



THE REPUBLIC OF UGANDA
MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS
JUSTICE, LAW AND ORDER SECTOR (J/LOS)

Participatory Poverty Assessment on Safety, Security, and Access to Justice:
Voices of the poor in Uganda.

Final Report

VOLUME 1

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FOREWORD

This first ever Uganda Participatory Poverty Assessment (PPA) on safety, security and access to justice is one of the initiatives undertaken by the Justice Law and Order Sector (J/LOS) to consult the poor as end-users of Justice Law and Order Sector services. This is one of the surveys commissioned by J/LOS at the onset of its Strategic Investment Plan for the medium term (2001-2006) to serve as monitoring tools¹. The PPA was also commissioned to seek poor people's views on the most appropriate ways of addressing vulnerability to poverty arising out of lack of safety, security and access to justice. This assessment was carried out in six districts of Uganda (Katakwi, Busia, Kampala, Arua, Kiboga, and Kabale). The assessment brings out the voices and perspectives of communities into government policymaking, specifically the Ministry of Justice and Constitutional Affairs (MJCA).

J/LOS plans to conduct similar assessments during the implementation process with an aim of assessing impact, public opinion and perceptions of J/LOS services. The voices generated by this assessment are also expected to inform local governments' planning and implementation of J/LOS interventions through *Access to Justice Committees* that will be formed at District Level and other lower levels to feed local responses and concerns into the overall program.

The challenge ahead for J/LOS entails, *inter alia*, to ensuring that communities, particularly the poor and vulnerable, are not further marginalised in the development process and that the policy reform process, which has the greatest potential for improving transparency and accountability in service delivery, is enhanced. The best way forward is to strive to create awareness among communities; of government policies, laws, fundamental rights and entitlements enshrined in the Uganda Constitution which provide the operational framework for protecting poor peoples' lives, property and promoting access to justice. The Voices contained in this report will facilitate central and local governments as well as development partners to become more responsive and sensitive to concerns of the vulnerable and the poor. The voices captured in this report should also help in informing J/LOS budgetary allocations, policy reforms, investment planning and other possible uses.

¹ Other surveys serving as monitoring tools, commissioned by J/LOS include, *inter alia*, the baseline survey of the criminal and commercial justice systems; and the Gender and access to justice study.

ACKNOWLEDGEMENT

This Participatory Poverty Assessment study in Uganda (on safety, security and access to justice) would not have been possible without the support of several stakeholders.

We are grateful to the District Administrations for their support, including making initial contacts with the study communities, and allowing their officers to be a part of this team. We are particularly indebted to the Division and Sub-county Administrations who were helpful to Winsor Consult team, with respect to mobilizing communities for the assessment. We are extremely grateful to the people of the visited cells and villages in Arua, Busia, Kabale, Kampala, Katakwi and Kiboga districts. Their active involvement and insightful views were informative for they enabled a more in-depth understanding of the plight of the poor in ensuring safety, security and access to justice.

We also want to thank Winsor Consult team that comprised Dr. G.W Mugwanya (Team Leader), Mr. S. Sewannyana, Mr. J. Suuna, Mr. J. Muwawu, Mr. D. Lubowa, Ms. P. Nnamasinga, Mr. G. M Bogere, Mr.J. Mugisha and Mr. J. R. Bugembe. The District Team Members in Arua, Busia, Kabale, Kampala, Katakwi and Kiboga districts provided invaluable support to the research team, particularly in organising lower local governments and district debriefing meetings. Special appreciation goes to the national resource persons who provided the much needed guidance in the preliminary preparatory activities.

Last but not least, we acknowledge the financial, technical, material and moral support provided by various agencies namely: Department For International Development (DFID), Ministry of Justice and Constitutional Affairs, Arua, Busia, Kabale, Kampala, Katakwi and Kiboga District Local Governments, the Poverty Working Group of, among others.

To each and all, including those that may not have been mentioned here, many thanks.

LIST OF ACRONYMS

AA-U	- Action Aid (Uganda)
AIDS	- Acquired Immune Deficiency Syndrome
CBO	- Community – Based Organization
CBR	- Community based Rehabilitation
CCF	- Christian Children Fund
CDA	- Community Development Assistant
CDI	- Community Development Initiative
COU	- Church of Uganda
CWD	- Children with Disabilities
DFID	- Department for International Development
DMC	- Disaster Management Committee
DPO	- District Population Officer
DSC	- District Security Committee
EARS	- Education Assessment and Resource Services
HIV	- Human Immune Virus
IDP	- Internally Displaced People
IEC	- Information Education and Communication
J/LOS	- Justice Law and Order Sector
LC	- Local council
LG	- Local Government
MFI	- Micro Finance Institutions
MFPEd	- Ministry of Finance Planning and Economic Development
MJCA	- Ministry of Justice and Constitutional Affairs
NEMA	- National Environmental Management Authority
NGO	- Non – Governmental Organization
NSCG	- Non Sector Conditional Grant
NUPSNA	- Northern Uganda Psycho Social Needs Assessment
PAF	- Poverty Action Fund
PAP	- Poverty Alleviation Project
PHC	- Primary Health Care
PMA	- Plan for Modernisation of Agriculture
PPA	- Participatory poverty assessment
PRA	- Participatory Reflection and Action
PWD	- People with Disabilities
RC	- Red Cross
S /C	- Sub- Country
STD	- Sexually Transmitted Diseases
SWAP	- Sector wide Approaches
TBA	- Traditional Birth Attendant
ToR	- Terms of Reference
TPO	- Trans – cultural Psycho social Organization
UPDF	- Uganda Peoples Defence Forces
UPE	- Universal Primary Education
UPPAP	- Uganda Participatory Poverty Assessment Project
WV	- World Vision

EXECUTIVE SUMMARY

Introduction

The Justice Law and Order Sector commissioned the first ever-Participatory Poverty Assessment on Safety, Security and Access to Justice, in October 2001, largely to ensure three aspects:

- Consultations with the poor concerning their attitudes, perceptions and constraints to gaining safety, security and access to justice.
- Ensuring that voices of the poor inform J/LOS' Strategic Investment Planning, and the Reform Process.
- To serve as a baseline and a monitoring tool by generating poor people's perceptions and attitudes regarding safety, security and access to justice, at the onset of J/LOS' strategic Investment.

The study was conducted in twelve communities selected from six districts of Kiboga, Arua, Kampala, Kabale, Busia, and Katakwi. Selection of study districts took into account socio-economic, demographic and ecological diversity to ensure representatives of study findings across the country.

Findings

Safety and security.

Inadequacies by Government to guarantee security of property and safety of persons were voiced in the six districts visited by the team, a situation linked to reduced productivity. For instance, in Katakwi communities consulted voiced their inability and unwillingness to invest in livestock if their animals continue to be raided by the Karamajong. In Kiboga (Massodde sub-county) communities expressed concern for the continued unresolved land disputes and the disincentive it has created to local development. In these two cases insecurity stood at the core of constrained production, hence linked to poverty.

Legal services

Legal representation for the poor was said to be a mockery in the current legal system. The high professional fees demanded by lawyers and the concentration of lawyers in the city meant that the majority of people and the rural poor in particular could not have access to legal advice stance. There are very few advocates and private law firms operating in rural areas and, where they exist, they are not very useful as lawyers spend very little time in their upcountry firms. It was further revealed that although there are legal aid providers in the country, these are very few and are concentrated in the city and major towns. In most cases people have to incur transport costs to get to those providers, which not only impoverishes them further, but also acts as a disincentive to

pursue legal redress. The need for professional social workers to be attached to key J/LOS institutions was apparent.

Access to, and administration of justice.

Several barriers were raised as specifically constraining the poor in seeking and accessing justice. The following constraints are worth mention:

Corruption: In all communities consulted participants admittedly found it increasingly difficult to report cases to police or even to pursue disputes to courts of law. The above was seen as a zero-sum game leading to loss (not gains). Even when Local Council officials have referred them to police they were reportedly frustrated by Police officers. Issues that were frequently cited include the infamous “*kitu kidogo*” (bribe) and the requirements to present a pen and paper before police can attend to a complainant. Failure to comply implied failure to get assistance.

Poorly facilitated institutions: Poor facilitation of the police, prisons and courts conspicuously featured in all communities as a contributory factor to crime and poor administration of justice. This was said to breed insecurity. To cite an example, in Kampala district the majority of study participants noted that police was unable to respond to reports and requests because they were hardly equipped with the resources and/or skills. It was noted that upcountry stations suffered more from lack of facilities. Limited effort was seen to be made to ensure Justice. Officials posted in rural areas were seen to be on the low side and often ill equipped in terms of facilities.

Abuse and violation of prisoners’ rights: This largely took a prison-welfare-related perspective. Most commonly singled out were (a) inhuman treatment, evidenced by hard labour, physical maiming, (b) poor feeding, (c) Lack of sleeping and proper toilet facilities resulting in spread of disease while in prisons.

Supervision, Monitoring and Accountability: Poor supervision and monitoring of the work of justice institution officials was frequently raised as a key constraint to accessing justice. For example, upcountry police was reportedly resorting to drinking for the biggest part of the night ignoring their responsibilities. In addition, justice-dispensing agencies showed limited interest in downward social accountability. Much of the accountability effort was financial, administrative and largely upward.

Commercial justice:. The business activities engaged in by the poor were evidently incompatible with current commercial justice system. Provision of small licenses/business permits for the poor and decentralizing tax tribunals were often strongly suggested especially in Kampala, Arua, and Busia. It does not come as a surprise that suggestions were made to the effect that tax tribunals be brought closer to the citizenry through existing Local Government structures. This closeness is expected to reduce complications faced by small firms (poor employers and employees) in enforcing contracts and payment of debt.

The youth noted that they more often suffered and not been paid by contractors because of absence of binding agreements. There is no known culture in Uganda for contractors to enter into formal contracts with casual workers e.g. on “building sites”. A pro-poor commercial justice system should address such situations.

The absence of land tribunals was of concern to the poor: Communities consulted wanted to see land tribunals in operation – a situation that would help in measuring their relevance and effectiveness. In Kiboga, it was revealed that land was an asset owned by the poor and often used to mobilize financial resources to engage in business. However, failure to adequately and satisfactorily handle land disputes meant the poor would continue to lose.

Inadequate levels of awareness: The poor were said to have failed to use the law to secure the protection for which they were entitled owing to general lack of awareness of basic legal rights and the “workings” of the laws. The paucity of information was voiced out in many of the visited communities. This, which many often termed as “ignorance”, acted against communities’ ability to enjoy protection of the law. Communities consulted were unaware of both procedural and substantive arrangements of formal courts. They hardly understood the circumstances why courts rejected certain evidence, called for witnesses who can shed light on the matter before court, the sentencing procedures, why certain offences are termed as grievous etc. High illiteracy rates among communities, especially the rural poor, were pointed out by the vast majority of participants as a major cause of this ignorance. Illiteracy erodes away confidence and breeds powerlessness among the poor and other vulnerable groups. The assessment also revealed that technical language and other procedures used in formal courts were a hindrance to accessing justice. English remains the official language in the country and thus proceedings in courts of law are conducted in English and the laws are written in English.

Coping mechanisms:

Participants revealed several coping mechanisms. The common thread that runs through many of them is linked to recourse to informality. In many of the visited districts, informal sector activities were seen as the way out if poverty was to be fought, since the law had criminalised activities through which the poor were deriving incomes e.g. street vending. In boarder areas of Busia, and Arua, where the main source of income was trading, the poor engage in illegal activities so as to fend for their families. They, thus, continued to engage in smuggling (trading without licenses or outside licensed places). Corruption and bureaucracy in the licensing offices were also cited as a barrier to securing permits to engage in lawful activities.

Participants further noted that police was largely responsible for making informal sector survival strategies increasingly difficult, as it harasses vendors and small traders especially women and youth. Police and law enforcement officers patrolled unauthorized trading areas in order to collect bribes from traders and kiosk owners thus reducing productivity.

The recent J/LOS innovation under the SWAP is a positive step towards creating inroads for removing legal, political and social barriers as well as strengthening the participation of various stakeholders including the poor, in the administration of justice. J/LOS aims, *inter alia*, at contributing to PEAP objectives and work towards poverty eradication. In addition the formation of the J/LOS strategic Investment Plan for the Medium-Term and the aspirations contained therein underpin the need to increase poor peoples choices, potentials, and capabilities to fight poverty.

It is important that the following issues are taken into account in implementing J/LOS plans.

- Financial implications of the recommendations made by the poor,
- Social – cultural considerations,
- Political issues including interference from political “wings”,
- Physical barriers to accessing justice such as poor road network
- Timing,
- Capacity at district and sub-county levels to improve access to justice,
- Existence and preferences of formal and informal institutions/ non-tradition and traditional mechanisms,
- Strengths and weaknesses of existing institutional arrangements, Discrimination and Victimization, institutional support, etc.

In light of the above issues and the recommendations made by the poor in this study should be seen as feedback arising from the PPA that should be taken into consideration when developing the strategic investment plan for the medium term and subsequent plans. It should further be noted that this PPA serves as one of the monitoring tools highlighting aspirations of the poor, as majority end users, of J/LOS services. Conducting a similar assessment (such as a participatory evaluation) in future will show the extent of J/LOS success or failure as interpreted by end users of J/LOS services themselves using these findings as benchmarks.

The study makes the following recommendations;

- Designing a more pro-poor J/LOS related information campaign and communication strategy for legal and human rights awareness.
- Ensuring that the poor actually participate in J/LOS activities such as community policing, community service.
- Fostering a bottom-up accountability, which is, ensures that J/LOS accounts to the poor communities.
- Adopting a social approach to administration of Justice.
- Reforming the law in areas of pauper proceedings, exhibits, and commercial justice with respect to making them pro-poor.

CHAPTER ONE

1. INTRODUCTION

1.1 BACKGROUND

The J/LOS² in Uganda has adopted a holistic approach to administration of justice. Article 126(2) of the Constitution of the Republic of Uganda provides that justice shall be done to all irrespective of their social or economic status. People cannot exercise their human rights or go about their work and concentrate on their development if they are living in fear and insecurity. Their situation is made worse if the justice system is inaccessible and unjust.

Efforts by government and its development partners into poverty eradication in Uganda have seen the development of pro-poor action plans, notably the Poverty Eradication Action Plan (Poverty Reduction Strategy Paper)³. One of the key areas in the PEAP is pillar 2 on good governance concerned with strengthening of the machinery for keeping law and order and administering justice to increase the ability of the poor to raise their incomes and attain improved quality of life.

Recent PPA studies have shown that poverty fundamentally dis-empowers individuals by constraining their capacity to protect themselves from abuse. The poor are often powerless and entangled in the deprivation trap. In light of the J/LOS reform program it is important that legal systems protect property rights so that people are in position to enforce, *inter alia*, contractual rights and obligations. A functional and accessible justice system where the poor can effectively seek the protection of their property and obtain redress for the violation of their rights will thus contribute to breaking the deprivation trap; enhance the poor people's capacity to fight poverty by meaningfully engaging in economic plus social activities.

This study is intended to give a "voice" to the poor to inform the J/LOS reform process of what is perceived to be a safe and secure society and an accessible and effective justice system. The study also draws from previous studies and researches conducted in areas of governance, access to justice, and participatory poverty assessments (PPAs). A concise documentation of this review is shown in **Annexes A and B** of this Report. The commissioning of this study demonstrates J/LOS' commitment to the good governance agenda which, *inter alia*, requires that all processes e.g. decision-making, policy formulation, etc should involve all relevant stakeholders. The good governance agenda calls for the involvement of the people in matters that affect them, including the administration of justice, security and safety. Governance is not a restrictive concept: it embraces the involvement and active participation of the people in identifying societal

² The J/LOS mission is to enable all people in Uganda to live in a safe and just society.

³ Uganda's PEAP (PRSP) was conceived and developed with consultations with relevant stakeholders that included government institutions and ministries, the poor, donor agencies, Civil Society Organizations. PAEP was also informed by Vision 20/25, and findings generated by the Uganda Participatory Poverty Assessment Project (UPPAP)

problems, needs and governance issues as well as taking initiatives and exploring means of solving them.⁴

Lack of safety and security constrain citizens' initiatives and grassroots activity including poverty eradication efforts. The J/LOS is desirous of developing commercial and criminal justice policies, which takes into account poverty concerns and it is anticipated that this study will contribute to this policy-making process. Policies formulated through bottom-up processes are increasingly gaining currency and seen to be effective.

It is against this background that this study was conceived to probe into the concerns of the poor, on gaining safety, security, and access to justice, in Uganda for purposes of contributing to the J/LOS reform agenda and the Strategic Investment Plan for the medium term. It is hoped that J/LOS will be better placed to develop a relevant sector policy, upon consultations with the poor and listening to their needs and priorities.

1.2 STUDY OBJECTIVES

The purpose of the J/LOS PPA study was to ensure that poverty considerations are given due regard in the criminal and commercial justice reform program and the overall J/LOS Strategic Plan. The study is also expected to inform the development of an appropriate J/LOS policy that contributes to poverty alleviation. The key aims of the study are;

- (a) To find out the specific constraints faced by the poor in Uganda in gaining safety, security, and access to justice.
- (b) To identify strategies and actions that should be adopted in the J/LOS reform process, including providing specific recommendations to the reform process. Provide.

⁴ Stone, C. and Ward, H. (2000) "Democratic Policing: A Framework for Action", Policing and Society Vol. 10 pp11

1.3 STUDY CONCEPTS

1.3.1 Poverty

Poverty has traditionally been regarded as a phenomenon best understood in terms of income and productivity, but it has recently been recognized that poverty can be local specific and multi-dimensional, extending beyond low income to include physical vulnerability and powerlessness within existing political and social structures. Other dimensions seen to manifest poverty include voicelessness and helplessness, the consequences of which include; suffering, humiliation, shame, inhumane treatment, and exploitation at the hands of the institutions of state and society. Until recently revealed by the Uganda Participatory Poverty Assessment Process (UPPAP), the measurement of Poverty in Uganda largely took quantitative dimensions with household income or consumption per adult equivalent taking centre stage. Whereas the quantitative understanding of poverty is crucial for poverty monitoring and measurement of poverty trends and economic growth across the country, it is important to relate such indices to qualitative measurements and the contextual nature of poverty as understood by the poor themselves.

1.3.2 Safety

Safety is used in this study to refer to freedom from violence and intimidation in people's homes, communities, work and other places. It mainly relates to personal physical safety. For example people may consider the absence of interpersonal conflicts to be essential for safety. This may further be extended to intra-household relations, social cohesion, and support. Crime and violence result into, fear, injury, permanent disability, and death thus impacting on safety of person. Reducing risk factors for crime, improving police protection, street lighting for urban areas, community policing, joint public-police problem solving are some of the measures adopted to improve safety of person.

1.3.3 Security

Security is understood to mean freedom from worry and fear of theft and loss of property. Security may further mean strong tenure rights, clear access relations and firm psychological security. Insecurity also affects the way people make economic decisions. The poor often lose their property through private or public theft. Unpredictable and insecure environments discourage economic agents from engaging in production, trade and investment, which are a means of expanding poor people's employment opportunities and incomes.

1.3.4 Access to Justice

Access to justice means that people are assisted, fairly and without discrimination by justice systems. Both formal legal and customary justice systems can be discriminatory and expensive particularly for the poor. This study investigates both the **perceived** and **real** constraints faced by the poor in accessing commercial and criminal justice. Issues of interest here include; a responsive rule of law, protection against violence and conducting business in a secure environment. The study recognizes that constraints to accessing justice may range from formal to non-formal. Formal barriers may include direct costs of accessing justice such as court fees, fines and travel, as well as indirect barriers such as opportunity costs (delayed justice, and the alternative use of money spent in accessing justice). Informal barriers/costs to accessing justice may include, but not limited to bribes, discrimination, and cultural constructions.

1.4 APPROACH, PROCESS AND METHODS

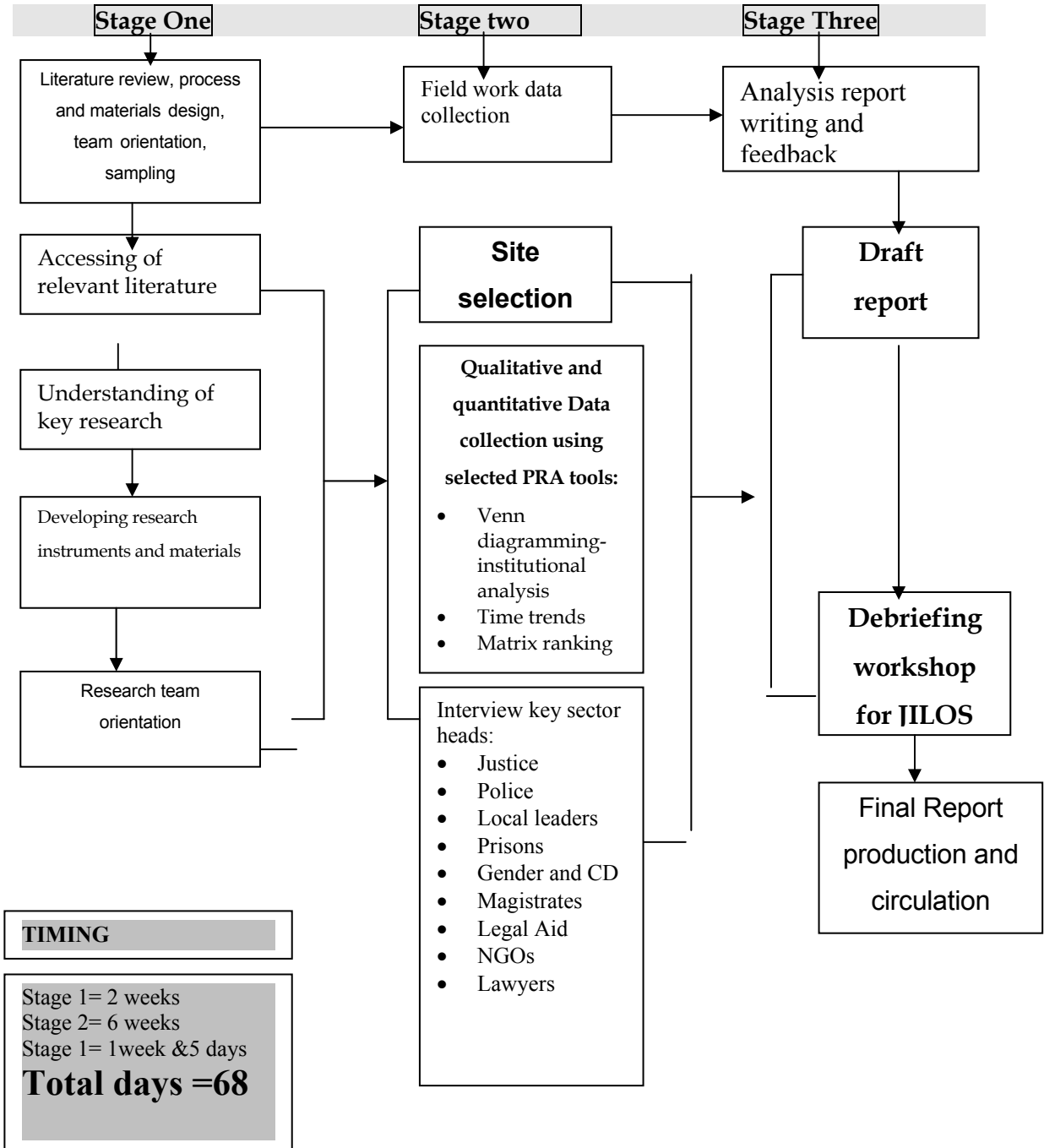
1.4.1 Approach

To ensure that people's views and perspectives are brought to bear on the design of the justice, law and order sector reform this participatory poverty assessment of safety, security and access to justice adopted a participatory research approach. The *primary* source of data for the study was people at a community level - the community being the key unit of analysis. However, several informants were interviewed to triangulate issues that emerged from community meetings. This means that this study entirely relied on qualitative and descriptive data, as indicated in the ToR. The research team attempted to unravel data on both the positive and the negative (not only people's problems, but also opportunities).

1.4.2 Process

The J/LOS PPA study fieldwork largely took a four pronged process illustrated below. This was to ensure research that is iterative, consultative and one that respects local knowledge, indigenous views or the poor people's perceptions or perspectives on the subject under study.

Figure 1: The Process and Stages of the J/LOS PPA study in Six Districts



Sampling articulated several aspects of community status, Distance from centre, gender, economic status, literacy, and accessibility to other social services, political affiliation e.tc. The study methodology also took into account the strategic Direction taken by the J/LOS

1.4.3 Study sample

Using six purposively selected districts, the participatory poverty assessment (PPA) ensured that the study team gains a good appreciation of communities' perceptions on safety, security and access to justice. Six districts: Kiboga, Kampala, Busia, Arua, Katakwi, and Kabale constituted the study area. The selection of the study sites in each district followed this rationale. Selection of the Districts was based on the need to capture diversity (border, urban and insecure situations respectively).

The agro-districts were purposively selected based on socio-economic, socio-demographic and ecological diversity within the greater Uganda.

1.4.4 Research cycles:

The first PPA study cycle covered 3 districts, namely Arua, Kampala and Katakwi. This enabled the study team to further fine-tune the methods but also identify areas that were potential gaps that needed to be focused on in the second cycle. The second cycle covered Busia, Kabale and Kiboga districts.

1.4.5 Document search and desk reviews

To give the study a contextual and conceptual framework, several mini study teams reviewed documents focusing on different issues and stages. The first stage was review of relevant international and national level literature focusing on best practices, gaps in knowledge and in the law with respect to ensuring poverty focus in promoting safety, security and access to justice. The second level of literature review was at district level and consisted a review of district based documents and was premised on the need to understand development needs and priorities as contained in district development plans and other source materials. This stage was vital in enhancing the study teams to get acquainted with the social demographic characterise of the specific districts. Literature review informed the investigation in that the identified gaps were filled subsequently.

1.4.6 Methods and tools

The table below indicates the participatory research methods, techniques and tools employed to animate dialogue in the course of data collection. To reiterate the point made about consultation, other tools and methods were used for purposes of triangulation.

Table 1: PPA Study's Core Research Tools and Methods for Data Collection

TOOLS	ISSUES	SENSITIVITY
<p>TIME TREND ANALYSIS</p>	<p>The aim of using was to generate data on changes overtime with regard to poverty, justice, security and safety. This included an analysis of perceptions on access to services meant to address challenges. That is (a) analysis of outreach; (b) quality of services e.g. in terms of client – personnel relations; (c) relevance of the services including their usability; (d) sources of information, traditional and non-traditional media; (e) public and private sectors interface dynamics; (f) formal sector and informal sector interface; (f) priorities for action. The point of entry in using this tool would be to seek (g) people’s conceptions and perceptions of poverty, justice, security and safety.</p>	<p>Facilitators ensured that communities do not raise misgivings to the effect that the tool is meant to spy on their views on the performance of government(s)! The discussions were conducted in manner that makes it possible ensuring that power relations do not colour the findings: voiceless and marginalised as to adequately echo their concerns.</p>
<p>INSTITUTIONAL / VENN DIAGRAMMING</p>	<p>Institutional aspects and arrangements including (i) importance and relevance, (ii) relationship and collaboration networks, (iii) perceptions on performance, (iv) collaboration between and amongst upper and lower local governments as well as NGOs/CBOs. (v) Are these perceived to be actors in the poverty, justice, security and safety arena(s)? Other issues worth investigating included (vi) governance and leadership, (vii) capacity and skill levels, (viii) target beneficiaries and performance in targeting, (ix) priority areas for support and (x) likely stakeholders to J/LOS and other partners.</p>	<p>A situation where discussions on institutions raise people's expectations, hoping that talking favourably or disparagingly about one or the other institution was not given room for (was guarded against).</p>
<p>HOUSEHOLD WELLBEING RANKING</p>	<p>Household wellbeing, poverty, security, safety and access to justice were investigated. This included an analysis of finding out (1) how deprivation impacted on their wellbeing (that is, the nature, indicators, causes, consequences, etc). It was interesting to understand (2) how social capital – related constraints came into play (social exclusion, isolation and priorities for safety-net support, self – help initiatives, community contributions, social ownership and control of resources, etc. (3) Intra – household variations (vulnerable groups, social group and gender –specific priorities for immediate attention, e.g. whether varying levels of *ownership and control of resources, activities, *wellbeing and wealth, *access to a repertoire coping and survival mechanisms, *priority livelihood concerns, etc. impinge on access to services (justice, security, safety and poverty reduction at a household level). (4) At this level, who should be the key stakeholder and, or beneficiary of the planned J/LOS and other partners’ support?</p>	<p>Discussion of people's wellbeing and livelihood undertaken after some good measure of explanation(s) so that the exercise was not misconstrued to be a tax assessment or (as above) spy on their wealth with the intent to harm. The discussions were conducted in manner that made it possible ensuring that power relations at household level do not colour the findings: the voiceless (and often marginalised) should be given adequate platform to echo their household-related concerns.</p>

1.4.7 Extent of consultation

1.4.7.1 *Views of stakeholders:*

Apart from seeking people's voices through community meetings (at village level) study teams also involved political leaders and technical persons to triangulate findings and throw light on what appeared to be of concern or that which appeared contradictory with respect to people's views on safety, security and access to justice. The district feedback or debriefing workshops enabled clarifications and confirmation of what had been investigated. While the study teams triangulated the data generated the exercise was done in such a way that people's voices are not suppressed, misrepresented, distorted or "doctored". The findings are presented dispassionately, presenting all viewpoints and bringing out the perspectives of participants in community meetings. The study teams remain cautious not to misrepresent, suppress or ignore poor people's voices throughout this study. The reporting format also takes cognizance of this.

1.4.7.2 *Voices of the Poor*

In a study such as this, interacting with people that represent all the layers of governance was seen as of paramount importance. However, it should be noted that the participants at the site (community) were often those that represented sections of the poor population. In urban sites it was often the unemployed/underemployed and vulnerable that attended and local mobilisers were requested specifically to invite people in those categories. In rural sites a similar trend was evident, but to add to this self-selection appeared to take the trend of those that perceived to be excluded from administration of justice on account of poverty. This was evident after the first encounter between the researcher and the research communities, and was made apparent by discussions based on testimonies of exclusion often culminating to provision of documentary evidence to attest to the fears, trials and inequities some felt. To this extent one would say that the teams interacted with those who felt that poverty denied them gaining safety, security and access justice.

1.4.8 Tasks in Data Management

Data collection, analysis⁵ and report writing were concurrently undertaken. This means that as days went by more light would be thrown on what had been captured in field notes, matrices and tables that the study teams were required to fill on a daily basis in the course of fieldwork. The overall and mini study teams' regular meeting helped further data analysis and synthesis. Report writing benefited from the on-going consultations such as:

⁵ The analysis was qualitative in nature. The study teams together with study participants, in each site/village/cell, conducted on-spot data analysis through "**interviewing diagrams**", which helped in arriving at consensus. This was followed by analyses of field notes from the two sites in each district, in order to compile district reports. The study teams later analyzed all the six district reports to produce a National Synthesis Report.

- Debriefing workshops on preliminary findings at the centre,
- Compilation of views of key informants (at the centre and in the 6 districts),
- Reviewing existing PPA-like documents, J/LOS legislation, plans and policies (for purposes of noting gaps and strengths),
- Analyzing the best - practices in commonwealth developing countries to generate options for choice, and
- Making a final feedback workshop at the centre to present key findings, agree on policy reform agenda and actions

1.4.9 Process Limitations

Whereas the study aimed at capturing people's⁶ voices and perspectives and relied on analyzing the concerns to get a good appreciation of communities' perceptions the following process limitations and lessons were encountered;

First, and quite important, it was a "hard effort" trying to get the participation of women in the community meetings. This limitation cut across all the three districts studied. Their numbers were on the low side (compared to the men), and were apparently hesitant in making their contributions. In Arua, the study team made it a point that a representative of women makes a "first go " at and, or a "round - up" of a discussion of a particular subject (or sub - theme). That is, before and after seeking men's views, the few and often timid women present would be asked what they thought about the subject or sub - theme. In Katakwi women views were elicited through numerous probes. This was followed up by encouragement at all times. In this way the study teams ensured that women's voices were brought on board of the dialogue. In Kampala female participants were also encouraged to open up.

Last, but not least, the fact that many of the issues under investigation were somewhat sensitive some of the participants were seemingly hesitant to provide details of their accounts and testimonies on Safety, Security and access Justice. To build rapport with the communities we ensured that we regularly interacted with them (spending 3 days in each site). Consequently, people revealed what they saw as the thorny issues to the extent of providing documented sources to attest to their pleas.

1.5 ORGANISATION OF THE REPORT

The report is organized in four chapters. Chapter one gives a background to the study showing study concepts, objectives as well as approaches and methods used. Chapter two presents study findings brining out conceptions, perceptions and attitudes on constraints to gaining safety, security and access to justice. Chapter three makes an interface between the recommendations made by the poor and J/LOS Strategic Investment Plan. The chapter also highlights best practices from commonwealth developing countries. Chapter four gives study recommendations and policy implications.

⁶ Two communities were visited in each district.

CHAPTER TWO

2. STUDY FINDINGS

2.1 OVERVIEW

This section presents local people' conceptions, attitudes and perceptions regarding constraints to gaining safety, security, and access to justice. Each of the above themes is discussed separately for purposes of capturing specific voices as revealed by the poor.

People's time trend analyses largely potrayed a worsening situation for poverty, safety, security and access to justice. The following diagram from Arua District depicts a similar pattern in other study districts.

Figure 2: Time trend analysis in Bibia Cell and Ombokoro Village, Arua District.

Shown in the above diagram are beans and sticks cross-matched with years. More beans or sticks indicate worse situation and vice versa.

The partnership approach to gaining safety, security and access to justice among study districts was reported to be weak due to absence of consolidated networks among the different institutions.

Figure 3: Communities' Institutional diagramming (Rankings and Relationships).

The above *chapatis* depict the level of significance in terms of responsiveness to community safety, security, and access to justice matters. Bigger circles represent important institutions. Relevance of institutions is depicted by bigger overlaps with and within the mother circle representing the community. Intersections mean partnerships between institutions. The LCs were given the biggest *chapati* because of the reason that they were the most utilized, more accessible and affordable. Whereas in some participants commended the work of LCs others raised issues of partiality, corruption, siding with criminals. LDUs were commended only in Katakwi but elsewhere they were blamed for perpetuating crime. Other J/LOS related institutions were reported to be irresponsible to poor people's priorities. Police was nevertheless singled out as being the most corrupt and non-professional in their *modus operandi*.

2.2 SAFETY

2.2.1 Poor People's Conceptions of Safety

Voices of the poor on safety reflected a common agreement on the meaning of the term safety across the study districts. To a large extent, the findings do not reflect diversity of meaning but indicate commonality of interpretation. The term safety in Kiboga was interpreted to mean immunity against dangers (having enough defense systems). The local term used was "*Okwerinda*". The same term was used in Kampala District. In Arua and Katakwi districts, the interpretation had a health connotation. In Arua It was interpreted as a condition of good and undisturbed health (*Idritambaza*). In Kabale safety was interpreted to mean favorable conditions for livelihood "*Embera hatariho ekikutegaganisa*". The foregoing conceptualization depicts that the poor had a wider understanding of safety to embrace individual and household health, defense as well as having access to necessities. Differences were however noted between urban and rural communities consulted. While among rural communities safety was largely interpreted in terms of basic necessities of life such as food and health care, to urban communities focus was placed on personal and household defense.

Across all study communities, there were views that the increasing levels of poverty and its symptoms impacts on safety of person. The poor revealed that poverty manifests its self through ill health, illiteracy, hunger, etc. It therefore follows that; safety was understood as closely linked to access to essential services and the degree of responsiveness of the service delivery agencies/ institutions like the police and Judiciary.

2.2.2 Attitudes and Perceptions Constraints for Safety promotion

Using trend analysis communities were asked their attitudes on safety. When put on a time scale, issues of safety reflected a pendulumic shift, swinging from periods of poor, good, to deteriorating safety. Reference was made to 1980's, 1990's, to 2001⁷ to capture poor people's attitudes on safety.

⁷ The study team for purposes of comparability over time adopted this time scale.

In the 1980's the protracted guerrilla war that crippled most parts of the country was said to have eroded safety of person and created fear among communities. There were many reported cases of theft and destruction of property. Many communities were engulfed in non-functional legal and the judicial services that could largely not guarantee safety of individuals and the community at large. The police and the judicial courts had succumbed to corruption and had lost independence due to political interference. This period was linked to low levels of productivity due to the constant fear, for life which people were subjected to and hence resulting into increased levels of individual, household and community poverty. State inability to maintain law and order characterized most communities in Uganda. This period was also characterized by:

- Torture by security personnel
- High crime rates and absence of crime effective crime prevention
- Poor health due to user-fees

All study communities save for Katakwi reported significant improvements in Safety in the 1990's. The 2000 period was reported to have witnessed deteriorating safety.

Recommendations by the poor

- ◆ *Equipping police to quickly handle community safety problems.*
- ◆ *Sensitizing both police and prisons in human rights matters.*
- ◆ *Supporting agriculture to expand household incomes for better health, food, and shelter.*
- ◆ *Orienting both the police and LCs to handle women concerns objectively.*
- ◆ *Recruiting more LDUs and sensitizing them on community safety.*
- ◆ *Promoting community policing and making it known to communities through LC meetings.*

I don't know where Uganda is going. Everything has been destroyed.

We sleep in "myala" (sewage channels). We cannot look after our children, we cannot go to hospital because we don't have the money, we cannot pay taxes, we keep on running away from tax collectors, we cannot even afford Panadol (Female participant Makindye division).

In addition, Local Defense Units personnel (LDU) were reported to have been very active in their early days of establishment but were increasingly becoming corrupt and siding with criminals. Reasons given for this negative trend mainly centered on;

- a) Poor mobilization of communities to financially support LDU work.
- b) Poor orientation of the LDU force and alienating them from community policing.

LDUs also smoke Marijuana yet they are the very people who are supposed to fight drug abuse. It is only lumpens that are in our force (Male participant, Kikonge, kabale Municipal Council, Kabala District).

A related voice was noted in Kiboga where a male participant reported that;

When on night patrol LDUs interest is not to guarantee safety but to trap who ever is moving at night beyond midnight, to steal their money (female participant, Muwunga, Kiboga town council, Kiboga district)

Among urban communities, increasing rates of armed robberies were cited. The Uganda police was blamed for this and were said to be corrupt and also siding with criminals.

Absence of effective community involvement in policing was also said to breed opportunities for crime. All communities consulted had a low attitude on the existing community policing arrangements. This low attitude was attributed to the inability of police to effectively promote community policing among the communities for which it is meant to serve. Communities revealed that they rarely get an opportunity to discuss their safety problems apart from the little time they get in LC village meetings that are less attended and poorly organized. In addition both the police and local council leadership do not promote the involvement of police in these meetings to discuss safety issues.

In addition the manner in which police treated the poor, youth, and women was regarded as poor by all communities consulted. Police subjected the poor to torture when arrested. In urban areas the youth were also tortured by police patrol units at night when returning from nightclubs. All these acts go unnoticed and no body is brought to justice for such tortures. Women find it difficult to report cases to police as the latter pays less attention to women concerns regarding them to be domestic and “fit to handled at home between husband and wife”. This situation was partly responsible for domestic violence, which was reported on the increase, although in many cases it was difficult to get the details because women were not very comfortable about discussing the issue. Many of the participants were quick to point out that domestic violence was still a big problem to the poor women mostly in the villages and both the police and Local councils have not been effective in reducing this violence.

In Kampala and urban Kabale safety took a gender dimension where women revealed increasing levels of domestic violence due to poverty.

Domestic violence is increasing mainly because of poverty. You have to be rude and terrorize everybody in order to minimize demands (Female participant Kabale).

Domestic violence has increased because when the husband is frustrated because of poverty he directs his frustration to the wife and children (Female participant Makerere Kivulu, Kampala)

The study interestingly revealed that domestic violence was reducing among those women who have benefited from micro-credit schemes and self help groups in Kabale.

Tutungire obusingye mu maka giitu abwokuba ebibiina bya bakyara nebyentunguuka bituhiire emigisha gyokwekolera esente itwe nka abakazi (We now have peace in our homes because of women groups that have given us more

opportunities to work and get money as women (Female participant Bubale, Kabale).

The same category of women in Kiboga and Busia further revealed that they have gained more opportunities to seek help from justice dispensing agencies as well assistance from organizations such as FIDA.

Poor women cannot even leave home to seek help. They cannot even raise transport money to go to FIDA (Female participant, Muwunga, Kiboga Town Council, Kiboga).

2.3 SECURITY

2.3.1 Poor people's conceptions on security

Like the concept safety, study findings across districts indicate similar understanding of security. In Kampala, security was interpreted to be "machinery that protects people and their properties" and "*Okwerinda*" was the local term used for security. A similar term was used in Kiboga. In Arua security was interpreted to mean a "situation of total protection" and the local term is *Agayiteza*. In Kabale security was understood as a state where ones property remained undisturbed- *obutateganisa ebintu byawe*.

The only bias depicted in understanding security was in illustrations given in explaining the concept, which hinged around the economic activities of the area. For Kampala and Busia the main focus was on merchandise. In Kiboga, and Arua (districts), the focus was on land and peace. In Katakwi it was linked to cattle. Due to scarcity of land in Kabale, the definition of security rotated so much around land (security of land).

2.3.2 Poor People's Attitudes and Perceptions Regarding Constraints to Gaining Security

The study unraveled people's views on security starting from the 1980s. Like views on safety, across study districts, there was agreement that the 80s were periods of deteriorated security. There was almost no rule of law.

"In 1980's there was no security, there were many abductions and the government was dictatorial, you could not walk at night. When you try to walk at night you could be attacked by thieves" (woman participant, Makerere Kivulu, Kampala).

Improvements in security in Kampala, in the 1990's and 2000 were attributed to government effort to equip police, LDUs and the army. The deteriorating security

among rural communities was attributed to gross inefficiencies of the police and LDUs. In Katakwi, security was reported to be deteriorating as manifested by rampant cattle rustling.

"Since karamajong invasion, no goat, no cow to assist us", camp leader Aketa, Katakwi.

In Busia, (Kabale to some extent) and Arua, due to prevalence of smuggling, the URA and SPRS have often confiscated and some times imprisoned the youth and other members in the business community when found in such illicit business.

Insecurity some times took a political dimension. Some study participants raised issues of political harassment and loss of property especially during campaign periods. Politicians who frequently use security agencies for their selfish gains were mentioned.

When the accused is a poor peasant without money to bribe the police and other security operatives.

The study further revealed that corruption has enabled suspected robbers get off the hook and terrorise again. It was also pointed out that police is not well facilitated (with reasonable remuneration, vehicles and other necessary equipment) and this has affected the response capacity of the force in terms of speed and morale. Coupled with this, is the problem of under staffing and lack of a proper organisational development of the police force were mentioned during the assessment.

Insecurity was further compounded by poverty. The Katakwi community was largely confined to camps due to insecurity caused by karamajong. The camps were associated with poor living conditions resulting from outbreak of diseases.

"Security will not normalise when people are still poor because redundancy and unemployment are on the increase. People will always plan to steal the little money earned through sweat", male participant, Muwunga, Kiboga

In all the study districts, government was considered to be the guarantor of security. Whereas this position is good, the lacuna is that there were almost no reported community initiatives to improve security. The few community initiatives reported never went beyond recommending some community members for LDU recruitment.

Security related tasks were seen as government responsibility and its institutions like the police, army and the LDUs. The inability by Government to take action was strongly voiced in the six districts visited. In Katakwi communities consulted voiced their inability and unwillingness to invest in livestock if their animals continue to be raided by the Karamajong and government takes no action. In Kiboga (Masode sub-county) communities expressed concern for the continued unresolved land disputes and the disincentive it has created to local development.

2.4 ACCESS TO JUSTICE

2.4.1 Poor people's perceptions of Access to Justice

Like on safety and security, the voices of the poor in the study districts indicate a common position in the interpretation of the term *access to justice*. Communities in Katakwi interpreted the term justice to mean fairness and freedom of expression (Ikisila). The remaining districts gave similar or related interpretations, which indicated uniformity of understanding of the concept.

Study findings underline the fact that the poor have not adequately utilized the formal justice dispensing systems due to expensive, cumbersome and complex procedures within the judicial processes. The extent to which constraints relating to, infra-structural-physical; finance and administration; Legal – statutory / regulatory; Policies and Service delivery, manifested themselves in the daily lives of the poor were investigated in all study districts and are presented in the subsequent sub-sections. The presentation is structured under; legal services; administration of justice; civic and legal education and law reform.

2.4.2 Poor People's attitudes and constraints to Accessing Justice

2.4.2.1 Constraints relating to Legal services

Throughout the assessment the poor decried that the formal legal system is discriminatory and legal processes are not only slow but also expensive. The current legal system was thus described as non-responsive to the wishes and aspirations of the poor.

A poor person who reports a case from far has to rely on his or her meagre resources to check on his case until he gives up. Only witnesses in the high court are paid some money and nothing is paid to the witnesses or complainants in the magistrates where we often report our cases (male participant Bubale, kabale district).

The vast majority of study participants reiterated helplessness before justice dispensing institutions. Throughout the study it was revealed that court fees, bribes, transport costs, limit the poor from accessing legal services. High professional fees demanded by lawyers' further compound the problem of lack of money to pay bribes and court fees. Many of the lawyers are concentrated in the city, which limits many of the people to have access to effective legal representations.

Recommendations by the poor

- ◆ *Introducing legal aid services to lower local government level and creating awareness among communities of their existence is a viable option for and civil society organisations.*
- ◆ *Supporting (through capacity building) informal justice systems such as Local Council Courts will increase access points for legal services. The poor are optimistic of the local council courts due to the envisaged speed as well as being better attuned to local community needs and priorities.*

In addition infrastructural constraints such as distances formal courts of law were also pointed out by the majority of study participants in all the districts. Further, the legal representation for the poor was said to be a mockery in the current legal system.

A poor person may fail to get a lawyer and therefore fail to be represented (Female participant, Durban, Busia District)

The Pauper proceedings have continued to be theoretical, as the poor are not aware of this provision. Secondly filing this application requires professional assistance, as it is technical.

The concentration of lawyers in Kampala city (the capital) mean that the majority of the people especially in rural areas cannot easily access legal services /representation. In the districts visited there were hardly any advocates and private law firms operating in rural areas. Even those that existed in main district towns were less helpful as these lawyers are not only expensive but also spend very little time in their upcountry firms.

In Katakwi poor transport and communication were cited as the major constraints especially in Klapelebyong and Acowa where inaccessibility of the areas due to poor roads makes access to the police and Courts among others a dream to many.

Accessing services of advocates or lawyers was seen to be the preserve and luxury of the custodians of justice, the rich. Consequently, many convicts that lacked legal representation suffer several disadvantages. Indeed, they hardly fully appreciated what mitigation entailed. As if this was not enough, the courts were widely seen not to see this as a problem.

Financial barriers to accessing justice were the most commonly cited, *“going to court is a waste of time and money”*, one participant exclaimed. Constraints of infrastructural nature such as distance and travel costs were constantly pointed out. Unnecessary administrative delays were reported in all the visited districts and were associated with *“monetisable”* opportunity costs, *“...instead of doing your work you are required to simply waste your savings and small monies to pay to courts!...”* (Male participant ,Arubaine, Busia District)

Costs, both formal (fees and fines) and informal (bribes extorted from parties) were seen as the most critical barriers institutions presented to the poor as they (poor) tried to seek justice. This was seen to be true at all levels (LC 1, LC III and above). Informal institutions were not exonerated either, especially elders as reported in Arua district. It is not surprising that the church was seen as increasingly vital in mediating warring factions or parties. They were seen to be useful in handling matters to do with domestic violence. The table below draws on the findings of the Uganda national integrity survey (CIET, 1998), which showed how 45 districts ranked in order of percentages of service users who paid a bribe. The percentage varied from 73% to 11%. The table demonstrates how the PPA districts fared.

Table 2: Ranking in Corruption, Proportion of Bribes givers and IGG Awareness, by district

District	Ranking in level of corruption out of 45 districts	% of service users who paid a bribe	% of households who think corruption in district is high	% of households who are aware of the IGG
ARUA	8	37	65	29
BUSIA	25	46	69	19
KABALE	42	47	67	37
KAMPA LA	28	40	87	65
KATAK WI	20	34	24	34
KIBOGA	34	32	82	8

Source: CIET International (1998) Uganda National Integrity Survey, Inspectorate of Government, Kampala.

Note that the table indicates that among the districts visited by PPA, Arua ranks highest in corruption. However, it fares average regarding awareness of the IGG (compared to Kiboga district). All districts seem to be at per concerning being affected by paying bribes to access services and they also feel that corruption is looming high in their midst. In the case of Arua, indeed in many other districts, this means that accessing services such as justice, security and safety is not a straightforward matter.

A further synthesis of the above constraints points to both supply and demand constraints to accessing legal services. While poor people’s monetary incapacity and ignorance of support systems and means of accessing them compound demand constraints, supply constraints relate to the institutional capacity of justice dispensing agencies. In Kiboga⁸ it was reiterated that supply constraints such as lack of communication equipment and vehicles, on the part of the Uganda Police⁹ has seriously reduced the investigative capacity of the police hence impacting on poor peoples choices to access justice. While the rich in Kiboga can afford to buy fuel for the police and or quickly report cases (and for that reason have their cases quickly investigated), the poor (who form the majority households in the district) have remained helpless and vulnerable.

“You have to sell off your goat to get money to buy fuel for the police vehicle because someone slapped you and you got somehow injured. It becomes useless

⁸ Kiboga is one of the recently created districts in Uganda, formerly belonging to Mubende district. The district experiences infrastructural difficulties such as poor telecommunication and bad roads. Uganda Police in Kiboga does not have any communication equipment. For example Kiboga police station in Kiboga Town Council can hardly communicate to any of its police posts in lower local governments. The Kiboga communities revealed that reporting cases to police posts was useless given their inability to quickly handle situations or communicate to the main station for support.

⁹ In Uganda, police is a key entry point to formal justice. Frustrating the poor at this vital entry point significantly reduces their access to formal justice.

to sell off your goat to facilitate the police to do its work” (Male participant Katakwi District)

A similar situation was found in all the districts studied except in Kampala where the problem took a different turn. In Kampala while the poor can quickly walk to police stations they find problems in reporting cases to police due to corruption among police officers on duty and those operating police counter, and later those in investigation.

2.4.2.2 Constraints relating to administration of justice

Administration of justice was dichotomized to reflect both criminal and commercial justice. While the former was clearly understood and widely discussed the later was not familiar to the vast majority of the communities visited.

a) Criminal Justice

The following constraints were identified by the poor as contributing to the *malfunctioning* of criminal justice system.

- **Corrupt officials within formal justice dispensing agencies.**

Throughout the study corruption was cited as one of the major constraints to accessing justice. The problem is rampant in criminal matters right from investigations to completion of cases in courts.

In all communities visited it was pointed that the poor find it difficult to report cases to police or even bother to pursue disputes in courts of law due to corruption. Police was in particular said to be corrupt and insensitive to the concerns of the poor.

“Omugagga bwawaaba omusango gufiibwako mangu ddala era abapoliisi mwe abavu babatwala nga bisasiro”. (When the rich report cases to police they are given priority over us the poor and their cases are expedited-Makindye Division Kampala District)

The above quote also reflects voices from the rest of the districts that cases that involve the rich are expedited and handled with maximum care. Those that involve the poor are treated as second class and / or irrelevant. On many occasions local council officials have referred the poor to police for assistance but no positive results have been achieved. Issues that were frequently mentioned include the infamous “*kitu kidogo*” (bribe) and the requirements to present a pen and paper before police officials can attend

Recommendations by the poor

- Explore options to increase efficiency, reduce delays, and ensure responsiveness of officers as professional investigations and prosecution are crucial in enhancing the administration of justice in Uganda.
- Policing in Uganda should change from a watchman style to a service style. It should be more service oriented and look at communities as esteemed customers and not potential criminals.
- Uganda prisons also needs to be oriented to respect human rights. The current drive to modernise and professionalise forces (the army, police) should be extended to prisons.
- National Community Service should be supported as it holds potential for reducing congestion in prisons.
- Empowering local courts and ensuring that their jurisdiction is respected by those in upper tiers of local governments is crucial.
- The police often despise local councils yet they are more close to communities than the police are. This attitude should change.
- Local Defence Forces/Units should work more closely with LCs and practically report to the community than the police.

to a complainant. Failure to comply implies failure to get assistance. In Katakwi and Kabale districts for example it was reported that in most cases the poor have been victimized because they cannot afford to pay bribes. In Kiboga a case was reported of a witness to a murder case who is Languishing in a police cell simply because the suspected murderer bribed the police. The poor in Busia, Kampala and Arua districts also highlighted corruption among some of the justice dispensing agencies such as the police, as a major hindrance to accessing Justice.

- **Poorly facilitated institutions**

The problem of institutional incapacity of many of the Justice dispensing institutions was pointed during the study as a major hindrance to accessing justice. Poor facilitation of the police prisons and courts conspicuously came out as a contributory factor to crime and poor administration of justice. In Kampala district (Makindye and Kampala Central Divisions) the majority of participants noted that police sometimes is unable to respond to *reports* and requests because they do not have equipment, resources and/or skills. In addition the poor have also noted that upcountry stations suffer more from lack of vital facilities such as vehicles and communication equipment which result into inefficiency in administration of justice.

“When the rich report cases to police they can afford to buy fuel for investigating the case as opposed to the poor. In such circumstances where institutional incapacity takes centre stage access to justice becomes impossible”, (Male teacher in Masode, Kiboga District).

The study further revealed that poor conditions and the abuse of their rights characterized Uganda prisons. Issues cited include;

- Poor feeding
- Lack of sleeping and proper toilet facilities
- Spread of diseases and sustaining permanent health problems.
- Other issues mentioned include degrading punishments and the physical hard work and beating they are subjected to while in the prisons.

The majority of the poor consulted commended community service. The legal framework to establish community service is already underway but the concept has not been unpacked and effectively operationalised. Communities were aware of the concept / approach but had not yet seen it introduced in their areas. Corroborating information from technical departments in the study districts indicated that the community liaison departments had embarked on community education in this respect but the impact of these efforts were insignificant due to resource constraints. The need to review and evaluate community service activities in the four magisterial districts of Masaka, Mpigi, Masindi and Mukono is crucial before scaling –up the program to national level

- **Supervision, Monitoring and Accountability**

Poor supervision and monitoring of institutions such as the police force, and courts was frequently raised by the poor as a key constraint to accessing justice. For example upcountry police in Arua and Kiboga districts was reportedly resorting to drinking for

the biggest part of the night ignoring their responsibilities because they are not properly supervised.

Further, justice-dispensing agencies have shown less interest in downward social accountability. Much of the accountability effort has been financial, administrative and largely upward.

2.4.2.3 Other critical areas and dilemmas

Political interference

The field findings indicate the lack of judicial independence due to interference from the executive arm of government and security agencies. This was found to constrain the administration of Justice by the courts thereby prejudicing the poor. These were said not to pay attention to the downward accountability (to the end users-poor) but to the appointing authority.

Some people are arrested during election time and released after the election without charging them (Male participant, Makerere Kivulu, Kampala)

- **Mob Justice**

It was also revealed that where no justice is done due to corrupt tendencies, not to mention the frustration felt due to the inaction of the police, mob-justice was seen as the last resort and the only alternative. “The poor people have adopted such strategies because the police is always bribed by the suspects and these are in most cases let free to return to the communities to *terrorize them...*” many argued. It was also observed by participants that communities never receive any feedback from the justice agencies about action that has been taken against perpetrators of criminal activities in their communities but instead they see them walking free. Communities consulted also wondered why criminals who have been caught red-handed are let off with claims such as lack of enough evidence to convict or no case to answer or are even bailed or bonded.

People in Nkere beat up a thief to death two months ago. I no longer blame them because you cannot get justice in Uganda today (Male participant in Nkere zone, Makindye division, Kampala.

- **Cultural constraints**

Several informants alluded to social cultural practices as invisible barriers to accessing justice. These prominently featured in discussions on defilement of girls above the age of 13. In Arua, for example, the Lugbara’s beliefs in

Recommendations by the poor

- *The need for the reformed commercial laws to be relevant to the poor remains crucial.*
- *Presence of specialized commercial courts to handle the business environment traded in by the poor is recommended by all communities consulted.*
- *Tax enforcement agencies should put in place a fair tax system for the poor but not to disrupt the poor people’s business environment. Local Governments should be encouraged to craft pro-poor tax regimes.*
- *The insensitive and anti-poor provisions of the commercial justice system should be reviewed.*
- *More jurisdiction should be given to LCs to handle commercial cases whose value is more than 5000 Ush*
- *The reformed commercial laws should be seen to encourage the poor get into business rather than going out of business.*

communal lifestyles and livelihoods meant that several households and people (with no kinship ties) lived, ate and worked together. While these social ties were seen to be indispensable in acting as a bulwark against destitution and shield against the many shocks and adversities they were vulnerable to they often coloured their interpretation criminal acts, the case in point being defilement. Defilement, of girls above the age of 13, was seen as a mere conflict (traditional lenses), as opposed to seeing it as a crime (official lenses). As a consequence, rarely did victims seek recourse to justice through formal courts of law as several informants revealed;

“they often want to settle the matter themselves by demanding material compensation from the man, and often requiring him to marry the girl. It is when the man fails or refuses that they go to LCs, police and courts, even there the matters are often referred back, particularly where those involved are all minors (by definition all children)...” (Female participant, Arua district)

The point being laboured here is that culture seemed to influence the way the gravity of the defilement offence was interpreted: very few people and informant thought that defilement merited the tough legislation that applies today.

b) Commercial Justice

Absence of specialised pro- poor commercial courts such as small claims courts, and the fact the vast majority of communities consulted were not aware of the recently created commercial division of the High Court (commercial court), buttresses the need for establishing specialised courts. In addition the commercial court is also yet to be decentralised. Whereas this court is known for disposing commercial cases quite expeditiously, its pecuniary jurisdiction is still that of the High Court. Many poor who are incapable of paying fees (both court and advocates’ fees) and pursuing cases give up their cases. Magistrate Courts handle all types of cases including commercial cases, which fall within their jurisdiction. They are so many delays to dispose of cases.

The commercial justice has not taken into account activities of those in the informal sector/petty traders and some of their activities are still regarded as criminal. All communities consulted perceived commercial justice to be insensitive to the transactions engaged in by the poor. Participants in Arua, Busia and Kampala argued that informal sector traders frequently came into conflict law due to unfair and discriminatory provisions.

In the administration of commercial justice, the poor preferred local councils as these are said to be pro-poor, responsive and humane. It was generally recommended that these courts should play a much bigger role in commercial justice than now. The Resistance Committees (Judicial Powers statute 1988) provides that the pecuniary jurisdiction of local council courts in disputes involving debts and contracts is limited to handling matters where the value of the subject matter does not exceed 5000 / Ush. (Five thousand).

In addition the issue of decentralizing tax tribunals also strongly came out especially in Kampala, Arua, and Busia. If tax tribunals are brought closer to the citizenry through existing Local Government structures their usefulness will be enhanced. This closeness is expected to reduce complications faced by small firms (poor employers and employees) in enforcing contracts and payment of debt.

The recently created land tribunals were also said to be theoretical. Communities consulted would like to see them coming into operational- a situation that will help in measuring their relevance and effectiveness. In Kiboga it was revealed that land is one of the assets owned by the poor and it must thus be protected and used to mobilize financial resources to engage in business and fight poverty. Failure to adequately and satisfactorily handle land disputes means the poor lose out on such a valuable asset.

The youth noted that they have more often suffered and not been paid by contractors because of absence of binding agreements. There is no known culture in Uganda for contractors to enter into formal contracts/agreements with casual workers e.g. on "building sites". In Kabale for example it was revealed that due to lack of job security, when the poor are employed, the terms of employment are never clear. In most cases the rich refuse to pay leaving the poor with no clear arrangement for recourse to justice. The commercial justice reform should address such situations that are practical and relevant to the poor.

2.4.2.4 Civic and Legal Education

The majority of the participants in the communities consulted were not aware of their basic legal rights, laws, and procedures. In a number of ways the poor have more often failed to use the law to secure the protection for which they are entitled. This ignorance acted against communities' ability to enjoy protection of the law. Communities consulted were also unaware of both procedural and substantive arrangements of formal courts. They did not understand circumstances why courts reject certain evidence, do not call all witnesses who can shed light on the matter before court, the sentencing procedures, why certain offences are termed as grievous while in their communities/cultures are interpreted differently.

High illiteracy rates among rural communities were pointed out by the vast majority of the poor consulted as a major cause of this ignorance. Illiteracy erodes away confidence and breeds powerlessness among the poor and other vulnerable groups.

The assessment also revealed that technical language and other procedures used in formal courts are a hindrance to accessing justice among the poor. It was noted that the majority of Uganda's poor have very

Recommendations by the poor

- *Initiative on the part of government and civil society organizations to ensure that basic laws are disseminated in simple, clear and affordable ways that will enhance awareness of human rights and access to justice. The presence of various local FM radio stations in districts should be seen as a niche to civic and legal education.*
- *In addition civic and legal education should be adequately incorporated in Local Government Development Planning process. The current practice is to have a small section on gender and child protection highlighted in Local Government development Plans.*
- *All Local Government planners should be educated on critical areas of civic and legal education.*

little formal education yet the majority of laws are written in English and the language used in courts also remains English. This therefore relegates the poor to the periphery of the justice system, for they cease to be active players and become powerless in their search for justice.

A key informant in Katakwi illustrated this problem when he said;

"Some women do not know what to do when they are victimized... (Woman Katakwi Town Council)"

It was also revealed that the public ought to be sensitized about the working of the justice dispensing institutions like the courts, police and prisons. From the voices of the poor it was noted that the poor are yet to understand the introduction of non-custodial sentencing such as community service and the rehabilitation of offenders.

Lack of the necessary capacity and skill by the investigators and even private lawyers, prosecutors and private lawyers were cited as a hindrance to a poor person's access to justice. Cases have on many occasions been miss handled by incompetent investigators prosecutors and even private lawyers. This makes continuing legal education of the professionals, a critical matter to consider if the quality of service is to be improved for the benefit of the poor.

2.4.2.5 Law Reform

The assessment revealed a number of provisions of the laws that were anti- poor in this country e.g. Penal Code Act Cap 106 (Laws of Uganda) which provide for offences such as being idle and disorderly, vagrant, a vagabond and living on the earnings of prostitution. The main culprits of these offences are the poor. Some of these laws are said to disempower the poor making them more vulnerable. The study revealed that the poor find themselves in the above conditions due to widespread poverty in the country. The youth particularly revealed that police on many occasions arrests them when they are in urban areas or trading centers searching for employment opportunities.

When I am busy looking for work in town because I want to work, the police can arrest me for being idle and disorderly. I am even scared of looking for employment around Kampala Road Youth participant, Nkere zone, Makindye division, Kampala district).

Another area of concern for the poor are the technical rules of evidence and procedure applied in formal courts. Communities consulted decried their lack of appreciation of these technicalities, which to a great extent constrain them from accessing justice from formal courts of law. Calls were made for the review and amendment of laws with a view to putting in place pro-poor simplified standard procedures, which are user friendly.

Recommendations by the poor.

- Review and reform laws that dis-empower the poor in the interest of the poor who form about 90% of Ugandans.
- Remove technical rules of procedure, which the poor cannot understand, and comprehend.
- Arrests on grounds of idle and disorderly are painful and act as a disincentive among the youth that must actively seek employment
- capacity of informal courts should be reviewed to handle commercial matters such as debts and Contracts is Limited.
- Revisit the commercial justice system, review and incorporate what might appear simple but relevant business activities for the poor.

Further the limited jurisdiction of the local council and magistrate's Courts was pointed out in all the districts visited. Preference for these courts by the poor is based on the envisaged simplicity, clarity and responsiveness to local realities.

CHAPTER THREE

3. J/LOS STRATEGIC PLAN, REFORM AGENDA, AND BEST PRACTICES IN COMMONWEALTH DEVELOPING COUNTRIES

OVERVIEW

This section presents an interface between J/LOS strategic investment plan for the medium-term (Fy 2001-2004) with PPA recommendations made by the poor. Three issues underpin this interface:

- a) J/LOS interest in ensuring “security of all Ugandans (the majority of whom are the poor) through prevention of crime and investigation and prosecution of criminal activity”.
- b) Adherence to the rule of law through, *inter alia*, local participation and feedback.
- c) Finding solutions to “chronic systematic constraints that hamper improved access to justice and service delivery, effective planning and budgeting and maintenance of rule of law”.

J/LOS investment plan for the medium term is pursued within the PEAP framework and the government initiatives for poverty eradication in the country. The commissioning of this PPA has thus created inroads, for J/LOS, to understanding poor people’s views and priorities in ensuring safety, security and access to justice. J/LOS has therefore demonstrated a firm stand to ensuring that the poor, who form the majority population in Uganda, are drawn into the strategic planning and decision making process for the sector. It is also important to note that J/LOS considers access to Justice, not as an end in its self, but a means through which security of property and safety of person are ensured (enabling all people in Uganda to live in safe and just society)

In light of the aforementioned, this interface seeks to harmonize¹⁰ key issues in the J/LOS plan and community views and recommendations, as well as pointing out gaps and contradictions (and possibly weaknesses). Broad themes such as legal services, legal education, law reform and administration of justice have been followed.

3.1 J/LOS INVESTMENT PLAN AND REFORM AGENDA

3.1.1 Review of sentences

3.1.1.1 Decriminalize some offences

Study communities consulted raised concern over the following offences and would like to see them decriminalized:

¹⁰ Please note that the purpose of this section is not to give a comprehensive and detailed review of plans as contained in both the strategic investment plan and the different sector plans. The section only makes a quick review of key aspects of the plan that relate to poor people’s safety, security, and access to justice.

- Prostitution
- Idle and disorderly
- Rogues and vagabonds

J/LOS under its review of sentences strategy, intends to decriminalize and amend some of the above offences noting that they purport to punish conduct which has no direct effect on the lives and property of the community especially the poor or are worded too vaguely to inform persons of the nature of the act declared criminal¹¹.

To the poor the problem is not the vagueness in terms of the wording of the offences, but the criminalisation of these acts/conduct. Regarding the offence of being idle and disorderly, the poor revealed that it is a result of lack of employment and general poverty situation that forces them to lead “idle and disorderly” lives. Therefore the J/LOS plan to decriminalize such offences will go along way in recognizing the socio-economic conditions of the poor.

3.1.1.2 Community service (implementation of alternatives to imprisonment)

The poor decried the poor prison conditions, inhumane treatment and absence from the family and home. Such situations were revealed to be a source of problems such as loss of income, “wife grabbing” and rapid spread of disease and violation of rights. The poor also cited other problems such as the stigma of a prison sentence both in the community and prospective employers.

Community service In Zimbabwe, community service has reduced the prison population by about 4,000 between 1991 and June 1998. It has been revealed that the cost per offender is \$ 20 for community service as against \$120 for prisons previously.

Throughout the PPA, the poor had overwhelming support for community service although some had reservation about its administration.

“Omuntu bwakomezebwawo kukyalo afuna ensonyi; kikendenza efujjo nesente zagavumenti ezisasanyizibwa kuddagala n’emmere” (when an offender serves his/her punishment among the community, it is shaming (undignifying); it will reduce government expenditure on drugs and feeding.) Makerere, Kampala

“No with community service, people are going to easy. It is even likely that the convict wil boast about merely digging around and coming back to their homes. Community service is not going to be deterring rather it is going to promote crime”; Group Discussion, Katakwi

Thus J/LOS intends to advance the use of non- custodial sentences such as community service, fines, conditional discharges, curfew orders, probation, new combination orders, attendance centers, compensation orders will greatly address the problems cited above. In addition and of great importance is the fact that there will be savings made to the

¹¹ (:2001) A. Nasaba and M.Kabega: Summary and Recommendations on the Review of Sentences in the Criminal Justice System

Sector as a whole as a result of adopting non-custodial sentences. First, less resources will be spent on feeding, clothing and medical treatment of offenders. Other savings may also be made in terms of reductions in the re-offending rate.

In light of the reservations expressed about community service, there is an urgent need to sensitize the general public about the benefits and administration of community service.

It has also been noted that the current scope of offences for community service orders is limited to those offences that carry a prison sentence of two years and below. For community service to be effective in handling problems cited by the poor there is need to revisit the offences or the sentence term.

3.1.2 Proposed Code of Conduct in the Strategic Investment Plan

While the proposed Code of conduct for Criminal Justice Institutions in the J/LOS Strategic Investment Plan is a positive step towards ensuring social accountability, its enforcement requires an effective and impartial system to investigate violations. Situations where compliance to such a code of conduct is administered internally within institutions have had their own weaknesses and thus remained theoretical and irrelevant to end users. It should also be noted that the relevance of the code of conduct in the eyes of the poor can only be felt when the poor themselves, as clients, are made aware of the key aspects of such a code. This stimulates demand for proper and ethical working practices.

The crux of the argument is that the code should be demystified to the end users so that they can be empowered to exercise social control in case of deviation. The poor should be viewed as quasi evaluators (judges) of the level of conformity to the code. It is out of such endeavors that demand for ethical practices will be effectively enhanced and sustained. A quick review / appraisal (identifying gaps and strength) of the existing Police Code of conduct, which was established, under the Police statute 1994, should be made to offer useful insights to J/LOS proposed code of conduct.

In Taiwan, the Control Yuan, a branch of government that is charged with investigation of the conduct of public officials is able to impeach public officials but because the Ministry of Justice is controlled by the ruling party, this means in practice that the government officials are rarely seriously punished.

In Nigeria, during the Second Republic, an elaborate Code of Conduct required public officials to report their assets and a Bureau was set up to investigate the authenticity of these reports as well as charges of bribery and other wrong doing. However, the Bureau lacked staffing to adequately investigate violations of the Code. Because the politicians feared no consequences for corrupt behaviour, gross abuses of public offices escalated out of control. (Schedler, A. 1999)

3.1.3 Accountability, Efficiency and Equity of Access

Whereas J/LOS strategic investment plan sets out accountability, efficiency and equity of access, as one of the key result areas, the accountability mechanism proposed on one part remains outside the recommendations of the poor particularly when relating it to the work of the Uganda Police Force. J/LOS should be cautious on how the proposed social accountability will be translated into action. Non-effective and non-practical feedback mechanisms should be avoided. Currently most institutions have “**Suggestion boxes**” and “**Complaints desks**” which have not been effective in providing feedback and ensuring accountability. For example the Human Rights Complaints Desk established at police stations in the country was said to be ineffective and not serving the interest of the poor. In addition suggestion boxes may become an additional form of dis-empowerment to those poor people who cannot read and write.

The Sector should thus explore the option of setting up independent complaints' commissions and ombudsmen. It is always believed that civilian's complaints bodies are good in ensuring social accountability by enabling citizens to air out their complaints with the hope that there will be redress and also improvement in the delivery of the service. In addition social accountability can be enhanced through report cards to periodically gather users' views on J/LOS services.

The Sebutinde Commission demonstrated an effort towards this but unfortunately the Commission was not permanent and has since been resolved. In addition, although many people were able to register their complaints, no significant disciplinary action has been taken against the culprits nor have their been major changes arising out the Commission's recommendations.

3.1.4 Strengthening popular justice.

J/LOS intends to strengthen local council courts as a way of taking justice nearer to the people and also for the reason that they operate without regard to technicalities. This move will be a direct response to the voices of the poor who throughout this study have commended the role of LC courts in facilitating access to justice in lower local governments. The poor have also recommended that these courts should be given power to handle criminal cases especially those that are rampant in their communities. The key argument raised here is that LC courts are not extraterrestrial, and are better versed with local knowledge and realities under which these offences are committed.

In Bangladesh, training and representation of women on the village level “Shalish” (dispute resolution committee), education of communities about domestic violence and encouraging women to participate in hearings were undertaken in order to improve the effectiveness of traditional justice.

However, during the assessment the participants noted flaws in the administration of justice at that level. They pointed out that some LCs are as insensitive to gender concerns just like police, and others said they are not impartial as they it is claimed.

“L.C. officials tend to neglect women who report cases of domestic violence. Such women are regarded as disrespectful of their husbands; who is a woman to report a man?” – Female Key Informant, Katakwi.

“The L.C. Court is not impartial (tihariho obwegahisa). We do not have LCs who can give a fair judgement” ... “The poor are assisted most at the L.C. level but at the higher levels- like Police, you may report a case but in the end, you end up being locked up yourself because the one you reported goes behind you and pays some money (okutugirira), Participants, Kabale.”

“Even LCs do not want to reveal the offenders, they themselves are criminals in the area” – Male Participant, Makerere, Kampala

3.1.5 Legal education

3.1.5.1 Educating Litigants, Victims, and the General Public

As noted in the J/LOS Strategic Investment Plan, educating litigants, victims, and the general public regarding their rights and obligations is a timely plan. During the PPA the poor also recommended mass legal education and sensitization of rights as well as education of professionals to be pro-poor in policy administration and implementation. Throughout the study, it consistently come out that government should ensure that the laws are translated into languages understood by the end users of the law. It was further observed that because the poor are not knowledgeable of their rights, they are deliberately misinformed and mistreated when they approach the justice dispensing institutions such as Police and Prisons.

“Minisitule eya mateeka etekewo emisomo gya mateeka mugwanga lyonna” (The Ministry of Justice should embark on a nation-wide legal awareness program) – Female Participant, Makerere

In Zambia, In order to increase citizen awareness of citizen's rights and responsibilities and multiparty democracy, three distinct forms of citizen education were undertaken between 1991 and 1997 by two NGOS and one government agency, the Ministry of Education. Cascade trainer training was used as well as popular theatre which was noted as the best mechanism for reaching the less educated with limited exposure to media.

“Sometimes L.C. officials take advantage of people's ignorance to deny them assistance/justice. In case of defilement, a parent may be told that if you do not have a birth certificate or baptism card you cannot prove your case”. – Participant, Katakwi.

3.1.6 Administration of Justice

3.1.6.1 Professionalisation of the Bench

It is noted that J/LOS seeks, *inter alia*, to increase the effectiveness of the administration of justice through professionalisation of the bench. One of the implications of this is the phasing out of lay magistrates who under the present system administer justice without strict adherence to technicalities. Throughout the Assessment, it was revealed that lack of knowledge of the rules of procedure and evidence on the part of the poor constrains them from accessing justice. Often times, this was said to breed unnecessary delays in the administration of justice.

“Court procedures are too long, complicated and expensive” - Man in Aketa Camp, Katakwi.

With due respect to this plan, J/LOS should however be cautious that the process of professionalisation of the bench does not emphasis the use of technicalities in courts of law. The Constitutional provision (Article 126 (2)) requiring administration of justice without undue regard to technicalities should be respected. Alternative arrangements need to be undertaken here especially in the area of civil procedures to, *inter alia*, facilitate the appearance of litigants before courts with out legal representation and to enable them comprehend legal proceedings.

3.1.6.2 Improving delivery of services in the DPP and Police investigations

The DPP intends to improve the efficient and prompt prosecution of criminal cases and also to direct police in efficient and timely investigations of criminal cases. This it intends to undertake by increasing the number of Resident State Attorneys, support staff in upcountry offices, reducing the duration of investigation and the period between mention, committal and completion of case, increasing the public’s awareness (especially the poor and women) in the DPP, etc. It was generally observed that the poor have lost confidence in most of the justice dispensing institutions. The poor decried the helplessness they suffer because the *unending* periods of remand they are subjected to a rising out of slow and inefficient prosecutions and also because of their lack of awareness of the legal requirements and procedures and most prominent lack of money to engage criminal lawyers. The move to reduce periods spent on remand and speeding up investigations and prosecutions in order to reduce the period between committal and completion of cases is timely and will effectively address the concerns raised by the poor in this study.

In Malawi, in order to improve the delivery of services and image of police, regular consultation between the police and the community was initiated. There were also initiatives such as joint-problems solving and action. Thus community/police consultative groups were established and linkages were made to traditional community systems e.g. village heads.

“The Police is poorly trained. For instance, fraud is now advanced - if there is fraud investigation requiring retrieving records from a computer, surely no policeman in Kabale can do it”. - Participant, Kabale.

“Rape and defilement cases require medical examination. Failure to conduct the test means losing the case”. - Participant, Kabale.

“In addition Police has CID which should go to the scene but the bad thing they don’t. they depend on hearsay, do not get enough evidence. When a person volunteers information, police do not want to co-operate because it means disrupting the deal”. - Male Participant, Makerere Kivulu, Kampala.

In addition, J/LOS’ plan to enhance the criminal investigation capabilities of the police is timely and relevant to what communities consulted called “unlawful arrests and false imprisonment” arising out of poor or lack of proper investigation before arrests and poor prosecutions. This will improve the image of the Sector, if such interventions stand the test of time, through capacity building. It is however important that the general public is made aware of such innovations and is encouraged to effectively participate in them.

3.1.6.3 Social approach to administration of justice

A review of the J/LOS Investment Plan reveals that the Sector uses a purely legal approach to the administration of justice. A socio-economic analysis of the circumstances under which crime is committed as well as social constraints to access to justice is necessary if the Sector is to administer the justice system fairly and effectively.

In order for poor people’ concerns to be reflected in J/LOS activities it is recommended that a social approach to administration of justice be promoted in all J/LOS institutions. In addition, both the Children’s Act and the Community Service Act have provided for a key role for Social and Probation officers in children’s and community service matters before courts of law, although no arrangements have been made to ensure that such support is available as and when required. Professional social workers will provide social analyses and implications of decisions taken by J/LOS institutions and agencies. Social workers will also play a key role in the non-custodial sentences that J/LOS is planning to introduce.

The role of social workers in criminal justice and reduction of crime may, *inter alia*, include;

- a) Providing information about offenders detailing their history and attitudes,
- b) Guiding and advising on community based sentencing,
- c) Providing faster and less complex assessments for court purposes on those offenders referred to social workers for investigation.
- d) Counseling those acquitted¹² before they are released in order to reduce re-offending.

¹² Insufficient basic skill level and stigma associated with a prison’s sentence may constrain those acquitted from accessing gainful employment hence making them vulnerable to re-offending. Counseling them and linking them to support systems is thus vital.

On the other hand social reports also point at the need to emphasize the mitigation part of the proceedings to enable convicts tell courts facts such as why they committed crimes which are normally given less emphasis. Factors such as poverty, unemployment, age and many others that lead poor people to commit crimes will be considered. Professional Probation/Social workers thus assist both in investigation and rehabilitation of convicts.

3.1.6.4 National Legal Aid Service

The poor have pointed out how helpless they are before the J/LOS institutions because of the complexity of the legal technicalities. J/LOS' plan to facilitate access to justice, by providing legal aid in identified areas of the criminal law is a key intervention. J/LOS' planned National Legal Aid Service is limited to offences that are punishable by death, life imprisonment and criminal cases handled under the Public Defender Scheme.

“In Kabale, most people cannot access certain services, like those of a lawyer. Some do not even know that legal services exist” - Male participant, Kabale.

However, from the Assessment there is need to extend the categories entitled to legal aid. When a poor man/woman loses a goat to a thief, which was his/her source of income, there should be a mechanism that such a person receives all the necessary help such that he/she is not thrown into further helplessness. In addition, when a poor man/woman languishes in a police cell because he/she does not have access to a lawyer to help him/her out with police bond applications, he/she loses time and money while in detention.

“Police eyamba alinawo (the Police assists those who have economic resources). If I am suspected of committing an offence, the complainant can pay the Police to keep me in a cell even up to a week”. - Male Participant, Kivuulu, Kampala.

On the other hand, it is important to be cautious on how the economic and social condition in the country will allow for the establishment and operation of a nation-wide legal aid system and protection of the scheme against abuse.

3.1.6.5 Fighting corruption

It is noted that DPP intends to increase the prosecution of corruption cases and develop a Code of Conduct for Prosecutors. This strategy will, if effectively implemented, improve the image of the DPP's office in the eyes of the public especially the poor who rely on this office for the effective prosecution of their cases. The poor believe that investigations and prosecutions are always in the favor of the rich as they can pay for cases to be swung their way. The poor decried the practice of requiring victims and complainants to “facilitate” investigations and prosecutions. Curbing these acts will go a long way in improving the image and confidence of the poor in this institution. Strategies to improve public accountability should be initiated.

3.1.6.6 *Gender And Access To Justice*

The J/LOS plan to address gender in the administration of justice will help address the problems of accessing justice by women and ensure fair dispensation of justice through a consistent and effective evaluation of the problems faced by poor women. Throughout the PPA women reported that they do not have any income to engage lawyers or to facilitate their movement to report cases. The women further voiced their inability to interpret legal documents.

3.1.6.7 *Victims Compensation Scheme*

The poor decried false arrests and imprisonment. There were real-life experiences narrated about the suffering and helplessness of the poor due to poor investigations and prosecution. The poor also pointed out their frustration whenever they attempt to seek redress. Although, the government can be sued, as some of them were aware, they noted that they often have to give up because of the complication and the long process of suing government. Thus a Victims Compensation Scheme administered at the trial stage is very welcome, although this should also be extended to cases of wrongful arrest which do not make it to the trial.

3.1.7 **Law reform**

The J/LOS plan to update laws, reform the rules of Criminal and Civil Procedure and evidence to enable access to fair and equitable justice is in line with recommendations made by the poor. While this is a positive step, creating awareness of these reforms at grassroots level remains crucial. All communities consulted would like to see an urgent scrapping of irrelevant laws and unnecessary technicalities and procedures. The bottom line however will be the extent to which these reforms will promote equity where the poor can afford the process of justice and the extent to which the technicalities and procedures will be softened for easy internalization by the illiterate members of society.

During the Assessment, a review of existing laws was undertaken to evaluate the impact of the existing legislation on the poor. Table 3 shows how legislation impacts on the poor's safety, security and access to justice.

**Table 3:
Legislation and poor persons' safety, security and access to justice in Uganda**

KEY LEGISLATION	ISSUES	REMARKS
The Constitution, 1995 The Penal Code Act	Right to life guaranteed, Offences against the person (assault, murder, etc)	While these rights are guaranteed in theory, the vulnerable condition of the poor make their attainment a dream
The Constitution, 1995 The Penal Code Act	Right to property Offences relating to property (burglary robbery e.t.c	-do-
The Constitution , 1995 Poor persons Defence Act, 1998	Right to legal redress Right to legal representation (Article 28(3))	The poverty condition of the Majority of the Ugandans constrains them from accessing Justice through legal representation since they cannot afford court and lawyers' fees. Few lawyers are interested in state briefs
Poor Persons Defence Act, 1998	Right for paupers to file suits after filing applications	This right to a state brief is only limited to capital offenses leaving many accused persons who cannot afford lawyers underrepresented
Civil procedure Act (S.86) Civil Procedure Rules (Order 30) Civil procedure Rules as amended (0.9)	Provision for paupers to file suits after filing applications Requirement for filing list of authorities	The poor are not aware of the existence of provision. Many poor persons do not have the capacity to make such applications due to illiteracy and poverty (inability to instruct lawyers)
Penal Code Act	Offences of idle and disorderly, rogue and vagabond etc	The criminalisation of acts/ omissions/conduct that are a consequence of the poverty situation and lack of employment has been cited as one of the anti-poor provisions of the law that ought to be decriminalized.
Community Service Act (2000)	Introduction of non-custodial sentences	Community service and other non-custodial orders will go a long way in reversing the poverty situations of most families where by the incomes of the homes will no longer be seriously

		affected by the imprisonment of house hold heads.
Penal Code Act Criminal Procedure Code Act etc	No clear provision of return of exhibits to complainants	To many people especially the poor this is one of the constraints in an attempt to attain justice.
Constitutional Commercial Courts (Practice) Directions 1996	Establishment of the Commercial Division of the High Court of Uganda	The Commercial Court is yet to impact on the poor in Uganda because the Court is only based in Kampala Its pecuniary Jurisdiction is that of the High Court (handling matters where the value of the subject matter is over 5m/= The business handled by the Court (insurance, negotiable instruments, sale of goods etc) does not Carter of the small business usually transacted by the poor people.
Resistance Committee (Judicial Powers) Statute, 1998	Pecuniary jurisdiction of RC/L.C. Courts is Shs. 5,000/=.	While these courts have been hailed as being pro-poor in the administration of justice their limited Jurisdiction constrains their accessibility
Arbitration and Conciliation Act 2000	Alternative dispute resolution mechanisms (arbitration, Conciliation, mediation etc) are established	The establishment of ADR mechanisms is a positive development for it reduces on the time and the cost of litigation. However many poor litigants can not afford even the cost of ADR proceedings e.g. Arbitration.
Constitution of the Republic of Uganda 1995 (Article 126) Children' Statute, 1997 Land Act, 1998	Courts to administer justice without undue regard to technicalities	The provision is an attempt to do away with the technical rules of procedure and evidence, most of which cannot by the vulnerable litigants especially the illiterate poor. The Children' Statute and the Land Act are good examples of legislation conforming to the constitutional provision.

3.1.8 Commercial justice reform

J/LOS intends to improve accessibility of commercial courts and also improve the processing of commercial cases in courts. The Sector also plans to reform commercial laws. The poor however expressed ignorance about the reforms in the section. They were not aware of the existence of the commercial court. Some noted that the jurisdiction of these courts is far too high for their small claims and contracts.

“An Indian contracted me to build for him at shs. 1,700,000/= and only paid shs. 450,000/=. when I went to the Ministry of Labour to pursue the case, they could not help me because I did not have the relevant licence authorising me to undertake such jobs” - Male Participant, Kampala.

“We are poor with no jobs, with small businesses, but taxes are killing us.” - Group discussion, Kabale.

“Workers are not given proper appointment letters. Contractors pay at their discretion, the workers do not know where to report or the do not report because of lack of evidence” - - Group discussion, Kabale.

Throughout the study the poor expressed concern over Uganda’s commercial justice system that is insensitive to the needs and aspirations of the poor. The vast majority of study participants generally less understood its importance and operations. The poor revealed that their business activities are so minimal that they are not handled by the commercial justice system. To the poor, improving commercial justice entails facilitating their presentation of small claims and unwritten contracts and enforcement of labour disputes involving poor employees against large commercial enterprises. The poor, especially the women, also cited the issue of land ownership and dispute resolution under the commercial justice discussions. They would like to see the issue of land ownership improved as a priority strategy in the commercial justice reform program.

3.2 BEST PRACTICES FROM COMMONWEALTH DEVELOPING COUNTRIES

Different countries have adopted various strategies in a bid to promote equal access to justice by all their citizens. The best practices given here include reforms and improvements by the justice institutions. The Study also looked at those strategies that have been adopted to improve the delivery of services to the people with the result of promoting equal access to justice in those countries.

Table 4 gives the reasons, arguments and strategies that have been adopted by countries both in the developed and developing countries. The Table also gives the implementation of the strategy. Some of the best strategies are specifically the marginalized for example women, children, etc but others are general but have produced benefits that tricked down to across all sections of societies in those countries. It should be noted that the study looked out for those best practices addressing issues/problems similar to those that have been highlighted as the main safety, security, and access to justice issues in this study. In addition, the practices have been singled out for

the fact that they be replicated in Uganda and also currently there are initiatives in this country in the direction of the best practices given.

Table 4: Best practices from Commonwealth developing countries

Jurisdiction	Issue	Rationale	Strategy	Implementing strategies.
South Africa	Safety and security	Minimal presence in a locality and resource constraints	Strategic partnerships with communities to create a safe and secure environment	<ul style="list-style-type: none"> ◆ Community justice and policing ◆ communities contribute material things ◆ volunteers in activities to keep law and order ◆ private companies supply Police with priority items
Malawi	Security and safety in the community	The need to improve service delivery and image of the institution through consultation of service users	Regular local consultation between the police and the community Joint problem solving and joint action	<ul style="list-style-type: none"> ◆ Training community police officers ◆ Establishing of community piloting sites ◆ Establishment of community/police consultative groups ◆ Providing accountability mechanisms ◆ Establishing linkages to traditional community systems e.g village heads ◆ Establishment of local crime prevention panels and joint police/community approaches
Zimbabwe	Law reform and legal education	Making the criminal law accessible to a wider audience and enhancing its educational function	The codification and simplification of the Code of Criminal law	<ul style="list-style-type: none"> ◆ The definition of criminal offences is preceded by a social policy statement outlining the purpose and function of the offence ◆ Examples are used to facilitate the explanation of difficult concepts e.g when homicide by omission is committed
Bangladesh	Improving the effectiveness of the	Encouraging equal access to justice by marginalised	To have women represented on the traditional justice system of	<ul style="list-style-type: none"> ◆ Training and representation on the village level “Shalish” (dispute resolution committee).

	traditional justice	members of society.	dispute resolution	<ul style="list-style-type: none"> ◆ Measures are being taken to educate communities about domestic violence ◆ Encouraging women to participate in hearings.
	Safety and security of the poor	Improving policing at local level.	A more service oriented police	<ul style="list-style-type: none"> ◆ Public attitude and user surveys to generate public awareness and improve accountability ◆ Joint police/public problem solving in issues such as victim support ◆ Establishments and strengthening of police community forums ◆ Use of Accessible Justice Fund open to government and non-governmental organisations for local level innovations or national strategic initiatives ◆ Monitoring of these initiatives through public perception surveys or report cards on policing
India	Effective policy and planning process	Need to be informed by the citizens voices in policy implementation on making process	Monitoring of citizens satisfaction with the quality of public services and causes of satisfaction and dissatisfaction. Capturing and consideration of citizen's alternatives for tracking current problems.	<ul style="list-style-type: none"> ◆ A survey carried out by an NGO sometimes together with a market-research company. The results are shared with NGOs, citizen bodies and service providers and widely publicised in the press. ◆ NGOs using Report cards educate and mobilise the media, other public interest groups and the citizenry at large between surveys ◆ Random sampling is used and representation of the total population is stressed rather than giving over emphasis to any particular group
Zambia	Large scale information	To facilitate citizen	In this country, two NGOs and	<ul style="list-style-type: none"> ◆ Cascade trainer training ◆ Popular Theatre was noted as

	and creating citizen awareness	participation in governance	one government agency, the Ministry of Education, undertook three distinct forms of citizen education between 1991 and 1997. All three initiatives were aimed at increasing citizen awareness of multiparty democracy and citizen's right and responsibilities	the best mechanism for reaching the less educated with limited exposure to media <ul style="list-style-type: none"> ◆ Discussion groups ◆ Reform of civic education in the school syllabus to provide for training of citizens' rights and responsibilities.
Zimbabwe	Cost effective means of administration of justice	<ul style="list-style-type: none"> ◆ Improvement of prison conditions ◆ Reduction of prison population ◆ Provide for humane ways of administering punishment 	Introduction of non-custodial sentences	<ul style="list-style-type: none"> ◆ Petty offenders are sentenced to community service ◆ Community service has reduced the prison population by about 4000 people between 1992 and June 1998 ◆ Punishment in the community with communities participation in the punishment

4. RECOMMENDATIONS AND POLICY IMPLICATIONS

4.1 OVERVIEW

The recommendations and policy implications discussed in this section are a disposition of key intervention strategies that may be considered by J/LOS in the law reform process. These recommendations should be understood as simply proposals, and not absolute panacea, in strengthening the reform agenda. The section also highlights potential contributions of the law reform and the strategic investment plan for the medium term to poverty eradication as well as ensuring safety of person and security of property in Uganda.

4.2 NATIONWIDE LEGAL AND HUMAN RIGHTS AWARENESS

4.2.1 Dissemination Desk

It should be a sector policy to disseminate, translate and simplify all laws. J/LOS could borrow a leaf from efforts done by the Ministry of Lands on the land law and the Ministry of Health on HIV/AIDS. This will call for the establishment of a Legal and Rights Dissemination Desk in the Ministry of Justice and Constitutional Affairs to undertake and monitor the dissemination of all existing and new laws. This Desk should also be undertaken the translation and simplification of laws, rules and procedure. It is important for the dissemination process to identify and emphasis the best mechanisms to reach those who cannot read, and/or write and other vulnerable groups such as women, youth, children and disabled. The presence of various local FM radio stations in the country should be seen as a *niche* to civic and legal education.

Sensitization of the public on the proposed code of conduct should also be one of the activities of the recommended Dissemination desk of the Ministry of Justice.

4.2.2 Local governments' participation

For sustainability of the dissemination process and in light of the current decentralization policy, it is imperative that the civic and legal education be incorporated in Local Government Development Planning process. The current practice in local governments is to have a small component of law-related planned activities in form of workshops on gender and child protection superficially included under gender and community services sector, in Local Government development Plans. In light of the need to entrench civic and legal education in local government development processes, it is important that all Local Government planners, probation officers and community based services managers be educated on critical areas of civic and legal education.

4.2.3 Inclusion of rights education in the school curricula.

Legal and rights education should be included in the primary and secondary schools curricula.

4.3 STRENGTHENING OF COMMUNITY PARTICIPATION IN POLICING

Community policing benefits have not been fully exploited and the concept is not known to the vast majority of the people. It is proposed here that in order to handle the problems of minimal presence in a locality and resource constraints of the police, partnership between the police and the communities should be strengthened. Key areas of focus for community policing should include enlisting voluntary contribution in terms of manpower, committee membership, finances and materials towards keeping law and order in the community.

The recent innovation by the Inspector General of Police of mobilizing companies operating in Kampala's Industrial Area to contribute towards the cost of a Police Patrol vehicle for the Industrial Area should be emulated¹³.

4.4 SOCIAL APPROACH IN THE ADMINISTRATION OF JUSTICE.

It is proposed here that one of the key inroads to achieving and sustaining this approach is the secondment of professional probation/ social workers from other government departments to J/LOS or the recruitment of Probation/Social workers and attaching them to major J/LOS agencies and institutions such as, police, prisons and courts of law. J/LOS may also use existing District based Probation Officers although majority of them are not professional Probation/Social Workers (they are social scientists) and therefore will require specialized training and orientation.

Community Development Assistants (CDAs) whose potential is not optimally utilized as confirmed by the recent survey¹⁴ of CDAs conducted by the Ministry of Gender, Labour and Social Development can also be of use in this strategy.

4.5 STRENGTHENING ACCOUNTABILITY

4.5.1 Monitoring and evaluation of services user perception and attitudes

Monitoring of user perception will result into demand-driven and effective service delivery if objectively and timely pursued. Report cards¹⁵, user surveys and regular local consultations should be adopted. The constant collection and analysis of users' satisfaction/dissatisfaction data will help in pointing out causes and possible solutions to community problems/ constraints. Introducing a practical feedback system through regular reviews where the poor are the main evaluators across all institutions should be supported.

¹³ New Vision Newspaper (December 2001).

¹⁴ The Ministry of Gender, Labour and Social Development conducted this survey in selected districts in Uganda in September 2001. The Ministry intends to revitalize the role of community development assistants in the country.

¹⁵ Report cards entail random periodic sampling of citizens perceptions and attitudes. Results of which must be shared by the sector institutions and agencies, civil society organizations and development partners.

4.5.2 Permanent Citizens' Complaints Body

External administration and regulation of the Code of Conduct should be emphasized. A permanent Citizens' Complaint Commission (similar to the Sebutinde Commission) should be institutionalized within J/LOS with the objective of receiving reports about the breach of the code of conduct and complaints about the administration of justice. This Commission should be highly facilitated in terms of personnel, remuneration, investigation skills, and equipment.

4.5.3 Promoting community participation in appraisal and discipline of staff

It is recommended that the reform agenda include the sharing of responsibilities and powers with local governments. This can be effected through local leaders participating in the supervision of J/LOS staff. This will enhance social and downward accountability since J/LOS staff will be aware that the immediate recipients of their services have a stake in their appraisal, promotion and discipline. It should also be noted that an accountable system is more likely to receive more community support than a system alienated from the people.

Partnerships where local governments such as district service commissions, district and lower local councils are consulted and involved in the promotion, appraisals and discipline of J/LOS should be entrenched in the reform agenda and the Strategic Investment Plan.

4.6 ENTRENCHING ACCESS TO JUSTICE COMMITTEES INTO EXISTING LOCAL GOVERNMENT STRUCTURES.

For sustainability of the planned intervention it is important that J/LOS entrenches its efforts and plans into the existing local government structures and systems. Incorporation of key personnel such as district planners, community based services managers, probation officers and community development assistants will ensure that the planned *Access to Justice Committees* at the district level obtain the necessary support and community feedback. It is however important that these committees exist at mandated planning levels (the district and sub-counties) with representation stretching to parishes and villages as administrative units. The recent creation of Participatory Development Management (PDM), a program that focuses on good governance for poverty eradication and supported by UNDP holds promise for incorporating access to justice into *Village and Parish Development Plans* that are expected, through the bottom-up planing and the building block approach, to significantly contribute to sub-county development plans.

4.7 GENDER SENSITIZATION OF ADMINISTRATORS OF JUSTICE

In the process of strengthening local courts, there should be emphasis on training and orienting local courts in gender. It is also recommended that at least one third of the local courts be women. In addition gender sensitization should be part of the various training undertaken by J/LOS institutions.

4.8 LAW REFORM

4.8.1 Pauper Proceedings

Order 30, Civil Procedure Rules (Pauper Proceedings) should be amended to enable the poor make oral application before courts to file suits without having to pay court fees. In addition, the whole procedure should be simplified to make it pro-poor.

4.8.2 Return of exhibits

Clear and effective legal provision requiring police and courts to return exhibits.

4.8.3 Review of Order 9, Civil Procedure Rules

The requirement for parties in a civil suit to file a list of authorities, summary of evidence, list of documents, etc should be removed as litigants cannot conform to this requirement without legal assistance.

4.8.4 Decriminalization of offences

The Penal Code Act should be amended to decriminalized offences such as being idle and disorderly, vagrancy, vagabond, and living on the earnings on prostitution.

4.8.5 Community Service Act amendment and awareness

The Community Service Act needs to be reviewed to widen the scope of offences that carry the sentence of a community service order. A comprehensive awareness of the concept should also be undertaken

4.9 LEGAL AID FOR VICTIMS AND SUSPECTS

The proposed National Legal Aid Service should not be limited to legal defence but extended to victims in enforcement and protection of their rights. It is also recommended that legal services should be available to suspects at the time of arrest.

The Public Defender Scheme should also offer advice to victims of crime and avail legal assistance to suspects at police stations.

The National Legal Service should be decentralized and administered at district level by the planned access to justice committees. The Service can also tap from the current Poverty Action Fund (PAF) at district level.

4.10 REFORMING COMMERCIAL JUSTICE TO BE PRO-POOR.

The following strategies are recommended;

- (i) Poor people's source of income activities such as hawking and vending should not be outright outlawed but should be regulated to operate with least inconvenience to the public and the small traders themselves.

- (i) Review of the jurisdiction of the Commercial court to enable the handling of small claims or in the alternative the establishment of small claims courts to speedily handle small claims in an informal manner.
- (ii) In addition LC Courts monetary jurisdiction should be increased to enable these courts to handle a wider range of cases. The Resistance Committees (Judicial Powers statute 1988) provides that the pecuniary jurisdiction of local council courts in disputes involving debts and contracts is limited to handling matters where the value of the subject matter does not exceed 5000 / Ush.
- (ii) The Commercial justice reform strategy should handle the issue of land ownership issues for the poor, especially women, as a strategy for improving access to commercial justice within the framework of poverty eradication.
- (iii) Tax enforcement agencies should put in place a fair tax system for the poor but not to disrupt the poor people' business environment. In addition tax tribunals should be decentralized made known and accessible to the poor.
- (iv) Legal Aid should be extended to commercial disputes.
- (v) The Commercial court should be decentralized by setting up more courts at least at district level.

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