

PRESENT SITUATION, PROBLEMS AND SOLUTIONS IN THE LEGAL SYSTEM RELATED TO CORRUPTION CONTROL IN UGANDA

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I. INTRODUCTION

There is no universal definition of corruption, but it is generally agreed that corruption is the illegal use of public power by a public official for private gain.

While corruption may manifest itself in a simple and straightforward manner, in many cases it is carried out through complex methods involving cross-border transactions.

Delivery of justice and other services by Government to the population can be negatively affected by corruption. Its effects are more devastating on the poor who are not capable of seeking private services such as medical and legal aid. Corruption also hinders investment, proper trade and genuine economic activities. It creates unfair competition whereby genuine performers in the economy fail to survive.

The anti-corruption agencies in Uganda have together developed and are spearheading the implementation of a National Anti-Corruption Strategy and working to bring all other stakeholders on board to help its implementation.

II. CURRENT SITUATION OF CORRUPTION IN UGANDA

This part of the paper presents the trend and criminal situation of corruption, legal framework including elements of offences and investigative methods, relevant agencies and institutions and their jurisdiction, and, the practice of the criminal justice system in Uganda.

A. Trend and Criminal Situation

Uganda has designed the National Strategy to fight corruption 2004 – 2007 which is a policy document on operations of anti-corruption agencies. The document, citing the second National Integrity Survey report of 2003 (the first was in 1998) indicates that a significant number of cases of grand corruption have emerged in recent years leading to significant losses of public funds through mishandled procurements and outright embezzlement. Further, that there has been petty corruption associated with low morale and indiscipline among poorly paid civil servants.

Where corruption has gone unpunished, or sanctions have been delayed due to weak systems and difficulties of obtaining evidence to prove court cases, parts of society have developed the perception that corruption is condoned, and tended to tolerate and participate in petty corruption due to sympathy regarding poor pay and the belief that there are those who are involved in more serious corruption but have not faced serious sanctions because they were not successfully prosecuted.

The surveys also note that government bureaucracy in providing certain services like issuance of licenses and permits involving several approval stages provides fertile ground for extracting bribes, while financial pressure on politicians to recover heavy election expenses leads them into corruption.

According to the surveys, sectors that have featured in incidences of corruption unfortunately have included the anti-corruption agencies such as the lower levels of the police and the judiciary. Others have been the health services, tax collection and local councils

However on a positive note, the 2003 survey report also indicates that anti-corruption efforts have yielded positive results. Since the 1998 survey, there has been a marked reduction in the reported incidences of bribery relating to the police, revenue services and magistrates courts. There has also been reported general satisfaction with improvements of services in health, education and agriculture.

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B. Legal Framework and Investigative Methods

The major anti-corruption legislation in Uganda today is the 1970 Prevention of Corruption Act. Under this law, corruption as an offence involves the participation of a public official. The law criminalizes corruption where a public official corruptly solicits or receives or agrees to receive a gratification as an inducement to, or reward for doing or omitting to do anything in which the public official is concerned. The said law also criminalizes the act of corruptly withdrawing a tender which has been awarded. Both the public official and the other party involved are treated as offenders. The law further criminalizes similar corrupt transactions involving an agent when conducting the principal's affairs or business and bribing any public official in order to vote or not to vote in any matter.

Other corruption related offences are found in the Penal Code and include embezzlement, causing financial loss, abuse of office, and false accounting. Embezzlement is theft by any employee, and also covers directors of companies or corporations and members of associations or religious organizations. Causing financial loss is where the acts or omissions of a public official or employee of a bank, credit institution, or insurance company cause financial loss to the employer or a customer. In abuse of office, a public official's arbitrary acts or acts done under his/her direction must be found to be prejudicial to the employer's interests. False accounting is where a public officer knowingly furnishes false statements or returns relating to public property, revenue or balance of public funds.

The above offences are investigated by mainly a specialized fraud squad of the Criminal Investigations Department (CID) based at the Police Headquarters or the investigators of the Inspector General of Government (IGG). The investigators come from various backgrounds of training.

The investigations involve obtaining relevant documents and statements of witnesses in the affected organization. Inputs are sought from experts in the affected organizations and others, especially auditors from the Office of the Auditor General, and document analysts or handwriting experts from the Government Analytical Laboratory.

The auditors are useful in unearthing financial irregularities or malpractices while document examiners mainly deal with the identification and analysis of handwriting, signatures, alterations, erasures, embossments and stamp impressions. In some cases the input of the Public Procurement and Disposal of Assets Authority (PPDA) may be required to identify procurement irregularities and malpractices.

C. Uganda's Anti-Corruption Agencies and their Jurisdiction

Uganda's main anti-corruption institutions are the Directorate of Public Prosecutions (DPP), Inspector General of Government (IGG), Criminal Investigations Department (CID), Auditor General and the Public Procurement and Disposal of Assets (PPDA).

The office of the DPP is established by Article 120(1) of the Constitution of Uganda. The DPP has the mandate over all criminal prosecutions in the country, including corruption cases. The DPP is independent in the sense that in the exercise of his/her Constitutional functions the DPP is not subject to the direction or control of any person or authority. Under Article 120(3) of the Constitution the major functions of the DPP include directing the police to investigate any information of a criminal nature and instituting criminal proceedings against any person in any court with competent jurisdiction other than a court martial.

Under Article 120(4) of the Constitution the powers of the DPP can be exercised by the DPP personally or by officers authorized by the DPP who are State Attorneys and State Prosecutors. However, the law requires the consent of the DPP personally in writing before commencing prosecution in corruption cases under the Prevention of Corruption Act and other corruption related offences like abuse of office under the Penal Code Act.

The DPP does not carry out investigation of cases. This is the function of the police. The role of the DPP is to guide and advise the police in the conduct of the investigations. The cases are reported to the police who carry out investigations and refer the case to the DPP for legal advice and to conduct the prosecution. The prosecutions are done in the Magistrates courts, although the DPP has powers to commit any case to the High Court for trial.

Under Article 230(1) of the Constitution of Uganda, the IGG has powers to investigate, cause investigation, arrest, cause arrest, prosecute, or cause prosecution in respect of cases involving corruption, abuse of authority or of public office. The major difference in the roles of the DPP and IGG are that while the IGG has powers to investigate, arrest and prosecute offenders, as already stated, the DPP does not investigate or arrest but relies on the police for investigations and arrest. Secondly, while the DPP has powers to control and handle all criminal prosecutions in the country, IGG handles investigations and prosecutions only in corruption cases, and cases of abuse of authority or public office. Corruption cases are defined in the IGG Act to include embezzlement, bribery, nepotism, influence peddling, theft of public funds or assets, fraud, forgery, causing financial or property loss and false accounting in public affairs.

In investigation of corruption, Uganda's Prevention of Corruption Act gives the DPP powers to: cause the investigation of any bank account, share account or purchase account; apply to court for orders restricting disposal of assets or bank accounts of accused persons; order the inspection of documents and obtaining of copies thereof; and, to obtain information. The same powers apply to the offences of embezzlement and causing financial loss under the Penal Code. Under the proposed amendment of the law, similar powers will specifically be extended to the IGG. However, under the IGG Act, the IGG generally has powers to make any such orders as are necessary in the circumstances.

D. Practice of the Criminal Justice System

Our criminal justice system is an adversary one based on the English law. The accused is presumed to be innocent until proved guilty. The burden is on the prosecution to prove the guilt of the accused beyond a reasonable doubt. The accused has no duty to prove his/her innocence.

Because of our rules of evidence, courts tend to require the production of original documents in evidence during trial. This makes matters difficult for the prosecution, where the accused may have caused disappearance of important documents.

III. CURRENT PROBLEMS AND MOVES RELATING TO CORRUPTION IN UGANDA

This part of the presentation highlights the current problems and moves relating to the investigation, prosecution and adjudication of fraud and corruption cases in Uganda.

A. Weaknesses in the Law

As already indicated, the scope of our Prevention of Corruption Act is limited mainly to bribery and the involvement of public officials. Therefore, the Act is being amended to define and broaden the offence of corruption to include diversion of public funds, influence peddling, conflict of interest and illicit enrichment, and, to cover employees in the private sector.

Economic gain is the major motivation for engaging in corruption. Therefore, the fight against it should involve targeting the proceeds of corruption. Uganda, however, lacks various laws in this area. Therefore, in addition to amending the Prevention of Corruption Act to cater for this situation we are currently working on new laws to help in the fight against crime generally by targeting crime proceeds, including money laundering. Other laws to be enacted in the fight against crime, including corruption are Qui-tam and a law to protect whistleblowers.

B. Lack of Sufficient Public and Victim Participation and Awareness

Fighting corruption requires effective public involvement. Yet many people do not seem to be alive to the fact that corruption involves and affects everybody and that the strategy to fight and eliminate it, therefore, should involve everybody. Many people seem to be indifferent or to lack knowledge of their role in fighting corruption by reporting, providing evidence and serving as witnesses. Many people do not feel obliged to play any direct role in preventing corruption or as witnesses in corruption cases. The public do not view corruption and corrupt public officials with the same intolerance as those who steal their personal property and commit other crimes of a personal nature. Consequently, the public and the relevant officials are rather reluctant to assist the investigators and prosecutors in a number of cases.

There is also lack of cooperation from witnesses who are approached by investigators to provide evidence or serve as witnesses, for fear of reprisals from accused persons, or they do not want to implicate relatives,

friends, their employer or those with influence.

Some victims such as banks and embassies do not want exposure and as such, are reluctant to report or participate actively in cases when they get to court. In some cases, they have no confidence in the criminal justice system to handle their cases.

In view of the above state of affairs, there are efforts in Uganda to ensure that Government institutions, donors and civil society strategically work together to raise public awareness against corruption. Investigations, prosecutions and the fight against corruption generally will greatly improve with improved public awareness and participation in the reporting of corruption, giving of evidence and general public intolerance of corruption.

C. Lack of Specialization in Handling Corruption Cases

Presently in Uganda, corruption cases are prosecuted in the magistrates courts, regardless of the complexity and magnitude. Although the DPP has powers to take any case to the high court, the said court, like the magistrates courts, suffers from a high degree of backlog.

There are no specialized criminal courts for corruption cases or any other crime categories in the magistrates courts. The magistrates courts handle corruption cases, in addition to all other crime case categories. They also handle civil cases, except only one city court which handles only criminal cases. This arrangement contributes to delays in concluding corruption cases, which frustrate witnesses.

There have been no specialized prosecutors for fraud or any other crime category. State prosecutors handle all case types in the magistrates courts while state attorneys do the same in the magistrates courts as well as the higher courts. Those who are assigned complex fraud corruption cases must grapple with them in addition to other pressing casework and yet many corruption cases are difficult and time consuming. Concerned parties become impatient and urge courts to impose measures which may be unfavourable to the prosecution.

At the beginning of 2004, the DPP set up a small fraud unit for a start, which is now operational having attached and trained its officers in the UK and South Africa. The Police have a serious fraud squad that is also operational. The two have now started working together on serious fraud and corruption cases from early investigation stages and continue contact throughout the trial. It is being proposed that serious fraud and corruption cases could be handled under scheduled special sessions, which would help improve on the speed and rate of disposal as well as benefit from a specially funded programme which is already in place to handle a backlog of capital cases in the high court.

The DPP is planning to carry out a baseline survey on corruption cases in the country. This will help us to understand the types, nature, number and status of corruption cases in the country. In addition, members of the fraud unit undertaking further studies are encouraged to do their research in the country in the area of fraud and corruption.

The anti-corruption agencies are pushing for the establishment of a specialized court for fraud and corruption cases and the idea has been passed in the constitutional amendment bill soon to become law.

D. Insufficient Capacity

The anti-corruption institutions lack sufficient well trained and experienced staff to handle fraud and corruption cases. There is great need to continually train and upgrade staff in investigation, prosecution and adjudication of corruption cases that are increasingly becoming sophisticated and highly technical. The fraud unit of the DPP and the National Fraud Squad of the police need specialized training both locally and internationally to be able to cope with the task.

Uganda also suffers an acute shortage of handwriting experts (document examiners) and it is a big problem when it comes to analysis of questioned documents. These experts also lack modern equipment for their work.

Tied to the issue of capacity building through training, is the question of low staff remuneration, which affects staff retention. Our experience has been that well trained skilled prosecutors have performed better, raised their profiles, become marketable and are targeted by other employers, who take them up for better terms and conditions of service. In this way, we have lost many good prosecutors. We seem to be investing in people who we are failing to retain in our institutions.

E. Complexity of the Cases

Most corruption cases involve complicated patterns of fraud. Such cases are more difficult for the investigators, prosecutors and magistrates than the capital cases of murder, rape and robbery.

The people who get involved in acts of corruption are well educated. They are the specialists in their areas of training and work. They use modern equipment, technology and skills. Public institutions and government departments and agencies are starting to suffer from acts of well trained officials whose corruption can be difficult to detect and fight unless there are well trained officials in the anti-corruption agencies.

F. Lack of Co-ordination Among Anti-Corruption Agencies

In the past, because of lack of knowledge and information on how the criminal justice system worked, some among the anti-corruption agencies found it difficult to appreciate the unsatisfactory features of the process and outcome. This led to accusations and counter accusations among anti-corruption agencies.

In view of the above and other factors and in order to improve effectiveness and efficiency in the fight against corruption Uganda has realized the need for increased coordination among institutions of the Justice Law and Order Sector (JLOS) and with other anti-corruption institutions. In this regard, Uganda has put in place the Anti-corruption Agencies Forum (IAF) to which some JLOS institutions are active participants. The Forum is chaired by the Minister of Ethics and Integrity and comprises of the Inspector General of Government (IGG), the Director of Public Prosecutions (DPP), the judiciary, the police, Public Procurement and Disposal of Public Assets Authority, the Auditor General and other institutions. Through the forum the anti-corruption agencies have been working together in the design and implementation of a national strategy to fight corruption, promoting publicity and advancing legal reforms.

Through a programme called the 'Chain Linked' Initiative, close co-ordination, communication and cooperation among criminal justice institutions has been emphasized in streamlining operations that impact on the fight against corruption. Under the programme, performance standards for all our institutions have been designed. These standards, among other things, set time limits for activities by all the institutions. How long certain investigations should be conducted by the police, the periods for perusal of files by state attorneys, the periods for writing of judgments by judicial officers and other performance time limits are set and are used in evaluating performance.

The DPP and Police have in place a joint coordination committee which meets monthly to ensure that Police/DPP operations remain coordinated. Further, the DPP/police attend joint annual workshops to share experiences, discuss common shortcomings and agree on the way forward. We plan to include the judiciary in this arrangement.

Uganda's anti-corruption agencies have set as one of their strategies the sharing of information and experiences. For this to be achieved all the agencies need to improve on their record of data management. We have to computerize our records and data to be able to easily retrieve and share information. Good records and reliable data can tell a good story about our performance. Our records currently are not in a proper state for us to tell what we have done and achieved. It may not be easy to share such data, records and information. Computerization, registry management, case management and data collection and analysis from different stations are activities the anti-corruption agencies are working to upgrade and modernize in Uganda.

IV. GLOBAL FIGHT AGAINST CORRUPTION

A. International Conventions

Uganda is a signatory to both the UN and AU Conventions against corruption. The conventions have not yet been domesticated into our domestic laws.

However, the provisions of the conventions are being considered in our amendments and new laws with a view to domesticating the international law in respect of corruption. The proposals for the amendment of Uganda's Prevention of Corruption Act include a number of provisions of the UN Convention that are not yet part of our current law. The provisions in the UN Convention that relate to Money Laundering and Bank Secrecy are being handled in the Money Laundering Bill.

B. International Cooperation

The global fight against corruption requires effective international cooperation through extradition and mutual legal assistance. Uganda has extradition treaties with only about 35 countries and corruption is not specifically listed among extraditable offences. These issues will have to be addressed when domesticating international conventions into our domestic legislation.

V. CONCLUSION

Corruption has increasingly become complicated and difficult to handle. The fight against it is a continuous process. A lot more will be achieved when issues are addressed in countries, relating to problems like public participation and awareness, legal reform, coordination of efforts and capacity building; and, when there is effective international cooperation.

As a country and as an individual participant, we are willing to learn from everyone who has ideas, proposals or any other forms of assistance that will enable us to achieve more in the anti-corruption struggle.