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### UNRAVELLING THE INTRICACIES OF FORMALITY AND INFORMALITY: AN EXAMINATION OF UGANDA'S INSTITUTIONAL FIGHT AGAINST CORRUPTION

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#### ABSTRACT

This article examines Uganda's anti-corruption landscape, which a lack of political will has hampered. This absence of political commitment illustrates how the interaction between formal and informal mechanisms influences the country's governance. By analysing existing structures and strategies, the author identifies both the critical strengths and significant obstacles in the fight against corruption. Contrary to the belief that a multi-layered approach is effective, the author argues that this strategy often results in anti-corruption mechanisms that conflict with one another, leading to a waste of limited public resources and negatively impacting anti-corruption efforts. The proliferation of both formal and informal anti-corruption agencies is a strategic move by the government aimed at appeasing citizens in response to widespread public outcry against corruption. However, the government understands that maintaining its political control requires the continued existence of corruption to support its regime's four-decade-long survival. By strategically directing resources toward a reduced number of specific formal anti-corruption agencies, Uganda can ensure a more efficient and effective use of public resources in combating these serious crimes. This article focuses specifically on informal entities within the State House and the President's Office. It also examines formal agencies, namely the Director of Public Prosecutions and the Inspectorate of Government, in the context of a horde of other anti-corruption agencies. To facilitate the reduction of informal and formal anti-corruption agencies, the possibility of employing new technologies, including Artificial Intelligence, is explored to strengthen the anti-corruption strategies of merged agencies. The author utilises doctrinal research methods to conduct the study's analysis.

**Keywords:** *Anti-Corruption Institutions, Artificial Intelligence, Blockchain, Uganda*

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## 1. INTRODUCTION

In Uganda, a robust array of institutional mechanisms exists to combat corruption. These institutional frameworks have made attempts to uphold integrity and transparency, reflecting a commitment to fostering good governance and accountability. These include the Ministry of Ethics and Integrity, the Public Procurement and Disposal of Public Assets Authority, the Auditor General, the Police, the Financial Intelligence Authority, the Inspectorate of Government (IGG), the Directorate of Public Prosecutions (DPP), and the Anti-Corruption Court. Other informal institutional agencies and offices include the State House Anti-Corruption Units and other agents of the President's Office, including Resident District Commissioners (RDCs) and Resident City Commissioners (RCCs).

As a result of the numerous anti-corruption agencies, some scholars have argued that these institutional organs are performing duplicate roles and should be reduced.<sup>1</sup> Some commentators have claimed that the numerous anti-corruption agencies have been unable to wipe out or reduce corruption. Scholars argue that the numerous anti-corruption agencies have led to a waste of taxpayers' money. They recommend that the Ugandan government consider either scrapping or merging some of these agencies, particularly those with overlapping responsibilities. Additionally, they suggest providing adequate financial and human resources to fewer anti-corruption agencies.<sup>2</sup> It is the author's humble and considered view that the proliferation of anti-corruption agencies is a deliberate political survival strategy aimed at sustaining regime power. As a consequence of this, there is no political will to genuinely curb corruption in view of the fact that it has sustained the regime's four-decade grip on power. The regime cannot, however, be seen to be doing nothing about rampant corruption. The regime consequently pretends to be engaged in anti-corruption efforts by creating multiple agencies. In view of this discussion, this article seeks to examine how informal and formal anti-corruption mechanisms complement or conflict with each other and whether political will undermines or fortifies anti-corruption in Uganda.

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1 Gumusiriza P & Mukobi R (2018) "Anti-Corruption Institutional Facade in Uganda" (15)1 *Uganda Journal of Management and Public Policy Studies* 91 – 108 at 91.  
2 Gumusiriza & Mukobi (2018) at 91.

In this article, Part 1 introduces the study. Part 2 discusses the establishment and role of informal anti-corruption agencies in Uganda. Thereafter, Part 3 reviews the establishment and functions of various official anti-corruption institutions, placing special emphasis on the roles of the Directorate of Public Prosecutions (DPP) and the Inspector General of Government (IGG). The discussion reveals that both formal and informal agencies are working at cross-purposes, resulting in the waste of public resources and ultimately weakening anti-corruption strategies. Under Part 4, the author notes that establishing various formal and informal entities serves as a deliberate strategy for political regime survival in Uganda, arising from a lack of political will to combat corruption and thus perpetuating the existing power structure. The possibility of employing Artificial Intelligence (AI) and other new technologies to automate a centralised case management system to reduce human and administrative functions is explored in Part 5. Part 6 concludes the article. The discussion on informal anti-corruption mechanisms follows hereunder.

## **2. INFORMAL ANTI-CORRUPTION AGENCIES**

Uganda has numerous formal anti-corruption organs playing duplicated roles.<sup>3</sup> The policy consideration behind the creation of informal ones by the executive has not been understood by citizens. The role of these ad-hoc State House anti-corruption entities and other informal entities is yet to be appreciated by the public.<sup>4</sup> In numerous speeches, President Yoweri Museveni has stated that the purpose of creating the State House anti-corruption units was to reinforce the formal anti-corruption organs by supplementing their efforts.<sup>5</sup>

### **2.1 Ad Hoc State House Anti-Corruption Units**

The Executive arm of the government has occasionally been setting up these informal anti-corruption entities. These entities are established within the State House and the President's

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3 Gumusiriza & Mukobi (2018) at 91.

4 Katureebe OK (20 February 2019) "State House Anti-Corruption Unit requires your support" *The Monitor*, available at <https://www.google.comamp/s/www.monitor.co.ug/OpEd/Commentary/State-House-Anti-Corruption-requires-your-suport/> (accessed 13 May 2024).

5 Katureebe (2019).

Office to curb the misuse of public resources.<sup>6</sup> This, on occasion, is due to public and donor objections about the impunity with which “connected” public officials swindle public resources. These entities have registered some success in fighting these criminal activities.<sup>7</sup> They have, sometimes, not done so in compliance with the law. The operations of these State House units resemble a street mob targeting a “thief” who has stolen property from someone on the street.<sup>8</sup> Their success is often fleeting and directly empowers those who commit acts of corruption. These entities include the State House Health Monitoring, Anti-Corruption, Investors Protection Units, and some offices of the RDCs and RCCs. In view of the manner in which their investigations are carried out, these informal entities occasionally get court convictions. The discussion on formal anti-corruption agencies follows hereunder.

### 3. FORMAL ANTI-CORRUPTION MECHANISMS

Uganda has several formal anti-corruption mechanisms, as mentioned earlier. However, in this section, the author will demonstrate that some of these mechanisms have overlapping roles and may be working at cross-purposes.<sup>9</sup> This has, as a result, led to the wastage of the meagre resources available to curb corruption.<sup>10</sup> The author examines the formal anti-corruption measures in Uganda hereunder.

#### 3.1 The Inspectorate of Government

The Office of the Inspectorate of Government (IGG) was established for the first time in 1986 as a department in the office of the President. As part of its promise to eradicate corruption and maladministration, the National Resistance Movement established the IGG. No other government in Uganda's history had previously instituted such an office. The IGG's Office was

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6 See Amia P (17 October 2017) “State House Health Monitoring Unit Fires Back at Uganda Medical Association” *Chimp Reports*. Also see Uganda Media Centre (2020) “Achievements by the State House Anti-Corruption Unit since Inception”, available at: <https://www.mediacentre.go.ug/media/achievements-state-house-anti-corruption-unit-inception> (accessed 4 May 2024).

7 See Uganda Media Centre (2020). In 14 months since it was set up, it had recovered over 7 billion shillings from corrupt officials, 120 public officials had been arrested, and 99 public officials had been interdicted.

8 See Amia (17 October 2017).

9 Gumusiriza & Mukobi (2018).

10 Gumusiriza & Mukobi (2018).

created to check on administrative and executive excesses. Its mandate included the prevention of abuse of office and an investigation into allegations of corruption, maladministration, and abuse of human rights. However, examining the Office's operation from its establishment as a statutory body in 1988 until its transition into a constitutional body in 1995 reveals several shortcomings. First, the IGG was responsible only to the President, and this, in effect, did not ensure the independence of the office to carry out its functions. Secondly, the findings and recommendations of the IGG's Office between 1988 and 1995 were never made public. Nonetheless, the establishment of the Office has had significant importance, given that the IGG's Office is now a major constitutional body with a similar mandate to its 1988 predecessor.

The IGG has made some impact in the fight against corruption. The IGG has the mandate to arrest or cause the arrest of corruption suspects and investigate and prosecute corruption cases generally in Uganda. The IGG has over 16 regional offices throughout the country, where complainants and whistleblowers can file their communications.<sup>11</sup> The regional offices are responsible for investigating any communications filed regarding corruption and subsequently making recommendations to the IGG, which has the authority to take further action based on the findings of the regional offices.<sup>12</sup>

Information regarding how many corruption cases the IGG has handled since its establishment is unavailable or unreliable.<sup>13</sup> The IGG publishes annual reports on its performance. It has, however, been argued that the information in these reports may be insufficient and untrustworthy.<sup>14</sup> The average period the IGG takes to investigate a complaint from filing to conclusion has been pegged at six months.<sup>15</sup> Articles 255 and 226 of the Constitution of the Republic of Uganda, 1995 (as amended) (1995 Constitution) provide for the mandate of the IGG. Article 227 of the 1995 Constitution provides the constitutional

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11 IGG (2017) *Bi-Annual Inspectorate of Government Performance Report to Parliament* Kampala: IGG.

12 Transparency International Uganda (2015) *As strong as its weakest link. Stakeholders' Perceptions of the Ugandan Legal and Institutional Anti-Corruption Framework*, available at <http://tiuganda.org/wp-content/uploads/Stakeholders-Perceptions-of-theUganda-Legal-Anti-Corruption-framework.pdf> (accessed on 27 July 2024).

13 Gumisiriza P & Mukobi R (2019) "Effectiveness of Anti-Corruption Measures in Uganda" (2)8 *Rule of Law and Anti-Corruption Center Journal* 1 – 8 at 5.

14 Gumisiriza & Mukobi (2019) at 5.

15 IGG (2014) *Fourth Annual Report on Corruption Trends in Uganda: Using the Data Tracking Mechanism*.

guarantee of the IGG's independence in the execution of its duties. The IGG's autonomy has, however, been hampered by political interference. The IGG also has human and financial resource constraints, which further impede the effective execution of its mandate.<sup>16</sup>

### **3.1.1 Submission of Complaints to the IGG**

The IGG is mandated to investigate any complaint that may arise regarding the conduct of any person occupying a public office or any other person(s), as Parliament may prescribe.<sup>17</sup> Whereas the IGG has set up mechanisms to enable the general public to report corruption,<sup>18</sup> most of the complaints that the IGG investigates and prosecutes are sent to it by politicians.<sup>19</sup> This is because the IGG's Office has not established an evidence-based and impartial manner of investigating cases. Political motivations override their case processing system.<sup>20</sup> As a result, the evidence that is compiled against such accused persons is usually weak and cannot stand up to scrutiny.<sup>21</sup> This is evidenced by the percentage of convictions they have secured.<sup>22</sup> The IGG's case processing mechanisms, therefore, require reform if the IGG's prosecutions are to reap higher percentages of convictions.

### **3.1.2 IGG Investigations**

The IGG is empowered under article 225(1)(b) of the 1995 Constitution "to eliminate and foster the elimination of corruption, abuse of authority and public office".<sup>23</sup> The IGG is also empowered under article 230(1) of the 1995 Constitution to investigate, cause an investigation, arrest, cause an arrest, prosecute, or cause the prosecution in respect of cases involving corruption, abuse of authority, or public office.<sup>24</sup>

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16 IGG (2018) *Bi-Annual Inspectorate of Government Performance Report to Parliament* Kampala: IGG at 59.

17 See arts 225(1) & 226 of the 1995 Constitution.

18 An individual filing a whistleblowing communication can do so on the IGG's website. See <https://www.igg.go.ug/complaints/> (accessed 20 May 2024).

19 Transparency International Uganda (2015).

20 Transparency International Uganda (2015).

21 Transparency International Uganda (2015).

22 Schütte SA (2016) "Specialised anti-corruption courts: Uganda" Anti-Corruption Resource Centre U4 Brief, available at <https://www.cmi.no/publications/file/5887-specialised-anti-corruption-courts-uganda.pdf> (accessed 8 December 2025), also see Carson L (2015) "Institutional Specialisation in the Battle against Corruption: Uganda's Anti-Corruption Court" 3(1) *The Public Sphere: Journal of Public Policy* 13 – 25.

23 Chap 13 of the 1995 Constitution.

24 See Part III and V of the Inspectorate of Government Act, Cap 32. (IGGA), Also see Part IV of the Anti-Corruption Act, Cap. 116 (ACA).

As opposed to the DPP, which is required to seek the assistance of police during its investigations, the IGG has its own investigators.<sup>25</sup> The aforementioned prosecution framework, as we shall see later, has its challenges. The Uganda Revenue Authority (URA) also has the power to institute corruption cases at the Anti-Corruption Court (ACC) as long as they have elements of tax fraud.<sup>26</sup> Public prosecutions by URA are outside the confines of this article.

The IGG does not have corporate status. Consequently, the IGG Act was drafted in a manner that offers immunity for the acts of the IGG or its officers in the execution of their mandate.<sup>27</sup> This lack of corporate status has advantages but also has its disadvantages.<sup>28</sup> The obvious advantage is that the IGG Act offers its officers immunity to conduct their work without fear of civil or criminal proceedings being brought against individual IGG staff or the IGG.<sup>29</sup> The disadvantage is that where officials in the Attorney General's Office are involved in covering up corruption on behalf of political leaders, there would be serious challenges.<sup>30</sup> This is because the Attorney General is the chief legal adviser of government ministries, departments, and agencies.<sup>31</sup> The Attorney General is, therefore, the IGG's legal adviser. This not only presents a conflict-of-interest situation but may also pose a challenge to the IGG's investigations.<sup>32</sup>

The investigators within the IGG's Office are not only poorly remunerated, but their employment is contractual. Employment contracts may not be renewed if the IGG staff do not please political leaders.<sup>33</sup> The political leaders can influence these contract renewals through intelligence reports that they periodically receive from security agencies on the conduct of these investigators.<sup>34</sup> Considering that ruling party cadres are placed in top

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25 Secs 15-17 & 21 of the IGGA & Sec 50 of the ACA.

26 Schutte (2016) at 2.

27 See sec 21(1) of the IGGA.

28 Musisi F (12 November 2014) "IGG wants Nyombi out of the Katosi road case" *Daily Monitor*, available at <https://www.monitor.co.ug/News/National/IGG-wants-Nyombi-out-Katosi-road-case/688334/2531716/-/u1xggd/-/index.html> (accessed 28 May 2024).

29 Sec 21(1) of the IGGA.

30 Musisi (2014).

31 Art 119(3), (4) & (5) of the 1995 Constitution.

32 Musisi (2014).

33 See sec 15 of the IGGA, also see Transparency International Uganda (2015) 19.

34 Transparency International Uganda (2015) at 19.

positions in these anti-corruption institutions, the political leaders can influence the renewal of investigators' contracts. Therefore, there is no job security for these investigators.<sup>35</sup> The importance of these investigators in the successful prosecution of cases cannot be underestimated. Without their skilful conduct of investigations, there would be very few convictions of corruption cases.<sup>36</sup> This lack of job security and inadequate facilitation is deliberately intended to weaken the capacity of investigators to execute their mandate. This indicates a lack of political will to prevent corruption in Uganda.<sup>37</sup> Moreover, the low salaries paid to investigators present fertile and tempting grounds for investigators to accept bribes. This environment is exacerbated by the fact that they investigate rich and politically connected individuals who have stolen millions of dollars.<sup>38</sup> The question of a conducive working environment for the investigators at the IGG's Office must be addressed.

### **3.1.3 IGG prosecutions**

In Uganda, the mandate of public prosecutions of crime is vested in the DPP.<sup>39</sup> Section 49 of the Anti-Corruption Act, 2009 (ACA), however, vests the public prosecutions of corruption crime in both the DPP and IGG and in any other person with the consent of the DPP or IGG. The question of whether it is only the DPP who has the sole right to institute criminal proceedings against any person was answered in the case of *Jim Muhwezi v Attorney General*, where the petitioners argued that it was only the DPP who had the power to institute criminal proceedings against them.<sup>40</sup> The Constitutional Court held that "with due respect to learned counsel for the petitioners, we do not accept their argument that under Article 230(1), the IGG has no powers to prosecute them". Relatedly, in the case of *Hon Sam Kutesa v Attorney*

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35 Sec 15 of the IGGA.

36 See Carson (2015), also Schutte (2016). Schutte indicates that the IGG's conviction rate of cases filed was 60%.

37 Transparency International Uganda (2015) at 19.

38 Transparency International Uganda (2015).

39 Art 120 of the 1995 Constitution.

40 Constitution Petition No 10/2008.



*General*, the Constitutional Court held that “it is constitutional that the Inspectorate of Government can prosecute or cause prosecution in respect of cases of corruption, abuse of authority or public office”.<sup>41</sup>

The mandate of the IGG to prosecute corruption has numerous challenges. These include insufficient funding and understaffing, among others.<sup>42</sup> The frequent failure by the government to fill vacant positions within the IGG’s office is a major weakness because it has caused a failure in prosecutions.<sup>43</sup> This challenge has not only caused case backlog but, in some instances, has enabled corrupt individuals to be let off the hook.<sup>44</sup> For example, the law requires the IGG’s Office to be led by an Inspector General of Government and two Deputy Inspectors General.<sup>45</sup> Since the establishment of the IGG’s Office in 1995, the second position of Deputy IGG was vacant until it was filled on 16 July 2013.<sup>46</sup> Due to this vacancy, three ministers who were being prosecuted by the IGG in connection with the notorious CHOGM Scandal – one of Uganda's most significant corruption cases – were ultimately acquitted. This outcome arose from the fact that the IGG’s Office was not fully constituted, undermining the legal proceedings and allowing these high-profile figures to escape accountability.<sup>47</sup> In the

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41 Constitutional Reference No 54/2011, 19 – 20.

42 Kahungu MT (1 February 2019) “Inside the IGG’s Shs56b Budget” *Daily Monitor*, available at <https://www.monitor.co.ug/News/National/Inside-IGG-s-Shs56b-budget/688334-4960666-format-xhtml-iru51h/index.html> (accessed 24 May 2024).

43 Mangula G (2 May 2018) “Corruption: Why the IGG stuck with 4000 cases” *Eagle Online*, available at <https://eagle.co.ug/2018/05/02/corruption-why-the-igg-is-stuck-with-4000-cases.html> (accessed 27 May 2024).

44 Mangula (2018). Also see *Hon. Sam Kutesa v Attorney General*, Constitutional Petition No 46/2011.

45 Sec 2(2)(b) of the IGG Act.

46 The Inspectorate of Government (2013) “Mariam Wangadya Approved New Deputy IGG”, available at <https://www.igg.go.ug/updates/news/mariam-wangadya-approved-new-deputy-igg/> (accessed 21 August 2024).

47 *Hon Sam Kutesa v Attorney General* Constitutional Petition No 46/2011.

case of *Hon Sam Kutesa v Attorney General*,<sup>48</sup> the Constitutional Court was faced with the question of

whether when only the Inspector General of Government (in an acting capacity) is the only one lawfully appointed in office, and the other two deputies are not yet appointed, it is constitutional that the Inspectorate of Government, as an Institution, can prosecute or cause prosecution in respect of cases of corruption, abuse of authority or of public office.<sup>49</sup>

Under article 233(1) and (2) of the Constitution, the Constitutional Court ruled that the IGG is fully constituted when it has an IGG and two Deputy IGGs appointed by the President with the approval of Parliament. The Constitutional Court ruled that the IGG can only exercise its powers when it is fully constituted as provided under article 230(1) of the Constitution.<sup>50</sup>

As a result of this constitutional court judgment, the IGG's Office was unable to prosecute any corruption matters because one of the positions of Deputy IGG within the IGG's Office was still vacant.<sup>51</sup> To enable continuity of the mandate of the IGG, the IGG's Office could only prosecute corruption matters through the DPP.<sup>52</sup> The DPP had to sanction every charge sheet instituted by the IGG. Oftentimes, when the charge sheet involved accused persons who were politically connected, there was reluctance on the part of the DPP to sanction the charges.<sup>53</sup> It was only with "donor" pressure that President Museveni was able to appoint a second Deputy IGG.<sup>54</sup> This was the first time in 25 years that the IGG's office became fully constituted and functional to execute its mandate since it was established.<sup>55</sup>

Prosecutors from the IGG's Office are not only overworked due to insufficient manpower but also face threats when they prosecute cases involving high-profile individuals with

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48 *Hon Sam Kutesa v Attorney General* Constitutional Petition No. 46/2011.

49 *Hon Sam Kutesa v Attorney General* Constitutional Petition No. 46/2011 at 15.

50 *Hon Sam Kutesa v Attorney General* Constitutional Petition No. 46/2011 at 21.

51 *Hon Sam Kutesa v Attorney General* Constitutional Petition No. 46/2011.

52 This weakened the role of the IGG, because it had no prosecutorial independence and discretion.

53 Transparency International Uganda (2015).

54 Wesaka A (8 July 2013) "Wangadya Named New Deputy IGG" *Daily Monitor*, available at <https://www.monitor.co.ug/News/National/Wangadya-named-new-deputy-IGG/-/688334/1908158/-/H84XW6/-/index.html> (accessed 22 May 2024).

55 As soon as Museveni fully constituted the IGG's office, he also appointed the DPP Richard Butera to the Court of Appeal leaving the position of DPP vacant for several months.

political connections.<sup>56</sup> Some prosecutors who refuse to be compromised are threatened with death.<sup>57</sup> These threats are compounded by the fact that IGG's prosecutors do not have any form of personal security.<sup>58</sup> Often, they are tasked with investigating and prosecuting government officials who have accumulated significant "dirty money" and power, while they receive meagre salaries.<sup>59</sup> As a result, prosecutors are also directed to manipulate or delay cases in favour of high-profile accused persons facing corruption charges.<sup>60</sup>

Prosecutors are cajoled by superiors who are most often ruling party cadres to delay cases even when there is strong evidence to convict the accused persons.<sup>61</sup> This delay enables the suspects to compromise key witnesses in a case. If the case drags on for a long time, key evidence may disappear, and some witnesses may emigrate or die. This may inevitably lead to the collapse of a cogent case against these powerful suspects.<sup>62</sup>

The ability of corrupt individuals to hire experienced lawyers against state prosecutors who are underpaid and overworked is a serious challenge to the public prosecution of corruption. Not only is this threatening to state prosecutors, but this intimidating environment is compounded when the President offers to pay legal fees for high-profile corruption suspects.<sup>63</sup>

### **3.1.4 Security of Tenure**

Article 223 of the 1995 Constitution provides that the President shall appoint the IGG for a four-year term of office, with a possibility of extension for another final term of four years.<sup>64</sup> The fact that the term of office of the IGG is very short, with the possibility of extension by Parliament, is problematic. The successful prosecution of the abusers of public resources may

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56 Mugabe R (9 June 2019) "Understaffing is hindering our fight against corruption – IGG" *New Vision*, available at [https://www.newvision.co.ug/new\\_vision/news/1502270/understaffong-hindering-fight-corruption-igg](https://www.newvision.co.ug/new_vision/news/1502270/understaffong-hindering-fight-corruption-igg) (accessed 22 May 2024).

57 Transparency International Uganda (2015) at 24.

58 Transparency International Uganda (2015) at 21 – 22.

59 Transparency International Uganda (2015) at 21 – 22.

60 Transparency International Uganda (2015) at 21 – 22.

61 Transparency International Uganda (2015) at 32 – 35.

62 Transparency International Uganda (2015) at 32 – 35.

63 Lumu D (4 March 2013) "Museveni Gives Mukula Shs. 100 million for Legal Fees" *The Observer*, available at <http://allafrica.com/stories/201303040200.html> (accessed 22 May 2024).

64 Art 234(4) & (7).

take more than eight years.<sup>65</sup> This robs the IGG of institutional leadership and memory to effectively prosecute corruption cases that may take longer than eight years to complete. The frequent turnover of leadership at the IGG's office undermines the agency's strategic interventions, which may be ongoing when the leadership changes.<sup>66</sup>

The other challenge is that after the four-year term, the IGG has to be reappointed by the President and approved by the Appointments Committee of Parliament. This mode of appointment of the IGG is vulnerable to political influence-peddling.<sup>67</sup> Some of the political leaders, including government ministers being investigated by the IGG, may appear at the parliamentary approval stage of the re-appointment of the IGG, to mobilise other Members of Parliament (MPs) to defeat his or her re-appointment.<sup>68</sup> This state of affairs affects the quality of investigations being carried out in the IGG's office because of the frequent turnover of not only the top leadership but also the investigators and prosecutors who work on a contract basis.<sup>69</sup>

In 2009, Justice Faith Mwendha, who was on secondment from the Judiciary to fill the IGG's top position, refused to appear before the Parliament's Appointments Committee for approval for her second term arguing that she had already been appointed by the President and according to her understanding of the constitutional provisions, she was not required to appear before Parliament's Appointment Committee for approval for a second time.<sup>70</sup> Following this stand-off with Parliament, President Museveni appointed Justice Mwendha's Deputy, Raphael Baku, as acting IGG.<sup>71</sup> He had earlier been vetted as Deputy IGG by Parliament.<sup>72</sup>

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65 Schutte (2016). This also due to the fact that some convictions are appealed to the High Court, Court of Appeal and Supreme Court.

66 Transparency International Uganda (2015).

67 Transparency International Uganda (2015).

68 As happened in the re-appointment of Justice Faith Mwendha.

69 See sec 15 of the IGG Act.

70 Ariko C (13 July 2009) "Faith Mwendha Vacates IGG Office, hands over vehicles," *New Vision*, available at [https://www.newvision.co.ug/new\\_vision/news/1209569/faith-mwendha-vacates-office-hands-vehicles](https://www.newvision.co.ug/new_vision/news/1209569/faith-mwendha-vacates-office-hands-vehicles) (accessed 23 May 2024).

71 New Vision (23 April 2009) "Raphael Bakku is named acting IGG" *New Vision*, available at [https://www.newvision.co.ug/new\\_vision/news/1245436/raphae-baku-named-acting-igg](https://www.newvision.co.ug/new_vision/news/1245436/raphae-baku-named-acting-igg) (accessed 23 May 2024).

72 Ariko (2009).

To overcome such drawbacks, the security of tenure of staff of the IGG's Office needs to be crafted in more permanent terms.<sup>73</sup> The MPs and government Ministers who are under investigation by the IGG should also recuse themselves from the Parliament approval process of the IGG. This is to avoid political influence-peddling during the approval process, and to enable the IGG to perform his or her duties in an independent manner as the law envisages.<sup>74</sup> Relatedly, the appointment and dismissal process of the IGG is not secure.<sup>75</sup> The security of tenure of the IGG should be strengthened to enable the agency to effectively perform its mandate without political interference from the President.<sup>76</sup> It is no wonder that many of the cases investigated and prosecuted by the IGG serve the interests of the government. Attempts by the IGG to investigate and prosecute individuals close to the State House have been roundly rebuffed.<sup>77</sup>

### 3.1.5 IGG as Ombudsman

The IGG is mandated by the 1995 Constitution and the Leadership Code Act (LCA) to act as the Ombudsman of the Government of Uganda.<sup>78</sup> This function within the IGG's Office is executed by the Directorate of Ombudsman Affairs.<sup>79</sup> Systemic interventions by the Ombudsman are required within the public administration system to enable efficiency. These systemic interventions are a legal requirement.<sup>80</sup> These interventions include "leveraging the Ombudsman role to embed adherence to the rule of law and principles of natural justice and

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73 See for example under arts 163 (10) and 224 of the 1995 Constitution in contrast to the security of tenure of the IGG and Auditor-General. The office of the Auditor-General, which is one of the anti-corruption organs, has performed well, because the security of tenure of the Auditor-General is permanent. He or she can only be removed from office for a few genuine reasons.

74 Art 227 of the 1995 Constitution and sec. 9 of the IGGA.

75 See arts 223(4) and 224 of the 1995 Constitution.

76 Assimwe G (7 June 2018) "Museveni blasts IGG, unveils parallel anti-corruption Unit" *Chimpreports*, available at <https://chimpreports.com/museveni-blasts-igg-mulyagonja-unveils-parallel-anti-graft-unit/> (accessed 19 May 2024).

77 Thembo MK (8 June 2018) "Thieves hide behind Museveni's back-IGG" *Daily Monitor*, available at <https://www.monitor.co.ug/News/National/Thieves-hide-behind-Museveni-s-back---IGG--/688334-4601064-dtjrcj/index.html> (accessed 19 May 2024). Batte B (12 December 2018) "Corruption: How Museveni weakened IGG" *The Observer*, available at <https://observer.ug/news/headlines/59459-corruption-how-museveni-weakened-igg> (accessed 19 May 2024).

78 See art 225(1) of the 1995 Constitution. Also see parts II, III & VI of the Leadership Code Act (LCA).

79 This function is specifically embedded in paragraphs (a), (c) and (e) of art 225(1) of the 1995 Constitution.

80 See sec 7 of the IGGA.

public administration".<sup>81</sup> The IGG carries out its Ombudsman function by receiving complaints from individuals and investigating them, with a view to quick resolution. During its investigations, the IGG emphasises broader systemic flaws to enable corrective action and to facilitate efficiency in public administration.<sup>82</sup> The Ombudsman encounters challenges due to government institutions' reluctance to provide information during investigations and the lack of adequate human resources to carry out its tasks.<sup>83</sup>

### **3.1.6 Code of Conduct for Leaders**

The 1995 Constitution provides for the enforcement of the Leadership Code of Conduct in Uganda.<sup>84</sup> The constitutional provisions are buttressed by the LCA<sup>85</sup> and the Inspectorate of Government Act (IGGA).<sup>86</sup> A minimum standard of behaviour is required of leaders under the Code of Conduct.<sup>87</sup> These minimum standards require leaders to declare their income, assets, and liabilities to the IGG every two years.<sup>88</sup>

The IGG has launched an online platform which leaders can easily access to declare their income, assets and liabilities.<sup>89</sup> The initial online declaration of income, assets, and liabilities started in March 2019.<sup>90</sup> The mechanism of declaration of assets ensures that the IGG has up-to-date information on leaders' wealth and that the leaders do not acquire their wealth through the misuse of public resources.<sup>91</sup> For this wealth declaration mechanism to effectively function, there must be a body to enforce this role. Its role must include the capacity to receive, process, examine, and verify leaders' income, assets, and liabilities.<sup>92</sup>

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81 IGG (2018) at 24.

82 IGG (2018) at 24.

83 IGG (2018) at 27.

84 Arts 225(1)(d) & 234.

85 Secs 2 & 3.

86 Sec 8.

87 See Part III of the LCA

88 Sec 4(1) of the LCA.

89 IGG (2018) 29. The IGG pilot-tested this system in the Districts of Gulu and Kisoro in August and September, 2018.

90 IGG (2018) at 29. Under sec 3(a) of the LCA, the IGG is empowered to receive, examine and verify declarations filed.

91 Gumisiriza & Mukobi (2019).

92 OECD (2011) *Asset Declarations for Public Officials. A Tool to Prevent Corruption*, available at <https://www.oecd.org/corruption/anti-bribery/47489446.pdf> (accessed 10 May 2024).

Leaders who violate the code of conduct can be penalised.<sup>93</sup> The IGG is also required to periodically file statutory reports to Parliament on how they have enforced the Code of Conduct.<sup>94</sup> In *Ken Lukyamuzi v Attorney General, Electoral Commission*,<sup>95</sup> the Appellant, an MP, without reasonable cause, failed to make a declaration to the IGG as required by the LCA. The IGG subsequently wrote to the Speaker of Parliament to remove the Appellant from his seat as an MP. The Speaker informed the Appellant that he had lost his seat, and the Clerk to Parliament wrote to the Electoral Commission indicating that the Appellant's seat was vacant. The Appellant petitioned the Constitutional Court, which agreed with the decision of the IGG and dismissed his petition with costs. Dissatisfied with the Constitutional Court decision, he appealed to the Supreme Court. The Supreme Court agreed with the Appellant and stated that the IGG's decision was unconstitutional.<sup>96</sup>

### **3.1.7 Leadership Code Tribunal**

On 2 June 2017, the amendment to the LCA commenced.<sup>97</sup> The long title to the amendment states that it is:

An Act to amend the Leadership Code Act, 2002, to give effect to Article 235A of the Constitution by providing for the establishment, composition, jurisdiction and functions of the Leadership Code Tribunal; to strengthen the enforcement of the code and other related matters.<sup>98</sup>

Whereas the amendment has enabled the establishment of a mechanism to enforce the code, the provision that made the failure to fill out wealth declaration forms an offence was removed.<sup>99</sup> The amendment was necessitated by, among others, the case of *John Ken Lukyamuzi v Attorney General*,<sup>100</sup> where the Supreme Court, sitting as an appellate Constitutional Court, decided that the IGG could not be an investigator, prosecutor and judge

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93 Secs 35 & 36 of the LCA.

94 Sec 37 of the Leadership Code Act.

95 (Constitutional Appeal No. 2 2007) [2010] UGSC 2 (31 March 2010).

96 (Constitutional Appeal No. 2 2007)) [2010] UGSC 2 (31 March 2010).

97 The Leadership (Amendment) Act, 2017.

98 Matembe MRK (2019) *The Struggle for Freedom and Democracy Betrayed*, Kampala: Self-publication, ISBN: 9789970524006, 176 – 206.

99 New Vision (24 August 2020) "Leaders with unexplained wealth worry Inspectorate of Government" *New Vision*.

100 Constitutional Petition No 19/ 2006.

in the same matter, for crimes committed under the LCA. As a result of this case, the 1995 Constitution was amended under article 235A to establish the Leadership Code Tribunal.<sup>101</sup> The Leadership Tribunal has been constituted.<sup>102</sup>

The lack of financial and human capacity has affected the effective implementation of the Leadership Code Act.<sup>103</sup> As a result of the lack of enforcement for those leaders who violate the code, there have been very few achievements on this front. The IGG has challenges with verifying the leader's wealth declarations.<sup>104</sup>

As a result of the aforementioned capacity challenges, due to a lack of political will to fight corruption, even presidential appointees who were formerly required to file wealth declaration forms under the law are no longer required to file the declarations before the IGG.<sup>105</sup> This weakness has been exploited by presidential appointees to acquire and enjoy unexplained wealth with impunity.<sup>106</sup> The discussion on the public prosecutor follows hereunder.

### 3.2 Director of Public Prosecutions

This institution is established in pursuance of article 120 of the 1995 Constitution. It provides that the institution is charged with all public prosecutions in Uganda.<sup>107</sup> Consequently, it handles all criminal prosecutions in Uganda, except where it delegates this authority.<sup>108</sup> When a suspected criminal commits a crime, it is not against the individual victim but the whole society. Therefore, it is only prudent that an organisation take charge of prosecutions on behalf of every citizen. Therefore, the DPP is the institution charged with the duty of representing the general public in a criminal trial against accused persons. The DPP is

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101 See the Constitution Amendment Act, 2005.

102 Uganda Media Centre (2020) "President Museveni swears in Leadership Code Tribunal", available at <https://www.mediacentre.go.ug/media/president-swears-new-leadership-code-tribunal> (accessed 29 August 2024).

103 Gumisiriza & Mukobi (2019) at 5.

104 Gumisiriza & Mukobi (2019) at 5.

105 See *Roland Kakooza Mutale v The Attorney General* Application No 665/2003 (arising from High Court Civil Application No 40/2003) and *Fox Odoi Oyelowo & James Akampumuza v Attorney General*, Constitutional Petition No 8/2003, where President Museveni swore affidavits against the IGG. In both cases, the Constitutional Court ruled in favour of the Petitioners.

106 Gumisiriza & Mukobi (2019) at 5.

107 Art 120 of the 1995 Constitution.

108 Art 120(4)(a), also see sec 222 of the Magistrates' Courts Act, Cap 19 (MCA).



responsible for guiding the police and other investigative bodies on how to compile evidence against accused persons for use in prosecuting criminal matters.

### **3.2.1 Police investigations**

#### *3.2.1.1 Resources*

The facilitation provided to police investigators is insufficient. Most times, the individuals the police have to investigate have become wealthy from the proceeds of corruption and are politically connected to powerful individuals within the government.<sup>109</sup> The fact that police investigators earn miserly salaries and are not well-equipped to conduct their investigations puts the integrity of these police investigators at risk.<sup>110</sup> They are susceptible to bribes and threats from these powerful, suspected criminals. Considering the major role they play in collecting evidence and identifying credible witnesses, they ought to be well facilitated to enable them to curb the misuse of public resources.<sup>111</sup>

#### *3.2.1.2 Specialisation*

The lack of specialisation within the police also hampers the investigation of corruption cases. A well-trained and experienced police investigator in corruption matters may be transferred during an investigation of a case.<sup>112</sup> Another police investigator deployed in his place may not have the same specialised expertise and experience to investigate corruption cases as the previous police investigator.<sup>113</sup> In addition to the aforementioned limitation of expertise and experience of police investigators, there is a shortage of manpower within the police Criminal Investigations Department to investigate corruption cases.<sup>114</sup> Corruption crimes have increased, but the manpower to curb corruption has not.<sup>115</sup> The Uganda Police Force (UPF) has very few forensic auditors, handwriting experts, and document analysis experts.<sup>116</sup> Some

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109 Transparency International Uganda (2015).

110 Transparency International Uganda (2015) at 18 – 19.

111 Transparency International Uganda (2015) at 18 – 19.

112 Transparency International Uganda (2015).

113 Transparency International Uganda (2015) at 17.

114 Transparency International Uganda (2015).

115 Transparency International Uganda (2015).

116 Transparency International Uganda (2015) at 20.

matters are dismissed from court due to a lack of expert reports. These experts are key personnel in corruption investigations. The other challenge faced by the UPF in corruption investigations is that some police investigators lack computers, information technology (IT), and accounting skills.<sup>117</sup> These skills enable proper analysis of financial records. Transparency International Uganda has noted that this computer illiteracy has hindered the investigative skillset of police officers.<sup>118</sup>

Under recent laws that are intended to curb crime committed using IT, there are procedural steps required to obtain evidence.<sup>119</sup> A police officer who does not have IT skills and has not obtained sufficient training on how to investigate crimes under these IT laws will, most times, prepare evidence that does not meet the procedural steps set out in the laws.<sup>120</sup>

Related to IT laws, other laws also have procedural steps that are mandatory in the acquisition of evidence in the course of police investigations.<sup>121</sup> If, due to a lack of adequate training of the police investigators, the mandatory processes are not followed, the matters are dismissed by the court. Not only does this waste public resources, but it also energises the corrupt to continue in their criminal ways, knowing they can easily exploit loopholes and escape the claws of justice.<sup>122</sup>

This lack of expertise may hamper a timely police investigation, which leads to a loss of interest in the matter or disappearance or death of key witnesses. This often may mean the end of the case, due to a lack of evidence.<sup>123</sup> At times, the State is forced to take the cases to court during early stages of investigations, and once the cases are in court, there is pressure to fix them for a hearing without sufficient incriminating evidence.<sup>124</sup>

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117 Transparency International Uganda (2015) at 17.

118 Transparency International Uganda (2015) at 20.

119 See, for example, sec 31 of the Computer Misuse Act, Cap 96 (CMA).

120 A Police Investigator may retrieve information without obtaining the warrant as required by the law which may led to the court dismissing a case based on technicalities.

121 See for example, sec 23 of the Evidence Act, Cap 8 (EA).

122 Transparency International Uganda (2015).

123 Transparency International Uganda (2015).

124 Transparency International Uganda (2015).

### 3.2.1.3 *Evidence Gathering*

The absence of convictions against the government and wealthy, politically connected individuals can be attributed to the influence-peddling they engage in. This is while evidence is being gathered against them for their prosecution. A court of law can only convict an accused person based on evidence skillfully presented to a court.<sup>125</sup> Moreover, the standard of proof is beyond a reasonable doubt in criminal matters.<sup>126</sup> Whereas the gathering of evidence can also be attributed to the capacity of those who are collecting it, there is abundant proof that political interference may stifle these efforts.<sup>127</sup> Even when investigators can gather evidence effectively, they often become fearful of potential repercussions once they realise that either the President or those associated with him have an interest in the case. This fear can hinder them from performing their duties professionally.<sup>128</sup>

This political influence peddling can be evidenced by the outright bribery of officials involved in gathering evidence or prosecuting corruption matters in court. Considering police officers are paid low wages, the likelihood that they will accept the bribes is very high.<sup>129</sup> Once they accept the bribes, they can easily manipulate a straightforward case with very high chances of conviction by overlooking vital evidence and generally carrying out pitiable investigations. Bribery of police investigators can, as a result, lead to the premature end of a good case, with a high likelihood of conviction in court.<sup>130</sup>

### 3.2.2 *Power to Prosecute*

The power of the DPP to institute cases must be exercised on the basis of comprehensive principles. In deciding whether the DPP should commence criminal proceedings against a

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125 Transparency International Uganda (2015).

126 See *Okoth Okale v Republic* (1965) EA 555.

127 Matembe (2019).

128 Matembe (2019).

129 Transparency International Uganda (2015).

130 GAN Integrity (2017) *Uganda Corruption Report*, available at <https://www.ganintegrity.com/portal/country-profiles/uganda/> (accessed 19 May 2024).

person, there should be guidelines. Presently, there are no official guidelines that the DPP uses to exercise its discretion on whether to prosecute a person.<sup>131</sup>

In the absence of official guidelines, the key considerations that should be considered are grounded in the basic purposes of criminal law. They include: first, the aims of criminal law, namely retribution, prevention, deterrence, reformation and public interest.<sup>132</sup> Secondly, whether the facts contained in the complaint disclose an offence known under the law. Thirdly, whether there is sufficient evidence to support the facts to justify the institution of criminal proceedings. Fourthly, whether there is a legal excuse for the conduct of the accused to justify the offence and to warrant the abandonment of proceedings against the accused. Fifthly, whether the case is more suitable for trial in a civil court. It is also important to consider whether the act complained of is frivolous or vexatious or inspired by malice or ill-will on the part of the complainant and likely to result in abuse of process.<sup>133</sup> Finally, whether it is in the interest of the public to prosecute.<sup>134</sup> Most importantly, in deciding whether or not it is in the public interest to prosecute, prosecutors should consider the seriousness of the offence, the nature of the crime, and the economic impact of the offence on the community.<sup>135</sup>

In some circumstances, the DPP has to consent to the charges under his or her hand.<sup>136</sup> A failure to obtain consent before the institution of the proceedings renders the criminal proceedings a nullity. In *Uganda v Ndodo Benard*,<sup>137</sup> the Court held that where proceedings require the consent of the DPP, the accused should not be charged and tried before such consent is obtained, or else the proceedings are a nullity.<sup>138</sup>

In pursuing this public prosecution role, the DPP is empowered by article 120(3)(a) of the 1995 Constitution “to direct the police to investigate any information of a criminal nature and

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131 This is excerpt for departmental good practices and tradition that have been reduced into what the DPP has called “Prosecution Performance Standards and Guidelines, 2014”, which largely re-echo general law principles on criminal prosecutions.

132 DPP (2013) *Prosecutors Manual on Illicit Trade in Uganda*.

133 Odoki B (1983) *A Guide to Criminal Procedure in Uganda* (3rd ed) Kampala: Law Development Centre at 75.

134 DPP (2013).

135 DPP (2013).

136 See sec 49 of the ACA.

137 (1985) EA 3.

138 JLOS (2017) *The Uganda Criminal Justice Bench Book* (1st ed) Kampala: LDC.

to report to him or her expeditiously”.<sup>139</sup> In *Uganda v Uwera Nsenga*,<sup>140</sup> Justice Gaswaga held that:

Only the DPP, and nobody else, enjoys the powers to decide what the charges in each file forwarded to him or her should be. Although police may advise on the possible charges while forwarding the police file to the DPP ... such opinion is merely advisory and not binding on the DPP ... unless invited as witnesses or amicus curiae (friend of court), the role of the police generally ends at the point the file is forwarded to the DPP.

Therefore, in the course of the police conducting its investigations and compiling a police file, not only is it under the direction of the DPP, but under article 120(6) of the 1995 Constitution, the DPP is not under the direction or control of any person or authority in the course of executing its mandate.<sup>141</sup> The DPP shall take into consideration “public interest, the interests of the administration of justice, and the need to prevent abuse of legal process” as it performs its role.<sup>142</sup>

The DPP can also take over and continue criminal proceedings instituted by any other person or authority.<sup>143</sup> There is no procedural format for how the DPP can take over criminal proceedings under this constitutional provision. The practice has been that the DPP appears in court where the proceedings have been instituted and addresses the court orally on his intention to take over the criminal proceedings.<sup>144</sup>

The DPP can also, under article 120(3)(d) of the 1995 Constitution, discontinue criminal proceedings at any stage before judgment. The first leg of the aforementioned constitutional provision provides that the DPP is empowered to discontinue criminal proceedings instituted by his office. The DPP, however, can only discontinue private criminal proceedings instituted by any person or authority, with the consent of the court in which they have been instituted.

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139 Although the article provides that the police shall conduct their investigations “expeditiously”, police investigations are rarely conducted expeditiously.

140 Criminal Session No 312/2013.

141 See also *Obey Christopher and 14 Others v Uganda* High Court Miscellaneous Application No 3/2016.

142 Art 120(5).

143 Art 120(3)(c).

144 *Uganda v Inspector General of Police Kale Kayihura*, High Court Revision Cause No 34/2016. For a detailed treatment on this, see Mujuzi JD (2017) “Strengthening the Right to Institute a Private Prosecution in Uganda by amending Art 120(3) of the Constitution: A comment on *Uganda v Inspector General of Police, General Kale Kayihura and 7 Others*” 25(4) *African Journal of International and Comparative Law* 590 – 607.

In practice, this has not been the case. In some cases, the DPP has made attempts to avoid this mandatory constitutional requirement.<sup>145</sup>

The DPP is also empowered to appeal against an acquittal by any court of law. In *Busiku v Uganda*,<sup>146</sup> the Supreme Court of Uganda held that the import of section 132 of the Trial on Indictments Act provides that where the High Court has, in the exercise of its original jurisdiction, acquitted an accused person, the DPP may appeal to the Court of Appeal as of right, on a matter of law, fact or mixed law and fact.

Under article 222 of the Magistrates Courts Act (MCA), the DPP can appoint qualified persons who shall be called public prosecutors.<sup>147</sup> These public prosecutors may be appointed to conduct a specific case or to prosecute criminal cases generally.<sup>148</sup> In the conduct of their duties as public prosecutors, they are under the express direction of the DPP.<sup>149</sup> Consequently, the DPP has appointed several public prosecutors to perform specialised public prosecutions.<sup>150</sup> Police officers of or above the rank of Assistant Inspector of Police can prosecute all criminal cases before a magistrate's court.<sup>151</sup> In *Gamalalieri Mubito v R*,<sup>152</sup> the Court held that it is appropriate for the Investigator of an alleged offense and the Public Prosecutor to be different persons from different departments in order not to prejudice the accused person.<sup>153</sup> A similar situation is legally replicated within the IGG's office, where the investigators and prosecutors are located in the same office.<sup>154</sup>

### 3.2.3 Challenges of State Prosecutors

Interference in the duties of state prosecutors has manifested itself in numerous ways. During prosecution-led investigations into corruption cases, prosecutors receive phone calls from

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145 For a detailed treatment on this, see Mujuzi (2017) 604 – 607.

146 Supreme Court Criminal Application No 33/2011.

147 Sec 222(1) of the MCA.

148 Sec 222(2) of the MCA.

149 Sec 222(3) of the MCA.

150 The DPP appoints them under rule 2 of the Magistrates' Courts (Appointment of Public Prosecutors) Instrument.

151 See for example under the Weights and Measures Act, the Births and Deaths Registration Act, and the Companies Act.

152 [1961] EA 224.

153 [1961] EA 224.

154 Sec 15 of the IGGA.

politicians and their agents requesting the prosecutor(s) to delay or drop the cases.<sup>155</sup> This is when there is overwhelming evidence to facilitate convictions in court. This interference is mostly perpetrated by politicians and their agents.<sup>156</sup> This political interference, at times, is practiced openly, which leads to credibility issues with the decisions that the prosecutors make on whether or not to prosecute particular corruption cases.<sup>157</sup> Ultimately, the DPP's prosecutors become instruments in carrying out their constitutional duties, which are surrendered to the influence of politicians.<sup>158</sup> Most of the state prosecutors are forced to do this to safeguard their jobs.<sup>159</sup>

The other challenge that affects the independent and professional prosecution of corruption cases is that the political leaders ensure that only the ruling party "cadres" are placed in leadership positions of key anti-corruption agencies.<sup>160</sup> For example, before one of the past DPPs was appointed as a Justice of the Supreme Court of Uganda, he was a former private secretary to the President.<sup>161</sup>

Political interference results in corruption cases against ruling party members being rushed to prosecution with insufficient evidence or while police investigations are still ongoing.<sup>162</sup> Consequently, in many of these cases, state prosecutors rarely secure convictions because the evidence presented before the court is inadequate.<sup>163</sup>

The staffing at the DPP's office is insufficient.<sup>164</sup> This is a politically motivated decision since state prosecutors are overworked, making it difficult for them to effectively prosecute

155 Transparency International Uganda (2015) at 21 – 22.

156 Transparency International Uganda (2015) at 21 – 22.

157 Matsiko G & Naturinda S (12 October 2008) "Uganda: Museveni defends Mbabazi on NSSF", available at <https://allafrica.com/stories/200810130466.html> (accessed 20 May 2024)., also see Mugerwa Y (5 September 2009) "Uganda: Stop Defending Corrupt Bush War Comrades", available at <https://allafrica.com/stories/2009070144.html> (accessed 20 May 2024).

158 Transparency International Uganda (2015) at 32 – 35.

159 Transparency International Uganda.

160 Wesaka A (15 August 2013) "Who is Chibita, the new DPP" *Daily Monitor*, available at <https://www.google.com/amp/s/www.monitor.co.ug/News/National/688334-1948392-view-asAMP-ahhw7u/index.html> (accessed 23 May 2024).

161 Justice Mike Chibita was a Private Secretary for Legal Affairs to President Museveni, before he was appointed a Judge of the High Court and then appointed DPP, among other key government positions. He is presently a Justice of the Supreme Court of Uganda.

162 Transparency International Uganda (2015) at 21 – 22.

163 Transparency International Uganda (2015) at 21 – 22.

164 The Independent (17 April 2018) "DPP threatens to close offices over staff shortage" *The Independent*, available at <https://www.independent.co.ug/dpp-threatens-to-close-offices-over-staff-shortage/> (accessed 20 May 2024).

corruption cases.<sup>165</sup> The challenge of understaffing is aggravated by the poor remuneration of the state prosecutors. Not only does this impact their motivation to perform their jobs, but it also creates opportunities for bribing these key gatekeepers in the fight against corruption.<sup>166</sup> Considering the state prosecutors are prosecuting individuals who are politically connected or have amassed huge amounts of wealth, it would be prudent to cushion the state prosecutors by paying them well.<sup>167</sup>

### **3.2.4 DPP Anti-Corruption Division**

The DPP has a specific department in charge of the prosecution of corruption cases. This is to enable specialisation, which enables efficiency within the DPP's Office.<sup>168</sup> This unit is primarily charged with prosecuting corruption cases at the Anti-Corruption Court. These core duties are "to provide legal advice to investigating bodies in corruption and money laundering cases; to prosecute corruption and money laundering cases".<sup>169</sup> The other duties of this department include enforcing measures for the recovery of proceeds of crime.<sup>170</sup> This department is also charged with coordinating with the Inter-Agency Forum on Corruption matters in Uganda.<sup>171</sup>

Reviewed literature indicates that most corruption cases handled by the DPP relate to forgery and embezzlement.<sup>172</sup> Many of these corruption cases instituted by the DPP are either closed or dismissed for lack of cogent evidence.<sup>173</sup> This is partly due to political influence peddling in the prosecution of these corruption cases. The manipulation of public

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165 Kiyonga D (12 April 2020) "Challenges that await DPP Abodo as she takes over office" *Daily Monitor*, available at <https://www.google.comamp/s/www.monitor.co.ug/Magazines/PeoplePower/Challenges-that-await-DPP-Abodo-she-takes-over-office/689844-5521860-view-asAMP-4gv5lt/index.html> (accessed 20 May 2024).

166 Transparency International Uganda (2015) at 21 – 22.

167 Transparency International Uganda (2015) at 21 – 22.

168 DPP (2018) "The Directors Remarks at the Launch of Anti-Corruption Week", available at <https://dpp.go.ug/index.php/component/k2/item/30-the-directors-remarks-at-the-launch-of-anti-corruption-week> (accessed 10 May 2024).

169 DPP (2018).

170 DPP (2018). With the amendment of Anti-Corruption Act, 2009, this role has been partly moved to the Public Trustee, within the Administrator General's Office.

171 DPP (2018).

172 IGG (2014).

173 IGG (2014).



prosecutions against the corrupt aims to reward loyal supporters and punish disloyal ones, thereby maintaining a political patronage system.<sup>174</sup>

#### 4. THE POLITICAL WILL TO CURB CORRUPTION IN UGANDA

The public prosecutions of corruption in Uganda have been riddled with interesting narratives. One of the narratives is that the anti-corruption framework is perfect, but enforcement of the laws is weak due to a lack of political will.<sup>175</sup> The first leg of this narrative is that only “small fish” are prosecuted, leaving the “big fish” to enjoy the proceeds of corruption. This is because they have the political connections to manipulate the anti-corruption regime. This is even when there is overwhelming evidence to convict them in the courts of law.<sup>176</sup> The second leg of the aforementioned narrative is that the overwhelming evidence is only brought up when the corrupt “big fish” choose not to offer political support to the political party in power.<sup>177</sup>

When central government departments or ministries are involved in corruption, it is the low-level public officials who are implicated and arraigned in court as “sacrificial lambs” for the criminality of their superiors.<sup>178</sup> These anti-corruption agencies focus on prosecuting low-level public servants, such as clerks, teachers, and auditors. Meanwhile, they manipulate the prosecution of high-level public officials to appease those in power. These senior public officers have godfathers in government to protect them from any investigation and prosecution by anti-corruption agencies.<sup>179</sup> At times, it is the President or individuals working with him who are shielding the suspects from prosecution.<sup>180</sup> Whereas the law provides that the DPP and IGG are independent from the direction of any person or authority, the President has, on a few occasions, instructed the DPP or IGG not to prosecute these suspected abusers of public resources to maintain his political support base.<sup>181</sup>

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174 Transparency International Uganda (2015).

175 Transparency International Uganda (2015) at 32 – 35.

176 This “small fish – big fish” metaphor was popularised by Human Rights Watch in their 2013 Report on corruption in Uganda. For a detailed treatment on this see, HRW (2013) “Let the Big Fish Swim: Failures to Prosecute High Level Corruption in Uganda” ISBN: 978-1-62313-0633.

177 Transparency International Uganda (2015) at 34 – 35.

178 Transparency International Uganda (2015) at 39.

179 Transparency International Uganda (2015).

180 See Matembe (2019) 201, also see Transparency International Uganda (2015) at 32 – 35.

181 Transparency International Uganda at 33.

Conversely, if a ruling party official who has previously been protected from prosecution stops offering political support to the government, they may be subjected to selective prosecution. In this case, the legal process could be expedited to “punish” that official. This lack of independence in the performance of the prosecution agencies’ mandate is partly due to the lack of security of tenure of the staff.<sup>182</sup> The staff in anti-corruption agencies often act according to the whims of political figures to secure their jobs. This behaviour represents a form of corruption itself, as these individuals, who are meant to lead the fight against corruption, abandon their duty to independently and fearlessly curb the abuse of public resources.

A former Minister in the Museveni government supports the previously mentioned situation regarding anti-corruption efforts. Matembe, who was the first Minister of Ethics and Integrity in Museveni's administration, reveals that she faced significant challenges when presenting both the IGG Statute and the Leadership Code to the cabinet for discussion and approval.<sup>183</sup> It took the cabinet three years to pass these Anti-Corruption Bills. This was only after Matembe had threatened to tell the general public and development partners that the NRM government was not interested in combating corruption in Uganda.<sup>184</sup> Matembe states that the Bills were only approved reluctantly by her cabinet colleagues, hoping that they would eventually be rejected on the floor of Parliament.<sup>185</sup> Matembe asserts that during her time as Minister of Ethics and Integrity and as Chairperson of the Inter-Agency Forum on Corruption, she concluded that the NRM government lacked the political will to combat corruption.<sup>186</sup>

Matembe asserts that President Museveni’s guiding principle in addressing corruption is that one is considered corrupt only if one is not a loyal NRM cadre. She states that “as long as you are a cadre but you are corrupt, he simply closes an eye”.<sup>187</sup> Matembe points out that

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182 For example, see secs 4,15 & 16 of the IGGA, 2002.

183 Matembe (2019) at 181.

184 Matembe (2019) at 181.

185 Matembe (2019) at 182. The Bills were eventually passed into law by Parliament.

186 See Matembe (2019) 176 – 206. In her book chapter aptly titled “No Political Will to fight Corruption” Matembe cites numerous examples which led her to come to this conclusion. She cites incidences where President Museveni pardoned corrupt government officials. These include Mulindwa Birimumaso, Christine Namudu Kigundu and Prof. Gastavus Ssenyonga who were convicted by court for corruption, but the President pardoned them, arguing that they were good NRM Cadres.

187 Matembe (2019) at 205.

this reveals a contradiction between his statements and actions regarding the fight against corruption. She notes that corrupt individuals are the ones sustaining Museveni's power and "corruption is the engine that sustains the President in power".<sup>188</sup> This patronage system, she notes, "has totally undermined the true tenets of democracy and good governance in Uganda".<sup>189</sup> For her efforts to curb corruption in Uganda, Matembe was summarily sacked from her position as Minister.<sup>190</sup>

## 5. NEW TECHNOLOGIES TO PREVENT DUPLICATION OF AGENCIES

AI and other new technologies can reduce the duplication of roles of these informal and formal anti-corruption agencies.<sup>191</sup> One of the interventions is by establishing an AI-powered case management system that enables a unified digital ecosystem. This unified ecosystem can synchronise the investigation, prosecution and court adjudication of corruption cases of all anti-corruption agencies.<sup>192</sup> As a result of these, integrated case management platforms between anti-corruption agencies, duplicated investigations will be eliminated. The reduction in the duplication of mandates may lead to a reduction in anti-corruption agencies in Uganda. This can lead to more efficient and effective anti-corruption strategies that avoid the wastage of taxpayers' resources through duplication of functions.

Using blockchain audit trails, cases across agencies can be tracked in real-time from investigation to conclusion in court. The AI potential for real-time collection and processing of cogent evidence, which significantly reduces time and resources during investigations, should be explored. In addition, automating compliance platforms and using AI can lead to a reduction in the human resources required to process the declaration of assets, income and liabilities, among other administrative tasks of these multiple agencies.

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188 Matembe (2019) at 205.

189 Matembe (2019) at 206.

190 Matembe (2019) at 140.

191 Odilla F (2023) "Bots against corruption: Exploring the benefits and limitations of AI-based anti-corruption technology" 80(4) *Crime, Law and Social Change* 353 – 396.

192 Hauser C (2024) "Digitalisation, artificial intelligence, and the fight against corruption" in Stachowicz-Stanusch A et al (2024) *Organizational Corruption, Crime and Covid-19* London: Routledge at 238 – 258.

The employment of new technologies is supported by the law in Uganda.<sup>193</sup> In view of the dictates of a contemporary world, the employment of new technologies in the prevention and detection of corruption is inevitable. In a nutshell, the aforementioned discussion shows that new technologies can reduce the human and administrative resources required to combat corruption.<sup>194</sup> As a result of the employment of new technologies, some anti-corruption agencies may become redundant. This should lead to merged anti-corruption agencies in Uganda.<sup>195</sup>

## 6. CONCLUSION

The anti-corruption framework in Uganda is strong, but its enforcement is severely compromised by a blatant lack of political will. Informal and formal mechanisms often conflict, undermining effective action against corruption. Political influence dictates the prosecution of corruption cases, allowing those aligned with the ruling party to evade accountability, while disloyal members are unfairly targeted even when the evidence is weak. The possibility of employing new technologies, including AI and blockchain applications, may reduce the need for significant human and administrative resources to curb corruption. This, as a result, may lead to a reduction in the number of anti-corruption agencies in Uganda. Political leaders routinely make lofty promises to combat corruption, yet these declarations rarely translate into genuine action. This results in low-level public servants being prosecuted as scapegoats, while high-profile cases handled by the DPP or IGG fail to satisfy public demand for justice. It is clear that without real political commitment to enable accountability, corruption will continue to thrive in Uganda.

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193 Also see other laws, like the Electronic Transactions Act, the Computer Misuse Act, and the Data Protection and Privacy Act, that facilitate how electronic evidence can be gathered for court purposes.

194 Odilla (2023) generally.

195 Mutungi F et al (2021) "Digital Anti-Corruption Typology for Public Service Delivery" 174 *International Journal of Computer Applications* (0975 – 8887).