

**THE LAW AND PRACTICE OF INSPECTOR GENERAL OF GOVERNMENT (IGG)  
IN FIGHTING CORRUPTION**

**BY**

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### DECLARATION

I hereby declare that except for references to other Research Projects, which have been duly acknowledged, the study presented here was done and written by me, under the supervision of **Ms TABOSWA SARAH**. It is a record of my own research work and has not previously been presented in any form whatsoever in any application for a degree elsewhere. All sources of information collected and materials used have been duly acknowledged by means of references and bibliography.

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### APPROVAL

I have approved the mentioned final year report to be presented as a partial requirement for the award of Bachelor of Laws at Kampala International University.

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Ms Taboswa Sarah

Signature



Date

14/8/2019

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### **LIST OF ABBREVIATION**

IGG	-	Inspector General of Government
LCA	-	Leadership Code Act
ACA	-	Anti Corruption Act
AIA	-	access to information act
WPA	-	Whistleblowers Protection Act
BA	-	Budget Act
PFAA	-	Public Finance and Accountability Act
OAG	-	Office of the Auditor General
DPP	-	Directorate of Public Prosecution
DEI	-	Directorate for Ethics and Integrity
ACD	-	Anti Corruption Division
ACC	-	Anti Corruption Court
PPDA	-	Public Procurement and Disposal of Public Assets Act

## CHAPTER ONE

### 1.0 Introduction

Corruption is not a localized debacle but a globalized tragedy<sup>1</sup>. It is as old as the Bible<sup>2</sup>. No country, however democratic, is liberated from the scourge and cruelty of corruption. The only disparity is the degree and the level of the vice and the systems in place to prevent it<sup>3</sup>. Its impact on any society in terms of socio-economic action is extremely detrimental<sup>4</sup>. Curbing corruption is exceedingly complex because it is not practiced by trespassers and outsiders. Instead, it is often institutionalized within government agencies that ensure that corrupt activities are continued and reinforced. Individuals with good intentions cannot easily revoke the system. They will either be forced to compromise their integrity and dine with the corrupt, or allow the corrupt system to prevail if they want to keep their lives and jobs. Africa in general and Uganda specifically, is a casualty to the menace of corruption<sup>5</sup>. Transparency International annually publishes the Corruption Perceptions Index (CPI) for countries around the globe.<sup>5,6</sup> Five of the 10 most corrupt countries in the world in 2003 were actually African: Nigeria, Madagascar, Angola, Kenya and Uganda. The least corrupt African country by this report was Botswana. Corruption in Africa is synonymous with political process, economic exchange and social service<sup>7</sup>. Transparency International asserts that the therapy for corruption is not simply accountability but also the collapse of the entire government or administrative system, for corruption is a symptom, not the disease itself.<sup>8</sup>

While measuring corruption is a notably challenging and imperfect endeavor,<sup>9</sup> all available indicators strongly suggest that corruption is endemic in Uganda. Out of 175 countries surveyed in Transparency International (TI)'s 2014 Corruption Perceptions Index, Uganda

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<sup>1</sup> Batchelor, P., *Salt and light: Christian's role in combating corruption*, (2010), Hodder Publishers Ltd, New York. 2010:2

<sup>2</sup> Genesis (6:11–12).

<sup>3</sup> Obura, C., *Effective records and information management as a catalyst for fighting corruption*, (2012) University of South Africa Press, Pretoria

<sup>4</sup> Werner, S.B., 'The development of political and bureaucratic corruption: A case study of four African Countries', 2010, *Socio-Political and Economic Studies* 31(4), 157–178.

<sup>5</sup> Berkman, C.M., 'Economic development via Bureaucratic Corruption', 2013 *American Behavioral Scientist* 6(3), 8–30.

<sup>6</sup> Transparency International, *Global corruption report*, Skeffing Co. Ltd, London. 2013

<sup>7</sup> Uneke, C.O., 'Corruption in Sub-Sahara Africa: Political and bureaucratic facilitator or handicap to development? 2010, *Journal of the Pan African Studies* 3(6), 111–128.

<sup>8</sup> Transparency International, *Global corruption report*, Skeffing Co. Ltd, London. 2013,

<sup>9</sup> Knack, Stephen, *Measuring Corruption: A Critique of Indicators in Eastern Europe and Central Asia*. (2007). *Journal of Public Policy*, 27(3): 255-291.

tied for 142<sup>nd</sup> place with the Comoros and Ukraine<sup>10</sup>. According to TI's 2013 Global Corruption Barometer (GCB), 87% of Ugandans believe that corruption is a serious or very serious problem in the country;<sup>11</sup> the country's National Governance Baseline Survey in 2013 similarly found that 82% of surveyed Ugandans reported that the extent of corruption was very much.<sup>12, 13</sup>

Controversy over corruption begins with its definition. The term —corruption has been used to refer to a wide range of illicit or illegal activities. Although there is no universal or comprehensive definition of what constitutes corrupt behavior, the most prominent definitions emphasize the abuse of public power or position for personal benefit. Mark Philip identified three broad definitions most commonly used in the literature: public office-centered, public interest centered, and market definitions. These three types of definitions are used as starting points for analyzing political corruption in Heidenheimer's *Political Corruption* and its successor volume edited by Heidenheimer, Johnston and Le Vine.

Public office-centered corruption is defined as behavior that digresses from the formal public duties of an official for reasons of private benefit. J.S. Nye provides an example of a public office-centered definition:

*—Corruption is a behavior which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary status gains; or violates rules against the exercise of certain types of private regarding influence. This includes such behavior as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses).<sup>14</sup>*

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<sup>10</sup> Transparency International (2014). Corruption Perceptions Index 2014, <http://www.transparency.org/cpi2014>.

<sup>11</sup> Transparency International Global Corruption Barometer 2013, (2013a).. <http://www.transparency.org/gcb2013/report/>.

<sup>12</sup> Inspectorate of Government Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism, (2014). At page 6  
[http://www.igg.go.ug/static/files/publications/tracking\\_corruption\\_annual\\_report\\_4th\\_edition.pdf](http://www.igg.go.ug/static/files/publications/tracking_corruption_annual_report_4th_edition.pdf).

<sup>13</sup> Mark Philip, —Defining Political Corruption, *Political Studies*, Vol. 45, number 3, special issue 1997.

<sup>14</sup> J.S. Nye, —Political Corruption: a Cost-Benefit Analysis, in A.J. Heidenheimer, M. Johnston and V. Le Vine (eds.), *Political Corruption: a Handbook*. New Brunswick: Transaction, 1989, p. 966. Other definitions which relate corruption to the behavior of a public official include: Susan Rose-Ackerman, —an illegal payment to a public agent to obtain a benefit that may or may not be deserved in the absence of payoff; and —the sale by government officials of government property for personal gain in Shleifer, Andrei and Robert Vishny, —Corruption, *Quarterly Journal of Economics*, Vol. 108, number 3, (August 1993): pp. 599-617 14 2014, Kampala. PP 5

Market-centered definitions base their analysis of corruption on social or public choice theory, utilizing an economic methodology within a political analysis. Two such definitions, by Nathaniel Leff and Jacob van Klavern, follow:

*—Corruption is an extralegal institution used by individuals or groups to gain influence over the actions of the bureaucracy. As such the existence of corruption per se indicates only that these groups participate in the decision making process to a greater extent than would otherwise be the case.*<sup>15</sup>

*—Corruption means that a civil servant abuses his authority in order to obtain an extra income from the public. Thus we will conceive of corruption in terms of a civil servant who regards his office as a business, the income of which he will seek to maximize. The office then becomes the maximizing unit.*<sup>16</sup>

Ultimately, as the Council of Europe noted, —no precise definition can be found which applies to all forms, types and degrees of corruption, or which would be acceptable universally as covering all acts which are considered in every jurisdiction as contributing to corruption.<sup>17</sup> The abuse of public office for private gain<sup>18</sup> is increasingly used as a functional definition. This practice is supported by Kaufmann who found empirical support for relying on this minimalist definition as a workable definition for corruption.<sup>18</sup>

Corruption, once broadly defined, can then be further broken down in many ways and into many categories. Corruption can be described according to where it occurs: at the political or bureaucratic levels of the public sector, or within the private sector. It can be defined according to its intensity: whether it is isolated or systematic. Other specifications include: grand versus petty, local versus national, personal versus institutional, and traditional versus modern.<sup>19</sup>

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<sup>15</sup> Nathaniel Leff, —Economic Development through Corruption, I in Heidenheimer et al., Political Corruption, 1989: 389.

<sup>16</sup> 16 Jacob van Klaveren, —The Concept of Corruption, I in Heidenheimer, Political Corruption, pp. 25-6.

<sup>17</sup> 17 World Bank, Helping Countries Combat Corruption, 1997

<sup>18</sup> Daniel Kaufmann, —Perceptions About Corruption Among Elites in Emerging Economies, I Draft, World Bank, March 1997.

<sup>19</sup> Paul Heywood —Political Corruption: Problems and Perspectives, I Political Studies, Vol. 45, number 3, special issue 1997.

<sup>19</sup> Evans, B.R The cost of corruption. A discussion paper on corruption, development and the poor', *Christian Action with the World's Poor* 4(3), 1-29. , 2012, \_

Evans<sup>20</sup> categorizes corruption under three headings. The first is incidental corruption. This is small scale. It involves junior public officials such as police officers, customs officers, civil servants and so on. Secondly, there is systematic corruption. This is corruption that affects government departments, businesses and non-business sectors. Thirdly, there is systemic corruption, called kleptocracy<sup>21</sup> or government by theft. Examples of systematic and systemic corruption are many and varied; they include political corruption (buying votes, jobs for supporters) and corruption of the legal process (bribing judges and police officers, and malicious prosecutions) and are typical of the political present and past of Uganda.

This paper will therefore discuss the role played by the office of the Inspectorate of Government in the struggle against corruption in Uganda, the legal framework of anticorruption and the challenges facing the office of the IGG also form the basis of this Research.

### **1.1 Background to the study.**

The Ugandan traditional system of chieftaincy, rulers or leaders had no stipend but survived on bestowing gifts and favours. Even women were given as gifts to chiefs for wives. This type of corruption of exchanging gifts is deeply rooted in the cultural practices and cannot be wished away in a single day. However, as the practices were not perceived to be corrupt, they were carried out openly. This attitude survives among Ugandans to date, except that today the practices are conducted rather confidentially.<sup>21</sup>

According to Mbabazi<sup>22</sup>, Uganda's obnoxious political past and current corruption dilemma emanated from the British colonial administrative system, which was based on using a segment of the local population to rule over the rest and consequently rewarded them for supporting their policies and interests. With the intentioned absence of democratic rule, institutions that could condemn and demand accountability from public officials never developed.

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<sup>20</sup> Kiddu, K.P., *Corruption deeply rooted in the Past: Colonialism and its Legacy in Uganda*, Fountain Publication,

<sup>21</sup> Mbabazi, G., 2015, 'Patronage driven corruption undermining the fight against Poverty in Uganda', *Journal of African Social Science Review* 7(1), 54–70.

## CHAPTER TWO

### 2.0 Introduction

The Present section discusses the theories of corruption from various perspectives.

### 2.1 Theories of Corruption

#### (a).Economists 'Perspective

According to Granovetter<sup>33</sup>, classical theories of corruption are “dominated by economic treatments that focus on identifying structures of incentives that make corruption likely and assessing the impact of corruption on economic efficiency.” The prominent theory in this perspective is the incentive theory or the principal-agent relationship. This theory states that there are a supervisory principal and an agent. The principal who can be a government auditor or a senior civil servant oversees the duties of the agent who can be a junior civil servant. The corruption can arise in this setup when the agent has more privilege of access to critical administrative information than the principal, and the agent tries to get the pay-offs by illegally providing the critical data to those outside the setup or administration without the knowledge of the supervisor.<sup>34 35</sup>. Here the relationship is predominantly “defined by how incentives are arranged, and the actors are otherwise indistinguishable or representative individuals”.<sup>36, 37</sup> With respect to the domain taken for the analysis, the agent and principal can be different. For instance, relating to the Ugandan case of **Uganda vs Byandala and others (SESSION CASE NO 12) [2018] UGHACD 1**; The accused and others were officials having access to vital administrative information, due to this privilege they miss used there positions and were accused of abusing the authority of his office by irregularly directing the immediate signing of a contract between UNRA and Eutaw Construction before due diligence was concluded and also causing financial loss. This form of corrupt act was done with prior knowledge of the accused for their personal

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<sup>33</sup> M. Granovetter, “The Social Construction of Corruption” in *On Capitalism*. Ed. V. Nee and R. Swedberg, vols. (Stanford University Press, 2004), 152–172. p.152

<sup>34</sup> Rose-Ackerman, *Corruption: A Study in Political Econom*, vols. (London: Academic Press, INC, 1978).

<sup>35</sup> Granovetter, “The Social Construction of Corruption.” p.152

<sup>36</sup> Rose-Ackerman, *Corruption: A Study in Political Econom*.

<sup>37</sup> Granovetter, “The Social Construction of Corruption.” p.15

be effectively accomplished by such payoffs. But the principal's interest will be undermined by the inaccessibility of critical data. In order to consolidate the position and see that the interests are fulfilled, the principal is left with three choices. They are providing directives, incentives either positive or negative and saving the costs incurred with regard to supervision or monitoring.<sup>40</sup> The agent may try to defeat the principal's monitoring by refusing to undertake the directives provided by the principal without compromising his or the principal's interests. In other words, according to Groenendijk<sup>41</sup>, the agent will earn the incentives set up by the principal and still the concealment costs will be incurred.

The agent will be advantaged by the supervisor's ignorance<sup>42</sup>. As commented by Rose-Ackerman<sup>43</sup>, the third party (favour seeker) who influences the agent by offering the payoff is left out in the agency theory by focusing only on principal and agent. The researchers say that the third party may act in such a way that can provide him/her with the advantage. This agency theory explains the corruption done by the agents alone, and this does not explain the public services that are affected by such corruption and other Informal payoffs. In order to realize the corruption existing in the public-sector establishments, the third-party angle as proposed by Rose-Ackerman is crucial. Further according to Rose-Ackerman<sup>44</sup>, "bribery may indicate that society has structured the agency relationship inefficiently. If customers commonly bribe agents, perhaps it would be more efficient to have customers hire the agents to deal with their old principals."

Rose-Ackerman<sup>45</sup> defines that the informal payoffs that the principal does not receive as illegal and this is the problem with this analysis. However, according to Granovetter<sup>46</sup>, the informal value or contextual legitimacy that comes with the illegal

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– 652.

<sup>40</sup> Rose-Ackerman, *Corruption: A Study in Political Econom*

<sup>41</sup> Brinkerhoff and Goldsmith<sup>43</sup> and Lewal<sup>44</sup>, in these situations, the corruption is thought of as a normal course of the society.

<sup>42</sup> J. M. M Mbaku, *Corruption in Africa: Causes, Consequences, and Cleanups*, vols. (United Kingdom: Lexington Books, 2007).

<sup>43</sup> Rose-Ackerman, *Corruption: A Study in Political Econ*

<sup>44</sup> <sup>38</sup> S. Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform*, vols. (United Kingdom: Cambridge University Press, 1999). P.94

<sup>45</sup> Rose-Ackerman, *Corruption: A Study in Political Econom*.

<sup>46</sup> Granovetter, "The Social Construction of Corruption."



payoffs is not addressed. The inventive theory considers the presence of benevolent principal which does not exist in practice. Also, there are probabilities that principal may be corrupt with respect to the study of Aidt.<sup>47</sup> There may be corrupt/non-corrupt agent, corrupt/non-corrupt principal and corrupt/non-corrupt third party. If the principal is corrupt, according to Wade<sup>48</sup>, the agent and third party may become corrupt; otherwise, they may lose their positions.

### (b) Moralists versus Functionalists' Perspectives

According to Gould (1991:468; cited by Mohammad Mohabbat Khan<sup>49</sup> in a paper prepared for TI Bangladesh), moralists view corruption as "an immoral and unethical phenomenon that contains a set of moral aberrations from moral standards of society, causing loss of respect for and confidence in duly constituted authority." Moralists observe that corrupt practice "stems from the social norms that emphasize gift-giving and loyalty to family or clan, rather than the rule of law"<sup>50</sup>. However, the functionalists differ from the moralists in their view of corruption. They say that corruption plays an important role in the operation of public sector establishments in such a way that it can boost the activities of the establishment thereby achieving the optimal efficiency<sup>51</sup>. According to the publication of Johnston<sup>52</sup>, functionalists "point to possible benefits of corruption, suggesting that it can speed up cumbersome procedures, buy political access for the excluded, and perhaps even produce de facto policies more effective than those emerging from legitimate channels." The prevalent political system or the structure of the institution is taken as the base for the analysis of corruption by the functionalists. They look at the other side of the coin by seeing the efficiency in the delivery of services offered by the public-sector

<sup>47</sup> Aidt, "Economic Analysis of Corruption: A survey."

D. W. Brinkerhoff and A.A. Goldsmith, *Clientelism, Patrimonialism and Democratic Governance: An Overview and Framework for Assessment and Programming*, vols. (USA, U.S: Agency for International Development Office of Democracy and Governance, 2002).

<sup>48</sup> G. Lewal, "Corruption and Development in Africa: Challenges for Political and Economic Change" *Humanity & Social Sciences Journal*. 2.1 (2007): 1–07.

<sup>49</sup> Wade, "The system of administrative and political corruption: Canal irrigation in South India."

<sup>50</sup> M.M Khan, "Political and Administrative Corruption: Concepts, Comparative Experiences and Bangladesh Case" *A paper for Transparency International –Bangladesh Chapter*. (n.d.), Available: <http://www.tibangladesh.org>.

<sup>51</sup> Gabriella R. Montinola and Robert W. Jackman, "Sources of Corruption: A Cross-Country Study" *British Journal of Political Science*. 32.01 (2002): 147–170, Available: [http://www.journals.cambridge.org/abstract\\_S0007123402000066](http://www.journals.cambridge.org/abstract_S0007123402000066).p. 148

<sup>52</sup> Mushtaq H. Khan, "The efficiency implications of corruption" *Journal of International Development*. 8.5 (1996): 683–696, Available: <http://doi.wiley.com/10.1002/%28SICI%291099-1328%28199609%298%3A5%3C683%3A%3AAID-JID411%3E3.0.CO%3B2-4>.

<sup>52</sup> ibid

establishments. According to the views of Tanzi<sup>53</sup> and Fjeldstad<sup>54</sup>, the functionalists also concur that weak establishments have much of corruption. Functionalists are of the view that corruption is not as grave as the moralists perceive.

### (c) Social Aspects of Corruption

According to Lancaster and Montinola<sup>55</sup>, the corruption can be understood in a particular Social context because certain corrupt practices like bribery are “morally loaded terms” in the settings of socioeconomics and politics. Like any other political or socio-economic practices, corruption is a part of stakes in the system, societal power relations, interests, and norms practiced by the group of people<sup>56</sup>, meaning that in a society like Uganda all troubled by the poor economy and low salaries plus low standards of living, people having access to such privileged office for example traffic officers shall take bribes or force road users to pay a certain sum of money in promising them freedom from being arrested another example are the police office taking bribes from criminals hence increasing criminal activities <sup>57</sup>,

About the corruption in West Bengal villages (in India), Ruud<sup>58</sup> comments that “...in the wider context of social life, the simple act of corruption (for the moment understood as an illicit deal involving the holder of a public position) is only one among many outcomes of habitual practices”. Researching the corrupt practices as the social problem and the corrupt people should take into account the “contextual information on [actors’] social positions, interests and stakes in the system as well as on the political, economic and social conditions within which they function.”Pavarala<sup>59</sup>: The role of non-elite groups in the creation and

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<sup>53</sup> ibid

<sup>54</sup> Odd-Helge Fjeldstad, *The pursuit of integrity in customs: Experiences from sub-Saharan Africa*, vols., CMI Working Paper, 2009, Available: <https://www.cmi.no/publications/3473-the-pursuit-of-integrity-in-customs>.

<sup>55</sup> Thomas D. Lancaster and Gabriella R. Montinola, “Comparative political corruption: Issues of operationalization and measurement” *Studies in Comparative International Development*, 36.3 (2001): 3–28, Available: <http://link.springer.com/10.1007/BF02686202>.p.9

<sup>56</sup> V Pavarala, *Interpreting Corruption: Elite Perspectives in India*, vols., Working Paper (New Delhi, 1996).

<sup>57</sup> Arild Engelsen Ruud, “Corruption as Everyday Practice. The Public—Private Divide in Local Indian Society” *Forum for Development Studies*, 27.2 (2000): 271–294, Available: <http://www.tandfonline.com/doi/abs/10.1080/08039410.2000.9666142>.

<sup>58</sup> Ruud, “Corruption as Everyday Practice. The Public—Private Divide in Local Indian Society.” p.271

<sup>59</sup> Pavarala, *Interpreting Corruption: Elite Perspectives in India*, P.25

resolution of social problems in a specific setting is ignored by Pavarala's study<sup>60</sup>,

## 2.2 Concept and Definition of Corruption

The phenomenon of corruption and its discernible implications has rendered its usage and understanding as essentially negative and detrimental to progress. The growing awareness of the existence of corruption has simultaneously generated a voluminous literature on it that has transcended academic disciplines and explored exhaustively its causes, effects, and role in the economic, political, social, and cultural milieu in general and in specific regions and countries. As Paul Heywood observes, 'By the mid-1990s, it appeared that no nation was immune to the corrosive impact of political corruption. Academic interest in the phenomenon experienced a parallel upsurge, characterized by a proliferation of conferences devoted to the issue, with related publications'<sup>61</sup>. According to Klitgaard (1984: 4, cited in Harrison<sup>62</sup>, <sup>63</sup>), corruption is the summation of monopoly and discretion excluding the accountability. In all these years, the political scientists and sociologists have researched the corruption. Corruption is defined as the wielding of power for the preference, earning a profit, the benefit of a group, or prestige which breaks the moral conducts or breaches the law<sup>64</sup>, <sup>65</sup>). Social anthropology also presents substantial literature on corruption that explains nepotism, bribery, graft, etc. However, there is no common theory to explain the corruption. Moreover, the studies are scattered. At the end of the 1990s, Robin Williams observed that "the 1990s have been the decade of corruption as an academic and policy topic and there is no indication that popular, academic, professional or political interest is beginning to flag. The literature is voluminous and varied, but most accounts share a common characteristic: a reluctance to say what they mean by corruption. This issue is either avoided completely or dismissed in a cursory fashion."<sup>66</sup>

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<sup>60</sup> Onyango Gedion, "Administrative And Political Grassroots Corruption In Rural Kenya: It Takes Two To Tango" University of Bergen, 2012, Available: <http://bora.uib.no/bitstream/handle/1956/5998/97214908.pdf?sequence=1>

<sup>61</sup> Paul Heywood, "Political Corruption: Problems and Perspectives" *Political Studies*. 45.3 (1997): 417-435, Available: <http://journals.sagepub.com/doi/10.1111/1467-9248.00089>. p.1

<sup>62</sup> Elizabeth Harrison, "Corruption" *Development in Practice*. 17.4-5 (2007): 672-678, Available: <http://www.tandfonline.com/doi/abs/10.1080/09614520701469971>. p. 676

<sup>63</sup> Robert Klitga, *International Cooperation Against Corruption*, vols., 1997, Available: [http://www.icgg.org/downloads/contribution02\\_klitgaard.pdf](http://www.icgg.org/downloads/contribution02_klitgaard.pdf)

<sup>64</sup> Julius Gould and William Lester Kolb, *A Dictionary of the Social Sciences*, vols. (New York: Free Press of Glencoe, 1964).p.142

<sup>65</sup> Edward Van Roy, "On the Theory of Corruption" *Economic Development and Cultural Change*. 19.1 (1970): 86-110, Available: <http://www.journals.uchicago.edu/doi/10.1086/450469>. P.86

<sup>66</sup> Robert Williams, "New Concepts for Old?" *Third World Quarterly*. 20.3 (1999): 503-513, Available: [https://www.jstor.org/stable/3993318?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/3993318?seq=1#page_scan_tab_contents). P. 503

A few major trends can be elicited by the brief overview of the available literature. Many definitions highlight focus on the private interest and public establishment. These definitions mean that in order to achieve the private gain, the political office is abused. This definition needed a rethinking when the private firms like World com and Enron involved in the scandals. Hence, corruption was defined by the establishments like Transparency International as the practice of abusing the trusted authority for the sake of public gain<sup>67</sup>. Secondly, ethnocentrism, functionalism, and evolutionism are the three categories in which the theory of corruption falls into. Several researchers follow ethnocentrism extensively. The deviation from the morality is seen as the corruption in the ethnocentric viewpoint. In functionalistic view, the ends or purposes served by the specific institutions are focused; moreover, the social science research forms the basis for functionalism. Evolutionism sees the corruption as the centre of social and economic change (Van Roy, 1970: 88–90). Thirdly, the donor development discourse initiated by World Bank along with the structural adjustment programme in third world countries produced more literature on the corruption. In addition, the anti-corruption portals also generate a considerable quantity of literature on the anti-corruption. Fourthly, the comprehension of Corruption in many third world nations has led to various concepts and definitions of governance and development. As per the comment from<sup>68</sup>, as long as the mechanism, causes, scope and effects of corruption are not clearly realized, it is difficult to know the way the third world countries are governed. The main difficulty is to define corruption which is considered to be a complex issue in our country. The definition given for corruption in simple terms is “the abuse of entrusted power for private gain” (Transparency International India [TII]).

## 2.3 Types of Corruption

Corruption can be classified as grand, petty and political, systematic, and so on depending on the amounts of money lost and the sector where it occurs.

### (a) Systemic corruption

The corruption that is deep-rooted and pervasive which happens in a routine manner on

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<sup>67</sup> Harrison, “Corruption,” P. 674

<sup>68</sup> Philip Oldenburg, “Middlemen in Third-World Corruption: Implications of an Indian Case” *World Politics*. 39.04 (1987): 508–535, Available: [http://www.journals.cambridge.org/abstract\\_S0043887100014477](http://www.journals.cambridge.org/abstract_S0043887100014477). P. 509

companies, public sector establishments, or individuals is called the systemic corruption<sup>69</sup>. Be it economic or social or political system; corruption has been remaining integrated into all these areas thereby gets reason to sustain. Systemic corruption is not confined to a particular category, instead of a situation, where major institutions and processes of the state remain used by corrupt individuals and groups, thus people don't have any option to deal with corrupt officials an example of this is corruption in the Judiciary where judicials are bribed by criminals leading to back log of cases, guilty offenders are set free when they bribe such officials and the innocent lack justice hence lack of fairness and equity according to the law

#### **(b) Sporadic (individual) corruption**

Sporadic corruption, on the contrary, is the opposite of systemic corruption, where it occurs at times. Hence, there is no threat to economy or mechanism for control in this type of corruption. However, it might cripple the resources of the economy.

#### **(c) Political Corruption**

Political corruption involves transaction between players in private and public sector where collective goods are channelized illegally for personal gains. Usually, political corruption is counted as high-level corruption, where it is distinguished clearly from bureaucratic as the former one involves political decision-makers. Political corruption takes place at the higher echelons of the political system, where politicians and state agents at the helm of enforcing the laws use their authority to get wealth and status. Moreover, political corruption involves the misallocation of resources but distorts the decision-making process. When the laws and regulations of the state are subjected to misuse by the rulers to meet their interests, it is known as political corruption. This clearly indicates about violation of law and is subjected to downright encroachment by the rulers.

Political corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision-makers, who abuse their position to sustain their power, status and wealth, voting irregularities, nepotism and

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<sup>69</sup> World Bank, *Helping Countries Combat Corruption The Role of the World Bank*, vols. (New York: The World Bank, 1997). P. 9-10 (2015): 1-10.

cronyism, rule of a few false political promises paying journalists for favorable coverage of candidates and parties influencing voters by the distribution of money, food and drink, holding on to power against the will of the people<sup>70</sup>

#### **(d) Grand corruption**

As the name indicates, it involves the act of corruption at a superior level of government that alter the laws and the functions of the respective state which allows the political officials to gain profit at the expense of the public. At the time of implementation of policy, high level or “grand” corruption takes place. It doesn’t give much indication of the amount of money siphoned off, rather formulation of rules and policies at the higher levels.

#### **(e) Petty Corruption**

Petty corruption refers to everyday abuse of entrusted power by low- and midlevel public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.

There are various instances of small-scale, bureaucratic or petty corruption from the implementation aspect; lic officials meet the public on a daily basis. Petty corruption involves bribery related to the implementation of existing laws, rules and regulations, thereby it differs. Usually, the modest sum is involved in this type of corruption and has also been called “low level” and “street level”. This petty corruption takes place on a day-to-day basis in organizations hospitals, local licensing authorities, schools, police, tax authorities, and so on.

#### **(f) Legal and moral corruption**

The word corruption is originated from *rumpere*, means to break. As per this approach, corruption means clear infringement of the law. Thus, there is a need to state all the laws in brief without any doubt on meaning and discretion to the public officials. Corruption is interpreted legally by differentiating between a corrupt activity and what is not. Suppose an act of an official comes under the prohibition of laws, then it is corrupt; otherwise, it is not corrupt even though it remains unethical.<sup>71</sup>

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<sup>70</sup> Upender Kandukuri, “Corruption in India” *International Journal of Multidisciplinary Research*. 1.5

<sup>71</sup> Elaine Byrne, “Definitions and Types of Corruption,” 2009, online, Internet, 10 Oct. 2017. , Available: <http://elaine.ic/2009/07/31/definitions-and-types-of-corruption/>.

## 2.4 Reason behind increase in corruption

Corruption is one of the biggest menaces that go against the welfare of society. Corruption is primarily seen in the areas of jobs, businesses, promotions, election campaigns, sports etc. There are so many probable reasons that lead to increasing in corruption. Those could be low pay scales/ wages, inadequate job opportunities, lack of strict and fast punishments, lack of transparency in affairs and deals, lack of independent investigating agency, lack of ample powers to the judicial system, lack of accountability and so on<sup>72</sup>. Another aspect of the problem is the unethical conduct by people in ministerial positions. Their pressure on senior government officials, especially at the level of the secretary, is certainly a factor. Moreover, the obnoxious part is that some of this personnel join with the ministers in power to get their share of spoils. Like these, various aspects of corruption exist at each and every level of people working in Governmental Organizations. Thus, the need is to curb corruption by means of implementing a robust legal mechanism.

## 2.5 Causes of Corruption

Heidenheimer et al.<sup>73</sup> have identified three main types of definitions of corruption: public-office-centered, market-centered. However, this article adopts the public-office-centered definition of corruption by the United Nations Development Programmers<sup>74</sup> as 'the misuse of public power, office or authority for private benefit through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement'. Corruption in Uganda is not a new phenomenon as it exists both in small scale and large scale. Among the causes of corruption are of political, social, economic environmental, professional ethics and legislation in nature as well as purely ethnological factors such as custom, habits and traditions. Corruption in Uganda is strongly influenced by low salaries of public administration employees who therefore try to improve their financial position by receiving bribes and consequently the socio economic situation of the government officials affect the phenomenon of corruption. According to the report made by the Observer a Uganda News paper report it gave some of the scandals for corruption that is Minister Kabakumba

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<sup>72</sup> N R Ranga, "Causes of Corruption|10 Main Reasons in India & Developing countries" *Mind Controversy*, 2017, online, Internet, 3 Oct. 2017, Available:

<sup>73</sup> Anorld J Heidenheimer and Michael Johnston, *Political corruption handbook* vols, 2<sup>nd</sup> ed.

<sup>74</sup> United Nations Development program fighting corruption to Improve governance.2017

<sup>76</sup>www. Observer u

Matsiko using an alleged stolen UBC mast at her private radio station, business man Basajjabalaba's compensation saga that claimed political scalps of ministers Syda Bbumba and Khidu Makubuya, to the billions of shillings worth bicycles that were never delivered<sup>75</sup>

## 2.6 Major factors of corruption

The significant factor for any corrupting activity gets the initiative from the human being. The tendency of people is to enjoy all the luxuries and comfort in their lives. Thus, to fulfill this aspect, people indulge in various kind of corrupting activities that would yield monetary or material benefits. In our education system, there is hardly any importance on moral and spiritual values. As a result, the value of society deteriorates. Another reason to indulge in corrupt practices is low paid salary to employees, hence resorts to illegal earning. Even if there is punishment, but is not enough. Leaders affiliated to various political parties are assumed as perpetrator of corruption and lead a luxurious life without any concern about the society. People even if aware of the corrupt activities don't raise their voices against anti-social elements<sup>76, 77</sup>.

## 2.7 Summary

This chapter provided the definitions, concepts and theories of corruption and gaps in theories of different scholars in detail. The present chapter deeply analyses the significant reasons and causes of corruption. Major factors of corruption analyses the literature review on corruption.

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<sup>75</sup> Leslie H. Palmer, *The control of bureaucratic corruption: case studies in Asia*, vols. (United State: Allied Publishers, 1985). p. 280

<sup>76</sup> P.C Alexander, *The Perils of Democracy*, vols. (Bombay: Somaiya Publications, 1995).

<sup>77</sup> Jon S.T. Quah, "Curbing Corruption in India: An Impossible Dream?" *Asian Journal of Political Science*. 16.3 (2008): 240–259, Available: <http://www.tandfonline.com/doi/abs/10.1080/02185370802504266>.



## CHAPTER THREE

### 3.0 Legal and Institutional Framework for Fighting Corruption in Uganda

#### 3.1 Legal Framework of Anti-corruption in Uganda.

##### 3.1.0 Introduction

Despite the challenges facing Uganda with regard to corruption, there are Anti-Corruption laws are notably comprehensive, receiving a perfect score from a leading international non-governmental organization focused on governance and anti-corruption.<sup>78</sup> Through statutes including The Penal Code Act, The Leadership Code Act,<sup>79</sup> The Anti-Corruption Act,<sup>80</sup> Inspectorate of government Act,<sup>81</sup> and the Anti-Money Laundering Act,<sup>82</sup> the country has criminalized core corruption offences including embezzlement, extortion, active and passive bribery, foreign bribery, using public resources for private gain, using confidential state information for private gain, money-laundering, attempted corruption and organized crime. Additionally, in 2010, Uganda enacted the Whistleblowers Protection Act to shield whistleblowers and provide monetary rewards in return for reporting. The Leadership Code Act and the Code of Conduct and Ethics<sup>83</sup> establish minimum standards of behavior and conduct for political leaders and public officials, respectively. This chapter will therefore discuss the legal framework most relevant to the topic of study in this paper.

##### 3.1.1 The Constitution of the Republic of Uganda

This is the supreme law of the land to which all other policies, regulations and legislation are subject.<sup>84</sup> It establishes the different organs and institutions of government such as the Judiciary, the Judicial Service Commission and the Inspectorate of Government. The IGG is established under article 223 of the Constitution and its functions provided for under Article 225 and among others these include to promote and foster strict adherence to the rule of law and principles of natural justice in administration;<sup>85</sup> to eliminate and foster the elimination

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<sup>78</sup> Global Integrity (2011). Global Integrity Scorecard: Uganda 2011. Washington, DC: Global Integrity, <https://www.globalintegrity.org/global/report-2011/uganda/2011>

<sup>79</sup> (2002)(LCA) laws of Uganda

<sup>80</sup> (2009) laws of Uganda

<sup>81</sup> (2002) laws of Uganda

<sup>82</sup> (2013) laws of Uganda

<sup>83</sup> (2005) laws of Uganda

<sup>84</sup> Article 2 of the constitution of the Republic of Uganda(1995)

<sup>85</sup> Article 225(1)(a) of the constitution of the Republic of Uganda(1995)

of corruption, abuse of authority and of public office;<sup>86</sup> to promote fair, efficient and good governance in public offices<sup>87</sup>; <sup>88</sup>to supervise the enforcement of the Leadership Code of Conduct;<sup>89</sup> 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<sup>90</sup>; and to stimulate public awareness about the values of constitutionalism in general and the activities of its office, in particular, through any media and other means it considers appropriate<sup>91</sup>. In performance of her functions the IGG is independent and not subject to the direction or control of any person or authority and shall only be responsible to Parliament<sup>92</sup>. These functions have been provided for in the Inspector of Government Act discussed below.

The Constitution also provides for the jurisdiction of the Inspector General of Government and it is to the effect that “*the jurisdiction of the Inspectorate of Government shall cover officers or leaders whether employed in the public service or not, and also such institutions, organizations or enterprises created to carry on government functions.*”<sup>93</sup> The constitution provides for the special powers of the IGG and these include 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, The Inspector General of Government may, during the course of his or her duties or as a consequence of his or her findings, make such orders and give such directions as are necessary and appropriate in the circumstances, power to enter and inspect the premises or property of any department of Government, person or of any authority, to call for, examine and where necessary, retain any document or item in connection with the case being investigated, found on the premises; and may, in those premises, carry out any investigation for the purpose of its functions.<sup>94</sup> The IGG is supposed to report to parliament at least once in every six months on the performance of its functions, making such recommendations as it considers necessary and containing such<sup>95</sup>

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<sup>86</sup> Ibid Article 225(1)(b)

<sup>87</sup> Ibid Article 225(1)(c)

<sup>88</sup> Ibid Article 225(1)(d)

<sup>89</sup> Ibid Article 225(1)(e)

<sup>90</sup> Ibid Article 225(1)(f)

<sup>91</sup> Article 227(1)(a) of the constitution of the Republic of Uganda(1995)

<sup>92</sup> Article 226 of the constitution of the Republic of Uganda(1995)

<sup>93</sup> Article 230 of the constitution of the Republic of Uganda(1995) information as Parliament may require.<sup>91</sup> And the IGG has always reported to fulfill the constitutional obligation

<sup>94</sup> Article 231 of the constitution of the Republic of Uganda(1995)

<sup>95</sup> Section 3(2)(a and b) Inspectorate of Government Act 2002

### 3.1.2 Inspectorate of Government Act, 2002

The Act establishes the IGG under section 3 consisting of the Inspector General of Government and two Deputy Inspectors-General<sup>96</sup>. The Act requires that at least one of the Inspectors General be a person qualified to be appointed a Judge of the High Court.<sup>97</sup> The Act mandates the Inspectorate General of Government under Section 8; To promote and foster strict adherence to the rule of law and principles of natural justice in administration;<sup>98</sup> To eliminate and foster the elimination of corruption, abuse of authority and of public office<sup>99</sup>; to promote fair, efficient and good governance in public offices;<sup>100</sup> to enforce the Leadership Code of Conduct<sup>101</sup>; To investigate any act, omission, advice, decision or recommendation by a public officer or any other authority to which this section applies, taken, made, given or done in exercise for administrative functions<sup>102</sup>; To stimulate public awareness about the values of constitutionalism in general and the activities of its office, in particular, through any media and other means it considers appropriate<sup>103</sup>; to inquire into the methods by which law enforcing agents and the state security agencies execute their functions, and the extent to which the practices and procedures employed in the execution of such functions uphold, encourage or interfere with the rules .of law in Uganda;<sup>104</sup> and many other function provided for under the section 8 of the Act.<sup>105,106</sup>

### 3.1.3 The leadership code (amendment) Act, 2017

The Leadership Code Act (LCA) also mandates the Inspectorate with ensuring that specified leaders under the LCA declare their incomes, assets, and liabilities once every two years explaining how they acquired or incurred them respectively.<sup>107</sup> Under the Act, provision is made for a minimum standard of behavior and conduct for leaders. The Code prohibits conduct that is likely to compromise the honesty, impartiality and integrity of leaders or conduct that leads to corruption in public affairs but imposing penalties on leaders who breach the Code.

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<sup>96</sup> Section 3(3) Inspectorate of Government Act 2002

<sup>97</sup> <sup>94</sup>Section 8(1) (a) Inspectorate of Government Act 2002

<sup>98</sup> Section 8(1) (b) Inspectorate of Government Act 2002

<sup>99</sup> Section 8(1) (c) Inspectorate of Government Act 2002

<sup>100</sup> Section 8(1) (d) Inspectorate of Government Act 2002

<sup>101</sup> Section 8(1) (e) Inspectorate of Government Act 2002

<sup>102</sup> Section 8(1) (f) Inspectorate of Government Act 2002

<sup>103</sup> Section 8(1) (g) Inspectorate of Government Act 2002

<sup>104</sup> <sup>101</sup> Section 9(1) (a-o) Inspectorate of Government Act 2002

<sup>105</sup> section 12 of the Inspectorate of Government Act 2002

<sup>106</sup> Section 14 (5) of the Inspectorate of Government Act

<sup>107</sup> section 3 of the leadership code (amendment) Act, 2017

The Leadership Code is enforced by the Inspectorate and the Tribunal<sup>108</sup> and the IGG is given the power to prosecute breaches of the Code before the Tribunal,<sup>109</sup> The challenge being faced is that there is no tribunal to prosecute breaches of the leadership code Act as provided for by the tribunal.<sup>110</sup> The IGG is also mandated to investigate or cause an investigation into any alleged breach of the Code by a leader<sup>111</sup>

However, enforcement of the Leadership Code by IGG was substantially paralyzed by the Supreme Court Judgment of **John Ken Lukyamuzi Vs Attorney General and Anor**; facts in this case were, that the petitioner a male adult of sound mind who at all times was the member of the 7<sup>th</sup> parliament of Uganda representing Lubaga south and one of the persons affected by the implementation of the Leadership Code Act No17. Under the appeal the petitioner was aggrieved that the removal of the petitioner from his seat before the expiry of his tenure as prescribed by article 77(3),96 and 289 of the Constitution(as amended) was inconsistent with article 2 and 83(1) (e) of the Constitution and that the IGG acted contrary to articles 2,3(4) and 83(1) of the constitution when by her report dated 30<sup>th</sup> September 2005, she was required the speaker of parliament to take action against the petitioner to vacate his seat in parliament on the ground of alleged breach of Leadership Code Act,2002<sup>112</sup>

It was also held in the same Supreme Court Judgment that since breaches of the Leadership Code are punished with severe penalties; such penalties should be imposed by a court of law or a Tribunal. Further, that the IGG and the Tribunal would be complementary to each other.<sup>113</sup>

Following the decision of the supreme court above the Act was amended in 2017 to provide for a Leadership Code Tribunal<sup>114</sup> with the duty to receive, examine and adjudicate any breach of the Code referred to it by the Inspectorate, make a decision on any matter referred to it by the Inspectorate and submit it to the authorized person and the Inspectorate and

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<sup>108</sup> Section 3A (1)(d) of the leadership code (amendment) Act, 2017

<sup>109</sup> TRANSPARENCY INTERNATIONAL UGANDA, THE ROLE OF THE INSPECTORATE OF GOVERNMENT IN PROMOTING ACCOUNTABILITY IN PUBLIC INSTITUTIONS IN UGANDA, FINAL REPORT (March 2016)

<sup>110</sup> Section 3A (1)(b) of the leadership code (amendment) Act, 2017

<sup>111</sup> Constitutional Appeal No. 2 of 2008

<sup>112</sup> Section 19A(1) of the leadership code (amendment) Act, 2017

<sup>113</sup> Section 19B of the leadership code (amendment) Act, 2017

<sup>114</sup> Section 19Q of the leadership code (amendment) Act, 2017

make recommendations to the authorized person on disciplinary action to be taken against a leader.<sup>115</sup> The Tribunal is only limited to hearing a matter referred to it by the Inspectorate General of Government.<sup>116</sup>

The tribunal is given powers under the Act to take evidence on oath, proceed in the absence of a party who has had reasonable notice of the proceedings, adjourn the hearing of the proceedings from time to time for sufficient cause, make any order which it deems appropriate to give effect to its orders<sup>117</sup> and For the purposes of hearing of a proceeding before the Tribunal, the Tribunal has powers of the High Court to summon a person to appear before it to give evidence, to produce books, documents or things in the possession, custody or control of the person named in the summons.<sup>118</sup> This means that the tribunal possesses some powers of the court. However much as it is established by the Act, it is important to note that there is no tribunal in place to perform the above mentioned functions, this being a challenge to the IGG in exercising its mandate of fighting the vice of corruption.<sup>119</sup>

### **3.2 Laws in place to fight Corruption in Uganda.**

#### **3.2.1 The Anti-Corruption Act, 2009**

This is an Act to provide for the effective prevention of corruption in both the public and the private sector by defining corruption,<sup>120</sup> <sup>118</sup> setting offenses and penalties, outlining the powers of the Inspector General of Government and the Director of Public Prosecutions, and related matters. The Anti-corruption Court has been mandated and given powers and jurisdiction to settle cases on corruption hence implementing the laws in the Anti-Corruption Act. The court has carried out a number of corruption cases such as Uganda vs Sentongo and four others(2019).in this case the accused were found guilty of embezzlement of 8,000,000,64,000,000 and 3billion Uganda shilling respectively and were convicted, another case was that of Uganda vs Kazinda (2014) where it was found that he was guilty of misappropriation and embezzlement of millions of money and this has helped combating

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<sup>115</sup> Section 19R(a-d) of the leadership code (amendment) Act, 2017

<sup>116</sup> Section 19R(2) of the leadership code (amendment) Act, 2017

<sup>117</sup> BI-ANNUAL INSPECTORATE OF GOVERNMENT PERFORMANCE REPORT TO PARLIAMENT,( JANUARY – JUNE 2017) at page 45

<sup>118</sup> Section 2 of the Act

<sup>119</sup> Constitution of the Republic of Uganda 1995, Art. 230.

<sup>120</sup> <sup>120</sup> The Leadership Code Act 2002, section. 4(2)

corruption since its seen that all those found in any act of corruption are to be convicted or fined and are likely to loose their jobs.

### **3.2.2 The Access to Information Act, 2005**

This is an Act to provide for the right of access to information pursuant to Article 41 of the Constitution; to prescribe the classes of information referred to in that article; the procedure for obtaining access to that information, and for related matters. According to this act it has mandated government to fully provide access to government information and accountability to the citizens of Uganda. This enables fair adherence of governance since citizen know what goes on in the government sector and they are not left behind closed doors leaving corrupt officials in business without accountability. In Uganda since the enactment of the 2005 Access to Information Act and its enabling regulations, the government has taken significant steps to prompt the right to access information through establishment of the ministry of ICT and National Guidance with a mandate to formulate and implement ICT policies, sustain, manager and oversee ICT infrastructure in the country, development of the government communication strategy to establish an effective, well-coordinated and proactive communication system and with the public that will meet the nation's information needs.

### **3.2.3 The Whistleblowers Protection Act, 2010**

This is an Act to provide for the procedures by which individuals in both the private and public sector may in the public interest disclose information that relates to irregular, illegal or corrupt practices; to provide for the protection against victimization of persons who make disclosures; and to provide for related matters. This Act has been implemented in Uganda in a way that different institutions for example the Anti-corruption agency of the State House in 2018 was formulated under chairmanship of Nakalema Edith to expose all the corrupt officials and this has been effective till 2019. Another example is the NBS investigative team headed by Solomon Selwanga on the issue of illegally selling government drugs that are meant to be given freely to the public hence causing inefficiency in the medical sector leading to poor health and death of citizens

### **3.2.4 The Budget Act, 2001**

This is an Act to provide for and regulate the budgetary procedure for a systematic and efficient budgetary process and for other matter connected with the same. Accordingly, the

act has over the years enabled transparency through access of information to the public as it implements that the budget be read out to the citizens of Uganda rather than a few officials in government. Due to such activities corruption has been combated in a way that no money shall be miss allocated since the public has been able to participate and engaged in interactions on issues of the budget for example through publications such as the citizens guide to the budget, budget transparency initiatives including platforms like the budget toll free hotline, call center and ministry websites which has helped to recover Uganda's economy from the low growth rate experienced two years ago to a faster growing economy in the financial year 2018/2019.

### **3.2.5 The Public Finance and Accountability Act, 2015**

This is an Act to provide for the development of an economic and fiscal policy framework for Uganda; to regulate the financial management of the Government; to prescribe the responsibilities of persons entrusted with financial management in the Government; to regulate the borrowing of money by Government; to provide for the audit of Government, state enterprises and other authorities of the State; and to provide for other connected matters. Under this act the Ministry of finance planning and economic development are mandated to carry on such rolls in Uganda. Despite their rolls there were a number of challenges in combating corruption for example the scandals in the office of the prime minister where 60billion was stolen and 340 billion was lost to ghost pensioners in the ministry of public services which prompted several donor governments to suspend budget support to Uganda. In response to these challenges the government initiated new reforms and measures to strengthen public financial management hence amending new laws in the 2015 Public Financial and Accountability Act

### **3.2.6 The Public Procurement and Disposal of Public Assets Act, 2003**

This Act applies to all public procurement and disposal activities, including all public finances originating from the Consolidated Fund and related special finances expended through the capital or recurrent budgets, resources in the form of counterpart transfers or co-financing or any finances of a similar nature within the context of development co-operation agreements for the implementation of national programs, and procurement or disposal of works, services, supplies or any combination.

### 3.3 Institutional framework of Anti-corruption in Uganda.

#### 3.3.1 Office of the Inspector General of Government (IGG):

The IGG is the primary anti-corruption agency in Uganda. Its powers, specified in the 1995 Constitution and the Inspectorate of Government Act (2002), include the ability to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution with respect to cases involving corruption or abuse of authority or public office.<sup>121</sup><sup>119</sup> Headed by the Inspector General of the Government (IGG), IGG is an independent agency that operates similarly to an ombudsman but with enhanced powers. For example, the Leadership Code Act (LCA) requires a range of national and local political leaders to submit to the IGG a written declaration of their incomes, assets and liabilities, as well as those of their spouses, children and other dependents;<sup>122</sup><sup>120</sup> the IGG is then tasked with inspecting the disclosure and may request clarification if discrepancies are discovered. However, in March 2010, Uganda's Constitutional Court ruled that the IGG does not have the authority to enforce the LCA, meaning that the IGG cannot implement any decisions or impose sanctions against leaders found to have violated the Code.<sup>123</sup><sup>121</sup> Empowered to investigate, arrest and prosecute cases involving corruption on the part of public officials (the Directorate of Public Prosecutions (DPP), can prosecute both public officials and private citizens), the IGG may initiate inquiries into suspected corrupt behaviors in response to public complaints or on its own initiative. Over the past five years, the number of new complaints received and handled by the IGG has nearly doubled from 1,566 in 2009 to 2,876 in 2013.<sup>124</sup><sup>122</sup> According to the IGG's reports to Parliament, IGG prosecutions have steadily increased since 2006 from 44 cases, reaching a high of 168 cases in 2012 before declining modestly to 145 in 2013,<sup>125</sup> a drop the IGG attributed to the closure of the Anti-Corruption Division for part of that year. While the IGG's success in investigating and prosecuting corruption among public officials has been notable, its autonomy, efficiency and effectiveness have been hampered by the lack of resources and staff, as well as influence by the Executive.<sup>126</sup>

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<sup>121</sup> Inspectorate of Government, Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism, (2014). Page 33 [http://www.igg.go.ug/static/files/publications/tracking\\_corruption\\_annual\\_report\\_4th\\_edition.pdf](http://www.igg.go.ug/static/files/publications/tracking_corruption_annual_report_4th_edition.pdf)

<sup>122</sup> Ibid page 6

<sup>123</sup> Ibid page 44

<sup>124</sup> Martini, Maria. Anti-Corruption Specialization: Law Enforcement and Courts, Transparency International. (2014) at page 7-8 [http://www.transparency.org/files/content/corruptionqas/Anticorruption\\_specialisation\\_Law\\_enforcement\\_and\\_courts\\_2014.pdf](http://www.transparency.org/files/content/corruptionqas/Anticorruption_specialisation_Law_enforcement_and_courts_2014.pdf).

<sup>125</sup> International Budget Partnership Open Budget Survey 2012, <http://Internationalbudget.org/wpcontent/uploads/OBI2012-Report-English.pdf>.

<sup>126</sup> Global Integrity (2011). Global Integrity Scorecard: Uganda 2011. Washington, DC: Global Integrity, <https://www.globalintegrity.org/global/report-2011/uganda/2011/>.

<sup>126</sup> Constitution 1995, Art. 120



### **3.3.2 Office of the Auditor General (OAG):**

The OAG is responsible for overseeing the government's operations through financial and other management audits of the central and local governments as well as public institutions. While Uganda's OAG is generally considered a strong institution that has successfully enhanced budget transparency in the country<sup>127</sup> the president's authority to appoint the Auditor General compromises the Office's independence, as illustrated by reports that the president has directed the OAG to investigate certain government departments.<sup>128</sup>

### **3.3.3 Directorate of Public Prosecutions (DPP)**

The DPP is the executive branch office charged with handling and prosecuting all criminal cases in the country, including offences related to corruption, or to delegate such powers where necessary.<sup>129</sup>

The powers and authorities of the DPP differ from those held by the IGG in at least two crucial ways. First, unlike the IGG, the DPP can prosecute private citizens, with the result that their prosecutors receive a large number of cases involving private corruption; in 2013, the majority of corruption-related cases handled by the DPP involved obtaining money by false pretence.<sup>130</sup> Second, while the IGG has its own investigative capabilities, the DPP relies on the police to conduct its investigations, and the data on the DPP's resolution of corruption-related cases suggests that the inadequate investigative capacity of DPP officials' contributes to the office's relatively high rate of acquittals, withdrawals, dismissals and closures.<sup>131</sup><sup>129</sup>

### **3.3.4 Directorate for Ethics and Integrity (DEI):**

Located in the Office of the Presidency, the DEI is responsible for coordinating the government's efforts against corruption and implementing the country's National Anti-Corruption Strategies (NACS). The DEI also chairs the Inter Agency Forum (IAF) which

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<sup>127</sup> Inspectorate of Government. Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism, (2014) at pp 44  
[http://www.igg.go.ug/static/files/publications/tracking\\_corruption\\_annual\\_report\\_4th\\_edition.pdf](http://www.igg.go.ug/static/files/publications/tracking_corruption_annual_report_4th_edition.pdf).

<sup>128</sup> Ibid page 46

<sup>129</sup> Martini, Maïra. Anti-Corruption Specialisation: Law Enforcement and Courts, Transparency International. (2014) pp 8  
[http://www.transparency.org/files/content/corruptionqas/Anticorruption\\_specialisation\\_Law\\_enforcement\\_and\\_courts\\_2014.pdf](http://www.transparency.org/files/content/corruptionqas/Anticorruption_specialisation_Law_enforcement_and_courts_2014.pdf).

<sup>130</sup> Human Rights Watch. 'Letting the Big Fish Swim': Failures to Prosecute High-Level Corruption in Uganda. (2013).

<sup>131</sup> Hatchard, John Combating Corruption: Legal Approaches to Supporting Good Governance and Integrity. Northampton, (2014). At 230 MA: Edward Elgar Publishing, Inc.

aims to ensure effective coordination among the various anti-corruption institutions in Uganda, but reports indicate that a lack of funding and capacity has constrained its effectiveness'.<sup>132</sup>

### 3.3.5 The Anti –Corruption Division (ACD) of the High Court

In addition to these various laws and specialized agencies tasked with preventing, monitoring, investigating and prosecuting corruption, in 2005, the Ugandan Parliament passed a provision creating an anti-corruption court and, in July 2008, the country's judiciary administratively established the ACD as a specialized division in the High Court to adjudicate corruption and corruption-related offences. The ACD is one of eight specialized divisions in the High Court, which include units focused on civil, commercial, criminal, family, land, international criminal matters and the execution of court orders and decisions. The ACD has unlimited original jurisdiction and exclusive appellate jurisdiction over offences under the Anti-Corruption Act and can also hear cases under the Penal Code Act, Leadership Code Act or any other statute related to corruption; if a defendant before the ACD has been charged with any other offence related to the corruption-related offence, the ACD can also hear the related charge.<sup>133</sup> The court is based in Kampala, which some commentators argue inevitably causes some delays and loss of files due to the process of transferring from other cities' into the capital city.<sup>132</sup> The ACD can also hold sessions in any of the twelve High Court circuits located throughout the country.<sup>134</sup>

Pursuant to clause 4 of the Legal Notice 9 of 2009, which created the ACD, the objective of the Court is to expeditiously dispose of corruption and corruption-related offences in an orderly and cost-effective manner'.<sup>135</sup> By that metric, the ACD's performance appears to be satisfactory, with the latest annual report from the IGG indicating that while the prosecutions of corruption cases remain often-lengthy processes, the Anti-Corruption Division has been able to resolve such cases more swiftly than other courts<sup>136</sup>. The

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<sup>132</sup> Human Rights Watch. 'Letting the Big Fish Swim': Failures to Prosecute High-Level Corruption in Uganda. (2013).

<sup>134</sup> Inspectorate of Government Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism, (2014). At pp 45  
[http://www.igg.go.ug/static/files/publications/tracking\\_corruption\\_annual\\_report\\_4th\\_edition.pdf](http://www.igg.go.ug/static/files/publications/tracking_corruption_annual_report_4th_edition.pdf).

<sup>135</sup> Mugamba, Paul K.. Annual Judge's Conference at Hotel Africana – Performance of the Anti-Corruption Division (ACD) 2012: Opportunities and Challenges, (2013) at pp 1

<sup>136</sup> Human Rights Watch (2013). 'Letting the Big Fish Swim': Failures to Prosecute High-Level Corruption in Uganda. At 36.

conviction rate for defendants before the ACD has also been strong; analyzing 88 first-instance rate<sup>137</sup>.

However, while some senior government officials and politicians, including several former Senior Ministers, have been prosecuted in the ACD, only one, former State Minister for Health

In the case of **Uganda vs Mike Mukula(2012)**; Mike Mukula, was convicted and his conviction was overturned on appeal. Thus the vast majority of cases and convictions involve low-level, local government officials as well as modest sums; as one private criminal defense attorney remarked, the petty corruption is prosecuted beautifully in Uganda,<sup>138</sup> drawing a stark contrast between cases dealing with the activities of government bureaucrats and those involving the country's big fish<sup>138</sup>.

The ACD's efforts to deter and punish corruption have been stymied by many of the same challenges as Uganda's other anti-corruption institutions, especially with regard to resource and capacity limitations and political interference. The court has been understaffed since its inception and a 2012 report by the head of the ACD highlighted its puny budget,<sup>139</sup> noting that funding had been cut by 40% that year and that even the allocated funds had not been released to the ACD in a timely manner.<sup>139</sup>

The Uganda Debt Network, a leading NGO in the country, has further emphasized that the court's lack of adequate technical, financial and human capacity undermines its ability to perform its functions to the full<sup>140</sup>. The court has also been vulnerable to attack from and interference by political leaders including members of the judiciary. In July 2013, in response to a petition from a Kampala attorney, Uganda's Constitutional Court suspended the proceedings of the ACD to determine whether the inclusion of magistrates in the ACD's structural framework was constitutional.<sup>141</sup> While the judges, by a vote of 4-1, eventually confirmed the constitutionality of the ACD and its structure in December 2013, the nascent

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<sup>137</sup> <http://www.judicature.go.ug/files/downloads/Anti-Corruption%20Division%20Report-2012.pdf>.

<sup>138</sup> Ibid page 37

<sup>139</sup> Mugamba, Paul K.. Annual Judge's Conference at Hotel Africana – Performance of the Anti-Corruption Division (ACD) 2012: Opportunities and Challenges, (2013) at pp 1

<sup>140</sup> Uganda Debt Network. Graft Unlimited? A Dossier of Corruption in Uganda 2000-2012, (2013) <http://www.udn.or.ug/index.php/publications/research-papers/36-udndossieroncorruption2013>. At 22 140 Tusingwire v Attorney General, 2013

<sup>141</sup> Inspectorate of Government (2014). Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism, page 44-45 [http://www.igg.go.ug/static/files/publications/tracking\\_corruption\\_annual\\_report\\_4th\\_edition.pdf](http://www.igg.go.ug/static/files/publications/tracking_corruption_annual_report_4th_edition.pdf).

court was forced to abandon operations for five months as its judges were redeployed to other courts and cases. The IG noted the negative impact of this closure on its ability to prosecute corruption cases and secure conviction.<sup>142</sup>

While the ACD is still a relatively young institution, its experiences to date suggest that while specialization may provide certain benefits to courts and other anti-corruption agencies in the form of more efficient proceedings, it is not a panacea for improving the punishment of corruption offences. Moreover, anti-corruption courts that do not enjoy sufficient degrees of institutional, administrative and financial authority may find themselves caught by the same bureaucratic and political hurdles as other entities focused on preventing or combating corruption.<sup>143</sup>

### 3.4 Conclusion

As noted in this study, despite Uganda having made significant steps in establishing a legal framework for good governance and for the management of corruption, it's absurd that Research has often pointed out that the government has not been very successful in actual implementation and enforcement of the framework. In addition, measured by the Global Integrity score card, over the years, Uganda's scores for establishing a legislative framework for governance and the management of corruption have been very impressive, averaging approximately 96 out of 100. Nevertheless, Uganda's success in actually implementing the laws has not been impressive, with Global Integrity scores often ranging between 45 and 55 percent in the period from 2009 to 2011<sup>144</sup>.

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<sup>142</sup> Lindsey Carson, Institutional specialization in the battle against corruption: Uganda's Anti-Corruption Court 2015

<sup>143</sup> Global Integrity (2011). Global Integrity Scorecard: Uganda 2011. Washington, DC: Global Integrity, <https://www.globalintegrity.org/global/report-2011/uganda/2011/>.

<sup>144</sup> Ibid at page 6

## CHAPTER FOUR

### 4.0 The law and practice of the Inspector General of Government (IGG) in the fight against corruption in Uganda.

#### 4.1 Introduction

This chapter introduces the role of the Inspector General of Government (IGG) In the Fight against Corruption in Uganda. This chapter presents the findings of this study in relation to understanding Stake holders 'perceptions about the role and performance of the IGG. It further details the strength, weakness, opportunities and threats in the Institution of IGG. The chapter further details the leakage zones in the Inspector General of Government, and maps out the fiduciary risk areas within this Institution.

##### 4.1.1 Establishment and Mandate of the Inspector General of Government. (IGG)

The IGG was first established in 1986 as a department in the Office of the President, to help instill a culture of accountability, transparency, integrity and good governance. In 1988, it became a separate Statutory Body, by the enactment of the Inspector General of Government Statute, 1988. In 1995, the Inspector General of Government was created as a Constitutional body,<sup>145</sup>. In 2002, the Inspectorate of Government Act was enacted, in order to operationalize the provisions of the 1995 Constitution, which made the Inspectorate of Government a Constitutional Body.<sup>146</sup>

##### 4.1.2 Practice of the Inspector General of Government

As spelt out in Article 225 of the Constitution of Uganda and Section 8(1) of the Inspectorate of Government Act the Inspector General of Government shall:

- (1) To promote and foster strict adherence to the rule of law and principles of natural justice in administration;
- (2) To eliminate and foster the elimination of corruption, abuse of authority and of public office;
- (3) To promote fair, efficient and good governance in public offices;
- (4) To supervise the enforcement of the Leadership Code of Conduct;
- (5) To investigate any act, omission, advice, decision or recommendation by a public officer

<sup>145</sup> under Chapter 13, Article 223 of the Constitution.

<sup>146</sup> Section 3, INSPECTORATE OF GOVERNMENT ACT, 2002

or any other authority to which the Article applies, taken, made, given or done in exercise of administrative functions; and

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

#### **4.1.3 General Powers of the Inspector General of Government**

The general powers of the Inspectorate are laid down in Section 12 of the Inspectorate of Government Act and include: authority by IGG officer to investigate allegations of corruption, abuse of office, Maladministration and breach of the Leadership Code of Conduct. The Inspectorate also, has powers to enter and inspect the premises or property of any department of Government, person or of any authority; to call for, examine and where necessary, retain any document or item in connection with the case being investigated, found on the premises; and may, in those premises, carry out any investigation for the purpose of its functions.

#### **4.1.4 Special Powers of the Inspector General of Government**

The Inspector General of Government is granted special powers under Article 230 of the Constitution and Section 14(5) of the Inspectorate of Government Act. These are; power to investigate, cause investigations, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office, maladministration and breach of the leadership code of conduct. The Inspector General of Government (IGG) may also, during the course of his or her duties or as a consequence of his or her findings, make such orders and give such directions as are necessary and appropriate in the circumstances.

#### **4.1.5 Jurisdiction and Independence of the Inspector General of Government**

Articles 226 and 227 of the Constitution provide the Inspector General of Government with areas of authority and guarantee its independence. The jurisdiction of the Inspector General of Government covers officers or leaders whether employed in the public service or not and the institutions, organizations or enterprises Parliament has prescribed under S.9 of the Inspectorate of Government Act. These include the Cabinet, Parliament, courts of law, central and local governments and statutory corporations, among others. The IGG is

independent in the performance of its functions and shall not be subject to the direction or control of any person or authority and shall only be responsible to Parliament.

## **4.2 Achievements by the Inspector General of Government in Combating Corruption in Uganda.**

After discussing the mandate, powers and jurisdiction of the office of the IGG, it is important to know how the IGG has exercised its mandate to combat the debacle of corruption in Uganda.

### **4.2.1 Investigations handled by IGG**

Since its formulation and operationalization, the Inspector General of Government has constantly received complaints and or in some cases initiated investigations over suspicions of corruption, Mal-administration, and breach of the Leadership Code among others. The investigations sometimes result into arrests and prosecution of the individuals or institutions implicated in the misconduct as well as instituting other administrative sanctions. Indeed, investigations form the biggest part of the activities performed by the institution of the IGG in terms of ensuring and promoting accountability in public sector.<sup>147</sup> The Inspector General of Government in the year 2018 registered a total of 1145 corruption and mal-administration complaints, 647 at head office and 498 at the 16 regional offices during the half year. The IGG referred 157 of these complaints to other institutions for further management, while 86 had no merit and were rejected. The IGG completed 8 high profile investigations out of a biannual target of 6: Civil Aviation Authority, Rural Electrification Agency, Uganda Police Force, Ministry of Agriculture ,Ministry of Internal Affairs. The cases involved a sum of UGX 19,419,619,300.<sup>148</sup> Arising from the investigations, a sum of more than Shs.15 billion has been saved (especially from court fines, awards and orders).<sup>149</sup>

Also funds were recovered from officials in the MDAs and Local Governments (on administrative sanctions) and deposited on the IGG Asset Recovery Account in the Bank of Uganda. A total of six hundred forty three million, one hundred seventy nine shillings (Shs.643,000,179/=) was transferred to the consolidated account of the Ministry of

<sup>146</sup> Transparency International Uganda, The Role Of The Inspectorate Of Government In

<sup>147</sup> Section 14(5) of the Inspectorate of Government Act

<sup>148</sup> Transparency International Uganda, The Role Of The Inspectorate Of Government In Promoting Accountability In Public Institutions In Uganda (2016) at page 23

<sup>149</sup> Inspectorate of Government Report to Parliament 2018 at page 12

<sup>147</sup>Inspectorate Of Government, Bi-Annual Inspectorate Of Government Performance Report To Parliament, 2018-2019 (Inspectorate of Government Report to Parliament 2018-2019). Ministry of Finance, Planning and Economic Development. By end of 2018, the IG Asset Recovery Account had a Closing balance of two hundred eighty eight million, thirty six thousand five hundred fifty nine shillings (Shs.288, 036,559/=). The total recoveries during the period were nine hundred thirty one million, thirty

#### 4.2.2 Arrests Caused and Prosecutions

As part of its mandate, IGG has powers to cause arrest and prosecution of public officers.<sup>150</sup> The Inspector General of Government has over the years enforced and implemented this mandate which has seen a number of public officers arrested and prosecuted in an attempt to make them account for their actions while in office. In its work, IGG has over the years caused arrest and prosecuted public officers holding them accountable for their actions while in public offices. It should be noted that the IGG often causes arrests of not less than 50 and not more than 120 public officers per year with the highest arrests of 117 public officers caused in 2011.<sup>151</sup> This number considerably reduced over years to only 53 cases in 2014 an indication that IGG has made commendable steps in ensuring that public officers are increasingly becoming accountable in Uganda. With regard to prosecutions made by IGG, between January and June 2017 the IGG prosecuted one hundred and five(105) cases, out of which ninety five (95) cases were carried forward from the previous period (i.e. on-going cases and pending appeals as at 31st December 2016). Six (6) were new cases registered in courts of law between January and June 2017<sup>152</sup>. Fourteen (14) cases were concluded during the reporting period, the concluded cases are categorized as follows: Four (4) convictions, two (2) cases resulted in acquittals and six (6) cases were withdrawn and two (2) abated. Fifty seven (57) cases were on-going at first trial and thirty five (35) cases were on appeal, as at 30th June 2017.<sup>153</sup> Some of the prosecuted cases include Uganda v Wanyaka Samuel Huxley,<sup>153</sup> former Director Budget Office, Parliament of Uganda was Convicted for Embezzlement, Abuse of Office and False Accounting by Public Officer,

<sup>150</sup> Inspectorate Of Government, Bi-Annual Inspectorate Of Government Performance Report To Parliament, January – June 2017 (Inspectorate of Government Report to Parliament January - June 2017) at page 12.

<sup>151</sup> Ibid

<sup>152</sup> COA-00- CR-CN 281/ 2015

<sup>153</sup> ibid



Uganda V Dr. Eumu Silver,<sup>154</sup> former DHO, Amuria District was Convicted for Embezzlement, Causing Financial loss and False Accounting, Uganda V Atai Hellen Doreen, former CFO, Amuria District was Convicted on Abuse of office and acquitted on Embezzlement and Causing Financial loss. These and many other cases have been prosecuted by the office of the inspectorate of government hence credit to the office.

In the year 2018, the IGG prosecuted 22[78%] cases of corruption against a planned target of 30, which resulted into 17 convictions, 3 withdrawals and acquittals. Furthermore 2 judicial reviews against IGG were successfully defended.<sup>155</sup>

#### **4.2.3 Money saved and recovered**

The IGG has posted inspiring results over the years which have seen recovery and saving of public funds from misuse, mismanagement and from corruption scenarios. Huge amounts of money have been saved after investigating public officers. For instance the IG office has been able to save money from a tune of approx. 13bn in 2011 to over 25bn in 2013.<sup>157</sup> This is a very big achievement implying good work is being carried out by the inspectorate. However, the sudden drop registered in 2012 (approx. 2bn saved) could be a subject of discussion to understand why.<sup>156</sup> Pertaining to money recovered by the inspectorate as a result of investigations and deposited on IGG recovery account; this has also grown to a tune of approx. 1.1bn in 2013 from approx. 151 million in 2011. In 2014 approx. 839 million shillings were recovered. In the year 2018, the total incomes verified and investigated was UGX 42,621,309,182 while assets verified were worth UGX 33,841,542,344.<sup>157</sup> The implication is that the inspectorate tries as much as possible to save tax payers money and cause value for money from public office holders.

#### **4.2.4 Administrative Sanctions applied**

Ensuring realization of the principle of natural justice is well embedded in the work of the Inspectorate.<sup>158</sup> This often occurs when public officers are put to book for acts that don't confirm with in their mandate. In this case, the inspectorate has over the years been able to

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<sup>154</sup> IGG Report of Financial year 2018

<sup>155</sup> Transparency International Uganda, The Role Of The Inspectorate Of Government In Promoting Accountability In Public Institutions In Uganda (2016) at page 25

<sup>156</sup> ibid

<sup>157</sup> ibid

<sup>158</sup> The constitution of Uganda 1995 Article 225(1)(a)

cancel appointments of public officers who were wrongfully appointed, referred public officer for disciplinary action, interdicted some officers and in some cases dismissed those officers not found capable of holding public office all of which are administrative sanctions.<sup>159</sup> The trend in cancellation of appointments of public officers has ranged between 39 and 5 in 2013 and 2012 respectively. On contrary, the number of public officers referred for disciplinary action to commissions increased from 35 cases in 2012 to 115 cases in 2014 which suggests that more public officers could be wrongfully using their public officers and committing leadership misconduct thus the increase.<sup>160</sup> About interdiction, these have kept reducing from as high as 104 in 2011 to 19 cases in 2013 an implication that public officers are increasing appreciating what they are expected of them. In terms of dismissals, these increased from 31 cases in 2011 to over 60 cases in 2014 while demotions reduced from 31 in 2011 to only 5 in 2014. As a result of dismissals and demotions and interdictions, the inspectorate has been able to cause re-advertisement of some posts though not more than 10 posts were re-advertised across the four years.<sup>161</sup>

#### **4.2.5 Enforcement of the Leadership Code of Conduct**

The Leadership Code Act (LCA) also mandates the Inspectorate with ensuring that specified leaders under the LCA declare their incomes, assets, and liabilities once every two years explaining how they acquired or incurred them respectively.<sup>162</sup> Under the Act, provision is made for a minimum standard of behavior and conduct for leaders. The Code prohibits conduct that is likely to compromise the honesty, impartiality and integrity of leaders or conduct that leads to corruption in public affairs but imposing penalties on leaders who breach the Code.<sup>165</sup> The aim of the Code is ensuring that leaders adhere to a standard of behavior that promotes integrity, transparency and accountability in their conduct of public affairs. As specified in the Act, the inspectorate for instance in 2014 made a request to a total of two hundred seventy (270) government Institutions including to submit updated lists of their staff who were eligible to declare by 31st March 2015 and a total of twenty five thousand (25,000) leaders country wide were expected to submit their declarations to the IGG. During the same period, a total of twenty five (25) verification cases and five (5)

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<sup>159</sup> Transparency International Uganda, *The Role Of The Inspectorate Of Government In Promoting Accountability In Public Institutions In Uganda* (2016) at page 25

<sup>160</sup> *ibid*

<sup>161</sup> Section 4 of the Leadership Code Act

<sup>162</sup> <sup>165</sup> *ibid* section 4B, A leader who includes in a declaration submitted to the Inspectorate, income, assets or liabilities that he or she does not own or has not yet acquired or has no interest in, at the time he or she makes a declaration, commits a breach of this Code.

investigations of the breach of the Code The Inspectorate expected to receive declarations from 25,000 leaders who were eligible to declare by 31st March 2017. By June 2017, a total of 22,844 leaders had so far logged onto the system and 22,122 had successfully submitted their declarations online. This indicates that 88.4% of the targeted leaders responded positively and submitted their declaration of income, assets and liabilities using the Inspectorate of Government Online Declaration System (IG-ODS).<sup>163</sup> The IGG has put in place mechanisms and processes that support the implementation of the leadership code of conduct for instance leadership code database and online declaration of wealth and assets. As an achievement, the IGG has been able to initiate and operate a Leadership Code Database. This database is where the leaders' declarations are captured and stored to enable easy searching using the Fast Track Screening Tool.<sup>164</sup> The Inspectorate in 2014 initiated a process aimed at setting up an online declaration system in which the leaders specified under the Code will declare. This system of using the internet will save way a lot of time for the leaders and the inspectorate with regard to declaration hence reducing the data entry backlog currently experienced at the inspectorate. With such a high level initiative, there is need for fast-tracking it for more beneficial outcomes if it's rolled out and implemented at large.<sup>165</sup>

#### **4.3 Measures put in place by the Inspectorate of Government to Prevent corruption in Uganda.**

##### **4.3.1 Public Awareness Programs**

As a constitutional mandate, the inspectorate is charged with sensitizing and educating the public about the values of constitutionalism in general and the activities of the Institution in particular, were conducted and completed by the inspectorate.<sup>166</sup> through any media or any other means it considers appropriate.<sup>167</sup> Specifically, the inspectorate educates the public about their constitutional right to access services without having to pay bribes and make them aware of their civic duties and responsibilities to demand for accountability from their leaders, value for money and also on how to report corrupt practices to the Inspectorate.

This mandate has over the years been implemented by the IGG. The IGG often carries out public awareness programs. The office of IGG conducted 21 sensitization workshops; In

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<sup>163</sup> Transparency International Uganda, The Role Of The Inspectorate Of Government In Promoting Accountability In Public Institutions In Uganda (2016) at page 25

<sup>164</sup> Inspectorate of Government Report to Parliament January - June 2017) at page 24

<sup>165</sup> *ibid*

<sup>166</sup> *ibid*

<sup>167</sup> The constitution of Uganda Article 225(1)(f)

Kumi district local government for CSOs, local government officials and the media community barazas and boardroom sessions with district officials in the districts of Buikwe, Iganga, Busia, Kapchorwa, Mbale, inter religious council of Uganda, Next Media Group, Broadcasting Services, Oil and gas sector, Education sector and Uganda police, the purpose of the events was to create awareness about the anti-corruption laws, the roles of IGG and dangers of corruption and empower citizens to demand for accountability of their leaders. Stake holder engagement workshops on extractive industry for key government actors was organized jointly with OAG and PPDA to discuss issues relating to land acquisition for oil and gas projects, opportunities in the oil and gas sector and compensation of project affected persons<sup>168</sup>. Public rally at kololo ceremonial grounds marking the international anti-corruption day held was graced by his excellence the president of Uganda in the year 2018. Nine radio programs were organized to discuss anti-corruption campaign 2018. Furthermore 12 partnerships were established to strengthen synergies and information in the fight against corruption , five initiative with a state actor and non-state actors. The office IGG also trained 4 public institutions about anti-corruption<sup>169, 170</sup>,

#### **4.3.2 Promoting Transparency and Accountability in Government Projects**

As a way of promoting and ensuring transparency and accountability within government projects and programs, the inspectorate implements the —Transparency, Accountability and Anti-Corruption (TAAC) component. This component ensures efficiency as well as value for money is achieved in government projects.<sup>171</sup> The inspectorate has made success in terms of mobilizing and training community monitors who are key in spearheading accountability tracking and monitoring within their communities spreading across various districts. This is enshrined within the inspectorates —Social Accountability and Community Monitoring (SACM) component.<sup>172</sup>

#### **4.3.3 Policy and Systems Studies**

The Inspectorate of Government is mandated to promote fair, efficient and good governance in public offices with the aim of attaining zero tolerance to corruption.<sup>173</sup> In implementing

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<sup>168</sup> Inspectorate of Government Report to Parliament(2018/2019)at page 27

<sup>169, 172</sup> Transparency International Uganda, The Role Of The Inspectorate Of Government In Promoting Accountability In Public Institutions In Uganda (2016) At Page 27

<sup>170</sup> Inspectorate Of Government, Bi-Annual Inspectorate Of Government Performance Report To Parliament 2018/2019

<sup>171</sup> ibid

<sup>172</sup> ibid

<sup>173</sup> The constitution of Uganda Article 225

that mandate, the Inspectorate carries out system studies and systemic investigations into operations, policies, systems, procedures and legislation of various government departments and institutions. The studies help in identifying loopholes that may be susceptible to corruption hence make recommendations for remedial measures.<sup>174</sup> The policy and systems studies are intended at improving service delivery within the identified government departments, ministries, agencies and parastatals. In selecting the institutions to be studied, the decision is based on information received through public complaints, media reports, audit reports, monitoring and evaluation reports and periodic surveys. There are a number of studies/systemic investigations which the inspectorate has carried out over the years for instance:

- 1.A system study into the management of immunization service delivery in Uganda
- 2.A systemic investigation into the management of Mulago Hospital
- 3.A systemic investigation into the recruitment of the Commissioner General Uganda Revenue Authority
- 4.A system study into the management of Uganda Printing and Publishing Corporation (UPPC)<sup>175</sup>
- 5.A systemic investigation into the recruitment of the Principal Uganda Institute of Allied Health and Management Sciences, Mulago<sup>176</sup>

In general terms, the IGG posts good evidence of how far she has gone to make recommendations within the systems studies. Nevertheless, what remains is to document the extent to which the investigations have been adapted and implemented within those institutions where they have been carried out. In addition, the IGG needs to follow-up on the recommendations they make to the 179 institutions to assess how far such institutions have made progress in that line.

#### **4.3.4 Capacity Building through Training and International Cooperation Training**

The Inspectorate of Government is committed to strengthening and building capacity of its staff through training in order to equip them with knowledge, skills and attitudes to improve their performance. In strengthening the staff capacity, the IG staff have the opportunity to attend training programs among which include: Public Sector Governance and Budget

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<sup>174</sup> Transparency International Uganda, The Role Of The Inspectorate Of Government In Promoting Accountability In Public Institutions In Uganda (2016) At Page 27

<sup>175</sup> *ibid*

<sup>176</sup> *ibid*

Reforms, Public Community Education and Corruption Prevention, Trade Facilitation, Training for Judicial Officers and Prosecutors and High Level Senior Leadership and Management.

#### **4.3.5 National and International Cooperation**

The war against corruption and the promotion of good governance often requires the cooperation, support and exchange of ideas with other stakeholder at national, regional and international levels. The study observed that this has been achieved through participation of IG staff in conferences, workshops and exchange programs and collaboration with local, regional and international anti-corruption agencies.

#### **4.4 Other platforms used by IGG to prevent corruption**

The study noted that the IGG besides the mandated activities which it should carry out now and then, it has initiated other platforms through which the message on combating corruption can be achieved in the country. The study found the following platforms very instrumental and useful in practice:

##### **4.4.1 The International Anti-Corruption Day Commemoration Activities**

This platform is very much instrumental in sending a message every time the commemorations are carried out. The IGG in conjunction with other government institutions like OAG, PPDA and Directorate of Ethics and Integrity (DEI) and other civil society organization organize and conduct a series activities for the International Anti-Corruption Week commemorations. These activities often run in December of each year.

##### **4.4.2 Open days**

Just like the commemorations, the IGG in collaboration with institutions of OAG, PPDA and DEI often organize joint Open Days with the aim of interacting with the public to discuss topical issues and debates on the role of the anti-corruption agencies, how to report corruption as well as respond to any matters raised by the public. Within this forum, IEC materials are often distributed. The IG does not only organize her own events, but equally participates and exhibits in other forums her work for instance during the commemoration of the Uganda Police Force 100 years of existence in 2014 and the open days organized by the Anti-Corruption Division of the High Court. These open days'activities are very commendable and continue with a more public eye given to them.

#### **4.4.3 Integrity Ambassadors Clubs' Activities**

The IGG has since 2011 been involved in sensitizing the youth about issues of corruption and supports the establishment of integrity clubs in Universities and tertiary institutions. The members of the established clubs act as ambassadors for Anti-corruption crusade in the various institutions they attend. By 2014, the inspectorate had supported the establishment of eight (8) Integrity clubs existing in different universities and tertiary institutions including Busitema University IAC, Mbarara University of Science and Technology (MUST) IAC, and Kampala International University (KIU) - Kansanga IAC among others<sup>177</sup> However, the IGG needs to document the successes and what has been achieved by the Clubs rather than just documenting how many and which activities are carried out in those Clubs.

#### **4.5 Conclusion**

Given the effort of the IGG corruption has remained a great catastrophe among Ugandans. Uganda is one of the countries in East Africa that has the best anti-corruption laws.<sup>181</sup> However given the laws the enforcement of the laws has been a major challenge to the Ugandan Government and the different institutions in place to enforce the laws including the IGG as Public funds and resources are continuing to be swindled by government official as such official are not prosecuted by the IG given the mandate to do so. These continuing corruption scandals have rendered the office of the IG a toothless backing dog.

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<sup>177</sup> Inspectorate Of Government, Bi-Annual Inspectorate Of Government Performance Report To Parliament, January – June 2017  
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## **CHAPTER FIVE**

### **5.0 Challenges facing the office of the Inspector General of Government in the struggle against corruption in Uganda**

#### **5.1 Introduction**

The Inspectorate of Government faces many changes in its struggle to fight corruption as its constitutional mandate. The changes range from funding, poor enforcement, political interference and others. This chapter therefore discusses the challenges encountered by the IGG in the struggle to fight the debacle of corruption.

#### **5.2 Delays in the judicial process**

The establishment of the Anti-Corruption Division of the high Court significantly shortened the period taken to complete prosecution of corruption cases.<sup>178</sup> However, even with a functional Anti-Corruption Court, cases face delays in courts of justice for various reasons including, but not limited to transfer of judicial officers, high numbers of witnesses involved, duration of time taken for investigations and prosecutions and delay tactics by the lawyers and prosecutors such as frequent adjournments and lack of quorum.

#### **5.2 Lack of Corporate status by the Inspector General of Government.**

A corporate status entitles a party to sue and be sued in its names and capacity as a corporate person. The office of IGG lacks a corporate personality status therefore this means the IGG cannot sue and be sued in its capacity and this has resulted in a situation where IGG has to have recourse to the Attorney General's office to represent it, where its reports are challenged in judicial review.

#### **5.3 Inadequate resources**

The IGG in Uganda suffers from a shortage of financial resources. For instance, the IGG corporate and development plan (2010-2014) estimated that the inspectorate required Ugx. 72 billion to carry out its operations for the FY 2010/11, but only Ugx. 18 billion was

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<sup>178</sup> Bi-Annual Inspectorate Of Government Performance Report To Parliament, January - June 2017.



approved by government hence creating a funding gap of Ugx. 53 billion.<sup>179</sup> this budget is way insufficient to enable the inspectorate to fully operate. In spite of being constitutionally an independent body,

which puts it in an advantageous position to lobby government and urge for more funds, the IG has not benefited from any sector wide approach or resources and is heavily dependent on core government funds as well as project funds from the international community.<sup>180</sup>

With such an example of a funding gap, it is conclusive to state that the funds provided from the central government are not adequate to enable the institution carry out her full operations in relation to her operational costs. Considering the workload, the institution needs a relatively bigger financial resource envelop to enable her fully execute her mandate. Notably, the high recurrent (non-wage) expenditure of the institution in terms of paying for rented offices increases her operational costs taking the biggest share of the provided funds. As of 2017 the institution was paying Ugx.7.8billion per annum in rent<sup>185</sup> thus leaving a smaller percentage of the funds for other operational costs.

#### **5.4 Inadequate human resources**

The IG as the lead agency vested with the mandate of combating corruption in Uganda is understaffed with handwriting and document analysis and forensic experts'. This causes delays in investigation of crimes with very adverse effects like the death of very vital witnesses and loss of interest in the cases, which grossly affect their outcome. At times, the State is forced to take the cases to court during early stages of investigations and once the cases are in court, there is pressure to fix them for hearing. The cases are then fixed for hearing when the prosecution is not fully prepared to proceed. The Stromme Foundation reveals that the human resources are more inadequate at regional offices resulting into high officer-complaint ratio. The general staff establishment though having registered a progressive trend, nonetheless the vacant positions remain way high. Out of the 425 positions available for instance in the FY 2010/11, only 310 position were filled hence creating a staff gap of 115 staff (vacant positions).<sup>181</sup> The staff gap stood at 18% which is way high if the inspectorate is to function fully. Even the regional staff establishment

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<sup>179</sup> Transparency International Uganda, The Role Of The Inspectorate Of Government In Promoting Accountability In Public Institutions In Uganda, Final Report March 2016

<sup>180</sup> Bi-Annual Inspectorate Of Government Performance Report To Parliament, January - June 2017.

<sup>181</sup> Stromme Foundation, Final Report For Anti-Corruption Action Research, July 2017

remains very low with an average of five technical staff per regional office.<sup>182</sup> The current staff establishment is thus considerably unable to handle the ever increasing case backlog hence impacting on performance of the institution of IGG. This inadequate human resource capacity could result in more cases which would otherwise be handled by the inspectorate to be ignored or unattended to.

### **5.5 Political interference**

Political pressure and limited resources have weakened the IG and curtailed their ability to systematically address corruption, particularly at the highest levels of government. The president's failure to fill key positions has made prosecutions cumbersome, causing delays and a large case backlog. Despite a legal requirement that leaders are required to make public statements about their financial assets a crucial factor of transparency in governance the system to enforce the obligation has not been established.<sup>183</sup>

### **5.6 Lack of enforcement actions such as the recovery of assets and application of sanctions.**

The implementation of measures to facilitate the recovery of misappropriated funds and assets creates strong disincentives for those likely to engage in corruption. In Uganda however, the full implementation of anti-corruption laws and accountability mechanisms remains a challenge. While the IG has made a substantive progress in addressing corruption, the efforts have principally focused on detection. Much more needs to be achieved in the way of concrete enforcement actions such as the recovery of misappropriated assets and the application of sanctions, which remains the weakest link in the accountability chain.

### **5.7 Delay or little uptake of IG recommendations**

Upon completion of investigations, there have been instances where the IG's recommendations are not implemented. When recommendations are made at the end of the investigation, little or nothing is acted upon or simply some institutions ignore those recommendations even with no reasons expressed.<sup>184</sup> This equally downplays the performance of the inspectorate in ensuring national accountability and when

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<sup>182</sup> *ibid*

<sup>183</sup> Andrew Mwenda, "Uganda's anti-corruption rituals," *The Independent*, August 12, 2012

<sup>184</sup> Stromme Foundation, *Anti-Corruption Action Research Report*, June 2017

implementation of the recommendations, such as sanctions of various officials is not effected promptly, the matters investigated remain unresolved.<sup>185</sup>

### **5.8 Lack of specialized equipment's and support staff**

As an investigating institution, there needs to be special equipment's as well as fully trained staff to undertake various investigations. The institution lack such equipment's which would potentially help her undertake forensic investigations aided by computer systems. This challenge extends to the staff incapacity to equally carry out such forensic investigations which would otherwise save much the operations of the inspectorate.

### **5.9 Failure to implement the Leadership Code.**

The 2002 Leadership Code Act requires a wide range of national and local political leaders to disclose their financial information, including income, assets, and liabilities, as well the financial information of their family members.<sup>186</sup> The IGG is tasked with inspecting disclosure and can request clarification if discrepancies are discovered. The Act also prohibits a number of corrupt practices, including acting in a public capacity with conflict of interest, acceptance of certain high-value gifts, acceptance of government contracts, abuse of public property, and misuse of official information. The Leadership Code Act appears to set up a fairly strong two-pronged anticorruption framework by requiring financial disclosure for public officials and establishing a Leadership Tribunal to enforce a code of conduct for political leaders. It is also intended to prohibit the same leaders from soliciting and receiving bribes or misusing state funds and property. Second, the design of the Leadership Code form is insufficient in itself as it permits respondents to provide only vague information and does not allow for important details on the assets of spouses and children (a place where they are most likely to hide their ill-gotten wealth).

At present, there are no mechanisms in place to enforce compliance, no means of improving the specificity of information required and insufficient capacity in the office of IGG in terms of personnel and financial resources to verify the results of even those statements currently returned.

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<sup>185</sup> *ibid*

<sup>186</sup> The Leadership Code Act, art.4 (2).

### **5.10 Lack of a Leadership Code tribunal**

In regard to fulfilling her mandate of enforcing the leadership code of conduct for the public officers, the inspectorate faces the challenge of lack of a Tribunal. The Act provides for the leadership Code tribunal however such a body has never been formed, rendering the Leadership

Code unenforceable in practice and crippling the IGG's ability to ensure accurate declarations.<sup>187</sup> There is lack of both the resources to monitor the content of those declarations and, and enforcement of the law where there is non-compliance. The tribunal is expected to handle cases in which the leaders are found in breach of the Code but its lack poses significant challenge to enforcement of the Code. The implication of lack of such a tribunal is that, many public officers who fail to comply with the Code are not penalized which leaves the inspectorate very weak in carrying out its mandate to ensure that leaders are held accountable or even serve as examples to future leaders. The lack of a Leadership Code Tribunal is a significant challenge to the enforcement of the Leadership Code and contributes to the decline in adhering to the code of conduct by leaders.<sup>188</sup> Such loopholes in the legal framework affect the full operation of the institution of IGG.

### **5.11 General reluctance, delays and/or refusal to respond to IGG inquiries**

The IGG faces the challenge of some Government officers and or Institutions failing to give appropriate attention inquiries and clarifications sought from them which carrying out its work. This on a bad note greatly slows down the investigations of the inspectorate. Generally, most of the government agencies and departments have this tendency as they are reluctant to provide all the necessary information or even appearing before the institution as requested.

### **5.12 Political Influence and Corruption in the Gathering of Evidence.**

Convictions are highly dependent on the quality of the evidence presented before the courts. While problems of capacity and training undermine the ability to collect the necessary evidence the lack of political will as the biggest obstacle to securing sufficient evidence for successful convictions. Political influence most often takes the form of bribes, and the low

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<sup>187</sup> Human Rights Watch "Letting the Big Fish Swim" Failures to Prosecute High-Level Corruption in Uganda, HRW(2013)

<sup>188</sup> Inspectorate of Government Report to Parliament January - June 2017

salaries of civil servants increase their susceptibility. For example, investigating police officers have the responsibility to collect evidence that will later be necessary at trial. Bribery can thus result in a lack of evidence and be sufficient to prevent a case from going forward. This explains why cases die for failure to procure enough evidence to try the suspects.

### **5.13 High and heavy case backlog**

The most noted challenge faced by IGG is the ever increasing case backlog. This is evidenced by the many cases which are carried forward year to year yet the new complaints keep growing every year.

### **5.14 Corruption and negative attitudes**

Corruption and negative attitudes in the institutions that are supposed to be partners with the IG in the fight against corruption, affect successful prosecution of some cases and delays in handling others. Some institutions/officials take unnecessarily too long or just ignore to provide the required information, until coercive measures are taken.<sup>189</sup>

### **5.15 Poor Record Keeping in Government Institutions**

A poor record keeping culture in Government Institutions such as the Land Office and Company Registry poses a major investigative and prosecution challenge as the success of both are highly dependent on good record keeping practices.<sup>190</sup>

### **5.16 Inadequate institutional support in implementation of IGG recommendations**

Lack of cooperation and negative attitude in some institutions that are supposed to be partners with the IGG in the fight against corruption, greatly undermine the effectiveness of the office. There are instances when some institutions have deliberately ignored or delayed implementation of the IGG recommendations, which undermines the effectiveness of the office and hinders the realization of desired results.<sup>191</sup> Analysis of government data revealed that multiple government agencies are involved in anti-corruption enforcement. They are therefore involved in the collection of corruption-related data. However, the efforts of these

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<sup>189</sup> INSPECTORATE OF GOVERNMENT, Report to Parliament (January – June 2012)

<sup>190</sup> *ibid*

<sup>191</sup> *ibid*

agencies are not well coordinated, a factor that in turn limits citizen's abilities to understand the effectiveness of government anti-corruption efforts, particularly related to public sector corruption. The limitation usually results from failure to provide timely information to the public by the agencies due to poor coordination and poor or failed data compilation. With regard to these agencies, there is need to improve the quality of data related to reporting anti-corruption enforcement. In order to improve efficacy in the fight against corruption, the Ugandan Government has realized the need for increased co-ordination among the institutions and has put in place the Anti-Corruption Inter-Agency Forum (IAF) and all anti-corruption institutions are active participants. The Forum is chaired by the Minister of Ethics and Integrity and comprises of the; Inspector General of Government (IGG), Director of Public Prosecutions (DPP), Judiciary, Police, Public Procurement and Disposal of Public Assets Authority, Auditor General and other institutions. Through the IAF, the anti-corruption agencies have been working together on the design and implementation of the National Strategy to fight corruption, promote publicity and advance legal reforms.<sup>192</sup>

#### **5.17 High public expectations of better outcomes in fighting corruption**

There are high public expectations for the IGG to handle complaints expeditiously, yet the financial, human and material capacities to meet this challenge are limited, resulting in a backlog of cases.<sup>193</sup>

#### **5.18 Keeping ahead of sophistication in corruption techniques**

The corrupt use sophisticated techniques to engage in fraud and other corruption malpractices. There is, therefore, need for the IGG staff to have continuous advanced and specialized training in order to keep ahead in the fight against corruption. The challenge, however, is inadequate funding to carry out the necessary training. There is also need to purchase modern equipment to be used during investigations.

#### **5.19 Inadequate funding of Government Departments**

Inadequate funding of government departments negatively affects resolution of cases involving payment of salary arrears, pensions, terminal benefits, etc. It also causes delays in data retrieval due to lack of facilities like computers which are necessary for fast retrieval of

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<sup>192</sup> Anti-Corruption Action Research Report, June 2017

<sup>193</sup> INSPECTORATE OF GOVERNMENT, Report to Parliament (January – June 2012)  
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data required by investigating officers from the office of IGG and for purposes of proper management of the affairs of the concerned institutions.<sup>198</sup>

### **5.20 Declining social morals**

Declining social morals in parts of society has made corruption less shameful. The public tend to glorify the corrupt and down look the upright members of the society. This is because the public at times benefit from the proceeds of the corrupt. This public attitude has lowered the demand for good governance and produced very reluctant whistle blowers and increased prevalence of corruption. There is therefore, need for continuous public sensitization about the evils of corruption and the public role to help eliminate it.

### **5.21 Conclusion**

The office of the Inspector General of Government faces very many challenges in the struggle to carry out its mandate of fighting corruption in Uganda as elaborates above. However it's important to note that the IGG has failed to prosecute the big government officials who are sometimes involved in corruption scandals but instead prosecute the junior officers and therefore they are letting the big fish to swim in Government resources.<sup>194</sup>

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<sup>194</sup> Human Rights Watch "Letting the Big Fish Swim" Failures to Prosecute High-Level Corruption in Uganda, HRW(2013)

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