

Negotiating Debt

Building a Strong Government Team in Uganda

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If you flip the pages of Ugandan newspapers, you will be struck by articles about big loans that Parliament has approved to finance development. This is not just something of arcane interest. The general public is concerned about what they all add up to: in the streets of Kampala, you will often overhear locals discuss op-eds about Uganda’s increasing ‘debt crisis’¹ over a cup of chai and a ‘Rolex’ egg roll.

With Uganda’s debt stock increasing, and with more and more creditors from multilateral, to bilateral and commercial lenders², the Ministry of Finance, Planning and Economic Development established a new Department of Development Assistance and Regional Cooperation (DARC) in April 2016. The Ministry charged DARC with mobilizing external resources to finance government programs. This note tells the story of how an Oxford Policy Fellow responded to the demand for vital legal expertise in order to support this mission.

DARC’s workload was set to be a heavy one. Its responsibilities include coordinating with Development Partners, providing advice on external debt, coordinating bilateral and multilateral negotiations and signature of subsequent agreements and protocols, preparing financing documentation and reports, and ensuring effective and efficient utilization of external resources. And the volume of external financial assistance has been growing. In the Financial Year 2019/2020 alone, new external resources (both loans and grants) amounting to approximately USD 1.6 billion were mobilized – an increase of 5.9% compared to the previous year, mostly for help with the budget deficit and new borrowing for infrastructure such as roads.³ With so many negotiations and agreements in the pipeline, the need for lawyers experienced in reviewing and negotiating international contracts became clear. With only one lawyer in DARC, it was apparent that the work of reviewing, advising and negotiating so many individual transactions was going to be overwhelming. Without delay, the Ministry approached the Oxford Policy Fellowship (OPF) with a terms of reference for a lawyer to be embedded as an OPF Fellow at DARC.

Multiple policies and projects – managing the blizzard of paperwork

Before the OPF Fellow arrived, DARC was facing challenges in managing the volume of work under its ambit. Sometimes, when the need was really pressing, the role of a lawyer was taken up by economists. Coupled with the laborious processes laid down for getting parliamentary approval for each and every loan, delays in commencing projects were mounting up. Furthermore, with each project involving heaps of paperwork, DARC

¹<https://www.monitor.co.ug/uganda/news/national/uganda-debt-nears-crisis-level-1932820>

² Report on Public Debt, Guarantees, Other Financial Liabilities and Grants for FY2019/2020, Ministry of Finance, Planning and Economic Development, Uganda.

³ Ibid.

needed legal capacity for sifting through documents with efficiency and rigour, and for providing on-time advice for negotiations.

Right from the first week of his joining, the Fellow was tasked with reviewing the kinds of challenges faced by previous loan agreements. His report, prepared with the guidance of the Commissioner and Director, highlighted the issues which could have been better negotiated and made suggestions on how to handle them during future negotiations. Over the subsequent two years, the Fellow and the DARC team negotiated terms and conditions in project documentation and loan agreements for over 20 projects in sectors ranging from infrastructure to health, education, agriculture and water, among others.

Coordination meetings to ensure a unified approach – with a new strategic negotiation matrix tool

Negotiation processes need a clear and agreed structure with adequate transparency if all parties are to get a good deal in good time. The crucial need in Uganda was to improve the pre-negotiation meetings with implementing agencies and the Ministry of Justice and Constitutional Affairs. This was to ensure that we discussed and agreed the negotiation strategy before we began the final negotiations. As lenders tend to be the party that prescribes the format of the documentation, our experience of several previous negotiations had enabled us to identify critical issues which had recurred across projects. These were clauses which specified what the government should do or not do, ranging from clauses pertaining to ‘conditions precedents’, to government’s representations, negative covenants, governing law and jurisdiction.

We were responsible for consolidating and harmonizing issues noted by everyone⁴, which we pulled together into a special legal matrix covering all issues in the project documents and financing agreements that needed to be resolved. This matrix became the basis of all our negotiations. We had the opportunity to meet a few of the Development Partners in person for negotiations, and were pleased that all could make use of the matrix we drafted as a systematic and transparent guide in the negotiation room, Zoom conference, or email correspondence. The Fellow advised the Director or Commissioner during the negotiations, and at times also led the technical legal discussions.

This unified and structured approach to the pre-negotiations, where we also took the time to discuss differences in drafting techniques among development partners, ensured that we were well prepared for any curveballs thrown at us pertaining to government responsibilities for commencing the project, and thus minimized delays.

⁴ Guidelines for Loans/Grants Negotiations in Government, Ministry of Finance, Planning and Economic Development, July 2018

Cabinet Memoranda and Parliamentary Briefs - interpreting technical issues for loan approvals

High-level approval is too often delayed if decision-makers are unclear of complex terms and conditions and what they mean in practice. Upon successful completion of each negotiation, we then had the role of drafting the Cabinet Memorandum and Parliamentary Brief for the Hon. Minister of Finance to seek parliamentary approval for the terms and conditions of the loan, as mandated under the Constitution. It was a challenging task to convert our technical knowledge into a format which was comprehensible to Parliamentarians while ensuring the essence of the issues was not lost in translation.

We had to coordinate with many government institutions involved in the project, before forwarding the final version of the paper to the Cabinet and Parliament. As this was potentially a very lengthy process, we streamlined it by ensuring that every government partner was informed of all relevant steps to avoid the information asymmetry that can derail project approval. The proactive steps we took to personally meet and discuss with all the stakeholders – rather than waiting for responses through mail (and email if we were lucky) – were helpful to all. The net result is that all have been able to advance important development progress in Uganda, often by months. While before it had generally taken 7-8 months for approval, for some projects we were able to secure approval within just 3-4 weeks.

“Having a Fellow guide me through lengthy legal documents and teach me report writing has been crucial in building a strong foundation for my journey as a young civil servant. It is not just technical knowledge which I gained, but I also learnt about good work ethics while managing the ever-growing workload, maintaining positive relations with Development Partners, and navigating oneself during firefighting situations. All this while understanding development at national, regional and global scales.”

Benjamin Odongo

Research Assistant (Ministry of Finance, Planning and Economic Development)

Small details matter too: once each loan paper was finalized, we had the cumbersome task of printing 140 copies and hand-delivering them to the Cabinet Secretary. As we had earlier faced instances where all 140 printed copies were rejected by the Cabinet Secretary for cosmetic formatting errors, we ensured that a team member who drafted the paper was personally present with the Cabinet Secretary to jointly review the paper, in order to get a final green-light for printing. Once again, the Fellow was able to make an interpersonal intervention to fast-track the development process.

Making best use of existing legislation – identifying a potential legal reform

Because seeking approval for each and every loan from Parliament was a time-consuming process, the top management at the Ministry of Finance offered us an exciting opportunity to research how loans are approved in other East African countries and to suggest how Uganda could improve the process for quicker approval. We found that in Kenya, the Cabinet Secretary is vested with the power to raise a loan within or outside of Kenya.⁵ In Rwanda, while loans from external sources do require approval from the Parliament⁶, the Minister of Finance is given the responsibility to present borrowing requirements and external loans to Parliament for authorization and Cabinet review.⁷ Yet, in Uganda, parliamentary approval of every loan is required by the Constitution.⁸ Any suggestion from our end to change the existing laws meant that we would also have to make a substantial amendment to the Constitution of Uganda, which was out of the question. We had to look elsewhere.

Through extensive research, we came across a law called the External Loans Act of 1962⁹, a very short act with only 6 sections. To our surprise, it had not been repealed even though it was enacted before Uganda's Independence (in fact, just 5 days before). Excited by the prospect of creative legal development, we suggested amending this Act, allowing the Minister of Finance to approve certain loans within amounts capped under this legislation, saving time by not having to go to the Parliament for specific approval. At the same time, it would not contravene with the provisions of the Constitution.

Learning and capacity development – establishing a fitter, sustainable Government team

To ensure sustainability, we hosted capacity development sessions where the Fellow gathered members of DARC and the Directorate to reflect on the technical challenges we had faced during previous negotiations, and the ways we had overcome barriers. As most team members are economists and statisticians, this led to interesting brainstorming on where lawyers can help, e.g. how we could go about having a standard format for loan agreements rather than using those from Development Partners. Due to Covid-19, these sessions were taken online during the fellow's final months of the Fellowship, and he

⁵ Section 49, Kenya's Public Finance Management Act, 2012

⁶ Article 54, Rwanda Organic Law on State Finances and Property, 2006

⁷ Rwanda Public Debt Management Manual, 2012

⁸ Article 159, Constitution of Uganda 1995.

⁹ The preamble of the Act states "An Act to authorize the raising of loans outside Uganda by the Government and to provide for matters incidental thereto and connected therewith." <https://ulii.org/ug/legislation/consolidated-act/235>

prepared online videos for a few sessions to allow his colleagues to listen to the sessions in their own time. The sessions have been uploaded online and are available for staff that may join DARC in the future.

At the same time, the Fellow also understood the need to build a wider legal cohort in Uganda, and especially for budding Ugandan lawyers to understand the ins and outs of international finance and law. So, he volunteered to give guest lectures on international finance and law to law students at two premier institutions – firstly at Uganda Christian University and secondly at Islamic University in Uganda. Many students are still in touch with him and are interested in pursuing careers in international finance and law.

"The capacity development sessions, which taught members of DARC various legal concepts used in financing agreements, were simple yet effective. Concepts such as 'Conditions Precedents' and 'Events of Default' familiar to lawyers were explained to others with various illustrations to help understand the concept. I was humbled to see my colleagues navigate easily through agreements to identify the pressing issues and subsequently converse with these terms during negotiations with confidence."

Prajwal Raj Gyawali

Oxford Policy Fellow (Ministry of Finance, Planning and Economic Development)

The net result – a stronger Government team

Having had an Oxford Policy Fellow on board, the Ugandan government now approaches negotiations and approvals of loans more systematically. The Fellow has been able to help with both the process and the content – whether reviewing the documents, hosting pre-negotiation meetings, compiling comments received from stakeholders and drafting legal matrixes, to finally entering the negotiation room with clarity on the way forward, and helping the Ministry to fast track loan approvals.

Meanwhile, the Fellow's initiative in providing diverse forms of legal capacity strengthening to his colleagues has familiarized them with legal terminologies, shaping a unified and credible government negotiation capacity.

"Having an Oxford Policy Fellow share with us the practical knowledge and importance of sovereign debt and international relations in Uganda's context was an eye-opener. I particularly enjoyed learning about the importance of law in international development."

Kabuye Ronald

Law student (Uganda Christian University)

An economic impact

OPF has helped to build economic resilience. With the COVID-19 pandemic, real GDP growth in Uganda crashed from 6.8 percent in 2019 to just 3.1 percent in 2020. Rural non-farm income declined about 60 percent and government service delivery suffered. Moreover, as a result of having to implement COVID-19 response policies, Uganda has built up very high debt levels. This debt could in turn lead to a drop in the real GDP growth rate of 0.72 percent, which is considerable – just under a quarter of its 2020 growth rate. To counter this, the Fellow’s work on debtor contracts has allowed Uganda to renegotiate fees and penalty clauses but critically also to restructure debt by renegotiating tenure. This has given Uganda a significant five-year window which frees up fiscal space and reduces the negative effects on growth that having high debt can bring. OPF may well, therefore, have helped to create a buffer for the Ugandan government to continue investment while ensuring macroeconomic stability in uncertain times.

“The support of the Oxford Policy Fellow during the outbreak of Covid-19 has been of immense help. As the unprecedented time required a dedicated and accessible team, we were able to rely on the Fellow for a quick response in thoroughly reviewing documents (including footnotes incorporated in lengthy project and loan documents), drafting legal matrixes with comments, harmonising comments from various documents and ministries, and finally, preparing the team and assisting everyone during negotiations.”

Maris Wanyera

Acting Director for Directorate of Debt, Cash and Policy (Ministry of Finance, Planning and Economic Development, Uganda)

Fellow reflection – South-South cooperation

As a Nepali, development with foreign aid has always been a contemporary topic in my country. With democracy recently established after the promulgation of Nepal's constitution in 2015, and following a devastating earthquake which struck the same year, Nepal has a long road ahead for economic prosperity. To achieve this, foreign aid has been pouring in. Working as a lawyer at the Ministry of Finance in Uganda, I have had the privilege of learning about making the best use of foreign aid, and of the importance of understanding the political economy around aid.

I have also enjoyed informal discussions with my colleagues about development in Nepal. Both countries being landlocked, with economies dependent on agriculture, tourism and remittance, it was inspiring to discuss development and aid, where we agreed on the importance of a level playing field between donor and recipient. Above all, we agreed that it has been legal capacity that has proven pivotal in ensuring both mutual benefit and greater equity among all partners, and that will lead to more sustainable loans that contribute most to development.

Prajwal Raj Gyawali, January 2021

OPF is a demand-led Fellowship Programme that works with governments to deliver legal capacity support and development. We do this through Fellows, networks, and learning. We source high performing legal advisors to work within current government systems and processes for two years so that their work contributes to ongoing policymaking, rather than creating parallel structures for getting things done. By providing governments with key support that they themselves have defined and requested, we deliver sustainable and locally-owned development impact. We also host a network of government practitioners working at the interface of law and public policy, promoting a culture of knowledge sharing and learning across governments and the wider community.

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