



**ANTI CORRUPTION
COALITION UGANDA**

Assessing the Status of Implementation of the Whistle Blowers Protection Act & the Leadership Code Act (as amended)

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TABLE OF CONTENTS

List of Acronyms	ii
I. Introductory Remarks	1
Purpose of the Study	3
Approach and Methodology for the Study	3
Study Area and Population	4
Sample Size and Sampling.	4
Data collection methods	4
Document review	5
Key Informant Interviews	5
II. Design of Assessment Parameters	6
III. Assessment of Status and extent of Implementation	8
A. Leadership Code Act, 2002 (as amended)	8
General Implementation Parameters	8
Legislation Specific Implementation Parameters	15
B. Whistle Blower Protection Act, 2010	21
General implementation Parameters	22
Legislative Specific Parameters	26
IV. Conclusion	32
V. Recommendations	33

LIST OF ACRONYMS

ACCU	Ant-Corruption Coalition Uganda
AUPCC	African Union Convention on Preventing and Combating Corruption
CPI	Corruption Perceptions Index
DPP	Director of Public Prosecutions
EAC	East African Community
GI	Global Integrity
HRW	Human Rights Watch
IG	Inspectorate General
IGG	Inspector General of Government
JSC	Judicial Service Commission
NEMA	National Environment Management Authority
OAG	Office of the Auditor General
PPDA	Public Procurement and Disposal of Public Assets Authority
RDC	Resident District Commissioner
UHRC	Uganda Human Rights Commission
UNCAC	United Nations Convention Against Corruption
UPF	Uganda Police Force
URA	Uganda Revenue Authority
USD	United States Dollar

Assessing the Status of Implementation of the Leadership Code Act, 2002 (as amended) and the Whistle Blowers Protection Act, 2010.

I. Introductory Remarks

Post-independence, corruption in its varying proportions has become one of the most endemic and corrosive vices in Africa. As a result, corruption especially that perpetuated by the elites and those at the top has become a significant catalyst of Africa's current governance and democratic crisis.¹ In particular, corruption fuels the patronage machinery which thrives on the reward of cronies and loyal supporters in return for political support.² Corruption also serves to generate funds for campaign financing, outright voter bribery and co-option of regime critics.³ Moreover, corruption undermines the enjoyment of fundamental rights and freedoms, promotes wastage of public resources, creates economic inefficiencies by widening the gap between the rich and the poor, distorts economies, increases state criminality and breeds public discontent which is a recipe for conflict.⁴ These are just but a few of the disastrous consequences of corruption in Africa.

Uganda has not been spared of the corruption epidemic and its consequences.⁵ For a number of years, the country has been consistently ranked among the most corrupt countries in the world. 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.⁶ Most recently in 2018, the country was ranked no. 149 of 180.⁷

1 See Tangri, Roger K. *The Politics of Elite Corruption in Africa: Uganda in Comparative African Perspective I*. Routledge Studies on African Politics and International Relations; 3. 2013.

2 *Ibid.*

3 *Ibid.*

4 See Susan Rose- Ackerman, The Political Economy of Corruption in Elliott, Kimberly Ann, and Institute for International Economics. *Corruption and the Global Economy I*. 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

5 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

6 See Transparency International, Corruption Perceptions Index 2017. Available on https://www.transparency.org/news/feature/corruption_perceptions_index_2017?gclid=CjwKCAiAkrTjBRAoEiwAXpf9CWMAN7IJAN17Akz5xKW2ij-aGwlVsZtDHgc-GWPyJKN4xNaV51qyPxoCncAOAvD_BwE (accessed on June 24, 2019). See also Transparency International, Corruption Perceptions Index 2017. Available on https://www.transparency.org/news/feature/corruption_perceptions_index_2017?gclid=CjwKCAiAkrTjBRAoEiwAXpf9CWMAN7IJAN17Akz5xKW2ij-aGwlVsZtDHgc-GWPyJKN4xNaV51qyPxoCncAOAvD_BwE (accessed on June 24, 2019)

7 See Transparency International Corruption Perceptions Index, 2019. Available on <https://www.transparency.org/cpi2018> (accessed on September 22, 2019)

Earlier in 2012, Uganda was reported to have the highest bribery incidents in the whole of the East African Community (EAC).⁸ The level and intensity of corruption is also evident in the significant amounts of public funds that have been lost to the vice. As an example, in 2006 alone Uganda lost an estimated USD 950 million to corruption.⁹ As of 2017, the amount of funds lost to corruption was reported to have increased to USD 1 billion.¹⁰ Even then, this is only to the extent that the damage can be ascertained. There is a very high likelihood that Uganda loses much more to corruption than can be accurately ascertained given the illicit and discrete nature of corruption.

Be that as it is, the level and extent of the corruption epidemic is irreconcilable with the fact that the Uganda has one of the oldest, most comprehensive and progressive anti-corruption legislative regime on the whole continent.¹¹ As early as 1988, Uganda enacted the Inspectorate of Government Act that among others established the office of the Inspectorate of Government (IG).¹² This office was charged with a dual mandate of eliminating corruption in public office and the protection of human rights.¹³ During the constitutional making process in 1995, this mandate was revisited to restrict the IG's responsibility to the anti-corruption and ombudsman functions.¹⁴ The human rights function was vested in a newly created body i.e. the Uganda Human Rights Commission (UHRC).

Moreover, Uganda has several other anti-corruption legislations. Significant of these is the Anti-Corruption Act, 2009 (as amended).¹⁵ In terms of its strengths, the law has expanded on the definition of corruption to include among others acts done in private, bestowed on both the DPP and IG wide powers in the investigation and prosecution of corruption, strengthened the protection of informers, provided for interim procedures, extra territorial enforcement and recovery of proceeds of corruption including through confiscation of property acquired ten years prior to the corrupt act.¹⁶ The other laws critical to the fight against corruption include, the Whistle Blower Protection Act, 2010, Leadership Code Act, 2002 (as amended), Access to Information Act, 2005, Anti Money Laundering Act, 2013, Public Procurement and Disposal of Public Assets Act, 2003 (as amended) among others.

⁸ 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>

⁹ See Global Integrity Report 2006: Uganda. Available on <http://www.globalintegrity.org/reports/2006/uganda/ind ex.cfm>

¹⁰ See Global Integrity Report 2017: Uganda. Available on

¹¹

¹² See Inspectorate of Government Statute, 1988. Available on <http://www.ulii.org/ug/legislation/consolidated-act/167> (accessed on October 20, 2016)

¹³

¹⁴ See Articles 223 and 225, Constitution of the Republic of Uganda, 1995 (as amended)

¹⁵ See Anti-Corruption Act, 2009 (as amended)

¹⁶ See Anti- Corruption Act, 2009 (as amended)

Additionally, Uganda is a state party to a number of regional and international anti-corruption instruments. These include the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUPCC).¹⁷ The provisions contained in these treaties are binding and in particular enjoin the state to undertake critical reforms and other measures necessary to eliminate corruption in both the public and private realms.

The above notwithstanding, corruption in Uganda is both systemic and systematic. According to the Human Rights Watch (HRW), the law and other legal institutions have been less successful in preventing and combating corruption in Uganda.¹⁸ While this is attributable to a number of factors, the most outstanding is the culture of patronage and survival on rents.¹⁹ As a result, there is utter lack of political will to investigate and prosecute especially high level corruption.²⁰ This observation has equally been made by several other scholars such as Tangri, Mwenda and Tripp.²¹ In sum, corruption provides the fuel for the patronage machinery and this largely explains the failure of the law in eliminating the vice.²²

Purpose of the Study

Against the above background, the implementation of the broad range of anti-corruption laws has become an extremely challenging task. While focusing on two major anti-corruption legislations, this study seeks to mainly assess the **extent** and **status** of implementation of the Leadership Code Act, 2002 (as amended) and the Whistle Blower Protection Act, 2010. The study also identifies some existing gaps in respect to the implementation of the two laws. Finally, the study makes a number of proposals that can be pursued to fill these gaps and improve implementation of these and other anti-corruption laws as a whole.

Approach and Methodology for the Study

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

17 See UNCAC Signature and Ratification Status, Available on <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (accessed on March 16, 2017). Uganda signed the UNCAC on December 9, 2003 and ratified on September 2, 2004. See also List of Countries which have Signed, Ratified or Acceded to the AUCPCC, Available on https://www.au.int/web/sites/default/files/treaties/7786-sl-african-union-convention-on-preventing-and-combating-corruption_21.pdf (accessed on March 16, 2017).

18 See 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. Available on https://www.hrw.org/sites/default/files/reports/uganda1013_ForUpload_1.pdf (accessed on July 25, 2016)

19 *Ibid*

20 *Ibid*.

21 Tangri *Supra*. See also Tripp, Aili Mari. *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime /*. Challenge and Change in African Politics. Boulder: Lynne Rienner Publishers, 2010. Pg.131

22 *Ibid*

Study Area and Population

The study was conducted in Kampala where officials and representatives from Civil Society, Government, the Academia, Media and Human Rights Defenders were interviewed as indicated by category and institutions in the table below.

Category	Institutions
Civil Society	<ul style="list-style-type: none"> - Anti-Corruption Coalition- Uganda - Transparency International- Uganda Chapter - Human Rights Network- Uganda - Africa Freedom of Information Centre - Centre for Public Interest Litigation - Hub for Investigative Media
Government	<ul style="list-style-type: none"> - Inspectorate General of Government - Directorate of Ethics and Integrity - Director of Public Prosecutions - Uganda Human Rights Commission - Anti-Corruption Division of the High Court of Uganda - Office of the Auditor General - Uganda Revenue Authority - National Environment Management Authority - Uganda Police Force
Human Rights Defenders	<ul style="list-style-type: none"> - National Coalition of Human Rights Defenders Uganda - Defenders Protection Initiative

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 because they are key in the implementation of the anti-corruption laws, awareness creation and holding the implementers accountable.

Data collection methods

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

Document review

The study involved reviewing key documents which included the Leadership Code Act, 2002 (as amended) and the Whistle Blower Protection Act, 2010. In addition to the laws, 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.

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 two laws and formed a basis for a number of proposals to address the gaps and improve implementation of anti-corruption laws as a whole.

II. Design of Assessment Parameters

This study relies on a number of parameters in an attempt to determine the status and extent of implementation of the laws subject to the review, i.e. the Leadership Code Act, 2002 (as amended) and the Whistle Blower Protection Act, 2010. The parameters are broadly categorized into two sets, that is, the general and legislation specific parameters. The general parameters apply to both laws and are five in total: a) establishment of institutions under the law b) availability of resources c) enactment of rules and/or regulations d) public awareness on the law. On the other hand the legislative specific parameters vary across the two laws and are designed to test the status of implementation of selected specific provisions of the laws.

It is admitted that the parameters -both general and legislative specific ones are not foolproof and neither are they perfect. At best they are merely indicative and provide a starting point in the process of gauging the status and extent to which the two pieces of legislation and the provisions contained therein have been implemented. It should be noted that from a practical point of view, it is almost impossible to determine with certainty the status and extent to which a particular piece of legislation has been implemented. This is largely because for the most part the law itself does not prescribe specific and quantifiable implementation parameters/benchmarks.

In the circumstances, the question as concerns the status and extent of implementation of a particular piece of law is often one that can best be determined with reference to individual opinions and perceptions (in this case those provided in the interviews). That said, in rare instances the provisions of the law may make contain clear implementation indicators/ benchmarks. In this case it may be possible to determine the status of implementation by looking at the actual steps that have been taken to meet the prescribed benchmarks. As an example, some laws may explicitly require the setting up of institutions. The implementation of such laws may then be assessed by looking at the actual establishment of the specific institution.

However as pointed out earlier, the challenge is that rarely do laws contain clear and specific implementation benchmarks. In the circumstances, the status of implementation may best be determined by relying on opinions/perceptions. In this case opinions of officials charged with responsibilities under the two laws as well as other key informants conversant with the law and its provisions were sought. The main challenge with this approach is that it is highly subjective. This is vivid from the views expressed by the different informants interviewed in the course of this study.

The other major challenge associated with measuring the status and extent of implementation is that in some cases, the law may provide for implementation of some of its provisions in a progressive/phased and more sequential manner. Again in this case, the status of implementation becomes subjective.

These challenges notwithstanding, the study relies on both the prescribed legislative benchmarks where they exist and on perceptions/opinions where there are no set indicators in the assessment of implementation status of the laws under review. The limitations of this approach notwithstanding, the study makes an important contribution to both the literature and anti-corruption fight since presently there has not been any known initiative to **“assess the extent and status of”** implementation of any of the two pieces of legislation. That said, this is only the starting point and there is need to consistently review, refine and update the parameters relied upon in this study.

Finally, in terms of scoring the study relies on the **“traffic stop light”** method. In cases where implementation is deemed satisfactory a green score is given. In moderate cases a yellow score is given. In extreme case of lack of implementation, a red score is given.

III. Assessment of Status and extent of Implementation

A. Leadership Code Act, 2002 (as amended)

The Leadership Code Act was first enacted in the year 2002. In terms of purpose, the law set out majorly to prescribe minimum standards of behavior and conduct for leaders and to provide for a framework for leaders to declare their wealth constituting of incomes, assets and liabilities.²³ In 2017, the law was amended with the main objective of giving effect to a 2005 Constitutional amendment whose purpose was to among other things establish a Leadership Code Tribunal. In this vein, the amendment to the law set out to provide for the establishment, composition, jurisdiction and functions of the Tribunal among others.²⁴

General Implementation Parameters

a) Establishment of Key Institutions

Under Section 3 of the Act, the mandate to enforce the code is vested in two major institutions namely; the Inspectorate of Government and the Leadership Code Tribunal. The Inspectorate is responsible for among others receiving and verifying declarations; instituting investigations into breach of the code and prosecution of breaches before the tribunal. It should be noted that in the execution of this mandate, the Inspectorate may collaborate with other government agencies.²⁵

The Tribunal on the other hand is responsible for the examination and adjudication of all breaches of the code reported by the Inspectorate. In this respect, the Tribunal is upon completion of the adjudication process expected to submit its decision to the authorised person and the inspectorate. Importantly and as part of its role, the Tribunal is also expected to make specific recommendations on the disciplinary action to be taken against a leaders found in breach of the Code.²⁶

In terms of implementation of the provisions listed above and in particular the general parameter on the establishment and functionality of relevant institutions as prescribed by the law, it is noted that at the time of the assessment it is only the Inspectorate that was fully established and active. The Leadership Code Tribunal on the other hand is yet to be fully operationalized.

²³ Long Title, Leadership Code Act, 2002.

²⁴ Long Title, Leadership Code (Amendment) Act, 2017.

²⁵ Section 3A, Leadership Code Act (as amended).

²⁶ *Ibid*, Section 19B

The failure to constitute the Tribunal as prescribed by the Constitution is responsible for the slow/poor implementation of the Leadership Code Act as a whole. It should be noted that prior to 2005, the Inspectorate of Government was solely responsible for the entire process of investigation, prosecution and enforcement of provisions contained within the Leadership Code Act. This power was however challenged in the case of *Fox Odoi – Oywelowo & James Akampumuza v. Attorney General* Constitutional Petition No. 8 of 2003. In that case, the power of the IG to recommend for dismissal of a certain category of officers appointed by the President was challenged. It was the petitioners' main contention that under the Constitution, the powers to dismiss this category of officials was vested in the President who in most cases was also required to refer the matter to a tribunal before exercising this power. By vesting powers in the Inspectorate to recommend dismissal, the law acted as an unnecessary fetter on the powers of the President. Agreeing with the submissions of the petitioners, the court found that the provisions of the Leadership Code Act relating to the powers of the Inspectorate to recommend for disciplinary action to be taken against officials found in breach of the code were unconstitutional. The court further stated that dismissal without recourse to the tribunal was equally unconstitutional.

This position was validated by the Supreme Court of Uganda in the case of *John Ken Lukyamuzi v. AG* where among others the court stated that as an investigator the Inspectorate did not qualify as an independent tribunal/court.²⁷ In the circumstances the removal of the petitioner from Parliament on the basis of the report and recommendation of the inspectorate was deemed unconstitutional notwithstanding that the facts and evidence pointed to the fact that the petitioner being a Member of Parliament and a leader to which the law applied had deliberately failed to declare his wealth as required by the law.²⁸

Following the decision of the Constitutional Court in the *Fox Odoi* case, in 2005 the Constitution was amended to make provision for the establishment of a Leadership Code Tribunal. In the same amendment, the Parliament of Uganda was tasked with the duty of enacting a law prescribing the establishment, composition and functions of the Tribunal.

The law, i.e. Leadership Code (Amendment) Act No. 4 of 2017 was enacted after a period of twelve years. Even then, up until this moment, the Tribunal is yet to be fully operationalised through among others the appointment of a chair, deputy and other members in accordance with Section 19C of the Act.

27 John Ken-Lukyamuzi v. Attorney General and Another, Constitutional Appeal No. 02 of 2007. Available on <http://www.ulii.org/ug/judgment/constitutional-court/2007/2/> (accessed on March 15, 2017)

28 *Ibid*

In the circumstances, the implementation of certain critical aspects of the Leadership Code Act is severely limited. According to an official from Transparency International *“the tribunal is meant to complement the efforts of the inspectorate in implementation of the leadership code act ...the failure to appoint members of the tribunal therefore renders the inspectorate toothless in enforcement of the provisions contained in the code as it cant do much on its own.”*²⁹ The absence of a tribunal has equally been consistently indicated as a major challenge in the enforcement of the leadership code in the various reports of the Inspectorate at least in the last five years.

It should be emphasized that other than the tribunal, there is no other appropriate avenue for determination of breaches under the code. This means that while it may be possible to try offences such as those relating to conflict of interest relying on other pieces of legislation such as the Anti-corruption Act, 2009, the same is not possible in respect to breaches under the code. In fact an official from the office of the DPP observed that *“the office of the DPP has not prosecuted any cases under the Leadership Code Act, this is because transgressions under that law do not necessarily qualify as criminal offences but rather they are breaches that are best handled by the Inspectorate.”*³⁰

The Inspectorate was also able to confirm that many of the cases involving breach of the Code by leaders are at this moment in abeyance pending the full operationalisation of the tribunal. The official in this regard stated that the *“the Inspectorate is more involved in gathering and documenting evidence of breaches of the code especially those to do with wealth declarations.”*³¹ It is hoped that these will be brought before the tribunal once fully operationalised.

b) Rules and Regulations

Rules and regulations are critical for the implementation of any law. This is largely because they often clarify on the relevant procedure that should be adopted in the enforcement of the main provisions of the law. In the case of the Leadership Code Act, Section 38 enjoined the Minister in consultation with the Inspector General to make regulations for better carrying out of the provisions of the Code. The Regulations once made were anticipated to make provisions for penalties of up to twelve months imprisonment or a fine not exceeding one hundred currency points in the event of breach.

According to the report of the inspectorate in respect to the period July- December 2018, the Minister responsible for Ethics and Integrity prepared and signed the Leadership Code(Declaration Form) Regulations on October 18, 2018 and they were due for gazetting.

29 Interview with Official from Transparency International- Uganda Chapter, August 29, 2019

30 Interview with Official from the Directorate of Public Prosecutions, September 12, 2019.

31 Interview with Official in the Inspectorate of Government Office, August 28, 2019.

This said, at the time of study it was established that the regulations were yet to come into force.³² This is a major setback in the quest for implementation of the Leadership Code Act 2002 (as amended)

c) **Availability of Resources**

The existence of both human and financial resources plays a significant role in the implementation of the law. As stated above, there are two major institutions involved in the implementation of the Leadership Code Act 2002 (as amended). However, only one i.e. the Inspectorate of Government is fully functional at the moment. The other institution (Leadership Code Tribunal) although by law established is yet to be fully operationalized.

In light of this, this parameter (availability of resources) focuses primarily on the Inspectorate of Government.

A critical review of the IG's reports to Parliament over the last five years brings the challenge of both human and financial resources scarcity and inadequacy to the fore. Almost all its annual reports allude to the challenge of persistent budget shortfalls from year to year. In 2016 for example the Inspectorate's operational budget was short by UGX 1.72billion.³³ During the year 2017/18 the operational budget shortfall shot to UGX 2.11billion.³⁴ In this same year (2017/18) the Inspectorate also reported another funding gap of UGX 33.095billion in respect to part of the costs needed for the construction of the inspectorate's headquarters.³⁵ It should be noted that one of the most pressing costs for the inspectorate has been in the form of rent payments. These are expected to significantly drop once construction of the headquarters is complete.

Going back to the general question of shortfalls, in financial 2018/19, the funding gap in respect to the operational budget grew to UGX 2.66billion.³⁶ In addition, the Inspectorate reported a funding deficit of UGX 0.521billion which was required to conduct a national integrity survey.

It should be further noted that aside from operations, budget shortfalls also have a direct impact on the capacity of the Inspectorate's human resources to execute their mandate under the law. According to the Inspectorate's reports to parliament, almost every year the human resources are stated

³² Interview with official in the Directorate of Ethics and Integrity, Office of the President, August 30, 2019.

³³ Inspectorate of Government Report to Parliament, July to December 2016, Pg. 43.

³⁴ Inspectorate of Government, Budget Framework Paper Presented to the Legal and Parliamentary Affairs Committee, FY 2017-2018. January 2017.pg. 14

³⁵ *Ibid*, 13

³⁶ Inspectorate of Government, Budget Framework Paper Presented to the Legal and Parliamentary Affairs Committee, FY 2018-2019. January 2018.Pg. 13

to be quite inadequate in terms of both numbers and training needs. This has affected the functions of the inspectorate and its ability to implement the provisions of the Leadership Code Act in different ways. The shortage of staff means that the inspectorate is not able to for instance effectively scrutinize and verify wealth declarations submitted by leaders. Yet according to the inspectorate, the number of persons eligible to make wealth declarations keeps increasing every other year. The increase is mainly attributed to the creation of new districts whose structures are administered by persons most of whom are required by law to declare their wealth.

As of December 2018, an estimated 26,000 people were eligible to declare their wealth under the law. This is a relatively huge number when compared to the number of staff responsible for receiving and verifying wealth declarations as well as carrying out further investigations where deemed necessary. Just as will be shown below, the inspectorate is currently able to verify less than 0.3% of the total number of wealth declarations received from eligible persons per year. In terms of investigations it is even more constrained.

In addition to shortages in numbers, it should be noted that the capacity of staff to effectively perform their duties under the law has equally been affected by current gaps in training. Yet given the complexity and ever evolving nature of corruption, it is important to invest in staff training and skills development in order for them to respond effectively.

Looking at the reports of the inspectorate over the past five years, it has not been able to meet the desired training levels largely because of existing funding limitations. In 2016 for example, of the required staff training budget of UGX 1billion, only 0.354billion was provided creating a funding shortfall of UGX 0.646billion.³⁷ In 2017/18 the staff training budget shortfall shot to UGX 0.843billion.³⁸ In 2018/19 the training budget shortfall was the same as that of 2016/17 at UGX 0.646billion.³⁹

Moreover, despite the fact that Uganda's anti-corruption agency has a much broader mandate when compared to similar agencies in the region, it is among the least funded and human resourced. It should be recalled that in addition to its anti-corruption and leadership code enforcement functions, the Inspectorate also plays an ombudsman role. Secondly, unlike several other anti-corruption agencies in the region whose mandate is strictly to investigate corruption cases, the Inspectorate of Government has powers to investigate and prosecute corruption offences.

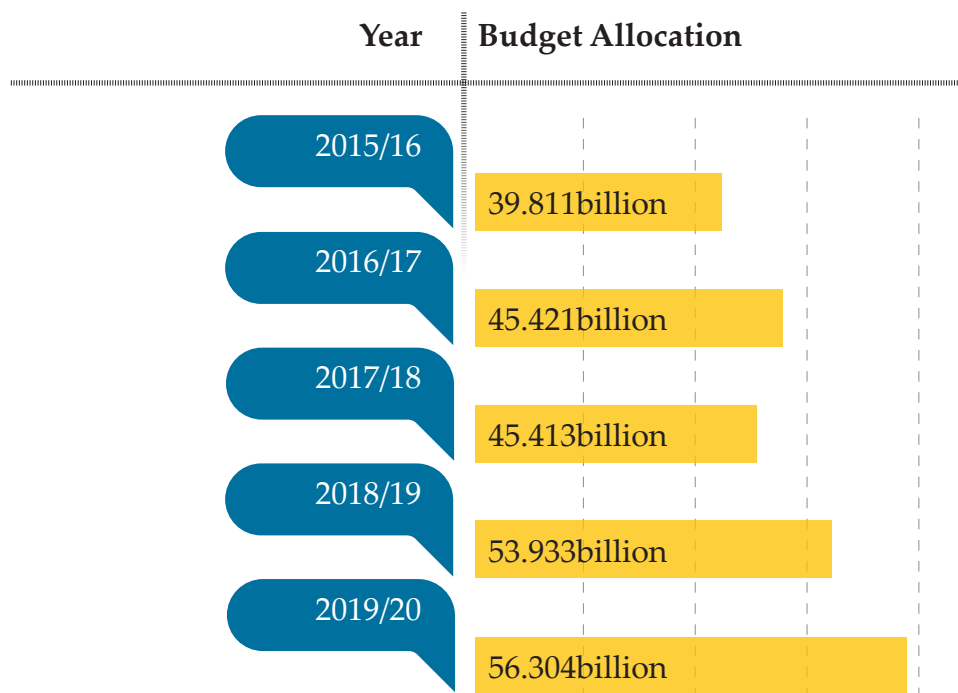
37 *Ibid.*

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. 14

This makes it even more important for the Inspectorate to be better facilitated in terms of human and financial resources if it is to effectively perform its role in respect to the enforcement of the Leadership Code Act.

Overview of the Inspectorate of Government's Budget for FY2015/16 - FY2019/20



d) Public Awareness of the Law

Strictly speaking, it is not often a legal requirement for the law to be promoted among members of the public as a basis for its implementation. In fact there is an old adage to the effect that “ignorance of the law is not a defence.” That said, it has been shown that deliberate acts to promote public awareness of the law are important and to some extent improve on its enforcement and compliance with its provisions by citizens. Moreover, in respect to the inspectorate of government it bears the constitutional mandate to among others promote public awareness on the dangers of corruption. This arguably involves creation of awareness on the existence of the Leadership Code Act and its provisions.

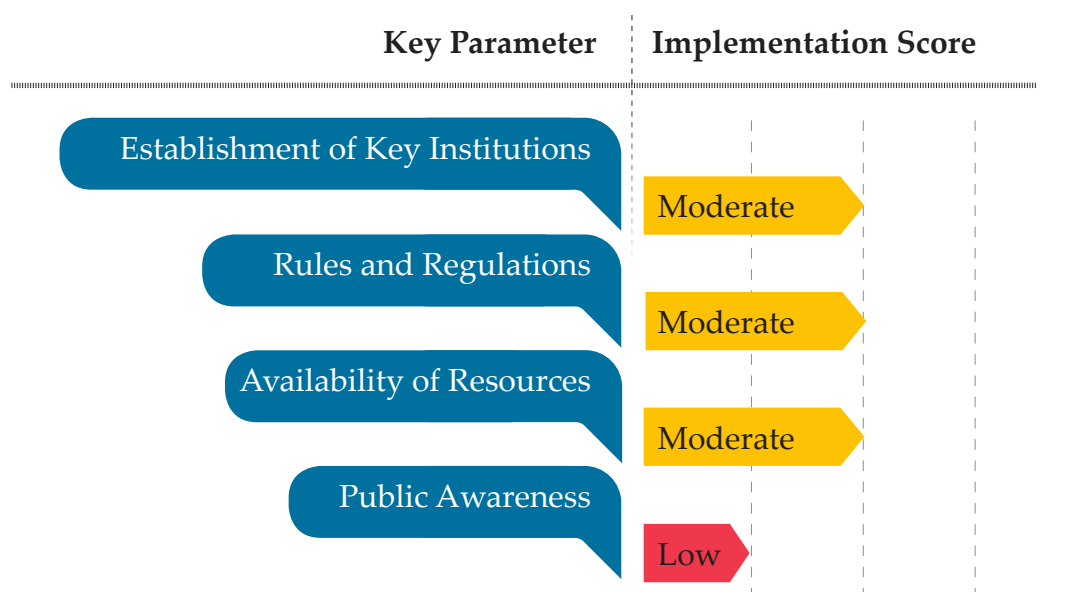
In this respect the study made an attempt to establish the current levels of public awareness on the existence of the Leadership Code Act and its provisions. According to the findings, majority of respondents believed that there is some relatively moderate level of public awareness on the existence of the law and its provisions.

An official in the office of the inspectorate stated that *“public awareness of the law is very important for its enforcement since often times we have to rely on members of the public to verify what has been submitted to us, it is often the truck driver that delivers sand and other construction materials who will know which building in the neighborhood belongs to who, for this reason they need to know that there is a law that obligates certain public officials to declare their wealth and in the event of discrepancies report to the inspectorate”*⁴⁰

The official further stated that aside from members of the public, there has also been an attempt to promote the law in the various government departments to make some officials aware of their obligations under the law. He stated that *“the inspectorate has expended a lot of efforts in popularizing the law in government departments in order to promote more wealth declarations.”*⁴¹

The above notwithstanding, the dominant view from especially the public and members of civil society is that public promotion efforts are still highly inadequate and there is need for the inspectorate to fix this gap. According to an official from Transparency International *“the inspectorate should take more steps to popularize the law among the public to enable them recognize and report various breaches under the law.”*⁴² This view was shared by officials from the Anti-Corruption Coalition Uganda (ACCU), Human Rights Network Uganda (HURINET-U), Africa Freedom of Information Centre (AFIC) and the National Coalition for Human Rights Defenders Uganda (NCHRD-U).

Leadership Code Implementation General Parameters - Scores Summary



⁴⁰ Interview with Official in the Inspectorate of Government Office, August 28, 2019.

⁴¹ *Ibid.*

⁴² Interview with Officials from Transparency International- Uganda Chapter, August 29, 2019

Legislation Specific Implementation Parameters

As explained in the methodology section, while it is difficult to quantify the status and extent of implementation of a particular piece of legislation, in some instances it may be possible for laws to make specific provisions against which the level implementation can be directly measured.

In the case of the Leadership Code Act, the law imposes specific obligations on the established institutions and on certain categories of leaders. In some cases the law also bestows on the public certain rights and entitlements. In this regard, the extent and status of implementation may be gauged by the extent to which these institutions have fulfilled the set objectives on the one hand. On the other hand implementation may also be determined by the extent that the public has been able to enjoy the rights/entitlements secured under the law. These are further evaluated below.

a) Wealth Declarations by Leaders and other Civil Servants

Under the law, current leaders are required to declare their income, assets and liabilities within a period of 3 months following commencement of the Act and there after every 2 years during the month of March.⁴³ In respect to other persons, they are required to make the same declarations within 3 months of becoming leaders and thereafter every 2 months in the month of March.⁴⁴ The law defines a leader to include any person holding or acting in any of the specified offices.

It is worthwhile to note that under the 2002 law, only those persons that qualify to be leaders within the meaning of the law were required to declare their wealth. This has since changed with the coming into force of the 2017 amendment. The law now obligates all public officials and not necessarily those who are leaders to submit a written declaration of their income, assets and liabilities to either the accounts officer or head of ministry, department or agency.⁴⁵ That said, this provision is yet to be implemented and the current practice seems to be inclined to the enforcement of the wealth declaration requirement against leaders in the strict sense rather than just a broad spectrum of public officials.

The other challenge is that following the 2017 amendment, leaders are no longer required to declare the names, income, liabilities and assets of their children and spouses. This is a major setback to the anti-corruption fight and will greatly affect the implementation and true intent of the law since it will be possible for corrupt officials to hide their assets in the names of their spouses and children without moreover without any fear of legal sanctions whatsoever.

43 Section 4 (1)

44 Section 4 (2)

45 Section 4A

In terms of performance of its role to receive and scrutinize wealth declarations made by leaders, as of March 2014, only 1,049 out of the eligible 1,500 persons filled and returned declaration forms.⁴⁶ This means that about 30% of eligible leaders did not comply with the requirement of the law.⁴⁷ In 2015, 22,425 out of 25,000 leaders filled and submitted their declarations to the inspectorate.⁴⁸ In 2016 out of a total of 25,000 leaders eligible to declare their wealth, 2,790 were invited to make declarations.⁴⁹ Out of these, the inspectorate received 306 declarations.⁵⁰ In 2017, a total of 22,608 out of the expected 25,000 wealth declarations were received.⁵¹

Leadership Code Act Enforcement over a period of 5 Years.

Year	Eligible to declare	Received	Verified	Investigated	Action
2014	1,500	1,049	38	15	2 properties valued and 2 bank accounts inspected
2015	25,000	22,425	46	18	1 case prosecuted and 1 case successfully valued and 1 case referred to Solicitor general
2016	25,000 but only 2,790 leaders sent invitations to declare	306	30	31	3 cautioned and 1 advised to declare wealth, 2 cases recommended for prosecution, 1 caveat emptor entered.
2017	25,000	22,608	48	7	45 investigation cases pending
2018	25,000	Unavailable	39	12	9 investigations concluded

b) Sanctions and Penalties for breach of the Code

The Leadership Code Act provides for sanctions in respect of breaches of its provisions. These are both criminal and administrative in nature. Administrative sanctions are generally provided for under Section 35 and include; warnings, caution, reprimand, demotion, vacation from office, dismissal, confiscation and forfeiture of property.

⁴⁶ Reports of the Inspectorate of Government, January to June and July to December 2014.

⁴⁷ *Ibid.*

⁴⁸ Report of the Inspectorate of Government to Parliament, January to June 2015.

⁴⁹ According to an interview with an official from the Inspectorate of Government, the invitation was prompted by the transition to online wealth declarations. A majority of leaders had initial challenges submitting their wealth declarations online.

⁵⁰ See Report of the Inspectorate of Government to Parliament, July to December, 2016.

⁵¹ Report of the Inspectorate of Government to Parliament, January to June 2017.

Under Section 36, a person who obstructs or hinders the exercise of the functions under this Code commits an offence and upon conviction is liable to conviction not exceeding two years or a fine not exceeding one hundred currency points or both. In cases where a person is convicted of an offence for which no penalty is prescribed, they are liable to a fine not exceeding one hundred and fifty currency points or to imprisonment not exceeding three years or both. Other offences include; giving false information to the Inspectorate⁵² disclosure of identities of informers,⁵³ and failure to comply with the orders of the Inspectorate.⁵⁴

In as far as the implementation of the provisions on sanctions is concerned, it should be noted that in addition to investigation and prosecution of offences committed under the Leadership Code Act, the Inspectorate initially had the powers to impose sanctions. Under Section 23 of the 2002 law, the inspectorate was vested with powers and rights equivalent to those of the High Court of Uganda as regards; attendance, swearing and examination of witnesses, production and inspection of documents and enforcement of its orders among others.

As has been noted above, some of these powers including those to do with enforcement of its orders as to sanctions were challenged in the Constitutional court and later in the Supreme Court. In the *Fox Odoi* case, the Constitutional court found that for instance the inspectorate did not have powers to sanction a category of officials appointed by the President and those to whom the Constitution required for a tribunal to be constituted before they could be dismissed or removed from office. This position was confirmed by the Supreme Court being the highest court in Uganda in the *Lukyamuza* case. According to the ruling of the court, the Inspectorate did not qualify to be an independent tribunal where it simultaneously exercised powers to investigate, prosecute and adjudicate. In the event, its powers to adjudicate over breaches in the Code was found to be unconstitutional. More particularly, the Supreme Court stated that given their gravity, the penalties imposed under the Leadership Code Act were to better be enforced by a court or tribunal established by law and that follows due process. The ruling of the two courts left a huge lacuna in the enforcement of orders of the inspectorate and in particular its powers to administer sanctions in respect to breaches of provisions of the Act.

It should further be noted that following the Constitutional challenge of the powers of the Inspectorate to adjudicate and sanction, a new Constitutional amendment was introduced to establish a Leadership Code Tribunal.⁵⁵

52 Section 18 (5)

53 Section 24 (3)

54 Section 30 (3)

55 Constitution of the Republic of Uganda, Article 235A

Under the amendment, Parliament was enjoined to by law prescribe the composition, jurisdiction and functions of the said tribunal.⁵⁶ This was only done after a period of twelve (12) years but even then the tribunal is yet to be fully operationalized through among others the appointment of both members of the tribunal and other staff.

The Inspectorate is not able to prosecute breaches of the code until the tribunal is duly constituted. According to an official of the inspectorate that was interviewed as part of the study, *“following the Lukyamuzi decision, a majority of the breaches particularly those related to failure to declare incomes and assets by leaders are in abeyance and await the full operationalization of the Tribunal.”* He added that *“in the meantime as we wait for the constitution of the tribunal, where breaches of the code occur simultaneously with breaches of other laws, the Inspectorate will rely on those other laws to prosecute the leaders responsible”*⁵⁷

This position was further confirmed by the members of the bench of the Anti-Corruption Court who observed that a majority of the cases that have been prosecuted before the court have been brought under the provisions of the Anti-Corruption Act 2009 (as amended) and the Anti-Money Laundering Act.⁵⁸

Moreover, a survey of court cases that have been brought before the courts post the Lukyamuzi case, show that there have not been many cases prosecuted wholly or exclusively on the strength of the provisions contained in the Leadership Code Act 2002 (as amended).

c) Reporting

The inspectorate is enjoined to report to Parliament on the performance of its functions once every six months under Article 231 of the Constitution. A copy of this report is required to be delivered to the President and Parliament is responsible for debating the contents of the reports. The requirement for the inspectorate to report to Parliament is reiterated in Section 37 of the Leadership Code Act, 2002 (as amended).

In terms of compliance with this provision, in the last five years (2014-2018), the Inspectorate has submitted reports to Parliament on a bi-annual basis save for the period January to December 2018. It is also noteworthy that all these reports except the one highlighted missing are available freely to the public on the Inspectorate’s website. In terms of its leadership code enforcement function, all the available reports clarify on the number of wealth declarations received, those verified and

⁵⁶ *Ibid*

⁵⁷ Interview with Official in the Inspectorate of Government Office, August 28, 2019.

⁵⁸ Interview with Judicial Officers of the Anti-Corruption Division of the High Court, August 30, 2019.

those on which action has been taken. The obligation to report therefore serves as a good mechanism for monitoring implementation of the inspectorates role in respect to the enforcement of the code.

d) Public access to wealth declarations

Before the Leadership Code Act 2002 was amended in the year 2017, contents of declarations made under the code were deemed public information and therefore accessible to members of the public upon application to the Inspector General.⁵⁹ The main challenge with this provision however was in respect to the requirement for the application to be made on a form prescribed by the Act.⁶⁰ It should be noted that right from the time the law was enacted in 2002, there was no attempt by the inspectorate to issue the prescribed form as required by law.

In 2013, an investigative journalist by the names of Edward Sekyewa requested for information contained in declarations made by all government permanent secretaries. In response to his information request, the Inspectorate of Government stated that the said information could not be availed to him in absence of the prescribed form. Dissatisfied with this ruling, he proceeded to seek the courts intervention to compel the IG to provide him with the requested information. On the basis of the IGs undertaking to create the form and initiate legal reforms that among others would ensure access to the information sought, the court dismissed the matter.⁶¹

In 2017 the law was amended to do away with the requirement of information requests in regard to wealth declarations having to be made in a prescribed form. As such, under Section 7 of the law as amended, a person interested in accessing information on wealth declarations is enjoined to make a written application to the IG and to pay a prescribed fee. In the written application, the person seeking information is required to include a list of income, assets and liabilities that they reasonably believe were not included in the declaration.

It is observed that the provisions above are quite nebulous and will instead act to frustrate public access to contents of wealth declarations. Secondly, by requiring the person seeking information on contents of declarations to include undeclared wealth, the law is contradictory and self-defeating. As indicated above, an official of the Inspectorate during the course of this study mentioned that often times they depend on information from the public when verifying the submitted declarations.

⁵⁹ Section 7, Leadership Code Act, 2002.

⁶⁰ *Ibid.*

⁶¹ Edward Sekyewa t/a Hub for Investigative Media v. Attorney General of Uganda Msc Cause No. 354 of 2013.

It will be very difficult for the public to offer an oversight role when they are not able to access the declarations on file with the inspectorate since that would be the only way for them to know as to whether an official has declared all that he owns or not.

The safest approach should have been for the law to facilitate full and unhampered access in order to allow for public scrutiny of all information contained in the declarations by and to on this basis report any omissions and/or inconsistencies to the IG after seeing what the leader declared in the first place.

In terms of implementation, it is too early to tell how far the amendment will go but as pointed out above it will not be very far. At the same time, it is on record that no one was able to utilize the provisions of the old law to access contents of wealth declarations made to the IG. Considering the challenges highlighted above, it is doubtful as to whether the new provisions will be any better at facilitating public access to wealth declarations.

Importantly, under Article 41 of the Constitution, every citizen has a right to access information in the possession of the state or its agencies provided that the disclosure of such information does not threaten national security or the privacy of another person. This provision has been appraised in a number of court decisions that among others state that there no requirement for person seeking to access information in the hands of the state to provide any reason or justification as to why the information is needed whatsoever.⁶² In this regard the stringent conditions imposed on access to wealth declarations under the Leadership Code Act, 2002 (as amended) may not stand Constitutional scrutiny.

e) Protection of Informers and Witnesses

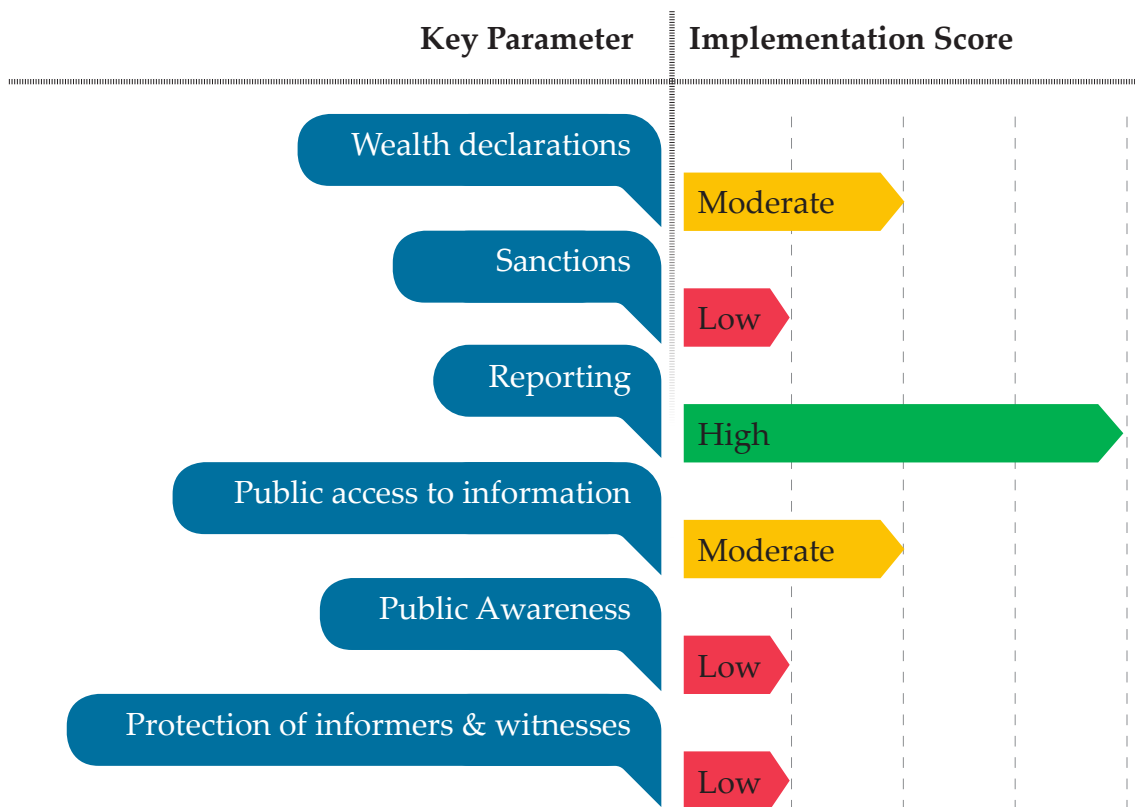
The law provides for protection of persons who provide information to the inspectorate. Under Section 24 of the Leadership Code Act (as amended) informers and witnesses are protected and its prohibited for their identity to be disclosed. Additionally, persons who provide information may be rewarded and paid such amount of money as the Inspectorate deems fit.

According to an official of the inspectorate, there are efforts to protect both informers and witnesses in anti-corruption cases but these are severely limited in a number of ways. This observation was also made by a number of anti-corruption activists. Officials of the anti-corruption court also opined that the way the criminal justice system is presently designed, it is very difficult to effectively protect the identity of informers and witnesses.

⁶² See *Major General David Tinyefuza v Attorney General* ((Ruling) (Constitutional Petition No.1 of 1996)) [1997] UGCC 2 (5 March 1997)) (hereafter *Tinyefuza CC*); See also *Greenwatch Uganda Limited v. Attorney General and Uganda Electricity Transmission Company Ltd (UETCL)*, HCCS No. 139 of 2001 (High Court) (unreported)

At the time that the complaint is registered, witnesses are among those from whom statements are obtained. In the process of extracting these statements they provide personal information which in most cases has to be provided to the defence team. In the circumstances it is very difficult to protect the identity of witnesses even if such statements were redacted.

Leadership Code Implementation Legislative Parameters - Scores



B. Whistle Blower Protection Act, 2010

The Whistle Blower Protection Act was enacted in the year 2010. Its main objective is to establish procedures by which individuals may in the public interest disclose information related to irregular, illegal or corrupt practices.⁶³ In addition, the law also sets out to protect whistle blowers against all forms of victimization. These (whistle blowers) are defined as persons who make disclosures of any form of impropriety under the law.⁶⁴

In the assessment of the extent and status of implementation of the Whistle Blower Protection Act, the study relies on two sets of parameters i.e. the general parameters and the legislative specific parameters.

⁶³ Long Title, Whistle Blower Protection Act, 2010.

⁶⁴ *Ibid*, Section 1

General implementation Parameters

a) Establishment of Key Institutions

The Whistle Blower Protection Act, 2010 does not make definite suggestions as to which government agency is responsible for the enforcement of the law. This is rather different from the Leadership Code Act, 2002 (as amended) where the Inspectorate of Government and the Leadership Code Tribunal are specifically mandated to enforce the provisions of the Act.

Be that as it may, it is observable that under the law, the Minister responsible for Ethics and Integrity is entrusted with a number of responsibilities similar to those that are ordinarily exercised by Ministers of lead agencies/mother ministries under other similar legislations. From this, it can be tacitly said that unless otherwise stated the Directorate of Ethics and Integrity within the Office of the President is the agency responsible for enforcement of the Whistle Blower Protection law. This position was equally confirmed in an interview with officials from the legal department of the Directorate- the legal department is also directly responsible for monitoring the enforcement of the Whistle Blower Protection Act. According to one of the officials, the Directorate is *“directly responsible for coordination of anti-corruption efforts in all government ministries and the promotion of the Whistle Blower Act is part of its responsibility”*⁶⁵

The above notwithstanding, the lack of clarity on the main government agency responsible for the enforcement of the law has greatly impacted its implementation. According to an interview with an official from the Anti-Corruption Coalition Uganda (ACCU), *“the law is not clear as to which government agency is responsible for monitoring its enforcement something that makes it extremely difficult to enforce and follow up on the implementation of some of its provisions.”*⁶⁶

This view is corroborated by the finding that majority of the respondents could not identify the specific agency that is responsible for the enforcement of the Act. In fact, in the course of the interviews, a good number of respondents who knew about the existence of the Whistle Blower Protection Act expressed the view that it was the Inspectorate of Government responsible for its enforcement. Others felt that this role was for the Police while the rest mentioned the Directorate of Public Prosecutions (DPP) and the Uganda Human Rights Commission (UHRC) as the agencies responsible. While it is true that a whistle blower can approach designated officials in these agencies, there is no indication under the law that they play a

⁶⁵ Interview with Official in the Directorate of Ethics and Integrity, Office of the President, August 30, 2019.

⁶⁶ Interview with Official from the Anti-Corruption Coalition Uganda, August 20, 2019.

specific role in the promotion and enforcement of the law. This is a major gap and is partly responsible for the poor implementation of the law.

b) **Rules and Regulations**

As underscored above, rules and regulations are critical in implementation and ensuring compliance with the law. In relation to the Whistle Blower Protection Act, Section 20 enjoins the Minister responsible for Ethics and Integrity to make regulations as is necessary for purposes of implementation of the law. In exercise of this power, the Minister is allowed to make Regulations on a number of matters including but not limited to; further disclosure procedures, additional institutions to which disclosures may be made and penalties for contravention of the regulations. The (penalties) should in any case not exceed a fine of five years or imprisonment for five years or both.

In exercise of these powers the Minister made the Whistle Blower Protection Regulations in 2015. These among others expand on the number of institutions to which external disclosure may be made. They include among others the Office of the Auditor General (OAG), Public Procurement and Disposal of Public Assets Authority (PPDA), Uganda Revenue Authority (URA) and the Judicial Service Commission (JSC).⁶⁷ The Regulations also make provision for standard forms that may be used by whistle blowers in the making of both internal and external disclosures.⁶⁸

As is the case with the Act, the main challenge is that the Regulations have not been well publicized. While in the course of the study copies were availed by the Directorate of Ethics and Integrity, it was apparent from the interviews with various stakeholders from both government and civil society that they are not well publicized. As a matter of fact, none of the respondents outside the directorate were aware of the existence of the Regulations.

c) **Resources**

As has been observed above, there is no specifically designated agency responsible for implementation of the Whistle Blower Protection Act. That said, presently the mandate is exercised by the Directorate of Ethics and Integrity. The challenge is that this entity has several other responsibilities and it is apparent from the interviews conducted with its officials that the whistle blower law enforcement function is not well facilitated in terms of human and financial resources.

In an interview with one of the officials in the Directorate, they stated that *“the*

⁶⁷ Regulation 3, Whistle Blower Protection Regulations, 2015.

⁶⁸ Regulations 4 and 5.

ministry has a very limited budget for activities aimed at promoting the various anti-corruption laws including the Whistle Blower Protection Act...for this reason the directorate has only been able to reach out to just a few local governments and some police stations” The official further stated that *“there is hope that the zero tolerance to corruption policy recently approved by the cabinet will help improve on funding since there is a proposal for every ministry to commit part of its budget to anti-corruption efforts.”*⁶⁹

In terms of the available human resources, the Directorate’s legal department which is directly responsible for all the activities connected to the Whistle Blower Protection Act, 2010 is composed of a Commissioner and two principal legal officers. Although it was said by one of the officials that this team is sufficient, it is clear that the Directorate has such a large mandate which if effectively exercised would greatly strain the existing human resource.

d) Public Awareness

Although it is not mandatory, in some cases the law may contain specific provisions on its promotion among members of the public. In other cases even when the law does not such provisions, public promotion is covered as part of the functions and responsibilities of the agency responsible for its enforcement. In the case of the Whistle Blower Protection Act, the law is silent on promotional activities. Also as observed above, although the Directorate of Ethics and Integrity is in practice responsible for its implementation, there is no specific obligation for it to promote the law.

According to an official in the Directorate, the failure of the law to provide for promotion would not be a big problem if they were allocated sufficient resources for this role. However as already observed, the resource envelope of the directorate is limited and as a result they have only been able to reach out to a very limited audience comprising of local government officials and members of the Uganda police.

The greater public which is also the biggest beneficiary of the law is not aware of its existence and in particular the available mechanisms for protection of whistle blowers.⁷⁰ Yet, majority of the members of the civil society interviewed attributed the poor implementation of the Whistle Blower Protection Act to the lack of public awareness about the law and its provisions.

In fact one respondent from the National Coalition of Human Rights Defenders in Uganda (NCHRD-U) had this to say *“we were recently contacted by one of our partner*

⁶⁹ Interview with Official in the Directorate of Ethics and Integrity, Office of the President, August 30, 2019.

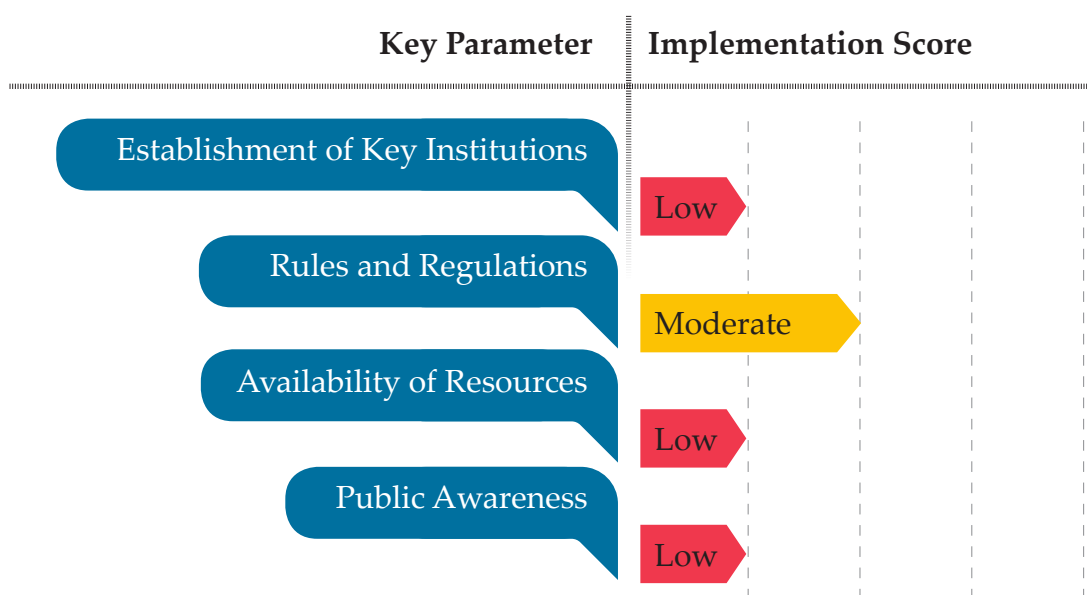
⁷⁰ Badru Walusansa, Whistle Blowing can Reverse Institutional Corruption, *New Vision*, April 14, 2017. Available on https://www.newvision.co.ug/new_vision/news/1451090/whistle-blowing-reverse-institutional-corruption

organizations on whether we knew about the whistle blower protection law and if it was applicable to human rights defenders under threat...it was the first time for me to hear about this law and even my other colleague who is a lawyer had never heard about it...in the end we had no option but to inform our partner that we all did not know about the law and that he would be better off seeking help from organizations whose mandate involves anti-corruption and the promotion of transparency and accountability."⁷¹

Another respondent from an accountability centered organization also had this to say "I am aware that the whistle blower protection law exists but beyond that we are yet to see a case where the law has been successfully utilized by a whistle blower...it is most probable that the public does not know about this law at all. "

The lack of awareness of the law is not limited to members of the public. In an interview with an official of the anti-corruption court they observed that "even lawyers especially those on the defence do not appreciate the existence of the whistle blower protection law...they for example insist on disclosure of witnesses' identities including those who are whistle blowers yet this may not be permitted under the law."⁷²

Whistle Blower Protection Implementation General Parameters - Scores



⁷¹ Interview with Officials of the National Coalition of Human Rights Defenders in Uganda,

⁷² Interview with Judicial Officers of the Anti- Corruption Division of the High Court, August 30, 2019.

Legislative Specific Parameters

a) Disclosure of Impropriety

The law makes provisions for disclosure of information in four instances: a) where a corrupt, criminal or other lawful act has been committed or is likely to be committed b) neglect by a public official to comply with any legal obligation c) occurrence of miscarriage of justice d) concealment of any of the instances in a, b and c.⁷³ In terms of persons qualified to make disclosures these include: a) employees in respect of their employer b) employees in respect of another employee c) person in respect of another person d) person in respect of a private or public institution.⁷⁴

More importantly, the law also specifies persons and institutions to whom disclosure may be made. In the case of internal disclosures, these may be made to the employer of the whistleblower in cases where the complaint is related to their place of employment.⁷⁵

It should further be noted that in some cases external disclosure may be permitted. This is possible where; a) the complaint is not employment related b) there is fear of occupational detriment c) belief that the evidence will be concealed or destroyed d) the complaint has been made but no action has been taken or there is fear that no action will be taken.⁷⁶ In these circumstances, the law permits for external disclosures to be made to any of the following institutions; a) Inspectorate of Government, Directorate of Public Prosecutions, the Uganda Human Rights Commission, Directorate of Ethics and Integrity, Office of the Resident District Commissioner, Parliament of Uganda, the National Environment Management Authority and the Uganda Police Force.

In terms of the extent and status of implementation of these provisions, the study found that in most of the cases there was confusion between whistle blowers and informers. Majority of the respondents from the agencies obligated to receive whistle blower complaints seemed to confuse informers for whistle blowers.

The study however established that only a few cases of whistle blowing exist at least within the strict meaning of the term whistleblower under the Act. From the interviews, only four of the agencies i.e. IG, UHRC, DPP and the DEI had registered complaints that can easily fall within the definition of whistle blower complaints within the meaning of the law. Others such as the URA, Police, NEMA largely received complaints from informers and not whistle blowers within the strict meaning of the law.⁷⁷

73 Section 2

74 Section 3

75 Section 4 (1)

76 Section 4(2)

77 Interview with official from the Uganda Revenue Authority, September 13, 2019. Interview with Official from

This goes to show that the provisions as to whistle blowing have not been well utilized. As stated above, this is largely attributed to the general lack of public awareness on the existence of both the law and its provisions.

The other factor that explains the infrequency of whistle blower complaints was the expressed by mainly civil society actors. According to an official from one of the leading Anti-corruption NGOs who requested to remain anonymous, they once had a scenario where a whistle blower made a complaint to one of the Inspectorates branch officers but they were surprised to receive a call from the person against whom the complaint was made just a few minutes thereafter. In these circumstances where there is no assurance that the information provided will be kept confidential, whistle blowers do not have the trust to report cases of illegality and corruption under the Act.

b) Investigations

Once a complaint has been filed, the authorised official to whom it is made is under obligation to investigate the matter and on that basis to take appropriate action expeditiously.⁷⁸ This is a mandatory requirement unless it can be shown that the matter contained in the disclosure is trivial, frivolous, vexatious, not made in good faith or one that requires further investigation.⁷⁹ The officer is also authorised to refer the disclosure to another competent authority or the Minister if they determine that they don't have the capability to undertake the investigation provided that this is done within seven working days.⁸⁰

From the interviews, there are three cases where whistle blower cases were fully investigated. This was the case at the UHRC and the DEI. The UHRC matter has since been referred to court while the one made to the DEI was referred to the URA where it was found that the alleged impropriety was not supported by evidence. In an interview with an official of the DPP it was stated that they had once received a whistle blower complaint but in the course of investigation they established that the same complaint had registered with the inspectorate of government. Under their understanding with the IG, in circumstances where both offices have the mandate to act preference is given to the inspectorate. In this spirit the complaint was referred to the inspectorate for their action.

NEMA, September 12, 2019.

78 Section 8

79 Section 5

80 Section 8

c) Protection of Whistle Blowers

One of the major objectives of the law is to provide protection against victimization of persons who make disclosures. This is meant to encourage the public to report cases of inappropriate behavior and majorly corruption.⁸¹ In this light the law contains a number of protections. Under section 9 (2), a whistle blower is considered victimized on account of having made a protected disclosure where being an employee he or she is; dismissed, suspended, denied promotion, demote, made redundant, harassed, intimidated, threatened, discriminated against or intimidated. Any whistle blower who honestly believes that they have been victimized as a result of their disclosure is also entitled to make a complaint to the Uganda Human Rights Commission (UHRC).

Further protection is afforded under Section 10 which protects whistle blowers from civil or criminal proceedings in respect of the disclosure where they act in good faith. Finally, a whistle blower who believes that his or her life or that of a member of their family is endangered or likely to be endangered as a result of the disclosure is entitled to state protection.

The listed provisions are all important for whistle blower protection however the challenge is that in practice they are almost never well enforced. According to an official of the Inspectorate of Government while the protection of whistle blowers is very important, it is very costly of it is to be done effectively. In his view *“protection should not be limited to physical protection but should also involve other strategies like relocation, identity change etc”*⁸² As it is, the IG is itself constrained and often has to rely on other agencies to provide protection for whistleblowers.

In terms of implementation, commitments to protect whistle blowers have been expressed by the Minister of Ethics and Integrity and the IGG has in the past offered some form of protection to whistle blowers.⁸³ Some of the cases that were brought to my attention during the course of the study include those involving the protection of whistle blowers in cases involving financial impropriety at the Micro Finance Support Centre (MFSC).⁸⁴ There was also an attempt to protect a whistle blower in the Uganda Development Bank Limited case.

The other challenge associated with the protection of whistle blowers is their safety once their identity has been disclosed. This mostly arises where the whistle

81 Irene Mulyagonja Kakooza, IGG must Work with Protect Whistle Blowers, *Independent*, May 31, 2014. Available on <https://www.independent.co.ug/igg-must-work-protect-whistleblowers/>

82 Interview with Official in the Inspectorate of Government Office, August 28, 2019.

83 Dorcus Murungi, Government to Protect Whistle Blowers, *Daily Monitor*, December 4, 2018. Available on <https://www.monitor.co.ug/News/National/Government-protect-corruption-whistle-blowers/688334-4880942-64qdrjz/index.html>

84 See IGG Arrests top UDBL Top Officials, available on <https://www.igg.go.ug/updates/media/igg-arrests-udbl-top-officials/>

blower is invited to testify against the person against whom a complaint was made in court. According to an official working with the National Coalition of Human Rights Defenders Uganda, such a whistle blower is at serious threat since Uganda does not have a witness protection law. It therefore appears that the protection afforded to whistle blowers is not effective once their identity has been disclosed. On this basis it is suggested that in addition to the whistle blower protection law, a witness protection law should be considered.

d) Sanctions

The law makes provision for offences and penalties for certain acts and omissions. These include among others the; disclosure of the whistle blowers identity, disclosure of details of the disclosure, victimization of the whistle blower, making false disclosures and unlawfully failing to take action.⁸⁵ Any person found liable for each of these offences is liable on conviction to imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.⁸⁶

Penalties and sanctions play a very significant role in the enforcement of the law. In an interview with an official of the human rights commission, he revealed thus, *“when I read the whistle blower protection act, I realized that a person to whom disclosure is made under the law is required to act on such disclosure within the time set and that failure to act is an offence which upon conviction attracts a sentence of five years in prison or a fine ...from this point I realized that I had no choice but to act as quickly as I could.”*⁸⁷

In the case of the Whistle Blower Protection Act, the offences and penalties are important in protection of the whistle blower from all forms of threats and victimization. This is very critical in building the confidence of whistle blowers. This said, there is no recorded incident of successful prosecution of any of these offences. There was one attempt by the inspectorate to prosecute the CEO and other toP ranking officials of the Uganda Development Bank Limited (UDBL) for victimization of a whistle blower.⁸⁸ Even then the effort was unsuccessful.

Yet at the same time it was discovered in an interview with an official of a leading accountability NGO that there have been cases where whistle blower information has been disclosed to persons against whom complaints are registered by officials working with the Inspectorate of Government.

⁸⁵ See Sections 14 to 18

⁸⁶ *Ibid*

⁸⁷ Interview with an Official of the Uganda Human Rights Commission, August 26, 2019.

⁸⁸ See IGG Arrests top UDBL Top Officials, available on <https://www.igg.go.ug/updates/media/igg-arrests-udbl-top-officials/>

The failure to enforce the provisions on penalties and sanctions encourages such behavior and exposes the whistle blower to serious threat.

e) **Rewards**

A whistle blower is entitled to a reward amounting to five percent (5%) of the net liquidated sum of money recovered based on his/her disclosure. Further, the law requires that such a reward is paid within six months after the recovery of the money.⁸⁹

From the interviews conducted with the various government agencies to whom disclosures can be made, except the URA none has been able to extend rewards to whistle blowers. According to an official in the Inspectorate, it is relatively easy for the URA to pay the reward since most times there are goods involved and its in the interest of the tax payer to have them released. In that case they will pay the taxes and assessed penalties from which the URA can pay the amount due to the whistle blower in the form of reward. In another case the DEI was unable to give the reward because the information provided related to theft of government drugs which are supposed to be available freely and in that case it was difficult to ascertain the 5%. Even then, the DEI did not have a budget and referred the whistle blower to the Ministry of finance which in turn referred the matter to the Ministry of health. In the end, the whistle blower was not given the reward and walked away frustrated.

Moreover, the size of reward provided for has been decried to be very low and not commensurate with the level of risk that comes with whistle blowing. When asked about the quantum of rewards and if they are sufficient, an official of the inspectorate had this to say *“the size of the reward is too small, I personally would not risk my life for it...as you know with whistle blowing there is a lot at stake including life, family and work...5% is just not sufficient and should be revised upwards”*⁹⁰

Proposals for the review of the size of the reward have also been made by members of civil society. Cissy Kagaba, executive director of the Anti -Corruption Coalition Uganda has in the past recommended for Uganda to adopt the US reward system where whistle blowers are paid between 20% to 50% of the recovered amount.⁹¹ Others have recommended for the current reward of 5% under the Whistle Blowers Protection Act to be reconciled with the 10% rewards paid by the Uganda Revenue Authority (URA) and the Kampala City Council Authority (KCCA).⁹²

⁸⁹ Section 19

⁹⁰ Interview with Official in the Inspectorate of Government Office, August 28, 2019.

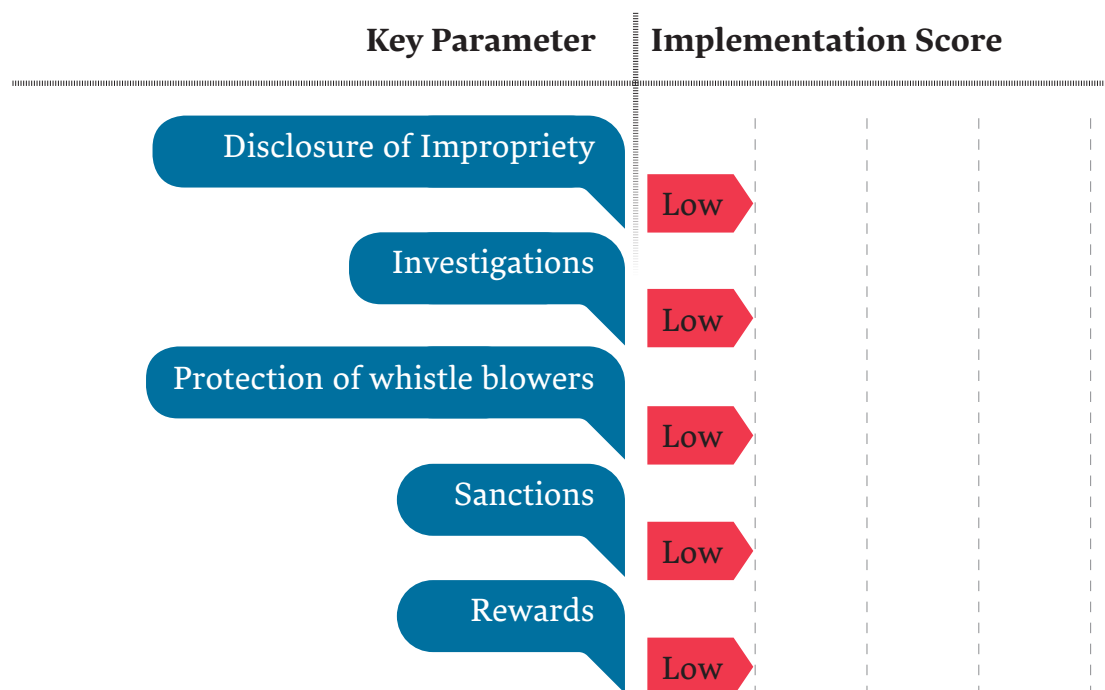
⁹¹ Cissy Kagaba, The Whistle Blower Deserves Deeper State Protection, *Daily Monitor*, March 7, 2010. Available on <https://www.monitor.co.ug/OpEd/Commentary/689364-874616-3mmwnk/index.html>

⁹² Tadeo Bwambale, Corruption: KCCA to Reward Whistle Blowers, *New Vision*, July 3, 2012. Available on https://www.newvision.co.ug/new_vision/news/1303312/corruption-kcca-reward-whistle-blowers. In the course of the study it was discovered that URA has since revised its rewards to 5%. That said this is still significant considering that often the funds involved are huge. See Interview with URA Official, September 13, 2019.

The above notwithstanding, in some cases its not necessarily the size of the reward that matters. According an interview with an official from NEMA, they always receive information regarding environmental degradation from members of the public majority of whom request to remain anonymous. They have therefore not had to reward informers but instead rely on the public concern about their environment. In that case introducing rewards may not be strategic and effective when compared by the public concern for their environment.

This view was corroborated by an official from the African Freedom of Information Centre (AFIC) who stated that *“there must be an incentive beyond the financial incentive”* Where the population is involved in governance of their country and believe that action will be taken, they have an incentive to report corruption. On the other hand, there is no incentive to report corrupt behavior where governments are themselves corrupt and filled with cronies who are not prepared to take any action against their own.

Whistle Blower Protection Implementation Legislative Parameters - Scores



IV. Conclusion

Uganda has a plethora of anti-corruption laws. In fact the country has some of the most modern and comprehensive anti-corruption laws on the continent. At the same time, Uganda has been consistently ranked among the most corrupt countries in the world. This contradiction goes to show that the mere presence of laws is not sufficient unless such laws are strictly and effectively implemented. Importantly there must be the political will to fight corruption.

This study set out to assess the status and extent of implementation of two of the major anti-corruption laws, that is, the Leadership Code Act, 2002 (as amended) and the Whistle Blower Protection Act, 2010. In pursuing this objective the study relies on reports, opinions and perceptions of both government officials and non-state actors. These are applied to two categories of assessment parameters i.e. general and legislative specific. It is acknowledged that these may have their own limitations but that said they provide an opportunity for a critical first step in the assessment of the two laws.

The major finding is that while these laws are rather comprehensive, they have not been effectively implemented. Several factors explain this result but the most remarkable is the utter lack of political will to fight corruption. As a result some major institutions such as the leadership code tribunal are yet to be operationalized. Some of those that are in existence are not well facilitated in terms of human and financial resources. It is also apparent that there is a general lack of awareness on both laws and their provisions. This is particularly true for the Whistle Blower Protection Act, 2010 which for now is the least known about among the public but also to some extent practitioners. The law also lacks sufficient incentives for whistle blowers as the maximum reward that can be granted is just 5%. Even then, from the study it was established that aside from the URA none of the entities whose officials were interviewed has been able to pay the reward. Finally, although there are efforts to protect whistle blowers, these are still scanty and unreliable. Even then once their identity is disclosed there are insufficient mechanisms for protection of whistle blowers. In this vein a witness protection law should be urgently and expeditiously enacted.

V. Recommendations

1. The Leadership Code Tribunal which is charged with enforcement of the provisions of the Code should be fully operationalized. In particular the staff and members of the Tribunal should be appointed expeditiously.
2. A clear and well defined Whistle Blower reporting mechanism should be developed. The current law gives more than five (5) entities the mandate to receive whistle blower complaints. It has been found that in some cases there have been overlaps where one person whistle blows to more than one entity.
3. The government should urgently enact a Witness Protection Law to complement the current Whistle Blower Protection Act. The law if enacted will be important in affording whistle blowers turned witnesses some protection which they don't have under the current legal regime.
4. Promote public awareness about the Whistle Blower Protection Act, 2010 and the Leadership Code Act, 2002 (as amended). It has been shown above that both laws are not well publicly known and appreciated something that has affected their successful implementation.
5. Establish a central body for the protection of whistle blowers that is trusted, independent and well facilitated to take care of the security of whistle blowers.
6. Rescind recent amendments to the Leadership Code Act 2002 (as amended) that seek to among others exempt persons to whom the law applies from declaring the names, income and assets owned by their children and spouses.
7. Enhance penalties for disclosure of confidential information provided by whistle blowers. This will restore integrity in the whistle blower system.
8. Increase funding for IG and other anti-corruption institutions such as the Directorate of Ethics and Integrity within the office of the president. Increased funding will enable them to meet their operational and training needs both of which are critical for the effective implementation of the obligations set under the law.
9. Invest in training of staff from the inspectorate and other affiliated institutions to enable them effectively respond to complex and other emerging corruption challenges.
10. Quickly gazette the regulations required for the operationalization of the Leadership Code Act, 2002 (as amended)
11. Review and harmonize provisions on public access to wealth declarations with the provisions of the Constitution that bestow on every citizen the right to access information in possession of government and its agencies.
12. Create a special fund for protection of informers, witnesses and whistle blowers in the context of corruption cases.

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