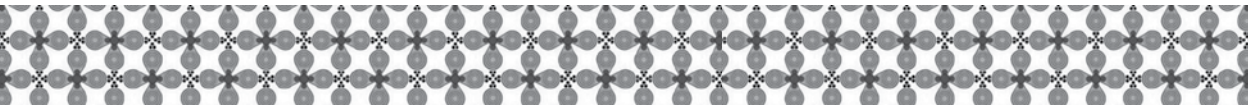


Effectiveness of Anti-Corruption Agencies in East Africa

Uganda

AFRICA REGIONAL OFFICE (AfRO) POLICY BRIEF 2016



**OPEN SOCIETY
FOUNDATIONS**

 Open Society Foundations 2016

This publication is available as a pdf on the Open Society Foundations website or the AfRO website under a Creative Commons licence that allows copying and distributing the publication, only in its entirety, as long as it is attributed to the Open Society Foundations and used for non-commercial educational or public policy purposes. Photographs may not be used separately from the publication.

Published by: Open Society Foundations

ISBN: 978-1-928332-10-7

For more information contact:

AfRO

PO Box 678 Wits, 2050 Johannesburg, South Africa

info@afro.org

www.afro.org

Open Society Initiative for Eastern Africa (OSIEA)

ACS Plaza, Lenana Road, Nairobi, Kenya

www.osiea.org

Layout and printing: COMPRESS.dsl | www.compressdsl.com

Contents

I	State of corruption in Uganda	1
II	Anti-corruption framework	3
III	Recommendations	8
	Annex: Cases prosecuted by the IG	10

I: State of corruption in Uganda

The elimination of corruption and abuse of office features prominently on the ten point programme formulated by the incumbent National Resistance Movement (NRM) during the five-year guerrilla war that eventually ushered the regime into power in 1986. The inclusion of corruption on the list of urgent issues that the new government would tackle reflected strong initial commitment on the part of the NRM to end the vice and to promote accountability. Indeed this commitment flourished during the first few years of NRM rule. The new government, among other things, passed anti-corruption legislation in the first two years of its coming into power. Under the law, the office of the Inspector General of Government (IGG) was established to investigate incidents of corruption. This was an important step in the fight against corruption at the time.

Unfortunately, after a few years in power, the NRM's strong stance against corruption began to dwindle and, to date, there is still a lack of political will to decisively tackle the vice. The fight against corruption is for the most part confined to political speeches and to some extent statute books which, for a number of reasons stated hereafter, have been rendered dysfunctional. This soft approach has encouraged corruption to thrive and there is a tremendous increase in the number of cases of petty corruption, grand corruption, political corruption, bribery, nepotism and abuse of office among the many forms of corruption.

Over the last decade, Uganda has been rocked by grand corruption scandals involving the loss of staggering amounts of public funds. In 2007, substantial amounts of money were lost in the procurement of cars and other items required for the Commonwealth Heads of Government Meeting (CHOGM). At the end of 2006, over USD 37 million meant for the treatment of malaria, HIV/AIDS and tuberculosis was confirmed unaccounted for. Earlier in the same year, over USD 890 000 (UGX 1.6 billion) immunisation funds from the Global Alliance for Vaccines and Immunisation (GAVI) was lost. Three government ministers including Jim Muhwezi, Mike Mukula and Dr Alex Kamugisha were implicated in the scandal. In 2011, over USD 1.7 million was lost in a botched purchase of 70 000 bicycles meant for members of local council committees across the country. In 2012, officials in the office of the prime minister were alleged to have stolen USD 12.7 million meant for the reconstruction of war ravaged areas in northern Uganda and some eastern parts of the country. In the same year, there occurred outright theft of USD 65 million (UGX 169 billion) in pension funds meant for compensation of 1 018 former workers of the East African Community.

Whilst the scale of theft of public resources illustrated above is worrisome, they represent but a small proportion of the grand corruption cases that have emerged over the decade. According to the Transparency International Corruption Perception Index (CPI), Uganda ranked 140 out of 177 countries in 2013. In 2012, the country ranked 130 out of 176

countries while in 2011 it ranked 143 out of 183. The East African Bribery Index (EABI) 2012, placed Uganda at the top in terms of bribery among the five East African countries.

In 2012, a group of civil society declared a week of national mourning and launched several anti-corruption activities in protest against the levels of corruption and seeming government reluctance to tackle it decisively. Under the umbrella of the 'Black Monday Movement' (BMM), civil society demanded the immediate resignation of those implicated in corruption and for the urgent intervention of government to end the vice. The activists donned black outfits as a sign of mourning for the loss of public funds and lack of accountability. The group also issued public flyers bearing anti-corruption messages.

In its response, the Ugandan government deployed armed police and anti-riot equipment and arrested a number of activists for distributing what was referred to as 'harmful propaganda'. To date, the BMM is not allowed to freely mobilise and distribute anti-corruption materials anywhere in the country.

Indeed, if the proposed legal framework for non-governmental organisations (NGOs) is passed, there is the fear that anti-corruption efforts will be stifled further due to the restrictive operational environment that the law seeks to introduce. This again demonstrates the state's reluctance to join hands with anti-corruption activists to end the vice once and for all.

Politics of corruption

The use of money to influence election processes and outcomes is a reality in Uganda. In the 2001 and 2006 elections, bribery of voters was cited through the myriad election petitions taken to court, for example:

- *Rtd. Col. Dr. Kizza Begiye vs. President Yoweri Museveni and the Electoral Commission*, Presidential Election Petition No. 1 of 2006;
- *Abdu Katuntu vs. Ali Kirunda Kivejinia and The Electoral Commission*, Electoral Petition No. 7 of 2006, High Court of Uganda;
- *James Garuga Musinguzi v. Amama Mbabazi and The Electoral Commission*, Electoral Petition No. 5 of 2001, The High Court of Uganda.

According to a 2010 report by AfriMAP, the pervasive use of money to decide elections has become an entrenched norm in Uganda. In research conducted by DEMGroup between 29 November and 14 December 2010, in 20 districts in all the regions of Uganda, voters confirmed that vote buying happens amongst all levels of elective political positions and in every region.

The same report laments that incumbent candidates readily use their access to state resources to provide an unfair edge when running for re-election. This includes cash payments from the state treasury, use of state-owned property and vehicles, as well as the fulfilment of campaign pledges during the campaign period. Voters have given up on their elected officials to fulfil campaign promises and seek to extract as much benefit as they can around the campaign period.

II: Anti-corruption framework

Constitution of the Republic of Uganda

At the national level, the commitment to end corruption is reflected in the 1995 Constitution of Uganda. According to Principle XXVI of the National Objectives and Directive Principles of State Policy (NODPSP), the state is enjoined to adopt all lawful means to eradicate corruption and abuse of power. Initially there was a lot of contention on whether the NODPSP should be enforced at the same level as other provisions of the constitution. The 2005 constitutional amendment has however settled this question and hence the NODPSP is now part and parcel of the constitution and is enforceable. This means that Principle XXVI above is just as binding on the state as it would be if it was contained in the main articles of the constitution.

The duty to eliminate corruption and abuse of authority is also reflected in a number of other constitutional provisions including those that establish the office of the Inspectorate of Government (IG). Under chapter 13, the Inspectorate has several functions, key of which is the mandate to ‘eliminate and foster the elimination of corruption, abuse of authority and public office’. In order to fulfil this function, the IG is given special powers to investigate, arrest and prosecute cases involving corruption and the abuse of public office.

The constitution empowers the IG to enforce the leadership code of conduct. The code is contained in the Leadership Code Act which was enacted by parliament in accordance with article 233 of the constitution. Under the code, specified officers are obligated to declare their incomes, assets and liabilities. It also prohibits certain conduct likely to encourage corruption and/or compromise values of honesty and impartiality.

The constitution also confers an express duty on every citizen to combat corruption and the misuse or wastage of public property. It is worth noting that corruption in its most common form involves a public official granting favours in exchange for a reward or rewards from members of the public. Willingness on the part of the public is therefore essential for the vice to thrive, and if citizens embrace their constitutional duty to combat corruption, it can go a long way in ridding society of the vice.

Anti-Corruption Act of 2009

The principle legislation that deals with the prevention and combatting of corruption is the Anti-Corruption Act of 2009. The law sets out to, among others: repeal and replace the Prevention of Corruption Act of 1970; prevent corruption in the public and private sectors; and to amend the Penal Code Act and the Leadership Code Act. The Anti-Corruption Act consolidates corruption and all other related offences in one text. The Act also bestows special powers on the IG and the director of public prosecutions (DPP) to investigate and prosecute corruption cases. In essence, the IG and the DPP enjoy equal powers in the investigation and prosecution of the offence of corruption and related offences there under.

While this is seemingly positive, there are concerns that it may lead to conflicts between the two offices and possibly to acrimony as to who is responsible where there is failure to duly investigate and prosecute particular cases. The DPP and the Inspector General of the Government (IGG) also operate with extremely limited resources and the duplication of duties is likely to lead to wastage of these already meagre resources.

The Anti-Corruption Act introduces a wider definition of corruption and expands on the scope of offences previously contained in the Prevention of Corruption Act and Penal Code Act. It introduces new offences such as influence peddling, conflict of interest, sectarianism and nepotism to mention but a few. All of these were not available in the Prevention of Corruption Act and the Penal Code Act. The offences of embezzlement, false accounting, abuse of office and impersonation of public officials previously contained in the Penal Code Act are retained. The only challenge with this law is the overly broad definitions accorded to some of the offences such as abuse of office and causing financial loss. These are defined in broad terms, which make it difficult for the prosecutors to sustain charges against persons charged with those offences. It is proposed that these offences be defined with more specificity as is the case under international and regional treaties on combatting corruption.

These reforms in the law should be taken together with current proposals to amend the Anti-Corruption Act in order to allow for the confiscation of properties belonging to persons convicted of corruption and its related offences.

Leadership Code Act

Besides the Anti-Corruption Act, there are several other laws that deal with corruption. The Leadership Code Act mentioned above is one of these. The law puts in place a code and enjoins specified officers to declare their assets after every two years. Failure to comply with this provision amounts to a breach of the code and attracts a penalty. In 2005, the constitution was amended to provide for the establishment of a special tribunal that would be responsible for enforcing the leadership code. To date, members of this tribunal have not been appointed – a clear demonstration of the lack of political will to decisively tackle corruption.

Inspectorate of Government Act 2002

The Act operationalises the constitutional provisions on the establishment of the IG. It spells out the appointment procedures, constitution, powers and functions of the inspectorate and other related matters.

Anti-Money Laundering Act

The recently passed Anti-Money Laundering Act is yet another piece of legislation which when fully enforced will help in efforts to curb corruption. The Act makes it an offence to accumulate wealth through illegitimate means and imposes responsibilities and sanctions on institutions and persons likely to be used in the accumulation of such wealth. The

Act also provides for seizure, freezing and forfeiture of assets obtained through money laundering. In Addition, the law provides for international cooperation in the investigation and prosecution of money laundering activities.

The other laws that contain aspects of anti-corruption include the Access to Information Act of 2005; Whistleblower Protection Act of 2010; and the Public Procurement and Disposal of Public Assets Act of 2013. Access to information, the protection of whistleblowers and open procurement are key tenets in the fight against corruption to the extent that they promote transparency which in turn promotes accountability.

National Resistance Movement Manifesto

The current NRM Manifesto promises a policy of zero tolerance to corruption through the various legal frameworks and institutions that have been listed here. It promises to implement the Anti-Corruption Amendments Act 2013 that provides for the confiscation of the properties of those convicted of corruption ‘to the spirit and letter’.

The manifesto further promises to popularise the Whistleblower Protection Act of 2010, which allows people to report cases of corruption and guarantees them protection.

Judiciary

Uganda has an anti-corruption court within its judiciary. Whilst this is a potentially effective intervention in stemming corruption, the judiciary itself is plagued with accusations of corruption.

In May 2015, retired justice and practising lawyer George Kanyeihamba, in a bid to help fight corruption in the courts, wrote a dossier naming 12 judges and what he considered evidence against them. In a 15-page document, he accused 12 judges and three magistrates of corruption, misconduct, gross incompetence, political bias, among other vices. This was in response to the public outcry about the rampant corruption in Uganda’s judiciary.

In his 2004 speech before the Seventh Biennial Conference of the International Association of Women Judges in Uganda, Jotham Tumwesigye, the IGG, stated five causes for corruption in the Ugandan judiciary: poor remuneration; inadequate supervision of magistrates; public ignorance about the judiciary and how to report corruption; the bribing of court clerks by lawyers; and inadequate judicial accountability (which appears to be an attack on judicial independence).

Parliamentary oversight

The Uganda parliament has had a chequered history of fighting corruption whilst perennially being accused of rampant systemic corruption. In July 2016, the director of the parliamentary budget office, Samuel Wanyaka, was found guilty of embezzling over UGX 822 million that was meant to fund service delivery surveys in the country.

The public accounts committee (PAC) of parliament has come under scathing attack. In November 2015 the auditor general (AG), John Muwanga, blamed parliament for the continued fraud, mismanagement and abuse office at the Uganda National Roads

Authority (UNRA). The AG decried that over 30% of the UGX 2.3 trillion for 2015/2016 to the roads sector was embezzled by UNRA's officials and their accomplices. The AG stated that if parliament and its PAC had looked at and acted on the findings of the audit reports, 'government and the taxpayer would not have incurred such gargantuan losses like witnessed in recent times'.

Inspectorate of Government

The Inspectorate of Government is established under chapter 13 of the Constitution of the Republic of Uganda, and is constituted by its inspector general and such number of deputy inspectors general as parliament may by law prescribe. In 2002, parliament enacted the Inspectorate of Government Act which among others prescribed the number of deputies to be two. The main objective of the Act was to give effect to provisions of the constitution in regard to the IG. The law in effect reiterates constitutional provisions on establishment of the IG and expands on the scope of functions for the IG. In terms of jurisdiction, the IG covers officers and leaders employed in the public service and other such institutions, organisations and enterprises as parliament may by law prescribe. The category of individuals and institutions over whom the IG exercises jurisdiction are included in the Inspectorate of Government Act.

The law guarantees the independence of the IG in more specific terms under article 227 of the constitution and section 10 of the Inspectorate of Government Act. Under these provisions, the IG is not subject to the direction or control of any person or authority in the performance of its functions and is only responsible to parliament.

As part of its responsibilities, the IG is required to submit a report to parliament every six months. The report should outline its performance over the relevant period and make recommendations as it considers necessary. Article 299 of the constitution provides that the IG have an independent budget appropriated by parliament and controlled by the IG. This provision is restated in section 31(1) of the Inspectorate of Government Act. The secretary of the inspectorate is required to prepare and submit to parliament an annual budget of the IG and once approved, the sought monies are charged to the consolidated fund.

The IGG and deputies are appointed by the president but may only be removed from office on recommendation of a special tribunal formed by parliament, thereby enjoying relative security of tenure.

This relative independence is however threatened by the conflicting role of parliament in the re-appointment of the IGG and the deputies with that of the IGG being responsible for ensuring accountability among parliamentarians. Members of parliament are among public officers required by the Leadership Code Act to declare their wealth and assets.

The IG is currently headed by a judge. She is assisted by two deputy inspectors general.

As a policy, the DPP, IGG and the anti-corruption court dispose of cases within four months of their institution. However, the appeals, constitutional petitions or references and applications filed in both the constitutional and supreme court often lead to the delayed conclusion of cases. Due to these delays, the IG was only able to conclude 32 out of 145

prosecutions in 2013 (a drop from 86 out of 168 cases in 2012) according to the December 2013 report to parliament.

There are other institutions such as the office of the auditor general, whose functions relate to unearthing financial irregularities or malpractices, and the DPP, who can prosecute any criminal cases including those related to corruption. When article 230 of the constitution states that the IG has the power to initiate investigations or to cause prosecutions in respect of cases involving corruption, it has all these institutions in mind, for collaborative purposes.

Often, the financial resources allocated are insufficient to support the requirements of the IG. For example, it was difficult to obtain a budgetary increment for 2014/2015 despite growing resource needs.

The creation of the IG was informed by government need to create a system that would nip corruption in the bud by exercising an oversight mandate over the conduct of government officials. The existence of the IG's office discourages corruption at least in the lower echelons of the public service. A considerable number of public servants are afraid of the negative press reports and prosecution that come with corruption. That said, the IG has, for a large part, succeeded in instilling fear among junior civil servants as opposed to senior civil servants and members of the cabinet.¹ This is also reflected in its prosecution strategy, which appears to focus on junior or mid-level civil servants.

¹ Human Rights Watch (2013) *Letting the Big Fish Swim: Failures to Prosecute High-Level Corruption in Uganda*. p. 16. Available at <https://www.hrw.org/report/2013/10/21/letting-big-fish-swim/failures-prosecute-high-level-corruption-uganda> [accessed 8 September 2016].

III: Recommendations

In order to tackle some of these challenges the report makes the following recommendations.

Strengthen overall legal framework

- Uganda has ratified the AUCPCC and it should therefore enact the prescribed articles of the continental convention.
- The recently proposed amendments to the Anti-Corruption Act 2009 that provide for the mandatory confiscation of property of persons convicted of corruption and its related offences should be urgently and expeditiously adopted and enacted.
- The offences of causing financial loss and the abuse of office should be clearly and specifically defined in line with international and regional norms and standards. The current definitions are overly broad and vague, which makes it difficult for the prosecution to sustain charges related to the two offences.
- The present scope of offices to which the code under the Leadership Code Act applies should be extended to include presidential appointees.
- The proposed Non-Governmental Organisations (NGO) Act (Amendment Bill), which imposes a number of stringent restrictions on NGO mobilisation and their interaction with communities, should be dropped in order to create an enabling environment for NGOs to promote awareness on corruption.
- The investigative and prosecutorial roles of the IGG and DPP should be streamlined under the law to avoid the present overlaps and the duplication of the already constrained resources.
- Parliament should expeditiously put in place a legal framework for the establishment of a leadership code tribunal as prescribed under chapter 14 of the constitution so as to enable the full implementation of the leadership code of conduct.

Strengthen agency status

- The leadership code tribunal should be constituted as a matter of urgency. In particular, parliament should embrace its constitutional mandate and by law establish the composition, jurisdiction and functions of this tribunal in the enforcement of the Leadership Code Act
- The tenure of the IGG should be extended beyond the current four years to a non-renewable term of at least seven years. This will enhance the IGG's security of tenure and boost the independence of the inspectorate as a whole.

Strengthen IG mandate and inter-agency collaboration

- The office of the IG and the attendant legal framework do not encourage interaction between the IG and the private sector. This in many ways constrains the work of the IG. It is important that the legal framework and the mandate of the IG is expanded to undertake investigations in the private sector where it is suspected that government officials have illegally influenced certain decisions or public funds have been illegally invested in private entities
- The ongoing reform of the police and the judiciary should be enhanced and expedited if the work of the IG is to be effective. As long as these institutions remain weak or ridden with corruption, the IG will be severely limited in its capacity to successfully bring officials implicated in corrupt practices to book.
- The role of the PAC in parliament should be supported as it complements the role of the IG. This may be done through strengthening the capacity of members through relevant training.

Improve agency financing, independence and sustainability

- There is a need for the executive to demonstrate commitment to fighting corruption. This can only be done if the IG is provided sufficient financial resources. The current insufficient budget allocation is an indication of the executive's perception of the role of the IG. It is possible that the IG is only considered as a means of averting donor fears and is not intended to actively tackle corruption. It is important that the funding variance of about USD 1 701 538 is provided for the IG to function effectively.

Strengthen administration, staff capacity and infrastructure

- The remuneration of IG staff should be enhanced so as to reduce their vulnerability to manipulation and bribery. Although it is difficult to place a particular figure in this respect, one way of achieving equitable remuneration might be through a comprehensive review of the salaries of all public servants, by a salaries commission established for the purpose.
- The IG has, until recently, focused on the prosecution of low and mid-level civil servants. This prosecution strategy directly protects high ranking civil servants and those with political clout. It is important that the IG treat all cases equally and expeditiously. This may be difficult taking into account Uganda's political reality. Securing the tenure of the IG and other officers in the entity may give the IG more independence to prosecute all public servants regardless of seniority, status or influence.

Annex

A. Cases prosecuted by the IG

<i>Uganda vs. Prof Gilbert Bukenya</i> CR.SC 95/2011	<i>Uganda vs. Geoffrey Kazinda</i> HCT- 00- SC- 0138- 2012
Formerly vice president of Uganda and member of parliament.	Formerly, principal accountant in the ministry of finance serving in the office of the prime minister.
It was alleged that between 2006 and 2007, while chairing the CHOGM cabinet sub-committee, he directed the award of a contract for the supply of 80 BMW vehicles and out-rider motorcycles to Motorcare Uganda Limited in total disregard of procurement procedures.	He diverted project money for his own benefit. This case is only one of a litany of cases. For example, a case on diverting of public funds for personal gain, where about USD 7 692 307, equivalent to about UGX 20 trillion was misappropriated by the above accused is before the anti-corruption court.
In a sudden turn of events after the president had announced that he had been advised that Hon. Bukenya was innocent, the IG withdrew all charges that had been preferred against the former vice president	He was convicted of among other charges abuse of offices and is currently serving a term in prison.

The above cases demonstrate the approach of the government to cases involving high ranking political figures. The decisions of the courts in both cases are in the public domain. In the case of Hon. Bukenya, the charges were dropped. In the case of Mr Kazinda (a mid-level civil servant), the cases are ongoing and it may be too early to determine the outcome of all the court cases. Be that as it may, in one of the cases, the one indicated above, the accused was convicted of abuse of office and sentenced.

Table 1: Illustration of complaints and matters handled between July and December 2013²

Complaints	Agency	Investigated	Agency	Tried	Agency	Convictions	Agency
1 513	IG	254	Police/IG	82	IG	3	IG/Court

2 The timeline for handling complaints is not available; we are in the process of obtaining the average time taken. These figures are computed from figures and tables in the IG's report to parliament for the period of July to December 2013. See IGG (2013) *Inspectorate Of Government Report to Parliament July – December 2013*. Available at http://www.igg.go.ug/static/files/publications/IGG_REPORT_DEC_2013_2.pdf [accessed 11 July 2014].

