



THE UNIVERSITY *of the*
WESTERN CAPE

**THE INVESTIGATION AND PROSECUTION OF CORRUPTION IN
UGANDA**

BY

WALYEMERA DANIEL MASUMBA

3970480

**A DOCTORAL THESIS SUBMITTED IN FULFILLMENT OF THE REQUIREMENT FOR THE AWARD
OF THE DEGREE OF DOCTOR OF LAWS (LLD) IN THE FACULTY OF LAW AT THE UNIVERSITY
OF THE WESTERN CAPE**

SUPERVISOR

PROFESSOR JAMIL D. MUJUZI

JULY, 2021

<http://etd.uwc.ac.za/>

ABSTRACT

This study analyzed the investigation and prosecution of corruption in Uganda. The study assessed the phenomena of corruption and how it can create an unjust society. It also examined the legal framework governing the investigation and prosecution of corruption in Uganda. The study thereafter discussed the institutional framework governing the investigation and prosecution of corruption in Uganda and its limitations. It further appraised the legal framework governing the private prosecution in Uganda. It also dealt with the possibility of using private prosecutions to fight corruption, where public institutions charged with the duty are weak or have been compromised by an undemocratic environment within which they are situated.

A doctrinal analysis of the information collected was used to report the conclusions of the study. This research method involves the finding of the foundations of the law, which subsequently leads to examination of the text.

The conclusions of the study indicate that creative legal mechanisms can be employed as anti-corruption tools where public institutions charged with the mandate to curb corruption are complicit in facilitating this criminality. The creative legal mechanisms that can be employed to restrain corruption in Uganda, include the private prosecution of the perpetrators of this crime. The study also found that even with a strong anti-corruption regime, without the political will of the leadership of a nation to prevent this vice, corruption will persist. Consequently, the study recommends that the onus is on the citizens of Uganda to periodically elect a political leadership that has the moral credentials to stop the abuse of public resources by a few individuals, who can capture state institutions to enable their personal plunder of public resources. This is especially so, when a few "powerful" individuals capture state institutions to enable their personal plunder of public resources.

LIST OF ACRONYMS

ACC	- Anti-Corruption Court
ACDEG 2007	- African Charter on Democracy, Elections and Governance
ACCU	- Anti-Corruption Coalition Uganda
APC	- All Progressives Congress
AUCPCC	- African Union Convention on Preventing and Combating Corruption
BTI	- Bertelsmann Transformation Index
CHOGM	- Commonwealth Heads of Government Meeting
CID	- Criminal Investigations Department
CSOs	- Civil Society Organizations
CHEA	- Council for Higher Education Accreditation
DPP	- Director of Public Prosecutions
EAAACA	- East African Association of Anti-Corruption Authorities
EAC	- East African Community
EACJ	- East African Court of Justice
EALA	- East African Legislative Assembly
FATF	- Financial Action Task Force
FDC	- Forum for Democratic Change
FIA	- Financial Intelligence Authority
FIAB	- Financial Intelligence Authority Board
GDP	- Gross Domestic Product

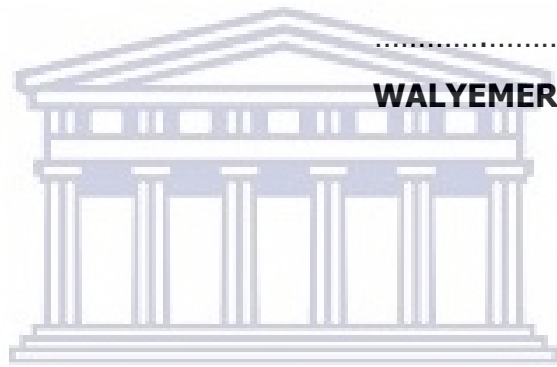
IAF	- Inter-Agency Forum
ICIJ	- International Consortium of Investigative Journalists
ICESCR	- International Covenant on Economic, Social and Cultural Rights, 1966
International IDEA	- International Institute for Democracy and Electoral assistance
IT	- information technology
IGG	- Inspectorate of Government
IMF	- International Monetary Fund
TI	- Transparency International
TIU	- Transparency International Uganda
JLOS	- Justice, Law and Order Sector
NACS	- National Anti-Corruption Strategy
NDP	- National Development Plan
NSSF	- National Social Security Fund
LASPNET	- Legal Service Providers Network
LGs	- Local Governments
MDAs	- Ministries, Departments and Agencies
MTN	- Mobile Telephone Network
MPs	- Members of Parliament
NEMA	- National Environment Management Authority
NGOs	- Non-Governmental Organizations

NIRA	- National Identification and Registration Authority
NRM	- National Resistance Movement
OECD	- Organization for Economic Cooperation and Development
UPF	- Uganda Police Force
PAC	- Public Accounts Committee
PEAP	- Poverty Eradication Action Plan
PIL	- Public Interest Litigation
PPDA	- Public Procurement and Disposal of Public Assets Authority
URSB	- Uganda Registration Services Bureau
UNCAC	- United Nations Convention against Corruption
UNDP	- United Nations Development Programme
UDHR	- Universal Declaration on Human Rights
UNTOC	- United Nations Convention on Transnational Crime
UNESCO	- United Nations Educational, Scientific, and Cultural Organization
URA	- The Uganda Revenue Authority
USD	- United States Dollars
UPM	- Uganda Patriotic Movement
SDGs	- Sustainable Development Goals
WB	- World Bank
WGI	- World Governance Indicator

DECLARATION

I, WALYEMERA DANIEL MASUMBA, declare that **'THE INVESTIGATION AND PROSECUTION OF CORRUPTION IN UGANDA'** is my original work and that has not been submitted before for any degree or examination in any other university and all sources I have quoted have been indicated and acknowledged as complete references.

DATED at Cape Town this day of 2021



.....
WALYEMERA DANIEL MASUMBA

DATED at Cape Town this..... day of 2021

UNIVERSITY of the
WESTERN CAPE

.....
PROF. JAMIL D. MUJUZI,
PROFESSOR OF LAW
(SUPERVISOR)

COPYRIGHT STATEMENT

© WALYEMERA Daniel Masumba 2021; The University of the Western Cape, Cape Town, South Africa.

Copyright subsists in this work. No part of this work may be reproduced or transmitted in any form or means, or stored in a retrieval system of any nature without the Author's written permission. Any unauthorized reproduction of this work will constitute a copyright infringement and render the doer liable under both criminal and civil law.



EPIGRAPH

“Without strong watchdog institutions, impunity becomes the very foundation upon which systems of corruption are built. And if impunity is not demolished, all efforts to bring to an end to corruption are in vain.” – **Rigoberto Mechu, Nobel Prize Laureate**



UNIVERSITY *of the*
WESTERN CAPE

ACKNOWLEDGEMENT

I would like to register my sincere gratitude to individuals, without whose support, this study would not have come to fruition.

I owe my gratitude to my Research Supervisor, Professor Jamil D. Mujuzi, for his intellectual guidance and for providing invaluable criticisms and support. I also profusely thank Professor Mujuzi for enabling me expeditiously carry out this doctoral study. Without Professor Mujuzi's able guidance, my quest to attain a doctorate would have been a lot more complicated.

I am also indebted to my close family especially my wife, Gloria M. Walyemera, who was exceptionally supportive in the course of the conduct of this study. My children; Kwame Masumba, Karl Masumba-Nawiitta, Sonia Khabuya and Roy Walyemera, who had to endure my absence in one way or another during the execution of this study. The aforementioned persons have been supportive throughout my quest for academic excellence. John F. Kennedy said "We must find time and thank the people who make a difference in our lives." The aforementioned persons have made a difference in my academic life. The struggle continues!

DEDICATION

This study is dedicated to my colleagues in the struggle for good governance in Uganda. The study is also dedicated to my wife, Gloria M. Walyemera and my children; Kwame, Karl, Sonia and Roy, who should in the near future enjoy the benefits of this study.



UNIVERSITY *of the*
WESTERN CAPE

TABLE OF CONTENTS

ABSTRACT	i
LIST OF ACRONYMS	ii
DECLARATION	v
COPYRIGHT STATEMENT	vi
EPIGRAPH	vii
ACKNOWLEDGEMENT	viii
DEDICATION	ix
TABLE OF CONTENTS	x
CHAPTER 1: INTRODUCTION	1
1.1 INTRODUCTION	1
1.2 BACKGROUND TO THE STUDY	2
1.2 STATEMENT OF THE PROBLEM	10
1.3 SIGNIFICANCE OF STUDY	11
1.4 LITERATURE REVIEW	12
1.5 PURPOSE/OBJECTIVE	19
1.6 THEORETICAL FRAMEWORK	20
1.7 SCOPE OF THE STUDY	30
1.8 RESEARCH METHODOLOGY	31
1.8.1 Research Design and methodology	31
1.8.2 Area of study	31
1.8.3 Data quality Control	32
1.8.4 Ethical Considerations	32
1.8.5 Limitations	32
1.8.6 Chapter Plan	32
CHAPTER 2: CORRUPTION AND AN UNJUST SOCIETY	33
2.1 INTRODUCTION	33

2.2	ORIGINS OF CORRUPTION	34
2.3	CORRUPTION DEFINED; A HISTORY	36
2.3.1	Moralists and Revisionists on defining corruption.....	37
2.3.2	Defining corruption as public-office-centered, market-centered or public-interest-centered 38	
2.3.3	Public Opinion or Legalistic Definitions.....	42
2.4	CATEGORISATION OF CORRUPTION	46
2.5	DOES CORRUPTION HAVE BENEFITS?	48
2.6	THE TRIGGERS OF CORRUPTION	51
2.7	HOW CORRUPTION CREATES AN UNJUST SOCIETY	55
2.8	EFFECTS OF CORRUPTION ON THE VARIOUS SECTORS OF SOCIETY	55
2.8.1	ECONOMY	56
2.8.2	DEMOCRACY.....	57
2.8.3	PUBLIC ADMINISTRATION.....	58
2.8.4	HEALTH	59
2.8.5	EDUCATION.....	60
2.8.6	MEDIA.....	61
2.8.7	ADMINISTRATION OF JUSTICE.....	62
2.9	CONCLUSION	68
CHAPTER THREE: CORRUPTION IN UGANDA		70
3.1	INTRODUCTION	70
3.2	UGANDA; A COLONIAL CREATION	71
3.2.1	Historical Perspective of Corruption in Uganda.....	73
3.3	FORMS OF CORRUPTION MANIFESTING IN UGANDA	81
3.3.1	Political Corruption.....	81
3.3.2	Grand Corruption	85
3.3.3	Petty Corruption.....	86
3.4	PUBLIC FINANCIAL MANAGEMENT IN UGANDA	87
3.4.1	Budget management.....	89
3.4.2	Public Procurement.....	90
3.5	ANTI - CORRUPTION MEASURES IN UGANDA	92

3.6	LEGAL FRAMEWORK ON CORRUPTION IN UGANDA	93
3.6.1	International.....	94
3.6.2	Regional.....	96
3.6.3	Sub-regional.....	97
3.6.4	National.....	97
3.7	LAWS ON CORRUPTION IN UGANDA	100
3.7.1	The Leadership Code Act, 2002.....	101
3.7.2	Inspectorate of Government Act, 2002.....	102
3.7.3	The Whistleblowers Protection Act, 2010.....	103
3.7.4	Access to Information Act, 2005.....	104
3.7.5	The Political Parties and Organizations Act, 2010.....	107
3.7.6	Public Procurement and Disposal of Public Assets Act, 2003.....	109
3.7.7	The Budget Act, 2001.....	111
3.7.8	Public Finance and Management Act, 2015.....	111
3.7.9	Anti-Money Laundering Act, 2013.....	112
3.7.10	Penal Code Act, Cap 120.....	114
3.7.11	Anti-Corruption Act, 2009.....	115
3.8	CONCLUSION	124
CHAPTER 4: THE INSTITUTIONAL FRAMEWORK ON CORRUPTION IN UGANDA		125
4.1	INTRODUCTION	125
4.2	INFORMAL ANTI—CORRUPTION AGENCIES	126
4.2.1	Adhoc State House Anti-Corruption Units.....	126
4.2.2	Civil Society.....	127
4.2.3	Media.....	127
4.3	FORMAL ANTI-CORRUPTION MECHANISMS	131
4.3.1	Ministry of Ethics and Integrity.....	131
4.3.2	Police.....	132
4.3.3	The Financial Intelligence Authority.....	133
4.3.4	Auditor General.....	138
4.3.5	Public Accounts Committee of Parliament.....	140
4.3.6	The Inspectorate of Government.....	143

4.3.7	The Director of Public Prosecutions	160
4.3.8	The Courts	172
4.4	CONCLUSION	177
CHAPTER 5: PRIVATE PROSECUTION OF CORRUPTION IN UGANDA		179
5.1	INTRODUCTION	179
5.2	THE RIGHT TO INSTITUTE PRIVATE PROSECUTIONS	180
5.3	A BRIEF LEGISLATIVE HISTORY OF PRIVATE PROSECUTIONS IN UGANDA	181
5.4	LIMITATIONS OF PUBLIC PROSECUTIONS	185
5.5	PRIVATE PROSECUTIONS IN UGANDA	188
5.5.1	Who may institute a Private Prosecution in UGANDA?	189
5.5.2	Safeguards against abuse of the right to institute a private prosecution in Uganda 200	
5.5.3	Appeals in Private Prosecutions in Uganda	201
5.6	THE PRIVATE PROSECUTION OF CORRUPTION IN UGANDA	203
5.7	WHY IS PRIVATE PROSECUTION REQUIRED IN CORRUPTION CASES?	211
5.8	CHALLENGES TO THE PRIVATE PROSECUTION OF CORRUPTION	214
5.9	OPPORTUNITIES TO STRENGTHEN PRIVATE PROSECUTIONS	216
5.10	CONCLUSION	218
CHAPTER 6: CONCLUSION AND RECOMMENDATIONS		219
6.1	INTRODUCTION	219
6.2	SUMMARY OF MAIN ARGUMENTS OF THE CHAPTERS	220
6.2.1	The study and methodology	220
6.2.2	The Phenomena of Corruption	221
6.2.3	Legal framework governing the Investigation and Public Prosecution of Corruption in Uganda	222
6.2.4	The Institutional framework governing the investigation and Public Prosecution of Corruption in Uganda	228
6.2.5	Private Prosecution of Corruption in Uganda	234
6.3	RECOMMENDATIONS	238
6.3.1	Sensitization of the Public about the effects of corruption	238

6.3.2	Declarations of Income, Assets and Liabilities	238
6.3.3	Integrity of Investigators.....	239
6.3.4	Integrity of witnesses in Corruption Prosecutions.....	239
6.3.5	Whistle blowers.....	239
6.3.6:	Prosecution-Led Investigations.....	240
6.3.7:	Team work in Public Prosecutions.....	240
6.3.8:	Prosecution’s media management in high profile corruption cases	241
6.3.9:	Prosecutors professional and personal behavior	241
6.3.10:	Private Prosecution of Corruption.....	241
6.3.11:	Amendment of Anti-Corruption legislation	242
6.3.12:	Independence of law enforcement agencies	242
6.3.13:	International cooperation on corruption.....	242
6.3.14:	Seizure of ill-gotten Property	243
6.3.15:	Institutional framework on recovery of the proceeds of corruption	243
6.3.16:	Transparency of earnings of Public Servants	244
6.3.17:	Duplication of roles by prosecution agencies	244
6.3.18:	Political Will to prevent Corruption.....	245
REFERENCES	246
	<i>Uganda Land Commission v James Mark Kamoga</i> Supreme Court Civil Appeal No. 08/2004.	272
	Thembo Misairi Kahungu “Inside the IGG’s Shs56b budget,” <i>Daily Monitor</i> , February 1, 2019. Available at https://www.monitor.co.ug/News/National/Inside-IGG-s-Shs56b-budget/688334-4960666-format-xhtml-iru51h/index.html	293
	Private Prosecution Barristers & Legal Experts - CRIMINAL BARRISTER. www.private-prosecution.co.uk	293
	https://www.unodc.org/unodc/en/org	294

CHAPTER 1: INTRODUCTION

1.1 INTRODUCTION

Numerous instances of corruption are reported in the media on a regular basis in Uganda and elsewhere. Consequently, the investigation and public prosecution of corruption is quite challenging. There is a necessity for legal creativity to counter the challenges that the investigation and public prosecution of corruption faces. This legal creativity may include innovative ways of investigating and prosecuting corruption. This may include the strengthening of both the legal and institutional mechanisms of fighting corruption by public institutions charged with this mandate. This includes innovative techniques of bolstering police investigations and public prosecution of corruption. It may also include the deployment of private prosecution as mechanism to curb corruption. Private prosecutions therefore are a potential tool to hold prominent perpetrators of corruption accountable, where formal mechanisms are weak or have failed. On the African continent, government officials are among the conspicuous perpetrators of corruption.¹ The study will investigate the possibility of using private prosecution as an accountability mechanism to curb this deplorable vice, which is not only a crime against humanity, according to some scholars, but also an international crime.² This legal apparatus is suitable where individuals and institutions charged with fighting corruption have refused, failed or neglected to investigate and prosecute corrupt public officials. This study covers Uganda.

¹ Khamisi J *Kenya: Looters and Grabbers: 54 Years of Corruption and Plunder by the Elite* (2018) Texas, USA: Jodey Book Publishers.

² See Articles 28A (1), 28(1) & 28I of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights. See also Article 7(1) (k) of the Rome Statute. For a detailed treatment on this subject, see previous studies by Ilias Bankekas, "Corruption as an International crime and a crime against humanity: An outline of Supplementary Criminal Justice Policies," in (2006) *Journal of International Criminal Justice* 4 (3) 466-484., Also see other studies on this issue; Martine Boersma "Corruption: A violation of human rights and a crime under international law? (2012) Intersentia, Cambridge, Chapter VIII., Also see Anne Peters "Corruption as a Violation of International Human Rights" (2018) 29 (4) *The European Journal of International Law* 1251-1287.

Presently, this legal tool is only provided for within domestic legislation. The tool can empower anti – corruption activists, among other key stakeholders, to fight corrupt tendencies within public spaces at national, regional and international levels, thereby curtailing fraudulent practices and enabling an accountable culture within public spaces. This can also enable economic development in Uganda as a result of optimal use of public resources.

1.2 BACKGROUND TO THE STUDY

The challenges of corruption do not only affect developing countries. They also affect developed countries, albeit, with less consequences, due to the checks and balances developed states have built over time to manage corrupt practices.³

Some of the key tenets of democracy that enable checks and balances which consequently curtail corruption are transparency and accountability in public administration, the rule of law, respect for human rights, media freedoms and democratic elections that enable public participation in the appointment of a country's political leadership. Related to these tenets is the doctrine of separation of powers in government. This is between three arms of government; the executive, legislature and judiciary. It is important to note that among these three organs of government, the independence of the judiciary is a key to the extermination of corruption in government.

Corruption is a virus which interferes with every vital organ of a nation. Any form of corruption therefore, is not acceptable under any circumstances. Consequently, there have been several global energies devoted to solving this difficulty.

One such binding effort, at global level, is the United Nations Convention against Corruption (UNCAC).⁴ Prior to this binding international treaty, there had been efforts to

³ Olatunde Julius Otusanya OJ 'Corruption as an obstacle to development in developing countries: a review of literature' (2011) 14 (4) *Journal of Money Laundering Control* 387-422, available at <https://doi.org/10.1108/13685201111173857> (accessed on 9 May 2019).

⁴ This Instrument came into force in December, 2005. The signing of the said Convention by state parties started in 2003.

deal with this problem at the international level by numerous international public and private institutions.⁵ For example, the Wolfsberg Anti-Money-Laundering Principles for Private Banking (2000), the Extractive Industries Transparency Initiative (2002), and the Sustainable Development Charter of the International Council on Mining and Metals (2002), the FIDIC Code of Ethics and Business Integrity Management System of the International Federation of Consulting Engineers and the Equator Principles for Financial Institutions (2005).⁶ Business entities have also established rules on how to do business in an ethical manner. Some of the instruments they have come up with comprise the 1977 International Chamber of Commerce Rules of Conduct to Combat Extortion and Bribery.⁷ Transparency International (TI) has also disseminated the Business Principles for Countering Bribery.⁸ The Partnership against Corruption Initiative has some guidelines on how to combat corruption while doing business.⁹ The OECD also has published the OECD Guidelines for Multinational Enterprises. The OECD guidelines were last reviewed in 2000. There are many other anti – corruption efforts by organisations beyond those mentioned hereinabove.¹⁰

Outside the aforementioned efforts to fight corruption by numerous international organisations, the United Nations had laboured to combat this challenging issue for many years.¹¹ These efforts include the following key soft law and binding instruments. The Code of Conduct for Law Enforcement Officers¹² provides that “Law enforcement officials

⁵ Vincke F & F Heimann (eds.), *Fighting Corruption. A Corporate Practices Manual*, 2 ed. (2003).

⁶ Argandona A 'The United Nations Convention Against Corruption and its Impact on International Companies' *Working Paper WP* nO 656 (October, 2006) 3.

⁷ Argandona (2006) 3.

⁸ Argandona (2006) 3.

⁹ The Partnership was established in January, 2004 by the World Economic Forum.

¹⁰ Also see initiatives by the International Chamber of Commerce that begun in 1977. There are many efforts by many public and private international bodies to combat corruption worldwide.

¹¹ See for example, Code of Conduct for Law Enforcement Officers (1979), the Basic Principles on the Role of Lawyers (1990), the Declaration on Crime and Public Security (1996), and the International Code of Conduct for Public Officials (1996).

¹² This Code came into force in 1979.

shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts".¹³ A commentary on this particular provision provides that: -

"Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.¹⁴

The commentary on Article 7 of the Code also states that "[w]hile the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted".¹⁵ The commentary also notes that "[t]he expression 'act of corruption' referred to above should be understood to encompass attempted corruption".¹⁶

The 1990 Basic Principles on the Role of Lawyers define the fundamental requirement that guarantees that everyone has access to an independent legal counsel.¹⁷ The Basic Principles also prescribe that everyone has the right to request the assistance of an independent lawyer of their own preference. But they also affirm that lawyers are entitled to practice their profession to their best efforts and in accordance with recognized ethical standards.¹⁸ The Declaration on Crime and Public Security also compels: -

member states to seek to protect the security and well-being of their citizens and all persons within their jurisdiction by taking effective national measures to combat serious transnational crime,

¹³ Article 7 of the Code of Conduct.

¹⁴ United Nations Human Rights, Office of the High Commissioner for Human Rights, Code of Conduct for Law Enforcement Officials, United Nations General Assembly Resolution 34/169 (1979). Available at <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx> (accessed 13 March 2019).

¹⁵ Code of Conduct for Law Enforcement Officials (1979).

¹⁶ Code of Conduct for Law Enforcement Officials (1979).

¹⁷ Lawyers for Lawyers 'What are Basic Principles,' available at <https://lawyersforlawyers.org/en/basic-principles/> (accessed 13 March 2019).

¹⁸ Lawyers for Lawyers (2019).

including organized crime, illicit drug and arms trafficking, smuggling of other illicit articles, organized trafficking in persons, terrorist crimes and the laundering of proceeds from serious crimes, and shall pledge their mutual cooperation in those efforts.¹⁹

The preamble of International Code of Conduct for Public Officials notes that the United Nations is “concerned at the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development, Also concerned about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money laundering”.²⁰ The International Code in its general principles notes the importance of a public officer in executing the role to society.²¹ It also notes that being in a position of trust, public officials should conduct their business with integrity.²²

One of the main international instruments in tackling transnational organised crime that has come out of these United Nations efforts is the United Nations Convention on Transnational Crime (UNTOC). This Treaty is also called Palermo Treaty after the city in Italy, in which it was adopted.²³ It requires states parties to designate the bribery of public officials as a criminal offence.²⁴ The binding nature of this convention signifies the seriousness with which states take transnational organised crime. The Convention is supplemented by three protocols that tackle human trafficking, smuggling of immigrants and the trafficking in ammunitions in specific detail²⁵. This Treaty so far has 147 state

¹⁹ Article 1 of the Declaration.

²⁰ See 1 & 2 preambular paragraph of the International Code.

²¹ Paragraph 1 (1) of the annex to the International Code.

²² Paragraph 1(2) of the annex to the International Code.

²³ This instrument came into force on 29 September, 2003, pursuant to Resolution 55/25 of 15 November, 2000.

²⁴ This instrument was adopted pursuant to Resolution 55/25 of 15 November, 2000.

²⁵ See UN Resolutions 55/25 & 55/255.

parties and signatories and 189 parties as at July 2018.²⁶ All the four instruments deal with money laundering, human and arms trafficking.²⁷

The only legally binding anti-corruption multilateral treaty is UNCAC. Under this Treaty, member states are required to implement several anti-corruption measures. They most importantly include; - asset recovery, information exchange, prevention mechanisms, criminalization and law enforcement, international cooperation and technical assistance.²⁸ The afore-named measures are intended to reduce corruption by curbing the abuse of power, embezzlement and money laundering.²⁹ The Sustainable Development Goals of the United Nations also provide for the eradication of corruption and bribery in all its forms by 2030.³⁰ Numerous Human Rights Treaty Bodies have singled out corruption as one of the major challenges to efficient allocation of public resources to enable equal rights.³¹

Africa also has recognised the challenges corruption poses to society and made some strides in addressing this malaise. The African Union Convention on Preventing and Combating Corruption (AUCPCC) was approved in Maputo, Mozambique to tackle corruption in the region.³² This regional instrument also advocates “for the eradication of corruption in the private and public sectors”.³³ Thirty-eight African countries have ratified

²⁶ United Nations on Drugs and Crime ‘United Nations Convention Against Corruption’ available at <https://www.unodc.org/unodc/en/org>; (accessed 13 March 2019). Only Iran, Somalia, South Sudan, Tuvalu, Solomon Islands, Bhutan and the Republic of Congo have not ratified the treaty.

²⁷ UNCAC (2003).

²⁸ UNCAC (2003)., The treaty has been ratified 140 signatories although the required was only 30.

²⁹ UNCAC (2003).

³⁰ The 2030 Agenda for Sustainable Development, General Assembly Resolution 70/1, 25 September 2015., See points 16.4 & 16.5.

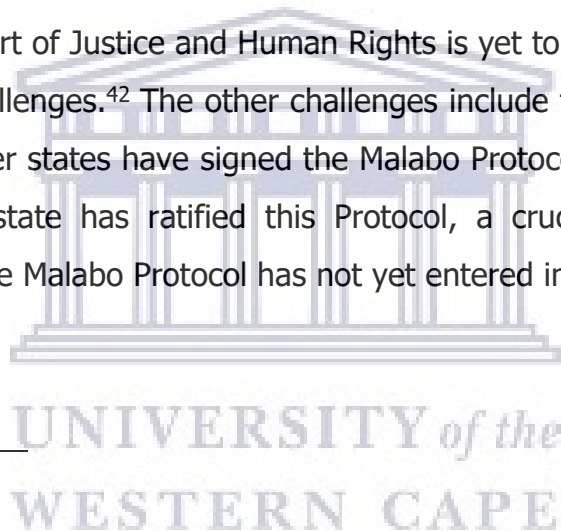
³¹ Human Rights Treaty Bodies, Contributions to the 2030 Agenda for Sustainable Development, May 2016, 7.

³² African Union ‘2nd version presentation on AUCPCC gender presummit’ available at https://au.int/sites/default/files/newsevents/workingdocuments/33563/wd-2nd_version_presentaion_on_the_aucpcc_gender_presummit_0.pdf. (accessed 13 March 2019).

³³ African Union (2018).

this instrument.³⁴ Seventeen states are yet to ratify this treaty.³⁵ Forty nine out of the 55 African Union member states have signed this treaty.³⁶ The states are required to file annual reports on the status of the implementation of the AUCPCC in their domestic spheres.³⁷ About thirteen states have sent to the board annual reports on the status of the implementation of the AUCPCC.³⁸ Uganda is one of the states that have sent in an annual report to the Board.³⁹ The AUCPCC, which preceded the UNCAC, was opened for signature several months before the UNCAC.⁴⁰

Under the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol) corruption has been listed as an international crime. Corruption can be tried as an offence in the African Court of Justice and Human Rights.⁴¹ The African Court of Justice and Human Rights is yet to be operationalized due to funding and other challenges.⁴² The other challenges include the fact that only 15 of the African Union member states have signed the Malabo Protocol out of the 55 African countries. No member state has ratified this Protocol, a crucial step to enable its operation.⁴³ Therefore the Malabo Protocol has not yet entered into force.⁴⁴



³⁴ African Union (2018).

³⁵ African Union (2018)., Angola, Mauritania, Somalia, Mauritius, Morocco, Sao Tome & Principe, South Sudan, Tunisia, Eritrea, Democratic Republic of Congo, Equatorial Guinea, Djibouti, Cape Verde, Central African Republic and Cameroun are yet to ratify the AUCPCC.

³⁶ African Union (2018).

³⁷ See Article 22(7) of the AUCPCC.

³⁸ African Union (2018)., Burkina Faso, Comoros, Ethiopia, Kenya, Madagascar, Namibia, Nigeria, Rwanda, Sierra Leone, Tanzania, Togo, Uganda and Zimbabwe have sent in reports.

³⁹ African Union (2018).

⁴⁰ East African Legislative Assembly 'Preventing and Combating corruption bill in the offing' available at www.eala.org/media/view/preventing-and-combating-corruption-bill-in-the-offing. (accessed 13 March 2019).

⁴¹ See Articles 28A (1), 28(1) & 28I of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights.

⁴² Chella J "A Review of the Malabo Protocol on the Statute of the African Court of Justice and Human Rights – Part 1: Jurisdiction over International Crimes" (2021) available at <http://ilareporter.org.au/2021/a-review-of-malabo-protocol-on-the-statute-of-african-court-of-justice-and-human-rights-part-i-jurisdiction-over-international-crimes-jessie-chella/> (accessed on 27 July 2021).

⁴³ Chella (2021) 1. Also see Article 11 of the Malabo Protocol on when the instrument enters into force.

⁴⁴ Chella (2021) 1.

At the East African sub-regional level, member states are yet to address the challenge of corruption within the regional block. The corrupt practices within the East African Community Secretariat have led to a Private Members Bill being introduced on the floor of the East African Legislative Assembly (EALA). Honourable Victor Burikukiye moved a motion for leave to introduce a Private Members Bill entitled "Preventing and Combating Corruption within the organs and institutions of the Community". The EALA representative noted this Bill was crucial in providing good governance, transparency and accountability within the EAC organs and institutions.⁴⁵ He went ahead to refer to Article 6 (d) of the Treaty Establishing the EAC block which provides for good governance, rule of law, transparency and social justice, among others.⁴⁶ Beyond these individual efforts of the legislator, the formal EAC structures have not sought to have a binding instrument on corruption in the EAC region. Anti - Corruption agencies within the EAC have, however formed an association whose efforts are geared towards drafting of a binding instrument on preventing and combating corruption in the region.⁴⁷

Uganda is one of the few countries that have filed annual reports of the status of the implementation of the AUCPCC in their domestic laws to the Board under Article 22(7) of the AUCPCC.⁴⁸ Consequently, Uganda has passed numerous laws in a bid to strengthen the administration of justice and eradicate corruption. Some of the Laws enacted include: The Budget Act⁴⁹ which enables a transparent budgeting process for all citizens of Uganda. The Leadership Code Act,⁵⁰ provides for a minimum code of conduct for leaders. This law requires leaders to periodically declare their incomes, assets and liabilities to the Inspectorate of Government.⁵¹ The law also puts in place an enforcement mechanism for

⁴⁵ East African Legislative Assembly (2019).

⁴⁶ East African Legislative Assembly (2019).

⁴⁷ The East African Association of Anti-Corruption Authorities (EAAACA). The EAAACA has spearheaded the drafting of an East African Community Protocol on Preventing and Combating Corruption. This Protocol is yet to come into force and is still in draft form pending consultations from partner states. For a detailed treatment on this see <https://eaaaca.com/news/heads-of-acas-with-eac-secretary-general-during-the-eac-protocol-on-preventing-and-combating> (accessed 25 February 2020).

⁴⁸African Union (2018).

⁴⁹ 2001.

⁵⁰ 2002.

⁵¹ 2002.

defaulting leaders.⁵² The Public Procurement and Accountability Act⁵³ regulates the public procurement process. This is intended to ensure transparency, accountability and value for money transactions within the procurement sector.⁵⁴ In a bid to accelerate access to information, Uganda enacted a law on access to information in the possession of public officials.⁵⁵ This law is intended to have the general public have access to information that would otherwise be locked away in government and other public offices so as to enhance accountability and transparency.⁵⁶ It was also thought necessary to enact a law to protect whistle blowers who come out to divulge corrupt practices to the authorities.⁵⁷ This law provides for prison sentences for people who divulge the identities of whistle blowers.⁵⁸ This law supplements the Leadership Code Act and the Access to Information Act, which has subsidiary provisions of protection of whistle blowers, who volunteer information on corrupt practices.⁵⁹ Lastly and more importantly, Uganda has recently enacted the Anti-Corruption Act, in order to domesticate certain provisions of international instruments, to which Uganda is a state party.⁶⁰ This is in a bid to capture the ever emerging issues in the fight against corruption.⁶¹ It is also to cater for proactive and reactive measures against corruption.⁶² This is not to say that afore-listed laws are the only laws that have been enacted in the fight against corruption in Uganda. There are other laws, albeit, with supplementary provisions to the aforementioned Acts.⁶³ Clearly, as seen from the number of the pieces of legislation Uganda has enacted so far, it cannot be accused of not making any effort to fight corruption.⁶⁴ With this impressive number of laws to curb corruption, it is frightening that corruption is an ever-growing vice in Uganda.

⁵² 2002.

⁵³ 2003.

⁵⁴ 2003.

⁵⁵ The Access to Information Act, 2005.

⁵⁶ 2005.

⁵⁷ The Whistle Blowers Act, 2010.

⁵⁸ The Whistle Blowers Act, 2010.

⁵⁹ The Whistle Blowers Act, 2010.

⁶⁰ 2009.

⁶¹ 2009.

⁶² 2009.

⁶³ See for example, the Penal Code Act, Cap 120, Laws of Uganda.

⁶⁴ There are many laws that deal with corruption in Uganda.

Some of the reasons for the ineffectiveness of many laws is attributed to underfunding of the agencies that have the mandate to fight corruption.⁶⁵

The number of instruments enacted to combat corruption by various bodies at international, regional and country levels indicate that corruption is a serious disorder that needs to be eradicated from society. As is illustrated in this thesis, Uganda as a country has suffered from this disorder for many years.

1.2 STATEMENT OF THE PROBLEM

Corruption is a serious cancer to any society. It eats away public resources that would otherwise be used for the public good. These public resources are then “privatized” by an elite and chosen few to the exclusion of the general public, that is entitled to them. Since the 19th century, societies have put up mechanisms to fight corruption.⁶⁶ The public institutions that fight corruption have executed their mandate with less or no interference from political leaders, in democratic societies. In democratic societies, the public institutions mandated to fight corruption perform more efficiently than those in undemocratic countries.⁶⁷ This is because in democratic societies, the necessarily checks and balances are in-built. When societies become undemocratic, the likelihood of rampant corruption is very high. The mechanisms to fight corruption are also compromised in corrupt societies. This is because the institutions charged with fighting corruption will most likely be filled with an elite few that relates with the corrupt leadership of that particular society. Consequently, the chances that such an anti-corruption institution will effectively fight corruption is very low.

⁶⁵ The attribution of the ineffectiveness of the anti-corruption laws in Uganda is discussed in detail in Chapter 3.

⁶⁶ See the enactment of the French Napoleonic *Code Penal* of 1810 in the 19th Century, which is assumed to be one of the first laws against corruption by a state.

⁶⁷ Pring C & Vrushi J 'Tackling the crisis of democracy, promoting rule of law and fighting corruption' Surveys, 29 January 2019, available at https://www.transparency.org/news/feature/tackling_crisis_of_democracy_promoting_rule_of_law_and_fighting_corruption. (accessed 11 May 2019).

If the institutions charged with fighting corruption are weak, or are so compromised by the political leadership of a particular society that they cannot execute their mandate in accordance with the law, what should citizens do? Apart from establishing innovative ways of strengthening police investigations and public prosecution of corruption, one of the other few mechanisms left to citizens is the private prosecution of corruption. In the domestic courts, this is a valuable tool in curbing corruption. This is in situations, where the public institutions mandated to do so have been compromised by the undemocratic environment within which they operate. This legal device in domestic criminal law, however, has been under used to hold the architects of corruption accountable. The most prominent culprits among them being the elite few, governing the society. This is the obtaining situation in Uganda, today. The findings of the study will benefit society as whole because if corruption is curtailed, the political, economic and cultural environment within which Ugandan citizens operate will enhance the equality of opportunities to all.

1.3 SIGNIFICANCE OF STUDY

In terms of political effects of a corruption-free society, Uganda will have a government that observes the rule of law and democracy, an efficient public administration, a government that observes human rights, a significantly reduced crime rate due to the absence of organised crime and money laundering, among others. In terms of the economy, the findings of the study will lead to an efficient use of public resources, it will enhance economic growth, frugal public spending, among other benefits. From the ethical point of view, it will enable citizens to value honesty and integrity in their day-to-day dealings with each other and with public resources. This will, as a result, promote a culture in Ugandan society whose public resources are available for honest use by all. Consequently, a democratic and peaceful culture will be nurtured in Uganda. The findings can also inform the process of adopting a legal regime that enables private prosecution to increasingly be utilized to hold individuals in public office accountable for misuse of public resources. This mechanism may be suitable in cases where the oversight agencies

fail to investigate or prosecute perpetrators of corrupt practices in public office. This is more so especially if the said individual perpetrators hold senior positions in the public office. It is the mandate of the public oversight agencies to investigate and prosecute corruption. When there is a failure by these oversight bodies to investigate or by the public prosecutor to prosecute, the mechanism of private prosecution becomes an essential tool to hold individuals occupying powerful positions in the public office to account. This is a frequent occurrence on the African continent where politically charged environments lead to major losses of public resources to corruption.⁶⁸ As is evidenced in Uganda, when this mechanism has been employed against powerful individuals within the public services, the lawyers or judicial officers handling these matters have been threatened with death.⁶⁹ With the conduct of further research, private prosecution may emerge as an essential tool in holding powerful individuals misusing public power for private gain to account for their greed.

1.4 LITERATURE REVIEW

There are many anti - corruption strategies to sanction the corrupt in Uganda. Several scholars have praised the anti – corruption legal framework as excellent, however, implementation and enforcement still remain a challenge.⁷⁰ One of the key challenges is the lack of political will to fight corruption, due to patronage politics. Consequently, the mechanisms to fight corruption have been rendered redundant and are impotent. This is a usual occurrence where influential and powerful individuals are involved, in this grave crime. Uganda was ranked the 149 least corrupt country out of 175 states studied by TI

⁶⁸ Adjei M 'Poverty in Africa: Causes, Solutions and the Future' (2017) Saarbrucken, Germany: LAP Lambert Academic Publishing.

⁶⁹ *Uganda v. Inspector General of Police, General Kale Kayihura & 7 Others* Criminal Revision Cause Number 34 of 2016, is one of such cases instituted by way of private prosecution, where the judicial officer presiding over the matter died under mysterious circumstances a few days after commencing the trial. The lawyers involved in the matter were also threatened with death for executing their professional duties security agents and militias allied to the state.

⁷⁰ Mbabazi G and Pyeong JY 'Patronage driven corruption undermining the fight against poverty in Uganda' (2015) 7 *African Social Science Review* No.1, Article 4., at 62.

in 2018.⁷¹ Uganda corruption rank reached the highest level in 2016 when it was ranked the 151 least corrupt nation out of 176 countries. Its lowest corruption rank was in 1996 when it was ranked at 43 out of 176 countries.⁷² Public prosecution of corruption, has not delivered the desired results in the fight against corruption in Uganda. The public prosecution of perpetrators has been selectively enforced, leaving out the key actors. These key actors have not been prosecuted either because they are influential politicians or are politically connected businessmen to the regime. This consequently has created a state of impunity, where well-connected individuals who perpetuate corruption, are left to enjoy the proceeds of their crimes, in full view of the citizens. In such an environment, private prosecution could be one of the few legal remedies available to the citizens to fight this impunity.

Private Prosecution is one of few anti – corruption tools that can be deployed to hold influential and powerful individuals accountable.⁷³ Oftentimes, private prosecution is the only anti-corruption strategy left to society to fight against powerful perpetrators of corruption. In *Gujra, R (on the application of) v. Crown Prosecution Service*⁷⁴, the Supreme Court of the United Kingdom emphasised the importance of the right to institute a private prosecution when it decided that: -

Private prosecution is, and I think always has been, a safeguard against the feelings of injustice that can arise when, in the eyes of the public, public authorities do not pursue criminal investigations and proceedings in a manner which leads to culprits being brought before a criminal court. The impunity that the offenders appear to enjoy can be socially detrimental.⁷⁵

Consequently, private prosecution could be a handy legal tool in a society whose governance structures have been criminalized and where impunity reigns with abandon. In anglophone Africa, very few scholars have written about the right to institute a private

⁷¹ See the Global Corruption Perceptions Index that was last updated in April 2019, at <https://tradingeconomics.com/uganda/corruption-rank>. (Accessed on 13 April 2019). Singapore is ranked number 1 among the least corrupt countries in the World.

⁷² The Global Corruption Perceptions Index (2019).

⁷³ *Gouriet and Kamani cases*.

⁷⁴ [2013] 1 ALL ER 612 at 68.

⁷⁵ *Gujra, R (on the application of) v. Crown Prosecution Service*, 2013] 1 ALL ER 612 at 22.

prosecution as Mujuzi has.⁷⁶ In a recent paper, Mujuzi assesses the possibility of strengthening the right to institute a private prosecution in Uganda.⁷⁷ Mujuzi also traverses the legal regime that governs private prosecutions in Uganda, as it is on the statute books. The scholar also examines the drafting history of Article 120(3) of the Constitution of the Republic of Uganda.⁷⁸ This constitutional provision governs the circumstances under which the Director of Public Prosecutions (DPP) can take over private prosecutions in Uganda. Mujuzi then examines how the DPP took over the private prosecution in the case of *Uganda v. Kayihura 7 Others*,⁷⁹ and notes that the finding of the court on Article 120(3) of the Uganda Constitution was the correct position of the law. He grounds his opinion on the fact that this was the policy consideration behind the enactment of the said provision by the drafters, constituted in the Constituent Assembly. Mujuzi concludes by recommending that Article 120(3) should be amended to make it difficult for the DPP to withdraw a matter instituted by way of private prosecution, where the DPP takes over and withdraws, without the consent of the private prosecutor and the court.⁸⁰ Whereas Mujuzi's work explores the legal framework governing prosecutions in Uganda, it does not examine the private prosecution of corruption in Uganda, which knowledge gap the doctoral thesis has investigated. Likewise, other Ugandan scholars

UNIVERSITY of the
WESTERN CAPE

⁷⁶ Mujuzi JD 'Strengthening the Right to Institute a Private Prosecution in Uganda by amending Article 120(3) of the Constitution: A comment on Uganda v. Inspector General of Police, General Kale Kayihura and 7 Others' (2017) 25(4) *African Journal of International and Comparative Law*: 590 – 607; Mujuzi JD 'Private Prosecutions and discrimination against juristic persons in South Africa: A comment on National Society for the prevention of cruelty to Animals V Minister of Justice and Constitutional affairs & Another' (2015) 15(1) *African Human Rights Law Journal* 580- 595; Mujuzi JD 'Private Prosecution of environmental offences under the South African National Environmental Management Act: Prospects and Challenges' (2016) 29(1) *South African Journal of Criminal Justice* 24-43; Mujuzi JD 'Private Prosecutions in Zanzibar' (2017) 23 (2) *East African Journal of Peace and Human Rights*, 200-231; Mujuzi JD 'The right to institute a private prosecution: A comparative analysis' (2015) *International Human rights Law Review* 222- 255, among other journal articles on private prosecution.

⁷⁷ Mujuzi (2017) 590 – 607.

⁷⁸ Mujuzi (2017) 604.

⁷⁹ Mujuzi (2017) 604.

⁸⁰ Mujuzi JD (2017) 606.

who have written on the issue of private prosecution have not discussed it as one of the ways in which those who have allegedly committed corruption could be brought to book.⁸¹

A scholar studying corruption in Uganda has defined corruption as “dishonesty or illegal behaviour, especially of people in authority”.⁸² The well-known and commonly used definition of corruption, however, is that which was devised by TI.⁸³ TI describes corruption as the “abuse of entrusted power for private gain”.⁸⁴ There are many studies that have been carried out about corruption in Uganda. The studies include those that have purely legal recommendations on how to eradicate corruption and those that suggest an economist’s approach or a businessman’s approach to combat corruption.

Elliot Green argues that the creation of districts in Uganda is a form of patronage politics.⁸⁵ The scholar notes that some of the districts are created towards general elections. This consequently has enabled the National Resistance Movement (NRM) government to “win” elections. The researcher also notes that this form of patronage seems to be gaining momentum across Africa.⁸⁶ Elliot cites Nigeria, Burkina Faso, Benin, Chad, Malawi, Ghana, Sudan and Democratic Republic of Congo, as countries where administrative units have been created immediately before the general elections of a country to extend patronage networks of those in power.⁸⁷ Consequently, those holding power have come up with smaller political units in order to win the periodic elections.

⁸¹ Ssekana M in his book *‘Criminal Procedure and Practice in Uganda’* devotes some time to discuss the legal framework governing private prosecutors, the procedure for private prosecution and control over private prosecution. Retired Justice Benjamin J. Odoki also discusses the right to institute private prosecutions in Uganda, in his book *‘A Guide to Criminal Procedure in Uganda’*. Both Ssekana and Odoki’s books are published by Law Africa. *‘The Uganda Criminal Justice Bench Book’* whose 1st edition was published in January 2017 by The Law Development Centre with support from the Judiciary, Justice Law and Order Sector and Danida, also briefly discusses the right to institute a private prosecution in Uganda.

⁸² Obura C *Effective records and information management as a catalyst for fighting corruption*, (2012) 1 University of South Africa Press, Pretoria.

⁸³ Brown E & Cloke J ‘Critical Perspectives on Corruption; Tracking the Empirical Evidences and Tailoring Responses’ (2013) 49(2), *Journal of Asian and African Studies* 187.

⁸⁴ Brown & Cloke (2013) 187.

⁸⁵ Elliot G ‘Patronage, District Creation and Reform in Uganda’ (2010) 45(1) *Studies in Comparative International Development* 83-1-3. DOI 10.1007/s101010100039.

⁸⁶ Elliot (2010) 20.

⁸⁷ Elliot (2010) 21.

Elliot employs quantitative and qualitative methods of research analysis to come to his conclusions. Elliot's study does not discuss any legal recommendations that may be used to combat corruption in Uganda and uses mixed methods of research analysis while the doctoral study has used doctrinal research methods.

Mbabazi and Jun Yu have argued that the fight against poverty has been hampered by patronage driven corruption.⁸⁸ The methodology used for this study was qualitative, consequently this may bias readers who are more inclined to quantitative or mixed methods of research analysis. This study notes that Uganda's legal framework has been ranked as "excellent".⁸⁹ There have been issues with enforcement of this "excellent" legal regime. Researchers have noted that Uganda has "one of the largest implementation gaps among countries that" have been studied periodically.⁹⁰ Mbabazi and Pyeong have argued that the patronage induced corruption has been used as a mechanism to reward loyal supporters to enable the NRM government sustain its hold on power. Those who have been implicated in corrupt practices have been left to roam around with impunity, considering that those holding power require their support to sustain their hold onto power.⁹¹ Even though Mbabazi and Pyeong indicate that the anti-corruption legal regime is "excellent", their work leaves a gap in the knowledge that the thesis has addressed.

The role of the citizens and the church in the fight against corruption in Uganda has been examined.⁹² Asea attempts what he calls a "new" approach "in the fight against corruption in Uganda". He, however, ends up addressing the challenges surrounding political and bureaucratic corruption.⁹³ He notes that "political untouchables" and

⁸⁸ Mbabazi G and Pyeong JY 'Patronage driven corruption undermining the fight against poverty in Uganda' (2015) 7 *African Social Science Review* No.1, Article 4., at 54.

⁸⁹ Mbabazi & Pyeong (2015) 54.

⁹⁰ Global Integrity *Global Integrity Report: Opportunities and Challenges in the fight against Corruption* (2007) Washington DC: Global Integrity.

⁹¹ Mbabazi & Pyeong (2015) 65.

⁹² Asea WB 'Combating political corruption in Uganda: Colossal challenges for the church and the citizens' 2018 74(2) *HTS Teologiese studies/Theological Studies* 4535. Also available at <https://doi.org/10.4102/hts.v74i2.4535>. (accessed 23 March 2019).

⁹³ Asea WB (2018).

businessmen have fuelled political corruption in Uganda.⁹⁴ This is because of their influential and powerful status in society. Consequently, the anti – corruption measures that are in place are unable to tame these influential individuals’ appetite to personalize public resources. Asea also argues that corruption is not in tandem with the teachings of God.⁹⁵ He therefore notes that corruption cannot only be fought using efficient public administration mechanisms, but also with entrusting public resources to individuals who are morally upright. Asea also notes that the teachings of the Holy Bible shun corruption.⁹⁶ Asea’s study does not address knowledge gap that this thesis has examined on the investigation and prosecution of corruption in Uganda.

Mwenda and Tangri note that “elite corruption” has enabled the ruling government to hold power for a long time in Uganda.⁹⁷ They note that political corruption has facilitated the ruling party to fortify support from individual politicians from various regions of the country. Added to this, they argue, is donors who have continued to pile the government with more resources. The donors are more concerned with Uganda’s economic growth rather than the political or governance challenges, that bedevil it.⁹⁸ Mwenda and Tangri do not offer any legal measures that should be employed to rid the country of “elite corruption”. Consequently, they do not address the knowledge gap that this doctoral thesis has addressed.

Amundsen whose study has been variously cited by other scholars on corruption in Uganda, contends that the donors have partly facilitated the sustenance of political corruption in Uganda.⁹⁹ Amundsen notes that corruption that is politically engineered can only be fought if there is political will to eradicate the vice. The scholar notes that political

⁹⁴ Asea WB (2018) 1.

⁹⁵ Asea WB (2018) 13., Asea cites Genesis chapter 3 verses 2-12; chapter 6 verses 11-12 and Psalms chapter 14 verses 1-3 of the Holy Bible, as the biblical teachings that abhor corruption in its every form.

⁹⁶Asea WB (2018) 13., Asea cites Genesis chapter 3 verses 2-12; chapter 6 verses 11-12 and Psalms chapter 14 verses 1-3 of the Holy Bible, as the biblical teachings that abhor corruption in its every form.

⁹⁷ Mwenda A & Tangri R ‘Elite Corruption and Politics in Uganda’ (2011) 46(2) *Commonwealth and Comparative Politics* 177-149. DOI: 10.1080/14662040802005336.

⁹⁸ Mwenda & Tangri (2011) 177-149.

⁹⁹ Amundsen IC *Political Corruption and the Role of Donors in Uganda* (2006) Chr. Michelsen Institute, Bergen 2.

corruption is motivated by those who want to hold power perpetually.¹⁰⁰ Amundsen argues that one of the main driver of political corruption is gluttonous accumulation of wealth.¹⁰¹ The scholar also states that political corruption cannot be eradicated by bureaucratic solutions only.¹⁰² Amundsen proposes to the donors what he calls “minimalist” and “maximalist” strategy to eradicate political corruption in Uganda.¹⁰³ He states that the “minimalist approach” by the donors should entail “to accept to work with the current NRM government, with the aim of restricting low-level administrative corruption in the service delivery sectors and in donor funded projects and programmes”.¹⁰⁴ He also notes that donors in Uganda should start a conversation with the NRM government, on what the minimum understanding is, on the enjoyment of civil and political rights by Ugandan citizens.

On the maximalist approach, he notes that the donors should “include supporting long - term democratization processes, as well as more radical attempt at stemming corruption in military procurement and the electoral process”.¹⁰⁵ Amundsen’s work does not address the main objective of the doctoral study that was carried out, thus, leaving a knowledge gap.

An attempt has been made by Martini to study the challenge of corruption.¹⁰⁶ He also examines the anti – corruption strategies in Uganda.¹⁰⁷ The Transparency International Researcher also argues that corruption is one of Uganda’s utmost challenges to economic development. This challenge has consequently affected the provision of quality social services.¹⁰⁸ He also notes that grand corruption is prevalent in the country because of a

¹⁰⁰ Amundsen (2006) 2.

¹⁰¹ Amundsen (2006) 2.

¹⁰² Amundsen (2006) 2.

¹⁰³ Amundsen (2006) 3.

¹⁰⁴ Amundsen (2006) 3.

¹⁰⁵ Amundsen (2006) 3.

¹⁰⁶ Maira M 'Uganda: Overview of corruption and anti – corruption: The U4 expert answers transparency international' (2013) 5(379) *Centre for Development Practitioners* 2-27.

¹⁰⁷ Maira (2013) 2-27.

¹⁰⁸ Maira (2013) 2-27.

lack of clear distinction between the “public and private spheres”.¹⁰⁹ Martini argues that although numerous initiatives have been put in place, the political will to fight corruption, is lacking. He also notes that the enforcement of the legal regime on corruption is not effective.¹¹⁰ Although this study addresses the corruption situation and legal strategies to combat corruption in Uganda, it was carried out four years ago, and four years is a long time in scholarship. The study also still leaves a gap in the knowledge because the thesis has addressed the investigation and prosecution of corruption in Uganda.

Whereas many scholars have written about corruption in Uganda, very few have written and published work on investigation and prosecution of corruption. This is so, with regard to the creative use of private prosecution as a novel accountability mechanism to curb criminality in Uganda. The literature reviewed so far indicates that no scholar has written about the investigation and prosecution of corruption, with particular emphasis on the possibility of creatively deploying private prosecution to curb corruption in Uganda. This consequently represents a gap in the knowledge that the doctoral study has addressed.

Therefore, the review of the literature clearly indicates that this is an under-researched area. There are many existing knowledge gaps in this area of study. This study concentrated on the investigation and prosecution of corruption in Uganda. Hopefully, the findings of this study will impact on further research in this area of the law.

1.5 PURPOSE/OBJECTIVE

1.5.1 To review the legal mechanisms established to eradicate corruption in Uganda.

1.5.2 To examine whether the legal mechanisms to eradicate corruption have been implemented and are effective in the fight against corruption in Uganda.

¹⁰⁹ Maira (2013) 2-27.

¹¹⁰ Maira (2013) 1.

To examine whether private prosecution can be used as an accountability mechanism to curb corruption in Uganda.

1.6 THEORETICAL FRAMEWORK

One of the key concepts that comes through in this study is - the eradication of corruption and how its eradication leads to a just and democratic society. The holding of periodic free and fair elections is one of the fundamental ideals of a democratic society. This however, is not enough. Consequently, a robust system of checks and balances, accountability and transparency in public administration, protection of human rights, the rule of law and media freedoms, are the other basic norms of a democratic society. A robust system of checks and balances can only keep corruption at bay, if the key tenets of democracy are observed by those who hold power. These checks and balances should include a legal regime that heavily sanctions the corrupt. Where the legal regime has been compromised by those who hold political power, then the citizens may be in a dilemma on what to do about corrupt people in power. One of the few available legal tools to remedy such a situation is the private prosecution of the corrupt.

Corruption has been defined in varying ways. One of the academic authors who has reviewed corruption definitions extensively is Ahmed Alaa Fayed.¹¹¹ In his review article, he looks at the different definitions of corruption.¹¹² He notes that "it is difficult to have a general and specific definition of corruption" due to cultural differences and norms of particular societies.¹¹³ He notes that "academics, scholars and researchers have debated the many different definitions" of corruption for several years.¹¹⁴ Some of the definitions fronted by these scholars include Nye, a distinguished American political scientist, who has "defined corruption as a behavior which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private

¹¹¹ Fayed AA 'Researching Corruption: Understanding its key concepts' (2018) *Rule of Law Journal* 11. Also available at <https://doi.org/10.5339/rolacc.2018.11> (accessed 22 March 2019).

¹¹² Fayed (2018).

¹¹³ Fayed (2018) 2.

¹¹⁴ Fayed (2018) 2.

clique) wealth or status gains; or violates rules against the exercise of certain types of private-regarding influence".¹¹⁵ Fayed has noted that "although this definition was criticized for its exclusion of other forms of corruption, such as corporate corruption, which allowed other different definitions to arise, Nye's definition is the basis for all contemporary definitions as it succeeds in being general and specific at the same time".¹¹⁶ Fayed further notes that: -

Nye mentioned that both elected and appointed officials could commit corrupt actions, and states that these corrupt acts can be committed not only for personal gain but for family or private benefit. In addition, the fact that he successfully managed to distinguish the types of benefit as either wealth or higher status helped in making this a generally accepted definition by corruption scholars for a period.¹¹⁷

Attempts have been made by many other scholars to define corruption in a different manner, however, the definitions have at most times, lacked what Fayed has termed "the elements of applicable generalization".¹¹⁸ Some of the interesting definitions of corruption have been made by Theobald.¹¹⁹ He "described corruption as the illegal use of public office or the process of selection to public office for private gain".¹²⁰ Fayed notes that the main challenge "with this definition is that it did not include different forms of corruption, such as nepotism, making it a particular but not inclusive definition".¹²¹ Another scholar who developed a different description is Tanzi.¹²² He noted that "corruption is the intentional noncompliance with arm's length relationship aimed at deriving some advantage from this behavior for oneself or for related individuals."¹²³ Fayed notes that the challenge with this definition "is that it depends on the 'arm's length principle', which

¹¹⁵ Nye JS 'Corruption and Political Development: A cost – benefit Analysis' (1967) *The American Political Science Review* 417.

¹¹⁶ Fayed (2018) 2.

¹¹⁷ Fayed (2018) 2.

¹¹⁸ Fayed (2018) 2.

¹¹⁹ Theobald R *Corruption, Development and Underdevelopment* 16 ed (1990).

¹²⁰ Theobald (1990).

¹²¹ Fayed (2018) 2.

¹²² Fiorentini G & Peltzman S *The Economics of Organized Crime* (1995) 161-180.

¹²³ Fiorentini & Peltzman (1995).

states that both parties involved in a transaction are engaged in an equitable agreement. This is not the case in corrupt actions between citizens and bureaucrats in developing countries, where both are not on a levelled playing field".¹²⁴

Fayed notes that eventually "Vito Tanzi, an economist, Susan Rose- Ackerman, a political scientist who studied corruption extensively for around four decades, and Daniel Kaufmann, an economist and the creator of the World Bank-World Governance Indicators (WGI), reached a consensus by agreeing that corruption can be defined as 'the abuse of public office for private gain'".¹²⁵ Fayed states that this definition was considered the proper definition of corruption in the 1990s as it was straight forward and inclusive.¹²⁶

This definition of corruption has, however, slightly been revised and improved by the World Bank. Consequently, the World Bank is now defining corruption as "the abuse of power for private gain,"¹²⁷ "going beyond previous definitions that insisted that corruption exists only in the public sector".¹²⁸ These definitions overlooked corruption in the private sector.¹²⁹ Fayed argues that "this definition helps to extend corruption to cover all sectors and societies, but its frequency and intensity will of course change from one society and sector to another".¹³⁰

Transparency International, as one of key international organizations that have worked on corruption world-wide has added a minor change to the definition of corruption.¹³¹ TI "defines corruption as the abuse of entrusted power for private gain".¹³² Consequently

¹²⁴ Fayed (2018) 2.

¹²⁵ Fayed (2018) 2., also see Tanzi V 'Corruption Around the World; Causes, Consequences, Scope and Cures,' Staff Papers-International Monetary Fund, 559 (1998) and Rose – Ackerman S *Corruption and Government: Causes, Consequences and Reform* (1999).

¹²⁶ Fayed (2018) 2.

¹²⁷ Oberoi R 'Mapping the Matrix of Corruption' (2009) 30(4) *History of Political Thought* 596-600.

¹²⁸ Fayed (2018) 2.

¹²⁹ Fayed (2018) 2.

¹³⁰ Fayed (2018) 2.

¹³¹ Brown E & Cloke J 'Critical Perspectives on Corruption; Tracking the Empirical Evidences and Tailoring Responses' (2013) 49(2) *Journal of Asian and African Studies* 187.

¹³² Brown & Cloke (2013).

this is the most well-known definition of corruption by scholars to date.¹³³ Does a new and more precise definition of corruption need to emerge? This question will be left to time to tell. The anti-Corruption law in Uganda, does not define the word corruption but defines the acts that would amount to corruption.¹³⁴ This study will consequently adopt the definition of corruption by TI to guide the research. The justification for the adoption of the definition by TI, is that, it is the definition that is now widely used by scholars in corruption studies.

Corruption has become more and more sophisticated with the modernization of society. Several manifestations of corruption have appeared on the scene over the years, consequently creating the need for categorization of the different expressions of corruption. The more society has developed the more varieties of corruption that have cropped up. To retrace corruption to its earliest manifestations is to discuss the works of Thomas Hobbes.¹³⁵ Thomas Hobbes was a political philosopher in the sixteenth century. He is the earliest scholar to have used the word corruption and to have explained it, in his work.¹³⁶ Adrian Blau who has studied the works of Thomas Hobbes notes that Thomas Hobbes simply explained corruption as “something shifting from good to bad”.¹³⁷ This was a simplified reflection of what constituted corruption in the sixteenth century. Thomas Hobbes categorized corruption in various forms at the time he lived. These included; ‘physical corruption’, ‘semantic corruption’, ‘moral corruption’, ‘constitutional corruption’, ‘political corruption’ and ‘cognitive corruption’.¹³⁸ Thomas stated that “physical corruption encompasses decaying bodies, stagnant water and rotten food”.¹³⁹ He also noted that “semantic corruption’ is when a word changes its meaning or

¹³³ Fayed (2018) 2., where Fayed argues that this is the most frequently used definition of corruption now. Also see Brown E & Cloke J, *Critical Perspectives on Corruption: An Overview*, 7(2), *Critical perspectives on international business*, 116 (2011), on the same issue.

¹³⁴ See section 2 of the Anti – Corruption Act No. 6 of 2009.

¹³⁵ Blau A ‘Hobbes on Corruption’ (2009) 30(4), *History of Political Thought*, 596, 600; also see Euben P ‘Corruption’ in Terrence Ball, James Farr and Russell Hanson (eds) *Political Innovation and Conceptual Change*, Cambridge University Press (1989) 220-46.

¹³⁶ Blau (2009).

¹³⁷ Blau (2009).

¹³⁸ Blau (2009) 600, 601 & 602.

¹³⁹ Blau (2009) 599.

spelling".¹⁴⁰ 'Moral corruption' was categorized as an act that "involves shameful and immoral behavior".¹⁴¹ 'Constitutional corruption' on the other hand was described as "deviations from good forms of government, like monarchy corrupting to tyranny".¹⁴² Thomas Hobbes stated that "political corruption occurs when political actions and the environment are harmful and destructive, for example, a state official receiving a bribe".¹⁴³ The last categorization by Thomas Hobbes is cognitive corruption.¹⁴⁴ Cognitive corruption is "wrongful interpretation and judgment that obstructs reason and leads to incorrect conclusions."¹⁴⁵ Thomas Hobbes concluded that all "all other forms of corruption as actions emanate from a thought process".¹⁴⁶ The current academic efforts have created innovative kinds of corruption, which mirror the changes that society has gone through. Some of these changes include the day-to-day role of government in a citizen's life and the legal intricacies that citizens have to deal to engage with each other or engage with the authorities in power. Fayed has attempted to study the categorizations of corruption in modern society.¹⁴⁷ He notes that the forms of corruption "include both concrete and abstract categories such as systemic versus sporadic, grand versus petty, downward redistribution versus upward extraction, active versus passive, and legal versus illegal".¹⁴⁸ Fayed argues that in recent times, the most serious manifestation of the aforementioned forms of corruption is grand and petty corruption.¹⁴⁹ He goes ahead to define this prominent category of corruption. He states that "primarily, grand corruption is a corrupt incident that does not happen on a daily basis. It can be referred to as political corruption as it usually involves senior, high-ranking officials and politicians using their

¹⁴⁰ Blau (2009) 600.

¹⁴¹ Blau (2009).

¹⁴² Blau (2009).

¹⁴³ Blau (2009) 601.

¹⁴⁴ Blau (2009) 602.

¹⁴⁵ Blau (2009).

¹⁴⁶ Blau (2009).

¹⁴⁷ Fayed A 'Understanding Corruption: Tackling its Multidisciplinary Nature' (2016) 2(3) *Middle East Review of Public Administration*.

¹⁴⁸ Fayed (2016).

¹⁴⁹ Fayed (2016).

influence and a significant monetary amount".¹⁵⁰ He notes that on the "other hand, petty corruption mostly happens on a daily basis and can be referred to as bureaucratic corruption. This is because it involves junior or low-ranking officials who use their knowledge of the bureaucratic system to receive illegal payments. When these petty incidents are aggregated, their potential impact outweighs grand corruption incidents".¹⁵¹

Previously, anti-corruption strategies focused on the eradication of either grand or petty corruption. The Sustainable Development Goals (SDGs) also addresses the challenge of grand and petty corruption.¹⁵² SDG 16 specifically focuses on grand corruption that specifically under privileges the poor.¹⁵³ Den Nieuwenboer and Kaptein have noted that tackling grand corruption then has created two new forms of corruption.¹⁵⁴ The two scholars have described the two new types of corruption as "downward redistribution" and "upward extraction".¹⁵⁵ Den Nieuwenboer and Kaptein state that this kind of corruption "can only exist if it is systemic within an institution as both are based on the redistribution of the revenues of the corrupt action to other co-workers".¹⁵⁶ Andvig and other scholars have contended that "[t]he two types enforce the concept of systemic corruption in an establishment as even those who do not want and do not participate in the unethical action are implicated. This technique ensures the loyalty of many individuals within the organization".¹⁵⁷ Andvig and other scholars go ahead to define the two new types of corruption as follows: -

Downward redistribution happens in the case of grand corruption, for example, when a high-ranking official receives a bribe, s/he distributes part of that bribe to low-ranking co-workers to make them forcefully participate or to ensure that they do not report the corrupt action. On the

¹⁵⁰ Fayed (2016)., also see Dahlstrom C 'Bureaucracy and the Different Cures for Grand and Petty Corruption,' 20, QoG Working Paper Series (2012).

¹⁵¹ Fayed (2016).

¹⁵² SDG 16.

¹⁵³ Fayed (2016).

¹⁵⁴ Den Nieuwenboer NA & Kaptein M 'Spilling Down into Corruption: A Dynamic Analysis of the Social Identity Processes That Cause Corruption in Organizations to Grow' (2008) 83(2) *Journal of Business Ethics* 133.

¹⁵⁵ Den Nieuwenboer & Kaptein (2008).

¹⁵⁶ Den Nieuwenboer & Kaptein (2008).

¹⁵⁷ Andvig, Fjeldstad & Amundsen et al., *Corruption, A Review of Contemporary Research* (2001).

other hand, upward extraction happens in cases of petty corruption, where a low-ranking official receives a bribe and gives a major part of it to his co-workers and higher-ranking officials within the organization. The main reasons for this action are again payment for their participation or for their silence or maybe to carry a favor for future usage.¹⁵⁸

Downward redistribution and upward extraction are forms of corruption that can affect the implementation of SDG 16. Unfortunately, SDG 16 only deals with elimination of corruption in public institutions and shies away from passive corruption.¹⁵⁹ For example, if a public official who does not ask for a bribe but is given one, which he accepts, this might constitute passive corruption. The acceptance of a bribe affects the public institution that the official is serving. This consequently will lead to bureaucratic corruption that SDG 16 intends to eradicate.¹⁶⁰ Institutions working on SDG 16 need to devise strategies to fight passive corruption because eventually, it affects active corruption.

Amundsen has categorized newest forms of corruption to fall into five categories.¹⁶¹ These are bribery, theft, embezzlement, fraud and favoritism.¹⁶² A very recent form of corruption that Amundsen does not discuss, and perhaps the newest form of corruption is sextortion.¹⁶³ Sextortion refers to where corruption and sex exploitation intersect.¹⁶⁴ The International Association of Women Judges contend that "Sextortion refers to the abuse of power to obtain a sexual benefit or advantage."¹⁶⁵ TI has noted that sextortion has "far-reaching costs, in terms of physical and mental health including human

¹⁵⁸ Andvig, Fjeldstad & Amundsen et al. (2001).

¹⁵⁹ Andvig, Fjeldstad & Amundsen et al. (2001).

¹⁶⁰ For a more detailed discussion see Argandoña A 'The United Nations Convention Against Corruption and its Impact on International Companies' (2007) 74(4) *Journal of Business Ethics* 481.

¹⁶¹ For a detailed discussion of these recent forms see Amundsen I 'Political Corruption: An Introduction to the Issues' (Chr. Michelsen Institute. Working Paper, 2011).

¹⁶² Amundsen (2011).

¹⁶³ International Association of Women Judges 'Corruption and Sextortion' available at <http://www.iawj.org/programs/corruption-and-sex-tortion/> (accessed 13 March 2019). The term "sextortion" was coined by the International Association of Women Judges.

¹⁶⁴ International Association of Women Judges (2019).

¹⁶⁵ International Association of Women Judges (2019). The term "sextortion" was coined by the International Association of Women Judges.

dignity”.¹⁶⁶ TI has stated that “sextortion remains an invisible phenomenon that thrives on silence and lack of understanding, but is a form of corruption where entrusted power is abused for private gain”.¹⁶⁷ TI proceeds to recommend that a clear and specific definition of sextortion be adapted for this new form of corruption. TI also recommends that sextortion should be categorized as a crime and included in domestic and organizations regulatory frameworks in the fight against the various forms of corruption.¹⁶⁸

Another new form of corruption that is also not discussed by Amundsen is “state capture”.¹⁶⁹ Although state capture is an extreme form of grand corruption,¹⁷⁰ it is not discussed as such by Amundsen. Hellman, Jones and Kaufman have defined “state capture” as “situations where top politicians and bureaucrats join forces with private actors in order to use the state as a vehicle for private income”.¹⁷¹

There are three theories broadly on how to fight corruption. Ades and Di Tella have described these broad categories “as the businessman’s approach, the economist’s approach and the lawyers’ approach”.¹⁷² The businessman’s approach consists of the payment of higher wages to bureaucrats.¹⁷³ The Economist’s approach “involves increasing the level of competition in the economy for the bureaucrats and firms”.¹⁷⁴ The

¹⁶⁶ Transparency International ‘Sextortion: Undermining Gender Equality’ available at https://www.transparency.org/news/feature/sextortion_undermining_gender_equality (accessed 27 February 2019).

¹⁶⁷ Transparency International (2019).

¹⁶⁸ Transparency International (2019).

¹⁶⁹ Hellman, Jones & Kaufman ‘Seize the State, seize the day: state capture and influence in transition economies’ (2003) 31 *Journal of Comparative Economics* 751-773.

¹⁷⁰ Hellman, Jones & Kaufman (2003).

¹⁷¹ Hellman, Jones & Kaufman (2003).

¹⁷² Ades A & Di Tella R ‘The New Economics of Corruption: A Survey and Some New Results’ (1997) XLV *Political Studies* 496 – 515.

¹⁷³ Ades A & Di Tella R ‘The New Economics of Corruption: A Survey and Some New Results’ (1997) XLV *Political Studies* 496 – 515., at 497; also see Becker GS and Stigler GJ ‘Law Enforcement, malfeasance and the compensation of enforcers’ (1974) 3(1) *The Journal of Legal Studies* 1-18.

¹⁷⁴ For more detail see Rose – Ackerman S *Corruption; a study in Political Economy* (New York, Academic, 1978); Ades A & Di Tella R ‘Competition and Corruption’, *Applied Economics Discussion Paper Series No. 169*, Oxford University (1995) and Bliss C and Di Tella R ‘Does Competition kill Corruption?’ *Journal of Political Economy*.

Lawyers' approach entails the enactment of tougher laws and tougher enforcement of existing laws.¹⁷⁵ The best strategy to fighting corruption that fits this study, is the lawyers approach.

The other key concept that this study investigated closely as a legal mechanism to counter corruption in public spaces, is the private prosecution of the perpetrators of corruption. This is where the legal regime to fight corruption has been compromised to such an extent that the organs charged with the duty to eradicate corruption, are deliberately weakened. This is especially so by those who are influential and holding power in society. In the Kenyan case of *Richard Kamani & M. Maina v. Nathan Kahara*,¹⁷⁶ the High Court held that "... the right of private prosecution is essential to counteract attempts by the wealthy and influential people to stifle prosecutions when offences by them are alleged in reports to police".¹⁷⁷ In *Gouriet v. Union of Post Office Workers*,¹⁷⁸ The House of Lords "held that the right of private prosecution is a useful constitutional safeguard against capricious, corrupt or biased, failure or refusal of police forces and the office of the Director of Public Prosecutions to prosecute offenders against the criminal law".¹⁷⁹

It is important to unpack this concept known as private prosecution. A private prosecution is the institution of criminal proceedings by a private person who ordinarily does not have the mandate to do so.¹⁸⁰ The duty to institute criminal proceedings is the constitutional preserve of a public prosecutor.¹⁸¹ In ordinary language, a private prosecution is a criminal proceeding brought against the accused by a private individual. This is with the aim of obtaining redress against the accused, if the public prosecutor declines to institute criminal proceedings against the accused, without any justifiable reasons. The private

¹⁷⁵ Ades & Di Tella (1995) 497.

¹⁷⁶ Kenya High Court Criminal Revision No. 11/1983. This case is also discussed in Professor PLO Lumumba's book entitled *Criminal Procedure in Kenya* 2002.

¹⁷⁷ Kenya High Court Criminal Revision No. 11/1983.

¹⁷⁸ [1978] AC 435 at 477; [1977] 3 ALL ER 70.

¹⁷⁹ [1978] AC 435 at 477; [1977] 3 ALL ER 70.

¹⁸⁰ Almandras S *Private Prosecutions*. (2010). Standard Note: SN/HA/5281 House of Commons Library. Home Affairs section.

¹⁸¹ Almandras (2010).

prosecutor then has a right to apply to the Magistrate Court that has jurisdiction to be allowed to institute the said private prosecution.¹⁸² Therefore, the right of a private prosecutor is not absolute.¹⁸³ The private prosecutor has two obstacles to overcome before being granted permission to prosecute. First, the person must convince a judicial officer to issue summons.¹⁸⁴ Secondly, if the person wishes to retain control, he or she or it may seek for legal aid or pro bono service if the said private prosecutor is not financially capable. Private prosecution is expensive. The African Commission has however, recognised this important constitutional safeguard and acknowledged the difficulties persons who choose to prosecute the ills of society on behalf of other citizens, face.¹⁸⁵ The African Union has encouraged member states to ameliorate the challenges of those citizens who elect to use private prosecution as an accountability mechanism to hold the influential and powerful in society accountable. Paragraph 75 states as follows:

-

In line with state parties' obligations under Article 7 of the African Charter, the option of private prosecution for acts of torture and other ill treatment by non-state actors should be availed and sufficiently facilitated by the state when utilized by a victim, including by addressing practical challenges to private prosecution such as prohibitive costs or the impossibility in practice to access all relevant evidence.¹⁸⁶

UNIVERSITY of the
WESTERN CAPE

¹⁸² The Magistrate Court Act, Cap 16; Section 42 (3); See comparable provisions in sections 7,8 & 9 of Criminal Procedure Code Act No. 51 of 1977 of the South Africa, where private prosecutions are only permitted on direct infringement of human dignity. Artificial persons cannot institute private prosecutions; see *National Society for the Prevention of Cruelty to Animals Versus Minister of Justice and Constitutional Development (20781/2014) [2015] ZASCA 206* (4 December 2015); See also section 88 of Criminal Procedure Code Act, Cap 75 of Kenya; which allows artificial entities to institute private prosecutions; Rwanda provides for private prosecution in certain situations. Under Article 29(4) of the Organic Law on Genocide Proceedings a civil party may bring a private prosecution, if the public prosecutor does not within six months. Also see Article 71 of the Rwanda Code of Criminal Procedure.

¹⁸³ The Magistrate Court Act Cap 16; Section 43 gives the DPP control over private prosecution.

¹⁸⁴ See section 42 (1) (c) and (3).

¹⁸⁵ Paragraph 75 of General Comment No. 4 on Article 5 of the African Charter on Human and Peoples Rights. This General Comment was adopted on 23 February, 2017 in Banjul, Gambia.

¹⁸⁶ Paragraph 75 of General Comment No. 4 on Article 5 of the African Charter on Human and Peoples Rights.

With the hindsight of the challenges of this mechanism, it may be adopted as an anti - corruption mechanism. Private prosecutions can ameliorate the challenges that public prosecutions of corruption encounter.

Private prosecution has been underutilized, as a legal tool and strategy to fight corruption. There have been a few cases that have been filed by way of private prosecution to fight corruption in Uganda.¹⁸⁷ The study, therefore, is relevant because private prosecution is likely to remain one of the important accountability tools to hold powerful individuals within the public institutions accountable where they have hovering influence over anti-corruption institutions in a society. The aforementioned scenario usually plays out in countries where criminal elements who have taken up leadership positions in society, try to prevent democratic checks and balances so that they can continue to hold power, with impunity. This being an under-researched space, the study has filled the aforementioned knowledge gap.

1.7 SCOPE OF THE STUDY

The scope of the study is limited to the investigation and prosecution of corruption in Uganda. Uganda is chosen for this study because it has consistently had a poor performance on several corruption indexes and reports released by several anti-corruption organisations.¹⁸⁸ Where necessary corruption by the ruling and elite individuals who are prominent perpetrators of corruption within the public institutions will also be highlighted. A comparative analysis of anti-corruption regimes was carried out. There are many dimensions of corruption. These are the vertical dimensions of corruption (state to citizens) and the horizontal dimensions of corruption (citizen to citizen). The study is

¹⁸⁷ See *Hassan Bassajabalaba v. Kakande Bernard*, Criminal Revision No. 02/2013; *Charles Mbiire & 12 Others v. Uganda* HCT-00-CR-0015/2012; among others.

¹⁸⁸ Anti-Corruption Coalition *Uganda Fact Sheet Anti-Corruption Court* (2011)., Arthur Larok 'Different Approaches, same goals: Civil Society and the fight against corruption in Uganda' (2012) 103. Bertelsmann Foundation, Bertelsmann Transformation Index (BTI) (2016), Uganda Country Report – Transformation Index (BTI)., Human Rights Watch *Letting the Big Fish Swim: Failures to prosecute High Level Corruption in Uganda*, (2013). Transparency International Uganda *As strong as its weakest link. Stakeholders Perceptions of Ugandan Legal and institutional Anti-Corruption Framework*, (2015) Kampala: Transparency International Uganda., Transparency International *Corruption Perceptions Index (2019)*, (2019).

restricted to vertical dimensions of corruption. Corruption as an offence is selected because it is now an international crime¹⁸⁹ and some scholars have argued that it is a crime against humanity.¹⁹⁰

1.8 RESEARCH METHODOLOGY

1.8.1 RESEARCH DESIGN AND METHODOLOGY

Doctrinal legal research methods were used for this study. The doctrinal legal research methodology is a twofold technique. This is because it involves finding the foundations of the law, which subsequently leads to examination of the text. There was also a comparative analysis of the information collected from other legal regimes that have managed to fight corruption successfully. Primary and secondary literature were relied on. This included reading media reports, government reports, policy documents, academic articles, case law, legislation, international and regional treaties, among others.

1.8.2 AREA OF STUDY

The area of study was Uganda. A select number of countries on the African Continent that have successfully leveraged on their democratic credentials to fight corruption were discussed. There was a comparative investigation of the anti-corruption regimes of selected countries. The selection of the aforementioned states covers Anglophone countries. The said selection is intended to make the study comprehensive. This is intended to inform the study on what the best practices are in those African states. Countries like Singapore and Hong Kong that have won international acclaim in the fight

¹⁸⁹ See Articles 28A (1), 28(1) & 28I of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights.

¹⁹⁰ For a detailed treatment on this subject, see previous studies by Ilias Bankekas, "Corruption as an International crime and a crime against humanity: An outline of Supplementary Criminal Justice Policies," in (2006) *Journal of International Criminal Justice* 4 (3) 466-484., Also see other studies on this issue; Martine Boersma "Corruption: A violation of human rights and a crime under international law? (2012) Intersentia, Cambridge, Chapter VIII., Also see Anne Peters "Corruption as a Violation of International Human Rights" (2018) 29 (4) *The European Journal of International Law* 1251-1287.

against corruption were examined for strategies used in their environment that can be used in Uganda to curb corruption.

1.8.3 DATA QUALITY CONTROL

There was triangulation of the data collected. There was no need to pre-test the research tools.

1.8.4 ETHICAL CONSIDERATIONS

The moral justification of the intervention is that; corruption is a grave social ill that creates societal challenges. Investigations, therefore, ought to be carried out on how to prevent it, and how to sanction those who practice it.

1.8.5 LIMITATIONS

One of the limitations was financing of the study, considering that I carried out the investigation largely out of my personal resources. The other limitation of the study was time, considering that the study was completed in two years.

1.8.6 CHAPTER PLAN

This doctoral thesis has six chapters. Chapter one constitutes the background to the study, statement of the problem, literature review, theoretical framework, objectives of the study, research questions, scope of the study, significance of the study and methodology. Chapter one thereafter, concludes with an overview of the contents of the subsequent chapters as follows. Chapter two examines the phenomena of corruption and how it can create an unjust society. Chapter three examines the legal framework governing the investigation and prosecution of corruption in Uganda. Chapter four discusses the institutional framework governing the investigation and prosecution of corruption in Uganda and its limitations. Chapter five appraises the legal framework governing the private prosecution in Uganda. It also studies the possibility of using private prosecutions to fight corruption where public institutions charged with the duty are weak or are compromised by an undemocratic environment within which they are situated. Chapter six stipulates the conclusions of the study and specifies practical recommendations on how corruption can be significantly reduced in Uganda.

CHAPTER 2: CORRUPTION AND AN UNJUST SOCIETY

2.1 INTRODUCTION

Corruption is a serious threat to the existence of humanity. This is because, in its most severe form, it drastically affects every sector of society. The economic, social or political development of any society can seriously be derailed, if corruption is not tackled and kept in check. In fact, a Kenyan court has stated that: -

'corruption is a cancer which robs the society in general, but more particularly the poor, when resources of a country, whether public or privately controlled, are siphoned into local or foreign accounts, for the benefit of a few individuals or groups thereof ... it is a form of terrorism and tyranny to the poor, the majority of our population.'¹⁹¹

The efforts to fight corruption have been ongoing since the nation state was established in Athens. It is believed that corruption is as old as 'organized human life'.¹⁹²

In chapter 1, I set the background to the study. I also conversed the statement of the problem, literature review and theoretical framework. The objectives of the study, and research questions were also considered. I further discussed the scope and significance of the study. I concluded chapter 1 by indicating the research methodology of this study. In this chapter 2, I retrace the origins of corruption. I also examine the debates that have occurred, on how to define corruption, overtime. The debates on what corruption is, have consequently enabled a categorization of corruption in its various manifestations. I probe the school of thought that claims that corruption has benefits to society. I also explore how corruption creates an unequal society. In furtherance of the justification of how corruption creates an unequal society, I study the consequences of corruption on various sectors of society. I conclude the chapter, by recapping the key themes and propose a way forward on how to curb corruption.

¹⁹¹ *Dr. Christopher Ndarathi Murungaru v Kenya Anti-Corruption Commission and Hon. Attorney General*, [2006] eKLR.

¹⁹² Klitgaard R. *Controlling Corruption* (1988) 7.

2.2 ORIGINS OF CORRUPTION

A well-known corruption scholar has noted that corruption is as old as 'organized human life'.¹⁹³ Perhaps this is exemplified by the Biblical story of Judas Iscariot, who for a few pieces of silver betrayed his master, Jesus Christ, to the Romans.¹⁹⁴ In the ancient world, corruption existed. The vice was, however, not frowned upon, as it is presently.¹⁹⁵ Many scholars who have studied corruption for decades, often cite an Indian text,¹⁹⁶ to justify that corruption indeed existed in the ancient world.¹⁹⁷ Farrales points out that 'in the Indian text, Kautilya, an adviser to the Indian emperor, Chanragupta Maurya counsels the emperor of the necessity to fight corruption'.¹⁹⁸ Kautilya is quoted telling the emperor that:

'Imported goods shall be sold in as many places as possible... [and] local merchants who bring in foreign goods by caravan or by water routes shall enjoy exemption from taxes, so that they can make a profit. The King shall protect trade routes from harassment by courtiers, state officials, thieves and frontier guards... [and] frontier officers shall make good what is lost... Just as it is impossible not to taste honey or poison that one may find at the tip of one's tongue, so it is impossible for a government servant not to eat up at least a bit of the King's revenue... And there are about forty ways of embezzlement by the government servant ...'¹⁹⁹

Apart from ancient India, corruption was also a rampant occurrence in ancient Greece and Rome.²⁰⁰ In fact, MacMullen claims that corruption was one of the major reasons for the collapse of the Roman Empire.²⁰¹ Greece was not different either.²⁰² Consequently,

¹⁹³ Klitgaard (1988) 7.

¹⁹⁴ Verses 14 -16, Chapter 26, Gospel of Mathew, Holy Bible.

¹⁹⁵ Klitgaard (1988).

¹⁹⁶ Kautilya, 1991, *The Arthashastra*, New Delhi: Penguin Books.

¹⁹⁷ Corruption scholars such as Daniel Kaufmann and Vito Tanzi cite this Indian text in their various works on corruption.

¹⁹⁸ Farrales MJ 'What is Corruption? A History of Corruption Studies and the Great Definitions Debate,' (2005) San Diego: University of California, at page 4. Available at <http://ssrn.com/abstract=1739962> (accessed 8 July 2019).

¹⁹⁹ Kautilya (1991) 281.

²⁰⁰ Farrales (2005) 4.

²⁰¹ MacMullen R *Corruption and the decline of Rome* (1988).

²⁰² Wilson RC *Ancient Republicanism: its struggle for liberty against corruption* (1989). Wilson in his aforementioned work notes that the practice of democracy in Athens was riddled with corruption.

the Council of Areopagus was mandated to monitor corruption in Athens.²⁰³ In the year 350 B.C.E, Aristotle points out that the Council of Areopagus had the mandate to ensure the proper execution of the law.²⁰⁴ It also oversaw the fundamental aspects of the government of the state of Athens. The renown philosopher notes that the Council carried out judicial duties and even executed sanctions against those who disobeyed set laws.²⁰⁵ The Council of Areopagus also acted as an oversight body, to ensure that magistrates administered their offices, in accordance with the set laws. Any citizen of Athens was allowed to make a complaint to the Council of Areopagus, detailing what wrong had been done to him.²⁰⁶

Apart from the ancient state of Athens, corruption did not spare ancient China.²⁰⁷ Lambsdorff, Taube and Schramm point out that ancient China had stern penal laws for corrupt behavior.²⁰⁸ The scholars further state that in the 3rd century B.C, the Qin dynasty enacted severe penal laws on corruption. In the 11th century, a Chinese reform-minded economist noted, that without a careful selection of individuals to serve in government positions, corruption can arise even with good laws and institutions in place.²⁰⁹ He states that 'but what I wish particularly now to emphasize is that history proves it to be impossible to secure proper government by merely relying on the power of the law to control officials when the latter are not the right men for the job'.²¹⁰

In Africa, the earliest corrupt behavior can be traced to Egypt, during the rule of the 1st Dynasty between 3100 - 2700 BC.²¹¹ Corruption was prevalent in the Egyptian judicial

²⁰³ Aristotle discusses the role of the said body in his work, *The Constitution of Athens*.

²⁰⁴ Aristotle *The Constitution of Athens*, see Part 3 & 4. The aforementioned work by Aristotle is translated into English by Sir Frederic G. Kenyon.

²⁰⁵ Aristotle Part 3 & 4.

²⁰⁶ Aristotle Part 3 & 4.

²⁰⁷ Lambsdorff Taube & Schramm (eds.) *The New Institutional Economics of Corruption* (2005).

²⁰⁸ Lambsdorff Taube & Schramm (2005).

²⁰⁹ Wang An Shih was a Chinese economist during the song dynasty in the 11th century. He advocated for 'new policies', a socioeconomic program that was deemed controversial at the time.

²¹⁰ As cited in Alatas (1968) 8.

²¹¹ El-Saady H 'Considerations on Bribery in Ancient Egypt' (1998) 25 *Studien Zur Altgyptischen Kultur*, 295-304. Available at <http://www.jstor.org/stable/25152765> (accessed 9 July 2019).

system.²¹² El-Saady uses textual evidence, biographies and religious texts to claim that corruption existed in ancient Egypt, and various sanctions were legislated in the fight against corruption.²¹³ El-Saady claims that evidence of strict laws on corruption in ancient Egypt, is found in royal decrees of Horemheb.²¹⁴ El-Saady states that the decree of Horemheb prescribed severe punishment for corrupt judges and priests of the Upper and Lower Egypt.²¹⁵ The decree of Horemheb stated that any judge, official or priest 'who shall engage in corrupt behavior shall be sentenced to death'.²¹⁶ El-Saady however, notes that other sanctions existed for the punishment of bribery in ancient Egypt. The sanctions included being sacked from occupying a public office. An official could also lose their rank in society.²¹⁷

Consequently, this section illustrates that advocacy against corruption has been ongoing for centuries, and is not about to cease. Having discussed the historical viewpoint on corruption, it is now appropriate to delve into definitional debates on corruption.

2.3 CORRUPTION DEFINED; A HISTORY

The origins of the word 'corruption' are in Latin.²¹⁸ The Latin word from which the English word 'corruption' originates from is 'corruptus'. The word 'corruptus' is the past participle of the Latin word 'corrumpere'. The word 'corrumpere' means to 'mar, bribe, destroy' in the English language.²¹⁹

The debate on how to define corruption is an old one. This is partly due to the cross-cutting nature of corruption studies.²²⁰ Actually Philps has noted that agreeing on a

²¹²El-Saady (1998) 25.

²¹³El-Saady (1998) 25.

²¹⁴ See BAR III, § 63-4; Davies BG 'Egyptian Historical Records of the Later Eighteenth Dynasty' facs. VI, 1995, 81., cited in El-Saady (1998) 25.

²¹⁵ El-Saady (1998) 25.

²¹⁶ BAR III, § 64a; C. LA;OUETTE, Textes sacres et textes profanes de l'ancienne Egypt, 1984, 83., as cited El-Saady (1998) 25.

²¹⁷ El-Saady (1998) 25.

²¹⁸ Harper D Online Etymology Dictionary (2016) available at <https://www.etymonline.com/word/corrupt>. Accessed on (12 July 2019).

²¹⁹ Harper D (2016).

²²⁰ Farrales (2005).

universal general definition of what constitutes corruption, is impossible.²²¹ Farrales suggests that, the only way to make some head way is to 'distinguish between competing approaches'.²²²

2.3.1 MORALISTS AND REVISIONISTS ON DEFINING CORRUPTION

In the earlier years, the definition of corruption was debated between the 'moralists' and 'revisionists'.²²³ The moralists espoused the view that corruption was inherently toxic to society, to politics and to development in general.²²⁴ The moralist definitions of corruption had ethical connotations.²²⁵ Banfield states that 'one who follows the rule is without morality ... in relation to persons outside the family –[but] in relation to family members he applies standards of right and wrong ...'.²²⁶ The broad interpretation from Banfield's work was that corruption was caused by a lack of moral behavior which held back society from developing.²²⁷ The moralists definition of corruption was viewed as a western definition by Leys.²²⁸ Leys suggests that although 'nepotistic practices are generally deemed corrupt by western standards, it is not always the case that family – based appointments are deemed corrupt in any society'.²²⁹ Leys argues that, to state that all nepotistic practices are corruption, is to define corruption from a western lens, and to ignore cultural differences that would not define such practices as corrupt.²³⁰

The revisionists on the other hand, did not view corruption as necessarily a bad practice in society.²³¹ They also defined corruption from a 'value-free' angle and did not

²²¹ Philp M 'Defining Political Corruption' in Heywood, Mark Phillips (ed.) *Political Corruption* (1997).

²²² Farrales (2005) 13.

²²³ The debate between these two categories of scholars occurred in the 1950s and 1960s.

²²⁴ Farrales (2005) 14.

²²⁵ See Banfield EC *The Moral Basics of Backward Society* (1958).

²²⁶ Banfield (1958) 85-86.

²²⁷ Banfield (1958) 85-86.

²²⁸ Leys C 'What is the Problem about Corruption?' (1965) 3 (2) *The Journal of Modern African Studies* 215-230.

²²⁹ Leys (1965) 215-230.

²³⁰ Leys (1965) 215-230.

²³¹ Scholars like David Bayley and Joseph Nye claim that corruption resulted from uncertainties between different systems deployed in society.

necessarily believe that corruption was harmful to society.²³² Actually the revisionists, to date, claim that corruption could be advantageous to society in some instances.²³³ Schleifer and Vishny claim that 'organized corruption' can be beneficial to society as compared to 'disorganized corruption'.²³⁴ Huntington also claimed that corruption may be a useful tool to the survival of a political system. He states that corruption 'may be a means to assimilating new groups into the political system by irregular means, because the system has been unable to adapt sufficiently fast to provide legitimate and acceptable means for this purpose'.²³⁵

2.3.2 DEFINING CORRUPTION AS PUBLIC-OFFICE-CENTERED, MARKET-CENTERED OR PUBLIC-INTEREST-CENTERED

The revisionists to some extent prevailed over the moralists on defining what corruption was, in the 1960s.²³⁶ In the 1970s, Heidenheimer examined new categorizations on how to define corruption.²³⁷ He suggested that corruption definitions were either 'public-office-centered, market-centered, or public-interest-centered'.²³⁸ We will now traverse Heidenheimer's corruption definition categorizations.

2.3.2.1 PUBLIC-OFFICE-CENTERED DEFINITIONS OF CORRUPTION

The leading scholars for the public-office-centered categorization of defining corruption, are David Bayley and David Nye.²³⁹ The most famous definition in this categorization of corruption is the definition crafted by David Nye. Nye's definition of corruption is famous because it manages to be broad and accurate. Nye's definition also covers the corrupt

²³² See for example Huntington SP *Political Order in Changing Societies* (1968).

²³³ Shleifer A & Robert WV 'Corruption' (1993) 108(3) *Quarterly Journal of Economics* 599-617.

²³⁴ Shleifer & Robert (1993) 599-617.

²³⁵ Huntington SP *Political Order in Changing Societies* (1968) 60-61.

²³⁶ Farrales (2005) 16.

²³⁷ Heidenheimer AJ (ed.) *Political Corruption: Readings in Comparative Analysis* (1970).

²³⁸ Heidenheimer (1970).

²³⁹ See Bayley DH 'The Effects of Corruption in a Developing Nation' (1966) 19(4) *Western Political Quarterly* 719-732; also see Nye J 'Corruption and Political Development: A Cost-Benefit Analysis' (1967) 61(June) *American Political Science Review* 417-27.

behavior of both political leaders and public administrators. It is founded on earlier definitions of corruption by Bayley and McMullan.²⁴⁰ Nye defined corruption as follows: -

[corruption is] ... behavior which deviates from the formal duties of a public role (elective or appointive) because of private-regarding (personal, close family, private clique) wealth or status gains; or violates rules against the exercise of certain types of private-regarding influence.²⁴¹

Whereas David Bailey defined corruption in regard to how an individual misuses authority for private gain as follows: -

Corruption, while being tied particularly to the act of bribery, is a general term covering misuse of authority as result of considerations of personal gain, which need not be monetary.²⁴²

The main difference in this categorization of definitions of corruption is the use of public office for private gain. It is also important to note that a key characteristic that emanates from these definitions is that corruption is abuse of public office.

The fact that Nye's definition of corruption at the time was precise and accurate did not save it from criticism.²⁴³ Williams, among other scholars, argued that Nye's definition excluded certain categories of people that ought to be included in the corruption matrix.²⁴⁴ These people include powerful lobby and interest groups. Farrales also noted that Nye's definition of corruption did not include political leaders or public administrators who may favor people from their tribe or home region.²⁴⁵ On the African continent, one of the enabling causes of political corruption is the allocation of public resources on the basis of ethnicity.

²⁴⁰ See McMullan M 'A Theory of Corruption' (1961) 9(2) *Sociological Review* 181-201. In 1961, McMullan defined corruption as 'A Public official is corrupt, if he accepts money or money's worth for doing something that he is under a duty to do anyway, that he is under a duty not do, or to exercise a legitimate discretion for improper reasons'.

²⁴¹ Nye J 'Corruption and Political Development: A Cost-Benefit Analysis' (1967), 61(June) *American Political Science Review* 417-27.

²⁴² Bayley DH 'The Effects of Corruption in a Developing Nation' (1966) 19(4): *Western Political Quarterly* 719-732.

²⁴³ See Williams R *Political Corruption in Africa* (1987).

²⁴⁴ Williams (1987).

²⁴⁵ Farrales (2005) 18.

2.3.2.2 MARKET-CENTERED-DEFINITIONS OF CORRUPTION

Heidenheimer's other categorization of definitions of corruption, are those definitions that are market-centered.²⁴⁶ Farrales states that market-centered definitions of corruption have limited value. This is because 'they are less concerned with the general "what" of corruption as they are with the "how", "when", "why" and "to what degree"'.²⁴⁷ Under the market-centered definitions, are those definitions crafted by Robert O. Tilman and Jacob Van Klaveren.²⁴⁸ Tilman defined corruption as follows: -

Corruption involves a shift from mandatory pricing model to a free-market model... when this happens bureaucracy ceases to be patterned after the mandatory market and takes on characteristics of the free market.²⁴⁹

Two years later, Van Klaveren built on Tilman's definition to expand the definition of corruption in the market-centered category. Van Klaveren defined corruption as follows:

A corrupt civil servant regards his public office as a business, the income of which he will ... seek to maximize. The office then becomes a 'maximizing unit'. The size of income depends ... upon the market situation and his talents for finding the point of maximal gain on the public's demand curve.²⁵⁰

It should be noted that market-centered-definitions are only useful in describing rent-seeking, for example, however, that is where their usefulness, in describing corruption ends.²⁵¹ The market-centered definition, as Johnston notes '... overlooks not only the intangible benefits (prestige, promises of political support) that can flow from the abuse

²⁴⁶ Heidenheimer AJ (ed.) *Political Corruption: Readings in Comparative Analysis* (1970).

²⁴⁷ Farrales (2005) 19.

²⁴⁸ Farrales (2005) 19.

²⁴⁹ Tilman RO 'Emergence of Black-Market Bureaucracy: Administration Development and Corruption in the New States' (1968) 28(5) *Public Administration Review* 437-444.

²⁵⁰ Van Klaveren J. 'The Concept of Corruption' in Heidenheimer AJ (ed.), *Political Corruption: Readings in Comparative analysis*.

²⁵¹ Kreuger AO 'The Political Economy of Rent-Seeking Society' (1974) 64 *American Economic Review* 291-303.

of authority, but also varieties that are not quid-pro-quo exchanges, such as embezzlement'.²⁵²

2.3.2.3 PUBLIC-INTEREST-CENTERED DEFINITIONS OF CORRUPTION

The other categorization of corruption definitions that Heidenheimer examines, are those that are public-interest-centered.²⁵³ This categorization of corruption definitions, advantages private interest at the cost of public interest. The prominent definitions in this classification are those of Rogow and Laswell, and Friedrich. Rogow and Laswell have defined corruption as hereunder: -

A corrupt act violates responsibility toward at least one system of public or civic order and is in fact incompatible with (destructive of) any such system. A system of public or civic order exalts common interest over special interest: violations of the common interest for special advantage are corrupt.²⁵⁴

Several years later, Friedrich builds on Rogow and Laswell definition of corruption and defines it as follows: -

The pattern of corruption can be said to exist whenever a power-holder who is charged with doing certain things, i.e., who is responsible functionary or officeholder, is by monetary or other rewards not legally provided for, induced to take actions which favor whoever provides the rewards and thereby does damage to the public and its interests.²⁵⁵

The central theme in the definitions of the public-interest-centered grouping is public interest. The challenge with this theme, is what public interest is. Can the word 'Public interest' be defined? In a multicultural civilization, public interest may be a challenge to define.²⁵⁶

²⁵² Johnston M 'The Definitions Debate: Old Conflicts in New Guises' in Arvind KJ (ed.) *The Political Economy of Corruption* (2001) 19.

²⁵³ Heidenheimer (1970).

²⁵⁴ Rogow A & Harold DL *Power, Corruption, and Rectitude* (1963) 132.

²⁵⁵ Friedrich CJ *Limited Government: A comparison*. (1974) 74.

²⁵⁶ Farrales (2005) 20-21.

Farrales has suggested that the other challenge of public-interest-centered definitions of corruption, is that they tend to fuse corruption with its effects.²⁵⁷ Farrales notes that: -

Whereas the market-centered definitions often emphasize the "how", "why" and maybe even the "when" of corruption, public-interest-centered definitions seem to put extra emphasis on the "so what" of corruption. Were we to tease out and remove this "so what" aspect of public-interest-centered definitions, then essentially we are left with a public-office-centered definition.²⁵⁸

It is important to note that public-office-centered definitions may have limitations that public-interest-centered definitions do not have. Public-office-centered definitions seem to lay more emphasis on corruption by bureaucrats, than on political leaders. Yet the degree of corruption practiced by a political leader maybe more harmful to society, than corruption by an office clerk, for example. Consequently, corruption by a political leader has more harm on people's lives, hence the public interest.²⁵⁹

2.3.3 PUBLIC OPINION OR LEGALISTIC DEFINITIONS

In addition to the aforementioned classifications on how to define corruption, there exists another debate on how to define corruption between 'public opinion' and 'legalistic' definitions. The key issue around this conversation is how to define 'abuse of public office'.²⁶⁰

The scholars in favor of 'public opinion' definitions of what constitutes corruption, assert that customs and public opinions should be the sole factor, in deciding what a corrupt act is. A leading sociologist, Alatas, states that what is a corrupt act in one society, may not be a corrupt act in another community. Consequently, the opinion of the public, is what would determine what is corruption.²⁶¹ The most prominent definition of corruption in the

²⁵⁷ Freidrich (1974) 74; also see Farrales (2005) 21.

²⁵⁸ Farrales (2005) 21.

²⁵⁹ Farrales (2005) 21.

²⁶⁰ Farrales (2005) 22.

²⁶¹ Alatas SH *The Sociology of Corruption. The Nature, Function, Causes and Prevention of Corruption.* (1968)., also see Alatas, Syed H *Corruption: Its Nature, Causes and Functions* (1990).

'public opinion' classification is by British Sociologist, Robert Neild. He defines corruption as follows: -

The breaking by public persons, for the sake of private financial or political gain, of the rules of conduct in public affairs prevailing in a society in the period under consideration.²⁶²

A close examination of Neild's definition of corruption still underscores the function of public opinion for an act to be viewed as corrupt. The scholars in this classification stress the importance of norms in defining corruption.²⁶³ This is a valid assertion, but the flipside of this argument is that, then defining corruption becomes problematic. This is because societal norms are ever-evolving. The study of corruption would also be made extremely difficult, because what is corruption would be indescribable.²⁶⁴

The other scholars like Andreski and Theobald have chosen to define corruption in only legalistic terms.²⁶⁵ Andreski defines corruption as 'the practice of using the power of office for making private gain in breach of laws and regulations nominally in force'.²⁶⁶

Theobald, on the other hand, has defined corruption in briefer terms. He has stated that corruption is 'the illegal use of public office for private gain'.²⁶⁷ Farrales consequently, concludes that this debate between 'public opinion' and 'legalistic' scholars on what constitutes corruption is inappropriate.²⁶⁸ He suggests that there is consensus among almost all corruption scholars that formal laws and public opinion, are key determinants on what constitutes a corrupt act.²⁶⁹ Scholars like Nye and Vito Tanzi emphasize the role of formal laws, cultural differences and public opinion in their definitions of corruption.²⁷⁰

²⁶² Neild R *Public Corruption: the dark side of social evolution*. (2002).

²⁶³ Neild (2002).

²⁶⁴ Farrales (2005) 23.

²⁶⁵ See Andreski S *The African Predicament: A study in the Pathology of Modernization* (1968)., also see Theobald R *Corruption, Development and underdevelopment* (1990).

²⁶⁶ Andreski (1968) 92.

²⁶⁷ Theobald (1990).

²⁶⁸ Farrales (2005) 24.

²⁶⁹ Farrales (2005) 23.

²⁷⁰ See Nye J (1967) 417-27; also see Vito T 'Corruption Around the World: Causes, Consequences, Scope, and Cures' (2014) *Staff Papers (International Monetary Fund)* Vol. 45, No.4 (Dec. 1998) 559-594.

Heidenheimer's classification of corruption as "black, white, gray" also includes formal laws and public opinion.²⁷¹ Heidenheimer notes that: -

"black" corruption occurs when both public officials and the general public perceive acts to be inappropriate and demand that these acts be punished by law. "White" corruption applies to behavior that does not break a specific law and that the general public does not regard as serious enough for criminal punishment. "Gray" corruption occurs when there are legal prohibitions but the public does not support them, or when prohibitions do not exist, but the public demands such prohibitions.²⁷²

Heidenheimer's aforementioned description of corruption may, on the face of it, seem to have racist connotations. The scholarly consensus, however, is that the classification of corruption definitions, in accordance with formal laws, cultural differences and public opinion, is illogical.

Nye's definition of corruption seems to have won the debate on how to define corruption because many corruption scholars today, seem to define corruption from a public-office-centered approach.²⁷³ Szeftel who studied corruption in Zambia in the 1980s, points out that the substance of corruption is well articulated by the public-office-centered definitions.²⁷⁴ Many other prominent corruption scholars like Suzan Rose-Ackerman and Robert Klitgaard also adopted Nye's definition of corruption.²⁷⁵ Farrales suggests that the popularity of Nye's definition of corruption is boosted by international

²⁷¹ Heidenheimer (1970).

²⁷² Farrales (2005) 24.

²⁷³ See for example Rose-Ackerman S *Corruption: A Study in Political Economy*. (1978)., Szeftel M 'Corruption and the Spoils System in Zambia.' In Michael C (ed.). *Corruption: Causes, Consequences and Control*. (1983). Williams R *Political Corruption in Africa* (1987); Klitgaard R *Controlling Corruption*. (1988)., Johnston M, Heidenheimer A & Victor LV (eds.). *Political Corruption: A Handbook*. (1989). Jain AK "Power, Politics and Corruption," in Arvind K J (ed.), *The Political Economy of Corruption*. (2001); Doig A & Theobald R (eds.) *Corruption and Democratization*. (2000).

²⁷⁴ Szeftel M 'Corruption and the Spoils System in Zambia' In Michael Clarke (ed.). *Corruption: Causes, Consequences and Control*. (1983).

²⁷⁵ Rose-Ackerman S *Corruption: A Study in Political Economy*. (1978). Klitgaard R *Controlling Corruption*. (1988).

organizations like Transparency International (TI) and the World Bank (WB).²⁷⁶ Both TI and WB formally adopt Nye's definition as their working definition of corruption.²⁷⁷

This was partly aided by both organizations' new found interest in eradicating corruption in the world, in the 1990s. Actually, Riley notes that the works of Rose-Ackerman and Klitgaard greatly influenced how both TI and WB approached the challenge of corruption in Africa, in the 1990s.²⁷⁸ Farrales claims that Rose-Ackerman and Klitgaard's impact on TI and WB's work greatly contributed to the adoption of Nye's definition of corruption. Rose-Ackerman has consulted for the WB for a longtime.²⁷⁹ Klitgaard also worked closely with the WB and has also consulted for International Monetary Fund (IMF).²⁸⁰

The criticism against Nye's definition of corruption, however, is that although it has allowed for scholarly discussions 'across different academic fields, it is too general and vague to be of much use by itself'.²⁸¹ Consequently scholars and researchers have been encouraged to use it sparingly with the hindsight of its shortcomings, to enable 'greater academic precision and rigor'.²⁸²

It should, however, be pointed out that there is no universally accepted definition of corruption. This is because of the differences in culture, around the world. What may be considered corruption in one part of the world, maybe gift-giving in another. This has also not been helped by the fact that corruption scholars emanate from a variety of professional backgrounds. Consequently, in the course of their studies of corruption, they use a variety of research methodologies, which are indigenous to their professions.

²⁷⁶ Farrales (2005) 27.

²⁷⁷ Farrales (2005) 27.

²⁷⁸ Riley S 'The Political Economy of Anti-Corruption Strategies in Africa' (1998) Development Centre Technical Papers No.122. Paris: Organization for Economic Co-operation and Development.

²⁷⁹ Farrales (2005) 28.

²⁸⁰ Farrales (2005) 27.

²⁸¹ Farrales (2005) 40.

²⁸² Farrales (2005) 40.

No wonder, that none of the provisions of the United Nations Convention Against Corruption (UNCAC) defines corruption.²⁸³ This is so, even when some member states pressed for the inclusion of definition of corruption in the UNCAC at drafting stage.²⁸⁴ The UNCAC however, covers some main types of corruption. These include bribery,²⁸⁵ embezzlement and misappropriation of public funds,²⁸⁶ abuse of functions and illicit enrichment,²⁸⁷ and obstruction of justice.²⁸⁸ The drafters chose to list activities that would amount to corruption to allow for flexibility in the future.²⁸⁹ Even when the United Nations has worked for many years on the prevention and eradication of corruption, an all-encompassing definition is yet to emerge from instruments it has adopted.²⁹⁰

2.4 CATEGORISATION OF CORRUPTION

Having wound up the definitional debates, with the public-office-centered approach holding sway on how to define corruption, it is important to state that these definitional debates have also influenced the categorization of corruption.²⁹¹ The most prominent classification of corruption is the one between petty and grand corruption.

Farrales notes that Rose-Ackerman was among the earliest scholars, to have pointed out this distinction in her work.²⁹² Rose-Ackerman suggested that while the essential motive behind petty corruption is monetary benefits, with grand corruption, it was either

²⁸³ Argondona A 'The United Nations Convention Against Corruption and its Impact on International Companies' (2006) Working Paper No. 656., 5., also available at <http://ssrn.com/abstract=960662>

²⁸⁴ See A/AC.261/IPM/11 of 12 November, 2001 and A/AC.261/IPM/24 OF 7 December, 2001. Some of the countries that pressed for the inclusion of a definition include Philippines and Peru.

²⁸⁵ Articles 15, 16 and 21 of the UNCAC.

²⁸⁶ Articles 17 and 22 of the UNCAC.

²⁸⁷ Articles 19 and 20 of the UNCAC.

²⁸⁸ Article 25 of the UNCAC.

²⁸⁹ Argondona (2006) 5.

²⁹⁰ Efforts by the United Nations to combat corruption can be traced to provisions in many of its earlier instruments. For example, in the Basic Principles on the Role of Lawyers (1990), the International Code of Conduct for Public Officials (1996), the Code of Conduct for Law Enforcement Officers (1979), Manual of Practical Measures on Corruption (1990), among others.

²⁹¹ Farrales (2005) 28.

²⁹² Farrales (2005) 28.

monetary benefits or the urge to stay in office.²⁹³ Rose-Ackerman further noted that the effect of petty corruption, was not the same as that of grand corruption on society. She suggested that while grand corruption involved 'a substantial expenditure of funds with a major impact on a government budget and growth prospects'.²⁹⁴ 'Petty corruption' involved routine government transactions such as tax payments, permit allocations, or regulation enforcement, whose impact is less substantial".²⁹⁵

Farrales points out examples of early scholarly work on grand corruption, including the efforts of Scott.²⁹⁶ In his work, Scott explores the function of 'political parties, electoral machines and democratic pressure' in India, Thailand and Ghana.²⁹⁷ Edited volumes by Bull and Newell also provide a good account of grand corruption.²⁹⁸ Bull and Newell assemble a group of experts to critically examine grand corruption in the developed world. Petty corruption can also be traced to Caiden and Caiden's earliest work on administrative corruption.²⁹⁹ Klitgaard also studies petty corruption in the Hong Kong, Singapore and Philippines.³⁰⁰

The divide between grand and petty corruption can also be attributed to the public-office-centered definitions of corruption, because the distinction has centered around the nature of office being abused.³⁰¹ The divide between grand and petty corruption, is the difference between political and administrative offices. In grand corruption, the political leader, in an agent - principal relationship, is answerable to citizens, while in petty corruption, the bureaucrat is answerable to the political leaders.³⁰²

²⁹³ Rose-Ackerman S 'The Political Economy of Corruption' In Kimberly A. Eliot (ed.) *Corruption and Government: Causes, Consequences and Reform* (1997) 27.

²⁹⁴ Rose-Ackerman (1997) 27.

²⁹⁵ Farrales (2005) 29.; also see Rose-Ackerman (1997) 27.

²⁹⁶ Farrales (2005) 29.

²⁹⁷ Scott JC *Comparative Political Corruption*. (1972).; also see work by Della PD and Vannucci A *Corrupt Exchanges: Actors, Resources and Mechanisms of Political Corruption*. (1999).

²⁹⁸ Bull MJ & Newell J *Corruption in Contemporary Politics*. (2003).

²⁹⁹ Caiden G & Caiden N 'Administrative Corruption' *Public Administration Review* (May-June): 300-309; also see Klitgaard (1988).

³⁰⁰ Klitgaard (1988).

³⁰¹ Farrales (2005) 30.

³⁰² Farrales (2005) 30.

Beyond the aforementioned classification of the literature on corruption, some scholars have categorized corruption according to the 'developed' and 'developing' countries. Farrales suggests that: -

'among the reasons usually given for such a categorization, are that market structures are inherently different in developing societies, that traditional notions of authority sometimes conflict with new forms of public office, and that economic and other types of market reform, in developing societies lead to changing incentives for opportunistic behavior'.³⁰³

Farrales concludes by stating that, this manner of theorizing about the various kinds of corruption, has a market-centered approach to defining corruption.³⁰⁴

Another theoretical categorization of corruption is the public-interest-centered approach, in which Heidenheimer points to the 'frequency' and 'degree' of impact of the corrupt act.³⁰⁵ Heidenheimer highlights the difference between 'routine' and 'aggravated' corruption.³⁰⁶ Robinson, on the other hand distinguishes between 'incidental, institutional and systematic corruption'.³⁰⁷ The scholarly efforts of Heidenheimer and Robinson emphasize the arguments in favor of public-interest-centered definitions.

2.5 DOES CORRUPTION HAVE BENEFITS?

Can corruption be justified in society on the basis that it encourages efficiency and the cost of doing business, thus enabling economic development? Some scholars argue that efficiency is an important quality.³⁰⁸ Rawls 'accepts some sacrifice of equality in exchange with efficiency, provided that inequality is to the greatest benefit of the least advantaged'.³⁰⁹ Consequently, You argues that 'inequality can have a functional role up to a

³⁰³ Farrales (2005) 31.

³⁰⁴ Farrales (2005) 31.

³⁰⁵ Heidenheimer (1970).

³⁰⁶ Heidenheimer (1970).

³⁰⁷ Robinson MM *Corruption and Development* (1998).

³⁰⁸ See Rawls J *A theory of Justice* (1999).

³⁰⁹ Rawls (1999) 57-58.

certain limit under certain conditions. So, one might argue that corruption can be justified by its functional role under certain conditions'.³¹⁰

Other scholars suggest that corruption 'greases the wheels' and consequently has a positive impact on economic development of a country.³¹¹ Bardhan has pointed out that corruption facilitates the overcoming of formalities by making them more moderate and less demanding. Bardhan also claims that this is a benefit that, consequently speeds up a transaction, which leads to economic growth.³¹² Fayed cites Bardhan, who also suggests that 'as long as there is competition between different bribers, allocation efficiency will be sustained'.³¹³ Bardhan notes that in the case of Sub-Sahara Africa, corruption opens up closed markets, that consequently increases competition.³¹⁴

You claims that 'corruption cannot be justified whenever it increases efficiency, because efficiency gain is not always just'. He suggests that incase of inefficient laws that apply to all equally, the other persons that bribe the bureaucrats, do so for their own advantage but not for the benefit of others.³¹⁵ You consequently suggests that 'it is hard to imagine having efficiency gain that is beneficial to the least advantaged through corruption unless everyone engages in corruption and benefits from it'.³¹⁶

It has been suggested that in developing countries like Uganda, which have inefficient regulations, corruption may increase efficiency and spur economic development.³¹⁷ You

³¹⁰ You JS *Corruption as Injustice*, San Diego: Annual Meeting of Political Science Association, August 30 September 2, (2007) 21.

³¹¹ See Levy D 'Price adjustment under the table: Evidence on efficiency-enhancing Corruption' (2007) 23 (2) *European Journal of Political Economy*, 423. Khan MH *A Typology of Corrupt Transactions in Developing Countries*. (1996) 27 (2) 12.

³¹² Bardhan P *Corruption and Development* (1997) A Review of the issues, *Journal of Economic Literature*, at 1320.

³¹³ Fayed AA 'Researching Corruption: Understanding its Key Concepts' (2018) Vol. 11, *Rule of Law and Anti -Corruption Journal* 4. Also available at: <https://doi.org/10.5339/rolecc.2018.11>.

³¹⁴ Leff N 'Economic Development Through Bureaucratic Corruption' in Ekpo MU (ed.) *Bureaucratic Corruption in Sub-Sahara Africa: Towards a Search for Causes and Consequences*, as cited in Fayed (2018) 4.

³¹⁵ You (2007) 21.

³¹⁶ You (2007) 21.

³¹⁷ Bayley DH 'The Effects of Corruption in a Developing Nation' 19(4) *Western Political Quarterly*: 719-732.

suggests that corruption has been often regarded as a cost of commerce, where the benefit is greater than the cost.³¹⁸ He points out that payment of a bribe to bureaucrats will facilitate the bribers to be served first, at the expense of others that do not pay bribes. You further states that the bureaucrats may even decide to delay the processes in the absence of a bribe.³¹⁹ Zak and Knack also have claimed that when many people benefit from corruption, the society encounters declining levels of 'social trust and increased corruption'.³²⁰

Consequently, the arguments for the economic efficiency of corruption are negative to society. Several empirical studies have indicated so.³²¹ Actually, the empirical studies indicate that the efficiency argument in favor of corruption has 'significant negative effects on economic efficiency in the long run'.³²² You cites other scholars and states as follows: -

... empirical studies show that the negative effect of corruption on development is not restricted to a narrow sense of economic development but extended to a broader meaning of "human development" such as education, health care, and even to subjective well-being. There is evidence that corruption lowers expenditures on education. ... A high level of corruption has adverse consequences for a country's child and infant mortality rates, percentage of low-birthweight babies in total births, adult literacy rate, and dropout rates in primary schools. People who live in more corrupt countries have lower levels of happiness or life satisfaction on average.³²³

³¹⁸ You (2007) 22.

³¹⁹ You (2007) 22.

³²⁰ Zak PJ and Knack S 'Trust and Growth' (2001) *The Economist Journal* 111.

³²¹ See the work of Kaufmann D, Kraay A & Ziodo-Lobaton P 'Governance Matters' World Bank Research Paper No. 2196 (Washington DC: World Bank, 1999); also see Mauro P 'Corruption and Growth' (1995) 110 *Quarterly Journal of Economics* 681-712.

³²² Kaufmann, Kraay & Ziodo-Lobaton (1999).

³²³ You (2007) 25., also see Mauro (1995) 110 681-712., Kaufmann, Kraay & Ziodo-Lobaton (1999)., Gupta S, Davoodi R & Rosa Alonso-Terme R 'Does Corruption Affect Income Inequality and Poverty?' (2002) 3 *Economics of Governance*, Helliwell JF and Huang H, 'How is your Government? International evidence linking good government and well-being' Working Paper (2005).

Therefore, it may be conclusively submitted that the short-term benefits of corruption to the economy of a particular country, are of no consequence to the harmful long-term effects of this vice, to its economic development.

2.6 THE TRIGGERS OF CORRUPTION

Perhaps it is now important to examine the factors that trigger corruption, in the first place. The main cause of grand corruption is lack of ethical, honest and knowledgeable political leaders in society. This consequently breeds poor accountability in the management of public affairs.³²⁴ This state of affairs is worsened by leaders, who bribe their way to elective office, which enables society to be led by individuals with questionable morals.³²⁵ Consequently, such political leaders will be more concerned with recovering what they spent when bribing their way to public office, as opposed to serving the citizens that elected them.³²⁶

Some of the basic principles of the African Charter on Democracy, Elections and Governance (ACDEG) are to 'promote the holding of regular, free and fair elections'.³²⁷ Others key provisions are 'to institutionalize legitimate authority of representative government, as well as democratic change of governments'.³²⁸ The ACDEG also provides for the fight against corruption.³²⁹ One of the key principles that state parties must observe under the ACDEG is the 'condemnation and rejection of acts of corruption, related offenses and impunity'.³³⁰ The regional instrument also provides that 'in order to advance political, economic and social governance, state parties commit themselves to improving efficiency and effectiveness of public services and combating corruption'.³³¹ Under the

³²⁴ Asea WB 'Combating Political and Bureaucratic Corruption in Uganda: Colossal challenges for the church and the citizens' (2018) 74(2) *HTS Teologiese Studies/Theological Studies* 4535., also available at <https://doi.org/10.4102/hts.v74i2.4535>., also see Kwan YL *From Third World to First: The Singapore story: 1965-2000* (2000).

³²⁵ Asea (2018).

³²⁶ Asea (2018) 3.

³²⁷ Article 2 of ACDEG.

³²⁸ Article 2(3) of ACDEG.

³²⁹ See Article 3(9) of ACDEG.

³³⁰ Article 3(9) of ACDEG.

³³¹ Article 27 (5) of ACDEG.

ACDEG member states are also required to 'institutionalize good economic and corporate governance through, inter alia, preventing and combating corruption and related offences'.³³²

The basic principles of African Union Convention on Preventing and Combating Corruption (AUCPCC) provide for 'respect for democratic principles and institutions, popular participation, rule of law and good governance'.³³³ In regard to regulating elections campaign financing, the AUCPCC requires state parties to 'proscribe the use of funds acquired through illegal and corrupt practices to finance political parties and incorporate the principle of transparency into the funding of political parties'.³³⁴ These two African Union instruments address the challenge of corruption in electoral democracies.

Larok has pointed out that a lack of accountability is evident at levels of the political organizations. This is especially so when news media is awash with stories on corrupt activities in public procurement, embezzlement of public funds, the buying and selling of votes during electoral campaigns, the forging of academic documents, among other corrupt vices.³³⁵

The other major trigger of grand corruption is anti - corruption agencies that cannot execute their mandate, effectively.³³⁶ Either they are established and deliberately availed limited human resources and dismal funding, to execute their role or they are filled with ruling party cadres, as human resource. These cadres are in office, to play a cosmetic

³³² Article 33 (30 of ACDEG., The ACDEG recently marked a decade, since its adoption and a special edition of the Journal of African Law was published by Cambridge University Press but none of the articles published examines the relationship between corruption and ACDEG, although the instrument has provisions on combating corruption. The Journal Articles published devote time to the history of ACDEG, whether ACDEG is justiciable before the African Court, Presidential term limits, resistance of gross undemocratic practices, among other topics.

³³³ Article 3(1) of the AUCPCC.

³³⁴ Article 10 of the AUCPCC.

³³⁵ Larok 'A Different Approaches, same goals: Civil Society and the fight against corruption in Uganda' (2012) 103.

³³⁶ Maira M 'Uganda: Overview of Corruption and Anti-Corruption: The U4 Expert Answers' (2013) Transparency International, Centre for Development Practitioners 5(379) 2-27.

function to the anti-corruption efforts. This state of affairs, in turn facilitates an environment where grand corruption blooms, unabated.³³⁷

This environment is made more conducive for corrupt activities to flourish by the court system, where court cases commenced in the system are unduly delayed. The perpetrators of corruption, being aware of all these weaknesses in the anti-corruption mechanisms in place, will continue with their criminal activities relentlessly.³³⁸

Perhaps another key factor that causes both grand and petty corruption is the ethics and values of a particular society.³³⁹ Considering that ethical behavior and values are practices that are inculcated at an individual level, these can only spread to society as a result of informal engagements within members of that society. Consequently, corrupt activities cannot thrive in such a community, because the day-to-day behavior of the individual members of the society would not tolerate corruption in their community.³⁴⁰ The antithesis of an ethical community, is an environment where the public admires and adores the corrupt.³⁴¹ If such a society does not question the sources of wealth of the perpetrators of corruption, this becomes a convenient society, in which they can flaunt their ill-gotten wealth, without question from the public. Matters are not helped by the citizens in such societies, who adore and glorify such criminal individuals.³⁴²

One of the major causes of petty corruption is low remuneration that bureaucrats receive.³⁴³ Van Rijckeghem and Weder point out that what a civil servant earns and what expenditure they incur to live a decent life, is an important factor, on whether an individual engages in corruption at their work place.³⁴⁴ Once what the civil servant earns

³³⁷ Maira (2013) 2-27.

³³⁸ Okorach M 'Judicial Independence and Government Interference. A Discussion paper on Corruption' (2014) available at: <http://www.corruption.int/2014.judicial%20independence.pdf>.

³³⁹ Fayed A 'Understanding Corruption: Tackling its Multidisciplinary Nature' (2016) (2) 3 *Middle East Review of Public Administration* 3.

³⁴⁰ Fayed (2016) 3.

³⁴¹ Asea (2018) 3.

³⁴² Asea (2018) 3.

³⁴³ Van Rijckeghem C & Weder B 'Bureaucratic Corruption and the rate of temptation: do wages in the civil service affect corruption, and by how much?' (2001) 65(2) *Journal of Development Economics*, 307-331.

³⁴⁴ Van Rijckeghem & Weder (2001) 307-331., also see Fisher (2012) 307-331.

is less than the expenses they incur, then a need to be corrupt is created. This kind of corruption is prevalent among the low-level bureaucrats.³⁴⁵

Another major cause of petty corruption is peer pressure from corrupt colleagues. Where an individual civil servant is pressured into engaging into a collective corrupt act at his work place. If the individual civil servant refuses to engage in the collective corrupt act, he may be ostracized by his fellow colleagues, for not engaging in the corrupt act.³⁴⁶ He may probably find himself out of a job, because his other colleagues fear that he may, sometime in the future, become a whistleblower about the corrupt activities within the office. Conversely, if he engages in the collective corrupt act, he will be embraced by his corrupt colleagues.³⁴⁷ On the other hand, corruption can also be facilitated by greedy civil servants who are well paid.³⁴⁸ This is partly explained by how the individuals holding public office were mentored. This need for more money, even when a civil servant is well – paid, is sometimes caused by a need to sustain an extravagant lifestyle.³⁴⁹

Related to the above cause of corruption, is a low-level civil servant who observes a senior colleague engage in corruption without being punished. This does not only show a bad example to the junior civil servant, but also will motivate him to contemplate about engaging in the same vice.³⁵⁰ Consequently, in an environment where the rule of law is not being strictly observed, many senior civil servants and political leaders will engage in corrupt activities, because they are sure that no one will punish them for engaging in these fraudulent behaviors.³⁵¹ The aforementioned state of criminal affairs flourishes in an environment that is secretive and not transparent. Consequently, no one is holding anyone to account for their corrupt activities.³⁵²

³⁴⁵ Fayed (2016) 3.

³⁴⁶ Fayed (2016) 3.

³⁴⁷ Fayed (2016) 3.

³⁴⁸ Maira (2013) 3.

³⁴⁹ Maira (2013) 3.

³⁵⁰ Fayed (2016) 3.

³⁵¹ Carothers T 'Rule of Law Revival' (1998) *The Foreign Affairs* 77 - 95.

³⁵² Kolstad I & Wiig A 'Is Transparency the key to reducing corruption in resource rich countries?' *World Development* (2009) 37(3) 521-532.

2.7 HOW CORRUPTION CREATES AN UNJUST SOCIETY

It was noted earlier that there is a school of thought that justifies corruption as a tool that 'greases the wheels' which enables the economic growth of a country. An opposing school of thought, however, has noted that corruption has long-term negative effects on economic development. Consequently, there is nothing advantageous that results from corruption. The Organization for Economic Co-operation and Development (OECD) has noted that corruption has severe effects for the economic, social and political growth of all sectors of life, of all nations.³⁵³

OECD points out that business resources that would facilitate businesses to innovate and stay competitive are instead re-directed to the bribery of bureaucrats. The OECD further states that individuals working in government convert public resources for their own personal use at the expense of society.³⁵⁴ This conversion of public resources by individuals working in government has led to a scarcity of public resources which should facilitate the well-being of their people.

The OECD also further suggests that corruption facilitates human trafficking which exacerbates the challenge of refugees.³⁵⁵ The Secretary General of the OECD, Angel Gurría, also notes that corruption is going to be a major challenge in achieving the 2030 sustainable development goals.³⁵⁶

2.8 EFFECTS OF CORRUPTION ON THE VARIOUS SECTORS OF SOCIETY

Corruption can severely cripple and affect various sectors of society, if left unchecked. These severe effects of corruption can consequently lead to economic, social and political instability in society. Hereunder, I traverse some of the essential sectors of society that may be affected by corruption.

³⁵³ OECD *Putting an End to Corruption* (2016). Also available at: www.oecd.org/putting-an-end-to-corruption.pdf.

³⁵⁴ OECD (2016).

³⁵⁵ OECD (2016).

³⁵⁶ OECD (2016).

2.8.1 ECONOMY

Corruption can severely undermine the economic development of a nation in several ways to the detriment of the citizens.³⁵⁷ Corruption can impede private sector production by raising the cost of doing business as bribes increase the price of a business to conclude a transaction. This consequently 'eats' into the profitability of a business.³⁵⁸ This perverted business environment can be a disincentive for entrepreneurs.

Investments can be distorted, with businesses preferring to use their resources to engage in bribery of bureaucrats in order to join the exclusive cartel of insiders. This as a result, reduces the resources businesses are able to actually invest in productive investment.³⁵⁹ This consequently affects the attractiveness of foreign direct investments to a country.³⁶⁰

The efficient allocation of public resources is also distorted because of corruption.³⁶¹ Public officers allocate public resources to sectors where they will individually benefit, maximally. This is at the expense of the efficient allocation of public resources for the benefit of the general public.³⁶² These unethical activities, consequently affect the social welfare of citizens.³⁶³ Education, healthcare and water are some of the social welfare services that may be affected by corruption. This situation is exacerbated when these social services are privatized, which leads to a blurring of the private sector from the public sector.³⁶⁴

The quality of human resource in the public service can also be affected by corruption.³⁶⁵ This is because appointments to the civil service will be on the basis of favoritism. Meritorious appointments to the civil service take the backstage. This consequently,

³⁵⁷ OECD (2016) 1.

³⁵⁸ OECD (2016) 1.

³⁵⁹ OECD (2016) 1.

³⁶⁰ Javorcikm B & Wei SJ 'Corruption and cross-border investment in emerging markets: Firm-level evidence' (2009) 29 *Journal of International Money and Finance* 605-624.

³⁶¹ OECD (2016) 1.

³⁶² OECD (2016) 2.

³⁶³ OECD (2016).

³⁶⁴ International Council on Human Rights & Transparency International (2009) 45.

³⁶⁵ OECD (2016) 2.

interferes with the quality of decision-making by those individuals appointed through favoritism.³⁶⁶ In most cases, their decision-making will mirror the wishes of those who appointed them. This maybe evidenced in the inefficient allocation of public resources to less-deserving sectors.³⁶⁷

Tax evasion may also flourish in an environment that is riddled with corrupt individuals.³⁶⁸ The OECD points out that corruption related to customs is costing the world about two billion United States Dollars, annually.³⁶⁹ Closing the loopholes in tax evasion in countries, can go a long way in enabling a good business environment which enables economic growth.³⁷⁰

Poor citizens also are at the receiving end of inefficient allocation of public resources by corrupt civil servants. This is further exacerbated when social programs intended to help the poor, are badly managed.³⁷¹

2.8.2 DEMOCRACY

All citizens of a country are entitled to participate in public processes. For example, they are entitled to vote and stand for elections, to freely assemble and associate, to equal access to public services, among others.³⁷² Corruption can undermine these democratic values. Not only can corruption affect electoral processes of a country, but it can also affect the accountability mechanisms in place.³⁷³ For example, opposition political leaders and political activists may be bribed into silence. The control of the public budget may also be undermined by illegal money that impairs its management.³⁷⁴ This unrestrained use of money during election campaigns can also cause inflation in an economy.

³⁶⁶ OECD (2016) 2.

³⁶⁷ OECD (2016) 2.

³⁶⁸ OECD (2016) 2.

³⁶⁹ OECD (2016) 2.

³⁷⁰ OECD (2016) 2.

³⁷¹ OECD (2016) 2.

³⁷² International Council on Human Rights & Transparency International (2009) 43., also see provisions to citizens' rights to public participation in Article 25 of the ICCPR, Article 13 of the African Charter.

³⁷³ OECD (2016) 4.

³⁷⁴ OECD (2016) 3.

Commercialization of electoral processes may produce elected leaders, that are not accountable to the people, but to themselves.³⁷⁵ It is a well-known value that citizens should exercise their rights to public participation, voluntarily. In the face of undue influences, the citizens consent is manufactured by political leaders, who bribe their way to public office.³⁷⁶ This environment then exacerbates corruption because a national assembly that is supposed to hold the executive organ of government to account, will not do so. The members of parliament will be pre-occupied with using their elected position, to corruptly recover their personal funds that they used during the last electoral campaigns. They will not mind about the actual reason, why they were elected into public office; to represent the interests of the public.

Consequently, any policy that the executive arm of government presents as a Bill, will sail through Parliament, as a law, unopposed, at the expense of the citizens.³⁷⁷ This state of affairs, eventually leads the government into losing legitimacy and legality.³⁷⁸ It can, in turn lead to economic, social and political instability, if citizens lose trust in the government.

2.8.3 PUBLIC ADMINISTRATION

The public resources that should efficiently be used to serve society are misappropriated in the face of corrupt practices in civil service.³⁷⁹ Public procurement of services are awarded to businesses, that can offer kick-backs to the civil servants, but not on the basis of the best bidding business. This may occur in critical sectors of public works. As result of these corrupt practices, companies contracted to perform public works, deliver sub-standard work.³⁸⁰ These corrupt practices, consequently lead to lower expenditure on the provisions of social services like education and health. These corrupt practices may also

³⁷⁵ Walyemera DM Campaign Finance Regulation and Enhanced Governance in Uganda: A case study of the 9th Parliament (unpublished LLM Thesis, Makerere University, 2016).

³⁷⁶ Walyemera (2016).

³⁷⁷ Walyemera DM 'Commercialization of Parliamentary Elections in Uganda' *East African Journal of Peace & Human Rights* (2018) 24(2) 182. Also available at <https://ssrn.com/abstract=3410338>.

³⁷⁸ OECD (2016) 3.

³⁷⁹ OECD (2016) 3.

³⁸⁰ OECD (2016) 3.

affect the business environment of an economy and in the long term, can become barriers to trade.³⁸¹

2.8.4 HEALTH

Corruption can lower the quality of healthcare that a society is entitled to, from its available public resources. Corruption in the health industry can occur in three main ways. First, in the management and allocation of resources to health.³⁸² Secondly, in distributing of health provisions. This mostly happens in the supply-chain process of manufacturing, marketing, procurement and prescription of the medical supplies. Thirdly, in the relationship of medical personnel to their patients.³⁸³ The ability of an individual to access quality healthcare is severely impaired in a fraudulent national healthcare system. For example, corruption in the pharmaceutical sector can harm patient's health, if the marketing of drugs in the sector, is not strictly organized by government regulatory agencies.³⁸⁴

If drug marketing is not controlled, medical personnel can prescribe medicines to their patients that have no benefit to them. Some of the prescribed medicines may even cause harm to the patients. Corruption can lead to the increase in the price of essential medicines and other health services.³⁸⁵ This increase in the price of essential medicines, can make it difficult for the vulnerable in society, to access life-saving drugs.³⁸⁶ Corruption may also make it difficult for citizens to access safe drinking water, receive an adequate supply of safe food and nutrition. In a corrupt environment, the likelihood of citizens, having protection from threats to their occupational and environmental health is severely impaired.³⁸⁷

³⁸¹ OECD (2016) 2.

³⁸² OECD (2016) 2.

³⁸³ International Council on Human Rights & Transparency International (2009) 53.

³⁸⁴ International Council on Human Rights & Transparency International (2009) 53.

³⁸⁵ OECD (2016) 1.

³⁸⁶ International Council on Human Rights & Transparency International (2009) 53.

³⁸⁷ International Council on Human Rights & Transparency International (2009) 52.

2.8.5 EDUCATION

In the education sector, the prevalence of corruption may impede access to quality education for all.³⁸⁸ It may also limit the access to free education for the vulnerable, when the public resources meant to equip the education institutions are diverted to other uses. In most countries, the education sector occupies a key social service to society, which requires a lot of public resources.³⁸⁹ This environment exacerbates chances for corruption. These corrupt activities may manifest in form of embezzlement of education resources, examination fraud, 'engineered' tenders and the charging of unlawful registration fees, among other fraudulent acts.³⁹⁰

In higher education, academic corruption has taken route in such a manner that it has caused panic. Recent efforts to combat academic corruption have been led by the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the Council for Higher Education Accreditation (CHEA) which called on institutions of higher learning to establish effective quality assurance systems to curb the fraudulent practices.³⁹¹ Nabaho and Turyasingura suggest 'the setting of academic integrity standards, institutional and program accreditation, accreditation of academic journals, sharing information and promoting whistle blowing, monitoring of institutions, applying sanctions, and ranking of higher education institutions on the basis of integrity indicators' as some of the possible solutions to curb the vice of academic corruption.³⁹²

³⁸⁸ International Council on Human Rights & Transparency International (2009) 56.

³⁸⁹ International Council on Human Rights & Transparency International (2009) 56.

³⁹⁰ International Council on Human Rights & Transparency International (2009) 56.

³⁹¹ United Nations Education, Scientific, and Cultural Organization (UNESCO) & Council for Higher Education Accreditation (CHEA) *Advisory statement for effective international practice: Combating Corruption and enhancing Integrity: A contemporary challenge for the quality and credibility of higher education.* (2016) Available at <https://unesdoc.unesco.org/ark:/48223/pf0000249460>.

³⁹² Nabaho L & Turyasingura W 'Battling Academic Corruption in Higher Education: Does External Quality Assurance Offer a Ray of Hope?' (2019) *Higher Learning Research Communications, Online Version*, available at <http://dx.doi.org/10.18870/hlrc.v9i1.449>.

2.8.6 MEDIA

There is consensus among academia, researchers and scholars that media plays a key role in the fight against corruption.³⁹³ The media plays a key role in enabling the public to access information about how the leaders are managing public resources on behalf of society. Consequently, the media is able to expose corrupt activities to the public when they do occur.³⁹⁴ A 2018 OECD study indicates that two percent of corruption cases resulted from media reports on alleged corruption.³⁹⁵ Media, therefore is a key anti – corruption tool.³⁹⁶

Freedom house has found that transparency in public affairs is enhanced with a free media, which is a key tenet in having an accountable leadership.³⁹⁷ The mainstream media's role as a watchdog, has been boosted with a variety of alternative media, such as social media and blogs that cover various sectors of society.³⁹⁸

Investigative journalism has also been acclaimed for exposing significant corruption scandals, hence becoming a key anti- corruption mechanism.³⁹⁹ Satirical works have also been known to expose corruption.⁴⁰⁰ This is especially so, in societies that have been deprived of an education and are poor. The simplified manner in which cartoons can, for example, sensitize people about corruption and consequently, empower them to take action is well-known. Examples of the power of satirical works that empower communities to organize for societal reform are many, world over.⁴⁰¹

The power that the media wields as an anti-corruption tool, renders it vulnerable to corrupt characters who do not want to be exposed, or who would use it to serve their

³⁹³ Fardigh MA *What's the use of a Free Media – The Role of Media in Curbing Corruption and Promoting Quality of Government?* (unpublished Ph. D Dissertation, University of Gothenburg, 2013).

³⁹⁴ Mendes M *Overview of Corruption in the Media in Developing Countries* (2013) Transparency International U4 Expert Answer.

³⁹⁵ Wasil S *Media and Anti – Corruption* (2019) Transparency International U4 Helpdesk.

³⁹⁶ Chene M *Gender Equality and Corruption* (2019) Transparency International U4 Helpdesk.

³⁹⁷ Fardigh (2013).

³⁹⁸ Wasil S *Media and Anti – Corruption* (2019) Transparency International U4 Helpdesk.

³⁹⁹ Wasil (2019).

⁴⁰⁰ Wasil (2019) 11.

⁴⁰¹ Wasil (2019) 11.

interests by misinforming the public.⁴⁰² The influence of the media can take various forms. It may be by bribing journalists to cover or not to cover certain news stories. It may also include the use of regulations on unfriendly media, by a corrupt government. It may also include denial of advertisements to particular media houses, who are performing their watchdog role by exposing corrupt behavior.⁴⁰³ The lack of comprehensive training for journalists in a particular society, can be a facilitator of unethical behavior. The Journalists may take bribes, in order to cover news stories in a particular way, for corrupt persons.⁴⁰⁴

The structures of ownership of the media houses may also weaken the media as an anti-corruption tool.⁴⁰⁵ State owned media will, in most cases, favor coverage of the government agenda, at the expense of exposing corruption. Private media on the other hand, will favor whoever is able to sustain the business as profit-making business.⁴⁰⁶ Therefore, business interests and government can easily manipulate such private media houses into covering up corrupt deeds of the government or business interests, at the expense of the public.⁴⁰⁷

The media as an anti – corruption mechanism is significantly weakened under such a hostile environment, where regulations, low salaries, bribes, nepotism, gifts and advertisements, among others, dictate how news is covered.⁴⁰⁸

2.8.7 ADMINISTRATION OF JUSTICE

The administration of justice can seriously be compromised by corruption. Corruption in the court system, is a serious threat to the dispensation of justice to society. This is especially so, if only those persons who are able to bribe or exert political influence on

⁴⁰² Mendes (2013).

⁴⁰³ Ramaprasad et. al. 'Ethics – Ideals and Realities' in Contemporary BRICS Journalism – Non-Western Media in Transition, Pasti S & Ramaprasad J (eds.) (2018)., also see Mendes M *Overview of Corruption in the Media in Developing Countries* (2013) Transparency International U4 Expert Answer.

⁴⁰⁴ Schriffrin A *Global Muckraking – 100 Years of Investigative Journalism from Around the World* (2014).

⁴⁰⁵ Mendes (2013) 4.

⁴⁰⁶ Mendes (2013) 4.

⁴⁰⁷ Mendes (2013) 4.

⁴⁰⁸ Wasil (2019) 13.

the court judicial officials, are the ones who get favorable decisions. Transparency International (TI) has defined judicial corruption as: -

'acts or omissions that constitute the use of public authority for private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain'.⁴⁰⁹

The true test of a corruption-free and democratic society, is a society, where the rule of law is respected, by those holding power. One of the key tenets of a democratic society is the observance of the right to a fair trial.⁴¹⁰ The right to a fair trial must consequently, result into an effective remedy for a litigant. The key agents of judicial corruption are the police, the prosecutors and court officials.⁴¹¹ For example, a police officer investigating a crime, may alter the evidence that is supposed to incriminate a suspect. A prosecutor may also be paid a bribe by a suspect to evaluate the evidence in a biased way. Court officials can be paid a bribe, to misplace or lose a court file or to allocate a file to a particular judge.⁴¹²

In light of the aforementioned challenges, human rights instruments have established standards that deal with the administration of justice.⁴¹³ A good system of administration of justice must be effective and efficient in its procedures and must also address the rights of the parties.⁴¹⁴ Human rights bodies have developed standards on the right to due process, over a period of time, based on treaties that are binding to member states. Apart from binding treaty law, there are soft law instruments that also establish

⁴⁰⁹ Global Corruption Report *Corruption in Judicial Systems* (2007) Cambridge: Cambridge University Press, 2007.

⁴¹⁰ The right to fair trial is provided for by many human rights instruments. These instruments include Article 14 of the ICCPR, Article 7 of the African Charter, among others. The Ugandan Constitution also provides for a right to fair trial under Articles 23 & 28.

⁴¹¹ International Council on Human Rights Policy & Transparency International 'Corruption and Human Rights: Making the connection' (2009) 36., Also available at <http://ssrn.com/abstract+1551222>.

⁴¹² International Council on Human Rights Policy & Transparency International (2009) 36.

⁴¹³ Articles 23 & 28 of Constitution of the Republic of Uganda; Article 14 of the ICCPR; Article 7 of the African Charter, among others.

⁴¹⁴ International Council on Human Rights Policy & Transparency International (2009) 35.

standards. It is important to point out that, soft law instruments do not have the same binding authority as treaties.⁴¹⁵

Some of the key soft law standards in combating corruption in the courts are embedded in the Bangalore Principles of Judicial Conduct.⁴¹⁶ The Bangalore Principles were framed following public uproars, in many countries, that corruption had engulfed the court system. This led to a decline in the public confidence of the courts' ability, to resolve disputes, in several countries.⁴¹⁷

The provisions of the Bangalore Principles have been used as model codes of judicial conduct, in many countries.⁴¹⁸ The Bangalore Principles prescribe six ideals, namely independence, impartiality, integrity, equality, propriety, competence and diligence, which should be considered by judicial officers, in the course of executing their duties.⁴¹⁹

In the administration of justice, human rights standards demand compliance with the values provided for by the Bangalore Principles. These values which include 'independence, competence and impartiality of tribunals' can be categorized into three limbs.⁴²⁰ First, the values of administration of justice. Secondly, the access to justice rights of the litigants and thirdly, the efficiency of the trial procedure.

In relation to the values of the administration of justice, it is important to state that judicial independence can be compromised by corruption in varying ways. These may include bribery and political interference, among others.⁴²¹ Bribes can be used by court users or be demanded by court officials to influence the outcome of court decisions.

⁴¹⁵ International Council on Human Rights Policy & Transparency International (2009) 35.

⁴¹⁶ In 2000, the Judicial Integrity Group was established under the United Nations Global Programme against Corruption, address challenges around the world, that judicial integrity, was declining.

⁴¹⁷ International Council on Human Rights Policy & Transparency International (2009) 35.

⁴¹⁸ International Council on Human Rights Policy & Transparency International (2009) 36.

⁴¹⁹ International Council on Human Rights Policy & Transparency International 36.

⁴²⁰ International Council on Human Rights Policy & Transparency International 37.

⁴²¹ International Council on Human Rights Policy & Transparency International 39.

Bribery can also deter the provision of court services to the public, that should be provided, as part of the normal duties of court officials.⁴²²

Political interference with the administration of justice may take different forms. These can include outright bribery, intimidation or threats of court officials to act in accordance with the interests of the politicians as opposed to the interests of the rule of law.⁴²³ If politicians interfere with the appointment process of judicial officers and their terms and conditions of service, then judicial decisions, that the judicial officers eventually make, will be perceived by the public, to be biased. The manipulation of the appointment process of judicial officers, tends to lower the quality of judicial officers. Instead of appointing persons who are qualified and competent to execute judicial duties in accordance with law, only those persons who are perceived as “cadres” of the ruling party will be appointed.⁴²⁴ Judicial officers who show attempts to be independent, will be moved from lucrative appointments and threatened with demotion.⁴²⁵ Politicians can also use the legal regime, to intimidate independent-minded judicial officers out of their judicial appointments, to enable their corrupt political scheming, to come to fruition.⁴²⁶ This corrupt political scheming undermines the tenets of a democratic society.

Secondly, the right to a fair trial of litigants relates to many procedural rights. These include: - the right to be presumed innocent until proved guilty; the right to a public hearing; the right to be given particulars of the offence charged; the right to legal representation; the right remain silent and refuse to testify; the right not to be convicted

⁴²² International Council on Human Rights Policy & Transparency International 39.

⁴²³ International Council on Human Rights Policy & Transparency International 39.

⁴²⁴ President Museveni has several occasions said that the Judiciary in Uganda would be filled with cadre judges. Also see Odora O 'Uganda Judicial Stacking: President Museveni's War on Independent Court' (2013) available at www.blackstarnews.com/global-politics/africa/uganda-judicial-stacking-president-museveni%E2%80%99s-war-on-independent-court.html on a detailed analysis of this.

⁴²⁵ International Council on Human Rights Policy & Transparency International 37.

⁴²⁶ In April, 2019, Walter Onnoghen, an independent minded Chief Justice of Nigeria, was hounded out of office, because the ruling party politicians anticipated a presidential election petition, would be filed before the Supreme Court of Nigeria by opposition presidential candidates, after they had rigged the presidential election. Indeed, the presidential election petition was filed after the general elections and the Nigerian Supreme Court ruled in favor of President Muhammadu Buhari's All Progressives Congress (APC), the ruling party, with a new Chief Justice appointed by President Buhari, presiding over the said election petition.

under retrospective criminal laws; the right to call and examine witnesses, among other fair trial rights.⁴²⁷ All persons are entitled to these procedural guarantees to a fair trial. In the face of corruption by the litigants or the court officials, these fair trial rights can severely be compromised, leading to unfair and unjust outcomes from the courts.⁴²⁸

Thirdly, efficiency of the trial procedure, relates to the 'reasonable time' within which a trial is commenced and completed. What is reasonable time, depends on the 'circumstances and complexity of the case'.⁴²⁹ In corruption cases, one of the tactics of lawyers defending suspected corrupt persons, is to delay the trial process. This may be by way of throttling the court administrative processes with frivolous interlocutory applications and communications to the court.⁴³⁰ Whereas due process is an important element in the fight against corruption, it can be used to stifle criminal prosecution of corrupt individuals, in the courts as seen above.⁴³¹

The right to a fair trial may also be compromised if the witness and victim's protection mechanisms in place are weak or non-existent.⁴³² The prosecution of corrupt persons is reliant on witnesses who come forward with information about these crimes. If the witness protection mechanisms are weak or non-existent to protect their identity, they are at risk from those who they have testified against. If the identity of witnesses is revealed, they are likely to fear reprisals to their lives and consequently withdraw from providing vital evidence to the prosecution of corruption cases.⁴³³ As a result, victims of these corruption crimes will suffer, without any accountability mechanism to bring to book the suspected criminals. This state of affairs may encourage impunity and exacerbate corrupt practices.⁴³⁴ The aforementioned set of challenges to prosecuting corruption, led

⁴²⁷ All the aforementioned fair trial rights are found in chapter 4 of the Constitution of Uganda, 1995. At international level, the ICCPR also reproduces the aforementioned rights.

⁴²⁸ International Council on Human Rights Policy & Transparency International 38.

⁴²⁹ International Council on Human Rights Policy & Transparency International 39.

⁴³⁰ International Council on Human Rights Policy & Transparency International 39.

⁴³¹ International Council on Human Rights Policy & Transparency International 39.

⁴³² International Council on Human Rights Policy & Transparency International 40.

⁴³³ International Council on Human Rights Policy & Transparency International 40.

⁴³⁴ International Council on Human Rights Policy & Transparency International 40.

state parties to the UNCAC to agree to obligations to ensure that witness and victims protection programs, are legislated into law in domestic settings.⁴³⁵ In the absence of a strong victim and witness protection mechanism, the court system may also suffer harm due its inability to prosecute corrupt practices.⁴³⁶

For administration of justice to be effective, the remedies for the litigant must be effective. In *Jawara v The Gambia*, the African Commission laid out the key principles of an effective remedy.⁴³⁷ It indicated that a remedy must be 'available, effective and sufficient'.⁴³⁸ The African Commission decided that 'a remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint'.⁴³⁹ The African Commission also noted that 'the existence of a remedy must be sufficiently certain, not only in theory but also in practice, failing which, it will lack the requisite accessibility and effectiveness'.⁴⁴⁰ The African Commission further stated that 'a remedy that has no prospect of success does not constitute an effective remedy'.⁴⁴¹ The state has the duty to ensure that the judicial system is able to deliver an effective remedy to victims. In the absence of this safeguard, impunity may reign supreme. The state, therefore, has a duty to ensure that victims have a right to an effective remedy.⁴⁴²

An effective court system should be able to observe the litigant's rights to an effective remedy. This right can only be observed in a judicial system that ensures equality in law

⁴³⁵ See Articles 32 & 33 of UNCAC that requires state parties to domestic its provisions on victim and witness protection. Uganda ratified the UNCAC on 9 September, 2004. Uganda has domesticated this particular provision by enacting the Whistle Blowers Act, 2010. Efforts to put the protection mechanisms in place are none-existent. It should be noted that whistle blower laws can be abused by malicious people who may damage the reputations of people as result of malicious and false reports. Consequently, legal arrangements should be available, to remedy the reputations of person who have been maliciously reported.

⁴³⁶ International Council on Human Rights Policy & Transparency International 40.

⁴³⁷ (2000) AHRLR 107 (ACHPR 2000) para 32.

⁴³⁸ (2000) AHRLR 107 (ACHPR 2000) para 32.

⁴³⁹ (2000) AHRLR 107 (ACHPR 2000) para 32.

⁴⁴⁰ (2000) AHRLR 107 (ACHPR 2000) para 35.

⁴⁴¹ (2000) AHRLR 107 (ACHPR 2000) para 38.

⁴⁴² Article 2(3) of the ICCPR.

and in practice.⁴⁴³ When the remedies are granted by court, they should be 'accessible, effective and enforceable'.⁴⁴⁴ Many international human rights instruments, consequently provide for the right to an effective remedy.⁴⁴⁵ The African Charter, however, does not provide for this right.⁴⁴⁶ Even though the African Charter does not provide for the right to remedy, jurisprudence from the African Commission indicates that this right is recognized, as the African Commission in adjudicating matters before it, can refer to jurisprudence from other regional or international human rights systems.⁴⁴⁷

Therefore, corruption in the court system can interfere with the right to an effective remedy, where a state fails to investigate perpetrators of a crime. For example, if a person is dismissed from a job, who sues their former employer. The employer, then bribes the judge, who rules in favor of the former employer.⁴⁴⁸ That person's rights to a fair trial and to an effective remedy would have been violated. This may create an environment of impunity.⁴⁴⁹

Public respect for court decisions, can only be achieved, if the public believes that the court officials are incorruptible. Where the public perceives the courts to be corrupt, the authority of judiciary is derailed. Consequently, judiciaries must strengthen their efforts to fight corruption within the court system.

2.9 CONCLUSION

In this chapter, I have reviewed the origins of corruption. I have been able to traverse the definitional debates on corruption from a historical perspective. The retracing of the

⁴⁴³ International Council on Human Rights Policy & Transparency International 42.

⁴⁴⁴ International Council on Human Rights Policy & Transparency International 42.

⁴⁴⁵ See for example Article 2(3) of the ICCPR; Articles 2 & 3 of ICESCR; Articles 2 & 3 of CEDAW.

⁴⁴⁶ The African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, under Part C provide for a right to remedy. It should be noted that these principles are soft law. The Preamble of the Principles cites Articles 5,6,7,26 and 45(c) of the African Charter which concern the right to a fair trial and are relevant in regard to the right to remedy.

⁴⁴⁷ *Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000) para 32., for a detailed account of this right to an effective remedy on the African Continent, see Musila G 'The right to an effective remedy under the African Charter on Human and Peoples Rights' (2006) 6 African Human Rights Law Journal.

⁴⁴⁸ International Council on Human Rights Policy & Transparency International 42.

⁴⁴⁹ International Council on Human Rights Policy & Transparency International 42.

definitional debates on corruption, have also informed the categorization of corruption, overtime. This classification of corruption, between grand and petty corruption was traced to Susan Rose-Ackerman in the 1970s. Is corruption a necessary evil that 'greases the wheels'? The school of thought that asserts that corruption has benefits to the economy was found to be irrational.

The causes of corruption were also reviewed. Literature indicated that the main cause of grand corruption was a lack of knowledgeable and honest leaders in the community. On the other hand, the major cause of petty corruption was low remuneration of junior civil servants. I subsequently, showed that corruption creates an unjust society when public resources meant for vulnerable populations are diverted for personal use. To show how corruption affects various sectors of society, I examined how corruption affects democracy, health, education, human rights, among other sectors. The literature shows that corruption is a serious challenge to humanity. All efforts must be focused on fighting the said cancer, because it affects all organs of society. And one of the few legal tools available, to curb corruption where public oversight institutions are weak, or are compromised, is the private prosecution of the corrupt. In chapter 3, I traverse the legal framework governing the investigation and prosecution of corruption in Uganda.

UNIVERSITY of the
WESTERN CAPE

CHAPTER THREE: CORRUPTION IN UGANDA

3.1 INTRODUCTION

Corruption is a serious obstacle to the economic, social and political development of any society. In Uganda, corruption is so wide-spread as evidenced by regular news media stories published in the local press. As result of the aforementioned challenge, the provision of quality social services by government, to the people of Uganda is a fairytale.

Uganda has a robust legal regime to fight corruption. The enforcement of this legal regime, however, has been weak. This can be partially attributed to the political leaders, who should be at the forefront of the execution of these laws. The political leaders, unfortunately, are the key beneficiaries in these fraudulent deals through patronage cartels, whose main facilitator, is corruption. Patronage networks facilitate the sustenance of political power in society, through the renting of support.⁴⁵⁰

Therefore, regimes that overstay in power, are synonymous with the prevalence of political corruption. Political corruption also facilitates grand corruption, because civil servants who are most times appointed by political leaders, will be required to find 'creative' ways by their political godfathers to pilfer public money to enable the patronage system to stay in place. This consequently fuels political corruption.⁴⁵¹

The aforementioned environment of impunity can only be reversed, if the country has strong checks and balances in the management of its public affairs. The key tenets of democratic governance, can improve this gloomy state of affairs. Some of the key tenets of a democratic governance are: - periodic, transparent, free and fair elections of political leaders; a free media and the observe of the rule of law and human rights, among others.

⁴⁵⁰ Yadav V & Mukherjee B *The Politics of Corruption in Dictatorships* (2016) Cambridge: Cambridge University Press.

⁴⁵¹ Yadav & Mukherjee (2016).

Having discussed how corruption can create and sustain an unjust society in chapter 2, in this chapter 3, I briefly examine the colonial creation called Uganda. I retrace the historical manifestations of corruption, since the creation of Uganda, as an independent polity. I also traverse the major corruption scandals that have occurred in Uganda. It is important to point out that all categorizations of corruption are prevalent in Uganda. I consequently, dissect how these categorizations of corruption manifest in different sectors in Uganda. I also scrutinize the public financial management system for evidence of corrupt practices and find abundant proof. Having found proof of corruption in the public financial management system in Uganda, I examine whether the anti – corruption legal framework in place, is strong enough, to curb this criminal enterprise in the country.

3.2 UGANDA; A COLONIAL CREATION

Uganda is a colonial creation whose boundaries were delineated from the Democratic Republic of Congo in the west, Kenya in the east, Rwanda and Tanzania in the South and Sudan, and now South Sudan in the north. It became a British Protectorate in 1893 and subsequently gained independence from Britain on 9 October, 1962. The population of Uganda is currently at 40.7 million people.⁴⁵² Whereas Uganda has been gifted by natural resources and an excellent climate, all year round, it is still one of the poorest countries in the World. The 'GDP per capita is often considered an indicator of the standard of living of any given country, as it reflects the average wealth of each person in a country'.⁴⁵³ The Gross Domestic Product (GDP) per capita income in Uganda, in 2019 was at United States Dollars (USD) 759.⁴⁵⁴ It is projected to rise to USD 959 in the 2023.⁴⁵⁵

⁴⁵² Uganda Bureau of Statistics (UBOS) 'Population Clock' available at <https://www.ubos.org> (accessed on 26 November 2019).

⁴⁵³ FOCUSECONOMICS 'The poorest countries in the World' available at <https://www.focus-economics.com/blog/the-poorest-countries-in-world> (accessed on 26 November 2019).

⁴⁵⁴ FOCUSECONOMICS (2019).

⁴⁵⁵ FOCUSECONOMICS (2019).

The World Bank (WB) indicates that Uganda has major challenges in providing its citizens with electricity, education and improved sanitation.⁴⁵⁶ This inability to provide basic social services to its people, is partly blamed on the misuse of public resources, by those entrusted to appropriate them. Therefore, corruption is a key contributor to the poverty levels in Uganda. Corruption is so widespread, that it has affected every sector of society in Uganda. These sectors include civil service, health, education, security and public procurement, which constitute the basic pillars to the country's economic development.

Since the establishment of Uganda as an independent sovereign territory, there has been some determination to curb corruption by governments. However, these efforts have been half-hearted. This is evidenced by the fact that Uganda did not have any Inspectorate of Government (IGG) office until 1988.⁴⁵⁷ Even then, this was a department within the Office of the President. The IGG's office also did not publish any reports on corruption, until when it became constitutionally established, and independent from the Presidents' office. There were other mechanisms to prohibit and prevent corruption in Uganda, but which were not constitutionally established.⁴⁵⁸ This was after the promulgation of the Constitution of the Republic of Uganda on 22 September, 1995.⁴⁵⁹ The IGG's office has been evolving, and as result it has published several periodic reports on its performance.⁴⁶⁰

⁴⁵⁶ World Bank 'Uganda Poverty Assessment: Fact Sheet' (2016) available at <http://www.worldbank.org/en/country/uganda/brief/uganda-poverty-assessment-2016-factsheet> (accessed on 26 November 2019).

⁴⁵⁷ It was established by the Inspectorate of Government Statute of 1988. The IGG's office was subsequently founded as a constitutional body under Chapter 13 of the 1995 Constitution, which part lays down its powers and functions.

⁴⁵⁸ For example, in February, 1966 a Commission of Inquiry was established. It was headed by a Judge of the East African Court of Appeal (EACA) and assisted by a Judge each from Kenya and Tanzania, with William Wako Wambuzi (as Secretary). It was to investigate claims that Idi Amin, a Deputy Army Commander of the Uganda Army had illegally acquired gold, coffee and money from the Democratic Republic of Uganda and he had put it to his personal use. Its report would remain unpublished until Amin came to power (in 1971). The findings of report exonerated Milton Obote and his colleagues.

⁴⁵⁹ The first Annual Report on Corruption by the IGG's office was published 2009. It is available at <https://www.igg.ug/static/files/publications/ig-report-corruption.pdf> (accessed on 27 February, 2020).

⁴⁶⁰ These reports have been submitted to committees of Parliament and to the general public through its website.

3.2.1 HISTORICAL PERSPECTIVE OF CORRUPTION IN UGANDA

The high levels of corruption in Uganda can partly be attributed to how Uganda was established. It was initially established as a British Protectorate. By the early 1900s, it became a British colony. The signing of the agreements between the four major Kingdoms, initiated British indirect rule in Uganda.⁴⁶¹ As result, the ground had been prepared by the colonialists to 'acquire raw materials for mushrooming industries, obtain food supplies for her increasing population, secure market for her mass-produced goods'.⁴⁶² The colonialists quest to acquire resources required collaborators and agents within the local populations. So, the colonialists established an administrative system with local agents that enabled them to fulfil their mischievous plans. They introduced the police and army to coerce the local populations, as and when they resisted any exploitative policy they introduced in the colony. They also appointed chiefs at the village level who collected taxes from the local people, on behalf of the colonialists, but never accounted to the local people.⁴⁶³

They accounted to the colonial administrators.⁴⁶⁴ It appears that these accountability relationships gave birth to unaccountable governance that we see in Uganda today. The aforementioned colonial culture, has most probably given birth to the high levels of corruption witnessed in Uganda now. This is evidenced in the government's attempts to account to 'donors'⁴⁶⁵ and international development partners, but ignoring calls for

⁴⁶¹ Four Kingdoms signed agreements with Britain, the most prominent being the 1900 Buganda Agreement with Buganda Kingdom. In his Book, *Uganda Protectorate* Vol. 1 London: Hutchison & Co. Paternoster Row (1902), Sir Harry Johnstone, who was a British Commissioner to Uganda states that he bribed Apollo Kaggwa with one hundred heads of cattle to enable the signing of 1900 Buganda Agreement. The signing had stalled for 3 months. The 1900 Buganda Agreement laid out the relationship between Buganda Kingdom and Britain.

⁴⁶² Wamara CK 'Corruption in Uganda: Does this have anything to do with Social Work?' (2017) 2:52 *Journal of Human Rights and Social Work* 61.

⁴⁶³ Nyago K 'Corruption rooted in colonialism' *New Vision* 21 March 2012., available at http://www.newvision.co.ug/new_vision/news/1300355/corruption-rooted-colonialism (accessed on 28 November 2019).

⁴⁶⁴ Low AD *Buganda in Modern History* (1974) London: Weidenfield and Wicolson Press.

⁴⁶⁵ The word "donors" is used with a lot of hesitation.

accountability from citizens, to whom the government owes a primary duty of accountability.⁴⁶⁶

Ruzindana has noted that colonial administrators never created state institutions that would hold public officers to account to the public they were serving.⁴⁶⁷ They only established the institutions to enable collaboration and loyalty, and consequently to serve the interests of the colonialists.⁴⁶⁸ Muhangi states that Uganda preserved its colonial governance system even after its independence in 1962.⁴⁶⁹ Therefore, the local leaders inherited leadership from the colonialists in a system 'where state institutions such as the army, police and courts were used to protect the regime, suppress political competition, intimidate citizens, violate peoples' rights and facilitate resource plundering'.⁴⁷⁰ Indeed, this is exemplified by the 1966 Kabaka crisis, where the Prime Minister Milton Obote, used the army, led by the army commander, Idi Amin, to attack Kabaka Mutesa II at his official residence in Mengo, Kampala.⁴⁷¹ This attack forced Kabaka Mutesa II into exile, where he died. Obote then abrogated the 1962 Constitution and replaced it with the 1966 pigeon hole Constitution.⁴⁷² The 1966 pigeon hole Constitution was eventually replaced with the 1967 Republican Constitution, which vested all executive powers in Obote.⁴⁷³ This enabled Obote to consolidate his power, as the executive President of Uganda.⁴⁷⁴ Obote had, in 1965 defended Idi Amin who had sold gold, he had received from Zaire, (currently renamed Democratic Republic of Congo), in a corrupt manner.⁴⁷⁵ The Political

⁴⁶⁶ Low (1974).

⁴⁶⁷ Ruzindana A 'The Importance of Leadership in fighting Corruption in Uganda' in Kimberly AE (ed) *Corruption and Global Economy* (1997) Washington DC: Institute for International Economics.

⁴⁶⁸ Ruzindana A (1997).

⁴⁶⁹ Muhangi B 'Bureaucracy in Uganda since colonial period to present (2015) *International Journal of Sciences: Basics and Applied Research*.

⁴⁷⁰ Muhangi (2015).

⁴⁷¹ Svolik MV *The Politics of authoritarian rule* (2012) Cambridge: Cambridge University Press.

⁴⁷² 1966 pigeon hole Constitution because the (70) seventy members of parliament constituting the parliament found it in their pigeon holes after they had voted for it. During the voting process, the army forces had surrounded Parliament. It is publicly known that only Godfrey Binaisa, the Attorney General then and Obote drafted the said constitution without consulting anyone else.

⁴⁷³ Muhangi (2015).

⁴⁷⁴ Muhangi (2015).

⁴⁷⁵ Muhangi (2015).

machinations between the Kabaka and Obote, on who was the supreme leader of Uganda, were ongoing at this time.⁴⁷⁶ The intention of the supporters of the Kabaka, was to legally “overthrow” Obote from his position, as Prime Minister.⁴⁷⁷ By accusing Obote’s senior army commander, Idi Amin, of corruption, they crafted their accusations in such a way that it would not only be Idi Amin to be implicated. It would include Milton Obote and his key allies in government.⁴⁷⁸

Citing corruption, among other eighteen reasons for carrying out a coup d’état against his benefactor, Idi Amin took over and continued from where Obote’s government had stopped.⁴⁷⁹ Amin established himself as the ‘Life President’ of Uganda. In his quest to lead Uganda for life, he ignored fraudulent activity from his henchmen provided they were loyal to his life presidency project.⁴⁸⁰ Idi Amin’s eight-year regime was extremely corrupt and was not accountable to anyone.⁴⁸¹ For example, Amin gave away Asian private property to his henchmen and bought military equipment at inflated prices.⁴⁸² To enable his life presidency project, Amin abolished all oversight institutions in the country. These oversight institutions included the Parliament.⁴⁸³ As result of abolishing this law-making organ of government, Amin ruled Uganda by decree, which led to a breakdown of state institutions.⁴⁸⁴

Amin also militarized the governance of Uganda by appointing army generals as governors. These army generals were only answerable to him.⁴⁸⁵ Subsequent appointments to public service were based on loyalty and ethnicity and not merit. Consequently, it can be ably concluded that Amin’s government, that lasted from 1971

⁴⁷⁶ Kanyeihamba, GW *Constitutional and Political History of Uganda. From 1894 to Present* (2002) Kampala: Century Publishing House Ltd, 93-94.

⁴⁷⁷ Kanyeihamba (2002).

⁴⁷⁸ Kanyeihamba (2002).

⁴⁷⁹ Ruzindana (1997).

⁴⁸⁰ Ruzindana (1997).

⁴⁸¹ Byrnes RM *Uganda a state study* (1992) Washington DC: Government Printing Office.

⁴⁸² World Bank *World Development Report: the state in a changing world* (1997) New York: Oxford University Press.

⁴⁸³ Muhangi (2015).

⁴⁸⁴ Muhangi (2015).

⁴⁸⁵ Muhangi (2015).

to 1979, was a military dictatorship, that did not allow citizen engagement with public affairs and that was not accountable to anyone.⁴⁸⁶

The World Bank claims that Amin's government was an organized criminal syndicate, that was extorting money from Ugandan citizens for its survival.⁴⁸⁷ As result of the gross mismanagement of public resources, the country's economy collapsed.⁴⁸⁸ When Idi Amin's military government was finally overthrown, Obote took over power for the second time. He was unbothered with the fight against corruption, and more interested in consolidating his power.⁴⁸⁹

The second Obote government that lasted from 1980 to 1985, was engaged in a guerilla war with Yoweri Museveni's rebel forces which, to an extent, forced the fight against corruption, to take the backseat.⁴⁹⁰ Tito Okello Lutwa's regime that overthrew the second Obote regime was short-lived and was more pre-occupied with its survival than anything to do with corruption. By the time Museveni and his rebel forces took over government, corruption was one of the urgent national issues, that required the government's undivided attention.⁴⁹¹ Ruzindana suggests that the Uganda Patriotic Movement (UPM) under which Museveni had campaigned in the 1980 general elections, indicated in its manifesto that if they were elected, they would prioritize the war against corruption.⁴⁹²

Instead, what has happened is that corruption has been more entrenched in the National Resistance Movement (NRM) government, than it was with all the regimes that have

⁴⁸⁶ Muhangi (2015).

⁴⁸⁷ World Bank (1997).

⁴⁸⁸ World Bank (1997).

⁴⁸⁹ Yadav & Mukherjee (2016).

⁴⁹⁰ Yadav & Mukherjee (2016).

⁴⁹¹ Yadav & Mukherjee (2016).

⁴⁹² Ruzindana (1997).

governed Uganda since independence.⁴⁹³ Published studies have proved that the NRM government is a highly corrupt establishment.⁴⁹⁴

Museveni has subsequently used the Parliament among key government organs, to sustain himself in power. Museveni's failure to respect the constitutional presidential term limits has made him and his government vulnerable to using public funds, to rent public support. He has on several occasions bribed Members of Parliament (MPs) with tax payer's money to enable him gain sufficient numbers in the Parliament to pass whatever law that favors his continued rule. This bribery, among other corrupt activities, has in the recent past, motivated MPs to amend the 1995 Constitution to enable his continued rule. He has also recently cajoled and bribed the same Parliament, to amend the Constitution enabling him to rule beyond 75 years of age.⁴⁹⁵ Beyond the presidential term limits, this was another safeguard and entrenched provision, that had been put in place by the framers of the 1995 Constitution, to deter a life presidency in Uganda.⁴⁹⁶ As result, parliament, as one of the democratic accountability mechanisms, has severely been weakened in playing its oversight role in government.

As Museveni's regime celebrates 34 years in power, Uganda has been named one of the most corrupt countries in the World, in the most recent Corruption Perceptions Index published by Transparency International (TI).⁴⁹⁷ This ranking by TI is by no means a mistake. Several grand corruption scandals have rocked the Museveni regime since it

⁴⁹³ Serunjogi EM 'High profile corruption scandals registered under the NRM' *The Daily Monitor* Newspaper 24 February 2013 available at <http://www.monitor.co.ug/news/national/high-profile-corruption-scandals-registered=under-NRM/-/688334/1702448/-/item/2/-/3d9naa/-/index.html> : also see Faller KF 'The system matters: Corruption and Vote Choice in Uganda' (2015) *Commonwealth Politics*, (2015) 53(4) 428, 456., also see Muhangi (2015),

⁴⁹⁴ See Burnett M 'Uganda's endless cycle of graft' *Politico* 22 October 2013; also see Tangri R & Mwenda AM *The Politics of Elite Corruption in Africa: Uganda in Comparative African Perspective* (2013) USA: Routledge, among other studies.

⁴⁹⁵ Barigaba J 'NRM MPs plot to lift to lift age limit for Museveni to stay in power longer' *The East African*, February 14 2015.

⁴⁹⁶ Barigaba J (2015).

⁴⁹⁷ In the recently released Corruption Perceptions Index, 2019 Uganda is ranked 137 least corrupt country out of 180 countries, and it scored 28 points out of 100 on the Index. Uganda is the third most corrupt country after South Sudan and Burundi, in the East African region.

came to power in 1986.⁴⁹⁸ This is not to claim that when the NRM/NRA rebels captured power in 1986, they found a corruption-free Uganda. The Museveni regime did not improve the corrupt environment they found from their predecessors. Instead, they have actually worsened it with grand corruption scandals.

The corruption scandals begun within one month after the NRM had settled into power. On 24 February, 1986, one of the executives of Uganda Airlines, Dr. Ben Ochola Latigo ordered the return of a plane that had been airborne for over thirty minutes, because he had failed to keep departure time.⁴⁹⁹ The plane returned to the tarmac at Entebbe Airport to pick him up with his government entourage, which was scheduled to travel to Pakistani, where the plane was flying to.⁵⁰⁰

Under public pressure, Dr. Ochola defended his action of recalling the plane by stating that he had powers to do so. He was arrested shortly thereafter, when he was attempting to flee into Kenya, a neighboring country.⁵⁰¹ In March 1986, Dr. Latigo was arraigned before a court, which found him not guilty. As a result of this altercation, a Commission of Inquiry into the mismanagement of the national airline was established. Serunjogi states that "The commission discovered that Latigo owned TEKDEL INTERNATIONAL LTD which hired two Mercedes-Benz Cars number... to Uganda Airlines at Shs. 95,000 per day. As such, the Airlines owed him millions of monies the commission heard".⁵⁰² Its recommendations have never been implemented.⁵⁰³ After this first corruption scandal, many others have engulfed the NRM regime like bush fires.⁵⁰⁴ I will highlight a few more.

⁴⁹⁸ Serunjogi EM High profile corruption scandals registered under the NRM. *The Daily Monitor*, February 24 (2013). Available at <http://www.monitor.co.ug/news/national/high-profile-corruption-scandals-registered=under-NRM/-/688334/1702448/-/item/2/-/3d9naa/-/index.html> (accessed 29 January, 2020). Also see Okello B "Uganda is rotten with corruption". *Daily Monitor*, April 13 (2016).

⁴⁹⁹ Uganda Airlines Flight No. QU 172 was destined for Karachi, Pakistan.

⁵⁰⁰ Serunjogi (2013).

⁵⁰¹ Serunjogi (2013).

⁵⁰² Serunjogi (2013).

⁵⁰³ Serunjogi (2013).

⁵⁰⁴ For a detailed treatment on the corruption scandals that have engulfed NRM's reign in power see Serunjogi (2013), Okello (2016) and Serunjogi et al. (2016), How police bribery killed shs. 165b pension scam case. *Daily Monitor*, April 22. Available at <http://www.monitor.co.ug/SpecialReports/how-police->

In its earlier years, perhaps the Santana vehicle scandal was the biggest, the NRM faced.⁵⁰⁵ Considering the NRM was still toying with its Marxist ideas, Grace Ibingira, as Uganda's lead diplomat in Spain, initiated a barter trade transaction. In this transaction, Uganda would exchange its coffee for Land Rover vehicles for government use.⁵⁰⁶ Ibingira had informed the Uganda government officials that the Spanish made 'Land Rovers' were as good as British Land Rovers. When the Spanish 'Land Rovers' were finally shipped to Uganda, it was found that actually they were Santana vehicles, only similar in body shape to the British Land Rovers. It was also found they were weaker vehicles that consumed a lot more fuel than the actual Land Rovers.⁵⁰⁷

Dr. Kizza Besigye, then a staunch NRM operative, now a leading opposition politician, was quoted by the press in an exclusive interview explaining why corruption scandals had hit the NRM. He stated that "You cannot accuse the NRM government of corruption because, when we came and we found a corrupt society and we are dealing with the same people".⁵⁰⁸

Other more recent scandals include the pilfering of US\$ 37,000,000 (United States Dollars thirty-seven million) which was meant to facilitate the fight against HIV/AIDS. This commonly known as the Global Fund Scandal.⁵⁰⁹ About US\$ 5,774,000 (United States Dollars five million seven hundred and seventy-four thousand) meant to organize the Commonwealth Heads of Government meeting in 2007 was embezzled. US\$ 12,700,000 (United States Dollars twelve million and seven hundred thousand) of the donor funds sent to the office of the Prime Minister to facilitate the rehabilitation efforts of war torn zones of Northern Uganda were also misappropriated.⁵¹⁰ US\$ 5,244,000 (United States

[bribery-killed-shs165b-pension-scam-case/688342-2693116-tr8cyvz/index/html](http://etd.uwc.ac.za/bribery-killed-shs165b-pension-scam-case/688342-2693116-tr8cyvz/index/html) (accessed 29 January 2020).

⁵⁰⁵ Serunjogi (2013).

⁵⁰⁶ Serunjogi (2013).

⁵⁰⁷ This 'land Rover' scandal did not end there. Around 1988, a minister in President's office found out that agents were negotiating for the supply of another consignment of two hundred and sixty "land Rovers" from Spain, valued at eight million United States dollars.

⁵⁰⁸ See, *The Monitor* 9-12 December 1994, as cited in Serunjogi (2013).

⁵⁰⁹ Wamara (2017).

⁵¹⁰ Wamara (2017).

Dollars five million two hundred and forty-four thousand) that was meant for the establishment of equipment to process national identity cards in the national identity card project was embezzled.⁵¹¹ US\$ 1,700,000 (United States Dollars one million and seven hundred thousand) that was earmarked by government to buy bicycles for local council officials to monitor the implementation of government programmes was stolen.⁵¹² US\$ 16,560,000 (United States Dollars sixteen million five hundred and sixty thousand) which was meant for microfinance to the local community to reduce the poverty levels in the country was misappropriated.⁵¹³ US\$ 46,800,000 (United States Dollars forty six million and eight hundred thousand) was paid by finance ministry officials to Hassan Basajjabalaba, a local business man closely associated with the NRM ruling party, allegedly as compensation for the loss of business in city markets he had purchased.⁵¹⁴ US\$ 1,700,000 (United States Dollars one million and seven hundred thousand) of tax payer funds were 'gifted' to public officials, earning hefty regular salaries, for doing what they are paid to do. The President, without following any laid down accounting procedures, awarded a bonus to the said public servants for winning an arbitration case against an oil company 'over capital gains tax on the re-sale of oil blocks.'⁵¹⁵

These are just a few of the major corruption scandals Uganda has endured since independence. Uganda's news media and civil society have at times analyzed, what these huge amounts of money would do to uplift the well-being of all Ugandans.⁵¹⁶

⁵¹¹ New Vision 'Nine Corruption Scandals to look back at' *New Vision* November 11, 2012. Available at https://www.newvision.co.ug/new_vision/news/1309873/cprruption-scandals-look (accessed on 27 April, 2020).

⁵¹² New Vision (2012).

⁵¹³ New Vision (2012).

⁵¹⁴ New Vision (2012).

⁵¹⁵ East African 'Uganda President defends \$ 1.7M 'presidential handshake' *The East African* 18 January 2017.

⁵¹⁶ For example, see Businge C & Bugembe A 'Uganda loses sh600b annually due to corruption' *New Vision* 18 December 2008., where it was mentioned that the taxpayer money lost in procurement alone every year, could pay for all the expenses of students in Uganda's premier University, Makerere University.

3.3 FORMS OF CORRUPTION MANIFESTING IN UGANDA

There are various forms of corruption present in Uganda. These include political corruption, grand corruption, bureaucratic corruption and petty corruption. Payment of bribes, embezzlement, nepotism and favoritism have been considered as the most common forms of corruption by the Inspectorate of Government (IGG) in Uganda.⁵¹⁷ I will examine the categories that have severe effects on the well-being of society, first. In Uganda these various modes of corruption have manifested for a long time because there has been no distinction between the private and public sphere. This has enabled a patronage system to develop to facilitate this evil. These criminal practices have also been exacerbated as result of a lack of enforcement of the legal regime. An environment of impunity has consequently been bred.

3.3.1 POLITICAL CORRUPTION

If there is any classification of corruption that can seriously undermine the well-being of a country, it is political corruption. This is because without the political will to fight any type of corruption, the theft of taxpayer's money can never be defeated. The political leaders have to abhor the misappropriation of public resources. In the event that the political leaders themselves are involved in criminal activities, it becomes exceedingly difficult for any country to fight the swindling of public resources.⁵¹⁸ Political corruption has been described as the use of official power by government officials or persons close to the government officials, in an irregular manner, for personal gain.⁵¹⁹ Consequently, Uganda's fight against the theft of public resources has been severely crippled by the fact that those people in leadership who ought to provide leadership in the fight against these crimes, are themselves perpetrators of this evil.⁵²⁰

⁵¹⁷ Asea WB 'Combating political and bureaucratic corruption in Uganda: colossal challenges for the church and the citizens' (2018) *HTS Theological Studies*.

⁵¹⁸ For a detailed treatment on this, see Amundsen I (2006) 'Corruption, lack of political will and the role of donors, (in Uganda)' CMI.

⁵¹⁹ Amundsen (2006).

⁵²⁰ Human Rights Watch World Report Uganda (2015).

The creation of patronage networks, with the aim of sustaining NRM in power, has been ongoing, since the current government came to power.⁵²¹ The use of state machinery to participate in partisan political campaign activities has been cited as a challenge in the fight against political corruption. The use of public funds to rent political support has been cited by various studies as a test to reform processes on political corruption.⁵²² Supplementary budgets have, immediately before or during campaign periods, been passed to enable the NRM government meet its campaign financing emergencies.⁵²³ Uganda's campaign financing law has been drafted in a haphazard manner and is lacking.⁵²⁴ Consequently, in its present form, it only facilitates sustained rule by the NRM government.

A good political funding system should enable transparent financing of political parties because they are a public good. The plurality and diversity of political views in a democracy are only possible with vibrant political parties. In the contestation of ideas, on how to move a country forward, it is prudent to provide public funding to political parties to nurture those ideas. Sufficient provision has not been made for all the registered political parties to access public funding.

The criteria used to disburse the funding is undemocratic.⁵²⁵ There are no limits on how much a contestant for any political office, can spend during election campaigns. As a result, the commercialization of elections has led to '(s)elected' leadership without the

⁵²¹ Freedom House *Countries at the Cross-roads* (2012) 14.

⁵²² See Barkan J *Uganda: Assessing risks to stability*, Center for Strategic & International Studies (CSIS). (2011) available at http://csis.org/files/publications/110623_Barkan_Uganda_web.pdf (accessed on 3 February 2020) and Freedom House *Countries at the Cross-roads* (2012) among other studies.

⁵²³ Barkan (2011).

⁵²⁴ For a detailed treatment on this, see Ssenkumba J *Political Party Financing in Uganda*, Friedrich Ebert Stiftung., also see Walyemera DM 'Commercialization of Parliamentary Elections in Uganda' (2018) 24(2) *East African Journal of Peace & Human Rights*, 182.

⁵²⁵ Ruzindana A 'Criteria used in state political party funding in Uganda are unfair' *Daily Monitor* 1 May 2015, also see Ssekumba J *Political Party Financing in Uganda*, Center for Basic Research, Kampala. available at <https://library.fes.de/pdf-files/bueros/uganda/05916.pdf> (accessed on 3 February 2020).

consent of the governed.⁵²⁶ This commercialization of elections is characterized by; first, donations to the ruling political party by business men and other influential individuals who hope to get 'deals and tenders' when the government is (s)elected into power.⁵²⁷ The second characterization of commercialization of elections is the use of public resources by political parties and candidates to carry out their campaigns. The third characterization of commercialization of elections is vote buying, selling by the candidates and voters. Related to this is the outright bribery of election officials before or during the electoral process. In a myriad of court cases, illegal use of money in elections has been proven. I will discuss a few prominent ones. The first case is *James Garuga Musinguzi v Amama Mbabazi and the Electoral Commission*,⁵²⁸ where Mr. Musinguzi, a key opposition figure and parliamentary candidate, alleged that Amama Mbabazi, an influential government official, had committed illegal acts, including bribery, during election campaigns. Justice Egonda-Ntende held that it was indeed true that Mbabazi had committed illegal practices during the campaign period. The illegal practices included the "offence of bribery to contrary to section 69 of the Parliamentary Elections Act, 2001 in paying a sum of money to one of his campaign agents for distribution to voters for the purpose of influencing them to vote for him".⁵²⁹

In another case, *Honourable Abdu Katuntu v Kirunda Kivenjinja and the Electoral Commission*.⁵³⁰ Kivenjinja, a government minister, was declared elected as Member of Parliament by the Electoral Commission. Hon. Katuntu, a prominent Lawyer, petitioned the High Court, alleging the illegal use of government vehicles for campaigns and bribery of voters. The High Court indeed found that Kivenjinja had been elected illegally. Unsatisfied with the judgment of the High Court, Kivenjinja appealed to the Court of Appeal.⁵³¹ The Court of Appeal upheld the decision of the High Court that indeed,

⁵²⁶ Maira (2013) 7.

⁵²⁷ Bartelsmann Foundation *Bartelsmann Transformation Index Uganda* (2012).

⁵²⁸ Electoral Petition No. 5 of 2001, High Court of Uganda.

⁵²⁹ Electoral Petition No. 5 of 2001, High Court of Uganda.

⁵³⁰ Election Petition No. 13/2006.

⁵³¹ See *Kirunda Kivenjinja versus Abdu Katuntu*, Court of Appeal Election Petition Appeal No. 24/2006.

Kivenjinja had illegally used government vehicles for campaigns and bribed voters in order to get elected as an MP. After a hotly contested presidential election in 2006, a leading opposition candidate contested the electoral results, alleging widespread electoral malpractices by the incumbent President, Yoweri Museveni. In *Rtd. Col. Dr. Kizza Besigye v President Yoweri Museveni and the Electoral Commission*,⁵³² Besigye alleged that there were wide-spread electoral malpractices all over Uganda including bribery of voters. The Supreme Court of Uganda held that indeed there was wide-spread electoral malpractices and bribery.⁵³³ In *Honourable Alice Asianut Alaso v Electoral Commission & Hellen Adda*,⁵³⁴ a recent case involving a prominent opposition figure, Alaso, who alleged that her opponent, Adda, bought an ambulance, which she donated to the local government and then, thereafter used it for her election campaigns, is an interesting one. When Alaso petitioned the High Court to nullify Adda's electoral win, Justice Wangutusi David held that the ambulance she had bought and donated to the District, was a government vehicle within the meaning of the law and offended section 25(1) of the Parliamentary Elections Act, 2005. The High Court Judge nullified Adda's election and ordered for a fresh election to be carried out in the constituency.⁵³⁵

As seen from the aforementioned court cases, the illegal use of money during elections in Uganda is a deep-seated practice. Vote selling and buying happens at all levels of electoral competition.⁵³⁶ Politicians who made empty promises to voters are vulnerable at this time. Voters ensure that they extract as much as possible immediately before and during the campaign period.⁵³⁷

⁵³² Presidential Election Petition No. 1 of 2006.

⁵³³ Presidential Election Petition No. 1 of 2006.

⁵³⁴ Election Petition No. 5/2016.

⁵³⁵ Election Petition No. 5/2016.

⁵³⁶ Blattman, et. al. "Eat Widely, Vote Wisely? Lessons from a Campaign Against Vote Buying in Uganda" (2019) available at https://www.povertyactionlab.org/sites/default/files/publications/Eat-widely-Vote-wisely_Blattman-Lareguy-Marx-Reid_July2019-.pdf. (accessed on 27 April 2020).

⁵³⁷ Blattman (2019).

Through various general elections in Uganda, it has been confirmed that there is no distinction between the ruling political party, NRM and government.⁵³⁸ Consequently, there has been bias in the media coverage of opposition candidates and use of public resources to support ruling party candidates during campaigns.⁵³⁹

3.3.2 GRAND CORRUPTION

There is sufficient and obvious evidence of grand corruption in Uganda.⁵⁴⁰ The embezzlement of public resources has been reported by the media on a consistent basis. The last National Integrity Survey that was commissioned by the IGG indicated that “the most prevalent form of corruption was bribery (66%) and this was largely attributed to greed (69.4%).⁵⁴¹ The survey attributed the greed to young people who are joining public service and who would like to accumulate wealth as quickly as possible, regardless of the method used to acquire it”.⁵⁴² The other key finding of the survey was that the community now seems to glorify individuals who have acquired wealth through misappropriation of public resources.⁵⁴³

Grand corruption therefore has been abetted by strategically positioned public servants, who form cartels within several government institutions and plan to swindle and share tax-payers’ money. These public servants are usually protected and sometimes even evoke the name of the President, when anti-corruption agencies attempt to investigate their sources of wealth.⁵⁴⁴ For example, over seven thousand ghost workers were

⁵³⁸ See Barkan (2011) and Bartelsmann Foundation (2012).

⁵³⁹ Freedom House *Freedom of the World Uganda* (2012).

⁵⁴⁰ See Serunjogi (2013), Okello (2016) and Serunjogi et al. (2016).

⁵⁴¹ IGG *The 3rd National Integrity Survey, October 2008* Available at <https://www.igg.go.ug/static/files/publications/third-national-integrity-survey-report.pdf> (accessed 22 February 2020).

⁵⁴² IGG (2008).

⁵⁴³ IGG (2008).

⁵⁴⁴ Thembo KM ‘Thieves hide behind Museveni’s back – IGG’ *Daily Monitor*, June 8 2018, also see Kanyeihamba GW *The Blessings and Joy of being who you are* (2019) Entebbe: Second Impressions. 171., also see Matembe MRK *The Struggle for Freedom and Democracy Betrayed* (2019) Self-publication ISBN: 9789970524006. 176-205.

unearthed during a police audit of staffing within public service.⁵⁴⁵ This scam was made possible as result of an organized network of corrupt public servants within the ministries.⁵⁴⁶

Billions of tax payer shillings were lost to these 'ghost workers' who were employed on the government payroll without performing any duties. Many other scandals have been unearthed, casting some more light, on how public and donor money is stolen by rogue public servants. Since many government projects are donor funded, this as a consequence has strained the relationship between the Uganda government and the donors who provide these resources.⁵⁴⁷ While this gross theft of public resources is an ever-growing challenge to Uganda, the political will to fight this cancer is almost non – existent.⁵⁴⁸

3.3.3 PETTY CORRUPTION

Petty corruption manifests frequently to those who seek public services. The interaction of citizens who seek public services, with mostly low-level public servants is a fertile ground for petty corruption. Petty corruption is also known as bureaucratic corruption. It is public knowledge that those citizens who intend to access public services must pay a bribe to bureaucrats in order to receive these social services.

It has however, been evidenced through studies that citizens and companies who seek public services openly pay the bribes that are demanded to facilitate a quick access to public services.⁵⁴⁹ The companies that do carry out business in Uganda have to contend with cumbersome procedures in the course of their doing business.⁵⁵⁰ As result, they are

⁵⁴⁵ allAfrica *Uganda: Police Unearth Details on Ghost Pensioners* (2012) Available at <https://allafrica.com/stories/201210301380.html>.

⁵⁴⁶ allAfrica (2012).

⁵⁴⁷ Foreign Policy *Another case of high-level corruption in Uganda* (2012).

⁵⁴⁸ See Human Rights Watch *World Report, Uganda* (2015) Human Rights Watch., also see Burnet M 'Uganda's endless cycle of graft' *Politico*, October 12 2013.

⁵⁴⁹ Inspectorate of Government *The Third National Integrity Survey* (2008) available at <http://www.igg.go/static/files/publications/third-national-integrity-survey-report.pdf> (accessed on 6 February 2020).

⁵⁵⁰ World Bank *Doing Business 2020* (2019): Comparing Business Regulation in 190 Economies -Economy Profile of Uganda (English) *Doing Business 2020*. Washington, DC: World Bank Group. available at

forced to pay bribes to speed up processes. It has been noted that almost all the companies that operate in Uganda expect to pay a bribe to access public services.⁵⁵¹ Some studies have actually found that bribes paid for accessing public utilities, dealing in international trade or in public procurement processes are very common.⁵⁵²

Uganda has made some attempts at fighting petty corruption, by reducing administrative processes.⁵⁵³ This is in a bid to reduce the procedures citizens and companies have to encounter before they access public services. This is intended to remove opportunities for petty corruption that present themselves. For example, Uganda has improved property and business registration, tax payment, passport acquisition processes by computerizing them.⁵⁵⁴ This has, to an extent, reduced opportunities for petty corruption. A lot still remains to be done about petty corruption. This is because citizens have continually reported to have paid bribes to access public services, in almost all government departments they have approached. These include the land and companies' registries, the courts, the police stations, public hospitals, customs.⁵⁵⁵ This also includes access to basic utility services such as water and electricity.⁵⁵⁶

3.4 PUBLIC FINANCIAL MANAGEMENT IN UGANDA

Reforms within public financial management have been ongoing for a long time. Consequently, the system has been improving, over a period of time. This is especially in regard to the effectiveness of government spending, but also the delivery of quality services for the said government spending.⁵⁵⁷

<http://documents.worldbank.org/curated/en/348981575375705706/doingd-business-2020-comparing-Business-Regulation-in-190-Economies-Economy-Profile-of-Uganda> (accessed on 28 February 2020).

⁵⁵¹ World Bank (2019).

⁵⁵² World Economic Forum Global Competitiveness Report (2013) available at http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf (accessed on 6 February 2020).

⁵⁵³ World Bank (2019).

⁵⁵⁴ World Bank (2019).

⁵⁵⁵ World Bank (2019).

⁵⁵⁶ Maira (2013) 2.

⁵⁵⁷ Maira (2013) 4.

A significant amount of money that is spent by the government of Uganda is direct budget support from donors.⁵⁵⁸ The government of Uganda consequently, spends this donor support through its own appropriations to the required public sectors. The lack of accountability on the part of government on how this donor money is spent has raised issues for concern between the donors and the government of Uganda. This is especially so, when public officials charged with appropriation of these monies are found embezzling the said monies, for their own personal use. This situation is exacerbated when the said public officials are not punished for their crimes.⁵⁵⁹

The discovery of oil in Uganda has led to a lot of chest-thumping by the government, which has indicated that it will no longer rely on donors to finance Uganda's budget. As evidenced by many other countries on the African continent that have discovered oil, the revenues that accrue from oil may facilitate economic development of a country, if administered well. The flipside of the availability of oil money to a country like Uganda, is that it exacerbates corruption through "graft and rent-seeking" by the ruling class.⁵⁶⁰

As a result of the aforementioned challenges, Uganda has crafted a public financial management strategy. This strategy is for implementation between July, 2018 to June 2023.⁵⁶¹ The purposes of the strategy are, among others, the following: -

- (i) to guarantee full compliance with the existing law;
- (ii) ensure that public officials who divert public funds are sanctioned;
- (iii) ensure that there are sufficient funds to finance the National Budget by improving planning and its connection with policy making and budget formulation;
- (iv) improve predictability in the release of funds to end users;
- (v) increase the participation of citizens and civil society groups, particularly in determining how the funds should be spent;
- (vi) improve procurement planning and management;
- (vii) ensure timely follow up on all audits and inspections

⁵⁵⁸ Barkan J *Uganda: Assessing risks to stability* (2011) Center for Strategic and International Studies (CSIS).

⁵⁵⁹ For example, in 2012, many public officials were found to have channeled public money to their private bank accounts in the office of the prime minister in what came to be popularly known as the Office of Prime Minister (OPM) Scandal.

⁵⁶⁰ Economic Policy Research Center *Oil wealth and Potential Dutch Disease Effects in Uganda* (2011).

⁵⁶¹ For a detailed reading of the strategy, it is available at https://www.finance.go.ug/sites/default/files/Publications/PFM%20Reform%20Strategy%202018_2023.pdf (accessed on 18 February 2020).

findings; (viii) improve record keeping in public administration bodies; and (ix) increase awareness of the PFM legal framework.⁵⁶²

The new reform strategy has only been implemented for about 2 years. This is since July 2018. Its effectiveness is yet to be measured.

3.4.1 BUDGET MANAGEMENT

Uganda is rated 60 out of 100 in terms of transparency in regard to its budgeting processes.⁵⁶³ Uganda scores 28 out of 100 in regard public participation in its budget processes. 'Uganda also provides the public with limited budget information'.⁵⁶⁴ This is evidenced from its scores from the budget index. The aforementioned scores, therefore reveal that the Government of Uganda has more work to do, in regard to the transparency of the budgeting process. The International Budget Partnership (IBP) has suggested that the government of Uganda can enable transparency with the budgeting process by 'increasing the comprehensiveness of the different reports produced during the budget process'.⁵⁶⁵ The IBP states that, to increase the comprehensiveness of the reports, the Government of Uganda needs to 'focus on providing information on expenditures, outstanding debts, macroeconomic forecasts, financial assets, future liabilities, earmarked revenues and tax expenditures'.⁵⁶⁶

Accountability in the budgeting process can only be enhanced, if there is public participation throughout the said process. IBP has claimed that 'public participation prior to the consultation phase and after the consultation process is non-existent'.⁵⁶⁷ During the implementation of the budget, other stakeholders – civil society and activist citizens - who are the 'eyes and ears' of the general public, should be allowed to closely monitor

⁵⁶² Ministry of Finance, Planning and Economic Development *Uganda Public Financial Management Reform Strategy (July 2018-June 2023)* (2018).

⁵⁶³ International Budget Partnership *Open Budget Index*, 2019. (2019) Available at <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=ug> (accessed on 18 February, 2020).

⁵⁶⁴ International Budget Partnership (2019).

⁵⁶⁵ International Budget Partnership (2013, 2019)., also see Maira (2013) 5.

⁵⁶⁶ International Budget Partnership (2013, 2019).

⁵⁶⁷ see International Budget Partnership (2013, 2019).

the implementation process. This is to ensure that public resources that were budgeted for particular societal needs, are indeed allocated and utilized by those essential needs of society. This is to prevent the said public resources from being diverted to corrupt activities by government officials.⁵⁶⁸

3.4.2 PUBLIC PROCUREMENT

In many countries on the African continent, public procurement is an area that provides a wide array of opportunities for corruption.⁵⁶⁹ Uganda is not an exception. Consequently, because of the large amounts of public resources involved and the opportunities for the corruption that public procurements present, a law on public procurement was enacted in Uganda, to regulate the sector.

The Public Procurement and Disposal of Public Assets Act, 2003, prescribes the guidelines on how the public procurement should be conducted. This public procurement law also regulates the disposal of public assets. This law guides the procurement processes both in the central and local government.⁵⁷⁰ This law also provides guidance to procurement in statutory bodies.⁵⁷¹ This law creates a regulatory body to enable its implementation, the Public Procurement and Disposal of Public Assets Authority (PPDA).⁵⁷² Some of the key objectives of the PPDA are to: -

- (a) ensure the application of fair, competitive, transparent, nondiscriminatory and value for money procurement and disposal standards and practices; advise Government, local governments and other procuring and disposing entities on procurement and disposal policies, systems and practices and where necessary, on their harmonization; (c) set standards for the public procurement and

⁵⁶⁸ Bukenya B & Muhumuza W (2017) "The Politics of core Public Sector reform in Uganda: Behind the Façade" 15-27. Also see IGG *Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism* (2014).

⁵⁶⁹ Appolloni A., Nshombo JMM Public Procurement and Corruption in Africa: A literature Review, in: Decaloris F., Frey M. (eds) *Public Procurement's Place in the World. Central Issues in Contemporary Economic Theory and Policy.* (2014) Palgrave Macmillan, London. DOI https://doi.org/10.1057/9781137430649_8, also see Eyo, A Corruption and the Challenge to Sustainable Public Procurement (SSP): A Perspective on Africa (2017) *European Procurement & Public Private Partnership Law Review*, Vol. 12 No. 3, 253-265.

⁵⁷⁰ Section 6 of the Act.

⁵⁷¹ Section 6 of the Act.

⁵⁷² See sections 5,6,7,8 & 9 of the Act.

disposal systems in Uganda; (d) monitor compliance of procuring and disposing entities; and (e) build procurement and disposal capacity in Uganda.⁵⁷³ Apart from the procurement law, procurement regulations and guidelines have also been enacted to guide the implementation of the Act.⁵⁷⁴

There are reported challenges in the public procurement sector that have been revealed by the office of the Auditor General.⁵⁷⁵ The Auditor General indicates that the public procurement processes are imperfect. As a result, opportunities for corruption have manifested in this environment. The Auditor General also reveals that the 'value for money audits' show that public officials have made inefficient procurements that have led to wastage of public resources. These inefficient procurements are reportedly made outside the established guidelines laid down by the law.⁵⁷⁶ The IGG's report indicates that "corruption in procurement is evident from 'unnecessary projects, substandard work, unnecessarily expensive work, diversion of resources, unjustified and unexpected price increases and delays in project completion'".⁵⁷⁷ The IGG has revealed that a common tactic to corrupt public procurement processes, is to intentionally defer the planning of the public procurements to justify emergency procurements that have no little or no competition.⁵⁷⁸ This is because the public procurement laws and guidelines permit emergency procurements.⁵⁷⁹

There have been several reforms within the public procurement sector in Uganda, however, because of the complex processes within public procurement, corruption is still prevalent.⁵⁸⁰ These complex procurement processes have been made worse by

⁵⁷³ Section 6 of the Act.

⁵⁷⁴ See Central Government Regulations and Guidelines; Local Government Regulations and Guidelines. available at <https://www.ppda.go.ug/download-reports/legal/guidelines/> (accessed on 19 February 2020).

⁵⁷⁵ IGG *Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism* (2014), 27.

⁵⁷⁶ IGG (2014) 31.

⁵⁷⁷ IGG (2014) 27.

⁵⁷⁸ IGG (2014) 27-30.

⁵⁷⁹ See section 82 of the PPDA Act.

⁵⁸⁰ Maira (2013) 5.

deliberate poor record keeping by public officials, in order to create opportunities for the misappropriation of public resources.⁵⁸¹

Companies that bid for public contracts to supply services or goods have reported high-levels of corruption within the processes.⁵⁸² It has been revealed that out of five companies, one expects to bribe public officials in order to 'win' public contracts.⁵⁸³ It has also been indicated that about 9.4% of the values of the contract is lost to corruption in both central and local government.⁵⁸⁴ Public officials frequently have little or no knowledge of the procurement rules.⁵⁸⁵

The decisions on public procurements are made on the basis of political connectedness as opposed to 'value for money' considerations.⁵⁸⁶ Companies have also revealed that the bidding process for privatization of public parastatals was deliberately restricted to politically connected persons.⁵⁸⁷ Many infrastructure developments projects have been halted due to flawed procurement processes. This has led to the loss of public resources, due to opaque procurement rules.⁵⁸⁸ Consequently, public procurement is one of the most 'fertile grounds' that enables swindling of public resources.

3.5 ANTI - CORRUPTION MEASURES IN UGANDA

A significant number of pronouncements have been made by high-ranking officials, about how to fight corruption in Uganda.⁵⁸⁹ As a result of these pronouncements, several formal and none formal anti-corruption mechanisms have been established by the government of Uganda. Even with the establishment of these mechanisms, the enforcement has been

⁵⁸¹ Gumisiriza P & Mukobi R 'Anti-Corruption Institutional Facade in Uganda' (2018) Vol. 15 No. 1 *Uganda Journal of Management and Public Policy Studies*.

⁵⁸² World Economic Forum (2016-2017).

⁵⁸³ World Bank *Enterprise Surveys Uganda* 2013.

⁵⁸⁴ US Department of State *Investment Climate Statement* 2017.

⁵⁸⁵ GAN Integrity *Uganda Corruption Report* 2017.

⁵⁸⁶ GAN Integrity (2017).

⁵⁸⁷ US Department of State (2017).

⁵⁸⁸ GAN Integrity (2017).

⁵⁸⁹ These include the recent 'Walk Against Corruption' led by President Museveni. The walk occurred on 4 December, 2019, in Kampala City, Uganda.

weak, or it has been against the 'small fish'.⁵⁹⁰ Consequently, doubts have been raised in the minds of the public, about the sincerity of the government of Uganda, in fighting this cancer.

3.6 LEGAL FRAMEWORK ON CORRUPTION IN UGANDA

Uganda's legal framework has been praised as an excellent regime in the fight against corruption.⁵⁹¹ The government of Uganda has over years been very outspoken about the fight against corruption. It has followed this up with several anti-corruption initiatives.⁵⁹² This includes a robust anti-corruption regime. For example, an anti – corruption division has been created within the court system to strictly adjudicate corruption cases. This is in a bid to handle corruption offences with the urgency they deserve as compared to other cases. Overtime specialized capacity has been built by the court staff on how to handle corruption cases. This legal regime has however been viewed as perfect on paper, although its enforcement has been very weak.⁵⁹³

The excellence of Uganda's legal regime on paper is evidenced by the international treaty and soft law instruments it has signed. Uganda is a signatory to the United Nations Convention against Corruption (UNCAC).⁵⁹⁴ Uganda is also a signatory to Convention on Preventing and Combating Corruption of the African Union, 2004 (AUCPCC).⁵⁹⁵ It has been reported that Uganda is yet to fully domesticate the provisions of UNCAC and AUCPCC.⁵⁹⁶ Within the East African region, Uganda and other countries in the region have

⁵⁹⁰ Human Rights Watch *Letting the Big Fish Swim: Failures to prosecute High Level Corruption in Uganda* (2013) 22.

⁵⁹¹ Transparency International Uganda (2015) *As strong as its weakest link. Stakeholders Perceptions of Ugandan Legal and institutional Anti-Corruption Framework*, Transparency International Uganda: Kampala.,10. Uganda Debt Network (2016) *Overcoming Corruption. Dossier on Corruption in Uganda: 2012-2016*, Kampala, 13.

⁵⁹² See National Anti-Corruption Strategy (2014-2019), JLOS Anti-Corruption Strategy, Uganda Police Force Anti – Corruption Strategy, among other initiatives.

⁵⁹³ See Matembe (2019), Kanyeihamba (2019), among other recent works by prominent Ugandans.

⁵⁹⁴ Signed on the UNCAC on 9 December, 2003 and ratified it on 9 September, 2004.

⁵⁹⁵ Uganda signed the AUCPCC on 18 March, 2003.

⁵⁹⁶ Uganda is yet to ratify the AUCPCC.

signed agreements within the region having recognized the transnational nature of illicit financial flows.⁵⁹⁷

3.6.1 INTERNATIONAL

Several international treaties have been signed and ratified by Uganda, in regard to the fight against corruption. Uganda has signed and ratified these agreements at international, regional and sub-regional levels. Consequently, under the national objectives and Directive Principles of State Policy, in particular, Objective 28(XXVIII) (b) of the 1995 Constitution, provides for Uganda's foreign policy objectives. The aforementioned provision prescribes 'that the foreign policy of Uganda shall be based on principles of ... (b) respect for international law and treaty obligations.'⁵⁹⁸

The aforementioned constitutional provision is buttressed by Article 119 of the Constitution of the Republic of Uganda (1995 Constitution), which provides for reception, incorporation and application of international law. Article 119(4) of the 1995 Constitution grants the Attorney General the duty to draw and pursue agreements, treaties, conventions and documents whatever name called to which the government is a party or in respect of which the government has an interest. Article 119(5) of the 1995 Constitution further provides that the government cannot enter in any of the above commitments and cannot conclude them without the legal advice from the Attorney General except in such cases and subject to such condition as Parliament may by law prescribe.⁵⁹⁹

⁵⁹⁷ Institute of Security Studies *Can East Africa sustain its promising anti-corruption efforts* (2018) available at <https://issafrica.org/iss-today/can-east-africa-sustain-its-promising-anti-corruption-efforts> (accessed on 6 February 2020). Also see Declaration signed by anti-corruption agencies in Kenya, Tanzania and Uganda in fighting illicit funds - World Bank *AGIDATA Uganda country profile* (2011).

⁵⁹⁸ 1995 Constitution.

⁵⁹⁹ See *Nsimbe Holdings Ltd v The Attorney General & Another*, Constitutional Petition No 2 of 2006, [2007] UGCC 4 (6 November 2007), where the Constitutional Court held that a failure to comply with Article 119(5) where a contract is signed between a government parastatal and a private entity, renders the contract null and void in terms of article 2(2) of the Constitution. It seems that the analogy would apply where an international agreement is concluded without the advice of the Attorney General as required under Article 119(5).

Article 123(1) of the 1995 Constitution, states that the execution of international treaties, conventions and agreements is a preserve of the President who may delegate his or her power to any person. Article 123(2) of the 1995 Constitution provides for Parliament to make laws to govern ratification of treaties. This brief examination of the constitutional provisions of the 1995 Constitution therefore, justifies the duty of Uganda as a state party, to these agreements to abide by international standards.

As indicated earlier, Uganda signed UNCAC on 9 December 2003. It later ratified the treaty on 9 September, 2004. As a state party to the UNCAC, Uganda has international obligations to fulfil.⁶⁰⁰

In Uganda, for an international treaty to be binding, it must be domesticated and incorporated into domestic law.⁶⁰¹ Some of the key provisions of the UNCAC that are relevant to the prosecution of corruption include Article 11(2), which requires Uganda to establish the independence of prosecution services. Article 30 also provides for state parties to UNCAC to establish laws and procedures that facilitate the prosecution, adjudication and sanctioning of the perpetrators of corruption.⁶⁰² The provisions of the UNCAC have been domesticated into law by amending the current law.⁶⁰³ New Acts of Parliament have also been enacted.⁶⁰⁴

UNIVERSITY of the
WESTERN CAPE

⁶⁰⁰ See for example Article 43 of the UNCAC, that requires Uganda to cooperate with other states in regard to extradition, transfer of sentenced persons, mutual legal assistance, transfer of criminal proceedings, law enforcement cooperation, joint investigations and special investigative techniques. For a detailed treatment on this refer to Articles 44 – 50 of the UNCAC.

⁶⁰¹ Section 14 of the Judicature Act (Cap. 13) provides for the applicable sources of law in Uganda. International law is not explicitly mentioned. This as a result, makes Uganda a dualist state. For a Treaty to be enforceable, the provisions of the Ratification of Treaties Act (Cap 204) would have to be applied. Thereafter, the provisions of the Treaty have to be domesticated into law by an Act of Parliament. For example, in the case of *Pentecostal Assemblies of God Ltd v Transsahara International (U) Ltd & Anor* (CIVIL APPEAL NO.10 Of 2010) [2012] UGSC 12 (21 November 2012), the Supreme Court cited section 2 of the Ratification of Treaties Act and Article 123 of the 1995 Constitution to support their decision that the United Nations African Institute for Prevention of Crime and Treatment of Offenders (UNAFRI) statute was a Treaty.

⁶⁰² See Article 30 (1) – (10) of the UNCAC.

⁶⁰³ See the Anti-Corruption Act, 2009.

⁶⁰⁴ See for example the Anti-Money Laundering Act and the Whistle-Blowers Act which have domesticated Article 14 & 23 of the UNCAC on Money Laundering and Article 40 of the UNCAC on Bank Secrecy., Also

3.6.2 REGIONAL

Uganda is also a state party to a number of African Union treaties. They include the African Charter on Democracy, Elections Governance adopted in 2007; the African Charter on Values and Principles of Decentralization, Local Governance and Local Development adopted in 2014 and the African Charter on Values and Principles of Public Service and Administration adopted in 2011. Uganda signed the AUCPCC in 2003 and ratified this instrument on 30 August, 2004. The AUCPCC is the principal treaty in curbing corruption on the continent.⁶⁰⁵ AUCPCC also establishes a framework for fighting corruption both in the public and private sector. The objectives of the AUCPCC are as follows: -

1.Promote and strengthen the development in Africa by each state party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences. 2.Promote, facilitate and regulate cooperation among the state parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa. 3.Coordinate and harmonize the policies and legislation between state parties for the purpose of prevention, detection, punishment and eradication of corruption on the continent.⁶⁰⁶

The principles of the AUCPCC encourage the state parties to respect the rule of law by observing democratic principles and fostering democratic institutions.⁶⁰⁷ The principles also emphasize that, the observance of human and peoples' rights in accordance with the African Charter and other human rights instruments, is of paramount importance to the AUCPCC.⁶⁰⁸ The AUCPCC also condemns and rejects corruption and related acts of impunity.⁶⁰⁹ The AUCPCC imposes obligations on Uganda in regard to the prosecution of corruption. Under Article 14, it imposes on Uganda an international obligation to ensure minimum guarantees to a fair trial of persons accused of corruption, in line with the African Charter and other international human rights instruments. Uganda also has an

see Article 31 of the UNCAC on freezing, seizure and confiscation of proceeds of corruption, which have been domesticated in sections 37, 53-62, 63-66 of the Anti-Corruption Act.

⁶⁰⁵ As of 12 February, 2020, this treaty had been signed by 49 states out of the 54 states on the African continent. 43 states have ratified the treaty and it is in force.

⁶⁰⁶ Article 2 of the AUCPCC.

⁶⁰⁷ Article 3 of the AUCPCC.

⁶⁰⁸ Article 3 of the AUCPCC.

⁶⁰⁹ Article 3 of the AUCPCC.

obligation under the AUCPCC, to seize and confiscate proceeds of corruption within its territory.⁶¹⁰

3.6.3 SUB-REGIONAL

Uganda have signed agreements with other countries within the East African region, having recognized the transnational nature of illicit financial flows.⁶¹¹ Uganda is also a member of East African Association of Anti-Corruption Authorities (EAAACA). The EAAACA was established in September, 2007 when the three countries signed a Declaration.⁶¹² The EAAACA was later launched 9 November, 2007, in Nairobi, Kenya.⁶¹³ Its major mandate is to 'to promote and facilitate regional cooperation, mutual legal assistance and technical assistance in the prevention and combating of corruption in the region, to share information, hold trainings and carry out joint research'.⁶¹⁴ The EAAACA has spearheaded the drafting of an East African Community Protocol on Preventing and Combating Corruption. This Protocol is yet to come into force and is still in draft form pending consultations from partner states.⁶¹⁵

3.6.4 NATIONAL

Uganda has a plethora of laws and institutions established to fight corruption. It is a surprise that Uganda is one of the most corrupt countries in the world, considering both the formal and informal mechanisms in place in to curb corruption. I will traverse a few strategies that have been established and then proceed to examine the legal framework.

⁶¹⁰ Article 16 of the AUCPCC.

⁶¹¹ Institute of Security Studies (2018) "Can East Africa sustain its promising anti-corruption efforts," Available at <https://issafrica.org/iss-today/can-east-africa-sustain-its-promising-anti-corruption-efforts>. (accessed on 6 February 2020). Also see Declaration signed by Anti-Corruption agencies in Kenya, Tanzania and Uganda in fighting illicit funds [source] – World Bank (2011) *AGIDATA Uganda country profile*.

⁶¹² The Kampala Declaration of East African Association of Anti-Corruption Authorities.

⁶¹³ EAAACA "About the EAACA," available at <https://eaaaca.com/about-eaaaca> (accessed on 25 February 2020).

⁶¹⁴ EAAACA "About the EAACA," available at <https://eaaaca.com/about-eaaaca> (accessed 25 February 2020).

⁶¹⁵ See <https://eaaaca.com/news/heads-of-acas-with-eac-secretary-general-during-the-eac-protocol-on-preventing-and-combating> (accessed 25 February 2020).

3.6.4.1 NATIONAL ANTI-CORRUPTION STRATEGY (2014-2019)

Uganda's National Anti-Corruption Strategy (NACS) is a five-year action plan that enables various government organs to work in a coordinated manner to curb the misuse of public resources within government institutions. This strategy expired in 2019, although it is the one in use until a new one is adopted. These various institutions have established an Inter-Agency Forum (IAF) where government organs learn from each other, on how to increase accountability mechanisms in public administration and also devise strategies of how to reduce corrupt activity, within those institutions.

The strategy has a two-pronged approach to fighting corruption. It emphasizes institutional and operational reforms. The NACS key objective is indicated here under;

'provides a national framework to guided policies and programmes of Ministries, Departments and Agencies (MDAs) and Local Governments (LGs); Offers an over-arching framework/approach to combating corruption in Uganda within a five-year period; Seeks to ensure that systems of accountability work for the benefit of the people and relate to each other properly.'⁶¹⁶

The IAF is an excellent forum where an exchange of ideas and tactics can be crystalized in a meaningful way, by all the stakeholders. This enables various government agencies not to work at cross-purposes, in their anti-corruption efforts. Inadequate funding of the IAF, has hampered its effectiveness, although it is a marvelous mechanism.⁶¹⁷ This national strategy stresses zero tolerance for corruption to enable good governance.⁶¹⁸ The lack of sufficient funding and human resource capacity has hindered the efficient implementation of this strategy.⁶¹⁹

⁶¹⁶ NACS (2014-2019).

⁶¹⁷ NACS (2014-2019).

⁶¹⁸ NACS (2014-2019).

⁶¹⁹ See The Justice and order Sector *The Third Justice, JLOS Strategic Investment Plan (2017)*., available at <https://www.ijlos.go.ug/index.php/document-centre/strategic-investment-plan-sip-iii/file>. (accessed on 28 April 2020). Kinyera OB Assessing the effectiveness of Uganda's National Anti-Corruption Strategies being used in the fight against Corruption. (2016).

3.6.4.2 JLOS ANTI - CORRUPTION STRATEGY

This is another strategy that should feed into the anti – corruption efforts crystalized by NACS at national level. This is sector wide approach in the Justice, Law and Order Sector (JLOS) intended to contribute to NACS policy on 'Zero tolerance for Corruption' in Uganda. The JLOS anti-corruption strategy is intended enable effective and efficient delivery of public goods to citizens in Uganda. This strategy was initiating adopted in 1998 and has been in place for 22 years. This strategy is made of over 17 government Ministries, Departments and Agencies (MDAs) which constitute the Justice, Law and Order Sector. The Police and Judiciary, as key JLOS institutions, have consistently been named as the most corrupt institutions in the country.⁶²⁰ The consumers of public services from these institutions have stated that they have to pay bribes to public officials to access public services.⁶²¹ Consequently, there was a need to fight such vices within these institutions by implementing the JLOS Anti-Corruption Strategy. Due to the lack of adequate funds, the implementation has been achieved with the assistance of donors and CSOs.⁶²² In partnership with the Judiciary, DPP and Uganda Police Force (UPF), Legal Service Providers Network (LASPNET) launched a media campaign named "Break the Silence on Corruption" which utilizes radio jingles and media talk shows, to sensitize the general public about this vice in the JLOS sector.⁶²³ LASPNET has also advocated for the functional independence of the Inspectorate of Courts, a key unit in the fight against corruption in the court system. Through these efforts the Judiciary Administration Bill.⁶²⁴ They output of the JLOS strategy was to increase the number of cases handled and completed at the

⁶²⁰ GAN *Uganda Corruption Report* (2017). Available at <https://gaintegrity.com/portal/country-profiles/uganda/> (accessed on 28 April, 2020).

⁶²¹ GAN (2017).

⁶²² Democratic Governance Facility and LASPNET are some of the key partners in the implementation of the JLOS Anti-Corruption Strategy.

⁶²³ LASPNET (2019) Assessment Report on Implementation of the JLOAS Anti-Corruption Strategy 2012, a CSO Perspective, available at <http://www.laspnet.org/joomla-pages/reports/521-assessment-report-on-implementation-of-anti-corruption/file>. (accessed on 27 April, 2020).

⁶²⁴ This Bill has been pending for a while but was presented for its first reading before Parliament in May 2018.

Anti-Corruption Court (ACC).⁶²⁵ The targets that have been sent by the ACC per year, have not been met due to lack of resources and understaffing. The lack of funding, therefore, has seriously impacted the implementation of the JLOS Anti-Corruption Strategy.⁶²⁶

3.7 LAWS ON CORRUPTION IN UGANDA

Beyond these two strategies, Uganda has a robust anti-corruption framework. Its implementation and enforcement is however, weak.⁶²⁷ The National Objectives and Directive Principles of State Policy of the Constitution of the Republic of Uganda provide that “all lawful means shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices”.⁶²⁸ The 1995 Constitution confers on every citizen the duty “to protect and preserve public property” and “to combat corruption and misuse or wastage of public property”, among other obligations.⁶²⁹ There are several laws that have been enacted to curb corruption. These include the Leadership Code Act;⁶³⁰ Whistleblowers Protection Act;⁶³¹ The Budget Act;⁶³² Public Finance Management Act;⁶³³ Inspectorate of Government Act;⁶³⁴ Access to Information Act;⁶³⁵ Public Procurement and Disposal of Public Assets Act;⁶³⁶ Political Parties and Organizations Act;⁶³⁷ 2010; Anti-Money Laundering Act;⁶³⁸ the Penal Code Act,⁶³⁹ Anti-Corruption Act,⁶⁴⁰ among other laws.

⁶²⁵ LASPNET (2019).

⁶²⁶ LASPNET (2019).

⁶²⁷ Transparency International (2019) *Corruption Perceptions Index*.

⁶²⁸ Principle XXVI.

⁶²⁹ Article 17(d) & (i).

⁶³⁰ Act No. 5 of 2017.

⁶³¹ Act No. 6 of 2010.

⁶³² of 2001.

⁶³³ Act No. 3 of 2015.

⁶³⁴ Chapter 167, Laws of Uganda.

⁶³⁵ Act No. 5 of 2005.

⁶³⁶ Act No. 11 of 2011.

⁶³⁷ Act No. 2 of 2010.

⁶³⁸ 2013.

⁶³⁹ Chapter 120, Laws of Uganda.

⁶⁴⁰ Act No. 6 of 2009.

3.7.1 THE LEADERSHIP CODE ACT, 2002

The Leadership Code Act regulates ethical behavior by public officials. It regulates issues with regard to conflict of interest, receipt of gifts and other related conduct that a public official should not engage into. In case of *Hon. Jim Muhwezi v Attorney General & Anor*,⁶⁴¹ the Constitutional Court considered a matter in which the Applicant, as Health Minister, was reprimanded by the IGG for failing to declare a GAVI reward (gift) of US \$ 4,361,000 (United States Dollars four million and three hundred sixty-one thousand) to the IGG as required by the Leadership Code Act. The IGG commenced proceedings to have the Applicant removed from his position as Member of Parliament and Health Minister for breaching the Leadership Code Act and in accordance with Article 83(1) (e) of the Constitution. Mr. Muhwezi filed a constitutional petition halting the IGG's punitive proceedings.⁶⁴² The Constitutional Court finally ruled that the appointment of an IGG who is a judicial officer contravenes the doctrine of separation of powers.⁶⁴³ The Constitutional Court also noted that the investigations, arrest and prosecution of Jim Muhwezi and 2 other petitioners by the IGG on the "instructions" of the President did not contravene any Article of the constitution.⁶⁴⁴ Similarly, in the case of *Mbabali Jude v Edward Kiwanuka Sekandi*,⁶⁴⁵ the Petitioner petitioned the Constitutional Court about the illegal use of government vehicles and other facilities attached to the office of the Respondent in parliamentary election campaigns. The Respondent was at the time the Vice President of the Republic of Uganda. The Petitioner prayed that the Court declare the acts of the Respondent were unconstitutional and an order that the Respondent be sacked from his position as Vice President for violating the Leadership Code Act. The Court declined to do so, arguing that the Petitioner was in the wrong forum. The proper forum for such electoral disputes being the High Court of Uganda. A Code of Conduct and Ethics was also passed, to also regulate the public officials conduct. The IGG is responsible for its

⁶⁴¹ Miscellaneous Application No.18 OF 2007)) [2007] UGCC 6 (15 November 2007).

⁶⁴² Miscellaneous Application No.18 OF 2007)) [2007] UGCC 6 (15 November 2007) 10-13.

⁶⁴³ *Jim Muhwezi & 3 Ors v Attorney General & Anor* (Constitutional Petition No. 10 of 2008) [2010] UGCC 3 (14 May 2010).

⁶⁴⁴ (Constitutional Petition No. 10 of 2008) [2010] UGCC 3 (14 May 2010).

⁶⁴⁵ Constitutional Petition No. 28 of 2012.

enforcement.⁶⁴⁶ The public officials including President, Vice President, Prime Minister, Ministers and public servants and their close relatives are supposed to sign wealth declarations forms, annually indicating how much wealth they and their relatives own, to the IGG. These wealth declaration forms are supposed to be made public.⁶⁴⁷

This Leadership Code Act, 2002 was recently amended to enable the establishment of the Leadership Code Tribunal to give effect to Article 235A of the 1995 Constitution.⁶⁴⁸ The Leadership Code (Amendment) Act, 2017 has also strengthened the enforcement of the Leadership Code.⁶⁴⁹

3.7.2 INSPECTORATE OF GOVERNMENT ACT, 2002

Related to the LCA, is the Inspectorate of Government Act, 2002, (IGA) which establishes the IGG's office. The mandate of this law, is to establish a legal framework through which corruption can be curtailed in Uganda. This law also enables the IGG's office to enforce strict adherence to the rule of law. It also enables a legal regime for the detection and prevention of corruption. This law mandates the IGG's to clamp down on those public officials who abuse public office for personal gain. The 1995 Constitution confers on the IGG powers to "to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office".⁶⁵⁰ The IGG's office in the course of executing its mandate is not the control or direction of any person or authority and can choose to discontinue investigations or

⁶⁴⁶ Section 3 the Leadership Code Act.

⁶⁴⁷ In the case of *Mbabali v Sekandi* (Constitutional Petition No. 0028 OF 2012) [2014] UGCC 15 (19 September 2014), the Constitutional Court noted that there was nothing that required constitutional interpretation in the petition filed before them, although the petitioner had cited provisions of the Leadership Code Act and Parliamentary Elections Act to support his assertion that the Respondent had used government vehicles and facilities to campaign. In practice this does not happen. Recently, Investigative Journalists made a request to the IGG to avail them with all the wealth declarations of all permanent secretaries in all ministries in Uganda. The IGG refused the request for information on flimsy grounds. See Kiyonga D "Govt sued over wealth declaration" *The Observer*, November 12, 2013. Available at <https://www.observer.ug/component/content/article?id=28560:govt-sued-over-wealth-declaration>. (accessed on 21 April 2020).

⁶⁴⁸ See sections 19A, 19B, 19C, 19E, 19G, 19H, 19I, 19J, 19K, 19L, 19M, 19N, 19O, 19Q, 19P, 19Q, 19R, 19S, 19T, 19U, 19V, 19W, 19X & 19Y & 19Z of the Leadership Code (Amendment) Act, 2017.

⁶⁴⁹ See sections 4, 4A, 4B, 4C, 4D & 28 of the Leadership Code (Amendment) Act, 2017.

⁶⁵⁰ Article 230(1) of the 1995 Constitution.

criminal proceedings it has initiated against any person.⁶⁵¹ Complaints made to the IGG must be in strict confidence, and can be made by any person.⁶⁵² These include juristic persons.⁶⁵³ The IGG is also required to file periodic reports to Parliament about its activities.⁶⁵⁴ The Parliament in turn is supposed to debate the reports and make recommendations to the IGG.⁶⁵⁵ I discuss the case law that has emerged from the application and interpretation of this Act in Chapter 4.

3.7.3 THE WHISTLEBLOWERS PROTECTION ACT, 2010

A legal framework for persons who give information to anti-corruption authorities on corrupt activities has been established. The Whistleblowers Protection Act, 2010 (WPA) provides an enabling mechanism through which whistleblowers can provide information on corruption in Uganda. This law has put in place a rewards and protection system, for individuals who risk to give information that anti-corruption officials would otherwise not access, due to the secretive nature of corrupt transactions.⁶⁵⁶ Challenges have been reported when whistleblowers are turned into court witnesses' in corruption cases. As a result, their identity is blown without any protections in place for their personal safety.⁶⁵⁷ Recommendations have been made for Parliament to enact a witness protection law to fortify the Whistleblowers Act, to cater for the safety of whistleblowers who are turned into court witnesses.⁶⁵⁸

Some jurisprudence has developed in the application of the provisions of this law. In the case of *Sebudde Joseph v Inspector General of Government*⁶⁵⁹ the High Court noted that

⁶⁵¹ Article 227 of the 1995 Constitution.

⁶⁵² See section 24 of the IGG Act.

⁶⁵³ Section 24 of the IGG Act.

⁶⁵⁴ Article 231 of the 1995 Constitution.

⁶⁵⁵ Article 231 (1) & (2) of the 1995 Constitution.

⁶⁵⁶ Musinguzi John (2019) "Lack of witness protection hampering fight against corruption" The Observer, October 23. Available at <https://observer.ug/news/hedelines/62408-lack-of-witness-protection-law-hampering-fight-against-corruption>. (accessed on 28 April 2020).

⁶⁵⁷ Musinguzi (2019).

⁶⁵⁸ Anti-Corruption Coalition Uganda (ACCU) (2019) *Assessing the Status of Implementation of the Whistleblowers Protection Act, 2010 and the Leadership Code Act, 2002(as amended)*.

⁶⁵⁹ (Misc. Cause No.32 Of 2010)) [2010] UGHC 64 (28 October 2010)., also see the case of *Mbiika Dennis Vs Centenary Bank* (LABOUR DISPUTE CLAIM NO.023 OF 2014) [2018] UGIC 11 (20 July 2018); where the

the Whistle Blowers Act does not override the constitutional guarantees to a fair hearing. Yorokamu Bamwine, J noted as follows: -

The argument appears not to appeal to the respondent. According to him, he is by law empowered and required to protect whistle blowers under the Whistle Blowers Act 2010 and the Inspectorate of Government Act 2002. With the greatest respect to the respondent, I do not think that the Whistle Blowers Act 2010, if it had come into force by 22/01/2010, gives solace to him. I do not think that the Act takes away the general rule. which is that a party must be given an opportunity to be heard before its rights are prejudiced or affected by a decision. True, the respondent may have acted within the law and rules governing his institution. However, having heard Mr. Bulegeya's arguments, the applicant's ground is based on one simple rule of natural justice, namely, the right of a party to be heard before they are found liable. Whether the information comes from whistle blowers or not, the rule embraces the whole notion of fair procedure and due process.⁶⁶⁰

The High Court further noted that the process of finding the Applicant liable, could not have passed the test of natural justice, without the Applicant being given a chance "to contradict those accusations since the whistle blowers could not come out to identify themselves".⁶⁶¹

3.7.4 ACCESS TO INFORMATION ACT, 2005

A related law to the WPA is the Access to Information Act, 2005 (AIA). This law is fortified by Article 41 of the 1995 Constitution, which provides that every citizen has a right to access information in the possession of the state or any organ or agency of the state. In *Kamba Saleh v Attorney General*⁶⁶² the Constitutional Court held that "Article 41 of the Constitution guarantees the right to access information to every individual citizen. This is meant to ensure transparency and accountability of all government organs and departments".⁶⁶³ The Court further held that the petitioner, in accordance with Article 41 and the provisions of the Access to Information Act, 2005, could have requested to

claimant cited sections 2(1), 3(1) (b) & 4(1) to support his argument that he was protected as whistle blower on "professional improprieties" of his supervisor. In its decision the Labour Court did not resolve this argument. The claimant nevertheless won his claim based on purely labour law provisions.

⁶⁶⁰ (Misc. Cause No.32 Of 2010)) [2010] UGHC 64 (28 October 2010) 4-5.

⁶⁶¹ (Misc. Cause No.32 Of 2010)) [2010] UGHC 64 (28 October 2010) 6.

⁶⁶² (Constitutional Petition No. 38 OF 2012) [2015] UGCC 3 (25 May 2015).

⁶⁶³ (Constitutional Petition No. 38 OF 2012) [2015] UGCC 3 (25 May 2015) 10.

receive information about his appointment and approval as minister from Parliament. The court ruled that he chose not to apply for the information. This constitutional provision restricts particular classes of information from being accessed, if they are likely to interfere with the security or sovereignty of the state.⁶⁶⁴ Information that may interfere with the privacy of a person may also be restricted.⁶⁶⁵

The first challenge with the access to information law, is that it provides for access to information by a citizen of Uganda but not any other person. A wide interpretation of the provision "a citizen of Uganda" would, in my humble view, include juristic persons registered in Uganda, while a narrow interpretation would only mean human beings who are citizens of Uganda.⁶⁶⁶ This provision restricts non-citizens from requesting for information, which they may be entitled to, especially if the persons requesting the information are international development partners.⁶⁶⁷ Uganda is heavily dependent on donor funds. If the public funds of a particular nation are misappropriated, the agents of that 'donor' country have a right to access information on how their public money was misused. In *Spear Motors Ltd v Attorney General & 2 Others*⁶⁶⁸ the 1st Defendant argued that according to section 25 of the Access to Information Act, 2005, minutes of a meeting of the CHOGM Ministerial Sub-Cabinet were protected from disclosure and therefore could not be used by the Plaintiff as evidence in the High court. The Plaintiff argued that Article 41 of the Constitution, guarantees citizens access to information in the possession of the state except on the grounds of security or privacy of persons. The Plaintiff further argued that the Ugandan Supreme Court in the case of *Attorney General v Tinyefuza*⁶⁶⁹ had earlier warned other subordinate courts "against the use of technicalities to stifle the production of evidence" in courts. The High Court held that the cabinet minutes were

⁶⁶⁴ Article 41(1) of the 1995 Constitution., also see section 5 of the Access to Information Act, 2005.

⁶⁶⁵ Article 41(1) of the 1995 Constitution., also see section 5 of the Access to Information Act, 2005.

⁶⁶⁶ For example, in the case of *Spear Motors Ltd v Attorney General & 2 Others* (HCT-00-CC-CS-0692-2007) [2012] UGCOMM 18 (18 March 2012) 15 & 20, the court held that a juristic person had a right to information. Also see *Green Watch (U) Ltd v Attorney General*, High Court Civil Suit No. 139/2001.

⁶⁶⁷ Article 41(1) of the 1995 Constitution., also see section 5 of the Access to Information Act, 2005.

⁶⁶⁸ (HCT-00-CC-CS-0692-2007) [2012] UGCOMM 18 (18 March 2012)

⁶⁶⁹ Constitutional Appeal No. 1 of 1997.

annexed to a Parliamentary Accounts Committee Report that was tabled before the Plenary of Parliament and therefore ceased to be privileged information protected by section 25 of the Access to Information Act.⁶⁷⁰

The second challenge is that, it restricts access to information in very broad and vague terms.⁶⁷¹ For example, the IGG refused to provide information about the wealth declarations of all permanent secretaries of all ministries in Uganda, on the pretext that not only was it expensive to make copies of the wealth declarations forms for the investigative journalists, but also that the permanent secretaries rights to privacy would be violated.⁶⁷² As a consequence of these restrictions, some cases have been brought before the courts to challenge the aforementioned restrictions to access public information.⁶⁷³ Prior to the enactment of this law, court had pronounced itself on access to public documents in other cases.⁶⁷⁴

The reasons for the information request were obvious. It is public knowledge that the office of the Permanent Secretary in any ministry in Uganda, is where corrupt deals are initiated.⁶⁷⁵ Considering that the main purpose for enacting the access to information law, was to enable democratic accountability, the challenges make it almost impossible for journalists to access and analyse public information. These impediments, as result affect

⁶⁷⁰ (HCT-00-CC-CS-0692-2007) [2012] UGCOMMC 18 (18 March 2012) 32-34.

⁶⁷¹ Also see Access to Information Regulations SI 17/2011.

⁶⁷² Kiyonga D 'Govt sued over wealth declaration' *The Observer* 12 November 2013.

⁶⁷³ See the case of *Charles Mwanguhya Mpagi and Izama Angelo v Attorney General* Miscellaneous Cause No. 751/2007 [also available at <https://globalfreedomexpression.colimbia.edu/cases/charles-mwanguhya-magii0izama-angelov-attorney-general-miscellanoues-cause-no-751-200/>] where two Journalists Charles Mwanguhya Mpagi and Angelo Izama challenged the decision of the Solicitor General before a Magistrates Court, for denying them access to the oil agreements signed between Uganda and Oil Companies. Relying on Articles 41 & 244 of the 1995 Constitution and sections 34(b),37, 41 & 42 of the Access to Information Act, the Journalists argued that the oil was the property of the people of Uganda and the people had the right to know the contents of the oil agreements. Their suit was dismissed on security and confidentiality grounds.

⁶⁷⁴ The first case was in regard to power purchase agreements and the environment impact assessment report of the Bujagali Hydropower Project. The second case was *Edward Sekyewa v National Forestry Authority*, where court emphasized the irrelevancy of giving reasons in order to access information and ordered that the Applicant be granted access. For detailed information on this case see *Edward Sekyewa v National Forestry Authority*, High Court Miscellaneous Cause No. 73/2014.

⁶⁷⁵ Ndagire B & Wesaka A 'Courts finds Lwamafa, Obey, Kunsu guilty of fraud' *Daily Monitor* 11 November 2016.

not only media freedom but also weaken anti-corruption efforts in Uganda. The inability for investigative journalists to receive, analyse and publish this public information defeats the principles of transparency and accountability in the management of public affairs.

Thirdly, there is no institution charged with its implementation. The law also does not provide for a state organ to facilitate its implementation. The implementation of the access to information in Uganda is consequently, arbitrary. Therefore, the request for information may be denied in the flimsiest circumstances.

The fourth challenge of this access to information law, is that there are no appeal mechanisms within the administrative legal regime. If your request for information is denied, your only recourse is to a court of law, which is a cumbersome and an expensive process for any citizen.⁶⁷⁶ Even for a citizen that is willing to appeal to a court of law, once a request for information is denied by the administrative authorities, the vigilant citizen will find that the court procedures within the court system have challenges that can be exploited by those public officials who are hell-bent on denying the determined citizen the public information, they require.⁶⁷⁷

3.7.5 THE POLITICAL PARTIES AND ORGANIZATIONS ACT, 2010

The Political Parties and Organizations Act, 2010 (as amended) (PPOA) lays down the rules of political association and existence in Uganda. The PPOA also enables a political financing mechanism to all registered parties represented in the national assembly.⁶⁷⁸ The rules on use of money in political processes are inadequate.⁶⁷⁹ As a result there is no ban or restriction on donations from legal entities or foreign sources to political parties, including from companies which have contracts with the public administration.⁶⁸⁰ International Institute for Democracy and Electoral assistance (International IDEA)

⁶⁷⁶ AccessInfo, Centre for Law and Democracy 2012.

⁶⁷⁷ AccessInfo (2012).

⁶⁷⁸ Section 14A of the PPOA.

⁶⁷⁹ See sections 10,11,12 and 14 of the PPOA.

⁶⁸⁰ Maira M Uganda: *Overview of corruption and anti-corruption* (2013) U4 Expert Answer, Transparency International, 7.

confirms that 'limits to donations are only established in case of foreign funds. Natural persons are allowed to make donations to parties and candidates. Parties also commonly rely on public funding to cover their expenses. Overall, there are no limits to how much can be spent during political campaigns.⁶⁸¹

Section 9(2) of the PPOA requires political parties to file annual audited accounts with the Electoral Commission. Political parties that do not file annual audited accounts may be deregistered by the Electoral Commission on application to the High Court.⁶⁸² Indeed, in the case of *Electoral Commission v Action Party & 10 Others*,⁶⁸³ the Electoral Commission applied to the High Court to de-register 10 political parties that had failed to comply with section 9(2) of the PPOA.⁶⁸⁴ Musota, J in his ruling noted that "since political parties and organizations influence the political process, they must be law abiding, and have an agenda in order to mobilize support and funds in order to compete for political power. Its leaders must be exemplary, disciplined and law-abiding citizens".⁶⁸⁵ Similarly in the case of *Hon. Sabila Herbert Kale v Maket Latif*,⁶⁸⁶ the Applicant, under Article 80(2) (f) of the Constitution sought orders of the High Court against the Respondent who was a Member of Parliament, to the effect that since the Respondent, in accordance with sections 2(b) and 6(1) of the Prevention of Corruption Act, had been convicted of corruption, he was not qualified to contest for forthcoming parliamentary elections. The High Court noted that Article 80(2) of Constitution seems to have been operationalized by section 10(1) of the Political Parties and Organizations Act, 2005. Section 10(1) of the political Parties and Organizations Act states that the internal organization of a political party shall comply with the provisions of the Constitution, which includes vetting candidates to contest under their party name. The High Court noted that the Election Petition was premature. This is

⁶⁸¹ International IDEA (2012) *Political Finance Database*.

⁶⁸² See section 9(6) of the PPOA.

⁶⁸³ Miscellaneous Cause No. 296/2013.

⁶⁸⁴ In April 2014, Action Party Bridge Party Progressive Alliance Party, Uganda Mandate Party, New Order Democracy, People's Independent Party, Movement for Democratic Change, National Redemption Party, Movement Volunteer Mobilizers Organization and Reform Party, were de-registered as political parties in Uganda.

⁶⁸⁵ Miscellaneous Cause No. 296/2013, 5-6.

⁶⁸⁶ Miscellaneous Application No. 124/2010 (arising from Election Petition No.2/2010) 3.

because the Respondent had only expressed an intention to contest as a candidate for the same parliamentary seat he was holding in the upcoming elections. The High Court also held that the Respondent had also not been nominated by the national electoral management body as a candidate to contest in the parliamentary elections.⁶⁸⁷

3.7.6 PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS ACT, 2003

The legal regime of the public procurement of goods and services, is enabled through the Public Procurement and Disposal of Public Assets Act, 2003 (PPDA Act)⁶⁸⁸ Any public procurement of goods or services must adhere to the legal rules laid down under this law. Under this law, regulations and guidelines have been drafted and enacted to aid the strict adhere to the PPDA Act. As long as the money held by a central or local government originates from the consolidated fund or is money sent to the central or local government coffers by development partners, it is subject to the procurement rules under the PPDA Act. Indeed, in *Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd*⁶⁸⁹ the Supreme Court of Uganda held that the PPDA Act was enacted to strictly regulate practices on public procurement and disposal of assets. The Supreme Court further held that the provisions are not directory, but mandatory, and must be adhered to without question. It also held that any non-compliance with the provisions of the PPDA Act makes any procurement proceedings fatal. Mwondha, JSC, who read the lead judgment of the Supreme Court held as follows –

Procurement and disposal activities are processes, one cannot move to another stage of processes without fulfilling the first one ... the objective of the Act for all intents and purposes is to achieve fairness, transparency and value for money procurement, among others. Therefore, breach of the provisions is not a mere irregularity since it goes to the core of the Act.⁶⁹⁰

This wise counsel of the Supreme Court of Uganda has been variously applied to other lower court judgments in Uganda, including the case of *Roko Construction v Public*

⁶⁸⁷ Miscellaneous Application No. 124/2010 (arising from Election Petition No.2/2010) 3.

⁶⁸⁸ 2003 (PPDA) Act.

⁶⁸⁹ Supreme Court Civil Application No. 8 of 2017.

⁶⁹⁰ Supreme Court Civil Application No. 8 of 2017.

Procurement and Disposal of Assets Authority & Another.⁶⁹¹ In this aforementioned case the High Court noted that section 90(7) of the PPDA Act was enacted in mandatory terms and its violation by the National Drug Authority to procure a service provider was fatal to the contract it had signed with the service provider.⁶⁹²

Relatedly, in *Spear Motors Ltd v Attorney General & 2 Others*,⁶⁹³ the High Court disregarded the arguments of the 1st Defendant against using cabinet minutes as evidence in court because they were privileged information protected by section 25 of the Access to Information Act. Mulyagonja, J stated that the suit before her was in relation to “the workings of government in the procurement of vehicles for an important event that occurred in the country”.⁶⁹⁴ The Court cited Part IV of the PPDA Act which provides for the basic principles of public procurement and disposal of assets. The Court stated that these principles included non-discrimination, transparency, accountability and fairness, among others. The Court held that the public procurement of CHOGM vehicles had to be “subjected to the same standards set for all procurement entities under the Act”.⁶⁹⁵ Public procurement has been found to be one of the areas where massive acts of corruption take place.⁶⁹⁶

The PPDA Act was amended on 2 June 2021 to enable efficient public procurement processes. Key among the amendments in the law is to enable electronic records and communications in public procurement processes.⁶⁹⁷ The amendments also provided for reservation schemes to enable marginalized groups to participate in public procurements

⁶⁹¹ High Court Civil Appeal No. 59/2017.

⁶⁹² High Court Civil Appeal No. 59/2017, 14.

⁶⁹³ (HCT-00-CC-CS-0692-2007) [2012] UGCOMM 18 (18 March 2012).

⁶⁹⁴ (HCT-00-CC-CS-0692-2007) [2012] UGCOMM 18 (18 March 2012) 35.

⁶⁹⁵ (HCT-00-CC-CS-0692-2007) [2012] UGCOMM 18 (18 March 2012) 35.

⁶⁹⁶ GAN (2017). Also see Basheka BC & Tumutegyereize M *Determinants of Public Procurement Corruption in Uganda*, available at

<http://www.ippa.org/images/PROCEEDINGS/IPPC4/01ComparativeProcurement/Paper1-10.pdf>

(accessed on 29 April, 2020).

⁶⁹⁷ See sections 41, 56(5) & (6), 57 and 86A of the PPDA Act, 2003 (as amended by Act 15 of 2021).

to facilitate social inclusion.⁶⁹⁸ The jurisdiction of the High Court in regard to public procurement processes has been altered.⁶⁹⁹

3.7.7 THE BUDGET ACT, 2001

The Budget Act, 2001 (BA)⁷⁰⁰ is the law that provides for an efficient allocation of national resources to where they are needed most. The law regulates the budget process. It clearly lays down the role of the executive, parliament and other stake holders in the budgeting process. It also lays out the required documentation and the dates when the documentation is required from key stakeholders to order enable an efficient allocation of Uganda's resources. The diversion of public funds allocated to particular priority areas provides fertile ground for corruption.⁷⁰¹ If the implementation of budget is not monitored by Civil Society Organizations (CSOs) on behalf of the citizens, it provides opportunities for diversion of budgeted resources, which facilitates corruption.⁷⁰²

3.7.8 PUBLIC FINANCE AND MANAGEMENT ACT, 2015

Related to the aforementioned law in the budgeting process, is the Public Finance and Management Act, 2015 (PFMA).⁷⁰³ It introduced provisions on use of revenue from oil. Oil was recently discovered in Uganda and there are many foreign oil companies involved in oil drilling, to make it commercially viable.⁷⁰⁴ Apart from the development of the fiscal and macroeconomic management framework, this law 'provides for development of a fiscal policy framework, regulation of public financial management, prescribes the responsibilities of persons entrusted with financial management and provides for public borrowing, audit of government accounts, state enterprises and other authorities of the

⁶⁹⁸ See sections 59B and 61A of the PPDA Act, 2003 (as amended by Act 15 of 2021).

⁶⁹⁹ See sections 91M of the PPDA Act, 2003 (as amended by Act 15 of 2021).

⁶⁹⁹ See sections 91M of the PPDA Act, 2003 (as amended by Act 15 of 2021).

⁷⁰⁰ 2001.

⁷⁰¹ Wamara (2017).

⁷⁰² Pinnington R *The Road to Budget Transparency in Uganda* (2017)., available at <https://www.internationalbudget.org/wp-content/uploads/the-road-to-budget-transparency-in-uganda-ibp-case-study-2017.pdf> (accessed on 29 April 2020).

⁷⁰³ 2015.

⁷⁰⁴ URN 'Uganda's first oil production now pushed to 2022' *The Observer*, December 20 2018.

state'.⁷⁰⁵ These are proactive measures to prevent abuse of public resources, before the criminal activity occurs.⁷⁰⁶

3.7.9 ANTI-MONEY LAUNDERING ACT, 2013

To prevent criminal syndicates from taking over Uganda's economy, and to domesticate provisions of the UNCAC, Uganda passed the Anti-Money Laundering Act (AMLA).⁷⁰⁷ Money laundering has been defined as "the use of money derived from illegal activity by concealing the identity of the individuals who obtained the money and converting it to assets that appear to have come from a legitimate source".⁷⁰⁸ The AMLA has defined money laundering as "the process of turning illegitimately obtained property into seemingly legitimate property and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under section 3 of this Act".⁷⁰⁹

Part II of AMLA criminalizes the laundering of proceeds of crime.⁷¹⁰ Measures to prevent money laundering, are provided for by Part III.⁷¹¹ Part IV of AMLA establishes a government organ, Financial Intelligence Authority (FIA), to implement AMLA. The FIA is established by section 18 of AMLA. The FIA is charged with enforcing the provisions of AMLA.⁷¹² The FIA is also empowered under Part V to seize, freeze and apply to court for orders of forfeiture of assets obtained from proceeds of money laundering.⁷¹³ Recently, the High Court fortified the authority of the FIA to seize assets as provided for under

⁷⁰⁵ Ministry of Finance, Planning and Economic Development A Guide to the Budget Process: Ensuring that Uganda's national budget reflects the views and priorities of citizens. Kampala (2009) 5.

⁷⁰⁶ Munyambonera E & Lwanga MM *A Review of Uganda's Public Finance Management Reforms (2012-2014): Are the reforms Yielding the Expected Outcomes?* (2015).

⁷⁰⁷ In 2013.

⁷⁰⁸ Madinger J *Money-Laundering: A Guide for Criminal Investigator* (2012) Third Edition. Boca Raton: Taylor & Francis Group LLC.

⁷⁰⁹ See section 1 of AMLA.

⁷¹⁰ See sections 3-5 of AMLA.

⁷¹¹ See sections 6-17 of AMLA.

⁷¹² See sections 19-43 of AMLA.

⁷¹³ See sections 44-104 of AMLA.

section 21(q) of the Anti-Money Laundering Act.⁷¹⁴ Section 21(q) of the Anti-Money Laundering Act provides that “The Authority may do all that is necessary or expedient to perform functions effectively, and in particular do anything that is incidental to the exercise of any of its functions”. In the aforementioned case of *Smart Protus Magara & 138 Others v Financial Intelligence Authority*,⁷¹⁵ Sekaana, J held as follows: -

The nature of work and mandate of the respondent is to detect financial crimes including money laundering and financing of terrorism, requires swift and expeditious detection of crimes which may affect the public at large. In such circumstances it may not be possible to offer a hearing at such an early stage in the investigation of such crimes.⁷¹⁶

In line with Uganda’s international obligations as a state party to UNCAC and AUCPCC, international cooperation is encouraged to curb money laundering, under Part VI.⁷¹⁷ The sanctions for engaging in money laundering are provided for under Part VII.⁷¹⁸ Not only is the staff of FIA immune to anything, that is done in furtherance of the provisions of AMLA, but they are also independent from the direction or control by anyone.⁷¹⁹ A claw back provision is introduced under section 22(1) of the AMLA which states that the minister may give the FIA “policy guidelines”. The effect of this provision on the independence of FIA is yet to be felt considering that, it is a recently established anti-corruption institution.⁷²⁰ Chapter four has a detailed discussion of how the FIA has so far executed its mandate in the last six years, since it was established.

The AMLA was recently amended.⁷²¹ The long title of the amendment provides that it is;

⁷¹⁴ See *Smart Protus Magara & 138 Others versus Financial Intelligence Authority*, High Court Miscellaneous Cause No. 215/2018.

⁷¹⁵ High Court Miscellaneous Cause No. 215/2018.

⁷¹⁶ High Court Miscellaneous Cause No. 215/2018 13., also see *Sundus Exchange Money Transfer & 5 Others versus Financial Intelligence Authority* High Court Miscellaneous Cause No. 154/2018.

⁷¹⁷ See sections 105-115 of AMLA.

⁷¹⁸ See sections 116-137 of AMLA.

⁷¹⁹ See sections 22 & 140 of AMLA.

⁷²⁰ FIA operations began 1st July, 2014.

⁷²¹ Anti-Money Laundering (Amendment) Act No.3 of 2017 commenced on 26 May, 2017.

An Act to amend the Anti-Money Laundering Act, 2013, to harmonize the definitions used in the Act; to provide for the carrying out of risk assessments by accountable persons; to provide for the identification of customers and clients of accountable persons; to provide for procedures relating to suspicious transactions; to harmonize the record keeping requirements and exchange of information obligations with international practice; and for related matters.⁷²²

The Uganda government executive has passed the 2019 Anti-Money Laundering Bill, 2019 for the second time in 2 years, to enable the Uganda to meet its international obligations with the Financial Action Task Force (FATF). This is specifically in regard to unrestricted exchange of information with similar organizations outside the country.⁷²³

3.7.10 PENAL CODE ACT, CAP 120

Both the Anti-Corruption Act, 2009 (ACA) and the Penal Code Act, Cap 120 (as amended) (PCA) provide for criminal liability for corruption.⁷²⁴ Public prosecutions for corruption can be conducted in terms of both the ACA and the PCA.⁷²⁵ Corruption related offenses have been cross referenced to the PCA by the ACA.⁷²⁶ These corruption-related offenses include any attempts, preparations, abetments and criminal conspiracies.⁷²⁷ It is important to note that in 2009, amendments to ACA had consequential amendments to the PCA.⁷²⁸

⁷²² See long title of the amendment.

⁷²³ This has necessitated the amendment of section 38 of AMLA. This Bill is awaiting approval by Parliament and assent by the President to become law.

⁷²⁴ See sections 26-35 of the ACA., also see sections 304-313 of the PCA.

⁷²⁵ See the case of *Uganda v. Lwamafa & 2 Others* Criminal Case No.9/2015, where the accused persons were charged with causing financial loss contrary to section 20 of the ACA, abuse of office contrary to section 11 of the ACA and also charged with conspiracy to defraud contrary to section 309 of the PCA.

⁷²⁶ See Section 52 of the ACA.

⁷²⁷ See Section 52 of the ACA.

⁷²⁸ Section 69 of the Anti - Corruption Act indicates that sections 85, 86, 87, 88, 89, 90, 91, 91, 93, 268, 322, 325 and 326 of Penal Code Act have as a consequence of the amendment of the Anti-Corruption been repealed. Section 70 of the Anti – Corruption Act, provides for a consequential amendment of section 8, 9 and 13 of the Leadership Code Act by repeal of the said provisions. The consequential amendment also under section 20(3) replaces “five years” with “ten” years.

3.7.11 ANTI-CORRUPTION ACT, 2009

The fundamental law in Uganda in regard to prosecutions for corruption offenses is the ACA. It established over 20 offenses on corruption.⁷²⁹ This Act creates offenses related to corruption which may be tried under it.⁷³⁰ Prior to the enactment of the Anti-Corruption Act No. 6 of 2009, the Prevention of Corruption Act, Cap. 121 was in force. This law attained the force of law on 12 June, 1970 and was repealed on 25 August, 2009 by the Anti-Corruption Act No. 6 of 2009. In 2013, a Private Members Bill was introduced on the floor of Parliament to amend the Anti-Corruption Act No. 6 of 2009 “to provide for mandatory confiscation of property of persons convicted of an offence under the Act”.⁷³¹ We shall deal with the detail of this Private Members Bill later, in this section.⁷³² As seen earlier, this primary anti-corruption legislation is supplemented by other laws, outlined in this chapter.

The preamble of the Anti-Corruption Act provides that it is: -

“An Act to provide for the effectual prevention of corruption in both the public and the private sector, to repeal and replace the Prevention of Corruption Act, to consequentially amend the Penal Code Act, the Leadership Code Act and to provide for other related matters.”⁷³³

The Anti-Corruption Act does not define corruption. The Act however describes acts that would amount to corruption.⁷³⁴ Some of the acts amounting to corruption include ‘soliciting and acceptance of anything by a public official, diversion of public funds, as well as fraudulent acquisition and concealment of property’.⁷³⁵ Or “neglect of duty”.⁷³⁶

⁷²⁹ See Part II of the Anti-Corruption Act.

⁷³⁰ For example, offenses under the Penal Code Act, Cap. 120.

⁷³¹ See Paragraph 1 of the Memorandum to the Bill. This Bill was later passed into law with slight amendments on 7 July, 2015.

⁷³² This Private Members Bill was introduced by Honorable John Ssimbwa, a Member of Parliament (MP) for the National Resistance Movement (NRM), the ruling party. He is an MP for Makindye Division East.

⁷³³ Section 70 of the Anti – Corruption Act, provides for a consequential amendment of section 8, 9 and 13 by repeal of the said provisions. The consequential amendment also under section 20(3) replaces “five years” with “ten” years.

⁷³⁴ See section 2 of the ACA.

⁷³⁵ Section 2 (a) of the ACA.

⁷³⁶ Section 2 (f) of the ACA.

Other acts of corruption include bribery of a public official,⁷³⁷ diversion of public funds,⁷³⁸ influence peddling,⁷³⁹ nepotism,⁷⁴⁰ loss of public property,⁷⁴¹ abuse of office,⁷⁴² and causing financial loss.⁷⁴³ This law regulates corruption for both private and public persons.⁷⁴⁴ Part II of the ACA has all the offenses that were repealed from the Penal Code Act. These offenses are covered from sections 3 – 25.

Some of the aforementioned offences have been couched in vague terms. Their meanings are overly broad contrary to international best practices.⁷⁴⁵ Other offenses, however, are have well-defined criteria of the intention of the offender.⁷⁴⁶ These well-defined offenses have phrases such as “negligent”, “intentional”, “knowing”.⁷⁴⁷ Other offenses are clearly imprecise for anyone including the prosecutors, investigators or the courts, to know the exact criteria of what constitutes the offense.⁷⁴⁸ I will discuss a few examples of the vague offenses. These include the offenses of diversion of public resources, causing financing loss and abuse of office.

The offense of diversion of public resources states that “A person who converts, transfers or disposes of public funds for purposes unrelated to that for which the resources were intended, for his or her own benefit or for the benefit of a third party, commits an offence”.⁷⁴⁹ This offense is vague in the sense that there are many circumstances in the management of public resources, where resources are diverted to some other purpose

⁷³⁷ Section 5 of the ACA.

⁷³⁸ Section 6 of the ACA.

⁷³⁹ Section 8 of the ACA.

⁷⁴⁰ Section 13 of the ACA.

⁷⁴¹ Section 10 of the ACA.

⁷⁴² Section 11 of the ACA.

⁷⁴³ Section 20 of the ACA.

⁷⁴⁴ See the case of *Francis Atugonza v Uganda Constitutional Reference* No.31/2010 where the Constitutional Court expounded on the objectives and purpose of the ACA.

⁷⁴⁵ For example, see Articles 19, on abuse of functions and Article 20, on illicit enrichment, of the UNCAC.

⁷⁴⁶ See section 10 of the Ant-Corruption Act, which clearly provides for the state of mind of the offender for the offense of loss of public property.

⁷⁴⁷ See for example section 10 (1) & (3) which use the words “knowing” or “knowingly”.

⁷⁴⁸ See sections 6, 11 & 20 of the Anti-Corruption Act, for example.

⁷⁴⁹ Section 6 of the ACA., For this offense, the 2013 Amendment to the ACA, has introduced compensation to the victim of corruption over and above the jail term and a fine. This is by paying “such sum as is considered just by the Court, having regard to the loss suffered by the aggrieved party.”

than what they were meant for, but nevertheless have been utilized for the public good because of unavoidable, unplanned emergencies. The second example is the offense of causing financial loss. The Act states that the offense of causing financial loss is committed 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.⁷⁵⁰

The choice of words used by the draftsman in the aforementioned offense is broad and vague. This provision encompasses a broad number of activities that agents of a government, banks and insurance companies are involved in, on a daily basis. These activities involve daily decision-making that involves the taking of financial risk. This decision-making by employees of these organizations, involves daily decisions taken on many activities including public procurement. The Anti-Corruption (Amendment) Bill, 2013 intends to further widen the scope of the offense of causing financial loss. The words "a company" and "a political leader" if the Bill is passed shall be inserted under subsection 1 of section 20 of the ACA.⁷⁵¹ The intention is to widen the scope of the offense of causing financial loss.

The third example is the offense of abuse of office. For an act to amount to the offense of abuse of office, a person must have done the following acts: -

A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done **any 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. Where a person is convicted of

⁷⁵⁰ Section 20(1) of the ACA.

⁷⁵¹ See Clause 3 of the Bill.

an offence under subsection (1) and the act constituting the offence was done for the purposes of gain, the court shall, in addition to any other penalty it may impose, order that anything received as a consequence of the act, be forfeited to the Government.⁷⁵²

The highlighted wording provides no direction on what conduct amounts to the offense of abuse of office. Abuse of office is one of the most common charges that people, accused of corruption are charged with at the Anti-Corruption Court.⁷⁵³ Under these three offenses covered above, it is possible to charge anybody with corruption. For example, at international level, UNCAC defines the offense of abuse of office in precise terms.⁷⁵⁴ The UNCAC defines abuse of office as follows: -

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.⁷⁵⁵

This UNCAC definition of abuse of office, is specific and precise, to the extent that it requires intention for a person to commit the offense. For a person to be charged with the said offence, it also requires that a person intends to obtain undue advantage from his official position. This narrows the circumstances under a person may be charged for the offence of abuse of office.⁷⁵⁶

To avoid wastage of public resources for the public prosecutors and the courts, and the abuse of the prosecutorial discretion and abuse of court process, these three offenses and others defined vaguely or broadly under the ACA, need an urgent amendment. This is to their narrow applicability to “intentional” conduct rather “knowing” conduct. These amendments will save the prosecutors and the courts a lot of time and resources, which

⁷⁵² See sections 11(1) & (2) of the ACA.

⁷⁵³ Uganda Police Force Annual Crime Report (2018) 24., available at <https://www.upf.go.ug/wp-content/uploads/2019/05/annual-crime-report-2018.pdf> (accessed on 29 April 2020).

⁷⁵⁴ See Article 19 of the UNCAC.

⁷⁵⁵ Article 19

⁷⁵⁶ See Article 28 (12) of the 1995 Constitution which provides for proper definition of an offence, before a person can be convicted of the offence.

can be put to optimum use, considering the backlog of cases that the courts have to contend with in Uganda.⁷⁵⁷ Perhaps one would wonder whether the draftsman was under instruction to draft these offenses in a vague manner, to enable the IGG and the DPP, a lot of prosecutorial discretion, which could be used for political motivations.⁷⁵⁸

Part III of the ACA provides for offenses and penalties.⁷⁵⁹ The punishment for offenses under sections 2,3,4,5,6,7,12 and 13 of the ACA is provided for under section 26 of the ACA. Section 27 of the ACA provides for penalties in addition to those specifically laid out in the Act. Life style audits have been provided for under section 31. If a person is found to maintain a standard of living beyond what they ordinarily earn or own property which they are unable to explain how they legally acquired it, the IGG or DPP can commence investigations with a view of charging the person with the offence of illicit enrichment. In the case of *Akankwasa Damian v Uganda*,⁷⁶⁰ the IGG on suspicion that the petitioner had filed false declarations of wealth, sought to verify his assets. The petitioner was found to be in possession of a guest house in Kampala city, valued at over Ush. 580,800,000/= (Uganda shillings five hundred eighty million and eight hundred thousand) a property which he could not explain how it was acquired and which was above his known sources of income as a public servant. He was subsequently charged with the offence of illicit enrichment at the Anti-Corruption Court. He objected to his prosecution at the Anti-Corruption arguing that the case was a violation of his constitutional rights to private property and the right to privacy of person, home and other property.⁷⁶¹ He prayed to the Anti-Corruption Court to have his case referred to the Constitutional Court for interpretation, which was granted.

⁷⁵⁷ Mutesi N "UBOS to register court case backlog," *New Vision*, August 5 2019, Available at: <https://www.newvision.co.ug/news/1504864/ubos-register-court-backlog> (accessed on 23 April 2020), also see The Judiciary of Uganda *Monitoring the Implementation of the Case Backlog Strategy. Preliminary Findings.*, (2018) Available at: <http://judiciary.go.org/files/downloads/Banishing.pdf> (accessed on 23 April 2020).

⁷⁵⁸ See Transparency International Uganda (2015).

⁷⁵⁹ Sections 26 – 35 of the ACA.

⁷⁶⁰ Constitutional Court Reference No. 5/2011.

⁷⁶¹ *Uganda v Akankwasa Damian*, Criminal case No.69/2010 of the High Court (Anti-Corruption Division

In the Constitutional Court, the petitioner argued that section 31 of the ACA that provides for the offense of illicit enrichment was contrary to Article 26(1) and 27 of the 1995 Constitution, which provide for the right to private property and right to privacy of person, home and other property. The Constitutional Court held that; -

The purpose of the Anti-Corruption Act as we stated in our ruling in *Atugonza's* case is to fight and eliminate all forms of corruption in public and private spheres. Section 31 gives power to the IGG and the DPP to prosecute all those who might have acquired property or assets whose value exceed their known lawful incomes or assets past or present. The section merely empowers the officers named therein to prosecute anyone whom they have reasonable grounds to believe that the property they hold was acquired through graft or corrupt means. We do not think that Articles 26(1) and 27 can be invoked to protect property which has been unlawfully acquired. The two articles protect property and assets which have been acquired using lawful means. Consequently section 31 is not inconsistent with Articles 26(1) and 27 of the Constitution and we so find.⁷⁶²

The IGG and DPP are given special powers to investigate a person, if they have reasonable suspicion that any offence under the ACA has been committed.⁷⁶³ The IGG or DPP may proceed to court to obtain an order authorizing an investigative officer or police officer above a certain rank to investigate any bank account, share account or purchase account of the person under investigation.⁷⁶⁴ Under subsection 2 of section 33, the ACA provides penalties for whoever refuses to divulge information to the investigating officer(s) named in the search order.

Upon application to court and once a court order is granted, the IGG or DPP may restrict the disposal of any property or freeze any bank account of an accused person or a person suspected of having committed a crime under the ACA. The ACA further prescribes circumstances under which the property or money may be disposed of.⁷⁶⁵ Compensation may be paid to a legal person who has suffered loss out of the resources

⁷⁶² Last page of the Judgment.

⁷⁶³ Section 33 of the ACA.

⁷⁶⁴ Section 33(1) of the ACA provides that the investigating officer must be of or above the rank of Assistant Superintendent or an Inspectorate officer or a special investigator named in the order.

⁷⁶⁵ See subsections 2-6 of section 34 of the ACA.

of a convicted person.⁷⁶⁶ After satisfactorily compensation to a legal person who has suffered loss, the balance of the proceeds of the sale of the property of the convicted person, shall be refunded to the convicted person.⁷⁶⁷

Under sections 7 and 35 of the ACA, there is an attempt by the ACA, to fuse criminal and civil proceedings. The remedies in criminal and civil proceedings are different.⁷⁶⁸ Consequently, the ACA when prescribing punishment for convicts prescribes a jail term, a fine or both, which is inadequate.⁷⁶⁹ In the case of *Machumbi Gasasira v Uganda*,⁷⁷⁰ the Constitutional Court held that “it is fairly settled law that criminal and civil proceedings are distinct from one another...the remedies offered to victims of crimes through criminal proceedings do nothing to get them back to the state in which they were, before the crime was committed...”⁷⁷¹ Section 35 of the ACA adequately covers this challenge.⁷⁷²

Section 35 of the ACA is controversial in the sense that it tends to confiscate property from a convicted person to compensate a victim, but provides that whatever balances from the proceeds of a sale of the convicted persons’ property, after compensation of the victim should be returned to the convicted person.⁷⁷³ The challenge with confiscation of a convicts property is that there was no designated government organization that was charged with management of confiscated property. The 2013 Amendment to the ACA resolved this by vesting this important duty with the office of the Public Trustee under the Administrator General.⁷⁷⁴

⁷⁶⁶ Section 35(1) of the ACA.

⁷⁶⁷ See section 35(2) of the ACA.

⁷⁶⁸ See section 7(2) of the ACA.

⁷⁶⁹ See Part III of the ACA.

⁷⁷⁰ Constitutional Reference No. 11/2011.

⁷⁷¹ Constitutional Reference No. 11/2011, 14.

⁷⁷² Also see section 7 of the ACA that fortifies the provisions of section 35 of the ACA.

⁷⁷³ See subsections 1 & 2 of section 35 of the ACA., also see Langa S *Who Follows-up the Billions Lost to Corruption? The Execution of Refund Orders Made by the Anti-Corruption Court of Uganda* (unpublished LLM thesis, Makerere University, 2015) 110-111., for a detailed treatment on this.

⁷⁷⁴ Clause 8 of the 2013 Bill.

Part IV of the ACA provides for powers of the IGG and DPP in terms of search, seizure, inspection and investigations⁷⁷⁵ of documents. This part also provides for arrest of those persons who attempt to compromise investigation officers.⁷⁷⁶ It also provides for protection of whistleblowers.⁷⁷⁷ No offence in regard to corruption can be instituted without the express authorization by either the IGG or the DPP.⁷⁷⁸ A person suspected of engaging in corruption can be arrested and detained but no further acts may be performed without the consent of the IGG or DPP.⁷⁷⁹

Jurisdiction to try offences under the ACA is dealt with under part V. The Magistrates courts presided over by either magistrate grade 1 or a Chief Magistrate have power to try offences under the ACA.⁷⁸⁰ The High Court also has powers to try offenses under the ACA.⁷⁸¹ Punishment for attempts, preparations, abetments and criminal conspiracies under the Act are punishable under any penalty prescribed under the Penal Code Act.⁷⁸²

Restraining orders and procedures on how to enforce the restraining orders are provided for under part VI of the ACA. The purpose of the restraining orders is to enable the IGG or DPP to investigate property or anything that is owned by a suspect unrestrained and without worrying that the property may be disposed of, to a third party, which may create, challenges during investigations.⁷⁸³

Confiscation orders are provided for under part VII of the ACA. The provisions of this part of the ACA enable courts to make orders to confiscate the proceeds of corruption of a convicted person.⁷⁸⁴ The confiscation of property of a convicted person has been a very

⁷⁷⁵ See sections 36,37,38,39,40,41 of the ACA.

⁷⁷⁶ See section 43 of the ACA.

⁷⁷⁷ See section 44 of the ACA.

⁷⁷⁸ See section 49 of the ACA.

⁷⁷⁹ Section 49 of the ACA.

⁷⁸⁰ See section 51 (b) & (c) of the ACA.

⁷⁸¹ See section 51 (a)., Under Article 139 of the 1995 Constitution, the High Court also has unlimited and original jurisdiction to try any offence within the boundaries of Uganda.

⁷⁸² See section 52 of the ACA.

⁷⁸³ See sections 53,54,55,56,57,58,59,60,61 & 62 of the ACA.

⁷⁸⁴ See sections 63,64,65 & 66 of the ACA.

controversial because there was difficulty in differentiating property that was derived from the corrupt act and property acquired genuinely.

The 2013 Amendment to the ACA, proposed to do away with this challenge by confiscating any property that belongs to a convicted person regardless of how the convict obtained it to compensate the victim of the crime.⁷⁸⁵ Under the 2013 Bill, it had been suggested that, where the convicted person obtained property within 10 years before conviction, it was to be permanently forfeited to the government by order of court. This provision was passed and has been applied and interpreted in several cases including *Biira Esther Kabaseke Kule v Uganda/DPP & Another*.⁷⁸⁶ In the aforementioned case, Gaswaga, J noted that there is a rebuttable presumption that the proceeds of crime to be confiscated extend to a period of ten years before conviction, in accordance with section 63 of the Anti-Corruption Act.⁷⁸⁷ The High Court further ruled that section 63A of the Anti-Corruption Act specifically provides for confiscation of proceeds of crime of corruption and not embezzlement, which offenses are distinctive. Section 63A of the Anti-Corruption Act serves a useful purpose in reinforcing life style audits that are covered under the ACA.⁷⁸⁸

Once the convict's property has been confiscated, it is to be vested with the Public Trustee and management of the property shall be by the Public Trustee Act.⁷⁸⁹ The challenge of vesting the confiscated property with the Public Trustee, is found in the law establishing the Public Trustee. Under section 4(5) of the Public Trustee Act, the Public Trustee is forbidden from managing a trust that involves the carrying on of business. Considering that some of the proceeds of corruption are ploughed into private businesses, it will weaken, the implementation of this otherwise well-intended amendment of the law.

⁷⁸⁵ See clause 7 of the Bill.

⁷⁸⁶ High Court Miscellaneous Application No. 1261/2018.

⁷⁸⁷ High Court Miscellaneous Application No. 1261/2018, 23., also see section 1 of the Anti-Corruption Act, that defines proceeds of crime.

⁷⁸⁸ See section 31 of the ACA.

⁷⁸⁹ See section 63A, 63B & 64A of the ACA, 2013.

On top of this challenge, the Administrator General who is the Public Trustee, has a lot more work and challenges, in the administration of estates of deceased persons in Uganda.⁷⁹⁰ Therefore, the Public Trustee Act needs to be amended to enable the Public Trustee to carry on business, where the confiscated property is a private business to enable the recovery of proceeds of corruption and to avoid the redundancy of the amended provision in the ACA, 2013.

3.8 CONCLUSION

Excerpt for a few lapses, including overly broad and vague offenses that may be deployed by “powerful” leaders to settle political scores against their political opponents, Uganda’s legislative framework is generally, well thought-out. It is my considered opinion, therefore, that there is excellent legislation in place, to curb corruption. The fight against corruption cannot, however, be won without good political leadership. This lack of political leadership has been a challenge in Uganda. The political leaders have made numerous pronouncements about how they intend to fight corruption in Uganda. Little has, however, come out of these grand political statements on how to curb corruption in Uganda. In chapter 4, we examine the institutions that are at the forefront of the efforts to eradicate corruption in Uganda, and whether they have achieved their mandates.

⁷⁹⁰ The Administrator General is appointed as Public Trustee under Rule 12(1) of Statutory Instrument 161-1, Laws of Uganda.

CHAPTER 4: THE INSTITUTIONAL FRAMEWORK ON CORRUPTION IN UGANDA

4.1 INTRODUCTION

In Uganda, the institutional mechanisms against corruption are many. These include the Ministry of Ethics and Integrity, Public Procurement and Disposal of Public Assets Authority, Auditor General, Police, Financial Intelligence Authority, Inspectorate of Government, Directorate of Public Prosecutions, and the Courts. Other 'informal' institutional frameworks on corruption include adhoc state house anti-corruption units, media and civil society.

As result of many formal anti-corruption mechanisms, some scholars have argued that the institutional organs are performing duplicated roles and should be reduced.⁷⁹¹ Gumusiriza and Mukobi have claimed that the numerous anti-corruption agencies have been unable to defeat corruption. The scholars argue that the many anti – corruption organs have resulted into wasteful expenditure of tax-payers' money. They recommend that the Uganda government should “consider scrapping or merging some of anti-corruption agencies, those with duplicated roles, avail sufficient financial and human resources to the remaining anti-corruption agencies”.⁷⁹²

In chapter 3, I conversed corruption and how it manifests itself in Uganda. I also examined the legal framework governing corruption. In chapter 4, I discuss the informal and formal institutional anti-corruption agencies in Uganda. I also examine the investigation and public prosecution of corruption and its limitations in Uganda. The discussion follows hereunder.

⁷⁹¹ Gumusiriza P & Mukobi R 'Anti-Corruption Institutional Facade in Uganda' (2018) Vol. 15 No. 1 *Uganda Journal of Management and Public Policy Studies*.

⁷⁹² Gumusiriza & Mukobi (2018) 91.

4.2 INFORMAL ANTI—CORRUPTION AGENCIES

Uganda has many formal anti-corruption organs playing duplicated roles.⁷⁹³ The policy consideration behind the creation of informal ones by President Museveni has not been understood by many citizens. Apart from the media and civil society whose fluid anti-corruption roles are understood, the role of these adhoc state house units is yet to be appreciated by the public.⁷⁹⁴ At the end of 2018, in his new year message, President Museveni stated that the purpose of the creating the state house anti-corruption unit was to reinforce the formal anti-corruption organs by supplementing their efforts.⁷⁹⁵

4.2.1 ADHOC STATE HOUSE ANTI-CORRUPTION UNITS

President Museveni has occasionally been setting up these informal anti-corruption units. These units are established within the State House to fight the misuse of public resources.⁷⁹⁶ This, on occasions, is due to public and donor outcry about the impunity with which “connected” public officials swindle public resources. These units have registered some success in fighting these criminal activities, however, they have at times, not done so in compliance with the law.⁷⁹⁷ The methods of operation of these state house units are synonymous with a street mob descending on a “thief” who has snatched a

⁷⁹³ Gumusiriza & Mukobi (2018) 91.

⁷⁹⁴ Katureebe OK “State House Anti-Corruption Unit requires your support” February 20 2019., available at <https://www.google.comamp/s/www.monitor.co.ug/OpEd/Commentary/State-House-Anti-Corruption-requires-your-suport/> (accessed on 13 May 2020).

⁷⁹⁵ Katureebe (2019).

⁷⁹⁶ See Amia P “State House Health Monitoring Unit Fires Back at Uganda Medical Association” *Chimp Reports* October 17, 2017. When there was an outcry on corruption in the provision of health services by government., also see Uganda Media Centre “Achievements by the State House Anti-Corruption Unit since Inception” (2020) available at: <https://www.mediacentre.go.ug/media/achievements-state-house-anti-corruption-unit-inception> (accessed on 4 May 2020)., The State House Anti-Corruption Unit led by Lt. Col. Edith Nakalema created about a year ago, to fight corruption in government offices. Also see Katureebe (2019).

⁷⁹⁷ See Uganda Media Centre (2020), in 14 months since it was set up, it had recovered over 7 billion shillings from corrupt officials, 120 public officials had been arrested and 99 public officials had been interdicted.

property from a person walking on the street.⁷⁹⁸ Consequently, their success is usually short-term and may actually embolden the perpetrators of corruption.

4.2.2 CIVIL SOCIETY

The civil society plays a key role as a mechanism to curb corruption in Uganda. In view of the constitutional guarantee to associate, civil society groups have taken advantage of this freedom of association to influence public policy.⁷⁹⁹ For example, they played a key role in framing the Poverty Eradication Action Plan (PEAP). The PEAP was a government programme aimed at reducing absolute poverty in the country.⁸⁰⁰ The civil society has also played an influential role in the budgeting processes of the government of Uganda.⁸⁰¹ There are several Non-Governmental Organizations (NGOs) playing a variety of roles. Some of them conduct most of their work in the anti-corruption sector.⁸⁰²

Some of the prominent work of the aforementioned NGOs includes the 'Black Monday Movement'. This was a campaign against corruption where events were organized every first Monday of the month, to sensitize the public about corruption, and awaken the public to take action.⁸⁰³

4.2.3 MEDIA

The fourth estate also plays a key role as an anti – corruption mechanism in Uganda. Many of the corruption scandals that have broken out, were as a result of investigative

⁷⁹⁸ See Amia (2017).

⁷⁹⁹ See Article 29 of the 1995 Constitution.

⁸⁰⁰ The PEAP was adopted in 1997 and was revised every 3 years, due to the poverty assessments made annually. In 2010 the PEAP was replaced with the National Development Plan 1 (NDP I). In 2015, National Development Plan II (NDP II) replaced NDP I. The principal role of NDP II is to move Uganda into middle income status.

⁸⁰¹ Mugisha M, et. al., *Civil Society in Uganda Broadening Understanding of Uganda's Civil Society Ecosystem and Identifying Pathways for Effective Engagement with Civil Society in the Development Process*, (2019) Centre for Development Alternatives & Konrad Adenauer Stiftung., available at <https://www.kas.de/documents/280229/280278/Reality+Check+11+Civil+Society.pdf/c17c76f7-e3d5-40d4-a5e8-fc8af1107a5b?version=1.1&t=1580718867580> (accessed on 27 May 2020).

⁸⁰² Some of the Organizations include Transparency International Uganda, Uganda Debt Network, NGO Forum, Anti-Corruption Coalition, African Parliamentary Network against Corruption, among others.

⁸⁰³ ACTIONAID "The Black Monday Movement is back" January 15, 2020. Available at <https://uganda.actionaid.org/news/2020/black-monday-movement-back> (accessed on 5 May 2020).

journalists digging up criminal activities and putting their lives at risk, to expose corrupt but powerful individuals. Media reports on corruption are 'an important source of detection of corruption'.⁸⁰⁴

Even though the constitution guarantees the freedom of expression and the press, government functionaries have used the Penal Code Act (PCA) and the Official Secrets Act to curtail Journalists work.⁸⁰⁵ The 1995 Constitution under Article 29 guarantees the right to freedom of expression of every individual, which includes media freedom.⁸⁰⁶ This includes the right to disseminate views and opinions. There have been challenges however with the level of protections extended to journalists in exercising their mandate. This is especially so, for those journalists involved in exposing corruption.⁸⁰⁷ Journalists who expose corruption can suffer from all manner of threats.⁸⁰⁸ These threats include criminal offenses like publication of false news⁸⁰⁹ criminal defamation and incitement, among others.⁸¹⁰

In the case of *Buwembo & Others v Attorney General*, the Constitutional Court of Uganda stated that section 179 of the PCA "criminalizing libel was not contrary to the right to freedom of expression guaranteed under Articles 29 and 43 of the Constitution".⁸¹¹ Four

⁸⁰⁴ Chene M *Gender Equality and Corruption* (2019) Transparency International u4 help Desk Answer.

⁸⁰⁵ Draku F "Uganda's journalism under attack" Daily Monitor, May 3 (2018)., available at <https://www.google.com/amp/s/www.monitor.co.ug/News/National/Uganda-journalism-under-attack/688334-4541618-view-asAMP-i20llq/index.html> (accessed on 7 May 2020).

⁸⁰⁶ Article 29(1) (a) of the 1995 Constitution.

⁸⁰⁷ Reporters without Borders (RSF) "Several Journalists arrested while investigating corruption" February 8 2019., available at <https://rsf.org/en/news/several-journalists-arrested-while-investigating-corruption> (accessed on 5 May 2020).

⁸⁰⁸ Reporters without Borders (2019).

⁸⁰⁹ In the case of *Onyango Obbo & Another v Attorney General of Uganda*, Constitutional Appeal No. 2 of 2002, the Supreme Court of Uganda decriminalized the offence of sedition. This case also discusses the permissible limitations to media freedom under Article 43(2) of the 1995 Constitution.

⁸¹⁰ See section 50 – Publication of false news; section 51 - Incitement to violence; sections 179 -186 – criminal defamation, all provisions of the PCA., also see sections 24 & 25 on computer misuse of the Computer Misuse Act No. 2 of 2011., also see sections 2-4 of the Official Secrets Act Cap. 302, that obstructs the free flow of information in regard official information.

⁸¹¹ Constitutional Reference No. 1/2008; also see available at <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2017/02constitutional-court-ruling-on-defamation.pdf> (accessed on 5 May 2020).

Uganda journalists working with the *Daily Monitor* Newspaper brought the constitutional petition following criminal charges brought against them for the unlawful publication of defamatory material in news stories concerning Justice Faith Mwendha, the former Inspector General of Government (IGG). The news articles indicated that Justice Mwendha was receiving two salaries as a Judge of the High Court and as the IGG.⁸¹² The Constitutional Court reasoned that the protection of one's reputation was a matter of public interest, because an individual is a member of the public and renders service to the public.⁸¹³ It follows, the court said, that protection of one's reputation is a justified restriction on freedom of expression. The court further stated criminal sanctions are justified because those who deliberately publish lies intending to damage a person's reputation commit an egregious act, comparable to acts of assault, fraud, even murder and manslaughter and should be punished.⁸¹⁴

In a related case under sections 179 – 186 of the PCA, a magistrate convicted radio journalist of criminally defaming a local politician in a news report.⁸¹⁵ The journalist alleged that the former District Chairman had stolen solar panels donated by the African Development Bank to the district. The Court sentenced him to pay a fine of one million Ugandan shillings or serve a prison sentence for a year.⁸¹⁶ However, the journalist died soon after his conviction. Prior to his death, he had submitted a petition to the East African Court of Justice (EACJ) challenging Uganda's criminal defamation laws.⁸¹⁷ This was on the ground of their incompatibility with the East African Community Treaty's fundamental and operational principles, notably "the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African

⁸¹² Gyezaho E "IGG in salary scandal" *Daily Monitor* October 2 2007., available at <https://www.google.com/amp/s/www.monitor.co.ug/News/National/688334-790648-view-asAMP-10tumubz/index.html> (accessed on 5 May, 2020).

⁸¹³ Constitutional Reference No. 1/2008, 13.

⁸¹⁴ Constitutional Reference No. 1/2008, 16-17.

⁸¹⁵ Ifex "Journalist convicted of criminal defamation for reporting on alleged theft of solar panels" October 7, 2014., available at <https://ifex.org/journalist-convicted-of-criminal-for-reporting-on-alleged-theft-of-solar-panels/> (accessed on 5 May 2020).

⁸¹⁶ Ifex (2014).

⁸¹⁷ See *Ronald Ssemuusi versus Attorney General of the Republic of Uganda*, Reference No. 16/2014.

Charter on Human and Peoples' Rights."⁸¹⁸ As at the time of writing, 5 May 2020, the EACJ was yet to rule on this case.

Uganda has over 300 licensed radio stations and 30 television stations.⁸¹⁹ These media houses are key platforms on which information can be received by the citizens and exchanged with public officials to enable public scrutiny and accountability by the government. Media is also a key platform that can be used to educate the public about corruption. For example, Radio Delta has partnered with civil society organizations in Teso sub-region to organize debates with secondary school students which they air to sensitize fellow students and the general public about corruption.⁸²⁰ Under the Black Monday Campaign, the media partnered with civil society to publicize this anti-corruption campaign.⁸²¹

Perhaps closely related to the main stream media, is the role alternative media play against the misappropriation of public resources.⁸²² Many forms of alternative media like social media, play a major role as mechanisms against the swindling of public resources. The diversity of alternative news sources enables more transparency and accountability in the management of public affairs.⁸²³ Anti-corruption agencies all over the world, are known to monitor social media platforms that expose corruption, to get tips for further investigation.⁸²⁴ Alternative media has been facilitated to develop by new technologies

⁸¹⁸ See articles 6(d) & 7 of the East African Community (EAC) Treaty. *Ssembusi's* case is challenging sections 179-186 of the Penal Code Act.

⁸¹⁹ BBC Media Action Uganda – *Media Landscape Report* (2019) 2., available at https://www.communityengagementhub.org/wp-content/uploads/sites/2/2019/09/Uganda-Media-Landscape-report_BBC-Media-Action-February-2019.pdf (accessed on 6 May, 2020).

⁸²⁰ ACTIONAID "Apply the rule of law to stop corruption; Youth Campaigns against Corruption" Frontline Stories 25., available at <https://uganda.actionaid.org/sites/uganda/files/frontline-14-2011-1mar.pdf> (accessed on 13 May, 2020).

⁸²¹ Serucaca EJ "Fight against Corruption: What does 2020 look like for rights Defenders?" *Daily Monitor*, January 6, 2020., available at <https://www.monitor.co.ug/OpEd/Commentary/Fight-against-corruption-What-2020-look-like-rights-defenders/689364-5408496-cupsl/index.html> (accessed on 26 May, 2020).

⁸²² Schauseil W *Media and anti-corruption* Transparency International U4 Helpdesk Answer, (2019) 4.

⁸²³ Schauseil (2019) 4.

⁸²⁴ Many Anti-Corruption Agencies monitor the FCPA Blog to keep abreast of what is happening in the Corruption and Anti-Corruption World.

and digitization of the forms of communication.⁸²⁵ These new forms of interaction and communication are frequently being used to expose corrupt behavior in Uganda.

The young population now consumes most of its news through technology-enabled platforms.⁸²⁶ This consequently enables much wider, easily accessible, platforms of interaction and communication. This increased circulation of information facilitates transparency, which may make it difficult for corruption to flourish in any society.⁸²⁷

4.3 FORMAL ANTI-CORRUPTION MECHANISMS

There are many formal anti- corruption mechanisms in Uganda as indicated earlier. As we shall later realize in this section, some of the formal mechanisms have duplicated roles and are working at cross-purposes.⁸²⁸ This has as a result, led to wastage of the meagre resources available to fight corruption.⁸²⁹ We examine the formal anti-corruption measures in Uganda, hereunder.

4.3.1 MINISTRY OF ETHICS AND INTEGRITY

This is a ministry under the office of the President. It is tasked with coordinating the government's strategy in the fight against corruption in the country. It was formerly a directorate under the office of the President. It was known as the Directorate of Ethics and Integrity. This directorate's role was to fight corruption by introducing integrity mechanisms within government administration. Initially, the directorate was mandated with introduction of the National Anti-Corruption Strategy, 2008-2013.⁸³⁰ The mandate of the initial directorate is the same as that of the Ministry. The Ethics and Integrity Ministry is also the institutional chairperson of Inter-Agency Forum (IAF) charged with coordinating anti-corruption strategies within government ministries and organizations.

⁸²⁵ Schauseil (2019) 4.

⁸²⁶ Schauseil (2019) 4.

⁸²⁷ Bosch et. al. Community Radio for the Right to Communicate – Brazil and South Africa, in: Contemporary BRICS Journalism – Non-Western Media in Transition 2018. (eds) Pasti, Svetlana and Ramaprasad, Jyotika, Routledge London/New York.

⁸²⁸ Gumusiriza & Mukobi (2018).

⁸²⁹ Gumusiriza & Mukobi (2018).

⁸³⁰ Also see the National Anti-Corruption Strategy 2014-2019, that the ministry is spearheading now.

These coordination efforts have however, been weakened due to lack of funding.⁸³¹ The IAF recommended the establishment of an Anti-Corruption Court.⁸³² The IAF follows up all corruption cases at all levels, to keep abreast of what is happening to them at all stages of the criminal trial.⁸³³

4.3.2 POLICE

The Uganda police force has a core duty to the citizens of Uganda. This duty includes “to protect life and property, to preserve law and order, to prevent and detect crime, among other core duties.”⁸³⁴ In course of detecting and preventing crime, the Uganda police has a duty to detect corruption within public bodies and elsewhere. In that vein and due to demands by donors, the Uganda Police Force has dedicated an anti-corruption unit within Directorate of Criminal Investigations and Crime Intelligence, to detect and investigate corruption cases.⁸³⁵

It has been noted that corruption and impunity are prevalent within the Uganda Police Force.⁸³⁶ Citizens have indicated that they do not think that the Uganda Police Force can protect them against crime.⁸³⁷ The citizens also do not believe that the Uganda Police Force can enforce the law in a non-partisan manner.⁸³⁸ Out of four Ugandans, three of them, believe the Uganda Police force is corrupt.⁸³⁹ It has also been noted that the

⁸³¹ Maira (2013).

⁸³² Schutte SA, *Specialized anti-corruption courts: Uganda*. Expert Answer 2016:5, Transparency International.

⁸³³ Matembe MRK *The Struggle for Freedom and Democracy Betrayed* (2019), Self-publication (Uganda), 203-204.

⁸³⁴ See Article 212 of the 1995 Constitution, on the core functions of the Uganda Police Force.

⁸³⁵ Uganda Police Force Anti-Corruption Strategy, 2017/18-2021/22. Available at <https://www.ug.undp.org/content/dam/uganda/docs/UNDP-UG-Police-Report-2019.pdf>. (accessed on 27 February 2020).

⁸³⁶ US Department of State (2016) *Human Rights Practices Report 2016*.

⁸³⁷ GAN Integrity, (2017) Available at <https://www.ganintegrity.com/portal/country-profiles/uganda/> (accessed on 27 May, 2020).

⁸³⁸ GAN Integrity (2017).

⁸³⁹ GAN Integrity (2017).

Uganda Police Force is one of the most corrupt institutions in Uganda, although the perpetrators of corruption within the police, are never investigated and prosecuted.⁸⁴⁰

With assistance from the United Nations Development Programme (UNDP), the Uganda Police Force has drafted the Uganda Police Force Anti – Corruption strategy 2017-2022. The strategy notes that ‘corruption and deviant behavior within the police force undermines its moral authority to keep law and order’.⁸⁴¹ The police anti-corruption strategy acknowledges the fact that corruption within its ranks, has undermined its credibility before the people it is supposed to serve. As result, the strategy indicates that the Uganda Police force has responded to this challenge by creating institutional mechanisms within the police to fight the vice.⁸⁴² These include the creation of Rectification Campaign, Compliance Unit, Alert Squad, Professional Standards Unit, Directorate of Human Rights and Legal Services and the Anti-Corruption Division under the Criminal Investigations Department (CID).⁸⁴³ Whereas a wonderful anti-corruption strategy has been drafted and is being implemented for the Uganda Police Force, the impact of this strategy is yet to be felt by the common man.

4.3.3 THE FINANCIAL INTELLIGENCE AUTHORITY

Section 18(1) of the Anti-Money Laundering Act, 2013 (AMLA) establishes the Financial Intelligence Authority (FIA). The FIA is a body corporate that can sue or be sued in its own name.⁸⁴⁴ The objectives of the FIA include the following: -

- (a) enhance the identification of the proceeds of crime and the combating of money laundering;
- (b) ensure compliance with this Act; (c) enhance public awareness and understanding of matters related to money laundering. (d) make information collected by it available to competent authorities and to facilitate the administration and enforcement of the laws of Uganda; and (e)

⁸⁴⁰ BTI (2016), Uganda Country Report – Transformation Index (BTI).

⁸⁴¹ Uganda Police Force Anti – Corruption strategy 2017-2022, 8.

⁸⁴² Uganda Police Force Anti – Corruption strategy 2017-2022, 8.

⁸⁴³ UPF Anti-Corruption Strategy 201718-2021/2022.

⁸⁴⁴ Section 18(2) of AMLA.

exchange information with similar bodies whose countries have treaties, agreements or arrangements with the Government of Uganda regarding money laundering and similar offences.⁸⁴⁵

In 2019, the mandate of the FIA was further expanded by government.⁸⁴⁶ The FIA is empowered to carry out due diligence on any entities that intend to carry out a public-private partnership with government or any of its institutions.⁸⁴⁷ To realize the objectives of combating money laundering crimes, the FIA is empowered to “process, analyze and interpret information disclosed to it ...” under the law.⁸⁴⁸ The FIA is also legally empowered to share information it receives with appropriate law enforcement agencies for action.⁸⁴⁹ For example, this financial information can be passed onto Uganda Revenue Authority, if it relates to tax fraud for further investigation and prosecution.⁸⁵⁰ FIA shares a lot of information with Uganda Revenue Authority than with the IGG or Criminal Investigations Department of the Uganda Police Force for further investigations or prosecutions.⁸⁵¹ Consequently, FIA therefore creates a specialized linkage between financial institutions and law enforcement agencies.⁸⁵²

The FIA may also provide guidance to accountable persons, competent authorities and any other persons in regard to compliance with provisions of AMLA.⁸⁵³ The FIA is required to provide training to accountable institutions to facilitate compliance requirements to AMLA.⁸⁵⁴ The financial intelligence information acquired by the FIA shall be kept for a period of 10 years and can only be destroyed with the approval of the Minister.⁸⁵⁵ Considering that in the performance of its functions, the FIA is supposed to be

⁸⁴⁵ See section 19 (a), (b), (c), (d) & (e) of AMLA.

⁸⁴⁶ Kyamutetera M “Meet Sydney Asubo, Uganda’s Chief Hunter of money launderers and terrorism financiers,” *CEO Magazine*, April 22 2020. Available at <https://www.ceo.co.ug/meet-sydney-asubo-ugandas-chief-hunter-of-money-launderers-and-terrorism-financiers/> (accessed on 13 May 2020).

⁸⁴⁷ Kyamutetera (2020).

⁸⁴⁸ Section 20(1) (a) of AMLA.

⁸⁴⁹ Section 20(1) (b) of AMLA.

⁸⁵⁰ Kyamutetera (2020).

⁸⁵¹ Kyamutetera (2020).

⁸⁵² Kyamutetera (2020).

⁸⁵³ Section 20(1) (d) of AMLA.

⁸⁵⁴ Section 20(1) (i) of AMLA.

⁸⁵⁵ Section 20(1) (e) & (2) of AMLA.

independent from any person or authority,⁸⁵⁶ the requirement to obtain approval to destroy information in its possession would amount to a claw-back provision, because it seeks to reduce the powers of the FIA. To further fortify its independence, the FIA is further empowered to recruit its staff and manage its own financial affairs, among other powers that are intended to make it operationally independent.⁸⁵⁷

The independence of the FIA is further weakened by the creation of a Financial Intelligence Authority Board (FIAB) to which it must report.⁸⁵⁸ The FIAB is the designated policy making organ of FIA.⁸⁵⁹ The FIAB is empowered to sack or suspend FIA staff.⁸⁶⁰ To further water down the independence of FIA, the minister is empowered to appoint members of FIAB.⁸⁶¹ The FIAB is required to submit an annual report on the performance of the FIA to the Minister and to Parliament within three months after the close of each financial year.⁸⁶² The FIA is empowered to disclose information in its possession to institutions with a similar mandate in foreign countries to curb cross-border and international financial crimes.⁸⁶³

In line with its mandate, the FIA carried out the first nationwide anti-money laundering and combating of terrorism financing risk assessment in 2016, which was approved by government in 2017.⁸⁶⁴ This was in line with the requirements of Financial Action Task Force (FATF).⁸⁶⁵ This risk assessment should be undertaken by a country every 3 years as an international best practice.⁸⁶⁶ In 2016, the FIA carried out a mutual evaluation report, which also assesses how compliant Uganda is to international money laundering

⁸⁵⁶ Section 22 of AMLA.

⁸⁵⁷ Section 21 of AMLA.

⁸⁵⁸ Section 24 (1) (b) of AMLA.

⁸⁵⁹ Section 24 (1) (a) of AMLA.

⁸⁶⁰ Section 24 (1) (f) of AMLA.

⁸⁶¹ Section 25(2) of AMLA.

⁸⁶² Section 36 of AMLA.

⁸⁶³ Section 38 of AMLA., Also see Part VI of AMLA, on international cooperation generally.

⁸⁶⁴ Kyamutetera (2020).

⁸⁶⁵ The FATF is an association that was initially created by the G7 countries to help combat money laundering crimes across borders. It has now developed into an association of over 160 financial intelligence units that share information to combat money laundering and international terrorism.

⁸⁶⁶ Kyamutetera (2020).

standards enforced by FATF.⁸⁶⁷ The FATF has over forty standards it uses to measure with international compliance.

Uganda scored below average in all eleven areas of assessment in which it was examined.⁸⁶⁸ This is partly because the FIA had just been set up in 2014 and effectively started its operations in 2015.⁸⁶⁹ As a result of this assessment, Uganda was placed on the grey list.⁸⁷⁰ In 2017, Uganda was removed from the FATF's grey list, when FIA addressed some of its inadequacies. One of the reasons why Uganda was put on the grey list in 2014 was because the country did not have an operational financial intelligence unit.⁸⁷¹ On 3rd July, 2019, Uganda was admitted to the EGMONT group.⁸⁷² This is an informal group that helps with the sharing of financial intelligence information and international cooperation generally of the financial intelligence units of 164 countries.⁸⁷³ One of the requirements of admission to the EGMONT Group is that the financial intelligence unit should be independent from the direction and control of any person or authority. In the earlier discussion on independence of the FIA, I indicated that AMLA has claw-back clauses that undermine the independence of FIA.⁸⁷⁴

The FIA is empowered to seize, freeze, forfeit assets of criminals that are proceeds of money laundering.⁸⁷⁵ Under Part VII of the AMLA, the FIA is empowered to enforce offences and penalties.⁸⁷⁶ The enforcement of the AMLA has not been robust enough,

⁸⁶⁷ Kyamutetera (2020).

⁸⁶⁸ Kyamutetera (2020).

⁸⁶⁹ Kyamutetera (2020).

⁸⁷⁰ Countries on the grey list face increased monitoring by FATF to enable them rectify identified deficiencies. The countries on the grey list have failed to comply with FATF's international standards on money laundering and terrorism funding. For a detailed treatment on this, see <https://www.fatf-gafi.org/countries/#Uganda> (accessed on 13 May 2020).

⁸⁷¹ Kyamutetera (2020).

⁸⁷² Financial Intelligence Authority (FIA) "Uganda joins EGMONT Group" *Financial Intelligence Authority* 18 March, 2020., available at <https://www.fia.go.ug/press-release/uganda-joins-egmont-group> (accessed on 13 May, 2020).

⁸⁷³ FIA (2020).

⁸⁷⁴ See sections 21, 22 (2) & 24(1) (b) of AMLA, among other provisions.

⁸⁷⁵ Part V of AMLA.

⁸⁷⁶ See sections 116 – 137 of AMLA.

because the FIA as a nascent institution, has many challenges.⁸⁷⁷ These challenges include finances, human resource and weak legal framework to enable cooperation among other anti-corruption institutions. The informality of financial transactions in Uganda has further exacerbated the ability of FIA to gather evidence against the ever-growing number of suspected money launderers.⁸⁷⁸ Financial institutions are designated as accountable institutions under the AMLA,⁸⁷⁹ however the fear of losing customers by these institutions has become a challenge to the flow of financial intelligence information to FIA. The insufficient remuneration to officials who are supposed to enforce the provisions of AMLA, makes them prone to bribery by money launderers. This as a consequence, has led to very few convictions in court.⁸⁸⁰

There is therefore a need to address the aforementioned challenges to enable a more robust enforcement of AMLA. There has been legislative reform with the amendment of the AMLA. The Anti-Money Laundering (Amendment) Act, 2017 has introduced some reforms. This is in specific regard to the following: -

to harmonize the definitions used in the Act; to provide for the carrying out of risk assessments by accountable persons; to provide for the identification of customers and clients of accountable persons; to provide for procedures relating to suspicious transactions; to harmonize the record keeping requirements and exchange of information obligations with international practice.⁸⁸¹

At the same time there have been arguments that the amendments to the AMLA were intended to arm the government, to financially cripple political opponents and also to threaten legitimate civil society activities.⁸⁸² These CSOs are targeted because the

⁸⁷⁷ Gumisiriza & Mukobi (2019) 6.

⁸⁷⁸ Gumisiriza & Mukobi (2019) 6.

⁸⁷⁹ See section 1 & the second schedule of AMLA, for a list of accountable persons.

⁸⁸⁰ Gumisiriza & Mukobi (2019) 6.

⁸⁸¹ See long title of the Amendment Act.

⁸⁸² Kirunda R "Understanding the Anti Money Laundering Act, 2013: Implications on the Work of Civil Society and Non-Governmental Organizations," (2014) Available at: <https://ssrn.com/abstract=2931658> (accessed on 11 May 2020),, also see Dr. Kiggundu S "Why My Bank Was Closed" Observer, June 25 2008), <https://observer.ug/features-sp-2084439083/special-report/309-dr-kiggundu-why-my-bank-was-closed> (accessed on 11 May 2020).

government alleges that they are sympathizers of opposition political parties and neo-colonialists.⁸⁸³

4.3.4 AUDITOR GENERAL

The Auditor General (AG) is another important anti-corruption institutional mechanism in Uganda. The 1995 constitution establishes this body.⁸⁸⁴ The key functions of the Auditor General are to audit the accounts of public institutions, the central and local government.⁸⁸⁵ The Auditor General is also required to “conduct financial and value for money audits in respect of any project involving public funds”.⁸⁸⁶ These constitutional provisions are magnified by sections 13(1) and 19 of the National Audit Act.⁸⁸⁷ As a result of an outcry about a joint venture that had been entered into by the National Social Security Fund (NSSF) using public funds, the Finance Minister requested the Auditor General to investigate the said joint venture.⁸⁸⁸ The Auditor General audited the said joint venture and made a report. The Auditor General’s report was used for further investigations by the Inspector General of Government. The Inspector General of Government finally established that there had been corrupt practices in the formation of the joint venture by the NSSF. The IGG’s findings were challenged in court in the case of *Nsimbe Holdings Ltd v The Attorney General & Inspector General of Government*.⁸⁸⁹ The findings of the Auditor General and Inspector General’s reports were used by the Constitutional Court as evidence to hold that the said joint venture was established without the advice of the Attorney General as provided for by Article 119(5) of the Constitution and was therefore an illegal entity. The Constitutional Court further held that in accordance with Article 164(3) of the Constitution, it was illegal for the

⁸⁸³ Gumisiriza & Mukobi (2019) 6.

⁸⁸⁴ Article 163(1) of the 1995 Constitution.

⁸⁸⁵ Article 163 (3) (a) of the 1995 Constitution.

⁸⁸⁶ Article 163 (3) (b) of the 1995 Constitution.

⁸⁸⁷ 2008.

⁸⁸⁸ *Nsimbe Holdings Ltd v The Attorney General & Inspector General of Government*, Constitutional petition No. 2/2006.

⁸⁸⁹ Constitutional Petition No. 2/2006.

management of NSSF to pass on public funds to a joint venture, in which they were beyond the scrutiny and control of the Auditor General and Parliament.⁸⁹⁰

The Auditor General is required to file an annual report of accounts audited by him or her before Parliament.⁸⁹¹ Parliament is required to “debate and consider the report and take appropriate action”.⁸⁹² In the execution of his or her role, the Auditor General shall not be under the control or direction of any person or authority.⁸⁹³ The independence of the Auditor General in the execution of its mandate was further fortified in case of *Tukamuhebwa v Attorney General*.⁸⁹⁴ In the aforementioned case, the Constitutional Court held that the Auditor General was among the offices that have powers of independence in the execution of their mandate.⁸⁹⁵

Parliament delegates the role of scrutinizing the Auditor General’s report in detail to its Public Accounts Committee, which must be chaired by an opposition Member of Parliament.⁸⁹⁶ An Auditor General’s 2020 periodic report to Parliament has exposed unauthorized expenditure by government to the tune of trillions.⁸⁹⁷ For example, Finance Ministry officials spent more than Ush. 1.15 trillion without compulsory parliamentary approval.⁸⁹⁸ The Auditor General’s report has also exposed the lack of coordination between government institutions that has cost the taxpayers billions of shillings.⁸⁹⁹ The

⁸⁹⁰ Constitutional petition No. 2/2006, 10.

⁸⁹¹ Article 163 (4) of the 1995 Constitution.

⁸⁹² Article 163(5) of the 1995 Constitution.

⁸⁹³ Article 163(6) of the 1995 Constitution.

⁸⁹⁴ CONSTITUTIONAL PETITION NO. 59 OF 2011 [2014] UGCC 2 (14 FEBRUARY 2014);

⁸⁹⁵ Constitutional Petition No. 59 OF 2011 [2014] UGCC 2 (14 February 2014), paragraphs 9-10.

⁸⁹⁶ Article 90 of 1995 Constitution. The current Chairperson of PAC is Honorable Nathan Nandala, a member of Forum for Democratic Change (FDC), the leading opposition party in Parliament.

⁸⁹⁷ Draku A “Auditor General report exposes financial indiscipline” *Daily Monitor*, January 16 2020., available at <https://www.monitor.co.ug/News/National/Auditor-General-report-exposes-financial-indiscipline/688334-5420548-format-xhtml-wgy4m3z/index.html> (accessed on 12 May 2020).

⁸⁹⁸ The NRM Government was supposed to have sought approval from Parliament in accordance with Section 25(1) of the Public Finance Management Act which provides that “government may approve a supplementary budget up to 3 per cent of appropriated budget but must seek retrospective approval from Parliament within four months”. In 2020 the AG found out that Government did not do this.

⁸⁹⁹ Ladu IM “Uncoordinated government entities causing loss billions – report” *Daily Monitor*, February 25 2020., available at <https://www.monitor.co.ug/News/National/Uncoordinated-government-entities--loss-of-billions-report-AG/688334-5468704-bqe3kkz/index.html> (accessed on 15 May 2020).

2018/2019 Auditor General's report to Parliament indicates that clumsy methods of work between government Ministries, Departments and Agencies (MDAs) led to a loss of revenue that may have been saved, if there was sufficient partnership with Uganda Revenue Authority.⁹⁰⁰ For example, Ush. 39.8 billion was uncollected as taxes because the Uganda Revenue Authority was unable to access the government payment system – the Integrated Financial Information Management System.⁹⁰¹

4.3.5 PUBLIC ACCOUNTS COMMITTEE OF PARLIAMENT

The Parliament of Uganda is required to play an oversight role over all government activities.⁹⁰² In order to efficiently perform its oversight role, Parliament works through committees.⁹⁰³ One of the key committees through which Parliament executes its mandate is the Public Accounts Committee (PAC).⁹⁰⁴

One of the primary responsibilities of PAC is to examine the Auditor General's reports submitted to Parliament after every financial year. After examination of the Auditor General's reports, PAC makes recommendations.⁹⁰⁵ PAC in the conduct of its duties can call upon any public official or private individual to give evidence or submit to it a statement in respect of any queries it has, emanating from the Auditor General's reports.⁹⁰⁶ PAC may also enforce the attendance of any public official or private individual and also compel them to produce documents in their possession.⁹⁰⁷ In scrutinizing the Auditor General's reports, PAC is empowered to conduct its own investigations with the

⁹⁰⁰ Ladu (2020).

⁹⁰¹ Ladu (2020).

⁹⁰² See Article 79 of the 1995 Constitution.

⁹⁰³ Article 90 of the 1995 Constitution.

⁹⁰⁴ Article 90 of the 1995 Constitution.

⁹⁰⁵ Under Articles 90 and 164 of the 1995 Constitution, PAC has powers to monitor public expenditure of Public Institutions, local and central governments. Mwiru P "The Role, Experience, Challenges of the Public Accounts Committee in Handling Cases of Misappropriation of Public Funds," (draft paper presented at the ULS Annual Conference at the Imperial Resort Beach hotel, March 22, 2012) 2. Honorable Paul Mwiru was the Vice Chairman of PAC at the time he presented this paper to the Uganda Law Society Annual General Meeting.

⁹⁰⁶ Article 90(4) of the 1995 Constitution.

⁹⁰⁷ Article 90(4) of 1995 Constitution.

assistance of Criminal Investigations Department (CID) police officers attached to it.⁹⁰⁸ The investigations are in regard to the misappropriations of public funds identified from the Auditor General's reports. The power of PAC to execute its oversight role was recently clarified in the case of *Baligobye Jamada & 2 Others v Attorney General & 3 Others*,⁹⁰⁹ where the High Court stated that "... there is no law that vests Parliament or any of its appointed Committees with power of oversight role to inquire into decisions of courts of Law".⁹¹⁰ The Court further noted that for PAC to review decisions of a court of law, would amount to PAC constituting itself into an appellate body and consequently usurping powers that are not vested in Parliament.⁹¹¹ In a related case of *Attorney General v Walugembe Daniel*,⁹¹² the Court of Appeal emphasized that judgments of courts of law cannot be reviewed or compromised by any other arm of government including Parliament. The Appeal Court further noted that the 1995 Constitution ensures that Parliament cannot make a law whose effect is to alter a court judgment between the parties.⁹¹³ The PAC may recommend "prosecution, recovery of misappropriated funds, and dismissal of public officials".⁹¹⁴ The plenary of Parliament must vote and approve the recommendations of PAC before they are implemented and become a record of Parliament.⁹¹⁵ In *Spear Motors Ltd v Attorney General & 2 Others*,⁹¹⁶ the High Court was faced with the question of whether a CHOGM PAC Report that had been debated and approved was a record of Parliament, or was privileged information that could not be used in a court of law. Mulyagonja, J held that the Commonwealth Heads of Government Meeting (CHOGM) Report was debated and concluded and consequently had become a record of Parliament. The Court also held that consequently, this was a public document

⁹⁰⁸ Mwiru (2012) 4.

⁹⁰⁹ High Court Miscellaneous Cause No. 376/2019.

⁹¹⁰ High Court Miscellaneous Cause No. 376/2019 19.

⁹¹¹ High Court Miscellaneous Cause No. 376/2019, 20., also see *Attorney General v Walugembe Daniel*, Court of Appeal Miscellaneous Application No. 390/2018.

⁹¹² Court of Appeal Miscellaneous Application No. 390/2018, 11.

⁹¹³ See Article 92 of the Constitution of Uganda, 1995.

⁹¹⁴ Mwiru (2012) 4.

⁹¹⁵ Mwiru (2012).

⁹¹⁶ (HCT-00-CC-CS-0692-2007) [2012] UGCOMM 18 (18 March 2012).

that could be used as evidence in the court and was not privileged information within the meaning of the law.

In conjunction with the Auditor General, PAC has exposed some of the biggest corruption scandals in Uganda.⁹¹⁷ I will share a few examples. One of the biggest corruption scandals was the CHOGM scandal. The Auditor General found out that although Parliament had approved Ush. 270 billion for this event, Ush. 370 billion had been spent.⁹¹⁸ When PAC further examined the Auditor General's report and interrogated the Ministers involved, it was found that actually Ush. 500 billion had been spent in dubious procurements by the Vice President and several ministers.⁹¹⁹ The Vice President was the Chairman of the Cabinet sub-committee on CHOGM, with the implicated ministers forming membership of the committee.⁹²⁰ Through examining the Auditor General's reports, PAC also found that the government of Uganda borrowed Ush. 150 billion to finance the procurement and installation of the national identity card system.⁹²¹ This is commonly known as the National ID scandal. Public procurement rules were flouted when a German company was sourced to supply and install the ID equipment leading to a loss of Ush. 19 billion.⁹²² This German firm only produced four hundred national cards for a population of 39 million citizens.⁹²³ These are just a few of the corruption scandals that space constraints allow me to deal with under this section, although there are many more scandals.⁹²⁴

⁹¹⁷ New Vision "Uganda's Big corruption scandals" *New Vision*, December 3, 2019., available at https://www.newvision.co.ug/new_vision/news/1511556/ugandas-corruption-scandals (accessed on 12 May 2020).

⁹¹⁸ New Vision (2019).

⁹¹⁹ Vice President Gilbert Bukenya; Ministers John Byabagambi, John Nasasira, Mwesigwa Rukutana and Isaac Musumba.

⁹²⁰ New Vision (2019).

⁹²¹ New Vision (2019).

⁹²² New Vision (2019).

⁹²³ Former Ministers Dr. Kiddu Makubuya, Kirunda Kivejinja and Permanent Secretary Steven Kagoda were implicated in this scandal.

⁹²⁴ For a detailed treatment on these corruption scandals see, New Vision "Uganda's Big corruption scandals" *New Vision*, December 3 2019., Available at https://www.newvision.co.ug/new_vision/news/1511556/ugandas-corruption-scandals; also see Serunjogi EM 'High profile corruption scandals registered under the NRM' *The Daily Monitor* February 24 2013 available at <http://www.monitor.co.ug/news/national/high-profile-corruption-scandals-registered=under-NRM/-/688334/1702448/-/item/2/-/3d9naa/-/index.html>. Muhangi B 'Bureaucracy in Uganda since colonial

4.3.6 THE INSPECTORATE OF GOVERNMENT

The Office of the Inspectorate of Government (IGG) was for the first time established in 1986 as a department in the office of the President. As part of its promise to eradicate corruption (and mal-administration), the National Resistance Movement established the Office of the Inspector-General of Government (IGG) (or the ombudsman in other countries). No other government in Uganda's history had previously instituted such an office. The IGG's office was created to check on administrative and executive excesses and its mandate included the prevention of abuse of office and investigation into allegations of corruption, mal-administration and abuse of human rights. Nonetheless, when one examines the operation of the office from 1988 when it was established as a statutory body until 1995 (when it was transformed into a constitutional body under the 1995 constitution), you will discover a number of shortcomings of the office. First, the IGG was responsible only to the president and this in effect did not ensure the independence of the office to carry out its functions. Secondly, the findings and recommendations of the IGG's office between 1988 and 1995 were never made public. Nonetheless, the establishment of the office has had a significant importance, given that the IGG's office is, under the 1995 Constitution, now a major constitutional body with a similar mandate of its 1988 predecessor.

The IGG has made some impact in the fight against corruption. The IGG has the mandate to arrest or cause the arrest of corruption suspects, investigate and prosecute corruption cases generally in Uganda. They have the duty to enforce the leadership Code of Conduct. The IGG has (16) sixteen regional offices all over the country where complainants and whistleblowers can file their communications.⁹²⁵ The regional offices have a duty to investigate any communications filed on corruption and subsequently make

period to present (2015) *International Journal of Sciences: Basics and Applied Research.*; Okello B "Uganda is rotten with corruption" *Daily Monitor*, April 13 2016.

⁹²⁵ IGG *Bi- Annual Inspectorate of Government Performance Report to Parliament* (2017) Kampala: IGG.

recommendations to the IGG, who has the mandate to take further action on the basis of findings by the regional offices.⁹²⁶

Information in regard to how many corruption cases the IGG has handled since its establishment are unavailable or unreliable.⁹²⁷ The IGG publishes annual reports on their performance, but it has been argued that the information in these reports maybe insufficient and untrustworthy.⁹²⁸ The average period the IGG takes to investigate a complaint from filing to conclusion has been pegged at (6) six months.⁹²⁹ Whereas Articles 226 and 227 of the 1995 Constitution provide constitutional guarantees to the IGG on its independence and in the performance of its duties, this autonomy has been hampered by political interference, and a lack of human and financial resources to execute its mandate.⁹³⁰

4.3.6.1 SUBMISSION OF COMPLAINTS TO THE IGG

The IGG is mandated to investigate any complaint that may arise about the conduct of any persons occupying a public office or any other person(s) as Parliament may prescribe.⁹³¹ Whereas the IGG has set up mechanisms to enable the general public to report corruption,⁹³² most of the complaints that the IGG investigates and prosecutes are sent to it by politicians.⁹³³ This is partly due to the fact that instead of the IGG's office establishing an evidence-based and impartial manner of investigating cases, political motivations override their case processing system.⁹³⁴ As a result, the evidence that is

⁹²⁶ Transparency International Uganda, "As strong as its weakest link. Stakeholders Perceptions of the Ugandan Legal and Institutional Anti-Corruption Framework" (2015). Available at <http://tiuganda.org/wp-content/uploads/Stakeholders-Perceptions-of-the-Uganda-Legal-Anti-Corruption-framework.pdf> (accessed on 27 July 2020).

⁹²⁷ Gumisiriza P & Mukobi R "Effectiveness of Anti-Corruption Measures in Uganda" (2019) (2) 8 *Rule of Law and Anti-Corruption Center Journal* 5.

⁹²⁸ Gumisiriza & Mukobi (2019) 5.

⁹²⁹ IGG *Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism* (2014).

⁹³⁰ IGG *Bi-Annual Inspectorate of Government Performance Report to Parliament* (2018) 59., Kampala: IGG.

⁹³¹ See Articles 225(1) & 226 of the 1995 Constitution.

⁹³² An individual filing a whistleblowing communication can do so on the IGG's website. See <https://www.igg.go.ug/complaints/> (accessed on 20 May 2020)., The IGG also has 16 regional offices where a whistleblower can file physical communication.

⁹³³ Transparency International Uganda (2015).

⁹³⁴ Transparency International Uganda (2015).

compiled against such accused persons is usually weak and cannot stand up to scrutiny.⁹³⁵ This is evidenced from the percentage of convictions they have been able to secure.⁹³⁶ The IGG's case processing mechanisms therefore require reform, if the IGG's prosecutions are to secure higher percentages of convictions, that are not politically motivated.

4.3.6.2 IGG INVESTIGATIONS

The IGG is also empowered under Article 225 (1) (b) of the Constitution "to eliminate and foster the elimination of corruption, abuse of authority and public office".⁹³⁷ The IGG is also empowered under Article 230 (1) of the 1995 Constitution to investigate, cause an investigation, arrest, cause an arrest, prosecute or cause the prosecution in respect of cases involving corruption, abuse of authority or public office.⁹³⁸

As opposed to the DPP that is required to seek the assistance of police during its investigations, the IGG has its own investigators.⁹³⁹ The aforementioned prosecution framework, as we shall see later, has its own challenges. The Uganda Revenue Authority (URA) also has powers to institute corruption cases at the Anti-Corruption Court (ACC), as long as they have elements of tax fraud.⁹⁴⁰ Public prosecution by URA is outside the confines of this study.

The IGG does not have corporate status, consequently the IGG Act was drafted in a manner that offers immunity for the acts of the IGG or its officers in the execution of their mandate.⁹⁴¹ This lack of corporate status has advantages, but also has its

⁹³⁵ Transparency International Uganda (2015).

⁹³⁶ See Schutte (2016) 2., also see Carson L "Institutional Specialization in the Battle against Corruption: Uganda's Anti-Corruption Court," *Public Sphere* (2015).

⁹³⁷ Chapter 13 of the 1995 Constitution.

⁹³⁸ See Part III and V of the Inspectorate of Government Act, 2002., also see Part IV of the Anti-Corruption Act, 2009 (as amended).

⁹³⁹ See sections 15-17 & 22 of IGG Act, 2002 & section 50 of Anti-Corruption Act, 2009.

⁹⁴⁰ Schutte (2016) 2.

⁹⁴¹ See section 22(1) of the IGG Act, 2002.

disadvantages.⁹⁴² The obvious advantage is that the IGG Act offers its officers immunity to conduct their work without fear of civil or criminal proceedings being brought against individual IGG staff or the IGG.⁹⁴³ The disadvantage is that where officials in the Attorney General's office are involved in covering-up corrupt crimes on behalf of political leaders, there would be a serious challenge.⁹⁴⁴ This is because the Attorney General is the chief legal adviser of government ministries, departments and agencies.⁹⁴⁵ The Attorney General is therefore the IGG's legal adviser. This does not only present a conflict-of-interest situation but may also pose a challenge to the IGG's investigations.⁹⁴⁶ In the Katozi road scandal, a private company filed a petition before the Constitutional Court arguing that the IGG had no powers to institute investigations against it.⁹⁴⁷ Government lost Ush. 24 billion in the Katosi Road Scandal.⁹⁴⁸ Considering that the Attorney General's lawyers were officially involved in contracting and then covering corrupt acts of this private company, the IGG argued that the Attorney General was not the appropriate body to represent the IGG, because of a conflict of interest.⁹⁴⁹

4.3.6.3 RESOURCES

The investigators within the IGG's office are not only poorly remunerated, but they work on the basis of contracts that may not be renewed, if they do not please political leaders.⁹⁵⁰ The political leaders are able to influence these contract renewals through intelligence reports that they periodically receive from security agencies about the conduct of these investigators.⁹⁵¹ Considering that cadres are placed in top positions in

⁹⁴² See for example, Musisi F "IGG wants Nyombi out of the Katosi road case" Daily Monitor, November 12, 2014., available at <https://www.monitor.co.ug/News/National/IGG-wants-Nyombi-out-Katosi-road-case/688334/2531716/-/u1xggd/-/index.html> (accessed on 28 May 2020).

⁹⁴³ Section 22(1) of the IGG Act, 2002.

⁹⁴⁴ Musisi (2014).

⁹⁴⁵ Article 119 (3), (4) & (5) of the 1995 Constitution.

⁹⁴⁶ Musisi (2014).

⁹⁴⁷ Musisi (2014).

⁹⁴⁸ Draku F "IGG fails to recover shs. 24b lost in Katosi road scandal" Daily Monitor, November 19, 2019., available at <https://www.monitor.co.ug/News/National/IGG-fails-recover-Shs24b-Katosi-road-scandal-Apollo-Senkeeto/688334-5354854-view-asAMP-EAQJ5Z/html> (accessed on 28 May 2020).

⁹⁴⁹ Musisi (2014).

⁹⁵⁰ See sections 16(2) of the IGG Act, 2002., also see Transparency International Uganda (2015) 19.

⁹⁵¹ Transparency International Uganda (2015) 19.

these anti-corruption institutions, the political leaders are able to influence the renewal of investigators' contracts. Therefore, there is no job security for these investigators.⁹⁵² The importance of these investigators in the successful prosecution of cases cannot be underestimated. Without their skilful conduct of investigations, there will be very few convictions of corruption cases.⁹⁵³ This lack of job security and inadequate facilitation is deliberately intended to weaken the capacity of investigators to execute their mandate and indicates a lack of political will to prevent corruption in Uganda.⁹⁵⁴ The low salaries paid to investigators present fertile and tempting grounds for an investigator to accept bribes. This environment is exacerbated by the fact that they investigate rich and politically connected individuals, who have stolen millions of dollars of public money.⁹⁵⁵ The question of a conducive working environment of the investigators at the office of the IGG has to be addressed.

4.3.6.4 EVIDENCE

As result of the poor working conditions of the investigators, the influential offending culprits will either bribe the investigators or threaten them into manipulating the investigations. Transparency International Uganda (TIU) notes that: -

those services investigators are being bribed to fulfill are the termination or slowing down of investigations, the hiding of important documents and reports, or the forging and manipulation of documents, such as finger prints. Several interview partners have lamented the disappearance of court files and reports, which were known to have existed. The manipulation of evidence, such as fingerprints and other relevant documents, leads to the courts dropping cases due to a lack of evidence.⁹⁵⁶

⁹⁵² Section 16(2) of the IGG Act, 2002.

⁹⁵³ See Carson (2015)., also Schutte SA "Specialized Anti-Corruption Courts: Uganda" (2016) Transparency International Anti-Corruption Resource Centre u4, 2. Schutte indicates that the IGG's conviction rate of cases filed was at 60%.

⁹⁵⁴ Transparency International Uganda (2015) 19.

⁹⁵⁵ Transparency International Uganda (2015).

⁹⁵⁶ Transparency International Uganda (2015) 19.

In some instances, it was indicated that lesser corruption charges were being preferred against the accused persons in spite of evidence to the contrary.⁹⁵⁷ Understandably, bribery of the investigators from the proceeds of corruption and political influence-peddling plays a big role in some of these circumstances.⁹⁵⁸

4.3.6.5 IGG PROSECUTIONS

As indicated in chapter 3, the mandate of public prosecutions of crime is mainly vested with the DPP.⁹⁵⁹ Section 49 of the Anti – Corruption Act, 2009 however, vests the public prosecutions of corruption crime in both the DPP and IGG and in any other person with the consent of the DPP or IGG. The question of whether it is only the DPP, who has the sole right to institute criminal proceedings against any person, was answered in the case of *Jim Muhwezi & 3 Others v Attorney General*, where the petitioners argued that it was only the DPP who had power to institute criminal proceedings against them.⁹⁶⁰ The Constitutional Court held that ‘with due respect to learned counsel for the petitioners, we do not accept their argument that under Article 230(1), the IGG has no powers to prosecute them.’ The Court further added that: -

‘the definition of “corruption” in the Prevention of Corruption Act is narrow as this court observed in the case of *Attorney General versus Ekemu & Another*, Constitutional Reference No. 9/2002. However, at the time of the decision, the Inspectorate of Government Act had not yet been enacted. With the enactment of that Act, corruption is defined as quoted above and now covers all the offences contained in the charge sheet...’⁹⁶¹

Relatedly, in the case of *Hon. Sam Kutesa & 2 Others v Attorney General*, the Constitutional Court held that ‘... it is constitutional that the Inspectorate of Government can prosecute or cause prosecution in respect of cases of corruption, abuse of authority or public office’.⁹⁶²

⁹⁵⁷ Transparency International Uganda (2015) 19.

⁹⁵⁸ Transparency International Uganda (2015).

⁹⁵⁹ Article 120 of the 1995 Constitution.

⁹⁶⁰ Constitution Petition No. 10/2008.

⁹⁶¹ Constitution Petition No. 10/2008, 14.

⁹⁶² Constitutional Reference No.54/2011, 19-20.

The mandate of the IGG to prosecute corruption has been swamped with many challenges. These include insufficient funding and understaffing, among others.⁹⁶³ The frequent failure by government to fill vacant positions within the IGG's office is a major weakness because it has caused a failure for prosecutions.⁹⁶⁴ This challenge has not only caused backlog, but in some cases has enabled corrupt individuals to be let off the hook.⁹⁶⁵ For example, the law requires the IGG's office to be led by an Inspector of Government and two Deputy Inspectors General.⁹⁶⁶ Since the establishment of the IGG's office in 1995, the second position of Deputy IGG was vacant, until when it was filled on the 16 July, 2013.⁹⁶⁷ As result of this vacancy, three ministers against whom the IGG was prosecuting for the CHOGM Scandal - one of the big corruption scandals in Uganda - were acquitted because the IGG's office was not fully constituted.⁹⁶⁸ In the case of *Hon. Sam Kutesa & Others v Attorney General*,⁹⁶⁹ the Constitutional Court was faced with the question on "whether when only the Inspector general of Government (in an acting capacity) is the only one lawfully appointed in office, and the other two deputies are not yet appointed, it is constitutional that the Inspectorate of Government, as an Institution, can prosecute or cause prosecution in respect of cases of corruption, abuse of authority or of public office".⁹⁷⁰ In accordance with Article 233(1) and (2) of the Constitution, the Constitutional Court ruled that the Inspectorate of Government is fully constituted when it has an Inspector General of Government and two Deputy Inspectors General of Government appointed by the President with the approval of Parliament. The

⁹⁶³ KAHUNGU MT "INSIDE THE IGG'S SHS56B BUDGET," *DAILY MONITOR*, FEBRUARY 1, 2019., available at <https://www.monitor.co.ug/News/National/Inside-IGG-s-Shs56b-budget/688334-4960666-format-xhtml-iru51h/index.html> (accessed on 27 May 2020).

⁹⁶⁴ Mangula G "Corruption: Why the IGG stuck with 4000 cases" *Eagleonline*, May 2 2018., available at <https://eagle.co.ug/2018/05/02/corruption-why-the-igg-is-stuck-with-4000-cases.html> (accessed on 27 May 2020).

⁹⁶⁵ Mangula (2018)., also see *Hon. Sam Kutesa & Others versus Attorney General*, Constitutional Petition No. 46/2011.

⁹⁶⁶ Section 3(2) (b) of the IGG Act.

⁹⁶⁷ The Inspectorate of Government, "Mariam Wangadya Approved New Deputy IGG," available at <https://www.igg.go.ug/updates/news/mariam-wangadya-approved-new-deputy-igg/> (accessed on 21 August 2020).

⁹⁶⁸ *Hon. Sam Kutesa & Others versus Attorney General*, Constitutional Petition No. 46/2011.

⁹⁶⁹ Constitutional Petition No. 46/2011.

⁹⁷⁰ *Hon. Sam Kutesa & Others versus Attorney General*, Constitutional Petition No. 46/2011, 15.

Constitutional Court ruled that the IGG can only exercise its powers when it is fully constituted as provided under Article 230(1) of the Constitution. The Court noted as follows: -

We are not persuaded by the submission that the framers of the Constitution intended that the powers vested in the Inspectorate of Government, as a composite entity, were also vested in the Inspector General of Government who at the same time is a member of the Inspectorate of Government to be exercised singularly and/or independently of the Inspectorate of Government. The ultimate result of that would be for the Inspector General of Government to override, at his/her whims the Inspectorate of Government as to the exercise of powers vested into the Inspectorate of Government. We are unable to read in section 32 of the Act any powers of prosecution being vested in the Inspector General of Government independently of or in the absence of the Inspectorate of Government. Our appreciation of the section is that the Inspectorate of Government must first act so as to give necessity for the requirement of an instrument, or document or some act to be signed, executed or done by the Inspector General of Government or a Deputy Inspector General of Government or by any person authorized in writing by the Inspector General of Government or Deputy Inspector General of Government. Surely Parliament cannot be taken to have intended that the Inspector General of Government or the Deputy Inspector General of Government or even a person authorized by anyone of the two, can assume and exercise the powers of the whole Inspectorate of Government through section 32 of the Act.⁹⁷¹

As a result of this constitutional decision the IGG's office was unable to prosecute any corruption matters because one of the positions of Deputy IGG within the IGG's office was still vacant.⁹⁷² To enable continuity of the mandate of the IGG, the IGG's office could only prosecute corruption matters through the DPP.⁹⁷³ The DPP had to sanction every charge sheet instituted by the IGG. Oftentimes, when the charge sheet involved accused persons who were politically connected, there was reluctance on the part of the DPP to sanction the charges.⁹⁷⁴

⁹⁷¹ Constitutional Petition No. 46/2011, 21.

⁹⁷² Constitutional Petition No. 46/2011.

⁹⁷³ This weakened the role of the IGG, because it had no prosecutorial independence and discretion.

⁹⁷⁴ Transparency International Uganda (2015).

It was only with “donor” pressure that President Museveni was able to appoint a second Deputy IGG.⁹⁷⁵ This was the first time in twenty-five years, that the IGG’s office became fully constituted and functional to execute its mandate, since it was established by the 1995 Constitution.⁹⁷⁶

Prosecutors from the IGG’s office are not only overworked due to the insufficient manpower, but also face threats when they prosecute cases involving “high profile” individuals, with political connections.⁹⁷⁷ Some prosecutors who refuse to be compromised are threatened with death.⁹⁷⁸ These threats are compounded by the fact that IGG’s prosecutors do not have any form of personal security.⁹⁷⁹ Oftentimes, they are to investigate and prosecute central government officials who have amassed a lot of ill-gotten wealth and power, while they receive peanuts as salary.⁹⁸⁰ As a result, prosecutors are also directed to manipulate or delay cases in favour of “high profile” accused persons facing corruption charges.⁹⁸¹

Prosecutors are cajoled by superiors who are most often ruling party cadres, to delay cases even when there is strong evidence to convict the accused persons.⁹⁸² This delay enables the suspects to compromise key witnesses in a case. If the case drags for long time, key evidence may disappear, some witnesses may die or travel permanently out of the country. This may inevitably lead to the collapse of a strong case against these powerful suspects.⁹⁸³

⁹⁷⁵ Wesaka A “Wangadya Named New Deputy IGG” *Daily Monitor*, July 8, 2013., available at <https://www.monitor.co.ug/News/National/Wangadya-named-new-deputy-IGG/-/688334/1908158/-/H84XW6//-/index.html> (accessed on 22 May 2020).

⁹⁷⁶ As soon as Museveni fully constituted the IGG’s office, he also appointed the DPP Richard Butera to the Court of Appeal leaving the position of DPP vacant for several months.

⁹⁷⁷ Mugabe R “Understaffing is hindering our fight against corruption – IGG” *New Vision*, June 9 2019., available at https://www.newvision.co.ug/new_vision/news/1502270/understaffong-hindering-fight-corruption-igg (accessed on 22 May 2020).

⁹⁷⁸ Transparency International Uganda (2015) 24.

⁹⁷⁹ Transparency International Uganda (2015) 21-22.

⁹⁸⁰ Transparency International Uganda (2015) 21-22.

⁹⁸¹ Transparency International Uganda (2015) 21-22.

⁹⁸² Transparency International Uganda (2015) 32-35.

⁹⁸³ Transparency International Uganda (2015) 32-35.

The ability of corrupt individuals to hire experienced lawyers against state prosecutors who are underpaid and overworked is a serious challenge to the public prosecution of corruption. Not only is this threatening to state prosecutors, but this intimidating environment is compounded, when the President offers to pay legal fees for high profile corruption suspects.⁹⁸⁴

4.3.6.6 SECURITY OF TENURE

Article 223 of the 1995 Constitution provides that the President shall appoint the IGG for a four-year term of office, with a possibility of extension for another final term of four years.⁹⁸⁵ The fact that the term of office of the IGG is a very short with the possibility of extension by Parliament is awkward. The successful prosecution of the abusers of public resources may take more than eight years.⁹⁸⁶ This robs the IGG of institutional leadership and memory to effectively prosecute corruption cases that may longer than eight years to complete. This frequent turnover of the top leadership at the IGG's office compromises the organisations strategic interventions, that may be amidst implementation when the top leadership is changed.⁹⁸⁷

The other challenge is that after the four-year term, the IGG has to be re-pointed by the President and approved by the Appointments Committee of Parliament. This mode of appointment of the IGG is vulnerable to political influence-peddling.⁹⁸⁸ Some of the political leaders including government ministers being investigated by the IGG may appear at the parliamentary approval stage of the re-appointment of IGG, to mobilize other Members of Parliament (MPs) to defeat his or her re-appointment.⁹⁸⁹ This state of affairs effects the quality of investigations being carried out in the IGG's office because

⁹⁸⁴ Lumu D "Museveni gives Mukula Shs. 100 million for legal fees" *The Observer*, March 4, 2013., available at <http://allafrica.com/stories/201303040200.html> (accessed on 22 May 2020).

⁹⁸⁵ Article 234(4) & (7).

⁹⁸⁶ Schutte (2016). This also due to the fact that some convictions are appealed to the High Court, Court of Appeal and Supreme Court.

⁹⁸⁷ Transparency International Uganda (2015).

⁹⁸⁸ Transparency International Uganda (2015).

⁹⁸⁹ As happened in the re-appointment of Justice Faith Mwendha.

of the frequent turnover of not only the top leadership but also the investigators and prosecutors who work on contract basis.⁹⁹⁰

In 2009, Justice Faith Mwendha, who was on secondment from the Judiciary to fill the IGG's top position, refused to appear before the Parliament's Appointments Committee for approval for her second term arguing that she had already been appointed by the President and according to her understanding of the constitutional provisions, she was not required to appear before Parliament's Appointment Committee for approval, for a second time.⁹⁹¹ Following this stand-off with Parliament, President Museveni appointed Justice Mwendha's Deputy, Raphael Baku as acting IGG.⁹⁹² He had earlier been vetted by Parliament.⁹⁹³

To overcome such drawbacks, the security of tenure of staff of the IGG's office needs to be crafted in more permanent terms.⁹⁹⁴ The MPs and government Ministers who are under investigation by the IGG, should also recuse themselves from the Parliament approval process of the IGG, to avoid political influence-peddling and to enable the IGG perform his or her duties in an independent manner as the law envisages.⁹⁹⁵

Relatedly, the appointment and dismissal process of the IGG is not secure.⁹⁹⁶ The security of tenure of the IGG should be strengthened to enable the organisation to effectively perform its mandate without political interference from the President.⁹⁹⁷ It is no wonder

⁹⁹⁰ See section 16(2) of the IGG Act, 2002.

⁹⁹¹ Ariko, Charles "Faith Mwendha Vacates IGG Office, hands over vehicles," *New Vision* July 13 2009., available at https://www.newvision.co.ug/new_vision/news/1209569/faith-mwendha-vacates-office-hands-vehicles (accessed on 23 May 2020).

⁹⁹² New Vision "Raphael Bakku is named acting IGG" *New Vision*, April 23, 2009., available at https://www.newvision.co.ug/new_vision/news/1245436/raphae-baku-named-acting-igg (accessed on 23 May 2020).

⁹⁹³ Ariko (2009).

⁹⁹⁴ See for example under Articles 163 (10) and 224 of the 1995 Constitution in contrast to the security of tenure of the IGG and Auditor General. The office of the Auditor General, which is one of the anti-corruption organs, has performed well, because the security of tenure of the Auditor General is permanent. He or she can only be removed from office for a few genuine reasons.

⁹⁹⁵ See Article 227 of the 1995 Constitution and section 10 Inspectorate of Government Act, 2002.

⁹⁹⁶ See Articles 223 (4) and 224 of the 1995 Constitution.

⁹⁹⁷ Assimwe G "Museveni blasts IGG, unveils parallel anti-corruption Unit" *Chimpreports*, June 7 2018 available at <https://chimpreports.com/museveni-blasts-igg-mulyagonja-unveils-parallel-anti-graft-unit/>

that many of the cases investigated and prosecuted by the IGG serve the interests of the government. Attempts by the IGG to investigate and prosecute individuals close to the state house have been roundly rebuffed.⁹⁹⁸

4.3.6.7 IGG AS OMBUDSMAN

The IGG is mandated by the 1995 Constitution and the Leadership Code Act to act as the ombudsman of the government of Uganda.⁹⁹⁹ It provides as follows; -

(a) To promote and foster strict adherence to the rule of law and principles of natural justice in administration; (c) To promote fair, efficient and good governance in public offices; and, (e) To investigate any act, omission, advice, decision or recommendation by a public officer or any other authority to which this article applies, taken, made, give nor done in exercise of administrative functions.¹⁰⁰⁰

This function within the IGG's office is executed by the Directorate of Ombudsman Affairs.¹⁰⁰¹ Systemic interventions by the ombudsman are required within the public administration system, to enable efficiency. These systemic interventions are a legal requirement under the law.¹⁰⁰² These interventions include "leveraging the Ombudsman role to embed adherence to the rule of law and principles of natural justice and public administration".¹⁰⁰³ The IGG carries out its ombudsman function by receiving complaints

accessed on (19 May, 2020).

⁹⁹⁸ Thembo MK "Thieves hide behind Museveni's back-IGG" *Daily Monitor*, June 8, 2018., available at <https://www.monitor.co.ug/News/National/Thieves-hide-behind-Museveni-s-back---IGG--/688334-4601064-dtjrcj/index.html> (accessed on 19 May 2020).

Batte B "Corruption: How Museveni weakened IGG" *The Observer*, December 12, 2018., available at <https://observer.ug/news/headlines/59459-corruption-how-museveni-weakened-igg> (accessed on 19 May 2020).

⁹⁹⁹ See Article 225(1) of the 1995 Constitution. Also see parts II, III & V of the Leadership Code Act.

¹⁰⁰⁰ This function is specifically embedded in paragraphs (a), (c) and (e) of the Article 225(1) of the 1995 Constitution.

¹⁰⁰¹ This function is specifically embedded in paragraphs (a), (c) and (e) of the Article 225(1) of the 1995 Constitution.

¹⁰⁰² See section 8 (i) & (ii) of the Inspectorate of Government Act, which provisions state as follows; - "To examine the practices and procedures of those offices in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedure which in the opinion of the Inspectorate may be conducive to corrupt practices; and, To advise those offices on ways and means of preventing corrupt practices and methods of work or procedure conducive to the effective performance of their duties and which, in the opinion of the Inspector General of Government would reduce the incidence of corruption".

¹⁰⁰³ IGG (2018) 24.

from individuals and investigating them, with a view of quick resolution. During its investigations, the IGG lays emphasis on broader systemic flaws to enable corrective action and to facilitate efficiency in public administration.¹⁰⁰⁴ Between July and December 2018, the Ombudsman investigated a total of 399 cases, the majority of which were mismanagement and non-payment of salaries and other entitlements.¹⁰⁰⁵ The ombudsman faces challenges with reluctance of government institutions to provide information during investigations and inadequate human resources to execute its tasks.¹⁰⁰⁶

4.3.6.8 CODE OF CONDUCT FOR LEADERS

The 1995 Constitution provides for the enforcement of the leadership Code of Conduct in Uganda.¹⁰⁰⁷ The constitutional provisions are buttressed by the Leadership Code Act¹⁰⁰⁸ and the Inspectorate of Government Act.¹⁰⁰⁹ A minimum standard of behavior is required of leaders under the Code of Conduct.¹⁰¹⁰ These minimum standards include the requirement of leaders to declare their income, assets and liabilities, every two years to the IGG.¹⁰¹¹ The IGG has launched an online platform which leaders can easily access to declare their income, assets and liabilities.¹⁰¹²

In 2018, there were no declarations filed by all the leaders, because the IGG was waiting for the amendment and approval of a new format of wealth declaration forms to be ushered in by the new regulations.¹⁰¹³ The initial online declaration of income, assets and

¹⁰⁰⁴ IGG (2018) 24.

¹⁰⁰⁵ IGG (2018) 25., IGG Quarterly Reports for 2019 are yet to be published.

¹⁰⁰⁶ IGG (2018) 27.

¹⁰⁰⁷ Articles 225 (1) (d) & 234.

¹⁰⁰⁸ Section 3 (1).

¹⁰⁰⁹ Section 8 (1) (d).

¹⁰¹⁰ See Part III of the Leadership Code Act.

¹⁰¹¹ Section 4 of the Leadership Code Act.

¹⁰¹² IGG (2018) 29., The IGG pilot-tested this system in the districts of Gulu and Kisoro in August and September, 2018.

¹⁰¹³ IGG (2018) 30., The Leadership Code (Declaration Form) Regulations are pending amendment and approval.

liabilities started in March 2019.¹⁰¹⁴ The IGG expects a total of 26000 leaders to file wealth declaration forms by the end of March, 2021.¹⁰¹⁵ The mechanism of declaration of assets ensures that the IGG has up-to-date information on leader's wealth and that the leaders do not acquire their wealth through the misuse of public resources.¹⁰¹⁶ For this wealth declaration mechanism to effectively function, there must be a body to enforce this role. Its role must include the capacity to receive, process, examine and verify leaders' income, assets and liabilities.¹⁰¹⁷ Leaders who violate the code of conduct can be penalized.¹⁰¹⁸ The IGG is also required to periodically file statutory reports to Parliament on how they have enforced the Code of conduct.¹⁰¹⁹ In *Mbabali Jude v Edward Kiwanuka Sekandi*,¹⁰²⁰ the Petitioner argued that the Respondent, as Vice President of Uganda, had used state resources to campaign for his constituency position and was therefore in breach of the Leadership Code Act. The Petitioner further argued that on the premise of that misconduct, the Respondent be dismissed from his leadership position as Vice President of Uganda, pay the loss occasioned by the use of state resources, among other reliefs. The Constitutional Court disagreed with the Petitioner and stated that he had brought his petition before the wrong court, the proper court being the High Court of Uganda. In a related case, *Ken Lukyamuzi v Attorney General, Electoral Commission*,¹⁰²¹ the Appellant, a Member of Parliament without reasonable cause failed to make a declaration of income to the IGG as required by the Leadership Code Act. The IGG subsequently wrote to the Speaker of Parliament to remove the Appellant from his seat as a Member of Parliament. The Speaker informed the Appellant that he had lost his seat, and the Clerk to Parliament wrote to the Electoral Commission indicating that the Appellant's seat was vacant. The Appellant petitioned the Constitutional Court, which agreed with the decision of the IGG

¹⁰¹⁴ IGG (2018) 29., Under section 3A of the Leadership Code Act, the IGG is empowered to receive, examine and verify declarations filed.

¹⁰¹⁵ IGG (2018) 30.

¹⁰¹⁶ Gumisiriza & Mukobi (2019).

¹⁰¹⁷ OECD, *Asset Declarations for Public Officials. A Tool to Prevent Corruption* (2011), available at <https://www.oecd.org/corruption/anti-bribery/47489446.pdf> (accessed on 10 May 2020).

¹⁰¹⁸ Sections 35 & 36 of the Leadership Code Act.

¹⁰¹⁹ Section 37 of the Leadership Code Act.

¹⁰²⁰ (Constitutional Petition No. 0028 OF 2012) [2014] UGCC 15 (19 September 2014).

¹⁰²¹ (Constitutional Appeal No.2 2007) [2010] UGSC 2 (31 March 2010).

and dismissed his petition with costs. Dissatisfied with the Constitutional Court decision, he appealed to the Supreme Court. The Supreme Court agreed with the Appellant and stated that the IGG could not be an investigator, prosecutor and judge at the same time.¹⁰²²

4.3.6.9 LEADERSHIP CODE TRIBUNAL

On the 2 June, 2017 the amendment to the Leadership Code Act commenced.¹⁰²³ The long title to the amendment states that it is "An Act to amend the Leadership Code Act, 2002, to give effect to Article 235A of the Constitution by providing for the establishment, composition, jurisdiction and functions of the Leadership Code Tribunal; to strengthen the enforcement of the code and other related matters".¹⁰²⁴ Whereas the amendment has enabled the establishment of a mechanism to enforce the code, provisions that made the failure to fill wealth declaration forms an offence were removed.¹⁰²⁵ The amendment was necessitated by among others, the case of *John Ken Lukyamuzi versus Attorney General and Another*,¹⁰²⁶ where the Supreme Court, sitting as an appellate Constitutional Court, decided that the IGG could not be a prosecutor and a judge at the same time, for crimes committed under the Leadership Code Act. As a result of this case, the 1995 Constitution was amended under Article 235A to establish the Leadership Code Tribunal.¹⁰²⁷ Three years after the amendment of the law to establish the Leadership Tribunal, its membership has been constituted.¹⁰²⁸ In April 2020, attempts to constitute the Leadership Code Tribunal failed. This was after the members nominated by the

¹⁰²² (Constitutional Appeal No.2 2007) [2010] UGSC 2 (31 March 2010).

¹⁰²³ The Leadership (Amendment) Act, 2017

¹⁰²⁴ Matembe MRK *The Struggle for Freedom and Democracy Betrayed* (2019) Self-publication ISBN: 9789970524006, 176 - 206.

¹⁰²⁵ New Vision "Leaders with unexplained wealth worry Inspectorate of Government," *New Vision*, August 24 2020.

¹⁰²⁶ Constitutional Petition No. 19/ 2006.

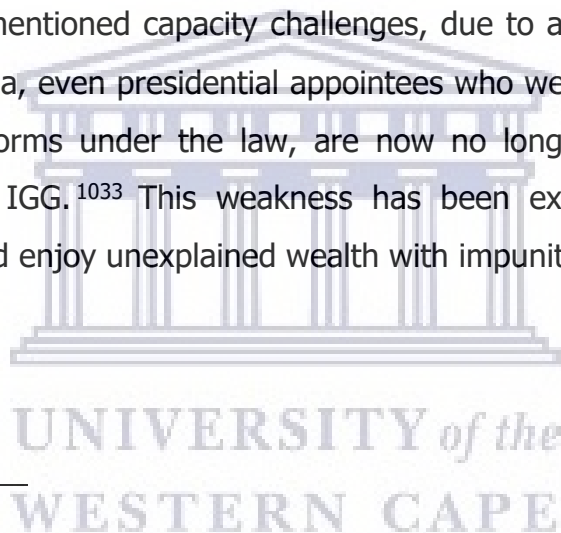
¹⁰²⁷ See the Constitution Amendment Act, 2005.

¹⁰²⁸ Uganda Media Centre "President Museveni swears in Leadership Code Tribunal," Saturday, 25, 2020 available at <https://www.mediacentre.go.ug/media/president-swears-new-leadership-code-tribunal> (accessed on 29 August 2020).

President to constitute the body were rejected by the Parliamentary Appointments Committee, because they were “unqualified”.¹⁰²⁹

The lack of financial and human capacity has affected the effective implementation of the Leadership Code Act.¹⁰³⁰ As a result of lack of enforcement for those leaders who violate the code, there have been very few achievements on this front. For example, about forty percent of the leaders often fail to file wealth declaration forms, while others falsify the declaration forms that they file.¹⁰³¹ Even for the sixty percent declarations that are filed annually, the IGG is only able to verify about fifty percent of the leaders’ wealth for accuracy, due to capacity issues.¹⁰³²

As a result of the aforementioned capacity challenges, due to a lack of political will to fight corruption in Uganda, even presidential appointees who were formerly required to file wealth declaration forms under the law, are now no longer required to file the declarations before the IGG.¹⁰³³ This weakness has been exploited by presidential appointees to acquire and enjoy unexplained wealth with impunity.¹⁰³⁴



¹⁰²⁹ Okello DH “Byabashaijja, 5 Others rejected by Parliamentary Appointments Committee” *ChimpReports* April 6, 2020., available at <https://chimpreports.com/breaking-byabashaijja-5-others-rejected-by-parliamentary-appointments-committee/> (accessed on 8 May 2020).

¹⁰³⁰ Gumisiriza & Mukobi (2019) 5.

¹⁰³¹ Gumisiriza & Mukobi (2019) 5.

¹⁰³² Gumisiriza & Mukobi (2019) 5.

¹⁰³³ See the case of *Roland Kakooza Mutale v The Attorney General* Application No. 665/2003 (arising from High Court Civil Application No. 40/2003), where President Museveni swore an affidavit against the IGG, claiming he dismissed the Applicant from his job as Presidential Appointee because the IGG had “ordered” him to do so, although he preferred to keep him in his job. Court held that the IGG had no powers to order the head of state. Also, in the case of *Fox Odoi Oyelowo & James Akampumuza v Attorney General*, Constitutional Petition No. 8/2003 was filed to challenge the various provisions of the Leadership Code Act, arguing that the said provisions were contrary to the 1995 Constitution. President Museveni once again swore an affidavit in support of this case. In this case the Petitioners argued that sections 19(1), 20(1) and 35(b), (d) of the Leadership Code Act were null and void in respect to presidential appointees because it was only the President entitled to discipline his appointees. The Constitutional Court agreed with the Petitioners. These two cases gravely undermined the enforcement of the Leadership Code Act, that had been enacted a year earlier. To date the IGG’s office is yet to recover from the effects of these two cases.

¹⁰³⁴ Gumisiriza & Mukobi (2019) 5.

4.3.6.10 ABSENCE OF POLITICAL LEADERSHIP TO CURB CORRUPTION

Matembe who was the first Minister of Ethics and Integrity in Museveni's regime suggests that she had a "rough time presenting both the IGG Statute and the Leadership Code to cabinet for discussion and approval".¹⁰³⁵ It took the cabinet 3 years to pass these anti-corruption Bills. This was only after Matembe had threatened to tell the general public and development partners that the NRM government was not interested in combating corruption in Uganda.¹⁰³⁶ Matembe states that the Bills were only approved reluctantly by her cabinet colleagues, hoping that they would eventually be rejected on the floor of Parliament.¹⁰³⁷ Matembe states that throughout the period she was a Minister of Ethics and Integrity and the Chairperson of the Inter-Agency Forum on Corruption, she came to the considered opinion that the NRM government had no political will to fight corruption.¹⁰³⁸

Matembe states that President Museveni's guiding principle in combating corruption is that you are only corrupt, if you are not a good NRM cadre or supporter. She states that "as long as you are a cadre but you are corrupt, he simply closes an eye".¹⁰³⁹ Matembe points out that this reveals a contradiction between what he says and what he does about combating corruption. She notes that the corrupt individuals are the ones keeping Museveni in power and "corruption is the engine that sustains the President in power".¹⁰⁴⁰ This patronage system she notes "has totally undermined the true tenets of democracy

¹⁰³⁵ Matembe (2019) 181.

¹⁰³⁶ Matembe (2019) 181.

¹⁰³⁷ Matembe (2019) 182. The Bills were eventually passed into law by Parliament.

¹⁰³⁸ See Matembe (2019) 176-206. In her book chapter aptly titled "No Political Will to fight Corruption" Matembe cites numerous examples which led her to come to this conclusion. She cites incidences where President Museveni pardoned corrupt government officials. These include Mulindwa Birimumaso, Christine Namudu Kigundu and Prof. Gastavus Ssenyonga who were convicted by court for corruption but the President pardoned them, arguing that they were good NRM Cadres.

¹⁰³⁹ Matembe (2019) 205.

¹⁰⁴⁰ Matembe (2019) 205.

and good governance in Uganda.”¹⁰⁴¹ For her efforts to curb corruption in Uganda, Matembe was summarily sacked from her position.¹⁰⁴²

4.3.7 THE DIRECTOR OF PUBLIC PROSECUTIONS

This institution is established in pursuance of Article 120 of the 1995 Constitution. It provides that the institution is charged with all public prosecutions in Uganda.¹⁰⁴³ Consequently, it handles all criminal prosecutions in Uganda, except where it delegates this authority.¹⁰⁴⁴

The mandate of the Director of Public Prosecutions (DPP) is grounded under Article 120 of the Constitution as follows: -

To direct the police to investigate any information of a criminal nature and court with competent jurisdiction other than a court martial; To institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial; To take over and continue any criminal proceedings instituted by any other person or authority. To discontinue at any stage before judgment is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority, except that the Director of Public Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court.

A 'Crime free Society' is the vision that the DPP has coined to guide it, in the execution of its mandate.¹⁰⁴⁵ The functions of the DPP have guided the formulation of its mission. Its mission is 'to handle and prosecute criminal cases in order to reduce crime in the country'.¹⁰⁴⁶

When a suspected criminal commits a crime, it is not against the individual victim, but the whole society. Therefore, it is only prudent that an organization take charge of prosecutions on behalf of everyone. Consequently, the DPP is the institution charged with

¹⁰⁴¹ Matembe (2019) 206.

¹⁰⁴² Matembe (2019) 140.

¹⁰⁴³ Article 120 of the 1995 Constitution.

¹⁰⁴⁴ Article 120(4) (a)., also see section 223 of the Magistrates Courts Act, Cap. 16.

¹⁰⁴⁵ See DPP's website at <https://www.dpp.go.ug/index.php/about-dpp> (accessed on 27 February 2020).

¹⁰⁴⁶ See DPP's website at <https://www.dpp.go.ug/index.php/about-dpp> . (accessed on 27 February 2020).

duty of representing the general public in a criminal trial against an accused person. The DPP is also charged with guiding the police and other investigative organs on how to proceed with compiling evidence against an accused person for the DPP's use in the prosecution of criminal matters.

4.3.7.1 POLICE INVESTIGATIONS

a) Resources

The facilitation provided to police investigators is insufficient. Most times, the individuals the police have to investigate have become wealthy from the proceeds of corruption and are politically-connected to powerful individuals within government.¹⁰⁴⁷ The fact the police investigators earn miserly salaries and are not facilitated well to conduct their investigations puts the integrity of these police investigators at risk.¹⁰⁴⁸ They are susceptible to bribes and threats from these powerful suspected criminals. Considering the major role, they play in collecting evidence and identifying credible witnesses, they ought to be well facilitated to enable them curb the misuse of public resources.¹⁰⁴⁹

b) Specialization

The lack of specialization within the police also hampers investigation of corruption cases. A well-trained and experienced police investigator in corruption matters maybe transferred while he is the middle of investigations of a case.¹⁰⁵⁰ Another police investigator deployed in his place may not have the same specialized expertise and experience to investigate corruption cases, as the previous police investigator.¹⁰⁵¹

In addition to the aforementioned limitation of expertise and experience of police investigators, there is a shortage of manpower within the police CID to investigate

¹⁰⁴⁷ Transparency International Uganda (2015).

¹⁰⁴⁸ Transparency International Uganda (2015) 18-19.

¹⁰⁴⁹ Transparency International Uganda (2015) 18-19.

¹⁰⁵⁰ Transparency International Uganda (2015).

¹⁰⁵¹ Transparency International Uganda (2015) 17.

cases.¹⁰⁵² Incidences of corruption have increased but the man power to curb corruption has not.¹⁰⁵³ The Uganda Police Force (UPF) has very few forensic auditors, handwriting experts and document analysis experts.¹⁰⁵⁴ Transparency International Uganda has noted that:

Deficiencies in the training of investigators negatively impacts and prevents their work in successfully and substantively contributing to cases against corruption. One magistrate for example, regrets that the police is not academic enough to conduct “deep analysis”. It would be helpful for the police to have specially trained staff at their disposal, such as lawyers, who can guide the investigations in terms of what evidence is necessary and legally valid for a case. Trained handwriting experts, who are able to analyze documents and establish a document’s originality in court, are equally scarce, while urgently needed in many cases.¹⁰⁵⁵

Some matters are dismissed from court due to lack of expert reports. For example, during prosecutions of corruption matters, the absence of a report of a handwriting expert may lead to the dismissal of the case, thus encouraging impunity.¹⁰⁵⁶

The aforementioned experts are key personnel in corruption investigations. The other challenge of the UPF in corruption investigations, is that some police investigators lack computer, information technology and accounting skills.¹⁰⁵⁷ These skills enable proper analysis of financial records. Transparency International Uganda has noted that this computer illiteracy has hindered the investigation skillset of police officers as follows: -

Notwithstanding the above-mentioned training deficiencies, the technicalities revolving around cybercrimes seem to be another significant training gap for investigators. Prosecutors no longer deal with open crimes such as stolen cows or cars, but with crime perpetrated through software.

¹⁰⁵² Transparency International Uganda (2015).

¹⁰⁵³ Transparency International Uganda (2015).

¹⁰⁵⁴ The Uganda Police Force had 5 hand writing and document analysis experts. 2 of the experts have retired but are sometimes called upon by the IGG to assist, in the course of their investigations on contract.

¹⁰⁵⁵ Transparency International Uganda (2015) 20.

¹⁰⁵⁶ Transparency International Uganda (2015)., There are very few Police Handwriting experts who are required to work alllover Uganda.

¹⁰⁵⁷ Transparency International Uganda (2015) 17.

Hence, the necessary evidence consists to a large extent of digital documents, data files, online transactions, and other information requiring information technology skills to be obtained.

Under recent laws that are intended to curb crime committed using information technology, there are procedural steps required to obtain evidence.¹⁰⁵⁸ A Police officer who does not have information technology (IT) skills and has not obtained sufficient training on how to investigate crimes under these IT laws, will at most times, prepare evidence that does not meet the procedural steps set out in the laws.¹⁰⁵⁹

Related to IT laws, other laws also have procedural steps that are mandatory in the acquisition of evidence in the course of police investigations.¹⁰⁶⁰ If due to lack of adequate training of the police investigators, the mandatory processes are not followed, the matters will be dismissed by court. Not only does this waste public resources, it energizes the corrupt to continue in their criminal ways, knowing they can easily exploit loopholes and escape the claws of justice.¹⁰⁶¹

This lack of expertise may hamper a timely police investigation which leads to a loss of interest in the matter or disappearance or death of key witnesses. This often may mean the end of the case, due to lack of evidence.¹⁰⁶² At times, the state is forced to take the cases to court during early stages of investigations and once the cases are in court, there is pressure to fix them for hearing without sufficient incriminating evidence.¹⁰⁶³

¹⁰⁵⁸ For example, under section 28 of the Computer Misuse Act, 2011, the law provides that “where a magistrate is satisfied by information given by a police officer that there are reasonable grounds for believing that an offence under this Act has been or is about to be committed in any premises [...] the magistrate may issue a warrant authorizing a police officer to enter and search the premises”.

¹⁰⁵⁹ A Police Investigator may retrieve information without obtaining the warrant as required by the law which may led to the court dismissing a case based on technicalities.

¹⁰⁶⁰ See for example, section 23 of the Evidence Act, Cap 6, Laws of Uganda.

¹⁰⁶¹ Transparency International Uganda (2015).

¹⁰⁶² Transparency International Uganda (2015).

¹⁰⁶³ Transparency International Uganda (2015).

c) Evidence Gathering

The lack of convictions of central government and politically-connected and wealthy individuals can be attributed to political influence-peddling that they engage in during the gathering of prosecution evidence. A court of law can only convict an accused person based on evidence skilfully presented to a court.¹⁰⁶⁴ Moreover, the standard of proof is beyond reasonable doubt in criminal matters.¹⁰⁶⁵ Whereas the gathering of evidence can also be attributed to the capacity of those who are collecting it, there is abundant proof that political interference may stifle these efforts.¹⁰⁶⁶ Even where the investigators have the capacity to skilfully collect the evidence, once they realize that either the President or those connected to him are interested in a case, they will be fearful of the repercussions that may unfold, if they perform their duties professionally.¹⁰⁶⁷

This political influence peddling can be evidenced by outright bribery of officials involved in gathering evidence or prosecuting corruption matters in court. Considering police officers are paid low wages, the likelihood that they will accept the bribes is very high.¹⁰⁶⁸ Once they accept the bribes, they can easily manipulate a straight-forward case with very high chances of conviction, by overlooking vital evidence, and generally carrying out pitiable investigations. Bribery of police investigators can as a result lead to the premature end of a good case, with a high likelihood of conviction at court.¹⁰⁶⁹

4.3.7.2 POWER TO PROSECUTE

The power of the DPP to institute cases, must be exercised on basis of comprehensive principles. In deciding whether the DPP should commence criminal proceedings against

¹⁰⁶⁴ Transparency International Uganda (2015).

¹⁰⁶⁵ See *Okoth Okale & Others versus Republic* (1965) EA 555.

¹⁰⁶⁶ Matembe (2019).

¹⁰⁶⁷ Matembe (2019).

¹⁰⁶⁸ Transparency International Uganda (2015).

¹⁰⁶⁹ GAN Integrity *Uganda Corruption Report* (2017)., Available at <https://www.ganintegrity.com/portal/country-profiles/uganda/> (accessed on 19 May 2020).

a person, there should be guidelines. Presently, there are no official guidelines that the DPP uses to exercise his discretion on whether to prosecute a person.¹⁰⁷⁰

In the absence of official guidelines, the key considerations that should be considered are grounded in the basic purposes of criminal law. They include; first, the aims of criminal law, namely retribution, prevention, deterrence, reformation and public interest.¹⁰⁷¹ Secondly, whether the facts contained in the complaint disclose an offence known under the law. Thirdly, whether there is sufficient evidence to support the facts to justify institution of criminal proceedings. Fourthly, whether there is a legal excuse for the conduct of the accused to justify the offence and to warrant the abandonment of proceedings against the accused. Fifthly, whether the case is more suitable of trial in a civil court. It is also important to consider whether the act complained of is frivolous or vexatious or inspired by malice or ill-will on part of the complainant and likely to result into abuse of process.¹⁰⁷² Finally, whether it is in the interest of the public to prosecute.¹⁰⁷³ Most importantly, in deciding whether or not it is in the public interest to prosecute, prosecutors should consider the seriousness of the offence, the nature of the crime, the economic impact of the offence on the community.¹⁰⁷⁴

In some circumstances the DPP has to consent to the charges under his hand. For example, as mentioned earlier, under section 49 of the Anti-Corruption Act, it provides that: -

A prosecution under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions or the Inspector General of Government; but a person charged with such an offence executed, and the person may be detained or released on police bond, notwithstanding that the consent of the Director of Public Prosecutions or the Inspector General of Government, to

¹⁰⁷⁰ This is excerpt for departmental good practices and tradition that have been reduced into what the DPP has called "Prosecution Performance Standards and Guidelines, 2014," which largely re-echo general law principles on criminal prosecutions.

¹⁰⁷¹ DPP (2013) *Prosecutors Manual on Illicit Trade in Uganda*.

¹⁰⁷² Odoki B *A Guide to Criminal Procedure in Uganda* (2011) 3rd ed. Kampala: Law Development Centre, 75.

¹⁰⁷³ DPP (2013).

¹⁰⁷⁴ DPP (2013).

the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.¹⁰⁷⁵

A failure to obtain the consent before institution of the proceedings renders the criminal proceedings a nullity. In *Uganda versus Ndodo Benard*¹⁰⁷⁶ court held that where proceedings require the consent of the DPP, the accused should not be charged and tried before such consent is obtained, or else the proceedings are a nullity.¹⁰⁷⁷

In pursuing this public prosecution role, the DPP is empowered by Article 120(3) (a) of the 1995 Constitution "to direct the police to investigate any information of a criminal nature and to report to him or her expeditiously".¹⁰⁷⁸ In *Uganda versus Uwera Nsenga*¹⁰⁷⁹ Justice Gaswaga held that: -

Only the DPP, and nobody else, enjoys the powers to decide what the charges in each file forwarded to him or her should be. Although police may advise on the possible charges while forwarding the police file to the DPP ... such opinion is merely advisory and not binding on the DPP ... unless invited as witnesses or amicus curiae (friend of court), the role of the police generally ends at the point the file is forwarded to the DPP.

Therefore, in the course of police conducting its investigations and compiling a police file, not only is it under the direction of the DPP, but in accordance with Article 120 (6) of the 1995 Constitution, the DPP is not under the direction or control of any person or authority, in the course of executing its mandate.¹⁰⁸⁰ The DPP shall take into consideration "public interest, the interests of the administration of justice and the need to prevent abuse of legal process" as it performs its role.¹⁰⁸¹

¹⁰⁷⁵ See similar provisions under Section 80 of the Presidential Elections Act; Section 87 of the Parliamentary Elections Act; Section 159 of the Local Government Act; Section 23 of the Judicial Service Act and Section 9 of the Public Service Act.

¹⁰⁷⁶ (1985) EA 3.

¹⁰⁷⁷ Also see JLOS *The Uganda Criminal Justice Bench Book* (2017) 1st ed. Kampala: LDC.

¹⁰⁷⁸ Although the Article provides that the police shall conduct their investigations "expeditiously", police investigations are rarely conducted expeditiously.

¹⁰⁷⁹ Criminal Session No. 312/2013.

¹⁰⁸⁰ See also *Obey Christopher and 14 Others versus Uganda High Court* Miscellaneous Application No. 3/2016.

¹⁰⁸¹ Article 120(5).

The DPP can also take over and continue criminal proceedings instituted by any other person or authority.¹⁰⁸² There is no procedural format on how the DPP can take over criminal proceedings under this constitutional provision. The practice has been that the DPP appears in court where the proceedings have been instituted and addresses the court orally on his intention to take over the criminal proceedings. In the case of *Uganda versus Inspector General of Police Kale Kayihura*¹⁰⁸³ Justice Murangira held that under Article 120(3) (c) the DPP was not required by law to file an application, when he is desirous of taking over any criminal proceedings instituted by any other person or authority in the magistrate's court or any other court.¹⁰⁸⁴

The DPP can also under Article 120(3) (d) of the 1995 Constitution discontinue criminal proceedings at any stage before judgment. The said constitutional provides as follows: -

to discontinue at any stage before judgement is delivered to which this article relates, instituted by himself or herself in person or any other person or authority; except that the Director of Public Prosecutions shall not discontinue proceedings commenced by another person or authority except with the consent of court.

The first limb of the aforementioned constitutional provision provides that the DPP is empowered to discontinue criminal proceedings instituted by his office. The DPP, however can only discontinue private criminal proceedings instituted by any person or authority, with the consent of court in which they have been instituted. In practice this has not been the case. In a number of cases, the DPP has made attempts to avoid this mandatory constitutional requirement.¹⁰⁸⁵ A detailed examination of the constitutional provisions on private prosecutions will be conversed under chapter 5.

¹⁰⁸² Article 120 (3) (c).

¹⁰⁸³ High Court Revision Cause No. 34/2016.

¹⁰⁸⁴ For a detailed treatment on this, see Mujuzi JD "Strengthening the Right to Institute a Private Prosecution in Uganda by amending Article 120(3) of the Constitution: A comment on *Uganda v. Inspector General of Police, General Kale Kayihura and 7 Others*," *African Journal of International and Comparative Law* 25(4) (2017): 590 – 607.

¹⁰⁸⁵ For a detailed treatment on this, see Mujuzi (2017) 604-607.

The DPP is also empowered to appeal against an acquittal by any court of law. In *Busiku v Uganda*¹⁰⁸⁶ the Supreme Court of Uganda held that the import of section 132 of the Trial on Indictments Act provides that where the High Court has, in exercise of its original jurisdiction, acquitted an accused person, the DPP may appeal to the Court of Appeal as of a right, on a matter of law, fact or mixed law and fact.

Under section 223 of the Magistrates Courts Act (MCA), the DPP can appoint qualified persons who shall be called public prosecutors.¹⁰⁸⁷ These public prosecutors may be appointed to conduct a specific case or to prosecute criminal cases generally.¹⁰⁸⁸ In the conduct of their duties as public prosecutors, they are under the express direction of the DPP.¹⁰⁸⁹

Consequently, the DPP has appointed a number of public prosecutors generally to perform specialized public prosecutions.¹⁰⁹⁰ Police officers of or above the rank of Assistant Inspector of Police can prosecute all criminal cases before a magistrate's court. Under the Weights and Measures Act, the Superintendent of Weights and Measures and Inspectors of Weights and Measures, can prosecute offenders under this law.¹⁰⁹¹ Under the Births and Deaths Registration Act, the Registrar General, Registrars and Assistant Registrars can prosecute offences under this law.¹⁰⁹² Under both the Companies Act and the Insolvency Act, the Official Receiver and Deputy Official Receiver can prosecute offences under these laws.¹⁰⁹³ In *Gamalalieri Mubito versus Republic*,¹⁰⁹⁴ Court held that it is appropriate for the Investigator of an alleged offence and Public Prosecutor to be different persons from different departments in order not to prejudice the accused

¹⁰⁸⁶ Supreme Court Criminal Application No. 33/2011.

¹⁰⁸⁷ Section 223(1) of the MCA.

¹⁰⁸⁸ Section 223(2) of the MCA.

¹⁰⁸⁹ Section 223(3) of the MCA.

¹⁰⁹⁰ The DPP appoints them under rule 2 of the Magistrates Courts (Appointment of Public Prosecutors) Instrument.

¹⁰⁹¹ See Parts VI & VII of Cap 103, Laws of Uganda.

¹⁰⁹² See Parts II & VI of Cap 309, Laws of Uganda.

¹⁰⁹³ See Part X of Act No. 1/2012, also see Parts VIII & X of Act No. 14 of 2011.

¹⁰⁹⁴ [1961] EA 224.

person.¹⁰⁹⁵ A similar situation is legally reproduced under the IGG's office where the investigators and prosecutors are situated in the same IGG's office.¹⁰⁹⁶

4.3.7.3 CHALLENGES OF STATE PROSECUTORS

Interference in the duties of state prosecutors has manifested itself in many ways. During prosecution-led investigations into corruption cases, prosecutors receive phone calls from politicians and their agents requesting them to delay or drop the cases.¹⁰⁹⁷ This is even when there is overwhelming evidence that there will be a conviction in court. This interference is mostly perpetrated by politicians and their agents.¹⁰⁹⁸ This political interference at times, is practiced openly which leads to credibility issues with the decisions that the prosecutors take on whether to or not to prosecute particular corruption cases.¹⁰⁹⁹ Eventually, the DPP's prosecutors become puppets in the execution of their constitutional mandate which is relinquished to the control of politicians.¹¹⁰⁰ Most of the state prosecutors are forced to this, in order to safeguard their jobs.¹¹⁰¹

The other challenge that affects the independent and professional prosecution of corruption cases, is that the political leaders ensure that only ruling party "cadres" are placed in leadership positions of key anti-corruption institutions.¹¹⁰² For example, before the immediate past DPP was appointed as a Justice of the Supreme Court of Uganda, he was a former private secretary to the President.¹¹⁰³

¹⁰⁹⁵ [1961] EA 224.

¹⁰⁹⁶ See section 16(2) of the IGG Act, 2002.

¹⁰⁹⁷ Transparency International Uganda (2015) 21-22.

¹⁰⁹⁸ Transparency International Uganda (2015) 21-22.

¹⁰⁹⁹ Matsiko G & Naturinda S "Uganda: Museveni defends Mbabazi on NSSF" October 12, 2008., available at <https://allafrica.com/stories/200810130466.html> (accessed on 20 May 2020)., also see Mugerwa Y "Uganda: Stop Defending Corrupt Bush War Comrades" September 5, 2009., Available at <https://allafrica.com/stories/2009070144.html> (accessed on 20 May 2020).

¹¹⁰⁰ Transparency International Uganda (2015) 32 - 35.

¹¹⁰¹ Transparency International Uganda.

¹¹⁰² Wesaka A "Who is Chibita, the new DPP" *Daily Monitor*, August 15, 2013., available at <https://www.google.com/amp/s/www.monitor.co.ug/News/National/688334-1948392-view-asAMP-ahhw7u/index.html> (accessed on 23 May 2020).

¹¹⁰³ Justice Mike Chibita was a Private Secretary for Legal Affairs to President Museveni, before he was appointed a Judge of the High Court and then appointed DPP, among other key government positions. He is presently a Justice of the Supreme Court of Uganda.

As a result of this political interference, corruption cases - involving ruling party cadres - that are not yet ready for prosecution are fixed for prosecution with inadequate evidence or when police investigations are still being carried out.¹¹⁰⁴ Consequently, in many of these cases, state prosecutors rarely secure convictions because the evidence presented before court is weak.¹¹⁰⁵

The staffing at the DPP's office is inadequate.¹¹⁰⁶ This a deliberate politically motivated decision because state prosecutors are unable to do a good job in prosecuting corruption cases, if they are overworked.¹¹⁰⁷ The challenge of understaffing is aggravated by poor pay of the state prosecutors. Not only does this affect their motivation to perform their jobs, but also creates opportunities for bribery of these key gate keepers in the anti-corruption fight.¹¹⁰⁸ Considering the state prosecutors are prosecuting individuals who are politically connected or have amassed huge amounts of wealth, it would be prudent to cushion the state prosecutors by paying them well.¹¹⁰⁹

4.3.7.4 POLITICAL WILL TO PROSECUTE THE CORRUPT

The public prosecutions on corruption in Uganda have been riddled with interesting narratives. The first narrative is that the anti - corruption framework is perfect, but enforcement of the laws is weak, due to a lack of political will.¹¹¹⁰ The first limb of the other narrative is that only "small fish" are prosecuted leaving the "big fish" to enjoy the proceeds of corruption, considering they have the political connections to manipulate the anti-corruption regime, even when there is overwhelming evidence to convict them in the

¹¹⁰⁴ Transparency International Uganda (2015) 21-22.

¹¹⁰⁵ Transparency International Uganda (2015) 21-22.

¹¹⁰⁶ The Independent "DPP threatens to close offices over staff shortage" *The Independent*, April 17, 2018., Available at <https://www.independent.co.ug/dpp-threatens-to-close-offices-over-staff-shortage/> (accessed on 20 May 2020).

¹¹⁰⁷ Kiyonga D "Challenges that await DPP Abodo as she takes over office" *Daily Monitor* April 12, 2020., available at <https://www.google.comamp/s/www.monitor.co.ug/Magazines/PeoplePower/Challenges-that-await-DPP-Abodo-she-takes-over-office/689844-5521860-view-asAMP-4gv5lt/index.html> (accessed on 20 May 2020).

¹¹⁰⁸ Transparency International Uganda (2015) 21-22.

¹¹⁰⁹ Transparency International Uganda (2015) 21-22.

¹¹¹⁰ Transparency International Uganda (2015) 32-35.

courts of law.¹¹¹¹ The second limb of the aforementioned narrative is that the overwhelming evidence is only brought up when the corrupt “big fish” choose not to offer political support to the ruling regime.¹¹¹²

When central government departments or ministries are involved in corruption, it is the low-level public officials that are implicated and arraigned in court as “sacrificial lambs” for the criminal activity of their superiors.¹¹¹³ These anti-corruption organs are more interested in prosecuting low-level public servants like clerks, teachers, auditors, among others, but while manipulating the prosecution of these “high level” public officials to please the appointing authorities. These senior public officers have godfathers in government to protect them from any investigation and prosecution by anti-corruption agencies.¹¹¹⁴ At times, it is the President or individuals working with him who are shielding the suspects from prosecutions.¹¹¹⁵ Whereas the law provides that the DPP and IGG are independent from the direction of any person or authority, the President has on a few occasions instructed the DPP or IGG not to prosecute these suspected abusers of public resources, in order to maintain his political support base.¹¹¹⁶

On the other hand, a selective prosecution based on whether a ruling party official who all along was being shielded from prosecution, who has stopped offering political support to government, will be rushed through to prosecution, to “punish” the said official.

This lack of independence in the performance of prosecution agencies mandate is partly due to lack of security of tenure of the staff in these organisations.¹¹¹⁷ The staff in these anti – Corruption agencies are simply acting according to the whims of the political figures in order to keep their jobs. This is also a form of corruption by those who should be at

¹¹¹¹ This “small fish – big fish” metaphor was popularized by Human Rights Watch in their 2013 Report on corruption in Uganda. For a detailed treatment on this see, HRW “Let the Big fish swim; Failures to prosecute high level corruption in Uganda” (2013) ISBN: 978-1-62313-0633.

¹¹¹² Transparency International Uganda (2015) 34-35.

¹¹¹³ Transparency International Uganda (2015) 39.

¹¹¹⁴ Transparency International Uganda (2015).

¹¹¹⁵ See Matembe (2019) 201., also see Transparency International Uganda (2015) 32 - 35.

¹¹¹⁶ Transparency International Uganda 33.

¹¹¹⁷ For example, see sections 4,15 & 16 of the IGG Act, 2002.

forefront in the fight against corruption, when they abdicate their independent role to fearlessly curb the abuse of public resources.

4.3.7.5 DPP ANTI-CORRUPTION DIVISION

The DPP has a specific department in charge of prosecution of corruption cases. This is to enable specialization which enables efficiency within the DPP's office.¹¹¹⁸ This unit is majorly charged with prosecuting corruption cases at the Anti-Corruption Court. These core duties are "to provide legal advice to investigating bodies in corruption and money laundering cases (Prosecution-Led investigations); to prosecute corruption and money laundering cases."¹¹¹⁹ The other duties of this department include enforcing measures for the recovery of proceeds of crime.¹¹²⁰ This department is also charged with coordinating with the Inter-Agency Forum on Corruption matters in Uganda.¹¹²¹

Reviewed literature indicates that most corruption cases handled by the DPP relate to forgery and embezzlement.¹¹²² Many of these corruption cases instituted by the DPP are either closed or dismissed for lack of cogent evidence.¹¹²³ This is partly due to political influence peddling in the public prosecution of corruption cases. The political influence peddling in public prosecutions of the corrupt is intended to reward loyal supporters or punish errant supporters in order to maintain a political patronage system.¹¹²⁴

4.3.8 THE COURTS

In accordance with the doctrine of separation of powers, the 1995 Constitution provides for separation of powers between the executive, legislature and the judiciary.¹¹²⁵

¹¹¹⁸ DPP "The Directors Remarks at the Launch of Anti-Corruption Week," November 30 2018, Available at <https://dpp.go.ug/index.php/component/k2/item/30-the-directors-remarks-at-the-launch-of-anti-corruption-week> (accessed on 10 May 2020).

¹¹¹⁹ DPP (2018).

¹¹²⁰ DPP (2018). With the amendment of Anti-Corruption Act, 2009, this role has been partly moved to the Public Trustee, within the Administrator General's office.

¹¹²¹ DPP (2018).

¹¹²² IGG (2014).

¹¹²³ IGG (2014).

¹¹²⁴ Transparency International Uganda (2015).

¹¹²⁵ See chapters 6, 7 and 8 of the 1995 Constitution.

Consequently, the aforementioned constitutional ideal, guarantees the independence of the courts in the execution of their role. The independence of the Judiciary has been buttressed by a well-trained human resource which has nevertheless not shied away from corruption. The major complaints about corruption in the judiciary have emerged from the lower magistrates' courts.¹¹²⁶ The manner of appointments of judges has also been queried.¹¹²⁷

In Uganda, the court system has been known as a corrupt space. This is partly due to the poor pay of court staff. It has also been attributed to political interference in the execution of courts' mandate. Court users believe that courts are not sufficiently independent as enshrined in the law.¹¹²⁸ Bribes to influence favorable court judgments, are reported to have been paid by more than half of the court users.¹¹²⁹ Court users of the lower courts experience more bribery and political interference in their court work, more than those who frequent the High Court, Court of Appeal or Supreme Court.¹¹³⁰

4.3.8.1 THE ANTI – CORRUPTION COURT

In 2008, a specialized court dealing with corruption was established with the aim of enabling a well-organized and quicker resolution of corruption cases. This Anti-Corruption Court (ACC) was created as an administrative measure by the Chief Justice, on recommendation by the Inter-Agency Forum on Corruption.¹¹³¹ The Chief Justice in creating the ACC stated that he was empowered under Article 133(1) (b) of the 1995 Constitution which provides that '[t]he Chief Justice may ... issue orders and directions to the courts necessary for the proper and efficient administration of justice'.¹¹³² The ACC is one of (8) eight divisions created by the Chief Justice to enable effective and efficient

¹¹²⁶ GAN Integrity (2017).

¹¹²⁷ GAN Integrity (2017).

¹¹²⁸ World Economic Forum *Global Competitiveness Report* (2016-2017).

¹¹²⁹ GAN Integrity (2017).

¹¹³⁰ GAN Integrity (2017).

¹¹³¹ Under Article 133(1) (b) of the 1995 Constitution, the Chief Justice is empowered to do so., also see Directions 2, 8 & 10 of The High Court (Anti-Corruption Division) Practice Directions, 2009.

¹¹³² The Judiciary *Anti-Corruption Division*, (2020). Available at <http://judiciary.go.ug/data/menu/19/Anti-Corruption%20Division.html> (accessed on 26 May 2020).

administration of justice in Uganda. It is important to note that the ACC can hear cases under other statutes apart from the Anti-Corruption Act, provided they are 'corruption related offences'.¹¹³³ On appeal, corruption offences are heard by the Court of Appeal, which is not a specialized court. There have been calls from many quarters for the establishment of a specialized court at Appeal level.¹¹³⁴ The ACC, just like any other division of the High Court of Uganda, can sit in any part of Uganda to hear corruption cases.¹¹³⁵ The ACC is unique in the sense that this is a High Court Division that is composed of magistrates.¹¹³⁶ High Court divisions usually should only be composed of High Court Judges.¹¹³⁷ The DPP is the principal prosecutor in the ACC. Other anti-corruption agencies may however, bring cases before the ACC as we noted earlier, in this chapter.

After investigations by the police, corruption cases can be sanctioned by the DPP's office, which process, then sets in motion criminal proceedings before the ACC. The DPP has filed more cases than any other organization before the ACC. This is because it has offices all over the country. The URA files the fewest cases. The URA has however, registered success because it has the highest conviction rate among the three anti-corruption agencies that file cases before the ACC.¹¹³⁸ The URA as a prosecuting agency has a

¹¹³³ Schutte (2016).

¹¹³⁴ Schutte (2016) 2.

¹¹³⁵ Section 19 of the Judicature Act Cap 13 provides for the sittings in any area of Uganda.

¹¹³⁶ See Directions 2, 8 & 10 of The High Court (Anti-Corruption Division) Practice Directions, 2009. There are six magistrates at the ACC. See section 6 of the Magistrates Courts Act, where the Chief Justice has powers to assign magistrates to the ACC. See also the case of *David Wesley Tusingwire v The Attorney General Constitutional Petition No. 2 of 2013* that expounds on powers of the Chief Justice to create a division of the High Court that includes Magistrates.

¹¹³⁷ In 2013, David Wesley Tusingwire, filed a constitutional petition against the operations of the ACC, arguing that the Chief Justice's grant of unlimited jurisdiction to the ACC magistrates was unconstitutional. The business of the ACC was suspended for some time when he requested the Constitutional Court to halt the business of the ACC, pending the disposal of his petition. In December 2013, Tusingwire lost the petition, when the Constitutional Court upheld the legality of the ACC. Tusingwire appealed to the Supreme Court, sitting as the appeal constitutional court. For the period that the ACC did not execute its mandate pending the disposal of Tusingwire's petition, the court accumulated a back of over two hundred cases. In *David Wesley Tusingwire v Attorney General Constitutional Application No. 01/2014*, the Applicant/Appellant sought an injunction order to stop the operations of the ACC pending the disposal of his appeal before the Supreme Court, the application was denied by the Supreme Court.

¹¹³⁸ Schutte (2016).

conviction rate of ninety percent.¹¹³⁹ The DPP has a conviction rate of seventy five percent, whereas the IGG has the lowest conviction rate of sixty percent.¹¹⁴⁰ Recent statistics for the performance for the three organs are either unavailable or inaccurate. As result of these prosecution agencies working at cross-purposes, there have been calls from researchers and scholars to streamline the prosecuting roles of these agencies, to enable an effective use of taxpayer's money in the prosecution of corruption cases.¹¹⁴¹

Between 2009 to 2019, the ACC has handled over one thousand and five hundred cases.¹¹⁴² Out of the cases handled there have been eight hundred and twenty-two convictions. Most of the cases are still pending trial, at magistrates' courts within the ACC. Many of the cases handled at court are offences to do with public procurement and embezzlement.¹¹⁴³ Even with this impressive amount of work accomplished by the ACC, it still has challenges with financial resources and staffing.¹¹⁴⁴

Inadequate funding and staffing do not only create a conducive environment for bribery to thrive, but also leads to delayed administration of justice to citizens. This delayed administration of justice can be seen in the time it takes a court of law to handle a corruption case to completion.¹¹⁴⁵ The ACC takes between 6 months to one year to complete a filed case through its system. Even after the convictions at the ACC, most convicts appeal their sentences, to the Court of Appeal.¹¹⁴⁶

The appeals filed before the Court of Appeal may take several years to resolve, because the Court of Appeal is not a specialized court. This enables the convicts to apply for bail

¹¹³⁹ Schutte (2016).

¹¹⁴⁰ Schutte (2016).

¹¹⁴¹ Gumusiriza & Mukobi (2018) 91.

¹¹⁴² Danida Fellowship Centre "Decline in cases at Uganda's Anti-Corruption Court" October 10 2018., Available at <https://dfcentre.com/the-decline-in-cases-at-ugandas-anti-corruption-court/> (accessed on 29 May 2020).

Schutte (2016) 3.

¹¹⁴³ Anti-Corruption Coalition Uganda *Fact Sheet Anti-Corruption Court* (2011).

¹¹⁴⁴ Anti-Corruption Coalition Uganda *Fact Sheet Anti-Corruption Court* (2011).

¹¹⁴⁵ For example, see Merten M "NPA Boss Shamilla Batohi: There is no quick fix" *Daily Maverick*, March 6 2020., Available at <https://www.dailymaverick.co.za/article/2020-03-06-npa-boss-shamila-batohi-theres-no-quick-fix/> (accessed on 27 May 2020).

¹¹⁴⁶ Schutte (2016).

pending appeal. These convicts are sometimes seen by the public enjoying the proceeds of corruption by living a flashy lifestyle, while awaiting their appeals to be heard. Some of the convicts who are sure their appeals have no likelihood of success, abscond from court.¹¹⁴⁷ This may sometimes mean the end of the prosecution. To resolve this quagmire and as indicated earlier, there are calls for a specialized court at appeal level, to only handle corruption cases, not only to reduce on the backlog, but also to quicken the resolution of corruption cases. The quick resolution of corruption cases was one of the major justifications for the establishments of the ACC. This backlog creates major challenges not only for the prosecution of the perpetrators of corruption, but also the administration of justice in general. More judges have recently been appointed at the Court of Appeal and Supreme Court, raising hope that the aforementioned challenges in prosecuting corruption cases on appeal will be solved.¹¹⁴⁸ There have been calls that not only should specialized panels at the Court of Appeal and Supreme Court be constituted to speedily handle corruption appeals, but the indiscriminate grant of bail pending appeal should be reviewed, for these convicts of corruption.¹¹⁴⁹

Whereas there are reported cases of corruption within the general court system, the judicial officers posted to the ACC, are carefully selected to serve at the ACC, after exhibiting exemplary behavior within the general court system.¹¹⁵⁰ Under Article 144 of the 1995 Constitution, a Judge may be removed from office, if there are complaints of corruption, among other reasons. So far, the ACC has not witnessed a removal process initiated for a judge or magistrate, who has been posted to work there.¹¹⁵¹ The disciplinary procedure for errant magistrates is different from that of the Judges.

¹¹⁴⁷ Schutte (2016) 2.

¹¹⁴⁸ Ministry of Justice and Constitutional Affairs "New Justices Appointed to the Supreme Court and Court of Appeal" available at <https://www.justice.go.ug/news/new-justices-appointed-supreme-court-and-court-of-appeal> (accessed on 29 May 2020). Also see the Inspectorate of Government *Report to Parliament*, January-June 2015.

¹¹⁴⁹ Langa S *Who Follows-up the Billions Lost to Corruption? The Execution of Refund Orders Made by the Anti-Corruption Court of Uganda* (unpublished LLM thesis, Makerere University, 2015) 110-111., also see Schutte (2016) 2.

¹¹⁵⁰ Schutte (2016).

¹¹⁵¹ Schutte (2016).

Complaints against magistrates are handled by the Judicial Service Commission, which may dismiss them if they are found guilty of judicial misconduct.¹¹⁵² This does not mean that corruption does not exist at the ACC. Human Rights Watch and Transparency International indicate that indeed, corruption exists at the ACC.¹¹⁵³ The other form of corruption at the ACC is that in the prosecution of corruption cases involving 'important' people, the matters are inadequately prosecuted, which leaves the ACC with no option but to acquit the accused persons.¹¹⁵⁴

4.4 CONCLUSION

The anti-corruption institutional framework in Uganda is strong. Its enforcement has however, been a challenge mainly because of the lack of political will to ensure that it is effective. This can be evidenced from the creation of both informal and formal mechanisms which at times work at cross-purposes. The lack of political will to ensure that the institutional framework is efficiently implemented can be evidenced from the political influence-peddling that comes into play, if the anti-corruption institutions assert their independence by executing their mandates in a professional manner.

The effective public prosecution of corruption has been limited by the hijacking of anti-corruption institutions, which prosecute a suspect only on the basis of whether they still support the political party in power. If the corruption suspect supports the ruling political party, their case will be manipulated by political leaders, who will direct these anti-corruption institutions on what to do with the case. This is even when there is overwhelming evidence to convict the suspect, because they are "good cadres". If the suspect becomes disloyal to the ruling political party, his case will be speedily investigated and prosecuted. This is even when there is weak evidence to secure a conviction in court.

Occasionally to cover-up this well-scripted act, the political leaders make numerous pronouncements about how they intend to fight corruption in Uganda. Little has,

¹¹⁵² The Judicial Service (Complaints and Disciplinary Proceedings) Regulations, 2005.

¹¹⁵³ Transparency International Uganda (2015) 28-29.

¹¹⁵⁴ Schutte (2016).

however, come out of these grand political statements on how to curb corruption in Uganda. Consequently, what has been witnessed are a few cases of 'small fish' being used as sacrificial lambs immediately after the politicians make these grand statements. The few cases involving 'big fish' that have been prosecuted by public prosecutors, from either the DPP, IGG or URA, have left a sour taste in citizens' mouths. The public prosecution of these 'big fish' leaves a lot to be desired, as we have seen in this chapter 4. In Chapter 5, I examine whether private prosecutions can be used as an intervention, to ameliorate the limitations that public prosecution of corruption faces in Uganda.



CHAPTER 5: PRIVATE PROSECUTION OF CORRUPTION IN UGANDA

5.1 INTRODUCTION

The National Objectives and Directive Principles of State Policy of the Constitution of Uganda provide that “all public offices shall be held in trust for the people,”¹¹⁵⁵ and that “all persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people”.¹¹⁵⁶ Further, the National Objectives and Directives Principles also emphasise that “all lawful means shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices”.¹¹⁵⁷ The 1995 Constitution confers on every citizen the duty “to protect and preserve public property”¹¹⁵⁸ and “to cooperate with lawful agencies in the maintenance of law and order”.¹¹⁵⁹ It is also the duty of every Ugandan citizen “to combat corruption and misuse or wastage of public property,” among other obligations.¹¹⁶⁰ Perhaps one of the ways every Ugandan citizen can engage in combating corruption and the misuse of public resources, is the private prosecution of its perpetrators, where the mechanisms in place for its public prosecution are weak or have failed, as seen in chapter 4.

¹¹⁵⁵ Principle XXVI (i)., See Article 8A of the 1995 Constitution, that makes the national objectives and directive principles of state policy justiciable before the courts of law. Earlier, the constitutional court was not persuaded by the justiciability of the national objectives and directive principles of state policy. The court stated that they only served an interpretative value, and no more in several cases before it. i will converse a few cases. In *Tinyefuza v Attorney General (Constitutional Petition No. 1/1996)*, Egonda Ntende noted that the National Objectives and Directive Principles of State Policy should guide the all organs of government including the courts in the interpretation of the Constitution. In *Zachary Olum & Another v Attorney General (Constitutional Petition No. 6/1999)*, the Constitutional Court noted that although the National Objectives and Directive Principles of State Policy were important cannons in the interpretation of the Constitution, they were not justiciable before the courts of law. The legal status of the national objectives and directive principles of state policy has recently changed with the decision in *Male Mabirizi & Others versus Attorney General, (Consolidated Constitutional Appeals No. 2,3 and 4/2019)* where Elizabeth Musoke, JCC stated that “pursuant to Article 8A, the objective Principles are now justiciable”.

¹¹⁵⁶ Principle XXVI (ii).

¹¹⁵⁷ Principle XXVI (iii).

¹¹⁵⁸ Article 17(d).

¹¹⁵⁹ Article 17(f).

¹¹⁶⁰ Article 17(i).

In this chapter 5, first, I briefly discuss the right to institute a private prosecution, which is grounded on English common law. Secondly, I also review the legislative history of private prosecutions in Uganda. Thirdly, I discuss the current legal framework governing private prosecutions in Uganda. Fourthly, I briefly converse the limitations of public prosecutions in Uganda. Fifthly, I explore the possibility of strengthening the right to institute a private prosecution in Uganda. Sixthly, I furthermore examine the possibility of using private prosecution as an anti-corruption mechanism to prosecute high-level persons, in order to hold them accountable for their crimes. I conclude this chapter by considering why anti-corruption activists may need to deploy private prosecution as an anti-corruption tool in the fight against corruption. I detail this chapter hereunder.

5.2 THE RIGHT TO INSTITUTE PRIVATE PROSECUTIONS

World-over, the general rule is that once offences are committed, the state through the office of the public prosecutor handles all criminal prosecutions. In many commonwealth countries, however, private individuals and entities can institute private prosecutions.¹¹⁶¹ Therefore, private prosecutions are the exception to the general rule in criminal proceedings.¹¹⁶²

The right to institute a private prosecution is yet to be provided for in any international, regional or sub-regional human rights instruments.¹¹⁶³ The developing jurisprudence about this mechanism indicates that this may change soon.¹¹⁶⁴ The African Commission

¹¹⁶¹ For a detailed treatment, see Mujuzi JD "The Right to Institute a Private Prosecution. A Comparative Analysis" 4 (2015) 222-255 *International Human Rights Law Review* 223., Also see, *The Municipal Council of Dar-es-Salaam versus AB De P Almeida and 3 Others*, [1957] 1 EA 244., where a private prosecutor is defined as "any prosecutor other than a public prosecutor".

¹¹⁶² See *Branson & Others versus Marrero Others* [2010] EW Misc. 19 (CC) (07 December 2010) para 27., also see *Solomenstsev c. Granit depot inc. (6265804 Canada inc.)* 2010 QCCQ 811 (CanLII) para 39.

¹¹⁶³ Mujuzi JD (2015) 223.

¹¹⁶⁴ Mujuzi JD "Private Prosecution as a local remedy before the African Commission on Human and People's Rights" (2019)19 *African Human Rights Law Journal*., also see *Zimbabwe Human Rights NGO Forum versus Zimbabwe* (2006) AHRLR 2006), where the African Commission stated that "To expect victims of violations to undertake private prosecutions where the state has not instituted criminal action against perpetrators of crimes or even follow up with the Attorney-General what course of action has been taken by the state as

has recently adopted a General Comment, where it implores state parties to tackle ill-treatment and torture using private prosecution. It states as follows: -

In line with state parties' obligations under Article 7 of the African Charter, the option of private prosecution for acts of torture and other ill treatment by non- state actors should be availed and sufficiently facilitated by the state when utilized by a victim, including by addressing practical challenges to private prosecution such as prohibitive costs or the impossibility in practice to access all relevant evidence.¹¹⁶⁵

The jurisprudence in case law and soft law instruments is developing around the value of the use of private prosecutions. This is where the state neglects its duty to prosecute crime and human rights violations against individuals as shown above. Possibly in the near future, this legal mechanism will be recognised as a right and adopted into the international, regional and sub-regional human rights treaties.

5.3 A BRIEF LEGISLATIVE HISTORY OF PRIVATE PROSECUTIONS IN UGANDA

The history of the right to institute a private prosecution in Uganda,¹¹⁶⁶ cannot be discussed in isolation of the history of the establishment of the office of the Director of Public Prosecutions (DPP).¹¹⁶⁷

the respondent state seems to suggest in this matter would be tantamount to the state relinquishing its duty to the very citizens it is supposed to protect. Thus, even if the victims of the criminal acts did not institute any domestic judicial action, as the guardians of law and order and protectors of human rights in the country, the respondent state is presumed to be sufficiently aware of the situation prevailing in its own territory and therefore holds the ultimate responsibility of harnessing the situation and correcting the wrongs complained of".

¹¹⁶⁵ Paragraph 75 of General Comment No. 4 on Article 5 of the African Charter on Human and People's Rights. This General Comment was adopted on 23 February, 2017 in Banjul, Gambia.

¹¹⁶⁶ Uganda was a British colony until 9 October, 1962. Its legal system is based on the English legal system. The origin of private prosecutions in Uganda can therefore be traced to British legal system. See Edmonds T & Jugnarain D "Private Prosecutions: A Potential Anticorruption Tool in English Law" (2016) Open Society Foundations., Available at https://www.justiceinitiative.org/uploads/d95e470e-54e6-4379-89e4-3fc81acafd53/legal-remedies-4-edmonds-jugnarian-20160504_0.pdf (accessed on 9 June 2020) 2.

¹¹⁶⁷ Director of Public Prosecutions (DPP) "Historical Development of ODPP" Available at <https://dpp.go.ug/index.php/about-dpp#:~:text=In%20the%20first%20post%20%2Dindependence,as%20an%20independent%20government%20body.&text=The%20Director%20of%20Public%20Prosecutions%20is%20appointed%20by%20the%20President,Commission%20with%20approval%20of%20Parliament.> (accessed on 13 June, 2020).

The office of the DPP was first established by the Constitution of Uganda of 1962 (1962 Independence Constitution). Under section 82 of the 1962 Independence Constitution, the DPP was established. Section 82(1) established the DPP as a public office. Section 82(1) of the 1962 Independence Constitution prescribed the functions of the DPP as follows: -

- (a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person; **65 (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.** (3) The powers of the Director of Public Prosecutions under subsection (2) of this section may be exercised by him in person or by officers' subordinate to him acting in accordance with his general or special instructions. (4) The powers conferred on the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority: **Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.** (5) For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved (including any question referred under section 95 of this Constitution) for the purpose of any such proceedings, to any other court in Uganda or the Court of Appeal or to the Judicial Committee of Her Majesty's Privy Council shall be deemed to be part of those proceedings : **Provided that the power conferred on the Director of Public Prosecutions by paragraph (c) of subsection (2) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.** (6) In the exercise of the powers conferred on him by this section, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority. **[Emphasis mine].**

In 1967, there was an amendment to the 1962 Independence Constitution that relegated the DPP under the office of the Attorney General.¹¹⁶⁸ Article 71(5) of the Constitution of the Republic of Uganda, 1967 (1967 Constitution) provided that “[i]n the exercise of the powers conferred on him by this Article, the Director of Public Prosecutions shall be subject to the direction and control of the Attorney-General”.¹¹⁶⁹ From 1967 onwards, the DPP was under the control and direction of the Attorney General. The DPP became a department in the Ministry of Justice.¹¹⁷⁰ The promulgation of the 1995 Constitution however reversed this position.¹¹⁷¹

Consequently, to date the independence and autonomy of the DPP was restored. Therefore, the office is protected from any interference of any person or authority in the execution of its functions.¹¹⁷² The public prosecution of recent high-profile corruption cases indicates that the independence of the DPP in the execution of its mandate may be in theory only.¹¹⁷³ A detailed discussion about the independence of the DPP has been made in chapter 4.

Prior to the promulgation of 1995 Constitution, there were key legislative events that ought to be covered that led to the current legislative framework that governs private prosecutions in Uganda.¹¹⁷⁴ In 1988, a constitutional commission was instituted by the NRM/A government to consult citizens about the issues that should be addressed in a

¹¹⁶⁸ See Article 71(5) of the 1967 Constitution.

¹¹⁶⁹ The third Constitution of Uganda was adopted on 8 September, 1967 following 3 months of debate.

¹¹⁷⁰ Director of Public Prosecutions (DPP) “Historical Development of ODPP” Available at <https://dpp.go.ug/index.php/about-dpp#:~:text=In%20the%20first%20post%20%2Dindependence,as%20an%20independent%20government%20body.&text=The%20Director%20of%20Public%20Prosecutions%20is%20appointed%20by%20the%20President,Commission%20with%20approval%20of%20Parliament.> (accessed on 13 June 2020).

¹¹⁷¹ See Article 120 (6) of the 1995 Constitution.

¹¹⁷² Article 120 (6) of the 1995 Constitution.

¹¹⁷³ See for example the case of *Uganda versus Uwera Nsenga* High Court (Criminal Session Case No. 312/2013) [2014] UGHCCRD 43 (23 September 2014), where the independence of the DPP was threatened by police, among many others.

¹¹⁷⁴ Mujuzi JD ‘Strengthening the Right to Institute a Private Prosecution in Uganda by amending Article 120(3) of the Constitution: A comment on Uganda v. Inspector General of Police, General Kale Kayihura and 7 Others’ (2017) 25(4) *African Journal of International and Comparative Law*: 596.

national constitution to replace the 1967 Constitution.¹¹⁷⁵ Among other national issues, the constitutional review commission dealt with was the mandate of the DPP.¹¹⁷⁶ It is beyond the scope of this chapter to discuss the history of private prosecutions in Uganda because this issue has been discussed by a scholar recently.¹¹⁷⁷

It is important to note that the DPP is prohibited under Article 120(3) (d) of the 1995 Constitution, from delegating his or her mandate to any person or authority. Consequently, unlike in many other countries,¹¹⁷⁸ in Uganda the DPP does not have to decline to prosecute, in order for a private prosecutor to commence criminal proceedings against anyone. This can be problematic and prone to abuse.¹¹⁷⁹ In the case of *Hassan Basajjabalaba v Kakande Bernard*¹¹⁸⁰ an influential businessman who was facing serious offences of tax evasion instructed his lawyers to institute a private prosecution against him on lesser charges, in order to evade a public prosecution of the same charges.¹¹⁸¹ The DPP labelled this private prosecution “a ploy by the businessman to evade justice through staging a sham self-prosecution using his own agents and an abuse of court process”.¹¹⁸² The aforementioned discussion shows that the mechanism of private prosecution can be abused, if the safeguards provided for in the procedural laws are not followed to the letter.

UNIVERSITY of the
WESTERN CAPE

¹¹⁷⁵ Mujuzi (2017) 596.

¹¹⁷⁶ *The Report of the Uganda Constitutional Commission: Analysis and Recommendations* (Uganda Constitutional Commission, 1992): para. 17.174.

¹¹⁷⁷ Mujuzi JD 596.

¹¹⁷⁸ See Section 7 of the Criminal Procedure Act, of South Africa; Article 44 of the Criminal Procedure Code Act of Ethiopia and Section 13 of the Criminal Procedure and Evidence Act, Chapter 9:07 of Zimbabwe, among others.

¹¹⁷⁹ See the case of *Kakande Bernard versus Hassan Basajjabalaba*, Buganda Road (Miscellaneous Application No. 22/2013)., also see Vision Reporter, ‘Basajjabalaba Sent to Luzira prison,’ *The New Vision*, 16 January 2013. Available at http://www.newvision.co.ug/new_vision/news/1312759/basajjabalaba-sent-luzira-prison., (accessed on 15 June 2020).

¹¹⁸⁰ Chief Magistrates Court of Buganda Road, Miscellaneous Application No. 22/2013.

¹¹⁸¹ *The New Vision* (2013).

¹¹⁸² *The New Vision* (2013).

5.4 LIMITATIONS OF PUBLIC PROSECUTIONS

We have conversed the challenges that bedevil public prosecutions in Uganda in detail in chapter 4, it is, however, important to generally traverse the limitations that hamper the effective public prosecutions of corruption generally, to enable a proper grounding of chapter 5.

One of the fundamental principles of the rule of law, is that everyone is equal before and under the law, in all spheres of life and shall enjoy equal protection of the law.¹¹⁸³ This democratic tenet however does not seem to apply when police and public prosecutors are confronted with prosecuting politicians and wealthy individuals for corruption.¹¹⁸⁴ Perhaps the Marxist maxim that concept of the state and law are structures intended to protect the ruling class, when they are exploiting the working class, could offer a philosophical context to this state of affairs.¹¹⁸⁵ This is because conviction rates for these categories of persons are still very low, not only in Uganda but world-over.¹¹⁸⁶ Where the suspected culprit is part of a government organ, the likelihood of his/her prosecution by way of public prosecution is challenging. This is because the state actors may be reluctant

¹¹⁸³ Article 21(2) of the 1995 Constitution provides that "All persons are equal before and under the law in all spheres of political, economic and cultural life and in every other respect and shall enjoy equal protection of the law". Article 21(2) further provides that "without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or economic standing, political opinion or disability. Article 21(3) defines what amounts to discrimination under Article 21(1) & (2). In the case *Okupa v. Attorney General & 3 Others* (Misc. Cause No. 14 OF 2005) [2018] UGHCCD 10 (31 January 2018) the High Court referred to Article 21 of the 1995 Constitution in defining what amounts to discriminatory treatment by government. The Applicants stated that the government of Uganda pursued illegal practices which led to the arming of the Karimojong tribe who in turn violated the Applicants human rights by rustling their cattle and causing general insecurity in their villages. The court also sought the aid of Article 28 of the African Charter on Human Rights; Article 26 of the International Covenant on Civil and Political Rights and Article 7 of the Universal Declaration on Human Rights, to interpret the principle of equality before the law in the aforementioned case.

¹¹⁸⁴ See Article 21 of the 1995 Constitution.

¹¹⁸⁵ Marx K, et al. *The Communist Manifesto*. (2012) Jeffrey C. Isaac (ed.) Yale University Press. *JSTOR*, www.jstor.org/stable/j.ctt5vmx2. (accessed on 13 June 2020).

¹¹⁸⁶ Henning PJ "It's getting harder to prosecute politicians for corruption," *The Conversation*, February 16 2018., Available at <https://www.google.com/amp/s/theconversation.com/amp/its-getting-harder-to-prosecute-corruption-91609> (accessed on 27 July 2020).

to act because he or she is one of them. For example, where a government minister diverts public resources to personal use, in concert with his junior officer(s) in the ministry, it may be difficult for the junior officer to whistle-blow this offence.¹¹⁸⁷ This is because it has implications to their job security and possibly life. Even if patriotic junior officer(s) reported this crime to police, the police investigating the government minister will mostly likely reveal to the minister who the whistle-blower is. This can put the junior officer's life at serious risk.¹¹⁸⁸

The difficulty of prosecuting high-profile individuals for corruption is also partly rooted in the nature of the anti-corruption legislation that is drafted to curb petty corruption, but not grand corruption.¹¹⁸⁹ This is because high-level individuals engage in complex crimes that may even require international cooperation, if the investigations into the crimes are to yield strong evidence, that can result into convictions in the courts of law.¹¹⁹⁰ Some of the proceeds of these crimes are stashed away in safe tax heavens that can only be accessed with the help of international financial intelligence networks.¹¹⁹¹ The need for specialized skills in, for example forensic accounting, is required for the investigators to effectively carry out the mandate that will produce strong evidence against these high-profile individuals, to enable their conviction.¹¹⁹²

There is a lot of political interference in the course of investigating high-profile individuals for corruption as we have seen in detail in chapter 4.¹¹⁹³ Superiors who were appointed

¹¹⁸⁷ Dimitriu R & Welz C "New Developments in the protection of whistle-blowers in the workplace," (2016). Available at <https://www.eurofound.europa.eu/publications/report/2016/eu-member-states/new-developments-in-the-protection-of-whistle-blowers-in-the-workplace> (accessed on 27 July 2020).

¹¹⁸⁸ Dimitriu & Welz (2016).

¹¹⁸⁹ Matembe MRK *The Struggle for Freedom and Democracy Betrayed* (2019), Self-publication (Uganda), 203-204.

¹¹⁹⁰ Montalban PZ, *Paradise Papers: Offshore Investment of the Rich and Powerful*, (2017) 1st ed.

¹¹⁹¹ ICIJ "Panama Papers: Exposing the Rogue Offshore Finance Industry" Available at <https://www.icij.org/investigations/panama-papers/> (accessed on 27 July 2020).

¹¹⁹² Montalban (2017), ICIJ (2016).

¹¹⁹³ Transparency International Uganda, "As strong as its weakest link. Stakeholders Perceptions of the Ugandan Legal and Institutional Anti-Corruption Framework" (2015). Available at <http://tiuganda.org/wp-content/uploads/Stakeholders-Perceptions-of-theUganda-Legal-Anti-Corruption-framework.pdf> (accessed on 27 July 2020).

by the political leaders, at times issue orders that are intended to derail the investigations into corruption scandals. These orders may consequently influence the course of investigations and prosecution of the crimes.¹¹⁹⁴ Considering these influential persons are popular and have enormous societal networks, they may fall back onto these networks to derail the outcome of the investigations and prosecution of corruption cases against them.¹¹⁹⁵

The aforementioned societal networks are backed up by the proceeds of corruption, which they are able to put to "good" use, by hiring highly experienced and skilled lawyers to defend them in court.¹¹⁹⁶ These highly skilled and experienced lawyers may employ all sorts of media and legal tactics to stall the trial of their high-profile clients, which may alter the views of the "court" of public opinion in their clients' favour.

Public prosecutors do not live and work in a "social vacuum".¹¹⁹⁷ Often times the high-profile individuals charged with corruption will, through their vast social networks approach these public prosecutors, with a "deal".¹¹⁹⁸ This environment then provides opportunities for bribery of the police investigators and public prosecutors.¹¹⁹⁹ This may then lead to presentation of a weak prosecution case that does not produce the desired result of a conviction. This is even when there is overwhelming evidence that can be produced in a court of law and in the "court" of public opinion.¹²⁰⁰

The major public attention that the public prosecution garners when prosecuting high profile persons may also affect the quality of investigations and consequently its public prosecution. There is often a lot of pressure on the investigators and public prosecutors to deliver.¹²⁰¹ Whereas this public attention creates awareness in the fight against

¹¹⁹⁴ Transparency International Uganda (2015) 21-23, 32-34.

¹¹⁹⁵ Transparency International Uganda (2015) 21-23.

¹¹⁹⁶ Transparency International Uganda (2015)21-23.

¹¹⁹⁷ Transparency International Uganda (2015) 21-23.

¹¹⁹⁸ Transparency International Uganda (2015)21-23.

¹¹⁹⁹ Transparency International Uganda (2015)21-23.

¹²⁰⁰ Transparency International Uganda (2015) 27.

¹²⁰¹ Transparency International Uganda (2015) 21-23.

corruption, it may have the detrimental effect of derailing and putting undue pressure on the investigators and public prosecutors, as result of the wide media coverage of this matter.¹²⁰² Sometimes, the media may even disclose premature information through its “sources” within the investigations team, which may derail the investigations. The experienced and high-profile lawyers may bribe the media to a report particular narrative of the investigation and public prosecution of the matter. This may sway public opinion in the favour of the high-profile defendants.¹²⁰³

Consequently, investigators and public prosecutors face a lot of challenges when pursuing this category of individuals. Perhaps private prosecutions could offer some hope in curbing these complicated corruption crimes. The successful private prosecution and conviction of even one high-profile individual could send a message to these influential criminals that impunity will not be tolerated by citizens. Private prosecution, can therefore be effectively used by individual citizens and civil society organisations, as an anti-corruption mechanism to successfully prosecute these high-profile individuals.¹²⁰⁴

5.5 PRIVATE PROSECUTIONS IN UGANDA

The legal system of Uganda is grounded on the English legal system.¹²⁰⁵ Indeed the Judicature Act¹²⁰⁶ clearly stipulates the applicable laws in Uganda, as statutory law, common law, doctrines of equity and customary law.¹²⁰⁷ It is no wonder that the English common law mechanism of private prosecution has been retained in Uganda’s legal system. As opposed to other countries where the right to institute private prosecutions is

¹²⁰² Transparency International Uganda (2015) 32-34.

¹²⁰³ Transparency International Uganda (2015) 32-34.

¹²⁰⁴ Edmonds & Jugnarain (2016) 5.

¹²⁰⁵ Mahoro B “Uganda’s Legal System and Legal Sector” (2013) Available at <https://www.mecgeorge.edu/Documents/sampleCasesHistoryUganda.pdf> (accessed on 10 June 2020).

¹²⁰⁶ Chapter 13, 1996.

¹²⁰⁷ See section 14.

clearly provided for in their Constitutions, Uganda has provided for this right in an Act of Parliament.¹²⁰⁸

5.5.1 WHO MAY INSTITUTE A PRIVATE PROSECUTION IN UGANDA?

Section 42 of the Magistrates Courts Act (MCA)¹²⁰⁹ provides for the procedure under which a private prosecution may be instituted in Uganda.¹²¹⁰ It provides as follows: -

Any person, other than a public prosecutor or a police officer, who has reasonable and probable cause to believe that an offence has been committed by any person may make a complaint of the alleged offence to a magistrate who has jurisdiction to try or inquire into the alleged offence, or within the local limits of whose jurisdiction the accused person is alleged to reside or be. Every such complaint may be made orally or in writing signed by the complainant, but if made orally shall be reduced into writing by the magistrate and when so reduced shall be signed by the complainant.

In Uganda a private prosecutor includes both natural and juristic persons.¹²¹¹ The private prosecutor can be a victim of the crime or another person on behalf of the victim of the crime.¹²¹² A statutory body can also institute a private prosecution.¹²¹³ In Uganda, jurisprudence is yet to develop on whether indeed, a prosecution by a statutory body is

¹²⁰⁸ Sections 85 and 86 of The Constitution of The Gambia permits its citizens to institute private prosecutions., Article 57(6)(b) of the Constitution of Kenya, 2010 authorizes, Kenyan citizens to institute a private prosecution., Article LIX of the Constitution of Brazil authorizes citizens to institute a private prosecution.

¹²⁰⁹ Chapter 16, 1971 (as amended).

¹²¹⁰ See section 42(1) (a).

¹²¹¹ The MCA does not define the word "person". Section II (uu) of the Interpretation Act, Chapter 3 of 1976, however defines a person to include a natural and juristic person., also see *Mugume & 5 Others versus Attorney General and Another*, (Constitutional Application No. 5 of 2015) [2016] UGCC 8 (26 April 2016)., where a public prosecution was conducted by a law firm of private prosecutors. When the accused persons raised this fact to the court, it ruled that what mattered was that the accused persons would get a fair trial. Consequently, in Uganda a private law firm may conduct a public prosecution, as though it is a private prosecution, as long as the court is of the view that the accused persons will get a fair trial. It is however important for an accused person to know from the start if he is being prosecuted by a public or private prosecutor to enable a fair trial of the accused persons., For a detailed treatment on this see Mujuzi JD "Strengthening the right to institute a private prosecution in Uganda by amending Article 120(3) of the Constitution: A Comment on *Uganda v. Inspector General of Police, General Kale Kayihura and 7 Others*" (2017) *African Journal of International and Comparative Law* 25.4 (2017): 590-607.

¹²¹² See Article 50 (2) of the 1995 Constitution., also see section 12 of the Prevention and Prohibition of Torture Act, Act No. 3 of 2012.

¹²¹³ See section 282 of the Companies Act, Act No. 1/2012., also see 46 of the NSSF Act, Cap. 222 of 1985., also see section 24 of the Fish Act Cap.197 of 1970.

a private prosecution or a public prosecution. This is because statutory bodies execute their duties on behalf of the general public.¹²¹⁴ In other countries juristic persons can institute private prosecutions.¹²¹⁵ As seen from the aforementioned provision, apart from a private prosecutor, a public prosecutor and a police officer can also institute criminal proceedings.¹²¹⁶

Article 120 of the 1995 Constitution provides that the Director of Public Prosecutions (DPP) has control over all criminal prosecutions in Uganda.¹²¹⁷ In exercising his or her mandate over all criminal prosecutions in Uganda, the DPP is not under the control and direction of any person or authority.¹²¹⁸ In *RA 65008 WOII Atunga Bantu and Others v DPP & AG*¹²¹⁹ the High Court emphasized the fact that “the DPP has authority to institute criminal proceedings against any person or authority in any competent court with competent jurisdiction”.¹²²⁰ Apart from Uganda Revenue Authority (URA) in respect to tax fraud cases¹²²¹ and the Inspectorate of Government (IGG), in respect of corruption cases, the DPP has ultimate power in controlling all criminal prosecutions in Uganda.¹²²²

¹²¹⁴ Some of the statutory bodies that can institute “private prosecutions” include National Environment Management Authority (NEMA) Uganda Revenue Authority (URA), Uganda Registration Services Bureau (URSB) and National Identification and Registration Authority (NIRA), among others.

¹²¹⁵ For example, in South Africa juristic persons can institute a private prosecution., see *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development*, 2017 (1) SACR 284 (CC); 2017 (4) BCLR 517 (CC)

where court indicated that it is possible under section 8 of the Criminal Procedure Act, to do so., also see Mujuzi JD “Private prosecution of environmental offences under the South African National Environmental Management Act: Prospects and challenges” (2016) *SACJ* 1.

¹²¹⁶ See section 42.

¹²¹⁷ See Article 120(6) of the 1995 Constitution.

¹²¹⁸ Article 120(6) of the 1995 Constitution., also see *Obey Christopher and 14 Others versus Uganda*, High Court Miscellaneous Application No. 3/2016.

¹²¹⁹ (Miscellaneous Cause No. 247 of 2017) (24 June 2021).

¹²²⁰ (Miscellaneous Cause No. 247 of 2017) (24 June 2021) 4.

¹²²¹ Under the High Court (Anti-Corruption Division) (Amendment) (Practice) Directions, 2019, Legal Notice No. 3 of 2019, the Chief Justice under powers entrusted to him, under Article 133(1) (b) of the 1995 Constitution, amended The High Court (Anti-Corruption Division) Practice Directions, 2009, Legal Notice No. 9 of 2009, to include any other offences related to tax fraud. The Chief Justice also designated the Commissioner General, URA or his or her representative as public prosecutors. Article 133 (1) (b) provides that the Chief Justice “may issue orders and directions to the courts necessary for the proper and efficient administration of justice”.

¹²²² Article 120(6) of the 1995 Constitution.

Unlike other countries,¹²²³ the DPP does not first have to decline to prosecute an accused person before a private prosecutor can proceed to institute criminal proceedings.¹²²⁴ There are however procedural safeguards enshrined under section 42 of the MCA which must be met before a magistrate allows a private prosecution to be instituted against an accused person(s).¹²²⁵ In *Charles Mbire & 12 Others versus Uganda*,¹²²⁶ the High Court held that before a magistrate authorises a person to institute a private prosecution, he or she must satisfy themselves that “a prima facie commission of the offence has been established” and that the complaint on oath is not “frivolous or vexatious”.¹²²⁷ Black’s Law Dictionary¹²²⁸ defines “vexatious suit” as “a law suit instituted maliciously and without good grounds; meant to create trouble and expense for the party being sued”. Ugandan courts have held that a suit is vexatious when it is “Paltry, trumpery; not worthy of serious attention; having no reasonable ground or purpose”.¹²²⁹ In *GM Combined (U) Ltd v AK Detergents (U) Ltd*, the Supreme Court of Uganda held that “vexatious suit” is one where “... a major matter of consideration is the likelihood of the plaintiff succeeding”.¹²³⁰

In the case of *Hassan Basajjabalaba v Kakande Bernard*,¹²³¹ the High Court emphasised that before a magistrate draws and signs a charge sheet for a matter instituted by way of a private prosecution, she or he must make and record a finding that “a prima facie commission of an offence has been disclosed and that “the complaint is not frivolous or

¹²²³ See section 7 of the Criminal Procedure Act 51/1977 of South Africa., also see Article 44 of the Criminal Procedure Code, 1961 of Ethiopia., also see section 13 of the Criminal Procedure and Evidence Act, Chapter 9:07/2016 of Zimbabwe.

¹²²⁴ Interesting in *Katuntu versus MTN Uganda Ltd & Another* (HCCS No. 248/2012) [2015] UGCOMMC 83, 52., the High Court notes that a private prosecution has to be instituted with the consent of the DPP. There is no provision of the law that states that a private prosecutor should do so, as long he or she fulfils the requirements under section 42 of the MCA.

¹²²⁵ Section 42 (3), (4), (5), (6) & (7) of the MCA.

¹²²⁶ HCT-00-CR-CV-0015/2012.

¹²²⁷ HCT-00-CR-CV-0015/2012, 7., also see Walyemera DM “Right to Institute a Private Prosecution cannot be wished away” *Daily Monitor*, January 29 2020. Available at <https://www.monitor.co.ug/OpEd/Commentary/Right-institute-private-prosecution-can-t-wished-away/689364-543238-view-asAMP-g0i7i0/INDEX.html>, for a detailed treatment on this issue.

¹²²⁸ 9th Edition, 1701.

¹²²⁹ See *Godfrey Kirumira Kalule v J.S.F Development* (Misc. Application No. 1878 OF2018) [2019] UGHCLD 41 (8 JULY 2019).

¹²³⁰ (1992)2 EA 94.

¹²³¹ High Court Criminal Revision No. 2/2013 (arising from Bug. Rd. Misc. Application No. 22/2013).

vexatious".¹²³² Justice Lameck Mukasa stated that "[a] charge sheet dated 11th January 2013 was accordingly drawn. However, the learned Chief Magistrate did not make any findings as to whether the complaint was frivolous or vexatious. This was a material omission on the part of the magistrate".¹²³³ The Judge added that had the chief magistrate made this finding, she would have found that the complaint was vexatious. He stated that: -

Had the learned Chief Magistrate addressed herself to the statement in paragraph 4 of the Complaint and *annexture A* thereto she would have discovered that the complainant was already aware that the case was already under police investigations, that the DPP had already sanctioned the same charges to be brought against the accused persons and that summons had already been issued for them to report to the police in respect of the same charges. With such knowledge exhibited in his complaint to have brought a complaint in respect of the same charges the complainant must have been acting maliciously with no good cause with the intention to aggravate the accused person's problems. Had Her Worship so addressed her mind she would have found the Complaint was vexatious.¹²³⁴

Consequently, in Uganda a magistrate is required to make a finding on this legal prerequisite before drawing and signing a formal charge instituted by a private prosecutor. In the aforementioned case, the High Court also agreed with, the private prosecutor that "in private proceedings, there is no requirement to involve the Director of Public Prosecution or his staff in inquiring or conduct of the proceedings".¹²³⁵

Under section 42 (4) of the MCA, a magistrate is required to "consult the local chief of the area in which the complaint arose and put on the record the gist of that consultation".¹²³⁶ In the alternative, where the magistrate is unable to consult with the local chief, and "the complaint is supported by a letter from the local chief, the magistrate may dispense with the consultation and thereafter put that letter on the record".¹²³⁷ In

¹²³² Section 42 (5) of the MCA.

¹²³³ High Court Criminal Revision No. 2/2013, 13.

¹²³⁴ High Court Criminal Revision No. 2/2013, 15.

¹²³⁵ High Court Criminal Revision No. 2/2013, 16.

¹²³⁶ Section 42(4) of the MCA.

¹²³⁷ Section 42 (4) of the MCA.

Hassan Basajjabalaba v Kakande Bernard,¹²³⁸ instead of obtaining a letter from the local chief of the area where the offence was allegedly committed, the private prosecutor got the letter from the Local Council I chairman of his residence.

The High Court wondered whether the Local Council I chairman can be regarded "as a local chief for purposes of the subsection".¹²³⁹ The Judge noted that according to section 69 of the Local Government Act¹²⁴⁰ "local council chairpersons were political heads, whereas the local chiefs were administrative heads and accounting officers of their respective sub-counties".¹²⁴¹ The High Court noted that the letter indicated that the complaint arose in the complainant's area of residence and not where the complaint arose and is alleged to have occurred.

Justice Lameck Mukasa ruled that the chief magistrate erred in law when she dispensed with the consultations from the local chief when the letter she had on the court record did not indicate where the complaint arose.¹²⁴² The High Court concluded that neither did the magistrate consult the local chief where the complaint arose, nor was the complaint supported by a letter from the local chief.¹²⁴³ The Court further noted that the requirement was mandatory.¹²⁴⁴ Chiefs are still provided for under the laws of Uganda and do carry out local government functions at lower administrative units.

¹²³⁸ High Court Criminal Revision No. 2/2013 (arising from Bug. Rd. Misc. Application No. 22/2013).

¹²³⁹ *Hassan Bassajabala v Kakande Bernard*, High Court Criminal Revision No. 2/2013 (arising from Bug. Rd. Misc. Application No. 22/2013), 11.

¹²⁴⁰ Section 69(2) of the Local Government Act, Cap. 243, provides that "The chief shall be the administrative head and accounting officer of the respective sub-county or parish".

¹²⁴¹ *Hassan Bassajabala v Kakande Bernard*, High Court Criminal Revision No. 2/2013 (arising from Bug. Rd. Misc. Application No. 22/2013), 11.

¹²⁴² *Hassan Bassajabala v Kakande Bernard*, High Court Criminal Revision No. 2/2013 (arising from Bug. Rd. Misc. Application No. 22/2013), 11., also see Constitutional Petition No. 21/2006, *Rubaramira Ruranga versus Electoral Commission*, where the Constitutional Court held that since there had been no elections for Local Councils for a long time, the Local Council Chairpersons had no legal mandate to conduct any business.

¹²⁴³ High Court Criminal Revision No. 2/2013 (arising from Bug. Rd. Misc. Application No. 22/2013).

¹²⁴⁴ High Court Criminal Revision No. 2/2013 (arising from Bug. Rd. Misc. Application No. 22/2013).

The High Court also found that the Chief Magistrate erred in scheduling the matter for hearing, in the absence of the accused persons and their Advocate. The High Court however declined to grant the accused persons prayers to have the record of the lower court expunged. This is because the accused persons had been charged afresh by the DPP on similar charges at the Anti-Corruption Court, as those that were instituted by private prosecution. The grant of the accused's persons' prayers would have meant that two parallel criminal proceedings on the same charges would subsist. This would have been prejudicial to the accused persons. The effect of the High Court's decision was that the public prosecution of the accused persons at the Anti – Corruption Court was able to proceed without any hindrance from the impugned private prosecutions.

Moreover, the territorial jurisdiction of a magistrate's court has to be ascertained before a private prosecution or any other criminal proceedings can be instituted in Uganda. Section 35 of the MCA provides that: -

When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, the offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

Consequently, there is sufficient jurisprudence on the ascertainment of the location of where the offence occurred in Uganda, before a private or public prosecutor can file criminal proceedings before a magistrate's court. In the case of *Kasibante Moses v Katongole Singh Marwaha & Another*,¹²⁴⁵ Justice Musoke Kibuuka stated that: -

"The term jurisdiction is not a term of art. It is a term of law. It is a term of very extensive legal import. It embraces every kind of judicial action. It confers upon the court the power to decide any matter in controversy. It presupposes the existence of a duty. Constituted Court with full control over the subject matter under adjudication. It also presupposes full control by the court of the parties to the subject matter under investigation by it. Jurisdiction defines the power of a court

¹²⁴⁵ (Kampala Election Petition No. 23/2011) [2011] UGHC 153 (23 October 2011).

to inquire into facts, to apply the relevant law, to make decisions and to declare the final outcome of the subject matter under its inquiry.¹²⁴⁶

In a similar case¹²⁴⁷ before the High Court, Justice Andrew Bashaija held that jurisdiction of a court cannot be regarded as a mere technicality that stands in the face of substantive adjudication of a dispute. He thus stated: -

“The lack of jurisdiction by a court over a matter cannot be regarded as a mere technicality under Article 126(2)(e) of the Constitution. Issues of jurisdiction are substantive and go to the core of a case and if a court lacks jurisdiction whether pecuniary or territorial, over the subject matter of limitation its judgment and orders however precisely certain and technically correct, are of no legal consequences and may not only be set aside anytime by the court in which they were rendered but be declared void in every court in which they are presented. Similarly, jurisdiction cannot be conferred on court by consent of the parties and any waiver on their part, cannot make up for the lack of jurisdiction.¹²⁴⁸

Similarly, in the case of *Ahmed Kawoza Kangu v Bangu Aggrey & Another*,¹²⁴⁹ the Supreme Court of Uganda held that jurisdiction of the court is not a matter for implication, but must be prescribed by law. The aforementioned jurisprudence indicates, inter alia, that a private prosecution must be instituted before a magistrate’s court that has territorial jurisdiction of the matter.

Under section 42(7) of the MCA the magistrate may, if they deem it fit “for reasons to be recorded in writing, postpone the issuing of a summons or warrant and may direct an investigation, or further investigation, to be made by police into the charge or complaint...”. After investigations of the charge or complaint, the police are supposed to report back its finding to the magistrate who must record them on the court file.¹²⁵⁰

Under section 43 of the MCA and Article 120(3) (c), the DPP is however empowered to take over and continue the private prosecutions. The DPP may only discontinue with the

¹²⁴⁶ (Kampala Election Petition No. 23/2011) [2011] UGHC 153 (23 October 2011).

¹²⁴⁷ *Gabula Benefansio v Wakidalu Meraso* High Court Civil Appeal; No. 29/2006.

¹²⁴⁸ *Gabula Benefansio v Wakidalu Meraso* High Court Civil Appeal; No. 29/2006, 7.

¹²⁴⁹ Supreme Court Civil Application No. 4/2007.

¹²⁵⁰ This is not a mandatory requirement of the law under section 42(7) of the MCA.

consent of court, as discussed in detail earlier. The DPP however may take over and continue the private prosecution.¹²⁵¹

Jurisprudence on the power and the procedure the DPP may employ, to take over and continue a private prosecution, has recently been re-affirmed in the case of *Uganda v Inspector General of Police, General Kale Kayihura and 7 Others*.¹²⁵² In this case a private prosecution was instituted against the former Inspector General of Police and 7 other senior police officers for torture before a magistrate's court. The senior officers had allegedly committed offenses under the Prevention and Prohibition of Torture Act.¹²⁵³ When the matter came up in the magistrate's court for hearing, the DPP presented a letter in court, which was to the effect that intended to take over the private prosecution. The same DPP letter noted they premised their communication to court on Article 120(3) of the 1995 Constitution, section 43 of the MCA and section 13 Prevention and Prohibition of Torture Act.¹²⁵⁴ The private prosecutors objected to the DPP's takeover of their private prosecution. They argued that in order for the DPP to takeover, they had to file an application with reasons why they wanted to take over the private prosecution. This would give the private prosecutors an opportunity to support or oppose the reasons why the DPP wanted to take over their private prosecution.

The magistrate agreed with the private prosecutors and ruled that the DPP had to file a formal application before taking over the private prosecution. Aggrieved with the magistrate's court's decision, the DPP filed an application for revision before the High

¹²⁵¹ Article 120(3) (c) of the 1995 Constitution.

¹²⁵² (Revision Cause No. 34 of 2016) [2016] UGHCCRD 75 (17 AUGUST 2016). Earlier decisions on the DPP's power to take over private prosecutions include *Uganda versus Opoka Pyenlyce David Nicholas* (Cr. Case No. 83/2003) [2009] UGHC 118 (5 March 2009)., also see *Thomas Kweyelo alias Latoni v Uganda* (Const. Pet. No. 036 of 2011 (reference)) [2011] UGCC 10 (22 September, 2011).

¹²⁵³ Act No. 2 of 2012.

¹²⁵⁴ Under Section 13 (1) of the Prevention and Prohibition of Torture Act states that "Where criminal proceedings under this Act have been instituted, the Director of Public Prosecutions may – (a) take over and continue the conduct of those proceedings at any stage before the conclusion of the proceedings; (b) discontinue the prosecution of the proceedings at any stage; and (c) require the victim or the person reporting the offence – (i) to give him or her all reasonable information and assistance; and (ii) to furnish him or her with any documents or other matters".

Court.¹²⁵⁵ Before the High Court, the DPP argued that he had powers to take over and continue with a private prosecution.¹²⁵⁶ The private prosecutors argued that whereas the DPP had power take over the private prosecution, the DPP had to file an application to give an opportunity to the private prosecutors to reply to the application considering this was a matter of public interest as provided for by Article 120(5) of the 1995 Constitution.¹²⁵⁷ Article 120(5) provides that “In exercising his or her powers under this article, the Director of Public Prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process”.¹²⁵⁸

The High Court held that the magistrate’s court erred in holding that the DPP had to first make an application before taking over a private prosecution.¹²⁵⁹ The High Court further held that the DPP does not require the consent of the private prosecutor to take over his or her private prosecution.¹²⁶⁰ The High Court stated that: -

The Constitution does not give a procedural format on how the Director of Public Prosecutions can take over any proceedings instituted in Court by any other person or authority . . . The Director of Public Prosecutions has a right to appear in any Court during the trial of a criminal matter which has been instituted under Private Prosecutions and addresses Court orally on his intentions to take over the said criminal proceedings. Thus, the letter that was written by the Director of Public Prosecutions expressing intentions to take over criminal proceedings in [this case] . . . was one of the procedures that Director of Public Prosecutions can use in such instances. [T]he trial Chief Magistrate’s orders that the Court allows the Director of Public Prosecutions to file an application so that he determines whether the Director of Public Prosecutions is worth of taking over the Criminal Proceedings . . . was erroneous and contravenes Article 120(3) and (6) of the Constitution of the Republic of Uganda.¹²⁶¹

¹²⁵⁵ *Uganda v. Inspector General of Police, General Kale Kayihura and 7 Others*, Revision Cause No. 34/2016.

¹²⁵⁶ (Revision Cause No. 34 of 2016) [2016] UGHCCRD 75 (17 August 2016).

¹²⁵⁷ (Revision Cause No. 34 of 2016) [2016] UGHCCRD 75 (17 August 2016).

¹²⁵⁸ Article 120 of the 1995 Constitution generally provides for powers of the DPP.

¹²⁵⁹ (Revision Cause No. 34 of 2016) [2016] UGHCCRD 75 (17 August 2016).

¹²⁶⁰ (Revision Cause No. 34 of 2016) [2016] UGHCCRD 75 (17 August 2016).

¹²⁶¹ (Revision Cause No. 34 of 2016) [2016] UGHCCRD 75 (17 August 2016).

The DPP however takes over the private prosecution to continue and can only discontinue it with the consent of the court, where it was filed.¹²⁶² In a dissenting Judgment, Kakuru, Justice of Appeal (JA) is in agreement with this position of the law. In the constitutional petition of *Were Naphtal v Attorney General*¹²⁶³ he stated as follows: -

“Take over and continue” in my view means the Director of Public Prosecutions when he/she decides to take over any criminal proceedings not instituted by her/him must continue which **(sic)** the prosecution of the case until its logical conclusion. This clause excludes the situation whereby the Director of Public Prosecutions may “take over and discontinue” the prosecution of the case.¹²⁶⁴

Kakuru, JA further notes that the DPP can discontinue the private prosecution with the consent of court, in accordance with the provisions of Article 120(3) (d) of the 1995 Constitution.¹²⁶⁵

There seems to be a contradiction between section 43(1)(b) of the MCA and Article Article 120(3)(d) of the 1995 Constitution. Whereas section 43(1)(b) authorizes the DPP to discontinue the private prosecution without the consent of court, Article 120(3)(d) explicitly states that the DPP must seek the consent of court, before it discontinues proceedings that were instituted by way of private prosecution. There is a need to amend section 43(3)(b) of the MCA so that the said provision is in line with the supreme law of Uganda, the 1995 Constitution.

The DPP has on several occasions utilised the loophole in section 43(1)(b) of the MCA, as an excuse not to appear in court and seek its consent before withdrawing criminal proceedings originally instituted by way of private prosecution. For example, in the case of *Charles Mbire & 12 Others v Uganda*¹²⁶⁶ where a private prosecution was instituted against a private multinational company for tax evasion, the DPP took over the case and withdrew it. The DPP told court that the withdrawal of the charges against MTN and other agents of MTN did not mean that fresh charges could not be brought, if new evidence

¹²⁶² Article 120(3) (d) of the 1995 Constitution.

¹²⁶³ (Constitutional Petition No. 11 of 2013) (9 February 2021).

¹²⁶⁴ *General* (Constitutional Petition No. 11 of 2013) (9 February 2021) 16.

¹²⁶⁵ *General* (Constitutional Petition No. 11 of 2013) (9 February 2021)

¹²⁶⁶ HCT-00-CR-CV-0015/2012.

emerged. To date no new charges have ever been reinstated against MTN by DPP for tax evasion.

In another private prosecution instituted by the Uganda Law Society against law enforcement officers who had assaulted lawyers who had gone to see their clients at court, the DPP took over the case but failed, refused or neglected to appoint a public prosecutor to prosecute the matter.¹²⁶⁷ This case was subsequently dismissed for want of prosecution.¹²⁶⁸ The Uganda Law Society undeterred with the DPP's machinations applied to the Constitutional Court to be reinstated as the private prosecutor so that they could proceed with their case.¹²⁶⁹ The Uganda Law Society argued that the dismissal of the case by the magistrate should be disregarded. The Uganda Law Society also argued that the DPP had abdicated their statutory duty to hold "erratic security officers who were expected to maintain law and order".¹²⁷⁰ The Constitutional Court is yet to pronounce itself on the petition by the Uganda Law society.¹²⁷¹

It is interesting that whereas there are several requirements for a private prosecutor to institute a private prosecution, section 42(2) of the MCA states that the validity of any criminal proceedings instituted under the aforementioned provision cannot be vitiated by "any defect in charge or complaint or by the fact that a summons or warrant was issued without any complaint or charge or, in the case of a warrant, without a complaint on oath".¹²⁷² Presumably, the framers of this particular provision of law were more interested in the administration of substantive justice as opposed to procedural technicalities.¹²⁷³

¹²⁶⁷ Nsambu H 'Lawyers Drag Attorney General to Court Over Suspects', *The New Vision*, May 12 2010, Available at http://www.newvision.co.ug/new_vision/news/1290487/lawyers-drag-attorney-court-suspects (accessed 12 June 2020).

¹²⁶⁸ Nsambu (2010).

¹²⁶⁹ Nsambu (2010).

¹²⁷⁰ Nsambu (2010).

¹²⁷¹ Nsambu (2010).

¹²⁷² Section 42(2) of the MCA.

¹²⁷³ Under Article 126(2) (e) of the 1995 Constitution substantive justice must be administered without undue regard to technicalities.

5.5.2 SAFEGUARDS AGAINST ABUSE OF THE RIGHT TO INSTITUTE A PRIVATE PROSECUTION IN UGANDA

The common law system has over-time developed sufficient safeguards against busy bodies who may wish to abuse the mechanism of private prosecution by instituting criminal proceedings which are malicious. In many countries that were colonized by Britain, English laws were “received”¹²⁷⁴ into their domestic legislation.¹²⁷⁵ Uganda is one of these countries. Many of the statutes that Uganda received are still in force several decades after the independence of Uganda.

The first safeguard is enshrined in Article 120(3) (c) of the 1995 Constitution where the DPP can take over and continue the criminal proceedings from a private prosecutor.¹²⁷⁶ If the private prosecutor abuses their right to institute criminal proceedings against an accused person, the DPP can take over the private prosecution. Under Article 120(3) (d) of the 1995 Constitution, the DPP can only discontinue the criminal proceedings initially instituted by way of a private prosecution with authorisation from court. The second safeguard is grounded in section 42, sub sections 4 and 5 of the Magistrates Courts Act. Before a magistrate signs a charge sheet drafted by a private prosecutor, he or she must ascertain that the charge is not frivolous or vexatious. However, in case a busybody found a sluggish magistrate who signs a charge sheet that is frivolous and vexatious, section 196 of the Magistrates Courts Act provides for the third safeguard.¹²⁷⁷ Section 196 of the Magistrates Courts Act states as follows: -

If on the dismissal of any private prosecution by a magistrate’s court, the court shall be of opinion that the charge was frivolous or vexatious, the court may order the private prosecutor to pay to

¹²⁷⁴ In many countries where Britain established colonies, the initial colonial laws provided for a reception clause of English law to be used, to administer the colony.

¹²⁷⁵ See section 15(2) of the Order-in-Council, 1902, which provided for the “reception” of all English laws in Uganda.

¹²⁷⁶ Also see Walyemera DM “Justice: Right to institute private prosecution can’t be wished away” *Daily Monitor*, January 29, 2020. Available at <https://www.monitor.co.ug/OpEd/Commentary/Right-institute-private-prosecution-can't-wished-away/689364-5436238-view-asAMP-g0i7i0/index.html> (accessed on 16 July 2020).

¹²⁷⁷ Walyemera (2020).

the accused person, in addition to his or her costs, a reasonable sum as compensation for the trouble and expense to which the person may have been put by reason of the charge.

Under section 195 (b) of the MCA, a magistrate's court may also award costs against a private prosecutor who had no reasonable grounds of prosecuting an accused person. The discussion above indicates that the potential abuse of the mechanism of private prosecution by busybodies has been significantly curtailed by the aforementioned safeguards within the law in Uganda.

5.5.3 APPEALS IN PRIVATE PROSECUTIONS IN UGANDA

Criminal proceedings instituted by private prosecution may end up on appeal or revision. Section 43(3) of the MCA provides as follows: -

For the purposes of this section, criminal proceedings mean proceedings before a magistrate's court and before any court by which an appeal may be heard or a power of revision exercised, and criminal proceedings shall not be deemed to be concluded until no further appeal or petition for revision can be made in the course of the proceedings.

Section 204 of the MCA provides for criminal appeals in Uganda. Criminal appeals by private prosecutors have not been provided for under the law in Uganda. It appears that under the MCA, only the DPP can appeal an acquittal of an accused person.¹²⁷⁸ Section 204(5) of the MCA states as follows: -

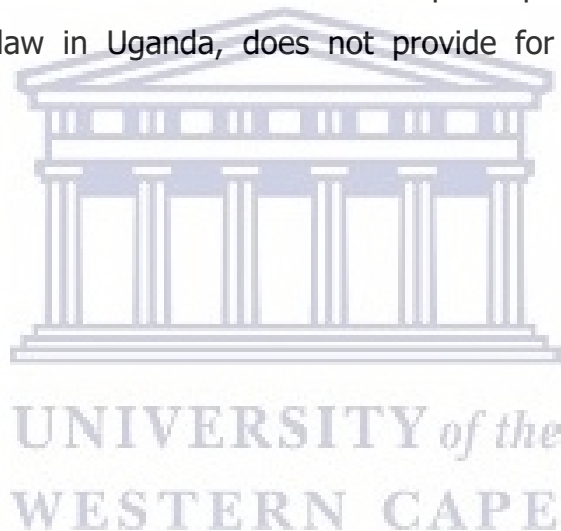
(5) Where an accused person has been acquitted by a magistrate's court, the Director of Public Prosecutions may appeal (or sanction an appeal in such manner as may be prescribed by the Minister by statutory instrument) on the ground that the acquittal is erroneous in law—

- (a) to the High Court, where the accused person has been acquitted by a court presided over by a chief magistrate or a magistrate grade I;
- (b) to a court presided over by a chief magistrate, where the accused person has been acquitted by a magistrate grade II or III.

¹²⁷⁸ See section 204(5) of the MCA.

It seems that the private prosecutor can only appeal with the consent of the DPP.¹²⁷⁹ In other commonwealth countries like Singapore, before the criminal procedure law was amended in 2010, a private prosecutor could appeal against a conviction or an acquittal of the accused person, without the consent of the public prosecutor.¹²⁸⁰ The provision of the law that allowed private prosecutors to appeal decisions of the court without the consent of the public prosecutor was however repealed in 2010.¹²⁸¹

An appeal is a creature of statute and therefore there is no inherent right of appeal from any decision of the court unless it is expressly provided for.¹²⁸² Considering that in Uganda and other commonwealth jurisdictions, there is no automatic right of appeal, the private prosecutor can only appeal with the authorisation of the public prosecutor. Consequently, the criminal procedure law in Uganda, does not provide for an inherent appellate jurisdiction.¹²⁸³



¹²⁷⁹ Under Article 120(4) (a) of the 1995 Constitution, the DPP may delegate some of his or her functions to other persons.

¹²⁸⁰ Mujuzi JD "Private prosecution in Singapore: understanding locus standi and measures in place to minimize abuse," (2018) *Commonwealth Law Bulletin*, 44:2, 205-226, 216. In *Cheng William v Loo Ngee* [2001] SGHC 201, Court held that that a public prosecutor did not only have power to intervene in private prosecutions at pre-trial and trial stages, but could also intervene on appeal.

¹²⁸¹ It was abolished by section 376 of the 2010 Criminal Procedure Code which provides that "(1) Where in any prosecution by a private person – (a) an accused has been acquitted by a court; or (b) an accused has been convicted and sentenced by a court, there shall be no appeal against the acquittal or the sentence, as the case may be, by the private person. (2) The Public Prosecutor may appeal against any judgment, sentence or order of a court in a private prosecution or he may, by fiat, and on such terms and conditions as he thinks fit, permit a private person to pursue such appeal."

¹²⁸² See *Alinyo versus Republic* (1974) EA 544; also see sections 4,5,10,16 of the Judicature Act, section 132 of Trial on Indictments Act, Section 204 of the Magistrates Court Act., also see. Articles 13(2) and 139 of the 1995 Constitution.

¹²⁸³ See *Attorney General versus Shah* [1971] EA 50.

5.6 THE PRIVATE PROSECUTION OF CORRUPTION IN UGANDA

The legal persons charged with the public prosecution of corruption in Uganda are restricted to the DPP, IGG and URA.¹²⁸⁴ Section 49 of the Anti-Corruption Act provides that: -

“A prosecution under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions or the Inspector General of Government; but a person charged with such an offence may be arrested, or a warrant for his or her arrest may be issued and executed, and the person may be detained or released on police bond, notwithstanding that the consent of the Director of Public Prosecutions or the Inspector General of Government, to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.”

Section 49 above shows that a private prosecution can only be instituted with the authorization of either the DPP or the IGG. If a private prosecutor instituted a prosecution without the consent of either of the two aforementioned prosecutorial agencies, the criminal proceedings would be a nullity and would be dismissed from court. In the case of *Uganda v Nondo Bernard*,¹²⁸⁵ the High Court of Uganda held that “w]here proceedings require the DPP’s consent, the accused is not to be charged and tried before such consent is obtained otherwise the proceedings are a nullity”.¹²⁸⁶

Ordinarily, the consent of the DPP must be in writing, signed and sealed. This would require a form to be issued for this purpose. Such details as the law under which it is issued, accused’s name and address, date of consent and signature of the consenting

¹²⁸⁴ Under the High Court (Anti-Corruption Division) (Amendment) (Practice) Directions, 2019, Legal Notice No. 3 of 2019, the Chief Justice under powers entrusted to him, under Article 133(1) (b) of the 1995 Constitution, amended The High Court (Anti-Corruption Division) Practice Directions, 2009, Legal Notice No. 9 of 2009, to include any other offences related to tax fraud. The Chief Justice also designated the Commissioner General, URA or his or her representative as public prosecutors. Article 133 (1) (b) provides that the Chief Justice “may issue orders and directions to the courts necessary for the proper and efficient administration of justice”.

¹²⁸⁵ (1985) EA 3., Also see *Abubaker Kakyama Mayanja v Republic* [1960] EA 23, which case makes the same point.

¹²⁸⁶ (1985) EA 4.

official, would be included. The Anti-Corruption Act¹²⁸⁷ however, does not provide for such a form in its schedules. In any other cases that require the consent of the DPP in Uganda, no such form is used, but the DPP merely endorses on the charge sheet with the words “I consent to this charge”.¹²⁸⁸

In Uganda, the law does not provide for what grounds the DPP would consider to consent to a charge instituted by a private prosecutor. In other common law countries, the prosecuting entity requires that the private prosecutor to present to it evidence, indicating that the case has a high likelihood of securing a conviction, once the consent is granted by the prosecuting agency.¹²⁸⁹

In deciding whether to consent to a private prosecution, many prosecuting agencies in common law countries apply two tests, to wit, the *full code test* and whether the private prosecution is in *public interest*.¹²⁹⁰ The full code test considers whether the evidence presented to the prosecuting agencies “reveals a reasonable prospect of conviction, sometimes known as the 51% chance test, or the “greater than evens chance test”.¹²⁹¹ This is premised on the fact that once the evidence presented by a private prosecutor passes this test, then there is a 51% chance that the private prosecutor will secure a conviction in court. The “51% chance test” has been criticized in a leading case on private prosecutions in the United Kingdom. In *R (on application of Gujra) (FC) (Appellant) v. Crown Prosecution Service (Respondent)*, the dissenting judgments of Lady Hale and Lord Mance, the Supreme Court of the United Kingdom stated that the “51% chance test” could raise potential human rights issues under the European Convention on Human Rights.¹²⁹² In the aforementioned case, Lady Hale argued that “there could be two

¹²⁸⁷ 2009.

¹²⁸⁸ Under section 49 of the Anti-Corruption Act, 2009, before criminal proceedings on charges of abuse of office, causing financial loss or embezzlement, among others, can proceed before a court of law, the DPP must consent to the charges.

¹²⁸⁹ Edmonds & Jugnarain (2016) 5.

¹²⁹⁰ Edmonds & Jugnarain (2016) 5.

¹²⁹¹ For a full treatment on this see the case of *R (on application of Gujra) (FC) (Appellant) v. Crown Prosecution Service (Respondent)* (2012) UKSC52, see Judgment of Lord Wilson.

¹²⁹² (2012) UKSC52.

reasonable, but different views on whether a reasonable court would convict".¹²⁹³ The second test applied by the prosecuting agencies is that the private prosecution must be in public interest.¹²⁹⁴ What amounts to public interest, in such a situation may be challenging.

Black's Law Dictionary¹²⁹⁵ defines public interest as "the general welfare of the public that warrants recognition and protection". In the English case of *R v. Bedfordshire*,¹²⁹⁶ Court defined public interest as something in which the public as a whole has a stake. Judge Campbell further held that public interest "...does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of community have a pecuniary interest, or some interest by which their rights or liabilities are affected."¹²⁹⁷ Oloka Onyango has also defined Public Interest Litigation (PIL) as "the use of the courts as mechanism to challenge authoritarian structures of governance, structural conditions of oppression, repression and domination and established frameworks of marginalization and exclusion".¹²⁹⁸ Similarly, in the case of *Aboneka Micheal & Another v. Attorney General*,¹²⁹⁹ Musa Sekaana, J held as follows: -

"A matter under Public Interest Litigation must require a legal remedy and be a public interest, which means it must; Affect a significant number of people not just the individual or; Raise matters of broad public concern or; Impact on disadvantaged or marginalized groups, and; It must be a legal matter which requires addressing *pro bono publico* (for the common good).¹³⁰⁰

¹²⁹³ (2012) UKSC52.

¹²⁹⁴ Edmonds & Jugnarain (2016) 5.

¹²⁹⁵ 8th Edition.

¹²⁹⁶ 24 L.J.G.B 84.

¹²⁹⁷ 24 L.J.G.B 84.

¹²⁹⁸ Oloka Onyango J, *Ghosts and the Law: An Inaugural Lecture*, 12 November, 2015 30. Also available at <https://news.mak.ac.ug/sites/default/files/downloads/Makerere-Prof-Oloka-Onyango-Inuagural-Professorial-Lecture12thNov2015.pdf> (accessed on 10 October 2020)., also see Rule 4 of the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules Statutory Instrument No. 31/2019, "public interest" includes the interest of society or any segment of society in promoting human rights, democracy, rule of law and good governance. This rule 4 also defines public interest litigation.

¹²⁹⁹ (High Court Miscellaneous Cause No. 367/2018) [2019] UGHCCD 188(16 August 2019).

¹³⁰⁰ (High Court Miscellaneous Cause No. 367/2018) [2019] UGHCCD 188(16 August 2019) 7.

In deciding whether to commence criminal proceedings against a person, the DPP must consider “whether or not it is in the interest of the public to prosecute. Prosecutors must consider the seriousness of the offence, the nature of the crime, and the economic impact of the offence on the community”.¹³⁰¹ Perhaps these could constitute the parameters upon which the DPP or IGG authorizes a private prosecution of a corruption matter under the limb of “public interest” as provided for by Article 120(5).

Ugandan case law shows that courts have entertained cases on the basis of PIL where the issues raised have included habeas corpus applications,¹³⁰² political rights,¹³⁰³ execution of death penalty,¹³⁰⁴ environmental concerns,¹³⁰⁵ freedom of worship,¹³⁰⁶ torture,¹³⁰⁷ and corruption,¹³⁰⁸ among others.

The media are a key ally in PIL in Uganda. The reason some naysayers have fashioned it as “Publicity Interest Litigation”.¹³⁰⁹ Considering the matters that are litigated in PIL cases, it obviously attracts a lot of attention from the public, and as result from the media. It is argued that publicity during PIL cases has its advantages, because it draws public’s attention to the issue being litigated upon. This attention can then spur a public debate about the PIL issue before the courts. Consequently, this public attention and debate

¹³⁰¹ Law Development Centre, *The Uganda Criminal Justice Bench Book*, 1st Ed. (2017) Kampala: LDC, 99., also see Directorate of Public Prosecutions, *Prosecutors Manual on Illicit Trade in Uganda*, (2013).

¹³⁰² *Uganda v Commissioner of Prisons, ex parte Matovu*, [1966] EA 514.

¹³⁰³ *Rwanyarare & Another v Attorney General*, Constitutional Petition No. 11/1997 & *Ssemogerere & Another v Attorney General*, Constitutional Petition No. 5/1999, among others.

¹³⁰⁴ *Uganda Law Society v The Attorney General*, ((Constitutional Petitions No. 2 & 8 of 2002)) [2009] UGCC 1 (4 February 2009).

¹³⁰⁵ *Greenwatch & Another v Golf Course Holdings Limited*, HCMA NO. 390/2001., *The Environmental Action Network (TEAN) v AG & NEMA*, Miscellaneous Cause No. 39/2001, *NAPE v AES Nile Power*, High Court Miscellaneous Cause No. 268/1999, among others.

¹³⁰⁶ *Dimanche Sharon & Others v Makerere University* ((Constitutional Cause No.1 of 2003)) [2003] UGCC 6 (24 September, 2003).

¹³⁰⁷ *Behangana & Another v Attorney General* (Constitutional Petition No. 53 of 2010) [2015] UGCA 6 (12 October 2015).

¹³⁰⁸ *Fox Odoi-Oywelowo & Another v Attorney General*, Constitutional Petition No. 8/2003.

¹³⁰⁹ See the case of *Aboneka Micheal & Another v. Attorney General*, (High Court Miscellaneous Cause No. 367/2018) [2019] UGHCCD 188(16 August 2019), where Musa Ssekaana, J stated as follows: “Public interest litigation should not be used for personal or political gains or for mere publicity or for other oblique reasons ...It is true that public interest litigation has been abused and is increasingly used by advocates for publicity and or seeking prominence in the legal profession and it is now “Publicity Interest Litigation”.

about a PIL issue may be considered a “win” in the “court of public opinion”, although the matter brought to the court of law, is eventually lost by the public interest litigants. This however is not to claim that PIL cannot be abused by busy bodies. There are, however, enough safeguards within the court system to deal with these disadvantages of publicity during PIL.¹³¹⁰

The aforementioned discussion offers a glimpse into what the DPP or a Ugandan court confronted with defining “public interest” would consider as public interest, before granting consent for a private prosecution to be instituted to prosecute a corruption case. What is not ascertained now, is whether DPP or a court of law in Uganda, would also adopt the two tests, to wit, the *full code test* and *public interest*, as an international best practice on granting consent for the institution of private prosecutions. This is in cases, where it is required by Ugandan law, in many serious crimes including the corruption offences. In Uganda, the closest legal provision of “tests” similar to the aforementioned tests that can be applied by the DPP to consent to a private prosecution, are found in Article 120(5) of the 1995 Constitution. Article 120(5) also provides “public interest” as a key factor in exercising the DPP’s criminal prosecutions mandate. Other grounds that the DPP may consider in deciding to exercise his or her mandate are “the interest of administration of justice and the need to prevent abuse of legal process”. Perhaps in granting a private prosecutor the consent to institute criminal proceedings against suspects in corruption cases, the DPP would consider these grounds. So far, there is no case law to this effect in Uganda.

Apart from public interest, the second ground the DPP could consider before authorising a private prosecution of a corruption matter, is still grounded in Article 120(5) of the Constitution. It provides that the DPP shall have regard to “... the interest of the

¹³¹⁰ For example, busy bodies can be subjected to payment of costs, if they file frivolous and vexatious suits before the courts.

administration of justice ...".¹³¹¹ The ingredients under this limb of Article 120(5) could constitute the following: -

- a) The functions of criminal law namely retribution, prevention, deterrence, reformation and public interest.
- b) Whether the facts contained in the complaint or report disclose an offence under the law.
- c) Whether there is sufficient evidence to support the facts to justify institution of criminal proceedings.
- d) Whether there is a legal excuse for the conduct of the accused to justify the offence and to warrant the abandonment of proceedings against the accused.
- e) Whether the case is suitable for trial in a civil court.¹³¹²
- f) Whether the act or omission complained of is frivolous and vexatious or inspired by malice or ill-will on the part of the complainant and likely to result in abuse of the process.¹³¹³

The third and last limb of Article 120(5) provides that "... and the need to prevent abuse of legal process".¹³¹⁴ In *Tibeigana v Vijay Reddy*,¹³¹⁵ the High Court obtained the aid of Black's Law Dictionary¹³¹⁶ to define "abuse of court process" as follows; "a malicious abuse of the legal process occurs when the party employs it for some unlawful object, not the purpose which it is intended by the law to effect, in other words a perversion of it".¹³¹⁷ Similarly, the Supreme Court of Uganda has stated that "abuse of court process" "involves use of process for improper purpose (sic)".¹³¹⁸ Presumably, the DPP would seek the aid of the aforementioned cases and other authorities, to assist it on whether a corruption case merits the DPP's authorization for a private prosecution.

¹³¹¹ 1995 Constitution.

¹³¹² LDC (2017) 99.

¹³¹³ Odoki B, *A Guide to Criminal Procedure in Uganda*, (2011) 3rd ed. Kampala: LDC 75., Also see section 42(50) & 196 of the MCA.

¹³¹⁴ 1995 Constitution.

¹³¹⁵ (Miscellaneous Application No. 665 of 2019) [2019] UGHCCRD 200 (4 November 2019).

¹³¹⁶ Black, H (Ed.) 6th Edition.

¹³¹⁷ (Miscellaneous Application No. 665 of 2019) [2019] UGHCCRD 200 (4 November 2019) 5.

¹³¹⁸ *Uganda Land Commission v James Mark Kamoga*, Supreme Court Civil Appeal No. 08/2004 7, Also see *Dr. Tiberius Muhebwa v Uganda* (Constitutional Reference No. 09 of 2012 (Arising from CSC No. 209 of 2011)) (14 February 2014), where the Constitutional Court offers some examples of abuse of court process.

Curiously, the anti-corruption legislation in Uganda does not also provide for what an aggrieved private prosecutor would do, if the DPP refuses to give his consent to a private prosecution of a corruption matter. Can an aggrieved private prosecutor sue the DPP in an application for judicial review of the DPP's decision to refuse to consent to a private prosecution of a corruption case? Can a court of law authorize the private prosecution without the DPP's consent? Can the court issue mandamus orders to the DPP to prosecute the corruption case itself?¹³¹⁹ It is argued that an aggrieved private prosecutor can explore all the aforementioned avenues to enable a public or a private prosecution of a corruption matter to proceed, if the DPP refuses to authorize the private prosecution.

The DPP is not under the direction and control of any person or authority in the execution of its mandate under Article 120(6) of the 1995 Constitution. The DPP's decisions can however be challenged if they do not serve public interest. In the case of *ACP Bakaleeke Siraji v Attorney General*,¹³²⁰ the High Court agreed with the Applicant who argued that whereas the DPP was independent in the execution of its mandate, the DPP was accountable to the people and should perform its actions in public interest, in the interests of administration of justice and to prevent abuse of legal process as provided for by Article 120(5) of the 1995 Constitution. The High Court also agreed with the Applicant that in case the DPP acted outside the aforementioned legal limits and acted unreasonably, then the Applicant could apply to court for an order for judicial review of the DPP's decision(s). In *Alinange v Director of Public Prosecutions*¹³²¹ Justice Musota ruled that in accordance with the Supreme Court decision of *Charles Harry Twagira v Attorney General*,¹³²² the

¹³¹⁹ See the Kenyan case of *Republic v Director of Public Prosecutions & another Ex-Parte Communications Commission of Kenya* [2014] eKLR 1, where court stated that "Where the Court ... finds that the DPP has exercised his discretion not to prosecute wrongly, the Court can only remit the matter back to the DPP for reconsideration in view of the findings of the Court. The powers of the DPP are found in the Constitution and statute and they should be exercised within the constitutional and statutory provisions. In view of the source of the powers of the DPP, this Court has the authority to ensure those powers are exercised constitutionally and lawfully".

¹³²⁰ (Miscellaneous Cause No. 212 of 2018) [2019] UGHCCD 4 (27 February 2019).

¹³²¹ (Miscellaneous Cause No. 167 of 2017) [2017] (10 July 2017).

¹³²² SCCA 4 of 2007.

DPP is a government department and is not a body corporate with powers to sue and be sued. Consequently, the proper party to sue is the Attorney General.

Consequently, under section 36(1) of the Judicature Act¹³²³ the High Court may issue mandamus, prohibition and/or certiorari orders against the decisions of the DPP.¹³²⁴ In the case of *John Jet Tumwebaze v Makerere University Council and 3 Others*¹³²⁵ the High Court held that the orders of mandamus, certiorari and prohibition are discretionary in nature. In *Hon. Winfred K. Masiko & 3 Others vs DPP & 2 Others*¹³²⁶ the Applicants brought an application against the Respondents for judicial review seeking orders of certiorari, declaration and prohibition. The High Court held that "... Court has analyzed the arguments on either side. It is of the view that indeed the DPP acted irrationally by preferring charges against the applicants who were shareholders of the company instead of preferring charges against the company itself as a legal entity and in accordance with section 53 of the Magistrates Courts Act."¹³²⁷ Similarly, in *Nyamuchocho & Another v Attorney General & 2 Others*,¹³²⁸ the High Court granted orders of mandamus and declaration to the Applicants, in the following terms: -

An order of Mandamus issues directing the 2nd respondent (Permanent Secretary- Ministry of Public Service) and 3rd respondent (Permanent Secretary/Secretary to the Treasury Ministry of Finance, Planning and Economic Development) to pay the applicants the said monies as per the resolution passed by Parliament. Court declares that the administrators of the estate of the deceased former holders of the office of the President of the Republic of Uganda are legally entitled to receive payment of allowances as stipulated by S. 3 of the Parliament (Remuneration of Members) Act as resolved by Parliament on the 16th day of March 2017.¹³²⁹

¹³²³ Chapter 13.

¹³²⁴ See sections 37 & 38 of the Judicature Act, Cap. 13, for other related remedies.

¹³²⁵ Civil Application No. 353/2005.

¹³²⁶ High Court Civil Miscellaneous Application No. 15 of 2009.

¹³²⁷ High Court Civil Miscellaneous Application No. 15 of 2009 7.

¹³²⁸ (Miscellaneous Cause No. 241/2017) [2018] UGCCD 95 (1 OCTOBER 2018).

¹³²⁹ (Miscellaneous Cause No. 241/2017) [2018] UGCCD 95 (1 OCTOBER 2018) 15.

In *Caroline Turyatamba & Others v Attorney General & Another*¹³³⁰ the Constitutional Court stated that the Applicant's prayer for an order of mandamus directing the Respondents to restore the Applicant to his position of employment was not tenable in law, as an employer cannot be forced to re-employ, an ex-employee, an employer is not ready to employ again. In *Unzi Godfrey Licho v Moyo District Local Government & Another*¹³³¹ the High Court held that "Judicial review of administrative action is a procedure by which a person who has been affected by a particular administrative decision, action or failure to act of a public authority, may make an application to the High Court, which may provide a remedy if it decides that the authority acted unlawfully".¹³³²

In view of the aforementioned authorities, if the decisions of the DPP do not serve the public interest, the interests of the administration of justice or are an abuse of legal process, it is submitted that an aggrieved private prosecutor could employ the aforementioned procedures to enable the DPP to authorize the private prosecution of a corruption matter.

5.7 WHY IS PRIVATE PROSECUTION REQUIRED IN CORRUPTION CASES?

When the DPP, IGG or the URA chooses not to institute a public prosecution of a corruption case, private prosecution offers an opportunity to public-spirited individuals to combat corruption in society. This is especially so, when the criminal actor(s) are part of the government and government institutions like the DPP, IGG or URA are reluctant to prosecute. In other circumstances, powerful commercial corporations may engage in criminality without the ability of government institutions to take action. Without this avenue in such a situation, an environment of impunity would prevail.

¹³³⁰ Constitutional Petition No. 15/2006.

¹³³¹ Miscellaneous Cause No. 0097/2016.

¹³³² Miscellaneous Cause No. 0097/2016 7.

Indeed, as an Irish Court found where a private prosecution was instituted against two bankers for fraud.¹³³³ In *Kelly and Another v District Court Judge Ryan*,¹³³⁴ the Irish court held that “the existence of a private prosecutor acts as an external check against the risk of a rare lapse or oversight on the part of the Director [of Public Prosecutions]”.¹³³⁵ In some countries, the mere threat of institution of a private prosecution may force the prosecuting agencies that are charged with the public mandate to institute criminal proceedings, to do so.¹³³⁶ Relatedly, private prosecutions have deterred criminal conduct not only for the private good but also public good.¹³³⁷

In Uganda, corruption crimes have increased but the anti-corruption mechanisms in place have not kept pace with these criminal activities. Many anti-corruption agencies have either refused, failed or neglected to perform their mandate. Therefore, the institution of private prosecutions against high-level individuals involved in corruption, can act as a deterrence against participation in corruption. This will send a clear signal that activists and society generally will not tolerate the impunity with which public resources are being abused.

The anti-corruption legislation in Uganda allows for restitution against victims of corruption. In a public or private prosecution, once a court of law convicts a suspect, Ugandan courts have powers to order compensation against a convict, in favour of victims of corruption.¹³³⁸ This can enable a speedy resolution of a corruption matter before court, as compared to civil proceedings which are expensive to pursue and may result into delays.¹³³⁹ A private prosecutor may also pursue confiscation proceedings against a

¹³³³ [2013] IEHC 321.

¹³³⁴ [2013] IEHC 321.

¹³³⁵ [2013] IEHC 321.

¹³³⁶ Edmonds & Jugnarain (2016) 4.

¹³³⁷ See for example, where private individuals or companies have brought private prosecutions for the protection of their intellectual property rights – See *Regina (Virgin media Ltd) v. Zinga* (2014) EWCA Crim 52. Available at <http://www.bailii.org/ew/cases/EWCA/Crim/2014/52.html>. (accessed on 17 July 2020), or where insurance companies have sued individuals for have filed false insurance claims., see *R(Axa) v. Gatley (2014) & R (Axa) v. Paul Havert* (2015) This to deter the criminal conduct of these individual fraudsters.

¹³³⁸ See sections 35 of the Anti-Corruption Act, 2009., also see Part XVII of the Magistrates Courts Act.

¹³³⁹ Edmonds & Jugnarain (2016) 11.

convict, which may enable a court to undertake an examination on how the convict has benefited from corruption.¹³⁴⁰ This can enable a court to order the confiscation of the proceeds of corruption.¹³⁴¹

In terms of strategic interest litigation, a private prosecution of a high-level person(s) for corruption, may draw attention to the cancer of corruption which the public authorities have ignored. This could enable publicity of the matter which causes a public debate. Consequently, these activities may enable deterrence of corruption in society when the culprits are named and shamed.¹³⁴² The naming and shaming can deter many other potential perpetrators from engaging in corruption.

Compared to public prosecutions, private prosecutions of corruption, especially if pursued by civil society activists, can enable mobilization of better resources, which can lead to a better investigation of corruption matters. This better-resourced investigation can facilitate the finding of good evidence that can enable a conviction of high-profile individuals involved in corruption.

On successfully instituting criminal proceedings and securing a conviction against a suspect in a corruption matter, a private prosecutor may seek for costs incurred in the criminal proceedings from government or the convict.¹³⁴³ In some countries, the costs will be recovered from government regardless of the outcome of the court process.¹³⁴⁴ Unlike in Uganda, when a public prosecutor takes over the private prosecution in the United Kingdom, the private prosecutor can apply to court to recover the costs of the private prosecution up to the stage at which the public prosecutor took over.¹³⁴⁵ The

¹³⁴⁰ See sections 63, 64, 65 & 66 of Anti-Corruption Act, 2009.

¹³⁴¹ Sections 63, 64, 65 & 66 of Anti-Corruption Act, 2009.

¹³⁴² Edmonds & Jugnarain (2016) 10., also see for example, in Uganda in the *Kayihura case*, which enabled a significant decrease of police brutality, when the Police head was private prosecuted for the torture of citizens, together with 7 other senior police officers.

¹³⁴³ See section 195 (1) of the Magistrates Court Act, which provides that "A court may order the payment of costs in any of the following circumstances— (a) to the prosecutor, whether public or private, by a person convicted of any offence by the court".

¹³⁴⁴ In United Kingdom, whether the defendant is convicted or acquitted, the court can award the private prosecutor costs of the criminal proceedings. See section 17 of the Prosecution of offenses Act, 1985.

¹³⁴⁵ Edmonds & Jugnarain (2016) 12.

aforementioned discussion shows that if some of these international best practices are adopted in Uganda, the mechanism of private prosecution could become a powerful anti-corruption tool.

5.8 CHALLENGES TO THE PRIVATE PROSECUTION OF CORRUPTION

There are many challenges private prosecutors may face in the course of gathering evidence to prosecute a corruption matter. Some of the challenges are detailed hereunder.

One of the key challenges of private prosecutions of corruption is financing.¹³⁴⁶ This may not be a challenge if a well-resourced civil society organization is conducting the private prosecution.¹³⁴⁷ It will, however, be a significant challenge if an individual activist took on this duty. This is coupled with the complexity of gathering information that may be used for the private prosecution of a corruption matter.¹³⁴⁸ The investigation of a corruption matter requires significant finance resources and specialized investigation skills, which may not be readily available to an individual citizen.¹³⁴⁹

The Access to Information Act¹³⁵⁰ and the Data Protection and Privacy Act¹³⁵¹ can also present significant challenges for a private prosecutor who intends to collect evidence to institute criminal proceedings against perpetrators of corruption in Uganda. Under Article 41 of the 1995 Constitution and the Access to Information Act, every citizen has a right

¹³⁴⁶ Paragraph 75 of General Comment No. 4 on Article 5 of the African Charter on Human and Peoples Rights, the African Union has encouraged state parties to ameliorate the challenges that private prosecutors may face in enabling accountability for human rights violations.

¹³⁴⁷ For example, AfriForum and Land First Black First have established Private Prosecution Units, in South Africa. For a detailed treatment see Naledi Shange "BLF establishes its own private prosecution" unit" *Times Live* 14 August, 2018., Available at <https://www.timelives.co.za/amp/politics/2018-08-14-blf-establishes-its-own-private-prosecution-unit/> (accessed on 19 November 2020).

¹³⁴⁸ The difficulties of investigating corruption matters have been discussed in detail in chapter 4 of this thesis.

¹³⁴⁹ See chapter 4 of this thesis.

¹³⁵⁰ 2005.

¹³⁵¹ 2019.

to access information in the possession of the state or any organ or agency of the state. A government agency may hold important information that may lead to the successful private prosecution of high-level suspects engaged in corruption, but may cite privacy concerns, in refusing to release that information to a private prosecutor.¹³⁵² For example, the IGG refused to provide information about the wealth declarations of all permanent secretaries of all ministries in Uganda, on the pretext that not only was it expensive to make copies of the wealth declarations forms for the investigative journalists, but also that the permanent secretaries rights to privacy would be violated.¹³⁵³

In related case of *Charles Mwanguhya Mpagi and Izama Angelo v Attorney General*,¹³⁵⁴ two Journalists Charles Mwanguhya Mpagi and Angelo Izama challenged the decision of the Solicitor General before a Magistrates Court, for denying them access to the oil agreements signed between Uganda and Oil Companies. Relying on Articles 41 & 244 of the 1995 Constitution and sections 34(b), 37, 41 & 42 of the Access to Information Act, the Journalists argued that the oil was the property of the people of Uganda and the people had the right to know the contents of the oil agreements. Their suit was dismissed on security and confidentiality grounds.¹³⁵⁵

Conversely, financial institutions including banks may cite the right to privacy and data protections in refusing to avail incriminating evidence to a private investigator working for a private prosecutor on a corruption matter.¹³⁵⁶ These laws however, exempt access to data that is obtained for purposes of criminal proceedings.¹³⁵⁷ Consequently, a private

¹³⁵² See Article 41(1) of the 1995 Constitution., also see section 5 of the Access to Information Act, 2005.

¹³⁵³ Kiyonga D 'Govt sued over wealth declaration' *The Observer* 12 November 2013.

¹³⁵⁴ Miscellaneous Cause No. 751/2007., also available at <https://globalfreedomexpression.colimbia.edu/cases/charles-mwanguhya-magii0izama-angelov-attorney-general-miscellanoues-cause-no-751-200/> (accessed on 18 July 2020).

¹³⁵⁵ Miscellaneous Cause No. 751/2007.

¹³⁵⁶ See, sections 7 (1) & (2) (b) (iii), which provided that "(1) Subject to subsection (2), a person shall not collect or process personal data without the prior consent of the data subject.

¹³⁵⁷ See, section 7 (2) of the Data Protection and Privacy Act, 2019 which provides that "Personal data may be collected or processed a) where the collection or processing is authorized or required by law; or (b) where it is necessary- (iii) for the prevention, detection, investigation, prosecution or punishment of an offence or breach of law"., Also see sections 11(2) (e) (iv) that provides for collection of data from a data subject and section 17 on further processing of data only for a specific purpose.

prosecutor may utilize these provisions to access incriminating information on suspected persons, that may lead to convictions in court. In situations where a financial institution refuses to provide the personal information, a private prosecutor may institute court proceedings for the purpose of having the information released by an order of court, to enable the private prosecution to proceed with sufficient evidence.¹³⁵⁸

5.9 OPPURTUNITIES TO STRENGTHEN PRIVATE PROSECUTIONS

There are many limitations and opportunities to strengthen the right to institute private prosecutions. Private prosecutions are an essential tool to enabling accountability for persons acting with impunity in Uganda. Considering the importance of this mechanism, it ought to be fortified as hereunder.

Private Prosecutors have to incur all the expenses of a private prosecution.¹³⁵⁹ There is no provision in Ugandan law to compensate a private prosecutor for expenses incurred in the private prosecution, if the private prosecution is successful. Considering the private prosecutor is executing a public duty that ought to be executed by the public prosecutor at taxpayer's expense, the private prosecutor ought to be reimbursed with reasonable costs by government. This is not only when the private prosecutor secures a conviction, but also when the accused person is acquitted. This is especially so, if it is a private prosecution of corruption. This approach has been followed albeit, with some alterations, in Namibia,¹³⁶⁰ Seychelles¹³⁶¹ and South Africa.¹³⁶²

¹³⁵⁸ This may be by way of an application under section 37 of the Access to Information Act to a Chief Magistrate. An application to financial institutions can also be made, to enable the production of incriminating evidence to the private prosecutor under sections 7 (2), 11(2) (e) (iv) & 17 of the Data Protection and Privacy Act, 2019.

¹³⁵⁹ Under section 196 of the MCA, the private prosecutor can be penalized in compensation and costs, if the court finds that the private prosecution is frivolous and vexatious.

¹³⁶⁰ See section 15(2) of the Criminal Procedure Act.

¹³⁶¹ See section 290 of the Criminal Procedure Code.

¹³⁶² See section 15(2) of Criminal Procedure Act.

In situations where the DPP takes over a private prosecution, and then exploits the provisions of section 43(1) (b) of the Magistrates Court Act to discontinue the criminal proceedings, there is need for an amendment of this provision. Section 43(1) (b) of the Magistrates Court Act is contrary to Article 120(3) (d) of the Constitution and should be amended. Mujuzi has correctly argued that Article 120(3) of the 1995 Constitution should be amended to require the DPP to seek the consent of a private prosecutor before they takeover and discontinue the criminal proceedings.¹³⁶³

The Magistrates Court Act also does not expressly provide that a juristic person can institute private prosecutions.¹³⁶⁴ This is a limitation to the institution of private prosecutions in the sense that opposing counsel could argue that the law only allows natural persons to institute private prosecutions in Uganda. By the time the court decides that a person includes for both natural and juristic persons, a private prosecutor would have been put to significant expense.¹³⁶⁵ Therefore, section 42 of the Magistrates Courts Act should be amended to clearly state that a "person" includes both natural and juristic persons, as is illustrated under the Interpretation Act.

The other possibility of fortifying this mechanism is to provide for circumstances under which a dissatisfied private prosecutor may appeal a decision of court, once the accused person is acquitted. The current legal frame only allows the DPP to appeal in case the DPP is dissatisfied with the findings of magistrate's court.¹³⁶⁶ Once this legal mechanism is strengthened, it will definitely bolster the fight against corruption, which often involves intricate social networks that may make it extremely difficult to prosecute the suspects in a public prosecution.

¹³⁶³ Mujuzi (2017) 592.

¹³⁶⁴ Mujuzi (2017) 594., also see section 42 of the MCA.

¹³⁶⁵ Section II (uu) of the Interpretation Act, 1976 provides that a "person" to include "any company or association or body of persons corporate or unincorporated".

¹³⁶⁶ See section 204(5) of the Magistrates Court's Act.

5.10 CONCLUSION

The right to institute private prosecution proceedings by an individual or any other legal person is an important tool in ensuring access to justice. It also enables accountability for those who commit criminal acts to be penalized. Private prosecutions can offer quicker and often more effective remedies than public prosecutions.¹³⁶⁷ Private Prosecutions can also offer swifter and more effective remedies than civil proceedings, to victims of crime or individuals or legal entities that intend to pursue the criminals on their behalf.

The mechanism of private prosecution is a powerful legal mechanism that can be deployed against the fight on corruption within both the public and private sector to a great effect. This especially so in an environment where the public institutions charged with the monitoring, investigation and public prosecution of corruption are either weak or have neglected to execute their legal mandate due to political and other influences.

In this chapter, I have conversed the origins of private prosecution. I also reviewed the legislative history of private prosecutions in Uganda. I consequently discussed the limitations of public prosecutions of corruption. I also discussed the current legal framework governing private prosecutions in Uganda. I further examined the possibility of using private prosecutions to curb corruption in Uganda. I also considered why anti-corruption activists may need to deploy private prosecution as an anti-corruption tool in the fight against corruption. This is where institutions charged with the monitoring, investigation and public prosecution of this serious crime are weak or have neglected to execute their obligations due to political or other influences.

In chapter 6, I report the findings and conclusions of the study. I also make recommendations on how private prosecution can be used as an anti - corruption tool in Uganda. This is where institutions charged with this role are frail or have been compromised by the undemocratic environment in which they operate and are situated.

¹³⁶⁷ Edmonds & Jugnarain (2016).

CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

6.1 INTRODUCTION

In the recent past, scholars have not carried out academic studies on the investigation and prosecution of corruption in Uganda. The literature review carried out in respect of this study revealed that recent academic studies in this area are very few. This study has further proved that the investigation and prosecution of corruption in Uganda is politicized, especially in regard to high profile individuals. As a result of the politicization of the anti-corruption efforts, the misuse of public resources has enabled regime survival through the creation of patronage networks all over the country. This study has further found that perhaps the challenges the investigation and public prosecution of corruption face, could be resolved by the institution of private prosecutions against the corrupt. This is especially so, against the high-profile individuals who present significant challenges to the public prosecution machinery in Uganda.

In this chapter 6, I summarize what is discussed in the chapters of the doctoral thesis. This includes chapter 1 which constitutes an overview of the study and the research methodology; chapter 2 which traverses the phenomena of corruption; chapter 3 which discusses the forms of corruption and legal framework governing the investigation and public prosecution of corruption in Uganda, chapter 4 which discusses the institutional framework governing the investigation and public prosecution of corruption in Uganda. In Chapter 5, I analyzed the possibility of using private prosecutions to curb corruption in Uganda. I also examined the limitations of private prosecutions in curbing corruption. The justification for strengthening the mechanism of private prosecution was also explored. This is in view of its possible use to prevent corruption in Uganda. In Chapter 6, I further wrap up the chapters by presenting the overall argument. I, thereafter make practical recommendations that may be implemented to reduce the cancer of corruption in Uganda. The discussion follows hereunder.

6.2 SUMMARY OF MAIN ARGUMENTS OF THE CHAPTERS

6.2.1 THE STUDY AND METHODOLOGY

The background to the study provides evidence that corruption is serious cancer to society. As result, all manner of efforts by the international business community and the United Nations system have enacted non-binding and binding international instruments to curtail corruption.¹³⁶⁸

Under the statement of the problem, the study has shown that whereas there are necessary checks and balances to keep corruption at bay in Uganda. The anti-corruption mechanisms have, however, been compromised by a political leadership that uses patronage politics as a survival strategy. The study was significant because a corruption-free Uganda, can enable a just allocation of public resources. This just delivery of public resources can facilitate a dignified and decent living for every citizen of Uganda.

It is surprising that whereas corruption is a very serious societal problem, very little has been written about it by scholars in Uganda. Recent academic literature on corruption in Uganda is almost non-existent. This study is a humble contribution to this knowledge gap in Uganda.

Due to cultural differences, it has been argued that it is difficult to have a general and specific definition of corruption that is applicable all over the world.¹³⁶⁹ Over the years, there have been ongoing debates on how to define corruption. These debates have occurred amongst interdisciplinary scholars studying corruption.¹³⁷⁰ Some of these scholars were consequently hired as experts to advise the World Bank and Transparency International.¹³⁷¹ These two organisations are engaged in corruption work all over the world. With some level of inclusiveness, a definition was crafted by World Bank and

¹³⁶⁸ Vincke F & F Heimann (eds.), *Fighting Corruption. A Corporate Practices Manual*, 2 ed. (2003)., Also see Argandona A 'The United Nations Convention Against Corruption and its Impact on International Companies' *Working Paper WP* no. 656 (October, 2006) 3.

¹³⁶⁹ Fayed AA 'Researching Corruption: Understanding its key concepts' (2018) *Rule of Law Journal* 2. Also available at <https://doi.org/10.5339/rolacc.2018.11> (accessed 22 March 2019).

¹³⁷⁰ Fayed (2018) 2.

¹³⁷¹ For example, Suzan Rose-Ackerman.

improved on by Transparency International.¹³⁷² As a result of these efforts, the widely used definition of corruption is “the abuse of entrusted power for private gain”.¹³⁷³ This corruption definition has gained acceptability in many quarters, considering that it is backed by these two Eurocentric organisations. Will a better definition of corruption emerge in the near future? Or will more arguments emerge justifying the difficulty of having an all-encompassing definition of corruption, considering the cultural and philosophical differences of societies? Time will tell.

The study set out to review the effectiveness of the legal mechanisms in place to fight corruption in Uganda. The study has found that the legal mechanisms to restrain corruption are inadequate. As a consequence, the study has recommended the creative use of private prosecutions to ameliorate the challenges that the investigation and public prosecution of corruption faces. Doctrinal research methods were used to carry out the study in Uganda.

6.2.2 THE PHENOMENA OF CORRUPTION

The phenomena of corruption and how it creates an unjust society is conversed in chapter 2 of the study. The origin of corruption is examined and is traced to Ancient Egypt, China, Greece and the Roman Empire.¹³⁷⁴ The word “corruption” is retraced to its Latin background to mean to bribe or destroy.¹³⁷⁵ The difficulty of defining corruption has been around since time immemorial. This is because of the cross-cutting nature of research on corruption.¹³⁷⁶ As result of this challenge of defining corruption, there are various schools

¹³⁷² Oberoi R ‘Mapping the Matrix of Corruption’ (2009) 30(4) *History of Political Thought* 596-600., also see Brown E & Cloke J, *Critical Perspectives on Corruption: An Overview*, 7(2), *Critical perspectives on international business*, 116 (2011).

¹³⁷³ Oberoi (2009)., Brown & Cloke (2011).

¹³⁷⁴ MacMullen R *Corruption and the decline of Rome* (1988)., also see Lambsdorff Taube & Schramm (eds.) *The New Institutional Economics of Corruption* (2005) and El-Saady H ‘Considerations on Bribery in Ancient Egypt’ (1998) 25 *Studien Zur Altgyptischen Kultur*, 295-304. Available at <http://www.jstor.org/stable/25152765> (accessed 9 July 2019).

¹³⁷⁵ Harper D Online Etymology Dictionary Available at <https://www.etymonline.com/word/corrupt>. (accessed on 12 July 2019).

¹³⁷⁶ Farrales MJ ‘*What is Corruption? A History of Corruption Studies and the Great Definitions Debate*,’ (2005) San Diego: University of California, at 4. Available at <http://ssrn.com/abstract=1739962> (accessed 8 July 2019).

of thought on what corruption is. These schools of thought, initially included the moralists on one hand and revisionists on the other hand¹³⁷⁷ and they consequently influenced the categorisations of corruption.¹³⁷⁸

The ongoing debate on whether corruption has benefits was examined. This study concludes that the short-term benefits of corruption are eventually outweighed by its long-term negative effects on society.¹³⁷⁹ The key enablers of corruption are also identified as political leaders with questionable morals, which sets the standards for the rest of society on how to conduct themselves. The study finds that society with several unethical leaders like Uganda, will enable corruption to thrive. Several sectors of society will be affected, once corruption overwhelms a society like it has done in Uganda.¹³⁸⁰ Sectors like the political and administrative leadership, economy, health, education, administration of justice, among other key sectors of society will be affected by corruption. This definitely affects the provision of basic social services to Ugandans.

6.2.3 LEGAL FRAMEWORK GOVERNING THE INVESTIGATION AND PUBLIC PROSECUTION OF CORRUPTION IN UGANDA

Under Chapter 3, I examined corruption in Uganda. I noted that British colonial rule lay the foundation for corruption in Uganda.¹³⁸¹ This was through the British colonial policy of indirect rule that the colonialists used to administer the Uganda Protectorate. This indirect rule encouraged the local chiefs to account to the British administrators, but not

¹³⁷⁷ Farrales (2005) 14.

¹³⁷⁸ Farrales (2005) 28.

¹³⁷⁹ Rawls J *A theory of Justice* (1999)., also see You JS *Corruption as Injustice*, San Diego: Annual Meeting of Political Science Association, August 30 September 2 (2007) 21.

¹³⁸⁰ See the work of Kaufmann D, Kraay A & Ziodo-Lobaton P 'Governance Matters' World Bank Research Paper No. 2196 (Washington DC: World Bank, 1999); also see Mauro P 'Corruption and Growth' (1995) 110 *Quarterly Journal of Economics* 681-712.

¹³⁸¹ In his Book, *Uganda Protectorate* Vol. 1 London: Hutchison & Co. Paternoster Row (1902), Sir Harry Johnstone, who was a British Commissioner to Uganda states that he bribed Apollo Kaggwa – a regent to young King Daudi Chwa II - with one hundred heads of cattle to enable the signing of 1900 Buganda Agreement. The signing had stalled for 3 months. The 1900 Buganda Agreement laid out the relationship between Buganda Kingdom and Britain.

to the local citizens of the Uganda Protectorate.¹³⁸² This was in a bid to encourage local chiefs' loyalty to British interests in Uganda. This state of affairs lay the ground for corrupt conduct in public administration in Uganda. Up to now, the current government in Uganda listens and accounts more to the Eurocentric "donors" than it does to its citizens.

I also examined the historical manifestation of corruption since the attainment of self-rule by Uganda. The corrupt governance practices by the Obote I independence Government led to the 1966 crisis, where Milton Obote installed himself as President of the Republic of Uganda.¹³⁸³ The 1966 crisis had been sparked by among other political events, the accusations against three top Obote aides, including Idi Amin who had sold gold that they had obtained in an illegal manner from the Democratic Republic of Congo (former Zaire).¹³⁸⁴ After a period of misrule, Obote was overthrown by his army chief, Idi Amin in January, 1971. Amin cited corruption as one of the 18 reasons for overthrowing his boss, Obote. Amin's rule from 1971 to 1979 was characterised by more corruption. Amin begun by giving Asians private property to his henchmen.¹³⁸⁵ He subsequently declared himself life president of Uganda. Amin also abolished all law-making organs of government. Amin subsequently ruled Uganda by decree. This enabled him to rule Uganda with an iron-hand. In 1979 the Amin regime was overthrown by Ugandan exiles who had been facilitated and organised by the Julius Nyerere government in Tanzania. The short-lived UNLF Government had personalities who were busy jostling for power, to render any attention to corruption. Obote's Uganda People's Congress won the 1980 general elections, which ushered in the Obote II regime. This Obote II government was in power from 1980 to 1985.¹³⁸⁶ As a result of the rebellion led by Yoweri Museveni, the Obote II government was unable to pay any attention to corruption, since it was fighting

¹³⁸² Ruzindana A 'The Importance of Leadership in fighting Corruption in Uganda' in Kimberly AE (ed) *Corruption and Global Economy* (1997) Washington DC: Institute for International Economics.

¹³⁸³ Muhangi B 'Bureaucracy in Uganda since colonial period to present (2015) *International Journal of Sciences: Basics and Applied Research*.

¹³⁸⁴ Muhangi (2015).

¹³⁸⁵ Kanyehamba, GW *Constitutional and Political History of Uganda. From 1894 to Present* (2002) Kampala: Century Publishing House Ltd.

¹³⁸⁶ Yadav V & Mukherjee B *The Politics of Corruption in Dictatorships* (2016) Cambridge: Cambridge University Press.

for its survival against the Museveni rebels.¹³⁸⁷ The Obote II regime was eventually overthrown by its own army officers led by Tito Okello Lutwa.¹³⁸⁸ Okello Lutwa's regime was also short-lived and was eventually overthrown by the Museveni rebels, when the peace talks they had initiated with the Museveni rebels failed.¹³⁸⁹

In the 1980 general elections, the Uganda Patriotic Movement (UPM) led by Yoweri Museveni indicated in its campaign manifesto that it would prioritize corruption once it was elected into power.¹³⁹⁰ When Museveni and his political party lost the 1980 general elections, they launched a rebellion against the Obote II government. Museveni and his group eventually won a guerrilla war and attained political power in 1986. The Museveni regime has not delivered on their 1980 promise of prioritizing the fight against corruption for over 34 years it has run government. The Museveni regime has instead used corruption as a survival tool to sustain itself in power.¹³⁹¹ Since the Museveni regime captured power in 1986, it has been engulfed with numerous corruption scandals.¹³⁹² Consequently, Transparency International has recently named Uganda as one of the most corrupt countries in the whole world.¹³⁹³ The huge amounts of public money lost to corruption that could have facilitated the provision of essential social services has been swindled by a few elite Ugandans. These few elite Ugandans have continued to defraud

UNIVERSITY of the
WESTERN CAPE

¹³⁸⁷ Yadav V & Mukherjee (2016).

¹³⁸⁸ Yadav & Mukherjee (2016).

¹³⁸⁹ Yadav & Mukherjee (2016).

¹³⁹⁰ Ruzindana (1997).

¹³⁹¹ Mwenda A & Tangri R 'Patronage Politics, Donor Reforms, and Regime Consolidation in Uganda' (2005) 104 (416) *African Affairs* 449-467., also see Gumisiriza P *Patronage and the Politics of District/City Creation in Uganda* (2019) in Farazmad A (eds) *Global Encyclopedia of Public Administration, Public Policy and Governance*, Springer, Cham.

¹³⁹² Serunjogi EM 'High profile corruption scandals registered under the NRM' *The Daily Monitor*, February 24 2013 Available at <http://www.monitor.co.ug/news/national/high-profile-corruption-scandals-registered=under-NRM/-/688334/1702448/-/item/2/-/3d9naa/-/index.html> : also see Faller KF 'The system matters: Corruption and Vote Choice in Uganda' (2015) *Commonwealth Politics*, (2015) 53(4) 428, 456., also see Muhangi (2015).

¹³⁹³ In the recently released Corruption Perceptions Index, 2019 Uganda is ranked 137 least corrupt country out of 180 countries, and it scored 28 points out of 100 on the Index. Uganda is the third most corrupt country after South Sudan and Burundi, in the East African region.

the public with impunity. This state of affairs has left many Ugandan citizens without key essential social services.

The study also found that various forms of corruption are discernible in Uganda. These include political corruption, grand corruption and petty corruption. Political corruption has mainly been noticed through the creation of patronage networks with the view of facilitating the Museveni regime's sustenance of power.¹³⁹⁴ The political financing regime is also framed in a manner that facilitates the sustenance of Museveni's regime in power. For example, the electoral campaign financing law does not prescribe limits on how much money candidates spend in elections or limits on donations that a candidate can receive before or during an electoral campaign period.¹³⁹⁵ There is no distinction between the Museveni regime's political party and the government. As a result, public resources are used for partisan political campaigns to further sustain the Museveni regime in power.¹³⁹⁶ Therefore, the illegal use of money during electoral campaigns is a well-established practice in Uganda that requires a comprehensive law to regulate its use.¹³⁹⁷

The study has also found that bribery constitutes the largest form of corruption under grand corruption. This category of corruption is practiced by networks of high-ranking government officials.¹³⁹⁸ Billions of tax payer money have been lost to this category of corruption, because it is very secretive and difficult to unravel by the anti-corruption mechanisms in Uganda. The political will to tackle grand corruption is absent, except for adhoc measures that are introduced when there is public or "donor" outcry on the inaction of government to tackle grand corruption.

¹³⁹⁴ See Barkan J *Uganda: Assessing risks to stability, Center for Strategic & International Studies (CSIS)*. (2011) Available at http://csis.org/files/publications/110623_Barkan_Uganda_web.pdf (accessed on 3 February 2020) and Freedom House *Countries at the Cross-roads* (2012) among other studies.

¹³⁹⁵ Walyemera DM 'Commercialization of Parliamentary Elections in Uganda' (2018) 24(2) *East African Journal of Peace & Human Rights*, 182.

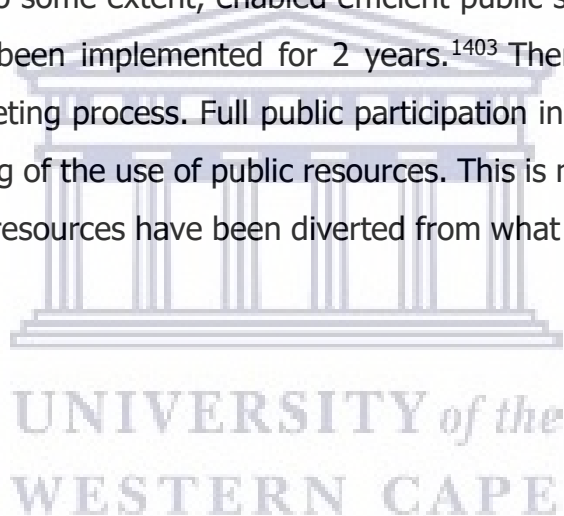
¹³⁹⁶ Walyemera (2018).

¹³⁹⁷ Walyemera DM "*Campaign Finance Regulation and enhanced Governance in Uganda: A Case Study of the 9th Parliament.*" (LLM Thesis, 2016, Makerere University, Uganda).

¹³⁹⁸ Kanyeihamba GW *The Blessings and Joy of being who you are* (2019) Entebbe: Second Impressions. 171., also see Matembe MRK *The Struggle for Freedom and Democracy Betrayed* (2019) Self-publication ISBN: 9789970524006. 176-205.

Uganda has made an attempt to reduce bureaucratic procedures that are fertile ground for petty corruption in the provision of public services. This is in public sectors such as land registration, company registration, payment of taxes, passport acquisition, among other public services.¹³⁹⁹ As a result of the computerisation of the aforementioned services, opportunities for petty corruption have reduced.¹⁴⁰⁰

The study has found that Uganda's public financial management has been improving over a long period of time.¹⁴⁰¹ The improvement in public financial management has been enabled by periodic reform strategies that have been implemented for some time. These reform strategies have, to some extent, enabled efficient public spending in Uganda.¹⁴⁰² The latest strategy has been implemented for 2 years.¹⁴⁰³ There is insufficient public participation in the budgeting process. Full public participation in the budgeting process enables proper monitoring of the use of public resources. This is not the case in Uganda. This is because at times resources have been diverted from what they were budgeted to do.¹⁴⁰⁴



¹³⁹⁹ World Bank *Doing Business 2020* (2019): Comparing Business Regulation in 190 Economies -Economy Profile of Uganda (English) Doing Business 2020. Washington, DC: World Bank Group. Available at <http://documents.worldbank.org/curated/en/348981575375705706/doingd-business-2020-comparing-Business-Regulation-in-190-Economies-Economy-Profile-of-Uganda> (accessed on 28 February 2020).

¹⁴⁰⁰ World Bank (2019).

¹⁴⁰¹ Maira M 'Uganda: Overview of corruption and anti – corruption: The U4 expert answers Transparency International' (2013) 5(379) *Centre for Development Practitioners* 2-27.

¹⁴⁰² For a detailed treatment on the strategies, see for example Public Financial Management Strategy Available at https://www.finance.go.ug/sites/default/files/Publications/PFM%20Reform%20Strategy%202018_2023.pdf (accessed on 18 February 2020).

¹⁴⁰³ Public Financial Management Strategy 2018-2023.

¹⁴⁰⁴ Bukenya B & Muhumuza W "The Politics of core Public Sector reform in Uganda: Behind the Façade" (2017) 15-27. Also see IGG *Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism* (2014).

Uganda has enacted stringent laws, regulations and guidelines on public procurements.¹⁴⁰⁵ This however has not stopped opportunities for corruption prevailing within public procurement, because of the complex procedures involved. It is important to note that public procurements provide the most fertile grounds for political and grand corruption in Uganda.¹⁴⁰⁶ Sometimes, in large public procurements decisions, contracts have been awarded on the basis of political affiliation and networks, as opposed to efficient public expenditure considerations.¹⁴⁰⁷

There have been significant initiatives to curb corruption in Uganda. In fact, Uganda has been widely praised for its admirable anti-corruption legal regime.¹⁴⁰⁸ This is evidenced by the many international, regional and sub-regional anti-corruption initiatives Uganda has signed to and is involved in.¹⁴⁰⁹ The political will to implement this marvellous legal regime is, however, absent.¹⁴¹⁰

At national level, Uganda has launched several strategies and enacted numerous laws, to curb all the categories of corruption conversed in this study.¹⁴¹¹ The most prominent laws among them are the Penal Code Act (PCA)¹⁴¹² and the Anti-Corruption Act (ACA).¹⁴¹³ Both the PCA and ACA provide for offenses and sanctions for corruption and corruption-related

¹⁴⁰⁵ IGG (2014) 27.

¹⁴⁰⁶ GAN Integrity *Uganda Corruption Report* 2017.

¹⁴⁰⁷ GAN (2017).

¹⁴⁰⁸ Transparency International Uganda (2015) *As strong as its weakest link. Stakeholders Perceptions of Ugandan Legal and institutional Anti-Corruption Framework*, Transparency International Uganda: Kampala.,10. Uganda Debt Network (2016) *Overcoming Corruption. Dossier on Corruption in Uganda: 2012-2016*, Kampala, 13.

¹⁴⁰⁹ Uganda is a state party to the UNCAC, AUPCC and a member of the East African Association of Anti-Corruption Authorities (EAAACA).

¹⁴¹⁰ Transparency International Uganda (2015)., also see Uganda Debt Network (2016).

¹⁴¹¹ See for example the National Anti-Corruption Strategy and JLOS Anti-Corruption Strategy.

¹⁴¹² Cap. 120, Laws of Uganda.

¹⁴¹³ 2009.

crimes.¹⁴¹⁴ It is interesting to note however, that the ACA does not define corruption.¹⁴¹⁵ The ACA also describes acts that amount to corruption.¹⁴¹⁶

This study found that some of the offenses provided for by the ACA were drafted and enacted in an overly broad and vague manner contrary to international best practice.¹⁴¹⁷ Among the most offenses that appear on charge sheets that are filed at the Anti-Corruption Court is the offense of abuse of office. This study found that wording of the offense of abuse of office was imprecise and at variance with how the offence of abuse of office is defined under United Nations Convention against Corruption (UNCAC).¹⁴¹⁸ Other offenses like causing financial loss or diversion of public resources, in the ACA were found to have the same vague and imprecise definitions.¹⁴¹⁹ The study found that this imprecision in drafting corruption offenses provides prosecution agencies with a lot of prosecutorial discretion, that can be used for political manoeuvring, to either “save” or to “prosecute” high-level individuals connected to the NRM government. The ACA also provides the Director of Public Prosecutions (DPP) and the Inspectorate of Government (IGG) with broad powers of investigation and prosecution of corruption and corruption-related offenses.¹⁴²⁰ Overall, the study confirmed that with the exception of a few lapses in the drafting of corruption offenses, Uganda has enacted a remarkable anti - corruption legal framework.

6.2.4 THE INSTITUTIONAL FRAMEWORK GOVERNING THE INVESTIGATION AND PUBLIC PROSECUTION OF CORRUPTION IN UGANDA

The aforementioned outstanding legal framework has laid a firm foundation for a robust anti-corruption institutional framework. This institutional framework has both informal

¹⁴¹⁴ See sections 26-35 of the ACA., also see sections 304-313 of the PCA.

¹⁴¹⁵ See section 2 of the ACA.

¹⁴¹⁶ See section 2 of the ACA.

¹⁴¹⁷ For example, see Articles 19, on abuse of functions and Article 20, on illicit enrichment, of the UNCAC.

¹⁴¹⁸ See Article 19 of the UNCAC.

¹⁴¹⁹ Section 6 of the ACA., For this offense, the 2013 Amendment to the ACA, has introduced compensation to the victim of corruption over and above the jail term and a fine. This is by paying “such sum as is considered just by the Court, having regard to the loss suffered by the aggrieved party”., also see section 20(1) of the ACA.

¹⁴²⁰ See sections 33 and 49 of the ACA.

and formal mechanisms. The informal institutional framework is represented by adhoc state house units, civil society and the media. The formal anti-corruption institutions are many, and at times work at cross-purposes.¹⁴²¹ The formal institutions that are relevant to this study include the Uganda Police Force (UPF), IGG and DPP. These are the key public institutions charged with the investigation and public prosecution of corruption in Uganda.¹⁴²²

The study found that the UPF, IGG and DPP have encountered major challenges in the execution of their mandate. A majority of the investigators within the UPF and those attached to the IGG's office do not have the requisite skills to investigate complex corruption cases.¹⁴²³ This state of affairs is worsened when the UPF, IGG and DPP investigate corruption crimes involving high-level individuals. Most times, political influence-peddling gets in the way of the professional investigation and public prosecution of corruption crimes.¹⁴²⁴ This can be evidenced from the flip-flopping that can occur in the investigation and prosecution of corruption crimes involving politicians affiliated to the government.¹⁴²⁵

Whereas both the IGG and DPP have the sole power to prosecute corruption offenses, they can delegate this power to other natural and juristic persons.¹⁴²⁶ Consequently, the IGG and DPP have the sole prerogative to prosecute corruption crimes in Uganda. Other natural and juristic persons can only prosecute corruption with the IGG or the DPP's authorisation.¹⁴²⁷ The study also found that the Uganda Revenue Authority (URA) can

¹⁴²¹ Gumusiriza P & Mukobi R 'Anti-Corruption Institutional Facade in Uganda' (2018) Vol. 15 No. 1 *Uganda Journal of Management and Public Policy Studies*.

¹⁴²² There are several other specialized anti-corruption institutions as seen in chapter 4.

¹⁴²³ Transparency International Uganda (2015).

¹⁴²⁴ Transparency International Uganda (2015).

¹⁴²⁵ Transparency International Uganda (2015).

¹⁴²⁶ See section 49 of the ACA.

¹⁴²⁷ Section 49 of ACA., also see section 42 of the MCA.

prosecute corruption offenses at the Anti-Corruption Court, provided they are related to tax fraud.¹⁴²⁸

The study found that IGG acts as an Ombudsman in Uganda. The IGG's role as Ombudsman has been hampered by the lack of adequate human and financial resources to effectively execute its role.¹⁴²⁹

A code of conduct for leaders was enacted which requires every leader to periodically declare his/her income, assets and liabilities.¹⁴³⁰ Very few leaders have filed the declarations forms with the IGG. The IGG's office does not have the capacity to effectively enforce the Leadership Code Act due to financial and human resource inadequacies.¹⁴³¹ These inadequacies, however, have not stopped the IGG from penalizing some leaders who have failed to fill declarations forms as required by the law.¹⁴³²

The study found that there many challenges in regard to the investigation of corruption in Uganda. These challenges include the following; - First, the lack of security of tenure for the investigators in the IGG's office affects their motivation to work professionally. Secondly, the lack of resources to facilitate the investigations of high-profile corruption cases puts the investigators in a vulnerable situation, where they are susceptible to accepting bribes from "rich" and high-level suspects.¹⁴³³ Thirdly, as a result of the lack of

¹⁴²⁸ Under the High Court (Anti-Corruption Division) (Amendment) (Practice) Directions, 2019, Legal Notice No. 3 of 2019, the Chief Justice under powers entrusted to him, under Article 133(1) (b) of the 1995 Constitution, amended The High Court (Anti-Corruption Division) Practice Directions, 2009, Legal Notice No. 9 of 2009, to include any other offences related to tax fraud. The Chief Justice also designated the Commissioner General, URA or his or her representative as public prosecutors. Article 133 (1) (b) provides that the Chief Justice "may issue orders and directions to the courts necessary for the proper and efficient administration of justice".

¹⁴²⁹ IGG *Bi-Annual Inspectorate of Government Performance Report to Parliament* (2018) 59., Kampala: IGG.

¹⁴³⁰ See Section 3 (1) of the Leadership Code Act.

¹⁴³¹ The Leadership Code Tribunal has been recently constituted and will hopefully ameliorate this situation. See Vision Reporter "Museveni swears in new leadership Code Tribunal" *New Vision*, July 25 2020. Available at <https://www.newvision.co.ug/news/1523355/museveni-swears-leadership-code-tribunal> (accessed on 20 November 2020).

¹⁴³² *Ken Lukyamuzi v Attorney General, Electoral Commission* (Constitutional Appeal No.2 2007) [2010] UGSC 2 (31 March 2010).

¹⁴³³ Transparency International Uganda (2015).

resources to facilitate the investigations, the possibility of securing incriminating evidence from these poorly facilitated investigations by the IGG investigators is in doubt.¹⁴³⁴

The challenges of the police investigators, are not any different from those of the investigators attached to the IGG's office. The DPP's office carries out prosecution-led investigations with the assistance of police, all over the country. The police established an anti-corruption unit to encourage specialization within the Criminal Investigations Department. This attempt at specialization within the police has been hampered by the frequent transfers of police officers from the anti-corruption unit to other police departments. This state of affairs in police investigations has not been helped by the fact that police has very few forensic auditors, handwriting experts and document analysis experts.¹⁴³⁵ The unavailability of expert handwriting reports may lead to the premature dismissal of otherwise strong cases against corruption suspects.¹⁴³⁶ Many corrupt activities are facilitated through the use of information technology. The Uganda police also have very few specialized investigators. Many police investigators are not trained on how to retrieve incriminating evidence in corruption crimes committed using information technology. The study found that in the course of gathering incriminating evidence, the police investigators may not follow the legal procedures for obtaining evidence, which may lead to court disregarding it.¹⁴³⁷

The police investigations of rich and politically-connected suspects are difficult. While police investigators are gathering evidence, they may be attempts at political influence-peddling. For example, by transferring specialized, skilled and professional police investigators to other police departments in the middle of the investigations of high-profile matters.¹⁴³⁸ The study also found that police investigators may also be ordered by

¹⁴³⁴ Transparency International (2015).

¹⁴³⁵ The Uganda Police force has only 3 handwriting experts.

¹⁴³⁶ Transparency International Uganda (2015) 17.

¹⁴³⁷ Transparency International Uganda (2015) 20.

¹⁴³⁸ Transparency International Uganda (2015) 19.

their superiors to present weak evidence to the DPP, which may not hold up during the prosecution of the cases in court.

The study found that as result of the lack of resources, investigation skills and political influence-peddling, the evidence that is presented in court, in public prosecutions is wanting. Consequently, the weak evidence is usually unable to secure convictions for corruption cases. This is so, especially for corruption cases involving high-profile and politically-connected individuals.¹⁴³⁹ The IGG's mandate to effectively prosecute corruption cases is drowned in several challenges. The poor-quality investigations conversed earlier, play a significant part. This work environment within the prosecutor's department in the IGG's office is further exacerbated by a lack of political will to curb corruption. The study found that at times political leaders have used the IGG's prosecutorial discretion to either save ruling party cadres from prosecution or to discipline those who are politically disobedient by prosecuting them on corruption charges.¹⁴⁴⁰

The DPP has similar challenges like the IGG, except for the DPP's investigations that are carried out by the police. The slight advantage the DPP has over the IGG is that both the DPP's and the Uganda Police Force's offices are spread throughout each district in Uganda. This wide reach enables the DPP to investigate and prosecute more corruption cases than the IGG.¹⁴⁴¹ In the prosecution of most high-profile corruption cases, state prosecutors have to take unprofessional directives from their superiors who are political appointments, in order to protect their jobs. The superiors in the DPP's office are at times also taking directives from the political godfathers on what direction the corruption case(s) should take. The study has found that this political influence-peddling has drastically affected the effective public prosecution of corruption in Uganda.¹⁴⁴² The study has also found that the top positions of most anti – corruption institutions are headed by

¹⁴³⁹ Transparency International Uganda (2015)18-20.

¹⁴⁴⁰ Transparency International Uganda (2015) 32-34.

¹⁴⁴¹ Schutte SA, *Specialized anti-corruption courts: Uganda*. Expert Answer 2016:5, Transparency International.

¹⁴⁴² Transparency International Uganda (2015) 32-34.

ruling party cadres. This affects the independent, effective and professional public prosecution of corruption matters.¹⁴⁴³

The staffing within the DPP's office is inadequate, and as result you have overworked state prosecutors.¹⁴⁴⁴ This insufficient staffing is further exacerbated by the low salaries and allowances that the state prosecutors are paid. This study found that the poor remuneration of state prosecutors, is a real challenge to the public prosecution of corruption suspects, most of who are very wealthy and powerful in society.¹⁴⁴⁵

The political will to fight corruption in Uganda is absent. Occasionally when there is public uproar about corruption a few "small fish" will be sacrificed to lend an appearance of a serious fight against corruption, when in reality it is a smokescreen. The "big fish" will continue their corrupt activities with impunity well-knowing that nothing will happen to them.¹⁴⁴⁶

This study also found that although the laws establishing the prosecution agencies in Uganda claim that they are independent, in practice they are not.¹⁴⁴⁷ On several occasions political leaders have publicly directed the agencies what they should in regard to particular cases.¹⁴⁴⁸ This especially so, if high-profile, regime-supporting individuals are involved in corruption cases that are being investigated or prosecuted by the DPP or IGG.¹⁴⁴⁹

An Anti-Corruption Court (ACC) was established to enable specialization and a speedy resolution of corruption cases.¹⁴⁵⁰ The ACC has accelerated the resolution of corruption cases, but has its own staffing and financing challenges.¹⁴⁵¹ The study established that

¹⁴⁴³ For example, the former DPP Mike Chibita.

¹⁴⁴⁴ Transparency International Uganda (2015).

¹⁴⁴⁵ Transparency International Uganda (2015).

¹⁴⁴⁶ Matembe MRK *The Struggle for Freedom and Democracy Betrayed* (2019), Self-publication (Uganda).

¹⁴⁴⁷ Matembe (2019).

¹⁴⁴⁸ Transparency International Uganda (2015) 32-34.

¹⁴⁴⁹ Matembe (2019).

¹⁴⁵⁰ Schutte (2016).

¹⁴⁵¹ Schutte (2016).

although the Anti-Corruption Court has quickened the resolution of corruption cases, many of these cases have stalled on appeal by the convicts. This defeats the very purpose for which the ACC was set up. Consequently, there have been calls for a specialized appeal court for corruption matters, to also enable a quick resolution of matters on appeal.¹⁴⁵²

The investigation and public prosecution of corruption in Uganda are faced with real challenges that require creative legal mechanisms to ameliorate the shortcomings. Perhaps the private investigation and private prosecution of corruption could solve the challenges that public investigation and public prosecution of corruption encounters in Uganda.

6.2.5 PRIVATE PROSECUTION OF CORRUPTION IN UGANDA

The National Objectives and Directives Principles of State Policy of the Constitution of the Republic of Uganda, provides that every Ugandan citizen has a duty to combat corruption, and prevent wastage of public resources, in their individual capacity.¹⁴⁵³ The National Objectives and Directives Principles also state that Ugandan citizens individually or collectively shall use all lawful means to combat corruption and abuse of power by individuals holding political or public offices.¹⁴⁵⁴ These justiciable provisions of the 1995 Constitution lay a firm legal background for citizens in Uganda to individually or collectively take action against corruption.

This study found that the investigation and prosecution of corruption has major challenges. Consequently, one of the creative legal mechanisms that could be deployed to curb the challenges that public prosecution faces, is the private prosecution. The investigation of corruption requires technical and professional skills, in order for a prosecutor to have cogent evidence to secure convictions in court. Without professional investigators to gather sound evidence, the likelihood of securing convictions in corruption

¹⁴⁵² Transparency International Uganda (2015).

¹⁴⁵³ Article 17(d) & (i).

¹⁴⁵⁴ Principle XXVI.

matters, whether in public or private prosecutions is doubtful. Consequently, in the deployment of private prosecutions to curb corruption, a professional, robust and well-facilitated team of private investigators, is necessary. This is to gather good information, that can be used as persuasive evidence in courts of law to secure convictions against the corrupt.

The study also established that Uganda which was a British colony, “adopted” the English legal system in 1902.¹⁴⁵⁵ The English legal system then enabled the introduction of the office of the DPP in Uganda. This was through the enactment of the 1962 Independence Constitution. The DPP was to administer public prosecutions in Uganda. To date the DPP has the overall mandate to institute criminal prosecutions.¹⁴⁵⁶

The study also found that a natural and juristic person can institute a private prosecution in Uganda.¹⁴⁵⁷ It was found that a private prosecutor does not have to seek the authorisation of the DPP to institute a private prosecution, although the DPP has overall the mandate over criminal prosecutions in Uganda. The study also found that the DPP however has powers to take over a private prosecution. The study also found that to avoid abuse of the mechanism of private prosecution, the criminal procedure laws provide for procedural safeguards before a magistrate endorses a charge sheet to commence a private prosecution.¹⁴⁵⁸ In the event a private prosecutor is dissatisfied with a decision of a magistrate’s court, the study found that criminal procedure laws do not provide for appeals by a private prosecutor in Uganda. The study also found a that a private

¹⁴⁵⁵ Section 15(2) of the Order – In – Council, 1902 provides for the reception clause of English laws into Uganda.

¹⁴⁵⁶ The IGG can also institute public prosecutions in specific regard to corruption under section 49 of the Anti-Corruption Act. Other public bodies like the URA can also institute public prosecutions for specialized offences, like tax fraud.

¹⁴⁵⁷ See section 42 of the MCA., For a detailed treatment, see Mujuzi JD (2017). “Strengthening the Right to Institute a Private Prosecution in Uganda by amending Article 120(3) of the Constitution: A comment on Uganda v. Inspector General of Police, General Kale Kayihura and 7 Others,” *African Journal of International and Comparative Law* 25(4) (2017): 590 – 607.

¹⁴⁵⁸ See section 42 & 43 of the MCA.

prosecutor may appeal a magistrate's decision with the authorisation of the DPP. There is no jurisprudence to this effect in Uganda, so far.¹⁴⁵⁹

The study also found that Ugandan law does not provide for grounds under which the DPP or IGG would consider to grant a private prosecutor consent to prosecute a corruption matter. In other commonwealth countries, two tests are applied to decide whether a private prosecution is in public interest.¹⁴⁶⁰ In Uganda, the closest legal provision of "tests" similar to the aforementioned tests that can be applied by the DPP to consent to a private prosecutor, are found in Article 120(5) of the 1995 Constitution. Article 120(5) also provides "public interest" as a key factor in exercising the DPP's criminal prosecutions mandate. Other grounds that the DPP may consider in deciding to exercise his or her mandate are "the interest of administration of justice and the need to prevent abuse of legal process". Perhaps in granting a private prosecutor the consent to institute criminal proceedings against suspects in corruption cases, the DPP would consider these grounds. So far, there is no case law to this effect in Uganda.

The study also found that whereas corruption has increased in Uganda, the anti-corruption mechanisms have not kept pace with these complex crimes. Consequently, the deployment of private prosecution as one of the creative legal mechanisms against corruption can improve on this deteriorating state of public affairs.¹⁴⁶¹ It has been demonstrated that once a corruption suspect is convicted in private prosecution proceedings, the remedies available to the victims of this crime include confiscation of the proceeds of corruption, compensation, and costs incurred in the private prosecution, among other remedies.¹⁴⁶²

¹⁴⁵⁹ See section 204 of the MCA.

¹⁴⁶⁰ The 2 tests, to wit, the *Full Code* and *Public Interest* Tests, emanate from the United Kingdom, as seen in chapter 5 of this thesis.

¹⁴⁶¹ Edmonds T & Jugnarain D "Private Prosecutions: A Potential Anticorruption Tool in English Law" (2016) Open Society Foundations., Available at https://www.justiceinitiative.org/uploads/d95e470e-54e6-4379-89e4-3fc81acafd53/legal-remedies-4-edmonds-jugnarian-20160504_0.pdf (accessed on 9 June 2020) 2.

¹⁴⁶² See for example sections 35 & 63 of the ACA.

In terms of strategic interest litigation, private prosecutions of high-profile individuals for corruption, enables attention to be drawn to the cancer of corruption in Uganda. The publicity that the criminal proceedings could cause a public debate that enables the naming and shaming of culprits involved in corruption crimes, thus deterring others from engaging in this vice.

The study also found that in order to enable the effective use of the creative legal mechanism of private prosecutions to curb corruption in Uganda, it needs to be strengthened. First, the law ought to be amended to have the DPP takeover a private prosecution only with the consent of the private prosecutor.¹⁴⁶³ Secondly, the law needs to expressly provide that a juristic person can institute a private prosecution. Thirdly, private prosecutions ought to be expressly provided for on appeal. As the law is now, a private prosecutor may find significant difficulties, if they are dissatisfied with a court's decision, and intend to appeal to a higher court.

In addition to strengthening public prosecution to efficiently enable accountability for corruption suspects and to achieve maximum effect from the private prosecution of corruption, Civil Society Organisations engaged in anti-corruption work could establish private prosecution units. This is with a specific purpose of prosecuting wealthy business people and prominent politicians, who would otherwise present significant challenges to public investigators and public prosecutors.¹⁴⁶⁴

The study also found that there was efficient conduct of politically-motivated prosecutions on corruption. The study also found that there was robust prosecution of petty corruption,

¹⁴⁶³ Section 43(1) (b) of the Magistrates Court Act is contrary to Article 120(3) (d) of the 1995 Constitution and should be amended.

¹⁴⁶⁴ The mechanism of private prosecution has been creatively deployed by CSOs in South Africa, to highlight corruption in public spaces. These include AfriForum and Black First Land First, among other CSOs. These private prosecutions of corruption have been criticized by many sectors of the South African public, for being politically motivated.

at the expense of political and grand corruption. The robust prosecution of petty corruption was a smokescreen to show the public that government is fighting corruption.

6.3 RECOMMENDATIONS

6.3.1 SENSITIZATION OF THE PUBLIC ABOUT THE EFFECTS OF CORRUPTION

The civil society and media, as one of the informal anti-corruption mechanisms in Uganda, should periodically craft sensitization and advocacy campaigns about the destructive effects of corruption to society. An excellent legal and institutional anti-corruption framework may not achieve much, if the society within which these efforts are being championed, is ignorant about its negative effects or glorifies the corrupt. The aforementioned state of affairs may further be exacerbated by those seeking public or political leadership positions. When they are appointed to a public office or win an election, and form an impression that it is “their turn to eat”.¹⁴⁶⁵ These media campaigns have been carried out within a population that worships individuals who have attained wealth through the abuse of public resources. It is therefore important for the anti-corruption campaigns to be crafted in a manner that shows society that glorification of corrupt individuals is akin to celebrating and applauding a thief who has cheated you.

6.3.2 DECLARATIONS OF INCOME, ASSETS AND LIABILITIES

The Leadership Code Act should be amended to require presidential appointees to declare their income, assets and liabilities. In a country where almost all political power is vested in the President, it is important to require presidential appointees to subject themselves to the anti-corruption measures in place. This is because the President has powers to appoint numerous political and public servants. It is prudent for an anti – corruption legal framework to cover these categories of public servants. The decision in *Fox Odoi-Oywelowo and James Akampumuza versus Attorney General*,¹⁴⁶⁶ was erroneous. This decision significantly weakened the enforcement of the Leadership Code Act.

¹⁴⁶⁵ Wrong M. *It's our turn to eat: The Story of a Kenyan Whistle Blower*. (2009) Harper.

¹⁴⁶⁶ Constitutional Petition No. 8/2003.

6.3.3 INTEGRITY OF INVESTIGATORS

The integrity of either the police or IGG investigators is an important aspect of ensuring that professional and quality investigations are carried out. This is to enable the gathering of good evidence against suspects. Therefore, it is important that every aspect of the investigator's lives is carefully scrutinized for uprightness, before they are deployed to investigate corruption cases.

6.3.4 INTEGRITY OF WITNESSES IN CORRUPTION PROSECUTIONS

During investigations, any potential witnesses that are to be arraigned before court to support the evidence obtained should be thoroughly assessed by the police or IGG Investigators for integrity. Overlooking the integrity of prosecution witnesses may provide the defense with an opportunity to weaken the prosecution's case.

6.3.5 WHISTLE BLOWERS

It is better to withdraw the charges against the corruption suspects, in view of the repercussions that may be visited on whistleblowers. This is especially in situations where state prosecutors are faced with the impasse of arraigning whistle blowers and police informants as witnesses, in order to secure convictions at all costs. This consequently, blows their covers consequently putting their lives at risk. In the absence of sufficient incentives and in the absence of a witness protection law for the whistle blowers, it is only logical to withdraw the charges. Perhaps related to this whistle blowers' dilemma, is the need for Uganda to urgently enact a comprehensive law on witness protection. This witness protection law will ameliorate the aforementioned challenges that state prosecutors are faced with.¹⁴⁶⁷

¹⁴⁶⁷ The office of the Director of Public Prosecutions launched the Witness Protection Guidelines in the absence of a law to protect witnesses in Uganda. The Uganda Law Reform Commission is working on draft legislation to protect witnesses. The Witness Protection Bill, 2015 is still a work in progress. The Witness Protection Bill, 2015 seeks to establish a Witness Protection Agency and a National Witness Protection Programme to provide protection and safety to witnesses during legal proceedings. For a detailed treatment see Kambale Reagan "The Launch of the Victim's Rights and Empowerment Guidelines and Witness Protection Guidelines" 15 June, 2019. Available at <https://www.dpp.go.ug/index.php/component/k2/item/31-the-victims-s-rights-andempowerment-guide->

Uganda ratified both the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). The aforementioned instruments compel Uganda to put in place mechanisms that ensure the safety of witnesses prevent.¹⁴⁶⁸ Consequently, Uganda is under an international obligation to enact the witness protection law, to protect whistleblowers who are turned into witnesses in corruption cases in judicial proceedings.¹⁴⁶⁹

6.3.6: PROSECUTION-LED INVESTIGATIONS

The state prosecutors should be involved in the investigations of corruption at the commencement of the investigations into a case, to ensure that the investigations yield the strongest possible legal arguments secure convictions. This saves a lot of scarce public resources that enables focused investigations that yield sound evidence.

6.3.7: TEAM WORK IN PUBLIC PROSECUTIONS

Considering the personal risks posed to prosecutors, especially while prosecuting high profile cases, prosecutors should work in teams and share all the information about the case file(s) among themselves. This teamwork dissipates the risks and social pressure that would otherwise be cushioned by only one prosecutor, enabling the prosecution team to work in a more professional manner. This team work in the prosecution of corruption offences also enables the team to have junior and experienced prosecutors which in the long run leads to the transfer of practical skills in the team. This tactic also enables the team to present to court only cases with the strongest evidence. This definitely will increase conviction rates of corruption cases.

[lines-witness-protection-guideline](#). (accessed on 21 November 2020)., also see Parliament of Uganda "Expedite Witness Protection Law" 30 April, 2018. Available at <https://www.parliament.go.ug/news/1393/expedite-witness-protection-law> (accessed on 25 November 2020).

¹⁴⁶⁸ See Article 32 of UNCAC.

¹⁴⁶⁹ See Article 32 of UNCAC.

6.3.8: PROSECUTION'S MEDIA MANAGEMENT IN HIGH PROFILE CORRUPTION CASES

In addition to the advantages that come with working in prosecution teams, the prosecutors may consider the building of their capacity on how to deal with the media in high profile cases. This is in view of the fact that high profile cases attract media attention for both good and bad reasons. The wealthy businessmen and women and prominent politicians may want to use the media to tilt public opinion in their favor. Consequently, the prosecution team(s) that have professional capacity to deal with the media, will definitely deal with such a challenge in a more effective manner. This is compared to prosecution team(s) that have not received any training on how to handle the media during the investigation and prosecution of the corruption cases.

6.3.9: PROSECUTORS PROFESSIONAL AND PERSONAL BEHAVIOR

An overly ambitious prosecutor may approach the investigation and prosecution of a corruption case with the aim of securing a conviction at all costs. This may amount to the persecution of suspects, in the quest to enable further the career of the prosecutor, at the expense of the professional investigation and prosecution of corruption. Overly ambitious prosecutors should be trained to tame their ambition because this challenge could work against the effective prosecution of corruption.

6.3.10: PRIVATE PROSECUTION OF CORRUPTION

The ideal anti-corruption framework for the investigation and prosecution of corruption is that public prosecution agencies mandated with this role should take the lead. This enables the prosecution agencies to gain legitimacy and the trust of the public. The present circumstances in Uganda, however require that the challenges faced by the investigation and public prosecution of corruption be tackled simultaneously with the robust deployment of private prosecution of corruption. This will enable private prosecutors to reinforce the efforts of the public prosecution agencies. This especially so, in cases involving rich businessmen and women and prominent politicians, where the likelihood of political influence-peddling is high.

The creative deployment of private prosecutions in this manner can help relieve social pressure on prosecuting agencies. This as a consequence enables the state prosecutors to deploy their energies where they are most likely to effectively and efficiently prosecute corruption. Consequently, the DPP should come up with practical modalities of enabling private prosecutors institute criminal proceedings against the abusers of public resources. The DPP or IGG should not unnecessarily appear to stifle the private prosecutors' efforts, considering the DPP has overall control of criminal prosecutions in Uganda.

6.3.11: AMENDMENT OF ANTI-CORRUPTION LEGISLATION

Anti-Corruption legislation should be amended to bar convicted political leaders from rejoining elective politics or any other public office. The current sanctions are not punitive enough. Therefore, public servants and leaders engage in corrupt behavior knowing that if they are convicted by courts of law, the implications are minimal.

6.3.12: INDEPENDENCE OF LAW ENFORCEMENT AGENCIES

The independence of law enforcement agencies should be strengthened to resist political-influence peddlers. The key pillars of an independent law enforcement should be embedded in the legal framework establishing these anti-corruption institutions. These include; - first, the security of tenure of the human resource in the institutions. Secondly, the financial independence of the anti-corruption institutions. Lastly, the functional independence of these institutions should be shielded from influence peddlers, to enable them perform a professional job.

6.3.13: INTERNATIONAL COOPERATION ON CORRUPTION

There is an urgent need to strengthen international cooperation on corruption due to the fact that corruption crimes are trans-national. Big Corruption scandals involving regime supporting politicians, rich businessmen/women and corporations, will often involve actors from different countries. Complex channels of money transfer are established in these big corruption scandals by involving transaction lawyers and banks in many countries, including well-known tax havens, that have enacted stringent secrecy laws. These complex international transactions can present significant challenges to

investigators and prosecutors, unless Uganda establishes efficient and effective international cooperation with other anti-corruption and financial intelligence institutions.

6.3.14: SEIZURE OF ILL-GOTTEN PROPERTY

Several corruption convicts have no problem with serving jail time as long the ill-gotten wealth is intact, when they eventually emerge from jail. To avoid this scenario, the assets should be seized, confiscated and forfeited to government. This is to ensure that the corruption convicts do not enjoy the proceeds of their crimes after serving their custodial sentences. Under the Anti - Corruption laws; seizure, confiscation and forfeiture of proceeds of corruption are provided for. The legal procedures are not comprehensive enough. For example, once a convict is sentenced, there is no proper government institution charged with effectively dealing with the proceeds of corruption in Uganda.¹⁴⁷⁰ This renders significant anti-corruption work incomplete, even when culprits are convicted. The legal regime should be redrafted to ensure that persons convicted of corruption do not under any circumstances, enjoy the proceeds of their crimes.

Under the Penal Code Act, the proceeds of corruption were on conviction to be refunded to the victims. Under the current Anti-Corruption Act, a judicial officer has the discretion to order the recovery of assets. This is in addition to a custodial sentence and payment of a fine. There are also no deadlines when the convict should have paid or returned the assets to the victims.¹⁴⁷¹

6.3.15: INSTITUTIONAL FRAMEWORK ON RECOVERY OF THE PROCEEDS OF CORRUPTION

To further strengthen the recovery of assets from corruption, the Public Trustees Act should be amended to enable it have a wider mandate than it presently has.¹⁴⁷² Consequently, the Public Trustees office should be staffed with individuals who have been

¹⁴⁷⁰ The Public Trustee is the institution charged with this mandate has significant structural challenges to effectively implementing their mandate as discussed in chapter 4 of this thesis. Langa S *Who Follows-up the Billions Lost to Corruption? The Execution of Refund Orders Made by the Anti-Corruption Court of Uganda* (unpublished LLM thesis, Makerere University, Uganda 2015).

¹⁴⁷¹ See sections 35 and Part VII of the ACA.

¹⁴⁷² Section 4(5) of the Public Trustee Act, the Public Trustee is forbidden from managing a trust that involves the carrying on of business.

vetted for personal integrity and honesty. The Public Trustees office should also be provided with a sufficient budget to enable it effectively perform its mandate. Among its duties will be to efficiently and effectively manage the property salvaged for the proceeds of crime.

To efficiently manage the seizure forfeiture and confiscation process of the proceeds of corruption, the legal provisions on confiscation notices and orders should be issued prior to judgment. This is to avoid a situation where the proceedings on the case are reopened with objections to the confiscations.

6.3.16: TRANSPARENCY OF EARNINGS OF PUBLIC SERVANTS

The salaries and allowances of public leaders should be periodically published to the general public. This is in addition to declaration of income, assets and liabilities to the IGG.¹⁴⁷³ This provides the general public and anti-corruption agencies with a vital tool to assess whether an individual has acquired illegitimate wealth.¹⁴⁷⁴ A Public servant who fails to explain where she or he acquired her/his wealth beyond the known sources of income that are in the public domain, should forfeit that assets to the state, once they are convicted by a court of law.¹⁴⁷⁵ These transparency measures in the earnings of public servants and politicians should be enhanced with periodic lifestyle audits of these individuals by a dedicated department of the IGG.

6.3.17: DUPLICATION OF ROLES BY PROSECUTION AGENCIES

The investigation and prosecution of corruption has many informal and formal institutions established to pursue the same mandate as seen in chapter 4. To avoid wastage of meagre public resources and duplication of roles, the role of each of the investigation and prosecuting agencies should be clarified. For example, within the formal institutions, the DPP and IGG at times find themselves investigating the same corruption case, and by the

¹⁴⁷³ To fortify life style audits provided for by section 31 of the ACA.

¹⁴⁷⁴ See section 31 on illicit wealth in the ACA.

¹⁴⁷⁵ Section 31 of the ACA provides for these life audits but needs to be enhanced with publication of public officials' salaries and allowances.

time a resolution is reached to relinquish the case to one prosecuting agency, public resources that would otherwise be spent on pursuing another corruption case have been spent on one case. This is wasteful.

6.3.18: POLITICAL WILL TO PREVENT CORRUPTION

Ultimately, the solution to having a political leadership that prioritizes the prevention of corruption, is to elect into government, leaders who understand the grave effects of corruption on society. Considering this study found that the current NRM government uses corruption to sustain itself in power, it is up to the citizens who are fed up with the misuse of public resources to elect a new political leadership into power. This new political leadership may then render effective leadership and support to the legal and institutional anti-corruption framework to execute its obligations to society.

This study found that Uganda has a sound legal and institutional anti-corruption framework, although, the political leaders have deliberately incapacitated its enforcement. Perhaps if the citizens of Uganda are sensitized about how corruption is devastating Uganda, they will make better political choices in electing their political leaders at the periodic general elections.

UNIVERSITY of the
WESTERN CAPE

REFERENCES

BOOKS

Andrew Mwenda & Roger Tangri *The Politics of Elite Corruption in Africa: Uganda in Comparative African Perspective* (2013) USA: Routledge.

Anya Schriffirin *Global Muckraking – 100 Years of Investigative Journalism from Around the World* (2014) New Press.

Arnold A. Rogow & Lasswell D. Harold *Power, Corruption, and Rectitude* (1963) Prentice Hall: New Jersey.

Allan Doig A & Robin Theobald (eds.) *Corruption and Democratization* (2000) London Portland: Frank Cass.

Arnold J. Heidenheimer (ed.) *Political Corruption: Readings in Comparative Analysis* (1970) New York: Holt Rinehart and Winston.

Arnold J. Heidenheimer, Michael Johnston & Victor T. Levine (eds.) *Political Corruption: A Handbook* (1989) New Brunswick, N.J.: Transaction Books.

Aristotle *The Constitution of Athens* (1891) London: Seeley and Co. Limited.

Benjamin J. Odoki *A Guide to Criminal Procedure in Uganda* (2011) Kampala: LawAfrica.

Benjamin Odoki *A Guide to Criminal Procedure in Uganda* 3rd ed. (2011) Kampala: Law Development Centre.

Bryan A Garner *Black's Law Dictionary* 9th ed. (2009) West.

Carl Joachim Friedrich *Limited Government: A comparison* (1974) New Jersey: prentice Hall.

Constant Okello-Obura *Effective records and information management as a catalyst for fighting corruption* (2012) Pretoria: University of South Africa Press.

Donald Anthony Low *Buganda in Modern History* (1974) London: Weidenfeld and Wicolson Press.

Donatella Della Porta and Aleberto Vannucci *Corrupt Exchanges: Actors, Resources and Mechanisms of Political Corruption* (1999) New York: Walter de Gruyter Inc.

Edward C. Banfield *The Moral Basics of Backward Society* (1958) USA: Free Press.

Francis Vincke and Fritz Heimann (eds.) *Fighting Corruption. A Corporate Practices Manual 2 ed* (2003) Paris: International Chamber of Commerce.

George W. Kanyeihamba *Constitutional and Political History of Uganda. From 1894 to Present* (2002) Kampala: Century Publishing House Ltd.

George W. Kanyeihamba *The Blessings and Joy of being who you are* (2019) Entebbe: Second Impressions.

Gianluca Fiorentini & Sam Peltzman, (1995): *The Economics of Organized Crime*, Cambridge University Press.

Harry Johnstone *Uganda Protectorate* (1902) Vol. 1 London: Hutchison & Co. Paternoster Row.

International Bible Society, *The Holy Bible* (2005) Today's New International Version Michigan: The Zondervan Corporation.

Jacqueline Martin *The English Legal System* 5 ed (2010) Hodder Education.

James C. Scott *Comparative Political Corruption* (1972) Englewood Cliffs NJ.: Prentice-Hall.

John Madinger *Money-Laundering: A Guide for Criminal Investigator* 3rd ed (2012) Boca Raton: Taylor & Francis Group LLC.

John Rawls *A theory of Justice* (1999) Oxford: Oxford University Press.

JLOS *The Uganda Criminal Justice Bench Book* 1st ed (2017) Kampala: LDC.

Johann Lambsdorff, Mathias Schramm & Markus Taube *The New Institutional Economics of Corruption* (2005) London: Routledge.

Kautilya *The Arthashastra* (1991) New Delhi: Penguin Books.

Karl Marx *The Communist Manifesto* (2012) Jeffrey C. Isaac (ed.) Yale University Press. JSTOR, www.jstor.org/stable/j.cctt5vmx2.

Law Development Centre, *The Uganda Criminal Justice Bench Book* 1st ed (2017) Kampala: LDC.

Lee Kwan Yew *From Third World to First: The Singapore Story: 1965-2000* (2000) Harper.

Martin J. Bull & James Newell *Corruption in Contemporary Politics* (2003) London: Palgrave Macmillan.

Maxwell Adjei *Poverty in Africa: Causes, Solutions and the Future* (2017) Saarbrücken, Germany: LAP LAMBERT Academic Publishing.

Milan W. Svobik *The Politics of authoritarian rule* (2012) Cambridge: Cambridge University Press.

Michela Wrong *It's our turn to eat: The Story of a Kenyan Whistle Blower* (2009) Harper Collins.

Miria K. Matembe *The Struggle for Freedom and Democracy Betrayed* (2019) Kampala: Self-publication ISBN: 9789970524006.

Patrick Loch Otieno Lumumba *Handbook on Criminal Procedure in Kenya* (2002) Nairobi: African Book Collective Ltd.

Paulo Montalban, *Paradise Papers: Offshore Investment of the Rich and Powerful*, 1st ed (2017) Lulu.com.

Ramsay MacMullen *Corruption and the decline of Rome* (1988) Yale University Press.

Robert Neild *Public Corruption: the dark side of social evolution* (2002) Anthem Press.

Robert Klitgaard *Controlling Corruption* (1988) California: University of California Press.

Robert Williams *Political Corruption in Africa* (1987) Dartmouth Publishing Co. Ltd: London.

Robin Theobald *Corruption, Development and Underdevelopment* (1990) Durham: Duke University Press.

Mark Robinson *Corruption and Development* (1998) London Portland: Franck Cass.

Musa Ssekana *Criminal Procedure and Practice in Uganda* (2010) Kampala: LawAfrica.

Ronald C. Wilson *Ancient Republicanism: its struggle for liberty against corruption* (1989) Peter Lang Inc., International Academic Publishers.

Samuel P. Huntington *Political Order in Changing Societies* (1968) Yale University Press: United States.

Stanislav Andreski *The African Predicament: A study in the Pathology of Modernization*, (1968) London: Michael Joseph.

Susan Rose – Ackerman *Corruption and Government: Causes, Consequences and Reform* (1999) Cambridge University Press.

Susan Rose-Ackerman *Corruption: A Study in Political Economy* (1978) New York: Academic Press.

Syed Hussein Alatas *The Sociology of Corruption* (1968) Singapore: Donald Moore Press.

Syed Hussein Alatas *Corruption: Its Nature, Causes and Functions* (1990) Kuala Lumpur: Gower Pub. Co.

United Nations Office on Drugs and Crime (UNODC) *Police Handbook on Police Oversight Accountability, Oversight and Integrity* (2011) Criminal Justice Handbook Series, New York: United Nations.

Vineeta Yadav & Bumba Mukherjee *The Politics of Corruption in Dictatorships* (2016) New York: Cambridge University Press.

CHAPTERS IN BOOKS

Arvind K. Jain "Power, Politics and Corruption" in Arvind K J (ed.) *The Political Economy of Corruption* (2001) London and New York: Routledge.

Andrea Appolloni & Jean-Marie Mushagalusa Nshombo "Public Procurement and Corruption in Africa: A literature Review" in: Decaloris F., Frey M. (eds) *Public Procurement's Place in the World. Central Issues in Contemporary Economic Theory and Policy* (2014) London: Palgrave Macmillan.

Augustine Ruzindana "The Importance of Leadership in fighting Corruption in Uganda" in Kimberly AE (ed) *Corruption and Global Economy* (1997) Washington DC: Institute for International Economics.

Peter Euben "Corruption" in Terrence Ball, James Farr and Russell Hanson (eds) *Political Innovation and Conceptual Change* (1989) Cambridge: Cambridge University Press.

Martine Boersma "Corruption: A violation of human rights and a crime under International Law? (2012) Intersentia, Cambridge, Chapter VIII.

Mark Philp "Defining Political Corruption" in Heywood, P (ed.) *Political Corruption* (1997).

Michael Johnston "The Definitions Debate: Old Conflicts in New Guises" in Arvind KJ (ed.) *The Political Economy of Corruption* (2001) London and New York: Routledge.

Morris Szeftel "Corruption and the Spoils System in Zambia" In Michael C (ed.) *Corruption: Causes, Consequences and Control* (1983).

Nathaniel H. Leff "Economic Development Through Bureaucratic Corruption" in Ekpo MU (ed.) *Bureaucratic Corruption in Sub-Sahara Africa: Towards a Search for Causes and Consequences* (1979) Rowman & Littlefield.

Jacob Van Klaveren "The Concept of Corruption" in Heidenheimer AJ (ed.), *Political Corruption: Readings in Comparative analysis* (1970) New York: Holt Rinehart and Winston.

Jyotika Ramaprasad, Deqiang Ji, Ruiming Zhou, Fernando Oliviera Paulino, Svetlana Pasti Dmitry Gavra, Herman Wasserman & Musawenkosi Ndlovu "Ethics – Ideals and Realities" in Pasti S & Ramaprasad J (eds.) *Contemporary BRICS Journalism – Non-Western Media in Transition* (2018) London/New York: Routledge.

Tanja Bosch, Raquel Paiva & Joao Paulo Malerba "Community Radio for the Right to Communicate – Brazil and South Africa" in Pasti, Svetlana and Ramaprasad, Jyotika (eds.) *Contemporary BRICS Journalism – Non-Western Media in Transition* (2018) London/New York: Routledge.

JOURNAL ARTICLES

Adrian Blau 'Hobbes on Corruption' (2009) 30(4) *History of Political Thought* 596-616.

Anne Peters "Corruption as a Violation of International Human Rights" (2018) 29 (4) *The European Journal of International Law* 1251-1287.

Ahmed Alaa Fayed 'Researching Corruption: Understanding its Key Concepts' (2018) Vol. 11, *Rule of Law and Anti - Corruption Journal* 1-8.

Ahmed Fayed 'Understanding Corruption: Tackling its Multidisciplinary Nature' (2016) (2) 3 *Middle East Review of Public Administration* 1-18.

Alberto Ales & Rafael Di Tella (1997): 'The New Economics of Corruption: A Survey and Some New Results' *Political Studies XLV*, 496 – 515.

Ama Eyo 'Corruption and the Challenge to Sustainable Public Procurement (SSP): A Perspective on Africa' (2017) 12 (3) *European Procurement & Public Private Partnership Law Review*, 253-265.

Anne O. Krueger 'The Political Economy of Rent-Seeking Society' (1974) 64 *American Economic Review* 291-303.

Andrei Shleifer & Robert W. Vishny 'Corruption' (1993) 108(3) *Quarterly Journal of Economics* 599-617.

Antonio Argandoña 'The United Nations Convention Against Corruption and its Impact on International Companies' (2007) 74(4) *Journal of Business Ethics* 481.

Beata S. Javorcik & Shang-Jin Wei 'Corruption and cross-border investment in emerging markets: Firm-level evidence' (2009) 29 *Journal of International Money and Finance* 605-624.

Becker S. Gary and Stigler J. George 'Law Enforcement, Malfeasance, and Compensation of Enforcers' (1974) 3 (1) *The Journal of Legal Studies* 1-18.

Benard Muhangi 'Bureaucracy in Uganda since colonial period to present (2015) *International Journal of Sciences: Basics and Applied Research* 103-116.

Caroline Van Rijckeghem & Beatrice Weder 'Bureaucratic Corruption and the rate of temptation: do wages in the civil service affect corruption, and by how much?' (2001) 65(2) *Journal of Development Economics* 307-331.

Colin Leys 'What is the Problem about Corruption?' (1965) 3 (2) *The Journal of Modern African Studies* 215-230.

Charles Kizza Wamara 'Corruption in Uganda: Does this have anything to do with Social Work?' (2017) 2 (52) *Journal of Human Rights and Social Work* 52-61.

Christopher Bliss & Rafael Di Tella 'Does Competition kill Corruption?' (1997) 105 (5) *Journal of Political Economy* 1001-1023.

David H. Bayley 'The Effects of Corruption in a Developing Nation' (1966) 19(4) *Western Political Quarterly* 719-732.

Daniel Kaufmann 'Corruption: The Facts' (1997) 107 *Foreign Policy* 114:131.

Daniel Levy 'Price adjustment under the table: Evidence on efficiency-enhancing Corruption' (2007) 23 (2) *European Journal of Political Economy* 423.

Daniel M. Walyemera 'Commercialization of Parliamentary Elections in Uganda' (2018) 24(2) *East African Journal of Peace & Human Rights* 182-202.

Ed Brown & Jonathan Cloke 'Critical Perspectives on Corruption; Tracking the Empirical Evidences and Tailoring Responses' (2013) 49(2) *Journal of Asian and African Studies* 187.

Gerald E. Caiden & Naomi Caiden 'Administrative Corruption' (1977) 37 *Public Administration Review* 295-306.

Gino J Naldi & Konstantinos D. Magliveras "African Court of Justice and Human Rights: A Judicial Curate's Egg" (2012) 9 *International Organizations Law Review* 383-449

Godfrey Mbabazi and Jun Yu Pyeong 'Patronage driven corruption undermining the fight against poverty in Uganda' (2015) 7 (1) *African Social Science Review* Article 53-70.

Godfrey Musila 'The right to an effective remedy under the African Charter on Human and Peoples Rights' (2006) 6 *African Human Rights Law Journal* 442-464.

Green Elliot 'Patronage, District Creation and Reform in Uganda' (2010) 45 (1) *Studies in Comparative International Development* 83-103.

Hassan El-Saady 'Considerations on Bribery in Ancient Egypt' (1998) 25 *Studien Zur Altgyptischen Kultur* 295-304.

Ilias Bankekas, "Corruption as an International crime and a crime against humanity: An outline of Supplementary Criminal Justice Policies," in (2006) *Journal of International Criminal Justice* 4 (3) 466-484.

Ivar Kolstad & Anne Wiig 'Is Transparency the key to reducing corruption in resource rich countries?' (2009) 37(3) *World Development* 521-532.

Jamil D. Mujuzi 'Strengthening the Right to Institute a Private Prosecution in Uganda by amending Article 120(3) of the Constitution: A comment on *Uganda v. Inspector General of Police, General Kale Kayihura and 7 Others*' (2017) 25(4) *African Journal of International and Comparative Law* 590-607.

Jamil D. Mujuzi 'Private Prosecution of environmental offences under the South African National Environmental Management Act: Prospects and Challenges' (2016) 29(1) *South African Journal of Criminal Justice* 24-43.

Jamil D. Mujuzi 'The right to institute a private prosecution: A comparative analysis' (2015) *International Human Rights Law Review* 222- 255.

Jamil D. Mujuzi 'Private Prosecutions and discrimination against juristic persons in South Africa: A comment on *National Society for the prevention of cruelty to Animals V Minister of Justice and Constitutional affairs & Another*' (2015) 15(1) *African Human Rights Law Journal* 580-595.

Jamil D. Mujuzi 'The right to institute a private prosecution: A comparative analysis' (2015) 4(2) *International Human Rights Law Review* 222-255.

Jamil D. Mujuzi 'Private Prosecution as a local remedy before the African Commission on Human and People's Rights' (2019) 19 *African Human Rights Law Journal* 26-42.

Jamil D. Mujuzi 'Private prosecution in Singapore: understanding locus standi and measures in place to minimize abuse' (2018) 44 (2) *Commonwealth Law Bulletin* 205-226.

Joe Khamisi *Kenya: Looters and Grabbers: 54 Years of Corruption and Plunder by the Elite* (2018) Texas, USA: Jodey Book Publishers.

Joseph S. Nye "Corruption and Political Development: A cost – benefit Analysis," (1967) 61 (2) *The American Political Science Review* 417-427.

Julie K. Faller 'The system matters: Corruption and Vote Choice in Uganda' (2015) 53(4) *Commonwealth Politics* 428-456.

Lindsey Carson 'Institutional Specialization in the Battle against Corruption: Uganda's Anti-Corruption Court' (2015) 3 (1) *The Public Sphere, Journal of Public Policy* 13-15.

M. McMullan 'A Theory of Corruption' (1961) 9(2) *Sociological Review* 181-201.

Mushtaq H. Khan 'A Typology of Corrupt Transactions in Developing Countries' (1996) 27 (2) *IDS Bulletin* 12-21.

Mwenda Andrew and Roger Tangri 'Elite Corruption and Politics in Uganda," (2011) 46 (2) *Commonwealth and Comparative Politics* 177-149.

Niki Den Nieuwenboer & Muel Kaptein 'Spilling Down into Corruption: A Dynamic Analysis of the Social Identity Processes That Cause Corruption in Organizations to Grow' (2008) 83(2) *Journal of Business Ethics* 133-146.

Olatunde Julius Otusanya OJ 'Corruption as an obstacle to development in developing countries: a review of literature' (2011) 14 (4) *Journal of Money Laundering Control* 387-422.

Paul J. Zak and Stephen Knack 'Trust and Growth' (2001) 111 (470) *The Economist Journal* 295-321.

Paulo Mauro 'Corruption and Growth' (1995) 110 (3) *Quarterly Journal of Economics* 110 (3) 681-712.

Pius Gumisiriza *Patronage and the Politics of District/City Creation in Uganda* (2019) in Farazmad A (eds) *Global Encyclopedia of Public Administration, Public Policy and Governance*, Springer, Cham.

Pius Gumisiriza & Mukobi Robert 'Effectiveness of Anti-Corruption Measures in Uganda' (2019) (2) 8 *Rule of Law and Anti-Corruption Center Journal* 1-8.

Pius Gumisiriza & Robert Mukobi 'Anti-Corruption Institutional Facade in Uganda' (2018) 15 (1) *Uganda Journal of Management and Public Policy Studies* 91-105.

Pranab Bardhan 'Corruption and Development: A Review of the issues' (1997) 35(3) *Journal of Economic Literature* 1320 - 1346.

Robert O. Tilman 'Emergence of Black-Market Bureaucracy: Administration, Development and Corruption in the New States' (1968) 28(5) *Public Administration Review* 437-444.

Roopinder Oberoi 'Mapping the Matrix of Corruption' (2009) 30(4) *History of Political Thought* 596, 600.

Sanjeev Gupta, Hamid Davoodi & Rosa Alonso-Terme R 'Does Corruption Affect Income Inequality and Poverty?' (2002) 3 *Economics of Governance* 23-45.

Thomas Carothers 'Rule of Law Revival' (1998) 77 (2) *Foreign Affairs* 95-106.

Wilson B. Asea 'Combating political corruption in Uganda: Colossal challenges for the church and the citizens' (2018) 74(2) *HTS Teologiese studies/Theological Studies* 4535.

INTERNATIONAL INSTRUMENTS

Basic Principles on the Role of Lawyers, adopted by the United Nations Congress on the Prevention of Crime and Treatment of Offenders, 27 August – 7 September, 1990.

Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly Resolution 34/169 of 17 December 1979.

Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979.

International Convent on Civil and Political Rights, 1966.

International Covenant on Economic, Social and Cultural Rights, 1966.

Manual of Practical Measures on Corruption, 1990.

Rome Statute of the International Criminal Court, 1998 (as amended).

The International Code of Conduct for Public Officials, adopted by the United Nations General Assembly Resolution 51/59 in 1996.

The International Code of Conduct for Public Officials, 1996.

United Nations Declaration on Crime and Public Security, adopted by the United Nations General Assembly Resolution 51/60 of 28 January, 1997.

REGIONAL INSTRUMENTS

African Charter on Democracy Elections and Governance, 2007.

African Charter on Human and Peoples Rights, 1981.

African Union Convention on Preventing and Combating Corruption, adopted by the African Union in Maputo, on July 2003.

General Comment No. 4 on the African Charter on Human and Peoples Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5).

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights

SUB – REGIONAL INSTRUMENTS

Treaty on the Establishment of the East African Community, 2000.

STATUTES

Brazil

The Constitution of the Federative Republic of Brazil, 1988 (as amended).

Ethiopia

The Criminal Procedure Code Act of Ethiopia, Proclamation No. 185/1961.

Gambia

The Constitution of the Republic of The Gambia, 1997.

Kenya

Criminal Procedure Code Act, Cap 75 (As amended in 2015).

The Constitution of Kenya, 2010.

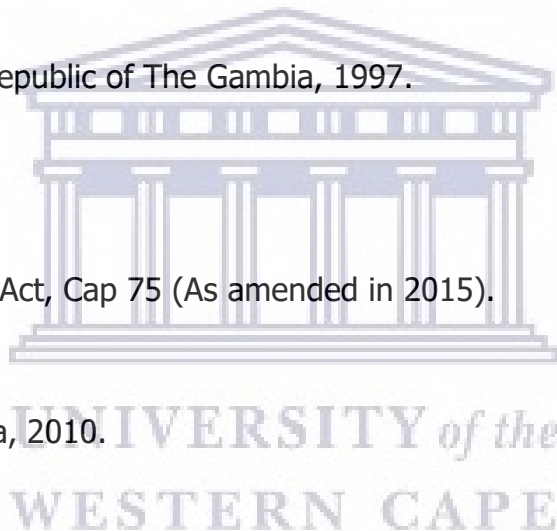
Rwanda

Code of Criminal Procedure.

Organic Law on Genocide Proceedings, 1996.

South Africa

Criminal Procedure Code Act, No. 51 of 1977.



Singapore

Criminal Procedure Code, Act 15 of 2010.

Uganda

Statutes

Anti-Money Laundering Act, 2013.

Anti-Money Laundering (Amendment) Act No.3 of 2017.

Companies Act, Act No. 1/2012.

Computer Misuse Act No. 2 of 2011.

Constitution of the Republic of Uganda, 1995 (as amended).

Data Protection and Privacy Act, 2019.

Fish Act Cap.197 of 1970.

Interpretation Act, Chapter 3 of 1976.

Inspectorate of Government Act Chapter 167.

Local Government Act, Cap 243 (as amended).

National Social Security Fund Act, Cap. 222 of 1985.

Official Secrets Act Cap. 302.

Parliamentary Elections Act, 2001 (as amended).

Political Parties and Organizations Act, Act No. 2 of 2010 (as amended).

Prevention and Prohibition of Torture Act, Act No. 3 of 2012.

Public Finance Management Act, Act No. 3 of 2015.

Presidential Elections Act, 2005 (as amended).

The Access to Information Act, Act. No. 5 of 2005.

The Budget Act, 2001.

The Evidence Act, Cap 6, Laws of Uganda

The Leadership Code Act, 2002.

The Magistrate Court Act, Cap 16.

The Anti-Corruption Act, 2009.

The Penal Code Act, Cap 120, Laws of Uganda.

The Public Finance and Accountability Act, 2003.

The Public Procurement and Disposal of Public Assets Act, Act No. 11 of 2011.

The Whistle Blowers Act, 2010.

Trial on Indictments Act, Cap. 23.

Judicial Service Act Public Service Act, 1997.

Ratification of Treaties Act, Cap 204.

Rules & Regulations

Uganda

Access to Information Regulations SI 17/2011.

Statutory Instrument 161-1, Laws of Uganda under Administrator General's Act.

Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules Statutory Instrument No. 31/2019.

The Judicial Service (Complaints and Disciplinary Proceedings) Regulations, 2005.

The Magistrates Courts (Appointment of Public Prosecutors) Instrument.

The High Court (Anti-Corruption Division) Practice Directions, 2009, Legal Notice No. 9 of 2009.

The High Court (Anti-Corruption Division) (Amendment) (Practice) Directions, 2019, Legal Notice No. 3 of 2019.

United Kingdom

Prosecution of offenses Act, Cap. 23 of 1985.

Zimbabwe

The Criminal Procedure and Evidence Act, Chapter 9:07 of Zimbabwe.

CASES

INTERNATIONAL COURTS

International Criminal Tribunal for the former Yugoslavia

ICTY Prosecutor v. Tadic, Interlocutory Appeals Decision on Jurisdiction (2 Oct. 1995)

REGIONAL COURTS

African Commission on Human and People's Rights

Jawara v The Gambia (2000) AHRLR 107 (ACHPR 2000)

Zimbabwe Human Rights NGO Forum v Zimbabwe (2006) AHRLR 2006).

East African Court of Justice

Ronald Ssemuusi v Attorney General of the Republic of Uganda Reference No. 16/2014.

COUNTRIES

Canada

Solomenstsev c. Granit depot inc. (6265804 Canada inc.) 2010 QCCQ 811 (CanLII) para 39.

Ireland

Kelly and Another versus District Court Judge Ryan [2013] IEHC 321.

Kenya

Dr. Christopher Ndarathi Murungaru v Kenya Anti-Corruption Commission and Hon. Attorney General [2006] eKLR.

Republic v Director of Public Prosecutions & Another Ex-Parte Communications Commission of Kenya [2014] eKLR 1.

Richard Kamani & M. Maina v Nathan Kahara Kenya High Court Criminal Revision No. 11/1983.

Tanzania

The Municipal Council of Dar-es-Salaam v AB De P Almeida and 3 Others [1957] 1 EA 244

Singapore

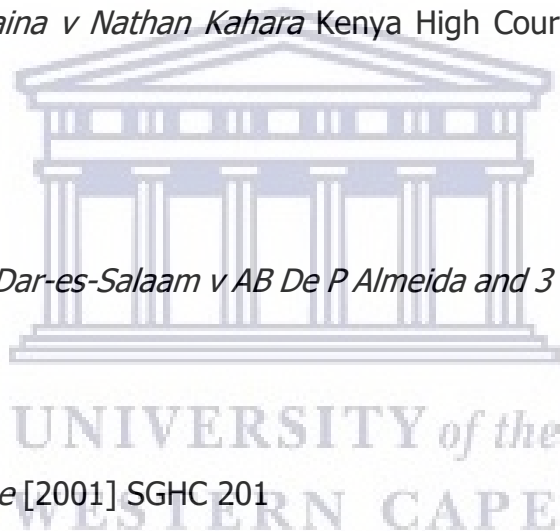
Cheng William v Loo Ngee [2001] SGHC 201

South Africa

National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development (20781/2014) [2015] ZASCA 206 (4 December 2015).

Uganda

Abubaker Kakyama Mayanja v Republic [1960] EA 23.



Aboneka Micheal & Another v. Attorney General (High Court Miscellaneous Cause No. 367/2018) [2019] UGHCCD 188(16 August 2019).

ACP Bakaleeke Siraji v Attorney General (Miscellaneous Cause No. 212 of 2018) [2019] UGHCCD 4 (27 February 2019).

Ahmed Kawoza Kangu v Bangu Aggrey & Another Supreme Court Civil Application No. 4/2007.

Akankwasa Damian v Uganda Constitutional Court Reference No. 5/2011.

Alinyo v Republic (1974) EA 544.

Attorney General v Tinyefuza Constitutional Appeal No. 1 of 1997.

Attorney General v Shah [1971] EA 50.

Attorney General v Walugembe Daniel, Court of Appeal Miscellaneous Application No. 390/2018.

Baligobye Jamada & 2 Others v Attorney General & 3 Others High Court Miscellaneous Cause No. 376/2019.

Biira Esther Kabaseke Kule v Uganda/DPP & Another High Court Miscellaneous Application No. 1261/2018.

Behangana & Another v Attorney General (Constitutional Petition No. 53 of 2010) [2015] UGCA 6 (12 October 2015).

Busiku v Uganda Supreme Court Criminal Application No. 33/2011.

Buwembo & Others v Attorney General Constitutional Reference No. 1/2008, 13.

Charles Mbire & 12 Others v Uganda HCT-00-CR-CV-0015/2012.

Charles Mwanguhya Mpagi and Izama Angelo v Attorney General Miscellaneous Cause No.751/2007.

Dimanche Sharon & Others v Makerere University ((Constitutional Cause No.1 of 2003))

David Wesley Tusingwire v The Attorney General Constitutional Petition No. 2 of 2013.

Dr. Tiberius Muhebwa v Uganda (Constitutional Reference No. 09 of 2012 (Arising from CSC No. 209 of 2011)) (14 February 2014).

Edward Sekyewa v National Forestry Authority High Court Miscellaneous Cause No. 73/2014.

Francis Atugonza v Uganda Constitutional Court Constitutional Reference No.31/2010.

Fox Odoi Oyelowo & James Akampumuza v Attorney General Constitutional Petition No. 8/2003.

Electoral Commission versus Action Party & 10 Others Miscellaneous Cause No. 296/2013.

Gabula Benefansio v Wakidalu Meraso High Court Civil Appeal No. 29/2006.

Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd Supreme Court Civil Application No. 8 of 2017.

Gamalalieri Mubito v Republic [1961] EA 224.

GM Combined (U) Ltd v AK Detergents (U) Ltd (1992)2 EA 94.

Godfrey Kirumira Kalule v J.S.F Development (Misc. Application No. 1878 OF2018) [2019] UGHCLD 41 (8 JULY 2019).

Greenwatch (U) Ltd v Attorney General High Court Civil Suit No. 139/2001.

Green Watch & Another V. Golf Course Holdings Limited HCMA NO. 390/2001.

Male Mabirizi & Others versus Attorney General (Consolidated Constitutional Appeals No. 2,3 and 4/2019).

Machumbi Gasasira v Uganda Constitutional Reference No. 11/2011.

Mbiika Dennis v Centenary Bank (LABOUR DISPUTE CLAIM NO.023 OF 2014) [2018] UGIC 11 (20 July 2018).

Mugume & 5 Others versus Attorney General and Another (Constitutional Application No. 5 of 2015) [2016] UGCC 8 (26 April 2016).

Musinguzi v Amama Mbabazi & Another (Electoral Petition No. HCT -05/2001) [2002] UGHC 1 (5 February, 2002).

NAPE v AES Nile Power High Court Miscellaneous Cause No. 268/1999.

Nsimbe Holdings Ltd v The Attorney General & Another Constitutional Petition No 2 of 2006, [2007] UGCC 4 (6 November 2007).

Hassan Bassajabalaba v Kakande Bernard High Court Criminal Revision No. 02/2013. (arising from Bug. Rd. Misc. Application No. 22/2013).

Honourable Abdu Katuntu v Kirunda Kivenjinja and the Electoral Commission Election Petition No. 13/2006.

Honourable Alice Asianut Alaso v Electoral Commission & Hellen Adda Election Petition No. 5/2016.

Hon. Jim Muhwezi v Attorney General & Another Miscellaneous Application No.18 OF 2007)) [2007] UGCC 6 (15 November 2007).

Hon. Sabila Herbert Kale versus Maket Latif Miscellaneous Application No. 124/2010 (arising from Election Petition No.2/2010) 3.

Obey Christopher and 14 Others v Uganda High Court Miscellaneous Application No. 3/2016.

Okupa v. Attorney General & 3 Others (Misc. Cause No. 14 OF 2005) [2018] UGHCCD 10 (31 January 2018).

Onyango Obbo & Another v Attorney General of Uganda Constitutional Appeal No. 2 of 2002.

Okoth Okale & Others versus Republic (1965) EA 555.

Jim Muhwezi & 3 Others v Attorney General Constitution Petition No. 10/2008, 14.

Jude Mbabali v Edward Sekandi (Constitutional Petition No. 0028 OF 2012) [2014] UGCC 15 (19 September 2014)

Roko Construction versus Public Procurement and Disposal of Assets Authority & Another High Court Civil Appeal No. 59/2017.

Roland Kakooza Mutale v The Attorney General Application No. 665/2003 (arising from High Court Civil Application No. 40/2003).

Rtd. Col. Dr. Kizza Besigye v President Yoweri Museveni and the Electoral Commission Presidential Election Petition No. 1 of 2006.

Rubaramira Ruranga v Electoral Commission Constitutional Petition No. 21/2006.

Katuntu v MTN Uganda Ltd & Another (HCCS No. 248/2012) [2015] UGCOMMC 83, 52.

Kakande Bernard v Hassan Basajjabalaba, Buganda Road (Miscellaneous Application No. 22/2013).

Kamba Saleh v Attorney General (Constitutional Petition No. 38 OF 2012) [2015] UGCC 3 (25 May 2015).

Kasibante Moses v Katongole Singh Marwaha & Another (Kampala Election Petition No. 23/2011) [2011] UGHC 153 (23 October 2011).

Ken Lukyamuzi v Attorney General, Electoral Commission (Constitutional Appeal No.2 2007) [2010] UGSC 2 (31 March 2010).

John Ken Lukyamuzi v Attorney General and Another Constitutional Petition No. 19/ 2006.

Kirunda Kivenjinja v Abdu Katuntu Court of Appeal Election Petition Appeal No. 24/2006.

Hon. Sam Kutesa & 2 Others v Attorney General Constitutional Reference No.54/2011.

Hon. Sam Kutesa & Others versus Attorney General Constitutional Petition No. 46/2011.

Pentecostal Assemblies of God Ltd v Transsahara International (U) Ltd & Another (CIVIL APPEAL NO.10 Of 2010) [2012] UGSC 12 (21 November 2012).

The Environmental Action Network (TEAN) V. AG & NEMA Miscellaneous Cause No. 39/2001.

Thomas Kweyelo alias Latoni v Uganda (Const. Pet. No. 036 of 2011 (reference)) [2011] UGCC 10 (22 September, 2011).

Tibeigana v Vijay Reddy (Miscellaneous Application No. 665 of 2019) [2019] UGHCCRD 200 (4 November 2019).

Tinyefuza v Attorney General (Constitutional Petition No. 1/1996).

Tukamuhebwa v Attorney General (Constitutional Petition No. 59 OF 2011) [2014] UGCC 2 (14 February 2014).

UGANDA LAND COMMISSION v JAMES MARK KAMOGA SUPREME COURT CIVIL APPEAL NO. 08/2004.

Uganda Law Society v The Attorney General ((Constitutional Petitions No. 2 & 8 of 2002)) [2009] UGCC 1 (4 February 2009).

Uganda v Akankwasa Damian, Criminal case No.69/2010 of the High Court (Anti-Corruption Division).

Uganda v Uwera Nsenga Criminal Session No. 312/2013.

Uganda v Inspector General of Police General Kale Kayihura & 7 others Criminal Revision Cause Number 34 of 2016.

Uganda v Lwamafa & 2 Others Criminal Case No.9/2015

Uganda v Ndodo Benard (1985) EA 3.

Uganda v Opoka Pyenlyce David Nicholas (Cr. Case No. 83/2003) [2009] UGHC 118 (5 March 2009).

Uganda v Commissioner of Prisons, ex parte Matovu [1966] EA 514.

Rwanyarare & Another V. Attorney General Constitutional Petition No. 11/1997.

Sebudde Joseph v Inspector General of Government (Misc. Cause No.32 Of 2010)) [2010] UGHC 64 (28 October 2010).

Smart Protus Magara & 138 Others versus Financial Intelligence Authority, High Court Miscellaneous Cause No. 215/2018.

Spear Motors Ltd v Attorney General & 2 Others (HCT-00-CC-CS-0692-2007) [2012] UGCOMM 18 (18 March 2012).

Sundus Exchange Money Transfer & 5 Others v Financial Intelligence Authority High Court Miscellaneous Cause No. 154/2018.

Ssemogerere & Another v Attorney General Constitutional Petition No. 5/1999,

Zachary Olum & Another v Attorney General (Constitutional Petition No. 6/1999),

United Kingdom

Branson & Others v Marrero Others [2010] EW Misc. 19 (CC) (07 December 2010).

Gouriet v Union of Post Office Workers [1978] AC 435 at 477; [1977] 3 ALL ER 70.

Gujra, R (on the application of) v Crown Prosecution Service, [2013] 1 ALL ER 612.

R v. Bedfordshire 24 L.J.G.B 84.

Regina (Virgin media Ltd) v Zinga (2014) EWCA Crim 52.

Theses

Daniel M. Walyemera *Campaign Finance Regulation and Enhanced Governance in Uganda: A case study of the 9th Parliament* (unpublished LLM Thesis, Makerere University, 2016).

Sarah Langa *Who Follows-up the Billions Lost to Corruption? The Execution of Refund Orders Made by the Anti-Corruption Court of Uganda* (unpublished LLM thesis, Makerere University, 2015).

Unpublished Works

Reports

Andvig, Fjeldstad & Amundsen et al., *Corruption, A Review of Contemporary Research* (2001).

Anti-Corruption Coalition Uganda (ACCU) (2019) *Assessing the Status of Implementation of the Whistleblowers Protection Act, 2010 and the Leadership Code Act, 2002*(as amended).

Anti-Corruption Coalition *Uganda Fact Sheet Anti-Corruption Court* (2011).

allAfrica Uganda: Police Unearth Details on Ghost Pensioners (2012).

Arthur Larok 'Different Approaches, same goals: Civil Society and the fight against corruption in Uganda' (2012) 103.

Badru Bukenya & William Muhumuza (2017) "The Politics of core Public Sector reform in Uganda: Behind the Façade".

Bartelsmann Foundation, Bertelsmann Transformation Index Uganda (2012).

Bartelsmann Foundation, Bertelsmann Transformation Index (BTI) (2016), Uganda Country Report – Transformation Index (BTI).

BBC Media Action Uganda – Media Landscape Report (2019) 2., available at <https://www.communityengagementhub.org/wp-content/uploads/sites/2/2019/09/Uganda-Media-Landscape-report-BBC-Media-Action-February-2019.pdf>

Bernard Ochaya Kinyera *Assessing the effectiveness of Uganda's National Anti-Corruption Strategies being used in the fight against Corruption.* (2016).

Benon C. Basheka & Milton Tumutegyereize Determinants of Public Procurement Corruption in Uganda, available at <http://www.ippa.org/images/PROCEEDINGS/IPPC4/01ComparativeProcurement/Paper1-10.pdf>

Brenda Mahoro "Uganda's Legal System and Legal Sector" (2013) available at <https://www.mecgeorge.edu/Documents/sampleCasesHistoryUganda.pdf>

Chris Blattman, Horacio Larreguy, Benjamin Marx & Otis Reid "Eat Widely, Vote Wisely? Lessons from a Campaign Against Vote Buying in Uganda" (2019) available at https://www.povertyactionlab.org/sites/default/files/publications/Eat-widely-Vote-wisely_Blattman-Lareguy-Marx-Reid_July2019-.pdf.

Danida Fellowship Centre "Decline in cases at Uganda's Anti-Corruption Court" October 10, 2018., available at <https://dfcentre.com/the-decline-in-cases-at-ugandas-anti-corruption-court/>

DPP (2013) Prosecutors Manual on Illicit Trade in Uganda.

DPP "The Directors Remarks at the Launch of Anti-Corruption Week," November, 30 (2018), available at <https://dpp.go.ug/index.php/component/k2/item/30-the-directors-remarks-at-the-launch-of-anti-corruption-week>

Director of Public Prosecutions (DPP) "Historical Development of ODPP" available at <https://dpp.go.ug/index.php/about-dpp#:~:text=In%20the%20first%20post%20%2Dindependence,as%20an%20independent%20government%20body.&text=The%20Director%20of%20Public%20Prosecutions%20is%20appointed%20by%20the%20President,Commission%20with%20approval%20of%20Parliament.>

Economic Policy Research Center, *Oil wealth and Potential Dutch Disease Effects in Uganda* (2011).

FOCUSECONOMICS 'The poorest countries in the World' available at <https://www.focus-economics.com/blog/the-poorest-countries-in-world>

Foreign Policy *Another case of high-level corruption in Uganda* (2012).

Freedom House *Countries at the Cross-roads* (2012).

GAN Uganda Corruption Report (2017). Available at
<https://gaintegrity.com/portal/country-profiles/uganda/>

GAN Integrity, Country Profiles: Uganda (2017) available at
<https://www.gaintegrity.com/portal/country-profiles/uganda/>

Government of Uganda *The Report of the Uganda Constitutional Commission: Analysis and Recommendations* (Uganda Constitutional Commission, 1992).

Government of Uganda *National Anti-Corruption Strategy (2014-2019)*, (2014).

Government of Uganda *Justice Law & Order Sector Anti-Corruption Strategy*.

Government of Uganda *The Justice and order Sector The Third Justice, JLOS Strategic Investment Plan (2017)*., available at <https://www.ijlos.go.ug/index.php/document-centre/strategic-investment-plan-sip-iii/file>

Global Corruption Report *Corruption in Judicial Systems* (2007) Cambridge: Cambridge University Press, 2007.

Global Integrity (2007). "Global Integrity Report: Opportunities and Challenges in the fight against Corruption". Washington DC: Global Integrity.

Human Rights Watch "World Report 2015: Uganda" (2015).

Human Rights Watch *Letting the Big Fish Swim: Failures to prosecute High Level Corruption in Uganda*, (2013).

Inge Amundsen (2006) 'Corruption, lack of political will and the role of donors, (in Uganda)' Chr. Michelsen Institute, Bergen.

PPDA Central Government Regulations and Guidelines. available at <https://www.ppda.go.ug/download-reports/legal/guidelines/>

PPDA Local Government Regulations and Guidelines. available at <https://www.ppda.go.ug/download-reports/legal/guidelines/>

International Consortium of Investigative Journalists (ICIJ) "Panama Papers: Exposing the Rogue Offshore Finance Industry," available at <https://www.icij.org/investigations/panama-papers/>

IGG The 3rd National Integrity Survey, October 2008 available at <https://www.igg.go.ug/static/files/publications/third-national-integrity-survey-report.pdf>

IGG *Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism* (2014).

International Budget Partnership *Open Budget Index, 2019*. (2019) Available at <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=ug>

Institute of Security Studies Can East Africa sustain its promising anti-corruption efforts (2018) available at <https://issafrica.org/iss-today/can-east-africa-sustain-its-promising-anti-corruption-efforts>

IGG *Bi- Annual Inspectorate of Government Performance Report to Parliament* (2017)
Kampala: IGG.

IGG *Bi-Annual Inspectorate of Government Performance Report to Parliament* (2018)
Kampala: IGG.

Inspectorate of Government *The Third National Integrity Survey (2008)*. Available at <http://www.igg.go/static/files/publications/third-national-intergrity-survey-report.pdf>

International Council on Human Rights Policy & Transparency International 'Corruption and Human Rights: Making the connection' (2009) 36., Also available at <http://ssrn.com/abstract+1551222>.

Jessie Chella (2021) "A Review of the Malabo Protocol on the Statute of the African Court of Justice and Human Rights – Part 1: Jurisdiction over International Crimes" available at <http://ilareporter.org.au/2021/a-review-of-malabo-protocol-on-the-statute-of-african-court-of-justice-and-human-rights-part-i-jurisdiction-over-international-crimes-jessie-chella/>

Joel D. Barkan Uganda: Assessing risks to stability, Center for Strategic & International Studies (CSIS). (2011) available at http://csis.org/files/publications/110623_Barkan_Uganda_web.pdf

John Ssenkumba Political Party Financing in Uganda, Kampala: Friedrich Ebert Stiftung.

Jong-Sung You Corruption as Injustice, San Diego: Annual Meeting of Political Science Association, August 30 September 2, (2007) 21.

Judiciary of Uganda *The Judiciary of Uganda Monitoring the Implementation of the Case Backlog Strategy. Preliminary Findings.*, (2018). Available at: <http://judiciary.go.org/files/downloads/Banishing.pdf>

Legal Service Providers Network (LASPNET) Assessment Report on Implementation of the JLOAS Anti-Corruption Strategy 2012, a CSO Perspective, (2019). Available at <http://www.laspnet.org/joomla-pages/reports/521-assessment-report-on-implementation-of-anti-corruption/file>.

Marie Chene Gender Equality and Corruption (2019) Transparency International U4 Helpdesk.

Martini Maira 'Uganda: Overview of Corruption and Anti-Corruption: The U4 Expert Answers' (2013) Transparency International, Centre for Development Practitioners 5(379) 2-27.

Mara Mendes Overview of Corruption in the Media in Developing Countries (2013) Transparency International U4 Expert Answer.

Mathias A. Fardigh What's the use of a Free Media – The Role of Media in Curbing Corruption and Promoting Quality of Government? (unpublished Ph. D Dissertation, University of Gothenburg, (2013).

Ministry of Finance, Planning and Economic Development *Uganda Public Financial Management Reform Strategy* (July 2018-June 2023) (2018) Kampala: Government of Uganda.

Ministry of Finance, Planning and Economic Development *A Guide to the Budget Process: Ensuring that Uganda's national budget reflects the views and priorities of citizens.* (2009) Kampala: Government of Uganda.

Ministry of Justice and Constitutional Affairs "New Justices Appointed to the Supreme Court and Court of Appeal" available at <https://www.justice.go.ug/news/new-jsutices-appointed-supreme-court-and-court-appeal>

Micheal Mugisha, Yusuf Kiranda & Micheal Mbate *Civil Society in Uganda Broadening Understanding of Uganda's Civil Society Ecosystem and Identifying Pathways for Effective Engagement with Civil Society in the Development Process* (2019) Centre for Development Alternatives & Konrad Adenauer Stiftung., available at <https://www.kas.de/documents/280229/280278/Reality+Check+11+Civil+Society.pdf/c17c76f7-e3d5-40d4-a5e8-fc8af1107a5b?version=1.1&t=1580718867580>

Odd-Helge Fjeldstad and Jens Chr. Andvig, with Inge Amundsen, Tone Sissener and Tina Soreide (2001): *Corruption, A Review of Contemporary Research*, Bergen: Chr. Michelsen Institute (CMI Report R 2001:7) 122.

OECD, *Asset Declarations for Public Officials. A Tool to Prevent Corruption* (2011), available at <https://www.oecd.org/corruption/anti-bribery/47489446.pdf>

Tamlyn Edmonds & David Jugnarain (2016). *Private Prosecutions: A Potential Anticorruption Tool in English Law*, Open Society Foundation; The Justice Initiative and Oxford University's Institute for Ethics, Law and Armed Conflict. Available at https://www.justiceinitiative.org/uploads/d95e470e-54e6-4379-89e4-3fc81acafd53/legal-remedies-4-edmonds-jugnarian-20160504_0.pdf

Transparency International *Corruption Perceptions Index (2019)*, (2019).

Transparency International Uganda *As strong as its weakest link. Stakeholders Perceptions of Ugandan Legal and institutional Anti-Corruption Framework*, (2015) Kampala: Transparency International Uganda.

Raluca Dimitriu R & Christian Welz "New Developments in the protection of whistle-blowers in the workplace," (2016). Available at <https://www.eurofound.europa.eu/publications/report/2016/eu-member-states/new-developments-in-the-protection-of-whistle-blowers-in-the-workplace>

Rosie Pinnington *The Road to Budget Transparency in Uganda* (2017)., available at <https://www.internationalbudget.org/wp-content/uploads/the-road-to-budget-transparency-in-uganda-ibp-case-study-2017.pdf>

Rita M. Byrnes *Uganda: a country study* (1992) Washington DC: Government Printing Office.

Sally Almandras (2010). *Private prosecutions*. Standard Note: SN/HA/5281 House of Commons Library. Home Affairs section.

Schauseil Wasil *Media and Anti – Corruption* (2019) Transparency International U4 Helpdesk.

Sofie Arjon Schutte, *Specialized anti-corruption courts: Uganda*. Expert Answer 2016:5, Transparency International.

Uganda Media Centre "Achievements by the State House Anti-Corruption Unit since Inception" (2020) available at: <https://www.mediacentre.go.ug/media/achievements-state-house-anti-corruption-unit-inception>

Uganda Police Force *Uganda Police Force Anti – Corruption Strategy 2017-2022.*

Uganda Police Force Annual Crime Report (2018) 24., available at <https://www.upf.go.ug/wp-content/uploads/2019/05/annual-crime-report-2018..pdf>

Uganda Debt Network *Overcoming Corruption. Dossier on Corruption in Uganda: 2012-2016*, (2016) Kampala: Uganda Debt Network.

United Nations Education, Scientific, and Cultural Organization (UNESCO) & Council for Higher Education Accreditation (CHEA) Advisory statement for effective international practice: Combating Corruption and enhancing Integrity: A contemporary challenge for the quality and credibility of higher education. (2016) Available at <https://unesdoc.unesco.org/ark:/48223/pf0000249460>.

US Department of State *Investment Climate Statement 2017*, (2017).

US Department of State, Human Rights Practices Report 2016, (2016).

World Bank 'Uganda Poverty Assessment: Fact Sheet' (2016) available at <http://www.worldbank.org/en/country/uganda/brief/uganda-poverty-assessment-2016-factsheet>

World Bank World Development Report: the state in a changing world (1997) New York: Oxford University Press.

World Bank Doing Business 2020 (2019): Comparing Business Regulation in 190 Economies -Economy Profile of Uganda (English) Doing Business 2020. Washington, DC:

World Bank Group. available at <http://documents.worldbank.org/curated/en/348981575375705706/doingd-business-2020-comparing-Business-Regulation-in-190-Economies-Economy-Profile-of-Uganda>

World Bank *Enterprise Surveys Uganda 2013*, (2013).

World Economic Forum Global Competitiveness Report (2013) available at <http://www3.weforum.org/docs/WEF/GlobalCompetitivenessReport2012-13.pdf>

World Economic Forum *Global Competitiveness Report* (2016-2017).

Working Papers

Ades, A and Di Tella, R. 'Competition and Corruption', Applied Economics Discussion Paper Series No. 169, Oxford University (1995).

Amundsen, I. Political Corruption: An Introduction to the Issues (Chr. Michelsen Institute. Working Paper, 2011).

Antonio Argondona A 'The United Nations Convention Against Corruption and its Impact on International Companies' (2006) Working Paper No. 656.

Dahlstrom, C. Bureaucracy and the Different Cures for Grand and Petty Corruption, 20, QoG Working Paper Series (2012).

Daniel Kaufmann, Aart Kraay & Pablo Ziodo-Lobaton 'Governance Matters' World Bank Research Paper No. 2196 (Washington DC: World Bank, 1999).

Ezra Munyambonera & Musa Mayanja Lwanga *A Review of Uganda's Public Finance Management Reforms (2012-2014): Are the reforms Yielding the Expected Outcomes?* (2015).

John F. Helliwell and Haifang Huang, 'How is your Government? International evidence linking good government and well-being' Working Paper (2006).

Lazarus Nabaho & Wilberforce Turyasingura 'Battling Academic Corruption in Higher Education: Does External Quality Assurance Offer a Ray of Hope?' (2019) Higher Learning Research Communications, Online Version, available at <http://dx.doi.org/10.18870/hlrc.v9i1.449>.

Mark J. Farrales 'What is Corruption? A History of Corruption Studies and the Great Definitions Debate,' (2005) San Diego: University of California.

Micheal Okorach 'Judicial Independence and Government Interference. A Discussion paper on Corruption' (2014).

OECD Putting an End to Corruption (2016). Available at: www.oecd.org/putting-an-end-to-corruption.pdf.

Oloka Onyango J, Ghosts and the Law: An Inaugural Lecture, 12 November, 2015 30. Also available at <https://news.mak.ac.ug/sites/default/files/downloads/Makerere-Prof-Oloka-Onyango-Inuagural-Professorial-Lecture12thNov2015.pdf>

Paul Mwiru "The Role, Experience, Challenges of the Public Accounts Committee in Handling Cases of Misappropriation of Public Funds," (draft paper presented at the ULS Annual Conference at the Imperial Resort Beach hotel, March 22, 2012) 2.

Robert Kirunda "Understanding the Anti Money Laundering Act, 2013: Implications on the Work of Civil Society and Non-Governmental Organizations," (2014) available at: <https://ssrn.com/abstract=2931658>

Stephen P. Riley The Political Economy of Anti-Corruption Strategies in Africa (1998) Development Centre Technical Papers No.122. Paris: Organization for Economic Co-operation and Development.

Tanzi, V. Corruption Around the World; Causes, Consequences, Scope and Cures, Staff Papers-International Monetary Fund, 559 (1998).

Transparency International Corruption Perceptions Index, 2019. Available at <https://www.transparency.org/en/cpi/2019>

Media Reports

ACTIONAID "The Black Monday Movement is back" January 15, 2020. Available at <https://uganda.actionaid.org/news/2020/black-monday-movement-back>

ACTIONAID "Apply the rule of law to stop corruption; Youth Campaigns against Corruption" Frontline Stories 25., available at <https://uganda.actionaid.org/sites/uganda/files/frontline-14-2011-1mar.pdf>

Anthony Wesaka A "Wangadya Named New Deputy IGG" *Daily Monitor*, July 8, 2013., available at <https://www.monitor.co.ug/News/National/Wangadya-named-new-deputy-IGG/-/688334/1908158/-/H84XW6//-/index.html>

Anthony Wesaka "Who is Chibita, the new DPP" *Daily Monitor*, August 15, 2013., available at <https://www.google.com/amp/s/www.monitor.co.ug/News/National/688334-1948392-view-asAMP-ahhw7u/index.html>

Augustine Ruzindana A 'Criteria used in state political party funding in Uganda are unfair'
Daily Monitor 1 May 2015.

Baker Batte "Corruption: How Museveni weakened IGG" *The Observer*, December 12, 2018., available at <https://observer.ug/news/headlines/59459-corruption-how-museveni-weakened-igg>

Betty Ndagire & Anthony Wesaka 'Courts finds Lwamafa, Obey, Kunsu guilty of fraud'
Daily Monitor 11 November 2016.

Canon Businge & Anthony Bugembe 'Uganda loses sh600b annually due to corruption'
New Vision 18 December 2008.

Charles Ariko "Faith Mwendha Vacates IGG Office, hands over vehicles," *New Vision* July 13, 2009., available at <https://www.newvision.co.ug/new-vision/news/1209569/faith-mwendha-vacates-office-hands-vehicles>

Daniel M. Walyemera "Right to Institute a Private Prosecution cannot be wished away"
Daily Monitor, January 29, 2020. available at <https://www.monitor.co.ug/OpEd/Commentary/Right-institute-private-prosecution-cant-wished-away/689364-543238-view-asAMP-q0i7i0/INDEX.html>

David Lumu "Museveni gives Mukula Shs. 100 million for legal fees" *The Observer*, March 4, 2013., available at <http://allafrica.com/stories/201303040200.html> accessed on (22 May, 2020).

Dickens H. Okello "Byabashaijja, 5 Others rejected by Parliamentary Appointments Committee"
ChimpReports April 6, 2020., available at

<https://chimpreports.com/breaking-byabashaija-5-others-rejcted-by-parliamentary-appointments-committee/>

Derrick Kiyonga "Govt sued over wealth declaration" *The Observer*, November 12, 2013. Available at <https://www.observer.ug/component/content/article?id=28560:govt-sued-over-wealth-declaration>.

Derrick Kiyonga "Challenges that await DPP Abodo as she takes over office" *Daily Monitor* April 12, 2020., available at <https://www.google.comamp/s/www.monitor.co.ug/Magazines/PeoplePower/Challenges-that-await-DPP-Abodo-she-takes-over-office/689844-5521860-view-asAMP-4qv5lt/index.html>

Dr. Sulaiman Kiggundu "Why My Bank Was Closed" *Observer*, June 25 2008), <https://observer.ug/features-sp-2084439083/special-report/309-dr-kiggundu-why-my-bank-was-closed>

Emmanuel Gyezaho "IGG in salary scandal" *Daily Monitor* October 2, 2007., available at <https://www.google.com/amp/s/www.monitor.co.ug/News/National/688334-790648-view-asAMP-10tumubz/index.html>

East African 'Uganda President defends \$ 1.7M 'presidential handshake' *The East African* 18 January 2017.

Erias M. Serunjogi 'High profile corruption scandals registered under the NRM' *The Daily Monitor* 24 February 2013 available at <http://www.monitor.co.ug/news/national/high-profile-corruption-scandals-registered=under-NRM/-/688334/1702448/-/item/2/-/3d9naa/-/index.html>

Edward J. Serucaca "Fight against Corruption: What does 2020 look like for rights Defenders?" *Daily Monitor*, January 6, 2020., available at <https://www.monitor.co.ug/OpEd/Commentary/Fight-against-corruption-What-2020-look-like-rights-defenders/689364-5408496-cupsli/index.html>

Financial Intelligence Authority (FIA) "Uganda joins EGmont Group" *Financial Intelligence Authority* 18 March, 2020., available at <https://www.fia.go.ug/press-release/uganda-joins-egmont-group>

Franklin Draku "Uganda's journalism under attack" *Daily Monitor*, May 3 (2018)., available at <https://www.google.com/amp/s/www.monitor.co.ug/News/National/Uganda-journalsim-under-attack/688334-4541618-view-asAMP-i20llq/index.html>

Franklin Draku "Auditor General report exposes financial indiscipline" *Daily Monitor*, January, 16 2020., available at <https://www.monitor.co.ug/News/National/Auditor-General-report-exposes-financial-indiscipline/688334-5420548-format-xhtml-wgy4m3z/index.html>

Franklin Draku "IGG fails to recover shs. 24b lost in Katosi road scandal" *Daily Monitor*, November 19, 2019., available at <https://www.monitor.co.ug/News/National/IGG-fails-recover-Shs24b-Katosi-road-scandal-Apollo-Senkeeto/688334-5354854-view-asAMP-EAQQJ5Z/html>

Frederic Musisi "IGG wants Nyombi out of the Katosi road case" *Daily Monitor*, November 12, 2014., available at <https://www.monitor.co.ug/News/National/IGG-wants-Nyombi-out-Katosi-road-case/688334/2531716/-/u1xggd/-/index.html>.

George Mangula "Corruption: Why the IGG is stuck with 4000 cases" *Eagleonline*, May 2, 2018. Available at <https://eagle.co.ug/2018/05/02/corruption-why-the-igg-is-stuck-with-4000-cases.html>

George Assimwe "Museveni blasts IGG, unveils parallel anti-corruption Unit" *Chimpreports*, June 7, 2018 available at <https://chimpreports.com/museveni-blasts-igg-mulyagonja-unveils-parallel-anti-graft-unit/>

Grace Matsiko & Sheila Naturinda "Uganda: Museveni defends Mbabazi on NSSF" October 12, 2008., available at <https://allafrica.com/stories/200810130466.html>

Hillary Nsambu H 'Lawyers Drag Attorney General to Court Over Suspects', 12 May 2010, *The New Vision*. Available at http://www.newvision.co.ug/new_vision/news/1290487/lawyers-drag-attorney-court-suspects

Ifex "Journalist convicted of criminal defamation for reporting on alleged theft of solar panels" October 7, 2014., available at <https://ifex.org/journalist-convicted-of-criminal-for-reporting-on-alleged-theft-of-solar-panels/>

Inspectorate of Government, "Mariam Wangadya Approved New Deputy IGG," available at <https://www.igg.go.ug/updates/news/mariam-wangadya-approved-new-deputy-igg/>

Ismail Musa Ladu "Uncoordinated government entities causing loss billions – report" *Daily Monitor*, February 25 2020. Available at <https://www.monitor.co.ug/News/National/Uncoordinated-government-entities--loss-of-billions-report-AG/688334-5468704-bqe3kkz/index.html> accessed on 15 May, 2020.

John Musinguzi (2019) "Lack of witness protection hampering fight against corruption" *The Observer*, October 23, 2019. Available at <https://observer.ug/news/hedelines/62408-lack-of-witness-protection-law-hampering-fight-against-corruption>.

Julius Barigaba 'NRM MPs plot to lift to lift age limit for Museveni to stay in power longer' *The East African*, February 14 2015.

Kahungu Misairi Thembo "Thieves hide behind Museveni's back-IGG" *Daily Monitor*, June 8, 2018., available at <https://www.monitor.co.ug/News/National/Thieves-hide-behind-Museveni-s-back---IGG--/688334-4601064-dtjrcj/index.html>

Kintu Nyago K 'Corruption rooted in colonialism' *New Vision* 21 March 2012., available at http://www.newvision.co.ug/new_vision/news/1300355/corruption-rooted-colonialism

Maria Burnett 'Uganda's endless cycle of graft' *Politico* 22 October 2013.

New Vision 'Nine Corruption Scandals to look back at' *New Vision* November 11, 2012. Available at https://www.newvision.co.ug/new_vision/news/1309873/cprruption-scandals-look

New Vision "Leaders with unexplained wealth worry Inspectorate of Government," *New Vision* Monday, 24 August, 2020.

Marianne Merten "NPA Boss Shamilla Batohi: There is no quick fix" *Daily Maverick*, March 6, 2020., available at <https://www.dailymaverick.co.za/article/2020-03-06-mpa-boss-shamila-batohi-theres-no-quick-fix/>

Muhereza Kyamutetera "Meet Sydney Asubo, Uganda's Chief Hunter of money launderers and terrorism financiers," *CEO Magazine*, 22 April, 2020. Available at <https://www.ceo.co.ug/meet-sydney-asubo-ugandas-chief-hunter-of-money-launderers-and-terrorism-financiers/>

New Vision, 'Basajjabalaba Sent to Luzira prison,' *The New Vision*, 16 January 2013. available at http://www.newvision.co.ug/new_vision/news/1312759/basajjabalaba-sent-luzira-prison

New Vision "Uganda's Big corruption scandals" *New Vision*, December 3, 2019., available at https://www.newvision.co.ug/new_vision/news/1511556/ugandas-corruption-scandals

New Vision "Raphael Bakku is named acting IGG" *New Vision*, April 23, 2009., available at https://www.newvision.co.ug/new_vision/news/1245436/raphae-baku-named-acting-igg

Norah Mutesi "UBOS to register court case backlog," *New Vision*, 5 August, (2019). Available at: <https://www.newvision.co.ug/news/1504864/ubos-register-court-backlog>

Obed K. Katureebe "State House Anti-Corruption Unit requires your support" February 20, 2019., available at <https://www.google.comamp/s/www.monitor.co.ug/OpEd/Commentary/State-House-Anti-Corruption-requires-your-suport/>

Obote Odora 'Uganda Judicial Stacking: President Museveni's War on Independent Court' *Blackstar News* (2013). Available at www.blackstarnews.com/global-politics/africa/uganda-judicial-stacking-president-museveni%E2%80%99s-war-on-independent-court.html

Pamela Amia "State House Health Monitoring Unit Fires Back at Uganda Medical Association" *Chimp Reports* October 17, 2017.

Peter J. Henning "It's getting harder to prosecute politicians for corruption," *The Conversation*, 16 February, 2018., available at <https://www.google.com/amp/s/theconversation.com/amp/its-getting-harder-to-prosecute-corruption-91609>

Reporters without Borders (RSF) "Several Journalists arrested while investigating corruption" February 8, 2019. Available at <https://rsf.org/en/news/several-journalists-arrested-while-investigating-corruption>

Ronald Mugabe "Understaffing is hindering our fight against corruption – IGG" *New Vision*, June 9, 2019. Available at https://www.newvision.co.ug/new_vision/news/1502270/understaffong-hindering-fight-corruption-igg

Uganda Media Centre "President Museveni swears in Leadership Code Tribunal," Saturday, 25, 2020 available at <https://www.mediacentre.go.ug/media/president-swears-new-leadership-code-tribunal>

URN 'Uganda's first oil production now pushed to 2022' *The Observer* December 20, 2018.

THEMBO MISAIRI KAHUNGU "INSIDE THE IGG'S SHS56B BUDGET," *DAILY MONITOR*, FEBRUARY 1, 2019. AVAILABLE AT <HTTPS://WWW.MONITOR.CO.UG/NEWS/NATIONAL/INSIDE-IGG-S-SHS56B-BUDGET/688334-4960666-FORMAT-XHTML-IRU51H/INDEX.HTML>

The Independent "DPP threatens to close offices over staff shortage" *The Independent*, April 17, 2018., available at <https://www.independent.co.ug/dpp-threatens-to-close-offices-over-staff-shortage/>

Yasin Mugerwa "Uganda: Stop Defending Corrupt Bush War Comrades" September 5, 2009., available at <https://allafrica.com/stories/2009070144.html>

Websites

Complaints filing on the IGG's website. See <https://www.igg.go.ug/complaints/>

EAAACA "About the EAAACA," available at <https://eaaaca.com/about-eaaaca.com>

<https://www.fatf-gafi.org/countries/#Uganda>

PRIVATE PROSECUTION BARRISTERS & LEGAL EXPERTS - CRIMINAL BARRISTER. <WWW.PRIVATE-PROSECUTION.CO.UK>

International IDEA (2012) Political Finance Database. Available at <https://www.idea.int/data-tools/data/political-finance-database>

<https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>

<https://lawyersforlawyers.org/en/basic-principles/>

<https://www.unodc.org/unodc/en/org>

<HTTPS://WWW.UNODC.ORG/UNODC/EN/ORG>

[https://au.int/sites/default/files/newsevents/workingdocuments/33563/wd-2nd version presentaion on the aucpcc gender presummit 0.pdf.](https://au.int/sites/default/files/newsevents/workingdocuments/33563/wd-2nd%20version%20presentaion%20on%20the%20aucpcc%20gender%20presummit%200.pdf)

[www.eala.org/media/view/preventing-and-combating-corruption-bill-in-the-offing.](http://www.eala.org/media/view/preventing-and-combating-corruption-bill-in-the-offing)

<https://doi.org/10.5339/rolacc.2018.11>

<http://www.iawj.org/programs/corruption-and-sextortion/>

https://www.transparency.org/news/feature/sextortion_undermining_gender_equality

[https://swarb.co.uk>gouriet-v-union-of-post-office-workers](https://swarb.co.uk/gouriet-v-union-of-post-office-workers)

<https://tradingeconomics.com/uganda/corruption-rank>

Harper D Online Etymology Dictionary (2016) available at <https://www.etymonline.com/word/corrupt>.

The Judiciary Anti-Corruption Division, (2020). Available at <http://judiciary.go.ug/data/smenu/19/Anti-Corruption%20Division.html>

Uganda Bureau of Statistics (UBOS) 'Population Clock' available at <https://www.ubos.org>

