A Paper Tiger: The Risks of Weak Enforcement in Uganda's Strong Anti-Corruption Regime

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Abstract

A "paper tiger" is a Chinese expression that describes something that appears strong from afar but proves weak or ineffectual upon closer inspection. This phrase aptly captures the essence of Uganda's anti-corruption legal framework. Consequently, numerous commentators have praised Uganda's legal framework as a robust regime in curbing corruption. The government of Uganda has, over the years, been vocal about its anti-corruption strategies. It has followed this up with several anti-corruption interventions. This includes the enactment of numerous anti-corruption laws. This legal regime is often touted as flawless in theory, yet its enforcement is disappointingly weak and inadequate. The doctrinal research methods are engaged for this paper.

1. INTRODUCTION

A "paper tiger" is a Chinese idiom employed to characterise something that seems formidable from a distance but is, in reality, feeble or ineffective upon closer inspection.[1] This expression accurately encapsulates the essence of Uganda's anti-corruption system.[2] Consequently, numerous commentators have praised Uganda's legal framework as an excellent regime.[3] The government of Uganda has, over the years, been very outspoken about the need to curb corruption. It has

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[1] Tse-Tung, M. (2024). *Quotations from Chairman Mao Tse-tung*. Aegitas. Also see Kanyeihamba GW, The Blessings and Joy of Being Who You Are (2019), Entebbe: Second Impressions. 171., also see Matembe MRK *The Struggle for Freedom and Democracy Betrayed* (2019) Self-publication ISBN: 9789970524006. 176-205, among other recent works by prominent Ugandans.

[2] Transparency International Uganda (2015) *As strong as its weakest link. Stakeholders Perceptions of Ugandan Legal and Institutional Anti-Corruption Framework*, Transparency International Uganda: Kampala.,10. Uganda Debt Network (2016) *Overcoming Corruption. Dossier on Corruption in Uganda: 2012-2016,* Kampala, 13.

[3] Transparency International Uganda (2015) *As strong as its weakest link. Stakeholders Perceptions of Ugandan Legal and Institutional Anti-Corruption Framework*, Transparency International Uganda: Kampala.,10. Uganda Debt Network (2016) *Overcoming Corruption. Dossier on Corruption in Uganda: 2012-2016,* Kampala, 13.

followed this up with several anti-corruption initiatives.[4] This includes a robust anti-corruption regime. For example, an anti–corruption division has been created within the court system to adjudicate corruption cases. This is in a bid to handle corruption offences with the urgency they deserve, as compared to other cases. Over time, specialised capacity has been built by the court staff on how to handle corruption cases.

The excellence of Uganda's legal regime on paper is evidenced by the international treaties and soft law instruments it has signed and ratified. Uganda is a signatory to the United Nations Convention against Corruption (UNCAC).[5] Uganda also signed and ratified the Convention on Preventing and Combating Corruption of the African Union, 2004 (AUCPCC).[6] It has been reported that Uganda is yet to fully domesticate the provisions of UNCAC and AUCPCC.[7] Within the East African region, Uganda and other countries have signed agreements, recognising the transnational nature of illicit financial flows.[8]

Part 1 introduces the paper. The relationship of Uganda's legal structure to the international anti-corruption regime is traversed in Part 2. Part 3 reviews Uganda's legal framework on corruption. The discussion shows that, whereas Uganda has a strong legal system, its enforcement is weak due to political influence-peddling. The paper is concluded in part 4. The discussion on the relationship between the domestic and the international standards follows hereunder.

2. INTERNATIONAL FRAMEWORK

Several anti-corruption international treaties have been ratified by Uganda. Uganda has ratified these agreements at international, regional and sub-regional levels. Consequently, the national objectives and Directive Principles of State Policy provide for Uganda's foreign policy objectives. Objective 28(XXVIII) (b) of the Constitution of the Republic of Uganda (1995 Constitution)

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[4] See National Anti-Corruption Strategy (2014-2019), JLOS Anti-Corruption Strategy, Uganda Police Force Anti – Corruption Strategy, among other initiatives.
[5] Signed the UNCAC on 9 December 2003 and ratified it on 9 September 2004.
[6] Uganda signed the AUCPCC on 18 March, 2003.
[7] Busingye, G., Yahyah, H., & Kanoel, R. (2024). Prosecuting Corruption: A Case Study of Kenya and Uganda. In *Corruption Proofing in Africa* (pp. 246-258). Routledge.
[8] Institute of Security Studies *Can East Africa sustain its promising anti-corruption efforts* (2018) available at https://issafrica.org/iss-today/can-east-africa-sustain-its-promising-anti-corruption-efforts accessed on (6 February 2020). Also see Declaration signed by anti-corruption agencies in Kenya, Tanzania and Uganda in fighting illicit funds - World Bank *AGIDATA Uganda country profile* (2011).

prescribes that the foreign policy of Uganda shall be based on principles of … (b) respect for international law and treaty obligations.[9]

The aforementioned constitutional provision is buttressed by Article 119 of the 1995 Constitution, which provides for reception, incorporation and application of international law. Article 119(4) grants the Attorney General the duty to draw and pursue agreements, treaties, conventions, and documents, by whatever name called, to which the government is a party or in respect of which the government has an interest. Article 119(5) further provides that the government cannot enter into any of the above commitments and cannot conclude them without the legal advice from the Attorney General, except in such cases and subject to such conditions as Parliament may by law prescribe.[10]

Article 123(1) of the 1995 Constitution states that the execution of international treaties, conventions and agreements is a preserve of the President, who may delegate his or her power to any person. Article 123(2) provides for Parliament to make laws to govern the ratification of treaties. This brief examination of the constitutional provisions of the 1995 Constitution, therefore, justifies the obligations Uganda has to abide by international standards.

As indicated earlier, Uganda ratified UNCAC on 9 September 2004. As a state party to the UNCAC, Uganda has international obligations to fulfil.[11]

In Uganda, for an international treaty to be binding, it must be domesticated and incorporated into national law.[12] Some key provisions of the UNCAC relevant to the prosecution of corruption

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[9] 1995 Constitution.

[10] See *Nsimbe Holdings Ltd v The Attorney General & Another,* Constitutional Petition No 2 of 2006, [2007] UGCC 4 (6 November 2007), where the Constitutional Court held that a failure to comply with Article 119(5) where a contract is signed between a government parastatal and a private entity, renders the contract null and void in terms of article 2(2) of the Constitution. It seems that the analogy would apply where an international agreement is concluded without the advice of the Attorney General as required under Article 119(5).

[11] See for example Article 43 of the UNCAC, that requires Uganda to cooperate with other states in regard to extradition, transfer of sentenced persons, mutual legal assistance, transfer of criminal proceedings, law enforcement cooperation, joint investigations and special investigative techniques. For a detailed treatment on this refer to Articles 44 – 50 of the UNCAC.

[12] Section 14 of the Judicature Act (Cap. 16) provides for the applicable sources of law in Uganda. International law is not explicitly mentioned. This as a result, makes Uganda a dualist state. For a Treaty to be enforceable, the provisions of the Ratification of Treaties Act (Cap 204) would have to be applied. Thereafter, the provisions of the Treaty have to be domesticated into law by an Act of Parliament. For example, in the case of *Pentecostal Assemblies of God Ltd v Transsahara International (U) Ltd & Anor* (CIVIL APPEAL NO.10 Of 2010) [2012] UGSC 12 (21 November 2012), the Supreme Court cited section 2 of the Ratification of Treaties Act and Article 123 of the 1995 Constitution to

include Article 11(2), which requires Uganda to establish the independence of its prosecution services.[13] Article 30 also provides for state parties to UNCAC to establish laws and procedures that facilitate the prosecution, adjudication and sanctioning of the perpetrators of corruption.[14] The provisions of the UNCAC have been domesticated into law by amending the current law.[15] New Acts of Parliament have also been enacted.[16]

2.1 Africa Union Regime

Uganda is also a state party to a number of African Union treaties. They include the African Charter on Democracy, Elections Governance, adopted in 2007; the African Charter on Values and Principles of Decentralisation, Local Governance and Local Development, adopted in 2014, and the African Charter on Values and Principles of Public Service and Administration, adopted in 2011. Uganda ratified the AUCPCC on 30 August 2004. The AUCPCC is the principal treaty in combating corruption on the continent.[17] AUCPCC also establishes a framework for the prevention and prohibition of corruption both in the public and private sectors. The objectives of the AUCPCC are as follows: -

1. Promote and strengthen the development in Africa by each state party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences.
2. Promote, facilitate and regulate cooperation among the state parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.
   3. Coordinate and harmonize the policies and legislation between state parties for the purpose of prevention, detection, punishment and eradication of corruption on the continent.[18]

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support their decision that the United Nations African Institute for Prevention of Crime and Treatment of Offenders (UNAFRI) statute was a Treaty.

[13] See Article 120(6) of 1995 Constitution which provides for the independence of the Director of Public Prosecutions in exercise of its public mandate.

[14] See Article 30 (1) – (10) of the UNCAC.

[15] See the Anti-Corruption Act, Cap. 116.

[16] See for example the Anti-Money Laundering Act and the Whistle-Blowers Act which have domesticated Article 14 & 23 of the UNCAC on Money Laundering and Article 40 of the UNCAC on Bank Secrecy., Also see Article 31 of the UNCAC on freezing, seizure and confiscation of proceeds of corruption, which have been domesticated in sections 37, 53-62, 63-66 of the Anti-Corruption Act.

[17] As of December 2025, this treaty has been ratified by 49 states out of the 54 states on the African continent.

[18] Article 2 of the AUCPCC.

The principles of the AUCPCC encourage the state parties to respect the rule of law by observing democratic principles and fostering democratic institutions.[19] The principles also emphasise that the observance of human and peoples' rights in accordance with the African Charter and other human rights instruments is of paramount importance to the AUCPCC.[20] The AUCPCC also condemns and rejects corruption and related acts of impunity.[21] The AUCPCC imposes obligations on Uganda in regard to the prosecution of corruption. Under Article 14, it imposes on Uganda an international obligation to ensure minimum guarantees to a fair trial of persons accused of corruption, in line with the African Charter and other international human rights instruments. Uganda also has an obligation under the AUCPCC to seize and confiscate proceeds of corruption within its territory.[22]

2.2 East African Initiatives

Uganda has signed agreements with other countries within the East African region, having recognised the transnational nature of illicit financial flows.[23] Uganda is also a member of the East African Association of Anti-Corruption Authorities (EAAACA). The EAAACA was established in September 2007 when the three countries signed a Declaration.[24] The EAAACA was later launched on 9 November 2007, in Nairobi, Kenya.[25] Its major mandate is to "to promote and facilitate regional cooperation, mutual legal assistance and technical assistance in the prevention and combating of corruption in the region, to share information, hold trainings and carry out joint research".[26] The EAAACA has spearheaded the drafting of an East African Community Protocol on Preventing and Combating Corruption. This Protocol is yet to come into force and is still in draft form pending consultations from partner states.[27]

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[19] Article 3 of the AUCPCC.
[20] Article 3 of the AUCPCC.
[21] Article 3 of the AUCPCC.
[22] Article 16 of the AUCPCC.
[23] Institute of Security Studies (2018) "Can East Africa sustain its promising anti-corruption efforts," Available at https://issafrica.org/iss-today/can-east-africa-sustain-its-promising-anti-corruption-efforts. Accessed on (6 February, 2020). Also see Declaration signed by Anti-Corruption agencies in Kenya, Tanzania and Uganda in fighting illicit funds [source] – World Bank (2011) *AGIDATA Uganda country profile.*
[24] The Kampala Declaration of East African Association of Anti-Corruption Authorities.
[25] EAAACA "About the EAACA," available at https://eaaaca.com/about-eaaaca accessed on (25 February, 2020).
[26] EAAACA "About the EAACA," available at https://eaaaca.com/about-eaaaca accessed (25 February 2020).
[27] See https://eaaaca.com/news/heads-of-acas-with-eac-secretary-general-during-the-eac-protocol-on-preventing-and-combating accessed (25 February 2020).

3. National Anti-Corruption Framework

Uganda has a plethora of laws and institutions established to combat corruption. It is a surprise that Uganda is one of the most corrupt countries in the world, considering both the formal and informal mechanisms in place to curb corruption.[28] A discussion on the anti-corruption laws enacted follows in the next section.

3.1 *Laws on Corruption in Uganda*

Uganda has a robust anti-corruption framework. Its enforcement is, however, weak.[29] The National Objectives and Directive Principles of State Policy of the 1995 Constitution provide that "all lawful means shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices".[30] The 1995 Constitution confers on every citizen the duty "to protect and preserve public property" and "to combat corruption and misuse or wastage of public property", among other obligations.[31] Several laws have been enacted to curb corruption.[32] The author shall review some of the major laws on anti-corruption in Uganda in the discussion hereunder.

3.1.1 The Leadership Code Act, Cap. 33

The Leadership Code Act regulates ethical behaviour by public officials. It regulates issues in regard to conflict of interest, receipt of gifts and other related conduct that a public official should not engage in. In the case of *Hon. Jim Muhwezi v Attorney General & Anor*,[33] the Constitutional Court considered a matter in which the Applicant, as Health Minister, was reprimanded by the IGG for failing to declare a GAVI reward (gift) of US $ 4,361,000 (United States Dollars four million and three hundred sixty-one thousand) to the IGG as required by the Leadership Code Act.

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[28] See, for example, the National Anti-Corruption and Justice, Law and Order (JLOS) strategies.
[29] Transparency International (2024) *Corruption Perceptions Index*.
[30] Principle XXVI.
[31] Article 17(d) & (i).
[32] These include the Leadership Code Act, Inspectorate of Government Act, the Anti-Money Laundering Act, the Penal Code Act and the Anti-Corruption Act, among others.
[33] Miscellaneous Application No.18 OF 2007)) [2007] UGCC 6 (15 November 2007).

The IGG commenced proceedings to have the Applicant removed from his position as Member of Parliament and Health Minister for breaching the Leadership Code Act and in accordance with Article 83(1) (e) of the Constitution. Muhwezi filed a constitutional petition halting the IGG's punitive proceedings.[34] The Constitutional Court finally ruled that the appointment of an IGG who is a judicial officer contravenes the doctrine of separation of powers.[35] The Constitutional Court also noted that the investigations, arrest and prosecution of Jim Muhwezi and 2 other petitioners by the IGG on the "instructions" of the President did not contravene any Article of the 1995 Constitution.[36] Similarly, in the case of *Mbabali Jude v Edward Kiwanuka Sekandi*,[37] the Petitioner implored the Constitutional Court about the illegal use of government vehicles and other facilities attached to the office of the Respondent in parliamentary election campaigns. The Respondent was, at the time, the Vice President of the Republic of Uganda. The Petitioner prayed that the court declare the acts of the Respondent were unconstitutional and issue an order that the Respondent be sacked from his position as Vice President for violating the Leadership Code Act. The Court declined to do so, arguing that the Petitioner was in the wrong forum. The proper forum for such electoral disputes is the High Court of Uganda. A Code of Conduct was also passed to regulate the public officials' behavior. The IGG is responsible for its enforcement.[38] In the case of *Inspector General of Government v Balondemu David*,[39] the Leadership Code Tribunal examined who qualifies to be called a "leader" under the Leadership Code Act. The Tribunal held that District Land Board Chairpersons fall under the description of "leader" as envisaged under the law. Public officials, including the President, the Vice President, the Prime Minister, the Ministers, and the public servants, and their close relatives, are supposed to sign wealth declaration forms annually indicating how much wealth they and their relatives own, to the IGG. These wealth declaration forms are supposed to be made public.[40]

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[34] Miscellaneous Application No.18 OF 2007)) [2007] UGCC 6 (15 November 2007) 10-13.
[35] *Jim Muhwezi & 3 Ors v Attorney General & Anor* (Constitutional Petition No. 10 of 2008) [2010] UGCC 3 (14 May 2010).
[36] (Constitutional Petition No. 10 of 2008) [2010] UGCC 3 (14 May 2010).
[37] Constitutional Petition No. 28 of 2012.
[38] Section 3 the Leadership Code Act.
[39] LCT No. 47 (2024) [2025] UGLCT 1
[40] In the case of *Mbabali v Sekandi* (Constitutional Petition No. 0028 OF 2012) [2014] UGCC 15 (19 September 2014), the Constitutional Court noted that there was nothing that required constitutional interpretation in the petition filed before them. However, the petitioner cited provisions of the Leadership Code Act and the Parliamentary Elections Act to support his assertion that the Respondent had used government vehicles and facilities for campaigning. In practice, this does not happen. Recently, Investigative Journalists requested the IGG to provide them with all the wealth declarations of all permanent secretaries in all ministries in Uganda. The IGG refused the request for

3.1.2 *Inspectorate of Government Act, Cap. 167*

Related to the LCA is the Inspectorate of Government Act which establishes the IGG's office. The mandate of this law is to establish a legal framework through which corruption can be curtailed in Uganda. This law also enables the IGG's office to enforce strict adherence to the rule of law. It also enables a legal regime for the detection and prevention of corruption. This law mandates the IGG's office to clamp down on those public officials who abuse public office for personal gain. The 1995 Constitution confers on the IGG powers "to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office".[41] The IGG's office, in the course of executing its mandate, is not under the control or direction of any person or authority and can choose to discontinue investigations or criminal proceedings it has initiated against any person.[42] Complaints made to the IGG must be in strict confidence, and can be made by any person.[43] These include juristic persons.[44] The IGG is also required to file periodic reports to Parliament about its activities.[45] The Parliament, in turn, is supposed to debate the reports and make recommendations to the IGG.[46] Whistleblowers of financial crimes require legal protection. We review these legal protections in the section.

3.1.3 *The Whistleblowers Protection Act, Cap. 34*

A legal framework for persons who give information to authorities on corruption crimes has been established. The Whistleblowers Protection Act (WPA) provides an enabling mechanism through which whistleblowers can provide information on corruption in Uganda. This law has put in place a reward and protection system for individuals who risk giving information that anti-corruption officials would otherwise not access, due to the secretive nature of corrupt transactions.[47]

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information on flimsy grounds. See Kiyonga D "Govt sued over wealth declaration" The Observer, November 12, 2013. Available at https://www.observer.ug/component/content/article?id=28560:govt-sued-over-wealth-declaration. (Accessed on 21 April 2020).

[41] Article 230(1) of the 1995 Constitution.

[42] Article 227 of the 1995 Constitution.

[43] See section 17 of the IGG Act.

[44] Section 17 of the IGG Act.

[45] Article 231 of the 1995 Constitution.

[46] Article 231 (1) & (2) of the 1995 Constitution.

[47] Musinguzi John (2019) "Lack of witness protection hampering fight against corruption" The Observer, October 23. Available at https://observer.ug/news/hedalines/62408-lack-of-witness-protection-law-hampering-fight-against-corruption. Accessed on (28 April, 2020).

Challenges have been reported when whistleblowers are turned into court witnesses in corruption cases. As a result, their identity is revealed without any protections in place for their safety.[48] Recommendations have been made for Parliament to enact a witness protection law to fortify the Whistleblowers Act, to cater for the safety of whistleblowers who are turned into court witnesses.[49]

Some case law jurisprudence has developed in the application of the provisions of this law. In the case of *Sebudde Joseph v Inspector General of Government*,[50] the High Court noted that the Whistle Blowers Act does not override the constitutional guarantees to a fair hearing. Yorokamu Bamwine, J noted as follows: -

> The argument appears not to appeal to the respondent. According to him, he is by law empowered and required to protect whistle blowers under the Whistle Blowers Act 2010 and the Inspectorate of Government Act 2002. With the greatest respect to the respondent, I do not think that the Whistle Blowers Act 2010, if it had come into force by 22/01/2010, gives solace to him. I do not think that the Act takes away the general rule, which is that a party must be given an opportunity to be heard before its rights are prejudiced or affected by a decision. True, the respondent may have acted within the law and rules governing his institution. However, having heard Mr. Bulegeya's arguments, the applicant's ground is based on one simple rule of natural justice, namely, the right of a party to be heard before they are found liable. Whether the information comes from whistle blowers or not, the rule embraces the whole notion of fair procedure and due process.[51]

The High Court further noted that the process of finding the Applicant liable, could not have passed the test of natural justice, without the Applicant being given a chance "to contradict those accusations since the whistle blowers could not come out to identify themselves".[52] Without access to information, the prosecution of corruption would be challenging. We discuss the mechanisms in place to enable access to information in the following section.

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[48] Musinguzi (2019).
[49] Anti-Corruption Coalition Uganda (ACCU) (2019) *Assessing the Status of Implementation of the Whistleblowers Protection Act, 2010 and the Leadership Code Act, 2002(as amended).*
[50] (Misc. Cause No.32 Of 2010)) [2010] UGHC 64 (28 October 2010)., also see the case of *Mbiika Dennis Vs Centenary Bank* (Labour Dispute Claim No.023 OF 2014) [2018] UGIC 11 (20 July 2018); where the claimant cited sections 2(1), 3(1) (b) & 4(1) to support his argument that he was protected as whistle blower on "professional improprieties" of his supervisor. In its decision the Labour Court did not resolve this argument. The claimant nevertheless won his claim based on purely labour law provisions.
[51] (Misc. Cause No.32 Of 2010)) [2010] UGHC 64 (28 October 2010) 4-5.
[52] (Misc. Cause No.32 Of 2010)) [2010] UGHC 64 (28 October 2010) 6.

3.1.4 Access to Information Act, Cap. 95

A related law to the WPA is the Access to Information Act. This law is fortified by Article 41 of the 1995 Constitution, which provides that every citizen has a right to access information in the possession of the state or any organ or agency of the state. In *Kamba Saleh v Attorney General,*[53] the Constitutional Court held that "Article 41 of the Constitution guarantees the right to access information to every individual citizen. This is meant to ensure transparency and accountability of all government organs and departments".[54] The Court further held that the petitioner, under Article 41 and the provisions of the Access to Information Act, 2005, could have requested to receive information about his appointment and approval as minister from Parliament. The court ruled that he chose not to apply for the information. This constitutional provision restricts particular classes of information from being accessed, if they are likely to interfere with the security or sovereignty of the state.[55] Information that may interfere with the privacy of a person may also be restricted.[56]

The first challenge with the access to information law, is that it provides for access to information by a citizen of Uganda but not any other person. A wide interpretation of the provision "a citizen of Uganda" would, in the author's considered opinion, include juristic persons registered in Uganda, while a narrow interpretation would only mean natural persons who are citizens of Uganda.[57] This provision restricts non-citizens from requesting information, which they may be entitled to, especially if the persons requesting the information are international development partners.[58] Uganda is heavily dependent on donor funds. If the public funds of a particular nation are misappropriated, the agents of that 'donor' country have a right to access information on how their public money was appropriated. In *Spear Motors Ltd v Attorney General & 2 Others*[59] the 1st Defendant argued that according to section 25 of the Access to Information Act, 2005, minutes of a meeting of the CHOGM Ministerial Sub-Cabinet were protected from disclosure and therefore

[53] (Constitutional Petition No. 38 OF 2012) [2015] UGCC 3 (25 May 2015).
[54] (Constitutional Petition No. 38 OF 2012) [2015] UGCC 3 (25 May 2015) 10.
[55] Article 41(1) of the 1995 Constitution., also see section 5 of the Access to Information Act, 2005.
[56] Article 41(1) of the 1995 Constitution., also see section 5 of the Access to Information Act, 2005.
[57] For example, in the case of *Spear Motors Ltd v Attorney General & 2 Others* (HCT-00-CC-CS-0692-2007) [2012] UGCOMMC 18 (18 March 2012) 15 & 20, the court held that a juristic person had a right to information. Also see *Greenwatch (U) Ltd v Attorney General,* High Court Civil Suit No. 139/2001.
[58]Article 41(1) of the 1995 Constitution., also see section 5 of the Access to Information Act, 2005.
[59] (HCT-00-CC-CS-0692-2007) [2012] UGCOMMC 18 (18 March 2012)

could not be used by the Plaintiff as evidence in the High Court. The Plaintiff argued that Article 41 of the Constitution guarantees citizens access to information in the possession of the state except on the grounds of security or privacy of persons. The Plaintiff further argued that the Ugandan Supreme Court in the case of *Attorney General v Tinyefuza*[60] had earlier warned other subordinate courts "against the use of technicalities to stifle the production of evidence" in courts. The High Court held that the cabinet minutes were annexed to a Parliamentary Accounts Committee Report that was tabled before the Plenary of Parliament and therefore ceased to be privileged information protected by section 25 of the Access to Information Act.[61]

The second challenge is that it restricts access to information in very broad, and as a result, vague terms.[62] For example, the IGG refused to provide information about the wealth declarations of all permanent secretaries of all ministries in Uganda, on the pretext that not only was it expensive to make copies of the wealth declarations forms for the investigative journalists, but also that the permanent secretaries' rights to privacy would be violated.[63] As a consequence of these restrictions, some cases have been brought before the courts to challenge the aforementioned restrictions to access public information.[64] Before the enactment of this law, the court had pronounced itself on access to public documents in other cases.[65]

The reasons for the information request were obvious. It is public knowledge that the office of the Permanent Secretary in any ministry in Uganda, is where corrupt transactions are initiated.[66] Considering that the main purpose for enacting the access to information law, was to enable

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[60] Constitutional Appeal No. 1 of 1997.
[61] (HCT-00-CC-CS-0692-2007) [2012] UGCOMMC 18 (18 March 2012) 32-34.
[62] Also see Access to Information Regulations SI 17/2011.
[63] Kiyonga D 'Govt sued over wealth declaration' *The Observer* 12 November 2013.
[64] See the case of *Charles Mwanguhya Mpagi and Izama Angelo v Attorney General* Miscellaneous Cause No. 751/2007 [also available at https://globalfreedomexpression.colimbia.edu/cases/charles-mwanguhya-magii0izama-angelov-attorney-general-miscellanoues-cause-no-751-200/] where two Journalists Charles Mwanguhya Mpagi and Angelo Izama challenged the decision of the Solicitor General before a Magistrates Court, for denying them access to the oil agreements signed between Uganda and Oil Companies. Relying on Articles 41 & 244 of the 1995 Constitution and sections 34(b),37, 41 & 42 of the Access to Information Act, the Journalists argued that the oil was the property of the people of Uganda and the people had the right to know the contents of the oil agreements. Their suit was dismissed on security and confidentiality grounds.
[65] The first case was in regard to power purchase agreements and the environment impact assessment report of the Bujagali Hydropower Project. The second case was *Edward Sekyewa v National Forestry Authority*, where court emphasized the irrelevancy of giving reasons in order to access information and ordered that the Applicant be granted access. For detailed information on this case see *Edward Sekyewa v National Forestry Authority,* High Court Miscellaneous Cause No. 73/2014.
[66] Ndagire B & Wesaka A 'Courts finds Lwamafa, Obey, Kunsa guilty of fraud' *Daily Monitor* 11 November 2016.

democratic accountability, the challenges make it almost impossible for journalists to access and analyse public information. These impediments, as a result, affect not only media freedom but also weaken anti-corruption efforts in Uganda. The inability for investigative journalists to receive, analyse and publish this public information defeats the principles of transparency and accountability in the management of public affairs.

Thirdly, there is no institution charged with its implementation. The law also does not provide for a state organ to facilitate its implementation. The implementation of the access to information in Uganda is consequently arbitrary. Therefore, the request for information may be denied in the flimsiest circumstances.

The fourth challenge of this access to information law is that there are no appeal mechanisms within the administrative regime. If your request for information is denied, your only recourse is to a court of law, which is a cumbersome and an expensive process for any citizen.[67] Even for a citizen that is willing to appeal to a court of law, once a request for information is denied by the administrative authorities, the vigilant citizen will find that the court procedures have challenges that can be exploited by those public officials who are adamant on denying the determined citizen the public information, they require.[68]

3.1.5 The Political Parties and Organisations Act, 2005 (as amended)

The Political Parties and Organizations Act (PPOA) lays down the rules of political association, formation and existence in Uganda. The PPOA also enables a political financing mechanism to all registered parties represented in the parliament.[69] The rules on use of money in political processes are inadequate.[70] As a result, there is 'no ban or restriction on donations from legal entities or foreign sources to political parties, including from companies which have contracts with the public administration.'[71] International Institute for Democracy and Electoral assistance

[67] AccessInfo, Centre for Law and Democracy 2012.
[68] AccessInfo (2012).
[69] Section 14A of the PPOA.
[70] See sections 10,11,12, and 14 of the PPOA. Also see Walyemera, D. M. (2018). Commercialization of Parliamentary Elections in Uganda. *East African Journal of Peace & Human Rights*, *24*(2)., and Walyemera, D. M. (2024). Political Financing around the World: A Historical Overview and Financing Models; Which Model for Uganda?. *Journal of Law, Society and Development*, *11*(1), 1-17.
[71] Maira M Uganda: *Overview of corruption and anti-corruption* (2013) U4 Expert Answer, Transparency International, 7.

(International IDEA) confirms that 'limits to donations are only established in case of foreign funds. Natural persons are allowed to make donations to parties and candidates. Parties also commonly rely on public funding to cover their expenses. Overall, there are no limits to how much can be spent during political campaigns.[72]

Section 9(2) of the PPOA requires political parties to file annual audited accounts with the Electoral Commission. Political parties that do not file annual audited accounts may be deregistered by the Electoral Commission on application to the High Court.[73] Indeed, in the case of *Electoral Commission v Action Party & 10 Others*,[74] the Electoral Commission applied to the High Court to de-register 10 political parties that had failed to comply with section 9(2) of the PPOA.[75] Musota, J, in his ruling noted that "since political parties and organizations influence the political process, they must be law abiding, and have an agenda in order to mobilize support and funds to compete for political power. Its leaders must be exemplary, disciplined and law-abiding citizens".[76] Similarly in the case of *Hon. Sabila Herbert Kale v Maket Latif*,[77] the Applicant, under Article 80(2) (f) of the Constitution sought orders of the High Court against the Respondent who was a Member of Parliament, to the effect that since the Respondent, under sections 2(b) and 6(1) of the Prevention of Corruption Act, had been convicted of corruption, he was not qualified to contest for forthcoming parliamentary elections. The High Court noted that Article 80(2) of the Constitution seems to have been operationalized by section 10(1) of the Political Parties and Organizations Act, 2005. Section 10(1) of the Political Parties and Organizations Act states that the internal organization of a political party shall comply with the provisions of the Constitution, which includes vetting candidates to contest under their party name. The High Court noted that the Election Petition was premature. This is because the Respondent had only expressed an intention to contest as a candidate for the same parliamentary seat he was holding in the upcoming elections.

[72] Walyemera (2024). Also see International IDEA (2012) *Political Finance Database.*
[73] See section 9(6) of the PPOA.
[74] Miscellaneous Cause No. 296/2013.
[75] In April 2014, Action Party Bridge Party Progressive Alliance Party, Uganda Mandate Party, New Order Democracy, People's Independent Party, Movement for Democratic Change, National Redemption Party, Movement Volunteer Mobilizers Organization and Reform Party, were de-registered as political parties in Uganda.
[76] Miscellaneous Cause No. 296/2013, 5-6.
[77] Miscellaneous Application No. 124/2010 (arising from Election Petition No.2/2010) 3.

The High Court also held that the Respondent had not been nominated by the national electoral management body as a candidate to contest in the parliamentary elections.[78]

3.1.6 Public Procurement and Disposal of Public Assets Act, Cap. 205

The legal regime of the public procurement of goods and services is enabled through the Public Procurement and Disposal of Public Assets Act, 2003 (PPDA Act).[79] Any public procurement of goods or services must adhere to the legal rules laid down under this law. Under this law, regulations and guidelines have been drafted and enacted to aid strict adherence to the PPDA Act. As long as the money held by a central or local government originates from the consolidated fund or is money sent to the central or local government coffers by development partners, it is subject to the procurement rules under the PPDA Act. Indeed, in *Galleria in Africa Ltd v Uganda Electricity Distribution Company Ltd*[80] the Supreme Court of Uganda held that the PPDA Act was enacted to strictly regulate practices on public procurement and disposal of assets. The Supreme Court further held that the provisions are not directory, but mandatory, and must be adhered to without question. It also held that any non-compliance with the provisions of the PPDA Act makes any procurement proceedings fatal. Mwondha, JSC, who read the lead judgment of the Supreme Court, held as follows –

> Procurement and disposal activities are processes, one cannot move to another stage of processes without fulfilling the first one … the objective of the Act for all intents and purposes is to achieve fairness, transparency and value for money procurement, among others. Therefore, breach of the provisions is not a mere irregularity since it goes to the core of the Act.[81]

This wise counsel of the Supreme Court of Uganda has been variously applied to other lower court judgments in Uganda, including the case of *Roko Construction v Public Procurement and Disposal of Assets Authority & Another*.[82] In this aforementioned case the High Court noted that section 90(7) of the PPDA Act was enacted in mandatory terms and its violation by the National Drug Authority to procure a service provider was fatal to the contract it had signed with the service provider.[83]

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[78] Miscellaneous Application No. 124/2010 (arising from Election Petition No.2/2010) 3.
[79] 2003 (PPDA) Act.
[80] Supreme Court Civil Application No. 8 of 2017.
[81] Supreme Court Civil Application No. 8 of 2017.
[82] High Court Civil Appeal No. 59/2017.
[83] High Court Civil Appeal No. 59/2017, 14.

Relatedly, in *Spear Motors Ltd v Attorney General & 2 Others*,[84] the High Court disregarded the arguments of the 1st Defendant against using cabinet minutes as evidence in court because they were privileged information protected by section 25 of the Access to Information Act. Mulyagonja, J stated that the suit before her was about "the workings of government in the procurement of vehicles for an important event that occurred in the country".[85] The Court cited Part IV of the PPDA Act, which provides for the basic principles of public procurement and disposal of assets. The Court stated that these principles included non-discrimination, transparency, accountability and fairness, among others. The Court held that the public procurement of CHOGM vehicles had to be "subjected to the same standards set for all procurement entities under the Act".[86] Public procurement has been found to be one of the areas where massive acts of corruption take place.[87]

3.1.7 The Budget Act, 2001

The Budget Act, 2001[88] is the law that provides for an efficient allocation of national resources to where they are needed most. The law regulates the budget process. It clearly lays down the role of the executive, the parliament, and other stakeholders in the budgeting process. It also lays out the required documentation and the dates when the documentation is required from key stakeholders to enable an efficient allocation of Uganda's resources. The diversion of public funds allocated to particular priority areas provides fertile ground for corruption.[89] If the implementation of the budget is not monitored by Civil Society Organizations (CSOs) on behalf of the citizens, it provides opportunities for diversion of budgeted resources, which facilitates corruption.[90]

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[84] (HCT-00-CC-CS-0692-2007) [2012] UGCOMMC 18 (18 March 2012).
[85] (HCT-00-CC-CS-0692-2007) [2012] UGCOMMC 18 (18 March 2012) 35.
[86] (HCT-00-CC-CS-0692-2007) [2012] UGCOMMC 18 (18 March 2012) 35.
[87] GAN (2017). Also see Basheka BC & Tumutegyereize M *Determinants of Public Procurement Corruption in Uganda,* available at http://www.ippa.org/images/PROCEEDINGS/IPPC4/01ComparativeProcuremnt/Paper1-10.pdf accessed on (29 April, 2020).
[88] 2001.
[89] Wamara (2017).
[90] Pinnington R *The Road to Budget Transparency in Uganda* (2017)., available at https://www.internationalbudget.org/wp-content/uploads/the-road-to-budget-transparency-in-uganda-ibp-case-study-2017.pdf accessed on (29 April, 2020).

3.1.8 Public Finance and Management Act, Cap. 171

Related to the aforementioned law in the budgeting process is the Public Finance and Management Act (PFMA).[91] It introduced provisions on the use of revenue from oil. Oil was recently discovered in Uganda, and there are many foreign oil companies involved in oil drilling to make it commercially viable.[92] Apart from the development of the fiscal and macroeconomic management framework, this law "provides for the development of a fiscal policy framework, regulation of public financial management, prescribes the responsibilities of persons entrusted with financial management and provides for public borrowing, audit of government accounts, state enterprises and other authorities of the state".[93] These are proactive measures to prevent abuse of public resources before the criminal activity occurs.[94]

3.1.9 Anti-Money Laundering Act, 2013

To prevent criminal syndicates from taking over Uganda's economy, and to domesticate provisions of the UNCAC, Uganda passed the Anti-Money Laundering Act (AMLA).[95] Money laundering has been defined as "the use of money derived from illegal activity by concealing the identity of the individuals who obtained the money and converting it to assets that appear to have come from a legitimate source".[96] The AMLA has defined money laundering as "the process of turning illegitimately obtained property into seemingly legitimate property, and it includes concealing or disguising the nature, source, location, disposition or movement of the proceeds of crime and any activity which constitutes a crime under section 3 of this Act".[97]

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[91] 2015.
[92] URN 'Uganda's first oil production now pushed to 2022' *The Observer* 20 December 2018.
[93] Ministry of Finance, Planning and Economic Development A Guide to the Budget Process: Ensuring that Uganda's national budget reflects the views and priorities of citizens. Kampala (2009) 5.
[94] Munyambonera E & Lwanga MM *A Review of Uganda's Public Finance Management Reforms (2012-2014): Are the reforms Yielding the Expected Outcomes*? (2015).
[95] In 2013.
[96] Madinger, J. (2012). *Money-Laundering: A Guide for Criminal Investigator*, Third Edition. Boca Raton: Taylor & Francis Group LLC.
[97] See section 1 of AMLA.

Part II of AMLA criminalises the laundering of proceeds of crime.[98] Measures to prevent money laundering are provided for by Part III.[99] Part IV of AMLA establishes a government organ, the Financial Intelligence Authority (FIA), to implement AMLA. The FIA is established by section 18 of AMLA. The FIA is charged with enforcing the provisions of AMLA.[100] The FIA is also empowered under Part V to seize, freeze and apply to court for orders of forfeiture of assets obtained from proceeds of money laundering.[101] Recently, the High Court fortified the authority of the FIA to seize assets as provided for under section 21(q) of the Anti-Money Laundering Act.[102] Section 21(q) of the Anti-Money Laundering Act provides that "The Authority may do all that is necessary or expedient to perform functions effectively, and in particular do anything that is incidental to the exercise of any of its functions". In the aforementioned case of *Smart Protus Magara & 138 Others v Financial Intelligence Authority,*[103] Sekaana, J held as follows: -

> The nature of work and mandate of the respondent is to detect financial crimes including money laundering and financing of terrorism, requires swift and expeditious detection of crimes which may affect the public at large. In such circumstances it may not be possible to offer a hearing at such an early stage in the investigation of such crimes.[104]

In line with Uganda's international obligations as a state party to UNCAC and AUCPCC, international cooperation is encouraged to curb money laundering, under Part VI.[105] The sanctions for engaging in money laundering are provided for under Part VII.[106] Not only is the staff of FIA immune to anything that is done in furtherance of the provisions of AMLA, but they are also independent from the direction or control of anyone.[107] A claw-back provision is introduced under section 22(1) of the AMLA, which states that the minister may give the FIA "policy guidelines".

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[98] See sections 3-5 of AMLA.
[99] See sections 6-17 of AMLA.
[100] See sections 19-43 of AMLA.
[101] See sections 44-104 of AMLA.
[102] See *Smart Protus Magara & 138 Others versus Financial Intelligence Authority,* High Court Miscellaneous Cause No. 215/2018.
[103] High Court Miscellaneous Cause No. 215/2018.
[104] High Court Miscellaneous Cause No. 215/2018 13., also see *Sundus Exchange Money Transfer & 5 Others versus Financial Intelligence Authority* High Court Miscellaneous Cause No. 154/2018.
[105] See sections 105-115 of AMLA.
[106] See sections 116-137 of AMLA.
[107] See sections 22 & 140 of AMLA.

The effect of this provision on the independence of FIA is yet to be felt, considering that it is a recently established anti-corruption institution.[108]

The AMLA was recently amended.[109] The long title of the amendment provides that it is;

> An Act to amend the Anti-Money Laundering Act, 2013, to harmonize the definitions used in the Act; to provide for the carrying out of risk assessments by accountable persons; to provide for the identification of customers and clients of accountable persons; to provide for procedures relating to suspicious transactions; to harmonize the record keeping requirements and exchange of information obligations with international practice; and for related matters.[110]

The Uganda government executive passed the 2019 Anti-Money Laundering Bill, 2019 for the second time in 2 years, to enable Uganda to meet its international obligations with the Financial Action Task Force (FATF). This is specifically in regard to unrestricted exchange of information with similar organizations outside the country.[111]

3.1.10 Penal Code Act, Cap. 128

Both the Anti-Corruption Act (ACA) and the Penal Code Act, (PCA) provide for criminal liability for corruption.[112] Public prosecutions for corruption can be conducted in terms of both the ACA and the PCA.[113] Corruption related offenses have been cross-referenced to the PCA by the ACA.[114] These corruption-related offenses include any attempts, preparations, abetments and criminal conspiracies.[115] It is important to note that in 2009, amendments to the ACA had consequential amendments to the PCA.

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[108] FIA operations began 1st July, 2014.
[109] Anti-Money Laundering (Amendment) Act No.3 of 2017 commenced on 26 May, 2017.
[110] See long title of the amendment.
[111] This has necessitated the amendment of section 38 of AMLA. This Bill is awaiting approval by Parliament and assent by the President to become law.
[112] See sections 26-35 of the ACA., also see sections 304-313 of the PCA.
[113] See the case of *Uganda v. Lwamafa & 2 Others* Criminal Case No.9/2015, where the accused persons were charged with causing financial loss contrary to section 20 of the ACA, abuse of office contrary to section 11 of the ACA and also charged with conspiracy to defraud contrary to section 309 of the PCA.
[114] See Section 52 of the ACA.
[115] See Section 52 of the ACA.

3.1.11 Anti-Corruption Act, Cap. 116

The fundamental law in Uganda regarding prosecutions for corruption misdeeds is the ACA. It established over 20 crimes regarding corruption.[116] This Act creates offences related to corruption which are prosecuted under it.[117] Before the enactment of the Anti-Corruption Act No. 6 of 2009, the Prevention of Corruption Act, Cap. 121 was in force. This law attained the force of law on 12 June 1970 and was repealed on 25 August 2009 by the Anti-Corruption Act No. 6 of 2009. In 2013, a Private Members Bill was introduced on the floor of Parliament to amend the Anti-Corruption Act No. 6 of 2009 "to provide for mandatory confiscation of property of persons convicted of an offence under the Act".[118] The author shall deal with the details of this Private Members' Bill later in this section.[119] As seen earlier, this primary anti-corruption legislation is supplemented by other laws, outlined in this paper.

The preamble of the Anti-Corruption Act provides that it is: -

> "An Act to provide for the effectual prevention of corruption in both the public and the private sector, to repeal and replace the Prevention of Corruption Act, to consequentially amend the Penal Code Act, the Leadership Code Act and to provide for other related matters."[120]

The Anti-Corruption Act does not define corruption. The Act, however, describes acts that amount to corruption.[121] Some of the acts amounting to corruption include 'soliciting and acceptance of anything by a public official, diversion of public funds, as well as fraudulent acquisition and concealment of property'.[122] Or "neglect of duty".[123] Other acts of corruption

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[116] See Part II of the Anti-Corruption Act.
[117] For example, offenses under the Penal Code Act, Cap. 120.
[118] See Paragraph 1 of the Memorandum to the Bill. This Bill was later passed into law with slight amendments on 7 July, 2015.
[119] This Private Members Bill was introduced by Honorable John Ssimbwa, a Member of Parliament (MP) for the National Resistance Movement (NRM), the ruling party. He is an MP for Makindye Division East.
[120] Section 70 of the Anti – Corruption Act, provides for a consequential amendment of section 8, 9 and 13 by repeal of the said provisions. The consequential amendment also under section 20(3) replaces "five years" with "ten" years.
[121] See section 2 of the ACA.
[122] Section 2 (f) of the ACA.
[123] Section 2 (i) of the ACA.

include bribery of a public official,[124] diversion of public funds,[125] influence peddling,[126] nepotism,[127] loss of public property,[128] abuse of office,[129] and causing financial loss.[130] This law regulates corruption for both private and public persons.[131] Part II of the ACA has all the offences that were repealed from the Penal Code Act. These offences are covered in sections 3 to 25.

Some of the aforementioned offences have been couched in vague terms. Their meanings are overly broad, contrary to international best practices.[132] Other offences, however, have well-defined criteria for the intention of the offender.[133] These well-defined offences have phrases such as "negligent", "intentional", and "knowing".[134] Other offences are imprecise for anyone, including the prosecutors, investigators, or the courts, to know the exact criteria of what constitutes the offence.[135] The author discusses a few examples of the vague offences hereunder. These include the offences of diversion of public resources, causing financial loss and abuse of office.

The offence of diversion of public resources states that "A person who converts, transfers or disposes of public funds for purposes unrelated to that for which the resources were intended, for his or her own benefit or for the benefit of a third party, commits an offence".[136] This offence is vague in the sense that there are many circumstances in the management of public resources, where resources are diverted to some other purpose than what they were meant for, but have been utilized for the public good because of unavoidable, unplanned emergencies. The second example is the offense of causing financial loss. The Act states that the offense of causing financial loss is

[124] Section 5 of the ACA.
[125] Section 6 of the ACA.
[126] Section 8 of the ACA.
[127] Section 12 of the ACA.
[128] Section 9 of the ACA.
[129] Section 10 of the ACA.
[130] Section 19 of the ACA.
[131] See the case of *Francis Atugonza v Uganda Constitutional* Reference No.31/2010 where the Constitutional Court expounded on the objectives and purpose of the ACA.
[132] For example, see Articles 19, on abuse of functions and Article 20, on illicit enrichment, of the UNCAC.
[133] See section 9 of the Anti-Corruption Act, which clearly provides for the state of mind of the offender for the offence of loss of public property.
[134] See, for example, section 9 (1) & (3) which use the words "knowing" or "knowingly".
[135] See sections 6, 11 & 20 of the Anti-Corruption Act, for example.
[136] Section 6 of the ACA., For this offense, the 2013 Amendment to the ACA, introduced compensation to the victim of corruption over and above the jail term and a fine. This is by paying "such sum as is considered just by the Court, having regard to the loss suffered by the aggrieved party."

committed as follows: -

> Any person employed by the Government, a bank, a credit institution, an insurance company or a public body, who in the performance of his or her duties, does any act knowing or having reason to believe that the act or omission will cause financial loss to the Government, bank, credit institution commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty-six currency points or both.[137]

The choice of words used by the draftsman in the aforementioned offense is broad and vague. This provision encompasses a broad number of activities that agents of a government, banks, and insurance companies are involved in, daily. These activities involve daily decision-making that involves the taking of financial risk. This decision-making by employees of these organizations involves daily decisions taken on many activities, including public procurement. The Anti-Corruption (Amendment) Bill, 2013 further widened the scope of the offense of causing financial loss. The words "a company" and "a political leader" were inserted into the ACA.[138] The intention is to widen the scope of the offense of causing financial loss.

The third example is the offense of abuse of office. For an act to amount to the offense of abuse of office, a person must have done the following acts: -

> A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done **any arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office**, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty-eight currency points or both. Where a person is convicted of an offence under subsection (1) and the act constituting the offence was done for the purposes of gain, the court shall, in addition to any other penalty it may impose, order that anything received as a consequence of the act, be forfeited to the Government.[139]

The highlighted wording provides no direction on what conduct amounts to the offense of abuse of office. Abuse of office is one of the most common charges that accused persons are charged with at the Anti-Corruption Court.[140] Under these three offenses covered above, it is possible to

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[137] Section 19(1) of the ACA.
[138] See Clause 3 of the Bill.
[139] See sections 11(1) & (2) of the ACA.
[140] Uganda Police Force Annual Crime Report (2018) 24., available at https://www.upf.go.ug/wp-content/uploads/2019/05/annual-crime-report-2018.pdf accessed on (29 April, 2020).

charge anybody with corruption. For example, at international level, UNCAC defines the offense of abuse of office in precise terms.[141] The UNCAC defines abuse of office as follows: -

> Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.[142]

This UNCAC definition of abuse of office, is specific and precise, to the extent that it requires intention for a person to commit the offense. For a person to be charged with the said offence, it also requires that a person intends to obtain undue advantage from his official position. This narrows the circumstances under a person may be charged for the offence of abuse of office.[143]

To avoid wastage of public resources for the public prosecutors and the courts, and the abuse of the prosecutorial discretion and abuse of court process, these three offenses and others defined vaguely or broadly under the ACA, need an urgent amendment. This is to their narrow applicability to "intentional" conduct rather "knowing" conduct. These amendments will save the prosecutors and the courts a lot of time and resources, which can be put to optimum use, considering the backlog of cases that the courts have to contend with in Uganda.[144] Perhaps one would wonder whether the draftsman was under instruction to draft these offenses in a vague manner, to enable the IGG and the DPP, a lot of prosecutorial discretion, which could be used for political motivations.[145]

Part III of the ACA provides for offenses and penalties.[146] The punishment for offers under sections 2,3,4,5,6,7,12, and 13 of the ACA is provided for under section 26 of the ACA. Section 27 of the ACA provides for penalties in addition to those specifically laid out in the Act. Lifestyle audits

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[141] See Article 19 of the UNCAC.
[142] Article 19.
[143] See Article 28 (12) of the 1995 Constitution which provides for proper definition of an offence, before a person can be convicted of the offence.
[144] Mutesi N "UBOS to register court case backlog," *New Vision*, 5 August, (2019), Available at: https://www.newvision.co.ug/news/1504864/ubos-register-court-backlog accessed on (23 April, 2020)., also see The Judiciary of Uganda *Monitoring the Implementation of the Case Backlog Strategy. Preliminary Findings*., (2018) Available at: http://judiciary.go.org/files/downloads/Banishing.pdf accessed on (23 April, 2020).
[145] See Transparency International Uganda (2015).
[146] Sections 26 – 35 of the ACA.

have been provided for under section 31. If a person is found to maintain a standard of living beyond what they ordinarily earn or own property which they are unable to explain how they legally acquired it, the IGG or DPP can commence investigations with a view of charging the person with the offence of illicit enrichment. In the case of *Akankwasa Damian v Uganda,*[147] the IGG on suspicion that the petitioner had filed false declarations of wealth, sought to verify his assets. The petitioner was found to be in possession of a guest house in Kampala city, valued at over Ush. 580,800,000/= (Uganda shillings five hundred eighty million and eight hundred thousand) a property which he could not explain how it was acquired and which was above his known sources of income as a public servant. He was subsequently charged with the offence of illicit enrichment at the Anti-Corruption Court. He objected to his prosecution at the Anti-Corruption arguing that the case was a violation of his constitutional rights to private property and the right to privacy of person, home and other property.[148] He prayed to the Anti-Corruption Court to have his case referred to the Constitutional Court for interpretation, which was granted.

In the Constitutional Court, the petitioner argued that section 31 of the ACA that provides for the offense of illicit enrichment was contrary to Article 26(1) and 27 of the 1995 Constitution, which provide for the right to private property and right to privacy of person, home and other property. The Constitutional Court held that; -

> The purpose of the Anti-Corruption Act as we stated in our ruling in *Atugonza's* case is to fight and eliminate all forms of corruption in public and private spheres. Section 31 gives power to the IGG and the DPP to prosecute all those who might have acquired property or assets whose value exceed their known lawful incomes or assets past or present. The section merely empowers the officers named therein to prosecute anyone whom they have reasonable grounds to believe that the property they hold was acquired through graft or corrupt means. We do not think that Articles 26(1) and 27 can be invoked to protect property which has been unlawfully acquired. The two articles protect property and assets which have been acquired using lawful means. Consequently section 31 is not inconsistent with Articles 26(1) and 27 of the Constitution and we so find.[149]

The IGG and DPP are given special powers to investigate a person, if they have reasonable suspicion that any offence under the ACA has been committed.[150] The IGG or DPP may proceed

[147] Constitutional Court Reference No. 5/2011.
[148] *Uganda v Akankwasa Damian*, Criminal case No.69/2010 of the High Court (Anti-Corruption Division
[149] Last page of the Judgment.
[150] Section 33 of the ACA.

to court to obtain an order authorizing an investigative officer or police officer above a certain rank to investigate any bank account, share account or purchase account of the person under investigation.[151] Under subsection 2 of section 33, the ACA provides penalties for whoever refuses to divulge information to the investigating officer(s) named in the search order.

Upon application to court and once a court order is granted, the IGG or DPP may restrict the disposal of any property or freeze any bank account of an accused person or a person suspected of having committed a crime under the ACA. The ACA further prescribes circumstances under which the property or money may be disposed of.[152] Compensation may be paid to a legal person who has suffered loss out of the resources of a convicted person.[153] After satisfactory compensation to a legal person who has suffered loss, the balance of the proceeds of the sale of the property of the convicted person, shall be refunded to the convicted person.[154]

Under sections 7 and 35 of the ACA, there is an attempt by the ACA, to fuse criminal and civil proceedings. The remedies in criminal and civil proceedings are different.[155] Consequently, the ACA when prescribing punishment for convicts prescribes a jail term, a fine or both, which is inadequate.[156] In the case of *Machumbi Gasasira v Uganda,*[157] the Constitutional Court held that "it is fairly settled law that criminal and civil proceedings are distinct from one another...the remedies offered to victims of crimes through criminal proceedings do nothing to get them back to the state in which they were, before the crime was committed..."[158] Section 35 of the ACA adequately covers this challenge.[159]

Section 35 of the ACA is controversial in the sense that it tends to confiscate property from a convicted person to compensate a victim, but provides that whatever balances from the proceeds of a sale of the convicted person's property, after compensation of the victim, should be returned

[151] Section 33(1) of the ACA provides that the investigating officer must be of or above the rank of Assistant Superintendent or an Inspectorate officer or a special investigator named in the order.
[152] See subsections 2-6 of section 34 of the ACA.
[153] Section 35(1) of the ACA.
[154] See section 35(2) of the ACA.
[155] See section 7(2) of the ACA.
[156] See Part III of the ACA.
[157] Constitutional Reference No. 11/2011.
[158] Constitutional Reference No. 11/2011, 14.
[159] Also see section 7 of the ACA that fortifies the provisions of section 35 of the ACA.

to the convicted person.[160] The challenge with confiscation of a convict's property is that there is no designated government organization that is charged with the management of confiscated property. The 2013 Amendment to the ACA resolved this by vesting this important duty with the office of the Public Trustee under the Administrator General.[161]

Part IV of the ACA provides for powers of the IGG and DPP in terms of search, seizure, inspection and investigations[162] of documents. This part also provides for arrest of those persons who attempt to compromise investigation officers.[163] It also provides for protection of whistleblowers.[164] No offence in regard to corruption can be instituted without the express authorization by either the IGG or the DPP.[165] A person suspected of engaging in corruption can be arrested and detained but no further acts may be performed without the consent of the IGG or DPP.[166]

Jurisdiction to try offences under the ACA is dealt with under part V. The Magistrates courts presided over by either Magistrate Grade 1 or a Chief Magistrate have power to try offences under the ACA.[167] The High Court also has powers to try offenses under the ACA.[168] Punishment for attempts, preparations, abetments and criminal conspiracies under the Act are punishable under any penalty prescribed under the Penal Code Act.[169]

Restraining orders and procedures on how to enforce the restraining orders are provided for under part VI of the ACA. The purpose of the restraining orders is to enable the IGG or DPP to investigate property or anything that is owned by a suspect unrestrained and without worrying that the property may be disposed of, to a third party, which may create, challenges during investigations.[170]

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[160] See subsections 1 & 2 of section 35 of the ACA., also see Langa S *Who Follows-up the Billions Lost to Corruption? The Execution of Refund Orders Made by the Anti-Corruption Court of Uganda* (unpublished LLM thesis, Makerere University, 2015) 110-111., for a detailed treatment on this.
[161] Clause 8 of the 2013 Bill.
[162] See sections 36,37,38,39,40,41 of the ACA.
[163] See section 43 of the ACA.
[164] See section 44 of the ACA.
[165] See section 49 of the ACA.
[166] Section 49 of the ACA.
[167] See section 51 (b) & (c) of the ACA.
[168] See section 51 (a)., Under Article 139 of the 1995 Constitution, the High Court also has unlimited and original jurisdiction to try any offence within the boundaries of Uganda.
[169] See section 52 of the ACA.
[170] See sections 53,54,55,56,57,58,59,60,61 & 62 of the ACA.

Confiscation orders are provided for under part VII of the ACA. The provisions of this part of the ACA enable courts to make orders to confiscate the proceeds of corruption of a convicted person.[171] The confiscation of property of a convicted person has been a very controversial because there was difficulty is differentiating property that was derived from the corrupt act and property acquired genuinely.

The 2013 Amendment to the ACA, proposed to do away with this challenge by confiscating any property that belongs to a convicted person regardless of how the convict obtained it to compensate the victim of the crime.[172] Under the 2013 Bill, it had been suggested that, where the convicted person obtained property within 10 years before conviction, it was to be permanently forfeited to the government by order of court. This provision was passed and has been applied and interpreted in several cases, including *Biira Esther Kabaseke Kule v Uganda/DPP & Another*.[173] In the aforementioned case, Gaswaga, J, noted that there is a rebuttable presumption that the proceeds of crime to be confiscated extend to a period of ten years before conviction, in accordance with section 63 of the Anti-Corruption Act.[174] The High Court further ruled that section 63 of the Anti-Corruption Act specifically provides for confiscation of proceeds of crime of corruption and not embezzlement, which offences are distinctive. Section 63 of the Anti-Corruption Act serves a useful purpose in reinforcing lifestyle audits that are covered under the ACA.[175]

Once the convict's property has been confiscated, it is to be vested with the Public Trustee, and management of the property shall be by the Public Trustee Act.[176] The challenge of vesting the confiscated property with the Public Trustee is found in the law establishing the Public Trustee. Under section 4(5) of the Public Trustee Act, the Public Trustee is forbidden from managing a trust that involves the carrying on of business. Considering that some of the proceeds of corruption are ploughed into private businesses, it will weaken the implementation of this otherwise well-intended amendment to the law.

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[171] See sections 63,64,65 & 66 of the ACA.
[172] See clause 7 of the Bill.
[173] High Court Miscellaneous Application No. 1261/2018.
[174] High Court Miscellaneous Application No. 1261/2018, 23., also see section 1 of the Anti-corruption Act, that defines proceeds of crime.
[175] See section 31 of the ACA.
[176] See section 63A,63B & 64A of the ACA, 2013.

On top of this challenge, the Administrator General, who is the Public Trustee, has a lot more work and challenges in the administration of the estates of deceased persons in Uganda.[177] Therefore, the Public Trustee Act needs to be amended to enable the Public Trustee to carry on business, where the confiscated property is a private business, to enable the recovery of proceeds of corruption and to avoid the redundancy of the amended provision in the ACA.

4. CONCLUSION

Apart from a few lapses, including excessively broad and vague offences that could be exploited by "powerful" leaders to settle political scores with their opponents, Uganda's legislative framework is comprehensive. Overall, there is effective legislation in place to combat corruption. However, the war against corruption cannot be won without a strong political leadership, which has been lacking in Uganda. This lack of political leadership has affected the effective enforcement of this strong anti-corruption regime. Although political leaders have made numerous statements about their intentions to combat corruption, very little has come from these grand declarations.

[177] The Administrator General is appointed as Public Trustee under Rule 12(1) of Statutory Instrument 161-1, Laws of Uganda.