

THE UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW

Corruption and the Judiciary: A Critical study of Uganda

Thesis submitted in the partial fulfilment of the requirements of the LLM Degree.



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Declaration

I, **Esther Asiimwe**, declare that **Corruption and the Judiciary: A Critical study of Uganda** is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Signature: A.E

Date: 16 December 2021.

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Date: 10 March 2022



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List of Acronyms and Abbreviations

ACD	Anti-Corruption Division of the High Court
ACD	Anti-Corruption Division of the High Court of Uganda
FATF	Financial Action Task Force
IG	Inspectorate of Government
IGG	Inspector General of Government
JLOS	Justice Law and Order Sector
LASPNET	Legal Aid Service Providers' Network
NACS	National Anti-Corruption Strategy
OAG	Office of the Auditor General
ODPP	Office of the Director of Public Prosecutions
PAC	Public Accounts Committee
PPDA	Public Procurement and Disposal of Public Assets Act
SADC	Southern African Development Community
UNCAC	United Nations Convention against Corruption



Key Words

Accountability

Anti-corruption

Anti-corruption court

Corruption

Independence

Integrity

Judicial corruption

Judiciary

Political corruption

Political will

Public official

Uganda



CHAPTER ONE

INTRODUCTORY OBSERVATIONS

1.1 Introduction

Corruption, or ‘the abuse of entrusted power for private gain’,¹ has been identified by the World Bank as one of the greatest obstacles to economic and social development.² In Uganda, widespread corruption limits access to and the quality of public services³ and undermines development.⁴ In the presence of weak monitoring and accountability institutions and sophisticated networks of collaborators, both petty and grand corruption thrive.⁵ In a 2013 survey conducted in Uganda, 82 percent of the respondents expressed the belief that corruption was entrenched in society.⁶ In recent years, the perception of the existence of corruption in Uganda has been consistently high, ranging from 25 percent in 2015 and 2016 to 26 percent in 2017 and 2018 (where 0 percent is highly corrupt and 100 percent is very clean).⁷

While some scholars argue that perception-based statistics are not an accurate representation of the real state of affairs,⁸ there are numerous high - and low profile cases that support the perception that the corruption situation in Uganda is dire and a concern for the

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- 1 Transparency International ‘What is Corruption?’ available at <https://www.transparency.org/what-is-corruption> (accessed 5 August 2019).
 - 2 World Bank ‘Corruption Hunters Rally for Action against Fraud’ available at <https://www.worldbank.org/en/news/feature/2010/12/06/corruption-hunters-rally-for-action-against-fraud> (accessed 5 August 2019).
 - 3 Martini & Transparency International ‘Uganda: Overview of Corruption and Anti-Corruption’ (2013) 2 available at <https://www.u4.no/publications/uganda-overview-of-corruption-and-anti-corruption.pdf> (accessed 23 November 2021).
 - 4 Inspectorate of Government *The 1st annual report on corruption trends in Uganda: using the data tracking mechanism* (2010) 5 available at <https://www.igg.go.ug/publications/publications/1st-annual-report-on-corruption-trends-in-uganda-using-the-dtm/> (accessed 16 December 2021).
 - 5 Asimwe GB ‘Of Extensive and Elusive Corruption in Uganda: Neo-Patronage, Power and Narrow Interests’ (2013) 56(2) *African Studies Review* 139.
 - 6 Inspectorate of Government *4th Annual Report. Tracking Corruption Trends in Uganda: Using the Data Tracking Mechanism* (2014) 10 available at <https://eprcug.org/publication/the-fourth-annual-report-on-tracking-corruption-trends-in-uganda-using-the-data-tracking-mechanism/> (accessed 16 December 2021)
 - 7 Transparency International *Corruption Perceptions Index 2018* available at <https://www.transparency.org/cpi2018> (accessed 30 May 2019).
 - 8 De Maria W ‘Measurements and markets: deconstructing the corruption perception index’ (2008) 21(7) *International Journal of Public Sector Management* 782.

citizens.⁹ For example, in 2012, deliberate circumvention of prescribed procedures by officials in the Ministry of Public Service led to the loss of 165 billion shillings.¹⁰ A report commissioned by the Auditor-General in 2014 uncovered in excess of 8 000 ghost employees and more than 2 000 ghost pensioners on the government payroll — it was hoped that their removal would save government over 70 billion shillings a year.¹¹ However, recent reports by the Auditor-General indicate that payments to ghost employees and pensioners still remain a challenge.¹² The diversion of funds meant for the delivery of public services, irregular expenditure, false accounting and gross abuse of office are persistent forms of corruption in Uganda.¹³ While the government of Uganda over the years has established a framework to combat corruption, the capacity of the established anti-corruption institutions to do their work effectively is constrained by numerous challenges.¹⁴

For meaningful impact to be realised in the fight against corruption, functioning anti-corruption institutions must be in place. Therefore, there is a need to match the capacity and efficiency of the anti-corruption efforts in Uganda to the growing corruption situation. The judiciary is one of the central anti-corruption institutions in Uganda and its working needs to be examined. The judiciary plays a key role in the fight against corruption because it is usually the “last hope”¹⁵ when all other options to prevent and combat corruption have failed. It has been noted that a fair and efficient judiciary is the key to successful anti-corruption initiatives, while

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- 9 Inspectorate of Government *Bi-Annual Report to Parliament July to December (2017)* x available at https://www.igg.go.ug/media/files/publications/IG_Report_to_Parliament_July_-_December_2017.pdf (accessed 16 December 2021).
- 10 Inspectorate of Government (2014) 10.
- 11 Inspectorate of Government (2014) 10; 34.
- 12 Office of the Auditor General *Annual Report for the Year ended 30th June 2018* (2018) 42, 138; 259. Available at <http://www.oag.go.ug/wp-content/uploads/2019/01/Report-of-the-Auditor-General-to-Parliament-for-the-FY-ended-30-June-2018.pdf> (Accessed 16 December 2021).
- 13 Inspectorate of Government ‘Bi-annual report to Parliament July to December’ (2018) 8-19. Available at https://www.igg.go.ug/media/files/publications/IG_Report_to_Parliament_July_-_December_2020.pdf (Accessed 16 December 2021).
- 14 See Chapter Three below.
- 15 Gbadamosi OA ‘The Role of the Judiciary in Combating Judicial Corruption’ (2015) 23(1) *Lesotho Law Journal* 35.

a corrupt judiciary undermines all efforts to curb corruption.¹⁶ Therefore, any country seeking to tackle the challenge of corruption, must reinforce its judiciary to ensure that it is equipped fully to discharge its functions.

In Uganda, the judiciary and, specifically, the Anti-Corruption Court have registered some progress in the fight against corruption. The prosecution and brief imprisonment of former Vice-President Prof Gilbert Bukenya,¹⁷ and the trial and conviction of former Works and Transport Minister, Abraham Byandaala, by the anti-corruption division of the high court¹⁸ are amongst the high profile corruption cases tried in Uganda. They demonstrate the opportunities that the Anti-Corruption Court has to make an impact on the fight against corruption through adjudicating not only cases involving lower-level bureaucrats but also those involving highly-placed political actors.

However, like all anti-corruption institutions in Uganda, the anti-corruption court faces criticism for focusing on the “smaller fish” while the larger ones are left swimming.¹⁹ For instance, the short-lived prosecution of former Vice-President Professor Gilbert Bukenya cast all anti-corruption agencies in Uganda as weak and incapable of touching the highly-placed politicians.²⁰ Even the prosecution and eventual conviction of Chandi Jamwa, the former National Social Security Fund managing director, as a result of the Temangalo corruption scandal, although welcomed, brought criticism for the anti-corruption agencies in Uganda.²¹ They were chastised for their failure to pursue Amaama Mbabazi (the then Security Minister) and other high-ranking politicians implicated in the same Temangalo corruption scandal, and

16 Langseth P & Stolpe O ‘Strengthening judicial integrity against corruption’ 2001 *Centre for International Crime Prevention, United Nations Office for Drug Control and Crime Prevention* 3.

17 Cited in Constitutional Petition 30 of 2011.

18 Anti-Corruption Session Case 12 of 2015.

19 Tangri R & Mwenda AM ‘Politics, Donors and the Ineffectiveness of Anti-Corruption Institutions in Uganda’ (2006) 44(1) *Journal of Modern African Studies* 107& 116; Human Rights Watch & Yale law school ‘Letting the Big Fish Swim’ Failures to Prosecute High-Level Corruption in Uganda’ (2013) 37 available at <https://reliefweb.int/report/uganda/%E2%80%9Cletting-big-fish-swim%E2%80%9D-failures-prosecute-high-level-corruption-uganda> (accessed 16 December 2021); Uganda Debt Network ‘Temples of Injustice: A Report Highlighting Alleged Abuse of Office in Selected Magistrates’ Courts in Uganda’ (2013) 22 available at <https://allafrica.com/stories/201407090331.html> (accessed 16 December 2021).

20 Human Rights Watch & Yale law school (2013) 16; ‘Uganda Drops Gilbert Bukenya CHOGM Fraud Charges’, available at <https://www.bbc.com/news/world-africa-15598628> (accessed 23 September 2019).

21 See Chapter Three below.

were castigated for being influenced politically and therefore incapable of checking high-ranking politicians. At the sentencing of Chandi Jamwa, the trial judge lamented that:

My quarrel with the prosecution is this selective prosecution. It is clear that the others should be here but they brought only you. Selective prosecution must be condemned and whoever is behind it must be condemned. But I am a judge, I am not a prosecutor. That is not my job.²²

Speaking about this scandal, the President declared:

I will not run away from old friends. I refused to run away from Amama Mbabazi during the “Temangalo” saga because he is an old friend.²³

Statements such as these from the political leadership, who ought to be at the helm of the fight against corruption, undermine the very struggle they claim to promote. As will be discussed in the chapters to follow, political interference in the work of anti-corruption agencies is a big challenge that greatly affects anti-corruption efforts in Uganda. In this regard, the Inspector General of Government (IGG) is on record as admitting that:

Political interference will always be there because there is nothing you can do about it; because your work deals with political abuse and you can't do away with it without being affected by politics.²⁴

The judiciary itself is not immune to political interference. As will be discussed in Chapters Three and Four below, there are numerous cases where the head of state makes public comments that challenge the mandate of the judiciary even in ongoing cases. This undermines judicial independence and leads to the perception of judicial corruption. However, there are also incidents of actual judicial corruption which deal a great blow to the administration of justice and the fight against corruption in general.

The judiciary, as the interpreter of what conduct is or is not corrupt, must itself be corruption-free in order to have the moral authority to determine and punish corrupt behaviour. However, as it strives to execute its mandate, the judiciary faces various challenges

22 Honourable Justice John Bosco Katutsi in Criminal Case 87 of 2010 of the Anti-Corruption Court.

23 *Daily Monitor* (5 September 2009), available at <https://allafrica.com/stories/200909070144.html> (accessed 2 October 2019).

24 *Weekly Observer* (22 February 2013), available at <https://observer.ug/component/content/article?id=23866:igg-political-interference-favours-the-big-thieves> (accessed 2 October 2019).

as an anti-corruption institution. There is a need to investigate and explore options to address these challenges. Doing so may result in a more efficient judiciary that will be a strong factor in the fight against corruption in Uganda.

1.2 Problem Statement

“Zero tolerance towards corruption” is the catchphrase for the Ugandan political leadership and the national ombudsman.²⁵ Indeed, various institutional, policy and legislative measures have been established to fight corruption in Uganda. Some of these include the Inspectorate of Government, the Anti-Corruption Court, the Anti-Corruption Act,²⁶ the National Anti-Corruption Strategy,²⁷ and the JLOS Anti-Corruption Strategy of 2012. Moreover, Uganda has demonstrated its commitment to fighting corruption through strengthening its anti-corruption agencies.²⁸

However, the efforts to fight corruption have been undermined by the challenges that affect the established anti-corruption institutions. Ironically, one of the major challenges facing anti-corruption institutions is their own institutional corruption.²⁹ Due to its fundamental role in the smooth running of society and the general fight against corruption, the judiciary is one of the institutions in respect of which institutional corruption is a major concern.

Corruption undermines the judiciary’s impartiality and credibility as a corruption fighter.³⁰ If judicial corruption persists, the public in the long run might lose trust in the judiciary and resort to unlawful means to resolve disputes. In Uganda, the judiciary ranks among the institutions most perceived to be corrupt.³¹ In one of his public addresses about the justice system, the Chief Justice of Uganda stated that:

25 Inspectorate of Government ‘Zero Tolerance to Corruption’, available at <http://www.igg.go.ug/> (accessed 6 August 2019).

26 Act 6 of 2009.

27 Uganda National Anti-Corruption Strategy, 2008-2013.

28 Communique by the Commonwealth Heads of Anti-Corruption Agencies, May 2019 available at <https://thecommonwealth.org/sites/default/files/inline/KAMPALA%20Communique%202019.pdf> (accessed 15 December 2021).

29 Tangri & Mwenda (2006) 103.

30 Gloppen S ‘Courts, corruption and judicial independence’ (2013) *Corruption, grabbing and development* 68 United Kingdom: Edward Elgar Publishing 68.

31 Inspectorate of Government (2014) 7.

We also cannot shy away from the fact that corruption, whether real or perceived, continues to cloud the public perception of the sector and ultimately reduces public confidence in the system.³²

While there are efforts to fight judicial corruption in Uganda, it still is prevalent. In 2017, it was reported that there was a 67 percent likelihood of a person being asked to pay a bribe and a 37 percent likelihood of actually paying the bribe when interacting with the Ugandan judiciary.³³ For a body that is entrusted with fighting corruption, these statistics are very alarming.

The persistence of corruption amidst several legal and policy mechanisms has led scholars to question the political will to fight corruption in Uganda.³⁴ While corruption is generally undesirable, when it penetrates the criminal justice system that ought to be the bulwark against corrupt behaviour, the effects are devastating for all sectors.³⁵ Specifically, judicial corruption constitutes not only a major setback to the fight against corruption as a whole, but also an obstacle to economic growth.³⁶ Therefore, as part of the general fight against corruption, it is important to fight judicial corruption.

1.3 Research Objective

One of the major enablers of corruption in Uganda is the weakness of the law enforcement institutions.³⁷ The police, the directorate of public prosecutions, the judiciary and other justice sector institutions have been named among the corrupt institutions in Uganda.³⁸ Further, even

32 Keynote Address by the Chief Justice Bart Magunda Katureebe at the 21st Joint Government of Uganda–Development Partners Review on 27 October 2016.

33 East African Bribery Index (2017) 33-34.

34 Martini M & Transparency International 'Uganda: Overview of Corruption and Anti-Corruption' (2013) 6 available at <https://www.u4.no/publications/uganda-overview-of-corruption-and-anti-corruption.pdf> (accessed 16 December 2021); Amundsen I *Political Corruption and the Role of Donors in Uganda* (2006) Kampala: Royal Norwegian Embassy 16-19.

35 Sandgren C 'Combating Corruption: The Misunderstood Role of Law' (2005) 39(3) *International Law* 717, 724; 731.

36 Wang Y 'Court funding and judicial corruption in China' (2013) 6 *The China Journal* 44.

37 Tangri & Mwenda (2006) 103.

38 Inspectorate of Government *Bi-Annual Report to Parliament January to June* (2017) 80 available at https://www.igg.go.ug/media/files/publications/IG_Performance_Report_January_to_June_2017.pdf (accessed 16 December 2021); East Africa Bribery Index (2017) 33.

in the cases where some progress has been registered, the anti-corruption agencies in Uganda have been criticised for picking on petty offenders while grand offenders are left untouched.³⁹

The role of the judiciary in upholding the ideals of society cannot be over-emphasised. In the fight against corruption, the central role of the judiciary is recognised internationally by UNCAC,⁴⁰ and in various pieces of legislation in Uganda.⁴¹ For the judiciary effectively to live up to its role, it must rid itself of all blameworthiness that flows from its flaws, especially incidents of judicial corruption. However, while the judiciary constantly faces criticism for its shortcomings, it continues to grapple with challenges, some of which largely account for perceived judicial corruption, such as poor funding and inadequate staffing. It is important, therefore, to investigate and address all the factors which undermine the judiciary's capacity to play a key role in the fight against corruption. By understanding and addressing the underlying causes of corruption in its ranks, the Ugandan judiciary will be empowered to become a more efficient institution in the general fight against other forms of corruption in Uganda.

Assuming that the presence of a corruption-free and well-equipped judiciary reduces a country's general level of corruption, the purpose of this research is to identify the challenges that anti-corruption agencies and specifically the courts face in controlling corruption, and propose solutions to enable them function better.

1.4 Research questions

From the brief introduction and background provided above, it is clear that (i) corruption is a real and not simply a perceived problem in Uganda; (ii) the Ugandan government accepts this fact and has taken steps to fight corruption; and (iii) the role of the judiciary in the fight against corruption in Uganda must be optimized. In view of this background and objective, three research questions present themselves for investigation:

39 Asiimwe (2013) 133.

40 Article 11 of UNCAC.

41 The Constitution of Uganda 1995; the Anti-Corruption Act 2006; and the IGG Act 2002.

- (a) What role are the courts in general, and the anti-corruption court in particular, designed to play in the fight against corruption?
- (b) Which internal and external factors have undermined the judiciary's capacity to play this role?
- (c) What remedial steps can be implemented to overcome these factors?

1.5 Literature Review

This thesis focuses on the link between the efficiency of the judiciary and a country's general level of corruption. It discusses the concept of corruption in general, the extent, causes and consequences of corruption in Uganda, the different anti-corruption bodies and, specifically, the standing of the judiciary in the general fight against corruption in Uganda. As will be discussed in more detail under chapter 2, corruption has been defined by different scholars and actors. Notably, Chinhamo & Shumba define corruption as the abuse or complicity in the abuse of private and public power, office or resources for personal gain.⁴² In Uganda, corruption is widespread and manifests in many forms. One of the most prevalent forms is political corruption.⁴³ This occurs when political decision-makers abuse their positions to manipulate state machinery in order to sustain themselves in power.⁴⁴ Uganda has taken great steps to fight corruption. Key among these, is the establishment of a specialised anti-corruption court to handle corruption related matters. However, the fight against corruption through the courts is hampered by allegations of judicial corruption.

Transparency International defines judicial corruption as:

Any inappropriate influence on the impartiality of the judicial process by any actor within the court system.⁴⁵

The literature considered below focuses on corruption in general and upon judicial corruption in the Ugandan context.

⁴² Chinhamo & Shumba 'Institutional working definition of Corruption' (2007)2 *Anti-corruption trust of Southern Africa* 6.

⁴³ Asimwe (2013) 133 & 139.

⁴⁴ Transparency International, available at https://www.transparency.org/glossary/term/political_corruption (accessed 6 September 2019).

⁴⁵ Transparency International (2007) xxi.

Different scholars have attributed corruption to various causes. Rose-Ackerman discusses the causes and consequences of corruption in various spheres of society. She observes that while corruption occurs in all countries, its effects are worse in poor countries, where bribes can expropriate a nation's limited wealth, leaving little for its poorest citizens. As to judicial corruption, she states that the power of judges to affect the distribution of wealth through their decisions may open them to the temptation of accepting bribes. She further notes that this temptation is stronger when judges are underpaid and overburdened, and the judiciary is poorly equipped and understaffed.⁴⁶

Focusing on Uganda, Ruzindana traces the root of corruption in Uganda from the post-colonial times to the incumbent regime. While underscoring the role played by the current leadership in fighting corruption, he argues that corruption affects political and economic development and ought to be fought by different stakeholders, including leaders and members of civil society.⁴⁷ Bukuluki takes a different view. He emphasises the importance of culture and context in understanding the causes of corruption in Uganda and argues that culture accounts for some of the current corrupt practices. Discussing the role played by close family and friends in pressuring officials into corruption, he argues that behaviour that otherwise would be viewed as corrupt is tolerable if it is perceived as beneficial to the community as a whole. He discusses collectivism, as the suppression of the self in the interests of the community, as one of the major drivers of corruption in Uganda.⁴⁸

Asiimwe analyses the steps that have been taken to combat the problem of corruption in Uganda. He argues that, while the political leadership in Uganda takes pride in its policy of “zero tolerance”, corruption remains entrenched and pervasive. He criticises the political regime and the extant anti-corruption strategies and bodies for focusing on petty bureaucratic corruption while ignoring grand political corruption. He advocates deeper democratisation,

46 Rose-Ackerman ‘The political economy of corruption’ (1997) *Corruption and the Global Economy* (1997) Washington, DC: Institute for International Economics 48.

47 Ruzindana ‘The Importance of Leadership in Fighting Corruption in Uganda’ (1997) *Corruption and the Global Economy* (1997) Washington, DC: Institute for International Economics 134.

48 Bukuluki ‘When I steal, it is for the benefit of me and you’: Is Collectivism Engendering Corruption in Uganda?’ (2013) *05 International Letters of Social and Humanistic Sciences* 29.

increased political activism, and institutional capacity-building measures to fight corruption in Uganda.⁴⁹ Like Asimwe, Tangri & Mwenda examine the anti-corruption efforts in Uganda. They argue that a number of anti-corruption institutions in Uganda are influenced heavily by political actors. This, they say, leaves these institutions too weak to fight corruption effectively, especially when corruption is perpetrated by powerful politicians.⁵⁰

Amundsen attributes the slow progress of anti-corruption efforts in Uganda to a lack of political will to fight corruption. He defines political corruption and political will in Uganda's context. He discusses the steps taken by Uganda to fight corruption but concludes that there are still a number of cases that demonstrate a clear lack of political will to fight political corruption. He then makes recommendations on what the international and donor agencies can do to strengthen the fight against corruption in Uganda.⁵¹ Gbadamosi OA recognises corruption as one of the greatest challenges of our time and presents the judiciary as the last hope in the fight against corruption. He regrets to note, though, that the judiciary also is affected by corruption. He defines judicial corruption and examines its negative consequences on society as a whole.⁵²

The negative consequences of judicial corruption are examined also by Wang. He discusses the negative effects of judicial corruption on the administration of justice and establishes a link between court funding and judicial corruption. He advances and proves the hypothesis that underfunded courts more likely are to be perceived as corrupt and that a higher level of government financial support leads to a lower level of perceived judicial corruption.⁵³ Voigt & Gutmann consider the different possible causes of corruption in the judiciary in general and how it can be overcome. They argue that independence and a secure income for prosecutors and judges, transparency of judicial decisions, and the absence of a monopoly in

49 Asimwe (2013) 132-133.
46 Tangri & Mwenda (2006) 103.
51 Amundsen (2006) 18-19.
52 Gbadamosi OA (2015) 35.
53 Wang (2013) 49-51.

prosecution are all correlated with a lower level of corruption in the judiciary. They conclude that anti-corruption agencies are capable of reducing the general levels of corruption.⁵⁴

Whereas there is a wealth of literature about corruption in general, and about judicial corruption in particular, few commentators comprehensively discuss the role of the judiciary in the fight against corruption in the Ugandan context. Most note it as a problem and seek to identify some causes. Few seem capable of conceiving of solutions or remedies for the problem. By investigating the factors that affect the efficiency of the Ugandan judiciary in the fight against corruption, and by making concrete proposals for legal reform, this mini-thesis aims at contributing to filling this gap in the existing literature.

1.6 Outline of Remaining Chapters

Chapter Two will constitute a general discussion of corruption in the Ugandan context. The definition and types of corruption prevalent in Uganda, its extent, as well as its causes and consequences will be examined.

Chapter Three will focus on the interventions that have been put in place to fight corruption in Uganda. The Ugandan policy, legal and institutional anti-corruption framework will be discussed. This chapter will highlight also the role of the judiciary and specifically the Anti-Corruption Court as a corruption fighting agency.

Chapter Four will examine judicial corruption as a major challenge to the discharge of the overall mandate of the judiciary. To this end, the chapter will contain a critical discussion of how judicial corruption undermines the role of the judiciary in the general fight against corruption.

Chapter Five will contain the conclusion and recommendations derived from the preceding chapters.

54 Voigt & Gutmann 'On the Wrong Side of the Law – Causes and Consequences of a Corrupt Judiciary' (2015) 43 *International Review of Law and Economics* 159-162.

CHAPTER TWO

UNDERSTANDING THE TYPES, CAUSES AND CONSEQUENCES OF CORRUPTION IN UGANDA

2.1 Introduction

The recent global war against corruption has swept across industrialised and developing countries alike. However, in developing countries such as Uganda, the results of the various efforts to curb corruption are yet to be realised. Over the years, there have been notable efforts by the government of Uganda to check corruption, including the establishment of specialised anti-corruption institutions such as the Inspectorate of Government and the Anti-Corruption Court. Despite these efforts:

Corruption remains a major impediment to development and a barrier to reducing poverty in Uganda.⁵⁵

Clearly, greater efforts to fight corruption are needed.

Scholars agree that any meaningful fight against corruption must look, first, at its root cause.⁵⁶ This chapter discusses the different types of corruption prevalent in Uganda, their causes and their consequences for the country. The chapter also lays a foundation for the discussion of the anti-corruption efforts in Uganda that will be considered in detail in the following chapters.

2.2 Definition of Corruption

There is no universally accepted definition of corruption. Different definitions have been advanced and adopted by different commentators. The available definitions may be divided into two categories — those contained in statutes or treaties, and those that are not statute-based.

⁵⁵ Inspectorate of Government (2010) 12.

⁵⁶ Shah & Schacter 'Combating corruption: look before you leap' (2004) 41 (4) *Finance and Development* 42. See also Mbaku *Corruption in Africa Causes, Consequences and Clean ups* (2007) United Kingdom: Lexington Books; Khan M 'Determinants of corruption in developing countries: the limits of conventional economic analysis' (2006) *International Handbook on the Economics of Corruption* 30-31.

2.2.1 Statute and Treaty-based Definitions of Corruption

On the national level, Section 2 of the Anti-Corruption Act of Uganda,⁵⁷ lists and explains the various acts that amount to corruption as follows:

Section 2. Corruption

A person commits the offence of corruption if he or she does any of the following acts—

(a) the solicitation or acceptance, directly or indirectly, by a public official, of any goods of monetary value, or benefits, such as a gift, favour, promise, advantage or any other form of gratification for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

(b) the offering or granting, directly or indirectly, to a public official, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage or any other form of gratification for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

(c) the diversion or use by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, which that official has received by virtue of his or her position for purposes of administration, custody or for other reasons;

(d) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for any other person, for him or her to act, or refrain from acting, in breach of his or her duties;

(e) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration of the undue advantage, whether the undue advantage is for himself or herself or for any other person, as well as the request, receipt or the acceptance of the offer or the promise of the advantage, in consideration of that influence, whether or not the supposed influence leads to the intended result;

(f) the fraudulent acquisition, use or concealment of property derived from any of the acts referred to in this section;

(g) the participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or in any other manner in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this section;

(h) any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party; or

(i) neglect of duty.

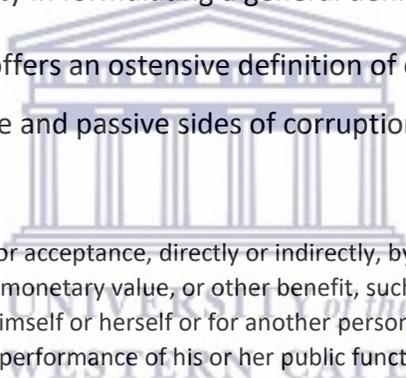
⁵⁷

Act No 6 of 2009.

The criminalisation of corrupt acts in both the public and private sector widens the scope of the offence, giving plenty of opportunity to law enforcement agencies to prosecute such acts. However, as will be discussed in Chapter Three below, despite the presence of an elaborate anti-corruption legal framework in Uganda, there is an implementation deficit that undermines the well-intended laws and policies.

On the transnational level, Uganda has ratified UNCAC,⁵⁸ and the African Union Convention on Preventing and Combating Corruption (AU Convention).⁵⁹ Under Chapter III, UNCAC proscribes corruption crimes. These include bribery, illicit enrichment, and obstruction of justice and are dealt with in more detail under Chapter Three. Although UNCAC is regarded as the most elaborate international convention on corruption, it relies upon an ostensive definition, illustrating the difficulty in formulating a general definition of corruption.

The AU Convention also offers an ostensive definition of corruption under Article 4, which criminalises both the active and passive sides of corruption in both the public and private sectors as follows:

- 
- a) the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
 - b) the offering or granting, directly or indirectly, to a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
 - c) any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
 - d) the diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position;
 - e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;

⁵⁸ 9 September 2004.

⁵⁹ 30 August 2004.

- f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;
- g) illicit enrichment;
- h) the use or concealment of proceeds derived from any of the acts referred to in this Article; and
- i) participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or on any other manner in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this article.

While the AU Convention covers most of the common forms of corruption, its ostensive approach offers no flexibility and therefore limits the “definition” of corruption to only the listed actions.

Although Uganda is not a member state, the definition of corruption in the Southern African Development Community Protocol against Corruption (SADC Protocol) is also worth noting. The Protocol defines corruption to include bribery or any other violation or abuse of entrusted responsibilities to obtain an undue advantage for oneself or others. Under Article 3, the Protocol details acts of corruption. Unlike the AU Convention, the SADC Protocol provides both a narrow and wide definition of corruption, thus allowing for a broad range of opportunities for prosecution. Article 1 read with article 3 defines “corruption” as follows:

any act referred to in Article 3 and includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others;

3. Acts of corruption

1. This Protocol is applicable to the following acts of corruption:

- (a) the solicitation or acceptance, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

- (b) the offering or granting, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (c) any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party;
- (d) the diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official received by virtue of his or her position for purposes of administration, custody or for other reasons.
- (e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties;
- (f) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of the influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result;
- (g) the fraudulent use or concealment of property derived from any of the acts referred to in this Article; and
- (h) participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, in any collaboration or conspiracy to commit, any of the acts referred to in this Article.

2.2.2 Non-Statute Based Definitions of Corruption

As mentioned in the Introduction to this mini-thesis, Transparency International defines corruption as “the abuse of entrusted power for private gain”.⁶⁰ Whereas this is one of the most popular definitions of corruption, it often is criticised for its focus upon “entrusted power”, which tends to imply that all power capable of being abused is entrusted.⁶¹

⁶⁰ See <https://www.transparency.org/en/what-is-corruption> (visited 6 September 2019).

⁶¹ Chinhamo & Shumba (2007) 6.

The World Bank defines corruption as “the abuse of public office for private gain”.⁶² This definition of corruption often is criticised for linking corruption exclusively to public office, thereby leaving out corruption in the private sector.

According to Chihamo & Shumba, corruption is the abuse or complicity in the abuse of private and public power, office or resources for personal gain.⁶³ The broad nature of this definition offers an enlarged scope for construing conduct as corrupt.

Notwithstanding the varying definitions of corruption available, once they are read together, the available definitions provide a sufficient framework to combat corruption. It may be deduced that corruption happens in both the private and public sectors and that it consists of both the demand and supply sides. Therefore, to understand fully what forms of conduct amount to corruption, one would do well to consider the available definitions as a composite whole.

2.3 Types of Corruption

Corruption can be categorised in different ways; from its statutory or non-statute based definitions as already discussed, to the manner in which it manifests. For purposes of this study, the manifestation of corruption in Uganda is categorised as grand, bureaucratic and political.

2.3.1 Grand Corruption

This is large-scale corruption, which consists of acts committed at high levels of government, distorting policies or the central functioning of the state and enabling leaders to benefit at the expense of the public good.⁶⁴

There have been several cases that indicate the prevalence and increase of grand corruption in Uganda. Some examples are allegations of mismanagement of donor funds in

⁶² Available at <https://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-2048> (accessed 16 December 2021).

⁶³ Chihamo & Shumba (2007) 6.

⁶⁴ Transparency International, available at <https://www.transparency.org/what-is-corruption> (accessed 6 September 2019). See also Lambsdorff JG *The institutional economics of corruption and reform: Theory, evidence and policy* (2007) 20.

refugee programmes managed by government;⁶⁵ the fraudulent procurement of a contractor for the Mukono-Katosi road and subsequent advance of UGX24 billion to a non-existent contractor to start the road construction in 2014; the embezzlement of UGX205 billion meant for the national identity registration exercise in 2011; the misappropriation of UGX58 billion by the office of the Prime Minister in 2012; and the embezzlement of funds to the value of UGX375 billion in the Education Ministry in 2012.⁶⁶

This type of corruption is worsened by syndicates of corrupt officials in different ministries, departments and agencies who collaborate to facilitate their corrupt dealings.⁶⁷ This has resulted in the loss of billions of government revenue that could have been used to deliver services to Ugandan citizens.

2.3.2 Bureaucratic or Petty Corruption

This refers to the everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens and enterprises, who often are trying to gain access to basic goods or services in hospitals, schools, police departments and other state institutions.⁶⁸ This type of corruption is known also by other names which demonstrate its nature. Two of the most common usages are “speed money” and “grease money” to indicate that it is “something small” intended to facilitate the smooth running of a system that ought to be running smoothly anyway.

Surveys in Uganda have shown that this everyday payment of small amounts of money to encourage the delivery of free public services is very common and generally is considered acceptable.⁶⁹ Ugandans have been found to be resigned generally to paying bribes before

⁶⁵ Transparency International-Uganda *An Audit of the operations in Uganda for the office of the United Nations High Commissioner for Refugees Report 2018/097* (2009) 6.

⁶⁶ Inspectorate of Government (2014) 71.

⁶⁷ Inspectorate of Government (2014) 17.

⁶⁸ Transparency International, available at https://www.transparency.org/glossary/term/petty_corruption (accessed 6 September 2019). See also Lambsdorff JG (2007) 20.

⁶⁹ Inspectorate of Government (2014) 17.

receiving public services, such as health care and assistance from the security forces.⁷⁰ Whereas the amounts of money exchanging hands at any one time usually are minimal, they become huge sums when combined and, if left unchecked, petty corruption can develop easily into large-scale institutionalised corruption.⁷¹ For example, in a 2014 survey, the total amount of money collected in petty bribes in Uganda was estimated at UGX167 billion, with 17 percent of the persons surveyed having paid a bribe in the preceding 12 months to secure access to a “free” government service.⁷² Bureaucratic corruption is aimed mainly at “lubricating the bureaucratic wheel”⁷³ in order to make it work faster or easier. Moreover, since petty corruption is the most noticeable form of corruption for the ordinary citizen and its victims are often the poor, it increases the transactional costs and the general perception of a country’s levels of corruption.⁷⁴

2.3.3 Political Corruption

This refers to the manipulation of policies, institutions and rules of procedure in the allocation of resources by political decision-makers who abuse their position to sustain their power and wealth status.⁷⁵ It involves also unlawfully using state resources to obtain support for a corrupt political party.⁷⁶ In Uganda, this form of corruption manifests itself in voter bribery, voter intimidation, manipulation of the voters’ register, ballot rigging and stuffing and multiple voting.⁷⁷ Political corruption is widespread and one of the factors which undermines reforms in Uganda.⁷⁸

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- ⁷⁰ Bertelsmann Foundation *Report on Uganda “BTI 2018”* (2018) 15 available at https://www.ecoi.net/en/file/local/1427478/488359_en.pdf (accessed 16 December 2021).
- ⁷¹ Amundsen *Political corruption: An introduction to the issues* (1999) Norway: Chr. Michelsen Institute 5.
- ⁷² Inspectorate of Government (2014) 71.
- ⁷³ Sumah ‘Corruption, causes and consequences’ (2018) *Trade and Global Market Intech open* 67.
- ⁷⁴ Khan M (2006) 6.
- ⁷⁵ Transparency International, available at https://www.transparency.org/glossary/term/political_corruption (accessed 6 September 2019).
- ⁷⁶ Martini & Transparency International (2013) 3.
- ⁷⁷ Inspectorate of Government (2014) 71.
- ⁷⁸ Mbabazi & Yu ‘Patronage driven corruption undermining the fight against poverty in Uganda’ (2015) 7(1) *African Social Science Review* 57.

The most recent form of what is arguably political corruption was the amendment of the Constitution to abolish the 75-year age limit for presidential candidates, clearly designed to favour the incumbent, who was then 73 years old. Despite heavy criticism and protest by opposition politicians and civil society, on 20-December 2017, through open voting, parliament approved a constitutional amendment that would abolish the 75-year age limit. This amendment allowed President Museveni to run for the sixth time in the elections of 2021. These elections would be marred by allegations of irregularities including fraud, violence and police brutality among others, which are said to have arguably “tilted” the political playing field in favour of the incumbent.⁷⁹

2.4 Extent of Corruption in Uganda

Corruption in Uganda is widespread and continues to hamper economic development and poverty reduction.⁸⁰ Uganda was ranked 146 out of 180 countries surveyed regarding perceptions of public sector corruption by Transparency International in 2018. With a percentage score of 26 out of 100, Uganda emerges as very corrupt.⁸¹ While it is arguable that this score is based upon mere perceptions, there are lots of cases that lend credence to these statistics.

In a 2017 study, Uganda was named to have the highest prevalence of bribery in East Africa, with 41% of all respondents reporting that they had to pay a bribe to obtain access to basic services.⁸² This percentage was even higher for respondents who had interacted with the police, judiciary and land services, which are ranked the most corrupt government sectors in Uganda. In these departments, over 60% of the persons interviewed stated that, implicitly or

⁷⁹ Afran BI 'A report on Governmental Abuse, Violations and Misconduct in advance of the January 2021, presidential elections and its aftermath' (2021) 7&28, Joseph Siegel 'Taking Stock of Africa's 2021 Elections' (2021) 2 available at <https://africacenter.org/spotlight/2021-elections/>, Africa Center for Strategic Studies (2021) available at <https://africacenter.org/spotlight/untangling-post-election-uganda/>, <https://www.hrw.org/news/2021/01/21/uganda-elections-marred-violence>.

⁸⁰ Inspectorate of Government (2014) 17.

⁸¹ Transparency International *Corruption Perceptions Index* (2018) 3.

⁸² Transparency International *East African Bribery Index* (2017) 11.

explicitly, they were asked or they offered to pay a bribe in order to receive services to which they were entitled.⁸³

A 2019 survey shows that 69 percent of the respondents think that corruption in Uganda has increased in the last 12 months, 78 percent think the government is not doing enough to fight corruption, while 49 percent admitted to paying a bribe in the last 12 months.⁸⁴ Other recent reports continue to show corruption as being widespread across most government sectors, with the civil service and the judiciary ranked amongst the top ten institutions perceived to be most corrupt.⁸⁵

The colossal sums named in some of the highly publicised corruption scandals involving government funds are a further demonstration of the serious extent of corruption in Uganda. For example, in the 2011 general elections, reports indicate that the Electoral Commission spent UGX2.34 billion (approximately 6 percent of its total 2012/2013 budget of UGX39.6 billion) on by-elections that were a result of electoral fraud.⁸⁶ In 2013, UGX165 billion meant for pensioners was lost in one of the most shocking corruption scandals, while the equivalent of US\$12.9 million was paid out by various government departments for works that were never done.⁸⁷

While statistics show ever-growing levels of corruption in Uganda, efforts to fight it do not seem to be commensurate with the burden at hand. In 2017, Uganda's efforts to control corruption scored a measly 13.94 out of 100 (where 0 is the lowest and 100 the highest score) on a World Bank index.⁸⁸ While there was a slight improvement from the 12.98 percent of 2016, Uganda needs to do significantly more to address the problem of corruption. Overall, the available statistical data suggest that corruption in Uganda is widespread. Any intervention

⁸³ Transparency International *East African Bribery Index* (2017) 33 & 34.

⁸⁴ Transparency International *Global Corruption Barometer* (2019) 56.

⁸⁵ Inspectorate of Government (2014) 23 & 26.

⁸⁶ Inspectorate of Government (2014) 14.

⁸⁷ Inspectorate of Government (2014) 14.

⁸⁸ World Bank Worldwide Governance Indicators, 2018 Update, available at <http://info.worldbank.org/governance/wgi/index.aspx#home> (accessed 10 September 2019).

aimed at making a meaningful change to this situation must examine the causes of these high levels of corruption so as to devise effective anti-corruption measures.

2.5 Consequences of Corruption

Studies about the consequences of corruption are in agreement that corruption has devastating consequences for the economic, political and institutional spheres of society. According to the World Bank, corruption is a major obstacle to development, growth and the rule of law.⁸⁹ These findings are in line with those of scholars, including Lambsdorff, who states that corruption acts ‘not as grease but as sand in the gears of the economic system.’⁹⁰ This section comprises of a discussion of these consequences in the Ugandan context.

2.5.1 Economic Consequences of Corruption

a) Discouragement of Foreign Direct Investment

“Fighting corruption and restoring investors’ confidence ... go hand in hand”.⁹¹ Given its bearing on the general cost of doing business and a business’s ultimate profitability, a country’s perceived level of corruption is always a major consideration for foreign investors. Popular corruption indices are known to inform both domestic and foreign investment decisions. A corrupt country is unattractive to investors and this reduces the general capital inflow into such a country.⁹²

High levels of corruption are associated with high taxes, uncertainty, arbitrary decisions and policy uncertainty, all of which create a hostile investment climate.⁹³ Investors are unwilling to commit to a country where corruption hampers the predictability of the decisions associated with running a business. By contrast, a country with lower levels of corruption guarantees

⁸⁹ World Bank *Drivers of corruption. A brief review* (2014) vii available at <http://hdl.handle.net/10986/20457> (accessed 16 December 2021).

⁹⁰ Lambsdorff JG (2007)24.

⁹¹ Lambsdorff JG (2007) 191.

⁹² Lambsdorff JG (2007) 28.

⁹³ Deininger & Mpuga ‘Does greater accountability improve the quality of public service delivery? Evidence from Uganda’ (2005) 33(1) *World development* 173. See also Rose Ackerman (1999)17; Hope KR *Corruption and development in Africa* (2000) London: Palgrave Macmillan 21-22.

expeditious processes and the protection of property rights, which is inviting for foreign investors.⁹⁴

Moreover, since corrupt systems create an environment conducive to money laundering, countries globally are encouraged to shun economies that are known to be corrupt. Thus, the Financial Action Task Force (FATF), draws the attention of its members — and effectively the whole world — to countries which pose a money laundering and, therefore, a terrorism risk, and encourages them to employ “enhanced measures” when dealing with such countries.⁹⁵ In effect, the FATF discourages its members and other countries from conducting business with countries that are corrupt and, therefore, pose a high risk of money laundering. The direct link between corruption and money laundering reduces the chances of foreign direct investment in countries which have high rates of corruption.

b) Increase in the Cost of Doing Business

The effect of corruption upon the cost of doing business is twofold. Firstly, the illegal kickbacks that are extorted by public officials serve as additional taxes for businesspersons, thereby making it costly for them to run their businesses. In turn, those who pay bribes, try to recover the money spent on the illegal kickbacks by increasing the cost of their goods or services.⁹⁶ Even if the price is maintained, the quality of the goods or services may be compromised in order for the bribe payer to make a profit despite the corruption costs. This increases the burden upon a country’s economy, since the poor quality goods or services are expensive for the taxpayer.⁹⁷

Secondly, when officials providing services that should be free request bribes as a precondition for doing their jobs, the actual cost of these services is higher than it ought to be and therefore more expensive for the ordinary user.⁹⁸ For example, in a bid to enhance access

⁹⁴ Ayittey GB ‘Combating corruption in Africa: analysis and context’ (2000) 106-107; Lambsdorff JG & Cornelius P ‘Corruption, foreign investment and growth’ *The Africa competitiveness report* (2000)10.

⁹⁵ FATF Recommendations and FATF Methodology available at [https://www.fatf-gafi.org/publications/?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/?hf=10&b=0&s=desc(fatf_releasedate)) (accessed 16 December 2021).

⁹⁶ Lambsdorff JG & Cornelius P (2000) 5; Deininger & Mpuga (2005)173; Hope KR (2000) 23.

⁹⁷ Hope KR (2000) 23-24; Mbaku (2007) 105.

⁹⁸ Mbaku (2007) 104.

to healthcare services for the poor, Uganda abolished health access fees. However, there are frequent cases of medical officials refusing to attend to patients unless the latter pay a bribe. This not only inflates the cost of health services but also, in some instances, has led to death of the patients who could not raise the requested bribe money.⁹⁹ In the end, while the corrupt bureaucrats enjoy their ill-gotten wealth, the burden of their corrupt acts is borne by the ordinary taxpayer who is already struggling to afford the basics of life.

c) Reduction of Development Funds

Embezzlement by government officials reduces the already scarce development resources available for government projects.¹⁰⁰ For countries like Uganda, where the levels of development are very low and where the availability and quality of public services are minimal, such embezzlement is devastating.

For example, in an attempt to bridge the development gap created by more than two decades of civil war in Northern Uganda, the government launched the Peace, Recovery and Development Plan (PRDP) as a strategy for the eradication of poverty and improvement of the welfare of the people in Northern Uganda.¹⁰¹ However, from October 2010 to June 2012, more than half of the funds availed for the programme were diverted by officials in the Office of the Prime Minister. Of the UGX39 319 399 151 provided by donors for this cause, only UGX10 161 775 000 were transferred to the consolidated fund to support PRDP activities. This meant that UGX27 125 103 826 were diverted to accounts for which the funds were not meant.¹⁰²

Evidently, corruption reduces developmental funds, thereby making a bad situation worse, and more so for poor countries such as Uganda.

⁹⁹ Inspectorate of Government (2014) 21-22.

¹⁰⁰ Hope KR (2000) 24.

¹⁰¹ The Peace, Recovery and Development Plan for Northern Uganda 2007-2010 available at https://www.brookings.edu/wp-content/uploads/2016/07/Uganda_PRDP-2007.pdf (accessed 15 December 2021).

¹⁰² Public Accounts Committee (2013) *Special Audit Investigations into Allegations of Financial Impropriety in the Office of the Prime Minister* Kampala, Uganda: PAC 7.

d) Distortion of the National Economy

The manner in which corrupt officials use their illegally obtained funds can distort the national economy.¹⁰³ For example, using bribery to evade taxes benefits the corrupt at the expense of the state and the economy as a whole. Owing to the loss of trust in the government to fight corruption and to create legitimate avenues of making money, and in order to avoid the high costs associated with government corruption, citizens will engage in clandestine economic activities that cannot be tracked for taxation purposes.¹⁰⁴ This leads to loss of revenue that potentially would have accrued from taxation, were these dealings monitored by government.

Corruption leads to capital flight. Capital flight has been defined as “the diversion of resources from domestic real investment to foreign financial investment”.¹⁰⁵ While trying to conceal their illegally obtained wealth, the perpetrators of corruption usually hide their assets abroad. This amounts to capital flight and it has adverse effects on the economy of the country from which the resources are being stolen.

The effects of capital flight resulting from corruption are twofold. Firstly, the perpetrator deprives the economy of the resources through the initial corrupt act and, secondly, capital flight erodes the tax base of the victim state, thereby further denying the victim state of resources.¹⁰⁶ Moreover, business owners who use bribery to avoid tax gain a competitive advantage against their law-abiding counterparts.¹⁰⁷ These perpetrators of corruption can set prices far below the market price, thereby destabilising the economy.

2.5.2 Political Consequences of Corruption

a) Political Instability

¹⁰³ Mbaku (2007) 107-108.

¹⁰⁴ Rose-Ackerman (1999) 15-16; Lambsdorff JG (2007) 94; Ayittey (2000) 108.

¹⁰⁵ Hope KR (2000) 24.

¹⁰⁶ Hope KR (2000) 25; Deininger & Mpuga (2005) 172.

¹⁰⁷ Rose Ackerman (1999) 23-25.

When highly-placed government official are involved in corruption, they are bound to adopt suppressive methods to silence any critics who may expose their corrupt dealings.¹⁰⁸ In the process, the political situation of the country deteriorates to one of intolerance and repression.

The government of Uganda is known to use state resources, like the police and the army, to brutalise activists who are perceived to be “anti-government”. For example, because of his constant criticism of the entrenched corruption in government, as well as other ills of the regime, Colonel Dr Kizza Besigye, a major opposition leader, has suffered numerous brutal arrests over the years.¹⁰⁹

Further, civil servants are the representation of government and once they are corrupt, the public will resent the government.¹¹⁰ In some cases, this resentment has led to political uprisings, as in Uganda (1986),¹¹¹ Mali (1991), Sierra Leone (1992) and the Democratic Republic of Congo (1997).¹¹²

b) Undermining of Government Reform

The beneficiaries of corruption will not want any change that might sabotage their illicit sources of income.¹¹³ Therefore, these individuals will resist any measures that might cause such a change, thereby holding back state reform at the expense of the general public.

2.5.3 Institutional Consequences of Corruption

a) Institutional Breakdown and Inefficiency

Pervasive corruption leads to a total collapse of institutions and defeats the purpose for which they exist. In a corrupt system, the persons in authority end up being more interested in bribes and kickbacks than in the quality of work produced.¹¹⁴ This results either in substandard work

¹⁰⁸ Mbaku (2007) X; 38; Hope KR (2000) 25.

¹⁰⁹ See <https://www.aljazeera.com/news/2016/05/uganda-opposition-kizza-besigye-charged-treason-160514043224644.html> (accessed 4 November 2019).

¹¹⁰ Mbaku (2007) 108-109.

¹¹¹ See Point 7 the Ten Point Programme of the National Resistance Movement; Mutibwa P *Uganda since Independence A story of unfulfilled hope* (1992)154.

¹¹² Hope KR (2000) 26; Khan (2006) 30.

¹¹³ Rose-Ackerman (1999) 17.

¹¹⁴ Ayittey (2000) 104-105; Mbaku (2007) 102.

or in work not done at all, both to the detriment of the larger population. For example, when a judicial officer corruptly defeats the ends of justice, or a mother and her unborn child die in a hospital because the mother could not raise the UGX50 000 bribe requested by a midwife (as was the case for Sylvia Nalubowa),¹¹⁵ this is reflective of institutions ironically defeating the purpose for which they exist.

b) Erosion of Institutional Trust

Public Institutions which have a reputation for being corrupt lose the confidence of the public.¹¹⁶ Specifically, when law enforcement institutions, such as the police and the judiciary, are known to be corrupt, the loss of trust in them by the public will mean that there will be less recourse to these institutions in times of need. This has been the case in Uganda, where mistrust of government institutions leads people to forfeit their rights or to resort to other coping mechanisms.¹¹⁷ Where the mistrusted institution is the police, this might result in mob justice for fear that the police will set surrendered suspects free corruptly.

c) Under-Utilisation of Human Capital

When the appointment, retention and promotion of staff are based upon bribery, nepotism or other forms of corruption instead of competence, it is impossible for a country to utilise fully its skilled labour force.¹¹⁸ In Uganda, this is referred to commonly as “technical know-who” as opposed to “technical know-how” in the job market.

This practice results in unproductive workplaces staffed by under-skilled or unskilled corrupt cliques of individuals committed to satisfying themselves and their patrons rather than the general public. Meanwhile, skilled individuals who are not well connected remain unemployed or under-employed in other sectors, with the country missing out on their valuable

¹¹⁵ Inspectorate of Government (2014) 22.

¹¹⁶ Mbaku (2007) 05.

¹¹⁷ Inspectorate of Government (2014) 11.

¹¹⁸ Mbaku (2007)105-106.

skills. Alternatively, skilled workers may opt for simple jobs with opportunities of corrupt enrichment as opposed to technically demanding but low-paying jobs.¹¹⁹

Closely related to this is the brain drain. When skilled workers are unable to obtain suitable employment because of jobs being offered to relatives and friends, some may opt for employment abroad, out of frustration. The result may be a brain drain which deprives a country of precious talent.¹²⁰

2.6 Causes of Corruption in Uganda

Any serious fight against corruption must look at its root cause(s).¹²¹ Findings have shown that while the causes of corruption across varying societies are numerous, they are largely similar in both developed and developing countries. In a study of a cross-section of countries, Lambsdorf attributes the prevalence of corruption to low wages of public officials, vague government policies, and weak monitoring structures, among others.¹²² The abuse of discretion, colonial history, and cultural practices, are some of the other factors proposed by Rose-Ackerman to account for corruption.¹²³ As is discussed in the following section, these causes are also true for the Ugandan context.

2.6.1. Abuse of Discretion

According to Robert Klitgaard, the abuse of discretion is the root cause of corruption. He argues that when public officials are vested with a monopoly to exercise discretion in their decision-making, in the absence of adequate accountability, they will end up being corrupt.¹²⁴ When public officials enjoy this kind of discretion, it gives them the opportunity to disrupt otherwise efficient markets by asking for kickbacks and only giving rents to the highest bidder.¹²⁵

¹¹⁹ Lambsdorff JG (2007) 88; Mbaku (2007)106.

¹²⁰ Rose Ackerman (1999) 73-74.

¹²¹ Shah & Schacter (2004) 42. See also Mbaku (2007) X; Khan (2006) 30-1.

¹²² Lambsdorff JG (2007) xiii and 28-9.

¹²³ Rose-Ackerman (1999) 73.

¹²⁴ Klitgaard R *Controlling corruption* (1988) London, England: University of California Press 75.

¹²⁵ Khan (2006) 5.

High levels of discretionary powers for civil servants coupled with weak accountability mechanisms in developing countries have been said to make them prone to corruption.¹²⁶ In Uganda, inadequate accountability across most government sectors has been named as one of the factors that supports corruption and the misappropriation of government funds.¹²⁷ The Office of the Prime Minister, the Ministry of Local Government, the Ministry of Health and the judiciary all have been involved in cases where entrusted funds were not used for their intended purpose.¹²⁸ In 2015, UGX12 086 792 676, constituting 40% of the total funds allocated to the Ministry of Local Government, were spent on activities other than those identified under the respective budget lines.¹²⁹ A recent report by the Office of the Auditor-General indicates that expenditure issues, such as procurement and payroll anomalies, and the failure to account for advanced funds, some of which were caused by the deliberate flouting of procurement regulations and mischarging of allocated funds, are crosscutting issues for all local governments in Uganda.¹³⁰

Ensuring increased accountability through the establishment of a system of controls, access to information and transparency will check discretionary power, thereby reducing opportunities for corruption.¹³¹ As Bardhan asserts: “One way of reducing bureaucratic corruption is to reduce the monopoly power of the bureaucrat.”¹³² By reducing the discretionary capacity of public officials to impose or disrupt procedures in order to extract kickbacks, corruption which flows from the misuse of discretionary power will be reduced.¹³³ This idea will be discussed further in Chapter Five below.

¹²⁶ Deininger & Mpuga (2005) 174. See also Mbaku (2007) 74.

¹²⁷ Inspectorate of Government (2014) 92. See also Asea WB ‘Combating political and bureaucratic corruption in Uganda: Colossal challenges for the church and the citizens’ (2018) 74(2) *HTS Theological Studies* 3.

¹²⁸ Inspectorate of Government (2018) 9-10.

¹²⁹ Office of the Auditor General *Annual Report of the Auditor General for the year Ended 30th June 2015* (2015) 15 Kampala, Uganda: OAG.

¹³⁰ Office of the Auditor General *Annual Report of the Auditor General on the Financial Statements for the Year ended 30th June 2016 – Local Authorities* (2016) 4 & 7 Kampala, Uganda: OAG.

¹³¹ Deininger & Mpuga (2005) 171.

¹³² Bardhan P ‘Corruption and development: a review of issues’ *Journal of Economic Literature* (1997) 1337.

¹³³ Khan (2006) 8.

2.6.2. Low Wages of Public Officials

It has been argued that the levels of the wages of public officials have a direct effect on corruption levels.¹³⁴ Public officials are said to be corrupt because they are remunerated poorly. Officials end up being corrupt in order to supplement their wages and obtain a “fair” amount of money. Various scholars support the idea that there is a relationship between the salaries of public official and the general levels of corruption in a country. Moreover, a poorly paid public official whose corrupt acts are less likely to be detected or who is less likely to be convicted and punished even when detected, is more likely to be corrupt.¹³⁵ By contrast, higher pay for public officials is seen as an incentive to stay away from corruption because officials are afraid of losing their livelihood were they to be caught in the corrupt act.¹³⁶ This argument is backed by Rose-Ackerman, who maintains that the low pay and low levels of internal monitoring in the public sector offer little incentive to public officials to do their jobs well. Therefore, she says, public officials easily are tempted by corrupt payoffs to “improve bureaucratic efficiency” in favour of the ones making the payments.¹³⁷ Voit & Gutman also assert that lower salaries lead to a higher probability of corruption.¹³⁸

Closely related to wages is the general level of income or the poverty levels of the citizens. Poverty has been defined by the World Bank as the lack or insufficiency of money to meet basic needs, including food, clothing and shelter.¹³⁹ While poverty often is viewed as a consequence of corruption, it has been argued by some scholars that poverty also creates the need for corruption.¹⁴⁰ When public officials who are vested with bureaucratic power to control processes earn barely enough to meet their basic needs, they are likely to resort to corruption.¹⁴¹ In Uganda, the low salaries of key public officials — such as teachers, health workers, and members of the judiciary, army personnel and police officers— often are blamed

¹³⁴ Lambsdorff JG (2007) 37.

¹³⁵ Rose-Ackerman (1999) 72 & 78. See also Khan (2006) 6; Hope KR (2000) 21.

¹³⁶ Khan (2006) 6; Rijckeghem & Weder (1997) 6.

¹³⁷ Rose-Ackerman (2001) 549.

¹³⁸ Voigt & Gutmann (2015) 4.

¹³⁹ See <https://www.worldbank.org/en/country/uganda/brief/uganda-poverty-assessment-2016-fact-sheet> (accessed 2 November 2019).

¹⁴⁰ De Maria (2008) 789.

¹⁴¹ Mbaku (2007) 66.

for contributing to the rising levels of corruption. It has been recommended that these officials be remunerated better so as to reduce their temptation and vulnerability to engage in corrupt acts.¹⁴²

2.6.3. Colonial History

Corruption, according to some scholars, is rooted in colonialism. During the period of colonialism, the colonial masters often used practices, such as divide and rule, indirect rule, violence and fraud, to gain loyalty and sustain their dominance.¹⁴³ Unfortunately, these practices, especially tribal divisions and the exchange of favours that were used by the British in Uganda as an integral part of their colonial rule, were carried forward after independence. It is argued that these same practices eventually culminated in the current state of corruption.¹⁴⁴ For example, the colonialists used the Baganda and the Nubians to rule over Uganda, which created bitterness across the other tribes.¹⁴⁵ Tribal loyalties continued to play a big role in sustaining post-independent regimes in power. In order to ensure their security of office, leaders appointed their close kinsmen to top positions in government and in the army, as arguably is still the case in Uganda today.

Certainly, the failure of the Ugandan elite to design a political system reflective of the general ideals of society and their preference for the methods of the colonial system that would maximise their individual interests, account for some of the corrupt practices in contemporary Uganda.¹⁴⁶

2.6.4. Cultural Considerations

De Maria argues that the underlying culture of the perpetrators is one of the causes of corruption. It is argued, somewhat controversially, that certain practices, such as gift giving and reciprocity, which are central to most African cultures, are to blame for the prevalence of

¹⁴² Inspectorate of Government (2014) 80; Asea (2018) 3; Asimwe GB (2013) 130 & 136.

¹⁴³ Lwanga-Lunyiigo 'The Colonial Roots of Internal Conflict in Uganda' (1987) 2 & 7 available at <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/1412> (accessed 14 December 2021); Mbabazi & Yu (2015) 58; Nystrand (2014) 823.

¹⁴⁴ Ruzindana (1997) 199.

¹⁴⁵ Lwanga-Lunyiigo (1987) 3.

¹⁴⁶ Mbabazi & Yu (2015) 6. See also Mbaku (2007) 1.

corruption in certain communities.¹⁴⁷ When this “something for something” mentality is transferred to the public and private sectors, it is said to result in corrupt practices. It has been noted that in Uganda it is common for public officials to expect a reward after delivering a service. In the same vein, the public often is willing to give a form of “appreciation” to officials who have served them. And so the cycle goes on.¹⁴⁸

Whereas gift giving may be considered perfectly normal in one society, in another it might be perceived as corruption.¹⁴⁹ However, if this way of life underlies all spheres of society, conduct that may seem culturally normal and acceptable may actually amount to corruption as defined above. For example, placing emphasis on loyalty to family, friends and other close ties at the expense of the public good has been found to account for corruption in Africa.¹⁵⁰ In Uganda, cases of nepotism and tribalism in the allocation of job opportunities are very common. It generally is expected that a person in a position of authority will create opportunities for relatives and friends, and corrupt acts are not castigated as much if the perpetrators share their loot with their community.¹⁵¹

While the variance in culture may account for the misconception that certain practices are corrupt or lead to corruption, it is also true that the misuse of such practices can culminate in corruption, such as bribery, being presented as gift giving.

2.6.5. Rational Choice

In seeking to account for the root cause of corruption, some economists explain that corruption is a result of considered choice. The individual is viewed as a rational being who takes considered decisions to maximise his or her benefit.¹⁵² It is argued that when an individual is

¹⁴⁷ De Maria (2008) 779. See also Lambsdorff JG (2007) 8-29; Bakuluki (2013)36; Mbaku (2007) 66.

¹⁴⁸ Bakuluki (2013) 36-37.

¹⁴⁹ Rose Ackerman (1999) 5, 92, 110; Bardham ‘Corruption and development: a review of issues’ (1997) 35 (3) *Journal of Economic Literature* (1997)1330; Ware & Noone ‘The culture of corruption in the post conflict and developing world’ (2003) *Imagine coexistence: Restoring humanity after violent ethnic conflict*. San Francisco, CA: Jossey-Bass 199.

¹⁵⁰ Hope KR (2000) 22. See also Osei-Hwedie & Osei-Hwedie ‘The political, economic, and cultural bases of corruption in Africa’ (2000) *Corruption and development in Africa* London: Palgrave Macmillan 41, 46.

¹⁵¹ Bakuluki (2013) 29.

¹⁵² Mbaku (2007) 74.

faced with the “opportunity” to engage in corruption he or she will conduct a cost-benefit analysis. If the benefits accruing from the corrupt act outweigh the costs, the person will engage in corruption and *vice versa*. In this regard, Mr. John Muwanga, the Auditor General of Uganda once stated that:

Someone will ask, “Will it pay?” If it will, one will steal. If it won’t pay, one won’t steal. It should be too expensive to steal. This is why corruption is happening on a grand scale. They must steal enough to stay out of jail.¹⁵³

It has been argued that where the opportunity costs of being discovered and punished are low, an official will be willing to engage in corruption.¹⁵⁴ It is proposed, therefore, that efforts to fight corruption ought to focus on raising the transactional costs of being corrupt.¹⁵⁵

2.6.6. Weak Accountability Institutions

Most crucially for the purposes of the rest of this mini-thesis, the existence of strong accountability institutions has been proved to be correlated with lower levels of public sector corruption.¹⁵⁶ On the other hand, the weakness of accountability institutions can be exploited by corrupt regime for their own interests.¹⁵⁷ Therefore, unsurprisingly, weak monitoring institutions are correlated with high levels of corruption. When a country’s accountability institutions — such as the press, the judiciary, the prosecution services and the national ombudsman — are weak, the possibility of their detecting and bringing the corrupt to book will be minimal. As a result, the gains from corruption will outweigh the potential penalties, and corruption will thrive.¹⁵⁸

2.7 Conclusion

On 9 October 1962, Uganda attained independence from Britain, bringing an end to more than six decades of colonial rule. However, while there was a change in the political leadership, the

¹⁵³ Human Rights Watch & Yale law school (2013) 1.

¹⁵⁴ Khan (2006) 6.

¹⁵⁵ Khan (2006) 8. See also Lambsdorff JG (2007) xiii.

¹⁵⁶ Shah & Schacte (2004) 3.

¹⁵⁷ Tangri & Mwenda (2008) 183.

¹⁵⁸ Bakuluki (2013) 27; Lambsdorff JG (2005) 2 & 20-21; Wang (2013) 47; and Mbaku (2007) 72.

Ugandan elite who took over power continued to run most of the systems as had been handed down by the former colonial masters. As we saw in this chapter, according to some scholars, these post-colonial practices adopted by the ruling elite persist and account for some of the corrupt practices in Uganda.¹⁵⁹

In most post-colonial governments in Africa, there was a focus on staying in power as opposed to discharging traditional governmental functions, such as ensuring the rule of law and providing basic services.¹⁶⁰ Uganda was no exception. As in the period of colonialism, post-colonial governments in Uganda were characterised by the use of fraud and force to sustain themselves in power.¹⁶¹ While the political new leaders struggled to find their equilibrium, they governed by both inducement through favours and the use of force to achieve desired results. What had been anticipated as a time of liberation from colonial oppression soon degenerated into a situation of economic and political turmoil that was exploited by government officials and private businessmen to amass personal wealth.¹⁶²

The high prevalence of corruption in Uganda has far-reaching consequences on various spheres of society. It leads to institutional inefficacy and erodes the population's trust in the very institutions that should attend to societal needs. Politically, corruption undermines government reform and creates instability, which in turn creates a hostile investment climate and affects economic growth.

However, the unprecedented levels of corruption in Uganda cannot be blamed entirely on colonial practices. Whereas Uganda has made substantial progress in reducing poverty, it is still a poor country. In 2013, more than a third of Ugandans were reported to be living below the international extreme poverty line of US\$1.90 a day.¹⁶³ This poverty trend has not improved

¹⁵⁹ Ruzindana (1997) 134. See also Mbabazi & Yu (2015) 59.

¹⁶⁰ Mbaku (2007) 145.

¹⁶¹ Lwanga-Lunyiigo (1987) 2 & 7.

¹⁶² Tangri & Mwenda (2008) at 178.

¹⁶³ World Bank *The Uganda Poverty Assessment Report 2016 Farms, Cities and Good Fortune: Assessing Poverty Reduction in Uganda from 2006 to 2013* (2016) X & XV available at <https://openknowledge.worldbank.org/handle/10986/26075> (accessed 16 December 2021).

in recent years. In the 2017/2018 financial year, the poverty rate was 21.4 percent.¹⁶⁴ Whereas there was a reported reduction to 20.3 percent in 2019/2020, still, one in five Ugandans was reported to be living in poverty, with 41.1 percent of the population living on less than USD1.9 per day.¹⁶⁵

However, while most citizens live in abject poverty, the elites continue to appropriate the already scarce resources with little to no constraint from the state machinery. This practice has been common to most of the regimes which have come to power since independence.

By 1985, two decades after independence, Uganda had had nine presidents, with Idi Amin's rule, from 1971 to 1979, being the most infamous. Among other evils, Amin's eight-year dictatorship was notorious for the wave of unparalleled corruption that spilled over to the Obote regime which, in turn, was toppled by Yoweri Museveni in 1986.¹⁶⁶ The coming to power of Museveni was a beacon of hope for the then ailing Ugandan economy. He was welcomed as the hero who could be trusted to end the country's numerous social and economic problems. At the top of his regime's agenda was the elimination of corruption and the abuse of power.¹⁶⁷

The Museveni regime's first tangible effort towards the elimination of corruption was the establishment of the office of the Inspectorate of Government to promote accountability, transparency, integrity and good governance.¹⁶⁸ This set the stage for several other anti-corruption initiatives that would be established in Uganda, championed by the President and others. However, while the President consistently has castigated the perpetrators of corruption and promised to stamp out the vice in Uganda, real progress in the reduction of corruption yet is to be realised.

After more than 35 years of Museveni's leadership and "zero tolerance towards corruption", Uganda still struggles with the problem of corruption, and its increase is of great concern to

¹⁶⁴ Ministry of Finance Planning and Economic Development (MoFPED) National *Budget Framework Paper 2021/2022* (2020) 44 Kampala, Uganda: MoFPED.

¹⁶⁵ Uganda Bureau of Statistics (UBOS) The *Uganda National Household Survey 2019/2020 (2021)* xxvii Kampala, Uganda UBOS.

¹⁶⁶ Tangri & Mwenda (2008) 178.

¹⁶⁷ Point 7 of the National Resistance Movement's 10 point Programme. See also Mutibwa (1992) 180.

¹⁶⁸ Inspectorate of Government (2010) 1.

national and international actors. In fact, the corruption situation is arguably at its worst ever.¹⁶⁹ Speaking about the perception of the increasing prevalence of corruption in Uganda, the Inspector General of Government herself declared that: “I agree with the perception that it (corruption) is going up.”¹⁷⁰ It is therefore important to examine Uganda’s anti-corruption efforts to understand their challenges and how the same can be addressed to make them more efficient. Uganda has devised a number of legislative, institutional and policy interventions to address the corruption situation. However, despite their presence, corruption still persists. The following chapter evaluates these interventions and assesses their effectiveness in fighting corruption in Uganda.



¹⁶⁹ Tangri & Mwenda (2008) 178.

¹⁷⁰ Hon Justice Irene Mulyagonja, available at <https://observer.ug/component/content/article?id=23866:igg-political-interference-favours-the-big-thieves> (accessed 6 September 2019).

CHAPTER THREE

A CRITICAL EVALUATION OF THE ANTI-CORRUPTION INTERVENTIONS IN UGANDA

3.1. Introduction

The institutions to fight corruption are there but the people manning them are the problem. These departments have been infiltrated by weevils.¹⁷¹

This is a statement made by the President of Uganda while launching the statehouse anti-corruption unit, one of the many anti-corruption institutions in the country. Uganda has adopted numerous measures to address the challenge of persistent corruption. These include ratification of international instruments, enactment of anti-corruption laws and policies, and establishment of independent anti-corruption institutions.

Despite the existence of these measures, corruption in Uganda remains pervasive.¹⁷² In the 2019 CPI, Uganda scored 28. While this was a slight improvement upon the 26 score in 2018, it still reflects the perception of high levels of corruption. It is important to examine critically the existing anti-corruption measures in order to establish why corruption persists.

As will be discussed in detail under Chapter Four, the various anti-corruption interventions provide for prosecution of perpetrators of corruption. This therefore entwines the general fight against corruption with the courts of law and their take on corruption. The general fight against corruption is curtailed when the courts, which are supposed to be the gatekeepers of justice and bulwark against corruption are themselves corrupt. Therefore, while the establishment of several interventions to fight corruption is well intended, it must go hand in hand with a corrupt-free judiciary. Short of this, all the anti-corruption efforts leading to prosecution before corrupt courts risk being futile. On the other hand, if the existent anti-

171 Ampurire P <https://www.softpower.ug/museveni-launches-anti-corruption-unit-lt-col-nakalema-appointed-head/> (accessed 29 April 2021).

172 Tangri & Mwenda (2006) 102, 105.

corruption interventions and the courts can overcome judicial corruption, Uganda would end up with a strong corrupt-free judiciary which would significantly contribute to the general fight against corruption in the country.

This chapter divides the discussion of the anti-corruption interventions into three categories: the international and regional interventions to which Uganda is party; the domestic anti-corruption legislation and policies; and the establishment of independent anti-corruption institutions. These are evaluated to ascertain their potential contribution to the fight against corruption in Uganda.

3.2. International and Regional Anti-Corruption Obligations

The first measure adopted by Uganda to address the challenge of persistent corruption is to ratify a number of international anti-corruption instruments. “Regional and international legal frameworks greatly influence domestic legal frameworks.”¹⁷³ Uganda is party to multiple regional and international instruments that require member states to adopt tough measures against corruption in their jurisdictions. Therefore, Uganda has a duty to align its domestic laws and policies with her international anti-corruption obligations. Some of the major international and regional conventions to which Uganda is party are discussed below.

3.2.1 United Nations Convention against Corruption

UNCAC is the first international anti-corruption instrument comprehensively to lay out measures for states parties to deal with corruption. Since its adoption by the UN General Assembly in December 2003, most countries have ratified the Convention as a show of their commitment to the fight against corruption. Uganda ratified UNCAC on 9 September 2004.¹⁷⁴ Whereas Uganda already had some measures in place to fight corruption, the ratification of UNCAC saw an even greater resolve in this regard.

173 OSEA (2015) *Effectiveness of Anti-Corruption Agencies in East Africa Kenya, Tanzania and Uganda* New York: African Minds 84 available at <https://muse.jhu.edu/book/45597/> (accessed 16 December 2021).

174 Data available at <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (Accessed 7 April 2020).

The anti-corruption measures proposed by UNCAC cover five broad areas: prevention, criminalisation and prosecution/enforcement, international co-operation and asset recovery. These pillars are discussed briefly below, alongside Uganda's compliance measures.

a) Prevention

This pillar aims at fighting corruption before it happens. Under Chapter II of UNCAC, states parties are encouraged to establish and promote measures aimed at preventing corruption.¹⁷⁵ Some of the proposed measures include the establishment of anti-corruption bodies,¹⁷⁶ of codes of conduct,¹⁷⁷ and of systems for the proper management of public procurement.¹⁷⁸

As will be discussed below, Uganda has a policy and legal framework in line with the preventive measures envisaged by UNCAC, including the code of conduct for public service, the leadership code of conduct, the anti-corruption court and the Inspectorate of Government.

b) Criminalisation

UNCAC requires states parties to criminalise particular conduct as corrupt. It identifies the following eight corruption crimes: bribery,¹⁷⁹ embezzlement/diversion,¹⁸⁰ trading in influence,¹⁸¹ abuse of functions,¹⁸² illicit enrichment,¹⁸³ concealment,¹⁸⁴ obstruction of justice,¹⁸⁵ and money laundering.¹⁸⁶

The Anti-Corruption Act of 2009 is the major anti-corruption statute in Uganda. All the corruption crimes contained in UNCAC are offences under Uganda's Anti-corruption Act. These are considered below.

175 Article 5(2) of UNCAC.
176 Article 6 of UNCAC.
177 Article 8 of UNCAC.
178 Article 9 of UNCAC.
179 Articles 15, 16 & 21 of UNCAC.
180 Articles 17 & 22 of UNCAC.
181 Article 18 of UNCAC.
182 Article 19 of UNCAC.
183 Article 20 of UNCAC.
184 Article 24 of UNCAC
185 Article 25 of UNCAC.
186 Article 23 of UNCAC.

i. Bribery

Article 15 of UNCAC requires states parties to criminalise bribery of a public official. A person commits the offence of bribery when he or she offers, promises, solicits or accepts an undue advantage, in order to act or refrain from acting in the course of his or her official duty. In Uganda, bribery is criminalised under Section 5 of the Anti-Corruption Act.

ii. Embezzlement/Diversion

States parties to UNCAC have the obligation to criminalise the intentional diversion of any valuable by a public official, if that valuable was entrusted to them by virtue of their office. In compliance with this section 19 of Uganda's Anti-Corruption Act criminalises embezzlement, while section 6 criminalises the diversion of public funds to a purpose other than that for which they were advanced.

iii. Trading in Influence

Article 18 of UNCAC calls upon states parties to criminalise the use of real or supposed influence to obtain an undue advantage and the offering of an undue advantage to any person in order that he or she uses his or her real or supposed influence with a view to obtaining from an administration or public authority an undue advantage for the original instigator of the act or for any other person.

While the Anti-Corruption Act does contain a crime known as influence peddling, it does not correspond to trading in influence as described in UNCAC. However, the Act does define corruption to include:

The offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration of the undue advantage, whether the undue advantage is for himself or herself or for any other person, as well as the request, receipt or the acceptance of the offer or the promise of the

advantage, in consideration of that influence, whether or not the supposed influence leads to the intended result.¹⁸⁷

This definition effectively covers the ingredients of trading in influence as criminalised in Article 18 of UNCAC.

iv. Abuse of Functions

Under Article 19, UNCAC criminalises the abuse of functions by a public official. A public official commits this offence when he or she commits or omits an act, in the course of the performance of his or her official functions, in violation of the law, with an intent to obtain an undue advantage for him- or herself or another.

In Uganda, these ingredients constitute the offence of influence peddling, defined in section 8 of the Anti-Corruption Act as follows:

A person who does or, omits to do an act in contravention of established principles or procedure as a result of improper influence, for his or her own benefit or for the benefit of a third party commits an offence.

The only difference between the offence of abuse of functions under UNCAC and influence peddling under Uganda's Anti-Corruption Act is that the latter applies to both the public and the private sectors, which broadens the scope of prosecution.

v. Illicit Enrichment

Article 20 of UNCAC authorises states parties to criminalise the significant increase in the wealth of a public official that is inexplicable in the light of his or her official income. This offence operates on the assumption that if a public official cannot satisfactorily explain the source of his or her wealth, said wealth must have been obtained through corrupt means.

The Anti-Corruption Act of Uganda criminalises illicit enrichment. However, it extends elements of the crime to cover both the public and private sectors. The inspectorate of

187 Section 2(e) of the Anti-Corruption Act, 2009.

government and the directorate of public prosecutions are empowered to investigate and prosecute any person suspected of committing the offence of illicit enrichment.¹⁸⁸

vi. Concealment

Article 24 of UNCAC criminalises the concealment or continued retention of property with knowledge that it is the proceeds of corruption. This article is intended to cover the prosecution of persons who may not have participated in the initial corrupt act, but who become accessories after the fact.

The same offence is domesticated under the definition of corruption in Uganda's Anti-Corruption Act, section 2(f) which defines corruption to include the fraudulent acquisition, use or concealment of property derived from any of the corruption offences.

vii. Obstruction of Justice

In order to protect law enforcement officers from harassment and intimidation in the course of their work, UNCAC criminalises the unlawful interference with such work that is intended to defeat the ends of justice.¹⁸⁹

The Anti-Corruption Act contains two offences seeking to prevent the obstruction of justice. Section 39 criminalises the obstruction of searches. This relates to physical obstruction, such as preventing enforcement officers from physically accessing premises or refusing to provide any information that is required. By contrast, section 40 criminalises the technical obstruction of investigations, such as altering or omitting information in documents required for investigations. Closely related to this is section 18 which criminalises any threats to public officials to commit or omit an act in the exercise of their official duty.

188 Section 31 of the Anti-Corruption Act, 2009.

189 Article 25 of UNCAC.

viii. Money Laundering

Article 23 of UNCAC requires states parties to criminalise the laundering of the proceeds of crime. In order to avoid detection, corrupt individuals usually engage in money laundering. It therefore became necessary to criminalise money laundering in its various forms.

Uganda passed the Anti-Money Laundering Act of 2013 to provide for the prevention and prohibition of money-laundering. The Act defines money laundering as the process of turning illegitimately obtained property into seemingly legitimate property. Money laundering includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under the Act.¹⁹⁰

c) Anti-Corruption Law Enforcement

Under this pillar, UNCAC requires states parties to prosecute persons suspected of committing corruption crimes. To this end, states parties are to ensure that their laws, such as those relating to prescription, immunity and bank secrecy, do not sabotage the prosecution of persons suspected of committing corruption crimes.¹⁹¹ Further, states parties are required to adopt measures to protect whistleblowers, witnesses and victims of corruption crimes.¹⁹²

Uganda has adopted some measures to protect key persons in the fight against corruption. These include the Whistleblowers Act No 6 of 2010 and the Access to information Act No 6 of 2005. These Acts are discussed in more detail below.

d) International Co-operation

When a corruption crime has an international aspect, states parties to UNCAC are obligated to offer one another the co-operation that is needed to prosecute the crime. This co-operation extends to investigations, prosecution, extradition and mutual legal assistance.¹⁹³

190 Section 1 of the Anti-Money Laundering Act, 2013.

191 Article 31(7) of UNCAC.

192 Article 32 of UNCAC.

193 Articles 43 to 50 of UNCAC.

e) Asset Recovery

As a state party to UNCAC, Uganda is obligated to offer the widest measure of co-operation to other states parties to ensure that property lost through corruption is recovered.¹⁹⁴

The cycle of prosecuting corruption offenders would not be complete if the corruptly obtained property remained the property of the offender. Indeed, in addition to any other sentence imposed, the courts in Uganda are empowered to make compensation orders against a person convicted of a corruption crime.¹⁹⁵

3.2.2 United Nations Convention against Transnational Organised Crime

With the use of modern technology and cross-border criminal co-operation, there was a need for the enforcement of the law also to become international.¹⁹⁶ The United Nations Convention against Transnational Organised Crime (Palermo Convention) was adopted in December 2000, with the purpose of promoting international co-operation in the prevention, investigation and prosecution of transnational organised crime more effectively.¹⁹⁷

Uganda ratified the Palermo Convention on 9 March 2005.¹⁹⁸ It therefore has a duty to adopt measures against organised crime, including money laundering and corruption.

The Palermo Convention requires its members to adopt measures to detect and punish the corruption of public officials.¹⁹⁹ In order to do so successfully, the Convention proposes the establishment of independent anti-corruption-authorities.²⁰⁰ In accordance with its conventional obligations, Uganda has a number of anti-corruption bodies whose operation and efficiency will be appraised below.

194 Article 51 of UNCAC.

195 Section 7 of the Anti-Corruption Act.

196 Foreword to the Palermo Convention.

197 Articles 1, 3 of the Palermo Convention.

198 Data available at

[https://www.unodc.org/documents/treaties/organized_crime/COP6/CTOC COP 2012 CRP/CTOC COP 2012 CRP1.pdf](https://www.unodc.org/documents/treaties/organized_crime/COP6/CTOC_COP_2012_CRP/CTOC_COP_2012_CRP1.pdf) (accessed 23 April 2020).

199 Article 9(1) of the Palermo Convention.

200 Article 9 of the Palermo Convention.

3.2.3 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Recognising that the proceeds of the trafficking of illicit drugs can be used to corrupt the structures of government, legitimate commercial and financial business, and society at all its levels, the United Nations adopted the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988 and it came into force on 11 November 1990.²⁰¹

Uganda ratified the Convention on 25 August 1990, thereby committing itself to fighting the illicit traffic in narcotic drugs and psychotropic substances and to co-operate with other states in the international fight against these crimes. Accordingly, Uganda enacted the Narcotic Drugs and Psychotropic Substances (Control) Act No 3 of 2016. Amongst the objectives of the Act, as may be derived from its long title, is implementation of the provisions of international conventions on narcotic drugs and psychotropic substances.

3.2.4 African Union Convention on Preventing and Combating Corruption

Adopted on 11 July 2003, the African Union Convention on Preventing and Combating Corruption (AU Convention) obligates its member states to respect human rights,²⁰² to promote transparency and accountability,²⁰³ and to reject corruption.²⁰⁴

The AU Convention's anti-corruption provisions relate to the prevention and criminalisation of corruption, both in the private and public sectors, and to international co-operation when offences are of an international nature. Notably, the AU Convention proposes the adoption of legislative measures to establish corruption offences, to create anti-corruption authorities and to promote the right of access to information to facilitate the fight against corruption.²⁰⁵ In Uganda, this has been done through the passing of the Access to information Act which will be discussed later.

201 Data available at https://treaties.un.org/Pages/ViewDetails.aspx?chapter=6&clang=en&mtdsg_no=VI-19&src=IND (accessed 23 April 2020).

202 Article 3(2) of the AU Convention.

203 Article 3(3) of the AU Convention.

204 Article 3(4) of the AU Convention.

205 Articles 4 to 9 of the AU Convention.

Under Article 4 of the AU Convention, member states are required to criminalise the demand and supply of any benefit in exchange for an act or omission by a public official in the course of his or her duty.

The international and regional anti-corruption legal framework sets a standard to prevent and address corruption. It defines corruption and guides member countries on how best to address it. Uganda has complied with her international anti-corruption obligations by passing legislation that domesticates the relevant provisions. However, Uganda's anti-corruption institutions still struggle with implementation. This accounts for the prevalence of corruption even in the presence of an elaborate anti-corruption legal framework. This national legislative framework is discussed in the following section.

3.3. National Anti-Corruption Legislation

As already alluded to above, several statutes in force in Ugandan seek to address the problem of corruption. Key pieces of such legislation are considered below.

3.3.1. Constitution of the Republic of Uganda, 1995

As the supreme law of the country, the Constitution is the instrument upon which all other anti-corruption statutes are based. From the outset, the Constitution establishes accountability as one of the National Objectives and Directive Principles of State Policy. Objective xxvi reads:

Accountability.

- (i) All public offices shall be held in trust for the people.
- (ii) All persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people.
- (ii) All lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices.

Further, the Constitution imposes a duty on every citizen to combat corruption and misuse or wastage of public property.²⁰⁶ It establishes bodies charged with fighting corruption, including the Inspectorate of Government (with the power to investigate and prosecute

206 Article 17(1) (i) of the Constitution of Uganda.

corruption cases),²⁰⁷ the judiciary with jurisdiction to hear corruption cases),²⁰⁸ the Office of the Auditor General,²⁰⁹ the Judicial Service Commission,²¹⁰ the Directorate of Public Prosecutions, and Parliament.²¹¹ Parliament has a duty to establish a leadership code of conduct for specified officers to prohibit conduct likely to lead to corruption in public affairs.²¹²

The Constitution lays a firm foundation for the establishment of a comprehensive legal and policy framework against corruption in Uganda. The existence of numerous anti-corruption bodies and a broad anti-corruption framework in themselves do not guarantee a reduction in the levels of corruption. For any meaningful reduction of corruption to be achieved, the anti-corruption bodies, laws and policies must be matched by strict implementation.

3.3.2. Anti-Corruption Act, 2009

The Anti-Corruption Act is the main statute relating to the prevention and combating of corruption in Uganda. Enacted on the 25 August 2009, it repealed and replaced the Prevention of Corruption Act, 1970, to provide for a greater number of corruption offences and other related matters.²¹³

The Anti-Corruption Act defines corruption, sets out corruption offences and their penalties, defines the roles of the Directorate of Public Prosecutions and the Inspector General of Government to prosecute corruption offences, and offers remedies to the victims of these offences. In addition to the corruption crimes specified in UNCAC, the Anti-Corruption Act establishes other corruption crimes, including sectarianism and nepotism.²¹⁴

While the Anti-Corruption Act is to be commended for consolidating all corruption crimes in one piece of legislation, it has been criticised for containing provisions that are too broad and therefore vague.²¹⁵ Section 11, which defines the offence of abuse of office, and

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- 207 Chapter Thirteen of the Constitution of Uganda.
208 Chapter Eight of the Constitution of Uganda.
209 Article 163 of the Constitution of Uganda.
210 Articles 146 and 147 of the Constitution of Uganda.
211 Chapter Six of the Constitution of Uganda.
212 Article 233(2) (b) (ii) of the Constitution of Uganda.
213 Long title of the Anti-Corruption Act, 2009.
214 Sections 12 and 14 of the Anti-Corruption Act, 2009.
215 OSEA (2015) 85. See also Human Rights Watch & Yale Law School (2013) 4 and 33.

section 20, defining the offence of causing financial loss, are the sections criticised most often.

Section 11 (Abuse of Office) provides that:

A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

Section 20 (Causing Financial Loss) reads as follows:

Any person employed by the Government, a bank, a credit institution, an insurance company or a public body, who in the performance of his or her duties, does any act knowing or having reason to believe that the act or omission will cause financial loss to the Government, bank, credit institution commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty six currency points or both.

The definitions contained in these sections have been criticised for not specifying what conduct is prohibited. The phrases “any arbitrary act” and “any act” used in the sections identify no particular prohibited conduct. While a broad definition might offer more prosecutorial options, it gives prosecutors wide discretion to interpret offences before charging, which can lead to abuse.²¹⁶ It has been argued also that this lack of clarity in the definition makes it hard for prosecutors to sustain charges in court.²¹⁷

In addition to the sections establishing corruption offences, there are other provisions of the Anti-Corruption Act that are worth noting.

a) Conflict of Interest

It is an offence under the Anti-Corruption Act for an official of a public body to deal with a matter in which he or she has a conflict of interest. A conflict of interest arises in different circumstances, including the case when an official:

deals with a matter in which he or she has personal interest and where he or she is in a position to influence the matter directly or indirectly, in the course of his or her official duties.²¹⁸

216 Human Rights Watch & Yale law school (2013) 4.

217 OSEA (2015) 85.

218 Section 9(2) (a) of the Anti-Corruption Act, 2009.

In this regard, “personal interest” is defined to include the personal interest of a spouse, child, dependant, agent, or business associate of which the person has knowledge or would have had knowledge if he or she has exercised due diligence having regard to all the circumstances.²¹⁹

b) Customs and Corruption

Many scholars have attributed the prevalence of corruption, especially in Africa, to customs such as gift giving.²²⁰ Alive to this concern, the Anti-Corruption Act prevents the admissibility of evidence of custom as a defence to a charge of corruption. Section 42 states that:

- (1) In proceedings under this Act, evidence shall not be admissible to show that the gratification mentioned in this Act is customary in any profession, trade, social occasion, vocation or calling or in the course of any particular business transaction.
- (2) It shall not be a defence to an offence under this Act to establish that any gratification mentioned in this Act is customary in any profession, trade, social occasion, vocation or calling, or in the course of any particular business transaction or social occasion.

Whereas it is true that customs of reciprocity do exist, in the absence of this section they could be subject to abuse by the corrupt. Section 42 therefore makes it impossible to use custom as a defence to an allegation of corruption.

c) Protection of Informers

The Anti-Corruption Act offers protection to persons who offer information regarding corrupt activities. To this end, the courts are precluded from admitting evidence of a complaint to a corruption offence. Further, the Act prohibits the disclosure of the identity and address of an informer by either witnesses or documentary evidence.²²¹

However, an informer who gives evidence knowing or believing it to be false in order to cause an investigation or knowing that it is likely to lead to one, commits an offence.²²² While this provision helps to guard against false accusations of corruption, it may discourage legitimate would-be informers who are afraid of the possibility of prosecution.

d) Penalties under the Anti-corruption Act

219 Section 9(3) of the Anti-Corruption Act, 2009.

220 De Maria (2008) 779. See also Lambsdorff JG (2007) 28-9; Bakuluki (2013) 36; Mbaku (2007) 66.

221 Section 44(1) and (2) of the Anti-Corruption Act, 2009.

222 Sections 44(3) and 45 of the Anti-Corruption Act, 2009.

The offences contained in the Act carry penalties which include compensation, payment of fines, and imprisonment ranging from six months for failure to register a restraining order in relation to land matters, to fourteen years for embezzlement²²³ or causing financial loss.²²⁴ Moreover, all the custodial sentences under the Act have the option of payment of a fine and the court is at liberty to impose both the fine and the custodial sentences. Further, under section 27 of the Act, in addition to any other penalty imposed, where the corrupt act comprised receipt of a gratification, the court may order the perpetrator to pay a penalty equivalent to the value of the gratification received.

By way of summation, it may be said that the Anti-Corruption Act provides an adequate regime for the management of corruption crimes. However, the Act has been subject of criticisms on a number of fronts. One of the major criticisms is the tendency to apply the penal provisions of the Act to the small fish while the big ones are left to swim.²²⁵

The Act has been criticised for giving the same mandate to the Inspectorate of Government (IGG) and the Directorate of Public Prosecutions (DPP). While the IGG's mandate focuses on public officials only, the DPP can prosecute persons in both the private and the public sectors. Therefore, by granting investigation and prosecutorial powers under the Act to both the IGG and the DPP, in the absence of systematic co-ordination, leads to confusion. In fact, there have been occasions where both institutions discover that they have been investigating the same offence.²²⁶ The shared mandate also makes it difficult for the public to identify which institution to hold accountable in case of prosecutorial oversight or inaction.²²⁷ There is a need for greater co-ordination amongst anti-corruption agencies to avoid the wastage of resources.

223 Section 18 of the Anti-Corruption Act, 2009.

224 Section 19 of the Anti-Corruption Act, 2009.

225 Human Rights Watch & Yale law school (2013) 36 and 37. See also OSEA (2015) 81.

226 Human Rights Watch & Yale law school (2013) 32.

227 Human Rights Watch & Yale law school (2013) 32.

3.3.3. Inspectorate of Government Act, 2002

The Inspectorate of Government Act (IGG Act) was passed in 2002 to make provision for the office of the IGG, as required by the Constitution.²²⁸ The IGG Act defines the roles of the officials in the inspectorate, the procedure for executing their duties, and the offences associated with failing to co-operate with the IGG's office.²²⁹ The functions of the IGG include the fostering of the elimination of corruption and the promotion of good governance in public office.²³⁰

Corruption is not limited to public officials. Therefore, by limiting the mandate of the IGG to public officials, the IGG Act fails to provide for the cases where private individuals connive with public officials.²³¹

3.3.4. Leadership Code Act, 2000 and Leadership Code (Amendment) Act, 2017

Article 233 of the Constitution of Uganda charges parliament with a duty to establish a code of conduct for specified offices, to prohibit conduct likely to compromise the honesty, impartiality and integrity of said officers. Accordingly, the Leadership Code Act was passed in 2000.

The Act specifies who a leader is and places upon said official an obligation to declare his or her income, assets and liabilities to the IGG every two years.²³² These officers, who are mainly public servants, include members of the executive, the legislature, the judiciary, local government, managers of public bodies, and managers of private bodies in which the government has a controlling interest.²³³

Assets declaration, if well implemented, would control corruption effectively.²³⁴ When the public is able to scrutinise the wealth progression of the persons to whom public funds are entrusted, it creates an environment of transparency and trust. However, since the system has no clear way of identifying the actual assets of the officials, the chances are high of its being

228 Chapter Thirteen of the Constitution of Uganda.

229 Sections 8, 12 and 14 of the IGG Act.

230 Section 8 of the IGG Act.

231 OSEA (2015) 83.

232 Section 4 of the Leadership Code Act, 2002.

233 Second Schedule to the Leadership Code Act, 2002.

234 Human Rights Watch & Yale law school (2013) 27.

abused or of leaders under-declaring their wealth to avoid taxation or detection. The Act further prescribes offences and penalties,²³⁵ including the use of one's office to amass wealth for oneself or a third party.

While the Act presents a strong mechanism for monitoring the wealth of persons to whom public funds often are entrusted, it does not apply fully to Presidential appointees. In the case of *Fox Odoi and Another v Attorney General*,²³⁶ the sections of the Act relating to punishing officials who fail to comply with the Act were declared inapplicable to Presidential appointees for being inconsistent with the Constitution.²³⁷ The reasoning of the court was that, by providing for dismissal or removal from office of non-compliant officers as the mandatory punishment, the Act fettered Presidential discretion guaranteed by the Constitution. Accordingly, the power to discipline Presidential appointees who fail to comply rests with the President. Following the decision in this case, Major Kakooza Mutaale, a special Presidential assistant who had been dismissed for non-compliance with the Act, was reinstated on grounds that he had been dismissed under a law that subsequently had been nullified.²³⁸

Therefore, whereas the Act provides safeguards to monitor potentially suspicious amassing of wealth, it leaves out a category of leaders to whom public funds are entrusted. Moreover, whereas the Act provides for a Leadership Tribunal to adjudicate any breaches of the code,²³⁹ said Tribunal has been appointed only and yet is to assume office.²⁴⁰ It is hoped that the appointment of the Tribunal translates into greater compliance with the Act.

3.3.5. Whistleblowers Protection Act, 2010

This Act is intended to provide for the procedures by which individuals in both the private and public sectors, in the public interest, may disclose information which relates to irregular, illegal

235 Sections 15 and 36 of the Leadership Code Act, 2002.

236 Constitutional Petition No 3 of 2003.

237 Sections 19(1), 20(1), 35(b) and (d) of the Leadership Code Act, 2002.

238 Emmy Allio (2004) Kakooza Mutale Back in office available at https://www.newvision.co.ug/new_vision/news/1099414/kakooza-mutale-office (accessed 1 May 2020).

239 Section 19A of the Leadership Code Amendment Act, 2017.

240 Parliament vets new Deputy Governor, DPP and seven others available at <https://www.parliament.go.ug/news/4593/parliament-vets-new-deputy-governor-dpp-and-seven-others> (accessed 6 May 2020).

or corrupt practices, so to afford protection against victimisation of persons who make such disclosures.²⁴¹

The Act authorises any person to disclose, to specific authorised officers, information that he or she believes points to impropriety.²⁴² It offers the whistleblower protection from victimization, including dismissal, suspension, demotion and intimidation.²⁴³ It further makes the victimisation of a whistleblower an offence punishable with a maximum of five years' imprisonment.²⁴⁴ However, the level of protection actually offered to witnesses and whistleblowers is often inadequate. For instance, Katureebe, a community leader and witness meant to appear before the Commission of Land Inquiry to testify about corrupt dealings in the land transactions in his area, was attacked with acid which left him completely disfigured and blind. Even though his attackers were arrested and brought to book, he, whose only intention was to expose corruption, is disabled forever. Ironically, he was given security after the attack.²⁴⁵ This case is a classic demonstration of how dangerous anti-corruption law enforcement can be for everyone involved, especially for witnesses who are most exposed and vulnerable. The situation therefore calls for an even greater effort by the government and anti-corruption crusaders to ensure that every person involved in the process is protected. Short of this, cases like Katureebe's are bound to recur, thereby discouraging other potential witnesses.

Furthermore, while the Act seeks to encourage disclosures by offering some protection to whistleblowers, it does place a high burden on an intending whistleblower, thereby discouraging any disclosures and defeating its purpose. Section 2(2) states, *inter alia*, that:

Subject to any other law to the contrary, any disclosure of an impropriety made by a whistleblower is protected where he or she—

- (a) makes the disclosure in good faith;
- (b) reasonably believes that the disclosure and any allegation of impropriety contained in it are substantially true.

241 Long Title of the Act.

242 Section 2(1) of the Whistleblowers Protection Act, 2010.

243 Section 9 of the Whistleblowers Protection Act, 2010.

244 Section 16 of the Whistleblowers Protection Act, 2010.

245 Ainebyoona F <https://www.monitor.co.ug/uganda/news/national/acid-attack-victim-still-waiting-for-museveni-help--3439464?view=htmlamp> (accessed 24 November 2021).

The requirement for disclosures to be made in good faith with reasonable belief that they are true, places a hefty burden on potential whistleblowers. It means that once a disclosure is made, there is a risk that it may fail to meet the test under section 2(2), which would leave the whistleblower exposed and unprotected under the Act. Moreover, Section 17 of the Act criminalises the disclosure of false information. It appears that an intending whistleblower ought to carry out investigations to verify the information or risk being prosecuted for making a false disclosure. The fear of prosecution undoubtedly discourages people from reporting improprieties. Therefore, there is a risk that acts of corruption that could have been exposed through whistleblowing may go on undetected.

3.3.6. Access to Information Act, 2005

This Act was enacted pursuant to Article 41 of the Constitution of Uganda, which guarantees every citizen's right of access information in the possession of the state or any of its organs. Its objectives include the promotion of a transparent, efficient and accountable government.²⁴⁶ The Act provides for records which are automatically available without the need for a formal request, for records which require a formal request, and for the procedure for requesting for information.²⁴⁷

The Act creates offences related to the denial of the rights which it confers. A person who destroys, conceals or falsifies records in order to sabotage the right of access to information commits an offence under the Act and is liable to imprisonment for three years.²⁴⁸

By relying on the Access to Information Act, members of the public and civil society are able to scrutinise the operations of public bodies and hold them accountable to ensure that they are corruption-free.

3.3.7. Public Finance and Accountability Act, 2003

This Act provides for the development of an economic and fiscal policy framework for Uganda, to ensure the proper allocation, monitoring, utilisation and accountability for public finances. It

246 Section 3 of the Access to information Act, 2005.

247 Section 8 of the Access to Information Act, 2005.

248 Section 46 of the Access to Information Act, 2005.

emphasises the role of the Minister responsible for Finance, Parliament, and the Secretary to Treasury and the Auditor General in ensuring the appropriate utilisation of resources for achieving an effective and transparent government.²⁴⁹

3.3.8. Public Procurement and Disposal of Public Assets Act, 2003

Public procurement is one of the areas that is most affected by corruption in many countries and Uganda is no exception. The purpose of the Public Procurement and Disposal of Public Assets Act (PPDA Act) is to provide for the formulation of policies and to regulate practices in respect of public procurement and disposal activities.²⁵⁰ To this end, the PPDA Act establishes the Public Procurement and Disposal of Public Assets Authority.²⁵¹ The objectives of the authority include ensuring the observance of the basic principles of public procurement and disposal, namely, fairness, non-discrimination, transparency, accountability, maximum competition to ensure value for money, confidentiality, economy and efficiency, and the promotion of ethics.²⁵²

The PPDA Act establishes a code of ethical conduct to which all public officers and experts engaged to deliver specific services are subject. Under this code, these officials commit themselves to conduct their duties with integrity and in observance of the established procurement principles.²⁵³ Further, the PPDA Act establishes offences and penalties. For example, a person who connives or colludes to commit a corrupt practice or a fraudulent practice commits an offence punishable with imprisonment for up to three years.²⁵⁴

Despite the existence of an elaborate guiding law on public procurement, corruption in this area remains pervasive. This calls for increased efforts in the monitoring of procurement deals and the enforcement of the law governing them.

249 Parts II & III of the Public Finance and Accountability Act, 2003.
250 Long Title of the PPDA Act, 2003.
251 Section 5 of the PPDA Act, 2003.
252 Sections 6 and 43-49 of the PPDA Act, 2003.
253 Section 93 and Schedule 5 to the PPDA Act, 2003.
254 Section 95 of the PPDA Act, 2003.

3.4. Anti-Corruption Policies and Principles

Guiding principles and policies, some of which have been the basis of legislation and institutional establishment have been put in place in Uganda. The country's major anti-corruption principles and policies are considered below.

3.4.1. Ten Point Programme/Zero Tolerance for Corruption

From the time it came into power in 1986, the commitment to fight corruption has been a part of the agenda of Uganda's current government. In the government's very first statement, commonly referred to as the Ten-Point Programme — highlighting the distortions of service that come about as a result of corruption, including undermining access to medical services — the then new government committed itself to eliminating corruption once and for all.²⁵⁵ Ironically, there have been a number of corruption scandals involving top government officials as discussed in the preceding sections. Most recently, the 2021 presidential elections were tainted by a number of irregularities including allegations of fraud and election tampering, violence against members of the opposition and media blackouts.²⁵⁶

Over the years, the current leadership has delivered endless rhetoric about the “zero tolerance” for corruption being the policy and mode of operation of the government. However, the numerous cases of corruption at various levels of state in Uganda bring the government's will to fight corruption into question. It is no wonder, therefore, that some researchers have argued that, because of the lack of political will, the fight against corruption in Uganda is limited to political speeches and, to some extent, statutes.²⁵⁷

3.4.2. National Anti-Corruption Strategy

The National Anti-Corruption Strategy (NACS) constitutes a five-year plan that serves as the national guiding policy for all anti-corruption initiatives. The specific objectives of the policy include empowering citizens to participate in anti-corruption measures, strengthening anti-corruption institutions and increasing the demand for accountability by the public in the fight

255 Point 7 of the NRM's Ten-Point Programme.

256 Afran I (2021) 28. See also <https://www.hrw.org/news/2021/01/21/uganda-elections-marred-violence>.

257 Human Rights Watch & Yale Law School (2013) 2, 15 and 64. See also OSEA (2015) 1.

against corruption.²⁵⁸ The existence of NACS offers leadership to other anti-corruption efforts. It is also a commitment to which the government can be held accountable by the citizens and any other interested party.

3.5. Institutional Anti-Corruption Framework

In addition to the legislative and policy framework, a number of institutions have been established to help fight corruption in Uganda. The potential role of the courts in the fight against corruption must be understood within this broader constitutional context.

3.5.1. Inspector General of Government

The office of the Inspector General of Government (IGG) was established in 1986, pursuant to Point 7 of the NRM's Ten-Point Programme regarding the complete elimination of corruption in Uganda.²⁵⁹ Whereas it was initially under the office of the President, the IGG became a constitutional body under the 1995 Constitution of Uganda.²⁶⁰ The constitutional functions of the IGG include the elimination and fostering the elimination of corruption, abuse of authority and abuse of public office.²⁶¹

The functions of the IGG are expanded under section 8 of the IGG Act to include: enforcement of the Leadership Code of Conduct; investigation of the conduct of any public officer that may be related to abuse of office; taking measures for the detection and prevention of corruption in public offices; and investigation of any matter that falls under its mandate. Furthermore, the IGG must submit a report to Parliament every six months, detailing the institution's work and offering appropriate recommendations.²⁶²

The structural configuration of the Inspectorate allows the IGG to enjoy relative independence and job security, which are essential to the handling of corruption matters. Both the IGG and the Deputy IGG are appointed by the President and approved by Parliament to

258 The National Anti-Corruption Strategies (2008-2013) and (2014–2019). See also IGG (2010-2014) 2.

259 IGG Corporate and Development Plan (2010-2014) 1. Available at https://www.igg.go.ug/media/files/publications/Corporate_plan_2.pdf (Accessed 16 December 2021).

260 Article 233 of the Constitution of Uganda.

261 Article 225(1) (b) of the Constitution of Uganda.

262 Section 21 of the IGG Act, 2002.

serve a term of four years and are eligible for re-appointment for one more term.²⁶³ Apart from parliamentary oversight, the Inspectorate is guaranteed independence and, in the exercise of its functions, it is to be free from the direction or control of any person or authority. Moreover, the Inspectorate receives an independent budget that it manages itself.²⁶⁴ Also, all staff of the Inspectorate enjoy immunity from any civil or criminal proceedings in respect of anything done in good faith and in the course of the performance of their duties under the IGG Act.²⁶⁵

It is arguable that, despite the prevailing challenges facing the Inspectorate, there exists a sufficient legal and structural framework to facilitate performance of the constitutional mandate of the IGG. Indeed, the IGG has done a good job especially in the investigation and prosecution of lower-ranking public servants. However, it is the high-ranking government officials who remain elusive. Most of the investigations against top officials either end prematurely or in acquittals. This has been attributed to a number of factors, notably the short term of office and the requisite parliamentary approval needed for the appointment of the IGG.²⁶⁶ It has been argued that the four-year term does not afford the IGG security of tenure and enough time to adapt to the new office to be effective. By contrast, the Auditor General's term of office has no time limit. The AG is quoted as saying:

Security of tenure enables me to comment and criticise freely, without worry of being fired, of getting no contract.²⁶⁷

Moreover, the renewal of the IGG's appointment is subject to approval by Parliament, whose members are potential targets of corruption investigations by the IGG. This leaves the inspectorate with two bad situations: one where an efficient leader may still be trying to "find his or her feet", and the other where the IGG may be reluctant to investigate members of Parliament who hold the key to his or her next appointment. Whichever the scenario, it affects negatively the overall efficiency of the Inspectorate.

263 See Article 233(4) of the Constitution of Uganda, and sections 4 of the IGG Act, 2002.

264 Article 229(1) of the Constitution of Uganda, and section 31(2) of the IGG Act, 2002.

265 Section 22(1) of the IGG Act, 2002.

266 Human Rights Watch & Yale law school (2013) 34-35.

267 Human Rights Watch & Yale law school (2013) 35.

3.5.2. Public Accounts Committee of Parliament

The Public Accounts Committee (PAC) is established under the parliamentary Rules of Procedure.²⁶⁸ It is responsible for examination of the audited accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure of the central government and the judiciary. By virtue of its mandate and high public profile, the PAC is well placed to fight corruption.

Indeed, the PAC has contributed significantly to the fight against corruption in Uganda. Most of the accounting officers in government's top entities have had to answer to the PAC from time to time regarding the utilisation of the resources allocated to their departments.²⁶⁹ By scrutinising the audited accounts of institutions, the PAC ensures proper utilisation of funds and, where any anomalies are identified, the officers concerned often are called upon to explain. Moreover, the fact that the proceedings of the PAC are highly publicised encourages vigilance by accounting officers for fear of bad publicity over corruption allegations.²⁷⁰

3.5.3. State House Anti-Corruption Unit

In celebration of the Anti-Corruption Day, this Unit was launched by the President in December 2018, to supplement the existing anti-corruption institutions. Speaking at its launch, the President called the Unit the "missing link" in government's efforts to fight corruption and stated:

I decided to reinforce the IGG'S office. The institutions to fight corruption are there but the people manning them are the problem. These departments have been infiltrated by weevils.²⁷¹

The Unit's mode of operation is to receive and act on complaints of corruption. Equipped with hotlines and an online portal through which anonymous complaints may be lodged, the Unit

268 Rule 148 of the Rules of Procedure for the Parliament of Uganda.

269 PAC questions Ministry of works officials, PAC questions solicitor General over court awards available at <https://www.independent.co.ug/tag/pac/> (accessed 29 April 2020).

270 IGG (2010) 36.

271 Museveni launches Anti-Corruption Unit Nakalema appointed its head available at <https://www.softpower.ug/museveni-launches-anti-corruption-unit-lt-col-nakalema-appointed-head/> (accessed 29 April 2020).

has a structure that encourages whistleblowers to lodge corruption complaints.²⁷² Since its establishment, it has carried out major operations at government departments about which there was public outcry regarding the existence of corruption. These include the land registration office, the Uganda Revenue Authority and several local government offices. Following these operations, the implicated officers were arrested and charged before the courts of law.²⁷³

As of October 2019, barely a year after its establishment, the Unit was reported to have 58 415 complaints registered with 4017 under investigation and 82 public officials charged.²⁷⁴ Some notable matters handled by the Unit include the investigation of directors of the Bank of Uganda on allegations that they had allowed unauthorised cargo onto a plane carrying newly printed bank notes. The said unauthorised cargo was money worth 90 billion Uganda shillings that had been printed unlawfully. These directors eventually were charged with corruption and abuse of office and their trial is currently ongoing.²⁷⁵ The ongoing prosecution of Hon. Sam Bitangaro, a former member of parliament over allegations of fraud, and of ten officials from the equal opportunities commission over allegations of corruption, initiated by the unit are all noteworthy.

The Unit may boast having recovered 1.73 billion Uganda shillings from perpetrators, having 146 suspects formally charged before court — 120 of whom are public officials under interdiction — and obtaining 14 convictions (though unreported).²⁷⁶ For an institution that has existed for only three years, the State House Anti-Corruption Unit is doing a tremendous job.

272 President Museveni launches new Anti-Corruption Unit available at <https://www.jlos.go.ug/index.php/about-jlos/projects/justice-for-children/item/653-president-museveni-launches-new-anti-corruption-unit> (accessed 29 April 2020).

273 Press statement on recent Anti-Corruption Unit- State House operations available at <https://www.mediacentre.go.ug/media/press-statement-recent-anti-corruption-unit-state-house-operations> (accessed 29 April 2020).

274 82 public officials charged, 800 million recovered available at <https://www.softpower.ug/anti-corruption-unit-report-82-public-officers-charged-shs-800m-recovered/> (accessed 29 April 2020).

275 Two bank officials charged over money printing available at <https://eagle.co.ug/2019/06/21/two-bank-of-uganda-officials-charged-in-court-over-money-printing.html> (accessed 29 April 2020).

276 Achievements by the State-House Anti-corruption Unit since inception. <https://www.mediacentre.go.ug/media/achievements-state-house-anti-corruption-unit-inception> (accessed 09 March 2022).

However, it has been criticised for appearing to compete for the mandate of the IGG — claims which the President, its originator, refutes.²⁷⁷

3.5.4. Office of the Auditor General

Article 163 of the Constitution of Uganda establishes the Office of the Auditor General (OAG).

The mandate of the Auditor General is to audit and report on the public accounts of the country and to conduct value for money audits for any projects involving public finances. The OAG's vision is to be an effective and efficient supreme audit institution in promoting public accountability.²⁷⁸

By auditing the country's public accounts, the OAG is able to identify how public finances are being utilised, thereby facilitating the detection of possible corruption activities. Every year, the OAG presents an annual performance report which details the audit findings. Furthermore, the OAG carries out value for money audits and makes reports with appropriate recommendations. Some of the recommendations made by the OAG have been the adoption of measures to avoid wasteful expenditure, streamlining pension management to ensure its proper administration, enhanced financing of projects and investigations of financial discrepancies, and strict adherence to budget discipline to avoid mischarge by accounting officers.²⁷⁹ The OAG has unearthed a number of corrupt activities. For example, the audits conducted in 2018 by the OAG included 1896 audits across government departments, statutory and local authorities.²⁸⁰ The Auditor General's report revealed that government spent 1.15 trillion Uganda shillings without the requisite parliamentary approval, and recommended that government streamlines the handling of supplementary budgets to avoid the recurrence of

277 Museveni, Oulanya in renewed efforts against corruption.
<https://www.parliament.go.ug/news/3308/museveni-oulanyah-renewed-efforts-against-corruption>
(visited 29 April 2020).

278 See <http://www.oag.go.ug/> (visited 30 April 2020).

279 Office of the Auditor General *Annual Performance Report* (2017) 6-22. Available at
<http://www.oag.go.ug/wp-content/uploads/2018/01/OAG-Annual-Performance-Report-2017.pdf>
(Accessed 16 December 2021).

280 Office of the Auditor General *Annual Performance Report* (2018) 24 available at
http://www.oag.go.ug/wp-content/uploads/2019/01/OAG-Annual-Performance-Report_2018.pdf
(accessed 16 December 2021).

such an event.²⁸¹ Reporting to Parliament, the OAG recommended that allegations of corruption be investigated and culprits be given deterrent punishments.²⁸²

3.5.5. Office of the Director of Public Prosecutions, Anti-Corruption Department
Article 120 of the Constitution establishes the Office of the Director of Public Prosecution (ODPP) with a mandate to direct investigations and institute criminal proceedings against any person or authority before a competent court. This mandate extends to the investigation and prosecution of corruption cases.²⁸³

In 2009, the ODPP established the Anti-Corruption Department (ODPP-ACD) with the specific mandate of guiding anti-corruption investigations and prosecuting the cases arising from these investigations. In 2017/2018 the office prosecuted 70 percent of all cases before the anti-corruption division of the high court with a conviction rate of 55.7 percent.²⁸⁴

3.5.6. Anti-Corruption Division of the High Court (ACD)

This brings us, finally, to the core focus of this mini-thesis: the role of the courts in the fight against corruption in Uganda. Under Article 129, the Constitution of Uganda establishes a number of courts charged with the exercise of judicial power. These include three courts of record ranging from the Supreme Court as the highest in rank and the final court of appeal. It is presided over by the Chief Justice and prescribed justices of appeal.²⁸⁵ The Court of Appeal which also sits as the Constitutional Court, is the second in the hierarchy, is headed by the deputy Chief Justice and handles all appeals from the High Court.²⁸⁶ The High Court is headed by the Principal Judge and has unlimited original jurisdiction in all matters. It consists of a number of divisions such as the Industrial Court and the International Crimes Division. Most importantly for our purposes, the High Court also includes a dedicated Anti-Corruption Division

281 Government spent 1.15 trillion without Parliament approval. Available at <https://www.independent.co.ug/govt-spent-ugx-1-15-trillion-without-parliament-approval/> (accessed 6 May 2020).

282 OAG Report to Parliament (June 2018) 111.

283 Sections 33, 36 and 41 of the Anti-Corruption Act, 2009.

²⁸⁴ Justice Law and Order Sector (2018) *Annual Report 2017/2018 Kampala*, Uganda: JLOS 93.

347 Articles 130,131 and 132 of the Constitution of the Republic of Uganda 1995.

348 Articles 134, 135, 136 and 37 of the Constitution of the Republic of Uganda 1995.

(ACD).²⁸⁷ The law further provides for Chief Magistrate's, Magistrate Grade One and Magistrate Grade II courts. These are presided over by officers of the corresponding rank and are divided into magisterial areas falling under given High Court circuits. As such, appeals from these lower courts lie in their respective High Court circuit.

In July 2008, the Judiciary administratively and of its own accord established the Anti-corruption Division of the High Court as a specialised Division to hear and adjudicate corruption related cases. The Establishment of the ACD was an initiative by the Judiciary, in direct response to the many calls by government and civil society, to strengthen the institutional framework for fighting corruption. The Principal Judge administratively set up the ACD. The Chief Justice thereafter issued the High Court (Anti-Corruption Division) Practice Directions of 2009,²⁸⁸ establishing the Anti-Corruption Court (ACD), pursuant to Article 133 of the Constitution which allows the Chief Justice to issue orders and directions necessary for the proper administration of justice. The Court is an independent division of the High Court and is aimed at:

being an orderly, expeditious, efficient and cost effective forum for adjudication of corruption and corruption related cases.²⁸⁹

The ACD has jurisdiction to try offences under the Anti-Corruption Act, the Penal Code Act, the Leadership Code Act or any other law related to corruption.²⁹⁰ It is comprised of judges, a registrar and designated magistrates to assist in the hearing of the cases. Whereas the physical location of the court is in the capital, Kampala, the designated magistrates staffing the court have territorial jurisdiction to try the specified offences committed anywhere within the geographical boundaries of Uganda.²⁹¹

Since its inception, the ACD has registered great success in handling corruption cases. For example, in 2017/2018, the court registered 176 new cases bringing its total cases to 426. Of these, 170 were disposed of, bringing the court's case disposal rate to 97.7 percent.²⁹² While

349 Articles 133, 138, 139, 140 and 141 of the Constitution of the Republic of Uganda.

288 Paragraph 2 of the High Court (Anti-Corruption Division) Practice Directions, 2009.

289 Paragraph 3 of the High Court (Anti-Corruption Division) Practice Directions, 2009.

290 Paragraph 8 of the High Court (Anti-Corruption Division) Practice Directions, 2009.

291 Paragraphs 7 and 10 of the High Court (Anti-Corruption Division) Practice Directions, 2009.

²⁹² Justice Law and Order Sector (2018) 93.

most of the completed cases involve lower-ranking government officials, there have been a few convictions of high-ranking officials. Notably, in *Uganda v Captain Mike Mukula*, a former state minister for health was convicted of embezzlement of a sum of 210 million Uganda shillings.²⁹³ In *Uganda v Geoffrey Kazinda*, an accountant in the office of the Prime Minister was convicted on 30 counts relating to corruption.²⁹⁴ Initially, the convictions in these cases were welcomed by the public as evidence that the corrupt, whatever their rank, would be brought to justice. However, this excitement was short-lived, as the convictions were overturned on appeal.

A brief analysis of Kazinda's case follows. The case stands out for two reasons: firstly, the offender served the entire sentence before his appeal could be heard and determined; and, secondly, even after his acquittal, he was sent back to prison because of other multiple pending corruption charges against him. The accused was a Principal Accountant in the Ministry of Finance posted to the Office of the Prime Minister. He was charged with and convicted of one count of abuse of office contrary to section 11(1) of the Anti-Corruption Act, 25 counts of forgery contrary to sections 342 and 347 of the Penal Code Act, one count of making a document without authority contrary to section 355(a) of the Penal Code Act, and two counts of unlawful possession of government stores contrary to section 316(2) of the Penal Code Act.

He was convicted on all counts and then sentenced to imprisonment for five years for abuse of office, two years for each count of forgery, five years for making a document without authority, and two years for each count of unlawful possession of government stores.

Kazinda appealed both his conviction and sentence. In determining the appeal, the Court of Appeal found that Kazinda had been convicted wrongfully and accordingly acquitted him. However, even though the Appellate Court reversed the High Court's decision, the original conviction was one of the high-level cases which carried a strong message that the ACD was willing to try and convict not only the lowly corrupt official but for every corrupt official.

293 HCACD 97/2010.

294 HCT-00-SC-0138-2012.

Moreover, Kazinda would spend more years battling more corruption charges, and eventually be convicted of fraud.²⁹⁵

However, other convictions of high-ranking officials also stood the test of appeals. A case in point is *Uganda v Lwamafa Jimmy and Others*.²⁹⁶ In this case, the Permanent Secretary, the Director: Research and Development, and the Principal Accountant to the Ministry of Public Service were convicted of various corruption offences for causing financial loss in excess of 44 billion Uganda shillings. In addition to each one's varying terms of imprisonment, a compensation order for 50 billion Uganda shillings was imposed. On appeal, the court upheld all except one conviction, varied the imprisonment sentences, but upheld the compensation order.

It must be noted that the ACD has registered considerable success in the prosecution of low-level, local government officials.²⁹⁷ In this regard, it is praised for boosting the national fight against corruption and leading to the recovery lost revenue.²⁹⁸ For example, in 2018 and with only two judges in the Division, the Court collected approximately 20 billion Uganda shillings in form of non-tax revenue for the country.²⁹⁹

In the performance of its functions, the ACD faces various challenges which ultimately affect its efficiency. Some of these include insufficient financing, inadequate staffing and political interference.³⁰⁰ Despite these challenges, the ACD remains a major institution in the fight against corruption in Uganda.

295 Ssali G Kazinda convicted again of stealing OPM funds available at <https://www.independent.co.ug/kazinda-convicted-stealing-opm-funds/> (accessed 5 May 2020).

296 HCACD 009/2015.

297 Human Rights Watch & Yale law school (2013) 36.

298 Remarks by Hon Justice Bart M Katureebe, Chief Justice of Uganda, at the Anti-Corruption Division Court Open Day on 8 August 2016.

299 Anti-Corruption Court raised 20 billion revenue- Principle Judge available at <https://www.jlos.go.ug/index.php/com-rsform-manage-directory-submissions/services-and-information/press-and-media/latest-news/item/672-anti-corruption-court-raised-shs20-billion-revenue-principal-judge> (accessed 28 April 2020.) See also <http://judiciary.go.ug/data/news/655/Anti-Corruption%20Court%20Raised%20Shs%20%20Billion%20Revenue%20-%20Principal%20Judge.html> (accessed May 2020).

300 Uganda Debt Network (2013) 21-24.

3.6. Conclusion

Through the establishment of institutional, policy and legislative anti-corruption framework, Uganda has made great strides in the fight against corruption. The role of the courts and specifically the ACD in this fight is particularly commendable. However, despite being armed with a comprehensive anti-corruption framework, Uganda still struggles with the problem of corruption. Anti-corruption institutions have to contend with challenges, including inadequate staffing and financing and internal corruption, as in the case of the courts.³⁰¹ These challenges undermine the effectiveness of these institutions. Therefore, for the fight against corruption to be effective, it ought to address the challenges of the anti-corruption institutions including any existent internal corruption. This will ensure that the anti-corruption institutions such as the judiciary are free enough from corruption and therefore are able to fight it.



301 OECD 'Specialised Anti-Corruption Institutions, a Review of Models' (2008) 33-36 available at www.sourceoecd.org/9789264039797 (accessed 10 March 2022).

CHAPTER FOUR

JUDICIAL CORRUPTION: AN OBSTACLE TO THE JUDICIARY'S FIGHT AGAINST CORRUPTION

Integrity is the bedrock of the administration of Justice.³⁰²

A judiciary of undisputed integrity is the bedrock of democracy and the rule of law. Even when all other protections fail, the judiciary provides a bulwark to the public against any encroachments on rights and freedoms under the law ... Ensuring the integrity of the global judiciary is thus a task to which much energy, skill and experience must be devoted.³⁰³

4.1. Introduction

The United Nations Convention against Corruption (UNCAC) emphasises the role of the judiciary in the fight against corruption.³⁰⁴ As discussed above in Chapter Three, the Ugandan judiciary is aware of and has actively embraced this role by the establishment of the Anti-corruption Division of the High Court (ACD). We noted above that the ACD is playing a key role in the fight against corruption. Unfortunately, this role can be undermined by external and internal threats to the independence and impartiality of the courts, and the ACD in particular. As is the case in many developing countries around the world, the credibility of the judiciary in Uganda as an impartial and independent body can be tainted by allegations of corruption within the judiciary itself. When the keepers of justice themselves become corrupt, the consequences are far-reaching. Some of the consequences are loss of confidence in the judiciary, decline in economic growth, increase in the cost of obtaining justice, and undermining of international efforts against transnational crime.³⁰⁵ It is a danger that must be guarded against.

It should be noted though, that due to its secretive nature and intricate networks, data regarding judicial corruption is hard to find. However, surveys, media reports and perceptions

³⁰² The Uganda Judicial Code of conduct (2003).

³⁰³ UNODC (2007) *Commentary on the Bangalore Principles of Judicial Conduct* 5 available at https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentary_on_the_Bangalore_principles_of_Judicial_Conduct.pdf (accessed 10 March 2022).

³⁰⁴ Article 11(1) of UNCAC.

³⁰⁵ Atukwasa, Basheka & Gadenya 'The Effect of Corruption on Administration of Justice in Uganda: Lessons from Two Chief Magistrates' Courts in Kampala and Mukono Districts' (2012) 5(3) *African Journal of Public Affairs* 3.

of persons interacting with the courts shed some light on the prevailing situation on the courts in Uganda and the ACD in particular.

This chapter discusses the meaning, scope and types of judicial corruption, as well as its causes and effects. Further, the chapter analyses how judicial corruption undermines the general fight against corruption. Specific reference is made to the relevant provisions of the applicable transnational instruments such as UNCAC and the African Union Convention on Preventing and Combating Corruption (the AU convention), and to the corresponding national legislation in Uganda.

It is argued that should the judiciary be corruptible, the fight against corruption will be lost. It is conceded that while there is no single cure for judicial corruption, the concerted efforts of all interested parties will go a long way to combating judicial corruption and, therefore, corruption in general. The starting point is to know the forms such internal corruption can take.

4.2. Judicial Corruption and General Corruption

The key role of the judiciary in the fight against corruption cannot be over-emphasised. As the determinant of what conduct is or is not corrupt, the judiciary checks the conduct of individuals and of the other arms of government. In the cycle of criminal justice, the judiciary is the final institution before the corrupt are brought to book. However, actors within the judiciary are themselves not immune to corruption.³⁰⁶ In the absence of judicial integrity, persons charged with corruption may escape justice.

Regardless of how well the investigators and all other interested parties might have worked to put together a case against a corrupt individual, a corrupt judicial officer can mishandle the hearing and determination of the case, thereby undermining the prior sequence of anti-corruption efforts.³⁰⁷ Therefore, a fair, impartial and corruption-free judiciary is a

³⁰⁶ International Bar Association (2016) *Judicial Systems and Corruption* 14 available at https://www.ibanet.org/Legal_Projects_Team/judicialintegrityinitiative (accessed 16 December 2021).

³⁰⁷ Buscaglia & Dakolias (1998) 'An Analysis of the Causes of Corruption in the Judiciary' (1998) 30 *Law & Pol'y Int'l Bus* 97.

prerequisite for the success of any anti-corruption initiative. In the face of a corrupt judiciary, any offender can evade responsibility for his crime by corrupting the judicial actors.³⁰⁸ Moreover, dealing with corruption in the judiciary increases the chances of tackling corruption in other sectors. Once the judiciary is corruption-free, its members will decide cases on their merits, without consideration for the lure of corrupt rents. This will increase the conviction rates in corruption cases, which in turn will make engaging in corruption very risky and expensive for any would-be perpetrators.³⁰⁹

4.3. Definition of Judicial Corruption

Judicial corruption has been defined as the:

Use of public authority for the private benefit of court personnel; when this use undermines the rules and procedures to be applied in the provision of court services.³¹⁰

Judicial corruption also includes any inappropriate financial or material gain and non-material gain, aimed at influencing the impartiality of the judicial process by any actor within the court system.³¹¹

4.4. International Legal Framework against Judicial Corruption

The integrity and independence of the judiciary is integrally intertwined with the integrity of judicial process and the extent to which the public perceives the criminal justice process as fair and just. The extent to which judges properly uphold the international standards and norms in conducting criminal trials and proceedings reflects upon both the integrity of the judge, the court and the system of justice.³¹²

The importance of the judiciary in the domestic and global fight against corruption is reflected in the key international and national instruments. The national anti-corruption legal framework has been discussed in detail in Chapter Three above against the background of international

³⁰⁸ International Bar Association (2016) at 14. See also Atukwasa, Basheka & Gadenya (2012) 3.

³⁰⁹ Inspectorate of Government (2014) at xii. See also Gbadamosi (2015) 47.

³¹⁰ Buscaglia 'An analysis of judicial corruption and its causes: An objective governing-based approach' (2001) 21(2) *International Review of Law and Economics* 235.

³¹¹ Gbadamosi OA (2015) 'The Role of the Judiciary in Combating Judicial Corruption' 23(1) *Lesotho Law Journal* 38.

³¹² UNODC *The Independence, Impartiality and Integrity of the Judiciary* (2006) 15 Available at https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/2_Independence_Impartiality_Integrity_of_Judiciary.pdf (Accessed 16 December 2021)

and regional anti-corruption initiatives. This section continues that analysis of the international and regional initiatives but focuses specifically on the provisions dealing with the judiciary. The main focus falls on the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AU Convention) as the chief international and regional instruments, and how their provisions on judicial corruption are reflected in Uganda's domestic law.

4.4.1. United Nations Convention against Corruption (UNCAC)

UNCAC comprehensively sets standards which its states parties ought to follow in the formulation of their anti-corruption legal framework. As mentioned above, Uganda ratified UNCAC on 9 September 2004,³¹³ and is therefore duty bound to observe UNCAC's provisions.

The UNCAC provisions *specific to the judiciary* are either mandatory or hortatory. Notably, most provisions establishing the required conduct of the judiciary are mandatory,³¹⁴ while the ones offering guidance on how to comply are optional.³¹⁵ The mandatory nature of the provisions of UNCAC relating to judicial corruption highlight the judiciary's key role in fighting corruption and, therefore, the need for strict measures against judicial corruption.

It is unclear whether UNCAC mandates the establishment of a specialized anti-corruption court. Article 6(1) of UNCAC requires states parties to ensure the existence of a body or bodies specialised in combating corruption through law enforcement. Article 6(2) specifically requires that states parties ensure that the body or bodies in question are independent, equipped and free from any undue influence. Article 6 of the Convention provides:

Article 6. Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

³¹³ Data available at <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (visited 7 April 2020).

³¹⁴ See Article 6(1), (2) & Article 11(1) of UNCAC.

³¹⁵ See Article 11 (2) of UNCAC.

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

While Article 6 is well intended, the challenge comes when the designated bodies are themselves corrupt, as is the case with judicial corruption. The various Ugandan bodies mandated to fight corruption, including the anti-corruption court and the Inspectorate of Government, and their contribution to the fight against corruption have been discussed in detail in Chapter Three above. Article 6 must be read with article 36:

Article 36. Specialized authorities Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out 27 their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

The legal implications of articles 6 and 36 have been the subject of domestic case law on the African continent among member states of the AU. For example, in *Glenister v President of the Republic of South Africa*,³¹⁶ the South African Constitutional Court approved of the following summation of the legal obligation imposed by these sections:³¹⁷

What must be emphasised here is that in creating these agencies, member states are not required to ignore their constitutions. As pointed out earlier, the Convention requires states to establish anti-corruption agencies—in accordance with the fundamental principles of [their] legal system. Indeed, the Legislative Guide for the implementation of the Convention emphasises this. Thus, in terms of implementation of article 6 of the Convention, the Legislative Guide provides:

Article 6 is not intended to refer to the establishment of a specific agency at a specific level. What is needed is the capacity to perform the functions enumerated by the article. [...] Article 6, paragraph 2, requires that States endow the body in charge of preventive policies and measures with: (a) The

³¹⁶ *Glenister v President of the Republic of South Africa* [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011).

³¹⁷ *Glenister* para 143.

independence to ensure it can do its job unimpeded by 'undue influence', in accordance with the fundamental principles of their legal system; (b) Adequate material resources and specialized staff and the training necessary for them to discharge their responsibilities. The Convention does not mandate the creation or maintenance of more than one body or organization for the above tasks. It recognizes that, given the range of responsibilities and functions, it may be that these are already assigned to different existing agencies. (Emphasis added.)

And the guidance for implementation of article 36 is to similar effect:

'Article 36 requires that States parties, in accordance with the fundamental principles of their legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. [...] Such a body or bodies or persons must be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State party, to be able to carry out their functions effectively and without any undue influence and should have the appropriate training and resources to carry out their tasks. An interpretive note states that the body or bodies may be the same as those referred to in article'.

This analysis suggests that Uganda has gone beyond what is mandated by the UNCAC when it administratively established the Anti-Corruption Division of the High Court (ACD). However, having done so, Uganda is arguable under the obligation to ensure that the ACD is and remains independence, to ensure it can do its job unimpeded by 'undue influence', in accordance with the fundamental principles of the Ugandan legal system. Furthermore, the ACD must be provided with adequate material resources and specialized staff and the training necessary for the division to discharge its responsibilities.

This is in line with articles 8 of UNCAC which obligates state parties to promote, *inter alia*, integrity, honesty and responsibility among its public officials. Members of the judiciary are public official within the meaning of Article 2(a) of UNCAC. Therefore, state parties must ensure that their judicial systems comply with Article 8. Indeed, article 11(1) of UNCAC explicitly mandates state parties to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures include codes of conduct that promote integrity, honesty and responsibility:

Article 11. Measures relating to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.
2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

In Uganda, the Judicial Integrity Committee formulated the Uganda Code of Judicial Conduct which was adopted by the judicial officers.³¹⁸ The Code's six guiding principles as discussed in more detail later in this chapter, are meant to promote the enforcement of the standards of judicial conduct as laid down in the Constitution and international conventions to which Uganda subscribes.³¹⁹ The Code emphasises that judicial officers are to demonstrate independence, impartiality, integrity, propriety, equality, competence and diligence in the administration of justice.³²⁰

Article 15 of UNCAC directs state parties to criminalise both the supply and demand sides of bribery. The challenge here is that, since judicial corruption is clandestine and involves a willing giver and willing taker of an inducement, in the absence of a third party who reports this transaction, corruption can go undetected. Commenting on judicial corruption in Uganda, the ACCU investigators noted:

It is also vital to note that corruption is highly sophisticated and with networks so discreet that documentary proof of malpractices is not easily accessible.³²¹

Article 25(b) of UNCAC mandates state parties to insert provisions in their laws to protect law enforcement officials from threats and intimidation that may interfere with the effective discharge of their duties. This article seeks to promote judicial independence which is important in the fight against corruption. Indeed, studies have shown that judicial and

³¹⁸ Preamble to the Uganda Code of Judicial Conduct.

³¹⁹ Preamble to the Uganda Code of Judicial Conduct.

³²⁰ Principles 1-6 of the Uganda Code of Judicial Conduct.

³²¹ Anti-Corruption Coalition Uganda (2014) 12.

prosecutorial independence are correlated to low levels of corruption.³²² Therefore, strict enforcement of Article 25(b) will reduce the general levels of corruption and of judicial corruption in particular. The Constitution of Uganda guarantees the independence of judicial officers under Article 128. Article 128(1) states that:

In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.

Further, Article 128(4) protects judicial officers from liability for any act or omission done in the exercise of judicial power. However, while these provisions empower judicial officers to perform their functions without interference or fear of prosecution, they do not address individual judicial corruption which arises not out of fear but out of an officer's conscious decision. Therefore, measures addressing this wilful corruption must be strengthened in order for it to be addressed.

Article 32(5) of UNCAC requires state parties to ensure that the views and concerns of victims in criminal proceedings are considered in a manner that is not prejudicial to the rights of the accused. Article 28 of the Constitution of Uganda, which guarantees the rights of the accused person to a fair, speedy and public hearing, is in line with this provision. A fair trial includes the presumption of innocence, the right to legal representation, transparent proceedings and giving accused person adequate time to prepare their defence. A failure by the court to observe the fundamental right to a fair trial would lead to perceived judicial corruption. Therefore, by highlighting the rights of an accused person, Uganda's domestic law seeks to guard against such corruption.

Uganda, through her Constitution and other domestic legislation has demonstrated her commitment to ensuring an independent and corruption-free judiciary. What remains to be undertaken is an examination of the implementation of the legislation.

³²² Voigt & Gutmann (2015) 1.

4.4.2. African Union Convention on Preventing and Combating Corruption (AU Convention)

The provisions of the AU Convention relating to the judiciary and judicial corruption are similar to those of UNCAC discussed in the previous section.

Article 5(3) mandates member states to establish, maintain and strengthen independent national anti-corruption agencies. Article 14 obligates member states to accord a fair trial to any accused person. A judicial officer who has received a bribe from any of the parties is incapable of conducting a fair trial within the meaning of the law. It is arguable that by domesticating and enforcing the foregoing provisions as a party to the AU Convention, Uganda is in effect making an effort to fight judicial corruption.

4.5. Types of Judicial Corruption

Having established that Uganda was under no international law obligation to establish a specialized anti-corruption court, but having done so, that it is obliged to “take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary” in the ACD, and generally, it is crucial for proper compliance with this obligation to better understand what forms “opportunities for corruption” can take. In this regard, judicial corruption may be classified into two broad categories:

- (a) actual corruption, meaning the active involvement of the members of the judiciary in acts of corruption; and
- (b) perceived corruption, that is, corruption which is imputed to the judiciary regardless of whether its members are actually corrupt or not.

4.5.1. Actual Judicial Corruption

Members of the judiciary may be involved actively in acts of corruption in the following ways:

In the handling of administrative matters, administrative staff members may take inducements from court users to manipulate the normal process of handling files to the advantage of those particular court users.³²³ A common form of administrative corruption occurs when clerks receive bribes to delay or fast-track the handling of a file. In Uganda, the

³²³ Buscaglia (2001) 236.

anti-corruption coalition, an organisation of anti-corruption actors conducted an investigation in 15 courts spread across the four regions of the country. The purpose of the investigation was to ascertain the forms of corruption in the courts and to verify reports and complaints received from whistleblowers regarding the courts. This investigation revealed that court clerks were the most implicated in cases of corruption at the courts.³²⁴ In 2019 following media reports of corruption in five specified courts, investigations were conducted by the judiciary administration in these courts. As a result, five support staff and two magistrates were implicated in allegations of corruption.³²⁵

Administrative staff are usually the first and constant point of contact between the general public and the court. Their corrupt actions therefore can portray a particular court as being generally corrupt.

Bribery is the other and most common form of corruption by individuals, and it can happen at any point in the judicial process. A bribe may be taken by a lawyer to delay or expedite the handling of a case, by a clerk to make a record disappear or miraculously appear, by a judicial officer to deliver a favourable ruling,³²⁶ and by a bailiff to delay or mishandle execution. Different actors in the justice system are prone to engaging in bribery. A survey in Uganda showed that the percentages of cases of various actors actively engaging in bribery were as follows: judges, 40 percent; lawyers, 33 percent; prosecutors, 53 percent; and court personnel, 7 percent.³²⁷ A survey by the Anti-Corruption Coalition Uganda confirms the involvement of several members of the judiciary in bribery at the courts. The survey revealed that, while bribery in the Ugandan courts usually is orchestrated by litigants, their relatives and

³²⁴ Anti-Corruption Coalition Uganda) *Temples of injustice: a report highlighting alleged abuse of office in selected magistrates' courts in Uganda* (2014) ii, 8 and 12. Kampala: Anti-corruption coalition available at <https://www.newvision.co.ug/news/1513118/judiciary-discipline-magistrates-corruption> (accessed 17 November 2021).

³²⁶ Transparency international (2007) xxiv.

³²⁷ International Bar Association Judicial Integrity Initiative (2016) *Judicial Systems and Corruption 20-22* available at https://www.ibanet.org/Legal_Projects_Team/judicialintegrityinitiative (accessed 16 December 2021).

lawyers, in some cases it is initiated by the court staff.³²⁸ A Ugandan magistrate has admitted that:

Bribery occurs in courts of law when the official is approached by fellow officers, through relatives and intermediaries and in some cases, professional sureties who get people's money and disappear.³²⁹

This involvement of a range of persons in the corrupt practice not only increases the cases of corruption but also compounds their nature, thereby making it harder for the anti-corruption efforts to detect the vice.

Judicial corruption also manifests through extortion. This has been defined as the act of utilising either directly or indirectly, one's access to a position of power or knowledge, to demand unmerited co-operation or compensation as a result of coercive threats.³³⁰ It is common for actors within the justice system to extort money from court users. Out of fear that they may not receive justice if they do not comply, these court users have no choice but to pay. The IBA survey cited above indicated that the perception of the existence of extortion among members of the judiciary was very high. In the survey, 73 percent of the respondents in Uganda perceived the existence of significant levels of extortion within the Judiciary. Out of these, the following percentages were attributed to the various actors within the justice system for whom the perception of extortion was ranked as common or very common: prosecutors scored 40 percent; investigators, lawyers and court personnel scored 33 percent; judges, regulatory authorities, civil status disputes litigants and defendants in criminal prosecutions scored 27 percent; while expert witnesses and public defenders accounted for 20 percent.³³¹

Moreover, extortion in the Ugandan courts is not committed only by court staff. Apart from court officials charging un-official court fees from court users, there have also been reports of non-court staff impersonating court officials to extort money from the public. Court clerks, state attorneys, prisons staff and police officers were found all to be involved actively in corrupt activities in the justice system.³³² It is imperative, therefore, that the judiciary and other

³²⁸ Anti-Corruption Coalition Uganda (2014) 8.

³²⁹ Atukwasa, Basheka & Gadenya (2012) 6.

³³⁰ Available at <https://www.transparency.org/glossary/term/extortion> (accessed 13 April 2020).

³³¹ International Bar Association (2016) 27.

³³² Anti-Corruption Coalition Uganda (2014) 11-2.

parties with an interest in the justice system devise means of tackling the problem of extortion by both court officials and outsiders. The details of possible interventions in this regard will be discussed in Chapter Five below.

4.5.2. Perceived Judicial Corruption

The perceived integrity of the institution is of particular importance, since it underpins trust in the institution.³³³

It is a cardinal principle of law that it is not merely important but fundamental that justice must not only be done but also must be seen to be done.³³⁴ This principle is transferable to the context of corruption in general and judicial corruption in particular. Perceived corruption occurs when members of the judiciary, who may not have engaged in corrupt conduct, are considered nevertheless to be corrupt.

In a survey conducted in Uganda, 37 percent of the respondents perceived the judiciary to be corrupt.³³⁵ A number of factors, such as unaccountably expensive lifestyles³³⁶ and delayed and inexplicable judgments, usually account for perceived judicial corruption. Studies have shown that the “public perception of judicial corruption is often worse than the reality.”³³⁷ In Uganda, for instance, notwithstanding the public outcry about judicial corruption, actual evidence implicating judicial officers rarely is found.³³⁸ While it is true that this may be due to the clandestine nature of corruption, it is also possible that this form of corruption is more perceived than actual. Nonetheless, these perceptions are important, because public confidence in the judiciary depends upon them. Moreover, some of the most popular anti-corruption publications such as the corruption perceptions index and the global corruption barometer are based primarily on whether or not particular countries are thought to be corrupt.

³³³ Transparency international (2007) xxiii.

³³⁴ *R v Sussex Justices, ex p McCarthy (1924) 1 KB 256.*

³³⁵ Inspectorate of Government (2014) ix.

³³⁶ Pepys ‘Corruption within the judiciary: causes and remedies’ in Transparency International *Global Corruption Report (2007) United Kingdom: Cambridge University* 9.

³³⁷ Pepys (2007) 10.

³³⁸ Anti-Corruption Coalition Uganda (2014) 12.

When a member of the judiciary, especially a judicial officer, is perceived to be corrupt, even if his or her judgment is well reasoned and supported by the law, it will not be embraced by the court users. This undermines the confidence of the public in the court's ability to handle cases fairly.³³⁹ This loss of confidence is even worse when the court which is perceived to be corrupt is the same court which hears corruption cases. The test of the independence of the judiciary includes the perception regarding its independence.³⁴⁰ Similarly, the test of whether or not a judiciary is corrupt includes the perceived levels of corruption. The effectiveness of a judiciary is premised on the confidence that the public has in the institution.³⁴¹ Therefore, a judiciary which is perceived to be corrupt cannot be effective, even more so in the fight against corruption.

Undue political interference in the judicial process is the other form of corruption which is perceived to be very high.³⁴² Undue political influence has been defined as:

the manipulation of policies, institutions and rules of procedure including, not exclusively, in the allocation of resources and financing by political decision-makers who abuse their position to sustain their power, status and wealth.³⁴³

Political interference in the judicial process occurs, when through intimidation, threat or bribery, powerful political actors pressurise members of the judiciary to act in their favour. For example, a judicial officer may be pressed, with sheer disregard for the applicable law, to rule in favour of a powerful government official.³⁴⁴ As a result, a judicial officer may deliver a politically motivated ruling,³⁴⁵ dismiss a meritorious application or allow one that lacks merit, all because he or she wishes to gain political favour. It is, therefore, not uncommon for certain judicial officers to have a reputation for taking bribes to rule in a particular way.³⁴⁶

³³⁹ Atukwasa, Basheka & Gadenya (2012) 12-13.

³⁴⁰ Commentary on the Bangalore Principles of Judicial Conduct (2007) 35.

³⁴¹ Preamble to the Uganda code of judicial conduct.

³⁴² International Bar Association (2016) 23.

³⁴³ International Bar Association (2016) 13.

³⁴⁴ Transparency International (2007) xxiii.

³⁴⁵ Buscaglia (2001) 235.

³⁴⁶ Transparency International (2007) xxiv.

On the one hand, the lack of judicial independence leads to political interference in the judicial process,³⁴⁷ and, on the other hand, political interference undermines judicial independence. Judicial independence relates to both the judicial officers' ability to make decisions without external influence, as well as to the general relationship of the judiciary with other institutions, especially the other arms of government.³⁴⁸ For there to be judicial independence, judicial officers must have security of tenure, a secure source of income and overall institutional independence in relation to matters regarding the administration of justice.³⁴⁹

Investigations have revealed that powerful politicians in some instances have used their influence to manipulate and corrupt the courts in order to commit land grabbing with impunity.³⁵⁰ Further, political interference may happen at the policy level, for example, in resource allocation. Budget control by either the executive or legislature affects the independence and overall operation of the judiciary. In Uganda, for example, before the judiciary budget is passed, it must be approved by the Minister responsible for justice; who is a member of the executive. This administrative process was challenged recently by the umbrella body of advocates in the case of *Uganda Law Society v Attorney General*.³⁵¹ In this case, one of the issues to be determined was whether or not subjecting the judiciary's budgeting process to approval by members of the executive was in contravention of Article 155 of the Constitution of Uganda which guarantees the independence of the judiciary. In resolving this issue, the Court of Appeal declared the requirement for the executive's approval to be unconstitutional and pronounced that:

judicial independence includes financial autonomy ... an arm of government that is wholly dependent on another arm of government for all its budgetary needs, cannot be described as independent in any sense.³⁵²

³⁴⁷ Gong (2004) 36.

³⁴⁸ Commentary on the Bangalore Principles of Judicial Conduct (2007) 28.

³⁴⁹ Commentary on the Bangalore Principles of Judicial Conduct (2007) 29.

³⁵⁰ Anti-Corruption Coalition Uganda (2014) 10.

³⁵¹ Constitutional Petition No 52 of 2017.

³⁵² Constitutional Petition No. 52 of 2017 34 and 56.

Indeed, when the judiciary must rely upon powerful politicians for approval of its budget, the same is bound to interfere directly with judicial work. It would explain also why the public would perceive the judiciary as offering preferential treatment to the “hand that feeds it”.

Hence, whereas it is necessary to monitor the workings of the judiciary to ensure that they are in line with professional standards, there must be a balance between monitoring and accountability, on the one side, and judicial independence, on the other. Without judicial independence, it is impossible for the judiciary adequately to discharge its functions, including corruption control.

4.5.3 Corruption in Uganda

There has been a persistent public outcry about the prevalence of judicial corruption in Uganda. Although factual evidence is hard to obtain, surveys and media reports support the perceived existence of corruption. In a 2016 International Bar Association survey, Uganda registered the worst cases of corruption, with 87 percent of the respondents reporting a high perception of judicial corruption,³⁵³ and only 13 percent of the respondents reporting no direct experience or knowledge of cases of judicial corruption.³⁵⁴ In the same survey, 73 percent of the respondents reported knowledge of the existence of corruption in the judiciary in Uganda, while 87 percent of the respondents perceived the existence of high levels of bribery in the judicial system.³⁵⁵

An investigation carried out in fifteen courts across Uganda revealed that corruption among court officials is very common; with bribery, extortion, poor time-keeping and delayed justice being the most prevalent forms of corruption.³⁵⁶ In another survey conducted in Uganda, a number of court users indicated that some people would prefer to seek other forms of justice rather than go to court. One of the litigants interviewed stated that:

³⁵³ International Bar Association (2016) 19.

³⁵⁴ International Bar Association (2016) 16.

³⁵⁵ International Bar Association (2016) 58.

³⁵⁶ Anti-Corruption Coalition Uganda (2014) ii.

People have lost confidence in the justice system in Uganda due to high levels of corruption in the form of bribery. This has even made some people seek justice outside court.³⁵⁷

The existence or perception on judicial corruption undermines the public's confidence in the judiciary's ability to deliver justice, which affects negatively the overall integrity of the administration of justice.

The discussion above of the various forms judicial corruption can take raises serious cause for concern as there is enough evidence to suggest that many of these forms are endemic in Uganda. To prevent the further spread of these forms, if not to eradicate them altogether, it is necessary to better understand the possible causes of judicial corruption.

4.6. Causes of Judicial Corruption

A survey carried out by Transparency International in 32 countries revealed the four major causes of judicial corruption to be the following: (a) political influence in the appointment criteria; (b) poor terms and conditions of service; (c) ineffective accountability mechanisms; and (d) lack of transparency during court procedures.³⁵⁸ These findings are supported by scholars such as Buscaglia who attributes judicial corruption to low compensation and weak monitoring systems, and Voigt & Gutmann who argue that secure income for judicial officers and transparency in judicial decision making are correlated with low levels of judicial corruption.³⁵⁹

4.6.1. Poor terms and Conditions of Service

When judicial officers feel that they are poorly treated, the incentives to refrain from corrupt behaviour are very low.³⁶⁰ Studies have shown that there is a close relationship between the official salary of members of the judiciary and judicial corruption.³⁶¹ Scholars argue that low salaries and poor working conditions in the public sector increase the possibility of and

³⁵⁷ Atukwasa, Basheka & Gadenya (2012) 9.

³⁵⁸ Transparency International (2007) xxiv.

³⁵⁹ Buscaglia (2001) 234 see also Voigt & Gutmann (2015) 2, 5 and 13.

³⁶⁰ International Bar Association (2016) 17.

³⁶¹ Transparency International (2007) xvi-xvii and 230.

willingness to engage in unethical conduct.³⁶² While there is no guarantee that increasing the salaries of judges and prosecutors necessarily would reduce judicial corruption, the fear of losing their well-paying jobs, if caught, would provide an incentive for the officials to desist from corruption. The lack of clear promotion and transfer policies and the absence of continuous training for judicial staff are amongst the other factors that have been found to lead to judicial corruption.³⁶³

In Uganda, the legal framework governing the establishment and operation of the judiciary provides for job security. Article 144 of the Constitution of Uganda guarantees secure tenure of office for judicial officers, except in specifically prescribed circumstances. However, the remuneration of judicial officers in Uganda still leaves a lot to be desired. Article 128(7) of the Constitution states that the salary, allowances, privileges, retirement benefits and other conditions of service of a person exercising judicial power shall not be varied to his or her disadvantage. Whereas this article attempts to provide financial security, the actual remuneration and terms of service of judicial still remains a cause of concern.

In an interview conducted by ACCU, certain judicial officers who admitted to engaging in corruption, explained that:

The conditions of work are so dire that you are forced to put aside integrity just to survive, this is worsened by the low pay. It is hard life that compels some of us.³⁶⁴

Moreover, some upcountry courts are located in places with no other public means of transports, apart from hired motorcycles (*boda bodas*). Judicial officers who do not own personal vehicles have to use these *boda bodas* to commute to and from work, while others are transported by lawyers or litigants.³⁶⁵ It is conditions such as these which create a fertile environment for judicial corruption to thrive, as judicial officers are forced to engage in corruption as a means of survival.

³⁶² Buscaglia 'An analysis of judicial corruption and its causes: An objective governing-based approach' (2001) 21(2) *International Review of Law and Economics* 243.

³⁶³ Transparency International (2007) xxiv.

³⁶⁴ Anti-Corruption Coalition Uganda (2014)11-2, see also Uganda Debt Network (2013) 2.

³⁶⁵ Anti-Corruption Coalition Uganda (2014) 10.

The conditions of work up country are simply too hard that we at times cannot help but do unprofessional things as a survival reflex action.³⁶⁶

It appears, then, that poor terms and conditions of service increase the temptation for judicial officers to engage in corrupt acts.

It is true that different individuals react differently to the temptations of corruption, and many public and private officials refrain from corruption even when the temptations are great, it is crucial for fighting corruption to recognise that as temptations rise, so do levels of corruption.³⁶⁷

4.6.2. Ineffective Accountability Mechanisms

The absence of strong accountability mechanisms makes it difficult to detect and penalise judicial corruption.³⁶⁸ If members of the judiciary abuse their judicial discretion and immunity for their private benefit, but they feel safe from the reach of law,³⁶⁹ there is no incentive for them to be incorruptible. This lack of accountability creates fertile ground for judicial corruption to blossom. As Voigt & Gutmann note:

Independence and accountability function as complements in preventing corruption —
judicial accountability without independence appears to be ineffective.³⁷⁰

The same is true of judicial independence without accountability. There is a need, therefore, to balance judicial independence and accountability to ensure that judicial officers perform their functions without interference while, at the same time, being transparent and adhering to the prescribed judicial standards.³⁷¹

4.6.3. Lack of Transparency during Court Procedures

The lack of transparency in this context is twofold: during the hearing and in the nature of the judgment delivered. When the courts deny the media and other interested persons access

³⁶⁶ Anti-Corruption Coalition Uganda (2014) 10.

³⁶⁷ Klitgaard (1999) 6.

³⁶⁸ Transparency International (2007) xvi.

³⁶⁹ Transparency International (2007) 301.

³⁷⁰ Voigt & Gutmann (2015) 1.

³⁷¹ International Bar Association (2016) 15.

to the venues of court proceedings, this leads to suspicions of unethical conduct that the court wishes to hide.³⁷²

Further, the complexity of the processes involved in gaining access to court services create opportunities for corruption. Court staff and other unscrupulous members of the public usually manipulate the bureaucratic processes for their corrupt benefit.³⁷³ In order to enhance transparency in the judicial process, judicial officers are required to give reasons for their judgments (*rationes decidendi*). The absence of a *rationes decidendi* or the presence of an unpersuasive one tends to result in perceived corruption. The delivery of inexplicable judgments may lead also to an inference of judicial corruption.

The case of *Uganda v Odoch Ensio*,³⁷⁴ demonstrates the importance of giving well-reasoned judgments and avoiding any conduct that would lead to an inference of judicial corruption. In that case, a police officer investigating a suspect on charges of corruption solicited a bribe from the suspect to help him escape prosecution. The police officer was caught red-handed receiving the bribe. In a shocking twist of events, the lower court acquitted him for lack of sufficient evidence. As it would turn out later, the presiding officer in the lower court in fact had written two judgments, one acquitting and the other convicting the accused. On appeal, the learned judge declared the decision of the lower court acquitting the accused as “absolutely wrong”. In his closing remarks, Justice ES Lugayizi had this to say:

Up to now, this Court has not yet understood why the record of the lower court contains two judgments i.e. one judgment acquitting the respondent and the other one convicting him! Curiously, the latter seems to be a product of a better considered process than the former.³⁷⁵

Judicial officers and staff therefore must be mindful of actions which raise suspicions of unethical conduct in the judicial process.

³⁷² Transparency International (2007) xxiv.

³⁷³ International Bar Association (2016) 17.

³⁷⁴ HCCA 28 of 2004.

³⁷⁵ HCCA 28 of 2004 11.

4.7. Interventions to address judicial corruption

There are a number of structures in place in Uganda to protect the integrity of the judiciary and ensure its efficiency. They include the judicial code of conduct, the appeal process, rules governing the disciplining and handling of complaints against judicial officers.

4.7.1 Judicial service commission

The commission is established under Article 146 of the constitution. Its core functions include the appointment of judicial officers of the lower courts and advising the president regarding the appointment of the justices of the Supreme Court and the Court of Appeal, as well as judges of the High Court.³⁷⁶

The commission also exercises disciplinary control over judicial officers including the power to remove a judicial officer from office. In the exercise of this power, the commission is guided by the Judicial Service Commission Regulations, 2005 and the Judicial Service (Complaint and Disciplinary Proceedings) Regulations, 2005. Under Regulation 5 of the latter, corruption and abuse of office are some of the grounds upon which a complaint against a judicial officer may be lodged to the commission. Under Rule 4, the commission can handle complaints against a judge, registrar, magistrate or any person holding an office connected to the court. For example, in the 2018/2019 financial year, the commission registered 115 complaints, bringing the total complaints before the commission to 342. Of these, 1 judicial officer was dismissed, 1 reprimanded, 3 cautioned, 2 recommended for interdiction, 13 were charged, 1 judicial officer's interdiction was recommended to be lifted while 190 complaints were recommended for closure.³⁷⁷ Therefore, any person who is aggrieved by any improper conduct by a judicial officer has audience with the commission, which in turn subjects the officer to due process.

4.7.2 The Appeal Process

The structure of the courts from the Supreme Court to the lowest Magistrate's court as already discussed, provides an opportunity for reviewing judicial decisions. A party aggrieved by

³⁷⁶ Articles 147 and 148 of the Constitution of the Republic of Uganda.

³⁷⁷ Judicial Service Commission annual report (2018/2019) 8 available at http://www.jsc.go.ug/sites/default/files/Annual_Report_2018_2019_JSC_0.pdf (accessed 16 December 2021).

a judgement has a right of appeal to a higher court. As such, where a party is for any reason aggrieved by the decision of the court of first instance, that party can obtain a second or even third opinion through appeal.

4.7.3 The Uganda Code of Judicial Conduct

Adopted in 2003, the code sets out principles and rules designed to regulate judicial conduct. As such, judicial officers are required to observe the following six principles in the exercise of their judicial functions and in their private lives.

Independence requires a judicial officer to decide cases based on their own assessment of the law and facts while desisting from any external influence including from fellow judicial colleagues. Impartiality, charges officers to conduct themselves in a manner that enhances confidence in the impartiality of the judicial process. Integrity, requires judicial officers to be above reproach while propriety calls upon officers to conduct themselves in a manner consistent with the judicial office, including accepting appropriate personal restrictions. Equality requires judicial officers to treat all persons before them without discrimination, while competence and diligence require a judicial officer to be competent and skillful in the discharge of their functions.

These specific interventions tailored for the judiciary hold judicial officers accountable without interfering with judicial independence, a core principle in the administration of justice.

4.8. Conclusion

The elaborate international legal framework against judicial corruption has been embraced and domesticated in Uganda. In particular, the establishment of the ACD is a major demonstration of Uganda's commitment to fight corruption. The court has indeed registered commendable success in the handling of corruption cases despite facing challenges that affect the judiciary in general. These challenges include inadequate funding and staffing and the danger of judicial corruption. Whereas factual evidence is hard to find, surveys suggest that there is a risk of corruption in the judiciary. This risk is aggravated by the complex procedures of court, poor terms of service of key actors in the judiciary and weak monitoring systems among other factors. If true, the existence of judicial corruption would undermine the judiciary's pivotal role in the fight against corruption in general. To address this danger, a number of interventions have been put

place. These include the appeal process, a code of judicial conduct, and the judicial service commission to which complaints against judicial officers can be lodged. These interventions protect the courts against the danger of internal corruption. However, there is a need for more reforms that prevent corruption not only in the courts but in all the other sectors of the economy. Chapter 5 discusses the proposed reforms to address both judicial and general corruption in more detail.



CHAPTER FIVE

REFORMS TO STRENGTHEN THE ANTI-CORRUPTION PROJECT IN UGANDA

If we had an army of benevolent and well trained public servants, we may be successful in fighting corruption in a top-down manner. If we had alert, well-educated citizens who write in their opposition against corruption, we can contain corruption in their grassroots movement. But corruption exists precisely because we are short of one or the other.³⁷⁸

5.1. Introduction

Although a number of anti-corruption initiatives have been set up in Uganda, corruption has persisted. Whereas the complete elimination of corruption is arguably impossible, the existing interventions need to be reformed to make them more effective. Designing and strengthening effective anti-corruption efforts and reform must focus therefore on the causes of corruption,³⁷⁹ as analyzed in Chapter Two (general corruption) and Chapter Four (judicial corruption). However, in the absence of other supporting factors, the reformation of anti-corruption measures itself will not be successful. This fight must be accompanied by a strong resolve on the part of both the law enforcers and members of the public not to tolerate corruption.³⁸⁰ For it to be effective, the fight against corruption needs to encompass a combination of “carrot and stick” approaches and collaboration between civil society, the media, and the private and the public sectors.³⁸¹

This chapter presents recommendations for strengthening the anti-corruption project in Uganda in line with the analyses conducted in the preceding three chapters.

³⁷⁸ Lambsdorff JG (2007) 28.

³⁷⁹ Lambsdorff JG (2007) 28. See also USAID (1999) 15.

³⁸⁰ Hope KR (2000) 27- 8.

³⁸¹ Rose-Ackerman *Corruption and Government: Causes, Consequences and Reform* (1999) Cambridge University Press 78. See also Lambsdorff JG (2007) 225.

5.2. Increase Government Transparency

Transparency is a necessary virtue which leads to accountability. When government business is conducted in a transparent manner, anti-corruption activists and other concerned persons will notice any suspicious conduct and report it or have it investigated.

The need for transparency as a way of checking corruption has been emphasised for centuries. For example, Aristotle argues that transparency in the handling of public finances prevents corruption. He states:

To protect the treasury from being defrauded, let all the money be issued openly in front of the whole city, and let copies of the accounts be deposited in the various wards.³⁸²

There ought to be increased transparency to allow for close monitoring of state custodians.³⁸³ Assets declaration, public procurement and the general exercise of entrusted power should be open to scrutiny by members of the public. This will make it very risky for officials to engage in corruption, thereby reducing the corruption levels.³⁸⁴

5.3. Independence of the Media

“A free press is an essential check against corruption.”³⁸⁵ Through information sharing, an independent press can facilitate public debate regarding the utilisation of public resources, expose corruption scandals, and help bring to book corrupt officials.³⁸⁶

Owners of the press must ensure that the media is independent enough to expose any corruption scandal, regardless of who may be involved. The press also should collaborate with civil society for this cause. While the press can use civil society reports to publicize incidents of corruption, civil society in turn can use media reports to demand accountability from officials implicated in corruption. This working relationship can help to check corruption.³⁸⁷

³⁸² Aristotle 350 BCE.

³⁸³ Mbaku (2007) 72.

³⁸⁴ Lambsdorff JG (2007) 49.

³⁸⁵ Rose-Ackerman (1995) 166. See also Lambsdorff JG (2007) 45.

³⁸⁶ Rose-Ackerman (1995) 166.

³⁸⁷ Mbaku (2007) 146.

5.4. Civic Participation

A vibrant civil society can go a long way to advancing the fight against corruption. This can be done through the documentation of government shortfalls, presentation of policy proposals and pursuit of legal remedies.³⁸⁸ Also, civil society should conduct sensitisation campaigns about the desired conduct, what conduct is criminal and the negative impact of corruption on society.³⁸⁹ This will empower communities to identify and report corruption when they see it, thereby facilitating the work of the other anti-corruption organs.³⁹⁰ As noted by the OECD:

No single body can fight corruption alone; interagency co-operation, co-operation with civil society and business are important factors to ensure their effective operations.³⁹¹

5.5. Improved Terms and Conditions for Public Officials

There is a need to improve the general conditions of service of public servants. These include the recruitment, retention and remuneration of public officials.

5.5.1. Recruitment and Promotions

The recruiting of public officials and their promotions should be decided upon merit and must be conducted in a transparent manner. Officials who feel oppressed or mistreated and who have no certainty of elevation are more likely to engage in corruption.³⁹² By contrast, job security and certainty about promotion when deserved provide an incentive for workers to be ethical.

5.5.2. Transfers

As in many other countries, corruption in Uganda depends on co-operation between citizens and public officials.³⁹³ Being clandestine in nature, corruption thrives on trust and confidence between conniving parties.³⁹⁴ Therefore, in order to fight corruption, this confidence which is

³⁸⁸ Ackerman (1999) 164-171.

³⁸⁹ Hope KR (2000) 32. See also Buscaglia & Dokolias (1998) 110.

³⁹⁰ Mbaku (2007) 141.

³⁹¹ OECD (2008) 10-11.

³⁹² IBA (2016) 17.

³⁹³ Kaluya & Elliott 'Corruption in Uganda: A Comparative Study of Citizens and Public Officials' Perceptions' (2018) 9(1) *African Social Science Review* 19 & 31.

³⁹⁴ Lambsdorff JG (2007) 56.

necessary for corruption to thrive must be destroyed by way of periodic transfers of public officials.³⁹⁵

5.5.3. Wages

Poorly paid public officials are the most likely to turn to corruption as a means of survival.³⁹⁶ Government officials therefore should be paid adequately to protect them from the temptation to engage in corruption. This will provide an incentive to desist from corruption for fear of losing their livelihood in the event that they are discovered and their employment is terminated.³⁹⁷ It is also arguable that better remuneration provides motivation for quality work by enforcement officials, leading to enhanced and improved enforcement of anti-corruption measures.³⁹⁸

5.5.4. Performance Rewards

Performance-based rewards offer an incentive for officers of integrity to keep doing a good job.³⁹⁹ These may take the form of ethical trainings to foster transparency and enhanced payment based on performance, which operate as preventive measures against corruption.⁴⁰⁰ When honesty is shown to be beneficial and ethical work is seen to pay off, more officials will be encouraged to reject corruption.⁴⁰¹

However, there ought to be systems in place to hold officials responsible when they do engage in corruption. The improvement of the conditions of service for public officials therefore must be coupled with strict accountability mechanisms. This will ensure that officials can be punished should they engage in corruption.⁴⁰²

³⁹⁵ Rose-Ackerman (1999) 84 and 97. See also Lambsdorff JG (2007) 57.

³⁹⁶ Rose-Ackerman (1999) 72 and 155.

³⁹⁷ Lambsdorff JG (2007) 37. See also Mbaku (2007) 141.

³⁹⁸ Buscaglia (2001) 234.

³⁹⁹ Ackerman (1999) 80.

⁴⁰⁰ Lambsdorff JG (2007) 226. See also Hope (2000) 32.

⁴⁰¹ Ackerman (1997) 46-47.

⁴⁰² Mbaku (2007) 78.

5.6. Specific reforms for Anti-Corruption Institutions

Anti-corruption institutions can perform their functions effectively only if they are themselves corruption-free and have all the necessary resources.⁴⁰³ Therefore, in order to address the issue of corruption, there is a need for a comprehensive reform of anti- corruption institutions.⁴⁰⁴ This will enable them to control government corruption.

The effectiveness of any anti-corruption body is determined by a number of cross-cutting factors. These include independence, specialisation, adequate training and resources.⁴⁰⁵

a) Independence

Anti-corruption institutions should be safeguarded from undue influence. This is achievable by ensuring both “structural and operational autonomy”.⁴⁰⁶ To this end, the appointment, term of office and remuneration of the heads and employees of anti-corruption institutions should allow the holders of these offices to discharge their duties without fear of victimisation or loss of employment. For example, it has been argued that the four-year term of the IGG does not afford enough job security and stability to discharge the roles of the IGG effectively. This should be revised to allow for a longer term, comparable to that of the Auditor General.⁴⁰⁷

b) Specialisation

The fight against corruption requires specific knowledge and skills.⁴⁰⁸ Therefore, there is a need for continuous training of the employees of anti-corruption bodies to ensure that they possess the skills to handle the dynamic criminal trends. Continuous training not only increases the knowledge and skills of officials but also inculcates ethical values.⁴⁰⁹

c) Adequate Resources

Anti- corruption bodies should be provided with the necessary finances and staff to discharge their duties effectively. Short of this, the institutions will be as good as paper tigers, incapable of executing the mandate for which they were established.

⁴⁰³ Mbaku (2007) 141. See also OSEA (2008) 10.

⁴⁰⁴ Mbaku (2007) 74. See also Lamsdorff JG (2007) 28.

⁴⁰⁵ OECD (2008)10

⁴⁰⁶ OSEA (2015) 11.

⁴⁰⁷ OSEA (2015) 106; Anti-Corruption Coalition Uganda (2014) 35.

⁴⁰⁸ OSEA (2015) 23.

⁴⁰⁹ Hope KR (2000) 33.

5.6.1. Parliament

By virtue of its oversight role, Parliament is well placed to hold any public official accountable. However, this cannot be done if the legislators owe their positions to institutionalised corruption.⁴¹⁰ Therefore, members of parliament (MPs) should take steps to rid themselves of all opportunities ~~of~~ for corruption. Specific attention should be paid to MPs to be appointed to the Public Accounts Committee, to ensure that they are persons of unquestionable integrity with the moral authority to hold corrupt officials accountable. Further, the media and civil society should keep the public informed about any MPs who are implicated in any corruption scandals to enable the public hold them accountable too.

5.6.1. State House Anti-Corruption Unit

The current anti-corruption efforts in Uganda have registered more success in the prosecution of lower-ranking officials than high-ranking ones.⁴¹¹ This has been attributed to the influence wielded by the top officials, making them hard to prosecute.⁴¹² Being established under the office of the president, the State House Anti-Corruption Unit has the capacity to investigate corruption even at the highest levels, without fear of intimidation.

Therefore, the mandate of the Unit should be revised to focus on cases where high-ranking officials have been implicated and cases which may be referred to the Unit by the other anti-corruption bodies. This limiting of mandate to a particular class of cases is supported by the OECD as an effective mode of operation for anti-corruption bodies.⁴¹³ Doing so will ensure that corruption at the highest level of leadership does not go unpunished.

5.6.2. The Judiciary

As discussed in Chapter Four, judicial corruption is particularly detrimental to the fight against corruption. Therefore, the following specific measures ought to be observed to address corruption within the judiciary:

⁴¹⁰ Mbaku (2007) 148.

⁴¹¹ OSEA (2015) 81.

⁴¹² Anti-Corruption Coalition (2014) 24.

⁴¹³ OECD (2008) 11.

As a preventive measure against both general and judicial corruption, there is a need to publish judicial decisions regularly. Deterrence is a major purpose of law enforcement. In the anti-corruption context, while convictions lead to punishment of the offender, unless the offender attracts media attention, his or her conviction and punishment may remain known to close connections. This does not have the desired deterrent effect. Publicised convictions for corrupt acts will send a message to intending perpetrators that corruption is punishable. At the same time, even pliable judicial officers, knowing that their decision will be publicised and subjected to scrutiny, are likely to decide cases on their merits rather than according to corrupt considerations.⁴¹⁴

In order to deal with judicial corruption that arises from the complexity of court proceedings, it is proposed that the processes leading to a judgment ought to be reduced.⁴¹⁵ The more processes a court user has to go through to access justice, the more the people with whom he or she must deal. This creates the opportunity for corrupt officials to request for bribes. Therefore, reducing these processes would limit the contact persons, thereby minimising the chances of judicial corruption.

There is a need to strike an appropriate balance between judicial independence and judicial accountability.⁴¹⁶ When there is a necessity for judges to justify their decisions legally, there will be a decrease in judicial corruption.⁴¹⁷ Whereas it is possible to be corrupt and still write a well-reasoned judgment, some cases are straight forward and offer no other explanation for deviation, other than that the judicial officer is incompetent or corrupt. A decision that is not well-reasoned or one for which the rationale does not make logical sense is bound to raise suspicions of corruption. Aware of this, judicial officers will want to avoid the embarrassment of making ridiculous decisions that would point to the possibility of an underlying malpractice. Emphasising justification in the judgment therefore will limit the cases of judicial corruption.

⁴¹⁴ Voit & Gutman (2015) 16.

⁴¹⁵ Voit & Gutman (2015) 16. See also Buscaglia & Dokolias (1998) 100.

⁴¹⁶ OSEA (2015) 10. See also Transparency International (2014) 4.

⁴¹⁷ Voit & Gutman (2015) 16.

There is a need to strengthen the enforcement of standard timelines for concluding cases. Currently, a case is declared as backlog when it has been in the system for more than two years.⁴¹⁸ The administration has piloted interventions in select courts to handle the backlog of cases. However, in the face of understaffing and limited resources,⁴¹⁹ it becomes difficult to eliminate backlog. Therefore, these efforts should be strengthened to provide court users with a realistic projection of when court cases are likely to be concluded. This will eliminate the perception of corruption that arises from uncertainty and delayed court decisions.⁴²⁰

Alternative dispute resolution (ADR) should be popularised and embraced as a mode of dispute settlement. ADR has seen the end of many court cases and saved parties valuable time and money that would have been spent on lengthy litigation and inducements in the process. ADR reduces the opportunities for court officials to solicit bribes from litigants.⁴²¹ Currently, all civil cases filed in court must go through ADR processes first.⁴²² However, not all members of the public appreciate the use of ADR. There should be increased creation of awareness, especially among new court users, to encourage them to embrace ADR.

5.7. Donor Engagement

A number of government programmes in Uganda, including anti-corruption interventions, rely heavily on donor funding.⁴²³ This gives Uganda's development partners a stake in the fight against corruption in the country. Donors therefore should insist on proper accountability for the funds advanced and demand strict measures against persons implicated in corruption. The risk of losing donor funding is bound to exert pressure on government to increase its anti-corruption efforts.⁴²⁴

⁴¹⁸ Judiciary & JLOS *A Report of the case backlog reduction committee* (2017) 5 Kampala, Uganda: JLOS & Judiciary.

⁴¹⁹ IGG (2017) 18.

⁴²⁰ Buscaglia (2001) 243. See also UNDOC (2001) 10.

⁴²¹ Buscaglia (2001) 243. See also UNDOC (2001) 10.

⁴²² Section 4 of the Judicature (Mediation) Rules, 2013.

⁴²³ Anti-Corruption Coalition (2014) 50.

⁴²⁴ Anti-Corruption Coalition (2014) 8. See also Tangri & Mwenda (2006) 122; Tangri & Mwenda (2008) 191-192.

5.8. Legislative Reforms

The relevant anti-corruption laws should be amended to address the anomalies embedded in them. Among others, vaguely defined offences should be defined precisely. The precision of legislative provisions will eliminate confusion and inaction that arises from ambiguity, thus leading to more prosecutions of corruption offenders.

Also, the mandate of the IGG ought to be extended to provide for an unlimited term of office. This will grant the IGG job security and stability, to enable the office make and execute long term anti-corruption strategies.

5.9. Decentralisation of Functions

Centralisation of government functions is a significant cause of corruption. In this regard, decentralisation is the proposed reform. This will allow for increased accessibility of government services, and will foster efficiency.⁴²⁵

Corruption has been attributed also to excessive discretion granted to public officials. When the decision-making power is concentrated in the hands of a few officials, these officials are likely to abuse it by asking for bribes before delivering services.⁴²⁶ Therefore, to limit corruption, there is a need to devise ways to reduce the abuse of power by state custodians.⁴²⁷ One of the proposed ways is the introduction of competition, which would limit the concentration of power in the hands of a few public officials. Competition, it is argued, also will increase efficiency, since public service providers will be contesting for clients.⁴²⁸

It has been suggested also that in order to reduce corruption in business transactions, there should be a decrease in government regulation. This, it is argued, will limit the opportunities of government officials to solicit and receive bribes.⁴²⁹

⁴²⁵ Mbaku (2007) 143.

⁴²⁶ Buscaglia & Dokolias (1998) 100.

⁴²⁷ Mbaku (2007) 138.

⁴²⁸ Mbaku (2007) 74-75.

⁴²⁹ Mbaku (2007) 143.

5.10. Citizen Participation

The Constitution of Uganda places upon citizens a duty to fight corruption.⁴³⁰ Indeed, armed with the relevant information, the general public can be a powerful tool against corruption.⁴³¹ However, this cannot be so when the masses are timid, disempowered and uninformed. Citizens must be empowered through sensitisation and information sharing to build up the courage to confront the perpetrators of corruption. In addition, they should be available cheap, safe, fast and convenient means ~~to~~ of reporting corruption.⁴³²

5.11. Protection of Whistleblowers and Others

In order to encourage whistleblowers and witnesses against corruption, they must be offered maximum protection. When the potentially corrupt know that they risk being reported anonymously, even they may be forced to refrain from engaging in corruption.⁴³³

Adequate protection should be extended also to investigators, prosecutors and judicial officers to enable them perform their mandate without intimidation or fear of harm from the suspects.

5.12. Technology

Uganda's public service is still highly dependent on the traditional method of physical interface with officers and physical file records. This increases the opportunities for human contact and, therefore, the possibility of corruption. By contrast, the use of online platforms to interact with the public is associated with lower levels of corruption.⁴³⁴ The use of technology reduces individual discretion and therefore reduces the opportunities for officials to engage in corruption.⁴³⁵ Certain government department, such as the judiciary and the IGG, already have

⁴³⁰ Article 17(i) of the Constitution of Uganda.

⁴³¹ Ackerman (1999) 162.

⁴³² Lambsdorff JG (2007) 225. See also Ackerman (1999) 162 and 171.

⁴³³ Lambsdorff JG (2007) 233-234.

⁴³⁴ Buscaglia & Dokolias (1998) 107.

⁴³⁵ LASPNET *Assessment Report on Implementation of the JLOS Anti-Corruption Strategy 2012: A CSO perspective* (2019) 34 Kampala: LASPNET.

made efforts to digitise their operations.⁴³⁶ This move should be supported and fast-tracked as one of the measures against corruption in the public service.

5.13. Conclusion

At the start of this mini-thesis it was established that the role of the judiciary in upholding the ideals of society cannot be over-emphasised. In the fight against corruption, the central role of the judiciary is recognised internationally by UNCAC and in various pieces of legislation in Uganda. For the judiciary effectively to live up to its role, it must rid itself of all blameworthiness that flows from its flaws, especially incidents of judicial corruption. However, while the judiciary in Uganda, and the ACD in particular, constantly faces criticism for its shortcomings, it continues to grapple with challenges, some of which largely account for perceived judicial corruption, such as poor funding and inadequate staffing. It is important, therefore, to investigate and address all the factors which undermine the judiciary's capacity to play a key role in the fight against corruption. By understanding and addressing the underlying causes of corruption in its ranks, the Ugandan judiciary will be empowered to become a more efficient institution in the general fight against other forms of corruption in Uganda.

This mini-thesis has hopefully succeeded in its objective. Chapter 1 gave an introduction of the corruption situation in Uganda and highlighted the efforts taken to address it. The extent, causes and consequences of corruption in Uganda were critically examined in chapter 2. Chapter 3 focused on the existent policy, legal and institutional anti-corruption framework in Uganda. The judiciary and specifically, the anti-corruption division of the High Court (ACD), was highlighted as a major player in the fight against corruption. It was noted however, that the judiciary faces a number of challenges which affect its efficiency in the corruption fight. These include the danger of judicial corruption which was examined in Chapter 4. It was argued that the danger of corruption in the judiciary risks undermining its mandate and the general fight against corruption in Uganda. As such, measures in place to prevent and address judicial

⁴³⁶ Judiciary ICT Strategy 2016-2020. Available at <http://judiciary.go.ug/files/downloads/Judiciary%20ICT%20Strategy%20FY2015-2016%20-%20FY2019-2020.pdf> (accessed 16 December 2021).

corruption were discussed. It was noted that further reforms are necessary to strengthen the fight against judicial and general corruption. These proposed reforms were discussed above in Chapter 5.

Whereas corruption remains a big challenge in Uganda, a number of anti-corruption measures have been established including the anti-corruption court. If properly equipped, the court has the potential to be a major tool against corruption. Therefore, there is a need to address the challenges faced by the ACD and all other anti-corruption agencies in line with the findings above to create a strong force against corruption. As Lambsdorff has observed:

Anti-corruption, therefore, is similar to destroying the Gordian knot; piecemeal approaches appear futile.⁴³⁷



⁴³⁷ Lambsdorff JG (2007) 28.

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