

55643

# BETTER REGULATION FOR GROWTH

GOVERNANCE FRAMEWORKS AND TOOLS  
FOR EFFECTIVE REGULATORY REFORM

REGULATORY CAPACITY REVIEW OF UGANDA

INVESTMENT CLIMATE ADVISORY SERVICES  
WORLD BANK GROUP





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The findings, interpretations and conclusions included in this note are those of the author and do not necessarily reflect the view of the Executive Directors of the World Bank Group or the governments they represent.

#### **Better Regulation for Growth Program**

The Better Regulation for Growth (BRG) Program was launched in 2007 by the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and IC, the investment climate advisory services of the World Bank Group.

The objective of the BRG Program is to review and synthesize experiences with regulatory governance initiatives in developing countries, and to develop and disseminate practical tools and guidance that will help developing countries design and implement effective regulatory reform programs. Reports and other documentation developed under the BRG Program are available at: [www.ifc.org/brg](http://www.ifc.org/brg)



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## FOREWORD

Regulatory reform has emerged as an important policy area in developing countries. For reforms to be beneficial, regulatory regimes need to be transparent, coherent, and comprehensive. They must establish appropriate institutional frameworks and liberalized business regulations; enforce competition policy and law; and open external and internal markets to trade and investment.

This report analyses the institutional set-up and use of regulatory policy instruments in Uganda. It is one of five reports prepared on countries in

East and Southern Africa (the others are on Kenya, Tanzania, Rwanda and Zambia), and represents an attempt to apply assessment tools and the framework developed by the Organization for Economic Cooperation and Development (OECD) in its work on regulatory capacity and performance to developing countries.

The report is an input to IC discussions aimed at helping governments improve regulatory quality—that is, to reform regulations to foster competition, innovation, economic growth and important social objectives.

## ACRONYMS: UGANDA

CDI	Confederation of Danish Industry
CEEWA	Council for Economic Empowerment for Women of Africa
COMESA	Common Market for Eastern and Southern Africa
CJRP	Commercial Justice Reform Program
DFID	U.K. Department for International Development
DP	Deregulation Program
DPSF	Decentralization Policy Strategic Framework
D-SSWG	Decentralization Sub-Sector Working Group
EABC	East Africa Business Council
EAC	East African Community
EACA	United Nations Economic Commission for Africa
FUE	Federation of Ugandan Employers
ICA	Investment Climate Assessment
IC	Investment Climate Advisory Services
ICT	Information and Communication Technology
IFMN	Information Flow Management and Networking project
JLOS	Law and Order Sector Program
LGA	Local Government Associations
LGFC	Local Government Finance Commission
MFPED	Ministry of Finance, Planning, and Economic Development
MJCA	Ministry of Justice and Constitutional Affairs

MOLG	Ministry of Local Government
MSME	Medium and Small-scale Enterprises
MTCS	Medium-term Competitiveness Strategy
MTTI	Ministry of Tourism, Trade, and Industry
NCC	National Consultative Commission
NCUSBO	National Council of Uganda Small Business Organizations
NGOs	Non-governmental Organizations
NIMES	National Integrated Monitoring and Evaluation Strategy
NRA	National Resistance Army
NTBs	Non-tariff barriers
PAU	Policy Analysis Unit
PEAP	Poverty Eradication Action Plan
PMA	Plan for Modernization
PSFU	Private Sector Foundation Uganda
PSRRC	Public Service Review and Reorganization Commission
PSRP	Public Service Reform Program
RBP	Regulatory Best Practice Program
RIA	Regulatory Impact Assessment
ROM	Results Oriented Management
SWAPS	Sector-wide approaches
UBOS	Uganda Bureau of Statistics
UEPC	Uganda Export Promotion Council
UIA	Uganda Investment Authority
UIRI	Uganda Industrial Research Institute
ULAA	Uganda Local Authorities Association
ULRC	Uganda Law Reform Commission
UMI	Uganda Management Institute
UNBS	Uganda National Bureau of Standards
UNCC	Uganda National Chamber of Commerce and Industry
UTB	Uganda Tourist Board
UWA	Uganda Wildlife Authority



## EXECUTIVE SUMMARY

Like many developing countries, Uganda needs a comprehensive regulatory reform agenda in response to emerging domestic and international influences. Since 1986, the government has acted first to rehabilitate and stabilize the economy, through macro-economic stabilization and liberalization programs, focusing on sound fiscal and monetary policies. Throughout the 1990s, the government promoted growth and tackled increasingly difficult challenges, such as returning confiscated properties to their original owners, and privatizing state enterprises. It also liberalized the investment code by eliminating the preferential treatment granted to domestic investors and by making approval of the investment authority virtually automatic.

During the 1990s, the economy turned in a solid performance, resulting from continued investment in the rehabilitation of infrastructure, improved incentives for production and exports, reduced inflation, gradually improved domestic security, and the return of exiled Indian-Ugandan entrepreneurs. Uganda recorded an impressive economic performance between 1990 and 2000,

with an average real rate of annual growth in GDP of 6.9 percent. These high levels of growth have largely continued in the current decade, with growth in real terms in FY2007/8 rising to 8.6 percent. Despite its sustained performance, Uganda, with a population of 28.2 million (2007 est.) that is growing at more than 3 percent per annum, remains one of the world's poorest countries. According to the Uganda Bureau of Statistics (UBOS) report for 2007, 31 percent of the population lived in poverty in 2005/6.

Sustaining and increasing growth is a key challenge facing policymakers in Uganda, as well as widening the impact of growth. To reduce the poverty rate to 10 percent by the year 2017, as envisaged in the government's Poverty Eradication Action Plan (PEAP), GDP growth will need to be higher than 7 percent per year, with an investment rate of 30 percent of GDP, or higher. Although Uganda has an impressive track record on the growth and investment front, the required increase in future investment is more challenging than it seems at first sight. Uganda's performance in the past has to a large extent involved restoration and

rehabilitation of existing productive capacity. In the future, growth will need to come from new investments and new activities, which will require a deeper commitment of capital, more intensive acquisition of know-how, and more complex collaboration between local and foreign partners. The PEAP places great importance on the role of private investment, both domestic and foreign. Private investment will need to increase from its share of about 10 percent of GDP in recent years to more than 24 percent, on average, over the PEAP horizon.

Growth in investment required to increase Uganda's GDP growth rate to the latest PEAP levels will require substantial improvements to the business environment. As indicated in the World Bank's 2004 Investment Climate Assessment (ICA), Uganda faces broad challenges in creating an improved environment. Factors ranked as "major or very severe constraints on enterprise operations and growth" were, in order of importance:

- cost of financing;
- tax rates;
- macro-economic instability;
- access to financing;
- electricity;
- corruption;
- tax administration;
- regulatory policy uncertainty; and
- customs and trade regulations and procedures.

Although, as the ICA showed, enterprises do face more severe problems than regulatory and administrative procedures, regulatory policy uncertainty and specific regulatory regimes are significant, and the private sector as a whole in Uganda must cope with a substantial regulatory burden. The

World Bank's *Doing Business* indicators provide more detailed measures of regulations concerning the start-up and operation of business that tend to confirm the conclusion that regulatory barriers remain serious in Uganda. Compared to its ranking of 105th globally in 2007, Uganda was ranked 111th globally in the "ease of doing business" synthetic indicator and 10<sup>th</sup> in Sub-Saharan Africa by DB2009, a slight deterioration and far behind best practice internationally.

Regulatory reform, both explicit and implicit, has been an element of the Uganda's overall poverty alleviation and growth strategy for close to 15 years. It has been an important component of broader policy responses directed towards business-enabling reform and increasing economic dynamism and competitiveness. Uganda, like the other East African countries, initially attempted to achieve legal and regulatory reform by fast-tracking review and simplification of existing commercial laws and addressing existing regulatory bottlenecks, rather than controlling systematically the flow of new regulations that went through the policy and law-making machinery of government. Many of the legal and regulatory reforms in the 1990s were ad hoc and piecemeal in nature, focused on eliminating specific bottlenecks, and implemented through individual donor-supported reform programs for the legal sector, financial sector, civil service, budget reform, etc.

Systemic, as opposed to specific, regulatory reform actions in Uganda essentially date from 2000, when the Deregulation Program (DP) was introduced to remove unnecessary regulations that hampered the business sector. The core of the DP was a pilot reform of trade licensing at the local government level. This was evaluated as highly successful in demonstrating the benefits of streamlined regulation and implementation. Other activities within the first phase of the DP included advising government on further opportunities for regulatory simplification; promoting reform of specific legislation affecting business; capacity building and training. These were designed to

support eventual institutionalization of regulatory best practices in law and policymaking throughout government.

Renamed the Regulatory Best Practice (RBP) program in 2004, the second phase of the project was given a wider focus and redefined to institutionalize best practices and the government-wide use of Regulatory Impact Assessment (RIA) in all policy formation and law and regulation making in Uganda. The end result was intended to be the establishment of a simpler and more appropriate and suitable regulatory environment for business that would contribute to the goal of enterprise growth and competitiveness by fundamentally changing the way government conceived, drafted, implemented and enforced regulation as a policy instrument.

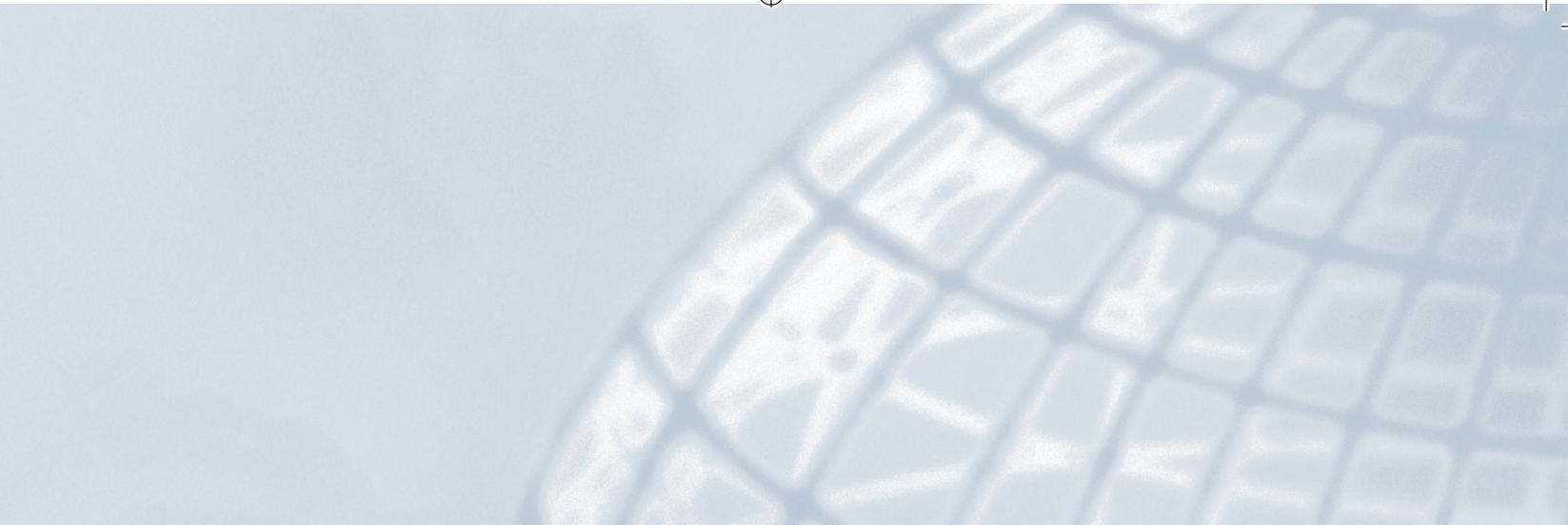
The program adopted an ambitious “big bang” approach to RIA implementation, in that the strategy focused on introducing RIA as soon as possible throughout government and to regulatory issues affecting other than the business environment.

As a result of the RBP program, significant capacities were developed to promote, manage, and coordinate regulatory reform in Uganda. RIA, monitoring and evaluation frameworks, and social impact analysis have been introduced to support future development of regulatory reform. However, effective capacity has not developed since the conclusion of the program, financed by the U.K. Department for International Development (DFID), primarily because of reduced funding within the government’s budget. Competing reform priorities are a particular challenge for Uganda. RIA has had to compete for attention and resources with other public sector policy management and efficiency improvement tools being implemented, such as Results Oriented Management (ROM). A multiplicity of reform initiatives and lack of effective government harmonization has meant competition for the limited resources, capacities, and staff time.

If the government wishes to implement the regulatory strategy that it has adopted, there are a number of steps that must be taken to resuscitate the process:

- a) Reaffirm publicly the government’s intention to pursue regulatory reform through a statement by the president that it is a priority that will be supported by adequate resources.
- b) Establish a ministerial position to champion regulatory reform at Cabinet level and to coordinate regulatory reform across government.
- c) Have the RIA Unit currently in the Cabinet Secretariat report to the new ministerial position.
- d) Carry out an assessment of the human and organizational resources available within the government to carry on a regulatory reform agenda. In particular, focus the assessment upon the capacity of the Policy Analysis Units to support regulatory reform activities.
- e) Establish a short-term program of “quick wins” that could be implemented within the fiscal year. This should be done in collaboration with the business community and leading non-governmental organizations (NGOs) to ensure that high priority items are on the action agenda.
- f) Consider whether the focus of regulatory reform in the medium term should continue to be on improving the business environment, or should be broadened to areas of social policy and other areas where there is a demand for RIA techniques.
- g) Establish clear budgets for regulatory reform activities, including resources for effective consultation.
- h) Engage in a dialogue with local governments to plan out the next stages of regulatory reform at local government levels after the roll-out of the licensing reforms has been completed.





# REGULATORY REFORM IN A NATIONAL CONTEXT

## Development context

At independence in 1962, Uganda had a per capita income of less than US\$200, similar to that in Kenya and Tanzania, and was thus one of the poorest countries in the world. However, the country, endowed with significant natural resources, including ample fertile land, regular rainfall, and mineral deposits, was thought to have considerable potential for rapid economic growth and development. For a while, Uganda's economy experienced steady growth, with its GDP increasing by approximately 30 percent over the decade. But the economic growth took place against a backdrop of political instability as supporters of a centralized state vied with those in favor of a loose federation and a strong role for tribally-based local kingdoms. In February 1966, Prime Minister Milton Obote suspended the constitution, assumed all government powers, and removed the ceremonial president and vice president. In September 1967, a new constitution proclaimed Uganda a republic, gave the president even greater powers, and abolished the traditional kingdoms.

In January 1971, Obote's government was ousted in a military coup led by armed forces commander Idi Amin Dada. Amin declared himself president, dissolved the parliament, and amended the constitution to give himself absolute power. Idi Amin's 8-year rule produced economic decline, social disintegration, and massive human rights violations. The economy plummeted, GDP fell by more than 30 percent by 1980, and per capita GDP was halved as the population increased from its independence level of 8 million to approximately 18 million by 1980.

The Ugandan army's unsuccessful invasion of Tanzania in October 1978 led to Amin's removal in April 1979, when the Uganda National Liberation Front formed an interim government with Yusuf Lule as president. This government adopted a ministerial system of administration and created a quasi-parliamentary organ known as the National Consultative Commission (NCC). Renewed disputes over the extent of presidential powers resulted in several changes in government, until elections returned Obote to the presidency in December 1980. Under Obote, the security forces

had one of the world's worst human rights records. In their efforts to stamp out an insurgency led by Yoweri Museveni's National Resistance Army (NRA), they laid waste to a substantial section of the country. Nonetheless, the second Obote government was able to attract some donor assistance to help stabilize the very fragile economy, with the World Bank extending two Economic Recovery loans in 1982 and 1984.

Obote ruled until July 1985, when an army brigade took over Kampala and proclaimed a military government. The new regime, headed by former defense force commander General Okello, opened negotiations with Museveni's forces and pledged to improve respect for human rights, end tribal rivalry, and conduct free and fair elections. In the meantime, massive human rights violations continued as the Okello government murdered civilians and pillaged the countryside to destroy the NRA's support. Following negotiations between the Okello government and the NRA in the fall of 1985 and an agreement for a ceasefire, the NRA seized Kampala in late January 1986, and assumed control of the country. It was only after the establishment of the Museveni presidency, which continues to this day, that attention could be given to economic development and reform.

Since 1986, the government has acted to rehabilitate and stabilize the economy by undertaking currency reform, raising producer prices on export crops, increasing prices of petroleum products, and improving civil service wages. The policy changes were especially aimed at dampening inflation and boosting production and export earnings. Initially, the trade regime was substantially liberalized through removal of quantitative restrictions and onerous export taxation. Foreign exchange allocation systems were also dismantled, and market determination of the exchange rate and major improvements in fiscal discipline were achieved by 1990.

In the early 1990s, the coffee industry was liberalized through a sharp disengagement of the public sector from the marketing, transport, and

financing of coffee trading and exports. These key measures were fundamental to the turnaround in the economy of Uganda after two decades of precipitous decline. Throughout the 1990s, the reform agenda shifted toward promoting growth, with increasingly more difficult challenges being tackled. Between 1992 and 1995, Uganda successfully returned confiscated properties to their original owners, mostly Ugandans of Asian origin. The investment code was liberalized by eliminating the preferential treatment granted to domestic investors and by making the approval of the investment authority virtually automatic. By 1999, the government had successfully privatized about two-thirds of the 150 existing public enterprises, primarily through sales of corporate control to strategic investors, both domestic and foreign.

During the 1990s, the economy turned in a solid performance based on continued investment in the rehabilitation of infrastructure, improved incentives for production and exports, reduced inflation, gradually improved domestic security, and the return of exiled Indian-Ugandan entrepreneurs. Because of the prudent macro-economic policies, Uganda recorded an impressive economic performance between 1990 and 2000, with an average real rate of annual growth in GDP recorded at 6.9 percent. These high levels of growth have largely continued in the current decade: GDP growth in real terms in FY2007/8 rose to 8.6 percent, from 7.0 percent in FY2006/7.

Despite its sustained performance, Uganda remains one of the world's poorest countries, with a population of 20 million that is growing at more than 3 percent per annum. According to the Uganda Bureau of Statistics (UBOS) report for 2001, 36 percent of the population lived in poverty. To eradicate poverty, Uganda has been implementing an economic transformation and poverty reduction strategy spelled out in the PEAP.<sup>1</sup> This program ends in 2010 when it will

<sup>1</sup> The first PEAP was adopted in 1997; a second version followed in 2000/01, and the current version was adopted in 2003/04. The current version emphasizes production and

be replaced by five-year National Development Plans. Because the economy is heavily dependent on agriculture, the PEAP gives particular attention, through the Plan for Modernization (PMA), to transforming the agricultural sector from peasant farmers to commercial enterprises. Agriculture accounts for 44 percent of GDP, contributes more than half of export earnings, and employs over 80 percent of the labor force. To reduce the poverty rate to 10 percent by the year 2017, as envisaged in PEAP, GDP growth will need to be higher than 7 percent per year, with an investment rate of 30 percent of GDP or higher. Sustaining and increasing growth is one of the key challenges facing Uganda.

Although Uganda has an impressive track record on the growth and investment front, the required increase in future investment is more challenging than it seems at first sight.<sup>2</sup> Uganda's performance in the past has to a large extent involved restoration and rehabilitation of existing productive capacity. In the future, growth will need to come from new investments and new activities, which will require a deeper commitment of capital, more intensive acquisition of know-how, and more complex collaboration between local and foreign partners. Uganda has also benefited enormously from development assistance for almost two decades, but the magnitude of foreign aid may or may not hold up in the next decade, depending on factors often beyond Uganda's control.

The PEAP places great importance on the role of private investment, both domestic and foreign. Given severe limits on the scope of domestic resource mobilization and commitments to social expenditures, the share of government investment to support business and the economy is not expected to increase much above the current level of about 6 percent of GDP. In view of this situation, private investment will need to increase

income growth, competitiveness, good governance, and human development.

2 The conclusion is drawn from the World Bank's Investment Climate Assessment, 2004.

from about 10 percent of GDP in recent years to more than 24 percent, on average, over the PEAP horizon (until 2017).

Growth in investment required to increase Uganda's GDP growth rate to the latest PEAP levels will require substantial improvements to the business environment. As indicated in the World Bank's 2004 Investment Climate Assessment, Uganda faces broad challenges in creating an improved environment. Factors ranked as "major or very severe constraints on enterprise operations and growth" were, in order of importance, cost of financing, tax rates, macro-economic instability, access to financing, electricity, corruption,<sup>3</sup> tax administration, regulatory policy uncertainty and customs and trade regulations and procedures. The effect of the business environment on foreign-invested firms (those with 10 percent or more foreign ownership) and the effect on entirely domestic firms diverge, with foreign firms reporting more sensitivity to corruption, regulatory policy uncertainty, customs and trade regulations and crime.

Although, as the ICA showed, enterprises do face more severe problems than regulatory and administrative procedures, regulatory policy uncertainty and specific regulatory regimes are significant,<sup>4</sup> and the private sector as a whole in Uganda must cope with a substantial regulatory burden. Large enterprises and companies with foreign equity find administrative and regulatory problems more of a nuisance than smaller or domestic

3 Uganda loses 510 billion shillings (US\$250 million approximately) a year through corruption and procurement malfeasance, according to the 2007 African Peer Review Mechanism Report. Governance indicators prepared by the World Bank confirm the significance of corruption in defining the business environment in Uganda. Uganda's ranking, according to Transparency International's *Corruption Perception Index*, has improved in an absolute sense since 2002 when it was ranked 2.1 (on a scale of 1–10); it rose to 2.5 in 2005 and 2.6 in 2008. However, its relative ranking has not changed very much, and the country remains on the borderline between rampant and very serious corruption. Its 2008 ranking is lower than all but Kenya in the five countries reviewed in these case studies.

4 Given that respondents to the ICA survey had been successful in negotiating regulations relating to entry and operation, it may well be that the relative importance of regulation has been underestimated.

firms. Because most exporting businesses are also foreign firms, the same can be said of them as well. Senior management of large, exporting or foreign firms spends more time on average dealing with regulations than the management of small or domestic enterprises, and they use more than twice as much time in inspections with government officials and lose almost 10 times more money on fines or seized goods as a result of these inspections. It also takes large and foreign companies longer to clear customs for exports.

The World Bank's *Doing Business* indicators provide more detailed measures of regulations concerning the start-up and operation of businesses, which confirm the conclusion that regulatory barriers remain serious in Uganda. Compared to its ranking of 105th globally in 2007, Uganda was ranked 111th globally in the "ease of doing business" synthetic indicator and 10<sup>th</sup> in SSA by DB2009, a slight deterioration and far behind international best practice. Only in the area of "paying taxes" was there any significant improvement. Uganda's ranking was particularly low in the areas of "starting a business," "registering property," and "trading across borders."<sup>5</sup> One indicator of the relative difficulty of starting business is the large share of GDP generated in the informal sector and its continuing growth. Some 50 percent of GDP is estimated to be generated within the informal sector, and more than 90 percent of enterprises in Uganda are estimated to be informal to some degree.

## Administrative and legal environment

Uganda's regulatory structure exists within a broad legal and administrative framework, most of which is centered on central government. Given that Uganda was a British colony, Uganda's legal system is based on English Common Law and African customary law. The laws applicable

<sup>5</sup> To be fair, Uganda's ranking in "trading across borders" is affected to some degree by transport and port conditions in Kenya and Tanzania.

in Uganda are statutory law, common law, and doctrines of equity and customary law, although customary law is now in effect only when it does not conflict with statutory law. It is worth noting that Uganda's Constitution contains several provisions that are compatible with the principles underlying good regulatory practice.

Principle 1 requires the president to report to Parliament at least once a year; principle 2 stipulates that the state is based on democratic principles that empower and encourage active participation of citizens, in part through decentralization of government functions. Principle 10 requires the state to involve the citizenry in formulation and implementation of development plans and programs. It is also worth noting that these provisions of the Constitution have been influenced by the shift towards increasing presidential power over the last decade.

In terms of the hierarchy of legal and regulatory instruments, the supremacy of the Constitution<sup>6</sup> is explicitly stated in Chapter 1, Article 2.<sup>7</sup> Other written law comprises statutes, Acts of Parliament and Statutory Instruments, all of which have to be published in the national Gazette. The Parliament is the supreme legislative authority, and bills can be proposed to Parliament by both individual MPs<sup>8</sup> and the Cabinet. Over time, the trend has been for the government to look for increased delegated powers so it can issue regulations without the need for new primary legislation. This trend has been accentuated by the growing tendency for enabling regulations to be drafted separately from, and after passage of primary legislation. These

<sup>6</sup> Uganda has adopted three constitutions since independence. The first was the 1962 constitution, which was replaced by the 1967 constitution. In 1995, a new constitution was adopted and promulgated on Oct. 8, 1995.

<sup>7</sup> Article 2 states "This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. If any other law or custom is inconsistent with any of the provisions of the Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void."

<sup>8</sup> Private members' bills can not be considered by Parliament if they attempt to impose additional taxation or a charge on the budget.

secondary legislations have taken the form of decrees, bylaws and circulars.

The 1995 Constitution established Uganda as a republic with executive, legislative, and judicial branches. The three branches operate as follows:

(a) **The Executive branch.** The executive branch is headed by the president, who is simultaneously the head of state, head of government and commander-in-chief.<sup>9</sup> Following written nomination and support from at least 100 voters in each of at least two-thirds of all districts in Uganda, the president is elected by universal adult suffrage through secret ballot<sup>10</sup> for a term of five years. The president is assisted by a vice president, the prime minister and Cabinet ministers. The vice president is appointed by the president, following approval from Parliament by a simple majority.

The Constitution (Article 111) provides for a Cabinet, consisting of the president, vice president and a number of ministers determined by the president, whose function is to develop and implement the policy of the government. Cabinet ministers are appointed by the president with the approval of Parliament, and are either members of Parliament or persons qualified to be members of Parliament. Article 117 of the Constitution provides for individual accountability of ministers to the president and collectively responsible for Cabinet decisions. Article 113 stipulates that the total number of ministers shall not exceed 21, except with the approval of Parliament,<sup>11</sup> while article 114 allows the president to appoint “other ministers to assist Cabinet ministers in the performance of their functions,” subject to the numbers limitation. The Cabinet also contains

<sup>9</sup> To be eligible for election as president, a person must be a citizen by birth, between 35 and 75 years of age, and qualified to be a member of Parliament.

<sup>10</sup> With the proviso that the winning candidate secures more than 50 percent of valid votes cast. If this does not happen, then a second election takes place between the two candidates receiving the most votes.

<sup>11</sup> Currently, the Cabinet contains 28 ministers, and there are in addition 48 ministers of state.

an attorney general<sup>12</sup> who is the “principal legal adviser” of the government.

Chapter 11 of the Constitution lays out the basis for local government in Uganda. The Preamble to the Constitution establishes “the principle of decentralization and devolution of government functions and powers to the people at appropriate levels where they can best manage and direct their own affairs.”<sup>13</sup> The powers assigned to the local governments under the Local Government Act, 1997, include the following:

- making local policy and regulating the delivery of services;
- formulating development plans based on locally determined priorities;
- receiving, raising, managing and allocating revenue through approval and execution of own budgets; altering or creating new boundaries;
- appointing statutory commissions, boards and committees for personnel, land, procurement, and accountability; and
- establishing or abolishing offices in Public Service of a District or Urban Council.

Line ministries carry out technical supervision, technical advice, mentoring of local governments and liaison with international agencies.

The system of local government in Uganda is based on the district as the basic unit under which there are lower local governments and administrative unit councils down to the county, parish,

<sup>12</sup> Appointed by the president with the approval of Parliament. Candidates for appointment have to be qualified to practice as an advocate of the High Court and to have practiced or gained necessary experience for at least 10 years.

<sup>13</sup> The Preamble also establishes principles of involving the population in the formulation and implementation of development plans which affect them, bringing about balanced development of various areas within the country and providing adequate resources for the functioning of government at all levels.

and village levels. Elected councils are made up of persons directly elected to represent electoral areas, with persons with disabilities, the youth, and women forming one-third of the council. Councils are corporate bodies having both legislative and executive powers, with the authority to make local laws and enforce implementation. Administrative unit councils serve as political units to advise on planning and implementation of services, and also assist in the resolution of disputes, monitor the delivery of services and assist in the maintenance of law, order and security.

(b) **The Legislative branch.** The Legislature consists of a unicameral Parliament that has a term of five years.<sup>14</sup> According to Article 78 of the Constitution, Parliament, which currently consists of 305 members, contains: members directly elected to represent constituencies;<sup>15</sup> one woman representative for each and every district; representatives of the army, youth, workers, persons with disabilities, and other groups determined by Parliament;<sup>16</sup> and the vice president and ministers.<sup>17</sup> Parliament has the sole power to make laws, and Article 79 (2) stipulates that no body other than Parliament shall have power to make provisions having the force of law, except under authority conferred by an act of Parliament. Laws passed by Parliament are presented<sup>18</sup> to the president for assent, after which the president has 30 days in which to assent, return the bill to Parliament with

<sup>14</sup> According to Article 95, a session of Parliament shall be held at least once a year, and the period between one session and the next has to be less than 12 months.

<sup>15</sup> Members of Parliament must be citizens and a registered voter and must have completed formal education at least to Advanced Level. Persons specifically disqualified include those holding offices related to conduct of an election, bankrupts and traditional or cultural leaders defined in Article 246 (6) of the Constitution.

<sup>16</sup> Representatives of these groups are elected by Electoral Colleges. Article 78 (2) requires Parliament to review the representation of women and special groups in order to retain, increase or abolishing such representation. The first review is to be held after expiration of ten years after the introduction of the Constitution and thereafter every five years.

<sup>17</sup> Ministers who are not members of Parliament are ex-officio members of Parliament with no vote (Article 78 (1)).

<sup>18</sup> Interestingly, Article 91 (2) requires only that a bill passed by Parliament shall be presented to the president for assent "as soon as possible."

a request for reconsideration or notify the Speaker that assent will not be given. In the case of a bill being returned for reconsideration, if the Parliament passes the bill with a two-thirds majority, the bill becomes law without the assent of the president.

Parliament is headed by a speaker<sup>19</sup> and deputy speaker, both elected by the members of Parliament from among their number (article 82), and no business can be conducted in Parliament if the office of speaker is vacant. Article 88 establishes that the quorum of Parliament in the case of a vote shall be one-third of all members of Parliament, and gives Parliament the power to establish its quorum in the conduct of business other than voting. Any question put to vote can be determined by a simple majority of those present and voting.<sup>20</sup> Article 90 of the Constitution gives Parliament the power to appoint standing committees and ad-hoc committees, and its rules of procedure can prescribe the composition and functions of those committees.

(c) **The Judiciary.** Article 128 of the Constitution establishes the independence of the judiciary. The court system in Uganda, as specified by Article 129, include the Supreme Court, the Court of Appeal, the High Court and subordinate courts, including qadhis courts for marriage, divorce and inheritance. The Constitution also provides for the establishment of a Judicial Service Commission, which advises the president on judicial appointments, oversees terms and conditions of service, prepares and implements training programs for judicial officers, serves as a link with the public, and advises the government on the administration of justice. The judiciary is headed by the chief justice and deputized by the deputy chief justice. For further details of the judicial system in Uganda, see Annex 3.

<sup>19</sup> The role of the speaker is to determine the order of business in Parliament, and he/she is required to give priority to government business.

<sup>20</sup> The person presiding in Parliament, normally the speaker, does not have either an original or a casting vote where the vote is tied.

Outside of the judiciary, the legal sector in Uganda comprises various institutions concerned with the provision of legal services, the administration of justice and enforcement of legal instruments or orders. The main institutions, established by the Uganda Constitution of 1995, include the Ministry of Justice and Constitutional Affairs, the Uganda Police Force, the Inspectorate of Government,<sup>21</sup> Uganda Law Reform Commission,<sup>22</sup> and the Uganda Human Rights Commission. Furthermore, there are legal education institutions such as faculty of law at Makerere University, the Law Development Center, professional bodies such as the Uganda Law Society, the Judicial Service Commission, and other organizations.

The mandate of the Ministry of Justice and Constitutional Affairs is “to promote and facilitate effective and efficient machinery capable of providing a legal framework for good governance and delivering legal advice and services to the Government, its allied institutions and the general public.” Major roles of the ministry include:

- initiating and facilitating the revision and reform of Ugandan laws, providing an effective mechanism for their change;
- advising the government on all legal matters;
- drafting all proposed laws and legal documents;
- instituting or defending civil suits to which government and/or its allied institutions are party and ensuring that court decisions are satisfied;
- overseeing the training of lawyers;

<sup>21</sup> Under the leadership of the inspector general, the functions of the Inspectorate (article 225 of the Constitution) are: to promote adherence to the rule of law; foster elimination of corruption; promote good governance; supervise enforcement of the Leadership Code of Conduct; investigate administrative acts by public officials and promote public awareness.

<sup>22</sup> Article 248.

- promoting legal advice of the constitution; and
- disseminating legal information to the public.

These functions are carried out through various directorates and departments of the ministry, such as the Directorate of Civil Litigation, the Directorate of Public Prosecution, Office of the First Parliamentary Counsel, the Administrator General’s Office, and the Office of Legal Advisory Services.

There appears to be no complete and comprehensive inventory of laws and regulations affecting businesses in Uganda. Licensing reforms have focused on a small subset of business licenses to date, and there has been no need within that particular reform to prepare a broad inventory of licenses and permits at central or local government level. However, as indicated by the Uganda Investment Authority (UIA) in an interview, agriculture faces a large regulatory burden in Uganda, with considerable redundancy in licensing, since various agencies within government require very similar licenses and frequent renewal and repeated submission of documents by licensees.

In addition, UIA suggested that particular attention should be paid to licensing of services, which now provides more than 50 percent of GDP. Finally, UIA stated that the latest amendment to the Investment Act (not yet enacted) calls for UIA to act as a “one-stop-shop,” which would require UIA to act as the principle access point in government for investment and business procedures currently operated by between 30 and 40 government agencies. However, UIA is concerned that the current legislation for these agencies often prevents them from delegating their responsibilities to any other body, such as UIA.<sup>23</sup>

<sup>23</sup> As an example, the Immigration Act specifically precludes the responsible minister from delegating his/her responsibilities for issuing visas to any other agency.

## Recent regulatory reforms to improve public administration

Uganda has been engaged in broad and comprehensive economic reform for the last 20 years. The political and economic crises of the 1970s and 1980s necessitated introduction of stabilization and growth policies, and then structural, institutional, and regulatory reforms. These include reform of the business climate, legal reform, financial sector reform, civil service reform, public enterprise restructuring and privatization, anti-corruption initiatives, competition policy, and decentralization reforms. The PEAP developed a comprehensive framework for reducing poverty in the country and established priorities for achieving the goal, including sector-wide approaches (SWAPs) that contain costed targets and priority actions. PEAP goals have also been developed within a Medium-term Competitiveness Strategy (MTCS), and have been supported by reforms of public expenditure budgeting and expenditure systems, which resulted in shifts in expenditure patterns.

Regulatory reform, both explicit and implicit, has been an element of the Government of Uganda's overall poverty alleviation and growth strategy for close to 15 years, and as an important component of broader policy responses directed towards business-enabling reform and increasing economic dynamism and competitiveness. Uganda's PEAP stresses that constraints on private sector competitiveness need to be removed in order to promote economic transformation, and that a high quality, low cost regulatory environment is critical to the emergence of a strong and vibrant private sector-driven economy able to compete in regional and international markets.

The PEAP stresses that micro, small, and medium enterprises (MSMEs) are particularly important to growth and development of the Ugandan economy and the government's efforts to reduce poverty and improve the quality of life for its citizens. It stresses that MSMEs are especially

vulnerable to regulatory burdens, as they are less able to take advantage of economies of scale to reduce the impact of regulatory burdens. However, these documents did not recognize regulatory governance and reform as a cross-cutting initiative requiring a specific strategy.

Uganda, like the other East African countries, initially attempted to achieve legal and regulatory reform by fast-tracking review and simplification of existing commercial laws and addressing existing regulatory bottlenecks. It did not attempt to control systematically the flow of new regulations that went through the policy and law making machinery of government. Many of the legal and regulatory reforms in the 1990s were ad hoc and piecemeal in nature, focused on eliminating specific bottlenecks and implemented through individual donor-supported reform programs for the legal sector, financial sector, civil service, budget reform, etc.

Legal reform began in the mid-1990s through the Justice, Law and Order Sector Program (JLOS), which had as its goal to revise and simplify criminal and civil laws and ensure improved access to justice. Within the broader JLOS, a comprehensive Commercial Justice Reform Program (CJRP) was identified as a key priority and launched with the aim of establishing a sound enabling environment and clear and stable rules for business. The program arose out of not only an awareness of the inadequacy of the legal framework, but also growing inconsistencies between the laws and regulations and the actual procedures.

Public sector reform has been pursued by Uganda since the establishment of the National Resistance Movement (NRM) government in 1986, when the civil service was bloated with untrained workers who were badly paid and poorly resourced. The reforms included both decentralization reforms as well as a general public service reform, but the two strands progressed along two separate tracks.

The public service reform program, which is now in its third phase,<sup>24</sup> concentrated initially on efforts to rationalize the structure of the civil service, reduce public employment, freeze recruitment, improve performance and reform pay structures. The Public Service Review and Reorganization Commission (PSRRC) was established in 1989 with the responsibility for developing a vision for the public sector. Initial successes were not sustained. Pay reforms stagnated and efforts to introduce results-oriented management (ROM), staff appraisal systems, decentralization programs, and anti-corruption campaigns all fell short of their goals. In April 2006, the third phase of the Public Service Reform Program (PSRP), covering 2005–2010, was approved by Cabinet, with the goals of introducing a competitive pay policy and improved career development policies and working conditions; improving performance and accountability of civil servants, including results-oriented management; and constructing human resource management systems.<sup>25</sup> One important component relevant to the regulatory reform agenda is the creation of guidelines for review of organizational structures and implementation procedures.

Uganda adopted a decentralization policy in 1992, with the intention of improving local democracy, transparency, and popular participation, as well as improving the efficiency and management of basic services. The decentralization policy was described in the Resistance Council Statute 1993 and the Constitution 1995 and elaborated in the Local Government Act 1997. Decentralization policy has been implemented under the Ministry of Local Government, which chairs the Decentralization Sub-Sector Working Group (D-SSWG).<sup>26</sup> Another important institution involved in implementing decentralization

24 The first phase as implemented in 1991–97, and the second phase ran from 1997–2002.

25 Including payroll management and existence of “ghost workers.”

26 A small Decentralization Office (DAO) has been created to support the latest phase of work.

has been the Local Government Finance Commission (LGFC), which advises the president on fiscal decentralization. In 2005, a Decentralization Policy Strategic Framework (DPSF) was developed to provide the basis for coordination and consolidation of decentralization, and MLG, in collaboration with the LGFC and Local Government Associations (LGA), produced a Local Government Investment Plan as the framework for budget allocations.<sup>27</sup> As a result of government actions, the 80 local governments now manage some 35 percent of public finances and employ 80 percent of the public servants. However, fiscal sustainability remains an issue, especially after January 2005, when the Graduated Tax, the main source of own revenue for discretionary development activities, was removed,<sup>28</sup> and not fully compensated through central government transfers.

The current phase<sup>29</sup> of Public Sector Management Reform (which began in 2007 and will finish in 2010) brings both public service and decentralization reforms together under one management structure, headed by the Office of the Prime Minister. The Public Sector Management Sector Working Group has been established, under the chairmanship of the Office of the Prime Minister and with membership from Ministry of Public Service, MLG, LGFC, Public Service Commission, LGA and the Ministry of Finance. The major function of the WG is to strengthen budgeting planning and ensure coordination of public service and decentralization components, including development of monitoring and evaluation frameworks.

Each of the reform programs discussed above had implications for policies, laws and regulations,

27 The LGIP is coordinated with the Medium-Term Expenditure Framework (MTEF).

28 In the face of quantitative analysis supporting its continuation. The DAI report cites this policy shift as an example of political expediency taking prominence over evidence-based decisionmaking.

29 Funded by a donor pool, comprising DANIDA, DFID and the World Bank.

but the approaches to and analysis of regulatory options have been determined on a program-by-program basis without overarching principles. Systemic and cross-cutting regulatory reform has been under consideration since the second half of the 1990s, when a study of regulatory impacts provided advice to the government on the design of regulatory reform.

Systemic, as opposed to specific, regulatory reform actions in Uganda essentially date from 2000, when the Deregulation Program<sup>30</sup> (DP) was introduced to remove unnecessary regulations that hampered the business sector. The core of the DP was a pilot reform of trade licensing at the local government level;<sup>31</sup> this was evaluated as highly successful in demonstrating the benefits of streamlined regulation and implementation. Other activities within the first phase of the DP included advising government on further opportunities for regulatory simplification, and promoting reform of specific legislation affecting business, capacity building, and training, which were designed to support eventual institutionalization of regulatory best practices in law and policymaking throughout government. Practical expression of the government's emerging commitment to systemic regulatory reform was included in the 2001 Budget Act, which required that every bill introduced into Parliament should be accompanied by calculations of its financial implications for both revenue and expenditure. The 2003 Budget speech also confirmed the government's commitment to best practices in regulation by stating that any new laws should be preceded by proper consultation, consideration of alternatives to regulation, conduct of RIAs, and identification of the manpower and financial resources needed for implementation and enforcement.

RBP Program in 2003, the second phase of the project was given a wider focus and redefined to

<sup>30</sup> Funded by DFID.

<sup>31</sup> Cerstin Sander, Bannock Consulting Ltd. UK, "Less is More: Better Compliance and Increased Revenues by Streamlining Business Registration in Uganda," Case Study for the WBR 2005 on Investment Climate, Growth and Poverty, November 2003.

institutionalize best practices and the government-wide use of RIA in the formulation of all laws and policies in Uganda. The end result was intended to be the establishment of a simpler and more appropriate and suitable regulatory environment for business that would contribute to the goal of enterprise growth and competitiveness by fundamentally changing the way government conceived, drafted, implemented and enforced regulation as a policy instrument. The program adopted an ambitious "big bang" approach to RIA implementation, in that the strategy focused on introducing as soon as possible RIA throughout government and to regulatory issues affecting other than the business environment. The RBP Program focused upon the following:

- establishing a RIA Unit in the Cabinet Secretariat, Office of the President, as the focal point for institutionalization of RIA across government, including monitoring and policing the quality of RIAs;
- securing formal presidential endorsement of the new RBP policy and its immediate implementation throughout government;
- securing formal Cabinet endorsement for RBP principles;
- developing a methodology for RIA tailored to the Ugandan context;
- building capacity across government to apply RIA in the design and review of regulations;
- building capacity among private sector and civil society organizations to use RBP and RIA principles for more effective policy advocacy;
- creating local training capacity to build up broad capacity for RIA;
- providing advice on institutional arrangements to support RIA; and

- providing mentoring, training, and assistance to officials, including training in micro-economic methods for calculating the impact of proposed regulations.

One of the outputs of the second phase project was development and publication of a long-term strategy for regulatory reform. The strategy, centered on introducing regulatory best practices within government's policy and lawmaking processes and systems, included an emphasis on:

- improving the capacity and efficiency of regulatory systems and processes;
- implementing RIA as a tool for policy development and review;
- strengthening public-private consultation and policy dialogue; and
- ensuring that the processes are Ugandan-owned and -driven, including incorporation of gender, informal sector, and regional dimensions into the evaluation tools.

Publication and adoption of the strategy was preceded by a great deal of consultation and proselytizing within government and among stakeholders, which was deemed necessary to counteract several widely held views about the business environment and regulation. According to the DAI evaluation, there was a tendency within government ministries to view improvement of the business environment as wholly the concern of the reform-coordinating institution, the Ministry of Finance, and the business reform coordinating units, such as the Ministry of Industry.

There was also a belief that a focus on improving the business environment provides advantages to foreign investors at the expense of domestic businesses and the social sector. Improving the well-being of the majority of citizens through better regulation, business competitiveness and wealth creation was not an easily appreciated message, and many Ugandans expected improvements in

their welfare to come through social protection of the vulnerable, not through business strengthening and better employment opportunities. One of the key features of the Ugandan regulatory reform program was publication of numerous handbooks and guides that attempted to place regulatory reform processes and techniques in the broader economic, political, and social context.

During the RBP Program, coordination of regulatory reforms was carried out through the RBP Program Coordination Committee, chaired by the Ministry of Tourism, Trade, and Industry (MTTI) and containing the Cabinet Secretariat, Ministry of Local Government (MLG), Ministry of Finance, Planning, and Economic Development (MFPED), and the Office of the Prime Minister, which met bi-monthly. With the end of the project and with the efforts to mainstream regulatory reform in government processes, new coordinating mechanisms were identified to promote the implementation of the Long-Term Strategy for RBP.

The Cabinet Secretariat and the MLG are members of the Public Sector Working Group under the Public Sector Reform Program. The Working Group brings together ministries and departments that are responsible for driving public sector reform activities. MTTI is a member of the Competitiveness<sup>32</sup> and Investment Climate Strategy Working Group that coordinates activities falling under Pillar II of the PEAP.<sup>33</sup> RBP activities designed to improve the business climate were being coordinated through the Competitiveness and Investment Climate Strategy, whose overall objective is to improve delivery of public services that affect the private sector.

<sup>32</sup> MTTI, MFPED, Office of the Prime Minister, Ministry of Public Service, Ministry of Lands, Housing and Urban Development, and MLG.

<sup>33</sup> The PEAP is established on five pillars: Pillar I: Economic Management; Pillar II: Enhancing Production, Competitiveness and Incomes; Pillar III: Security, Conflict Resolution and Disaster Management; Pillar IV: Good Governance; and Pillar V: Human Development.

Relationships between RBP and these broader strategies have been built into the monitoring and evaluation framework developed within the RBP Program. The framework for RBP was developed taking into account existing monitoring and evaluation frameworks, particularly the National Integrated Monitoring and Evaluation Strategy (NIMES).<sup>34</sup> The framework was based on institutional assessments that were undertaken in 2005 and 2006, first to assess use of RBP in preparation of policy submissions by ministries to the Cabinet,<sup>35</sup> and second to evaluate the

<sup>34</sup> NIMES was developed in 2003 as a coordinating framework to ensure that all government programs (country-wide, sector-wide and local government) were assessed in a harmonized manner. It acts as a public information tool that supports evidence-based planning and ensures that specific monitoring and evaluation systems are compatible with each other and with national reporting requirements.

<sup>35</sup> The assessment was based on a RIA Scrutiny Tool, which assigned percentage ratings according to use of best practice criteria for developing high quality proposals. Subsequently, the Cabinet Secretariat has created a Cabinet Decisions Making database, which is an inventory of policies, legislation and regulations.

capacity and readiness of selected ministries to promote and implement the long-term strategy or RBP.

As a result of the RBP Program, significant capacities were developed to promote, manage and coordinate regulatory reform in Uganda, and tools (RIA, monitoring and evaluation frameworks, social impact analysis) have been introduced to support future development of regulatory reform. However, effective capacity has not developed since the conclusion of the DFID-financed program, primarily because of reduced funding within the government's budget. Competing reform priorities are a particular challenge for Uganda. RIA has had to compete for attention and resources with other public sector policy management and efficiency improvement tools being implemented, such as ROM. A multiplicity of reform initiatives and lack of effective government harmonization has meant competition for the limited resources, capacities, and staff time.

# NATIONAL POLICIES AND INSTITUTIONS FOR REGULATORY REFORM

## Regulatory reform principles and policies

Governments should be clear about why they are pursuing private sector development and reforming regulation, the principles and objectives of reform, and the responsibilities of the groups involved in reform. The most effective way to do this is to establish an explicit regulatory reform policy, based on internationally accepted principles of good regulation (See Annex A).

Uganda has taken several steps over the past years to prepare and adopt a formal strategy for RBP. In June 2004, MFPED issued a *“Guide to Good Regulation,”* containing a foreword by President Museveni, in which the president restated his government’s commitment to reducing procedural and regulatory obstacles to doing business in the country and minimizing the burden of regulation. The president also sent a memo to the Public Service and the prime minister endorsing the importance of RIA and the need to make full use of RIA mechanisms in formulating policies towards the private sector.

In 2006, the Cabinet endorsed RBP/RIA principles as the basis for policy and law-making in Uganda, and approved a long-term strategy for RBP that is consistent with the best practice principles promulgated by OECD. The *“Long Term Strategy for RBP in Uganda”* identified five long-term strategic objectives and their specific modes of implementation:<sup>36</sup>

- 1. Policymakers and regulators will use RBP in new policy and law-making by:**
  - securing official requirement for RIA;
  - implementing an RIA system;
  - supporting an RIA system; and
  - building capacity.
- 2. Policymakers will achieve effective public, private, and civil society engagement by:**
  - ensuring stakeholders contribute to strategy development;

<sup>36</sup> Reproduced in Section 3.3 of “Monitoring and Evaluation Framework for the Long Term Strategy for RBP in Uganda,” DAI 2006.



- publicizing the strategy and make it widely available;
- strengthening public-private dialogue: put effective public-private dialogue channels in place at national and local levels for articulating reform issues/priorities and potential solutions;
- putting effective consultation practices in place; and
- facilitating awareness of regulatory agenda through timely effective notification system/process so that new proposals can be tracked, and opportunities for intervention readily identified.

**3. Ministries will carry out regular review of existing regulations to ensure they conform with RBP. This will involve:**

- designing a model review and monitoring framework, internalized by ministries, and incorporated into ministry work-plans and budgets;
- a coordinating body that monitors and reports on progress;
- capacity in ministries to analyse and evaluate the present situation, to consult, review costs, and benefits objectively, identify opportunities to reduce costs and options for delivery, and present the analysis in a clear and convincing way; and
- capacity in private sector and civil society to respond to ministerial reform proposals.

**4. Provide fair, efficient, comprehensive implementation and enforcement of regulations by:**

- making information on regulations, their intent, and how they should be implemented available to civil servants and public at all levels;
- increasing capacity in government and agencies to understand importance of, and

to deliver fair, efficient comprehensive implementation and enforcement; and

- strengthening redress and complaint mechanisms in place for hearing and reviewing complaints concerning administrative unfairness – i.e. ombudsman.

**5. The goal will be to have a Uganda-owned, resourced, and publicly accountable:**

- strong institutional policy development and management framework in place;
- strong coherent reform strategy/action plan in place (incorporating ongoing review and monitoring framework) and which is cross ministerial, established roles, outcomes, budgets, targets, indicators, timetable, and reporting requirements.
- accountability structure in place that forces ministries to be accountable for delivery of reform strategy;
- widespread public awareness as to the reasons that reform is essential, its key ingredients and who is responsible;
- informed media monitoring implementation and “naming and shaming” defaulters; and
- a good regulation index/scorecard system in place, including capacity to evaluate changes/improvements in quality of the regulatory environment for business.

Since its adoption, however, the strategy has not been implemented as intended. A Cabinet memorandum was prepared by MTTI stipulating that RIA should be used for the development of policies and regulations. It called for the designation by government of a coordinating institution within government to champion implementation of RIA and RBP. The Cabinet took a decision to endorse RIA/RBP principles as developed in Uganda, but requested the Ministry of Public Service to consider the proposed institutional arrangements and to return to Cabinet with a recommendation.



To date, the Ministry of Public Service has not submitted a proposal to Cabinet. Various sources interviewed for this case study suggested that it was this lack of action rather than the end of DFID funding that was the primary reason the strategy has not been pursued. Neither the Cabinet Secretariat, which houses the RIA Unit, nor the MTTI, which houses the RBP Unit, has felt empowered to press the issue of implementation of the strategy.

### Institutions and drivers to promote regulatory reform

Reform mechanisms with explicit responsibilities and authorities for managing and tracking reform inside the administration are needed to keep reform on track and on schedule, and to ensure that regulatory quality standards continue to improve. It is often difficult for ministries to reform themselves, given internal countervailing pressures. Initiating and taking up a reform agenda, maintaining its consistency and pursuing systematic approaches across the entire administration is necessary if reform is to be broad-based. This requires the allocation of specific responsibilities and powers to agencies at the centre of government. International experience has shown that central oversight units are most effective if they have the following characteristics:

- independence from regulators (*i.e.* they are not closely tied to specific regulatory goals);
- operation in accordance with a clear regulatory policy, endorsed at the political level;
- horizontal operation (*i.e.* they cut across government);
- expert staffing (*i.e.* they have the information and capacity to exercise independent judgment); and
- links to existing centers of administrative and budgetary authority (centers of government, finance ministries).

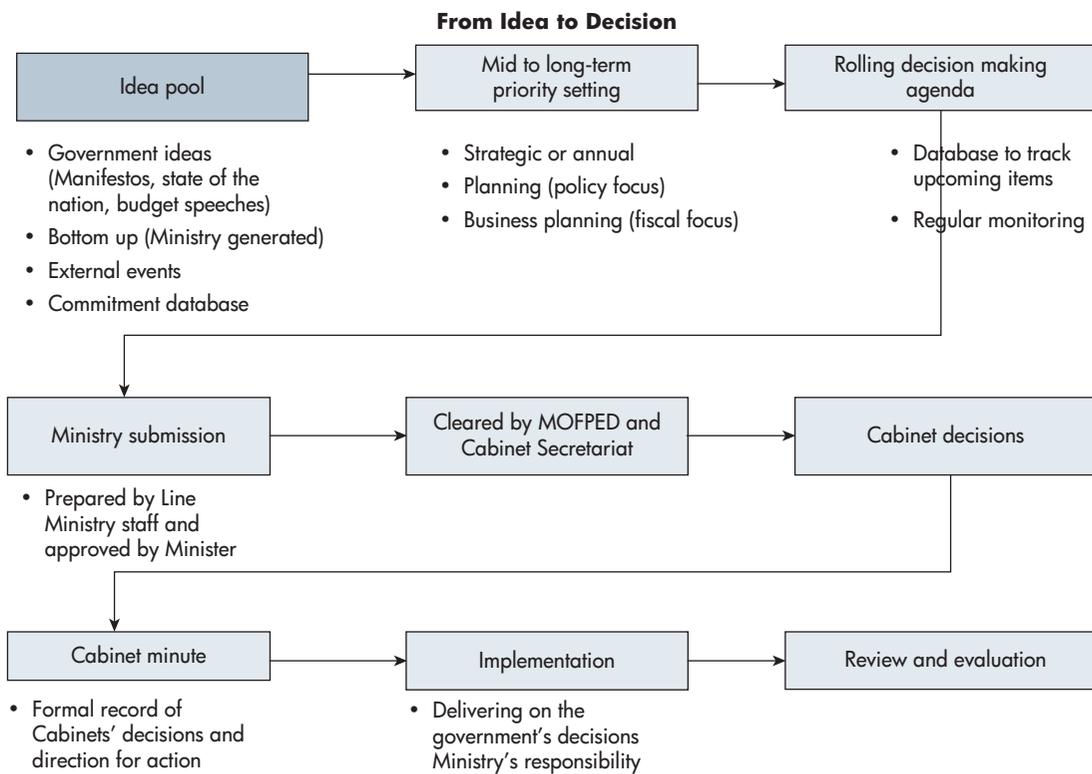
**Policies and Practices.** There were well-established and documented mechanisms within the Ugandan government for policy- and law-making before the implementation of the RBP Program. These are laid out in the *Cabinet Handbook*, the *Policy Development Guide* and administrative instructions issued by the Cabinet Secretariat.

The Cabinet is the highest policy-making organ of the executive branch. Since executive authority is vested in the president, Cabinet is advisory to the president and supports him in carrying out his executive powers. In practice, most policy decisions<sup>37</sup> are considered in the Cabinet before being implemented, and its approval of a bill signifies adoption of a government position to be presented for Parliamentary consideration. In Uganda, the Cabinet adheres to the principle of collective responsibility, while individual ministers are primarily responsible for policy formulation and implementation within their areas of responsibility. The following figure<sup>38</sup> summarizes the policy process in Uganda, elements of which are discussed at greater length in the following paragraphs.

In Uganda, preparations for legislation and subordinate regulations are usually initiated by the ministry which carries policy responsibility. While the Constitution defines the general process of making new laws, there are no laws in Uganda governing the process of law making, but the process is laid out in considerable detail within the *Cabinet Handbook*, and detailed guidance on preparing and submitting proposals to Cabinet are set out in the *Policy Development Guide*.

<sup>37</sup> Individual ministers are responsible for discharging statutory powers of their portfolios. They can therefore make certain decisions without reference to the Cabinet. Generally, a policy matter will be submitted to the Cabinet only when it represents a new policy or a change in existing policy, entails significant financial implications, has significant impacts on other ministries, requires legislative changes, or is in response to a report from a Parliamentary Committee.

<sup>38</sup> Taken from page 38 of “Effective Advocacy in Uganda,” Bannock Consulting, for the RBP Program and MFPED, February 2005.



Source: From page 38 of "Effective Advocacy in Uganda," Bannock Consulting, for the RBP Program and MFPEd, February 2005.



Ministries are required to follow the intra-government consultation guidelines laid out in the Cabinet Handbook: "Ministers should also be aware of the need for consultation where the subject matter affects the portfolio interests of another Minister.<sup>39</sup> The principle for Cabinet decision-making is based on the assumption that all the Ministers at the Cabinet table have had access to the same level of information needed to make a particular decision. It is therefore not fair for a Minister to push an issue on the Cabinet table when not every member has had the same level of information on it. It is also important that Ministers have the opportunity to consult their technical officials on a new policy proposal

being submitted to Cabinet to enable him/her to make an informed contribution during any debate.

Cabinet papers must be submitted to the Cabinet Secretariat in good time before the relevant deadline (usually several days before the relevant meeting). The practice has been for a new Cabinet submission to be circulated to all members and then kept on pending business to enable ministers, if needed, to consult their technical officials on the proposals that are being brought before the Cabinet. The agenda and the accompanying Cabinet papers are required to be distributed and received in the ministers' offices 48 hours before the scheduled meeting . . . Amendments to Cabinet papers already submitted to the Cabinet Secretariat will not be accepted unless the change is minimal. If the amendments proposed are substantive then the usual practice is to withdraw the original paper and submit a new one."

<sup>39</sup> The Cabinet Handbook indicates that in most cases policy proposals will have implications for other ministries, and that the onus is on the initiating ministry to ensure that all other organizations are consulted at the earliest opportunity and that their views are accurately reflected in the Cabinet paper. These aspects are emphasized also in the RIA Handbook and the Guide to Good Regulation.



More detailed instructions on consultation are provided in the *Policy Development Guide*. It appears that the various documents that shape the consultation process do not prescribe time limits for consultation, and are not specific about measures that should be taken to ensure good quality consultation. However, in February 2005, Bannock Consulting issued, in collaboration with MFPED and the Private Sector Foundation, “*Effective Advocacy in Uganda*,” a document that had the primary purpose of educating business organizations and NGOs about making their cases to the government. This document includes recommendations on how to conduct consultations that are as relevant to government departments.

The *Rules of Procedure for Parliament* require that bills are submitted to Parliament, after publication in the *Gazette*,<sup>40</sup> with an explanatory memorandum “setting out the policy and principles of the Bill, the defects in the existing law, if any, the remedies proposed to deal with those defects, and the necessity for introduction of the Bill.”<sup>41</sup> Moreover, “all Bills shall be accompanied by a certificate of financial implication setting out: (a) the specific outputs and outcomes of the Bill; (b) how those outputs and outcomes fit within the overall policies and programs of government; (c) the costs involved and their impact on the budget; (d) the proposed or existing method of financing the costs related to the Bill and its Feasibility.”<sup>42</sup>

**The Cabinet Office** is the main secretariat of the government, and is intimately involved in the formulation of policies and laws. The Cabinet Office<sup>43</sup> is headed by the secretary to the Cabinet,

who is appointed by the president in consultation with the Public Service Commission. The responsibilities of the secretary are: (a) to take charge of the Cabinet Office, keep all Cabinet minutes and convey decisions of the Cabinet to the appropriate persons or agencies; and (b) to be the head of the Public Service and to assure the general efficiency of the public service. In terms of duties as Secretary to Cabinet, the secretary is deputized by a deputy secretary (at permanent secretary level) who is responsible for day-to-day operations of the Cabinet Office.

The mission of the Cabinet Office is to provide support to the Cabinet in discharge of its responsibilities for formulating and implementing government policy. Its strategic objectives are quoted as:

- supporting the presidency in providing leadership in public policy management, and promotion of good governance;
- providing support to the Cabinet in its mandate for formulating and implementing policy; and
- facilitating the policymaking process and coordinating implementation.

Its specific functions, as laid out in the *Cabinet Handbook*, are to:

- support the political authorities in translating their manifesto into policies and programs for implementation by developing policy capacity across government;
- support ministries in developing capacity for policy analysis and in the development of Cabinet memoranda and the management of policy work, including organization of policy workshops;
- provide secretariat services to Cabinet and its committees, including preservation of Cabinet minutes;

<sup>40</sup> Where the House determines upon the recommendation of the appropriate Committee of the House appointed for the purpose, that a particular bill is of an urgent nature, that bill may be introduced without publication. (clause 103).

<sup>41</sup> Clause 101. The memorandum has also to be signed by a minister.

<sup>42</sup> Clause 102. The memorandum has to be signed by the Minister of Finance. The Cabinet Handbook specifies that the financial implications shall cover a period of not less than two years.

<sup>43</sup> Also known as the Cabinet Secretariat.

- support Cabinet ministers in implementation of Cabinet decisions and in monitoring their implementation; and finally and most recently
- institutionalize RBP within government to facilitate better policy- and law-making.

There are other ministries that are involved in the regulatory process.

**The Ministry of Finance, Planning and Economic Development**<sup>44</sup> is consulted on draft policies, laws and regulations affecting the budget and fiscal policy. It provides the sponsoring ministry with a certificate to confirm that financial resources to support the initiative will be available.

**The Ministry of Justice and Constitutional Affairs**<sup>45</sup> is consulted on legal issues arising from policies. It provides the sponsoring ministry with a certificate confirming whether legal resources will be available to implement the initiative. In the case where the policy proposal entails new legislation or amendment of existing laws, the minister responsible is required to prepare and submit to the Cabinet the principles for the legislation. Once approved, the ministry issues drafting instructions to the first parliamentary counsel in MJCA. The minister submits the draft bill for Cabinet approval, with the Cabinet memorandum accompanied with a certificate issued by the first parliamentary counsel saying that the bill is consistent with the principles. After Cabinet has approved the draft bill, the first parliamentary counsel instructs the government printer to publish the bill in the *Gazette* and the bill is then placed on the Parliament's order of business.

**The Ministry of Public Service**<sup>46</sup> is consulted on the implications of the proposed policy for the civil service and human resources required for implementation, and provides the sponsoring ministry with a certificate to that effect.

<sup>44</sup> [www.finance.go.ug](http://www.finance.go.ug)

<sup>45</sup> [www.justice.go.ug](http://www.justice.go.ug)

<sup>46</sup> [www.publicservice.go.ug](http://www.publicservice.go.ug)

**Parliament** is the penultimate stage in the law-making process. The bill is read the first time without debate or question; it is referred to the appropriate committee, which is supposed to report back within two months. At the second reading, the committee's report is presented, and the merits and principles of the bill are debated and may attract a motion to approve. If the motion is approved, the parliament is constituted as a committee of the whole, and the bill is discussed clause by clause. Upon conclusion of the debate, the bill is read a third time.

**The president** is the final stage of the process, through his powers to promulgate laws passed by Parliament. The president may return bills to parliament for reconsideration a maximum of three times, and after parliament has reconfirmed the bill three times, it enters into law.

The Deregulation and RBP Program focused their efforts on building, on this existing decision-making structure, a central regulatory agency to coordinate the introduction of better regulation. Starting in 2000 and until the end of 2005, RBP/RIA initiatives were centered on the MFPED. This base in the ministry gave the project status and credibility, and MFPED had a strong team of senior managers and staff who benefitted from the project and initially gave active support. The ministry played a pivotal role in supporting the introduction of RIA into public policymaking.

As the project entered its second phase, however, it became clear that MFPED was not demonstrating commitment and ownership needed to guarantee sustainability. MFPED had many calls on its time and resources, and its responsibility for economic management was diverted increasingly to fiscal and macro issues. Changes in key staff also resulted in less engagement with private sector issues. Therefore, it was decided to house the RBP Program team, for its remaining time, in MTTI, which was attempting to strengthen its capacity and staff, particularly in policymaking for industrial and commercial development. The

RBP team moved in early 2006, shortly after appointment of a new minister of MTTI, who had been a member of the Parliamentary Taskforce on Good Regulation and a strong supporter of the project. The RBP unit in MTTI was given the responsibility for:

- strengthening the quality of policymaking, legislation, and regulation by consolidating RBP/RIA within MTTI and championing regulatory good practice for the business environment for across government;
- championing best practice for consultation in policy development/ review and best practice in setting agendas for public-private sector dialogue in order to ensure better policy outcomes; and
- monitoring and evaluating progress in implementation and impact of business-related regulatory reforms over the long term period, and sharing outcomes with other key stakeholders in the economy in line with the monitoring and evaluation strategy and implementation toolkit.

In 2006, another champion for the RBP emerged. According to the final report prepared by DAI, the Office of the Cabinet Secretariat in the Office of the Presidency became the strongest institutional champion for the RBP program. As the report indicated, “the Office of the Cabinet Secretariat. . . despite it formerly being perceived as having little more than a “ticking and totting role,” is now being entrusted with key responsibilities in government policy monitoring, management and performance evaluation,<sup>47</sup> having

<sup>47</sup> In Uganda, the Cabinet Office in the Office of the President coordinates policy proposals on their way to the Cabinet. The Prime Minister’s Office coordinates and ensures the delivery of agreed policies. General policy coordination in government is supported by a three-tier committee arrangement namely: a Policy Coordination Committee (a committee of Cabinet) chaired by the prime minister; the Committee of Permanent Secretaries under the chairmanship of the head of the public service and Secretary to Cabinet; and a Technical Level Committee under the alternating chairmanship of the Permanent Secretary in the Office of the Prime Minister

projected substantially increased levels of competence and professionalism, and having shown itself to be committed to international best practice standards . . . . In addition, strong institutional support and leadership has come forward from the Office of the Prime Minister.” The Cabinet Secretariat has been able to use its powers to determine the Cabinet agenda to promote RIA and regulatory best practice.

The Office of the Cabinet Secretariat has provided a home for the RIA Unit, which was made responsible for:

- championing institutionalization of RIAs across government, including sustained support for RIA case study work in six selected ministries and rolling out RIA across all government ministries;
- issuing policy guidance and new policy submission frameworks based on the RBP approach to policymaking to all government ministries, departments and agencies; and
- monitoring quality of draft policy submissions to the Cabinet, and undertaking periodic assessments and sharing them with other stakeholders responsible for public sector reform under the newly launched Public Sector Reform Strategy.

and the Secretary to the Treasury. The Policy Coordination Committee reviews progress in the implementation of government policies and programs and reports to Cabinet biannually. This committee is supported by the Committee of Permanent Secretaries and the Technical Level Committee. Sector working groups, comprising of representatives of stakeholders in various sectors, review policy at the sectoral level, and submit reports and recommendations to the three coordination committees through the Technical Level Committee. The Office of the Prime Minister is charged with the role of ensuring that government policy and programs are effectively and efficiently implemented, and a National Integrated Monitoring and Evaluation System (NIMES) has been established to realize this objective. NIMES is supported by working groups of geographical information systems, district information systems and research and evaluation systems. These working groups are steered by a committee of permanent secretaries and a National Monitoring and Evaluation Coordination Committee of Experts, with the Office of the Prime Minister providing the secretariat.

Another champion that was to have an important coordinating role was the Inspectorate Department of the Ministry of Local Government. During the past decade, Uganda has decentralized administrative responsibility and many aspects of fee-setting and revenue collection to local authorities. The Local Governments Act of 1997 and new legislation relating to specific economic sectors have had an impact on responsibilities and procedures. While the decentralization process can offer many benefits once it is complete, it is in many ways unclear and requires a more consistent and systematic approach. As a result, there is duplication (e.g., licensing and fees) and a focus on revenue generation at the regional and local levels that does not consider the combined burden of multiple taxes and licensing fees on the business community.

Other focal points for regulatory reform were set up within five ministries (Ministry of Health, Ministry of Education, Ministry of Water and Environment, Ministry of Lands, Housing and Urban Development, and the Ministry of Tourism Trade & Industry.) that were part of the RIA pilot project, and capacity for social impact analysis was built in the Uganda Law Reform Commission (ULRC), Ministry of Gender, Labor and Social Development, and Uganda Management Institute (UMI).

However, these institutional arrangements have not been robust enough to maintain the impetus for regulatory reform activities. Rather than becoming a separate funded unit in the MTTI, the RBP program moved to the Policy Analysis Unit<sup>48</sup> which already existed in the MTTI. Currently, the PAU/RBP unit consists of three staff, two economists, and one statistician. It is fully engaged in coordinating formulation of the ministry's budget and development plans and carrying

<sup>48</sup> Uganda adopted a policy in the mid-1990s to establish PAUs in each ministry to provide a planning and policy capacity. These units were generally staffed with economists and statisticians, and were a natural home for regulatory responsibilities. As indicated later, the PAU staff included some of the first civil servants trained under the RBP Program.

out analysis of the ministry's policies on the basis of ad-hoc requests from the ministry. An interview with the head of the PAU revealed that there is no active work program for business regulation reform, that the PAU is not carrying out any activities related to regulatory reform, that the unit has no free time for regulatory reform activities because of its primary responsibilities, and that the head of the unit is the only staff who has been trained in RBP/RIA skills. The PAU has been authorized to recruit three more staff, and the head of the unit considered that doubling of staff would provide some potential for carrying out RIA work.

Ideally, the head of the PAU would like to recruit a lawyer, but is not confident that MTTI would be able to retain a candidate for more than a few months.<sup>49</sup> Finally, the MTTI in general has inadequate capacity and staffing in relation to its responsibilities, and is not able to provide leadership to a business regulation reform.

The RIA Unit in the Cabinet Office is also staffed at minimal levels, which permits it to apply the Adequacy Checklist as a guide for its scrutiny of draft Cabinet papers. However, the fact that it contains only three staff ensures that it is not able to expand its horizons to promoting introduction of RIA.

## Coordination between levels of government

International experience has been fairly consistent in advocating that regulatory reform should occur at all levels of government. This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and sub-national levels. High quality regulation at one level can be undermined

<sup>49</sup> Demand within the private sector for lawyers is very robust. It is typical for young lawyers to join government and then, after establishing a record, to be hired away by private legal firms.

by poor or inconsistent regulatory policies and practices at other levels, and coordination between levels of the administration can vastly expand the benefits of reform. Equally, central governments can undermine the purpose of decentralization and devolution by adopting heavy-handed regulatory policies. The policies and mechanisms for coordination between levels of administration are thus becoming increasingly important for the development and maintenance of an effective regulatory framework.

### **National – local**

As indicated in section 1.3, Uganda has been pursuing a decentralization program since the late 1980s. A highly centralized state has been gradually transferring powers, functions and services from central government to local councils. Decentralization is expected to contribute to development by empowering the people and institutions at every level of society, including public, private, and civic institutions; improving access to basic services; increasing people's participation in decision-making; assisting in developing people's capacities; and enhancing government's responsiveness, transparency and accountability.

The central government has two offices of president and prime minister and 28 line ministries, one of which is the Ministry of Local Government (MOLG), which oversees local governments' administration. There are currently 82 district councils (LCV) and one city council (Kampala) that have the powers of a district council: Kampala has five divisions that constitute lower local governments with the status of sub-county councils. The rural districts' lower level governments comprise 903 sub-county councils (LCIII) and 63 urban councils with some autonomy from the district. The urban councils comprise 13 municipal councils (LCIV) with 34 municipal divisions and 50 town councils (LCIII). In addition, there are administrative councils consisting of County Councils (LCIV), Parish Councils (LCII) and Village Councils (LCI). There are currently 1,050 local government units.

Within this administrative structure, a district is divided into counties and municipalities or towns, depending on their size and other criteria set by the MOLG. Every county is sub-divided into sub-counties, while municipalities are divided into divisions. Sub-counties, divisions and towns are sub-divided into parishes and wards, respectively, and these are further sub-divided into villages, the lowest administrative areas.

The rationale for decentralization has been political, oriented towards restoring democracy and returning power to the people. The constitution at independence in 1962 established a decentralized system combining federalism with a unitary state. It gave federal status to the Kingdom of Buganda and semi-federal status to the kingdoms of Ankole, Bunyoro and Toro and the territory of Busoga, and provided for the establishment of councils in the districts of Acholi, Bugisu, Bukedi, Karamoja, Kigezi, Lango, Madi, Sebei, Teso and West Nile. In 1966, the constitution was abrogated, and replaced with a new constitution that emphasized centralized power and a unitary state. Subsequently, the Amin regime, that took power in 1971, dissolved district and urban administrations and established provincial administrations led by governors, many of whom were military officers.

From the beginning of the National Resistance Movement's rule, decentralization was a central part of the program, and it has been embodied in both the 1995 constitution and the 1997 Local Government Act.<sup>50</sup> One can point to seven characteristics of Uganda's brand of decentralization. First, it was seen as crucial to establishing good governance and democracy. The second characteristic

<sup>50</sup> The Local Government Act has been amended four times, reflecting the gradual evolution of decentralization policy and administrative structures. First, in July 1997, it was amended to provide for the establishment of interim local councils for newly created local government units. Second, in 2001, it was amended to give effect to decentralization of powers. Third, in November 2001, amendments were introduced relating to village and parish executive committees. And fourth, in November 2003, it was amended to facilitate establishment of the Local Government Finance Commission and to repeal sections of the act that became part of the Local Government Finance Commission Act.

has been that decentralization policy has been developed gradually, starting with giving local government watch-dog and policymaking functions, and then transferring financial and personnel functions. In general, functions have been transferred as capacity at the local level has developed. In the financial realm, recurrent budget responsibilities were transferred before the development budget, since capacity to produce development plans required considerable institutional investment.

The third has been the principle of devolution, building on the public service functions of the resistance councils that had carried out the functions of the failed state in the 1980s. Devolution then was defended as a way of giving citizens decision-making powers in their areas of jurisdiction.

The fourth characteristic is that local councils have been granted wide-ranging powers, including both executive and legislative powers, so that they are empowered to make local laws, as long as they are not inconsistent with the constitution or other laws. Local councils have powers to make development plans based on locally determined priorities; to make and implement their own budgets, to appoint statutory commissions, boards and committees for personnel, land, procurement and accountability.

Fifth, districts can, in accordance with Article 178 of the 1995 constitution, cooperate and form various administrative structures to manage the cooperation. Sixth, the devolution policy presumes that line ministries will gradually concentrate on national standards and policy, leaving direct delivery of services to the local governments. And finally, the constitution establishes a formula for determining the distribution of revenue between central and local government, including a basic “unconditional” grant and other conditional grants.

### **National – international**

Uganda belongs to two regional organizations – The East African Community (EAC) and the

Common Market for Eastern and Southern Africa (COMESA).

The Treaty for the Establishment of the East African Community was signed on Nov. 30, 1999, at Arusha, Tanzania, by the three partner states: Kenya, Tanzania, and Uganda. It entered into force on July 7, 2000, after the necessary ratification. It rose from the ashes of the former community which was formally dissolved in 1977 in an atmosphere of mutual recrimination, barely 10 years after its creation in 1967. The first step has been to create a Customs Union. A common tariff was adopted on Jan. 1, 2005. Currently, a draft protocol for the creation of a common market is being finalized.<sup>51</sup>

Regulatory reform in Uganda has not yet been driven by the demands of the East Africa Community since the EAC has yet to devise formal regulatory standards for its members. However, there are a number of regulatory reform areas that are now being developed as a result of the Customs Union and the Common Market. In the case of the Customs Union, each of the member countries is carrying out customs modernization projects, which are meant to lead to harmonization of customs procedures. In addition, attention is being paid to non-tariff barriers, which have been identified as serious hindrances on trade and business operations.

Following the signing of the Customs Union in 2004, the East Africa Business Council (EABC)<sup>52</sup> commissioned a study to identify the scope and severity of non-tariff barriers. The study found that NTBs have evolved around business registration and licensing, customs procedures, police road checks, road axle regulations, and standards and certification requirements. Between November 2006 and February 2007, a follow-up

<sup>51</sup> The draft protocol is being presented to the 7<sup>th</sup> meeting of the Sectoral Council on Legal and Judicial Affairs, scheduled for April 16–24, and then to the Summit of Heads of EAC governments, scheduled for April 29–30.

<sup>52</sup> A consortium of traders from the member countries.

Community Business Climate Index Survey was conducted to assess the business climate and to estimate the impact on business operations. Subsequently, the NTB Monitoring Mechanism was developed as a joint initiative of the EABC and

the EAC Secretariat to identify, report on, and monitor the status of non-tariff barriers.<sup>53</sup>

<sup>53</sup> For details, see “Proposed Mechanism for the Elimination of NTBs in EAC,” a study carried out for EAC and EABC by Simon Ngatia Ihiga (Trace and Investment Consortium, Nairobi) and ICON Institute, under the GTZ Project “Support of Regional Business Organizations in East Africa (SRBO-EA).”

# ADMINISTRATIVE CAPACITIES FOR MAKING HIGH QUALITY REGULATION

## Administrative transparency and predictability

A transparent regulatory system is an essential feature of a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influences by special interests. It reinforces the legitimacy and fairness of regulatory processes, but it is not easy to establish in practice. Transparency involves a wide range of practices, including standardized processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; and implementation and appeal processes that are predictable and consistent.

### Provisions for law-making procedures

Transparent and consistent processes for making and implementing laws and regulations are fundamental to ensuring public confidence in the rulemaking process.

Uganda does not have specific requirements or procedures for making laws and regulations. However, the Constitution provides a basic framework for the lawmaking process. Article 79 gives Parliament the right to make laws, and stipulates that no other person or body has this right, except when conferred by an Act of Parliament,<sup>54</sup> and allows the Cabinet and individual MPs to propose bills to Parliament.<sup>55</sup>

The formal process of making policies and laws in Uganda centers on the Cabinet Memorandum, preparation of which is initiated by a ministry or

<sup>54</sup> (1) Subject to the provisions of this Constitution, Parliament shall have the power to make laws on any matter for the peace, order, development, and good governance of Uganda. (2) Except as provided by this Constitution, no person or body other than Parliament shall have power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament. Article 79 of Chapter 6 – the Legislature.

<sup>55</sup> Article 94, section (4) (b) – a member of Parliament has the right to move a private member's bill; (c) the member moving the private member's bill shall be afforded reasonable assistance by the department of government whose area of operation is affected by the bill; and (d) the office of the attorney general shall afford the member moving the private member's bill professional assistance in the drafting of the bill.

government agency. All draft cabinet memoranda introducing new policies are submitted to and vetted by the Cabinet Secretariat before being placed on the Cabinet agenda. The secretariat submits its analysis to the vice president (who has been mandated by the president to chair regular meetings of the Cabinet), and the vice president may require a meeting with the sponsoring ministry and other ministries affected by the proposed policy to iron out any differences that can be resolved at the technical level. Prior to the RBP program, it seems that the vetting by the Secretariat concentrated upon ensuring that consultations with affected ministries had taken place, and that legal and financial implications had been presented clearly to the satisfaction of the Ministries of Finance and Justice.

During the RBP Program, administrative procedures for development of policy and legislation were revised to incorporate best practices of RIA. The “*Guide to Good Regulation*” summarized these practices as follows: “consultation is vital to designing an effective law ... laws must be drafted in simple straight-forward language ... wherever possible, laws should specify the goal to be achieved ... regulators must be able to justify decisions on the basis of having carried out full and fair consultation, proper research and quantitative analysis ... an RIA should always be performed when a proposed new policy or law would appear to have significant consequences on businesses ... proposals and the analysis behind them should be widely published before decisions are taken ... implementation of the law must be considered early in the process and clearly communicated to all stakeholders ... once a new law has been introduced, it should be monitored to ensure it is working.” These principles have been reflected in other documents that were intended to guide the government’s policymaking practices and procedures.

The RBP Program team reviewed then-existing guidelines for submissions to the cabinet and recommended improvements in line with RBP

recommendations: the format for policy submissions was adjusted accordingly, and the RBP Program team also helped the Cabinet Secretariat prepare a new *Cabinet Handbook* and reviewed the new *Policy Development Manual*, prepared by the Cabinet Secretariat. The manual consolidates all past policy guidance to ministries and aims to rationalize policymaking processes across all Ugandan ministries. The manual is premised on a RBP/RIA approach to making policies and laws. The manual also provides authoritative guidance on policy design, development, and implementation to all Ugandan ministries and agencies. A comprehensive guideline for RIA has been issued along with an RBP-based framework for the submission of principles for new laws.

The Cabinet Secretariat’s *Adequacy Checklist*, which guides staff in scrutinizing draft memoranda from all Ugandan ministries, was also reviewed by the RBP Program, and improvements were proposed and adopted, as shown in **Figure 1**.

Consultations in the development of policy are stressed in all of the documents emanating from the RBP Program. The *Guide to Good Regulation* issued in 2004 under a foreword by the president stressed that “consultation is vital to designing an effective law.” The *Guide to RIA* indicated that “effective consultation is vital to producing a high quality RIA ... (and) consultation should start early in the process and continue throughout.” It added that “effective consultation needs to be preceded by analysis of the individuals or groups that will be affected ... and the individuals or groups that have the ability to impact on the proposed new measure.” The RBP Program supported not only assistance to government ministries and departments to improve their abilities to carry out policy consultation but also assistance to business associations and civic groups to improve their ability to participate effectively in these consultations. The Program drafted and circulated widely a manual, “*Effective Advocacy in Uganda: A Guide to Impacting Policy and Law Making*.”

Figure 1: Adequacy Checklist for Cabinet Memoranda

**Title of Paper:** \_\_\_\_\_

Code	ASPECTS OF REVIEW	YES/NO	COMMENT
<b>1.0</b>	<b>Title</b>		
1.1	Is the title of the memo clear?		
1.2	Is the title of the author/minister spelled out?		
<b>2.0</b>	<b>Introduction/Background</b>		
2.1	Is reference made to previous Cabinet decisions? Is a brief explanation of the reasons for the paper made? Is a summary of developments made? (establishing the context)		
2.2	Is the object of the memo stated?		
<b>3.0</b>	<b>Main body of the Memorandum</b>		
3.1	Is it clear what is the fundamental <b>problem</b> being addressed? (elaboration of the problem)		
3.2	Is the magnitude of the problem identified? Is a case made for why government action is needed?		
3.3	Is there a clear articulation of the <b>policy objectives</b> sought by government action? Have the outcomes, goals or targets of the proposed government action been reflected in the policy objective?		
3.4	Are linkages to the relevant strategic objectives of the country's overarching policy frameworks (e.g. the PEAP, PMA, MTCS, etc.) established?		
3.5	Are aspects of the consultative process highlighted? (Form of <b>consultation</b> , articulation of the significant concerns of those consulted, how the concerns were addressed, if there was no consultation; is an explanation made?)		
3.6	Is the proposed course of action clearly articulated?		
3.7	Is an implementation arrangement outlined?		
3.8	Are the cost implications specified? Has MFPED cleared this?		
<b>4.0</b>	<b>Conclusion</b>		
4.1	Are the recommendations being made clearly stated? Is the approval, authority, direction, agreement, deferment, note, etc. that is being sought reasonably summarized?		
<b>5.0</b>	<b>Attachment and References</b>		
5.1	Is a Certificate of Financial Implications of MFPED attached?		
5.2	Is an outline of the financial implications and modalities of implementation of the draft bill/policy attached to the memo?		
5.3	Are attachments referred to within the memo attached and/or are relevant attachments appended to the memo?		
<b>6.0</b>	<b>Address of Author and Date of initiation/submission</b>		
6.1	Is the address of the author/minister indicated at the bottom of the last page?		
6.2	Is the date of writing or initiating of the memo indicated at the bottom of the back page?		

The Adequacy Checklist imposes extensive obligations on the sponsoring ministry and the Cabinet Secretariat in the development and evaluation of proposals put before cabinet. It is not conceivable,

given the limited availability of staff trained in policy analysis and RIA within the ministries and the small size of the Cabinet Secretariat, that the system can be implemented as designed.

## Provisions for consultation

Consultation is a systematic attempt to discover the opinions of groups affected by regulation and to obtain data useful in regulatory development and analysis. It may be general (e.g. advertisement for comment) or specifically targeted (e.g. focus groups, working parties). Consultation can contribute to regulatory quality by bringing new ideas, perspectives and data to the attention of regulators; helping to balance opposing interests and reduce the risk of capture; identifying unintended effects and practical problems; gathering information on compliance issues; and by providing a quality check on the administration's assessment of costs and benefit. Consultation can also enhance voluntary compliance by creating a sense of "ownership" of the resulting regulations, reducing reliance on enforcement and sanctions.

**Inter-ministerial consultations** play a major role in the policy development process. Other ministries can evaluate how a policy option can affect their portfolio areas and can provide feedback on the implications of a proposal, including unforeseen impacts. It is the responsibility of the ministry preparing the cabinet memorandum to undertake the necessary inter-ministerial consultations. Ministries are required to circulate the draft cabinet memorandum to the affected ministries early in the process to provide enough lead-time so that whatever differences there are can be effectively addressed. As the previous section indicated, the Cabinet Secretariat works to ensure that proper consultations within government take place as policies, legislation and regulations are developed.

**Public consultations** can range from informal consultations to one-time meetings with stakeholders to extended formal public consultations on discussion papers or draft legislation. In Uganda, public stakeholder consultation procedures are not particularly institutionalized in the policy management process. Few ministries have permanent committees or round tables with sector representatives, and ministries do not have

access to a contact database for private sector and civil society organizations. The framework for policy consultation and dialogue is not yet well established, especially for cross-cutting issues, and there are a number of gaps in the dialogue framework at sectoral and local government levels.

Opportunities for external input to the policy process in Uganda are often limited, and consultation on policy has not yet reached a sufficient stage of regularity and formality to be considered transparent and inclusive. Consultations still mostly take place through personal contacts with a minister or senior civil servant, informal meetings/conversations<sup>56</sup> with government representatives, or working groups with junior civil servants. Only a few formal channels exist for regular, transparent, and structured consultation.

Deficiencies in the consultation process with business associations and civil society due to poor organization by the government are often reinforced by inadequacies in the private sector's skills and capacity to effectively advocate. This often means that limited evidence-based input into policy and law making from outside government is available. Particular weaknesses among Civil Society Organizations/Business Membership Organizations (CSO/BMOs) at the moment include the inadequate involvement of members in institutional issues and participating in actual advocacy campaigns; ineffectively presented policy position papers which lack an evidence-based foundation; and the lack of actionable short-term advocacy strategies around specific issues. CSO/BMOs need to get better in these and other areas if they are to become credible, sought-after contributors to policy and law making.

The RBP Program prepared and circulated, under a foreword by the Private Sector Foundation, a comprehensive guide to consultation issues titled, "*Effective Advocacy in Uganda: A Guide to Impacting Policy and Law Making.*" Its objective was to

<sup>56</sup> Communications are often through e-mail and telephone calls, which gives contacts an informal quality, and it is not usual for them to be recorded.

provide practical guidance and consultation best practices on how to affect policy making, and combined international best practice and experiences specific to Uganda.

**At the parliamentary level,** there appear to be a number of serious deficiencies in the consultative process in Uganda relating to legislation, in spite of the introduction of a parliamentary Web site that offers information on its activities. The key sources of strategic policy issues for inclusion in the policy and legislative agenda include:

- President's Election Manifesto;
- Budget Speech;
- State of the Nation Address:

The State of Nation Address is the first formal opportunity for the government to outline its legislative plans, and is repeated each year at the beginning of the parliamentary calendar. It is a public speech given by the president, and contains proposed executive programs, expected bills, and programs for the year. The legislative program provides an annual framework within which priorities are established for the management of proposed legislation.

However, it is not clear whether more detailed information is made available on the legislative program during the year.<sup>57</sup> In the recent past, parliament published in the print media *This Week in Parliament*. The publication was widely considered to be informative, and included parliament's weekly agenda that benefited all stakeholders in the legislative process, including the private sector. It is important that such a calendar be publicly available to allow for effective consultation. There is little point enabling business

<sup>57</sup> During the RBP Project, parliament began providing to DAI the work programs of parliamentary committees, which DAI channeled to civil society groups, presumably providing assistance to those groups in preparing presentations. There is no evidence that the effectiveness was fully evaluated, and with the end of DAI's participation in Uganda, it is presumed that the initiative ended.

associations and NGOs to carry out RIA, if they are unaware of the government's legislative agenda and unable to prepare analyses and their positions in time to influence the policy debate.

The advocacy document indicates that, in many cases, very little warning is given prior to parliamentary committee meetings, and organizations often report having to locate agendas and meeting schedules without assistance from the committee. In addition, it is extremely difficult to track legislation, and relevant CSO/BMOs do not necessarily hear about a new law until a final draft is distributed. As a result, the response time for comment and input into new legislation is often very short. In addition, as little as only one or two weeks may be given for responses and comments on lengthy or complicated laws. As a result, the quality of responses may be low. Finally, little or no feedback is provided to organizations on the result of prior consultations, including how their input has affected the contents of the proposal.

Yet due to the success of the government's democratization and empowerment programs, there are a number of civil society organizations that are extremely vocal and alert. Increasingly, these interest groups are making significant contributions to policy development at the point of approval in Parliament. Within this procedure, there are opportunities for civil society and private sector engagement in the process. Particularly at the committee stage when a draft bill is being scrutinized, parliament allows for witnesses from the private sector and civil society to make presentations on various matters related to the bill. In practice, however, many parliamentary committees are not pro-active in soliciting external input and often give CSO/BMOs inadequate time to prepare their testimony.

Parliament recognizes the need for a deliberate mechanism to support private sector engagement. At present, there is no formal mechanism in place, so media coverage of parliamentary business tends to have the biggest influence, highlighting essential

elements of parliament's agenda, including issues of interest to the private sector. Parliament recognizes the need to revive this initiative but it is important to note that private sector engagement needs to be based on more than a weekly publication.

Parliamentary committees also need to change the way they plan and deliver their meetings, including dealing more proactively and systematically with external parties, making them more aware of their deliberations, providing them more time to prepare submissions and providing feedback on how these submissions influence the contents of proposals. Plans are underway to revive an Internet-based facility that allows the public to track the progress of bills in parliament, therefore making the legislative process more accessible to the wider public.

### Communication of regulations

Another dimension of transparency is the need for the government to effectively communicate the existence and content of all regulations to the public. This means that the regulations are available to the public at reasonable cost, in a language that can be easily understood. Communication is also essential to achieving effective compliance.

Law and judicial reporting has been generally weak in Uganda over the past decades.<sup>58</sup> In Uganda, the full text of new laws and regulations is published in the *Official Gazette*, which is published on a weekly basis. The Ministry of Justice is responsible for preparing volumes of legal registers codified according to subjects, and an electronic version of the laws and regulations is accessible (for an annual fee) from a Web site maintained by

<sup>58</sup> In the 1950s, *Uganda Law Reports* were published, but they were discontinued in 1957, and *East Africa Law Reports*, which covered decisions of the Court of Appeal for East Africa and the superior courts of the constituent territories, namely, Kenya, Uganda, Tanzania, Aden, Seychelles and Somaliland, were published from 1957 to 1975, when they were discontinued following the dissolution of the East African Community. They have been reintroduced by Law Africa with the launch of EA 2000 and EA 2001.

the Uganda Law Reform Commission. Some ministries have Web sites from which relevant regulations and decisions are available. The Law Development Center is mandated to prepare and publish law reports and other legal material, but to date has published only High Court Bulletins. Today, the other legal reporting comprises the Uganda Commercial Law Reports<sup>59</sup> and Kampala Law Reports.<sup>60</sup>

Under the RBP Program, while the RIA case study work largely focused on strengthening capacity in policy research and analysis in the pilot ministries, improved capacity to communicate policy positions, including draft submissions to cabinet, was considered an important area that merited specific attention. The Cabinet Secretariat, with the support of the RBP team, organized training for permanent secretaries and other senior government policy officials. The workshops, among other issues, addressed current practices and common constraints encountered while communicating policy positions. Attention was also given to capacities, roles, and responsibilities of ministries with regard to communicating policy effectively, policy submission writing, and need for communication strategies as part of policy development.

Over 50 government officials, including permanent secretaries, benefited from this training. Building on this training, the RBP team worked with the Cabinet Secretariat to prepare a draft cabinet memorandum on introducing a policy communications strategy across government. In addition, the project developed a database<sup>61</sup> for tracking draft policy submissions from ministries and cabinet decisions. By the end of the project, the database was still under construction, but making progress. Since then, according to the Cabinet Secretariat, further progress has been slow, in part because of funding issues for the computer

<sup>59</sup> The reports cover decisions of the Commercial Division of the High Court of Uganda since its establishment in 1996. The first such report, covering judgments from 1997–98, was printed in 2005.

<sup>60</sup> These are publications by a private Ugandan lawyer.

<sup>61</sup> The database is constructed in MS Access.

specialists and in part because of the small staff and broad responsibilities of the Secretariat.

Currently, there are no formal requirements for “plain language” drafting. However, the *Guide to Better Regulation* does stipulate that regulation should strive to be simple and transparent, which implies a requirement for straight-forward language.

### **Compliance and enforcement of regulation**

The adoption and communication of a law or regulation is only part of the regulatory process. The law can achieve its intended objective only if it is adequately implemented, applied, complied with and enforced. A low level of regulatory compliance threatens the effectiveness of regulations, public policies, and ultimately the capacities and credibility of governments in taking action. Compliance and enforcement issues can be considered in terms of processes and practices as well as institutional structures.

Policy development and decision-making represent a comparatively small proportion of government’s regulatory activities. Implementation of policies often demands the most resources, and it is a highly visible activity that ultimately forms the basis on which the effectiveness and coherence of the government’s actions will be judged. It is, therefore, important that during the policy development process careful account is taken of implementation issues, which, if done poorly, can offset the benefits of high quality analysis and policy development. Inadequate attention is placed on implementation issues during the policy development process. This includes consideration of the costs of implementation early in the process – in particular realistic enforcement costs to government.

Uganda does suffer from weaknesses in enforcement and compliance, as exemplified both by the large number of informal enterprises that are

evading regulation and also the complaints from the private sector about unclear requirements and arbitrary enforcement. These weaknesses were acknowledged in the “*Guide to Better Regulation*,” which recommended that enforcement costs and benefits should be dealt with explicitly in the RIA.

### **Public redress and appeals**

Mechanisms to redress regulatory abuse must also be in place, not only as a fair and democratic safeguard in a rule-based society, but also as a feedback mechanism to improve regulations. The first stage of seeking redress is to complain directly to the government agency that has taken the decision. The second stage is to seek review by the courts. There may be other institutions for redress, such as arbitration, mediation, or an ombudsman.

In Uganda, the rights to redress are embodied in general terms in chapter 4 of the Constitution. Article 42 – Right to just and fair treatment in administrative decisions – states “any person appearing before any administrative official or body has the right to be treated justly and fairly and shall have the right to apply to a court of law in respect of any administrative decision taken against him or her.” Article 44 – prohibition of derogation from particular human rights and freedoms – states that “notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms –© the right to a fair hearing.”

The first stage of redress in any country is to file a complaint with the administration. In Uganda, various organs of government have established specific procedures for dealing with appeals and complaints. For example, appeals against tax rulings are governed by a well-defined procedure:<sup>62</sup> a taxpayer can lodge an objection against a ruling,

<sup>62</sup> The objections and appeals procedure is provided for under Section 123A - 123D of the Custom Management Act, 1970, Sections 34A - 34E of the Value Added Tax Statute 1996 and Sections 100 - 103 of the Income Tax Act, 1997. See [www.ugrevenue.com/regulations/OBJECTION.doc](http://www.ugrevenue.com/regulations/OBJECTION.doc)

and then can approach the Tax Tribunal<sup>63</sup> in the event that he/she is dissatisfied by the reconsideration triggered by the objection. The appeal procedures include deadlines within which the government is required to respond, but does not stipulate that the appellant must be furnished with a justification for the decision. If dissatisfied by the decision of the Tax Tribunal, the taxpayer may move onto the court system.

The second stage of redress is to launch a review through the courts, in keeping with Article 42 of the Constitution. A petition can be filed irrespective of whether administrative review has been exhausted or not, but the rules call for an appeal to the courts to be on a point of law only. Petitions are filed with the Commercial Court, and its decisions can be appealed to the Court of Appeal, and eventually to the Supreme Court.

Another avenue of appeal is to the Office of the Inspector General of Government.<sup>64</sup> The IGG, originally set up in 1987, is established under Article 225 of the Constitution, and has clearly defined responsibilities.<sup>65</sup> The Inspectorate is an independent institution charged with the responsibility of eliminating corruption and abuse of office. Because it reports to parliament and has the function of promoting and ensuring strict adherence to the rule of law and principles of natural justice in administration, it is also the national ombudsman. It is also a complaints office to which any person aggrieved with a decision of a public official or authority takes his or her complaint for redress. According to independent assessments, the IGG has been able to function reasonably effectively, without direct political interference in its work. However, its effectiveness has been judged as compromised to some degree by funding limitations.<sup>66</sup>

63 The Tribunal was established by Article 152 of the Constitution of Uganda, and set up under the Tax Appeals Tribunal Act, Cap. 12 of 1997.

64 [www.igg.go.ug/](http://www.igg.go.ug/)

65 <http://www.igg.go.ug/functions.htm>

66 See <http://www.globalintegrity.org/reports/2006/Uganda/scorecard.cfm?subcategoryID=66&countryID=38>

## Policy instrument alternatives

A core administrative capacity for good regulation is the ability to choose the most efficient and effective policy tool, whether regulatory or non-regulatory. In the OECD, the range of policy tools and their use are expanding as experimentation occurs, learning is diffused, and understanding of the markets increases. Increasingly, guidelines for regulators in OECD countries require ministries and agencies to consider whether “command and control” regulation is likely to be the most effective policy instrument or whether other options might succeed in achieving policy goals at lower cost. But the use of regulatory alternatives in OECD countries, while increasing, is still at a relatively low level.

At the same time, administrators, rulemakers and regulators often face risks in using relatively untried tools. A clear leading role – supportive of innovation and policy learning – must be taken by reform authorities if alternatives to traditional regulations are to make serious headway into the policy system.

Government intervention should be based on clear evidence that a problem exists and that government action is needed. This should include assessments of the size of the problem, of likely government effectiveness and of the likely costs of government intervention. Good practice in this area is increasingly seen as requiring consideration of both regulation and alternative policy tools.

*Current Policy and Practices.* Historically, Uganda’s regulation regime has been rooted in the “command and control” approach. The RBP program explicitly requires consideration to be given to alternatives to regulation. Both “*The Guide to Good Regulation*” and “*The RIA Handbook*” stipulate that regulators should examine whether government action is justified. The Guide indicates that, after a problem is shown to exist that requires public action, the issue is whether government action is justified, and whether, given resource, manpower and other

constraints, government action will solve the problem. The Guide also requires consideration of alternative ways of solving the problem, including the options of doing nothing, applying existing laws and regulations better, improved information, voluntary schemes, self-regulation, and economic incentives.

One new alternative to regulation is the devolution of regulatory authority and function to organized non-government bodies, such as chambers of commerce and professional organizations. For example, the Ugandan Code of Judicial Conduct has been adopted as a voluntary code by which the conduct of members of the judiciary can be guided.

## Use of RIA for understanding regulatory effects

RIA provides a systematic basis for choosing the best regulatory (or non-regulatory) alternative to respond to a problem. A range of different approaches to RIA exist, depending on policy preferences and administrative capacities. At the core of any RIA system, however, are the following:

- an assessment of selected types of impact of specific types of regulation;
- assessment methodology according to pre-defined standards and procedures; and
- a process of quality control by an independent government agency/unit.

The use of RIA was conceived as central to the RBP Program in Uganda. The foreword, from the president in the “*Guide to Good Regulation*,” states:

*“Government is striving to ensure that we raise the quality of our laws by incorporating international best practice standards into our policy and law-making processes. The 2001 Budget Act requires that every Bill introduced to Parliament be accom-*

*panied by its financial implications on both revenue and expenditure. The Budget Speech of 12<sup>th</sup> June 2003 confirms our commitment to the principles of Regulatory Best Practice. These requirements infer that any new laws are preceded by proper consultation, consideration of alternatives to regulation, the conduct of regulatory impact assessments, and identification of manpower and resources for proper enforcement.*

*I want to stress the importance of Regulatory Impact Assessment. This is not an add-on to the policy process. It is an integral part of the advice that goes to Ministers, helping to inform options as the policy develops, to Cabinet and to Parliament. The effects of policy options on small firms – the engine of our economy – must be a key part of the assessment process.”*

A Cabinet memorandum was prepared in 2005 to the effect that RIA is an important tool to be used by all ministries before they come up with policies and regulations affecting the private sector, and that RIA training was going to be a requirement for promotion in government beyond a certain level. The memo was not approved or circulated by the Cabinet, yet it was to be the official launch of the requirement for RIA.

The Cabinet memo required the Cabinet to do two things: i) endorse RBP/RIA as the basis for policy and law making in Uganda; and ii) designate a coordinating institution within government to champion RIA. Towards the end of the RBP program, the Cabinet met and endorsed RBP/RIA principles, but deferred the decision on the coordinating institution, pending further consultation. The first deputy prime minister was given the responsibility for resolving the institutional issues in collaboration with the Ministry of Public Service, but as of the time of writing this report, the issue has not been resolved or referred back to the Cabinet.

RIAs have been done for some important legislation, and during the time period covered by the RBP Program, it became customary for

ministries to consult the RBP Unit to do a RIA or commentary on proposed legislation. A working relationship was also created with the Uganda Law Reform Commission whereby experts from the RBP Unit and RIA Unit made commentaries on proposed legislation, and helped to ensure stakeholder consultations. The RIA unit would use the RIA checklist to ask relevant questions and to identify whether it complied with the RIA system in full.

The RIA system designed for use in Uganda focused on identifying and measuring the distribution of impacts as well as the aggregate costs and benefits of regulation. The RIA handbook starts from the presumption that regulation should be as equitable as possible, but makes the assumption that costs and benefits rarely fall equally across all segments of society. The Handbook requires that the analysis should consider the impact of regulation on groups that are “particularly susceptible to disproportionate regulatory impact,” namely SMEs, vulnerable groups (the poor, women, children, the elderly, the disabled, people living with HIV/AIDS, etc), different districts, tribes and religions, and civil society and NGOs. It is not clear whether any RIAs that incorporated such a distributional analysis were carried out in fact.

The RBP program also participated in discussions between MTTI and consultants carrying out the business levies study,<sup>67</sup> within which a RIA was conducted, and it has been suggested

<sup>67</sup> This study, financed through the Local Government Development Project II, was commissioned in 2005 to review the laws and regulations administered by local governments relating to operation of businesses in Uganda, from a perspective of effective revenue generation, ease of administration and compliance, regulatory best practice and any best practices that had been adopted in East Africa and South Africa. The study was to propose options to rationalize the legal framework and consider specifically the merits of moving to a framework where business registration and regulation procedures were independent of business tax assessment and collection. In Phase II, the study was to determine the modalities of implementing the selected option, design the selected regulatory framework, stipulate what reforms are required to which Acts, develop a detailed implementation plan, and carry out a regulatory impact assessment. In Phase III, the study was to draft the appropriate new regulations,

that the impact of the RIA was to have the study refocused to some degree to avoid undue concentration on revenue issues. However, the outcome of the study is unclear as to results and recommendations, and as to the nature of the RIA that was carried out.

Finally, pilot RBP/RIA activities were started in different ministries - Ministry of Health, Ministry of Education, Ministry of Water and Environment, Ministry of Lands, and Housing and Urban Development. Although the DAI's final report on Phase II declared that these pilots were successful, there does not appear to have been dissemination of the results and the successes and weaknesses.

## Building administrative skills for regulatory reform

A skilled and well-trained civil service recruited on the basis of merit is a prerequisite for developing and maintaining high-quality regulations and regulatory policies.

From the beginning of the RBP program, attention was given to training and creation of skills related to RIA. In addition, steps were taken to emphasize the importance of skills in RBP and RIA by including demonstrated ability in these fields in the criteria for promotion to high-level jobs in the civil service.

Between 2000 and 2003, a major emphasis of the program was to build understanding and awareness of regulatory reform among top-level officials. Training courses and materials were developed, including modules on social and environmental dimensions of RIA, and were delivered to government, private sector and civic society. More than 350 persons received training, including 65 policy analysts, 60 or so media and public relations representatives of regulatory

(including the possibility of new acts) and draft changes to the respective existing Acts.

agencies, senior business reporters/editors, and parliamentary technical and analytical staff.

The need for basic RIA training for MTTI technical staff was identified as an early priority. A three-day RIA course was delivered with the support of the senior analyst, Cabinet Secretariat – Office of the President and the Principal Policy Analyst in the Ministry of Water Lands and the Environment. Nearly 30 MTTI technical staff and staff from affiliated institutions, including Uganda National Bureau of Standards (UNBS), Uganda Industrial Research Institute (UIRI) and Uganda Tourist Board (UTB), Uganda Export Promotion Council (UEPC) and Uganda Wildlife Authority (UWA), were trained. The training partly focused on the Ministry's draft policies – including the Cooperatives,<sup>68</sup> Industrialization and Tourism policies – which were analysed using the RIA methodology.

The RBP project developed the capacity of a local training organization, the UMI, to deliver training in RIA to Ugandan officials.<sup>69</sup> A business plan for UMI's RBP/RIA training was developed, and the initial training curriculum was modified so that it could meet the diverse requirements of the market. One core program was a one-week training course in basic RIA, which was offered to government's policy analysts before the RIA requirement was formally introduced. DAI's evaluation of the RBP program concluded that developing local capacity to provide training was a key advantage of the program, because it reduced resource costs and enabled training to be linked closely to local conditions and examples. However, following the end of the RBP Program, funding from government for training courses dried up, and it appears that UMI is no longer active in providing training to civil servants.

Civil society organizations and business associations also received training, since it was recognized

<sup>68</sup> According to the head of the RBP Unit, RIA principles were subsequently used during 2008 for the preparation of the cooperative development policy.

<sup>69</sup> The university also added training in RIA into its curriculum, but UMI remained the premier organization delivering training for government officials.

that they have limited capacity to contribute to consultation undertaken by government as part of the RIA process. From March 2004, the project had, as a key activity, the building of capacity of business organizations and civic society organizations to contribute to policy and law-making processes through effective evidence-based analysis and advocacy. In March 2004, a formal assessment was made of the capacity of five CSO/BMOs (and later, three more were added) to carry out their role as advocates for better regulation.<sup>70</sup> The assessment was carried out using a framework<sup>71</sup> developed by the Confederation of Danish Industry,<sup>72</sup> which examines the way an organization develops its policy advocacy strategy right up to the delivery of the message.

The CDI's assessment concluded that Ugandan organizations differed widely in terms of their internal capacity, experience and interest in engaging in policy advocacy, and that the RBP Program would need to dedicate significant time and resources to assisting them. Consequently, the Program worked extensively to upgrade the ability of key partner institutions to provide evidence-based advocacy, through formal training in RBP/RIA, workshops and mentoring on advocacy

<sup>70</sup> The organizations targeted were the Private Sector Foundation Uganda (PSFU), Uganda National Chamber of Commerce and Industry (UNCCI), the Federation of Uganda Employers (FUE), the Uganda National NGO Forum and the Development Network of Indigenous Voluntary Associations (DENIVA). Later in 2004, evaluations were also carried out on the National Council of Uganda Small Business Organisations (NCUSBO), Uganda Tourism Association (UTA) and the Council for Economic Empowerment for Women of Africa (CEEWA).

<sup>71</sup> Concentrating on 10 different components of a policy advocacy campaign listed below, the framework allowed the program to score and rank organizations on:

- advocacy strategy;
- process used to develop position papers;
- presentation and interaction with government;
- role of the secretariat;
- member input and timing;
- member presentations;
- use of the media;
- tracking and following up legislative initiatives; and
- documenting advocacy successes and failures

<sup>72</sup> The Confederation of Danish Industry (DI) was the RBP Program's principal partner in delivering capacity building assistance to partner organisations.

strategy and hands-on assistance in developing strategies, position papers and policy advocacy campaigns.

During 2005, the Program tried to assist three partner institutions (FUE, DENIVA and NCUSBO) to develop their advocacy capacity by focusing on: (i) overall policy advocacy strategy, and (ii) development of advocacy campaigns around specific issues. Also in 2005, the Program provided assistance to CEEWA and the Uganda Women Entrepreneurs Association Ltd (UWEAL), who were leaders within the Gender and Growth Coalition's efforts to remove regulatory, administrative and institutional barriers to women's participation in the economy.

A follow-up evaluation of partner advocacy capacity was carried out in August 2005.<sup>73</sup> On

<sup>73</sup> Follow-up evaluations were carried out in August 2005 on PSFU, FUE, DENIVA, CEEWA, NCUSBO and UTA.

the positive side, it was concluded that each institution had become much more attuned to its membership and the need to solicit views. In addition, the introduction of "compliance costs" was seen to be a positive move for documenting business concerns. However, the biggest remaining problem was still the lack of capacity to guide the implementation of advocacy activity, and the tendency to resort to "fire-fighting" rather than using a structured approach. Staff turnover and lack of resources have been compounded by the fact that, first, policy advocacy is simply not a core function in most CSO/BMOs, and second, evidence-based/cost-benefit analysis is still in its early stages. The RBP Program's involvement provided evidence that, when an institution is at the very early stages of its development, it is necessary to couple advocacy capacity building with institutional and other forms of capacity building.

# UPDATING REGULATIONS

## Revisions of existing laws and regulations

Assessment of new regulation is not enough to ensure a high quality regulatory structure. As technology, the economy and society change, existing regulations often become less relevant and effective. Regulatory management should involve periodic reevaluation of whether existing regulations still constitute the best available solution to the problems they seek to address. A systematic approach is required to ensure that all regulation is regularly subjected to this reassessment.

Over the past years, there have been a number of programs designed to review and revise existing laws in Uganda. The ULRC has had general responsibility for review and revision of the country's criminal and commercial legal code since 1996. There seems to be a consensus within government and the private sector that the ULRC has been reasonably well resourced and has carried out its functions well.

Commercial law reform began as a sub-component of the legal sector reform supported by an

Institutional Capacity Building project, under which reviews were carried out of the major commercial laws, including the Companies Act,<sup>74</sup> Partnership Law, Cooperative Societies Act and Joint Venture Law, and has in recent years been supported by the World Bank's second Private Competitiveness Project. The reviews identified a total of 20 laws for revision or development, with a view to meeting seven objectives:

- reduce the cost of doing business;<sup>75</sup>
- encourage new products onto the market;<sup>76</sup>
- support new financial and lending products;<sup>77</sup>

<sup>74</sup> The current Companies Act is a reflection of the 1948 UK Companies Act, and has not been revised substantially since its passage.

<sup>75</sup> The Audit Bill gives greater autonomy to the Auditor General for shortened procedures, and the revision of the Investment Act is meant to support the "one-stop-shop" function of the UIA.

<sup>76</sup> Industrial Property Bill, to replace the Patents Act, and Counterfeit Bill, to prevent trade in counterfeited goods.

<sup>77</sup> Mortgage Bill, Hire Purchase Bill and Company Act, which provides for capital pooling.

- provide for dispute resolution;<sup>78</sup> and
- provide security for electronic business;<sup>79</sup>
- sixth, to provide consumer protection;<sup>80</sup> and
- seventh, to provide the legal framework for specific institutions, such as the Uganda Free Zones Authority and Bureau of Standards.

These priority pieces of legislation have been under development since before 2004, when the Presidential Investors Round Table began tracking their progress. Although a commitment was made to complete the passage of all the bills by December 2008, only two bills (the Audit Bill and Copyrights and Neighboring Rights Bill) have been enacted. The rest remain in Cabinet or in Parliament at various stages of completion, and the deadlines for their enactment have been exceeded, greatly in several cases. Interviews in Uganda revealed that the Ministry of Finance is a bottleneck, and that many of the bills have been referred back to the originating ministries for further rounds of consultations, although consultations have been carried out. With the exception of the National Bureau of Standards (Amendment) Act, it does not appear that RIA principles (other than consultation) have been applied in the development of the various pieces of legislation.

A Competitiveness Bill is also under preparation, supervised by the Commissioner of External Trade. According to the RBP Unit in the MTTI (which has been involved only peripherally), RIA principles have been followed in the process of developing this law, but consultations with

78 Contracts Act, Sale of Goods and Supply of Services Bill, and Geographical Indications Bill.

79 Recent commercially-oriented legislation put forward to Parliament includes laws to govern cyberspace: the Computer Misuse Bill, the Electronic Signatures Bill and the Electronic Transactions Bill, which are Uganda's interpretation of the common information security policy on cyber-crime formulated by East African countries. The five member states of the East African Community (EAC) are pursuing a coordinated approach to harmonize cyber-crime laws that would be effective throughout Burundi, Kenya, Rwanda, Tanzania and Uganda.

80 Bureau of Standards Bill.

stakeholders have not been extensive because of resource constraints.

The ULRC has also been involved in compiling a consolidated volume of existing and revised laws. The last revision of the laws of Uganda was carried out in 1964. Since then, the laws of Uganda have only been published as supplements to the Gazette, with the result that applicable laws were not easily accessed and many other laws were irrelevant. Machinery to revise the laws of Uganda was launched and re-launched several times, but to no effect. Uganda set up a new Department of Law Revision (otherwise known as the Law Revision Centre<sup>81</sup>) under the Uganda Law Reform Commission, with the objective of having a small, permanent and specialized body to update the laws of Uganda on a continuing basis and to produce annual volumes of the revised laws.

In 2003, the department published a revised edition of the Principal laws of Uganda 2000, having completed the revision of the principal laws of Uganda covering the period 1964 to December 31<sup>st</sup> 2000. The revised edition, which is contained in 13 volumes covering a total of 365 laws, omits all laws which had been expressly repealed, and includes all the repealing laws and amending laws, and all statutory instruments, ordinances and decrees made under the authority of the principal laws.<sup>82</sup> The department has more recently been engaged in revising all the subsidiary legislation up to December 2000; revising all the principal laws from 2001-2003; preparing annual supplements for the revised edition; updating the commission Web site with the revised laws for the benefit of the users; collecting and compiling by-laws from the districts for public consumption and Court of Appeal and Supreme court decisions; and reviewing all laws at the end of the constitutional review process.

81 The Centre is headed by a commissioner, law revision. It currently has a principal legal officer, senior legal officer, legal officer and a research assistant on staff.

82 The revised edition was brought into force on 1<sup>st</sup> October 2003 by the Attorney General by Statutory Instrument No. 69 of 2003.

## Reducing administrative burdens

Regulatory paperwork and government formalities can be unnecessarily burdensome on regulated groups if coordination is lacking among regulators, new technologies are not used to assist in information gathering, and unnecessary information is sought by regulators. Governments worldwide are adopting programs to reduce the administrative burdens associated with regulatory requirements.

The RBP program had its origins in a specific effort to reduce administrative burdens on businesses in the area of licensing practices under the control of local government. At the beginning of the deregulation project, an Administrative Compliance Cost Survey based on the standard cost model was used to demonstrate and substantiate the regulatory burden in Uganda. It identified and measured Uganda's high compliance costs and the specific burden placed on small and micro businesses. The calculation, which estimated the potential cost of 'red tape' to the economy as a whole at 11 percent of GDP, captured the attention of both government and the private sector and built their support for the reform program.

The primary regulatory reform in the RBP program was trade licensing, which had been identified as a time-consuming and costly process. A pilot streamlined licensing system was launched in Entebbe Municipality in mid-2002,<sup>83</sup> based on a "before and after" model after undertaking the survey which captured simple time and cost measurements. The reform was based on fewer approval stages, a simplified form, improved service delivery and provision of better information on health and safety standards.<sup>84</sup> Over the rest of

<sup>83</sup> Results from the Entebbe pilot were: time to get a license down by 90 percent; compliance costs to firms down by 75 percent, administration time spent by Entebbe on licensing down by 25 percent, voluntary compliance up by 47 percent, revenues to Entebbe up by 40 percent. Entebbe's practices in trade licensing reform were incorporated in the Local Government Finance Commission's guidance on revenue enhancement best practices, and recommended to all local governments for immediate application.

<sup>84</sup> Entebbe's reform attracted international recognition, winning the Africa 2004 Investor Award for Smart Regulation, and was showcased in the 2005 World Development Report.

the RBP program, this pilot was expanded to incorporate a service delivery and private/public partnership dimension, including:

- (i) linking licensing revenues to service delivery costs and promoting accountability and transparency in local governance;
- (ii) introducing structured consultations with the business community to set priorities on expenditure; and
- (iii) reorienting the focus of local governments towards business development.

Following the success in Entebbe, these licensing reforms were introduced into three local governments (Mukono,<sup>85</sup> Tororo, and Lira), followed by implementation of a phased nationwide rollout to 10 more local governments. Key elements of the rollout were:

- (i) universal enumeration of businesses and computerization of business registries;
- (ii) education and information campaigns; and
- (iii) monitoring and review mechanisms.

The RBP program also offered support to local governments that were willing to commit their own resources for trade licensing reform. Local authorities, including Wobulenzi, Kasese and Lugazi used their own funds to computerize their databases, and Hoima Town Council used its own funds to implement the reform package. During the final year of the RBP Program, one of the priorities was to formulate a roll-out strategy with the MLG and the Uganda Local Authorities Association (ULAA) for the new business registration system and its future funding. In addition, the lessons of the pilot licensing project were incorporated into the Local Government Finance Commission's guidance to councils on best practices for revenue enhancement.

<sup>85</sup> Trade licensing reforms in Mukono Town Council were recognized by the UN-HABITAT biannual Mashiriki Innovations Awards Program (MILGAP), especially for their potential to be replicated across all governments.

However, with the conclusion of the RBP Program, the impetus for further rollouts appears to have disappeared: the majority of local authorities have not yet introduced the reforms, either because they have been unable to mobilize resources for the reform activities themselves or because they do not support the reform. Moreover, the reform of the trade license had been expected to lead to reforms of other licenses at the local government level, but these have not emerged, probably because the end of the RBP Program removed the institutional support and resources for further reforms.

### Use of ICT to support regulatory reform

Once government procedures have been streamlined and redesigned as part of regulatory reforms, use of computerized databases and registries can lead to further improvements in regulatory performance, particularly for enterprises that are a long distance away from the agencies with which they have to deal. ICT can be used to provide information to the users of government procedures, and can also enable users and applicants to submit requests for services in a structured and consistent fashion. Moreover, use of ICT for regulatory and administrative tasks within the public sector is increasingly seen as an important way of combating corruption.

Uganda has adopted a broad e-government strategy, essentially aimed at empowering the population to improve their living standards. The country's National ICT Policy Framework discusses a wide range of issues, such as information as a resource for development, mechanisms for accessing information, and ICT as an industry, including e-business, software development and manufacturing.

There are various elements of the national e-government strategy relevant to the regulatory agenda. First, following implementation of an

Information Flow Management and Networking (IFMN) project<sup>86</sup>, the MTTI started in 2005 to develop an ICT policy and implementation strategy for its areas and sectors of responsibility, with a view to harmonizing specific ICT projects within the sectors Trade, Tourism and Industry. An IICD-funded project<sup>87</sup> began in August 2005 to develop an ICT policy and an implementation strategy for the tourism, trade and industry sectors. Both the policy and implementation strategy were finalized in September 2006 following extensive consultation within government and with the private sector and civic society. The policy component led to the formulation of guidelines for the use of IT at the Ministry, as well as the creation of an IT forum (the ICT Advisory Committee (ICTAC)) overseeing all matters of ICT at MTTI<sup>88</sup>. This would be the vehicle through which e-government elements in a regulatory reform program would be developed and approved.

Second, the ICT strategy has been particularly focused on local government. A DistrictNet pilot project (funded through IICD) was implemented several years ago by the Ministry of Local Government to improve communications between the different government levels within a district: parish, sub-county, and district HQ in four different districts: Kayunga, Lira, Mbale and Mbarama. This was done by introducing data and voice

<sup>86</sup> The project arose from an IICT round-table held in November, 2000, where all stakeholders agreed that poor information flows within the ministry were a hindrance, and that a project to address this weakness should be developed. The outcome was the Information Flow Management and Networking (IFMN) project, to improve information flows within the Ministry and its departments (Tourism, Wildlife, Trade, Cooperatives, Industry and Technology) and between the Ministry and its affiliated institutions.

<sup>87</sup> See <http://allafrica.com/stories/200610231227.html> and <http://www.iicd.org/projects/articles/iicdprojects.2005-12-09.2164038218>

<sup>88</sup> As of the current date, two of the six programs (capacity development centre for the sector and an Intranet site to support the IFMN initiative) are being implemented, while the Ministry is seeking funding for the remaining programs. Implementation appears to have slowed, with the departure of the Permanent Secretary who championed the initiative.

communication links between the districts and lower level government offices as well as introducing electronic data processing in financial management, data communication, data storage and analysis. This program has been an attempt to support the objectives of the decentralization program by providing the district and lower councils with tools and infrastructure to handle increased responsibilities.<sup>89</sup>

Implementation of the projects appears to have been slow, and a recent evaluation report noted the following factors as important:

- high turnover of staff within the local government offices, with the consequence that new staff is constantly having to be trained in ICTs;<sup>90</sup>

<sup>89</sup> The project had the following specific goals:

- Reduce administrative costs by improving communications between the districts and lower councils.
- Reduce the long cycle of releasing funds by donors and the Ministry of Finance by improving the process and capacity of districts and smaller local government offices to provide timely and accurate information.
- Improve the district authority's overall efficiency by setting up a single sharable database that could be used by all local government officers.
- Train staff in basic ICT skills.
- Enhance the transparency and efficiency of local government offices.
- Strengthen the public information function.

<sup>90</sup> One issue is where to develop ICT capacity development programs. The general plan has been to site training at the district level so that local government employees do not have to travel all the way to Kampala for their ICT training.

- a shortage of, and large turnover of computer maintenance staff; and
- limited budgets of district governments, which means that the scaling-up process has to be carried out gradually.

These lessons learned in the ICT arena are likely to be important factors underlying the design of regulatory reform programs that depend on e-government solutions.

During the RBP Program, a Web site was established: [www.goodregulation.or.ug](http://www.goodregulation.or.ug). It was considered to be an important part of the dissemination of information during the RBP program. Currently, the Web site cannot be accessed.

Efforts to introduce e-government and ICT at the regional level are also underway. The EAC, with technical assistance from United Nations Economic Commission for Africa (ECA), has undertaken to develop a harmonized policy and strategy framework for e-government among EAC partner-states—Uganda, Kenya and Tanzania. This framework is envisaged to cover all major aspects of regional cooperation on e-government. In developing this document, a participatory approach and consultative methodology were followed to gather data from the three states. The data base includes information on current activities and requirements as well as challenges and opportunities in promoting e-government.

# CONCLUSIONS AND RECOMMENDATIONS

## Assessment of strengths and weaknesses

Uganda has, through the RBP program, put together a regulatory governance and reform model based on international best practice (and largely a modification of the English model). The program benefited from the highest level of political championship in the form of the president. Champions were developed in the core ministries (MFPED, Cabinet Secretariat, MLG, MTTI) at both political and technical levels and in Parliament. Local capacity was developed for implementing RBP principles and for training civil servants and business associations and NGOs. A Uganda-specific RIA technique incorporating measures of distributions of costs and benefits of regulation was developed to support the government's poverty alleviation strategies. Quick wins were secured through a licensing reform program that also supported the government decentralization objectives and brought different levels of government together.

However, the momentum for reform and for implementation has reportedly been lost, following the

end of the DFID-financed project in 2007. The government did not budget funding for continued implementation, and faced with a continual shortage of funds for their programs, the ministries have tended to switch funding away from their RIA/RBP activities. The RIA unit is not staffed at a level required to carry out RIA promotion, and the RBP unit in MTTI, which has three staff members, itself acknowledges that it is incapable of doing anything of substance to promote regulatory good practice.

The shortage of funds also limited the scope for consultation, since ministries have a tendency to preserve their financing of overhead and staff at the expense of activities and programs outside their ministries. The fragility of the consultation process was increased by the fact that few private sector organizations had yet developed an organizational, technical or financial base for sustaining consultation on a continuing basis. The ministries have been encouraged in these choices by the fact that most of the laws and regulations developed with an active RIA have been stuck in Cabinet or Parliament, and by the fact that decision-making has tended to be made on an ad-hoc basis.

Finally, alternative attempts to secure funding for continuation of the program, such as a proposed World Bank project, have not borne fruit. As a consequence, RIA is not openly practiced in Uganda at the present time, although the basic principles are well known by officials involved in policy formulation.

## Recommendations

If the Ugandan government wishes to implement the regulatory strategy that it has adopted, there are a number of steps that it must take to resuscitate the process:

- Reaffirm publicly the government's intention to pursue regulatory reform through a statement by the president that such reform is a priority that will be supported by adequate resources.
- Establish a ministerial position to champion regulatory reform at Cabinet level and to coordinate regulatory reform across government.
- Have the RIA Unit currently in the Cabinet Secretariat report to the new ministerial position.
- Carry out an assessment of the human and organizational resources available within the government to carry on a regulatory reform agenda. In particular, focus the assessment upon the capacity of the Policy Analysis Units to support regulatory reform activities.
- Establish a short-term program of "quick wins" that could be implemented within the fiscal year. This should be done in collaboration with the business community and leading NGOs to ensure that high priority items are on the action agenda.
- Consider whether the focus of regulatory reform in the medium term should continue to be on improving the business environment, or should be broadened to areas of social policy and other areas where there is a demand for RIA techniques.
- Establish clear budgets for regulatory reform activities, including resources for effective consultation.
- Engage in a dialogue with local governments to plan out the next stages of regulatory reform at local government levels after the roll-out of the licensing reforms has been completed.



## APPENDIX A. PRINCIPLES OF GOOD REGULATION

The 1997 OECD Report on Regulatory Reform includes a coordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These were:

### **A. BUILDING A REGULATORY MANAGEMENT SYSTEM**

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making.
3. Build regulatory management capacities.

### **B. IMPROVING THE QUALITY OF NEW REGULATIONS**

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory coordination.

### **C. UPGRADING THE QUALITY OF EXISTING REGULATIONS**

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.

The OECD report recommended adoption of a set of regulatory quality standards based on the OECD principles as follows:

“Establish principles of “good regulation” to guide reform, drawing on the 1995 Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimize costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.”

Source: OECD Report to Ministers on Regulatory Reform, 1997.

## APPENDIX B. DB INDICATORS, DB 2009

Economy	Ease of DB	Business start-up	Constr. permit	Employment	Property Regist.	Credit	Investor Protection	Paying Tax	Trade across borders	Contracts	Closure
<b>Global Ranking</b>											
Kenya	82	109	9	68	119	5	88	158	148	107	76
Zambia	100	71	146	135	91	68	70	38	153	87	80
<b>Uganda</b>	<b>111</b>	<b>129</b>	<b>81</b>	<b>11</b>	<b>167</b>	<b>109</b>	<b>126</b>	<b>70</b>	<b>145</b>	<b>117</b>	<b>57</b>
Tanzania	127	109	172	140	142	84	88	109	103	33	111
Rwanda	139	60	90	93	60	145	170	56	168	48	181
<b>SSA Ranking</b>											
Kenya	5	14	1	10	16	2	14	36	26	19	10
Zambia	7	7	32	26	11	6	11	5	30	15	12
<b>Uganda</b>	<b>10</b>	<b>21</b>	<b>14</b>	<b>1</b>	<b>41</b>	<b>14</b>	<b>20</b>	<b>15</b>	<b>24</b>	<b>21</b>	<b>2</b>
Tanzania	14	14	42	28	27	7	14	21	9	1	19
Rwanda	17	5	16	13	5	27	43	10	40	4	34

## APPENDIX C. LEGAL SYSTEM IN UGANDA

The Supreme Court is the highest Court in Uganda, and is the final court of Appeal. It only decides cases on appeal from lower courts, except for presidential election petitions, where the Supreme Court has original jurisdiction.

The Court of Appeal is next in hierarchy, and it handles appeals from the High Court but also sits as the Constitutional Court in determining matters that require Constitutional interpretation. Established by the 1995 Constitution, it is an intermediary between the Supreme Court and the High Court and has appellate jurisdiction over the High Court. It is not a Court of first instance and has no original jurisdiction, except when it sits as a Constitutional Court to hear constitutional cases.

The High Court of Uganda is the third court of record in order of hierarchy and has unlimited original jurisdiction, which means that it can try any case of any value or crime of any magnitude. Appeals from all Magistrates Courts go to the High Court. The High Court has five Divisions:

the Civil Division, the Commercial Division, the Family Division, the Land Division and the Criminal Division.

Subordinate Courts include the Chief Magistrate's Court, Industrial Court Magistrates Grade I and II Local Council Courts levels 3-1 (sub county, parish, and village). Magistrate's Courts handle the bulk of civil and criminal cases in Uganda. There are three levels of Magistrates courts: Chief Magistrates, Magistrates Grade I and Magistrates Grade II. These are subordinate courts whose decisions are subject to review by the High Court. Presently, the country is divided into 26 Chief Magisterial areas administered by Chief Magistrates who have general powers of supervision over all magisterial courts within the area of their jurisdiction.

Specialized courts or tribunals also form part of the judicial structure: for example, the Industrial Court, Tax Appeals Tribunal, NPART Tribunal, Land Tribunals, Tax Appeals Tribunal and the Human Rights Tribunal.

Subordinate Courts include Magistrates Courts, and Local Council Courts, *Qadhis'* courts for marriage, divorce, inheritance of property and guardianship, and tribunals such as those

established under the Land Act (Cap 227), Communications Act (Cap 106) and Electricity Act (Cap 145), and Tax Appeals Tribunal Act.