

**THE LEGAL AND INSTITUTIONAL FRAMEWORK
IN THE FIGHT AGAINST CORRUPTION**

BY

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DECLARATION

I WEGOYE JUDE M, declare that, this research on “The legal and institutional framework in the fight against corruption is my entire effort and has not been submitted to any other institution of learning for any form of award.

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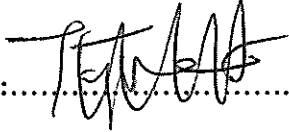
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APPROVAL

This piece of work on “The legal and institutional framework in the fight against corruption,” has been supervised by me, and is ready for submission.

Supervisor: Mr. Tajudeen Sanni

Signature:.....



Date:.....

3-8-11

DEDICATION

I dedicate this piece of work to my dear parents Mrs Mechtilda Rubanga, Tara, Jeki and Jason and Moshe friends Khadija, Quid, Juma Boy and the rest of the gang for their great care, spiritual guidance and financial support in my academic life.

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Further acknowledgements to my entire family particularly to and my mum Mechtilda for their great support both spiritual and financial in my career. To my brothers Jason, Martin and Moshe, thanks for your support and to my sisters Tara and Jeki, you were such a great encouragement. Thank you all.

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Last but not least, I appreciate all my respondents who were able to respond positively within the shortest notice, to avail me with useful information that enabled me to compile this work successfully.

God Bless you All.

LIST OF ABBREVIATIONS AND ACRONYMS

ADF	Allied Democratic Force
CAO	Chief Administrators Officer
CHOGM	Common Wealth Heads of Government Meeting
DANIDA	Danish International Development Agency
IG	Inspector of Government
IGG	Inspector General of Government
LRA	Lords Resistance Army
MP	Member of Parliament
NRM	National Resistance Movement
PAC	Public Accounts Committee
UCB	Uganda Commercial Bank
UEB	Uganda Electricity Board
UPC	Uganda Peoples' Congress
UPDF	Uganda People's Defence Forces
UPE	Universal Primary Education
URA	Uganda Revenue Authority
URC	Uganda Railways Corporation

NAD⁺ NUSAF
 CID Chom
 URA
 URAU
 Auct-G
 Pen S.
 LCA
 DPP
 PAC
 IGH
 I-G
 HRN

LEGISLATIONS AND STATUTES

International Conventions

The United Nations Convention against Corruption 2003

AU Anti-Corruption Convention 2003

Local Legislation

1. The Constitution of the Republic of Uganda 1995
2. The Constitution of the Republic of Uganda 1962
3. The Constitution of the Republic of Uganda 1967
4. The Inspector General of Government Statute, No. 2 of 1998.
5. The Inspector General Government Act 2002
6. The Leadership Code Act 2002.
7. The Parliamentary Act
8. The Prevention of Corruption Act, 1970.
9. The Penal Code Act Cap 106.
10. The Prevention of Corruption (Amendment) Act 1998.
11. The Public Finance Act
12. The Public Procurement and Disposal of Public Assets Authority Act
13. The Anti-Corruption Act 2009
14. The Local Government Act No. 1 of 1997.
15. The Whistle Blower Act 2010.

ABSTRACT

This study “The legal and institutional framework in the fight against corruption: The case law” was carried out in Uganda, with specific aims to; find out the cause of corruption in the existing institutional framework in Uganda; examine impact of corruption on the performance of institutions in Uganda; identify the loopholes and excesses of the performance of the anticorruption agencies and to suggest ways to counter these loopholes and excesses. To comprehend this, the study reviewed literature from various scholars on the specific aims as well as different laws from different countries that govern anti-corruption within the public as well as the private sector. This was done through use of a qualitative design in which the researcher relied on book review and interviewing a few members from the office of the IGG, Anti Corruption Court, Directorate of Ethics and Integrity, Parliament, Auditor General.

The study findings indicate that, the cause of corruption despite the existing institutional framework includes; greed, nepotism, sectarianism and above all autocratic tendencies. The challenges of corruption are noted to include poor coordination and facilitation, incompetent and corrupt staff, lack of independence of the anti-corruption agencies, lack of political will and zeal of the public and poor enforcement. The impact of corruption was established to be reduced foreign investment, discriminatory distribution of services, political instability and poverty, to which the suggested recommendations can counter these excesses.

It is concluded that, the anti-corruption agencies if not left to be free of the political will of those in power, anticorruption measures will be countered by favoritism.

CHAPTER ONE

GENERAL OVERVIEW

1.1 Introduction

During the colonial period, there was no representative institution and after independence, almost immediately the democratic process was soon overthrown by misuse of the army, police and the public service in general.¹

The independent constitution provided for a president as a head of state and prime minister as ahead of government. However this constitutional arrangement which was founded on the West Minster Model² has the tendency of making the executive possess a domineering influence in parliament and government in general. This led to the subsequent abrogation of the 1962 Constitution with a struggle for dominance between Muteesa and Obote which made them lose confidence in the 1962 Constitution and therefore undermining it. This led to the promulgation of the 1967 Constitution, which gave birth to republicanism as a replacement of federalism with a very powerful executive. This has been described as an "imperial presidency which is a combination of envy and greed." The amassing of power in one man made separation of power illusory.³ This definitely undermined the political participation, when the power of the political organizations became entirely vested in the hands of the political party leaders. This opened the chain of autocracy and dominance when political party heads undermined the powers of the constitution.⁴

¹ Augustine Ruzindana, The Inspector General of Government; Relevance in the Implantation of 10 Point Programme. East African Publishers, Nairobi 1988 P.2

² Peter and J. Oloka-Onyango, In Search of Freedom and Prosperity, Constitutional Reform in East Africa Edited by Kivuthi-Kibwana, Chris Maina Pg. 132.

³ Ibid 133.

⁴ Discussion on SOP at CA Delegates Conference, Sheraton.

This was one of Amin's reasons for overthrowing Obote in 1971. But long before that on the use of terror against civilians had been institutionalized by Obote. Amin's slaughter and terror were, of course worse and greater in proportion than Obote I regime but only because his popular base was narrower and he faced greater opposition both from within (i.e UPC) and outside (Israel etc). When the Obote II regime was faced with similar oppositions, terror, murder and massive violation of human rights that ensued were of even much greater proportion than Amin's regime. Faced with such a history, human rights was an utopian dream in Uganda.⁵ It is suffice to state that, under such circumstances of human rights violations, it was impossible for an institution which merely assumes the existence of democracy to fight corruption. For such reasons, the Salary Review Commission chaired by Professor Tulyamuhika in its 1982 Report recommended that the country to institute ombudsman with effect from 1st July, 1983. However, this was ignored and the institution was never started.⁶ Taking these into account, the Obote II regime could not allow its government to be blacklisted and exposed by the institution of ombudsman in Uganda.

The NRM conceived the idea of creating the office of the IGG while still in the bush on the same basis. In its Ten point programme, Point No. 7 has the objective of "elimination of corruption and misuse of powers". In full it says the following; Africa, being a continent that is never in shortage of problems, has also the problem of corruption particularly bribery and misuse of office to serve personal interests.

Corruption is indeed a problem which ranks as a problem of structural distortions and capable of neutralizing any disease. This is traced right from the medical staff that invariably ensure that government

⁵ Article by Augustine Ruzindana on the IGG, Kampala International Conference (KCC) 2-3Rd

⁶ Augustine Ruzindana, The Inspector General of Government: Relevance in the Implantation of 10 Point Programme, East African Publishers, Nairobi 1988 P.9.

drugs are diverted for private sale. Consequently the patients get under-doses which render some of them microbe resistant to those drugs creating many chronic diseases. In development planning or trade, a cheaper option can be ignored in preference to a less efficient one, because the officials concerned see a chance of making 10% illegal commission by adopting the less useful options. These types of decisions can cause distortions of great magnitude. Therefore to enable the tackling of our backwardness, corruption must be eliminated once and for all.⁷

It is in view of the above that the inspectorate was established of which the major duties of the IGG is consequently, the elimination of corruption.

1.2 Background of the Study

Worldwide, the fight against corruption is not a new phenomenon, it stems right from the 1970s. It also derives from the International Anti-Corruption Conference (IACC), a series of biannual conferences whose first meeting was held at the Hong Kong ICAC in the late 1981. This was between several international agencies with a purpose of improving liaison and facilitating the flow of information between agencies concerned with prevention and investigation of corruption with the first of its conferences hosted in Columbia with 20 agencies from 13 countries.

The IACC gained considerable importance after 1981 and attracted an ever wider spectrum of organizations and individuals within the private sector organizations and civil society. Other IACCs meetings were held in New York (1985), Hong Kong (1987), Sydney (1989), Amsterdam (1991), Cancun (1993) and Beijing (1995). In Beijing, representatives of the former host organizations collaborated to establish the IACC Council for continuity and sustainability of the conferences,

⁷ NRM 10 Point Programme Point No. 7

since the previous conferences were organized on ad-hoc basis. The Peru (Lima) conference was just the first and promising step into this direction.⁸

The theme of the Lima Conference "The State and Civil Society in the Fight Against Corruption"⁹ emphasized the importance of coalition-building between governmental, non-governmental and private sector organizations in working at the international, regional, national and local levels to increase government accountability and transparency; to curb corruption in private sector actions; and to involve civil society organisations more strongly into anti-corruption initiatives.¹⁰

In Africa, the African Union Convention on Preventing and Combating Corruption (AU Convention) was also adopted in Maputo on 11 July 2003, to represent regional consensus on what African states should do in the areas of prevention, criminalization, international cooperation and asset recovery.¹¹ **Article 7** was established to the effect of fighting against corruption and related offences in the public service with **Article 10** requiring for transparency within the public service. However, despite the provisions the convention is criticized for its limited ability in the access to information provision and yet without provision statutes of limitation and resources for follow-up mechanism.¹² This undermines its effectiveness in countries where it is ratified Uganda inclusive. Uganda ratified the AU anti corruption convention in October 2004 and came into force in 2009 to prevent, detect, punish and eradicate corruption. The obligations of which (AU-anti

⁸ The 8th International Anti Corruption Conference 1997. The State and Civil Society in the Fight Against Corruption, Lima, Peru 7-11th September 1997. (Lima, Declaration).

⁹ The 8th International Anti Corruption Conference 1997, The State and Civil Society in the Fight Against Corruption, Lima, Peru 7-11th September 1997. (Lima, Declaration).

¹⁰ Ibid

¹¹ Jack Dwayne, African Union Conventions' Overview – African Union.htm. U4- Anti Corruption Resource Center.

¹² Jack Dwayne, African Union Conventions' Overview – African Union.htm. U4- Anti Corruption Resource Center.

corruption convention) were primary legislative, administrative and institutional, envisaging bilateral and multilateral treaties and arrangements in many respects.¹³

In the Ugandan perspective, the fight against corruption is traced right from the 1970s in the Prevention of Corruption Act (POCA). The Act did not explicitly define corruption, but provided for the prevention of people from corruptly soliciting or receiving, or agreeing to receive a reward, gratification or an inducement to do anything in respect of any matter or transaction. Similarly it forbade people from corruptly giving, promises or offers to any person whether for the benefit of that person or of another person.¹⁴ The law initially confined the acts of corruption to situations only involving public officers. This obviously was restrictive as experience showed that there was a private sector corruption that inadvertently impacts negatively on the public sector.¹⁵

According to Onoria,¹⁶ Uganda has in place certain legislative and policy measures aimed at tackling and combating corruption. These include legislative measures such as the Prevention of Corruption Act, the Penal Code Act, the Leadership Code Act, the Inspectorate of Government Act, the Local Government Act and Public Procurement and Disposal of Public Assets Authority Act and the Constitution.

The enactment of the 1995 constitution made the Inspectorate of Government a constitutional office¹⁷ with mandate of fighting corruption and abuse of public body and to promote the rule of law and good governance in Uganda. The department is

¹³ Henry Onoria, *Legislative and Policy Measures in Uganda vis-à-vis Practical Challenges of Compliance with AU anti Corruption Convention*, Transparency International Uganda, 2005 p 4.

¹⁴ Mr P Kabasa, *Anti-Corruption in Uganda*, Research and Evaluation. Office of the President-html.

¹⁵ Ibid

¹⁶ Henry Onoria, *Legislative and Policy Measures in Uganda vis-à-vis Practical Challenges of Compliance with AU anti Corruption Convention*, Transparency International Uganda, 2005 p 4.

¹⁷ IGG Report to Parliament, April-December 1999.

primarily governed by the provisions of the Constitution and particularly Chapter XIII and XIV. Case law has become a source of law in which corruption is being fought as a result of the creation of the office of the IGG.

However the effectiveness of the performance of the inspectorate is at times hampered as seen in case of **Fox Odoi Oywelowo & James Akampumuza v. Attorney General**¹⁸ where the petitioners challenged various sections of the Leadership Code¹⁹ as being inconsistent and controversial to certain articles of the Ugandan Constitution. Insofar, they did not give the President discretion in punishing certain officers who had breached the Leadership Code. In essence the president could only implement the recommendations of the Inspector of Government without discretion and the position was only reversed by the Constitutional Court. As such recommendations of the Inspector of Government today no longer bind the president. In other words he need not implement them. Whereas this decision cleared the air with regard to how certain public officers like judges could be removed from office. This is enough expression that the fight against political corruption is crippled as it disables the inspectorate when it requires the president to implement the recommendations it makes.

Furthermore, it can be argued that the president did not take kindly to having his discretionary powers stripped. This is confirmed by a statement made by the first petitioner Fox Odoi Oywelowo a presidential legal assistant to effect that, "...the Constitutional Court just affirmed that the president is the most powerful man in the land and cannot take directions from any one."²⁰ In essence, the fight against corruption was left in the hands of one institution whose recommendations were no

¹⁸ Constitutional Petition No.8 of 2003.

¹⁹ Act No. 12 of 2002

²⁰ Angero Izama, The Daily Monitor, 2nd November 2005.

longer binding. This is such a frustration to the effective implementation of the anti-corruption policy.

Additionally, the president's proponent action in cases of corruption is yet another deterrence of the anti-corrupt efforts. In **Roland Kakooza Mutale v the Attorney General**²¹ Kakooza Mutale, a Senior Presidential Advisor failed to declare his wealth as required by the Leadership Code Act²² prompting the IGG in May 2003 to recommend that the president relieves Mr. Mutale of his duties. The petitioners main ground was that there was no prescribed legal form on which to declare his wealth, which arguably was a mere technicality since all other leaders had managed to declare their wealth in various forms. However the president swore an affidavit in support of his application. This was a clear indication that the president and his men were not interested in the fight against political corruption and as such were making it harder for the IGG on whose hands the fight is vested to carry out his functions effectively. This is clearly confirmed by the president's willingness to reinstate Kakooza even after contravention of the law.²³ Rest the president did not have to be the deponent, thus a clear departure of his (president) earlier commitment to strict adherence of the rule of law and zero tolerance for corruption. Such actions aforementioned create a laxity in the minds of those who are supposed to act against corruption. This is clearly expressed by the IGG (Tumwesigye) "most permanent secretaries do not want to take action against their insubordinate staff and that there is a lack of will power to deal with corruption due to tribalism and religion

²¹ Application No. 665 of 2003 arising out of HCCA No.40 of 2003. where Justice Bwamwine was later overruled by the IGG v Kikonda Butema Farm Ltd and Attorney General Constitutional Application No. 13 of 2006 arising out of Constitutional Petition No. 18. of 2006.

²² The Leadership Code Act 2002

²³ Daniel Ronald Ruhweza, Frustrated or Frustrating? The Inspector General of Government and the Questions of Political Corruption in Uganda,. Huripec Working Paper No. 20. 2008 November p. 39.

hindering the struggle against graft” this also makes the work of the inspectorate very difficult especially when officers are required to carryout the recommendations made by the IGG. Justice Bamwine refused to allow the IGG to be added as a party in the case on the grounds that it lacked legal personality and three years later the constitutional court declared that the framers of the constitution had intended that the IGG be clothed with legal personality.²⁴ The judgment shows a legal encouragement in the fight against political corruption.

The constitutional as the supreme law together with the legal framework, is the main basis for anti-corruption institutions such as the Inspectorate of Government, Directorate of Public Prosecutions and the Auditor General.

Additionally, the Anti-Corruption Coalition Uganda (ACCU) is also another organization in the fight against corruption. It is an umbrella group of more than 70 civil society organizations seeking to curb corruption in Uganda in order to contribute to poverty reduction. The ACCU organizes an anti-corruption week every year in December, the purpose of which is to mobilize civil society in the fight against corruption. In the autumn of 2008, the coalition started the *Name and Shame* book where public servants who are caught in corruption practices and convicted will be named.²⁵

The media is yet another body that is actively fighting against corruption in Uganda, but with major challenges. According to the US Department of State 2008, although the constitution provides for the freedom of speech and of the press, the government at times restricts these rights, and the law criminalizes offences by the media and

²⁴ Ibid pg 22

²⁵ Mr P Kabasa, Anti-Corruption in Uganda, Research and Evaluation, Office of the President-html.

limits the media's ability to function effectively. In respect to the same source, the government has harassed and intimidated journalists, who continue to practice self-censorship despite the Access to Information Act being in place. Nonetheless, independent print media outlets are often highly critical of the government. The Access to Information Act in 2005, is strengthening press freedom and reinforcing existing anti-corruption legislation.²⁶

Despite the available extensive legal framework to fight against corruption, in Uganda, effective implementation and enforcement of the existing legislation is still questionable. Corruption is still manifested by grand scale theft of public funds as well as petty corruption involving public officials at all levels of society, and widespread NRM patronage systems reaching into the private sector.²⁷ Even though the government has implemented corruption measures against corrupt individuals including police officers, military personnel and ministers, there are still considerable political and procedural limitations for these strong and consistent measures to prosecute well-connected individuals involved in corruption. It is still a widely held view amongst citizens that corruption is pervasive and institutionalized. Bribery, for example, is common in obtaining basic health care, in encounters with the traffic police and in large-scale procurement projects involving international companies.²⁸ It is due to this background and setting that the research was carried out to examine the effectiveness of the law of corruption in Uganda.

²⁶ Trust Law, htmUganda.- Thompson Reuters Foundation.

²⁷ Ibid

²⁸ Trust Law, htmUganda.- Thompson Reuters Foundation

1.3 Statement of the Problem

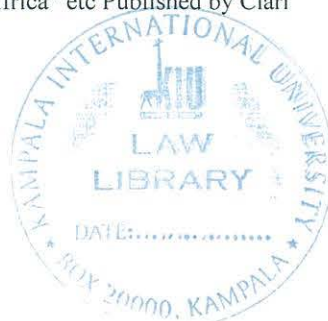
It is imperative to state that, since the National Resistance Movement (NRM) came to power in 1986, Uganda has undertaken an ambitious set of reforms in the economic and political sphere. The reforms have led to the establishment of a solid legal administrative and institutional framework to fight corruption.²⁹ However, in spite of the initial success widely acknowledged by the international community, the country faces major implementation challenges and corruption remains widespread at all levels of society in Uganda.³⁰ The level of poverty, inequitable wealth distribution and corruption raise questions about the impact of the government's anti corruption reforms.

Article 227 of the 1995 Constitution provides that the performance of its functions shall not be subject to the direction or control of any person or authority and shall only be responsible to parliament. This is mythical because the president is the appointment authority, the IGG in the performance of its functions shall be subject to the whims of the president especially where s/he has an interest in the case under investigation. This reflects the fact that some cases of corruption which may directly involve; the president; officials who are in one way or another, directly connected to the president; or officials who have under the orders of president carried out corrupt acts, may not be thoroughly investigated by the IGG, the president being the appointment authority. In most cases the IGG will succumb to the will of the president because the powers of his/her office are vested in the hands of the president contrary to the powers of the constitution.³¹

²⁹ Joseph Oloka Onyango, "Law and the Struggle for Democracy in Africa" etc Published by Clari Press Limited, Nairobi 1996 – Pg 29.

³⁰ Joseph Oloka Onyango, "Law and the Struggle for Democracy in Africa" etc Published by Clari Press Limited, Nairobi 1996 – Pg 29.

³¹ The Constitution of the Republic of Uganda, 1995 Article 227



The view of developing countries is that an ombudsman must be an instrument of the president to appoint in his capacity as guardian, administrative officials subordinate to him.³² With the president as the appointing authority, the IGG may hold cases where the president has an interest in so as to protect his position.

Funding is one of the problems of research in the office of the IGG and more to that is also the problem, "who monitors the monitor?" All anti corruption bodies and agencies like the IGG must be properly consolidated and facilitated. This is a problem to the IGG because it is not properly facilitated and coordinated e.g there has not been a special budget in the National Budget for facilitating the programme of the IGG in acquiring their own premises. It still remains at a proposal level but this year a structural plan was unveiled, we await the implementation.

Many regional offices have so far opened and the number of staff is still wanting in these offices. They may not have enough facilities to combat corruption but many staff have been accused of soliciting bribes and little action has been taken against the suspects making it appear as though they are untouchable. There is a tendency of sectarianism, looking at the history of appointment of the IGG they are either NRM sympathizers e.g Ruzindana, Jotham Tumwesigye are NRM and so is the current one and his predecessor. Therefore does the IGG or Government for that matter have the political will to perform its anticorruption functions? And the fact that other watchdog organs of government which work hand in hand with the IGG to combat corruption are headed by people or majority of whom are from the same ethnic group ie. The Public Accounts Committee (PAC), Directorate of Public

³² Uganda Workshop for Parliamentarians "Good Governance for Sustainable Development 13-14 March 1997 p.16

Prosecutions (DPP), Solicitor General, Police, the army. The cases that have successfully been prosecuted are considered to be of significance since the big shots are not incarcerated e.g the GAVI Funds Scandal.

The commissions of inquiry that are set up have made recommendations for prosecution but they are only shelved e.g the inquiry into the police, Uganda Revenue Authority (URA), National Social Security Fund (NSSF) etc. It is for this and other reasons that having identified the weaknesses, attempts need to be made to review the law relating to dealing with corruption in Uganda.

1.4 Objectives of the Study

1.4.1 General Objective

The general objective of the study is to examine the effectiveness of the law of corruption in Uganda.

1.4.2 Specific Objectives

The specific objectives of the research are as follows;

- (i) To find out the cause of corruption in the existing institutional framework in Uganda.
- (ii) To examine impact of corruption on the performance of institutions in Uganda.
- (iii) To identify the loopholes and excesses of the performance of the anticorruption agencies.
- (iv) To suggest ways to counter these loopholes and excesses.

1.5 Research Questions

- (i) What are the causes of corruption in the existing institutional framework in Uganda?
- (ii) What is the impact of corruption on the performance of institutions in Uganda?
- (iii) What are the possible loopholes and excesses of the performance of the anticorruption agencies?

1.6 Hypothesis of the Study

The study relied on a null hypothesis and it was hypothesized that;

There is lack of independence of and accountability by the anticorruption agencies in Uganda which escalates the problem of corruption. However if these agencies are free and independent of government will, they would be in a better position to combat corrupt tendencies of the top political personnel.

1.7 Significance of the Study

In view of the proceeding statement of the problem and the objectives of the study, the significance of this study is to;

- (i) Solicit public support through public awareness programmes against corruption.
- (ii) Promoting rule of law and natural justice and equity in all public offices.
- (iii) Improving on the investigative measures taken against corruption as committed by politicians. This may act as a deterrent to officers of lower ranks.
- (iv) The study will improve on the verification of assets and liabilities of all leaders and prospective leaders to ensure compliance with the leadership code of conduct as well as in the prosecution of those who have violated the law.

1.8 Methodology

The research is of a legal specificity therefore the researcher will use a qualitative method of research by basically using textbooks, various articles and reports published and decided cases. Through library research especially the Inspector General of Government Chambers, Center for Basic Research Library, Foundation for Human Rights Initiative Library and Kampala International University library, the main Makerere University library and the Anticorruption Court.

The researcher also uses informal interviews especially with different heads of the different anticorruption units including the Senior Principal Inspectorate Officer in the IGG's Chambers, the Directorate of Public Prosecutions and Public Accounts Committee.

1.9 The Scope of the Study

The scope of the research is limited to the Ugandan jurisdiction though the performance of the Ugandan ombudsman will in the course of the research be compared with other ombudsmen.

The study is specifically limited to the functioning of the anticorruption agencies between the period 2006-2010 although the researcher will also refer to periods preceding the 2006 general elections.



1.10 Literature Review

This research is least likely to be the first piece on the subject of corruption and the role of the anticorruption agencies in respect to case law fighting it. There are reputable writers and authors who have dealt with the matter at length but however,

most of them did not look exhaustively at case law since the offices set to combat corruption are only beginning to prosecute cases in the last few years.

According to learned author H.W.R Wade, in his book entitled Administrative Law³³ it is submitted that an ombudsman is a Scandinavian word meaning “officer” or “commissioner” and in its special sense, it means a commissioner who has the duty of investigating and reporting to parliament on citizens’ complaints against the government. An ombudsman according to the author requires no legal powers except powers of inquiry.³⁴

The provision of the 1995 Constitution³⁵ Article 225 (2) empowers the Inspectorate of Government to carry out investigations on its own initiative or upon people’s complaints and make annual reports to parliament.

The study agrees with the constitution in so far as powers for the Inspectorate of Government because the IGG is mandated to investigate and forward the cases to the relevant authorities for prosecution like the DPP’s office. The Inspectorate has no power to prosecute but rather it recommends. However by the power conferred to the IGG under Article 230, the IGG has special powers to prosecute and cause prosecution in respect of case involving corruption, abuse of authority or of public office.

According to Tasfir Malick in his book “Effects for Corruption of Development” The origin of corruption is that, it is influenced by the quest for more wealth. The author further contends that corruption exists even in wealthier societies as it does in

³³ H.R.W Wade: Administrative Law, 5th Edition, Oxford University Press, 1982 pp 74-123.

³⁴ Ibid Pg 74

³⁵ The Constitution of the Republic of Uganda 1995

poorer ones. The researcher's observation is that, the above author's contention is worthwhile. The researcher does not agree with authors who contend that corruption is a preserve of the poor, non-democratic third world countries. Therefore it is submitted that a critical worldwide analysis depicts the existence of corruption in wealthier societies.

According to Wraith and Simpkins, "Corruption in Developing Countries"³⁶ the word corruption as is usually employed to mean the illicit gain of money or employment and that is the principal sense in which it is discussed. This definition in the researcher's opinion is too narrow. A view of corruption may involve and include other elements which include inter-alia, evasion, nepotism, sectarianism which may not necessarily involve gain or money or employment. Suffice to state is that, not all acts which benefit the office holder at the expense of other people are corrupt or else the term would include legal services to the crown like money charged on consolidated funds. It would therefore be wrong to take author's view of corruption in their publication "Corruption in Developing Countries" as an ideal one.

According to Peter Oluyende in his book "Administrative Law in Africa"³⁷ the word Ombudsman is a Swedish word which means a person who speaks on behalf of someone else like an advocate. The learned author is of the view that there are many ways of protecting the individuals from maladministration but that they are either too technical, formal, inadequate or expensive for the common man or for one reason or the other not within the reach of the average man. Further that the office

³⁶ Wraith and Simpkins, *The Law and Struggle for Democracy in East Africa* 2000, p.52

³⁷ Peter Oluyende, *Administrative Law in Africa*, East African Distributors, 2004, p.26.

of ombudsman arose from the need to protect the common man from any tyranny, abuse of power, errors by public officials. The author submits that the word “ombudsman” has its origin in Scandinavia and it means “officer” or “commissioner” Suffice it to say, that Inspectorate of Government considerably falls within the meaning of the word ombudsman.

Dr Khiddu- Makubuya in an article entitled “Ombudsman for Uganda” observed that ombudsman is generally the ordinary citizens’ watchdog and champion against unjust and oppressive actions of government departments and officials.³⁸ In Khiddu Makubuya’s assertions, one views and gets the idea that the ombudsman has powers of access, supervision, observance and interception. This in the researcher’s view is true in so far as the ordinary citizen always suffers dismissals and suspensions from work without any valid justifications.

According to Paul. H. Douglas, in his book “The Godkin Lecturers”³⁹ comes up with a suggestion that in order to rid society of corruption, public officials should be attacked together with private individuals because private individuals are equally corrupt especially the business sector. In his view, the abuses which get exposed are in the public sector. It follows therefore that corruption permeates from the sector. Although there is a higher standard expected of public officials it does not exclude private businessmen from scrutiny and observance of ethics to enable the facilitation of corruption. The researcher agrees with the author in so far as corruption in the private sector is concerned. The most corrupt institution in Uganda is the private sector, this is so because the Inspectorate of Government has no justification to investigate in so far as the private sector is concerned, and yet the IGG is the

³⁸ Khiddu- Makubuya, Ombudsman for Uganda, East African Publishers, 2003, p. 37.

³⁹ Paul. H. Douglas, The Godkin Lecturers, New Jersey, 1997. p 19

Citizen's protector from all injustices. Therefore if the Inspectorate of Government is the citizen's protector it should be given the mandate to investigate and expose the evils of the private sector since private sector employs majority of the people in Uganda.

According to learned author Abraham Kiapi, in his book "Civil Service Laws in East Africa,"⁴⁰ concedes that there is no single universally accepted view of what corruption is but rather it is the social moral values of each community which determines what corruption is. The researcher concurs with the learned author because it is rather not possible to have a definite definition of corruption that will be valid in all communities. Different communities have different aspects and perceptions of corruption.

In an attempt to discuss the diseases fully, Kiapi analyzes the nature of corruption, the forms it assumes, the evils it brings and the way the law of the community tries to control it. He further informs the readers of the various forms and emphasizes on the evils of corruption such as, the increased disparity, loss of morale by public officials and failures of the justice system.

More to this the concept of give and take whereby in order to meet one's needs one has to concede something in exchange. The researcher submits that the learned author's submission serves as an important insight into the nature of corruption.

The researcher's work is done alongside the works of these writers and authors but with reference to case law and gives recommendations to that effect.

⁴⁰ Abraham Kiapi, "Civil Service Laws in East Africa, East African Publishers. 2001 pp 24-25.

CHAPTER TWO

HISTORICAL OVERVIEW OF CORRUPTION IN UGANDA VIZ-A-VIZ: THE EXISTENCE OF LEGAL FRAMEWORK FOR ITS COMBAT

2.1 Introduction

This chapter examines the historical perspective of corruption in Uganda viz-a-viz the existence of legal framework for its combat, such as the Anti Corruption Act,⁴¹ The Penal Code Act,⁴² The whistle Blower Act⁴³ and finally the Inspector General Government Act⁴⁴ and above all the Constitution.⁴⁵ Before examining the subject matter of discussion it's very important to define the word "corruption" which is the basis of the discussion.

There are many definitions of corruption. Corruption according to **Curzon**⁴⁶ generally refers to an inducement by means of an improper consideration to violate some duty. To be corrupt is to change from good to bad in morals, manners and actions.⁴⁷ Corruption is further defined as impairment of integrity, virtue of moral principle⁴⁸ Cambridge International Dictionary of English⁴⁹ defines corruption as "dishonestly using one's own advantage, especially for money. Blacks law Dictionary defines the corrupt as "spoiled, tainted, vitiated, depraved, or morally

⁴¹ The Anti Corruption Act 2009

⁴² The Penal Code Cap. 106

⁴³ The whistle Blower Act 2010

⁴⁴ The Inspector General Government Act 2002

⁴⁵ The Constitution of the Republic of Uganda 1995.

⁴⁶ L.B. Curz Barrister, Dictionary of Law, Third Edition, Publishing 128 Long Acre. London WC2E 9AN, 1990

⁴⁷ Webster's New Collegiate Dictionary.

⁴⁸ Masaw Musene, Registrar, Supreme Court, at the Regional Seminar for Grade II Magistrates on 15th – 18th May, 2000 at Colline Hotel, Mukono "Corruption in Judiciary" Pg.2.

⁴⁹ Cambridge International Dictionary of English

degenerated.⁵⁰ The term “corruption” is usually used interchangeably with “bribery”. Corruption in a general sense can be defined as any practice, act or omission by a public official or private individual, which violates the generally acceptable norms, rules and procedures and principles governing the expected performance of official duties with the intention of expectation of a personal gain or advantage. There are many types and forms in which corruption manifests itself. For example: it may appear in the form of bribery, embezzlement, diversion of government materials for private use, over invoicing and under invoicing, payment of salaries and wages to “ghost” or non-existent workers, under-charging, over charging taxes and duties. Nepotism, patronage, payment of air, 10% commission, extortion and to a greater extent, neglect of duty, inter alia.

According to the **Anti Corruption Act**⁵¹ a person generally commits the offence of corruption if he or she does any of the acts stated in Subsections (a – i). “Any person who shall by himself or by in conjunction with any other person, solicit or receive or agree to receive for himself or for any other person or, corruptly gives, promises or offers any other person, whether for the benefit of that other person or any person, any gratification as an inducement to a reward for, or otherwise on account of any member, officer or servant or a public body doing or for being to do anything in respect of any matter or transaction what serves, actual or proposed, in which the said public body concerned shall be guilty of an offence.

This law is to the effect of prosecuting two parties in case of corruption, the giver and the receiver, making it something for something.

⁵⁰ Black’s Law Dictionary

⁵¹ The Anti Corruption Act, 2009, Section 2, Subsections (a-h).

Corruption is traced right from the colonial system. During the colonial period, with the exception of certain intermediaries between the colonialists and the politicians, for example interpreters and chiefs, there was no possibility of serious involvement in incidents of corruption by the indigenous people employed in the civil service, as all the major decisions were made by the colonial officials.⁵² However there were some elements of corruption in the political system in colonial Uganda as colonial Uganda was seen as a pyramid of power effectively based on race⁵³ which is a form of corruption. A few whites ruled the African masses without their consent, the life style of rulers was almost entirely business divorced from those they ruled in terms of material wealth, access to business and leisure. In this system of government, most of the important decisions were made by the Governor, unless overruled by the colonial office in the metropolitan country⁵⁴ (United Kingdom). Therefore there was no democracy in Uganda during the colonial period. Where there is no democracy, there cannot be any institutions to curb the injustice and abuses in the public offices, thus corruption existed not majorly amongst the indigenous but rather by the colonial officers. The indigenous people betrayed one another in order to gain favour from the colonial masters as a reward they were paid or given concessions e.g. large tracts of land, offices as chiefs and tax collectors.

At independence new leaders were ushered in and took on from the colonialist and they applied the same systems of public control and accountability rather than modify it and make it responsive to the needs of the people,⁵⁵ they perpetuated it in its colonial form. As leader of the ruling party (UPC), the Premier Milton Obote

⁵² Uganda Workshop for Parliamentarians, "Good Governance for Sustainable Development" 13-14, March 1997, Kampala, Uganda. Edited by Sahr J. Kpunden and Peter Longseth P.L.

⁵³ Joseph Oloka Onyango, "Law and the Struggle for Democracy in Africa" etc Published by Clari Press Limited, Nairobi 1996 – Pg 49.

⁵⁴ Ibid p.49

⁵⁵ The New Vision May 26, 1992.

began to dispense favours almost exclusively to members of his own party⁵⁶ so that the members of the ruling party prospered at the expense of members of other political parties, which is a form of corruption getting its way into the Ugandan politics. Its worth noting that the incoming Ugandan politicians adopted the style of the colonial politics in practice, the only difference was that they were “natives”.

Soon after the independence, many projects were initiated involving awarding contracts and tenders. These contracts involved construction of roads, schools, public building, radio, TV Stations and Hotels including state controlled co-operatives which took over agricultural marketing and processing. These were awarded as favours for UPC members and close friends and relatives. Political upheavals set in job insecurity. President Amin worked more in the interests of his supporters and personal enrichment. His non compromising action led to the destruction of the country and its economic, political and social institutions. “Tribalism” and parochialism in their crudest form were introduced to side-track the major issues of economic chaos and insecurity.⁵⁷

Thereafter, Lule was elected as president but his government was short-lived and replaced by Godfrey L. Binaisa.⁵⁸ According to Milton Obote, “Lule was removed due to the unchecked corruption due to the activities of Rugumayo, Tandon, Nabudere and Omwony Ojok...”⁵⁹ Corruption was aggravated by the rapid changes in governments.

⁵⁶ The view was explained better by Grace Ibingira in the paper presented at the International Conference Center, Kampala, August 6, 1993. In his own words, “The Multi-Party Democracy in Uganda had Collapsed due to a number of reasons including intolerance of other parties, discriminatory rules in the politic as game, tampering with professionalism of the public sector, undermining the rule of law, and the winner take- all philosophy”.

⁵⁷ Wraith and Simpkins, *The Law and Struggle for Democracy in East Africa 2000*, p.52

⁵⁸ Ibid p. 52

⁵⁹ Obote’s Speech at the Meeting of Delegates of Student’s Leaders, MUK, held at Impala Avenue, Kololo, 14th May, 1980.

After independence the turnover of governments in Uganda was unequalled in Africa. People became cynical about government since they did not expect it to last. Civil servants were always oblivious of their work and when reminded they would grapple about how many governments they had seen. Such persons when well placed grab whatever they can lay their hands on. Corruption permeated every sphere of public life and the population became resigned to it as an inevitable way of life. Corruption became the mode of service between the public officials and those they are supposed to serve. Corruption totally undermined the rights of people making everything a privilege to be paid for or exchanged for, there were no rights except if something is offered in return.

By 1986, corruption was generally considered to be one of the major problems facing the country thereby giving the population opportunity to demand for a clean government which they only saw in the rebel force, NRA which came into power in 1986. Its administration made it clear that it viewed corruption as one of the evils inherited from the past which needed to be eliminated and that it was a key obstacle to development. This was provided for in the NRM ten point programme.⁶⁰

It can be said corruption shifts with power, that is why after independence, the different governments in Uganda have always worked for the interests of certain particular groups of people, for instance during Obote's regimes, it was generally the Luo who enjoyed the national cake, during Amin's regime, it was the Kakwa, Lugbara who mainly enjoyed the proceeds of his government and now in the NRM government, it's the people from the West who are enjoying the national cake

⁶⁰ National Resistance Movement 10 Point Programme No. 7.

particularly the Banyankole and to be more specific the Bahima, all those enjoyments are to the detriment of others. Every time the power base shifts, corruption tendencies shift with it. Currently northerners and easterners are considered not corrupt and honest which was not the case when power was in the hands of Obote, the same applies to the current government.

2.2 Consequences of Corruption

The costs of corruption are incalculable. The economy went into a free fall in the 1970's; state revenues collapsed with corruption. In the 70's the inflation sky rocketed, living standards plummeted, the economy collapsed due to the effects of corruption, industrial and agricultural production declined sharply. The level of services and commitment in the public sector also fell steadily. The following are some of the effects of corruption;

2.2.1 Poverty

One major effect of corruption is poverty as the resources from national coffers are diverted and embezzled by a few public officials and therefore distorting national plans and programmes. This leads to poor provision of services thus leading to escalation of other crimes e.g theft of drugs in hospitals, teachers absconding, and absentee doctors.

2.2.2 Political Instability

Corruption undermines the legitimacy of governments and results into political insecurities.⁶¹ A good example is that of the recent strikes over fuel prices and high inflation rates that the population blames on a particular ethnic group i.e.

⁶¹ Uganda Workshop for Parliamentarians "Good Governance for Sustainable Development 13-14 March 1997 p.3

Banyankole. As a result, corruption erodes the legitimacy of political leaders which leads to social unrest often resulting into civil strife and a violent change of government, undermining or even reversing decades of hard won development as is the case in Libya and Egypt where civil unrest has led to the overthrow of government. This has led to destruction of the development that has taken over 30 years in both countries.⁶² In Uganda, this is evidenced by low levels of development in Acholi land and Batwa region due to the instabilities caused by the Lord Resistance Army (LRA) and the Allied Democratic Forces (ADF) respectively, and this had too many deaths, displacement of people, thereby making the victims unable to develop and fend for themselves since agriculture was hindered by the strife.

2.2.3 Effect on Environment and Wildlife

Another effect is on environment and wildlife. Between 1970 and 1985, many species of wildlife vanished due to illegal activities motivated by corruption. These included loss of 75% of elephant population, 98% of Rhinoceros, 90% of crocodiles, 80% of Lions and Leopards and numerous bird species.⁶³ Uganda realizes little income in the wildlife sector due to the loss of animals that attracted the foreign tourists. People took advantage of those civil wars to smuggle some of these animals and birds to other countries. Some people connived with wildlife authority staff and others with the then rebels. This explains why, there are no longer any white rhinoceros in Uganda and yet these were a rare species of rhinoceros only found in Ajai Games Reserve. This is costing government to re-introduce the rhinoceros.

⁶² Ibid p.3

⁶³ Ibid p. 3

2.2.4 Discriminatory Distribution of Services

The other effect of corruption is discriminatory dispensation of government services, this is evidenced by the fact that the president's relations are awarded lucrative contracts, the Presidents daughter going to give birth in Germany using the Presidential jet, to the Public relations deal for the Common Wealth Heads of Government Meeting (CHOGM), the Vice President being involved in the CHOGM funds misappropriation, and others.⁶⁴

2.2.5 Hinders Foreign Investment

Corruption is a hindrance to foreign investment and foreign assistance.⁶⁵ This can be seen in the Tullow oil saga in which high ranking officials were accused of taking bribes but none was incarcerated or investigated. The officials should have taken responsibility and resigned to pave way for investigations.⁶⁶

2.2.6 Inhibit Control of Diseases

Corruption is a hindrance to the fight against Aids as postulated in the New York Times.⁶⁷ The US considered increasing of funding to Uganda by 35 million dollars but decided against it for lack of transparency in the distribution of funds and ministers siphoning off funds received from other donors for instance in the Global Fund embezzlement of funds. Ministers were forced a pay back but not jailed for their crimes.

⁶⁴ Karl Vick, "Corruption Tarnishes Advances in Economy", Washington Post Foreign Service, Sunday, Feb 7, 1999, p.A.23.

⁶⁵ Uganda Workshop for Parliamentarians p.3

⁶⁶ Karl Vick "Corruption Tarnishes Advances in Economy" Washington Post Foreign Service Feb 7 1999, p.23.

⁶⁷ New York Times, Article-may 9, 2010 by Donald C McNeill Jr

Although there are existing laws and institutions to fight corruption, the laws are marred by poor enforcement and the institutions suffer vast constraints including inadequate and skilled manpower, insufficient financial resource and poor remuneration of staff: It's from this view that the people of Uganda should advocate for stronger and more effective institutions or strengthening the existing institutions for combating corruption in Uganda.

CHAPTER THREE

THE LEGAL FRAMEWORK

3.0 Legal Framework to Combat Corruption in Uganda

Having looked at the historical perspective of corruption and its subsequent costs to Uganda, it's important at this time to discuss the substantive legal framework enacted to combat corruption. The basic anti-corruption legislations are the Anti Corruption Act, 2009, the Penal Code Act⁶⁸, the Inspector General of Government Act 2002 and the Leadership Code Act and any other laws which will be of relevance in so far as the fight against corruption in Uganda is concerned, the Constitution⁶⁹ being the supreme law. The legal framework mentioned above will be discussed conversely, therefore they include:

3.1 Domestic Legislation

3.1.1 The Constitution of the Republic of Uganda 1995

The 1995 Constitution is the supreme law of the land and has a binding force on all authorities and persons throughout Uganda.⁷⁰ As the primary legal instrument, the Constitution contains provisions on measures, concepts and institutions that are geared to preventing, monitoring and combating corruption. The Constitution makes all public offices and those in positions of leadership answerable and accountable to the people of Uganda. The preservation and protection of public property and combating corruption are stipulated as two of the duties of citizens of Uganda under the Constitution.⁷¹

⁶⁸ The Penal Code Act Cap. 106

⁶⁹ The Constitution of the Republic of Uganda 1995

⁷⁰ Article (2) (1)

⁷¹ Article 17 (2) (d) and (i)

The constitution further provides for the institutions and measures to fight and tackle corruption. The office of the Auditor General (AG) being the overall audit institution that acts as watchdog over financial integrity.⁷² The same constitution empowers parliament to monitor all expenditures of public funds⁷³ and the Permanent Secretary (PS) in each and every ministry/department is also held accountable to parliament for the use of funds under the same constitution.⁷⁴

Additionally, Inspectorate of Government (IG) is the key anti-corruption watchdog or ombudsman.⁷⁵ The Constitution further provides for the Leadership Code of Conduct as a measure of ensuring the promotion and maintenance of honest and impartial leaders and the protection of public funds and property under Article 231(1). It further empowers the DPP as the key prosecutorial agency with mandate to institute and control all criminal proceedings in Uganda.⁷⁶ It also confers powers to the police as the key institution to detect and prevent crime with no exception to acts of corruption⁷⁷ and finally the courts of law as the primary medium for prosecution of offences.⁷⁸

However, despite the provisions of the Constitution, the president goes on to appoint other authorities to oversee and coordinate efforts against corruption. A case in point is when the president assigned the Vice President the role of overseeing and coordinating the efforts against corruption.⁷⁹ This weakens the strength of the available agencies and limits their abilities to effectively execute their roles when a

⁷² Article 163

⁷³ Article 163 (3)

⁷⁴ Article 164 (1)

⁷⁵ Articles 223-232

⁷⁶ Article 120

⁷⁷ Article 212(c)

⁷⁸ Article 129

⁷⁹ The Anti Corruption Legislative and Policy Measures in Compliance with

person so named by the president begins to direct efforts, more so if such appointed persons intend to protect the image of the corrupt party.

3.1.2 The Anti Corruption Act 2009

This is the basic anti-corruption legislation in Uganda and its one of the latest anti-corruption laws. The law endeavors to legislate against corruption in the broadest way possible by providing a “comprehensive” definition of what amounts to corruption. The Act⁸⁰ specifically provides for acts that amount to the offence of corruption.

The Act prohibits corrupt acts that may ensue between agent and principal, that “any agent who corruptly accepts or obtain from any person, for himself or for any other person, any gratification as an inducement or reward for doing or fore bearing to do anything in respect of the matter commit an offence,”⁸¹ and also against corruptly procuring withdrawals of tender,⁸² corrupt interference, in voting at any meeting of public body and against abstaining from voting at any meeting of such public body in favour of or against any measure, resolution or question submitted to such body.

And or such member performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act or such members aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person,⁸³ shall be guilty of an offence⁸⁴ of bribery which has been condemned by this section and punishment for offences under sections 2, 3, 4, 5, 6, 7, 8, 12 and 13 shall be

⁸⁰ The Anti Corruption Act 2009 Section 2 (a-1)

⁸¹ IGG Statute, No.2/88

⁸² The Anti Corruption Act 2009 Section 2(a)

⁸³ Ibid Section 3

⁸⁴ Ibid Section 4(a) (i) and (ii)

imprisoned for a term not exceeding 10 years or a fine not exceeding 72 currency points or both.⁸⁵ The fine aspect of this sentence has been reviewed to suit punishment. Previously it was a paltry 24000/=. Most of the provisions relating to corruption are just in the books and they do not apply. The Act further provides the DPP and IGG with special powers of search, seizure⁸⁶ and arrest.⁸⁷ It's empowered to investigate any bank account of any person or authority, to inspect documents of public servant, his wife, child or other person's believed to be a trustee or agent of such public servant.⁸⁸

The Act further empowers the Director of Public Prosecution by written notice to require any public servant to enumerate all property movable or immovable owned by such public servant, their spouse, child of such person and specifying the date of acquisition and manner of acquisition of such property.⁸⁹ Some of these provisions do not apply in Uganda as far as certain persons in top government offices are concerned. For instance when Sam Kutesa was investigated, was the wife or children put to such a search, therefore this provision should apply to all Ugandans irrespective of tribe, colour, position in government, to ensure that the legislatures have not acted in vain. The DPP can require a statement of money or property sent out of Uganda during the time of investigations and can request the Department of taxation for any information that may be deemed necessary for the investigation.

Under the same Act⁹⁰ a manager of any bank can also be required to furnish account of any person or the spouse, child at the bank. This, though tends to look like a

⁸⁵ Ibid Section 4(b)

⁸⁶ Ibid Section 14.

⁸⁷ Ibid Section 19

⁸⁸ The Anti Corruption Act 2009 Section 33

⁸⁹ The Anti Corruption Act 2009

⁹⁰ The Anti Corruption Act 2009 S 34(5)

contravention of the bankers duty not to disclose the customers secrets however, if the disclosure is for a court process, then the Banker is under a duty to disclose such account.

The Act,⁹¹ also provides that evidence of a pecuniary source or property that is not proportionate to one's known sources of income and for which one cannot satisfactorily account can be used as corroborative evidence to prove corruption on his part. This is clearly seen in the case of **Roland Kakooza Mutale v the Attorney General**⁹² and that of **John Ken Lukyamuzi v the Attorney General of Uganda and Electoral Commission**⁹³ Whereas the IGG was able to order for the removal of Lukyamuzi from the house as speaker of parliament and to stop the Electoral Commission to disallow his nomination to contest for a seat in the 8th parliament for failing to declare his wealth as required in the Leadership Code, it was unable to oust Kakooza from his position as the presidential advisor for committing the same offence. Members of the public could suspect the bribery, but may find it hard to produce evidence, particularly if both parties (receiver and giver of bribe) decide to remain silent. The evidence in this case can therefore only be circumstantial, whereby one of the parties to corruption may proclaim his/her participation, but being an accomplice, his/her evidence may not be that binding as it raises doubt.

The Act,⁹⁴ provides a remedy to this situation by providing for accomplice evidence in cases under the Act to be treated differently from other criminal cases. It's for this reason of the nature of offence that the Act,⁹⁵ provides for a slight shift of presumption of innocence in cases where gratification is received under Section 29,

⁹¹ Ibid Section 31 (1) (b)

⁹² Application No. 665 of 2003 arising out of HCCA No.40 of 2003. where Justice Bwamwine was later overruled by the IGG v Kikonda Butema Farm Ltd and Attorney General Constitutional Application No. 13 of 2006 arising out of Constitutional Petition No. 18. of 2006.

⁹³ Constitutional Petition No. 19 of 2006

⁹⁴ The Anti Corruption Act 2009, Section 32

⁹⁵ Ibid section 29 and 30

and where there is an unexplained pecuniary resource or property found with the accused a provision is made under Section 30 of the Act.

The 3 sections of the Act are usually pieces of evidential law in collaboration offences. Corruption does not only exhibit itself in the form envisaged in the Anti Corruption Act.

The Act however, makes the giving of false information punishable or failure to disclose information under Section 33(2) which is to the effect that any person who gives false information knowingly or refuses to disclose is guilty of an offence and shall be liable on conviction to imprisonment not exceeding three (3) years or a fine not exceeding 72 currency points. The rationale of this provision is to prevent malice on the other person, that's why there is the provision regarding investigation of each complaint because there are some people who do not wish other people luck. All persons acting in pursuance of the provision of the Act are also protected from any liability in the execution of their work under Section 23 of the Anti Corruption Act.

This is envisaged by s 41 (f) of the Act which gives the DPP power to require the manager of any bank account to give copies of the accounts of a person, spouse or son, or daughter suspected or accused of having committed an offence for the purposes of ensuring the payment of corruption to any victim of the offence. The amendment also provides for payment of compensation out of resources of convicted persons to make good any suffering of a principal or agent as provided for under Section 35. This is to ensure that the corrupt official is aware that corruption has irreparable risks.

Any balance after such payment is refunded to the convicted person. The amendment in Section 41⁹⁶ further re-enforces punishment for corruption by including compensation on top of imprisonment and fines. The terms of imprisonment and the fines are also enhanced under the Act for the same purposes. Therefore the various offences could perhaps be codified and some redefined especially to encompass corruption in private individual occupation because since we have privatized most of the parastatals, corruption has shifted to the private sector and it may just be as bad for the economy as it is in the public sector.

3.1.3 The Penal Code Act Cap. 106

The Penal Code provides for a range of criminal offences aimed at fighting corruption. These include the offences of embezzlement,⁹⁷ causing financial losses,⁹⁸ false accounting by public officers,⁹⁹ fraudulent false accounting,¹⁰⁰ conspiracy to defraud,¹⁰¹ uttering false documents¹⁰² and false statements by directors and officers of corporation or companies and other related offences which include false claims by officials,¹⁰³ abuse of office,¹⁰⁴ fraudulent disposal of trust property,¹⁰⁵ fraudulent offences by director and officers of the corporation or companies.¹⁰⁶ However these provisions have been improved upon in the Anti-corruption Act.¹⁰⁷

⁹⁶ The Anti Corruption Act 2009 S.41.

⁹⁷ Penal Code Act Cap. 106 Section 257

⁹⁸ Ibid Section 258 (i)

⁹⁹ Ibid S. 306.

¹⁰⁰ Ibid Section 305

¹⁰¹ Ibid Section 293

¹⁰² Ibid Section 330

¹⁰³ Ibid Section 82

¹⁰⁴ Ibid Section 83

¹⁰⁵ Ibid Section 302

¹⁰⁶ Ibid Section 303.

¹⁰⁷ The Anti Corruption Act 2009

3.1.4 The Inspector General of Government Act 2002

The office Inspectorate of Government was established under chapter 13 Article 223 1995 constitution. The office is not subject to the direction and control of any other authority but is directly appointed by the president subject to approval from parliament.¹⁰⁸ The office consists of the Inspector General of Government (IGG), deputy Inspector General of Government (deputy IGG), Secretary, Counsel, and other supporting staff.¹⁰⁹ The IGG and Deputy IGG are direct appointees of the President while counsel and the supporting staff are appointed by the Appointments Board. The Board is composed of the IGG, deputy IGG, Secretary, Chairman of the Public Service Commission, Permanent Secretary of the Ministry of Public Service and two appointees of the President.¹¹⁰

The board is therefore by the majority comprised of presidential appointees. Further to ensure guaranteed remuneration, the salaries and allowances of the IGG, Deputy IGG's are drawn from consolidated fund.¹¹¹

The office of the IGG is charged with the mandate of promoting rule of law, principles of natural justice in administration, fostering the elimination of corruption, abuse of abuse and public office, promoting good governance in public offices and making recommendations in respect of regulatory and administration reforms considered necessary for the prevention of corruption. The function of the IGG of detecting and preventing corruption involves among other things, examining and reviewing practical and procedures of public office, advice on ways and means

¹⁰⁸ IGG Act Article 223(4)

¹⁰⁹ Ibid Section 3(1)

¹¹⁰ The Inspector General of Government Act 2002 Section. 7

¹¹¹ The Constitution of the Republic of Uganda 1995, Article 223(8)

of preventing corruption and disseminating information to the public on the dangerous effects of corruption.¹¹²

The IGG in the performance of his duties is authorized to work with any other public office like the DPP, Parliamentary Accounts Committee (PAC), Auditor General's Office, The IGG can authorize any officer to conduct any inquiry into corruption, require or summon any public officer or other person to answer questions concerning his office and to produce within a specified time any documentation under his charge or possession to assist in any investigations.¹¹³ Thus, the IGG can initiate investigations under the Act¹¹⁴ and is not confined to acting on submitted complaints. The Act¹¹⁵ empowers the IGG to have access to all documentations, books, reports, and returns of any public office and can have access to and search premises of any public office, vessel, air craft, or vehicle in which it reasonably suspected to be kept, concealed or deposited, a corruptly obtained property. In the exercise of its search function, the IGG can use reasonable force and can be assisted by law enforcement agencies.

The Inspector General of Government is further provided with special powers to inspect any bank account, share account, purchase account, expense account or a bank.¹¹⁶ The Act¹¹⁷ further provides for punishment of any person who wilfully or unlawfully refuses to comply with the order of the IGG, which is an offence which carries with it imprisonment not exceeding 3 years or a fine not exceeding 72 currency points or both. The IGG has no power to review the decision of a court of law, a tribunal or a matter that is still pending before court. This is in line with the

¹¹² Ibid Article 225

¹¹³ IGG Act 2002

¹¹⁴ The Inspector General of Government Act S.1(e)

¹¹⁵ The Inspector General of Government Act Section 13(1)

¹¹⁶ Ibid Section 14 (1)

¹¹⁷ Ibid Section 14 (3)

principles of independence of the judiciary. This is evidenced when the IGG tried to review a case in Masaka unreported and the accused was acquitted in court of corruption. This act contradicts the Principle of independence of judiciary. The IGG had no power to review a case where the IGG is satisfied that the complaint is trivial, frivolous, vexatious or not made in good faith, he is discouraged from attending to it.

In order to instill respect in the institution of the IGG, its proceedings cannot be challenged, reviewed or called to any court of law unless such inquiries are clearly outside the scope of the IGG's office. This is to ensure independence in the execution of duties.

The Act provides that a complaint to the IGG can be made directly by an individual or anybody of persons whether corporate or incorporate, these complaints are strictly a secret, this, ensures that complainants are not victimised in their respective areas of work.

For reporting purposes, the IGG is required under this law to submit to the president from time to time, a full report on the proceedings of every inquiry together with conclusions and recommendation as to the action taken against a person whose conduct has been under inquiry. The report to the president is strictly confidential. The IGG is required to submit to parliament a summary of such report twice a year and the report does not disclose the identity of the person who is the subject of an inquiry unless by resolution.

The 1995 constitution has since recognised the office of the IGG as a Constitutional body/organ and widens its powers to include the enforcement of leadership code of conduct.¹¹⁸

3.1.5 The Leadership Code Act 2002

A Leadership Code is a set of rules or ethics that constitute the minimum standards of conduct for public officials by establishing clear rules for appropriate behavior. It lays down principles that public servants should follow in order to maintain the integrity of public office.

A Code should be read in the context of the overall purposes of the Act, rather than in isolation, particularly where disciplinary action on the basis of a code's provision is being considered. Managers and staff alike must be able to readily identify the relevant standards of conduct and any specific requirements which apply to them in their work. While some Codes in other jurisdictions specifically lay out the principles that underlie them, the LCA does not lay out those principles.

The codes requires a leader to declare his or her income, assets and liabilities; to protect and preserve public property and use it only for authorized purposes. It provides for the nature and amount of gifts that a leader may accept and prohibits any conduct that is likely to promote abuse of public property, undue influence and unfair advantage obtained by a leader from the improper use of his or her office. Section 15 of the Code gives a general idea of the intention the Parliament had at the time of passing the Code. The conduct prohibited by the Section indicates that parliament intended to legislate against improper use of official positions in order to

¹¹⁸ The Constitution of the Republic of Uganda Article 230(4).

obtain property to ensure that public officials maintain their integrity and the integrity of their offices by honouring their financial obligations; to discourage and outlaw favouritism or nepotism and culture of giving preferential treatment and to ensure that public office is not abused by the people who are elected or appointed to public positions. The Code also tries to ensure that the conduct of a public official is not influenced by expectations or offers of employment after the leader has left public office. In this regard, the Code, therefore, sets the minimum standards of behavior and conduct that are acceptable for anybody in public office – transparency and accountability.

By enacting the Leadership Code Act in 2002, it was the intention of the parliament to institute an effective enforcement mechanism to ensure that leaders adhere and respect the minimum standards of behavior and conduct as provided in the Code as a way forward to control corruption by improving the detection of illicit gain.

While enforcing the Code, the Act gives the Inspectorate power to receive and examine declarations lodged with the Inspectorate under the Act, to conduct inquiries and investigations on matters regarding the breach of the Code and any allegations. According to **Section 4 (1) (b)**, the declarations are supposed to be made by a leader every two years.

The Leadership Code Act enforcement mechanism has been greatly compromised by the Constitutional Court's decision in **Fox Odoi and James Akampumuza v. Attorney General**¹¹⁹ which was supported by affidavit deposed by the president resulting in the exclusion of all persons who have their appointment and dismissal

¹¹⁹ Constitutional Petition No. 8 of 2003.

provided for in the Constitution and other laws from being victims of the IGG's recommendations. This by implication, covers all appointees of the president and ministers also fall under this within the ambits of the ruling case where IGG could not make recommendations of removal of such persons on completion of investigations.

To ensure that the declarations lodged with the Inspectorate are accurate, **Section 5** of the Code empowers the Inspector General to require a leader to give clarification on any declaration submitted by the leader. The Code requires the clarification to be made in thirty days after the Inspector General has made a request for clarification.

The Act also makes it a breach of the Code for a leader to submit false, misleading or insufficient information. Additionally Section 3(3) empowers the Inspectorate to delegate any of its functions in order to ensure effective implementation of the Code. This provision was aimed at addressing the human resource problem that the IGG would face in implementing the Code.

The Code makes it a breach of the Code for a leader to be found in possession of assets and income which is disproportionate to the known source of income of the leader. In such a case, the LCA¹²⁰ provides a penalty of confiscation or forfeiture to government any excess or undeclared property.

Section 7 of the Code makes the contents of a declaration made under the Code to be accessible to members of the public. This though is watered down by the requirement to make an application to the IGG in a prescribed form before one can access the specific declaration despite the fact that Article 41 of the Constitution provides access

¹²⁰ The Leadership Code Act, 2002, Section 35 (1).

to information in the possession of the state. The decision of the president to relieve the appellant was contradictory to this provision in the case of **Major Roland Kakooza Mutale v Attorney General** and yet the appellant failed to submit forms for declaration of income, assets and liabilities in breach of the Code.

In **Kikonda Butema Farms Ltd v The Inspector General of Government**,¹²¹ the applicant brought an application contending that the IGG's action in stopping the payment of certain sums of money which the applicant claimed were outstanding to it as compensation for property that had been damaged on its farm by offices of the government was illegal. The IGG had intercepted the payment of the said sums and commissioned an inquiry into the circumstances under which the sums were to be paid. In the ultimate, the sums were never paid as a result of the IGG's intervention. The applicant also contested the legality of the IGG's report upon which the payments were cancelled, however the court disagreed with the applicant.

Thus in its ruling court set out aspects that relate to the status of the IGG in enforcing the Code whose approach was laudable. In addressing the question of whether the IG acted outside and in excess of its powers, the court was of the opinion that the IG had the authority to intervene as an institution clothed with the mandate to fight corruption and abuse of office. Court also found it to be in the confines of the IG's jurisdiction to preserve the status quo to enable it carry out the investigations. The IGG thus vested in her under Article 230 (2) of the Constitution and Section 14 (b) of the IGG Act and that therefore in stopping the payment of the said.

¹²¹ HCT – 00- MA- 593-2003

The fight against corruption is buttressed against the cooperation and coordination of more than one institution or agency, thus an encouragement for cooperation and coordination is necessary.¹²²

3.1.6 The Whistleblowers Protection Act 2010

This Act was made to provide for the procedure by which individuals in both private and public sector may in public interest disclose information that relates to irregular, illegal or corrupt practices and to provide protection against victimization of persons who make disclosures and also to provide for related matters. This act is the newest addition to the laws in the fight against corruption it was assented to in April 2010.

The Act¹²³ provides for the institutions to which the disclosures can be made. It also compels authorized officers to receive and keep such disclosures confidential and initiate investigations.¹²⁴

Part III of the Act provides for procedure. Under s 6 the disclosure may be made orally or in writing. Part V is to the effect of protection of the person that makes the disclosure from victimization.¹²⁵ Part VI provides for offences and penalties for the disclosure of identity of a whistle blower¹²⁶ The Act further provides for rewards to be given to the whistleblower¹²⁷ as 5 % of the sum recovered based on the disclosure and also limits the time frame of payment to be within 6 months after the

¹²² The New Vision, Wednesday, October 31 2007 pp. 1,2.

¹²³ The Whistleblowers Act 2010, Section 4 (3)

¹²⁴ Ibid Section 5

¹²⁵ Ibid Section 9

¹²⁶ Ibid Section 14

¹²⁷ Ibid Section 19

recovery.¹²⁸ This Act gives a step further in the fight against corruption as people will be motivated by the reward and the protection. This being a new law, it has not been tested therefore its efficiency is still presumptive.

3.2 International Conventions on Corruption

3.2.1 The United Nations Convention against Corruption 2003

The United Nations Convention against Corruption 2003 (UNCAC) represents the first binding global agreement on corruption that has elevated anti-corruption action to the international stage. Uganda has ratified the Convention and as such is bound by it. A brief survey of the substantive provisions of the Convention is therefore important in appreciating the mechanisms envisaged by the Convention in preventing and addressing corruption, which essentially hinge on the practice of the rule of law in a bid to curb the scourge. In recognition of the importance of having an institutional framework to curb corruption, the Convention stipulates that each state party will ensure the existence of a body or body of persons specialized in combating corruption through law enforcement.¹²⁹ The Convention further reiterates the need for independence and professionalisms of the officers of those institutions in order to effectively address corruption, by providing that those persons or staff of such bodies should have the appropriate training and resources to carry out their tasks.¹³⁰ The effectiveness of law enforcement actions to combat corruption relies on information flow and established communication channels that facilitate rapid exchange of information in the conduct of inquiries.¹³¹ UNCAC consequently requires the establishment of institutions either as preventative anti-corruption

¹²⁸ Ibid Section 19 (2)

¹²⁹ The United Nations Convention against Corruption 2003, Article 36

¹³⁰ Article 36

¹³¹ Ibid Article 49.

bodies or as bodies specialized in combating corruption through the law. The institutions set up will prevent corruption by such means as implementing the preventative anticorruption policies and practices¹³² in doing so, state parties shall decide on the mandates and powers of these institutions, their level of autonomy, the resources they are entitled to and rules of engagement that will guide the interaction and collaboration between the various institutions. In acknowledging the role that can be played by the disclosure of information in curbing corruption, the UNCAC¹³³ elucidates that witnesses, experts and victims who give testimony concerning corruption are to be provided protection from potential retaliation or intimidation. The Convention¹³⁴ further requires state parties to incorporate into their domestic legal system measures to provide protection against any unjustified treatment of a whistleblower to the competent authority.

In Uganda, the Whistle Blower's Act and the Anti Corruption Act have not sufficiently protected whistle blowers, and as much the means of encouraging disclosure of information on corruption leaves a lot to be desired. Cooperation between national authorities¹³⁵ and the private sector¹³⁶ is encouraged in an effort to combat corruption.

Mutual legal assistance between states in the investigation, prosecution and judicial proceedings¹³⁷ is to be afforded to 'the fullest extent possible'¹³⁸ It is anticipated that, such policies and practices should promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public

¹³² UNCAC article 6.

¹³³ The United Nations Convention against Corruption 2003, Article 32

¹³⁴ Ibid Article 33

¹³⁵ Ibid Article 38.

¹³⁶ Ibid Article 39.

¹³⁷ Ibid Article 46 (1).

¹³⁸ Ibid Article 46(2).

property, integrity, transparency and accountability.¹³⁹ The Convention also underscores the independence of the judiciary and its crucial role in combating corruption by calling on state parties to take measures that strengthen the integrity of the judiciary and prosecution services.

State parties are also required to establish mechanisms to overcome obstacles that may arise out of the application of bank secrecy laws.¹⁴⁰ Each state party is obliged to regulate its financial institutions to enhance scrutiny of its operations to detect suspicious transactions¹⁴¹ in an effort to establish effective financial disclosure systems¹⁴² State parties are also obliged to establish a financial intelligence unit responsible for receiving, analyzing and disseminating information to competent authorities and report suspicious financial transactions¹⁴³

State parties are further obliged to take measures for direct recovery of property through civil action¹⁴⁴ and through international cooperation in confiscation¹⁴⁵ Asset recovery is a crucial issue for developing countries involving grand corruption with cases abound of national wealth being stashed abroad in foreign banks,¹⁴⁶ while resources are badly needed for the reconstruction of societies under new governments.¹⁴⁷ Assets recovery is given prominence in the UNCAC as a fundamental principle of the Convention.¹⁴⁸ A lot of Ugandans wealth is said to be stashed in mushrooming buildings and foreign accounts looted during former and even during the current regime but there exists a lot of difficulty in proving such

¹³⁹ Ibid Article 5.

¹⁴⁰ The United Nations Convention against Corruption 2003, Article 40.

¹⁴¹ Ibid Article 52(1).

¹⁴² Ibid Article 52 (5).

¹⁴³ Ibid Article 58.

¹⁴⁴ Ibid Article 53.

¹⁴⁵ Ibid Articles 54 and 55.

¹⁴⁶ African leaders who have been accused of banking national income in foreign banks include but not limited to former president Mobutu Sese Seko of former Zaire now DRC, former president Sani Abacha of Nigeria.

¹⁴⁷ Webb (n 44 above) 207.

¹⁴⁸ The United Nations Convention Against Corruption Article 51.

accounts and amounts given the stringent secrecy laws and practices governing banks.¹⁴⁹

The difficulty of recovering such funds and assets due to lack of cooperation from some of the countries where such funds are stashed is also a huge hurdle that can not be underestimated. With reference to the public sector, the UNCAC champions for the recruitment and promotion of civil servants based on principles of efficiency, transparency and objectivity.¹⁵⁰ In the promotion of a code of conduct for public officials, public officials are required to make declarations of their investments, assets and substantial gifts from which a conflict of interest may arise.¹⁵¹

The Convention¹⁵² provides for public procurement and management of public finances which state parties are expected to establish systems based on transparency, competition and objective criteria. As illustrated in the chapter, the Leadership Code Act requires disclosure of wealth of civil servants but such disclosures amount to naught given the fact that they are not publicly available. While the UNCAC has innovative and laudable provisions, which if effectively implemented domestically would address the bane of corruption through the rule of law, the existence of claw back clauses couched in words such as ‘in accordance with fundamental principles of domestic law’¹⁵³ and taking measures ‘to the greatest extent possible within a domestic legal system’¹⁵⁴ choke the envisioned potential of the substantive provisions of the UNCAC. This is because states employ such

¹⁴⁹ State changes tune on looted billions abroad, *East African Standard*, 19 May 2005.

¹⁵⁰ UNCAC article 7.

¹⁵¹ UNCAC article 8.

¹⁵² UNCAC Article 9 of the

¹⁵³ UNCAC article 23.

¹⁵⁴ UNCAC article 31.

discretion to limit and constrain actions of various actors to the detriment of fighting corruption.

3.2.2 The African Union Convention on Preventing and Combating Corruption 2003

The African Union Convention on Preventing and Combating Corruption 2003 (AU Anti-Corruption Convention) adopted under the auspices of the African Union sends a positive signal of improving transparency and good governance in Africa.¹⁵⁵ The Convention acknowledges that corruption undermines accountability and transparency in the management of public affairs as well as socio-economic development on the continent.¹⁵⁶ Although Uganda is not only a signatory but also ratified this all important-regional Convention, some of its provisions are innovative thus worth being highlighted. Since the nature and impact of corruption is beyond national boundaries, it requires cooperation and mutual assistance between countries in order to be tackled effectively. In the spirit of international cooperation, state parties are obliged to collaborate with countries of origin of their supportive multinational corporations to criminalize and punish the practice of secret commissions during international trade transactions.¹⁵⁷ Such cooperation is geared towards fostering regional, continental and international cooperation to prevent corrupt practices in international trade transactions.¹⁵⁸ In light of the prevalence and plight of looted funds being stashed in other jurisdictions the AU convention echoes provisions of the UNCAC by calling on all states to take legislative measures to prevent corrupt public officials from enjoying ill acquired assets by freezing their

¹⁵⁵ K Olaniyan 'The African Union Convention on Preventing and Combating Corruption: A critical appraisal' (2004) 4 *African Human Rights Law Journal* 74, 75.

¹⁵⁶ AU Anti-Corruption Convention preamble para 7.

¹⁵⁷ AU Anti-Corruption Convention Article 19(1).

¹⁵⁸ AU Anti-Corruption Convention Article 19(2).

foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin.¹⁵⁹ This implies that state parties must cooperate and be in conformity with relevant international instruments on international cooperation on criminal matters for purposes of investigations and procedures in offences within the jurisdiction of the AU Anti-Corruption Convention.¹⁶⁰ The AU Advisory Board on Corruption is set up as a monitoring mechanism within the AU Anti-Corruption Convention.¹⁶¹ Its objectives are to promote and encourage the adoption and application of anti-corruption measures on the continent as well as collect and document information on the nature and scope of corruption and related offences.¹⁶² It is also required to advise African governments on how to deal with the scourge of corruption and consequently submit a regular report on the progress made by each state party in complying with the provisions of the AU Anti-Corruption Convention.¹⁶³ State parties are required to empower their domestic courts and other competent authorities to give valid confiscation or seizure orders of bank, financial or commercial documents with a view to implementing the AU Anti-Corruption Convention.¹⁶⁴ In addition, state parties are forbidden to use any information received that is protected by bank secrecy for any other purpose other than the proceedings for which such information was requested. This is an innovative provision in its express provision forbidding states to invoke banking secrecy to justify state parties' refusal to cooperate with regard to acts of corruption and related offences.¹⁶⁵ This reduces opportunities for heads of states and other state

¹⁵⁹ AU Anti-Corruption Convention Article 19(3).

¹⁶⁰ AU Anti-Corruption Convention Article 19 (5).

¹⁶¹ The AU Advisory Board on Corruption is set up as a monitoring mechanism of the AU Anti-Corruption Convention and it is to adopt its own rule of procedure according to AU Anti-Corruption Convention article 5(6)

¹⁶² AU Anti-Corruption Convention article 22 (5).

¹⁶³ AU Anti-Corruption Convention article 22 (5).

¹⁶⁴ AU Anti-Corruption Convention article 17(1).

¹⁶⁵ AU Anti-Corruption Convention article 17(3).

officials to exploit the global banking system to conceal or launder the proceeds of corruption from their countries. It equally serves to reduce the attractiveness of jurisdictions that often serve as destinations for stolen money.¹⁶⁶

The AU Anti-corruption Convention therefore seeks to reflect African realities in the fight against corruption and is particularly important in its reference to the African Charter on Human and Peoples' Rights in the fight against the scourge. The objectives of the AU Anti-corruption Convention are to promote, facilitate and regulate cooperation among state parties to ensure effectiveness of measures and actions¹⁶⁷ to promote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights,¹⁶⁸ and to establish the necessary conditions to foster transparency and accountability in the management of public affairs.¹⁶⁹ In realizing the aforementioned corruption is inhibited. The purpose of the AU- Anti-corruption Convention is similar to that of UNCAC whose objective is to 'promote integrity, accountability and proper management of public affairs and public property.'¹⁷⁰ The AU Convention further sets out as one of its purposes, the promotion and strengthening of measures to prevent and combat corruption more efficiently and effectively¹⁷¹ which is also elucidated by the UNCAC.

In conclusion the overall objectives of the AU Anti-corruption Convention are laudable, like most other treaties adopted in Africa; the major problem lies with translating these lofty objectives into reality. What is needed is a strong political will on the part of states, to address corrupt practices which, unfortunately in most

¹⁶⁶ Olaniyan (n 68 above) 84.

¹⁶⁷ AU Anti-Corruption Convention article 2(2).

¹⁶⁸ AU Anti-Corruption Convention article 2(4).

¹⁶⁹ AU Anti-Corruption Convention article 2(5).

¹⁷⁰ UNCAC article 1(c).

¹⁷¹ UNCAC article 1(a).

instances is lacking or inadequate, as evidenced by the rampant corruption on the continent.

3.4 Conclusion

Although there is an institutional legal framework in place to combat corruption, there is still need to strengthen it to eliminate the loopholes in the existing legislations. Much as the IGG has advanced to a certain extent, there is need to improve on the realization of the available legislation to uplift the work of the IGG.

CHAPTER FOUR

INSTITUTIONAL FRAMEWORK

4.1 Introduction

There are a number of institutions in Uganda that are mandated fight abuse and misuse of public office and resources as below:

4.2 The Inspectorate of Government

The Constitution requires the Inspectorate of Government (IG) is required to submit to parliament at least once in every six months,¹⁷² a report on the performance of its functions, making recommendations which it considers necessary for the efficient performance of public institutions; and to provide any other information that Parliament may require. The functions of the Inspectorate of Government as spelt out in the Constitution are:¹⁷³

- (a) To promote and foster strict adherence to the rule of law and principles of natural justice in administration.
- (b) To eliminate and foster the elimination of corruption, abuse of authority and of public office.
- (c) To promote fair, efficient and good governance in public offices.
- (d) To supervise the enforcement of the Leadership Code of Conduct.
- (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, given or done in exercise of administrative functions.

¹⁷² The Constitution of the Republic of Uganda Article 231.

¹⁷³ Ibid Article 225(1) (a– f)

- (f) To stimulate public awareness about the values of constitutionalism in general and the activities of its office, in particular, through any media or other means it considers appropriate.

In order to fulfill its mandate, the Inspectorate of Government is granted special powers.¹⁷⁴ These powers include the following:

- (a) The power to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office;
- (b) Power to make orders and give directions where necessary and appropriate;
- (c) Power to enter and inspect premises or property of any department of Government, person or authority and to examine or retain any documents found therein. This institution has been discussed in the previous chapter in detail.

4.3 Directorate of Ethics and Integrity

This institution was created in 1998 under the President's Office and is the newest addition to the others in fighting corruption.¹⁷⁵ By this new addition it was believed the fight against corruption had been elevated to the cabinet level meaning that corruption could be discussed at the highest level; the executive.

This institution was intended to instill integrity and ethical standards in the public and also raise awareness on corruption. The opinion that this institution was created to fight corruption brought about an illusion amongst the populace that a new institution to arrest and prosecute the corrupt had been created under the watchful

¹⁷⁴ The Constitution of the Republic of Uganda 1995, Article 230 and The Inspectorate General of Government Act 2002 Section 14(5).

¹⁷⁵ Masaw Musene. Registrar, Supreme Court, at the Regional Seminar for Grade II Magistrates on 15th -18th May, 2000, Colline Hotel, Mukono "Corruption in Judiciary", p 45.

eye of the president. There was confusion as to what the role of this department was in the prevention of abuse and misuse of public office and resources.

This institution was created as a department and is not backed by any laws. Its role has been found wanting in the sense that it sounds tough and talks tough but in reality it can only do just that.

However the department took up its duty of instilling ethics to serious levels. In 2000, the directorate published the government strategy to fight corruption in the next 2 years pointing out that government was to put in place rules for the management of public resources and use of public authority. But these were not implemented at all. They remained on paper and not implemented by any agency that is mandated to fight the vice.

Had the department been backed by law and given authority to implement its strategy, there might have been a difference. It was more of advice which was at the discretion of the recipient to decide whether to follow or not so it is impossible for the public to task any agency to explain why government failed to implement those strategies/plans.

The directorate has published strategies to fight the vice the latest being in 2009.¹⁷⁶

In the foreword of a booklet, the former minister of Ethics Nsaba Buturo says the fight against corruption has entered a new phase by laying the new national corruption strategy as a tool rolling out this fight further.

This fight, according to the minister involved only a few institutions and civil society organizations but this is time around was involving the Uganda society that is said to only accuse government of lacking political will to fight corruption. This new strategy after finding the failings of the 2004/07 national strategy came up with

¹⁷⁶ National Strategy to fight corruption and rebuild ethical and integrity in Uganda 2009-2013

three main objectives to widen the scope of participation in the fight against corruption. These are;

- 1) Effective political leadership in the fight against corruption
- 2) Increasing public demand for accountability and upholding national values.
- 3) Effective enforcement of anti corruption measures.

These are strategies in a move to implement the policy of Zero tolerance to corruption articulated in the NRM manifestos of 2006 and 2011. In the same manifesto's, it was declared that the institutions fighting corruption such as DDP, auditor general, IGG, CID and Ethics and Integrity will be strengthened.

The National Anti-Corruption Strategy (NACS) is a five year planning framework designed to make an impact on the quality of accountability and reducing the levels of corruption.

The main focus of NACS is on people, systems and organizations including building a culture where integrity is valued and corruption rejected.

NACS also seeks to support natural development that will be able to sustain a better quality of life for Ugandans, a strong competitive economy and an efficient and effective public policy.

With these laws, why does corruption still exist?

The National Anti-Corruption Strategy (NACS) is a guide to the policies and programmes in the national framework in the fight against corruption by providing a broad, medium-term and comprehensive approach to more effective accountability and reduce corruption.

NACS sets an ambition agenda to achieve a public service that appreciates and embraces integrity, accepts the need for transparency and accountability. It further seeks to ensure full compliance with regulatory and legal requirements.

NACS is set within the policy framework of Zero-tolerance to corruption and national planning and seeks to support the implementation of government policies in the area of good governance.

It is set within the institutional framework under the umbrella of the Inter Agency Forum (IAF).

This forum provides a key mechanism for all anti corruption agencies and institutions with a role of furthering the aims of NACS.

NACS recognizes that corruption is getting institutionalized and the consequences as previously seen are substantial for the social and economic fabric of Uganda society with the burden resting on the poorest who suffer the brunt of corruption.

NACS identifies key aspects that enable corruption to exist to wit:

- 1) Public beliefs and attitudes
- 2) Inefficient accountability systems
- 3) Weak political leadership and accountability
- 4) Moral decay in public service
- 5) Limited capacity on anti-corruption agencies and the judicial system
- 6) Delays in the establishment of an effective legislative framework.

NACS is therefore considered the main tool in the fight against corruption as expressed in the Zero-tolerance policy. The NACS further seeks an active dialogue with all stakeholders and promotes the introduction of anti-corruption action plans

and sectoral groups. Development of strategic alliances to achieve this is very essential.

The Public accounts Committee (PAC) of the Uganda parliamentary and the Auditor General's office lack power to execute their recommendations but rely on other institutions to take action on their behalf, which action is rarely enforced. The CID and judiciary on the other hand are reported to be among the top most corrupt institutions in the country. This undermines the trust people have in these institutions and greatly affects the reporting of corruption cases.

4.4 The Office of the Auditor General

Under Art 154 and 163 1995 constitution, no funds can be withdrawn from the consolidation fund or all project accounts without the approval of the A.G. it further provides that at the end of each year she/he must carry out financial and value for money audit of government expenditures and revenue collections.

Mandate

The 1995 Constitution of the Republic of Uganda and the National Audit Act, 2008 require the Auditor General to undertake Financial and Value for Money Audits and report to Parliament as set:

The Constitutional provisions are as follows: -

The Constitution requires the Auditor General to:¹⁷⁷

- (a) Audit and report on the public accounts of Uganda and of all public offices including the courts, the central and local government administrations,

¹⁷⁷The Constitution of the Republic of Uganda 1995 Article 163 (3)

universities and public institutions of like nature, and any public corporation or other bodies or organizations established by an Act of Parliament; and

(b) Conduct Financial and Value for Money audits in respect of any project involving public funds.

The same constitution requires the Auditor General to submit to Parliament annually a report of the accounts audited by him or her or under clause (3) of this article.¹⁷⁸

This body is provided for in the Public Finance Act which was enacted to provide for the control and management of public finances of Uganda and for the audit and examination of public accounts of certain statutory bodies. The Public Finance Act¹⁷⁹ stipulates that the Auditor General on behalf of parliament may examine, inquire into and audit the accounts of the accounting officers and receivers of revenue and of all persons entrusted with the collection, receipt, custody, issue or payment of public moneys, or with receipt, custody, issue, sale, transfer or delivery of any stamps, securities, stores and any other government property. The Auditor General performs the function of controller and auditor. As controller, Auditor General deters or minimizes the occurrence of corrupt practices while as auditor, aids in exposing corrupt practices.¹⁸⁰

Article 163 establishes the office of the Auditor General with the approval of parliament and whose office shall be a public office. The power of the Auditor General are also spelt out and this includes inter alia, the power to audit and report on the public accounts of Uganda and all public offices including the courts, the central and local government administrations, universities and public organizations

¹⁷⁸ The Constitution of the Republic of Uganda 1995 Article 163 (4)

¹⁷⁹ The Public Finance Act Section 24

¹⁸⁰ Joseph Oloka Onyango, "Law and the Struggle for Democracy in Africa, Clari Press Limited, Nairobi 1996, p.87.

established by an Act of Parliament Article¹⁸¹ and to conduct financial and value for money audits in respect of any project involving public funds. Article 163(6) further stipulates the independence of the Auditor General provides that in performing his or her functions, the Auditor General should not be under the direction or control of any person or authority.

Article 154(3) and the Local Government Act 1997¹⁸² provide for the Auditor General as the sole authority to give approval for any money to be withdrawn from consolidated fund account, the general fund and other district accounts. This provision aims to deter misappropriation of funds by people who actually have access to this money. Loan money is however used contrary to this provision since it's spent with the approval of donors and not the Auditor- General.

The Local Government Act¹⁸³ provides that the accounts of every local government council and administrative unit shall be audited by the Auditor General or an auditor appointed by him, and is empowered to carry out surprise audits investigations or any other credit audits considered necessary. The Auditor General is further required to submit to parliament annually a report of the accounts audited by him/her under clause (3) of this Article for the financial year immediately preceding.¹⁸⁴ Similarly, the report is to be submitted to inter alia parliament, the ministry of Finance, the minister of Local Government, the Local Government Administrative Unit concerned.¹⁸⁵ The report is required to indicate inter alia, details of whether government resources have been managed lawfully as per the Appropriation Act. its however worth noting that the Auditor-General has no

¹⁸¹ The Parliamentary Act 163(3)(a)

¹⁸² The Local Government Act 1997 Section 83(2)

¹⁸³ Ibid S.88.

¹⁸⁴ Ibid

¹⁸⁵ The Local Government Act 1997 Section 88(3),

powers to arrest and prosecute culprits but rather points out aspects of financial mismanagement, which may then lead to the initiation of investigation proceedings. It is the bodies to whom the reports are presented that take up the matters raised, take actions, which may not be satisfactory. The office of Auditor General further needs a specialized, well equipped staff, able to cope with detection of corrupt practices as technology advances and also need for more offices in the districts and man power.

Despite these powers, the Auditor General's office is largely ignored by the executive. There are so many incidences in which money is withdrawn from the treasury without the approval of the auditor general. The former Auditor General (Mr. Kakozza James) pointed out to the Ministry of Finance, Planning and Economic Development (MOFPED) the constitutional provision that bars them from withdrawing money from the consolidated fund without his approval. This shows total disrespect by the MOFPED for the Auditor General's office. There are more incidences that arise to show total disrespect for this office e.g. instances where the president orders for money to be drawn from the treasury and is given to private individuals for their private business.¹⁸⁶

The Auditor General is mandated to make annual audit reports but these reports are not made public. The researcher tried to get a copy of any such reports in vain. All he was told was to Google and get them on-line.

The question is how many Ugandans can afford such access considering how slow internet speed is and the costs involved, in addition to the fact that some important details may not be available online. The reports are submitted to the Minister of

¹⁸⁶ The NRM Manifesto 2011

Finance who is required to lay them before parliament within 14 days. Failure to do that, the Auditor General is required by law to submit a copy directly to the Speaker of Parliament. This is then handed to the Public Accounts Committee (PAC) of parliament which studies it and interrogates those indicated to have failed to account for public funds then recommends appropriate action. The house then passes on the recommendations to government.

This being a department of government, information stemming from the findings of the Auditor General shall be public documents. However in reality one can not easily access these documents with flimsy excuses such as copies not being available contrary to Section 5.¹⁸⁷ The researcher was given such excuses as “*they are finished check tomorrow*” when trying to get copies of the reports till he was told to Google. The major excuse being that the resources are not enough to print a substantial number of copies.

This is a major problem because in the IGG’s office I was able to get a copy of the report that was published recently i.e. July-December 2010 report.

The question therefore is, does the public not deserve to know how much is lost, unaccounted for or misappropriated?

Transparency International mission holds that the fight against corruption would benefit from the wide publicity of the auditor generals reports as this would be a way of involving the public.¹⁸⁸

In the NACS, one of the strategies is to involve the public (Uganda society) and what other better way other than the public accessing information that would be able to let them know which of their leaders (especially political) is involved in acts that betray their welfare.

¹⁸⁷ Access of Information Act 2005 Section 5.

¹⁸⁸ Ibid Section 6.

There also is the issue of classified accounts. Government's refusal of the Auditors General to audit classified accounts casts doubt on government's commitment to the fight against corruption. These funds are usually in organs such as Uganda People's Defense Forces, Internal Security Organization, ESO, some state house departments.

These accounts form a substantial part of the budget every year. This means that the big portion of government resources used in these departments are not audited.

It was resolved by parliament in 1999 that these accounts be audited but security organs replied by stating that they needed to vet the officers to audit them. These officers were vetted but were still not allowed to audit the classified accounts. The security organs said they needed to work out their own modalities for the auditing. It is from such institutions that are not audited that we find some of the richest Ugandans running them. Worldwide it's known that institutions where accountability procedures are not enforced the tendency to abuse and miss-use funds is very high.

4.5 The Public Accounts Committee (PAC) 342

The Public Accounts Committee¹⁸⁹ empowers parliament to make laws to promote peace, order, development and good governance. In the exercise of its functions, parliament is empowered to approve and authorize Government expenditure from the consolidated fund and through continuous review of Government operations. There is further requirement that the Auditor General and the Inspector General of Government (IGG) to submit reports to parliament.

¹⁸⁹ Article 79

PAC¹⁹⁰ provides that parliament can appoint standing committees and other committees necessary for the efficient discharge of its duties. According to PAC¹⁹¹, one of the functions of the standing committees is to assess and evaluate activities of government and other bodies. The rules of procedure of the parliament¹⁹² provide for the standing committees to be elected from among members of parliament. Therefore Public Accounts Committee (PAC) is one of such standing committees which holds the duty of examining the Auditor General's report and to monitor all expenditure of public funds as required by the constitution. It further makes any holder of a public or political office, who directs or concurs in the use of public funds contrary to existing instructions, accountable for any loss arising from such use and requires him/her make good the loss even if he/she has ceased to hold that office. Therefore, the PAC makes recommendations to parliament in this regard. One of the strengths of the PAC is the fact that its proceedings are public and thus accessible. PAC has powers to call any minister or person holding public office, private individuals' to appear before them to give evidence or submit memoranda, and may co-opt experts or any member of parliament to assist them in the discharge of their functions.

Public Accounts Committee (PAC) is one of the frontline committees in Parliament given its role of quizzing public officers suspected of abusing public resources.

PAC gained popularity during the early 1990s, when it forced accountability from most public offices. Public officers were often hit by trepidation when summoned to appear before PAC, especially if they lacked a plausible excuse for improper use of the funds entrusted with them.

¹⁹⁰ Article 90(12)(i)

¹⁹¹ Article 90(3)

¹⁹² Article 90(2) 153

Although the present PAC still delves into the activities of public officers, it is seen as a tool of the opposition to fight the government by attacking the officers that are accused of corruption tendencies who are considered to be good cadres of the movement. One time PAC was referred to as a torture chamber especially after grilling a recipient of CHOGM funds for the hotel industry and he died a few days later before fully accounting for the funds he received.

However, that might only be a part of the problem. The general feeling in the public is that PAC was toothless because it was headed by a staunch member of the ruling Movement Government who was not quite ready to be so confrontational with his colleagues in the Executive. This is clearly seen in the former Auditor General, Mr. James Kakooza' expression, who, in 1995 observed that, "without opposition, you cannot have full accountability."

However opposition came in by 2006 and PAC has been headed by opposition MP Nandala Mafabi who has worked diligently with his committee. They have made recommendations which have been passed on to government but not implemented. Currently the only person who appeared before the committee on the CHOGM report that has been summoned to court is former VP Gilbert Bukenya, yet there many more who have appeared are scams.¹⁹³ The excuses given above are no justification for allowing errant public officers to go scot-free after misusing billions of taxpayers' money, many times the culprits rally the support of the party caucus to be absolved of the offences thus rendering the PAC recommendations of no use. Another problem is that, government does not bother to implement the recommendations made by parliament, which could be the reason the Auditor General keeps encountering the same malpractice's year after year.

¹⁹³ Trust Law, htmUganda.- Thompson Reuters Foundation

Big amounts of public funds continue to be entrusted to the same officers who have questionable records of accountability records, thus perpetuating the vicious circle of abuse and misuse of public funds. Case in point is the former vice president Dr Kazibwe assigned with a responsibility of heading the Microfinance service, after failing with the valley dams project.

Similarly, it is the same departments which keep losing large amounts of money each passing year, prompting speculation that institutions like PAC, CID and DPP are not doing their work as effectively as they should.

4.6 Criminal Investigations Department (CID)

The Criminal Investigations Department (CID) has failed the anti-corruption campaign in Uganda, because of corruption within its ranks. During 1999 when a judicial commission of inquiry into the police force (of which the CID is part) was launched, junior officers were threatened with demotion and unpopular transfers if they testified before the commission.

A wave of intimidation was visited upon the Force, especially the junior cadres who felt intimidated. The intimidation was so glaring, prompting an appeal from the Commission Chairperson, Lady Justice Julia Sebutinde for government to put a stop to the clandestine victimization.

During the Commission's hearings, former top CID officers were accused by their victims of threatening them with death, or preventing them from getting police contracts after refusing to agree to bribes.

Former CID boss, Chris Bakiza was for instance accused by a witness of diverting police's welfare money to his private company, so he could supply ceremonial

uniforms to the force. Money for the welfare fund is deducted from policemen's salaries every month.¹⁹⁴

A private citizen, Benon Kashaka testified that in July 1991, Bakiza borrowed Shs 16m from him so that he could replace money he had drawn from the fund. He was afraid auditors would discover the diversion. However, when Kashaka demanded repayment, Bakiza threatened him with death.¹⁹⁵

In October 2000, a Senior Detective Inspector, Enslo Odoch was arrested in Kampala after getting a Shs 1million bribe from a suspected embezzler, David Walakira so that he could drop the investigations. Odoch said he was supposed to share the money with his bosses, and had therefore demanded that Walakira pays Shs 5m.¹⁹⁶

Odoch's case could be an indicator to the corruption infesting the CID and it is difficult to determine the number of investigations involving billions of shillings that have been dropped in exchange for a share of the loot. Yet nothing much has been done by the government when such abuses are exposed. For instance, what has it done about implementing the recommendations of the Sebutinde Commission of Inquiry? Act slowly maybe. Meanwhile the rot in the CID grows and public cynicism doubles. Every one knows that to get anything at police one must have some money yet there are posters stating that police services are free e.g. Bond.

The donors are also watching intently how government handles the report which was completed over 10 years ago. "No donor will be willing to put money into the police force until the report of the Judicial Commission has been made public and acted on' said then Deputy Danish Ambassador, Jens Kaare Rasmussen.

¹⁹⁴ Corruption in Uganda, Lillian Nsubuga, Uganda Debt Network pg 8

¹⁹⁵ Ibid 9.

¹⁹⁶ Ibid.

Years later we still receive donor funding for police activities, the latest being police trucks that are being used to quell riots and demonstrations. The report still remains on the shelves. The disciplinary measure taken being transfer of officers to stations with less limelight.

The Ugandan Public is equally disappointed with government's refusal to implement the recommendations of the Sebutinde Report. At least by November 2009 Over 75 percent of 100 respondents¹⁹⁷ in a random survey demanded to know why government had not released the Sebutinde Report if its claims of being committed to fighting corruption were genuine. Majority of the Ugandans moving on the street do not even remember the essence of the report, because there are more young stars who did not know about it then and those in the know have lost interest and believe nothing ever comes out of commissions of inquiry except hot air and creating employment for some retired offices. Currently there is a commission of inquiry on KCC. Let us wait and seen if there will be any difference from the previous commissions.

Most importantly, although by failing to build a well-motivated, adequately remunerated Police Force, government has indirectly sanctioned corruption in the CID. For the C.I.D to do its work effectively, it should be able to attract highly educated, well-trained, disciplined and well-motivated individuals, within high levels of integrity. Government of late recruited graduates to the force but rumour has it that party affiliation was a key factor in the exercise therefore no difference can be noticed.

¹⁹⁷ Radio One, Early Rise Show 14 March 2009

The CID is also pathetically under-equipped and is mostly unable to deal with highly technical embezzlement cases. Files are routinely lost simply because the department lacks custody equipment to store files and exhibits.

Some exhibits are stolen by members of the force e.g. money, drugs etc when a suspect asks for them for their property he/she is threatened with re-arrest.

CID officers have not been supplied with cell-phones, although this is the standard form of communication in Uganda today. By using mobile phones, criminals' have better mobility and communication than the police force. Those that are given phones use them for private interests. Those with private phones are expected to use them for their duty yet the force does not provide for airtime etc even when it's provided the beneficiaries may not receive it or if they do it is not the real amount given usually its reduced by the issuing officers and there is no accountability for such funds.

Despite its importance however, it is the most neglected component of the force. This department is so ignored, that whatever few officers there were, have since left for better employment. "In the majority of cases requiring proof beyond circumstance evidence, there is no hope of proving a single case when this section is so ignored and neglected as it has been to date," observed a former Director of Public Prosecutions Alfred Nasaba. When there is a complaint the officers ask the complainant for facilitation claiming, transport, lunch charges etc stating that these are not provided by government.

Despite all these problems the CID has always received and tried to handle cases of corruption. Below is a general outlook of the sector handling fraud and corruption:

4.6.1 Corruption (Public Sector Fraud)

This involves corruption related cases occurring in the public sector i.e. Ministries, Government Departments, Local Governments and Municipal Statutory Organizations/Bodies. The cases handled under this category are specified in the Anti-Corruption Act 2009 which repealed the corruption related sections from the Penal Code Act and also created other new offences.

The greatest incidences of corruption have been noted to take place in;

- a) . The local governments (Districts, Municipalities and Town Councils).
- b) . In the award of contracts for provision of services or goods; there is a lot of abuse/flouting of the Public Procurement and Disposal of Public Assets (PPDA) processes.
- c) Shoddy construction works especially in Primary Schools and Health Centre's.
- d) Procurements under the Common Wealth Heads of Government Meeting (CHOGM) which was held November – December 2007. This area was probed by PAC (Parliamentary Accounts Committee) which referred some cases to DPP/Police and IGG for investigations.
- e) The NAADS (National Agricultural Advisory Services) a government rural based program meant to improve rural household incomes.

A special team of “the NAADS Task Force” was put in place by the Hon. Minister of Agriculture Animal Industry and Fisheries (MAAIF) from September 2009 till February 2011, to investigate abuses in the NAADS programme.

4.6.2 Summary of Public Sector Corruption Cases Investigated During the Year 2010

Table 1: Summary of Public Sector Corruption Cases (2010)

Corruption Probes	Number of Cases
NAADS Probe	55
Local Governments	124
CHOGM	25
Committee on commission and state Enterprises	06
Committee on Local Government	16
Other cases	67
Total	293

Source: IGG's Office, July-December 2010 report

4.6.3. Estimated Recoveries from Public Sector Corruption Cases

Table 2: Showing NAADS Recoveries

District	Recoveries in Ug. Shs
Yumbe	47,000,000
Lira	12,000,000
Iganga	23,000,000
Kanungu	10,000,000
Mbarara	12,000,000
Amuru	12,000,000
Nebbi	25,000,000
Kibaale	1,820,000
Total	142,820,000

Source: IGG's Office, July-December 2010 report

N.B

- i) In Iganga District, on top of cash there was also recovery of NAADS technologies (200 bee hives) worth 25 millions.
- ii) In Lira District about one billion shillings which had been fraudulently transferred to suspected Bank Accounts was blocked and put back to the NAADS program

CHOGM Eight (8) millions recovered

4.7 Economic Crimes (Private Sector Fraud and Corruption)

In the year 2010, 10,988 Cases of Economic Crimes were investigated, compared to 11,127, cases investigated in 2009 giving a decrease of 1.2% as revealed by the July-December 2010 report.

Additionally, it was established from Tetra Tec¹⁹⁸ that corruption in public procurement and service delivery poses a serious obstacle to economic and social development in Uganda, and that, the Government of Uganda (GOU) and Ugandan civil society acknowledge the seriousness of corruption and recognize that corruption has led to ‘significant losses of public funds through mishandled procurements and outright embezzlement.’ According to a National Public Procurement Integrity Baseline Survey, conducted under the auspices of the GOU’s Public Procurement and Disposal of Public Assets Authority (PPDA), between 7%–9% of the central and local governments’ procurement budgets are lost to corruption each year. This amounts to between \$64 and \$85 million dollars.

According to Transparency International’s Corruption Perception Index, Uganda’s performance has improved from a score of 1.9 in 2001 to 2.7 in 2006; however, any score below 3 represents a perception that corruption is rampant. A significant number of corruption cases have been reported in the press in recent years, and high profile cases in particular need to be dealt with during the period of the Threshold Country Plan (TCP) to address the problem and change public perception.

¹⁹⁸ Tetra Tec (2010)

4.7.1 The major recoveries made in this category of crime in the year 2010 are indicated below:

- i) CID HQS GEF 901/2001, investigations led to the discovery that Kasese Cobalt Company (KCCL) evaded tax up to the tune of USD \$2,262,698 (Ugx 5,430,475,200). Police brought this to the attention of PS Energy, the Commissioner General Uganda Revenue Authority and payment is going on.
- ii) CID HQS GEF 1088/2010, Fraud case to the prejudice of GAPCO (U) Limited of over 1,000,000,000/=. So far 335,000,000 has been recovered and more recoveries being made.
- iii) Three Lorries full of suspected counterfeit sanitary towels “always” and diapers “pampers” were recovered.

4.7.2 The major Challenges Experienced Included the Following

- i) increased levels of money laundering
- ii) Lack of cyber crime legislation yet the offence is on the increase.
- iii) Weak enforcement of the Anti Counterfeiting Act.
- iv) Weak legislation on obtaining by false pretences i.e. conmen “Bafere”
- vi) Government interferences and favoritism .

There is still lack of political will and zeal among the people to fight corruption, without the presence of human and financial resources. This can particularly be blamed on high official interferences and sabotage in the steps taken against corruption. For instance in the case of Roland Mutale, for this reason the institutional framework suffers various constraints like lack of finances, human

resources, interference of top officials in the work of anti-corruption agencies and logistical support.¹⁹⁹

The law is inadequate to new changes brought about by development and suffers poor enforcement. The institutions are marred with inadequacies arising from lack of skilled/adequate staff, lack of logistical support and funding as well as poor remuneration. The IGG also lacks autonomy in the exercise of his duties and is subject to the whim of the executive. The top officers of the IGG's office are for instance appointed by the president and can be dismissed by him at will. The institution of the vice president's office in assuming the role of coordinator has also undermined the autonomy of the institutions fighting against corruption.²⁰⁰

The staff of anticorruption are not motivated and protected to ensure their impartiality, efficiency and independence. There is lack of security of tenure, integrity and a good working relationship among anti-corruption agencies.²⁰¹

The police are perceived as one of the most corruption institutions in Uganda, particular the traffic police. This is clearly expressed in 71% of the Afro Barometer respondents in a research carried out in 2005 on Global Integrity where the respondents expressed that they have paid a bribe to avoid a problem with the police. According to the same research it is upheld that the Political interference in police-work is commonplace, with high profile cases sometimes dropped following political pressure.²⁰²

¹⁹⁹ Mr. Bageya Waiswa, Country report on the Fight against Corruption: Inspectorate of Government, A Paper Presented at the 3rd Annual General Meeting in Bujumbura, Burundi, Secretary of the Inspectorate of Government, 2009 October.

²⁰⁰ Ibid.

²⁰¹ Ibid

²⁰² U4 Expert Answer, Overview of Corruption in Uganda, Anti Corruption Resource Center. www.U4.no

There is a lot of wastage of financial and human resources due to poor coordination of activities of the anti-corruption agencies and at times a duplication of roles. Parliament has failed to play its coordination role due to unnecessary interferences by president. It can therefore be submitted without financial and human resources the anti-corruption measures will remain inadequate as coordination will be lacking thus, the fight is rendered inadequate.

For such purposes, it can thus be submitted that, just like prevention is better than cure in fighting a disease, in the same way prevention matters more than enforcement in corruption. Enforcement is reactive while prevention is proactive and therefore, consequently, compliance gained through cooperation is always more meaningful and more enduring than compliance gained through coercion.

Table 10: Breakdown of Economic Crimes

S/NO	Acquisition	No of Cases
1.	Obtaining by false pretences	7,135
2.	Issuing false cheques	1,074
3	Forgery and altering of documents	1,010
4	Counterfeiting	981
5	Embezzlement	354
6	Bank and other corporate frauds	145
7.	Abuse of office	190
8	Causing financial loss	99
	Total	10,988

Source : IGGs Office July-December 2010 Report

4.8 Land Frauds

A Land Protection Unit was formed under the CID to:

- i) Oversee evictions and ensure that they are conducted professionally
- ii) Investigate complaints of land fraud

iii) Sensitize the public on matters concerning land frauds.

In 2010, 1,870 cases were registered in the country.

4.8 Directorate of Public Prosecutions (DPP)

Established under article 71 of the 1967 Uganda Constitution, the Directorate of Public Prosecutions (DPP) is responsible for investigating and prosecuting all criminal cases in the country. Under the Anti Corruption Act (2009), the DPP is empowered to investigate and prosecute cases of corruption and bribery.

By the nature of its work, the DPP works very closely with the Criminal Investigations Department and the Judiciary especially in the investigation and prosecution of cases. The DPP has not performed effectively due to the weaknesses of investigations carried out. On many occasions, cases are thrown out for lack of hard evidence.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

As explained in the previous chapter these institutions are all under the justice law and order sector. This chapter covers conclusions and recommendations made to this sector in general since they face almost the same problems.

This report noted the areas needing improvement for the future implementation of the programme and thus findings from all the JLOS Institutions audited are presented in this report so as to be shared amongst themselves.

5.2 Conclusion

The study concludes that corruption has had a most harmful effect on Uganda's capacity to develop as a nation and especially on its economy, in lifting its people out of poverty, this is despite the available anti-corruption legislation. Corruption is endemic and widespread in Uganda, because people in higher offices have remained immune to the anti-corruption charges and trials. Despite the supportive framework some corrupt practices pass unnoticed and unattended.

Bureaucratic and administrative forms of corruption are widespread in the Ugandan administration, with practices of bribery, nepotism and misuse of official positions and resources. Government bureaucracy, complex regulatory procedures and red tape provide numerous opportunities for corruption and rent seeking.

Although there exists a legal framework to fight corruption in Uganda, it suffers from poor enforcement as well as other factors thus calling for continuous review to address new developments that come up. There is a need to strengthen the legal framework to eliminate the interferences in the work of agencies instituted to fight against corruption.

On the other hand, it should further be noted that, the LCA is not a task that should be entirely left to the IGG. It is one that would be paralyzed should other public offices decline to cooperate with the IGG. By import, the ruling in the Kikonda Butema's court insulates the IGG from allegations of fraud or ill intention in the process of reporting the findings of the Inspectorate and encourages the IGG to take drastic measures with the confidence that they will not be overturned by courts of law without merit.

It is necessary that the policy implementers make reviews of any law or regulation to constantly monitor whether it is applicable or not and to establish whether it is being enforced the way it is intended by the legislators, and whether this enforcement is proper, fair and consistent by the laws that govern it.

5.3 Further Recommendations

On summarizing the findings and drawing conclusions of the findings, the researcher made the following recommendations;

5.3.1 Improving the Effectiveness of the IGG

In order to curb corruption tendencies in Uganda there is need to improve on the effectiveness of the IGG and the Leadership Code and to enhance the measures

already in place to fight corruption. For this, the Constitution needs to be amended to reflect the provision that the violation of the code is a ground for the removal of all leaders whose removal procedure is provided for in the constitution and not a directive from any other person be it the president.

5.3.2 Declarations of Leaders be Lodged Immediately

Declarations of the leaders once lodged with the IGG should be displayed or made public so that the public can give information which may be used to verify their correctness. This should also more specifically, define and clarify the terms of outrageous, infamous and disgraceful conduct amongst the leaders as required by the code.

5.3.3 Technical Facilitation of the IGG

The IGG should also be technically facilitated and empowered to effectively enforce the Code by increasing the capacity of the IGGs office and strengthening it to be able to effectively handle the cases and complaints before it. This calls for a massive campaign to increase awareness campaign of the code with the involvement of the civil society.

5.3.4 Immediate Publicizing of Declarations by IGG with the Inspectorate

The IGG should automatically display or publish the declarations lodged with the inspectorate at the end of the statutory period in which the leaders are required to declare since the declaration period is known, so as to invite the public to commend and provide information that can be used to verify the declarations. The publication

may also be made in the national media or in the media circulating in the area where the leaders are based.

There is need for the activities of the IGG to be made public in order to create transparency and to encourage positive criticism from the public of its activities, this will definitely enhance the public image of the institution. There is need to inculcate an anti-corruption culture among the people especially the youth through incorporating anti corruption programmes within the school curriculum because this will help to improve on the public awareness about the dangers and effects of corruption, thus will created a concerted effort to fight corruption.

5.3.5 Sensitization of the Public on Existing Laws

There is need to sensitize the public on the existing laws of corruption for the public to be directly involved in fighting against corruption. It is highly recommended that these laws be included in the education curricula right from the primary schools so that people get to know that that they are free to come up and sue on behalf of government and that they get a percentage of the monies recovered.

Confidence needs to be built in the population since many people have fear for people in offices especially high ranking officers.

5.3.6 Follow-up on Implementation of Legislation by Government

Government must also make follow up on implementation of the legislations enacted and also on recommendations of commissions of inquiry so that it's seen by the population that government is actually fighting the vice. This will encourage the populace to participate more knowing their efforts are not going to waste.

5.3.7 Creation of a Think Tank

The creation of a think tank as a mechanism to fight corruption so as to develop policies and ideas which are more practicable in the fight against corruption. There should also be a working relationship between the DPP, IGG, and Law reform to protect witnesses through creation of safe houses for witnesses.

5.3.8 Uplifting and Supporting of the Institutional Framework

The institutional framework needs to be uplifted and supported and activities of the various agencies need to be streamlined to overcome overlaps in their activities in order to save on both financial resources.

Government should secure funding to support the fight against corruption and should forge international relationships with countries that have handled corruption successful to draw from their useful experiences for the benefit of Uganda.²⁰³

5.3.9 Independence of the Anticorruption Agencies

The constitution empowers the president under Article 99 when it vests executive authority in the hands of the president. It accords him the duty to uphold, safeguard, execute and maintain the constitution and the laws of Uganda to act in respect of corruption laws. It also empowers the president to delegate these functions to subordinate officers. It is recommended that there should be less interference with the work of anti-corruption agencies. The top officials of the IGG's office for instance the IGG and his Deputy should be appointed and accountable to parliament

²⁰³ Pope J. Enhancing Accountability and Ethics in the Public Sector", In Stapenhurst R. & Kpundeh J.Y (eds) Curbing Corruption P.109.



and not to the president. The president should not interfere to stop his officials from being censored or else they should be sentenced for defying the law.

Parliament should be empowered to take action in cases of corruption. And the PAC should be allowed to enforce recommendations. Parliament should be put in place as an independent Anti-Corruption Tribunal to try all corruption cases

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