



# Anti Corruption Coalition Uganda

## ANALYSIS OF UGANDA'S ASSET RECOVERY FRAMEWORK

In Partnership with



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## ACRONYMS

<b>ACA</b>	Anti-Corruption Act
<b>ACD</b>	Anti-Corruption Unit
<b>AG</b>	Attorney General
<b>AI</b>	Artificial Intelligence
<b>AML</b>	Anti-Money Laundering
<b>ARD</b>	Asset Recovery Division
<b>ARIN-EA</b>	Asset Recovery Inter-Agency Network for Eastern Africa
<b>ARU</b>	Asset Recovery Unit
<b>AUCPCC</b>	African Union Convention on Prevention and Combating Corruption
<b>BOU</b>	Bank of Uganda
<b>CDD</b>	Customer Due Diligence
<b>CFT</b>	Corruption and the Financing of Terrorism
<b>CPI</b>	Corruption Perceptions Index
<b>DEI</b>	Directorate of Ethics and Integrity
<b>DPP</b>	Director of Public Prosecution
<b>ESAAMLG</b>	Eastern and Southern Africa Anti-Money Laundering Group
<b>FAFT</b>	Financial Action Task Force Guidelines
<b>FIA</b>	Financial Intelligence Authority
<b>FIU</b>	Financial Intelligence Unit
<b>ICAR</b>	International Cooperation and Asset Recovery
<b>IFMS</b>	Integrated Financial Management System
<b>IGG</b>	Inspector General of Government
<b>IMF</b>	International Monetary Fund
<b>MLA</b>	Mutual Legal Assistance
<b>NACS</b>	National Anti-Corruption Strategy

<b>NCB</b>	Non-Conviction-Based-Recovery
<b>NEPAD</b>	New Partnership for Africa's Development
<b>NGO</b>	Non-Government Organisation
<b>NIRA</b>	National Identification and Registration Authority
<b>NSSF</b>	National Social Security Fund
<b>OAU</b>	Organisation of African Union
<b>ODPP</b>	Office of the Director of Public Prosecutions
<b>PFMA</b>	Public Finance Management Act
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>UNTOC</b>	United Nations Convention Against Transnational Organised Crime
<b>URA</b>	Uganda Revenue Authority
<b>URSB</b>	Uganda Registration Services Bureau
<b>ZTCP</b>	Zero Tolerance to Corruption Policy

# CHAPTER ONE

## INTRODUCTION

### 1.1 BACKGROUND

Corruption stands as a formidable impediment to Uganda's development, affecting both short-term growth and long-term development.<sup>1</sup> 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.<sup>2</sup> This lack of improvement accentuates the persistent challenge of corruption, positioning Uganda as 141st out of 180 countries globally.<sup>3</sup>

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 illicitly acquired property involved in corruption-related offences, preventing them from benefiting from their illegal activities and deterring future corruption.<sup>4</sup> Asset recovery stifles corrupt individuals from benefiting from their illegal profits, making it a crucial tool in deterring corruption and organized crime.<sup>5</sup> It limits the ability of offenders to continue engaging in illegal activities while restoring public resources misappropriated through corrupt practices.<sup>6</sup> Additionally, recovered assets provide compensation to the state for the considerable costs incurred in tackling corruption.<sup>7</sup>

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](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](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 (2020), Mechanisms of Confiscation. Available at: <https://www.eaaca.com/sites/default/files/media-documents/2021/05/ASSET%20RECOVERY%20Mechanisms-Lilian%20W%20K.pdf>

6 Ibid

7 Ibid

In Uganda, the Asset Recovery Unit (ARU), Office of the Inspectorate General of Government has effectively reclaimed assets and cash using two main methods: Conviction-Based Recovery (CBR) and Non-Conviction Based Recovery (NCBR).<sup>8</sup> Conviction-Based Recovery involves the seizure of assets following a criminal conviction, while Non-Conviction Based Recovery allows for asset recovery without a formal conviction, targeting assets linked to criminal activities even if prosecution is not feasible.

The table below provides a detailed analysis of the ARU's recovery performance, capturing key metrics such as total amounts recovered, recovery rates, and case distribution over the reporting period from 2020/21 to 2022/23.<sup>9</sup> This data reflects the Division's efforts and effectiveness in asset recovery, highlighting trends and insights that underscore its role in combating illicit financial flows and reinforcing accountability.

### Recovery Performance Overview (2020/21 - 2022/23)

	2020/21		2021/22		2022/23	
	AMOUNT RECOVERED	RECOVERY RATE (%)	AMOUNT RECOVERED	RECOVERY RATE (%)	AMOUNT RECOVERED	RECOVERY RATE (%)
Amount anticipated to be recovered			36,136,477,461		38,797,345,165	
Amount recovered	2,277,384,477		12,500,652,865	34.6	14,354,523,020	37.00
CBR	85,700,000	3.76	4,497,779,752	35.98	23,080,963	0.2
NCBR	2,191,684,477	96.24	8,002,873,113	64.02	14,331,442,057	99.8
NUMBER OF CASES						
Total cases handled	143		394		387	
CBR CASES	18	12.59	27	7	12	3.10
NCBR CASES	125	87.41	367	93.15	375	96.90

<b>CBR</b>	Conviction Based Recovery
<b>NCBR</b>	Non-Conviction Based Recovery

Over the course of three years, from 2020/21 to 2022/23, the total amount anticipated for recovery showed a steady increase, growing from 36.1 billion in 2020/21 to 38.8 billion in 2021/22. This upward trend in the target reflects an expectation of a continued or even improved performance in recovering the anticipated amounts. However, the actual recovery figures across these years demonstrated significant fluctuations. In 2020/21,

<sup>8</sup> Daniel Achato, the Supervisor Asset Recovery Unit, Inspectorate of Government.

<sup>9</sup> Ibid.

only 2.28 billion was recovered, representing a relatively modest success. By 2021/22, the amount recovered surged to 12.5 billion, marking a noticeable improvement. This positive trend continued into 2022/23, where the recovery amount reached 14.35 billion, further indicating that recovery efforts had gained momentum over time. Overall, this trajectory illustrates an improvement in recovery performance, with each year seeing a greater amount recovered than the previous one.

Alongside the total amount recovered, the recovery rate also demonstrated consistent improvement. In 2020/21, the recovery rate stood at 34.6%, but this rose to 37% by 2022/23. Although the amounts recovered do not indicate a significant recovery rate as compared the amounts anticipated to be recovered in a reporting period, it reflects a clear and steady improvement in recovery efficiency, indicating that a greater proportion of the anticipated amounts were being recovered as the years progressed. Furthermore, the total number of cases increased from 143 in 2020/21 to 387 in 2022/23, indicating a steady and consistent improvement in recovery performance over this period.

## **1.2 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.
- iv. To make recommendations towards strengthening Uganda's asset recovery framework.

## 1.3 METHODOLOGY

This research study employed a blended methodological approach to analyze asset recovery processes in corruption cases in Uganda. The study integrated qualitative and quantitative techniques to provide a comprehensive understanding of the subject matter. The qualitative aspect of the study involved conducting in-depth interviews with key stakeholders directly engaged in Uganda's asset recovery processes. These stakeholders included representatives from the following institutions: Inspectorate of Government (the body mandated to investigate and prosecute cases of corruption), Office of the Directorate of Public Prosecutions (responsible for prosecuting criminal cases, including corruption), Financial Intelligence Authority (tasked with combating money laundering and illicit financial flows), Judiciary/Anti-Corruption Division of the High Court (a specialized judicial arm handling corruption-related cases), Uganda Revenue Authority (that plays a role in uncovering tax-related corruption), Directorate of Ethics and Integrity (that oversees policies aimed at promoting integrity and combating corruption) and Civil Society Organizations (CSOs) (that provide oversight and advocacy on anti-corruption efforts). These interviews were structured to gather insights into institutional practices, challenges, and perspectives regarding asset recovery mechanisms.

The quantitative analysis involved examining both primary and secondary data sources to assess the effectiveness of Uganda's asset recovery framework. Primary Data included domestic, regional and international legal instruments related to recovered assets. Secondary Literature included academic papers, journal articles, comparative study reports, reports from international organizations and civil society organizations, strategies and action plans among others to contextualize Uganda's asset recovery efforts within global and regional trends.

In addition to the qualitative and quantitative data, the research examined case law outcomes. This involved analyzing judicial decisions in corruption cases to evaluate the practical application of legal provisions and the overall efficacy of the asset recovery mechanisms in Uganda. Key aspects assessed included success rates in recovering misappropriated assets, legal and procedural challenges faced during prosecution and trends in penalties and restitution orders.

By combining these approaches, the study provided a multi-dimensional analysis of asset recovery in Uganda, highlighting areas of strength, systemic weaknesses, and actionable recommendations for enhancing the legal and institutional framework.

## 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.<sup>10</sup> 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.

<sup>10</sup> Preamble of the UNCAC

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 of corruption can be traced, confiscated, and returned.<sup>11</sup> The Convention provides for the following obligations in the asset recovery realm: -

**i. 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.<sup>12</sup> 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.<sup>13</sup>

**ii. 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.<sup>14</sup>

**iii. 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 have bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation in asset recovery.<sup>15</sup> 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.<sup>16</sup> The Convention also requires domestic laws to make provisions for

11 Article 51 UNCAC

12 Article 52(1) Ibid

13 Article 52(2) Ibid

14 Article 53 Ibid

15 Article 59 Ibid

16 Article 54(1) (a-c) and Article 54(2)(a) Ibid

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.

#### **iv. 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.

#### **v. 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.<sup>17</sup> 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.

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 37<sup>th</sup> 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

<sup>17</sup> Article 56 Ibid

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**

### **i. 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.<sup>18</sup> States were called upon to establish, maintain and strengthen institutions tasked with and empowered to fight corruption.<sup>19</sup> The rationale for this provision being to prevent wrongdoers from laundering and disguising illicit assets as genuinely obtained property. These laws are essential for disrupting the flow of illicit wealth and preventing corrupt individuals from enjoying the benefits of their crimes.

### **ii. Confiscation and seizure of illicit assets.**

The Convention obligates state parties to enact laws that prescribe the procedure for identifying, freezing, administering, and confiscating the property which corresponds with the value of the proceeds of crime.<sup>20</sup> 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.

### **iii. 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.<sup>21</sup> 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.<sup>22</sup> 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.

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18 Article 5 and 6 AUCPCC

19 Article 5(3) Ibid

20 Article 16(1) Ibid

21 Article 18(1) Ibid

22 Article 18(2) Ibid

#### iv. Addressing Corruption in International Trade.

International trade is considered 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.<sup>23</sup> This provision highlights the importance of international cooperation in 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.<sup>24</sup>

## **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 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

23 Article 19(1) Ibid

24 Interview with Head, High Court Anti-Corruption Division.

be treated as evidence of illicitly obtained property.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> 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 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 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 inefficiencies 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 were not only designed to increase the penalties for corruption but also underscored the government's commitment to recovering public funds and deterring corrupt behavior by imposing harsher consequences on offenders.

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25 Section 30 ACA

26 Section 53 Ibid

27 Section 55 Ibid

28 Section 63(1) Ibid

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.<sup>29</sup> 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.<sup>30</sup> Failure to disclose such information constitutes an offence punishable by a fine not exceeding two hundred and forty currency points, a term of imprisonment not exceeding three years, or both.<sup>31</sup> 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.<sup>32</sup> 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 within ten years preceding their conviction is derived from corruption.<sup>33</sup> 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.

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29 Section 1 Ibid

30 Section 38 (1) Ibid

31 Section 38(2) Ibid

32 Section 63 Ibid

33 Section 64 Ibid

- 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.<sup>34</sup> His Lordship Lawrence Gidudu noted that this creates a debt obligation enforceable by the different modes of execution of court orders.<sup>35</sup> 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.<sup>36</sup> 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 14 fourteen days.<sup>37</sup> The costs incurred during the execution of the confiscation order are recoverable from the property that has been confiscated.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> 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

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34 Section 65(1) Ibid

35 Supra Note 24

36 Section 66(1) Ibid

37 Section 68 Ibid

38 Section 69 Ibid

39 Section 67 Ibid

40 Section 74(2) Ibid

forward it to the relevant country to facilitate the enforcement of the order.<sup>41</sup> 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.<sup>42</sup> This 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

- 1). 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.
- 2). The Act establishes the **Financial Intelligence Authority (FIA)**, a specialized body tasked with monitoring, detecting, and investigating suspected money laundering activities.<sup>43</sup> The FIA also has the authority to enforce compliance of the requirements on due diligence, risk assessment and reporting.
- 3). **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.<sup>44</sup> Additionally, they are required to gather and understand information regarding the intended nature of the transaction or business that the individual plans to conduct.<sup>45</sup>

41 Section 75 Ibid

42 Section 72 Ibid

43 Section 20 and 21 Anti Money Laundering Act

44 Section 6 (3) Ibid

45 Ibid

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 currency, whether completed in a single transaction or a series of related transactions.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> Where a financial institution is of the view that a transaction involves funds suspected to be proceeds 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.<sup>49</sup> 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 cooperation.<sup>50</sup> This enables mutual legal assistance in as far as access to cross border information is concerned.

- 1). 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.<sup>51</sup> 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.<sup>52</sup>
- 2). 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 property in which the person has an interest.<sup>53</sup> Additionally, the convicted individual may be required to pay a pecuniary penalty based on the benefits they derived from the crime.<sup>54</sup>

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46 Section 6(2) Ibid

47 Section 7(1) Ibid

48 Section 9(1) Ibid

49 Section 10(1) and (2) Ibid

50 Section 42 Ibid

51 Section 64 (1) and (2) Ibid

52 Section 71 Ibid

53 Sections 74, 86, 89 and 95 Ibid

54 Ibid

- 3). 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 periodic 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.<sup>55</sup> 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.

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 Lyantonde, and registered them in the names of his infant children, effectively shielding the property from public scrutiny.<sup>56</sup>

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.<sup>57</sup> In 2002, this provision

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55 Section 5 (1) Leadership Code Act Cap 168

56 Supra Note 24

57 Section 7 (1) Leadership Code Act Cap 168

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.<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup> This 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.<sup>61</sup>

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.<sup>62</sup> The duty of information officers is to facilitate access, ensuring that citizens can exercise this right without unnecessary hindrance.<sup>63</sup>

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.<sup>64</sup> 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,

58 Section 11(1) Leadership Code Act Cap 33

59 Section 11(7) Ibid

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

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

62 Section 5 Ibid

63 Section 12 (1) Ibid

64 Section 3(1) Ibid

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

- 4). 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 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.<sup>65</sup> The Act outlines several key provisions:
- 5). The PFMA assigns the responsibility for the management and oversight of both physical and monetary assets to the **Accounting Officer** of each public entity.<sup>66</sup> This role involves maintaining an accurate inventory of all assets assigned to the entity, ensuring that detailed records are kept and regularly updated.<sup>67</sup> By doing so, the Act seeks to create transparency in how public assets are managed and to prevent mismanagement or misappropriation.
- 6). The PFMA establishes the **Consolidated Fund** as the primary repository for all government revenues.<sup>68</sup> This fund is critical for the centralized management of public finances and is regulated by the Act to ensure its proper administration.<sup>69</sup> 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.
- 7). To safeguard the integrity of public finances, the PFMA mandates regular internal audits of public accounts.<sup>70</sup> These audits serve as an essential tool for

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65 Grace Atwongyeire (2019), *Syndicate Corruption in Public Finance Management: Dynamics, Vulnerabilities and Possible Strategies: A Case Study of Central Government of Uganda*. Master in Anti-Corruption Studies Programme at the International Anti-Corruption Academy. Available at: [https://www.iaca.int/media/attachments/2020/08/13/grace\\_mac's\\_thesis\\_finalpdf.pdf](https://www.iaca.int/media/attachments/2020/08/13/grace_mac's_thesis_finalpdf.pdf)

66 Section 32 (1) PFMA Cap 171

67 Section 32 (3) Ibid

68 Section 28 Ibid

69 Ibid

70 Sections 46, 47, 48 and 49 Ibid

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 mismanagement or corruption.<sup>71</sup> 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.<sup>72</sup> 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 comprehensive measures aim to strengthen Uganda's capacity to engage in effective international collaboration, particularly in asset recovery and fighting transnational crime.

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71 Sections 50 and 51 Ibid

72 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>

## 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. 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***.

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.<sup>73</sup> 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 laundering.<sup>74</sup> 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.<sup>75</sup>

### 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

73 Supra Note 24

74 Ibid

75 HCMA No. 27 of 2018. Available at: <https://www.fia.go.ug/sites/default/files/downloads/Sundus%20Ruling%20Anti%20Corruption%20Court.pdf>

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.<sup>76</sup> 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, including corruption.<sup>77</sup> 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.<sup>78</sup> 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.

<sup>76</sup> Interview with Commissioner Legal, Office of the Directorate of Ethics and Integrity

<sup>77</sup> Ibid

<sup>78</sup> Sections 2, 7 (1) and 12 (1) (a) Inspector General of Government Act

## 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.<sup>79</sup> 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 enforcing the Anti-Corruption Act. Where prosecution is recommended and sanctioned by the IGG, the DPP initiates and conducts the criminal proceedings.

The Directorate of Public Prosecutions (DPP) executes its asset recovery mandate through the International Cooperation and Asset Recovery Department (ICAR). ICAR is essential to Uganda's cross-border asset recovery efforts, working with international partners to implement mutual legal assistance agreements, facilitate extraditions, and prosecute international corruption offences. It also ensures that Uganda's legal framework is prepared to address extraterritorial offences and strengthen global cooperation, thereby enhancing the country's capacity to recover assets concealed abroad. Within ICAR, the Asset Recovery Division (ARD) provides legal guidance on asset recovery to investigative agencies like the Inspectorate of Government (IGG), prosecutes asset recovery cases, and enforces measures to reclaim proceeds of crime, among other responsibilities.<sup>80</sup>

## 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.<sup>81</sup> 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.<sup>82</sup>

The FIA occupies a central administrative role in asset recovery, emerging as a key player in the detection, investigation, and recovery of assets linked to financial crimes.<sup>83</sup> This dual approach encompasses both proactive and reactive strategies, which are essential for a comprehensive asset recovery framework. Further the FIA's ability to assist

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

80 Interview with Chief State Attorney, Asset Recovery Division, ODPP

81 Section 18 Anti Money Laundering Act

82 Section 19 Ibid

83 Interview with Director Policy Analysis and Senior Legal Officer, FIA.

other agencies in obtaining freezing orders for assets further underscores its proactive commitment to asset recovery. Notably, this process can be expedited as the FIA does not require a court order to act, allowing for rapid intervention when needed.<sup>84</sup>

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.<sup>85</sup> 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.<sup>86</sup> 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 occasional, when establishing business relationships or carrying out transactions.<sup>87</sup> This includes activities such as opening accounts, issuing passbooks, entering into fiduciary transactions, renting safe deposit boxes, or conducting large cash transactions.<sup>88</sup> These records are vital for tracing the origins of illicit funds and supporting investigations into corruption.

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84 Ibid

85 Supra Note 24

86 Section 118 Financial Institutions Act Cap 57

87 Section 129 (1) (a) Ibid

88 Ibid

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.<sup>89</sup> 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.

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89 Sections 129 (1) (b) and 130 Ibid

## 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.<sup>90</sup> 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 border 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.<sup>91</sup> Conviction-based recovery is classified as an In-personam action or criminal charge against a person.<sup>92</sup> Conviction-based recovery applies where there is a conviction for any criminal offence.<sup>93</sup> 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.

90 Interview with Supervisor Asset Recovery, Office of the IGG

91 Andrew Dornbierer (2024), Comparative Study: Good Practices in Asset Recovery Legislation in selected OSCE participating States. International Center for Asset Recovery Working Paper 51. Basel Institute on Governance). Available at: <https://baselgovernance.org/sites/default/files/2024-03/WP-51.pdf>

92 Supra Note 6

93 Common Law Legal Systems Model Legislative Provisions on Money Laundering, Terrorism Financing, Preventive Methods and Proceeds of Crime. Available at: [https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/key\\_reform\\_pdfs/Common%20Law%20Legal%20Systems%20Model%20Legislative%20Provisions%20EB\\_0.pdf](https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/key_reform_pdfs/Common%20Law%20Legal%20Systems%20Model%20Legislative%20Provisions%20EB_0.pdf)

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.<sup>94</sup> 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.

- 1). 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.
- 2). 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.
- 3). Mr. Achato notes that while conviction-based recovery is fundamental, it is often considered the **lowest form of recovery** used by the IG, 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.<sup>95</sup> NCB focuses on the illicit nature of the assets rather than the criminal conduct of the individual.<sup>96</sup> 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 illicit assets are recovered, and government is restituted from the loss caused, other than a conviction.

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94 Supra Note 90

95 Oldfield, J. (2024) The effectiveness of non-conviction-based proceedings in asset recovery. Available at: <https://www.u4.no/publications/the-effectiveness-of-non-conviction-based-proceedings-in-asset-recovery/fullversion>

96 Ibid.

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 IG and through settlements. Both methods allow for the recovery of assets without the need for criminal convictions and have been instrumental in curbing corruption.

### **i. 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. The primary source of NCB asset recovery for IGG has been administrative orders.<sup>97</sup> This mechanism has registered the most successes in asset recovery for the institution.<sup>98</sup>

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.<sup>99</sup> 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.

### **ii. 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 IG, thereby facilitating the recovery of an agreed-upon sum after an investigation of a corruption case. Settlements occur

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97 Supra Note 91

98 Supra Note 91

99 Article 230(1) and (2)

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 office in 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.

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 responsible 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.

Data on the Asset Recovery Unit's (ARU) performance from 2020/21 to 2022/23 shows a notable shift in recovery methods.<sup>100</sup> Over this period, Non-Conviction Based Recovery (NCBR) became the primary approach, especially in recent years. In 2020/21, NCBR accounted for 96.24% of total recoveries, and its share continued to increase, reaching 99.8% by 2022/23.<sup>101</sup> Meanwhile, Conviction Based Recovery (CBR) contributed only 3.76% in 2020/21 and dropped further to 0.2% by 2022/23.<sup>102</sup>

Further, the trend in the number of cases further supports this shift in recovery strategy. In 2020/21, the total number of cases was 143, and the distribution between CBR and NCBR was more balanced.<sup>103</sup> CBR cases made up 12.59% of the total, with 125 NCBR cases accounting for 87.41%.<sup>104</sup> By 2022/23, the total number of cases had increased to 387, but the number of CBR cases had remained relatively low, comprising just 3.1% of total cases.<sup>105</sup> The NCBR cases grew to represent 96.9% of the total, a significant shift that underscores the growing reliance on NCBR for effective recovery. This trend suggests

100 Supra Note 8

101 Ibid

102 Ibid

103 Ibid

104 Ibid

105 Ibid

a strategic pivot by the Inspectorate of Government (IGG) towards NCBR, which has proven to be a more effective recovery method.

### **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.<sup>106</sup> 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:

- 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.

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106 Article 18(1) AUCPCC and Article 59 UNCAC

### 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.<sup>107</sup> 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. Parallel investigation in Uganda involves “following the money” which includes financial profiling, enhanced due diligence, and transaction monitoring.<sup>108</sup> 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.

His Lordship Lawrence Gidudu has also emphasized the value of parallel investigations, urging that the ACD frequently encourages the DPP to conduct parallel investigations alongside criminal probes.<sup>109</sup> He noted that by doing so, the DPP can uncover additional offences like money laundering, which often occur alongside corruption.<sup>110</sup>

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107 FATF (2012-2023), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France. Available at: [www.fatfgafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html](http://www.fatfgafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html)

108 Supra Note 91

109 Supra Note 24

110 Supra Note 24

## 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 IG 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 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.<sup>111</sup>

## **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 prepares a case file and submits it to the Director of Public Prosecutions, 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.

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111 Section 53 ACA

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.

#### **d. 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.<sup>112</sup>

- 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

<sup>112</sup> Supra Note 24

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.<sup>113</sup> 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. To mitigate this risk, the ARD has sought to implement interim sale orders, allowing for the sale of identified assets during ongoing legal proceedings.<sup>114</sup> This proactive strategy aims to preserve asset value and ensure that proceeds are collected promptly.<sup>115</sup> 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.<sup>116</sup>

## 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

113 Supra Note 90

114 Supra Note 80

115 Supra Note 83

116 Ibid

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.<sup>117</sup> 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 Kunsu's case, for instance, objections raised by the spouse hindered the timely attachment of assets, creating substantial obstacles for the Asset Recovery Division.<sup>118</sup> 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.<sup>119</sup> 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

117 Supra Note 80

118 Ibid

119 Supra Note 90

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.<sup>120</sup> 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.<sup>121</sup>

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120 Supra Note 90

121 Ibid

## 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.<sup>122</sup>

Kenyan courts use conviction-based recovery methods like compensation orders and 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.<sup>123</sup> These compensation orders are enforced through civil proceedings, ensuring that victims or the state can recover stolen assets effectively.<sup>124</sup>

<sup>122</sup> Section 56C (1) Anti-Corruption and Economic Crimes Act, Act No. 3 of 2003 Laws of Kenya

<sup>123</sup> Section 54(1) (a) and (b) Ibid.

<sup>124</sup> Section 54(4) Ibid.

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 additional order requiring payment to the government, alongside other punishments.<sup>125</sup> 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.<sup>126</sup> 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.<sup>127</sup> 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.<sup>128</sup>

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.<sup>129</sup>

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.<sup>130</sup> The Commission is then allowed to negotiate and enter a settlement with such a person against whom a suit for corruption is pending.<sup>131</sup> 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.<sup>132</sup>

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

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

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

127 Section 55(3) Ibid

128 Section 55(6) Ibid

129 Section 90(1). See also Note 125 Supra

130 Section 56B (1). See also Note 122 Supra

131 Section 56B (2) Ibid

132 Section 56B (4) Ibid

being acquired through corrupt means.<sup>133</sup> This order is granted ex parte (without the knowledge of the property holder) if the court finds reasonable grounds for suspicion.<sup>134</sup> In civil proceedings, similar measures are available to prevent the dissipation of assets while legal proceedings are ongoing.<sup>135</sup>

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.<sup>136</sup> 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.<sup>137</sup> 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 2.1 further specifies the procedures and considerations to be considered while tracing assets that are susceptible to be proceeds of a crime.<sup>138</sup> 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.<sup>139</sup>

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133 Section 56

134 Ibid

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

136 Section 53(1) Ibid

137 Asset Forfeiture, Recovery and Management Guidelines. May 2023. Available at: <https://tanzlii.org/akn/tz/doc/guidelines/2023-05-01/asset-forfeiture-recovery-and-management-guidelines/eng@2023-05-01>

138 Ibid

139 Guideline 5.0 Ibid

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.<sup>140</sup> 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.<sup>141</sup> 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 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.<sup>142</sup> 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.<sup>143</sup> 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.<sup>144</sup> This ensures that even after conviction, the government has ample time to recover the

140 Section 31(1) Proceeds of Crime and Anti-Money Laundering Act

141 Section 31A (1) Ibid

142 Guideline 4.0

143 Section 14 (1). See also Note 140 Supra.

144 Section 9(1) Ibid

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 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 provides a comprehensive and structured approach to the identification, recovery, and equitable distribution of assets derived from criminal activities. The framework defines clear parameters for what constitutes recoverable assets, outlines mechanisms for their recovery, and establishes provisions for sharing confiscated assets with foreign governments. This legal structure is designed to support both domestic and international efforts in combating financial crimes, enhancing transparency, and fostering global cooperation.

Article 1 of the law sets out a detailed definition of recoverable assets, which include those obtained through illicit activities such as corruption, embezzlement, money laundering, offences related to public procurement, and the financing of terrorism among others.<sup>145</sup> By explicitly listing these offences, the framework ensures that a wide

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145 Law N° 037/2021 of 28/07/2021 amending Law N° 42/2014 of 27/01/2015 Governing

array of criminal activities linked to illicit financial gains are addressed, enabling effective enforcement and recovery processes. The scope extends to assets that are directly or indirectly connected to the aforementioned crimes, ensuring that even disguised or laundered proceeds can be targeted. This broad definition helps in mitigating loopholes that perpetrators might exploit to shield illegal gains.

Article 2 introduces a progressive provision for the sharing of confiscated assets with foreign countries. This provision is activated in scenarios where law enforcement authorities from a foreign jurisdiction or Rwanda have collaborated in the investigation or legal proceedings leading to the confiscation of assets. The article stipulates that:

***“Sharing of confiscated assets applies in circumstances where law enforcement authorities of a foreign country, or Rwanda, participated in the investigation of the offense or in civil proceedings that led to the confiscation of assets. The Government of Rwanda may enter into an agreement with the Government of a foreign country for reciprocal sharing of a confiscated asset and its proceeds.”***

This mechanism emphasizes Rwanda’s commitment to international cooperation in fighting transnational financial crimes. It facilitates partnerships between governments, ensuring that all parties involved in the recovery process can benefit proportionately from the proceeds of confiscated assets. These agreements are designed to promote mutual accountability and strengthen global efforts against corruption and illicit financial flows.

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Recovery of Offence-Related Assets. Available at: <https://rwandalii.org/akn/rw/act/law/2021/37/eng@2021-07-30>

## CHAPTER SIX

### CASE STUDIES

#### Uganda vs. Geoffrey Kazinda<sup>146</sup>

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.

146 (Session Case HCT-AC/CO 4 of 2016) [2020] UGHACD 3 (28 October 2020). Available at: <https://ulii.org/akn/ug/judgment/ughacd/2020/3/eng@2020-10-28>

- 1). 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.
- 2). 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.

### **Uganda vs. Lwamafa Jimmy & 2 Others**<sup>147</sup>

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 Kkunsu, Christopher Obey and Bob Kasango**<sup>148</sup>

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.

147 Criminal Session Case No 9 of 2015. Available at: <https://judiciary.go.ug/files/downloads/UGANDA%20VS%20LWAMAFAMA%20JIMMY%20AND%20%20OTHERS%20JUDGEMENT%20%20SENTENCE.pdf>

148 (HCT-00-ACD-SC 3 of 2016) [2018] UGHACD 5 (21 December 2018). Available at: <https://ulii.org/akn/ug/judgment/ughcacd/2018/11/eng@2018-12-21>

The case stemmed from the 1992 IMF Adjustment and Economic Restructuring Policies, during which the government laid off 6,337 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 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, 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 Authority<sup>149</sup>**

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.

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,

149 High Court Misc Cause No 154 of 2018. Available at: <https://ulii.org/akn/ug/judgment/ughccd/2018/100/eng@2018-08-27>

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 & Money Transfer and 8 others**<sup>150</sup>

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.

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.

150 Misc App No 27 of 2018. Available at: <https://www.fia.go.ug/sites/default/files/downloads/Sundus%20Ruling%20Anti%20Corruption%20Court.pdf>

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 others**<sup>151</sup>

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 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 Uganda**<sup>152</sup>

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.

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151 Misc Appl. No 1261 of 2018. Available at: <https://ulii.org/akn/ug/judgment/ughcebd/2020/11/eng@2020-05-18>

152 Criminal Appeal No. 53 of 2020; Criminal Appeal 74 of 2020; Criminal Appeal 77 of 2020 [2023] UGSC 49 (24 October 2023). Available at: <https://ulii.org/akn/ug/judgment/ugsc/2023/49/eng@2023-10-24>

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.

### **Uganda v Ezeh Gibson Chukuebuka**<sup>153</sup>

The accused faced money laundering charges after allegedly arriving at Entebbe International Airport in November 2021 with USD 289,980, aware that the funds originated from criminal activity. Despite holding an online visa, his ticket indicated arrival on November 14, 2021, with a return on November 16, 2021, and he presented an invitation to a conference scheduled for November 13, 2021, lasting one week. Airport officials grew suspicious of the large cash amount and inquired whether it had been declared at the point of origin. The accused affirmed but could not provide documentation. Consequently, the case was referred to the Financial Intelligence Authority (FIA) for further investigation.

The court drew comparisons to *The People v. Austin Chisangu Liato*, Appeal 291 of 2014 (Supreme Court of Zambia), where Chisangu was found with a large sum of cash (K. 2,100,100,000) hidden in his home, facing charges for possession of suspected criminal proceeds. Chisangu remained silent in his defence, and an assessment of his known income was deemed insufficient to justify such wealth. The court found reasonable grounds to suspect the funds were illicit due to the amount and surrounding circumstances.

In this case, however, the court noted a key difference: no search certificate indicated hidden funds on the accused, who instead voluntarily disclosed the cash, which was in transit. Ugandan law permits bringing money into the country, requiring only that amounts above 1,500 currency points be declared. Finding no basis to suspect the funds were criminal proceeds, the court acquitted the accused and ordered the return of the money previously deposited in the FIA's account.

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153 (Criminal Session Case 6 of 2023) [2023] UGHACAD 8 (4 October 2023). Available at: <https://ulii.org/akn/ug/judgment/ughcacd/2023/8/eng@2023-10-04>

## CONCLUSION AND RECOMMENDATIONS

Uganda's legal framework for asset recovery demonstrates considerable potential, leveraging both domestic and international instruments to secure convictions and recover assets in some cases. However, despite these frameworks, their practical application is hindered by significant challenges that undermine their effectiveness. The existing gaps highlight the urgent need for a more robust and cohesive legal approach to asset recovery. To build a more effective asset recovery regime, it is essential to adopt comprehensive reforms that promote clarity, streamline procedures, and enhance the efficiency of legal processes. Strengthening this framework is not only critical for combating corruption but also plays a vital role in restoring public trust in the justice system. This, in turn, supports broader objectives of transparency, accountability, and sustainable economic development.

The report, therefore, provides several recommendations to streamline asset recovery procedures and enhance the effectiveness of the legal framework, including:

### Government

- a. Fast-track the enactment of the Anti-Corruption (Confiscation and Recovery Orders) Rules 2024 and the Proceeds of Crime Bill. These laws will provide clearer procedures for asset tracing, seizure, and management, thus strengthening the legal framework for recovering illicit wealth.

- b. Hasten the enactment of the Proceeds of Crime Bill which is intended to improve the seizure, management, and disposal of assets linked to criminal activities, including corruption.
- c. Foster collaboration among all relevant stakeholders, including law enforcement agencies, the judiciary, and the Asset Recovery Department (ARD). Regular inter-agency meetings and joint task forces can improve communication, coordination, and the sharing of best practices across the lifecycle of corruption cases.
- d. Establish dedicated inter-agency task forces focused on combating corruption and asset recovery. These teams can benefit from joint capacity-building initiatives, promoting a unified approach to asset tracing and seizure.
- e. Implement a seamless process for real-time information sharing among agencies. This can be achieved through integrated databases and communication channels that provide rapid access to financial intelligence, improving the efficiency of asset recovery efforts.
- f. Develop a unified digital platform to facilitate access to critical data across government agencies. Entities like the Land Registry, National Identification and Registration Authority (NIRA), Motor Vehicle Registry, Uganda Registration Services Bureau (URSB), and financial institutions should be integrated into this system. This will allow asset recovery units to efficiently trace, track, and seize illicit assets in real-time, thereby streamlining the recovery process.
- g. Implement measures to protect the value of seized assets during the recovery process. This could involve developing guidelines for the management and maintenance of seized properties, ensuring that their value is preserved until legal proceedings are concluded.
- h. Create an open society network that encourages advocacy, monitoring and accountability support to asset recovery initiatives.

## **Parliament**

- a. Ensure that new regulations for asset recovery allow for the immediate confiscation of assets suspected to be linked to corruption upon receipt of credible intelligence. This will prevent the concealment of illicit funds during investigations.
- b. Enact laws that integrate prosecution and asset confiscation efforts, allowing them to occur simultaneously. Importantly, under such laws, asset recovery should not depend on obtaining a criminal conviction first. Conviction based asset recovery sets an unnecessarily high standard of proof.

- c. Reinstate provisions of the Leadership Code Act requiring spouses and children of leaders and other public servants to declare their assets. This will guard against leaders hiding corruptly acquired assets in the names of their spouses and children.
- d. Amend the Leadership Code Act to require all Leaders and public officers to declare their assets for a period of five years following their retirement from public service.
- e. Enact a witness protection law. This will encourage members of the public to come forward and cooperate with law enforcement agencies in asset recovery.

### **Inspectorate of Government**

- a. Enhance public accountability by committing to regular public disclosures concerning asset recovery initiatives, including the identities of individuals implicated in corruption and the amounts recovered.
- b. Put in place a publicly accessible registry and data base of asset recovery orders made and enforced.
- c. Avoid unjustified or unnecessary denial of public access to wealth declarations made by leaders. Public scrutiny of these declarations plays a vital role in ensuring their accuracy and integrity. Moreover, citizens have a constitutional right to access this information, as guaranteed under the Constitution, the Access to Information Act, and the Leadership Code Act.
- d. Adopt a proactive approach by acting promptly on intelligence from whistleblowers. Swiftly seizing assets upon credible suspicion can prevent their concealment or transfer, thus improving the success rate of recovery efforts.
- e. Establish a clear criterion used in defining which cases qualify for administrative orders. This criterion should be publicized to foster transparency and help citizens understand the recovery process.
- f. Develop stronger enforcement mechanisms to manage compliance with administrative orders by building the capacity of IGG Compliance Unit and increasing its human resource.

### **Law Reform Commission**

- a. Conduct a comprehensive review of existing laws related to asset recovery, identify provisions that may unduly restrict the same and recommend appropriate action to Parliament. This will promote the alignment of these laws with international instruments.

- a. Ensure that provisions such as codifying interim sale orders that will empower the ARD to act swiftly in selling assets during the prosecution phase are well integrated into the existing legal system. This will substantially mitigate the risk of asset depreciation and enable recovery orders to be fulfilled more efficiently.
- b. Collaborate with other stakeholders, including the judiciary, ARD, and relevant government agencies, to ensure that the codification of interim sale orders is comprehensive and practical.
- c. Develop a non-restrictive user-friendly tool for access to information to empower citizens and civil society groups to seek information and monitor asset recovery initiatives.

### **Civil Society Organisations**

- a. Increase public awareness by conducting campaigns to educate the public and relevant stakeholders on the risks and methods of concealing corruption. These efforts should focus on changing mindsets and empowering both the public and officials engaged in anti-corruption and asset tracing activities to recognize and address early warning signs effectively.
- d. Advocate for legal reforms by actively lobbying policymakers to amend or repeal existing laws to enhance the asset recovery framework. CSOs can play a critical role in pushing for legislative changes that improve the effectiveness of asset tracing, seizure, and management procedures.



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