



ANTI-CORRUPTION COALITION UGANDA

ANALYSIS OF UGANDA'S ASSET RECOVERY FRAMEWORK

Policy analysis report

Dr. Dan Ngabirano
Development Law Group
P.O Box 566

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ACRONYMS

1. ACA	Anti-Corruption Act
2. ACD	Anti-Corruption Unit
3. AG	Attorney General
4. AI	Artificial Intelligence
5. AML	Anti-Money Laundering
6. ARD	Asset Recovery Division
7. ARIN-EA	Asset Recovery Inter-Agency Network for Eastern Africa
8. ARU	Asset Recovery Unit
9. AUCPCC	African Union Convention on Prevention and Combating Corruption
10. BOU	Bank of Uganda
11. CDD	Customer Due Diligence
12. CFT	Corruption and the Financing of Terrorism
13. CPI	Corruption Perceptions Index
14. DEI	Directorate of Ethics and Integrity
15. DPP	Director of Public Prosecution
16. ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
17. FAFT	Financial Action Task Force Guidelines
18. FIA	Financial Intelligence Authority
19. FIU	Financial Intelligence Unit
20. ICAR	International Cooperation and Asset Recovery
21. IGG	Inspector General of Government
22. IFMS	Integrated Financial Management System
23. IMF	International Monetary Fund
24. MLA	Mutual Legal Assistance
25. NACS	National Anti-Corruption Strategy
26. NCB	Non-Conviction-Based-Recovery
27. NEPAD	New Partnership for Africa's Development
28. NIRA	National Identification & Registration Authority
29. NGO	Non-Government Organisation
30. NSSF	National Social Security Fund
31. OAU	Organisation of African Union
32. ODPP	Office of the Director of Public Prosecutions
33. PFMA	Public Finance Management Act
34. ZTCP	Zero Tolerance to Corruption Policy
35. UNCAC	United Nations Convention Against Corruption
36. UNTOC	United Nations Convention Against Transnational Organised Crime
37. URA	Uganda Revenue Authority

38. URSB

Uganda Registration Services Bureau

CHAPTER ONE

INTRODUCTION

1.0 Background

Corruption stands as a formidable impediment to Uganda's development, affecting both short-term growth and long-term development.¹ Despite substantial financial investments and concerted efforts directed towards combating corruption in the country, the efficacy of anti-corruption interventions has yielded limited impact at best. Consequently, corruption persists in exacting far-reaching societal costs. In 2023, Uganda's Corruption Perceptions Index (CPI) score remained stagnant at 26%, indicating no progress from the 2022 score.² This lack of improvement accentuates the persistent challenge of corruption, positioning Uganda as 141st out of 180 countries globally.³

A critical aspect fundamental to addressing the widespread impact of corruption is the recovery of government assets lost due to corrupt practices. Asset recovery involves all processes that are aimed at confiscating the property of individuals involved in corruption-related offences, preventing them from benefiting from their illegal activities and deterring future corruption.⁴ Asset recovery stifles corrupt individuals from benefiting from their illegal profits, making it a crucial tool in deterring corruption and organized crime.⁵ It limits the ability of offenders to continue engaging in illegal activities while restoring public resources misappropriated through corrupt practices.⁶ Additionally, recovered assets provide compensation to the state for the considerable costs incurred in tackling corruption.⁷

¹ IGG, Costs of Corruption in Uganda, December 2021. Available at https://www.igg.go.ug/media/files/publications/Cost_of_Corruption_Popular_Version.pdf

² The Corruption Perceptions Index is a composite index, a combination of 13 surveys and assessments of corruption, collected by a variety of reputable institutions. It scores and ranks countries/territories based on how corrupt a country's public sector is perceived to be by experts and business executives. The CPI ranks 180 countries. The results are given on a scale of 0 (highly corrupt) to 100 (very clean). Available at https://images.transparencycdn.org/images/CPI2021_Report_EN-web.pdf

³ Corruption Perception Index 2023. Available at <https://www.transparency.org/en/cpi/2023/index/uga>

⁴ Oldfield, J. (2024) The effectiveness of non-conviction-based proceedings in asset recovery. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (U4 Helpdesk Answer 2024:3)

⁵ Lilian William Kafiti, MECHANISMS OF CONFISCATION 2020

⁶ Ibid

⁷ Ibid

In Uganda, the work of various government institutions has contributed to notable recoveries of stolen assets. As of November 2018, the Asset Recovery Division (ARD) within the Office of the Directorate of Public Prosecutions (ODPP) successfully recovered and deposited UGX 1,174,363,766 into an account at the Central Bank of Uganda.⁸ Furthermore, by June 2019, the Asset Recovery Unit of the Office of the Inspectorate of Government had achieved a total recovery of UGX 4,419,014,014.⁹

More recent data provides further insight into Uganda's asset recovery efforts. For example, according to the Inspectorate of Government Bi-Annual report presented to parliament covering between July and December 2020, the High Court issued confiscation against Godfrey Kazinda for four vehicles and four plots of land valued at approximately UGX 4 billion. The court's order was executed with the property being vested in Knight Frank Uganda for interim management. During the same period, through a plea bargain agreement vide HCCA/9/2019, IGG recovered property worth UGX 85,000,000 from Mr Mugasha and also secured a conviction for the offence of embezzlement against him.¹⁰

During the reporting period between July and December 2021, IGG reported to have recovered UGX 1,449,191,325 which was deposited in the Asset Recovery Account at Bank of Uganda. It was also reported that the IGG had successfully prosecuted some cases from which the court made recovery orders. Owing to this, property valued at UGX 4,427,221,335 was confiscated and forfeited to the Government.¹¹

During the reporting period between January and July 2022, it was reported that the IG had fifteen (15) cases before the Anti-Corruption Court, Executions Division for recovery of up to UGX 632,845,747.¹² Of this amount, UGX 135,325,000 was recovered as a result of IG orders and UGX 285,066,222 was recovered due to asset tracing. A total of UGX 2,055,902,036 was recovered and deposited into the IG Asset Recovery Account at the Bank of Uganda during the reporting period.¹³

⁸ CiFAR, Asset Recovery in Uganda 2021 Available at <https://cifar.eu/country-profiles/uganda-2021/>

⁹ Ibid.

¹⁰ Inspectorate of Government, Bi-annual Performance Report to Parliament, July- December 2020

¹¹ Inspectorate of Government, Bi-annual Performance Report to Parliament July to December 2021

¹² Inspectorate of Government, Bi-annual Performance Report to Parliament January – July 2022

¹³ Ibid

Between July and December 2022, the total value of assets recommended for recovery rose to UGX 23,029,555,439, up from UGX 13,089,382,270 in the previous reporting period (2021/2022). During this same period, UGX 2,105,146,378 was successfully recovered, reflecting consistent progress in asset recovery efforts.

From January to July 2023, the Inspectorate of Government recovered a building valued at UGX 8,700,000,000, linked to alleged financial loss of UGX 8.7 billion and abuse of office by Prof. Barnabas Nawangwe and Prof. William Bazeyo. This property, located at LRV 279 Folio 14 Plot 2A Kila Rd, was transferred to the Uganda Land Commission for management. By mid-2023, the IG had also recovered funds to the tune of UGX 3,631,442,057 through the enforcement of IG and court orders, along with further investigations.

These efforts underscore the importance of robust asset recovery mechanisms in Uganda's broader anti-corruption framework and the efforts made by some institutions in addressing corruption-related crimes and enhancing accountability. By retrieving public funds and assets lost to corruption, the state not only restores its financial capacity but also strengthens the deterrent effect on future corrupt activities.

A TABLE SHOWING THE ASSETS RECOVERED FOR 2021 TO 2023

	JULY – DEC 2021	JAN – JULY 2022	JUL- DEC 2022	JAN- JUN 2023
Total recoverable (cash and assets)	-	13,089,382,270	33,170,171,234	38,797,345,165
Value of physical assets recovered	4,427,211,335	420,391,222		8,700,000,000
Cash recovered	1,449,191,325	2,055,902,036	2,307,856,164	3,631,442,057
Total actual funds recovered	5,876,402,660	2,476,293,258	2,307,856,164	12,331,442,057
Recovery rate	-	18.9%	7.0%	31.8%

1.1 Objectives

Recognizing the substantial negative impact of corruption on governance and economic development, asset recovery has become a crucial component of the nation's anti-corruption strategy. Despite various reforms and institutional efforts, there remains a need to assess the effectiveness of the existing mechanisms. This study undertook a thorough evaluation of Uganda's legal framework and processes for asset recovery within the broader concepts of anti-corruption efforts. By analyzing the effectiveness of the current practices and identifying key challenges, the study aims to provide valuable insights for enhancing the asset recovery process.

The specific objectives of this study were;

- i. To conduct a policy analysis on Uganda's asset recovery framework.
- ii. To ascertain and assess Uganda's current asset recovery regime including mapping to key laws, policies and institutions
- iii. To conduct a literature-based comparative analysis of Uganda's Asset recovery regime with other selected countries, and
- iv. To make recommendations towards strengthening Uganda's asset recovery

1.2 Methodology

While conducting this research study, a blended approach to analyse asset recovery processes in corruption cases in Uganda was adopted. It involved the combined use of qualitative interviews with key stakeholders and quantitative data analysis of case law outcomes to offer a comprehensive assessment of the effectiveness of asset recovery mechanisms and the legal framework used in Uganda.

CHAPTER TWO

LEGAL AND INSTITUTIONAL FRAMEWORK FOR ASSET RECOVERY IN UGANDA

2.1 Introduction

The legal framework for asset recovery in Uganda is grounded in international and regional instruments to which the country is a signatory, along with key statutes, laws and regulations that provide a structured approach for recovering assets acquired through illicit means. This framework includes procedural guidelines outlined in the Magistrates Courts Act and the Trial on Indictment Act as well as institutions tasked with combating corruption, money laundering, and the illicit accumulation of wealth. Its primary objective is to facilitate the identification, freezing, confiscation, and return of assets obtained through criminal activities, particularly corruption.

2.2 International Treaties and Agreements

2.2.1 United Nations Convention against Corruption, 2003 (UNCAC)

In 2003, the United Nations Convention against Corruption (UNCAC) was enacted to combat corruption on a global scale. During its adoption, the UN Secretary General Kofi Annan described corruption as a “treacherous scourge” that affects both developed and developing nations alike. The UNCAC was created in response to this challenge, marking a crucial step towards the establishment a zero-tolerance policy against corruption.¹⁴ Additionally, it was enacted to complement the United Nations Convention against Transnational Organized Crime (UNTOC), enhancing the global fight against both corruption and organized crime.

One of the fundamental principles enshrined in the UNCAC is asset recovery, which serves as a key pillar in efforts to combat corruption. The Convention emphasizes international cooperation among states Parties to recover assets across borders, ensuring that the proceeds

¹⁴ Preamble of the UNCAC

of corruption can be traced, confiscated, and returned.¹⁵ The Convention provides for the following obligations in the asset recovery realm: -

1. Detection and prevention of the transfer of proceeds of crime.

The Convention calls upon state parties to take measures such as scrutinizing beneficial owners of high-value accounts to prevent and detect the transfer of proceeds of crime obtained through corruption. The Convention obliges state parties to enact domestic law, to require financial institutions within their jurisdictions to verify the identities of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts, and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are or have been entrusted with prominent public functions and their family members and close associates.¹⁶ In order to implement this mandate, state parties are required to enact laws that require necessary disclosure to be made and require financial institutions to maintain a record of such disclosures.¹⁷

2. Cross-Jurisdictional Asset Recovery

The Convention provides mechanisms for recovery across jurisdictions by allowing States Parties to take civil action in foreign courts to establish ownership of property acquired through corruption. It also facilitates the enforcement of foreign judgments related to asset recovery and recognizes the legitimacy of claims by other States Parties to property acquired through corrupt practices.¹⁸

3. Mutual Legal Assistance Agreements

To further support international cooperation, UNCAC encourages States Parties to establish bilateral and multilateral agreements on mutual legal assistance. The Convention provides for mutual legal assistance to effect cross-border recoveries. State parties are therefore required to

¹⁵ Article 51 UNCAC

¹⁶ Article 52(1)

¹⁷ Article 52(2)

¹⁸ Article 53

have bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation in asset recovery.¹⁹ In facilitating these agreements on mutual legal assistance, state parties shall ensure that there are domestic laws that permit authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money laundering or such other offence as may be within its jurisdiction and enforce confiscation orders.²⁰ The Convention also requires domestic laws to make provisions for the freezing or seizing of property upon a freezing or seizure order being issued by a court or competent authority of a requesting State Party.

4. Creation of Financial Intelligence Units (FIUs)

To strengthen mechanisms for detecting corruption, the UNCAC requires States Parties to establish Financial Intelligence Units. These Units are responsible for receiving, analysing and disseminating reports on suspicious financial transactions to the concerned authorities. FIUs play a critical role in tracking the movement of illicit funds and assisting authorities in detecting patterns of corruption, money laundering, and other financial crimes. They also contribute to international information-sharing efforts, making it easier to identify and seize corrupt assets across borders.

5. Information sharing

The Convention promotes the sharing of information related to proceeds of corruption, even without a prior request, provided that such disclosure would not prejudice ongoing investigations, prosecutions, or judicial proceedings. This proactive approach allows States Parties to assist one another in detecting corruption, building strong cases, and preventing future offenses.²¹ By facilitating information exchange, UNCAC enables countries to collaborate more effectively in the fight against corruption, particularly when assets are transferred across borders, raising awareness and being alert to the possibilities of commission of similar offences, and building strong cases against suspected individuals.

¹⁹ Article 59

²⁰ Article 54(1) (a-c)
Article 54(2)(a)

²¹ Article 56

UNCAC has set international standards that many countries, including Uganda, have worked to adopt in their national frameworks. Uganda has made notable efforts to align its legal system with the Convention's requirements. The Financial Intelligence Authority (FIA) was formally established through the Anti-Money Laundering Act, playing a key role in monitoring and reporting suspicious financial transactions. Additionally, the Anti-Corruption Act was amended to strengthen the country's asset recovery regime, enabling a more diverse and effective approach to tracing, seizing, and confiscating illicit assets.

2.3 Regional Treaties

2.3.1 African Union Convention on Preventing and Combating Corruption (AUCPCC)

The African Union Convention on Preventing and Combating Corruption (AUCPCC) stands as a significant instrument in Africa's fight against corruption and the recovery of illicit assets. Its inception traces back to pivotal meetings of African leaders: the 37th ordinary session of the Assembly of Heads of State and Government of the OAU in Lusaka, Zambia, in July 2001, and the subsequent Declaration from the first session of the Assembly of the Union in Durban, South Africa in July 2002. These sessions emphasized the importance of the New Partnership for Africa's Development (NEPAD) and called for a unified and coordinated mechanism to combat corruption across the continent culminating in the establishment of the AUCPCC.

Key Obligations under the AUCPCC

1. Legislation to Prevent Money Laundering and Concealment of Corrupt Assets

Under this Convention member states are obligated to establish legislation to prevent the laundering, transfer, conversion, or disposal of assets derived from corruption or related offences, to conceal or disguise the illegal origins of such assets.²² States were called upon to establish, maintain and strengthen institutions tasked with and empowered to fight corruption.²³ The rationale to this provision being to prevent wrongdoers from laundered and disguising illicit assets as genuinely obtained property. These laws are essential for disrupting

²² Article 5 and 6 AUCPCC

²³ Article 5(3)

the flow of illicit wealth and preventing corrupt individuals from enjoying the benefits of their crimes.

2. Confiscation and seizure of illicit assets.

The Convention obligates state parties to enact laws that prescribe the procedure for identifying, freezing, administrating, and confiscating the property which corresponds with the value of the proceeds of crime.²⁴ Such legal provisions are crucial in ensuring that assets obtained through corruption are not only identified but are also recovered and returned to the public domain. The ability to freeze and confiscate assets during investigations or prosecutions ensures that they remain within the control of legal authorities, preventing their further disposal or concealment.

3. Co-operation and mutual legal assistance

State parties are required to provide the greatest possible technical cooperation and assistance to one another in dealing with requests from authorities that are empowered by their national laws to prevent, detect, investigate and punish acts of corruption and related offences.²⁵ State parties are also at liberty to enter into mutual assistance agreements with each other provided they have similar provisions that allow the enforcement of cross border recovery orders.²⁶ This provision ensures that assets that are outside the convicting jurisdiction can be attached/confiscated for purposes of fulfilling enforcing recoveries without prejudice to the sovereignty of the state in which the assets are concealed.

4. Addressing Corruption in International Trade.

International trade is considered as an avenue through which corruption may be committed and illicit assets stirred. State parties are called upon to cooperate in criminalizing and punishing all forms of corruption that may be committed through international trade. Foreign accounts of corrupt public officials should be frozen to prevent them from enjoying the proceeds of crime.²⁷ This provision highlights the importance of international cooperation in

²⁴ Article 16(1)

²⁵ Article 18(1)

²⁶ Article 18(2)

²⁷ Article 19(1)

monitoring and regulating trade channels, ensuring that they do not serve as vehicles for laundering corrupt wealth.

This Convention was and continues to be instrumental in enforcing cross-border recoveries where domestic laws fall short on this aspect. Uganda has also made efforts to adopt a legal framework that mirrors the obligations set out in the Convention. It has enacted the Anti-Money Laundering laws and adopted the FAFT recommendations on identifying, tracing and recovering of illicit assets. These legal frameworks have strengthened Uganda's capacity to combat corruption and recover stolen assets. Prosecutors are encouraged to prefer multiple charges under both the Ant-Corruption Act and the Anti-Money Laundering Act to secure comprehensive punitive measures and ensure that illicit assets remain within court's jurisdiction during prosecution.²⁸

2.4 National Legislation

The legal framework in Uganda facilitates the recovery of illicit property acquired through criminal activities and supports asset recovery efforts by enabling the disclosure of information about assets owned by individuals accused of corruption and other related offences, confiscation of such property, prosecuting the offenders and executing court orders as to recovery of assets. Asset recovery in Uganda is guided by the international and regional anti-corruption law principles, which have been ratified, domesticated, and adopted into the country's legal system.

2.4.1 Anti-Corruption Act, Cap. 116

In 2009, the Anti-Corruption Act was enacted in Uganda to provide a more robust and focused framework for preventing and combating corruption in both the public and the private sector. This Act effectively transferred corruption-related offences from the Penal Code Act into a separate statute, aiming to streamline and strengthen the legal provisions related to corruption.

While the 2009 Anti-Corruption Act did not expressly establish a detailed asset recovery regime, it laid the groundwork for such recovery through key provisions. Central to the

²⁸ Interview by His Lordship Lawrence Gidudu Judge High Court Anti-Corruption Division

concept of asset recovery under the Act was the identification of illicit assets. The Act stipulated that any assets or pecuniary resources that a person cannot satisfactorily account for, or that are disproportionate to the person's known sources of income, would be treated as evidence of illicitly obtained property.²⁹ This provided a basis for targeting the proceeds of corruption.

The Act also introduced mechanisms for preserving suspected illicit property pending prosecution of the offender. This was primarily done through restraining orders, which prevented individuals who had been charged or about to be charged, with corruption-related offences from disposing off tainted assets.³⁰ These orders served as an essential step to ensure that such assets remained within the jurisdiction of the court and were not transferred or hidden before a final judgment could be made. If the Court was convinced of the necessity, it would issue a restraining order, safeguarding the property from any dealings until the matter was concluded.³¹

The Act also provided for the confiscation of illicit property. Upon the successful prosecution and conviction of the offender, the Act allowed for the confiscation of the illicit property, in addition to any custodial sentences.³² This process was meant to remove the economic benefits of corruption and return stolen assets to the government.

However, despite the enactment of the Anti-Corruption Act of 2009, corruption in Uganda continued to rise, with many convicted individuals escaping significant convicted of penalties or asset confiscation. The government's inability to effectively recover the substantial amounts lost to corruption underscored a significant gap in the existing legal framework, particularly with respect to recovery of stolen assets. This realization prompted amendments to the Anti-Corruption Act in 2015.

The 2015 amendments significantly enhanced the legal framework on asset recovery. These changes aimed to address the practical challenges of recovering stolen property and preventing offenders from retaining the proceeds of corruption. The amendments introduced

²⁹ Section 30 ACA

³⁰ Section 53 ACA

³¹ Section 55

³² Section 63(1)

stricter measures such as mandatory confiscation of illicit property and the vesting of such property into government, with the intention of recovering lost public funds more effectively. Additionally, the amendments sought to expedite the asset recovery process, addressing the delays and efficiencies that had previously hindered timely confiscation.

Overall, the 2015 amendments strengthened the Anti-Corruption Act by creating a more comprehensive and efficient framework for identifying, seizing, and recovering assets derived from corrupt activities. These measures not only increased the were designed penalties for corruption but also underscored the government's commitment to recovering public funds and deterring corrupt behavior by imposing harsher consequences on offenders.

The 2015 amendments to the Anti-Corruption Act significantly bolstered Uganda's asset recovery regime by introducing comprehensive provisions aimed at enhancing the identification, tracing, and confiscation of illicit assets. These amendments addressed key gaps in the legal framework and introduced practical measures to ensure the recovery of proceeds obtained through corruption. The key provisions introduced by the amendments include;

1. A more detailed definition of "property" to ensure clarity in identifying assets linked to corrupt activities. Previously, "property" was broadly defined to include money or any other movable or immovable, corporeal thing and includes any rights, privileges, claims, securities and any interest therein and all proceeds thereof. The 2015 amendment expanded this definition to include legal documents conferring title or interest in the property.³³ This clarification ensures that all forms of assets, including documentation that could signify ownership, are subject to recovery.
2. Duty to Give Information. The amendment imposed a duty on persons from whom police officers require information to disclose information in their possession or knowledge.³⁴ Failure to disclose such information constitutes an offence punishable by a fine not exceeding two hundred and forty currency points, a term of imprisonment

³³ Section 1

³⁴ Section 38 (1)

not exceeding three years, or both.³⁵ This provision enhances transparency and assists authorities in tracing and recovering assets hidden by those convicted of corruption.

3. **Assessment of Benefits obtained from corruption-related offences.** The amendment empowered the courts, upon application by either the ODPP or IG, to assess the benefits obtained from corruption related offences.³⁶ The court is authorized to determine the financial gains of the convicted person within six months after their conviction. This assessment forms the foundation for determining the extent of asset recovery, ensuring that the convict cannot retain ill-gotten wealth.
4. **Presumption of Illicit Property or Interest.** To strengthen the burden of proof, the amendment introduced a presumption that any property, interest or expenditure acquired by a convicted person the ten years preceding their conviction is derived from corruption.³⁷ This provision shifts the burden of proof to the accused to justify the source of their assets. It is built on Section 30 of the Act, which deals with evidence of pecuniary sources or property. This reinforces the framework for proving the illegitimacy of suspicious assets.
5. **Assessment Order.** Following a conviction, if the court concludes that the individual has benefitted from corruption, it is obliged to issue an assessment order. This order requires the convicted person to remit the assessed amounts within six-months.³⁸ His Lordship Lawrence Gidudu noted that this creates a debt obligation enforceable by the different modes of execution of court orders.³⁹ The assessment order ensures that financial restitution is a mandatory part of the convict's penalty.
6. **Confiscation Order.** Where the convicted individual fails to comply with the assessment order, the Director of Public Prosecutions (DPP) or the Inspector General of Government (IGG) may petition the Court for a confiscation order.⁴⁰ This order is to allow the DPP or IGG to attach the property of the convict for purposes of enforcing the assessment order. Where a person has an interest in property for which a confiscation order has been issued, they may apply to vary/ review that order within

³⁵ Section 38(2)

³⁶ Section 63

³⁷ Section 64

³⁸ Section 65(1)

³⁹ Supra Note 28

⁴⁰ Section 66(1)

14 fourteen days.⁴¹ The costs incurred during the execution of the confiscation order are recoverable from the property that has been confiscated.⁴² This ensures that enforcement is cost-effective and efficient.

7. Appointment of Mergers, Receivers or Administrators for the confiscated property. Where the court is satisfied that the property for which a confiscation order was made is realisable or requires special attention, it shall appoint a person to take control or manage the property.⁴³ This Section provides for mechanisms through which property can be managed to ensure that the amount ordered to be paid by the convict in the assessment order is realized.
8. Mutual legal assistance: The amendment introduced provisions for mutual legal assistance, enabling Uganda to engage in reciprocal agreements with other states for cross-border recovery of assets. If the Minister is convinced that another country has the appropriate legal framework, Uganda can enter into treaties or agreements for the recovery of illicit assets through confiscation or recovery orders.⁴⁴ This provision is crucial for addressing the global nature of corruption, where assets may be transferred abroad.
9. Extraterritorial Enforcement of Judgments: The amendment also provides for extraterritorial enforcement of judgments, particularly when property subject to a confiscation order is located outside Uganda. In such cases, the DPP or IGG shall submit a request for assistance to the Minister, who will forward it to the relevant country to facilitate the enforcement of the order.⁴⁵ This provision significantly enhances the efficiency of cross-border recovery efforts by establishing a clear protocol for the enforcement of confiscation orders in foreign jurisdictions and boosting mutual legal assistance.
10. Authority to Create Rules: The Chief Justice is authorized to establish rules governing the procedures for confiscation and recovery orders. This includes rules for individuals appointed as managers, receivers, or administrators of confiscated property.⁴⁶ This

⁴¹ Section 68

⁴² Section 69

⁴³ Section 67

⁴⁴ Section 74(2)

⁴⁵ Section 75

⁴⁶ Section 72

provision vests the Chief Justice with the authority to ensure that the asset recovery regime established by the amendment is effectively implemented and operational.

These amendments have created a more comprehensive and effective legal framework for asset recovery in Uganda, addressing previous weaknesses and enhancing the government's capacity to recover stolen public assets. The introduction of stricter enforcement measures, clearer definitions, and provisions for international cooperation demonstrates a robust commitment to tackling corruption at both national and global levels.

2.4.2 Anti Money Laundering Act Cap. 118

The Anti-Money Laundering Act was enacted to prohibit and prevent money laundering activities, which play a significant role in concealing the proceeds of crime, including corruption and other financial offences. The Act is pivotal in the recovery of assets that have been laundered or hidden through complex financial transactions, as it targets both domestic and international money laundering operations.

The Act establishes the Financial Intelligence Authority (FIA), a specialized body tasked with monitoring, detecting, and investigating suspected money laundering activities.⁴⁷ The FIA also has the authority to enforce compliance of the requirements on due diligence, risk assessment and reporting.

Accountable persons, including financial institutions, are required to maintain accurate records and accounts of individuals, ensuring they avoid transactions with fictitious or fraudulent entities. As part of their obligations, they must perform thorough due diligence, which involves verifying the identity of customers, identifying and verifying the beneficial owners, and confirming the identity of anyone acting on behalf of another party.⁴⁸ Additionally, they are required to gather and understand information regarding the intended nature of the transaction or business the individual plans to conduct.⁴⁹ This due diligence process must be carried out before opening any accounts, as well as when conducting transactions equal to or above the amount of 5,000 currency points or its equivalent in foreign

⁴⁷ Section 20 and 21 Anti Money Laundering Act

⁴⁸ Section 6 (3)

⁴⁹ Ibid

currency, whether completed in a single transaction or a series of related transactions.⁵⁰ It is also mandatory to perform these checks if there is any suspicion of domestic or international money laundering or terrorism-related activities.

In addition, accountable persons are required to take necessary steps to identify, assess and monitor risks of money laundering.⁵¹ In so doing, such entities are called upon to develop new technologies and mechanisms for identifying the risks and managing them appropriately. Further, they are also required to keep a record of cash flows of both domestic and or foreign currency exceeding 1,000 currency points.⁵² Where a financial institution is of the view that a transaction involves funds suspected to be proceedings of crime, they are under an obligation to report such transactions and take such measures to ensure that the funds are not moved. The reporting period for suspicious transactions is two working days.⁵³ This measure is to ensure that assets are seized in real-time since they are highly volatile.

The Act allows authorities to share information relating to money laundering activities to enhance international corporation.⁵⁴ This enables mutual legal assistance in as far as access to cross border information is concerned.

The Act provides for the seizure, freezing, and forfeiture of assets linked to money laundering activities. An authorized officer is empowered to search individuals and enter the premises of suspected offenders to seize any property believed to be illicit.⁵⁵ After seizing such tainted property, the officer is required to maintain clear records and take necessary precautions to preserve the property, ensuring it is safeguarded for eventual recovery.⁵⁶

Moreover, the Act provides for stringent penalties for individuals and entities found guilty of money laundering. This includes restraining orders, which prohibit anyone from disposing of property suspected to be proceeds of crime, preventing the dissipation of assets during investigations; and confiscation orders that are issued against the illicit property or any

⁵⁰ Section 6(2)

⁵¹ Section 7(1)

⁵² Section 9(1)

⁵³ Section 10(1) and (2)

⁵⁴ Section 42

⁵⁵ Section 64 (1) and (2)

⁵⁶ Section 71

property in which the person has an interest.⁵⁷ Additionally, the convicted individual may be required to pay a pecuniary penalty based on the benefits they derived from the crime.⁵⁸

The Act emphasizes international cooperation and mutual legal assistance, authorizing the Minister to enter into agreements with public authorities outside Uganda. These agreements facilitate the sharing of information and aid in both civil and criminal prosecutions related to money laundering.

2.4.3 Leadership Code Act, Cap. 33

The Leadership Code Act plays a crucial role in asset recovery by establishing a framework for the declaration and tracking of assets owned by public officials. This framework requires public officials to declare their assets, thus creating a foundational benchmark for detecting illicit enrichment. This process of asset declaration reinforces the presumption of illegal acquisition of assets under the Anti-Corruption Act, helping identify discrepancies between a public officials' wealth and their lawful earnings. Furthermore, the Act mandates periodically disclosure of assets and liabilities by public officials, promoting transparency and accountability within the public sector.

However, over the years, the Leadership Code Act has undergone various amendments, some of which have strengthened its enforcement mechanisms, while others have diluted its effectiveness. The key amendments to the Leadership Code Act include;

Prohibiting the declaration of assets belonging to spouses and beneficiaries. Originally, the Leadership Code Act Cap 168 of 1992 required public officials to not only declare their assets but also those held by their nominees including spouses and children.⁵⁹ The Act defined a “nominee” to include a person whose decisions or acts are such that they are, in essence, made or done by the leader himself or herself or the person who manages and controls the business or affairs of which the leader is the principal beneficiary. This provision was crucial in preventing officials from hiding illicitly obtained wealth by registering it under a family member's name.

⁵⁷ Sections 74, 86, 89 and 95

⁵⁸ Ibid

⁵⁹ Section 5 (1) Leadership Code Act Cap 168

However, in 2002 the Act was amended to exclude independently owned assets of spouses and beneficiaries from mandatory disclosure. This amendment created a significant loophole, allowing corrupt officials to evade scrutiny by transferring illegally acquired assets to their spouses and children. A notable example is Christopher Obey who reportedly acquired properties in various locations, such as Kampala, Jinja, and Lyantodde, and registered them in the names of his infant children, effectively shielding the property from public scrutiny.⁶⁰

The Act was further amended to foster access to information. Under the 1992 Act, information provided in asset declaration by public officials was classified as protected information. Access to this information was limited to specific authorities such as, the Inspector General of Government, the Auditor General, the Inspector General of Police and senior law enforcement officials, or through a court order.⁶¹ In 2002, this provision was amended to allow the contents of a declaration made under the Code to be treated as public information and accessible to members of the public upon application to the IGG.⁶² Additionally, this provision has been reinforced by allowing applicants whose applications have not been granted to access the declaration to apply to the Leadership Code Tribunal for redress.⁶³ This amendment represented a significant step towards greater transparency, enabling citizens to play an active role in scrutinizing the wealth of public officials.

These amendments reflect a mixed legacy for the Leadership Code Act, highlighting both progress in fostering transparency and accountability and the challenges posed by the weakening of certain provisions designed to combat corruption. While reforms enhancing public access to asset declarations have contributed to improved oversight, loopholes like the exclusion of spousal and beneficiary assets continue to hinder the full realization of the Act's objectives.

2.4.4 Access to Information Act, Cap. 95

Access to information is a fundamental human right, enshrined in law to ensure that every citizen can access records and information held by the state or any public authority.⁶⁴ This

⁶⁰ Supra Note 28

⁶¹ Section 7 (1) Leadership Code Act Cap 168

⁶² Section 11(1) Leadership Code Act Cap 33

⁶³ Section 11(7)

⁶⁴ Article 41(1) 1995 Constitution of the Republic of Uganda

right is essential for fostering transparency, accountability, and good governance. Every citizen is entitled to access information with only a few exceptions, such as when the disclosing of such information would prejudice national security, threaten the sovereignty of the State, or infringe on an individual's right to privacy.⁶⁵

Importantly, the reasons why a person seeks information should not influence their right to access it, nor should the interpretation of those reasons by information officers.⁶⁶ The duty of information officers is to facilitate access, ensuring that citizens can exercise this right without unnecessary hindrance.⁶⁷

Access to information applies to all information and public records of Government ministries, departments, local governments, statutory corporations and bodies, commissions and other Government organs and agencies unless specifically exempted.⁶⁸ The Access to Information Act reinforces this principle by making certain type of information such as declaration of assets by public officials accessible to the public. By doing so, it promotes transparency, especially in areas where accountability is critical, such as the management of public resources and the fight against corruption.

Through the provisions of the Act, citizens are empowered to request and scrutinize information related to declared assets, assets recovered through anti-corruption efforts, and the overall progress of asset recovery initiatives. This transparency allows citizens to hold institutions, particularly those involved in asset recovery, accountable for their actions. The access to such information ensures that the public can monitor how effectively the government is enforcing anti-corruption measures, including tracking wealth accumulated by public officials and ensuring that assets recovered from corrupt individuals are properly handled.

2.4.5 Public Finance Management Act Cap 171

In 2003, as part of a series of public finance reforms, Uganda initiated the implementation of the Integrated Financial Management System (IFMS). This system was designed to provide

⁶⁵ Section 4(1) Access to Information Act, Cap 95

⁶⁶ Section 5 *ibid*

⁶⁷ Section 12 (1) *ibid*.

⁶⁸ Section 3(1)

centralized oversight of public institution accounts and to combat corruption. The introduction of the Public Finance Act, 2003, later amended by the Public Finance Management Act (PFMA), aimed to create a more robust framework for managing public funds, enhancing accountability, and strengthening the fight against corruption.⁶⁹ The Act outlines several key provisions:

The PFMA assigns the responsibility for the management and oversight of both physical and monetary assets to the Accounting Officer of each public entity.⁷⁰ This role involves maintaining an accurate inventory of all assets assigned to the entity, ensuring that detailed records are kept and regularly updated.⁷¹ By doing so, the Act seeks to create transparency in how public assets are managed and to prevent mismanagement or misappropriation.

The PFMA establishes the Consolidated Fund as the primary repository for all government revenues.⁷² This fund is critical for the centralized management of public finances and is regulated by the Act to ensure its proper administration.⁷³ Any funds recovered from corrupt activities, including proceeds from seized or identified assets linked to corruption, are deposited into this fund. The oversight of the Consolidated Fund is a vital element in ensuring that recovered public assets are effectively managed and redirected for public use.

To safeguard the integrity of public finances, the PFMA mandates regular internal audits of public accounts.⁷⁴ These audits serve as an essential tool for detecting irregularities, uncovering potential corruption, and identifying any misallocation of funds. By scrutinizing financial statements, public officials are held accountable for discrepancies, and these audits often trigger asset recovery processes where funds have been improperly used. The Auditor General is required to submit an audit report and the Minister a treasury memorandum to Parliament, facilitating transparency and enabling further investigations into cases of financial

⁶⁹ Grace Atwongyeire (2019) *Syndicate Corruption in Public Finance Management: Dynamics, Vulnerabilities and Possible Strategies: A Case Study of Central Government of Uganda*

⁷⁰ Section 32 (1) PFMA Cap 171

⁷¹ Section 32 (3)

⁷² Section 28

⁷³ Ibid

⁷⁴ Sections 46, 47, 48 and 49

mismanagement or corruption.⁷⁵ This reporting mechanism plays a critical role in driving asset recovery and enforcing accountability in public financial management.

2.4.6 Mutual Legal Assistance Guidelines

Mutual Legal Assistance (MLA) refers to the cooperation between countries in gathering and exchanging information, evidence, and judicial documents, as well as conducting searches, seizures, and other actions necessary for effective legal proceedings.⁷⁶ It plays a crucial role in facilitating international collaboration in criminal matters, particularly in cases involving asset recovery across borders. In Uganda, the government, through the Office of the Director of Public Prosecutions (ODPP), has adopted Mutual Legal Assistance Guidelines as interim measures to streamline this process. The primary agencies responsible for implementing these Guidelines are the Attorney General's Chambers, the ODPP, and the Ministry of Foreign Affairs. The Guidelines cover a broad spectrum of legal and procedural issues, including: propriety of MLA, confidentiality of MLA, collateral use, authentication of documents, transmission of a request, timescales within which to execute MLA, urgent requests, cost of executing requests to be borne by requesting state, communication between central authorities after the submission of the request, linked request, postponement of execution of a request and, refusal to execute requests.

In addition, the Guidelines detail the types of assistance that Uganda offers under MLA, which include: service of documents; provision or production of documents, records, items or other materials; taking of a statement or testimony of witnesses; hearings through visual-audio link; attendance of witnesses in the requesting state; personal attendance of prisoner; transit of prisoners; search and seizure; interception of communications; covert electronic surveillance; preservation of communications data; and identification, tracing, asset recovery, freezing, confiscation and seizure of the proceeds and instruments of crime. These

⁷⁵ Sections 50 and 51

⁷⁶ Mutual Legal Assistance. E4J University Module Series: Organised Crime. Module 11: International Cooperation to Combat Transnational Organised Crime. United Nations Office on Drugs and Crime. Available at: <https://www.unodc.org/e4j/en/organized-crime/module-11/key-issues/mutual-legal-assistance.html#/top>

comprehensive measures aim to strengthen Uganda's capacity to engage in effective international collaboration, particularly in asset recovery and fighting transnational crime.

2.5 Institutional Framework

Uganda's institutional framework for asset recovery involves a network of government agencies, the judiciary, financial intelligence units, and civil society. The combined efforts of these institutions form a comprehensive approach to investigating, prosecuting, and recovering assets derived from corruption, with increasing attention to cross-border collaboration and legal reforms. They include: -

2.5.1 Anti-Corruption Division (ACD)

The Anti-corruption Division was established in July 2008 as a circuit of the High Court. It was established as a specialized division to prosecute and adjudicate upon corruption and corruption-related cases. The main objective of the ACD was to provide a well-structured mechanism for handling corruption cases based on merit, speed, efficiency and fairness. Judges assigned to the ACD are selected based on their expertise in economic crimes, ensuring they possess the knowledge required to handle cases involving fiscal evidence and technicalities of corruption. The ACD is empowered by law to issue recovery orders upon the conviction of individuals involved in corruption. The court has handled numerous high profile corruption cases, such as, and some of the some of the notable ones involving the recovery of large amounts of money include *Uganda vs Godfrey Kazinda*, *Uganda v Sundus Exchange* and others, and *Uganda vs Jimmy Lwamafa, Christopher Obey, Kiwanuka Kunsu and Bob Kasango* recovering large sums of public funds.

His Lordship Lawrence Gidudu, the Head of the Anti-Corruption Division, emphasized the court's steadfast commitment to convicting corrupt individuals and the recovering of assets.⁷⁷ He noted that the court advises state actors, such as the Directorate of Public Prosecutions (DPP), to conduct parallel investigations targeting corruption and related offences like money

⁷⁷ Supra Note 28

laundering.⁷⁸ This approach allows assets to be frozen under anti-money laundering laws, enhancing the likelihood of successful recovery.

The ACD has played a key role in the fight against corruption by issuing freezing orders to prevent the dissipation of assets and confiscation orders for the recovery of stolen funds. For example, in *Uganda v. Sundus Exchange and others*, the court uncovered a money-laundering scheme, leading to asset freezes that prevented further misuse of corrupt funds.⁷⁹

2.5.2 Directorate of Ethics and Integrity (DEI)

The Directorate of Ethics and Integrity (DEI), established under Article 99(4) of the Constitution of the Republic of Uganda, operates within the Ministry of Ethics and Integrity. It was set up in 1996 and fully operational by 1998, with the mission to lead the national dialogue on ethics, integrity, and anti-corruption. Its core objectives include coordinating the fight against corruption nationwide, steering the development of ethical policies and strategies, and ensuring transparency and accountability in governance.

In December 2019, the Government of Uganda launched the Zero Tolerance to Corruption Policy (ZTCP) and the National Anti-Corruption Strategy (NACS), with the DEI taking a leading role. to combat the increasing complexity of corruption in the country. The DEI oversees the alignment of NACS activities with Zero Tolerance to Corruption Policy (ZTCP) objectives, including monitoring the implementation of anti-corruption programs and ensuring that Uganda's legal framework aligns with global standards for fighting corruption.

The Directorate of Ethics and Integrity (DEI) has also been instrumental in development of the Proceeds of Crime Bill which provides for the efficient management and disposal of recovered assets, along with outlining procedures for civil asset recovery.⁸⁰ It also addresses instances where the accused individual would not be subjected to criminal prosecution due to circumstances such as death, legal immunity, or fleeing jurisdiction. The bill is intended to improve the seizure, management, and disposal of assets linked to criminal activities,

⁷⁸ Ibid

⁷⁹ HCMA No. 27 of 2018

⁸⁰ Interview by Ms. Ruth Namirembe Olijio – Directorate of Ethics and Integrity

including corruption.⁸¹ Legal gaps identified in high-profile cases, such as Obey Christopher, where perishable goods like rice lost their value during asset recovery, have highlighted the importance of robust legal frameworks.

The DEI also ensures the legal landscape remains current, advocating for the formulation of Confiscation and Recovery Rules under Section 73 of the Anti-Corruption Act to facilitate smoother asset recovery operations.

2.5.3 Office of Inspector General of Government (IGG) and Asset Recovery Unit (ARU)

The Inspectorate of Government is established by law as a semi-autonomous public office tasked with investigating corruption and abuse of office, especially in public service.⁸² It plays a critical role in investigating corruption-related offences and, upon completion of investigations, can either address the matter administratively or recommend the case for prosecution.

In 2016, the IGG established the Asset Recovery Unit (ARU) to lead efforts in recovering illicit properties. The ARU takes charge of enforcing recovery orders and negotiating voluntary agreements with individuals to recover stolen assets. Its work complements the prosecution of corruption cases by focusing on the financial recovery aspect and ensuring that the benefits of corrupt practices are returned to the state.

2.5.4 Directorate of Public Prosecution (DPP)

The DPP is established as the prosecutorial body to conduct and represent government and public interests in criminal prosecution. It has the duty to institute criminal proceedings against any person or authority in any court with competent jurisdiction other than the court martial and to take over and continue any criminal proceedings instituted by any other person or authority.⁸³ Corruption being a criminal offence, falls within the ambit of transgressions prosecuted by the DPP. The DPP also plays a complementary role to other agencies in

⁸¹ Ibid

⁸² Sections 2, 7 (1) and 12 (1) (a) Inspector General of Government Act

⁸³ Article 120 (3) (b) and (c) Constitution of the Republic of Uganda

enforcing the Anti-Corruption Act. Where prosecution is recommended and sanctioned by the IGG, the DPP initiates and conducts the criminal proceedings.

The asset recovery role of DPP is executed by the Asset Recovery Division and the International Cooperation and Asset Recovery Unit (ICAR). According to Ms. Anette Namatovu, the conviction-based framework clearly defines the role and responsibilities of the Asset Recovery Division (ARD), following a successful prosecution. This statutory framework provides a transparent procedural pathway, significantly enhancing the ARD's capacity to fulfill its mandate on behalf of the state while ensuring it operates within its legally prescribed powers.

The ICAR unit plays a crucial role in cross-border asset recovery efforts. It collaborates with international partners to enforce mutual legal assistance agreements, facilitate extradition, and manage the prosecution of international corruption offences. ICAR ensures that Uganda's legal framework is equipped to handle extra-territorial offences and foster international cooperation, thereby strengthening the country's ability to recover assets hidden abroad.

2.5.5 Finance Intelligence Authority (FIA)

The Financial Intelligence Authority is established by the Anti-Money Laundering Act to detect, prevent, and combat money laundering.⁸⁴ Its objectives are to provide recommendations and strategies to improve the identification of the proceeds of crime and the combating of money laundering; to make certain that the provisions of the Anti-Money Laundering laws and regulations are fully complied with; to create public awareness and understanding of matters related to money laundering; and to facilitate access to information across competent authorities charged with the duty to facilitate the administration and enforcement of the law. It also cooperates with domestic and international organizations to share information and enhance efforts to recover proceeds of crime.⁸⁵

⁸⁴ Section 18 Anti Money Laundering Act

⁸⁵ Section 19

His Lordship Lawrence Gidudu highlights the high volatility of assets involved in corruption, noting that they are often swiftly transferred and spent through money laundering schemes to create the illusion of legitimacy.⁸⁶ Consequently, key players in combating money laundering, such as the Financial Intelligence Authority (FIA), must be actively involved in the process of recovering assets derived from corruption-related crimes. The FIA collaborates with global organizations such as the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), the Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA) and the Egmont Group, which ensures that Uganda adheres to international standards in asset recovery and money laundering prevention.

2.5.6 Financial Institutions

Financial institutions play a pivotal role in both enabling and preventing the laundering and disguising of illicit assets. As gatekeepers of the financial system, they are crucial to both preventive measures and active asset recovery initiatives. Section 3 of the Financial Institutions Act Cap 57 defines a financial institution as “A company licensed to carry on or conduct financial institutions business in Uganda and includes a commercial bank, merchant bank, mortgage bank, post office savings bank, credit institution, a building society, an acceptance house, a discount house, a finance house or any institution which by regulations is classified as a financial institution by the Central Bank”.

Financial institutions are legally mandated to comply with Anti-Money Laundering (AML) and combating Corruption and the Financing of Terrorism (CFT) frameworks. As part of this obligation, they must freeze any account upon the direction of the Central Bank if there is reasonable suspicion that the funds held in the account are proceeds of crime.⁸⁷ This measure is a key part of preventing the flow of illicit funds and ensuring that financial institutions do not become conduits for money laundering or the financing of criminal activities.

Financial institutions are responsible for conducting Customer Due Diligence (CDD) by requiring and recording proof of identity from all clients or customers, whether regular or

⁸⁶ Supra Note 28

⁸⁷ Section 118 Financial Institutions Act Cap 57

occasional, when establishing business relationships or carrying out transactions.⁸⁸ This includes activities such as opening accounts, issuing passbooks, entering into fiduciary transactions, renting safe deposit boxes, or conducting large cash transactions.⁸⁹ These records are vital for tracing the origins of illicit funds and supporting investigations into corruption.

Additionally, financial institution officials including directors, officers, and employees are obligated to promptly report any suspected money laundering activities associated with accounts held at the institution to the appropriate national law enforcement agencies.⁹⁰ In asset recovery, financial institutions play a critical role by providing data that can help locate hidden assets and map out the flow of illicit funds. Information sharing between financial institutions and regulatory bodies aids law enforcement in the identification, seizure, and recovery of illegally obtained assets.

2.5.7 Civil Society organisations (CSOs)

Civil society, including non-governmental organizations (NGOs) and the media, play an essential role in monitoring and oversight of government agencies involved in asset recovery. CSOs provide a public accountability mechanism, ensuring that institutions like the FIA, IGG, and DPP are held to their mandates. They also advocate for legal reforms, raise public awareness of corruption's impacts, and push for a stronger national focus on anti-corruption measures.

CSOs are key in promoting transparency, monitoring asset misuse, and raising awareness among the public through campaigns that highlight the importance of asset recovery and the fight against corruption.

⁸⁸ Section 129 (1) (a)

⁸⁹ Ibid

⁹⁰ Sections 129 (1) (b) and 130

CHAPTER THREE

MECHANISMS FOR ASSET RECOVERY

3.0 Introduction

Asset recovery mechanisms are essential to ensure that stolen or misappropriated assets are recovered and returned to governments or institutions that have suffered losses. Various mechanisms exist to facilitate asset recovery, ranging from criminal and civil legal procedures to administrative measures. These mechanisms often depend on both the nature of the offence and the legal framework of the jurisdiction involved. While criminal proceedings are the most common path to recovering assets, civil procedures are also critical tools in cases where prosecution may be challenging. Additionally, tools like cross boarder asset recovery and parallel financial investigations have become integral to identifying and recovering stolen assets. Each stage of the asset recovery process, from investigation and asset tracing to enforcement and repatriation plays a vital role in ensuring that illicit gains are recovered and returned.

3.1 Conviction Based Recovery

This mechanism lays a foundation for recovery and is often used as an ideal first option for asset recovery efforts.⁹¹ Conviction-based recovery is classified as an *In-personam* action or criminal charge against a person.⁹² Conviction-based recovery applies where there is a conviction for any criminal offence.⁹³ It involves prosecuting and securing a criminal conviction against an individual, and through this process, assets obtained as a result of illegal activities are identified, frozen, and ultimately recovered.

According to Mr. Daniel Achato, the Supervisor Asset Recovery Unit, Office of the IGG, the process of Conviction-based recovery follows a structured pathway to wit; receiving a complaint, conducting investigations, preserving the illicit assets, sanctioning the file for prosecution to institutes criminal proceedings by the DPP, conducting the criminal trial, and issuing and executing recovery orders where the court makes an order as to compensation.

⁹¹ Andrew Dornbierer, (2024) Asset recovery legislation - Best Practices (Basel Institute on Governance)

⁹² Lilian William Kafiti, MECHANISMS OF CONFISCATION 2020

⁹³ Common Law Legal Systems Model Legislative Provisions on Money Laundering Part V

The Asset Recovery Unit (ARU) of the IGG has the duty to execute the orders and ensure that the assets are returned to the government.

In practice, conviction-based recovery is often the most straightforward mechanism for asset recovery but is also resource-intensive. It requires substantial evidence, successful prosecution, and a strong legal framework to ensure that the convicted individual can be held accountable for their illicit actions. Furthermore, the process can be slowed by legal challenges, appeals, or difficulties in identifying and freezing assets before they can be hidden or transferred.

Despite these challenges, conviction-based recovery remains a vital tool for combating corruption and financial crimes in Uganda. The case of Uganda vs Geoffrey Kazinda, a former principal accountant in the Office of the Prime Minister, serves as a notable example of the success of conviction-based recovery. In this case, approximately UGX 4 billion in assets that had been misappropriated through fraudulent schemes was recovered.

Mr. Achato notes that while conviction-based recovery is fundamental, it is often considered the lowest form of recovery used by the IGG, as it is dependent on securing a conviction. This method is less flexible in situations where the accused flees the jurisdiction, dies, or benefits from legal immunity. Nonetheless, it provides an essential legal foundation for recovering assets and deterring future corrupt activities by holding offenders accountable through the judicial process.

3.2 Non-conviction-based recovery (NCB)

Non-conviction-based (NCB) recovery is a mechanism that allows for the confiscation of assets, including the proceeds of corruption, without securing a criminal conviction.⁹⁴ NCB focuses on the illicit nature of the assets rather than the criminal conduct of the individual.⁹⁵ NCB recovery is a mechanism used globally in jurisdictions such as Ireland, South Africa, the United States, and the United Kingdom thus establishing a non-conviction robust legal framework for asset recovery. NCB proceedings provide a strategic option for ensuring that

⁹⁴ Oldfield, J. (2024) The effectiveness of non-conviction-based proceedings in asset recovery

⁹⁵ Ibid. p. 3

illicit assets are recovered, and government is restituted from the loss caused, other than a conviction.

Given their civil nature, NCB proceedings require a lower standard of proof than in criminal trials. In criminal proceedings, the standard of proof is "beyond a reasonable doubt," which makes securing a conviction difficult, particularly in complex corruption cases. In contrast, NCB recovery relies on the "balance of probabilities" standard, meaning that the court only needs to be convinced that it is more likely than not that the assets in question are the proceeds of corruption. This lower threshold makes it easier to recover illicit assets, especially in cases where the individual has evaded prosecution or where the evidence for a conviction is insufficient.

In several jurisdictions, it is possible to enforce NCB mode or recovery even in the absence of domestic laws enabling NCB recovery. NCB asset recovery is a key tool for addressing corruption in scenarios where prosecuting the individual may be challenging, such as when the accused has fled the jurisdiction, is deceased, or benefits from immunity.

In Uganda, NCB asset recovery is primarily executed through administrative orders issued by the IGG and through settlements. Both methods allow for the recovery of assets without the need for criminal convictions and have been instrumental in curbing corruption.

1. Administrative Orders

Administrative orders are used mainly for confiscation of illicit property and restoring the government to the position it was in before the offence was committed. These orders do not require a conviction and are based on the administrative powers of the IGG. According to Mr. Daniel Achato, the primary source of NCB asset recovery for IGG has been administrative orders. He notes that this mechanism has registered the most successes in asset recovery for the institution.

He further states that while administrative orders are not explicitly envisaged under the law, the Office of the IGG derives this authority from Article 230 of the Constitution, that vests the Inspectorate of Government with the power to investigate, arrest or cause an arrest, prosecute in cases involving corruption and abuse of authority or public office, and make such

orders and give such directions as is necessary and appropriate in the circumstances.⁹⁶ When the IGG concludes that public funds have been misappropriated following an investigation, the Inspectorate of Government issues an administrative order requiring the wrongdoer to refund the misappropriated assets. These orders help recover stolen assets quickly without the prolonged legal processes of criminal trials.

2. Settlements

Settlements offer another avenue for recovering illicit assets without necessarily securing a conviction against the perpetrator. The Asset Recovery Unit (ARU) is duly empowered to engage in consent settlements on behalf of the IGG, thereby facilitating the recovery of an agreed-upon sum after an investigation of a corruption case. Settlements occur when during an investigation, the accused admits to the misappropriation of funds and agrees to refund the same. The Inspectorate of the Government and the accused then enter into an agreement to have the money refunded.

Several high-profile cases in Uganda have been resolved through settlements. For example, in *Joanita Nakityo, Andrew Byaruhanga, and Julius Ashaba in HCT-00-AC-CO-0009/2021* charges of embezzlement were withdrawn on January 24, 2022 after the accused agreed to refund a total of UGX 93,273,360 and retire from public interest. Similarly, in *Oketayot Christopher James, Bernard Okello, Fred Tamale, and David Constantine Kawuuma, HCT-00-AC-CO-0036/2021*, charges of causing financial loss and abuse of office were withdrawn after the accused refunded the stolen money.

Settlement can also take the form of plea bargains, where the accused admits to the crime and agrees to a reduced penalty in exchange for cooperation. In *Uganda v Tusiime Doreen HCT-00-AC-SC-0076/2021*, the accused pleaded guilty to embezzlement and financial damage and was ordered to pay UGX 19,8640,000 within six months as restitution, in addition to being barred from holding public office for ten years.

⁹⁶ Article 230(1) and (2)

While NCB recovery does not involve a criminal conviction, it often leads to disciplinary actions. After a settlement or an administrative order, the Inspectorate of Government sends a formal communication to the Public Service Commission, recommending the initiation of disciplinary proceedings against the individual under scrutiny. These proceedings may result in sanctions such as dismissal from public office or being barred from holding future public positions. This ensures that the wrongdoer faces consequences, even if not convicted in a court of law.

3.3 Cross-Border Asset Recovery

Cross-border asset recovery is a complex process of corruption enabled by international and regional legal frameworks designed to combat corruption and ensure the return of illicitly acquired assets across jurisdictions. The UNCAC and AUCPCC provide that member states should have laws that facilitate mutual legal assistance to make cross-border recoveries possible.⁹⁷ State parties are encouraged to have bilateral mutual legal assistance agreements for the enforcement of cross-border-asset-recovery.

Under these conventions, member states are also encouraged to enter into bilateral MLA agreements to streamline cooperation and enforcement of foreign asset recovery orders. Such agreements help to ensure that assets held in foreign jurisdictions can be traced, frozen, and eventually returned to the rightful governments, without being hindered by differences in legal systems.

The significance of MLA agreements lies in their ability to overcome jurisdictional challenges. These agreements enable states to execute foreign court orders, conduct joint investigations, and share evidence across borders, which is crucial in dealing with corruption cases involving international financial flows.

Key Tools for Cross-Border Asset Recovery

Several tools and practices aid in the process of cross-border asset recovery, including:

⁹⁷ Article 18(1) AUCPCC and Article 59 UNCAC

1. Mutual Legal Assistance (MLA) Requests. Formal requests made by one country to another to obtain evidence or assistance in asset recovery, such as freezing bank accounts or seizing property.
2. Financial Intelligence Units (FIUs). Agencies such as Uganda's Financial Intelligence Authority (FIA), which monitor financial transactions and flag suspicious activity. FIUs play a key role in tracing illicit assets in foreign jurisdictions.
3. Asset Freezing and Forfeiture. Cross-border asset recovery often begins with freezing assets to prevent their dissipation. After gathering sufficient evidence, the assets are forfeited through judicial processes.
4. International Collaboration. Uganda benefits from collaborative efforts with international organizations such as INTERPOL, World Bank Stolen Asset Recovery (StAR) Initiative, and Egmont Group, which help trace and recover assets across borders.

3.4 Parallel Investigations

The Financial Action Task Force guidelines (FATF) require that in all major cases involving proceeds-generating offences, such as corruption, money laundering, predicate offences and terrorist financing, the designated law enforcement authorities should develop a proactive parallel financial investigation.⁹⁸ A 'parallel financial investigation' refers to conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation.

In Uganda, the Inspectorate of Government (IGG) has adopted parallel investigations as a key strategy for cross-border asset recovery. Mr. Daniel Achato, Supervisor of the Asset Recovery Unit (ARU) at the IGG, highlighted the importance of this approach during an interview. He explained that parallel investigation in Uganda involve "following the money" which includes financial profiling, enhanced due diligence, and transaction monitoring. These investigations are designed to trace the financial flows related to corruption, money laundering, and other offenses, often revealing multiple crimes, such as tax evasion.

⁹⁸ FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatfgafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html

His Lordship Lawrence Gidudu has also emphasized the value of parallel investigations, urging the ACD frequently encourages the DPP to conduct parallel investigations alongside criminal probes. He noted that by doing so, the DPP can uncover additional offences like money laundering, which often occur alongside corruption.

CHAPTER FOUR

PROCEDURES AND CHALLENGES IN ASSET RECOVERY

4.0 Introduction

Asset recovery is a critical component of the fight against corruption, organized crime, and money laundering in Uganda. As observed, it involves tracing, identifying, seizing, and returning assets that have been unlawfully obtained through corrupt practices or financial crimes. Uganda, like many other countries, has established legal frameworks and institutions to address this issue. Despite these efforts, the asset recovery process faces several challenges, ranging from complex financial networks and legal loopholes to insufficient resources and international cooperation issues. This section explores the key procedures involved in asset recovery in Uganda, including intelligence gathering, asset tracing, and legal proceedings, while also examining the significant challenges that impede successful asset recovery efforts in the country.

4.1 Procedures

The process involves several key procedures, each essential to ensuring that assets obtained through unlawful means are identified, recovered, and properly managed. The following outlines the procedures involved in asset recovery.

1. Intelligence and investigation

The initial phase of asset recovery necessitates the gathering of intelligence and conducting of thorough investigations to trace illicitly acquired assets. This process is imperative for comprehending the extent of corrupt misconduct and identifying the assets that are obtained as a result of this conduct. Intelligence gathering entails the utilization of diverse information sources, including;

- financial records where banks and financial institutions provide transaction data that helps trace the flow of funds.
- whistleblowers' testimonies where individuals with insider knowledge may provide critical information about corrupt activities.

- cooperation with international bodies especially in cross-border cases that may provide crucial leads.

Upon receipt of intelligence, the relevant authorities such as the IGG conduct in-depth investigations. These investigations aim to scrutinize the financial activities of the individuals under suspicion, identify the movement of illegal funds, and establish connections between the corrupt acts and the assets in question.

2. Identification of assets

Upon the collection of adequate evidence and intelligence, the focus shifts towards the identification and location of the specific assets linked to the corrupt activities. This process involves Asset Tracing, wherein investigators employ forensic accounting techniques and asset tracing methodologies to trace the movement and current location of the assets. This encompasses;

- reviewing financial records where Investigators examine bank accounts, property holdings, and investments.
- forensic analysis through specialized accounting methods that are used to follow the financial trail from corrupt activities to assets.
- establishing ownership where Investigators confirm who owns or controls the assets, which may be hidden under the names of third parties or shell companies.

In cases where the Inspector General of Government (IGG) has reasonable grounds to believe that essential documentation exists to substantiate the nature of the asset, an application may be made for a search and seize order. Upon confirmation that the asset are proceeds of corruption, a restraining order is issued, to prevent the individual from dealing with the asset, securing it until recovery is complete.⁹⁹

3. Instituting proceedings for conviction-based recovery

Where there is adequate evidence to support the allegation of corruption against the individual, the Inspector General of Government (IGG) prepares a case file and submits it to

⁹⁹ Section 53 ACA

the Director of Public Prosecutions (DPP), recommending that criminal charges be preferred against the said individual.

In conviction-based recovery, the prosecution must prove beyond a reasonable doubt that the individual committed the criminal act of corruption and that the assets in question were obtained as a result of this act. The court then tries the accused individual, and if found guilty, a compensatory or recovery order is issued for the assets.

Alternatively, in cases where the accused admits guilt and reaches a settlement with authorities, the IGG may issue an administrative order to recover the illicitly obtained property without the need for a full trial. This allows for a quicker recovery of assets.

4. Execution of compensatory orders and asset recovery

Once a conviction is secured and a court issues a compensatory order, the process of executing that order begins. According to His Lordship Lawrence Gidudu, this process mirrors civil execution and enforcement procedures, as it transforms the recovery of assets into a legal debt owed to the government.

- Civil execution mechanisms: Similar to how civil debts are enforced, the judgment from the criminal case becomes enforceable through civil procedures.
- Seizure of assets: Financial or tangible assets, such as real estate or vehicles, are seized to compensate for the value determined by the court.
- Liquidation or transfer: In some cases, the confiscated assets may be liquidated, with the proceeds returned to the state or the victims of the crime. Alternatively, the asset (in this case public funds) itself may be transferred back to the government.

This process ensures that justice is served not only through the conviction of corrupt individuals but also through the restitution of unlawfully obtained wealth.

5. Finalizing Asset Recovery

Once the assets are recovered, they must be carefully managed to prevent any further misappropriation. In some cases, recovered funds may be used to benefit public services, or

in others, returned to government, such as stolen public funds being reinvested in national development projects.

4.2 Challenges

Challenges in Asset Recovery involve a range of legal, procedural, and practical hurdles that impede the efficient recovery of illicitly acquired assets in Uganda. Despite efforts to align with international standards, the existing framework faces several limitations.

1. Lack of Non-Conviction-Based (NCB) Asset Recovery Framework

One of the most significant challenges in Uganda's asset recovery process is the absence of Non-Conviction-Based (NCB) asset recovery mechanisms, which are recommended under international frameworks such as UNCAC. According to His Lordship Lawrence Gidudu and Mr. Daniel Achato, the NCB process is less cumbersome because it shifts the burden of proof to the individual whose assets are being confiscated. They must prove that the property was lawfully acquired. Unlike conviction-based recovery, which requires proof beyond a reasonable doubt, NCB uses the lower standard of balance of probabilities, making asset recovery simpler and faster.

However, without a proper legal framework to support NCB recovery, Uganda relies primarily on conviction-based recovery, which is highly litigious and complex. This legal complexity leads to case backlogs and delays in the recovery of assets. The IGG, being an administrative body, faces challenges in handling criminal prosecutions under the Anti-Corruption Act (ACA), creating overlaps between the IGG, the Director of Public Prosecutions (DPP), and the Attorney General (AG) when it comes to asset recovery enforcement.

2. Syndicated Corruption and Money Laundering

Corruption often occurs alongside money laundering making asset recovery more difficult. High profile cases such as *Jimmy Lwamafa, Christopher Obey, Kiwanuka Kunsu and Bob Kasango vs AG* demonstrate how corrupt individuals disguise their assets by registering properties in the names of family members, shell companies, or through insurance schemes.

His Lordship Lawrence Gidudu stresses the need for stringent money laundering laws. Money laundering not only facilitates corruption but also allows criminals to hide and move assets across borders, making asset recovery nearly impossible without advanced legal tools and cooperation between nations.

3. Asset Depreciation

A critical challenge in asset recovery is the depreciation of seized assets. At the time a recovery order is issued following rigorous prosecution, the value of these assets may have diminished due to market fluctuations or physical deterioration. Due to depreciation, the potentially recoverable value of the seized asset tends to fall short of the amount awarded in the court's order. Ms. Annet Namatovu highlights that to mitigate this risk, the ARD has sought to implement interim sale orders, allowing for the sale of identified assets during ongoing legal proceedings. This proactive strategy aims to preserve asset value and ensure that proceeds are collected promptly. However, the lack of clear legal provisions for such interim sales complicates the process, making it difficult for the ARD to secure these orders from Judges who may be reluctant to act in the absence of a clear legal provision.

4. Presidential pardons

In August 2023, Jimmy Lwamafa, along with several others, received a presidential pardon despite having been convicted in two cases involving a scam that resulted in significant financial loss. Similarly, on October 4, 2024, John Muhanguzi Kashaka, who was convicted for causing a financial loss amounting to approximately 4.2 billion shillings, was also granted a presidential pardon. The issuance of such pardons presents a considerable challenge to the asset recovery process, frequently disrupting enforcement efforts and leading to inconsistencies in application. This situation prevents the state from effectively enforcing recovery, raising critical concerns about the fairness and integrity of the recovery process and the safeguarding of state interests. There is an urgent need to clarify the impact of presidential pardons on asset recovery, particularly given that blanket pardons can hinder enforcement actions, even in cases where court orders for recovery have been issued.

5. Appeals and objector proceedings

Objector proceedings add layers of complexity to the asset recovery process. These proceedings allow third parties, such as spouses or business associates of the accused, to challenge the attachment of assets which are subject to recovery orders. In the Kunsas case, for instance, objections raised by the spouse hindered the timely attachment of assets, creating substantial obstacles for the Asset Recovery Division. These delays not only extend the duration of the recovery process but also afford the accused additional opportunities to dissipate their resources or contribute to further depreciation of the assets in question.

Appeals prolong the recovery timeline by extending the duration within which asset recovery efforts would have been taken. As cases move through the appellate courts, the resolution of recovery orders is delayed, prolonging the time it takes for the state to reclaim illicitly obtained assets. During this period, assets are depreciated/ devalued, and it also creates an opportunity to dissipate the assets.

• 6. Resource Limitations

The process of asset recovery is resource-intensive, requiring substantial funding for investigations, intelligence gathering, and witnesses. His Lordship Lawrence Gidudu notes that perpetrators of corruption cases have at their disposal enough resources to help them move and disguise the proceeds of crime. To counter this, the Asset Recovery Unit under the IGG is under-resourced and understaffed. The current structure, which envisages seven (7) members including the Head of Asset Recovery, the Supervisor, the Senior Officer and 4 Investigation Officers is not fully fledged, limiting the unit's ability to handle cases effectively across the country.

• 7. Weak legal framework and coordination

Uganda's legal framework for asset recovery remains underdeveloped. The Proceeds of Crime Bill, which aims to address existing gaps, has faced criticism and delays. According to His Lordship Lawrence Gidudu and Ms. Ruth Namirembe, introducing specific laws targeting proceeds of crime would make asset recovery clearer and more efficient. The absence of both

substantive and procedural laws hampers the judiciary's ability to enforce asset recovery and confiscation orders.

Moreover, coordination among key players, such as the DPP, IGG, and AG, is often challenging. The involvement of multiple agencies leads to jurisdictional disputes, especially regarding who has the authority to enforce judgments related to asset recovery.

- **8. Lack of a Unified Digital Platform for Information Sharing**

Efficient asset recovery requires strong inter-agency cooperation, particularly in the sharing of financial and legal data. However, in Uganda, there is no unified digital platform that links key institutions such as NIRA, URA, URSB, Land Registry and financial institutions. Each of these data collectors has developed an independent system that does not allow other stakeholders to tap into their systems. His Lordship Lawrence Gidudu highlights that the lack of real-time information sharing enables corrupt individuals to quickly move assets out of the jurisdiction, making recovery even more challenging. Although the Bank of Uganda has supervisory roles over financial institutions, it does not have the authority to access digital platforms of private banks due to the privacy laws and lack of a legal mandate, relying instead on voluntary reporting from banks.

- **9. Cross Boarder Asset Recovery Challenges**

Despite the framework provided by UNCAC and AUCPCC, cross-border asset recovery faces significant challenges, including differences in legal systems, bureaucratic hurdles, and issues of sovereignty. Recovering assets located in foreign jurisdictions often requires lengthy legal processes and cooperation from multiple stakeholders, including foreign governments and financial institutions. Countries must also navigate conflicting legal standards and the reluctance of some jurisdictions to share financial information, especially where banking secrecy laws exist. Furthermore, some assets may be transferred through multiple countries, adding layers of complexity to the recovery process. Identifying and tracking these assets demands sophisticated investigative techniques and strong international cooperation.

According to His Lordship Lawrence Gidudu, mutual legal assistance often fails due to the lack of cooperation from foreign countries. A case in point is when the late BOU Governor

Emmanuel Tumusiime Mutebile forwarded a request to the Governor of the Bank of Tanzania to flag an account suspected of holding proceeds of crime. Instead, Tanzania treated the suspicious funds as a foreign domestic investment in the education sector, highlighting the reluctance of some countries to return assets to their country of origin. Such incidents of lack of cooperation across borders make cross-border asset recovery difficult. Countries receiving the proceeds of crime are often unwilling to cooperate, preferring to benefit from these illicit investments, thus complicating cross-border asset recovery efforts.

- **10. Technology and Digital Challenges**

The increasing use of advanced technology and artificial intelligence (AI) by perpetrators poses significant challenges to asset recovery. Criminals now use sophisticated methods to launder money and hide illicit assets, making them harder to trace. The use of digital platforms, cryptocurrencies, and anonymous banking systems enables criminals to move money undetected across borders. Without the technological capability to track these transactions, law enforcement agencies are left at a disadvantage. Uganda's legal system and its asset recovery institutions currently lack the advanced tools required to keep up with the evolving digital landscape of financial crimes.

- **11. Judicial Discretion in Compensatory Orders**

The courts retain significant discretion in issuing compensatory orders. In some cases, it may be detrimental if the amount awarded by the court is less than the actual value of assets lost through corruption. This can undermine asset recovery efforts, as it leaves a gap between what was intended to be recovered and what is actually obtained. Additionally, perpetrators often move their assets out of the court's jurisdiction before an order can be enforced, making it difficult to attach property and execute compensatory orders.

CHAPTER FIVE

COMPARATIVE ANALYSIS

5.1 Kenya

Kenya's legal framework recognises both conviction and non-conviction-based asset recovery to combat corruption and recover proceeds from criminal activities. All assets recovered through either method are deposited into the consolidated fund, ensuring that recovered proceeds benefit the state. This process is regulated by several laws, notably the Anti-Corruption and Economic Crimes Act which provides that any funds, asset, or property, whether movable or immovable, recovered either in the course of or upon conclusion of investigations or upon commencement of court action or proceedings, whether such proceedings are of a civil or criminal nature or upon conclusion of such proceedings recovered by them shall be paid into the Consolidated Fund and or surrendered to the Permanent Secretary to the Treasury.¹⁰⁰

Kenyan courts use conviction-based recovery methods like compensation orders confiscation orders upon the conviction of individuals involved in corruption. Under Kenyan law, a court that convicts a person of corruption can order them to pay compensation under section 51 of the Anti-Corruption Act. The convicted person may be required to return any assets unlawfully obtained or to pay an amount equivalent to the value of those assets.¹⁰¹ These compensation orders are enforced through civil proceedings, ensuring that victims or the state can recover stolen assets effectively.¹⁰²

Confiscation orders are another critical tool used in conviction-based recovery. The Assets Recovery Agency (ARA) has the legal mandate to apply for the grant of a confiscation order to take over all assets that are obtained as a result of a crime. The law provides that upon a defendant's conviction, the court can, on the application of the Attorney-General, ARA, or on its own initiative, inquire into any financial benefits the defendant gained from the corrupt conduct. If the court determines the defendant profited from corruption, it can impose an

¹⁰⁰ Section 56C (1) Anti-Corruption and Economic Crimes Act, Act No. 3 of 2003 Laws of Kenya

¹⁰¹ Section 54(1) (a) and (b) *ibid.*

¹⁰² Section 54(4) *ibid.*

additional order requiring payment to the government, alongside other punishments.¹⁰³ These confiscation orders help ensure that criminals are stripped of all benefits they derived from corrupt activities.

Kenya also uses non-conviction-based recovery to recover assets, a notable advantage in cases where a criminal conviction is not secured. One of these mechanisms includes the, forfeiture of unexplained assets.¹⁰⁴ Where after an investigation, the Commission is satisfied that the person has unexplained assets or the assets are disproportionate to the known legitimate sources of income of that person, the Commissioner may take out proceedings for forfeiture of the unexplained assets. This application is commenced by way of Originating Summons, a legal procedure for straightforward cases requiring minimal evidence.¹⁰⁵ Where the court is satisfied that a person has unexplained assets, acquired as the result of corrupt conduct, the court may order the person to pay to the Government an amount equal to the value of the unexplained assets.¹⁰⁶

Additionally, if a preservation order has been issued on assets suspected of being proceeds of crime, the ARA may apply for forfeiture order to permanently transfer ownership of those assets to the government.¹⁰⁷

Another non-conviction-based mode of recovery used is out-of-court settlements. The Commission has the authority to issue a notice or letter of demand to an individual suspected of corruption, allowing them to settle the claim before formal legal proceedings commence.¹⁰⁸ The Commission is then allowed to negotiate and enter a settlement with such a person against whom a suit for corruption is pending.¹⁰⁹ If a settlement is successfully reached, the Commission has to ensure that the written settlement is registered with court to ensure transparency and legal validity.¹¹⁰

¹⁰³ Section 61(1) Proceeds of Crime and Anti-Money Laundering Act, Cap 59B

¹⁰⁴ Section 55(2) Anti-Corruption and Economic Crimes Act

¹⁰⁵ Section 55(3)

¹⁰⁶ Section 55(6)

¹⁰⁷ Section 90(1) Proceeds of Crime and Anti-Money Laundering Act, Cap 59B

¹⁰⁸ Section 56B (1) Anti-Corruption and Economic Crimes Act

¹⁰⁹ Section 56B (2)

¹¹⁰ Section 56B (4)

The Kenyan regime provides mechanisms for the protection of assets during corruption investigations. The Commission can apply for a preservation order, which prohibits the transfer, disposal or dealing with property suspected of being acquired through corrupt means.¹¹¹ This order is granted ex parte (without the knowledge of the property holder) if the court finds reasonable grounds for suspicion.¹¹² In civil proceedings, similar measures are available to prevent the dissipation of assets while legal proceedings are ongoing.¹¹³

Kenya has established specialized agencies to verse asset recovery. The ARA was created under the Proceeds of Crime and Anti-Money Laundering Act. This semi-autonomous body operates under the supervision of the Attorney General and is responsible for pursuing both criminal and civil forfeiture related to proceeds of crime.¹¹⁴ The agency plays a central role in Kenya's efforts to curb corruption by recovering illicit assets and ensuring they are returned to the public through the Consolidated Fund. In conclusion, Kenya's legal framework for asset recovery is comprehensive, covering both conviction-based and civil recovery modes, supported by specialized agencies like the ARA. While Uganda is making strides with administrative and non-conviction recovery mechanisms, it still lags behind Kenya in terms of a formal civil recovery framework. However, the proposed Proceeds of Crime Law could bring Uganda's asset recovery mechanisms closer to international best practices.

5.2 Tanzania

Tanzania's asset recovery framework is focused on property identification and management of illicit assets, providing guidelines that empower authorities to effectively trace, seize, and confiscate assets obtained through criminal activities. These guidelines emphasize asset tracing and management, which are key to ensuring the preservation of value for the government or victims until the assets are fully realized.

Tanzania's asset recovery process begins with identifying and tracing illicit assets. Guideline 2 of the recovery framework focuses on asset tracing which entails determining the subject's assets, examining the benefit generated by criminal activity, and following its trail. Guideline

¹¹¹ Section 56

¹¹² Ibid

¹¹³ Section 82(1) Proceeds of Crime and Anti-Money Laundering Act

¹¹⁴ Section 53(1) ibid

2.1 further specifies the procedures and considerations to be taken into account while tracing assets that are susceptible to be proceeds of a crime.¹¹⁵ This detailed approach ensures that authorities can build comprehensive cases against individuals involved in serious offences by tracking the financial gains derived from their criminal conduct.¹¹⁶

Upon the identification of illicit assets, authorities are encouraged to search and seize any susceptible assets. Section 31 grants police officers the authority to search individuals and seize any property they reasonably believe to be tainted by criminal activities.¹¹⁷ Section 31A provides that where the Director of Criminal Investigation or Inspector General of Police has a reasonable suspicion that any person has been involved in the commission of a serious offence, they may authorize and direct a police officer of the rank of Assistant Superintendent of Police or above to freeze a bank account and seize any document from that bank or financial institution for fourteen days during which leave of the court for continued seizure and freezing shall be obtained.¹¹⁸ Such measures are crucial for preventing the dissipation of assets while investigations and legal proceedings are underway.

In contrast, Uganda faces challenges in the identification of illicit assets, which hampers asset recovery. As noted by Mr. Achato in an interview, Uganda's lack of a robust mechanism for the identification of illicit assets often results in successful investigations and prosecutions, but with no assets available for recovery, making the process less effective.

Tanzania's guidelines also provide a framework for asset management, which is recognized as a fundamental component of asset recovery. The goal is to safeguard the value of seized or confiscated assets from the time of seizure until their eventual realization, either through judicial or administrative orders. This focus on asset management helps prevent the degradation or depreciation of seized property, allowing the government to benefit from the value of recovered assets once legal proceedings are complete. This aspect of Tanzania's asset

¹¹⁵ Asset Forfeiture, Recovery and Management Guidelines, 2023

¹¹⁶ Guideline 5.0 *ibid.*

¹¹⁷ Section 31(1)

¹¹⁸ Section 31A (1)

recovery regime is designed to ensure the highest possible returns from recovered property while reducing administrative costs.

Tanzania's asset recovery framework emphasizes conviction-based recovery, where the confiscation of assets follows a criminal conviction.¹¹⁹ The law provides for various forms of confiscation to include forfeiture of tainted property, forfeiture of property of corresponding value, or the issuance of a pecuniary penalty order. The guidelines ensure that these options are applied based on the specific circumstances of each case, allowing prosecutors to maximize the financial recovery from criminal conduct.

Section 14 of the law allows the Director of Public Prosecutions (DPP) to apply for a forfeiture order after the conviction of a person involved in a serious offence. The DPP can apply for the forfeiture of assets either directly tainted by the crime or those of corresponding value.¹²⁰ The application for a forfeiture order should be made not later than 12 months after the conviction, and the court has the power to grant this order if it is satisfied that the property in question was obtained through criminal activity.¹²¹ This ensures that even after conviction, the government has ample time to recover the proceeds of crime through legal proceedings. It also allows the authorities to ensure that the financial benefits derived from criminal activities are removed from the convicted individual, preventing them from enjoying the proceeds of their crimes.

Section 21 enables courts to issue pecuniary penalty orders against individuals who have gained financially from criminal conduct, both within and outside Tanzania. Courts can assess the value of the benefits obtained from the offense and order the individual to pay an equivalent amount to the government through the Permanent Secretary in the Ministry responsible for the Treasury. This provision ensures that financial gains from crimes can be recovered, even when the direct proceeds of the crime are not available for confiscation.

Courts in Tanzania also have the authority to issue compensatory orders following a conviction. These orders require convicted individuals to compensate the government for

¹¹⁹ Guideline 4.0

¹²⁰ Section 14 (1)

¹²¹ Section 9(1) Proceeds of Crime Act, Cap 256 Laws of Tanzania

financial losses incurred due to corruption or other criminal conduct. However, as noted by Mr. Achato, while compensatory orders can provide some financial relief, they are discretionary and may not always fully account for the government's financial losses. In some cases, these orders function more as a remedy than as restitution for the government's fiscal shortfall.

In conclusion, Tanzania's asset recovery framework is robust, providing clear guidelines for asset tracing, management, and confiscation. By focusing on both the identification and preservation of assets, Tanzania ensures that criminal proceeds are recovered effectively. Conviction-based recovery is central to this framework, complemented by pecuniary penalty orders and compensatory measures. Tanzania's legal mechanisms serve as a model for asset recovery, particularly in comparison to Uganda, where gaps in asset identification and recovery procedures remain significant obstacles to effective asset recovery.

5.3 Rwanda

Rwanda's asset recovery framework sets clear guidelines of what constitutes recoverable assets, providing both conviction-based and non-conviction-based mechanisms for asset recovery. The legal framework is comprehensive, encompassing the seizure and management of assets derived from criminal activities, particularly those related to corruption and economic crimes.

Article 5 outlines the scope of recoverable assets subject to seizure. These include assets or benefits related to an offence; property or equipment used, or intended to be used in the commission of an offence; new assets derived from the integration of illicit assets with other legitimate assets (to the extent of the illicit component's value); and assets derived from

criminal proceeds that have been transformed or converted into other forms, up to the value of the criminal component. This clear definition ensures that even when illicit assets are mixed with legitimate property or converted into different forms, they remain subject to recovery. By covering transformed assets and intermingled proceeds, Rwanda's laws close loopholes that criminals might exploit to conceal or launder illicit gains.

Rwanda employs conviction-based recovery as a key mechanism to combat corruption and other related offences. The court adjudicating a criminal case involving assets subject to recovery has the mandate to issue a confiscation order upon conviction of the suspect.¹²²

The laws also recognise preventative confiscation of assets suspected to be proceeds of crime. It provides that where there are reasons to believe that an asset is related to an offence, such asset shall be seized or confiscated.¹²³ Under Article 14, provisional seizure can be applied for by the Attorney General or any authorized person, securing the assets until a final judgment is made. Such confiscated property can be deposited with the public treasury, transferred to a public entity, or transferred to any other organ as deemed appropriate by the court.¹²⁴ This preventative measure ensures that illicit assets are preserved for potential recovery, reducing the risk of asset dissipation during legal action.

Rwanda's legal system also accommodates non-conviction-based recovery. In cases where criminal proceedings are not pursued, the law provides for civil actions aimed at recovering assets.¹²⁵ This ensures that even if a criminal prosecution does not occur—due to lack of sufficient evidence for a conviction, death of the accused, or other reasons—illicit assets can still be reclaimed through civil proceedings.

The Attorney General is authorised to initiate civil action for the recovery of assets.¹²⁶ In such instances, the assets in question are subject to civil procedures, which are governed by Rwanda's civil laws. This flexibility in recovery mechanisms allows Rwanda to pursue asset recovery even in cases where traditional criminal prosecutions may face challenges.

One of the unique features of Rwanda's asset recovery framework is the time limitation for asset recovery actions. Article 12 gives the Attorney general power to take action for asset recovery within 5 years from the commission of the offence. This limitation period helps to ensure the timely recovery of assets and prevents the indefinite prolongation of recovery

¹²² Article 8 The law governing the recovery of offence-related assets No. 42/2014 of 27/01/2015

¹²³ Article 6 *ibid.*

¹²⁴ Article 9 *ibid.*

¹²⁵ Article 11

¹²⁶ Article 12 *ibid.*

proceedings. However, it also requires that authorities act swiftly in investigating and pursuing asset recovery cases to ensure that valuable time is not lost. In contrast, Uganda's legal framework does not currently set a limitation period for asset recovery. However, as noted by Ms. Ruth Namirembe, the proposed Anti-Corruption (Confiscation and Recovery Orders) Rules 2024 envisages a time limitation to proceedings for asset recovery thus aligning Uganda's practices more closely with Rwanda's.

In conclusion, Rwanda's asset recovery laws provide a comprehensive framework that includes both conviction-based and non-conviction-based mechanisms. The emphasis on asset preservation, even in cases where criminal proceedings do not occur, ensures that illicit gains are not shielded from recovery. The structured management and disposition of confiscated assets further demonstrate Rwanda's commitment to ensuring that the proceeds of crime are put to good use for the public benefit. By setting a clear time limit for asset recovery actions, Rwanda's legal framework encourages swift and decisive action, protecting the state's ability to reclaim assets derived from criminal activities.

CHAPTER SIX

CASE STUDIES

Uganda vs. Geoffrey Kazinda¹²⁷

Geoffrey Kazinda, a former Principal Accountant in the Office of the Prime Minister, was convicted on three counts of illicit enrichment contrary to Section 31 of the Anti-Corruption Act, 2009 (as amended). He had previously faced prosecuted for other corruption-related offences.

In the first count, the court found that between 2009 and 2012, the accused maintained a standard of living that was not commensurate with his known sources of income.

In the second count, the court found that between 2010 and 2012, the accused was in control and possession of three plots of land in Bukoto, Kampala worth a total value of UGX 3,657,747,500 (USD 989,540), which was disproportionate to his known sources of income. On one of these plots stood a luxurious mansion. In the third count, the court found that between 2010 and 2012, the accused was in control and possession of four motor vehicles worth a total value of UGX 769,473,835 (208,145 USD), which was also disproportionate to his known sources of income.

Kazinda's defense argued that his assets were the result of his 18 years of work in various roles, implying he had accumulated wealth over time. However, the court rejected this argument, noting that even if all of his earnings were totaled over the years—and assuming he had not spent any money on personal expenses—his assets would still far exceed what could be explained by his lawful income.

as a result, the court issued confiscation orders against the three plots of land and the four motor vehicles, concluding that these assets were the proceeds of illicit enrichment. This landmark case highlights Uganda's commitment to holding public officials accountable for unexplained wealth and misuse of public funds.

¹²⁷ (Session Case HCT-AC/CO 4 of 2016) [2020] UGHACD 3 (28 October 2020) Misc Appl. No 1261 OF 2018

Uganda vs. Lwamafa Jimmy & 2 Others¹²⁸

In a significant case of corruption and financial mismanagement, Christopher Obey (Principal Accountant), Jimmy Lwamafa (former Ministry of Public Service-Permanent Secretary), and Stephen Kiwanuka Kunsu (former Commissioner in Charge of Pensions and Compensations) were convicted on multiple charges, including, abuse of office, fraudulent false accounting, causing financial loss, diversion of public funds, and conspiracy to defraud. The offences occurred during the financial years 2010/2011 and 2011/2012

The Court found that the convicts had irregularly budgeted UGX 88.2 billion for National Social Security Fund (NSSF) contributions, which the ministry of public service does not typically budget for. Once the funds were allocated, the convicts diverted them for personal use, causing significant financial loss to the government.

His Lordship Lawrence Gidudu presided over the case and delivered the judgment in November 2016. Christopher Obey was sentenced to 10 years in prison, Jimmy Lwamafa to seven years, and Stephen Kiwanuka Kunsu to five years. In addition to their prison sentences, the court also ordered each of the convicts to pay UGX 50 billion in compensation to the government.

Uganda vs. Lwamafa Jimmy, Kiwanuka Kunsu, Christopher Obey and Bob Kasango¹²⁹

The accused Jimmy Lwamafa (former Permanent Secretary of the Ministry of Public Service), Stephen Kiwanuka Kunsu (former Commissioner in Charge of Pensions and Compensations), Christopher Obey (Principal Accountant), and Bob Kasango (a lawyer), were charged with the offence of diversion of public resources contrary to Section 6 of the Anti-Corruption Act.

The case stemmed from the 1992 IMF Adjustment and Economic Restructuring Policies, during which the government laid off 6337 civil servants. These retrenched workers instituted civil proceedings against the government seeking pension and other remedies. A consent judgment was reached, awarding UGX 7,357,283,107 as pension and 4,500,000 in damages

¹²⁸ Criminal Session Case No 9 of 2015

¹²⁹ HCT-00-ACD-SC-N0.0003/2016

to each plaintiff. In total, the government was obligated to pay UGX 15,487,040,200 to the claimant.

However, instead of disbursing the funds directly to the retrenched civil servants, the government transferred the entire sum to Hall and Partners, a law firm owned by Bob Kasango, under the pretense that it covered the firm's legal costs in the case against the government. The funds were misappropriated by the accused.

Following a trial, the court found all the accused guilty of diverting public resources. They were sentenced to various terms of imprisonment, and a compensatory order of UGX 15,487,040,198 was issued against them.

On appeal in the case of *Lwamafa and 3 Others vs. Uganda*,¹³⁰ the first two appellants, Lwamafa and Kunsu, argued that it was unlawful for the trial judge to order them to pay compensation of UGX 3,495,680,066 each when Bob Kasango had admitted to receiving the entire sum of UGX 15,487,040,198. The Court of Appeal however upheld the compensatory orders against all the appellants, holding them accountable for the financial loss.

This case underscores the severity of public resource diversion in Uganda and the judiciary's efforts to recover stolen funds through compensation orders, even in complex cases involving multiple accused parties.

Sundus Exchange & Money Transfer & 5 Ors vs. Financial Intelligence Authority¹³¹

The Applicants filed for judicial review, challenging the respondent's decision to instruct their banks to restrict or halt all withdrawals or debits from their accounts. They argued that the respondent's action was ultra vires, unlawful, irregular, unreasonable and made in contravention of the rules of natural justice. The applicants contended that, while the respondent had the discretion to freeze their accounts, it should have been based on satisfactory evidence, and they should have been given an opportunity to be heard before such action was taken.

¹³⁰ Court of Appeal Criminal Appeal No 183 of 2018. 2021 UGCA 40

¹³¹ High Court Misc Cause No 27 Of 2018

in response, the respondent argued that the freezing of the applicant's accounts was based on credible evidence and that they had notified the Director of Public Prosecutions following the freeze.

His Lordship Musa Ssekana ruled in favour of the respondent holding that, the decision to freeze the accounts was lawful and justified. The court determined that the respondent, before exercising its discretion to freeze the applicants' bank accounts, was satisfied with the available evidence that the said funds could indeed be used for terrorism activities. Specifically, the court noted that the bank accounts were frozen based on Farhan Hussein Haider's investigation by the Anti-Terrorism Police Unit in Kenya for coordinating financial and logistical support to terrorist groups in Somalia and Kenya. The respondent armed with such information was duty-bound to take immediate action by freezing the bank accounts and any non-action would have resulted in removal or withdrawal of the said funds. The court emphasised that the nature of the work and mandate of the respondent is to detect financial crimes including money laundering and financing of terrorism, which requires swift and expeditious detection of crimes that may affect the public at large. In such circumstances, it may not be possible to offer a hearing at such an early stage in the investigation of such crimes.

The ruling affirmed the FIA's authority to act swiftly in freezing accounts suspected of being linked to terrorism or other financial crimes, balancing the need for public safety against procedural requirements.

Uganda v Sundus Exchange and Money Transfer¹³²

Farhan Hussein Haider, a Kenyan national, was under investigation for alleged involvement in terrorism and financing terrorist groups in Kenya and Somalia. He was a director and signatory in the first respondent company. In May 2018, the Financial Intelligence Authority froze the company's accounts and halted its operations due to suspicions that the funds were being used to support terrorism.

¹³² Misc App No 27 of 2018

The applicant filed an application seeking to prevent the respondent from transacting, citing concerns that the funds were being funneled to terrorist groups. The applicant argued that the first respondent received money in small increments, which were then transferred to the second respondent. From there, the funds were distributed to other companies in Dubai, under the guise of sugar trade.

In defence, the respondents claimed that freezing their accounts was a violation of their economic rights. They argued that the FIA's actions had unjustly halted their business operations without sufficient evidence.

His Lordship Lawrence Gidudu ruling on the matter, granted the application to freeze the respondent's transactions. In his judgment, he emphasised that global crimes such as terrorism, money laundering and trafficking in person are often cross border in nature and require Mutual Legal Assistance between state for effective investigation and enforcement. Given the transnational and organized nature of such crimes, he noted that immediate action was necessary to prevent the dissipation of funds. The Judge highlighted the volatility of money in the digital age, stating that funds can be moved across borders within seconds, making it essential to secure the assets before they could be withdrawn or transferred.

The court's ruling underscored the importance of swift legal measures in handling cases involving transnational crimes, even at the risk of temporarily infringing on economic rights, to ensure that illicit funds are not moved beyond reach during ongoing investigations.

Biira Esther Kabaseke Kule v Uganda and others¹³³

In this case, objector proceedings were instituted opposing the attachment of land comprised in Kibuga Block 25 Plot 405 which was being seized as part of an execution process. The judgment debtor had previously been convicted in High Court Criminal Session Case No. 01 of 2017, after pleading guilty to two counts of embezzlement.

The court held that proceeds of Crime refer to any economic advantage derived directly or indirectly from criminal activities. It was further noted that Confiscation or recovery of assets or proceeds of crime from criminal activities is one of the most challenging aspects of a

¹³³ Misc Appl. No 1261 of 2018

criminal trial. This is because individuals involved in corruption often aggressively resist efforts to seize their illicit gains. However, the court pointed out that the intent of asset recovery laws is to ensure that victims of crime are compensated by those who caused the harm.

The ruling also highlighted the importance of casting a wide recovery net to combat impunity and ensure that no one profits from criminal acts. The Judge stressed that allowing perpetrators to retain any benefits from their crimes would undermine justice and perpetuate a culture of corruption. By enforcing robust asset recovery measures, the legal system aims to make certain that those who engage in criminal activity are not allowed to enjoy the fruits of their wrongdoing, thereby protecting the interests of society.

John Muhanguzi Kashaka, Henry Bamutura and another v Uganda¹³⁴

The appellants were charged and subsequently convicted of corruption, abuse of office, and causing financial loss. Their involvement pertained to the procurement of 70,000 bicycles intended for the chairpersons of local village councils.

The trial court determined that the award of the contract to a fraudulent and non-existent entity, identified as Amman Industrial Tools and Equipment Ltd (AITELE), was executed through a meticulous and sophisticated scheme that resulted in a financial loss of USD 1,719,454.54. Given the significant public outcry regarding corruption, the court deemed it appropriate to impose a joint compensation order of USD 1,719,454.58, alongside a ten-year imprisonment sentence for the appellants.

The appellants contested this decision, escalating the matter to the Supreme Court, which ultimately upheld both the imprisonment term and the compensation order against Kashaka and Bamutura.

¹³⁴ [2023] UGSC 49

CONCLUSION AND RECOMMENDATIONS

Enacting waterproof rules vide Section 71 Anti-Corruption Act on asset recovery and management of proceeds of crime. The Directorate of Ethics and Integrity noted that the provisions on asset recovery under the Act are not comprehensive enough to cover all assets and procedures involved in asset recovery. The intended Proceeds of Crime law envisaged mechanisms of preserving, managing and disposing of assets recovered during the process of investigation. It envisaged a wide range of assets such as highly depreciable assets and how their value can be preserved pending litigation. Since the Proceeds of Crime law has not been well received, the DEI has undertaken to enact Rules under the Anti-Corruption Act. The Rules should facilitate early recovery and immediate seizure of Assets and money suspected to be obtained. Mr. Daniel Achato reveals that the current training is that assets should be seized upon receiving intelligence that a corruption-related crime has been committed. However, the Unit lacks a legal regime that justifies this training. A law that provides for early recovery will ensure that intelligence from whistleblowers is followed up in real time and assets seized immediately before they are syndicated and removed from the jurisdiction of the IGG and courts of law. Justice Gidudu therefore recommends that these Rules should be airtight and address the gaps in the asset recovery regime.

To stay up with the illicit use of technology, technological advancement, innovation and investment are required to match the new methods employed by dishonest officials in conducting corruption-related offences and disguising illicit assets. Justice Gidudu observes that offenders use sophisticated technological methods to transfer illicit assets. They invest in technology to effectively conceal their illegal gains. If the state does not keep pace with technological advancements, these perpetrators will consistently stay ahead of the legal system.

Employing well-trained and experienced personnel to manage asset recovery such as property valuers and managers. The Asset Recovery Unit of the IGG as it stands has seven officials who are not enough to cover the national wide mandate that the IGG plays in asset recovery. Mr. Achato Daniel notes that there is a need for more economic and human resources to boost the capacity of asset recovery. He refers to the Asset Recovery Unit in Ireland where it employs officials with expertise in auditing, asset identification, asset management and

preservation. A well-staffed and trained Asset Recovery Unit will register improvement in assets that are recovered.

Mr. Sendugwa Gilbert, Executive Director of the African Freedom of Information Centre (AFIC), emphasizes that the lack of clarity regarding the criteria for choosing between administrative orders and prosecution hinders accountability. This uncertainty leads to confusion about the factors that influence key stakeholders' decisions on recovery methods. Such ambiguity also opens up opportunities for potential asset misappropriation.

Access to information is a crucial component of asset recovery. The amendment to the Leadership Code Act limited access to asset declaration details of public officials, which undermined transparency. However, leveraging the Access to Information Act can improve transparency and accountability. Civil Society Organizations (CSOs) and the media can utilize access to information tools to request precise information and statistics regarding asset recoveries. Access to information will also enhance accountability by ensuring that administrative recovery orders are published, establishing timelines for payment by the person of interest, and monitoring compliance with these orders. Access to information will also boost public participation by encouraging them to join in the fight against corruption by providing intelligence and conducting well-informed social media campaigns, creating awareness.

To facilitate access to information, there is a need for a single digital platform that allows seamless access across government agencies. Key players such as the Land Registry, NIRA, Motor Vehicle Registry, URSB and financial institutions should facilitate access to information to the agencies charged with asset recovery and anti-corruption. With a unified flow of information, asset recovery units can efficiently trace and identify illicit assets, allowing for real-time seizure of those assets.

There is need for strengthening Inter-Agency Cooperation. Enhancing cooperation among all agencies involved in corruption cases is vital for effective asset recovery since asset recovery is more successful as an early recovery. A collaborative approach can streamline processes from investigation to recovery, leading to more successful outcomes. To achieve this, strategies such as establishing Inter-Agency Task Forces responsible for coordinating efforts

at various stages of asset recovery, ensuring that all relevant parties are aligned and informed and developing best practices to facilitate the sharing of best practices and lessons learned among agencies. This could involve workshops, seminars, and training sessions focused on effective asset tracking, seizure, and recovery methods.

There is need to codify Interim Sale Orders to facilitate early recoveries. To enhance the asset recovery process, it is essential to explicitly codify the use of interim sale orders within the legal framework. This legislative change would empower the Asset Recovery Division (ARD) to take prompt action in selling identified assets during the prosecution phase. By allowing for interim sales, the ARD can secure funds for recovery even before a final judgment is rendered, thereby minimizing the risk of asset depreciation.

REFERENCES

Articles

<https://www.transparency.org/en/cpi/2023/index/uga>

Oldfield, J. (2024) The Effectiveness of Non-conviction-based Proceedings in Asset Recovery. Bergen: U4 Anti-Corruption Resource Centre, Chr. Michelsen Institute (U4 Helpdesk Answer 2024:3)

Lilian William Kafiti, Mechanisms of Confiscation 2020

Andrew Dornbierer, Comparative study good practices in asset recovery legislation in selected OSCE participating States, Basel Institute on Governance Working paper No 51

Common Law Legal Systems Model Legislative Provisions on Money Laundering Part V

FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France,

www.fatfgafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html

<https://cifar.eu/country-profiles/uganda-2021/>

Frederick W. Jjuuko, (2016) The Fourth Estate: Media Freedoms and Rights in Uganda, Fountain Publishers

Inspectorate of Government, Bi-annual Performance Report to Parliament, July- December 2020

Inspectorate of Government, Bi-annual Performance Report to Parliament July to December 2021

Inspectorate of Government, Bi-annual Performance Report to Parliament January – July 2022

IGG, Costs of Corruption in Uganda, December 2021.

Statutes

Anti-Corruption Act Cap 116

Leadership Code Act

United Nations Convention Against Corruption, 2003

African Union Convention on the Prevention and Combatting Corruption

Inspector General of Government Act

Anti-Corruption and Economic Crimes Act, Act No. 3 of 2003 Laws of Kenya

Proceeds of Crime and Anti-Money Laundering Act, Cap 59B

Anti-Corruption and Economic Crimes Act

Asset Forfeiture, Recovery and Management Guidelines, 2023

Proceeds of Crime Act, Cap 256 Laws of Tanzania

The law governing the recovery of offence-related assets No. 42/2014 of 27/01/2015

Proceeds of Crime Act 1996 (Ireland),

