



**INTERNATIONAL LAW INSTITUTE-UGANDA
AFRICAN CENTRE FOR LEGAL EXCELLENCE**

Report on the National Consultation Process: Conference on Legal Empowerment

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

Background

The International Law Institute – Uganda African Centre for Legal Excellence (ILI-Uganda) in collaboration with the Commission for Legal Empowerment of the Poor (Legal Empowerment) held a Ugandan National Consultation Process on Legal Empowerment of the Poor from 24 – 25 November, 2006 in Kampala. This Process began with the commissioning of four papers on the themes that Legal Empowerment is examining under its mandate – Access to Justice and the Rule of Law, Property Rights, Labour Rights and Entrepreneurship. These formed the foundation for Focus Group Discussions that were held at ILI-Uganda and the conclusions from these in turn informed some of the discussions at the conference.

The conference attracted over 60 participants from various backgrounds and sectors. It provided a platform for new voices to be heard in discussions on the various themes and this was recognized by a number of participants. It was clear from the breadth of discussion that there were many pertinent concerns to be raised by the group, many of whom did not get opportunities to share views in gatherings of this scale.

The Chief Justice of Uganda, Hon. Justice Benjamin Odoki made the opening remarks. Justice Ogoola, the Principal Judge for Uganda also made remarks and chaired the Access to Justice and Rule of Law session. Commissioner Hilde Johnson and Cate Ambrose, represented Legal Empowerment. A full list of participants is included in a separate document.

Key Issues That Arose from Discussions

- The poor, and especially the poorest, are not adequately involved in law-making and law-reform processes in Uganda. Their realities and concerns therefore tend to be ignored and there are instances where laws that are enacted further marginalize them. Coupled with limited education and awareness-raising, the poor maintain a weak grasp of the laws and their rights. Weak implementation also exacerbates matters.
- Throughout the discussions, the rigidity and impracticality of the existing laws was underlined. Inadequate consideration is given to the fact that many Ugandans, the majority of whom live in the rural areas, are bound by traditional norms to varying degrees. Whereas some of these customary laws are not progressive and may negatively affect other rights, some of the norms are beneficial. These norms require identification

and examination followed by formalisation through documentation, codification, digitalization etc., ensuring that unnecessary bureaucratic procedures and costs are kept to a minimum.

- In Uganda, policies in the four highlighted themes are non-existent or remain in draft form. There is no land policy and the policy on employment has been in the pipeline for over a decade. The informal sector, and small-scale entrepreneurship remain sidelined as the focus remains on attracting foreign and large-scale investment. It was recommended that the long-awaited Labour policy be enriched before its release in March 2007, and the policies on industrialization and vocational training be finalized. Bridging the gaps caused by the lack of clear and representative policies, combined with the challenge of implementing existing laws, would be a contributory factor to legal empowerment of the poor.

Overview of the four key sessions

Access to Justice and the Rule of Law

It was acknowledged that the Executive Council Courts run by the Local Council (LC) Chairmen are the first port of call for the poor and those at the grassroots seeking legal redress. However, there is concern about the quality of justice being dispensed at this level. Many LC Chairmen have little or no knowledge of the law yet, for example, they oversee complicated cases on land that come before them, acting beyond their limited jurisdiction. There is no doubt about the importance of these courts and it was agreed, and underscored by both the Chief Justice and the Principal Judge, that the Executive Council Courts should be strengthened and supported. While there is an effort to dispatch more magistrates across the country, there can be difficulties in posting qualified legal officials to remote areas, particularly where there is insecurity. The LC Chairmen, on the other hand, are elected and are located throughout the country. It was important to address issues of precedence, and getting proceedings recorded in these courts. It was also recommended that best practices from these courts be documented.

With regard to the formal court system, lessons learned from the success story of the Commercial Courts in Uganda, should be applied to increase efficiency and speed. Case proceedings in the Commercial Courts have been drastically reduced to an average of seven to eight months per case. Legal aid should be considered for the poor.

Property Rights

With respect to legal empowerment of the poor, issues on property rights in Uganda tend to focus on land. The poor are disadvantaged when it comes to owning, maintaining, mortgaging and disposing property. Customary laws play a key role in the ownership and transfer of property especially among the poor. The lack of individual rights in these laws means that women and children are open to exploitation. Widows can only hold land in trust and when they die, it is not uncommon for their children to be thrown out of the land. Banks and Micro-finance institutions also do not recognize user rights. Many of the poor are in the situation where, because they are holding land in trust, cannot use the land to access credit.

With no access to funds, they cannot own property and they remain in a cycle of poverty. It was recommended by two women groups present that involving the poor in income-generating activities was vital in steps towards assisting them to acquire property. Corruption and fraud was also highlighted, especially affecting the poor who are not adequately compensated, or lose, their property.

Entrepreneurship

Small-scale entrepreneurs and those in the informal sector feel marginalized in favour of foreign and big investors. Participants discussed the ‘high mortality rate’ of small-scale businesses. These entrepreneurs should unite under associations where they can be supported to grow and their technical and business skills should be enhanced. The need for simple, decentralized registration procedures for businesses, and ensuring that taxation is not viewed as a disincentive. Business Promotion Centres are also important. Bigger corporations should collaborate with small entrepreneurs by either mentoring them or working directly with them as in the case of the lauded UNDP-funded COVE model where Uganda Breweries purchase Barley from 2,500 small-scale farmers in Kapchorwa and Masindi, providing them with a reliable source of income and allowing them to access credit without security. Uganda Breweries profit margins have also risen as a result of the collaboration.

Labour Rights

There was a call to define terms within a localized framework. The informal sector was in fact the traditional sector – dynamic, modernized and marginalized. The informal sector could accurately be termed the “Jua Kali” sector, an East African term literally meaning “harsh sun” denoting those (mostly manual labourers and artisans) who work under harsh and difficult conditions. The decent work agenda is lacking in both the formal and informal sectors and seen as not affordable and relevant for the informal sector. It was believed that there was no success story of the decent work agenda globally. The lack of a policy was negatively affecting labour rights in the country. The new Employment laws that came into force as a result of lobbying by various stakeholders, need to be implemented. There is a lack of a minimum wage in Uganda. Difficult employment conditions in various areas were mentioned such as teachers in private schools and Tri-star¹ employees.

Bringing about Necessary Change

These are some of the recommendations resulting from the two-day conference:

- **Recognition and formalisation of traditional norms and practices**

There is a general feeling that Uganda has discarded reference to customary laws and traditional practices in favour of western-styled and based laws, definitions and policies that are too rigid to cater to the practical realities on the ground. Acknowledging that there are customary laws and practices that are destructive and marginalize groups, more analytical reference must be made to these norms. Whereas there has been some effort to codify some aspects of these laws, this has not been sufficient.

¹ A clothing manufacturing factory supplying apparel under the African Growth and Opportunity Act (AGOA).

Policies and laws that are written based on actual grassroots consultation would provide the background to the possible convergence of the formal and the customary (often extra-legal) norms – “*corpus juris Ugandana*,” as suggested by the Principal Judge of Uganda, Justice Ogoola, in harmony with international standards but customized for Ugandans. This would also inform on practices that should be legislated against. Analysis of terms such as informal sector should be examined within the Ugandan context to ensure that definitions are inclusive. It has been recommended that the informal sector be defined in the East African context as including all those who work “under harsh conditions” and could also be viewed as a dynamic and modern “traditional sector.” This sector should be valued as investors in their own right. In the labour sector, with regard to social and health insurance schemes, traditional norms should be protected and strengthened. Traditionally, there is the “munno mukabi” (friend in need) practice. It was recommended that the Government and the ILO should support these self-sustaining programmes.

- **Education and skills development:**

Generally, it is important for the poor to know and understand their rights, and this was also highlighted in the sessions regarding Property and Labour. Involving the poor in the law-making process ensures that their views and experiences are heard, but also ensures their knowledge and understanding of the laws. This enables them to demand for implementation. It is also recommended that key legislation is translated into local languages.

Skills development is a crucial component in uplifting the poor. Uganda’s current curriculum does not give much attention to practical and vocational training. It is also necessary that Micro-finance initiatives are implemented hand-in-hand with skills development programmes.

Business promotion centres around the country should be set-up. Where possible, community-based trainers should be used to give support to the poor with regard to entrepreneurship. It was recommended that the Probation and Welfare as well as the Community Liaison officers be used to reach the poor. Recognition should also be given to skilled craftsmen regardless of their formal educational achievements. The Uganda Women Entrepreneurs, for instance, has an annual Achievers Award which is given to women across the country.

- **Encouraging the minimization of bureaucratic procedures and costs**

The Chief Justice said: “We talk about a One-Stop Centre for investors, but where is our one-stop centre for small investors?” Business registration should also be decentralized from the capital city (Kampala) because the trip is too costly for many struggling to make ends meet. Registration procedures should be simplified and take a short period of time. Various costs related to registration should also be kept at a minimum if those in the informal sector are to be encouraged to formalize. Taxation should not be a disincentive and people should be provided with accurate information.

What Institutions are crucial and what will be their role?

The Justice Law and Order Sector is crucial to any initiative. Already incorporated at the Consultation Process was a Senior Technical Advisor on JLOS with the Ministry of Justice and

Constitutional Affairs; Esther Loeffen, Legal Advisor on JLOS with the Embassy of the Netherlands who are donors; and the Chief Justice as well as the Principal Judge who chaired the session on Access to Justice and the Rule of Law. The Uganda Law Reform Commission is also a crucial institution in this sector. It is worth involving the Uganda Law Society especially to discuss areas of Legal Aid and compulsory *pro bono* work. In light of the findings from the consultation process, it would be relevant to include LC Chairmen.

The Ministry of Finance and Economic Planning is a key implementing institution, and disburses funds to different initiatives. They are also the implementing institution for the Poverty Eradication Action Plan (PEAP) in Uganda.

The Ministry of Gender, Labour and Social Development

This ministry houses the Labour and Gender departments, both of which are important in the implementation of any related initiatives. The Principal Legal Officer from the Labour Department was a discussant during the conference.

Other institutions to involve include:

The Uganda Human Rights Commission

Civil Society organizations: A general range of these can be found in the organizations that took part in the consultation process, among others. They include: CEEWA, FIDA, Uganda Land Alliance, UCOBAC etc

Trade Unions and various Associations of Entrepreneurs

Banks and Micro-finance institutions