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Exploring the Efficiency of the Inspectorate of Government in Anti-Corruption Regime in Uganda

Matial Andrew

School of Law Kampala International University, Uganda

ABSTRACT

The inspectorate of government has put a big fight to end corruption in Uganda. However, due to a number of challenges the inspectorate of government (IG) has failed to end the vice of corruption in Uganda. Using the doctrinal methodology of research, this study explores the effectiveness of the inspectorate of government in the fight against corruption and the challenges faced by the same in executing its mandate. It is in this light the article calls for anti-corruption efforts to focus on preventing and eliminating root causes of corruption, and government's capacity to detect corruption and sanction corrupt practices should also be strengthened. Also, since IG is a national cross-cutting institution responsible for three major functions of promoting good governance, preventing and combating corruption and enforcement of the Leadership Code of Conduct, each of these functions should be funded as a separate vote. It is equally recommended for the process of establishing Leadership Code Tribunal to be expedited. This will among other things not only make the enforcement of the Code more effective but it will also encourage the leaders to comply with the Code. Finally, the parliament should amend the IG Act in order for the IG to attain corporate status. The amendment will give powers to the IG to sue or be sued in its own names this will mean that the IG won't wait for the office of the AG to represent it, where its reports are challenged in judicial review. Importantly, all government institutions must have a proper record keeping and retrieval system and Government should provide its Ministries, Departments and Agencies (MDAs) with necessary tools to ensure that this is done.

Keywords: Anti-corruption Act, Character modification, Corruption, Inspectorate of government, public conduct.

INTRODUCTION

Corruption is not a localized debacle but a globalized tragedy[1]. No country, however democratic, is liberated from the scourge and cruelty of corruption. The only disparity is the degree and the level of the vice and the systems in place to prevent it [2]. Its impact on any society in terms of socioeconomic action is extremely detrimental. Curbing corruption is exceedingly complex because it is not practiced by trespassers and outsiders. Instead, it is often institutionalized within government agencies that ensure that corrupt activities are continued and reinforced. Individuals with good intentions cannot easily revoke the system. They will either be forced to compromise their integrity and dine with the corrupt, or allow the corrupt system to prevail if they want to keep their lives and jobs. Africa in general and Uganda specifically, is a casualty to the menace of corruption [3]. Transparency International [4] annually publishes the Corruption Perceptions Index (CPI) for countries around the globe. Five of the 10 most corrupt countries in the world in 2003 were actually African: Nigeria, Madagascar, Angola, Kenya and Uganda. The least corrupt African country by this report was Botswana. Corruption in Africa is synonymous with political process, economic exchange and social service [5]. Transparency International asserts that the therapy for corruption is not simply accountability but also the collapse of the entire government or administrative system, for corruption is a symptom, not the disease itself [4]. Uganda scored 26 out of 100 in the year 2017 in the Corruption Perception Index according to the Transparency International Report of 2017 holding

its 151st position among the 180 countries that were ranked in the whole world. The country has continuously registered an increase in the level of corruption since 2008 to date with a few exceptions of 2010 and 2012 where it dropped slightly [6]. But the bottom line remains that, the situation in Uganda pertaining to corruption is so dire. A wider range of public sectors and entities, including health, education, Uganda Police Force, judiciary, works, and local government to mention but a few, have continuously been affected by corruption despite having in place an integrity system.

The concern for Uganda is to eradicate corruption which is an obstacle to economic development and prosperity. However, reports appearing in the media and those published by public and private bodies such as Transparency International 4 continuously indicate that corruption still exist in Uganda and affects key government departments and the society as a whole despite the legislative and institutional structures put in place to tackle the vice. In the year 1986 the government, created the office of the Inspector General of Government which spearheaded a number of anti-corruption initiatives which included legislative and institutional reforms[7]. Despite the legislative and institutional reforms, success in the fight against corruption has persisted. Institutions tasked to fight corruption have been perceived to be ineffective with bodies such as the Office of the IGG continuously expressing lack of 'teeth' to bite as they have failed to end corruption. The situation is further worsened by disharmony among the various institutions charged with the task of fighting corruption. The overall result is that the fight against corruption has not been won by the IGG despite the initiatives and resources put in place to combat the vice. Some of the major corruption scandals in Uganda remain unresolved to date. The persistent problem of corruption in Uganda therefore calls for re-examination of the legal and institutional frameworks in Uganda to fight corruption. This paper will therefore examine the strategies put in place by the office of the Inspectorate of Government to combat the debacle of corruption.

Historical Background of Corruption in Uganda The Ugandan traditional system of chieftaincy, rulers or leaders had no stipend but survived on bestowing gifts and favours. Even women were given as gifts to chiefs for wives. This type of corruption of exchanging gifts is deeply rooted in the cultural practices and cannot be wished away in a single day. However, as the practices were not

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perceived to be corrupt, they were carried out openly. This attitude survives among Ugandans to date, except that today the practices are conducted rather confidentially [8].

According to Asea [3], Uganda's obnoxious political past and current corruption dilemma emanated from the British colonial administrative system, which was based on using a segment of the local population to rule over the rest and consequently rewarded them for supporting their policies and interests. With the intentioned absence of democratic rule, institutions that could condemn and demand accountability from public officials never developed.

Corrupt colonial policies through the lens of the oppressive political, economic and legal structures they instituted to exploit Ugandans. The colonial officials were never accountable to the natives; they only provided feedback to the distant colonial office and Parliament in London. The natives were not permitted to question the actions of their colonial chiefs. The populace was simply recruited to serve the interests of their masters, who rewarded them based on how well they suppolied their policies [8].

The center piece of the Government's anticorruption strategy is the office of the Inspectorate of Government which was created under the leadership of Augustine Ruzindana in 1986, the Statute establishing it was only passed in 1987 and assented to it on the March 19, 1988[9]. When this institution was established it was given the responsibility under section 7 of protecting and promoting human rights, elimination and fostering the elimination of corruption and abuse of public office and promoting and ensuring adherence to the rule of law and justice in administration. Following the adoption of a new national constitution in 1995 the responsibility for human rights was removed from Inspectorate of Government and given to a new human rights body [10]. However, the Inspectorate of Government was given more extensive powers under article 225[11] of investigation, arrest and prosecution in its responsibility of combating corruption and abuse of office. It was also given a new responsibility of enforcing the Leadership Code of Conduct which is not unrelated to its central task of combating corruption.

Before the adoption of the 1995 constitution the Inspectorate of Government, which was at that time known as the Inspector General of Government, was reporting to the President [12]. In order to give the Inspectorate more autonomy the constitution changed this position. Article 22 of the constitution [13] provides that the Inspectorate "shall be independent in the performance of its

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functions and shall not be subject to the directionor control of any person or authority and shall only be responsible to Parliament". Its six monthly reports are submitted to Parliament with a copy to the President. A liicle 227 of the constitution provides for the Inspectorate to have an independent budget which was not the case before the new constitution was passed.

Definition of Corruption

Controversy over corruption begins with its definition. The term "corruption" has been used to refer to a wide range of illicit or illegal activities. Although there is no universal or comprehensive definition of what constitutes corrupt behavior, the most prominent definitions emphasize the abuse of public power or position for personal benefit. Philip[14] identified three broad definitions most commonly used in the literature: public office-centered, public interest centered, and market definitions. Public office-centered corruption is defined as behavior that digresses from the formal public duties of an official for reasons of private benefit. Law Library[15] provides an example of a public office-centered definition:

Corruption is a behavior which deviates from the formal duties of a public role because of private regarding (personal, close family, private clique) pecuniary status gains; or violates rules against the exercise of certain types of private regarding influence. This includes such behavior as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for privateregarding uses)[15].

Market-centered definitions base their analysis of corruption on social or public choice theory, utilizing an economic methodology within a political analysis. Two such definitions, by Mbaku and Mauro, follow:

"Corruption is an extralegal institution used by individuals or groups to gain influence over the actions of the bureaucracy. As such the existence of corruption per se indicates only that these groups participate in the decision making process to a greater extent than would otherwise be the case [16].

"Corruption means that a civil servant abuses his authority in order to obtain an extra income \mathfrak{f}^{im} om the public. Thus we will conceive of corruption in terms of a civil servant who regards his office as a business, the income of which he will seek to maximize. The ofice then becomes the maximizing unit" [17].

Ultimately, as the Council of Europe noted, "no precise definition can be found which applies to all

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forms, types and degrees of corruption, or which would be acceptable universally as covering all acts which are considered in every jurisdiction as contributing to corruption."²⁹ The abuse of public office for private gain" is increasingly used as a functional definition. This practice is supported by Kaufmann who found empirical support for relying on this minimalist definition as a workable definition for corruption[18].

Corruption, once broadly defined, can then be further broken down in many ways and into many categories. Corruption can be described according to where it occurs: at the political or bureaucratic levels of the public sector, or within the private sector. It can be defined according to its intensity: whether it is isolated or systematic. Other specifications include: grand versus petty, local versus national, personal versus institutional, and traditional versus modern[19].

Katharina^[20] categorizes corruption under three headings. The first is incidental corruption. This is small scale. It involves junior public officials such as police officers, customs officers, civil servants and so on. Secondly, there is systematic corruption. This is corruption that affects government departments, businesses and non-business sectors. Thirdly, there is systemic corruption, called 'kleptocracy' or government by theft. Examples of systematic and systemic corruption are many and varied; they include political corruption (buying votes, jobs for supporters) and corruption of the legal process (bribing judges and police officers, and malicious prosecutions) and are typical of the political present and past of Uganda. Mungiu-Pippidi and Fazekas have identified three main types of definitions of corruption: public office centered, market-centered and public-interest-centered definitions. However, this article adopts the public-office-centered definition of corruption by the United Nations Development Programme³⁴as 'the misuse of public power, office or authority for private benefit through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement.

In the words of to Wawrosz [21], classical theories of corruption are "dominated by economic treatments that focus on identifying structures of incentives that make corruption likely and assessing the impact of corruption on economic efficiency." The prominent theory in this perspective is the incentive theory or the principal-agent relationship. This theory states that there are a supervisory principal and an agent. The principal who can be a government auditor or a senior civil servant oversees the duties of the agent who can be a junior civil servant. The corruption can arise in

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this setup when the agent has more privilege of access to critical administrative information than the principal, and the agent tries to get the pay-offs by illegally providing the critical data to those outside the setup or administration without the knowledge of the supervisor.³⁶ Here the relationship is predominantly "defined by how incentives are managed, and the actors are otherwise indistinguishable or representative individuals" [22]. With respect to the domain taken for the analysis, the agent and principal can be different. For instance, the principal can be the government or voters whereas the agent can be a public official or senior government official. The principal's interest may not be interfered by the agent's action of getting a payoff for the personal use, as put forward by the supporters of agency theory [23].

Legal Framework of Anti-corruption in Uganda The constitution of the Republic of Uganda

This is the supreme law of the land to which all other policies, regulations and legislation are subject 13]. It establishes the different organs and institutions of government such as the Judiciary, the Judicial Service Commission and the Inspectorate of Government. The IG is established under article 223 of the Constitution and its functions provided for under Article 225 and among others these include to promote and foster strict adherence to the rule of law and principles of natural justice in administration; to eliminate and foster the elimination of corruption, abuse of authority and of public office; to promote fair, efficient and good governance in public offices;83to supervise the enforcement of the Leadership Code of Conduct; to investigate any act, omission, advice, decision or recommendation by a public officer or any other authority to which this article applies, taken, made, given or done in exercise of administrative functions; and to stimulate public awareness about the values of constitutionalism in general and the activities of its office, in particular, through any media and other means it considers appropriate 247. In performance of her functions the IG is independent and not subject to the direction or control of any person or authority and shall only be responsible to Parliament.87 these functions have been provides for in the Inspector of Government Act discussed below.

The constitution also provides for the jurisdiction of the Inspectorate of Government and it is to the effect that "the Jurisdiction of the Inspectorate of Government shall cover oficers or leaders whether employed in the public service or not, and also such institutions, organisations or enterprises as Parliament may prescribe by law" [12].

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The constitution provides for the special powers of the IG and these include power to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office. The Inspector General of Government may, during the course of his or her duties or as a consequence of his or her findings, make such orders and give such directions as are necessary and appropriate in the circumstances, power to enter and inspect the premises or property of any department of Government, person or of any authority, to call for, examine and where necessary, retain any document or item in connection with the case being investigated, found on the premises; and may, in those premises, carry out any investigation for the purpose of its functions [12]. The IG is supposed to report to parliament at least once in every six months on the performance of its functions, making such recommendations as it considers necessary and containing such information as Parliament may require. And the IG has always reported to fulfill the constitutional obligation.

Inspectorate of Government Act, 2002

The Act establishes the IG under section 3 consisting of the Inspector General of Government and two Deputy Inspectors-General [12]. The Act requires that at least one of the Inspectors General be a person qualified to be appointed a Judge of the High Court. The Act establishes the functions of the Inspectorate of government under its section 8 and these include, promoting and fostering strict adherence to the rule of law and principles of natural justice in administration; to eliminate and foster the elimination of corruption, abuse of authority and of public office; to promote fair, efficient and good governance in public offices; to enforce the Leadership Code of Conduct; to investigate any act, omission, advice, decision or recommendation by a public officer or any other authority to which this section applies, taken, made, given or done in exercise for administrative functions; to stimulate public awareness about the values of constitutionalism in general and the activities of its office, in particular, through any media and other means it considers appropriate; to inquire into the methods by which law enforcing agents and the state security agencies execute their functions, and the extent to which the practices and procedures employed in the execution of such functions uphold, encourage or interfere with the rules of law in Uganda; and many other function provided for under the section 8 of the Act $\lceil 11 \rceil$.

The Act provides for the jurisdiction of the IG and it

covers officers and leaders serving in government department, undertaking or service, statutory corporation or authority, the Cabinet, Parliament, Court of law, the Uganda Police Force, the Uganda Prison Force, government aided school, college or other institution of learning that accesses public funds, the Uganda Peoples' Defense Forces, the Local Defense Forces, local government council or local government unit or committee of such council or unit a council, boards, society or committee established by law for the control and regulation of any profession, public commission, association or similar body whether corporate or not, established by or under any law, national security organizations including Internal Security

Organization ISO and any other, office or body that administers public funds on behalf of the public 25]. The above-mentioned jurisdiction of the IG clearly show that the IG was mainly created to fight corruption among public official and other people that have access to public monies and other resources.

The Act provides for the general powers of the Inspectorate and they include; authority by IG officers to investigate allegations of corruption, abuse of office, maladministration and breach of the leadership code of conduct. The Inspectorate also, has powers to enter and inspect the premises or property of any department of Government, person or of any authority; to call for, examine and where necessary, retain any document or item in connection with the case being investigated, found on the premises; and may, in those premises, carry out any investigation for the purpose of its functions [11].

The Act also grants the Inspectorate of Government special powers under Article Section 14 (5) of the Inspectorate of Government Act. These powers include; power to investigate, cause investigations, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office, maladministration and breach of the leadership code of conduct. The Inspector General of Government (IGO) may also, during the course of his or her duties or as a consequence of his or her findings, make such orders and give such directions as are necessary and appropriate in the circumstances $\lceil 12 \rceil$. The act also gives life to the administration of the IG and the procedure to be followed in the investigation of corruption among civil servants in the country [11].

The Leadership Code (Amendment) Act, 2017

The Leadership Code Act (LCA) also mandates the Inspectorate with ensuring that specified leaders

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under the LCA declare their incomes, assets, and liabilities once every two years explaining how they acquired or incurred them respectively [26]. Under the Act, provision is made for a minimum standard of behavior and conduct for leaders. The Code prohibits conduct that is likely to compromise the honesty, impartiality and integrity of leaders or conduct that leads to corruption in public affairs but imposing penalties on leaders who breach the Code. The Leadership Code is enforced by the Inspectorate and the Tribunal and the IG is given the power to prosecute breaches of the Code before the Tribunal, the challenge being faced is that there is no tribunal to prosecute breaches of the leadership code Act as provided for by the tribunal. The IG is also mandated to investigate or cause an investigation into any alleged breach of the Code by a leader [26]. However, enforcement of the Leadership Code by IG was substantially paralyzed by the Supreme Court Judgment of John Ken LukyamuziVs Attorney General and Anor[27], where it was declared in effect that the IG was not the appropriate Tribunal as envisaged under Article 83 (1) (e) for enforcement of the Code against members of Parliament or Article 235A of the Constitution which provide for the establishment of the Leadership Code Tribunal.

It was also held in the same Supreme Court Judgment that since breaches of the Leadership Code are punished with severe penalties; such penalties should be imposed by a court of law or a Tribunal. Either, that the IG and the Tribunal would be complementary to each other [26].

Following the decision of the supreme court above the Act was amended in 2017 to provide for a Leadership Code Tribunal with the duty to receive, examine and adjudicate any breach of the Code referred to it by the Inspectorate, make a decision on any matter referred to it by the Inspectorate and submit it to the authorized person and the Inspectorate and make recommendations to the authorized person on disciplinary action to be taken against a leader. The Tribunal is only limited to hearing a matter referred to it by the Inspectorate of Government[28].

The tribunal is given powers under the Act to take evidence on oath, proceed in the absence of a party who has had reasonable notice of the proceedings, adjourn the hearing of the proceedings from time to time for sufficient cause, make any order which it deems appropriate to give effect to its orders and For the purposes of hearing of a proceeding before the Tribunal, the Tribunal has powers of the High Court to summon a person to appear before it to give evidence, to produce books, documents or things in the possession, custody or control of the

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person named in the summons[29]. This means that the tribunal possesses some powers of the court. However much as it is established by the Act, it is important to note that there is no tribunal in place to perform the above-mentioned functions this being a challenge to the IG in exercising its mandate of fighting the vice of corruption.

Laws in Place to Fight Corruption in Uganda *The Anti-Corruption Act, 2009*

This is an Act to provide for the effective prevention of corruption in both the public and the private sector by defining corruption [30], setting offenses and penalties, outlining the powers of the Inspector General of Govenm1ent and the Director of Public Prosecutions, and related matters.

The Access to Information Act, 2005

This is an Act to provide for the right of access to information pursuant to article 41 of the Constitution; to prescribe the classes of information referred to in that article; the procedure for obtaining access to that information, and for related matters [31].

Whistleblowers Protection Act, 2010

This is an Act to provide for the procedures by which individuals in both the private and public sector may in the public interest disclose information that relates to irregular, illegal or corrupt practices; to provide for the protection against victimization of persons who make disclosures; and to provide for related matters.

The Budget Act, 2001

This is an Act to provide for and regulate the budgetary procedure for a systematic and efficient budgetary process and for other matter connected with the same 32].

The Public Finance and Accountability Act, 2003

This is an Act to provide for the development of an economic and fiscal policy framework for Uganda; to regulate the financial management of the Government; to prescribe the responsibilities of persons entrusted with financial management in the Government; to regulate the borrowing of money by Government; to provide for the audit of Government, state enterprises and other authorities of the State; and to provide for other connected matters [33].

The Public Procurement and Disposal of Public Assets Act, 2003

This Act applies to all public procurement and disposal activities, including all public finances originating from the Consolidated Fund and related special finances expended through the capital or recurrent budgets, resources in the form of counterpart transfers or co-financing or any finances of a similar nature within the context of development co operation agreements for the implementation of national programmes, and procurement or disposal of works, services, supplies or any combination [34].

Measures put in place by the Inspectorate of Government to Prevent corruption in Uganda *Public Awareness Programmes*

As a constitutional mandate, the inspectorate is charged with sensitizing and educating the public about the values of constitutionalism in general and the activities of the Institution in particular, through any media or any other means it considers appropriate 35]. Specifically, the inspectorate educates the public about their constitutional right to access services without having to pay bribes and make them aware of their civic duties and responsibilities to demand for accountability from their leaders, value for money and also on how to report corrupt practices to the Inspectorate.

Promoting Transparency and Accountability in Government Projects

As a way of promoting and ensuring transparency and accountability within government projects and programs, the inspectorate implements the "Transparency, Accountability and Anti-Corruption (TAAC)" component. This component ensures efficiency as well as value of money is achieved. The inspectorate has made success in terms of mobilizing and training community monitors who are key in accountability tracking spearheading and monitoring within their communities spreading across various districts. This is enshrined within the inspectorates "Social Accountability and Community Monitoring (SACM)" component³⁶.

Policy and Systems Studies

The Inspectorate of Government is mandated to promote fair, efficient and good governance in public offices with the aim of attaining zero tolerance to corruption [37]. In implementing that mandate, the Inspectorate carries out system studies and systemic investigations into operations, policies, systems, procedures and legislation of various government departments and institutions. The studies help in identifying loopholes that may be susceptible to corruption hence make recommendations for remedial measures [38]. The policy and systems studies are intended at improving service delivery within the government departments, identified ministries, agencies and parastatals. In selecting the institutions to be studied, the decision is based on information received through public complaints, media reports, audit reports, monitoring and evaluation reports and

periodic surveys.

Capacity Building through Training and International Cooperation Training

The Inspectorate of Government is committed to strengthening and building capacity of its staff through training in order to equip them with knowledge, skills and attitudes to improve their performance. In strengthening the staff capacity, the IG staff have the opportunity to attend training programmes among which include: Public Sector Governance and Budget Reforms, Public

Corruption in Uganda is "any conduct or behavior in relation to persons entrusted with responsibilities in public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind for themselves or for others. It is in this light the article calls for anti-corruption efforts to focus on preventing and eliminating root causes of corruption, and government's capacity to detect corruption and sanction corrupt practices should also be strengthened. Also, since IG is a national cross-cutting institution responsible for three major functions of promoting good governance, preventing and combating corruption and enforcement of the Leadership Code of Conduct, each of these functions should be funded as a separate vote. It is

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Community Education and Corruption Prevention, Trade Facilitation, Training for Judicial Officers and Prosecutors and High-Level Senior Leadership and Management.

National and International Cooperation

The war against corruption and the promotion of good governance often requires the cooperation, support and exchange of ideas with other stakeholder at national, regional and international levels. The study observed that this has been achieved through.

CONCLUSION

equally recommended for the process of establishing Leadership Code Tribunal to be expedited. This will among other things not only make the enforcement of the Code more effective but it will also encourage the leaders to comply with the Code. Finally, the parliament should amend the IG Act in order for the IG to attain corporate status. The amendment will give powers to the IG to sue or be sued in its own names this will mean that the IO won't wait for the office of the AG to represent it, where its reports are challenged in judicial review. Importantly, all government institutions must have a proper record keeping and retrieval system and Government should provide its Ministries, Departments and Agencies (MDAs) with necessary tools ensure that this is done. to

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