja, Mabira Forest Reserve is the largest block of moist semi-deciduous forest remaining in central Uganda.

⁵ In 2003, the government signed an agreement in which it agreed to give away 10,000 hectares of land on Bugala Island in Kalangala District for development of palm oil to an Asian owned firm, Bidco Palm Oil Company, a Nairobi based firm with interests in oil and food processing in Kenya, Uganda and Tanzania. Eventually government proposed to giveaway 20,000 hectares of land to the same firm. The developments resulted in the resignation of some officials of the National Forestry Authority. ⁵ In March 2007 the Finance Director of the NFA Anatoli Batamani and the spokesman Gaster Kiyangi resigned in protest against the impending giveaway of Mabira Forest to the Mehta Group.

⁶ Charles Ariko, Edward Anyoli and Hillary Nsambu, Muhwezi sent to Luzira; New Vision, May 28, 2007

⁷ Milton Olupot, How did GAVI funds disappear? New Vision May 22, 2007

⁸ Oil drilling to start in Uganda by June 2010 retrieved 9/06/07 from www.gulfoilandgas.com

⁹ The statistics and estimates in this and the following paragraphs were extrapolated from the 2002 National Household and Population Census by the Uganda Bureau of Statistics.

Poverty Assessment (2000) identified large families as a major cause of poverty and also linked them to limited access to land and other assets. One in two Ugandans is less than 15 years old, and, of these, one in 12 is an orphan. 1.1m Ugandans are living with HIV/AIDS and, due mainly to the impact of this disease, life expectancy at birth is 42 years. Unfortunately, though Uganda has been lauded by the international community for its efforts to stop the spread of AIDS, a 2006 survey revealed that the prevalence rates are again on the increase, reportedly on the rise to 6.7% from 6.2% in 2005.¹⁰

An estimated 67% of the population above 15 years can read and write, with 49% relying on word of mouth as their primary source of information. 48% of Ugandan households have a radio and only 4.8% have a television set. English is the official language with a significant number of local languages spoken. 77% of the population live in rural areas and engage in agriculture as their primary source of income. 77.4% of households live in houses with rammed earth floors though the majority have are roofed with iron sheets.

Justice, Law and Order in the PEAP

Currently, Uganda's PEAP prioritizes reform in the JLOS because of the effects of lawlessness on poverty. Markets cannot exist without effective property rights, which depend in turn on three conditions: protection from theft and violent acts, protection from arbitrary government actions and a fair and predictable judiciary enforcing clear laws. Crime deters poverty reduction not only because people are directly hurt by crime but because their ability to invest is reduced. Incarceration of convicts carries fiscal and human costs, while in the case of adults often removes breadwinners from households, causing hardship to spouses and children. In addition, Government has found it difficult to devote enough resources to prisons, especially local government prisons.

In recent years, juvenile crime has been on the increase, including child prostitution among females. Two categories of juvenile crime are of particular importance: defilement and child prostitution.¹¹ The JLOS faces new challenges, important to Uganda's reputation, such as international money laundering and terrorism.¹²

In the area of civil justice, the *Commercial Justice Baseline Survey (2001)* highlighted the negative impact of poor services on private sector development. Among businesses surveyed, 70% perceived the commercial justice system to be expensive, slow and corrupt. Poor enforcement of commercial justice also affects the poor because it makes it difficult for them to protect their property rights¹³. For the majority of Ugandans that depend on agriculture, the resolution of land disputes remains particularly important.

The SIP is a progressive attempt to align the delivery of justice and judicial reform with the broad aims of the PEAP, that is, to ensure delivery of justice within the context of

¹⁰ Report on the Uganda HIV/AIDS Sero-Behavioural Survey, 2004-2005, Ministry of Health, Kampala

¹¹ By 2007, defilement cases represented the 3rd highest number of cases reported after thefts and common assault. Defilement is prevalent in situations of poverty, armed conflict, and among street children and orphans. In many cases, young men (ages 16-20 years) are arrested for defiling young girls who are later found to have consented to sexual exploration or intercourse. The girls who are supposed to be the complainants become hostile witnesses and fail to give evidence resulting in failed prosecutions.

¹² PEAP, 2004

¹³ PEAP, 2004

poverty reduction. The major challenge for GoU under the PEAP and the SIP is to reach the *chronically poor*¹⁴ who constitute over 50% of those living below the poverty line

Objectives and Purpose

The objective of the original study which had been conceived as an assessment was to gather information and analysis in order to (a) share learning on the successful aspects of JLOS-SIP I with other institutions within Uganda and with other countries undertaking or planning to undertake similar reforms; (b) identify remaining challenges in the sector; and (c) explore how the World Bank can support the ongoing process without detracting from the successful sector wide approach. This update builds on the findings of the study and presents the lessons learnt from SIP I, the development of SIP II, successes that have been achieved in its implementation so far, and the remaining challenges.

Overall, the study evaluated the efforts currently undertaken by GoU, the private sector, civil society, and International Development Partners (IDPs) under SIP I and II. The results of the 2005 study were used to stimulate a participatory discussion among interested parties, which included, among others, the JLOS Institutions, the Faculty of Law at Makerere University, the School of Law¹⁵, the Law Society, the international development community, other civil society groups, and the private sector. The study was updated in June 2007 and March 2008 and its findings will be used by the World Bank to inform its continuing program in Uganda.

Scope

In 2004, a mid-term evaluation of the implementation of the SIP was carried out by the GoU and donors supporting the sector (JLOS MTE). This Study will focus on the challenges identified by the JLOS MTE: access to commercial justice, alternative dispute resolution at CADER, enforcement of judgements, monitoring and evaluation, commercial registries and the legal profession. The Study will also focus on the lessons learned from the implementation of SIP I and the development of SIP II which is now into its second year of implementation. In addition the study will discuss legal education, access to justice in the areas of Uganda that have been going through conflict, and the role of civil society and non-state actors in the achievement of SIP objectives.

The Administrator General's Department was left out of the SIP I and there was therefore no evaluation of its operations in the JLOS MTE. SIP II incorporates the Department in its programmes under the new Family Justice Programme. Because of its importance to access to justice for poor and vulnerable, this department, its challenges and proposed reforms are described in some detail.

Less emphasis is placed on the Criminal Justice Reform Programme, save in so far as it relates to the issue of access to justice in the areas of the country that are recovering from the effects of armed conflict. Although previous studies including the JLOS MTE noted that JLOS institutions did not have much presence in Northern Uganda, considerable

¹⁴ These are referred to in GoU documents as "the poorest of the poor" and are 20% of the population with the lowest consumption rate per capita. The hard core poor are those people living below the food poverty line. (MoFPED, 1998, Poverty Trends in Uganda, Discussion Paper No 2)

¹⁵ The Law Development Centre, Kampala

effort has been made through the support to Government's Peace Recovery and Development Plan (PRDP) and the Emergency Humanitarian Action Plan (EHAP) to improve the Government's presence in the conflict affected areas. This situation persists despite SIP II's recognised need to step up programmes, and steps taken in turn to ensure an increased presence of and access to JLOS institutions in Northern Uganda. The Study also includes a technical opinion on the quality, scope and priorities set by SIP I within both the CJRP and the Criminal Justice Reform Programme and the improvements that were made in SIP II.

Methodology

The study began with a detailed desk review and analysis of documents relating to the JLOS, individual sector institutions, the Government of Uganda as well as the World Bank and donor groups that fund the institutions of the JLOS.

Reports on implementation of programmes by sector institutions were reviewed to identify areas where there is need for further investigations or reforms. For purposes of comparison, reports on work that had been done in the legal sectors of other developing countries were also reviewed. Particular emphasis was laid on issues relating to the Commercial Court and CADER, the adequacy of legal education and legal service provision for the poor in order to increase their access to justice. The desk review provided background information for use in assessing the sector against the SIP guidelines and objectives and for identifying successes and remaining challenges. More importantly, it served to identify areas of inquiry and further analytic work, in line with the emphasis laid on such efforts by the World Bank Country Assistance Strategy.

The study then involved one-on-one interviews with representatives of sector institutions, legal education institutions, representatives of the private sector and NGOs. Representatives of JLOS institutions, but which had not been included in SIP I were also interviewed. The interview process was followed by a search for data and statistics on the sector institutions and NGOs allied to the JLOS. The original study carried out in 2005 during the implementation of the first SIP was updated after the development of SIP II. The process involved the review of literature about the institutions, searches to update quantitative data, and selected interviews with representatives of the sector institutions.

This report was discussed with key stakeholders in the justice sector in 2005 to verify the findings made as well as to stimulate further discussion of the issues raised for the further implementation of the JLOS programme. The final report incorporated the comments of stakeholders and the client. The report was updated in June 2007 and a limited group of stakeholders consulted on key issues in the JLOS at the time. Further consultations were carried out in 2008 and this report incorporates the comments and additions that were made after the 2008 consultation at the highest level of the JLOS.

1. The Justice, Law and Order Sector

History of the JLOS

The maintenance of law and order was one of the worst affected state functions during the years of political turmoil, and particularly between 1972 and 1986. The loss of public confidence in the justice system was reflected in the rise in “mob justice” – public lynching of suspected criminals. Justice institutions were all poorly funded and there was no incentive for Ugandans to pursue careers in the justice sector. Employees of the justice system, who had no proper supervision, developed a culture of accepting bribes and provided very poor services, which the population accepted for lack of effective alternatives. In the circumstances, there was lack of access to justice for all persons in Uganda, including the rich regardless of their willingness to purchase it at high cost.

After 1986, Uganda set out to recover from a state of anarchy and restore governance institutions. Efforts to restore the rule of law started with the introduction of Local Council Courts (LCCs). The restoration of the formal justice institutions lagged behind, though the government recognized the crucial role they play in restoring confidence in the economy and thus encouraging investments and business activity. The 1995 Constitution refocused emphasis on the respect for human rights and access to justice for all persons in Uganda as a constitutional right at the centre of the system of governance.

In the 1980s and 90s, various IDPs provided significant support to justice delivery institutions, following the traditional project approach whereby an individual institution was given aid to carry out specific activities that were supposed to improve its efficiency in the delivery of services. Funding agencies found this approach wanting in terms of assessing the impact of the aid given, while the uncoordinated lists of requirements that originated from the justice delivery institutions taxed government planning. It became necessary to analyze the situation and studies were commissioned to establish the way forward for assistance to the justice institutions. Of particular note were the *Commission of Inquiry (Judicial Reform) of 1995* and the *Crown Agents Study of the Criminal Justice System*. The reports from these processes made it possible to analyze the situation and made recommendations for reform. These were followed in 1999 by the report on the *Review of Uganda’s Criminal Justice System*. All of the reports detailed severe weaknesses in the justice system due to institutional and systemic constraints.

Meanwhile, solutions were crafted within the justice delivery institutions to improve efficiency and effectiveness. One first such attempt was the Chain Linked Initiative, launched in September 1999 between the criminal justice agencies in Masaka Magisterial area. The initiative’s immediate aim was to increase coordination, communication and cooperation between institutions in the criminal justice system. Implementation was the responsibility of the criminal justice agencies themselves, i.e. the police, prisons and the courts together with advocates and prosecutors. Coordination was done by a Case Management Committee, assisted by a small secretariat, and overseen by a technical committee and an advisory board. The overall goal was to enhance the standard of criminal justice by helping to reduce mob justice, increase public confidence in the criminal justice system and ensure compliance with constitutional requirements.

The Initiative made a positive contribution to those ends, resulting in fairer treatment of accused persons and victims, complainants, witnesses, and the general public, faster processing of cases, reduction of case backlog, and remand populations. It was inexpensive in terms of incremental costs to the administration of justice, proving that improvements could be made at minimal cost by promoting communication, collaboration and coordination among institutions in the criminal justice system. It laid the ground for the principles of sectoral planning and budgeting for the justice sector.

In November 1999, a group of high level policy and political decision-makers in justice delivery and maintenance of law institutions met to discuss systemic and comprehensive reform of the until then inchoate sector.¹⁶ Uganda had in 1995 adopted a sector wide approach to planning and budgeting as a means of improving strategic planning and implementation within the PEAP. At this meeting (the “Mamba Point Meeting”) it was decided to apply this model of sector reform to the justice sector and to develop a Medium Term Strategic Investment Plan (SIP) in order to align the sector with the PEAP.

The JLOS Investment Plan I: Goals, Purposes and Actions

The Uganda Justice Sector effectively started operating under the sector wide approach in 2000. A Secretariat was established in August 2000, and it developed the first Sector Investment Plan (SIP I) for the years 2001 to 2006. In 2006 the JLOS developed and launched its second Sector Investment Plan (SIP II) which will run from 2006-2011 and takes into account achievements and lessons-learned from the implementation of SIP I.

The mission of the JLOS was formulated as “*to enable all people to live in a safe and just society,*” which was in part derived from the PEAP. The sector further sought to use the PEAP’s principles as its Strategic Guidelines, namely, contributing to the PEAP’s aims and working towards the reduction of poverty; and promoting knowledge and a respect for governance and human rights principles.¹⁷ This translated into the super goal of the JLOS programme *to enhance the quality of life for the people of Uganda and to ensure that poverty is eradicated.* The JLOS’s broad policy objectives during SIP I were to maintain law and order and increase access to justice for all persons.¹⁸ The Sector mission and policy objectives were derived and supported by the sector institutions and their respective mandates and policy objectives (described in Chapter 2). An outstanding question that this study examines is whether the priorities identified to achieve this

¹⁶ Which was defined as follows: Ministry of Justice and Constitutional Affairs (Lead Institution); Ministry of Internal Affairs (Government chemist; Immigration Department, Community Services Department); Judiciary, Uganda Police Force, Directorate of Public Prosecutions; Uganda Prisons Service; Judicial Service Commission; Uganda Law Reform Commission; Ministry of Local Government - Local Council Courts; Ministry of Gender, Labour and Social Development - Probation Department.

¹⁷ Namely, by working towards the ideals laid out in the Uganda Constitution; working towards implementation of the Human Rights principles and Conventions to which Government of Uganda is a signatory; and promoting transparency and social and financial accountability across the JLOS institutions.

¹⁸ The sector’s specific objectives were as follows: (i) Fostering a culture of Human Rights across the JLOS institutions; (ii) Promoting the rule of law; (iii) Securing access to justice for all people, particularly the poor and other marginalized groups; (iv) Amending all discriminatory laws and regulations; Ensuring a significant reduction in the incidence of crime, particularly crime that is defined by the people as “serious crime,”; (v) Promoting principles of crime prevention, as well as enforcement; (vi) Encouraging grassroots voices and community involvement across all JLOS institutions; (vii) Strengthening structures for commercial justice, particularly at the grass roots level.

strategy were consistent with the environment in which the programme was set. The other was whether the stated objectives contributed to the achievement of the super goal of enhancing the quality of life in Uganda and eradicating poverty. This question is answered in Chapter 4.

During SIP I the JLOS sought to achieve reform in support of its broad policy objectives to maintain law and order and increase access to justice for all persons. Strategic actions were undertaken in both commercial and criminal justice in the following 4 areas: a) legal services reform; b) administration of justice; c) legal education and d) law reform. Table 1A shows the objectives of SIP I and the actions planned under it.

Table 1A: Key result areas envisaged under SIP I under identified sector objectives

Sector objectives	Planned actions
1. Criminal Justice Reform	<p>A. Legal Services Reform:</p> <ul style="list-style-type: none"> • Accountability, monitoring and coordination across JLOS sustained • Results oriented management in line with codes of conduct and performance standards and guidelines • Protection of rights particularly those of vulnerable groups • Effective strategy to counteract human resource losses to HIV/AIDS; protection of prisoner's rights to health • Rationalised and cost effective legal representation to vulnerable groups; reduction in incidence of mob justice; increased public confidence in the criminal justice system <p>B. Improved administration of justice</p> <ul style="list-style-type: none"> • Increased staff retention; • Improved skills levels; • Efficiency savings through cost effective service delivery <p>C. Improved civic and legal education</p> <ul style="list-style-type: none"> • Improved compliance with law • Improved perception of the justice law and order sector • Reduction in the incidence of crime <p>D. Law Reform</p> <ul style="list-style-type: none"> • Achievement of consistency and transparency in sentencing and prosecution • Reduction in costs of administration of justice • Development of laws responsive to community needs.
Commercial Justice Reform	<p>A. Commercial Court Reform</p> <ul style="list-style-type: none"> • Accessibility of commercial courts improved • Processing of commercial cases by courts improved • Promotion of ADR • Improved enforcement of commercial judgments <p>B. Companies and land registry reform</p> <ul style="list-style-type: none"> • Efficiency and transparency of registries improved <p>C. Commercial law reform</p> <ul style="list-style-type: none"> • Key commercial laws reformed • Sustainable process established for ensuring business friendly laws and regulations <p>D. Commercial lawyers</p> <ul style="list-style-type: none"> • Competitive regulatory environment established • Numbers of lawyers competent to handle commercial cases increased • Implementation of monitoring and evaluation

Transition into SIP II

Implementation of the JLOS SIP I came to an end in 2006. At the end of implementation of SIP I, it was recognised that process was a crucial factor in development of the sector and it could only be progressively undertaken by the institutions themselves. Though external partners could and did provide resources and facilitated the process they could not deliver the desired outcome. The process gains noted by the end of SIP I included that the government of Uganda took responsibility for the JLOS policy and implementation plan, there was political will to resource and implement the plan and it had adopted a long-term perspective to the process of reform. Partnerships developed between development partners, civil society and government and the process resulted in consistent development partner shift from project support to sectoral support.

The JLOS MTE identified the key achievements during SIP I as the reduction in the length of stay on remand from an average of 24 months to 15 months, reduction in the number of persons held on remand beyond the constitutional period¹⁹ from 39% to 1% and 23% to 10% for serious and petty offences respectively. There was also increased efficiency in the commercial court which was evidenced by the increased case throughput and application of ADR, establishment of CADER and the Tax Appeals Tribunal and the improved capacity of the legal profession to handle commercial cases.

The MTE pointed to several challenges for the sector such as financial constraints within which the reforms were being implemented, need for management to build adequate policy, managerial and operational capacity and integrity, premised in functional organisational systems and a delayed implementation of a financial management strategy. With regard to programmes, there was a need to achieve clarity in output targets and to demonstrate their contribution to the national and sectoral objectives, an increasing demand for services in northern Uganda, an increasing national population and heightened levels of civic and legal awareness. There was also still the need to develop a national feed-back system with baseline indicators, adequate staff capacity, consolidating and institutionalising data sources and strengthening performance measurement and reporting systems. The need to improve sector cohesion so as to build a team was another challenge identified. SIP II plans to address these challenges.

Objectives of SIP II

SIP II carries forward the purposes of SIP I. Ongoing pilot projects such as the case backlog reduction project, CADER, the mediation pilot project, and the prisons farms project continued into SIP II. Programmes like the National Community Service Programme and the Chain Linked Initiative also continued. The annual recruitment of staff for police and prisons, construction of premises such as the commercial court, and

¹⁹ Where a person is arrested in respect of an offence triable by the High Court as well as by a subordinate court, he/she shall be released on bail on such conditions as the court considers reasonable if that person has been remanded in custody for 120 days. In the case of an offence triable only by the High Court, the person is released as the court considers reasonable if he/she has been remanded in custody for 360 days before the case is committed to the High Court.

up country courts as well as regional offices and the law reform efforts are further activities that have been carried on into SIP II.

SIP II aims, in particular, to enhance the public's capacity to demand improved service, and to create wealth through improved awareness of human rights and confidence in the justice system. To this end, the sector reviewed and revised its policy objectives from eight (8) to five (5) objectives. This reflected the fact that the sector had now entered another phase of development in which it was consolidating gains from SIP I and enhancing impact. The objectives and outcomes are linked to a Monitoring and Evaluation framework with baseline indicators (where available) and targeted outcomes.

It is also notable that while SIP I objectives for reform focused mainly on the sector, SIP II's objectives embrace developments outside the sector and cut across sectors. As such, the objectives are more in line with the goal of the PEAP to enhance incomes and reduce poverty (e.g. (iii), (iv) and (v)). The objectives also reflect the JLOS desire to move from a program that emphasises law and order to one having a broader, rights focus. Table 1 shows the objectives of SIP II and the actions planned under it.

Table 1B: Key result areas envisaged by SIP II under the identified sector objectives

Sector Objective	Planned actions
To promote the rule of law and due process	<ul style="list-style-type: none"> ▪ Ensure certainty of the law and procedures ▪ Foster independence of the judiciary ▪ Enhance accountability and ethics across JLOS institutions
To foster a human rights culture across JLOS institutions	<ul style="list-style-type: none"> ▪ Enhance human rights awareness and practice at institutional and sectoral levels ▪ Reduce incidence of violation of specific human rights ▪ Foster a conducive environment for human rights CSOs and the private sector to participate in JLOS
To enhance access to justice for all particularly the poor and marginalised	<ul style="list-style-type: none"> ▪ Ensure rationalised physical access to JLOS institutions and functions ▪ Minimise financial bottlenecks hampering access to justice ▪ Ensure increased use of ADR and innovative approaches to enhance access to justice ▪ Strengthen the capacity and role of LCCs in easing access to justice ▪ Enhance the quality of justice delivered ▪ Minimise technicalities that hamper access to justice
To reduce the incidence of crime and promote safety of the person and security of property	<ul style="list-style-type: none"> ▪ Enhance JLOS response to crime ▪ Reduce recidivism ▪ Develop and implement crime prevention strategies ▪ Promote safety of the person and security of property
To enhance JLOS contribution to economic development	<ul style="list-style-type: none"> ▪ Develop and implement conducive strategies to support production, competitiveness and wealth creation ▪ Strengthen JLOS contribution to creating an environment that enables Uganda to take advantage of regional, bilateral and international trade agreements.

Management and Coordination of the JLOS

MOJCA continues to be the lead JLOS institution under SIP II and most of the various JLOS leadership bodies set-up under SIP I, at both national and district levels, continue in SIP II with slight variations. The JLOS governance structure is described briefly here.

The apex body of the JLOS is the Leadership Committee (LC) which is chaired by the Chief Justice and comprises relevant members of government.²⁰ The Leadership Committee was intended to provide political support to the institution, represent the JLOS at Cabinet and Parliament levels and effectively lobby for the benefit of the sector by articulating its issues and raising its profile. It is also in charge of Policy formulation.

Next to the Leadership Committee is the Steering Committee (SC) which is responsible for overseeing the implementation of the SIP, making management decisions, providing strategic guidance to the reform process and giving it direction. It also makes policy decisions. The Steering Committee is chaired by the Solicitor General with the JLOS Senior Technical Advisor as its Secretary.²¹

There is a Technical Committee (TC) comprising of technical personnel from all JLOS institutions at Under-Secretary/Commissioner level, or heads of departments. There is one representative from each of the JLOS institutions with one alternate designated by each institution.²² The TC's key responsibilities are to review the SIP annually, ensure its implementation, task the working groups to identify sectoral problems and solutions related to their focus areas, report to and advise the SC on implementation and providing the primary link between individual institutions and the sector as a whole.

The TC operates under 5 Working Groups (WGs), one covering each focus area (Criminal, Commercial, and Land and Family justice) and the fifth for Budget/Finance. Their chairs are selected annually on a rotational basis from sector institutions. The WGs are responsible for carrying out delegated roles of the TC, maintaining focus on pro-poor, low cost initiatives, vulnerable groups, conflict/post conflict affected areas; monitoring and evaluating progress of JLOS sector work plans towards achievement of sector wide objectives; recommending relevant changes to the SIP II activities, continually seeking to mainstream cross-cutting issues, lobbying MoFPED for better funding of the sector and developing annual work plans and budgets.

During the course of SIP II, the Secretariat will work towards integrating itself into a civil service structure. Its pace of growth is expected to follow developments in the sector and

²⁰ Namely, of the Minister of Justice/Attorney General, the Ministers of Internal Affairs and Finance, Planning and Economic Development, Chairpersons of the Uganda Law Reform and Judicial Service Commissions, Chairperson of the JLOS Steering Committee and the Head of the JLOS Secretariat. The Leadership Committee may invite other key stakeholders deemed necessary to meetings including the Ministers of Public Service, Gender, Labor and Social Development and the Principle Judge.

²¹ It comprises of officials at the highest level of institutions (Police, Prisons and DPP), Permanent Secretaries of the sector institutions/ministries including MoFPED and MoPs, Chairperson of the JLOS Technical Committee and the Head of the JLOS secretariat.

²² . Other members of the TC are the STA, the FMS and other Technical Advisors from the JLOS Secretariat. The Chairpersons of the Chain Linked Initiative and JLOS desk officers at MoFPED and MoPS, as well as institutional technical advisors also sit on the TC.

availability of resources. The Secretariat will provide the vital link to all WGs and Committees in the sector.²³ Its responsibilities include operational leadership, research, sector-wide M&E, policy development, communication, liaison and coordination, public relations, and financial management.

SIP II aims to strengthen Policy Planning Units and establish them in institutions where they do not yet exist. Linkages between PPUs and other institutional departments as well as the Secretariat will also be strengthened. PPUs' key responsibilities are policy analysis, data collection, monitoring progress at the institutional level, providing monitoring information to WGs and representation of institutions at WGs.

Based in each District, JLOS is represented by the JLOS Coordination Committee (JCC) whose purpose is to oversee and coordinate improvements in the administration of justice and maintenance of law and order (i.e. enhancing case management and reducing backlog). The JCC comprises JLOS committees at District level (e.g. Chain Linked Initiative and Community Service Committee) and is chaired by the Chief Magistrate or a Grade I magistrate. Its members are JLOS institution representatives at District level, District Probations and Social Welfare Officers (PSWO), representatives of Juvenile Justice Child Welfare Committees, Uganda Law Society, and civic and local leaders.

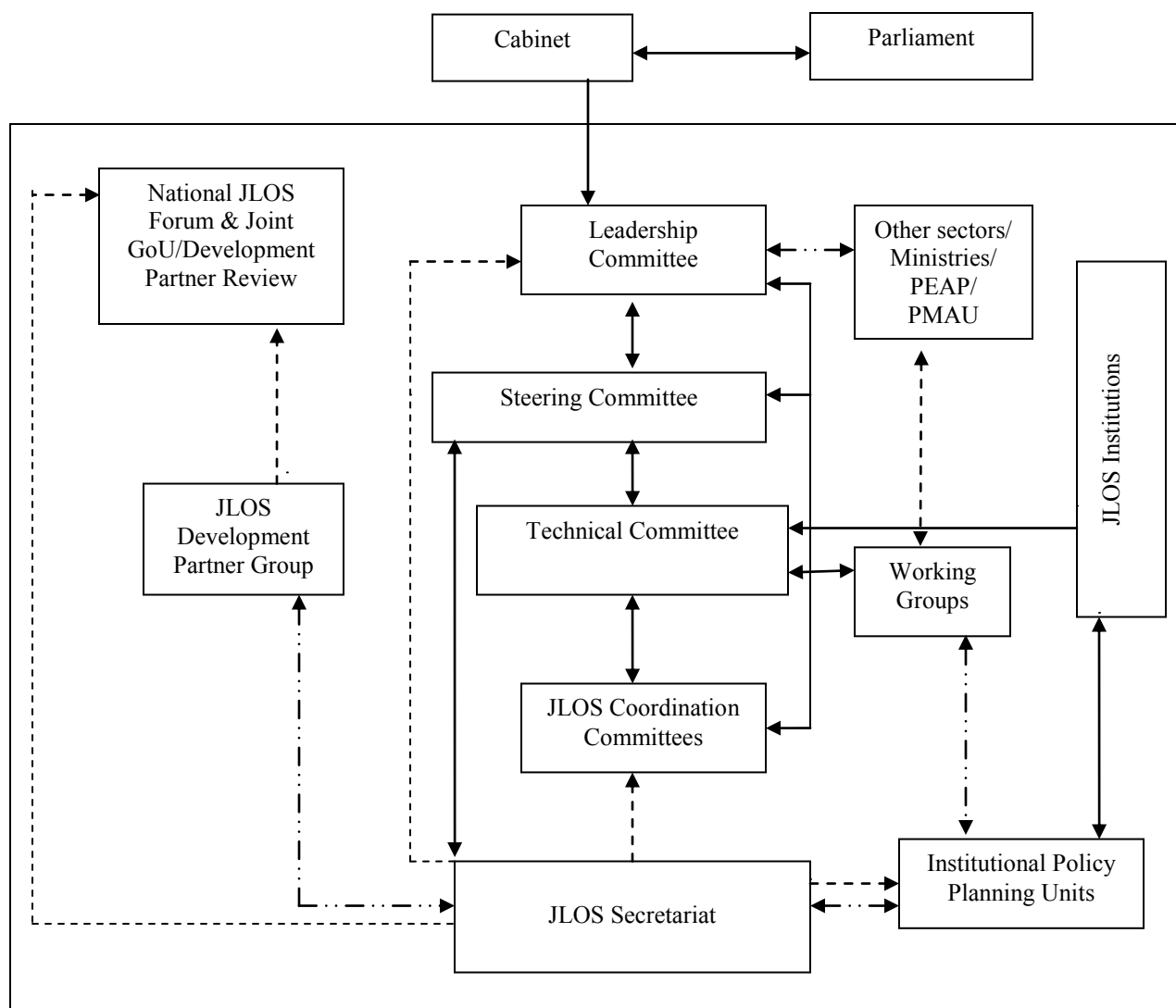
The JLOS Development Partners Group (J/DPG) is comprised of agencies that support JLOS through various mechanisms including general budget support, sector budget support, and project support.²⁴ In terms of donor coordination, there is a Donor SWAP Legal sub-Sector Group, which brings together all contributors to the J/LOS and serves as a contact point for J/LOS institutions. The Donor group has a chairperson, selected by Donors and meets regularly with government through GOU-Donor Liaison Meetings, Sector Reviews and amongst themselves to concretize issues and speak with one voice.

Donors contribute to the JLOS either by giving technical assistance or by directly funding the JLOS. Constructive dialogue between donors and institutions has helped to push the process of development of the sector forward, not only through the bi-annual reviews but also through constant discussion with sector institutions and the working groups. Figure shows the JLOS structures and management information flows.

²³ Staffing of the Secretariat is expected to grow to include the STA, FMS, two TAs, two policy analysts from the MoJCA PPU, secondments from institutional PPUs, and short-term technical assistance as the Secretariat needs demand. Monitoring and Evaluation and mainstreaming of the cross-cutting issues have already been identified as areas deserving of short-term TAs.

²⁴ Membership includes Austria, Denmark, EU, Germany, Ireland, Netherlands, Norway, Sweden, UNDP/UNCDF, United Kingdom, and the World Bank. The relationship between J/DPG is based on the general GoU/Donor Partner Principles 2003 under MoFPED which JLOS and J/DPG have used to develop collaboration and co-ordination mechanisms to ensure effective contribution to the reform process.

Figure 1. JLOS Structure and management information flows²⁵



KEY

--->	Feedback, M & E, information
- - - ->	Organisational support, advice
<-->	Reporting (up) Communication (down)

²⁵ Structure reproduced from Justice Law and Order Strategic Investment Plan II

The JLOS has evolved as an institution operating under a sector wide approach, which has a distinct budget referred to in some cases as the SWAp Development Fund or the SWAp. Reference to the JLOS in this text means the Justice, Law and Order Sector, which is the institution as opposed to the fund.

Previous reviews of the SIP

The implementation of the first half of the SIP was reviewed in 2004 (JLOS MTE), noting significant successes and challenges both at the process and output level, in all the three programme areas (Commercial Justice, Criminal Justice, Monitoring and Evaluation). The evaluation found that overall the JLOS had registered considerable achievements. The process in place had established a solid foundation for further stages of JLOS implementation. The most notable achievement was the increased practice of coordination, communication and cooperation.

Other successes included the development of an atmosphere conducive to peer review, introduction of effective data collection for evidence based planning, and donor coordination. Outstanding challenges included access to commercial justice for a large proportion of the population, lack of efficient mechanisms to enforce judgments, lack of effective monitoring and evaluation in the sector institutions, a relative lack of awareness of human rights standards in some of the sector institutions, and private sector perception of corruption within the sector institutions and among members of the legal profession.

The above measures of success concentrated on the supply side of justice delivery. However, the sector has since concluded a corporate effort of identifying broader indicators to define achievements on the demand side of accessing justice. Sector wide indicators are now used to report on JLOS programmes. They were also used in a 2006 sector-wide survey to create a baseline of qualitative and quantitative data which will later help to measure the performance, progress and impact of JLOS programmes.²⁶

The development of SIP II was carried out through a consultative process which identified and sought to build on lessons learned during the implementation of SIP I. The key achievements related to the process of establishing the sector, by sector institutions themselves. In particular, the GoU took responsibility for the JLOS policy and demonstrated the political will to implement and resource the plan. The other positive achievement was that the JLOS SIP adopted a long term perspective to the process of reform. Partnerships were developed between development partners, civil society organisations and GoU, enhancing the process of formation of a sector and implementation of the JLOS SIP. The process resulted in a consistent development partner shift from project support to sectoral support to the advantage of the GoU.

Broad sectoral challenges identified at the end of SIP I related to expediting legislative reform, addressing existing case backlogs and the inequitable spread of JLOS institutions across the country. There was also lack of awareness of the sector among members of the public and sector institutions. The JLOS programme was to be expanded within a

²⁶ JLOS Progress Report to the 12th Joint GoU/Donor Review, June 2007

limited resource envelop controlled by GoU funding mechanisms (the LTEF and MTEF). Justice delivery in conflict and post conflict areas remains an immense challenge.

The following chapter gives brief descriptions of the institutions and mandates in the JLOS with more on the successes and challenges of those given less attention in the JLOS MTE, such as the Administrator General's Department.

Sector Institutions: Mandates and Issues

The Ministry of Justice and Constitutional Affairs (“MoJCA”)

MoJCA Institutional Mandate

The mandate of the Ministry is to provide legal advice and legal services as well as to support the machinery that provides the legal framework for good governance. MoJCA also provides technical advice on matters of law to government and advises on the interpretation of various provisions of the Constitution.

Structure

MoJCA is the lead institution of the JLOS, and is headed by the Attorney-General, who must also be a Cabinet Minister²⁷. The Ministry is comprised of three directorates: Directorate of Civil Affairs, Directorate of Legal Advisory Services and Office of the First Parliamentary Counsel (“FPC”) responsible for the drafting of legislation and divided into three departments: Uganda Registration Services Bureau, Administrator General’s Department and Uganda Law Council. The Law Development Centre, Uganda Law Reform Commission and Uganda Human Rights Commission are semi-autonomous institutions allied to MoJCA.

Issues for MoJCA

MoJCA suffers from a lack of staff, especially state attorneys, with some of the most experienced staff leaving and others facing interdiction and dismissal. It has in some cases resorted to hiring private lawyers to represent government in court. Service delivery at the Registration Services Bureau and Administrator General’s department is poor, with a general public perception of corruption and inefficiency. The FPC lacks experienced legislative drafters, resulting in the need to hire consultant-drafting specialists.

Administrator General’s Department

Structure

Established under the Administrator General’s Act and the Public Trustee Act²⁸ in the 1930s, the Administrator General’s Department is a body corporate with separate legal liability, headed by the Administrator General/Public Trustee. The Government, represented by the Attorney General, retains liability for all the Administrator General’s acts or omissions, as with any other government department. The Administrator General is assisted by a Deputy Administrator General and other legal officers (State Attorneys in MoJCA) referred to as Assistant Administrators General.

Mandate and functions of Administrator General

The mission of the Administrator General’s department is “to ensure that all estates of deceased persons in Uganda are properly managed and administered in accordance with

²⁷ Article 119 Constitution of the Republic of Uganda. The Attorney General is appointed by the President with the approval of Parliament, and he/she is the principal legal advisor of Government.

²⁸ Chapters 157 and 167 of the Laws of Uganda, respectively

the laws of Uganda governing succession matters.”²⁹ The Administrator General has several functions, notably, the administration of both testate and intestate estates of deceased persons, acting as Public Trustee; protection and management of the shares of minors; and instituting legal proceedings in courts of law against inter-meddlers, fraudulent administrators of deceased’s estates, unscrupulous relatives and others for the recovery of estates of deceased persons. The Administrator General’s functions are quasi-judicial, including the authority to dispose of some disputes over estates of deceased persons. The office is thus crucial in ensuring access to justice for some of the most vulnerable members of society in Uganda, mainly widows and orphans.

The Succession (Amendment) Decree of 1972 consolidated the administration of estates in Uganda.³⁰ This was a significant hallmark in family law reform because it recognised women’s rights to inherit property and the rights of all children whether male or female, legitimate or illegitimate, to inherit from parents in equal shares.³¹ The law streamlined the application of numerous customary laws by codifying various norms and practices related to inheritance common to most indigenous communities in Uganda.³² It further preserved the rights of a widow to remain in the principal matrimonial holding of the deceased (in trust for the heir) until she remarried, died or voluntarily left the home. To ensure uniformity, the law applies all persons in Uganda including regardless of religion.

This Act increased the duties of the Administrator General which previously only involved the administration of estates of the expatriate community (the majority of other estates having been dealt with under customary law). To function effectively, the Department performs a fair amount of investigation and mediation between family members (usually large and polygamous) involved in succession disputes. This function helps to enforce the rights of widows and orphans acquired under formal law against customary succession practices that subsist in many communities in Uganda.

Table 2: Performance of Administrator General’s Department FY 2004/2005 – FY 2007/2008³³

Activities	2004/2005	2005/2006	2006/2007	2007/2008 ³⁴
Files opened	3174	3457	3803	1,701
Clients attended to	30,000	32,500	36,000	18,000
Grants of Letters of Administration to Admin General	254	193	124	45
Monies collected for clients	2.9 billion	3.6 billion	3.05 billion	9.57 billion
Tenancy agreements for clients	94	68	75	20
Reconciliations of families	279	389	370	170

²⁹ This is in line with the provisions Article 247 of the Constitution of 1995.

³⁰ Prior to the amendment of the Succession Act (Succession (Amendment) Decree, No 22 of 1972), Uganda had a dual system of succession law comprising both the received law contained in the Act and the customary laws of the various communities in the country. The Succession Decree and the Administration of Estates (Small Estates Special Provisions) Decree (No. 12 of 1972) consolidated the administration of estates into one system of law in 1972. Now consolidated with the Succession Act, 2000.

³¹ By virtue of s. 28(1) (a) (iv) of the Succession (Amendment) Decree, all lineal descendants of a male intestate deceased person get 75% of the estate, which is to be divided equally amongst them.

³² E.g. designating customary heirs a 1% share of an intestate deceased males estate and dependent relatives within the extended family a 9% share of the estate (s. 28(1)(a)(i) & (iii) No. 22 of 1972).

³³ This data was extracted from quarterly reports submitted to MoJ. Compilation and reporting of data as contained in Table 2 began in 2002 (but with gaps in the records for the period April to July 2003).

³⁴ These figures represent the mid 2007/2008 performance

Agreements drafted	79	26	30	18
Certificates of No Objection issued	942	662	619	584
Transfers of land for clients	212	222	173	95
Estate inspections	308	97	90	25
Civil suits in courts	70	125	150	95

Source: Administrator General's Department

The statistics above indicate that the numbers of clients increased each year. According to a State Attorney interviewed in the Department, this was first attributed to deaths due to HIV/AIDS. However, in recent years, the rise in cases has been attributed to: increased public awareness of the Administrator General's Department's functions; requirements that beneficiaries pursuing death gratuity from employers, both public and private, prove their rights as beneficiaries (which can only be done by obtaining letters of administration); and recent increased ownership of real property by Ugandans.³⁵

Links to JLOS Programmes

The Administrator General deals mainly with transactions involving land and affecting the poor and vulnerable, and had considerable success in defending vulnerable widows and orphans from being disinherited by their extended families. By virtue of the volume of such cases, the department contributes to the JLOS mission. Though not a part of SIP I, the Administrator General's department was included in SIP II under the Family Justice Reform Programme, allowing it to benefit from the reforms in the rest of the JLOS.

Challenges

Human Resources. The department is understaffed and overwhelmed: with only two main offices in Kampala and Mbarara, staff deal with the large number of succession matters from all regions of the country. Staff are demoralised by the poor terms and conditions of service, lack of promotions and lack of continuous training.³⁶ Additional skills or manpower are also required to handle other responsibilities relating to management of support staff, the financial aspects of estates and counselling of clients.

Identification of clients and beneficiaries. Uganda does not have a uniform system of identification cards which makes it difficult to identify beneficiaries of states. Officers in the department sometimes rely on oral affirmation and identification to identify beneficiaries and, in some cases, travel long distances to the home areas of beneficiaries, at the cost of sometimes indigent persons. This causes undue delay and is sometimes perceived as corruption which diminishes public trust in the department.

Law Reform. The Succession Act is still largely discriminatory against women inheritance matters, especially in regards widows' rights to their matrimonial homes. The Administrator General has presented the ULRC with proposals to reform the Succession Act in tandem with the Magistrates Courts (Amendment) Act to reflect the current economic situation and disparities in the administration of estates. The slow process of reforms however led to litigation by human rights NGOs. In 2007, the Constitutional

³⁵ UPPA II indicates that ownership of land among high and middle income earners is increasing, with low-income earners losing their land through forced sales and increased fragmentation due to large families.

³⁶ E.g. lawyers in the department require training in emerging areas such as ADR, since a majority of succession disputes are settled using mediation.

Court declared several provisions of the Succession Act as contrary to the Constitution, rendering them inoperative until amended.³⁷ This may speed up the process of enacting the proposed Succession (Amendment) Bill.

Law Enforcement. Poor enforcement of orders issued by Administrator General's office remains a challenge.³⁸ Yet this office remains a crucial link in protecting inheritance and property rights of widows and orphans. Current structures, mainly the LCCs and the Chief Administrative Officer's district level office, while accessible to vulnerable groups in other areas of law, tend to enforce customary succession laws and practices which may be prejudicial to widows and orphans.

Accounts and Records Management. The department keeps a manual accounting system which is tedious, time consuming, unreliable and inefficient due to the numerous cases handled by the department (about 86,000 files which are not properly coded and are thus difficult to find). This leaves the department open to litigation for misplaced records and actual or perceived asset mismanagement and corrupt practices.

Interaction with Other JLOS Institutions. The Administrator General encounters various difficulties interacting with other JLOS departments, for example, where magistrates' courts make succession grants outside their jurisdiction or without a certificate of "no objection" from the Administrator General.³⁹ Further, even where such a certificate is provided, grants are delayed by case backlogs in the courts.⁴⁰ This can escalate disputes between beneficiaries and in some cases to the point of fraud and intermeddling in estates. These disputes increase the workload of the Administrator General's office which must then intervene and mediate between beneficiaries before the grant is made. According to the Administrator General, the Judiciary does not seem to appreciate the problems and constraints that the department faces. A possible solution would be to broaden the powers of administrators and executors of estates to make all types of grants provided for by the Succession Act (of which only three can be made by the courts).⁴¹

Proposed restructuring

In order to address the human resource challenges and improve efficiency, the Public Service Review⁴² proposed upgrading the department into a Directorate – headed by the Administrator General, with a deputy Administrator General and three Commissioners for the western, eastern and northern regions. Under each Commissioner, three posts of Principal State Attorneys would be created to take up stations in the regions, thus decentralising the Administrator General's functions to fulfil the Constitutional

³⁷ Law & Advocacy for Women in Uganda v. Attorney General. Constitutional Petitions No. 5 of 2005 and 12 of 2006 were filed separately to challenge provisions of the Succession Act, and the Penal Code Act. Court consolidated the petitions and disposed of them in one judgement.

³⁸ E.g. orders for the preservation of estates are sometimes the subject of succession disputes and slow response by the police has allowed meddling in property which jeopardises the quick resolution of disputes.

³⁹ As required by the Administrator General Act, s. 6.

⁴⁰ Magistrates courts or Family Division of the High Court as the case may be.

⁴¹ Part XXX of the Succession Act provides for Limited Grants which include: Grants limited in duration, Grants for the use and benefit of others having rights, Grants for special purposes, Grants with exception, Grants of effects unadministered and Grants of the rest.

⁴² Report and Action Plan for the Proposed Devolution of the Department of the Administrator General from MoJCA.

provisions on access to Department's services.⁴³ At present the department has started on a plan to decentralise of its functions by opening offices, to date, in Mbarara and Gulu and in Mbale with limited functions. The Department was earmarked for divestiture in the mid-1990s to make it an independent commercial department. Any plans to restructure have been delayed by a lack of human and financial resources.

Uganda Law Council

Established under the Advocates Act,⁴⁴ Uganda Law Council (ULC) is the overall regulatory body for advocates and law clerks in Uganda. It is also charged with the regulation of legal aid service providers under the Advocates (Legal Aid to Indigent Persons) Regulations. The ULC is part of MoJCA and is funded by the government. Its members are a judge appointed by the Attorney General in consultation with the Chief Justice, President of the Uganda Law Society, Director of the Law Development Centre, Dean Faculty of Law at Makerere, and two practicing advocates elected by the ULS.⁴⁵

Main Activities of ULC

Regulation of the Legal Profession. The Council considers and approves applications of all lawyers who seek to enrol as advocates and directs the Chief Registrar to enter the names of those found eligible on the Roll of Advocates. The Council also inspects books of accounts and chambers of advocates and legal aid service providers and issues Certificates of Approval of Chambers (issued annually and a pre-requisite to the issuance of a practicing certificate to an advocate or legal aid service provider).

Supervision and Control over the Provision of Legal Aid. This a major function of the Council, which it has not performed due to the absence of an institutional structure and government funding. Consequently, legal aid services to indigent persons has hitherto not been regulated as stipulated by the law and it is not clear how many legal aid service providers exist in the country and where and how they operate.⁴⁶ At the moment the ULC has mandated the Uganda Law Society to regulate legal aid service providers, until more permanent arrangements being made for the ULC exercise this function.

Committee on Legal Education and Training

The 2002 amendment of the Advocates Act created a Committee on Legal Education and Training (CLE Committee) as a distinct part of the ULC.⁴⁷ The Committee exercises general supervision and control over professional legal education: it prescribes the professional qualifications to enrol as an advocate, and for standards paralegals; and conducts CLE for qualified legal practitioners. The Advocates (Continuing Legal

⁴³ The proposed structure includes new posts of Public Relations Officer, Estates officers and records management officers. The cost of the proposed decentralisation and restructuring is approximately Ushs 482,060,771/=. The cost of the proposals for restructuring of the department is presented in Appendix A.

⁴⁴ Chapter 267 of the Laws of Uganda, 2000 as Amended by the Advocates (Amendment) Act 2002, s. 2.

⁴⁵ S.3 Advocates Act. Council members hold office for three years and are eligible for re-election.

⁴⁶ In 2004, the *Baseline Survey on Legal Aid Service Provision* (the Legal Aid Service Providers Network) established that 8 main organisations provide primary legal aid (i.e. representing clients in court). Many more secondary legal aid providers, i.e. CSOs and CBOs provide legal information, advice and counselling.

⁴⁷ The CLE Committee comprises distinguished law teachers, a judge of the High Court, representatives from the Faculty of Law (Makerere FOL) and the LDC, the ULS, MoJCA and the Ministry of Education.

Education) Regulations (2004) require all practicing advocates to complete a CLE program of at least 21 hours each year, but these have never been seriously enforced and Advocates continue to practice without fulfilling the required CLE requirements.

Disciplinary Committee

The Disciplinary Committee initiates disciplinary proceedings against advocates, on a range of complaints involving commercial and civil cases involving professional misconduct, unethical behaviour and embezzlement of client's funds.⁴⁸ In some cases, advocates have been ordered to pay compensation to complainants, while in others parties have reached amicable settlements through ADR. In recent years complaints against advocates have greatly increased partly due to open sessions of the Disciplinary Committee and publication of ULC decisions in the public newspapers. There has also been a swell in the ranks of lawyers, with over 800 advocates being supervised in 2007 by the same structure that was set up in 1970 to cater for 189 advocates. Most of these lawyers cannot immediately be absorbed into government and the private sector. Many young lawyers open up private practices without adequate supervision which is seen to contribute to large increase in cases before the Disciplinary Committee involving embezzlement of clients' funds by advocates and overcharging of fees.

Specific Challenges for ULC

Inadequate Funding. The ULC is funded under the MoJCA and the SWAp Development Fund and has no separate budget. The amendment of the Advocates Act to include the CLE Committee increased the ULC's functions with no commensurate increase in funding. Due to financial constraints, the ULC has not been able to publish most of its decisions. The ULC is allowed to obtain funding from the LABF to support its supervisory role of legal aid providers.

Inadequate Staff & Equipment. Two State Attorneys are assigned to the ULC by the MoJCA. A new proposed structure composed of 18 staff, (7 lawyers) was approved by the Ministry of Public Service, which when put in place may improve the Council Secretariat's capacity to carry out its mandate effectively. Funding and staffing constraints have created a considerable case backlog at the ULC, though some of it was cleared in 2005 through the JLOS case backlog programme, and increased use of ADR to resolve cases filed against advocates has helped to bring down the number of complaints that actually proceed to hearing. ULC's records are still manual, with no computerized registry of cases and records about advocates. The ULC also continues to press GoU to have it made into a semi-autonomous body as is the ULRC, the LDC and the Directorate of Public Prosecutions, with a proposed budget for its restructuring found at Appendix B. Figure 1 shows the number of cases lodged with ULC between 1995 and 2006.

⁴⁸ Committee members are the LDC Director, a representative of the Solicitor General; ULS President, two advocates representing the ULS, and the Secretary, who also serves as the Committee's prosecutor.

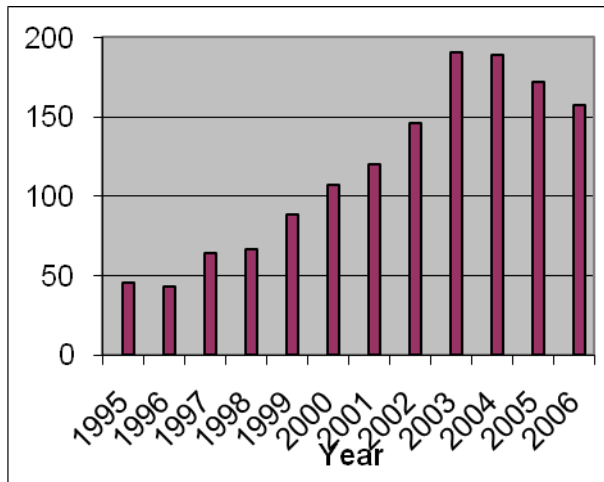


Figure 1: No of cases lodged with ULC from 1996-2006

The Directorate of Public Prosecutions (“DPP”)

The DPP’s mission is “to maintain an efficient and effective system of criminal prosecutions and to deter crime in the country.” Its mandate, derived from Article 120 of the Constitution, is to handle and prosecute all criminal cases in the country, having regard for the public interest and administration of justice. Appointed by the President on the recommendation of the Public Service Commission, the Director of Public Prosecutions has the same terms and conditions of service as a Judge of the High Court.⁴⁹

Sector Issues. Inadequate numbers of state attorneys remains a challenge for the DPP, which currently operates in 48 districts with only 39 Resident State Attorney Stations. DPP has recruited state attorneys and prosecutors to address inefficiencies and improve service delivery, but this has not kept pace with the establishment of Magistrates’ Courts, the police and prisons down to sub-county level, and has resulted in a concentration of cases at the Magistrates’ Grade I and Chief Magistrates’ Courts adding to existing case backlogs. Under the Professionalization of the Bench Strategy of the Judiciary,⁵⁰ DPP will stop recruiting Police/State Prosecutors,⁵¹ and increase the number of State Attorneys who will appear before the Judiciary’s new Grade I Magistrates.⁵² At the same time, DPP faces high turnover of staff, particularly State Attorneys (average of 4 leaving per year), with low salaries cited as the main reason. Funds for opening upcountry stations have also been limited, which is exacerbated by the lack of transport for field officers.⁵³

⁴⁹ Article 120 (7) *ibid*, notably: in the exercise of the functions stated in Article 120 of the Constitution, the DPP “shall not be subject to the direction or control of any person or authority.”

⁵⁰ The Judiciary Strategic Plan proposes to phase out all lay magistrates that have been in charge of the Grade II and III courts. These courts will be replaced by Grade I courts which will be presided over by professional magistrates sitting at each sub-county.

⁵¹ Prior to the Professionalisation of the bench, there were police state prosecutors in some of the magistrates’ courts. Police state prosecutors are not lawyers.

⁵² There are 168 state attorneys including 60 who were recruited in the 2007/2008 FY. It is expected that State Attorneys will replace prosecutors leaving the UPF and will be able to prosecute more cases.

⁵³ DPP currently owns 19 buildings rents 22, while its 42 other offices are loaned to it by local governments and have been found inadequate for current needs. A project designed to ensure the professionalisation of prosecution includes construction and renovation of residential and non-residential premises.

The Ministry of Internal Affairs

The Ministry of Internal Affairs' mandate is to maintain internal peace and stability by enforcing law and order. This is done through the Ministry Headquarters, the Uganda Police Force, the Uganda Prisons Service, the Immigration Department, the Analytical Laboratory, Amnesty Commission, Community Services Programme and the Finance and Administration Department, which are considered below in turn. Headquarters' mandate is to coordinate law enforcement activities, ensure guidance on political and policy issues and initiate and handle legislative matters of the Ministry.

Community Service Programme

Background. In 2000 Parliament passed the Community Service Act introducing Community Service as a penal sanction in Uganda.⁵⁴ Under the Act, where a person is convicted of a minor offence carrying a punishment of less than two years, court may sentence that person to community service, a non-custodial alternative to imprisonment. Orders are limited to six months and an offender should not work for more than eight hours a day. The Act established a National Community Service Committee which has district committees.⁵⁵ Implementation of the National Community Service Programme (NCSP) started in 2001. The Programme's mandate includes overseeing the implementation of the Community Service Act, sensitising the general public about the new law, and ensuring effective contribution to current JLOS reforms, and the use of non-custodial sentences in the administration of justice. Medium-term objectives include contributing to prison decongestion, rehabilitating offenders, and promoting their reconciliation with both the victim and the community.

Programme Implementation. The programme was first piloted in four magisterial areas: Masaka, Mpigi, Masindi and Mukono, with workshops and sensitization campaigns were held in the communities as a prior step.⁵⁶ The pilots were a successful in the four areas, with over 1,127 offenders sentenced to community service since its inception in November 2001. From June 2005 to May 2006, the Programme resulted in the diversion of 1510 petty offenders from the prison system, with 80% of the orders being issued to accused persons held in Local Administration Prisons. Whereas the roll out of the program is now complete across the country, there has been less impact on central government prisons. Strategies have been crafted to target this population.⁵⁷

⁵⁴ This followed on the 1996 Pan-African Seminar on Prison Conditions in Africa held in Kampala which produced a declaration (that later became a UN document) making specific recommendations to African states concerning prison conditions, remand prisoners, prisons staff and alternative sentencing. Delegates agreed to adopt Community Service as an alternative to imprisonment.

⁵⁵ National Committee members are a Judge nominated by the Chief Justice and 9 others including, the Chairperson of the ULRC, the DPP, the PS Ministry of Internal Affairs, the Commissioner for Prisons. The Committee has a secretary appointed by the Minister of Internal Affairs. The National Committee

⁵⁶ Funding for the programme was obtained from development partners: European Union through Penal Reform International and DANIDA Strengthening the Judiciary Programme

⁵⁷ E.g. efforts by LASPs to visit central government prisons to identify petty offenders for community service and the Judiciary starting special community service sessions at each court around Kampala.

At its inception the Programme yielded an estimated savings of USShs. 156,780,000/= per annum for Local Councils and USShs. 953,745,000/= for prisons,⁵⁸ and from June 2005 to May 2006 an estimated efficiency gain of USShs 679.5m in costs to maintain prisoners. The cumulative value of community work carried out by offenders (e.g. maintenance of feeder roads, sanitation and manual labour in schools) from June 2005 to May 2006 was valued at USShs 158.2 million. Further, recidivism rates after serving a community sentence were found to be lower (10%) than after a prison sentence (~40%-60%), which is an added savings to government through effective rehabilitation.

Sector Issues. The Community Service Programme requires restructuring for better integration into the Ministry. Current staffing and equipment is not adequate to cover the whole country,⁵⁹ which is exacerbated by the creation of new districts both before and after the 2006 elections. At present the programme is driven through District Community Service Committees and because the programme is rehabilitative in nature, there will be need to expand the supervisory functions of the programme by increasing the numbers of social workers and probation and social welfare officers to counsel offenders.

Directorate of Immigration

Formerly the Department of Immigration, the department's mandate included the control and regulation of the entry and employment of foreign nationals into the country, verification of citizenship of Ugandan nationals and the granting of conventional travel documents to registered refugees. The Directorate is also charged with issuing work permits to immigrants and inspection and monitoring their status.

Sector Issues. As a new creation of the MIA, the Directorate has increased the number of MIA staff contributing to MIA's budget shortfall of MIA of USShs 2.7 billion.

Government Analytical Laboratory ("GAL")

GAL's mandate is to provide specialised analytical and advisory services to government departments responsible for administration of justice (Police, DPP and Judiciary) and other statutory bodies, and carry out research for private sector as an engine of economic development. GAL's activities have not been very visible in previous reviews of the JLOS. Yet forensics examinations and tests represent a problem in the sector. For instance, JLOS identified pertinent issues in its beginning, such as increased DNA testing in family matters and increases in sexual offences and drug trafficking and consumption in Uganda). Whereas efforts are being made to identify and carry out specialized training in various areas including protection against chemical weapons, food safety, forensic science, organic chemistry skills and laboratory management skills, there still remains great need to increase laboratory equipment. *Sector Issues.* GAL has acquired state of the art equipment for investigations but this requires special reagents and annual servicing and maintenance.

⁵⁸ Budget Framework Paper, 2004/5.

⁵⁹ The NCSP was initially funded by EU which was enough to establish and furnish offices in 56 Districts. However, the funding from EU ended and the NCSP has been integrated into the JLOS budget.

Amnesty Commission

The Amnesty Commission's mandate is to demobilise, resettle and reintegrate reporters⁶⁰, sensitise the public about the Amnesty Act and promote dialogue and reconciliation mechanisms in the war-affected areas. The Commission's medium-term objectives are to demobilise, resettle, and reintegrate, sensitise the public about the Amnesty Act and promote dialogue between Government, reporters and other parties involved in conflict.

The Uganda Police Force ("UPF")

The UPF is established by the Police Act and Article 211 of the Constitution. Its mandate includes protection of life and property, enforcement of law and order, maintenance of security and peace in the country, crime prevention and investigation, and cooperating with other security agencies both nationally and internationally to fight crime.

Sector Issues. UPF had a total strength of 14,352 personnel (excluding civilian staff and auxiliary forces) in FY 2003/4.⁶¹ Taking this number and the national population of about 24.7 million in 2002, the police-population ratio was 1 to 1,663, against the international standard ratio of 1:500.⁶² In keeping with the Constitution of 1995, Cabinet approved the merger of all local government police into one central government police force. Possible concerns in integrating local forces were their perceived widespread involvement in criminal acts, lower educational requirements (to the UPF's are „A'), and an insufficient budget to train them. However, in FY 2005/2006 the police absorbed 4000 auxiliary police into the force which contributed to the effective policing during the 2006 elections. This has improved police numbers to approximately 18,000, and the police/population ratio to approximately 1:1,450 in 2006,. The JLOS 2006/2007 BFP proposes to increase the recruitment levels to 1000 police each year and to improve the police/population ratio to 1:732. The Uganda Police Force also experiences significant annual staff losses to death (over 300 per year), with most attributed to HIV/AIDS. UPF has thus proposed, phased recruitment of staff, while allocating 70% of the development budget to improving the terms and conditions of service for the current staff in terms of housing, welfare and specialised training.

JLOS is supporting the police to develop its estate to improve police welfare: e.g. in FY 2007/2008 the police estate was improved by the construction and rehabilitation of water and sewerage systems in Kabalye Training School, and construction of Kiira Police Station and headquarters in 7 districts in Northern Uganda.⁶³ Between FY 1997/1998 and 2006/2007 the Police had accumulated domestic arrears of over US\$ 5.5 billion, which has worsened by shifting headquarters to rented accommodation in Kampala.

⁶⁰ The Amnesty Act refers to persons that hand themselves in for consideration for amnesty as "reporters".

⁶¹ By rank: General Duty, 10,949 (of which 1,091 female), C.I.D., 2,310 (of which 251 female), S.B., 1,093 (of which 81 female). There were also and 498 constables under training in the Financial Year 2003/2004.

⁶² In FY the Police Force had a total number of 11,060 auxiliary staff serving at local government level and in conflict areas such as Northern Uganda. The Force is in the process of completing a staff census, and preliminary results indicate that the actual strength of the General Duty, Special Branch and CID categories may be as low as 12,000 officers due to the non-removal of deceased, abandoned and "ghost" staff.

⁶³ Uniports were purchases for 12 districts in the war affected area which is of concern as in some barracks police share houses between families which sometimes results in defilement of young girls.

The Uganda Prisons Service

The Uganda Prisons Service's mandate is to provide safe custody of prisoners both convicted and on remand, as well as health care for inmates and staff, work skills training and other preparation for smooth reintegration into society as law abiding citizens.

Sector Issues. One of UPS's key issues is highly dilapidated accommodation of the over 1,000 families of resident prisons guards, which have created health risks due to collapsed water and sanitation systems and has contributed to the high staff turnover. By FY 2006/2007, the UPS prison population averaged approximately 18,000.⁶⁴ At the same time, UPS achieved a plan it set under JLOS to recruit an average of 500 wardens/wardresses and from 2000 to 2007 reduced the warder-prisoner ratio from 9:2 (when the average population was 15,000 prisoners) to 1:6 though there were still prisons with prisoner/warder(ess) ratios of up to 1:13 against the international recognized standard of 1:3. Only 12 prisons have achieved the international standard.

Prison congestion remains a human rights concern for the UPS. By September 2007, prisons had 9,721 (103%) more prisoners than their approved capacity of 9,428 prisoners. Congestion is more marked in some prisons, especially Luzira Upper Prison, Kakiika, Masaka, Rukungiri, Kumi and Ragem which carry four times more prisoners than their capacity. However, following decongestion strategies put in place by the sector in 2006, eight prisons fell below capacity in January 2008.⁶⁵ The sector has addressed the problem of prison congestion by renovating and rehabilitating dilapidated structures,⁶⁶ through the Case Backlog and Community Service Programmes, and using other options such as invoking the Presidential Prerogative of Mercy to release some prisoners who have served long sentences awaiting the death penalty. Congestion in prisons has thus reduced by 11% as a result of increased capacity following construction and renovation of prisons in Nakasongola, Namalu and Jinja main prison.

Status of Prisoners. The issues that arise relating to prisoners are overcrowding of prison facilities, delays in trials due to limited numbers of judicial officers, inadequate provision of basic necessities (water, shelter, medical services, food, clothing), and transport to court. The breakdown of the judicial system in North and North Eastern Uganda has also particularly affected prison conditions. There is a high prevalence of HIV/AIDS infections amongst prison inmates and staff. Limited access to lawyers and legal aid results in many persons being held in prisons after the constitutional limit.⁶⁷ Most deaths

⁶⁴ UPS recruited and posted more than 1500 prison guards countrywide in the past few years, with medium-term plans to recruit the same number. There has been no corresponding increase in staff housing but JLOS has supported UPS construction of housing, e.g. in FY 2007/2008, 8 housing units in Luzira prison.

⁶⁵ Soroti, Tororo, Patiko, Mbale, Kigo, Bulaula, Bugungu and Masindi

⁶⁶ E.g. during FY 2007/2008 the sector rehabilitated one female ward in Luzira and strengthened detention facilities to curb prison breaks and reducing escape rates by January 2008 from 20 per 1000 to 15 per 1000. The sector plans to construct prisons in Gulu, Soroti and Tororo. The Prisoner Census commissioned by the JLOS Sector Secretariat in 2006 found that prison population continued to grow at a rate of 10% per year. The Community Service Programme would only prevent the growth rate of prisoner populations from 10% to 8% but was not anticipated to reduce prisoner population.

⁶⁷ A survey commissioned by the EU in conjunction with UPS underscored non-compliance with constitutional provisions as undermining prisoners dignity. The survey noted physical infrastructure as a key factor in observing prisoner rights, findings which have been by the of UHRC.

(84.5%) in prisons are caused by overcrowding, with evidence that over 55% of deaths from infection were due to respiratory tract diseases, which thrive in overcrowded and poorly ventilated spaces. TB was the major killer of prisoners in Uganda, spreading at faster rate than in the general public, and infecting 64% of HIV positive inmates. The sector has prioritised improvement of prisoner welfare by providing food, clothing and medical care, although there are still funding gaps to provide basic necessities and an urgent need to overhaul water and sanitation systems.⁶⁸

Uganda Judiciary

The Judiciary's mandate under Article 126(1) of the Constitution is to exercise judicial power derived from the people in their name and "in conformity with law and with the values, norms and aspiration of the people." In addition, Article 128(1) enshrines the Judiciary's independence.⁶⁹ Thus the Judiciary's functions are to adjudicate disputes expeditiously in accordance with the law, interpret the Constitution and other laws of Uganda and enforce and safeguard the rights of individuals. Other functions include policy formulation on the courts, managing and operating courts, training of judiciary staff, and introducing modalities for alternative dispute resolution mechanisms.

Management of the Judiciary

The Chief Justice is responsible for the administration and supervision of all courts in Uganda, and is the head of the Supreme Court. The Deputy Chief Justice is the head of the Court of Appeal/Constitutional Court. The Principle Judge manages the High Court, including the decentralized up-country High Court stations, and is further responsible for the Magistrates courts.

The High Court is divided into five divisions, including the Civil, Criminal, Commercial, Land and Family each headed by a High Court Judge. All of these managers also adjudicate cases within their respective jurisdictions, in addition to fulfilling their management and policy making responsibilities.

The Chief Registrar, who is at the level of Permanent Secretary, and is assisted by a management team of Registrars, carries out management of the Judiciary on a day to day basis. Registrars are ordinarily drawn from the cadres of Magistrates in the lower Judiciary. They include Registrars of the Supreme Court, Court of Appeal, the High Court, Research and Training, the Inspector of Courts, Registrar Planning and Development, and Deputy and Assistant Registrars. Most of these managers are responsible for adjudicating cases within their respective jurisdictions. Some managerial functions are delegated to committees composed of members of the Judiciary management. There are parallel centres of authority at the level of Secretary, with the

⁶⁸ . By January 2008, UPS was able to provide 62% of inmates with a daily meal within its budget; 10% of inmates receive three meals a day, while 60% of inmates now receive food of an improved nutritional value. With regard to clothing, 11% of inmates have received one pair of uniforms but none has received any bedding. Medical care has been provided in 22% of the 222 prison units, but without any change in annual morbidity rate which stood at 6% at the end of 2007.

⁶⁹ The Judiciary's mission under SIP II is "*to dispense justice to all people in Uganda, through timely adjudication of disputes without discrimination*".

Chief Registrar heading the technical branch consisting of judicial activities and the Secretary to the Judiciary heading the Administration and Finance branch. There is in effect a split between management of judicial staff and administrative staff, even though both categories of staff work on many of the same activities on a day today basis.

Most Justices of the Supreme Court and Court of Appeals, and Judges of the High Court, do not have or are not required to exercise management responsibility. Some judges exercise substantial influence in certain areas by virtue of their appointment to establish or *ad hoc* committees, such as the Judicial Training Committee, the Judicial Integrity Committee, and the IT Implementation Sub-Committee, among others. Some judges are appointed Chairs of Commissions of Inquiry or other judges in up-country court stations may but are not required to supervise subordinate courts under the Resident High Court stations. Chief Magistrates are both the judicial and administrative managers of their court stations (except where Deputy Registrars are posted); including the subordinate courts within their chief magisterial areas.

The Courts of Judicature

The Courts of Judicature comprise the Supreme Court of Uganda, the Court of Appeal of Uganda/Constitutional Court, the Magistrates Courts and the subordinate courts. The Constitution provides for establishment of Qadhi's courts for marriage, divorce, inheritance of property and guardianship where both parties profess Islamic faith. Since 1995, Local Council (LC) courts⁷⁰ have played an increasingly important role in adjudicating mainly domestic, land and community disputes, and are the means to ensure participation by citizens in administration of justice by courts (Article 127, Constitution).

The Supreme Court

The Supreme Court, Uganda's final court of appeal, consists of the Chief Justice and six other judges. The Chief Justice presides over each sitting of the Court and is also the head of the Judiciary, responsible for the administration and supervision of all courts in Uganda and, as such, may issue orders and directions to the courts that are necessary for „the proper and efficient administration of justice“

The Court of Appeal

Consisting of the Deputy Chief Justice and seven judges, the Court of Appeal adjudicates appeals from the High Court and serves as the first instance of the Constitutional Court, with appeals to the Supreme Court. The Constitutional Court consists of five members of the Court of Appeal and determines any question as to the Constitution's interpretation.⁷¹

The High Court

Established by Article 138 of the Constitution, the High Court is the third court of record in order of hierarchy and has unlimited original criminal and civil jurisdiction. The High Court hears appeals from all Magistrates Courts and it serves as the court of first instance in a very large number of both criminal and civil cases. It has five Divisions (Civil,

⁷⁰ Qadhi courts and LCCs are not part of the Judiciary. For detailed description of the functions, advantages and shortcomings, and attitudes towards LCCs, refer to Section 2.16 below.

⁷¹ The Court of Appeal is constituted into a Constitutional Court by Article 137 (1).

Commercial, Family, Land, and Criminal) and a pecuniary jurisdiction of US\$ 5m. The Court consists of the Principal Judge and such number of judges as Parliament may prescribe which, as of June 2004, was an approved structure of 50 judges. Government has filled 35 of the posts and had a plan to recruit five judges each year, as the budget allows.⁷² The High Court conducts most of its business at its headquarters in Kampala, but with its decentralisation, has extended its services to seven other circuits.⁷³ The High Court also holds Criminal Sessions in the areas where there are no High Court circuits.

The Chief Registrar is at the level of Permanent Secretary and is charged with the day-to-day management of the Judiciary, including administration of the five divisions, and is the Head of all Registrars. Registrars are attached to each of the High Court's circuits while others provide support to other functions of the Chief Registrar.⁷⁴ Five Deputy Registrars directly manage the divisions. Registrars and Deputy Registrars also have judicial powers and are empowered to take all preliminary steps before and after trials. In circuits without Deputy Registrars, the Chief Magistrates take charge of court administration.

The Subordinate Courts⁷⁵ [Irene I think this reflects latest position please confirm] [Yes this is the current position]

Magistrates' courts are established by s.2 of the Magistrates Courts Act and have jurisdiction to try both civil and criminal cases. There are 32 Chief Magistrate's courts, 105 Grade I Magistrates courts and 133 Grade II Magistrates Courts.⁷⁶ Table 3 shows their jurisdiction by grade. Grade II courts are mostly presided over by lay magistrates.

Table 3: Ranks and jurisdiction of judicial officers in the subordinate courts

Rank	Civil Jurisdiction	Criminal Jurisdiction
Chief Magistrate	Shs 50,000,000/= (US\$ 29,585) and unlimited jurisdiction in disputes relating to conversion, damage to property and trespass.	Any offence other than an offence in respect of which the maximum penalty is death
Magistrate Grade I	Pecuniary jurisdiction of Shs 20,000,000/= (about US\$ 12,000)	Any offence other than where the maximum sentence is death or life imprisonment
Magistrate Grade II	Pecuniary jurisdiction in disputes where the value of the subject matter does not exceed shs 5,000,000/= (i.e. US\$ 3,000)	Any offence other than treason and offences against the state and offences affecting relations with other states

⁷² There was no recruitment in FY ,05/'06 and ,06/'07. In FY ,07/'08 14 new judges are being recruited. Appointments have been made and parliamentary approval obtained for the process.

⁷³ Masaka, Mbale, Nakawa, Fort Portal, Mbarara, Gulu and Jinja with plans to create more circuits and increase the number of Judges in the future, so as to improve access to justice.

⁷⁴ Registrars are designated for: Court of Appeal, Supreme Court, Research and Training, Planning and Development and an Inspector of Courts. Article 145 (1), Constitution creates the office of the Registrar.

⁷⁵ Article 129 (1) (d), Constitution allows Parliament to enact laws to establish subordinate courts, as well as Qadhis courts. Parliament has not made a law to establish Qadhi's courts, but they exist in many parts of Uganda though not linked to the formal courts.

⁷⁶ Previously, there were Magistrates Grade III which were abolished by the Magistrates Courts (Amendment) Act, 2007, as part of a more general aim to improve the professionalism of the Judiciary in addition to the recruitment of more judges..

The Inspectorate of Courts

The Inspector of Courts is appointed from among the High Court Registrars, is assisted by a Deputy Registrar and further by the circuit Registrars or Deputy Inspectors who are charged with inspecting courts within the radius of the High Court in each Circuit.

Specialised Tribunals outside the Judiciary

Tax Appeal Tribunal ("TAT"). TAT was established under the Tax Appeals Tribunal Act in 1997, to adjudicate tax payers appeals against assessments by the Uganda Revenue Authority. This was an important landmark in tax administration in Uganda to help promote private investment by instilling confidence in the business community. Though supporting the judiciary's functions, TAT is under the Ministry of Finance and Economic Development. By the end 2006, TAT had registered 162 cases valued at US\$ 115bn, of which 63% had been disposed of. TAT's decisions are appealable to the High Court.⁷⁷

Industrial Court. This is set up under the Trade Disputes Act of 1964, and is under the supervision of the MoGLSD. For many years, during Uganda's economic turmoil, the Court was not visible and legal action by employees was not encouraged. Court decisions can be referred to the High Court and then appealed to the Court of Appeal. However, under the CJRP, it is proposed to review the operations of the Court, to decide whether it is still needed, given the mediation and arbitration facilities offered by CADER.

Land Tribunals. These were established by the Land Act, 1998 (LA98), now Chapter 227 of the Laws of Uganda. LA98 established a two tier system of tribunals to deal with land disputes: the District and sub county Land Tribunals (LTs). Initially, there were 45 District Land Tribunals and 962 sub county land Tribunals. District level LTs determined disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the Uganda Land Commission, or other authority with responsibility relating to land. They determined disputes relating to compensation for land and made consequential orders relating to cancellation of entries on certificates of title.⁷⁸ Sub-county LTs had jurisdiction to determine any dispute up to a certain value depending on the area,⁷⁹ but could not cancel certificates of title. Appeals from sub-county LTs were to the District LTs, and appeals from there were to the High Court.

Land Tribunals were established in response to dissatisfaction with the handling of land disputes by the courts (viz. perceptions of court corruption and long delays, sometimes up to 10 years, in disposing of land disputes). However, at the end of 2006, the operations of the LTs were suspended and their cases returned to the courts. This increased the backlog of cases in the Magistrates courts (which were not given a commensurate increase in resources) which is only expected to increase, as the High Court transfers part of its caseload to the Magistrates Courts, as a result of the increased jurisdiction granted to magistrates under the Magistrates Courts (Amendment) Act. A bottleneck of cases is thus

⁷⁷ There are plans for the TAT to establish its own rules of procedure to reduce the technicalities present in the Civil Procedure Rules used by rest of the Judiciary. TAT decisions are available at: www.tat.co.ug

⁷⁸ S.76 LA98, District LT members were appointed by the Chief Justice on the advice of the JSC and were a chairperson of Magistrate Grade I level and two members with knowledge and experience in land matters.

⁷⁹ In the case of a rural area up to 2500 currency points, in a gazetted urban area up to 2500 currency points, and in a division up to 12,500 currency points. One currency point is equivalent to shs 20,000/= (approx. US\$ 11). Sub-county LTs comprised a chairperson and two other persons (at least one woman).

anticipated at the Chief Magistrate level which is likely to be exacerbated by the fact that Chief Magistrates now have the jurisdiction to try cases of simple defilement.⁸⁰

Judicial Review

The High Court has powers to review administrative action in instances provided for by particular laws, and grant orders for mandamus (requiring any act to be done), prohibition (prohibiting any proceedings or matter) and certiorari (removing any proceedings or matter to the High Court).⁸¹ The High Court also has powers to issue injunctions (s.40 of the Judicature Act, which widens the powers under Civil Procedure Rules).

Appointment of Judicial Officers

According to Article 142 of the Constitution, the Chief Justice, Deputy Chief Justice, Principle Judge, and Judges of the Supreme Court, Court of Appeal and the High Court are appointed by the President on advice of the Judicial Service Commission, with the approval of Parliament. Table 4 details the qualifications to become a judicial officer.

Table 4: Qualifications of judicial officers for the courts of record

Rank	Qualification
Chief Justice	Service as judge of SC or court having similar jurisdiction or practice as advocate for 20 years
Deputy C/J or Principle Judge	Justice of SC, CoA, H/C or advocate for not less than 15 years
Judge Supreme Court	Service and Judge of CoA or H/C or court with similar jurisdiction, or practice as an advocate for not less than 15 years
Judge of Court of Appeal	Service as H/C judge or court with similar or higher jurisdiction or practice as an advocate for not less than 15 years
Judge of High Court	Judge of court with unlimited jurisdiction in civil and criminal matters or court having jurisdiction in appeals or practice as an advocate for not less than 10 years.

Judicial officers in the subordinate courts are appointed by the Judicial Service Commission on application to the Commission to become magistrates.⁸²

Independence of the Judiciary

The Constitution of Uganda provides several safeguards to ensure the independence of the Judiciary. It explicitly provides that, in the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.⁸³ Judicial officers have security of tenure: with the exception of the Chief Justice, Deputy Chief Justice, justices of the Supreme Court who may retire at the age of

⁸⁰ This is a felony offence (specified by amendment of s.129 of the Penal Code Act) defined as performing a sexual act with a child above the age of 14 years (to be differentiated from aggravated defilement: performing a sexual act with a child below the age of 14 years).

⁸¹ S. 36 Judicature Act. Applications for these orders are made under the Civil Procedure (Judicial Review) Rules 2003, as are applications to remove of proceedings from the lower courts, the industrial court or any tribunal established by law, or any similar body. Rule 1(1)

⁸² Magistrates are graduates of law with an LL.B Degree and a Diploma in Legal Practice from the LDC. There is no statutory requirement for experience in practice to be appointed as a magistrate.

⁸³ Art. 28(1) Constitution of Uganda

seventy years, the Principle Judge and judges of the High Court retire at the age of 65⁸⁴ and may otherwise be removed from office only for inability to perform the functions of their offices due to infirmity of body or mind, misconduct or misbehaviour, or incompetence.⁸⁵ During the political transition to multiparty democracy, there have been increasing threats to the Judiciary's independence, with government alleging that judges are biased in their decisions to the opposition. The government, for instance, has ignored Court decisions made in favour of opposition members charged of treason, and law enforcement officers have stormed the courts to re-arrest those suspects when granted bail, creating embarrassing confrontations between heads of JLOS institutions. The Judiciary reports that it has been able to withstand the attacks and has developed the ability to withstand criticism and exercise its functions without fear. Whereas JLOS continues to receive funding from DANIDA, there is concern that any potential withdrawal of direct donor funding to the Judiciary could threaten its independence, by making it fully dependent on government, which in turn could withhold funding as a measure to tame judicial decisions contrary to government political interests.

Sector issues for the Judiciary

The Judiciary's current strategic plan is being implemented in line with JLOS objectives. It was formulated through a process of consultation which captured the views of the Judiciary and key stakeholders as to how well the Judiciary is fulfilling its constitutional mandate and stated mission. Of particular note, during the consultations, the Judiciary was recognized for its role in maintaining social equilibrium and helping to promote business activities and strengthen the country's economy. The Judiciary has faced some challenges in ensuring adherence to core principles. For instance, delays in delivering judgments, and the resulting case backlog, are still considered to be among the most serious problem, hampering the Judiciary's mission to be „efficient and effective“. There remain obstacles to the Judiciary being „accessible to all people in Uganda“. The LCCs have provided an important avenue for Ugandans to have access to court, but concerns remain in the Judiciary about the standard of justice the LCCs provide. Women, displaced people and the poor also face specific obstacles to accessing justice.⁸⁶ Many court procedures and practices are alien to most Ugandans, and pose challenges for the Judiciary to be „respectful of their traditions and mindful of their aspirations.“ Technicalities abound in the land laws and commercial laws which even businesspeople may not understand.⁸⁷ Finally, the Judiciary stills needs work to serve Ugandans „without bias or discrimination, fear or favour“.

The Judiciary's Assessment of its Problems

In August 2001, the Judiciary presented a Memorandum to the MoJCA outlining a number of problem areas and issues of concern. The Memorandum focused on developing and implementing new models and approaches to improve the administration of justice (e.g. enhancing collaboration with other institutions in the legal sector;

⁸⁴ Article 144 (1) Constitution of Uganda

⁸⁵ They can only be removed by the President, on the recommendation of a tribunal appointed under conditions laid down in the Constitution.

⁸⁶ See e.g., Desk Review of Gender and Access to Justice, JLOS 2002; Law and Disorder: The impact of conflict on access to justice in Northern Uganda (2004). Justice Resources, Kampala

⁸⁷ See discussion on private sector concerns in Chapter 7

identifying and addressing bottlenecks across the justice system). The following are some of the problems identified which in some cases continue to be challenges to the Judiciary.

Lay/Professional Divide. Articles 126 and 127 of the Constitution clearly support the inclusion of a lay element in the administration of justice. The most significant mechanism for achieving this is the LCCs with other lay courts administered by Grade II Magistrates.⁸⁸ It was generally accepted then, as now, that their effectiveness is less than optimal. This was confirmed by a 2001 study commissioned by the Judiciary on *Workload, Jurisdiction, Structures and Cost-analysis* which assessed the capacity of the judiciary to carry out its mandate. This study led to the plan for the Professionalisation of the Judiciary now under implementation. The study found that Grade II courts had a disproportionately low workload of both criminal and civil cases, given their coverage and accessibility, and compared to Chief Magistrates' courts and the High Court.⁸⁹ The study also found that the High Court had a higher total workload than the Grade I Magistrates Courts, but the caseload per judicial officer was higher in the Grade I Courts.

A 2001 assessment⁹⁰ of case throughput by Court Level showed that in 1999, Chief Magistrates' Courts handled 54% of cases, the High Court handled 23%, Grade I Courts 18%, Grade II Magistrates' courts handled 4% and the Court of Appeal only handled 1%. Apart from the High Court, the majority of cases in the various courts were criminal. The lowest level of case turnover per judicial officer was thus by the Court of Appeal, followed by Grade II Magistrates' courts (paralleling their low workload found in the 2001 study). Grade II courts were also found to be very poorly funded, compared to other courts.

The 2001 study of the Judiciary⁹¹ recommended a phase out programme to achieve a fully professionalized bench within five years. Under this scheme, a number of Grade II Magistrates would be identified, retrenched or retrained and replaced by professionally qualified Magistrates. Subsequently, it was recommended that 141 of the 171 assessed Grade II magistrates should be redeployed as Court Supervisors. This has partly been implemented, which Grade II magistrates who retire or die are not replaced, with these posts traded for the appointment of Grade I and Chief Magistrates. Other Grade II Magistrates have left their stations to pursue a law degree and also obtain a Diploma in Legal Practice from the LDC which, despite the expense of meeting tuition fees privately, they have found a welcome solution to enhance their status within the Judiciary.⁹²

The challenge now facing the Judiciary is to improve the quality of services provided by the formal system of justice by phasing out the lay, Grade II Magistrates at the same time increase access to the courts for the general public, a PEAP objective. A more specific challenge is to achieve the proper balance between the professionalisation of the Bench

⁸⁸ At the time of formulating the first Judiciary Strategic Plan there were over 248 lay magistrates.

⁸⁹ Grade II courts were at the time located at each sub-county and the next most accessible after the LCCs in each village. Criminal cases constituted 95% of all cases registered, against 4.7% for civil suits.

⁹⁰ Nordic Consulting Group (2001), Study on Workload, Jurisdiction and Cost Analysis

⁹¹ Nordic Consulting Group (2001), Study on Workload, Jurisdiction and Cost Analysis

⁹² Especially in cases where litigants have legal representation who challenge the Grade II Magistrates' knowledge of the law. The Professionalisation of the bench has created opportunities for them either to become practicing advocates or professional magistrates with a higher status than before.

and the strengthening of the LCCs. The desire for Grade II Magistrates to have a professional qualification has also meant a negative impact on for women and children: the FCCs were designated Grade II courts and have suffered a significant reduction in cases heard and disposed of while Grade II magistrates are away retraining.

A Divided Judicial Service. Control of the judicial and administrative functions within the Judiciary is divided between separate service commissions. Judges and Magistrates are appointed by the JSC, while responsibility for the administration of the judiciary also falls on a legion of administrative and support staff⁹³ currently accountable to the Ministry of Public Service through the Public Service Commission (“PSC”). This creates a number of problems including the Judiciary not having full control over many staff members working for it and, in turn, little incentive to invest in their training and career development. PSC does not always appreciate nor anticipate the specialized skills required for clerks, records supervisors, process servers and interpreters. In order to address these concerns, a Human Resource Development Exercise was carried out in the Judiciary during 2000, which outlined a new structure for the Judiciary and identified minimum qualifications for the various categories of staff. These were approved by the Judiciary Executive and the Chairman of the JSC in December 2000. A further review was done in 2004 of the Judiciary’s management structures to streamline mandates of officers within the Judiciary, including administrative and other support staff. The report awaits clearance of the Ministry of Public Service before recommended changes can be made. These will likely not go down well with some staff, however, as changes include merging some offices and posts, and altogether removing others. A unified structure and complete de-linking from the Ministry of Public Service remains a priority for the Judiciary.

Case Backlogs and Uneven Workloads. The Judiciary asserts that a strengthened LCCs system and a fully professionalized lower Bench would have a significant impact on the Bench’s upper levels. This was a key assumption of the 2001 study on *Workload, Jurisdiction, Structure and Cost Analysis* (viz. an increase in jurisdiction of lower courts would reduce High Court backlog, which could then focus more on appeals, which would bring into question the need for the Court of Appeal). The study went as far as to question whether it might be more cost-effective (without compromising justice) to abolish the Court of Appeal or, if not desirable or possible, transform it into a Constitutional Court.⁹⁴ A number of reasons were advanced for the very serious delays in the criminal justice system, including insufficient compliance with Constitutional standards, slow reporting of cases to police, non-adherence of established investigation procedures, cumbersome file handling and transfer, frequent case adjournments, limited judicial officers and prosecutors, and delayed appointment of defence lawyers. The Chain Linked Initiative and Case Backlog Projects of the JLOS try to address these problems.

Inability to Use Information for Management. A good deal has been achieved with regard to data collection. A computerized data collection system, the Court Case Administration

⁹³ These include court clerks, accountants, administrative assistants, records supervisors and interpreters.

⁹⁴ The recommendation has not been considered and the Court of Appeal continues to double as a Constitutional Court. Further results of the study include the increase in jurisdiction of the Chief Magistrates Courts and the establishment of Grade I courts at each subcounty.

System (CCAS), was designed and implemented in the Judiciary which, if regularly updated, provides accurate statistical reports.⁹⁵ The challenges for the Judiciary now are to facilitate the CCAS's integration in its management, to improve reporting and the monitoring and evaluation of performance and to roll out CCAS to branches of the High Court and to the lower and subordinate courts. According to the Chief Registrar of the High Court, the system has taken root in the courts where it has been installed, but judicial officers need training to improve results in case administration. Otherwise, court records and recording of proceedings are still a challenge for the Judiciary: officers still take down notes of all proceedings in long hand and lack efficiency, while equipment to tape record proceedings in the High Court about six years ago broke down.

Lack of Performance Standards. As part of the Chain Linked Initiative in Masaka, the criminal justice agencies (including the Judiciary) developed performance standards, recommended procedures and suggested good practices for each area of the criminal justice system.⁹⁶ These minimum standards were adopted by the Chain Linked Advisory Board and circulated to all Chief Magistrates. With the roll out of the Chain Linked Initiative, the standards have been adopted throughout the country. JLOS continues to emphasise the need to adhere to the set standards by judicial officers. The standards are to be reviewed within the ongoing revision of the case backlog strategy.

Judicial Training

Previous Efforts. One of the first efforts to formalize judicial training was with the establishment of the Judicial Training Committee was set up in 1992.⁹⁷ In 1994 a Commission of Inquiry on Judicial Reform headed by Justice H. G. Platt found that there was no specific or special training for judicial officers. When available, training was on an ad hoc basis and did not require the needed areas of knowledge and skill. In 2000, the Judiciary developed a plan for continuing education for support staff and judicial officers which was incorporated into the first Judiciary Strategic Plan.⁹⁸

Training Evaluation. In 2004, an evaluation was done to assess the impact on the judiciary's overall performance of training activities conducted from 2003-4.⁹⁹ The evaluation concluded that overall training had resulted in some improvement in the staff of the Judiciary. Skills enhancement and efforts to pursue training depended on the personal initiative of officers. There was no comprehensive training programme for the Judiciary or any clear criteria for selecting staff for training, which led to a tendency to leave out staff from up country stations. Training manuals displayed clear links between training content and specific tasks of learners. A good number of Judiciary staff had been

⁹⁵ CCAS computer equipment is found in the following High Court Divisions and circuits: Commercial Division (Commercial Court), Criminal and Family Division (Kampala High Court), Civil Division (Kampala), Nakawa High Court, Jinja High Court, Masaka High Court.

⁹⁶ E.g., such as: investigation and mentioning practices, arrests and arrangement, bail and remand, hearing and disposal of cases in courts, and appeals.

⁹⁷ The Commission was established based on the recommendations of a 1991 report on training in the Judiciary: Uganda Project Formation: Judiciary Training and Resources, James S. Read, 1991.

⁹⁸ The Strategic Plan also proposed the establishment of a Judicial Training College and the development of a Judicial Curriculum in four stages.

⁹⁹ Within that period, US\$ 320m had been spent on training for both judicial and administrative staff through DANIDA's Strengthening the Judiciary Project.

trained as trainers and were managing the training function. The Judiciary lacked an effective strategy for evaluating results and impact of training. A further evaluation of training activities in 2005¹⁰⁰ concluded that the judiciary needs to redefine its training to demonstrate a clear link and contribution to sector objectives and targets.

The Judicial Studies Institute (“JSI”)

Background. The above evaluation set the stage for the establishment of the JSI in 2004. The JSI’s purpose is to provide training to the Judiciary’s judicial and non judicial staff in order raise the quality of service delivery, ultimately transforming the Judiciary to reflect constitutional values and exhibit high ethical standards and sensitivity to social context. As such JSI will sensitise judicial and non judicial staff on issues of social context and gender, including gender violence and hold workshops on proper work habits, case-flow, expediting trials, and review and study of existing and new legislation. JSI plans to establish online and distance learning programmes and proposes increased IT training for both the judiciary and other sector institutions to improve use of CCAS and the flow of information between institutions around the country.

Activities. In the past year, JSI implemented planned programmes for induction of magistrates in FY 2006/2007 36 workshops were held to train staff of the judiciary. JSI has now an established curriculum that is tailor made to suit the needs of the Uganda Judiciary (an outline is found in Appendix E). Judicial and non judicial staff performs undertakes training for the JSI which reduces costs and external experts are enlisted for specialised subjects such as management. JSI has established strategic linkages with several institutes and training committees around the world.¹⁰¹

Challenges. Resource constraints are a major challenge for the JSI due to budget cuts across the JLOS and the absence of a funding strategy.. There is still a lack of awareness of JSI and its various roles and appreciation for their relevance in the Judiciary and other sectors institutions. There is also overlap between JSI’s activities and those of other sector training institutions and a failure to coordinate between them. JSI’s curriculum is not sufficiently comprehensive and broad to address sector needs. There are no clear criteria or processes for selecting the beneficiaries of the training or database to track establish the training history and needs of staff. JSI also faces the challenge of developing strong and competent faculty due to its limited resource base. There is thus a challenge to identify, prioritise and meet training needs.¹⁰² This is exacerbated by the absence of a culture that seeks learning among beneficiaries or their desire to participate actively in training.¹⁰³ In other words, attitude change is still a challenge, as are professional ethics and corruption. JSI has yet to achieve its mandate to publish materials about the judiciary’s activities (e.g. on subordinate courts decisions which are not courts of record).

¹⁰⁰ Centre for Justice Studies and Innovations (2005). Report on Evaluation of Training Programmes in the Judiciary (August 2004-September 2005)

¹⁰¹ E.g. International Organization for Judicial Training, South Africa Justice College, The Indian National Judicial Academy in Bhopal, Judicial Training Committee Malawi, Institute of Judicial Administration Tanzania., and the Commonwealth Judicial Education Institute, Canada.

¹⁰² However, since 2006, JSI embarked on a programme to assess the results of training by carrying out behavioural change evaluations, and training needs assessments within the Judiciary.

¹⁰³ The JSI is considering diversifying training methods to include mentoring and coaching, counselling, developing empathy among judicial staff and officers.

Judicial Service Commission (“JSC”)

The JSC has a significant role in improving the administration of Justice, in particular, by ensuring that the justice system has qualified, competent and disciplined judicial officers. In addition, the JSC educates the general public about the administration of justice and administers a complaints system. Its mandate includes advising the President in the appointment of judicial office; appointing and advising on other offices; reviewing the terms and conditions of service of judges and judicial officers; and training and disseminating information to judicial officers¹⁰⁴. JSC also exercises the power to discipline and remove persons from office.

Staff. Originally, the functions of the JSC were to receive and process suggestions and complaints under Article 147 of the Constitution. JSC’s Secretariat performs these activities, with two other departments: Education and Public Affairs (to carry out training activities), and Planning, Research and Inspectorate. By the year 2006, the JSC has 69 employees and a budget of approximately US\$ 200m a year. Some Court Registrars have been appointed to head the various departments of the JSC. The Commission also employs five lawyers as principle legal officers at the level of Magistrates Grade I and six law clerks that help in processing complaints. Because of its increased activities, a Deputy Chairperson was established for JSC (Constitution Amendment of 2006).

Fostering a Culture of Human Rights. The JSC is trying to meet this objective by and informing the public about the functions of the Judiciary, their rights and obligations and mechanisms available for enforcing them. JSC has established several systems to receive complaints, for instance, an automated system in its office, and complaints boxes in the districts, at the offices of the CAO and the DPP.¹⁰⁵ The result of JSC’s public awareness efforts is that JSC now receives about 7 complaints a day, and 194 complaints from June to December 2006, up from 17 complaints lodged in 2002 over two years. Complaints lodged with the IGG, JSC Secretary and the DPP are channelled to JSC through a referral system between the offices.

Monitoring and Evaluation. JSC has established two systems for monitoring and evaluation of performance of judicial officers: educating the public on complaints procedure and an inspectorate attached to the JSC, which carries out on spot and planned inspections. Information from those inspections is compared with that which is gathered by the Inspectorate of Courts.

Recruitment of Judicial Officers. During FY 2007/2008 JSC appointed several magistrates including those to serve in Northern Uganda. It also facilitated the appointment of 14 judges including 2 for the courts of appeals. In FY 2008/2009 JSC intends to recruit 13 judges, 7 registrars and 8 magistrates.

¹⁰⁴ JSC and JSI have agreed to avoid duplication by providing training each according to their best competence. (Source, Chairman JSC). JSC’s JLOS vision is to establish an effective and efficient Judiciary and to contribute to the promotion of law and order in Uganda.

¹⁰⁵ Boxes are not placed in courts due to public fear of lodging complaints in courts where their cases are adjudicated.

The Uganda Law Reform Commission (“ULRC”)

The ULRC’s mandate is to modernize laws, through law reform and law revision and simplification and the elimination of obsolete legislation. ULRC is also charged with incorporating international and regional instruments ratified by Uganda into domestic laws. Areas of law and legislation targeted for review and reform in the mid-term include: new commercial law, criminal procedure and sentencing legislation, social justice as well as completion of the 6th edition of Laws of Uganda, and harmonizing legislation as part of the implementation of the East Africa Community Treaty.

Sector Issues. The ULRC can only draft laws. It is up to Parliament to enact them. This became a source of frustration to the JLOS sector, as delays in enacting laws delayed the implementation of parts of JLOS programmes.¹⁰⁶ Several reasons advanced for the delays include the turn-over of MPs at the end of each parliamentary term which breaks continuity in deliberation and understanding of bills; MP absenteeism; constant cabinet reshuffles; lack of knowledge and understanding of the crucial law reform issues. Further there are no mechanisms to track the process of bills through Parliament. Parliament also appears to prioritize the budget process and issues of economy or political governance, leaving little time to address social justice and JLOS oriented legislation.¹⁰⁷ Moreover, ULRC has no links to Parliament, and deals instead with the Legal and Parliamentary Affairs Committee. Uganda could benefit from the system found in some jurisdictions, whereby Parliament or Cabinet¹⁰⁸ creates a Cabinet sub-committee for legislation, to examine proposed laws and make recommendations to Cabinet for enactment or reform.

Ministry of Local Government – Local Council Courts

JLOS in partnership with Ministry of Local Government (“MoLG”) encourages development of the Local Council Courts (LCCs). MoLG’s mandate is to assist, harmonise, mentor, strengthen and advocate for all Local Governments. As such, MoLG promotes compliance and implementation of statutory requirements and national policies, the decentralisation policy in particular.¹⁰⁹

LCCs start at village level where the village executive committee can constitute itself into a court, followed by the LC II court at parish level, and then the LC III court at the sub-county.¹¹⁰ Members of the various court must be residents of the area with knowledge of the local language of the area in question and English. The LCCs have jurisdiction to try among other things¹¹¹, land matters relating to customary tenure, disputes concerning marriage, marital status, separation, divorce or the parentage of

¹⁰⁶ Several pieces of legislation presented by LRC to Parliament still awaited enactment by the end of SIP I. Parliament has the sole responsibility to enact legislation under Article 93 of the Constitution.

¹⁰⁷ E.g. the 7th Parliament only debated the Uganda Human Rights Commission’s report once in a five-year period, though those reports are submitted to Parliament on a yearly basis.

¹⁰⁸ The Republic of South Africa has such a committee and has been able to put in place a lot of legislation since reform of its Constitution.

¹⁰⁹ Its mission is to co-ordinate and support Local Governments for sustainable, efficient and effective service delivery, within a decentralised system.

¹¹⁰ According to the Director, Strengthening the Judiciary Project (DANIDA), in 2005 there were 953 LC III courts, 5,225 LC II courts and 44,202 LC I Courts in the country, and only 27 Chief Magistrates posts.

¹¹¹ Matters specified in Schedule 3 of the Local Council Courts Act, 2006

children. The Courts have special jurisdiction in criminal matters over children for the offences of affray, common assault, causing actual bodily harm, theft, trespass and malicious damage to property.¹¹² LCC I's may grant orders for reconciliation, compensation, restitution, community service, apology and caution¹¹³ in respect of children and also issue orders for guidance requiring such children to submit to the guidance and supervision of a specified person in the community.

The procedures in LCCs are simplified¹¹⁴ and hearing is informal, conducted in the local languages¹¹⁵, as opposed to the formal courts where proceedings must be conducted in English and the records kept in the same language. Suits in LCCs may be instituted verbally by stating the nature of the claim to the Chairperson of the council who then reduces it into writing. This is the start of the record of the proceedings of the court. Brief particulars of the parties and their addresses are also recorded on file.¹¹⁶ Originally, there was no official fee structure for the LCCs and LCs were accused of charging unofficial fees which amounted to bribery.¹¹⁷

Sector Issues. To date, the main focus within JLOS on MoLG has been the need for JLOS to integrate the LCCs as key providers of accessible justice for the poor, especially for women and children and in areas where formal JLOS institutions lack a definite presence (e.g. war affected areas). The Executive Committees (Judicial Powers) Act gave LCCs powers to hear cases against children as a court of first instance for non-capital offences and, in 2006, the Local Council Courts Act¹¹⁸ increased jurisdiction of the LCCs to deal with disputes relating to assault and battery (specifically domestic violence) and disputes relating to identity of customary heirs. LCCs are linked to the formal system through a system of appeals from the village court through to the Magistrates' courts: decisions of the village executive committee court (LC I) can be appealed to the parish executive committee court (LC II), with appeals from there possible to the sub-county executive committee court (LC III), and in turn to the Chief Magistrates Courts.¹¹⁹

Strengths of LCCs. LCCs enjoy public confidence because of their active response to disputes and participatory manner for passing decisions. Because of their smaller geographical jurisdiction, LCCs are better acquainted with communities, their behaviour and emerging problems. By handling many minor cases, they reduce the burden on the formal courts and other dispute resolution organs and promote law and order at the community level by encouraging mediation and reconciliation. Their procedures are less

¹¹² S. 49 Local Council Courts Act, 2006

¹¹³ S. 49 (4) *ibid*

¹¹⁴ S.23 *ibid*

¹¹⁵ S. 21 of the Local Council Courts Act provides that the court shall use the language that is widely spoken in its area of operation.

¹¹⁶ S. 14 Local Council Courts Act

¹¹⁷ According to the Commissioner LCCs at the MoLG, the Ministry issued a circular regulating what should be paid to the courts in 2005, which are not intended to be restrictive as fees in formal courts, Fees thus vary with e.g. ranging up to US\$ 20,000 for a land dispute and varying between US\$ 2,000 and US\$ 5,000 and additional fees found to expedite cases. Nordic Consulting Group, 2006; Joint Survey on LC Courts and Legal Aid Services, Ministry of Local Government and the Legal Aid Basket Fund.

¹¹⁸ This is a re-enactment of the Executive Committees (Judicial Powers) Act

¹¹⁹ The appellate decisions of a Chief Magistrate can in some circumstances be appealed to High Court. All appeals are lodged by filing a memorandum of appeal in the form given in the LCCs Act.

formal and thus more user-friendly (for both the literate and illiterate) than with formal courts. A 1998 Baseline Survey¹²⁰ on the LCCs in four districts found that 80% of the population in the areas of the study used LCCs in the adjudication of disputes. A 2006 study on LCCs and legal aid service¹²¹ provision in 15 districts of Uganda confirmed that LCCs are still accessible to the majority of Ugandans, familiar, convenient, prompt, cheap, while helping promote social harmony, and fulfil local social development initiatives.

Weaknesses of LCCs. LCC officials are elected by popular vote of the community and many were found to have little or insufficient education to exercise their judicial role, having been voted into office because of their personal attributes. LCCs have been found to discourage unsatisfied parties from appealing to the formal courts. It is however not clear whether this is attributable to ignorance of the law and procedures for handling cases by LC officials or their negative views of appeals as strategies to undermine their powers. For instance, due to a lack of (and perhaps intentional failure to keep) records, there was a tendency to manufacture evidence at the time of appeal. LC officials were found to be particularly gender biased in favour of men and against vulnerable groups.¹²² Officials sometimes to hear cases beyond their jurisdiction for monetary gain.¹²³ LCCs were found to charge user fees, causing an added impediment to poor people in the communities to access justice. Persistent failure of LCC officials to raise the quorum, attributed to the LC officials' inability to distinguish between their judicial and executive functions, frustrates proceedings. Some LC Chairmen were reported to make unilateral decisions and reverse decisions taken by other LCC members in their absence.¹²⁴

Challenges in the Administration of Justice. LCC posts are performed on a voluntary basis. This lack of remuneration was found to be as a factor that causes LCCs to charge high fees and to have led to a decrease in voluntarism in the LCs.¹²⁵ LCCs also lack regular monitoring and supervision. Chief Magistrates have the role to supervise LCCs and other subordinate courts, but the number of LCCs can prove overwhelming for Chief Magistrates who are sometimes in charge of supervising up to four districts. LCCs also have limited capacity to enforce their otherwise expeditious decisions. Although the decisions are largely respected, LCCs have been reported to confiscate property to ensure that judgements are honoured, which risks undermining public confidence in LCCs and the conciliatory approach that they promote. Their limited ability to enforce decisions is exacerbated by their poor working relationship with the police.¹²⁶ Because they live in

¹²⁰ Baseline Survey on the Local Council Courts System in Uganda: Nordic Consulting Group and Royal Danish Embassy, Kampala (1998).

¹²¹ Nordic Consulting Group (2006); Joint Survey on Local Council Courts and Legal Aid Services; MoLG and Legal Aid Basket Fund

¹²² This was confirmed by probation officers, CAOs and the Police (gender desk).

¹²³ E.g. LCCs have commonly been found to try offenders in cases of defilement under customary law and award fines like goats and chickens as well as money to the parents of the children defiled.

¹²⁴ Both above studies of LCCs in 1998 and 2006 found the same weaknesses persisted such as limited attention to human rights principles, bribery, limited capacity to handle cases, failure in judicial function, bias against vulnerable groups, and failure to follow recommended procedures, nepotism and cronyism. A UNDP-supported reference manual and training guide to strengthen LC judicial capacity were recently tested in six pilot districts, which reportedly had a positive impact, in particular, on the quality of record-keeping.

¹²⁵ 2006 Study on LCCs.

¹²⁶ To illustrate, LCs perceive the police as undermining their authority for instance when the police arrest citizens without involving the LCs.

the same community as their litigants, LC court official sometimes feel vulnerable to „backlash“ from citizens as a result of their decisions and, for instance, have thus been reported to hold back from making decisions on sensitive situations in the community.

The Local Courts Act, 2006. This Act replaced the Executive Committees (Judicial Powers) Act with a view to addressing various weaknesses identified in that Act's operation. The LCCs Act defines the qualifications of LC office-holders, for instance requiring LC I and LC II court officials to be able to read and write in English, to ensure they can keep records. This is expected to facilitate supervision by the Chief Magistrates. The Act also enhances female representation by providing that two members of the town, division and sub-county courts shall be women. It introduces guidelines on court procedure, regulations concerning the collection and use of fees, community service as a sentencing option and separates the LCC at Sub-County and Town level from the Executive Committee of the local government.

Ministry of Gender Labour and Social Development – Probation Services ("MGLSD")

MGLSD's purpose is to give effect to Chapter 4 of the Constitution which focuses on affirmative action and the promotion of fundamental human rights, with a particular emphasis on marginalised groups.¹²⁷ Within the JLOS, MGLSD is charged with the implementation of the juvenile strategy. MGLSD employs probation and social welfare officers who deal with children who come into conflict with the law. The Ministry is in charge of remand homes and correctional facilities for children all over the country. However, facilities are limited and probation officers are few. They are insufficient to meet the needs of the JLOS in the face of rising levels of both crime and juvenile crime. For instance, defilement and child prostitution pose challenges to the sector. Juvenile remand facilities remain limited and many juvenile offenders are still kept in adult facilities, despite sector efforts to increase correctional facilities, local government responsibility to build remand homes at district level and international and Ugandan standards to the contrary.¹²⁸

¹²⁷ MGLSD's mandate is to empower communities to harness their potential through cultural growth, skills development and labour productivity. Its vision is a better standard of living, equity and social cohesion. Its mission is to create an enabling environment for social protection and transformation of communities.

¹²⁸ Children are dealt with under the Probation Act and the Children Act. By of 2007, a prison census found that 79 juveniles were held in prisons, of which 13 below the age of 15 years. The sector has made efforts to divert juveniles from the legal system to the LCCs, while juveniles are not eligible under law for the Community Service Programme.

Adequacy and Relevance of Legal Education and Training

Introduction: History of Legal Education in Uganda

Prior to 1968, legal education in Uganda was at the Nsamizi School of Law in Entebbe. That year GoU appointed the Gower Committee¹²⁹ to study legal education, which recommended and led to the establishment of a dual system of legal education, consisting of an undergraduate programme of study at the Faculty of Law, Makerere University in Kampala (The Makerere FOL), followed by a postgraduate programme of vocational legal training at the Law Development Centre (LDC). Those institutions progressively declined during the eras of political turmoil between 1972 and 1985 and government frequently viewed them, especially the Makerere FOL as hotbeds of discontent and political opposition. Indeed, it was in this period that the Chief Justice disappeared and many FOL lecturers sought political asylum, while those remaining behind often moonlighted as tutors to make ends meet. Following the change of political leadership in 1986, Ugandans that had left the institutions began to trickle back, but government financing remained limited through the 1990s. Liberalization of the Uganda's economy changed the landscape of legal education. FOL and LDC adapted modern management techniques, adapted their curricula, introduced use of ICT and sought to improve student access and equity and staff development and welfare.¹³⁰ Liberalisation also ushered in the establishment of privately owned tertiary institutions and tuition fees.

The last comprehensive review of legal education in Uganda was conducted in 1995 by the Committee on Legal Education, Training and Accreditation (the Odoki Committee). At the time, this was part of a comprehensive GoU programme of reforming and strengthening the legal sector. The results of the review pointed to a need for comprehensive reform of legal education, to inculcate a culture in the legal profession of constitutionalism and human rights (in the face of the then predominant concern for material gain) and reverse a substantial decline in professional standards. Many of the Odoki Committee's recommendations were implemented (e.g. amendments to the Advocates Act, mandatory CLE, an extra year in the LLB course, and so on). Others would still apply to the situation of legal education and the legal profession today and their implementation even continues in some JLOS programmes.

The following sections thus will describe current legal institutions in Uganda, and examine the adequacy of current legal education given developments that have taken place within JLOS, as well as other areas for possible reform.

¹²⁹ Members of the Committee included Prof. L. C. B. Gower (then a Commissioner of English Law in Uganda), Professor Quentin Johnstone (the Dean of the Faculty of Law, Haile Selassie). The Department of Law in the Faculty of Social Sciences at Makerere University College was established in 1968 (assuming some functions of the University of East Africa), and became a Faculty in 1970. The LDC was also established in 1968, replacing the Nsamizi School, and made a body corporate in 1970 on enactment of the Law Development Centre Act.

¹³⁰ Source of descriptions: Nakanyike Musisi. Makerere University in Transition, 1993-2000: Opportunities and Challenges, Partnerships for Higher Education in Africa, Grant Partnership Database

Legal Education in Uganda Today

The Bachelor of Laws degree (LL.B) is the “academic” component of legal education prior to the vocational or practical training phase. For three decades, the Makerere FOL and LDC were the only institutions that provided legal education in Uganda. In the last decade, several tertiary education institutions were established (for a total of 27 Universities, 24 of which are private). Makerere University continues to be the only public university to offer the LL.B while six of the private universities are said to provide legal education.¹³¹ However, only Makerere FOL and Uganda Christian University, Mukono have been accredited by the Uganda Law Council.¹³²

A key challenge identified by legal education institutions is a gradual decrease in GoU funding,¹³³ which has led to increased reliance on revenue generated from tuition. In addition, institutions do not receive funds for capital development and operate within very limited physical facilities. These institutions have also recognized the need for their curricula to be attuned to national strategies such as PEAP, developments in the economy and technology, and the emergence of regional and international legal regimes such as in trade (e.g. East African Customs Union, WTO and so on) and criminal justice. Concerns have been expressed, by the private sector and public service, about the declining standards of graduates from the various legal institutions, which in turn have pointed to the declining competencies of students admitted to the LLB course (e.g. who lack basic fluency in English or sufficient analytic skills and creativity).¹³⁴ The Makerere FOL and LDC both report widespread complaints about examination malpractices among students. The perceived declining quality of graduates in turn raised concerns about the professional ethics of new lawyers. Finally, efforts have not been made to standardise the content of legal courses across the universities, to ensure that they meet the current demands of JLOS and the private sector.

International Law Institute-Uganda (“ILI-U”)

In 1997, ILI-U, established a training centre for GoU to train lawyers and other professionals from Uganda in legal skills and law. ILI-U’s African Centre for Legal Excellence works to strengthen the skills of sub-Saharan African lawyers and related professionals in finance, management, law and governance.¹³⁵ ILI-U’s goal is to train

¹³¹ Uganda Christian University, Mukono, Islamic University of Uganda, Mbale, Uganda Martyrs University, Nkozi, Nkumba University, Wakiso, Namasagali University, Kamuli, Busoga University, Iganga, Kampala International University, Kampala

¹³² ULC has expressed dissatisfaction that the National Council for Tertiary Education grants permission to institutions to provide legal education without consulting it. Institutions apply to LDC for accreditation after getting licences from the National Council. ULC has several pending applications but the curricula presented by most applying institutions do not meet LDC requirements. (Source, Director LDC, member of ULC Committee for Legal Education, and the Secretary Uganda Law Council).

¹³³ According to the Deans of the Faculty of Law and LDC, each institution only receives government support for staff salaries, so each relies heavily on fees paid by private students for its operations.

¹³⁴ E.g. at The Makerere FOL about 150 students fail out from the total of 450 admitted each year, with many more repeating courses. The Director LDC and lecturers also confirmed high failure rates in oral practical exercises resulting from students’ inability to express themselves fluently in English. Both have thus proposed to introduce oral examinations before admission.

¹³⁵ It is affiliated to the International Law Institute in Washington D.C, one of the key specialised institutes offering this kind of specialised training worldwide and trains persons drawn from sub-Saharan Africa.

participants from both the public and private sectors to lead their nations towards improved legal regimes, sound economic policy and effective capital markets. Seminars at ILI-Uganda are said to be of the same quality as those offered by ILI's Washington program, with faculty drawn from Europe, the United States and Africa and course materials oriented towards African conditions. ILI-Uganda also provides regional technical assistance related to commercial law, public procurement, judicial administration and alternative dispute resolution. IT participates in various policy and reform initiatives and currently generates funding from fees for seminars and technical assistance and a number of multilateral and bi-lateral donor fund some activities.¹³⁶

The Faculty of Law at Makerere

Situation. FoL has 44 lecturers, 15 being women. The student/lecturer ratio is poor, with classes having between 300-400 students. For the last four years, The Makerere FOL has had an average of 1500 students pursuing the LL.B course. The average number of students that register for the LL.B degree each year is about 450, and about 300 students graduate each year. The Makerere FOL has both private and government supported students.¹³⁷ For the ordinary Ugandan, the cost of tertiary education, including legal education is still high. The four-year LL.B programme at Makerere's FOL is run on a two-semester calendar per academic year, and many students default in paying tuition. The tuition fee for one semester for the evening course is UShs. 900,000/= (USD 514), and UShs 600,000/= (USD 342) for the day course, with an average cost for a law student of about UShs. 2,000,000/= (USD 1,200) a semester. No loan scheme exists to assist students from disadvantaged or poor families. About 80 students (including room and board) receive full merit scholarships by the GoU each year. GoU rejected Makerere proposals in 2005 and 2007 to raise fees on various technical grounds.¹³⁸

Links and Perception of JLOS. The Makerere FOL falls under the Ministry of Education and so is not a member of JLOS, though it sees itself as inevitably linked to the JLOS reforms. Efforts by the Dean in 2005/06 to persuade the JLOS stakeholders to recognise the FOL as an "allied institution" were fruitless. However, the Makerere FOL keeps current of developments in JLOS, and has followed some of its processes such as performing strategic planning exercises and formulating a mission statement. The FOL also faces increased competition from new institutions, no longer having a monopoly on the best students and privately funded students.¹³⁹

Progress in Implementing Odoki Report Recommendations. The Makerere FOL has and plans to continue implementing recommendations made by the Odoki Committee, in particular, a review of admission requirements and curricula, development of specialised

¹³⁶ Initial funding was provided by the World Bank Institutional Capacity Building Project and the Austrian government, current donors include the African Development Bank, USAID, DANIDA, NORAD.

¹³⁷ There are 3 categories of students: government sponsored (of tuition only), privately paid tuition day students, and privately sponsored evening students who pay higher tuition fees than the rest. In Academic Year 2005/6 there were 423 government sponsored students, 146 private day and 1058 private night, as compared to 315, 247 and 644 in 2001/1 with a close split between men and women depending on the year.

¹³⁸ Fortunate Ahimbisibwe; Government again blocks fees rise, New Vision, June 8, 2007

¹³⁹ Private institutions still charge lower fees than Makerere University which claims it can only take 40% of all students that apply.

LL.M courses, and a system of accreditation and standards.¹⁴⁰ First, restrictions were removed on admission requirements, to allow entry to all qualified „A“ Level students (which was previously just to liberal arts „A“ level students). Second, the duration of the LL.B. program was extended to four years from three and its curriculum was diversified, with more courses on offer (and now include e.g. multidisciplinary courses such as Human Rights Law, Health and the Law, Gender and the Law, Environmental Law and Social Research Methods). Third, introduced a two-year Masters of Law (LL.M.) Degree program with a research component, with plans to introduce both a one-year course based program and specialised courses in Commercial Law, Environmental Law, Human Rights and International.¹⁴¹ Finally, Makerere University is implementing a quality assurance policy and structures to evaluate the performance of lecturers, including in the FOL.

Challenges in Administration. Makerere’s the biggest administration challenges are insufficient space and teaching staff in the face of an increase in students (from 150 to about 1,600 students over about 10 years). There has basically be no expansion of the facilities in spite of this dramatic increase. The Makerere FOL has plans for a three phased expansion program of physical infrastructure and the first phase has been completed (the second phase to focus on lecture and seminar space, the third on the library, computer lab and lecturers’ offices). Limited teaching staff and time is caused by low salaries (with lecturers dividing their time with private sector work), competition from other universities teaching law and a new requirement of a PhD. to be recruited as a lecturer.¹⁴² Planning by the FOL is performed within a university-wide process and is limited by the funds of the University Planning Committee. Research remains a challenge to the extent that Makerere FOL does not have a research policy, the frequency of research thus depending on the motivation of individual lecturers (some publishing two or three articles a year, others not at all).

The Law Development Centre (“LDC”)

LDC’s mandate is to organise and conduct courses for the acquisition of legal knowledge and professional skill for lawyers and magistrates, government officers, and members of the armed forces. LDC is also mandated to carry out research, publish and update law reports, digests and bulletins, and assist in the preparation of reprints of the Laws of Uganda.¹⁴³ LDC offers a Postgraduate Diploma in Legal Studies (the Bar Course), a one year Diploma in Law for paralegals and other short courses. The Postgraduate Diploma in

¹⁴⁰ Interview carried out in May 2005. Dr Sylvia Tamale has been a teacher of law and researcher for more than 14 years. She has carried out academic and social research on a broad number of issues in Uganda including law and politics.

¹⁴¹ Specialization of degrees has been partially implemented by the introduction of courses at Makerere’s Human Rights and Peace Centre (HURIPEC). While it appears that the majority of students admitted to the LL.M course are already employed and often already too many competing to complete the research component in the second year of the programme, and so the University is considering a proposal for one-year course-based one-year LL.M program (Plan B) in parallel to the current system of the LL.M for two years will continue to operate in parallel.

¹⁴² Academic staff thus mainly consists Assistant Lecturers who do not plan to attain a Ph.D.

¹⁴³ The official statute books of GoU. The LDC is governed by a Management Committee, whose chair is appointed by the Solicitor General. Other members are: Dean of the Makerere FOL, Director LDC, PS Ministry of Education and four other people qualified in the administration of law appointed by the Attorney General. The Committee administers and sets policies for LDC. The E-Director and a Secretary (assisted by two deputies) who is also the Registrar of Students manage its day-to-day activities.

Law is a full time one year programme leading to the award of a Diploma in Legal Practice (Dip. LP) -- a prerequisite for practicing law in Uganda only offered by LDC.

Admission Requirements. Applicants for the Bar Course require a degree in law awarded by a University in a country operating the common law system recognised by ULC and a background of core subjects at undergraduate level.¹⁴⁴ ULC reserves the right of admission in cases where the applicant is not from a recognised university, and it may set additional requirements before admission, for example, a period of tutelage with a law firm. These requirements have remained the same since 1995 (though the Odoki Committee recommended they be reviewed). With the new private legal education institutions and the liberalisation of the profession by the amendment of the Advocates Act, other universities in Uganda and the region are expected become LDC accredited.¹⁴⁵

Fee Structure. LDC has both government sponsored and private students in the Bar Course. Full fees, including tuition, registration, textbooks, medical fees and others, are just over US\$ 2 million, with GoU paying about half to sponsored students.

Infrastructure. The increase in students graduating from The Makerere FOL has resulted in an increase in admission to the Bar Course at LDC without a commensurate increase in resources available to run the institution. At present there are more than 400 students at the LDC on the Bar Course with a total of over 800 including the Diploma in Law students and day and evening courses. The facilities, originally planned for a maximum of 60 students, remain stretched despite efforts to expand them (in 2004/5 and 2006/7). These efforts included construction of new lecture rooms, a library, computer lab, new buildings and purchase of printing equipment to aid in law reporting.¹⁴⁶

Curriculum Development. The Bar Course at LDC is aimed at training lawyers to serve the public justly. Core subjects thus include civil proceedings, criminal proceedings, commercial transactions, land transition, and domestic relations, while subsidiary courses are in legislative drafting, professional conduct, revenue law and taxation, accountancy for lawyers and international transactions. There have been complaints that the curriculum at LDC has gaps, having not even filled those identified by the Odoki Commission. The LDC does not have a mechanism for regular assessment and updating of its curricula, which remain very much oriented towards litigation (and could explain in part why the majority of students graduating join private legal practice). LDC has plans to review its academic programmes and teaching methods to better meet the needs of the legal profession resulting from reforms in JLOS. It plans to incorporate ADR, negotiation, IP law and capital markets in the Bar Course curriculum and in the meantime has measures to incorporate developments in the law as and when the need arises.

¹⁴⁴ Including: Criminal Law and Procedure, Civil Procedure, Law of Evidence, and Commercial, Family and Land Law, which are considered foundational to legal practice in Uganda.

¹⁴⁵ Again, in addition to Makerere FOL, the Christian University at Mukono (in Wakiso District, about 20kms outside Kampala) has been added as an accredited university in Uganda. The amendment opened up legal practice by allowing any person practicing as an advocate in a common law country, with leave of the Law Council to be entered on the Roll of Advocates in Uganda.

¹⁴⁶ Funding came from a building fee charged to students as part of tuition since 2003 and JLOS support.

Diploma in Law course targets paralegals who need to learn basic principles of law. LD two courses (day and evening) with participants are drawn from the army, police, prisons, local government and other government departments. The course is also open to students who have an A“ Level Certificate of Education and has become more attractive in recent years because graduates are eligible for admission to the LL.B Degree at Makerere FOL.

Staff Development. By 2005 LDC employed about 200 staff members including academic and administrative staff. 28 of these were lecturers. LDC is short of teaching staff and recruitment is constrained by various government procedures. LDC has received support to train its academic staff in ADR, which has become mandatory in Ugandan civil cases,¹⁴⁷ In addition, MoJCA has supported a small number of academic staff to attend masters“ programmes in law at universities abroad in fields such as legislative drafting. LDC especially supports its academic staff to pursue further studies by allowing them sabbatical leave. Other professional staff of the LDC has been facilitated to attend in-house courses in procurement and management.

De-Monopolizing LDC’s Functions. It will be remembered that LDC is the only institution authorised by law to provide professional legal training for lawyers wishing to practice law in Uganda. While the Odoki report had recommended that the LDC be divested of some of its functions, this has not been possible. When the Advocates Act was tabled for amendment before Parliament in 2002 it included a proposal for liberalising the provision of professional legal education. Parliament rejected it because MPs feared that the standard of legal education and professional standards would be compromised. As a result, according to the Director LDC, the institution plans to establish colleges offering its programmes in other parts of the country.

Restocking LDC Library. LDC has the only comprehensive law library in Uganda open to students from the various legal education institutions, the legal profession and the public. LDC has not been able to procure sufficient books because of limited funds, despite, despite the efforts of management to increase stock each year from a portion of funds set aside for this purpose.

Law Reporting. This is one LDC’s major functions. LDC used to produce the Uganda Law Reports (ULR, the official law report of the Uganda Judiciary) but the last volume was published in 1973. There have been several attempts to revive the ULR, the most recent by the Uganda Law Society, which is currently in the process of preparing the first volume of the new series.¹⁴⁸ LDC also published the High Court Bulletins (HCB), a digest of decisions of the High Court of Uganda. LDC has been more successful in producing these reports (and is now working on issues for 2003) but has had trouble marketing and distributing them.

Limited Competence of Admitted Students. According to the Director LDC, over the last few years many students admitted to LDC have not been well enough grounded in the

¹⁴⁷ Funding came from Commercial Justice Reform Programme for these activities in 2004. Commercial Court cases must now to go through mandatory court annexed mediation at CADER before trial.

¹⁴⁸ Funding has been secured to cover start-up costs and there are plans to ensure sustainability of future publications. Previous revival attempts came under the World Bank Capacity Building Project, but no funding was found to publish manuscripts of the ULR prepared from 1953 to 1977.

basic principles of law needed to succeed in the Bar Course focused on developing practical legal skills. Students have thus failed to pass or performed poorly in the assessments during the Course.¹⁴⁹ For instance, failure rates for first term examinations has increased from an already high rate of 41% in 2003/4 to 80% in 2006/7. This exacerbates the already high numbers of students at LDC, as students who do not qualify after the first attempt are carried over to re-take examinations in the following year. It is now anticipated that the LDC will be examining over 800 students this year. LDC has raised complaints with about low performance of students with Makerere FOL, but it itself faces similar problems. Lecturers at LDC attribute poor performance to the high numbers studying law Makerere FOL, which used only to admit students intelligent enough to qualified for financial support by GoU, but with the liberalisation of university education and the legal profession, now admits most students able to pay tuition fees.¹⁵⁰

Conclusion

The efforts being taken by legal education institutions to improve the quality of education given to equip the sector are commendable. However, there are overlaps in the activities they plan to implement in the future. It appears they have not discussed their future plans and more collaboration in planning is needed to ensure optimal use of already scarce resources available from legal education (e.g. overlapping proposals produce law reports, legal centres of excellence). The ULC Committee on Legal Education and Training appears weak, possibly because the institution is new and short of funding.

¹⁴⁹ These include: (i) a first term practical written examination, (ii) a second term practical oral exercise, (iii) a third term, three month apprenticeship in private law firms, government departments and the courts, during which students are assessed by interviews, observation, and perusal of documents they drafted and (iv) based on written reports by senior lawyers supervising students on a daily basis.

¹⁵⁰ LDC, legal education institutions, MoE, practicing lawyers, and others have met on several occasions to discuss declining standards of students and in the legal profession. In 2007, LDC embarked on a 4-year capacity-building program (Netherlands Government sponsored).

2. Implementation of JLOS Investment Plan

This chapter highlights the successes achieved in implementation of JLOS SIP I 2006 and outstanding challenges identified during implementation. This chapter also presents an evaluation of the quality, scope and priorities set by SIP I, and notes the improvements that were made to the JLOS programme for reform in SIP II.

Criminal Justice Reform Programme: Successes and Challenges under SIP I, CJP was clustered around four main themes to ensure the integrated nature of the sector wide approach. Criminal Justice Reform was expected to result in accountability, efficiency and equity of access sustained across the justice system, strengthened administration of justice, promotion of civic and legal education and criminal law reform.

Legal Services Reform

This theme's expected results were sustained accountability, monitoring and coordination across JLOS intuitions, results oriented management in line with codes of conduct and performance standards and guidelines, protection of rights, particularly those of vulnerable groups and an effective strategy to counter human resource losses to HIV/AIDS as well as the protection of prisoners' right to health. It was also expected that the programme would result in rationalised and cost effective legal representation for vulnerable groups, reduction of mob justice and increased public confidence in the criminal justice system.

Accountability, monitoring and coordination sustained. Achievement of these results was premised on the adoption and use by the JLOS institutions of Codes of Conduct and Performance Standards. This was achieved by some by the end of SIP I,¹⁵¹ and JLOS had made use of the standards established in the Chain Linked Initiative and employed in the pilot districts where the project was rolled out. However there was still need for the institutional codes of conduct to be shared among sector institutions and for them to be made more accessible to the public to ensure that monitoring was not only within the institutions but also from without.

Programme oversight in the JLOS depends on the functionality of the institutional policy planning units. By the end of financial year 2005/2006 there was still marked variability in the format and quality of reporting from the institutions, indicating a need to improve the reporting culture within the JLOS. However, JLOS has now developed sector- wide indicators for sector institutions to use in reporting, which is expected to improve in turn. Based on these indicators JLOS also carried out a sector wide baseline survey to provide the basis for measuring SIP II's performance, impact and progress..¹⁵²

Budget allocations during SIP I were not consistent, contrary to one of SIP's key assumptions for implementation that they would increase, and this compromised the

¹⁵¹ The Judiciary, Uganda Police Force, DPP and Government Analytical Lab..

¹⁵² The Report on the sector wide baseline survey is to be presented at the GOU/Donor Review to be held at the end of June 2007.

activities of JLOS institutions. The JLOS MTE noted that the sector had not been spared from budget cuts, except where the budget was protected under the Poverty Action Fund.¹⁵³ However, as a result of sustained and coordinated lobbying by the sector, by the end of financial year 2005/2006 the sector wide development funds (SWAP development fund, Case Backlog and Commercial Justice Reform funds) were all PAF protected, which resulted in an increase of resources released to the sector. But releases were still delayed resulting in a lag in implementing activities, with some institutions carrying over activities from the previous year which was not conducive to consistent accountability.

Due to the measures put in place to improve accountability, the sector was also able to track its contributions to government revenue through the collection of non tax revenue (NTR). Between July 2005 and June 2006 JLOS institutions collected US\$ 7.9bn comprising 38.7% of the total national NTR collection.¹⁵⁴ This goes a long way in dispelling the perception that the sector institutions are not productive. The sector intends to carry out a sustained lobbying effort to retain NTR to run programs. Increased accountability in the sector also generated efficiency savings from the Prisons Farm Project of US\$ 600m from December 2005 to June 2006.

Legal Services Reform also formulated a JLOS Implementation Strategy and Plan, which was successful in promoting the participation of sector institutions in the development of SIP I and II and the participation and inclusion of CSOs as important partners in SIP II. CSOs and the private sector are now recognised as having a monitoring, advocacy and feedback function within JLOS, as well as playing a complementary role to JLOS service delivery. During SIP I, the JLOS measures for CSO involvement included donor support of the establishment of the Legal Aid Basket Fund and CSO organising the Legal Aid Service Providers Network which carried out a Baseline Survey on legal aid provision in Uganda. Much still is needed for JLOS to create deeper partnerships with CSOs and it is hoped that this will be achieved by the new strategy, taking advantage of inter-sectoral linkages and so that CSOs do not merely view JLOS as a funding mechanism.¹⁵⁵

To improve management and monitoring, the sector also aimed to develop sector wide computerised management information systems, which for key sector institutions is still at varying degrees of development. Some institutions like the Judiciary and the DPP have computerised case management systems, a computerised crime statistics data base has been developed which can produce crime statistics to inform JLOS reform programme, the JSC acquired equipment to automate the Public Complaints System while the ULRC has embarked on development of a bill tracking system critical to the reform programme.

Overall the SIP I objective of to improve accountability, monitoring and coordination across JLOS institutions was focused, realistic and within JLOS means, producing identifiable outputs, i.e. codes of conduct, performance standards and budgets, sector-

¹⁵³ Some institutions continued to operate with less than 50% of the anticipated budget

¹⁵⁴ Justice Law & Order Budget Framework Paper, FY 2007/2008

¹⁵⁵ This was a finding of the JLOS MTE which indicated that despite their interest to participate in JLOS most legal aid service providers still looked at the JLOS as a funding mechanism, and not as an institution that could add value to their activities through coordinated approaches in interventions. The LABF's development continued during SIP II and CSOs have been facilitated to carry out their activities, including starting on the process to establish regulations for supervision of Legal Aid Service Providers (LASPs).

wide indicators, and better management of JLOS funds. These efforts continued into SIP II under the objective to Promote Rule of Law and Due Process, by enhancing have accountability and ethics across JLOS institutions. JLOS plans to link closely to the activities of the Directorate of Ethics and Integrity (DEI) under the National Anti Corruption Strategy 2004-2007. Sector institutions are among other things, aiming to strengthen internal disciplinary mechanisms (to increase the disposal rate of registered complaints to reduce backlog and increase public confidence in the institutions, the need to improve rate of disposal more pronounced both at JSC and ULC).¹⁵⁶

Results-Oriented Management. This output was dealt with in detail in the JLOS MTE report. All institutions developed strategic plans. In terms of results, the Chain Linked Initiative was rolled out to all districts as planned and the Community Service Project started. These programmes have had a minimal impact on reducing case backlogs, as levels of crime and in turn the criminal caseload continued to grow during SIP I's implementation.¹⁵⁷ The JLOS MTE noted that perhaps the most far-reaching result or these programmes was the improvement in coordination, collaboration and communication between the sector institutions that had to be encouraged to participate to enable all institutions in the chain to be efficient. Efforts carried out through the Chain Linked Initiative concentrated on using available resources, which may explain why it was so successful. From the outset, its objective was therefore realistic and achievable.

Protection of rights of vulnerable groups. Implementation of this part of the programme envisaged that there would be NGOs capable of establishing and supporting a National Legal Aid System, that financial and that human resources would be available to enable decentralisation of services, bringing them nearer to the people. Various NGOs have been formed into the LASPNET but a National Legal Aid Scheme is still elusive. The resources required for this have not been identified and in the medium term the JLOS will continue with the development of the legal aid service providers supported by donors under the Legal Aid Basket Fund. In order to improve the protection of rights of vulnerable groups, the majority of who are women, it was further assumed that gender sensitive approaches for delivery of justice would be *acceptable* across the justice system and that institutions would be committed to principles of juvenile justice. This proved to be highly unlikely however given the patriarchal nature of Ugandan society and the men/women ratios employed in the JLOS institutions (e.g. 90 % of UPF being male).¹⁵⁸

SIP II has a broader strategy to incorporate gender and justice initiatives: it identifies gender as a cross-cutting issue, with a plan to establish a task force to develop a JLOS gender strategy, enlist short-term technical assistance to oversee its development and

¹⁵⁶ Progress Report to the 12th Joint GoU/Donor Review, June 2007. The disposal rate of complaints by JSC now stands at 25%, while that at the ULC is 27%. There has also been a significant decrease in the percentage of the public indicating that they have paid a bribe for services in sector institutions. The JLOS sector wide survey indicates a reduction in bribery from 15% in 2002 to 4% in 2007.

¹⁵⁷ The reason for the increase in crime has not been established. However, it may be partly attributed to public responsiveness to the community policing programmes that encourage the public to report crime, as well as an increased confidence in the UPF to investigate complaints.

¹⁵⁸ The performance indicator in this regard was "gender and justice initiatives integrated into mainstream JLOS institutional changes," which requires a better understanding of gender issues sector institutions do not have. There was therefore need for more specific and achievable indicators for this.

implementation, include promotion of gender equality among the selection criteria of priority activities, adapt gender responsive designs of activities, and establish linkages and feedback with innovative approaches on gender and access to justice.

In terms of human rights, the objective was for JLOS institutions to become more sensitive to the rights of victims.¹⁵⁹ Here again the JLOS MTE found that there is still very limited knowledge and application of human rights standards in sector institutions, with a need to educate institutions on human rights standards, with existing such efforts performed in an *ad hoc*. LCCs were targeted to improve access to justice for vulnerable groups (women, children and others) with their sustained development envisaged in line with the juvenile justice strategy. The LCCs have been lauded for bringing the institutions of justice nearer to the people.¹⁶⁰ However, enactment of the LCCs Bill to amend the Children Act and synchronise the jurisdictions of FCCs and LCCs was delayed, only becoming law in June 2006. Further, planning for this objective also omitted a vital component, namely including the courts, in particular, the FCCs. Without those, and planning for their full development, a national strategy on juvenile justice could not be achieved.¹⁶¹ The objective of improving access for women and children therefore had no significant impact during implementation of SIP I. Indeed, FCCs were neglected during this period which much of the focus on the LCCs. In response, SIP II broadens the areas of intervention to include reforms in family laws and the adjudication of family disputes.

This objective also aimed to improve the conditions of prisoners by reducing overcrowding in prisons. Under SIP I the sector undertook construction projects to expand prisons and renovate others. This reduced congestion in the expanded facilities.¹⁶²

In conclusion, the objective to protect the rights of the vulnerable within SIP I was broad and realistic but remain a challenge. SIP II therefore retains and broadens this objective, with those efforts described in Chapter 1.

Strategy to counter human resource losses to HIV/AIDS. This objective was to be achieved by supporting and encouraging institutions to develop awareness and coping strategies. Measures to those ends, however, appeared not to have been well thought-out or clearly formulated, as evidenced by the numbers of reported deaths due to HIV/AIDS, especially in the prisons (where the strategy to address combating HIV/AIDS should, to a certain extent, have gone hand in hand with decongestion strategies). Even salutary reforms such as the enactment of the Prisons Act, it is clear that the JLOS institutions do not have the capacity to deal with HIV/AIDS without the assistance of better skilled

¹⁵⁹ E.g. UPF would adapt and apply rights based procedures and practices towards victims and suspects.

¹⁶⁰ LCCs have the jurisdiction to hear criminal matters relating to children as a court of first instance (S.6 of Executive Committees (Judicial Powers) Act) and have a duty to safeguard children, disabled and abandoned children, through various measures, such as ensuring basic needs from parents and promoting reconciliation between parents. See e.g. s. 5, 10, 13 and 14 Children's Act.

¹⁶¹ Jurisdiction, powers and procedures of the FCC in relation to juveniles are at ss. 13-4 Children Act.

¹⁶² Rukungiri, Apac and Ibuga prisons were built, Nebbi Prison expanded, and Jinja Main Prison renovated. Due to increased escapes, prison construction now focuses on ensuring structures are safe, strong and secure. There has been a decrease in the use of *uniports* as temporary structures for custody of prisoners.

persons/sectors in dealing with it.¹⁶³ In this vein, SIP II proposed to address this priority by proposing to review and strengthen implementation of HIV/AIDS strategies within institutions such as UPF and UPS in collaboration with Uganda AIDS Commission.¹⁶⁴

Rationalized & cost effective legal representation to the vulnerable. This objective envisaged the implementation of a national strategy for legal and human rights education, the designing of a JLOS Communication and Publicity Strategy and studies on user perception that would reflect an increase in public awareness of legal rights and acceptance of legal and penal reforms. It does not look this objective will be met soon, despite efforts of the LASPs and legal education institutions to provide legal aid public awareness campaigns for instance by the JSC.¹⁶⁵ There is a general widespread lack of resources, human and financial, to achieve these results. In this regard finalizing of an effective CSO strategy and regulations for legal aid and Paralegals are urgent.

Improved Administration of justice

This was to be achieved by through a range of institutional change programmes and activities in JLOS institutions, focusing on human resource development, financial management systems and infrastructure development. A key success from this process has been the development of planning mechanisms and strategic plans for all institutions, a requirement for the development of the sector Budget Framework Paper. The outstanding challenge in this regard is the development of institutional PPU's, which were found to be at various levels of development by the JLOS MTE. Sector institutions have also developed codes of conduct and institutional users' guides in some cases. This has enabled better interaction with and understanding by the public of sector issues and procedures. The JLOS MTE proposes that codes of conduct could be improved in a chain-linked manner. Institutions are also struggling to improve the availability and consistency of information by the development of MIS and computerisation. Results in the Judiciary where courts have been computerised are impressive in terms of tracking backlogs and identifying patterns of case build up in the system. The UPF is developing a crime statistics database, while the UPS still uses a manual system., which has a model of best practices for other institutions yet to be computerised.

Increased staff retention, human resources development and efficiency savings. Increased staff retention requires improved in staff welfare which JLOS institutions could not realistically achieved with a strained budget envelop. Institutional human resource development is another action that is difficult to implement without interaction with the

¹⁶³ Uganda has several programmes running for the treatment and prevention of tuberculosis and HIV/AIDS. SIP I had not taken advantage of available initiatives in addressing this issue.

¹⁶⁴ Helping ensure that the JLOS participates in the implementation of the National Policy on HIV/AIDS. Also to this end, legislation on sexual offences is being reviewed and the Administrator General's Department and incorporated in the JLOS programme in order to improve the administration of estates in which many of the beneficiaries are persons affected by HIV/AIDS. MoJCA is spearheading the efforts to have a law on HIV/AIDS put in place. And in collaboration with other actors, JLOS will strengthen awareness and sensitivity of JLOS personnel to HIV/AIDS issues in their areas of work.

¹⁶⁵ E.g. development of brochures and user guides to inform the public about functions and responsibilities of sector institutions. This has not yet had much impact: many Ugandans in the private sector do not know about the JLOS and even from within it is seen as a vehicle for the distribution of scarce resources, with confusion still over funds distributed through JLOS are government funds or purely donor funds.

MoPS. The difficulties and efforts to retain staff in the various institutions are described in Chapter 2. Training programmes were offered by sector institutions like the UPF, MoJCA and UPS, while some like the Judiciary could not for some cadres of employees.¹⁶⁶ The Chain Linked Initiative and the Case Backlog Project generated the most notable efficiency savings and there is potential to increase efficiency savings in JLOS in a chain-linked manner. These objectives all are continued under SIP II.

Operations and Infrastructure Reform. The JLOS MTE found that there had been an improvement in access to the JLOS institutions as a result of infrastructure development, aimed at reducing distances travelled to JLOS institutions, that occurred during SIP I.¹⁶⁷ Needs still exist, such as improving accommodation for prison officers and, in addition to these, addressing the distribution of JLOS personnel in the different areas of Uganda, relative to population and crime trends in the country. The sector has thus prioritised recruitment of personnel as is demonstrated in the descriptions of the sector institutions and their plans for the future in Chapter 3. The development of infrastructure in the JLOS remains a priority and is carried on into SIP II under the objective to enhance access to justice for all, prioritising construction, renovation and equipment of offices.

Improved civic and legal education

The SIP I recognised the need to improve the demand side of justice and the main vehicle chosen was increasing human rights awareness of the poor and vulnerable. It was also a key objective to improve human rights awareness of personnel in the JLOS institutions. Implementation of this objective in SIP I focused on civic education, legal literacy for the poor and marginalised and human rights awareness among sector employees. JLOS planned to achieve this objective by implementing a National Strategy for legal and human rights education. The expected results were improved compliance with the law, improved perception of JLOS, and reduction in incidence of crime.

Interventions included a publicity and sensitisation campaign by JLOS institutions and its Publicity Committee on T.V, radio, and the print media in 2005. Of particular note, the UPF publishes an article in the New Vision¹⁶⁸ on crime and safety. Brochures have been printed and distributed by various sector institutions. The shortcoming of these efforts, especially the printing of information, is the inaccessibility by those who cannot read, and for those that can, the technical level of language employed by JLOS institutions. The Publicity Committee has facilitated workshops to sensitise members of the public about JLOS and its role and to collect views about the sector at a more grassroots level. The provision of civic education in the legal sector in Uganda has always been carried out together with legal aid, which highlights again the shortcoming in the implementation of SIP I to omit NGO involvement. Under SIP II CSOs will, among others, work in partnership with JLOS to enhance community awareness of and involvement in JLOS.

¹⁶⁶ In this regard, the sector trained Accounting Officers and Under Secretaries/Accountants, in financial management in the Public Sector. 90 applicants supported for Masters Degrees and short courses in the Netherlands by its government is to support this effort.

¹⁶⁷ Activities carried out during SIP I included renovations of remand homes and border posts, building of regional offices for the DPP, expansion and construction of courts, prisons and police stations/posts, procuring a DNA machine for the GoU Analytical Laboratory, construction of lecture theatres at LDC.

¹⁶⁸ Local daily newspaper with wide coverage and readership.

Further, during SIP I, JLOS did not make use of other sector institutions having the mandate to impart legal education like LDC.

Legal and Law Reform Achieved

The purpose of the respect for human rights principles, and/or facilitate their enforcement. Areas for reform include sentencing and prosecution reform, criminal trial procedure, de-criminalisation of petty offences and simplification of laws for the public. Some progress has been achieved in that sentencing and prosecution guidelines have been completed and draft regulations for criminal trial procedures are ready and have been submitted to the Attorney General. The Penal Code Act has also been simplified and the process of amending the Community Service Act has commenced¹⁶⁹. In 2006, Parliament passed some pending bills that had an impact on successful implementation of JLOS programme. These are the Prisons Act, the Local Council Courts Act and the Police Amendment Act and the Magistrates Courts Amendment Bill at the beginning of 2007.¹⁷⁰ Fast tracking measures had to be adopted to enable their enactment., which SIP II has sought to avoid in the future, for instance, through strategies to strengthen its partnerships with NGOs in their advocacy efforts.

Commercial Justice Reform Programme (“CJRP”)

The CJRP under SIP I had four components which were expected to generate improvements in and better access to commercial justice: commercial courts, commercial registries, commercial laws and commercial lawyers. CJRP’s main priority was the establishment of a Commercial Court in Kampala as a pilot project from which reforms would be rolled out to the rest of the courts.

The Commercial Court: Successes and Challenges

The Commercial Court (CC) was established in 1996 as a division of the High Court to improve service delivery and enhance efficiency and effectiveness in the adjudication of commercial disputes. S.2 of the Practice Direction that sets up the CC provided that these would be disputes that “*affect significantly the economic commercial and financial life of Uganda.*” The CC’s activities were to relocate it to its own premises, establish appropriate managerial and administrative structures and a CC Users’ Committee and developing and implementing a policy on staff corruption.

Efficiency and Effectiveness: Customer Service Improved. The CC has implemented the four activities above, which has resulted in an improvement in efficiency, as indicated by the speedy disposal of cases, and especially noticeable when compared to the other courts that hear civil cases. Since putting in place the new rules of procedure for disposing of cases in the CC, the rate of development of backlogs has been substantially reduced.

¹⁶⁹ For example to provide amnesty to those having served their sentence, but who have only two years remaining; as well as revising the definition of minor offence and considering juvenile offenders.

¹⁷⁰ The latter two statutes will address case backlog in the Judiciary and congestion in the prisons because Chief Magistrates now have the jurisdiction to try suspects of defilement who comprise over 32% of remands in prisons. A Statutory Instrument has also been proposed to increase magisterial areas from 29 to 50 in anticipation of the case load comprising existing suspects of defilement.

Management of support staff. With regard to the management of support staff, the CC carried out a training programme to improve the competencies of the clerks and other court administrators. As a result the CC staff has improved its attitude towards serving the public; they are punctual, and efficient in the management of court files. They have also been trained to use computers and have easy access to information about cases that they easily pass on to inquiring litigants.

Accountability. The establishment of the CC Users Committee (CCUC) has created a forum for the open exchange of ideas between lawyers, the users and the court. In the year 2005, four meetings of the CCUC were held, which were attended by a broad spectrum of stakeholders including lawyers, judges, lecturers from the Makerere FOL and LDC and representatives from the private sector. Accountability to the users by the CC has improved since the setting up of the CCUC.

Judicial Integrity. The establishment of a transparent forum for communication with the court and more efficient court and case management procedures have improved public perception of administrators and judicial officers at the court. The provision of adequate facilities for the management of cases has also led to the improvement in the integrity of court clerks and the perceptions of the public with regard to corruption have improved.

Information Technology. The commercial court has been at the forefront of the development of the use of ICT in the Judiciary. The court has consolidated the use of the Computerised Case Administration System (CCAS) which was introduced in the Uganda Judiciary in the 90s. CCAS at the CC is able to provide fairly accurate and reliable data on cases at the court and become an indispensable tool in the management of the court caseload and related attributes. All staff members have use of independent computer work stations, which has greatly improved efficiency, and have access to an email system. The CC's cause list is now electronically distributed both in and outside the court and internet connection is available to judges and registrars of the court. Analogue recording machines for court recording and transcribing are available but their use is limited because of many faults and limited human resources for transcribing.¹⁷¹

Commercial Law Reporting. The CC launched the first volume of its own law report in December 2005 (500 volumes of the report were printed and available for sale, with the second volume scheduled to be released before the end of June 2007).

Mediation at the CC. The CC has been transformed into a multi door court house with the expansion of the mediation project to include an in-house option in addition to the court annexed mediation run by CADER. Initial evaluation of in-house mediation by the mediation registrar at the court registered an average success rate of 60%. The rules required for making mediation a permanent feature of the procedure and practice of the CC were finalised and passed by the Rules Committee of the Judiciary in February 2007.¹⁷² The rules shall be applied to all commercial courts when the project rolls out to the rest of the country. However, the court has only one in-house registrar for mediation.

¹⁷¹ Since 2006 the CC and other courts of record in Uganda have been able to post their judgements on the internet and they are available at <http://www.commonlii.org/ug/cases>.

¹⁷² The Judicature (Commercial Court) (Mediation) Rules, 2007

In order to increase the number of disputes settled through mediation, the court requires to have at least two registrars for mediation. This would free judges from mediation and allow them to concentrate on disposing of cases that need to go through full hearing.

Progress on challenges identified by JLOS MTE. The establishment of the court in separate premises led to improved access to the CC. Access to justice through the CC has certainly improved in Kampala. Large firms have benefited from the establishment of the CC and have more confidence in the judicial system. It is expected that the programme will be rolled out to other parts of the country. However, by the time of the JLOS MTE, the following challenges had arisen in the growth of the Commercial Court.

- *Jurisdiction.* When it was established the CC had jurisdiction over cases of 5 UShs or above, cases of a lesser amount (claims or *mandazi*¹⁷³) going to the Magistrates Court. This resulted in many cases filed in the CC, which lower courts have dealt with, because lawyers preferred the convenience and improved efficiency at the CC. To counter this, after concerted lobbying by the JLOS, the Magistrates Courts Act (Amendment) Bill was enacted in July 2007 to increase Magistrates Courts' jurisdiction. Statistics from the CC indicate that it receives about 130 cases. Following a review of the definition of a commercial case in March, 2005 it was decided that contract cases between individuals would be filed in the High Court Civil Division, and CC cases now must be between companies and within the business setting. There has thus been reduction in cases filed in the CC to about 90 cases each month. According to the CC's Registrar, the Magistrates Courts Amendment Act will lead to about 90% of cases transferred to Chief Magistrates Courts, which could eliminate the CC's case backlog.

The judges at the court have continued to craft innovative methods of speeding up trials and disposing of larger numbers of cases and plan more in the future (e.g. tracking cases for hearing, scheduling procedures to expedite cases, and a small claims court.)

- *Small Claims Court.* Introducing a small claims court was one of the original ideas for commercial justice reform. According to a 2007 study report investigating this possibility,¹⁷⁴ small claims will be restricted to civil claims whose subject matter does not exceed 5 million UShs.¹⁷⁵ This limit was influenced by the Amendment to the Magistrates Courts Act which raised Chief Magistrate's jurisdiction to between 5m and 50m UShs, and the maximum jurisdiction of a Magistrate Grade I to claims of 20m UShs. However, small claims are to exclude suits against the government, suits for defamation, malicious prosecution, wrongful arrest and imprisonment, and specific performance. Procedure shall be formally established for an institution to adjudicate

¹⁷³ "*Mandazi*" are cakes baked in hot oil; the expression is used here to infer small scale or petty trade.

Legal Notice No. 5 of 1995 provided that the CC would entertain cases on disputes related to e.g. the supply and exchange of goods and services, banking, international credit, insurance, operation of the stock exchange and foreign exchange markets, foreign judgments and commercial arbitration.

¹⁷⁴ G. Kiryabwire, et al, (2007). Interim Report on the Establishment of a Small Claims Procedure in Uganda" Uganda Judiciary, Strengthening the Judiciary Project.

¹⁷⁵ This is the equivalent of USD 3,030 at the ruling exchange rate (15.06.07) of 1650 shs to the dollar

small claims,¹⁷⁶ expected to be in place by end-2007, with claims anticipated to emanate from disputes of medium and small enterprises in their day-to-day business interactions.

- *Regulation of Court Bailiffs.* Court users still complain about the malpractices perpetrated by court bailiffs. In 2005 the CC initiated a programme to deal with this, and sensitise bailiffs on the laws relating to the execution of judgments. This revealed a tendency for bailiffs not to have proper awareness of procedures for executing judgments, and both to show an allegiance to advocates (and not the court) but also shift blame to them for unethical behaviour. Advocates are now no longer allowed to employ preferred bailiffs in execution and the court insists on the return of a bailiff's executions before employing that bailiff in compliance with the Civil Procedure Rules and Court Bailiffs Rules (which led to a failure for bailiffs to collect warrants from the court for sometime after the rules were enforced). The CC has also started to emphasise and created an incentive system for bailiffs to protect the rights of judgment debtors.¹⁷⁷ Other court bailiffs' rules do not yet have some of these provisions but it is predicted that some of them will be in time. All these efforts have had some success, but the challenge with irregular execution of judgments still remains.

- *Delayed judgments and case backlogs.* The CC Registry still receives complaints about delayed judgments, which are caused mainly by heavy backlogs. Judges are transferred to the CC from other High Court divisions with pending cases from the previous post that have to be concluded, in addition to new cases allotted to the Judge. According to the CC's Registrar, some of the delayed cases are very old, meaning that, when writing their judgments, judicial officers are required to perform time-consuming review of the evidence. The CC's efforts to improve case processing times are highlighted above. The ordinary load of a judge at the CC is a portfolio of about 200-300 cases.

In year 2007, the court was able to complete a total of 2,063 cases of all categories, including those that were transferred to the magistrates courts following the enhancement of the monetary jurisdiction of that court. The net number of cases completed by the court was 811 cases, representing a clearance rate of 131.65%.¹⁷⁸ The court was able to complete 48.85% of cases filed that year and 12.33% of the backlog.

According to the Deputy Registrar at the court the improvement in the rates of completion of cases is attributed to the use of case information available to the court from the Court Case Administration System (CCAS). In order to improve the speed at which judgments are delivered by the court, judges are informed of their workload on a regular basis. This involves recording numbers of cases allocated to a judge and the duration that it has taken for the judge to hear each case and give judgment. The results of this analysis are distributed between judicial officers in the court to raise consciousness of individual

¹⁷⁶ Under Article 133 (1) (b) which provides that the Chief Justice may issue orders and directions to the courts necessary for the proper and efficient administration of justice.

¹⁷⁷ E.g. standards of disclosure as to where the property attached is to be kept., that all electronic equipment attached must be taken in the presence of a technician, and bailiffs must also explain to the judgment debtor that he/she can get their property back if they satisfy the judgement within a period of one month. The incentive system involves "clean sheets" and "black lists" based on performance.

¹⁷⁸ This represents the percentage of cases completed against cases filed in the court in that year.

performance and the overall performance of the court. These comparisons have been found to encourage judicial officers in other jurisdictions to dispose of disputes and not create backlogs. The court intends to find methods of improving the welfare of support staff in order to improve performance.

- *Remaining Challenges for the CC.* The CC has plans to relocate to and construct new premises are expected to be completed and ready for occupation in June, 2008. Current premises have facilities for recording court proceedings, but limited facilities for transcribing and no provision for the recruitment of transcribers in the Ugandan Civil Service. 2008.¹⁷⁹ Extending application of the case management principles in commercial disputes used by the CC to High Courts and Magistrates Courts in other regions if Uganda would ensure that impact of the Division is felt all over the country. The CC is sometimes perceived as slow in delivering judgments. It is short of judges, and would require one more than the existing four judges and two registrars to reduce existing backlogs. here also exists at need for continuous training in commercial law and principles (international and domestic). The CC's biggest challenge currently is diminishing funding which has led the court to abandon some of its activities such as law reporting.

Alternative Dispute Resolution at CADER

The CADER was opened in 2003 as a support mechanism for the CC to implement the provisions of the Arbitration and Conciliation Act. It was expected that an increase in arbitration and mediation in commercial cases would reduce the case backlog at the court. However, there have been mixed reactions from both the public and practicing lawyers to the efforts to settle disputes through CADER.

Arbitration

Arbitration is meant to be a quicker and simpler means of proceeding in commercial cases, offering litigants the benefit for instance of selecting the preferred arbitrator. However, arbitration can also be very technical depending on the field in commercial law that it involves. The experience in Uganda has found that arbitration is more expensive than litigation. The few senior lawyers that serve as arbitrators charge very high fees and these are only affordable to big business organisations. The practice of arbitration has not been popular; especially because the increased efficiency of the CC makes it more the more attractive option which lawyers encourage to their clients in favour of arbitration (as seen with parties opting out of contractual arbitration clauses to pursue litigation).

Mediation

Mediation, the alternative provided by the Arbitration and Conciliation Act, was in 2003 the CC made compulsory under the CJRP's Mediation Pilot Project (MPP). This increased the cases that went to mediation, but the funding was for only two years and it expired

¹⁷⁹ The Judiciary asked the MoPS for it to take this special need into consideration, while Court Users Committee, obtained a grant from the Bank of Uganda to fund transcribing for three years starting in 2006. Charging fees for this presents the challenge that because payments would be paid directly to URA.

in August 2005. The lessons learned from the MPP as well as the in-house mediation at the CC are documented below.

At its inception, the mediation process was found to be slow. Some lawyers resisted it and complained that CADER used young lawyers as mediators, who had been given very limited training soon after they graduated from the LDC. During the MPP, some lawyers preferred judge-led mediation to those mediators, though the judges' performance was not without criticisms (e.g. judges continuing to hear the case after the frank disclosure in a failed mediation).¹⁸⁰ That said, at CADER's inception, few were trained in mediation, and ILI provided some of the first training, meaning that due to the larger numbers of cases that they mediated at CADER after their training, the CADER mediators were some of the most experienced in Uganda; so that age should not be confused with experience in any field of practice. With regard to mediation in general, lawyers in Uganda have been trained to trust the adversarial system for settling disputes and have not quite made the shift to mediation. Some lawyers perceive the mediation process as denying them the opportunity to earn higher earnings that come from litigation (not yet appreciating the cost benefits of settling disputes quickly to take on new clients) and as one that slows down the trial process.

Mediation at the Commercial court has continued under the Registrar (Mediation). The Judicature (Commercial Division) (Mediation) Rules allow for a variety of mediators from which litigants can choose including the Registrar (Mediation), a qualified person certified by CADER as a mediator and appointed by the parties to mediate or appointed by the registrar, the registrar or other official of the court and a judge of the CC chosen by the parties. According to the Mediation Registrar at the CC, this variety has helped to make mediation more popular and acceptable to advocates.

However, there is still some resistance. Some lawyers still use mediation as a delaying tactic to slow down the litigation process (e.g. not turning up when they are summoned for mandatory pre-trial mediation. In FY 2007/2008, 100 lawyers and magistrates were trained in mediation skills and this further helped to make mediation popular but there is still need for training and practice and the formal introduction of mediation in the legal education institutions for it to become a permanent feature of the Ugandan legal system.

2.1.1. Independent mediation and the Cost of Mediation

When the MPP at CADER ended, CADER had three in-house mediators for the court-annexed mediation at the CC and 88 mediators and arbitrators from different professional fields were registered with CADER who could be called upon to mediate at the request of the parties. CADER was increasingly taking on independent mediations initiated by parties, following an increase in publication of information about the project. Between January and June 2005, CADER mediated and completed 14 independent mediations. However, the charges for mediation were still on the high side, each costing US\$ 150,000/= (US\$ 85). This was perceived as expensive for the majority of Ugandans, save

¹⁸⁰ As a result, the Judicature (Commercial Court Division) (Mediation) Rules provide that a judge who participates in an unsuccessful mediation shall immediately cease to take part in further proceedings arising out of the mediation and he/she shall not give evidence as a witness in any subsequent judicial proceedings arising out of the failed mediation.. Rule 13(4)

for business entities. CADER had established criteria for determining when fees should be waived. Most of the independent mediations at CADER related to land disputes and because of the larger number of such disputes coming to CADER, there was a proposal to create a system to refer matters from the Land Tribunals to CADER.

Positive developments at CADER

There were several improvements in the management of cases at CADER before the MPP stalled. As is the practice in other courts CADER had introduced a cause list to inform parties when their causes would come for mediation, started publishing a Newsletter, developed forms to guide parties and their advocates on the procedures used in mediation, as well as a curriculum to train mediators, to help further develop the culture of mediation in the justice system. On the whole, trends in settling cases through mediation indicated a more positive climate for mediation provision than other legal services in Uganda. The general public has a positive attitude towards it, and there is great potential in encouraging them to opt for mediation. The attitudes of lawyers towards mediation have also over time slightly improved.

Statistics of case records at the CC during the MPP suggested that the mediation process at CADER helped cases to settle at an earlier stage in the court, with some lawyers even developing the habit of settling cases between parties after one or two sessions with a mediator. Table 6 shows the case flow at CADER for each quarter of the year 2004.

Table 6: Case flow at CADER in 2004¹⁸¹

	Jan-March	April-June	July-Sept	Oct-Dec	Total
Mediations Brought/F	131	142	120	146	
Cases referred to mediation	98	82	109	112	401
Successful mediations	18	19	28	22	87
Unsuccessful mediation	46	33	37	33	149
Discontinued mediations	8	34	23	56	121
Pending mediations	157	116	142	151	566

The original concept for the establishment of the MPP was that the unit would dispose of as many cases as one Judge of the court for a given period. This was not achieved by the

¹⁸¹ Source: CADER Registry

project: results indicated that in the first quarter of 2004 CADER settled 18 cases, while on average a CC Judge disposed of 37 cases. On average a CC judge concludes 350 cases in one year as is indicated in Table 5 above, while CADER's performance was 87 cases.

In spite of the quite disappointing statistics, staff at CADER seemed to be confident that rolling out of the MPP to other courts would be successful. This had been demonstrated with success in handling independent mediations in land matters. Other areas that have been considered are settlements in family property proceedings and custody of children. The MPP was reviewed in 2005 and funding challenges plaguing CADER appear to have been resolved its incorporation into the JLOS budget.

Challenges for CADER

The Arbitration and Conciliation Act has been amended and CADER continues to receive subventions from the JLOS SWAP development fund to meet its reform and development related activities that aim to increase appreciation of ADR, and support court annexed mediation. However funding and sustainability challenges remain as CADER needs to increase the knowledge of lawyers of both the process and benefits of mediation.. Some lawyers still frustrate the process of mediation and see it as an inconvenience to be endured until they get to the trial before a judge in the CC. Although forms to initiate mediation and other processes had been developed, there is constant need to review and improve them.¹⁸² The fees charged for mediation at CADER are still on the high side and do not enable the ordinary Ugandan to pursue mediation. Lawyers were not following the rules regarding disclosure in pleadings whether they would submit to mediation at CADER or not. Some lawyers objected to the mediation. There was not enough space for both conducting mediation and offices for staff at the current location of CADER.

Tax Appeals Tribunal ("TAT")

As described in Chapter 2, TAT was established under the Tax Appeals Tribunal Act to adjudicate on appeals of tax payers against tax assessments made by the URA. A challenge identified for TAT is that not accessible to most Ugandans because it is found in Kampala – inviting the recommendation that TAT open up upcountry registries to take services nearer to the people or, alternatively, run a circuit system like the High Court in criminal cases. CJRP has facilitated the TAT to acquire equipment train its staff in taxation (e.g. study tours for members to the Tanzania Revenue Tribunal and the Zambia Revenue Appeals Tribunal, as well as in other COMESA countries). In FY 2006/2007 178 applications worth 130 billion shilling were registered with the TAT by May 2007. The Tribunal disposed of 105 applications worth US\$ 68.4 billion. The tribunal has started reporting its cases in digests that have been published from 1999-2004. Some of the outstanding challenges are that TAT members serve on a part time basis, limiting the number of weekly sittings by the Tribunal; parties seek constant adjournments, causing delays in hearing applications. TAT plans to prepare its own rules of procedure to reduce the technicalities experienced in the use of the Civil Procedure Rules and will increase the number of sittings to meet effectively the growing numbers of cases registered.

¹⁸² There were loopholes in the Commercial Court Division (Mediation Pilot Project) Rules, 2003 which were addressed by the coming into force of the Judicature (Commercial Court Division) (Mediation) Rules of 2007. Suitability and functionality of the rules is yet to be assessed.

Uganda Registration Services Bureau (“URSB”)

Progress has been recorded in the transformation of the Registrar General’s Department into the autonomous URSB. CJRP has been crucial to the end, funding all components of a workplan for this devolution (as recommended in the JLOS-MTE). Lack of financial autonomy thus is a major constraint. URSB is building capacity in intellectual property rights and has trained state Attorneys in this area. Staff have also been trained in the use of computers and management of electronic records. This has resulted into a decrease in the loss of documents and forgeries. URSB staff have continued to meet with users to discuss the bottlenecks in the system, resulting in high levels of satisfaction of users (75% of the business community), and a reduction in the perception of corruption from legal professionals (from 85% in 2004 to 71% in 2007).

The prioritization of the Commercial Court

The CJRP focused on the urban population, particularly the business community who are the main users of the Commercial Court. This appears to have been guided by the lower cost of this intervention relative to other options, and despite the fact that the majority of Ugandans use the lower courts (magistrates and LCCs). JLOS MTE found that large firms have benefited most from the CC’s establishment and have greater confidence in the Judiciary and frequency in using the courts. Smaller domestic exporters are less catered to by the CC especially with the recent expansion of the Magistrate Court’s jurisdiction. The challenge in rolling out the CJRP programme to other courts is indeed the cost that would be incurred.

The concentration of resources for reform on the CC and its establishment resulted in a very wide disparity in practice, with the rest of the courts as ineffective as they were before.¹⁸³ In order to provide for the users of the lower courts within the programme, the CJRP envisaged that it would deal with the most serious constraints in their operations which were seen as: case backlog, the practice of multiple adjournments of cases and corruption. GoU intended to tackle these problems by strengthening the Inspectorate of Courts and the JSC. There was also a plan to improve administrative and procedural measures designed to improve case flow in the magistrates’ courts. This plan seemed to hinge on raising the pecuniary jurisdiction of the Chief Magistrate by enactment of the Magistrates Courts (Amendment) Act which Parliament passed by in 2007. It is expected that the programmes in the CC will now be rolled out to the rest of the courts.

The Inspectorate of Courts. IOC activities include regular field inspections, investigation of complaints and the dissemination of information about the courts. The IOC has started on a programme to publish and distribute court users’ guides, but this has shown little impact,¹⁸⁴ and print anti-corruption posters. IOC is supposed to supervise compliance

¹⁸³ Indeed the contrast of the speed of the CC to the other courts makes the problem look even worse, with litigants unable to accept that that his/her case cannot be disposed of expeditiously by a magistrates’ court, or the main stream High Court. The result is that the fault is placed squarely on advocates and magistrates.

¹⁸⁴ At the beginning of 2005, the IOC published 20,000 copies (English only). These were supposed to be distributed country wide. 6000 were distributed in Kampala alone, leaving 14,000 for the rest of the country (then 58 districts but now 76). The distribution in each area is through pedestrians and motorists.

with the Judicial Code of Conduct and to that end examines complaints deposited in the suggestion boxes at the courts. However, in spite of having suggestion/complaints boxes, the IOC gets many complaints at the office in the High Court at Kampala (complainants believing that these will elicit a faster response than at the district courts). The IOC also collects and analyses court case returns and analyses the causes of delays. IOC is supposed to be funded by the Judiciary but this only for the Inspector at the High Court. The JLOS under CJRP has partly financed IOC by providing vehicles (6 for 10 circuits).

The IOC has found that Deputy Inspectors do not have the skill or knowledge for monitoring discipline and performance of judicial officers (their inspections tending to focus on court records). There IOC recognizes the need for training in inspection and for guidelines for inspection of courts (and plans to develop them). Overall, the monitoring and evaluation of lower court performance is still very weak. The activities of the Inspectorate described above have not been effective in moving the plans of the CJRP to the lower courts where the majority of Ugandans litigate. In that respect, perhaps the emphasis on the CC should have been balanced with interventions to help improve access in the lower courts reported to have a more serious backlog problem than the High Court.

Legal Profession and Legal Education in Commercial Law

The CJRP facilitated the amendment of the Advocates Act, which provides more stringent disciplinary measures and improved oversight by the disciplinary body, the ULC. In addition, the ULS has taken the policy decision to require lawyers to handle a minimum number of *pro bono* matters or provide payment *in lieu*, as a means of developing a “legal aid” culture amongst lawyers.

The Government of Uganda administers a pro bono scheme in which lawyers are paid by government to represent persons charged with capital offence which are tried by the High Court. Although all persons charged with capital offences are represented in court through this scheme, CSO organisations dealing with human rights have complained that this categorisation limits the provision of legal aid to sometimes very vulnerable persons who are charged with other categories of offences. Accused persons have also complained that lawyers do not pay sufficient attention to their cases. Lawyers claim the fees paid by government are much below the market prices payable for commensurate services to paying clients. The ULS intends to augment the government scheme by implementing the provisions in the ULS Act which require all lawyers to provide legal aid to indigent persons.

Such initiatives are aimed at bringing the services of the legal profession nearer to the poor. In addition, as noted above, members of the commercial bar still need significant sensitizing if they are to embrace the progress made at the CC and CADER. The innovative approaches to case management and court procedures being piloted by the CC are very different to the traditional practices previously employed and taught to advocates in Uganda. The pace of change experienced at the CC and the specific training and sensitization needs of the legal profession could not be fully appreciated at the planning stage CJRP thus funds allocated in the original CJRP budget to capacity building and training were minimal.

Capacity building programmes for commercial lawyers will continue in collaboration with the ULS, which established a Legal Resource Centre was established in 2005 under the CJRP to provide members of the Bar and the Bench with an opportunity to expand and update their skills and scope of legal research.¹⁸⁵ ULS with its Kenyan and Tanzanian counterparts have formulated a regional training programme for lawyers through distance learning seminars (with CJRP funding the Ugandan component). As part of its activities related to capacity building for the legal profession, CJRP also continues to sponsor lawyers from the MoJCA for training in different courses.

Land Justice Reform

The JLOS MTE reported that CJRP produced no improvements in the Land Registry, which was a CJRP objective. If anything, the office was found to be less efficient than it had been at the time of the Commercial Justice Survey in 1998. The JLOS MTE also found that the Registry required a major injection of funds to enable reforms that would enable it to function optimally.¹⁸⁶ The Registrar of Titles was found to be more at home within the Land Sector than JLOS. The Land Registry did not participate in SIP I because the land management system under the Land Act and land reform had already been effected in the Land Sector Strategic Plan (LSSP). Following is a brief description of the LSSP and its effects on establishing a link between the Land Registry and JLOS.

The Land Sector Strategic Plan

The LSSP is the plan for the land sector to implement legal reforms that came about as a result of the 1995 Constitution and subsequent enactment of the Land Act. The LSSP is designed to provide the operational, institutional and financial framework for the implementation of sector wide reforms and land management including implementation of the Land Act. Before the LSSP, the land sector in Uganda was traditionally perceived within a narrow focus, i.e. the provision of technical land services for the elite. The LSSP is a landmark in the process of developing an integrated approach to the management of the land sector, encompassing the broad spectrum of land sector actors and services. Implementation of the LSSP is intended to mobilise the diverse interests and actors in the sector to achieve a common purpose or mission.

Major LSSP stakeholders include the large majority of rural and urban populations who depend on land resources and products for subsistence settlement, and small scale commerce; those working in land related employment sectors including agriculturalists, conservationists etc.; the wider national and international public who depend on the life support provided by Uganda's land resources; all officers of the sector including civil servants, judicial authorities, local government officers, researchers, trainers, NGOs and support businesses. Sector activities include technical services (land registration, surveying, mapping, valuation, administration, physical planning); legal aspects, design,

¹⁸⁵ The Resource Centre has three sections: (i) a Library with updated legal materials, (ii) a computerized section where lawyers can do their research through the Internet, (iii) an Audio Visual Section that is to be used for conducting training programmes through long distance learning and video conferencing

¹⁸⁶ Possible funding for reforms was made available by a World Bank programme to computerize and reform Registry systems. Other interventions had been proposed for training staff in computer use.

provision and use of land information; development, implementation and monitoring of land policy, environmental regulations, public awareness, and dispute resolution.

The LSSP envisages decentralized land management institutions (viz. Land Boards), functioning land tribunals and streamlined tenures.¹⁸⁷ Land is managed mainly at the districts which have Land Boards and at the sub-county by area Land Committees. The Land Boards have been found to be very active. They were first appointed in 1999 and many districts appointed new ones after their first tenure lapsed. Land titles are issued at fully fledged district level offices. The Land Registry has not been fully decentralized and very few districts have land registries, so that in many districts after the land boards have managed the process of acquisition and/or division of land, they forward the documents to Kampala Land Registry for issue of titles.

Funding of the LSSP. Original funding was for a much more modest structure than MoWLE proposal to set-up 56 land boards and tribunals, 962 sub-county land tribunals, and 1000 parish land committees. The structure was paired down with the Chairpersons of Tribunals operating in circuits to cover all the districts of Uganda and GoU allocation of US\$ 9 billion for the operations of the land institutions.

Land Tribunals

The rationale of establishing Land Tribunals was an outcry that the courts were corrupt in adjudicating over land disputes. As noted in Chapter 2, these were recently dismantled.

JLOS and the Registry of Titles

The JLOS initially proposed including the Land Registry (proposed CJRP) but this was declined on the grounds that it would leave out all the other land management institutions: land administration, land valuation, surveying and mapping. The LSSP Secretariat asserted that support to one and not the others was neither realistic nor efficient or cost effective. Despite this resistance to JLOS support for the Land Registry, SIP II expanded its scope to incorporate land justice reform, with a programme to focus on improving land dispute resolution mechanisms while engaging with other stakeholders to enhance land administration and registration. JLOS has commissioned a study on land dispute systems the results of which will provide baseline data to develop the programme.

Family Justice Reform

Under this head, JLOS will seek to reverse the present position of the family justice system which is characterised by a paucity of information on the state of the system, a growing caseload in the administration of estates which is unmatched by staffing and other resources, inadequate legislative provision to address gender based violence, and

¹⁸⁷ Before the 1995 Constitution there was only one kind of land tenure created by the 1975 Land Reform Decree which had abolished *mailo* land. The 1995 Constitution creates 4 systems of tenure: *mailo*, leasehold, freehold and customary tenure, thus the need to create more land management institutions. *Mailo* land tenure means the holding of registered land in perpetuity and having roots in the allotment of land pursuant to the 1900 Uganda Agreement and subject to statutory qualifications in s.3 of LA98. This kind of tenure permits separation of ownership of the land from the ownership of developments on land; it also enables the holder subject to the customary and statutory rights of those persons lawful or bona fide in occupation of land at the time that the tenure is created to exercise all the powers of ownership of land held of a freehold title set out in s. 3 (2 & 3) LA98.

equality in marriage and its dissolution. The inadequacies in the probation and social welfare system will also be addressed together with the FCCs and the police Family and Child Protection Units. The sector will also seek to address the centralisation of the Administrator General's department which puts additional burdens on the poor and rural based who also need its services. The sector also recognises the low level of coordination among family based agencies and of public awareness of legal provisions and procedures and modes to access services. As a priority the sector will continue to seek for the reform of legislation that is not aligned with the provisions of the Constitution.

Current programmes in family justice reform

Some sector institutions have started on programmes in this area. Of particular note is the effort to revitalise the registration of births and deaths by URSB. With funding from UNICEF, URSB has continued to sensitize the public on the importance of registering births and deaths. However, registration officials still need to be trained at sub county, parish and LCI levels. URSB has also aired programmes and messages (in 7 languages) on radio on birth and death registration. Due to increased awareness, the demand for registration of births has increased. There is a higher demand for birth certificates which has also been influenced by education institutions which now demand birth certificates on registration of children into primary school. Constraints have been experienced in sustainability of registration materials and rolling over the programme to all districts.

The UPF has embarked on a series of training programmes to equip its staff with skills to deal with family matters, which extended to child care activities, juvenile justice, increasing access to justice for women and prevention of domestic violence. The ULRC carried out a study on the latter topic to examine and propose improvements in legal protection against domestic violence and another study on HIV/AIDS and related issues. Consultations on drafting a law in this area and amending the Children Act are ongoing.

Overall examination of the SIP: quality, scope & priorities

Without detracting from the comments and opinions made about specific objectives of SIP I above, overall, the SIP I objectives were broad and covered the critical issues needing to be addressed at the time that the plan was formulated. However, to conclude this chapter, one cross-cutting objective to all JLOS programmes warrants further comment: Objective (iv) was stated as "*Amending all discriminatory laws and regulations.*" It appears that formulation of this policy objective reflected the sector institutions' role in the process of law reform. The ULRC is the body that would be expected to carry out the bulk of activities relating to this objective, which is in-line with ULRC's mandate. Other Sector institutions like the LDC and the Judiciary also contribute to the process of law reform. The ULRC cannot amend laws and it had little impact on the amendment and enactment of laws, based on the experience of the sector. Part of objective (iv) was therefore neither realistic, nor achievable. Neither could a timeframe within which it could be achieved be determined, though it was very relevant.

SIP II carries forward the sector's plans to reform laws (under the objective "To promote rule of law and due process.") but the focus has now changed to strengthening identified laws and lobbying Cabinet and Parliament for enactment of key laws (some of which had

been identified by JLOS at the onset of SIP II). Indeed the sector has become proactive by adopting fast tracking measures to expedite the law reform process, such as meeting with the Parliamentary Committee on Legal Affairs. These efforts to lobby are said to have resulted in the fast tracking and enactment of four relevant bills.¹⁸⁸ With regard to regulations (subsidiary legislation) the sector ministers are responsible for formulating them under current laws. This is an area where it is recommended that the JLOS review and make more specific the law reform objective and make it more specific (e.g. to enable activities such as studying areas where new regulations are needed).

Overall the sector has learnt from its experience in the implementation of SIP I and SIP II fills the gaps that were evident during SIP I's implementation. The efforts to improve access to justice for the poor and marginalized in SIP II are laudable given that the focus of SIP I was limited in this regard. However the reform of land and family justice still needs to be re-examined and programmes crafted for each of the sector institutions to ensure that they target current needs in these two areas. Though some institutions have identified areas within this area and have started implementing the objectives of SIP II, others such as the Judiciary do not demonstrate any efforts to deal with the problems that beset the FCCs. A coordinated effort needs to be established and family justice may also need to be addressed in a chain-linked manner.

¹⁸⁸ JLOS Progress Report to the 12th Joint GoU/Donor Review, June 2007

Access to Justice and the JLOS institutions

Comparison of accessibility of the various courts

Various factors that hinder access to justice have been identified in Uganda including physical, economic, social and cultural norms and practices. They however affect individuals and genders differently. In this section we look at these factors in relation to the various courts, noting the particular constraints for each.

The Courts of Record

The first problem here is that one needs legal representation in order to access the Courts of Record. Lawyers in Uganda are scarce to the ordinary citizen and legal aid is not yet available for the majority of Ugandans who live in the rural areas. The exception is for persons that have been charged with serious crime, i.e. crimes for which the sentence is life imprisonment or death. For these the state provides mandatory legal aid by virtue of Article 28(1)(e) of the Constitution. According to the Secretary of the ULC, there are complaints that some lawyers retained by GoU under this state brief system are not diligent in representing their clients. The most frequent complaint is lawyers' failure to even visit clients in prison, which risks compromising the accused persons' defences.

Physical access to the High Court access has improved with the introduction of court circuits but poverty still makes it extremely difficult for most Ugandans to access the High Court, again because of the need for representation and long distances to travel to circuit courts (there being only 10 circuits for the whole country and until early 2007 there was no Circuit in Northern Uganda due to the armed conflict with the LRA).¹⁸⁹ The Court of Appeal and Supreme Court in Kampala are the most inaccessible both physically and for economic reasons. In addition, the courts use very technical procedures, daunting even for some advocates. The language of these courts is English, and litigants cannot access them unless represented by lawyers.

Magistrates' Courts

These are not readily accessible to the ordinary Ugandan especially in the rural areas for the following reasons: language in these courts is English and interpreters are not always available for a litigant's particular dialect; most cases, except in Grade II courts, require a lawyer which makes litigation in courts other than the LCCs a luxury to most people in a country where most earn less than \$10 a month. Both the law and courts are shrouded in myths and mystery to the ordinary Ugandan, causing fear and a lot of uncertainty, because most people associate courts with criminal trials and imprisonment. As a result there are sometimes problems with getting witnesses to appear. In addition, most magistrates courts still have a heavy caseloads, are poorly staffed and the disposal of disputes is very slow, which is most apparent with the Chief Magistrates Courts.¹⁹⁰

¹⁸⁹ Priority sessions were held to deal with the overwhelming backlog of criminal cases that had accumulated over time when the JLOS institutions were largely inaccessible in the area.

¹⁹⁰ Interview with Mr. E Kisawuzi, PRO of the Judiciary and Registrar Nakawa High Court. There are 27 Chief Magistrates, with 4 assigned by the Judiciary to act as registrars of the High Court, leaving only 23 magistrates and as a result some of those in charge of 4 magisterial areas.

Family and Children Courts (FCCs)

The FCCs have now been in operation for 10 years but there has been no evaluation of their impact in improving access to justice. The JLOS MTE only considered FCCs in as far as they relate to juvenile justice in the CJP but did not their jurisdiction in civil matters. Because initial reform efforts in the JLOS were limited to commercial and criminal justice, the FCCs did not receive as much attention as it deserved. There remains a dearth in information on the FCC and need to study it further. Alternative methods such as the clan, LCCs and relatives were found to be more effective in solving disputes than FCCs, which remain little known or understood by communities.¹⁹¹ The LCCs and clans seem to be bearing the greatest responsibility for disputes, which they are ill-equipped to do, prompting a key finding of the Integrated Study on Land and Family Justice that the jurisdiction of family justice institutions needs to be redefined. Any such efforts however to improve access to family justice should institutionalise links with and use of the LCC in collaboration with the clans or elders. This has its challenges in light of the gendered biases discussed above in these fora, especially against women and children. According to the court, FCCs have helped improve access to justice for women and children in maintenance and custody cases because the courts are geographically accessible.¹⁹² However, they have been affected by the programme for the professionalisation of the bench (discussed in Chapter 2).

A study¹⁹³ of FCCs' operations in Kampala City in civil disputes, identified the following challenges: most FCCs are not housed in separate buildings (due to insufficient space), contrary to that requirement under the Children Act and its goal to make FCCs friendly and more accessible to litigants;¹⁹⁴ There were key gaps in the skills and knowledge of lay magistrates, and their decisions seemed sometimes clouded by cultural, religious and andocentric attitudes. There is an apparent clash between the Children Act's provision that FCC proceedings be as informal as possible and the Rules applying general court procedures to FCC proceedings¹⁹⁵ – thus exposing children, especially in cases represented by lawyers, to adversarial processes causing delay in the cases and compromising the children's interests. The jurisprudence on children's rights has not developed over the last 10 years because Grade II magistrates' courts, including the FCCs, are not courts of record and cases are rarely appealed from FCCs.¹⁹⁶ Additional challenges such as the poor skill levels of probation officers to carry out investigations to establish the best interests of children in disputes before FCCs and lack of basic documentation and filing practices also compromise access to the FCCs, based on the findings at the Kampala FCC. Finally, FCCs created a dichotomy in litigation over

¹⁹¹ JLOS MTE found 220 FCCs functional out of 549 FCCs expected to be established. Respondents to the Integrated Study on Land and Family Justice found the clan (32.9%), LCC 1 (32.8%) relatives (11.6%) to be more effective in resolving family disputes than formal courts (3.7% perception of effectiveness.)

¹⁹² Interview with Mr. Ochepe Arutu, Registrar Family Division, High Court of Uganda and Chairperson Family Justice Working Group of the JLOS, June 2007.

¹⁹³ Mulyagonja Kakooza, I (2002). Some observations on the operations of FCCs in Kampala: A memorandum presented to the Chief Justice of Uganda.

¹⁹⁴ S. 15 Children Act

¹⁹⁵ Respectively, s. 16 Children Act and s. 4 Family and Children Court Rules.

¹⁹⁶ Recent decisions available on children law are from High Court divorce cases, which are few because jurisdiction in divorce of Ugandans is vested in the Magistrates courts. The majority of available decisions thus relate to guardianship and adoption in matters where non Ugandans have petitioned the High Court.

family disputes, whereby in some separation and divorce cases, litigation over child maintenance takes place in FCCs and the rest of the proceedings in Grade I, Chief Magistrates' courts, or the High Court. More study on the FCCs, better training of lawyers and magistrates on the Children Act and welfare principle, extending the High Court family division to the lower courts as is proposed for the CC, giving parties the option to file cases in the High Court to help develop jurisprudence on the law on children, and emphasizing greater involvement of social workers and psychologists and use of ADR were all proposed as means for overcoming such challenges.

Local Council Courts

These have been found to be more accessible than all other courts in Uganda. LCCs are regarded as the cheapest forum that Ugandans can employ to access justice but still appear to be outside the range of incomes of most Ugandans.¹⁹⁷ Representation in the LCCs by Advocates is limited to matters where one is prosecuted for infringement of a by-law in the court's jurisdiction.¹⁹⁸ There are, however, problems with instituting LCC proceedings, which are not as regular as in the formal courts (especially LCC II and III). Other challenges include those seen in Chapter 2 (e.g. room for the interference of prejudices and bias by presiding members, complaints of bribery of the court officials by litigants) and the need to exhaust appeals all LCC levels (with great delays at LCC II and III) in order to take the dispute to the magistrates' court. In comparison, magistrates' courts may be more accessible in the sense that when a complaint is lodged in the court at first instance, once disposed of, appeals are easier to process.

Land Tribunals

Their operation has been suspended (as discussed in Chapter 2) making discussion of their impact on access to justice moot for the time-being.

Accessibility of other JLOS institutions

Under the JLOS programmes, great efforts have been taken to improve physical accessibility of all institutions including the police, prisons and remand homes.¹⁹⁹ The need however to further decentralize services of JLOS institutions remains enormous especially in Northern Uganda and the Karamoja region – where service delivery has long been suspended by conflict. Beyond improving JLOS' physical presence, there is also still need to address the ratios of distribution of JLOS personnel to the population, while taking the increased crime levels into consideration.²⁰⁰

¹⁹⁷ Cases are still attended to even where fees have not been paid; at the end of the cause the unsuccessful parties pay the fees.

¹⁹⁸ S. 16 (2) Local Council Courts Act

¹⁹⁹ Success has been recorded in that there is a police post at every sub-county. The Sector Wide Survey of 2006/2007 found that in terms of physical accessibility 85% of the public reported access to at least one JLOS institution with the police and LCCs being the most accessible. Improvements have also been recorded with respect to accessibility to probation and social welfare services from 15% in 2002 to 46% in 2007. Access to the DPP has also gone up from 7% in 2002 to 18% in 2007.

²⁰⁰ In this regard 2006/2007 JLOS budget, prioritised interventions devoting 30% to increase its presence in conflict and post conflict areas: the judiciary had 11 High Court sessions Gulu, Lira, Soroti, and Kumi with 69% of the 448 cases that were listed for hearing; the sector also increased police presence in the area by establishing 100 police posts in Acholi, Lango and Teso sub-regions. In the same period, about 56% of

Significance of Alternative Dispute Resolution (“ADR”)

In a bid to reduce pressure on the courts, JLOS and sector institutions have encouraged ADR and the jurisprudence is fast growing. The LCCs, Land Tribunals, CADER and the Commercial Court are the main proponents of this strategy. ADR is also used in the Administrator General’s Department in the form of mediation, and has been found very useful by Legal Aid Service Providers to mediate disputes. There is increased public confidence in the use of ADR as an alternative to formal litigation.²⁰¹ Cumulatively confidence has increased in the whole judicial system with 67% of the public considering the system to be fair, fast and professional.²⁰²

Law Applicable

The law applicable in Uganda is statutory law, case law, common law and doctrines of equity. Courts are also empowered to exercise jurisdiction in conformity with established and current custom and usage, and the powers vested in, and the procedure and practice observed by the High Court. Statutory law takes precedence over any other law, subject to the provisions of the Judicature Act.²⁰³

The Judicature Act provides that the High Court has the right to enforce the observance of existing customs which are not repugnant to natural justice, equity and good conscience and which are not incompatible either directly or by necessary implication with any written law. Under the laws that established them, LCCs and Land Tribunals also have the power to enforce customary law and practices.

Conflict of Laws and Legal Pluralism

Within certain limits, the High Court, under the Judicature Act, has the right to enforce the observance of existing customs and the LCCs have the power to enforce customary law and practices (which is seen vividly in the family and land law domains). Uganda is multi-ethnic and has a diversity of customary law systems which work side by side with the general law (statutes, doctrines of equity and common law), sometimes in conflict.

Conflicts in Land Laws. Land reforms in Uganda have tried to integrate customary and statutory law in LA98. Until the promulgation of the 1995 Constitution and LA98 customary land tenure was not recognised in Uganda, in spite of the fact that most of the land in Uganda is held under customary tenure and all land was vested in the Uganda Land Commission in trust for the people of Uganda.²⁰⁴ The 1995 Constitution ushered in a new regime for holding land, introducing four types of land holding: customary, freehold, *mailo* and leasehold. This dramatically changed the relationship between the individual and the state because the state ceased to be the absolute holder of land. The constitutional reform recognised customary tenure in Uganda for the first time and

JLOS’ development budget was spent on improving sector institutions in Northern Uganda. JLOS is also implementing the Emergency Humanitarian Action Plan and aimed at restructuring institutions those areas.

²⁰¹ 95% of the public reported increased confidence. The passing of the proposed regulations to enable the use of ADR in the magistrates’ courts is expected to further increase confidence in this mechanism.

²⁰² JLOS Progress Report to the 12th GOU/Donor Review, June 2006

²⁰³ S. 14(2) Judicature Act

²⁰⁴ It was therefore not uncommon for politicians and government officials to award themselves leases of large portions of land already occupied by customary tenants, who thus faced extreme insecurity.

customary tenants are entitled to certificates of customary ownership. However, conflict is rife with other laws which were never amended to allow effective management of the land regime introduced by LA98 and the Constitution.

These include the Survey Act, which dates back to 1920s and provides for detailed and high standard cadastral surveying which is unnecessarily complicated for customary holdings; the Registration of Titles Act, which is based on the Torrens system of registration, setting out lengthy and difficult procedures for the acquisition of certificates of titles; the Land Acquisition Act, which is inconsistent with Constitutional requirements for compensation for land acquired by government and could cause difficulties in acquiring land for redistribution to tenants; the Mortgage Decree which is at present virtually inoperable and would make the provision of loans from the Land Fund a long and difficult process, and also the use of certificates of customary ownership and of customary occupancy as security for credit impossible; and the Town and Country Planning Act which needs to be harmonised with current local government arrangements.

Conflicts in Family Law. Family law in Uganda like in other jurisdictions in East and Southern Africa is comprised of the general law that is supposed to apply to all persons regardless of their ethnic origins, and the customary laws of the various ethnic groups in the country. Apart from the law of succession, which was amended in 1972 and the law relating to children (amended in 1996),²⁰⁵ the written family law of Uganda is basically the same as the one inherited from the British in 1902. The customary laws are unwritten, varying across the 65 ethnic communities in the country and “even within the same „tribe“, from locality to locality, and in some cases perhaps from village to village.”²⁰⁶ One of the greatest contradictions in family law in Uganda is the tacit acceptance and continued existence of a mixture of customary and civil marriages side by side (or within one household).²⁰⁷ This is in spite of sanctions against bigamy both in criminal and marriage laws and poses enormous practical problems to the Judiciary, other administrative and law enforcement agencies and citizens (e.g. in the administration of land and succession law). Added to this, there are a slew of questions as to which factors, including cultural, social and economic, influence people to choose remedies under either formal or customary law. This choice, a product of the plural system of laws, poses a dilemma for women in particular, who must choose not just which law to use in seeking redress, but also which forum (be it the LCC, Police Family Protection Unit, the Qhadi’s Courts, clans, the church, NGOs and so on).

Domestic Relations Bill

This Bill proposed to amend all marriage laws in Uganda, to reform and consolidate the law relating to marriage, separation and divorce. The Bill was the product of a comprehensive ULRC study. It aimed to produce a law that would be fair and achieve social justice; address human rights of all members of the family; protect the institution of marriage and the family; be enforceable and accessible to all Ugandans; and in line

²⁰⁵ Children Act, 2000

²⁰⁶ Report of the Commission on Marriage, Divorce and the Status of Women 1965 (Popularly referred to as the Kalema Commission Report)

²⁰⁷ This is a situation where a man who is still married under a civil monogamous marriage takes on another wife under customary law. The situation is considered normal and accepted by many.

with the Constitution and international legal obligations. Reforms included harmonizing the age of consent to marriage with the Constitution, nullifying parental consent to marriage and clarifying for recognized marriages, marital rights and duties and grounds for and rights at dissolution of marriage. The proposed law however raised serious issues of controversy on the interface between culture and international human rights, which this report addresses below. Due to the divisive outcry from various interest groups various caused by the Bill, it lapsed in the 7th Parliament. Under the 8th Parliament the DRB was reviewed and split into two bills- one part providing for reform and consolidation of the law relating to civil, Christian, Hindu, Bahai and Customary marriages, the marital rights and duties there under, as well as separation and divorce by persons who have contracted any of the above mentioned marriages. The other part[The Administration of Muslim Personal Law Bill, 2008 (AMPLB)] provides for creation of Qhadi Courts in Uganda which will adjudicate over disputes relating to Muslim marriages, Divorce and other family issues.

Accessibility of the Legal System

One of the basic principles underlying the Constitution of Uganda is the rule of law which entails regulation of government power, formal equality and equal treatment under the law. These however can be elusive, particularly where access to the legal system is constrained. Following are some of the factors that constrain access to the legal system.

The first is the mixture of inherited formal legal systems and customary systems in Ugandan law. The conflict between the two and its impact on access is discussed immediately above. As already highlighted also, the prevailing language in Ugandan courts is English and quite technical, which can be indecipherable to most Ugandans even when interpreters are available. This problem is said to be exacerbated by declining education standards in the country, which as seen already, has had an impact on the quality of students studying law and the consequent quality of lawyers available to the public. Legal representation further tends to be concentrated in the urban areas and cost beyond the means of most Ugandans.²⁰⁸ Added to this is the lack of legal information and literacy highlighted above (viz. the inconsistent and scarce availability of case reports, general legal materials, and access to decisions and statutory amendments upcountry).²⁰⁹ Finally, there has also been academic debate as to what extent Ugandans, especially in rural areas, identify with the adversarial nature of judicial process granted the more reconciliatory nature of various customary dispute resolution processes.²¹⁰

²⁰⁸ The ratio is about 1:13,400, inversely concentrated to the rural population (about 88.7% of advocates in Kampala in 1999 and present fees range from US\$ 300,000/= to 500,000/= .

²⁰⁹ Also because of a lack of publication by legal scholars in Uganda, it is not uncommon for judges and lawyers to rely on textbooks commenting on English law; even though the statutes of general application imported from England are now at about the same level as those laws in England in the 1950s or before.

²¹⁰ For a sample of such discussion see e.g. the results of a poll on attitudes concerning justice taken in conflict affected regions of Uganda in the context of debates over the International Criminal Court's intervention. P. Pham, P. Vinck et al., *Forgotten Voices: A Population-Based Survey of Attitudes about Peace and Justice in Northern Uganda*, International Center for Transitional Justice and Human Rights Center (University of California, Berkeley), July 2005 (available at www.ictj.org) at 23-4.

Uganda Human Rights Commission (UHRC). In addition to the factors discussed to this point, the UHRC also stands as an important entry point to accessing justice. Although not a JLOS institution,²¹¹ there is a clear cooperation framework guiding its linkage to the JLOS. The UHRC is an independent body accorded an important role in upholding and raising awareness about the Constitution. UHRC's main functions under the Constitution include: investigating violations of human rights; visiting and investigating conditions in jails, prisons and detention facilities; initiating and conducting programmes of research, education and public information; and monitoring Government compliance with international treaty and convention obligations. The UHRC, in line with these functions, submits annual reports to Parliament on human rights conditions in the country, in addition to publishing periodic reports on its findings; regularly conducts civic education campaigns across the country; and its Commissioners also sit as a human rights tribunal to hear and investigate human rights complaints, with the power to summon witnesses, make orders, including compensation against the government (for which it reportedly has never made any payments, citing general budgetary constraints).

Inspectorate of Government. Though also not a JLOS institution IG plays a crucial role to improve access through its cross-cutting mandate of eliminating and fostering the elimination of corruption and abuse of authority and office. Corruption undermines public confidence in the justice agencies and in recognition of this challenge, the JLOS has tasked the JSC to come up with an anti-corruption strategy. Cooperation between the IG and the JLOS has also facilitated the speedy implementation of Article 232(e) of the Constitution Amendment Act 11 of 2005 which provides for the establishment of a special anti-corruption court. Given the slow law reform process, the high levels of corruption perceived in Uganda and the slow disposal of corruption cases that results from the backlog in the criminal courts, the judiciary decided to create this court administratively under Article 133 of the Constitution (1995) instead of under Specific Act of Parliament under Article 133(1) (b) of the Constitution. The Judiciary will create a new division of the High Court, the Anti-Corruption Division (ACD) (its jurisdiction will extend to all matters defined as corruption under the Penal Code Act, the Prevention of Corruption Act, the Inspectorate of Government Act and the Leadership Code Act.)²¹²

Gender and Access to Justice

The constraints to accessing justice discussed above affect men and women in different ways. A 2002 study on *Customary and Religious Constraints to Women's Access to Justice* found that there is a direct relationship between full access and utilization of local councils by women and their economic empowerment and confidence. A lack of those factors and discriminatory norms and cultural practices against women thus explained why women's initiatives to access local courts were still slow, despite increased access to and more accessible courts brought about by decentralization. Another study commissioned by JLOS in 2002, *Gender and Access to Justice*, confirmed the findings above and found that gender neutral laws that do not take cognizance of gender related barriers and veil structural inequalities (e.g. collateral required by banks). Other factors

²¹¹ Its activities no doubt contribute to achievement of JLOS objectives and in was consulted during the development of SIP II. The UHRC was in the Public Administration Sector, opting thus to coordinate with the JLOS r as an external stakeholder, which was formalized in a 2006 cooperation framework.

²¹² By invoking its powers under Article 133 of the Constitution and the Judicature Act.

found to have an impact on access for women included: the physical accessibility of justice delivery agencies vis-à-vis the nature of women's employment in the home, which sometimes makes it near impossible for them to leave the home; lack of sensitivity of court and law enforcement officials to the gender specific needs of court users and lack of confidence in the justice delivery system as a result of a sense of powerlessness and inability to influence things, a common denominator of gender oppression and poverty.

The JLOS study on *Gender and Access to Justice* also highlighted the significant impact of various community dynamics on access to justice for women, such as cultural and patriarchal taboos associated with taking legal action against relatives or neighbours, which can be exacerbated by unequal power relations at household level which limit financial independence and undermine the rights of women. It also confirmed that, as seen already, the plurality of community justice resolution mechanisms may limit access to the formal institutions. The lower literacy rates for women (57% to 74% for men) also created a further constraint for women in following processes to access justice. Further, Ugandan women continue to suffer disproportionately from time poverty: working an average 50 hours a week, to men's average 23 hours,²¹³ which obviously curtails time available to pursue legal claims or engage in income generating activities outside the home. Women remain at great risk for gender based violence, which is exacerbated by their lack of access to land and property, and consequent economic dependence (which leads to an inability to negotiate with male partners terms of intimate relationships).

The controversy surrounding the Domestic Relations Bill may demonstrate to what extent the success of legal reforms depend on attitudes keeping pace with the law. Indeed any further legal reform may serve to feed a rising backlash. Religious leaders have strongly opposed some of the Bill's provisions as alien to the local culture, for example those relating to marital rape. The other key issue is forced sex within marriages where an HIV infected partner refuses to use protection. In general, the disconnect between law reform and social change in Uganda points to the need to engage other disciplines (psychology, sociology) to enhance the effect of legal reform.

Conflict and Access to Justice

The discussion here summarizes some of the results and recommendations of the Justice Resources study, *Law and Disorder: The impact of conflict on access to justice in Northern Uganda*, as pertains to efforts to improve access to justice in the area.

Overview of the conflict

Hostilities in Northern Uganda have lasted for over 20 years, despite heavy investment in counterinsurgency, including deploying the military into the Sudan. In addition to military responses the GoU has also embarked on various dialogues and peace initiatives, including introducing amnesties. In the event of the conflict's resolution a wide range of interventions will be needed for Northern Uganda's economic and social restoration.

²¹³ Interactive Population Centre; Food for the future: Women as food producers.
<http://www.unfpa.org/intercenter/food/womenas.htm>

The extent of abuses

The Lord's Resistance Army (LRA) was responsible for the most horrific violations of human rights across Northern Uganda including killing and maiming civilians, abduction of children, and sexual slavery of women and children. An estimated 20,000 children were abducted. The numbers of displaced people at the peak of the insurgency reportedly reached well over 1.5 million in Northern and Eastern Uganda. The large scale displacement of the people of Northern Uganda began when GoU created camps as a counter insurgency measure. Within the camps rampant abuses of human rights as well as denial of the population's basic necessities were reported. The camps were run by communities structured along the lines of local councils, but many of them did not have established LC systems, such as recourse to the jurisdiction that LCCs would exercise. Instead, disputes and minor misdemeanours were dealt with by camp leaders at the lowest level. These leaders made the decision to either dispose of the dispute or refer it to higher leadership in the camp where they felt decisions were beyond them. All camps appeared to have by-laws for guiding conduct of residents.

Withdrawal of justice

The conflict forced formal courts and the police to withdraw from Northern Uganda leaving the countryside to the army, local councils and other arbiters, meaning no service for the large camp communities. As the war progressed, magistrates left the lower courts in the countryside, and their sessions ceased. Judicial officers' lives were at risk (with at least one reported killed) as they travelled through conflict affected areas. Nonetheless, the Judiciary has tried to ensure its presence since the beginning of 2007 and there are Chief Magistrates in Gulu, Lira, Arua and Nebi. The courts suffer from poor public perception (e.g. inaccessible, beholden to the rich and bribes) which pre-date the conflict. Displacement at the height of the insurgency led to increased congestion in urban and peri-urban centres and, in turn, to a higher frequency of property and sexual crimes adding greater pressure on the entire criminal justice system. This has been felt acutely by the courts, with the displacement effectively eliminating the use of bail (because of the accused having no a fixed places of abode). New approaches to sentencing like the community service scheme are also difficult to implement where placement of offenders is limited to the camps.

Policing needs

At the height of the insurgency, policing in Northern Uganda had largely become confined to the towns with the countryside and most camps too unsafe for the deployment of police officers. The lack of security in the region further served only to exacerbate for the UPF in Northern Uganda, the same difficulties it faces in other areas. In order to overcome the problem, UPF recruited Special Police Constables who were deployed in the northern districts. Some local authorities employed local administration police at the community level who have now been integrated in the UPF.²¹⁴ In addition to increasing personnel numbers, strategies to incorporate alternative policing have been explored, for

²¹⁴ At the height of the insurgency it was reported that among the 100 camps there was police presence in only 12 camps. Northern Uganda had the lowest ratio of police to population standing at 190:1,000,000 inhabitants. With the increased numbers of personnel in the area, it is reported that 67% of the population now feel safe in public places while 78% feel safe in their homes. 35 % of the population also perceives crime to be decreasing. Progress Report to the 12th GOU/Donor Review, June 2006

instance, community policing has been found to be particularly effective and popular. Armed conflict in northern Uganda appeared to be coming to an end with the progress in the peace process in Juba. However, due to the failure to conclude the final peace agreement between the government and the LRA in March 2008, efforts to put a conclusive end to the conflict have stalled.

In spite of the stalling of the talks, peace is steadily returning to northern Uganda. In May 2008 it was reported that there was no activity by the LRA, although cattle raids continue in the Karamoja sub-region, including raids by the Turkana from Kenya. The large majority of IDPs in Pader District are reported to be living outside the main camps while the majority of IDPs in Kitgum remain in the camps. In Amuru and Gulu Districts, IDPs have started moving back to their villages.²¹⁵

But as peace returns to Northern Uganda, government has put in place its Emergency Humanitarian Action Program and launched its Peace Recovery and Development Program (PRDP). The PRDP addresses four areas that are clearly within the ambit of the JLOS program: enhancement of policing, judicial services and prisons, and the rationalisation of auxiliary forces.

Legal Reforms

Despite the difficulties encountered by the justice institutions in Northern Uganda, reforms in the administration of justice are being implemented in the area and there is openness to new approaches to address the needs of the conflict (e.g. Chain Linked Initiative implemented in Gulu with initial successes and rolled out to Kitgum).

Popular justice

In the face of the hardship experienced, communities in Northern Uganda displayed resilience in finding alternative means of ensuring some order in the communities. LCCs served a crucial role in this process and were the most significant arbiters in the area. Supporting the development of the LCCs in this regard is very important. LC officials paid a high price for their sustained work in Northern Uganda. Many were murdered by the LRA. As the representatives of government, the unarmed LC executives were an easy target for the LRA who saw them as government informants. But the LC executives also ended up on the wrong side of GoU forces when they failed in their assigned role of providing sufficient explanations for rebel incursions.

The LCC system reportedly broke down in some of the camps comprised of people from different regions and ethnic groups,²¹⁶ with dispute resolution handled instead by camp leaders as described above. As peace returns to the region, it will be important to support reinstatement of the LC system in the areas where it had broken down. Enactment of the LC Courts Act also calls for training of LC officials in human rights and the proper implementation of the Act in order to enhance access for all, especially the poor and vulnerable.

²¹⁵ OCHA, Uganda Humanitarian Situation Report, 1-31 May 2008

²¹⁶ Nordic Consulting Group (2006). Joint Survey of Local Council Courts and Legal Aid Services

Legal aid services

Due to the break down of structures in Northern Uganda, there was no incentive for lawyers to offer services in the area. The ULS Legal Aid Project (LAP) has provided legal aid for the population in Northern Uganda since 1995 through its Gulu office, which provides regular legal aid services and advice directed specifically at the internally displaced population as part of an Information, Counselling and Legal Advice programme²¹⁷. Even with these efforts, however, the need for the services remains huge, outstripping current capacity and resources. Paralegals have been useful to help fill the gap (e.g. ULS has trained some in Gulu) and these types of non-lawyers remain the main legal aid providers for the majority of Ugandans who cannot afford to pay for the services of lawyers. This points to the need for greater attention paid to developing paralegal schemes and to facilitating their training.

The Uganda Human Rights Commission

The UHRC opened its office in Gulu in 1999. Its work became increasingly significant in promoting access to justice and respect for human rights in Northern Uganda, notably, adjudicating over the rights abuses committed by UPF personnel. The UHRC has been effective in providing advisory and referral support to individuals who can report their grievances to its Gulu offices. It carries out some investigations and outreach programmes for the whole of Northern Uganda, but limited to training and assessment of needs. However, the Commission is short staffed and would require more centres in Northern Uganda to enable greater access than its current facilities offer.

Traditional Justice Institutions

Although they lack effective means of enforcing their decisions, traditional justice systems continue to play an important role in ensuring access to justice in Northern Uganda. These are mostly employed in the settlement of family disputes. Experience has shown that where there are clear roles for traditional leaders communities readily turn to them for guidance. The resolution of disputes by customary leaders encourages consensus building among community members and decisions reached with their help are generally more acceptable to them. But, like other local systems, traditional approaches to justice often reinforce structural inequalities in society and care should be taken to ensure that in encouraging their development the rights of traditionally marginalized groups like women, children and the disabled are not compromised. And unlike the courts and LCs they do not rely on the enactment of laws but derive their legitimacy from historic allegiances and continuing relevance to contemporary conditions.²¹⁸

The JLOS recognises the need to step up its activities in Northern Uganda and has significantly increased the presence of its institutions in the region, as is indicated by committing 30% of its budget in FY 2007/2008 to improving its presence in Northern Uganda. It is also notable that during financial year 2006/2007, about 56% of the JLOS development budget was actually used to improve justice institutions in the region.

²¹⁷ Funded by Norwegian Refugee Council, and implemented in conjunction with HURIFO.

²¹⁸ The significance of traditional justice institutions in the conflict in northern Uganda is underscored by debates over „peace versus justice“ present in the peace negotiation and concerning whether the International Criminal Court should proceed with its case or lift indictments if meant securing peace.

Conclusions and Recommendations

The study on the impact of conflict on access to justice made some recommendations for greater access to justice in conflicted areas, such as increased support for LCCs. Perhaps the most significant one was to anticipate and adjust for post-conflicts needs. These include, for instance, an anticipated influx in crime after hostilities and from failed reintegration of ex-largely juvenile combatants; inevitable disputes over land and property as displaced populations return to their villages; the need to cope in a satisfactory manner with abuses committed during the conflict, including truth-telling processes and compensation and reparations for damages suffered; addressing special legal needs of victims of conflict and vulnerable groups (e.g. orphans, widows, children born to former combatants); family law issues arising due to stresses from displacement. Developing partnerships, especially between government and CSOs, and protecting human rights were identified as key to addressing those problems and developing new strategies to improve the justice system in Northern Uganda.

In order to deal with abuses committed during the conflict, the Judiciary proposes to set up a Division of the High Court to hear war crimes. Though this is a welcome idea, there is need to identify the jurisprudence and laws that will be applied by the court since there appear to be no specific laws to deal with some of the crimes that were committed on the law books in Uganda. In addition, it will be difficult to enact laws relating to the crimes since criminal law cannot act retrospectively. Current proposals include the domestication of international instruments relating to war crimes to which Uganda is a party such as the Rome Statute.

Role of Non-State actors in SIP implementation

Relevance of SIP I Objectives to Non-State actors

The sector explicitly recognized attaining SIP I objectives and JLOS mission depended not only on the role of JLOS institutions but also the input of non-state actors, specifically civil society organizations (CSOs) and the private sector (PSOs). NGO contribution to national development has often been in critical areas not served or inadequately addressed by government. This was evident from the contribution made by CSOs working in the justice sector and their critical role in securing access to justice for all people, particularly the poor and marginalized groups. NGOs have provided legal services largely on their own initiative, without active government direction or support (besides allowing them space to work) and with little coordination between themselves. Thus, while many have established best practices in their work, and creatively enhanced access to justice through mediation, arbitration, counselling and provision of popular legal education, there has been no standardized method of practice, and much of the work has been *ad hoc* and highly dependent on donor funding. Despite relatively many CSOs engaged in those activities, their services are still limited.²¹⁹

Private sector organizations efforts, as discussed in more detail below, have focused more on issues related to strengthening structures for Commercial Justice at various levels as well as affecting capacity of the justice system to reduce the cost of doing business. In this regard, the PSOs have consistently advocated for commercial law reform and efficiency of the courts. CSOs and PSOs therefore, have a clear interest in the outcome or success of the SIP and can be viewed as critical stakeholders and partners in the sector.

Civil Society Organizations (“CSOs”)

A stakeholder mapping²²⁰ found that CSOs in Uganda included international, regional and domestic NGOs, operating at national level and conducting activities in different parts of the country; community-based organizations (CBOs) based in specific localities; and networks and coalitions of CSOs regrouped on the basis of geographical location, issues of common interest or application of similar strategies.²²¹ CSOs include professional bodies, parliamentary forums, creative arts and theatrical groups, faith-based groups and research institutions. Though many of these are working on issues relating to the justice sector, including human rights education and awareness, advocacy on equity and justice issues, and legal aid, there are often significant variations in their capacity, outreach, and quality and effectiveness of their programmes. The main CSO stakeholders in JLOS are those referred to as Legal Aid Service Providers (LASPs), with structured legal aid service programmes. They have formed themselves into a network, the LASPNET, partly as a response to JLOS’ existence and also as a result of the NGOs

²¹⁹ A 2004 baseline survey on legal aid found that legal aid services do not exist in forty seven out of the total of fifty six districts of Uganda at the time; Uganda now has 80 districts.

²²⁰ Stakeholder Mapping and Analysis Report DANIDA.

²²¹ Policy Analysis and Advocacy Centre, Report on Legal Aid Scheme for Anti Corruption Actors prepared for DANIDA.

recognition, in 2000, of their mutual need for collaboration. Some of its member are discussed here.

FIDA-U Legal Aid Clinic. The Uganda Association of Women Lawyers (FIDA-U) was founded in 1974 by women lawyers to assist women and children, especially widows and orphans, to attain effective protection under the law and promote the professional development of women lawyers in Uganda. The FIDA legal aid clinic is the oldest in Uganda and among the first in Africa, having been established in 1987. In addition to the head office in Kampala there are branches in the three regions of Uganda (in Arua, Mbale and Mbarara), and three specialized legal aid clinics in Iganga, Kamuli, Kawempe targeting children and people living with HIV/AIDs.²²² The focus of FIDA is on civil cases and most of the cases it receives deal with domestic relations or family issues.²²³ FIDA emphasizes the use of ADR to resolve disputes (due to their nature, and socio-cultural concerns of clients), and uses litigation only where disputes cannot be resolved by ADR or to enforce agreements reached by parties using ADR. FIDA also takes up public interest litigation in matters advancing human rights and gender equality such as constitutional interpretation of women's and children's law in Uganda.²²⁴

Legal Aid Project (LAP) of the ULS. The Uganda Law Society (ULS) is the umbrella professional body for Ugandan lawyers and is a statutory body set up by Act of Parliament.²²⁵ Under the ULS's standing committee on legal aid, LAP was established in 1992, with the mission to ensure access to justice for the poor and vulnerable people so as to promote the socio-economic development of Uganda. Under its Strategic Plan LAP objectives include the provision of quality legal aid services to the indigent, promotion of respect for human rights and the rule of law, and advocacy for legislative reform and pro-poor policies. An important objective of LAP regarding the JLOS is to build mechanisms and aggressively mobilize resources to ensure financial sustainability of Legal Aid Services in Uganda. LAP has clinics in Kampala (headquarters), seven legal aid service centres and is represented in the four regions of Uganda.²²⁶ Activities of LAP include court representation, legal education seminars and prison representation services for bail applications²²⁷. LAP handles criminal and civil cases, and also emphasizes ADR use.²²⁸

Public Defender Association of Uganda (PDAU). The PDAU was established in 1997 with the mission of ensuring improved access to justice for all charged with serious criminal offences as guaranteed by the Constitution. Its programmes include legal advice

²²² Data on geographical coverage indicate FIDA-U clientele came from over 20 of the 80 districts. FIDA-U reportedly receives an average 50 clients daily.

²²³ E.g. in 2004 and 2005, FIDA-U reported about 4000 cases each year, with about 40% (38% and 42% respectively) dealing with maintenance, custody and parental responsibility. Marital disputes, land disputes and inheritance and succession cases were the next largest categories (about 15%, 11%, 11% each).

²²⁴ In 2004, FIDA challenged the interpretation of sections of the Divorce Act in the Constitutional Court which resulted in the Act being applied more equitably to both men and women, giving the same grounds of divorce to both. Constitutional Petition No. 1 of 2004, FIDA (U) & others v. Attorney General.

²²⁵ The Uganda Law Society Act.

²²⁶ Centres are in Gulu, Masindi, Kabarole, Kabale, Jinja, Luzira Prison, and Kampala, with a total a staff of 87, 10 of whom are enrolled advocates. There are in addition 13 paralegals attached to LAP.

²²⁷ Legal Aid Project of the Uganda Law Society, Strategic Plan 2005-2010.

²²⁸ In 2005 and 2006, LAP handled 7394 and 7774 cases respectively, with an 18% increase in general criminal cases in 2006 (41.4% to 59.8%), land disputes as the next largest category (17.4% and 14.7%).

and representation for indigent accused persons, advocacy (including lobbying and public interest litigation), law reform and research on legal issues, and public education. The Legal Education programme involves periodic prison and refugee camp visits. PDAU has one office in Kampala and employs three lawyers. On average it receives 25 clients daily. PDAU handles mainly cases of criminal capital offences (e.g. murder, aggravated robbery, and rape), torture, refugee related cases, and a few civil matters.²²⁹

The Legal Aid Clinic of the LDC (LAC). The LAC is a programme of the LDC set up in 1998. Its mandate is to provide clinical legal education to post graduate law students and to provide legal aid services to indigent petty adult criminals and juvenile offenders. In this light, LAC aims to promote community service by lawyers. Services provided by LAC include legal representation, court representation and mediation. Importantly LAC has a diversion programme that encourages alternative punishments and rehabilitation of children that come into conflict with the law. The clinic handles an average of three clients a day. Other activities carried out by LAC are legal research especially in respect to juvenile offenders, public legal education and government advocacy.

Other CSOs. Also within the justice sector is the Foundation for Human Rights Initiative (FHRI) and Uganda Gender Resource Centre (UGRC). FHRI's mandate promoting rights awareness, which is done through human rights education, research, and advocacy. FHRI also carries out legal aid and conflict management. Much of its advocacy work is for prisoners, aimed at improving their representation, conditions, treatment and legal rights. For example, it has campaigned against the death penalty and torture of prisoners. Uganda Gender Resource Centre (UGRC) is an NGO with the mandate of promoting equitable community development, which is done through training, advocacy and research on gender and development and legal aid activities only in Kabale district.

Links to JLOS. CSOs support the idea of the sector-wide approach, and clearly see the relevance and link of JLOS to their activities. A major concern during SIP I however was that the JLOS programme did not clearly address the link reflected in the PEAP between access to justice and poverty eradication. SIP II now addresses this and has a clear link to poverty alleviation with its objective to enhance JLOS contribution to economic development. CSOs were formally recognized as key stakeholders in JLOS, but many felt that in practice this link was tenuous. Communication between them was poor and the resulting could reflect low interaction and between LASPs and JLOS.²³⁰ SIP II addresses concerns under SIP I by recognising the role of CSOs in JLOS and, in particular, how their areas of expertise can contribute the JLOS programme's success. CSOs now participate in relevant working groups and have been ascribed other specific roles.²³¹ CSOs see an improved relationship with JLOS but are conscious to maintain independence from government, especially regarding their monitoring role.

²²⁹ Interview with Executive Director PDAU

²³⁰ The main challenges identified by CSOs in interacting with JLOS during SIP I was a lack of clarity and changes in funding conditions and guidelines. CSOs also indicated some frustration with the delayed development of the LABF: CSOs had participated in its development, yet funding was slow to materialize from it, and its establishment had destabilised old sources of funding.

²³¹ E.g. enhancing community awareness and involvement in JLOS, policy and law reform advocacy, setting standards for law enforcement, promoting judicial independence.

JLOS Achievements and Challenges. CSOs have identified the following achievements under JLOS, which have been beneficial to their work: a move away from a crisis-oriented management in the judiciary other sector institutions; increased use of strategic planning; improvements of the state briefs scheme; introduction of community service; enhancement of the police vehicle fleet; increased equipment and facilities in the judiciary; and better quality and numbers of prosecutors and equipment in the DPP. CSOs however note that overall the main beneficiary is the formal justice system, and echo the need for JLOS to include the Advocate General's office. Further, some CSOs feel that the reforms have not adequately touched legal issues of the poor especially women.²³² The CSOs thus welcome the increased scope of the JLOS to include land and family justice, though some concern was expressed about the lack of change in the management of the FCCs and, more generally, that many interventions have focused more in infrastructure and less on changes in attitudes in the JLOS institutions, both in terms of instilling a greater rights culture and sense of professionalism of JLOS personnel.²³³

Recommendations. Going forward, CSOs have identified a number of way JLOS could improve access to justice for the poor, including: better use of CSOs as feedback mechanisms between grassroots populations and JLOS, especially in the North; efficient disbursement of LABF funds; instituting a country-wide scheme to provide and regulate legal aid; better use of ADR by lawyers and magistrates.

The Private Sector

The private sector in Uganda operates within a context defined by national, regional and global factors, and aspires for sector specific growth in agriculture, manufacturing and attendant services. Its concerns regarding JLOS should be viewed in this context. These are only discussed briefly here seeing as the World Bank has private sector development initiatives in Uganda. The private sector refers essentially to the business community, and includes formal and informal business entities (PSOs) (e.g. industry organizations, major corporations, trade associations, professional bodies and small and medium enterprises (SMEs)). Informal PSOs (mainly SMEs) form a large component of the private sector,²³⁴ while the formal sector is more organized and engages with government, including the justice sector. The Private Sector Foundation (PSFU), an umbrella group of business associations and corporate bodies formed in 1995, has emerged as the focal point for private sector growth and engagement with government.²³⁵

Private Sector Concerns about JLOS. Many complaints have issued from the private sector about unethical and unprofessional practice of advocates, and lack of adequate

²³² Thus most of the cases handled by the LASPs have not benefited from the efficiency gains generated in JLOS programmes (e.g. criminal and small scale civil disputes).

²³³ Ovonji Odida, I: Mapping Possible Priorities for JLOS: its Operating Context and Next Priorities: Presentation at First National Justice Forum of JLOS, April 2005. CSOs note in particular that some JLOS institutions are responsible for serious rights abuses.

²³⁴ Private Sector Platform for Action 2005: A Synopsis of Private sector policy concerns and suggestions for policy reform. Submitted to Ministry of Finance, Planning and Economic Development for consideration in the National Budget 2005/6. April 2005.

²³⁵ Especially to implement the Medium Term Competitiveness Strategy for the Private Sector (MTCS).

disciplinary action over malpractices. Delayed judgments and lack of Commercial Court or ADR centres outside of Kampala, lenient penalties and political influence in judicial process are also key concerns. As discussed in Chapter 4, challenges remain with the efficacy and regulation of bailiffs in executing judgments. In the same connection, the private sector, especially the bankers still experience delay in execution of judgements due to political interference. There is still need for extensive law reform of various commercial law and the PSFU has made comprehensive proposals on this. The priorities for the PSFU for law reform include the Companies Act, the Credit Reference Bureau Act (to provide accurate information on credit-worthiness), Bankruptcy/Insolvency Act. In addition, trademark and intellectual property rights law, cooperative law, and the Trade Licensing and Customs Management Act are argued to need review to reduce business costs and remove delays in service delivery.

Concerns about corruption in the justice system and the need to enhance enforcement agencies remain a concern to the private sector. Despite reforms made in JLOS, court costs are seen still to constrain access to courts (e.g. at the TAT). A simplification of technicalities in legal rules for banks are a further area identified for reform. There is also a perception that attitudes in the judiciary are slanted against businesses and some businesses have thus decided that it is not worth pursuing smaller claims in court. The private sector, especially the banks also view provisions of LA98, requiring spousal consent for mortgaging land, as hindering financial activities and economic growth.²³⁶

In the same vein, the private sector is still very much inconvenienced by an inefficient Land Registry. The process of registration of transfers, mortgages and the making of searches still takes a longer time than is required for efficient delivery of services in the commercial sector. Finally, there are concerns that the police, particularly its investigative arm, is not effective enough for the private sector (e.g in cases of fraud).

Under SIP II, JLOS seeks to increase private sector participation in the implementation of its programs. JLOS plans to work closely with existing private sector apex organisations and association to identify, appoint and invite private sector representatives to all working groups with particular focus on the Commercial Justice Working Group. Several of these organisations have been involved with the Commercial Court Users Committee. It is planned that this Committee which has been useful in development of the Commercial Court will be extended to the TAT, URS and CADER.

²³⁶ S. 39 LA 98 prohibits either spouse from mortgaging, transferring or in any way dealing in a home where a family derives sustenance without written consent of the other spouse. This is intended to protect the interests of weaker spouses but the Banks have been found not to have regard for it in all transactions.

Financing of the SIP

Policy framework

In addition to providing the policy framework for poverty reduction, the PEAP sets the framework for government's resource allocation to poverty reduction. Public expenditure in Uganda is jointly financed by the Government and donors. This includes the Poverty Reduction Support Credits that have been advanced to Uganda by the World Bank since 2001. In the past, there have been a number of funding modalities including general budget support, Poverty Action Fund (PAF) support, budget support, earmarked budget support (e.g. to a sector), basket funding (e.g. proposed donor support to legal aid) and bilateral support normally through project aid, among others. GoU preference is for general budget support and since the beginning of FY 2004/2005 has introduced some budget reforms in order to ensure macroeconomic stability.

Government allocates resources through its Medium Term Expenditure Framework (MTEF) covering 3-5 years and the Long Term Expenditure Framework (LTEF) covering 5-10 years. The medium term plan implements the priorities of the PEAP, covering decisions related to all public expenditures, including those that are donor-financed, and works at three levels: macroeconomic consistency, inter-sectoral allocation and efficient use of resources within each sector. The MTEF determines overall resource availability through the ceiling set by the macroeconomic framework. This limits the resources that can be available for any of the government bodies and sectors.²³⁷ PEAP sets a number of criteria for determining public spending, and the government has identified a number of techniques to allocate funds.²³⁸

Key JLOS priorities related to pillar four of the PEAP (which includes justice, law and order) include implementing case backlog project and community service roll-out; tertiary education; strengthening prison farms; in the medium term, strengthening the manning and equipment of judicial services including the police. These priorities are linked to some of those identified in Pillar 5 such as expanding tertiary and secondary education and strengthening the community development function. The PEAP further notes that funding its priorities will be a challenge in the context of fiscal consolidation. Government's approaches to funding the PEAP priorities are listed as follows: ensuring service delivery is maintained and pension obligations met; continuing infrastructure programmes, phased over the LTEF; increasing expenditures in previously under-funded priority areas while in others restraining growth or cutting back on waste.

²³⁷ JLOS MTE

²³⁸ Criteria include a clear role articulated for the public sector and link to PEAP strategic priorities; priority according to the highest returns, projects fully costed and realistic, spending through existing structures. Techniques include cost benefit analysis; cost effectiveness analysis; public-private substitution; econometric and participatory methods.

Sectoral allocations

To show how the sector shares are expected to evolve over the long term, the PEAP gives LTEF sector ceilings for 2003/04 and 2013/14. The JLOS ceilings are projected as 162 billion shillings for 2003/04 (5.0% of the budget) and 403 billion shillings for 2013/14 (5.5% of the budget). This indicates that there will likely be no hope, both in the medium and long term, for GoU to increase the funds allocated to the JLOS or even that projected allocations will be made to the sector.

Table 7: Provisional Sector shares, 2003/2004 and 2013/14: US\$ billions

Sector	2003/2004	2013/2014
Security	332 (10.3%)	741 (10.1%)
Roads and Works	337 (10.5%)	1046 (14.2%)
Agriculture	101 (3.1%)	301 (4.1%)
Education	601 (18.6%)	1557 (21.1%)
Health	368 (11.4%)	1108 (15.0%)
Water	111 (3.4%)	260 (3.5%)
Justice, Law and Order	162 (5.0%)	403 (5.5%)
Accountability	144 (4.5%)	230 (3.1%)
Economic Functions & Social Services	292 (9.1%)	528 (7.2%)
Public Administration	377 (11.7%)	656 (8.9%)
Interest payments	245 (7.6%)	273 (3.7%)

Note: Sector shares are in parenthesis; sector shares do not sum to 100% because of unallocated budget resources. Source: PEAP as quoted in LTEF

Procedures for determining sector ceilings

After the 2004 PEAP, budget reforms in Uganda have entailed a fundamental shift in the method by which sector expenditure ceilings are determined. All sector expenditure ceilings are determined on the basis of allocating a centrally determined budget resource envelope for aggregate government expenditures, including donor projects, according to the GoU's strategic spending priorities, which are in tandem with PEAP priorities. This means that sector expenditure ceilings are determined independently of the resources which any donors propose to give to a sector, whether through project aid or sector budget support. This was meant to prevent a sector from obtaining an increase in its expenditure ceiling simply because donors were offering more aid to that sector.

The Poverty Action Fund ("PAF")

PAF was set up in 1997 to provide a mechanism to strengthen the pro-poor orientation of the budget. PAF resources are part of the pool of general budget resources in the Uganda Consolidated Fund and PAF expenditures are an integral part of GoU expenditures. The PAF consists of a subset of the GoU budget, which is considered to contribute directly to poverty reduction, notably primary education, primary health care, water and sanitation, agriculture and rural roads. The PAF subset of the GoU budget receives privileged

treatment, for example, an increased share of the GoU budget allocated to expenditures. PAF budget allocations are also protected from cuts within a budget and PAF expenditures are subject to much stricter reporting and monitoring requirements to ensure that the money is spent on the intended items of the budget. Programme funds for the JLOS have been PAF protected, with an increased percentage of the JLOS programme under PAF in 2004. The JLOS SWAp continued to receive protection under PAF till 2007 when an evaluation by MoFPED resulted in the withdrawal of PAF protection from JLOS. The JLOS has challenged the withdrawal of protection because there was no consultation with the sector.²³⁹

Financial performance of the JLOS

The JLOS BFP 2005/2006-2007/2008 pointed out that there was a steady decrease in the sectors' share of the national budget from 1994/1995 to 1999/2000 (from 9.07% to 6.7%). Thereafter the sector budget share was projected to remain between 6% and 7%. Donor funding to the sector in the 1999/2000 financial year (FY) accounted for less than 1% of the total donor funds and only 5% of the total expenditure of the sector. The JLOS share of the national budget began to decline in FY 2001/2002 and continued to decline as indicated in table 8, from 0.71% on 2002/2003 to 0.62% in FYs 2005/2006 and 2006/2007. The sector continues to operate on less than 1% of the total national budget.

Table 8: Consolidated National and JLOS Budget Performance from 2001 to 2007

Financial Year	National Budget		JLOS Budget		JLOS Share of National outturn (Shs.'000)	JLOS outturn (%)
	Total Approved Estimates (Shs.'000)	Total Releases (Shs.'000)	Total Approved Budget (UShs.,000)	Total Releases (Shs.'000)		
	a	b	c	d	e=d/b	F=d/c
2001/02	1918,710,000	1,895,010,000	8,790,000	6,520,000	0.34%	74.18%
2002/03	2,037,600,000	2,0932,380,000	15,230,000	14,800,000	0.71%	97.18%
2003/04	2,304,680,000	2,327,830,000	16,690,000	10,820,000	0.46%	64.83%
2004/05	2,445,820,000	2,422,680,000	17,580,000	16,470,000	0.68%	93.69%
2005/06	2,698,410,000	2,760,010,000	19,590,000	18,250,000	0.66%	93.16%
2006/07	3,067,750,000	Not available	18,890,000	17,030,359	0.62%	90.16%

Source: JLOS Progress Report presented to the 12th GOU, Donor Review

the government's reluctance or inability to fund the JLOS optimally compromises the sector's ability to maintain law and order and generally to administer justice fairly and transparently. It also compromises the quality of services offered as well as peace and security of the person and property, generally coming in the face of increased crime levels. It also leads to the increase in corruption within the sector institutions. The JLOS BFP further reports that since 2000/2001, ten development partners have supported the JLOS through budget support and direct project aid. In the absence of reliable and

²³⁹ Withdrawal of protection also resulted in breach of some agreements GoU had made with IDPs to fund the JLOS. The sector continues to advance the argument that JLOS activities contribute to the reduction of poverty by providing an enabling environment for investment, as well as helping the poor protect their property or enforce their rights over it and lobby government to restore PAF protection for the SWAp.

optimal GoU support, donors have become crucial in facilitating the reforms in the sector.

In particular, JLOS emphasizes a need to increase the percentage share of the recurrent budget because an increase in the capital budget for one year leads to an increase in the recurrent costs for the following year as programmes (and their recurring costs) are initiated by the sector institutions. During SIP I, the first half of the medium term was characterized by increased capital development, with the building of new courts, prisons and the establishment of more points of the sector institutions to serve the population. The successive decreases in budget allocations however greatly strained operations in all sector institutions.

JLOS Budget Outturns

The sector prepared and submitted a BFP for the FY2005/2006 – 2007/2008 to MoFPED. The actual budgetary requirement for the JLOS development budget was US\$ 42,720,000,000/=. The JLOS budget ceiling that had been given in November 2004 was US\$ 24.72 bn presenting a gap of US\$ 18 bn. Following that, there was a reduction in the MTEF ceiling to 19bn which widened the gap further to US\$ 23bn.

During the earlier years of the SWAP financial flows from the SWAP Development Fund to the institutions presented a great disparity in performance with some institutions performing over 75% (Judiciary, Government Chemist, Publicity Committee and DPP), with others like the MoGLSD (Local Council Courts) performing at 0%. This has improved over the years and the 2006/2007 outturns indicated a more balanced outcome with all institutions receiving above 80% of the funds budgeted. Table 31 shows the releases for each of the sector institutions for 2006/2007.

Table 9: Releases to sector institutions during FY 2006/2007

Institution/Programme	Annual (US\$. ,000)	Total (Shs.'000)	Outturn
Ministry of Justice and Constitutional Affairs	1,733,364	1,613,655	93.1%
Ministry of Internal Affairs	2,513,400	2,286,495	91.0%
Ministry of Local Government	100,000	100,000	100%
Ministry of Gender, Labour & Social Development	270,000	270,000	100.0%
Judiciary	2,334,000	2,120,748	90.9%
Uganda Police Force	2,798,564	2,382,285	85.1%
Uganda Prisons Service	3,462,079	2,937,998	84.9%
Directorate of Public Prosecution	1,370,500	1,269,888	92.7%
Chain Linked Initiative Programme	550,000	511,023	92.9%
Uganda Registration Service Bureau	185,000	185,000	100.0%
Uganda Law Reform Commission	832,500	775,000	93.1%
Judicial Service Commission	495,000	470,000	94.9%
Tax Appeal Tribunal	90,000	90,000	100.0%
Centre for Arbitration And Dispute Resolution	310,000	260,000	83.9%
Law Development Centre	450,000	450,000	100.0%
Uganda Law Society	165,000	135,000	81.8%
Programme Management	1,230,593	1,173,266	95.3%
Total	18,890,000	17,030,359	90.2%

There was an improvement in use of funds in FY2006/2007 as a result of a policy to release funds directly to institutions.

The biggest share of the budget was to sector recurrent expenditures (wage, non-wage and statutory) which stood at 86% of the annual estimates. Development expenditure is a very small in comparison, standing at 9.7% for JLOS development and 4.3% for Capital Development. This compromises the extension of services and reforms within the sector.

In conclusion, GoU still has a limited capacity to implement programmes within the sector. Of particular note, almost the whole budget for legal aid in Uganda is supported by funding from donor assistance. This was also the case for infrastructure development in the court system, and the Judiciary as a beneficiary of the SWAP Development Fund must wait for its share from JLOS to implement programmes. It is highly unlikely that funding for legal aid will shift to government in the short and medium terms. Concerted budget tightening may however enable government to implement programmes in the long term, especially if macroeconomic stability is maintained. For the time being, donor funding will remain important for the reforms being implemented within the sector.

Conclusions and Recommendations

The Terms of Reference for this Study limited the scope of the inquiry to outstanding challenges that had been identified by the JLOS MTE such as access to commercial justice, development of ADR, enforcement of judgements, and the perception of corruption in the commercial registries as well as within the legal profession. The Terms of Reference further required the inquiry to pay particular attention to three issues: the Commercial Court and the impact of the establishment of CADER on backlogs, the adequacy of legal education to meet sector needs and the provision of legal aid services to the poor in order to increase access to justice.

The decision to implement a sector wide approach to planning in the justice sector has proved worthwhile. The developments in SIP II give due regard to the lessons learned in the implementation of SIP I. The biggest lesson learnt by sector institutions is that long term and sustainable development cannot be achieved in isolation: it must maximise use of resources and linkages to partners in the field with similar goals and aspirations. Following are conclusions and recommendations regarding the three main issues stated above that were identified in the Terms of Reference for this Study.

The Commercial Court and CADER

The CJRP has been a success. However, concern is raised about prioritising commercial justice in a country where the larger part of the population are poor and engage in agriculture. Without detracting from its support to the CC, JLOS should initiate similar reforms as in that court within its new programmes on family and land justice.

The MPP at CADER was also a success. It led to change in some lawyers attitudes towards disputes and to quicker resolution of disputes in the CC. CADER mediators and members of the legal profession attached to CADER developed skills in mediation. However, lawyers still require sensitisation to the benefits of ADR as a means of enhancing their income and taking pressure off the courts. Magistrates and judges should also continue to receive training in ADR.

Recommendations:

- JLOS and IDPs should speed up rolling out developments in the CC to the other divisions of the High Court that have not yet benefited from the reforms: Land, Family and Civil. It would also be useful to look at the various ways in which civil as opposed to commercial justice could be improved in the subordinate courts. The development and implementation of a procedure to fast track disposal of small claims is urgent.
- In the short term the use of methods other than litigation to resolve disputes should be encouraged. The successes of CADER should be rolled out to other courts, especially in matters relating to land and the family. In the short term, efforts should be made to

sensitise lawyers and magistrates to ADR, especially making them understand the nature of disputes and stages of dispute resolution. The program of training lawyers and magistrates on ADR as an innovative tool for expediting case disposal embarked on in 2007, should be sustained and JLOS should identify funds to continue training lawyers and magistrates in ADR methods as well as to enable lawyers to specialise in mediation. In the long term, there is need to wholly integrate ADR in the curriculum at LDC or the Makerere FOL (with coordination on which takes the lead). The sector should devise means of equipping libraries with materials on ADR and facilitate lecturers to specialise in this field.

Legal Education and training

On the whole, the current system of legal education has proved inadequate to meet the changing needs of the sector as well as efficiently and professionally serve the general public. Legal education institutions are turning out large numbers of lawyers that are sometimes unable to carry out tasks required within the sector. The sector has not integrated legal education into its programmes. There are no coherent plans for employing young lawyers within the sector. The declining professional/ethical standards of lawyers continue to be of concern to the sector and the general public. The ULC and the LDC are ill equipped and short staffed and cannot efficiently and effectively carry out their mandates. There is also need for strengthening the human rights education for most of the personnel in the JLOS institutions as well as a need to raise ethical and professional standards.

Legal education institutions involved in this study have all come up with strategic plans that are related to sector needs. However, there seems to be very little or no coordination in deciding on steps to take to improve legal education. Institution plans appear to overlap which will result in duplication and wastage of scarce resources. It may also result in gaps in plans, leaving some sector needs out of them.

Recommendations:

- While it is appreciated that the function of planning for legal education falls within the mandate of the Ministry of Education and that there is no feasible structure for integrating legal education institutions into the JLOS, the JLOS should at the very least participate in making plans for legal education in its programmes. Legal education institutions should also be involved in planning within the sector so that they are practically aware of sector needs. The planned strengthening of the Judicial Studies Institute should include these elements.
- While it is appreciated that the function of planning for human resources is vested in the MoPS, intersectoral linkages are still encouraged. The JLOS should therefore craft a strategy to lobby MoPS and the Judicial Services Commission to make use of the large numbers of lawyers graduating from legal education institutions. The need to provide legal aid for the majority of Ugandans presents a good opportunity to put them to work within JLOS.

- LDC should be strengthened to efficiently and effectively impart professional skills to the large numbers of students graduating from the ever increasing tertiary institutions.
- The ULC should be expanded and strengthened as an institution and be facilitated to fully carry out its mandate of supervising CLE, legal education institutions and legal aid service providers and disciplining advocates and court clerks.
- In the short term Legal Education institutions should come together as a sub-sector in the JLOS and plan, in a Chain Linked manner, according to their mandates, and by synchronising mandates and functions to ensure that there are no overlaps.
- In the long term, legal education institutions should identify similar activities which can be implemented together, to create economies of scale, such as the establishment of libraries and resource centres. Legal education institutions would then also share the JLOS objective of generating efficiency gains and cost savings in their activities. They would also avoid issuing wish lists to GoU and IDPs as was the case with the JLOS institutions before the sector wide approach to development and planning.

Access to Justice for the Poor

There is need to implement the JLOS strategy to minimize the weaknesses of the sector in this regard and take advantage of opportunities for improving delivery of justice in order to effectively improve access to justice for the poor.

There is generally lack of a broader conceptualization of justice and access to it from a rights-based approach, as the foundation and guide for the JLOS programme. This has shaped both the priorities and implementation of the programme. Institutions that promote governance like the Inspectorate of Government and the Uganda Human Rights Commission are not part of the structure or framework and therefore are not supported.

JLOS reforms have hitherto focused more on the formal structures than the informal dispute resolution mechanisms available in Uganda, except the LCCs which are also established by law and are to that extent formal. While the LCCs are a convenient vehicle for the enforcement of customary/personal law, other institutions like clans, the church, Qadhi's courts and their effects on the administration of justice have not been identified.

Recommendations:

- In the short term, JLOS should continue to strengthen its partnership with CSOs in order to create feedback from the grassroots to JLOS institutions and make JLOS more visible in communities. Implementing the regulatory framework in place for CSOs delivering legal aid and establishing paralegal initiatives remains urgent.
- In the long term, JLOS should lead the process of developing a policy on legal aid for Uganda. Proper structure should be developed within the policy to contribute towards the establishment of a national body to manage legal aid funds and supervise the provision of legal aid.

- In the long term, JLOS should lobby government to institute a comprehensive country-wide legal aid scheme and introduce government support for both civil and criminal LASPs. The ULS should be supported to implement its pro bono scheme as a means of increasing services to the poor by the private sector.
- Again in the long term, JLOS should support LASPs to improve their strategy from short term provision of legal aid to individual clients to community support to achieve common needs that will effect change in people's lives. In this regard, JLOS ought to explore links with local governments and support their efforts in the reduction of poverty by empowering communities and vulnerable groups to use the law.
- JLOS should strengthen its linkages with watchdog institutions given the constraining factors in JLOS related to good governance (also a key PEAP objective).
- In the short term, continuous support should be given to LCCs to help improve the important role and quality of justice they have delivered. Implementation of the LCCs Act is an urgent issue. Efforts should also be made to enforce the fee structures provided for in the LCC Courts Regulations for fees in some LCCs appear to be a barrier to access especially in the rural areas.
- In the long term, there is still need to explore the linkages between informal dispute resolution mechanisms under customary and other laws and the formal justice system and exploit best practices from those systems in the administration of justice.

APPENDICES

APPENDIX A

Post	Salary Scale	Proposed Posts	Proposed Annual Salary
Administration General	U1	1	21,168,000
Deputy Administration General	U1	1	18,144,000
Commissioner	U1	3	54,432,000
Principal State Attorney	U2	5	60,480,000
Senior State Attorney	U3	10	100,170,000
State Attorney	U4	12	91,476,000
Principal Assistant Secretary/PRO	U2	1	9,712,260
Senior Accountant	U3	1	7,390,560
Accountant	U4	1	5,902,920
Records Officer	U4	1	5,902,920
Estates Officer	U4	2	8,537,760
Senior Personal Secretary	U3	1	7,390,560
Personal Secretary	U4	2	8,537,760
Senior Office Supervisor	U5	1	2,823,665
Assistant Records Officer	U5	1	2,823,665
Senior Accounts Assistant	U5	9	25,412,985
Office Supervisor	U6	3	6,513,948
Pool Stenographer	U6	3	6,513,948
Records Assistant	U7	5	6,644,400
Clerical Officer	U7	5	6,644,400
Office Typist	U7	5	6,644,400

Office Attendant	U8	12	11,276,772
Driver	U8	8	7,517,848
Total		93	482,060,771

Estimated cost of restructuring the Administrator General's Department

APPENDIX B

Estimated cost of the activities of the Uganda Law Council for one year

Item	Activity	Cost Uses
1	Disciplinary Committee expenses	189,298,500/=
2	Committee on Legal Education & Training	177,771,000/=
3	Inspection of advocates offices	60,885,000/=
4	Law Council Meetings	12,757,800/=
5	Office equipment and stationery	56,204,500/=
6	Furniture	20,295,000/=
7	Consultancy Services	10,000,000/=
8	Publicity	340,120,000/=
9	Travel Abroad	203,720,000/=
10	Motor vehicle and office maintenance	36,000,000/=
11	Utilities	19,000,000/=
12	Training	82,000,000/=
	TOTAL (USHS)	1,210,212,800/=
	CAPITAL EXPENDITURE	
1	Acquisition of motor vehicles	184,800,000/=
2	Office premises (Acquisition)	682,000,000/= ²⁴⁰
	TOTAL	866,800,000/=

²⁴⁰ Estimated at US\$ 400,000

APPENDIX C

Estimated Cost of Setting up Judicial Studies Institute

No.	Description	Cost (US\$)
1	Administration Block (i.e. Executive Director, 2 Registrars, 2 Secretaries, Cashier, Accounts, Records, Board room	120,000
2.	7 Classroom/seminar room (2 No. medium sized)	108,000
3.	Library/Resource Centre (including space for books, resources centre, ICT equipment and offices for library staff)	70,000
4.	Conference hall with communication equipment, sound absorbing facilities	140,000
5.	Dining with kitchen and canteen facilities	32,000
6.	Residential accommodation for 120 people	180,000
7.	Warden's houses – 2No. and staff houses, 8 No.	68,000
8.	Principal's house	90,000
9.	Computer Laboratory	35,000

10.	Training equipment (i.e. Projector, video facilities, flipchart, water dispenser, computers (20No.)	80,000
11.	Furnishing the college i.e. bedding and office furniture	200,000
	SUB-TOTAL 1	1,123,000
	ADD 10% CONTINGENCIES	112,300
	GRAND TOTAL	1,235,300

APPENDIX D

JLOS Legislative Agenda for FY 2006/2007

	Activity 2006/2007
	To Draft
	<ol style="list-style-type: none">1. Administration of Estates (Small Estates) (Special Provisions) (Amendment) Bill2. Penal Code (Amendment) (Hijacking and Surrender Offences) Bill3. Interpretation Bill4. Qadhi's Courts Bill5. Trademarks Bill6. Trade Secrets Bill7. Subsidies Bill8. Companies Bill9. Partnership (Amendment) Bill10. Insolvency Bill11. Mortgage (Amendment) Bill12. Personal Securities Bill13. Hire Purchase Bill14. Contracts Bill15. Geographical Indications Bill <p>Draft other Bills, as required, to give effect to the policies of relevant Government Departments.</p>

APPENDIX E

OUTLINE OF CURRICULUM FOR JUDICIAL STUDIES INSTITUTE (2007-2008)

Training modules offered for the judiciary

Judicial officers induction module
Judicial officers continuous education module
Judicial impartiality, independence and accountability course
Judicial efficiency course
Judicial effectiveness course
Management course
Life skills course
Access to criminal justice and sentencing course
Access to commercial justice course
Access to civil justice
Special aspects of the law of evidence course
Specially tailored training module for trial judges
Specially tailored training module for appellate judges
Gender and Human rights course
Juvenile justice course
Court registry staff induction course
Registry staff special skills module
Registry staff continuous education module
Court interpreters special skills course
The public and the judiciary
Specially tailored judiciary administrative, non-core and support staff course
Specially tailored module for all accounting offices and personnel managing judicial resources
Introduction to the civil service and departmental standing orders, regulations and written standing orders
Professional judicial secretaries training module
Specially tailored training module for judicial ICT personnel
Administration of justice skill training module for land tribunal members

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Appendix

List of Interviewees

Ms. J. F. Kiggundu Ag. Administrator General Ministry of Justice and Constitutional Affairs Amamu House, George Street Kampala	Dr. Sylvia Tamale Dean, Faculty of Law Makerere University Kampala
Mr. Justice G. Kiryabwire Judge, Commercial Court Division High Court of Uganda KAMPALA	Mr. Justice S. Manyindo Chairman, Judicial Service Commission KAMPALA
Mr. Haduli Registrar, Commercial Court Crusader House Kampala KAMPALA	Mr. F. Kitoogo Principal Information Management Officer High Court of Uganda KAMPALA
Mr. G. Namundi Inspector of Courts High Court Of Uganda Kampala P.O. Box KAMPALA	Mr. H. Adonyo Registrar Planning and Development (Judiciary) Strengthening the Judiciary Project George Street KAMPALA
Ms. Evelyn Edroma Justice, Law and Order Secretariat Ministry of Justice and Constitutional Affairs KAMPALA	Ms. H. Obura Secretary, Uganda Law Council Ministry of Justice and Constitutional Affairs KAMPALA
Mr. E. M. Wante Director Law Development Centre KAMPALA	Ms. Joyce Werikhe Secretary/Registrar of Students Law Development Centre KAMPALA
The Hon Justice Ogoola Principal Judge High Court of Uganda KAMPALA	Mr. Donal Cronin Development Atache" Embassy of Ireland KAMPALA

Mr. F. Atoke Principle State Attorney Administrator General's Department Ministry of Justice and Constitutional Affairs KAMPALA	Ms. Miriam Namutebi Deputy Administrator General Ministry of Justice and Constitutional Affairs KAMPALA
Mr. Aggrey Wagubi Principle State Attorney Administrator General's Department Ministry of Justice and Constitutional Affairs KAMPALA	Ms. Lillian Sentamu Registrar, Centre for Arbitration and Dispute Resolution Commercial Court KAMPALA
Ms. Flavia Munaaba Executive Director Public Defender Association of Uganda KAMPALA	Moses Adriko President, Uganda Law Society Adriko & Karugaba, Advocates KAMPALA
Ms Jane Musoke Executive Director Uganda Association of Women Lawyers Bukoto Street KAMPALA	Ms Announciata Kampire Head of Conflict and Dispute Management Department Uganda Association of Women Lawyers KAMPALA
Ms Solome Nakawesa Coordinator Uganda Women's Network KAMPALA	Godfrey Bahagwa Private Sector Foundation KAMPALA
M. Kikoni Chairperson Uganda Institute of Bankers KAMPALA	Ms Sarah Kulata Basangwa LSSP Secretariat Ministry of Water, Lands and Environment KAMPALA
Ms Esther Loeffen Chairperson JLOS Donor Group Royal Netherlands Embassy Rwenzori House KAMPALA	Ms. Rebecca Nyonyi National Coordinator National Community Service Programme Ministry of Internal Affairs KAMPALA
Mr. John Ochepe Elanyu Arutu Family Division High Court of Uganda KAMPALA	Hon. Ms. R. A. Kadaga Deputy Speaker Parliament of Uganda
Ms. Dorothee Hutter In-coming Chairperson (2005/2006) JLOS Donor Group GTZ KAMPALA	

List of People Consulted in March 2008

Justice Benjamin Odoki Chief Justice High Court of Uganda KAMPALA	Ms. Joyce Werikhe Secretary/Registrar of Students Law Development Centre KAMPALA
Honorable Fred Ruhindi Deputy Attorney general/ Minister of State for Justice and Constitutional Affairs. KAMPALA	Mr. J. Shallita Commissioner for Police KAMPALA
Mr. Richard Buteera Director of Public Prosecution KAMPALA	Mr. T. Ochen Commissioner General of Prisons KAMPALA
Mr. Ralph Ocan Secretary to the Judiciary KAMPALA	Mrs. Jane Kiggundu Acting Solicitor General KAMPALA
Mr. Lawrence Gidudu Chief Registrar – Courts of Judicature KAMPALA	Mr. Daniel Muwolobi Embassy of Ireland KAMPALA
Mr. Muhanguzi Kashaka, Secretary Judicial Service Commission KAMPALA	Mr. H. W. I. Otim Commissioner Juvenile Justice, Ministry of Gender Labor and Social Development KAMPALA
Mr. Frank Nigel Othembi, Alternate/Deputy Chair Technical Committee JLOS KAMPALA	Mr. Julius Odwee Deputy Inspector general of Police KAMPALA
Mr. Oscar Kihika President Uganda Law Society	Ms. Esther Loeffen Royal Netherlands Embassy Kampala
Ms. Evelyn Edroma Senior Technical Advisor Ministry of Justice and Constitutional Affairs	Mrs. Robinah Rwakoojo Principle State Attorney Ministry of Justice and Constitutional Affairs

Bank staff and consultants who worked on the study

Name	Title	Unit
Minneh Kane	Lead Counsel	LEGJR/LEGES
Edith Ruguru Mwenda	Senior Counsel	LEGAF
Barbara Magezi Ndamira	Public Sector Specialist	AFTPR
Lady Justice Irene Mulyagonja Kakooza	Consultant	
Anne-Marie Mtonyi Mecca	Consultant	LEGJR
Adriani Di Giovanni	Counsel	LEGST
Rosemary Mugasha	Team Assistant	AFMUG
Sarah Nankya Babirye	Program Assistant	ECSPE