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Uganda's Institutional Framework for Development Since Colonialism: Challenges of a Developmental State

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Recovering from colonialism's neglect and the ugly chronic instability experienced between 1971 and 1986, Uganda has had a fast growing economy. Essential commodities which previously were either not available or when they were, had to be rationed by politicians, bureaucrats and chiefs either through lining up or issuance by chits due to scarcity, now litter shops. The phenomenon of 'scarcity' has been replaced with that of 'individual choice' and 'affordability'. Despite this spectacular economic growth, poverty and income inequalities persist as servicing and repayment of debt remains high. That is perhaps attributable to post turbulence policies that strove to introduce a market-based economy, where a few people control the majority of the country's wealth.

Institutions play a vital role in fostering (and impeding) development in a developmental state. Yet, Uganda's institutional frameworks for contract negotiation and fund utilisation are routinely criticised. The presence of such factors that imperil debt repayment possibilities, and by extension development, prompted my analysis of justification for the study of the legal framework. This is embedded in the institutional framework for development and shaped by myriad processes whose efficiency helps determine a developmental state.

The genesis and context of Uganda's institutional framework

In pre-colonial Uganda, informal village institutions transacted business, guided by the culture of trust. Deviants from the basic norms were punishable via sanctions like curses, voluntary restraints and ostracism. Clan leaders and outspoken elders implemented the informal rule. That arrangement is less favoured

in today's virtually impersonal dealings between strangers engrossed in protecting individual stakes.

British colonialism found Uganda advantageous to its quest for 'privileged spheres of foreign trade' and 'foreign investment' (Mangat 1969). Far from developing Uganda, the advantage was to guarantee its unobstructed resource exploitation. The institutional framework for realising this policy objective bestowed Uganda a protectorate status, which meant minimal colonial engagement in establishing local development oriented institutions. This was supplemented by a policy that barred foreigners' acquisition of land. Effectively, they were proscribed from establishing permanent residences or investments whose sustenance would add a new cost of infrastructure development to that of colonialism and trade.

Through carefully orchestrated legislation and dubious contracts, schemes with little value to the indigenous societies were institutionalised. Thurston, a Colonial agent bluntly explains how, 'I had a bundle of printed treaties which I was to make as many people sign as possible. This signing is an amiable farce which is supposed to impose on foreign governments and to be equivalent of an occupation' (Murkherjee 1956: 125). Examples suffice here. The only consideration for ceding territory and resources in the 1893 Protectorate agreement was a pittance of beads and mirrors. This consideration was conveniently secured through technical contractual terms written in a language the illiterate indigenous signatories could not comprehend without translation. The signing was possibly under the mistaken belief that it was for acknowledging receipt of the pittances or a gesture of friendship. But as subsequent events show, it lacked mutual consent. When Kabaka Mwanga tried to opt out, he was greeted with a military might that culminated in his banishment. Had there been mutual consent, the excessive force would have been avoided. But the precedent thenceforth institutionalised the legacy of payment of no value for value in Uganda's politics. It also heralded the dreadful preference of violent pursuance of political goals to plausible institutional frameworks that came to characterise Uganda's profile.

Through the 1900 agreement a new institution of chiefs was introduced as a facet to sidestep the authority of the traditional rulers. This dispossessed them of their hitherto government powers. For their collaboration, the agreement bribed them with portions of the land they prior superintended over in trust for the masses, and thereby for the first time turned the masses into squatters. The treaty was marked with undue influence to an infant Kabaka and misrepresentation to his Regents.

Because it was not meant to develop Uganda, the agreement rooted a land tenure system counter to national development. Rather than fostering comprehensive land consolidation, it was retrogressively fragmented to reward collaborators. That way, only institutional arrangements needed to safeguard colonial economic interests were instituted. Infrastructure development, especially

railway construction focused on facilitating colonial exploitation. Leaders of both the dominant Labour and Liberal Party stressed that colonial development was 'part of the attack on British unemployment' (Brett 1973:132). The debate conspicuously ignored the colonies underdevelopment.

Development matters were left to fate, while priority was given to lopsided laws meant to protect colonial economic interests. Colonialism practised an intertwined exercise of powers, where the District Commissioner (DC) doubled as the Magistrate, administrative head and legislator of bye-laws (Murindwa 1991; Akampumuza 1992). Not only was this a fusion of the institutional framework but it was also conscious detachment of Africans from activities that would give them professional skills. That way, colonialism arrested the establishment of professional institutions it didn't deem central for controlling semi-barbarians. Consequently, high levels of illiteracy, a low managerial and administrative base and only one University are the attributes inherited at independence in 1962. Post independence regimes preserved colonialisms' modus operandi as a country chief was an administrator, judicial officer and enacted by-laws. Developing local institutional capacity would have unnecessarily meant tampering with such convenience.

Confronted by the colonial policy's blowback, a World Bank Mission acknowledged that 'the creation of a large enough class of successful local entrepreneurs is bound to take a long time' (IBRD 1969: 106). Public bodies set up to rectify this institutional gap such as the National Trading Corporation were reduced to bureaucratic conduits of largesse to reward party loyalists. Funding for these odious aims was secured under the guise of promoting African skills via borrowing on tough repayment terms. The sham development institutions were set up by legislation to champion development. However, no corresponding institutional framework to check their functioning was set up be it legislatively or administratively. This could have been a deliberate omission as the authors of the legislation turned out to be the loopholes' actual beneficiaries.

Meanwhile those privileged were pre-occupied with their 'eating', sections of the society resorted to criminal activity to forcefully get a share. This manifested in *Kondoism* (endemic robbery), speculative practices like *Majuta Mingi* (economic war), *Magendo* (smuggling) and *Bichupuli* (fake investments). These were symptoms of a failed institutional framework. Instead of tackling the cause, the institutions futilely misdirected their interface to enacting penal legislation and convictions to suppress the symptoms.

The postcolonial state therefore continued the instrumental application of the law to achieve policy objectives. The new global ideology of development planning, championed by donor proxies such as The World Bank, ensured the new administration remained reliant on foreign financing. Imperialism thus slyly established a parallel donor government regime to control Uganda's policy and

law making. Consistently, conformingly designed policies are judiciously presented as antidotes to that pattern.

Meanwhile, wealthy tycoons entered into partnerships with top government and the ruling UPC party functionaries to access public funds to run private enterprises. These were informal public private sector relationships operating outside any institutional framework. Such informality involving use of public funds and institutions predictably furthered corruption and bribery that reached alarming levels (Mamdani 1976). Feigning political concern, the executive through Parliament enacted a cosmetic 1970 Anti-corruption Act to assuage public outcry. But given its superficiality, the Act failed dismally as its sponsors consciously instituted no institutional framework to ensure its effectiveness. Obviously, the major culprits of the partnerships were the very Act's sponsors, which explains their desire to keep it ineffectual. Unabatedly, public sector partners enjoyed unlimited access to public funds, which they often disguised in the tycoons business accounts to avoid detection. For example, a prominent Asian's pre-expulsion files catalogued more than 90 percent bureaucrats indebted to him, yet there was no prosecution or investigation of the culprits to establish what business justified such indebtedness. This was perhaps because the very beneficiaries were the custodians of that institutional duty. Even the few corruption cases that went to Court were often dismissed for lack of 'sufficient evidence'.

In 1972, shortly after Amin had expelled the Asians, the realities of the cosmetic institutional framework were laid bare in his declaration of an 'economic war' to check 'saboteurs'. This turned out to be rhetoric sloganeering to justify a policy aimed at widening his political functionaries' economic base. Expropriated businesses were allocated to an incredulous class of henchmen using the criteria of Amin's friend or soldier. No institutional formality was followed as Amin personally 'allocated' them *gratis*. Like the inequitable policies fostered under colonialism, this was a moot private enterprise policy that bore serious repercussions. Besides the inherited cancer of lack of professional skills were added non-skilled management and ownership which inevitably had to fill in the institutional vacuum the policy created. Key government skilled personnel were equally affected and so were vital institutions, the worst hit being the judiciary. With the new style of transacting government business, a Siamese informal parallel black-market called *Magendo* was developed too. This outperformed state—controlled marketing agencies, owing to the unskilled nature and strategic place of some of its key actors in the institutional framework of the very agencies.

Politicians exploited the scarcity engendered by their bad policies to make personal fortunes. Amin and his protégés drew foreign currency from Bank of Uganda (BOU) without any backup local currency. Ministers placed orders overseas for personal ventures and incurred commitments against the national budget, without either the consent or knowledge of the treasury. The resultant high net capital outflow between 1971 and 1977 depleted Uganda's foreign reserves Special

Drawing Rights (SDR) by 51.2 million (Kaberuka 1990). A bankrupt treasury and a whooping debt of US\$ 700m greeted the post Amin regime in April 1979. The weak laws, alongside a fallen institutional framework thus had put the poor policies on trial.

To reverse this trend, Uganda has undergone two structural adjustment programmes (SAP), one between 1981 and 1985 (Obote II), and the other between 1987 and the present (Museveni's regime). However, the challenges of the weak institutional framework still abound. Alas, even the architects of the policy reforms are implicated in perpetuating the very vice the policies sought to stamp out. For instance, 'an IMF team once engaged in a dialogue with a team of Ugandan 'negotiators' from the Ministry of Finance, Planning, Education and Bank of Uganda. When the Ugandan team questioned some of the IMF assumptions, its team stormed out of the meeting and drove directly to Obote, who promptly signed the agreement. The Ugandan negotiating team only learnt of the signing from the news media (Hansen and Twaddle 1991: 63). Such patronising attitude is not healthy for development, especially in the light of an already fragile institutional framework. Permitting their institutional mandate to be compromised deflects expectations.

Ultimately, political functionaries irregularly access the funds while international institutions obligated to ensure the project's success passively look on. Invariably the moral basis to escape liability for failed projects is lost, disqualifying their neutrality posturing as 'outside third parties without a stake in the outcome' to monitor the transaction and reduce the risk' (Shirley 2002). That perhaps explains Uganda's unabated privatisation scandals without reprimand of those implicated, despite donors' constructive and physical presence.

All in all, no matter the specific point in time, policies conceived since colonialism were presented as developmental but in tandem exhibited opposite objectives in practice. The shared denominators in their functioning was political rhetoric not backed by any development oriented institutional framework and omnipresent penal legislation to bully dissent. The executive thus through the legislature legislatively shielded inequitable policies to ensure their unimpeded operation.

The Asian property question

It is now apparent that post independence regimes did not inherit any strong institutions or an educated workforce. The eventual transfer of power to unpractised politicians and/ soldiers of limited intellect was thus not accidental, but rather arose out of colonialism's deliberate refusal to impart local skills and develop local institutions. Politicians and civil servants who took over the reins of political power lacked the technical know-how, to formulate and implement government policy. This was a sure blueprint for anarchy, given the inherited alien form of politics that enshrined the tricky rule of law they were to implement.

Their remedy was a scapegoat political solution they found in the trading Asian community. This came to gain prominence in various development policies hence the phrase 'Asian question'. The Asian question is central both in policy and institutional framework that successive Ugandan regimes, right from colonialism to Obote I (1962–1971), Amin (1971–1979), then Obote II, Tito Okello Lutwa (July 1985–January 1986) and Museveni have had to institutionalise policies on its handling. This has intertwined it with Uganda's development process. Often marked with violence, its nature and intensity has been varied by the evolution of the political conditions it has propagated. At certain points, it caused antagonisms between indigenous Ugandans and Asians, which undesirably manifested in violent widespread lawlessness expressed in violent boycotts, kondoism and subsequent guerrilla activity. Such manifestations were a reflection of survival tussles by indigenous Ugandans and a censure to government and the global community's complacency.

Amin's Asian expulsion nurtured a horrendous effect of cumulative economic mismanagement, attributed to deepening social and political tensions within the undeveloped economy. The ensuing property expropriation lacked a parallel legal enforcement institutional framework. The immediate effects of the expropriation are best discernible from a theatrical hypothecation of 'throwing a carcass amidst a den of hungry hyenas, part of them charged with handling it among the rest-thus causing wrangles over it' (Asian property). Decrees were later made to govern the expropriated properties' disposal. A Government Parastatal body, the Departed Asians Property Custodian Board (DAPCB) was supposed to hold the properties in trust, an impossible task given the days' politics. True to Amin's character, expropriated properties were wantonly dished out to cronies and government functionaries as charity. Yet the Decrees lacked an enforcement institutional framework given the impotence of the then Ugandan judiciary already cowed through disappearances and massacres of its senior personnel by extremists from the executive. That in turn eroded the notion of the rule of law.

Insecurity of property continued to inhibit investment as the informal and illegal sector activities grew remarkably, escaping both legal and statistical scrutiny. Private property accumulation by mainly uneducated, inexperienced, opportunistic allocates followed, creating the speculative class which came to be baptised 'Mafuta Mingi'. This grew to arrogate itself the new speculative economy called *Magendo* in which hoarding, smuggling and over pricing of scarce essential goods were the hallmarks of the 'economic war'. Political patronage in the disbursement of property and positions soared. The DAPCB's held properties were used as facets for favouritism and promotion of personal objectives. Given that jumbled arrangement, the expropriations' purported policy objective of developing the economy through local Ugandan's initiative could never be realised.

The legacy of property allocations outlived Amin while the institutional trustee, DAPCB could at best acquiesce or support the pillage. This was politics of building

and dismantling classes, based on politically inspired allocations. Successive regimes made legislation to ease their access to expropriated property. Legislatively, political manipulations conveniently assumed legal form. Simply put, such laws were not development driven, and so couldn't address development priorities. Through its legislation, every new regime deprived allocatees of its predecessor to reward its own protégés. And these were many, given that there have been six governments since Amin. The resultant institutional distortions nurtured conditions for violence from sections that resorted to war to protect lost fortunes. The weak or collapsed institutional framework, engendered self-seeking politics of property allocations that bred internal divisions, graft and a legacy of corrupt practices that to date remain Uganda's biggest challenge to establishment of credible institutions.

The initial passage of the Expropriated Properties Act in 1982 enticed few Asians to return to a country where the security of their life and property was at risk. Donors then set the convalescing of security as a conditionality for disbursement of the restructuring loan. But the institutional framework was not correspondingly synchronised to ensure the policy's success. The law thus skirted the interests of the Ugandan masses. The politicians on their part had a diametrically opposed interest of widening political beneficence through the properties. The Act's intentional loopholes were judiciary legitimised by the then staunch UPC ruling party's appointed Chief Justice Masika in the case of Lutaya, setting a precedent that guided repossession from 1982 until its 1993 overrule in the Sure House case, twelve years after. The overrule was not a reflection of the changed role of the judiciary, but rather, the changed interface between the judiciary and the new political actors in the era of structural adjustment. Given his political leanings, Masika could not apparently conceive of appropriations by the military regime, except those it sanctioned by decree. That interpretation applied wrong principles to achieve political goals. That interface was motivated more by political rather than legal logic as it was deliberate political ploy to except certain categories of properties from repossession, for political rewards and enrichment.

This judgment followed Allen's earlier ruling that the expropriation amounted to outright theft on a big scale and that the expropriation decrees were illegal. Whereas repossession at the time of Allen's ruling was still being done bilaterally without any enabling legislation, save for the politically engineered anti Amin hysteria that shaped the decision. Lutaya however came after the passage of the donor dictated Act which the political class was not keen on enforcing, hence, the Judges deliberate excepting of certain properties. Sure House coincided with increased donor pressure to the government to unconditionally complete repossession and the Supreme Court had to provide a soft landing by overruling its earlier decision, to ensure that it didn't block critical donor funding. This at the general level reflected a policy crisis in the broader economic and political activity in the politics of development planning. Characteristically, the status of

the properties was often contested in administrative circles (mostly the Minister) rather than impartial judicial forums.

The Minister of Finance

The constitutional separation of powers in Uganda's politics has been a blotted affair that every regime has abused. As we saw earlier, the emasculation of the judiciary and legislature under Amin was more complete. The Obote II government was equally entrapped in this blotched framework. It administratively empowered the Minister to determine all matters pertaining to repossession, which protracted the trend of intimidation of judicial officers. Detention and brutalisation of advocates became common place, to the extent that a Chief Magistrate was nearly killed by a hand grenade in the courtroom moments before he committed a soldier for murder (Karugire 1988).

Cases decided during this era raise the question of whether the judiciary protects the broad section of the population. The court's refusal in *Sure House* to extend its interpretation to order for repossession lest it meddles with the Minister's discretion is testimony to shared interests between the executive and the judiciary. Legislatively, beneficiaries in parliament worried by prospects of losing their allocations preceded the case with a private members bill to pre-empt its judicial application.

The National Resistance Movement (NRM) regime bred a further fusion of the executive, legislature and judicial powers in single entities, in its introduction and dual empowerment of Resistance Councils (now [Local Councils] (LCs)). Once more, political interference was cited in the administration of justice, as political heavyweights defied court pronouncements to the absurd extent of one Minister irregularly ignoring a court ruling. In *Baluti vs. Victoria Tea Estates* [D.R. Civil suit No 3/1982 (unreported)], a successful applicant for a temporary injunction against repossession of the suit property was blocked by the Minister who in contempt maintained that the plaintiff grabbed the Tea Estate using Mr. Samwiri Mugwisa, Obote's Minister of Agriculture and Forestry. He directed the Special District Administrator to evict the trespassers and return the estate to Mr. Patel. Given the Court ruling, this was manifest interference that explicates the legacy of political interference in judicial matters. The court meanwhile argued that by virtue of inflation, sufficient compensation was difficult.

The minister was legislatively given wide and perpetual power. That was born out of a deliberate policy to protect vested class interests. To that end, the law made a friendly and automatic property acquisition process, but complicated procedures for those legitimately claiming compensation which it subjected to court litigation. The policy consideration behind that one sided provision is explicit in Judge Allen opining that the seizure of business and other property was tantamount to theft on a huge scale and those who became allocatees placed themselves in the same position as knowing receivers of stolen property. That

political decision alerted the allocatees to legislatively shield themselves against possible legal actions. This shielding was deemed so vital that the Court of Appeal had to legitimise it when it had not been pleaded before it. In obiter dicta, the Court stated that:

Although the above matters are unfortunately not issues in the present suit I consider that they are important and relevant background and wished them to be on record. The Military Government's take over of properties and businesses of Non-Ugandans amounted to nationalisation with provision for payment of compensation under the Law (Decree No. 32 of 1972, S.1(2) and Decree No. 12 of 1975, S.15); and therefore there was no violation of Article 13 of the Constitution especially as the non-citizens were no longer eligible for residence in Uganda. As according to the relevant Decrees, the property or business in question vested, first in the Government and then in the Board, which was set up by the Government to manage such property, with powers to allocate some to individual Ugandans or corporations, and as every allocatee was legally bound to pay the Government the assessed value of the property or business received, the analogy to stealing and knowingly receiving stolen property was misplaced in this case.

Needless to say, litigation involves expensive, sophisticated and cumbersome procedures which are not only time consuming but also unaffordable by the majority. Those who acquired the properties through the Ministers' allocation were not the target of this law which in essence gave them a legal cover to simply return dilapidated property shells without renovations. The law was clearly silent about returning the properties in their pre-allocation state or even paying rent arrears to the legitimate owners for the value in use, they derived from them. Not even were there provisions to provide for the post enactment payment of rent till repossession. In short, the Act absolved allocatees from any liability but transferred the mantle to legitimate tenants who genuinely deserved compensation. Not surprisingly, majority compensation court claims were defeated, given the endowment of the new Acquirers in terms of their affordability of legal representation and other niceties it takes to win a court battle. But what does this mean in political and social terms?

What should not be lost to the reader is that the claimants were largely the underprivileged who had through difficulty bought from or entered tenancies with the political allocatees and therefore, in the absence of the protection given to the allocatees and those repossessing, qualified to be *bona fide* occupants who deserved automatic compensation. As we proceed to show, this phrasing was carried over to privatisation laws, arbitrarily subjecting existing interests to post privatisation uncertainty similarly couched as 'prompt, adequate compensation'. This left many shareholders, including former workers of privatised companies impoverished, while correspondingly protecting the new acquirers from such

liabilities that legitimately existed prior to privatisation. That marked the institutional role of the executive and legislature in designing and passing legislation which the legislature conformingly enforced.

The privatisation institutional framework

Until 2000, the institutional responsibility for privatisation implementation and the use of divestiture proceeds was jumbled up. There was no clearly demarcated institutional responsibility with implementation institutions overlapping authority with those mandated by the Constitution. For example, the Privatisation Unit was enjoined to enter into contracts disposing off public enterprises in which government had an interest, a role constitutionally reserved for the AG. Other enterprises were set up by specific laws or incorporated under the Companies Act, with specific procedures and institutional frameworks (such as the Boards of Directors).

Even the PERD statute made an undesirable overlap of institutional responsibility, by vesting concurrent responsibility to privatise a Public Enterprise in the Line Minister or the Finance Minister. All this jumbling up of institutional responsibility was undesirably the cause of court litigation and multiple administrative conflicts that threatened the privatisation exercise and drained the country's finances through the resultant awards of costs and damages. Meanwhile, donors were biased towards the purchaser's interests. To this end, much of the donor espoused economic literature emphasises establishment of a strong institutional framework for bestowing confidence in those purchasing public enterprises, by giving them assurances that disputes arising out of privatisation shall be resolved in their favour (Shirley 2002: 11). Donors thus ignored the precarious shortage of human, institutional, economic and political capacities to manage privatisation. The stakes of the privatising government, whose development is the policy's supposed aims are conspicuously ignored. Contrary to postulations by the market self regulating ideology, privatisation cannot by itself establish self regulating institutions.

Had the policy been well conceived, supporting laws defining the institutional framework would have preceded its implementation. Ideally, this would have harmonised existing laws such as land laws that restricted foreigner's acquisition of land on which public enterprises stand. Secondly, the Public Enterprises Reform and Divestiture Statute was enacted in October 1993, when some privatisations had been conducted. Thirdly, The Procurement and Disposal of Public Assets Act only came into place in 2003. This should have preceded privatisation which basically entails disposal of public assets. Lastly, to date there are no franchising laws to govern the operations of franchises, yet some privatisations were by franchises. Such lapses were prone to political and institutional corruption; and from the planning perspective reflected a lack of sequencing and timing. A faulty institutional framework aids speculators' unchecked abuse of the process. Unlike

a private seller who has no post sale concerns, the privatised products were vital development agents. The failure to properly sequence, time and harmonise governing laws and implementation institutions amidst an alien legal regime, generously ceded them to speculative 'tourists'.

The very existence of human systems presupposes the possibility of human failures and errors. That is why safeguard institutional frameworks were needed. Failing such measures, bungled privatisations like Nile Hotel and Conference Centre are inevitable outcomes. The Minister, confronted by this reality, in defence blamed the failures on 'people, people'. That was a clear admission of the absence or weaknesses in the institutional framework to check the people. That absence engendered a seismic political manipulation that derailed the development process. This, to the extent that the whereabouts of privatisation proceeds has been a contested arena, at times prompting Parliament to suspend privatisation activities (*New Vision* 5 March 1993). Meanwhile, Uganda is still hailed as a privatisation 'success story', yet external debt continues to soar and is now estimated at US \$4.32 billion (BOU 2002/2003 Annual Report).

To silence public outcry, donors advanced a loan for short training programmes conducted by the American International Law Institute as part of 'local skill enhancement'. The project covered issues on privatisation but its short duration did not ensure effective transfer of substantial skills to support a strong privatisation institutional framework. A comprehensive institutional reform addressing both the training needs and the implementation framework would suffice. Besides, had there been proper sequencing and timing in designing the policy, this is one of those institutional frameworks that should have preceded privatisation. At the broader level, this was a reflection of pitfalls in government's negotiation framework. The law was but part of the requisite institutional framework.

Issues affecting the government's negotiation framework

Under the law, Uganda's negotiating framework comprises the line Ministry, Ministry of Finance and Attorney General (AG). This law has however been both the cause and victim of a weak institutional framework. It has been the cause via its failure to sufficiently define the institutional framework and a victim via vagrant breaches by those charged with its implementation. Examples of its breach abound. For instance, Hon. Wandera Kazibwe then Minister of Tourism accused the Finance Minister of bypassing her to sign a controversial Nile Hotel privatisation she had halted (Minutes of the DRIC's 85th meeting of 17 November 1998.) That privatisation soon collapsed, leaving behind huge costs to the government and numerous court wrangles that still rage on.

Cultural and political reforms

Uganda experiences a culture of silence and secrecy among its population. In Uganda's political culture, people rarely criticise government policies directly. They often do it through an informal network of rumour conveniently termed 'radio Katwe'. Views on a particular policy or its implementation shortfalls are thus hard to solicit. That alludes to the absence of a culture of utilising formal institutions. Uganda's political culture is round about in attitudes. Manipulative attacks through rumours are largely employed as the preferred mode of communication of sensitive information. This partly arises from the hierarchical nature of the traditional cultural institutions. For example, it is abominable to openly criticise the Kabaka, the Head of the Ugandan Ganda tribe. The foregoing, coupled with the political repression Ugandans suffered during the turbulent era of military rule and successor anarchic governments if they dared speak out, this culture of manipulative attacks has come to engulf the whole spectrum of Uganda's body politick and negatively impacts on information circulation.

Such an informal rumour network when institutionalised in government dealings plays in the hands of those interested in entrenching secret deals visited with corrupt practices. That retards development prospects. Secret dealings were appropriate when government was a closed entity but with its liberalisation, information flow should follow suit. Political liberalisation reforms Uganda adopted presupposes existence of formal market arrangements, which assume that contracting parties enjoy information symmetry. Valuably, the 1995 Constitution institutionalised the process of liberalising information flow and the Judiciary has been firm in its interpretation, thus operationalising the process. However, a section of politicians, bureaucrats and technocrats remain opposed to that opening up as it runs counter to their cultural experiences. This is so because the culture of secrecy has traditionally supported institutional weaknesses that enabled some sections irregular wealth accumulation.

In 1993, the NRM government institutionalised the policy of decentralisation and devolution of authority to local municipalities and non state actors. Devolving authority to Municipalities from the central government as President Museveni humorously put it 'democratises corruption by decentralising it to widen the spectrum of beneficiaries and this is better than keeping it concentrated in a few hands'. Added to other forms of bureaucratic and economic reform such as downsizing, retrenchment and privatisation, these have diminished the magnitude of the central government. These reforms though were not wholly embraced by political hangers-on, whose traditionally enjoyed political power and patronage they diminished.

Downsizing and public service recruitment freeze though had a serious aftermath on the institutional framework. There was loss of a vital middle level cadreship that followed. This created a generation gap that meant no tier of new

bureaucrats acquired skills over a given period and partly accounts for the present lack of middle cadre staff to handle serious institutional responsibility. Because of not instituting a systematic framework to vet non performers for retrenchment, the process phased out a certain skilled and experienced cadre level that has proved impossible to replace. This situation is not helped by the continued loss of bureaucrats to the lucrative private sector.

Bureaucratic and organisational hurdles

In the wake of Uganda's decentralisation and devolution of institutions and power, individual Government departments, both at ministry and municipality, have distinct internal procedures. These define the success or hindrance of the institutional framework. For example, a respondent for this study told of a situation where there is no system of filing government agreements. President Museveni, keen on attracting investors has been weary of such operational drawbacks, which he has condemned as deliberate frustration of investors. But is the problem the bureaucrats or institutional structures, procedures and unfriendly laws?

Uganda's bureaucracy involves an impervious structural and operational work culture. For example, the President directs the execution of a given task but it is not executed. This may arise from failure to interpret the scope and purpose or simply because it is not beneficial to the implementers. It may also be attributable to poor coordination between public sector institutions. Indeed, there is a serious institutional problem of Government inter departmental access to information. This causes inordinate delay or complete unavailability of crucial information for government's planning and subsequent use. Meanwhile, departments struggle to break through institutional huddles, external parties easily access the required information by miraculously reducing delays in moving files or jumping slow moving queues for relevant signatures. Informatively, the former Attorney General (Bart Katureebe) narrates:

As a State Attorney in 1978, I was told to go with a delegation of Uganda Airlines to purchase a Fokker Friendship aircraft. I asked for the draft contract and I was told, they will give it to you. The first time I saw the draft contract was while we were in a Hotel in Brussels, the night before we signed it. I had never seen a contract of purchase of an aircraft before! If you are buying helicopters and your team goes to look at the helicopters, that is not a legal matter, it is technical. If he comes and says I have seen the helicopters and they are okay, I would put this down in the agreement (quoted in *New Vision*, Kampala, 7 October 1998).

That narration reveals a bureaucratic problem of the line ministries' failure to disclose vital information pertaining to projects being negotiated. Such a practice negatively impacts on negotiation outcomes. This is besides involvement of individuals basing on employment status rather than expertise and experience.

There is also an appointment criteria that sometimes assumes the political correctness ideology dimension rather than proven ability. This occurs amidst a paucity of a public service culture. Public office is regarded by some as an investment for personal aggrandisement rather than offering of service. Such attitudes weaken institutional capacity thereby narrowing possibilities of getting good deals. Meritocratic recruitment guarantees minimal competence and generates an ethical and united work force that works towards institutional goals rather than self-interest. In contrast to bureaucrats enlisted through nepotism or political correctness, those recruited on merit, qualifications and experience first perform to excel while job protection comes last. These latter attributes vitally foster a culture of institutional commitment, a vital element of the institutional framework for development.

An efficient bureaucracy is a vital engine for Uganda's development, as it uniquely fits the private and public sectors. That involves rejuvenating private public business partnerships transactions through the provision of vital information on available investment opportunities. This is especially so since Uganda as a policy actively promotes private investments by privatising public enterprises and investing directly in private firms. As such, Ugandan entrepreneurs' attempts to break into the world trade framework require coordinated efforts to ensure that they are availed information on such issues as laws and standards. An effective bureaucracy would thereby end institutional hurdles in international trade, thus promoting development. As President Museveni has consistently stressed, trade rather than 'aid' is the ultimate panacea for Uganda's poverty and this can only be meaningfully realized through genuine local entrepreneurship rather than those pre-occupied with profit repatriation.

Competent bureaucracies can help individual entrepreneurs overcome coordination problems and instigate new activities. Given that the public sector was accustomed to governmental level dealings, the challenge is to adjust to accommodate work styles outside that setting. That includes a marked departure from the routine classified setting to subtle complex transactions involving a different set of actors. Instituting a culture to shape development oriented work habits and strengthen institutions is imperative. Legal and bureaucratic systems must be functioning predictably, dependably, effectively, efficiently and honestly.

Because of bureaucratic weaknesses, external debt continues to accumulate partly through sheer negligence, fraud, corruption and bribery; amidst a weak institutional framework. As debtors (accused) are financially crippled the creditor (accuser) plays judge, also determines repayment terms and from what source, hence, the near take over of political and legislative power. All this has engendered a negative legacy of 'Bichupuli' (fake deals) which has permeated Uganda's institutions to near institutionalisation of corruption. Consequently, pseudo-investors and speculators purporting to conduct genuine development related activities have hijacked the management of the economy. All this is possible,

because of the institutional weaknesses. In a survey conducted in September 2003, respondents said that the process to invest or set up a business is deliberately made unnecessarily long so as to attract bribes. They said that bureaucratic systems and bottlenecks facilitate corruption. It is noteworthy that the police, who are responsible for arrests and prosecution, were singled out as the worst offenders. That weakens ethical and institutional efficiency. Corruption is glorified. An individual, who builds residential or commercial buildings using stolen public funds is praised or seen as successful. Such glorifications alongside complicity by implementation institutions epitomise serious disincentives to institutional development.

From the foregoing discussion, the executive, legislature and judiciary have to interface smoothly in the execution of their roles, without one dominating or setting hurdles for the other for the sake of development. This must rise above cultural and political constraints.

Even more importantly, the interface must refrain from unquestioningly designing policies in conformity with donor demands and obediently propagating them without a supporting institutional framework for enforcement, monitoring and respect for contractual obligations as we proceed to show.

Enforcement institutions

Judiciary

The judiciary is an important institutional framework for interpreting laws thereby setting the benchmarks for those involved in the country's development process. More than ever before, Uganda under the Movement Government boasts of a vibrant judiciary, perhaps one among the best in Africa. There is animated adjudication of civil and criminal cases, interpreting the Constitution, giving effect to its provisions, and providing expertise in interpreting laws. Institutionally, it performs other related duties in promotion of human rights, social justice and morality. Courts freely make pronouncements against the Government and interpret the Constitution which sets out the legislative process, by whom and how powers are to be exercised, even the sovereign power who made it. This represents the independence of the judiciary, a sign of a developmental state. In the case of *Bank of Uganda vs. Banco Arabe Espanol* (SCCA No 1/2001, unreported), the Supreme Court interpreted development policies and demarcated institution responsibilities in the Government institutional framework thus:

The act amounting to frustration upon which the appellant is relying is that of government's liberalisation policy of coffee trade. By this policy both the appellant and Uganda Government lost control over the proceeds of coffee and foreign currency... it would not have been proper for the appellant to rely on frustration which was self-induced by both the borrower and the appellant's agents. Under the Bank of Uganda Statute, the appellant is supposed

to advise the government of financial and economic policies and that it also acts as government agent in financial matters. It had a duty to advise the government against the policy of liberalisation of coffee trade and more so since the appellant and the government had already committed themselves to paying the respondent out of coffee sales which had to be channelled through the appellant Bank.

The judgment was an indictment of the Bank of Uganda's institutional dereliction to advise government on development policy making and implementation. The major cause here was the panicky liberalisation to beat the donor funding conditionality deadlines. Forsaking existing contractual obligations was reminiscent of the colonial agreements and legislative frameworks carried over to the post colonial regime as vivid in Acts like that on repossession, and equally replicated in donor conditionality. That it returned to haunt the policy makers through recriminations, and inflicted an otherwise avoidable costly litigation should form the basis for proper and cautious advice. Incredibly, the projected benefits went to compensation, a burden absurdly shouldered by the poor taxpayers and not those who dictated an unconditional hurried liberalisation. The tough language in the case is a judicial reminder that in interface with the executive and legislature, deliberate breaches will not be tolerated irrespective of the source and cause. On the positive side however, the case is a reassurance that Ugandan Courts offer viable institutional avenues to remedy any renegeing on contractual obligations irrespective of who is at fault. It is a reproach to any attempts to arbitrarily seek or legislate to defeat existing obligations. The interface between the executive, legislature and judiciary brought out in this case is that of promoting foreign direct investment, albeit in separate roles.

But why was this case decided differently from those involving expropriated properties, where an Act equally wantonly trampled on existing contractual obligations but was judiciary upheld? That reflects a new firmer judiciary in its interface with the executive and legislature. Rather than proffering conformist decisions as before, it this time around insisted on the executive's compliance with the Constitution's institutional framework.

Attorney-General

The procedures of Government entering into contracts are comprehensive enough to provide a beneficial institutional framework if strictly observed. The AG must mandatorily give advice on every government contract. This is intended to eliminate abuse of the process and standardise procedures. However, it is open as to the precise point in time the advice should be sought. The AG's legal advice is often sought to fulfil the constitutional 'ritual' of seeking legal advice.

Thus officials negotiate, strike deals, and then approach AG to rubber stamp them. Since these hold public offices, the law should fill the lacuna and prescribe

sanctions for such errant behaviour. Such cases are many. Revelations by the AG that, 'the Foods and Beverages Limited sale agreement was signed without reference to our office', indicate a behaviour that undermines efforts to build strong institutions for good governance. The Minister of Finance conceded to the Public Accounts Committee that 'the person who signed a contract was not allowed by the Constitution to sign it' (*New Vision*, Kampala, 9 July 1998). Surprisingly, he only conceded without indicating the punishment meted out to the culprit.

Since it is the AG's opinion that goes to Court, it should be sought at the commencement of project negotiation. The policy consideration behind that institutionalised authority is the need for consistency and harmonisation of sensitive government activities. While stressing this role, the Supreme Court in *Bank of Uganda vs. Banco Arabe Espanol* (Supra) opined:

The Attorney General is the principal legal adviser to the Government of Uganda. In consequence, nothing could be more authoritative and authentic than the opinion of the Attorney General of Uganda. The opinion of the Attorney General as authenticated by his own hand and signature regarding the Laws of Uganda and their effect or binding nature on any agreement, contract or other legal transaction should be accorded the highest respect by government and public institutions and their agents. Unless there are other agreed conditions, third parties are entitled to believe and act on that opinion without further enquiries or verifications...it is improper and untenable for the Government, the Bank of Uganda or any other public institution or body in which the Government of Uganda has of an interest, to question the correctness or validity of that opinion in so far as it affects the rights and interests of third parties. While it is true that the Attorney General plays a dual role as Government principal legal adviser on both Political and legal matters, nevertheless, in that latter role the Attorney General is a law officer for the sole purpose of advancing the ends of justice. In this role, the Attorney General has access to all types of advice from fellow ministers who may have negotiated and authorized the signing of contracts. He has a host of qualified and experienced advisers on legal matters.

Remarkably, this judgement stresses the institutional importance of the AG both to Government as well as other parties dealing with Government. It is a censure against the culture of treating the AG as a peripheral participant best suited for proofreading, even with the amount of law involved and the strong presence of the other party's high calibre lawyers. For his part, the AG cannot play safe when deals go bad, pleading that the flaws occurred because he was not consulted.

Inspectorate of Government (IGG) (Ombudsman)

The institution of the IGG is under Article 225 (1) of the Constitution, charged with the duty of: promoting and fostering strict adherence to the rule of law and principles of natural justice in administration; eliminating and fostering the elimination of corruption, abuse of authority and of public office; promoting fair, efficient and good governance in public offices; supervising the enforcement of the Leadership Code of Conduct; investigating any act, omission, advice, decision or recommendation by a public officer or any other authority to which this article applies, taken, made, given or done in exercise of administrative functions.

The jurisdiction of the IGG coincidentally covers officers or leaders whether employed in the public service or not, and also such institutions, organisations or enterprises as Parliament may prescribe by law. The IGG has invoked this jurisdiction to significantly check institutional flaws and abuse of office, such as halting the irregular sale of Sheraton Hotel, when the Solicitor General had advised that the bid continue despite the withdrawal of one of the members in the consortium. The IGG's limitation though remains in the under staffing, overstretched jurisdiction and the over concentration on post-mortem interventions fit for other institutions like Police. As a cautionary note, it must be appreciated that monitoring institutions are also manned by human beings who can fall susceptible to the very vices they are meant to check if they are no counter mechanisms to check their workings.

Opportunely, the Constitutional Court, has held that the special powers that enable the IGG to effectively deal with cases of corruption and abuse of office and authority cannot be construed so widely to include the power to prosecute most of the offences in the Penal Code Act. This decision positively consolidated the IGG's operational scope, after taking cognisance of the dangers posed by overstretched jurisdiction on institutional efficiency and effectiveness of an understaffed and poorly remunerated institution.

Parliament

Throughout Uganda's history, legislative decisions have been politically influenced. In the case of the ruling NRM, the executive has interfaced with Parliament in closed sessions and caucuses for this purpose. Parliament has thus on occasion acted as a rubber stamp as vivid in the Preamble to the Traditional Rulers Restitution of Assets and Properties Statute of 1993:

WHEREAS the National Resistance Army sitting in Gulu on the 3rd day of April, 1992 after discussing the return of traditional sites to the traditional groups concerned resolved (that) "it has no objection to the relevant national authority entering into discussions with the concerned traditional groups . . . , PROVIDED that this does not interfere with the security of the country. "AND WHEREAS on the 30th day of April, 1993, the National Resistance

Council sitting as a political organ under the Chairmanship of His Excellency the President of Uganda, by resolution of the Council directed that certain assets and properties previously confiscated by the State...be returned in accordance with the laws of Uganda.

Three organs viz the National Resistance Army, the National Resistance Council—the Political organ and the National Resistance Council—the legislative organ clearly interfaced in their roles and this has never been questioned by the judiciary, despite court disputes involving the Statute. The legislator's categorical acknowledgement of the NRA's direct involvement in the matter was an open reminder that the military is still alive in Uganda's policy making.

In yet another incident, acting under donor deadline pressures, the Minister of Justice dryly proposed amendment of the Expropriated Properties Act, notwithstanding any other written law, including the Constitution. That reflects the fragrant passage of inconsistent laws that have been routinely nullified by the judiciary, leading to an ugly exchange with the executive and legislature, who interpret this to mean political sabotage.

The authority and functions of Parliament have since been strengthened in Article 159 of the 1995 Constitution. As the legislative and monitoring body it makes laws and oversees government actions. The Constitution empowers Parliament to make laws on any matter for the peace, order, development and good governance of Uganda and to protect the Constitution and promote democratic governance in Uganda. It checks government agreements, inquires and scrutinises government policy. It is possessed with the sanctions of impeachment in case it is the President at fault and censure if it is a cabinet Minister. Invoking that power, Parliament on 18 August 1998, suspended the privatisation process which it maintained was fraught with corruption and served to benefit a select clique of individuals. Minister Matthew Rukikaire's decision to ignore the resolution culminated in a petition to censure him from the executive, and precipitated his untimely resignation.

Parliament has unsparingly executed its mandate. As they preached the gospel of transparency as the bedrock of good governance, international lenders and their sympathisers contradictorily waved confidentiality to conceal their transactions. They argued that their dealings were a preserve of bureaucrats who were parties to the signing of contracts. But Parliament invoked its constitutional mandate to reject inequitable donor projects. In one such instance, The World Bank Country Director succumbed and agreed to engage in open, frank and constructive dialogue. (James W. Adams, World Bank Country Director, Uganda in a letter to the Minister of Finance and the Vice President and Minister of Agriculture and copied to the P/S's of Finance and Agriculture dated August 14, 1997).

That was a principal departure from the usual conditionality dictation. Diplomatically, it was a concession to break the confidentiality cap. For its part, Parliament demonstrated its institutional potential to streamline development projects to accord with people's aspirations. It was an unpalatable reminder to both local negotiators and individual donor agencies' desk officers that their institutional credibility would be tainted by sanctioning dubious deals. Above all, it demonstrated the institutional potential of Parliament to discipline erring donor officials, senior politicians and bureaucrats.

Civil Society

Civil society institutions are accorded a lot of respect and recognition. The state has harnessed the Local Government Councils (LCs) and Non Government Organisations (NGOs) as effective forums for advocacy, public consultation and dissemination of information for developmental purposes. Notwithstanding the fragility that often exists between say NGOs and politicians, there is a reasonable balance achieved between the two institutions and they complement one another on matters of development. The interface with state institutions is via the exchange of vital information collected through the networks of each.

As complimentary partners, LCs, NGOs, journalists, academics, the private sector, (professional bodies like the Alternative Dispute Resolution Forum, Uganda Law Society and Trade Unions), play a vital role in strengthening Uganda's institutional framework for development. This has assumed the form of court challenges, reportage or publication of leaks or analysis that highlight the existence of institutional problems in government functioning. This information is in turn picked up by mandated bodies such as the Director of Public Prosecutions (DPP) Police's Criminal Investigation Department (CID), Parliament, IGG, The Ministry of Ethics and Integrity and so forth to make further inquiry or analysis, leading to further action or debate. The results are evident in the strong public support anti graft Parliamentarians, NGOs and the media have received for exposing the flaws.

Suffice it to say, civil society is still at formative stages and mindful of Uganda's ugly past often treads carefully on contentious issues. Besides, government functionaries do not hesitate to tactfully exploit or manipulate its leadership to achieve selfish goals. This they achieve by denial of licenses, manipulating appointments of their protégés on NGOs Governing boards, intimidation and threats to officials' lives. The important role of NGOs in their interface with state institutions helps to promote Uganda's institutional framework for development. Their vital role surpasses the observed shortfalls, which in any case are not peculiarly exclusive to Uganda.

Conclusions

Uganda's developmental state has emerged from the Movement Government's good post war policies which have exploited Uganda's fortuity of resource endowment. However, the impediment to its full realisation still manifests in the weak institutional framework. This is mirrored in the weak policies that often lack operational safeguards, a virtue exploited by self seekers to undermine development. The implementing bureaucracy remains susceptible to social and political pressures. So, is the problem the law, the weak institutions or lack of developmental initiatives or a combination? The institutional framework appears to have been conditioned by a combination of factors, i.e., deliberate colonial policy, political manipulation and donor complacency. As a result, Uganda's legal profession has remained relatively parochial while its best clients have become increasingly global. That is a serious limitation that needs serious training and exposure. Likewise, the training curriculum should emphasise the area of institutional development, which has hitherto received little coverage.

The disregard of the law, legal institutions and lawyers in policy formulation and implementation is unethical. The processes need harmonising to develop strong institutions as mis-coordination abets squandering of funds in inefficient programmes. Professional incompetence, institutional corruption, collusion and the failure of leadership apparent in some senior officials and politicians need to be seriously addressed. Physical insecurity, bureaucratic inefficiency and corruption are not only inimical to the development of a stable society, but are also serious disincentives to investment. The Government must strengthen the monitoring and enforcement institutions in performance of their roles, increase their participation in initiating, planning and implementing development policies; secure long-term financial resources to undertake sustainable developmental intervention; and set up an effective and efficient mechanism for inter-departmental cooperation. For posterity, an agency to guide, periodically monitor and advise the Government, independently co-ordinate and control policy implementation should be set up by Statute.

Privatising enterprises to investors from and operating within a diversity of jurisdictions presaged a growing number of legal areas demanding rich and cross-border expertise – property rights, taxation, land, the environment, procurement, antitrust, employment law, pensions, International arbitration, and so on. Privatisation entrenched the capitalist system with its associated characteristics. It is thus inconceivable that its vanguards never alongside instituted those laws to check the negative economic effects triggered by privatisation.

The rising phenomenon of same persons acquiring numerous entities points to the emergence of monopolies. Yet, this should have been forestalled by introducing anti trust and competition laws to protect consumer interests and

check their negative economic effects. This will help to instil crucial local skills for fresh graduates joining government service.

Finally the AG's office is not and should not be used as an instrument of defence for self-seekers' last minute manoeuvres. The Attorney General must enforce his constitutional mandate by participating in preparation, negotiation, procurement, validating and adjudicating on civil claims. This must be linked with policy formulating organs to ensure harmonisation. Where his advice is not sought or is ignored, transactions so entered should be nullified and perpetrators brought to book. Mere lamentation and endless pronouncements on how the AG's advice is ignored, is a culpable admission of failure to execute a constitutional duty and therefore incompetence that merits automatic resignation.