Institutional specialisation in the battle against corruption: Uganda's Anti-Corruption Court

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Abstract

Over the past few decades, the battle against corruption has emerged as a leading priority on the global development agenda. Countries around the world have designed and implemented a vast array of initiatives to prevent corruption as well as to hold accountable those who engage in corrupt activities. One long-standing but growing trend in the fight against corruption has been the movement toward institutional specialisation. Specifically, governments have established targeted anti-corruption units within existing public institutions or created new centralized agencies or authorities dedicated entirely to anti-corruption efforts. However, while specialisation has become a common strategy to strengthen the ability of governments to monitor, detect, investigate and even prosecute corruption in many countries, the adjudication and punishment of corrupt actors has conventionally remained within the exclusive ambits of traditional judicial and penal systems. This disinclination of countries to establish anti-corruption courts appears particularly puzzling given the particular value that specialisation may provide in the context of the judicial system and its role in the fight against corruption. This article examines the experience of one country that has recently experimented with such an innovative judicial institution, focusing on the Anti-Corruption Division (ACD) of Uganda's High Court. It analyzes the challenges the ACD has faced and assesses its record on punishing corrupt actors, concluding that resource constraints and political interference, particularly on the part of the executive branch, have undermined the capacity of the Division to have a meaningful impact on the struggle to end impunity and corruption in Uganda.

INTRODUCTION

No longer dismissed as mere 'grease for the wheels' of inefficient bureaucracies (Huntington, 1968; Leff, 1964; Nye, 1967), in recent decades corruption and the fight against it have emerged as leading priorities on the global agenda, especially within the international development community. Corruption – conventionally defined as the misuse of public power for private benefit (Gray and Kaufmann, 1998; Lambsdorff, 2007; Rose-Ackerman, 1999) – is strongly associated with a panoply of deleterious economic, political and social outcomes including depressed economic growth (Aidt, 2011; Mo, 2001; Swaldeen, 2011), distortions in public resource allocation (Gupta, de Mello and Sharan, 2001; Mauro, 1998; Shleifer and Vishny, 1993), increased social and income inequality (Gupta, Davoodi and Alonso-Terme, 2002; Li, Xu and Zou, 2000) and weakened public trust in government and its representatives (Anderson and Tverdora, 2003; Power and Cyr, 2009; Seligson, 2002). Within and across countries, various initiatives have been developed and implemented with the aim of deterring corruption ex ante or holding those who participate in corrupt activities accountable ex post. A growing trend in such battles against corruption has been the movement towards institutional specialisation. This has been done either through the creation of targeted anti-corruption units within existing government entities such as police departments, offices of the public prosecutor or supreme audit authorities, or the establishment of new centralized agencies or authorities aimed exclusively at stopping corruption. While specialisation has become a common strategy to strengthen government efforts to monitor, detect, investigate and even prosecute corruption in many countries, the adjudication and punishment of corrupt actors has conventionally remained within the exclusive ambits of countries' traditional judicial and penal systems. However, several countries in Asia (India, Indonesia, Malaysia, Pakistan, the Philippines), Africa (Ghana, Kenya, Uganda) and Europe (Croatia, Slovakia) have begun to experiment using specialised courts and/or designated judges to hear corruption-related cases. This article examines one of these innovative judicial institutions – the Anti-Corruption Division (ACD) of Uganda's High Court – analyzing the challenges the Court has faced, assessing its record on punishing corruption-related offences and identifying potential lessons for other developing countries considering the use of specialised judicial bodies or personnel to battle corruption.

I. SPECIALISATION IN PUBLIC ANTI-CORRUPTION INSTITUTIONS

As the problem of corruption and its associated ills rose to prominence on the international agenda in the 1990s, many global and regional organizations began to develop and adopt various 'hard law' (treaties, conventions) and 'soft law' (recommendations, guidelines, principles) instruments to prevent and combat corruption in its multiple forms. While the scope, membership, strength and monitoring mechanisms associated with these legal instruments vary enormously, a common emphasis has been placed on the need for countries to enact and strengthen anti-corruption legislation and to implement effective internal monitoring systems. Moreover, these instruments have highlighted the need to ensure that the public agencies charged with implementing and enforcing such laws and policies possess adequate knowledge, expertise, resources and independence. For example, the United Nations (UN) Convention against Corruption calls on signatories to

> *ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks. (United Nations 2003, Art. 36).*

Similarly, under Section 5 of Article 20 of the African Union (AU) Convention on Preventing and Combating Corruption, states party to the agreement are required to 'undertake to adopt necessary measures to ensure that national authorities or agencies are specialised in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.' (African Union, 2003).

The drive towards specialisation reflects various realities about the nature of corruption as well as opinions on how best to address it. First, as a clandestine, sometimes-complex activity typically conducted under the veil of secrecy, corruption may be difficult for conventional law enforcement agencies to detect, investigate and prosecute and may thus be handled more capably by entities and individuals with specialised training, expertise and technologies (Recanatini, 2011). Second, as corruption is both a symptom and cause of dysfunctions in governance institutions, existing bureaucratic entities may lack the resources, capacity or political will to deter, detect, investigate or punish corrupt behaviours. Third, in many countries the government entities and officials traditionally responsible for the promulgation, enforcement and interpretation of laws—members of the legislature, police force, public prosecutor's office and judiciary—may themselves be corrupted, thus undermining the entire accountability system as well as the rule of law more broadly (e.g. Transparency International, 2007). Fourth, in regimes in which the balance of power is tilted in favour of a single branch of government (such as the executive), efforts to prevent and combat corruption may only be carried out effectively if they are entrusted to entities outside the existing power and bureaucratic structures. Finally, the financing and administration of anti-corruption initiatives may require levels of independence, accountability and transparency that might not be appropriate or logistically feasible for traditional public agencies.

A) Specialisation in the Judiciary: Rationales for Anti-Corruption Courts

Expanding on these arguments, there are reasons to believe that specialisation may provide particular value in the context of the judicial system and its role in the fight against corruption. The courts in many countries are plagued by significant backlogs leading to lengthy delays in bringing cases to trial and creating opportunities for evidence to be lost or witnesses' memories to fade. Specialised courts may be able both to alleviate the burden on existing courts and to adjudicate corruption-related cases more expeditiously, offering particular advantages in cases involving sensitive matters or prominent individuals (Hatchard, 2014). In addition, given that corruption cases often involve politically or financially powerful individuals, the courts involved may benefit from strong guarantees of transparency and independence that may not be practically or politically feasible to extend to the judicial system as a whole. For example, in order to enhance the availability and reliability of the court records of corruption cases, the Jakarta Anti-Corruption Court in Indonesia uses audiovisual equipment to record all of its proceedings (Schütte and Butt, 2013), a practice that may be unnecessary or prohibitively expensive to apply to all cases in every court in the country.

Focusing on the role of judicial institutions in the entire accountability process, strong performance on the part of monitoring and investigative agencies may prove ultimately futile if judges and the courts fail to punish the individuals against whom they gather evidence and prosecute cases. Thus, weaknesses in the capacity of the courts to adjudicate corruption cases and sanction those parties found guilty may help to perpetuate the specter of impunity that surrounds corrupt actors in many countries. This can foster the popular perception that the law serves the interests of the powerful and the few rather than providing equal protection and opportunities for all (Morris, 2009, p. 9; Botero and Ponce, 2011). Moreover, deficiencies in the judicial system may create conditions and incentives that eventually undermine the performance of monitoring bodies such as supreme audit authorities and investigative entities including the police, public prosecutors and ombudsmen. Without effective punishment mechanisms, such authorities may see little practical value in uncovering, exposing and prosecuting corruption. If corrupt officials remain in positions of power and free from sanction they may be able to directly or indirectly thwart the efforts of such entities to detect and investigate corrupt activities (Power and Taylor, 2011, pp. 13-14; Prado and Carson, 2014).

Finally, in many countries the judiciary itself is rife with corruption. Transparency International's 2013 Global Corruption Barometer survey of more than 114,000 individuals in 107 countries found that 56% of all respondents considered the judiciaries in their countries to be corrupt or extremely corrupt. The judiciary was ranked the most

corrupt of twelve government institutions[4] in twenty of the surveyed countries, including the Democratic Republic of the Congo, Madagascar and Tanzania (Transparency International, 2013a). Globally, 24% of total respondents who came into contact with the judiciary in their country in the previous twelve months reported paying a bribe, with judicial bribery response rates in sub-Saharan African countries ranging from 9% in Sudan to 82% in Sierra Leone; 58% of Ugandans who interacted with the judiciary indicated that they had paid a bribe (Transparency International, 2013a). Beyond constituting corruption in its own right, corruption among members of the judiciary also presents serious challenges to efforts to combat corruption more broadly, as judges in corruption-related cases may themselves be improperly induced to issue rulings in favour of other dishonest officials, particularly if they are other judges. While the specific causes of corruption in the judiciary vary from country to country, many of the broad strategies recommended to mitigate factors that contribute to its incidence suggest that specialised courts may be one institutional response. Oft-noted remedies to the problem of judicial corruption typically include enhancing the financial, administrative and institutional autonomy of the judiciary, creating more transparent appointment, promotion, censure and removal criteria and processes, strengthening accountability mechanisms through the adoption of codes of conduct, simplification of court procedures and publication of judicial decisions (Pepys, 2007; Hatchard, 2014). While such massive reforms may require substantial resources and political will to enact for the judiciary as a whole, the establishment of anti-corruption courts that possess some of these recommended characteristics and safeguards may help to limit corruption among judges and hold corrupt actors in wider society accountable.

B) Establishing and Operating Anti-Corruption Courts: Barriers and Decisions

Despite these various rationales, the emphasis in international standards and conventions on specialisation in the fields of corruption prevention and law enforcement has generally not been extended to the realm of the courts (OECD, 2013, p. 26). As such, in many countries, corruption may be detected by specialised monitoring or auditing bodies, investigated by specialised police units or officers and prosecuted by specialised government attorneys, but the cases are ultimately heard and adjudicated by general criminal or civil court judges. Corruption-related cases may be retained within the exclusive jurisdiction of the standard judiciary on the basis of constitutional/legal, political or practical barriers to the creation and operation of specialised courts. Legally, due process standards or other constitutional provisions may prevent or discourage governments from establishing alternative courts or forums outside the traditional judicial system. For instance, constitutional courts in Indonesia and Slovakia declared the anti-corruption courts in those countries unconstitutional, though authorities in both countries were eventually able to reform their specialised court systems to meet constitutional standards and continue operations (Martini, 2014; Schütte and Butt, 2013).

Even in countries whose legal frameworks permit establishment of such specialised courts, their creation may require the participation and thus agreement, or at least acquiescence, of members of the executive, legislative and/or judicial branches and the marshalling of the requisite political will among these various bodies around the issue of an anti-corruption court. This may be politically infeasible except in extreme circumstances such as following a change in government or in the wake of a massive corruption scandal. Finally, many countries lack adequate personnel, buildings, financial resources and technology to support their existing courts, rendering the establishment of additional courts impractical.

Those countries that do resolve to establish a specialised judicial mechanism to hear corruption cases subsequently face a host of legal and logical questions and decisions concerning the structure and operations of such courts or cadres of judges. In terms of their relationship to the broader judicial system, anti-corruption courts may be created as independent entities equivalent to other courts in the country (e.g., Slovakia's Specialised

4 In addition to the judiciary, Transparency International asked respondents about the perceived and experienced levels of corruption involving political parties, parliament/legislature, military, NGOs, media, religious bodies, business/private sector, education system, medical and health, police, and public officials/civil servants (Transparency International, 2013a).

Criminal Court, Indonesia's Sandiganbayan, Pakistan's Accountability Courts) or as divisions in the existing court structure (e.g., Ghana's Financial and Economic Crimes Court within the High Court, Uganda's Anti-Corruption Division in the High Court). In either case, it must be determined whether such courts function as trial and/or appellate fora as well as what the delineated channels of and standards for any appeal should be. Anti-corruption courts may be constituted under federal or sub-national laws and operate at the national, state or local levels. In addition to defining the structural and functional relationships between anti-corruption courts and the conventional judiciary, governments must also establish the rules governing the interactions between those specialised courts and other anti-corruption actors and entities such as offices of the public prosecutor, police forces and auditing agencies. Specialised courts may be established as permanent entities or ad hoc initiatives similar to the international tribunals created to investigate human rights abuses in Rwanda and the former Yugoslavia. For example, while the anti-corruption courts in most countries (e.g., Indonesia, the Philippines, Pakistan, Uganda) are permanent fora, in Thailand, the Supreme Court's Criminal Division for Holders of Public Offices is constituted only after a criminal case involving illegal activity – including corruption – has been initiated against a high-level official (Organic Law on Criminal Proceedings against Persons Holding Political Positions 1999, Sec. 13).

On the issue of subject matter jurisdiction, the scope of offences triable in such fora may be limited to charges directly involving corruption or may also include associated or related offences. Given their putative objectives, anti-corruption courts are presumably authorized to adjudicate criminal cases involving corruption, but governments may also opt to allow such courts (or divisions therein) to hear civil corruption cases such as those involving disgorgement or asset recovery. Regarding personal jurisdiction, anti-corruption courts may be empowered to hear cases against all public officials involved in corrupt activities, only those at or above a specified level, or charges brought against both government employees and private citizens engaged in public corruption schemes. For example, the anti-corruption court in the Philippines, the Sandiganbayan, is authorized to serve as a court of first instance for corruption cases involving high-ranking public officials at or above a specified salary grade (e.g., mayors, military colonels and captains, members of Congress and the judiciary) and an appellate court for corruption cases originally heard in the country's regional trial courts that involved lower-ranking officials and public employees (Benitez, 2013). Under India's Prevention of Corruption Act (or simply, Corruption Act), designated 'Special Judges' can hear cases brought against not only public sector officials and employees but also any persons 'remunerated by the Government by fees or commission for the performance of any public duty' such as representatives of non-governmental organizations that receive public funds (Prevention of Corruption Act, 1988, Sec. 2(c)(i), 4; Jain, 2009, p. 90).

Anti-corruption courts may exercise exclusive jurisdiction over corruption-related offences or hold concurrent jurisdiction along with conventional courts, such that corruption cases might be heard in either a specialised or a standard court. Relatedly, the jurisdiction of the specialised courts over corruption cases may be mandatory or optional. For instance, in India, only designated Special Judges can conduct trials of offences falling under the country's Corruption Act (Prevention of Corruption Act, 1988, Sec. 4). If jurisdiction is concurrent or optional, the government must determine the procedures for moving such cases into the anti-corruption court system, including the criteria for and means of petition, as well as specify which party(ies) or other actors have standing to move corruption cases to the specialised courts. Removal may be based on motion by the prosecution or defence (or require the approval of both sides), recommendation from another anti-corruption authority (e.g., inspector general, anti-corruption bureau), or taken up by the court sua sponte; for example, in Thailand, the Supreme Court's Criminal Division for Holders of Public Offices only hears criminal corruption cases involving political position holders that are submitted by the Office of the Attorney General or the National Counter Corruption Commission (NCCC) (Organic Act on Counter Corruption 1999, Sec. 70, 71).

With respect to judicial personnel, anti-corruption courts may be presided over by regular but specially-designated judges; judges or magistrates meeting specified criteria such as length of tenure (e.g. India's Special Judges, Kenya's Special Magistrates) or retired, foreign or other judges selected from outside the conventional judiciary (e.g., Lesotho's appointment of an Irish-born judge, Justice Brendan Cullinan, a retired chief justice of the Lesotho High Court, to hear the international corruption cases involving the Lesotho Highlands Water Authority scandal in

1999-2004). The procedures for selecting/appointing and promoting – as well as disciplining and removing – such judges need to be defined and their periods of tenure determined. Finally, because specialised courts are generally intended to expedite proceedings, the rules governing the operation of such fora may include requirements concerning the timeliness with which such cases must be heard, the frequency with which proceedings must occur or time limits on the duration of judicial deliberations. For example, statutes require that India's Special Judges and Kenya's Special Magistrates 'as far as practicable, hold the trial of an offence on a day-to-day basis' (Prevention of Corruption Act, 1988, Sec. 4(4); Anti-Corruption and Economic Crimes Act, 2003 (2009), Sec. 4(4)).

II. Uganda's Struggle against Corruption

A) Corruption in Uganda

While measuring corruption is a notably challenging and imperfect endeavor (e.g., Golden and Picci, 2005; Knack, 2007), all available indicators strongly suggest that corruption is endemic in Uganda. Out of 175 countries surveyed in Transparency International (TI)'s 2014 Corruption Perceptions Index, Uganda tied for 142nd place with the Comoros and Ukraine (Transparency International, 2014). According to TI's 2013 Global Corruption Barometer (GCB), 87% of Ugandans believe that corruption is a 'serious' or 'very serious' problem in the country (Transparency International, 2013a); the country's National Governance Baseline Survey in 2013 similarly found that 82% of surveyed Ugandans reported that the extent of corruption was 'very much' (Inspectorate General, 2014, p. 6). According to respondents polled by the World Economic Forum in creating its 2014-2015 Global Competitiveness Report, corruption is the most problematic factor for doing business in Uganda (World Economic Forum 2014, p. 370). Troublingly, when polled about the perceived trajectory of corruption in the country over the previous two years, three-quarters of Ugandans indicated that corruption had increased, compared to a global average of 53% (Transparency International, 2013a). The World Bank's Governance Indicators further support the perception that corruption is high and worsening in Uganda: since 1996, the country has dropped from the 28.8 percentile on the Bank's Control of Corruption indicator to the 13.8 percentile (World Bank, 2014).

Survey and anecdotal evidence further indicates that corruption remains a serious problem in Uganda at all levels of government, from petty corruption and bribery among low-level officials and bureaucrats to grand-scale embezzlement of public resources by the country's leaders. With regard to petty corruption, according to TI's 2013 East Africa Bribery Index, the overall likelihood for a Ugandan to encounter bribery while seeking state services is nearly 19% (Transparency International Kenya, 2014, p. 1). On the 2013 GCB, 64% of the country's citizens reported that they had been asked to pay a bribe by a public official at least once (Transparency International, 2013a). Table 1 reports the findings of the GCB survey on Ugandans' perceptions concerning the levels of corruption within and across institutions in the country:

Table 1: Perceptions of Corruption, by Institution, in Uganda

Institution	% that think 'corrupt' or 'extremely corrupt'
Police	88%
Judiciary	79%
Public officials/civil servants	73%
Medical and health	57%
Parliament/legislature	57%
Political parties	57%
Education	46%
Military	40%
Business/private sector	37%
NGOs	20%
Media	14%
Religious bodies	12%

Source: Transparency International, 2013a.

Recent scandals and media reports further reveal that corruption stretches to the highest levels of government in Uganda. A 2012 report by the Auditor General of Uganda revealed significant financial mismanagement of donor funds by the Office of the Prime Minister. Eventually it was revealed that €12 million in aid from Ireland, Norway, Sweden and Denmark had ended up in accounts of officials in the Office of the Prime Minister (OPM) instead of a peace recovery and development program for Northern Uganda, a region long-ravaged by conflict. In response, the European Union and several European nations suspended aid to the country in late 2012, but resumed aid in 2013 after the Ugandan government repaid most of the missing funds and met other donor criteria including reforms to the country's financial management systems and corruption programs (Human Rights Watch, 2013, pp. 48-49). In June 2013, the OPM's principle accountant was convicted and sentenced to five years for fraud for his role in the affair. He and three former employees of the Finance Ministry are currently facing additional charges including abuse of office, embezzlement and diversion of funds (Kiyonga, 2014). Beyond allegations of high-level graft, reports indicate that the system of patronage politics that has helped to maintain President Yoweri Museveni's twenty-eight-year hold on power remains strong, with evidence that financial enrichment has been used to build and maintain loyalty among politicians (including members of Parliament) and partisan groups. This includes an infamous episode in April 2013 in which the president publicly handed over a sack containing 250,000,000 Ugandan shillings (US$100,000) to a youth group from Eastern Uganda with no apparent restrictions on or instructions for its use (Human Rights Watch, 2013).

Despite the Museveni Administration's repeated and vehement pledges to take a zero-tolerance stance against corruption (e.g., Museveni, 2013; Poverty Alleviation Department-State House, 2011, pp. 33-34), in practice the president's rhetoric has been overshadowed by his public support for members of his inner circle when they have faced accusations of corruption. For example, in 2008 Museveni publicly voiced his support for Amama Mbabazi, his then-Security Minister and the current Secretary General for Museveni's National Resistance Movement (NRM) Party, when Mbabazi was implicated in corruption allegations involving the sale of land to the National Social Security Fund (NSSF) (Obore, 2008; Uganda Debt Network, 2013, p. 17). While a Parliamentary committee investigating the matter issued a report recommending that Mbabazi and his colleague face censure, the majority of members of Parliament (MPs) ultimately voted to exonerate the men in November 2008. Three months later, Museveni reshuffled his cabinet, appointing four MPs who had been instrumental in mobilizing fellow members to oppose the censure motion against Mbabazi to prime ministerial posts (Wanambwa, 2009).

In another matter, while an abuse-of-office case against former Vice President Gilbert Bukenya was pending in 2011, Museveni was quoted in the media as stating that the Attorney General had informed him that the case had 'no merit' (Mulondo *et al.*, 2011). The case thus publicly undermined, the Inspectorate General later withdrew the charges, citing lack of evidence (Uganda Debt Network, 2013, p. 18). More recently, when Mike Mukula, a former

state minister for health and a current MP, appealed his conviction and sentence for embezzling 210 million Ugandan shillings (US$80,000) from the Global Alliance for Vaccines and Immunisation in 2013, Museveni publicly paid Mukula's legal team 100 million Ugandan shillings to aid in his defence (Lumu, 2013); Mukula's appeal was later successful. As a prosecutor in the Office of the Inspectorate of Government said to Human Rights Watch in a recent interview, '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.' (Human Rights Watch, 2013, p. 17).

B) Uganda's Public Anti-Corruption Institutions

Despite the challenges facing Uganda with regard to corruption, its anti-corruption laws are notably comprehensive, receiving a perfect score from a leading international non-governmental organization focused on governance and anti-corruption (Global Integrity, 2011). Through statutes including the Penal Code Act (1950), the Leadership Code Act (2002) (LCA), the Anti-Corruption Act (2009) and the Anti-Money Laundering Act (2013), the country has criminalized core corruption offences including embezzlement, extortion, active and passive bribery, foreign bribery, using public resources for private gain, using confidential state information for private gain, money-laundering, attempted corruption and organized crime. Additionally, in 2010, Uganda enacted the Whistleblowers Protection Act to shield whistleblowers and provide monetary rewards in return for reporting. The LCA and the Code of Conduct and Ethics (2005) establish minimum standards of behaviour and conduct for political leaders and public officials, respectively. The country is also a signatory to both the UN and AU conventions against corruption. However, despite the robustness of the country's statutes and regulations on paper, the actual enforcement of those laws has been lacking; while Global Integrity gave Uganda's overall legal framework a 98 ('very strong') on its 2011 'scorecard,' the country's 'actual implementation score' of 51 was considered 'very weak' (Global Integrity, 2011).

Implementation of the country's anti-corruption initiatives and enforcement of its laws have been entrusted to several public agencies with varying degrees of autonomy and scopes of authority, but the performance and effectiveness of these institutions have been largely constrained by political interference and resource limitations.

- **Office of the Inspectorate of Government (IG):** The IG is the primary anti-corruption agency in Uganda. Its powers, specified in the 1995 Constitution and the Inspectorate of Government Act (2002), include the ability to 'investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution with respect to cases involving corruption or abuse of authority or public office' (Constitution 1995, Art. 230). Headed by the Inspector General of the Government (IGG), IG is an independent agency that operates similarly to an ombudsman but with enhanced powers. For example, the LCA requires a range of national and local political leaders to submit to the IG a written declaration of their incomes, assets and liabilities, as well as those of their spouses, children and other dependents (The Leadership Code Act 2002, Art. 4(2)); the IG is then tasked with inspecting the disclosure and may request clarification if discrepancies are discovered. However, in March 2010, Uganda's Constitutional Court ruled that the IG does not have the authority to enforce the LCA, meaning that the IG cannot implement any decisions or impose sanctions against leaders found to have violated the Code (Inspector General, 2014, p. 33). Empowered to investigate, arrest and prosecute cases involving corruption on the part of public officials (the Directorate of Public Prosecutions (DPP), discussed below, can prosecute both public officials and private citizens), the IG may initiate inquiries into suspected corrupt behaviours in response to public complaints or on its own initiative. Over the past five years, the number of new complaints received and handled by the IG has nearly doubled from 1,566 in 2009 to 2,876 in 2013 (Inspectorate General, 2014, p. 6). According to the IG's reports to Parliament, IG prosecutions have steadily increased since 2006 (44 cases), reaching a high of 168 cases in 2012 before declining modestly to 145 in 2013 (Inspectorate General, 2014, p. 44), a drop the IG attributed to the closure of the Anti-Corruption Division for part of that year (discussed below). While the IG's success in investigating and prosecuting corruption among public officials has been

notable, 'its autonomy, efficiency and effectiveness have been hampered by the lack of resources and staff, as well as influence by the Executive' (Martini, 2013, pp. 7-8).

- **Office of the Auditor General (OAG):** The OAG is responsible for overseeing the government's operations through financial and other management audits of the central and local governments as well as public institutions. While Uganda's OAG is generally considered a strong institution that has successfully enhanced budget transparency in the country (International Budget Partnership, 2012), the president's authority to appoint the Auditor General compromises the Office's independence, as illustrated by reports that the president has directed the OAG to investigate certain government departments (Global Integrity, 2011).

- **Directorate of Public Prosecutions (DPP):** The DPP is the executive branch office charged with handling and prosecuting all criminal cases in the country, including offences related to corruption, or to delegate such powers where necessary (Constitution 1995, Art. 120). The powers and authorities of the DPP differ from those held by the IG in at least two crucial ways. First, unlike the IG, the DPP can prosecute private citizens, with the result that their prosecutors receive a large number of cases involving private corruption; in 2013, the majority of corruption-related cases handled by the DPP involved obtaining money by false pretence (Inspectorate General, 2014, p. 44). Second, while the IG has its own investigative capabilities, the DPP relies on the police to conduct its investigations, and the data on the DPP's resolution of corruption-related cases suggests that the 'inadequate investigative capacity of DPP officials' contributes to the office's relatively high rate of acquittals, withdrawals, dismissals and closures (Inspectorate General, 2014, p. 46).

- **Directorate for Ethics and Integrity (DEI):** Located in the Office of the Presidency, the DEI is responsible for coordinating the government's efforts against corruption and implementing the country's National Anti-Corruption Strategies (NACS). The DEI also chairs the Inter Agency Forum (IAF) which aims to ensure effective coordination among the various anti-corruption institutions in Uganda, but reports indicate that 'a lack of funding and capacity has constrained its effectiveness' (Martini 2013, p. 8).

III. Background, Structure and Assessment of Uganda's Anti-Corruption Court

In addition to these various laws and specialised agencies tasked with preventing, monitoring, investigating and prosecuting corruption, in 2005, the Ugandan Parliament passed a provision creating an anti-corruption court and, in July 2008, the country's judiciary administratively established the ACD as a specialised division in the High Court to adjudicate corruption and corruption-related offences. The ACD is one of eight specialised divisions in the High Court, which include units focused on civil, commercial, criminal, family, land, international criminal matters and the execution of court orders and decisions. The ACD has unlimited original jurisdiction and exclusive appellate jurisdiction over offences under the Anti-Corruption Act and can also hear cases under the Penal Code Act, Leadership Code Act or any other statute related to corruption; if a defendant before the ACD has been charged 'with any other offence related to' the corruption-related offence, the ACD can also hear the related charge (Human Rights Watch, 2013). The court is based in Kampala, which some commentators argue 'inevitably causes some delays and loss of files due to the process of transferring from other cities' into the capital city (Hatchard, 2014, p. 230). The ACD can also hold sessions in any of the twelve High Court circuits located throughout the country (Human Rights Watch, 2013).

Pursuant to clause 4 of the Legal Notice 9 of 2009, which created the ACD, the objective of the Court is 'to expeditiously dispose of corruption and corruption-related offences in an orderly and cost-effective manner' (Mugamba, 2013, p. 1). By that metric, the ACD's performance appears to be satisfactory, with the latest annual report from the IG indicating that while the prosecutions of corruption cases remain often-lengthy processes, the Anti-Corruption Division has been able to resolve such cases more swiftly than other courts (Inspectorate General, 2014, p. 45). The conviction rate for defendants before the ACD has also been strong; analyzing 88 first-instance

cases, Human Rights Watch and Yale Law School's Lowenstein Clinic found that the Court had a 68% conviction rate (Human Rights Watch, 2013, p. 36). However, while some senior government officials and politicians, including several former Senior Ministers, have been prosecuted in the ACD, only one, former State Minister for Health Mike Mukula, has been convicted—and his conviction was overturned on appeal. Thus the vast majority of cases and convictions involve low-level, local government officials as well as modest sums; as one private criminal defence attorney remarked, 'the petty corruption is prosecuted beautifully in Uganda,' drawing a stark contrast between cases dealing with the activities of government bureaucrats and those involving the country's 'big fish' (Human Rights Watch, 2013, p. 37).

The ACD's efforts to deter and punish corruption have been stymied by many of the same challenges as Uganda's other anti-corruption institutions, especially with regard to resource and capacity limitations and political interference. The court has been understaffed since its inception and a 2012 report by the head of the ACD highlighted its 'puny budget,' noting that funding had been cut by 40% that year and that even the allocated funds had not been released to the ACD in a timely manner (Mugamba, 2013). The Uganda Debt Network, a leading NGO in the country, has further emphasized that the court's lack of adequate technical, financial and human capacity undermines its ability 'to perform its functions to the full' (Uganda Debt Network, 2013, p. 22). The court has also been vulnerable to attack from and interference by political leaders including members of the judiciary. In July 2013, in response to a petition from a Kampala attorney, Uganda's Constitutional Court suspended the proceedings of the ACD to determine whether the inclusion of magistrates in the ACD's structural framework was constitutional (Tusingwire v Attorney General, 2013). While the judges, by a vote of 4-1, eventually confirmed the constitutionality of the ACD and its structure in December 2013, the nascent court was forced to abandon operations for five months as its judges were redeployed to other courts and cases. The IG noted the negative impact of this closure on its ability to prosecute corruption cases and secure convictions (Inspectorate General, 2013, pp. 44-45).

While the ACD is still a relatively young institution, its experiences to date suggest that while specialisation may provide certain benefits to courts and other anti-corruption agencies in the form of more efficient proceedings, it is not a panacea for improving the punishment of corruption offences. Moreover, anti-corruption courts that do not enjoy sufficient degrees of institutional, administrative and financial authority may find themselves caught by the same bureaucratic and political hurdles as other entities focused on preventing or combating corruption.

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