



PART THREE



Chapter 6

Findings and recommendations

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Chapter 6

Findings and recommendations

6.1. Introduction

The study started out in chapter 1 with the stated objective of interrogating the role that development partners play in shaping the human rights agenda in Uganda. The five chapters contained in this study have discussed the conceptual and theoretical framework of the study, the legal and policy framework for development in Uganda, the human rights landscape in Uganda, and the role played by development partners in the promotion and protection of human rights in Uganda.

The study arrives at the overall conclusion that development partners play a significant role in promoting and protecting human rights in Uganda. As a result of this influence the study concluded that there is lack of complete ownership of the human rights agenda in Uganda. In addition, there is no long-term sustainability of the human rights programmes as they are dependent on foreign assistance which is not permanent. Furthermore, there is limited acceptance and understanding of the human rights agenda by Uganda. Accountability is also another area of concern. It is agreed that the UHRC, JLOS and CSOs are more inclined to be accountable to the development partners that bank roll them than the people of Uganda that they are meant to serve. Several of the recommendations below are aimed at remedying these issues. The main findings, conclusions and a number of recommendations are discussed below.

6.2. Findings

The study shows that, similar to several African countries such as Malawi, Zambia, Mozambique and Ghana, Uganda is aid-dependent, though it is committed to reducing this dependence. This dependence manifests itself in the fact that 30% to 50% of the overall national budget has over the past decade or so been funded by development assistance. However, this in reality means that the development partners with this economic leverage have immense influence over the content and direction that national policies take. In fact, it could be firmly concluded that without this vital lifeline of development assistance, Uganda and most African countries would not be able to fully fund their development budgets.

The study establishes that the Uganda Human Rights Commission and JLOS relied on development assistance to fund their development budgets to the tune of 80%. Without this support, these agencies would find it extremely difficult to fulfil their mandates of promotion and protection of human rights. This, in reality, means that development partners play a fundamental role in the promotion and protection of human rights. Without this assistance, UHRC and JLOS institutions would have been severely constrained in executing their mandate.

The situation for human rights NGOs is even more dire. They rely up to 100% on development assistance to run their activities. Therefore, if this assistance was not forthcoming, they would have to close shop. Just like with the government agencies above, development partners with their development assistance are the financial nerve centre of NGO operations.

As far back as 1971, developed countries made commitments to remit 0.7 % of their GNP as development assistance to the poor developing countries. However, 39 years later, only five countries have honoured this obligation. This situation in many ways reflects the reality that most of the developed countries are not really committed to uphold this commitment. The G8 states at Gleneagles recommitted themselves to double aid to Africa, a commitment reaffirmed in Hokkaido Toyako. However, the G8 leaders are yet to make good on their promises.

The provision of development assistance from the rich giving-countries of the north to the poor receiving-countries of the south is underpinned by a partnership that calls for local ownership of the development process. The study establishes that partnership principles concluded at the national level in Uganda between the development partners provide for local ownership and national-led development. This principle is further reflected in the Paris Principles of Aid Effectiveness and the Cotonou treaty. However, in practice it has been shown that in some instances this principle is honoured more in its breach than in its observance. Due to the economic leverage of the development partners there has been a 'donorisation' of domestic policy and there is hardly any local ownership of the process. The study concludes that development partners have in effect become Ugandan civil servants and do influence policy formulation, implementation and execution. In fact, in many respects, Uganda has outsourced its primary obligation of policy formulation and implementation to development partners, in order to ensure that the assistance keeps flowing.

The study establishes that international cooperation and the provision of development assistance are embodied in international human rights treaties and declarations. The rich developed countries have an obligation to provide assistance to poor countries so that they are able to promote and protect human rights in their countries. However, while there is an obligation stipulated in international human rights treaties, the study established that while some countries link their development assistance to human rights treaties others do not. Germany, Ireland, UNDP and the EU are examples of the latter while Norway, the Netherlands are examples of the former. The provision of development assistance for the promotion and protection of human rights is therefore an established principle of international human rights law. This principle is however not respected by developed countries and they opt to provide development assistance as a moral obligation or commitment rather than arising from a legal obligation.

The right to development is still very controversial and not yet agreed upon at the international level. Recognition of the right to development would mean that developed countries have an obligation to provide assistance to help the poor countries to develop. This assistance would invariably include support for the promotion and protection of human rights. The study establishes that while the right is not yet agreed at the international level, within the African system it is recognised by a binding treaty, the African Charter on Human and Peoples' Rights. However, challenges remain, as the developed countries are

not party to the ACHRP, therefore there is no legally binding treaty to enjoin them to honour the right to development.

The study also establishes that development assistance treaties and agreements have been concluded between Uganda and several development partners. Apart from the Cotonou Agreement, which is a binding international treaty, we have established that the other agreements are concluded in good faith and are binding on the parties. International law recognises the principle of good faith as reflected in the judgment of the ICJ in the *Nuclear Tests* case. However, it also concludes that enforcement of these agreements is rather problematic and most recipient countries like Uganda would be very reluctant to enforce them in case of breach because of a fear that the much need assistance could then be withheld.

The study observes that a right to development assistance versus the right to development could be found in international customary law. This was discerned from the fact the several developed countries have over the last 40 years provided development assistance. This practice is generally and widely accepted. Through a combination of general usage and acceptance, the right to development assistance is now part of international customary law. Poor developing states therefore have the right to claim development assistance from developed rich countries.

Various development assistance modalities were discussed in this study. The study establishes that the project mode is used by some partners while others use budget support. Some countries such as Ireland and Netherlands use a

combination of both. Each of these modalities lend themselves to development partners being involved in shaping the human rights agenda in Uganda. In addition, the use of basket funds for support to mainly CSOs is becoming the new preferred way of work by development partners. These basket funds tend to want to support either CSO networks or community based organisations. The use of this modality, going forward, will have serious implications for traditional human rights NGOs.

The study further establishes that the officials in the development agencies played an important role in shaping the human rights agenda. It has been established that these officials can play either a positive or negative role in advancing the human rights agenda, not to mention the partnership relationship. The study concludes that these individuals yield significant power and influence and in most cases shape the human rights agenda, positively or negatively way.

The study goes on to establish that the consultants who are usually commissioned by development partners to assist the recipient agencies play a critical role in shaping the human rights agenda. Once again, they can play both a positive and negative role as outlined in chapter 5. These consultants, through the power of the pen, have immense power in shaping the human rights agenda especially from the policy formulation point of view.

Following the adoption of the Paris Declaration on Aid Effectiveness, a number of development partners have undertaken to provide budget support

and provide support to only two sectors. This new modality will have implications for support to human rights institutions, as some development partners will stop funding the human rights sector, or become passive or silent partners.

6.3. Recommendations

These recommendations are informed by the findings of the study and are aimed at ensuring that development partners play a positive role in shaping the human rights agenda in Uganda.

The study proposes that all development assistance policies and agreements should be anchored in international human rights law. This could be done for example by adopting the human rights-based approach to development cooperation. By doing this, not only would we ensure that this would be the first step in adopting a human rights-based approach, but it would also entrench the provision of development assistance as a legal obligation. It is acknowledged, of course, that most developed countries might be hesitant to accept that there is an obligation to provide development assistance for fear of being held accountable. The counter-argument to this would be that since they have ratified these treaties, they have already committed to providing assistance through international cooperation.

In chapter 4, an International Convention on the Provision of Development Assistance is proposed. A model Convention is found in Annex 6 of this study. This Convention seeks to, among others, bestow legal status and

framework for development assistance treaties and agreements. It also provides a legal framework for the provision of development assistance. It is therefore recommended that a convention on the provision of development assistance be adopted at the international level.

Development partners should respect the principle of local ownership. It is essential that the national actors and agencies are given the space and opportunity to lead and own the human rights agenda. It is acknowledged that development partners can play an advisory and facilitation role, but they should not take centre stage. The vision African-led and African-owned under NEPAD should be the beacon. Africa needs to take charge of its own agenda.

It is also equally important that development agencies ensure that they hire and deploy competent personnel in the field. Here, the study is calling upon development agencies to ensure that they get people with a human rights background to work on their human rights programmes. In addition, there is need to ensure that these officials have the requisite experience to deal with senior government officials and CSOs. There is no shortcut to gaining experience than through experience itself. This should be coupled with having proper induction programmes once they arrive in a specific country. These programmes would expose the officials to the basics of the country they are going to work in. Equally Government of Uganda and CSO officials need to be inducted on the culture and working ethic of development partners. This would go along way to reduce the misunderstandings that arise from cross-cultural clashes.

The study further recommends that development partners and their operations are peer reviewed by the Government of Uganda. At the moment as discussed in chapter 5, development partners have various assessments that they carried out in respect of the Government of Uganda's performance. There is, however, no corresponding process in respect of development partners and how they operate in relation to Uganda. The peer review would look at among others, how development partners conduct themselves, whether they honour obligations, the capacity of their personnel and whether they adhere to the principles enshrined in the partnership principles, Paris Declaration on Aid Effectiveness and Accra Agenda of Action. This peer review would be done at least once a year. CSOs also should adopt this peer review mechanism and review those development partners that provide them with development assistance.

Uganda should continue on the path to reducing its dependency on development assistance. It is contended that the government has the first obligation to fund its human rights agencies. Development partners should only come in to supplement government's efforts. Allowing development partners to fund 60% to 85 % of the development budget amounts to ceding sovereignty and responsibility to external actors. It is realised that in the case of NGOs this might prove hard to achieve in the short to medium term, but it should be the ultimate long-term objective. However, it is equally important that NGOs devised self-sustaining initiatives to reduce on dependence on development partners.

Dugard however cautions that a settled practice on its own is insufficient to create a customary rule.⁹²⁶ In addition there must be a sense of obligation, a feeling on the part of states that they bound by the rule in question and that the general practice is accepted as law.⁹²⁷ The study contends that there is a demonstrated sense of obligation on the part of countries that have been providing assistance to Uganda for close to 49 years.

To this end NGOs need to begin to think of avenues like support from national governments, endowment funds to ensure sustainability. Several international NGOs receive money from their governments to run programmes in Uganda.⁹²⁸ Why then should Government of Uganda and private sector not fund local NGOs? In addition the government could set up endowment funds that could fund NGOs. It is critical that the dependency on foreign funding is reduced significantly.

Furthermore Ugandan NGOs need to build up their membership base. At the moment several NGOs like FHRI have limited membership. It is believe that this is an area that has been fully explored. NGOs like the easy route of development assistance from the north. But there is need for local NGOs to think broader and develop strategies to build their membership base.

⁹²⁶ Dugard (see n 280)33.

⁹²⁷ Dugard (see n 280) 33.

⁹²⁸ The Dutch Government is the largest funder of Hivos a dutch NGO which had an annual budget of EUROS 125.5 million in 2009. Hivos also receives funding from institutions and the bussines sector. More on Hivos can be found at <http://www.hivos.nl/english/About-Hivos/Hivos-facts-figures> (accessed on 20 January 2011).

Related to the above issue of being dependent on development assistance mainly from the rich countries of the north, the study advocates for movement towards south-south cooperation as provided for in the ACHPR. It is maintained that Africans should be able to help themselves and not wait for assistance from outside. This assistance could be from individuals within the country, including the private sector.

The Government of Uganda and NGO senior officials should undertake negotiation courses which would equip them with the much needed negotiation skills. This, in principle, would enable the officials to get the best deal for the country and their agencies. In addition there is need for them to be exposed to the basis of international human rights law.

Access to information is critical for empowerment. The study therefore recommends that both government policies and development partners' policies should be readily accessible, for example on their websites. During the course of this study accessing policies was not easy and there is need that these vital documents are in the public domain. While there is no deliberate policy to restrict access to these documents, most ordinary people might find it difficult to access diplomatic agencies or government offices where these documents are. There is therefore a need to find ways to making them more accessible.

Development partners and the Ministry of Finance, Planning and Economic Development, as outlined in chapter 5, are the key interlocutors in implementing the new aid modalities under the Paris Declaration on Aid

Effectiveness. However, as noted, most ministries are not even aware of what is going on or even of the Paris Declaration and its contents. It is therefore imperative that the new modalities and their implications are disseminated as widely as possible amongst all government ministries and sectors. NGOs should also be brought into the loop.

The study further recommends, that development partners supporting human rights programmes should develop a human rights index which would provide a platform to assess a country before they provide assistance. This index could also form the basis of determining whether to continue delivering assistance or not. This index would look at whether a country has ratified the major human rights instruments, whether the country has submitted its state reports in accordance with its treaty obligations, whether a country acts on the concluding observations of the various treaty bodies, whether a country has a national human rights body that is independent, autonomous and adequately funded, whether there is a progressive increase in the budget to the national human rights body, whether human rights CSOs can operate freely including the media, whether the judiciary is independent. The development partners would then have to have an open and frank discussion with government devoid of political overtones discussed in chapter 5. In the event that a country is deemed to be regressing, assistance should be cut or withdrawn. In case of positive progress assistance should continue to flow in.

African governments and officials need to emulate the Asian countries such as India, Singapore and Malaysia, which have managed to develop their systems

their way. Of course one questions their human rights pedigree. However, notwithstanding this, Africa could learn a thing or two from Asia. Kishore Mahbundani asserts that:

Asians have finally understood, absorbed, and implemented western best practices in many areas: From free-market economics to modern science and technology, from meritocracy to rule of law. They have also become innovative in their own way, creating new patterns of cooperation not seen in the West. He goes on to conclude that for centuries, the Asians (Chinese, Indians, Muslims, and others) have been bystanders in world history. Now they are ready to become co-drivers.⁹²⁹

Africa and Uganda in particular, needs to take the lead in crafting the rule of law and human rights culture which will ensure that its citizen's human rights are respected, protected and fulfilled.

In Chapter 4, it has been established that human rights CSOs are entirely dependent on development assistance which exposes them to external influence. One way of mitigating this dependency is for the CSO to develop a robust strategic plan which outlines their key strategic priorities. This plan should be the blue print for any support that they obtain. Any development partner wishing to support the CSO must align the support to the strategic plan. It is essential that the CSO sticks to this strategy and avoid being swayed into unplanned activities in the guise of getting resources.

⁹²⁹ K Mahbundani *The New Asian Hemisphere: The Irresistible Shift of Global Power to the East* (2007) available at <http://www.mahubani.net/book3.html#BookReview> (accessed on 17 July 2008).

Human Rights CSOs need to engage more in policy dialogue with the government. As noted in chapter 5, human rights CSOs are not very active in JLOS. It is essential that the CSOs, move into the arena of policy debate and dialogue. At the moment this seems to be the preserve of government, development partners and a handful of CSOs. Of course, this assumes that development partners will fund CSOs engaged in policy dialogue.

Why should a country like Uganda that pays its members of parliament (MPs) USD 8000 per month need development assistance to promote and protect human rights? Uganda has 333 MPs who are to be paid the equivalent of USD 8,000 per month.⁹³⁰ The study proposes that development assistance is stopped until a country can genuinely demonstrate that it needs it and is serious about effectively and efficiently using its own resources. We should therefore close down Uganda ‘for repair’. This repair would entail seriously addressing several development challenges like roads, health centres, schools, funding the human rights commission, reducing big government expenditure on defence and presidential jets. Once repairs are over, then development assistance can be used sparingly to keep things moving. However, there should be a time limit. Development assistance should have a definite time line. In addition it should not exceed say 10% of the national budget and not the current levels of 40-60%. Ugandans need to take the reins of their own development and not sit back and rely on others to do so and think it will happen.

⁹³⁰ *Saturday New Vision* 17 October 2009 1.

The transformation of the UNDRD into a treaty on the right to development, for which Baxi advocates, is another avenue that would strengthen the realisation of the right to development.⁹³¹ At present it is only the ACHPR that provides for the right to development. The result of the world needs to emulate this and embrace a treaty on the right to development as the universal normative standard for the realisation of the right to development.

6.4. Conclusion

It is evident that development assistance plays an important role in shaping the human rights agenda in Uganda both with state and non-state actors. It is also clear that for the foreseeable future Uganda will remain dependent on development assistance to help it move its human rights agenda. This dependence brings along with it not only lack of national ownership but also a clash between universal norms and domestic understanding arising from cultural specificities. The LGBTI example cited in this study is one such example. However, it is critical, as contained in the recommendation above, that the Ugandan human rights agenda is owned by Uganda. Development partners can only assist to realise this agenda. In order to achieve this, it is essential that Uganda reverses the dependence on development assistance and begin to rely on its own resources to drive its human rights agenda forward. This agenda must be firmly rooted in national, regional and international human rights standards.

⁹³¹ Baxi (see n 211 above).