

Effectiveness of anti-corruption measures in Uganda

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ABSTRACT

The government of Uganda has put in place and is implementing different home-grown and internationally proven anti-corruption measures such as rescission of contracts obtained through corrupt means, monetary fines for those implicated in corruption, debarment/blacklisting of companies or individuals known to have been corrupt in the past, asset declaration by leaders and government officials to detect and minimize corrupt accumulation of assets, whistleblowing to expose corruption by those who know about it, criminalizing money laundering to stem the flow of illegally or corruptly acquired money, and confiscation of assets or proceeds obtained through corruption, all aimed at curbing endemic corruption in the country. Nevertheless, corruption (both petty and grand) is still endemic in public institutions at all levels in Uganda. This article uses secondary and key informant primary data sources to critically explain why these anti-corruption measures have not been effective in the fight against corruption in Uganda. The main argument made in this article is that anti-corruption measures in Uganda have not been effective because they are inherently weak, a challenge that is compounded by political interferences in anti-corruption prosecutions and a dysfunctional anti-corruption institutional framework. This article recommends that anti-corruption measures should be fine-tuned to confront sophisticated corruption and be applied to all impartially.

Keywords: Anti-corruption, asset declaration, debarment, monetary fines, rescission of contracts, whistleblowing, Uganda

العنوان: مدى فعالية تدابير مكافحة الفساد في أوغندا

ملخص

أرست حكومة أوغندا عدد من تدابير مكافحة الفساد التنفيذية المحلية المنشأ والمعترف بها دولياً ، على سبيل المثال :نقض العقود التي تم الحصول عليها من خلال وسائل فاسدة ، الغرامات المالية لأولئك المتورطين في الفساد ، العزل من الوظيفة للأشخاص الطبيعيين الفاسدين وحجب الشركات الفاسدة وإدراجها على القائمة السوداء ، بالإضافة إلى الإفصاح عن الممتلكات من قبل القادة والمسؤولين الحكوميين لكشف والحد من تراكم الأصول الفاسدة ، تجريم غسل الأموال لغرض إيقاف تدفق الأموال الغر مشروعة ومصادرة الأصول أو العائدات التي تم الحصول عليها من خلال الأعمال الفاسد والتي تسهم في الحد من الفساد المستشري في البلاد. ومع ذلك ، لا يزال الفساد -سواء كان صغيراً وكبيراً - منتشرًا على نطاق واسع في كافة المستويات في المؤسسات الحكومية.

توظف المقالة مصادر البيانات الثانوية لتوضيح سبب عدم فعالية تدابير مكافحة الفساد في أوغندا. حيث ان الحجة الرئيسية الواردة في المقالة تقضي بعدم فعالية تدابير مكافحة الفساد ف أوغندا لضعف طبيعتها الناتجة عن اختلال الاطار المؤسسي المعني بمكافحة الفساد في الدولة و التدخل السياسي الذي

يشكل تحدياً في تطبيق القانون تحدياً في المحاكمات المعنية بقضايا الفساد. تقدم هذه المقالة توصيات حول ضرورة صقل تدابير مكافحة الفساد لمواجهة أعمال الفساد المتطورة وتطبيقها على الجميع بشكل محايد.

الكلمات المفتاحية: مكافحة الفساد، الإفصاح عن الموجودات، العزل من الوظيفة، غرامة مالية، نقض العقد، الإبلاغ، أوغندا

1. INTRODUCTION

The government of Uganda established several anti-corruption agencies,¹ including the Inspectorate of Government (IG),² the Office of the Auditor General (OAG), the Directorate for Public Prosecution (DPP), the Directorate for Ethics and Integrity (DEI), the Anti-Corruption Court, State House Anti-corruption Unit, among others, to fight endemic corruption in the country. A number of laws, including: the Inspectorate of Government Act 2002; the Leadership Code Act 2002; the Public Finance and Accountability Act 2003; the Public Procurement and Disposal of Public Assets Act 2003; the Access to Information Act 2005; the Audit Act 2008; the Anti-Corruption Act 2009; and the Whistle Blowers Protection Act 2010 have been put in place. Home-grown and internationally recommended anti-corruption measures such as rescission of contracts, monetary fines, debarment, asset declaration, whistleblowing, imprisonment of corruption culprits, and criminalizing money laundering have also been adopted to help the fight against rampant corruption in Uganda. The use of different parameters to gauge the effectiveness of anti-corruption measures has indicated some success. For example, the IG indicated in its July–December 2017 report that it registered 1,399 complaints against corruption and maladministration across the country and 4,817 investigations were ongoing. Of the overall complaints received, 947 were investigated and concluded, as well as 15 out of 105 prosecuted corruption cases were concluded with 11 convictions, two acquittals, and two dismissals. More than Ushs 15 billion was saved through court fines, awards, and orders, while Ushs 267,191,558 was made from administrative recovery sanctions imposed on officials in government ministries, departments, agencies, and local governments. A total of 14 cases of grand and syndicated corruption involving 20 high-ranking public officials were completed with arrests and prosecution of culprits. Seven judicial review cases were concluded under civil litigation, and all the judgments were in favor of the IG. The IG also concluded verification of declarations of 10 (15%) leaders, while verifications of 102 leaders were ongoing.³

Despite the existence of several anti-corruption agencies, laws, other measures, and the achievements mentioned above, corruption is still pervasive in Uganda. In 2017, Transparency International ranked Uganda at 151 out of 176 countries in the

Corruption Perception Index of 2016, placing it among the top 25 most corrupt countries in the world.⁴ Most people, including high-ranking anti-corruption officials, seem to be resigned to corruption rather than stand up against it.⁵ This article critically examines how different anti-corruption measures (rescission of contracts, monetary fines, debarment, asset declaration, whistleblowing, imprisonment of corruption culprits, and criminalizing money laundering) have been used in the fight against corruption in Uganda, why they have achieved very limited success, and recommendations on how these measures can be strengthened to effectively fight the complex problem of corruption in Uganda.

1.1. Rescission (nullity) of contracts

Rescission (nullity) of contracts occurs when a contract is cancelled, annulled, or abrogated by parties, or one of them, thereby restoring parties to the positions they would have occupied if no contract had ever been formed.^{6, 7} Contracts obtained with the influence of corruption can be entirely or partly annulled from the very beginning or at any time once they are discovered. This measure entails substantial costs/risks for parties involved in corruption and has been hailed by different scholars and anti-corruption practitioners as one of the effective measures that governments can use to curb corruption.^{8, 9} In Uganda, conditions for rescission of contracts are provided for in Article 2 Clause 119 (5) of the Uganda Constitution 1995, which stipulates the conditions to be fulfilled in contract management. Failure to fulfill the stipulated terms would render such a contract null and void.¹⁰ The constitutional provisions are operationalized using the Public Procurement and Disposal of Public Assets (PPDA) Act 2003. The PPDA Act 2003 stipulates the guidelines to be fulfilled under public procurement and conditions for nullification of contracts. Section 45 of the PPDA Act 2003 requires that Procuring and Disposing Entities (PDE), bidders, and providers observe the highest standards of ethics during procurement and execution of contracts. Section 55 of the PPDA Act 2003 emphasizes the application of rules, guidelines, and regulations set out by relevant bodies. Section 93(1) of the PPDA Act 2003 requires public officers as well as experts who are engaged in delivering specific services to sign the code of ethical conduct. Noncompliance with these provisions renders a contract illegal, null, and void. According to Sub-Clause 3.1 of the procurement guidelines, the PDE may terminate a contract any time if it finds its representatives or a provider engaged in corrupt practices during procurement or execution of that contract.¹¹ Many public contracts discovered to have been secured through corruption both at central and local government levels have been annulled. However, in most cases, the usefulness of nullity of contract as a deterrent to corruption in Uganda remains ineffective because of political interference, collusion between

1 There is extensive Academic discussion on why the Anti-corruption Institution Multiplicity Approach (having several anti-corruption fighting corruption at the same time in Uganda has rather been ineffective. For this discussion see P. Gumisiriza & R. Mukobi, Anti-Corruption Multiplicity Façade in Uganda, 15 Ugandan J. Mgmt. & Pub. Pol'y Stud. 90 (2018).

2 The Inspectorate of Government is the lead national anti-corruption agency with power to investigate, inspect, and freeze bank accounts; search, arrest, order for production of documents; enforce asset declaration and prosecute public officials involved in corruption

3 See Inspectorate of Gov't, Bi-Annual Inspectorate of Government Performance Report to Parliament, July – December 2017 (2018), available at <https://www.igg.go.ug/publications/>

4 See *Corruption Perception Index 2016*, Transparency Int'l (Jan. 25, 2017), https://www.transparency.org/news/feature/corruption_perceptions_index_2016.

5 K. Kazibwe, *IGG to Museveni: Your Anti-Corruption Unit will be Swallowed by Corruption*, Nile Post (Jun. 7, 2018), <https://nilepost.co.ug/2018/06/07/igg-to-museveni-your-anti-corruption-unit-will-be-swallowed-by-corruption/>

6 D.M. McGowan & A.T. Brisendine, *Option Medley Continued: Rescissions*, Benefits L.J., Autumn 2001, at 14.

7 E. Sherwin, *Nonmaterial Misrepresentation: Damages, Rescission, and the Possibility of Efficient Fraud*, 36 Loy. L.A. L. Rev. 1017 (2003).

8 M. Nell, *Contracts Induced by Means of Bribery: Should they be Void or Valid?* Friedrich-Alexander-University Erlangen-Nuremberg (BGPE Discussion Paper No. 42, 2008), https://www.bgpe.de/texte/DP/042_Nell.pdf.

9 Susan Rose-Ackerman & Paul Carrington, *Anti-Corruption Policy: Can International Actors Play a Constructive Role?* (2013) (citing J.G. Lambsdorff).

10 Constitution of the Republic of Uganda (1995).

11 PPDA, User Guide to the Public Procurement and Disposal of Public Assets (PPDA) Act 2003 and Regulations, 2014 (2015).

corrupt government technocrats and companies to approve or conceal contracts that should be annulled, renegotiation of contracts, failure to recover the already spent public money once a contract has been annulled, and costly compensation. For example, in 2013, the Karuma Hydro Electric Dam was initially terminated but later renegotiated, costing Uganda US\$ 2.2 billion instead of the initial US\$ 1.2 billion. In 2014, EATAW (an alleged American Company) was awarded a contract to tarmac the 75 km Kyetume–Katosi road. However, because of fraud in the procurement process, the contract was cancelled. The renegotiated contract cost Ushs 254 billion instead of the initial 165 billion, causing the Ugandan taxpayer Ushs 24 billion loss.¹²

Decisions to award, nullify, or staying nullified corruptly secured public contracts in Uganda are susceptible to political influence peddling. For example, in September 2019, President Museveni interrupted the tendering process for the proposed Kampala–Jinja Expressway as a public–private partnership and invited a Chinese company, China Railway 17th Bureau Group Company (CR17th), to begin discussions on the project. In a September 18, 2019 letter to the Minister for Works, President Museveni gave a directive that the Chinese should be given a contract since they have over US\$ 1 billion to build the road. However, it should be recalled that the subsidiaries of this company was previously disqualified from the tendering process of this project for several tender requirement abuses.¹³ In 2014, the Parliament of Uganda recommended the termination of contracts awarded to two electric power distribution companies (Eskom and Umeme) due to gross manipulations encountered in their procurement. However, President Museveni revoked the parliament's resolution and ordered the contract approval.¹⁴ In 2011, Members of Parliament wanted to nullify the contract agreements of an oil exploration and extraction company (Tullow) on the grounds that government officials had taken kickbacks and there was no transparency in the procurement process. However, the President ordered the Minister of Energy to sign and uphold the Tullow production sharing agreement with Uganda.¹⁵ In March 2010, rather than go through a proper competitive procurement arrangement as stipulated in law, President Museveni ordered that Mühlbauer Technology Group, a company that had been recommended to him by the then German ambassador to Uganda, Reinhard Butchnolz, be given a contract to produce national identity cards. The company was expected to produce over 3.5 million IDs by December 2010 and approximately 21 million by the end of the project in June 2012. However, the firm only released 400 IDs, and by March 2012 the project had stalled and government lost over Ushs 200 billion.¹⁶ In 2008, the IG cancelled a Ushs 312 billion tender for the second phase of the National Social Security Fund (NSSF) pension towers due to corruption. The government lost US\$ 16 million in the compensation

process that ensued and the construction stalled.¹⁷ In 2006, the National Enterprises Corporation (NEC), which is the trading arm of the Uganda People's Defence Force, signed a mining contract with Dura Cement to mine limestone from its 473-hectare land in Kamwenge and nearby districts. However, President Museveni later ordered the cancellation of this contract because the directors and address of Dura Cement Company were not known. Dura sued the government for loss of business and demanded US\$ 103 million, but it was paid more than US\$ 16 million after negotiations. In 2010, President Museveni rescinded the contract of Haba Group of Companies owned by Kampala businessman Hassan Bassajjabalaba to lease and manage three Kampala markets of Nakasero, Shauriyako, and St Balikuddembe when market vendors and parliament opposed the lease. Basajjabalaba was compensated Ushs 142 billion (US\$ 61 million), which he claimed that the then Minister of Finance Syda Bbumba, Attorney General Khiddu Makubuya, Governor Bank of Uganda Tumusiime Mutebile, and President Museveni knew about this. An audit by the OAG determined that there was no basis for the compensation. While Basajjabalaba was subsequently arrested and charged with forgery of the documents relating to the payment and tax evasion, he never returned the taxpayer's money.^{18, 19} In Uganda, the law clearly states that falsification of documents, signatures, academic, or tax verification certificates will earn an individual a loss of contract and some jail time; the same applies to an individual involved in big contracts such as road construction.

1.2. Monetary fines

Monetary fines are charges imposed on individuals or entities for breach of contracts, rules, or violation of codes of conduct or nonconformity to agreed procedures.²⁰ The size of the penalty is sometimes linked to the contract value or reflects the gravity of an offence, taking into account an enterprise's size, culpability, and other factors such as the harm caused by an offence.²¹ Monetary fines encourage self-reporting as companies strive for leniency. Through monetary fines, resources are shifted from one party to another without further social costs. They are penal in nature, designed to punish misconduct and deter future offences by a defendant.²² In Uganda, the use of monetary fines as a punishment for corruption has been embraced in different laws spread throughout various statutes. The Anti-Corruption Act 2009 stipulates the punishment for the corruption offences committed. A person convicted of an offence under sections 2, 3, 4, 5, 6, 7, 8, 12, and 13 is liable on conviction to a term of imprisonment not exceeding 10 years or a fine not exceeding 240 currency points, or both. In monetary terms, a month of imprisonment is roughly equal to 2 currency points and each currency unit is Ushs 20,000 (US\$ 6). The PPDA Act 2003 prescribes a jail sentence of 5 years and a

12 C.K. Sabiiti et al. *10 Years of Promoting Accountability in Public Procurement in Uganda* (2014).

13 F. Musisi, *Museveni Directs on Shs4 trillion Jinja Expressway Tender*, Daily Monitor (Sept. 26, 2019), <https://www.monitor.co.ug/News/National/Museveni-directs-on-Shs4-trillion-jinja-expressway-tender/688334-5287304-xwi8yt/index.html>.

14 B. Badru & W. Muhumuza, *The Politics of Core Public Sector Reform in Uganda: Behind the Façade* (Effective States and Inclusive Development Research Centre (ESID), University of Manchester, United Kingdom, Working Paper No. 85, 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954595.

15 R. Tangri & A. Mwenda, *The Politics of Elite Corruption in Africa: Uganda in Comparative Africa Perspective* (2013).

16 See Badru & Muhumuza, *supra* note 14.

17 UDN, *Dossier on Corruption in Uganda from 2002–2012* (2013).

18 Inspectorate of Gov't, *Third Annual Report on Corruption Trend Tracking in Uganda: Using the Data Tracking Mechanism* (2012).

19 Badru & Muhumuza, *supra* note 14.

20 J.S. Zucker, *The Boeing Suspension: Has Consolidation Tied the Defence Department's Hands?*, 6 Pub. Procurement L. Rev. 260 (2004).

21 U.N. Office on Drugs & Crime, *Guidebook on Anti-corruption in Public Procurement and the Management of Public Finances. Good Practices in Ensuring Compliance with Article 9 of the United Nations Convention against Corruption* (2013).

22 J.G. Lambsdorff, *Corrupt Intermediaries in International Business Transactions: Between Make, Buy and Reform*, 35 Eur. J.L. & Econ. 349 (2013).

minimum fine of 5 million Uganda shillings (US\$ 1,700) upon conviction for accounting officers who award a fraudulent contract. New financial penalties have been added in the legislation. According to the Anti-money Laundering Act 2013, an individual who commits a crime under the Act will face 5–15 years in prison or be liable to a fine ranging from Ushs 660,000,000 (660 million Uganda shillings) to 2,000,000,000 (2 billion Uganda shillings) (approximately US\$ 2,575–780,340). For a legal person, the fine imposed on the entity ranges from Ushs 1,400,000,000 (1 billion 400 million Uganda shillings) to Ushs 4,000,000,000 (4 billion Uganda shillings) (approximately US\$ 546,240–1,560,680). The use of monetary fines as a corruption deterrent tool comes with several advantages such as easy implementation. In Uganda, police and courts of law are mandated to give out fines for people who commit offences such as corruption, embezzlement, misuse of public resources, and neglect of duty.²³ Despite the legal provisions for the use of monetary fines and their continued applications in courts of law, various reports have indicated that these penalties have not been effective in deterring bribes and corruption prevalence in Uganda. In fact, in some cases, they seem to accelerate corruption because most monetary fines laws are outdated. Monetary fines provided in anti-corruption laws are weak and just a fraction of what is embezzled. For example, a person who embezzles Ushs 18 billion (US\$ 5 million) may not be required to pay back the money but would rather be jailed for 3–5 years. In some cases, individuals and companies who have been fined are left in business and continue with their vices. Financial penalties are scattered throughout various statutes and are not consolidated in any one place, but each of them is looked at in isolation of the other. Therefore, it becomes very difficult to track and assess the total impact of such financial penalties on an individual or company. The different anti-corruption laws give judicial officers powers to order for compensation or repayment of the money to the owner, but this power can be misused when rules are vague and hardly enforced; thus, officials obtain sovereignty in interpreting them and may take a bribe. In addition, it is difficult to accurately estimate the amount of fines that is sufficiently punitive to deter corruption. If the penalties are not severe enough and not applied each time when inappropriate behavior is detected, they will not be effective in reducing corruption. Sometimes, lack of enforcement of fines has accelerated bribery in Uganda. Cases of asking and accepting a bribe in the form of cash payment in order not to issue a speed fine or reduce the fine are very common in Uganda. Even the fines as prescribed by the current legislations have not kept pace with inflation. Many of the minimum and maximum are now absurdly low. Consequently, it is difficult to assess the total impact of financial penalties on an individual or company.²⁴

1.3. Debarment

Debarment occurs when a company or individual is formally prohibited from tendering or participating in a project that a government or multinational agency is funding if they are found to be involved in corruption (either to obtain contracts on present or

past projects with that agency or government).^{25, 26} Debarment has gained momentum, and many governments/international institutions have developed their own debarment systems to exclude contractors who have committed bribery or fraud or more broadly to exclude contractors who pose unacceptable performance or reputational risks because of bad acts or broken internal controls. In 2005, Transparency International published a list of recommended minimum standards to be applied in creating lists of untrustworthy, unreliable, and irresponsible companies and individuals who have proven that they have participated in acts of corruption and preventing their participation in public contracting.²⁷ In Uganda, debarment is provided for in the laws and adopted in practice. Section 94 of the PPDA Act and Regulation 351 of the PPDA Regulations empower the PPDA Authority to suspend providers who do not comply with procurement regulations or guidelines after thorough investigations. The PPDA may suspend a provider (company) from engaging in any public procurement and disposal process for a period ranging from 1 to 10 years. There are many grounds for suspension, including breach of the provider's code of ethics, submission of forged documents, bid security, sheer negligence, bribery, corruption, shoddy work, general flouting of procurement procedures, and cross-debarment from the procurement process of an international agency, of which Uganda is a member. Under cross-debarment, when one agency debar a contractor, other institutions automatically debar that very contractor. This improves anti-corruption efforts by multiplying the impact of debarment actions. Thus, contractors could potentially face exclusion from many systems, which would mark a significant change in fraud and corruption practices.²⁸ However, debarment and cross-debarment practices have been criticized for being inefficient paper tigers. They are poorly publicized, fail to include big companies with proven records of involvement in corruption, and are subjected to many technicalities such as unwillingness to debar due to lack of strong evidence, lack of a court order, and resistance to giving public access to blacklists. There is also a risk that a parent or subsidiary company, an agent, a joint venture, a consortium partner, or a subcontractor of another company can be debarred for the actions of a corrupt company over which they have no control. This may happen even when the subsidiary or sub-contracted company is not involved in corruption.²⁹ Well-established companies, which have been known to violate anti-corruption regulations and are legally supposed to be prohibited from participating in public bids, sometimes bid again using their influence, particularly if those companies are politically well connected.³⁰ Although debarment is provided for in Ugandan laws, the measure has not been effectively utilized because the process involved in getting a firm debarred is quite long and complicated. Many debarred firms have been able to circumvent disciplinary measures, including bribing their way back into bidding processes. The government is also very careful not to implement such measures on companies that usually get contracts using the influence of the government that provides the money to execute those contracts in the first place.

23 JLOS, Report on the Study on Sentencing and Offences Legislation in Uganda (2014).

24 *Id.*

25 J. Moran et al., Debarment as an Anti-corruption Means: A Review Report (2004).

26 E. Baghir-Zada, Debarment As an Anti-corruption Tool in the Projects Funded by Multilateral Development Banks (2010).

27 Transparency Int'l, Publicity of Debarment and Current Debarment Systems in Place in International Organizations and Some Countries (2006).

28 C.R. Yukins, *Cross-Debarment: A Stakeholder Analysis Corruption Mean*, 45 *Geo. Wash. Int'l L. Rev.* 219 (2013).

29 S.L. Schooner, *The Paper Tiger Stirs: Rethinking Suspension and Debarment*, in *Suspension and Debarment: Emerging Issues in Law and Policy*, 5 *Pub. Procurement L. Rev.* 211 (2004).

30 *Global Integrity Report 2011*, Global Integrity (2011), <https://www.globalintegrity.org/resource/gir-2011-data/>

1.4. Confiscation

Confiscation of corruption proceeds constitutes another deterrent that makes corruption less attractive.³¹ In Uganda, the Leadership Code Act 2002, the Anti-Corruption Act 2009, and the Anti-Money Laundering Act 2013 confer power to IG and the Directorate of Public Prosecution to freeze, seize, and confiscate proceeds of corruption. Money recovered from the prosecution of corrupt officials or companies is directly paid to the institutions that had sustained losses. Some money is also kept on the Asset Recovery Account maintained by the IG. A critical analysis of the implementation of asset recovery laws shows little progress in making recoveries mainly because corrupt officials register their assets in the names of their spouses, children, associates, relatives, or friends. Investigation of such cases is hard, as it is not provided in the law. This loophole is often taken advantage of by many corrupt public officials who amass illicit wealth and register it in other people's names. Furthermore, the law is not strong enough to criminalize those living beyond their known sources of income. The sanctions provided for under the same laws are so weak to deter someone to be involved in corruption; for example, the confiscation of assets under the current anti-corruption legal regime occurs only after conviction at the discretion of the court, yet prosecutions leading to convictions are difficult. The value of recovered funds has been low when compared with the value of public resources that are misappropriated. In 2007, of the US\$ 43,676,471 lost in fraudulent procurement during CHOGM, less than US\$ 2,941,176 was recovered. Between 2008 and 2011, only US\$ 252,920 was recovered while US\$ 4,275,499 was saved as a result of investigation.³² In December 2017, it was reported that the Government of Uganda had only recovered Ushs 71.4 billion (US\$ 18.9 million) from corrupt officials through plea bargaining and post-conviction orders since the inception of the Anti-Corruption Court in 2008, which is an extremely low figure given that Uganda loses over US\$ 300 million a year.³³

1.5. Imprisonment

There are those who argue that in cases where corrupt officials are not reimbursing stolen money or assets, imprisonment serves as a good deterrent and has worked in many countries.³⁴ However, in Uganda, giving prison sentences to culprits as an anti-corruption measure has many loopholes, particularly very short prison sentences compared with the amount of money stolen and the fact that many convicted public officials continue enjoying corruptly acquired wealth after serving their jail sentences.³⁵

1.6. Whistleblowing

Whistleblowing and whistleblower protection, if well implemented, can also be one of the most effective tools in detecting and combating corruption.³⁶ In Uganda, the Whistleblowers Protection Act 2010 was enacted to encourage individuals to expose corruption. The IG established a hotline where individuals can

report corruption anonymously. However, the weak enforcement of whistleblowers' protection law in Uganda has led to continued cases of retaliation against whistleblowers. Consequently, most whistleblowers are reluctant to cooperate after receiving threats or fear losing their lives, jobs, and properties. Without whistleblowers' testimony, prosecutors are left with little evidence to convict corrupt officials.³⁷ For example, in 2012, out of intimidation and fear, all the key 11 prosecution witnesses denied any knowledge of the three ministers' involvement in the CHOGM scandal, where Ushs 14 billion was lost to corruption. As a result, the Anti-Corruption Court acquitted the three ministers. The lack of a clear system to protect witnesses from bribery and intimidation means that anti-corruption institutions in Uganda have ended up focusing on low-level actors while the big fish continue to corruptly accumulate wealth.³⁸

1.7. Asset declaration

Asset declaration provides valuable information that helps uncover misconduct and illicit enrichment, and ensures that leaders are accountable and the acquisition of their assets is not through corruption. Successful enforcement requires an effective asset declaration monitoring body with clear mandate, powers, capacity, resource, and authority to receive and process public officials' asset declarations, as well as assess their authenticity, completeness, inaccuracies, and inconsistencies.³⁹ In Uganda, it constitutes a corruption act for a leader who is found to be in possession of assets and income that is disproportionate to the known source of income, and penalty is confiscation or forfeiture to government any excess or undeclared property. The Uganda Leadership Code Act 2002 mandates the IG to verify the accuracy of incomes, assets, and liabilities of leaders, their spouses, children, and dependents between 2 and 18 years. The implementation of the Leadership Code Act 2002 has yielded marginal success due to weaknesses within the law and lack of capacity in enforcement agencies. The leadership tribunal required by law to enforce the Leadership Code Act has not been constituted. This has left the law a mere paper tiger subject to challenge whenever the IG has attempted to implement it. In 2014, over 40% of eligible leaders failed to declare their income, assets, and liability, and got away with it. Even for those who declared, it was reported that many falsified their declarations. Private individuals who are not leaders within the meaning of the law such as presidential appointees, and low staff who may amass a lot of wealth through corruption offences are not required to declare their wealth. This loophole has allowed such people to enjoy their ill-gotten wealth unchecked. The IG lacks sufficient finance, staff, expertise, and equipment to enforce and verify all declarations. Only 50% of declared assets are sampled for verification annually. The rest are kept without confirmation for any inaccuracy and inconsistency. Leaders take advantage of this loophole to under or over declare their assets because they know the probability of getting them is too low.⁴⁰

31 OECD, *Asset Recovery and Mutual Legal Assistance in Asia and the Pacific* (2008).

32 UDN, *supra* note 17.

33 Y. Mugerwa, *Probe Reveals New Ways of Stealing Money from Government*, Daily Monitor. (Jul. 23, 2016), <https://www.dailymonitor.co.ug>.

34 Humboldt-Viadrina School of Governance. *Motivating Business to Counter Corruption - A Global Survey on Anti-corruption Incentives and Sanctions* (2012), <https://www.humboldt-viadrina.org/anti-corruption>.

35 See, e.g., F. Kasule, *Katosi Road Scam: Byandala Acquitted, Ssenketo Convicted*, New Vision (Aug. 29, 2018), https://www.newvision.co.ug/new_vision/news/1484662/katosi-road-scam-byandala-acquitted-ssenketo-convicted

36 R. Goel & M. Nelson, *Effectiveness of Whistleblower Laws in Combating Corruption* (BOFIT Discussion Paper No. 9/2013, 2013).

37 C. Mahoney, *Uganda: Conflating Witnesses Protection and Protection of Informants*, in *The Justice Sector afterthought: Witness Protection in Africa* (C. Mahoney ed., 2010).

38 UDN, *supra* note 17.

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

40 L.D. Carson, *Institutional Specialization in the Battle against Corruption: Uganda's Anti-corruption Court* (2015).

1.8. Criminalizing money laundering

Money laundering can severely accelerate corruption and organized crime; thus, criminalizing it provides the possibility of courts to hold liable persons who are involved in it.⁴¹ In Uganda, the enforcement of the Anti-Money Laundering Act 2013 has not achieved the desired outcomes because the Financial Intelligence Authority that is responsible for its enforcement is hampered by technical and operational challenges such as limited capacity (finance, human resource, technology, and equipment) and lack of an effective framework to foster collaboration among different stakeholders. As a result, there are very few successful convictions of money launders given the rising money laundering activities in the country. The effective enforcement is further hampered by the large informal sector that makes it difficult to track and monitor informal financial transactions, widespread use of cash rather than other means of exchange, confidentiality rules in banks and fear of losing customers, poor remuneration which makes officials responsible for detecting and controlling money laundering vulnerable to bribery, and lack of or poor record-keeping.^{42, 43} Concerning the effective enforcement of anti-money laundering, there is a need to develop legislative measures to address cooperation in tracing requests and transfer of such property or proceeds, and provide resources to improve the capacity of enforcement agencies. At the same time, the government must also refrain from using the Anti-Money Laundering Act 2013 to hunt down political opponents and thwart the legitimate activities of NGOs, especially those involved in issues relating to the rule of law, governance, and human rights, many of whom are now being portrayed as sympathizers of political opposition and companies whose owners may be political threats to government heavyweights, as happened in the recent past. For example, on April 1, 1999, Greenland Bank, the biggest indigenous commercial bank in Uganda, lost its license because it had a joint partnership with a company (Divinity Union) that was supposedly involved in money laundering scandals, and its owner, Dr Sulaiman Kiggundu, was arrested and charged with lending big sums of money in violation of the Financial Institutions Statute. However, in a written memorandum that Dr Kiggundu submitted to the Judicial Commission of Inquiry into the Closure of Banks on August 7, 2000, he stated that his bank was a victim of politics and not bad economics which were well documented.⁴⁴

2. EXISTING GAPS THAT CALL FOR REFORM

It is clear from the discussion presented above that although the Ugandan government has put in place several anti-corruption agencies, created considerable legal framework and adopted internationally recommended anti-corruption measures to fight corruption, it has achieved limited success in fighting the vice. In fact, it seems to increase year after year according to the Transparency International Corruption Perception Indexes. The question then becomes: what can actually be done to significantly reduce corruption in Uganda? This is a very broad and difficult question, particularly given the fact that corruption is now a

systemic problem in the country, many measures that have been adopted, as discussed above, seem not to have given the desired results. Thus, different scholars can provide different answers depending on any perspectives they choose to focus on. In this article, we specifically focused our recommendations on how the measures discussed above can be strengthened, as they have been proven to work in other places, and the political leadership question. These recommendations were built on interview insights from 10 key informants selected from anti-corruption agencies and civil society organizations in Uganda. The interviews were conducted between November 14 and 18, 2019 in Kampala by two authors. The key informants were selected based on their anti-corruption knowledge and experience in Uganda. They were duly informed that the information shared will only be used for academic purposes and that their identity would be kept confidential because this was a sensitive topic. Insights from the key informants were triangulated with scholarly literature and anti-corruption best practices from other countries that Uganda can actually benchmark. We hope that the ideas presented in this article will inform better future anti-corruption measures in Uganda and generate new debates in this academic field.

3. RECOMMENDATIONS

3.1. Avoiding influence peddling by top political leadership

Influence peddling in awarding or rescinding of contracts to companies has resulted in loss of millions of dollars of taxpayers' money, as discussed earlier.⁴⁵ It is very difficult to stop influence peddling particularly when it emanates from the President who always defends his action, including awarding or rescinding of contracts, that he does so in public interest particularly to attract investors, create jobs, and protect the poor. However, the main recommendation of some key informants interviewed in this paper is that the interest of all these different groups can be better served and protected by stopping influence peddling.⁴⁶ In fact, the experience of other countries has shown that genuine investors, protection of public resources, and creation of employment are best done when leaders shield themselves and their governments from influence peddling. The leadership in countries such as Singapore that significantly reduced corruption/escape corruption disasters (during the 1970s–1990s) that are in many ways similar to those befalling Uganda today avoided high-level influence peddling in awarding or denying of contracts, licenses, and permits to investors. For example, in 1973, 1980, and 1982, the leadership of Singapore denied an offshore banking license to the Bank of Credit and Commerce International, and deliberately resisted influence peddling from its lobbyists, including British Prime Minister Harold Wilson at the time. The bank had approximately 400 branches in over 70 countries in Europe, the Middle East, Africa, and America. Its shareholders included members of the royal families of Saudi Arabia, Bahrain, Abu Dhabi, and Dubai. When it was closed down in July 1991 because of dishonest operations, it led to losses of US\$ 11 billion for other banks, depositors, and creditors. Even when the financial crisis broke out

41 F. Schneider, *Money Laundering and Financial Means of Organized Crime: Some Preliminary Empirical Findings* (German Inst. for Econ. Research, Working Paper No. 26, 2010).

42 P. Edopu, *Infrastructure to Detect and Control Money Laundering and Terrorist Funding in Uganda* (2010), available at <https://www.files.ethz.ch/isn/117789/FULL107.PDF>.

43 F. Kulabako, *Anti-Money Laundering Law Faces Challenges*, Daily Monitor (Sept. 10, 2013), <https://www.monitor.co.ug/Business/Prosper/Anti-money-laundering-law-faces-challenges/688616-1984978-lw3m7r/index.html>.

44 Dr. Kiggundu, *Why My Bank Was Closed*, Observer (Jun. 25 2008), <https://observer.ug/features-sp-2084439083/special-report/309-dr-kiggundu-why-my-bank-was-closed>

45 See UDN, *supra* note 17.

46 Interview with Assoc. Prof. Julius Kiiza, Lecturer Makerere University Department of Political Science and Public Administration (Nov. 18, 2019) [hereinafter Kiiza Interview].

in East Asia and devastated currencies, stock markets, and economies of the region, no bank in Singapore faltered. Singapore escaped all of these crises unscathed because its leaders avoided influence peddling and refused to be compromised.⁴⁷ Thus, avoiding high-level influence peddling is a very strong anti-corruption practice that the Ugandan leadership can benchmark and is highly recommended in this paper.⁴⁸

3.2. Severely punishing the corrupt without fear or favor

Rational choice theory-inclined scholars have long argued that people rationally choose to engage in corruption when its benefits are greater than the risks/punishment involved.^{49, 50, 51, 52} As discussed earlier, many corrupt individuals in Uganda continue to engage in corruption because the risks involved in the form of monetary fines, imprisonment, and asset confiscations are not very severe compared with the benefits they can obtain by corrupt means. A key recommendation of this article is that the government should revise its anti-corruption laws to make them more stringent and severely punish any individual implicated in corruption without fear or favor.⁵³ Stringent laws and severely punishing people implicated in corruption (particularly those at the top) without fear or favor is one of the key methods that was used or being used to successfully reduce corruption in cities such as La Paz in Bolivia⁵⁴ and Hong Kong in China, as well as in countries such as Singapore,⁵⁵ South Korea,⁵⁶ and Brazil.⁵⁷ In the specific case of Uganda, it is recommended that anti-corruption laws and their enforcement on all people should be made tougher. For example, the laws could be revised to ensure that convicted corrupt offenders are made to pay back money equivalent to the amount they had taken, be imprisoned for a period not less than five years, or both. Both the giver and the receiver of a bribe should be guilty of corruption and liable to similar harsh punishment. Contractors who are revealed to have secured contracts by corrupt means should have their contracts terminated and be debarred for a period of five or more years from any public contract. If the offence is related to a government contract or involves a Member of Parliament or a member of public body, the term of imprisonment should be increased to 10 years because of too much high profile corruption in Uganda. Such senior officials who are convicted of corruption offences should face dismissal from public services or have their ranks reduced. If the corruption is deemed to be too grave, they should not only be required to pay back the money involved, but should also lose their jobs, pension, and other benefits, being debarred from any future public appointment.⁵⁸ Public officers should declare their assets at their first appointment

and subsequently annually. Courts in Uganda should be allowed to treat the proof that an accused is living beyond his or her means or having property that his or her income cannot explain as corroborating evidence that the accused has engaged in corruption. As a matter of urgency, the Parliament should expeditiously put in place a legal framework for establishing a Leadership Code Tribunal for arbitration of corruption cases.⁵⁹ The law should be amended to ensure that all leaders at all levels and public officials become eligible to declare their assets.⁶⁰ Government should provide more financial resources, equipment, and training to people working in anti-corruption agencies such as the IG, in order to allow them to cope with the ever-changing tricks and sophistication of corruption perpetrators.⁶¹ Anti-corruption investigators in Uganda should be allowed to arrest, search, and investigate bank accounts of suspected persons, their partners, children, and agents. Banks should be obliged through proper court orders to give information about anyone who is investigated, particularly those suspected to be involved in money laundering. It is such kind of measures and tough laws that helped countries such as Singapore to change from corrupt countries to the most least corrupt in the world.⁶²

3.3. Adopting new technologies that anonymously report corruption

It is highly recommended that the government should encourage mass adoption of new technologies such as SAYITAPP – an application that allows the public to report cases on corruption anonymously. This application was developed by LASPNET, a civil society organization that fights corruption in the Justice, Law and Order Sector (JLOS). The app is linked to the complaint-handling mechanisms of different JLOS institutions, including the Inspectorate of Courts, the Police Standards Unit, the Office of the Directorate of Public Prosecution, and Justice Secretariat. The app is also integrated into the mailing system of the Inspectorate of Courts. It enables the reporting and receiving of complaints via phone. Such technologies that can quickly transmit information to trigger corruption investigations within targeted institutions should be widely embraced.⁶³

3.4. Simplifying procedures to improve service delivery while minimizing human contact

In institutions such as the police and judiciary where corruption is very rampant, particularly among low-ranking cadres, government with the help of development partners should simplify procedures. For example, they should encourage electronic submission of

47 K.Y. Lee, *From Third World to First: Singapore and the Asian Economic Boom 72-82* (2011).

48 Kiiza Interview, *supra* note 46.

49 D.B. Cornish & R.V. Clarke, *The Reasoning Criminal: Rational Choice Perspectives on Offending* (1986).

50 G. De Graaf, *Causes of Corruption: Towards a Contextual Theory of Corruption*, 31 *Pub. Admin. Q.* 39 (2007).

51 W.T. Felps et al., *How, When, and Why Bad Apples Spoil the Barrel: Negative Group Members and Dysfunctional Groups*, 27 *Res. Organizational Behav.* 175 (2006).

52 T.C. Pratt, *Rational Choice Theory, Crime Control Policy, and Criminological Relevance*, 7 *Criminology & Pub. Pol'y* 43 (2008).

53 Interview with Prof. Fredrick Ssempebwa, Uganda High Court Advocate and Scholar, Kampala, Uganda (Nov. 18, 2019).

54 R. Klitgaard et al., *Corrupt Cities: A Practical Guide to Cure and Prevention* (2000).

55 M.M. Ali, *Corrupt Practices Investigation Bureau, Eradicating Corruption—The Singapore Experience* (2000), <https://www.unpan1.un.org/intradoc/groups/public/documents/apcity/unpan002749.pdf>.

56 J. McCurry, *Park Geun-hye: South Korean Court Removes President over Scandal*, *Guardian* (Mar. 10, 2017), <https://www.theguardian.com/world/2017/mar/10/south-korea-president-park-geun-hye-constitutional-court-impeachment>.

57 S. Romero, *Dilma Rousseff Is Ousted as Brazil's President in Impeachment Vote*, *N.Y. Times* (Aug. 31, 2016), <https://www.nytimes.com/2016/.../brazil-dilma-rousseff-impeached-removed-presidency>.

58 Interview with Hon. Miria Matembe, Former Member of Parliament Mbarara District, Kampala, Uganda (Nov. 14, 2019).

59 Interview with Hon. Lyandro Komakech, Member of Parliament for Gulu Municipality, Kampala, Uganda (Nov. 16, 2019).

60 Interview with Key Informants, Accountability Sector Secretariat, Kampala, Uganda (Nov. 15, 2019).

61 Interview with Key Informant, Inspectorate of Government, Kampala, Uganda (Nov. 15, 2019).

62 Lee, *supra* note 47, at 157-63.

63 Interview with Dr. Sylvia Namubiru Mukasa, Executive Director – Legal Aid Service Providers Network (LASPNET), Kampala, Uganda (Nov. 15, 2019).

forms, payment for permits, passports, bills, fines, and management of files.⁶⁴ In particular, the judiciary and police need to develop, adopt, and support innovations such as the use of ICT in file management. This can help expedite the reduction in case backlogs and the corruption that comes with them.⁶⁵

3.5. Availing the public details of contractors

It has been highly recommended that the PPDA should establish rules that require all companies that want or possess public contracts to provide audited details of the companies, including previous work records, any involvement in corruption, names of owners and directors, among others. Such details should be kept in publicly available databases so that any procurement committees in different government agencies can effectively vet them. Any company that falsifies its information should be debarred from participating in public contracts. This can particularly help local governments.⁶⁶

3.6. Full citizen participation

Corruption in Uganda is not just a problem within government or by government institutions/officials but rather a society problem. All people from different walks of life, whether within government or outside it, initiate and do participate in corruption in one way or the other. Likewise, the war on corruption cannot be left to government

institutions or officials. All citizens must first participate by reporting corruption wherever it happens, and also must stop the culture of participating in the vice themselves. They must support government anti-corruption efforts and desist from concealing corruption when it favors them and then shouting when it does not. This also calls for professionalism, particularly basing allegations on concrete, hard evidence that can help the usual allegations of witch-hunt from those suspected of corruption.⁶⁷

4. CONCLUSION

From the discussion above, this article concludes that while the government of Uganda has gone an extra mile in establishing several would-be effective anti-corruption measures, they have not been able to effectively curb corruption. This is mainly because they are not stringent enough to severely punish corrupt actors and deter them, especially those engaged in grand corruption where the public is losing an enormous amount of money. Special care should be taken to ensure that they are robust, fairly applied, make culprits accountable, are transparently applied, well publicized, and unbiased. Therefore, it is hereby recommended that the already existing measures should be strengthened further to make corruption a very costly and prohibitive practice.

64 Interview with Key Informant, Cissy Kagaba, Executive Director – Anti-Corruption Coalition, Kampala, Uganda (Nov. 13, 2019).

65 Interview with Key Informant, Uganda Police CIID Officer, Central Police Station, Kampala, Uganda (Nov. 13, 2019).

66 Interview with Key Informants, PPDA, Kampala, Uganda (Nov. 15, 2019).

67 Interview with Hon. Justice Mike Chibita, Director of Public Prosecution, Kampala, Uganda (Nov. 18, 2019).