

## INDIAN'S ASSET RECOVERY IN UGANDA: THE ANTI-CORRUPTION LEGAL AND ENFORCEMENT PERSPECTIVE

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### 1. ABSTRACT.

Corruption constitutes a major challenge for businesses operating or planning to invest in Uganda. Corruption, like a disease, is eating away the foundation of people's faith in government. It undermines the stability and security of nations. Funds destined for schools, health care, and infrastructure in the world's most fragile economies are split off and stashed away by individuals and entities for personal benefit.

The recovering of the proceeds of corruption is a collective responsibility that involves both the public and private sector. Law enforcement and prosecution's efforts to go after assets, confiscate and return them has been undermined by the use of the same policies and laws by the corrupt persons.

This research deals with the ease with which corrupt actors hide their interests behind various law provisions such as corporate veils, trusts and the difficulties investigators face in tracing, identifying, and recovering these assets. There is need for mobilization of the highest level to effectively tackle corruption. Financial centers and developed countries have committed, through the UN Convention against Corruption and international anti-money laundering to improve the flow of information and aid in the tracing, identifying and recovering of the assets in question.

The research will provide evidence of how far we still have to go to make these commitments a reality. Narrowing down the gap between the stated commitments and practice on the ground has a direct impact on the actual recovery of assets.

**KEYWORDS.** CORRUPTION, WORLD BANK, ASSETS, LAW, GOVERNMENT.

### 1.1. INTRODUCTION

Notwithstanding the economic improvements achieved by Uganda over the last 25 years, corruption remains a major impediment to the development and has the potential to be a destabilizing influence. It is closely linked to the distribution and exercise of political power together with the long-term, social, political and economic factors. Uganda has consistently scored poorly in the World Bank Worldwide governance Indicators. In 2011, it scored 19.9% on control of corruption. The curbing of corruption has been demonstrated in Uganda through establishment of agencies to deal with reported corruption including the Inspectorate of Government<sup>1</sup>, the Office of the Auditor General, the Directorate of Public Prosecution<sup>2</sup>, the Director for Ethics and Integrity, the Anti-Corruption Court, and the State House Anti-Corruption Unit.

All national efforts have however been undermined by the use of laws and policies by the corrupt actors to hide away the proceeds from their illicit actions.

<sup>1</sup> As established under the Inspectorate of Governments Act 2002.

<sup>2</sup> As established under Article 120 of the Constitution of the Republic of Uganda, 1995.

## 1.2. STATEMENT OF THE PROBLEM

Uganda together with many other developing countries have barely taken any steps to trace and freeze the proceeds of corruption. A lot of concern is on punitive actions on the corrupt actors. This being a worldwide problem<sup>3</sup>, corrupt actors have been enabled to use corporate vehicles such as trusts and corporation to purchase and maintain assets in many jurisdictions.

The fatigues faced by states in statistic gatherings and survey implementations has limited the flow of information and thus subsequently hindering investigation on major corrupt actors.

Much of the data is collected for evaluation under the investigation processes. It includes the number of domestic cases in the country, policies and agencies (investigations, sanctions, acquittals) against individuals and legal persons, cases with an international dimension, cases where assets or the proceeds have been identified or otherwise. This has been frustrated by non-compliance of some states organs or the tiresome bureaucratic process of obtaining the data. This therefore undermines the common goal of letting information flow to enable investigators trace, identify and recover assets.

The current legal regime esteems the right to a fair trial and the importance to be held innocent until proven guilty.<sup>4</sup> This to a larger extent has been a limitation to the full investigations against the corrupt actors. Bodies and policies created to deal with the assets of the corrupt actors have been frustrated by the craftsmen of the same policies hence hindering the implementation of anti-corruption spirit in Uganda.

## 1.3. RESEARCH OBJECTIVES.

The overall objective of the study is to analyze the process of investigation of corruption cases to generate information on the forms used to disguise foreign assets in Uganda and making recommendations of abating the situation.

Specific objectives;

- i. To identify the ways corrupt officials disguise proceeds of corruption.
- ii. To identify various forms of securing information to aid in tracing assets of corrupt officials.
- iii. To assess the various forms corrupt officials utilize laws and policies to disguise their assets.

### iv. RESEARCH QUESTIONS.

The prevailing questions while conducting this research were based on the following;

- i. What are the various ways corrupt officials disguise proceeds of corruption?
- ii. What are the various forms of securing information that aids in tracing assets?
- iii. Does implementation of the current legal framework effectively regulate investigation and asset recovery?

## 1.4. JUSTIFICATION.

Uganda together with other developing states loses between US\$20 to US\$40 billion<sup>5</sup> each year through bribery, misappropriation of funds, and other corrupt practices. Particularly, Uganda losses at least US\$1 billion. Much of the proceeds of corruption find “safe haven” in the world’s financial centers and corporate vessels. These criminal flows are a drain on social services and economic development programs, contributing the further impoverishment

<sup>3</sup> According to the Tracking Anti-corruption and Asset Recovery Commitments- IBRD/ WORLD BANK, 2011, only four of the thirty donor countries returned assets to a foreign jurisdiction between 2008 and 2010.

<sup>4</sup> Article 28(1), (3) a of the 1995 Constitution of the Republic of Uganda.

<sup>5</sup> JP Brun, Larissa Gray, Clive Scott, Kevin Mc Stephenson, Asset Recovery Handbook. A Guide for Practitioners, World Bank, UNODC, 2011.

of the country. The corrupt actors take advantage of the laws and policies to maintain the proceeds of their illegal actions. The victims include children in need of education, patients in need of treatment, and all members of society who contribute their fair share and deserve assurance that public funds are being used to improve their lives. The overall effect of corruption is by undermining confidence in governments, banks, and other government and non-governmental agency.

### **1.5. SIGNIFICANCE**

The research covers the existing gaps or loopholes in the endeavors of the government to trace, identify and recover foreign assets of corrupt officials in Uganda. The various policies, laws and bodies established by the government to curb the vice of corruption through controlling, freezing, and dealing with property acquired by actors in question shall be precisely explored to cover the missing gaps.

The study will provide necessary findings and conclusions to draw attention to the need of implementation of the anti-corruption laws and policies in Uganda. The findings include the support of strict measures and consequences of misleading funds through corporate bodies. These stringent measures aim at making it nearly impossible for the citizens to own property without the knowledge of the Government of Uganda.

The study will reveal the need for the government to comply with the International Anti-Corruption Agencies and instruments in order to ease the flow of data regarding the assets of individual actors. The study shall also indicate the achievements of the government while striking out the gaps that need to be covered relating the tracing, identifying and recovery of foreign Assets and funds obtained illegally in Uganda.

### **1.6. CONCEPTUAL FRAMEWORK.**

Socio-economic, power distributions and demographical factors hindering the elimination of corruption. Securing information by Anti-corruption agencies to enable investigators follow up on the proprietorship of corporate vehicles will make it hard for corrupt actors to utilize laws and policies to disguise the proceeds of illegal actions.

The government of Uganda has pushed for the state to be a signatory to various regional and international instruments to curb investment with illicit funds. In 2007, the East African Association of Anti-Corruption Authorities was formed and launched on the 28<sup>th</sup> September 2007. Such instruments and agencies enable the flow of information amongst member states hence making it possible for investigators track down property and investments made from illicit funds. Uganda is also a signatory to the United Nations Convention against Corruption. Such compliance enables the state within which investment was made to identify various investors and their sponsors hence stimulating the flow of information.

### **1.7. THEORETICAL FRAMEWORK**

The national Law and policies determines what patterns are used in the curbing of corruption. Therefore, usually, the number of assets recovered is dependent on the implementation of the legal frame work and political ties between nations.

The framework of this study is grounded in the positive political theory. The positive political theory is concerned with the understanding of phenomenal through analytical models which yield insight into why outcomes materialize in a certain way. This approach presumes that political outcomes are the consequence, intended or not, of decisions made by individuals. The researcher assumes that all participants including organizations and individuals are acting in their own self-interest. As such, decision making patterns can be isolated and generalizations made. Truly the study has been focused on the ways with which laws, policies and the ties between nations can aid to increase the recovery of assets. Corruption and the distribution of power in nations in context endangers the possibility of recovering the assets that were obtained through illicit means.

### 1.8. SCOPE OF STUDY.

The research was conducted in Kampala, Uganda. The researcher focused on the factors that have slowed down the discovery and recovery of foreign assets by investigators and government agencies involved and the influence of policies and laws that enable corrupt actors disguise assets in corporate proprietorship in foreign states.

- 10.1. Geographical scope. The research was carried out in Kampala, Uganda.
- 10.2. Thematic/ Content Scope. The study is set to cover the factors aiding and those hindering the recovery of foreign assets obtained by corrupt officials through illicit means.
- 10.3. Time-based scope. The time frame is between 2012 and 2021.

### 1.9. RESEARCH METHODOLOGY.

The focus of this study will be of a qualitative nature. It will mainly be conducted through desk research and a desk review will be carried out on the same. Various literature on the subject will be perused and analyzed. This will include enormous instruments; national, regional and international such as treaties, conventions, resolutions, declarations, Constitutions, Statutes, Case Law, General comments, Concluding observations and recommendations of Treaty bodies of the United Nations and the African Union Policies.

Legal periodicals, development plans, human rights, action plans, text books, journal articles, reports and any other relevant literature shall be included in the study.

### 1.10. LITERATURE REVIEW.

The president of the Republic of Uganda has demonstrated some commitment levels in the fight against corruption. In 2006, he announced a policy of zero tolerance for corruption. In 2016, he vowed to renew the fight as took an Oath for his Fifth term in office. Many Critics have disregarded all these as mere political theaters. Transparency International's 2002 Corruption Perception Index ranks Uganda 130<sup>th</sup> out of 176 countries indicating a perception of wide spread and endemic corruption.

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Today the formal rules, laws and policies have been used by many corrupt actors to undermine the formal systems that are established to combat corruption. The acquisition of foreign assets by corrupt actors has hindered the tracking and recovery of such interest of such individuals.

The Human Rights Watch in its report<sup>6</sup> "*Letting the Big Fish Swim*", qualitatively approaches the reasons for selective prosecution of corruption. In this report, an analysis of a selection of case files of the Anti-Corruption Division of the High Court is made. Instances of interference with anti-corruption institutions and gaps in the legislation by the high authorities are also common in Uganda hence the non-independence of such institutions.

The views of the reports are assertions that presuppose that without the collective positive intensions of the highest authorities in the government, the fight against corruption in Uganda is a mere drama skit.

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<sup>6</sup> Human Rights Watch & Allard K. Lowenstein International Human Rights Clinic (2013), "*Letting the Big Fish Swim*" Failures to Prosecute High-Level Corruption in Uganda.

Transparency International Uganda<sup>7</sup> published a review of legislative and other measures directed at combatting corruption which included asset recovery, strict measures that make the vice very expensive and implementing punishments. While it provides a good snapshot into the anti-corruption regime, it doesn't provide a detailed description of the problem or qualitative insights into where obstacles are encountered.

The Uganda Debt Network's Dossier on Corruption<sup>8</sup> (2013) is an attempt at bringing together the actions taken by the Ugandan government in the aftermath of corruption cases from 2000 to 2012. UDN was of the view that "Taking a look at a track record of President Museveni's actions and inactions to efficiently eradicate corruption, one is likely to conclude that the president's actions are partly responsible for undermining the institutional capacity of anti-corruption agencies". It further holds that the Ugandan anti-corruption legislation has the potential to "make corruption a very expensive venture to indulge in", yet the same laws are largely ineffective.

The report claims that laws, such as the Whistleblowers Protection Act (2010), are being abused and rather serve to protect high level political figures instead of facilitating the public members to raise red flags over corruption scandals.

This claim is right to a large extent given the lack of job securities to prosecutors. Prosecutors are employed on fixed term contracts, at which termination they have to pursue renewal. This therefore scares prosecutors of losing the favor of too many people hence choosing to preserve their names. This poses a big threat to investigations leading to asset recovery of the proceeds of corruption.

The literature on the Ugandan government's efforts to recover assets from corrupt individuals leads to these conclusions; there is an Acknowledgement of a list of declarations, policies, legislation and institutions to capture assets so as to fight corruption on one hand; and the failure of these promising announcements and structures that were established.

## NON LEGAL ASPECTS OF ASSET RECOVERY

### 2. INTRODUCTION

Corrupt officials require access to the financial system to be able to access and use their proceeds derived from corruption to purchase assets and fund lifestyles. The economic motive of corruption is to get as much wealth as possible, and thus the illicit gains are invested in various areas. Therefore to kill and deter the crime by impoverishing the perpetrator is the most effective way to eradicate and prevent the act. This can be done by seizing the results of the crime. However, corruption is more likely to go unpunished in opaque circumstances where the proceeds of such crimes are laundered and cannot be traced back to the underlying corrupt activity, as is the case when the ownership of assets is obscured, and transactions and transfers leave an incomplete (or no) audit trail.<sup>9</sup>

#### 2.1. THE VARIOUS WAYS CORRUPT OFFICIALS DISGUISE PROCEEDS OF CORRUPTION

When criminals obtain any benefit derived from corruption, they will try their best to hide their illicit gains. There are several mechanisms through which corrupt officials and individuals can disguise illicit proceeds, including the use of financial products and services and gatekeepers, as well as the purchase of high value assets.

<sup>7</sup> Stakeholders' Perceptions of the Ugandan Legal and Institutional Anti-Corruption Framework by Transparency International Uganda, June 2015.

<sup>8</sup> Uganda Debt Network (May 2013), Graft Unlimited? A Dossier on Corruption in Uganda 2000-2012.

<sup>9</sup> Best practices Paper the Use of the FATF Recommendations to Combat Corruption, FATF, October 2013, para 17.

The most used means to hide corruption proceeds is money laundering. Through this process, the criminals purchase or transform the corruption proceeds into legal creatures. By doing this, they make tracing of the money trail almost hard to identify.<sup>10</sup> Some corrupt criminals purchase property in the stolen money or assets.

## **2.2. THE VARIOUS FORMS OF SECURING INFORMATION THAT AIDS IN TRACING ASSETS.**

The effectiveness of confiscation or recovery of assets depends on the effectiveness of asset tracing, which is often complicated by sophisticated money laundering methods.<sup>11</sup> Tracing the proceeds of corruption would not be possible without the cooperation of financial institutions and of other third parties, natural or legal persons.

In this form of assistance the requesting state can easily acquire relevant information that will aid it in the tracing and recovery of assets or proceeds of corruption. A Mutual Legal Assistance request is normally based upon an assurance of reciprocity. Formal Mutual Legal Assistance arrangements can be effected by a bi-lateral treaty or multi-lateral treaty. Uganda should enter into bi-lateral treaties to effect recovery of assets or proceeds of corruption that are outside the jurisdiction.

## **LEGAL REGIME OF ASSET RECOVERY**

### **3. INTRODUCTION.**

The Research shall include a review of the existing asset recovery methods in the legal international and national instruments in Uganda.

#### **3.1. INTERNATIONAL INSTRUMENTS ON ASSET RECOVERY.**

##### **3.1.1. United Nations Convention against Corruption (UNCAC), 2003.**

Uganda became signatory and ratified the United Convention against Corruption. (UNCAC) in 2003 and on 9<sup>th</sup> September 2004 respectively.

Asset recovery is a fundamental principle of the UNCAC.<sup>12</sup> The convention places obligations on State Parties to take measures to enable confiscation of proceeds of corruption. Article 2(g) of the Convention defines Confiscation to include recovery, forfeiture where applicable and the permanent deprivation of property by order of a court or other competent authority.

Article 31 of the instrument provides that each State Party shall take such measures as may be necessary to enable confiscation of proceeds of crime derived from offences established in accordance with the Convention.

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<sup>10</sup> Tracking Anti-corruption and Asset Recovery Commitments- IBRD/ WORLD BANK, 2011, only four of the thirty donor countries returned assets to a foreign jurisdiction between 2008 and 2010.

<sup>11</sup> Riccardi, M. and Levi, M., (2018), "Cash, Crime and Anti-Money Laundering", in King, C. et al. (eds.), The Palgrave Handbook of Criminal and Terrorism Financing Law, Springer, pp 135-163.

<sup>12</sup> Article 51 of the Convention.



### 3.1.2. The African Union Convention on Preventing and Combating Corruption, 2003 (AUPCC).

The AUCPCC signifies the consensus of African states in the areas of prevention and criminalization of corruption.<sup>13</sup>

The Convention provides for confiscation of proceeds of corruption under Article 16. It stipulates that each State Party shall adopt such legislative measures as may be necessary to enable its competent authorities to search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgment plus the confiscation of proceeds or property, the value of which corresponds to that of such proceeds, derived, from offences established in accordance with this convention.

There are pieces of soft-international law that have been developed to provide for anti-corruption and anti-money laundering guidelines and schemes. These include the **Financial Action Task Force (FATF)** and the **Eastern and Southern Africa Anti Money Laundering Group**.

### 3.1.3. The Financial Action Task Force (FATF) 40+9 Recommendations of 1990. (Revised in 2012)

The Financial Action Task Force is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering. The FATF Recommendations are recognized as the global anti-money laundering standards (AML).<sup>14</sup> It was established in 1989 by the Group of Seven (G-7) Summit in Paris to examine and develop measures to combat money laundering. The FATF issued its first set of international anti-money laundering (AML) standards, the “The Forty Recommendations on Money Laundering”, in 1990 which were revised in 1996 and 2003<sup>15</sup> due to the constant evolution in money laundering methods, techniques and trends. The FATF 40+9 Recommendations require an adequate legal and institutional framework which should include laws that create money laundering offences and provide for the freezing, seizing and confiscation of assets of money launderers<sup>16</sup>.

### 3.1.4. Eastern and Southern Africa Anti Money Laundering Group.

The ESAAMLG was launched on 27th August 1999 at a meeting of eastern and southern African ministers held in Arusha, Tanzania. The meeting was attended by nine member countries including Uganda. It was a culmination of consultations that had taken place since 1995 on the need to develop a regional mechanism to co-operate in the implementation of Anti Money Laundering programmes.

## THE NATIONAL LEGISLATION ON ASSET FORFEITURE.

### 3.1.5. The Anti-Corruption Act, 2009.

Section 1 of the Act defines confiscation to include recovery, forfeiture and the permanent deprivation of property by order of court. The act gives a number of mechanisms that help in the recovery of assets and these include;

Restraining orders. These are temporary in nature. They majorly serve the purpose of prohibiting any person from disposing of, or otherwise dealing with suspected tainted property.

Under section 63(1), the Act provides for asset tracking and recovery where if a person is convicted of an offence under the Act, the court may make an order confiscating the property that is the subject of or derived directly or

<sup>13</sup>Combating Corruption, Improving Governance in Africa: Regional Anti-Corruption Programme for Africa (2011 – 2016) By Governance and Public Administration Division (GPAD) of the Economic Commission for Africa (ECA) in Collaboration with the African Union Advisory Board on Corruption (AUABC) page 13.

<sup>14</sup> [www.fatf-gafi.org](http://www.fatf-gafi.org)>accessed on 22<sup>nd</sup> March 2019.

<sup>15</sup> Eastern and Southern Africa Anti Money Laundering Group, From Arusha to Maseru ESAAMLG at Ten, 10 year Report, page 14.

<sup>16</sup> Ibid.

indirectly from the act of corruption in addition to the penalties imposed under the Act. The sole effect of these orders is that they vest the “recovered proceeds or property” in the government.<sup>17</sup>

### **3.1.6. The Anti-Corruption (Amendment) Act, 2013.**

On 7th July 2015, the Parliament of Uganda passed into law the Anti-Corruption (Amendment) Bill 2013, a private members bill, initiated by Hon. John Simbwa. The purpose of the Bill is to amend the principal Act (The Anti-Corruption Act, 2009) to among other things, provide for the mandatory confiscation of property of persons convicted of corruption or corruption-related offences and to vest such confiscated property with the Government of Uganda<sup>18</sup>. This Act by and large reinforces the parent Act of 2009 with regard to asset-recovery in Uganda.

### **3.1.7. The Anti-Money Laundering Act, 2013.**

This Act’s provisions are similar with those of the Anti-Corruption Act, 2009 as discussed above. The Acts intend to curb the vices of corruption and money laundering because the two have been recognized to occur concurrently. Persons who engage in corruption but want to hide all traces of their corruption always do it through money laundering to clean their dirty money. Money Laundering is the process by which criminals attempt to conceal the true ownership of the proceeds of their activities<sup>19</sup>.

### **3.1.8. The Anti-Money Laundering (Amendment) Act, 2017**

The Act was passed to amend the Anti-Money Laundering Act, 2013, to harmonise 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 harmonise the record keeping requirements and exchange of information obligations with international practice; and for related matters.<sup>20</sup>

### **3.1.9. The Inspectorate of Government Act, (IGG) 2002.**

The office of the Inspector General of Government was established by Research 13 of the Constitution. The role of this office is to promote and foster strict adherence to the rule of law and principles of national justice in the administration, to dominate and foster elimination of corruption in public office.

The Inspector General of Government (I.G.G) is vested with power to investigate any person, bank account, share account or any transaction in order to acquire the relevant information needed to institute proceedings against a person suspected to have committed an offence under the Anti-Corruption Act.<sup>21</sup> However, much as the IGG Act vests powers in the IGG, she in reality has limited powers.

### **3.1.10. Proceeds of Crime Bill 2013.**

The Proceeds of Crime bill intends to introduce asset recovery in Uganda which has been long overdue as other jurisdictions have had this kind of legislation existing for a while. The Deputy Inspector General of Government, Ms Mariam Wangadya said the Act when passed will would help in fighting corruption. She stated that “Convicting criminals is not sufficient; it is equally important to recover the money and assets stolen but there is no legal framework to do so. That is why we are looking forward to having a law to enable us seize these assets,” Ms Wangadya added that whereas the inspectorate has an Asset Recovery Account it is not backed by the law. There

<sup>17</sup> Section 63(2) of the Anti-Corruption Act, 2009.

<sup>18</sup> An Analysis of the Anti-Corruption (Amendment) Bill No. 7 of 2013, Irene Akurut August 18, 2015 available at <http://cepa.or.ug/analysis/an-analysis-of-the-anti-corruption-amendment-bill-no-7-of-2013> accessed on 23<sup>rd</sup> March 2019.

<sup>19</sup> Efficacy in Prosecution of Crimes of Money Laundering in Uganda by Mooli Albert Sibuta. A Dissertation submitted to Uganda Christian University for the Award of the Degree of Master of Laws in International Business Law, 2016, page 1.

<sup>20</sup> Preamble of the Act.

<sup>21</sup> Section 14(1) of the IGG Act.



is only an administrative arrangement that applies when culprits in theft scams offer to refund instead of being prosecuted.<sup>22</sup>

### **3.1.11. The State House Anti-Corruption Unit.**

This unit was established under the office of the President. It has identified very many culprits of corruption and therefore is a good initiative from the State House. However, the Unit was not given powers to prosecute corrupt officials or even after their inquiries, confiscate the proceeds of corruption. The body has not exercised any asset recovery remedies because there is no law to back it up with such powers. Its powers are only investigatory.

### **3.2. Conclusion.**

It should be borne in mind that there are serious threats the vice of corruption poses to our country's democracy, rule of law among other spheres. Uganda has good laws against corruption but they are riddled with lacunae as the mechanisms for confiscation of proceeds in place are inefficient. This renders the laws almost redundant in that respect.

## **4. MAJOR CHALLENGES FACED IN COMBATING CORRUPTION THROUGH ASSET RECOVERY**

The non-implementation of laws and policies structured to curb corruption. It should be mentioned that the instruments that have been put in place to guide the Anti-Money Laundering and corruption methods face implementation challenges. Obtaining and sustaining execution will among national institutions, and the members of the responsible authorities is the major underlying factor that hinders the implementation of the legal and institutional framework that has been put in place to among other remedies recover the assets and proceeds of Corruption in Uganda.

The lack of evidence in corruption and money laundering cases. There are numerous apparent signs of unexplained wealth among politicians and public officials, like extravagant houses and luxury cars. Newspaper coverage is filled with news on corruption. However, judicial decisions highlighted the challenge of gathering sufficient evidence from the prosecution in cases of recovery of assets and proceeds of corruption. In most cases, the Courts merely have to be satisfied on reasonable grounds that the corrupt officials lawfully obtained income would have been inadequate to acquire the property in question.<sup>23</sup>

Business is at the risk of loss or permanent closure after the confiscation of assets. The government agencies are placed in charge of such property but no structures and policies have been strategized for the continuation of business for business assets confiscated by government. As per Skirmantas Bikelis<sup>24</sup>, a grave danger exists if some businesses are subject to confiscation under the impression that they might be under the control of organised crime. An uncertain business environment may be created hence destructive damage to the business.

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<sup>22</sup> IGG wants law to recover stolen money passed, Saturday January 25 2014, Rajab Mukombozi, Daily Monitor>available at [www.monitor.co.ug](http://www.monitor.co.ug)>accessed on 23<sup>rd</sup> March 2019.

<sup>23</sup> Cullen Commission, C. (2020). Proceedings at Hearings. [https://cullencommission.ca/data/transcripts/Transcript December 15, 2020.pdf](https://cullencommission.ca/data/transcripts/Transcript%20December%2015,%202020.pdf) de Willebois, E. van der D., & Brun, J.-P. (2013).

<sup>24</sup> Bikelis, S. (2020). Modeling the Patterns of Civil Confiscation: Balancing Effectiveness, Proportionality and the Right to Be Presumed Innocent. *Baltic Journal of Law and Politics*, 13(2), 24–48. <https://doi.org/10.2478/bjlp-2020-0010>.

## 5. FINDINGS, RECOMMENDATIONS AND CONCLUSIONS OF THE STUDY.

### 5.1. FINDINGS

Uganda, like many other developing countries, is faced with high levels of corruption among public officials. Estimates show that the country has one of the highest levels of corruption in Africa. This has led to bottomless loss of public resources.

Asset recovery legislation is complex and difficult to construe. This is perhaps inevitable in legislation which seeks to balance the need to ensure that sophisticated professional criminals are deprived of the well concealed profits of their crimes against ensuring that the right assets are confiscated to avoid the deprivation of property from individuals. In many respects the law is still in a state of development, and it is important that international practitioners remain conversant with the developments of the law relating to the recovery of assets and proceeds of corruption.

### 5.2. RECOMMENDATIONS.

**Uganda should utilize the Mutual Legal Assistance System.** The use of this mechanism would help to abridge all loopholes through which all corruptly acquired proceeds are laundered and concealed. Ugandan investigatory authorities should co-ordinate with other investigating authorities from foreign jurisdictions through exchange of information and technical assistance to fight the global vice of corruption.

**Creation of an asset recovery agency.** Uganda does not have an asset recovery Agency. It would be imperative and significant for the Government of Uganda to establish an asset recovery agency. The unit would manage proceeds and instrumentalities that have been restrained or confiscated.

This would ensure effectiveness of the Anti-Money Laundering Act which does not provide for an asset recovery agency but instead tasks an applicant or an authorised officer to carry out functions under the Act.

**Widening of the Powers of the DPP and the IGG.** The Anti-Corruption Act 2009 empowers the DPP and the IGG to carry out investigations into corruption. New legislation should be enacted to provide for these institutions to be in charge of recovery of assets and proceeds of corruption.

**The Constitution and other necessary laws need to be amended to accommodate asset recovery.** Article 26 of the Constitution requires, inter alia, that property can be compulsorily acquired by government only in circumstances where there is adequate and fair compensation in relation to the expropriation. A strict interpretation of this provision would require compensation and therefore does not apply to recovery of assets and proceeds of corruption. Thus, there is a need to amend the Constitution to allow expressly for confiscation of property which has been acquired illegally without requiring compensation in such circumstances.

**All anti-corruption related laws should be harmonised to avoid duplicity.** In order to ensure effectiveness, it is necessary to harmonise existing laws, including the Anti-Corruption Act, the Anti-Money Laundering Act and the Leadership Code Act on confiscation to avoid duplication. Currently, the Anti-Corruption Act and the Anti-Money Laundering Act provide for asset recovery but establish different procedures. This is bound to cause confusion in the application of these procedures. The laws therefore should be harmonised to ensure effectiveness of recovery of assets and proceeds of corruption.

**Enforcement.** The legislative scheme should provide for how, once a forfeiture/ recovery order has been made by a court, that order will be enforced against the property and what will happen to the money. Usually an organ of the state will sell the property. In the UK model a recovery order must vest recovered property in the trustee for civil recovery whose function is to realise the value of the property and pass the realised funds to the director.

Finally, there must be an adequate and transparent framework to guide the identification and confiscation of proceeds of corruption in order to prevent abuse and pervasion of the system. This would be of very profound benefit.

### 5.3. CONCLUSION

Recovery of assets and proceeds of corruption is needed in order to mitigate the losses of public resources resulting from criminal acts. This is because it in accordance with the follow the money/ assets principle to be used as proof of offenses under the Anti-Corruption Act, in contrast to the formal offenses currently used in the Anti-Corruption Act.

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