ANTI CORRUPTION COALITION UGANDA

An Assessment of the **Status of the Implementation of the Anti-Corruption Act,** 2009 (As Amended)

Submitted by:
Dr. Dan Ngabirano
Consulting Partner,
Development Law Associates &
Lecturer on Law, Makerere University
Email: dan.ngabirano@developmentlaw.org
Cell: +256-779-857129

An Assessment of the **Status of the Implementation of the Anti-Corruption Act,** 2009 (As Amended)

Submitted by:
Dr. Dan Ngabirano
Consulting Partner,
Development Law Associates &
Lecturer on Law, Makerere University
Email: dan.ngabirano@developmentlaw.org
Cell: +256-779-857129

List of Acronyms

A CCU	Anti-Corruption Coalition Uganda
ACD	Anti-Corruption Division
AFIC	Africa Freedom of Information Centre
AG	Attorney General
ARU	Asset Recovery Unit
AUPCC	African Union Convention on Preventing and Combating Corruption
COA	Court of Appeal
CPI	Corruption Perceptions Index
DPP	Director of Public Prosecutions
EAC	East African Community
GI	Global Integrity
HC	High Court
HRW	Human Rights Watch
HURINET-U	Human Rights Network- Uganda
IG	Inspectorate of Government
IGG	Inspector General of Government
JSC	Judicial Service Commission
MLA	Mutual Legal Assistance
NCHRD-U	National Coalition for Human Rights Defenders- Uganda
OAG	Office of the Auditor General
ODPP	Office of the Director of Public Prosecutions
PPDA	Public Procurement and Disposal of Public Assets Authority
RDC	Resident District Commissioner
SC	Supreme Court
TI	Transparency International
UHRC	Uganda Human Rights Commission
UNCAC	United Nations Convention Against Corruption
UPF	Uganda Police Force
URA	Uganda Revenue Authority
USD	United States Dollar

An Assessment of the Status of the Implementation of the Anti-Corruption Act, 2009 (as Amended)

1.0 Introduction and Context

Corruption involves the abuse of entrusted power for private gain.[1] Although it is more pervasive in some countries than in others, corruption affects almost all nations and it has global ramifications. Yet, countries that experience high levels of corruption tend to be economically, democratically and socially unstable.[2] In these countries, corruption distorts economies and worsens income inequalities by benefitting a few while a significant part of the population wallows in abject poverty.[3] This breeds social tensions which have in some countries acted as a spark for unrest and conflict. It is therefore not surprising that behind almost every military coup, corruption of the government sought to be overthrown is always presented as one of the main justifications. Corruption also leads to resource wastage where instead of investment in critical sectors like health and education, funds are instead diverted to less priority areas for purposes of benefitting a few officials.[4] This in turn affects the delivery of public goods and services.[5] Moreover, corruption has also been shown to compromise the enjoyment of fundamental rights and freedoms.

Despite its grave and devastating consequences on countries, elite corruption in Africa is still rampant. According to the Human Rights Watch (HRW),

1 See Transparency International, What is Corruption?, Available on https://www.transparency.org/en/what-is-corruption# (accessed on April 20, 2020)
2 *Id.*
3 Susan Rose- Ackerman, The Political Economy of Corruption in Elliott, Elliott, Kimberly Ann, and Institute for International Economics. Corruption and the Global Economy /. Washington, DC: Institute for International Economics, 1997. Pg. 33. See also Kwabena Gyimah- Brempong (2001), Corruption, Economic Growth and Income Inequality in Africa, Econ. Gov. Vol 3 pg. 183-209
4 Shleifer, Andrej, and Vishny, Robert W. "Corruption." The Quarterly Journal of Economics 108, no. 3 (1993): 599-617
5 *Id.*

corruption in Uganda is both systemic and systematic and often involves high ranking and politically well-connected individuals (grand/political corruption).[6] In fact, it has also been said that corruption provides the fuel required to run the ruling National Resistance Movement's (NRM) patronage machinery.[7] In this regard, corruption provides an important avenue for the quick generation of resources required to purchase political patronage. Some corruption schemes also serve to reward regime loyalists and involve strategies for the mobilization of campaign resources for the NRM.[8] Against this background, some commentators have observed that corruption is the glue that holds the ruling NRM regime together and that without it, its long stay in power would not have been possible.[9]

The high prevalence of especially grand corruption involving those closely connected to the NRM is inconsistent with the regime's earlier stance against the vice and its initial efforts to stamp it out. Right from the time that the NRM came into power in 1986, it pledged to eliminate corruption and abuse of power as part of its political agenda for the country.[10] In fulfilment of this pledge, the NRM established the institution of the Inspectorate of Government (IG) within two years of coming into power.[11] The initial mandate of the IG included, among others, the elimination of corruption and the investigation of human rights violations. This was eventually streamlined during the making of the 1995 Constitution and presently the IGs mandate is restricted to the elimination of corruption, abuse of authority and of public office.[12]

6 Maria Burnett, Let the Big Fish Swim: Failures to Prosecute High Level Corruption in Uganda, Human Rights Watch & Allard K. Lowenstein International Human Rights Clinic -Yale Law School, October 2013

7 Tripp, Aili Mari. Museveni's Uganda: Paradoxes of Power in a Hybrid Regime /. Challenge and Change in African Politics. Boulder: Lynne Rienner Publishers, 2010

8 *Id.*

9 Roger, Tangri K and Andrew M, Mwenda. The Politics of Elite Corruption in Africa: Uganda in Comparative African Perspective /. Routledge Studies on African Politics and International Relations; 3. London; New York: Routledge, 2013

10 National Resistance Movement (Uganda). 1986, Ten Point Programme of the NRM, Kampala, Uganda. NRM

11 Inspectorate of Government Statute, 1988.

12 Article 225 (1) (b), Constitution of the Republic of Uganda, 1995 (as amended)

Moreover, the work of the Inspectorate of Government is complimented by several other institutions. These include the Office of the Auditor General (OAG), Directorate of Public Prosecutions (DPP), Uganda Police Force (UPF), Anti-Corruption Division of the High Court (ACD), Parliamentary Public Accounts Committee (PAC) and the Directorate of Ethics and Integrity (DEI). Most recently, the President has created the State House Health Monitoring Unit and the State House Anti-Corruption Unit to "boost" the fight against corruption. Needless to mention that in the past, several Commissions of Inquiry have been appointed to investigate corrupt conduct of public officials. The findings of these commissions have on some occasions been used to discipline corrupt officials and reform affected institutions.

More critically, under the NRM's leadership, Uganda has seen the enactment of specific anti-corruption legislation such as the Anti-Corruption Act, 2009 (as amended). The law is laudable in many respects. It defines and criminalizes the offence of corruption when committed in both the public and private spheres. The criminalization of private corruption recognizes the difficulties that arise when faced with a situation where the lines between the public and private are blurred as has often become the case. Furthermore, where an accused person is found guilty of committing an offence, the law prescribes an appropriate sanction. Other progressive provisions of the law include those relating to the protection of informers, asset recovery, reciprocal enforcement, and international cooperation in combating corruption.

In addition to the Anti-Corruption Act, 2009 (as amended) there exists other pieces of legislation that may be relied upon to combat corruption. These include laws that provide for among others declaration of assets, access to public information, protection of whistleblowers and transparency in procurement. Uganda is also a state party to the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUPCC). These create binding obligations on states to enact competent laws and facilitate the establishment of independent anti-corruption institutions. Regional and international anti-corruption treaties

also set standards for state parties to follow if they are to effectively combat corruption.

Be that as it may, Uganda is still ranked among the most corrupt countries in the world despite the NRM's earlier political commitment to eliminate the vice and its deliberate efforts to put in place a fairly strong and comprehensive anti- corruption legal and institutional framework. According to Transparency International's Corruption Perceptions Index (CPI), on a scale of least to most corrupt, Uganda ranked no. 151 out of 176 and 151 out of 180 countries in 2016 and 2017 respectively.[13] In 2018, the country was ranked no. 149 of 180 and most recently in 2019 it was ranked no.137 out of 180 countries.[14] Earlier in 2012, Uganda was reported to have had the highest incidents of bribery in the whole of the East African Community (EAC).[15] The level and intensity of corruption in Uganda is also reflected in the staggering amounts of public funds lost to the scourge every other year. It is estimated that as of 2006, Uganda lost up to USD 950 million to corruption per year.[16] In 2017, the amount of funds lost was reported to have shot upwards to USD 1billion.[17]

1.1 Purpose of the Study

The rapidly rising levels of corruption in Uganda have been blamed on the practice of patronage by the ruling NRM. Since corruption provides the fuel for the patronage machinery, there is reluctance to investigate and prosecute high ranking officials and those closely connected to the ruling regime. In some of the cases where those accused of corruption are associated with the ruling regime, there has been active interference in the work of anti-

13 See Transparency International, Corruption Perceptions Indexes, 2016 and 2017. Available on https://www.transparency.org/en/cpi/2019/results/table

14 See Transparency International, Corruption Perception Indexes, 2018 and 2019. Available on https://www.transparency.org/en/cpi/2019/results/table

15 See Gaaki Kigambo, 'Uganda Most Corrupt in EA- Report' The East African, September 1, 2012. See also Uganda Tops East Africa in Corruption, Transparency International, Available on http://www.tiuganda.org/data/news/1/Uganda-tops-East-Africa-in-Corruption.html

16 See Global Integrity Report 2006: Uganda. Available on http://www.globalintegrity.org/reports/2006/uganda/ind ex.cfm)

17 See Global Integrity Report 2017: Uganda.

corruption institutions in their attempt to investigate and prosecute them. Relatedly, for the most part, anti-corruption institutions are not afforded the necessary support and resources by the state in order for them to perform their functions effectively.

As it is, the absence of political will to tackle corruption by the ruling NRM regime has inevitably affected the implementation of anti-corruption laws and the functioning of institutions established under these laws.

Against this background, this study set out to assess the status of implementation of the Anti-Corruption Act, 2009 (as amended). In this way, the study also seeks to verify the claim that the non-implementation of anti-corruption laws is partly responsible for the widespread corruption problem in Uganda. Importantly, the study explores the extent to which current implementation gaps can be attributed to the inherent weaknesses in the law itself or rather to other external factors or a combination of both. Based on the findings, the study makes appropriate recommendations towards the reform and enhanced implementation of the Anti-Corruption Act, 2009 (as amended).

1.2 Approach and Methodology

The study adopted a qualitative approach to inquiry where primary data was complimented by secondary data.

1.2.1 Study Area and Population

The study was conducted in Kampala where officials and representatives from government, civil society, the media, and academia were interviewed.

1.2.2 Sample Size and Sampling

A total of 40 key informants i.e. 30 from the categories and institutions mentioned above and 10 members of the public were purposively selected to participate in the study. Their selection was based on the consideration that they are key in the implementation of the anti-corruption laws, awareness creation and in holding the duty bearers accountable.

1.2.3 Data collection methods

The following data collection methods were used to collect both primary and secondary data during the study.

1.2.4 Document review

The study involved a review of the Anti-Corruption Act, 2009 (as amended). In addition to this, the study also relied on a comprehensive review of existing corruption literature especially that related to the role of law and institutions in combatting corruption.

1.2.5 Key Informant Interviews

Individual interviews were conducted with officials and representatives from institutions in the categories mentioned above. The in-depth information obtained facilitated a comprehensive understanding of the existing gaps in respect to the implementation of the law and formed a basis for a number of proposals to address the gaps and improve implementation of Anti-Corruption Act, 2009 as a whole.

2.0 Design of Key Assessment Parameters

The status and level of implementation of the Anti-corruption Act, 2009 (as amended) is determined in accordance with two broad categories of parameters i.e. general and legislation specific parameters.

The general parameters are four in total and include: a) establishment and functioning of institutions required to implement the law b) availability of the necessary resources c) enactment of rules and/or regulations required to implement the law and, d) public awareness on the law. On the other hand, the legislative specific parameters assess the status of implementation of individual provisions of the law. These specific provisions whose implementation is assessed in this study include those that provide for, among others; investigation and prosecution of corruption offences, effectiveness of sanctions, protection of informers and witnesses, recovery of corruption proceeds and international cooperation and reciprocal arrangements in combating corruption.

These parameters are neither perfect and nor are they completely foolproof. They are merely indicative and are only designed as a starting point in the assessment of the status and extent to which the Anti-Corruption Act, 2009 (as amended) has been implemented. This is because from a practical point of view, it is almost impossible to determine with clear certainty the exact status and extent to which a specific piece of legislation has been or is being implemented. This is further complicated by the fact that most laws do not prescribe specific and quantifiable implementation indicators and or milestones. Otherwise where such clear benchmarks exist in the law, it is relatively easy to assess the level and extent to which the law has been/is being implemented. As an example, some laws may explicitly require the setting up of institutions with specific mandates, composition, and amount of resources. In that case, the status of implementation of the law can be gauged by looking at the actual establishment of the specific institution and comparing the composition and resources available with the benchmark provided in the law.

It is also the case that the question as to the status and extent of implementation of a specific piece of legislation is one of opinion and individual perception. For this reason, this assessment makes reference to individual opinions and perceptions as gleaned from the interviews conducted with various persons during the study. These include the opinions and perceptions of officials charged with specific responsibilities under the law as well as those of other key informants who are conversant with the law and its provisions. The main challenge with this approach is that it is highly subjective, and the responses tend to be nuanced by both individual and institutional biases. This reality is highly vivid in the views expressed by some of the informants interviewed during this study.

Related to the above, there is also a lot of subjectivity where the status and extent of implementation of the law or some of its provisions is meant to be progressive, sequential, and phased over a period of time. In that case, where the duty bearers believe that considerable progress has been made, there is a tendency for the other actors to feel that this is not the case. In fact, a considerable number of respondents tend to place the blame for the slow or even complete non implementation of the law, on duty bearers.

In mitigation of all these challenges, this assessment relies on both the prescribed legislative benchmarks/indicators where they exist and on individual/institutional perceptions and opinions where there are no set benchmarks/indicators in the law. Although this approach equally has its own limitations, it seeks to create a balance.

The methodological challenges notwithstanding, the study represents an initial effort towards the development of an assessment mechanism for determining the status of implementation of laws such as the Anti-Corruption Act, 2009 (as amended). In this respect, it makes an important contribution to both the literature and anti- corruption fight since there is presently no such known initiative. Either way, this does not take away the need for the constant review and revision of the current methodology.

2.1 Determination of Status of Implementation

For each of the parameters, the level and status of implementation is scored using the **"traffic stop light"** method. Where the level and status of implementation of a specific parameter is deemed to be satisfactory, a green score is given. In cases of moderate implementation, a yellow score is given. Finally, in the extreme cases of either non implementation or where it is deemed totally unsatisfactory, a red score is given.

3.0 Overview of the Anti-Corruption Act, 2009 (as amended)

The Anti- Corruption Act came into effect on the 25th day of August 2009.[18] At the time of its passing, the law on corruption in Uganda was scattered in different pieces of legislation i.e. the Prevention of Corruption Act, 121; the Penal Code Act cap 120 (as amended); and the Leadership Code Act, 2002. The Anti-Corruption Act, 2009 repealed the Prevention of Corruption Act in its entirely and amended certain provisions of the other two laws. In this way, it consolidated the provisions of the law relating to corruption in Uganda.

The purpose of the law as set out to in its long title is to provide for the effectual prevention of corruption in both the public and private realms.[19] In this regard, the law establishes procedural mechanisms necessary for the investigation, prosecution and punishment of corruption and other related offences. Over and above, the law contains several important provisions that are critical in the elimination of corruption. In the first place, the law defines the offence of corruption as well as other related offences such as abuse of office, embezzlement, causing financial loss, bribery, diversion of public resources, influence peddling, conflict of interest, nepotism and sectarianism. For each one of these offences, the law also prescribes an appropriate penalty.

Most fundamentally, the law defines and criminalizes acts of corruption committed in the private realm. This is a significant innovation that is alive to current realities in countries like Uganda where the lines between the public and private are increasingly blurred. Moreover, the Anti-Corruption Act also contains provisions that prescribe the appropriate punishment where a person is found to have committed an offence under the law. This is important since penal sanctions act as a deterrent factor in respect to offences like corruption.

18 Anti-Corruption Act, 2009 (as amended) Available on https://www.parliament.go.ug/documents/1264/acts-2015 (accessed on June 10, 2020)
19 *Id,* Long Title.

The other important provisions of the law include those to do with the protection of informers and other persons charged with the implementation of the law. Equally important, are the provisions relating to asset recovery where an accused person is found guilty of committing an offence under the law. This is laudable given the significance of the ability of the state or any other affected party to confiscate and recover assets obtained using proceeds of corruption. Given its importance, in 2015 the Anti-Corruption Act, 2009 was amended to strengthen provisions relating to asset recovery.[20] Following this amendment, it is now possible for the state to recover assets acquired by an accused person in a period of up to ten years prior to their conviction.[21] This period can be extended further with the approval of the court. The other positive aspects of the law include the provisions on extra-territorial enforcement and international cooperation in the fight against corruption.

Overall, the Anti-Corruption, Act 2009 is a fairly comprehensive piece of legislation that is alive to current challenges in the fight against corruption. More importantly, the law to a great extent incorporates the minimum legal standards set under regional and international anti-corruption treaties. These include the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). Being a state party to both Conventions, Uganda is obligated to put in place legal mechanisms necessary for the detection, punishment and elimination of corruption. The provisions of the Anti-Corruption Act, 2009 satisfy this requirement to a great extent.

Notwithstanding the above, there are certain aspects of the law that require urgent consideration for reform. For instance, under the law, both the Inspectorate of Government (IG) and the Director of Public Prosecutions (DPP) have equal powers to investigate and prosecute corruption and related offences. In the absence of an effective coordination mechanism, there is a huge risk of overlaps and duplication of work leading to waste of the already

20 *Id.*
21 Section 63, Anti-Corruption Act, 2009 (as amended)

scarce resources available to these institutions. Lastly, the law is fundamentally limited in as far as it does not sufficiently provide for adequate witness protection in the context of corruption trials. This is a major omission that requires urgent attention of both legislators and policy makers if Uganda is to make strides in the fight against corruption.

While there is no doubt that the quality of anti-corruption legislation is important for the fight against corruption, efforts to implement such law are equally and, in some cases, more significant. It is possible to have a high-quality piece of anti-corruption legislation but if it is not well implemented its impact is often severely limited. Countries which have demonstrated willingness and ability to implement their anti-corruption legislations have been shown to achieve better results in the fight against corruption. A good example is Botswana which is presently ranked among the least corrupt countries in Africa. In comparison, Uganda which ranks poorly passed anti-corruption legislation much earlier and the provisions of its laws are in many respects relatively stronger than those in the Botswana law. While legal implementation of anti-corruption legislation is not the sole reason, it has greatly contributed to the country's success.

Against this background, it is not sufficient for countries to concentrate on passing high quality anti-corruption legislation. They should equally prioritize and invest in the implementation of these laws. In view of Uganda's consistent ranking among the most corrupt countries in the world while at the same time the country has some of the most comprehensive and progressive anti-corruption laws, the study set out to assess the extent and status of implementation of the Anti-Corruption Act, 2009 (as amended). The assessment is based on both general and legislative specific parameters.

4.0 Assessment of the Status & Extent of Implementation of the Anti-Corruption Act, 2009 (as amended)

4.1 General Implementation Parameters

4.1.1 Establishment and Functioning of Institutions

As a state party to the UNCAC and the AUCPCC, Uganda is required to establish institutions necessary to prevent and combat corruption.[22] Under the Anti-Corruption Act, 2009, the mandate to investigate and prosecute corruption and other related offences is vested in two main institutions, i.e. the Inspectorate of Government (IG) which is the anti-corruption agency and the Office of the Director of Public Prosecutions (DPP). Under Section 49, the prosecution of corruption and other related offences provided for under the law is subject to obtaining of consent from either the DPP or the IGG. As has been pointed out above, the main challenge that arises from these provisions is that it unnecessarily increases the risk of duplication of work in the implementation of the Act. There is also a strong risk of overlaps and a high possibility of the two institutions instituting parallel investigations in respect to the same matter. This inevitably leads to resource wastage further constraining budgets of the two institutions. It is also difficult to hold either of the institutions accountable in cases of institutional failure since the mandate is a shared one.

During the study both officials from the DPP and the IG confirmed the existence of an informal working collaboration between the two institutions. Through this arrangement, officials from both institutions can regularly update each other on ongoing investigations. Where it is established that both institutions are involved in the investigation of the same corruption matter, priority is usually given to the IG. However, in some cases, the one who has

22 Article 6, United Nations Convention Against Corruption (UNCAC) and Article 5 (3), African Union Convention on Preventing and Combating Corruption (AUCPCC)

most advanced in the investigations process can proceed with the matter.[23] This approach while laudable does not completely take away the challenges mentioned earlier on. In the absence of a formal and clear coordination policy for investigation and prosecution of corruption and other offences under the law, there is still a high risk of overlaps and duplication. This inevitably leads to resource wastage as opined by an Official from the Inspectorate of Government below.

> *"Sometimes when we receive a corruption related complaint involving high profile individuals, we initiate secret investigations to protect the identity of the whistle blower and to avoid interference from such a person. We also try to keep the initial information obtained amongst the members of the investigation team. It is not until we have gathered sufficient information that we are in position to bring formal charges in which case the matter will become public. While this strategy is good for maintaining the integrity of the investigation, sometimes we later get to know that the DPP has been investigating the same matter and sometimes has the same information as we have. At this time we have to agree on who is in best position to proceed but the challenge is that we will have all spent a lot of time and other resources on just one case yet there are many other complaints that we have to investigate"* [24]

The overlap in the exercise of mandate of the DPP and IG has been made further complex by the creation of other auxiliary units. The challenge is that unlike the formal institutions whose mandate is derived from law, auxiliary units such as the State House Anti-Corruption Unit and the State House Health Monitoring Unit are created by Presidential directive and their mandate is not very clear. The lack of clarity on how these units should relate with the formal anti-corruption institutions has in some cases created unnecessary tension and competition in the investigation of corruption cases. According to a Civil Society Official interviewed,

23 Interview with ODPP Spokes Person also confirmed by Interview with Official in the IG.
24 Interview with Official from the Inspectorate of Government, Kampala.

> *"The creation of the State House Anti-Corruption Unit is part of President Museveni's political strategy to be seen to be doing something about the corruption that has plagued his tenure. The unit is under pressure to deliver results and unlike the DPP and the IG, theirs is about appeasing the increasingly disgruntled population. Since they are answerable to President Museveni, this is the reason why the corruption cases in which they have been involved are regularly reported in the media."*[25]

Similar observations have been made in respect to the role of the State House Health Monitoring Unit.[26] According to a 2018 report, while the unit has leveraged its close connection to the President to succeed in reducing bribery in the health sector in the short run, in the long run its activities are likely to harm the morale of frontline service providers and to undermine citizens' trust in the sector.[27]

Over and above, the context within which the State House Anti-Corruption Unit was created shows that the President acted to tame the growing public frustration over widespread corruption and gross loss of public funds in his government. Indirectly, the President's move also speaks to his lack of confidence in the work of existing formal anti-corruption institutions. It is submitted that while both the IG and the DPP have had their limitations in the exercise of their legal mandate, the President could have approached their current limitations differently since he has a level of influence on the effectiveness of their work. First, it is the President who is responsible for appointment of both the DPP and members of the Inspectorate of Government. This, while not good for independence of these institutions gives the President the opportunity to select the best persons to lead them. Secondly, the President has the political clout to ensure that both institutions are well funded since

25 Interview with Civil Society Official, Kampala.
26 Caryn Peiffer, Rosita Armtage and Heather Marguette, Uganda's Health Sector as a "Hidden" Positive Outlier in Bribery Reduction, Development Leadership Programme, Research Paper 56, May 2018.
27 *Id*

some of the current limitations directly arise from the fact that they are resource strained.

It should also be noted that in the past, the poor performance of the Inspectorate has been blamed on delays by the President to appoint its members. This affects the work of the Inspectorate since its mandate can only be exercised collectively by the members when properly constituted. This position was confirmed by the Constitutional Court in the case of *Hon. Sam Kutesa, Hon John Nasasira & Hon. Mwesigwa Rukutana v. AG of Uganda.*[28] In that case it was found to have been unconstitutional for the IG to bring corruption charges against the petitioners at the time when the Inspectorate only had an IGG and one deputy instead of two. The court stated that under the Constitution, special power to investigate and prosecute corruption is vested in the Inspectorate as a unit and not individuals. For that matter, the power to investigate and prosecute was required to be exercised collectively by all the members of the Inspectorate so properly constituted. Earlier on in 2011, the prosecutorial powers of an IGG in acting capacity had been challenged in the case of *Prof. Gilbert Balibaseka Bukenya v. AG*.[29] Although the court found that an IGG in acting capacity could exercise such power, the case exposed the risk of not having a substantive IGG.

The challenges arising from the delayed appointment of members of the IG notwithstanding, at the time of the study it was established there was no Inspector General of Government (IGG) following the expiry of the previous one's contract. It therefore remains to be seen as to when the President will exercise his Constitutional power to appoint a substantive IGG. According to a 2011 report of the Human Rights Watch (HRW), the failure to constitute the Inspectorate through timely appointment of members greatly undermines its ability to perform its constitutional mandate and at the same time points

28 Hon. Sam Kutesa, Hon John Nasasira & Hon. Mwesigwa Rukutana v. Attorney General of Uganda, Constitutional Petition No. 54 of 2011.

29 Prof. Gilbert Balibaseka Bukenya v. Attorney General of Uganda, Constitutional Petition No. 30 of 2011.

towards the lack of political will to fight corruption.[30] The IG Report to Parliament partly supports this claim to the extent that it acknowledges that there was a significant reduction in the number of complaints investigated during the time there was no substantive IGG.[31]

Considering the above, the creation of auxiliary units such as the State House Anti-Corruption Unit may not be the best approach in addressing the current limitations of the Inspectorate. The resources spent on the activities of such units should rather have been expended on the strengthening of the IG and the DPP. Moreover, it is the Inspectorate of Government that is legally mandated to eliminate corruption under the Constitution. Flowing from this, the IG is best suited to provide leadership and guidance in the broad fight against the vice. On this basis, it is recommended for the IG to be supported and strengthened instead of creation of other competing units whose mandate is not clearly defined under the law.

4.1.2 Implementation Rules and Regulations

Parliament is usually preoccupied with the substantive elements of the law while exercising its legislative mandate. The procedural elements necessary to enforce the law are often left to the Minister or any other person responsible for initiating subsidiary legislation in the form of rules and regulations. In the absence of subsidiary legislation, it is almost impossible to implement those substantive aspects of the law that require procedural clarification. For this reason, the existence of subsidiary legislation in the form of rules and regulations constitutes a key parameter in the assessment of the status and level of implementation of a law like the Anti-Corruption Act, 2009 (as amended)

30 Burnet pgs. 24-27

31 Inspectorate of Government Report to Parliament, January to July 2016, pg. 9. Available on https://www.igg.go.ug/static/files/publications/IG_Report_to_Parliament_January_-_December_2016.pdf. See also Inspectorate of Government Report to Parliament, July to December 2015, pg. 10. Available on https://www.igg.go.ug/static/files/publications/IG_Report_to_Parliament_July_-_Dec_2015.pdf

Under Section 67A of the law, the Chief Justice is enjoined to make rules necessary to regulate the procedure for confiscation and recovery orders, trustees and receivers and other related matters.[32] The other person with power to make subsidiary legislation for purposes of asset recovery under the law is the Minister. Pursuant to the provisions of the Section 67B, the Minister may by statutory instrument declare a state to be a reciprocating state for purposes of the Act provided that such a state has enacted laws for confiscation or recovery with the same effect as that of the provisions of the Act.

As earlier stated, the ability to recover assets obtained using the proceeds of corruption is fundamental in the fight against corruption. The possibility of asset recovery acts as a deterrent mechanism. It also enables the state or any other affected party to use the confiscated property to recover resources lost to corruption.

During the study, it was discovered that the regulations needed to clarify on procedural matters in respect to confiscation and recovery orders are yet to be made. This makes asset recovery in the context of corruption cases difficult and uncertain. Moreover, the Minister is also yet to enact an appropriate statutory instrument required for purposes of the reciprocal application of the law. In the absence of such an instrument, it is almost impossible to recover assets acquired using proceeds of corruption located outside Uganda's territorial boundaries. In light of these limitations, it is recommended for the Chief Justice and the Minister to urgently enact the subsidiary legislation necessary for the effective enforcement of asset recovery provisions of the law.

4.1.3 Availability of Resources

The ability of anti-corruption institutions to effectively perform their functions and execute their legal mandate is dependent on the amount of the human and financial resources available to them. Under the Anti-Corruption Act, 2009 (as amended) both the IG and the DPP have the legal mandate to investigate and prosecute corruption and other related offences.

32 Section 67A, Anti-Corruption Act, 2009 (as amended)

The ability of each of these institutions to effectively execute this mandate is very critical for the implementation and achievement of the stated purpose of the law i.e. the effectual prevention of corruption in both the public and the private sector. At the same time, the IG and the DPP can only make a meaningful contribution to realization of this objective only if they are adequately resourced.

The importance of resources to the work of anti-corruption agencies has been equally stressed in regional and international anti-corruption treaties. Article 6 of the United Nations Convention Against Corruption (UNCAC) makes it obligatory for state parties to provide the necessary material resources and employ specialized staff that anti-corruption agencies require to function effectively.[33] The UNCAC further enjoins state parties to initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption.[34] Similar provisions can be found in the African Union Convention on Preventing and Combating Corruption (AUCPCC) which requires state parties to create specialized national anti-corruption authorities whose staff are well trained and motivated.[35]

Uganda's obligations as a state party to both the UNCAC and the AUCPCC therefore include the duty to provide its anti-corruption agencies with the funds necessary for their day to day operations as well as motivation and training of staff. The allocation of funds necessary for the operations and welfare of staff of both the IG and DPP is a function of Parliament. This is quite problematic considering that Members of Parliament have in the past been a subject of investigation and prosecution for offences under the Anti-Corruption Act, 2009. Moreover, under the Leadership Code Act, Members of Parliament are required to declare their wealth to the IG annually and those that have failed to do so have in the past been prosecuted for violations of the law.

33 Article 6 (2), United Nations Convention Against Corruption (UNCAC)
34 *Id,* Article 60 (1)
35 Article 20 (5), African Union Convention on Preventing and Combating Corruption (AUCPCC)

Given this context, there is a strong risk that Members of Parliament may be conflicted in the allocation of funds required for the activities and welfare of staff of the IG and the DPP. It is also common for Parliament to approve less funds than those budgeted for. Although this is not restricted to anti-corruption institutions, budgetary cuts have a huge effect on the capacity of both the IG and the DPP to investigate and prosecute corruption cases brought under the Anti-Corruption Act, 2009.

According to the DPP, while they need more than usual resources in the form of tools and staff, what is allocated is usually much less when compared to the number of cases they are expected to handle and the sophistication and dynamism with which corruption is committed.[36] Due to these budgetary constraints, the Anti-Corruption Unit of the ODPP is unable to invest in modern investigative tools and infrastructure. Their capacity to hire and train staff to match both the number and complexity of cases reported is also severally limited.[37] This greatly impacts on the ODPPs capacity to investigate and prosecute corruption and other related cases under the Anti- Corruption Act, 2009 (as amended)

The Inspectorate of Government is equally faced with its own resource challenges while performing its legal mandate. In FY 2017/18 the Inspectorate reported a shortfall of UGX 2.11Billion in respect to its operations budget.[38] This shortfall increased to UGX 2.66Billion during the FY 2018/19.[39] In FY 2019/20, the budgetary shortfall in respect to operational expenses stood at UGX 3.3Billion. Moreover, the Inspectorate's human resource has also not been spared of these funding shortfalls.

36 Kambale Reagan, The Directors Remarks at the Launch of the Anti-Corruption Week, November 30, 2018. Available on https://www.dpp.go.ug/index.php/component/k2/item/30-the-directors-remarks-at-the-launch-of-anti-corruption-week

37 *Id.*

38 Inspectorate of Government, Budget Framework Paper Presented to the Legal and Parliamentary Affairs Committee, FY 2017-2018. January 2017.pg. 14

39 Inspectorate of Government, Budget Framework Paper Presented to the Legal and Parliamentary Affairs Committee, FY 2018-2019. January 2018.Pg. 13

Without the required resources, the Inspectorate is not in position to hire additional staff that are required for effective investigation and prosecution of increasing corruption cases. The IG is also unable to extend specialized training to its staff where its training budget is limited. Yet specialized training is critical given the sophistication with which corruption is being committed in Uganda. During FYs 2017/18 and 2018/19, the IG's staff training budget fell short of UGX 0.843 and 0.646 Billion, respectively.[40]

During the study, Officials from the IG expressed the view that funding gaps in the training and operations budgets have greatly weakened its capability to investigate and prosecute corruption and other related offences. This has an ultimate impact on the implementation of the Anti-Corruption Act, 2009 (as amended). According to an Official in the IG;

> *"Modern corruption is digital and highly technical. It is perpetrated by a network of professionals including accountants, bankers, lawyers and Information technology experts. This makes it very sophisticated and difficult to detect. It is often very difficult to investigate this kind of corruption unless you have access to equally sophisticated tools and technical capacity. Unfortunately, we are most times lacking in both. This greatly restricts our ability to investigate and prosecute these kinds of sophisticated corruption offences.*

Moreover, the study also found that although Uganda's Inspectorate of Government enjoys a broader mandate than other anti-corruption agencies in the region, it is very poorly funded. In 2014 for instance, budgetary allocations to the IG amounted to USD 14million. During the same timeframe, Kenya and Tanzania's agencies received USD 16.8million and 23.7million, respectively. Looking critically at the figures, budgetary allocations to the IG are not commensurate with the size of its mandate. Unlike its Kenyan and Tanzania counterparts, in addition to exercise of investigative powers, the IG's mandate includes the prosecution of corruption cases.

40 *Id.*

Additionally, the IG is mandated to verify asset declarations by leaders while at the same time exercising the ombudsman function.

Fig. 2 Overview of Anti-Corruption Authorities (ACA) Spending Across Four East African Countries 2014

Country	Population 2014	GDP per Capita 2014 (USD)	ACA Budget Allocation 2014 (USD)	Staff
Kenya	44.9million	1368.49	16.8million	385
Tanzania	51.8million	958	23.7million	2,086
Rwanda	11.3million	697	2.6 million	78
Uganda	37.8million	735	14million	376

Source: World Bank Data and Anti-Corruption Authorities Portal

4.1.4 Public Awareness of the Law

Generally speaking, ignorance of the law is not a defence. This means that public awareness about the Anti-Corruption Act, 2009 is not a strict legal requirement for the purposes of its implementation. However, corruption is an offence which is often committed in secret. Given this reality, the investigation and prosecution of corruption is possible where persons with knowledge of commission of a corruption offence are willing to report and give testimony to that effect. For this to happen, there must be a deliberate effort to educate citizens on what amounts to corrupt conduct under the law. The public should also be made aware of the available safety and security mechanisms for the protection of informers and witnesses from retaliation and intimidation by the corrupt. Since such measures are usually contained in the law, it is important for it to be publicized.

Moreover, one of the functions of the Inspectorate of Government under the Constitution is to stimulate public awareness its activities. Since a significant part of the Inspectorate's activities are prescribed by the Anti-Corruption Act, 2009, it is only prudent for the IG to educate the public on its provisions and importantly on the potential role of the public in the implementation process. According to an Official from the Inspectorate of Government.

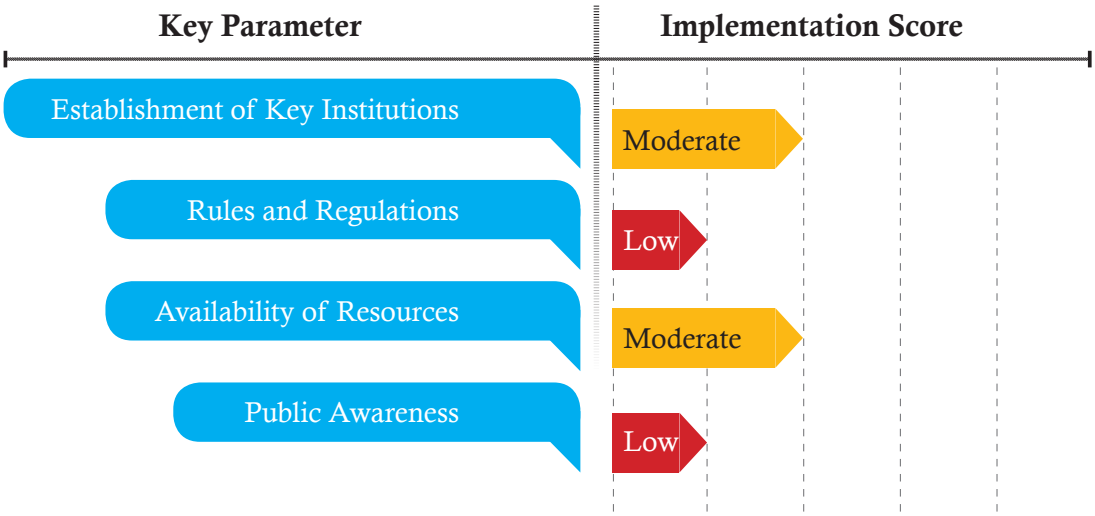
> *"The Inspectorate frequently relies on information availed by members of the public to compile evidence against corrupt officials. In one recent case for example, we relied on information given to us by a truck driver to prove the offence of illicit enrichment against a corrupt official. The truck driver had previously been y hired to supply building materials to several sites belonging to the official. When he heard that the official had been arrested in respect to a huge corruption scandal, he voluntarily came out to provide this information. This goes to show how important it is to involve the public in the fight against corruption. Previously, members of the public did not take corruption seriously but with continued engagement they have come to appreciate its dangers and the mechanisms for dealing with it under the law."*[41]

In respect to its obligation to create public awareness on corruption, its dangers, and the legal framework under which the offence may be punished, the Inspectorate has taken several steps to sensitize the public. These include the formation and support of integrity clubs in schools and universities, radio talk shows, broadcast of spot messages, newspaper releases and dissemination of IEC materials. The challenge however is that just like all other activities, public awareness function is not well funded. This greatly undermines the capacity of the IG to reach out to a significant part of the population. That being said, the few awareness campaigns and trainings are held every year. In the period July to December 2017 for instance, the IG supported 14 institutions to conduct public awareness campaigns on the evils of corruption.[42]

41 Interview with Official from the Inspectorate of Government, Kampala.
42 Inspectorate of Government Report to Parliament, July to December 2019.

During the same period, the IG held ten (10) sensitization workshops involving 1,345 persons in the districts of Rubanda, Kisoro, Kabale and Rukiga.[43] In FY 2017/18, the IG conducted trainings for 2240 community members to enable them monitor and report the misuse of government funds.[44]

General Implementation Parameters – Summary of Scores



4.2 Legislation Specific Implementation Parameters

4.2.1 Punishment of Corruption and other Related Offences

Penal laws are by nature designed to punish and deter criminal activity (in this case corruption and other related offences) through imposition of sanctions. For that matter, an assessment of the status, level and extent of the implementation of the Anti-Corruption Act, 2009 should take into consideration three major considerations i.e. the nature and number of cases investigated and prosecuted under the Act, number of convictions, disposal period and the nature and effectiveness of sanctions imposed by the courts of law or any other administrative organ that has a mandate to determine the offence of corruption and other related offences.

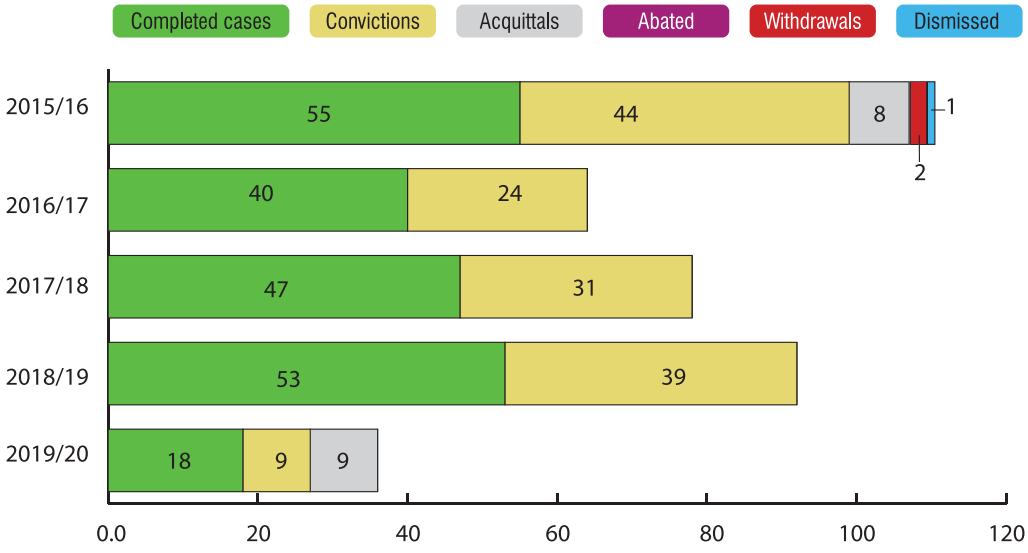
43 *Id,* pg. 28.
44 Inspectorate of Government Budget Framework Paper, Presented to Parliament in January 2019 at pg. 5

a) *Number of Cases Investigated and Prosecuted*

The investigation and prosecution of corruption and other related offences under the Anti-Corruption Act, 2009 is a function that is meant to be jointly exercised by the Inspectorate of Government (IG) and the Director of Public Prosecutions (DPP). The number of cases investigated and prosecuted by each of the two institutions is reported separately.

In the period of five years from 2015/16 - 2019/20, the IG successful prosecuted and completed a total of 213 corruption related cases. Of these, 147 cases resulted into convictions. This represents a 69% average conviction rate. The rest of the cases were either withdrawn or dismissed while in some cases the accused persons were acquitted by the courts.

Figure 1- Corruption cases Prosecuted by the Inspectorate of Government FYs 2015/16-2019/20



Source: IG Reports to Parliament, Budget Framework Papers and Ministry of Finance Record

In a comparable period of 5 years (2015- 2019), the Directorate of Public Prosecutions (DPP) also managed to prosecute several corruption cases. In the year 2019 for instance, the DPP received thirty (30) complaints from the Uganda Police Force (UPF) of which six (6) were taken to court.[45] At the time of reporting, one (1) conviction had been secured while five cases were still pending before the courts. Still in 2019, the DPP received thirty one (31) complaints from the newly created State House Anti-Corruption Unit.[46] Of these, the DPP managed to secure four (4) convictions, one (1) was withdrawn and a total of twenty six (26) cases were still pending before the courts at the time of reporting.[47] Previously in 2018 and 2017, the DPP received twelve (12) and thirty seven (37) cases from the UPF respectively.[48] It is not stated in the crime reports how many of each of these cases resulted into convictions. However, according to the DPP's Performance Report dated November 30, 2018, in the FY 2017/18, the DPP managed to secure forty five (45) convictions.[49] In the same Report, the DPP indicated that by the end of the first quarter of FY 2018/19, twelve (12) convictions had been secured.[50] This represents an average of 67.1% and 85.7% average conviction rates for FY 2017/18 and the first quarter of FY 2018/19 respectively.[51]

A critical review of the number of cases investigated and prosecuted by the IG and the DPP shows that they are still minimal. While there is no ideal threshold of what amounts to a satisfactory number of cases that ought to be prosecuted, there is a fundamental gap between the total number of complaints received and those that are eventually successfully prosecuted. Secondly, although the current conviction rate for both institutions is above

45 Uganda Police Annual Crime Report, 2019, pg. 21. Available on https://www.upf.go.ug/wp-content/uploads/2020/04/Annual-Crime-Report-2019-Public.pdf?x45801
46 *Id.*
47 *Id.*
48 Uganda Police Annual Crime Report, 2018, pgs. 24- 25. Available on https://www.upf.go.ug/wp-content/uploads/2019/05/annual-crime-report-2018..pdf. See also Uganda Police Annual Crime Report, 2017 pg. 8.
49 Office of the Director of Public Prosecutions, Performance Report, November 30, 2018, pg. 3. Available on https://www.dpp.go.ug/index.php/component/k2/item/30-the-directors-remarks-at-the-launch-of-anti-corruption-week
50 *Id,* pg.4.
51 *Id.*

average, this could be improved through deliberate investment in human and other resources required for effective investigation of corruption cases.[52] Given the sophistication with which corruption is increasingly perpetrated, it is very difficult for the IG, DPP and other agencies such as the Police to effectively investigate corruption crimes if they are not afforded the necessary resources. As a result of current resource limitations, a good number of cases are either lost or dropped. According to an official from the Inspectorate of Government,

> *"Modern corruption is digital and highly technical. It is perpetrated by a network of professionals including accountants, bankers, lawyers and Information technology experts. This makes it very sophisticated and difficult to detect. It is very difficult to detect, investigate and prosecute this kind of corruption unless you have the technical capacity and access to equally sophisticated tools. Unfortunately, we are most times lacking in both. This greatly restricts our ability to investigate and prosecute these kinds of high level and sophisticated cases."*[53]

Needless to mention, the inability of the IG and DPP to secure convictions has in some cases been linked to the difficulty in proving some of the offences because of the way that they are defined under the law. According to the Human Rights Watch (HRW), the current definition of the offence of abuse of office is too vague and makes the offence too difficult to prove.[54] Yet charges for abuse of office are common to the extent that in 2011 the offence constituted an average of 42% of all the cases prosecuted under the Anti-Corruption Act, 2009.[55] Given the lack of clarity in the definition of the offence and the difficulty with its proof, it has been recommended for Uganda to adopt a more concise definition such as the one provided under the UNCAC. This (the UNCAC definition) is more concise and provides better clarification in

52 Wanjala, S, Akech, M and Nampewo, Z, Review of the Judicial Response to Corruption through the Anti-Corruption Division of the High Court and Related Courts, Adam Smith International, 2017 at pg. 14

53 Interview with Prosecutor in the Inspectorate of Government, Kampala.

54 Burnet, Let the Big Fish Swim, Failures to Prosecute High Level Corruption in Uganda, pgs. 32-33.

55 *Id*

regard to all the ingredients of the offence that are required to be proved by the prosecution.[56] The other problematic and yet common offence under the Anti-Corruption Act is causing financial loss. The challenge with this offence is that it is unnecessarily broad and does not take into account professionals whose work involves substantial risk taking for profit. In light of this, the definition of the offence should be revised to exclude acts/omissions done in good faith.

Before taking leave of this issue, it should be noted that most of the convictions registered so far relate to petty corruption. Despite the fact that Uganda has one of the highest grand corruption rates in the world, there have not been corresponding convictions in this regard. According to the Human Rights Watch, the prosecution of corruption in Uganda has been very selective and often involves political interference in cases involving high ranking and well-connected officials.[57] As a result, convictions of high ranking and politically connected individuals are extremely rare. This has made the investigation and prosecution of cases under the Anti-Corruption Act, 2009 selective which has gravely undermined its implementation. The absence of convictions in cases involving high profile persons also significantly diminishes the deterrent value of the law and challenges the integrity of anti-corruption institutions.

b) *Determination and Disposal of Anti- Corruption Cases*

The timely disposal of cases involving corruption and other related cases is critical for the effective implementation of the law. Delays in determination of cases affects the rights of accused persons but may also compromise the prosecution's case. The longer it takes for corruption cases to be heard and disposed by the court, the more the risk of the prosecution losing critical evidence. According to an Official from the Office of the DPP:

56 Article 11 defines the offence of abuse of office as constituting "the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity … when committed intentionally."

57 Burnet, Let the Big Fish Swim, Failures to Prosecute High Level Corruption in Uganda

> *"There is a tendency for witnesses to disappear when the court takes too long to hear the cases and have them testify. They either lose interest, get compromised and in some cases go into hiding all out of fear of retaliation."*[58] *The Official added that "where courts take long to determine cases, there is a high possibility of investigating officers being transferred before the matters they handled are heard."*[59] Moreover, where the essence of trial is to recover funds lost in corruption enterprises, a delay in the determination of the case may impact on asset recovery efforts especially where restraining orders are secured.

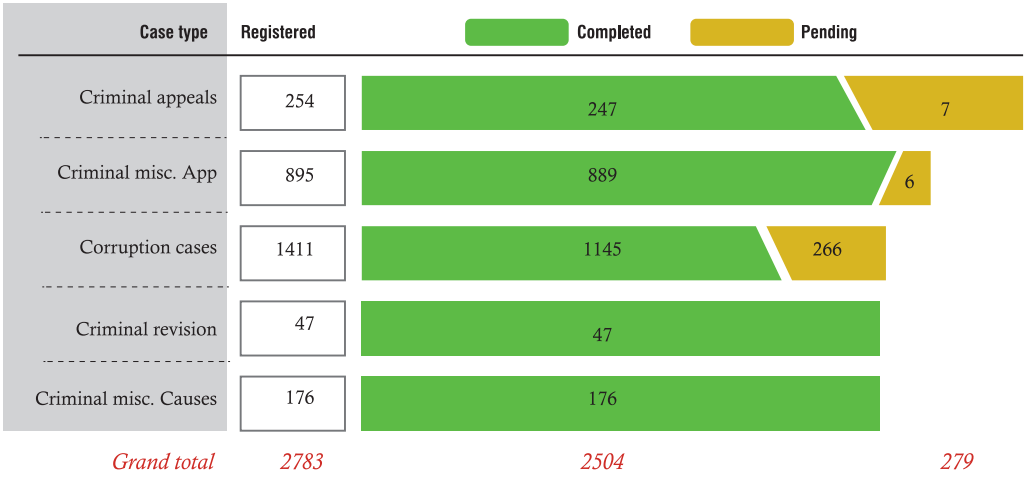
In consideration of the challenges associated with the delay in prosecution of corruption cases, in 2009, the Chief Justice of Uganda established a dedicated Anti- Corruption Division of the High Court to try corruption and other related offences in a timely manner. This objective has been achieved to a great extent. According to a study conducted by Adam Smith International in 2017, the ACD has achieved the objective to dispose of cases in a timely manner to a great extent.[60] Through its work and dedication, the court has reduced the average time for completion of cases from an average of seven years to two years.[61] As of December 2016, the ACD's clearance and disposal rate stood at 95% and 46% respectively.[62]

In terms of more detailed data, as at July 31, 2017, the Court had completed a total of 1,145 cases out of the 1,411 total cases registered right from the time of its inception in 2009.[63] During this timeframe, the ACD determined 247 out of 254 criminal appeals and 889 miscellaneous criminal applications out of the registered 895.[64]

58 Interview with Official from the ODPP, Kampala.
59 *Id.*
60 Wanjala ***et al***, Review of the Judicial Response to Corruption through the Anti-Corruption Division of the High Court and Related Courts, at pg. 14
61 *Id.*
62 *Id.*
63 *Id.*
64 *Id*

In addition, all criminal revisions cases (47) and criminal miscellaneous causes (176) filed before the court had been heard and completed by July 31, 2017.[65]

Table 1: Summary of Cases Handled by Anti-Corruption Division as at 31/07/2017



Source: Adam Smith International Study Review of the Performance of the ACD, 2019.

Going by this, the performance of the ACD when compared to that of the rest of the divisions of the High Court is generally impressive. Nonetheless the 46% disposal rate reported as of December 2016 is still below average. According to numerous IG reports to Parliament, the performance of the court is severally limited by several factors including the lack of an adequate number of judicial officers at the court. At the time of this study, the core ACD staff was constituted of 3 Judges, 4 Magistrates, 1 Deputy Registrar, 5 legal clerks and 2 Research Assistants. According to an Official from the ACD, *"the number of corruption related cases brought before the court increases every other day. In addition to this, the court also hears tax crime related cases. Moreover, the cases brought to the court often involve a lot of sophistication and require more time to hear and determine. Considering all these factors, the current number of Judicial Officials as well as staff of the court is quite inadequate."*[66]

65 *Id*
66 Interview with Judicial Officer, Anti-Corruption Division of the High Court (ACD), Kampala.

Moreover, delays have also been reported in the determination of appeals from decisions of the ACD by the higher courts i.e. Court of Appeal (COA) and the Supreme Court (SC).[67] The main challenge with the appeal process is that there is no separate track for determination of appeals arising out of corruption cases. This brings about delays in determination of appeals considering the amount of case backlog in the mainstream judiciary. In relation to this, it has become a common practice for convicts to secure bail pending appeal of their cases by the higher courts. While application for bail is a constitutional right, in this case it is counterproductive given the number of years that it takes to have the appeals heard and disposed of. Upon being granted bail, the convict can go about his business normally. This can be frustrating where their conviction is ultimately confirmed by the higher courts. In one of the appeal cases, an accused official was convicted of offences under the Anti-Corruption Act and sentenced to a jail sentence of twelve years by the ACD in 2011. He appealed against this decision before the Court of Appeal (COA) albeit unsuccessfully. A Subsequent appeal to the Supreme Court which is the highest court of the land also upheld his sentence and conviction.[68]

The challenge is that the entire appeal process took a total of eight (8) years during which period the convict spent a substantial time on bail pending appeal and was able to go about his daily business. Delays in the disposal of appeals and the ability of convicts to spend long periods of time out of jail on bail pending appeal sends a negative message and should equally be rectified i.e. a) the public views the process as ineffective and not deterrent enough which defeats the purpose of the law and, b) it tests the patience of those involved in the investigation and prosecution of corruption. This in one way or another has implications for the implementation of the law.

Considering the challenges arising from the delays in determination of appeals, the IG has on several occasions made demands for the establishment of a dedicated appeal mechanism for the timely disposition of appeals relating to

67 *Id,* pg. 21
68 David Chandi Jamwa v. Uganda, Supreme Court Criminal Appeal No. 02 of 2017.

corruption and other similar offences under the Anti- Corruption Act, 2009 (as amended).[69]

c. Effectiveness of Sanctions

For every offence under the Anti-Corruption Act, 2009, there is a corresponding sanction where an accused person is found guilty of the offence. The effective enforcement of sanctions enhances the deterrent value of the law and helps to achieve its objective to eliminate corruption. That said, the ability of sanctions to achieve this objective and to influence the implementation of the law largely depends on both their nature and level of enforcement. More critically, sanctions must take into account the gravity of the offence committed.[70]

The sanctions contained under the Anti-Corruption Act, 2009 vary from fines to terms of imprisonment ranging from 6months to 14 years. Under the law, a majority of corruption related offences are punishable with imprisonment for a term not exceeding ten years or a fine not exceeding UGX 4.8 Million or both.[71] This notwithstanding, where the particular act of corruption is conducted in the course of contracting with a public body, the punishment may go up to twelve years of imprisonment or a fine not exceeding UGX 5.76million or both.[72] Under Section 20 of the Act, where an accused person is convicted for the offence of causing financial loss, they are liable to be punished by either a term of imprisonment not exceeding 14 years or a fine not exceeding UGX 6.72million or both. The punishment for causing financial loss is the most severe under the law.

As observed above, sanctions should be effective, proportionate and dissuasive.[73] While the maximum level of punishment by imprisonment i.e. 10 years for general corruption offences and up to 14 years for causing financial loss is quite

69 Christopher Kiiza IGG Calls for Special Court to Handle Corruption Appeal Cases, ***Chimpreports,*** September 4, 2019. Available at https://chimpreports.com/igg-calls-for-special-court-to-handle-corruption-appeal-cases/. (accessed on 27 June 2020)
70 Article 30, United Nations Convention Against Corruption.
71 See Section 26 (1), Anti- Corruption Act, 2009 (as amended).
72 ***Id,*** Section 26 (2)
73 Article 26 (4), United Nations Convention Against Corruption (UNCAC)

satisfactory, the amounts of fines imposed under the law are far too lenient and not sufficiently deterrent. In order to make corruption less rewarding, the amount of fines imposed under the law must be revised. In this respect, Uganda should borrow from Rwanda where the amount of fines imposed vary from twice to ten times the value of the illicit profit solicited.

It should also be noted that while the law disqualifies persons convicted of corruption related offences from holding public office for a period of ten years following the conviction, this has been poorly enforced.[74] According to an Official from the Inspectorate, they have had a very difficult time in trying to enforce this especially where the said official seeks employment in a different government agency or department. In other cases, officials cross over to politics where it is again difficult to trace them.[75]As a result, this sanction has not been very effective. This same view was expressed by an activist working for an anti-corruption Nongovernmental Organisation (NGO). He gave an example of an official in Mayuge district who was convicted of a corruption offence but has recently been reappointed as the Town Council Engineer even before the ten years lapse. From the time of his conviction and before this appointment, the official continued to earn a government salary. There was another scenario involving a previously convicted official who is currently an Assistant Commissioner in the Ministry of Health.[76] This particular official when contacted by the activist on the matter stated that he had reached an out of court settlement with the Inspectorate of Government.

In light of the challenges involved in the enforcement of Section 46, it is suggested for the IG to regularly publish the list of persons convicted for offences under the Act and who unless their conviction is reversed by the courts are deburred from holding public office for a period of ten years. Such an action would heighten public vigilance which would in turn help the IG in the enforcement of this sanction.

74 Section 46, Anti—Corruption Act, 2009 (as amended)
75 Interview with Official in the Inspectorate of Government, Kampala.
76 Interview with An Activist working for an Anti-Corruption Civil society Organisation.

4.1.2 Asset Recovery

Asset recovery is the process of tracing, freezing, security, managing, confiscating, and returning to the country or government, property that has been obtained through illicit means.[77] Under the now repealed Whistle Blowers Protection Act cap 12, asset recovery for purposes of compensation of losses arising from corruption activity was only possible after conviction of the accused by the court.[78] Even then, before the court could order for recovery from proceeds of sale of the property, it had to be proved that such property was acquired directly from gratification obtained by the convict.[79] All this made the process of asset recovery both onerous and protracted. Secondly, there was an elevated risk of interference with the property of the accused person and by the time the conviction could be secured it would be almost impossible to recover.

The passing of the Anti-Corruption Act of 2009 mitigated against these risks by, among others, putting in place mechanisms for preservation of property belonging to the accused upon the application of either the IGG or DPP. The law additionally introduced provisions that restrict the disposal of assets or bank accounts of the accused or any other person suspected of having committed an offence under the Act.[80] The law also allowed for a court to issue an order restraining the disposal of property in possession or under the control of a person charged or about to be charged with corruption or other related offence.[81]

Moreover, the provisions of the law were in 2015 amended to strengthen the asset recovery regime further. Pursuant to the amendment, where a person is convicted in respect of a corrupt act, the DPP or IGG can apply to court for an assessment of the value of the benefit that has been derived from such act.[82] In the course of determining the value of such benefit, the court may

77 See IGG Report to Parliament, July 2017 to December 2018.
78 Section 15, Prevention of Corruption Act cap 121.
79 *Id.*
80 Section 34, Anti-Corruption Act, 2009 (as amended)
81 *Id,* Sections 53 and 55.
82 *Id,* Section 63

take into consideration any property or interest that is disproportionate to the accused's known sources of income.[83] The law further provides that any property acquired within a period of ten years preceding the conviction shall be presumed to constitute a proceed or benefit that is derived from corruption.[84] Where the offence is shown to have been committed prior to the period of ten years, it shall be open to the court to take into account any property or interest acquired by the convicted person when assessing the value of the benefit enjoyed.[85]

The Anti- Corruption Act, 2009 also gives the court the power to issue a confiscation order in respect to property of a convicted person in certain circumstances.[86] If the court is satisfied that the property in respect of which the confiscation order has been issued is realizable or requires special attention, it may appoint a manager or receiver to administer such property.[87]

The ability of the state to recover assets accumulated using proceeds of corruption is very critical in the prevention of corruption. Successful asset recovery acts as a deterrent since it denies the corrupt the opportunity to benefit from proceeds of corruption. The Anti-Corruption Act, 2009 is thus laudable to the extent that its provisions make asset recovery a less onerous process. Under the law, it is no longer necessary for the state to prove that the property sought to be confiscated was strictly acquired using proceeds from the specific act of corruption in respect of which the conviction was obtained. It is sufficient for the prosecution to show that the accused committed the offence of corruption before the court can order of asset recovery. Secondly, the provisions of the law help to preserve the property and other interests belonging to persons accused of corruption right from the time that they are charged or about to be charged. This helps to reduce on the risk of dissipation of such property during the trial and before conviction.

83 *Id.*
84 *Id,* Section 63A (1))
85 *Id,* Section 63A (2)
86 *Id,* Section 64
87 *Id,* Section 64A

In terms of implementation of provisions relating to asset recovery, in 2016 the Inspectorate of Government established the Asset Recovery Unit (ARU).[88] The mandate of the unit involves the enforcement of a) IGs orders for the recovery of property, and b) voluntary agreements for recovery of property entered into between the IG and suspects. In this regard, the ARU may also institute court proceedings for purposes of recovery of property and preservation of tainted property by among others preventing transfer or disposal therefore by accused persons.[89]

The Asset Recovery Unit has had several achievements since it became operational in January 2017. During the period July to December 2017, the Unit was able to recover a total of UGX 267,191,558.[90] The Unit was also able to secure bailiff services and develop operating guidelines for their staff during this time.[91] Moreover, the size of recoveries made by the ARU shot up to UGX 618, 549, 714 between January to June 2019. [92]

Table 2: Recoveries made by the IG FY 2017/18 to 2019/20

Financial Year	Amount Recovered
2017/18	536,301,422/= (Approx 150,000USD)
2018/19	1,106,309,665/=(Approx 310,000USD)
2019/2020	2,776,402,927/= (Approx 750,000USD)

Source: Directorate of Legal Affairs, Inspectorate of Government.

These achievements notwithstanding, the work of the ARU has not been without challenges. According to the January to June 2019 IG report, the unit sometimes has difficulties in tracing judgement debtors and in ensuring that they comply with the agreed payment terms. The other challenges include

88 Inspectorate of Government Report to Parliament, July to December 2017. Pg 12. Available on https://www.igg.go.ug/static/files/publications/IG_Report_to_Parliament_July_-_December_2017.pdf.
89 *Id.*
90 *Id,* pg. 13.
91 *Id.*
92 See also Inspectorate of Government Report to Parliament, January to June 2019, pg. 20. Available on https://www.igg.go.ug/static/files/publications/IG_Report_to_Parliament__January_to_June_2019.pdf

missing files from the court registry and failures by the trial courts to provide written judgements in time.[93]

It should be noted that the ODPP has also expressed similar challenges in its efforts to recover assets purchased from proceeds of corruption. The ODPP has expressed concerns over the challenges that arise from a conviction-based asset recovery regime. According to the DPP's statement at the launch of the 2018 Anti-Corruption week.

> *"With regard to Asset recovery, there is no comprehensive law, but sections scattered in various pieces of legislation. Additionally, there is no law that allows recovery of proceeds before conviction (non-conviction based asset recovery) and as such even when the assets are traced and identified and at times restrained, they cannot be recovered until a conviction has been secured. This poses a challenge given the burden of proof on the prosecution to secure a conviction. Property gets lost or disposed of even when it is tainted but for failure to prove a charge against the person beyond reasonable doubt."*[94]

Still on the challenges arising from the current asset recovery legal regime, a Prosecutor from the Inspectorate of Government had this to stay,

> *A conviction-based asset recovery regime makes it all too difficult. Even when a conviction is secured and on that basis an order of recovery made, the accused can still appeal against the conviction. In the meantime, the IG may proceed to recover the assets if no stay of the recovery order is sought from the court. The challenge that however arises is that in the event that the conviction is subsequently quashed on appeal, the IG would have to compensate the accused in respect to the asset sold and to pay interest in addition. This defeats the whole purpose and could be avoided where there is a non-conviction-based asset regime.*[95]

93 *Id, p*g. 20

94 Kambale Reagan, The Directors Remarks at the Launch of the Anti-Corruption Week, November 30, 2018. Available on https://www.dpp.go.ug/index.php/component/k2/item/30-the-directors-remarks-at-the-launch-of-anti-corruption-week

95 Interview with a Prosecutor in the Inspectorate of Government, Kampala.

Other challenges identified include; the reluctance of courts to issue restraining orders in respect to going concerns due to the absence of a legal and institutional framework for management of assets; inadequate tracing skills and the fact that Uganda is a cash based economy that makes it difficult to establish a financial trail.[96]

In light of these challenges and the fact that the size of recoveries that have been registered so far is far too inadequate when compared to the amount of funds lost to corruption per year (this is presently estimated to be USD 1billion), asset recovery provisions of the law although progressive are yet to be well implemented. It is, therefore, highly recommended for Uganda to invest in building the capacity of the IG and the DPP in asset tracing. More importantly, a non-conviction-based asset recovery mechanism should be adopted. Under this approach, the courts can order for asset recovery where the prosecution is able to establish that the property was acquired using proceeds of corruption on a balance of probabilities. This is the standard of proof for civil matters and involves proof of a high likelihood that the property belonging to the accused person was acquired using proceeds of corruption. This is a more relaxed standard than that required for under a conviction-based asset recovery regime which is beyond reasonable doubt.

4.2.3 Protection of Informers & Witnesses

The Anti- Corruption Act, 2009 contains provisions that make it mandatory for persons with knowledge that an offence under the law has been committed to provide information to the police or special investigator.[97] Failure to comply with this provision constitutes an offence that is punishable by a fine not exceeding UGX 4.8million or imprisonment for a term of 3years or both. The law also requires any person to whom gratification has been corruptly offered to report to either the police or the inspectorate.[98] Failure to comply with this provision amounts to an offence punishable by imprisonment for two years or a fine not exceeding UGX 960,000.[99]

96 *Id.*
97 Section 38, Anti-Corruption Act, 2009 (as amended)
98 *Id,* Section 43.
99 *Id.*

While these provisions are important in facilitating the disclosure of information critical in the prosecution of corruption and related offences, they are not sufficient in themselves. Beyond the legal requirement to provide information, informers should be afforded protection from the danger of retaliation and intimidation by the corrupt. This protection should also extent to situations where informers turn into witnesses and to all other witnesses.

In recognition of the dangers faced by informers and witnesses alike in corruption cases, the United National Convention Against Corruption (UNCAC) enjoins state parties to incorporate in their legislations, appropriate measures for the protection of witnesses from potential retaliation or intimidation.[100] Such measures may include physical protection, identity protection in course of testimony and in some cases, relocation. The state is also required to protect persons who willingly and in good faith report the commission of acts of corruption i.e. whistle blowers and informers.[101] Similar provisions exist in the African Union Convention on Preventing and Combating Corruption (AUCPCC) which also requires state parties to adopt legislative and other measures for the protection of informants and witnesses in corruption cases.[102]

The Anti- Corruption Act, 2009 partly fulfills the requirement as to protection of informers in corruption cases. In particular, it makes provision for the protection of the identity of informers during the trial of offences under the law.[103] Informers/whistleblowers are afforded similar protection under the Whistle Blowers Protection Act, 2010.[104] The challenge is that beyond these provisions, there have been very limited efforts to offer sufficient protection to informers and witnesses alike. This failure has been attributed to several factors including the persistent funding gaps in budgets of anti-corruption agencies that make it difficult for them to offer adequate witness protection.

100 United Nations Convention Against Corruption (UNCAC), Article 32.
101 *Id,* Article 33
102 African Union Convention on Preventing and Combating Corruption, Article 5 (5)
103 Section 44, Anti-Corruption Act, 2009 (as amended)
104 See Whistle Blower Protection Act, 2010. The law defines a Whistle Blower as a person who makes a disclosure of impropriety under the Act and sets out to protect such person from any form of victimization.

According to an Official in the IGs office interviewed as part of this study,

> *"While the protection of informants and witnesses is very critical for the effective investigation and prosecution of corruption, it requires a lot of funds to achieve. Given the funding constraints of the Inspectorate of Government, it is always difficult for it to provide sufficient protection to its informers and witnesses. As a result, people with critical information on commission of corruption are in most cases very reluctant to share it with the IG since they are not guaranteed of protection. It is also common for witnesses to turn hostile out of fear for their personal safety and security."*[105]

The other challenge relates to current limitations in Uganda's laws. Beyond the protection of informers, there is no specific law for the protection of witnesses. In the absence of such a law, the security and safety of witnesses is compromised as it not clear which institution is responsible and what measures should be taken by the state to afford witnesses protection.

Corruption constitutes an offence that is often committed in secrecy. Also, as stated above, in countries which operate the cash economy like Uganda, there is often limited paper trail that could be relied upon to prove acts of corruption. In this context, the state must rely on statements of informers and witnesses if it is to investigate and prosecute corruption cases successfully. While the Anti-Corruption Act provides for mandatory information disclosure and to some extent makes provision for protection of informers, this is not sufficient.

4.2.4 International Cooperation and Extra Territorial Enforcement of the Law

It is common for corrupt officials to use corruption proceeds to buy properties outside the geographical territory of the countries where the crime is committed. This strategy is designed to conceal their corrupt acts and to avoid detection by national investigative and prosecution authorities.

105 Interview with an Official in the Inspectorate of Government, Kampala.

The purchase of assets abroad is also often calculated to put them beyond the reach of national investigating authorities and courts. Considering this reality, it is critical for countries to cooperate with each other in their efforts to combat corruption. The United Nations Convention Against Corruption also calls upon state parties to encourage their national authorities to cooperate with each other in the course of investigation and prosecution of corruption. This form of cooperation involves but is not limited to information sharing.[106] The African Union Convention on Preventing and Combating Corruption also contains similar provisions on international cooperation and underscores the importance of mutual legal assistance in the fight against corruption.[107]

The Anti- Corruption Act, 2009 (as amended) also provides a good basis for international cooperation in the fight against corruption. Under Section 67B, the Minister may declare a state to be a reciprocating state if he/she is satisfied that that state has enacted laws for confiscation or recovery orders with the same effect as those provided for by the law. The law also makes provision for Uganda to enter into reciprocating agreements and arrangements with other countries for purposes of cross border recovery of assets obtained through corruption.[108] Extra territorial recovery is also expressly permitted where property is subject to an order of court made under the law is situated in a country or territory outside Uganda.[109] In this case (where there is property subject to a court order that is located outside Uganda's territorial boundaries), the IGG or the DPP is required to send a request for assistance to the Minister to forward to the country where the property is located for enforcement.[110]

While the provisions highlighted above make it possible for Uganda to support and obtain international cooperation in its fight against corruption, the study findings indicate that they have not been optimally utilized.

106 Article 38, United Nations Convention Against Corruption
107 Sections 18 and 19, African Union Convention on Preventing and Combating Corruption.
108 Section 67 B, Anti-Corruption Act, 2009 (as amended)
109 *Id,* Section 67 C.
110 *Id.*

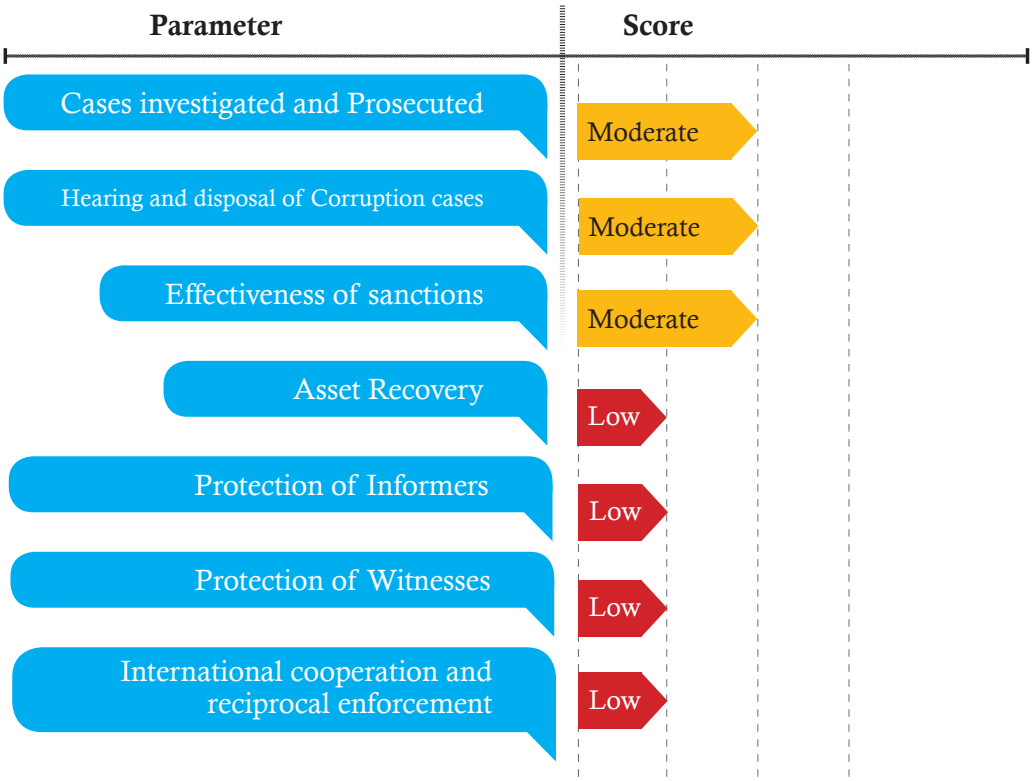
Interviews with Officials from both the IG and ODPP suggested that Uganda is yet to enter into specific legally binding arrangements with other countries for purposes of the investigation and prosecution of corruption as well as asset recovery.

In the absence of binding reciprocal agreements, the IG has had to rely on its informal networks and relationships with other national anti-corruption agencies when investigating cross border corruption matters. An example of this is the Asset Recovery Inter-Agency Network for East Africa (ARIN-EA) which is an informal network formed in 2013 to promote and encourage information exchange for purposes of asset recovery.[111]

In 2014, the IG was able to rely on the Mutual Legal Assistance Agreement (MLA) between the ODPP of Uganda and the United States of America (USA) to prosecute a matter involving Eutaw Construction, a US based company. Using the provisions of the MLA, it was possible for the IG to examine Eutaw's president who was a key witness in this case which involved fraudulent procurement for works relating to the Katosi -Nyenga road construction project.[112] Subsequently, the IG was able to secure convictions in respect to some of the officials and persons involved in the flawed procurement. It is most likely that this would not have been possible in respect to countries with which Uganda does not have an MLA or any other similar arrangement. For this reason, it is highly recommended for Uganda to put in place a comprehensive mutual legal assistance framework. While this need not be restricted to corruption cases, it must be alive to the multijurisdictional challenges that arise from the investigation and prosecution of such cases.[113] The Anti-Corruption Act, 2009 (as amended) already provides a firm basis for the Minister to enter into legally binding reciprocal agreements with other countries for purposes of enforcement of its provisions.

111 About ARIN-EA. Available on https://eaaaca.com/about-arinea
112 IG Report to Parliament, July to December 2017. Pg. 11
113 Wanjala ***et al***, Review of the Judicial Response to Corruption through the Anti-Corruption Division of the High Court and Related Courts pg. 32

Legislative Specific Implementation Parameters – Summary of Scores



5.0 Conclusion

The Anti-Corruption Act 2009 (as amended) puts in place a fairly comprehensive and progressive anti-corruption legal and institutional framework. The law defines and criminalizes corruption and other related offences such as bribery, embezzlement, causing financial loss, diversion of public resources, influence peddling, conflict of interest, nepotism, and sectarianism. The Act also recognizes and criminalizes acts of corruption committed in the private realm. This is important given that the line between the public and private is often blurred. Additionally, for each of the offences committed, the law prescribes an appropriate penalty. The range of penalties includes fines, imprisonment and in some cases debarment from holding public office for up to ten years. All these penalties act as a deterrent and in some cases facilitates recovery of lost funds. The other laudable provisions of the law include those to do with, the protection of informers, asset recovery, extra territorial enforcement, and international cooperation in the investigation and prosecution of corruption. Most importantly, the Anti-Corruption Act, 2006 (as amended) does a great job at incorporating legal standards established in the regional and international anti-corruption treaties to which Uganda is a state party. These include, the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC).

Even though Uganda has a stellar anti-corruption piece of legislation in the form of the Anti-Corruption Act, 2009 (as amended), it is still ranked among the most corrupt countries in the world. Recent reports show that corruption in Uganda is both systemic and systematic and involves high ranking and politically well-connected individuals. Corruption also provides the fuel for the ruling NRM's patronage machinery and for this reason there is utter lack of political will to combat the vice. In fact, in some cases there has been active interference in the work of anti-corruption institutions and deliberate efforts to frustrate the implementation of anti-corruption laws such as the Anti-Corruption Act, 2009 (as amended).

Against this background, this study set out to assess the status and level of implementation of the Anti-Corruption Act, 2009 (as amended). The study aims to understand whether the slow and, in some cases, non-implementation of the law is a result of its own inherent weaknesses or rather can be attributed to the other external factors such as political frustration. The findings indicate that while the law has some inherent weaknesses responsible for its poor implementation, external factors have hugely contributed to the current limitations in the implementation of its provisions.

In terms of the inherent weaknesses, the law lacks a comprehensive witness protection mechanism and some offences such as abuse of office and causing financial loss are vaguely defined. As a result, such offences are difficult to prove and the corrupt have been able to walk away scot-free contrary to the objective of the law. More still, by vesting the mandate to investigate and prosecute corruption in both the IG and the DPP, the law creates unnecessary overlaps which increase the risk of duplication and are likely to result into resource wastage in the absence of a clear coordination mechanism. It was also found that in some cases, the penalties provided are lenient as compared to the gravity of the offence. Lastly, conviction-based asset recovery makes it difficult for the state to recover properties secured using proceeds of corruption. In many ways, these provisions of the law greatly limit the extent to which the otherwise progressive provisions of the law may be enforced, hence limiting its implementation.

Be that as it may, the study finds that the poor and, in some cases, non-implementation of the law is not far removed from the general question of the lack of political will to combat corruption by the ruling NRM. Whereas the law has vested in the IG and the DPP, the mandate to investigate and prosecute corruption, these institutions lack the necessary financial and human resources to execute this mandate. In the case of the IG, its budget is too low when compared to those of other national anti-corruption agencies in the region that have only one mandate i.e. investigation of corruption. Similarly, the ODPP does not have a specific budget line for its anti-corruption department.

The failure to guarantee sufficient resources for anti-corruption institutions is a demonstration of the lack of political will to combat corruption and has great implications for implementation of the Anti-Corruption Act, 2009 (as amended). Instead of ensuring that existing institutions are well funded, the executive has instead focused on creating other auxiliary units whose mandate is unclear and yet they appear to be well facilitated. On their part, the legally mandated anti-corruption institutions are unable to obtain modern investigative tools and to employ more staff and offer specialized training due to resource constraints. Consequently, their capacity to investigate and prosecute every increasing and complex forms of corruption is severely limited.

Related to the above, in delaying to appoint substantive IGG on more than one occasion, the executive demonstrated his reluctance to legally constitute the IG in order to make operational. The same can be said in respect to the Leadership Code Tribunal where it has taken more than ten years to appoint members. The failure to fully constitute these significant institutions has greatly undermined their efficiency and ability to implement the law. In one of the cases involving senior Ministers, the constitutional court found that the IG could not successfully prosecute them when there was no substantive IGG.

Lastly, in some cases the implementation of the law is limited by the absence of subsidiary legislation that among others define in greater detail the procedural steps that must be taken in the confiscation and management of property obtained using proceeds of corruption. Similarly, although the law empowers the Minister to enter into reciprocal agreements with other states for purposes of investigations and asset recovery, this is yet to happen.

Recommendations

Considering all the challenges and limitations in the implementation of the Anti-Corruption Act, 2009 (as amended) the study makes the following recommendations.

- The President should urgently appoint a substantive Inspector General of Government (IGG) in order for the Inspectorate of Government to be fully constituted as is required by the law i.e. Constitution. In this regard the constitutional court of Uganda has previously decided that that the special powers vested in the Inspectorate to investigate and prosecute corruption can only be legally exercised if it is a fully constituted i.e. Inspector General of Government and two deputies. In the event, where the Inspectorate of Government is not fully constituted, it has no legal capacity to effectively prosecute corruption cases.
- Enhance the budgets and funding of the Inspectorate of Government (IG), Anti- Corruption Department of the DPP and other agencies to enable them to effectively investigate corruption and other related offences. The provided funds should be invested in specialized staff training and in the acquisition of modern investigative equipment and skills in order to match the increasingly sophisticated nature of corruption.
- Consider creation of a separate entity to exercise the ombudsman function or fundamentally increase the funding available to the Inspectorate of Government to enable it hire sufficient well qualified and experienced staff if it is to perform all its legal functions including the ombudsman one.
- Streamline the functions of the State House Anti- Corruption Unit as well as other auxiliary anti-corruption units such as the State House Health Monitoring Unit to avoid resource duplication, unnecessary competition, and tensions with mainstream anti-corruption agencies. In short, the work of these agencies should not compete with that of

the IG but rather compliment it.

- Beyond the current understanding, the IG and DPP should urgently formulate and agree on a clear collaboration policy to guide both their interventions and avoid unnecessary conflict and overlaps in the exercise of the shared mandate to investigate and prosecute corruption and other related offences. Such a policy would also provide a good basis for accountability of both institutions.
- Boost the capacity of the Anti-Corruption Division (ACD) of the High Court to determine and dispose of corruption cases in a timely manner by among others hiring more judicial officers and other staff required by the court.
- Facilitate the Anti-Corruption Division of the High Court to hold regular and frequent criminal sessions in respect to corruption cases that arise from places outside the capital Kampala where the court is presently located.
- Introduce regular corruption dedicated sessions at the Court of Appeal (COA) and Supreme Court (SC) levels to enable them to expeditiously hear and determine appeals emanating from corruption cases tried by the Anti-Corruption Division of the High Court.
- Reinstate the requirement for leaders to declare wealth held and owned by their spouses and children under the Leadership Code Act, 2002 (as amended) so as to make it easy to trace and recover assets obtained using proceeds of corruption. In the same measure, the Leadership Code Tribunal should be urgently constituted to try officials who either under declare or fail to declare their assets in contravention of the law.
- The Chief Justice and the Minister responsible should urgently draft the necessary Regulations and other subsidiary legislation required to clarify on procedures for the making of confiscation orders, asset recovery orders, appointment of property managers and reciprocal/ extra territorial application of the Anti- Corruption Act, 2009 (as amended) among others.
- Adopt a non-conviction-based asset recovery regime. Conviction

based asset recovery imposes an unrealistic and unreasonably high degree of proof on the prosecution and makes it difficult to recover property obtained using proceeds of corruption. Recovery should be permitted where the prosecution is able to prove that there is a very high likelihood that the assets in question were acquired using proceeds of corruption (balance of probabilities) and where upon this proof the accused person fails to prove otherwise.

- Address the challenges that arise from the cross jurisdictional investigation and prosecution of corruption as well as in asset recovery by putting in place a comprehensive mutual legal assistance framework. Moreover, the Anti-Corruption Act, 2009 (as amended) already provides a firm basis for the Minister to enter into legally binding reciprocal agreements with other countries for purposes of enforcement of its provisions.
- Increase the size of fines imposed under the Anti-Corruption Act, 2009 (as amended). This will make corruption less appealing and ensure that the law is sufficiently deterrent. The fines imposed under the law should range from twice to about ten times the value of the corruption benefit obtained.
- Urgently introduce a comprehensive witness protection legal and institutional framework for the enhanced protection of witnesses and informers in the context of investigation and prosecution of anti-corruption cases. The suggested framework should also incorporate a satisfactory reward mechanism for informers and witnesses.
- Define the offence of abuse of office with more clarity and in accordance with the definition contained in the United Convention Against Corruption (UNCAC). The offence as is currently defined is too vague and the *mensrea* (guilty mind) which is critical ingredient of the offence that is required to be proved by the prosecution is not adequately defined.
- Likewise, the definition of the offence of causing financial loss is unnecessarily too broad and does not take into account the work of professionals whose nature of business involves significant risk taking

such as investment bankers. In the circumstances, the offence should be revised to take care of those instances where the suffered loss is occasioned by dishonesty or acts/omissions committed in bad faith.

- Introduce beneficial ownership rules as part of the tax, companies and anti-money laundering legislative framework in order to make asset recovery less difficult. The rules should provide for among others the mandatory disclosure of underlying ownership of especially companies and other business organizations.
- The Inspectorate of Government should proactively disclose the list of persons convicted for offences committed under the Anti-Corruption Act, 2009 (as amended). This will aid the enforcement of the ten-year bar from holding public office once convicted.
- Realign the procedures relating to the disclosure of contents of wealth declarations made by public officials to the IG with the Constitution and the Access to Information Act, 2005.

END

Contact Information
Anti Corruption Coalition Uganda,
Plot 9B Vubya Road, Ntinda
P.O. Box 34238, Kampala – Uganda,
Tel: +256-414-535659
Email: info@accu.or.ug, **Web:** www.accu.or.ug
anticorruptioncoalitionuganda
@Accu_Ug
Anti Corruption Coalition Uganda
0775-265042