

Appendix I: Uganda and the MDGs: A case study¹

It is hardly surprising that the Millennium Declaration makes very little explicit reference to law except in relation to human rights. People do not believe that law *causes* development; if it has anything to do with hunger or universal primary education or child mortality or maternal health or combating AIDS or malaria, its contributions can only be marginal and incidental, such as making primary education compulsory or enforcing health and safety regulations. Even in areas involving rights one should not expect too much. One cannot just legislate equality or empowerment. Most would agree that security is a necessary *pre-condition* to development and that a well-established rule of law helps security. But beyond that, in this view, it goes against common sense to think that law can be *important* in this context.

The strategies for implementing the MDGs are concretised at the country level. The main instruments are national Poverty Reduction Strategy Plans (PRSPs), which take into account local history and conditions and which, at least in theory, involve the participation of all major stakeholders (including donors) in drawing up national priorities and detailed plans and policies. The construction of such plans is one of the main undertakings made by recipient countries as part of their contribution to the 'global compact'. This case study considers in detail how law is perceived and explicitly referred to in one of the first PRSPs to be developed and accepted by the donor community. This is the Uganda Poverty Eradication Action Plan (hereafter UPEAP) of 2004. I have chosen this, mainly because I am familiar with much of the background,² but also because UPEAP was quite widely used as a model by other participating countries. This case study suggests that law features quite prominently in

¹ This case study of the assumptions about and perceptions of law in the Uganda Poverty Eradication Action Plan (UPEAP) of 2004 was prepared in 2006–07 as part of the research for Chapter 11 of *General Jurisprudence*. It was too detailed to include in the main text. The purpose is to illustrate some of the themes in Chapter 11 rather than to make a general evaluation of the plan. In 2007 a process was started to evaluate and revise the UPEAP, but this note focuses on the 2004 document.

² Between 1995 and 1999 I assisted in the preparation of reports on the Criminal Justice System and the Legal Sector Component of Uganda Institutional Capacity Building Project Government of Uganda (1997) and (1999) (Odoki Report). Some of the recommendations that had not already been implemented were included in the UPEAP (2004).

the strategy, perhaps more than many would expect, and that four of the five perspectives on law and development are represented. However, despite Uganda's commitment to human rights, a rights based approach is not adopted.

It is reasonable to take the UPEAP at face value for the limited purpose of analysing official assumptions and attitudes to law. However, it is important to bear in mind that this kind of document has both advocacy and public relations functions. A cynical view of PEAPs is that they may be little more than a façade for further neo-colonial exploitation by foreign investors. I doubt that this is true of Uganda. Nevertheless, it is striking how many of the hardest choices facing the Ugandan authorities are left to be resolved in particular cases within a framework of regulation, which allows for quite wide discretion in 'balancing' public policy, local community interests, and market imperatives.³

The first UPEAP was drafted in 1997. Its stated aim was to reduce the population living in absolute poverty from 38% in 2003 (56% in 1992) to 10% by 2017. It was accepted by the World Bank and the IMF as the basis for their assistance plans and hence qualified for substantial debt relief. These savings, together with increased donor aid, have been committed to the eradication of poverty.⁴ The draft was extensively revised in 2000 and was adopted as Uganda's PRSP under the Millennium Development Goals compact. It states explicitly that Uganda remains committed to achieving the MDG targets and its strategy plans reflect the priority given to them.⁵ The document was further revised in 2003–4 after extensive processes of consultation.

This section analyses the role of law envisaged in the 2004 revision.⁶ The 2004 UPEAP is a very wide-ranging document. It identifies the most significant areas of poverty and sets out broad goals for poverty reduction:

'Four core challenges for the PEAP are: (a) the restoration of security, dealing with the consequences of conflict and improving regional equity; (b) restoring sustainable growth in the incomes of the poor; (c) human development; and (d) using public resources transparently and efficiently to eradicate poverty. The PEAP is grouped under five 'pillars': (1) Economic management; (2) Production,

³ For example, under the Mining Act, 2003 the governing principle is 'maximizing benefit to Uganda' (including sharing the benefits with local communities and limiting environmental impact) ... while providing attractive investment opportunities for the private sector. (p. 67) The details are left to regulations and administrative decisions, largely on a case-by-case basis. How these competing interests will fare in practice and how transparent the decisions will be are unclear.

⁴ A Poverty Action Fund (PAF) was set up in 1997 to direct savings from debt relief into supplementing budgets in priority poverty relief sectors, especially health, education, water and sanitation, agriculture, and rural roads. This has substantially increased public expenditure in these areas. In 2003–4 the PAF constituted 35% of total GOU expenditure. (p. 200) This income flow is not sustainable and the PAF is regarded as an interim measure (p. 201).

⁵ 'In general, the MDGs are fully consistent with Uganda's national priorities. However, the relative speed at which any particular target is approached will reflect the particular constraints and tradeoffs that the country faces.' (p. 10)

⁶ Ministry of Finance, Planning and Economic Development, *Poverty Eradication Action Plan (2004/5–2007/8)*, (Kampala (2004) www.finance.go.ug)

competitiveness and incomes; (3) Security, conflict-resolution and disaster-management; (4) Good governance; and (5) Human development.⁷

Uganda is still one of the world's poorest countries, with per capita income below \$300 per annum. It would have been much better off today but for the ruinous regimes of Presidents Amin (1971–79) and Obote (1980–85), a particularly vicious AIDS epidemic and the conflict with the Lord's Resistance Army (LRA) in the North, which has not yet been resolved. When the Government of Uganda (GOU), under President Yoweri Museveni, set about reconstruction after the terrible years under Amin and Obote, it eventually agreed to co-operate more fully with the structural adjustment strategies of the World Bank and the IMF than most other African countries. Despite President Museveni's insistence on a period of one-party rule, Uganda's approach fitted into the expectations of Western donors and it received a substantial amount of foreign aid.⁸ By 1997 it had taken significant steps in the direction of creating conditions for a free market economy and trade liberalisation as prescribed by the Washington Consensus.⁹ The Action Plan of 1997 can be taken as a continuation of this strategy, but at a time when Western donors had softened their prescriptions to include 'human rights, good governance, and democracy' as a counterweight to free market policies designed to encourage foreign direct investment. During this period development efforts were hampered by the AIDS epidemic and continuation of civil strife in the North and, to a lesser extent, among the Karamajong in the East. Apart from history, several geographical features are relevant to development and poverty reduction: Uganda is landlocked; it has an equable climate and fertile soil; its mineral wealth is limited; and it is and is likely to remain a primarily agricultural country. Its main exports, especially coffee and sugar, are vulnerable to price fluctuations in the world market. Its relations with its neighbours Rwanda, the Democratic Republic of Congo, Sudan, Kenya, and Tanzania have not always been easy. Uganda has to cater for about 250,000 refugees and well over 1 million (figures vary) internally displaced persons, mainly from the North. However, with greater stability the possibilities for regional co-operation, including in respect of rich water resources, are quite promising.

The GOU's highest priority was stated to be eradication of poverty, 'defined as low incomes, limited human development, and powerlessness'. (1) The aim is to transform Uganda into a middle-income country, largely by private investment in competitive enterprises with industrialisation of agriculture (especially local processing of agricultural products) being a key element. Protectionism is rejected (1, 49–5). Both agriculture and manufacturing need to be strengthened:

⁷ UPEAP Executive summary p. xv.

⁸ After a referendum, the Constitution was amended in 2005 to reintroduce multi-party rule. In the 2006 elections President Museveni and his party, the National Resistance Movement, were re-elected with substantial majorities.

⁹ On 'the Washington Consensus' see Chapter 11 n.52 above.

For agriculture critical interventions include infrastructure (especially rural roads), information and support to farmers' marketing. For manufacturing, Government will strengthen infrastructure (especially electric power), improve governance (since corruption has been identified as a constraint for manufacturing), boost the education of the workforce, improve the financial system, and establish a regulatory regime that ensures a level playing field.' (1).

While emphasising private investment, competition, and income enhancement, the report is not based on an extreme version of free market ideology. 'Poverty' is not defined solely in economic terms, but by reference to the indicators in the Human Development Index. Social and human development are treated as being closely inter-related with economic development (2). Throughout the report great stress is placed on gender issues (e.g. 4, 6, 19, 52) and concerns about increasing inequality, both for individuals and for geographical areas, especially the North. Indeed the document is quite *dirigiste*: planning and government intervention are central, and quite firm constraints on economic activity are envisaged. In short, the plan envisages quite strong elements of a mixed economy.

Security

UPEAP says very little explicitly about the role of law in maintaining security, but it is implicit in the treatment of the judiciary, police and prisons (Chapter 6.2) The 2004 version contains a new pillar on security and conflict resolution 'as a direct recognition that the security of all Ugandans needs to be treated as a national priority and in a holistic manner so that we can cater for interventions both in conflict areas and also non-conflict areas.' (4) However, the focus here is not on crime control, but rather on ending armed conflict and dealing with its aftermath as it bears on poverty:

Insecurity has been a major contributor to poverty and inequality over the last fifteen years and the most afflicted areas have not been able to share in the benefits of economic growth. Hence achieving an end to conflict and the rule of law and order is critical for poverty-reduction. (30)

The UPEAP identifies four main challenges to security: rebel insurgency in the North; cattle rustling in Karamoja; the conditions of life of internally displaced people both during and after conflict; and the need to develop capacity to anticipate crises arising from conflict and natural disasters (99). In addition there is a rising crime rate, with new challenges arising in such areas as international terrorism and money laundering. (122) The report recognises that criminal law can only have a limited role to play in dealing with insurgency, which it is hoped will be ended by diplomacy and negotiation backed by military force and workable amnesties (103). Similarly, it is proposed to deal with cattle rustling among the Karamajong by a combination of less confrontational methods, including voluntary surrender of weapons, offering security from threats

by regional neighbours, recovering stolen cattle, and supporting livelihood development among pastoralists. The plight of refugees and internally displaced persons is a cause of major concern, but no mention is made of a rights-based approach to these issues. Elsewhere the report acknowledges the relevance of crime prevention to poverty reduction and refers to the adverse effects of cattle rustling and the use of illegal nets in fishing communities. (121) But the emphasis is on ending armed conflict by a mixture of force and diplomacy as a pre-condition of a return to normality and very little is said specifically about ordinary criminal law enforcement.

Rule of law and formal legality

During the 1970s and 1980s there was an almost complete breakdown of the administration of justice and a huge loss of public confidence in the judiciary. During the period of reconstruction, restoring public confidence has been a slow and difficult process – not helped by the fact that the criminal justice system (including police, prisons, and the judiciary) has been severely under-financed.¹⁰ However, Uganda's 1995 Constitution is a source of national pride and signals a strong commitment to the Rule of Law and human rights. Perhaps, not surprisingly, the UPEAP does not envisage a strong positive role for the judiciary in poverty reduction – indeed, the report recognises the need to reduce delays in criminal proceedings, make a greater use of non-custodial punishments and improving conditions in prisons, but it sees these as largely representing a cost for public expenditure¹¹ (e.g. 145). It is perhaps more surprising that I have found only two explicit references to the Rule of Law (126, cf. 130), but the whole report is premised on a respect for law and is generally consistent with quite strong commitments to the ideal. A high priority is given to combating corruption at several places in the report, with an emphasis on increasing market efficiency.

Free market

The strategic objective of the PEAP is to build a private sector driven economy which can generate rapid and sustainable broad based economic growth and

¹⁰ ODA (1997) *Uganda: Review of the Criminal Justice System*.

¹¹ Because of delays in court proceedings and a reluctance on the part of magistrates to use bail and alternatives to imprisonment, a very high proportion of the prison population is on remand (reduced to 64% in 2003). In 1997 I was told by some magistrates that they feared being accused of corruption if they gave bail or used alternatives to imprisonment in sentencing. It is recognised that a reduction in the prison population, through speedier proceedings, greater use of alternatives to imprisonment (especially community service), strengthening prison farms, and a change in the jurisdiction of the local courts could lead to some significant savings, and there are moves promised in that direction. However, the legal sector is under-financed, and is likely to remain so for the foreseeable future because it is not seen as contributing much to development or poverty reduction. Most of the measures mentioned in the UPEAP of 2004, reflect recommendations made in the Criminal Justice Review of 1996–7 (ODA (1997)).

propel structural transformation of the economy. Such structural transformation will entail the growth and diversification of exports and the modernisation of agriculture. (185)

During the 1990s Uganda had followed a strategy of encouraging foreign direct investment, market liberalisation and legislative reform to modernise and sustain conditions for a free market economy. The 2004 UPEAP continues this strategy: The key priorities in economic management are 'the maintenance of macroeconomic stability, fiscal consolidation, and boosting private investment' (5): A minimum wage is ruled out (85–6). Protectionism is rejected as an option (1, 49–50), and free movement of goods in the region is being negotiated through a revived customs union (90). Uganda has joined the WTO and some have expressed fears that this will severely inhibit the Government's capacity to balance the public interest with commercial interests, especially in respect of recently privatised utilities and services.¹²

Government's policy is to create a level playing field for all investors, whereby private incentives are not distorted by public policy, to minimise economic cost and risk, to reduce barriers to production and to address market failures through sector-wide interventions.' (49)

To this end further legislation and regulation is proposed. For example, the Mining Act 2003 aims to modernise the legal and regulatory framework in order to make the mining sector internationally competitive for attracting investment, while allowing the benefits of mining to be shared with local communities. (67) In order for this Act to be operationalised, detailed regulations need to be enacted. Similarly, 'a conducive regulatory framework', a streamlined taxation system, and other practical laws affecting micro, small and medium enterprises (MSMEs) are proposed to '[s]upport enterprise growth and competitiveness while at the same time protecting essential public interests'(72).¹³ Similar policies are reflected in the Capital Markets Authority Act, 1996, the Public Finance and Accountancy Act, 2003, the Financial Institutions Act, 2004, and a proposed Micro Finance Institutions Law (68–72). It is proposed that the Uganda Investment Authority (UIA) should offer a 'one-stop shop' for foreign investors. (90–1) Fairly large-scale privatisation of public services (post, water, electricity) was in the process of being undertaken, despite a good deal of criticism. Nearly all of the housing stock is in private hands and it is planned to divest the National Housing and Construction Corporation (76). A Land Act was passed in 1998, but its implementation has been bedevilled by a lack of consensus about policy within Government and a serious

¹² E.g. Nyamugasira and Rowden (2002).

¹³ The UPEAP places great emphasis on small businesses (MSMEs) and small farmers as key contributors to both economic development and poverty reduction. (pp. 70–2) It gives a high priority to strengthening capacity and know-how in these areas. However, MSMEs have a high failure rate and increasing the efficiency of small-scale agriculture is an uphill struggle.

underestimation of the costs and adjustments involved.¹⁴ It is probably fair to say that a coherent national land policy has yet to be settled.¹⁵ An ambitious programme of reform of commercial law and justice has proceeded slowly. A Commercial Division of the High Court has been set up, but progress on 'the modernization' of commercial law has been slow, not least because the scale, complexity, and cost of large-scale reform in this area has been greatly underestimated.¹⁶ Anti-corruption activities are also given high priority.

'The main objectives of microeconomic management are inflation control and private sector-led growth.' (xvi) Naturally, most of the UPEAP sections dealing with the first two 'pillars' (economic management and enhancing production, competitiveness and incomes) concentrate on matters of economic analysis, administration, and the role of government in underpinning and facilitating the market. This has involved a certain amount of legislation, deregulation, and the drafting and implementing of new regulations along fairly predictable lines.¹⁷

Limitations on the free market: wider roles for law

'The role of the public sector is primarily to provide the public goods and services which complement private investment, and which can promote a more

¹⁴ '[A]longside any programme of law reform, perhaps as a precondition of law reform, must be a plan for the implementation of the new law including the costing of implementation and some facing up to and planned response to opposition to implementation. This was not done in Uganda so that it was only after the enactment of the Land Act, 1998 that the relevant Ministry began to realise the implications of what had to be done: the huge financial costs, the revolution in styles of land management and the relative balance of power between the Ministry and local authorities; the training needs of new land management authorities; the organisation of the new judicial system of over 1,000 Land Tribunals; the need for a plethora of rules, regulations and forms; the need in short for a major programme of capacity building'. (McAuslan (2003) at 80–1. For the unhappy story of one attempt to implement part of the Land Act, 1998, see 'Men Behaving Badly: a narrative of land reform' (*Ibid.* Chapter 13). Similar concerns have been expressed about the problems of implementation of the proposed radical overall of commercial law.

¹⁵ 'The focus of [the Land Sector Reform Programme] is protection of land rights of the poor, improved access to land, and tenure security.' (p. 74) cf. the difference in emphasis of: 'The decision whether a particular area of land should be used for large-scale production or small-scale farming is a matter of private initiative, and Government's role is mainly regulatory. Government will seek to ensure that large-scale investors in farming face a conducive business environment; for instance, improved functioning of the land market should make it possible to buy large areas of land for commercial production, conditional on land use policy at the district level, while also ensuring that existing property rights are not disturbed.' (p. 57) On the political background to this see McAuslan (2003) Chapters 12 and 13.

¹⁶ UPEAP (2004) 126–7.

¹⁷ One point emphasised in the Legal Sector Review was that from Independence until the mid-1990s the local professional legal culture (government lawyers, the Bar, the institutions of legal education and the Law Development Centre) was generally oriented towards public law and personal law, and was quite unsophisticated about finance, commerce, and business. (GOU (1999) (Odoki Report) sections 5.5.1 and 10.4). It warned that merely establishing a separate Commercial Court and 'modernizing' commercial legislation would not make much difference in practice without a substantial change in the local legal culture, including legal education and training, and this would take many years to become established.

equitable pattern of development. These include the essential public services which cannot be supplied in an optimal manner through the market mechanism alone'. (185, cf. 9, 193, 212–13)

Generally speaking, the tone of the 2004 UPEAP is market-friendly and sees the private sector as the main agent of economic development. However, the UPEAP should not be read as an unconstrained pursuit of economic growth through facilitation of a free market. First, the primary objective of GOU strategy is poverty eradication and all of its main policies are directed to that end. This implies that concerns about the environment, increasing inequalities, and the position of women, children and the worst off constrain strategies directed to fostering economic growth. Second, the thinking throughout is strongly state centric: the Government is the main agent in devising and co-ordinating strategy and policy, the UPEAP is a *plan*,¹⁸ and the GOU's response to the challenges of poverty reduction is to set up a stream of public agencies (units within government and semi-autonomous public authorities) all of which have to balance the aim of strengthening free enterprise with other concerns.¹⁹ Thus the role of the government intervention is very much broader than merely creating the pre-conditions for and holding the ring for a competitive free market. Third, the MDG strategy is itself built on Results-Based Management (RBM). This involves an enormous bureaucratic apparatus to collect statistics, design, administer and monitor indicators, targets, performance measures, and even league tables. The main task of collecting, analysing and reporting relevant information falls on government. This imposes a heavy burden on the public service (Chapter 9).

Uganda is moving quite rapidly in the direction of becoming a 'regulatory state'. The reliance on public authorities and a highly bureaucratic approach to 'development' lead almost inevitably to governance through broad legislation and often massive amounts of detailed regulations. Even 'de-regulation' involves regulation. And, as we have seen, regulations are rarely simple technocratic instruments implementing broad policy. Insofar as regulation has to strike a balance between the interests of private entrepreneurs, the public interest, and the poor and vulnerable, and has to give due weight to considerations of equity and fairness, important issues of value ('political' issues in a broad sense) arise in the details of even the most technical-seeming

¹⁸ One of the strongest critiques of the MDGs pursues the theme: 'You can't plan a market'. Easterly (2006) Chapter 3.

¹⁹ By 2003 more than 80 (p. 189) public agencies were established or planned in respect of agricultural research, control of spread of livestock diseases, corruption, credit, electricity, fishing, forests, land, mining, MSMEs, railways, roads, water and sewage, sports, standards, wetlands etc. At various points in the report it is recognised that this proliferation of semi-autonomous agencies, corporations and commissions has been wasteful and unco-ordinated and the UPEAP proposes a major rationalisation of these structures which it hopes will significantly cut costs. (189, 206, 213) However, this should not conceal the fact that most of these agencies have a major role in balancing the demands and expectations of the free market against GOU's priorities in respect of equity, gender, and poverty reduction.

provisions. Again, the Land Act, 1998 provides a clear example of diluting 'the pure milk of a market solution' by a complex, rather messy, compromise between continuing the most valued aspects of the traditional land tenure system and 'market-oriented, donor sponsored' recommendations made in numerous official reports.²⁰

Rights-based approaches

Uganda has a strong and popular Constitution (1995) arrived at by a thorough and admirably democratic process.²¹ It includes a quite strong Bill of Rights and any law or custom that conflicts with the Constitution is invalid. The Constitution provides for the protection and promotion of 'Fundamental and other Human Rights and Freedoms', but places issues relating to gender, education, medical services water, food security, and nutrition under 'Social and Economic Objectives'.²² The UPEAP gives high priority to gender issues and to the interests of children, orphans, internally displaced persons, prisoners and the poor. A constant theme throughout the report is that recent developments had led to growing inequalities and these need to be counteracted. The whole document puts poverty eradication as the highest priority, adopting a broad holistic conception of poverty.²³ Nevertheless, like most other governments in comparable situations, it shies away from a rights-based approach.²⁴ It generally uses the discourse of needs and interests rather than rights.

Uganda has an active Human Rights Commission (UHRC) that has produced annual reports since 1997. UHRC receives many individual petitions, monitors new legislation, produces reports on specific issues, and is involved in human rights education. The Commission has identified a number of areas of concern especially in regard to prisons and detention centres. It has pointed out several respects in which Uganda is not meeting its obligations under international conventions, especially with regard to reporting. The UHRC is respected, but it is a small organisation with limited resources. The 2004 UPEAP treats it as one institution among many (119–20) and does not accord any major explicit role to it nor to human rights NGOs.

²⁰ McAuslan (2003) at p. 304. A high proportion of the law reform measures discussed in the UPEAP relate to constitutional and administrative law, judicial reform, criminal law, and social issues, especially relating to gender and child protection, all of which are treated as matters of state responsibility.

²¹ Odoki (2005). A Constitutional Review Commission was appointed in 2001 in response to popular demand. This paved the way for the reintroduction of multiparty elections. The UPEAP does not deal with this in detail. (pp. 115–18). See n. 7 above.

²² For details see Odoki (2005).

²³ In addition to accepting the broad notion of 'human development' which gives priority to primary education, primary healthcare, water and sanitation and housing, and which, in Uganda emphasises agriculture and rural roads, 'Uganda has a wider definition of poverty to include voicelessness, social inclusion and information' (147)

²⁴ One exception, is the adoption of a rights-based approach to penal reform (p. 123).

Uganda has a mixed human rights record. Both national and international criticism has focused especially on the widespread use of torture within security organisations. Generally it has had a lively and relatively free press, but a number of incidents involving attacks by security forces on journalists and on political opponents and critics of the Government led to Uganda only being rated as having the thirteenth most free press of forty-eight countries in Sub-Saharan Africa in 2005.²⁵ The plight of child soldiers in the North and of internally displaced persons have been continuing causes of concern. Nevertheless, the present situation represents a considerable advance on that of the 1970s and 1980s. In addition to the UHRC, there are several active rights-oriented NGOs and in 2004 the Supreme Court held that the offence of 'publication of false news' was unconstitutional.²⁶

One of the main problems is corruption, which took root during the Amin-Obote years and despite vigorous efforts when President Museveni came to power, has not been brought under control.²⁷ The prevalence of corruption is notoriously difficult to estimate. On the one hand, Uganda rose from 117 to 105 out of 163 countries (CPI score 2.7) in Transparency International's Corruption Perception Index for 2005²⁸ and there have been some high-profile cases, including the implication of three health ministers in mismanagement and misappropriation of Global Fund resources.²⁹ On the other hand, others have reported an increase in corruption, especially petty corruption and the Government has been accused of being slow to enforce anti-corruption measures. Some commentators have suggested that the corruption has been fortified by the long period in power of the National Resistance Movement.³⁰ In a series of public speeches in 2007 President Museveni reiterated his Government's commitment to fighting corruption and attributed any lack of success to weaknesses in the anti-corruption agencies, which were being strengthened.³¹

²⁵ Freedom House Survey, 2005

²⁶ *Obbo and Another v Attorney-General* [2004] UGSC 1 (2004)

²⁷ For a comprehensive analysis carried out in 1997 see World Bank Report (1998). Anti-corruption measures included a Directorate of Ethics, a Leadership Code, the Office of Inspector-General of Government, several ad hoc Commissions of Inquiry, quite extensive legislation, and, recently, a reorganisation of the Uganda Revenue Authority. There is a quite lengthy discussion in UPEAP (2004) at pp. 127–32.

²⁸ Transparency International: *Corruption Perception Index, 2005*. The position was the same in 2006. For a comment on this kind of ranking see GLT 157–65. Since 2000 Transparency International has tried hard to refine its methodology, but the essential weaknesses remain.

²⁹ DFID (2007) Uganda Performance Framework and Delivery Plan 2006/7–2008/9 3.12;

³⁰ Biryetega (2007).

³¹ In his Budget Speech in 2007 President Museveni responded forcefully to his critics:

Finally, corruption. I am always amused and dismiss as unserious, those who expend a lot of calories pontificating that the NRM has no political will to fight corruption. Those are mere charlatans if they are not the bona fide uninformed types. .

It is the NRM that stopped extra-judicial killings by state agencies, extortion on roadblocks, poaching of animals in the National Parks etc. How can we, then, fail to fight corrupt public officials pilfering state funds? We are the ones who initiated and made all the anti-corruption legislations in Uganda as well as creating the anti-corruption institutions: the Inspector

The main obstacles to Uganda achieving the target that it has set itself within the MDG framework are probably civil strife, HIV/AIDS, corruption and agricultural subsidies in Europe and North America.

Comment

Structural Adjustment Programmes have been hugely controversial and it is widely agreed that some of the harsher and more hurried programmes widened the gap between rich and poor and did serious harm even in respect of pure wealth creation.³² By the time Uganda became deeply involved with international financial institutions, the more doctrinaire versions of free market policies had been tempered by concerns about 'human rights, democracy, and good governance' and by 'the new institutionalism' spearheaded by Douglass North. Moreover, ideas about 'development' had been modified by the broader conceptions of 'poverty' adumbrated by Ul Haq, Sen, and others that are reflected in the Human Development Index and the Millennium Development Goals. So it is fair to say that Uganda escaped some of the worst excesses of structural adjustment, but nevertheless it has gone quite far down the route that prescribes that *economic* development requires strong free market institutions and policies.

PEAPS have had a mixed response internationally. For example, some, including those of Uganda and Tanzania, have received high praise. Tanzania's PEAP of 2002 was called 'a model for MDG reporting':

A major benefit readily became clear: the long-term aspirations of the MDGs complement the shorter-term targets of Tanzania's poverty-reduction strategy. Policy-makers could now envision the future while taking the steps required to reach it. The process of preparing reports brings together government officials, civil society representatives, academics, gender specialists and development agencies, and offers opportunities for people to contribute their views as the findings emerge. They ask questions: Will this policy be a breakthrough? Are there enough resources? Is short-term economic growth compatible with longer term environmental issues? Finding the answers will ensure that Tanzanians make real progress toward the vision that they have outlined for themselves.³³

General of Government, the Leadership Code etc. The only problem we faced in the past were the officials that manned these agencies.

Fortunately, the long tenure of NRM in power has enabled us to train and identify a large force of anti-corruption fighters – educated, professional and patriotic. In the same way, we have created capacity to guarantee peace by building and consolidating UPDF (an Army of a new type), we are restructuring the police, we have re-organized Uganda Revenue Authority and, now, are also providing appropriate manpower for the anti-corruption agencies.

Therefore, the corrupt, the non-patriotic, the non-dedicated or the careless are in for accountability.

³² A succinct evaluation of the record of early programmes by a former World Bank official who was initially in favour of 'shock treatment' is Easterly (2006) Chapter 3.

³³ UNDP (2004). This may be seen as a biased source as UNDP was involved in the consultation process.

Aspects of the UPEAP/PRSP have been criticised.³⁴ The main charges have been that the consultation processes lacked credibility; that the lessons of past reviews of structural adjustment have been ignored, especially in relation to rapid cutting back of trade barriers and subsidies; that local government lacks the capacity to take on many of the responsibilities associated with decentralisation; that privatisation of key services is taking place before proper regulation is in place; that the plans underestimate the extent to which membership of WTO will inhibit regulation; and that insufficient emphasis is placed on the state's obligations in respect of human rights, public information and constitutionalism.³⁵ Some of these criticisms are a cause for concern, but they are beyond the scope of this paper, which is about perceptions of the role of law in advancing strategies of poverty eradication in conformity with the MDGs.

UPEAP is recognisable as one a genre of planning documents directed primarily at the international donor community, but also with an eye on the local public service, local opinion and political sensitivities. UNDP claims that PEAPs have two purposes 'public information and social mobilisation'.³⁶ Alston suggests that their main consumer is UNDP.³⁷ Written in a recognisably bureaucratic style, UPEAP is quite succinct, clear, and remarkably coherent. It is state centric, aspirational and quite optimistic, but it does deal fairly frankly with a range of 'challenges' and it acknowledges some past failures and disappointments. It is difficult for an outsider to judge how far it represents a genuine consensus among 'stakeholders' and how far the political leaders and senior officials feel that GOU genuinely 'owns' the document. Its great strength seems to me that it sets clear goals and priorities within a coherent framework on the basis of an ideology that tries to balance market-led economic growth with genuine concerns about equity, gender equality and poverty reduction. In relation to my own limited experience, the adoption of sector-wide approaches is a considerable improvement on fragmented, ad hoc policy-making and problem-solving.³⁸

In an interesting section on 'Prospects for the Millennium Goals', the report is remarkably optimistic in that it concludes that, if there is macro-economic

³⁴ General criticisms of PRSPs and PEAPS include Easterly (2006) 126, 152–3; cf.

Nyamugasiragasira and Rowden (2002) discussed below. A balanced assessment from a human rights perspective is Alston (2005).

³⁵ Some of these criticisms were made of the earlier PRSP by Warren Nyamugasira and Rick Rowden (2002). Easterley (2006) at p. 128 implies that the main Tanzania PRSP document of 2000 was largely rewritten by the World Bank. He satirises the bureaucracy and red tape involved in obtaining approval from the IFIs (*Ibid.*, at 152–4) and is generally critical of both structural adjustment programmes and the Millennium Development Goals along the lines that one cannot plan development.

³⁶ UNDP (2004) quoted by Alston (2005) at 815.

³⁷ *Ibid.*, Alston.

³⁸ The Criminal Justice Review (1997) and the Legal Sector Review (1999) were the first attempts in Uganda to adopt a sector-wide approach to law; some of the main recommendations related to the need for improved co-ordination within Government, among all 'stakeholders', and between donors.

stability and an end to armed conflict, most MDGs can and should be achieved by 2015 within expected resources, except possibly in relation to maternal mortality and full primary education; in some cases MDGs will be exceeded. This would raise Uganda to the status of a middle-income country, which according to present commitments will have a political culture that is democratic, takes human rights seriously, and is concerned about equity and gender equality. To evaluate such predictions is beyond the scope of this paper, but one can at least wish them well.³⁹

How important is law in relation to these aspirations? I shall conclude by making three points about this particular document. First, UPEAP 2004 is an official report, written by officials, which focuses on the roles of government, public policy where government has a role, public expenditure, and state law where law is mentioned at all. Non-state law is outside the radar. Since Independence, successive regimes in Uganda have placed much less emphasis on customary law than have their neighbours in Tanzania and Kenya. In so far as there have been explicit policies, they have tended to emphasise selective incorporation of custom into the national legal system, especially in respect of land. Otherwise, custom and other forms of non-state law, including religious law, are barely mentioned in official discourse.⁴⁰ That is not to say that they are unimportant, especially in rural areas in what is still a largely agricultural country with only 12–15% of the population living in towns and peri-urban areas.

Second, although the report refers briefly to regional co-operation (in relation to railways and customs and excise) and to international obligations in respect of human rights, it probably underestimates the significance of regional, transnational, and international law.

Third, so far as state law is concerned, it receives at least as much attention as one might expect:

1. The UPEAP places a high priority on security as a pre-condition for development. However, state criminal law plays only a minor role in GOU's plans for dealing with the two major areas of concern: the rebellion in the North and cattle rustling among the Karamajong. This tends to confirm Tamanaha's hypothesis that for law to contribute to social control, basic social order needs first to be established.⁴¹

³⁹ Some recent reports give some ground for optimism. UK DFID reported in Sept. 2006 that HIV/AIDS adult prevalence declined significantly over the previous decade (6.5% in 2005 compared to 18% in the early 1990s); as reported above, the poverty headcount of individuals dropped from 56% in 1992 to 38% in 2003; enrolment in primary school peaked at 87% in 2004 (compared to 62% in 1992), with near gender equality. Similar figures are given in more recent reports, see DFID Country Profiles: Africa/Uganda www.dfid.gov.uk. (last visited 9/08).

⁴⁰ Of course, 'customary law' features in the Local Council Courts, which operate at village and sub-county levels, and which are generally popular, except that they are sometimes accused of gender bias (124). These courts are part of the state system.

⁴¹ 'The traditional assumed relationship [between law and social order] gets things precisely upside down. It is state law that is dependent on these other sources of social order if it is to have a chance of exerting an influence.' (Tamanaha (2001) at p. 224.

2. Uganda's 1995 Constitution (as amended) provides a firm foundation for a democracy based on the Rule of Law, but this is assumed rather than emphasised in the UPEAP as a pre-condition for development.
3. UPEAP illustrates the amount of law needed to create, facilitate and regulate markets.
4. UPEAP 2004 also illustrates the roles of law not only for those state functions that are not privatised or involve public-private partnerships, but also more generally in promoting equity and equality and in making poverty reduction its top priority.
5. Even when going quite far down the road of structural adjustment and free markets, Government has key roles in setting priorities, working out, implementing, and monitoring strategies and policies, and balancing the demands of the market with other goals.
6. UPEAP 2004 is quite state-centric in several ways: (i) it assumes that Government is pivotal in setting priorities and goals and devising policies for attaining the MDGs; (ii) it treats municipal law as central, barely touches on customary law and other forms of non-state law, and (iii) assumes that the GOU is the main actor in regional, transnational, and international relations affecting the MDGS.
7. Although GOU gave high priority to interests of women, children, orphans, internally displaced persons, and the rural poor, UPEAP 2004 did not adopt an explicitly rights-based approach – few governments have.⁴²

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⁴² See Alston (2005) on the reluctance of governments to commit themselves to a rights-based approach, even in respect of discourse (792–8). He reports that Bosnia and Herzegovina (2003) represents one end of the spectrum with 108 references to human rights in 141 pages; in many reports references to human rights are completely absent or merely token; UPEAP has a few explicit references (e.g. at 8, 119–20), and it regularly emphasises gender equality, but in relation to children, orphans, handicapped and displaced persons it uses the language of needs and interests.

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