



Retrospective study of the progress, performance and impact of the Uganda Commercial Court 1996 - 2015

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Foreword

Hon. Justice Dr. Yorokamu Bamwine, Principal Judge

The Ugandan Judiciary is committed to upholding the rule of law and to dispensing justice with independence, accountability and impartiality.

Of course, the rule of law should be valued in its own right. There is, however, also an important link between the performance of legal institutions and economic growth. Clear, known and predictable laws and institutions can play a key role in the establishment of environments conducive to investment and economic growth. For this reason commercial legal institutions affect us all.

It is with this in mind that this important study examines the performance and impact of Uganda's Commercial Court Division of the High Court. It is intended to help us to assess what has already been achieved, to learn from our experiences and to develop strategies for the next phase of our development.

This study lays out the Commercial Court's development into a model of judicial best practice over time, as well as its decisive and sustained impact on the Ugandan economy. The Court has made impressive gains in terms of efficiency and institutional embeddedness and, in turn, furthered the Government's objective of facilitating private sector-led growth.

We have come a long way since 1996. Today the Commercial Court is an institution of which Ugandans should be proud. As it stands at a cross-roads, we must focus on how we can build on these achievements and ensure the continued effectiveness of the Court's support to our country's growing economy.

Executive summary

Introduction

1. The study considers the performance and impact of the Commercial Court Division of the High Court of Uganda (the 'Commercial Court') from its inception in 1996 to date, including the role that donor assistance has played in supporting institutional reform. Retrospective reviews over such a lengthy time frame are rare, with donor time-scales tending to be short term and based on relatively short project cycles. Bucking this trend, this study considers the extent to which DFID-U's support to the Commercial Court from 2000-2005 has contributed to sustained reform today.

Sustained Performance

2. The Court's key achievement has been to transform the time taken to process commercial cases: from over five years – to eighteen months currently. This is despite a seven fold increase in the number of cases being heard. In this 15 year period there has been a tenfold increase in the threshold for cases, which means that the higher value (and hence probably more complex) cases are now dealt with at Commercial Court level. The average total annual value of cases dealt with by the Court is now Ushs 275 billion (US\$74,000,000) – a 70% increase in the real average value of the cases since the Court began.¹
3. Ten years from the end of DFID support the Commercial Court now has more Judges and is fully funded by government. It also continues to be well regarded by stakeholders, and acts as a model of best practice for the rest of the Judiciary. The key challenge it faces is managing the continuing rise in the demand for its services. Last year the ratio of cases disposed of in a year compared to the number outstanding at the beginning of the year fell below the critical threshold of 100%: for the first time since 1999 the Commercial Court was unable to clear as many cases as it had pending. The Court is in danger of being a victim of its own success.

Positive Economic Impact

4. In the last ten years there has been a marked expansion in lending, most notably in a sustained doubling of the proportion of bank assets lent to the private sector - from 30% to 60% - as well as a sustained reduction in non-performing loans. Although it is not possible to quantify the extent to which such changes are due just to the improved operation of the Commercial Court, strong anecdotal evidence from this study suggests that at a minimum the Commercial Court was one of the key driving factors. There is emerging evidence that the Commercial Court has enabled a new form of lending – backed by assets other than land. This is likely to have disproportionately benefited previously excluded groups such as women. There is also evidence, including from World Bank Enterprise surveys, that the improvement of the Commercial Court has made it easier for firms to grow. There is strong anecdotal

¹ In this report all values have been adjusted for inflation and are expressed in terms of Ushs 2014.

evidence that the improvement of the Commercial Court has also been a factor in the sharp increase in foreign direct investment.

Commercial Court Value for Money

5. Assessing the value for money of the Court is hampered by the inherent difficulty of attributing the precise impact of the Commercial Court. But if the Court were responsible for just 1% of the US\$2.5bn pa increase in private sector lending and 1% of the US\$1bn pa increase in foreign direct investment this would have covered the total investment in the Court (donor and government) thirty times over.
6. Donor (particularly DFID) support to the Commercial Court can be seen as an early example of what has now become known as 'doing development differently'. The approach that was adopted started with a locally identified problem; was locally (rather than donor) led, context specific and politically informed; and was designed and implemented in a highly flexible and adaptive way.

Research team note

This study was commissioned by the Judiciary of the Republic of Uganda. The Hon. Justice Geoffrey W. M. Kiryabwire, Justice of the Court of Appeal and Constitutional Court of Uganda and former head of the Commercial Court, has peer reviewed the document.

The research was funded by the UK Department for International Development under its LASER (Legal Assistance for Economic Reform Programme²) and was undertaken by a team from The Law & Development Partnership: Marcus Manuel, Jess Magson, and Laura MacLean, with support from Zac Bull, and data analysis undertaken by Helga Gunnell and Harry Mansfield. LASER programme director Clare Manuel oversaw the work. The Centre for Justice Studies and Innovations in Kampala supported the research team in-country. A draft of the study was externally peer reviewed by Dr Eva Lein and Dr Jan van Zyl Smit respectively Senior Research Fellow and Associate Senior Research Fellow at the Bingham Centre for the Rule of Law.

The research team would like to extend their sincere thanks to all who kindly provided their time for interview and assistance in sourcing information for this study.

²Implemented by The Law & Development Partnership and KPMG. <http://www.laserdev.org/>

Acronyms

ADR: Alternative Dispute Resolution
CADER: Centre for Arbitration Dispute Resolution
CCMA: Commercial Court Management Advisor
Commercial Court: Commercial Court Division of the High Court of Uganda
CCAS: Computerised Case Administration System
CCUC: Commercial Court Users' Committee
CJRP: Commercial Justice Reform Programme
Danida: Ministry of Foreign Affairs of Denmark
DDD: Doing Development Differently
DFID: UK Department for International Development
DFID-U: UK Department for International Development Uganda Office
FDI: Foreign Direct Investment
GDP: Gross Domestic Product
GoU: Government of Uganda
ICT: Information and Communications Technology
IFC: International Finance Corporation
JLOS: Justice, Law and Order Sector
MSME: Micro, Small and Medium Enterprises
MTCS: Medium Term Competitiveness Strategy
MoFPED: Ugandan Ministry of Finance, Development and Economic Planning
MoJCA: Uganda Ministry of Justice and Constitutional Affairs
NPL: Non-Performing Loan
PCR: Project Completion Report
PEAP: Uganda Poverty Eradication Action Plan
PTA: Personnel Technical Assistance (CJRP)
PEAP: Poverty Eradication Action Plan
SIP: Strategic Investment Plan
SSA: Sub-Saharan Africa
URA: Ugandan Revenue Authority
Ushs: Ugandan Shillings
VFM: Value for Money
WB: World Bank

1. Introduction

Summary

This chapter outlines the purpose of the study: to consider the performance and impact of Uganda's Commercial Court from its inception in 1996 to date, including the role that donor assistance has played in supporting institutional reform. Retrospective reviews over such a lengthy time frame are rare. A brief explanation of the methodology for the study is provided, and the report structure outlined.

Study purpose

- 1.1 This study considers the performance and impact of Uganda's Commercial Court from its beginnings in 1996 to date. It considers what has been achieved, and how change has occurred. Commissioned by the Judiciary, the aim is to learn lessons from the past, and also to look forward to the next phase of development for the Court, and to make recommendations on how the Court can best meet the growing and changing demands it faces. A particular point of focus is whether the Court has had a sustained impact on the turn-around of commercial cases in Uganda, and whether there is evidence that the Court may have had a key role to play in opening up access to new forms of credit. The study also considers the effects of this on boosting confidence in business, thereby promoting foreign direct investment.
- 1.2 The study assesses whether strong local ownership and commitment to the reform process both within the Ugandan Judiciary and at the highest levels of the executive has been key to the successes that the Court has achieved and whether donor technical assistance and funding also played a part in bringing about institutional reform. The study reviews what donors did, and importantly, how they did it, finding that the approach adopted, particularly by DFID-U bears a strong resemblance to what today would fall within thinking on *problem driven iterative adaptation / doing development differently*.³
- 1.3 Retrospective analysis of the impact of development assistance is rare, with donor time-scales tending to be short term and based on relatively short project cycles.⁴ Bucking this trend, this study considers the extent to which DFID-U's support to the Commercial Court from 2000-2005 has contributed to sustained reform today.

³ See for example: Andrews, M. (2013) *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions*. Cambridge: Cambridge University Press; Andrews, M. et al (2012) 'Escaping Capability Traps through Problem-Driven Iterative adaption'. London. *Center for Global Development*. Working Paper 299 June 2012; Booth and Unsworth (2014) Politically smart, locally led development. *ODI discussion paper*. London: ODI; Booth D (2012) 'Development as a Collective Action Problems: Addressing the Real Challenges of African Governance'. *Synthesis report of the African Power and Politics Programme*. London: ODI; Pritchett, L. et al (2012) 'Looking Like a State: Techniques of Persistent Failure in State Capability for Intervention'. UNU WIDER. WIDER Working Paper 2012/ 63, July.

⁴ <http://oxfamblogs.org/fp2p/what-do-we-know-about-the-long-term-legacy-of-aid-programmes-very-little-so-why-not-go-and-find-out/> Duncan Green blog *From Poverty to Power*; Carothers, T. (2003) Promoting the rule of law abroad: The problem of knowledge. Working paper no 34, Carnegie Endowment p170.

Objectives and methodology

1.4 Four objectives underpinned the research:

- Tracing the evolution of the Commercial Court, from inception in 1996 up to the present day;
- Assessing how successful (in terms of sustainability, impact and value for money) DFID's Commercial Justice Reform Programme 2000-2005 (CJRP) and other donor efforts were in supporting sustained change in commercial dispute resolution, focusing on the effectiveness of the Ugandan Commercial Court;
- To the extent that this support was successful, analysing how and why, particularly in light of the *Doing Development Differently* narrative and latest thinking on institutional reform – including the efficacy of problem driven, iterative, politically informed and locally owned processes, and the extent to which DFID's intervention was an early example of such an approach;
- In the light of the above analysis, consider learning in relation to the context for future donor support to commercial law and justice reform in Uganda.

Full terms of reference are at annex A in volume two.

- 1.5 The research team visited Uganda in May 2015 and conducted interviews with a wide range of judges, court staff and highly placed observers across the government and private sectors, as well as international donors and members of the legal community. The aim was both to understand the narrative of Commercial Court progress, and to obtain users' perceptions of Court performance. Information from interviews is incorporated in this study, but as agreed with interviewees, is not attributed. A list of interviewees can be found at annex B in volume two. The team also undertook analysis of recent economic and business surveys, and a literature review of key national, JLOS and programme documents. A list of documents considered is in annex C of volume two. In addition, the research team worked with the ICT team at the Commercial Court to analyse data on cases from the electronic case management system. Based on all the other documents the team saw, this would appear to be the first ever long term detailed analysis of the Commercial Court's operations, covering 22,000 cases. Data included details on plaintiffs, defendants, disposal and adjournment information. As part of the analysis the team cleaned the dataset to ensure the claim value consistently reflected the details given in the description (for example some cases listed in US\$ had the claim value recorded as the same amount in Uganda shillings).

Report structure

- 1.6 Chapter two provides an overview of the history of the Commercial Court from its inception in 1996 to the present day. It presents an analysis of the Court's performance over this entire period, drawing heavily on data from the Court's case management system. Chapter three provides a broader analysis, looking first at the extent to which gains achieved by the time DFID-U support ended were subsequently sustained by the Court. The chapter also

considers the broader economic impact of the Court, particularly on financial sector development. It ends with a brief discussion of what value for money assessment can be made of DFID's initial investment in the Court. Chapter four focuses on the donor part of the story, and looks at how donor (particularly DFID) support was provided, in the light of the current discourse on *problem driven iterative adaptation / doing development differently*. The report concludes with chapter five looking to the future, highlighting the current challenges faced by the Court, and making recommendations for its future direction.

2. Commercial Court progress and performance 1996-2015

Summary

The Commercial Court has now been operating for more than twenty years. The Court's key achievement has been to transform the time taken to process commercial cases: from over five years – to eighteen months currently. This is despite a seven fold increase in the number of cases being heard. Over this period there has been a tenfold increase in the threshold for cases, which means that the higher value (and hence probably more complex) cases are now dealt with at Commercial Court level. The average total annual value of cases dealt with by the Court is now Ushs 275 billion (US\$74,000,000) – a 70% increase in the real average value of the cases⁵

The Court is now facing a critical challenge: rising case-loads mean that disposal rates have begun to decline. Last year the ratio of cases disposed of in a year compared to the number outstanding at the beginning of the year fell below the critical threshold of 100%: for the first time since 1999 the Commercial Court was unable to clear as many cases as it had pending. The Court is in danger of being a victim of its own success,

The Commercial Court's performance is unrelated to Uganda's World Bank Doing Business score for contract enforcement (currently 80 out of 188 economies) – which looks at much smaller, simpler cases processed through the magistrates' court system⁶

Commercial Court progress

2.1 Time lines outlining key events in the history of the Commercial Court can be found in figures 2.10 and 2.11 at the end of this chapter. The paragraphs that follow highlight key developments.

Inception: 1996-1999

2.2 The Commercial Court was established in 1996⁷ and is formally a division of Uganda's High Court.⁸ (Other divisions are civil, criminal, family, land, international crimes, anti-corruption, execution and bailiffs)⁹. The Commercial Court was one of the Government of Uganda's (GoU's) 'first generation' investment climate reforms. The need to improve commercial justice was identified as a key issue in Uganda's home-grown overarching national policy framework, the PEAP - Poverty Eradication Action Plan¹⁰ – see box 2.1 below. Recommendation for the creation of a separate Commercial Court, as set out in the Justice

⁵ In this report all values have been adjusted for inflation and are expressed in terms of Ushs 2014.

⁶ The World Bank does however note the creation of the Commercial Court as a positive reform. See for example World Bank, Doing Business 2009.

⁷ Legal notice No 5 of 1996.

⁸ Above it, the Court of Appeal and then the Supreme Court hear appeals.

⁹ Before 1996, the High Court consisted of only the Criminal and Civil Divisions. The Commercial Court was carved out of the Civil Division and was the first example of specialisation of the High Court Division.

¹⁰ Ministry of Finance, Planning and Economic Development (2000) *Poverty Eradication Action Plan*, Government of Uganda.

Platt report of 1995, responded to the business community's dissatisfaction with the general civil division's sensitivity to business matters.¹¹

Box 2.1 Extract from Uganda's Poverty Eradication Action Plan (1997 - 2017)

The main economic impact of the failure of the commercial justice system is that contracts are difficult to enforce. In particular, private businessmen find it costly and difficult or impossible to enforce repayment of debt. This discourages investment and increases the costs of banking and of private business activity. The indirect impact on poverty is very substantial because private sector development is very seriously constrained by the inability to enforce contracts. Essentially, any investor in Uganda takes a risk that if they are cheated, the courts may not provide any recourse.¹²

- 2.3 Policies to improve the business enabling environment were later fleshed out in the Ministry of Finance, Planning and Economic Development's (MoFPED) Medium Term Competitiveness Strategy 2000-2005 (MTCS)¹³ where again, the Commercial Court is identified as a key initiative (see box 2.2 below).

Box 2.2 Extract from the Medium Term Competitiveness Strategy 2000-2005

The Strategy identifies commercial justice reform as one of the top five priority areas for action¹⁴. The GOU has recognised that the way forward for the Strategy is to develop a detailed, prioritised action plan for its implementation¹⁵. The Commercial Justice Reform Programme is the first step in doing so. Commercial Justice has been selected as the first action area because while its impact on private sector development is huge, the proposed investment required to reform the system is relatively modest. It has been estimated that the current malfunctioning of the system costs Uganda at least 2% of GDP¹⁶ (Ushs 155 billion pa), while the interventions proposed are budgeted at US\$ 6.33 million over four financial years.

- 2.4 The Commercial Court was from the start, a strongly home-grown initiative, supported and promoted by the executive at the highest level.¹⁷ Initially it had no donor funding, nor technical assistance, although donor-funded reports had pointed to the utility of greater specialisation in the court system.¹⁸ Pressure for the formation and then strengthening of the Commercial Court was led by the (rich and influential) financial sector, concerned about weak capacity to enforce debts through the courts.
- 2.5 The Commercial Court's jurisdiction covers civil (not criminal) cases including banking, insurance, securities exchange, maritime law, and arbitration issues.¹⁹ Initially it was open to hear relatively small value cases, before a Ushs 5 million threshold (equivalent to Ush 2014

¹¹ 1995 Justice Platt Commission of Inquiry Report on Delays in the Judicial System', Crown Agents report (1995).

¹² Ministry of Finance, Planning and Economic Development (2000), Poverty Reduction Strategy Paper, Uganda's Poverty Eradication Action Plan, Summary and Main Objectives, p52.

¹³ Government of Uganda (2000) Medium Term Competitiveness Strategy.

¹⁴ The other four are: reform in infrastructure provision; strengthening the financial sector and improving access; institutional reforms, including dealing with corruption and tax administration; and removing export specific impediments.

¹⁵ See 'Closing Statement to Donor Consultative Group' by Hon. Gerald Ssendaula, Minister of Finance, Planning and Economic Development, 23 March 2000.

¹⁶ See Uganda Commercial Justice Sector Study, July 1999, especially Chapter 2.

¹⁷ Examples of executive support for the growth agenda include a nationwide address by the President on Jan 26 1995, tasking the judiciary with putting in place measures to facilitate commercial justice dispute resolution.

¹⁸ For examples see the 1995 Justice Platt Commission of Inquiry Report on Delays in the Judicial System', Crown Agents report (1995).

¹⁹ See Legal notice No 5 of 1996.

18 million at current rates, US\$ 7,000²⁰) was introduced. In 2007 the threshold was raised to Ushs 50 million (US\$15,000) to screen out smaller value cases.²¹

- 2.6 The Commercial Court started small, as an initial unit of one full-time and one part-time judge, which then grew over time. It was housed centrally within the main High Court building up to 1999, and did not have its own registry or support staff. A Commercial Court User's Committee was set up during this period, to generate discussion between judges and the legal community and foster a mechanism for self-regulation and open discussion of best practice. But with no distinct organisational structure, the new Commercial Court division was roundly criticised in a report commissioned as part of a Legal Sector Programme Study, which highlighted its poor facilities, management and lack of specialised experience.²²
- 2.7 In 1999 the Ministry of Justice and MoFPED jointly commissioned the Uganda Commercial Justice Study, undertaken with funding from DFID-U, and co-authored by the influential then head of the Judicial Service Commission (later Uganda's Chief Justice) Hon. Justice Benjamin Odoki. The authors presented evidence of perceived corruption, delays, lack of specialised commercial expertise and weak enforcement as fundamental barriers to the effective operation of the Commercial Court, and proposed a focused programme of reform built around a 'customer service' ethos.²³
- 2.8 During 1999 the new Court was moved to separate (rented) premises away from the High Court, with its own registry, which gave it autonomy to manage its own cases. But further substantive reform remained elusive.

Commercial Justice Reform Programme 2000-2005

- 2.9 Despite extremely low capacity,²⁴ the Ministry of Justice during 1999 and 2000 took a strong policy lead in promoting reform in the justice sector. The Ministry began to work with the Judiciary to develop a national programme to strengthen commercial justice and respond to the recommendations of the Commercial Justice Study. At the same time, with strong support from MoFPED, the Ministry of Justice in response to the 2000/2001 budget process and the MoFPED's formation of sector working groups, began to work towards the development of a sectoral approach to policy-making, planning and resource allocation across the justice sector. In his keynote 'Mamba Point' speech to justice sector leaders Solicitor General Peter Kabatsi set out a framework for the development of a prioritised approach to addressing the very serious constraints across the justice sector, focusing in the light of PEAP priorities on (i) commercial justice and (ii) criminal justice.
- 2.10 By the end of 2000 the Justice Law and Order Sector (JLOS), with some limited donor support had set up a co-ordinating secretariat in the Ministry of Justice and had begun to

²⁰ Adjusted for inflation to Ushs 2014 and converted at 2014 exchange rate.

²¹ The Magistrates' Courts (Amendment) Act 2007.

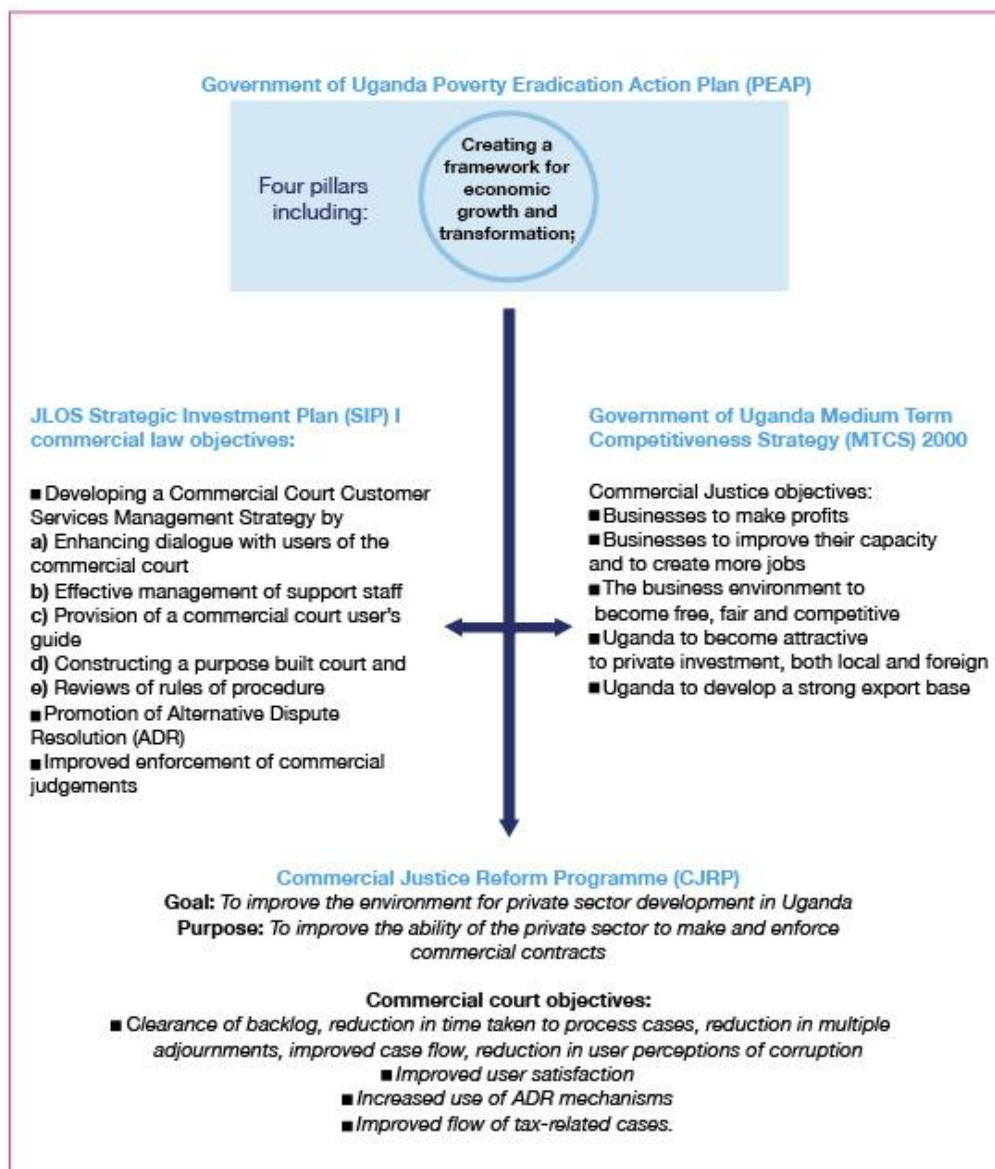
²² Consultations with Private Sector Business on Their Views of Constraints to the Creation and Enforcement of Contracts in Uganda: The Ssemwanga Centre Ltd, July 1999.

²³ Manuel C, Hooper, R & Odoki B (1999) *Uganda Commercial Justice Sector Study*, Department for International Development, Private Sector Foundation p3.

²⁴ The only external support was one policy adviser (part funded by DFID-U, part by the Austrian Government).

work on its first Strategic Investment Plan (SIP I 2001/2- 2008/7), with its twin pillars of (i) commercial and (ii) criminal justice reform. In the meantime, DFID-U committed to support the GoU’s programme of commercial justice reform, *the Uganda Commercial Justice Reform Programme 2000-2005* (CJRP) positioned under the first SIP pillar, as well as a key MTCS initiative (see box 2.2 above). The CJRP was a detailed programme of reform, developed by the Ministry of Justice²⁵ and involving a range of justice sector institutions, including the Judiciary, from whom there was strong appetite for a strengthened Commercial Court.

Figure 2.1 Flowchart of Commercial Court priorities and objectives in light of national policies



2.11 The CJRP was a GoU document and programme of reform, positioned under the developing JLOS SIP. Reform objectives included improving the accessibility of commercial justice and the processing of commercial cases, promotion of alternative dispute resolution (ADR) and improved performance of commercial judgements. The programme also addressed other

²⁵ DFID-U part-funded an adviser to support the MoJ in this work.

areas: the business registry, the land registry, commercial laws and the legal profession.²⁶ DFID-U was the main backer, including funding an embedded Commercial Court Management Adviser who worked directly to the Head of the Court. The initial focus of Commercial Court reform included:

- Supporting improved case management procedures and assistance in the development of the Court's IT capacity;
- Reviewing the civil procedure rules;
- Initiating a case backlog clearance project;
- Reviewing personnel management, developing court procedure manual; and
- Support to civil society dialogue and consultation, including the Commercial Court Users Committee.

2.12 A summary of DFID's log frame for its programme of support to the CJRP is at annex D in volume two.

2.13 This was a period of substantial and innovative reforms to the way the Court operated, driven forward by the head of the Commercial Court Justice James Ogoola and supported by the DFID funded Management Adviser Stuart Forster (see summary in table 2.1 at the end of this chapter). A JLOS review in 2004 noted tangible successes in Commercial Court performance including a reduction in multiple adjournments and faster disposal of cases.²⁷ Particularly significant in improving case flow in the face of an increasing case load was the introduction of ADR. Court annexed mediation was introduced in 2003, through a two year Mediation Pilot Project where appropriate Commercial Court cases were referred (on a mandatory basis) to the external ADR provider the Centre for Arbitration Dispute Resolution (CADER) which was funded by USAID. Between launch in October 2003 and May 2004, around 230 cases were referred to CADER, with settlement rates of around 35%.²⁸ This initial channelling of cases through CADER, helped to both reduce backlog in the short term and catalyse learning and interest in the use of ADR mechanisms among the Judiciary and Court staff. But in the longer term, questions around CADER's financial sustainability resulted in the development of a parallel channel of ADR via court-based annexed mediators. Mandatory mediation became a permanent feature at the Commercial Court with the passing of the Judicature (Mediation) Rules 2007.

2.14 By 2005 the Court had four full-time judges, two registrars and around 29 support staff, based in rented offices in Crusader House in Kampala.²⁹ DFID-U support to the GoU's CJRP ended in 2005, as DFID's country programme moved more strongly to budget support. DFID's CJRP Programme Completion Report (PCR) summarises the progress made in Commercial Court performance between 2000 and 2005 concluding that the Commercial

²⁶ CJRP had four overall areas of focus; Commercial Court reform, commercial law reform, development of lawyers' skills and reform of registries. This study concentrates on CJRP work with the Commercial Court.

²⁷ http://www.ihrnetwork.org/files/Uganda_JLOS_MTE_Vol_One.pdf p52.

²⁸ Report of the DFID output to purpose review for the year 2003-2004 p4.

²⁹ Registrars are more junior members of the bench who play a dual role, overseeing some cases but also managing the court's administration in areas such as budgeting, staffing and management of the court registry.

Court was now *an effective institution with clear institutional identity, competent and well-trained staff*.³⁰ DFID's PCR evidences that at output level, the objectives of its support has been achieved, with detailed objectively verifiable indicators showing improvements in: (i) clearance of backlog, reduction in time taken to process cases, reduction in multiple adjournments, improved case flow; (ii) improved flow of tax-related cases; (iii) increased use of ADR; and (iv) user satisfaction. DFID's support to the Commercial Court component of its assistance was designated a '1' (completely -or likely to be completely - achieved).

2005 to the present

- 2.15 By 2005 JLOS had developed from a sector with extremely limited donor support to one with a broad range of donors engaged, including through sector budget support and a high degree of donor coordination around successive GoU JLOS Strategic Investment Plans. SIPs II (2006/7 – 2010/11) and III (2012/13 – 2016/17) had a broader set of priorities than SIP I. With the ending of DFID-U support to the Commercial Court in 2005, other donors stepped in with a new programme of work focused on infrastructure – specifically a new Commercial Court building, enabling the Court to move out of rented office accommodation into its own purpose-built 'Palace of Justice' in September 2009. Construction took place between 2007 and 2009, with an EU commitment of €1,950,000, covering the vast majority of the costs. Overcoming significant procurement challenges, the new building on Lumumba Avenue, Nakasero houses ten court rooms and ten mediation rooms, as well as two registries (separated for mediation and the Court). Despite delays to the project, there was consensus among users that the new court building played a strong role in consolidating the Commercial Court's distinct identity and strong reputation.
- 2.16 With the ending of CJRP in 2005, the Commercial Court continued to generate internal reforms (see summary of key tools and techniques in table 2.1 at the end of this chapter). In particular, reform has focused on modernisation of procedures and innovations to deal efficiently with the increased case filings. The separate mediation registry was created in 2010, and in 2012 the division introduced evaluative mediation before a Judge. This was rolled out during 'settlement weeks' in a push to tackle the backlog. The Commercial Court has also focused on improving technology. In 2012, a prototype e-court room was introduced, which aimed to enable on-screen projections of proceedings and evidence. There is also a continuing desire to use video links to hold Court hearings in different parts of the country without Judges having to travel long distances. The Court has explored taking this forward through a pilot project linking the Commercial Court to the High Court in Jinja via video.
- 2.17 From 2010 the Commercial Court began to produce annual reports for the Chief Justice and Principal Judge, drawing on the computerised case administration system (CCAS) to pull out data on Court and staff performance. The development and implementation of CCAS,

³⁰ DFID's 2005 Project Completion report give CJRP's support to the reform of the Commercial Court the highest score of 1, with other strands of the programme scoring a 2 (lawyer skills development) 3 (commercial law reform) and 4 (reform of the registries) respectively. Support to the Commercial Court was the central focus of DFID support, receiving the bulk of funding (with an original commitment of £1,170,000).

beginning in 1997 and funded by Danida, was initially piloted in the Commercial Court and in the criminal and civil divisions. It has now been introduced across the Judiciary to create a statistical record to track the work of the court and its personnel.

- 2.18 After the new Commercial Court building there has been only limited amounts of donor support, largely via overall support to JLOS. Under the Ugandan Good Governance Programme beginning in 2011, Danida supported case backlog reduction, the development of a performance enhancement mechanism, and training.
- 2.19 As of January 2015, the Commercial Court has six full time judges, two registrars, 18 accredited court-annexed mediators and around 50 support staff.

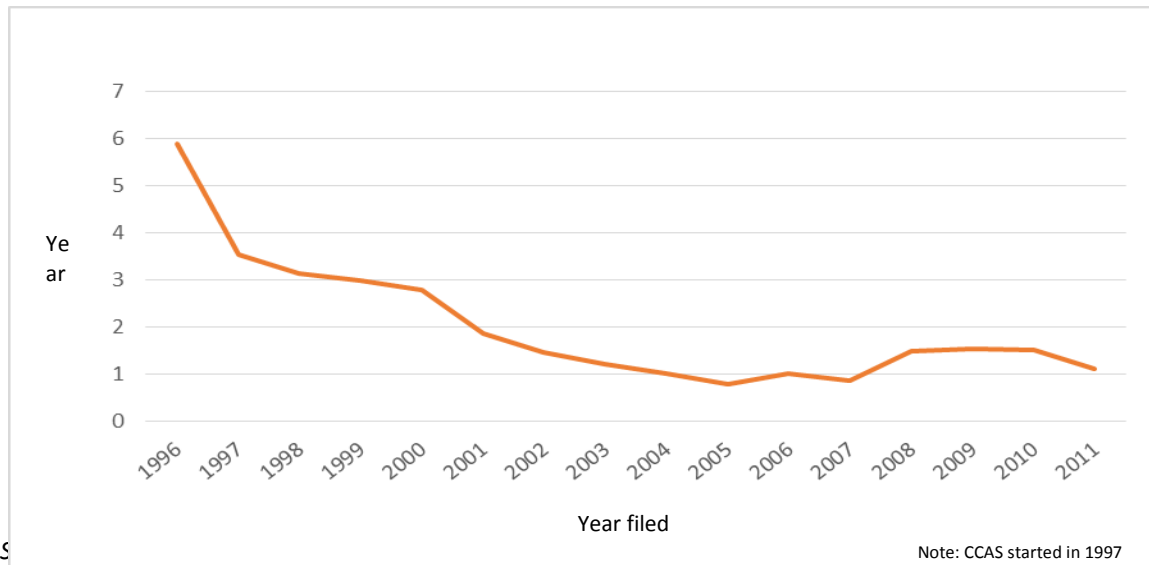
Commercial Court performance 2000-2015

- 2.20 The key achievement of the Commercial Court has been the transformation in the length of time to complete a case. The new analysis undertaken for this study reveals the extent of this change. When the Court was first established, cases were taking an average of over five years to be processed. But by the end of the DFID project period in 2005 cases were being turned around in 12 months on average. While there has been some slippage since then, due to increased case numbers (as discussed in paragraph 2.21 below), cases are still taking less than 18 months on average³¹. The change is shown in figure 2.2 below. This analysis just looks at the time frame for the disposal of substantive cases such as civil suits and bankruptcy petitions. The analysis deliberately excludes mediation cases and miscellaneous applications as these are separate interim processes within the overall history of a substantive case. Their inclusion would be misleading and would reduce the average. The analysis also excludes appeals from other courts (as these are heard just on points of law). Unfortunately it is only possible to do this analysis up to 2011 as the detailed case dataset available at the moment only includes 75% of the total cases filed in 2012-2014.³²

³¹ In Uganda, a case in backlog is defined as having been in the system without disposal for a period of 24 months. Case disposal averages are below this figure.

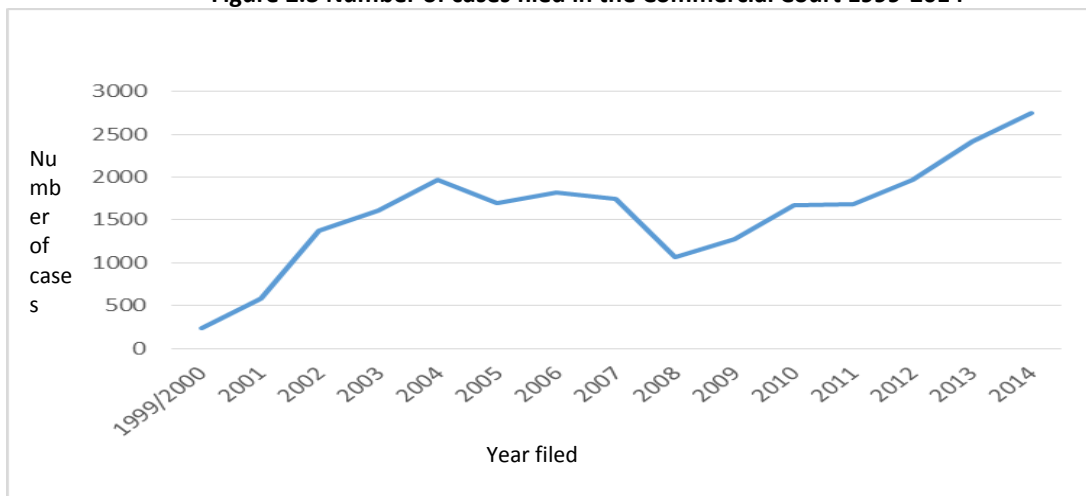
³² It is hoped that the coverage can be improved to allow this analysis to be extended to 2014.

Figure 2.2 Average number of years taken to dispose of a substantive case



2.21 This sustained achievement in the speed of turnaround has been achieved despite a seven fold increase in the number of cases being heard. The average number of cases filed each year in 1998 and 1999, just before the DFID project started, was 239. The average for 2010 and 2011 was 1,680 a year (see figure 2.3 below).

Figure 2.3 Number of cases filed in the Commercial Court 1999-2014



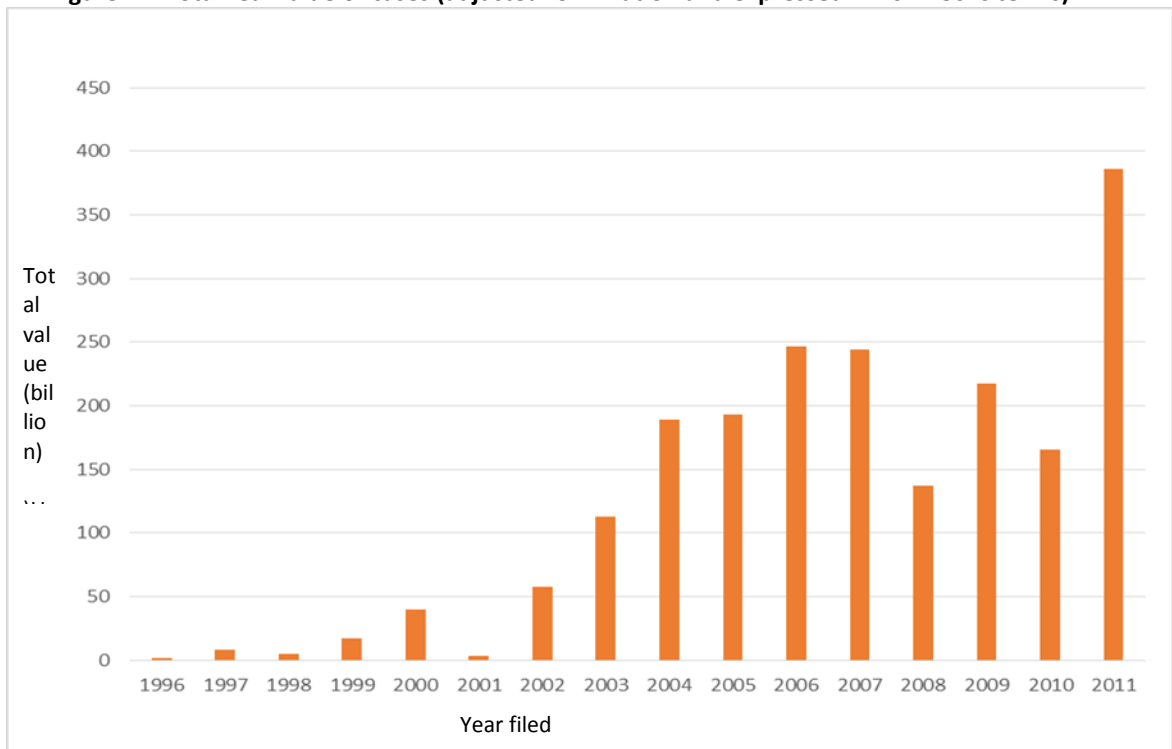
Source: Commercial Court Annual Reports 2011-2014 with figures pre 2004 taken from Commercial Court's case database, CCAS.

2.22 The sustained improvement in turnaround time is even more impressive given the tenfold increase in the threshold for cases noted above which meant only the higher value (and hence probably more complex) cases were being heard. The impact of the change in the threshold is also revealed by the first ever analysis of the value of the cases heard by the Commercial Court (see figure 2.4 below).³³ The average total annual value in 1998/99 was

³³ While LDP has checked the value of many of the cases it has not been possible in the time available to check all 22,000 cases. Given the vast majority of the corrections have involved an increase in the recorded claim value it is likely that the total values cited in this report will be an underestimate.

Ushs 25 billion, implying the average case was worth Ushs 100 million (US\$38,000 adjusted for inflation in 2014 Ushs terms). By 2010/11 (the latest year for which a fairly complete data set of cases is available) the average total annual value had risen to Ushs 275 billion and the average case was Ushs 170 million (US\$65,000 adjusted for inflation in 2014 Ushs terms). Thus over this period in addition to a seven fold increase in the number of cases there was a 70% increase in the real average value of the cases. The appendix at the end of this document provides a list of the largest cases (over Ushs 5 billion) that the Court has dealt with since 1996.

Figure 2.4 Total real value of cases (adjusted for inflation and expressed in 2014 Ushs terms)



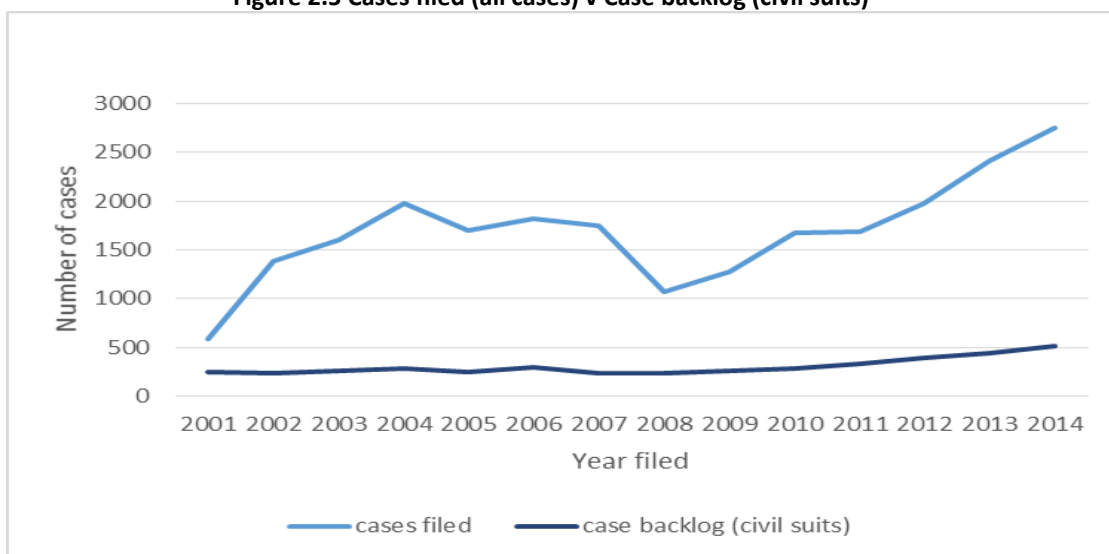
Source: Commercial court's case database, CCAS.

- 2.23 One reason why the Commercial Court has managed to deal with the increased number of cases and increased average value of cases is the greater use of mediation. While this is an extra process it enables the overall cases to be completed faster. Other initiatives have also helped, such as stricter case management tools like pre-trial recording, the introduction of court room recording and the use of legal assistants, as outlined in table 2.1 below.
- 2.24 Despite this overall success, it is clear that the continued growth in the number of cases being filed is putting the Commercial Court under increasing pressure, even allowing for the 2012 addition of two more judges to the Court. The Principal Judge's decision to assign the additional judges followed a 60% increase in the number of cases since 2008. But since then the demands on the Court have increased by yet another 60%.³⁴ The Court continues to struggle with being a victim of its own success.

³⁴ Cases filed rose from 1,064 in 2008 to 1,684 in 2011 and 2,751 in 2014.

2.25 One example of the challenge the Commercial Court faces is the increase in the size of the case backlog: as defined by the Commercial Court this is the number of substantive cases that are taking longer than two years to dispose of (see figure 2.5 below). The Commercial Court tracks this number very closely highlighting the figures in its annual report and circulating monthly updates to all judges. In addition the Head of the Commercial Court has asked users to alert him personally about any cases that are approaching this limit. The number of backlogged civil suits (which account for the vast majority of all substantive cases) has doubled in the last five years.³⁵ But as a proportion of the total number of cases there has been no change. The number of cases have also doubled over the same period.³⁶

Figure 2.5 Cases filed (all cases) v Case backlog (civil suits)³⁷



Source: Commercial Court Annual Reports 2011-2014 with figures pre 2004 taken from Commercial Court's case database, CCAS.

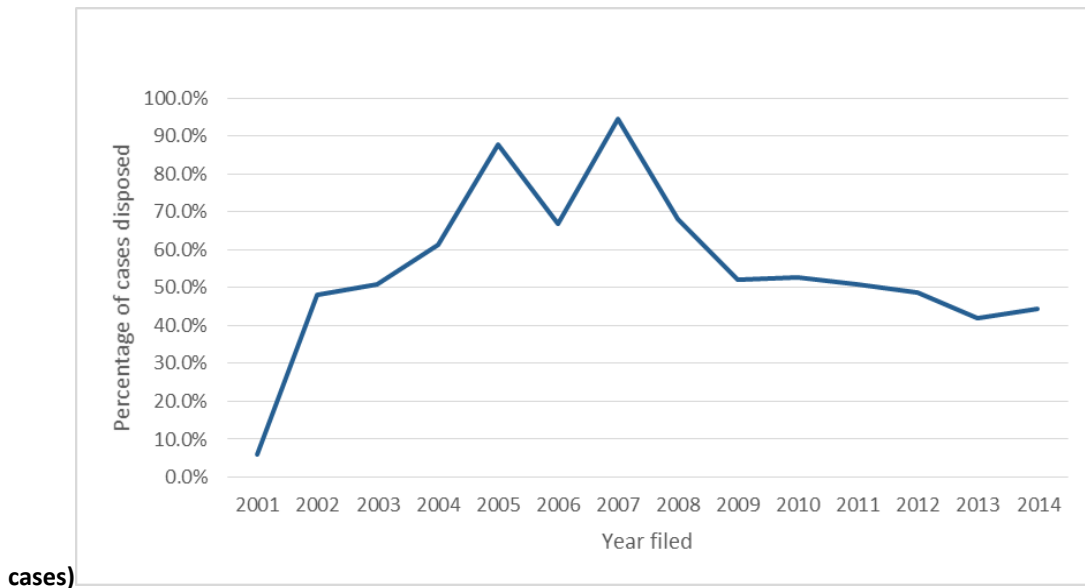
2.26 Another example of the pressure on the Court is the disposal rate: the number of cases disposed of each year compared to the total number of cases needing to be dealt with that year (i.e. the number pending at the beginning of the year plus the numbers filed that year). As figure 2.6 shows, by 2005 the disposal rate had hit 90%. The rate remained high for the next few years, while the number of cases filed remained relatively constant. But once the cases started to steadily rise from 2009 onwards the disposal rate has been consistently around 50%: only half the cases needing to be dealt with are being brought to conclusion in that year.

³⁵ From 260 in 2009 to 516 in 2014.

³⁶ From 1,275 in 2009 to 2,751 in 2014.

³⁷ Civil suits are substantive cases, excluding mediation cases and miscellaneous applications as these are separate interim processes within the overall history of a substantive case.

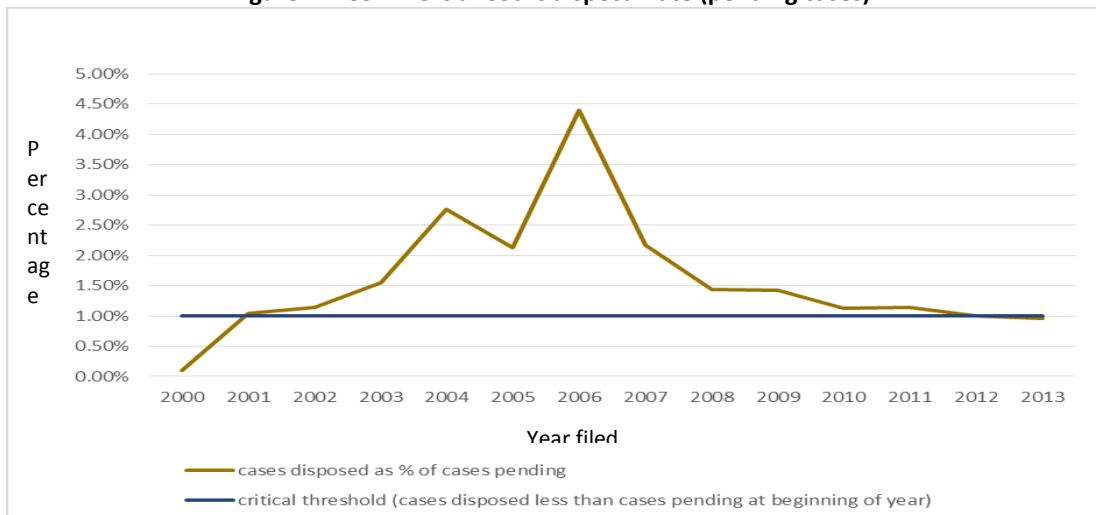
Figure 2.6 Commercial Court disposal rate (all cases)



Source: Commercial Court Annual Reports 2011-2014 with figures pre 2004 taken from Commercial Court's case database, CCAS.

2.27 But perhaps a clearer indicator of the cumulative impact of the stress on the Commercial Court is the disposal rate just for pending cases (see figure 2.7 below). This rate looks at the number of cases disposed in a year compared to the number outstanding at the beginning of the year. In normal years this rate should be well above 100% i.e. the Court is able to dispose of significantly more cases than it had pending at the beginning of the year and thus is also able to make substantial progress with cases being filed during the year. But last year this ratio fell below the critical threshold of 100%. For the first time since 1999 the Commercial Court was not even able to clear as many cases as it had pending.

Figure 2.7 Commercial Court disposal rate (pending cases)

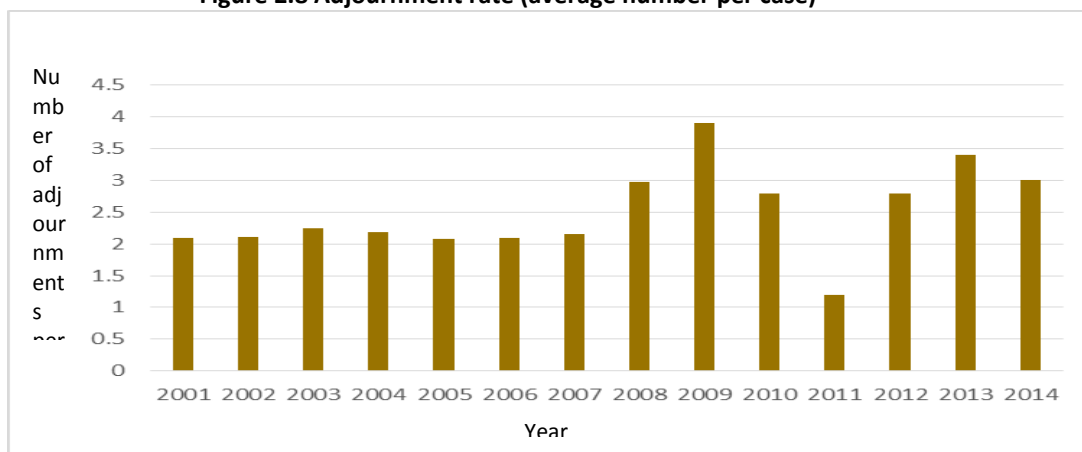


Source: Commercial Court's case database, CCAS.

2.28 The Commercial Court annual reports also monitor the average number of adjournments per case (see figure 2.8 below). Between 2000 and 2005 this was a fairly constant two adjournments per case. But by 2009 the number had doubled to four per case. Following a

major drive in 2011 these were cut to just one per case, but then rose again and now average three per case. In general the fewer adjournments the faster the case can be concluded. Reducing the number back to two or even one would enable the Court to process more cases, although the number of adjournments may reflect more the more complex cases that the Court is now dealing with, rather than inefficiencies.

Figure 2.8 Adjournment rate (average number per case)

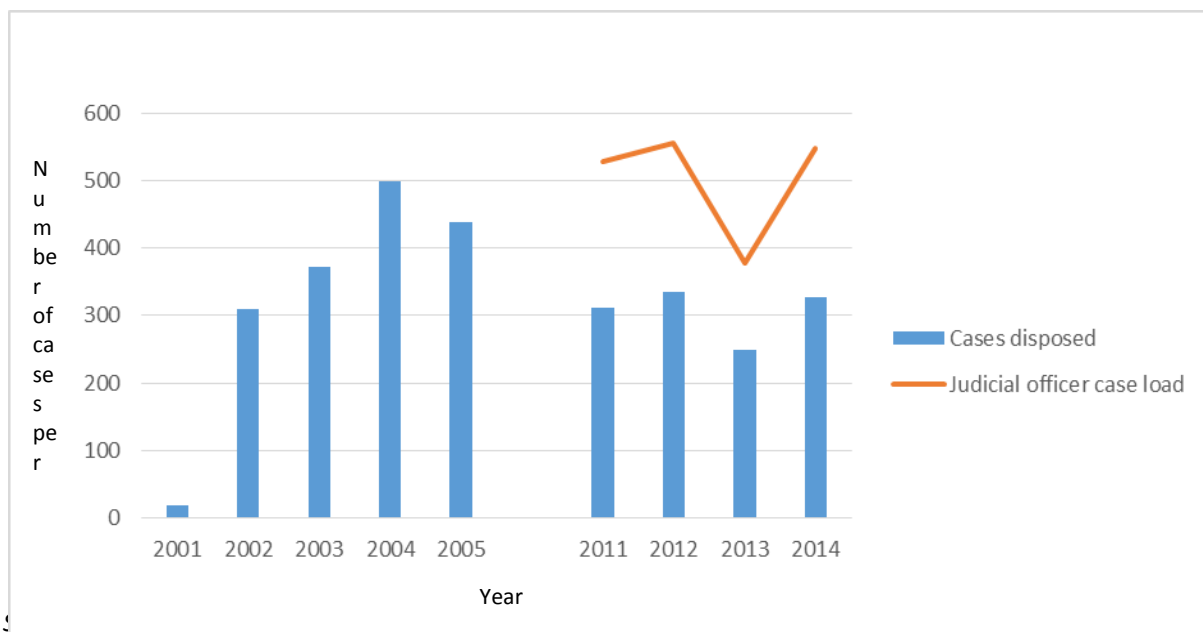


Source: Commercial Court Annual Reports 2011-2014 with figures pre 2004 taken from Commercial Court's case database, CCAS.

2.29 But while there may be some scope for reducing the number of adjournments and hence further reducing the time it takes to complete a case, this is unlikely to be sufficient to offset the growing gap between the case workload on each judge and the number of cases a judge can realistically deal with. As can be seen from figure 2.9 below, in 2014 the average case workload is 550 per judge. In the last four years the average number of cases disposed has averaged 307 per judicial officer – and has never been more than 336 (roughly one case per day of the year)³⁸. While there was an improvement in 2014 this was from a low level in 2013 which may well have reflected the fact that new judges continued to spend some of their time dealing with outstanding cases in their former courts when they start at the Commercial Court. More significantly it was only in 2004 (when there was a major case backlog clearance effort and the average case value was much less) that the disposal rate touched 500 cases (before falling back to nearer 400). The current case workload of 550 would therefore seem to be an unachievable level. At current filing and disposal rates this workload will only rise further and the gap between what is being demanded and what is feasible will widen yet further. The Commercial Court is facing a critical challenge – arguably the greatest of its 20 year existence.

³⁸ Comparison of these figures against regional or international equivalents would be an interesting area for future research.

Figure 2.9 Number of cases disposed vs the average judicial officer workload



commercial court database, CCAS.

2.30 The Court has undertaken two user surveys during its lifetime, both funded by DFID as part of their support to CJRP. Baseline and follow up user surveys in 2001³⁹ and 2004⁴⁰ respectively, traced perceptions on issues such as quality, access and corruption.⁴¹ CJRP’s 2004 user survey suggested increased user satisfaction on dispute handling and a significant improvement in private sector responses to the services offered by lawyers. With regards to corruption, a small decrease of 1% was noted between 2001 and 2004 in perceptions of corruption among formal sector respondents (26% in 2004). A more significant shift was noted among lawyers surveyed, with a fall of 6% in perceptions of corruption in the Commercial Court. This trend contrasts with the status of the magistrates courts, where perceptions on corruption increased over the same period (standing at 88% by 2004). The Commercial Court has developed a distinctive culture of its own, one aspect of which appears to be a pride in the perceived lack of corruption.

2.31 No user surveys of the Commercial Court have been undertaken since then. The World Bank Enterprise Survey however looks at the overall court system. In 2006⁴² the Survey noted that only 4% of firms regarded legal system as a major constraint to business – half the rate of other African and low income countries. The same survey noted that 43% of firms regarded Uganda’s overall court system as fair/impartial/uncorrupted (about the same as in other African and low income countries) but only 33% of firms resolved disputes through court actions (half the rate in other African and low income countries). The 2013⁴³ Survey

³⁹ The Law & Development Partnership Limited (2001) Uganda Commercial Justice Baseline Survey.

⁴⁰ K2-Research Uganda Ltd (2004) Commercial Justice Reform Programme.

⁴¹ The baseline and follow up user survey used different sampling method, limiting the scope for direct comparison over time.

⁴² World Bank/IFC (2006) *Enterprise Surveys Country Profile: Uganda*. Available at: <http://www.EnterpriseSurveys.org>.

⁴³ World Bank/IFC (2013) *Enterprise Surveys Country Profile: Uganda*. Available at: <http://www.EnterpriseSurveys.org>.

unfortunately only repeated the question on impartiality and reported a small improvement from 43% to 49% (fractionally higher than in other African and low income countries). But one striking element in the 2013 Survey was that large firms had become more concerned. Their confidence in the impartiality of the overall court system fell from 44% to 30%. This may reflect broader concerns about the rule of law in Uganda and the relationship between the Judiciary and the executive. It would be interesting to have up-to-date information on perceived corruption in the Commercial Court and see whether positive trends still hold.

Conclusion

2.32 Despite the challenges it is now facing, the Commercial Court has clearly succeeded in its own terms: it is processing relatively large commercial cases quickly and efficiently. However, the backlog of cases is now beginning to grow, and the Court is standing at something of a crossroads – in danger of becoming a victim of its own success. The Commercial Court has developed a culture of its own, and is seen as the flagship of the Uganda Court system. The next chapter reviews the sustainability of DFID-Uganda’s initial support to the Court, and looks at the Court’s broader economic impact.

Figure 2.10 Timeline of Uganda's Commercial Court activity 1995-2014

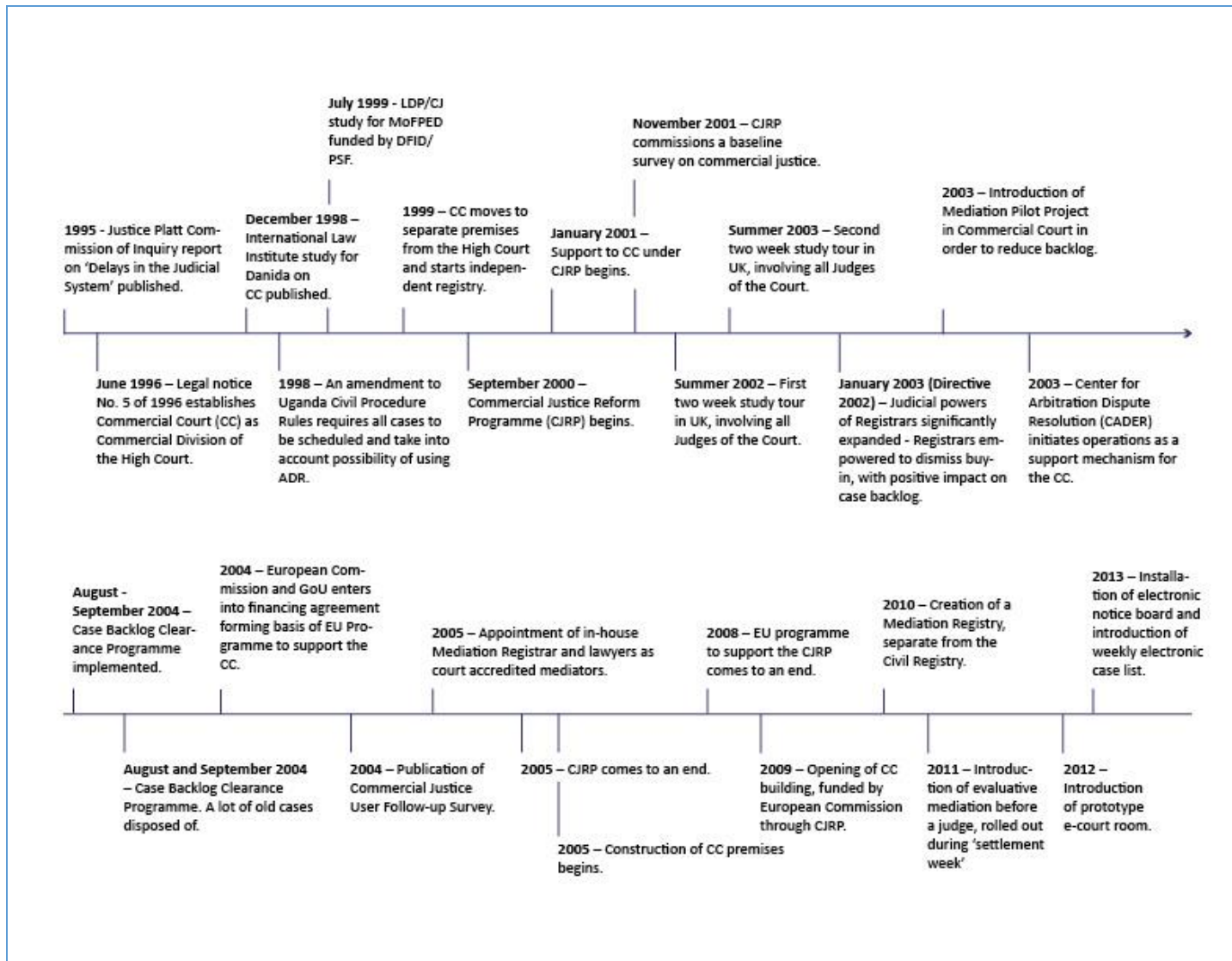


Figure 2.11 Timeline of judicial officer appointments at the Commercial Court

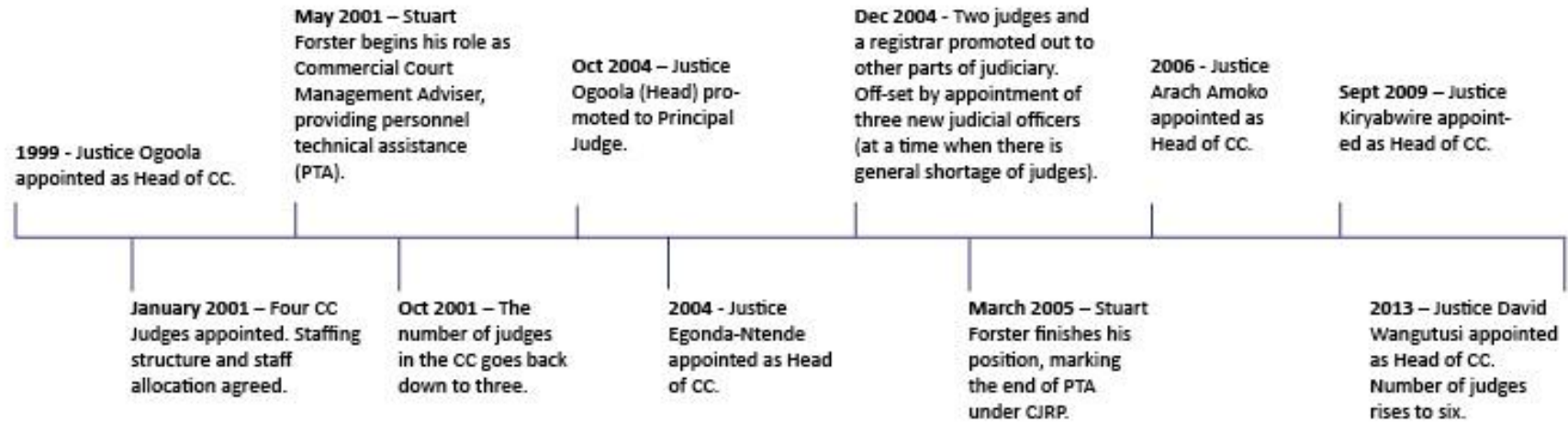


Table 2.1 New tools and techniques introduced in the Commercial Court

| Technique/Tool | Detail |
|--|--|
| <p><i>Court-annexed mandatory mediation</i></p> | <p>As a central ADR mechanism, mediation can be quicker, less time consuming and cheaper than going through court processes, by allowing parties to resolve a dispute through a neutral third party. Parties are also generally more likely to follow through on the mediation agreements as they have been involved in preparing the terms. Mediation was piloted under the CJRP programme as part of a two year Mediation Pilot Project, from 2003, with cases initially channelled through the ADR provider Centre for Arbitration Dispute Resolution (CADER). Mediation is mandatory only, and only pursued if the case is selected as suitable.</p> <p>Building on these earlier, less successful efforts to channel mediation through CADER, the Commercial Court subsequently set up a system of court-based mediators, operating out of designated spaces in the new court building. Under the Judicature (Commercial Court Division) (Mediation) Rules 2007, mediation became a permanent feature of the Commercial Court processes, and the court became a multi-door courthouse with mandatory mediation. In 2012, the Commercial Court introduced evaluative mediation before a judge. This was rolled out during ‘Settlement Week’ in a push to tackle backlog in the court.</p> <p>Development assistance for mediation is currently provided by:</p> <ul style="list-style-type: none"> ▪ Pepperdine University in the USA, which sends two graduate US Attorneys per year to assist in the Division’s mediation activities, as well as the provision of two students from the University who provide research support to the chambers of the Head of Division. ▪ In 2015, Austrian Development Agency began support to training for the roll out of mediation from the Commercial Court to other courts and dispute resolution bodies in the JLOS sector (Alternative Dispute Resolution Project). The project aims to train 475 officials from the JLOS institutions on ADR. <p>Previous development assistance for mediation:</p> <ul style="list-style-type: none"> ▪ Through the EU support to CJRP, ten rooms specifically designed for mediation were integrated into the CC’s new court building in 2009. ▪ Less successful was the support provided to the set-up of CADER, which, while being formed as a statutory entity, failed to secure regular government funding. CADER provision of ADR services to the CC users was largely in the early stages of CJRP, principally through funding from USAID. |
| <p><i>Commercial Court User’s Committee (CCUC)</i></p> | <p>The CCUC was introduced under CJRP in 2003, as a forum for the frank exchange of ideas, to ensure that the views of CC users were integrated into the reform process. Originally meeting quarterly, members included court judges, commercial lawyers, the private sector, academics and donors.</p> <p>The CCUC has made valuable contributions in spearheading reform within the Commercial Court, thanks in part to the willingness of the Judges to engage with users. The lobbying of the CCUC contributed to the drive for a specialised CC building, for example, and the group also pushed for reform of the legislative framework directing the work of bailiffs. The positive effects of the CCUC have been noted from across the spectrum of participants. Interviewees highlighted the potential isolation of judges within the court system, with the CCUC providing a positive mechanism for interaction and two-way feedback, contributing to the willingness of the Commercial Court Judges to engage with the process.</p> <p>Some now argue that CCUC’s formal convening power is in decline, with the group meeting less frequently and falling visibility over time. There remains broad consensus around the basic utility of the group, but there is appetite to revitalise member engagement.</p> |
| <p><i>Witness Statements</i></p> | <p>Witness Statements, written in advance of a hearing and setting out the detailed evidence of a witness to the case, thereby allow the presiding judge to consider the central evidence well in advance of the oral hearing. The discretion of the Judge to direct proceedings allows for the use of Witness Statements without any changes to the Civil Procedure Rules. Although not codified in law, the increasing use of witness statements</p> |

| Technique/Tool | Detail |
|--|--|
| | in the Commercial Court speeds up the trial process. The suggested use of Witness Statements has now spread over into other divisions. |
| <i>Trial Bundles and the pre-submission of pleadings, exhibits</i> | Trial bundles are provided by the claimant/plaintiff to the court. The advance provision of relevant material for the case allows judges and advocates time to effectively prepare, with a view to speeding up hearing times and in turn increasing case disposal rates. Anecdotal evidence suggests the introduction of trial bundles in the Commercial Court has helped to speed up court disposal rates, particularly in the immediate months after its introduction. |
| <i>ICT and case management system</i> | The Commercial Court has digital court recording and transcription in all court rooms, and draws on the CCAS system, developed initially in 1997, to keep a record of all cases. There is an aspiration to use real time technology in the future, as well as e-filing, video conferencing and mobile evidence presentation services. Anecdotal evidence suggests the broader constraints around reliable electricity supply across Uganda could undermine the effective use of systems such as video conferencing. Maintenance was also cited as an issue by some of those interviewed, with transcription services sometimes breaking down. In 2012, a prototype e-court room was introduced, which aimed to enable on-screen projections of proceedings and evidence. With support from Danida, the Commercial Court installed in 2013 an electronic notice board, with the aim of promoting faster information exchange among Court stakeholders. At the same time, a weekly electronic cause list was introduced. |
| <i>Scheduling Conferences</i> | The process of pre-trial scheduling, in which the counsel discuss the pleadings and other relevant matters outside of court and file a joint scheduling memorandum, narrows down the areas of dispute, enabling better time and case management. Points of agreement and disagreement are laid out before filing a joint scheduling memorandum and trial bundle with agreed and contested documentary evidence. The concept of scheduling was accommodated for with changes to the Civil Procedures Rules in 1998 (order 12) requiring the scheduling of all cases, including consideration of ADR options. In 2003, Justice Ogoola identified the use of the scheduling conference as a keystone to case management, helping litigants and advocates to focus on the substantive issues of the case. Piloted through CJRP, the use of scheduling conferences as a case management tool was consolidated in the late 2000s. |
| <i>Practice directions issued by Head of CC</i> | Practice directions act as supplementary protocols to rules of civil justice procedure, providing concrete advice on how to interpret the central rules of the court and regulating court practice and procedure. They allow the judge to clarify proceedings and better hold legal professionals to account, seen in Uganda as a particularly important function of an effective judiciary. The CCUC fed into the development of the practice directions at the Commercial Court. |
| <i>Research Assistants to Judges</i> | A majority of those interviewed welcomed the introduction of research assistants for judges. The concept was initiated by the Court of Appeals, but was rapidly adopted by the Commercial Court. Assistants are usually well qualified trainees who help to alleviate heavy administrative demands placed on judges, allowing them more time in court while providing the selected assistant with valuable on the job experience. |

3. Commercial Court sustainability, impact, and value for money

Summary

Ten years from the end of DFID support the Commercial Court is managing more cases and larger cases. It now has more Judges and is fully funded by government. It also continues to be well regarded by stakeholders, and acts as a model of best practice for the rest of the Judiciary. The key challenge it faces is managing the continuing rise in the demand for its services.

DFID-U support was provided with the hope that an effective Commercial Court would have a wider economic impact in particular on lending to the private sector. In the last ten years there has indeed been a marked expansion in lending, most notably in a sustained doubling of the proportion of bank assets lent to the private sector - from 30% to 60% - as well as a sustained reduction in non-performing loans. Although it is not possible to quantify the extent to which such changes are due just to the improved operation of the Commercial Court, the changes are what would have been expected (and are in line with experience in other countries). The strong anecdotal evidence from this study suggests that at a minimum the Commercial Court was one of the key driving factors. There is emerging evidence that the Commercial Court has enabled a new form of lending – backed by assets other than land. This is likely to have disproportionately benefited previously excluded groups such as women. There is also evidence, including from World Bank Enterprise surveys, that the improvement of the Commercial Court has made it easier for firms to grow. There is strong anecdotal evidence that the improvement of the Commercial Court has also been a factor in the sharp increase in foreign direct investment.

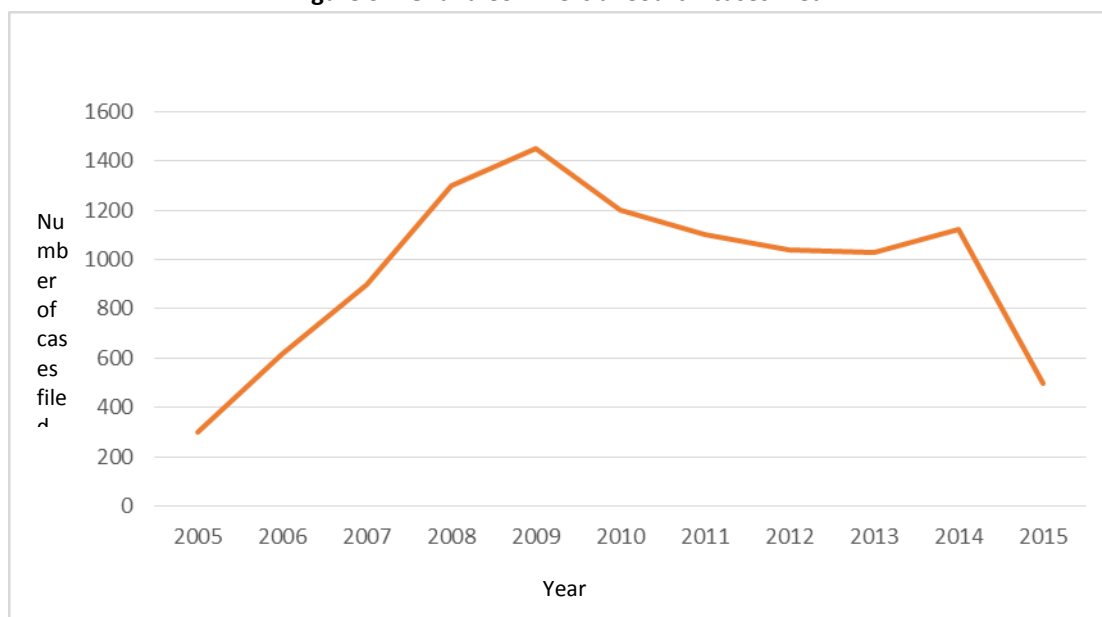
The value for money assessment is hampered by the inherent difficulty of attributing the precise impact of the Commercial Court. But if the Court were responsible for just 1% of the US\$2.5bn pa increase in private sector lending and 1% of the US\$1bn pa increase in foreign direct investment this would have covered the investment in the Court (donor and government) thirty times over.

Sustainability

- 3.1 Ten years after the DFID project it is clear that reforms in the Commercial Court have not only been sustained, but that the Commercial Court is larger and fully self-sufficient. As noted in the previous chapter, the Commercial Court is managing 50% more cases than in 2005 and with the increase in the threshold from Ushs 5 million to Ushs 50 million (see paragraph 2.5) is managing much higher value cases. Despite this increase in demand, the Commercial Court has also broadly managed to sustain the turnaround in the length of time taken to dispose of cases (see figures 2.6 and 2.7 in chapter two). The key challenge the Commercial Court faces is managing the continuing rise in the demand for its services.
- 3.2 In terms of financial sustainability the government has not only been fully funding the Commercial Court for at least the last five years, it has also fully funded the recent 50% increase in the number of judges allocated to the Commercial Court.

- 3.3 Interviews by the research team revealed that the Commercial Court is much appreciated and uniformly respected by wide range of stakeholders such as banks, insurance firms, Uganda Revenue Authority, lawyers, private sector bodies and donors. The complete absence of criticism of the Commercial Court in either the parliament or the media is also striking given how critical both are of other institutions in Uganda and how active the Commercial Court has been. The Commercial Court is seen by lawyers and donors as the most organised division and best performing court by far: as one interviewee put it *‘the Commercial Court has undoubtedly increased the efficiency of dispute resolution’*.
- 3.4 The Uganda experience is in sharp contrast to the experience in Ghana where the Commercial Court was set up in 2005.⁴⁴ While there was initial growth in cases in the first few years after the new court had been created the growth has not been sustained. Indeed the case load has fallen markedly in recent years (see figure 3.1 below). The reasons for these different experiences deserves further study, but one difference appears to be that in Uganda initial donor focus was on technical assistance with the construction of a new court building following after the Commercial Court had already become well established. In Ghana the donor project started with the construction of a new court building.

Figure 3.1 Ghana Commercial Court – cases filed



Source: Ghana Commercial Court / The Law & Development Partnership.

Impact

Expected economic impact of the DFID funding for the Commercial Court

- 3.5 When the DFID project was approved in 2000 it was envisaged that there would be three broad possible avenues of economic impact:

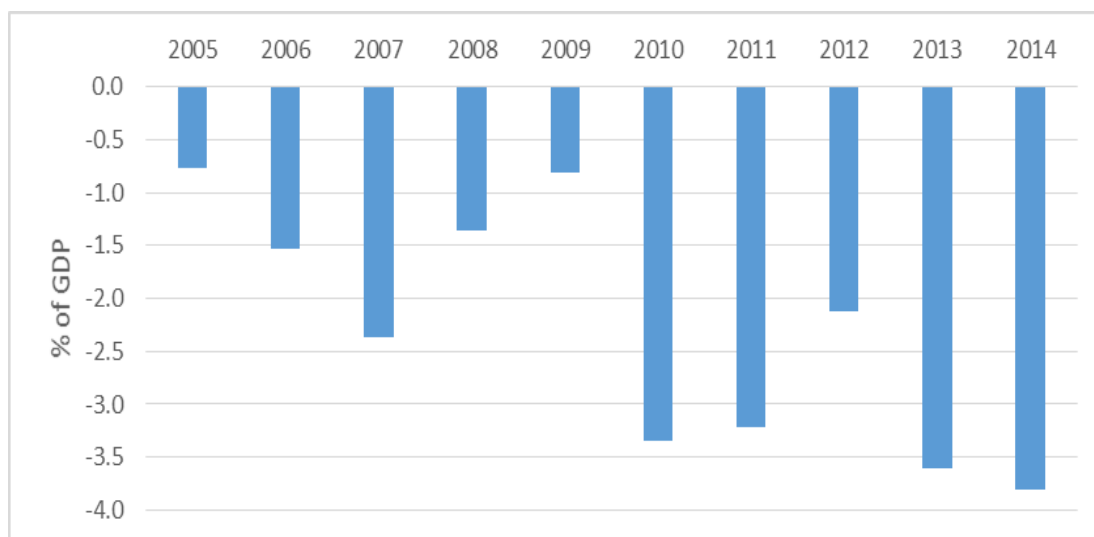
⁴⁴ Clare Manuel and Sandra Thompson (2015) Ghana BEEP: Commercial Justice and Contract Enforcement Component (Internal DFID document).

- (1) Improvement in the banking environment that would be observed by an increase in bank lending and a reduction in the interest rate spread, with a growing ability to enforce insolvency reducing the risk of lending.
- (2) Increased efficiency of the private sector, as greater confidence in contract enforcement allows firms to work with a much wider range of partners, going beyond previously trusted networks and resulting in increases in firm size and overall productivity.
- (3) Increased foreign direct investment (FDI) as overall confidence in rule of law increases, which is known to be a key determinant.

3.6 In addition the overarching goal of the project was working towards poverty alleviation, in line with GoU’s poverty reduction strategies. Taking each of these four issues in turn, we assess the extent to which economic goals were achieved by 2004/5 and sustained in the decade after DFID’s programme ended.

3.7 The economic context within which the development and growth of the Commercial Court occurred was a period when the overall macroeconomic environment had been relatively stable and supportive of investment and growth. Until 2010 the government limited its borrowing, with its deficit averaging just 1.4% of GDP between 2005 and 2009, allowing the private sector substantial room to borrow (see figure 3.2). But in 2010 government more than doubled its rate of borrowing and then maintained this higher rate making it slightly harder for the private sector to borrow.

Figure 3.2 Government deficit as % of GDP



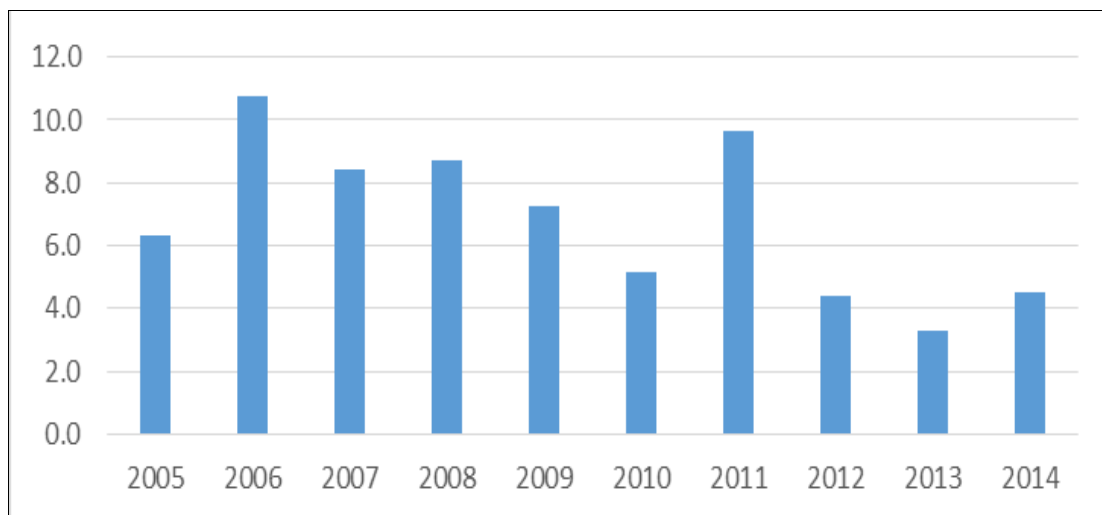
Source: WB Development Indicators to 2012; IMF Country Report 2015 for 2013 and 2014.

3.8 Overall GDP growth rate has been high since 2005 (see figure 3.3). But it has slowed over this time. In addition, as DFID’s recent Inclusive Growth Diagnostic for Uganda report for DFID notes⁴⁵ growth in part was driven by rapid population growth and post conflict recovery (first in Northern Uganda and then in South Sudan). There has been much less

⁴⁵ DFID (2015) *Uganda Inclusive Growth Diagnostic (external version)* p23.

structural transformation of the economy compared to other countries in the region. In part this may reflect adverse developments in the broader context such as the increase in perceptions of corruption.

Figure 3.3 GDP growth (annual %)



Source: WB Development Indicators to 2012; IMF Country Report 2015 for 2013 and 2014.

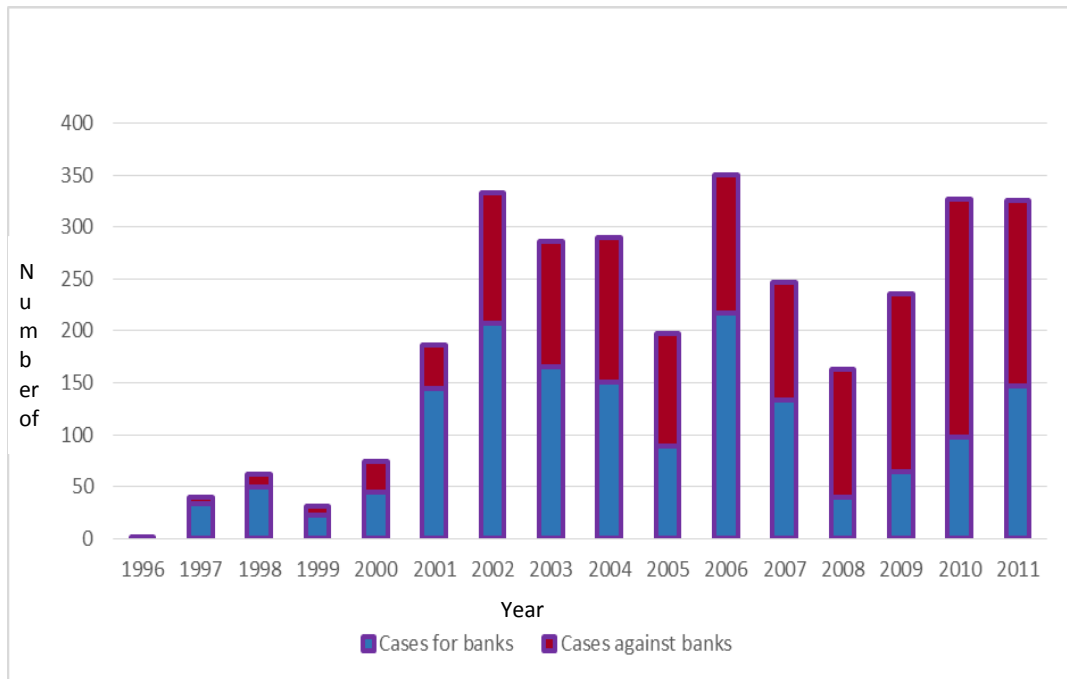
(1) Impact of the Commercial Court on the banking environment

Commercial banks' use of the Commercial Court

3.9 Banks rapidly increased their use of the Commercial Court during the initial DFID project period. The DFID project review in 2005 noted that domestic and international banks were enthusiastic users and banks have continued to make significant use of the Commercial Court since then.⁴⁶ One notable feature that emerges from the detailed case analysis is that banks' customers also initiate cases which could suggest that both parties regard the Commercial Court as a neutral institution.

⁴⁶ Data source: Commercial Court CCAS data file. As some cases are missing for 2012-2014 these years have not been included. Further research is underway to include the missing cases.

Figure 3.4 Cases involving commercial banks

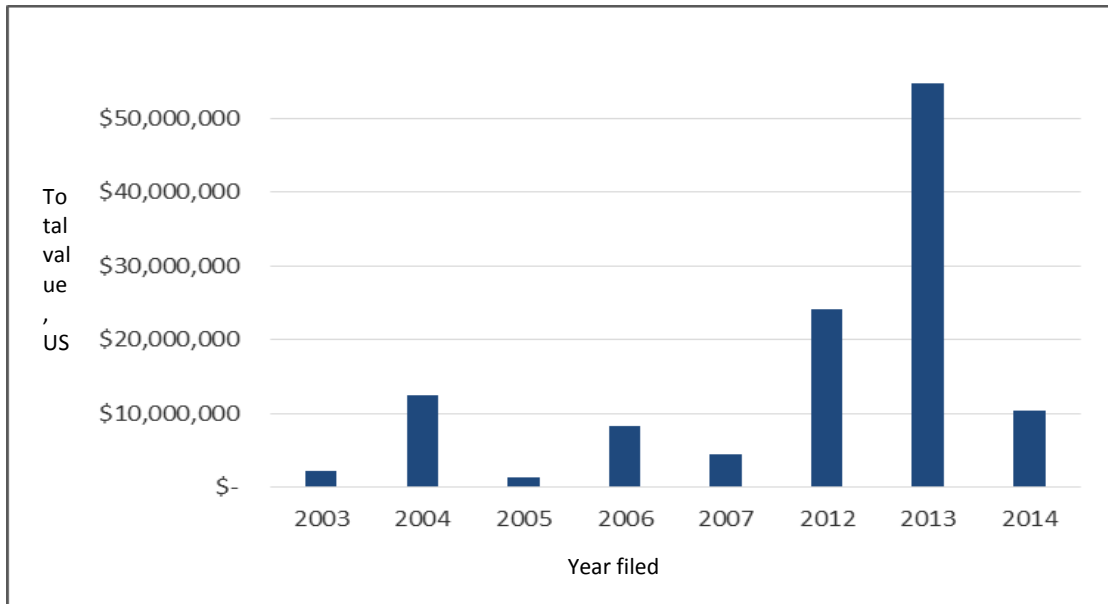


Source: Commercial Court Annual reports 2011-2014 for 2004-2014 data; prior data from Commercial Court’s case database, CCAS unless otherwise stated.

3.10 Over this period there was also a marked increase in the value of cases involving banks. The annual amount rose from an average of US\$5 million pa in 2003-2005 to an average of US\$30 million pa in 2012-2014.⁴⁷ The average value of each case also rose from US\$20,000 to US\$75,000 over the same period.

⁴⁷ Data source: Commercial Court CCAS data file. As some cases are missing for 2012-2014 the figures for the values in 2012-2014 are likely to understate the increase. Further research is underway to include the missing cases.

Figure 3.5 Total value of bank cases (US\$, some missing data for 2012-14 so will understate values)



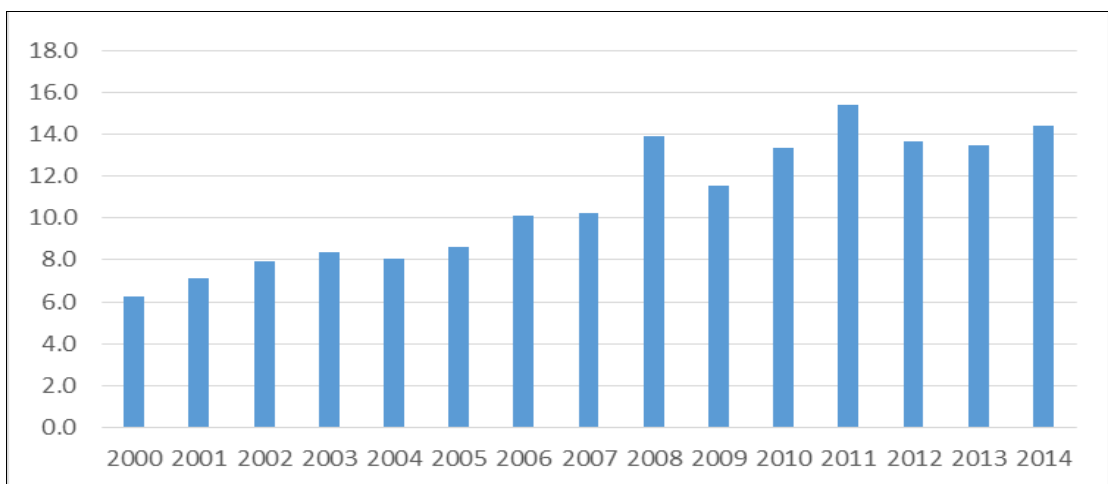
Source: Commercial Court's case database, CCAS.

3.11 The value of the Commercial Court to the banking sector however is not just measured by the number of cases. Once all parties know that the Commercial Court is operating effectively and predictably disputes are less likely to reach the courts. There is no incentive for example to take a case to court as way of delaying resolution of a bad debt.

Impact on commercial bank lending

3.12 Bank lending to the private sector did increase considerably over this period, nearly doubling as % of GDP between 2005 and 2011 (see figure 3.6 below). The slowdown in this growth rate – and the slight reduction as % of GDP - is likely to be associated with the 1.7% of GDP increase in government borrowing that started in 2010.

Figure 3.6 Domestic credit to the private sector % of GDP



Source: World Bank Development Indicators

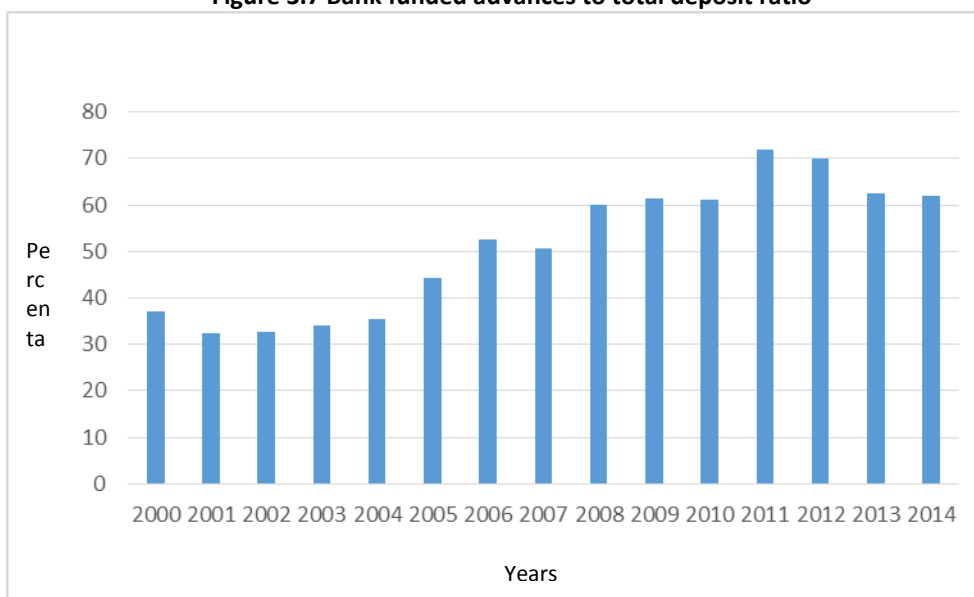
<http://data.worldbank.org/indicator/FS.AST.PRVT.GD.ZS/countries>

- 3.13 Although the Commercial Court is unlikely to have been the only reason for this rapid increase, such a marked shift it is consistent with the banks being willing to increase lending to the private sector in the confidence that bad debts will be more easily recoverable.
- 3.14 Another key indicator is the increase in bank-funded advances to total deposit ratio (see figure 3.7 below). When banks regard the private sector as too risky to lend to, this ratio is low as banks prefer to invest their deposits in government bonds. Soon after the Commercial Court started to operate effectively this ratio jumped from 30% to 60% over a space of just a few years and has remained at these higher levels ever since. A similar shift was observed in Lesotho which was also credited to the introduction of a commercial court there.⁴⁸ The slight decline in the ratio after 2011 is again consistent with the marked increase in government borrowing that crowded out private sector lending.⁴⁹

⁴⁸ Millennium Challenge Corporation *Reforming Civil Courts to Enhance the Business Environment in Lesotho* (Accessed at: <https://www.mcc.gov/pages/docs/story/story-kin-apr-2015-enhance-business-environment-lesotho>)

⁴⁹ The Government of Uganda's deficit was relatively low in the period 2000-2012, below 3% of GDP in most years.

Figure 3.7 Bank funded advances to total deposit ratio



Source: Bank of Uganda, *Financial Soundness Indicators*, http://www.bou.or.ug/bou/rates_statistics/statistics.html

- 3.15 The World Bank Enterprise Surveys in both 2006 and 2013 note that the proportion of Uganda firms reporting access to financing as the main obstacle to growth is half that of their counterparts in low income countries and in Sub Sahara Africa. While this could be a result of the improvement of the operation in the Commercial Court and the increase in private sector credit it is much more likely to reflect the fact that access to electricity has been a long standing concern for Ugandan firms. In the more detailed 2006 Survey the proportion of firms citing access to finance as being a major constraint was the same for Uganda as in other countries.
- 3.16 The interview with one innovative bank revealed that the Commercial Court had enabled the bank to lend against non-land assets. In the past the bank’s lending had been limited to borrowers that could offer registered land as security. But the Commercial Court has enabled greater ‘flexibility of transactions’ so lending can now be based on leasing of assets and cash flow security. In 1998 the High Court refused to uphold a leasing based loan made by the bank. When the Commercial Court was established and judges with greater commercial expertise were involved, subsequent leasing cases were upheld. As a result the bank was able to proceed with confidence in offering these new types of instruments to reach entrepreneurs without land security. This is likely to have disproportionately benefited previously excluded groups such as women. One measure of this change can be seen in the latest National Small Business Survey of Uganda.⁵⁰ While access to finance/lack of collateral

⁵⁰ National Small Business Survey of Uganda March 2015 funded by Financial Sector Deepening Africa and Uganda and prepared by Nathan Associates.

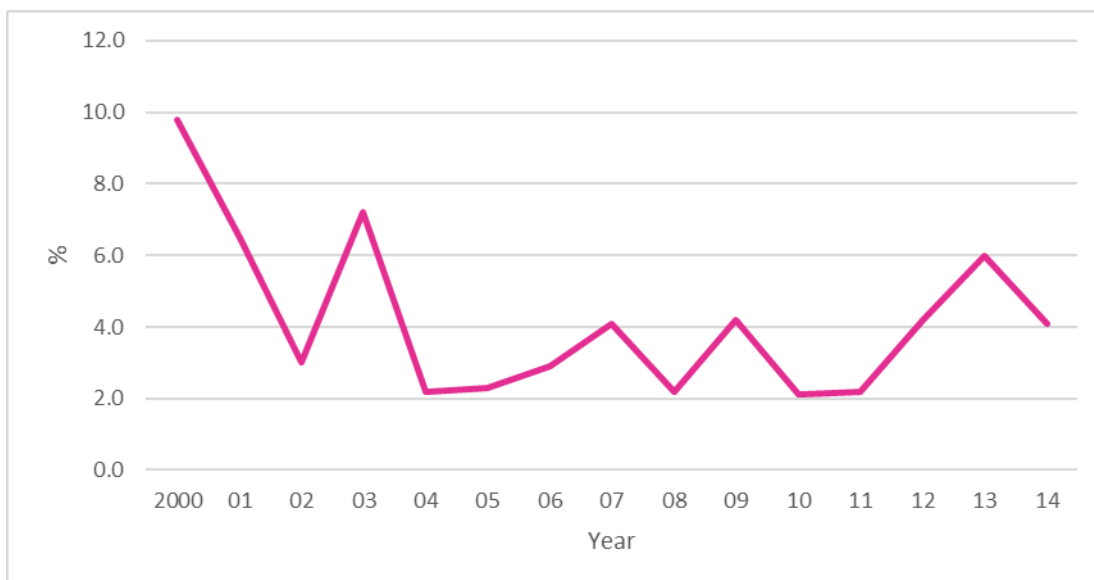
is still the most critical obstacle for small businesses the majority of loans are now secured on the basis of non-land assets.⁵¹

Impact on non-performing loans (NPLs)

3.17 Non-performing loans are those that have fallen behind on debt service payments. The notable reduction in the percentage of non-performing loans as a percentage of all loans is highly significant as it frees up bank capital for additional lending.

3.18 The fall in NPLs could occur through two routes: a fall in the number of bad debtors and/or an increase in the speed with which bad debts are resolved. Both of these changes are likely to have been influenced by the improved operation of the Commercial Court. Debtors are more likely to pay if they know enforcement through the courts is more effective. Creditors are also more likely to pursue debtors if the Commercial Court operates more quickly, as this reduces the costs of litigation. Officials from one bank interviewed as part of this research suggested these delays had fallen from an average of around three years to 18 months. By contrast other sections of the court system continue to witness significant delays, with the same bank reporting on a recently completed case that had taken 20 years to complete in another part of the court system.⁵²

Figure 3.8 Non performing loans to total gross loans %



Source: Bank of Uganda, *Financial Soundness Indicators*, http://www.bou.or.ug/bou/rates_statistics/statistics.html

3.19 While the Commercial Court is likely to have helped reduce the level of NPLs it is unlikely to have been the only influence. The reduction could also reflect the impact of efforts by the Non-Performing Asset Recovery Trust in the late 1990s to reduce unacceptably high levels of NPL in Uganda’s largest bank, the Uganda Commercial Bank. The change could have also resulted from the way NPLs are treated in bank accounts. During the 1990s there was a run

⁵¹ Ibid Table 21 shows land accounted for 39% of all loans (and 48% of all secured loans).

⁵² Interview with bank official, May 2015.

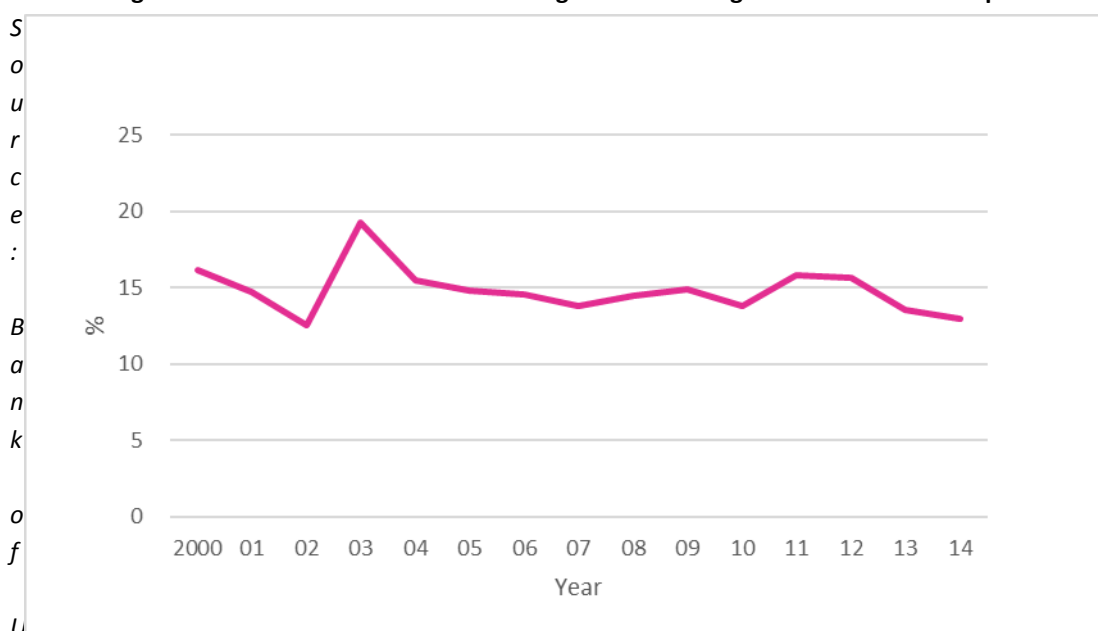
of bank failures due to NPAs. Such failures have not recurred. Uganda has introduced a range of financial reforms over the past 15 years. Further research would be needed to assess the precise impact of the Commercial Court.

3.20 One surprising feature of the Commercial Court operation is the very small number of bankruptcy cases – typically less than ten cases a year. This suggests that banks have been able to recover their bad debts without making the debtor bankrupt. This would be consistent with many of the bad debts being owed by relatively rich individuals or corporations who could afford to pay but before the creation of the Commercial Court were unwilling to do so.⁵³

Impact on interest rate spread

3.21 One avenue of expected impact as noted in the original DFID project related to the difference between the interest rate on loans and deposits. As the cost of banking went down with a reduction in non-performing loans, this difference – the interest rate spread - would normally be expected to fall and customers would benefit from some combination of an increase in the savings rate and a reduction in the borrowing rate. But as figure 3.9 below shows, no discernible change has since been noted.⁵⁴

Figure 3.9 Difference between borrowing rate and savings rate – interest rate spread



ganda, *Financial Soundness Indicators*, http://www.bou.or.ug/bou/rates_statistics/statistics.html

3.22 In the long term, and in a contested market, such ‘super profits’ would eventually attract new entrants and drive profits down. A lack of change in the interest rate spread in Uganda, despite the presence of a large number of banks in the market, suggests the sector is either operating inefficiently or that the improvement in the operation of the Commercial Court

⁵³ INSOL International has recognised the work of the Uganda Commercial Court in facilitating insolvency workouts that have led to innovative restructuring of NPLs.

⁵⁴ Financial Stability Department, Bank of Uganda.

has had a negligible impact on banks' costs. This trend could be indicative of a lack of competition, with a reduction of costs resulting only in an increase in bank profit.⁵⁵

(2) Impact of the Commercial Court on the private sector

Contract enforcement

- 3.23 Both the original DFID project document and IFC Doing Business methodology highlight the importance of contract enforcement for growth of the private sector. CCMA Stuart Forster's assessment in 2006⁵⁶ noted that the increase in cases at the Commercial Court was due to people and firms taking action on breached contracts that would previously have been written off as bad debts. The number of cases is not the sole benefit. As IFC report notes where there is judicial predictability and precedents are established, this gives the private sector greater confidence to enter into contracts.⁵⁷
- 3.24 DFID's project completion documents in 2005 and Stuart Forster's analysis in 2006 drew on IFC figures that showed with regard to time for contract enforcement that Uganda had improved since 2000 and was now the best in the Africa region. In 2004 it took only 99 days to enforce a contract compared to 127 in Tanzania, 255 in Kenya and 372 in Sub-Saharan Africa.⁵⁸ IFC's Doing Business publication in 2006 rated Uganda as the 7th most efficient country in the world for contract enforcement, with only 15 procedures needed. However since then the increase in the threshold for the Commercial Court (now standing at Ushs 50 million – see paragraph 2.5) means the IFC now track contract enforcement in the much slower magistrates' court. This data shows no improvement since data started to be gathered in 2004, with Uganda performing less well relative to neighbours.

Impact on private sector more broadly

- 3.25 Research in other countries suggest that overall performance of rule of law facilitates the transformation of small firms to grow into much larger firms with an associated increase in overall productivity. Evidence from sub national studies in Mexico and India⁵⁹ suggests this can have a large effect. Evidence from Mexico suggests that improving from the worst and to the best quality would increase GDP by 8%. And both papers suggest that going from average to best quality would lead to an increase of a 'few percentage of GDP'.
- 3.26 Unfortunately this study was unable to find data in Uganda on the change in the size of firms. This is not covered by the World Bank's Enterprise Survey. Given the potential important of this issue a further a more detailed private sector user survey would be useful. Such survey would also need to consider the broader environment for the private sector. The perceived deterioration in broader governance issues means that smaller firms that are

⁵⁵ International Monetary Fund/World Bank (2012) *Financial Sector Assessment Programme Update: Uganda* p6.

⁵⁶ Stuart Forster 2006.

⁵⁷ World Bank/IFC (August 2004) *Competing on the Global Economy: An Investment Climate Assessment for Uganda* p38, cited by Stuart Foster.

⁵⁸ PCR report p7.

⁵⁹ Sean Dougherty (2013) *Legal reform contract enforcement and firm size in Mexico*; Reshad Ahsan (2011) *Input tariffs, speed of contract enforcement and the productivity of firms in India*.

less well connected may be finding it harder to access public sector contracts and services and hence find it harder to grow.

3.27 The World Bank's Enterprise Survey in 2006 did however note that the proportion of Ugandan firms citing the legal system as being a major constraint were half that of their counterparts in Africa and low income countries. Unfortunately the 2013 survey was less detailed and did not repeat this question.

3.28 In addition interviews conducted for this study noted two further avenues of impact which it might be useful to investigate further. First one firm stressed how the much faster turnaround of cases in the Commercial Court had enabled the firm to protect its trademark. Such protection is a key issue for firms as they seek to grow and expand their market beyond a limited geographical area where there are already well known. This was an avenue also identified in Stuart Forster's report in 2006.⁶⁰ Second the current Head of the Commercial Court also noted a decline in the use of clauses in contracts requiring compliance with the UK courts. This process was previously very expensive for local companies and the decline makes it easier for Ugandan companies to compete.

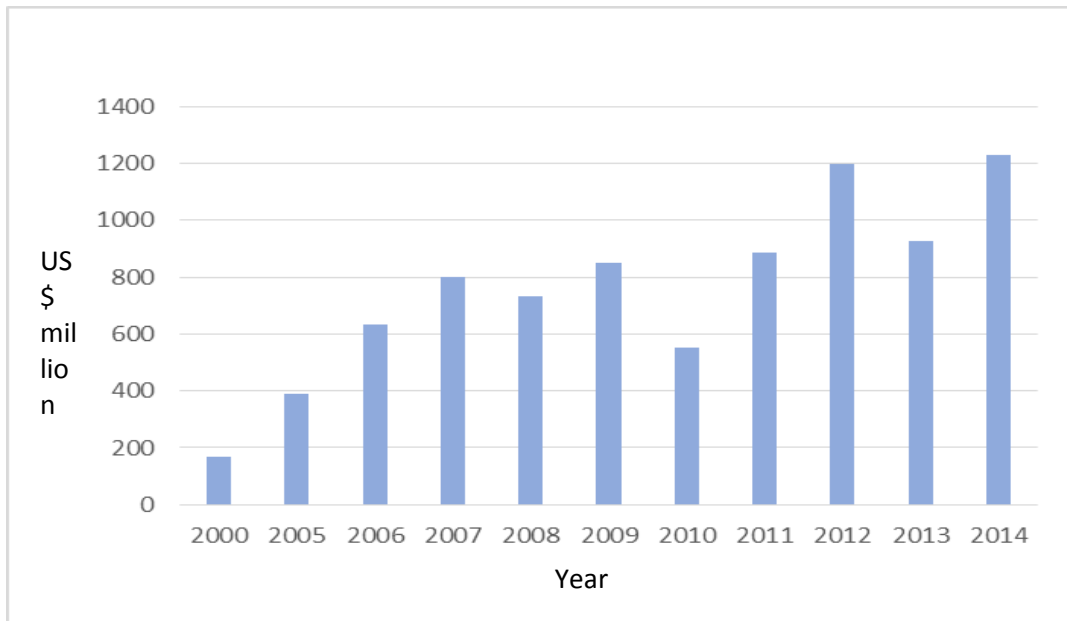
(3) Impact of the Commercial Court on foreign direct investment

3.29 Foreign Direct Investment (FDI) into Uganda has tripled since 2005. Uganda has risen to become a top FDI destination among East African Community countries, with a particular surge driven by demand for oil sector investments since 2012. It is likely that the Commercial Court fed into this growth of FDI. Interviewees as part of this study noted that one of the first questions foreign investors ask local bankers relates to how long it takes to resolve cases in court. As early as 2004, the Executive Director of the Ugandan Investment Authority noted that *The operations of the Commercial Court have had a positive effect on commerce and promotion of business and investment prospects and have made our work of promoting Uganda as an investment destination easier.*⁶¹

⁶⁰ Stuart Forster 2006, Box 1, The Flip-flop wars: Umoja v Omoja.

⁶¹ Project Completion Report p7.

Figure 3.10 FDI, net inflows, US\$ million
pa



Source: World Bank Development Indicators for 2012; IMF Country Report 2015 for 2013 and 2014.

(4) Impact of the Commercial Court on poverty

- 3.30 Poverty reduction goals were important drivers of reform for both the GoU executive and international donors and many of those interviewed cited the GoU's Poverty Eradication Action Plan (PEAP) as a central driver behind efforts to introduce a specialised Commercial Court. As the DFID project memorandum, the EU evaluation⁶² and the PEAP itself made clear it was always envisaged that the impact of the Commercial Court would be on growth and that it would be this increase in growth that would then impact on poverty. And while it is not possible to make any direct attribution poverty has fallen during the life of the Commercial Court.
- 3.31 In addition the evidence that the Commercial Court enabled lending against non-land assets is likely to have allowed for a broader access to credit, which has been one of the primary constraints for MSMEs. With women owning disproportionately low levels of registered land, the opening up of other means to gain credit may have been particularly positive for female traders and businesswomen. This change may also be the reason for the surprising result in the Finscope 2013 survey on the constraints to borrowing that found no difference between men and women with regard to ability to offer security for loans.⁶³
- 3.32 The introduction of a small claims procedure in the magistrates' courts was always expected to have a more direct impact on poverty, not least by facilitating access to justice for the poor. This was an unfulfilled aspiration of the broader programme, but has since been piloted and is now being rolled out at the magistrates courts. The 2004 user survey commissioned as part of CJRP noted no change in informal sector perceptions of Commercial Court user satisfaction, arguably reflecting a lack of programme focus on geographical roll out, and limited engagement with the lower courts, where many commercial disputes are heard.⁶⁴

Impact of the Commercial Court on other courts and institutions

Other courts – in Uganda and internationally

- 3.33 Feedback from Commercial Court User Committee members and Commercial Court annual reports suggest the Commercial Court continues to be identified as a model for the rest of the court system. Initially the Commercial Court helped to act as a model for other newly created, specialised divisions of the High Court, such as the Land and Anti-corruption divisions. Best practice has also been disseminated to other parts of the commercial justice system, particularly in relation to the roll out of mandatory mediation and more recently small claims procedures.

⁶² EU Final Evaluation p8.

⁶³ Finscope Uganda 2013 Survey Report findings "Unblocking barriers to financial inclusion" Section 6.7, Table 17, page 43.

⁶⁴ Report of the DFID output to purpose review for the year 2003-2004 p16.

3.34 The modelling of best practice for the domestic system has been mirrored at the international level. Uganda has been visited by delegations from many countries in the region seeking to learn from Uganda’s experience, including officials from Zambia, Malawi, Ghana, Lesotho and Rwanda.⁶⁵ Shared learning has continued up to the present; in 2014, for example, the Commercial Court developed and disseminated papers on the Ugandan experience for officials in Liberia and Tanzania.⁶⁶ Assessing the extent to which Uganda’s experience inspired reforms across the rest of the continent is beyond the scope of this study but anecdotal evidence suggests Uganda’s experience has been helpful in providing a tangible example of reform for other countries undergoing a similar process of court specialisation.

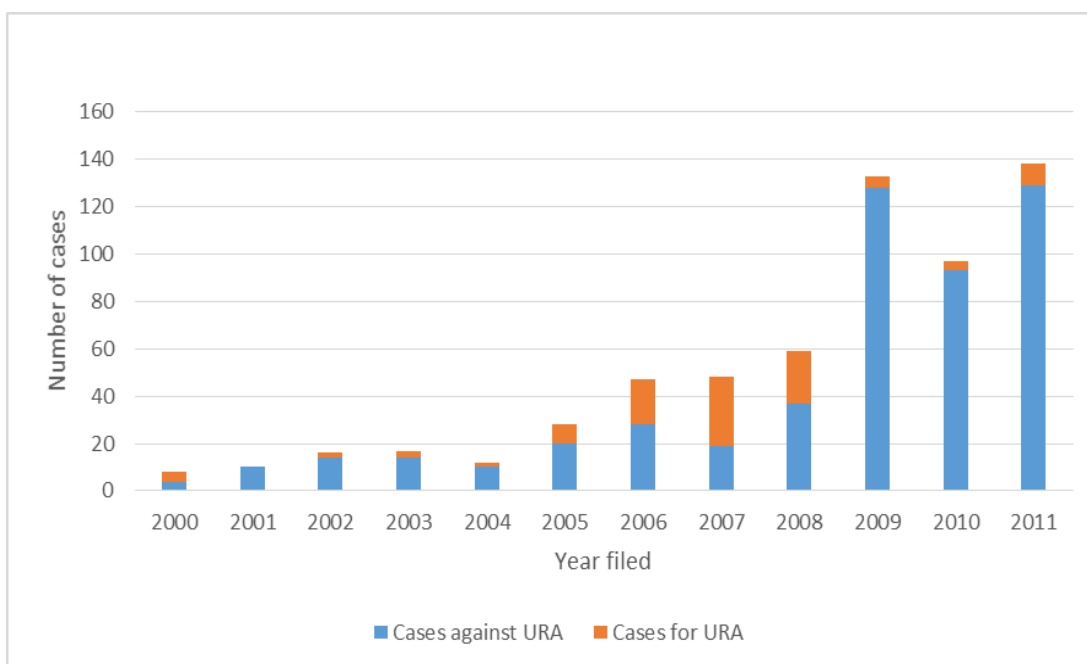
Uganda Revenue Authority

3.35 The new analysis of the cases handled by the Commercial Court undertaken for this study has revealed the extent to which the Court has been used by the Ugandan Revenue Authority (URA). The URA appears as both plaintiff and defendant which suggests that the Court is regarded as a neutral institution by both the URA and taxpayers. Indeed the largest case in the database is between MTN and URA.

Figure 3.11 Number of cases involving URA

⁶⁵ JLOS SIP I Mid-Term Review 2004 p45.

⁶⁶ Ugandan Commercial Court, (2014) *Commercial Court 2014 Annual Report* p26.



Source: Commercial Court Annual reports 2011-2014, and Commercial Court's case database, CCAS.

Value for money

- 3.36 Over the past 20 years a wide range of studies have attempted to explore the likely impact of rule of law reform on economic growth, but the quality of this research has been found to be weak⁶⁷. LASER is supporting the development of an evidence base exploring the correlation between investment climate reform (of which commercial court reform is one example) and growth.
- 3.37 To feed into this work, the research team wanted to explore whether it was possible to assess VFM in the context of the CJRP, through analysis of input costs compared to the benefits captured through higher economic growth. Analysis of this kind is inherently problematic when the true impact of the Commercial Court on economic growth is so difficult to disentangle from the other variables that may have an impact. In addition unfortunately neither government budget data nor donor records distinguish spending on the Commercial Court from spending on other divisions of the High Court. Despite these challenges, two clear pointers do emerge on the VFM case.
- 3.38 First it is clear that that the success of DFID's contribution⁶⁸ to Commercial Court development was key to leveraging in EU funding of a further €1,950,000 for the subsequent commercial court build, delivered through a financing agreement with the GoU. The success of both these projects also seems likely to have encouraged the funding of the larger multi donor support for the whole Justice and Law and Order sector.

⁶⁷ LASER Evidence Report.

⁶⁸ DFID's CJRP project completion report quotes a budget of £1,170,000 and actual spend of £946,430 (p2).

3.39 Second, while detailed budget data is not available, it is possible to put an upper estimate of total spend on the Commercial Court at US \$1 million pa including both government and donor spend over the last fifteen years.⁶⁹ If the Commercial Court were responsible for just 1% of the US\$2.5bn pa increase in private sector lending and 1% of the US\$1bn pa increase in foreign direct investment this would have covered the whole costs of the Commercial Court thirty times over. If further research could confirm that the increase in lending without land security was entirely due to the Commercial Court, and quantify how much such lending has increased, an exceptionally strong value for money case might be revealed.

Conclusion

3.40 Ten years on, it is clear that DFID support to the Commercial Court has had a sustained impact. There has been a doubling of the proportion of bank assets lent to the private sector and strong anecdotal evidence that at a minimum the Commercial Court was one of the key driving factors in this. DFID's relatively modest investment in the Commercial Court appears to have delivered excellent value for money. The next chapter focuses on the nature of this support and on how this project achieved such a sustained and significant impact.

⁶⁹ E.g. donor spend during the CJRP period was around US\$2.8 million over four years (i.e. \$700,000 pa). Salary costs of three judges @ maximum of Ushs 10 million per month = US\$ 110,000 pa. Costs of support staff are likely to have been significantly less than \$200,000 pa. While number of judges and support staff has increased since then donor support is now zero.

4. The role of donors: an early example of *doing development differently*?

Summary

Donor (particularly DFID) support to the Commercial Court can be seen as an early example of what has now become known as ‘doing development differently’. The approach that was adopted started with a locally identified problem; was locally (rather than donor) led, context specific and politically informed; and was designed and implemented in a highly flexible and adaptive way.

Introduction

- 4.1 Uganda’s Commercial Court is a relatively small institution, but its successes are of note. As discussed in chapter three, they have been sustained over a fifteen year period and there is emerging evidence that they have had a demonstrable economic impact. While other aspects of the GoU’s DFID supported Commercial Justice Reform Programme proved problematic and seem to have achieved little,⁷⁰ the Commercial Court stands out as a real success story. The success is also in contrast with attempts at wider institutional reform in Uganda – for example in relation to tackling corruption.⁷¹
- 4.2 This story is also potentially of wider interest: there is emerging consensus that institutional reform in general, and reform of justice sector institutions in particular has proved deeply problematic.⁷² The recent UK Independent Commission for Aid Impact’s report on DFID’s security and justice work⁷³ highlighted DFID’s difficulties in supporting institutional reform in the sector. As noted in chapter three, design work undertaken by LDP for DFID’s Ghana Business Enabling Environment Programme⁷⁴ reviews how a similar investment by Danida in Ghana’s Commercial Court failed to deliver sustainable reform.
- 4.3 The growing consensus is that there are limits to an ‘institution centred’ starting point for reform⁷⁵ and that an approach that starts with *problems that local people care about*⁷⁶ is more likely to succeed. Related thinking is the need to avoid *isomorphic mimicry* - where

⁷⁰ DFID (2005) *CJRP Project Completion Report*, p7.

⁷¹ Despite having one of the most robust anti-corruption institutional frameworks in the world, the form has not delivered function, and Uganda is a poor performer in Transparency International’s corruption perception index. See Andrews, M. (2013) *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions*.

⁷² See for example: Carothers, T. (2003) *Promoting the rule of law abroad: The problem of knowledge*. Working paper no 34, Carnegie Endowment; Faundez, J (2001) *Legal reform in developing and transition countries: making haste slowly*. In RV Van Puymbroeck (ed) *Comprehensive Legal and Judicial Development*, Washington DC. World Bank p 369-396; Desai, D., Isser, d. & Woolcock, M. (2012) *Justice Reform in Fragile and conflict-Affected States: Lessons for Enhancing the Capacity of Development Agencies*. *Hague Journal on the Rule of Law*. 4(1).

⁷³ Independent Commission for Aid Impact (2015) *Review of UK Development Assistance for Security and Justice*, Report no 42.

⁷⁴ Clare Manuel and Sandra Thompson (2015) *Ghana BEEP: Commercial Justice and Contract Enforcement Component* (Internal DFID document).

⁷⁵ Andrews, M. (2013) *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions*

⁷⁶ Booth and Unsworth (2014) *Politically smart, locally led development*, ODI discussion paper; Booth, D (2014) *Aiding Institutional Reform in Developing Countries: Lessons from the Philippines on what works, what doesn’t and why*.

donor-driven best practice solutions deliver the form, but not the reality of change. Uganda's anti-corruption institutional framework has been cited as a seminal example of the dangers of donor-driven solutions.⁷⁷ New thinking about approaches that are more likely to succeed includes: *starting with locally identified problems, rather than with attempting to reform institutions; being locally (rather than donor) led, context specific and politically informed; and undertaking programming that is designed and implemented in a highly flexible and adaptive way.*⁷⁸ This new thinking has been summarised as *doing development differently.*⁷⁹

4.4 While this kind of thinking is hailed as 'new' – it is striking that many of the element of it are apparent in the way donors (and particularly DFID-U through its support to the CJRP) approached support to the Commercial Court. This chapter outlines three of the most striking aspects:

- Addressing a locally identified problem;
- Being locally (rather than donor) led; and
- Maintaining a high degree of flexibility in implementation and funding.

Addressing a small locally identified problem

4.5 Commercial justice had been identified locally as a problem for some time.⁸⁰ The reform programme was a GoU reform programme and not a donor project. The design process deliberately took a year to ensure it was locally driven. The process (during 1999 and 2000) was supported by an external embedded adviser in the Ministry of Justice who was able to support local players to translate the desire for reform into a fundable programme. But leadership clearly lay with local players: the MoFPED; the Ministry of Justice and the Judiciary, with whom the resident adviser had daily contact. This was not a case of a donor achieving 'buy in', rather it was 'going with the grain' – working with a growing and powerful coalition for change: initially the President; the powerful banking lobby; the Ministry of Justice and MoFPED. The need for improved commercial dispute resolution mechanisms was a problem from powerful users' perspective, but it was also one that the Judiciary in particular and the Government more generally had become increasingly engaged with.

4.6 While the approach to addressing this problem centred on an institution – the Commercial Court – this was a solution that had already been adopted locally. As is described below, within this framework 'solutions' to improve the Court's functionality were developed with local people, rather than being imposed from outside. By comparison donors might well have prioritised other problems – e.g. lack of access to justice for the poor – or seen the problem more broadly – e.g. reform of the whole Judiciary. In this case by starting with small

⁷⁷ See Andrews, M. (2013) *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions*.

⁷⁸ Manuel, C (2015) *Doing Investment Climate Reform Differently: The What, Why and How* p4. Accessed at: <http://www.laserdev.org/media/1078/synthesis-paper-1-doing-investment-climate-reform-differently-why-what-and-how.pdf> p4 Manuel, C (2015) *Investment Climate Reform: Doing it Differently*, Legal Assistance for Economic Reform

⁷⁹ <http://www.odi.org/doing-development-differently-0>

⁸⁰ E.g. Levenson and Platt reports in 1994-1996.

local limited problem, it was possible for a handful of individuals to drive the reform. The success of this reform then made it easier for the same group to drive forward reform in others courts.

Being locally (rather than donor) led

Strong local leadership

- 4.7 Overall, strong Ugandan leadership was the key reason for the Commercial Court's success. Former Solicitor General, Peter Kabatsi and Justice Odoki were key to pushing the original prioritisation of commercial justice through JLOS. Later, Commercial Court heads Justice Ogoola (1999-2004), Justice Egonda Ntende (2004-2006), Justice Stella Arach Amoko (2006-2009) and Justice Kiryabwire (2009-2013) were key to setting the Court's agenda (including a culture of urgency) and driving it forward. Justice Kiryabwire was appointed from the private sector, outside the traditional framework of judicial appointments, and provided a fresh view and direct user experience of channelling cases through the commercial justice system. Justice Ogoola was promoted to the role of Principal Judge for the High Court (2004-2010), and Justice Kiryabwire moved to the Court of Appeal, ensuring strong buy-in and understanding of Commercial Court processes at the centre of the Judiciary. Experience of less successful reform in other East African countries highlights the important role the Ugandan reform champions played in managing potentially complex relations between the Judiciary and the executive.⁸¹

Linking in with on-going, locally owned processes, rather than starting donor-driven processes

- 4.8 The embedding of the initial process of the development and implementation of the CJRP within existing and developing GoU processes was also key. Most important of these was the MoFPED's drive for the development of sector wide approaches and the developing JLOS. CJRP's implementation structures were JLOS's structures: there was no project implementation unit nor parallel implementation arrangements. The Commercial Court User Committee, seen by key private sector observers as vital to the Court's success was a home grown initiative: its membership was local stakeholders, with no donor representation.

The role of external actors was to facilitate rather than drive reform forward

- 4.9 Many interviewees emphasised the important role played by the embedded Commercial Court Management Advisor (CCMA) who worked effectively to build up trust with local counterparts and develop a strong base of contextual knowledge. The CCMA had the right soft skills to facilitate discussion, support the building of common incentives and link up public and private sector partners to identify and solve shared problems. He formed a close partnership with the Head of the Commercial Court which enabled a highly political and adaptive approach to maximise the reform process.

⁸¹ Stuart Forster 2006.

- 4.10 The level of concern expressed by Commercial Court at the CCMA's departure in 2005, and strong praise from the Head of the Commercial Court at the time, reflects the importance of his role. While the role was focused on facilitation, there was also an element of capacity substitution. The Commercial Court was led by Judges, whose key focus is obviously on hearing cases. But change needs management as well as leadership. The CCMA was the only person in the system with the full time job of thinking about pushing change forward, and managing that change.
- 4.11 The CCMA's own assessment⁸² noted that one surprisingly cost-effective intervention was the two study tours to the UK. Study tours in general tend to provide little institutional benefit. But in the Ugandan reform context and with careful planning, the time the Ugandan judges spent shadowing their counterparts in London's commercial court proved decisive in introducing a new culture of urgency into Uganda's Commercial Court. The experience gave the judges the confidence to manage cases much more actively – a culture that still persists today. One of the former heads of the Commercial Court also traces back the development of small claims procedures in magistrates' courts in Uganda to him witnessing such an approach in the UK in 2003.
- 4.12 Another example of the highly valued but clearly supportive role of external actors is the presence of Pepperdine University students working as additional research assistants and support for the court annexed mediation process. A similar supportive role has been played by Overseas Development Institute economists in MoFPED for the last thirty years.

Politically savvy and context specific

- 4.13 Despite the favourable pro-reform signs, the success of the Commercial Court was far from a foregone conclusion. There was profound and high level opposition within powerful elements of the Judiciary to any external influence and moving any division of the High Court into a separate building. This led to the stagnation of the Commercial Court between 1996 and 1999. An additional constraint to successful reform was the continued appointment and control of clerks / administrative staff by the Public Service Commission, rather than the Judiciary.⁸³ In addition neither the Judiciary nor private sector lawyers had a strong commercial culture.
- 4.14 The CRJP was developed and implemented in the context of these challenges – which had to be navigated / addressed / manoeuvred around. For example the Commercial Court's initial backlog clearance project in 2001 recognised the importance of securing a reduction in

⁸² Stuart Forster 2006.

⁸³ The issue of establishing formal judicial control over staffing and budgeting procedures has been under debate since the late 1990s and as of August 2015 remains unresolved. All Court staff are hired through the Public Services Commission rather than Judicial Services Commission, meaning they are subject to broad civil service procedures around employment, dismissal and salary setting. Dismissal is very uncommon, with allegations of corruption or poor performance usually resulting in the transfer of staff. An administration of Justice Bill includes provisions to allow the judiciary to directly oversee staff performance and discipline in the courts. Bill has been stuck in Cabinet since 2013, despite widespread support for the Bill from senior officials within the judiciary and external agencies such as the Ugandan Law Society. It is interesting to reflect that despite the failure to address this issue the Commercial Court has managed to be so successful. A more donor driven project might have insisted on these changes being made as a prior condition of support. This might have been successful. But it also might have led to the support being delayed for years.

judicial caseload before seeking buy-in for reforms in more sensitive areas such as performance monitoring and management. The UK study tours were in the context of a carefully designed change management programme. Training and capacity development also played a part. One of the most striking characteristics evident in the Commercial Court today is the strong and open relationship between court administrative staff, Judges and mediators. CJRP brought significant investment in soft skills training and a customer-centred approach that went beyond the creation of a ‘customer code of conduct’ and into areas addressing substantive aspects of staff behaviour and attitude.

- 4.15 The approach can be contrasted with that taken by other programmes in the same period, where weak consultation or lack of stakeholder buy-in undermined programme delivery. In 1997, for example, a World Bank/Austrian Government programme supported the reform of Uganda’s commercial laws. A failure to properly grapple with the nuances of local context meant that little progress was made in passing the recommended statutory changes, despite the development of 44 pieces of new legislation. Some aspects of the EU’s support to the building of a new Commercial Court have also come under scrutiny. Broader procurement issues were compounded by the failure to consult key stakeholders in the purchase of Court reporting and transcription equipment. This resulted in supplying the Court with a temporary and obsolete analogue court recording system with no transcript component. Likewise the photocopy machines currently used by the Court are not operational because they cannot be served or maintained locally in Uganda.
- 4.16 But perhaps the clearest counter example is provided by Centre for Arbitration Dispute Resolution (CADER). This has been a donor funded and driven initiative for twenty years. It was originally funded by USAID and then was part of the DFID-U commercial justice project with the intention of becoming self-funded. Yet through all this period and subsequently, CADER has remained problematic. The Commercial Court mediation process did draw on CADER expertise originally but was based much more on what could be done under existing rules with administrative reforms. The Commercial Court process has subsequently grown and thrived, but the CADER Board has now not met for some time, and the current head is working on a voluntary unpaid basis.

High degree of flexibility in implementation and funding

- 4.17 The flexibility in DFID-U’s approach to supporting Commercial Court reform was also important. It involved small steps at first: the initial funding for the Commercial Justice Study in 1999 cost just £100,000. The CJRP and DFID’s programme of support to it then developed over a period of a year led by resident adviser in the Ministry of Justice. This ‘slow build’ approach allowed strong local ownership to develop: CJRP was a GoU document and reform programme, not a donor one.
- 4.18 The CCMA was enabled to adopt a highly flexible and responsive approach to implementation, working in close collaboration with local counterparts to test out different areas of support and take forward those that looked to work. The political savvy approach noted above would not have been possible without this flexibility. Donors in effect trusted

the Ugandan reform champions and the CCMA to find the best way to sequence the programme. The logframe set the overall objectives but apart from monthly and annual reports the CCMA was largely left to get on with the programme. The early successes of the programme and the relatively small spend meant DFID could afford to adopt a relatively light touch management role. There were no donor prior conditions, no external pressure for 'quick wins' nor to spend. Initial implementation identified low cost budget neutral reforms to avoid the distraction of major IT or court construction issues. Indeed the Commercial Court's new building came years later in the process (after DFID support ended). The whole DFID project was £1 million over 4 years, of which the majority was spent on the Court. This was in the context of total DFID spend in Uganda over this period of approximately £150 million.

- 4.19 DFID funding for the Commercial Court was fully integrated with Government's own funding which is remitted both from MoFPED to MoJCA and then to the Judiciary. There was then a transparent process for negotiating and revising funding across all commercial justice priorities. This flexibility was key in the early stages when the Commercial Court had to manage shortfalls in donor funding.⁸⁴ DFID's preferred model for its subsequent justice programming relied on large scale upfront procurement based on bids from firms overwhelmingly based in UK, which means that the form of DFID support is 'locked in' up front, and contrasts with this 'slow build' locally developed flexible and integrated approach.

Conclusion

- 4.20 DFID's initial support to the Commercial Court was key to its success: the Court's initial stagnation ended in 2000 when DFID funding, including of the embedded CCMA began. But more important was the way the funding was provided: flexibly, enabling local ownership, with no pressure for 'quick wins' and through a 'slow build' process.
- 4.21 This approach facilitated locally driven reform, which has proved to be sustainable over a fifteen year period. This is in contrast to institutional reform more generally in Uganda and to CADER in particular. An interesting contrast is also emerging with Ghana – where Commercial Court improvements were not sustained following the withdrawal of donor support.
- 4.22 There is no firm evidence or data to enable consideration of the counter-factual - what would have happened if DFID had not provided support. However, the Ghana case provides an alternative scenario on which some speculation can be based. In Ghana, the donor project started with the construction of a new court building and reforms have been less sustainable. While in Uganda, DFID assistance leveraged the support of other donors, DFID's initial provision of technical assistance facilitated the 'slow build' development of the Court, providing change management expertise and embedding a locally owned process, before construction of the Court building. This approach contributed to development of a distinctive culture within the Commercial Court, which in part explains the success and

⁸⁴ Stuart Forster 2006.

sustainability of the reforms. Without DFID's contributions, support from other donors may still have been forthcoming and the Judiciary would still have taken forward the development of the Court. However, in the absence of the approach supported by DFID, the trajectory of the Court may have been more similar to the less successful process in Ghana.

5. Commercial Court challenges and recommendations for future development

Summary

The Commercial Court has broadly maintained performance in the face of a rising case load, but faces the challenge of becoming a victim of its own success. There is scope for the Court to review its use of human resources and to explore the scope for an innovative approach to its budgetary settlement. A stronger focus on change management is recommended. The Court should also maintain and strengthen its role as a 'flagship' for the rest of Uganda's court system.

On-going challenges and the way forward

5.1 The key challenge for the Commercial Court is maintaining performance in the face of its rising case load. The sections below outline recommended responses to this challenge, and also consider the Court's wider role in influencing changes in broader justice delivery

Budget / staffing

5.2 The Commercial Court's budget and staffing levels have not kept pace with the number of cases it now deals with, the increasing size of those cases and therefore the Court's potential impact on the Ugandan economy. There is scope to review staffing structures. For example the Court has identified increased use of research assistance for Judges as a value for money route to improving use of judicial time.⁸⁵ There may be scope for further streamlining of human resources.

5.3 There may also be scope to explore with MoFPED a new, innovative budgetary settlement for the Court, for example one explicitly linked to the value of commercial cases it deals with. It is recommended that further work be undertaken on costing such an initiative, in order to provide a strong value for money case.

Change management

5.4 During 2000-2005 the Commercial Court's focus on change management was maintained through the externally funded CCMA. Reforms introduced during that period have been largely maintained, in some cases improved, and new initiatives introduced (see summary in table 2.1 at the end of chapter two). But the pace of reform has slowed, and there are some clear institutional and operational challenges which have still be addressed (see box 5.1 below). The context for reform has changed since 2000: vocal lobby groups including the Ugandan Law Society now push for reform, and the Judiciary are now seen as key players in justice sector reform through their key role in the leadership of JLOS.

⁸⁵ Commercial Court Division Annual Report 2012.

- 5.5 While the Commercial Court continues to enjoy strong leadership and appetite for reform, there is scope to strengthen the change management function. There may be scope for some technical assistance in this respect.

Box 5.1 Current institutional and operational challenges

- **Caseload allocation:** it appears that cases (particularly ones involving land) are filed in more than one High Court division (e.g. in the Commercial Court and the Land Division). This leads to confusion and inefficient use of court time.
- **Case management:** there is need to revisit historic cases that remain on the books, removing files that have since been resolved. There is also scope to redo the case flow for the court, cutting out waste areas and making the introduction of an e-platform easier. There is also scope for continued improvement of mediation / ADR.
- **Use of technology:** there is strong support among judges for increased use of ICT, with innovations such as video conferencing seen as a potential mechanism for increasing access to commercial justice. Court room technology such as document projectors and real time transcription would increase efficiency. But unreliable electricity supply and the need to rely on expensive back-up generators could make this a risky strategy.
- **Management information:** the current case management system provides the Commercial Court leadership with data on key issues such as backlog, and is actively used as a management tool. But there are gaps and inconsistencies in the data collected, and there is room for a thorough review of what is recorded, and how.
- **Execution of judgments:** the central Execution and Bailiffs Division in the High Court has responsibility for overseeing the enforcement of judgements for a wide range of civil, criminal and commercial cases. The division nominally remains a pilot initiative, after it was agreed to amalgamate the various separate execution teams that operated across the different arms of the High Court. Delays and weaknesses in the enforcement of judgements continues to be a key problem, hindered in part by the physical separation of the Commercial Court and Executions Division and the resultant delays in the physical transfer of files.
- **Judicial specialisation:** a key strength of the Commercial Court lies in its development of a 'culture of its own' including a commercial understanding (See impact on poverty section in chapter 3). There is now scope for a stronger and systematic focus⁸⁶ on the specialist knowledge that the Court will need to develop in emerging priority areas such as complex tax fraud, oil and extractives law.

Influencing change in broader justice delivery

- 5.6 The Commercial Court was originally conceived of as a 'flagship' court, modelling and promoting best practice to other parts of the system.⁸⁷ And the Court has indeed assumed such a role, promoting innovations, such as enhanced use of ADR, across the system including in magistrates courts. But there is scope for the Court (supported by the most senior members of the Judiciary) to be more proactive in this respect, for example in relation to performance management, case management, and 'customer service' ethos. Judges in the Commercial Court expressed a continued interest in supporting the roll out of good practice elsewhere, but realistically are constrained by their rising workloads.

⁸⁶ Some training has already been provided, in some cases donor funded.

⁸⁷ Commercial Justice Reform Programme document, GoU.

- 5.7 The High Court's Land Division in particular is dogged by case backlog and delay. One way forward may be for the Commercial Court to be explicitly 'twinned' with the Land Division and to support it to address the systematic problems it is facing, whilst also indirectly helping the Commercial Court by helping to iron out ambiguities in terms of the jurisdiction between the two divisions. Positioning reform in the context of economic growth may also help to reduce opposition to change in some quarters.

Conclusion

- 5.8 The Commercial Court is currently at a cross roads. With impressive performance maintained over its twenty year life, it is now at the stage where there is a real threat of it beginning to be overwhelmed by its own success. The Court's history is one of adopting a strategic approach to challenges, undertaking innovative approaches, and managing change effectively. A significant success factor in DFID's support was the role the CCMA played in facilitating the Court's strategic thinking and pursuing management of change processes. In the current environment, the Court does not lack champions to advocate. However, to achieve the necessary momentum and build coalitions of support, the Court requires someone with the time and skills to develop and apply a strategic approach to the current challenges. The Court would now benefit from careful consideration of the current challenges it faces, developing a strategic case for a new budgetary settlement with MoFPED, and looking for deeper reforms to achieve further efficiencies in the way it manages its growing case load.

Appendix

The Commercial Court's largest cases (over Ushs 5 billion) as at 5 September 2015

| Case number | Parties | Claim Description | Value (billion Ushs) | Year Filed | Conclusion |
|------------------------|--|---|----------------------|------------|------------------------------------|
| HCT-00-CC-CS-0230-2011 | MTN (U) Limited VS The Commissioner General URA | Declaration Order, Permanent Injunction, General Damages, Costs | 168,825,000 | 2011 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0328-2012 | Buyanga Multiservices Ltd Vs Henry Mukwaya | Interest, G/damages, & costs | 63,700,000 | 2012 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0236-2007 | The Milton Obote Foundation VS Dr. Faustine Orach Meza & Others | Declaration orders, Injunction, Costs | 40,000,000 | 2007 | Closed - withdrawn |
| HCT-00-CC-CS-0189-2006 | Meera Investments Ltd VS The Attorney General & 2 others | Interest & costs | 36,514,790 | 2006 | Closed - Consent Judgement Entered |
| HCT-00-CC-OS-0012-2005 | Stirling Civil Engineering Ltd VS Uganda Revenue Authority | Payment for construction work done, Costs | 33,925,250 | 2005 | Closed - dismissed |
| HCT-00-CC-CS-0257-2009 | Civil Aviation Authority Vs The Commissioner General URA | Declaration, general damages, costs | 25,647,370 | 2009 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0063-2011 | Standard Chartered Bank U Ltd and 7 others Vs The Commissioner General URA | Declaration costs | 25,000,000 | 2011 | Closed - Judgement delivered |
| HCT-00-CC-CS-0551-2012 | Barclays Bank Of Uganda Ltd VS Pearl Flower Ltd & others | Interest of 27.5%, costs | 22,287,090 | 2012 | Consent order filed |
| HCT-00-CC-CS-0027-2010 | His Royal highness The Kabaka of Buganda Vs The Attorney General of Uganda | Declaration, G/damages interest, costs | 18,794,600 | 2010 | Closed - Consent Judgement Entered |
| HCT-00-CC-CA-0013-2012 | National Water & Sewerage Corporation VS The Commissioner General URA | costs | 17,455,680 | 2012 | Closed - Judgement delivered |

| | | | | | |
|------------------------|--|---|------------|------|------------------------------------|
| HCT-00-CC-CS-0366-2005 | Uganda Telecom Limited Vs Attorney General | G/damages, Interest & costs | 16,093,090 | 2005 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0574-2003 | Kenroy Investment Ltd Vs Tom Bamweyane | Loan recovery | 15,400,000 | 2003 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0247-2011 | Cogef Impex Ltd Vs Uganda Revenue Authority | Declaration costs | 15,000,000 | 2011 | Closed - dismissed |
| HCT-00-CC-CS-0408-2007 | Promotion Of Rural Initiatives And Development Ent Vs Attorney General | Order | 14,693,880 | 2007 | Closed - Judgement delivered |
| HCT-00-CC-CS-0479-2009 | Jacobsen Power Plant Co. Ltd Vs Commissioner General URA | Declaratory Orders, Temporary Injunction, General damages, Costs | 14,376,640 | 2009 | Closed - withdrawn |
| HCT-00-CC-CS-1403-2000 | Phenehas Agaba Vs Swift Freight International | Recovery of goods which got lost in transit | 13,581,000 | 2000 | Closed - dismissed |
| HCT-00-CC-CS-0051-2012 | Shell (U) Ltd Vs Uganda Revenue Authority | An order to set aside VAT assessment of Ush 13,093,227,664 and costs. | 13,093,230 | 2012 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0368-2004 | Nsimbe Musa Vs Musa Omara | Costs and interest. | 13,000,000 | 2004 | Closed - withdrawn |
| HCT-00-CC-MC-0026-2009 | R.C. Munyani & Co Adv. Vs Liberty Construction Co. Ltd | Advocate client bill of costs, costs | 11,087,330 | 2009 | Closed - ruling delivered |
| HCT-00-CC-CS-0062-2014 | John Matovu t/a Matovu & Matovu Adv Vs Bob Kasango t/a | Ush 10,418,182,058, Ush 178,877,740, costs | 10,418,180 | 2014 | Closed - Judgement delivered |
| HCT-00-CC-CS-0208-2011 | MTN (U) Limited Vs Uganda Telecom Ltd | Ush 9,327,342,631/=, Interest of Ush 744,897,542/=, Interest at 20.5% and Costs | 9,327,343 | 2011 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0389-2006 | Kampala International University Ltd Vs Steel Rolling Mills (U) Ltd | 8,269,553,502, interest 26% damages, & costs | 8,269,554 | 2006 | Closed - Judgement delivered |
| HCT-00-CC-CS-0221-2012 | Orange Uganda Limited VS The Commissioner Uganda Revenue Authority | Injunction, damages and costs | 8,158,713 | 2012 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0383-2009 | Jamal Muhindo Vs Mahmood Saad | Payment of rent arrears, Interest of principal, Costs, Damages | 7,734,910 | 2009 | Closed - Consent Judgement Entered |
| HCT-00- | Stanbic Bank | Interest, costs | 7,598,090 | 2013 | Default |

| | | | | | |
|------------------------|--|--|-----------|------|------------------------------------|
| CC-CS-0066-2013 | Uganda Ltd Vs Kayemba Jamil | | | | Judgment |
| HCT-00-CC-CS-0049-2010 | MTN Uganda Ltd VS Uganda Telecom Ltd | Interest at 25%, G/damages costs | 7,135,441 | 2010 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0273-2011 | Diamond Trust Bank U Ltd Vs Serwanga Lwanga Moses And 3 Others | Interest, costs | 7,000,000 | 2011 | Default Judgment |
| HCT-00-CC-CS-0124-2011 | Springs International Hotel Ltd Vs Mtn U Ltd | Declaration, an order of permanent injunction, general damages, costs | 6,570,000 | 2011 | Closed - File transferred |
| HCT-00-CC-CS-0225-2012 | US Defence Systems LLC Vs The Commissioner General URA | Ush 6,539,492,000, declaration, Permanent injunction, G/damages, costs | 6,539,492 | 2012 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0051-2013 | Dolomite Engineering Services Ltd Vs Equity Bank (U) Ltd | General damages, interest and costs | 6,200,000 | 2013 | Closed - Judgement delivered |
| HCT-00-CC-CS-0118-2006 | Uganda Development Bank Ltd VS Basajjabalaba Hides & Skins & 4 others | Interest of 12%, G/damages, costs any relief | 6,078,145 | 2006 | Closed - Consent Judgement Entered |
| HCT-00-CC-CS-0409-2004 | Kikungwe Issa & Others Vs Standard Bank Investment Corporation & Others | Declaration, Orders, Costs. | 6,000,000 | 2004 | Closed - withdrawn |
| HCT-00-CC-CS-0264-2010 | Paramount Insurance Co. Ltd Vs Commissioner General Uganda Revenue Authority | Punitive damages , general damage, interest | 6,000,000 | 2010 | Closed - Judgement delivered |
| HCT-00-CC-CS-0590-2012 | Dolomite Engineering Services Ltd Vs Equity Bank (U) Ltd | G/damages, E. E/damages, Interest, costs | 6,000,000 | 2012 | Closed - withdrawn |
| HCT-00-CC-CS-0069-2009 | National Social Security Fund Vs Pota Uganda | Costs, interest | 5,757,214 | 2009 | Default Judgment |
| HCT-00-CC-CS-0404-2009 | Swift Commercial Establishments Ltd Vs Keiyo Investments Ltd | Ush 6,000,000, Costs | 5,600,000 | 2009 | Closed - dismissed |
| HCT-00-CC-CS- | Sure Telcom (U) Ltd Vs The | Plaintiff not liable to pay tax, Permanent | 5,553,634 | 2011 | Consent order filed |

| | | | | | |
|------------------------|--|---|-----------|------|------------------------------------|
| 0229-2011 | Commissioner General Uganda Revenue Authority | injunction, G damages, E damages & Costs. | | | |
| HCT-00-CC-CS-0095-2010 | Barclays Bank Of Uganda Ltd Vs Pius Kasaija and Two Others | Interest, costs | 5,160,372 | 2010 | Closed - under appeal |
| HCT-00-CC-CS-0545-2014 | Joseph Lutalo Bbosa Vs Diamond Trust Bank Ltd & 2 others | Declarations, damages, interest and costs | 5,100,000 | 2014 | Closed - Consent Judgement Entered |



Retrospective study of the
progress, performance and
impact of the Uganda
Commercial Court 1996 - 2015

Annexes

6 November 2015

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Annex A: Terms of Reference

Uganda Commercial Law and Justice Programme 2000-2005: Retrospective Study

Terms of Reference

Background - LASER

1. The Legal Assistance for Economic Reform Programme (LASER) aims to improve the investment climates in developing countries (DCs) by identifying and helping to solve commercial law and justice problems, and by documenting and sharing lessons learnt about doing so.
2. The impact of LASER will be an improved business environment and increased investment in DCs. The intended outcome is that DC governments adopt a more strategic, evidence based approach to Commercial Law and Justice (CLJ) reform and develop, test and implement measures to promote investment and enhance the business environment. LASER will work in multiple countries over three years, with a strong focus on learning lessons in relation to investment climate (IC) reform in fragile and conflict-affected states.
3. In order to achieve the above, LASER will undertake activities to:
 - i. Support the demand-side for country level interventions. Interventions will be demand led, politically informed and context specific. LASER will assist developing country partners to articulate needs and develop initiatives that are genuinely country owned and led.
 - ii. Incentivise the supply-side for CLJ services. Interventions will leverage higher quality international CLJ resources including pro bono technical assistance.
 - iii. Improve information. Development of M&E and lessons learning mechanisms to improve market information, including conducting two rigorous impact evaluations (RIEs).

Scope of work

4. LASER is currently supporting the Justice Law and Order Sector (JLOS) in Uganda in relation to the Judiciary's small claims procedure, including by investigating the potential to undertake a rigorous impact evaluation to provide 'hard' evidence of the impact of the new procedure. LASER is also scoping out the potential for further DFID support to CLJ in Uganda.
5. To support the scoping work, and also contribute to LASER's output iii on improving information and the evidence base on CLJ, LASER will undertake a retrospective study of DFID's previous engagement in CLJ under the Commercial Law and Justice Programme 2000-2005 (CLJP). DFID's engagement with the Uganda Commercial Court was the most successful aspect of the CLJP (scoring a '1' in the programme completion report) and appears to have delivered concrete

results. JLOS's Annual Performance Report 2013/14 reports on-going strong results in terms of case disposal rates.

6. The aim of the retrospective study is to measure, understand and communicate how progress has been made in relation to commercial dispute resolution in Uganda. Donor time-scales are typically short and this is an unusual opportunity to consider the impact of a donor intervention in terms of its sustainability over a ten year period (since the DFID Commercial Law and Justice Programme ended in 2005). In general justice reform programmes are seen as having had limited success. Tom Carothers' 2003 conclusion that *examples of significant, positive sustained impacts [of justice reform] are few* still stands. DFID's Commercial Law and Justice Programme (CLJP) seems to have bucked the trend. The lessons learning exercise will:
 - a) Assess how successful (in terms of impact, sustainability and value for money including return on investment) DFID's Commercial Law and Justice Programme and other donor efforts were in supporting sustained change (10 years +) in commercial dispute resolution (focusing on the Commercial Court);
 - b) To the extent that this support was successful, analyse how and why (particularly in the light of the doing development differently narrative); and
 - c) In the light of the above analysis, consider the current context for potential on-going donor support to commercial law and justice reform in Uganda.

Methodology

7. In relation to a) and b) above, the report will adopt a case study methodology (see ODI and Princeton University's approach to case studies <http://www.developmentprogress.org/> and <http://successfulsocieties.princeton.edu/>). It will:
 - Plot the history of the commercial court from 1999 to date showing key interventions (including nature and level of support from donors including DFID, Danida and the EU);
 - Consider the situation before 2000, the situation after the change and how change came about; and
 - Consider the extent to which any change can be attributable to DFID's (and other donor) support.
8. The analysis will be undertaken in the light of latest thinking on institutional reform – including the efficacy of problem driven, iterative, politically informed and locally owned processes⁸⁸ and will consider the extent to which DFID's intervention was an early example of such an approach.

⁸⁸ See for example: Andrews, M. (2013) *The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions*. Cambridge: Cambridge University Press; Andrews, M. et al (2012) 'Escaping Capability Traps through Problem-Driven Iterative adaption'. London. *Center for Global Development*. Working Paper 299 June 2012.; Booth and Unsworth 2014 Politically smart, locally led development. *ODI discussion paper*. London: ODI; Booth D (2012) 'Development as a Collective Action Problems: Addressing the Real Challenges of African Governance'. *Synthesis report of the African Power and Politics Programme*. London: ODI; Pritchett, L. et al (2012) 'Looking Like a State: Techniques of Persistent Failure in State Capability for Intervention'. UNU WIDER. WIDER Working Paper 2012/ 63, July.

9. Sources will include: a review of key documents, and court data and statistics, particularly on case flow and disposal rates (see paragraph 12 below); and interviews with key stakeholders (see paragraph 12 below).

Deliverable

10. A maximum twenty page report addressing each of the issues in paragraph six above.

Key documents

11. Key documents to consider include:

- Commercial Law and Justice Programme (CLJP) – programme document
- CLJP logframe
- CLJP output to purpose review 2003/2004
- CLJP project completion report
- Commercial Court annual reports
- JLOS annual reports
- Court statistical records

Key stakeholders

12. Key stakeholders to interview may include:

- Key GoU officials involved with the commercial court initiative from 1999 (including MFPED and the Medium Term Competitiveness Strategy)
- The Judiciary
- Donors engaged with the Commercial Court including DFID (Anthony Way – PSD adviser) and Danida
- The Commercial Court management adviser 2000-2005 (Stuart Forster)
- Private sector stakeholder including for example lawyers, bankers association, the PSF and Chamber of Commerce

Annex B: List of interviewees

| Name | Position |
|---|--|
| Alex Rezida | Advocate and Commissioner for Oaths, Nagwala, Rezida & Co. Advocates; Current chair of Commercial Court Users' Committee |
| Amanda Serumaga | Deputy Country Director, UNDP, South Sudan |
| Anna Namboze | CICS Secretariat, Ministry of Finance, Planning and Economic Development |
| Bernard Olok | Supervisor – Litigation, Legal Services and Board Affairs Department, Uganda Revenue Authority |
| Boaz Wandera | Registry Head and Records Supervisor, Court clerk |
| Cecilia Muhwezi | Head Regulatory Compliance, Standard Chartered |
| Charles Okuni | Court clerk |
| Chris Bold | Growth and Resilience Team Leader, DFID Uganda |
| Chris Engola | Legal Counsel- Corporate & Institutional Clients Africa, Standard Chartered Bank Uganda Limited |
| Christopher Musoke | Technical Director, Financial Sector Deepening Uganda |
| Clare Manuel | Director, The Law & Development Partnership |
| Dr. Katja Kerschbaumer | Senior Advisor Good Governance, DANIDA Judiciary/JLOS |
| Emmanuel Kikoni | Executive Director, Uganda Bankers' Association |
| Erica Bosio | Enforcing contract indicator lead, Doing Business Indicators team, World Bank |
| Felix Okurut | Research Officer/Economist, Judiciary |
| Fiona Asimwe | Economist, Registry Planning and Development |
| Francis Kisirinya | Director of Finance, Private Sector Foundation |
| H/W Olive Kazaarwe | Ag. Registrar, Registry of Planning & Development |
| H/W Opesen Thaddeus | Registrar of the Commercial Court |
| H/W Vincent Emmy Mugabo | Ag. Assistant Registrar Mediation, High Court of Uganda Commercial Division |
| Harriet Wakooli | Court clerk |
| Hon. Justice Christopher Madrama | Judge, High Court of Uganda Commercial Division |
| Hon. Justice David K. Wangutusi | Head of Commercial Court Division, High Court of Uganda Commercial Division |
| Hon. Justice Dr. Yorokamu Bamwine | Principal Judge, Uganda Judiciary |
| Hon. Justice Geoffrey W. M. Kiryabwire | Justice of the Court of Appeal and Judge Arbitration Tribunal, East African Development Bank |
| Howard Miller | Consultant, Nathan Associates |
| Innocensia Ajam | Court clerk |
| James Mukasa Sebugenyi | Partner, Sebalu & Lule, Advocates and Legal Consultants |
| Jayashree Srinivasan | Doing Business Indicators team, World Bank |
| Joe Bolton | Second Secretary (Political), British High Commission |
| Joyce Kokuteta Ngaiza | Senior Governance and Human Rights Advisor, Embassy of the Netherlands |
| Juma Kisaame | MD, DFCU Bank |
| Lydia Ochieng-Obbo | Senior partner, Frederick, Francis and Associates Advocates |
| Maureen Nahwera | Senior Governance Advisor, Embassy of Sweden |
| Miriam Magala | Chief Executive Officer, Uganda Insurers Association |
| Monica Kirya | Consultant, Centre for Justice Studies and Innovations |
| Paul Otim Okello | Operations Officer, Democracy and Human Rights, European Union Delegation to Uganda |
| Peter Kabatsi | Senior Partner, Kampala Associated Advocates |
| Peter Ngategize | National Coordinator, CICS Secretariat, Ministry of Finance, Planning and Economic Development |

| | |
|---------------------------|--|
| Richard Sandall | Governance Adviser, DFID Uganda |
| Robert Mutebi | Commercial Court IT |
| Rose Emeru | Court clerk |
| Ruth Sebatindira | President, Uganda Law Society; Founding Partner, Ligomarc Advocates |
| Sarah Callaghan | Senior Consultant, The Law & Development Partnership |
| Sauda Mansubuga | Court clerk |
| Solome Luwaga | Company Secretary/Head of Legal, SWICO, Statewide Insurance Company |
| Solomon Ichumar | Manager - Research and Advocacy, Uganda Bankers' Association |
| Valentine Namakula | Executive Director, Centre for Justice Studies and Innovations; Lawyer; Justice Consultant |
| Violah Ajok | Centre for Justice Studies and Innovations |
| Willy Kibabu | Records officer, Court clerk |

Annex C: Documents considered

Key National Documents

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Annex D: DFID support to CJRP

Commercial Justice Reform Programme objectives: The DFID-funded component of the CJRP narrowed objectives down to the operation of the Commercial Court, Land and Tax registries.

Super Goal: To contribute to the eradication of poverty in Uganda (no information on indicators provided).

Goal: To improve the environment for private sector development in Uganda

| Indicator |
|--|
| <i>Businesses prepared to transact with wider networks</i> |
| <i>Improved lenders' confidence in legal environment and increased willingness to lend</i> |
| <i>Improved perception by local and foreign investors of Uganda's legal environment</i> |
| <i>Increased number of non-viable businesses subjected to formal insolvency proceedings.</i> |

Purpose: To improve the ability of the private sector to make and enforce commercial contracts

| Indicator |
|---|
| <i>Increased private sector confidence in their ability to enforce contracts through the commercial court</i> |
| <i>Increased private sector satisfaction with speed and transparency of service provided by Land and Company Registries</i> |
| <i>Increased private sector trust in the commercial justice system</i> |

Output-based objectives: Commercial court component of CJRP

| CJRP Output Indicator |
|---|
| <i>Clearance of backlog: reduction in time taken to process cases, reduction in multiple adjournments, improved case flow, reduction in user perception of corruption.⁸⁹</i> |
| <i>Improved user satisfaction</i> |
| <i>Increased use of ADR mechanisms</i> |
| <i>Improved flow of tax related cases</i> |

⁸⁹ In Uganda case backlog is defined as any civil suit pending for two years or more without resolution

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