

**INDEPENDENCE OF THE INSPECTORATE OF GOVERNMENT OF UGANDA:
LESSONS FROM THE DEPARTMENT OF JUSTICE'S ENFORCEMENT OF THE FCPA IN THE USA
AND INCENTIVES FOR GOVERNMENTS**

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I. Introduction

Systemic corruption affects everyone but mostly the disadvantaged. Despite attempts by various anti-corruption agencies (ACAs) and laws enacted by countries, corruption remains one of the biggest challenges to development. Countries establish ACAs to instill a culture of accountability, transparency, integrity, and good governance with a mandate to promote the rule of law, eliminate corruption and abuse of office. However, they often fail to execute this mandate due to their lack of independence from and consequent interference of the executive who appoints them.

In this paper, I analyze the main ACA in Uganda, the Inspectorate of Government (IG),² which was created to investigate and prosecute corruption cases of public officials. Why isn't it independent? I examine its inability to check high-level corruption and make recommendations to be adopted to enhance its independence by providing a comparative analysis with the Department of Justice's (DOJ) enforcement of the Foreign Corrupt Practices Act (FCPA)³ in the USA. I will show how amending the laws of appointment and removal of the IG executives, adopting a collaboration strategy and a bottom-up approach, creating suspension and debarment authorities, and a system of agency peer review can enhance the independence of the IG in Uganda.

Could these efforts prevent corruption from happening at all? Does independence of the IG guarantee its effectiveness in fighting corruption? How can governments be incentivized to fight corruption? I will examine The International Commission against Impunity in Guatemala (CICIG)⁴ an ACA that undermined state legitimacy while effectively executing its mandate by

² The Inspectorate of Government, <https://www.igg.go.ug> (last visited May 11, 2022)

³ 15 U.S.C. §§ 78dd-1

⁴ The Guatemala's CICIG was founded in the wake of the Civil War in 2007 through an agreement between the Guatemalan government and the United Nations.

uncovering widespread corruption patterns within the state apparatus that led to its downfall.⁵ From this example, I analyze the relationship between state legitimacy and anti-corruption reforms. Based on this analysis, I will propose that fighting corruption benefits everyone. Incentives such as better/improved health services and infrastructure, greater revenues from taxes, benefits from the country's natural resources, increased foreign direct investments, and reduced crime rates enable both the rich and poor to benefit from a corrupt-free regime and can influence governments to support the independence of ACAs.

I. Overview of Corruption in Uganda

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism, and other threats to human security to flourish. This evil phenomenon is found in all countries - big and small, rich, and poor - but it is in the developing world that its effects are most destructive.⁶

Uganda as a developing country has made efforts to resolve this problem. Numerous anti-corruption agencies have been enacted by the government, including, the Directorate for Ethics and Integrity (DEI),⁷ the Inspectorate of Government (IG),⁸ the State House Anti-Corruption Unit (SHACU),⁹ the Anti-Corruption Division of the High Court (ACD),¹⁰ the Internal Auditor General (IAG),¹¹ the Public Service Inspection Unit (PSIU),¹² the Public Procurement and Disposal of

⁵ Gemperle SM, *When Anti-Corruption Agencies Delegitimize the State: The Cases of Nepal and Guatemala*, *Rule of Law and Anti-Corruption Journal* 2021 <https://doi.org/10.5339/rolacc.2021.1> at 1.

⁶ United Nations Convention against Corruption, 2004 https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf at 3.

⁷ DEI <https://www.dei.go.ug> accessed on May 12, 2022

⁸ IG <https://www.igg.go.ug> accessed on May 12, 2022

⁹ SHACU <https://sh-acu.go.ug> accessed on May 12, 2022

¹⁰ ACD, www.judiciary.go.ug/data/smenu/19/Anti-Corruption_Division.html accessed on May 12, 2022

¹¹ IAG, <https://finance.go.ug/content/office-internal-auditor-general> accessed on May 12, 2022

¹² PSIU, <https://publicservice.go.ug/directorate-of-inspection-and-quality-assurance/departement-of-public-service-inspection/> accessed on May 12, 2022

Public Assets Authority (PPDA),¹³ the Office of the Auditor General (OAG),¹⁴ the Office of the Director of Public Prosecutions (ODPP),¹⁵ the Parliamentary Accountability Committees,¹⁶ and the Financial Intelligence Authority (FIA).¹⁷

Uganda has signed and ratified both the United Nations and the African Union conventions against corruption and enacted a number of laws including the Anti-Corruption Act, 2009 (as amended),¹⁸ the Whistle Blowers Protection Act, 2010,¹⁹ the Leadership Code (Amendment) Act,²⁰ the Public Finance Management Act, 2015 (as amended),²¹ the Anti-Money Laundering Act, 2013 (as amended),²² the Access to Information Act, 2005,²³ the Public Procurement and Disposal of Public Assets Act,²⁴ 2003 (as amended) and the Computer Misuse Act, 2011.²⁵

To sum up the above, there are eleven anti-corruption agencies and nine legislations that have been enacted to fight corruption. However, they have yielded limited results; according to the corruption perception index of 2021, Uganda scored 27/100²⁶ of which 0 stands for (highly corrupt) and 100 (very clean). There has not been a notable change in the rank since 2009 when the Anti-Corruption Act was enacted. This, therefore, raises doubts about the sincerity of government efforts to effectively address corruption. Could it be that all these agencies are established as a ploy to keep bringing in donor funds? Or is it to prevent corruption?

¹³ PPDA, <https://www.ppda.go.ug/> accessed on May 17, 2022

¹⁴ OAG, <https://www.oag.go.ug/about/> accessed on May 12, 2022

¹⁵ ODPP, <https://dpp.go.ug> accessed on May 12, 2022

¹⁶ Parliamentary Committee, <https://www.parliament.go.ug/page/committees-parliament> accessed on May 12, 2022

¹⁷ FIA, <https://www.fia.go.ug> accessed on May 12, 2022

¹⁸ Act No. 6 of 2009, <https://ulii.org/akn/ug/act/2009/6> accessed on May 12, 2022

¹⁹ Act No. 6 of 2010, <https://old.ulii.org/ug/legislation/act/2015/6-10> accessed on May 12, 2022

²⁰ Cap 168 as amended, <https://old.ulii.org/ug/legislation/act/2017/5> accessed on May 12, 2022

²¹ Act No. 3 of 2015, <https://ulii.org/akn/ug/act/2015/3> accessed on May 12, 2022

²² Act No. 3 of 2017, <https://ulii.org/akn/ug/act/2017/3> accessed on May 12, 2022

²³ Act No. 6 of 2005 <https://ulii.org/akn/ug/act/2005/6> accessed on May 12, 2022

²⁴ Act No. 1 of 2003 <https://ulii.org/akn/ug/act/2003/1> accessed on May 12, 2022

²⁵ Act No. 2 of 2011 <https://ulii.org/akn/ug/act/2011/2> accessed on May 12, 2022

²⁶ Corruption Perception Index <https://www.transparency.org/en/cpi/2021/index/uga> accessed on May 12, 2022

Over the last decade, Uganda has been rocked by grand corruption scandals involving the loss of staggering amounts of public funds. In 2012, officials in the prime minister's office were alleged to have stolen \$12.7 million meant for the reconstruction of war-ravaged areas in northern Uganda.²⁷ In the same year, there was a theft of \$ 65 million in pension funds meant for compensation of 1,018 former workers of the East African Community.²⁸ All these events occurred after the enactment of the Anti-Corruption Act with the IG as the main ACA.

Recently, in June 2020, Parliament approved a supplementary budget of 1.087 trillion shillings to facilitate the COVID-19 response by the health ministry, and the IMF approved US \$491.5 million as an emergency assistance for Uganda under the Rapid Credit Facility. These initiatives were followed by a World Bank US \$300 million to boost the government's capacity to prevent, detect and treat the coronavirus, and support economic recovery.²⁹ Lastly, the total donations by the Ugandans to the COVID-19 taskforce were valued at 28 billion shillings as of May 2020.³⁰ The Auditor General's report for the fiscal year 2019/20 identified several cases of corruption in the management of Covid-19 funds in the country.³¹ It later emerged in the report presented at the multi-stakeholder workshop on Covid-19 Transparency and Accountability that there was no information provided in 2020 on actual spending on Covid-19 expenditures.³²

²⁷ Open Society Foundation “*Effectiveness of Anti-Corruption Agencies in East Africa*” <https://www.opensocietyfoundations.org/uploads/b2e4045b-9d30-405b-b84d-78709c644778/effectiveness-of-anticorruption-agencies-in-east-africa-uganda-20160913.pdf> at 1 accessed of March 15, 2022.

²⁸ Open Society Foundation, *supra*, at 1

²⁹ The Independent “*MPs Demand Audit of COVID Cash*” available at <https://www.independent.co.ug/mps-demand-audit-of-covid-cash/>

³⁰ The Independent *supra* at 1

³¹ Office of the Auditor General, (2021). “*Report of the Auditor General to Parliament for the Financial Year ended 30TH July 2020*”. Accessed at: http://www.oag.go.ug/wp-content/uploads/2021/03/Consolidated-Audit-ReportFinal-31st-Dec-2020_web.pdf. Accessed on August 9, 2021.

³² Ismail Musa Ladu “*Accountability of Covid-19 Resources Wanting-Report*” <https://www.monitor.co.ug/uganda/news/national/accountability-of-covid-19-resources-wanting-report-3650344> accessed on March 28, 2022

In 2020, the main referral hospital, Mulago had only 27 ICU beds turned over to manage Covid-19 patients, including four isolation rooms³³. Having an independent ACA enforces accountability in government institutions and public funds are put to proper use. If this was done at the height of the Covid-19 pandemic many lives could have been saved. However, what does this independence mean? And how can it be achieved?

II. Independence as a Distinct Feature for Anti-Corruption Agencies

It has been said that corruption tends to be reduced by the separation of powers, checks, and balances, transparency, a good system of justice, and clearly defined roles, responsibilities, rules, and limits. Corruption tends not to thrive where there is a democratic culture, competition, and good systems of control, and where people have rights to information and rights of redress. However, separation of powers, checks and balances cannot exist without independent ACAs.

The key features of ACAs according to the OECD include mandate and functions; forms of specialization; independence, autonomy, and accountability; adequate material resources, specialized and trained staff; adequate powers; co-operation with the civil society and the private sector; inter-agency co-operation.³⁴ In this paper I will focus on independence as a distinct feature in fighting corruption.

Article 6 of the United Nations Convention against Corruption (UNCAC) prescribes that an anti-corruption investigation and prosecution system needs the “necessary independence” to resist “political interference” and should be “free from any undue influence.”³⁵

According to the OECD,

³³ Daniel K. Kalinaki, “*Investigation: How lack of Oxygen, Poor Health Sector is Killing COVID-19 Patients in Uganda*” Monitor, Monday, November 30, 2020 accessed on May 7, 2022.

³⁴ OECD (2008), *Specialized Anti-Corruption Institutions: Review of Models*, OECD, Paris.21, <https://www.oecd.org/corruption/acn/39971975.pdf> accessed on May 7, 2022

³⁵United Nations office on Drugs and Crime https://www.unodc.org/unodc/corruption/tools_and_publications/UN-convention-against-corruption.html, accessed on May 7, 2022

“Reasons why the independence criteria rank so high on the anti-corruption agenda are closely linked with the nature of the phenomenon of corruption [...] tackling corruption of high-level officials [...] or systemic corruption in a country with deficits in good governance and comparatively weak law enforcement and financial control institutions is destined to fail if efforts are not backed by a sufficiently strong and independent anti-corruption institution.”³⁶

Independence, therefore, is accepted as an indispensable element in the widely acclaimed effectiveness of ACAs. Political independence and public accountability are the two sides of the same constitutional coin.³⁷

Articles 226 and 227 of the Uganda Constitution provide the IG with areas of authority and guarantee its independence.³⁸ Whereas this independence is assured by the constitution, I contend that the IG’s independence is only *de jure* and not *de facto* as seen below.

Justice John Bosco Katutsi, former head of the Anti-Corruption Court, during a court ruling in 2010, stated that “This court is tired of trying tilapias when crocodiles are left swimming.”³⁹ Hon. Mike Mukula the only minister convicted for embezzlement appealed his conviction and sentence.⁴⁰ The President publicly offered to pay for his legal fees. The payment was confirmed in the media by the presidential press secretary. Ultimately, he was acquitted on appeal. One prosecutor in the IG’s office said, “If the head of state comes out openly to offer to pay for someone’s lawyers, what kind of message does that send to us? We know we cannot win.”⁴¹

More recently, in December 2021, during International Anti-Corruption Day in Uganda, the Inspector General of Government (IGG) Betty Kamyia said that “it is now time for public

³⁶ OECD (2008) *supra* at 22

³⁷ Robert Gregory “*Political Independence, Operational Impartiality, and the Effectiveness of Anti-corruption Agencies*” <http://www.emeraldinsight.com/2046-3162.htm> at 127

³⁸ The Constitution of the Republic of Uganda, <https://ulii.org/akn/ug/act/statute/1995/constitution/eng%402018-01-05> accessed on May 4, 2022.

³⁹ Human Rights Watch, “*Letting the Big Fish Swim: Failures to Prosecute High-level Corruption in Uganda*,” <http://www.hrw.org/reports/2013/10/21/letting-big-fish-swim-0> at 17

⁴⁰ Human Rights Watch *supra* at 17

⁴¹ *id*

officials who live a lifestyle that is not commensurate with their salaries and earnings to explain the source of their wealth.”⁴² She called on citizens to become angry and join forces against the corrupt officials.⁴³ The President immediately after her speech warned the IGG to "be careful" with her lifestyle audit and further said that Uganda is still lucky that the corrupt steal the money and invest it in the country.⁴⁴ This statement was viewed as a threat to the IG and to the general public is proof that independence enshrined in the constitution is only de jure and not de facto.

The IG has also suffered from lack of prosecutorial independence. The IG is headed by the IGG and two Deputy Inspector Generals.⁴⁵ All of them are appointed by the President. From the time of the IGG’s establishment in 1988, 2013 was the first time that all three leadership positions were filled, but it was clearly prompted solely by donor pressure.⁴⁶ In April 2012, the court ruled that the IGG’s office could not prosecute cases if it is not fully constituted.⁴⁷ This shows that for 25 years of its existence the IGG lacked prosecutorial independence and could not perform its main duties.

From the above therefore, the effectiveness of an anti-corruption strategy in a country also depends on whether the President and respective ministries are prepared to implement the necessary measures and legislation to grant ACAs prosecutorial independence.

III. Comparative Analysis Between the Independence of the Department of Justice (DOJ) in the USA and the IG in Uganda

⁴² The Observer “*Corruption: Museveni warns Kamyra to be careful with lifestyle audit*”, December 10, 2021 [Corruption: Museveni warns Kamyra to be careful with lifestyle audit \(observer.ug\)](http://observer.ug) accessed on March 10, 2021.

⁴³ The Observer *supra* accessed on March 10, 2021.

⁴⁴ The Observer *supra* accessed on March 10, 2021.

⁴⁵ Inspectorate of Government Act, 2002, clause 3.

⁴⁶ Human Rights Watch, “*Letting the Big Fish Swim: Failures to Prosecute High-level Corruption in Uganda*”, <http://www.hrw.org/reports/2013/10/21/letting-big-fish-swim-0> at 26

⁴⁷ Hon. Sam Kuteesa and Two Others v. Attorney General, Constitutional Court of Uganda at Kampala, Constitutional Petition No. 46 of 2011, <http://www.ulii.org/ug/judgment/constitutional-court/2012/2> (accessed March 10, 2023).

Within the U.S., a myriad of state and federal laws, including the RICO Act,⁴⁸ the Travel Act,⁴⁹ and the Mail and Wire Fraud Acts,⁵⁰ have been enacted and applied to both government officials and private persons to fight corruption. No explicit law existed, however, to deal with foreign officials before the Foreign Corrupt Practices Act of 1977 (FCPA).⁵¹

The DOJ and the Securities Exchange Commission (“SEC”) can jointly or separately initiate/conduct an FCPA investigation. Within the DOJ, the Fraud Section of the Criminal Division has primary responsibility for all FCPA matters.⁵² The FCPA Unit within the Fraud Section, works on enforcement singularly or with the U.S. Attorneys’ Offices around the country.

Corporate attention to the FCPA escalated as enforcement increased in the late 1990s. The FCPA went from a “legal backwater”⁵³ to being “at the nerve endings of corporate general counsels and executives.”⁵⁴ Now, the FCPA is one of the most well-known (and feared) American statutes by corporate executives in the United States and abroad.⁵⁵

Government officials have also been prosecuted under the FCPA and other federal and state laws listed above. In 2008, congressman William J. Jefferson was indicted with charges for participating in multiple schemes and related offenses. Jefferson solicited and received bribes from various persons and business entities. His indictment was affirmed by the Court of Appeals for the fourth circuit.⁵⁶

⁴⁸ 18 U.S.C. 96

⁴⁹ 18 U.S.C. 52

⁵⁰ 18 U.S.C. 1343

⁵¹ U.S. Department of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, at 2

⁵² U.S. Dept. of Justice, U.S. Attorneys’ Manual § 9-47.110 (2008), available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/.

⁵³ Charlie Savage, With Wal-Mart Claims, Greater Attention on a Law, N.Y. Times, Apr. 25, 2012, at B1 (quoting Richard Cassin).

⁵⁴ Nelson D. Schwartz & Lowell Bergman, Payload: *Taking Aim at Corporate Bribery*, N.Y. Times, Nov. 25, 2007, at BUI (quoting Daniel E. Karson, executive managing director at Kroll Associates).

⁵⁵ Ashby Jones, FCPA: *Company Costs Mount for Fighting Corruption*, Wall St. J., Oct. 12, 2012, at B1.

⁵⁶ 674 F.3d 332 (4th Cir. 2012)

According to the Justice Manual, the guidebook for all DOJ action, DOJ’s “legal judgments” must be “impartial and insulated from political influence,” and its “investigatory and prosecutorial powers” must be “exercised free from partisan consideration.”⁵⁷ Although no constitutional provision or statute explicitly establishes prosecutorial independence, neither law expressly grants the President absolute power over federal prosecutions. It is Congress's role to determine the extent of the President's criminal-justice power, and Congress has acquiesced in the norm and practice of respecting prosecutors' independence.⁵⁸

This independence has made the DOJ very effective in fighting corruption. In November 2020, the OECD’s Working Group on Bribery officially released the final Phase 4 report of its review of the US’ implementation of its treaty obligations.⁵⁹ The working group’s assessment of US enforcement practices were favorable, finding that the United States leads in best practices among all signatories of the Anti-Bribery Convention.⁶⁰

From the above findings, I will analyze features that make the DOJ independent and effective in fighting corruption in the USA and recommend how these features can be modified and implemented to strengthen the IG in Uganda.

A. Appointment, Renewal, and Removal of the ACAs executives

The Attorney General in the USA is appointed by the President,⁶¹ and the Attorney General is responsible for appointing the chief of the Fraud Section⁶². The President is not mandated by the law to appoint officials in the Fraud section and the FCPA Unit of the DOJ.

⁵⁷ U.S. Department of Justice, “*Justice Manual: 1-8.100 – Introduction*,” available at <https://www.justice.gov/jm/jm-1-8000-congressional-relations> accessed on May 2, 2022

⁵⁸ U.S. Department of Justice *supra* accessed on May 2, 2022

⁵⁹ Bruce A. Green & Rebecca Roiphe, *Can the President Control the Department of Justice*, 70 ALA. L. REV. 1 (2018), at 5

⁶⁰ Implementing the OECD Anti-Bribery Convention: United States Phase 4 Report (October 16, 2022), accessed at [Implementing the OECD Anti-Bribery Convention: United States Phase 4 Report](#) on April 5, 2022

⁶¹ Bruce A. Green & Rebecca Roiphe, *supra*, at 5

⁶² Bruce A. Green & Rebecca Roiphe, *supra*, at 5

The President, however, retains the power to fire the Attorney General, but government lawyers must resist or resign if the President directs them to act contrary to the sound exercise of prosecutorial discretion because in criminal prosecutions-as in other contexts-the exercise of professional discretion is built into the structure of American government.⁶³ This fosters prosecutorial independence in their enforcement of the FCPA and other Anti-Corruption statutes.

By contrast, in Uganda, the President has unlimited powers with regards to the appointment and renewal of the tenure of all heads of the IG⁶⁴ and all other agencies of government. Historically allegiance to the head of State seems more relevant to appointed officials than the legally known safeguards provided under the law for their appointment.⁶⁵ It follows that the procedures for appointing and dismissing the heads of these bodies are not adequately implemented to foster independence in the execution of their duties. Under Article 223(7) of the constitution, the IG officials have four-year terms and are eligible for one re-appointment. However, this is always uncertain and creates a situation where the IGG and the deputies serve to please the President to secure a re-appointment or avoid a dismissal.

I would, therefore, recommend that the legislation be amended to allow the attorney general or the Public Service Commission to appoint the IGG and his or her deputies. Proper regulations detailing their appointment, renewal, and removal should be enacted to enable them to serve for a fixed term without the fear of being fired by the President or anyone in a senior position. Alternatively, the President can be granted power to appoint the IGG and allow for the deputies to

⁶³ Bruce A. Green & Rebecca Roiphe, *supra*, 6

⁶⁴ Article 223(4) and 224 of the Constitution of the Republic of Uganda 1995

⁶⁵ 4 Interview with CSO Leader in Kampala conducted in July 2021. [2021 Final-Civil-society-parallel-report-Anti-Corruption-Coalition-Uganda.pdf](#) at 26

be appointed by another body. This balance will create the necessary checks and balance required by the IG to execute its mandate.

B. Collaboration With Other Independent Enforcement Agencies

The DOJ's FCPA Unit regularly works with the Federal Bureau of Investigation (FBI) to investigate potential FCPA violations. The FBI's International Corruption Unit has primary responsibility for international corruption and fraud investigations and coordinates the FBI's national FCPA enforcement program. In addition, the Department of Homeland Security, the Internal Revenue Service-Criminal Investigation, and other agencies regularly investigate potential FCPA violations.⁶⁶

In June 2021, the Biden-Harris Administration Issued a National Security Study Memorandum (NSSM) declaring corruption a core national security priority and mandated a "whole of government" approach to fight corruption. The directive asked every U.S. government agency to establish plans on how their agency will fight corruption.

Fighting corruption is thus not the role of ACAs alone but rather a collective effort of agencies organized under a supportive government. This collective effort among government agencies fosters independence because it creates accountability within the institutions.

Uganda, on the other hand, does not have a similar coordination and it is unlikely to achieve the same results. The country has a duplication of ACAs that have a duplication of mandates which are neither clear nor enshrined in the law. There are instances where the IG and the other ACAs carry out the same investigations on the same cases causing wastage of government resources.

If all government agencies are independent and free of corruption, this collaboration would yield positive results. The East African Bribery Index (2017) revealed that the Judiciary is the

⁶⁶U.S. Department of Justice, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, at 14

second most corrupt institution in Uganda, with a 70% probability of being asked to pay a bribe by judicial officers.⁶⁷ If the Judiciary, which is empowered to collaborate with ACAs to fight corruption, is corrupt, then it means that the country is fighting a losing battle.

I, therefore, recommend, as stated by the Biden-Harris Administration in the NSSM, that corruption needs to be a core priority of all government ministries, with each of them establishing anti-corruption plans and appointing a compliance officer to enforce the said plans. This collective effort will foster accountability, transparency, and provide the support the IG requires to act independently.

C. Adopting a Bottom-up Approach and Enhancing Civil Society Participation

Outreach programs and civil society participation help to strengthen public trust in ACAs and build their independence. Tracy Webb, the Director of Community & Law Enforcement Outreach, US State Attorney's office, stated that "in all of these efforts, the United States Attorney's goal is to listen, to learn, and to educate, in order to better achieve the overall mission of the office and the Department of Justice Improving public trust."⁶⁸ Social actors play a big role in protecting and defending anti-corruption reforms. Accordingly, any threat to the independence of ACAs may be fiercely resisted if the ACA has the support of civil society organizations.

In Uganda, in November 2012, a coalition of around 50 civil society groups organized a campaign known as the Black Monday movement.⁶⁹ The participants would wear black every Monday to highlight the theft of public money, raise awareness of corruption's effect on citizens' lives, and protest the impunity of government officials who have not been held accountable.⁷⁰

⁶⁷Transparency International, (2017), *East African Bribery Index 2017*, <https://tikenya.org/wp-content/uploads/2017/09/East-African-Bribery-Index-EABI-2017-1-1.pdf>. Accessed on March 14, 2022.

⁶⁸ Tracy Webb "Community Outreach," [Community Outreach | USAO-CDCA | Department of Justice](#) accessed on April 5, 2022

⁶⁹Human Rights Watch, *Letting the Big Fish Swim: Failures to Prosecute High-level Corruption in Uganda*, <http://www.hrw.org/reports/2013/10/21/letting-big-fish-swim-0> at 44

⁷⁰ *Id.* at 44.

Police arrested and charged at least 28 individuals handing out Black Monday materials in the first ten months of 2013.⁷¹ The fact that the IGG did not rally behind the civil society organizations in raising awareness against corruption indicates its lack of independence.

Public awareness about corruption is still insipient in Uganda. This explains why corrupt officials show no shame when accused of corruption. In this sense, inducing a bottom-up approach could be an essential piece to fighting corruption. Educational anti-corruption programs at all levels of education will promote ethics, values and create a population that is aware of the negative effects of corruption and can demand for leaders who are free of corruption scandals.

Whereas this solution may not yield immediate results, there is a need to mold the ethics and values of the young generation who will, in the long run, advocate for independent ACAs and elect leaders who respect and enforce democracy, separation of powers and accountability.

D. Creating Suspension and Debarment Authorities

The IG does not have a debarment authority, nor does any other enforcement agency in Uganda. A well-functioning suspension and debarment system can be an effective tool for governments to promote integrity in public procurements, reduce performance risk, and mitigate the likelihood of fraud and corruption. The latest annual report from the US Interagency Suspension and Debarment Committee (ISDC) reveals that the number of suspensions and debarments in the United States has increased steadily over the last six years.⁷² Every US executive agency may suspend or debar any supplier that: a) has been convicted of a crime or civil fraud; b) was in serious breach of other requirements (including poor contract performance); or c) for ‘any

⁷¹ *Id.*

⁷² Pascale Dubois, Collin D. Swan and Nathaniel Castellino “*Suspension and Debarment on the Rise: A Popular Enforcement Tool in the USA.*” Newsletter of the International Bar Association Legal Practice Division VOLUME 7 NUMBER 2 SEPTEMBER 2015, *Suspension and Debarment on the Rise: A Popular Enforcement Tool in the United States* by Pascale Dubois, Collin D. Swan, Nathaniel Castellano :: SSRN

other cause of so serious or compelling a nature that it affects the present responsibility of the contractor.⁷³

Under the Federal Acquisition Regulation (FAR), a decision to debar or suspend is discretionary. The decision is not made by DOJ's prosecutors or SEC's staff but instead by independent debarment authorities within each agency, which analyze a number of factors to determine whether a company should be suspended, debarred, or otherwise determined to be ineligible for government contracting.⁷⁴

By having debarment authorities, the offenders could be cross-listed and prohibited from bidding or handling any other government business until they have put into place policies and procedures to avert corruption. This solution will avoid dependency on the Judiciary, which is corrupt, and top political officials will be estopped from obtaining more government business until there is proof of reform. Since the President is unwilling to fire most of the top officials accused of corruption, debarring them from obtaining government business could be a compromise and will reduce the political influence in the IG.

E. Creating a System of Agency Peer Review

Independence in the IG can be enhanced by enacting legislation that allows agencies to review the effectiveness of the anti-corruption reforms of another. This procedure will bring to light the existence of political influence in ACAs, which will prompt reforms. A peer agency review can contribute to assessing the effectiveness of the organization by testing the capacity and quality of the organization's own evaluations of effectiveness.

In the USA, the Government Auditing Standards require that each organization conducting engagements in accordance with these standards must obtain an external peer review. The

⁷³ 48 CFR s 9.406-2(c).

⁷⁴ See 48 C.F.R. §§ 9.406-1, 9.407-1(b)(2). Section 9.406-1

objectives of a peer review are to determine whether the reviewed audit organization's system of quality control is suitably designed and whether the organization is complying with its quality control system.⁷⁵

This approach builds greater knowledge, confidence, and use of evaluation systems by management, governing bodies, and others while providing a suitable way of “evaluating the evaluators,” sharing good practice, experience, and mutual learning.⁷⁶ A program of systematic follow-up to monitor and promote full implementation of the OECD Anti-Bribery Convention is required by Article 12 of the Convention. The Working Group on Bribery has effectively undertaken its monitoring work through a system of peer review⁷⁷. This system has been proven effective in promoting compliance and reforms in member countries.

If adopted in Uganda, agency peer review would check political influence in the IG and all other ACAs, enabling them to act independently in executing their mandate as stated above.

F. Public Disclosure of Income and Asset Declarations of Public Officials

Following the Watergate scandal, public officials' financial disclosure was required in the United States by the Ethics in Government Act of 1978.⁷⁸ Public financial disclosure and reporting requirements apply to the President, Vice President, all members of Congress (as well as to candidates for President, Vice President, or Congress), federal judges and justices, and employees

⁷⁵ US Government Accountability Office <https://www.gao.gov/ig/peer-review-reports?msclkid=a72bfaecb86511ec81d87f816d24d42c> accessed on April 28, 2022

⁷⁶Evaluating multilateral effectiveness - work of the DAC Evaluation Network <https://www.oecd.org/dac/evaluation/evaluatingmultilateraleffectiveness.htm> accessed on April 28, 2022

⁷⁷ Country Monitoring Principles for the OECD Anti-Bribery Convention accessed at <https://www.oecd.org/daf/anti-bribery/anti-briberyconvention/countrymonitoringprinciplesfortheoecdanti-briberyconvention.htm> accessed on April 28, 2022.

⁷⁸ CRS Report for Congress “Financial Disclosure by Federal Officials and Publication of Disclosure Reports” accessed at <https://sgp.fas.org/crs/misc/R43186.pdf> accessed on April 29, 2022

in all three branches of the federal government who are compensated at a rate of pay over a particular amount.⁷⁹

If legislation is amended to allow for public disclosure, it will create accountability, which in the end, will enhance the independence of the IG. In May 2022, the IG launched the declaration of income, assets, and liabilities by public officers' online portal, where public officials are required to make their declarations.⁸⁰ However, the details of the income and asset declarations are not made available to the public; hence it does not incentivize the public officials to act better to please their electorate. This lack of transparency not only causes a lack of public trust in the IG system but also takes away from its independence. I would therefore recommend amending the current legislation to allow for public disclosure of the asset and income declarations by public officials.

The recommendations proposed above, especially those related to public disclosure of corrupt government officials, and disclosure of their assets and income, may end up affecting state legitimacy and eventually lead to the abolition of the IG. Therefore, I analyze the relationship between state legitimacy and anti-corruption reforms to effectively create an independent ACA that has the will of the government.

IV. Increasing Political Will for Anti-Corruption Reforms

Legitimacy is an important dimension of state effectiveness and political stability.⁸¹ Thus, the IG, while addressing the gaps that take away its independence, has to consider the socio-economic effects that could harm state legitimacy. By being independent and effective, ACAs can

⁷⁹ id

⁸⁰ Ig Launches Declaration Of Income, Assets And Liabilities By Public Officers, <https://www.igg.go.ug/updates/news/ig-launches-declaration-of-income-assets-and-liabilities-by-public-officers/> accessed on April 20, 2018

⁸¹Uriel Abulof, 'Can't buy me legitimacy': the elusive stability of Mideast rentier regimes, 20 J INT RELAT DEV 55 (2017)

undermine state legitimacy by uncovering widespread corruption patterns within the state apparatus.

This was witnessed with Guatemala's International Commission Against Impunity (CICIG), founded in the wake of the civil war in 2007 through an agreement between the Guatemalan government and the United Nations.⁸² The CICIG was given a broad anti-impunity mandate, and while corruption was not initially a priority, it became so given its importance in perpetuating impunity.⁸³

The CICIG's comprehensive mandate enabled it to independently conduct investigations that, in turn, played a major role in reducing the political legitimacy of corrupt incumbents. President Jimmy Morales opposed the CICIG as soon as it started investigating him and his corrupt cabinet.⁸⁴ Morales announced that he would not renew the CICIG's mandate.⁸⁵ The CICIG closed in September 2019 amidst people gathering around its headquarters to thank the CICIG for its work and to express their concerns around renewed corruption.⁸⁶

What happened in Guatemala does not necessarily mean that an ACA like the CICIG cannot be effective; however, governments need to be incentivized to appreciate the efforts of the ACAs. Developing countries could benefit from the merits of a hybrid model like the CICIG,

⁸² A. Hudson & A. W. Taylor, *The International Commission against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms*, 8 J INT CRIM JUSTICE 53 (2010). 72 International Crisis Group, at 70.

⁸³ *id*

⁸⁴ Arturo Matute, *Guatemala Stumbles in Central America's Anti-Corruption Fight* (International Crisis Group, Commentary, 2017), <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/guatemala-stumbles-central-americas-anti-corruption-fight>, accessed 8 November 2018.

⁸⁵ *id*

⁸⁶ 92 Jeff Abbott, *Guatemala's CICIG: UN-backed anti-corruption body shuts its doors*, Al Jazeera (Sep. 3, 2019), <https://www.aljazeera.com/news/2019/09/guatemala-cicig-backed-anti-corruption-body-shuts-doors-190903132411201.html>, accessed 15 March, 2022; CICIG, *Opinion poll shows that 72% of Guatemalan people support CICIG's work* (Apr. 5, 2019), <https://www.cicig.org/citizen-support/opinion-poll-shows-that-72-of-guatemalan-people-support-cicigs-work/?lang=en>, accessed 15 March 2022.

guided by the idea that a partnership with the international community can be an effective way of enforcing independence in the execution of ACA duties.

In sum, there is another side to the often-asserted positive relationship between anti-corruption reforms and state legitimacy. As much as anti-corruption reforms are key for development, it can be deduced from the Guatemala example that some governments do not want an efficient anti-corruption agency. This is the main reason why ACAs lack independence because independent ACAs are most likely to undermine state legitimacy. Several perks/incentives can stimulate governments to fight corruption and enforce a system of independent and effective ACAs.

V. Incentives for Governments to Fight Corruption

Achieving independence is often challenging because top political officials are often the ones who stand to gain the most from a corrupt system and have no incentive to create independent ACAs. In the process, other government workers like police officers who are supposed to arrest the corrupt have no incentive to refrain from corrupt practices. This also extends to public prosecutors and all other public servants. Often corruption continues because those charged with defeating it do not believe the corrupt system can be changed. Once the top government officials are incentivized to fight corruption, it will force the low-level public officials to join the fight against corruption. These incentives include.

A. Improving Public Officials' Salaries

In Uganda, low-level public officials are usually underpaid with delayed salary payments. They often can't support their families without moonlighting or accepting side payments. More importantly, there is a need to strengthen the linkages between pay and performance, and

promotion and performance, which in many public sectors have been badly eroded. This should not only apply to anti-corruption enforcers but to the entire public sector.

The reason for low-level corruption is often necessity, while the reason for high-level corruption is greed. To avoid low-level corruption, having minimum wage standards, increasing the salaries of public officials, and strengthening capacity will help reduce the need and eventually reduce corruption.

B. Public Infrastructure and Facilities Improvement

Recently, Uganda Airlines AirBus A330-800 chartered the former speaker of Parliament (deceased), to Seattle, Washington, U.S., for specialized medical treatment, at a cost of USD 500,000 (about Shs1.7b).⁸⁷ The absurd expense was protested by some Ugandans, who said the government should improve the quality of healthcare in the country to avoid such expensive trips.⁸⁸ This came shortly after the death of the governor of the Bank of Uganda, who was flown to Dubai, UAE, for treatment. It was purported that “the sickness deteriorated due to failure fly out of the country in time to receive his treatment during the Covid-19 pandemic [...]Uganda is not desperate for resources to put up proper hospitals; we have the money but it is being squandered on useless things.”⁸⁹ When funds are put to their proper use there is an improvement in the health infrastructure, roads, schools, power, and other public facilities, which benefit everyone, including the high-ranking government officials.

⁸⁷ Tonny Abet “Revealed: *Four People who Flew with Oulanya to Seattle*” April 6, 2022. <https://www.monitor.co.ug/uganda/news/national/revealed-the-four-people-who-flew-with-oulanyah-to-seattle-3773138> Accessed on April 10, 2022

⁸⁸ *id*

⁸⁹ The Monitor “*Oulanya didn’t have to die in the USA*” March 23, 2022 accessed at <https://observer.ug/viewpoint/73129-oulanya-didn-t-have-to-die-in-the-usa> Accessed on April 10, 2022

Corruption affects everyone. Most of the effects don't distinguish between the rich and the poor. If not curbed, citizens suffer the impact of a bad health system and other facilities, and traveling abroad might be futile, as was seen during the covid-19 pandemic. This should be an incentive for governments to fight corruption because it benefits the entire nation.

C. Fighting Corruption Increases Revenues Obtained from Tax Collections

All governments require taxes to operate effectively, and rampant corruption can significantly affect the countries revenue. In an analysis of more than 180 countries, it was found that more corrupt countries collect fewer taxes, as people pay bribes to avoid them, including through tax loopholes designed in exchange for kickbacks.⁹⁰ Also, when taxpayers believe their governments are corrupt, they are more likely to evade paying taxes.⁹¹

By excusing and entertaining corrupt behavior, a government creates a society that is very reluctant to pay their taxes since they know the money will end up in the pockets of a few government officials who will use it for their benefit. All public servants are lured to be corrupt, knowing that there are no serious consequences. As a result, this leads to fewer taxes due to kickbacks and tax avoidance which eventually lead to an economic collapse. Thus, this risk alone should be an incentive to fight corruption.

D. Anti-Corruption Reforms Allow a Full Benefit of a Country's Natural Resources

The discovery of 6.5 billion barrels of oil reserves in the Albertine region of Uganda presents an opportunity for the country to generate government revenues for domestic investment and catalyze domestic private sector development.⁹² However, the oil reserves represent a

⁹⁰ Victor Gaspar, Paolo Mauro and Paulo Medas "*Tackling Corruption in Government*" accessed at <https://blogs.imf.org/2019/04/04/tackling-corruption-in-government/> accessed on April 19, 2022

⁹¹ *id*

⁹² The World Bank, *How Can Uganda's Private Sector Yield Maximum Benefits from Oil and Gas?* <https://www.worldbank.org/en/news/feature/2015/05/12/how-can-ugandas-private-sector-yield-maximum-benefits-from-oil-and-gas> accessed on April 19, 2022

temporary boom, as revenues from oil reserves are finite. But their impact on the Ugandan economy and society, if deployed strategically, could be far more durable.⁹³

Corruption prevents a country from benefiting fully from the wealth created by its natural resources. Multinational companies that dominate these industries typically agree to pay host countries to extract natural resources, which involves acquiring licenses and setting up agreements that specify the terms of the process and any payments to the host country, including royalties, license fees, and bonuses. In the process, a lot of bribery is likely to happen in exchange for favorable agreements as opposed to maximizing the resources for the people and creating a long-term positive impact on the economy. Fighting corruption is key for a country not to be dependent on aid but rather on its natural resources. This can be another incentive for the government to improve accountability and independence in ACAs to maximize its resources. If corruption is dealt with, the exploration of these resources creates jobs for the people and generally increases the country's GDP, making the government more prominent.

E. Corruption Negatively Affects Foreign Direct Investment (FDI)

Corruption discourages FDI and is a major cost to international business. Parties to the OECD Anti-Bribery Convention account for 64% of global FDI flows and more than half of world trade.⁹⁴ With the OECD's enforcement of the Anti-Bribery Convention, The FCPA, and the UK Anti-Bribery Act restrictions, investors avoid corrupt countries to protect themselves from liability.

It is thus not shocking that in the last ten years, several big companies, including British Airways, Vodacom, Barclays, Shoprite, and Etihad Airlines, among others, have left Uganda. It

⁹³ *id*

⁹⁴ Blundell-Wignall, A. and C. Roulet (2017), "*Foreign direct investment, corruption and the OECD Anti-Bribery Convention*", *OECD Working Papers on International Investment*, No. 2017/01, OECD Publishing, Paris, <https://doi.org/10.1787/9cb3690c-en>. Accessed on April 19, 2022

has been argued that businesses were exiting way before the COVID-19 pandemic due to corruption, although the pandemic has certainly accelerated the process.⁹⁵ There is an urgent need to attract foreign direct investment to boost the country's economy and trade before the economy collapses. The president and all arms of government need to come out publicly to denounce corruption and hold all corrupt government officials accountable. One way of doing this is to increase the independence of the IG. Increasing Uganda's position on the corruption index should be one of the priorities post COVID-19 pandemic to foster development.

F. Fighting Corruption Helps to Reduce the Crime Rate

Through corruption, criminals can obtain protection from public officials, influence political decisions and infiltrate state structures and legitimate businesses. Criminal organizations need legitimate state structures to sustain and expand their activities.⁹⁶ Ugandan public officials have been subject to shootings in the last five years, with investigations failing to get the culprits due to broken police and judicial systems. In 2021, Gen Edward Katumba Wamala, the outgoing Works and Transport Minister, was lucky to survive after four gunmen shot his daughter and driver dead.⁹⁷ Other unresolved killings include Senior State Prosecutor Joan Kagezi, former police spokesperson Andrew Felix Kaweesi, Muhammed Kirumira Buyende District Commander, Maj Muhammad Kiggundu, and Ibrahim Abiriga, a former Member of Parliament.⁹⁸

Failure to capture the victims is proof of a failed judicial system, and this failure is largely due to corruption, as explained in this paper. Corruption allows criminal organizations to survive,

⁹⁵ Dorothy Nakaweesi, "Exit of Foreign Companies from Uganda," <https://www.monitor.co.ug/uganda/business/prosper/exit-of-foreign-companies-from-uganda-3550438> accessed on April 19, 2022

⁹⁶ Anti-Corruption Resource Center; *Organised Crime and Corruption*, <https://www.u4.no/publications/organised-crime-and-corruption.pdf> accessed on April 19, 2022

⁹⁷*id*

⁹⁸ The Daily Monitor, "Katumba's Shooting: Connecting the dots and the unanswered questions" <https://www.monitor.co.ug/uganda/special-reports/katumba-s-shooting-connecting-the-dots-and-the-unanswered-questions-3429680> accessed April 22, 2022

and it minimizes the risk of the criminals from being arrested and prosecuted. Corrupt police officials tend to turn a blind eye to illicit activities, often fail to do investigations, and prosecutors conduct flawed prosecutions.

Failing to fight corruption leads to increased crime, and as seen above, anyone can be a victim.

VI. Conclusion

Uganda has an opportunity to enhance economic development post covid-19. This development will be impeded if corruption remains rampant. Having independent ACAs with the necessary political will could resolve this problem. Therefore, the IG must adopt a bottom-up approach to effectively fight corruption in Uganda by advocating for policies in the education sector to transform the citizen's attitude towards corruption. There is also a need to amend the law that appoints the IG executives, allow for collaboration of all government agencies, create a suspension and debarment authority and a system of agency peer review to enhance its independence.

Corruption exacerbates poverty, inequality, and social division. This paper has shown that corruption also negatively affects the government and its corrupt officials who oppose ACAs reforms in the form of poor health services and infrastructure, lowered revenues from taxes, failure to benefit from the country's natural resources, reduced foreign direct investments, and increased crime rates. This paper calls for a collective effort to fight corruption because it affects everyone regardless of their political status. All government agencies should work hand in hand to promote the independence of the IG because by doing so, everyone shall reap the benefits of a corrupt-free regime.