

THE ROLE OF THE JUDICIARY IN NATIONAL DEVELOPMENT: THE CASE OF 2ND NATIONAL DEVELOPMENT PLAN (2015/16-2019/20)

1.0 Introduction:

The thrust and goal of NDPII is to propel the country to middle income status in the next five years through prioritizing investment in five key growth drivers with the greatest multiplier effect as identified in the Uganda Vision 2040. These growth areas are: *Agriculture; Tourism; Minerals, Oil and Gas; Infrastructure; and Human Capital Development*. The implementation of NDPII is a responsibility of every Ugandan.

According to the NDPII, the Justice, Law and Order Sector (JLOS) is responsible for administering justice, maintaining law and order as well as promoting and protecting human rights. Through a sector wide approach, the sector brings together state and non-state actors who play complementary roles in planning, budgeting, programme implementation, monitoring and evaluation.

The sector targets over the Plan period are to increase: public confidence in JLOS Services from 35 percent in 2014 to 50 percent in 2020; public satisfaction in JLOS Service delivery from 60 percent in 2012/13 to 75 percent in 2020; and case disposal rate from 42.7 percent in 2013/14 to 60 percent in 2020 (*2nd National Development Plan 2015/16-2019/20*). The focus of the JLOS sector during this plan's period includes; *improving policy, legislative and regulatory framework; enhancing access to JLOS services particularly for vulnerable persons; and promoting accountability and the observance of Human Rights*. These will be achieved through implementation of a multitude of interventions as clearly specified in the plan

The NDPII recognizes the judiciary as a key stakeholder in the implementation of the plan given it is a vital factor in ensuring the **Rule of Law** for economic development. The role of the judiciary in promoting national development is thus of the greatest importance. For instance, the judiciary, particularly at a national level, is faced with

the task of explaining how the country's laws are contributing to and facilitating sustainable development. Therefore, economic and social development greatly depends on an effective legal and judicial system.

In Uganda's context, as also observed in Vision 2040 and NDPII, economic and social development is not just about the balance of payments or building a road or increasing tax collection. It is becoming more and more evident that the rule of law is integral to socio-economic transformation given the strong correlation between the tenets of the former and latter. For instance, it is believed that the rule of law is in effect when there are:

- **Meaningful and enforceable laws** (that means transparency, fairness, predictability in court decisions and confidence);
- **When there are enforceable contracts** (so that there's promotion of business and commerce);
- **When there is basic security** (that means personal safety and protection of property, and an independent judiciary that safeguards both); and finally,
- **When there is access to justice** (that means concrete ways to invoke that safeguard).

If we have these elements in Uganda, the state can regulate the economy and empower private individuals to contribute to economic development by confidently engaging in business, investments, and other transactions. This in turn fosters domestic and foreign investment, the creation of jobs, and the reduction of poverty.

It is also important to note the interdependence of the different aspects of development – economic, social, political and legal. If the different aspects of development are not simultaneously addressed and considered together for analysis and action, they may be lost and hence affect the overall development process.

2.0 Role of the Judiciary in achieving the Goals of NDPII

2.1 Development of a conducive business environment;

During this plan's period, it is envisaged that the Judiciary will play a critical role of improving the legal, policy and regulatory environment that is conducive for doing business to create wealth and employment.

A number of studies by the World Bank (*World Development Report 2005*) have presented evidence to show that; there are positive economic benefits of strong effective judiciaries; the degree of judicial independence is correlated with economic growth; competence of courts of law affects comparative economic competitiveness; better performing courts lead to more developed credit markets; and, a stronger judiciary is associated with more rapid growth of small firms as well as with larger firms in the economy.

A symptom of dysfunctionality of a judiciary lies in the size of the backlog of cases. Backlogs are of course related to times to disposition and other measures of delays, but backlogs are important in themselves because they lead to a lack of public confidence in a country's judiciary and to a hesitancy to rely on the judiciary in business planning. We note that the performance of the Judiciary in the Percentage of completed cases to registered cases in 2014/15 stands at 95.8% against the targeted 108%.¹ The establishment of a **Commercial Court Division of the High Court** has greatly helped in this endeavor. This is encouraging and it is hoped that it will support the process of economic development especially during the NDP II period.

¹ JLOS; Annual Performance Report 2014/15, page 23

2.2 Mindset change:

Through advocating for the rule of law, the Judiciary is going to be relied upon to contribute towards **inculcation of values of honesty and hard work** among the population. This would help in fighting the corruption, promoting hard work, patriotism and saving culture, in order to contribute to national development. For example, through the Anti-Corruption Court, the Judiciary will enforce the Anti-Corruption law which is in place by ensuring that the convicted corrupt people face the full might of the law. This will ensure that resources allocated towards the implementation of NDPII are put to their intended use and ultimately, this will lead to **improved service delivery** during this plan's period.

2.3 Rights promotion for Accountability;

It is also envisaged by the NDPII that the Judiciary will continue to advocate for **rights promotion in order to enhance accountability** across the entire national spectrum. The general public will ensure that the desired socio-economic transformation, as envisioned in the Uganda Vision 2040 and subsequently in the NDPII, is realised through demanding for accountability and effective service delivery from government and other relevant stakeholders (e.g. implementing institutions, Local Governments, development partners etc).

2.4 Promotion of Investments and Access to Financing;

The overall cost of the NDPII is estimated at approximately UGX 196.7trillion, of which UGX 113.7 trillion is Government funding and UGX 83.0trillion is private sector contribution. This huge cost are borne out of the huge investments in the NDPII focus areas, with the lions share going to infrastructure development. For example, the cost of constructing the Standard Gauge Railway alone is estimated to cost over UGX11trillion.

Enhancing access to financing is one of the core requirements for implementing the NDPII and Uganda Vision 2040. As per the NDPII the public financing sources will

include: Domestic revenues, External financing namely; budget support, concessional loans, semi-concessional borrowing, non-concessional borrowing and domestic financing. For the private sector to be able to invest in the identified core areas of tourism, infrastructure, minerals and oil and gas and agriculture, it will call for government to ensure that there is access to cheap credit and financing. All these sources, as well as contribution of the private sector, will require the Judiciary to collaborate with other relevant institutions to make the necessary steps for enhancing the **country's competitiveness** as a means for attracting these resources.

The effectiveness of our judicial system will contribute towards making Uganda more credit worthy. Absence of investor or creditor's confidence would mean that vital NDP II infrastructure projects will stall because a **dysfunctional judiciary is an obstacle for cheap credit and financing due to the difficulty of enforcing contracts in case of breach**. For example studies from Argentina and Brazil by the World Bank (*World Development Report 2005*) show that firms doing business in provinces/ areas with better-performing courts enjoy greater access to credit.

2.5 Promotion of peace and national security;

The Judiciary is also a very vital stakeholder in the preservation of peace and guaranteeing national security which are key pillars for national development. This entails defending and protecting people and their properties, the sovereignty and territorial integrity of Uganda, as well as ensuring peace and security for socio-economic development. Through ensuring and enforcing the rule of law, the Judiciary is expected to continue contributing towards the promotion of peace and national security in Uganda.

2.6 Ensuring inclusive growth;

In line with the Sustainable Development Goals (SDGs) one of the pillars of NDPII is to ensure inclusive growth. As highlighted in the NDPII, Uganda has made great

strides in economic development however, the benefits have been uneven, affecting different segments of society differently. Over 19.7 per cent of Ugandans are under the poverty line and live on less than one dollar a day (*2nd National Development Plan 2015/16-2019/20*). The NDPII sets out to ensure inclusive growth (as it is our conviction that no part of Uganda should be left behind).

The Judiciary therefore, will be very vital in this endeavor through **enhancing access to Justice, Law and Order services** particularly for vulnerable persons and fighting corruption in order to strengthen Uganda's competitiveness for wealth creation and inclusive growth.

In addition, the role of the judiciary in promoting sustainable development is acknowledged. The NDP II to a large extent, integrated the sustainable development goals. We therefore look up to you among others to administer environmental litigation, balance environment and development considerations, influence societal attitudes towards the environment and the concept of sustainable development, furthering the development of legal concepts in the area of sustainable development and the implementation of regional and global environmental accords.

2.7 Independence of the judiciary

Independence of the Judiciary is key in promoting confidence of the public in the judicial system. It is important to promote both structural independence and behavioral independence. The former term, refers to the way in which government is constitutionally structured: does that structure lend itself to independence? The latter is more far-reaching. Are individual judges independent—that is, not just dispassionate and free from bias, but willing to take difficult positions, to resist corruption, and to make truly independent decisions? This will have far reaching effects in promoting the development of our country because it will either make or

break present and future investment decisions in our country. I therefore call upon you to embrace most especially the behavioral independence in the execution of your mandate.

2.8 Separation of Powers in terms of checks and balances

It is important to emphasize the principle of the separation of powers. The Constitution set up three separate bodies that is Executive, Parliament and the Judiciary for purposes of ensuring checks and balances in the exercise of power. I urge the Judiciary to continue exercising this mandate so as to promote stability in our country and hence ensuring the necessary environment for development.

3.0 Conclusion:

In conclusion, the Judiciary is a critical stakeholder under the Justice Law and Order (JLOS) sector. Therefore, like any other sector, the Judiciary is also an implementing partner of the NDPII and a number of interventions that are spelt out in this plan under the Justice, Law and Order section. On top of the above highlighted roles, the Judiciary should also take note of the specific interventions in the NDPII that fall under its docket and ensure that they are implemented during this plan's period.

If there is to be sustainable development in Uganda, the rule of law is paramount.

References:

- Dakolias, Maria. 1999. Court Performance around the World: A Comparative Perspective. *Yale Human Rights & Development Law Journal*. 2: 87–142.
- Daniel M. Klerman. 2007. Legal Infrastructure, Judicial Independence, and Economic Development
- JLOS; Annual Performance Report 2014/15. (2015)
- Maria Dakolias. 2003. *The Role of the Judiciary for Economic and Social Development*. The Hague, Netherlands
- The 2nd National Development Plan (2015/16-2019/20). (2015)
- The Uganda Vision 2040. (2013)
- World Bank. 2004. *World Development Report 2005: A Better Investment Climate for Everyone*. New York: World Bank and Oxford University Press.