“AS STRONG AS ITS WEAKEST LINK”

Stakeholders’ Perceptions of the Ugandan Legal and Institutional Anti-Corruption Framework

Transparency International Uganda
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This report was written and researched by Lian-Philipp Haddad, Program Officer for Research at Transparency International Uganda (TIU).

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BACKGROUND

Transparency International Uganda (TIU) is a national chapter of Transparency International (TI), a global coalition against corruption. TI Uganda was founded in 1993 and is registered as a non-governmental organization with the Uganda NGO Board. TI Uganda works to create change towards a Uganda free of corruption and its effects. It has national jurisdiction and promotes good governance (transparency, integrity and accountability) with specific emphasis on education, health, water, private sector, extractive industry, and political corruption.
Its program areas include: Transparency and accountability in service delivery in education, health and production; Deepening democracy and political accountability; Transparency and accountability in public and private sectors and; Transparency and accountability in the extractive industries.

LIST OF ACRONYMS:

ACC	Anti Corruption Court
ACCU	Anti Corruption Coalition Uganda
ACD	Anti Corruption Division of the High Court (Used interchangeably with ACC)
AG	Auditor General
CIID	Criminal Investigations and Intelligence Directorate, Uganda Police Force
CSO	Civil Society Organisation
DEI	Directorate of Ethics and Integrity
DIG	Deputy Inspector General
DPP	Directorate of Public Prosecutions
DTM	Data Tracking Mechanism
GAVI	Global Alliance Vaccines
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IG	Inspectorate of Government
IGG	Inspectorate General of Government
JSC	Judicial Service Commission
MP	Member of Parliament
NGO	Non Governmental Organisation
PAC	Public Accounts Committee
TIU	Transparency International Uganda
UDN	Uganda Debt Network
ULS	Uganda Law Society
UNCAC	United Nations Convention Against Corruption

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EXECUTIVE SUMMARY

The public debate on the legal and institutional anti-corruption framework in Uganda agrees that political will is one of the factors determining the success of anti-corruption policies, laws and institutions. However, if the government is not willing, how does this materialize in the implementation of the laws in place in Uganda? Which screws do observers expect the government to twist to make the anti-corruption machinery function? Providing a detailed glimpse into the stages of anti-corruption prosecutions and the respective challenges occurring on each, the report at hand complements existing literature on the inefficiencies of the Ugandan anti-corruption framework. Extensive insights into the practical obstacles faced by those working in the involved institutions, add to already existing conceptual explanations used to summarize the reasons for the persisting impunity for corruption culprits.

Interviews were conducted with stakeholders from various selected occupations related to the prosecution of corruption cases. The design of the sample of participants was aimed at gaining direct insights into the real barriers and difficulties faced by the implementing institutions. Among the selected interview partners were judicial officers, state attorneys, lawyers, as well as staff from the Office of the Auditor General, Law Development Centre, Judicial Service Commission, Uganda Law Reform Commission and Uganda Law Society. Additional insights were collected from outside observers knowledgeable about the Ugandan endeavours against corruption, notably legal academics, anti-corruption activists and representatives from the civil society. A small number of international donor representatives have also been asked to comment.

The overview given by the report over the legal framework in place in Uganda sheds light on the legal mandates and relationships between the organs involved in the prosecution, investigations and trials of corruption cases in Uganda. It also presents the legislative framework under which corruption is being prosecuted, looking at the Constitution of Uganda, the Anti Corruption Act, the Penal Code Act, the Leadership Code Act, the Anti Money Laundering Act, the Access to Information Act, the Inspectorate of Government Act and the Whistleblowers Protection Act.

The identified red flags spread across the institutional and legal framework. Openness to bribery, threats and intimidations, for instance, are issues affecting both investigators and prosecutors, which significantly limit the independence of their work. Lack of adequate training and appropriate capacities, on the other hand, further decrease the chances of successful prosecution of corruption cases. Also, poor incentives and protection for witnesses strongly weaken prosecutions, while legislation and structures enabling the recovery of embezzled funds are not sturdy enough to ensure asset recovery. Finally, delayed justice contributes to the failure of cases in court, notably through practices such as appeals without merit against judgments, or referrals of cases to the Constitutional Court for interpretation. Such referrals, in turn, are needlessly facilitated by institutional loopholes, such as the absence of a Leadership Code Tribunal, the lack of appointment of institutional personnel, or the duplication of mandates of the DPP and the IGG.

The report establishes the link between barriers to prosecution and the lack of political will to effectively fight corruption. Given the disappointment of stakeholders over this absent commitment, many have stressed the need for civil society actors to more actively complement the role of mandated institutions. In this respect, private litigation in the form of civil society actors directly bringing cases to court, is a very progressive and at the same time challenging proposal. Next to taking a more

proactive approach, it is imperative that all actors continue to raise greater awareness about the negative effects of corruption on society and its welfare. Individual awareness is indeed necessary in order to overcome what is perceived as moral acceptance of corruption. A *rights-based-approach* would in this sense try to put the victims who have suffered the effects of corruption directly in the centre of anti-corruption efforts.

1 INTRODUCTION

A common argument put forward to explain unsuccessful prosecution of corruption cases, is political interference. Political interference however, is an abstract concept that usually refers to subtle and ambiguous actions manipulating anti-corruption institutions. To many observers, it is so abstract that it is hard to understand. And if it is hard to understand, it is hard to fight. One concrete example of political interference, for instance, is the case of prosecutors receiving calls ordering them to drop a certain case. This is an explicit example of stakeholders being interfered with.

Apart from being accurate, this example also provides insight into one of the most pressing questions when talking about the ineffectiveness of the anti-corruption framework in Uganda: how does political interference materialize? Do political actors manipulate anti-corruption institutions and render them ineffective? If so, how? If there are several government departments, constitutionally mandated institutions and a special Anti Corruption Court in place to fight corruption, the question that deserves to be asked is how are these bodies being compromised? Considering the heavy human and economic toll that corruption has on the country and considering the Ugandan government's numerous *Zero-Tolerance-to-Corruption* commitments, such questions become very relevant. And the revelation that government officials can undermine the fight against corruption by simply calling a prosecutor with illegal directives as illustrated above, becomes even more appalling.

The debate about the enduring ineffectiveness of anti-corruption institutions despite the elaborate legislative framework in place often arrives at decisive but shallow conclusion. Literature on corruption in Uganda regularly concludes with echoing complaints about the absent political will of the government to curb corruption in public offices. However, if one's goal is to pressure the government to be more committed to and step up the fight against corruption, or if the goal is to eradicate corruption *per se*, it is necessary to go further to understand what is meant by terms such as political interference or absence of political will. It is also necessary to acknowledge the numerous forms of political interference outside of the lack of political will, such as a lack of appointed personnel in anti-corruption institutions, or lack of incentives provided for witnesses to testify in front of the Anti Corruption Court.

For the purpose of this report, it may be helpful to temporarily remove the political angle from the debate and first ask: What are the practical legal and institutional challenges that obstruct the successful prosecution and conviction of corruption culprits? Once these practical obstacles are properly understood, one can then consider the potential influence that the political elite have on these endemic challenges and obstructions. Indeed, to fully operationalize the Ugandan anti-corruption framework, it is imperative to know how corrupt actors forge inroads into the mandated institutions in order to patch these weak spots.

Therefore, the goal of this research is to identify challenges and handicaps experienced by the institutions mandated to prosecute and eradicate corruption. To obtain a realistic image, a qualitative study was designed that focuses on the most important stakeholders in these institutions, as well as the most knowledgeable observers situated outside of the institutional framework. The aim was to scrutinize which legal and institutional shortcomings - in the eyes of the interview partners - should be handled with priority. Surely, the subjects under discussion will to an extent mirror what existing literature has identified as policy priorities to eradicate impunity for corruption cases in Uganda. Nonetheless, given that this report echoes the voices

and experiences of the stakeholders interviewed, priorities are being boiled down to what practical difficulties actually obstruct real accountability for corruption – rather than theoretical considerations. Because the research mirrors the ideas and concerns that were recorded during the interviews, a realistic glimpse into problems faced at the working-level of the agencies or organisations involved in prosecuting corruption crimes is provided.

In effect, the document at hand should be regarded as a pool of ideas for participants in the anti-corruption debate in Uganda to reflect on why the corrupt continue to enjoy impunity. Furthermore, the report portrays the complexity of the challenge faced, by engaging an array of different aspects of *de jure* and *de facto* difficulties in fighting corruption in Uganda. Therefore, these extensive insights prescribe a nuanced and multi-faceted approach to addressing the deficiencies, rather than adopting a one-channel response that over-emphasizes any one particular agency or aspect of the anti-corruption chain.

In this light, the study report is structured as follows. The methodology adopted will be laid out in chapter two, followed by a review of existing literature on the Ugandan government's fight against corruption in chapter three. Chapter four elaborates the Ugandan legislative and institutional framework relevant for the fight against corruption. The main part, chapter five, will analyze and describe the data that has been gathered in the context of this study. The chapter will be divided into sub-chapters on: (a) the legal, technical and operational challenges faced by the institutions involved in implementation; (b) the political dimension of the obstacles to implementation - the political influence over obstacles to implementation and the absence of political will; and (c) the responses envisaged by interview partners. An additional section will then summarize all the legal challenges that were encountered across the main body. In chapter six, the report will conclude the findings of the research and make recommendations.

1.1. Objectives of the Study

The objectives of this study were to identify the obstacles to successful prosecution of corruption cases. In order to avoid speculation and a too theoretical approach, the study set out to obtain information about these obstacles from interviews with people directly working in the prosecution of corruption. The second objective was to find out in how far the identified obstacles are effects of political interference, or are caused by absence of political will of the government to eradicate corruption. Overall, the findings of this study are meant to inform more determined and focused advocacy efforts aimed at closing the institutional and legal gaps leading to impunity for corruption perpetrators.

2 METHODOLOGY

2.1 The *Grounded Theory* as Research Method

This study is supposed to gather and analyse various views on the obstacles to prosecution of corruption cases without an *à-priori* interpretation regarding causes and institutions responsible. It is supposed to scan the opinions of stakeholders involved in order to test what is generally perceived as reasons for impunity. No hypothesis has guided the research from the outset. Instead, the data and emerging trends obtained through qualitative interviews inform the conclusions of this report.

To develop a consistent methodology for this study, the researcher has borrowed key ideas from the *Grounded Theory* qualitative data analysis method.[1] The main concern behind the *Grounded Theory* is that analysing qualitative data with a predefined theory in mind "would force data into the straightjacket of pre-existing concepts", resulting in research outcomes that have "little connection to substantive social life".[2] Researchers, who start their data collection and analysis with a defined set of theories and concepts at hand, confront the subject of their study with a bias, directly affecting the conclusions of their research. Instead, Glaser and Strauss[3] recommend to "ignore the literature of theory and fact of the area under study", in order not to contaminate the research findings.

Therefore, the researcher should approach the information collected in interviews in as a neutral manner as possible. The aggregated data can then be scrutinized for concepts, meanings and interpretations with the purpose of consistently categorizing all relevant statements. Theories can be deduced by interpreting the trends, which emerge within these categories. The advantage of this method is that it makes an attempt at obtaining raw information from interview partners, which can then be critically reflected upon. This maximizes the likelihood that the researcher ends up with a new picture of a possibly known phenomenon, because existing theories have been disregarded until the analytic work has been completed.[4] It should be noted that the *Grounded Theory* is usually being consulted predominantly in social, educational or health related subjects, and often aims at deducing theories concerning behavioural aspects. Because in this very study the *Grounded Theory* will be applied to judicial and prosecuting institutions, guiding literature on the theory's application is relatively scarce.

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[1] Glaser, B. G. & Strauss, A. L. (1967) *The discovery of grounded theory: strategies for qualitative research* (New York, Aldine)

[2] Timmermans, S. & Tavory, I. (2012) "Theory construction in qualitative research: From Grounded Theory to Abductive Analysis". In *Sociological Theory*, Vol. 30, No. 3 (September 2012), pp. 167-186

[3] Glaser, B. G. & Strauss, A. L. (1967) *The discovery of grounded theory: strategies for qualitative research* (New York, Aldine), p. 37

[4] Timmermans, S. & Tavory, I. (2012) "Theory construction in qualitative research: From Grounded Theory to Abductive Analysis". In *Sociological Theory*, Vol. 30, No. 3 (September 2012), pp. 167-186; and Thomas, G. & James, D. (2006) "Reinventing Grounded Theory: Some questions about theory, ground and discovery". In *British Educational Research Journal*, Vol 32, No. 6 (Dec., 2006), pp. 767-795

2.2 Data Handled in this Report

Since qualitative interviews with stakeholders form the centre of this research report, a big share of the data is derived directly from the perceptions and experiences of stakeholders. The insights thus gained are invaluable since they mostly convey information, which can otherwise not be obtained. When citing information, this report will state through which means the information has been obtained. Statements are only deemed reliable, if a statistically significant margin of interview partners has backed them up, either by stating the same information, or making reference to the same issue. In other instances, information obtained through interviews has independently been verified by the researcher, and is sided by documented sources. The term "documented sources" refers to an array of material, such as judicial files and decisions, institution's reports, research by academics and field experts, but also journalistic investigations. In some instances, however, stakeholder's statements are regarded as unique opinions or insights, which are deemed relevant enough to be cited in this report.

For the study at hand, the researcher has conducted interviews with stakeholders from various selected occupations related to the prosecution of corruption cases in Uganda. The interviews were held in English and took place in Kampala between January and June 2015. No remuneration or facilitation was paid to the interview partners in any form. Several stakeholders have spoken to the researcher only on the condition that their statements are not associated to their identity, and they remain anonymous.

The design of the sample of participants was aimed at gaining direct insights into the real barriers and difficulties faced by the implementing agencies of the anti-corruption legislation. In addition to this, the perspective of experienced observers and outside actors was documented, such as legal scholars, activists and civil society representatives. This way, it was possible to measure the statements of representatives from the anti corruption institutions against those of independent observers and representatives from civil society. Overall, the sample design was supposed to combine both critical evaluations of the Ugandan anti-corruption institutions as well as first hand knowledge from professionals on the ground.

First, the institutions and bodies directly involved in the judicial process were selected for interviews. Among these were judges and magistrates from the Anti Corruption Division (ACD) of the High Court, as well as state attorneys from the Directorate of Public Prosecutions (DPP) prosecuting cases at the Division and advocates experienced in practicing in front of the Division. Further, representatives from the Office of the Auditor General (OAG) were interviewed. Also included in the sample are representatives from the organs involved in the education and recruitment of judicial officers, such as the Law Development Centre (LDC), and the Judicial Service Commission (JSC). Officers from agencies involved in legal policy work, such as the Uganda Law Reform Commission (ULRC) and the Uganda Law Society (ULS) were also interviewed.

In order to gain insights from outside observers who have studied and dealt themselves with the Ugandan endeavours against corruption, a number of legal academics, legal and anti-corruption activists and representatives from civil society organisations were interviewed. The Civil Society Organisations contacted deal primarily with corruption related issues and have significant insights into both institutions occupied with fighting corruption, as well as with particular corruption

cases in front of the Anti Corruption Court. A small number of international donor representatives have also been asked to comment on the subjects studied.

Unfortunately, the Inspectorate of Government (IG) has declined to grant permission to interview IG staff, despite repeated requests. The IG has instead referred the attention of the researcher to the Inspector General of Government's (IGG) annual report to Parliament. The Inspector General of Police (IGP) as well as the Director of the Criminal Investigations and Intelligence Directorate (CIID) have given permission in principle to interview CIID staff. Regardless, several attempts by the researcher at meeting CIID representatives were unsuccessful. Hence no interviews were conducted with the Police and the IG by the time this report was published.

3 LITERATURE REVIEW

3.1 Existing Literature on the Ugandan Anti-Corruption Framework - Approaches

Corruption in Uganda is a challenge with tremendous and far reaching administrative, economic, political and social implications. Corruption in Uganda is entrenched in an array of sectors and has a plethora of effects on both individuals and the society as a whole. Over time, Transparency International Uganda (TIU) has conducted studies that deal with these effects as well as potential remedies. The legal and institutional framework in place to eradicate corruption in Uganda is overarching and covers most sectors affected by corruption. Acknowledging the importance of this framework to be intact and effective, Transparency International Uganda has now conducted a study that tries to explore the reasons for relative impunity regarding acts of corruption in Uganda. This very study is an attempt at evaluating the Ugandan anti corruption sector, including its institutions and laws, and test it for loopholes and deficiencies.

In 2005 TIU published a review of legislative and other measures directed at combatting corruption, contrasting these measures with obligations under the African Union anti-corruption convention. The review carefully scrutinizes the Ugandan anti corruption legislation and institutional framework. This study was completed before the enactment of the Anti Corruption Act of 2009, and before the creation of the Anti Corruption Division, yet it provides a good overview of institutional and legal developments in Uganda in the years preceding their creation. The review also devotes a short section to the implementation of the anti-corruption framework, but does not go into detail about practical obstacles to the successful prosecution of corruption in Uganda.

The 4th report on the Data Tracking Mechanism (DTM) of 2014 by the Inspectorate of Government[5] has, apart from establishing the impact of corruption in Uganda, tried to evaluate the success of activities put in place by anti corruption agencies. For the purpose of this exercise the report analyzes several available data sources, such as surveys or administrative data gathered by institutions involved in the fight against corruption. These reports provide an excellent overview of visible deficiencies in the anti-corruption sector, and can serve as a good indicator for action. While it provides a good snapshot, this methodology does not grasp detailed

[5] Inspectorate of Government & Economic Policy Research Centre (2014), "4th Annual Report" *Tracking Corruption Trends in Uganda: Using the Data Tracking Mechanism*

descriptions of the problem or qualitative insights into where obstacles are encountered.

The Uganda Debt Network's (UDN) *Dossier on Corruption*[6] makes the effort to scrutinize cases of corruption and their judicial follow up between the years 2000 and 2012. While choosing corruption cases, which had significant economic impact, mostly involving high level politicians, the dossier examines the actions that the government and the anti-corruption agencies have taken in response. This approach is very revealing in regard to the extent in which the Ugandan anti-corruption agencies successfully execute their mandate. One might argue however, that this approach cannot answer the question as to why the particular agencies do not register bigger achievements.

The report *Letting the Big Fish Swim*, published by Human Rights Watch (HRW),[7] takes a qualitative approach to investigating the reasons for selective prosecution of corruption, bundled with an analysis of a selection of case files of the Anti Corruption Division of the High Court. Informed by insider interviews, the report cites instances of interference with anti-corruption institutions and gaps in the legislation but also creates an image of the impact of the national and international political environment on the fight against corruption. *Letting the Big Fish Swim* is enlightening and inspires further research as it sheds light on a spectrum of channels for political manipulation of the anti-corruption sector.

3.2 Existing Literature on the Ugandan Anti-Corruption Framework - Conclusions

Literature on the Ugandan government's fight against corruption is characterized by two main conclusions: The acknowledgement of a plethora of declarations, policies, legislation and institutions to fight corruption on the one hand; and the disappointment over the failure of promising announcements and structures put in place. In this regard, the 4th Data Tracking Mechanism (DTM) report concludes that the Ugandan legislative framework in place to achieve good governance and to implement anti-corruption measures is relatively strong. However, the report states Uganda's "corresponding score in terms of the actual implementation of the laws enabled by this framework has been very low".[8] Similarly, the U4 Anti-Corruption Resource Centre asserts that the Government has been "vocal about fighting corruption" and that a number of laws and policies aimed at reducing corruption have been established.[9] At the same time, it speaks of a "lack of implementation and enforcement of these rules and policies" and doubts the "political will to actually change the situation in the country".[10]

Agather Atuhaire reports that overlapping responsibilities and mandates of the central anti-corruption agencies are perceived as the main factor for their

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[6] Uganda Debt Network (May 2013), *Graft Unlimited? A Dossier on Corruption in Uganda 2000-2012*

[7] Human Rights Watch & Allard K. Lowenstein International Human Rights Clinic (2013), "*Letting the Big Fish Swim" Failures to Prosecute High-Level Corruption in Uganda*

[8] Inspectorate of Government & Economic Policy Research Centre (2014), "4th Annual Report" *Tracking Corruption Trends in Uganda: Using the Data Tracking Mechanism*, p. 55

[9] Anti-Corruption Resource Centre (April 8, 2013), "Uganda: overview of corruption and anti-corruption," *U4 Expert Answer*, p. 6

[10] Ibid.

inefficiency[11]. Accordingly, the IGG, the DPP and the Police accuse each other of clashing over who is supposed to investigate or prosecute cases. This ultimately blocks the institutional framework and makes a very elaborate set of government agencies ineffective. Discussing whether the reduction of agencies or the clarification of mandates could solve the stalemate, Atuhaire also cites those claiming, "there is no goodwill to have competent, independent institutions".[12]

The UDN's *Dossier on Corruption* (2013) is an attempt at summing up the actions taken by the Ugandan government in the aftermath of corruption cases from 2000 to 2012. After looking at a track record of President Museveni's actions and inactions to efficiently eradicate corruption, the dossier admits, "one is likely to conclude that the President's actions are partly responsible for undermining the institutional capacity of anti-corruption agencies".[13] UDN holds that the Ugandan anti-corruption legislation has the potential to "make corruption a very expensive venture to indulge in", yet these laws are largely ineffective. This is due to the lack of capacity and willingness on the part of those in charge of implementation.[14] The report claims that laws, such as the Whistleblowers Protection Act (2010), are being abused and rather serve to protect high-level political figures, instead of actually facilitating members of the public to raise red flags over corruption scandals.[15]

Human Rights Watch's 2013 report *Letting the Big Fish Swim* is adamant about political will being the reason for selective prosecution and impunity for high level corruption in Uganda. The report acknowledges "a fairly robust set of laws to address corruption [with] some areas of concern".[16] Regardless, it claims that technical responses to the malfunctioning of the Ugandan anti-corruption regime would overlook "what […] can be described as the government's deep-rooted lack of political will to address corruption at the highest levels".[17] Citing numerous examples of how weaknesses and vulnerabilities of all actors fighting corruption stem from absent political support, HRW concludes that unless Uganda's political leaders are being held accountable, "the injustices of Uganda's corruption problem will endure".[18]

Mwenda and Tangri (2006) share the view that top political leaders have actively weakened Uganda's anti-corruption institutions, especially limiting "their effectiveness in checking high-level state wrongdoing".[19] Concluding a review of the effectiveness of the IGG, Parliamentary Committees, Commissions of Enquiry and the Leadership Code, the authors are convinced that the Ugandan government is not willing, despite contrary declarations, to eradicate corruption in government. Rather,

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[11] Atuhaire, A. "When crime fighters fight", *The Independent* May 17, 2015, http://www.independent.co.ug/news/news-analysis/10246-when-crime-fighters-fight#sthash.6zYZBCSK.dpuf

[12] Ibid.

[13] Uganda Debt Network (May 2013), *Graft Unlimited? A Dossier on Corruption in Uganda 2000-2012*, p. 19

[14] Ibid., p. 71

[15] Ibid., p. 24

[16] Human Rights Watch & Allard K. Lowenstein International Human Rights Clinic (2013), "*Letting the Big Fish Swim" Failures to Prosecute High-Level Corruption in Uganda*, p. 31

[17] Ibid., p. 2

[18] Ibid., p. 5

[19] Tangri, R. & Mwenda, A. M. (2006) "Politics, Donors and the Ineffectiveness of Anti-Corruption Institutions in Uganda", *The Journal of Modern African Studies*, Vol. 44, No. 1 (Mar., 2006), p. 103

the top political leadership actively weakens "the ability of oversight institutions to control their corruption in order to protect personal and political regime interests".[20]

The relevance of political will in the fight against corruption is well illustrated by Amundsen (2006). The author shares the widely held view that it is "the single most critical starting point for effective and sustainable anti-corruption strategies", without which declarations and policies will not turn into actual commitments.[21] Behind political will, Amundsen (2006) explains, are several background factors that are key to understanding a political elite's real willingness to fight corruption. The political economy of a country is determinant of the government's political will. A politician's resolve to fight graft results from "his basic incentives, which is conditioned on political and economic opportunities and restraints, among other factors for instance the opportunities for political corruption".[22]

There is agreement in recent literature that the Ugandan government has proven its lack of political will to effectively address corruption. And yet, significant resources have been mobilized by the government to establish anti-corruption institutions and to pass appropriate legislation. Krause (2013) calls this phenomenon *isomorphic mimicry*, which denotes the act by which states imitate institutional frameworks that have been successful in other countries.[23] He identifies various reasons for *isomorphic mimicry*, one of which is to satisfy donor demands, on which donor support is conditioned. While Krause (2013) calls this *insincere mimicry*, such strategies are "not inherently bad", if they have the side effect of ultimately leading to the adoption of successful institutions.[24] It is up for debate, whether Uganda's institutional framework in the fight against corruption is actually "meant" to be effective in curbing corruption, or whether it is intended to serve political purposes.

The understanding that political will is one of the factors determining anti-corruption policies, laws and institutions has been proven beyond doubt. The public debate on how to improve Uganda's success in curbing corruption has shown that the government needs to be willing to effectively work against corrupt practices in public offices. Despite that, additional shortcomings and challenges directly stand in the way of prosecution of the corrupt. If the government is not willing, how does this materialize in the implementation of the numerous laws in place in Uganda? Which screws do observers expect the government to twist to make the anti-corruption machinery function? Or, on the other hand, which screws does the government want to keep intentionally unscrewed? Without identifying these challenges, the call for government commitment cannot reach far.

Importantly, this study is an attempt at evaluating the Ugandan anti-corruption sector, including its institutions and laws, and test it for loopholes and deficiencies. This study does not intend to measure the pure success or failure of the institutions in place to bring to account the culprits, but aims to find out the most pertinent reasons for failure. Therefore, this report is less inspired by quantitative research about corruption remedies in Uganda than by a thorough qualitative approach free of *à priori* judgments. Hence, the insights gathered from stakeholders' experience should

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[20] Ibid., p. 122

[21] Amundsen, I. (2006), "Political corruption and the role of donors (in Uganda)" *CMI Commissioned Report*, Chr. Michelsen Institute. Bergen, Norway, p. 17

[22] Ibid., p. 17

[23] Krause, P. (April 2013), "Of institutions and butterflies: is isomorphism in developing countries necessarily a bad thing?" *ODI Background Note*. The Overseas Development Institute

[24] Ibid.

inform the debate about priorities in improving the fight against corruption in Uganda. What the study does not aim to do is to establish the prevalence or extent of corruption in certain sectors in Uganda. Neither does this study investigate particular cases of corruption, or mean to be a complete overview of anti-corruption mechanisms and actions in Uganda. Also, this study cannot be regarded as a full review of the legislation in place against corruption. Rather, it takes for granted an anti-corruption system being in place in Uganda and attempts to identify the gaps and weaknesses of this system which, in turn, lead to continuous and systemic impunity for individuals committing acts of corruption.

4 LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

Uganda is party to several international anti-corruption treaties, such as the United Nations Convention against Corruption (UNCAC),[25] as well as the African Union Convention on Preventing and Combating Corruption.[26] On the one hand, being party to these conventions pushes Uganda to obey by international accountability and transparency standards, especially regarding the enactment of appropriate legislation, but also the institution of certain agencies. On the other hand, being party also purportedly demonstrates Uganda's commitment to fight corruption. As Uganda is also party to conventions on human rights,[27] as well as economic social and cultural rights,[28] the government furthermore has associated obligations to eradicate corruption.

Under the National Objectives and Directive Principles of State Policy of the Constitution of Uganda, principle XXVI sets out that "all 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".[29] The Constitution also confers on each citizen the duty to "combat corruption and misuse or wastage of public property".[30]

In 2008, an Anti Corruption Division was created within the High Court of Uganda. In the remainder of this report the terms Anti Corruption Division (ACD) of the High Court and Anti Corruption Court (ACC) will be used interchangeably. The Anti Corruption Court (ACC) is the only court with jurisdiction over offenses under the Anti Corruption Act (2009), but can also try corruption related offenses falling under other legislation.[31] The ACC is staffed by High Court judges, Chief Magistrates and Grade 1 Magistrates.[32] Grade 1 Magistrates may try cases "where the subject

[25]The United Nations Convention against Corruption, 2003, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en
[26]African Union Convention on Preventing and Combating Corruption, 2003, http://www.au.int/en/content/african-union-convention-preventing-and-combating-corruption
[27] International Covenant on Civil and Political Rights (ICCPR), 1976, http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
[28] International Covenant on Economic, Social and Cultural Rights (ICESCR), 1976, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
[29]Constitution of the Republic of Uganda, 1995
[30]ibid., art. 17 (1i)
[31]The High Court (Anti-Corruption Division) Practice Directions, Legal Notice No. 9, 2009, para. 8(1)
[32]Anti Corruption Act No.6, 2009, art 51

matter has a value of not more than Uganda shillings two million".[33] High Court judges in the Anti Corruption Court have powers to hear appeals to decisions of Chief Magistrates and Magistrates Grade 1 courts. Appeals to the decisions of High Court judges are handled by the Court of Appeal.[34]

The Anti Corruption Act of 2009 is the prevailing anti-corruption legislation in Uganda. It repeals the Prevention of Corruption Act (1970). The act broadens the definition of corruption relative to the Prevention of Corruption Act and the Penal Code Act and identifies as corruption the crimes of bribery, embezzlement, fraud, extortion favoritism and nepotism.[35] Article 49 of the Anti Corruption Act gives the mandate to institute prosecutions under the act to both the Inspectorate General of Government, as well as to the Directorate of Public Prosecutions.

Chapter 13 of the Constitution provides for the establishment of an Inspectorate of Government (IG), constituted of an Inspectorate General of Government (IGG) and Deputy Inspector Generals (DIG). Both the IGG and the DIGs shall be appointed by the President with the approval of Parliament.[36] The IGG is given the mandate to "eliminate and foster the elimination of corruption, abuse of authority and of public office".[37] Article 225 (2) authorizes the IGG to investigate cases of corruption that fall under its mandate "on its own initiative or upon complaint made to it by any member of the public". In order to execute its mandate, the IGG has the power to investigate, arrest and prosecute in respect of cases involving corruption, abuse of authority or of public office.[38]

According to article 9 of the Inspectorate of Government Act (2002), the IGG has jurisdiction only over government officials. In the meantime, the Directorate of Public Prosecutions (DPP) can prosecute corrupt government officials as well as private individuals. Article 120 (3b) of the Constitution mandates the Directorate of Public Prosecutions to "institute criminal proceedings against any person or authority in any court with competent jurisdiction". In addition, it has the "function to take over and continue any criminal proceedings instituted by any other person or authority".[39] The DPP can direct the Police, in particular the Criminal Investigations and Intelligence Directorate (CIID) with respect to corruption, to investigate any information of a criminal nature. As opposed to this, the IGG investigates cases using its own staff.[40] Except for the limitation of the IGG's jurisdiction to prosecute only public officials, the IGG and the DPP have overlapping powers to investigate and prosecute corruption offenses.

Article 234 of the Constitution mandates the IGG to enforce the Leadership Code of Conduct. The code of conduct, which is contained in the Leadership Code Act of 2002, shall require specified officers to declare their incomes, assets and liabilities as well as how they acquired them.[41] In addition, the code shall prohibit

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[33]Judicial Service Commission, *A Citizen's Handbook on Law and Administration of Justice in Uganda*, Third Edition, 2007, p. 29
[34]ibid., p. 26
[35]Uganda Debt Network (May 2013), *Graft Unlimited? A Dossier on Corruption in Uganda 2000-2012*, p. 15
[36]Constitution of the Republic of Uganda, 1995, art. 223 (2) (4)
[37]ibid., art. 225 (1b)
[38]ibid., art. 230(1)
[39]ibid., art. 120 (3c)
[40]Judicial Service Commission, *A Citizen's Handbook on Law and Administration of Justice in Uganda*, Third Edition, 2007, p. 57
[41]Constitution of the Republic of Uganda, 1995, art. 233 (2a)

conduct, which is likely to lead to corruption in public affairs.[42] Under Article 235A of the 2005 constitutional amendment, a Leadership Code Tribunal shall be established, which has jurisdiction over violations of the Leadership Code Act. As described in further detail below, this tribunal has not been established to date.

There are other laws relevant for the combat of corruption. One is the Anti Money Laundering Act of 2013, which establishes for the purpose of implementation the Financial Intelligence Authority. Besides this, there is the Access to Information Act (2005) and the Whistleblowers Protection Act (2010). The latter act provides for financial incentives and protection for individuals who pass information about corruption cases to the IGG.

Currently, the Parliament is holding readings of the Anti-Corruption Amendment Bill (2013). The draft bill intends to amend the Anti Corruption Act of 2009 to the effect of, among other things, introducing new provisions concerning the confiscation and recovery of assets gained through crimes of corruption. In addition, some civil society organizations are pushing to shift the burden of proof in corruption cases from the prosecution to the accused. Also, amendments to restrict the conditions to grant bail to the accused are also being considered.[43]

Under Article 163 (3a) of the Constitution, the Auditor General (AG) shall "audit and report on the public accounts of Uganda and of all public offices". The AG submits an annual report to the Parliament's Public Accounts Committee (PAC). In this report the Auditor General may raise red flags indicating malfeasance or misconduct, however he does not have the power to prescribe actions to be taken in response.[44]The PAC has the mandate to monitor the government's use of public funds. It may therefore invite ministers, public officials or private individuals to testify in front of the committee. Since the Auditor General reports to the PAC, the committee has discretion to initiate investigations into cases contained in the report.[45] For this purpose, an officer from the Criminal Investigations and Intelligence Directorate is dispatched to the PAC to follow up on the orders of the committee members. In addition, the IGG receives a copy of the Auditor General's annual report and has discretion to investigate cases contained therein.[46]

The organ meant to coordinate the anti-corruption sector in Uganda, set policies and standards, monitor and build capacity is the Directorate of Ethics and Integrity (DEI), located in the Office of the President.[47] The DEI also coordinates the Inter Agency Forum (IAF), members of which are the IG, the DPP, the OAG, the Public Procurement and Disposal of Assets Authority (PPDA), the CIID and the Judiciary.[48]

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[42]ibid., art. 233 (2b)

[43]Musiime, E., "Anti-Corruption Amendment Bill must make corruption a risky business!", *NGOFORUM* February 12, 2015, http://ngoforum.or.ug/anti-corruption-amendment-bill-must-make-corruption-a-risky-business/

[44]Transparency International Uganda interview with a staff member from a public oversight agency B, Kampala, 17 April, 2015

[45]Report on the Public Accounts Committee in Uganda, Ricardo Pelizzo, 2014

[46]Transparency International Uganda interview with a staff member from a public oversight agency B, Kampala, 17 April, 2015

[47]Ramadhan, H. (2014), "Analysis of Public Administration System Reform Process in Uganda: To what Extent did it Attaint its Objectives?",*International Journal of Public Administration and Management Research*, Vol. 2, No 3, pp. 9-23

[48]*Inter Agency Forum*, http://www.dei.go.ug/IAF.html

5. WEAKNESSES IN THE ANTI-CORRUPTION CHAIN: NARRATIVES AND PERCEPTIONS

The literature review has shown that the generally perceived and predominating reason for unsuccessful anti-corruption prosecution is shortcomings in implementation. Observers claim that for too long the Ugandan anti-corruption legislation has been complemented by new laws, and has been subject to reforms. The government, the civil society and international donors have attached high expectations and hopes to reforms and new legislation that corruption could eventually be fought effectively. Instead, defunct, understaffed or otherwise incapacitated anti-corruption agencies are perceived to be the reason for which the relatively sound legislation in place is not being implemented to a satisfactory degree. Finally, pessimism prevails among observers that the absence of political will to effectively eradicate corruption is the reason why even an ambitious plethora of laws and institutions will ultimately never serve the needs and hopes they are meant to answer.

Interview partners were given the freedom to elaborate on the aspects, which they perceive as the most prohibitive to the prosecution of corruption cases. This leeway given to each speaker causes the aggregated data to spread over a wide array of subjects. This data pool covers most stages involved in the lengthy process of prosecutions. The following chapter structures the data pool into several narratives that were covered during the interviews and that span all across the anti-corruption chain.

Before moving on to deeper interpretations of why impunity for corrupt actors prevails in Uganda, the narrative-part starts (5.1) by recounting reported challenges - operational, technical, or legal - that concern the single actors involved in the whole process of prosecution. The first section (5.1.1) starts with shortcomings and weaknesses at the investigation's level that negatively affect the prosecution in the long run. The second section (5.1.2) covers the prosecution's level. This section is wider since it includes narratives on various forms of interference with prosecutors, challenges in the recovery of assets and issues arising around hostile witnesses. The third section (5.1.3) elaborates on weaknesses perceived in the judiciary. Under this section also falls the narrative of delayed justice. In this narrative, constitutional challenges to corruption prosecutions are reported.

The next section (5.2) will add a political dimension to the issues identified earlier. It will first (5.2.1) elaborate on interview partner's allegations of political interference with the work of anti-corruption agencies. Then (5.2.2) it will test in how far stakeholders believe that lack of political will is behind the incapacitation of these agencies. Finally, the narrative's part will move on to explain which responses (5.3) stakeholders perceive appropriate. This part draws an enhanced role to play for civil society actors (5.3.1, 5.3.2), but also includes a holistic view of Uganda (5.3.3, 5.3.4), not only focusing on the political and institutional sphere.

5.1 Operational, Technical and Legal Challenges

5.1.1 Investigations Stage

5.1.1.1 Good-Quality Investigations Are Vital for Successful Prosecutions

"A structure is only as strong as its weakest part".[49] Many interview participants have identified the biggest weakness of the prosecution of corruption cases to be in the initial stage of the prosecution process, during the investigation of a case. According to one judge, the most frequent reason for the failure of cases in front of the court is due to weak investigation.[50] The understanding behind this perspective is that if the investigation does not deliver a qualitatively sturdy case file with clear evidence and reliable witnesses which can be used in court, the prosecution is left with weak material to accomplish a successful prosecution.

An interlocutor describes why the investigations phase provides relatively more opportunities to ruin a case, as compared to the later stages of the prosecution. He argues that starting from the trial stage, any misconduct on behalf of the magistrates or judges can be addressed by appealing against the respective judgment. Hence, at least in theory there is a check against the wrongdoing or bias of judicial officers. On the other hand, if a case is based on insufficient or wrong evidence, there are not as many remedies available.[51] The prosecution may appeal against the court's judgment, in order to review the evidence and reconsider whether the case is strong enough to potentially stand in court. If the evidence is unlikely to convince the judge in a second consideration, the case will be withdrawn.[52] In this circumstance, weak evidence is fatal for the prosecution.

One state attorney reiterated the prosecution's dependence on the investigators work. He states that "whatever technical challenges the CIID faces translate into challenges the DPP needs to face. […] At the end of the day, it's the DPP prosecutors who have to prepare the cases and take them to court".[53] Meanwhile, DPP state attorneys have acknowledged that their cooperation with the CIID did improve in recent years, due to the introduction of prosecution-led investigations. This practice foresees regular meetings between the involved investigators and the state attorneys leading the cases, commencing before the start of investigations. State attorneys hold case management meetings "so that prosecutors and investigators are on the same page".[54] Before the investigations start, agreements are made on the evidence sought after, and the witnesses to be questioned. One DPP state attorney claims that the conviction rate for DPP cases at the Anti Corruption Division of the High Court has gone up to 70 percent due to prosecution-led investigations. Notwithstanding this improvement, the majority of respondents in this study still see significant challenges at the investigation's level, which impact the success rate of prosecution cases.

One of the judges interviewed remarked that the evidence supporting the cases brought forward by Inspectorate of Government (IG) prosecutors is of significantly worse quality than the evidence produced by DPP state attorneys. According to the

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[49] Transparency International Uganda interview with a judicial officer, Kampala, 29 April, 2015
[50] Ibid.
[51] Transparency International Uganda interview with a staff member from a public oversight agency A, Kampala, 18 March, 2015
[52] Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015
[53] Transparency International Uganda interview with prosecutor C, Kampala, 17 March, 2015
[54] Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015

judge, the fact that the investigations are being conducted by internal IGG investigators is part of the problem, as opposed to the separation of investigations and prosecution as is the case in the DPP's practice. The relative independence of investigations from DPP prosecutors, and the fact that cases "have to go through the CIID and get sieved" increases the quality of the cases being submitted at the Anti Corruption Court. Compared to this, "the IGG has more discretion in choosing its cases".[55] The judge alleges that the selection of cases by the IGG is more arbitrary and does not undergo as many checks because the IGG can decide unilaterally which cases to investigate and prosecute. This insight shows that even if increased proximity between investigators and prosecutors is appreciated by the DPP (see above for prosecution-led investigations), in the case of the IGG this proximity might be regarded as problematic.

The respondents who agree that weak investigations are the biggest factor for failed prosecutions of corruption cases see the actual problem mostly in the unreliability of the evidence produced. What seems to cause this perception is that the courts dismiss cases because the evidence presented does not suffice to indict the accused. Lawyer and Executive Director of Barefoot Law, Gerald Abila, asserts that "a judge has to work with what was delivered and cannot interpret the evidence" since otherwise he would give room for appeal. If at Court "the evidence presented is of weak quality, it does not suffice for conviction".[56] The evidence brought forward needs to be solid and sufficient to prove a case. These concerns prove that the work of the investigators is vital for the success of the prosecution.

5.1.1.2 Facilitation of Investigators

Of those interview partners who regret the profound effect of weak investigations on the success of prosecutions, most have also mentioned their assumed reasons for why this is the case. One of the aspects, which proved recurring in most accounts, is the contrast between the meagre financial facilitation provided to investigating officers and the immense importance of their task. Investigations of corruption cases have inherent challenges and obstacles, which demand a lot from the personnel supposed to elucidate the details. Without proper and appropriate facilitation of these personnel, many observers do not expect to see a good job done.

In respect of large-scale corruption cases, the act of committing these crimes requires - to start with - perfect knowledge of the system abused for unlawful gain. This know-how puts the culprit in an advantageous position vis-à-vis the investigator, who needs to gather ad-hoc the necessary information about the technicalities surrounding the crime. In addition to careful, step-by-step planning of the crime, the offender most likely disposes of a small but tight network of partners, or at least people in-the-know, who have also profited from the crime and will thus not cooperate with investigators.[57] A staff member from one of the oversight agencies stated that "fraud related cases are the most complicated cases to try, due to the syndicates involved".[58] Alas, from the perspective of the investigator, people within

[55]Transparency International Uganda interview with a judicial officer, Kampala, 29 April, 2015
[56]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015
[57]Transparency International Uganda interview with a staff member from a public oversight agency A, Kampala, 18 March, 2015
[58]Ibid.

these syndicates - be they partners, colleagues, employees or supervisors - would be ideal witnesses to be interviewed to gain information about the offender and the crime committed. Nevertheless, these individuals are the most difficult to find. Thus, the investigation of vast financial crimes, be it outright corruption, embezzlement or fraud is not comparable to investigations in other criminal cases such as murder, defilement or other.[59]

Some argue that this special task needs appropriate remuneration. An interlocutor in a leadership position from one of the agencies involved in fighting corruption has acknowledged, "as long as the basic needs of police officers are not being catered for, one cannot expect integrity from them".[60] The interview with a lawyer has accentuated this concern saying, "a CIID investigator earning five hundred dollars a month cannot investigate someone who stole five hundred thousand dollars".[61] As most interview partners do, the advocate regards an underpaid police officer as too vulnerable to resist being compromised. Similarly, one civil society representative wonders, in spite of existing rules and regulations, "how are the chances that if someone offers them money they will not be compromised"?[62]

In the eyes of many, cases abound in which people affiliated with the offender pay investigators to discontinue or manipulate investigations. Among those services investigators are being bribed to fulfill are the termination or slowing down of investigations,[63] the hiding of important documents and reports,[64] or the forging and manipulation of documents, such as finger prints. Several interview partners have lamented the disappearance of court files and reports, which were known to have existed.[65] The manipulation of evidence, such as fingerprints and other relevant documents, "leads to the courts dropping cases due to a lack of evidence".[66]

According to one insider, who believes that many cases are being compromised at the investigations level, officers are being paid by the real offenders to prefer lesser charges over the more significant charges, despite the abundance of contrary evidence. The speaker speculates a strategy behind this type of case wherein the public is satisfied by a show of judicial proceedings outwardly responding to the public outcry over a corruption case while in the meantime, no one follows up on whether the culprits are actually being tried for the relevant crimes in court, or whether the culprit has been replaced by a scapegoat".[67]

The contrast of poorly paid investigators with culprits who have newly stolen enormous amounts of money poses a practical challenge in the investigations. Due to the large wealth obtained thanks to the crime, the corrupt have more than enough financial means at their disposal to bribe the relevant individuals - namely the

[59]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015
[60]Transparency International Uganda interview with a staff member from a public oversight agency B, Kampala, 17 April, 2015
[61]Transparency International Uganda interview with lawyer B, Kampala, 30 January, 2015
[62]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015
[63]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015
[64]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015
[65]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015 and prosecutor A, Kampala, 17 March, 2015
[66]Transparency International Uganda interview with Mr. Joseph Wandega, Acting Executive Director, Rights Defenders and Promotion Organization, Kampala, 20 January, 2015
[67]Transparency International Uganda interview with a staff member from a public oversight agency A, Kampala, 18 March, 2015

investigators who are naturally open to additional income, as their salaries are low. A legal policy officer interviewed in the course of this study was evidently frustrated by the inadequacy of facilitation for investigators. He supposes that "the accused corrupt have surely put aside money in order to deal with investigators that might look up their case", and are in a perfect position to compromise investigators.[68]

Among the stakeholders who were interviewed, this perspective was largely shared. However, despite acknowledging the correlation between the facilitation of investigators and the amounts of money involved in the act of the alleged individual, some stakeholders were hesitant to suggest that higher facilitation will actually increase the protection of investigators from being compromised.[69]

5.1.1.3 Capacity of Investigators

Another commonly shared concern among observers is the inadequate *capacitation* of the CIID to conduct investigations. *Capacitation* in this case refers to the resources and skills that the Police have at hand in order to investigate corruption cases. The concern begins at the human resource level.

A prosecutor complained that the number of investigators is not high enough to conduct thorough and expedient investigations. The stakeholder reports cases in which he found that an investigator "is currently in the field, busy with another case, when you need the investigator to meet and discuss an embezzlement case".[70] Another challenge acknowledged by prosecutors is that investigators are rotating. Transferrals of officers might occur out of administrative or disciplinary reasons. One prosecutor has remarked, "the old investigator might not hand over all the files and material to the new investigator", thus disrupting the investigations.[71] It would therefore be helpful if certain police officers were designated to strictly investigate corruption cases. This would be beneficial in terms of their availability for prosecutors, as well as in terms of a thematic focus and special training these particular officers would accumulate.

Deficiencies in the training of investigators negatively impacts and prevents their work in successfully and substantively contributing to cases against corruption.[72] One magistrate for example, regrets that "police is not academic enough to conduct deep analysis". It would be helpful for the police to have specially trained staff at their disposal, such as lawyers, who can guide the investigations in terms of what evidence is necessary and legally valid for a case.[73] Trained handwriting experts, who are able to analyse documents and establish a document's originality in court, are equally scarce, while urgently needed in many cases. According to one prosecutor, the Uganda Police Force disposes of only 3 handwriting experts nation-wide. Their reports are needed for many prosecutions, and sometimes a case can be dismissed if a hand writing report is not made available in time.[74]

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[68]Transparency International Uganda interview with legal policy officer B, Kampala, 14 April, 2015

[69]Transparency International Uganda interview with a staff member from a public oversight agency B, Kampala, 17 April, 2015

[70]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015

[71] ibid.

[72]Transparency International Uganda interview with lawyer B, Kampala, 30 January, 2015

[73]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015

[74]Transparency International Uganda interview with prosecutor B, Kampala, 17 March, 2015

For certain types of investigations the police needs a search warrant given by court. The Police Act prescribes that the police officer to conduct or order to conduct this search shall "not [be] lower in rank than a sergeant".[75] One prosecutor has reported cases in which at the responsible police station no officer of the rank of a Sergeant had been assigned. As a consequence, "all the evidence gathered is not admissible in court, as much as it is good", leaving the prosecutors with no useful evidence.[76]

Notwithstanding the above-mentioned training deficiencies, the technicalities revolving around cyber crimes seem to be another significant training gap for investigators. "Prosecutors no longer deal with open crimes such as stolen cows or cars, but with theft perpetrated through software".[77] Hence, the necessary evidence consists to a large extent of digital documents, data files, online transactions, and other information requiring information technology skills to be obtained. The Computer Misuse Act (2011) is supposed to handle technicalities surrounding crimes committed using IT technology. The act sets out that "where a magistrate is satisfied by information given by a police officer that there are reasonable grounds for believing that an offence under this act has been or is about to be committed in any premises […] the magistrate may issue a warrant authorizing a police officer to enter and search the premises". One prosecutor who was interviewed has testified that too often investigators retrieve evidence under these acts, such as computers, without the court order, leading to the obtained evidence not being valid in court.[78] Many observers thus conclude, investigators need more training on how to manage specific investigations, including training on all the applicable laws.

Another challenge faced by the investigators is the interaction with witnesses. While witnesses often make their initial testimonies in their local dialect, a police officer is being put to task to transcribe the statements into English language to be included in the case file. This practice leaves much room for misinterpretation or transmission of inaccurate statements, affecting the quality of evidence.[79] Moreover, regarding cases located outside of Kampala, CIID officers often lack the funds to travel in order to record witness statements. A practice often adapted is to conduct interrogations on the phone. One prosecutor has questioned the appropriateness of this practice, referring both to the accuracy of information thus obtained, as well as the confidentiality of the witness statement.[80]

5.1.2 Prosecution Stage

While the weaknesses of investigations and their effects on the later stages of prosecutions of corruption cases constituted a large amount of stakeholder responses, the following will look at the information that respondents submitted regarding the gaps at the prosecution stage directly. To be precise, this section will look at the challenges interview partners see the DPP and IGG prosecutors confronted with. While the investigators play the important role of delivering the evidence that is vital in order to successfully try corruption cases, it depends on the prosecutors to determine what happens with this very evidence from then on. Whatever decisions

[75]The Police Act, 1995, section 27
[76]Transparency International Uganda interview with prosecutor D, Kampala, 17 March, 2015
[77]ibid.
[78]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015
[79] ibid.
[80]Transparency International Uganda interview with prosecutor B, Kampala, 17 March, 2015

they take regarding the selection, emphasis or discarding of evidence has a direct effect on the future of a case.

5.1.2.1 Vulnerability of Prosecutors

During the interviews conducted it has become clear that an operational challenge constantly faced by the prosecutors is a lack of job security and the resulting dependence on assuring contract renewal. Prosecutors are employed on fixed-term contracts, at which termination they have to pursue renewal. However, knowing that their renewal is uncertain, they are hesitant to lose the favor of too many people from the particular actions they take in a prosecution. Therefore, prosecutors might decide to preserve their image by not stepping on high-level people's feet.[81] Next to the absence of job security, prosecutors also become subject to threats from the accused and their associates.

Several prosecutors interviewed in the course of this study discussed the intimidating effect of threats they receive. In these threats, individuals intimidate prosecutors by threatening violence directed at the prosecutor's family as a forthcoming consequence to the charges against the accused, which the prosecutor has filed in court. According to one prosecutor, the situation becomes the most intimidating when a case is at the court of appeal. If a magistrate has made a ruling in favor of the prosecution, the accused may appeal this ruling in front of the High Court. If the High Court judge approves the magistrate's ruling, the accused can bring the case in front of the court of appeal.[82]

At this stage, it is the right of the accused to be released from prison on bail. Article 132 (4) of the Trial on Indictments Act (1971) states that "except in a case where the appellant has been sentenced to death, a judge of the High Court or the Court of Appeal may, in his or its discretion, in any case in which an appeal to the Court of Appeal is lodged under this section, grant bail, pending the hearing and determination of the appeal". The right to bail is based on the principle of protection of personal liberty, enshrined in article 23 (6) of the Constitution of Uganda. The article proscribes that a "court may grant that person bail on such conditions as the court considers reasonable". Since these conditions are not defined in more detail, the court has a high degree of discretion over whether it grants bail or not. However, prosecutors have shared experiences that at this stage of a trial, bail is mostly granted.

Due to a case backlog at the court of appeal, the accused might be free for a long time, pending the court's decision. This period of uncertainty gives the accused a big window of opportunity to intimidate the state attorneys involved in their case. Bodyguards no longer protect prosecutors after they have left the court premises. Prosecutors are not protected in their private life. This lack of protection afforded to prosecutors, coupled with the threats of violence directed at the individuals and their families, make prosecutors highly vulnerable to pressure by the accused.[83]

[81]Transparency International Uganda interview with legal policy officer B , Kampala, 14 April, 2015

[82]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015

[83]ibid.

> "*Thus I avoid looking at the accused persons when I am prosecuting. Because when your eyes meet, you see a lot of hatred. And that is what is happening to us. We prosecute our cases. They are convicted twice, and the court of appeal releases them immediately. You know how shocked you can be to find a person whom you have given 7 years, in the streets after one month*".[84]

A legal policy officer asked whether prosecutors are still doing their job well, given these circumstances. In the view of the interlocutor, prosecutors may indeed be very committed to do their job. However, doing a good job at the price of one's security and that of one's family may be too demanding.[85]

Vulnerability and insecurity felt by the prosecutors may not only stem from actual threats to one's life. The working conditions alone limit the confidence with which the state attorneys do their work. Talking about the interviewing and trial-preparation of witnesses, one state attorney has lamented the inadequacy of the premises in which he is bound to operate, especially concerning sensitive and high-level cases. Sharing the room with at least three colleagues, he is not provided with the necessary confidentiality to reassure a witness and secure honest and unbiased statements. "One needs to be sure that whatever is discussed in a certain setting remains within this setting - [our] work environment does not provide for such concerns".[86] The state attorney fears that under these circumstances leakages of confidential information, as well as information regarding the operations of the prosecutors could be leaked to parties intending to compromise their work. These feelings of vulnerability also arise from the fact that one single state attorney is working on one case. Hence it becomes easy to intimidate or threaten this state attorney, as compared to a team of attorneys.[87]

This vulnerability of prosecutors - in the form of employment security, threats from the accused, and lack of confidentiality - offers multiple entry points for interference in the prosecution's work. Without being granted full independence and confidence in their work, through protection and financial support, the prosecuting agencies will ultimately remain significantly weakened. (The way in which these entry points are being abused will be subject of a section further below).

Not all challenges faced by the agencies tasked with prosecuting corruption cases are the result of outside interferences. Indeed, prosecutors have shared their doubts on whether their training suffices to effectively prosecute the culprits. In particular, this concern referred to aspects that have been added to the prosecutor's mandate by the introduction of new legislation such as the Computer Misuse Act (2011), the Electronic Signatures Act (2010) and the Anti Corruption Act (2010). Since state attorneys have not received special training on these acts, they feel unequipped to handle the technicalities of implementing these acts. One prosecutor argues that "in respective cases very small details are very important, hence cases are being lost on technical grounds".[88]

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[84]ibid.

[85]Transparency International Uganda interview with legal policy officer B , Kampala, 14 April, 2015

[86]Transparency International Uganda interview with prosecutor C, Kampala, 17 March, 2015

[87]Transparency International Uganda interview with legal policy officer B , Kampala, 14 April, 2015

[88]Transparency International Uganda interview with prosecutor E, Kampala, 17 March, 2015

5.1.2.2 The Attorney General Representing the IGG

One legal challenge for the Inspectorate General of Government (IGG) stated by several stakeholders is that the IGG is a government institution and does not have corporate status. Therefore, if the IGG is being sued in front of Higher Courts, it cannot represent itself. Instead, it is the Attorney General who has the mandate to legally defend all government institutions.[89] The *Katosi road* case has demonstrated how this relationship can prove problematic, as it inherently introduces a conflict of interest. In this case, a private company against whom the IGG had initiated investigations went to the Constitutional Court to challenge the legality of the IGG's investigations. With the Attorney General naturally taking the role of representing government institutions, the IGG complained that the Attorney General was not the appropriate body to defend the IGG in court, since the Attorney General had itself been implicated in the case.[90]

Many knowledgeable observers have criticized the legal representation of the IGG by the Attorney General as it might lead to frustration of cases which the IGG is investigating or prosecuting.[91] Isaac Semakadde, Executive Director of Legal Brains Trust, contends that as a body charged with fighting corruption in government, the IGG should be independent and not subject to representation by the Attorney General. Not availing over a corporate status also leads to administrative and financial dependencies for the IGG. Currently, the IGG has neither budgetary nor human resource independence as a corporate agency would have. Given the role that the IGG plays in the fight against corruption in Uganda, a more autonomous agency with more discretion to take actions would be welcomed.[92]The changes contained in the Constitutional Amendment Bill (2013) currently before parliament, among other things, seek to amend Article 233 to give the Inspectorate a corporate status.[93]

5.1.2.3 Challenges Related to the Recovery of Assets

The focus on seeking punitive justice for corruption cases often leaves one particularly important aspect aside, which should arguably be in the forefront of Uganda's fight against corruption. While the trial and conviction of a corrupt individual is supposed to have a deterrent effect on other potential culprits, some observers have questioned whether the current legal regime actually fulfills this goal. Many observers argue that the punishment of being imprisoned for a limited period of

[89]Transparency International Uganda interview with Mr. Nicholas Opiyo, Executive Director, Chapter Four, Kampala, 6 February ,2015

[90]Transparency International Uganda interview with Mr. Nicholas Opiyo, Executive Director, Chapter Four, Kampala, 6 February 2015. See also Musisi, F., "IGG wants Nyombi out of Katosi road case", *Daily Monitor*November 23, 2014, http://www.monitor.co.ug/News/National/IGG-wants-Nyombi-out-of-Katosi-road-case/-/688334/2531716/-/u1xggd/-/index.html

[91]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015; Mr. Nicholas Opiyo, Executive Director, Chapter Four, Kampala, 6 February ,2015; magistrate B, Kampala, 10 March, 2015; and Isaac Semakadde, Executive Director, Legal Brains Trust, Kampala, 9 March, 2015

[92]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

[93]Atuhair, A., "When crime fighters fight", *The Independent* May 16, 2015 http://www.independent.co.ug/news/news-analysis/10246-when-crime-fighters-fight

time, after which the offender returns to the wealth amassed through the respective crime, does not sufficiently deter or intimidate the corrupt.[94]

One magistrate has thus acknowledged that "people have not yet felt the impact of how courts punish the convicts". In the eyes of the magistrate "punishment by imprisonment is not sufficient, since after the prison term the culprits return to their riches".[95] A second magistrate has further criticized that the penalties imposed on corruption offences - fines and imprisonment[96] - are "inappropriate for handling cases in which billions have been embezzled".[97] According to this insider, the Anti Corruption Act does not provide for sufficient penalties responding to corruption cases, as compared to the Penal Code Act, which was replaced by the Anti Corruption Act. While under the current act, causing of loss of public property is sanctioned by imprisonment and the imposition of a fine,[98] a court order to recover the loss is merely optional[99].

While many observers share the sentiment of the insufficiency of the current laws providing for the recovery of assets,[100] one magistrate believes that the recovery of assets can still in fact be achieved by using the existing laws. In her view, "once the prosecution has brought through a case arguing for the recovery of assets, this can be used as a precedent".[101] Therefore, amendments to the current legislation may not be necessary. Instead, the existing legislation should first, be used to its fullest.

Another interview partner expressed a more pessimistic take on the issue of asset recovery. Note that in his view, asset recovery is indeed possible under the current legislation. What mars the prospect of recovery, however, is that prosecutors allegedly illicitly connive with the accused's defendants. According to interlocutor, "the defendant's team negotiates a deal with the prosecution team so they will share the embezzled assets".[102] By bribing the prosecution with a stake in the financial benefits, the defendant tries to avoid having to refund the money he or she illicitly gained by compromising the prosecution. This stakeholder's narrative evidently presupposes the prosecution's openness to being compromised.

In this respect, one related issue also repeatedly came up in interviews with urgency. Currently, the prosecution can only push for asset recovery once the accused person has been convicted. However, the actual conviction of a corruption defendant can be significantly delayed due to obstacles at the investigations, prosecution and trial phase. From early on, the prosecution might have evidence concerning the whereabouts of the embezzled funds, as well as concerning the assets of the accused. Regardless, the obligation to initiate the process for asset recovery only after the accused is convicted leaves the prosecution handcuffed for a long period.[103] This

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[94]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015

[95]Transparency International Uganda interview with magistrate A, Kampala, 11 March, 2015

[96]Anti Corruption Act No.6, 2009, art. 10

[97]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015

[98]Anti Corruption Act No.6, 2009, art. 10

[99]Anti Corruption Act No.6, 2009, art. 10 (4)

[100]Transparency International Uganda interview with legal policy officer A, Kampala, 28 January, 2015; lawyer B, Kampala, 30 January, 2015; a Law Development Centre staff, Kampala, 3 March, 2015; magistrate B, Kampala, 10 March, 2015; prosecutor A, Kampala, 17 March, 2015; legal academic B, Kampala, 25 February, 2015; and a judicial officer, Kampala, 29 April, 2015

[101]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015

[102]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015

[103]Transparency International Uganda interview with a judicial officer, Kampala, 29 April, 2015

effectively gives the accused enough time to hide the assets so as to make recovery impossible.

Probably the most significant reason for the delay of conviction occurs when the accused person goes into appeal. As has been mentioned above, if a case is taken to the court of appeal, the accused is granted bail in most cases. Cases have been reported in which culprits have explicitly used their freedom gained through bail to hide their assets and make it impossible for the prosecution to affect recovery.

Under the Anti Corruption Act Article 34 (1) a court may, upon application by the IGG or the DPP, issue restrictions on the disposal of the bank accounts and the property of the accused. The act provides no specification as to the timing of the restriction orders. In contrast, article 10 (4) and article 35 (1), provide that the actual recovery of the embezzled fund or the compensation of the loss incurred shall only be affected upon conviction of the accused. In theory, these legal provisions should ensure that the prosecution may freeze the assets of the accused in a timely manner, outstanding conviction. Only once the accused is proven guilty, should his assets be used to recover the loss.

In the eyes of the prosecutors interviewed in the course of this study, these legal regulations do not fulfill their purpose. If the prosecutors issue restrictions on the property of the accused, they are still barred from taking further actions. In many cases the DPP confiscates cars, or even businesses and assets such as hotels. Since corruption cases often take up to three years before a final conviction is delivered, the confiscated properties depreciate. The DPP does not avail of the necessary storing facilities to ensure that the properties maintain their value. No asset-management department is in place to ensure confiscated businesses keep running. Once the conviction has been issued the value of the properties has decreased and will not suffice for compensation or recovery of assets.[104] One judge has confirmed this concern, stating that "if you get something like a building or a vessel, somebody needs to manage it. At the moment, such management is not in place. The effect of this is that if somebody has been convicted, you have no property to go back to".[105]

In addition, the Anti Corruption Act foresees that the shares of the confiscated assets, which have not been used for compensation and recovery, shall be refunded to the convicted person.[106] As a result of the insufficient facilities available to the prosecution to properly manage and store the confiscated assets, opportunity is given to the accused to sue the prosecuting agencies for causing loss to the accused.[107] Hence, the current situation might even provide the culprits with more avenues to gain at the cost of the public. One prosecutor calls for more legal guidelines on how to proceed with confiscated properties outstanding conviction. She furthermore calls for the possibility to go ahead with the non-conviction based recovery of assets.[108]

Problems surrounding the recovery of assets also span beyond the issuing of recovery orders. According to a magistrate at the Anti Corruption Division, the court has given several orders for refund of assets, which have not been executed. The legislation on asset recovery does not provide for deadlines for payback, making it harder to enforce the refund orders. In addition, the Limitation Act (1959) provides that no follow up of court orders is legal more than 6 years after the order has been

[104]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015; and legal policy officer B , Kampala, 14 April, 2015

[105]Transparency International Uganda interview with a judicial officer, Kampala, 29 April, 2015

[106] Anti Corruption Act article 35 (2)).

[107]Transparency International Uganda interview with prosecutor E, Kampala, 17 March, 2015

[108]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015

issued.[109] The ACD's work ends when a recovery order has been issued. Follow up and enforcement becomes the task of the executive branch, which might not be informed about the case to a satisfactory degree.[110]

The Anti-Corruption Act Amendment (2013) bill which is currently in front of the Parliament pending approval, is supposed to include more detailed provisions on the handling of asset recovery of embezzled funds. Several interview partners actually endorsed the amendment bill to reinforce the legislation providing for the recovery of assets.[111]

5.1.2.4 Plea Bargaining

To a certain extent practices used in informal arbitration mechanisms could be helpful for increasing the likelihood of asset recovery. A legal policy officer has for instance judged the introduction of plea-bargaining by the DPP as a good development.[112] If the prosecutors are inclined to negotiate strong deals with the accused, and there is good evidence proving embezzlement, the prosecutor can ensure that the lost money is paid back, and that the convict is banned from holding office. In contrast, formal litigation is lengthy and in an ideal scenario, results in imprisonment which again costs the government additional funds. To a large extent, informal arbitration does not make use of public infrastructures. Furthermore, since arbitration offers options for the accused to avoid imprisonment, it provides the prosecutors with a good bargaining position for to recover the embezzled funds.[113]

The accused and their defense team most frequently propose plea-bargaining themselves, while the DPP only has authority to put the option on the table. From the perspective of a prosecutor, the advantages of plea-bargaining include the following: (1) cases can be concluded at a faster rate than if going through a full trial. (2) The otherwise complex and uncertain recovery of assets becomes more easily achievable as the accused realizes that through plea bargaining he or she may get a lesser sentence, while at the same time prosecution insists on funds being paid back. (3) Plea-bargaining furthermore frees up prosecution to be available for trial cases in which plea bargaining is not a possibility. (4) The challenges involved in preparing witnesses to testify in front of the court are also avoided, because the prosecution can rely on the case files provided by the investigation.[114] According to the prosecutor in regards to the cases in which plea-bargaining has been used, one hundred percent of the money that had been embezzled as stated in the case file was recovered.[115]

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[109] Limitation Act, 1959, art. 3

[110] Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015

[111] Transparency International Uganda interview with legal policy officer A, Kampala, 28 January, 2015; lawyer B, Kampala, 30 January, 2015; a Law Development Centre staff, Kampala, 3 March, 2015; magistrate B, Kampala, 10 March, 2015; prosecutor A, Kampala, 17 March, 2015; legal academic B, Kampala, 25 February, 2015; and a judicial officer, Kampala, 29 April, 2015

[112] Transparency International Uganda interview with legal policy officer B, Kampala, 14 April, 2015

[113] ibid.

[114] Transparency International Uganda interview with prosecutor C, Kampala, 17 March, 2015

[115] Transparency International Uganda interview with prosecutor C, Kampala, 17 March, 2015

5.1.2.5 Hostile Witnesses

In the pages above, the issue of bail being granted to the accused has been mentioned. It has been posited that if a case is taken to the court of appeal, the accused is likely to be granted bail. Stakeholders were cited saying that in many cases culprits on bail have either bribed investigators to manipulate the case files, or have hidden their assets to secure them from being frozen by the prosecutors. In addition to these grave interferences, another threat perceivably stemming from the release of the accused on bail was the manipulation of the witnesses in a case.

In respect of conditions for granting bail, the Magistrates Courts Act states that the granting of bail should be based on the consideration of "whether the applicant is likely to interfere with any of the witnesses for the prosecution or any of the evidence to be tendered in support of the charge".[116] However, one magistrate has confided that to bring proof that an accused is likely to interfere with witnesses is close to impossible and almost never successful. Often, the prosecution and courts only realize that such interference has occurred after the fact, once the statements the witnesses make in front of the court differ from the initial complaints filed at the police station.[117] Only at this point does it become obvious to the prosecutors that the witnesses they were relying on for their case have ceased to cooperate – and have instead turned into "hostile witnesses". In most of these cases, witnesses ordered to show up in court withdraw accusations against the culprit altogether and become useless for the prosecution.[118]

One way or another, interference by the accused is a recurring explanation for the emergence of hostile witnesses. A civil society representative disclosed that during investigations witnesses might be very willing to cooperate, but when called upon to be a witness in court, they fear for their safety and withdraw[119] regarding corruption within government, one might find that a witness has to testify against a colleague or supervising officer. If the supervisor is being acquitted and comes back to office this might bear consequences for the witness.[120] Due to this power relationship and the associated consequences of testifying, "witnesses are not comfortable stating the truth in court".[121]

Others allege that the accused bribe witnesses into withholding information and refusing to cooperate with the investigators and prosecutors.[122] Especially in cases in which the trial is being delayed due to various reasons, the accused are given further opportunity to seek out the witnesses of the case and compromise them.[123]

The interference with witnesses testifying in a case is facilitated by an operational technicality involved in the prosecution's submission of a case to the court. The Constitutional Court of Uganda has interpreted the right to a fair trial[124] as an obligation for the prosecution to disclose ahead of trial the evidence planned to be used. Defense council thus receives the prosecution's case files, including all witness

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[116] Magistrates Courts Act, 1971, art. 77 (2)
[117] Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015
[118] Transparency International Uganda interview with magistrate A, Kampala, 11 March, 2015
[119] Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015
[120] Transparency International Uganda interview with prosecutor C, Kampala, 17 March, 2015
[121] Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015
[122] Transparency International Uganda interview with magistrate A, Kampala, 11 March, 2015
[123] Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015
[124] Constitution of the Republic of Uganda, 1995, art. 28 (1)(3)(a)(c)(d) and (g)

statements and identity details. This ruling effectively deprives witnesses of their anonymity.[125]

A state attorney affirms that "the prosecutors have to make a copy of [their] own file a month before the hearing to give it to the defense. So the defense and the accused sit together and look at the file, knowing exactly what witness a, b, c says".[126] In the eyes of a legal policy officer, this obligation should be rephrased in the sense that the prosecution redacts details concerning witness identities, the disclosure of which is not necessary for a fair trial.[127] Otherwise, witness anonymity and protection is rendered impossible. Throughout the interviews, many stakeholders shared the concern that intimidation and compromising of witnesses by the accused is a severe challenge leading to hostile witnesses.

This trend speaks to the need for a more effective witness protection regime in place in Uganda. Accordingly, it has come up regularly in interviews that currently no witness protection schemes are in place. Many deem the Whistleblowers Protection Act (2010) inefficient in creating sufficient security for whistleblowers to come forward and testify.[128] In addition, witnesses who are not the initial whistleblowers do not fall under the Whistleblowers Protection Act and are not covered by protection in the first place. Hence, many stakeholders call for new legislations to be put in place to better protect witnesses.[129]

Apart from the accused using various means to manipulate the witnesses, there are other reasons that render witnesses uncooperative in court. Some of these reasons clearly have to do with lack of capacity of the institutions involved. The Anti Corruption Division of the High Court is the only court in Uganda with jurisdiction over corruption cases. This means that cases from all over the country are brought in front of the court. As a consequence, the state attorneys dealing with corruption cases are based in Kampala, while the witnesses on whom their cases rely might live in remote areas upcountry. Witnesses are being refunded their transportation fee, in order to be facilitated to appear in court. Notwithstanding this possibility, the refund can only be made *post factum* - only once the witness has already appeared in court. In many cases this practice causes problems as witnesses often do not avail over sufficient financial means to pay their transport cost up-front. Hence, witnesses are reluctant to appear in court, thus leaving the prosecution without essential evidence.[130]

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[125] Soon Yeon Kong Kim and Kwanga Mao vs. Attorney General, Constitutional Reference No. 6, 2007, http://www.ulii.org/ug/judgment/constitutional-court/2008/2. See also Mahony, C. (2010). *The Justice sector afterthoughts: Witness Protection in Africa*. Institute for Security Studies

[126] Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015

[127] Transparency International Uganda interview with legal policy officer B , Kampala, 14 April, 2015

[128] Transparency International Uganda interview with lawyer A, Kampala, 16 January, 2015; and Mr. Joseph Wandega, Acting Executive Director, Rights Defenders and Promotion Organization, Kampala, 20 January, 2015

[129] Transparency International Uganda interview with prosecutor E, Kampala, 17 March, 2015; and a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

[130] Transparency International Uganda interview with magistrate A, Kampala, 11 March, 2015; prosecutor D, Kampala, 17 March, 2015; and prosecutor A, Kampala, 17 March, 2015

5.1.3 Trial Stage

5.1.3.1 Challenges Faced by the Judiciary

The Anti Corruption Court (ACC) had initially been created in order to make sure judges are on disposal for quick handling of corruption cases.[131] While the ACC was supposed to be manned by judges only, the amount of low level corruption cases adding to the workload of the judges led to taking on board magistrates as well.[132] Some observers are critical of the adequacy of magistrates sitting over corruption cases. While judges are believed to be sufficiently experienced and well qualified, a legal scholar involved in the training of judicial personnel finds the appointment of magistrates more problematic. In order to serve at the Anti Corruption Division, judges need at least 10 years experience as lawyers. However, Law Development Centre graduates are being appointed as magistrates after as few as two years of work experience. In addition, they are assumed to often have in insincere activities before and lack clean working records, which are essential for carrying out a task as important as sitting over corruption cases.[133]

One lawyer recounts the incidents of two fellow graduate legal professionals, who allegedly paid a bribe to become magistrates, while their legal qualifications and even their command of the English language were inferior.[134] In the eyes of the legal scholar, "working for the Anti Corruption Court should be a professional promotion, while often those are being transferred who actually do not deserve it".[135] Cases are reported in which defense lawyers who have practiced for more than 30 years and are well versed with the Anti Corruption Court, have to work in front of a magistrate with two years of work experience. These magistrates often fail to fully comprehend the complex nature of embezzlement cases, and to evaluate the respective evidence properly.

Illicit practices implicated in the appointment of legal personnel to the Anti Corruption Court taint the quality of the trials. As a result, stories of judicial officers accepting bribes to favor a certain judgment are common practice. Many observers suspect judicial officers to be corrupt and enrich themselves on the side. One prosecutor makes a vague allegation, saying that judicial officers' low remuneration "gives room for … let me say should be looked at as insufficient".[136] Since the courts are overburdened with cases, registrars are suspected of accepting bribes to file applications.[137]One magistrate has furthermore acknowledged that judicial officers are allowed too much discretion in their decision-making. This is problematic, since they can thus easily be motivated to give lenient judgments.[138]

When it comes to disciplinary action for misconduct by judicial officers, it is indeed easier to hold magistrates accountable than judges. Magistrates can be tried

[131]Transparency International Uganda interview with Mr. James Muhindo, Project Officer, Global Rights Alert, Kampala, 2 February, 2015

[132]Transparency International Uganda interview with a staff member from a public oversight agency A, Kampala, 18 March, 2015

[133]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015

[134]Transparency International Uganda interview with lawyer D, Kampala, 2 March, 2015

[135]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015

[136]Transparency International Uganda interview with prosecutor C, Kampala, 17 March, 2015

[137]Transparency International Uganda interview with lawyer D, Kampala, 2 March, 2015

[138]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015

and disciplined straight away and if the misconduct is grave, they can even be removed from office. However, a different procedure applies for judges. If a *prima facie* case is found regarding a judges' conduct after an initial investigation by the judicial service commission, the president is advised to constitute a tribunal to investigate the misconduct. This tribunal will finally advise the president on whether or not to remove the judge. In practice, the establishment of this tribunal is not a common for bureaucratic reasons, as well as reasons relating to the readiness of the presidency to actually institute such a tribunal. In some instances, the Office of the President has delayed responding to the Judicial Service Commission's (JSC) advice until the tenure of the judicial officer in question has expired. Since disciplinary procedure against judges has not been regular practice, "some judicial officers have acted with impunity, knowing that no tribunal will be established".[139]

5.1.3.2 Justice Delayed

Minimizing delays in the judicial process can significantly reduce the potential for witnesses turning hostile. One interlocutor is convinced that "if a case is tried expeditiously, the evidence will remain fresh, and credible witnesses will testify".[140] On the contrary, delays in the trials can lead to witnesses losing their memory of events or interest to cooperate.[141] If cases are being delayed, the accused has an extended opportunity to maneuver and interfere with both witnesses and investigators.

Article 23 (6) of the Constitution foresees that in the case of an offence under jurisdiction of the High Court as well as of a subordinate court, "the person shall be released on bail on such conditions as the court considers reasonable, if that person has been remanded in custody in respect of the offence before trial for one hundred and twenty days". Hence, the delay of the trial increases the likelihood that an accused individual is released on bail. The discussion above elaborates on the fact that hostile witnesses and the release of the accused individual on bail are closely linked, whereby the culprits "who have taken billions can buy off witnesses and the person who has initially filed a corruption complaint, loses interest".[142]

Some believe that the understaffing and lack of capacity of the judiciary, the prosecuting as well as the investigating agencies contribute to cases not being closed quickly enough.[143] A magistrate reports that the low staffing of the police leads to delays in the investigations phase. Hence cases are not being admitted to court soon enough and the overall process is being delayed. Furthermore, police is said to be slow in following up with arrest warrants issued by the Anti Corruption Court. The ACC issues criminal summons or warrants of arrest, but the police fails to execute the arrest. Since trial in absentia is not lawful, trials have to be postponed.[144]

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[139]Transparency International Uganda interview with a staff member from a public oversight agency A, Kampala, 18 March, 2015

[140]Transparency International Uganda interview with a staff member from a public oversight agency A, Kampala, 18 March, 2015

[141]Transparency International Uganda interview with legal academic A, Kampala, 25 February, 2015

[142]Transparency International Uganda interview with Mr. James Muhindo, Project Officer, Global Rights Alert, Kampala, 2 February, 2015

[143]Transparency International Uganda interview with a staff member from a public oversight agency A, Kampala, 18 March, 2015

[144]Transparency International Uganda interview with magistrate A, Kampala, 11 March, 2015

Next to the police not disposing over a sufficient amount of investigators, the Anti Corruption Division itself is overburdened with the caseload. There are not enough judicial personnel to handle cases as soon as they come in, and as a result, prosecutors in some instances have to wait for months before their cases can be put before a magistrate or judge.[145]

5.1.3.3 Constitutional Matters Delaying Justice

According to many, in cases that are in front of the Anti Corruption Division, outside interference is a major reason behind trial delays. Such interference often occurs in cases where the accused challenges the legality of the prosecution against him. A prosecutor has reported that on a regular basis, activity on cases has to temporarily cease, because the principal senior prosecutor has received a complaint concerning the work of his office. These complaints must then be tested for merit. The interlocutor claims that a big share of complaints is ungrounded and filed purely to delay the prosecution.[146]

Next to complaints directly addressed to the DPP, magistrates also claim that "their hands are tied by orders of the Supreme Court" to temporarily stop a trial. Even before the accused has been convicted, their lawyers take cases to higher courts and appeal - mostly based on constitutional issues. Reference was made to issues relating to the absence of a Chief Justice as a head of the judiciary (the position has now been filled), the Inspectorate General of Government not having the mandate to prosecute violations of the Leadership Code Act, as well as the duplication of mandates by the DPP and the IGG.

If a higher court, such as the Constitutional Court, deals with a case, the lower courts are barred from working on them.[147] One magistrate has reported a case, which had been on hold for more than 5 years.[148] In the eyes of one observer, the accused have exploited the circumstance of the Court of Appeal being understaffed. Supposedly, to be fully instituted, it must be ensured that 14 justices of appeal and the Deputy Chief Justice are available and that 3 panels can sit at any given time. Defense lawyers file constitutional complaints under article 137 of the Constitution "even if there has been nothing to be interpreted", knowing that the Constitutional Court will not hand down the decision quickly.[149]

5.1.3.3 a) Absence of a Chief Justice

The long-term absence of a Chief Justice goes back to Justice Benjamin Odoki vacating the office of Chief Justice in March 2013 upon reaching the age of 70.[150] On 9 July 2013, the President of Uganda wrote to the Chairperson of the Judicial Service

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[145]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015
[146]Transparency International Uganda interview with prosecutor B, Kampala, 17 March, 2015
[147]Constitution of the Republic of Uganda, 1995, art. 137
[148]Transparency International Uganda interview with magistrate A, Kampala, 11 March, 2015; and magistrate B, Kampala, 10 March, 2015
[149]Transparency International Uganda interview with a staff member from a public oversight agency A, Kampala, 18 March, 2015
[150]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015; lawyer A, Kampala, 16 January, 2015; lawyer B, Kampala, 30 January, 2015; and a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

Commission to order Justice Benjamin Odoki to continue to be the Chief Justice for 2 years. After the constitutionality of this action had been successfully challenged in front of the constitutional court however, the office of the Chief Justice remained vacant until March 2015.[151] Article 133 (2) of the Constitution of Uganda foresees that in the absence of a Chief Justice, the Deputy Chief justice shall take over his role. Since no deputy had been appointed since 2010, the judiciary found itself without a former head until recently.[152] In the meantime, an acting Chief Justice took over the roles of both the Chief Justice and the Deputy Chief Justice - a practice not backed by the Constitution. This therefore invited contestation of the constitutionality of trials held in this period.[153] Accused persons and their lawyers can easily abuse these institutional challenges.[154]

According to several interlocutors, the long lasting failure to appoint a legal Chief Justice was intentional. Representatives from civil society organizations are convinced that there are enough qualified professionals who could be appointed as Chief Justice.[155] In an official statement, Ruth Sebatindira, President of the Uganda Law Society, also took this stance.[156] Hence to capacitate the judiciary could be an easy task for the executive and therefore the choice not to, as expressed by stakeholders, seems to have been intentional. Instead, it is being assumed that the failure to fully institute a Chief Justice was explicitly meant to weaken the judiciary as a whole.

5.1.3.3 b) Lack of Mandate to Prosecute Leadership Code Cases

To a large extent, crimes that fall under the Leadership Code Act (2002) have been subject to constitutional challenges. The act requires public officials to declare their financial properties, assets, incomes and liabilities, but is marred by serious loopholes. In 2003 a presidential advisor who had been dismissed upon the order of the IGG for failure to declare his income, assets and liabilities contested his dismissal in front of the Constitutional Court. The court agreed with him that the Leadership Code Act was void in respect of presidential appointees.[157]

The case of John Ken-Lukyamuzi versus the Attorney General and the Electoral Commission[158] has revealed a much bigger legal loophole, providing opportunities for the challenging of prosecutions. Upon repeated failure to declare his assets, the IGG Faith Mwondha accused Mr. Lukyamuzi of not complying with the

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[151] Hon. Gerald Kafureeka Karuhanga vs. Attorney General, Constitutional Petition No. 39, 2013, http://www.ulii.org/ug/judgment/constitutional-court/2014/13

[152] Vision Reporter, (May 05, 2015), "*Who is Bart Katureebe the new Chief Justice?",* New Vision, http://www.newvision.co.ug/news/665519-bart-katureebe-is-new-chief-justice.html

[153] Uganda Law Society (April 07, 2014), "*Press Statement on the Administration of Justice in Uganda*"

[154] Transparency International Uganda interview with lawyer B, Kampala, 30 January, 2015

[155] Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015; and an NGO representative Kampala, 17 February, 2015

[156] Uganda Law Society (April 07, 2014), "*Press Statement on the Administration of Justice in Uganda*"

[157] Fox Odoi-Oywelowo and James Akampumuza vs. Attorney General, Constitutional Court, Constitutional Petition No. 8, 2003, http://www.ulii.org/ug/judgment/constitutional-court/2004/2

[158] John Ken-Lukyamuzi vs. the Attorney General and Another, Constitutional Petition No. 19, 2006, http://www.ulii.org/ug/judgment/constitutional-court/2007/2

Leadership Code Act and asked the Speaker of Parliament to declare his office vacant and to dismiss him from Parliament. However, Mr. Lukyamuzi contested his dismissal in front of the Constitutional Court, claiming that the IGG is not authorized to issue a dismissal order under the Leadership Code Act. The appellant's counsel referred to Article 83 (1e), which states that "a member of Parliament shall vacate his or her seat […] if that person is found guilty by the appropriate tribunal of violation of the Leadership Code of Conduct". The counsel then argued that while the IGG has the constitutional mandate to enforce the act, it does at the same time not have the mandate to act as a tribunal under the act.

The court in its decision approved the appellant's grounds arguing that the IGG cannot be prosecutor and judge at the same time for crimes under the Leadership Code Act. Following the principle of natural justice, the IGG should be the prosecutor, while a Leadership Code Tribunal should be established to try cases of violations of the act. Article 235A of the Constitution as amended in 2005 provides that "there shall be a Leadership Code Tribunal, whose composition, jurisdiction and functions shall be prescribed by Parliament by law".[159]

Several interview partners have identified the absence of such a tribunal as a lacuna in the anti-corruption legislation, giving the culprits an extra opportunity to walk away with impunity. NGO representatives, civil servants and the IGG itself have demanded that a Leadership Code Tribunal be established, and the act be amended to that effect.[160]

5.1.3.3 c) Duplication of Mandates

One civil society representative complained about unclear mandates to prosecute corruption. Both the Directorate of Public Prosecutions (DPP) and the Inspectorate General Of Government (IGG) have constitutional mandates to prosecute corruption offences (see legislative framework).[161] Nicholas Opiyo, Executive Director of Chapter Four, claims that this overlap in mandates results in confusion over who is responsible to investigate and prosecute, thus defeating the purpose of these institution's role to fight corruption. Investigators from both the IGG and the DPP undertaking work on the same case at the same time will ultimately harm the case. Mr. Opiyo reports instances in which the institutions compete with each other over who has the mandate to fight corruption.

What this overlap also creates is legal uncertainty. Article 49 of the Anti Corruption Act gives the mandate to institute prosecutions under the act to both the Inspectorate General of Government, as well as to the Directorate of Public Prosecutions. According to article 9 of the Inspectorate of Government Act, the IGG has jurisdiction only over government officials, while the DPP can prosecute corrupt government officials as well as private individuals. However, while the IGG has the

[159]The Constitution Amendment Act, 2005

[160]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015; Izak Semakedde, Executive Director, Legal Brains Trust, Kampala, 9 March, 2015; Mr. Nicholas Opiyo, Executive Director, Chapter Four, Kampala, 6 February 2015; an anti-corruption activist, Kampala, 9 February, 2015; and a staff member from a public oversight agency A, Kampala, 18 March, 2015. Also see Inspectorate of Government (20 November 2014) *Report to Parliament: January - June 2014*

[161]Transparency International Uganda interview with Mr. James Muhindo, Project Officer, Global Rights Alert, Kampala, 2 February, 2015

discretion to initiate its own proceedings, the DPP can only start investigations upon receiving a complaint.[162] Prosecutors have confirmed that there have been instances in which both the IGG and the DPP have simultaneously conducted investigations. An informal system of information sharing between the two institutions is in place, which should facilitate the two agencies to agree on who will continue with the investigations. Usually whichever institution has gone furthest with the investigations is left to carry on. Regardless, unclearly regulated delegation of mandates and legal uncertainty lead to confusion of responsibilities and waste of resources within both institutions.

5.2 The Political Dimension of Obstacles to Corruption Prosecutions

5.2.1 Political Interference in the Prosecution of Corruption Cases

Many stakeholders believe that the in principle good anti-corruption legislation currently in place is being obstructed from really eradicating corruption. One concern in this regard is that the legislation is being misused for political purposes. The view often held is that behind most corruption cases, there is a political interest.[163] This narrative is composed of two elements: the shielding of high-level corrupt officials by the government; and the actual prosecution of scapegoats and political enemies.

5.2.1.1 "Hiding Behind the Big Man": Protection of Political Allies[164]

> *"If the public is calling out about such misconduct, how can the IGG remain silent? The IGG does not want to bite its feeding hand."*[165]

Regarding the first element, stakeholders repeatedly said that if ministries are involved in corruption scandals, mostly low-level officers are being held accountable, while the masterminds are left untouched. Those officials actually implicated in the scandals mostly hold high positions and have godfathers in the government, shielding them from prosecutions.[166] One civil society representative claimed that cases against high level government officials often are frustrated or the accused are acquitted because the President "has an interest in these cases".[167] Many also hold the view that the President is getting too involved in the prosecution of corruption cases, calling suspects to appear at the State House, or speaking himself in front of the Parliamentary Public Accounts Committee.[168] Another civil society representative

[162]Transparency International Uganda interview with prosecutor C, Kampala, 17 March, 2015
[163]Transparency International Uganda interview with legal activist A, Kampala, 13 January, 2015
[164]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015
[165]Transparency International Uganda interview with legal policy officer A, Kampala, 28 January, 2015
[166]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015
[167]Transparency International Uganda interview with Mr. James Muhindo, Project Officer, Global Rights Alert, Kampala, 2 February, 2015
[168]Transparency International Uganda interview with lawyer B, Kampala, 30 January, 2015; and a NGO representative Kampala, 17 February, 2015

observed that there are few corruption cases in which the President had not taken a public stance even going so far as to instruct the actions of the prosecuting authority. As a consequence, institutions often only move upon an endorsement by the President, but take no independent initiative.[169]

The reasons for the political vulnerability of institutions and the significant control government has over anti-corruption cases are manifold and complex. A judge from the Anti Corruption Division reckons that loopholes exist in the case processing system of the IGG. The judge claims that the ways through which the IGG receives its complaints are "less orthodox", and that their cases are "coming more out of sentiment than anything else".[170] The IGG, instead of being guided by impartial investigations and analytical decision-making, follows the political agenda of the government elite. These shortcomings are supposedly not found in the work of the DPP because before a DPP case is submitted to court, two organs have already worked on the case file - the CIID as the investigating institution and the DPP as the prosecuting institution. Hence, the working channels of the DPP provide less opportunity for complaints to be submitted based on political motivation. A lawyer and legal activist backs up the concerns of the judge, remarking that the office of the president was the single biggest filer of complaints at the IGG, making the IGG's work strongly politicized.[171] To be an effective institution to watch over accountability in the government, the IGG should be following up complaints filed by the widest possible constituency, also honoring its mandate to act as an ombudsman institution.[172]

One lawyer said that the tendency of the prosecuting agencies to continuously fail to perform their work independently and to fail to prosecute the actual culprits might have a lot to do with seeking political patronage. Prosecutors feel that as long as they please the incumbent President, their tenure will be secured.[173] Stakeholders consider that it is "a form of corruption too", if a public officer is complicit with the government's interests and is acting as the executive asks him to, just in order to keep his job.[174]

One legal scholar interviewed says that out of this strive for job-security, a phenomenon arises which he describes as a "breakdown of a culture of institutions and the emergence of a new culture of presidentialism [sic]". He says that unless the President gives a "go-ahead", most institutions including their heads will be reluctant to fulfill their mandate. Officers run to the President instead of playing their part in fighting corruption. In this sense, the scholar believes that a prosecutor who has received hints pointing towards the illicit behavior of a public official might be reluctant to institute investigations and prosecute, out of concern for his job security.[175]

In the eyes of Isaac Semakadde, Executive Director of Legal Brains Trust, the people working in leading positions in anti-corruption agencies are doing a good job,

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[169]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

[170]Transparency International Uganda interview with a judicial officer, Kampala, 29 April, 2015

[171]Transparency International Uganda interview with Izak Semakedde, Executive Director, Legal Brains Trust, Kampala, 9 March, 2015

[172]Inspectorate of Government Act, 2002, art. 8 (2)

[173]Transparency International Uganda interview with lawyer A, Kampala, 16 January, 2015

[174]Transparency International Uganda interview with legal policy officer A, Kampala, 28 January, 2015

[175]Transparency International Uganda interview with legal academic B, Kampala, 25 February, 2015

in principle. Even though they are highly qualified, they opt for low paid jobs - suggesting that they are passionate about their work. Not the remuneration, but the cause motivates them to do the work they do. Regardless of this motivation, Mr. Semakadde contends that "they work in a framework that requires them to obey orders and directives. If they are ordered to cease investigations, there is little that can be done". This shows that the vulnerability of the anti-corruption agencies also stems from the absence of security of tenure, resulting in harmful dependence on the executive. A donor representative agrees with this view. He holds that the CIID as well as the DPP and the IGG have good leaders at their top, who mean to do good work. Nonetheless, it is their working environment that obstructs them from fulfilling their ambitions. In his view the head of the CIID is in a vulnerable position to be directed by the government on where to push forward and where to withhold. Concerning the IGG, the donor representative is convinced that his performance is marred by his strive to be reappointed.[176]

At this point, reference should be made to the section above on the challenges faced by prosecutors. Indeed, many interview partners have spoken of interference with state attorneys in various ways, leading to selective prosecution. Respondents have reported that prosecutors are being intimidated among others in the form of receiving calls, urging them to drop or delay cases.[177]A legal academic interviewed referred to such instances of political interferences in the prosecutor's work as counterproductive for the institution's credibility and respect among the public.[178] The interference with their work ultimately leads to their reluctance "to carry out what they are constitutionally mandated to do for fear of job security".[179]

Slightly contesting this perception, some stakeholders are convinced that in the first place, the government makes sure that only individuals who will act in its favor are appointed to leading positions in the anti-corruption agencies. Since the President is in charge of the appointment and dismissal of the Inspector General of Government[180], any activity not kind to the government can easily be suppressed.[181] This would explain why most prosecutions carried out by the IGG are in the interest of the government. Similarly, the heads of the judiciary are proposed by the Judicial Service Commission and approved by the President. One civil society representative was therefore convinced that judicial candidates are coming from within the cadres of the ruling party to make favorable decisions.[182]

5.2.1.2 Prosecuting Scapegoats

While those individuals close to the government are effectively shielded by the government from prosecution for illicit embezzlement in office, they may be

[176]Transparency International Uganda interview with donor representative A, Kampala, 10 March, 2015
[177]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015; and lawyer B, Kampala, 30 January, 2015
[178]Transparency International Uganda interview with legal academic B, Kampala, 25 February, 2015
[179]Transparency International Uganda interview with legal academic B, Kampala, 25 February, 2015
[180]Constitution of the Republic of Uganda, 1995, art. 223 (4) and art. 224
[181]Transparency International Uganda interview with legal activist A, Kampala, 13 January, 2015
[182]Transparency International Uganda interview with Mr. Joseph Wandega, Acting Executive Director, Rights Defenders and Promotion Organization, Kampala, 20 January, 2015

"prosecuted for their misconduct only once they are falling out of favor".[183] Looking to the ineffectiveness of anti-corruption legislation, one lawyer goes as far as to argue, "laws are made to get rid of political enemies, to cater for certain groups, and not for the common good".[184] One civil society representative in this context refers to the case of the embezzlement of Global Alliance for Vaccines (GAVI) funds, for which former Minister of State for Health, MP Mike Mukula, was held guilty by the Anti Corruption Division in early 2013. According to the interlocutor, Mr. Mukula had lost his favor with President Museveni, which is why he was to be convicted.[185] It should also be noted that in 2013, Mr. Mukula successfully appealed his conviction and the charges were dropped.[186]

The laws and institutions in place are focused on holding accountable technical officers, such as accountants, or even teachers, but leaving high-level officials out. While higher-level officers are often in-the-know and guilty of the respective crimes, their criminality cannot be proven beyond reasonable doubt because the political establishment protects them.[187] The only exception to this occurs, once a high-level individual turns into an enemy for the government. This person becomes a scapegoat in the fight against corruption as the government can then point to such cases to disprove the allegation of high-level impunity for the political establishment. Another interview partner observed, "in an environment in which nobody has clean hands, the question always arises over why one case is being pushed while another one is being disregarded or dropped".[188] Other observers fear that the upcoming elections might worsen this trend and lead to the abuse of the laws to eliminate potential political opponents.[189]

5.2.2 Absence of Political Will to Effectively Fight Corruption

The above sections have described how interview partners believe the anti-corruption laws and institutions are being undermined by various actors, such as the corruption criminals themselves, or even parts of the government. In addition to frustration over the futility of the anti-corruption regime, many have also shared their astonishment over the lack of political will to tackle corruption which ultimately hinders the institutions and legislations from being successful. Most stakeholders agree that at least since the enactment of the 2009 Anti Corruption Act, existing legislation is satisfactory for fighting corruption. Rather, the implementation of this legislation was

[183]Transparency International Uganda interview with legal policy officer A, Kampala, 28 January, 2015

[184]Transparency International Uganda interview with lawyer B, Kampala, 30 January, 2015

[185]Transparency International Uganda interview with legal activist A, Kampala, 13 January, 2015. See also Angumya, E., "Mukula guilty of embezzling GAVI funds", *The Observer* January 13, 2013, http://www.observer.ug/index.php?option=com_content&view=article&id=23224&catid=74&Itemid=117; and Rosario, A., "Mukula attacks Museveni in Wikileaks cable", *The Independent* September 5, 2011, http://www.independent.co.ug/ugandatalks/2011/09/mukula-attacks-museveni-in-wikileaks-cable/).

[186]FLT.CPT. George M. Mukula vs. Uganda, Anti Corruption Division HCT-00-AC-CN-0001,2013 (Arising from HCT-00-AC-SC-97/2010), http://www.ulii.org/ug/judgment/high-court/2013/6-3

[187]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015

[188]Transparency International Uganda interview with donor representative B, Kampala, 11 March, 2015

[189]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

the problem, due to the lack of good will on the side of the government.[190] Executive Director of Chapter Four, Mr. Nicholas Opiyo, offers criticism that the government has created institutions as an apparent commitment to fight corruption, while "at the same time it denies these institutions sufficient resources to fully function and operate as mandated". Uganda has gone far to establish these institutions and the necessary laws, but little has been won without the motivation and determination to enable these institutions to actually enforce the laws.[191]

The legal activist and Executive Director of Barefoot Law, Mr. Gerald Abila, speaks of a "halfhearted political will". On the one hand, the government regularly pronounces its zero tolerance on corruption. But on the other hand, it seems as if the same government was not really interested in actually ridding the country of corruption. Mr. Abila believes that the government was itself too implicated in certain cases of corruption.

It has been discussed above, that there are issues rendering certain institutions ineffective such as the long periods in which the judiciary has been incapacitated because no Chief Justice had been appointed, as well as the long lasting lack of a deputy IGG. It is perceived by some to be in the government's interest to leave the anti-corruption bodies vulnerable and incapacitated.[192]

Besides government's purported lack of interest in a strong anti-corruption regime, many accounts also directly implicate Members of the Parliament with the accusation of also lacking the politically will to effectively fight corruption. Referring to the drafting of the Leadership Code Act (2002), but also the Money Laundering Act (2010), observers remarked that MPs are careful not to design legislation, which interferes with their own economic interest.[193] Therefore, MPs in most cases avoid consultations with civil society or legal think tanks before passing anti-corruption legislation. There is no real interest in giving way to laws which could at a later stage be instrumental in bringing corruption charges against them.[194]

It is paradoxical that the government commits to the resource-demanding establishment of a plethora of anti-corruption organs and legislation while simultaneously leaving these organs intentionally incapacitated. Naturally, the question arises as to what purpose these organs serve. One judicial officer at the Anti Corruption Division has phrased the purpose behind the Anti Corruption Court poignantly, saying: "the court is a convenient asset to have. The western world always talks about there being corruption and people not being prosecuted, but now one can say that there is a court system, which is available".[195] Indeed, it has been a recurring narrative throughout the interviews that the sophistication and extent of the Ugandan anti-corruption regime to a large degree serves the purpose of pleasing the international donor community, which has often shown concern with corruption in

[190]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015

[191]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

[192]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015; an anti-corruption activist, Kampala, 9 February, 2015; and a staff member from a public oversight agency A, Kampala, 18 March, 2015

[193]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015; and magistrate B, Kampala, 10 March, 2015

[194]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015

[195]Transparency International Uganda interview with a judicial officer, Kampala, 29 April, 2015

Uganda and threatened to withhold funds accordingly.[196] Uganda is mimicking a state with all necessary institutions in place, while implementation is lacking.[197] One civil society representative took this concern further, arguing that the only corruption cases, which are seriously being prosecuted and tried, were those donors had pressed for. Worse, as soon as donors have stopped following a case, the accused are acquitted.[198] These considerations suggest that the Ugandan government is establishing a wall of agencies and legislations to hide behind while in reality remaining unwilling to effectively work towards accountability for corrupt government officials.

5.3 Remedies to Persisting Impunity for the Corrupt

5.3.1 Rethinking Responsibilities: The Role of Civil Society Organizations

From the interviews conducted it seems that the call for more decisive and effective government enforcement of the anti-corruption legislation has in the past been repeated to an extent that leaves many disillusioned as to whether it will ever be successful. Also, the government has made numerous promises for increased funding, reforms, and less interference with anti corruption institutions that have rarely been followed by action. Hence, little to no results can be expected from further pressure on the government to increase political will - "it is an old record".[199] Therefore, one interview partner who prefers to remain anonymous said that "the solution to the lack of political will is not more money for the IGG's department. The solution is a political solution; a fundamental change in governance itself; a paradigm shift in political thinking".

Regardless of the vehemence of such a statement, this conclusion points to the fact that relying on the government to finally show enough resolution to step up the fight against corruption is not the way forward. "If we rely on the state as it is, I doubt whether we will go far", says an anti-corruption activist.[200] In his opinion, the government has failed to do its part, and that now civil society needs to play the supplementary role to what the government should be doing.

Many civil society actors interviewed share this idea. However, for many the hope attached to civil society efforts in the fight against corruption is tempered by disappointment over their track record to do so thus far. In the eyes of one interlocutor, civil society stops after identifying corruption cases, an activity the media already performs successfully.[201] What CSOs do not do is follow these cases up. An anti-corruption activist sees CSOs confronted with a lack of capacity to investigate complex corruption crimes, which is why these organizations do not follow up cases. This is especially the case for corruption scandals that have lost

[196]Transparency International Uganda interview with Mr. Nicholas Opiyo, Executive Director, Chapter Four, Kampala, 6 February 2015; and lawyer B, Kampala, 30 January, 2015
[197]Transparency International Uganda interview with donor representative B, Kampala, 11 March, 2015
[198]Transparency International Uganda interview with legal activist A, Kampala, 13 January, 2015
[199]Transparency International Uganda interview with Isaac Semakadde, Executive Director, Legal Brains Trust, Kampala, 9 March, 2015
[200]Transparency International Uganda interview with an anti-corruption activist, Kampala, 9 February, 2015
[201]Transparency International Uganda interview with legal activist A, Kampala, 13 January, 2015

public attention.[202] "As soon as new corruption scandals erupt, the old ones are no longer interesting", says one anti-corruption activist.[203] Because CSOs fail to follow up what happens with these cases, no one pushes for the recovery of the swindled funds. This activist therefore thinks that CSOs should have at their disposal more technical and legal staff capable of conducting research and investigations so as to match the high demands of the fight against corruption.[204]

In this very approach some interlocutors call for very practical civil society approaches to become active in the fight against corruption. Often these approaches reach into realms, which should originally be covered by public institutions. However, given the absence of effective structures to hold public officials accountable, a call can be heard for civil society to fill this void and act supplementary to the anti-corruption institutions.[205]

5.3.2 New Ideas: Private Litigation

> *"Civil Society should stop hiding away from anti corruption litigation. Anti corruption litigation is the new performance zone. There are many reasons why the police, the DPP and the IGG will not move. So the solution is not another law, but creative, bold and enterprising remedies, spearheaded by CSOs, which are the alternate state agencies of the people [sic]".*[206]

Legal activist and Executive Director of Legal Brains Trust, Isaac Semakadde, is of the opinion that by now civil society actors should have realized that the state will, for various political reasons, not effectively institute proceedings against a corrupt official. Therefore, CSOs should become active in the very domain they demand the state to become active in - namely, to bring such cases to court itself. Clearly, civil law suits, as the go-to legal action available to non-state actors, will be too pricey of an endeavor in this respect. However, Mr. Semakadde foresees a different, more alternative path for CSOs to prosecute. Section 43 of the Magistrates Court Act (1971) gives individuals access to the criminal process, in which all prosecutions are done in Uganda's name, and the costs of the judicial process are carried by the state. Furthermore, once a case has been submitted, the DPP may choose to take over the prosecution. CSOs should make use of this clause, build legal capacity and use private litigation as a way to prosecute corruption crimes.

Regardless of the potential in this form of anti-corruption activism, it also has its challenges. Mr. Semakadde contends that recent legislation did not build upon the Magistrates Court Act and does not include clauses providing for private litigation. In addition, clause 4 of section 43 includes a technicality, which can be used to defeat a private prosecution. The clause foresees that the local chief of the area needs to be consulted upon before the citizen can file a complaint. However, in the past it has

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[202] Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015

[203] Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

[204] ibid.

[205] Transparency International Uganda interview with Mr. Nicholas Opiyo, Executive Director, Chapter Four, Kampala, 6 February 2015; and legal academic B, Kampala, 25 February, 2015

[206] Transparency International Uganda interview with Izak Semakedde, Executive Director, Legal Brains Trust, Kampala, 9 March, 2015

proven difficult to obtain a signed letter as a proof of consultation. Together with the magistrates, Mr. Semakadde recommends, CSOs should support obtaining the letter of consultation. The purpose of this strategy goes beyond the prosecution of single cases. Successful cases provide precedents, which can help pressure the government into capacitating the anti-corruption agencies to live up to their expectations. Once private litigation has proven a successful strategy for CSOs to consider, incentives are given for more non-government actors to build the respective capacities.

The above paragraphs provide a glimpse in the alternative ways that stakeholders identified in order to address the impunity of corrupt officials. Civil society organizations, frustrated by ineffective anti-corruption agencies and laws as well as empty promises, should rethink the government- and non-government actor divide and reconsider new ways to move the fight against corruption forward.

5.3.3 Corruption as a Social Problem

The profession, position and views of the stakeholders interviewed for this report vary significantly in certain respects. Therefore, very different priorities were recorded as to how corruption should best be combatted. Regardless of this diversity, one narrative has been recurring throughout, be it in statements by CSO representatives, prosecutors, lawyers or judges. This narrative evolves around the hypothesis that it is not institutions that are corrupt, but rather the individuals in these institutions as well as those interacting with them. One advocate said that the fight against corruption "boils down to the individuals". Even the most credible IGG cannot achieve much "if the IG is staffed by incompetent and corrupt people".[207] A civil society representative asserts that "a lot of corrupt behavior is inherent to Ugandan people", and not to institutional staff only. Corruption is not limited to accepting a bribe, but also to the act of offering a bribe.[208]

Two legal scholars believe most Ugandans think that in order to receive a service one needs to facilitate the service provider, e.g. public official. In turn, the one obtaining a public position is perceived as entitled to benefit from this very facilitation.[209] This perception goes so far as that those who manage to gain most while in public office are being applauded for their wit.[210]A magistrate has stated that the public "is glorifying corruption and perceives the corrupt as smart, not as thieves".[211] The social circles of public officers are often even encouraging theft from public coffers.[212] One anti corruption activist states: "on becoming an office holder, the office becomes personal property. A public office is not looked upon as a means to offer services, but as a means to make economic gain".[213] This absence of guilt or blame felt by the briber and the bribed makes it difficult to stigmatize corruption. One

[207]Transparency International Uganda interview with lawyer D, Kampala, 2 March, 2015
[208]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015
[209]Transparency International Uganda interview with a Law Development Centre staff, Kampala, 3 March, 2015; and legal academic A, Kampala, 25 February, 2015
[210]Transparency International Uganda interview with Mr. James Muhindo, Project Officer, Global Rights Alert, Kampala, 2 February, 2015
[211]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015
[212]Transparency International Uganda interview with legal academic A, Kampala, 25 February, 2015
[213]Transparency International Uganda interview with an anti-corruption activist, Kampala, 9 February, 2015

lawyer cited a tax case in which someone bribed a public officer so as to pay fewer taxes, while the public officer was happy to increase his salary. This way both sides feel that they have benefitted and therefore no party will feel aggrieved or urged to cease the corrupt practice.[214]

The same lawyer is convinced that Ugandans are being brought up to realize that "our leaders are corrupt so why shouldn't we be corrupt?" He concludes that Ugandans follow the examples they see in their everyday life. Hence, corruption is being displayed as common practice. One judicial officer said, "if children were being taught at school and at home that corruption is bad, they would grow up behaving correctly. But what happens is that all what people fear is the law and being caught. You can do anything as long as you are not caught, but this is the wrong attitude".[215] The judicial officer stipulates that corruption is not perceived as wrong, but only as illegal and that education and upbringing play significant roles in this perception.

One observer went so far as to claim that, "the problem with asking for political will from the existing government is forgetting that the society is the root cause of corruption".[216] As a result, the interlocutor states, nobody who newly enters the government will be willing to change the power structures. Instead, the underlying ideology behind seeking political power was to "reconfigure the division of the national cake".[217] One legal scholar interviewed phrased this idea the following way: "If one powerful political group has exclusive access to government and state resources, anyone who manages to eventually get a foot into government positions will want to take his turn and benefit from the position, and appropriate state resources".[218]

Another legal scholar therefore concluded that it is a mistake to use a legal angle in order to fight a social problem. He is convinced that "corruption has been deeply embedded in the social fabric, and that there is no moral power to fight it".[219] Instead of creating new laws, which aim at changing the society, the laws should catch up with where the society stands. The culture of corruption needs to be approached "right from the grassroots".

5.3.4 No Awareness of Negative Effects of Corruption

Clearly, it is difficult to verify the perception voiced by many that corrupt behavior is rooted in the upbringing of most Ugandans. This report has tried to reflect what interview partners have said, especially since the narrative of corruption being a social phenomenon was certainly a red line that could be found throughout the interviews. However, it seems that a main reason for why corruption is not seen as morally wrong is the lack of awareness regarding the negative consequences of corruption.

An often-cited explanation as to why the fight against corruption finds little public support is that "citizens have limited awareness of the effects of corruption on

[214]Transparency International Uganda interview with lawyer A, Kampala, 16 January, 2015
[215]Transparency International Uganda interview with a judicial officer, Kampala, 29 April, 2015
[216]Transparency International Uganda interview with Izak Semakedde, Executive Director, Legal Brains Trust, Kampala, 9 March, 2015
[217]Wrong, M. (2009). *It's Our Turn to Eat: the Story of a Kenyan Whistle Blower.*Harper
[218]Transparency International Uganda interview with legal academic A, Kampala, 25 February, 2015
[219]Transparency International Uganda interview with legal academic B, Kampala, 25 February, 2015

their day to day life".[220] In the eyes of many stakeholders, people do not understand that if someone in a public position is stealing money it will affect them. One legal anti corruption activist says, "people establish no nexus between them and the corruption".[221]

A representative from another CSO was convinced that people know they want improved service delivery. But, they do not appreciate that the lack of services is often linked to corruption in public offices.[222] The state is perceived as an "abstract notion far away from the individual; thus, if the state is harmed because the corrupt are stealing funds, it is not perceived as harming the individual", said a legal scholar.[223] Furthermore, especially when the embezzled money is coming from donor funds, "citizens do not understand that these funds were supposed to benefit them, and that in many cases donor money needs to be paid back".[224]

Given a broad consensus regarding the lack of awareness about the effects of corruption on the Ugandan populace, many stakeholders hold that wider dissemination of information would be an adequate response.[225] It is only that once citizens know the amounts budgeted for improved service delivery in their region, and how much thereof have actually benefitted them that people will realize that corruption actually affects them. Stakeholders are convinced that under these circumstances citizens will ask their government for accountability for these very funds.[226]

In unison, a prosecutor and a magistrate acknowledge that currently the wrong perception prevails that "corruption is a victim-less offence".[227] While a victim can be easily identified in the case of a theft for instance, in corruption there is no clearly identified victim. Nicholas Opiyo, Executive Director at Chapter Four, also compares corruption to theft. If, for instance money was stolen from the funds that a family had put aside for a marriage or a funeral, the outcry of the community would be significant. Theft is not accepted in this regard. However, in Mr. Opiyo's opinion, this accountability out of social pressure from one's community should also apply to corruption, instead of a general celebration of the corrupt. Mr. Gerald Abila, Executive Director of Barefoot law also speaks out for treating corruption as theft. If funds for a hospital are stolen by a corrupt politician, and as a consequence to a lack of medical equipment patients suffer, "this should be called theft or even murder, and not simply corruption".

A legal policy officer in the same vain calls for a "rights-based-approach to fight corruption."[228] If a rights-based-approach was adopted, the call to prosecute

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[220]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015

[221]Transparency International Uganda interview with Mr. James Muhindo, Project Officer, Global Rights Alert, Kampala, 2 February, 2015

[222]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

[223]Transparency International Uganda interview with legal academic A, Kampala, 25 February, 2015

[224]ibid.

[225]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

[226]Transparency International Uganda interview with legal activist A, Kampala, 13 January, 2015; and Mr. Nicholas Opiyo, Executive Director, Chapter Four, Kampala, 6 February, 2015

[227]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015; and prosecutor A, Kampala, 17 March, 2015

[228]Transparency International Uganda interview with legal policy officer A, Kampala, 28 January, 2015

corruption will be much stronger. In the case of hospital funds being embezzled and health centers not being equipped properly, "the right to health is being violated". Legally and psychologically, framing corruption as a out-right violation of an individual's right would increase the pressure to bring these violations to justice.

This insight is very pertinent that due to a lack of knowledge about the negative effects of corruption, the public does not sufficiently support the fight for accountability and transparency and the eradication of impunity for corruption. Consequently, all actors should be called upon to work towards a change in perception that corruption affects every single individual in the country, and that money stolen from public coffers, is money stolen from everyone.

5. 4 Summary of the Legislative Gaps Mentioned by Interview Partners

This chapter serves as a wrap up of the legal gaps that were perceived by interview partners. Most of the issues raised in this chapter have come up above. It is meant for the readers interested in the legal shortcomings that were identified.

A thread running through the views recorded for this study is that improving the existing anti-corruption legislation should not be a priority at the moment. More precisely, even if gaps in the legislation could be filled, such actions would ultimately not lead to an increased accountability for corruption in Uganda. The prevailing perceived reason for impunity for corruption in Uganda is the intentional incapacitation of the anti-corruption organs. Two thirds of the stakeholders interviewed see the laws in place as ideal the way they are - some even saying Uganda has some of the best anti-corruption laws in the region. Among those saying that the legislation does have gaps, more than half say that these gaps do not have a significant effect on the fight against corruption and should for now be disregarded.

Regardless, in the main narratives part, stakeholders were cited mentioning instances of legal gaps, ambiguities, and barriers. They did see certain legislative obstacles and loopholes, which depending on their position in the anti-corruption chain, are perceived more or less disruptive. Often these concerns relate to technical challenges faced in the prosecution of corruption cases, less affecting the overall fight against corruption, but more the work and effectiveness at certain stages of the process. While most of these legal shortcomings have been explained in their context, this following part will summarize the most pertinent issues in one place.

In the eyes of many, the Anti Corruption Act (2009) and other relevant legislation such as the Anti Money Laundering Act (2010) or the Leadership Code Act (2002) do cover most crimes related to corruption. Notwithstanding, some stakeholders miss sufficient clarity in these laws. A lawyer has for instance complained that in the definition of offenses in the Anti Corruption Act the aspect of intention to commit a crime is not sufficiently covered.[229] Executive Director of Barefoot Law, Gerald Abila, finds that the crime of corruption in general is not defined sufficiently, which makes it hard for state attorneys to successfully prosecute. He states, "fighting corruption with the existing laws is like using hunting bullets to shoot down an aircraft. You might get one, but the chances are very low".

The concern that anti-corruption legislation is vague seems to be shared by many. Some find that without guidelines as to what constitutes a corruption crime, or

[229]Transparency International Uganda interview with Mr. Joseph Wandega, Acting Executive Director, Rights Defenders and Promotion Organization, Kampala, 20 January, 2015

what evidence constitutes a case, "applying the law becomes a problem".[230] Guidelines would help those implementing the laws to do so more efficiently and avoid confusion. In one instance, a state attorney has expressed the hope that guidelines would also be provided on how to proceed with confiscated assets, outstanding conviction. So far, no asset management scheme is in place.[231]

Another state attorney recounted that the burden of proof in corruption cases might create challenges for the prosecution. Accused persons have a constitutional right under article 28 (3a) to be presumed innocent, until proven guilty. Therefore, the state attorney says that carrying the burden of proof is not the problem, "but the standard of proof should be lowered".[232] Given the confidential nature of most corruption crimes, it becomes difficult to proof a crime beyond reasonable doubt "because there is no yardstick for that".

A legal gap cited by a number of interview partners concerns the recovery of assets. To most stakeholders, the imprisonment of culprits is insufficient and refund of the swindled money is necessary.[233] In the eyes of a magistrate, the Penal Code Act (1970) had a more deterrent effect; while the new Anti Corruption Act (2009) has been weakened and judicial officers have the discretion to order for recovery of assets or not.[234] Under the current act the causing of loss of public property is sanctioned by imprisonment and the imposition of a fine.[235] However a court order to recover the loss is merely optional.[236]

Furthermore, under Article 34 (1) of the Anti Corruption Act a court may, upon application by the IGG or the DPP, issue restrictions on the disposal of the bank accounts and the property of the accused. The act provides no specification as to the timing of the restriction orders. In contrast, article 10 (4) and article 35 (1), provide that the actual recovery of the embezzled fund or the compensation of the loss incurred shall only be effected upon conviction of the accused. As has been elaborated on above, the strict conviction based possibility of recovery of assets has the strong potential to create problems for the prosecutors.[237] In addition, the legislation on asset recovery does not provide for deadlines for payback, making it hard to enforce the court's refund orders. The Limitation Act[238] provides that no follow up of court orders is legal later than 6 years after the order has been issued. These legal provisions leave the prosecution and the Anti Corruption Court powerless in many instances to actually enforce asset recovery.[239]

Also, as has been discussed in a section above, the relatively unconditional right to bail for an accused poses a challenge to prosecutors. The high chances of

[230]Transparency International Uganda interview with a NGO representative Kampala, 17 February, 2015; and Mr. James Muhindo, Project Officer, Global Rights Alert, Kampala, 2 February, 2015

[231]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015

[232]Transparency International Uganda interview with prosecutor D, Kampala, 17 March, 2015

[233]Transparency International Uganda interview with lawyer A, Kampala, 16 January, 2015

[234]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015

[235]Anti Corruption Act No.6, 2009, art. 10

[236]Anti Corruption Act No.6, 2009, art. 10 (4)

[237]Transparency International Uganda interview with prosecutor A, Kampala, 17 March, 2015; and legal policy officer B, Kampala, 14 April, 2015

[238] Limitation Act, 1959, art. 3

[239]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015

interference with witnesses as well as investigators, and the sensitivity of corruption crimes, would recommend that bail is restricted as an option to corruption culprits.[240]

Several interview partners have described the current Whistleblowers Protection Act (2010) and witness protection in general as largely insufficient. There is debate whether witnesses are given sufficient incentives to testify in court, given that they are not sufficiently protected.[241] The effects of this absence of protection have been described above. Furthermore, many regard the obligatory disclosure of the prosecutor's case file to the defense counsel as problematic. Regulations should ensure that witnesses' identities are being withheld, to guarantee their protection.[242]

There is a strong call for reform of the Leadership Code Act (2002), to provide for the timely creation of the Tribunal as the mandated body to enforce the act together with the IGG.[243] In addition, the act needs to be amended to the effect that presidential appointees are equally obliged to declare their assets. The Constitutional Court has ruled that the act does not apply to presidential appointees.[244] However, this exemption is unjustified and leads to impunity of this group of public officials.

Since the duplication of mandates of the DPP and the IGG, as well as the overarching role of the Attorney General, are incapacitating factors for the anti-corruption agencies, the legal mandates should be clarified in this respect. Clear fields of responsibilities should be established in the respective acts for both the DPP and the IGG.[245] The elevation of the IGG's status to a corporate agency should be considered, to enable real independence of the IGG as a watchdog institution.[246]

One anti-corruption activist has voiced a particular critique of legislation reaching beyond the quality of certain laws. He holds that most legislation is being drafted at "boardroom-level", foregoing public consultation before the enactment of laws. If the public is not being consulted, knowledge of the laws will remain low and the legislation will not be effective.[247]

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[240]Transparency International Uganda interview with magistrate B, Kampala, 10 March, 2015; and prosecutor A, Kampala, 17 March, 2015

[241]Transparency International Uganda interview with Mr. Joseph Wandega, Acting Executive Director, Rights Defenders and Promotion Organization, Kampala, 20 January, 2015; and a NGO representative Kampala, 17 February, 2015

[242]Transparency International Uganda interview with magistrate A, Kampala, 11 March, 2015; prosecutor A, Kampala, 17 March, 2015; and legal policy officer B, Kampala, 14 April, 2015

[243]Transparency International Uganda interview with legal policy officer B, Kampala, 14 April, 2015; and a NGO representative Kampala, 17 February, 2015

[244]*Roland Kakooza Mutale v. the Attorney General* General Application No. 665 of 2003 arising out of HCCA No. 40 of 203 (unreported)

[245]Transparency International Uganda interview with Mr. James Muhindo, Project Officer, Global Rights Alert, Kampala, 2 February, 2015

[246]Transparency International Uganda interview with Izak Semakedde, Executive Director, Legal Brains Trust, Kampala, 9 March, 2015; and a staff member from a public oversight agency B, Kampala, 17 April, 2015

[247]Transparency International Uganda interview with a representative from the Anti Corruption Coalition Uganda (ACCU), Kampala, 4 February, 2015

7 CONCLUSION

Providing a detailed glimpse into the diverse stages of anti-corruption prosecutions and the respective challenges occurring, the report at hand complements existing literature on the inefficiencies of the Ugandan anti-corruption framework. Extensive insights into the actual practical obstacles faced by those working in the involved institutions add to already existing conceptual explanations used to summarize the reasons for the persisting impunity for corruption culprits. In fact, by linking the theoretical debate to the practical reality, this paper provides clear explanations on how political interference or absence of political will translate into practice in the fight against corruption

Challenges present themselves in a variety of shapes. Lack of finance and training, lack of mandates or unclear legal provisions are obstructing successful prosecutions as much as direct actions of the government to influence the judicial outcome of corruption cases. The plethora of difficulties combined allows for impunity for the perpetrators of corruption crimes. This understanding makes it imperative to address each issue with urgency.

The research report at hand reflects the most challenging issues obstructing the prosecution of corruption cases. To that end, interviews with a representative sample of stakeholders on the ground were the base of the study. Given the scope of the research design, however representative, the sample is not exhaustive and it is acknowledged that not all views could be heard. In addition, regrettably not all stakeholders who were approached have consented to an interview. Views of representatives from the IG and from the CIID would have been particularly valuable. In light of these limitations, further research is recommended regarding unidentified challenges linked to stages of the prosecution of corruption cases not covered in this report.

The main findings can be summarized as follows:

- Selective prosecution: **High-level corrupt officials are being shielded from prosecution by the government, while scapegoats and political enemies are held accountable**. Absent job security of prosecutors, judges and heads of institutions as well as the government getting too involved in the work of the prosecuting agencies were particular explanations for selective prosecution.
- Prosecutors have shown to be vulnerable on several fronts. While **absence of job-security** harms their independence to prosecute cases, prosecutors are also insufficiently protected from **threats stemming from the accused**. In addition, lack of appropriate legal and technical training leads to the failure of complex corruption cases in court.
- **Investigators are perceived to be open to being bribed** into manipulating investigations. Also, low staff numbers and **insufficient legal, investigative and other technical skills** are deemed not commensurate with the investigator's key role in gathering evidence. Both issues have repercussions on the success rate of prosecutions. Better remunerations as well as training are perceived as appropriate remedies.
- Various factors **delaying justice** contribute to corruption cases failing in court. Among these factors are appeals against judgments without merit, and

referrals of corruption cases to the Constitutional Court for interpretation. These referrals are needlessly facilitated by institutional and legal loopholes, such as the absence of a Leadership Code Tribunal, the lack of appointment of institutional personnel, or the duplication of mandates of the DPP and the IGG.

- Legislation and structures need to be established in order to make sure prosecutors can successfully apply for the **recovery of embezzled funds**.
- Mechanisms are not in place to provide incentives and real **protection to witnesses**, barring their contribution to bringing culprits to account.
- The **lack of the government's political will** to effectively fight corruption is reflected in the legal and institutional loopholes persisting over long periods of time, the under-facilitation of institutions, and weak anti-corruption legislation. Sporadic actions to superficially improve the legal and institutional framework upon demands by international donors only reinforce the perception of half-heartedness.
- The **need for civil society actors to more actively complement the role of the mandated anti-corruption institutions** is a response envisaged by many stakeholders. In this respect, private litigation - civil society actors themselves bringing cases of corruption to court - is a very progressive proposal.
- **Awareness raising about the negative effects of corruption on society** is necessary in order to overcome what is perceived as moral acceptance of corruption. A rights-based-approach would in this sense try to put directly in the center of the anti-corruption task the victims who have suffered the effects of corruption.

In order to address these shortcomings in a determined and focused manner, strategies on how to eradicate each obstacle need to be developed. These strategies can only be produced in consultation with both, the agencies responsible at each stage but also the groups negatively affected by the shortcomings. Based on which actors the strategies depend on - the Parliament for instance - respective partnerships are necessary. Acknowledging that certain obstacles persist intentionally due to political reasons, addressing the issues identified will by no means be a task completed in one attempt and with one instrument. The report at hand has shown the various challenges faced. Each of these challenges needs a tailored response. And each response needs to be focused, well prepared and backed up by a large enough share of stakeholders.