

Legislative and Policy Measures in Uganda *vis-à-vis* Practical Challenges of Compliance with AU anti- corruption Convention



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List of Acronyms

ACCU:	Anti-Corruption Coalition of Uganda
ACHPR:	African Charter on Human and Peoples' Rights
AG:	Auditor General
APNAC-U:	African Parliamentarians Network Against Corruption-Uganda
AU:	African Union
CC:	Constitutional Court of Uganda
CHRI:	Commonwealth Human Rights Initiative
CID:	Criminal Investigation Department
COFI:	Coalition for Freedom of Information
DANIDA:	Danish International Development Agency
DEI:	Directorate of Ethics and Integrity
DSC:	District Service Commission
ESC:	Education Service Commission
FHRI:	Foundation for Human Rights Initiative
FPC:	First Parliamentary Counsel
GDP:	Gross Domestic Product
GU:	Government of Uganda
DPP:	Directorate of Public Prosecutions
HC:	High Court of Uganda
HURINET-U:	Human Rights Network-Uganda
IAF:	Inter Agency Forum
ICCPR:	International Covenant on Civil and Political Rights
IG:	Inspectorate of Government
IGG:	Inspector General of Government
JIC:	Judicial Integrity Committee
JSC:	Judicial Service Commission
Interpol:	International Criminal Police Organisation
KALI:	Karambi Action for Life Improvement
LG:	Local Government
LGPAC:	Local Government Public Accounts Committee
LGTB:	Local Government Tender Board
MP:	Member of Parliament
NRM/A:	National Resistance Movement/Army
NUSAF:	Northern Uganda Social Action Fund
PAC:	Public Accounts Committee
PEAP:	Poverty Eradication Action Plan
PACONET:	Pallisa Anti-Corruption Network
PMA:	Program for Modernisation of Agriculture
PPDA:	Public Procurement and Disposal of Public Assets Authority
PS:	Permanent Secretary

PSC:	Public Service Commission
RAC:	Rwenzori Anti-Corruption Coalition
UHRC:	Uganda Human Rights Commission
UN:	United Nations
UNAFRI:	United Nations African Institute for the Prevention of Crime and Treatment of Offenders
UPE:	Universal Primary Education
SC:	Supreme Court of Uganda
SFG:	School Facilitation Grant
Shs:	Shillings
TAC:	Teso Anti-Corruption Coalition
TI-U:	Transparency International-Uganda Chapter

Preface

Introduction

This report on the Legislative and Policy Measures in Uganda *vis-à-vis* Practical Challenges of Compliance with AU anti-corruption Convention is delivered to Transparency International-Uganda Chapter. The assignment constituting this report was awarded as part of the joint collaboration between TI-U and African Parliamentarians Network Against Corruption-Uganda (APNAC-U) to conduct a national study on the effectiveness of the existing anti-corruption legislation and policies in complying with the requirements under the provisions of the 2003 AU Convention on Preventing and Combating Corruption and Related Offences. This report is submitted in accordance with the terms of the consultancy contract between TI-U and the consultant.

The report describes and analyses the existing legislative and policy framework on tackling and combating corruption in Uganda, highlighting the key principles and measures on corruption and the needed legal/policy reforms or changes that are required to conform with the obligations that Uganda agreed to in ratifying the AU convention in October 2004.

To carry out the mandate, the consultant consulted and reviewed various pieces of literature—in form of national anti-corruption legislation and policy documents conventions, published work, decisions of courts—as well as gathered opinions on the outlook and general concerns that are regarded pertinent to a more effective legislation, policy and other measures in combating corruption in Uganda.

The specific objective of the study comprised in this report was the consideration of the effectiveness of the existing anti-corruption legislation and policies and the identification of the areas that need strengthening to ensure compliance with the requirements of the AU anti-corruption convention.

Terms of Reference

This report focuses on the effectiveness of existing anti-corruption legislation and policies in Uganda in the context of the requirements under the AU convention. It seeks to identify the key areas where reform is needed and the challenges that are likely to be faced in efforts to domesticate and implement the convention.

Specifically, the report sets out to—

- (a) document and review all existing anti-corruption legislation in Uganda and analyse their respective strength and effectiveness.
- (b) highlight the steps that are needed for Uganda to comply with the AU convention requirements.
- (c) analyse the issues and practical obstacles expected with respect to the domestication and implementation of the AU convention.

- (d) proffer recommendations on the strategies to overcome the anticipated practical obstacles to the implementation of the AU convention.

Purpose of Report

The consultant has prepared this report as an exploratory document on the state of anti-corruption legislation and policies in Uganda and the practical challenges to fostering necessary legal/policy changes in implementing key obligations and measures under the AU anti-corruption convention.

Overall, the consultant wants to thank TI-U and APNAC-U for offering him the opportunity to conduct the study comprised in this report. It is the hope that the ideas presented in this report will serve as a useful guide towards the process of domesticating and implementing the AU anti-corruption convention obligations in Uganda in the not too distant future.

I. Executive Summary

Uganda ratified the AU anti-corruption convention on October 29, 2004. As a party to the convention, Uganda is bound by the obligations spelt out under the convention and while it has not yet come into force (as it awaits the minimum 15 ratifications that are needed to bring it into force), Uganda is under obligation not to defeat the object of the convention¹ – that is, to prevent, detect, punish and eradicate corruption. The obligations under the AU convention are primarily legislative, administrative and institutional and, in certain respects, do envisage bilateral and multilateral treaties and arrangements.

Uganda has in place certain legislative and policy measures aimed at tackling and combating corruption. These include legislative measures such as the Prevention of Corruption Act, the Penal Code Act, the Leadership Code Act, the Inspectorate of Government Act, the Local Government Act and the Public Procurement and Disposal of Public Assets Authority Act. This legal framework, together with the constitution, is the basis for anti-corruption institutions such as the Inspectorate of Government (IG), Directorate of Public Prosecutions (DPP) and the Auditor General (AG). The legal framework makes provision for the criminalisation of certain acts of corruption, a code of conduct for public officials (including wealth declarations), transparency and probity in procurement and the management of public finances. The policy measures have included national integrity surveys and strategies for combating corruption and rebuilding ethics. The legal framework is nonetheless in need of reform in respect of (a) criminalisation of certain acts of corruption, including illicit enrichment and money laundering; (b) combating of corruption in the private sector; (c) combating of corruption in the activities of political parties (and generally political corruption) and (d) liability of legal or artificial persons for acts of corruption.

There is an ongoing process on legal reform particularly of the anti-corruption law, the Prevention of Corruption Act. At the same time, there is drafting of new legislation addressing corruption such as the Anti-Money Laundering Bill or with anti-corruption implications such as the Access to Information Bill.

Although there exist legislative and other measures on protection of witnesses, informers, etc.; participation of civil society; criminal prosecution and sanctions and seizures and confiscation of property and financial records, these need to be strengthened and reinforced. The legal provisions on jurisdiction of courts with regards to corruption need to be reformed to accord with the bases set out under the AU convention.

The legislative and other measures in Uganda on international co-operation and mutual legal assistance are not only limited but where they exist, in the form of the Extradition Act, they are outdated and not tailored to combating corruption. Mutual legal assistance legislation including the Extradition Act and the Foreign Judgments (Enforcement) Act has traditionally been premised on the existence of

¹ Vienna Convention on the Law of Treaties, 1969, art. 18(b).

reciprocal agreements and arrangements. Nonetheless, Uganda's legal framework has provisions and measures to address certain aspects of mutual legal assistance on, for instance, service of judicial documents, execution of judgments, etc. There have been instances of law enforcement co-operation with Interpol. Overall, there is a need for new legislative and other measures (including bilateral/multilateral arrangements) on mutual assistance.

The effective implementation of the AU convention does call for comprehensive, rather than piece-meal, reform of anti-corruption laws. The on-going approaches on reform will only result in several pieces of scattered legislation. The way forward is the wholesome adoption of much of both conventions into domestic legislation – the resultant legislation would then incorporate the key obligations under the AU and, if need, have the convention as appendix. There will be need for lobbying by the civil society, with bodies such as TI-U, ACCU, UDN at the forefront in getting the government to sponsor a Prevention of Corruption Bill in 2006 and to ensure its passage into an Act of Parliament within the year. Further, there should be urgency in the enactment of legislation on access to information, protection of whistleblowers and the amendment of the local government law and the code of conduct. Practical anti-corruption processes such as the verification of wealth and development of curricular on teaching of ethics in schools should be speeded up. So should the development of regulations under the code of conduct.

II. Background country data

2.1 Political, economic and social development of Uganda

As a former British Protectorate (1894-1962), Uganda attained independence in October 1962. Uganda is a landlocked country situated in the East Africa that is bordered by Kenya to the East, the Democratic Republic of Congo to the West, The Sudan to the North, Rwanda to the Southwest and Tanzania to the South. A census carried out in September 2002 estimated the population at 24.7 million. In real terms, the population has grown 5 times its size of 5 million in 1948 and doubled in 20 years from a figure of 12.6 million in 1980.

After the attainment of independence, Uganda underwent decades of political and constitutional turmoil, particularly in the years 1966-86, as reflected in the abrogation of the 1962 independence constitution in 1966, its replacement with an 'interim' 1966 constitution and then a 1967 republican constitution. In the aftermath of installing of a new government in 1986, country-wide consultations were undertaken by a constitutional commission established in 1988 with a view of writing a new constitution. The new constitution was promulgated in 1995. As to socio-economic development, the political turmoil during the mid-1960s to the mid-1980s was matched by the collapse of the economy and social infrastructure. The vibrant economy of the early and mid-1960s came to a decline in the 1970s as the military government of Idi Amin (1971-79) placed enterprise (that it had grabbed from expelled Asians) into the hands of its cronies (the *mafutamingi*) with no business acumen. This coupled with black-marketeering (*magendo*) and corruption saw the collapse of the private sector and the public parastatals as the economic mainstay of the country. In the social sector, health facilities collapsed while in education, there was brain drain as intellectuals fled abroad for greener pastures. The political situation and economic policies of the early 1980s failed to revive an economy in ruins and, aided by corruption, nepotism and tribalism, economic and social development stagnated. Since 1986, there has been political stability while implementation of macro- and micro-economic policies has aimed at restoring socio-economic development.

Uganda's economy is predominantly agro-based. Agriculture accounts for 85% of rural livelihood and 51% of the GDP. It contributes about 90% of export earnings, while industry contributes 10% and manufacturing 4%. Agricultural production expanded over the years through policies such as the Plan for the Modernisation of Agriculture (PMA). The economy has during the past 20 years expanded as the government adopted policies of liberalisation and privatisation of government-owned enterprises, promotion of fiscal and monetary management, promotion of improved incentives to the private sector and development of human capital through investment in education and health. Since 1997, the country has posted an annual growth of 5.5%, a rise in educational enrolment from 60% to 80%, owing to the policy of Universal Primary Education (UPE) instituted in 1996 and a decrease in infant mortality rate from 122 per 1,000 through the provision for preventive and curative services with emphasis on child health care, reproductive health, hygiene, essential drugs, etc. The revenue collections have improved from

Shs. 136bn in taxes in 1990/1 to Shs. 1,700bn in to 2003/4. Household income and livelihoods have been improved through policies and interventions such as *entandikwa* ('seed' money), the Poverty Eradication Action Plan (PEAP) and the Northern Uganda Social Action Fund (NUSAF). Notably, donor funding and grants funds a significant portion of the annual government budget and policies. The problem that the legislative and policy measures that exist (and are reviewed in this study) are invariably called to address is how to prevent these funds (and social services and resources) being diverted for personal gain, enrichment and self-aggrandisement – this has been the case with, for instance, essential drugs or funds in form of School Facilitation Grants (SFG) under UPE and, more recently in 2005, the Global Fund AIDS/Malaria funds.

2.2 System of government and legal system

The system of government is republican founded on the Constitution of Uganda of 1995. The system of government has, since 1986 and following promulgation of the 1995 Constitution, been based on the non-partisan 'Movement' political system. In July 2005, the country transited from the movement political system to a multi-party political system and the 2006 elections will be conducted under a multi-party dispensation.

Uganda is under a presidential system of government, under which the president is directly elected. The Parliament is constituted through elections on the basis of universal suffrage. The 1996-2001 and 2001-6 parliaments were elected on the basis of the principle of 'individual merit' under the non-partisan movement political system, which will be abandoned for the election of the 2006-11 eighth parliament. The Parliament has, under the 1995 Constitution, crucial oversight functions, ranging from approval of presidential appointees to constitutionally established offices, approval of ministerial budgetary estimates to censureship of ministers.

Uganda is administered under both the centralised and decentralised systems of government. The provision for decentralised governance, i.e. local government is provided for under the Constitution and Local Government Act. The largest unit of local government is the district, with the district further broken down into counties, sub-counties, parishes and villages. There are up to 4,000 villages at the grassroots level. These administrative divisions are very crucial, especially the sub-counties, for service delivery. Given the government policy on and structures of decentralisation, the law has sought to put in place mechanisms and measures for accountability, transparency, financial probity, etc. at those levels, especially at the districts and sub-counties (including Tender Boards, service commissions, audits, etc.).

The legal system is comprised of the constitution as the supreme law and other laws that include Acts of Parliament, subsidiary legislation (regulations, bye-laws, etc.), case law, principles of common law and doctrines of equity and customary

law.¹ The court system is comprised of the courts of judicature, which include the Supreme Court, Court of Appeal, Constitutional Court, High Court and other subordinate courts (magistrate courts, local council courts and military courts).²

2.3 Ratification of AU anti-corruption convention

Uganda is a member of the African Union and the United Nations and is a party to several treaty instruments concluded under the auspices of both organisations. Uganda signed the AU Convention on Preventing and Combating Corruption and Related Offences on December 12, 2003 and ratified it on October 29, 2004.³

¹ Judicature Act, Cap. 13, sec. 14.

² Constitution of the Republic of Uganda, 1995, art. 129.

³ It is also a party to the 2003 UN Convention against Corruption, signing the convention on December 12, 2003 and ratifying it on September 9, 2004. The more significant is that unlike the AU convention, the UN convention did receive its 30th ratification on September 15, 2005 that is necessary to bring it into force on the 90th day after that ratification – in effect, obligations that Uganda agreed to by its ratification of the UN convention in September 2004 as regards measures to prevent and eradicate corruption begin to flow as from December 14, 2005. Crucially, however the obligations under the AU and UN convention are, except for certain differences, largely similar in content and requirements.

III. Anti-Corruption Legislation and their Effectiveness in the context of the AU Convention requirements

3.1 Historical overview on legislative efforts to address and combat corruption in Uganda

Corruption has bedevilled Uganda since grant of independence in 1962. In fact, a reading of the history of the country since then has been one of graft, nepotism, tribalism and widespread looting of public coffers –this is evident from the Congo gold scandal in 1966 to Global Fund AIDS/malaria scandal in 2005. Although the penal laws criminalized certain acts of financial impropriety as early as the 1960s, the first thematic effort to address corruption was in 1970 with enactment of the Prevention of Corruption Act. The Act, enacted a year before collapse of the then civilian government, was powerless to deal with the corruption associated with the military government of Idi Amin from 1971-79 in the form of black-marketeering (*magendo*) in spite of an economic crimes tribunal. Likewise, the Act together with the penal law was inept to deal with rampant corruption during the civilian government of 1980-85; for practices of bribery, embezzlement of public funds, nepotism and favouritism were rampant in government, parastatals and other public institutions and bodies. Crucially, upon coming to power in 1986 of the National Resistance Movement/Army (NRM/A) government, predecessor to the current government (with President Museveni at its helm), that government put forth, as one of its key priorities, the eradication of, amongst others, corruption, abuse of office and mal-administration. On this premise, the NRM/A government created, by legislation, the office of the Inspector General of Government (IGG) in 1988.¹ Although the IGG did perform his functions within the difficulties of an infant institution, the office was largely ineffective and was beset with set-backs, the most profound being that the IGG was responsible only to the President and his reports were not made public.

The subsequent years, especially from 1995 to the present, have seen efforts to revamp and strengthen the legal and institutional framework and the evolution of other policy measures in attempts to stem the widening infestation of corruption in Uganda. These efforts have included legislative measures such as specific constitutional provisions (on strengthening accountability, integrity and moral conduct of public affairs and anti-corruption bodies) as well as new legislation (e.g. the Inspectorate of Government Act and the Leadership Code Act, both enacted in 2002). Notwithstanding these good-hearted efforts, corruption has remained the nemesis to creating accountable government and ensuring the non-wastage of public resources. Uganda continues to be ranked among the top most corrupt societies,² while research shows the rampant nature of corrupt practices in activities of government at all levels.³ Measures have evolved in the past years in attempting to address the problem of corruption through laws relating to local

¹ This was by enacting the Inspectorate of Government Statute, No. 2/1988.

² Transparency International, *Global Corruption Barometer Report*, 2004.

³ Svensson, J., 'The Cost of Doing Business: Ugandan Firms' Experiences with Corruption', *Africa Region Working Paper Series* No. 5 (April 2000); *ibid.*, 'Who must Pay Bribes and How Much? Evidence from a Cross-section of Firms' (May 2000).

government⁴ and public procurement⁵. Yet, in spite of the various existing laws, corruption has not abated. This has been attributed in part to weak enforcement mechanisms and the problems of using the criminal justice system (police, DPP and courts) in prosecution of incidences of corruption. Coupled with the above is the perceived absence of political will on the part of government to fight graft and corruption amongst its ranks and top ideologues.

This Part seeks to address the effectiveness of the existing anti-corruption laws in Uganda in the context of compliance with the requirements under the AU anti-corruption convention. It will also highlight the steps that need to be undertaken by Uganda to comply with the convention requirements. Later Part IV of the report considers the practical obstacles likely to be countered in efforts to domesticate and implement the convention. Finally, Part V proffers some recommendations to overcoming the anticipated obstacles to domestication and implementation of the convention.

3.2 Legislative and other measures in compliance with the AU anti-corruption Convention requirements

The terms of reference required a review of existing anti-corruption legislation in Uganda in analysing their strengths and effectiveness. The existing legislation in Uganda addresses not only acts (and forms) of corruption but also preventive and institutional measures in detecting, tackling and combating corruption. To that end, it is deemed prudent not to consider the legislation in general terms but to contextualise analysis of the effectiveness against the requirements under the AU convention. The reforms/changes that need to be adopted or introduced into the existing legislation and institutions to meet the requirements of the convention are also addressed in that contextualisation. It is further hoped to proceed with this analysis thematically.

(a) Objectives of prevention, detection, punishment and eradication of corruption

The AU convention captures, as its key objectives, the ‘prevention’, ‘detection’, ‘punishment’ and the ‘eradication’ of corruption.⁶ It also envisages the fostering of transparency and accountability in public governance.⁷ It further envisages co-operation between states in policies and measures towards these ends.⁸ These anti-corruption ideals are captured under Uganda’s anti-corruption objectives, most importantly in its constitutional framework under the National Objectives and Directives of State Policy that: ‘[a]ll lawful measures shall be taken to expose, combat and eradicate corruption and abuse or misuse of power by those holding political and other public offices’.⁹ In fact, the constitution is the primary anti-

⁴ Local Government Act, 1997.

⁵ Public Procurement and Disposal of Public Assets Authority Act, No. 2/2003.

⁶ Arts 2(1), 3(5).

⁷ Arts 2(5) 3(3).

⁸ Arts 2(2)-(3).

⁹ 1995 Constitution, objective XXVI(iii).

corruption legislative instrument and, together with the government itself, forms the premise for legislative and policy measures on corruption.

The 1995 Constitution is the supreme law of the land and has binding force on all authorities and persons throughout Uganda.¹⁰ As the primary legal instrument, the Constitution contains provisions on measures, concepts and institutions that are geared to preventing, monitoring and combating corruption. At the outset, it does under the National Objectives and Direct Principles of State Policy, stipulate that the State and citizens of Uganda are to ‘preserve and protect and promote a culture of preserving public property’¹¹ and that all measures should be undertaken to eradicate corruption and abuse of office or misuse of power by those in public office.¹² The Constitution makes all public offices and those in positions of leadership answerable and *accountable* to the people of Uganda.¹³ Furthermore, the preservation and protection of public property and combating corruption are stipulated as two (2) of the *duties of citizens* of Uganda under the Constitution.¹⁴ The Constitution further provides for the institutions and measures to fight and tackle corruption as follows–

- (a) Office of the Auditor General (AG) as the overall audit institution that acts as watchdog over financial integrity.¹⁵
- (b) Parliament is empowered to monitor all expenditures of public funds.¹⁶
- (c) Permanent Secretary (PS) in every ministry/department is accountable to Parliament for the use of funds.¹⁷
- (d) Inspectorate of Government (IG) as the key anti-corruption watchdog (or the *ombudsman*).¹⁸
- (e) Leadership Code of Conduct (as a measure of ensuring the promotion and maintenance of honest and impartial leaders and the protection of public funds and property).¹⁹
- (f) Directorate of Prosecutions (DPP) as the key prosecutorial agency with the mandate to institute and control all criminal proceedings in Uganda.²⁰

¹⁰ Ibid., art. 2(1).

¹¹ Ibid., objective XXV.

¹² Ibid., objective XXVI.

¹³ Id.

¹⁴ Ibid., art. 17(2)(d) and (i).

¹⁵ Ibid., art. 163. The Auditor General is expected to be a person of high moral character and proven integrity.

¹⁶ Ibid., art. 163(3). In order to give effect to this mandate, the Parliament has created a number of committees, including the Public Accounts Committee (PAC) and Local Government Accounts Committees (LPAC). The Parliament also has powers to censure ministers for abuse of office: *ibid.*, art. 118.

¹⁷ Ibid., art. 164(1). The provision also makes any holder of public or political office who directs or concurs in the use of public funds contrary to existing regulations, accountable for any loss arising from such use and requires him or her to make good the loss even if he or she has ceased to hold that office.

¹⁸ Ibid., arts 223-32. These provisions provide for the powers, functions and jurisdiction of the IG, with article 227 specifically guaranteeing the autonomy of the IG.

¹⁹ Ibid., art. 233(1).

- (g) Police as the key institution to detect and prevent crime (including acts of corruption).²¹
- (h) Courts of law as the primary medium for prosecution of offences.²²

The key existing legislation does generally seek to provide measures and bodies/institutions towards the prevention, detection, punishment and, hopefully, the eradication of corruption. This includes the Penal Code Act, the Prevention of Corruption Act, the Local Government Act, the Public Finance and Accountability Act, the Leadership Code Act, the Inspectorate of Government Act, the Police Act, the Magistrate Courts Act, the Trial on Indictments Act, the Public Procurement and Disposal of Assets Authority Act.

Likewise the government policies, especially since 1995, have sought to tackle and combat corruption. In the immediate aftermath of the promulgation of the 1995 Constitution, the President assigned the Vice President the role of overseeing and co-ordinating efforts against corruption. The Vice President's office established the Anti-Corruption Unit, from which a number of strategies were developed in order to combat corruption, including—

- (a) development of sector-based approaches to co-ordinate anti-corruption activities.
- (b) avoidance of duplication and unnecessary overlaps in activities of and the improvement of resource mobilisation and effectiveness of all anti-corruption agencies.

The assignment of the political mandate to oversee anti-corruption efforts to the Vice President's office would result in the appointment, in 1998, of a Minister of State for Ethics and Integrity and establishment of a Directorate of Ethics and Integrity (DEI). The DEI is the successor to the Anti-Corruption Unit. Both the Minister and the DEI provide the political leadership in the efforts to tackle and combat corruption.

There have been varied key anti-corruption policies adopted over the years at the DEI and at the IG. The IG has been involved in carrying out national integrity surveys (NIS) and implementation of its mandate under the constitution and the Leadership Code(s). Thus it carried out the integrity surveys in 1999 and 2002. On the other hand, the DEI has been developing national strategies on combating corruption. It has had national strategies drawn up for 2001-4 and presently for 2004-7.²³ In its 2004-7 strategy, DEI identifies the key areas of anti-corruption policy as: development of institutional framework, enforcement mechanisms, co-ordination, public management, education and awareness raising, procurement, public participation in anti-corruption efforts.²⁴ The key aspects of the policy are

²⁰ Ibid., art. 120

²¹ Ibid., art. 212(c).

²² Ibid., art. 129.

²³ *National Strategy to fight Corruption and Rebuild Ethics and Integrity in Public Office*, 2004-7 (July 2004).

²⁴ Ibid., pp. 17-20.

legal reform, procurement in the context of the decentralisation policy, checking corruption in context of the Poverty Eradication Action Plan (PEAP), developing curriculum for teaching of ethics in schools.

(b) Scope of application of legislative and other measures

The AU convention envisages its application to certain ‘acts of corruption and related offences’²⁵ and in its later provisions for certain measures in that regard. The specific attributes of the scope of application of the convention are analysed separately in terms of existing legislation in Uganda.

(i) ‘Active’ and ‘passive’ corruption

The AU convention addresses, as acts of corruption covered, ‘active’ and ‘passive’ corruption.²⁶ This attribute of corruption, encompassing acts of the offeror and acceptor already exists in anti-corruption legislation in Uganda. The Prevention of Corruption Act defines corruption in terms of acts to:²⁷

- (a) corruptly *solicit* or *receive*, or agree to *receive* for himself, or for any other person; or
- (b) corruptly *give*, *promise* or *offer* to any person whether for the benefit of that person or of another person
any gratification as an inducement to, or reward for, or otherwise on account of any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned ...

It is evident that this Act, as conceptualised in 1970, was limited essentially to ‘bribery’ as a corrupt act. It is therefore necessary to reform the anti-corruption legislation to embrace attribute of both ‘active’ and ‘passive’ corruption in respect of all the ‘acts’ of corruption in terms of the provisions of the AU convention.

(ii) Acts of corruption in ‘public’ and ‘private’ sector

The AU convention addresses the occurrence of acts of corruption in the ‘public’ sector as well as the ‘private’ sector.²⁸ The key anti-corruption legislation and the other measures in Uganda mainly deal and concern with corruption in the public sector. This is perhaps premised on the traditional perception of corruption as an activity occurring in government and a definition that saw it as ‘misuse of *public* power for *private* gain’. Further, the legal situation can be seen as founded upon the time when service delivery was primarily undertaken through government institutions, bodies, parastatals, etc. Thus it has been in the public sector that corruption has the most profound impact, in terms of hurting public resources and delivery of services (e.g. education, health care, infrastructure, etc.). Even the Prevention of Corruption Act penalised bribery in respect of corrupt procurement

²⁵ Art. 4(1).

²⁶ Ibid., art. 4(1)(a)(b)(e) and (f).

²⁷ Prevention of Corruption Act, sec. 1.

²⁸ Art. 4(1)(e)(f). See also art. 11.

of *withdrawal* of tenders from the perspective of a ‘public’ official.²⁹ At the very minimum, existing legislation, in form of the Penal Code, penalises, in the private sector, acts of financial impropriety (e.g. conspiracy to defraud; causing financial (or property) loss; false (of fraudulent) accounting; uttering false documents and statements)³⁰ – however, these acts are provided for and prosecuted as ‘criminal acts’ and not as ‘acts of corruption’ when committed by an individual in the private sector.

However, with the era of privatisation and a burgeoning private sector, services are now in the hands of private enterprise, which has the power and interest in influencing decision-making in the public sector. Presently, there are proposals to amend the anti-corruption legislation to address corruption in the private sector – the Prevention of Corruption (Amendment) Bill, currently in draft at the First Parliamentary Counsel’s office, seeks to prevent and combat acts of corruption committed in and by agents of the private sector.³¹ Notably, in respect of public procurement, the law and regulations as well as an ethical code of conduct seek to ensure, *inter alia*, prevention and combating of acts of corruption committed in and by agents of the private sector.³²

(iii) Acts of corruption and ‘related offences’

The AU convention envisages application to not only specific acts of corruption but also ‘related offences’. Although the convention lists as specific acts, bribery, neglect/abuse of office, diversion of resources, illicit enrichment, etc., it does not set out or define what constitutes ‘related offences’ – whether this relates to the ‘inchoate’ offences (attempts) or forms of participation (conspirator, accomplice, agent, etc.) is not clear. Nonetheless, the existing legislative provisions in Uganda have sought to embrace as wide a range of acts by officials as corruption in terms of ‘abuse of office’ – thus the Inspectorate of Government Act defines corruption as:³³

The abuse of office for private gain and includes but is not limited to embezzlement, bribery, nepotism, influence peddling, theft of public funds or assets, fraud, forgery, causing financial loss or property loss or false accounting in public affairs.

(c) Criminalisation of specific acts of corruption

The AU convention envisages the adoption of legislative and other measures with regards to prevention and combating of corruption. One of such measures is the criminalisation of acts of corruption, that is, to establish such acts as ‘criminal

²⁹ Sec. 3.

³⁰ Penal Code Act, Cap. 120, sec. 257, 258(1).

³¹ Interview with Vincent Wagona, Senior State Attorney, Directorate of Prosecutions, Workers’ House, Kampala on October 10, 2005.

³² Interview with Ms. Cornelia Kakooza-Sabiiti, Manager, Legal and Compliance, PPDA at her office, Workers House, Kampala on October 11, 2005.

³³ Inspectorate of Government Act, 2002, sec. 2.

offences'.³⁴ The criminalisation of the specific acts as corruption under the legal framework in Uganda is considered under separate headings.

(i) Bribery

The AU convention calls for the criminalisation of acts of bribery in both the public and private sectors. Bribery as an act of corruption is provided for as a criminal offence under a number of laws in Uganda. This is the case under the Prevention of Corruption Act, which penalises passive and active acts of seeking or offering 'gratification', 'inducement', or 'reward' by and to 'public officials'. The 'gratification' includes 'gifts', 'commissions', 'favours', etc. The Inspectorate of Government Act similarly provides both passive and active 'bribery' as an act of corruption, and since the IG is mandated to prosecute acts of corruption under the Act,³⁵ this makes acts of 'corruption' under the Act 'criminal' acts. Both the Prevention of Corruption Act and the Inspectorate of Government Act are limited to bribery of 'public officials' or during 'official capacity'. There is need therefore to amend the legislation to address corruption in respect of both the public as well as the private sector with respect of not only bribery, but also all other acts of corruption. This is currently what is envisaged under a draft bill to amend the Prevention of Corruption Act, being prepared by the government draftsman, the First Parliamentary Counsel's office.³⁶ In public procurement, the law and regulations (and ethical code of conduct) address acts of corruption committed in and by agents of the private sector³⁷—this would therefore include acts of bribery in procurement. However, this is not criminalisation of the commission of the offence in the private sector.

(ii) Abuse and neglect of office/functions

The criminalisation of acts in this regard is required only indirectly under the AU Convention.³⁸ The status of these acts as 'acts of corruption' can be brought within the scope of abuse of office for private gain as provided under the Inspectorate of Government Act.³⁹ The acts are in fact captured in other provisions of the Constitution and the Inspectorate of Government Act – the former calls upon the IG to 'investigate any *acts or omissions* of public officers made in the exercise of ... *administrative functions*'⁴⁰ while the latter empowers the IG to 'investigate any public officer connected with the *abuse* of his or her *office or authority*; the *neglect* of official duties ...'⁴¹ These provisions however do not stipulate these acts to be 'criminal offences' and it maybe imperative that the penal law or the anti-corruption law be amended to specifically criminalize these acts.

³⁴ Arts 4(1), 5(1), 11

³⁵ Sec. 13.

³⁶ See supra note 31 and accompanying text.

³⁷ See supra note 32 and accompanying text.

³⁸ Art. 4(1)(c).

³⁹ Supra, note 33.

⁴⁰ 1995 Constitution, art. 225(d).

⁴¹ Inspectorate of Government Act, sec. 8(1)(d)(ii)-(iii).

(iv) Diversion (and misappropriation) of public resources, etc.

The AU Convention calls for the criminalisation of acts that are tantamount to diversion and misappropriation of public property or resources.⁴²

A species of acts (embezzlement, theft of public funds/assets) are captured as acts of corruption under the Inspectorate of Government Act and can be prosecuted by the IG in the ‘public’ sector. More pertinent, embezzlement (as well as theft and fraud), as forms of corruption, is provided for as a ‘criminal offence’ under the Penal Code Act.⁴³ Because of the implications of these acts and the manner in which they are carried out, these offences are closely inter-related to corrupt acts such as conspiracy to defraud; causing financial loss (or property loss); false (or fraudulent) accounting, uttering false documents and statements (by directors and officers of corporations). Furthermore, these acts (and related offences) are penalised for their commission in the private sector.

(iv) Influence peddling

The AU convention calls for the criminalisation of acts of influence peddling (or ‘trading in influence’).⁴⁴ The Leadership Code Act stipulates, as a prohibited act, on part of the conduct of a public official/leader as that of:

... participating in a decision in which he or she has an *interest* or where he or she is in a position to *influence* the matter directly in the course of his or her official duties for private gain.⁴⁵

The Code in effect addresses both ‘conflict of interest’ and ‘influence peddling’.⁴⁶ In light of its powers, the IG can therefore prosecute the prohibited conduct as acts of corruption under the Code. The provisions of the Leadership Code do not however set out these acts as ‘criminal offences’ and it may be imperative that the penal law or the anti-corruption law be amended to specifically criminalize those acts. In fact, the experience with ‘influence peddling’ (and ‘conflict of interest’) in Uganda during the censure of Sam Kuteesa (then State Minister for Finance (Investment)) by the sixth Parliament was essentially in the terms of ‘misconduct’ and impropriety to hold a ministerial post as a public office and the question of ‘criminal’ sanctions were never in the minds of the Members of Parliament.

(v) Illicit enrichment

The AU convention calls for criminalisation of illicit enrichment.⁴⁷ Presently, the legal framework of Uganda does not address illicit enrichment, yet it is an area of concern. At the moment, illicit enrichment can only be used in shifting the

⁴² Art. 4(1)(d).

⁴³ See supra note 30 and accompanying text.

⁴⁴ AU Convention, art. 4(1)(e)-(f) and UN Convention, art. 18.

⁴⁵ Leadership Code, sec. -.

⁴⁶ The UN convention only calls for measures to prevent ‘conflict of interest’: art. 7(4).

⁴⁷ Arts 4(1)(g), 8(1). The convention also calls for mutual assistance and cooperation with respect to illicit enrichment as an offence: art. 8(3).

burden to the accused during prosecution of corruption in respect of sudden and unexplained accumulation of wealth.⁴⁸ To that end, the Prevention of Corruption Act, in shifting of the evidentiary burden of proof, renders evidence of pecuniary resources or property that is not proportionate to the known source of income of an individual (and for which no satisfactory account is given) collaborative evidence to prove corruption during a trial.⁴⁹ There is therefore a need for the penal law or the anti-corruption law be amended to specifically criminalize illicit enrichment as an offence.

(vi) Laundering proceeds of corruption

The AU convention does not create the offence of money laundering as such – rather it calls for the criminalisation of laundering the proceeds of corruption.⁵⁰ Presently, the legal framework of Uganda does not address money laundering, yet it has become, together with illicit enrichment, a key area of legislative concern. Presently, there is a Anti-Laundering Bill in the offing and is meant to fill this gap in the law by establishing a criminal offence of money laundering and will cover laundering the proceeds of corruption.⁵¹

(d) Preventive and other measures with regards to corruption

The AU envisages the adoption or establishment (and strengthening) of what are preventive measures/mechanisms – these are varied and range from institutions, standards of conduct, public recruitment, financial integrity and probity, public participation and education, etc.⁵² These are to be dealt with individually and separately.

(i) Establishment and operations of foreign companies

The AU convention requires that measures exist to ensure that foreign companies set up and operating are subject to existing national legislation (including that on corruption).⁵³ According to a registrar at Uganda Bureau of Registration Services, there is a presumption that the setting up and operations of foreign companies in the territory of Uganda shall be subject to respect of national legislation in force with regards to corruption.⁵⁴ This is because, once registered, a foreign company is subject to all the laws of Uganda. In any event, the Companies Act does not

⁴⁸ Interview with Fred Waninda, Senior State Attorney, Directorate of Prosecutions, at Faculty of Law, Makerere University, Kampala on October 3, 2005. In any event, this is how the notion is conceptualised under the convention: art. 1 (on definitions).

⁴⁹ Prevention of Corruption Act, sec. 10.

⁵⁰ AU Convention, art. 4(1)(b) and (h). This is contrast to the UN Convention which criminalizes money laundering and requires States to adopt measures with regards to laundering of proceeds of corruption: arts 15-16, 25.

⁵¹ Interview with Vincent Wagana, Senior State Attorney, Directorate of Prosecutions, Workers' House, Kampala on October 10, 2005.

⁵² Art. 5.

⁵³ Art. 5(2).

⁵⁴ Interview with Ms. Juliet Nassuna, Registrar of Political Parties and Organisations, Uganda Bureau of Registration Services, at Amamu House, Kampala on October 11, 2005.

expressly mention corruption while the other laws such as the Leadership Code, and the Inspectorate of Government Act or the Prevention of Corruption Act only target individuals.⁵⁵ Similarly, the Penal Code Act penalises, on the basis of the common law principles on criminal liability, only individual (natural persons). At any rate, even then where a company is concerned, the approach is lifting of the veil to ascribe criminal liability. However, given that increasingly legal persons (especially in private sector) are becoming involved in acts of bribery and other acts of corruption, it is necessary to create liability for legal persons subjecting them to criminal, civil or administrative measures/sanctions. This would address both local and foreign companies.

(ii) Independent national anti-corruption authorities/agencies

The AU convention requires state parties to establish or ensure the existence of *independent* anti-corruption authorities or agencies.⁵⁶ Uganda can be considered to provide a number of such authorities and agencies, including the Inspectorate of Government (ombudsman),⁵⁷ the Auditor General (for financial probity),⁵⁸ the Directorate of Public Prosecutions (DPP)(for criminal prosecution in tandem with the police and courts),⁵⁹ Parliament (by its oversight function through its committees, in particular the Public Accounts Committee (PAC) and the power of censure of ministers)⁶⁰ and the Public Procurement and Disposal of Public Assets Authority (PPDA)(integrity in public procurement).⁶¹ Ultimately, the overall implementation of the government policies on corruption is undertaken and co-ordinated by the Directorate of Ethics and Integrity (DEI), with political leadership in the Minister of State for Ethics and Integrity. The IG, as the key anti-corruption agency, is clothed with independence and autonomy under the 1995 Constitution.⁶² The AG and DPP enjoy similar independence in their roles in ensuring financial integrity and criminal prosecution of corrupt activities.⁶³ In practical terms, the IG has exercised its powers without significant interference from government. So has the AG and the DPP. An overview of the major anti-corruption authorities and agencies is presented as follows.

- *Directorate of Ethics and Integrity (DEI)*

The establishment of the Directorate of Ethics & Integrity (DEI) was in response to public outcry that the presence of specific anti-corruption bodies had not been effective in efforts to control and combat corruption in public office, and against

⁵⁵ Ibid.

⁵⁶ AU Convention, arts 5(3), 7(2). Elsewhere the convention calls for the national authorities are to be accorded sufficient autonomy to carry out an anti-corruption mandate: art. 20(4).

⁵⁷ 1995 Constitution, art. 223.

⁵⁸ Ibid., art. 163.

⁵⁹ Ibid., art. 120.

⁶⁰ Ibid., arts 90, 118.

⁶¹ Public Procurement and Disposal of Public Assets Authority Act, No. 2/2003.

⁶² 1995 Constitution, art. 227. The independence is further bolstered by the security of tenure of the IG and his/her deputy: *ibid.*, art. 224. See also Inspectorate of Government Act, sec. 10.

⁶³ Ibid., arts 140(7) and 163(10).

the background that some of the anti-corruption agencies (e.g. the police) were corrupt. The DEI is mandated to provide coordination policies and strategies towards effective anti-corruption efforts, including–

- (a) co-ordinating activities of the constitutional bodies/agencies with an anti-corruption mandate (e.g. the IGG, AG).
- (b) receipt of and follow-up actions in relation to the implementation of the recommendations of certain commissions of inquiry (e.g. on the Police, junk military helicopters) and of the AG and IGG.
- (c) acting as an anti-corruption contact point for reporting on corruption and corrupt practices, and with a public relations' role to enhance public education on (and awareness about) corruption.
- (d) undertaking spot-checks, monitoring and identification of particular cases for deterrent measures.

In efforts to facilitate co-ordination of activities of anti-corruption agencies and implementation of anti-corruption measures/programmes, the DEI established the Inter Agency Forum (IAF).

- *Parliament*

The Parliament is the legislative organ of government and is constituted, under provisions of article 78 of the Constitution, of directly elected representatives as well as indirectly elected representatives for certain groups (including women, youth, persons with disabilities, workers and the armed forces) and certain *ex-officio* members.

As one of its primary functions, the Parliament performs an oversight function and acts as a watchdog over the executive – this involves holding the executive accountable on a continuous basis by way of the public scrutiny it subjects the executive, through debate and question time, which ultimately promotes both transparency and accountability. To that end, Parliament (and its committees) act as checks in investigating misuse and abuse of authority and public office. In the performance of its investigative functions into misuse and abuse of office, the Parliament acts in liaison with the offices of the Auditor General (AG), the Inspectorate of Government (IG), the Directorate of Ethics and Integrity (DEI) and the public. The Parliament has the power to create and constitute select committees for consideration of matters that the House may refer to such committees. Further, Parliament can also appoint special or *ad hoc* committees to investigate any matter of public importance that however does not come within the jurisdiction of the standing committees or has not been dealt with by a select committee. Such a special or *ad hoc* committee can be assigned to investigate cases of corruption as they arise. An instance was a special committee constituted to investigate the sale of the Uganda Commercial Bank (UCB) in 2001.

The Public Accounts Committee (PAC), as one of the standing committees of the Parliament, has the overall responsibility for matters of financial accountability. The PAC has the role of examining reports of the Auditor General (AG) tabled

before the Parliament and to report back to the Parliament on remedial actions recommended and to be acted upon by Cabinet. The primary role of the PAC is to examine the audited accounts on appropriated funds and public expenditures of the central government and other organs and agencies of government. The PAC reports to Parliament at least twice a year. As a strong instrument for enforcing public accountability, the PAC has authority to summon any controlling officer or department head to explain and account for breaches in financial accountability as reported in the AG's reports. The scrutiny of annual accounts and audit reports by PAC completes the circle of the various stages of controls for ensuring financial accountability. Both the PAC and AG play very significant roles in overseeing public financial accountability.

One of the powers that the Parliament has, as an anti-corruption sanction, is that of censuring Ministers accused of engaging in acts of abuse of office, misconduct and misbehaviour. This power is conferred under the provisions of article 118(1) of the 1995 Constitution. The Parliament has exercised (or threatened to exercise) this power on a number of occasions, including the censure of Jim Muhwezi and Sam Kutesa, then as the Minister for Education and State Minister for Finance (Investment) respectively during the sixth parliament (1996-2001).

- *Inspectorate of Government (IG)*

The Inspectorate of Government (IG) as the ombudsman and key anti-corruption watchdog is provided for under article 223 of the 1995 Constitution. The office was first established in 1988 under the Inspectorate of Government Statute,⁶⁴ with a mandate to fight corruption and abuse of authority and public office. The 1995 Constitution and the 2002 Inspectorate of Government Act have redefined and expanded the functions and powers of the IG. The functions of the IG are spelt out under article 225 of the 1995 Constitution and re-affirmed under section 8 of the 2002 Inspectorate of Government Act. Under the IG Act, the IG has the certain powers additional to investigation into acts of corruption, including:⁶⁵

- (a) arresting or causing arrest in respect of cases involving corruption, abuse of authority or of public office.
- (b) prosecuting or causing prosecution in respect of cases involving corruption, abuse of authority or public office.
- (c) gaining access to premises or documents including powers of injunctions or orders whenever necessary, whether during process of investigations or after completion of investigations.

The IG is however restrained from questioning or reviewing the decision of any court of law, or of any judicial officer or tribunal irrespective of the nature of the case in question. Of significance (and concern in early years of the IG) is the power to prosecute or cause prosecution of cases of corruption. The discretionary powers to prosecute criminal offences have traditionally lain with the DPP. In

⁶⁴ See supra note 1.

⁶⁵ Inspectorate of Government Act, sec. 13 and 14.

effect, other prosecutions have required consent of the DPP, with the DPP also having the power to discontinue criminal prosecution. With the conferring of power upon the IG to prosecute corrupt acts, this had occasioned confusion and a legal challenge before the courts in 2000 in *Joseph Ekemu & Another v. Attorney General*.⁶⁶ This has since been clarified under the Inspectorate of Government Act, enacted in 2002, which provides that ‘notwithstanding any law, the IG shall not require the consent and approval of any person or authority to prosecute or discontinue proceedings instituted by the Inspectorate’.⁶⁷ Furthermore, the IG has the responsibility for the enforcement of the Leadership Code.⁶⁸ In enforcing the Code, the IG has certain powers and can recommend certain sanctions with respect of public officials in breach of the Code.

- *Auditor General (AG)*

The Auditor General (AG) is the overall audit institution that acts as watchdog over financial integrity. The office of the AG is created under article 163 of the 1995 Constitution. The AG is responsible for auditing government income and expenditure. The functions of the AG are stipulated under article 163(3) of the 1995 Constitution. The AG’s audit responsibility and function extends to the local government.⁶⁹ Furthermore, the mandate, responsibilities and duties of the AG are set out under the 2003 Public Finance and Accountability Act.⁷⁰

- *Police*

The Uganda Police Force is provided for under article 211 of the Constitution. The functions of the police force are stipulated under article 212 of the Constitution as including the prevention and detection of crime.⁷¹ The function of the police in prevention and detection of crime is crucial in efforts to combat corruption, with the Criminal Investigation Department (CID)(and its National Fraud Squad) as the branch (and unit) of the Police charged with carrying out investigations in the process of prevention and detection of acts of corruption (as criminal offences).

- *Directorate of Public Prosecutions (DPP)*

The Directorate of Public Prosecutions (DPP) is established under article 120 of the Constitution, with mandate to institute and control all criminal proceedings in Uganda against any person before any court (other than a court martial) in

⁶⁶ Constitutional Petition No. 1/2000 (unreported). The petitioner, a former Attorney General and Minister for Justice & Constitutional Affairs, contested the power of the IG to prosecute him for the acts of embezzlement and causing financial loss, arguing that the power lay only with the DPP. Significantly, the Constitutional Court determined that the DPP had authorised the IG to prosecute the petitioner for those offences.

⁶⁷ Inspectorate of Government Act, sec. 14(8).

⁶⁸ See 1995 Constitution, art. 225(1)(d); Inspectorate of Government Act, sec. 8(d); Leadership Code, sec. 3.

⁶⁹ Local Government Act, sec. 88 .

⁷⁰ Public Finance and Accountability Act, No. 6/2003.

⁷¹ 1995 Constitution, art. 212(c). See also the Police Act, Cap. 303.

respect of offences alleged to have been committed. The powers of the DPP to prosecute offences relating to corruption are provided under both the Penal Code Act and the Prevention of Corruption Act.

The Penal Code Act provides for a wide range of offences relating to corruption including forgery, uttering false documents, conspiracy to defraud, fraudulent false accounting, embezzlement, causing financial loss, etc. The Prevention of Corruption Act similarly creates corruption-related offences and empowers the DPP to, among other–

- (a) prosecute cases of corruption and bribery
- (b) search, seize, arrest and interrogate suspects.

The DPP advises the CID as well as other government departments on matters of criminal investigation. In 2004, the Fraud Unit was created in the Directorate as a specialized body to handle fraud and corruption matters and works closely with the CID National Fraud Squad. The team of five (5) members works together at the early stages of cases of corruption and keeps reviewing all aspects of the cases during investigations and court proceedings, through regular case management meetings as between the investigators and prosecutors and State Attorneys and complainants and witnesses.⁷²

- *Courts of Law*

Upon completion of investigations and compiling of evidence by the police (and the IG or the DPP), actual criminal prosecution for corruption and abuse of office occurs before the courts of law. The courts of law are the basic mechanism for prosecution of public officials who are accused of engaging in acts of corruption. To that end, an independent, impartial and accountable judiciary is crucial to anti-corruption efforts through its capacity to hand down terms of imprisonment against individuals accused of and prosecuted for corruption. It is a very serious impediment to anti-corruption efforts if the courts (and the judicial officials) are corrupt. The biggest concern about the courts is the fact that they has not really acted as an anti-corruption deterrent, with the public feeling that (together with the police and the prosecuting agency, the DPP) they have let corrupt officials off too easily.

Crucially significant is the approval under the recent constitutional amendments for the establishment of a special *anti-corruption court*.⁷³

- *Others*

Additional oversight bodies have emerged in response to particular concerns over corruption. This has been the case of the Judicial Integrity Committee instituted

⁷² Interview with Vincent Wagana, Senior State Attorney, Directorate of Prosecutions, Workers' House, Kampala on October 10, 2005.

⁷³ Constitutional Amendment Bill, No. 2/2005. This was premised on a recommendation by the government: Government of Uganda, *White Paper*, chapter 13, p. 68 (September 2004).

as a response by the judiciary to allegations of corrupt practices in its ranks and is primarily tasked with a duty of ensuring integrity and probity within the judicial sector.

(iii) Adoption of procedures for procurement and management of public goods and services

The AU Convention provides for the creation of systems for procurement as well as the provision for systems of management of *public goods and services*.⁷⁴ For the past two (2) years, Uganda has sought to revamp processes and procedures of procurement in the public sector. Through legislative measures, it has put in place a new procurement authority and regulations have been established under the Public Procurement and Disposal of Public Assets Authority Act of 2003. The Act, which came into force on February 21, 2003, governs public procurement for the whole public sector in Uganda. The institutional framework under the Act consists of–

- (a) Public Procurement and Disposal of Public Assets Authority (PPDA).
- (b) Procuring and Disposing Entities.

The PPDA is clothed with political, regulatory, data management and capacity-building functions. The procurement entities include ministries, commissions, statutory bodies and other Government departments.

The procurement process is governed by the Public Procurement and Disposal of Public Assets Regulations,⁷⁵ which set out principles aimed at tackling corruption and corrupt practices within the process, including for instance–

- (a) principle of non-discrimination, fairness and impartiality.
- (b) promotion of transparency, accountability and fairness as to prevent the abuse of the procurement process. This requires detailed procedures, records and justifications for every procurement decision.
- (c) achieving ‘value for money’, i.e. securing economy and efficiency in procurement.
- (d) keeping of confidentiality until successful bidder notified of award.
- (e) use of open and competitive bidding.
- (f) principles of ethics and integrity should inform the character of behaviour and character of persons engaged in the process. Ethics in procurement ensures that decisions that are made are neither tainted or appear to be tainted by any question of conflict of interest. This has required and resulted in the development of a code of conduct.

The procurement measures are also evident in aspects of the local government law, given that the Local Government Tender Boards (LGTBs) are at the heart of

⁷⁴ Art. 5(4). Elsewhere, the convention calls for ensuring transparency in the ‘management of tendering’: art. 7(4).

⁷⁵ Public Procurement and Disposal of Public Assets Regulations, SI No. 70/2003.

the procurement process in the local government (in the decentralised process of service delivery). The composition and functions of the LGTB is provided for under the Local Governments Act of 1997. It is the LGTBs that award the bulk of the tenders/contracts for both goods and services. Ordinarily, the Tender Boards are expected to take out advertisements and call for bids for works and services. However, the PPDA Act and its 2003 regulations seek to ensure transparency in central government. The Ministry for Local Government is presently reviewing the Local Government Act to bring it into conformity with the PPDA Act.⁷⁶

(iv) Maintenance and strengthening of accounting, audit and follow-up systems

The AU convention provides for the creation and strengthening of systems for accounting, audit and follow-ups on public income and expenditures.⁷⁷ There exist legislative measures that seek to ensure financial accountability and transparency in government business. Thus Parliament is empowered to approve and has over-sight over government budget (revenue, loans and expenditure) and programs. Further, the Budget Act gives the Parliament powers to monitor the enforcement and control of national budget and expenditure estimates. The Act establishes a Parliamentary Budget Office to provide the Parliament with timely and technical advice. The Parliament undertakes its oversight functions mainly through standing committees. It has ten (10) standing committees, including the Public Accounts Committee (PAC)(with membership of 15 MPs), which has the responsibility for matters of financial accountability. Finally, the Public Finance and Accountability Act 2003 requires the Minister of Finance to ensure that full account of finances is made to the Parliament. Under the Act, the Public Finance and Accountability Regulations of 2003 were enacted to provide guidelines for accounting, auditing and reporting on public finances (including cash books, cheques, etc.). Much of the follow-up measures involve ‘value for money’ audits by officers of Auditor-General’s Department at all levels of government.

(v) Systems and procedure for recruitment in public service

The AU convention requires transparency and equity in hiring procedures in the public service.⁷⁸ In Uganda, recruitment in the public sector is undertaken by and through a number of public bodies, which advertise and conduct interviews in respect of vacant positions in public service – this is the case of, for instance, the Public Service Commission (for jobs in the public service), the Education Service Commission (for positions in the educational sector), the Health Service Commission (for positions in the health sector).⁷⁹ On the other hand, recruitment and appointments in local government (districts) is carried out by District Service Commissions.⁸⁰ Notably, these public bodies do further exercise supervision and

⁷⁶ Interview with Ms. Cornelia Kakooza-Sabiiti, Manager, Legal and Compliance, PPDA at her office, Workers House, Kampala on October 11, 2005.

⁷⁷ Art. 5(4).

⁷⁸ Arts 5(4), 7(4).

⁷⁹ These commissions are constitutional bodies under the Constitution: arts 165-6, 167-8, 169-70, 172. Further, they are granted a measure of independence in the performance of their functions.

⁸⁰ Ibid., arts 198, 200.

disciplinary measures over public officials in the sectors under their mandate. In the context of mainstream public service jobs, there is attention to meritocracy in recruitment and promotions. However, given the expanded nature of government or public jobs in the past decades, some of these are not covered by the existing recruiting bodies and procedures. The appointment of one Dr. Tiberius Muhebwa (and inexplicable sidelining of Dr. John Mulumba) to the position of co-ordinator of Project Management Unit (PMU) for the Global Fund AIDS/malaria funds is an eye-opener on lack of transparency and equity in the grey area of 'contracted' employment.⁸¹

(vi) Access to information

The AU convention calls for the adoption of legislative and other measures to give effect to the right of access to information required to assist in the fight against corruption.⁸² Access to information is guaranteed as a 'human right' under the 1995 Constitution.⁸³ The right relates to information 'in the possession of the State or any other organ and agency of the State' (in effect, primarily public bodies). There are however exceptions to access where there is prejudice to 'the security or sovereignty of the State or interference with the right to privacy of any other person'. The constitution does envisage the enactment of legislation to prescribe 'classes of information' and the 'procedure for obtaining access to that information'. Although courts have enforced the right since 1995, for over ten (10) years now, there has been no legislation to give effect to the provisions of the Constitution.⁸⁴ A bill entitled *The Access to Information Bill*⁸⁵ was gazetted in April 2004 and has spent the past 1½ year before a committee of Parliament and under debate and scrutiny by the civil society.⁸⁶ It is yet unknown when the Bill will become law. In that regard, access by the public to information on corruption is not readily available and seeking information from government often runs foul of laws such as the Official Secrets Act.

Of crucial significance is the fact that the Leadership Code Act treats contents of declarations of wealth by public officials as 'public information', that is to be 'accessible to members of the public upon application to the Inspector General of Government'.⁸⁷ In 2003, the IG had the declarations of the President and the Ministers published in the local newspapers.

⁸¹ See P. Nyanzi, 'Sidelined Mutumba takes his grievances to the Ogoola Probe', *Daily Monitor*, October 28, 2005, pp. 22-3.

⁸² Arts 9, 12(4). Generally, access to information has been seen as central to the development of *participatory democracy*, ensuring *governmental accountability* and strengthening the fight against *corruption*: see Declaration of Commonwealth Heads of Government Meeting, Harare, Zimbabwe, 1991; Commonwealth Human Rights Initiative (CHRI), *Open Sesame: Looking for the Right to Information in the Commonwealth* (New Delhi, India, 2003) 34-6.

⁸³ 1995 Constitution, art. 41.

⁸⁴ Cf. H Onoria, 'Realisation and Enforcement of the Right of Access to Information in Uganda, 1995-2005' (2004-5) *Makerere Law Journal* 39-58.

⁸⁵ The Access to Information Bill, No. 7 of 2004.

⁸⁶ On December 7, 2004, two local CSOs, the Coalition for Freedom of Information (COFI) and the Human Rights Network-Uganda (HURINET-U), presented views on the Bill before a committee of Parliament.

⁸⁷ Leadership Code Act, sec. 7.

The necessity for enactment by the government of a specific access to information legislation cannot be understated. This is especially to provide in detail and with clarity: (i) standards on ‘minimum’ information requirements by key information providers; (ii) duty-holders and beneficiaries of the right of access; (iii) scope of exemptions on disclosure; (iv) forms and procedures for access to information; (v) penalties and sanctions for refusal to disclose or denial or access, etc.

(vii) Promotion of education and sensitisation on corruption

The AU convention requires adoption and strengthening of mechanisms for the promotion of education and sensitisation of the public on corruption and ethics.⁸⁸ There is a constitutional duty placed on the government to promote public awareness of the constitution.⁸⁹ There is also a specific function placed on the IG to ‘stimulate awareness about the values of constitutionalism in general’.⁹⁰ In real terms, there has been significant government activity in creating awareness about corruption, particularly through mass media, e.g. newspapers, radio, billboards, etc. The creation of awareness and public sensitisation on corruption has in recent years witnessed closer working of the key anti-corruption agencies such as DEI and IG with the civil society, e.g. the anti-corruption weeks in October 2004 and 2005. Recent efforts at education on corruption are the development of a training manual on the Leadership Code at the IG⁹¹ and curricula for teaching of ethics in schools at the DEI.⁹² Invariably, the gaps in education and sensitisation on corruption have over the years been filled by an emergent civil society whose organisations (CSOs) have, since the 1990s, represented stakeholders on issues of good governance and low corruption environment in playing an enhanced role in the anti-corruption efforts. The anti-corruption CSOs have played their part in creating public awareness on corruption through advocacy (seminars, talk-shows, drama, brochures, field visits, etc.) and networking (through collaborative efforts with other CSOs).⁹³

(e) Combating corruption in the public service

The AU convention calls for adoption of specific measures to tackle and combat corruption in the public service. These measures are considered against existing legislation in Uganda as follows.

⁸⁸ Art. 5(7). The sensitisation and training of public officials is also envisaged under article 7(2).

⁸⁹ 1995 Constitution, art. 4.

⁹⁰ Ibid., art. 255(1)(f). In its 2004 White Paper on constitutional review, the government agreed with the recommendation of the Constitutional Review Commission that this function of the IG be removed from the IG and be performed by the UHRC: supra note 76, at p. 68.

⁹¹ Interview with Raphael Baku, Deputy IG at his office, Jubilee Centre, Kampala on October 10, 2005.

⁹² Interview with Mr. Ashaba-Aheebwa, Director, Directorate of Ethics and Integrity at his office, Kampala on October 11, 2005.

⁹³ See also this Part, section 2(g) below.

(i) Establishment of codes of conduct for public officials

The AU convention calls for establishment of a code of conduct and monitoring of its implementation by a specific body.⁹⁴ The legal framework in Uganda provides for such a code of conduct as envisaged under the convention. The Leadership Code of Conduct is provided for under the 1995 Constitution, which recognises the role and need for a code of conduct for public officials and leaders.⁹⁵ The Leadership Code Act,⁹⁶ enacted in 2002,⁹⁷ seeks to provide a minimum standard of behaviour and conduct for leaders. The Code is to apply to persons holding ‘offices’ as specified in the schedules. There are major aspects to the Code which include:

- (a) Public officials and leaders are not to engage in certain *prohibited conduct*, i.e. conduct likely to compromise honesty, impartiality and integrity, or likely to lead to corruption in public affairs and conduct which is detrimental to the public good, welfare or good governance.
- (b) Public officials and leaders are required to *declare their income, assets and liabilities* from time to time and how they acquired them.
- (c) The IG is vested with power to enforce the Leadership Code⁹⁸ and, to that end, it is mandated to–
 - (i) receive and examine declarations of wealth lodged with it under the Code.
 - (ii) verify declared incomes, assets and liabilities.
 - (iii) recommend certain courses of action to appropriate organs or authorities in respect of errant leaders in breach of the Code.
- (d) The Code provides for acts and conduct that constitute *breaches of the Code* which include (i) commission of prohibited conduct and (ii) failure to declare wealth. Overall, the Code aims to minimise incidences of bribery among leaders, prevent misuse of public property, and admonish nepotism, favouritism and other forms of self-aggrandisement. The Code seeks to prohibit misuse of public funds, improper use of public positions to enrich oneself using official time and facilities to promote private business and disgraceful and unbecoming behaviour.⁹⁹
- (e) The Code provides *enforcement mechanisms* for ensuing compliance with its anti-corruption measures as well as penalties for breaches of the Code. To that end, the Code provides for–
 - (i) lodging of complaints of corruption (and the procedures for the investigation of such complaints).¹⁰⁰

⁹⁴ Art. 7(2).

⁹⁵ 1995 Constitution, art. 233.

⁹⁶ Leadership Code Act, Cap. 168.

⁹⁷ The 2002 Code replaced the Leadership Code, Statute No. 8/1992.

⁹⁸ Leadership Code Act, sec 3.

⁹⁹ *Ibid.*, sec.8-13.

¹⁰⁰ Generally, in enforcing the Code, the IG has all the powers conferred upon it by Chapter XIII of the 1995 Constitution: *ibid.*, sec. 29.

- (ii) liability of leaders that are in breach of the Code (including failure without reasonable cause to submit declaration of wealth) to certain courses of action that the IG can recommend or undertake, as sanctions, with regards to errant leaders (including warning (or caution), demotion, dismissal (or vacation of office), confiscation (or forfeiture of undeclared property) and payment of fine).

The IG has been carrying out its mandate of monitoring the implementation of the Code, although not without some setbacks as will be noted below with respect to declarations of wealth.

It is to be noted that a code of conduct has been developed in the procurement sector under auspices of the PPDA.¹⁰¹ On the other hand, the Judicial Integrity Committee (created to oversee integrity and probity in the judiciary) developed a Uganda Judicial Code of Conduct in 2003.¹⁰²

(ii) Declarations of wealth

The AU convention calls for all or designated public officials to make declaration of wealth (incomes, assets and liabilities).¹⁰³ As an anti-corruption measure, this requirement already exists under the provisions of the Leadership Code – for as noted above, public officials and leaders are required under the Code to *declare their income, assets and liabilities* periodically and how they acquired them.¹⁰⁴

The declaration of wealth as a key anti-corruption measure was applied almost immediately; for many public officials in the categories set out in the schedules to the Code picked up forms to declare their wealth. Ultimately, Cabinet ministers, Permanent Secretaries, Members of Parliament, judges and magistrates, District Commissioners, etc. complied with provisions of the Code regarding assets and liabilities declaration. Since the content of declarations is ‘public information’, the IG had the declarations – at least for the President and Ministers – published in the newspapers (this was not to the amusement of certain groups of persons). By December 2002, assets and liabilities declaration compliance issued by the IG showed that a significant number of public officials and leaders had made declarations in compliance with the law. In late 2004, the IG distributed forms for wealth declarations due for March 2005.

Two major incidents occurring in 2003/4 came to define the challenges that this anti-corruption preventive measure was likely to face in its practical application. The question of declaration of wealth came to a head in the now well-known and

¹⁰¹ See supra note 32 and accompanying text.

¹⁰²The 2003 Code replaced the 1989 Code of Conduct for Judges, Magistrates and other Judicial Officers.

¹⁰³ Art. 7(1).

¹⁰⁴ The declaration of wealth extends to spouses, children and dependants of the leaders. The Code, which came in force in July 12, 2002, requires those who were leaders at that time to declare their statements of income, assets and liabilities within three (3) months after the commencement date, those becoming leaders thereafter within three (3) months of so becoming and thereafter every two (2) years during the month of March.

publicized clash between the IG and Major Kakooza Mutale, one of the numerous Presidential Advisors. The affair was also to be a test case for the application of the various sanctions for non-compliance under the Code. Major Mutale's public refusal to declare his wealth resulted in an IG recommendation to the President (as Mutale's appointing authority) to dismiss Mutale from his position as a Senior Presidential Advisor. In the aftermath, Major Kakooza Mutale proceeded to file a civil suit against the Government before the High Court.¹⁰⁵ In the meantime, two persons, Fox Odoi-Oywelowo and James Akampumuza, filed a petition before the Constitutional Court to impugn certain provisions of the Leadership Code they regarded as inconsistent with provisions of the Constitution.¹⁰⁶ In its decision, the Constitutional Court found that the provisions of sections 19(1), 20(1), 35(b) and (d) of the Leadership Code, in requiring an appointing authority to implement a recommendation of the IG within 60 days (in mandatory terms) had *taken away* the discretion of the President in respect of removal of holders of constitutionally established offices – in other respects, the Court considered the contested provisions of the Code to '*fetter* the discretion accorded to the President under the Constitution'. On the other hand, the High Court found Major Mutale to be in violation of the Code, thus:

... From all the evidence, it is clear to me that the IGG did all he could possibly have done to make the appellant [Major Kakooza Mutale] to declare his wealth but the appellant *consciously, deliberately, calculatedly and stubbornly* refused to comply with the mandatory provisions of the law. He was in breach of the Leadership Code Act.

In the end, the High Court deferring to the decision of the Constitutional Court (in light of the ruling on fettering the discretion of the appointing authority) held the dismissal of Major Mutale to have been wrongful. The Court however felt that, in light of the breach of the Code, Mutale be dealt with by the authorized authority (the President) in the manner authorized by law. The President duly reinstated his Presidential Advisor and Mutale was to be paid his salary arrears. In spite of this setback, the IG has continued to receive declarations of wealth and is currently seeking consultancies for preparation of guidelines for out-sourcing verification of wealth.

(iii) Disciplinary measures against public officials

The AU convention requires the development of disciplinary measures (and of investigative procedures) in corruption.¹⁰⁷ The constitutional framework¹⁰⁸ and the public service regulations¹⁰⁹ provide for exercise of certain disciplinary powers (and measures) by bodies such as the PSC, JSC, HSC, ESC and the DSC. Further, the legislative framework and practices in the public service has encompassed measures of removal, suspension (or interdiction), etc. of corrupt officials – in fact, the Leadership Code makes acts of corruption (commission of

¹⁰⁵ *Major Ronald Mutale v. Attorney General*, Civil Appeal No. 40/2003.

¹⁰⁶ *Fox Odoi-Oywelowo & Another v. Attorney General*, Constitutional Petition No. 8/2003.

¹⁰⁷ Art. 7(3).

¹⁰⁸ See this Part, section 2(b)(iii) above (at p. 12).

¹⁰⁹ Public Service Standing Orders.

the prohibited conduct) by public officials subject to a *regime of sanctions*, from a warning (or caution), demotion to dismissal (or vacation of office).¹¹⁰ The recent incidences of interdictions are those of senior state attorneys at Ministry of Justice and Constitutional Affairs alleged to have colluded to lose or settle civil suits in which the government was defendant and involved colossal payouts in damages.

(f) Political parties and corruption

The AU convention calls for measures to ensure transparency in the funding of political parties.¹¹¹ Further, it calls for measures to proscribe the funding of political parties through funds acquired by corrupt means.¹¹² The principle of transparency in the funding of political parties (and organisations) is provided for under the Political Parties and Organisations Act, which, *inter alia*, demands maintenance of records and audits that are to be accessible to members of a political party.¹¹³ On the other hand, the law is not clear on the funding of political parties by or from proceeds of corruption, for it may not be easy to trace monies reflected in accounts and audits to corruptly acquired resources. The political parties law only mentions persons and entities that cannot contribute towards funding of political parties.¹¹⁴ As specific prohibited sources of funding, this pertains to funding from a ‘terrorist’ organisation or an organisation that has its ‘financing’ from terrorist activities or entities engaged in terrorism.¹¹⁵ Given that there have been proposals to amend the political parties law, it maybe necessary to provide for an additional clause to section 14 to proscribe the ‘solicitation’ or ‘receipt’ of funds by a political party where the funds have been acquired through corrupt means or are the proceeds of corruption.

(g) Civil society and the media

The AU convention calls for an enabling environment that allows for participation and involvement of the civil society and the media in combating and monitoring corruption.¹¹⁶ Since 1986, Uganda has witnessed the emergence of a civil society and growth of unprecedented opportunities for civil society organisations (NGOs, CBOs) that represent the stakeholders on issues of good governance and low corruption environment to play an enhanced role in the anti-corruption efforts. There is an enabling environment, by legislation, for the

¹¹⁰ Leadership Code, sec. 5(2), 12(2), 13(4), 14(3), 19(1), 20(1), 35(b)-(d). It maybe noted that in *Fox Odoi-Oywelowo case* (supra note 106), it was the power of the IG to recommend *mandatory* implementation of certain sanctions against the public officials in breach of the Code (especially as regards removal of holders of constitutionally established offices) that was challenged rather than the *sanctions* themselves.

¹¹¹ Art 10(b).

¹¹² Ibid., art 10(a).

¹¹³ Political Parties and Organisations Act, No. 18/2002, sec. 12.

¹¹⁴ Ibid., sec. 14(1). The persons and entities include non-citizens, foreign governments (and missions) and non-Ugandan NGOs. These persons or entities are required to report to the Registrar of Political Parties if they make any contributions: sec. 14(4).

¹¹⁵ Ibid., sec. 14(5)(b)-(c).

¹¹⁶ Art. 12.

formation of CSOs under the Non-Governmental Organisations (Registration) Act. The 1995 Constitution does envisage the involvement, empowerment and participation of the citizenry in affairs of society under the Objectives and Directive Principles of State Policy – this would include combating corruption:

The State shall endeavour to mobilise, organise and empower the Uganda people to build independent and sustainable foundations for the development of Uganda.¹¹⁷

The State shall take all steps to involve the people in the formation and implementation of development plans and programmes which affect them.¹¹⁸

The liberal environment for the creation of CSOs has enabled local organisations with an anti-corruption agenda such as the Anti-Corruption Coalition of Uganda (AACU)¹¹⁹ and its grassroots' counterparts such as the Rwenzori Anti-Corruption Coalition (RAC) and the Teso Anti-Corruption Coalition (TAC) to emerge as key actors in the anti-corruption crusade.¹²⁰ It has further enabled local chapters of international NGOs such as Transparency International-Uganda chapter (TI-U) and the African Parliamentarians Network Against Corruption-Uganda chapter (APNAC-U) to operate. Much of the work of anti-corruption CSOs and NGOs has involved advocacy and networking and they have worked in collaboration with government agencies such as Parliament and the DEI – in fact, the inter-agency collaboration under the Inter Agency Forum (IAF), coordinated by the DEI, has involved the civil society. The DEI is completing the drafting of a memorandum of understanding with civil society that will involve working with civil society and provision for training.¹²¹

(h) Law enforcement and matters relating to corrupt activities

The AU convention calls for the adoption and establishment of various legislative and other measures towards *enforcement* of obligations under the convention in efforts to combat and tackle corruption. These include the following.

(i) Participation and perpetration of acts of corruption

The AU convention additionally calls for legislative provisions that bear upon the criminalisation of corruption. This is in respect of participation in perpetration of the various acts of corruption – as principal, accomplice, agent, etc.¹²²

¹¹⁷ 1995 Constitution, objective IV(iii).

¹¹⁸ Ibid., objective X. In fact, combating corruption is a crucial part of the duties of citizenry– the preservation and protection of public property and combating corruption are two of the 'duties' of the citizenry stipulated under article 17(2) of the 1995 Constitution.

¹¹⁹ This is the umbrella anti-corruption CSO. Other NGOs/CSOs with an anti-corruption agenda include Uganda Debt Network (UDN), HURINET-U and Foundation for Human Rights Initiative (FHRI).

¹²⁰ RAC and TAC are CSOs carrying out activities in the western and eastern regions of Uganda respectively. In fact, there are CSOs that work at even lower levels, at districts, sub-counties, e.g. Pallisa Anti-Corruption Network (PACONET) and Kalambi Action for Life Improvement (KALI).

¹²¹ Interview with Mr. Ashaba-Aheebwa, Director, Directorate of Ethics and Integrity at his office, Kampala on October 11, 2005.

¹²² Art. 4(1)(i).

The legal framework of Uganda penalises as offences conduct that constitute an attempt to commit a crime (as ‘inchoate’ offence) under the Penal Code. Likewise, the Penal Code penalises conduct that constitutes a criminal offence perpetrated by a range of offenders, including accomplices (i.e. persons who aid and abet) as well as conspirators.¹²³ Further, the Leadership Code Act provides that the acts of prohibited conduct are committed by a public official/leader if he or she causes the acts in question to be done through an ‘agent’, unless it be shown that he or she had no prior knowledge or consent to the said acts or did everything within his or her powers to prevent the breach.¹²⁴ Of note, the Prevention of Corruption Act penalises corrupt acts even though the purpose for the gratification may not have been carried out¹²⁵ – so it is irrelevant that the acceptor of the gratification did not get to carry out his/her ‘side of the bargain’.

(ii) Prosecution of corruption by public officials

The AU convention calls for the prosecution of officials for acts of corruption.¹²⁶ There have been incidences of prosecution before courts of law of public officials accused of commission of acts of corruption. Invariably, the nature of politics and interests has similarly occasioned incidences where individuals implicated in corruption have escaped prosecution. Of note though, and in conformity with the AU convention, is the fact that although there exist jurisdictional immunities from prosecution with regards to, for instance, judicial officers,¹²⁷ this does not extend to conduct that amounts to acts of corruption.¹²⁸

(iii) Protection of witnesses, experts, victims, informers

The AU convention calls for legislative and other measures to protect informants and witnesses in corruption cases.¹²⁹ The legal framework in Uganda presently contains provisions that have a semblance of protection for informants and those offering testimony or documents in matters of corruption. Thus section 20(1) of the Prevention of Corruption Act provides for the protection of informers:

Except as hereinafter provided, no complaint as to an offence under this Act shall be admitted in evidence in any civil or criminal proceedings whatsoever, and *no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.*

¹²³ Penal Code Act, sec. -.

¹²⁴ Leadership Code, sec. 13.

¹²⁵ Prevention of Corruption Act, sec. 8.

¹²⁶ Art. 7(5).

¹²⁷ 1995 Constitution, art. 128(4).

¹²⁸ Cf. *John Arutu v. Attorney General*, Constitutional Petition No. 4/1997. This petition in 1997 involved a magistrate challenging his prosecution for acts that involved corruption and abuse of office relying on the immunity under article 128(4) of the Constitution. In the end, the petition was sadly not heard.

¹²⁹ Art. 5(5).

Under section 20(2) of the Act, the protection of informers is further in relation to inspection of 'books, documents or papers'. The protection in section 20 of the Act, conceived in 1970, would embody what is now referred to as 'whistleblowers'. The protection of whistleblowers in corruption cases is in fact envisaged under the Access to Information Bill of 2004, seeking to afford protection to persons who avail or disclose information on 'wrongdoing', with 'wrongdoing' defined in the following manner and context:¹³⁰

... commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, *corruption or dishonesty*, serious mal-administration affecting a public body, serious threat to health, safety or the environment.

There is debate whether the measures to ensure that citizens report instances of corruption without fear of reprisals should be part of the Access to Information Bill or a separate Whistleblowers Bill.¹³¹ Finally, the Inspectorate of Government Act provides for protection of citizens who report instances of corruption without fear of consequent reprisals.¹³²

(iv) Punishment of persons making false/malicious reports

The AU convention requires adoption of measures to punish the making of false and malicious reports against innocent persons in corruption cases.¹³³ In Uganda, the Prevention of Corruption Act makes it an offence, under section 21, to give false information.

(v) Confiscation and seizure of proceeds of corruption

The AU convention calls for adoption of legislative measures to enable national authorities search, identify, trace, freeze, seize and confiscate the proceeds (and instrumentalities) of corruption.¹³⁴ Additionally, it calls for adoption of measures to administer frozen, seized and confiscated property. As regards freezing, seizure and confiscation, the Leadership Code confers upon the IG special powers to place restrictions on operation of bank accounts or disposal of property of a leader being investigated.¹³⁵ On the other hand, the Prevention of Corruption Act similarly confers powers on the DPP to restrict the operations of a bank account or the disposal of property of a person suspected or accused of having committed an act of corruption for purposes of ensuring payment of compensation to any victim of the act.¹³⁶ The DPP also has the powers of search and seizure of places where there is reasonable cause to believe there is/are document/st containing evidence of commission of an act of corruption.¹³⁷

¹³⁰ The Access to Information Bill, No. 7/2004.

¹³¹ Interview with Vincent Wagona, Senior State Attorney, Directorate of Prosecutions, Workers' House, Kampala on October 10, 2005.

¹³² Inspectorate of Government Act, sec. 34.

¹³³ Art. 5(6).

¹³⁴ Ibid., art. 16.

¹³⁵ Leadership Code, sec. 22.

¹³⁶ Prevention of Corruption Act, sec. 22.

¹³⁷ Ibid., sec. 14.

Notably, the AU convention defines ‘confiscation’ as an act ensuing from an order of court in corruption proceedings. Although confiscation (or the forfeiture of undeclared property) is one of the sanctions under the Leadership Code, it is unclear how the IG is to exercise this power (since there has been no opportunity as yet since verification of declarations are yet to be undertaken), it is prudent to subject such exercise to judicial (or quasi-judicial) process. This should be one of the basic principles in the development of regulations under the Code.¹³⁸

The convention further envisages the undertaking, within the parameters of legal provisions, the remittance and transference of proceeds of seized, confiscated and frozen properties.¹³⁹ This would be undertaken through measures of mutual legal assistance and co-operation.

(vi) Bank secrecy and seizure of financial and commercial records

The AU addresses, as part of obligations on confiscation and seizure, the matter of bank secrecy.¹⁴⁰ The convention calls for the adoption of measures to empower the seizure by courts and other authorities of banking, financial and commercial documents and bank secrecy should not be a bar to effecting such seizures. The Prevention of Corruption Act confers powers on the DPP of investigation of bank accounts, share accounts or purchase accounts.¹⁴¹ Further, under the Inspectorate of Government Act, the IG has the power to gain access to documents including powers of injunctions or orders when necessary during process of investigations or after completion of investigations.¹⁴² This would invariably include access to bank accounts. In fact, according to the Deputy IG, Mr. Raphael Baku, this power would arise from not only the Inspectorate of Government Act but also article 230(3) of the Constitution, which provides:

Subject to the provisions of any law, the Inspectorate of Government shall have power to enter and inspect the premises or property of any department of Government, person or any authority, to *call for, examine and where necessary, retain any document* or item in connection with the case being investigated, found on the premises; and may, in those premises, carry out any investigation for the purpose of its functions.

According to him, this gives the IGG powers to compel banks to avail information on their customer’s questionable dealings with such banks.¹⁴³ Although under the banking laws, there is no legal obligation on part of banks to disclose dealings of their customers, in practice, banks have complied with requests and there have

¹³⁸ Sec. 25 and 38 of the Code provide for making of rules to regulate the procedures under the Code and for the better carrying out of the provisions of the Code.

¹³⁹ Art. 16(2)-(3).

¹⁴⁰ AU Convention, art. 17.

¹⁴¹ Prevention of Corruption Act, sec. 12. The Act also provides for inspection of documents (and this can include banking documents): sec. 13.

¹⁴² Inspectorate of Government Act, sec. 14. Under this provision, all operations on an account can be frozen by a bank if so ordered: interview with Raphael Baku, Deputy IG at his office, Jubilee Centre, Kampala on October 10, 2005.

¹⁴³ Id.

been several instances where banks have provided such information about their customers.¹⁴⁴ This is owed in part to the fact that Bank of Uganda, by circular to the commercial banks, made arrangements for the availing of information by the latter on customers' dealings.¹⁴⁵ The draft Prevention of Corruption (Amendment) Bill and the Money Laundering Bill are also expected to address this matter¹⁴⁶ – the former is expected to give the DPP power not only to freeze accounts pending court hearing but also to empower the courts to confiscate banking documents with a view to prosecution of corruption.¹⁴⁷

(vii) Jurisdiction over acts of corruption

The AU convention stipulates the bases under which states are entitled to assume jurisdiction over acts of corruption as criminal offences.¹⁴⁸ In practical terms, the convention essentially underscores the prevailing bases of criminal jurisdiction in international law and affirms non-prejudice to exercise of criminal jurisdiction in accordance with 'domestic law'. The jurisdiction over criminal offences in Uganda is spelt out under the Penal Code Act, which provides, firstly, for jurisdiction as extending to 'every place in Uganda'.¹⁴⁹ Secondly, there is criminal jurisdiction with respect to offences committed partly within Uganda where the offender is within Uganda's territory.¹⁵⁰ Thirdly, there is jurisdiction with respect of offences committed outside Uganda by a Ugandan citizen or person ordinarily resident in Uganda¹⁵¹ – however, this is limited to certain offences (primarily offences against the State): in effect, it does not extend to offences of corruption.

It is therefore apparent that the jurisdictional bases in Uganda's penal law do not cover the bases envisaged under the convention. To that end, it will be necessary to amend the law to provide for more comprehensive jurisdictional bases with regards to corruption. The more prudent course is to incorporate *verbatim* the bases provided in the convention in the revamped anti-corruption legislation. Crucially, this should include the 'effects doctrine' embodied in the convention,¹⁵² given the *economic* implications of acts of corruption occurring abroad upon the fragile African economies, including Uganda's.

The protection against double jeopardy, as required under the convention,¹⁵³ is guaranteed under article 28 of the 1995 Constitution.¹⁵⁴

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Interview with Vincent Wagona, Senior State Attorney, Directorate of Prosecutions, Workers' House, Kampala on October 10, 2005.

¹⁴⁷ Id.

¹⁴⁸ Art. 17.

¹⁴⁹ Penal Code Act, sec. 4.

¹⁵⁰ Ibid., sec. 5(1).

¹⁵¹ Ibid., sec. 5(2)-(3).

¹⁵² Art. 13(1)(d).

¹⁵³ Ibid., art. 13(3).

¹⁵⁴ 1995 Constitution, art. 28(9).

(viii) Guarantees of a fair trial

The AU convention enjoins according persons accused of commission of acts of corruption minimum guarantees of a fair trial.¹⁵⁵ The minimum guarantees of a fair trial to an accused in criminal prosecution are provided under article 28 of the Constitution – this includes the right to presumption of innocence, in spite of the fact that the Prevention of Corruption Act has provisions that seek to shift the burden of proof to the accused. Further, in empowering the IG, in the process of investigation, to compel the attendance of witnesses and to receive evidence, the Leadership Code nonetheless requires the IG to observe the principles of natural justice.¹⁵⁶ Notably, Uganda is a party to the 1981 African Charter on Human and Peoples' Rights (as well as the 1966 International Covenant on Civil and Political Rights), which affirms the right to a fair trial.¹⁵⁷

(ix) Designated national authority and staff training

The AU convention requires the designation of a national authority or agency in application of the convention and for making and receipt of requests for mutual assistance and co-operation.¹⁵⁸

The convention reiterates the necessity for independence and autonomy of the authorities.¹⁵⁹ As previously noted, the constitution guarantees and clothes key anti-corruption agencies of the IG, DPP and AG with significant independence and autonomy in their work.¹⁶⁰ Finally, the convention requires the staff of the national authorities to be trained or afforded appropriate training and resources in carrying out their tasks.¹⁶¹ The IG and DPP have endeavoured to ensure their staff have specialized courses of study, locally and abroad – thus Mr. Vincent Wagana, a senior attorney with the DPP was in 2004 sent to Pretoria to attend courses on fraud and money laundering.¹⁶²

(i) Measures of international co-operation and mutual legal assistance

The AU convention calls for certain measures of international co-operation and mutual legal assistance in efforts by states to prevent and combat corruption.¹⁶³ Given that most of the obligations are not for each individual state party to effect

¹⁵⁵Art. 14. The convention also requires that access to information to the media should not affect investigation processes and the *right to a fair trial*: art. 12(4).

¹⁵⁶ Leadership Code, sec. 26.

¹⁵⁷ Uganda ratified the ACHPR and the ICCPR in 1986 and 1995 respectively.

¹⁵⁸ Art. 20(1)-(2).

¹⁵⁹ Ibid., art. 20(4).

¹⁶⁰ See 3.2(d)(ii) above.

¹⁶¹ Ibid., art. 20(5).

¹⁶² Interview with Vincent Wagana, Senior State Attorney, Directorate of Prosecutions, Workers' House, Kampala on October 10, 2005.

¹⁶³ Arts 15, 16 and 18.

but are premised on bilateral and multilateral arrangements, only the specific measures that Uganda has or would have to put in place are considered in this report. The emphasis is thus on extradition and certain other aspects of mutual legal assistance.

(i) Extradition

The AU convention calls for the adoption of, among others, measures to make the offences of corruption extraditable as well as to address the procedural and evidentiary requirements in extradition processes.¹⁶⁴ Extradition and extradition procedures in Uganda is governed primarily by the Extradition Act.¹⁶⁵ Firstly, in Uganda, extradition is conditioned on the existence of an extradition treaty¹⁶⁶ – in fact, it is on this premise that there is reciprocal legal provisions and reciprocal backing of warrants.¹⁶⁷ However, while the AU and UN conventions envisage the conventions as legal basis for extraditable offences in corruption, this will require *domestication* of the conventions (or their provisions to that effect) to make acts of corruption extraditable offences. Secondly, the Extradition Act specifies the offences for which extradition of fugitives maybe sought: (a) the offence must not be political in character,¹⁶⁸ and (b) the offence(s) must be listed as extraditable offences in schedule to the Act.¹⁶⁹ While it might be possible to argue on the ‘non-political’ character of corruption, the extraditable offences in the schedule to the Act are essentially ‘offences against the person’ (murder, grievous bodily harm, rape, etc.) and do not therefore include corruption. The provisions of the Act in fact apply not only with regards to extradition itself but also as regards the *apprehension* (warrants) and *committal* (to prison) and the taking of *evidence* (dispositions, documents) of and from fugitives by law enforcement authorities and courts.¹⁷⁰

Therefore, in order to make acts of corruption extraditable offences, this requires *domestication* of the conventions (or the provisions of articles 15 and 44 of the AU and UN conventions respectively) – this is the approach that is envisaged with regards the Statute of the International Criminal Court in respect of requests for assistance and arrests and surrender in the provisions of the International Criminal Court Bill of 2004.¹⁷¹ Probably on account of the state of the law, the Directorate of Public Prosecutions has not had any experiences with extradition in respect of offences of corruption.¹⁷²

¹⁶⁴ Art. 15.

¹⁶⁵ Extradition Act, Cap. 119.

¹⁶⁶ Ibid., sec. 16.

¹⁶⁷ Ibid., Part II.

¹⁶⁸ Ibid., sec. 3.

¹⁶⁹ Ibid., Schedule.

¹⁷⁰ Ibid., sec. 9, 10, 11, 16, 17, 25, 27. The 1995 Constitution nonetheless recognises detention of an individual ‘for the purpose of effecting the expulsion, *extradition* or other lawful removal of that person from Uganda’: art. 23(1)(g).

¹⁷¹ International Criminal Court Bill, No. 10/2004, Parts III and IV.

¹⁷² Interview with Vincent Wagana, Senior State Attorney, Directorate of Prosecutions, Workers’ House, Kampala on October 10, 2005.

(ii) Certain other aspects of mutual legal assistance

There are several forms and areas of mutual legal assistance envisaged under the AU convention, including the apprehension, arrest and transfer of perpetrators of corruption and proceeds of corruption. The extradition legislation and treaties would largely address matters of mutual assistance with regards to the fugitive perpetrators (including collecting of evidence, prosecution before courts, etc.). As regards property and proceeds of corruption, there is need for the development of legislative measures to address co-operation in tracing, requests and transfer (reparation) of such property or proceeds. This will essentially call for legislation to domesticate the measures and procedures envisaged under the conventions—according to Mr. Vincent Wagana, when the domestication of the conventions is achieved, there will be law in place to foster continental co-operation to not only prevent corruption in international transactions but also ensure that corrupt public officials are prevented from enjoying ill-acquired assets by facilitating the freezing of foreign accounts and the repatriation of stolen or illegally acquired monies to the countries of origin.¹⁷³

Of significance with regards to mutual legal assistance is the fact that over the past ten years, there has been a realisation by the African countries that there is a need to have more effective treaties and legislation on extradition and mutual assistance. The countries realised that there was increasing criminality, especially transnational criminality, which continued to threaten stability, security, peace and socio-economic development. Thus in 1996, the United Nations Crime Prevention and Criminal Justice Division initiated a project on extradition and mutual legal assistance in African states.¹⁷⁴ The United Nations African Institute for the Prevention of Crime and Treatment of Offenders (UNAFRI), based in Uganda, is an African component of a network of UN-affiliated regional institutes for prevention of crime and criminal justice. A survey by UNAFRI on extradition and mutual assistance in criminal matters revealed that existing mechanisms, practices and legislation were inadequate and poorly developed and that there was a dearth of bilateral extradition and mutual legal assistance arrangements. The mechanisms and legislation that existed was outdated and needed replacing with modern arrangements. In 2000, Uganda sponsored two draft conventions on extradition and mutual legal assistance prepared by UNAFRI, following a draft approved by African delegates in a meeting in Cairo in November 1999. The draft convention on extradition had comprehensive provisions on principles of extradition, grounds for refusal of extradition, contents of request for extradition and consideration of requests. The draft convention on mutual assistance covered *inter alia* scope of application, types of assistance, assisting authorities, contents of requests, refusal to offer assistance, return of completed requests and securing requested assistance.

¹⁷³ Ibid.

¹⁷⁴ The project was implemented with technical cooperation and funding from the Departments of Justice and State of the United States of America.

While these draft conventions are under consideration, it is only imperative that for the effecting of the measures envisaged with respect to mutual legal assistance that, as with extradition, the conventions (or their provisions in that regard) are *domesticated*. A number of mutual assistance measures may be considered with regards to existing legislation and policy, e.g.–

- (a) service of judicial documents (in criminal and civil matters) is governed by provisions of the criminal and civil procedure codes.¹⁷⁵
- (b) execution of orders of courts from other jurisdictions is governed by the Foreign Judgments (Enforcement) Act,¹⁷⁶ although it is premised on the existence of reciprocal arrangements between Uganda and the requesting state.
- (c) requests for legal assistance have traditionally been undertaken through the office of Minister for Internal Affairs, e.g. transmission or endorsement of a request for extradition.¹⁷⁷
- (d) execution of requests of legal assistance has traditionally been undertaken using diplomatic process – this is the case with extradition.¹⁷⁸
- (e) law enforcement co-operation has involved assistance of the International Criminal Police Organisation (Interpol) – thus DPP has engaged assistance of Interpol over the years in handling of investigation of crimes.¹⁷⁹

¹⁷⁵ See e.g. Civil Procedure Code, SI 71-3.

¹⁷⁶ Foreign Judgments (Enforcement) Act, Cap. The Act provides for procedure for application to Ugandan courts to register a judgement (or order) of a foreign court and its enforcement in Uganda as though it was a judgement (or order) issued by a Ugandan court.

¹⁷⁷ Extradition Act, sec. 22.

¹⁷⁸ Id.

¹⁷⁹ Interview with Vincent Wagona, Senior State Attorney, Directorate of Prosecutions, Workers' House, Kampala on October 10, 2005.

IV: Practical obstacles to implementation of the convention

The ratification of the AU anti-corruption convention calls for, as the next step, the implementation of obligations assumed by Uganda through legislative and policy measures and reforms. Nonetheless, implementation of the convention in Uganda will not be a smooth process and will, as with other instruments calling for legislative and institutional reforms, require commitment and resources. This part of the report addresses some of the obstacles likely to be faced in the efforts to implement the convention in Uganda.

4.1 Capacity building and commitment of resources

Although there exist a number of institutions with an anti-corruption mandate or function, the major obstacle to effectiveness of these institutions is their capacity to cope with tasks required of them in terms of human and financial resources. The AU convention requires that the staff of the national authorities be trained or afforded appropriate training and resources in carrying out their tasks.¹ The training remains minimal, with a few senior staff of institutions such as DPP and IG sent for courses/programmes of study abroad. Furthermore, the staff is not adequately motivated given the poor levels of remuneration in government institutions, with a high turn-over of attorneys in the prosecutorial services that over the past five or so years, the DPP has had to recruit every year as attorneys who had barely been in service for two years leave for greener pastures in other organisations or private legal practice.² This militates against capacity building in key anti-corruption institutions. At the Inspectorate of Government (IG), there is a shortage of personnel that it would not have the capacity to verify the over 1000 declarations of wealth, hence the need to outsource the exercise,³ yet it is over 3 years since the first batch of declarations. At the Auditor General's Department, there is delayed submission of audited reports – such reports which ordinarily have to be submitted at least within 6 months into the next financial year have in practice been availed to Parliament 3-4 years later.

The shortage of manpower in the key anti-corruption institutions has become even the more manifest in the aftermath of decentralisation. The potential for corruption has shifted to local government and become ingrained in the districts and sub-counties, yet the IG and AG have a few regional centres/staff. Ultimately, the IG is disassociated from the 'grassroots' corruption while the AG is incapable of conducting *surprise* and *on-site* audits.⁴

¹ AU Convention, art. 20(5).

² Interview with Vincent Wagona, Senior State Attorney, Directorate of Prosecutions, Workers' House, Kampala on October 10, 2005.

³ Interview with Raphael Baku, Deputy IG at his office, Jubilee Centre, Kampala on October 10, 2005.

⁴ During a pre-testing of an Anti-Corruption Training Manual developed by DANIDA, it was in fact found that instead of for instance carrying out on-site audits at a sub-county, the representative of the AG would require public officials in the sub-counties to report to the AG's district office with accounts books, invoices, receipts where the audit would then be carried out. In effect, the auditors merely carry out *documentary* audit in looking at the books (e.g. of schools) without verifying that the services or goods were indeed rendered (e.g. supply of textbooks, chalk, footballs, etc.): *Report*

Additionally, there is need for computerisation in the work of key anti-corruption institutions. There is presently on-going computerisation in the courts, DPP and the IG. Overall, there is need for committal of resources to ensure effectiveness in anti-corruption activities and retention of human resources in institutions.

4.2 Political will and partisan politics

In spite of the immense efforts that have been put to put in place legislative and policy measures and institutions to combat corruption, these efforts have often floundered in the face of the absence of ‘political will’ on the political leadership to address incidences of corruption. Thus the Kakooza Mutale affair before the High Court and of the Leadership Code before the Constitutional Court and the decisions of the two courts have had far-reaching ramifications not only on the Code (and powers of the IG) but also the overall perception of the government’s political will to fight corruption and abuse of office. The decisions could not have come at a time defined by a lacklustre approach and the absence of political will to fight corruption that had become a feature of the Movement government. The perception is not helped by a number of events, some dating back to the Kakooza Mutale affair and others as recent in 2003-4, viz.–

- (a) H.E. the President deposing an affidavit in respect of the petition before the High Court to the effect that if the IG’s recommendation was wrong, the presidential aide, Kakooza Mutale, would be reinstated.
- (b) The standoff between the IG and Solicitor-General over a file involving payments of compensation to certain individuals and H.E. the President’s ‘intervention’ in the matter.
- (c) The Cabinet’s proposals to the Constitutional Review Commission (CRC) in September 2003 recommending significant changes to the powers and position of the IG.

The seeming absence of political will was already evident in the sixth parliament when there was inaction to sack two ministers accused of influence-peddling and conflict of interest and where a planned parliamentary censure of the then Vice-President for mismanagement of ‘valley-dam’ funds was hijacked by her removal from the agriculture ministry portfolio. The return of the censured ministers into Cabinet in 2001 reinforces the feeling of political inaction on corruption. This is apart from the failure of government to deal with issues surrounding the dubious sale of Uganda Commercial Bank, in spite of a damning report by a parliamentary committee. The list is endless – the National Drugs Authority (NDA) scandal, again involving a previously censured minister, junk helicopters inquiry, etc.

Coupled with the above has been a culture of political patronage and partisanism that has afflicted government, especially in the absence of a viable opposition in the movement political system. Further, it has become a testament of the failure

of top leaders and public officials to lead by example and to provide a reference-point for honesty and integrity. Ultimately, where top public officials are widely believed to be corrupt, the average citizens have tended to see little reason why they, too, should not engage in misbehaviour and misconduct. This mentality that has crept into the Ugandan psyche can only be arrested if there is more political commitment on part of government to fight corruption amongst its ranks.

Until the politics of patronage, cronyism and favouritism are rooted out and the government shows more commitment to deal with corruption than it has in the recent past, its ratification of the AU convention is going to amount to no more than 'window-dressing' for its AU and NEPAD partners.

4.3 Judicial handling of corruption: establishing a special court?

The prosecutorial and judicial institutions are key components in combating of corruption. Nonetheless, both institutions have come under particular attack for the ineffectiveness of efforts to prosecute incidences of corruption. The judiciary has been accused of itself being corrupt and occasioning delays in handling and completion of corruption cases. Furthermore, a separate blame has been attached to evidentiary procedures and requirements before courts as not suited to dealing with corruption.

Under a recent constitutional amendment, there is provision for establishment of a special anti-corruption court.⁵ In principle, this is a good suggestion in light of the difficulties that ordinary courts, bogged down with both criminal and civil case-loads, have had disposing off cases. This may help speed up the disposal of cases on corruption. There are crucial lessons and shortcomings that may have to be drawn from experiences of the Commercial Division of the High Court. The pertinent concerns will be in respect of–

- (i) funding (and manpower) for the special court – invariably, there will be need to recruit and train judges for the court, meet the administrative and infrastructural costs of setting up the court.
- (ii) putting in place a legal framework and rules of procedure (e.g. on burden of proof, tendering of evidence), etc. for the court.

On the other hand, there is an overall concern about the likely proliferation of courts,⁶ without dealing with the key problems in courts (including delays, costs, structures). Further, given that the Ugandan legal system calls for trial before an independent and impartial court, the designation in the constitutional framework of special courts to try corruption has a hint of elevating criminal conduct that is labelled corruption to a category different from ordinary crime with a danger that trials get politicised. Additionally, it assumes that the fundamental weakness in

⁵ Constitutional Amendment Bill, No. 2/2005.

⁶ It is to be noted that not only did the government recommend a special court on **corruption**: *White Paper*, chap 13, p. 68 (September 2004), it also recommended a special court on **terrorism**: *ibid.*, p. 119. This is in spite of the fact that there already exists a Commercial, Criminal and Family divisions of the High Court (not to mention the Land Tribunals), all of which call for additional funding.

the trial process in Uganda is speed, or rather lack of it and creation of a special court fails to address the reason why trial process is slow in the first place. Thus the lack of credibility in the judiciary and judicial institutions is ignored. There is need for a root and branch reform of judiciary, so that any fast track process crafted within it is not perceived as part and parcel of the general dereliction of the court system. The assumption of speed in a special court will only accentuate a sense of suspicion of unfairness— this is already the case with military courts.

4.4 Slow pace of law reform and enactment of legislation

The ultimate and primary means of implementing the conventions is through the enactment of legislation, either to introduce reforms or new principles. Much of the existing anti-corruption legislation is out-dated and there is on-going activity towards its reform and introduction of new pieces of legislation to address areas not covered by the existing legislation (e.g. money laundering). Both the Anti-Money Laundering Bill and Prevention of Corruption (Amendment) Bill are at the drafting stage with the First Parliamentary Counsel. While the FPC has over the years shown great diligence in getting draft bills out, the concern has been the lacklustre approach taken thereafter. General law reform over the years has been slow in pace with emphasis on political legislation and highly sensitive legislation (e.g. land law). Where the government has acted on anti-corruption legislation, it has been on the premise that they formed the cornerstone of the donor anti-corruption strategy and funding. Otherwise, the government has been pedestrian in law reform and enactment of legislation – this has been the case with, for instance, the domestic relations law, sexual offences law.⁷ The recent legislation to suffer this fate are the Access to Information and the International Criminal Court Bills – both bills were gazetted in 2004 and it is yet unknown what their fate will be.⁸ It is likely that they will only be considered now in 2006 during the eighth Parliament.

It becomes thus imperative that any legislative reforms or enactments be fast-tracked into the parliamentary cycle in 2006 and, to that end, significant lobby efforts need to be carried out by civil society.

4.5 Emasculation of civil society

The significant role of civil society cannot be understated. In fact, to counter the problems likely to be faced in pushing for legislative reforms/enactments, the civil society should be at the forefront in spearheading developing of legislation,

⁷ The drafts of the Domestic Relations Bill and the Sexual Offences (Amendment) Bill have been shuttled between Uganda Law Reform Commission and the Ministry of Justice and Constitutional Affairs since 1997.

⁸ It is to be noted that The Access to Information Bill 2004, gazetted in April 2004, only came about after a Private Member's Bill by Hon. Abdu Katuntu, MP forced the hand of the government. This was almost after ten years of inaction by the government had forced civil society to deal with the matter through the formation of the Coalition for Freedom of Information (COFI) which began the process of developing guidelines and preparing draft legislation on access to information. After gazetting of the Bill in 2004, COFI and HURINET-U presented views on the Bill before a committee of Parliament in December 2004. The Bill is still in limbo before the parliamentary committee.

debate on legislation and lobbying Parliament to discuss and pass the law. At the same time, civil society should be at the centre of lobbying government on policy reforms and measures to implement the conventions.

Given that civil society organised through CSOs is regulated by a legal framework, there have been recent concerns over proposals to amend the NGO law through the Non-Governmental Organisations (Amendment) Bill, 2003. The concern is that the proposed amendments would create restrictions upon NGO activity and therefore the workings and operations of CSOs. The changes would grant certain discretionary powers to an NGO Board and the Ministry for Internal Affairs that could be used to restrict the activities of NGOs, and therefore worryingly for the CSOs with an anti-corruption agenda. The NGOs and CSOs spent 2004 fighting the provisions of the Bill that were considered aimed at ‘emasculating’ their roles and activities in society. The Bill, as with other bills, is presently in limbo.

4.6 Reciprocity and procedures in mutual legal assistance

For the near foreseeable future, mutual legal assistance will be premised on the few reciprocal arrangements between Uganda and other countries. This is while reformed legislative measures and new bilateral/multilateral arrangements are put in place. The element of reciprocity will limit the extent to which mutual legal assistance can be rendered in key areas in efforts to combat corruption. Further, it will involve procedures under the laws which themselves are in need of reform to ease delays in rendering of the necessary mutual assistance.

V. Conclusions and Recommendations

5.1 Conclusions

In light of the review of the legislative and other measures that exist in Uganda, it is apparent that the ten year period 1995-2005 has witnessed the creation of anti-corruption legal and institutional environment. There exists in place several anti-corruption legislation that, although fall short in certain respects as regards the obligations under the AU convention, forms the basis of a normative regime for the prosecution of acts of corruption and the institutions mandated to detect, prevent and punish corruption. Some of the institutions, such as the Public Procurement and Disposal of Public Assets Authority (PPDA) and the Fraud Unit in the DPP, are in their infancy. The diversity of the anti-corruption institutions has not translated into effectiveness, especially in the wake of decentralisation, given the dearth of human and financial resources. Most of the institutions have thus suffered institutional weaknesses, owing to investigative capacities (e.g. IG, DPP, CID) or procedural debacles leading to delays (e.g. courts). On the other hand, anti-corruption policies have been at the forefront of government efforts to tackle and combat corruption through, for instance, national integrity surveys and the strategies on ethics in public life by the IG and DEI respectively. The overall policy framework on corruption has not been matched by political will on the part of the government to fight corruption in its ranks. Finally, the legal framework on mutual assistance is perhaps the most inadequate that it needs a more comprehensive approach to reform of legislation and bilateral/multilateral arrangements.

5.2 Recommendations

The recommendations suggested here seek to address priority areas and activities where legislative and institutional reforms can be undertaken. They also set out the key areas/activities where emphasis is to be placed and the factors that maybe required to support efforts in getting reforms effected.

- (a) There should be a comprehensive reform of the anti-corruption laws. The present/on-going piece-meal approach to reform of the Prevention of Corruption Act and introduction of new legislation such as the Anti-Money Laundering Bill will only result in several pieces of scattered legislation. The way forward is the wholesome adoption of much of both conventions into domestic legislation – the resultant legislation would incorporate key convention obligations and, if need, have the conventions as appendices.¹ The advantage is that certain aspects of the conventions – e.g. offences, scope of the occurrence of corruption, jurisdiction, forms of mutual legal assistance – would automatically be domesticated by the legislation.

¹ This is the approach that has been adopted in the International Criminal Court Bill, 2004 that seeks to domesticate the 1998 Statute of the International Criminal Court.

- (b) The reform of sectoral laws such as the Local Government Act to bring it in conformity with the PPDA Act can however go on.
- (c) The existing bills such as the Access to Information Bill, the Whistleblower Protection Bill (if introduced separately from the Access to Information Bill) and the Qui tam Bill should be treated as priority legislation and their passage into an Acts of Parliament be completed in 2006. The regulations in the respect of these legislation should likewise be speeded up.
- (d) There should be commitment of human and financial resources on the part of the government in order to ensure the effectiveness of the existing anti-corruption institutions. These institutions should have their presence felt at the grassroots levels of governance and delivery of services. In terms of specific goals, this would enable the following institutions to undertake the following tasks as priority concerns–
 - (i) verification of declarations of wealth by leaders and public officials (IG)
 - (ii) ‘on-site’ audit of accounts and expenditures of local government bodies/institutions (AG)
 - (iii) investigation and prosecution of acts of corruption (CID/DPP)
- (e) The government should speed up implementation of some of the key areas of its 2004-7 national anti-corruption strategy, in particular development of a curriculum on teaching of ethics in schools.²
- (f) The government should pursue efforts to conclude mutual legal assistance treaties/agreements within the auspices of the AU.
- (g) There should be a strengthening and empowerment of the civil society and civil society organisations (CSOs) in terms of legislative framework but also in measures and processes for involvement, participation and collaboration in the efforts and activities of key government anti-corruption institutions.
- (h) The civil society should initiate and enhance linkages and networking to foster efforts at prevention and combating corruption, through–
 - (i) spearheading development and public debate on a comprehensive anti-corruption legislation.
 - (ii) lobbying government to sponsor a comprehensive anti-corruption bill in 2006 and ensure its passage into an Act of Parliament within the year.

² This is borne out of the fact that the Directorate of Ethics and Integrity (DEI) has over the past 1½ years been promising the civil society that such a curriculum is in the offing. This was a position that DEI officials gave to the CSOs during consultative workshops on guiding principles on access to information in March-April 2004.

- (iii) monitoring government programmes and raising awareness among the general public.

Other priority areas include–

- (i) The constitutional/legal ambiguity between the 1995 Constitution and the Leadership Code Act, created by the challenge and nullification of certain provisions of the Code, needs to be resolved. In effect, any amendments to the Leadership Code should be fast-tracked and completed by 2006.
- (j) The regulations to give effect to certain provisions of the Leadership Code should be put in place in 2006.³

The above recommendations are seen as key priority areas for the government and the civil society.

³ In August 2005, the IG called for consultancies to develop the regulations: see *Consultancy for the Development of the Leadership Code Regulations for the Directorate of Leadership Code*, Procurement Reference No. IGG/Services/05-06/00024.

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