

**The role of development assistance
in
the promotion and protection of human rights in Uganda**

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**Thesis submitted in fulfilment of the requirements of the degree Doctor Legum
(LLD) of the University of Pretoria, South Africa**

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And with Professor Frans Viljoen as co-supervisor**

Declaration

I declare that this thesis, which I hereby submit for the degree Doctor Legum (LLD), at the University of Pretoria, is my own work and has not previously been submitted by me for a degree at this or any other tertiary institution.

Signature of student.....

Signature of supervisor.....

Signature of co-supervisor.....

Dedication

This study is dedicated to my late father, Professor Enoka Rukare, who will always be my beacon and inspiration.

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In the course of preparing and writing this study I have received support, guidance and assistance from various people. I would like to thank Professor Michelo Hansungule for his tireless guidance as my supervisor. I would also like to thank Professor Frans Viljoen for his assistance as co-supervisor. My thanks also go to all those that provided comments and input to this study. I cannot forget to make mention and thank all the members of the ‘Hansungule family’, Serges Kamanga, Lyntette Bonareri, Rita Ozoemena, Mmaise Mooki, Chacha Murungu, Anthony Munene and Innocent Maja. You all have been a source of encouragement and inspiration. Marcella Karekye, Tina Turyagenda, Fiona Arach and Jackie Namara, I appreciate your time and effort in proofreading this thesis.

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Summary

Uganda, like several developing countries, is a recipient of development assistance. This assistance, which is provided by rich developed countries, supports among others human rights programmes in these countries. Development partners that provide this assistance wield considerable influence arising from the assistance they provide. This study seeks to determine what role development assistance plays in the promotion and protection of human rights in Uganda.

The study establishes that, similar to several African countries such as Malawi, Zambia, Kenya and Ghana, Uganda is aid-dependent. Although Uganda is committed to reducing this dependence, it is concluded that without this vital lifeline of development assistance, Uganda would not be able to fully fund and run its human rights programmes or development budget.

The study further establishes that international cooperation and the provision of development assistance are embodied in international human rights treaties and declarations. However, while there is an obligation to provide development assistance, stipulated in international human rights treaties, the study establishes that some development partners do not recognise this obligation. A model convention providing for the obligation to provide development assistance is elaborated in this study.

The study arrives at the conclusion that development partners through the provision of development assistance have advanced the human rights agenda

in Uganda, though sometimes impeding the development of an authentic domestic human rights culture. The study recommends that there is a need to reverse this situation. The study concludes with several recommendations aimed at making Uganda own its human rights agenda.

Keywords: Development assistance, development partners, human rights, development, local ownership, right to development, law of development, development assistance treaties, aid modalities, budget support and project support.

List of Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACP	African Caribbean Pacific
APIR	Annual PEAP Implementation Review
APR	African Peer Review
APRM	African Peer Review Mechanism
AU	African Union
BTC	Belgium Technical Cooperation
CBO	Community-Based Organisation
CBR	Centre for Basic Research
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CHRAJ	Ghana's Commission on Human Rights and Administration of Justice
CIA	Central Intelligence Agency
CIET	Community, Information, Empowerment, Transparency
CIDA	Canadian International Development Agency
CSO	Civil Society Organisation
CPAP	Country Programme Action Plan
CORET	Consulting, Research and Training Centre
DAC	Development Assistance Committee
DANIDA	Danish International Development Agency
DCI	Development Cooperation Ireland
DFID	Department for International Development (UK)
DPSF	Decentralisation Policy Strategic Framework
DRC	Democractic Republic of Congo
DNIEO	Declaration on Establishment of New International Economic Order
EAC	East African Community

EC	European Commission
EU	European Union
FCO	Foreign and Commonwealth Office
FHRI	Foundation for Human Rights Initiative
FIDA	Federation of Women Lawyers
FINNIDA	Finish Department for International Development Cooperation
FOCA	Friends of Children
FY	Financial Year
GDP	Gross Domestic Product
GTZ	German Technical Cooperation
GNI	Gross National Income
GNP	Gross National Product
GoU	Government of Uganda
Govnet	Network on Governance
HDI	Human Development Report
HIPC	Heavily Indebted Poor Countries
HIV	Human Immunodeficiency Virus
HIVOS	Humanist Institute for Cooperation with Developing Countries
HRBA	Human Rights-Based Approach
HRW	Human Rights Watch
HURINET	Human Rights Network
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICT	Information Communication Technology
IDP	Internally Displaced Persons
ILO	International Labour Organisation

IG	Inspectorate of Government
IGG	Inspector General of Government
IHRN	International Human Rights Network
IMF	International Monetary Fund
JAF	Joint Assessment Framework
JARD	Joint Annual Review of Decentralisation
JLOS	Justice, Law and Order Sector
KNCHR	Kenya National Commission on Human Rights
KHRC	Kenya Human Rights Commission
LC	Local Councils
LG	Local Government
LGBT	Lesbian, Gay, Bisexual and Transexual
LGSIP	Local Government Sector Investment Plan
LRA	Lord's Resistance Army
MCC	Millennium Challenge Corporation
MDGS	Millennium Development Goals
M & E	Monitoring and Evaluation
MGLSD	Ministry of Gender, Labour and Social Development
MoFPED	Ministry of Finance, Planning and Economic Development
MoLG	Ministry of Local Government
MoPS	Ministry of Public Service
MoU	Memorandum of Understanding
MP	Member of Parliament
MTE	Mid-Term Evaluation
MTEF	Medium Term Expenditure Framework
MTR	Mid-Term Review
NEPAD	New Partnership for Africa's Development
NAM	Non-Alignment Movement

NDP	National Development Plan
NIEO	New International Economic Order
NGO	Non-Governmental Organisation
NOK	Norwegian Krone
NRA	National Resistance Army
NRM	National Resistance Movement
OAU	Organisation of African Unity
ODA	Official Development Assistance
ODI	Overseas Development Institute
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSF	Open Society Foundation
OSI	Open Society Institute
OPEC	Organisation of Petroleum Exporting Countries
PAF	Poverty Action Fund
PAS	Para legal advisory project
PCDIA	Parliamentary Committee on Defence and Internal Affairs
PDCO	Parliament Development Coordination Office
PDG	Partners for Development and Governance
PEAP	Poverty Eradication Action Plan
PMA	Plan for the Modernisation of Agriculture
PRSC	Poverty Reduction Support Credit
PRA	Popular Resistance Army
PPTAP	Promoting partnerships with traditional authorities' project
PSC	Public Service Commission
PSI	Policy Support Instrument
PSIDP	Parliamentary Strategic Investment and Development Plan
PRSP	Poverty Reduction Strategy Paper

RTD	Right to Development
SAHRC	South African Human Rights Commission
SIDA	Swedish International Development Agency
SIP	Strategic Investment Plan
SWAP	Sector-wide Approach
SWG	Sector Working Group
TA	Technical Adviser
UDN	Uganda Debt Network
UDHR	Universal Declaration of Human Rights
UGX	Uganda Shillings
UHRC	Uganda Human Rights Commission
UJAS	Uganda Joint Assistance Strategy
UK	United Kingdom
UJCC	Uganda Joint Christian Council
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDG	United Nations Development Group
UNDP	United Nations Development Programmeme
UNELAMP	United Nations Elections Assesment and Monitoring Project
UNDRD	United Nations Declaration on the Right to Development
UPE	Universal Primary Education
UPPAP	Uganda Participatory Poverty Assessment Project
USA	United States of America
USAID	United States Agency for International Development
USD	United States Dollars
WB	World Bank
WTO	World Trade Organisation

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PART ONE



Chapter 1

Introduction

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Chapter 1

Introduction

1.1. Background

This chapter will provide the background to the study. It will discuss the political and economic context of Uganda. The chapter will further outline the research problem and set out the justification of the study. In addition, the methodology as well as the intended scope of the study will be outlined. An overview of available literature in this area will be done.

1.1.1 Political context

In the past, Uganda went through a dark and difficult period of political chaos and gross economic mismanagement. It can be said that Uganda had become a ‘killing field’ where the principles of the rule of law, democracy and justice were routinely trampled upon by the governments of the day. The respect for human dignity and rights was minimal at best and absent at worst. This past was characterised by periods of massive human rights violations and abuse.¹

For nearly three decades, the people of Uganda suffered diverse forms of human rights violations in stark contravention of the provisions of the then 1962 and 1967 Constitutions of Uganda.² The violations included the breach of the right to life, the right to personal liberty and inhumane treatment.³

These violations were also in breach of the provisions of the United Nations

¹ African Peer Review Mechanism (APRM) Republic of Uganda. APRM Country Review Report No.7 January 2009. xxxv and chapter 3. The report is available at <http://www.aprm-international.org/> (accessed on 16 March 2010).

² Government of Uganda Constitutions of the Republic of Uganda 1962 and 1967. See n 1 above for more details.

³ Government of Uganda. *Constitution of the Republic of Uganda* 1962. Articles 18, 19 and 21. Available at <http://www.scribd.com/doc/20262240/Uganda-Constitution-1962> (accessed on 16 March 2010).

Universal Declaration of Human Rights (UDHR) 1948⁴ and the African Charter on Human and Peoples' Rights (ACHPR) 1986,⁵ together with major international human rights treaties, to which Uganda was and still is a party. Uganda's political, social and economic history is therefore chequered by several incidences of human rights violations, most notorious of which was the Amin dictatorship (1971-1979) which was characterised *inter alia* by the suspension of the Constitution and the introduction of military decrees, unlawful arrests of people, mass murders, suppression of freedom of expression and the prevalence of torture. It is estimated that over 300,000 people were killed during the Amin era.⁶ The Obote II era (1980- 1985) served to solidify the dark shadow cast by the Amin era.⁷

In view of this dark period, one could say that Uganda had become a centre of tyranny. The very institutions that were supposed to be the vanguards of human rights such as the police and army were the principal violators of human rights. Umozurike asserts that the paradox in human rights is that governments are potentially their effective protectors but are also often their worst violators.⁸ As indicated above, Uganda was no exception to the picture that Umozurike paints. It could be said that to date Uganda is yet to completely shake off this legacy. Several public officials still act in a manner that violates human rights. One possible reason for this could be the dark

⁴ United Nations Universal Declaration of Human Rights GA Res 217 A (111), U.N. Doc A/810 at 71 (1948).

⁵ African Charter on Human and Peoples' Rights adopted 27 June 1981, Nairobi Kenya, OAU. Doc. CAB/LEG/67/3, Rev 5. Reprinted in 21. I.L.M 59 (1981) Available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/Banjul%20Charter.pdf> (accessed on 15 August 2008).

⁶ International Commission of Jurists *Uganda and Human Rights* (1978) 5.

⁷ APRM Uganda Country Review Report No 7 (see n 1 above) Chapter 3.

⁸ UO Umozurike *The African Charter on Human and Peoples' Rights* (1997) 8.

legacy. The difference between right and wrong was blurred and to a large extent violating human rights was seen as an acceptable way of doing things. This is illustrated by the view of a police officer who expressed surprise that the police are not by law supposed to torture a suspect. According to the officer, torture was acceptable especially, if it led to obtaining of evidence.⁹ It is therefore not uncommon in present day Uganda to come across police officers treating suspects in an inhumane way.

The present government, the National Resistance Movement (NRM), took the reigns of power in 1986. It is committed to fulfilling the full restoration of the rule of law, democracy, justice and the respect of human rights. This commitment is reflected in a number of ways. A new Constitution was passed in 1995 with a comprehensive Bill of Rights in chapter four.¹⁰ The Uganda Human Rights Commission (UHRC) was established as the national human rights institution.¹¹ In addition, regular elections have been held. All these initiatives are aimed at creating an environment where there is respect for human rights, the rule of law, justice and democracy. It is acknowledged that human rights have greatly improved in Uganda over the last two decades.¹²

Uganda can therefore today be described as a country in transition, from a situation where there was no rule of law, no human rights culture and where democracy was a notion that could only be thought about, to a situation where

⁹ J Kanya 'The softer side of the EU HRGGP programme in the Uganda Police Force' (2008) 2 in *The Human Rights and Good Governance Programme Newsletter*, Issue No 3, 2009.

¹⁰ Republic of Uganda: *Constitution of The Republic of Uganda* 1995 (as amended).

¹¹ The Uganda Human Rights Commission Cap 276 and Article 51 of the Constitution of Uganda 1995 (as amended).

¹² APRM Uganda Country Review Report No 7 (see n 1 above) xxxv.

at least there is a semblance of political, social and economic order. There is no doubt that since Uganda gained its independence in 1962, it has been through political, economic and social upheaval. The country is still recovering from the ramifications of the brutal eras of Amin, Obote and Okello. Some might go as far as stating that the once sad Ugandan story is being turned around, although not as fast or in the direction that some might want. In recognition of this positive change, several development partners have provided assistance to Uganda for different development programmes, including the promotion and protection of human rights in Uganda. This study will examine the role development assistance is playing in the promotion and protection of human rights in Uganda.

1.1.2. Economic and social context

Uganda is one of the poorest countries in the world, but over the last decade and a half, it has registered positive economic growth. The United Nations Development Programme (UNDP) in its human development index ranks Uganda in the low human development category.¹³ Notably, progress has been achieved in the area of poverty reduction. In 1996, core poverty was estimated at 56%.¹⁴ This fell in 1998 to 44% and further dropped to 35% in 2001. It is reported to have dropped to 31% in 2006.¹⁵ The life expectancy is 54.1 years, the Gross Domestic Product (GDP) per capita is USD 1,254 and gross enrollment in education 62.3%.¹⁶ The country is divided into about 117

¹³ United Nations Development Programme *Human Development Index 2010* (2010). Available at http://hdr.undp.org/en/media/HDR_2010_EN_Table1_reprint.pdf (accessed on 17 January 2011). Uganda is ranked 143 out of 162 in the low human development category.

¹⁴ Uganda Bureau of Statistics *Uganda National Household Survey 2005 - 2006* (2007) xiii.

¹⁵ Uganda Bureau of Statistics (see n 14 above) xiii.

¹⁶ Human Development Report (see n 13).

districts that vary in size and population. It is therefore hardly surprising that Uganda is the recipient of development assistance as it is a poor underdeveloped country.

Despite the fact that Uganda has managed to record real gross domestic product (GDP) growth in recent years, the economy remains highly exposed and vulnerable. As part of its medium term economic strategy, the government is in the process of creating a suitable environment for increased private investment and savings. The adopted strategy is underpinned by the idea that strong economic growth is necessary to eradicate poverty, which will only be possible with high levels of private investment and a strong export base. It could therefore be concluded that the economic policies of the government have largely succeeded in reversing the macroeconomic disequilibria that the economy suffered for most of the period between the early 1970s and the early 1980s.¹⁷ However, it has to be acknowledged that such investment is unlikely to occur where there is no observance and protection of human rights.

It is worthwhile to note that the government had in place a Poverty Eradication Action Plan (PEAP) which was supported by five pillars that underpin the medium term economic and budget strategy.¹⁸ Pillar four thereof was devoted

¹⁷ APRM Country Review Report No 7 (see n 1 above) 114.

¹⁸ Ministry of Finance, Planning and Economic Development December. Poverty Eradication Action Plan 2004/5 – 2007/8 (2004). Available at <http://www.finance.go.ug/peap/about.php> as 20 August 2007 (accessed on 29 January 2005). The Poverty Eradication Action Plan (PEAP) is Uganda's national development framework and medium term planning tool, prepared in 1997 through wide stakeholder consultations and participation. The PEAP, which is also the Country's Poverty Reduction Strategy Paper (PRSP), guides the formulation of government policy and implementation of programmes through sector-wide approaches and a decentralised governance system. The PEAP came to an end in June 2008 and was replaced by the National Development Plan (NDP) in June 2010.

to ‘ensuring good governance’.¹⁹ As already alluded to herein, the concept of good governance embraces the promotion, respect and protection of human rights. The PEAP has now been replaced by the National Development Plan (NDP).²⁰ Later, in chapters 3 and 4, the NDP and how it relates to development and human rights shall be examined.

The Government of Uganda (GOU) has put in place a national human rights body known as the Uganda Human Rights Commission (UHRC).²¹ The UHRC is supported by both GOU and development partners. In chapter 5, more details will be provided on the government’s and development partners’ contribution to the UHRC. The role and impact of development partners’ contribution to the UHRC will be explored in detail.

Furthermore, as some donors move to general budgetary support, good governance becomes an area of increasing importance and an area for monitoring. In Uganda, the member states of the European Union (EU) and the EU as a multilateral institution have taken particular interest in ensuring that good governance indicators, which include human rights, are incorporated into the annual assessment of the impact of budget support. This debate shall be returned to in chapter 5.

President Museveni is remembered assuring the Ugandan public in 1986, when being sworn in as president, that Uganda was witnessing a fundamental

¹⁹ Ministry of Finance, Planning and Economic Development (see n 18 above).

²⁰ Government of Uganda (2010). National Development Plan 2010/11-2014/15. Available at http://www.finance.go.ug/docs/NDP_April_2010-Prot.pdf (accessed on 15 June 2010).

²¹ The Uganda Human Rights Commission Cap 276 (see n 11 above).

change and not a mere change of guards.²² Many Ugandans at the time verily believed that this was going to be an administration with a difference, one truly committed to wiping out the serious ills that had plagued the nation for so long. It could be said that part of this promised fundamental change includes the creation of new bodies like the Uganda Human Rights Commission²³ and adoption of a new Constitution in 1995 that has a progressive Bill of Rights.²⁴

There is no doubt that the current administration has created a greater degree of peace, although the northern part of the country has been plagued by a 22 year old civil war.²⁵ The administration has also put in place sound economic policies.²⁶ However, human rights abuses and violations still remain as one of its main nemesis. The UHRC in its 11 annual report for 2008 outlines a number of areas of concern.²⁷ These include:

- Maintenance of children
- Right to liberty
- Right to property
- Torture, cruel and inhumane treatment
- Non-payment of compensation awards to torture victims

²²This was said by President Yoweri Museveni in his swearing in speech as President of Uganda on 26 January 1986 in Kampala.

²³ The Uganda Human Rights Commission (see n 11 above). UHRC is the national human rights body created by an act of parliament and provided for in the Constitution of Uganda. In chapter five, its mandate and operations are discussed.

²⁴ Since independence in 1962 Uganda has had 4 constitutions: 1962, 1966, 1967 and most recently 1995. The 1995 Constitution of Uganda as amended in 2006 is the operational one.

²⁵ Refugee Law Project 'Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda' Working Paper No 11 (2004) 4. Available at http://www.refugeelawproject.org/working_papers/RLP.WP11.pdf (accessed on 23 March 2011).

²⁶ F Kuteesa, E Tumusiime-Mutebile, A Whitworth, T Williamson (eds) *Uganda's Economic Reforms: Insider Accounts* (2009) 10-15.

²⁷ Uganda Human Rights Commission *11 Annual Report* to the Parliament of the Republic of Uganda (2008) 32.

- Insecurity and lack of peace in Northern Uganda
- Delayed trials and over long stays on remand
- Use of the military court martial which routinely violates the right to due process
- Domestic violence
- Discrimination and stigmatisation of persons with HIV/AIDS
- Violation of the freedom of assembly

1.2. Development partner interventions

Over the last two decades, poor countries of the south such, as Uganda, have received development assistance mainly from the affluent countries of the north. The stated overall objective of this assistance is to alleviate or eradicate poverty in the disadvantaged or poorer countries. It is not uncommon therefore to find a human rights component embedded within this development assistance. We now see, more and more, that most development assistance portfolios contain support for the promotion, protection and respect for human rights. In fact, having a good governance programme underpinned by *inter alia* a human rights facet is now the working practice for most development partners. For example, development partners like Ireland, Germany, Norway, Netherlands and Denmark have good governance programmes running in Uganda as discussed in chapter 5.

Buttressing this development assistance relationship is a partnership that is mooted by both the ‘giving’ and ‘receiving’ countries to be based on equality, mutual respect and the promotion of local ownership. This study sets out to

establish the actual nature of this relationship. The study will seek to establish whether international human rights standards provide an operative framework for development assistance and whether development policies take cognizance of international human rights standards.

In the last 25 years, Uganda has been the recipient of several millions of dollars in development assistance. A number of development partners have been supporting the promotion, protection and respect of human rights by funding the UHRC and several human rights civil society organisations. Uganda, just like many other African States, relies heavily on development assistance not only to run its national budget but also to roll out reform programmes in several sectors including human rights.²⁸ The assistance which amounts to about 50% of the national budget has led many to believe that it is the development partners with their deep pockets that set the agenda in almost all spheres of economic, social and political life in Uganda.²⁹ The proposed area of study therefore seeks to examine the dynamics of this relationship in the human rights arena in Uganda.

The Ministry of Finance, Planning and Economic Development of Uganda (MOFPED) further notes that, the implication of this is that Uganda is likely to be dependant on external assistance for the budget even in the medium-term³⁰.

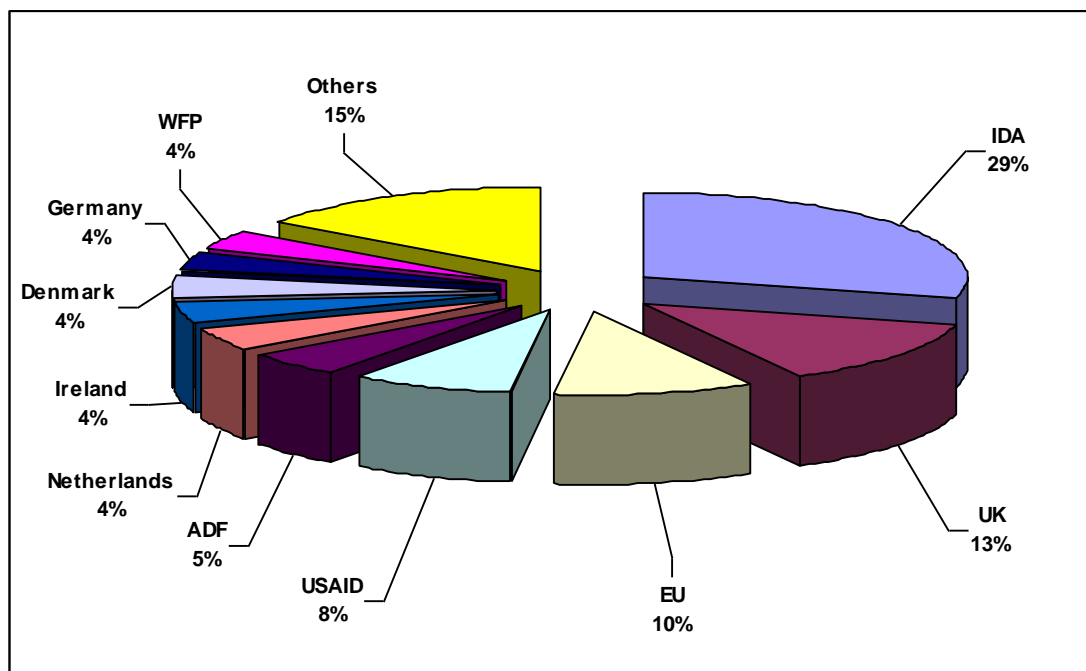
²⁸ APRM Country Review Report No 7 (see n 1 above) ixiii.

²⁹ Ministry of Finance, Planning Economic Development, National Budgets from 2004/2005 indicate that development partners contribute close to 51% of the national budget. This however, in the 2005/2006 budget fell to about 48%. In 2006/7 it was about was 45%, in 2007/2008 it was reported as 42% and in 2008/2009 it went down to 29%. It is government policy to reduce dependency on donor funding and rely more on domestically mobilised resources.

³⁰ Ministry of Finance, Planning and Economic Development Development Cooperation Report 2006/2007 (2008) 24.

In the long run, MOFPED observes that the government has planned to gradually reduce dependency on external assistance by a small percentage of GDP per year.³¹ Chart 1 below highlights the commitments by top ten individual donors to Uganda. Later in chapter 5, the study shall examine the support given to human rights agencies such as the UHRC and JLOS.

Chart 1: Percentage share of top ten donors



Source: *Aid Liaison Department, MOFPED*

The above chart shows a summary of external assistance by individual donor for the period 2000/2001 to 2006/2007. The World Bank, through the International Development Association (IDA) window, has cumulatively remained the top donor. Currently, the list of top 10 donors includes the World Bank (29% share), United Kingdom (13%), European Union (10%), USAID (8%), the African Development Bank (5%), Netherlands (4%), Ireland (4%), Denmark

³¹ Ministry of Finance, Planning and Economic Development (see n 30 above) 25.

(4%), Germany (4%) and the World Food Programme (4%). All the remaining donors take a 15% share. It is significant to note that the World Bank is the top donor. This fact has significant implications for human rights. Due to its position, the World Bank wields a lot of power and influence and yet it is very reluctant to take up issues of promotion and protection of human rights citing its mandate. Danino however, is of the opinion that, the World Bank's objectives and activities are deeply supportive of the substantive realization of human rights.³² Danino believes that one of the reasons for this is because the concept of development itself has evolved substantially over the past 60 years and along with it the Bank's mission. As currently defined, the Bank's mission consists of the alleviation of poverty through economic growth and social equity. This conception of the alleviation of poverty has an especially strong human rights dimension.³³ Danino does present a compelling argument but the reality is that this is a legal opinion which is not Bank policy.

The human rights non-governmental sector is no different from the government. In fact, the situation of the NGOs is more dire, with almost all of them relying entirely on external assistance to run their programmes. This therefore begs the question of how an institution that is 100% funded by external actors can retain its autonomy and independence. And to whom are these institutions accountable? The study aims at answering this question. One possible reason for NGO dependence is the fact that several NGOs are born or established as a result of development partners and their assistance.

³² R Danino. 'Legal Opinion on Human Rights and the Work of the World Bank' (2006) 1, 4. Danino is the former Senior Vice President and General Counsel of the World Bank.

³³ Danino (see n 32 above) 4.

The Organisation for Economic Cooperation and Development (OECD) takes the view that aid (development assistance) can and must be used more effectively to provide healthier and more secure lives for the 1.1 billion people in the world who live on less than a dollar a day and to achieve the Millennium Development Goals (MDGs).³⁴ In 2003, OECD countries provided development aid amounting to a record United States Dollars (USD) 69.0 billion, up from USD 58.3 billion in 2002.³⁵ OECD further acknowledges that human security – democratic and accountable governments, the protection of human rights, and respect for the rule of law – is crucial to development.³⁶ This view is held by several of the EU members that provide development assistance. The question that will be explored arising from this OECD position is whether there is a legal obligation to provide this development assistance under international law. If not, should there be such an obligation? These questions will be discussed and answered in chapters 2 and 5 of this study.

Uganda receives over USD300 million per year as development assistance from several development partners, mainly from OECD countries.³⁷ The Overseas Development Institute (ODI) reports that Uganda received substantial aid flows averaging 45.4% of total government expenditure between 1999 and 2009.³⁸ Further figures together with the development assistance agreements will be provided and discussed in chapter 5. Almost all

³⁴ Organisation for Economic Cooperation and Development (OECD's) Annual Development Cooperation Report 2004 I. Available at http://www.oecd.org/document/22/0,2340,en_2649_33721_34285782_1_1_1_1,00.html (accessed on 30 January 2005).

³⁵ OECD (see n 34 above) 1.

³⁶ OECD (see n 34 above) 1.

³⁷ The main development partners operating in Uganda are Austria, Denmark, Norway, Netherlands, United Kingdom, Sweden, Germany, Ireland, United States of America and the European Union.

³⁸ Overseas Development Institute *Donor support to domestic accountability: Budget processes and service delivery in Uganda* (2010) 6.

the major development partners have human rights programmes normally nested in their overall governance programme. In Uganda, the main development partners have attempted to harmonise and coordinate their interventions in the human rights area.

These development partners are collectively supporting the promotion and protection of human rights through support to the UHRC and NGOs. A basket fund was been created through which a number of development partners channel their support to the UHRC.³⁹ In addition, there is a donor working group on human rights that monitors human rights under a governance matrix that has been developed by development partners.⁴⁰ It is within this group that the human rights support is coordinated and monitored. The human rights working group is one of four working groups created by the Heads of missions who have come together under a group known as the Partners for Democracy and Governance (PDG). See figure 1 below for the development partner group structure under the PDG. A complete list of the other development partner groups is provided in chapter 5.

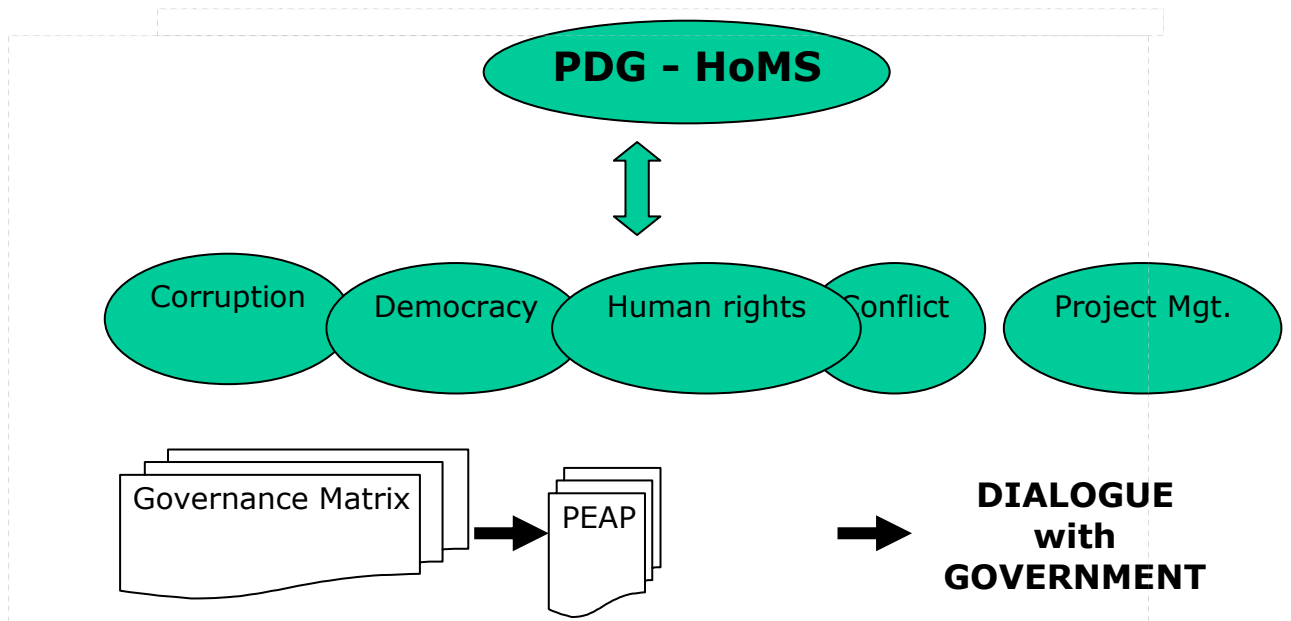
The governance matrix which contains a number of governance issues including human rights, which are monitored by development partners is presented to the government formally and forms the basis of engagement over these critical issues. (See Annex 1 for the human rights component of the

³⁹ The Uganda Human Rights Basket Fund which run from 2000- 2008, was supported by Ireland, Denmark, Sweden and Norway and provided institutional support to the Uganda Human Rights Commission. In 2008 the fund wound up and now each of these countries provides bi-lateral support to the Uganda Human Rights Commission. This was confirmed by Daniel Muwolobi, Governance Advisor with the Embassy of Ireland Kampala in a telephone interview I held with him on 10 January 2011.

⁴⁰ The Governance Matrix is a monitoring tool developed by development partners and comprises of four components (1) democratisation processes (2) human rights (3) transparency & accountability and (4) security. Monthly and bi-annual assessments are prepared, forming the basis of dialogue with the Government of Uganda.

matrix.) I developed the matrix below. The study will delve into the relationship between the development partners and the recipient agencies with the view of establishing what influence, if any, they bring to bear on the national agendas of the recipients.

Figure 1: Development Partner Groups



1.3. The research question

This study is underpinned by one central research question: What role does development assistance play in shaping the human rights agenda in Uganda? Flowing from this central question, a number of other questions arise, including:

1. Why do developed countries provide development assistance to countries like Uganda and what is the ideology behind this assistance?
2. What is the nature of the partnership between the development partner and the receiving country? Is there national ownership of programmes supported?
3. Is development assistance a right or charity and are development assistance agreements legally binding?
4. What are the various development assistance modalities and how are they used to shape the human rights agenda?

As earlier mentioned, it is therefore not uncommon to find that development partner countries will have development assistance programmes with a human rights component embedded therein. A number of principles and policies have been designed to underpin the development assistance relationship.

Concepts such as local ownership and partnership will be discussed in chapter 2. The theory and practice of development assistance and the role it plays in the human rights arena practice will also be explored. While the theory espouses concepts such as local ownership, partnership and mutual respect, in

practice the story is quite different. It is this inherent contradiction between theory and practice that has prompted me to delve deeper into this area.

Another compelling reason that prompted this study in this area was the discovery that most scholars like Tomasevski and Piron who have written on development assistance and human rights have done so from a global perspective and do not follow a country specific approach. There is hardly any literature on Uganda regarding the role that development assistance plays in promoting and protecting human rights. For example, the OECD, World Bank and leading scholars have tended to discuss development assistance and human rights from the premise of using human rights as conditionality for aid disbursement or looking at the relationship between development and human rights. This partly explains the driving force behind some development partners' reasons for providing assistance. Literature on the role that development assistance actually plays in determining the national human rights agenda in Uganda is hard to come by; a situation that this study hopes to remedy.

The study will examine implications of this dependence and determine the extent to which development partners set the agenda for UHRC. This line of investigation will also touch on the central question of national ownership. To what extent can a state that is dependent on development assistance claim to own its development/reform programme? How independent is the UHRC or NGOs that are funded between 80% and 100% by external actors? In view of

the heavy reliance on development assistance, can one expect the UHRC or NGOs to be truly independent?

In contemporary development practice, the concepts of partnership and local ownership are taking centre stage. These concepts are defined later in chapter 2. One way of realising partnership and local ownership is through the adoption of the human rights based approach (HRBA). The clarion call to adopt a HRBA to development is on from a number of development partners including the United Nations. UHRC has responded to this call and is advocating for this new approach. However, the legal and practical implications of rolling out the HRBA are not well-articulated and merit study.

1.4. Objectives and relevance of the study

This study is informed by a set of objectives which include the following:

- To provide information on how development partners provide their support for human rights programmes in Uganda,
- To determine who sets the human rights agenda in Uganda,
- To establish whether there is an international legal framework for the provision of development assistance,
- To recommend an equitable framework for the provision of development assistance that promotes and protects human rights, and
- To contribute to the body of knowledge on development assistance and the promotion and protection of human rights in Uganda.

The centrality of development assistance in supporting human rights programmes is undisputed. This study is therefore of particular significance given that the human rights landscape in Uganda is dominated by programmes and institutions supported through development assistance. Based on this background, a study of this nature, seeking to unravel this relationship and also inquire about the applicability of international human rights standards, is essential.

The study will therefore contribute to the jurisprudence in this area that currently lacks data that covers the nexus between development assistance and human rights in Uganda. This study also intends to spark interest in the paradigm that in some instances development assistance does shape the human rights agenda of the recipient country and also investigate what this means for countries such as Uganda that receive development assistance

1.5. Literature review

During the course of the study, available literature pertaining to the relationship between development assistance and human rights has been examined. However, it is important to bear in mind that most of the available literature does not examine the local situation in Uganda. In addition, most of the literature accessed discusses development assistance and human rights from the perspective of using human rights as a trigger for disbursement of assistance/aid but not from the perspective of the role that development assistance plays in setting the human rights agenda.

Within Uganda, the Centre for Basic Research (CBR) has explored the relationship between NGOs and donors.⁴¹ One of the conclusions of the CBR study was that NGOs are vulnerable to donors setting the agenda due to their financial leverage.⁴² The CBR study did not focus on human rights NGOs but rather NGOs in general, and it did not delve into the relationship between donors and national institutions such as UHRC. It is therefore hoped that this study will fill this lacunae.

In a 2003 report, Human Rights Watch (HRW) provides a number of recommendations for donor countries on the human rights issues they should monitor in Uganda.⁴³ However, there is no analysis done on the relationship between development partners and national institutions in the report or previous reports. Yet it is clear that HRW believes that donor countries have a role to play in promoting and protecting human rights in Uganda and this is why it provides a set of recommendations for donor countries.

In contrast, the Human Rights Committee which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) in its concluding observations in relation to Uganda's initial report, makes no connection between national institutions and development partners or development assistance.⁴⁴ It could be said that, the Human Rights Committee,

⁴¹ Centre for Basic Research, Economic Commission for Africa Monitoring Progress Towards Democratic Governance: The Uganda Country Report (2002) 28.

⁴² Centre for Basic Research (see n 41 above) 28.

⁴³ See Human Rights Watch. 'The State of Pain: Torture in Uganda' 2003. Available at http://hrw.org/reports/2004/uganda0404/4.htm#_Toc67373883 (accessed on 8 March 2006).

⁴⁴ Human Rights Committee; Concluding observations of the Human Rights Committee : Uganda CCPR/CO/80/UGA 05/04/2004 . The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State

failed to acknowledge the pivotal role development partners play in the human rights field, a position clearly understood by HRW. It is contended that the Human Rights Committee should provide guidance on what role development partners have or should have in promoting and protecting human rights in countries like Uganda.

Chowdhury *et al.* compiled a number of articles on the right to development.⁴⁵ The various articles in their publication deal with a wide range of issues including the right to development, development ideology in international law and the human rights approach to the right to development. The publication offers insightful ideas on the problematic question of the legitimacy of the right to development in international law. While the articles do not specifically deal with the question of what role development assistance plays in the human rights arena, they are of particular value in so far as they deal with the right to development and the human rights-based approach, issues that will be dealt with in this study. One of the issues that chapter 2 deals with, is whether there is a right to development assistance and if it can be inferred from the right to development.

Uvin discusses the implications of the development community, conferring a more central role to human rights in its work.⁴⁶ While Uvin does attempt to discuss the nexus between development and human rights, the primary thrust

parties. Available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.80.UGA.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.80.UGA.En?Opendocument) (accessed on 19 May 2009).

⁴⁵ SR Chowdhury, EMG Denters and PJIM Waart *The Right to Development in International Law* (1999).

⁴⁶ P Uvin *Human Rights and Development* (2004).

of his book is aimed at the points of intersection rather than the role development assistance plays in the promotion of human rights.

Two leading human rights scholars and practitioners, Alston and Robinson, discuss ways in which the strengths resources and support of the international human rights and development communities can be mobilised in order to reinforce one another in their efforts to achieved shared goals.⁴⁷ Alston and Robinson seek to unravel the challenges of meeting the agendas of the human rights and the development world. Just like Uvin, their main preoccupation is looking at the historical divide between the human rights and development communities and looking at ways of bridging this gap. While both pieces of work do provide very useful pointers on the relationship between development and human rights, they both do not explore the question of the practical role development assistance plays in shaping human rights agendas in developing countries like Uganda.

The former head of the World Bank, Wolfensohn discusses the connection between human rights and development as opposed to development assistance.⁴⁸ He recognises that, ‘there is a tremendous coalescence between human rights and what we do (in the bank).’⁴⁹ Wolfensohn arrives at the conclusion that a rights-based approach is connected to poverty eradication

⁴⁷ P Alston & M Robinson ‘The Challenges of Ensuring the Mutuality of Human Rights and Development Endeavours’ , in P Alston & M Robinson *Human Rights and Development: Towards Mutual Reinforcement* (2005) 1-18 available at <http://www.oup.co.uk/pdf/0-19-928462-8.pdf> (accessed 3 April 2006).

⁴⁸ JD Wolfensohn ‘Some Reflections on Human Rights and Development’ (2005) in P Alston & M Robinson *Human Rights and Development: Towards Mutual Reinforcement* (2005) 19.

⁴⁹ Wolfensohn (see n 48 above) 19.

and thus development.⁵⁰ However, he does not examine the role development assistance plays in promoting the rights based approach or human rights. The study will therefore go further to look at the role development assistance plays in promoting and protecting human rights in Uganda.

Robinson asks the question: What rights can add to good development practice?⁵¹ She endeavours to show that human rights are part of development. The central premise of Robinson's discussion is showing how human rights should be linked to development. She makes the case, just like Tomasevski below, for the integration of human rights in development.⁵² She does not deal with the role of development assistance in promoting and protecting human rights, which is the focus of this study. However, her view is relevant as it will help shape the discussion around the question: Why do development partners provide development assistance?

The work of the late Tomasevski is perhaps the closest in outlook and focus to this study.⁵³ Tomasevski advances the argument that human rights ought to be incorporated in development aid to prevent it from becoming part of the problem it purports to solve.⁵⁴ Some of the most valuable sections show how irregularly the goal is pursued by national donors, the World Bank and the United Nations. This is one of the major strands of debate in this study. This study will therefore take forward a number of issues raised in Tomasevski's

⁵⁰ Wolfesnohn (see n 48 above) 19.

⁵¹ M Robinson 'What Rights can Add to Good Development Practice' in *P Alston & M Robinson Human Rights and Development: Towards Mutual Reinforcement* (2005) 25.

⁵² Robinson (see n 51 above) 25.

⁵³ K Tomasevski. *Development Aid and Human Rights* (1989) 49.

⁵⁴ Tomasevski (see n 53 above) 49.

work and also take into account that since 1989, the modalities of development assistance have undergone some major changes.

In what he calls ‘donorisation of domestic policy’, Olukoshi argues that donors have taken over domestic policy.⁵⁵ He notes that, ‘the donorisation of the domestic policy processes amounted to a capture of the state by external forces and the donorisation of the system of accountability.’⁵⁶ The conclusions of Olukoshi resonate with some of the research questions that the study seeks to answer, including who, in reality, is setting the human rights agenda in Uganda. While Olukoshi’s views may inform this study, he does not discuss the role donors have played in shaping the human rights agenda of recipient countries, an issue that this study will delve into.

Wallace *et al.* discuss how local strategies and projects of NGOs are influenced by changing donor policies and other external forces.⁵⁷ They provide very useful insights on how NGOs in general respond to donor policies using Uganda and South Africa as case studies. They deal with NGOs in general to the exclusion of human rights NGOs. Nevertheless, they do provide useful pointers which will inform and enrich this study. The work of Wallace *et al* provided useful pointers in this study especially as far as the effect of development assistance on human rights NGOs is concerned.

⁵⁵ A Olukoshi ‘Assessing Africa’s New Governance Models’ in JO Onyango & N Muwanga (eds) *Africa’s New Governance Models. Debating Form and Substance* (2007) 19.

⁵⁶ Olukoshi (see n 55 above) 19.

⁵⁷ T Wallace, L Bornstein & J Chapman *The Aid Chain: Coercion and Commitment in Development NGO’s* (2007).

In a rather brazen attack on aid agencies, Hancock questions the role and effectiveness of aid (assistance) and the whole development assistance enterprise.⁵⁸ One of the central themes he advances is that the whole aid enterprise is driven by self-interest and greed. He further notes that very often aid agencies are run by inexperienced people who might end up causing more harm than good. Hancock's position will be interrogated in this study and will assist in answering the questions: Why do developed countries provide development assistance? What really is their agenda?

While discussing donor assistance to justice sector reform in Africa, Piron notes rightly that poverty reduction has become the official objective of development policy.⁵⁹ This, she argues, has been associated with a commitment to changing the provision of donor aid, which is now based on a 'partnership approach' and the 'ownership' of reform by local actors, aiming to improve coordination of aid, moving toward a harmonisation of procedures and eventual alignment of donor assistance with national partners' policies and systems.⁶⁰ Piron goes on to call upon donors to promote national leadership. The question that informs this study is whether you can ever have local/national ownership of foreign-funded programmes. Piron's work therefore will provide some insight on this.

⁵⁸ G Hancock *Lords of Poverty* (1987).

⁵⁹ LH Piron 'National Criminal Justice Reform: Donor Assistance to Sector Reform in Africa: Living up to the New Agenda?' in Open Society *Justice Initiatives* (2005) 6.

⁶⁰ Piron (see n 59 above) 6.

Moyo is one of the more recent critics of aid. In her recent book, her main argument is that aid has not worked for Africa.⁶¹ Moyo maintains that we live in a culture of aid which has made Africa aid-dependant. She goes on to observe that while in the past forty years at least a dozen developing countries mainly in Asia have experienced phenomenal growth, over the same period as many as thirty other developing countries, mainly aid-dependent in sub-saharan Africa, have failed to generate consistent economic growth and have even regressed.⁶²

Moyo advocates for a world without aid, with focus on trade and capital as the solutions to Africa's development woes.⁶³ While Moyo's assertions, may be true, they fail to take cognizance of the role development assistance (positive or negative) has played or is playing to promote and protect human rights. Moyo, who is dismissive of aid, does not acknowledge this, which is a major omission in her very convincing book. In this study, the role of development assistance in promoting and protecting human rights will be unravelled, taking into account the question of who is and ought to be shaping this agenda. It is also acknowledged that aid alone can never be the answer, it must be accompanied by initiatives such as trade and private sector- led growth in order for African countries to be able to truly shape and own their destiny.

Hansen *et al.* ask the question, 'does aid to Africa actually work?'⁶⁴ The common answer that comes out of the book is that after nearly 50 years of

⁶¹ D Moyo *Dead Aid: Why Aid is not working and how there is another way for Africa* (2009).

⁶² Moyo (see n 61 above) 29.

⁶³ Moyo (see n 61 above) part II.

⁶⁴ HB Hansen, G Mills & G Wahlers *Africa Beyond Aid* (2008) section 2.

independence and development efforts backed by more than half a trillion dollars of western aid, most of Africa's citizens are poorer than ever. The authors have a sceptical perspective on aid and seek to establish if we can conceive of an Africa beyond aid.⁶⁵ While the authors do make a valid point that Africa needs to go beyond aid, they fail to acknowledge the role that aid has played in moving the development agenda in Africa. It is wrong to completely dismiss aid as a failure. Notwithstanding this, one of the conclusions of this study is that Uganda cannot rely forever on development assistance to support its human rights programmes. In this regard, the study relies on the views in Hansen's book calling for Africa beyond aid.

Degnbol-Martinussen and Engberg-Pedersen strongly support aid.⁶⁶ The authors argue that there is no better alternative to replace taxpayer financed-aid as the main mechanism for promoting greater equality between North and South and within the countries of the south.⁶⁷ They strongly recommend that it aid should be continued but be made more effective and efficient.⁶⁸

Four traps that have ensnared underdeveloped countries like Uganda are identified by Collier: Conflicts, being landlocked, natural resources and bad governance.⁶⁹ Collier states that one way the developed world has tried to address these traps is to provide aid. He however, comes to the conclusion that aid alone is really unlikely to the address the problem of the bottom billion

⁶⁵ Hansen *et al* (see n 64 above) sections 2 and 4.

⁶⁶ J Degnbol-Martinussen & Poul Engberg-Pedersen *Aid Understanding International Development Cooperation* (1999).

⁶⁷ Degnbol-Martinussen & Engberg-Pedersen (see n 66 above) i.

⁶⁸ Degnbol-Martinussen Engberg-Pedersen (see n 66 above) i.

⁶⁹ P Collier *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It*. (2007) 17-64.

(from the underdeveloped world).⁷⁰ While Collier does discuss aid and human rights, this study comes to the same conclusion with him on one position that development assistance cannot be the solution to promoting and protecting human rights in Uganda. It can and should only supplement the government in carrying out its primary obligation of promoting and protecting the human rights of its citizens.

Calderisi advances the same argument as Collier and others. He believes that aid has failed Africa and also Africa has failed to manage itself.⁷¹ Calderisi calls for a reduction in aid to poor African countries.⁷² Calderisi makes a valid point, poor countries like Uganda should aim at reducing their dependency on aid to run human rights programme. This is one of the key recommendations of this study. The role of development assistance in promoting and protecting human rights should be reduced over time.

Marks, together with several other eminent scholars like Baxi, Salomon and Shrijver, deals with the role of international law in implementing the right to development.⁷³ The various scholars in this very insightful book make compelling arguments on how the right to development can be made legally binding. Some of the thoughts and ideas of for example Baxi and Shrijver have been relied upon in this study. Both put forward a number of suggestions on how the right to development can be legally recognised.

⁷⁰ Collier (see n 69 above) 99.

⁷¹ R Calderisi *The Trouble with Africa: Why Foreign Aid isn't Working* (2007) 153.

⁷² Calderisi (see n 71 above) 209.

⁷³ SP Marks *Implementing the Right to Development The Role of International Law* (2008).

The United Nations High Level Task Force on the Implementation of the Right to Development in a recent report highlights the ongoing debate and thinking of the right to development within the member states of the UN.⁷⁴ It highlights the deep polarisation over the legal status of the right to development with several developed countries like Canada and the United States of America not supporting the recognition of the right while others from Africa like Nigeria in favour of the right.

Bolton explores how globalisation and aid have not worked.⁷⁵ Bolton who was the former head of the British Government Aid programme in Rwanda provides a vivid insider account on how globalisation and aid are failing the world's poorest continent Africa. He notes that Africa is not able to take advantage of the increased opportunities that globalisation provides.⁷⁶ Bolton's view could be modified to say that Africa is not allowed to take advantage of the opportunities due to for example an unfair international trading regime.

Baxi discusses the state of human rights in the current global atmosphere defined by security concerns and terrorists threats.⁷⁷ Baxi is critical of Sen's theory of human rights which is rooted in an ethical context. Baxi provides an interesting discussion on why the United Nations Declaration on the Right to Development has not been taken seriously. Baxi provides useful pointers on

⁷⁴ High-Level Task Force on the implementation of the right to development (2010) A/HRC/15/WG2/TF/2 presented at the fifteenth session of the Human Rights Council in Geneva 14-22. January 2010. Available at <http://www.ohchr.org/EN/Issues/Development/Pages/HLTFSession6th.aspx> (accessed on 20 January 2011).

⁷⁵ G Bolton *Aid and other Dirty Business* (2007).

⁷⁶ Bolton (see n 75 above) 240.

⁷⁷ U Baxi *Human Rights in a Post Human World: Critical Essays* (2007).

the work of Sengupta and the implications this has on the right to development.

The relationship between aid, the media and conflict is examined by Polman.⁷⁸ Polman makes the point that aid, the world media and countries in conflict in bound together for selfish interests. While Polman does not specifically look at development assistance and human rights she does provide a very telling account of the motivation, frustration and deceit of the aid industry. There is a lot of commonality with what Polman narrates in her book in the Ugandan development assistance arena.

The International Law of Development is the main theme of the book edited by Snyder and Slinn.⁷⁹ Various scholars deal with the concepts and ideologies of the international law of development, sources of the law of development and the implementation of the law of development. The articles by Bedjaoui, Allott and Kanyeihamba provide useful insights on law and development which have been relied on in this study.

⁷⁸ L Polman *War Games The Story of Aid and War in Modern Times* (2010).

⁷⁹ F Snyder and P Slinn (eds) *International Law of Development: Comparative Perspectives* (1987).

1.6 Methodology

In undertaking this study, a variety of methods have been relied upon. These include desk review, internet, legal data bases, interviews and comparative research methods. This multi-method approach allowed for data triangulation which enhanced the validity of the data through cross -verification from multi-sources.

During the desk review, a content analysis of the literature on development, development assistance and international human rights law was undertaken. In addition a detailed review and analysis of international treaties, conventions, protocols, reports and other relevant instruments on the law of development, development assistance and human rights was done. Furthermore Ugandan national laws and policies on development and human rights were critically examined. Desk reviews tend to lead to the problem of a study being overly descriptive. In order to address this issue, a critical analytical approach was adopted while conducting the desk review.

The internet and various legal databases were also used to complement the desk review. Through the internet and legal data bases like Westlaw and Heinonline a number of international treaties and policies on human rights, development and development assistance were accessed. While using the internet and legal data bases it was recognised that these sources can be unreliable and inaccurate. Therefore every effort was taken to respect the academic tradition of relying on reliable and accurate sources of information like the legal data bases outlined above.

Apart from desk review, semi-structured, unstructured and telephone interviews and discussions were held with fifty senior and knowledgeable persons working in the area of human rights, development and development assistance in Uganda. These persons were drawn from government institutions, civil society, academia, diplomatic and development agencies. The information got from the interviews and discussions form an integral part of the study, as the views and ideas of those involved intimately in the provision of development assistance and the implementation of human rights programmes have been solicited. A complete list of people met and interviewed is attached in Annex 4. An open-ended questionnaire was developed and used during the interviews. The use of interviews raises concern over reliability of the data generated and the possibility of bias of the people interviewed. The study has taken care of this by interviewing fifty people and validating the information got from the interviews with other sources like the desk review.

The use of comparative research was also employed. The study was able draw comparisons between the Uganda Human Rights Commission and national human rights institutions of some countries like Kenya, Malawi and South Africa. The approach used was to look at the role of development assistance in funding the Uganda Human Rights Commisison and compare it to the suitation of other national human rights instititons in the African region. Through the comparative analysis best practices were examined. One major problem with comparative research is that the data sets in different

countries may not use the same categories and the situation in each country is different. However notwithstanding this the comparative method serves to enhance the study by infusing examples from the region.

1.7. Scope of the study

The study is limited to examining the relationship between development partners that provide development assistance to support human rights programmes in Uganda and the human rights NGOs in Uganda (supported agencies). These development partners include Ireland, Germany, Netherlands, Norway, UNDP and the EU. The supported agencies include, the Justice, Law and Order Sector (JLOS) with specific focus on the police and prisons, the UHRC and Human Rights NGOs like the Foundation for Human Rights Initiative (FHRI), Human Rights Network (HURINET), Uganda Debt Network (UDN), Uganda Joint Christian Council (UJCC). These NGOs were chosen primarily because they are among the leading human rights NGOs in Uganda. The information in this study is updated as of 31 August 2010.

1.8. Chapter overview

The study is divided into 3 parts and comprises 6 chapters. Part one, contains chapters 1 and 2. Chapter 1 provides a general introduction of the study, laying out the background to the study and identifying the main research questions. Chapter 1 also contains the objectives of the study, the literature review, limitations of the study and methodology adopted in the study.

Chapter 2 is devoted to the conceptual and theoretical framework in which this study is rooted. The concepts and theories on development, development assistance, human rights, partnership, local ownership and the various aid modalities such as project and budget support will be examined. It is within these frameworks that the ensuing discussion will be tested. The practice that will be explored will be dipped into the conceptual and theoretical pool to determine to what extent the concept and theories are matched in practice.

Part two comprises chapters 3, 4 and 5. Chapter three outlines the legal, policy and institutional framework of development in Uganda. In chapter 4, an analysis of the human rights landscape in Uganda is done.

The study, in chapter 5, discusses the different development assistance modalities used by development partners. In this chapter an audit of the development policies and practices will be done. This audit will seek to establish whether the said policies and practices conform to international human rights standards that will have been outlined in chapter 2. In addition chapter 5 of this study will look at the relationship between development partners and recipient organisations. The theory and practice will be examined. This chapter is the heart and soul of this study. It seeks to answer the key research question of the study: What role does development assistance play in shaping the human rights agenda in Uganda?

The study in part three concludes with a number of findings and recommendations contained in chapter 6. These findings and recommendations

are intrinsically linked to the key research questions. Each finding and recommendation will be addressing the research questions.

1.9. Limitations of the study

In undertaking a study of this nature challenges and limitations are bound to be encountered. One of the major challenges faced in the study, was marrying the two disciplines of development and law. The central question in this study straddles these two disciplines and this in itself poses a scholarly challenge. Uvin acknowledges the same problems and points out that, ‘until quite recently, the development enterprise operated in perfect isolation, if not ignorance, of the human rights community.’⁸⁰ Bridging this isolation is not an easy endeavour.

A second challenge met in carrying out this study was trying to maintain a delicate balance between a practitioner’s and a scholar’s/academic view point. The author finds himself in the unique position of both a practitioner and scholar of human rights and development assistance. This may be both a strength and a challenge. The strength lies with the fact that the author will be able to observe whether the theory is applied in practice while on the other it is a challenge since the author relies in some cases on his observations of the practice in meetings which cannot easily verified.

⁸⁰ P Uvin ‘On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise’ (2002) 171 *Fletcher Journal of Development Studies* 1-11, also available at <http://fletcher.tufts.edu/praxis/archives/xvii/Uvin.pdf> (accessed on 4 May 2006) He further urges that, this does not mean that all development practitioners are undemocratic people or lack personal interest in human rights. Rather, it means that development practitioners did not consider human rights issues as part of their professional domain: they neither weighed the implications of their own work on human rights outcomes, nor sought explicitly to affect human rights through their work.

The lack of adequate material on Uganda makes for the third challenge. As pointed out in the literature review section of this chapter, there is hardly enough literature on development assistance and its role in promoting and protection human rights in Uganda. This has proved to be a major obstacle. The study when completed will hope to remedy this to some degree.

A fourth challenge faced in the undertaking of this study, is the fact that in the areas being explored are fairly untrodden. How development assistance shapes the promotion and protection of human rights agenda is a relatively new area in international law. Most literature and discourse as indicated above is limited to the use of observance of human rights as a conditionality for receiving development assistance. As a result, there is limited academic agreement in this area and as a result there is bound to be academic reluctance to some of the views expressed in this study.

1.10. Conclusion

There is no doubt that in contemporary times, development assistance plays a central part in supporting the promotion, protection and respect for human rights in several developing countries, including Uganda. The scope, nature and impact of this assistance merits study, taking into account what international human rights law, development policy and practice have to say or show. It is therefore hoped that the findings of this study will contribute to the limited information in this area. Chapter 2 that follows sets out the conceptual and theoretical framework of the study.



Chapter 2

Concepts of development assistance and human rights

2.1. Introduction

2.2. Theoretical and conceptual framework

2.2.1. Human rights

2.2.2. Development

2.2.3. Right to development

2.2.4. Development assistance

2.2.5. The right to development assistance

2.2.6. Human rights-based approach to development cooperation

2.2.7. Partnership

2.2.8. Ownership

2.3. Conclusion

Chapter 2

Concepts of development assistance and human rights

2.1. Introduction

This chapter sets out the conceptual and theoretical framework of the study. The key concepts and theories of development assistance, development, human rights, the human rights-based approach to development assistance are discussed. In addition the rights to development and development assistance are examined. The chapter will also outline the current theories of harmonisation and specialisation of development assistance as outlined in the Paris Declaration on Aid Effectiveness and the Accra Agenda of Action.⁸¹ The views of both the proponents and detractors of these various concepts will be considered. It is against this theoretical and conceptual platform that the discussion and findings in this study are tested.

2.2. Human rights

What are human rights? The answer to this seemingly simple question is not straightforward. Definitions of human rights are vast and varied. It should however be pointed out that there is no definition of human rights prescribed in international human rights treaties. It is the Courts of Law and scholars therefore who have attempted to provide guidance in this regard as outlined below.

⁸¹ Paris Declaration on Aid Effectiveness adopted at the High Level Forum on Aid Effectiveness held in Paris February 28 March 2005. The Accra Agenda for Action (AAA) builds on the commitments agreed in the Paris Declaration.

The Uganda Human Rights Commission (UHRC) views human rights as those basic and fundamental rights to which every person for the simple reason of being human is entitled.⁸² They are inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. They are therefore innate, universal, inalienable, indivisible and interdependent/interrelated.⁸³ The UHRC has a tribunal that has the mandate to hear and determine human rights cases/complaints.⁸⁴ An examination of some of the cases heard by the UHRC tribunal reveal that there is little guidance and interpretation provided in terms of the nature and content of some of the human rights dealt with.

In *Kinkuhire Bonny v Kamugisha Stephen*,⁸⁵ the issue before the tribunal was whether the right of the child to be cared for by Mr Kamugisha had been violated, while in *Tusiime Bruce v Attorney General*⁸⁶ the tribunal was confronted with determining (1) whether the complainant's right to personal liberty was violated by the respondent (2) whether the complainant's right to freedom from torture, cruel, inhuman and degrading treatment or punishment was violated. In both these cases the tribunal did not outline what the content and nature of the human rights that were alleged to have been violated. However, in *Fred Tumuramye v Gerald Bwete & others* the tribunal highlighted the central contours of the definition of torture, cruel, inhuman and

⁸² See Uganda Human Rights Commission statement on their website available at <http://www.uhrc.ug/> (accessed on 7 February 2010).

⁸³ Uganda Human Rights Commission (see n 81 above).

⁸⁴ Constitution of Uganda (see n 10 above) article 53(2).

⁸⁵ *Kinkuhire Bonny v Kamugisha Stephen* The Human Rights Commission at Mbarara Complaint No. MBA/063/2005.

⁸⁶ *Tusiime Bruce v Attorney General* The Human Rights Commission at Fort Portal Complaint No. FP/25/2005.

degrading treatment or punishment.⁸⁷ This practice of providing the nature and content of the right being violated is not consistent across all complaints heard by the Commission. It would be very helpful if the UHRC tribunal would provide guidance on the nature and content of the particular human right in the cases they handle just like the South African Human Rights Commission does.

The office of the United Nations High Commissioner for Human Rights (OHCHR) defines human rights as universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity.⁸⁸ OHCHR goes further to aver that human rights law obliges governments (principally) and other duty-bearers to do certain things and prevents them from doing others.⁸⁹ The OHCHR definition recognises the human rights of both individuals and groups, which is a welcome position. This is because there is a large rift in thinking over this among human rights scholars as will be exposed in chapter 4 in respect of the right to development. The OHCHR definition assumes that human rights are universal. This assumption is riddled with problems as many will not agree that human rights are universal. OHCHR itself recognises that international human rights are universally recognised regardless of cultural differences, but their practical implementation does demand sensitivity to

⁸⁷ *Fred Tumuramye v Gerald Bwete & others* Uganda Human Rights Commission No.264/1999. The tribunal outlines the elements of torture to be (1) an act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person (2) for a purpose such as obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind (3) the act is inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity.

⁸⁸ Office of the United Nations High Commissioner for Human Rights. Frequently asked questions on a human rights-based approach to development cooperation 2006 1. Available at <http://www.un.org/Depts/dhl/humanrights/toc/toc9.pdf> (accessed on 14 December 2009).

⁸⁹ Office of the United Nations High Commissioner for Human Rights (see n 88 above) 1.

culture.⁹⁰ This, in reality, amounts to a contradiction: How do you implement human rights, taking into account cultural sensitivities, while at the same time claim they are universal? Implementation of human rights lies at the heart of the human rights agenda and therefore, if universal, should be implemented as such.

Mawa provides an interesting view when he suggests that the concept of human rights in Africa is one of struggle against all forms of domination, exploitation, oppression and abuse.⁹¹ Mawa goes on to support his position by pointing out that this conception of human rights is also clearly reflected in the African Charter on human and peoples' rights noting that, in its preamble, the Charter affirms the duty of everyone, 'to achieve the total liberation of Africa, the people of which are still struggling for their dignity and genuine independence.'⁹² Shivji believes that human rights must be rooted in the perspective of class struggle and must be claimed and enjoyed collectively.⁹³ Stavenhagen discusses cultural rights and universal human rights.⁹⁴ He provides a useful insight into the debate on whether human rights are universal or culture specific. Stavenhagen carries out a relativist critique of universal human rights. He cites the American Anthropological Association which, as early as 1947, recognised the issue of cultural relativism.⁹⁵ This association argues that the individual realises his personality through his culture and hence

⁹⁰ Office of the United Nations High Commissioner for Human Rights (see n 88 above) 5.

⁹¹ M Mawa 'Human Rights and Development in Uganda: Reflections on the Constitutional Provisions on the Right to Development' in AT Dalfovo, JK Kigongo, J Kisekka, G Tusabe, E Wamala, R Munyonyo, Ab Rukooko, ABT Byaruhanga-Akiiki, M Mawa (eds) *Ethics, Human Rights and Development in Africa: Ugandan Philosophical Studies III* (2002) 2.

⁹² Mawa (see n 91 above) 1.

⁹³ I Shivji *The Concept of Human Rights in Africa* (1989) 71.

⁹⁴ R Stavenhagen 'Cultural Rights and Universal Human Rights' in A Eide, C Krause & A Rosas (eds) *Economic, Social and Cultural Rights. A Textbook* (1995) 63-78.

⁹⁵ Stavenhagen (see n 94 above) 69.

respect of individual differences entails a respect for cultural difference.⁹⁶ The association goes further to state that even as the UDHR was being drafted 62 years ago, American anthropologists considered it to be embodying the values of only one culture and they questioned the automatic applicability of this standards to other cultures.⁹⁷ It is clear that referring to universal human rights is problematic and there is no universal acceptance of this position.

Weiss *et al.* argue that human rights are fundamental entitlements of persons, constituting means to the end of minimal human dignity or social justice. They go on to advance the point that if persons have human rights, they are entitled to a fundamental claim that others must do or refrain from doing something.⁹⁸

Wronka defines human rights as statements of human needs.⁹⁹ He maintains that the idea of human rights is a social construct, which reflects social acknowledgements of individual and communal basic and perceived needs in a particular historical period.

Human rights, according to Malanczuk, are fundamental and inalienable rights essential to the human being.¹⁰⁰ Nhamburo goes a bit further and defines human rights as fundamental entitlements to which all persons have a claim.¹⁰¹

⁹⁶ American Anthropological Association 'Statement on Human Rights' submitted to the Commission on Human Rights, United Nations, by the Executive Board, American Anthropological Association, (1947) 49, *American Anthropologist* 4.

⁹⁷ American Anthropological Association (see n 96 above) 4.

⁹⁸ TG Weiss, DP Forsythe & RA Coate *The United Nations and Changing World Politics* (1994) 105.

⁹⁹ J Wronka *Human Rights and Social Policy in the 21st Century* (1992) 22.

¹⁰⁰ P Malanczuk *Akehurst's Modern Introduction to International Law* (1997) 207.

¹⁰¹ AT Nhamburo 'Towards Global Human Rights in Zimbabwe' in P Morales *Towards Global Human Rights* (1996) 121.

Bentham¹⁰² and Burke¹⁰³ take the view that human rights cannot be inalienable but rather stem from actions of governments. Locke on the other hand strongly believes that life, liberty, and estate (property) were fundamental natural rights.¹⁰⁴ Locke's view of rights is rather narrow and focused on civil and political rights at the expense of other rights such as economic, social and cultural rights. Pollis and Schwab conclude that through the philosophic and legal writings of Grotius, Locke, Montesquieu and Jefferson a new conception of popular sovereignty and individual rights was conceived.¹⁰⁵

The Canadian Development Agency (CIDA) states that 'human rights derive from the inherent dignity of the human person and are fundamental to the well-being of the individual and to the existence of freedom, justice and peace in the world'.¹⁰⁶ This study will examine whether development assistance and development policy assists in achieving the basic tenets outlined in the various definitions of human rights.

¹⁰² J Bentham 'Critique of the Doctrine of Inalienable, Natural Rights' (1843) 2, in J Bentham *The Works of Jeremy Bentham* (1843). Available at <http://www.ditext.com/bentham/bentham.html> (accessed on 9 June 2010).

¹⁰³ E Burke 'Reflections on the Revolution in France' (1790) 144.

¹⁰⁴ J Locke 17th century English, philosopher John Locke discussed natural rights in his work, identifying them as being "life, liberty, and estate (property)", and argued that such fundamental rights could not be surrendered in the social contract. See JR Milton (ed) 'Locke's Moral, Political and Legal Philosophy' (1999) chapter 6.

¹⁰⁵ A Pollis P, Schwab 'Human Rights: A Western Construct with Limited Applicability' in A Pollis and P Schwab (eds) *Human Rights: Cultural and Ideological Perspectives* (1979) 2

¹⁰⁶ The Canadian Development Agency (CIDA) See <http://www.acdi-cida.gc.ca/cida> (accessed on 4 May 2006).

Donnelly asserts that there is a special connection between human rights and the rise and consolidation of liberalism in the modern west.¹⁰⁷ Morsink agrees with this noting that the liberalist agenda is closely aligned to that of universal human rights.¹⁰⁸

2.3. Development

In trying to understand what development is, one will immediately be thrust into an inter-disciplinary turf battle. This battle has been one mainly between economists and development practitioners, with the international human rights scholars joining the fray in the last two decades. Lofchie acknowledges that, ‘the notion of development has become so diffuse that it must be redefined afresh by each scholar who wishes to use it.’¹⁰⁹ Classical or traditional economists tend to gravitate towards a definition of development which places a lot of currency on the measurement of a country’s Gross Domestic Product (GDP) as well as Gross National Product (GNP). GDP is the total final output of goods and services produced by a country’s economy, within the country’s territory by residents and non-residents, regardless of its allocation between domestic and foreign claims.¹¹⁰ GNP is the total domestic and foreign output claimed by residents of a country. It comprises gross domestic product plus factor incomes accruing to residents from abroad, less the income earned in the domestic economy, accruing to persons abroad.¹¹¹

¹⁰⁷ J Donnelly *Universal Human Rights in Theory and Practice* (2003) 2.

¹⁰⁸ J Morsink *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (1999) x-xi.

¹⁰⁹ MF Lofchie *State of the Nations: Constraints on Development in Independent Africa* (1971) 3.

¹¹⁰ MP Todaro *Economic Development* (1994) 680.

¹¹¹ Todaro (see n 110 above) 680.

Todaro, for example, asserts that in strictly economic terms, development has traditionally meant the capacity of a national economy whose initial economic condition has been more or less static for a long time to generate and sustain an annual increase in its GNP at rates of perhaps 5% to 7% or more.¹¹² Classical economists will therefore assess whether a country is developing, depending on whether there is an increase in the amount of goods and services produced by an economy of a particular country.¹¹³

This kind of definition of development, as Hansungule notes, did not bother to counter check the net effect of such an increase of the GDP on, for instance, the life of an ordinary person.¹¹⁴ In addition the GDP/GNP approach does not take into the account the question of who owns and produces these goods and services. It does not ask about the income inequality question. It is therefore possible that a country may register impressive GDP figures yet the reality on the ground indicates that the development is enjoyed by the few, while the majority wallow in chronic poverty.

However, with the chronic levels of poverty that the world, especially sub-Saharan Africa is experiencing, something was bound to give in as far as development is defined, viewed or understood. Hansungule believes that it became increasingly obvious that the poor of the world would not disappear by simply being ignored.¹¹⁵ The nobel prize-winning economist Sen has

¹¹² Todaro (see n 110 above) 14.

¹¹³ Todaro (see n 110 above) 14.

¹¹⁴ M Hansungule 'The Right to Development: An African Response' (2005), unpublished paper presented to the workshop on Human Rights and Development at the Centre for Human Rights – University of Pretoria 28 November 2005.

¹¹⁵ Hansungule (see n 114 above) 3.

articulated a view that development is not the acquisition of more goods and services, but the enhanced freedom to choose to lead the kind of life one values.¹¹⁶ Sen refers to these enhanced choices as capabilities. Poverty, he explains, is the deprivation of basic capabilities and goes on to urge that attention must be focused on aspects of life other than income to understand what poverty is and how to respond to it in places like South Asia and sub-Saharan Africa where extreme poverty is concentrated.¹¹⁷

Taking into account Hansungule and Sen's concerns of inequality it is critical to keep in mind the contemporary dominant development paradigms of neo-liberalism and globalisation. The main features of both are the diminished role of the State in development and adoption of free market policies.¹¹⁸ Development and development assistance since 1989 have therefore been informed by the free market ideology or what Williamson termed the 'Washington consensus.'¹¹⁹ Looking at development from a neo-liberal/globalisation/ free market lens entails accepting the survival for the fitness mentality, which is a concern. The strong States and individuals survive while the weak perish. In addition it could be said that development assistance in some ways maintains the status quo of keeping poor countries like Uganda poor. In fact it could be said that developed countries will normally provide development assistance to countries that have a free market development

¹¹⁶ A Sen *Development as Freedom* (1998) 87-110. Sen is one of the first scholars to suggest this radical paradigm shift.

¹¹⁷ Sen (see n 116 above) 88.

¹¹⁸ E Martinez, A Gracia 'What is "Neo-liberalism"? A brief definition (2000) 1 unpublished article available at [http://www.mona.uwi.edu/liteng/courses/E29a/documents/What is Neoliberalism.doc](http://www.mona.uwi.edu/liteng/courses/E29a/documents/What%20is%20Neoliberalism.doc) (accessed on 20 January 2011).

¹¹⁹ J Williamson 'What Washington Means by Policy Reform' in J Williamson (ed) *Latin American Readjustment: How Much has Happened*, Washington (1989) chapter 1.

model. However what is really needed is an equitable international trading regime that gives all States an equal opportunity to develop. The study shall revert back to this issue in chapter 5.

Seers shares concerns as those of both Hansungule and Sen. Seers poses very critical and basic questions which merit citing in full:

The questions to ask about country's development are: What has been happening to poverty? What has been happening to unemployment? What has been happening to inequality? If all three of these have declined from high levels then, beyond reasonable doubt, this has been a period of development for the country concerned. If one or two of these central problems have been growing worse, especially if all three have, it would be strange to call the result 'development' even if per capita income doubled.¹²⁰

Several other economists like Goulet¹²¹ and Owens¹²² have challenged the use of the GDP/GNP model. They advocate for a broad understanding of development which calls for the development of people rather than the development of things. The World Bank, which until the 1980s was the main advocate for economic growth as the primary goal of development, has also adopted the broader perspective of development. The World Bank in its world development report of 1991 asserted that:

The challenge of development is to improve the quality of life. Especially in the world's poor countries, a better quality of life generally calls for higher incomes, but it involves much more. It encompasses as ends in themselves, less poverty, a cleaner environment, more equality of opportunity, greater freedom and a richer cultural life.¹²³

¹²⁰ D Seers 'The meaning of development' *International Development Review* (1969) 3-4.

¹²¹ D Goulet *The cruel choice: A New Concept in the Theory of Development* (1971) 23.

¹²² E Owens *The Future of Freedom in the Developing World: Economic Development as Political Reform* (1987) 19.

¹²³ World Bank *World Development Report 1991: The Challenge of development* Vol. 1 (1991) 4.

In furtherance of the interdisciplinary debate Professor (of History) Rodney, as far back as 1972, suggested definitions to development that went far beyond the GDP/GNP model.¹²⁴ Rodney suggests that development in human society is a many-sided process. At one level, there is the individual and development implies increased skills, capacity, great freedom, creativity, self-discipline, responsibility and material well-being.¹²⁵ At the level of social groups, Rodney argues that development implies an increasing capacity to regulate both internal and external relationships.¹²⁶ Rodney concludes that a society develops as its members increase jointly their capacity for dealing with the environment. This capacity to deal with the environment in turn depends on the extent to which they understand the laws of nature (science), on the extent to which they put that understanding into practice by devising tools (technology) and the manner in which the work is organised.¹²⁷

It is therefore evident that the concept of development is a multi-dimensional one that has several layers which include basic needs of the persons, questions of inequality, enhanced freedoms and the eradication of poverty. Improvement of human dignity, and not only increase in goods and services, should therefore be at the heart of development.

¹²⁴ W Rodney *How Europe Underdeveloped Africa* (1972) vi- x.

¹²⁵ Rodney (see n 124 above) x.

¹²⁶ Rodney (see n 124 above) x.

¹²⁷ Rodney (see n 124 above) x.

2.4. Law of Development

Allott takes the view that the international law of development is about development.¹²⁸ It can therefore be said, taking a cue from Allott that, the law of development sets out the legal or normative framework for pursuing development. It provides for the addressees of development, namely, states, individual and collectives. Allott poses critical questions related to the issue of addressees of development, for what is development and for whom is development?¹²⁹ Allott goes on to answer these questions by saying that there is a need to distinguish between immediate and ultimate goals. Immediate goals refer to provision of infrastructure like roads while ultimate goals are for the enhancement of life and life possibilities for the individual in society.¹³⁰ Allott's view makes the point that development is not just about physical development of things like roads but also touches upon improving the lives of the individuals. This is akin to Sen's view that development means, among others, improving the freedoms of the individual.¹³¹ This section will therefore establish whether the various instruments express Allott and Sen's understanding of development.

On the other hand, Chemillier-Gendreau opposes that notion of the law of development. She takes the view that development cannot be an object of law and therefore comes to the conclusion that development law regulates an

¹²⁸ AN Allott 'The Law of Development and the Development of Law' in F Snyder & P Slinn, P (eds) *International Law of Development: Comparative Perspectives* (1987) 69.

¹²⁹ AN Allott 'Development for What? False Goods and Holy Writ' in International Third World Legal Studies Association *Human Rights and Development* (1984) 4.

¹³⁰ Allott (see n 129 above) 4.

¹³¹ Sen (see n 116 above) 87.

illusion.¹³² Chemillier-Gendreau goes further in support of her position to point out that any branch of law must have as its object a certain sector of social life which it organises legally.¹³³ The logical extension of Chemillier-Gendreau's argument is that development law does not regulate any sector. This is far from the truth. A close examination of the various instruments in this chapter will reveal that development law does regulate a cross-section of sectors, including but not limited to education, health, and the environment. Chemillier-Gendreau, therefore, grossly misunderstands what development is all about. Development, as defined above, is an integrated concept that goes beyond material items and involves improving the quality of life of individuals and communities.

Furthermore, this section will create the foundation for discussing the right to development below. This section is therefore critical in providing the basis for discussing the right to development. Brietzke neatly makes the connection between development and the right to development when he notes that the human right to development teaches that the only way to resolve the liberty/equality dilemma is through development.¹³⁴ In addition this section will provide the basis for answering the question posed below, on whether development assistance is a right or charity.

¹³² M Chemillier-Gendreau 'Relations between the Ideology of Development and Development Law' in F Snyder & P Slinn, P (eds) *International Law of Development: Comparative Perspectives* (1987) 58.

¹³³ Chemillier-Gendreau (see n 132 above) 58.

¹³⁴ PH Brietzke 'Development as a Human Right' in *International Third World Legal Studies Association Human Rights and Development* (1984) 25.

2.5. Africa and the law of development

Within the African region several treaties, declarations and other non-binding standards focusing on development have been adopted. In this section, focus will be on some of main treaties that deal with development. In addition a number of declarations are outlined in Annex 2, together with their areas of interface with development. The study has deliberately omitted reference to several non-binding resolutions, but this is in no way diminishing their value.¹³⁵ The African body of treaties and declarations make a bold attempt to bring an African flavour and footprint on issues such as human rights and development. Umozurike, in particular reference to the African Charter on Human and Peoples' Rights, says that it reflects a particularly African footprint.¹³⁶ While the African footprint is very welcome, it suffers from lack of implementation and being able to translate theory into practice. The African development footprint, which is discussed below, is very faint with no tangible results on the ground.

The African Charter on Human and Peoples' Rights (1981) is a legally binding treaty that 53 African States have signed and ratified.¹³⁷ The Charter explicitly addresses the issue of development. In the preamble of the Charter, it is provided that considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone, convinced that it is henceforth essential to pay particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and

¹³⁵ M Hansungule, S Kamanga & D Rukare (eds) are in the process of preparing a book on the African Law of Development (due to be published). This book is a collection of all the major African treaties, declarations and non binding resolutions that provide for development.

¹³⁶ Umozurike (see n 8 above) 46.

¹³⁷ The African Charter on Human and Peoples' Rights (see n 5 above).

cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.¹³⁸

The ACHPR outlines a number of rights which are critical for development and these include: (1) the right to existence for all peoples;¹³⁹ (2) inalienable right to self-determination;¹⁴⁰ and (3) right of peoples to freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.¹⁴¹

Article 22 recognises that all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.¹⁴²

In addition, the article goes on to make clear who have the duty. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.¹⁴³ Under article 24, all peoples shall have the right to a general satisfactory environment favourable to their development.¹⁴⁴

¹³⁸ The African Charter on Human and Peoples' Rights (see n 5 above) preamble.

¹³⁹ The African Charter on Human and Peoples' Rights (see n 5 above) article 20.

¹⁴⁰ The African Charter on Human and Peoples' Rights (see n 5 above) article 20.

¹⁴¹ The African Charter on Human and Peoples' Rights (see n 5 above) article 20.

¹⁴² The African Charter on Human and Peoples' Rights (see n 5 above) article 22.

¹⁴³ The African Charter on Human and Peoples' Rights (see n 5 above) article 22.

¹⁴⁴ The African Charter on Human and Peoples' Rights (see n 5 above) article 24.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa notes that women's rights and women play an essential role in development.¹⁴⁵ The Protocol calls upon State parties to take the necessary measures to reduce military expenditure significantly in favour of spending on social development in general, and the promotion of women in particular.¹⁴⁶ The Protocol highlights the important issue of budgetary allocations and priorities. Without the necessary resources the right to development will remain a theoretical aspiration. In chapter 5, the study will look at the priority areas of the Government of Uganda. Additional African instruments that provide for development are contained in Annex 2.

2.6. International law of development

At the international level, a number of instruments deal with the subject of development. The major international instruments will be examined in this section. Annex 3 outlines several other international instruments that deal with development. The UN Charter is a useful place to start because the Charter reflects the vision and aspirations of the 192 member states of the United Nations.¹⁴⁷ The preamble of the UN Charter reveals that the peoples of the United Nations are determined 'to promote social progress and better

¹⁴⁵ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted 13 September 2000 (entered into force 25 November 2005) CAB/LEG/66.6 Available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf> (accessed on 19 November 2009). The Protocol reaffirms what is stipulated in the United Nations Plans of Action on the Environment and Development of 1992 in so far as recognising the right to development.

¹⁴⁶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (see n 145 above) article 10 (3).

¹⁴⁷ United Nations Charter 24 October 1945 I UNTS XVI Available at <http://www.un.org/aboutun/charter/> (accessed on 28 November 2008) preamble.

standards of life in larger freedom'.¹⁴⁸ In addition, the peoples of the United Nations affirm that one of the reasons of setting up the United Nations is to employ international machinery for the promotion of the economic and social advancement of all peoples.¹⁴⁹ It is clear from these statements that one of the aims of setting up the United Nations was to promote social progress and better standards of life which, in reality, amounts to development as discussed in chapter 2. The UN Charter could therefore be said to be one of the international instruments that aims at advancing development.

The UN Charter goes further to amplify the vision in the preamble by outlining its principles in article 1. As indicated below, a reading of the founding principles reveals an implied commitment to development. Article I provides that the principles underpinning the UN are:

- (1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace,
- (2) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.¹⁵⁰

¹⁴⁸ United Nations Charter (see n 147 above) preamble.

¹⁴⁹ United Nations Charter (see n 147 above) preamble.

¹⁵⁰ United Nations Charter (see n 147 above) article 1.

It can be surmised that international peace and security are seen by the member States of the UN as essential to ensuring development. It will be shown later in this chapter that the United Nations Declaration on the Right to Development clearly makes the connection between international peace and security and development. In addition, the UN Charter introduces the idea of international cooperation in solving problems of an economic, social, cultural or humanitarian character, including promoting respect of human rights. It could be argued that promotion of development can be inferred from this principle. Problems that have an economic, social or cultural nature are development problems. One underlying assumption here is that States especially those that are economically better off are willing to cooperate with those that are economically disadvantaged. While it can be said that indeed the UN Charter does create an obligation to cooperate, in practice cooperation is done on a voluntary basis. In chapter 6 therefore, it will be argued that this principle of international cooperation supports the provision of development assistance and also forms the basis of argument supporting the right to development.

The UN Charter in article 55 becomes very explicit on the subject of development. Article 55 provides that, the United Nations shall promote (1) higher standards of living, full employment, and conditions of economic and social progress and development and (2) solutions of international economic, social, health, and related problems, and international cultural and educational cooperation.¹⁵¹ It is clear that the UN aims at promoting development and it

¹⁵¹ United Nations Charter (see n 147 above) 55.

could be therefore said that development within the ambit of the UN Charter amounts to higher standards of living, full employment and conditions of economic and social progress.

The other international instrument that deals with development is the Universal Declaration of Human Rights (UDHR).¹⁵² The UDHR in its preamble echoes the provision in the UN Charter and notes that the peoples of the United Nations have in the UN Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.¹⁵³ This reaffirmation reinforces the notion of development.

One possible argument that could be used to rebut the position of the UDHR is its legal standing. The argument would be that the UDHR is not a legally binding treaty in international law and therefore its provisions should not be deemed to be binding. The response to this position would be that the UDHR has over the years acquired legal force through customary international law. Reisman acknowledges that the UDHR provides a common standard of achievement and now is accepted as declaratory of customary international law.¹⁵⁴ In addition, Schwarzenberger points out that resolutions on development adopted unanimously or by consensus in heterogeneous bodies such as the United Nations General Assembly, may have been adopted

¹⁵² UDHR (see n 4 above) preamble.

¹⁵³ UDHR (see n 4 above) preamble.

¹⁵⁴ WM Reisman 'Sovereignty and Human Rights in Contemporary International Law' (1990) in 84 *The American Journal of International Law* 866-876.

with the mental reservation that development equals anything that is so termed by those involved and/or their governments.¹⁵⁵ Schwarzenberger's position could mean a number of things. At one level it could mean that several States that adopted the UDHR knowing that it is not legally binding took a very loose and vague understanding of development to mean everything and probably nothing. On the other hand it could be that some States, especially developing ones, were under the impression that development could be achieved in their countries by, among others, the tool of international cooperation.

In a very progressive judgment the South African Constitutional Court in the case of the *State v Makwanyane and another* stated that customary international law and international agreements that South Africa had ratified may be used as tools of interpretation by the court based on the Constitution of South Africa. The Court went on to specifically note that in the context of section 35(1) of the Constitution of South Africa, public international law would include non-binding as well as binding law.¹⁵⁶ This case which was based on an appeal against the death penalty, clearly illustrates that a progressive court would be able to use non-legally binding instruments in coming to its judgment. The problem here lies in the reliance on a progressive court and judge which are not always easy to come by.

¹⁵⁵ G Schwarzenberger 'Meanings and Functions of International Development Law' in F Snyder & P Slinn (eds) *International Law of Development: Comparative Perspectives* (1987) 5.

¹⁵⁶ *The State v Makwanyane and another Constitutional Court of South Africa*. Case No. CCT/3/94 1995 ZACC 3. Available at <http://law.gsu.edu/ccunningham/fall03/DeathPenalty-SouthAfrica-Makwanyane.htm> (accessed on 30 May 2010).

The UDHR goes on to outline a number of rights which, it is argued, are essential to development. These include for example the right to own property¹⁵⁷, right to social security¹⁵⁸, right to work¹⁵⁹, right to education¹⁶⁰, right to participate in the cultural life of the community¹⁶¹ and right to a social and international order in which the rights set forth in the UDHR can be fully realised.¹⁶²

Drzewicki concludes that all in all, the adoption and content of the UDHR has been a great success. The declaration constitutes the first internationally adopted catalogue and, in this sense, definition of human rights. It may be submitted that the universal declaration is one of the best legal instruments on human rights ever adopted.¹⁶³ Drzewicki further points out that on the international level, the declaration has established the very first international catalogue of human rights as a common standard of achievement for all peoples and all nations.¹⁶⁴ It can therefore be argued that the clauses that relate to development in the UDHR are a common standard of achievement for all peoples and all nations.

¹⁵⁷ UDHR (see n 4 above) article 17.

¹⁵⁸ UDHR (see n 4 above) article 22.

¹⁵⁹ UDHR (see n 4 above) article 23 (1).

¹⁶⁰ UDHR (see n 4 above) article 26 (1-2).

¹⁶¹ UDHR (see n 4 above) article 27.

¹⁶² UDHR (see n 4 above) article 28.

¹⁶³ K Drzewicki 'The United Nations Charter and the Universal Declaration of Human Rights' (1995) in R Hanski & A Suksi (eds) *An Introduction to the International Protection of Human Rights* (1999) 65.

¹⁶⁴ Drzewicki (see n 163 above) 75.

The UNDRD is an international instrument solely devoted to development.¹⁶⁵

It however must be noted that the UNDRD is not a legally binding instrument and has been the subject of much debate and disagreement. For purposes of this section we shall limit ourselves to what the UNDRD set forth as development.

The UNDRD starts out in article 1 to state that (1) the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised (2) the human right to development also implies the full realisation of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.¹⁶⁶ It is clear from this opening article that the UNDRD sets out the right to development as an inalienable human right which every human person is entitled to participate in and contribute to.

The UNDRD goes further to make the connection between development and self determination.¹⁶⁷ The UNDRD further points out that States have the primary responsibility for the realisation of the right to development.¹⁶⁸ As a result States have the duty to take steps individually and collectively to

¹⁶⁵ United Nations Declaration on the Right to Development A/RES/41/128 4 December 1986 Available at <http://www.un.org/documents/ga/res/41/a41r128.htm> (accessed on 26 June 2009).

¹⁶⁶ UN Declaration on the Right to Development (see n 165 above) article 1.

¹⁶⁷ UN Declaration on the Right to Development (see n 165 above) article 1(2).

¹⁶⁸ UN Declaration on the Right to Development (see n 165 above) article 3.

formulate international development policies that facilitate the full realisation of the right to development.¹⁶⁹ It would be helpful if the UNDRD provided some guidance on what development is. However, it can be assumed that according to the UNDRD, development is comprised of economic, social cultural and political aspects. In order, therefore, for development to take place, people must be able to participate in their economic, social and political development. The UNDRD probably should have added the word freely. Every person, it is contended must be able to freely take part. In most of Africa this is not the case. Most citizens are excluded from the development process.

The UNDRD makes it very clear who the central subject is and participant in development.¹⁷⁰ The human person according to the UNDRD is the central subject of development and also the active participant and beneficiary of development. The UNDRD further stipulates that all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.¹⁷¹

¹⁶⁹ UN Declaration on the Right to Development (see n 165 above) article 4.

¹⁷⁰ UN Declaration on the Right to Development (see n 165 above) article 2.

¹⁷¹ UN Declaration on the Right to Development (see n 165 above) article 2 (2).

States, according to the UNDRD have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.¹⁷²

Article 10 calls for steps to be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.¹⁷³ Article 10 uses language similar to that found in the ICESCR. Progressive realisation refers to the gradual and incremental realisation of the right to development. One major loophole that renders article 10 redundant is that the fact that states do not link their development programmes and development assistance programmes to the UNDRD. This will be further examined in chapter 5. However, it can be said that most development plans do, by their very nature, contain a road map of how States intend to roll out their development programmes. This in effect amounts to progressive realisation. The problem lies in translating the theory into practice. In fact if most African countries like Uganda could implement what is contained in their development plans, development of the State and its people would be realised.

¹⁷² UN Declaration on the Right to Development (see n 165 above) article 2 (3).

¹⁷³ UN Declaration on the Right to Development (see n 165 above) article 10.

The ICESCR is a legally binding treaty with over 180 countries that have signed and ratified it.¹⁷⁴ In article 1, it is provided that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Article 1 is similar to article 5 of the UNDRD. Both recognise that self-determination or independence of peoples is critical to them achieving development. However, it is interesting to note that the UNDRD speaks of human beings and not peoples. While the difference may not be easily seen, the term peoples in international law is synonymous with self determination. It is therefore vital that the legally binding ICESCR refers to peoples while the UNDRD to human beings. It could be contended that peoples and human beings are one and the same thing.

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.¹⁷⁵

The ICESCR also provides for a series of rights that are at the heart of any development agenda. These include (1) the right of everyone to the enjoyment of the highest attainable standard of physical and mental health¹⁷⁶ (2) the right

¹⁷⁴ International Covenant on Economic, Social and Cultural Rights 993 U.N.T.S 3 GA Res 220 (1966) Available at <http://www.ohcr.org/english/law/cescr.htm> (accessed on 28 November 2008) article 1(1).

¹⁷⁵ International Covenant on Economic, Social and Cultural Rights (see n 174 above) article 1(2).

¹⁷⁶ International Covenant on Economic, Social and Cultural Rights (see n 174 above) Article 12. Article 12 provides for the steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for which include:(a) The provision for the

to education, which should be universal and free at primary level¹⁷⁷ (3) right to take part in cultural life.¹⁷⁸ It could therefore be said that a person without an education, in poor health and with no culture cannot be said to be developed. These are essential for the dignity of the human person and ultimately, his or her development.

The ICCPR is a legally binding treaty.¹⁷⁹ Article 1 stipulates that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.¹⁸⁰ The ICCPR just like the ICESCR and the UDHR recognises that self-determination is a critical element for peoples to attain development. One underlying assumption that seems to run across all these treaties is that self-determination alone will cause development. It should be kept in mind that self-determination alone, it could be said, will not cause development. Peoples and states need to be able to freely trade and engage in the international economic system. Without this, no level of self-determination will cause development. Several African countries attained self-determination over 40 years ago but remain underdeveloped. Why? One may ask. The

reduction of the still birth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

¹⁷⁷ International Covenant on Economic, Social and Cultural Rights (see n 174 above) article 13. State parties agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

¹⁷⁸ International Covenant on Economic, Social and Cultural Rights (see n 174 above) article 15.

¹⁷⁹ International Covenant on Civil and Political Rights 999 U.N.T.S 171 GA Res 220 (1966).

¹⁸⁰ International Covenant on Civil and Political Rights (see n 179 above) article 1(1).

answer mainly lies in the fact that African countries are not equal participants in the international economic system.

This concern is ably captured further in article 1 of the ICCPR which stipulates that all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.¹⁸¹ It is critical that all peoples and their states are able to freely interact in the international economic arena.

In 1974 the UN Charter on the Rights and Duties of States was adopted with the intent to constitute an effective instrument towards the establishment of a new system of international economic relations based on equity, sovereign equality and interdependence of the interests of developed and developing countries.¹⁸² The idea behind the Charter could be summed up as aiming to attain: (1) wider prosperity among all countries and of higher standards of living for all peoples, (2) the promotion by the entire international community of the economic and social progress of all countries, especially developing countries, (3) the encouragement of co-operation, on the basis of mutual advantage and equitable benefits for all peace-loving States which are willing to carry out the provisions of the present Charter, in the economic, trade, scientific and technical fields, regardless of political, economic or social systems, (4) the overcoming of main obstacles in the way of economic

¹⁸¹ International Covenant on Civil and Political Rights (see n 179 above) article 1(1).

¹⁸² Charter on Economic Rights and Duties of States A/RES/29/3281 (1974). Available at <http://www.un-documents.net/a29r3281.htm> accessed on 14 November 2009.

development of the developing countries, (5) the acceleration of the economic growth of developing countries with a view to bridging the economic gap between developing and developed countries, and (6) the protection, preservation and enhancement of the environment.

However, it is important to stress that a number of developed countries did not adopt it or accept it,¹⁸³ while most developing countries embraced the Charter. The primary reason why the developed countries reject this Charter can be found in articles 9 and 13.¹⁸⁴

It is evident from article 9 and 13 of the Charter that developed countries that sign up to it would be obliged to transfer scientific knowledge and technology to developing countries at no cost. Science and technology are at the heart of advancing development. A country devoid of science and technology cannot develop. Developed countries are able to maintain and improve their status because they have the science and technology to do so. It was therefore quite

¹⁸³ Charter on Economic Rights and Duties of States (see n 182 above) preamble.

¹⁸⁴ Charter on Economic Rights and Duties of States (see n 182 above). Article 9 provides, 'All States have the responsibility to cooperate in the economic, social, cultural, scientific and technological fields for the promotion of economic and social progress throughout the world, especially that of the developing countries'.

Article 13 provides that every State has the right to benefit from the advances and development in science and technology for the acceleration of its economic and social development.

2. All States should promote international scientific and technological co-operation and the transfer of technology, with proper regard for all legitimate interests including, *inter alia*, the rights and duties of holders, suppliers and recipients of technology. In particular, all States should facilitate the access of developing countries to the achievements of modern science and technology, the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies and their needs.

3. Accordingly, developed countries should cooperate with the developing countries in the establishment, strengthening and development of their scientific and technological infrastructures and their scientific research and technological activities so as to help to expand and transform the economies of developing countries.

4. All States should cooperate in research with a view to evolving further internationally accepted guidelines or regulations for the transfer of technology, taking fully into account the interest of developing countries.

naïve of developing countries to expect developed countries to transfer their technology and scientific innovations to them free of charge. It would have probably benefited developing countries more to adopt the Japanese and Chinese model of copying and adapting to the technology of the developed world. Expecting to be given the technology, was asking for the impossible.

In article 10, all States are juridically equal and, as equal members of the international community, have the right to participate fully and effectively in the international decision-making processes in the solution of world economic, financial and monetary problems, *inter alia*, through the appropriate international organisations in accordance with their existing and evolving rules, and to share in the benefits resulting therefrom.¹⁸⁵ The reality on the ground is very far from the picture painted by article 10. It is clear that not all states are equal and do not participate as equal members of the international community. To illustrate this point, the World Bank and International Monetary Fund which are the two main international financial and monetary bodies are historically headed by an American and European respectively. In addition, developing countries like Uganda have little or no leverage at all in these financial institutions.

This is despite the provision of article 11 which notes that all states should cooperate to strengthen and continuously improve the efficiency of international organisations in implementing measures to stimulate the general economic progress of all countries, particularly of developing countries, and

¹⁸⁵ Charter on Economic Rights and Duties of States (n 182 above) article 10.

therefore should cooperate to adapt them, when appropriate, to the changing needs of international economic cooperation.¹⁸⁶

The Charter goes on to state that international cooperation for development is the shared goal and common duty of all States.¹⁸⁷ Every State should cooperate with the efforts of developing countries to accelerate their economic and social development by providing favourable external conditions and by extending active assistance to them, consistent with their development needs and objectives, with strict respect for the sovereign equality of States and free of any conditions derogating from their sovereignty. Development assistance is the main theme of article 19. Article 19 obliges States to cooperate with developing countries through active assistance which is consistent with their development needs. This implies that development assistance should not be used to impose external values and ideas but rather it should advance national development objectives. This issue of national led development programmes shall be revisited in chapter 5.

The Declaration on Establishment of a New international Economic Order (DNIEO) attempted to set forth a New International Economic Order.¹⁸⁸ DNIEO was meant to be a set of proposals put forward during the 1970s by developing countries, through the United Nations Conference on Trade and Development, to promote their interests by improving their terms of trade, increasing development assistance, developed-country tariff reductions, and

¹⁸⁶ Charter on Economic Rights and Duties of States (n 182 above) article 11.

¹⁸⁷ Charter on Economic Rights and Duties of States (see n 182 above) article 17.

¹⁸⁸ United Nations Declaration on Establishment of a New international Economic Order (NIEO) A/RES/S-6/3201 available at <http://www.un-documents.net/s6r3201.htm> (accessed on 12 November 2009).

other means. It was meant to be a revision of the international economic system in favour of third world countries, replacing the Bretton Woods system, which had benefitted the leading states that had created it – especially the United States.¹⁸⁹

The main tenets of the DNIEO are:

1. Developing countries must be entitled to regulate and control the activities of multinational corporations operating within their territory.
2. They must be free to nationalize or expropriate foreign property on conditions favourable to them.
3. They must be free to set up associations of primary commodities producers similar to the OPEC, all other States must recognise this right and refrain from taking economic, military, or political measures calculated to restrict it.
4. International trade should be based on the need to ensure stable, equitable, and remunerative prices for raw materials, generalized non-reciprocal and non-discriminatory tariff preferences, as well as transfer of technology to developing countries, and should provide economic and technical assistance without any strings attached.¹⁹⁰

In the 1970s and 1980s, the developing States pushed for DNIEO and an accompanying set of documents to be adopted by the UN General Assembly. Subsequently, however, these norms became only of rhetorical and political value, except for some partly-viable mechanisms, such as the non-legal, non-binding Restrictive Business Practice Code adopted in 1980 and the Common Fund for Commodities which came in force in 1989.¹⁹¹ In Matsushita *et al.*'s book, the authors explained part of the legacy of the NIEO writing that that:

Tensions and disagreements between developed and developing countries continue: The latter expect a greater degree of special treatment than industrialised countries have afforded them. This demand was expressed comprehensively in the New International Economic Order and the Charter of

¹⁸⁹ JN Bhagwati (ed) *The New International Economic Order: The North-South Debate* (1997) 36.

¹⁹⁰ United Nations Declaration on Establishment of a New international Economic Order (NIEO) (see n 188 above).

¹⁹¹ Bhagwati (see n 189 above) 28.

Economic Rights and Duties of States promoted by UNCTAD in the 1970s. Although the Charter was never accepted by developing [sic] countries and is now dead, the political, economic, and social concerns that inspired it are still present. The Charter called for restitution for the economic and social costs of colonialism, racial discrimination and foreign domination.¹⁹²

2.7. The right to development

The right to development remains a subject of debate and controversy, as will be discussed below. Tomasevski rightly points out that the right to development, which was meant to become the umbrella notion unifying human rights and development, divided rather than unified the international community.¹⁹³ This division is characterised by proponents of the rights, who are predominantly scholars from the south and assert that the right to development is the foundation from which all others rights spring. The opponents of the right to development urge that it is not a right under international law.

A leading African scholar on the right to development, Bedjaoui, has defined the right to development as the ‘fountain-head of all other human rights’.¹⁹⁴ In other words, Bedjaoui takes that view that all other human rights are derived from the right to development. It is therefore a necessary condition for the achievement of all human rights. Bedjaoui’s views represent the African radical school of thought. In addition to Bedjaoui, M’Baye, who is widely believed to have first coined the phrase ‘the right to development’, is one of the main African promoters of this right. When he was President of the

¹⁹² M Matsushita, TJ Schoenbaum, PC Mavroidis *The World Trade Organisation: Law, Practice, and Policy* (2003) 388–389.

¹⁹³ Tomasevski (see n 53 above) 48.

¹⁹⁴ M Bedjaoui ‘The Right to Development’ in M Bedjaoui, (eds), *International Law: Achievements and Prospects* (1991) 1177.

Senegal Supreme Court, M'Baye enunciated the right to development in an address to the International Institute of Human Rights Strasbourg in 1972. He went on to refer to articles 55-56 of the United Nations Charter and 22-27 of the Universal Declaration of Human Rights and to statutes of specialised agencies in which international cooperation and solidarity are important.¹⁹⁵ Ghai on the other hand views any attempt to recognise or protect the right to development as diversionary and as capable of providing increasing resource and support for state manipulation and repression of civil society.¹⁹⁶

Subscribing to this view, Robinson calls for the protection of individual welfare, especially in this globalisation era.¹⁹⁷ The United Kingdom Department for International Development (DFID) says it is important to consider the impact of global policies on poor people, particularly in the areas of trade, investments, financial regulations, the environment and debt.¹⁹⁸ In response to Donnelly, regarding the question on who is to be the beneficiary of the right to development, Bedjaoui said that it is not a problem whether it is a collective or individual right: 'The right to development is a right of the human race in general', he said.¹⁹⁹

¹⁹⁵ KM M'Baye 'Le Droit Development comme un droit de l'homme' (1982) 5 *Revue de Droit de l'homme* 623-626.

¹⁹⁶ Y Ghai 'Whose Human Right to Development?' Commonwealth Unit Occasional Paper (1989) 2.

¹⁹⁷ Robinson (see n 51 above) 23.

¹⁹⁸ United Kingdom Department for International Development (DFID) *Halving World Poverty by 2015: Economic Growth, Equity and Security* (2000) 15.

¹⁹⁹ Bedjaoui (see n 194 above) 1177.

Chowdury and DeWaart take the view that the right to development is a principle of international law.²⁰⁰ They derive this conclusion from articles 28 of the Universal Declaration of Human Rights,²⁰¹ article 2 of the United Nations Covenant on Economic, Social and Cultural Rights²⁰² and articles 55 and 56 of the UN Charter.²⁰³ The collective message from these articles is that there is a legal duty imposed on States to take joint and separate action to further social progress and development in the interest of human rights. Rosas, reacting to Chowdury and De Waart, notes that they speak of the right to development in international law without any convincing argument.²⁰⁴ Alfredsson, in support of Rosas's view, states that it may be fair to conclude that the right to development, at least as presented in this entirety in the Declaration on the Right to Development, does not yet exist as a legally binding obligation on States.²⁰⁵

Piron is of the view that though the right to development has met the procedural requirements to become a new internationally recognised human right, the Declaration on the Right to Development is not a legally binding treaty.²⁰⁶ Alston takes the position that for a right to be legally recognised, it should be endorsed by the general assembly of the United Nations and later

²⁰⁰ Chowdury and DeWaart (see n 45 above) 10.

²⁰¹ Universal Declaration of Human Rights (see n 4 above) article 28.

²⁰² International Covenant on Economic, Social and Cultural Rights (see n 174 above) article 2.

²⁰³ United Nations Charter (see n 147 above) articles 55 and 56.

²⁰⁴ A Rosas 'The Right to Development' in A Eide, C Krause & A Rosas (eds) *Economic, Social and Cultural Rights* (2001) 251.

²⁰⁵ G Alfredsson 'The Right to Development Perspectives from Human Rights Law' in L.A. Rehof & C.Gulmann (eds) *Human Rights in Domestic Law and Development Assistance Policies of Nordic Countries* (1989) 84.

²⁰⁶ LH Piron 'The Right to Development. A Review of the Current State of the Debate for the Department for International Development' (2002) (unpublished) 14.

reaffirmed in conferences.²⁰⁷ The right to development has not only been endorsed by the United General Assembly but also reaffirmed in several international conferences as outlined below. Interestingly, Piron recommends in a report prepared for the Department for International Development (DFID) that DFID and other development agencies should take the right to development debate seriously and even goes as far as saying that as a concept, it could replace the internationally agreed objective of eradicating poverty.²⁰⁸ Piron should have further recommended that the right should be legally recognised.

Alston provides a useful overview on the possible status of the right to development. He argues that there are two paths by which one can reach the conclusion that there exists the right to development. The first winds through untrodden fields and requires the assertion that new rights have emerged within the international community as a consensus response to new problems and perceptions. The second and more accessible path is a well-worn one, which relies upon internationally recognised human rights guarantees. Alston concludes that by this approach the right to development is viewed largely as a synthesis of existing rights, informed and given an extra dimension by the emergence of a growing consensus on a variety of development objectives. In this way, the right can be seen as an example of the essential dynamism of the concept of human rights.²⁰⁹ Alston rightly cautions that using the new rights argument has certain dangers associated with it. He notes that the human rights

²⁰⁷ P Alston 'Conjuring up New Human Rights: A Proposal for Quality Control' (1984) 78 *American Journal of International Law* 614-616.

²⁰⁸ Piron (see n 206 above) 5.

²⁰⁹ P Alston 'The Right to Development at the International Level' (1979) 814, paper presented at the Workshop of the Hague Academy of International Law, October 1979.

tradition has often been criticised in the past for the tendency to accord the status of a fundamental human right to certain desirable but allegedly non-essential objectives like the right to tourism.²¹⁰

Baxi goes further than both Piron and Alston to suggest that the UNDRD should be transformed into the Right to Development Treaty.²¹¹ The effect of the Baxi proposal would be making the Right to Development legally binding. Baxi presents a very compelling argument in favour of moving to a treaty on the Right to Development. One main argument that he presents is the general acceptance of the normativity of the UNDRD by States.²¹² Baxi goes as far as equating the UNDRD to the UDHR and notes that it is clear that the programmatic content of the UNDRD has attained over the decades a wider endorsement from the community of states than in sight at times of its adoption.²¹³

Schrijver on the other hand believes that a treaty on the right to development is not the only way to achieve the goal of a legally binding instrument.²¹⁴ Schrijver citing *inter alia* the UDHR and the Millennium Declaration suggests that declarations can have considerable legal effect beyond their formally non-binding legal status and can at times be a more effective technique in

²¹⁰ Alston (see n 209 above) 814.

²¹¹ U Baxi 'Normative Content of a Treaty as Opposed to the Declaration on the Right to Development: Marginal Observations' in SP Marks (ed) *Implementing the Right to Development. The Role of International Law* (2008) 47. Available at <http://library.fes.de/pdf-files/bueros/genf/05659.pdf> (accessed on 21 January 2011).

²¹² Baxi (see n 211 above) 47.

²¹³ Baxi (see n 211 above) 47.

²¹⁴ N Schrijver 'Many roads lead to Rome. How to arrive at a legally binding instrument on the right to development?' 127 in SP Marks (ed) *Implementing the Right to Development. The Role of International Law* (2008). Available at <http://library.fes.de/pdf-files/bueros/genf/05659.pdf> (accessed on 21 January 2011).

generating consensus and subsequently compliance then the instrument of a formal treaty.²¹⁵ Schrijver sets forth additional options which include (1) reviewing the UNDRD and adopting a meaningful follow up declaration (2) preparing new instruments in the form of guidelines or recommendations (3) enhancing the institutional status of the right to development within the UN system (4) concluding development compacts (5) mainstreaming the declaration into regional and interregional agreements and (6) drafting a new human rights treaty on the right to development.²¹⁶ Baxi and Schrijver, both advance compelling avenues that could lead to the recognition of the right to development.

One of the central points of departure in this debate is collective rights versus the individual rights. Individual rights as those enjoyed by persons in their individual capacity, for instance the right to life, while collective rights are those rights that are enjoyed by a group of people collectively, like the right to a clean environment and the right to development. Western scholars, such as Rosas and Donnelly, take the view that there cannot be collective rights, a view that Bedjaoui dismisses by maintaining that the right to development is a right of the human race in general.²¹⁷ Donnelly, who comes from the opposition spectrum of the right to development debate, just as he is of the non-western human right system, believes that the right is not justiciable, i.e. an individual cannot hold it against their state, society, or individual *qua* individual.²¹⁸

Donnelly is very hostile to any attempt to link development and human rights.

²¹⁵ Schrijver (see n 214 above) 127.

²¹⁶ Schrijver (see n 214) 127-129.

²¹⁷ Bedjaoui (see n 194 above) 1177.

²¹⁸ J Donnelly 'In search of the Unicorn: the Jurisprudence and Politics of the Right to Development' (1985) 15 *California West International Law Journal* 485.

He says that the necessity of development for self-determination does not mean that development is itself a human right.²¹⁹

Rosas, who is one of the proponents of the idea that the right to development is not a right, shares the same view when he points out that the right to development is not one of the traditional core of human rights.²²⁰ Rosas maintains that ‘the precise meaning and status of the right are still in flux.’²²¹ This view is reflected in how international bodies, such as the United Nations, treat this matter. The result of this divided opinion has been relegated to being a subject of a non-binding declaration as will be discussed later in this chapter.

Hansungule notes that taking into account that more than half the world lives in chronic poverty or in squalor and the other in opulence, the right to development can not be ignored or dismissed.²²² Poverty has been defined and discussed in chapter 2. Africa is beset by chronic poverty and a look at the UNDP human development index confirms this with the bottom half of the list filled with African States. This, in part, explains the position taken by the likes of M’Baye and Bedjaoui. They are essentially making the case for the disadvantaged poor countries of the south.

²¹⁹ Donnelly (see n 218 above) 485.

²²⁰ Rosas (see n 204 above) 251.

²²¹ Rosas (see n 204 above) 251.

²²² In a discussion I held with Professor Michelo Hansungule at the Centre for Human Rights University of Pretoria South Africa 26 May 2006. Professor Hansungule was my supervisor and I met with him in this respect.

On the other hand, academic lawyers drawn mainly from the north, like Rosas and Donnelly above, believe that the right to development is not really a right in the first place because its content, claims, beneficiaries and victims are not precise. The right to development, according to them, is a misnomer and does not exist.²²³ Several scholarly expositions and books authored by western or north based scholars tend to either diminish the relevance of this right or downright ignore it.

Within the African human rights system, the right to development has been incorporated within a treaty that is to say a legally binding agreement between States that is governed by international law. This, in itself, is a rather unique and novel feature, as it means the right to development within the African context is entrenched by treaty or hard law while at the international level the right to development is a subject of non binding declarations or soft law. This is discussed in detail below. Rosas²²⁴ and Okafor²²⁵ acknowledge that the only binding international human rights treaty which has recognised the right to development is the African Charter on Human and Peoples' Rights. He however qualifies this by saying that this provision is only binding on African States that are parties to the African Charter. He interestingly acknowledges that it has served as a source of inspiration for the then initiated preparations of a universal instrument on the right to development.²²⁶ This means that the

²²³ Rosas (see n 204 above) and Donnelly (see n 218 above).

²²⁴ Rosas (see n 204 above) 248.

²²⁵ OC Okafor ' "Righting" the Right to Development: A socio-Legal Analysis of Article 22 of the African Charter on Human and Peoples' Rights' in S Marks (ed) *Implementing the Right to Development The Role of International Law* (2008) 52.

²²⁶ Rosas (see n 204 above) 248.

ACHRP could be used to regulate development assistance between its State parties like South Africa and Uganda.

The ACHPR in article 22 provides for the protection and implementation of the right to development while articles 60 and 61 provide for the African Commission. An African Court of Justice and Human Rights is also in place.²²⁷ The Commission and Court are the two main regional bodies deal with compliance with the provisions of the ACHPR.

The ACHPR is the only human rights instrument which recognises the right to development as legally binding. States that are party to the ACHPR can be legally held accountable for the implementation of the right to development. At a regional level, therefore, the African Commission has the appropriate legal framework to promote and monitor the right to development. The African Commission on Human and Peoples' Rights in the landmark case of *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria* (known as the *SERAC* case and referred to as such herein)²²⁸ came to this conclusion as discussed below.

This communication was filed by two non-governmental organisations (NGOs) on behalf of the Ogoni people before the Commission against Nigeria, for claims based on Article 21 of the African Charter of Human and

²²⁷ Protocol on the Statute of the African Court of Justice and Human Rights July 2008 Available at <http://www.africa-union.org/root/au/Documents/Treaties/text/Protocol%20on%20the%20Merged%20Court%20-%20EN.pdf> (accessed on 17 January 2011).

²²⁸ *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria* Communication No 155/96 of 2001 available at <http://www1.umn.edu/humanrts/africa/comcases/155-96.html> (accessed on 23 May 2008).

Peoples' Rights. The NGOs challenged the agreements the Nigeria government had entered into for the exploration and mining of oil in Ogoniland without considering the interests of the Ogoni people. The interests that were allegedly ignored included participation of the local community during the conclusion of the contracts, the local people not being given a share of the profit from the exploitation of their land, and their displacement from their ancestral land without compensation in order to clear the way for mining activity.

The Commission in a historical and ground-breaking decision took the position that:

The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter.²²⁹

The African Commission in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (herein referred to as the *Endorois* case) found Kenya to be in violation of Articles 1, 8, 14, 17, 21 and 22 the African Charter which included the rights to free practice of religion, property, education, culture, natural resources and development.²³⁰ The Commission seemingly utilizes

²²⁹ African Commission on Human and Peoples' Rights is created under article 30 of the African Charter on Human and Peoples' Rights 1986.

²³⁰ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010, available at: <http://www.unhcr.org/refworld/docid/4b8275a12.html> (accessed

Article 22 – the right to development – as an umbrella to safeguard numerous human rights including the right to property, religion and culture of the Endorois people.

It therefore follows that the right to development is a recognised right within the Africa. Hansungule is of the view that this decision created awareness among victims to protest conditions of underdevelopment and that it gave States a frame to look to as a standard of what is expected of them to realise their duties to develop their societies.²³¹ Despite this ground-breaking decision many African governments still routinely breach this right by not consulting or involving the people in decisions that affect their lives. This decision was a consecration of the legality over illegality²³² and proof that the right to development is a human right, which can be enforced. We share the opinion of Hansungule shared earlier.²³³

The debate on the right to development is not an easy one. Fortunately the interests of the poor were considered by the UNDRD. Furthermore, the Vienna Declaration and Programmes of Action reaffirmed the right to development as a universal inalienable right and an integral part of fundamental human rights.²³⁴

6 April 2011). The Endorois people is a sub-tribe from central Kenya that was evicted from its lands near Lake Bogoria in the 1970s. The government relocated them to an area that limited their access to a clean water source, central sites of worship and other daily requirements for their pastoral way of life. The Kenyan government failed to provide compensation for this eviction but still proceeded to develop a Game Reserve on the Endorois former lands.

²³¹ Hansungule (see n 222 above).

²³² African Commission on Human and Peoples' Rights (see n 229 above).

²³³ Hansungule (see n 222 above).

²³⁴ The conference affirms its attachment to the principles enshrined in the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights as well as in other relevant international human rights instruments.

2.8. Development assistance

The Organisation for Economic Cooperation and Development (OECD)'s Development Assistance Committee (DAC) defines official development assistance (ODA) as:

Flows to developing countries and multilateral institutions provided by official agencies, including state and local governments, or by their executive agencies, each transaction of which meets the following test:

- it is administered with the promotion of the economic development and welfare of developing countries as its main objective, and
- it is concessional in character and contains a grant element of at least 25% (calculated at a rate of discount of 10%).²³⁵

The World Bank defines ODA as 'grants and loans that donors (the governments of rich countries) give to developing countries'. In 1970, global leaders of rich (donor) countries agreed to contribute 0.7 % of their gross national product to aid.²³⁶ Most donor countries are yet to reach this agreed target.

Development aid (also development assistance, international aid, overseas aid or foreign aid) is aid given by developed countries to support economic development in developing countries.²³⁷ It is distinguished from humanitarian

²³⁵ A combined total of \$78.568 billion USD, with subsets as follows:

- The G7 countries donated \$56.686 billion USD
- The European Union countries combined donated \$42.919 billion USD
- The United States donated \$18.999 billion USD, the smallest contribution as a percentage of GNI, at 0.16%
- Norway donated \$2.200 billion USD, but were the largest contributors as a percentage of GNI at 0.87%.

²³⁶ United Nations Resolution 2626 (1970) *The International Development Strategy for the Second United Nations Development Decade*.

²³⁷ As agreed by the United Nations Economic and Social Council, the General Assembly, on the recommendation of the Committee for Development Policy, decides on the countries to be included in the list of *least developed countries* (LDCs).

aid as being aimed at alleviating poverty in the long term, rather than alleviating suffering in the short term.

The United Nations defines ODA as comprising of grants or loans to developing countries and territories on the Organisation for Economic Co-operation and Development/Development Assistance Committee (OECD/DAC) list of aid recipients, that are undertaken by the official sector with promotion of economic development and welfare as the main objective and at concessional financial terms (if a loan, having a grant element of at least 25%). Technical cooperation is included. Grants, loans and credits for military purposes are excluded. Also excluded is aid to more advanced developing and transition countries, as determined by the DAC.²³⁸

It is important when discussing development assistance to locate this narrative with the globalisation context. Dohlman and Halvorson-Quevedo note that donors are increasingly turning their attention to how development cooperation can spread the benefits of globalisation to a larger proportion of the world's population by for example, promoting joint ventures, stimulating technology acquisition and building trade capacity.²³⁹

2.9. Development assistance redefined

It is important to point out from the onset that in the last few years, there has been a change in the terminologies used in the development world. The terms

²³⁸ United Nations Development Group (UNDG) *Indicators for monitoring the Millennium Development Goals: Definitions, Rationale, Concepts and source (2003)*, United Nations: New York available at <http://www.undg.org/index.cfm?P=2> (accessed on 19 August 2005).

²³⁹ E Dohlman, E Halvorson-Quevedo 'Globalisation and Development' in *The OECD Observer* No 204 (1997) 36.

‘donors’ and ‘foreign aid’ have been replaced by ‘development partners’ and ‘development assistance’ respectively.²⁴⁰ This change has been adopted by the multi-lateral financial institutions like the World Bank and International Monetary Fund (IMF). Words such as ‘conditionalities’ have been replaced with concepts such as ‘undertakings’ and ‘prior actions’. ‘Conditionality’ is a concept in international development, political economy and international relations and describes the use of conditions attached to a loan, debt relief, bilateral aid or membership of international organisations, typically by the international financial institutions, regional organisations or donor countries.²⁴¹

Multilateral financial institutions such as the International Monetary Fund, the World Bank or a donor country before providing loans, debt relief or financial aid imposed a number of conditions to be fulfilled before a country can access the loan or aid. Conditionalities may involve relatively uncontroversial requirements to enhance aid effectiveness, such as anti-corruption measures, but they may involve highly controversial ones, such as austerity or the privatisation of key public services, which may provoke strong political opposition in the recipient country.²⁴² These conditionalities are often grouped under the label structural adjustment as they were prominent in the structural adjustment programmes following the debt crisis of the 1980s. Of course it

²⁴⁰ Degnbol-Martinussen & Engberg-Pedersen (see n 66 above) 42.

²⁴¹ This is according to the International Monetary Fund. Available at <http://www.imf.org/external/np/pdr/cond/2001/eng/overview/> (accessed on 19 August 2010). Conditionality is intended to ensure that these two components are provided together: it provides safeguards to the Fund to ensure that successive tranches of financing are delivered only if key policies are on track, and assurances to the country that it will continue to receive the Fund's financing provided that it continues to implement the policies envisaged.

²⁴² World Bank Review of Conditionality (2007). Available at <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20292723~pagePK:41367~piPK:51533~theSitePK:40941,00.html> (accessed on 19 August 2010).

must be said that once you lift the development veil you might quickly find that the change is mainly in form and not content.²⁴³

The main reason advanced for this change according to Hearn is that the term aid had overtones of charity written into it.²⁴⁴ Charity involves the donor giving help to those in need.²⁴⁵ It has an element of benevolent giving. Degnbol-Martinussen & Engberg-Pedersen assert that in order to mitigate the unfortunate picture of needy and helpless people, donors gradually begun to speak about humanitarian assistance and further state that the border line between humanitarian assistance and development assistance has become vague.²⁴⁶ Donors, as discussed above, are therefore now called development partners who provide development assistance rather than aid. The relationship, as we shall see, is based on the notion of partnership rather than ‘give and take’. A question that needs to be asked is whether there is any real change or whether it is a matter of old wine in new bottles. Is this partnership real and based on mutual respect and equality? These questions will be discussed in chapter 5.

2.10. Development assistance a right or charity?

Sengupta defines a right to mean, ‘to have a claim to something of value on other people, institutions, the State, or international community, who, in turn, have the obligation of providing or helping to provide that something of

²⁴³ See IMF (see n 241 above) and World Bank (see n above 517) above.

²⁴⁴ Aine Hearn was the Ambassador of Ireland to Uganda from 2006-2008. She revealed this during an interview I held with her on 28 June 2008 in Kampala.

²⁴⁵ Hearn (see n 244 above).

²⁴⁶ Degnbol-Martinussen & Engberg-Pedersen (see n 66 above) 42.

value'.²⁴⁷ Sen looks at rights as entitlements that require correlated duties. He points out that if person A has a right to some X, then there has to be some agency say B, that has a duty to provide A with X.²⁴⁸ A right, therefore, can refer to a claim on other persons, that is acknowledged and perhaps reciprocated among the principals associated with that claim. A right could also mean an entitlement conferred by law.

In recognising that there is a right, there would be a need to identify the duty holder who has the obligation of fulfilling or enabling the fulfilment of the right. It is precisely this situation that Piron notes above, that explains the reluctance by developed countries to acknowledge that there is a right to development.²⁴⁹ The recognition of the right to development would mean that developed countries have an obligation to provide assistance to developing countries and also cater for their own people. Notwithstanding this, in view of this definition, this section seeks to answer the question: Can development assistance be classified as a right or mere charity given at the behest of the rich country?

As can be imagined, opinions on this issue are varied. There are two primary schools of thought. One claims that without a legally binding international instrument providing for the right to development assistance, there is no entitlement or claim and therefore no right. This school is mainly subscribed to

²⁴⁷ A. Sengupta 'The Content of the Right to Development: What is to be implemented?' (unpublished paper) 3.

²⁴⁸ Sen (see n 116 above) 227-321.

²⁴⁹ Piron (see n 206 above).

by northern scholars such as Rosas.²⁵⁰ According to this school development assistance is seen as a form of charity. President Bush revealed that that the United States needed to spread compassion through aid around the world.²⁵¹ It is therefore hardly surprising that the United States Agency for International Development (USAID), which is the development agency of the United States, has as its motto: ‘a gift from the people of the United States of America.’

DFID, which is the development arm of the United Kingdom, recently rebranded itself to read UK Aid, from the Department for International Development.²⁵² Irish Aid changed to Development Cooperation Ireland and has now changed back to Irish Aid.²⁵³ This position clearly embodies the view that development assistance is meant to save and help the poor people of Africa.

The comments of the United Kingdom, on behalf of the European Community when the Right to Development Declaration was being adopted, succinctly sums up the views of those opposed to the right to development as a right.²⁵⁴

The UK stated that:

While the circumstances of developing countries have prompted many aid initiatives on their behalf, this does not at present confer to them a right in the strict sense of the word. Instruments such as the international development

²⁵⁰ Rosas (see n 206 above).

²⁵¹ Comments made in a *BBC World Service* interview on 7 November 2007.

²⁵² See Department for International Development website, <http://www.dfid.gov.uk/> (accessed on 15 June 2010).

²⁵³ See Department of Foreign Affairs of Ireland website <http://www.dfa.ie> (accessed on 15 June 2010).

²⁵⁴ The submission of the European Community to the Working group on the Right to Development, originally issued as a comment related to progressive development of the principles and norms of international law relating to the new international economic order. UN Doc A/41/536 15 September 1986, 16 para 13.

strategy provide a framework for international action but constitute guidelines rather than legally binding obligations.²⁵⁵

It is therefore evident that the right of developing countries to obtain assistance from member States of the European Community is denied by all the governments which view themselves as potential addressees of such development assistance request. This fear is at the heart of the rejection of the notion of the right to development and the right to development assistance.

The Government of the Republic of Ireland in its White Paper on Irish Aid clearly states why it provides aid. The reason is quite instructive and merits quoting verbatim:

First and foremost, we give aid because it is right that we help those in greatest need. We are bound together by more than globalisation. We are bound together by a shared humanity. The fate of others is a matter of concern to us. From this shared humanity comes a responsibility to those in great need beyond the borders of our own state. For some, political and strategic motives may influence decisions on the allocation of development assistance. This is not the case for Ireland. For Ireland the provision of assistance and our cooperation with developing countries is a reflection of our responsibility to others and of our vision of a fair global society.²⁵⁶

It is clear from the above statement that Ireland's reason for providing assistance is devoid of political strategic interest but rather driven by a sense of humanity and responsibility to help those in greatest need. There is mention that what is right but not a right. It is can therefore be surmised that assistance is viewed more as a responsibility on the part of the Republic of Ireland and not a right of those in greatest need.

²⁵⁵ See n 254 above para 13.

²⁵⁶ Government of Ireland White paper on Irish Aid (2006).

The other school of thought is that there is a right to development assistance provided under international law and practice. Tomasevski is of the view that the existing international human rights norms contained in the ‘hard law’ (that is in international treaties) provide a sufficient basis to demand the observance of human rights in development, including development aid.²⁵⁷ She makes the point that there is a vast number of international policy documents and an immense library of works which argue the case for the right to development assistance.²⁵⁸

The second school of thought is now examined in more detail. The starting point is the UN Charter. Article 3 of the Charter outlines as one of the purposes of the United Nations, the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights.²⁵⁹ From the reading of this article, one may argue that member States of the United Nations have committed themselves to international cooperation which includes development assistance. Using this article, countries could make the case that international cooperation is a right under international law, as laid down in the UN Charter.

In a rather interesting way, Finland departs from the common position of most western countries and recognises that there is a right to development

²⁵⁷ Tomasevski (see n 53 above) 48.

²⁵⁸ Tomasevski (see n 53 above) 48.

²⁵⁹ United Nations Charter (see n 147 above) article 3.

assistance.²⁶⁰ This is interesting in the sense that it departs from the majority view of the member States of the European Community stated above. Pirkko Kourula of the Finnish International Development Agency (FINNIDA) said that in case a State is not able to realise its goals without international assistance, it should be entitled to external aid by individual States of the international community as whole.²⁶¹ Such assistance is called for on the basis of the principle of solidarity and burden sharing.

Development assistance should be seen as a practical expression of the principle of solidarity.²⁶² According to Verwey, the principle of solidarity is derived from the principle of justice and entails that henceforth needs instead of only power, would provide the basis for entitlement, basic need superceding non-basic needs.²⁶³ It can therefore be surmised that the principle of solidarity calls upon those states that have, to give to those that do not have. Articles 55 and 56 of the UN Charter allude to this scenario as discussed in this chapter.

At the summit of the Heads of State and Government of the member States of the then Organisation of African Unity, in 1999, in Algiers it was pointed out in the Algiers Declaration that they observed that current trends in the world economy do not augur well for Africa and, among others, singled out a decline

²⁶⁰ See n 254 above para 13.

²⁶¹ P Kourula FIINIDA's view on the relationship between development aid and human rights. in Human Rights in Domestic Law and Development Assistance Policies of the Nordic Countries. Proceedings of the Fourth Nordic Seminar on Human Rights (42) hosted by the Danish Centre of Human Rights.

²⁶² Kourula (see n 261 above) 3.

²⁶³ WD Verwey 'The new international economic order and the realisation of the right to development and welfare' 827, extracted from F.E. Snyder & S. Sathirathai (eds) *Third World Attitudes towards International law: An Introduction* (1987).

in international development cooperation, and a continuous fall in official development aid.²⁶⁴ They went ahead and:

Called for a mutually beneficial and genuine international partnership; a partnership based on a balance of interests and mutual respect, a partnership, the most crucial and immediate ingredients of which are the genuine democratisation of international relations, the renewal of multilateralism and consolidation of its instruments, the reorganisation of international cooperation based on sustained inter-dependence and the decline in national egoism.²⁶⁵

It is therefore clear that indeed international cooperation is a recognised feature but, the Heads of State did not however make express reference to the UN Charter and treaties as a point of reference. This, would have added more weight to their call. They could have take the opportunity to remind the developed world of their commitments to international cooperation that they have undertaken.

The UDHR does not make express reference to international cooperation in the same manner as the UN Charter. There is, however, reference in the preamble to the essential need to promote the development of friendly relations between nations.²⁶⁶ While this could be interpreted to include provision of development assistance, it hardly confers rights. Article 28 refers to the entitlement of everyone to a social and international order in which the rights and freedoms set forth in the UDHR can be fully enjoyed. One

²⁶⁴ Organisation of African Unity 1999. Algiers Declaration AHG/Decl. 1 (XXXV) Adopted at the Assembly of Heads of State and Government Thirty-Fifth Ordinary Session of OAU/Third Ordinary Session of AEC 12-14 July 1999 Algiers, Algeria para II. Available at http://www.au2002.gov.za/docs/summit_council/algiers.pdf (accessed on 4 June 2008).

²⁶⁵ Organisation of African Unity 1999 (see n 264 above) para II.

²⁶⁶ Universal Declaration of Human Rights (see n 4 above) preamble.

interpretation of article 28 is that it does confer rights to development assistance as this promotes international order and the enjoyment of the human rights set forth in the declaration. One of the counter arguments to this position would be first, that there is no express reference to development assistance but rather international order and in any case, the UDHR is not a legally binding instrument under international law.

Another way of looking at the right to development assistance is by asking whether there is a right to development. As indicated above, the right to development is articulated in the UNDRD. Chowdury and De Waart maintain that through article 4 of the UNDRD the right to development of States withdraws development cooperation from the ambit of charity.²⁶⁷ One of the major weaknesses of Chowdury and De Waart's position is the fact that the UNDRD is not a legally binding instrument and has not been adopted or accepted by the major developed countries. This therefore means that while article 4 of the UNDRD does attempt to make international cooperation and development assistance a legal obligation, the ability to claim this obligation by developing countries under international law is non-existent.

The ICESCR, in contrast to its twin the ICCRP, provides for international assistance and cooperation with emphasis on the economic and technical aspects. This assistance is meant to assist State parties to the Covenant progressively realise the rights recognised in the Covenant.²⁶⁸ This provision suggests that international assistance is indeed a right, albeit restricted to the

²⁶⁷ Chowdury and De Waart (see n 45 above) 20.

²⁶⁸ International Covenant on Economic, Social and Cultural Rights (see n 174 above) article 2.

rights within the ambit of the ICESCR. The Committee on Economic, Social and Cultural Rights in the General Comment that interprets article 2, notes as follows:

Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant. It describes the nature of the general legal obligations undertaken by States parties to the Covenant. Those obligations include both what may be termed (following the work of the International Law Commission) obligations of conduct and obligations of result.²⁶⁹

The Committee goes further and states that:

The Committee wishes to emphasise that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realisation of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. The Committee notes in particular the importance of the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all of the principles recognised therein. It emphasises that, in the absence of an active programmes of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realisation of economic, social and cultural rights will remain an unfulfilled aspiration in many countries.²⁷⁰

²⁶⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23 available at: <http://www.unhcr.org/refworld/docid/4538838e10.html> (accessed 5 June 2008).

²⁷⁰ UN Committee on Economic, Social and Cultural Rights (see n 269 above) para 14.

It is however important to note that countries like the Netherlands,²⁷¹ the United Kingdom,²⁷² and Sweden²⁷³ in their state reports to the Committee on Economic, Social and Cultural Rights do not make any reference to international cooperation when reporting on article 2. The Committee also does not in its concluding observation ask them to do so in future reports.²⁷⁴ This indicate that these countries do not take the provision under article 2 of the ICESCR as creating a legal obligation to provide international assistance and that is why they do not even bother to report on it. It could be said that these countries are violating their reporting obligation and do not acknowledge their legal obligation, though in practice most do provide development assistance.

It therefore can be said that arising from the international instruments discussed above that there is a right to development assistance. However just like the right to development discussed above, this right is not universally recognised or accepted. In addition both individuals and States are the beneficiaries of this right. Development assistance is provided to assist the people in Uganda for example and therefore they are beneficiaries and claimants of this right. In addition the State which receives the assistance has

²⁷¹ Netherlands Implementation of the International Covenant on Economic, Social and Cultural rights fourth and fifth State Reports 9 April 2008. E/C.12/NLD/4-5 17 July 2009. Available at <http://www2.ohchr.org/english/bodies/cescr/cescrwg43.htm> (accessed on 14 December 2009).

²⁷² United Kingdom of Great Britain and Northern Ireland Implementation of the International Covenant on Economic, Social and Cultural rights fifth periodic State Report E/C.12/GBR/5 7th August 2007. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/403/68/PDF/G0840368.pdf?OpenElement> (accessed on 14 December 2009).

²⁷³ Sweden Implementation of the International Covenant on Economic, Social and Cultural rights fifth periodic State Report E/C.12/SWE/5 30th June 2006. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/441/36/PDF/G0644136.pdf?OpenElement> (accessed on 14 December 2009).

²⁷⁴ The committee's concluding observations can be found at <http://www2.ohchr.org/english/bodies/cescr/cescrwg39.htm> (accessed on 14 December 2009).

the obligation to implement the development programmes for which this assistance is given.

2.11. International customary law and development assistance

It could be argued that the right to development assistance through international cooperation has become part of international customary law and therefore is legally binding. International custom, as evidenced of a general practice accepted as law, is recognised as one the sources of international law in the Statute of the International Court of Justice (ICJ).²⁷⁵ In the *Nicaragua* case, the ICJ confirmed that custom is constituted by two elements, the objective one of a general practice and the subjective one accepted as law or *opinio juris*.²⁷⁶ The ICJ in the *Continental Shelf* case stated that the substance of customary international law must be looked for primarily in the actual practice and *opinio juris* of States.²⁷⁷ It can therefore be deduced that when looking for evidence of customary law, the actual practice of States is a useful place to start. Malanczuk agreed with this.²⁷⁸ In view of the fact that a number of developed countries have provided development assistance for the last 40 or so years, this has become an actual practice.

In the *Fisheries Jurisdiction* case, it was determined that for a rule to qualify as custom, it must receive general or widespread acceptance.²⁷⁹ However, Judge Lachs, in the *North Sea Continental Shelf* cases, pointed out that

²⁷⁵ Statute of the International Court of Justice Article 38.

²⁷⁶ *Nicaragua v USA* ICJ Reports 1986 14, 97.

²⁷⁷ *Continental Shelf Case Libya v Malta* ICJ Reports 1985 29.

²⁷⁸ Malanczuk (see n 100 above) 39.

²⁷⁹ *Fisheries Jurisdiction* case ICJ Reports 1974 23-26.

universal acceptance is not necessary.²⁸⁰ Brownlie concedes that proof of *opinio juris* is difficult to produce and consequently it is argued by some jurists that *opinio juris* will be presumed when there is evidence of general practice in support of a particular rule.²⁸¹ Since provision of development assistance has over the years received general and widespread acceptance, it could be said to have acquired recognition under international customary law.

Dugard however cautions that a settled practice on its own is insufficient to create a customary rule.²⁸² In addition there must be a sense of obligation, a feeling on the part of states that they are bound by the rule in question and that the general practice is accepted as law.²⁸³ It therefore could be contended, 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.

Malanczuk²⁸⁴ and Dugard²⁸⁵ both maintain that valuable evidence can also be found in documentary sources produced by the United Nations. It has been demonstrated above in this chapter that the provision of development assistance through international cooperation finds expression in several United Nations documents. This further supports the argument that development assistance is now part and parcel of international customary law.

²⁸⁰ *North Sea Continental Shelf* cases 1969 ICJ Reports 3, 229.

²⁸¹ I Brownlie *Principles of Public International Law* (2003) 8.

²⁸² J Dugard *International Law: A South African perspective* (1999) 33.

²⁸³ Dugard (see n 282) 33.

²⁸⁴ Malanczuk (see n 100 above) 39.

²⁸⁵ Dugard (see n 282) 399.

In order for a customary rule to emerge it must be based on a constant and uniform usage. This was the position of the ICJ in the *Asylum* case.²⁸⁶ This would imply that a single act is not sufficient to establish a customary rule. It must be based on repetition over a period of time. The operative words here are ‘constant’ and ‘uniform’. It is important to demonstrate consistent usage. This was clearly the view of the ICJ in the *Nicaragua case*.²⁸⁷ The *Fisheries case* provides some guidance on the issue of consistence, noting that minor inconsistencies do not prevent the creation of a customary rule.²⁸⁸

One other element of international customary law is general practice of States. Malanczuk makes the point that general practice is a relative concept and cannot be determined in the abstract. It should include the conduct of all States which can participate in the formulation of the rule and it can be general even if not universally accepted by all States.²⁸⁹ Following from this, it can be said that the provision of development assistance has become a general practice and therefore a rule under international customary law.

Some authors like Malanczuk have argued that State practice consists of only what States do and not of what they say.²⁹⁰ Conradie confirms Malanczuk’s position and states that it is necessary to consider the action or practice of States and not their promises or rhetoric, as customary international law is founded on practice not on preaching.²⁹¹ If one adopts this line of reasoning,

²⁸⁶ *Asylum case* ICJ Reports 1950 266-389.

²⁸⁷ *Nicaragua case* (n 274 above) 462 98.

²⁸⁸ *UK v Norway* ICJ Reports 1951 116.

²⁸⁹ Malanczuk (see n 100 above) 43.

²⁹⁰ Malanczuk (see n 100 above) 43.

²⁹¹ This was stated by J Conradie in *S v Petane* 1988 (3) SA 51 (c) 61.

then the fact that some States have been providing development assistance for the last 40 years means that, it has now become part and parcel of State practice.

Malanczuk²⁹² and Paul²⁹³ observe that when inferring rules of customary law from the conduct of States, it is necessary to examine not only what States do but also why they do it. This psychological element, as Slama notes, is also known as *opinio juris*.²⁹⁴ This would therefore entail trying to understand the intention or conviction behind a states conduct. In Chapter 5, the study discusses why countries provide development assistance and various reasons from political interests to poverty reduction are outlined. It can be said that States that provide development assistance and conclude development assistance agreements do have the intention to create a legal obligation.

Ago²⁹⁵ and Cheng²⁹⁶ are the main proponents of the notion of instant customary law. Ago and Cheng imply that State practice and time are not relevant but rather they rely on *opinio juris* as expressed in non-legal binding resolutions and declarations as the constitutive element of custom. Bernhardt disagrees with both Ago and Cheng.²⁹⁷ The ICJ clearly rejects the doctrine of instant customary law in the *Nicaragua* case when it states that the mere fact that the States declare their recognition of certain rules is not sufficient for the

²⁹² Malanczuk (see n 100 above) 43.

²⁹³ LD Paul 'Comity in International Law' (1991) 32 *Harvard International Law Journal* 1-79.

²⁹⁴ JL Slama 'Opinio juris in Customary International law' (1990) 15 *Oklahoma City University Law Review* 606.

²⁹⁵ R Ago 'Science juridique et droit international' (1956) 90 *Recueil des Cours de l'Académie de droit International (RCADI)* 849-955.

²⁹⁶ B Cheng United Nations Resolutions on Outer Space: 'Instant international customary law' (1965) 23 *Indian Journal of International Law* 489.

²⁹⁷ R Bernhardt 'Customary International Law' (1992) 4 *Encyclopaedia of Public International Law* 902.

Court to consider these as being part of customary international law. Bound as it is by article 38 of its Statute, the Court must satisfy itself that the existence of the rule in the *opinio juris* of States is confirmed by practice.²⁹⁸ The *opinio juris* of States is confirmed by the continuous provision of development assistance to Uganda over the last 25 years.

Taking into account the above, one question that arises is what happens in cases where a State objects to a particular act. Brownlie says that if a State persistently objects to a particular practice while the law is still in the process of development, it cannot be bound by any customary rule that may emerge from such a practice.²⁹⁹ The principle of a persistent objector was further expounded in several judicial opinions.³⁰⁰ In the case of the provision development assistance to Uganda for human rights, there is no evidence of any persistent objector, but rather persistent provision of development assistance by developed countries to developing countries.

International human rights treaties and declarations provide for international cooperation. This implies that developed States that are party to the various treaties discussed above are obliged to provide development assistance. To that extent, one can talk of a right to development assistance under international law, backed by the various international instruments provisions which have been discussed above. However, as indicated in this chapter and later in chapter 5, development assistance is still viewed as charity or a gift

²⁹⁸ *Nicaragua* case (see n 276 above) 97.

²⁹⁹ Brownlie (see n 281 above) 11.

³⁰⁰ See *Anglo-Norwegian Fisheries* case 1951 ICJ reports 131, *North Sea Continental Shelf* case 1969 ICJ report 131, *Asylum* case 1985 ICJ reports 277-278 and *Nicaragua* case 1986 ICJ reports 107.

given by the rich countries to the poor countries. This view is reflected in the one-sided development assistance agreements concluded with recipient countries, which are discussed in chapter 5.

2.12. Development partners/donors

The terminology development partner is relatively new in development lexicon. Historically, the term donor was used and, to a large extent is still used or understood today. A donor refers to a person or state that gives or a person who makes a gift of property.³⁰¹ Donor states ('giving' States) could therefore be described as those states that provide aid or gifts to the poor underdeveloped countries. However, in the later 90s, a move was made to change the terminology from donors to development partners. This was mainly because it was felt that the phrase donor had a charitable connotation attached to it.

Furthermore, there was a growing need by the multilateral donors like the World Bank to move away from the conditionality approach and embrace local ownership of development processes. Therefore as partners, the receiving and giving countries would through consultations and discussions move the development agenda.³⁰² 'Development partners' was the now favoured term to indicate a change in the relationship between the giving and receiving countries. Instead of being just the end receivers of charitable gifts from donors, countries were now 'development partners'. It must be pointed out that

³⁰¹ See <http://wordnetweb.princeton.edu/perl/webwn?s=donor> (accessed on 14 June 2010).

³⁰² Uvin (see n above 46). He notes that since the early 1999, the World Bank has also been trying to develop post conditionality approach namely the creation of a process of soliciting input and discussion around liberal policy. The idea here is that ownership the crucial missing link can be achieved as a result of broad consultation and discussion.

this change in terminology was really mainly in form and not content and most development partners still view and consider themselves as donors who provide charitable aid.

It should be noted that there are several types of development partners or donors. On the one hand, we have bi-lateral development partners. These refer to individual states that provide development assistance. This, in the case of Uganda, would include the United Kingdom, Austria, Denmark, Norway, Ireland, United States of America, Netherlands and Germany. On the other hand, we have multilateral development partners. A multilateral development partner is an international organisation that provides development assistance. One such example is the European Union (EU). Under this umbrella of multilateral development partners we could also include international financial institutions like the World Bank and the African Development Bank. While these banks mainly provide long term loans, they also provide concessionary loans and in some cases grants. This qualifies them as development partners.

In addition to the above, wealthy individuals and philanthropists are also development partners or donors. These wealthy individuals, through foundations or trusts, provide assistance to poor countries like Uganda. Examples of these include George Soros and his Open Society,³⁰³ Bill

³⁰³ The Open Society Institute works to build vibrant and tolerant democracies whose governments are accountable to their citizens. To achieve its mission, OSI seeks to shape public policies that assure greater fairness in political, legal, and economic systems and safeguard fundamental rights. More details can be found at <http://www.soros.org/about> (accessed on 15 June 2010).

Gates with the Bill and Melinda Gates foundation,³⁰⁴ and the Ford Foundation.³⁰⁵

In the case of Uganda, there is a combination of all the above categories of development partners supporting human rights programmes as will be discussed in Chapter 5. It needs to be pointed out that as discussed below in this chapter, a number of bilateral and multilateral development partners are in line with the harmonisation and specialisation agenda, reducing their presence in several sectors. This in some cases, like the health sector, has led to a huge gap in the policy dialogue. This gap is occasioned by the fact that individual development partners or their foundations remain as the active development partners and very often do not have field presence.

In addition, foundation and individual development partners do not carry the same level of leverage, especially when engaging with States and governments. This new emerging trend needs to be closely monitored and studied. At the end of the day, it is critical to be aware of, Wallace *et al.* point out, of where the power lies and how it is currently used in the north-south funding aid chains, something which is often acknowledged but rarely analysed.³⁰⁶ One of the central questions that this study seeks to answer is what role development partners play in promoting and protecting human rights in Uganda.

³⁰⁴ The Gates Foundation believes that every life has equal value is at the core of their work at the foundation More about the Gates Foundation can be found at <http://www.gatesfoundation.org/about/pages/overview.aspx> (accessed on 15 June 2010).

³⁰⁵ The Ford Foundation's goals are to strengthen democratic values, reduce poverty and injustice, promote international cooperation and advance human achievement. More details can be found at <http://www.fordfoundation.org> (accessed on 15 June 2010).

³⁰⁶ Wallace *et al.* (see n 57 above) 30.

2.13. Human rights-based approach to development cooperation

Development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. This was acknowledged by the Vienna Declaration adopted by the United Nations World Conference on Human Rights way back in 1993.³⁰⁷ Following on from this all entities of UN system were called upon to mainstream human rights into their various activities and programmes within the framework of their respective mandates³⁰⁸ Since then a number of UN agencies have adopted a human rights-based approach to their development cooperation. To this end a statement of common understanding on human rights-based approach to development cooperation has been agreed in which the key elements of this approach are outlined.³⁰⁹

According to the common understanding the human rights based approach to development cooperation is informed by three elements which include (1) all programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments. (2) human rights standards contained in and principles derived from the Universal Declaration of Human Rights and other international

³⁰⁷ United Nations World Conference on Human Rights Vienna Declaration and Programme of Action A/CONF.157/23 12 July 1993. Available at <http://www.unhchr.ch/html/menu5/wchr.htm> (accessed on 19 August 2005).

³⁰⁸ United Nations Renewing the United Nations: A Programme for Reform A/51/950 (1997). Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N97/189/79/IMG/N9718979.pdf?OpenElement> (accessed on 15 January 2011)

³⁰⁹ United Nations The Human Rights-Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies (Available at http://www.undg.org/archive_docs/6959 (accessed on 17 January 2011))

human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process and (3) development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.³¹⁰ It could therefore be said that a human rights-based approach to development cooperation required putting human rights at the centre of development cooperation.³¹¹

International Human Rights Network *et al.* understand the human rights-based approaches to development to mean understanding human rights as both the means and the goal of development.³¹² IHRN outlines five interconnected principles of the HRBA which are derived from the international legal framework. These principles are outlined below.

OHCHR says that essentially, a rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations. The principles include equality and equity, accountability, empowerment and participation. A human rights-based approach to development includes the following principles:

- express linkage to rights

³¹⁰ United Nations (see n 309 above) 1-2.

³¹¹ United Nations Office of the High Commissioner for Human Rights. Rights-Based Approaches: What is a rights based approach to Development? Available at <http://www.unhchr.ch/development/approaches-04.html> (accessed on 31 March 2009).

³¹² International Human Rights Network, Action Aid, Amnesty International & International Federation (2008) Human Rights-Based Approaches and European Union Development Aid Policies (47).

- accountability
- empowerment
- participation
- non-discrimination and attention to vulnerable groups³¹³

It is critical that in planning and implementing programmes in any sector (energy, Justice Law and Order, rural water, refugees, finance, education (vocational training), or youth and HIV/AIDS, these principles are taken into account.

The definition of the objectives of development in terms of particular rights as legally enforceable entitlements – is an essential ingredient of human rights approaches, as is the creation of express normative links to international, regional and national human rights instruments.

Human rights-based approaches are comprehensive in their consideration of the full range of indivisible, interdependent and interrelated rights: Civil, cultural, economic, political and social. This calls for a development framework with sectors that mirror internationally guaranteed rights, thus covering, for example, health, education, housing, justice administration, personal security and political participation.

³¹³ United Nations Office of the High Commissioner for Human Rights (see n 309 above) A detailed discussion of these principles is provided.

By definition, these approaches are incompatible with development policies, projects or activities that have the effect of violating rights, and they permit no ‘trade-offs’ between development and rights.

2.14. Partnership

A partnership in law is defined as ‘the relation which subsists between persons carrying on a business in common with a view of profit’.³¹⁴ The operative word in this legal definition of a partnership is ‘relation’. In the development world, partnership is now a commonly accepted phenomenon, at least in theory. A partnership is said to exist between the country giving development assistance and the one receiving the assistance. Most development policies and strategy documents, as will be discussed later in this study, allude to partnership between governments.

In addition, the term ‘donors’ has been replaced with ‘development partners’. The issue herein is what is the nature of this partnership? Wallace *et al.*, rightly note when discussing the relationship between donors and NGOs, that inequalities are acknowledged then brushed aside or hidden through the use of language.³¹⁵ The terms ‘partners’ and ‘partnership’ replace the concepts of donor- recipient or subcontractor.³¹⁶ They continue to state that while donors and NGOs in the United Kingdom (UK) universally use these terms, many so called partners in Africa feel more like supplicants or dependants. For many, this language of partnership denies the relationships of power but in reality,

³¹⁴ Partnership Act of Uganda Cap 114 Article 3(1).

³¹⁵ Wallace *et al.* (see n 57 above) 38.

³¹⁶ Wallace *et al.* (see n 57 above) 38.

these are strong and defined by some as the new colonialism.³¹⁷ In view of this, study asks: Are the partners in the human rights arena equal or is one partner dormant and inactive? The answers to these questions will be discussed in chapter 5.

2.15. Ownership

According to Black:

Ownership is the collection of rights allowing one to use and enjoy property, including the right to convey it to others. Ownership implies the right to possess a thing, regardless of any actual or constructive control.³¹⁸

Ownership is the right to the exclusive enjoyment of a thing.³¹⁹ From the above stated definitions one can say that ownership, in essence, refers to control. The phrase ‘local ownership’ has over the years crept into development language and practice. It refers to the recipient country owning and controlling the development or reforms programmes supported through ODA. The question that is going to be asked in this study is, can countries, like Uganda, that are dependent on ODA, claim or be expected to own development programmes that are funded mainly by ODA? Is it possible to assume that a country can really own a development agenda funded by external assistance to the tune of over 40% of the national budget?

³¹⁷ Wallace *et al.* (see n 57 above) 38.

³¹⁸ Black’s Law Dictionary (1999) 1131.

³¹⁹ Osborne’s Concise Law Dictionary (1993) 239.

The Government of Uganda and its development partners have signed up to partnership principles that govern the provision of ODA.³²⁰ Principle two states that the delivery of financial assistance (aid) by development partners must be fully compatible with the national budget process and with government ownership of the budget.³²¹ The partnership principles do not define what government ownership means. However, taking cue from the above definition, ownership in this case could refer to Government of Uganda taking control of the budget process and execution.

The concept of ownership is featured prominently in the Paris Declaration on Aid Effectiveness.³²² Ownership according to the Paris Declaration requires partner countries on the one hand, to exercise leadership in the development and implementation of their national development strategies, set their own strategies for poverty reduction, improve their institutions and coordinate aid at all levels.³²³ On the other hand donor countries are supposed to respect country leadership and help strengthen their capacity to exercise it.³²⁴ Ownership therefore entails Government of Uganda assuming the primary responsibility for its development programme. This includes among others the funding of the programme, policy development and implementation. Later, the study shall, critically examine whether this is the case in reality in respect of the human rights agenda.

³²⁰ Ministry of Finance, Planning and Economic Development, September 2003 Partnership Principles between Government of Uganda and its Development Partners.

³²¹ Ministry of Finance, Planning and Economic Development (see n 320 above) 1.

³²² Paris Declaration (see n 81 above) 3.

³²³ Paris Declaration (see n 81 above) 3.

³²⁴ Paris Declaration (see n 81 above) 3.

2.16. Conclusion

Development assistance and human rights are rooted in several concepts and theories that have been identified and discussed above. These theories and concepts will underpin the rest of the study. The study will therefore seek to establish whether there is a connection or disconnection between the theories /concepts and the practice. This will be done chapters 3 and 5.



PART TWO



Chapter 3

Legal framework governing development in Uganda

- 3.1. Introduction**
- 3.2. The legal and policy framework governing development in Uganda**
- 3.3. The right to development in Uganda**
- 3.4. Content and claimants of the right to development in Uganda**
- 3.5. Conclusion**

Chapter 3

Legal and policy framework governing development in Uganda

3.1. Introduction

While chapter 2 is devoted to discussing the conceptual and theoretical framework underpinning the study, it is also dedicated to examining the legal and policy framework governing development in Uganda. The chapter will outline the key laws and policies on development in Uganda. It must be pointed out from the outset that this chapter is mainly descriptive in nature. The promotion of development is one of the objectives of development cooperation and therefore it is necessary to examine the development framework in Uganda.

3.2. Legal and policy framework governing development in Uganda

3.2.1 The Constitution of Uganda 1995

Uganda is one of the few African countries to have provided for development in its constitution.³²⁵ Even the often praised South African Constitution, which enshrines a list of admirable socio-economic rights, nevertheless refrained from specifically providing for a development clause. Prior to 1995, the previous constitutions of Uganda did not provide for development. However, the Constitution of Uganda 1995, which is the supreme law of the land, provides for development.³²⁶ The concept of development finds expression under the National Objectives and Directive Principles of State policy (NODPSP). The Constitution states in principle IX that ‘in order to facilitate

³²⁵ Ethiopia and Malawi both have development enshrined in their constitutions. These are both discussed later in this chapter.

³²⁶ The Constitution of Uganda 1995 (as amended) (see n 10 above) Available at <http://www.trybunal.gov.pl/constit/constitu/constit/uganda/uganda-e.htm> (accessed on 14 November 2009).

rapid and equitable development, the state shall encourage private initiative and self-reliance³²⁷. It is further provided within the directive principles that the State shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them.³²⁸ The principles go further to outline the role of the State in development and in a number of ways draw parallels with the international and regional view of the right.

The Constitution goes further to enjoin the State in principle XIV to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that (i) all developmental efforts are directed at ensuring the minimum social and cultural well-being of the people, and (ii) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

Several questions can be posed in respect of the nature, status and purpose of these national objectives and directive principles of State policy. The report of the Uganda Constitutional Commission provides very useful insights to these questions. The report notes that past Constitutions of Uganda do not contain national objectives and directive principles to guide governmental action.³²⁹

The Constitutional Commission highlights that the national objectives and directive principles provide the national goals, ideals and targets which the

³²⁷ The Constitution of Uganda (see n 10 above) 25, Principle IX of the National Objectives and Directive Principles of State policy as contained in the Constitution of Uganda 1995 pg 25.

³²⁸ The Constitution of Uganda (see n10 above) Principle X.

³²⁹ The Republic of Uganda (1993) The Report of the Uganda Constitutional Commission. Analysis and Recommendations 14.

nation must strive to achieve. The Commission reveals that it recommended inclusion of national objectives and directive principles of State policy in the new constitution in order to guide government and society as a whole to move gradually towards the full realisation of the people's political, economic, social and cultural rights and environmental and foreign policy objectives.³³⁰ It was envisaged by the Commission that Parliament and other constitutional institutions would be charged with the responsibility of monitoring compliance with the principles and objectives.³³¹ It is therefore clear that the inclusion of development as one of the national objectives and directive principles of State policy was in essence meant to act as a guide for the government.

However, it is clear that at best the clauses above are no more than just a decoration. One could say that they are most certainly not one of the core principles that enjoy the highest hierarchy in the hierarchical structure of the fundamental principles that underpin Uganda's constitutional law. However as shall be discussed below, through an amendment to the Constitution of Uganda, it can now be argued that these principles are now embedded in the heart of the Constitution.

3.2.2. The Poverty Eradication Action Plan (PEAP)

Apart from the constitution, one other useful source to look at in trying to unravel and determine Uganda's efforts to promote development as the basis for poverty reduction and the attainment of sustainable development is the

³³⁰ The Republic of Uganda (see n 329 above) 14.

³³¹ The Republic of Uganda (see n 329 above) 14.

Poverty Eradication Action Plan (PEAP),³³² which was the main development framework in Uganda. The PEAP acknowledges that Uganda is participating in regional initiatives such as the New Economic Partnership for Africa (NEPAD) and the African Peer Review Mechanism (APRM) and underscores that participation in these initiatives is among its priority actions.³³³

The PEAP provides an overarching framework to guide public action to eradicate poverty.³³⁴ It outlines the participatory processes underpinning the development of the PEAP strategy, provides a poverty diagnosis and presents policy measures, sector plans, costing and a result-oriented policy matrix for sustainable economic growth and poverty reduction over the medium term (5 years, 2004-2008).³³⁵ Nyamugasira praises Uganda and notes that Uganda is way ahead of many other countries in the formulation of the PRSP, the level of openness and inclusion of other stakeholders, including civil society.³³⁶ Lister and Nyamugasira also agree that in terms of process, civil society have seats at the table in broad cross-sectoral process such as the PEAP. They go further to applaud the PEAP process as constituting a breakthrough in relationships between civil society and parts of government.³³⁷

³³² Ministry of Finance, Planning and Economic Development (see n 18 above) 10.

³³³ Ministry of Finance, Planning and Economic Development (see n 18 above) 10 and 120-121.

³³⁴ Ministry of Finance, Planning and Economic Development (see n 18 above) 2.

³³⁵ Ministry of Finance, Planning and Economic Development (see n 18 above) 2-5.

³³⁶ W Nyamugasira 'Monitoring of the Poverty Eradication Action Plan' (PEAP) (2000). A Presentatthe Consultative Workshop on the Revision of the PEAP and Public Expenditure Review Kampaion at la International Conference Centre, May 15-16, 2000, 1.

³³⁷ S Lister, W Nyamugasira 'Design contradiction in the 'new architecture of aid'? Reflections from Uganda on the role of civil society organisations' Development Policy Review 21 (2003) 98.

McGee *et al.* carried out an assessment that evaluated participation in the PRSP making process in sub-Saharan Africa.³³⁸ They come to the same conclusion with Lister and Nyamugasira when they acknowledge that Uganda undoubtedly presents one of the most comprehensive and country-owned participatory PRS process to date.³³⁹ They further note that in practice the participatory process has been of a much higher quality, more substantial, much more country-owned, higher profile and influential than in any other country, not least because of the favourable pre-conditions which existed and substantial donor support (from DFID, SIDA and the World Bank).³⁴⁰ McGee *et al.* point out that civil society, organised through the civil society task force, participated in the revision of the PEAP.³⁴¹ It is vital to note that donors played an influential role in supporting the development of the Uganda PEAP. Later, in Chapter 5, the study shall examine the ramifications of this role with specific focus on human rights.

The Association of German Development Non-governmental Organisations in a 2003 report reveals that, so far the PRS process in Uganda has maintained the highest degree of participation, and it has widely been attributed as a model character.³⁴² This success is attributable to the government's opening up for civil society input which has resulted in a decentralised process and a

³³⁸ RM McGee, J Levene, A Hughes. 'Assessing participation in poverty reduction strategy papers: a desk-based synthesis of experience in sub-Saharan Africa'. (2002) Research Report 52, The assessment was carried out in respect of Bolivia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Rwanda, Tanzania, Uganda and Zambia.

³³⁹ McGee *et al.* (see n 338 above) 69.

³⁴⁰ McGee *et al.* (see n 333 above) 69.

³⁴¹ McGee *et al.* (see n 333 above) 69.

³⁴² Association of German Development Non-governmental Organisations *PRSP's. Prospects and Limits of Civil Society Involvement: 2015 in Dialogue* 7, (2003) 13.

comparatively wide acceptance of the PRS process.³⁴³ At national level, structures have been created to continue the participatory process that raise civil society's influence on political decisions.³⁴⁴

The Government of Uganda within the PEAP framework put in place a number of programmes that aimed at promoting development. These included universal primary education (UPE), improved access to primary healthcare services and the plan for the modernisation of agriculture (PMA). Five pillars underpinned the PEAP: (1) economic management, (2) production, competitiveness and incomes, (3) security, conflict resolution and disaster management, (4) good governance, and (5) human development.³⁴⁵

Each sector of government, like justice, law and order, health and security is situated as far as possible under each of these pillars mentioned above.³⁴⁶ The sectors are therefore the first port of call in determining the current state of play in the democratic and good political governance arena in Uganda. Pillar 4 on good governance is of particular relevance to this study. Of course, this is not to say that other pillars of the PEAP and sources are not relevant. Under Pillar 4, there are four core priorities: (1) ensuring respect for human rights, (2) pursuing democratisation, (3) making government structures affordable, transparent and efficient, and (4) providing a good judicial system.³⁴⁷ The PEAP does not explicitly refer to the right to development, but when you

³⁴³ Association of German Development Non-governmental Organisations (see n 342 above) 13.

³⁴⁴ Association of German Development Non-governmental Organisations (see n 342 above) 13.

³⁴⁵ Ministry of Finance, Planning and Economic Development (see n 18 above).

³⁴⁶ Ministry of Finance, Planning and Economic Development (see n 18 above) pillar 1,2,3,4 and 5.

³⁴⁷ Ministry of Finance, Planning and Economic Development (see n 18 above) pillar 4.

examine its priorities and objectives it is clear that it does address development.

The African Peer Review Mechanism (APRM) country report on Uganda acknowledges that Uganda has made tremendous progress towards achieving some major socioeconomic targets that are set out in the PEAP.³⁴⁸ It states that over the past 20 years, the country has achieved sustained growth and significant reduction in income poverty.³⁴⁹ The report notes that the economy has grown at an average rate of 5.6% per year over the past five years.³⁵⁰ The income poverty headcount has declined from 56% in 1992/3 to 31% in 2005/6.³⁵¹ Hickey on the other hand strongly disputes the success attributed to the PEAP in respect of poverty reduction. He notes that despite claims that Uganda's recent success in poverty reduction has been significantly related to 'getting the politics right', there are concerns that the poorest may not have benefited from this form of poverty reduction or the types of politics that have helped shape it.³⁵²

Oxford Policy Management also concludes that the PEAP has made a remarkable contribution to the strategic prioritisation of public policy, and the creation of an environment of confidence for greater engagement and cooperation with development partners.³⁵³ It is reported, for example, that infant mortality has fallen by over 15%, the prevalence of HIV/AIDS fell

³⁴⁸ African Peer Review Mechanism (see n 1 above) 215.

³⁴⁹ African Peer Review Mechanism (see n 1 above 215.

³⁵⁰ African Peer Review Mechanism (see n 1 above 215.

³⁵¹ African Peer Review Mechanism (see n 1 above) 215.

³⁵² S Hickey 'The Politics of Staying Poor: Exploring the Political Space for Poverty Reduction in Uganda' (2005) 33 *World Development* 1.

³⁵³ The Oxford Policy Management. Independent Evaluation of Uganda's Poverty Eradication Action Plan (PEAP) Final Draft Synthesis Report, ii.Final Draft Synthesis Report (2008) IV.

among the urban population from 15% in 1997 to 6% in 2005 and overall, the PEAP has had a positive impact on education with adult literacy rates rising and the gender gap falling.³⁵⁴ National enrolment rates at primary level have increased, while enrolment disparities between rural and urban areas, rich and poor, boys and girls, and between regions have all declined.³⁵⁵

Tikare *et al.* make a valid observation when they state that the translation of documents into local languages and the production of simplified documents with key messages may be central to information dissemination, particularly at local levels.³⁵⁶ For example, in Uganda, a simplified version of the Poverty Eradication Action Plan, which contained many visuals, was translated into 5 languages and distributed through local authorities at regional workshops and key messages were delivered through the media.³⁵⁷ Tikare *et al.* are right on the need to translate development policies like the PEAP into the local languages so that ordinary people can understand them. However, in a country with over 56 communities with varied languages, translation into 5 languages, while a good start, does not go far enough. It would also have been very helpful to know how many copies were made and distributed. In addition, it is wrong to assume that the majority of Ugandans can read their local languages. In order for any dissemination campaign to work, a combination of other methods like role plays and illustrations may be more effective than just translation of policies into local languages.

³⁵⁴ The Oxford Policy Management (see n 353 above) IV.

³⁵⁵ The Oxford Policy Management (see n 353 above) IV.

³⁵⁶ S Tikare, D Youssef, P Donnelly-Roark, P Shah 'Organizing participatory processes in the PRSP' in World Bank *A Sourcebook for Poverty Reduction Strategies* (2001) 11.

³⁵⁷ Tikare *et al.* (see n 356 above) 11.

The APRM country report however, also points out that despite many improvements over the years, effective policy implementation remains a critical challenge in Uganda.³⁵⁸ The report points to inadequate resources, lack of capacity particularly at lower levels, corruption, lack of effective public expenditure management, revenue enhancement, development assistance coordination and politicisation of development programmes as major challenges.³⁵⁹

3.2.3. The National Development Plan (NDP)

The NDP articulates Uganda's development status, challenges and opportunities, as well as the strategic direction, development priorities and implementation strategies within a 30-year national vision framework.³⁶⁰ The NDP operates under the theme, growth, employment and prosperity for socio-economic transformation and has, as its vision, a transformed Ugandan society from a peasant to a modern and prosperous country within 30 years.³⁶¹

The NDP is based on sector focused investments while the PEAP was underpinned by pillars.³⁶² To this end, eight primary growth sectors have been outlined in the NDP and these include: agriculture forestry, tourism, mining, oil and gas, manufacturing, information and communication technology and housing.³⁶³ These growth sectors are supported by complementary,³⁶⁴ social³⁶⁵

³⁵⁸ African Review Peer Mechanism (see n 1 above) 215

³⁵⁹ African Review Peer Mechanism (see n 1 above) 215.

³⁶⁰ Government of Uganda (2010) see n 20 above 32.

³⁶¹ Government of Uganda (2010) see n 20 above 32.

³⁶² Government of Uganda (2010) see n 20 above 1-4.

³⁶³ Government of Uganda (2010) see n 20 above Chapter 5.

³⁶⁴ Government of Uganda (2010) see n 20 above. Chapter 6 sets out the complementary sectors as, (1) science and technology (2) transport (3) energy (4) water for production (5) land management and

and enabling sectors.³⁶⁶ It is evident that development is at the core of the NDP. The challenge will lie in translating the noble vision of the NDP into reality for the ordinary Ugandan. Ssewakiryanga poses a critical question: Will the National Development Plan bail out the poor? He answers this by saying that the success of the NDP is not gauged on how much economic growth and infrastructure development is attained, but whether this growth has improved the living conditions of Ugandans.³⁶⁷

It is one thing to state in a plan that development will be attained in 30 years and quite another thing to attain this in practice. One glaring omission from a human rights and development perspective is the lack of explicit reference to human rights as essential for development. This, is because the NDP development process, while participatory, was driven and influenced heavily by macro economists and consultants who were not human rights conscious.³⁶⁸ There is no doubt that infusing a human rights-based approach to development would have greatly improved the quality of the NDP, more especially in the delivery of its growth and development promise. Notwithstanding the above, it is still premature to evaluate the NDP as it has just been launched. It remains to be seen, as Ssewakiryanga states, how much Ugandans will see their quality

administration (6) physical planning (7) urban planning (8) trade development (9) financial services and (10) cooperatives.

³⁶⁵ Government of Uganda (2010) see n 20 above. Chapter 7 highlights the sectors as (1) population (2) labour and employment (3) education and sports (4) skills development (5) health and nutrition (6) HIV/Aids (7) water and sanitation (8) social development.

³⁶⁶ Government of Uganda (2010) see n 20 above. Chapter 5 outlines the enabling sectors to growth and these are (1) legislature (2) justice, law and order (3) national defence and security (4) environment (5) climate control (6) water resource management (7) meteorology (8) wetland management (8) development of national statistics (9) standards and quality infrastructure (10) public sector management (11) accountability and (12) disaster management.

³⁶⁷ R Ssewakiryanga 'Will the National Development Plan bail out the poor?' *The New Vision*, Tuesday, 11 May 2010 12. Mr Ssewakiryanga is the Executive Director of the Uganda National NGO forum in Uganda.

³⁶⁸ This view is based on the my experience as I took part in the NDP development process and was an active member of the governance working group in 2009.

of life improve as a result from the investment in the NDP growth, social, enabling and complimentary sector.

In short, the development rhetoric in the NDP needs to be translated into reality on the ground. Ugandans need to see a demonstrated improvement in employment levels, higher per capita incomes, improved labour force distribution, decline in child /maternal mortality rates and a substantial improvement in human development indicators. In order to say at the end of the day that Uganda is on the right development path, we need to see it move up the UNDP human development ladder. The NDP no doubt represents a major developmental milestone but is in itself not the end of the journey. In fact, it is just the start and it will be important that it is translated into real meaningful change for Ugandans.

3.3. The right to development in Uganda

The right to development in Uganda finds expression in the supreme law of the land, the Constitution.³⁶⁹ The Constitution further outlines the role of the state in development and in a number of ways draw parallels with the international and regional view of the right.³⁷⁰

The right to development was not incorporated into the bill of rights found in chapter 4 of the Constitution.³⁷¹ This was probably deliberately to avoid

³⁶⁹ The Constitution of Uganda (see n 10 above).

³⁷⁰ The Constitution of Uganda (see n 10 above) Principle IX provides that “in order to facilitate rapid and equitable development, the state shall encourage private initiative and self reliance. It is further provided in principle X that, the state shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them.

³⁷¹ The Constitution of Uganda (see n 10 above) chapter 4.

making its justiciable. By putting it in the national objectives and directive principle of state policy, the right becomes more of an aspiration and goal than an enforceable right at the same standing as the rights in chapter 4. The Constitutional Review Commission provides useful guidance on the rationale of this provision. The review commission reveals that the national objectives and directive principles of state policy should guide all governmental bodies and citizens. In particular, the judiciary should be guided by them in applying or interpreting the Constitution and other laws. Government bodies should be guided by them in their policy decisions.³⁷² It is clear that the judiciary is enjoined by the Constitution to use the national objectives and directive principles of state policy as a guide. However, the problem is that so far no case on the right to development has been presented before the Judiciary. Such a case would provide an opportunity to discern the thinking of the Judiciary on the nature and status on the right to development in Uganda.

This however, all changed with the amendment of the 1995 Constitution in 2005. A new provision was included which basically translates the National Objectives into justiciable obligations. Article 8(A) 1 provides that ‘Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy’.³⁷³ A question that could be posed is what the rationale for the insertion of this amendment was. The answer is found in the Hansard report of the Parliament of Uganda. Zziwa is the person responsible for moving the amendment. The reason she gave for this was that in order to strengthen the culture and spirit of

³⁷² The Republic of Uganda (1993) See n 329 above, 750.

³⁷³ The Constitution of Uganda (see n 10 above).

nationalism, it is important to have the minimum interests or the minimum elements, which constitute Uganda's national interests, to be the guiding principles of Uganda's policy. These interests must be stated in the justiciable part of the Constitution in order to give them a permanent feature, which must be implemented by all government agencies.³⁷⁴ Zziwa confirmed that she pushed for the amendment in order to make the national principles justiciable and also to provide an avenue for parliament to make laws to give effect to the principles.³⁷⁵ She revealed that the Attorney General strongly opposed the proposed amendment. However, with support from two of her colleagues the motion was carried, notwithstanding the Attorney General's opposition.³⁷⁶ It could be assumed that the Attorney General's objection was motivated by the desire to avoid making the national principles legally binding by incorporating them into the main part of the Constitution. It is therefore clear that the intent behind this amendment was to make the national principles justiciable.

It could therefore be concluded that with the inclusion of article 8A, the principles became binding, a position that Oloka-Onyango agrees with when he states that 'they can form the basis of a court action and they can be used to ascertain the extent to which the State is meeting its national obligations or indeed, whether the State is violating them'.³⁷⁷ Kanyeihamba puts forward a very interesting argument regarding the role of lawyers and the judiciary in

³⁷⁴ The Parliament of Uganda (2005) Hansard Report, August 15 'Honourable Zziwa's motion got 94 votes for it, 3 abstentions and 0 against it. Available at http://www.parliament.go.ug/index.php?option=com_wrapper&Itemid=33 (accessed on 16 June 2010).

³⁷⁵ Honourable M. Zziwa revealed this in a telephone interview I held with her in Kampala, on 22 June 2010.

³⁷⁶ Zziwa (see n 375 above).

³⁷⁷ JO Onyango 'Mabira Forest Allocation illegal' *The New Vision* 1 September 2006, 9.

promoting development.³⁷⁸ He calls upon the legal profession and judiciary to participate positively in the field of development.³⁷⁹ He goes on to note that since the majority of the populations in these nations lack adequate access to democratic processes by which their rights and development priorities are determined, lawyers and especially judges may have to become activists and interventionists in disputes and arguments which emanate from the political, economic and socio/legal situation which prevails there.³⁸⁰ It could therefore be said that article 8A does provide the legal avenue for the lawyers and judges to articulate the right to development. However as indicated above the courts are yet to be seized with this issue in Uganda.

While it is commended that the Constitution of Uganda provides for the right to development, as Mawa points out sadly that, the right in Uganda has not yet found real reflection on the life of ordinary people many of whom are still excluded from the development process.³⁸¹ He notes that Uganda must get comprehensive principles and an approach most suitable for the realisation of this right to development.³⁸²

In Ethiopia, the right to development is incorporated in the bill of rights. Article 43 of the Constitution of Ethiopia provides that:

³⁷⁸ GW Kanyeihamba 'The Rule of Law, Judicialism and Development' (1984) 100, *Third World Studies* (1984).

³⁷⁹ Kanyeihamba (see n 378 above) 100.

³⁸⁰ Kanyeihamba (see n 378 above) 100.

³⁸¹ Mawa (see n 91 above) 9.

³⁸² Mawa (see n 91 above) 9.

1. The right of the peoples of Ethiopia collectively, or the nations, nationalities and peoples in Ethiopia, individually, to improve their standard of living and to sustainable development is guaranteed.
2. Citizens shall have the right to participate in national development, and in particular, to demand that their opinions be heard on matters of policies and of projects pertaining to the community of which they are members.
3. International agreements entered into or relations formed by the State shall be such as to guarantee the right to the sustainable development of Ethiopia.
4. The main objectives of development activities shall be the citizens' development and the fulfilment of their basic needs.³⁸³

One can conclude from the above that at least from the normative standard point of view, Ethiopia is very progressive. By incorporating the right to development in chapter 3 of the Constitution, Ethiopia made the right to development a justiciable right. The practice/implementation might be a different story.

Malawi, just like Ethiopia, also provides for the right to development within its bill of rights. Article 30 of the Constitution of Malawi provides that:

1. Persons and peoples have a right to development and therefore to the enjoyment of economic, social, cultural and political development and women, children and the disabled in particular shall be given special consideration in the application of this right.
2. State shall take all necessary measures for the realisation of the right to development. Such measures shall include, amongst other things, equality

³⁸³ Constitution of Ethiopia, (1994) article 43 available at http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html (accessed on 28 May 2008).

of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure.

3. State shall take measures to introduce reforms aimed at eradicating social injustices and inequalities.
4. State has a responsibility to respect the right to development and to justify its policies in accordance with this responsibility.³⁸⁴

The provisions of the Constitution of the Republic of Malawi are more explicit in outlining the content of the right to development as compared to the Constitution of Ethiopia. In the case of Malawi, reference is made to taking all necessary measures for the realisation of the right to development. Such measures shall include, amongst other things, equality of opportunity for all in their access to basic resources, education, health services, food, shelter, employment and infrastructure. In addition, it provides for all persons and peoples to have a right to development and therefore to the enjoyment of economic, social, cultural and political development, with women, children and the disabled in particular being given special consideration in the application of this right. In the case of Ethiopia citizens have to right to participate in national development and to have their views heard.

It has been shown above that some countries, like Uganda, have placed the right to development under the NODPSP section which can be viewed as non-justiciable while others like Ethiopia and Malawi have the right incorporated in the bill of rights thereby making it justiciable. Others however, like South Africa and Namibia, make no reference at all to this right. Perhaps

³⁸⁴ Constitution of the Republic of Malawi (2004), article 30 available <http://www.sdn.org.mw/constitut/dtlindx.html> (accessed on 28 May 2008).

this stems from the fact that they do not regard it as a right at all. One would contend that irrespective of where the right may be placed in national constitutions or even omitted, the key question to ask is whether the governments of the African countries are able to deliver to their people an environment in which they can prosper. The picture across Africa is rather one of despair with chronic levels of poverty, disease ravaging the population and high illiteracy rates. This, in effect, amounts to a denial of the right to development.

Apart from the constitution one other useful source to look at in trying to unravel and determine the status of Uganda's efforts to the right to development as the basis for poverty reduction and the attainment of sustainable development is the NDP,³⁸⁵ which is the main development framework in Uganda. The NDP, as discussed provides for development but does not refer explicitly to the right to development. The previous development plan, the PEAP, had development as its main focus but did not refer to the right to development.

3.4. Content and claimants of the right to development in Uganda

In order to enjoy or realise the right to development there is need to know its content and claimants. The Constitution of Uganda explicitly identifies the people of Uganda as the claimants of the right to development.³⁸⁶ It can therefore be said that individuals do have the right to participate in their own development. Following on from this, peoples as a group also have the right to

³⁸⁵ The Government of Uganda (see n 20 above).

³⁸⁶ Constitution of Uganda (see n 10 above) principle x.

collectively participate, contribute and enjoy the right to development. This is an issue that the African Commission was seized with in the *SERAC and the Endorosi* cases discussed above.³⁸⁷

Uganda can claim the right to development from other states. This is the position taken by several African States which maintain that some European countries owe Africa a debt to pay back for colonialism and slavery. It is this position that European States do not agree with. Acheampong rightly says that this kind of analysis dovetails into what we should consider to be the major context of human rights discourse in Africa, i.e, the historical context which bears out the struggles of Africans to be free from the tentacles of colonialism, imperialism, apartheid and dictatorship. The right to self-determination, by virtue of which all peoples freely determine their political status and freely pursue their economic, social and cultural development, is crucial in this regard.³⁸⁸ This is what Shivji calls ‘the central right’ for Africans.³⁸⁹ Shivji’s point resonates with views of Bedjaoui and M’Baye quoted at the beginning of this chapter. The reality however, remains that this view is largely an African one and is not shared by all.

In terms of content of the right to development, the Constitution of Uganda outlines social and cultural well-being, access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security,

³⁸⁷ See notes 228 and 230 above.

³⁸⁸ KA Acheampong ‘Human Rights and The African Renaissance’ (2000) 5 *African Journal for Political Science* 105-123.

³⁸⁹ Shivji (see n 93 above) 58.

pension and retirement benefits as the objectives of development.³⁹⁰ It could therefore be surmised that these elements could be regarded as making up the content of the right to development in Uganda. The challenge however is that the actual meaning of each of these issues is not clearly spelt out in the Constitution of Uganda.

The Government of Uganda has institutions, laws and policies to give effect to the various elements of development outlined above. With respect to education, the Ministry of Education and Sports is the lead agency. The Education Act³⁹¹, the Universal Primary Education Programme (UPE)³⁹² and the Universal Post Primary Education and Training (UPPET)³⁹³ are in place to provide for education in Uganda. UPE and UPPET outline issues like number of pupils enrolled in school, teacher/ pupil ratio, pupil/textbook ratio which can be said to be elements of the content of the right to education.³⁹⁴

In the area of health the Ministry of Health is in place. The Health Act³⁹⁵, the National Health Policy³⁹⁶ and Health Sector and Strategic and Investment Plan

³⁹⁰ Constitution of Uganda (see n 10 above) principle XIV.

³⁹¹ The Education Act Cap 127.

³⁹² The Universal Primary Education Programme was launched by the Government of Uganda in 1997. Following its inception over 14 million children have accessed free primary education. More details on this programme can be found at <http://www.education.go.ug/> (accessed on 1 April 2011).

³⁹³ Universal Post Primary Education and Training was launched in February 2007 by the government of Uganda. This effort was encouraged by the success of free universal primary education programme which was introduced in 1997. Since its inception, a significant number of students has benefited from the programme. More details on this programme can be found at <http://www.education.go.ug/> (accessed on 1 April 2011).

³⁹⁴ The Universal Primary Education Programme (see n 392 above).

³⁹⁵ Ministry of Health *Sector and Strategic and Investment Plan 2010-2015*. The Health Sector Strategic and Investment Plan was developed to guide the health sector investments towards achieving medium term goals for health. See <http://www.health.go.ug/docs/HSSIP10.pdf> (accessed on 1 April 2011).

³⁹⁶ Government of Uganda/Ministry of Health. *The National Health Policy 2010/2019*. The development of this National Health Policy (NHP II) has been informed by the National Development Program (NDP) for the period 2009/10-2013/14, the overall development agenda for Uganda. The NDP

are in place and provide for health indicators like access to health services, child mortality and maternal mortality.³⁹⁷ It could be said that these indicators provide the content of a health service. Twinomugisha points out that Uganda's legal framework does not specifically provide for the right to health.³⁹⁸ Twinomugisha however notes that the Constitution of Uganda in the NODPSP provides for provision of medical services to the population and access to health services.³⁹⁹ He concludes that a creative court can effectively apply the provisions of the NODPSP.⁴⁰⁰

In the area of water there is the Water Act⁴⁰¹ and Water Policy⁴⁰² which are overseen by the Ministry of Water and the Environment. The water policy is informed by *inter alia* the objective to have sustainable provision of clean safe water within easy reach based on good hygiene sanitation practices and facilities based on management responsibility with ownership by the users within a decentralised governance.⁴⁰³ These objectives could be also viewed as the content of access to water.

places emphasis on investing in the promotion of people's health, a fundamental human right for all people. Constitutionally, the Government of Uganda (GoU) has an obligation to provide basic medical services to its people and promote proper nutrition. The Constitution further provides for all people in Uganda to enjoy rights and opportunities and have access to education, health services and clean and safe water. Investing in the promotion of people's health shall ensure they remain productive and contribute to national development. More can be found at <http://www.health.go.ug/> (accessed on 1 April 2011).

³⁹⁷ Ministry of Health *Health Sector and Strategic and Investment Plan 2010/2011- 2014/2015*.

³⁹⁸ BK Twinomugisha 'Beyond Social Programmes: Protection of the Right of Access to Malaria Treatment in Uganda'. Human Rights and Peace Centre Working Paper No 22, 5.

³⁹⁹ Twinomugisha (see n 398 above) 5.

⁴⁰⁰ Twinomugisha (see n 398 above) 5.

⁴⁰¹ Water Act Cap 152.

⁴⁰² Ministry of Water and Environment *The National Water Policy (1997)*. Available at <http://www.ruwas.co.ug/reports/National%20Water%20Policy.pdf> (accessed on 3 April 2011).

⁴⁰³ Ministry of Water and Environment (see n 402 above) 1.

The National Housing Policy and Shelter Strategy remains the blue print for an orderly and integrated development of the housing sector in Uganda.⁴⁰⁴ The main feature of the strategy is the development of measures to enable community organisations to produce adequate shelter.⁴⁰⁵ The Ministry of Lands, Housing and Urban Development is in charge of shelter and housing matters.

Pensions under the Ministry of Public Service are covered under the Pension Act.⁴⁰⁶ The Constitution of Uganda guarantees the right to pensions.⁴⁰⁷ Pension is meant to be used by public servants when they retire. In *Kalyango Mutesasira and others v the Attorney General*, the Uganda Human Rights Commission tribunal confirmed that pension is a right when it held that:

Article 254 of the Constitution creates the right to pension expressed in mandatory terms. By failing to pay or by delaying to pay the complainants' pensions, the respondent has violated the complainants' right to pensions.⁴⁰⁸

Food is provided for in the Uganda Food and Nutrition Policy.⁴⁰⁹ Both the ministries of Health and Agriculture, Animal Industry and Fisheries implement the Food and Nutrition Policy. One of the key objectives of the

⁴⁰⁴ Government of Uganda The National Housing Policy and Shelter Strategy 2009.

⁴⁰⁵ Government of Uganda (see n 404 above).

⁴⁰⁶ Pension Act Cap 286.

⁴⁰⁷ Constitution of Uganda (see n 10 above) article 254.

⁴⁰⁸ *Kalyango Mutesasira and others v Attorney General* Complainant No UHRC No 501 of 2000, 139.

⁴⁰⁹ Government of Uganda *Food and Nutrition Policy* 2003 The Uganda Food and Nutrition Policy was formulated within the context of the overall national development policy objective of eradicating poverty as spelt out in the Poverty Eradication Action Plan (PEAP), and in consonance with other policies already formulated by government of Uganda. The policy makes express reference to International Human Rights Law. It notes that international treaties and conventions recognise that the right to adequate food is a fundamental human right. Article 25 (1) of the Universal Declaration of Human Rights and Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) both provide for the right of everyone to an adequate standard of living including adequate food. Article 11(2) of the ICESCR recognises the need for more immediate and urgent steps to ensure the fundamental right to freedom from hunger and malnutrition. More can be found at http://www.fao.org/righttofood/inaction/countrylist/Uganda/Uganda_foodandnutritionpolicy.pdf (accessed on 1 April 2011).

policy is to ensure availability, accessibility, affordability of food in the quantities and qualities sufficient to satisfy the dietary needs of individuals sustainably.⁴¹⁰ The policy recognises that adequate food and nutrition is a human right.⁴¹¹ While Uganda can be commended for taking steps to recognise the right to food there is still the challenge of implementation of this right. Welt Hunger Hilfe commissioned study on the right to food in Uganda which established that:

Findings from the case study indicate that despite Constitutional and Policy recognition of the right to food in Uganda, there exists a gap between policy and practice: a policy developed after ten years of debate still lacks a strategic investment plan, and legislation to support its implementation. State actors are also not fully committed to provide the vulnerable and deprived poor groups with adequate food or resources to access food, let alone targeting them in national food and nutrition security programmes.⁴¹²

3.5. Conclusion

The law of development is about development. It is clear that there are several national laws and policies in Uganda that speak to development. While countries like Uganda have constitutions that make the right to development justiciable others like South Africa do not. The challenge that remains therefore is to see development needs become a reality for most Ugandans in their day to day lives and not just remain in fancy, glossy reports like the PEAP and NDP.

⁴¹⁰ Government of Uganda (see n 409 above) 5.

⁴¹¹ Government of Uganda (see n 409 above) 6.

⁴¹² Welt Hunger Hilfe Empowering Civil Society to Monitor the Right to Food: A case study report on Uganda (2009) V.



Chapter 4

The human rights landscape in Uganda

- 4.1. Introduction**
- 4.2. The human rights legal and policy framework**
- 4.3. Institutional overview**
- 4.4. Conclusion**

Chapter 4

The human rights landscape in Uganda

4.1. Introduction

This chapter will examine the human rights landscape of Uganda. The chapter is intended to be the bedrock on which chapter 5 will be built and crafted. The legal and policy framework, together with the institutional set up in respect of the promotion, protection and respect for human rights in Uganda, will be discussed, from a national, regional and international perspective. That is to say, national policies like the PEAP and NDP will be explored. At the regional level the New Partnership for Africa's Development will be discussed while at the international level, the key human rights instruments will be examined. Key institutions involved in the promotion and protection of human rights in Uganda will be outlined.

This will provide the context and parameters of the human rights situation in Uganda, where a number of development partners have in programmes in place, aimed at improving the situation. It will therefore provide the back drop for the examination of the role played by development partners in promoting and protecting of human rights in Uganda in chapter 5.

4.2. The human rights legal and policy framework

In Uganda there is a fairly robust policy and legal framework in place to ensure the promotion and protection of human rights. While this may be true, there is still some way to go when it comes to the implementation of the various policies and laws. One could easily call it 'the curse of

implementation’ or giving effect. The study will examine what role development assistance plays in supporting the implementation of the human rights agenda.

4.2.1. The Constitution of Uganda

The supreme law of the country, the Constitution of Uganda 1995 has a chapter dedicated to human rights.⁴¹³ Chapter four of the Constitution is the bill of rights and contains the broad spectrum of rights. Several of the rights contained in chapter four are a reflection of the international and regional standards that Uganda has ratified. It however must be stated that in respect of economic, social and cultural rights like the right to employment, education, health and affordable housing, there has been limited jurisprudence on the meaning and enjoyment of these rights. This chapter is complimented by the National Objectives and Directive Principles of State Policy. Objective number V states:

- (i) The State shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively.
- (ii) The State shall guarantee and respect the independence of non-governmental organisations which protect and promote human rights.⁴¹⁴

4.2.2. The Poverty Eradication Action Plan (PEAP)

Pillar four of the PEAP is devoted to good governance and therein human rights are embedded. While the PEAP does not attempt to define human rights it interestingly states that ‘it is generally agreed that good governance implies

⁴¹³ The Constitution of Uganda (see n 10 above) chapter 4.

⁴¹⁴ The Constitution of Uganda (see n 10 above) Objective 5 of the National Objectives and Directive Principles of State Policy.

democracy, respect for human rights.⁴¹⁵ It therefore can be gleaned from this that human rights are part of the good governance agenda in Uganda. Development partners link their development assistance to the PEAP.

The PEAP further outlined a number of human rights challenges such as illegal detentions, use of torture in detention centres operated by the police, military forces and local administration prisons.⁴¹⁶ It is further revealed that starvation, tuberculosis and dysentery is causing deaths in the prisons system.⁴¹⁷

The PEAP outlines five key action areas that need addressing in the human rights area. These are reflected in Box 1 below. Some of the key questions that will be asked in chapter 5 of this paper are whether the assistance from development partners takes cognisance of these areas, and who was the driving force behind these actions.

⁴¹⁵ Ministry of Finance, Planning an Economic Development (see n 20 above) 115.

⁴¹⁶ Ministry of Finance, Planning an Economic Development (see n 20 above) 115

⁴¹⁷ Ministry of Finance, Planning an Economic Development (see n 20 above) 119.

Box 1 Key human rights actions over the medium term

- 1. Government will take action to prevent any of the violations reported by UHRC from continuing*
- 2. The JLOS will treat the humane treatment of prisoners as a priority and the security sector will ensure that its agencies do not exceed their legal powers for instance by legal detention*
- 3. The UHRC is establishing a sub regional office in Moroto. The civil military liaison offices in Moroto, Kotido and Nakapiripirit will continue to implement a frame work of engagement between government and civil society to achieve disarmament in Karamoja. The civil military liaison offices will be extended to Katakwi, Kumi, Soroti and Kaberamaido.*
- 4. UHRC is coordinating a national civil education framework with other human rights organisations for the next three years to increase awareness among Ugandans about their human rights and obligations.*
- 5. In line with the UN Convention on the Rights of the Child and the Children's Statute, UHRC will support and coordinate data collection on abuse, neglect and exploitation of children.*

Source: PEAP 2005 Uganda

4.2.3. The National Development Plan

The NDP provides for:

The inculcation of human rights principles and practice at institutional and sectoral levels through integration of human rights principles in institutional induction, training programmes and operational procedures, implementation of a change management strategy and human development plan, promotion of a human rights-based approach to service delivery within all JLOS institutions and development of national capacities including state and non state actors to apply the human rights-based approach to service programming and delivery.⁴¹⁸

While the NDP can be applauded for inclusion of observance of human rights and the embracing of a human rights-based approach, it is not clear whether this will be done in practice. It is encouraging that that the adoption of HRBA

⁴¹⁸ The Republic of Uganda (see n 20 above) 269.

did not suffer the same fate of being washed out, like was done in respect of the PEAP as revealed in Chapter 5. Notwithstanding this apprehension, this provides an entry point for not only highlighting human rights but also rolling the HRBA in Uganda.

4.2.4. The Uganda Human Rights Commission Act

The Uganda Human Rights Commission Act guides the operations of the Uganda Human Rights Commission (UHRC).⁴¹⁹ The Act provides the functions of UHRC.⁴²⁰ The key function of the UHRC is to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right.⁴²¹ In addition, the UHRC carries out research into areas of human rights concern, carries on human rights awareness programmes, monitors governments compliance with human rights instruments and works in partnership with civil society, human rights non-governmental organisations and government departments.⁴²²

4.2.5. The African human rights regime

Uganda as part of the African Union family has ratified several African human rights instruments. These include the ACHPR⁴²³, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women⁴²⁴ and the

⁴¹⁹ The Uganda Human Rights Commission Act (see n 11 above)

⁴²⁰ The Uganda Human Rights Commission Act (see n 11 above) article 7.

⁴²¹ The Uganda Human Rights Commission Act (see n 11 above) article 7 (1) (a).

⁴²² See Articles 51-52 of the Constitution of Uganda 1995 and section 4 of the Uganda Human Rights Cap 276.

⁴²³ Uganda ratified the ACHR on 10 May 1986. See

http://www.au.int/en/sites/default/files/93African_Charter_on_Human_and_Peoples_Rights.pdf (accessed on 24 January 2011)

⁴²⁴ Uganda ratified the APWR on 22 July 2010. See

http://www.au.int/en/sites/default/files/999Rights_of_Women.pdf (accessed on 24 January 2011).

African Charter on the Rights and Welfare of the Child (ACRWC).⁴²⁵ These instruments form part of what can be referred to as the African regional human rights system. The instruments were an attempt to embody African values and norms, while also taking into account international normative standards.

The African Commission on Human and Peoples' Rights in the *SERAC*⁴²⁶ case earlier cited, notes that international law and human rights must be responsive to African circumstances.⁴²⁷ Heyns also notes:

Legal mechanisms for the protection of human rights in Africa operate in the context of the practice and attitudes of those in Africa who deal with human rights issues on a daily basis: Governments, officials, lawyers, non-governmental organisations (NGOs), academics and civil society. The legal and extra legal aspects of human rights protection in Africa form part of the same organic whole and as such, they are interdependent. The ultimate test for any legal system that purports to deal with human rights is the difference it makes to the lives of people.⁴²⁸

Arising from Heyns assertion, we could ask ourselves to what extent the African human rights system has made a difference to the lives of Africans. The answer is not reassuring. Africa is one of continents where human rights are routinely violated. Heyns does acknowledge that Africa has often been criticised on account of its human rights record and the African charter system in particular has been subjected to stringent criticisms due to its apparent inability to improve the situation.⁴²⁹ Viljoen describes Africa as being

⁴²⁵ Uganda ratified on 17 August 1994. See

http://www.au.int/en/sites/default/files/96Welfare_of_the_Child.pdf (accessed on 10 July 2007).

⁴²⁶ *Social and Economic Action Centre and the Centre for Economic and Social Rights v Nigeria* (see n 228 above).

⁴²⁷ African Commission on Human and Peoples' Rights (see n 229 above) article 30.

⁴²⁸ C Heyns 'The African regional human rights system: In need of reform' (2001) 1 *African Human Rights Journal* 156.

⁴²⁹ Heyns (see n 428 above) 156.

associated more with human rights problems and humanitarian crises than with their solutions, more with the need for international human rights law than its applications and more with the failure of international law than with its success.⁴³⁰

The situation in most parts of rural Uganda amplifies Heyns and Viljoen's sentiments. In Northern Uganda, for example, most of the people there are so poor, illiterate and not really part of the state or the development train in Uganda. The government speaks of free universal primary education, but there are no teachers and the few who are there are drunkards. The children walk miles to school barefoot and hungry. Their parents do not give them any food to eat at school. So these poor children are left hungry on their own. Government figures indicate that enrolment in primary schools is up to about 7 million.⁴³¹ The magnitude of this problem is quite scaring.

However, there are serious issues of quality that are not really addressed. Clearly, their rights to food, education and health are violated by the state and their parents. The challenge, therefore, is how we get these people to appreciate the concept of human rights. These people do not know their basic rights nor see the need to engage in the development process, they cannot hold their leaders accountable. The challenge is so great. In the health sector, it is no different. While government has established health centers in the districts, people do not want to use them. Mothers prefer, for example, to give birth at

⁴³⁰ F Viljoen 'Africa's contribution to the development of international law human rights and humanitarian law' (2001) 1 *African Human Rights Law Journal* 18.

⁴³¹ Ministry of Education and Sports of Uganda reveals this at http://www.education.go.ug/2008_Abstract/Primary_2008_PDF.pdf (accessed on 19 June 2009).

home for cultural reasons. The centres are not funded adequately they receive about Uganda Shillings (UGX) 50,000 equivalent to 20 EUROS to run for a month and there are few qualified medical personnel.⁴³² It can therefore, be said that that the majority of the people have lost hope in life and are apathetic. They have accepted their situation and resigned themselves to a life of bare minimums or non-existence.⁴³³ To these people human rights are a very abstract notion. It is imperative therefore, that government, civil society, politicians and scholars need to think really hard on best way to the win the hearts and minds of the people on the ground.

One way of doing this is by packaging the human rights message in simple easy-to-understand language. Rodney spoke of different levels of development and the individual needs to be developed.⁴³⁴ Focused, deliberate, uncompromising leadership from governments, civil society, politicians and scholars is what is required to ensure that human rights become a reality for the people on the ground.

While Viljoen's observation is valid, it must be pointed out that Africa is not the only region confronted with human rights problems. In the United States of America (USA), the Guantánamo Bay experience has exposed serious human rights violations in the land of the free. Several detainees, including children, suspected of having committed acts of terrorism have been held without due

⁴³² This situation was observed by the author who visited Arua, Gulu and Amuru districts in Northern Uganda 14 – 18 March 2009

⁴³³ See n 432 above.

⁴³⁴ Rodney (see n 122 above).

process for close to six years.⁴³⁵ In addition some have been tortured and treated in inhumane and cruel ways.⁴³⁶ HRW reveals that detainees in Guantánamo Bay have been exposed to torture situations which included ‘water boarding’.

Water boarding refers to when interrogators strap the prisoner to a board with his feet above his head, cover his mouth and nose with cellophane, and pour water over his face to create the sensation of drowning.⁴³⁷ They also apparently included a technique known as ‘long-time standing’, in which a prisoner is forced to stand motionless for up to forty eight straight hours, and extreme sleep deprivation for days on end, methods that survivors of some of the world’s most brutal regimes have said cause as much suffering as the worst physical torture.⁴³⁸

In addition, the USA engaged in the practice of extraordinary rendition.⁴³⁹ The rendition programmes is in essence a system, in which the Central Intelligence Agency (CIA) of the USA government would fly terrorism suspects to undisclosed locations in the world and expose them to various forms of torture, cruel and inhumane treatment.⁴⁴⁰ HRW reports that the USA administration has acknowledged that around 100 prisoners have been held in

⁴³⁵ Human Rights Watch has chronicled various human rights violations at Guantánamo Bay Cuba and can be read at http://www.hrw.org/doc/?t=usa_gitmo as of 15 August 2008.

⁴³⁶ Human Rights Watch (see n 435 above).

⁴³⁷ Human Rights Watch (see n 435 above).

⁴³⁸ Human Rights Watch (see n 435 above).

⁴³⁹ Human Rights Watch (see n 435 above).

⁴⁴⁰ Human Rights Watch (see n 435 above).

the CIA programme, in facilities operated by the agency in undisclosed locations around the world.⁴⁴¹

Europe is also not immune from cases of human rights violations. The European Court of Human Rights reports that as of 2007, it had received 54,000 applications with 41,000 allocated to a decision.⁴⁴² The Court goes on to report that as of 2007, 138,850 applicants were still pending resolution.⁴⁴³ Russia and Turkey lead the way in countries with most applications made against them-23,000 (26%) and 9,150 (12%) respectively.⁴⁴⁴ The *International Herald Tribune* estimates that at its current pace the Court would need forty six years to rule on all complaints.⁴⁴⁵ The situation in the European Court of Human Rights is reaffirmed by the findings of HRW, which has details regarding human rights violated in Europe, especially torture in Russia.⁴⁴⁶

HRW exposes that human rights violations are also a fact of life in Asia. It reports on abuses from China, Malaysia and India among others.⁴⁴⁷ It is

⁴⁴¹ See Testimony by T Malinowski, Human Rights Watch Washington advocacy director, Extraordinary Rendition, Extraterritorial Detention, and Treatment of Detainees: Restoring Our Moral Credibility and Strengthening Our Diplomatic Standing. Presented to the US Senate Committee on Foreign Relations on 26 July 2007. Available at <http://www.hrw.org/english/docs/2007/07/26/usint16514.htm> (accessed on 15 August 2008).

⁴⁴² European Court of Human Rights 2008 Survey of Activities 2007 page 51. Strasbourg. Available at <http://www.echr.coe.int/NR/rdonlyres/D0122525-0D26-4E21-B9D4-43AEA0E7A1F5/0/SurveyofActivities2007.pdf> (accessed on 15 August 2008).

⁴⁴³ European Court of Human Rights (see n 442 above) 51.

⁴⁴⁴ European Court of Human Rights (see n 442 above) 54.

⁴⁴⁵ 'Europe's human rights court faces huge case backlog; Turkey worst offender in 2007' International Herald Tribune 23 January 2008. Available at <http://www.iht.com/articles/ap/2008/01/23/news/European-Court-Backlog.php> (accessed on 15 August 2008).

⁴⁴⁶ Human Rights Watch Europe and Central Asia Available at <http://www.hrw.org/doc/?t=europe> (accessed on 15 August 2008).

⁴⁴⁷ Human Rights Watch. Asia Available at <http://www.hrw.org/doc/?t=asia> (accessed on 15 August 2008).

therefore clear that human rights violations are not restricted to Africa but, rather, a worldwide phenomenon.

While it is true that the African human rights situation is rather dire, the father of the African Charter M'Baye said that the Charter was the best that could be achieved at the time.⁴⁴⁸ Heyns is right, when he says in reference to the African Charter that 'this might be true but times have changed and today more should and can be achieved'.⁴⁴⁹ The concept of human rights is now accepted as the idea of our time and a vast body of experience has been acquired in respect of international human rights systems.⁴⁵⁰

4.2.6. The international human rights arena

In addition to being part of the regional structure, Uganda has signed up to and ratified several of the key international human rights. Uganda has over the last 19 years signed, ratified or acceded to various international and regional instruments and standards. The Uganda Human Rights Commission (UHRC), which is a creature of both an Act of Parliament and the Constitution, is *inter alia* charged with monitoring Uganda's compliance with its international and regional obligations.⁴⁵¹ The UHRC in its 7 Annual report for 2004 reveals that Uganda has ratified several international and regional instruments, but has fallen short in the area of state reporting.⁴⁵² This concern is echoed by the

⁴⁴⁸ C Heyns 'The African regional human rights system: In need of reform' (2004) 4 *African Human Rights Journal* 157.

⁴⁴⁹ Heyns (see n 448 above) 157.

⁴⁵⁰ Heyns (see n 448 above) 157.

⁴⁵¹ The Constitution of Uganda (see n 10 above). The Uganda Human Rights Commission is provided for in article 51(1) and The Uganda Human Rights Commission Act No 4 of 1997. Article 52 (1) h of the Constitution and section of the UHRC Act mandate the UHRC to 'monitor governments compliance with International treaty and convention obligations.'

⁴⁵² Uganda Human Rights Commission 7 *Annual Report 2004* (2005) 179-181.

African Peer Review (APR) panel which reports that the Government of Uganda still faces challenges in the areas of domestication and reporting obligations. The APR panel recommends that Uganda should streamline and effectively coordinate reporting on the implementation of ratified conventions.⁴⁵³

Uganda, for example, having ratified the ICCPR in 1995, submitted its initial report in March 2004.⁴⁵⁴ In addition, Uganda has only recently submitted its initial report to the Committee against Torture in May 2005, which was 16 years late.⁴⁵⁵ At the regional level Uganda, ratified the ACHPR in 1986, with 9 reports overdue since 1988 it submitted in 2004 the 9th State report to the African Commission on Human and Peoples' Rights which combined all the overdue reports.⁴⁵⁶

Most the treaties contain a state reporting requirement and annexure 5 also highlights the reporting status in respect of the treaties that have been signed and consequently need to be reported.

A number of constraints that the government faces in adhering to its reporting obligations are highlighted by the UHRC. These include:

- (1) Lack of sufficient manpower in key ministries e.g. Ministry of Foreign Affairs
- (2) Some ministries have not been informed of their duty to provide information and many are unaware of this obligation

⁴⁵³ African Peer Review Mechanism (2009) (see n 1 above).

⁴⁵⁴ Uganda Human Rights Commission. 2004 (see n 452 above) 180.

⁴⁵⁵ Uganda Human Rights Commission 2004 (see n 452 above) 181.

⁴⁵⁶ Uganda Human Rights Commission 2004 (see n 452) 179.

- (3) Lack of consistent coordination, mainly attributed to lack of sufficient manpower and resources to coordinate reporting especially by the Ministry of Foreign Affairs which is mandated to prepare these reports.⁴⁵⁷

It can be seriously questioned whether the Ministry of Foreign Affairs is the most suited agency to prepare these reports given the limited capacity. This could perhaps be a role for the UHRC or JLOS, as they have greater capacity and understanding to do so.

4.3. Institutional overview

In order to interpret, implement and give effect the various polices and legal instruments that Uganda is party, to there is an elaborate institutional enterprise in place. Development partners are supporting these agencies and later in chapter 5 we shall examine how they do so and with what impact.

4.3.1. The Courts of law

The Courts of Judicature established in the Constitution are mandated to interpret and protect human rights.⁴⁵⁸ The courts range from the Supreme Court, Court of Appeal (which doubles as Constitutional Court), High Court, Chief Magistrates Courts and Magistrates Courts.⁴⁵⁹ The Judiciary is

⁴⁵⁷ See Uganda Human Rights Commission 2004(see n 429 above) 181.

⁴⁵⁸ Constitution of Uganda (see n 10 above) article 129.

⁴⁵⁹ Constitution of Uganda (see n 10 above) articles 129-141.

constitutionally an independent institution charged with upholding the constitution and ensuring access to justice for all.⁴⁶⁰

Running parallel to this civil court system is the military court martial system.⁴⁶¹ While many development partners are extremely wary of supporting these courts, they have extreme powers of trying civilians and they very often do. The rules of procedure of these courts are very opaque and this has resulted in many accused persons' rights being violated.

The Local Council Courts are a recent creation of the present government.⁴⁶² These Courts are embedded within the Local Government political structure.⁴⁶³ They are the most accessed Courts with over forty five thousand of them right across the country.⁴⁶⁴ It is evident from the table below that the Local Council Courts (Executive Council Courts) are the Courts of first instance for most Ugandans. A recent joint survey on operations of Local Council Courts and legal aid providers confirms this.⁴⁶⁵ These Courts are the most accessible and people have confidence in them compared to the mainstream Courts as outlined in Table 1 below.⁴⁶⁶

⁴⁶⁰ The Constitution of Uganda (see n 10 above) article 128 (1) and (2) refers to the independence of the Judiciary.

⁴⁶¹ Uganda Peoples Defence Forces Act Cap 307 sections 78,80 and 81.

⁴⁶² Local Government Act Cap 243 section 3.

⁴⁶³ These courts are created under the Local Government Act Cap 243 and are supervised by the Ministry of Local Government.

⁴⁶⁴ Ministry of Local Government of Uganda see <http://molg.go.ug/ministry/local-councils-development/> (accessed on 19 January 2010).

⁴⁶⁵ Legal Aid Basket Fund and UNPD/UNCDF June [draft] 2006: Joint survey on operations of Local Council Courts and Legal Aid Providers, pages 9-10.

⁴⁶⁶ This was the overwhelming view of the 20 participants in the focus group discussion I held with them on 10 November 2006 in Kampala.

Table 1: Percentage distribution of households by distance to nearest institution/ Court

Institution	less than 1km	1 - 5km	>than 5 - 10km	more than 10km	Total
Customary courts	62.2	28.6	3.6	5.6	100.0
LCI	67.0	32.2	0.4	0.4	100.0
LCII	28.6	62.4	7.0	2.0	100.0
LCIII	12.4	51.7	22.4	13.5	100.0
Local administration police	10.5	50.0	22.6	16.8	100.0
Central police	8.2	37.4	20.6	33.7	100.0
Prisons	3.9	28.1	21.0	47.0	100.0
Magistrates court	4.3	28.6	18.3	48.8	100.0
District Land Tribunal	3.0	18.9	12.2	66.0	100.0
High court	1.3	12.4	6.3	79.9	100.0

Source National Service Delivery Survey 2004

4.3.2. The Uganda Human Rights Commission

In Uganda, the lead institution charged with promoting and protecting human rights is the UHRC which is both a constitutional⁴⁶⁷ and statutory body.⁴⁶⁸ The UHRC investigates violations of human rights, carries out research into areas of human rights concern, carries on human rights awareness programmes, monitors governments compliance with human rights instruments and works in partnership with civil society, human rights non-governmental organisations and government departments.⁴⁶⁹

⁴⁶⁷ Constitution of Uganda (see n 10 above) Article 51 of the Constitution of Uganda 1995 provides for the creation of the Uganda Human Rights Commission.

⁴⁶⁸ The Uganda Human Rights Commission Cap 276 (see n 11 above).

⁴⁶⁹ See Articles 51-52 of the Constitution of Uganda 1995 and section 4 of the Uganda Human Rights Cap 276.

The UHRC has a tribunal that has the powers of a Court and this tribunal has the jurisdiction to hear cases of human rights violations.⁴⁷⁰ The tribunal however is limited to hearing cases of human rights violations that occurred after the coming into force of the Constitution.⁴⁷¹ This implies that an individual whose rights may have been violated before 1995 has no remedy before the human rights tribunal. This excludes several people whose rights may have been violated during the dark days of Idi Amin in the 1970s. It must be pointed out that the court has gained prominence and this is manifested in the number of cases heard. While the Commission could be commended on awarding compensation to torture victims, the government has elected and/or refused to pay up.⁴⁷²

The UHRC is enjoined by both the Constitution and its Act to prepare and present a report to the Parliament of Uganda.⁴⁷³ The 12th annual report of 2009 is the most recent report by the Commission.⁴⁷⁴ Upon reading it one immediately notices that the report gives a fair account of the state of human rights in Uganda. One would expect that since the Commission is a government organ, it might fear to bite the hand that feeds it. However, the report tells graphically of instances of torture in government prisons. The report also points out reports and instances of torture by the army and intelligence organs.

⁴⁷⁰ Constitution of Uganda 1995 (see n 10 above) article 53.

⁴⁷¹ The Uganda Human Rights Commission Cap 276 (see n 11 above) article 7(3).

⁴⁷² Uganda Human Rights Commission 12 Annual Report 2009 reveals that the government has not paid out the compensation awards issued by the tribunal of the UHRC.

⁴⁷³ See Article 52 (2) of the Constitution of Uganda 1995 and Section 8(6) of the Uganda Human Rights Commission Act No 4 of 1997.

⁴⁷⁴ Uganda Human Rights Commission 2008 (see n 27 above).

While it can be said that UHRC has been effective at exposing human rights violations, parliament through the Legal and Parliamentary Affairs committee which is mandated to receive and review the UHRC annual report has been rather ineffective. The committee has not until, recently, reviewed any of the UHRC annual reports submitted to it. Among the major reasons advanced for this backlog is the huge work load the committee has coupled with lack of funds for the committee to sit.⁴⁷⁵ Another possible interpretation of this backlog of reports is the little attention parliament pays to human rights issues. In a parliament that is composed of a majority from the ruling party, one can easily see why the committee may be reluctant to consider reports that indict the government of various human rights violations. Development partners have on a number of occasions, with limited success, taken up this matter with parliament and urged it to act on the UHRC reports.⁴⁷⁶ UHRC is supported by a number of development partners as will be discussed in chapter 5.

4.3.3. The Justice, Law and Order Sector (JLOS)

The Justice, Law and Order Sector (JLOS), the first such sector of its kind in Africa, aims to support the promotion of the rule of law, to increase public confidence in the criminal, commercial, land and family justice systems, and to enhance access to justice.⁴⁷⁷ JLOS brings together 10 institutions under three primary agencies, the Ministry of Justice, the Ministry of Internal Affairs

⁴⁷⁵ Uganda Human Rights Commission (see n 22 above). In chapter 5 it was revealed that Honourable Stephen Tashobya, the chairperson of the Legal and Parliamentary Affairs Committee reported that the committee has prioritised human rights.

⁴⁷⁶ D Akiidi is the Governance Advisor with the German Development Agency (GIZ) and she revealed this during an interview I held with her on 23 June 2008.

⁴⁷⁷ Republic of Uganda Justice, Law and Order Sector Strategic Investment Plan (SIP I 2001/01 – 2005/06) 1-5. More details about JLOS can be found at <http://www.jlos.go.ug/page.php?p=about> (accessed on 24 April 2011).

and the Judiciary.⁴⁷⁸ The poor are the stated primary target of the JLOS reform effort.⁴⁷⁹

The mission of the sector is to ‘enable all to live in a just and safe society’.⁴⁸⁰ A strategic investment plan (SIP II) has been developed that sets out the broad policy interventions of the sector.⁴⁸¹ The SIP outlines five key result areas which include (1) promoting the rule of law and due process, (2) fostering a human rights culture across all JLOS institutions, (3) enhancing access to justice for all, especially the marginalised and the poor (4) reducing incidence of crime and promoting the safety of the person and security of property and (5) promoting economic development. An elaborate management structure has been put in place to manage and oversee the reform process.

Under the JLOS SIP II, one of the key result areas is to enhance access to justice for all, particularly for the poor and marginalised.⁴⁸² The sector has undertaken to do the following in a bid to achieve this result: Ensure more rationalised physical access and available institutions at administrative level and based on demographic factors in a phased manner, minimise financial bottlenecks hampering access to justice, promote Alternative Dispute Resolution mechanisms and innovative approaches to enhance access to justice, strengthen the capacity and role of Local Council Courts (Executive

⁴⁷⁸ See <http://www.jlos.go.ug/> (accessed on 17 October 2006).

⁴⁷⁹ Republic of Uganda (see note 477 above) 1-5.

⁴⁸⁰ The complete list of 11 institutions can also be found at <http://www.jlos.go.ug> (accessed on 17 October 2009).

⁴⁸¹ The plan established government’s commitment to a coordinated sector-wide reform policy. JLOS is composed of the Ministry of Justice, Ministry of Internal Affairs, The Judiciary, Uganda Prison Services, Uganda Police Force, Director Public Prosecutions, Judicial Service Commission, Uganda Law Reform Commission, Ministry of Gender, Labour and Social Development, Ministry of Local Government.

⁴⁸² Justice, Law and Order Sector *Strategic Investment Plan* (SIP II) 2006.

Council Courts, enhance the quality of Justice and minimise technicalities that hamper access to justice.

4.3.4. The Ministry of Foreign Affairs

The Ministry of Foreign Affairs may appear to be an odd member of the institutional set up but it does play a critical role in the human rights arena. The primary role of the Ministry is to implement national foreign policy objectives.⁴⁸³ The Ministry is charged with coordinating and preparing the various State reports that Uganda has to submit to the treaty bodies. A desk officer has been appointed for this. Increasingly, questions are being asked as to whether the Ministry is the most suited agency to prepare these reports.⁴⁸⁴

4.3.5. The Inspectorate of Government (IG)

The Inspectorate of Government (IG) is both a creation of an Act of Parliament⁴⁸⁵ and the Constitution of Uganda.⁴⁸⁶ The IG when initially set up in 1988 had the dual role of fighting corruption, abuse of office and promoting and protecting human rights and the rule of law in Uganda.⁴⁸⁷ This is part of its Ombudsman function. However, with the creation of the UHRC, this function was transferred from the Inspectorate of Government to the UHRC in 1997. This notwithstanding the IG remains a critical institution in the fight to promote and protection human rights. In its Ombudsman function

⁴⁸³ See Ministry of Foreign Affairs- Ministerial policy statement available at http://www.mofa.go.ug/page2.php?1=foreign_policy&&2=Foreign%20Policy (accessed on 21 August 2007).

⁴⁸⁴ N Bamukama a former officer with the Uganda Human Rights Commission expressed this view during an interview I held with him on 17 January 2011 in Kampala.

⁴⁸⁵ The Inspector General of Government Cap 167 creates the office of the Inspector General of Government in article 2(1).

⁴⁸⁶ The Constitution of Uganda (see n 10 above) chapter 13 and 14 provide for the Inspectorate of Government.

⁴⁸⁷ The Inspector General of Government Cap 167 (see n 485 above) article 7(1) creates the office of the Inspector General of Government.

and as the primary institution charged with combating corruption it indeed is critical.

A nexus exists between corruption and violation of human rights.⁴⁸⁸ The challenge is that the human rights and corruption people see themselves in separate and different enterprises. In fact, at the time when the IG had in 1988-1997 the dual role of fighting corruption, abuse of office and promoting human rights and the rule of law in Uganda, these were viewed as distinct roles which were not interrelated at all. The two departments never talked to each other. Furthermore, when in 2006 the Government of Uganda proposed to merge the IG and UHRC this was roundly opposed by both the IG and UHRC and supported by development partners. This is notwithstanding the underlying reasons of the proposed merger. Some thought, though, that it was an attempt to weaken the IG.⁴⁸⁹

Another practical challenge when trying to make the nexus between corruption and human rights is a question of turf wars. Many may wrongly oppose this because they believe they will be giving up part of their mandates to the other.

In some cases this also entail budgets and jobs, hence the opposition. It is

⁴⁸⁸ D Rukare Corruption and Human Rights Violations in Uganda (1998) unpublished Master of Laws thesis, University of Lund. I make the argument that corruption leads to violation of human rights. The justice, health and education sectors are discussed outlining how corruption leads to violation of due process, right to education and health. The International Council on Human Rights Policy also acknowledges that there is a nexus between human rights and corruption and has commissioned two studies on this issue. The first report will develop a conceptual framework enabling users to describe, in specific terms, how violations of human rights may be linked to particular acts of corruption. It will set out why those working on corruption and those working on human rights have reasons to cooperate, and delineate the main features of the two traditions of practice. The second report will develop a clear description of the conceptual links between human rights and corruption. More details on this can be found at <http://www.ichrp.org/en/projects/131> (accessed on 22 May 2008).

⁴⁸⁹ The author worked with the Inspectorate of Government from 1993- 1997 and later with Embassy of Ireland from 2002- 2006. These examples are taken from the author's personal experience while working with these two agencies.

therefore critical to emphasize the point that this is not the case but rather, it is a way of conceptualising/ analysing the issue.

The idea and concept of human rights are not clearly understood by all. The author attended a meeting where a very senior government official from the justice sector rejected off hand, the idea of making reference to human rights and the human rights-based approach. The reason put forward was that human rights are for NGOS.⁴⁹⁰ With such strong views, selling the idea that human rights and corruption are interrelated is a hard sale.

4.3.6. Local governments

A decentralised system of governance, that was one of the first to be rolled out in Africa, is in place and it encompasses 117 districts (with the number ever growing). The Local Government Act⁴⁹¹ and the Constitution of Uganda⁴⁹² devolve functions, powers and services to all levels of local government. The aim is to enhance good governance, democratic participation and control of decision-making. Local governments have the powers to make policy and regulate delivery of services. They also formulate development plans based on locally determined priorities, receive, raise, manage and allocate revenues, through approval and execution of own budgets at the different levels. The decentralisation system in Uganda has served as a model for several African countries such as Tanzania, Rwanda and Malawi.

⁴⁹⁰ I attended this meeting in February 2005 in Kampala Uganda.

⁴⁹¹ The Local Government Cap 243.

⁴⁹² Constitution of Uganda (see n 10 above) articles 176- 207.

The majority of Ugandans live in the rural areas and therefore the importance of the local government structure cannot be over emphasised. It is an interesting development. Human rights desks have been created at most local governments. The UHRC is behind this initiative. It is still early too determine how effective they are in promoting and protecting human rights.

4.3.7. Parliament

Parliament is not the most obvious institution one would expect to find listed amongst human rights institutions. Very often, we refer to national human rights institutions like the UHRC and justice sector institutions like the police and leave out or forget parliament. Parliament has, or ought to play, a critical role in pushing for the promotion and protection of human rights. Since members of parliament represent the people who elect them, it is incumbent upon them to ensure that the human rights of the people are not violated, especially by the executive which parliament is mandated to oversee. For example, it was commendable that the parliament of Uganda in 2002 took it upon itself to investigate allegations of torture against security agencies. There was a public outcry that government was using safe houses to torture people. The Parliamentary Committee on Defence and Internal Affairs (PCDIA), in 2002 formed an ad hoc select committee to undertake a study of torture, safe houses, and other places of ungazetted detention investigated this and came up with a report.⁴⁹³

⁴⁹³ Parliament of Uganda . Draft, report of Sub-Committee of the Parliamentary Committee on Defence and Internal Affairs (PCDIA), (2002). The sub-committee concluded that there was no torture in the facilities that it visited: JATT headquarters; the former Operation Wembley headquarters on Clement Hill Road; Najankumbi I House, a training facility for the Internal Security Organisation (ISO) which was relocated in December 2002 to Heritage Park; Heritage Park, a new not-yet-operational training facility for ISO; and ISO headquarters (the only surprise visit). The sub-committee noted that the

However, the report was not well received by many as it found that there was no torture despite it being reported in the UHRC annual report of 2005.⁴⁹⁴ HRW notes that, the draft report of the PCDIA has not been finalised and it has not been made public, nor has the matter has not been debated or considered further by Parliament.⁴⁹⁵ HRW points out that according to one parliamentarian, the draft report has been shelved three times.⁴⁹⁶ The ruling government at the time had a majority in parliament of three hundred five parliamentarians with only eighty in active opposition. This might explain why the report was not debated and acted upon.

In addition parliament through the Legal and Parliamentary Affairs Committee reviews reports submitted to it by UHRC. The UHRC in its 9th Annual report for 2006 has an entire chapter that chronicles the government's record of complying with its various recommendations over the years. The chapter reveals that government has been slow in taking forward several of its recommendations such as honouring the awards it grants torture victims and the issue of unrestricted access by the commission to army detention facilities.⁴⁹⁷ It is, however, somewhat reassuring that following the chairperson of the Legal and Parliamentary Affairs Committee Honourable Tashobya's revelation that in the present session of parliament the main priority for his committee is human rights the committee has started to

former dungeon at ISO headquarters had been turned into an armory and document storage area. Draft report, undated.

⁴⁹⁴ Uganda Human Rights Commission *6 Annual Report 2005* (2006).

⁴⁹⁵ Human Rights Watch (see n 43 above).

⁴⁹⁶ Human Rights Watch (see n 43 above).

⁴⁹⁷ Uganda Human Rights Commission Annual Report (see n 464 above) 132-133, Chapter 11, discusses in detail the Government of Uganda's compliance with the commission's recommendation and outlines several recommendations made over the years which government has failed to act on.

consider the annual reports from the Uganda Human Rights Commission 1997-2008.⁴⁹⁸ Kagwa reveals that parliament debated all the reports in less than one day and no action was taken on the reports.⁴⁹⁹ It would have ideal if those implicated in the various reports were to account and, the raft of recommendations made by the UHRC acted upon by government including but not limited to ratifying of all major human rights instruments. The ‘swift’ consideration of 12 reports in less than 8 hours reflects the lack of interest in human rights issues by the Parliament.

4.3.8. Civil society

The civil society movement in Uganda is still nascent and growing. Barya and Rutabajuka rightly note that:

The notion of civil society is generally new in Africa compared to western developed countries where various categories of non-state actors have been in existence and interacting with the state organs and institutions for centuries.⁵⁰⁰

It can be said that there is an enabling environment for human rights CSOs to operate. At the moment there are several human rights CSOs operating in Uganda ranging from International Non-governmental Organisations (NGOs), Regional NGOs and National NGOs right down to community based organisations (CBOs) at the local level. They engaged in advocacy, training,

⁴⁹⁸ Honourable Stephen Tashobya, the chairperson of the Legal and Parliamentary Affairs Committee revealed this at high level working lunch that was hosted by the Norwegian Ambassador H. E. Bjorg Leite at her residence in Kampala on 15 July 2008. The meeting brought together some of the key Justice, Law and Order Sector (JLOS) stakeholders to discuss the issue of domestic violence in Uganda. I attended the said meeting.

⁴⁹⁹ Med Kagwa is the chairperson of the Uganda Human Rights Commission and he revealed this during a workshop organised by Global Rights Uganda on 20 January 2011 at the Imperial Royale Hotel Kampala which I attended.

⁵⁰⁰ JJ Barya & SP Rutabajuka ‘Monitoring Progress Towards Democratic Governance : The Uganda Country Report’(2004) 27 Unpublished report prepared for the Economic Commission for Africa (ECA).

litigation and policy dialogue initiatives. As expected, almost all rely on development assistance and again, this study shall examine the consequences both intended and unintended of this reality.

4.3.9. The private sector

The private sector is usually not considered as one of the key constituencies when we talk of human rights. However, the private sector, which can be defined as that part of a nation's economy which consists of those entities which are not controlled by the state i.e. a variety of entities such as private firms and companies, corporations, private banks, non-governmental organisations, is very much a key player especially in the area of economic, social and cultural rights like the right to work. A significant portion of the Ugandan working population is situated in the private sector.⁵⁰¹ The sector is enjoined by law to promote and protect the rights of those it engages.⁵⁰² However, the rights of workers, for example, are routinely violated. Several workers not have employment contracts and are not afforded the due protection of the law.⁵⁰³ In addition the private is a potential provider of development assistance.

4.3.10. Development partners

Development partners have over the years become an integral part of the human rights mosaic in Uganda through their development assistance and

⁵⁰¹ Private Sector Foundation of Uganda (2008) 'Enterprise skills and linkages' 1. According to the Private Sector Foundation of Uganda, the private sector is the major source of employment of an estimated 12 million strong workforce.

⁵⁰² The Employment Act Cap 219 in sections 51-61 provides for rights and duties in employment including but not limited to right to pay and right to leave.

⁵⁰³ Lillian Keane Executive Director Platform for Labour Action revealed this in an interview I held with her on 20 January 2011 in Kampala.

engagement with the beneficiaries, their. They therefore cannot escape being qualified as key stakeholders. Infact, today there is hardly any major activity carried out by any government institution like policy meetings, budget formulation and reviews, which are not attended by development partners. In many ways, development partners are now almost civil servants of Uganda. The central thesis of this paper is to examine how development partners engage with the other actors, what role they play and to what extent their actions are guided or rooted in the aspiration of international human rights law.

4.3.11. Traditional cultural system

While the human rights institutions outlined above exist formally, one system that remains invisible, but very much alive in most of Africa and Uganda is the traditional cultural system. Writers on human rights like, Donnelly⁵⁰⁴ and Howard⁵⁰⁵, tend to assume that African communities had no justice or human rights systems worth talking or writing about. Elias observes in relation to such views that:

All too often, one finds that the majority of persons in the legal world of Europe and America entertain curious notions regarding African legal ideas and institutions. These vary from the vague scepticism of those who think that there were no such things as laws in Africa before the advent of Europeans to those who, while admitting that there are such laws, demand a wholesale eradication of what exists and the substitution for imported legal concepts. This narrow attitude stems from the approach which judges

⁵⁰⁴ One of the major arguments by both Donnelly and Howard is that most cultures including the African did not have human rights principles embedded in them and hence they argue for a universal view of human rights. See n 105 above.

⁵⁰⁵ R Howard 'Cultural Absolutism and the Nostalgia for Community' (1993) 15 *Human Rights Quarterly* 315.

everything African in terms of European standards and values and which dismisses out of hand anything that does not conform to such patterns.⁵⁰⁶

The King of Asante, Otumfuo Tutu II, makes a valid point when he says that we need to look at all these systems of governance in relation to our own African system. Democracy had existed in Africa for years before the coming of the Europeans. We had our own witnesses in judicial matters; we had our own systems of administration at the community and nation state levels everywhere.⁵⁰⁷ King Otumfuo initiated the promoting partnerships with traditional authorities project (PPTAP) which received funding from the World Bank.⁵⁰⁸ This USD 5,000,000 project was the first of its type to be funded by the World Bank and proved to be very successful as the projects were identified and owned by the people.⁵⁰⁹ This project proves that development projects including human rights programmes can gain more acceptance and traction if channelled through institutions that people understand and respect. Most Africans do not understand the formal government structures like ministries or human rights commission but they understand and respect the traditional leaders. It is therefore worthwhile supporting traditional institutions. It is vital however that these institutions do not become political. This is because if they become political they will be on a crash course with the governments, which is not very helpful.

⁵⁰⁶ O Elias *The Nature of African Customary Law* (1956) 5. The central premise of Elias's book is an attempt to discredit the mythological approach which advances the view that African laws and customs are non-existent or need to be replaced with a European version.

⁵⁰⁷ See interview of The King of Asante, Otumfuo Tutu II 'Ghana's King of Kings celebrate' in *The New African* 12 April 2009 19.

⁵⁰⁸ See note 507 above 19.

⁵⁰⁹ See note 507 above for more details on the promoting partnerships with traditional authorities project (PPTAP) 18-19.

Africa did have and still has its own legal system. By the time Africa was colonised several Ugandan communities had fairly established legal system that aimed at protecting and promoting human rights. However, the colonial missionaries and administrators ruthlessly blocked or suppressed the development of indigenous systems of human rights. The challenge therefore of African human rights scholars and practitioners is to devise relevant ways and means of Africanising our human rights system. Where Africanising here, means viewing and understanding human rights from an African perspective taking into account African traditions and cultures. This is position also taken by Cobbah, who calls for an African sense of human dignity, or perhaps human rights, one that flows from an African perspective, one that perhaps the rest of the international community can also use.⁵¹⁰ It should be carefully noted, however, that such a renaissance should not be blindly undertaken. There is no value in blindly re-introducing indigenous cultures that may offend universal human rights standards. We need to remodel the African traditional system and ensure that it is compliant with international norms.

4.3.12. The African human rights system

The African Court of Justice and Human Rights is provided for as one of the African Union organs.⁵¹¹ The statute, composition and functions of the Court

⁵¹⁰ JAM Cobbah 'African Values and the Human Rights Debate: An African Perspective' (1987) 9 *Human Rights Quarterly* 310 available at <http://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/hurq9&div=26&size=2&rot=0&type=image> (accessed on 13 August 2008).

⁵¹¹ Protocol on the Statute of the African Court of Justice and Human Rights 1 July 2008. The single protocol replaces the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights adopted in 1998 (the old Protocol), and the Protocol of the Court of Justice of the African Union which was adopted in 2003. This protocol merges the African Court of Justice and the African Court of Human Rights. Available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/africancourt-humanrights.pdf> (accessed on 15 August 2008).

of Justice are defined in a protocol.⁵¹² This Court is similar in its functionality to the International Court of Justice and will *inter alia* determine disputes between State parties to the AU treaties.⁵¹³ Since the Court has just commenced operation, its impact is yet to be seen. The Court will work alongside and compliment the African Commission on Human and Peoples' Rights.

The African Commission on Human and Peoples' Rights (the Commission) is created by the ACHRP.⁵¹⁴ The Commission's primary mandate is to promote human rights in Africa.⁵¹⁵ Murray, quoting Ankumah, states that from the adoption in 1981 and coming into force in 1986 of the African Charter on Human and Peoples' Rights, this regional mechanism has been criticised for being ineffective, poorly funded, lacking impartiality and based on ambitious and unenforceable rights and even neglected in the mainstream debate on human rights law.⁵¹⁶ The financial tide however seems to be changing for the African Commission on Human and Peoples' Rights. The former Chairperson of the African Commission Honourable Commissioner Justice Monageng revealed that the process of empowerment of the Commission had started by the Commission being able to present and defend its budget, and for the first time since the existence of the Commission, the African Union allocating

⁵¹² Protocol on the Statute on the African Court of Justice and Human Rights (see n 511). The Protocol provides for the court and outlines its mandate.

⁵¹³ Protocol on the Statute on the African Court of Justice and Human Rights (n 511 above) articles 18 and 19.

⁵¹⁴ African Charter on Human and Peoples' Rights (see n 5 above), article 30.

⁵¹⁵ African Charter on Human and Peoples' Rights (see n 5 above) article 45.

⁵¹⁶ R Murray 'The African Charter on Human Rights and Peoples' Rights 1987-2000 An overview of its progress and problems' (2001) 1 *African Human Rights Law Journal* 1.

enough funds for it to carry out most of its activities.⁵¹⁷ The former Vice-Chairperson of the Commission Melo reveals that the budget has been increased by over 400%.⁵¹⁸ This does bring some hope that the commission will now be able to deliver on its mandate.

The plight of funding for human rights promotion and protection is not restricted to the African Commission only. The *International Herald Tribune* reports that the European Court of Human Rights is under-funded, lacks judges and is struggling with a huge case backlog of almost 80,000 cases, some of them pending from the mid-1990s, according to the Courts annual survey.⁵¹⁹ The paper further reports that its budget for 2007 was USD 72 million which according to Slovak Foreign Minister Kubis, whose country holds the rotating presidency of the Council of Europe, the continent's premier human rights watchdog was hardly adequate.⁵²⁰

While Judges to the Court have been appointed the Court has decided one case.⁵²¹ We can only hope that the woes that the Commission has suffered over the years, of chronic under funding will not afflict the new Court.

⁵¹⁷ M Monageng. Closing remarks made at the closing ceremony of the 43 Ordinary Session of the African Commission on Human and Peoples' in Ezulwini Kingdom of Swaziland on 22 May 2008, 10. Available at

http://www.achpr.org/english/Speeches/43%20Session/Chair%27s%20Closing%20Speech%20_43rd%20Session_%20.pdf (accessed on 15 August 2008).

⁵¹⁸ A Melo Opening remarks made at the opening ceremony of the 43 Ordinary Session of the African Commission on Human and Peoples' in Ezulwini Kingdom of Swaziland on 7 May 2008, 1. Available at

http://www.achpr.org/english/Speeches/43%20Session/Opening%20Speech%20_Final%20Rev_.pdf (accessed on 15 August 2008).

⁵¹⁹ *International Herald Tribune* 23 January 2008 Available at <http://www.breakingnews.ie> (accessed on 25 January 2008).

⁵²⁰ *International Herald Tribune* (see n 519 above).

⁵²¹ *In the matter of Michelot Yogogombaye v The Republic of Senegal* Application No 001/2008 African Court of Human Rights and Peoples' Available at http://www.african-court.org/fileadmin/documents/Court/Latest_Judgments/English/JUDGMENT_MICHELOT_YOGOGOMBAJE_VS_REPUBLIC_OF_SENEGAL_1_.pdf (accessed on 19 August 2010). On December 15,

4.3.13. The international human rights system

At the international level, an elaborate global human rights system has been put in place by the United Nations (UN). This system is based largely on its Charter, non-binding declarations, legally binding treaties and on various activities aimed at advancing democracy and human rights throughout the world.⁵²² The UN human rights system is characterised by three pillars first, it establishes international standards through its charter, legally binding treaties, non-binding declarations, agreements, and documents, next, it has mandates special rapporteurs and experts, and groups, such as working groups, committees and treaty bodies, to work in various manners for the promotion and protection of human rights, finally, it offers technical assistance through the voluntary fund for advisory services and technical assistance in the field of human rights.⁵²³

Uganda as a member State of the UN and a party to the UN human rights treaties is therefore part and parcel of this system. A list of the various treaties ratified by Uganda including the reporting status has been provided in Annex 5.

Uganda has in place both the institutional and policy framework for the promotion and protection of human rights. These institutions, as will be discussed in chapter 5, are heavily reliant on development assistance to run

2009, the Court has delivered its first judgment, finding an application against Senegal inadmissible. The plans to merge with the African Court of Justice appear to have stalled. As of December 2009, only two countries have ratified the relevant protocol, out of 15 needed for its entry into force.

⁵²² See the Office for the High Commissioner for Human Rights web site for a detailed account of the United Nations system. Available at

<http://www.ohchr.org/EN/HRbodies/Pages/HumanRightsBodies.aspx> (accessed on 18 August 2008)

⁵²³ Office for the High Commissioner for Human Rights web site (see n 522 above) for more details.

their budgets and programmes. The study shall examine what role development partners play therefore in shaping the human rights agenda through their support and engagement with these agencies in chapter 5.

4.4. Conclusion

Uganda has in place both the institutional and policy framework for the promotion and protection of human rights. These institutions, as will be discussed in chapter 5, are heavily reliant on development assistance to run their budgets and programmes. The study shall examine what role development partners play therefore in shaping the human rights agenda through their support and engagement with these agencies in chapter 5.

Chapter 5

Development assistance and the human rights agenda

- 5.1. Introduction**
- 5.2. Why development assistance?**
- 5.3. Development partners supporting human rights programmes**
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Chapter 5

Development assistance and the human rights agenda

5.1. Introduction

This chapter will examine the role development assistance plays in promoting and protecting human rights in Uganda. Development partners, provide development assistance to support the promotion and protection of human rights to both government and CSOs and this is provided for in development assistance agreements concluded with both the government and CSOs, which will be discussed later in this chapter. The development partners that have human rights programmes in Uganda will be outlined together with the agencies supported. In addition to the foreign policies, country strategy papers of the development partners will be examined to establish whether or not they make linkages to international human rights instruments.

The chapter will also look at how development partners engage with the recipients of their assistance and the partnership that exists between the two. Whether this partnership is one of equals and based on mutual respect or it is unequal is one of the research questions posed in chapter 1. The practice of this support will be interrogated, taking into account what the theory holds and what happens in practice. In doing this, the question will be asked: Do development partners respect the principles of national ownership and partnership as outlined in development policies? The various assistance modalities such as projects, basket funding, budget support, use of consultants, provision of technical assistance, joint reviews and high level dialogues

currently employed by development partners will be also reviewed. While reviewing these modalities, the study will also explore to what extent these modalities allow for national ownership. How effective are these modalities in promoting and protecting human rights and what challenges are faced?

It can be argued that development partners, through the provision of development assistance play, a role in promoting and protecting human rights in Uganda. However, in practice this role can have both a negative and positive outcome, as will be discussed in this chapter.

5.2. Why provide development assistance?

One question whose answer is not easy to discern without scepticism, is why the rich countries of the north give development assistance to the poor countries of the south. Perhaps the answer lies, for example, in the stated objective of the development assistance of the Republic of Ireland. It is stated that ‘poverty reduction, reducing vulnerability and increasing opportunity is the overarching objective of Irish Aid’.⁵²⁴ It can be surmised from this that the main driving force behind the assistance from Ireland is to reduce poverty. Illing shares this view and suggests that ethical and humanitarian considerations to help those in need underpin why the EU and its member States provide assistance.⁵²⁵

⁵²⁴ Government of Ireland. White Paper on Irish Aid September 2006 (see n 256 above) 9.

⁵²⁵ Sigurd Illing is the former EU Head of Delegation in Uganda and I interviewed him on in Kampala.

The Government of Ireland reveals that they provide aid because it is right to help those in need.⁵²⁶ From the above it is clear that while the need to share and give to those in need drives the engine of Irish Aid, for other development partners political and strategic motives may be high on the agenda. One could say some former colonial masters tend to use this motive in their development assistance agendas in their former colonies. It is therefore very typical to find Britain providing assistance to its former colonies. France and Belgium do the same. Through the provision of assistance they are able to maintain their influence and leverage in their former colonies.

In the preamble to the Cotonou Agreement, the EU member States affirm their commitment to work together towards the achievement of the objectives of poverty eradication, sustainable development and the gradual integration of the ACP countries into the world economy.⁵²⁷ It can therefore be surmised from this affirmation that the primary driving force behind the provision of EU development assistance to ACP countries is to eradicate poverty, thereby leading them into the mainstream world economy. This, despite years of assistance, is yet to happen.

⁵²⁶ Government of Ireland (see n 256 above) 6.

⁵²⁷ European Union. Partnership agreement between the members of the African, Caribbean and Pacific group of states of the one part, and the European Community and its member states, of the other part (The Cotonou Agreement)-005 Available at http://ec.europa.eu/development/ICenter/Pdf/agr01_en.pdf (accessed on 28 November 2007) The Cotonou Agreement is a global and exemplary Agreement, introducing radical changes and ambitious objectives while preserving the 'acquis' of 25 years of ACP-EU cooperation. It is based on five interdependent pillars with the underlying objective of the fight against poverty: an enhanced political dimension, increased participation, and a more strategic approach to cooperation focusing on poverty reduction, new economic and trade partnerships and improved financial cooperation. More available at http://europa.eu/abc/european_countries/index_en.htm (accessed on 29 June 2008).

Illing puts forward a number of other reasons as to why development assistance is provided. He urges that the bad conscience of the former colonial powers led them to provide for this in the Rome Treaty.⁵²⁸ He pointed out that there was burden sharing between the EU member States that had colonies and those that did not. France, Britain and the Netherlands represented the former colonial masters while Germany, Italy and Luxemburg represented those without colonies.⁵²⁹ It was felt by those that had colonies that they should provide development assistance to their former colonies. One may wonder therefore whether this assistance was really meant to help countries develop or whether it was some form of token reparation to appease the bad conscience of the former colonial powers. It is a combination of both.

Berthelemy and Tichit believe that aid is among other driven by the self-interest of the donors.⁵³⁰ Illing goes on to point out that commercial interests are also a reason why development assistance is provided.⁵³¹ He reveals that assistance is given to build infrastructure like roads in developing countries in order for the developed countries to be able to trade with them.⁵³² He further notes that during the Cold War, each side needed allies to oil the machinery.⁵³³ As a result of this, development assistance was used to ‘buy good will’ from developing countries.⁵³⁴ This reasoning in part explains why regimes like

⁵²⁸ Illing (see n 524 above).

⁵²⁹ Illing (see n 524 above).

⁵³⁰ JC Berthelemy and A Tichit ‘Bilateral donors’ aid allocation decisions—a three-dimensional panel analysis’ (2004) 13 *International Review of Economics and Finance* 254.

⁵³¹ Illing (see n 524 above).

⁵³² Illing (see 524 above).

⁵³³ Illing (see n 524 above).

⁵³⁴ Illing (see n 524 above).

those of Idi Amin in Uganda and Mobutu in Zaire were supported, despite having violated the human rights of the people in their countries.

The Pearson Report of 1969 makes the point that both moral obligations and enlightened self-interest are the motivation driving international foreign aid.⁵³⁵

The report stresses that development assistance to poor countries will benefit the rich countries in the long run.⁵³⁶ The Brandt commission carries forward this thinking by emphasizing that large resource transfers to the poor countries would benefit the rich industrialised countries.⁵³⁷ The South Commission espouses similar views.⁵³⁸

Bauer however rejects the moral obligation argument for giving foreign aid.⁵³⁹

Bauer believes that neither individuals nor States have any moral obligation at all to help others.⁵⁴⁰ Bauer finds it morally unacceptable for States to use taxes which their citizens are required to pay, for foreign aid.⁵⁴¹ Bauer further asserts that the State has no right to do this, because taxes belong to the citizens and must be used for their benefit.⁵⁴² Hayek⁵⁴³ and Nozick⁵⁴⁴ both support Bauer's view.

⁵³⁵ L Pearson Commission on International Development, *Partners in Development* (1969).

⁵³⁶ Pearson (see n 535 above).

⁵³⁷ Brandt Commission *North South: A programme for Survival* (1980).

⁵³⁸ Brandt Commission (see n 537 above).

⁵³⁹ PT Bauer *Equality, the Third World and Economic Delusion* (1981).

⁵⁴⁰ PT Bauer *Dissent on Development* (1973) 44.

⁵⁴¹ Bauer (see n 540 above) 14.

⁵⁴² Bauer (see n 540)14.

⁵⁴³ F Hayek 'The Mirage of Social Justice' in (1976) 2 *Law, Legislation and Liberty* .

⁵⁴⁴ R Nozick *Anarchy, State and Utopia* (1974) 64.

In furtherance of promoting their economic interests, a number of development partners provide tied assistance. Tomasevski defines tied aid as the obligation of the recipient to purchase goods or services financed as ‘aid’ in the donor country.⁵⁴⁵ She goes on to make an important observation, when she claims that at least not even a half of aid is designed to meet the development needs of the recipient countries but to promote commercial interests of donors.⁵⁴⁶ Das goes further to say that there is a continuum between a strictly commercial transaction with no grant element and a pure gift with no element of *quid pro quo*.⁵⁴⁷ He argues that it would be naïve to assume that donors expect nothing in return for their aid.⁵⁴⁸ Degnbol-Martinussen and Engberg-Pedersen point out that bilateral donors tie a certain amount of their aid to the purchase of goods and services from their own country due to pressures exerted by both employers and employees.⁵⁴⁹

To illustrate the issue of using aid to further commercial interest, the United Kingdom, until as recently as 2002, had a policy of tying its assistance to its commercial interests. Under the Overseas Development and Cooperation Act there was a policy of 'tying' aid to procurement contracts for UK companies.⁵⁵⁰ However, in 2002 the United Kingdom became the first country to prohibit tying of aid under the International Development Act.⁵⁵¹ Under this Act, the United Kingdom government is not able to use development assistance for

⁵⁴⁵ Tomasevski (see n 53 above) 34.

⁵⁴⁶ Tomasevski (see n 53 above) 34.

⁵⁴⁷ DK Das *Migration of Financial Resources to Developing Countries* (1986) 70.

⁵⁴⁸ Das (see n 547 above) 70.

⁵⁴⁹ Degnbol- Martinussen and Engberg-Pedersen (see n 66 above) 13.

⁵⁵⁰ Overseas Development and Cooperation Act 1980.

⁵⁵¹ The International Development Act 2002 Available at <http://www.dfid.gov.uk/aboutdfid/ida.asp> (accessed on 21 March 2009).

other purposes, which include tying aid to procurement contracts in the UK.⁵⁵² The EU, on the other hand, still ties its assistance to procurement contracts in the EU/ACP region.⁵⁵³ Under the rule of origin principle, beneficiaries of EU assistance are obliged to purchase goods and services from EU/ACP countries. In rare exceptions, this rule may be waived to permit the purchase of goods and services from non EU/ACP countries.⁵⁵⁴ This rule of origin principles poses a number of problems for recipients, as most European vehicles, for example, are not suitable for the terrain in Africa. Japanese vehicle are the vehicles of choice. However, to buy a Japanese vehicle with EU funding is not encouraged. This is one way of ensuring that most of the assistance provided is remitted back to the ‘giving’ country.

According to a special euro-barometer on ‘development aid in time of economic turmoil’ released by the European Commission, ahead of the fourth European development day, 64% of Europeans agree that aid is driven by self-interest, while 90% still support the provision of aid.⁵⁵⁵ It is strange that charity, as a reason for aid to the poor countries, did not feature. Maybe it is politically incorrect to say that charity is a driver of aid. One in two Europeans said poverty was the greatest challenge in developing countries (a majority of which are African). It is therefore possible that most Europeans really think that they are helping these poor people. It is also interesting that 74% have never heard of the MDGs which again supports the theory that charity and

⁵⁵² The International Development Act 2002 (see n 551 above) article 1 (1).

⁵⁵³ European Union, 9 European Development Fund Practical Guide (2009) and procurement regulations. As Programme Manager of the Human Rights and Good Governance Programme of the European Union from 2007- 2010, I implemented these regulations.

⁵⁵⁴ European Union (see n 553 above).

⁵⁵⁵ European Commission Special Eurobarometer. Development Aid in times of economic turmoil (2009) 3.

some form of moral obligation may be driving the giving of aid and not commitments like those made at the UN, namely 0.7% of GDP. A similar survey should be done in developing countries to determine what Africans think about the motives behind provision of development assistance. This would shed light on how development assistance is viewed and therefore used in developing countries.

The need to maintain world peace is yet another reason advanced by Illing for the provision of development assistance.⁵⁵⁶ He revealed that in the 1970s, one of the underlying reasons that assistance was given was to help developing countries attain development. Underdeveloped, unstable countries were seen as threats to world peace.⁵⁵⁷ Under development bred instability and conflict and therefore it was imperative that countries were assisted to become developed, thereby stable.

Gordon Brown, the former Prime Minister of the United Kingdom provided three reasons why the United Kingdom needs to continue to provide development assistance to Africa in particular.⁵⁵⁸ The first reason he advanced was that we could no longer talk of ‘over here’ (the developed world) and ‘over there’ (the underdeveloped world). The world, he noted, was interrelated and interdependent and there was need to help out those in greatest need.⁵⁵⁹

The Prime Minister further pointed out that in order to stem the immigration

⁵⁵⁶ Illing (see n 524 above).

⁵⁵⁷ Illing (see n 524 above).

⁵⁵⁸ Interview on *the BBC World Service* on 25 November 2007.

⁵⁵⁹ See n 558 above.

tide from Africa, there was need to assist Africa develop.⁵⁶⁰ Lastly, he alluded to the terrorism threat, saying that there was a need to assist countries to develop in order to avert possible signing up to terrorist agencies.⁵⁶¹

President Paul Kagame of Rwanda, believes that development assistance is ideological, used by developed countries as a tool to control and dictate terms to poor developing countries.⁵⁶² Kagame is of the view that developed countries provide assistance in order to be able to tell developing countries what to do or not to do. In the event that a country does not do what the developed countries want, they can cut assistance, as they did to Rwanda, thereby signalling dominance and leverage of aid to control.⁵⁶³ He makes a valid argument when he points out that the developing countries should strive to depend less on assistance and begin to do things that are in their interests and not the interests of those providing assistance.⁵⁶⁴

One of the arguments advanced in chapter six is that development partners supporting human rights institutions in Uganda use their assistance as a leverage point and there is need to break this yoke. One way of reducing external control is being able to pay one's way. All the above notwithstanding, whether as a direct objective or incidental objective, the utility of these control and dominance measures inbuilt in aid mechanisms is not completely lost to

⁵⁶⁰ See n 558 above.

⁵⁶¹ See n 558 above.

⁵⁶² President Kagame expressed this view in a BBC World Service interview on the Hard Talk programme on 17 March 2009. Video of the programme can be viewed at <http://www.bbc.co.uk/programs/b00j5hz9> (accessed on 19 March 2009).

⁵⁶³ Netherlands and Denmark cut assistance to Rwanda in December 2008 citing its involvement in the Democratic Republic of Congo.

⁵⁶⁴ President Kagame (see n 562 above).

the everyday people as relevant in checking and curtailing the political and military excesses of the executives and mis-governance in most developing countries. The problem on, the flipside and which is Kagame's constant grievance, is the selective and uncontextualised application of these measures, sometimes with politically partisan agendas. Case in point is the refusal by the international community, and particularly the donors, to appreciate that Rwanda has a legitimate responsibility to secure its western border against the FDLR/ Interahamwe militia based in the DRC, while they are doing little or nothing to resolve the fragile security situation.

From the above one cannot but help wonder whether the underlying ethos of development assistance lies in some deeply embedded idea of helping those in need or, put differently, charity. If this is the case, then it does in great part explain the, 'father Christmas syndrome' referred to below.

5.3. Development partners supporting human rights programmes

Nine countries in their bilateral capacity support human rights programmes in Uganda. These are Ireland, the United Kingdom, Denmark, the Netherlands, the United States of America, Austria, Sweden, Germany and Norway. On the multilateral front, the European Commission (EC) supports human rights programmes in Uganda. In addition, some UN agencies notably, UNDP and the United Nations Office for the High Commissioner for Human Rights operate, in Uganda. The World Bank, the IMF and African Development Bank

are the leading multilateral financial agencies engaged with Uganda.⁵⁶⁵ These, due to their mandates, do not have programmes that support the promotion and protection of human rights. However, the projects and programmes they support do have human right content and implications. Clark, in support of this position, makes the point that the World Bank has been reluctant to consider or address the human rights implications of its lending activities.⁵⁶⁶ This is despite putting in place mechanisms such as the Inspection Panel.⁵⁶⁷

Lumina points out that the Articles of Agreement of both the World Bank and the IMF do not include references to human rights or any similar notion.⁵⁶⁸ Lumina argues that the Bank claims its articles of agreement prohibit it from taking political considerations into account in its lending decisions and from imposing political or human rights conditions on borrowing countries.⁵⁶⁹

⁵⁶⁵ Civil Society Capacity Building Programme. Donor Directory 2007. This donor directory provides a list of the major donors operating in Uganda. It contains a list of 178 agencies.

⁵⁶⁶ DL Clark. 'The World Bank and Human Rights: The Need for Greater Accountability', (2002) 15 *Harvard Human Rights Journal* 207. Available at <http://www.law.harvard.edu/students/orgs/hrj/iss15/clark.shtml> (accessed on 19 October 2008).

⁵⁶⁷ For more details on the operations of the World Bank Inspection panel visit <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,menuPK:64129249~pagePK:64132081~piPK:64132052~theSitePK:380794,00.html> (accessed on 19 October 2008) The Inspection Panel was established by the Executive Directors of the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) on September 22, 1993. The primary purpose of the Inspection Panel is to address the concerns of the people who may be affected by Bank projects and to ensure that the Bank adheres to its operational policies and procedures during design, preparation and implementation phases of projects. The Inspection Panel consists of three members who are appointed by the Board for non-renewable periods of five years. Members are selected on the basis of their ability to deal thoroughly and fairly with the requests brought to them, their integrity and independence from the bank management, and their exposure to developmental issues and living conditions in developing countries.

⁵⁶⁸ C Lumina 'An assessment of the human rights obligations of the World Bank and the International Monetary Fund with particular reference to the World Bank's Inspection Panel. *Journal for Juridical Science* 31(2) (2006) 108-129. Lumina notes that, in terms of Article IV, section 10 of its Articles of Agreement, the Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article 1. The Bank's reluctance to include human rights concerns in its operational policies and projects seems to be based on a narrow interpretation of the above provision, Lumina concludes.

⁵⁶⁹ Lumina (see n 568 above) 109.

Horta, in support of Lumina, states that the World Bank has often been criticised for infringing human rights or ignoring human rights through its projects in developing countries and through its structural adjustment lending.⁵⁷⁰ In contrast, Shihata just like Danino⁵⁷¹ takes the view that the Bank itself promotes human rights (especially economic, social and cultural rights) through its activities and states that:

The Bank is joining hands with developing countries and other international agencies in the alleviation of poverty, in combating disease, malnutrition, illiteracy and in fighting for the preservation of the environment. It is also seeking an enhanced role for women in development and trying to establish a partnership with developing countries in the gigantic task of economic development. In doing so, the Bank is not only promoting economic and social human rights but is no doubt playing a catalytic role in creating conditions in which all basic rights can develop and flourish.⁵⁷²

In the case of the IMF, Lumina points out that the official position of the IMF is that the question of protecting or promoting human rights is one that is completely outside the scope of its mandate and activities. The institution firmly rejects the notion that it has any legal obligations in regard to human rights and has declared that it is not obliged to promote human rights around the world. In its view, the promotion and protection of human rights is the exclusive preserve of the state concerned.⁵⁷³ This reluctance by both the World Bank and IMF to embrace the promotion and protection of human rights is rather unfortunate, bearing in mind that in practice, the policies and activities of both the Bank and the Fund affect millions around the world. In addition, a

⁵⁷⁰ K Horta 'Rhetoric and reality: Human rights and the World Bank', (2002) 15 *Harvard Human Rights Journal* 227.

⁵⁷¹ Danino (see n 32 above) 4.

⁵⁷² I Shihata *The World Bank Inspection Panel* (1994) 133.

⁵⁷³ Lumina (see n 568 above) 116.

substantial amount of the funding channelled through the two financial institutions originates from member states (bilaterals) that have a human rights agenda as a central tenet of their development assistance.

The European Court of Human Rights has pronounced itself in some cases on the issue of human rights obligations of States in multinational fora. For example in the cases of *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland*⁵⁷⁴ and *Matthews v The United Kingdom*⁵⁷⁵ the Court held Member States' responsibility continues even after the transfer of competences to international organisations provided that Convention rights continue to be "secured".⁵⁷⁶ In effect these decisions mean that while multilateral agencies like the EU (or the World Bank and IMF for that matter) are not parties to international treaties like the ECHR, member States of these agencies do retain their obligations. States therefore could be held responsible for actions taken under the banner of the EU. Costello⁵⁷⁷ and Kruma⁵⁷⁸ both are of the view that these decisions are problematic and there is no agreed position amongst EU member States.

⁵⁷⁴ *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland* Application No 45036/98 para 150- 154. Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=45036/98&sessionid=69825993&skin=hudoc-en> (accessed on 15 April 2011).

⁵⁷⁵ *Matthews v The United Kingdom* Application No24833/94 Available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=24833/94&sessionid=69827327&skin=hudoc-en> (accessed on 15 April 2011).

⁵⁷⁶ *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland* (see n 518 above) para 150, 152 and *Matthews v The United Kingdom* (see n 524 above) para 32.

⁵⁷⁷ C Costello 'The Bosphorus Ruling of the European Court of Human Rights; Fundamental Rights and Blurred Boundaries in Europe' in 6 *Human Rights Law Review* 2006 87-130.

⁵⁷⁸ Kristine Kruma is a High Court Judge in Latvia and she revealed this in a telephone interview I held with her on 17 April 2011.

Table 2 below which I have drawn outlines the countries with development programmes in Uganda.

Table 2: Development Partners in Uganda.

	Country	Development Agency	Type of Support
1	Austria		Budget support/projects
2.	Belgium	Belgium Technical Cooperation (BTC)	
3.	Denmark	Danish International Agency (Danida)	Projects
4.	German	German Agency for Technical Cooperation	Budget support/projects
5	Ireland	Irish Aid	Budget support/projects
6	United Kingdom	Department for International Development (DFID)	Budget support/projects
6	Netherlands	Ministry of Development Cooperation	Budget support/projects
7	Sweden	Swedish International Development Agency (SIDA)	Budget support/projects
8	Norway	Norwegian Agency for Development Cooperation (NORAD)	Budget support/projects
9	United States of America	United States for International Development (USAID)	Projects
9	Canada	Canadian International Development Agency	Projects
10.	European Union	European Commission Development Directorate General	budget support/projects
11	United Nations		Projects
12	World Bank		budget support/projects
13	International		budget support/projects

	Monetary Fund		
14	African Development Fund		budget support/projects

It is important to note there are new entrants on the development scene whose impact on human rights promotion and protection is yet to be clearly understood. China is one such new partner. China is increasingly becoming a major player on the development scene. China does not link its development assistance to human rights or good governance and some recipient governments may find this rather attractive. This is because they do not have to adhere to democratic and human rights principles.

In addition, China provides huge development projects like infrastructure. China is becoming a development partner of preference but it is still too early to discern what this may mean for human rights in Uganda. However, it is quite unlikely that China will replace the present development partners that are supporting human rights programmes in Uganda in the foreseeable future. Nevertheless it could be said that, the Chinese model of development assistance lends itself to great local ownership as they seem not to get involved in the development processes like the current development partners.

5.4. Development Assistance Treaties

The Government of Uganda and its development partners have concluded development assistance agreements that provide the basis for the provision of assistance. The governments of Ireland,⁵⁷⁹ Germany,⁵⁸⁰ Norway,⁵⁸¹ and the

⁵⁷⁹ Government of Ireland. 2007 Government of Ireland and Government of Uganda Budget Support Memorandum of Understanding, 2007/08- 2009/10 for Budget Support to the Poverty Action Fund and

Netherlands⁵⁸² have all concluded agreements with Uganda for the provision of development assistance. In addition UNDP⁵⁸³ and the EU⁵⁸⁴ have concluded agreements with Uganda.

It should be borne in mind that the bilateral agreements concluded between Uganda and its development partners are not international treaties as defined by the Vienna Convention on the Law of Treaties.⁵⁸⁵ In contrast the multilateral agreement concluded between the Government of Uganda and the EU could be considered a treaty under international law.⁵⁸⁶ The Cotonou agreement defines the development relationship between the EU and the ACP

Sector Budget Support to Education, Justice, Law and Order Sector (JLOS) and Local Government Sub Sector (Local Government Sector Investment Plan, LoGSIP), 27 July 2007. The agreement was signed by the Charge d’Affaires of the Republic of Ireland to Uganda and the Permanent Secretary/ Secretary to the Treasury, Ministry of Finance, Planning and Economic Development representing the Government of Uganda.

⁵⁸⁰ Republic of Germany (2007) Grant agreement between the Republic of Uganda represented by the Minister of Finance, Planning and Economic Development and Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH Dag- Hammarskjöld-weg 1-5 656760- Eschborn, Federal Republic of Germany. The agreement was signed by the Regional Director of GTZ on behalf of the Federal Republic of Germany and the permanent secretary Ministry of Finance, Planning and Economic Development on behalf of the Republic of Uganda on 2 August 2007.

⁵⁸¹ Kingdom of Norway 2004. Agreement between the Government of the Republic of Uganda and the Government of the Kingdom of Norway regarding support to the SWAP development fund for the implementation of the Strategic Investment Plan for the Justice, Law and Order Sector. 19th October 2004. The agreement was signed by the Ambassador of Norway of the Kingdom of Norway to Uganda and the Permanent Secretary/ Secretary to the Treasury, Ministry of Finance, Planning and Economic Development representing the Government of Uganda.

⁵⁸² Netherlands 2007 Arrangement between the Netherlands Minister for Development Cooperation and the Minister of Finance, Planning and Economic Development of Uganda. September 2007. The agreement was signed by the Ambassador of the Royal Netherlands Kingdom to Uganda and the Minister of Finance, Planning and Economic Development representing the Government of Uganda.

⁵⁸³ UNDP 2005. Country Programme Action Plan 2006-2010 for Uganda 31 December 2005. The agreement was signed by the UNDP Resident Representative to Uganda and the Deputy Secretary to the Treasury, Ministry of Finance, Planning and Economic Development representing the Government of Uganda.

⁵⁸⁴ European Commission 2006. Financing Agreement between the European Commission and the Republic of Uganda. Agreement No 9372/UG – Human Rights and Good Governance Programme. The agreement was signed by the European Union Delegate/Representative to Uganda and the Minister of Finance, Planning and Economic Development representing the Government of Uganda.

⁵⁸⁵ Vienna Convention on the Law of Treaties, entered in force 27 January 1980, 1155 UNTS 331, Available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed on 29 June 2008). The Vienna Convention defines a treaty as ‘an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation

⁵⁸⁶ European Union (see n 527 above) article 1.

countries.⁵⁸⁷ The agreement makes the connection to the principles of the Charter of the United Nations, and recalling the UDHR, the conclusions of the 1993 Vienna Conference on Human Rights, the ICCPR, ICESCR, the Convention on the Rights of the Child, the Convention on the Elimination of all forms of Discrimination against Women and the International Convention on the Elimination of all forms of Racial Discrimination.⁵⁸⁸ It further makes reference to the the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, ACHPR.⁵⁸⁹ The development assistance agreements of UNDP⁵⁹⁰ and Germany⁵⁹¹ make similar reference while those of Ireland,⁵⁹² Norway⁵⁹³ and the Netherlands⁵⁹⁴ do not.

Apart from the Government of Uganda, Civil Society Organisations (CSOs) also conclude development assistance agreements with similar provisions as those discussed above. The format and content of the agreements is very similar to the Memoranda of Understanding concluded with governments. Therefore, the same issues discussed above apply to CSOs. However, the distinction lies in the fact that while the agreements discussed above are between two States, save for those with multilateral organisations, these agreements are concluded between a state and a CSO. It therefore could be said that the agreements concluded between states are CSOs are contracts under the national law of contract and are binding. They are therefore not

⁵⁸⁷ European Union (see n 527 above) article 1.

⁵⁸⁸ European Union (see n 497 above) preamble.

⁵⁸⁹ European Union (see n 497 above) preamble.

⁵⁹⁰ UNDP (see n 583 above) section1, page 2.

⁵⁹¹ Republic of Germany (see n 580 above) article 1.

⁵⁹² Government of Ireland (see n 579 above).

⁵⁹³ Kingdom of Norway (see n 581 above).

⁵⁹⁴ Netherlands (see n 582 above).

treaties. An international treaty can only be concluded between states and is governed by international law as discussed above.

The situation of CSOs is even more dire, since they depend entirely on development assistance or grants. The agreements just like the ones concluded with governments, are tilted in favour of the 'giving' country. Almost all development partners require that a CSO must be duly registered before they can award a grant or conclude an agreement with it. For example, under the European Union call for proposals, one of the eligibility criteria for applicants is the requirement that an applicant must be a legal person.⁵⁹⁵ In the event that an entity has no legal personality, the applicants must show that their representatives have the capacity to undertake legal obligations on their behalf and assume financial liability.⁵⁹⁶ Once again, there is no evidence of any CSOs taking action against the giving country in case assistance is withheld.

5.5. Foreign policy/ development cooperation policies of the development partners

As indicated above a number of developed or affluent countries predominantly from the north have development cooperation programmes that support the respect, promotion and protection of human rights in Uganda. It is the norm that such programmes are anchored in the foreign policy of the country, from which then flows the development cooperation policy, which is then translated into a country specific strategy through a country strategy or assistance paper.

⁵⁹⁵ European Union, National Authorising Officer, Ministry of Finance, Planning and Economic Development. Guidelines for grant applicants ref: EuropeAid/126-145/M/ACT/UG (2007) 6. A legal person refers to a duly legally registered entity in Uganda. This could include a non governmental organisation duly registered under the Non -governmental Organisations Act of Uganda.

⁵⁹⁶ European Union, National Authorising Officer, Ministry of Finance, Planning and Economic Development (see n 595 above) 6.

The study shall now proceed to examine whether indeed the foreign policies of the Republic of Ireland and the European Union (representing the ‘giving’ northern countries and institutions) make any reference to the need to support human rights and if so, in what manner. Ireland has been chosen as it is one of the key players in the human rights arena in Uganda and will be representative of the bilateral partners. The EU is the largest multilateral providing support to human rights and has been chosen for that reason. While the focus is only on these two, it is worthwhile mentioning that some development partners have their policies in languages which cannot be read or understood. One example is Germany.

5.5.1. Republic of Ireland

The foreign policy of the Republic of Ireland is shaped by Irish values and by the external environment to which they relate them. Ireland is committed to an international order based on the rule of law and the peaceful settlement of disputes.⁵⁹⁷ The United Nations Organisation is the cornerstone of Ireland’s foreign policy.⁵⁹⁸ In addition, the policy recognises the essential interconnections between security, development, and human rights, as acknowledged in the 2005 World Summit outcome document. It further notes that Ireland is particularly active in the promotion of disarmament and the protection of human rights.⁵⁹⁹ Within the EU framework, Ireland is also committed to working closely with their partners in the development and implementation of the EU’s Common Foreign and Security Policy which,

⁵⁹⁷ Department of Foreign Affairs Ireland- Foreign Policy available at <http://foreignaffairs.gov.ie/home/index.aspx?id=36> (accessed on 27 November 2007).

⁵⁹⁸ Department of Foreign Affairs Ireland (see n 597 above).

⁵⁹⁹ Department of Foreign Affairs Ireland (see n 597 above).

interalia, places emphasis on the need to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

Development cooperation is an integral part of Ireland's foreign policy. One of the central tenets of Irish development policy is a commitment to 'support the promotion of human development, human security and justice, the building and strengthening of democracy, the protection of gender equality and the promotion and protection of human rights'.⁶⁰⁰ Irish Aid's overarching objective is the reduction of poverty throughout the world. To this end, they support development programmes in over sixty of the world's poorest countries, with a particular focus on sub-Saharan Africa.⁶⁰¹ Uganda is one of six African countries that receive development assistance from Ireland through its development agency, Irish Aid.⁶⁰²

In implementing this commitment Irish Aid, is guided by a number of principles one of which is partnership. It is stated that:

Ireland's relationship with the developing world will be based on the spirit of partnership and equality. The governments and peoples of our partner countries are primarily responsible for their own development and will lead the development process. Ireland will offer advice, expertise and assistance but decisions on development planning must to the greatest extent possible be locally owned and led.⁶⁰³

It is clear that in theory, Ireland bases its development assistance relationship with the developing world on a partnership of equals. This presupposes that Ireland and a recipient country of its assistance, like Uganda, are equal

⁶⁰⁰ Government of Ireland. White Paper on Irish Aid (see n 254 above) 9.

⁶⁰¹ Department of Foreign Affairs Ireland (see n 550 above).

⁶⁰² Ireland supports Tanzania, Botswana, Zambia, Tanzania, Ethiopia, Uganda,

⁶⁰³ Government of Ireland (see n 256 above) 9.

partners with equal voice and say over how the assistance is to be used. In practice however, as will be shown in this chapter, this is a partnership of unequals with the country giving the assistance having more say and power in the partnership. The questions that arise therefore are: To what extent is there real partnership based on equality? Is the development process locally led and can there be equality between those who give and those who receive? The answers to these central questions will be answered in the following sections of the chapter.

5.5.2. The European Union

The EU is the largest multilateral provider of development assistance in the world, with 55% share of the world wide development assistance market.⁶⁰⁴

Human rights are the cornerstone of the European Union's Foreign Policy. This is reflected in the international agreements it concludes and in its development assistance. Since the Treaty of Rome establishing European Communities in 1957,⁶⁰⁵ European integration has been founded on respect for human rights and fundamental freedoms. This commitment translated into the ethos of EU foreign policy.

Thirty years later, after the Treaty of Rome, human rights became integrated into EU Common Foreign and Security Policy. Treaty on European Union (TEU) provides for 'democracy, rule of law, and respect for human rights and fundamental freedoms' as an objective of the EU's Common Foreign and

⁶⁰⁴ European Union see. http://ec.europa.eu/external_relations/human_rights/intro/index.htm#4 (accessed on 27 November 2007).

⁶⁰⁵ European Union. The Treaty of Rome 1957.

Security Policy.⁶⁰⁶ It further stipulates that EU policy in the development cooperation sphere must contribute to the respect of human rights and fundamental freedoms.⁶⁰⁷ Several subsequent EU Treaties reaffirm this position such as the treaty of Amsterdam-1999.⁶⁰⁸ Promotion of human rights and democratisation is therefore an entrenched feature of the external relations of the EU. This is done through a wide range of ways (1) tools of traditional diplomacy-declarations, demarches and resolutions in the United Nations, (2) cooperation and assistance programmes implemented with third countries regional and bilateral, (3) country strategy papers, and (4) political dialogue and use of the ‘human rights clause’ which is incorporated in nearly all EU agreements, such the Cotonou Agreement and financing agreements with third countries. Over 123 agreements have been concluded by the EU.

Within the framework of the EU Common Foreign Policy and Security Policy, sometimes referred to as the Amsterdam Treaty, several tools to promote human rights and democratisation have been defined through development of specific guidelines on a range of human rights issues which includes the death penalty, human rights dialogue, torture and other cruel, inhumane or degrading treatment, children and armed conflict, human rights defenders and promotion of international humanitarian law.⁶⁰⁹ EU Development Policy aims at reducing poverty in line with the MDGs and highlights the importance of promotion of

⁶⁰⁶ European Union (see n 605 above) article 6 (1-4).

⁶⁰⁷ European Union (see n 605 above) article 6(1-4).

⁶⁰⁸ European Union The Amsterdam Treaty 1999. Available at http://ec.europa.eu/external_relations/human_rights/intro/index.htm#3 (accessed on 28 November 2007).

⁶⁰⁹ European Union. (see n 608 above) article J.1.

good governance, human rights and democracy, which is a big departure from 2000 policy.

Since 1995, all association agreements as well as partnership and cooperation agreements with third countries contain a clause stipulating that human rights are an essential element in the relations between the parties. There are now more than 120 such agreements. In the event that those principles are breached, the EU may take certain measures, ranging from a refusal to grant visas to senior government members to the freezing of assets held in EU countries. The human rights clause also offers the ultimate possibility of suspending the agreement. However, the principal rationale for the clause is to form a positive basis for advancing human rights in third countries through dialogue and persuasion. In other words, the preference is to use positive action rather than penalties.⁶¹⁰ To what extent has this clause been in the EU Uganda partnership?

The EU is committed to mainstreaming human rights in all aspects of EU Policy decision making and implementation, including external assistance and trade. This can be found in the EU communication on the EU's role in promoting human rights and democracy in third countries of May 2001.⁶¹¹

⁶¹⁰ European Union Promotion of Human Rights and Democratisation in the European Union's External Relations. Available at http://ec.europa.eu/external_relations/human_rights/intro/index.htm#4 (accessed on 28 November 2007).

⁶¹¹ European Union (see n 610 above).

The Cotonou Agreement provides the framework for assistance between the EU and the African, Pacific and Caribbean Countries (ACP).⁶¹² It must be pointed out that the Cotonou Agreement is an international treaty as defined in the Vienna Convention on the Law of Treaties, that is to say, it is an international treaty governed by international law.⁶¹³ The agreement contains a human rights clause which recognizes that human rights are integral to sustainable development.⁶¹⁴

In addition, under article 8 of the agreement, the parties undertake to regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides. The dialogue shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance.⁶¹⁵ It is therefore very clear that the EU relationship with its recipient countries of the ACP is subject to a binding international law treaty. Uganda is a party to this agreement, which means that obligations and entitlements flow between the EU and Uganda.⁶¹⁶ In recent times there was been a difference in approach by several ambassadors in Uganda. Some favour the EU leading the dialogue with the Government of Uganda citing article 8 of the Cotonou Agreement, while others do not subscribe to this, favouring the Partner for Democracy

⁶¹² European Union (see n 610 above).

⁶¹³ United Nations Convention on the Law of Treaties (see n585 above).

⁶¹⁴ European Union (see n 527 above) article 9.

⁶¹⁵ European Union (see n 527 above) article 8.

⁶¹⁶ Uganda signed the Cotonou Agreement on 25 June 2005 and notified the General Secretariat of the Council of the EU of its having ratified/approved/concluded/acceded to an Agreement/Convention on 24 September 2007. Details are available at http://www.consilium.europa.eu/cms3_Applications/applications/Accords/details.asp?cmsid=297&id=2005033&lang=EN&doclang=EN (accessed on 29 June 2008) .

Group (PDG) which included both EU and non-EU members States.⁶¹⁷ The promotion and protection of human rights in Uganda would be served better by the collective voice of both EU and non-EU development partners. The United States, due to its international stature, is a critical voice that the Government of Uganda respects and acting together with all the other development partners would be a great asset.

It follows from the above that the EU members are enjoined by the Cotonou Agreement to provide assistance to promote human rights. Therefore the EU members operating in Uganda are legally bound under the Cotonou Agreement to do this. As indicated, above members States like Ireland have their development policies pegged to the EU framework which, among others, includes the Cotonou Agreement. However the recent adoption of the Treaty of Lisbon will have ramifications in how EU member States operate in countries like Uganda.⁶¹⁸ The Treaty of Lisbon amends the current EU and EC treaties, without replacing them. It provides the Union with the legal framework and tools necessary to meet future challenges and to respond to citizens' demands. One of the intentions of the treaty is to get the 27 member States of the EU to act as one at the global level. It is possible that in the future most EU member States will integrate their development programmes with the EU and let the EU become the focal point. While in principle it makes sense to harmonise and intergrate development plans based on competence, using the EU as the main development vehicle will cause some problems for recipient

⁶¹⁷ I was a regular participant in development partners group meetings and witnessed first hand this difference of opinion and approach among the various development partners.

⁶¹⁸ European Union The Treaty of Lisbon 2009. Available at http://europa.eu/lisbon_treaty/glance/index_en.htm (accessed on 25 January 2010)

countries like Uganda. The EU is a very bureaucratic and complex institution that could be described as a large, slow oil tanker. So for governments and institutions that have been accustomed to flexible, less bureaucratic bilateral countries like Netherlands and Ireland, the EU would be a different complex ball game.⁶¹⁹

At the country level, the country strategy paper makes linkage to promotion of human rights.⁶²⁰ In addition, the financing agreement between the EU and the Government of Uganda under the 9 European Development Fund contains a human rights clause which reads thus:

the commission may suspend the financing agreement if the beneficiary breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption.⁶²¹

The commitment to promotion and protection of human rights is further reflected in the procurement guidelines at programmes level.⁶²² The procurement guidelines also have a human rights clause which bar awarding a contract to any vendor that breaches human rights.⁶²³ However in practice this clause is rarely invoked thus rendering the regulation quite ineffective.⁶²⁴

⁶¹⁹ This observance is based on the author's experience as he worked for the Embassy of Ireland and a European Union programme between 2000- 2010.

⁶²⁰ Republic of Uganda-European Community *Country Strategy Paper and National Indicative Programme 2002-2008* (2002) 3.

⁶²¹ Article 21 of the Financing Agreement between The European Commission and the Republic of Uganda. Agreement No.9372/UG- Human Rights and Good Governance Programme 9 UG/003/05) EDF IX.

⁶²² European Union 9 European Development Fund Practical Guide 2009 (2009) and the procurement regulations.

⁶²³ European Union (see n 662 above).

⁶²⁴ As Programme Manager of the Human Rights and Good Governance Programme of the European Union from 2007-2010, I implemented these regulations.

Amnesty International *et al.* take on strongly the issue of linking EU development policies to the applicable international human rights.⁶²⁵ The Amnesty International report reveals very interesting findings including an observation that despite increased use of human rights language, a range of key EU development policies do not coherently or consistently reflect the applicable international human rights framework.⁶²⁶ Weaknesses include substitution of legally precise human rights terminology with vague formulations of language, misrepresenting the relationship between policy commitments such as the MDGS and the legal obligations of human rights, failure to identify core development challenges such as poverty as a denial of human rights, or to acknowledge the equal status of economic, social and cultural rights and civil and political rights.⁶²⁷

The report goes on to reveal that the current EU overarching development policy framework, the European Consensus on Development 2005, fails to provide a clear and accurate definition of human rights-based development, one which acknowledges and promotes human rights as both the means and the goal of development.⁶²⁸ The findings contained in this report reflect the practice of what can be called, ‘human rights proofing’ of policies without careful thought. This human rights proofing of policies entails making reference to human rights in the policy without express linkages to the international human rights obligations and any sense of a real commitment to

⁶²⁵ Amnesty International, International Federation, Action aid, International human rights network and the EU office. Human Rights- Based Approaches and European Union Development Aid Policies (2008) 39. Available at <http://www.ihrnetwork.org/uploads/files/10.pdf> (accessed on 20 October 2008).

⁶²⁶ Amnesty International, International Federation *et al.* (see n 625 above) 39.

⁶²⁷ Amnesty International, International Federation *et al.* (see n 625 above) 39.

⁶²⁸ Amnesty International, International Federation *et al.* (see n 625 above) 39.

the human rights agenda. It would therefore appear that inclusion of human rights in development policy may at times be more cosmetic than arising from a genuine desire to promote and protect human rights. In short, it has become a development fashion to refer to human rights in policies, but do something else in practice.

5.5.3. Sweden

Sweden's main foreign policy objective is 'to contribute to freedom, peace and reconciliation both in our own and other parts of the world.'⁶²⁹ The policy further provides that, it proceeds clearly from the values on which their own society is built and from their own interests. Efforts to promote democracy, human rights and sustainable development underlie Sweden's entire foreign policy.⁶³⁰ It is clear that Swedish values and interests heavily colour Swedish foreign policy. It is interesting to note that no mention is made to try and harmonise Swedish values with those of the countries that Sweden engages with.

The cooperation strategy for development cooperation with Uganda outlines the key objectives of Swedish development cooperation with Uganda.⁶³¹ The overall objective of Swedish development cooperation with Uganda is increased respect for and enjoyment of human rights and democratic

⁶²⁹ Minister for Foreign Affairs Carl Bildt when he presented the Statement of Foreign Policy to the Riksdag on 13 February 2008. Available at <http://www.sweden.gov.se/sb/d/3103> (accessed on 24 December 2009).

⁶³⁰ Bildt (see n 629 above).

⁶³¹ Government of Sweden 2009 Strategy for development cooperation with Uganda March 2009-December 2013. Ministry of Foreign Affairs Sweden.

principles.⁶³² Sweden, in realisation, of this objective focuses its support on four sectors, (1) democratic governance including, peace and security (2) the health sector (3) private sector development including international trade and financial systems and (4) research cooperation.⁶³³ It is interesting that Sweden focuses on research. Not many development partners do this. In addition, while increased respect for and enjoyment of human rights and democratic principles is the stated overall objective of Sweden's development cooperation, no mention or link is made to the international human rights treaties.

In addition, there is no clear definition of what amounts to human rights or democratic principles. This kind of vagueness leaves a lot of room for possible misunderstanding. For example, Sweden recently threatened to cut aid to Uganda because of an anti-homosexuality bill presented to parliament. Homosexuality is outlawed in Uganda and Sweden views this as a human rights violation. There is clearly a clash of cultures and values here on the question of homosexuality.

5.5.4. Norway

All attempts by the author to obtain a copy of the Foreign policy of Norway were futile. Kajoba revealed that the policy was in Norwegian and official policy barred translating it into other language such as English.⁶³⁴ However,

⁶³² Government of Sweden (see n 631 above) 1.

⁶³³ Government of Sweden (see n 631 above)1.

⁶³⁴ Sam Kajoba is a programme officer with the Norwegian Embassy in Uganda and revealed this in an interview I held with him on 1 December 2009. This was further confirmed by a search on the official website of the Ministry of Foreign Affairs of Norway. There is no link to the foreign policy. See

extracts in English of the development cooperation policy are accessible. The objective of Norway's development policy is to fight poverty and bring about social justice.⁶³⁵

The Government of Norway takes the position that it will focus on areas in which it believes that it can make the greatest contribution and these include among others human rights, peace building and good governance.⁶³⁶ It is therefore clear that promotion of human rights is a key objective of Norwegian development policy. While there is no express mention or linkage to international human rights standards, the development policy states that human rights are fundamental rights that belong to all people by virtue of their humanity. Since the Second World War, human rights have been codified in international agreements at both global and regional level.⁶³⁷ It could be implied that this statement does provide an avenue for linking Norwegian development cooperation and therefore development assistance to international human rights standards.

The development cooperation policy goes further to point out that even though all human rights are equal and indivisible, it is usual to distinguish between civil and political rights, and economic, social and cultural rights and even acknowledges that knowledge and understanding of human rights are

http://www.regjeringen.no/en/dep/ud/selected-topics/development_cooperation.html?id=1159

(accessed on 1 December 2009).

⁶³⁵ Ministry of Foreign Affairs of Norway. Development Cooperation 2009 Available at http://www.regjeringen.no/en/dep/ud/selected-topics/development_cooperation.html?id=1159 (accessed on 24 December 2009).

⁶³⁶ Ministry of Foreign Affairs of Norway (see n 635 above).

⁶³⁷ Ministry of Foreign Affairs of Norway (see n 635 above).

necessary in order to ensure that these rights are respected.⁶³⁸ Norway, it would appear, does not subscribe to the notion that all human rights are interrelated, equal and indivisible.

At country level, Norway has developed a strategic plan for its development cooperation with Uganda.⁶³⁹ The main objective of Norwegian development assistance to Uganda is to support Uganda's own efforts to reduce poverty as well as contribute to the peaceful resolution of internal conflicts in the country.⁶⁴⁰ In addition, Norway undertakes to support the Uganda Human Rights Commission. This support is based on the assumption that there is political will to protect and enhance human rights and that the commission is allowed space and freedom to continue its work.⁶⁴¹

5.5.5. Germany

Just like in the case of Norway above, it was not possible to obtain a copy of the Federal Republic of Germany (Germany) foreign policy or development cooperation policy in English from the Embassy in Uganda. However the Ministry of Foreign Affairs of Germany website does provide some information on Germany foreign policy. 'Foreign policy is peace policy' is the central theme of the German foreign policy.⁶⁴² Recognising political and

⁶³⁸ Ministry of Foreign Affairs of Norway (see n 635 above).

⁶³⁹ Ministry of Foreign Affairs Norway. Strategic Plan for Norway's Development Cooperation in Uganda 2010-2012.

⁶⁴⁰ Ministry of Foreign Affairs of Norway (see n 639 above) 10.

⁶⁴¹ Ministry of Foreign Affairs of Norway (see n 639 above) 566 19.

⁶⁴² Ministry of Foreign Affairs Federal Republic of Germany website see <http://www.auswaertiges-amt.de/diplo/en/Aussenpolitik/Uebersicht.html> (accessed on 24 December 2009).

humanitarian crises as early as possible and taking appropriate action is a key goal of German foreign policy.⁶⁴³

Germany has gone ahead to develop a human rights policy. Under this human rights policy, respect for and development of human rights are a key priority for the German government.⁶⁴⁴ Germany's human rights policy in international relations has a concrete obligation: to protect individuals from violations of their rights and basic freedoms and to create a viable framework to ensure that suppression, the arbitrary use of power and exploitation no longer have a chance to flourish.⁶⁴⁵ It is rather interesting to note that Germany uses the word obligations. This would suggest that Germany, at least at policy level has linked its human rights policy to international human rights standards. However, it is rather instructive that this obligation is restricted to individuals and not groups of people. This reflects the Eurocentric view of human rights as individual entitlements and freedoms. This view was highlighted in chapter 2 when looking at the definition and understanding of human rights.

5.5.6. Netherlands

The opening line on the website of the Ministry of Foreign Affairs of the Netherlands provides a good insight of the foreign policy objectives of the Netherlands. It states, 'every hour of every day, the Ministry of Foreign Affairs promotes the interests of the Kingdom abroad.'⁶⁴⁶ It is clear that promoting the interests of the Kingdoms is the primary thrust of the foreign

⁶⁴³ Ministry of Foreign Affairs Federal Republic of Germany (see n 642 above).

⁶⁴⁴ Ministry of Foreign Affairs Federal Republic of Germany (see n 642 above).

⁶⁴⁵ Ministry of Foreign Affairs Federal Republic of Germany (see n 642 above).

⁶⁴⁶ Ministry of Foreign Affairs Kingdom of the Netherlands website. See http://www.minbuza.nl/en/The_Ministry (accessed on 24 December 2009).

policy. A high profile for human rights is one of the ten foreign policy objectives for the Kingdom.⁶⁴⁷ The Netherlands notes that:

Human rights will continue to be the lynchpin of foreign policy in 2010. This is not only because we believe that everyone in this world has the right to live with dignity, but also because it serves the Netherlands' interests. Human rights are the basis of a stable society, investing in human rights therefore also benefits the trade and investment climate. It is quite simply easier to do business in countries where the rule of law prevails and human rights are respected. This is particularly the case when the economy is under pressure. Trade and values can be complementary and are not necessarily mutually exclusive.⁶⁴⁸

5.5.7. United States of America

The officially stated goals of the foreign policy of the United States, as mentioned in the Foreign Policy Agenda of the U.S. Department of State, are 'to create a more secure, democratic, and prosperous world for the benefit of the American people and the international community.'⁶⁴⁹ Promoting freedom and democracy and protecting human rights around the world are central to U.S. foreign policy.⁶⁵⁰

The values captured in the Universal Declaration of Human Rights and in other global and regional commitments are consistent with the values upon which the United States was founded centuries ago.⁶⁵¹ The United States supports those persons who long to live in freedom and under democratic

⁶⁴⁷ (see n 616).

⁶⁴⁸ Ministry of Foreign Affairs Netherlands. Foreign Policy Goals 2010 (10) Available at <http://www.minbuza.nl/dsresource?objectid=buzabeheer:78054&type=org> (accessed on 24 December 2009).

⁶⁴⁹ US Department of State- Foreign Policy Agenda.

⁶⁵⁰ US Department of State (see n 649 above).

⁶⁵¹ US Department of State (see n 649 above).

governments that protect universally accepted human rights.⁶⁵² The United States uses a wide range of tools to advance a freedom agenda, including bilateral diplomacy, multilateral engagement, foreign assistance, reporting and public outreach, and economic sanctions.⁶⁵³ The United States is committed to working with democratic partners, international and regional organisations, non-governmental organisations, and engaged citizens to support those seeking freedom.⁶⁵⁴

It is clear that the US uses foreign assistance to promote human rights. However, it should be borne in mind that the US focuses on freedom and individuals. Secretary of State Hillary Clinton, in a speech made at Georgetown University on International Human Rights day on 10 December 2009, noted that human rights were the central feature of American foreign policy.⁶⁵⁵ Her speech, whose theme was, ‘Human Rights agenda for the 21st Century’, is quite revealing, in the sense that the United States is not reknown for promoting and protecting human rights. She states that the US policy is putting human rights at the centre of human development and to make human rights a human reality. She notes that a commitment to human rights starts with universal standards and with holding everyone accountable to those standards including ourselves.

⁶⁵² US Department of State (see n 649 above).

⁶⁵³ US Department of State (see n 649 above).

⁶⁵⁴ United States, State Department, see <http://www.state.gov/g/drl/index.htm> (accessed on 24 December 2009).

⁶⁵⁵ Hillary Clinton’s remarks on the Human Rights Agenda for the 21st Century, made at Georgetown University, Gaston Hall on December 14 2009. Full text available at <http://www.state.gov/secretary/rm/2009a/12/133544.htm> (accessed on 27 December 2009).

This is a big departure from the usual US position which is mainly domestic in outlook. Of course we need to see the US in practice adhering to international human rights by, for example, ratifying treaties that it has not. The US would be a critical force in advancing human rights across the world, only if it could deliver on the undertakings in Clinton's speech.

The US Government provides assistance to 47 countries in Africa through the USAID.⁶⁵⁶ USAID notes that US foreign assistance supports the overall goal of transformational diplomacy: To help build sustained and well-governed states that respond to the needs of their people, reduce widespread poverty, and conduct themselves responsibly in the international system.⁶⁵⁷ USAID assistance to Africa works to help African governments, institutions, and organisations incorporate good governance principles and innovative approaches to health, education, economic growth, agriculture, and the environment.⁶⁵⁸

It is important to note that promoting human rights is not one of the US priorities in Africa.⁶⁵⁹ It will be worthwhile observing whether the US will really put human rights on its agenda for the 21 century, going forward. It must be said however, that the US priority of strengthening Africa counterterrorism cooperation and capacity has come under a lot of criticisms

⁶⁵⁶ United States Agency for International Development. Overview of US Foreign Assistance to Africa. Available at http://www.usaid.gov/locations/sub-saharan_africa/ (accessed on 27 December 2009).

⁶⁵⁷ United States Agency for International Development (see n 656 above).

⁶⁵⁸ United States Agency for International Development (see note 656 above).

⁶⁵⁹ The US priorities for Africa are (1) Enhance strategic partnerships (2) Consolidate democratic transitions (3) Bolster fragile states (4) Strengthen regional and sub-regional organisations (5) Strengthen regional security capacity (6) Strengthen Africa counterterrorism cooperation and capacity (6) Stimulate Africa's economic development and growth (7) Implement presidential initiatives (8) Focus on humanitarian and development assistance Available at http://www.usaid.gov/locations/sub-saharan_africa/ (accessed on 27 December 2009).

by HRW as it has, as discussed later in this chapter has led to abuses of human rights across the world.

At country level in Uganda USAID runs programmes in the following thematic areas: (1) peace and security (2) governing justly and democratically (3) investing in people: health (4) investing in people's education (5) economic growth and (6) humanitarian assistance.⁶⁶⁰ Human rights as a programme area does not feature in the USAID agenda. However, it could be argued that support to peace, security, education; health and democratisation inadvertently have a human rights dimension. Therefore while there is no express mention of human rights, it does amount to support for the rights to education, health and participation.

5.5.8. United Kingdom

The Foreign and Commonwealth Office, which is the main government body charged with implementing the United Kingdom foreign policy, reveals that they work hard to promote and protect Britain's interests around the world.⁶⁶¹ In addition, the FCO states that it seeks to promote and develop human rights, law and governance.⁶⁶² The FCO also points out that:

They are working to support human rights, democracy and good governance around the world - these are critical to preventing and resolving conflict. As a member of the United Nations it is our obligation to promote: 'the universal respect for, and observance of the human rights and fundamental freedoms

⁶⁶⁰ United States Agency for International Development: Uganda programmes. Available at http://www.usaid.gov/locations/sub-saharan_africa/countries/uganda/index.html (accessed on 27 December 2009).

⁶⁶¹ Foreign and Commonwealth Office. Human Rights . Available at <http://www.fco.gov.uk/en/global-issues/human-rights/> (accessed on 27 December 2009).

⁶⁶² Foreign and Commonwealth Office (see n 661 above).

for all, without distinction as to race, sex, language or religion'. The UDHR and the core international human rights treaties provide the basis for our work. We work through the UN (and its bodies), international institutions like the EU and with other countries to promote ratification and implementation of these treaties.⁶⁶³

The language used by the FCO is very instructive. It speaks of obligations to promote. Obligation connotes some level of legality or binding force. In addition, the express linkage to the UDHR and core international human rights treaties, means that the UK is legally obliged for example under the CESC, to provide development assistance for the promotion and protection of human rights to developing countries like Uganda.

Poverty reduction is the primary focus of the UK's development assistance agenda. This is reflected very clearly in the Department for International Development (DFID) white paper titled 'Eliminating World Poverty, building our common future'.⁶⁶⁴ This poverty focus is re-echoed in the DFID Uganda country plan.⁶⁶⁵ In addition, DFID makes a commitment to promote the pursuit of human rights, improved governance and equity for all.⁶⁶⁶ DFID is presently implementing the UK government's programmes of work to fight poverty in Uganda.⁶⁶⁷ In 2007, the UK government signed a ten-year £700 million Development Partnership Agreement with the Government of Uganda.

⁶⁶³ Foreign and Commonwealth Office (see n 661 above).

⁶⁶⁴ Department for International Development (2009) *Eliminating World Poverty, Building Our Common Future*. White paper Presented to Parliament by the Secretary of State for International Development by Command of Her Majesty July 2009. Available at <http://www.dfid.gov.uk/Documents/whitepaper/building-our-common-future-print.pdf> (accessed on 27 December 2009).

⁶⁶⁵ Department for International Development (2009) *Development in Uganda 2009-2014: Country Plan*. Available at http://www.dfid.gov.uk/Documents/publications/5601-01_Uganda_ActionPlan@8.pdf (accessed on 28 December 2009).

⁶⁶⁶ Department for International Development (see n 665 above) 19.

⁶⁶⁷ Department for International Development (see n 665 above) 20.

The agreement is based on a shared resolve to reduce poverty, address corruption, respect international human rights obligations and improve coordination between donors.⁶⁶⁸ Notwithstanding this, the UK is not one of the most visible development partners in the human rights arena in Uganda. It is therefore not very evident what in practice respect for international human rights obligations means in practice.

5.6. Agencies supported by the development partners

This section will examine the human rights agencies both state and non-state that are supported by the development partners. These include the UHRC, JLOS, and human rights NGOS which include the Foundation for Human Rights Initiative (FHRI), HURINET, FIDA, and Uganda Joint Christian Council (UJCC). These NGOs have been selected because they are the leading human rights agencies in Uganda.

5.6.1. The Uganda Human Rights Commission (UHRC)

UHRC is supported by a number of development partners that include the Netherlands, Ireland, Denmark and Sweden.⁶⁶⁹ The activities by these partners are derived from the UHRC corporate plan.⁶⁷⁰ The contribution from the partners is about 50% of the UHRC budget thereby showing how much power and influence they have in directing the operations of UHRC. Development Partners wield a lot of power and influence in determining the agenda of the UHRC due to the financial contribution they make. The Tables 3 and 4 below indicate support received from development partners since 1998.

⁶⁶⁸ Department for International Development (see n 665 above) 8.

⁶⁶⁹ See n 39 above.

⁶⁷⁰ Uganda Human Rights Commission Corporate Plan 2004 - 2009.

Table 3: Summary of Uganda Human Rights Commission funding for the 1997-2004 (Uganda Shillings Millions)

<i>Financial Year</i>	<i>Recurrent/Activity</i>	<i>Capital Development</i>	<i>Total GoU release 1997 base</i>	<i>Incremental increase</i>	<i>UHRC requirement</i>	<i>Donor Funding per financial year</i>
1997/98	-	-	1,456	0%	5,367	101
1998/99	1,400	100	1,400	-4%	2,698	1,980
1999/00	1,541	150	1,541	10%	2,646	1.217
2000/01	1.763	1,541	1.763	14%	2,845	963
2001/02	1,718	1,763	1.718	3%	6,961	2,695
2002/03	2,630	1.718	2,630	53%	8,984	2,695
2003/04	2,580	2,630	2.580	-2%	8,602	2,010
Total	11,632	2,580	13,087	-	38,103	11,661

Source: Uganda Human Rights Commission, 6 Annual Report 2003

Table 4: Development Partner Support to UHRC 2004/5-2010/11 in Uganda Shillings

FY/Source of Funding	2004/05	2005/06	2006/2007	2007/2008	2008/2009	2009/10	2010/11
	UGX	UGX	UGX	UGX	UGX	UGX	
1. Basket Fund programme	1,619,464,655	2,474,593,919	1,806,996,787	1,813,896,222	2,102,063,720	1,869,822,812	2,565,000,000
2. Deepening Democracy Programme						494,666,000	208
EU					936,375,000		
JLOS						192,000,000	
Total Donor funded	1,619,464,655	2,474,593,919	1,806,996,787	1,813,896,222	3,038,438,720	2,556,488,812	2,565,000,208
3. GOU							
Wage	1,310,000,000	1,340,000,000	1,640,000,000	1,825,796,103	1,877,085,000	1,880,000,000	2,145,000,000
Non-wage	1,290,000,000	1,290,000,000	1,360,000,000	1,313,060,000	1,308,713,000	2,710,000,000	2,982,000,000
Development	42,000,000	40,000,000	190,000,000	316,357,000	282,565,778	200,000,000	2,047,000,000
Total GOU	2,642,000,000	2,670,000,000	3,190,000,000	3,455,213,103	3,468,363,778	4,790,000,000	7,174,000,000
	4,261,464,655	5,144,593,919	4,996,996,787	5,269,109,325	6,506,802,498	7,346,488,812	9,739,000,208
Donor funding towards UHRC budget in %	38	48	36	34	47	35	26

Source: Uganda Human Rights Commission

From the budget figures in Tables 3 and 4 above it is clear that the development partners cover the operational activities of UHRC while the Government of Uganda provides the capital development and wages. UHRC confirms that basket fund donors and other development agencies continued to fund the core activities of the commission including funding for some capital expenditure.⁶⁷¹ This in effect means that without this funding the UHRC would not be able to run its core activities of promoting and protecting human rights in Uganda.

Kemigisha confirmed that with the assistance from development partners UHRC has been able to (1) establish 8 regional offices across the country (2) operate and conduct tribunal hearings (3) carry out human rights awareness and promotional activities and (4) carry out civic education.⁶⁷² She noted that without development assistance UHRC would not function.⁶⁷³

Kaggwa revealed that in 2010 the development partners did not provide UGX 800 million to UHRC and this almost crippled their operations.⁶⁷⁴ He noted that it was important that the Government of Uganda funded the UHRC 100% to protect it from the unpredictable development assistance.⁶⁷⁵ Kaggwa's view is the right approach, the Government of Uganda needs to provide adequate funding to the UHRC and not abdicate its obligation to development partners.

⁶⁷¹ Uganda Human Rights Commission 11 Annual Report (2008) 151.

⁶⁷² RoseMary Kemigisha is a Senior Human Rights Officer with the Uganda Human Rights Commission and I interviewed her on 6 April 2011 in Kampala.

⁶⁷³ Kemigisha (see n 672 above).

⁶⁷⁴ Med Kaggwa is the Chairperson of the Uganda Human Rights Commission and he revealed this in a speech at a workshop organised by Global Rights Uganda on 20 January 2011 at Imperial Royale Hotel Kampala which I attended.

⁶⁷⁵ Kaggwa (see n 674 above).

The power and influence of development partners comes to the forefront in semi-annual joint reviews which are held mainly between the UHRC and its funders. For example between 2004 and 2005 there was a difference in opinion on what should be the priorities for the UHRC. The UHRC basket fund donors were of the firm view that the UHRC should concentrate on tribunal hearings, while the Commission thought it should focus on strengthening the regional offices. This standoff brewed for quite a while and in the end, it strained the relationship between the UHRC and the basket fund donors. Ultimately, a compromise had to be reached and funding was provided for both activities though emphasis was placed on tribunal hearings.⁶⁷⁶ This standoff is quite typical of what sometimes happens between the recipient agency and the development partners and in most cases, due to the financial muscle they have, the development partners win thereby influencing priority areas of the recipient agency. Foster warns rightly that, pushing a strategy which government does not support leads to frustration and eventual rejection.⁶⁷⁷

Mwenda and Tangiri draw similar conclusion in regard to the health sector which deals with the right to health in Uganda by pointing out that:

Donors priorities are completely wrong. They have poured much more money into celebrity diseases like AIDS and forgotten that most Ugandans,

⁶⁷⁶ I was a member of the UHRC basket fund group from 2002- 2006, while a Governance Advisor with Embassy of Ireland which was a contributing member to the basket. These observations are based on my interaction within the group.

⁶⁷⁷ M Foster 'New Approaches to Development Co-operation: What can we learn from experience with implementing Sector-wide Approaches' Overseas Development Institute Working Paper No 140 (2000) 33.

are suffering from measles, from malaria, from tuberculosis, from cough and from flu and they do not have drugs for those.⁶⁷⁸

In October 2007, one such review was held focusing on the death penalty, right to assembly/public demonstrations, the situation in Karamoja and the issue of sexual orientation.⁶⁷⁹ In these reviews development partners usually indicate what they believe should be the priorities of the UHRC in the coming year. It is this extreme financial power that places development partners in a very strong position to influence the direction of the UHRC.

It is therefore critical to ensure that the UHRC is able to maintain its independence and lead on what it deems a priority. This is also important in order not to undermine the Paris principles which *inter alia* call for the autonomy of national human rights institutions.⁶⁸⁰ The issue of autonomy is highly regarded though in practice it is hard to achieve when an agency has its budget covered by external assistance. Mwesigye states that the UHRC is independent and derives its mandate from both Constitution and the UHRC Act.⁶⁸¹ However he acknowledged that development partners do try in subtle ways to advance their own agenda.⁶⁸²

⁶⁷⁸ A Mwenda & R Tangiri. 'Patronage Politics, donor reforms and regime consolidation in Uganda'. (2000) 104 *African Affairs* 416, 449.

⁶⁷⁹ The Uganda Human Rights Joint Donor Semi Annual review was held on 31 October 2007 and was attended by the UHRC and the basket fund donors like Denmark, Ireland, Sweden, Netherlands and Norway.

⁶⁸⁰ Office of the United Nations High Commissioner for Human Rights. Principles relating to the Status of National Institutions (The Paris Principles) 1993. Available at <http://www.ohchr.org/english/law/parisprinciples.htm> (accessed on 29 November 2007).

⁶⁸¹ G Mwesigye is the Secretary to the Uganda Human Rights Commission and he revealed this in an interview I held with him on 20 January 2011 at the UHRC offices in Kampala.

⁶⁸² G Mwesigye (see n 681 above).

When one look's further afield it is noted that several African countries have established national human rights institutions. Ghana's Commission on Human Rights and Administration of Justice (CHRAJ) is among the first commissions in Africa established in 1993.⁶⁸³ Though, as Nderitu notes, it is said to have perennially been confronted with problem of under-funding notwithstanding that, the CHRAJ is widely recognised and has earned some degree of public legitimacy.⁶⁸⁴

The Kenya National Commission on Human Rights (KNCHR) is the national human rights institution for the Republic of Kenya. It was established by the Kenya National Commission of Human Rights Act.⁶⁸⁵ The Commission replaces the former Standing Committee on Human Rights (K) of 1996, whose institutional and structural weaknesses it is expected to remedy. KNCHR has a similar composition, functions and powers to the UHRC in Uganda.⁶⁸⁶ KNCHR also has a tribunal that hears human rights cases. Nderitu of KNCHR

⁶⁸³ Ghana Commission on Human Rights and Administration of Justice, <http://www.chrajghana.org/index?articleId=0001> (accessed on 1 July 2008).

⁶⁸⁴ A Nderitu 'National Human Rights Institutions: What are they?' (unpublished), Presentation. Slide number 25. She highlights some achievements of the Ghana's Commission on Human Rights and Administration of Justice (CHRAJ) which include: It has on many occasions stood against the powerful public officials in cases related to corruption and abuse of office, breaking public perceptions that ruling elites are above the law. Its accessibility to the communities at local levels even among the furthest outlying districts have helped resolve issues related to violations of human rights. Successfully intervening in cases relating to harmful cultural practices such as Trokosi – a form of sexual servitude and forced labor mainly practiced in the Volta region. Many children and women – “slaves of the fetish” were released after its intervention. Effectively handling of complaints especially those, which were believed to be beyond its jurisdiction like private employers e.g. Ashanti Goldfields Corporation. Education and training for public officials and rural communities such as the Upper East and Volta regions.

⁶⁸⁵ Kenya National Commission of Human Rights Act No 9 of 2003, section 3.

⁶⁸⁶ See note 685 above. Article 16 outlines the mandate of the KNCHR. The primary mandate of KNCHR includes, promotion and protection of human rights, monitoring and assessment of the observance of human rights by the citizens and the Government, promotion of respect for human rights through research, education and information, enhancing respect of human rights and ensuring the government's compliance to its obligations on international instruments. More on the KNCHR can be found at <http://www.knchr.org/>.

notes that one of the primary challenges facing the commission is inadequate finances and lack of adequate financial independence.⁶⁸⁷

KNCHR is advocating for a separate vote in the national budget. It currently receives its grant via the Ministry of Justice and Constitutional Affairs. This threatens the independence of the Commission since the Ministry is potentially one of the institutions the Commission may be called upon to investigate, a position recognised by KNCHR itself. KNCHR reports that in 2004/2005, the Commission received Ksh 80m only although it presented a budget in excess of Ksh 174 million, while in 2005/2006 the grant was Ksh 90 million. The inadequacy of the government grant has meant that the Commission cannot hire adequate staff or open more offices in the rural areas. The target was one regional office each year and so far they have only managed to open up one.⁶⁸⁸

KNCHR is very clear about funding and the influence it might bring. It provides in its draft accounts and procurement manual, that the Commission may receive grants and donations from any source. However, such grants or donations shall not be made or received for purposes of influencing the decision or ability of the Commission.⁶⁸⁹ This is an attempt to shield the commission from external influence based on financial support. Of course, it is one thing to have this reflected in an accounts and procurement manual and quite another thing in practice.

⁶⁸⁷ Nderitu (see n 684 above) Slide 22.

⁶⁸⁸ Kenya National Commission of Human Rights 2006. Public Accountability Statement: Achievements and Challenges- 2003-2006 15, Available at <http://www.knchr.org/dmdocuments/PAS.pdf> (accessed on 1 July 2008).

⁶⁸⁹ Kenya National Human Rights Commission. 2004 Accounts and Procurement Manual (draft) section 6, available at <http://www.knchr.org/dmdocuments/Finance.pdf> (accessed on 1 July 2008).

In South Africa, the South Africa Human Rights Commission (SAHRC) was founded in 1995 to mainly monitor government compliance with the post-apartheid constitution.⁶⁹⁰ The South African Human Rights Commission (SAHRC) derives its powers from the Constitution and the South African Human Rights Commission Act of 1994.⁶⁹¹ The SAHRC is a national institution established, to entrench constitutional democracy through the promotion and protection of human rights by addressing human rights violations and seeking effective redress for such violations, monitoring and assessing the observance of human rights, raising awareness of human rights issues and educating and training on human rights. The SAHRC works with government, civil society and individuals, both nationally and abroad, to fulfil its constitutional mandate.

The SAHRC is rather unique, compared to other national commissions such as the UHRC and KNHRC, in that it is funded almost 90% by the government. For example, in 2006 the SAHRC received a government grant of 41,774,000 rands and only 49,265 rands as donations.⁶⁹² This clearly reflects that the SAHRC relies mainly on internal as opposed to external funds. Of course, the fact that it relies on internally derived funds in itself does not mean that it acts independently. However, it is our contention that the chances of having their independence compromised is lessened by relying more on resources from

⁶⁹⁰ Nderitu (see note 684 above) slide 24.

⁶⁹¹ Republic of South Africa, The Constitution of the Republic of South Africa 1996, articles 181 and 184 and the South African Human Rights Commission Act of 1994, No 54 of 1994 create the South Africa Human Rights Commission. See http://www.sahrc.org.za/sahrc_cms/publish/cat_index_88.shtml for more details (accessed on 1 July 2008).

⁶⁹² South African Human Rights Commission, 2006. Report of the Chief Executive Officer for the year ended 31 March 2006, 76, also available at http://www.sahrc.org.za/sahrc_cms/downloads/Finances.pdf (accessed on 2 July 2008).

within rather than from outside. You may have to touch on the political economy of South Africa to legitimately arrive at this conclusion. This is based on the assumption that relying on domestic resources allows SAHRC to be driven by its own priorities rather than those of external actors such as donors. It also bodes well for the long term sustainability of the SAHRC and its programmes, since it depends on domestic sources as opposed to unpredictable and volatile external development assistance.

From the above it is evident that with the exception of the South African Human Rights Commission, which is almost reliant on its government budgets, most African Commissions are under-funded by their governments. Some, like the UHRC, rely heavily on development assistance to run their affairs. One questions whether this does not threaten the autonomy of these agencies. One important plank of this includes financial autonomy.⁶⁹³ It could be said that whether it is the national Ministry of Finance or the development partners that control the resources of an agency, it is most likely that the agency's autonomy will be seriously compromised. So, as in the case of the UHRC, which is dependent on development assistance for its development budget, or the KNHRC which has no vote, one could envisage a scenario of a de facto breach of the principle of autonomy.

⁶⁹³ United Nations Principles relating to the Status of National Institutions GA Res. 48/134 of 20 December 1993 (The Paris Principles) Available at <http://www2.ohchr.org/english/law/parisprinciples.htm> (accessed on 1 July 2008). It is provided in principle 3(2) that the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

5.6.2. The Justice, Law and Order Sector (JLOS)

There are a number of agencies within JLOS that play a central role in promoting and protecting human rights. These include the Uganda Police Force, Uganda Prisons and the Judiciary.⁶⁹⁴ These agencies as discussed below have received development assistance. Piron observes that donor assistance to promote justice sector reform in sub-Saharan Africa has increased significantly over the last 10 years, from an estimated USD 17.4 million in 1994 to over USD110 million in 2002.⁶⁹⁵ This is quite a significant amount of money which can ‘buy’ a lot of influence in poor countries like Uganda.

Ireland, Austria, the Netherlands, Germany, Norway, Denmark, the European Commission all support JLOS.⁶⁹⁶ Their support is pegged to the priorities set out in the JLOS SIP II⁶⁹⁷. Overall, JLOS does not receive a lot of resources from the national budget. It gets little below 5% of the overall budget as indicated below in Table 5. The development partners, outlined above, provide about USD 15m per year which goes to the development budget of the sector. It is therefore questionable how critical agencies under JLOS can deliver on their human rights mandate with such limited resources.

⁶⁹⁴ For more about the Justice, Law and Order Sector (JLOS) see <http://www.jlos.go.ug/> (accessed on 17 October 2007).

⁶⁹⁵ Piron (see n 59 above) 1.

⁶⁹⁶ P Gadeya is the Senior Technical Advisor with the Justice, Law and Order Secretariat and he revealed this in an interview I held with him on 4 April 2011 in Kampala.

⁶⁹⁷ Gadeya (see n 696 above).

Table 5: Government budget allocations to JLOS

Financial Year	Total National Budget (Shs billions)	Total JLOS Budget	% Share of the National Budget
2003/2004	2,990.1	203.16	6.80
2004/2005	3,274.7	177.22	5.40
2005/2006	3,548.7	181.88	5.10
2006/2007	4,289.0	212.67	4.95
2007/2008	4,734.4	234.56	4.95
2008/2009	5,239.3	240.57	4.60

Source: Ministry of Finance Approved Estimates Book

This under-funding of the justice sector and reliance on development partners is not unique to Uganda. For example, according to the Open Society Foundation, the justice sector in Malawi is heavily dependent on multilateral and bilateral donors.⁶⁹⁸ OSF notes that in the case of non judicial oversight institutions such as the Ombudsman and the Law Commission, aid agencies provide as much as 80% of the funding for core activities.⁶⁹⁹ Most of the external aid provided to the justice sector between 2000 and 2005 was given by DFID, USAID and the Norwegian Embassy, OSF reveals.⁷⁰⁰ OSF further points out that on the multilateral side UNDP, the EU, IMF and African Development Bank were major contributors.⁷⁰¹

Table 6 below indicates contributions to JLOS by various development partners from 2000-2007. It is clear that JLOS is not one of the priority areas for most donors and the interest in JLOS is bound to lessen with the new harmonisation agenda discussed above. The reality is that a number of donors are going to withdraw from JLOS and this will have an impact on the available

⁶⁹⁸ Open Society Foundation Malawi Justice Sector and the Rule of Law. A review by AfriMap and Open Society Initiative for Southern Africa (2006) 151-52

⁶⁹⁹ Open Society Foundation (see n 698 above) 151-52.

⁷⁰⁰ Open Society Foundation (see n 698 above) 151-52.

⁷⁰¹ Open Society Foundation (see n 698 above) 151-152.

resources and ultimately the human rights agenda. Already the Netherlands, which is a major player, withdrew from JLOS in 2009, with Germany doing the same in 2011.⁷⁰² It is therefore important that the JLOS agencies fully understand and internalise the implication of the specialisation and harmonisation agenda, currently being undertaken by the development partners.

Table 6 also indicates that the largest share of the national budget is spent on infrastructure (roads and works) and public administration. Sectors which promote the right to education, food and health receive on average about 4%, 5% and 10% of the budget. This clearly shows what the priorities of government are. It must be noted that the figures below are what are budgeted and do not reflect what the sectors actually receive, which in reality is less than what is budgeted for. It is therefore essential that sectors which are critical for the promotion and protection of human rights, like JLOS, education, health and agriculture, are provided with adequate resources. A caveat is placed on this, additional resources in itself will not translate into greater promotion and protection of human rights. The resources have to be used effectively by, for example strengthening the capacity of UHRC and the relevant JLOS agencies.

⁷⁰² This was revealed in the JLOS Development Partner Group meeting of 27 June 2008, which I attended.

Table 6 :Summary of donor disbursements by sector 2000/01 – 2006/07 (USD Millions)

SECTOR	2000/01	% Share	2001/02	% Share	2002/03	% Share	2003/04	% Share	2004/05	% Share	2005/06	% Share	2006/07 ⁷⁰³	% Share
Security	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0	0.0	0	0.0	0
Roads and Works	112.78	13.42	93.63	9.78	52.91	6.38	113.85	10.75	105.70	10.17	41.14	5.64	122.01	11.78
Agriculture	48.82	5.81	45.59	4.76	56.58	6.82	29.92	2.83	35.53	3.42	33.82	4.64	35.34	3.41
Education	26.57	3.16	29.64	3.09	37.33	4.50	33.30	3.15	30.84	2.97	33.27	4.56	18.78	1.81
Health	90.08	10.72	76.23	7.96	100.79	12.15	78.93	7.46	112.76	10.85	147.71	20.24	141.22	13.64
Water & sanitation	61.07	7.27	50.31	5.25	24.41	2.94	29.89	2.82	28.77	2.77	31.85	4.37	34.48	3.33
Justice/Law & Order	2.90	0.35	3.07	0.32	6.19	0.75	4.71	0.44	4.07	0.39	0.7	0.10	2.0	0.19
Accountability	0.54	0.06	0.48	0.05	22.69	2.74	25.27	2.39	16.17	1.56	37.30	5.11	29.29	2.83
Econ. Fun. / Soc. Services	71.45	8.50	68.11	7.11	66.18	7.98	119.16	11.26	87.80	8.45	58.70	8.05	63.20	6.10
Public Administration	96.70	11.51	68.39	7.14	33.30	4.01	27.99	2.64	19.71	1.90	19.03	2.61	20.08	1.94
Budget Support	255.16	30.36	451.21	47.11	335.98	40.50	486.93	46.00	473.30	45.55	238.20	32.65	517.49	49.97
GRAND TOTAL	840.46	100.00	957.7	100.00	829.49	100.00	1058.59	100.00	1039.01	100	729.63	100	1035.51	100

Source:Ministry of Finance, Planning and Economic Development

⁷⁰³ 2006/07 figures are based on the available data as at 30 June 2007.

One reason that government allocates mearge resources to these human rights agencies, it could be argued is because they know that development partners will fund them. This in effect removes any pressure or incentive on government to fund these agencies. Taking into account that development assistance is not permanent this is a short sighted strategy. Once development partners reduce or stop their funding, these agencies will most likely face serious operational constraints.

What has been the outcome or impact of the development assistance provided to JLOS? The study will provide some empirical data to illustrate the impact of the support provided by the various development partners.

Development partners can be credited with being the force behind the creation of JLOS.⁷⁰⁴ Following the establishment of JLOS, the International Human Rights Network found that JLOS had been successful in establishing the 3 C's that is the practice of coordination, cooperation and communication through established mechanisms.⁷⁰⁵ These far reaching changes have contributed to a range of positive results e.g an increased appreciation of each other's problems combined with an atmosphere conducive to peer review and constructive self-criticisms.⁷⁰⁶

⁷⁰⁴ S Wairagala is the Technical Advisor, Monitoring and Evaluation JLOS and he revealed this in an interview I held with him on 4 April 2011.

⁷⁰⁵ International Human Rights Network Justice, *Law and Order Sector Strategic Investment Plan Medium Term Evaluation 2001/2-2005/6 Final Report 2004* iv.

⁷⁰⁶ International Human Rights Network (see n 705 above) vi.

In addition to the 3 C's mentioned above, development partners played an important role in lobbying together with JLOS for an increase in the budget allocations for the sector.⁷⁰⁷ As a result of this lobbying JLOS saw its budget increase from UGX 120 billion in 2004/2005 to UGX 550 billion in 2010/2011.⁷⁰⁸ This represents a significant resource increase which would not have been realised without development partner support.

With support from development partners JLOS has been able to reform a number of laws with for example 44 commercial laws passed.⁷⁰⁹ Some of these laws include, the Contracts Act⁷¹⁰, the Partnership Act⁷¹¹, the Mortgage Act⁷¹², Domestic Violence Act⁷¹³, International Criminal Court Act⁷¹⁴ In addition the EU provided funding for a purpose built Commercial Court which is now operational.⁷¹⁵

Furthermore JLOS has been able to carry out physical decongestion of justice services.⁷¹⁶ For example DANIDA had built 23 courts for the sector across the country.⁷¹⁷ In addition with support from USAID, JLOS constructed 4 courts, 4 DPP offices and 3 police stations all with staff accommodation in Northern Uganda⁷¹⁸ As a result of this physical access to justice has been

⁷⁰⁷ Wairagala (see n 704 above).

⁷⁰⁸ Wairagala (see n 704 above).

⁷⁰⁹ Wairagala (see n 704 above).

⁷¹⁰ The Contract Act Cap 73.

⁷¹¹ The Partnership Act Cap 114.

⁷¹² The Mortgage Act Cap 229.

⁷¹³ Domestic Violence Act.

⁷¹⁴ The International Criminal Court Act.

⁷¹⁵ Gadeya (see n 696 above).

⁷¹⁶ Wairagala (see n 704 above).

⁷¹⁷ Wairagala (see n 704 above).

⁷¹⁸ Republic of Uganda. Justice, Law and Order Sector *Annual Performance Report 2009/2010* (2010) above) 25-27.

enhanced. However a recent evaluation noted that while physical deconcentration has happened this has not always been followed by deconcentration of services and proper rationalisation sometimes occasioned by bilateral support from development partners.⁷¹⁹ JLOS itself acknowledges this disconnect between physical and service deconcentration.⁷²⁰

JLOS through support from development partners has been able to reduce congestion in prisons in Uganda.⁷²¹ The average stay on remand has been reduced from 45 months in 2001/2002 to now less than 15 months in 2010/2011.⁷²² This has been achieved through the support provided to the Chainlinked Pilot Project and the Casebacklog Programme under JLOS over the years since 2000.⁷²³ In addition the remand/convict ratio in the prisons has reduced from 75/25 in 2001/2002 to 53/47 in 2010/2011.⁷²⁴

JLOS over the years through *inter alia* support from development partners has been able to increase the number of officers. Over 330 judicial officers at different levels have been recruited.⁷²⁵ In addition JLOS has been able to provide housing to some of its officers especially in the Uganda Police and

⁷¹⁹ Republic of Uganda *An Independent Mid Term Evaluation Report of the Second Sector Strategic Investment Plan (SIP II) 2010 11.*

⁷²⁰ Republic of Uganda (see n above 718 above) 25.

⁷²¹ E Muhumuza is the Acting Commissioner Planning in the Uganda Prisons Service and he revealed this during an interview I held with him on 4 April 2011 in Kampala.

⁷²² Honourable Dr. Khiddu Makubuya, Attorney General and Minister of Justice and Constitutional Affairs. Presentation made at the Retreat of Ministers and Permanent Secretaries on the Government Semi Annual Performance Report 2010/2011, March 16, 2011, 5.

⁷²³ Muhumuza (see n 721 above).

⁷²⁴ Republic of Uganda (see n 718 above) 18.This was also confirmed by Muhumuza (see n 723 above).

⁷²⁵ Wairagala (see n 704 above).

Uganda Prison Services.⁷²⁶ JLOS reveals that it was able to in 2009/2010 to provide basic accommodation for 66% of the entitled officers.⁷²⁷

The EU supported the Uganda Police and Uganda Prisons under the Human Rights and Governance Programme.⁷²⁸ The EU provided EUROS 700,000 to Uganda Police over a three year period 2007- 2010.⁷²⁹ In this period the Uganda Police was able to (1) establish 4 regional complaints desks that strengthened the one desk that was in existence ⁷³⁰ (2) training for officers at various levels as indicated in table 7 below.

Table 7: Human Rights training in Uganda Police under the EU Human Rights and Good Governance Programme

	Category	Men	Women	Total
1	Senior Police Officers (trainers of trainers)	46	5	51
2	Senior Police Officers, District Police Commanders	117	18	135
3	Former Local Government Police	126	51	177
4	Community Liasion Officers	-	-	70
			Total	433

Source: Uganda Police Force

From the above example it is clear that the Uganda Police Force was able train 433 officers at various levels and also build in-house capacity for further training through the trainers. The Uganda Police acknowledges that through

⁷²⁶ Makubuya (see n 722 above).

⁷²⁷ Republic of Uganda (see n 719 above)12.

⁷²⁸ European Commission-Republic of Uganda (see n 584 above)

⁷²⁹ European Commission- Republic of Uganda (see n 584 above).

⁷³⁰ European Union Final Evaluation Report of the Human Rights and Good Governance Programme December 2010.

the trained community liaison officers there has been a reduction in cases of defilement in Mayuge district and reduced conflicts between the pastoralists and the farmers leading to peaceful co-existence of the two categories of people.⁷³¹

Uganda Prisons Services with the EURO 600,000 provided by the EU was able over the three period to (1) have 50 trainers trained who in turn trained 1500 other staff members (2) a resource centre was stocked (3) information, education and communication material was produced and distributed (4) upgrading and equipping two prison clinics with basic laboratory equipment (5) purchase and installation of 20 water storage tanks in selected prisons and (6) system for monitoring Human Rights violations.⁷³² UHRC acknowledged that there has been a significant improvement in the human rights situation in prisons and attributed this to both the leadership in prisons and the human rights training done.⁷³³

5.6.3. Civil Society

The Uganda human rights arena is dotted by a number of civil society organisations (CSOs), both of an international and local flavour. The human rights related non-governmental organisation (NGO) community is quite vibrant and works relatively free from government interference. Among the notable NGOs are the Foundation for Human Rights Initiative (FHRI),⁷³⁴

⁷³¹ European Commission (see n 584 above) 29.

⁷³² European Commission (see n 584 above) 30.

⁷³³ Uganda Human Rights Commission 10 Annual Report (2009) 15.

⁷³⁴ The Foundation for Human Rights Initiative (FHRI) is an independent, non-governmental, non-partisan and not-for-profit human rights organisation established in December 1991. It seeks to remove impediments to democratic development and meaningful enjoyment of the fundamental freedoms

Human Rights Network Uganda (HURINET-U),⁷³⁵ Federation of Women Lawyers Uganda (FIDA)⁷³⁶ and Uganda Joint Christian Council (UJCC).⁷³⁷ At the international level, there is Amnesty International which has an office in Kampala.⁷³⁸ Others, such as HRW, cover the country from their headquarters in the United States of America.⁷³⁹ It can be said that the NGOs tend to focus more on civil and political rights, often at the expense of the equally important economic, social and cultural rights. This might, in part, be due to the political, socio-economic environment of the country. In contemporary times, political issues like elections have taken center stage and most NGOs therefore tend to

enshrined in the 1995 Uganda Constitution and other internationally recognized human rights instruments. FHRI addresses the entire range of human rights: Civil and political as well as economic, social and cultural as defined in international human rights covenants. More details about the mandate and operations of FHRI can be found at, <http://www.fhri.or.ug/aboutus.html>.

⁷³⁵ The Human Rights Network Uganda (HURINET-U) was established in 1993 by a group of eight human rights organisations and was formally registered as an independent, non-partisan and not for profit organisation in 1994. The identity of HURINET-U lies with its diverse membership of 32 NGOs. Membership is drawn from organisations that are committed to a wide range of human rights issues which are complementary in terms of areas of focus including, civil and political rights, economic social and political rights, child rights, gender and women's issues, peace building and conflict resolution, prisoners' rights, refugee rights and labour rights. Members range from purely Ugandan NGOs to international organisations. The vision, mandate and activities of HURINET –U can be found at http://www.hurinet.or.ug/index.php?option=com_content&view=article&id=88&Itemid=86.

⁷³⁶ The Federecion Internacional De Abogadas (FIDA)-U is a premier women's rights organisation and leading spokes-organisation on all human rights, governance, legal and policy issues pertaining to women as enshrined in international treaties especially the Convention on the Elimination of Discrimination Against Women (CEDAW). For more details on FIDA and its operations see http://www.fidauganda.org/index.php?option=com_content&task=view&id=12&Itemid=28.

⁷³⁷ Uganda Joint Christian Council (UJCC) is an Ecumenical Organisation whose membership at present is: The Roman Catholic Church, the Uganda Orthodox Church and the Church of Uganda. As a fellowship of Churches, UJCC provides a platform for its members to work towards greater mutual understanding and unity of purpose. UJCC provides a forum to articulate and address issues of common concern including peace building, health, education, social and economic justice. See <http://www.civilsocietyforum.org/uganda-joint-christian-council-ujcc>.

⁷³⁸ Amnesty International is a worldwide movement of people who campaign for internationally recognised human rights for all. Its supporters are outraged by human rights abuses but inspired by hope for a better world - so they work to improve human rights through campaigning and international solidarity. See <http://www.amnesty.org/en/who-we-are>. Also see Civil Society Handbook East Africa. 2008. It lists over 500 civil society organisations operating in the East African Region.

⁷³⁹ Human Rights Watch is one of the world's leading independent organisations dedicated to defending and protecting human rights. By focusing international attention where human rights are violated, they give voice to the oppressed and hold oppressors accountable for their crimes. Their rigorous, objective investigations and strategic, targeted advocacy build intense pressure for action and raise the cost of human rights abuse. For 30 years, Human Rights Watch has worked tenaciously to lay the legal and moral groundwork for deep-rooted change and has fought to bring greater justice and security to people around the world. See <http://www.hrw.org/en/about> for more details.

focus on political and civil rights, like the right of association and assembly. It can only be hoped these latter rights can gain more attention and prominence.

In addition, the NGOs suffer from being ‘tied in’ or restricted to donor interest areas that is to say they can only focus on issues that foreign donors are interested in and consequently willing to fund, for example women's rights and children's rights. The donors' agendas therefore dictate the local NGOs agendas.

It nonetheless can be said that the civil society movement in Uganda is gaining strength and it is hoped that they will in the future, begin to place more emphasis on the second generation rights (economic, social and cultural rights), and also to some extent begin taking advantage of the various complaint mechanisms available both at the regional and international level.⁷⁴⁰ FHRI and FIDA deal with economic, social and cultural rights as indicated above. However it is essential that more NGOs follow their example.

FHRI held donor round table meetings in 2007 and 2009.⁷⁴¹ These round table meetings act as a fundraising forum in which FHRI solicits funding from potential development partners. Sweden and HIVOS (Netherlands) are the core donors that provide institutional support to FHRI while other donors provide project support. The primary purpose of the meeting was to present

⁷⁴⁰ It can be noted that no human rights organisation has taken on human rights cases at the regional and international level. Most of the NGOs in Uganda are focusing on human rights awareness campaigns and not human rights litigation. This is in part due to lack of expertise on the part of the NGOs.

⁷⁴¹ I attended these meetings on 29 August 2007 and 17 October 2009 at the Foundation for Human Rights Initiative Offices in Kampala.

the 2007 progress report based on the activities outlined in FHRI's strategic plan 2006-2008. In addition, fundraising options were on the agenda. FHRI presented a progress report highlighting the key activities carried out in 2007. These included, (1) rights monitoring and policy advocacy, (2) access to justice, (3) penal reform, education and training focus on Northern Uganda, (4) paralegal advisory services project (PAS), (5) Uganda national elections assessment and monitoring project (UNELAMP) 2006, (6) Northern Uganda legal defense for war affected children project, (7) paralegal training for Ssesse islands (8) right to life project, and (9) right to reparation project.⁷⁴²

It was noted that FHRI has a funding gap of about USD 582,496.⁷⁴³ Consequently, it was agreed that FHRI would be invited to present its progress report to the members of the Human Rights Working group.⁷⁴⁴ At this presentation FHRI would be able to ascertain which development partners would be able to fund it. It was evident that that most of the project initiatives had their themes decided by the respective donor and in most cases FHRI might have been 'convinced' to go down a path that it might have not really wished to go. This convincing really amounts to being politely forced to adopt a programme that was not planned for or a priority. This was acknowledged by Mr Ssewananya of FHRI.⁷⁴⁵ In the 2006 annual report of FHRI, it is reported that of the UGX 1,757,361,466 budgeted for in 2006, UGX 1,509,118,370 was provided by development partners.⁷⁴⁶ This reflects the almost complete

⁷⁴² See n 741 above.

⁷⁴³ See n 741 above.

⁷⁴⁴ See n 741 above.

⁷⁴⁵ This was revealed at an interview I held with Mr Livingstone Ssewananya the Executive Director of FHRI on 29 August 2007.

⁷⁴⁶ Foundation for Human Rights Initiative Annual Report 2006, 93.

reliance on development assistance. In 2009 FHRI undertook a number of activities that were crucial for the promotion and protection of human rights in Uganda with support from development partners. These included (1) several reports on the human rights situation in Uganda⁷⁴⁷ (2) trained 284 paralegals (137 men and 147 women⁷⁴⁸ (3) 14, 2 day mobile legal aid camps in six districts in Uganda⁷⁴⁹ (4) legal support to 18 victims of torture⁷⁵⁰ (5) run a para legal advisory services programme⁷⁵¹ (6) filed a public interest litigation case challenging the lengthy stays on remand before trial⁷⁵² and (7) carried out leadership development programmes for human rights defenders in Uganda.⁷⁵³ Since FHRI is funded close to 100% by development partners like the EU it can be concluded that without this assistance, FHRI would not exist or be able to run this much needed programmes. Muwanga confirms this conclusion.⁷⁵⁴

The Human Rights Network of Uganda (HURINET) is another leading human rights NGO in Uganda. Kamusiime of HURINET reveals that HURINET is 100% funded by development assistance and just like in the case of FHRI, some partners tend to want to set the agenda while others are more liberal.⁷⁵⁵ HURINET runs an annual budget of about UGX 800million (equivalent to USD 350,000).⁷⁵⁶ He singled out Danida as one of those that constantly want to shape the agenda, while SIDA Sweden and the Ford Foundation as those

⁷⁴⁷ Foundation for Human Rights Initiative (see n above 746 above) 19-20.

⁷⁴⁸ Foundation for Human Rights Initiative (see n above 746) 26.

⁷⁴⁹ Foundation for Human Rights Initiative (see n above 746) 26.

⁷⁵⁰ Foundation for Human Rights Initiative (see n above 746) 29.

⁷⁵¹ Foundation for Human Rights Initiative (see n above 746) 31.

⁷⁵² Foundation for Human Rights Initiative (see n above 746) 33.

⁷⁵³ Foundation for Human Rights Initiative (see n above 746) 43.

⁷⁵⁴ Sheila Muwanga is the Deputy Director of FHRI and she revealed this in an interview I held with her on 6 April 2011 in Kampala.

⁷⁵⁵ I held an interview with Kamusiime Thomas of HURINET on 3 June 2008 in Kampala

⁷⁵⁶ Kamusiime (see n 755 above).

that allowed HURINET to set the agenda.⁷⁵⁷ He noted that in the case of Danida, it would want to decide on activities to be supported.⁷⁵⁸ This paternalistic approach to development assistance and donorship as adopted by Danida, even with its noble objectives, may be posing a set back for the growth of the NGOs because it does not allow them to organically mature, thrive and set own agenda, suiting the contextual and situational analyses made by the NGOs themselves⁷⁵⁹. In other words, it may be perpetuating the structural dependency weaknesses and depreciating their role and capacity as NGOs.

Nifunda acknowledges that without support from development partners like Denmark and Sweden HURINET in 2010 would not have been able to (1) hold an international conference to review the International Criminal Court Statute in which over 101 countries attended.⁷⁶⁰ During the review conference actual victim of the war in Northern Uganda were met (2) carry out training of about 200 police offices in human rights and accountability. In addition a complaint form which members of the public could use to register their complaints against the police was developed and is being used (3) built capacity of civil society organisations to use the Access to Information Act.⁷⁶¹ Nifunda further stressed that development assistance was critical to the operations of HURINET and without it; it would not be able to run most of its operations.⁷⁶²

⁷⁵⁷ Kamusiime (see n 755 above).

⁷⁵⁸ Kamusiime (see n 755 above).

⁷⁵⁹ Kamusiime (see n 755 above).

⁷⁶⁰ I held interview with Mohamed Nifunda Executive Director of HURINET on 5 April 2011.

⁷⁶¹ Nifunda (see n 760 above).

⁷⁶² Nifunda (see n 760 above).

Reverend Kaiso of the Uganda Joint Christian Council (UJCC), yet another leading human rights NGO, identifies with the above pattern. Kaiso reveals that UJCC is 100% reliant on development assistance to run its programmes.⁷⁶³ He notes that while UJCC has developed a strategic plan, some development partners want to come in with their own agenda and interests, while others are willing to align their support to the UJCC priorities.⁷⁶⁴ Kaiso further notes that the relationship with the development partners also largely depends on the personality and the background of the individuals.⁷⁶⁵ One may even add that experience and exposure too are significant in shaping the choices and quality of partnerships. He noted that some individuals in the development agencies had strong views and would want to influence the direction of certain programmes.⁷⁶⁶

This situation of being reliant on development assistance is not unique to Uganda. In Kenya, for example, the leading human rights NGO is the Kenya Human Rights Commission (KHRC) which was set up in 1993.⁷⁶⁷ According to Kantai of KHRC, the Commission is 100% dependant on development partners. She reveals that in 2003 KHRC received Kenya Shillings (KC) 55 Million, in 2004 KC 83 Million, in 2005 KC 74 Million, in 2006 KC 97 million, and in 2007 100 million. The support is channelled via both budget support/institutional support and through basket funding. She points out that

⁷⁶³ Reverend Grace Kaiso is the Executive Secretary of Uganda Joint Christian Council and I held an interview with him on 9 November 2007 in Kampala.

⁷⁶⁴ Kaiso (see n 763 above).

⁷⁶⁵ Kaiso (see n 763 above).

⁷⁶⁶ Kaiso (see n 763 above).

⁷⁶⁷ More details on the Kenya Human Rights Commission can be obtained from www.khrc.or.ke.

development partners do assert their influence in jointly implemented activities.⁷⁶⁸

Wallace *et al.* recognise the problem of CSOs being dependent on aid.⁷⁶⁹ They note that those with power can promote the approaches they prefer and rightly point out that it is not possible to ignore the dynamics of ‘he who calls the piper plays the tune’, that are so evident in the development aid chain.⁷⁷⁰ They further say that there is reluctance among donors and United Kingdom NGOs to get to grips with the issue of their power over funding and funding conditionalities.⁷⁷¹ The authors argue that the reality of donor power and the urgent need of local NGOs to access scarce funding means that most people at every level have an interest in buying into the dominant paradigm of how to manage development in ‘aid land’.⁷⁷²

The authors make very valid observations when they reveal that almost all the Ugandan NGOs interviewed in their study said that serious dependency on external donor funding for NGO activities continued, with few opportunities and little effort to fundraise locally.⁷⁷³ The deep dependency of southern NGOs mirrored the dependence of the government on foreign aid, which placed Uganda in a weak negotiating position.⁷⁷⁴ They further note that many Ugandan NGOs raised the issues being hotly debated in the media, concerning

⁷⁶⁸ L Kantai is with the outreach department of the Kenya Human Rights Commission and she revealed this in an email of 15th February 2008 responding to questions sent to her by myself..

⁷⁶⁹ Wallace *et al.* (see n 57 above) 38.

⁷⁷⁰ Wallace *et al.* (see n 57 above) 38.

⁷⁷¹ Wallace *et al.* (see n 57 above) 38.

⁷⁷² Wallace *et al.* (see n 57 above) 38.

⁷⁷³ Wallace *et al.* (see n 57 above) 39.

⁷⁷⁴ Wallace *et al.* (see n 57 above) 39.

the role of aid and whether it is undermining local democracy and perpetuating a government agenda, of being more responsive to donor demands than local needs.⁷⁷⁵ They in addition note that there is a tendency of many development partners to undervalue indigenous organisations and cultural forms.⁷⁷⁶

ODI observes that donors play important roles in providing funding to CSOs who otherwise struggle to access resourcing, in part because of difficulties in accessing or accepting funds from the government.⁷⁷⁷ ODI goes on to rightly conclude that :

As support is often provided in an ad hoc and uncoordinated manner they have contributed to a context in which CSOs effectively compete for funding (and profile) rather than cooperate to deepen their impact.⁷⁷⁸

5.7. The practice

5.7.1. Principles of partnership

The relationship between development partners and the Government of Uganda has been described as a partnership.⁷⁷⁹ As in most partnerships, this relationship is governed by some form of agreement or understanding. In the case of Uganda, this understanding is reflected in the partnership principles between the Government of Uganda and its development partners.⁷⁸⁰ A number of development partners have signed up to these principles.⁷⁸¹ It could

⁷⁷⁵ Wallace et al (see n 57 above) 82.

⁷⁷⁶ Wallace *et al* (see n 57 above) 82.

⁷⁷⁷ Overseas Development Institute (see n 38 above) 22.

⁷⁷⁸ Overseas Development Institute (see n 38 above) 22.

⁷⁷⁹ The Republic of Uganda (see n 30 above)2.

⁷⁸⁰ Ministry of Finance, Planning and Economic Development (see n 318 above) 3.

⁷⁸¹ F Twesiime is the Aid Liason Officer with the Ministry of Finance, Planning and Economic Development and he revealed this in an interview I held with him on 4 April 2011 in Kampala. He confirmed that all Uganda's main development partners have signed up to these principles and they include, Ireland, Netherlands, Denmark, Germany, Norway, Sweden and the United Kingdom.

be argued that these principles create legally binding obligations to the parties that sign up to them, in this case Uganda and its development partners.

The partnership principles set out general principles, government's preferred modalities of support from development partners, undertakings by Government of Uganda, the need to reflect development assistance in the budget, global funds, working more effectively at sector level, joint sector reviews and missions and consultative group meetings.⁷⁸² It is interesting, but perhaps not surprising, that in section three, which contains government undertakings, there is no reference to promotion, protection and respect for human rights.⁷⁸³ Reference is made; *inter alia*, to fighting corruption.⁷⁸⁴ In addition, while there is a section on undertakings by Government of Uganda as a partner, there is none for the other partners, the development partners.⁷⁸⁵ This amounts to a one-side partnership, tilted in favour of the development partners.

One of the general principles embedded in the partnership principle is local ownership.⁷⁸⁶ It is stated that 'the delivery of financial assistance (aid) by development partners must be fully compatible with the national budget process and with government's ownership of the budget'.⁷⁸⁷ One could, on the basis of this, claim that there is local ownership. However, development partners are permitted within the same principle to participate in the process of

⁷⁸² Ministry of Finance, Planning and Economic Development (see n 320 above) 1-5.

⁷⁸³ Ministry of Finance, Planning and Economic Development (see n 320 above) 3.

⁷⁸⁴ Ministry of Finance, Planning and Economic Development (see n 320 above) 3.

⁷⁸⁵ Ministry of Finance, Planning and Economic Development (see n 320 above) 3.

⁷⁸⁶ Ministry of Finance, Planning and Economic Development (see n 320 above) section 3.

⁷⁸⁷ Ministry of Finance, Planning and Economic Development (see n 320 above) section 3.

formulating government budgets.⁷⁸⁸ This, in effect, means that the Government of Uganda ceded some of its sovereignty to development partners in the budget formulation process.

It is hard to discern a situation where Uganda would be allowed to take part in the formulating of the national budget of Ireland, United Kingdom or Germany. This situation has been occasioned by the fact that development partners fund the budgets of poor developing countries like Uganda. The participation of development partners in the budget formulation process does give them enormous leverage in determining the agenda, especially since the Government of Uganda officials are all too aware of who has the money and therefore the power.

The principle of local ownership is re-echoed in the Paris Declaration on Aid Effectiveness.⁷⁸⁹ The Paris Declaration is underpinned by the common objective of building stronger, more effective partnerships to enable partner countries achieve their own development goals.⁷⁹⁰ In order for this to happen, there is need that the partner/recipient countries own and lead the development agenda. This is a position fully acknowledged by the OECD Development Assistance Committee (DAC).⁷⁹¹ In a survey on monitoring the Paris Declaration, it is recognised that strengthening country ownership of development efforts is the first priority and aid is effective only when it

⁷⁸⁸ Ministry of Finance, Planning and Economic Development (see n 320 above) 25.

⁷⁸⁹ Paris Declaration on Aid effectiveness (see n 81 above) article 14.

⁷⁹⁰ Paris Declaration on Aid effectiveness (see n 81 above) articles 3,14..

⁷⁹¹ Development Assistance Committee 2008 *Survey on Monitoring the Paris Declaration. Effective Aid by 2010? What it will take?* (2008) 27.

enables partner countries to achieve their own economic, social and environmental goals.⁷⁹² Developed and developing countries recommitted themselves to allowing developing country governments to take stronger leadership of their own development policies, and engage with their parliaments and citizens in shaping those policies.⁷⁹³ Donors committed, in turn, to support them by respecting countries' priorities, investing in their human resources and institutions, making greater use of their systems to deliver aid, and increasing the predictability of aid flows.⁷⁹⁴

The DAC survey goes on to make the valid point, that the onus is on developing country governments to enhance their ownership of development efforts, in consultations with their parliaments, citizens, civil society and the private sector.⁷⁹⁵ However, while this point is valid, in practice developing countries consult more with the development partners than with their parliaments or citizens, mainly because the development partners fund their budgets. Governments in developing countries have no incentive to consult with their parliament or citizens, since their budgets are funded mainly by external funds. This position would change if national budgets were funded mainly through taxes from the citizens. Mwenda and Tangiri make a potent argument on this dynamic, saying that aid distorts development in developing

⁷⁹² Development Assistance Committee (see n 791 above) 27.

⁷⁹³ 3 High Level Forum on Aid Effectiveness. September 2-4 Accra Ghana. Accra Agenda for Action (2008) 1 Available at <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf> (accessed on 25 October 2008).

⁷⁹⁴ 3 High Level Forum on Aid Effectiveness (see n 793 above).

⁷⁹⁵ Development Assistance Committee (see n 791 above) 27.

countries, by altering the structural incentives to be accountable to their citizens who have been emasculated through non-payment of taxes.⁷⁹⁶

Within section two of the principles, government's preferred modalities of support from development partners are set out.⁷⁹⁷ The government goes ahead to rank, in descending order of preferences, donor support modalities which include:

1. General Budget Support
2. Budget Support earmarked to the Poverty Action Fund
3. Sector Budget Support
4. Project Aid⁷⁹⁸

However, it must be pointed out that several government officials across most government ministries are not even aware of these principles and their provisions.⁷⁹⁹ The officials in the Ministry of Finance, Planning and Economic Development who deal with the budget and donor projects are usually the ones that know about them.⁸⁰⁰ This indicates that indeed the partnership is not anchored across the length and breadth of government but rather, restricted to a few officials.

The principles of equality and local ownership are also reflected in the Cotonou Agreement. Article 2 is quite explicit in this regard and provides for the following:

⁷⁹⁶ A Mwenda & R Tangiri (see n 678 above) 449.

⁷⁹⁷ Ministry of Finance, Planning and Economic Development (see n 320 above) section 2.

⁷⁹⁸ Ministry of Finance, Planning and Economic Development (see n 320 above) section 2. A glossary defining these key terms has been provided in Annex 7.

⁷⁹⁹ Twesiime (see n781 above).

⁸⁰⁰ Twesiime (see n 781 above).

Equality of the partners and ownership of the development strategies: For the purposes of implementing the objectives of the partnership, the ACP States shall determine the development strategies for their economies and societies in all sovereignty and with due regard for the essential elements described in Article 9, the partnership shall encourage ownership of the development strategies by the countries and populations concerned.⁸⁰¹

It could be argued that in practice, as noted above, there is hardly equality between the EU and the ACP countries like Uganda. Furthermore, there is rather limited local ownership of the development process. Degenbol-Martinussen and Engberg-Pedersen rightly point out that:

The great and difficult challenge is to unite, on the one hand, donor priorities, and on the other, genuine respect for recipient country ownership and for the priorities of the relevant authorities. Paradoxically enough, uniting these two general considerations can prove to be more difficult to achieve in connection with sector assistance than with traditional aid forms such as project aid⁸⁰²

The human rights international normative standards also provide for international cooperation and one could argue that human rights development assistance should be anchored on these standards. The UN Charter obliges member states 'to develop friendly relations among nations based on respect for the principle of equal rights...'⁸⁰³ The UN Charter further enjoins them to:

Achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language, or religion.⁸⁰⁴

⁸⁰¹ European Union (see n 527 above) article 2.

⁸⁰² Degenbol-Martinussen and Engberg-Pedersen (see n 66 above) 271.

⁸⁰³ Charter of the United Nations (see n 147 above) article 1 (2).

⁸⁰⁴ Charter of the United Nations (see n 147 above) article 1(3).

The ICESCR goes further to provide for international assistance and cooperation by stipulating that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including, particularly, the adoption of legislative measures.⁸⁰⁵

The ICESCR goes ahead to suggest that such international assistance should be through technical assistance.⁸⁰⁶ One could therefore conclude that indeed, human rights development assistance is rooted in international human rights standards. However, it is essential that in applying this assistance, space is provided for local ownership.

5.8. Assistance modalities

Development partners use a number of assistance delivery modalities as outlined above. The Government of Uganda has indicated its preference for general budget support.⁸⁰⁷ It should be noted that while some development partners may opt for one of the modalities, some use a mixture of these modalities with a view to shield themselves against inefficacy, maximise effectiveness and mitigate risks that accompany the main modality of choice.⁸⁰⁸ Domestic constituencies also affect the choices or combination of modalities chosen. For instance, there are strong moral and political arguments against provision of budget support where official corruption is rampant and

⁸⁰⁵ International Covenant on Economic, Social and Cultural Rights (see n 174 above) article 2.

⁸⁰⁶ International Covenant on Economic, Social and Cultural Rights (see n 174 above) article 29.

⁸⁰⁷ Ministry of Finance, Planning and Economic Development (see n 320 above) 1-5.

⁸⁰⁸ See table 2 above.

supported by impunity and lack of results to show for the investments made by their tax payers.⁸⁰⁹ It therefore becomes legitimately and increasingly difficult for any one donor to defend the most preferable budget support modality amidst outcry to cut aid. It is crucial to understand the modalities through which development partners channel their resources and why and how they do so. Overall, the modalities used in many ways reflect or give an indication on not only the possible role a development partner can play in shaping the human rights agenda, but also the service delivery efficiency and whether the donor is in for the short, medium or long haul, in the receipt country or agency. Some modalities, as will be argued below, open more leverage space than others, for development partners to shape the human rights agenda in Uganda.

The use of projects, as a method of delivering aid, was the traditional way adopted by several development partners up until the late 1990s in Uganda.⁸¹⁰ Apart from balance of payments support almost without exception aid was disbursed in terms of individual projects almost without exception.⁸¹¹ Development partners were forced to go that route because of, *inter alia*, weak legal and institutional government structures and systems.

The net effect of this project approach is that the local human rights institutional environment has become completely ‘honey combed’ with donor

⁸⁰⁹ AR Menocal & A Rogerson ‘Which Way the Future of Aid? Southern Civil Society Perspectives on Current Debates on Reform to the International Aid System’ (2006) 5-6 Overseas Development Institute Working paper 259.

⁸¹⁰ P Amis ‘Uganda A Country Case Study’ (2002) 6, prepared for the OCED/ DAC task force on Donor Practices in 2002 (14).

⁸¹¹ Amis (see n 810 above)14.

projects, which was also had the impact of further weakening the existing administrative system especially of the NGOS and the UHRC. Individuals in projects often received very generous salaries by local standards. This created a host of problems, ranging from closing down the project or what Amis calls the exit nightmare,⁸¹² to limiting the processes of institutional reform and a lack of sustainability by the UHRC. The same applied to projects in the NGO arena.

It was common practice, and still is to some extent, both in Uganda and other developing countries, to find projects adhering to financial, accounting and even audit procedures of the development partner. Thus the development partner closely monitors expenditure of disbursed funds. This was one way of mitigating losses to corruption and vulnerability to structural and systemic weaknesses. A number of development partners, such as the United States of America and Denmark, still use projects as a vehicle of aid delivery in Uganda.

Uganda, at the end of the 1990s, embarked on a journey of moving away from project support and adopting sector wide approaches (SWAPS).⁸¹³ The first SWAPS in Uganda were in the health and education sectors.⁸¹⁴ The Justice, Law and Order Sector has also developed a SWAP in 1999.⁸¹⁵ A sector is defined as a coherent set of services and/or activities relating to a specific function which can be relevantly distinguished in terms of policies, institutions

⁸¹² Amis (see n 810 above) 14.

⁸¹³ Amis (see n 810 above) 17.

⁸¹⁴ Amis (see n 810 above) 18.

⁸¹⁵ International Human Rights Network (see n 693 above).

and finances, and which need to be looked at together, in order to make a meaningful assessment.⁸¹⁶

The provision of general budget support is at cutting edge of aid delivery systems. Budget support therefore entails development partners supporting directly the budget of GoU by committing (or rather transferring) funds directly to the recipient country's consolidated fund and it is not earmarked at all.⁸¹⁷ This is to say that once the development partners' funds (EUROS, USD or British Pounds) enter the consolidated fund they become part and parcel of GoU funds and thereafter become fungible. Ordinarily, according to the OECD/DAC, this modality has three characteristics – added to the recipient country's treasury and administered by its Ministry of Finance, it is mixed with the recipient country's own funds and, it is spent and accounted for, in accordance with recipient country's rules and procedures.⁸¹⁸

The main advantage of budget support is that in principle it allows for greater local ownership of the development process.⁸¹⁹ In principle budget support has the potential to let the recipient country determine its priorities, which are supported by development partner. However in practice, development partners through budget support are involved at strategic levels in the process

⁸¹⁶ G Handley 'Sector budget support in practice' (2009) report prepared for the Overseas Development Institute.4. Available at <http://www.odi.org.uk/resources/download/4578.pdf> (accessed on 15 June 2010).

⁸¹⁷ OECD-DAC 'Harmonising Donor Practices for Effective Aid Delivery: Budget Support, Sector-Wide Approaches and Capacity in Public Financial Management' DAC Guidelines and Reference Series OECD (2006) 26.

⁸¹⁸ OECD-DAC (see n 817 above) 26.

⁸¹⁹ Ministry of Finance, Planning and Economic Development (see n 320 above) article 8.

of policy formulation and implementation, thereby eroding the local ownership idea.

Stroh notes that, budget support does have the inherent vulnerability in the sense that if there is no respect of the budget and the resources channelled through it, this modality is subject to gross abuse.⁸²⁰ It is therefore essential that there is strict budget discipline and oversight to ensure that the money provided is used for the intended purpose. In a bid to mitigate against this problem, development partners closely follow and take part in the budget formulation and execution. In addition, they support the strengthening of oversight agencies, like the office of the auditor general, in a bid to reduce on the potential for abuse of resources. A number of development partners like the Netherlands, Sweden and Denmark are beginning to seriously think of either stopping or reducing budget support due to concerns over corruption and are reverting back to projects.⁸²¹

Sector budget support is another modality used. This type of budget support allows for notionally earmarking funds for a particular sector.⁸²² Some donors are providing sector budget support (earmarked/notionally earmarked budget support), which essentially refers to providing support to specific sectors such as justice, law and order, education and health.⁸²³ The same concerns that

⁸²⁰ Justine Stroh was the Economist with the Embassy of Ireland 2002- 2007 and she revealed this in an interview I held with her on 30 April 2011 in Kampala

⁸²¹ Stroh (see n 820 above).

⁸²² S Lister, T Williamson, J Steffensen, W Baryabanoha *Uganda Country Report: Joint Evaluation of General Budget Support 1994- 2004* (2005) S3. Available at <http://www.dfid.gov.uk/Documents/publications1/evaluation/gbs-uganda.pdf> (accessed on 14 April 2011).

⁸²³ Lister *et al.* (see n 822 above) 15-16.

apply to general budget support apply here. Lawson and Booth view this as a less strict definition of sector budget support.⁸²⁴ Sector budget support is in essence therefore budget support, as once the money is remitted to the government accounts it becomes fungible.⁸²⁵ It can be said that the concept of notionally earmarking funds for a particular sector is really a matter of smoke and mirrors. Sector budget support is a concept that was developed to give development partners some form of assurance and comfort that their money was earmarked for sectors of their choice and interest. In reality, it amounts to budget support.

The use of a basket fund, or what is also sometimes known as a joint partnership fund, is an emerging trend. In this situation, various development partners under the lead of one, or supported by an implementation secretariat/unit, pool funds into one fund. Development partners also use these mechanisms as a joint operational coordination feature, especially with NGOs. In addition, NGO networks with national coverage are more and more being favoured for assistance. While the operational advantages of this approach are clear there is sometimes a feeling that the development partners are ganging up or forming a ‘development cartel’.

Within this cartel, development partners will collectively choose which agency or thematic areas to support. This, in some respects, does not augur well for several NGOs which, hitherto, would receive core funding from one

⁸²⁴ A Lawson, D Booth ‘Evaluation Framework for General Budget Support’ (2004) 20. Report to Management Group for the Joint Evaluation of General Budget Support, February 2004.

⁸²⁵ Stroh (see n 820 above).

development partner. In addition, there is a tendency to focus on funding activities and not the operation/administrative side of the programme. This has left many NGOs crippled without the ability to go out and run their activities. It can be contented that there is need for development partners to strike a balance between funding the operational costs and the activities.

Credit is also used. The World Bank is the primary player in the provision of credit to the GoU.⁸²⁶ So far, the WB has been offering the GoU a credit facility to the tune of USD 150 million per year.⁸²⁷ The Bank's poverty reduction support credit (PRSC) mechanism has inbuilt benchmarks relating to corruption, among others.⁸²⁸ A number of other development partners had until recently, before the introduction of the Joint Budget Support Facility (JBSF), signed up to this mechanism.⁸²⁹ The GoU and the World Bank agree on a series of actions, with benchmarks and outputs to be carried out in a sequence in order for GoU to gain access to credit.⁸³⁰

In addition, a number of development partners, mainly those from the European Union, have under the DAC of the OECD subscribed to the harmonisation principles.⁸³¹ The primary objective of this initiative as stated is to:

⁸²⁶ Twesiime (see n 781 above).

⁸²⁷ Twesiime (see n 781 above).

⁸²⁸ See World Bank Uganda website for more details at <http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P101231> (accessed on 11 January 2011).

⁸²⁹ Stroh (see n 820 above).

⁸³⁰ Stroh (see n 820 above).

⁸³¹ DAC Guidelines and Reference Series: Harmonising Donor Practices for Effective Aid Delivery. OECD, available at <http://www.oecd.org/dataoecd/0/48/20896122.pdf> (accessed on 7 November 2005)

Harmonise operational procedures and the highest standard so as to reduce transactions costs and make ODA disbursements and delivery more flexible taking into account national development needs and objectives under the ownership of the recipient country.⁸³²

Governance indicators including some on human rights have been developed by the DAC network on Governance (GOVNET).⁸³³ The concept of harmonisation and specialisation entails that development partners remain in sectors where they are deemed to have comparative advantage from the view point of human capacity and financial contribution.⁸³⁴ In addition, development partners would reduce the number of sectors they engage in.⁸³⁵ This new concept will have ramifications for the human rights agenda in Uganda. Civil society organisations globally are already weary of the harmonisation approach noting that an excessive rigid application of these principles to CSOs could stifle initiative, hamper innovation or divert energies to other pursuits.⁸³⁶ Lister and Nyamugasira also shared this concern.⁸³⁷

5.9. Relationship/ working modus

The partnership between the GoU and its development partners is underpinned by a number of coordination mechanisms.

⁸³² DAC Guidelines and Reference Series (see n 831 above).

⁸³³ GOVNET an international forum that brings together practitioners of development cooperation agencies, both bilateral and multilateral, as well as experts from partner countries. Areas of work include: The fight against corruption, public sector reform, capacity development, human rights, democracy, the rule of law, assessing governance development, and fragile states. For more details see www.oecd.org/dac/governance (accessed on 7 November 2005).

⁸³⁴ DAC Guidelines and Reference Series (see n 831 above).

⁸³⁵ DAC Guidelines and Reference Series (see n 831 above).

⁸³⁶ Advisory group on Civil Society and Aid Effectiveness. Synthesis of Findings and Recommendation ,2 presented at the 3rd High Level Forum on Aid Effectiveness. September 2008, Accra Ghana.

⁸³⁷ Lister and Nyamugasira (see n 337 above) 94.

5.9.1. Joint government/donor reviews

It is now common practice for the GoU and the development partners in a specific sector to hold either biannual or annual joint reviews.⁸³⁸ This is done in the Justice, Law and Order, Health decentralisation, Education and Water sectors. These reviews are attended by a cross-section of development partners and the GoU.⁸³⁹ The design and architect of these reviews can be summed up in their titles, ‘Joint Government of Uganda/donor reviews’.⁸⁴⁰ The original ideal was that the reviews would provide a platform and space for the government to account to its primary funders, the donors.⁸⁴¹ However, of late, the civil society and the private sector are now also invited to these joint reviews. While the uptake by civil society has been slow, they are beginning to increasingly occupy the space available to them and engage with government on key policy issues.⁸⁴²

At these reviews, both narrative and financial progress reports are discussed and undertakings of key issues to be carried out over a six months or one year period are agreed. These are then evaluated at the subsequent joint review. To some donors, the reviews are an important moment that becomes the point of determining whether or not to release their next tranches to the sector under review.⁸⁴³

⁸³⁸ International Human Rights Network (see n 693 above). The report provides a discussion of donor interaction with JLOS. In addition I attended these reviews while a Legal/Governance Advisor with the Embassy and also as Programme Manager of the Human Rights and Good Governance Programme of the European Union from 2000- 2009.

⁸³⁹ International Human Rights Network (see n 693 above) 12.

⁸⁴⁰ International Human Rights Network (see n 693 above)12.

⁸⁴¹ International Human Rights Network (see 693 above) 12.

⁸⁴² International Human Rights Network (see n 693 above) 12.

⁸⁴³ International Human Rights Network (see n 693 above) 15.

The rationale for having these joint reviews, which are favoured by general budget support and sector budget support partners, is that it reduces the number of missions and transactions costs.⁸⁴⁴ It is believed that through the use of joint reviews, there will be reduced repetitive missions.⁸⁴⁵ Of course, the problem here lies with project partners who are not part of this system and still have their separate missions. This means that in reality, the number of missions has not significantly been reduced. The ideal situation would be where all development partners attend the reviews and use the outcomes of the reviews. The OECD DAC notes that there has been a modest trend in increasing joint missions from 18% in 2005 to 20% in 2007. It is of the view that despite this progress, clearly significant efforts are still needed.⁸⁴⁶

During these reviews progress reports and future directions of a sector are determined. The development partners are closely involved in this process and in some cases, determine the direction that a sector will take. The development partners are involved in drafting the undertakings and since their future releases are pegged to these, they have immense influence on what is finally agreed. It however must be pointed out, that experience varies from sector to sector—in some, and development partners have more say than in others.

5.9.2. Development partner groups

The development partner coordination architecture in Uganda is well-developed with several development partner groups in place. Table 8 below

⁸⁴⁴ Ministry of Finance, Planning and Economic Development (see n 320 above) section 7.

⁸⁴⁵ Amis (see n 810 above) 4.

⁸⁴⁶ OECD-DAC (see n 817 above).

which I have developed highlights the key groups in the governance and human rights area.

Table 8 :Donor coordination groups in governance and human rights (as of December 2009)

Name of Group	Frequency	Chair
Partners for Democracy and Governance (PDG)	3 rd Wednesday every month	The Netherlands
Human Rights Working Group	Once a month	Sweden
Accountability Working group	Once a month	DfID
Peace and Conflict Working Group	Ad Hoc	Denmark
Democratisation Working Group	Once a month	Denmark
JLOS Development Partner Group	Last Friday of every month	The Netherlands
Amnesty Working Group	Ad hoc	Amnesty Commission
Procurement Working Group	Once a month	Procurement Authority
Uganda Human Rights Basket Fund Donor Group	Ad hoc	DANIDA
Donor Coordinating Group on Gender	Once a month	DANIDA
Local Donor Partner Group (LDPG)		The World Bank

The above said groups meet at least once a month to discuss and keep abreast with the key issues in a sector. They mainly monitor and analyse developments relevant, to or affecting the sectors, and follow up on them with the relevant channels of dialogue. The chairmanship of the group rotates annually among the membership and terms of reference have been developed

for each group. The chairperson in turn keeps in close contact with the sector agencies.

Experience has shown that some chairpersons tend to want to micromanage and direct sector agencies and this has led to a lot of friction between the partners and the government or CSO agencies. In fact, some partners develop ‘a father christmas syndrome’ where they call the tune in return for treats in form of money. This syndrome is very similar to Christmas time when children are given gifts by Father Christmas for being nice. This in practice also happens between development partners and the recipients of their assistance. There are times when an agency will be rewarded for being nice and given assistance ‘treats’ and times when the assistance will not be given due to bad behaviour.⁸⁴⁷

Polman believes that development assistance sometimes props up bad governments and in effect helps maintain the *status quo*.⁸⁴⁸ She goes as far as noting that in some cases it is necessary to withdraw assistance especially if it is propping up bad governments.⁸⁴⁹ The Overseas Development Institute (ODI) while agreeing in part with Polman points out that development assistance does assist poorer countries especially in the area of service delivery.⁸⁵⁰ Polman is right, which she says that, governments which violate

⁸⁴⁷ I participated in a meeting in June 2006 where it was agreed that a government institution would be given a vehicle as an incentive to work better.

⁸⁴⁸ Polman (see n 78 above) 88.

⁸⁴⁹ Polman (see n 78 above) chapter 5.

⁸⁵⁰ Overseas Development Institute (2010). The Humanitarian’s Dilemma: collective action or inaction in international relief? Background Paper Note 1. Available at <http://www.odi.org.uk/resources/details.asp?id=4757&title=humanitarians-dilemma> (accessed on 20 August 2010).

human rights should not receive development assistance even if they act ‘a little bit’ good.

This is further compounded by the fact that some development partners who are as junior as possessing less than two years experience, have unprecedented access to dialogue with senior ranking government officials, who in some cases try not to ‘offend’ the deep pocketed benefactors. In fact, a good number of these officials from development agencies have limited experience in dealing with senior government officials and do not know the first thing about how governments operate. Most have a background working with NGOs and related development agencies. This situation sets the scene for potential clashes. For instance, an official from one of the leading development agencies in Uganda wrote an official letter to a ministry addressed to the permanent secretary and copied to the Minister.⁸⁵¹ This was in breach of government protocol as the letter should have been addressed to the Minister as a political head of the Ministry and then perhaps copied to the permanent secretary. In another instance, during a high level accountability sector meeting, a junior female representative from one of the development agencies addressed a very senior civil servant as ‘that man over there’. The senior civil servant was so offended that he left the meeting shortly after the incident. The meeting was, among other things, looking at setting up the accountability sector, which would be the focal sector for the anti-corruption drive in Uganda.⁸⁵² President Museveni, who is sometimes critical of development partners, is reported to have told development partners that he did not want their advice on how to

⁸⁵¹ I witnessed this while I was the Governance Advisor with the Embassy of Ireland 2004 -2006.

⁸⁵² I witnessed this while I was a Governance Advisor with the Embassy of Ireland 2004 - 6.

govern Uganda. ‘How can a young man teach me about governance? I cannot accept this’, Museveni told development partners at a meeting.⁸⁵³ Museveni’s view could stem from the issue discussed above, where inexperienced junior officials are sent to missions abroad, perceivably to lecture African leaders. Sometimes inexperienced as they are, the junior officials, it can be said, are given audience simply because they control the assistance purse.

An evaluation of JLOS observed that some of the donor representatives did not have the technical competency and recommended that they build their capacity.⁸⁵⁴ Hancock, in consonance with the above position, writes that the aid personnel who consume these resources (aid) come in all shapes and sizes, all kinds and variations.⁸⁵⁵ Some are very good indeed and undoubtedly earn their pay. Others are extraordinarily bad, their motivation is questionable and their input is negligible or even harmful.⁸⁵⁶ All too often during third world disasters, staff, experts and consultants are not subjected to any kind of scrutiny before they are sent into the field, as common sense gets abandoned in the rush to help.⁸⁵⁷ Hancock further tells of how he came across a bronzed globe trotter in charge of a highly reputable British voluntary agency whose only qualification was that he had an African wife.⁸⁵⁸

It should, however, be noted that the study is not taking the position that all development agencies have inexperienced or questionably qualified staff. It is

⁸⁵³ ‘Museveni rebukes donors’ *The Daily Monitor* Thursday October 9, 2008.

⁸⁵⁴ International Human Rights Network (see n 693 above) 90.

⁸⁵⁵ Hancock (see n 58 above) 8.

⁸⁵⁶ Hancock (see n 58 above) 8.

⁸⁵⁷ Hancock (see 58 above) 8.

⁸⁵⁸ Hancock (see n 58 above) 8.

an issue that does occur and on several occasions, most government and CSO officials resent the fact that they have to deal with these officials over whom, in most cases, they have more experience and qualifications. The incentive and motivation to hang in there and deal with them is the fact that they provide the much needed development assistance.

It can be argued that the budget support modality has afforded development partners greater leverage in the policy development and implementation in the recipient countries and this, in some cases, can be a point of great tension. Olukoshi in support of this position takes the view that ‘the donorisation of the domestic policy processes amounted to a capture of the state by external forces and the donorisation of the system of accountability’.⁸⁵⁹ There is little doubt that with the budget support modality, development partners have been given unprecedented access to the development planning process. They now sit as equal partners on the table and agree on development plans, strategies, priorities and key result areas. This does not bode well for the independence of developing countries.

ODI boldly notes that there are persistent challenges where donors do not ‘practice what they preach’ in relation to Paris and Accra commitments to aid effectiveness. ODI observes that while Uganda is recognised as displaying strong ownership (for example of its National Development Plan) donors still operate according to their own priorities.⁸⁶⁰

⁸⁵⁹ Olukoshi (see n 55 above) 19.

⁸⁶⁰ Overseas Development Institute (see n 38 above) 27.

The Open Society Institute (OSI) agrees with the above position and notes that donor institutions and governments have become important stakeholders in the formulation and implementation of government policies.⁸⁶¹ Such involvement is often seen as a threat to democratic accountability, since the government may be pressured to take decisions that go against popular opinion or are not subject to debate in Parliament. OSI asks a very pertinent question: How does the government manage the delicate act of balancing donor conditionalities with the public interest?⁸⁶² Most African governments find themselves having to pander to the interests of those picking the bill. This is almost inevitable as those with the financial muscle have the power and therefore wield enormous influence and leverage. It is imperative that African governments take deliberate efforts to reverse this dependence on assistance and begin to rely more on domestically mobilised resources. In addition, these governments need to rethink their spending priorities.

At present Uganda spends over 20% of its national budget on public administration.⁸⁶³ There is need to ask: Does Uganda need such an expensive administration or can this money be rechanneled to more deserving sectors? To further illustrate this point, Uganda has in recent years spent UGX 80 billion on a new state of the art presidential jet⁸⁶⁴ and another whopping sum

⁸⁶¹ Open Society Institute. Ghana. Democracy and Political Participation (2007) 125. A review by AfriMap and Open Society Initiative for West Africa.

⁸⁶² Open Society Institute Ghana (see n 861 above) 125.

⁸⁶³ Uganda Bureau of Statistics Function Classification of Central Government Recurrent Expenditure 2005/06 – 2009/10 (2010) 1 Available at <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/TGF32010.pdf> (accessed on 30 April 2011).

⁸⁶⁴ M Tebajjukira 'Museveni's Old Plane Sold for US 10m' *The New Vision* 23 February 2010, 1 and Xan Rice 'MP's back Uganda Presidents plea for 24 Million Pounds Jet Upgrade' *The Guardian* 20 December 2007, 3.

on furnishing a newly refurbished state house⁸⁶⁵, not to mention the purchase of fuel guzzling 4X4's for numerous public officials.⁸⁶⁶ How many primary health centres, schools or teachers can this money pay for, one wonders. Does a poor agro-economic country, like Uganda, really need such lavish consumptive expenditure such as the stated amounts spent on a Presidential jet while children, some with jiggers in their bodies walk miles, hungry, barefooted to school and health centres remain without drugs? It certainly does not. Some writers, like Mwenda and Tangiri, have attributed the reason for this state of affairs, to the effect of budget support, which distorts domestic accountability by making the national leadership less accountable to its taxpayer.⁸⁶⁷ There is need, therefore, to introduce a new dynamic that can propagate and instigate domestic accountability to focus on priorities that will enhance the rights and dignity of the people.

Samura makes a valid observation, which resonates with one of the main themes in this chapter that with dependence on assistance comes less of independence and ownership.⁸⁶⁸ He notes that many sub-Saharan African countries have had high levels of aid dependence in excess of 10% of Gross Domestic Product, or half of government spending for decades. When half the government budget comes from aid, African leaders find themselves less inclined to tax their citizens.⁸⁶⁹ As a result, governments that are highly

⁸⁶⁵ New Vision reporter 'State House Repairs to cost UGX 25 billion' *The New Vision* 3 May 1999 1.

⁸⁶⁶ The Republic of Uganda *The Uganda Public Service Standing Orders* (2010) Rule F-(1) 15 provides that public servants from the position of Head of Department are entitled to an official vehicle.

⁸⁶⁷ Mwenda & Tangiri (see n 678) 24.

⁸⁶⁸ S Samura 'Addicted to Aid', a documentary aired on *BBC Panorama* programme on 23 November 2008. Available at <http://news.bbc.co.uk/1/hi/programmemes/panorama/7738297.stm> (accessed on 5 January 2009).

⁸⁶⁹ Samura (see n 868 above).

dependent on aid pay too much attention to donors and too little to the actual needs of their own citizens.⁸⁷⁰ And unfortunately, donors have their own objectives, which are not always the same as those of the citizens of African countries.⁸⁷¹

The African Peer Review Panel (APR panel) established that Uganda is one of the most aid-dependent countries in Africa.⁸⁷² The APR panel acknowledges the role that development assistance has played to redress capital deficiencies (financial, physical and human) and that it has been used to meet the shortfalls in resources aimed at various investments. The panel attributes the massive improvements in education and health care mainly to aid. The panel goes on to note that there is a danger that external aid can create a dependence syndrome that weakens the recipient government and its people. The panel recommended that the Government of Uganda undertake an orderly transition, from the current high dependence on foreign aid for financing economic and social development to building up leadership in the political citizenry and civil society arena.⁸⁷³ It is clear the APR panel is worrying about the effects of depending on foreign aid such as weakening the government. It could therefore be concluded that Uganda is addicted to aid.

It is therefore essential that recipient governments take the necessary steps to insulate themselves from external influence and wean themselves of this addiction. One such way is to reduce the level on dependency of development

⁸⁷⁰ Samura (see n 868 above).

⁸⁷¹ Samura (see n 868 above).

⁸⁷² African Peer Review Panel (see n 1 above) 37.

⁸⁷³ African Peer Review Panel (see n 1 above) 37.

assistance and rely more on domestically-mobilised resources. Once recipient governments are able to rely less on development assistance, they should be able to set their own agenda.

Another way is to have well-thought out development plans, which they present to development partners and take full charge of the planning and implementation. At the moment, there seems to be a willingness to cede this function to consultation and development partners. It is essential therefore that recipient government officials are well-prepared to take on the development partners in planning meetings. It would be preferable that all senior government officials are taken through negotiation skills training in order to equip them with much needed negotiating skills.

An issue related to aid dependency is how much of this aid or assistance reaches the intended beneficiaries. There is hardly any data available that can authoritatively answer this question in the case of Uganda. There is no doubt that some of the development assistance is lost to corruption. Uganda is ranked by Transparency International as one of those countries with rampant corruption.⁸⁷⁴

Kapoor makes a very revealing point, when he points out that the real aid money that is actually made available for funding development in the poorest countries, is running only at about USD 30 billion a year or only about 40% of

⁸⁷⁴ Transparency International ranked scored Uganda on its corruption perception index, with less than 3 over the last 8 years which is indication that there is rampant corruption. See <http://www.transparencyinternational.org> (accessed on 19 August 2010).

the total aid volume.⁸⁷⁵ Administrative costs, technical assistance, accounting for debt relief, tying aid to purchases from the donor country, and aid to geo-strategically important but less needy countries, are some of the reasons that more than 60% of the current aid volume is not available as money that can be spent on real and urgent development needs, such as meeting the MDGs.⁸⁷⁶ This exists within a broader context of insufficient aid volumes which, despite promises, are currently running only at about 0.3% of the GNI of donor countries.⁸⁷⁷ Kapoor's findings mean that about 40% of the aid is spent on development and this in effect means that the biggest percentage of this assistance does not reach the intended beneficiaries.

This then leads to the questioning of whether development assistance is really relevant or reaching its intended targets. Samura has raised this question as well, in his various documentary productions.⁸⁷⁸ Has the development assistance industry become a self-perpetuating game that has lost its direction? It would appear that with 60% of the aid not reaching its target, the answer to this question is in the affirmative.

5.9.3. Joint assessments

In chapter 1, it was pointed out that those development partners that provide general budget support carry out annual joint assessments. To this end, ten development partners have agreed with the Government of Uganda to provide

⁸⁷⁵ S Kapoor 'Exposing the myth and plugging the leaks'.in "Impossible architecture" Social Watch (2006) 10- 20 available at <http://www.socialwatch.org/en/informesTematicos/99.html> (accessed on 14 December 2009).

⁸⁷⁶ Kapoor (see n 875 above)10.

⁸⁷⁷ Kapoor (see n 875 above)10.

⁸⁷⁸ Samura (see n 868 above).

budget support under a Joint Budget Support Framework (JBSF).⁸⁷⁹ Under the JBSF, the Government of Uganda and Development Partners developed a Joint Assessment Framework (JAF), endorsed in October 2009, which provides indicators and actions against which Government performance is judged on an annual basis, which thereafter lays the basis for donor disbursement decisions.⁸⁸⁰ Human rights, rule of law and access to Justice are some of the underlying principles for the provision of budget support by the development partners.⁸⁸¹ The development partners come to the conclusion that, while there is regression in some areas of governance which needs to be urgently addressed, overall the Government of Uganda continues to show a sufficient level of commitment to the underlying principles to enable the JBSF development partners to continue with the provision of budget support. However, if the current trend continues it may have serious consequences for future disbursement of budget support.⁸⁸²

With respect to human rights, the development partners note that:

There are continued challenges in terms of the protection of people's basic freedoms and human rights, including the rights of free assembly and free expression, as well as the freedom of the media to report. Some important progress was registered in the recent period in a few selected areas. The passing of the Domestic Violence Bill by Parliament was a positive step forward when it comes to the securing of women's rights and gender equality. Another significant achievement was the passing of legislation

⁸⁷⁹ Joint Budget Support Framework (2009). Appraisal of Performance of the Government of Uganda against the joint framework assessment 1 December 18, 2009, Kampala. The World Bank, European Union, African Development Bank, and the Governments of United Kingdom, Netherlands, Germany, Sweden, Denmark, Norway and Ireland all provide budget support to Uganda and are part of this joint assessment modality.

⁸⁸⁰ Joint Budget Support Framework (see n 879 above) 11.

⁸⁸¹ Joint Budget Support Framework (see n 879 above) 11.

⁸⁸² Joint Budget Support Framework (see n 879 above) 11.

outlawing female genital mutilation. However, overall the period under consideration was characterised by stagnation and regression in some key areas.

Development partners are very concerned about reports detailing continued arbitrary arrests, illegal detention and complaints of torture by police, as well as the excessive use of force by security forces during the September 2009 riots. Moreover, the development partners are very worried by the tabling of the Anti-Homosexuality Bill in Parliament in October 2009. This Bill has attracted considerable international attention, including in development partner capitals. The passing of the Bill into law in its present, or even a moderated form, would have serious negative human rights implications, not only with regard to the LGBTI community, but civil society and the general population at large. Finally, while the media is perceived to be allowed to operate relatively freely in Uganda in comparison to many of its neighboring countries, development partners are concerned about restrictions on media freedom that occurred throughout 2009, especially during the September riots. These included the revoking and suspending of media licences. Furthermore, individual journalists and editors were arrested, detained and charged, and equipment was damaged. We also note the lack of professionalism in some media outlets and the effects this might have had on political tensions. While there is a case for revising and consolidating the legislation that impinges on the freedom of the media, no progress has been made in this area. We urge the Government to take seriously the UHRC's recommendations in this regard.⁸⁸³

From the above, it is quite clear that development partners do pay attention to human rights and take into account whether Uganda is progressing positively in this area when making their funding decisions. One issue that will be examined further in this study is how development partners use their finance leverage to advocate for certain rights which may not be a priority for Uganda such as the rights of lesbian, gays and transsexuals (LGBT).

⁸⁸³ Joint Budget Support Framework (see n 879 above) 11-12.

5.9.4. Use of consultants, technical assistance (T/A)

The use of highly paid consultants and/or T/A is a fairly entrenched practice. This involves the use of experts, who are either in projects or placed within an agency to provide capacity building. The vast majority of consultants or T/A are paid for by the development partners and in many respects owe their allegiance to them. This gives credence to the adage ‘he who pays the piper calls the tune’. More often than not, these consultants are deeply involved in drafting major policies and strategic plans for the agencies. The consultants wield a lot of power and influence over what gets in or gets out (washed out) of the policies and reports they write.

In many respects, it can be concluded that affairs of these institutions have been privatised or outsourced to consultants. This in effect seriously raises the question of whether there is locally-owned and led development. One primary reason for this outsourcing is the fact that public servants are paid very meagre salaries and have no motivation to write these policies or reports dedicatedly. When they do, they want the terms applicable for their work to be synchronised with those of expatriates and to provide the service as private consultants. This, in effect, could amount to privatising the State. So it can be asked, if major policies including the UHRC corporate plan are written by consultants paid for by development partners, where is the local ownership?

A few examples can be cited to illustrate the power of consultants. These examples are drawn from the author's experience.⁸⁸⁴ The first is in respect of the PEAP of Uganda. During the revision process of the PEAP in 2004, a British consultant was commissioned by DFID to be the lead consultant. Several working groups were established in accordance with the pillars of the PEAP. These groups were supposed to take the lead in developing sector papers that would eventually form the revised PEAP. One such group was the governance rights working group. This group, *inter alia*, had the mandate to come up with the human rights priority areas to be included in the PEAP. Representatives from the UHRC, supported by development partners such as Ireland, Denmark and the Netherlands, included the reference to adopting human rights-based approach to the development process. This was the agreed position of the group.

It subsequently reflected in the draft PEAP that was submitted to the lead consultant. However, to many of the group members' surprise, the reference to the HRBA was washed out of the final version of the PEAP, by presumably the lead consultant who was a macroeconomist.⁸⁸⁵ A vital opportunity to have the HRBA integrated into the main development blue print of Uganda was lost due to the power of the lead consultant with his laptop in a Kampala hotel.

⁸⁸⁴ I was from 2000-2009 working with the Embassy of Ireland and European Union programme as a Legal/Governance Advisor and Programme Manager respectively. The examples provided are from first hand experience.

⁸⁸⁵ I was at the time in 2004 a Governance Advisor with the Embassy of Ireland was a member of the governance working group. The Poverty Eradication Action Plan (PEAP) draft of 20 March 2004 makes reference to the rights based approach on pages 135-136. However in the final December 2004 version of the PEAP this was removed. Chapter 6 on Good Governance does not contain the section on the rights-based approach.

Yet another example is a technical advisor to the chair of the UHRC in 2005. The basket fund donors of the UHRC paid for an institutional/technical advisor. The mandate of this advisor was to assist the chair of UHRC. However, this advisor was viewed with a lot of suspicion and seen as more as a representative of the donors. Since he was paid by the donors he was seen as accountable to them. This situation led to a lot of friction between the advisor and the staff of UHRC. Several of the ideas put forward were not easily accepted. To this end, when his contract came to an end, it was not renewed despite funds being available from the basket fund.⁸⁸⁶

On a positive note, consultants can be a useful tool in promoting and protecting human rights. In 2004 Irish Aid and the Netherlands commissioned consultants from the International Human Rights Network and Nordic Consulting Company to carry out a mid-term review of JLOS. The purpose was to take stock of what had been achieved under SIP I together with the challenges faced. The consultants were also tasked to suggest possible priority areas for SIP II. While it was not the intention of either Irish Aid or the Netherlands, that the consultants, who had a strong human rights background, make ground breaking advances in pushing for a human rights agenda in JLOS, it was a welcome unintended consequence. They were able, albeit with initial resistance from the JLOS officials to include a key result area on fostering a human rights culture across JLOS into SIP II. In addition, the

⁸⁸⁶ I was a member of the UHRC basket fund donor group from 2002- 2006 and during meetings with officials of UHRC where this view was expressed on several occasions.

HRBA was embedded into SIP II.⁸⁸⁷ This is indeed an example of the positive role consultant can play. However, it must be borne in mind that whether all JLOS institutions are really committed to fostering a human rights culture is questionable.

Edroma takes the view that consultants who are engaged to fill in capacity gaps of agencies can be helpful in providing the much needed expertise to fill the gap.⁸⁸⁸ These, she notes, are mainly those consultants commissioned to assist with developing policies. However, she takes issue with some consultants who are brought in to do external evaluations.⁸⁸⁹ She points out that most of these consultants tend to think for the agencies and end up prescribing solutions that are not applicable or accepted by the implementing agencies.⁸⁹⁰ Barrie agrees with Edroma when he observes that the problem with the so-called development aid is that it is very difficult for the European and American consultants to understand the problems of these people of Sierra Leone.⁸⁹¹

It is therefore critical to ensure that the right type of consultant is used, together with ensuring that the agency for whom the work is to be done are on board. In the alternative, combining international and local expertise can be another option allowing both types of consultants to cross-pollinate their

⁸⁸⁷ I was the Governance Advisor with Irish Aid/Embassy of Ireland in 2004 and was involved in selecting the consultants. The JLOS Strategic Investment Plan (SIP II) has as one of its key result areas, fostering a human rights culture across the sector.

⁸⁸⁸ E Edroma is the former Senior Technical Advisor to the Justice, Law and Order Sector and Edroma revealed this during an interview I held with her on 3 July 2008 in Kampala.

⁸⁸⁹ Edroma (see n 888 above).

⁸⁹⁰ Edroma (see n 888 above).

⁸⁹¹ M Barrie is a medical doctor in Sierra Leone quoted in 'Addicted to Aid' by Sorious Samura aired on *BBC Panorama* programme on 23 November 2008. Available at <http://news.bbc.co.uk/1/hi/programmemes/panorama/7738297.stm> (accessed on 5 January 2009).

experiences and expertise, ultimately strengthening their product for the implementing or beneficiary institutions. ‘Cut and paste’ consultants should therefore be avoided. These are consultants that use previous work without any original or contextual research. This would avert most reports being shelved, as is the case now.

Related to the issue of ownership and buy- in, some development partners have been known to commission studies or evaluations, without involving the government agencies, only to later request that the government agencies adopt the studies or evaluations. Two examples of this include the Embassy of Ireland and the Netherlands in 2004. They jointly commissioned the mid-term evaluation of JLOS as an internal study. However, later they wanted JLOS to adopt it as a sector evaluation. This was resisted, though in the end some of its recommendations were taken on board.⁸⁹²

The second example is when the World Bank in 2005 commissioned a consultant to undertake a justice sector assessment.⁸⁹³ Following the completion of the study, the World Bank requested JLOS to adopt it as a sector assessment, a request that Edroma reveals was roundly rejected. In fact, she notes, that there was no work done in so far as the assessment was concerned and no one in the sector was consulted. The information in the assessment was outdated and it lacked analysis of the data.⁸⁹⁴ It is therefore critical to use consultants in a careful manner and have clarity as to what the

⁸⁹² I was the Governance Advisor with the Embassy of Ireland in 2004 and was closely involved with the commissioning of the mid term evaluation of JLOS study.

⁸⁹³ World Bank Justice Sector Assessment Study (2005). This study was commissioned by the World Bank to assess the Justice, Law and Order Sector of Uganda.

⁸⁹⁴ Edroma (see n 888 above).

nature of their assignment covers, especially within the framework of the donor-government partnership. It is sometimes wrongly assumed that since development partners are in partnership with the recipient countries, their actions and intentions mutually complement each. There is need to share information and ensure that sides of the partnership are singing from the same hymn sheet. In the above stated examples this was clearly not the case.

5.9.5. Dialogue with government

Development partners mainly through their ambassadors and heads of mission hold regular high level meetings with senior government officials both at formal and informal levels.⁸⁹⁵ These meetings are used as avenues to discuss pertinent human rights and governance issues and can prove to be quite effective on getting some issue on the agenda and pushing the agenda. Under Cotonou Agreement, article 8 provides for such modalities as outlined above.⁸⁹⁶ Several meetings have been held and demarches presented on issues such as the death penalty and the question of torture in Uganda.⁸⁹⁷ It is rather questionable whether these meetings have contributed to advancing the human rights agenda in Uganda. While there is no doubt that there is an open and frank dialogue, in most cases the situation is hardly remedied. For example the death penalty remains applicable in Uganda and security agencies continue to detain people in safe houses, despite several high level meetings over these issues.⁸⁹⁸

⁸⁹⁵ Aine (see n 244 above).

⁸⁹⁶ European Union (see n 527 above) article 9.

⁸⁹⁷ Illing (see n 595 above).

⁸⁹⁸ I from 2000 to 2010 attended several such meetings.

At the informal level, it is quite usual for an ambassador to host senior government officials to discuss an issue informally. For example, the Norwegian Ambassador hosted two high level informal meetings to discuss the issue of domestic violence which is quite rampant in Uganda.⁸⁹⁹ Following the breakfast meeting in March 2008, President Museveni in his Women's Day speech raised the issue of domestic violence. This is in part attributable to the breakfast meeting held with senior ministers, who brought this to his attention. These informal meetings are quite useful in getting issues on the agenda which are later followed up. One main draw back is the ad-hoc nature and possible lack of sustained follow up.

5.9.6. Diplomatic pressure and presence

In addition to dialogue with government officials, there have been instances where ambassadors and personnel from embassies have, through their presence and actions, put pressure on government to observe human rights. Several instances illustrate this point. The first is the case of retired Colonel Kizza Besigye who was one of the key opponents to President Museveni in the February 2006 Presidential elections in Uganda. Besigye was arrested on 14 November 2005 and subsequently charged together with 22 others with three counts: (1) treason, (2) concealment of treason and (3) rape and remanded to Luzira maximum prison. The High Court of Uganda on 25 November 2005 granted Besigye interim bail pending the outcome of a reference to the Constitutional Court on the question whether bail is a right. In the process of

⁸⁹⁹ The Norwegian Ambassador H. E. Bjorg Leite hosted a high level working lunch on 15 July 2008 that brought together some of the key JLOS stakeholders to discuss the issue of domestic violence in Uganda. The meeting was a follow up to a similar high level working breakfast at which the former President of Ireland Mary Robinson and the former Norwegian Prime Minister H.E Kjell Bondvik on 7 March 2008 I attended both meetings.

the criminal trial before the High Court, Besigye was charged before the general court martial. During the various court hearings, several ambassadors attended the hearing sessions, which in many ways was unprecedented, but it was a way of putting pressure on government to ensure that the rule of law was respected. In fact, when the High Court was raided by security agencies and a special military unit (popularly known as the ‘Black Mambas’) several heads of mission were caught up in the standoff between the black mamba troops and the accused persons who had been granted bail by the court, with the security agencies refusing to respect the court decision.⁹⁰⁰

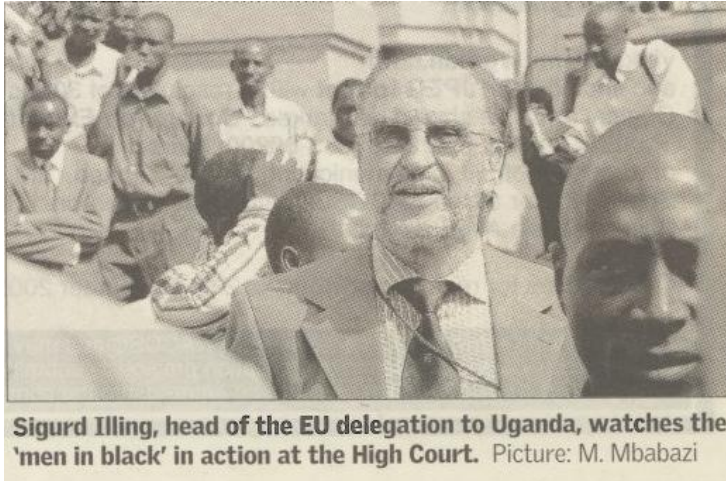
In respect of the military invading the High Court, the Principal Judge referred to the incident as ‘the most naked and grotesque violation of the twin doctrines of the rule of law and the independence of the Judiciary’. He went on to refer to it as the ‘raping’ of the Judiciary.⁹⁰¹ The position of the Principal Judge is re-echoed by a public statement issued by the Judiciary, which strongly condemned the deployment of military and other security personnel and calls upon the executive arm of government to abide by its constitutional obligation to uphold and promote principles of the rule of law and Judicial independence.⁹⁰² This case, on the other hand, illustrates the limited effect ambassadors can have when the state is bent on violating human rights. Despite having several EU ambassadors at the High Court, it was attacked and the suspects’ bail disrespected despite having been granted by the court. See picture 1 below.

⁹⁰⁰ I was a Governance Advisor with the Embassy of Ireland and witnessed these events first hand. I attended both High Court session and the military court martial sessions in 2006.

⁹⁰¹ ‘Uganda military rapes the temple of Justice’ *Sunday Monitor* 20 November 2005, 28.

⁹⁰² See full statement ‘A statement by the Judiciary on the recent siege of the High Court by Security Personnel’ *The New Vision* 23 December 2005 21.

Picture 1: Sigurd Illing former head of the EU Delegation at the High Court.



Source: The East African Newspaper, November 21-27 2005

Another case involves two prominent members of parliament from the opposition who were charged with murder in May 2005. Again the ambassadors attended court and in fact, in rather a surprise decision, the MPs were granted bail within two months, which was and is not the case in murder trials.⁹⁰³ This could be explained by the presence of the ambassadors. The main fault line with this approach is that it is very selective. There are hundreds of ordinary people languishing in jail awaiting trial with no ambassadors to put pressure on the system for them.⁹⁰⁴

In recent times development partners and the Government of Uganda have been hotly engaged over the issue of LBGT. In Uganda, it is against the law to commit acts against nature that could be committed by anyone irrespective of

⁹⁰³ I was the governance advisor with the Embassy of Ireland and attended the High Court sessions of this case on a regular basis in 2005 and 2006.

⁹⁰⁴ At present the prison system in the country is grappling with overcrowding, with about 19,000 prisoners incarcerated in structures built in the 1930s for less than a third of the present population. And 59% of these are on remand awaiting trial and with the majority not having access to legal representation. See Uganda Prisons Service. (2007) prisoner census. It was reported that as of September 2007, there was a prisoner population of 19,149 of which 58.9% were on remand and 41.4% convicted.

sexual orientation. The Penal Code Act of Uganda outlaws this.⁹⁰⁵ For a number of years several development partners were very concerned about this situation. It was however agreed that the development partners would take up their concerns with the Government including the Uganda Human Rights Commission silently and behind closed doors.⁹⁰⁶ This was the position from 2000-2009. In 2009, the situation changed drastically. This was occasioned by the submission of the Anti-Homosexual Bill 2009 by Honourable Bahati (Member of Parliament).⁹⁰⁷ The object of this Bill is to establish a comprehensive legislation to protect the traditional family by prohibiting (i) any form of sexual relations between people of the same sex, and (ii) the promotion or recognition of such sexual relations in public institutions as healthy, normal or an acceptable lifestyle, including in the public schools, through or with the support of any government entity in Uganda or any non-governmental organisation inside or outside the country.⁹⁰⁸

The Bill seeks to declare homosexuality illegal in Uganda and goes even further to propose the death penalty for any person who commits the offense of aggravated homosexuality with another person who is below the age of 18 years, (1) where the person against whom the offense is committed is below the age of 14, (2) where the offender is infected with HIV, (3) where the offender is a parent or guardian or a person in authority over the person against whom the offence is committed, (4) where the victim of the offence is

⁹⁰⁵ The Penal Code Cap 120 Section 145 provides for unnatural offences.

⁹⁰⁶ In my role as a Governance Advisor with the Embassy of Ireland Uganda from 2000- 2007 I attended several meetings that discussed the possible response and strategies that development partners should take in respect of the abuse of the human rights of LGBT people.

⁹⁰⁷ The Anti-Homosexuality Bill, 2009 was presented as a private member's bill by Honourable David Bahati. MP, Ndorwa County West Kabale.

⁹⁰⁸ The Anti - Homosexuality Bill (see n 907 above) preamble.

a person with a disability, or (5) where the offender is a serial offender.⁹⁰⁹ This Bill has attracted a lot of heated debate within and outside Uganda. Several development partners have threatened to cut development assistance if this law is passed by parliament. Buturo, the Minister of Ethics and Integrity, is reported to have told the development partners that Uganda will not bend over for aid.⁹¹⁰

Hillary Clinton in response to this Bill said that the United States expected governments to be vigilant in preventing law from becoming an instrument of oppression as bills like the one under consideration in Uganda would do to criminalise homosexuality.⁹¹¹ Clinton's view is supported by several development partners who are putting pressure on Uganda to withdraw this Bill. In an apparent about-turn, President Museveni and some of his ministers, citing international pressure, have indicated that the Bill is not sanctioned by the government and that they were to review some of its clauses.⁹¹² Honourable Bahati (Member of Parliament), the mover of the Bill, is also reported to have indicated that he is willing to amend the Bill.⁹¹³ The debate and reaction by the development partners over the Anti-Homosexuality Bill reflects the leverage they can have when they opt to follow up on a matter. While the author does not agree with the Bill, the action of the development partners is rather suspect. Why do we not see development partners and foreign capitals reacting the same way to other human rights in Uganda such as torture, child sacrifice

⁹⁰⁹ The Anti - Homosexuality Bill (see n 907 above) article 4.

⁹¹⁰ 'We will not bend over for aid, Buturo tells donors' *Daily Monitor* Friday December 4, 2009 1.

⁹¹¹ Hillary Clinton speech, on the Human Rights agenda for the 21 Century made at Georgetown University on December 14 2009. Available at <http://www.state.gov/secretary/rm/2009a/12/133544.htm> (accessed on 15 December 2009)

⁹¹² 'Government could stop Gays bill – Minister' *Daily Monitor* Friday 8 January 2010 3.

⁹¹³ 'Bahati says he is willing to amend gays bill' *Daily Monitor* Thursday 21 January 2010 1.

and the thousands stuck in prisons across the country awaiting trial? This selective interest in certain rights does not bode well for the promotion and protection of human rights in Uganda.

It must be said that while development partners do play an important role in shaping the human rights agenda, mainly in the area of policy formulation, they have limited influence in the implementation arenas as discussed above. For example: In addition, in 2006, it was revealed by the Ambassador of Denmark that the state was running a safe house right next to his official residence in Kampala.⁹¹⁴ In fact, a suspect who alleges to have been tortured managed to jump over the fence and run into his house. This shows the limited influence development partners may have on shaping actual human rights implementation, especially if the state is the main perpetrator of human rights violations.

5.10. South-South assistance - towards African development assistance

So far the discussion and arguments have been premised on a development assistance model with the rich northern countries giving assistance for human rights programmes to the under developed countries of the south. However, it is also possible to look at another possible model of south- south cooperation. This would entail countries from the south providing assistance to fellow countries in the south.

⁹¹⁴ In 2006 Ambassador Stig Barling of Denmark revealed this both in the media and several meetings which I attended.

This African development assistance model borrowing from NEPAD would see Africa own, lead and manage development. This would entail relying entirely on African resources and cooperation and it would mean that development assistance from the north would be stopped over time. In the draft Convention on the Right to Development Assistance (see Annex 6) the author is suggesting that development assistance should be time bound and have an ‘opt out’ clause. In short, development assistance should not be viewed as a long term or permanent modality. In this model Africa should take on very limited strategic assistance from the north. Assistance that for example will help build its capacity to be self-reliant. Why for example should we in the 21st Century still have long-term technical assistance or lead consultants drafting our major development plans like the NDP.

In addition, apart from inter-south cooperation, we could also have intra- south cooperation. That is to say that within a given underdeveloped country, assistance for human rights programmes could be solicited from within as opposed to, or to complement, north-based assistance. This could come from the private sector or even wealthy individuals, experienced retired civil servants and public experts with long experience from comparably similar contexts and challenges. Of course, one of the possible drawbacks is to avoid getting captured by these powerful entities, though the same argument can be used against the rich powerful northern states.

The study here is calling for African development assistance for human rights. It is often assumed that no African communities had/have internal

development assistance systems worth talking about. This is based on the notion that because Africans were generally illiterate (in the formal education sense). It automatically followed that they had no body of knowledge and culture to pass on from one generation to another. African communities have managed to persevere through many decades faced with severe challenges.

The African norms and practices of communalism are precious mines of traditional development assistance practice. For example in times of famine or poor harvest, most African communities had mechanisms in place where those families with food would give to those without.⁹¹⁵ In addition, among the Banyankore of Uganda, it is still common for a wealthy family to ‘lend’ (referred to as to ‘okugaruriza’) a less fortunate person a cow whose offspring would be used by that person (the ‘lender’).⁹¹⁶ Interestingly, in the unfortunate event that the cow died, another one would be given as compensation (‘okushumbusha’).⁹¹⁷ This was a form of re-capitalisation. The same practice is use by the Tonga in Zambia and is known as ‘Kiesisa’.⁹¹⁸ This in many ways amounts to a form of African microfinance.

In Kenya, it is common practice for family and friends to fundraise for a child to go abroad and pursue undergraduate and postgraduate studies.⁹¹⁹ This is

⁹¹⁵ This was revealed in an interview I held with Mr Francis Gureme on 29 June 2009 in Kampala. Gureme is a senior elder with vast knowledge if Kinyankore culture.

⁹¹⁶ Gureme (see n 915 above).

⁹¹⁷ Gureme (see n 915 above).

⁹¹⁸ Hansungule (see n 222 above).

⁹¹⁹ A Munene is a lecturer at the Kenya School of Law and familiar with the Kenyan practice of Harambee. He noted that harambee was an African socialist idea by Jomo Kenyatta which means ‘lets pull together; in Kiswahilii. In practice it became the idea of pooling funds together for a development project to assist communities eg. to build schools, hospitals and so forth. He agrees that it is a form of social development assistance. He confirmed this in an telephone interview I held with him on 3 May 2011.

referred to as ‘Harambee’.⁹²⁰ This could be seen, as a form of African social welfare. The question here stands: Why can we not have an African Harambee at state level? We would have inter-African development assistance and also have it within the country. Some African countries can provide assistance to fellow African countries. Countries like South Africa, Botswana, Libya and Nigeria come to mind as potential African development partners. In early 2010, Haiti was devastated by a massive earthquake that destroyed the infrastructure of the entire country and left over one hundred seventy thousand people dead.⁹²¹ Uganda, in the spirit of solidarity with the people of Haiti, donated UGX 190 million which is close to USD 98,000. In addition, the Government of Uganda opened up bank accounts and called upon ordinary Ugandans to contribute to the Haiti cause.⁹²² While USD 98,000 may not be a significant amount of money, Uganda’s action demonstrates that south-south assistance in principle can happen. Of course it is acknowledged that in the case of Haiti, this is humanitarian assistance, but nonetheless it does reveal that countries from the south could mobilise money for development assistance.

In addition, they are several wealthy individuals who could easily put together 100,000 EUROS per year for example, to assist a community health clinic thereby ensuring the right to health. 100,000 EUROS could fund several health centres across Uganda. A health centre in Uganda receives about UGX 50,000,

⁹²⁰ Munene (see 919 above).

⁹²¹ On January 12 2010, Haiti was struck by a massive earthquake that left the entire country in ruin.

⁹²² ‘Government donates Shs 190m to Haiti’ *The New Vision* Tuesday 26 January 4.

which is equivalent to about 19 EUROS a month to run.⁹²³ 100,000 EUROS therefore can provide much needed medicines and basic medical equipment to carry out malaria tests, which would ensure the right to life.

In view of this, the challenge that African States face is to devise relevant ways and means of promoting and encouraging Africanisation of development assistance or south-south cooperation. It should be carefully noted, however, that such a renaissance should not be blindly undertaken. We should not, of course, put aside the development assistance from the north but rather compliment it with the view to self-reliance in the long run.

This African development assistance model finds expression in the African Charter on Human and Peoples' Rights, which clearly states that 'every individual shall have duties towards his family and society.'⁹²⁴ The Charter further provides that:

The individual shall also have the duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family, to respect his parents at all times, to maintain them in case of need.⁹²⁵

It is evident that the drafters of these clauses had in mind the African system or culture of assisting. It is also important to keep in mind that the African concept of family is much wider than the European version. It, in essence, means the extended family as opposed to the nuclear family. While the

⁹²³ This was revealed by Charlotte Mwesigye Bagegoza, National Coordinator of INFOC Uganda during an interview I held with her on 2 February 2009 in Kampala.

⁹²⁴ African Charter on Human and Peoples' Rights (see n 5 above) article 27.

⁹²⁵ African Charter on Human and Peoples' Rights (see n 5 above) article 27.

extended family goes beyond the father, mother and biological children, the nuclear family is restricted to these categories.

5.11. Conclusion

This chapter establishes that indeed development partners, through the provision of development assistance, do play a role in shaping the human rights agenda. With development budgets of national institutions such as UHRC and JLOS funded to the tune of 80%, it is clear that their support is critical for the promotion and protection of human rights in Uganda. In the case of human rights CSOs, the support is 100%, meaning that without development assistance they cannot operate. One area, in which development partners have a rather limited ability to shape the agenda, is that of implementation of the human rights agenda. However it is absolutely essential that any human rights agenda should be locally-owned and nationally-led. Development assistance should be used to advance a national human rights agenda which is premised on national, regional and international human rights instruments.



PART THREE



Chapter 6

Findings and recommendations

- 6.1. Introduction**
- 6.2. Findings**
- 6.3. Recommendations**
- 6.4. Conclusion**

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).

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African Development Bank: Uganda

http://www.afdb.org/portal/page?_pageid=313,166038&_dad=portal&_schema=PORTAL

Aid Harmonisation and Alignment: Initiatives for Uganda

http://www.aidharmonization.org/ah-cla/ah-browser/index-abridged?rgn_cnt=ug&master=master

Delegation of the European Commission in Uganda

<http://www.deluga.cec.eu.int/en/index.htm>

DFID: Uganda

<http://www.dfid.gov.uk/countries/africa/uganda.asp>

Dutch Embassy in Kampala

<http://www.mfa.nl/kam-en/development>

Government of Uganda

<http://www.statehouse.go.ug/>

GTZ: Uganda

<http://www.gtz.de/en/weltweit/afrika/601.htm>

Irish Aid: Uganda

<http://www.dci.gov.ie/uganda.asp>

Millennium Challenge Corporation: Threshold Programme

<http://www.mca.gov/countries/threshold/index.shtml>

National NGO Forum

<http://www.ngoforum.or.ug/>

Norwegian Embassy in Kampala

<http://www.norway.go.ug/Development/cooperation.htm>

Swedish Embassy in Kampala

http://www.swedenabroad.com/pages/general_____29618.asp

UNDP in Uganda

<http://www.undp.or.ug/>

USAID: Uganda

http://www.usaid.gov/locations/sub-saharan_africa/countries/uganda/index.html

World Bank Country Policy and Institutional Assessment (CPIA)

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:20933600~pagePK:51236175~piPK:437394~theSitePK:73154,00.html>

World Bank: Uganda

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/UGANDAEXTN/0,,menuPK:374871~pagePK:141159~piPK:141110~theSitePK:374864,00.html>

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‘Britain Cuts Aid to Uganda’ *Daily Monitor* 21 December 2005, page 7

‘Can Africa come out of the poverty trap?’ Interview with Salil Shetty UN Millennium Campaign Director. *Daily Monitor* November 22 2005, page 29

‘Donors should help Uganda’ *Sunday Monitor* 7 August 2005, pages 10 and 16

‘Dutch cut back on Aid’ *Sunday Monitor* 4 December 2005, page 5

‘Reverse ban- Human Rights Watch’ *The New Vision*, Saturday 26 November 2005, page 5

Andrew Mwenda, ‘Sovereignty? Beggars have no Choices’ *Daily Monitor* 29 May 2005

Asser Nyanzi ‘Uganda Misses US cash over freedom’ *Daily Monitor* 28 December 2005, page 1-2

Barbara Among ‘Besigye rejects envoy- brokered deal to apply for amnesty’ *The East African* 28 November- 4 December 2005, page 1 and 4-6

Chris Kiwawulo ‘EU boss calls for speedy trial’ *The New Vision* 30 June 2007

Cyprian Musoke & Madrina Tebajjukira. ‘EU chief blasts opposition’ *The New Vision* 9 November 2007, page 3

Deaglan de Breadun- ‘Government may cut aid by 2m Euros in protest’ *The IrishTimes*, 14 May 2005

Grace Kalungi ‘Who’s Human Rights’? Reported in *The New Vision* 17 November 2005 page 11

Julius Kapwepwe ‘Development Efforts should come from us’ reported in *The New Vision* 16 September 2005

Kebba Wa Kebba ‘Donors should leave us alone’ *Sunday Monitor* 12 June 2005, page 5

Lydia Kamugisha ‘Donors give us autonomy’ *Daily Monitor* 6 December 2007, page 11

Milton Olupot ‘Britain cuts Aid’ *The New Vision*, 21 December 2005 pages 1-2

Moses Byaruhanga 'Donors gave frivolous reasons for cutting aid' *The New Vision* 27 December 2005, page 11

Omar D. Kalinge- Nnyago 'Donors always taken in by reference to terrorism fight'. *Daily Monitor* 26 November 2005 page 6

Paul Busharizi 'Uganda- Donor friction inevitable' *The New Vision* 24 December 2005, page 36

Sam Akaki 'Why is the EU inflaming political instability' *Sunday Monitor* 11 November 2007

Ssemujju Ibrahim Nganda 'Dr. Besigye, donors discussed rape 10 days before arrest- Donor Knew of plan to Arrest Besigye' *The Weekly Observer*, 24-30 November 2005, pages 1-3

Ssewakiryanga, Richard 'Will the National Development Plan bail out the poor?' *New Vision* Tuesday 11 May 2010

Ssenenkabirwa Mahdi 'We will not bend over for aid, Buturo tells donors' *Daily Monitor* 4 December 2009, page 1

Toby Helm & Tracy McVeigh 'Foreign aid diverted to stabilise Afghanistan' *The Observer* 18 July 2010

'UK cuts aid to Uganda' *Sunday Monitor* 25 December 2005, page 5

Wandera Steven and Jumbe Ben 'Govt could stop Gays Bill-minister' *Daily Monitor* 8 January 2010 page 3

Wairagala Wakabi 'Donors soften stance towards Uganda' *The East African* 7-13 November 2005, page 4

Wairagala Wakabi 'Donors now commend Museveni and ignore calls to freeze aid', *The East African* 7- 13 November 2005, page 1 and 4

Will Ross. 'Museveni: Uganda's fallen Angel' *Daily Monitor* 2 December 2005, page 12

Yoweri Museveni 'Budget Cuts: Museveni writes to UK' *The New Vision*, 24 December 2005, page 10

Zurah Nakabugo & Martin Luther Oketch 'Donors want Ministry of Agriculture restructured' Reported in *Daily Monitor* 17 September 2005

ANNEX 1 : GOVERNANCE MATRIX HUMAN RIGHTS COMPONENT AS OF 31 DECEMBER 2004.

<p><i>B Human Rights situation</i></p> <p><i>One of the core priorities in the Governance Pillar of the PEAP (2004-09) is ensuring respect for human rights. The PEAP states “The state of human rights in Uganda has continued to be challenging” with illegal detentions, the use of torture in detention centres operated by police, military forces, and local administration prisons, and (poor) conditions in prisons. Key Human Rights Actions over the medium term include Action to prevent any of the violations reported by UHRC from continuing, the prioritisation by the Justice Law and Order Sector (JLOS) and the security sector of the humane and fair treatment of prisoners; the continued development of the UHRC and, the roll-out of a national civic education framework to increase awareness about human rights and obligations.</i></p>		
Objectives	Actions to be taken by GoU in accordance with the PEAP	Indicators

<p>Respect for human rights in upholding of the constitutional state and rule of law by Army, Security Organisations and Police (Violent Crime Crack Unit).</p>	<ul style="list-style-type: none"> • Training of security officers in interrogation and in human rights. • Monthly meetings between UHRC, Army Security Organisations Police, Prisons, Review and Directorate of Public Prosecutions to review the offensive against torture. • Access to military barracks, safe houses and CMI and VCCU HQ. • Re-evaluation of VCCU and vetting of its personnel. • Payment of compensations awarded by the UHRC to torture victims. • Backlog in the judicial system will be cleared to shorten detention periods and to decrease the number of detainees on remand. • Improvement of living conditions in central and local government prisons. 	<ul style="list-style-type: none"> • Disciplinary measures and prosecution taken against members of Army, Security Organisations and Police (VCCU), where UHRC has investigated and proved cases of torture. • Reduction in number of torture cases on the basis of information of UHRC, local and international human organisations and field visits by JLOS donor group. • Reduction in number of arbitrary arrests of members of the political opposition.
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ANNEX 2: ADDITIONAL AFRICAN INSTRUMENTS AND DEVELOPMENT

	Instrument	Development focus area
1	AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES (1968)	Recognises that soil, water, flora and faunal resources constitute a capital of vital importance to mankind and recognised the duty “to harness the natural and human resources of our continent for the total advancement of our peoples in spheres of human endeavour”
2	CONSTITUTION OF THE ASSOCIATION OF AFRICAN TRADEPROMOTION ORGANISATIONS (1974) (YET TO ENTER INTO FORCE)	Highlights significant role that African trade promotion organisations have to play in the economic development of the region
3	INTER AFRICAN CONVENTION ESTABLISHING AN AFRICAN TECHNICAL CO-OPERATION PROGRAMMES(1975) (YET TO ENTER INTO FORCE)	Considers the fact that cooperation among African countries in the deployment of their human resources is vital and will contribute to the promotion of closer solidarity and economic development among their peoples
4	OAU CONVENTION FOR THE ELIMINATION OF MERCENARISM IN AFRICA (1977)	Points out the grave threat which the activities of mercenaries present to the independence, sovereignty, territorial integrity and harmonious development of Member States of the Organisation of African Unity
5	CONVENTION FOR THE ESTABLISHMENT OF THE AFRICAN CENTRE FOR FERTILIZER DEVELOPMENT (1985) (YET TO ENTER INTO FORCE)	Realises that the OAU Charter states that one of the purposes of the OAU is for its Member States to “coordinate and intensify their cooperation and efforts to achieve a better life for the people of Africa” and that, to this end, Member States are enjoined to “harmonise their general policies in various fields, including nutritional, scientific and technical cooperation
6	TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY (1991)	Highlights the need to share, in a equitable and just manner, the advantages of cooperation among Member States in order to promote a balanced development in all parts of the continent

	Instrument	Development focus area
7	OAU CONVENTION ON THE PREVENTION AND COMBATING OF TERRORISM (1999)	Terrorism constitutes a serious violation of human rights and, in particular, the rights to physical integrity, life, freedom and security, and impedes socio-economic development through destabilisation of States
8	PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING TO THE PAN-AFRICAN PARLIAMENT (2001)	The establishment of the Pan-African Parliament will ensure effectively the full participation of the African peoples in the economic development and integration of the continent
9	CONVENTION OF THE AFRICAN ENERGY COMMISSION (2001)	<p>Africa must harness its energy resources and make them available to meet the energy needs of its peoples in order to be able to develop and provide an alternative to deforestation and use of firewood as a primary source of energy</p> <p>There is need to co-ordinate the actions of the African countries to develop their energy resources and deal jointly with the various problems relating to their efficient and rational exploitation and utilisation, in order to ensure socio-economic development</p>
10	PROTOCOL RELATING TO THE ESTABLISHMENT OF THE PEACE AND SECURITY COUNCIL OF THE AFRICAN UNION (2002)	<p>The continued prevalence of armed conflicts in Africa and the fact that no single internal factor has contributed more to socioeconomic decline on the Continent and the suffering of the civilian population than the scourge of conflicts within and between our States</p> <p>Notes the problems caused by landmines and the illicit proliferation, circulation and trafficking of small arms and light weapons constitute a serious impediment to Africa's social and economic development, and that they can only be resolved within the framework of increased and well coordinated continental cooperation</p>

	Instrument	Development focus area
11	AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES- REVISED EDITION (2003) (YET TO ENTER INTO FORCE)	Duty to harness the natural and human resources of our continent for the total advancement of our peoples in spheres of human endeavour
12	AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION (2003)	Corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent
13	PROTOCOL TO THE OAU CONVENTION ON THE PREVENTION AND COMBATING OF TERRORISM (2004) (YET TO ENTER INTO FORCE)	Terrorism constitutes a serious violation of human rights and a threat to peace, security, development, and democracy
14	AFRICAN UNION NON AGGRESSSION AND COMMON DEFENCE PACT (2005) (YET TO ENTER INTO FORCE)	Impact of conflicts both within and among African States, on peace, security and stability in the Continent, and their devastating impact on socio-economic development
15	AFRICAN YOUTH CHARTER (2006) (YET TO ENTER INTO FORCE)	Youth are partners, assets and a prerequisite for sustainable development and for the peace and prosperity of Africa with a unique contribution to make to the present and to future development
16	AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE (2007) (YET TO ENTER INTO FORCE)	Promote the universal values and principles of democracy, good governance, human rights and the right to development
17	CHARTER FOR AFRICAN CULTURAL RENAISSANCE 2006) (YET TO ENTER INTO FORCE)	African cultural diversity and unity are a factor of equilibrium, strength in African economic development, conflict resolution and reducing inequality and injustice to promote national integration

	Instrument	Development focus area
18	PROTOCOL ON THE STATUTE OF THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (2008)	Commitment to promote peace, security and stability on the Continent and to protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant instruments relating to human rights including the right to development
19	STATUTE OF THE AFRICAN UNION COMMISSION ON INTERNATIONAL LAW (2009) (YET TO ENTER INTO FORCE)	Inspired by the common objectives and principles enshrined in the Constitutive Act of the African Union, notably Articles 3 and 4 which underscore the importance of accelerating the socio-economic development of the Continent through the promotion of research in all fields
20	AFRICAN CHARTER ON STATISTICS (2009) (YET TO ENTER INTO FORCE)	Statistical information is vital for decision-making by all components of the society, particularly policy makers, as well as economic and social players, and is therefore essential for the continent's integration and sustainable development
21	PROTOCOL ON THE AFRICAN INVESTMENT BANK (2009) (YET TO ENTER INTO FORCE)	Address collectively the main economic development challenges facing African continent

Source: African Union

ANNEX 3: ADDITIONAL INTERNATIONAL INSTRUMENTS

	Treaty/Instrument	Status	Focus
1	UN Declaration on International Economic Cooperation & Development (1990)	Non-binding	Nations within UN should address all issues in an integrated manner
2	Copenhagen Declaration on Social Development	Non-binding	Links social development and human well-being for all and to give to these goals the highest priority both now and into the twenty-first century
3	Rio Declaration on Environment and Development (1992)	Non-binding	The Declaration makes the connection between the environment and development. It puts human beings at the centre of sustainable development
4	World Summit for Social Development (1995)	Non binding	Poverty reduction central to development
5	The Highly Indebted Poor Countries' (HIPC) Initiative	Non binding	Reduction of external debt critical for development
6	Doha Agreement in November (2001)	Non-binding	emphasises the importance of lifting trade barriers and boosting access to developed country markets to promote exports, high growth and poverty reduction in developing countries
7	Monterrey Consensus on financing for development in March (2002)	Non-binding	Increased ODA And access to developed countries s markets necessary for development
8	The Plan of Implementation of the World Summit on Sustainable Development in September (2003)	Non-binding	Poverty Reduction and sustainable development
9	The High Level Policy Harmonisation Forum (2003)	Non-binding	Calls for the harmonisation of the global effort to enhance development effectiveness through implementation of PRSPs and support for MDGs

Source: African Union

ANNEX 4: LIST OF PEOPLE INTERVIEWED

	NAME	INSTITUTION	DATE
1.	Professor Hansungule	Centre for Human Rights- University of Pretoria	2005- to date
2.	Ms Karen Kenny	International Human Rights Network	7 June 2005
3.	Ms Allen Asiimwe	International Human Rights Network	7 June 2005
4.	Ms Pamela Okille	Consultant- SIDA	7 July 2005
5.	Mr Mutahi Ngunyi	Consultant - SIDA	7 July 2005
6.	Mrs Margaret Sekaggya	Chairperson Uganda Human Rights Commission	25 November 2005
7.	Mr Nathan Byamukama	Director – Uganda Human Rights Commission	25 November 2005
8.	Mr Omara Oliro	Commissioner Uganda Human Rights Commission	25 November 2005
9.	Professor Joe Oloka- Onyango	Faculty of Law –Makerere University	29 November 2005
10	Dr Onoria Henry	Faculty of Law –Makerere University	29 November 2005
11	Mr Livingstone Ssewanyana	Executive Director Foundation for Human Rights Initiative	29 November 2005
12.	OECD/DAC Peer Review Team	OECD/DAC	5 May 2006
13.	Her Excellency Aine Hearn	Charge de Affairs – Embassy of Ireland – Uganda	24 August 2007
14.	Ms Joyce Nagiza	Governance Advisor- Royal Netherlands Embassy	25 August 2007
15.	Ms. Sylvia Ntambi	Governance Advisor - GTZ	25 August 2007
16.	Reverend Grace Kaiso	Executive Secretary- Uganda Joint Christian Council	23 August 2007
17	Ms Perry Antia	Head of Governance & Human Rights- Uganda Joint Christian Council	23 August 2007
18.	Ms Esther Loffen	Governance Advisor Royal Netherlands Embassy	23 August 2008
19.	Mr Sam Kajoba	Programme Officer – Embassy of Norway	23 August 2008
20.	Mr Solomon Ossiya	Programme Officer - Danida	5 June 2008
21.	Mr Kamusiime Thomas	Capacity Building & Network Development Oficer Human Rights Network Uganda (HURINET)	3 June 2008
22.	Mr Zie Gariyo	Uganda Debt Network	3 June 2008
23.	Ms Maria Nssali	Former Executive Director Kituo Cha Katiba	23 August 2008
24.	Honourable Fredrick Ruhindi	Deputy Attorney General. Minister of State for Justice and	15 July 2009

		Constitutional Affairs	
25.	Mr Kees Kondin	Programme Manager Capacity Building Programme of the European Union	15 July 2008
26.	Mr Sigurd Iling	Former Head of the European Delegation to Uganda and Advisor to the President of Benin	25 May 2008
27	Ms Doris Akiidi	Governance Advisor - GTZ	23 June 2008
28	Mr Willy Joe Haguma	Principal Finance Officer, Aid Liaison Department, Ministry of Finance, Planning and Economic Development	17 July 2008
29	Ms Evelyn Edroma	Former Senior Technical Advisor JLOS secretariat	17 July 2008
31	Mr Fred Twesiime	Ministry of Finance, Planning and Economic Development	19 January 2011
32	Mr Gordon Mwesigye	Secretary Uganda Human Rights Commission	19 January 2011
33	Ms Lillian Keane	Executive Director Platform for Labour Action	20 January 2011
34	Mr Sam Wairagala	Technical Advisor Monitoring & Evaluation JLOS Secretariat	31 March 2011
35	Mr Paul Gadeya	Senior Technical Advisor JLOS Secretariat	31 March 2011
36	Ms Rosemary Kemigisha	Uganda Human Rights Commission	2 April 2011
37	Mr Christopher Turigye	Uganda Human Rights Commission	2 April 2011
38	Mr Ndifuna Mohammed	Human Rights Network	6 April 2011
39	M. Sheila Muwanga	Foundation for Human Rights Initiative	6 April 2011
40	Ms Ida Nakiganda	Director Legal Uganda Human Rights Commission	7 April 2011
41	Mr John Kanya	Uganda Police Force	7 April 2011
42	Kristine Kruma	Judge High Court of Latvia	18 April 2011
44	Daniel Muwolobi	Governance Advisor Embassy of Ireland Kampala	20 January 2011
45	Justine Stroh	Economist Embassy of Ireland, Kampala 2002-2007	20 April 2011
46	Anthony Munene	Lecturer Kenya School of Law	3 May 2011
47	Kenneth Mugambe	Commissioner Budget Ministry of Finance, Planning and Economic Development	2 June 2009
48	Maureen Nahwera	Programme Officer Embassy of Sweden Kampala	2 June 2009
49	Ferdinand Katendeko	African Peer Review Mechanism Secretariat South Africa	3 May 2009
50	Dan Banik	University of Oslo Norway	4 August 2007

ANNEX 5: UGANDA'S RATIFICATION OF INTERNATIONAL AND REGIONAL HUMAN RIGHTS TREATIES

Instruments and Standards	Ratification	Reporting Status
The International Covenant on Civil and Political Rights (1966)	12 June 1995	Report submitted in 2004*.
The International Covenant on Economic, Social and Cultural Rights	12 January 1987	4 Reports overdue. 4 th period due 30/6/05. No evidence that it was submitted*
The Optional Protocol to the International Covenant on Civil and Political Rights	14 November 1995	-
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	3 November 1986	Initial report coming four reports was received 16 years late in May 2005
International Convention on the Elimination of All Forms of Racial Discrimination	21 November 1980	2 nd – 10 th Periodic reports examined in March 2003. 11 th , 12 th , and 13 th due 21/12/05
Convention on the Political Rights of Women		
Convention on the Elimination of All Forms of Discrimination Against Women	22 July 1985	Report more than five years over due. 3 rd period report examined in August 2002*
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	1995	No report. Initial report was due March 2004*
Convention on the Rights of the Child	17 August 1990	2 nd Periodic report was due September 2005*
Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in Armed Conflict	2 May 2002	-
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	2002	Report over due was expected 18/1/2004*
Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	-	-*

Instruments and Standards	Ratification	Reporting Status
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	Not signed	N/A*
Convention relating to the Status of Refugees	21 September 1976	*
Convention on the Prevention and Punishment of the Crime of Genocide 1948	14 th November 1995	*
Geneva Convention relative to the Protection of Civilian Persons In Time of War	-	*
Convention on Protection of Rights of Migrant Workers (entered into force on 1 July 2003)	14 November 1995	*
The Constitutive Act of the African Union (2000)	3 April 2001	~
The African Charter on Human and Peoples' Rights (1990)	10 May 1986	1 st -9 th report overdue. 9 th report submitted in 2004 combining all reports.
The AU Convention on Preventing and Combating Corruption	30 August 2004	--
The AU Peace and Security Council Protocol	10 March 2004	~
African Charter on the Rights and Welfare of the Child (1990)	17 August 1994	Report due 29/11/2001 ~
The OAU Refugee Convention of 1969	24 July 1987	~
Protocol on the Rights of Women in Africa (2003)	22 July 2010	Report due 22 July 2012

Source: Uganda Human Rights Commission

ANNEX 6 DRAFT CONVENTION FOR THE PROVISION OF DEVELOPMENT ASSISTANCE

We, the State Parties to the present Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian nature,

Recognising that provision of development assistance which aims at poverty reduction and enhancing development of poor under developed states, is now a common practice between developed and developing countries,

Bearing in mind the commitment to providing the historic UN target of 0.7% of national income as development assistance,

Recognising further that several development assistance, treaties agreements have been concluded over the years, forming the basis for provision of development assistance,

Considering that the current international law regime does not provide a framework for the formulation, conclusion and implementation of the development assistance treaties and agreements,

Considering that the provisions of the, Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Declaration on the Right to Development all

provide for the obligation to provide development assistance through international cooperation,

Considering that the prosperity, security and health of the developed countries are increasingly inseparable from the conditions and events in the developing countries,

Reaffirming that we live in an increasingly interdependent world, in which we all have an obligation to eradicate poverty and underdevelopment, and further noting that there is need to refocus development assistance on poverty and make it law that aid should be used to tackle poverty and reach the intended beneficiaries,

Recognising that the provision of development assistance should be aligned to national development priorities and based on partnership and mutual respect,

Taking into account the principles of national ownership and partnership enshrined in the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action (AAA),

Aware that the primary obligation to create favourable conditions for the development of peoples and individuals is that of their states and that development assistance is only meant to compliment and not replace national development plans and efforts,

Aware also of the dangers associated with dependency on development assistance, it is recognised that developing countries should as soon as possible be weaned off development assistance,

Confirming that the right to development assistance is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations,

Proclaims the following Convention for the Provision of Development Assistance and agree the following articles:

Article 1 The right to development assistance

1. The right to development assistance is an inalienable human right.
2. State parties that are able to provide assistance have the obligation to provide development assistance to less developed countries.

Article 2 Development assistance agreements

1. Development assistance treaties, agreements, memoranda of understanding, arrangement letters, or by whatever other name designated, are binding treaties under international law.
2. Development assistance treaties for purposes of interpretation should be governed by the Vienna Convention on the Law of Treaties.

Article 3 Principles

Development assistance shall be guided by the following principles

- a) equal partnership,
- b) local ownership and national led development, and
- c) alignment to national development priorities.

Article 4 State responsibility

1. The primary responsibility for development lies with the State and development assistance is meant to complement and not replace national development programmes.
2. States have the obligation to cooperate with each other in ensuring development and eliminating obstacles to development.

Article 5 Opting out

1. All development assistance treaties, agreements, memoranda of understanding, arrangement letters, or by whatever other name designated, shall have an opt out clause and timeframe for the providing of assistance.
2. Steps should be taken to ensure the progressive reduction in the provision of development assistance with the ultimate aim of ending the assistance all together.

Article 6 Purpose of development assistance

1. State parties that receive development assistance undertake to ensure that it is used for the intended purpose and shall not be diverted for other use.
2. State parties that receive development assistance shall ensure that it is results oriented with demonstrable outcomes and impact.
3. State parties commit themselves to promoting the highest levels of transparency, efficiency and effectiveness in all development programmes.

Article 7 Beneficiaries of development assistance

Development assistance shall be provided to both States and non-State actors such as civil society organisations.

Article 8 Obstacles to development

States parties undertake to jointly remove all obstacles to development such as conflict, insecurity, hunger, disease which blight the lives of ordinary people, particularly women and children.

Article 9 Assistance modalities

State parties that provide development assistance should use assistance modalities such as budget support, project support and other any modalities mutually agreed upon.

Article 10 Compatibility

Nothing in the present Convention, shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

Article 11 Addressees of development assistance

States parties acknowledge that the addressees of development assistance and development programmes are individuals, communities, peoples and States.

Article 12 Timing of development assistance

State parties that provide development assistance, undertake to ensure that the assistance is predictable, timely and not tied.

Article 13 Rights of peoples

Nothing in the present Convention shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.

Article 14 Signature

1. The present Convention is open for signature by any State Member of the United Nations or member of any of its specialised agencies, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Convention.
2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Convention shall be open to accession by any member State of the United Nations.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Convention or acceded to it of the deposit of each instrument of ratification or accession

Article 15 Entry into force

1. The present Convention shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Convention shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 16 Application

The provisions of the present Convention shall extend to all parts of federal States without any limitations or exceptions.

Article 17 Amendment

1. Any State Party to the present Convention may propose an amendment and file it with the Secretary General of the United Nations. The Secretary General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Convention in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Convention and any earlier amendment which they have accepted.

Article 18 Notifications

Irrespective of the notifications made under article 17, the Secretary General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- a) Signatures, ratifications and accessions under article 15, and
- b) The date of the entry into force of the present Convention under article 15 and the date of the entry into force of any amendments under article 17.

Article 19 Language

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 15.

Annex 7 Glossary of terms

	Term	
1	Basket Fund	Fund to which many development partners/organisations contribute.
2	Budget support	A method of financing a partner country's budget through a transfer of resources from an external financing agency to the partner government's national treasury. The funds thus transferred are managed in accordance with the recipient's budgetary procedures. Funds transferred to the national treasury for financing programmes or projects managed according to different budgetary procedures from those of the partner country, with the intention of earmarking the resources for specific uses, are therefore excluded from this definition of budget support.
3	Credit/loan	Provision of resources, excluding food or other bulk commodities, for relief or development purposes, including procurement programmes, which must be repaid according to the conditions established at the time of the loan agreement or as subsequently agreed.
4	Poverty Action Fund	A ring fencing mechanism in favour of primary anti-poverty sectors like Education and Health
5	Project Support	Support for a temporary activity with a starting date, specific goals and conditions, defined responsibilities, a budget, a planning, a fixed end date and multiple parties involved
6	Sector	A coherent set of services and/or activities relating

		to a specific function which can be relevantly distinguished in terms of policies, institutions and finances, and which need to be looked at together, in order to make a meaningful assessment
7	Sector budget support	Budget support which allows for notionally earmarking funds for a particular sector. Some donors are providing sector budget support (earmarked/notionally earmarked budget support), which essentially refers to providing support to specific sectors such as justice, law and order, education and health
8	Sector Wide Approach (SWAPS)	All significant funding for the sector supports a single sector policy and expenditure programme, under Government leadership, adopting common approaches across the sector, and progressing towards relying on Government procedures to disburse and account for all funds