



**AID EFFECTIVENESS AND CIVIL SOCIETY: EXPERIENCES
FROM THE JUSTICE LAW AND ORDER SECTOR OF
UGANDA**

**By Evelyn B. Edroma
Senior Technical Advisor, Justice Law and Order Sector
Uganda**

Presented to a Seminar on Aid Effectiveness: The Paris Declaration and Its Implementation, organized by the Austrian Foundation for Development Research in Vienna, Austria May 30, 2007

Introduction¹

The Justice Law and Order Sector (JLOS) is a reform process ongoing across the entire justice sector through a sector wide approach (SWAp) to address the systemic weaknesses in the justice system that were compounded by lack of a clear policy framework for all the justice agencies to deliver quality justice efficiently and effectively. Today, all funding for the agencies comprising the JLOS support a single policy and expenditure reform program under the leadership of the Government of Uganda (GoU). The reform program, which is strategically planned and aligned to the poverty reduction strategy of Uganda, is a sustained government-led partnership with donor agencies and other stakeholders. This will be illustrated by drawing on lessons learnt by the JLOS in its efforts to partner with development partners and Civil Society Organizations (CSOs) as a way of enhancing aid effectiveness.

Development of the Justice Reform Policies and Strategies

The Government of Uganda committed to reform the justice system in 1999 under the leadership of the Ministry of Justice and Constitutional Affairs. The multiplicity of institutions in the JLOS with different priorities and diverse approaches to justice delivery meant that a unified policy framework and strategy for reform was important to ensure that all the institutions operated in a coordinated manner towards a common goal.

The key issues addressed by JLOS including cross cutting issues e.g. human rights were placed at the centre by identifying them as objectives. The areas for intervention were integrated into the sub results, with activities and performance indicators, making it easier to plan, budget and monitor them. The JLOS incorporated the real issues that people desired to see improvements in with a rights based focus, such as a fair and speedy solution to land disputes or a safe forum to be heard for victims of domestic violence. This has raised public expectation and created a danger of overloading the agenda. However, we have learnt to maintain realistic, practical and achievable approaches for impact related results.

¹ This paper is informed by several presentations from the JLOS Reform Program from 2000 to date; and a Research by Action aid International & CARE on Direct Budget Support in Uganda: Its Implications on Policy Engagements & Funding for CSOs, 2006

From the onset of developing the justice strategy, the JLOS regarded the Ugandan citizens as the beneficiaries of the reform who should not passively wait for benefits of development processes; rather they should be actively involved directly or indirectly through representatives or CSOs. It had been observed that the process of developing national development strategies has largely limited the involvement of CSOs & hence ignored them as serious partners who can influence policy processes.

The justice reform strategy was therefore developed through a participatory and consultative process. Consultations were not held with only the JLOS institutions, but also with CSOs whose input was obtained through series of local level seminars held countrywide, a national justice forum, and meetings at which the reform strategy was validated. In addition, independent reports compiled by CSOs on the JLOS and a Mid Term Evaluation Report of 2004 that assessed the justice system from key stakeholders' perspectives informed the priorities and strategies for intervention.

The JLOS learnt that increased access to policy processes during consultation must provide an assurance to CSOs that their participation is fair and effective. The JLOS demonstrated its sincerity and commitment by adopting the independent and shared views of CSOs. Where the final decisions were taken, any alterations to policy were not far removed from what CSOs initially proposed or anticipated. For example their proposal on expansion of the focus of the reforms beyond commercial and criminal justice to include land and family justice as key concerns of the poor; and the commitment to use 30% of the JLOS resource to improve justice delivery in conflict affected areas were incorporated into the strategy.

Developing the reform program meant identifying strategies that would improve law, policy and practice. As such, the JLOS took time to dialogue and negotiate with stakeholders to build consensus with "buy in" on the strategies as a way of managing diverse expectations into a common and realistic plan. Where issues from CSOs were not input, the JLOS provided explanations and encouraged them to conduct in-depth research to develop convincing policy alternatives; in addition to keeping the issues on their CSO advocacy agenda for engagement with the JLOS. This approach prevented the JLOS from getting caught up in the planning phase since it was able to develop its SIP II within 8 months, allowing for implementation of reforms.

It also became apparent that CSOs are not always perceived as real and true representatives of the people because they either do not effectively show that they are in touch with the communities or they are not seen to exist for a common good but for personal interests. The JLOS therefore consulted a cross section of key external stakeholders including the private sector, development partners, members of Parliament, other GoU sectors and independent reports to obtain a fair representation of the people's aspirations. The justice reform strategy became an all inclusive and country driven process. Its ownership was not interpreted narrowly to mean ownership by Government alone, but by all stakeholders. This was achieved by emphasizing consultation with all the stakeholders at key stages of developing the contextualized and content specific strategy – the Strategic Investment Plan (SIP II).

Institutionalization of the Reforms

There was initial skepticism about the benefits of the reform strategy since it was considered another GoU initiative that would use resources without implementation. The JLOS adopted a participatory approach in institutionalizing the reform process. All JLOS institutions are represented in the established management structure that is coordinated by the Ministry and the JLOS Secretariat. Continuous dialogue between all the institutions is ensured through regular meetings to cultivate the required interest, support, commitment and ownership at political, policy and technical levels of the reform program particularly within Government.² We have now registered positive attitudinal change towards the reform from the political to the technical level.

Within the SIP II framework, general GoU-Donor Partnership Principles 2003 provide mechanisms for collaboration and coordination for more effective development partner contribution to the reform process. Specifically, this is through donor coordination and a clear relationship with JLOS. A JLOS Development Partners Group for example, enables them to concretize issues amongst themselves in order for them to speak with one voice. A unified group has lessened pressure on Government to respond to a multiplicity of interests, requests and priorities, some of

² The Technical Committee composed of senior/middle level technical managers meets every two months while its Working Groups meet monthly; The Steering Committee headed by the Solicitor General with membership of Permanent Secretaries meet quarterly; and a Leadership Committee headed by the Chief Justice of Uganda and the Ministers of Internal Affairs and Justice and Constitutional Affairs as members, Finance and Economic Planning and Public Service meet at least twice a year.

which might be conflicting. The partnership is further enhanced and simplified through one reporting and accounting mechanism, a lead development partner who speaks on behalf of the rest, one evaluation methodology and one financial audit.

It is fair to say that there has been significant progress in identifying roles and developing partnerships between development partners and JLOS. However, development partner coordination has not been easy and has required skill and continued negotiation amongst themselves. It has placed a responsibility on the development partners to respond to the GoU argument that they should synchronize their planning, review and monitoring processes with the JLOS system. This way, they participate in the same broad justice reform with GoU, (however with GoU taking the lead) and which they should view as a common exercise for all, in which they participate as one group of stakeholders.

The JLOS SIP II also created a new basis and framework for the partnership between GoU and CSOs that in the past had been adhoc and generally characterized by mutual suspicion and distrust. CSOs had noted the need to challenge the framework they claimed they were compelled to work within since they could only discuss that which GoU and development partners deemed important or relevant. They wanted a framework that allowed them to consider alternative ideas, but such a framework was generally prohibited within the system of getting invited to policy spaces.

In JLOS however, formal and designated avenues were introduced on the JLOS Coordination Committees at district level for CSOs' participation where local level practice issues are harnessed to seek solutions or to inform policy; and at the thematic technical and user committees at national level. In addition to their participation in the JLOS reviews and forums, CSOs are able to participate freely in influencing the agenda, policy, planning and implementation. Where CSO have seen the JLOS avenues to be inadequate for them to fulfill their roles, we have also challenged them to create spaces for GoU and not to simply wait to be invited. This conditioned participation should give increase to civil society coordination and policy engagement in JLOS

We have established, however, that providing avenues for CSO interaction in JLOS does not mean that they will take them, or do so effectively. Recent experience and research in Uganda show that the policy capacity of CSOs is hampered not only by lack of understanding of GoU processes and capacity for effective advocacy that can cause decision makers to act, but also the vast array of opportunities that now exist for them to engage in the development, review and implementation of strategies in all sectors. This makes it difficult for CSOs to keep abreast with and get engaged on all processes.

The JLOS has tackled this by formulating clear entry points of what the CSOs' expected and potential monitoring, advocacy and feedback roles could be. It involved the JLOS working with CSOs to prepare them for their involvement; a process that is time consuming. In this, the JLOS has consciously avoided creating multiple entry points to ensure that it strategically targets relevant and credible CSOs to focus on thematic areas and who can bring technical expertise to the reform. The JLOS is considering the option of Partnership Principles with CSOs to provide a better understanding of each other's roles and responsibilities for stronger partnerships outside its management structures.

Implementation of the Reforms

Factual studies and surveys, and public perception had confirmed a negative bias of the justice system. The reform activities were therefore integrated into the usual and ordinary course of business of institutions through implementation mechanisms derived from current government structure. This way the JLOS has used development aid to strengthen institutions in a sustainable way, by also minimizing the "project" approach gains which are often eroded after the project.

Previous perceptions of a corrupt and inefficient justice system made it less desirably to invest in. The JLOS is currently not a priority like education and health. Despite arguments to compete for resources within the GoU macro economic framework alongside other sectors, the JLOS efforts to align to the PEAP and present a clear case in submissions on the national budget have still not resulted in improvements of its percentage share of the national budget. Only 10.9% of the justice development

budget has a guarantee of 100% disbursement notwithstanding budgetary pressures following ITS protection under the Poverty Action Fund. The reality is that actual disbursement of funds from the Ministry of Finance have remained unstable and to an extent unpredictable for the JLOS to meet its core obligations in the reform, hence impacting on its ability to meet agreed milestones or perform satisfactorily.

Rather than give up, the JLOS has kept momentum to redouble efforts to illustrate the link to poverty reduction and to focus on the reform through regular management meetings. In view of competing interests within the limited resource envelope, the JLOS has prioritized activities and re-conceptualized justice constraints in a holistic manner. For example, the JLOS has agreed that strategic inputs that yield cross-institutional benefits should receive higher priority than any other. The holistic approach means that the Prisons Service has had to view congestion as not purely one about inadequate accommodation, but also to realize that slow case throughput by the Police, the Prosecutors and the Judiciary contribute to congestion. With this broader view of the problem, the Prisons Service is more likely to support an intervention that may in fact exclude a direct financial or physical benefit to them because in the medium term, it would de-congest the prisons. This approach has registered real gains such as case back log reduction, increased cooperation and understanding of shared constraints, rationalization of resource consumption, and increased commitment to the reforms.

The challenges for JLOS in this process is that the systems and processes at sector level have sometimes been difficult to translate to improvements at an institutional level, especially given that JLOS comprises 10 different institutions. This has sometimes been influenced by prevailing political platform. The JLOS began a sustained campaign to engage political decision-makers to view the reform as a way of making the JLOS a viable sector for investment. This has included establishment of a Leadership committee comprising Ministers who present JLOS concerns to Cabinet and Parliament, presentation of a Cabinet Information Paper to inform and enlist support for the justice reforms. Awareness creation activities have also been undertaken to educate the JLOS institutions as well as the public about the need for a policy shift to reform on the one hand, and to raise the JLOS profile on the other.

We have found it also useful to engage with technical officers at mid level in the daily management of the reform program because the JLOS cannot rely fully on the political leadership where there are more frequent changes that result in set backs. The JLOS institutions have had to carefully balance representatives to meetings who have the decision-making power to commit their institution to implement decisions agreed to collectively, with change agents who are able to continually drive the reform program and still have an interest in the quality of service delivery. Emphasis to increase understanding and appreciation of the reform within institutions has therefore been at the technical mid level management whose awareness of the reforms make them allies in keeping the leadership at political and policy levels interested in the reforms in a sustainable way.

The JLOS recognizes the complementary role of CSOs in service delivery by providing a broad and encompassing framework for CSOs to execute and discharge their functions independently, amongst themselves or collaboratively with JLOS towards the common objectives under the SIP II. For example, legal aid provision by CSOs minimizes financial bottlenecks that hamper access to justice and the civic education that CSOs conduct empowers the public to claim their rights. These activities complement the efforts by JLOS and contribute to enhancing access to justice that the JLOS aspires to achieve.

Collaboration with CSOs presumes the existence of a coherent strategy within their own service delivery, and a willingness to engage constructively amongst themselves and with JLOS. We have seen CSOs whose priorities and activities are solely driven by availability of funds, or who are engaged in service delivery that enables them to sustain their activities through funding, and others who have a minimal base upon which they have formulated their policies or workplans. Although CSOs service delivery allows them to draw upon a grass roots base that Governments increasingly accuse them of lacking, the CSOs are also financed by development partners. They have largely worked in an uncoordinated manner and more in urban areas, which limit equitable geographical distribution of their services. The relationship amongst CSOs, and with the JLOS tended to be competitive and less complementary.

The JLOS has advocated for CSO coalitions to deliberately assist in networking and collaboration within and outside their organization as an essential way of meeting their goals. E.g. the creation of the Legal Aid Service Providers Network that is supported through a Legal Aid Basket Fund (LABF) brings CSOs together in a strategic forum for them to better address and articulate legal aid issues and to liaise with JLOS representatives who sit on the LABF Advisory Board. The Uganda Land Alliance is another consortium of national and international NGOs that collectively lobby and advocate for fair land laws and policies that address land rights of the poor, disadvantaged and vulnerable groups.

CSO networks and coalitions are frequently problematic, always struggling to build relations of trust between the different member CSOs. However, their benefits such as improved information sharing, coherence, coordination and policy dialogue strengthen ownership of CSO agenda as well as activities, thus eliminating the danger of questioning each others legitimacy in representation on various activities. On the other hand, they minimize transaction costs when dealing with GoU. For the JLOS, it has eased and strengthened the dialogue; and made the JLOS more confident that the CSOs are well organized with clear feedback mechanisms.

Joined up Aid Programming

Implementation of the JLOS SIP II is financially supported through sector budget support by a group of development partners who recognize it as a representation of a negotiated and agreed to plan. This approach presents an overview of all available resource to the JLOS in a predictable and less fragmented way; limits duplication and wastage of resources; and encourages efficiency in management of resources with the benefit that resources are spent on priorities set by the country.

Development partners, have different interest areas, even within the context of a sector program. For some, it is sufficient to report on quick impact projects, and thus justify expenditure, while for others the focus is on the policy objectives and outcomes of the sector and its relevance to the overall GoU policy for development. This is reflected in the existing divide between budget and project support donors within JLOS. The concern for JLOS has been that existing projects create parallel

processes and structures, distort priority setting and planning because they draw out of existing resources within the JLOS Medium Term Expenditure Framework (MTEF) without any additional funding to the sector. To minimize this, efforts have been made to rationalize and integrate existing parallel processes into the mainstream reform, and in future, the JLOS will veto all new proposed projects and initiatives as a way of encouraging support for them from available resources.

It is clear that the inflexibility to maintain macroeconomic stability through the MTEF ceilings means that all aid pledged by partners to the JLOS may not be accepted and some priorities will therefore remain unfunded.³ Experience however has shown that development partners working transparently and in partnership with JLOS within the existing budget and processes is a better approach than bi-lateral and *ad hoc* donor approaches that are unsustainable and which tend to undermine the SWAp. In JLOS, donor coordination has been useful in emphasizing the commitment from development partners to buy into the macro economic framework and support GoU in implementing the justice reform strategy through a SWAp, by streamlining the aid mechanism.

Over the years, there has been a disproportionate increase in the JLOS development budget compared with the recurrent budget. For aid to be effective JLOS has encouraged concerted political effort by JLOS and its partners to lobby GoU for a commitment to sustain development activities by either increasing the recurrent budgets with a corresponding adjustment of the MTEF ceiling; or allowing the JLOS to trade a percentage of its development budget for a proportionate increase in the recurrent budget. Efforts have also been made to identify ways of increasing the JLOS budget from within through efficiency savings to free more funds for operations.

Recent research in Uganda, Tanzania and Malawi reveals that implementation of joined up funding through budget support was more biased towards Government, such that although the aspect of CSOs was talked about, it was not streamlined for clear strategic implementation. Therefore, over the years CSO funding has changed without establishing a clear framework for developing both newly identified roles and

³ In FY2001/2002 the JLOS could not accept all US\$15Million pledged by donors because of the MTEF ceilings

how these roles could be met. The focus of development partners working with GoU to meet its role resulted in little or no effort to clarify their relationship with or how to engage with the CSOs, let alone ensure that CSOs also re-align themselves and build capacity to work under these changes.

For example, the potential consequence of increasingly funding selected sectors was that there was inadequate CSO involvement in that policy area. Even theme based funding like the LABF posed a danger of leaving out CSOs in certain thematic areas given that there is no comprehensive donor-CSO arrangement to harmonize strategies and approaches; CSOs are therefore unable to design comprehensive programs in all policy areas. It was also observed that CSOs are unable to predict funding for a foreseeable future even with the GoU frameworks, contrary to the core principle of predictability of funding that underpins budget support and the Paris Declaration.

On the side of development partners, there is therefore still much to contemplate on how CSOs can be supported to effectively play such roles as policy-making and monitoring, and the participation, consultation, research and advocacy required to do so. And more thought needs to be put into how the aftermath of the Paris Declaration might better be attuned to the needs of civil society so that they can have relatively equitable capacities with Governments for harmony and complementarity. One such way could be adoption of a practice from Tanzania in which a coherent methodology or a more holistic joint CSO funding strategy is adopted rather than ad hoc initiatives by each development partner.

Results Based Accountability

The responsibility to ensure that accountability is equally strong as the goals, frameworks and commitments lies with Governments, development partners and CSOs. The past approach of measuring progress in terms of outputs that the JLOS perceived as contributing to improvements in access to justice, efficiency and effectiveness of justice, and quality justice meant that the outcomes were assumed from what was intended rather than demonstrated through actual impact. This was challenged as a weak approach for accountability.

The JLOS SIP II Policy and Indicators Matrix provides for policy actions, institutional and sector wide indicators that are linked to each key result area for reform. It provides a holistic results framework for effective accountability because it is the basis upon which the JLOS reviews and illustrates progress to ensure that the desired outcomes and results are realized. It enables the JLOS to analyze justice delivery across a range of institutions by prioritizing outcomes rather than output. Therefore, in addition to the concern over infrastructure and human resource, the results framework provide indicators to show whether their availability and accessibility translates to delivery of justice for all and also improvements in the quality of life of the people. The JLOS institutions have to develop up to date and functional data bases, and also conduct periodic surveys to provide valid, reliable and evidence based data that is necessary to support the results framework.

So far the 11 Joint JLOS GoU-Donor reviews have been open platforms to review progress and performance in a singular manner. Although the reviews are primarily informed by the JLOS progress reports, CSOs and development partners attending the reviews have challenged the reports by research based evidence from which they have illustrated weak policies or weak implementation of policies, and for which they have demanded transparency and accountability on what was done, or not done and why. We have understood however that monitoring progress based on the results framework should not legitimize unreasonable demands that all the results must be realized immediately. They must be a progressive realization which recognizes realities such as protracted procurement regulations, delays in disbursement of funds that result in delays in program implementation.

The JLOS has therefore specified the meaning and the status of implementation of the reform program without focusing only on progress but also on disparities and policy discussion; hence partly recognizing the interface between progress on content and process. The reviews have advanced mutual accountability by opening avenues that encourage CSOs and development partners to also provide options in mapping out solutions with GoU to address the disparities and policies. From the reviews and meetings proposals are made requiring action. We have therefore positioned the reviews to integrate into the national budgeting and decision making processes for them to be most effective.

Development partners have used the reviews to show their commitment in the next budget period based on satisfactory progress. When development partners release funds having considered the disparities and the solutions for them, it shows that they do not manage aid by results, but for results. Such dialogue and mutual accountability requires experienced and high expertise among development partners who are sensitive to developing partnerships and achieving results.

The role of CSOs in holding GoU accountable should not be limited to the joint reviews or JLOS meetings. They should also participate in sensitization and mobilization of citizens to demand for policy reforms in an assertive and consistent way. It is the role of CSOs to act as watch dogs of both GoU and development partners at national and international levels. This implies that they must build capacity and synergies to effectively engage Governments and donors in matters of policy advocacy based on evidence emerging from their own monitoring activities.

The change to a multiparty system of politics in Uganda implies that monitoring GoU activities and pointing out weaknesses has high political risks, which may be associated with political opposition. Unlike before, CSOs may not be viewed as credible groups to criticize government on its failures. Therefore CSOs will need more than funds and moral support to uphold their own integrity, autonomy and credibility to effectively monitor service delivery, undertake policy advocacy and demand for accountability from GoU. This may require generally acceptable ethical standards and operational norms for responsible practice to protect the credibility and integrity of certified CSOs in their networks.

Conclusion

The SIP II and its implementation illustrate GoUs commitment to use the interrelated principles of ownership, alignment, harmonization, managing for development results and accountability to provide a common framework and base for participation of development partners and CSOs in the justice reform. It is undeniable that aid effectiveness can be achieved when sustainable mechanisms are identified by and with Governments for CSO and development partner involvement, among others.

The key underlying assumptions in the changing forms of aid and the different roles are that all stakeholders will over time have built the capacity for meaningful participation; that they agree on policy positions that will be upheld up to implementation; and that there will be a continuous flow of evidence on results of policy implementation to be shared by all stakeholders.

We should consequently be more concerned about how we can achieve these assumptions. Therefore as Governments retain flexibility in making decisions, there must be room for certain forms of pressure to ensure that Government decisions are based on available evidence and that they are made in a patriotic manner. This allows for abuses to be checked that may lead to unnecessary deviations or undesired laxity to set development objectives.