FRUSTRATED OR FRUSTRATING?
THE INSPECTOR GENERAL OF GOVERNMENT AND THE QUESTION OF POLITICAL CORRUPTION IN UGANDA

Daniel Ronald Ruhweza

HURIPEC WORKING PAPER NO. 20
November, 2008
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May the Lord bless you.
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<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>AG</td>
<td>Attorney General</td>
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<tr>
<td>ACCU</td>
<td>Anti-Corruption Coalition Uganda</td>
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<tr>
<td>APNAC</td>
<td>African Parliamentarians Network against Corruption</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>AG</td>
<td>Auditor General</td>
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<tr>
<td>CIA</td>
<td>Commission of Inquiry Act</td>
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<td>CID</td>
<td>Criminal Investigations Department</td>
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<td>CPI</td>
<td>Corruption Perceptions Index</td>
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<tr>
<td>DEI</td>
<td>Directorate of Ethics and Integrity</td>
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<tr>
<td>DPP</td>
<td>Department of Public Prosecutions</td>
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<tr>
<td>GoU</td>
<td>Government of Uganda</td>
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<td>GAVI</td>
<td>Global Alliance for Vaccine and Immunization</td>
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<tr>
<td>IGG</td>
<td>Inspector General of Government</td>
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<tr>
<td>GAVI</td>
<td>Global Alliance for Vaccines and Immunisation</td>
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<td>IGP</td>
<td>Inspector General of Police</td>
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<td>MJCA</td>
<td>Ministry of Justice and Constitutional Affairs</td>
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<td>MP</td>
<td>Member of Parliament</td>
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<tr>
<td>NIS</td>
<td>National Integrity Survey</td>
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<td>NRM</td>
<td>National Resistance Movement</td>
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<td>PAC</td>
<td>Public Accounts Committee of Parliament</td>
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<td>PPDA</td>
<td>Public Procurement and Disposal of Public Assets Authority</td>
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<td>TIU</td>
<td>Transparency International Uganda</td>
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<td>TI</td>
<td>Transparency International</td>
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<tr>
<td>UDN</td>
<td>Uganda Debt Network</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UPF</td>
<td>Uganda Police Force</td>
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<tr>
<td>UNHCHR</td>
<td>United Nations High Commission for Human Rights</td>
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<tr>
<td>URA</td>
<td>Uganda Revenue Authority</td>
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Roland Kakooza Mutale v. the Attorney General Application No. 665 of 2003 arising out of HCCA No. 40 of 2003 (Unreported)

Roland Kakooza Mutale v. the Attorney General HCCA No. 40 of 2003 (Unreported)

Uganda v. Hon. Jim Muhwezi & 3 Others High Court Revision Petition No. 19/2007 arising from Buganda Road Court Case No. 557/2007:


SUMMARY OF THE REPORT AND MAIN RECOMMENDATIONS

One of the main reasons the National Resistance Movement/Army started a guerrilla movement, which subsequently overthrew the so-called “bad” government of the day in 1986, was to eliminate corruption from the rubric of Ugandan society, and the office of Inspector General of Government (IGG) was created to achieve this goal. This study therefore examines the role of the IGG in fighting corruption, with a special emphasis on political corruption. The paper recognises the critical role played by the IGG in the promotion of the rule of law and of good governance and explores the main challenges frustrating the Inspectorate in achieving this goal. This is done by analysing the mandate of the IGG and identifying the obligations of the Government and other actors in the fight against political corruption.

It is against this background that this paper makes the following conclusions:

• The rule of law and good governance are crucial ingredients of any democratic society and should therefore be encouraged and enforced by the state, public institutions, and private persons. All must join hands to ensure that the principles of good governance are upheld;

• Corruption is a deadly cancer eating away at the soul of the nation and should therefore be fought with all available resources and mechanisms;

• There are many serious challenges involved in fighting corruption—particular of the political variant—some of which are rooted in the decay of morality and of the ethical framework of society.

The paper makes the following recommendations:

• The government needs to show the political will to fight corruption by *inter alia* implementing the recommendations of the IGG and improving the remuneration of the more experienced prosecutors and other professionals in the Inspectorate;

• The jurisdiction of the Inspectorate of Government should be made explicitly clear to all stakeholders in order to avoid clashes among the different state organs involved in the fight against political corruption;

• While, the role of the IGG is crucial in the struggle against corruption, the mandate of the Inspectorate should be reduced in order to have more efficient results in the fight against corruption. This should be done by allocating the roles of Ombudsman and enforcing the leadership code to other institutions.

• At the same time there is a need to guard against the excesses of the IGG by encouraging more action from parliament to which the Inspector General of Government reports.
• The IGG Act also needs to be amended to coerce Parliament and the Executive to not only act, but to take appropriate action.

• Parliament needs to constitute the leadership code tribunal provided for by Article 235A of the Constitution, in order to deal with those who are alleged to have breached the Leadership Code Act;

• The judicial system and especially the recently created Anti-corruption Division of the High Court of Uganda should be well facilitated with the most recent technology for investigations and speedy trials.
I. INTRODUCTION

Following two decades of violent civil war, massive corruption, instability and economic decline, Uganda has seen remarkable economic growth and enhanced democracy.\(^1\) However, considerable challenges remain. Right from independence, Uganda had no model of a transparent, accountable government upon which to build the foundations of a new democratic state.\(^2\) The British colonial regime was, by definition, unaccountable to the people and its colonial business was not conducted according to democratic norms of openness, transparency, and accountability. Repressive colonial policies also heightened social and ethnic tensions within the country, thereby helping to lay the foundation for much of the conflict that would define Ugandan politics over the three decades that followed independence.\(^3\) To borrow the words of President Museveni,

\[
\ldots \text{most of the political views we have had, have been of a backward, non-progressive type: tribalism, sectarianism, sycophancy, intrigue, corruption etc. These wrong lines, for which Obote bears great responsibility, have propelled into leadership people of ideas that would have been considered reactionary even in medieval times…} \]

As stated in the Freedom House Country Report:

\[
\text{Uganda has always been a difficult country to govern democratically. It is deeply fragmented into ethnic, religious, and regional cleavages that greatly complicate the formation and maintenance of a legitimate ruling coalition. As his authority over his coalition members declined, each former ruler increasingly resorted to patronage and intimidation at the expense of support for the rule of law. By the time Museveni and the National Resistance Army (NRA) seized power by defeating the national army in 1986, Uganda had become a failed state without an effective constitution, fair elections, protection from terror, autonomous judges, or honest officials.} \]

Soon after coming to power in 1986, the NRM (National Resistance Movement) Government viewed corruption as one of the evils inherited from the past and as a key obstacle to progress. President Museveni often spoke of the seriousness of corrupt practices, making it clear that he viewed corruption as a threat to Uganda’s stability and to the possibility of establishing democracy in the country. In order to emphasize its determination to end corruption, the (then) new government made the following commitment in its Ten-Point Program:

\[
\ldots \text{Africa, being a continent that is never in shortage of problems, has also the problem of corruption-particularly bribery ad misuse of office to serve personal interests. Corruption is indeed, a problem that ranks with the problems of structural distortions…} \]

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\(^1\) See Karugire, 1988.


\(^3\) See Ruzindana, 1995.

\(^4\) Museveni, 1985, at 19.


\(^6\) See Museveni, op. cit., at 68.
Corruption has thus been one of the major obstacles to progress. Indeed, Uganda continues to rank very low among states within governance indicators. Uganda has slipped from position 111 to 126 among 180 countries surveyed by Transparency International. The World Bank also estimates that Uganda annually loses about $300m (Uganda shillings 510 billion).

Uganda’s vulnerability in this respect has thus worsened over the past three years, having been placed 27th among 75 countries in 2005 when the index was first launched. In a recent opinion poll conducted by the Fund for Peace, most respondents (42.4%) stated that corruption was the most critical cause of state failure, followed by the lack of basic education, group hatred, and finally poverty. Furthermore, Transparency International (TI) ranks Uganda as the 130th most corrupt of 163 countries in its Global Perceptions of Corruption Index.

Eight months after taking office in January 1986, President Museveni signalled the government’s intent to stamp out corruption by appointing an Inspector General of Government with extensive powers of dealing with corruption and human rights abuse. Popularly known as the ‘IGG,’ the Inspectorate of Government was established in response to the escalating and rampant occurrence of corruption in public offices and the abuse of human rights due to bad governance in the past. In 1988, the office received legal backing with the enactment of the Inspectorate of Government Statute No. 2 of 1988 and further reinforcement by Article 223 of the 1995 Constitution of Uganda. Its specific mandate and functions are laid out in Article 225. The Inspectorate of Government Statute No. 2 of 1988 has now been replaced by the Inspectorate of Government Act, 2002, while the Leadership Code Statute has also been replaced by the Leadership Code Act 2002.

The jurisdiction of the Inspectorate of Government covers officers and leaders employed in public service and other organizations, institutions or enterprises that use public funds. In the bi-annual reports to Parliament, the Inspectorate of Government may

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9 Id.
12 The 1995 Constitution was amended by Parliament to introduce various changes.
13 This Act 5 of 2002 which was assented to on the 5th of March 2002, and commenced on the 5th of April 2002, was meant to operationalise Chapter Thirteen of the 1995 Constitution and in particular to give effect to Articles 225, 226 and 232 of the Constitution and to repeal the Inspectorate of Government Statute, 1988.
14 No. 8 of 1992.
15 This Act was meant to provide for minimum standards of behaviour and conduct for leaders. It was assented to on 25th June 2002, and it commenced on the 12th of July 2002.
16 Section 9 of Act No. 5 of 2002.
highlight failure on the part of responsible officers to implement the recommendations of the Inspectorate of Government. Article 231 of the Constitution (as amended by the Constitution (Amendment) Act 11 of 2005) requires the President or any local authority referred to in clause (2) of the Article to submit to Parliament at least once a year actions that have been taken on reports submitted to them for implementation. Parliament may determine what action to take against the responsible official. The office of the IGG is a public one, with a mandate far wider and deeper than that of a traditional Ombudsman. As noted earlier, in the previous Statute of 1988, the IGG was charged with the general duty of protecting and promoting human rights and the rule of law in Uganda, which mandate was later transferred to the Uganda Human Rights Commission (UHRC).

In spite of the existence of the IGG for close to nineteen years, there seems to be a general decline in the respect for the rule of law and an increase in the levels of corruption and other social evils especially in all areas of public administration. Save for some isolated cases, there has been a growing frustration at the extent to which corruption goes unpunished and the apparent inability of the Inspectorate of Government and other organizations empowered to investigate and prosecute corruption to act decisively and bring the culprits to book.

There also appears to have been a specific and calculated move by the very government which created this office to frustrate its functions. One arrives at this conclusion by either considering the comments made by cabinet ministers, or when analysing the

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18 An official appointed to investigate individual’s complaints against maladministration, especially that of public authorities. See Judy Pearsall, The Concise Oxford Dictionary 10th Edition, Revised Oxford University Press 2001. Page 993. An ombudsman (English plural: ombudsmans or ombudsmen) is an official, usually (but not always) appointed by the government or by parliament, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens. In some jurisdictions, the Ombudsman is referred to, at least officially, as the ‘Parliamentary Commissioner (e.g., the West Australian state Ombudsman). The word ombudsman and its specific meaning, Swedish in origin, have since been adapted in to English as well as other languages, and ombudsmen have been instituted by other governments and organizations such as the European Union. An ombudsman need not be appointed by government; they may work for a corporation, a newspaper, an NGO, or even for the public. Quoted from http://en.wikipedia.org/wiki/Ombudsman. Accessed on 24th June 2007.

19 See Article 52 of the 1995 Constitution.


22 See IGG, 2003 at 143.

23 See Fortunate Ahimbisibwe, ‘Otafiire blasts IGG over Naguru estate,’ The New Vision; 25th June 2008. Available at http://www.newvision.co.ug/D/8/12/635581, where Otafiire said the IGG is not the Government and she cannot use her position to frustrate government projects. We shall go ahead with the development whether she likes it or not. Nobody should act as if he or she is more powerful than the Government.”

24 For example former Justice Minister Janet Mukwaya stated that Mr. Tumwesigye (former IGG), was interfering with government departments in disregard of his constitutional mandate; See Grace Matsiko, ‘I won’t resign, IGG reacts,’ Daily Monitor; 24th June 2007. Available at http://www.monitor.co.ug/news/news06101.php.
issues brought for determination in the courts of law in the recent past, and how the Government has responded to them. Indeed in one particular case, President Museveni wrote to the Attorney General requesting for a legal opinion to the effect that the Inspectorate of Government did not have the constitutional or legal mandate to stop any government procurements and should therefore be prevented from doing so.

In another more recent situation, Minister of Local Government Kahinda Otafiire has been attacking the IGG over the allocation of Naguru housing estate to a foreign investor, insisting that the redevelopment had been approved by the Cabinet and that no one had the power to overturn the decision. According to Otafiire, the delays caused by the IGG make investors run out of patience and threaten to sue the Government. However, the IGG has retaliated by saying that Otafiire misadvised the President and cabinet about the propriety of the $300m (sh510b) project and also stated that her work should not be frustrated or obstructed.

Thus, in spite of the fact that the IGG is the brainchild of the NRM government, conflicting messages are being sent out to the public with regard to the fight against corruption generally, and the abuse of public office in particular. In 2004, Cabinet had even proposed to the Constitutional Review Commission that the Inspectorate and the Human Rights Commission be merged, in a move that many believed was designed to neutralise the IGG’s powers. The situation is made worse by the President ordering the
reinstatement of ministers who have been censured by parliament because of political corruption.\textsuperscript{34} Further still, reports of the Commissions of Inquiry into the Purchase of Junk Helicopters, on the Uganda Revenue Authority,\textsuperscript{33} the Police, the Global Fund and others remain largely shelved and unimplemented.

It is also on record that on several occasions, the President has himself accused the IGG of frustrating national development by preventing various projects from taking place.\textsuperscript{36} For example, in 2004, President Museveni told off the former IGG, Jotham Tumwesigye, to stop interfering with the work of other government officials,\textsuperscript{37} when the former ordered the arrest of Lucien Tibaruha, then Ag. Solicitor General, because the latter had sanctioned the payment of thirteen billion Uganda shillings to one James Musinguzi Garuga in compensation for his farm which had been allocated to settlers by government.\textsuperscript{38} On the other hand, he (the President) applauds the work of the current IGG prompting one to wonder whether it is a mere façade of a well orchestrated effort by the State to frustrate\textsuperscript{39} the work of the Inspectorate of Government\textsuperscript{40} and to limit its jurisdiction.\textsuperscript{41}

Against the above background, this paper addresses the following issues:

(i) Why is political corruption so prevalent in Uganda?

(ii) Is the Inspectorate of Government promoting or frustrating the work of government in its bid to deliver services to the people of Uganda?

(iii) Is the Inspectorate being frustrated by the government in its fight against political corruption?, and

(iv) How can the Inspectorate of Government be supported to work more effectively in its fight against political corruption?

1.1 WORKING DEFINITIONS

1.1.1 The Phenomenon of Corruption

\textsuperscript{34}As noted by former Minister of Ethics and Integrity, Dr. Miria Matembe, whilst debating at the K-FM (93.3FM) Radio talk Show on the 14th of January 2008 at 7pm.

\textsuperscript{35}This Report was later struck off the public records of the Republic of Uganda after the ruling of Justice J.B. Katutsi in Anne Britt Ashund V. Attorney General. Miscellaneous Application No. 441 of 2004


\textsuperscript{41}Between 2003 and 2005, the President sought to reduce the powers of the IGG through constitutional amendments.
Broadly speaking, corruption can be classified into five categories: political corruption, administrative corruption, grand corruption, petty corruption, and patronage/paternalism. The term ‘corruption’ however, lacks universal definition and indeed its definition differs from one jurisdiction to the next. The word ‘corruption’ comes from the Latin verb *corruptus* meaning to break. It literally means a broken object. Klitgaard attempts to define corruption by stating that ‘(a corrupt official) deviates from the formal duties of a public role because of private gains; or violates rules against the exercise of certain private–regarding behavior.’ This however is limited to only public officials, which unfortunately is just the tip of the iceberg. Corruption has always been in existence, in one form or another. As far back as the fourth century, B.C.E., Kautiliya, a Sanskrit scholar, wrote,

> Just as it is not possible not to taste honey (or poison) placed on the surface of the tongue, even so it is not possible for one dealing with the money of the king not to taste the money in however small a quantity. Just as fish moving inside water cannot be known when drinking water, even so officers appointed for carrying out works cannot be known when appropriating money.

Kautiliya goes ahead to point out the different ways in which employees can be involved in corruption and prescribes the modus operandi to be adopted by the king to deal with corruption and make appointments. The term Corruption is thus used as a general concept describing any organized, interdependent system in which part of the system is either not performing duties it was originally intended to, or performing them in an improper way, to the detriment of the system’s original purpose. Klitgaard in fact asserts the formula that *corruption = monopoly + discretion-accountability*. It should be emphasized that corruption happens in both the public and private sectors.

### 1.1.2 Corruption in Uganda

There is no specific textbook or legal definition of corruption in Uganda. However, practices that are deemed by the law as corrupt under the Prevention of Corruption Act, and under the Penal Code Act include acts such as bribery and extortion, the mismanagement of public funds, theft by public servant, neglect of duty, causing financial loss to the Government, making false claims, embezzlement, and abuse of office.

The Inspectorate of Government Act 2002 classifies corruption as an “…abuse of public office for private gain and includes but is not limited to embezzlement, bribery, nepotism, influence peddling, theft of public funds or assets, fraud, forgery, causing financial or property loss, and false accounting in public affairs.”

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42 Id.
43 For example, the World Bank has simply defined Corruption as the abuse of public power for private gain. See also Tanzi 1998 at 564.
44 See Klitgaard 1988 at 23 quoted in Omar 2001 at 44.
46 Id.
49 Cap.120, Laws of Uganda, 2000.
On the other hand, Section 2 of the Prevention of Corruption Act Cap. 121 states that,

*Any person who shall, by himself or herself or by or in conjunction with any other person—*

(a) *corruptly solicit or receive or agree to receive for himself or herself or for any other person;* or

(b) *corruptly give, promise or offer to any person whether for the benefit of that person or of another person, any gratification as an inducement to, or reward, or otherwise on account of any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed, in which that public body is concerned, commits an offence.*

The Act also prescribes penalties for offences like dealing with corrupt transactions with agents, corruptly withdrawing tenders, bribery of members of public bodies, and others.

Conceptually, corruption is a form of behaviour, which departs from acceptable ethics, morality, tradition, law, and civic value. In the words of Zie Gariyo:

*Corruption is not unique to Uganda. Indeed, it is now recognised as a serious and pervasive international problem with diverse political, economic, and social implications. Corruption affects small as well as large business. It affects the rich as well as the poor. It affects small poor countries as well as rich countries. However, for the big business and rich countries, the effect could be in gains to their economic well-being. For the poor people and poor countries, the effect is adversely negative leading to economic stagnation, political instability, increased social inequality, and marginalisation. Corruption affects economic growth as it distorts the costs of business transaction thus making lessening profits and making their services very expensive to the detriment of economic development in poor countries.*

The fact that corruption hampers development is well known. The World Bank estimates that the country loses about $300m (Shs. 510 billion) annually due to corruption.

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51 Prevention of Corruption Act Cap 121.
52 Section 3 Cap 121, Laws of Uganda.
53 Section 4 Cap 121, Laws of Uganda.
54 Section 5 Cap 121, Laws of Uganda.
55 Sections 9 and 10 Cap 121, Laws of Uganda.
However, the fact that corruption always takes two actors, is often overlooked. As Klitgaard puts it, “…corruption is a crime of calculation, not passion”. In some cases, corruption has been looked at as strictly a political issue, and some institutions like the World Bank have only fought corruption only a political way which has unfortunately been successful. Therefore, by refusing to approach corruption in a multifaceted way, Thomas notes that, “…the Bank (just) lends to corrupt governments to help them control their own corruption.” Mwenda agrees when he states that many (corrupt) regimes on the African continent have been saved from collapse by foreign aid.

It is clear from the aforementioned provisions that corruption in Uganda is given a narrow interpretation because there are many incidences of corruption for example in elections, private businesses, and other situations that do not generally apply to public officials.

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58 If corruption indices were to include the aiding and abetting of corruption and tax evasion, the ‘geography of corruption’ would look rather different and Countries currently designated as being amongst the least corrupt, such as Singapore (now No. 5), Switzerland (7), UK (11), Luxembourg (13), Hong Kong (15), Germany (16), USA (17), Belgium and Ireland (19) would slip some way down the list. For example, Africa Confidential editor-in-chief, Patrick Smith, estimates illicit sales of small arms to developing countries to be no less than $1b, and those of conventional weapons as much as $10b. Nigeria is losing at least 100,000 barrels of crude oil per day from illegal and secret shipments. The shipping companies and commercial firms are located in Amsterdam (Netherlands), Zug (Switzerland). For details, see, The Other Side of Corruption: Third World Network, The New Vision; Saturday, 17th February 2007. Available at http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=134&newsId=549629.

59 Klitgaard, op.cit, at 46 quoted in Omar Azfar 2001 at 44.


61 Thomas 2007 at 742.

62 Id.

63 Mwenda 2006 at 3.
II. RATIONALE FOR THE CREATION OF THE INSPECTORATE OF GOVERNMENT

2.1.0 Historical Context

Uganda has not had a good history of adherence to the precepts of the rule of law and human rights. Indeed, four years after independence in 1966, the country experienced the first of many coups d'etat which would then become an integral part of the political landscape of the country until 1986. As stated earlier, these occurrences need to be understood in light of Uganda’s history of colonial rule, ethnic and religious diversity, difference in levels of development, massive poverty, foreign interests, the lack of capable leaders, and political underdevelopment. Corruption became endemic because of many years of political turmoil and a collapsed economy, rendering the salaries of public servants nearly worthless.

The Inspectorate of Government was therefore a reform initiated by the NRM Government prior to the promulgation of the 1995 Constitution in a bid to restore respect for the rule of law and good governance. At the time it was established in 1986, the Inspectorate was referred to as the Office of the Inspector General of Government (OIGG) with the general duty of protecting and promoting human rights and the rule of law in Uganda as well as eliminating and fostering the elimination of corruption and abuse of public offices. However, the responsibility for the promotion and protection of human rights was transferred to the Uganda Human Rights Commission (UHRC) and the Inspector General of Government, now renamed Inspectorate of Government (IG), was given wider powers of investigation, arrest and prosecution, plus the additional responsibility of enforcing the Leadership Code of Conduct. Unfortunately, by 1994, just as it is today, the vice of corruption was still pervasive, thus necessitating a rethinking of the mandate of the inspectorate to address these loopholes.

2.2 Original Mandate of the Inspectorate of Government

The Inspectorate is an independent institution charged with a three-pronged
responsibility of firstly, eliminating corruption, and the abuse of office. According to Jotham Tumwesigye, former IGG, this office, which reports to Parliament bi-annually, also has the function of promoting and ensuring strict adherence to the rule of law and principles of natural justice in administration. It is also the national Ombudsman of Uganda and the enforcer of the Leadership Code.

The Inspectorate of Government is now mandated by the 1995 Constitution and the Inspectorate of Government Act 2002 to inter alia fight corruption. Principle XXVI of the National Objectives and Directive Principles of State Policy states that: “… all public offices shall be held in trust for the people,” and that “… all persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people.” The Principles further state that “… all lawful measures shall be taken to expose, combat, and eradicate corruption and abuse of power by those holding political and other public offices.” The Inspectorate of Government was accordingly established within the Constitution to meet these objectives with a mandate “… to eliminate and foster the elimination of corruption, abuse of authority and of office” and “to promote fair, efficient and good governance in public office.”

The functions of the Inspectorate of Government are prescribed by Parliament. These range from the promotion of the rule of law to investigations on the conduct of public officers in the execution of their duties. As noted earlier, the Inspector-General of Government Statute was enacted in 1987 before the 1995 Constitution was passed. Apart from the provisions which related to human rights and that are no longer applicable, the rest of the statutory provisions together with the Constitution constitute the legal basis for the operation of the Inspectorate.

This Act was then amended to bring it into perfect harmony with the Constitution. Specifically, to promote and foster strict adherence to the rule of law and principles of natural justice, eliminate and foster the elimination of corruption, abuse of authority and public office, promote fair, efficient and good governance in public offices, enforce the leadership code, and investigate acts, omissions, advice, decisions or recommendations by public officers.

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73 Interview with Mr. Jotham Tumwesigye carried out on the 29th of August 2007.
74 Interview carried out on the 29th of August 2007.
76 It should be noted that the Ugandan Constitution is based on the notion that the country’s future prospects depend, largely, on the quality and honesty of its leaders. It calls for a new culture of leadership for both elected and appointed leaders in the public sector based on the principles of honesty, impartiality non-discriminatory leadership; sensitivity to marginalized groups; development leadership; democratic leadership; respect for the rule of law; a “sense of shame”; and, transparency and accountability.
78 The Inspectorate of Government Act 5 of 2002.
79 Section 7 of the IGG Inspectorate of Government Act 5 of 2002.
2.3 Current Mandate, Jurisdiction and Powers of the Inspectorate of Government

According to the Deputy IGG, Mr. Raphael Baku, the Inspectorate currently has three main mandates in promoting overall good governance in the country, as prescribed by law; that is, Eliminating Corruption and the Abuse of Office; The Inspectorate of Government as the National Ombudsman; and The Inspectorate of Government as the Enforcer of the Leadership Code.

Article 230 of the Constitution gives the Inspectorate the 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 same Article goes further to give the Inspectorate the power to enter and inspect the premises or property “…of any department of Government, person or any authority” and to examine any documents relating to the case being investigated. This is in addition to having the power to order or direct that certain things be done or not done.

The jurisdiction of the Inspectorate of Government covers officers or leaders whether employed in public service or not, and also such institutions, organisations, or enterprises as Parliament may prescribe by law.” This covers officers and leaders serving in a government department undertaking or service, a statutory corporation or authority, the Cabinet, Parliament, a court of law, the Police Force, the UPDF and the Local Defence Force. It has also been proposed to extend the jurisdiction of the Inspectorate to cover all public servants.

In order to carry out its functions, the Inspectorate is given an independent budget in order to protect it from funding fluctuations created by government.

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80 Interview carried out on the 28th of August 2007.
81 See Art 230, 225, and 234 of the 1995 Constitution.
82 See also comments by Ms. Christine Mugerwa, Head of the Communication Division of the IGG, speaking live on WBS TV show “Issues at Hand” program hosted by Mr. Peter Kibaazo on the 18th of September 2007.
83 The Inspectorate has indeed made headway and used its powers to investigate, arrest, and prosecute officials accused of corruption and the abuse of office. See IGG “Case Summaries” 2007 available at http://www.igg.go.ug/cases.htm.
84 See Article 230(2), which states: “The IGG 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.”
85 See Article 226.
86 For example, the former army Commander Maj. Gen. James Kazini was asked the then ethics minister, Miria Matembe, and the former IGG, Jotham Tumwesigye, to comply with the Leadership Code and declare 200 bags of cement and a cow that the Kasese business community had donated to him as an appreciation for helping rid the district of rebels. See Anne Mugisa & Charles Ariko, ‘Court Martial Jails Kazini For 3 Years’, See also Alfred Wasike & Henry Mukasa, ‘Who is Major General James Kazini?’ available at http://www.thepromota.co.uk/index.php?option=com_content&view=640&Itemid=41.
87 See Section 9 of the Inspectorate of Government Act.
However, the Inspectorate’s powers are limited. It is forbidden from questioning or reviewing the decision of any court of law or tribunal, any civil matter which is before court at the commencement of the Inspectorate’s investigations.\textsuperscript{90} It is further forbidden from questioning any matter relating to the exercise of the prerogative of mercy or any matter the review or investigation of which has been certified by the President as likely to be prejudicial to the security, defence or international relations of Uganda. The Inspectorate is also forbidden from questioning any matter which may involve the disclosure of proceedings and deliberations of the Cabinet relating to matters of a secret or confidential nature that would be injurious to the public interest.\textsuperscript{91} This study is mainly concerned with the first mandate of the Inspectorate; that is eliminating Corruption and the Abuse of Office.

\textsuperscript{90}See Section 19 (1) (a)(e) of the IGG Act.

\textsuperscript{91}Id.
III. ANALYSING THE ROLE OF THE INSPECTORATE OF GOVERNMENT

3.1 Political Corruption Defined

The phenomenon of political corruption is difficult to define. The yardsticks used in different jurisdictions are not the same.\textsuperscript{92} However, political corruption has been defined as that which inhibits a political system, or institution in which public officials seek illegitimate personal gain through actions such as bribery, campaign financing, extortion, cronyism, nepotism, patronage, graft, and embezzlement.\textsuperscript{93} It is therefore a serious threat to democratic values such as accountability to citizens. It also poses a serious threat to the economic institutions that safeguard democracy and development.\textsuperscript{94}

James Wolfensohn identified this situation when he stated; “I was then told that there was one word I could not use, which was the ‘C’ word, the ‘C’ word being ‘corruption’. Corruption you see, was identified with politics, and if I got into that, I would have a terrible time with my Board”\textsuperscript{95} This statement was indeed true because Mr. Wofensohn lost his job after it was discovered that he had influenced the preferential treatment of his girlfriend at the work place.

So complex is political corruption that there is a view that certain political funding practices\textsuperscript{96} that are legal in one place may be illegal in another.\textsuperscript{97} Indeed some have argued that poor countries have a propensity towards corruption due to cultural and historical reasons.\textsuperscript{98} In some countries, government officials have broad or ill-defined powers, and the line between what is legal and illegal can be difficult to draw.\textsuperscript{99} This is confirmed by Lord Young, the former Secretary of State for Trade and Industry of the United Kingdom when he stated;

\begin{quote}
Now when you are talking about kickbacks, you are talking about something that is illegal in this country and that, of course, you would not dream of doing… but there are parts of the world I have been to where we all know it happens. And if you want to be in business, you have to do-not something that is morally wrong, because in some parts of the world… that is not immoral or corrupt. It… would be totally wrong in our environment but was not wrong in their environment; and what we must be careful of is not to insist that our practices are followed everywhere in the world.\textsuperscript{100}
\end{quote}

However, in this age of globalisation, it would be unfortunate to insist on classifying corruption using a geographical analysis.\textsuperscript{101} In any case, such an analysis is questionable.
because there are aspects of behaviour, which can be used as benchmarks in deciding whether an act, omission, behaviour, or habit, amounts to corruption or not regardless of the geographical dimension. Some people claim that certain government practices such as patronage, while legal, might be suspect. This definition sets a very high standard for political propriety and many have questioned it. There are also situations of conflict-of-interest whereby public office is used for personal gain. This is an ethical issue dealing with the premise that power corrupts and absolute power corrupts absolutely. Corruption, therefore, is a word used for all such commissions and omissions that are either illegal or unethical. Since power corrupts, the challenge is to ensure accountability at all levels of government and to create virtuous and ethical citizens.

Clearly all forms of government are susceptible to political corruption. Forms of political corruption vary but include bribery, extortion, cronyism, nepotism, patronage, graft, and embezzlement. While corruption may facilitate criminal enterprise such as drug trafficking, money laundering, and trafficking, it is not restricted to these activities of organized crime. In some nations, corruption is so common that it is expected whenever ordinary businesses or citizens interact with government officials. Arguments have been made that corruption is a matter of “culture” in developing countries, and that it would be culturally wrong for Europeans to “impose” their anti-corruption standards on the developing world. However, some have argued that branding corruption as cultural in the developing world is confusing and misleading since it assumes all forms of hospitality and gift-giving are a form of corruption.

102 See for example the case of Uganda V. Emma Kato in which the main witness for the state, Major General Caleb Akandwanahoa a.k.a Salim Saleh testified that the money he received form the defendant was considered as a commission and not a bribe.

103 For example, some people have argued that whereas Hon. Amama Mbabazi, the Minister for Security and Secretary General of the NRM party says that he sold this land to the National Social Security Fund after the Fund managers approached him through his donee, one Amos Nzevi, the fact that no procurement procedures were followed and yet the land was sold at a price over and above that which was set by three independent valuers, clearly makes the transaction suspicious. See Richard Wanambwa & Elias Biryabarema, ‘QUERIES AS NSSF BUYS MBABAZI’S LAND AT 11B’ The Daily Monitor, 13th August 2008. Available at http://www.monitor.co.ug/artman/publish/news/Queries_as_NSSF_buys_Mbabazi_s_land_at_11b_69776.shtml.

104 See Paul Busharizi, ‘NSSF, you are damned if you do or don’t’ The New Vision Friday, 22nd August 2008. Available at http://www.newvision.co.ug/D/8/220/645856; Moses Byaruhanga, ‘NSSF got fair deal in the Temangalo land’ The New Vision; Monday, 1st September 2008. Available at http://www.newvision.co.ug/D/8/459/647457. Political corruption has been defined as the misuse by government officials of their governmental powers for illegitimate private gain. Misuse of government power for other purposes, like repression of political opponents and general police brutality, is not considered political corruption. An illegal act by private persons or corporations not directly involved with the government is not considered political corruption either. See also http://www.answers.com/topic/political-corruption last accessed 24th June 2007.


106 Id.


108 Id.


110 Id.
The difficulty in defining and detecting corruption is admitted by the current IGG in her 245-page Report to Parliament dated April 5 2007. She states that, “although there was no evidence corroborating the allegations of bribery against the minister, there was gross interference, manipulation and influence peddling during the procurement process by the minister.” As stated by the Minister of Ethics and integrity, “It’s a complex situation which involves networks which can’t be easily identified...and that explains the difficulty we have.”

This statement shows the difficulty of defining, identifying and proving political corruption.

**3.1.1 Genealogy of the Fight Against Political Corruption**

The record for the fight against political corruption in Uganda is not very impressive. Prior to the setting up of the Inspectorate of Government, investigating corruption was mainly handled by the Police and the Directorate of Public Prosecutions (DPP). The Inspectorate only handled corruption as an administrative matter rather than as a crime, because the staff of the Inspectorate were not trained to handle these kinds of investigations.

This was reflected in the fact that very few corruption cases were filed in the courts and fewer still were ever heard or disposed of. Even those cases that were taken to the courts were not successfully handled because the witnesses normally turned hostile after being either compromised or intimidated, while other witnesses would lose interest when cases dragged on for years. The high profile cases involving political corruption have been mainly handled by commissions of inquiry whose recommendations remain largely implemented. *(See Table One 1).*

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114 Interviewed on the 29th August 2007.

115 This view is supported by the former Minister of Ethics and Integrity, Dr. Miria Matembe, whilst debating at the K-FM (93.3FM) Radio talk Show on the 14th January 2008, at 7pm.

116 Interview with a former prosecutor who spoke on condition of anonymity carried out on the 27th August 2007.
## TABLE ONE

### TABLE OF INQUIRIES INTO POLITICAL CORRUPTION IN UGANDA

<table>
<thead>
<tr>
<th>INQUIRY</th>
<th>DATE</th>
<th>Prosecution</th>
<th>RESULT</th>
<th>Arreets</th>
<th>Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police(^{117})</td>
<td>May 2000</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Junk Helicopter(^{118})</td>
<td>August 2001</td>
<td>Emma Kato</td>
<td>1</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>URA(^{119})</td>
<td>December 2003</td>
<td>Report struck off public records vide Misc. Appl. No. 441 of 2004 Asland V. The Attorney General of Uganda however the chairperson of the Commission, Justice Sebutinde stated that the institutional recommendations are being enforced(^{120})</td>
<td>Onegi Obel</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>Global Fund(^{121})</td>
<td>2006</td>
<td>Nil. However, the Draft Cabinet White Paper agreed that Maj. Muhwezi be held politically accountable for the mess in the GF.</td>
<td>Nil</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>National Social Security Fund(^{122})</td>
<td>2007</td>
<td>IG.Ref:TS.35/2003; CRT Ref:BU-CO-1222; 2006(Ongoing against Onegi, Mpuuma, Bakoko &amp; Isabirye but suspended by appeals in Higher Courts)</td>
<td>Mukula, Muhwezi, Kamugisha &amp; Kaboyo</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>GAVI Fund(^{123})</td>
<td>2007</td>
<td>Ongoing against Capt. Mike Mukula, Maj. Gen. Muhwezi, Dr. Alex Kamugisha &amp; Ms. Alice Kaboyo but suspended by appeals in Higher Courts.(^{124})</td>
<td>Nil</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>The National Population Databank and Identification Solutions investigation(^{125})</td>
<td>2007</td>
<td>Nil. The IGG found that between 2004 and 2005 state minister for regional co-operation, of influence peddling in the award of the US$150 million contract</td>
<td>Nil</td>
<td>Nil</td>
<td></td>
</tr>
</tbody>
</table>

**Source:** Daniel Ruhweza 2008


\(^{118}\) Republic of Uganda (2001), The Report Of The Judicial Commission Of Inquiry Into the purchase of Military Helicopters(Chair: Justice Julia Sebutinde), UPPC, Entebbe.

\(^{119}\) Republic of Uganda (2003), The Report Of The Judicial Commission Of Inquiry Into Allegations of Corruption in the Uganda Revenue Authority(Chair: Justice Julia Sebutinde), UPPC, Entebbe.

\(^{120}\) Interview carried out in December 2007 whilst the respondent was on Christmas break from her current posting with the Special Court for Sierra Leone.


\(^{123}\) The Report Of The Inspector General of Government Into The Mismanagement Of The Global Alliance for Vaccines and Immunisation Funds.

\(^{124}\) It also agreed that Muhwezi lied to the commission that he did not have any knowledge of Dr. Tiberius Muhebwa, the Project Monitoring Unit (PMU) co-ordinator. Muhebwa only conceded he did after much probing. Cabinet said Muhwezi used his political influence to meddle in the appointment of Muhebwa and other staff, yet he had no professional competence in operational matters. For details see Charles Etukuri and Felix Osike, ‘Muhwezi lied on Global Fund – Cabinet’ The Sunday Vision Newspaper. See also Charles Etukuri ‘Muhwezi to blame for Global Fund – Cabinet, The Sunday Vision Newspaper; available at http://sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=132&newsId=534293.

\(^{125}\) See for example http://www.igg.go.ug/docspopulation_Dbank.doc last accessed on 24th June 2007.
Most of the recommendations from the aforementioned inquiries remain largely unimplemented while some were challenged in the courts of law. However, the Hon. Justice Mrs. Julia Sebutinde commented that she was happy that some action (like the change of leadership in the Police) has been effected. Obviously, this is far short of the voluminous recommendations that were made by the Sebutinde and other commissions and therefore there is need to analyse the efficacy of the Inspectorate of Government as arguably the last person standing in the fight against corruption.

3.2 ‘Barking Dog’ or ‘Poisonous Snake’? : An analysis of the efficacy of the Inspectorate in the fight against Political Corruption

To what extent has the Inspector General of Government been able to use its powers effectively in the fight against political corruption and thereby fulfil the constitutional mandate given by the constitution? A contrary line of inquiry would be to investigate whether the Inspectorate has simply abused its powers and remained ineffective.

3.2.1 Enforcement of The Leadership Code In The Fight Against Political Corruption

The Leadership Code was one of the laws used to detect and fight political corruption. As it now stands, the Leadership Code Act describes the expected and prohibited forms of conduct for government leaders. The Code requires leaders to make annual disclosures of their income, assets, and liabilities. This disclosure must not only cover the leader but also his or her “nominees” (defined as anyone who controls or manages business or other activities of which the leader is principal beneficiary). Activities which are forbidden include asking or accepting gifts or benefits in relation to the exercise of official duties and personal interests; failure to seek prior approval from the Leadership Code Committee to contract with the government or with certain kinds of foreign businesses; abuse of government property; and misuse of official information not available to the public. The Code also prohibits the misappropriation of public funds, as well as setting a minimum standard of behaviour the code also establishes penalties for transgressions.

This Code was originally enacted by the National Resistance Council in 1993 on the understanding that it would be enforced by a Leadership Code Committee appointed by the President. However, the 1995 Constitution empowered the IGG to enforce

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128 Article 234 of the Constitution.
132 Interview with Mr. Jotham Tumwesigye carried out on the 29th August 2007.
the Code. Unfortunately, the levels of compliance were very low\(^\text{133}\) and it took the intervention of the then Minister for Ethics and Integrity, Hon. Miria Matembe and a lot of donor pressure, to make Parliament strengthen the law. However, the Constitutional Court in *Fox Odoi & another v. A.G.*,\(^\text{134}\) effectively reverted the situation to the pre-1995 status where the office was a mere barking dog with no teeth.\(^\text{135}\) In essence the President was no longer bound to implement the recommendations of the IGG regarding the appointment and dismissal of an officer.\(^\text{136}\)

Be that as it may, the IGG still has powers to prosecute or cause the prosecution\(^\text{137}\) of public officials who are suspected of having breached the law.\(^\text{138}\) We shall now analyse some key cases in order to appreciate the complexity of the work of the Inspectorate in the fight against political corruption.

**A: Fox Odoi Oywelowo & James Akampumuza v. Attorney General;**\(^\text{139}\)

The petitioners in this case challenged various sections of the Leadership Code Act No. 12 of 2002 as being inconsistent or as contravening certain articles of the Ugandan Constitution, insofar as they did not give the President discretion in punishing certain officers who had breached the Leadership Code. In essence, the President could only implement the recommendations of the Inspector of Government without discretion. This position was however reversed by the Constitutional Court.\(^\text{140}\) As such, the recommendations of the Inspector of Government today no longer bind the President. He need not implement them. Whereas this decision cleared the air with regard to how certain public officers like judges could be removed from office, it is my contention that it crippled the fight against political corruption as it made the Inspectorate toothless when it came to requiring the President to implement the recommendations it made.

Furthermore, it can also be argued that the President did not take kindly to having his discretionary powers stripped. This is confirmed by a statement made by the first

\(^{133}\) See ‘Museveni Hails Anti-Corruption Crusade’ in The Mobiliser Vol. 1 No. 5 at 28.

\(^{134}\) Constitutional Court Petition No. 8 of 2003.

\(^{135}\) Interview with Mr. Jotham Tumwesigye carried out on the 29th of August 2007. This view is supported by the former Minister of Ethics and Integrity, Dr. Miria Matembe, whilst debating at the K-FM (93.3FM) Radio talk Show on the 14th January 2008 at 7pm.

\(^{136}\) Oloka Onyango, 2007 at 46.


\(^{138}\) Some common cases recommended for prosecution that are encountered by the Inspectorate of Government in the course of its work include; corruption involving either bribery or extortion, abuse of office, embezzlement, causing financial loss and others which are linked with forgery and/or utterance or use of false academic documents particularly of academic documents or accountability documents. If convicted of a criminal offence, a public official may suffer imprisonment and may have to pay compensation. According to sections 21 and 35 of the Leadership Code Act, where a leader acquires property through breach of the Code, for example if the s/he fails to declare certain properties or makes a false declaration, the consequence of such breach of the Code is confiscation or forfeiture of the property. See IGG; the Inspectorate of Government and the Fight against Corruption in Uganda, available at www.igg.go.ug/docs/Corruption%20Insert.doc last accessed on 28th June 2007.

\(^{139}\) Constitutional Petition No. 8 of 2003.

\(^{140}\) Id.
Petitioner Fox Odoi Oywelowo (also a presidential legal assistant) to the effect that, “...the Constitutional Court just affirmed that the President is the most powerful man in the land and cannot take directions from anyone.”141 In essence, the fight against corruption was left in the hands of one institution whose recommendations were no longer binding. How frustrating!

**B: Roland Kakooza Mutale v. the Attorney General Application No. 665 of 2003 arising out of HCCA No. 40 of 2003**142

Kakooza Mutale, a Senior Presidential Advisor, failed to declare his wealth as required by the Leadership Code Act, prompting the Inspector General of Government in May 2003 to recommend that the President does relieve Mr. Mutale of his duties. The Petitioner’s main ground was that there was no prescribed legal form on which to declare his wealth, which arguably was a mere technicality since all other leaders had managed to declare their wealth in various forms.143 However, the President swore an affidavit in support of his application, thereby sending out the message that the President and his men were not interested in the fight against political corruption and as such were making it harder for the Inspector of Government to carry out his functions. This was confirmed by the President’s willingness to re-instate Kakooza Mutale despite the fact that the said petitioner had contravened the law (as it was then).144 If it were not so, then the President did not have to be the deponent nor did he have to categorically state that he would reinstate the applicant despite the fact that the applicant had breached the law. This was a clear departure from the President’s earlier commitment to strict adherence to the rule of law and zero tolerance for corruption.145

The aforementioned actions create laxity in the minds of those who are supposed to act against corrupt individuals. As confirmed by the former IGG Jotham Tumwesigye “Most permanent secretaries do not want to take action against their insubordinate staff.”146 He further noted that there was a lack of will power to deal with corruption, adding

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141 See Angelo Izama ‘Sailing without ballast on IGG ship, The Daily Monitor; 27th November 2003.
143 See Article 126(2)e of the 1995 Constitution.
144 In an affidavit sworn in support of the petition, the President stated, ... (That) if the Court finds that the IGG made the … recommendation to me on the basis of a flawed procedure and never followed the Leadership Code and the law generally in making his recommendation, I am prepared to reinstate Major Roland Kakooza Mutale to his office as Presidential advisor. Paragraph 5 of the Affidavit sworn on the 22nd of September 2003 by H.E. the President of Uganda in support of Major Kakooza Mutale’s petition to be reinstated.
145 Museveni 1985, at 17.
that factors such as tribalism and religion hindered the struggle against graft. It is clear that such actions make the work of the Inspectorate very difficult especially when officers are required to carry out the recommendations made by the Inspectorate.

Whereas Justice Bamwine refused to allow the IGG to be added as a party to the proceedings in this case on the grounds that it lacked legal personality, the Constitutional Court three years later, declared that the framers of the constitution had intended that the IGG should be clothed with legal personality. Such judgements show an encouraging trend in promoting the fight against political corruption and are welcomed.

C: John Ken Lukyamuzi v. the Attorney General of Uganda & Electoral Commission Constitutional Petition No. 19 of 2006

As in the Kakooza Mutaale petition, the IGG ordered the Speaker of Parliament to remove Lukyamuzi from the House and also directed the Electoral Commission (EC) to disallow his nomination to contest for a seat in the 8th Parliament because he failed to declare his wealth, as required by the Leadership Code. Subsequently, Lukyamuzi filed a petition in the Constitutional Court seeking a declaration that his removal from the House and barring him from standing in the 2006 elections was null and void. He relied on Article 83(1) (e) of the Constitution, which states that a person can vacate the House if, among others, he is found guilty by an appropriate tribunal of violating the Leadership Code. Mr. Lukyamuzi argued that because a tribunal was not existent to handle the complaint against his failure to declare his wealth, his removal from parliament was illegal, as was his disqualification from nomination. The Attorney General—in a rare show of support for the IGG’s recommendations—argued that until Parliament decides to constitute the “appropriate tribunal”, the powers of such tribunal are exercised by the IGG.

Court ruled that since the IGG had the powers to order the removal of a Member of Parliament who was found guilty of breach of the Leadership Code of Conduct, all that the Speaker of Parliament and the Chairperson of the Electoral Commission had to do was comply with the orders of the IGG.

Whereas this was a laudable move by the Court, it should be noted that the IGG was

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147 For example the NSSF Board chairman Mr. Gamuwa, while appearing before the parliamentary Committee of Commissions and State Enterprises, said that the Fund board deals with anyone irrespective of religion, tribe, sex or political affiliation but later acknowledged that they were at first uncomfortable to deal with Hon. Amama Mbabazi regarding the sale of his land at eleven billion Uganda shillings. Some members of the ruling NRM have also criticised Mr. Amama Mbabazi for alleging that the investigations against him are because of his tribe and religion. See comments by Hon. Kahinda Otafiire, Hon. Jim Muhwezi and Hon. Henry Banyenzaki on the program “On the Spot” talk show on NTV September 19, 2008. See also Edris Kiggundu, ‘MPs grill NSSF bosses over land deal’ The Weekly Observer available at http://www.observer.ug/index.php?option=com_content&task=view&id=866&Itemid=59 last accessed on the Saturday, 23rd August 2008.


149 Inspector General of Government V. Kikonda Butema Farm Ltd & Attorney General Constitutional Application No. 13 of 2006 arising out of Constitutional Petition No. 18 of 2006 re-affirmed legal personality on the IGG.

never the intended “appropriate tribunal” for the enforcement of the Leadership Code under Article 235A.\footnote{151} This is confirmed by the current IGG when she admits that there is a confiscation provision in the Leadership Code Act that shall be used effectively ‘when we have the tribunal.’\footnote{152} Former IGG Tumwesigye further reveals that the Tribunal was supposed to implement the findings of the IGG.\footnote{153} Since the Tribunal had not been established, then Lukyamuzi had been improperly dismissed.\footnote{154} In his view, Parliament did not appreciate the purpose of Article 235A when it passed the amendment.\footnote{155} Tumwesigye also stated that the purpose of the Article was to check on the powers of the IGG but this was unfortunately not explicitly stated in light of Article 83(1) (e).\footnote{156} Indeed if the interpretation remains as it today, there is no way we can guard against the excesses of the IGG, which lacuna can easily be abused as we shall see in the subsequent chapters.

On the other hand however, this judgment significantly departs from the \emph{Fox Odoi} and \emph{Kakooza Mutaale} petitions and thus contributes to the creation of a conducive situation for the work of the IGG. As such, Members of Parliament must take heed of the IGG more than any other public officer because the Speaker and the Electoral Commission Chairperson are bound by her orders to sack any MP and to block him or her from contesting for a parliamentary seat for the next five years.\footnote{157} What this demonstrates is that it becomes easy to instil discipline and respect for the rule of law when the IGG's recommendations are respected. Although Mr. Lukyamuzi has lodged an appeal against this ruling, the impact of the law as it stands today is that it is highly unlikely that a Member of Parliament would refuse or delay to declare his/her, assets because they now know the consequences.\footnote{158}

In conclusion, therefore, an enabling legal environment makes the work of the Inspectorate easier. The aforementioned cases demonstrate that the Inspectorate has been able to regain its balance in spite of the frustrating circumstances under which it operates. This therefore means that the fight against political corruption is not yet lost.\footnote{159}

### 3.3 Major Challenges to the Inspectorate of Government in Dealing with Political Corruption

\footnote{151}Id.\footnote{152} See Felix Osike, ‘I Expect a Conviction In Muhwezi, Mukula Case - IGG Mwondha’, The Sunday Vision, Saturday, 2nd June 2007 available at \url{http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=130&newsId=568497}.\footnote{153} Interview with Jotham Tumwesigye conducted on the 23rd of August 2007.\footnote{154} Id. This is so because upon applying the literal rule of interpretation, one can infer that the framers were not either properly advised as to the rationale of the article or its significance.\footnote{155} Id.\footnote{156} See ‘IGG to try errant leaders’ available at \url{http://www.mttigov.go.ug/docs/July13.pdf}.\footnote{157} See also \url{http://www.newvision.co.ug/D/8/459/556537} last accessed on August 29th 2007.\footnote{158} See Felix Osike, ‘I Expect a Conviction In Muhwezi, Mukula Case - IGG Mwondha’, The Sunday Vision, Saturday, 2nd June, 2007 available at \url{http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=130&newsId=568497}.\footnote{159} For example, 355 billion Uganda Shillings has been saved over the last three years. See Risdel Kasasira and Mercy Nalugo, ‘Mwondha Cancels shs 335 billion tender; The Daily Monitor, Wednesday 15th October, 2007 available at \url{http://www.monitor.co.ug/artman/publish/news/mwondha_cancels_shs333b_tenders_73/55.shtml}.\footnote{21}
Frustrated Or Frustrating

We shall now analyse some of the challenges that have crippled the work of the Inspectorate in its fight against political corruption. Some of the cases handled by the Inspectorate are analysed in the following section of the paper, with the view of identifying the bottlenecks that are encountered and offering some suggestions as to how they can be resolved.

3.3.1 Lack of Political Will

One of the most challenging aspects of the fight against corruption is the lack of political will. This is made worse by the mixed messages from those in authority regarding this fight. As stated by the current IGG, Faith Mwondha, the fight is worthless unless there is political leadership and strong support provided by the President.

Whereas the President loses few opportunities to drive the anti-corruption message home, and sometimes removes corrupt politicians from senior positions in the government through a series of reshuffles, there are, at the same time, individuals in high office who are widely known for their corrupt activities but they remain in power for reasons that are not immediately obvious. The continued failure to remove such people undermines public confidence in the leadership’s commitment to deal with the issue of corruption.

This is further accentuated by the allegations that the very person who is supposed to be at the helm of the fight against corruption, is alleged to be involved in seemingly corrupt practices like using Global Alliance for Vaccine and Immunization (GAVI) to

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161 For example, in May 2003 Maj. Kakooza Mutaale was relieved of his duties for failure to declare his wealth as required by the Leadership Code Act. However, when Mutaale challenged his sacking in court, President Museveni of did swear an affidavit in support of his application. Interestingly, four years later in May 14, 2007 the President again swore an affidavit forming part of the evidence challenging a petition by ex-health Minister Jim Muhwezi challenging the procedure used by the IGG in carrying out investigations about his alleged mismanagement of Shs7.9 billion donated to Uganda by the Global Alliance for Vaccines and Immunisation (GAVI). Solomon Muyita, ‘Museveni faces cross-examination’, The Daily Monitor; 23rd May 2007 http://www.monitor.co.ug/news/news05233.php.

162 Interview with former IGG employee on condition of anonymity.


165 The former State Minister for Youth and Child Affairs Felix Okot Ogongo (NRM, Dokolo) is quoted as saying; “The President is not serious…his anti-corruption fight is below the required standard. He is lamenting yet he knows the action to be taken on corrupt ministers and other government officials.” See note 129 supra.

166 Mr Ishaa Otto (UPC, Oyam South) is quoted as saying; “Those corrupt ministers should be forced to retire in public interest and be arrested immediately. But without President Museveni’s will, corruption will continue as usual.”
mobilise political support in the referendum on political systems.\textsuperscript{167} More frustrating is the fact that in 2005, members of parliament were facilitated with Uganda Shillings five Million (US$2,800) to enable them consult their constituents with a view to changing the clause in the 1995 Constitution which limited a President to stand for only two terms.\textsuperscript{168} This clause was subsequently changed by Parliament, thus allowing Museveni unlimited access to State House. Interestingly, the President is on record for criticising African leaders who stay in power for too long.\textsuperscript{169} This “cat on the fence” double standard has clearly put the NRM government in disrepute and greatly undermined the fight against political corruption.\textsuperscript{170}

Such double standards are also alluded to by the Spokesman for the Forum for Democratic Change, the main opposition political party in Uganda, Mr. WafuLa Oguttu revealed a statement that the President made to him to wit;

\begin{quote}
...You behave like a padiri (priest) and see those of us in government as sharks... don’t you think that the corruption today is better than in the past since the stolen money is now being used to put up buildings in Uganda instead of taking it outside the country?\textsuperscript{171}
\end{quote}

This statement, which has remained undisputed to date, clearly puts the President in disrepute. In the absence of contrary view, it demonstrates that there is no clear leadership in the fight against corruption.\textsuperscript{172}

In another situation, the Minister of State for Regional Integration, Mr Isaac Musumba whilst marking the Danish Constitution Day in Kampala in 2007 was reported as having stated that, “Our leadership is determined to intensify efforts and demonstrate political will in the fight against corruption.”\textsuperscript{173} However, the Hon. Justice Faith Mwondha has accused Mr. Musumba, of influence peddling in the award of the $150 million national identity card contract to Face Technologies of South Africa.\textsuperscript{174} The award was suspended


\textsuperscript{169} See Tusarirwe, 2003.


\textsuperscript{174} The IGG found that between 2004 and 2005 Mr Musumba “irregularly involved himself” in the ID project “as if he was part of a Procuring and Disposal Entity” contrary to the Public Procurement and Disposal of Assets Act. See Report of the IGG on the Investigation on the Procurement of the Vendor for the National Population Databank and Identification Solution August 2006. See http://www.igg.go.ugdocspopulation_Dbank.doc last accessed 7th June 2007.
but the only action taken against Mr. Musumba was simply to move him to another ministry. But such inaction frustrates the fight against corruption.

The above clearly shows that there is a need for a clear and unequivocal message from the leadership of this nation that the fight against corruption is a priority. The Government needs to show that all actions taken are not a mere façade either due to donor pressure or because the government prepares to host events like the recently concluded Commonwealth Heads of Government Meeting (CHOGM). There should be a clear message that leaves us beyond reasonable doubt that the government indeed has zero tolerance for corruption. No excuses should continue to be made as in the past when the president told his brother Caleb Akandwanaho (who admitted receiving a bribe), to use it for the people in the north and then at the same time order for the prosecution of those in similar circumstances.

Whereas the IGG has been seen to score highly of recent, many sceptics are not quick to toast the Government or to stamp their feet in applause. Moses Serwanga clearly states that this fight against corruption is long overdue and that the President had hitherto done little to crack the whip. Other sceptics like former Integrity Minister Miria Matembe, Prof. Dan Wadada Nabudere, and others who have spoken on condition of anonymity, have noted that the recent arrests and prosecution of top-notch politicians was done in light of the fact that the country was going to host the Commonwealth Heads of Government meeting, a fact alluded to by the president.

Inspite of the above, the fact that the government has implemented some of the recommendations made by the IGG deserves some applause. Recently, Major

176 Indeed some people like Hon. Banyenzaki expect the government to sit back now that the CHOGM is over. Indeed some people like Hon. Banyenzaki expect the government to sit back now tat the CHOGM is over. Comments made at recent Pre-CHOGM Regional Conference on the theme: “Good Governance and Constitutionalism in East Africa: The Contemporary Relevance of the Commonwealth” on November 2nd, 2007 Grand Imperial Hotel, Kampala.
177 Id.
179 Onyango Obbo argues that corruption is used as a kind of political glue. There is a group of people in the NRM who rally, and work tooth and nail to preserve “their” power, because they have accumulated a lot of wealth corruptly. See Onyango Obbo, “Kazini and the danger of eating small frogs” The Daily Monitor; 14th May 2008. Available at http://www.monitor.co.ug/artman/publish/CharlesOnyangoObbo/Kaziniandthedangerofeatingsmallfrogs.shtml last accessed 14th May 2008.
182 Comments by government official who spoke on condition of anonymity.
General Jim Muhwezi was charged with abuse of office, theft and causing financial loss after inquiries were made by the IGG.\textsuperscript{185} He was also blamed for failing to declare to President Yoweri Museveni about the US$4,361,000, which was received as a reward for Uganda’s successful immunization program from the Global Alliance for Vaccine and Immunization (GAVI).\textsuperscript{186} In one way, this shows that the President and government appreciated and enforced the recommendations made by the IGG. However, this is not the first time that ministers in this government or other officials have been subjected to disciplinary action due to corrupt practices and tendencies.\textsuperscript{187} This means that the government needs to clean up its act and improve its image regarding the fight against corruption\textsuperscript{188} by inter alia appointing persons of proven integrity to these high offices and taking punitive and deterrent action against those caught with their hands in the till.\textsuperscript{189}

### 3.3.2 The Question of Political Interference

On its own, political interference\textsuperscript{190} stands out as the strongest obstacle to the IGG as compared to any other single frustration mentioned in this paper.\textsuperscript{191} In almost every investigation of high-level corruption in which the IGG has been involved, there has been political interference.\textsuperscript{192} This is because the modus operandi of doing business in

\begin{itemize}
  \item \textsuperscript{186} See HillaryNsambu: “Muhwezi Blocks His Arrest over Funds” The New Vision; Tuesday, 8th May 2007. Available at \url{http://www.newvision.co.ug/D/8/12/564037}. See also, “MPs flock Luzira to see Muhwezi” The New Vision; Wednesday, 30th May 2007 available at \url{http://www.newvision.co.ug/D/8/12/567954}. See also The New Vision; Friday 4th May 2007. See also The New Vision; Thursday 3rd May 2007.
  \item \textsuperscript{187} Ministers who have resigned from office, been prosecuted in the courts of judicature or censured by Parliament in the early days of the NRM government include former Attorney General Joseph Ekemu (convicted and sentenced), Mathew Rukikaire (resigned), Jim Muhwezi (censured), Sam Kuteesa (censured), Kirunda Kivejinja (resigned), among others. See generally Parliament of Uganda Hansard for details.
  \item \textsuperscript{188} Supra, note 158.
  \item \textsuperscript{190} In its country report on Uganda, Freedom House reported that, ‘whereas the autonomy of the public service is protected by the Constitution, the public, health, and education service commissions generally make appointments on the basis of merit and open competition, despite the widespread reliance on patronage and corruption elsewhere in the government. In 2005, however, cases surfaced of interference in the appointments of Justus Akankwasa as Assistant Commissioner in the Ministry of Education and Sports and Dr. John Mutumba as the coordinator of the Project Management Unit for the Global Fund to Fight Aids, Tuberculosis and Malaria. The district service commissions, which make appointments in local governments, confronted further allegations of discrimination see Freedom House Country Report – Uganda \url{http://www.freedomhouse.org/modules/publications/cfr/mod_PrintVersion.cfm?edition=7&ccrpage=31&ccrcountry=127} last accessed on the 24th June 2007.
\end{itemize}
Uganda is heavily politicised.193

According to Julius Kiiza, patronage and personal interests are key factors in business-politics linkages in Uganda.194 Kiiza further asserts that senior military officers and their civilian business associates have profited from military procurements largely because of their personal ties with the powers that be (including the President).195 This crony capitalism has been worsened by the absence of effective institutions to check the excesses of corrupt officials.196 He further states that in addition to corrupt military procurement practices there has been the rise of profitable “civilian” businesses (such as Speke Resort, Munyonyo and Mosa Courts) owned by individuals like Sudhir Rupharelia who are connected to leading members of the regime.197 Therefore, such a status quo makes it extremely difficult for the institution to carry out its work and any investigation carried out by the IGG will be subjected to a lot of political interference.

An example of unnecessary political influence is a statement by the Local Government minister Kahinda Otafiire who has stated that; “She (the IGG) was given a powerful office which she is abusing. She is becoming a burden to the Government. Why can’t she point out the problem and we correct it instead of saying that she is investigating the project without pointing out the wrong.”198 Clearly such a statement is premature because the IGG can only identify the problem complained of after the investigations are complete. In any case, Jotham Tumwesigye, former IGG has therefore advised that in order to avoid a stall in government projects, government officials need to follow the law and do things properly.199

It should be noted that political influence is not easy to impute and prove, but can only be inferred from the surrounding circumstances.200 It can be the use of diversionary

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194 See generally Kiiza, Julius 2004.


197 See for example the questions put to Hon. Hope Mwesigye who was sending text messages to phones of members of parliament probing the sale by Hon. Amama Mbabazi of land in Temangalo to the National Social Security Fund. She stated that she was only lobbying the ruling party’s representatives on the Committee to deal with the issues and not be diverted by “politics”. It is clear that members like Dr. Lyomoki have since changed their aggressive stance against Amama Mbabazi, while others like Hon. Tinkasimire Barnabas have, much to the dismay of his former petitioners, changed sides and alleged that tribalism and religion are the actual cause of the probe against the Minister Mbabazi. See also NSSF MD) JAMWAs letter to Museveni on Temangalo-NSSF deal Daily Monitor, October 20, 2008 available at http://www.co.ug/artman/publish/news/jamwa_s_letter_to_museveni_on_Temangalo_NSSF_deal_73425.shtml.
tactics like using fake documents or false or baseless news reports like the purported report on the removal of the IGG.\textsuperscript{201} Other instances include the way in which presidential advisor Maj. Roland Kakooza Mutale blocked the IGG from arresting the former Solicitor General, and successfully frustrated the IGG from proceeding with his investigations.\textsuperscript{202} This type of behaviour should be discouraged so as to discourage impunity and pave ensure that the IGG carries out her work without disruption.

3.3.3. Conflicts with Government Institutions

3.3.3.1 The Case for Co-operation

As stated earlier, the fight against corruption has to be multi-faceted if at all it is to be effective. This means that all government structures should work together to ensure that all loopholes are eliminated to ensure success in this fight. In trying to address this issue, the \textit{Monitor} Newspaper wrote in its Editorial that,

\textit{Though belated, Ugandans should welcome this development (the prosecution of the ministers of health). All public officers are advised to avoid interpreting the actions by the Inspectorate of Government, one of the bodies mandated to investigate these offences, as a personal vendetta. Where one is the subject of an investigation, it is hoped that due process will follow, and if found innocent, the relevant judicial authority will exonerate the suspect(s).}\textsuperscript{203}

However, this also means that the procedures prescribed for public offices and institutions should be respected by all players.\textsuperscript{204} In most European countries, when the Ombudsman makes a recommendation, it is implemented forthwith.\textsuperscript{205} This is because the moral authority of institutions is very high. Unfortunately, this is this is not the case in Uganda.\textsuperscript{206} Deputy IGG, Hon. Raphael Baku, concurs and states that in many cases, the recommendations of the IGG are seldom implemented or even discussed in parliament.\textsuperscript{207} On a positive note, this situation has started changing recently probably because of multiparty politics, a more vibrant fourth estate (media), or due to the desire of government to show the international community that it is committed to fight against corruption.\textsuperscript{208}


\textsuperscript{203} Id.

\textsuperscript{204} Comments by Mr. Jotham Tumwesigye interviewed on the 29th of August 2007.

\textsuperscript{205} Id.

\textsuperscript{206} See Ssemujju Ibrahim Nganda, ‘Why have Ugandans become Sectarian?,’ The Weekly Observer; 7th June 2007 at 12.

\textsuperscript{207} Interviewed on 27th August 2007.

\textsuperscript{208} Id.
Furthermore, the noticeable proliferation of institutions that have been established to fight corruption has instead caused a lot of conflict between them.\(^{209}\) This is confirmed by the IGG who in the recent past has attacked the Prime Minister Prof. Apollo Nsibambi, former Chairman of the Legal and Parliamentary Affairs committee, Mr Peter Nyombi, and his fellow MPs Wilfred Nuwagaba and Mr Alex Ndezi, of conniving with people she has investigated to fight her.\(^{210}\)

Some sceptics have however argued that even though these institutions were given their due respect, they cannot execute their tasks properly, due to political influence, lack of capacity, poor infrastructure, and internal corruption.\(^{211}\) As stated by Dr. Nsaba Buturo, “…\textit{We know of institutions that are supposed to fight corruption but its members are the ones promoting it quietly. People you would expect to be at the vanguard of fighting corruption are the ones using the very rules and regulations to promote it…(there) is hypocrisy from a number of sections in our society who claim to be against corruption but quietly promote their own interests. You publicly profess to be against corruption but privately your actions suggest otherwise.}\(^{212}\)

The fact that the Inspectorate carries out a zero-tolerance approach to corruption and abuse of office means that it easily creates enemies with all other government departments, which would have easily assisted it.\(^{213}\) Whereas the law requires these departments to give information to the Inspectorate, the information given is never sufficient. They will thus retain information, which they hope will assist them to have a defence and thereby frustrate the case.\(^{214}\) The IGG is thus seen as a lone hunter sometimes without help from the rest of the institutions.\(^{215}\)

A case in point is a recent Symposium organised by the Uganda Human Rights Commission where the IGG argued that the fight against corruption should be left to her office alone.\(^{216}\) However this suggestion was opposed by many who have argued


\(^{212}\) Nsaba Buturo, supra.

\(^{213}\) Comments by Ms. Betty Namuhoma, Head of the Ombudsman division of the IGG, speaking live on WBS TV show “Issues at Hand” on the 18th of September 2007.

\(^{214}\) Interview of Martin Erone, former Senior Inspectorate officer IGG.

\(^{215}\) Comments by a senior public servant working for one of the anti corruption agencies who spoke to the researcher on condition of anonymity.

that the fight against corruption involves everyone and cannot be the preserve of the IGG alone. In another incident, Hon Rubby Aweri Opio, whilst responding to a complaint lodged by the IGG regarding how he had handled a petition brought before him by Maj. Gen Jim Muhwezi, Capt. Mike Mukula, Dr. Alex Kamugisha and former State House official Alice Kaboyo are accused of misappropriating sh1.6b from the Global Alliance for Vaccines and Immunisation (GAVI) funds, made the following remarks: “In Luo society where I belong genetically and historically, there is a saying that ‘cingi keni pe konyi’ meaning your hands alone cannot help you. The Learned IGG should cooperate with other agencies if she is to be a prophet(ess) of hope in the fight against corruption.”

A similar remark is made by the Local Government Minister Kahiinda Otafiire regarding the deadlock over the now halted $300m Nakawa housing estate when he has lamented the lack of cooperation from the IGG. He stated; “… I have been calling her. I have been trying to talk to her on phone. Every time I call her, she does not answer the phone. I leave a message, she does not call back. If she was answering my phone, may be we would not have reached this situation.”

More the Minister of Ethics and Integrity also considers his ministry as the “captain” of the fight against corruption.

Clearly, such bickering over superiority is unnecessary and should stop. It should not matter who is at the helm of the fight, what is most important is that all anti-Corruption agencies should therefore work together in order to have a multi faceted approach to eliminating corruption. Short of which the battle will be lost easily.

It is therefore good to note that there is collaboration and co-operation within the several institutions mandated to fight corruption through for example, the Inter Agency Forum Against Corruption (IAF), the Accountability Sector, and the African Parliamentarians Network against Corruption. These have corresponding support from offices like the Attorney General’s Chambers. The IAF is a coalition of institutions that are

217 Comments by Mr Benson Obua-Ogwal, MP for Moroto County.
220 Dr. Nsaba Buturo is quoted as saying that (the Directorate of Ethics and Integrity) is the captain. You have a battle against immorality generally and the directorate, on behalf of government, is the commander. In other words, the ministry, on behalf of government, sets standards which are arrived at through consultations with very important sections of our society and once those standards are agreed upon and supported by Parliament, then we have a perfect framework within which to say the whole country can move together. See Nsaba Buturo, supra.
221 Comments by Mr. Jotham Tumwesigye interviewed on the 29th August 2007.
mandated to fight corruption.223 Whereas these institutions are working together, they view the Inspectorate as a spoiler of their progress, a fact which has not been helped by the perceived hard line stance taken by the IGG against many of the institutions.224 According to Linda Tumusiime—the Director of Legal Affairs in the Directorate of Ethics and Integrity—these institutions come together with the vision of eradicating corruption and working together to ensure that there is zero tolerance for corruption. However, the IGG does not participate in this forum which clearly works against the unity of purpose that is needed in this fight.225

3.3.3.2 Laxity in Implementing IGG Recommendations

In order to effectively fight corruption, the recommendations of the Inspectorate of Government must be taken seriously and implemented to create a deterrent effect. In one of her recent reports, the IGG pointed out that one of the main obstacles facing the office is the corruption and negative attitudes in the institutions that are supposed to be partners with the IGG in the fight against corruption.226 Although not named, the report states that some institutions take unnecessarily long to take action, or simply fail to provide required information or they ignore the recommendations made outright.227 In a number of cases these bodies or individuals have either not implemented the recommendations, nor taken the actions expected.228

An example of such action include the way Kampala mayor Nasser Sebaggala opposed an order signed by the deputy IGG, Raphael Baku Obudra, requiring the acting town clerk, Ruth Kijjambu, to reinstate her principal assistant, William Tumwine,229 or how

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223 These include; Inspectorate General of Government, the Directorate of Ethics and Integrity, the Directorate of Public Prosecutions, the Criminal Investigations Department of the Police, the Auditor General, the Public Procurement and Disposal of Public Assets Authority, the Public Accounts Committee of Parliament, All Service Commissions, Justice, Law and Order Sector, Inspectorate Divisions of the Local Government and Public Service, the Local Government Finance Committees.


225 View of a senior member of the Inter Agency Forum who spoke on condition of anonymity and confirmed by the Deputy IGG Hon Rapahel Baku who intimated that the Inspectorate will get actively involved in the near future.


227 Id.

228 This view is confirmed by Miria Matembe, a former minister of Ethics and Integrity who commented on the now suspended former Solicitor General Lucien Tibaruha, thus; “Me and IGG Jotham, we raised and filed several reports about the misconduct and corrupt tendencies of Tibaruha…even recommendations by the IGG that Tibaruha should not be appointed Solicitor General.” See Ssemuju Ibrahim Nganda, ‘Why Museveni’s Getting Tough On Corruption’ The Weekly Observer; 21st June 2007. Available at http://www.ugandaobserver.com/new/archives/2007arch/news/jun/news200706211.php.

the Njeru Town Council defied the IGG’s recommendation to sack their Mayor. In other instances, the concerned officials have simply reduced serious recommendations by taking light action against those concerned without consent from the Inspectorate of Government. In essence therefore, it can be argued that this type of behaviour amounts to a review of the findings of the Inspectorate thus, a contravention of the Inspectorate of Government Act which prohibits any challenge, review, quashing or questioning of the findings, recommendations, investigations or inquiries made by the Office of the Inspector-General in any court of law. This is confirmed by Justice Augustine Kania in *Kiara Amos*, when he held that

“… because the process of the Inspectorate of Government of making the said report is protected by immunity under section 21 of the Inspectorate of Government and because I respondent had no way of reviewing or varying the recommendation of the Inspectorate of Government, I find the application of all the five applicants against both respondents misconceived and bad in law...”

Therefore, the legislature should take up its constitutional role and ensure that the recommendations of the IGG are carried out. As noted by Parliament’s Public Accounts Committee Chairman Nandala Mafabi “…it is appropriate for … Parliament to question government officials as to why IGG recommendations are being taken for granted.”

### 3.3.3.3 Laxity of Parliament

Equally frustrating, has been the laxity of Parliament in supporting the work of the Inspectorate and fighting political corruption generally. According to Hon. Beti Kamya, ‘the public is disappointed in the institution of Parliament;- instead of hearing voices holding government accountable, adding value to the democratisation process, they hear calls for increased salaries, medical benefits, posh offices, fuel and more loans to further mortgage the country.’

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230 According to the IGG, “The non-interdiction of the Chairman, Dr. Nganwa, from office, resulted into the victimisation of [former NDA employee] Mr. Atanasius Kakwemeire, who was a principal state witness,” Tumwesigye claimed. He then pointed to the failure of the NDA to renew the contract of Kakwemeire, who was then head of the National Drug Quality Control Laboratory in the NDA, when it expired on April 10 that year. See Henry H. Ssali, ‘IGG pins Muhwezi over NDA officials,’ The New Vision 25th November 2003. See also Charles Kakamwa, ‘Njeru Defies IGG Over Mayor,’ The New Vision available on Saturday, 14th April 2007 available at [http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=125&newsId=559870](http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=125&newsId=559870). See also “IGG, Tibaruha in fresh fight” The Daily Monitor; 11th June 2007 available at [http://www.monitor.co.ug/news/news06111.php](http://www.monitor.co.ug/news/news06111.php).

231 See IGG; July- December 2003 Report to Parliament outlined this problem as one of the biggest challenges to the IGG.

232 See Sections 21, breach of which is punishable under Section 35 of the Act.


conduct and be seen to conduct official business in an official manner… there is no place to discuss statements such as whether the IGG is still in charge of the institution after local government minister Kahinda Otafiire allegedly called her a school girl.\footnote{237See Faith Mwondha, ‘IGG is Not Answerable to the Parliament’, The New Vision; 23rd July 2008 available at \url{http://72.3.244.61/stories/200807240332.html}.
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Hon. Benson Obua-Ogwal admits that Parliament and the IGG have been having “running battles”\footnote{238Josephine Maseruka, ‘IGG Mwondha slams anti-corruption Bill’, The New Vision; Wednesday, 3rd September 2008. Available at \url{http://www.newvision.co.ug/PA/8/12/647927}.} over various issues,\footnote{239In the recent past, the IGG criticized the Public Accounts Committee of Parliament for having given the Minister of Ethics and Integrity a soft landing when it asked him to pay back a loan of Uganda Shillings Twenty Million shillings which he had illegally borrowed from a private radio station. The Committee Chairman at that time threatened to take action against the IGG however, the threats never materialised.\footnote{240As confirmed by her recent interview on Radio One 90 FM. See Rodney Muhumuza & Richard Wanambwa; ‘Deputy IGG attacks Mwondha. Available at \url{http://www.monitor.co.ug/artman/publish/news/Deputy_IGG_attacks_Mwondha_71416.shtml}. See also Pascal Kwegsiga “MPs won’t scare me, says IGG Mwondha, The New Vision, Tuesday October 7, 2008 at 5.\footnote{241Id.} The IGG also argues that the Inspectorate is a public office by virtue of Article 223 (2) of the Constitution and Section 4(2) of the Inspectorate of Government Act, 2002 and that it was not envisaged by the Constitution or the Act as personal to holder.\footnote{243See Article 155(2) and Article 232 of the Constitution.}
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which has led to the IGG’s refusal to appear before the Parliamentary Committee on Legal and Parliamentary affairs\footnote{242See Article 155(2) and Article 232 of the Constitution.} claiming that there are people like the former chairperson of the committee who were trying to taint her image.\footnote{244The IGG also argues that the Inspectorate is a public office by virtue of Article 223 (2) of the Constitution and Section 4(2) of the Inspectorate of Government Act, 2002 and that it was not envisaged by the Constitution or the Act as personal to holder.\footnote{243See Article 155(2) and Article 232 of the Constitution.}

She also asserts that there is no constitutional or legal basis that justifies the need for the IGG to appear in person\footnote{245Mwondha, Op. cit. She further states that being responsible is not synonymous with being answerable for it is clear that when the draftsperson meant answerable or accountable, the appropriate word was used (for example see Article 117 and Principle XXVI (ii) of the National Objectives and Directive Principles of State Policy).\footnote{246See ‘MPs demand respect from IGG’, available at \url{http://www.parliament.go.ug/index.php?option=com_content&task=view&id=66&Itemid=65}.}

before the legal and parliamentary affairs committee of Parliament.\footnote{247Speaking at Stakeholders’ workshop to discuss the draft Whistleblowers’ Protection Bill, 16th August 2007, Fairway Hotel, Kampala.} According to the IGG, Article 155(2) of the Constitution only requires that the head of any self-accounting department, commission or organisation set up under this Constitution “shall cause to be submitted” (not “shall submit”) reports to Parliament.\footnote{248See Article 155(2) and Article 232 of the Constitution.}

She further states that Article 227 of the Constitution provides that the Inspectorate shall be independent in the performance of its functions and shall not be subject to the direction or control of any person or authority and shall only be responsible to Parliament.”\footnote{249See Article 117 and Principle XXVI (ii) of the National Objectives and Directive Principles of State Policy.}

This conflict between institutions that have the similar mandate is unfortunate to say the least.\footnote{250See ‘MPs demand respect from IGG’, available at \url{http://www.parliament.go.ug/index.php?option=com_content&task=view&id=66&Itemid=65}.}

In an attempted defence of his colleagues, Hon. Nandala Mafabi notes that Parliament has been bogged down with a lot of work and has never debated any of the bi-annual reports of the IGG.\footnote{251Speaking at Stakeholders’ workshop to discuss the draft Whistleblowers’ Protection Bill, 16th August 2007, Fairway Hotel, Kampala.} However, this is hard to accept, because it is easy to summon members of Parliament from their recess, to discuss the arrest and
detention of the Kabaka’s ministers\(^{248}\) or the ongoing inquiry into the botched purchase of land by the National Social Security Fund.\(^{249}\) In any case, Article 231(5) requires Parliament to discuss expeditiously any reports submitted to it under Clause (1) but reports submitted covering the period June 2004 to December 2007 have never been discussed by Parliament.\(^{250}\) This is accentuated by the fact that the law does not make it mandatory for either Parliament or the President to take action on any report submitted by the IGG.\(^{251}\) It just simply shows that the work of the IGG’s office has not been given priority or treated as essential,\(^{252}\) and has left the Inspectorate frustrated in light of the fact that neither Parliament nor the President is implementing the IGG reports and recommendations.\(^{253}\)

It is therefore good to note that the current chairman of the Legal and Parliamentary Affairs Committee, Hon. Steven Tashobya, acknowledged that whereas it has not been done before, Parliament is supposed to help her do her work and in his words, “the way forward is to see how we can get Parliament and her office to work together.”\(^{254}\)

### 3.3.3.4 Clash with The Attorney General’s Chambers

Equally noticeable are the clashes between the Inspectorate and the Attorney General’s Chambers.

These have taken various forms and resulted in threats by the IGG to have the Solicitor General arrested,\(^{255}\) as well as the creation of a separate department for Civil Litigation in the inspectorate because, the Attorney General’s office seemed to have no interest in the IGG’s which would end up being lost.\(^{256}\) In one instance, the Deputy Attorney General, Hon. Freddie Ruhindi recently challenged the IGG to name state attorneys

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\(^{251}\) Section 30 (1) and (2) of the IGG Act provides that, “…upon receipt of a report under S.29, Parliament may take or cause to be taken such action on it as it may consider appropriate.” Sub section 2 provides that, “Upon receipt of a copy of a report of the inspectorate under section 28, the President may take or cause to be taken against the public officer or other person in respect of whom the report is made such action as may be taken under or in accordance with any written law.”


\(^{253}\) Id.


who connived with corrupt government officials to frustrate their prosecution.257 According to Hon. Ruhindi, his office can only take action on the allegations by the IGG once they are. It is my contention that the minister missed the point,258 and has not yet appreciated how sophisticated or institutionalised political corruption is.259 This is because evidence of bribery and corruption is extremely difficult to addeuce since there is hardly any paper or other trail left. Applying the strict burden of proof as required by the Evidence Act260 might not help unless the suspects have been careless or negligent in the way they transacted their business.261

An officer with IGG’s office who spoke on condition of anonymity, also confirmed that due to the unique nature of prosecuting corruption cases, there is a need to rethink the rules of procedure in court. This is because corruption is a syndicate crime that is not committed by only one person and thus it is hard to establish beyond reasonable doubt as required by the law.262 Indeed, in most cases, it can only be assumed from a chain of events263 like the high number of cases, which the government was losing allegedly due to connivance of state attorney and private lawyers.264

What the learned Deputy AG should have done was to borrow a leaf from other ministries such as Defence and Local Government and cause an internal investigation with his chambers in order to identify the culprits and this vice.265 However, by seeking indisputable evidence from the whistleblower instead of carrying out the investigation frustrates the corruption fight. This was clearly seen in parliament when Samuel Odonga Otto266 was put to task to prove that the Ministry of Foreign Affairs had bribed some members of parliament to pass additional funding for the Commonwealth Heads of Government Meeting, which was held in November 2007.267

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257 This was in light of the fact that the IGG had told Members of the Parliamentary Committee on Legal Affairs that her office needs a department on civil litigation that was separate from that of the Attorney General’s chambers which frustrates her work. See Id.


259 See Final Statement of the Uganda International Conference on Empowering Civil Society in the Fight against Corruption Mweya Lodge/Uganda 21 - 25 April 1996.

260 Chapter 6 Laws of Uganda.

261 Section 101 Cap. 121 Laws of Uganda.

262 See Section 101 of the Evidence Act Cap. 6 Laws of Uganda.

263 See for example Section 10 Cap. 121.


267 Interestingly, the current Foreign Affairs minister, Hon. Sam Kutesa, had been dismissed for the rest of the session of the Sixth Parliament, after failing to prove his allegations that Bukanga MP Nathan Byanyima had solicited a bribe. Kampala Central MP Erias Lukwago also failed to prove that his colleagues; Geoffrey Ekanya (Toroony County) and Nabilah Sempala (Woman, Kampala) had been compromised by businessman Hassan Basajjabalaba during investigations into the sale of Nakasero market. See parliament of Uganda Hansard for details.
This clearly confirms that just like the members of parliament, the learned AG’s chambers are either ill equipped to investigate or reluctant to fight corruption, a view alluded to by H.E. President Museveni in a May 4, 2008 letter to the Prime minister Apolo Nsibambi to the effect that “political leaders are not supervising civil servants well enough, and thus breeding corruption.”

3.3.3.4.1 The Battle of Wits: Challenges of Legislative interpretation

No greater force has fuelled the conflict between the two institutions than the disagreement over the interpretation of enabling laws establishing the IGG.

According to the former Solicitor General, Mr. Tibaruha, there was a professional disagreement between the two departments as to the meaning of Article 230(1) and (2) of the Constitution. Tibaruha argues that Article 230 only allows the IGG to investigate and prosecute public officials involved in corruption, abuse of authority or of public office and not bogging down the government’s decision-making process. This position is however disputed by Hon. Baku as shall be discussed below. In any case, even if Mr. Tibaruha’s advice were the true position of the law, the Constitutional Court in Kabagambe Faraj has held that even though the Attorney General has the mandate to advise other government departments, such opinion is not binding on those departments. Those departments have discretion to take or ignore that advice and no sanctions can be taken against them in case they choose not to adhere to the advice. In this regard therefore, the IGG is not bound by the opinion of the AG’s chambers.

However, in line with the Tibaruha argument, the Deputy AG, Mr. Freddie Ruhindi wrote an opinion in which he stated that the IGG does not have the mandate to handle complaints involving Government procurements. It can be argued that the purpose of this opinion, as requested for by H.E the President of Uganda, was to create

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268 This view is held by a former State Attorney who spoke to the researcher on condition of anonymity and is also made by a Senior Inspectorate Officer at the IGG’s Office who spoke on condition of anonymity.
270 According to the former Solicitor General Mr. Tibaruha, there was professional disagreement between the two departments as to the meaning of Article 230(1) and (2) of the Constitution.
272 Id.
273 Kabagambe Faraj v. AG & Another Petition No. 1 of 2006.
274 Id.
275 Comments by Mr. Sydney Asubo, a Senior Legal Officer at Inspectorate, made at Good Governance Workshop organized by the Human Rights and Peace Centre, Faculty of Law, Makerere University.
Frustrated Or Frustrating

legal ground to proceed with projects stalled by the IGG.277 Furthermore, it should remembered that the IGG’s action on the Thermal Power tender came at a time when the country was experiencing acute power shortages. The Ruhindi opinion therefore cannot be divorced from political considerations and indeed, it did cause considerable consternation within government circles.278

Thus, it can be inferred that the government was hard pressed to resolve this crisis and saw the intervention of the IGG as a frustrating event. The former IGG, Jotham Tumwesigye and the current deputy IGG Raphael Baku agree that the investigations of the IGG take time and hence put Government work at a standstill.279 However, whereas it might be true that halting a project in order to carry out an investigation might not be in the best interests of government, not doing anything or allowing an illegality to continue unabated, will give bureaucrats leeway to do as they please.280 It is therefore advisable that public offices follow the correct procedures and carry out their activities in time in order to avoid emergency procurements.281

The aforementioned not withstanding, the Tibaruha view was recently supported by Peter Mulira.282 According to Mulira, the constitution does not give the IGG power to “overlap the three branches of government” but rather, the Inspectorate is “limited to administrative actions of public officers.” He also states that the Inspectorate can only investigate “public officials” who are defined as “persons holding or acting in any public office” save for those specifically excluded by the Constitution.283 Mulira however admits that the Inspectorate of Government Statute does extend the IGG’s jurisdiction even to the cabinet, parliament and a court of law284 which he calls “null and void as being repugnant to a provision in the constitution.”


278 See, for example, See also ‘Uganda; $300 Million Electricity Deal Delayed Due to Bidding Concerns’ The Daily Monitor; 15th April 2006; See also Ibrahim Kasita : Hearing Of Namane Thermal Power Award Starts On August 17 , The New Vision, 22nd July, 2007 available at http://www.newvision.co.ug/D/8/220/577293.

279 Interviews carried out on the 23rd of August 2007 and 29th of August 2007 respectively.


281 “Comments by Mr. Jotham Tumwesigye, Supra.


283 See Article 257(2)(b) of the Constitution 1995.

284 Section 9 provides that ; The jurisdiction of the Inspectorate shall cover officers of and leaders serving in the following offices— (a) a government department; undertaking or service; (b) a statutory corporation or authority; (c) the Cabinet; (d) Parliamnet; (e) a court of law; (f) the Uganda Police Force; (g) the Uganda Prison Services; (h) a government aided school, college or other institution of learning that accesses public funds; (i) the Uganda Peoples’ Defence Forces; (j) the Local Defence Force; (k) a local government council or local government unit or a committee of such council or unit; (l) a council, boards, society or committee established by law for the control and regulation of any profession; (m) a public commission, association or similar body whether corporate or not, established by or under any law; (n) national security organisations including Internal Security Organisation ISO; (o) any other person, office or body that administers public funds on behalf of the public.

285 Mulira, op.cit.
However, Deputy IGG Baku does not agree with Mulira’s interpretation. According to Baku, the Inspectorate is an anti-corruption agency with the duty “to eliminate and foster the elimination of corruption, abuse of authority and of public office.” He further argues that the Inspectorate is also an Ombudsman with the functions of:

“promoting and fostering strict adherence to the rule of law and principles of natural justice, promote fair, efficient and good governance in public offices, investigating any act, omission, advice, decision or recommendation by a public officer or any other authority … taken, made, given or done in exercise of administrative functions.”

He therefore opines that the Inspectorate is not just an Ombudsman like in other jurisdictions, but a lot more, whose jurisdiction is not limited to public officers only but also extends to “other authority.”

According to the Deputy IGG therefore, it is clear that the Inspectorate has powers not only to investigate any act, omission, advice, decision or recommendation of public officers taken in exercise of their administrative functions, but also to investigate their conduct when such conduct is alleged to be highhanded, outrageous, infamous or disgraceful. This view is also supported by Hon. Beti Kamya who writes that;

…I wish to remind her(The Inspector General of Government (IGG) that her brief goes beyond watching over public funds, it includes watching over all forms of abuse of office, and I dare say that the effects of abuse of office on Uganda by far outweigh all loss of public funds through corruption, put together….

Whereas I agree with the aforementioned position, I do not agree with Hon. Baku, when he further asserts that the Inspectorate is a Leadership Code Tribunal with a function “to supervise the enforcement of the Leadership Code of Conduct” as discussed in 3.2.2.C above.

The above disagreements notwithstanding, not all hope is lost. The two departments can work together for the common purpose of fighting corruption and abuse of authority. This was seen in the case of IGG v. Kikonda Butema Farm Ltd & AG, in

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287 Article 225(1)(b) of the Constitution.
288 In an earlier interview, conducted on the 29th of August 2007 at IPS Building the Deputy IGG stressed that the word “any” is all-inclusive. This opinion is supported by three other employees at the IGG’s office, who spoke on the condition of anonymity because they are not authorised to speak on behalf of the IGG.
289 According to Article 225 (1) (a) (c) and (e), 1995 Constitution.
293 Article 225(1)(d) and Article 234 of the 1995 Constitution.
295 Constitutional Petition No. 13/06 arising out of Constitutional Petition No. 18/06.
which Attorney General, did not object to the IGG’s application to be added as a party to the petition as has normally been the practice. Such a trend is healthy and shows that the Government and the IGG are on the same side instead of fighting each other all the time.

Another case in point is *Afric Tours & Travel Cooperative Society v. AG* in which the plaintiff sought to recover over sixty eight billion Uganda shillings from government. The former Director of Civil Litigation, Joseph Matsiko argued that Afric’s claim was a demand for double payment, based on forged documents, and that the company’s claims had long been settled. This case was one of the nine controversial government cases which the IGG alleges were mishandled by the former Solicitor General, Lucian Tibaruha for having failed to inform the then deputy Attorney General Adolph Mwesige that *Afric Tours* had resurrected its former claim.

The *Afric Tours* case therefore demonstrates that unless there is malpractice on the part of either the AG or the IGG, the two institutions can work well together in the struggle against corruption and fraudulent practices.

### 3.3.4. Non Adherence to Procurement Rules

Over the past several years, major public works have been stuck in the gridlock of government procurement procedures. This is a serious matter since it is estimated that over half Uganda’s total budget passes through the procurement system every year. About 90% of the complaints received by the IGG reportedly concern contested procurements, which inevitably lead to delays as investigations take place. According to statement from the Millennium Challenge Account (MCA), 65 per cent of Uganda’s total budget passes through the public procurement system each year. In the National Social Security Fund alone, 8.4 billion Uganda shillings is lost per year due to corruption.

Therefore, it hopes that the government can reduce procurement-related corruption by $10 million.

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297 See for example the attempted arrest of the Solicitor General by the former IGG Jotham Tumwesigye which was interestingly blocked by the same Maj. Kakooza Mutale.


300 Afric Tours initially sued government in 1981 over the seizure of its property in 1977 and interference with its business when the late President Idi Amin Dada’s administration confiscated 26 company trucks and froze its bank accounts held with the defunct Uganda Commercial Bank (UCB). On July 17, 1989, the government acknowledged liability for its action and made an out-of-court-settlement in which it committed to pay US$832,000 as value for the lost trucks, recovery of the bank accounts, interest, and damages caused.


This means that despite the existence of a comprehensive procurement law, which aims inter-alia at transparency, accountability, and value for money, such law is hardly ever implemented nor appreciated.\textsuperscript{305} As stated by Local Government Minister Kahiinda Otafiire;

\begin{quote}
The procurement law needs to be amended. At first there was an outcry against the district tender boards. It was alleged that councillors were using them to award themselves contracts. The tender boards were dismantled and we now have contracts committees. We still have a problem but we are going to revise the procurement process and plug the loopholes.\textsuperscript{306}
\end{quote}

As stated above, it is possible to evade the procedures set in the laws, for example by using emergency procurement,\textsuperscript{307} thereby making it hard to achieve corrupt free public sector procurement.\textsuperscript{308} Corruption in government contracts has partly risen with the evolution of the multiple reforms in governance. Analysts have even stated that anti-corruption agencies like the IGG which is targeted for the Millennium Challenge Account (MCA) funding sometimes add to the corruption because of their ability to influence the direction of tenders.\textsuperscript{309}

According to Tangri and Mwenda, one of the most notorious areas of corruption in most developing countries like Uganda is that concerned with the procurement of military equipment and defence supplies.\textsuperscript{310} Since the late 1990s, the government began acquiring more and larger military hardware. A number of major tenders were entered into for aircraft, guns, and tanks as well as items such as food rations and uniforms. These deals invariably involved bribes, kickbacks and massive overpayments from which many officers, top government officials, and intermediaries profited.\textsuperscript{311} Tangri and Mwenda further state that it was President Museveni who was responsible for permitting an environment to emerge that was conducive to much military corruption by a handful of his relatives and supporters.\textsuperscript{312} This made it difficult for him to take a strong stand against corruption since, many of these military and political figures

\textsuperscript{305} For example, Mr Sam Nahamya, the Permanent Secretary in the Ministry of Trade while appearing before the Public Accounts Committee, accused President Yoweri Museveni of pushing him to flout the tendering process to award a controversial $1.35 million (Shs2.4 billion) deal to Cable News Network-CNN to promote Uganda as a tourism destination under the Gifted by Nature campaign. It emerged that the President’s son in law, Odrek Rwabwogo who brokered the deal is reported to have been paid USD $350,000 under his local firm TERP Group, which was in contravention of the procurement rules issued by the Public Procurement and Disposal of Public Assets Authority. See Yasiin Mugerwa, ‘Politics and the war on corruption’ The Daily Monitor February 6, 2008 available at http://www.monitor.co.ug/artman/publish/inside_politics/Politics_and_the_war_on_corruption.shtml; See also Editorial, ‘Govt should stop graft, wastage,’ The Daily Monitor; 7th February 2008. Available at http://www.monitor.co.ug/artman/publish/opinions/Govt_should_stop_graft_wastage.shtml.

\textsuperscript{306} See Kiggundu Edris, supra.

\textsuperscript{307} As was revealed in the Commission of Inquiry into the Mismanagement of the Global Fund for AIDS, Tuberculosis and Malaria headed by Justice James Ogoola.


\textsuperscript{309} Id.

\textsuperscript{310} See Tangri, & Mwenda 2003 at 539.

\textsuperscript{311} Id. at 539.

were closely connected—at times related—to President Museveni and his wife. It is this kind of status quo that makes it extremely difficult for the IGG to fight political corruption.

3.3.5 Court Processes and Unique Corruption Trials

The fight against corruption requires support from all arms of government including a strong and active Judiciary. Unfortunately, the regular courts are slow and have cumbersome legal technicalities, which tend to frustrate the prompt prosecution of corruption cases. In order to achieve the desired impact, corruption cases need to be tried without delay while the case is still vivid in the public eye in order to have the adequate deterrent effect. More so, there is a need to study closely the rules of evidence in corruption cases with a view to revising them since corruption (and especially political corruption) is very hard to prove beyond reasonable doubt.

There are additional problems the IGG encounters with the courts. Former IGG Jotham Tumwesigye stated that “… there are some cases you would have the judges being transferred in the middle of the case, then the witness would disappear and the case would collapse.” For example, the IGG’s office arraigned about six people in the Electoral Commission and charged them with corruption, abuse of office, and misappropriation of public funds. The case is still in court and has been there for the last six years. Another case involving top officials in the Prime Minister’s office has taken even longer. Such cases are likely to be dismissed for want of prosecution or the accused persons acquitted because witnesses fail to show up for a variety of reasons. In some cases, the Magistrates are not even willing to prosecute their own colleagues and criticise the IGG for arresting them like “common criminals”. According to a Senior Prosecutor at the IGG’s Office who spoke on condition of anonymity, the Courts make the work of the IGG very hard when the case drags on for years with endless adjournments. Furthermore, it is very difficult to commence an appeal against a judgment of the high court because of the delay in getting copies of the court proceedings, which are normally handwritten and need to be typed and approved by the judge before being released. According to this officer, only one appeal

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316 Id.
317 Supra note 259.
318 Id.
319 Interview with former IGG Jotham Tumwesigye 23rd August 2007.
320 Interview on the 27th of August 2007.
(Joseph Ekemu) had by the time of the interview, been argued but no ruling has ever been delivered.

3.3.5.1 Legal Technicalities

In the most recent past, many legal technicalities have been raised to prevent the prosecution of those accused of political corruption. Ever increasingly, the battle against corruption is bogged down by legal technicalities of various types. This is contrary to the Constitution which requires that substantive justice be done without undue regard to technicalities. However, inspite of the clear provisions of the Constitution, there have been many instances in which trials have been frustrated by either reviews, petitions, appeals and applications for reviews.

3.3.5.1.1 The Jim Muhwezi Case

This case involves the trial of Maj. Gen. Jim Muhwezi (former minister of Health), Capt. George Mike Mukula (Minister of State for Health—General Duties), and Dr. Alex Kamugisha (Minister of State for Health—Public Health). The three were arrested and detained for alleged misappropriation of Global Alliance for Vaccines and Immunization (GAVI) funds, while they were at the Ministry of Health.

The first application by Maj. Muhwezi was to challenge his arrest and prosecution by the IGG. However, the High Court rejected this application on the grounds that he had already filed a similar petition in the Constitutional Court seeking redress on the...
same matter. This was the second attempt to stall the trial of the former Ministers, coming shortly after the trial court rejected an application to stall the trial until disposal of the application in the High Court. Whereas Justice Arach’s decision is appreciated, the accused persons, managed to stall the trial at the magistrate court, first, by two weeks because their lawyers had walked out and they needed to look for new lawyers, and second, by securing a stay from Justice Augustine Kania in order to challenge the powers of the IGG to prosecute them. This is in addition to challenging their trial before Her Worship Tibulya at the Buganda Road Court on grounds that she is related to Justice Faith Mwondha, the Inspector General of Government who is prosecuting the case.

These challenges to the work of the IGG clearly show a concerted effort to frustrate its mandate bearing in mind that the petitioners are all legislators who participated in the passing of the law. We now await the rulings of the high court and constitutional court on the matters raised, since all proceedings in the trial court have now been halted. The Inspectorate is only left with the choice of requiring the vacation from office in case Maj. Gen. Jim Muhwezi fails to refund Uganda shillings 470 million which he was found liable of misappropriating.

3.3.5.1.2 The Serapio Rukundo Case

Equally challenging is the fact that in the prosecution of cases involving political corruption, suspicious behaviour or activities which might be unethical but might not necessary be illegal and in case they are illegal, then it is very hard to prove this beyond reasonable doubt as required by the law.

For example, attempts to prosecute Minister Serapio Rukundo hit a snag after the Director of Public Prosecutions refused to sanction charges because of a January 20, 2003 letter from the Managing Director of National Housing and Construction

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329 Justice Stella Arach-Amoko ruled that “…(Court) cannot condone an abuse of the court process by letting two related cases in courts …She further stated that “court is already constrained in terms of resources so it has a duty to prevent the multiplicity of cases…”. As such she contended that the findings of the investigation by the IGG be tested before a court of law…and concluded that she would not grant the application in “considering a wider public interest.”


331 A common practice used by lawyers to stall the judicial process.


335 See ‘Muhwezi has 30 days to refund 470million shillings” The New Vision; 16th October 2007, p.3.

336 See Section 101 of the Evidence Act Cap. 6 Laws of Uganda.
Corporation (NHCC) clearing the minister of his alleged indebtedness.\textsuperscript{337} Whereas the IGG raised doubts about the fact that this matter had not been adequately handled by the DPP since, in her opinion, there was enough evidence to implicate the Minister for abusing his office whilst he was still the chief Accountant of NHCC, the case clearly showed the inadequacies of the DPP in the absence of compelling evidence.\textsuperscript{338} This view is confirmed by the former Deputy DPP, (now Hon. Justice) Mr. Simon Byakakama who describes the current rules of evidence as the bottlenecks in fighting corruption since many unscrupulous criminals will hide any traces of corruption for example receipts or account books.\textsuperscript{339} In this particular case, the would-be complainant (NHCC) had already cleared the suspect of any wrongdoing, thus making it hard to pursue the matter lest witnesses turn hostile in the courtroom. Byakakama also stated that in spite of these shortcomings, there is still coordination between the two institutions and in some cases, the Inspectorate forwards certain cases to the Department for prosecution.\textsuperscript{340}

3.3.5.1.3 The Nsimbe Housing Estate Scam

In some situations, the courts fail to appreciate the uniqueness of the war against corruption. This is seen through the case of the attempted prosecution of former labour minister Zoë Bakoko Bakoru, former National Social Security Fund (NSSF) boss Leonard Mpuuma and businessman James Isabirye of Mugo ya Housing Estates by the IGG arising out of the multi-million shilling Nsimbe Housing Estate Scam in which Uganda Shillings Eight Billion was allegedly lost.\textsuperscript{341} In early March 2007, Justice Steven Kavuma of the Constitutional Court halted an arrest order issued against the three accused persons pending the determination of the accused person’s application seek the court’s interpretation of the provisions of a fair hearing and trial. Bakoko (now seeking asylum in the USA) and Mpuuma were charged with the offence of abuse of office together with former NSSF Board chairperson Jeff Onegi Obel, while Mr Isabirye was accused of bribing his way into the NSSF housing joint venture. By stalling prosecution of these cases, the learned judge frustrated the work of the IGG and the trials have never kicked off to date.\textsuperscript{342}

The same problem applies to the ruling by Justice Vincent Kagaba when he blocked the suspension of Solicitor General Lucien Tibaruha.\textsuperscript{343} By blocking the suspension


\textsuperscript{338} Id.

\textsuperscript{339} Interview carried out in November 2007.

\textsuperscript{340} Interview carried out on 29th August 2007.


\textsuperscript{342} Id.

of the Solicitor General, the judge was in effect, asking him to prepare the response for the State since he would have remained the mandated officer of the government to do so.  

As such, my contention that the learned Judge failed to appreciate the stalemate he created in this unique of the fight against corruption.

All these cases show the challenges faced by the IGG in the fight against political corruption. This analysis does not attempt to deny the constitutional rights of the accused. The right to a fair hearing as enshrined in the Constitution should certainly be protected. However, the courts should be seen to work proactively in supporting the work of the IGG especially when the old ploys of legal trickery are being used to frustrate the process. It is therefore my hope that the judges of the newly constituted Anti Corruption division of the High Court, headed by Justice Katutsi will take note of these unique situations when dispensing justice.

3.3.6 Poor Ethical and Moral Standards

Nothing frustrates the work of the Inspectorate as much as the almost non-existent moral and ethical standards within the people generally and in government in particular. This is because the fight against corruption requires the cooperation and support of the masses. Dr. Buturo notes that “the population has not sufficiently understood that it’s in our interest to collectively work together against corruption. Some of them politicise the issue instead. Of course they protect those they think are their own and our efforts are watered down.”

In order for them to do so, the masses ought to feel offended by the corrupt officers and practices. Surprisingly, the respondents to interviews and group discussions as well as the views from various radio and television talk shows hardly expressed any abhorrence for such behaviour. As succinctly put by the Principal Judge of Uganda, The Hon. Justice Mr. James Ogoola, who chaired the Commission of Inquiry into the Mismanagement of the Global Fund for AIDS, Tuberculosis, and Malaria, “…Society is

345 “Article 28(3)(a)”
346 See comments by various callers on “Kimeeza- The People’s Parliament” Program Radio One FM 90; “Mambo Bado” CBS Radio 89.2FM on Saturday afternoon. See also Interview with police officer at Kiira Road Police Station on condition of anonymity.
347 These views are also shared by Dr. Miria Matembe who also states that in addition to moral decadence, corruption is also state driven. See also Yasin Mugerwa, ‘Districts Top IGG list of shame’, The Daily Monitor; 2nd December 2007 available at http://www.monitor.co.ug/artman/publish/sun_news/Districts_top_IGG_list_of_shame.shtml.
349 Nsaba Buturo, supra.
351 See comments by Minister of Ethics and Integrity, Dr. Nsaba Buturo appearing on ‘On the Spot’ programme of Nation Television, 25th September 2008.
352 See WBS TV ‘Issues at Hand’ Programme hosted by Peter Kibazo; The Ekimeeza- People’s Parliament aired live on Radio One 90FM from Club Obligatto and Mambo Baddo on Radio CBS 89.2 FM aired on Saturday afternoons.
rotten to the core and the moral thermometer has fallen below freezing point.” President Museveni confirmed this when he stated; “The public should know that when there are no givers there will be no takers. If the public does not agree to give bribes, no body will receive bribes.” He then admits that there is a need for people who are convinced and trained about change, to be able to lead the struggle against corruption. This is probably because of the high levels of poverty in the country. However, this cannot be a blank cheque for corruption and especially for political corruption.

Whereas many institutions where built and created to fight corruption, people were ignored and not sensitized about the ills of corruption, neither were they educated on why corruption should be fought at an individual level first, and later at the national level. The challenge was put forth by Matthew Hennessey who has said “With this bribe-paying and bribe-taking going on, it's fair to ask: Is anyone doing the right thing by refusing to take part?” This is a question that should be answered by all of us, not just the government. Dr. Matembe puts the challenge to leaders by stating “… if you steal whilst carrying some one on your back, your are teaching them how to steal…”

According to Henry Muguzi—spokesperson for the Anti Corruption Coalition Uganda (ACCU)—the situation is made worse by the public’s tolerance of it. Muguzi argue that “The corrupt are still regarded in high esteem, even in churches and mosques because they are the ones who can make huge offerings.” This is confirmed by the general deviation or depreciation in the moral order probably because of influences exerted by diverse circumstances of the modern environment, which include the media, wars, migration, and others, which influence social life and inspire behavioural change in most cases for the worse. In many cases, political leaders who have been found responsible for electoral fraud have been allowed to stand for public office again without any sort of repercussion, rebuke or punishment and their followers have gone ahead to carry them shoulder high and applaud them for the “good job” they are doing. Some people have ended up advocating for different standards of the law especially when dealing

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355 Id at 28.
356 Id.
358 Kinyankore proverb quoted by Hon. Dr. Miria Matembe debating on the K-FM (93.3FM) Radio Hard Talk Show on 14th January 2008 at 7pm.
359 See for example the various comments and diversionary issues made about the NSSF-Temangalo land saga which have resurrected tribal sentiments, religious sentiments and lobbying on political party lines. See Cyprian Musoke, ‘NRM chiefs debate NSSF Temangalo land’, The New Vision Tuesday, 9th September, 2008 available at http://www.newvision.co.ug/D/8/13/648832; See also Karoro Okurut, ‘ Guilty or not, Mbabazi has a right to be heard’, The New Vision; 1st September 2008 available at http://www.newvision.co.ug/D/8/20/647462
361 Id.
with political leaders. For example, Hon. Capt. Mukula’s lawyers are quoted as saying “…as a political leader, he was undeservedly hounded out of his home as if he was a run away criminal whose guilt had been predetermined.”363 This shows that people expect politicians to be treated differently as compared to ordinary citizens which is contrary to the Constitution.

Indeed, in some situations corruption is viewed as an everyday affair and is no longer considered wrong or illegal.364 Whereas such behaviour is prohibited by Section 21 of the Prevention of Corruption Act Cap 121, it is impossible to get a job done without having to pay some *chai* or *kitu kidogo* for it. This makes it impossible to compete favourably in the open market since there is a lot of corruption in its various forms.365 Some have gone ahead to suggest that corruption remains one of the main reasons that capitalism cannot take root in Africa, given that it can make it simply too expensive to start a business, or in many cases, to keep a small one running.366 This is confirmed by the former IGG Jotham Tumwesigye who states that the moral fibre of the society has indeed collapsed and it is a very hard job to fight corruption in such circumstances.367 Tumwesigye further states that the most disturbing case is of leaders who get millions of shillings in kickbacks through the award of tenders and contracts or through tax evasion.368

Interestingly, the same people expect the IGG and the government generally to clamp down on such corrupt officials and feel greatly let down when nothing is done, thus putting the Inspectorate between a rock and a hard place.369 The challenge is further realised by the fact that those who are in key offices and are required to fight corruption are either incapable of doing so, or do not have the moral fibre to do so.370 This view is supported by former minister Miria Matembe who states that she has undergone and continues to undergo a lot of criticism for standing up against the politically corrupt and cites this as one of the reasons she was dropped from Cabinet.371

### 3.3.7 Institutional Challenges at The Inspectorate

As an independent institution, the IGG is also bogged down with a lot of internal challenges that complicate the fight against political corruption.

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364 Interview with law student on condition of anonymity who is working with a very key government department November 2007.


367 Interview conducted on the 23rd of August 2007.

368 See generally Tumwesigye, 2005.

369 Id.

370 See for example the former Minister of Health Jim Muhwezi who was formerly censured by parliament, found politically liable by the Global Fund Commission and the Cabinet white paper, found liable by the IGG in the GAVI fund scandal as well as the national drug Authority inquiries.

3.3.7.1 Case Prosecution

The prosecution of cases in the courts of law is a very challenging job. According to a former prosecutor, white-collar crime has no paper trail, thus making it very difficult to prove. In the public service, corruption is an interdepartmental affair and thus almost impossible to trace. Furthermore, according to the former IGG, Mr. Tumwesigye due to the fact that the investigators are hardly trained in modern investigation skills, the work of the inspectorate is made more difficult. This means that work will be slow and as such government work will be stalled and thus frustrating government business. In a recent interview, the local government Minister commented about the stalled Naguru housing project as follows:

We thought the matter would be sorted out in two to three months. This would be reasonable time to investigate any outstanding issue but now it is seven months. This is beyond the boundaries of a reasonable period to sort out this matter. Now it is no longer an investigation, it is obstruction. And if the investor—having signed an agreement with government, having gone through an international tendering process—decides to go to court, the penalty would be heavy for government and I do not think Parliament and the electorate would be amused. Surely what is there within the agreement that would take the IGG seven months to sort out?  

The above clearly states how the inadequacy at the Inspectorate does hamper government business.

3.3.7.2 Lack of Training Facilities

As mentioned above, the delay in delivering results is met with an even greater challenge of lack of specialist training for the IGG personnel. According to one of the officers at the IGG’s office who spoke on condition of anonymity, there are no in-house trainings at the Inspectorate, which makes it hard to have up to date investigation and litigation skills. Furthermore, there are inadequate transportation and communication services especially airtime to follow up the investigations with the various officers, coupled with the tensions created by the establishment of the new Directorate of Civil Litigation within the Inspectorate while the Department of Legal affairs is still in existence.

The need to strengthen the inspectorate both financially and legally cannot be over emphasised. By failing to do so, the state frustrates the work of the IGG and leaves it as a lame duck. Former IGG Joatham Tumwesigye stated that he always appealed to

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372 Interview carried out on the condition of anonymity.  
373 Comments made by an employee of the IGG who spoke on condition of anonymity.  
374 Interview carried out on the 27th of August 2007.  
376 Information delivered on condition of anonymity for fear of reprisals.  
377 Interviews carried out with some officers of the inspectorate of government who spoke on condition of anonymity.  
378 “Comment by Ethics Minister Dr. Nsaba Buturo, on Hot Seat 93.3 KFM 5th October, 2008  
the government to strengthen the institution financially; unfortunately this did not happen during his tenure. Several donors tried to help out, but not the government, which only met recurrent expenditure, but not for the development of the institution. To him, the government not only failed to strengthen the IGG’s office, but it also failed to enhance the capacity of other important institutions such as the office of the Auditor General and the Judiciary, all of which are key institutions in the fight against corruption. This is also confirmed by Dr. Nsaba Buturo when he notes that “(there is) limited capacity of the anti-corruption agencies - IGG and DPP- and the challenge is increasing that capacity”

Therefore, in order for the fight against corruption to be won, the capacity of institutions should be improved.

3.3.7.3 Need For Financial Assistance

Most of the bi-annual reports of the IGG to Parliament underline the lack of adequate funding as a major challenge to the effective operation of the office. Watt and Williams report that according to Transparency International, Government currently allocates only 1.1 percent of its budget to accountability institutions, which is clearly inadequate for the tasks of anticorruption agencies and might be interpreted as a lack of political support for the effective enforcement of anti-corruption measures in Uganda.

The IGG lacks adequate resources to carry out his or her functions effectively. As noted earlier, inadequate resources mean a lack of equipment, transport facilities, and operational funds. This has also led to poor staff remuneration, which makes it difficult to attract experienced prosecutors and other professional staff. The remuneration is also inadequate. As such, in a situation where a prosecutor is paid Ug. Shs. 300,000/= and is required to prosecute someone who has stolen Ug. Shs 500,000,000/=, it is very likely that such prosecutor will be compromised with a promise of more money. Even when it appears that the office has adequate staff, they lack proper training and facilitation. It can be contended that this lack of action from the state is unconstitutional since it places a duty upon the State to ensure that the Inspectorate has adequate and qualified staff in order to carry out its functions effectively and efficiently.

Whereas donors such as DANIDA, DFID, and UNDP continue to provide support to run the institution’s programs, the gap left to enable the institution to perform optimally is still too big. Despite performing at sub-optimal level, the public nevertheless believes that the IGG’s institution is important and should be given more financial and political support.

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380 Nsaba Buturo, supra.
382 See Watt Alan Doig, David & Williams Robert 2005 at 74.
383 Interview with the Deputy IGG Hon. Raphael Baku conducted on the 29th of August 2007.
384 Id.
385 Article 229(2) of the 1995 Constitution
386 See Tumwesigye, 2005.
It is therefore encouraging to learn that the Ugandan government received a grant of US $ 10.4 million from the government of the United States of America under the United States Millennium Challenge Account (MCA). According to Margot Ellis, the Uganda Mission director for the United States Agency for International Development (USAID), the funding will go into providing “extensive training, technical assistance and mentoring to various government anti-corruption agencies”. The Inspectorate of Government, the Public Procurement and Disposal of Assets Authority, the Office of the Auditor General, the fraud squad of Criminal Investigation Department of the Uganda Police and the Director of Public Prosecutions. MCA is a US government fund designed to work with poor countries to improve governance by strengthening anti-corruption agencies in a bid to strengthen the investigation, documentation, and prosecution of corruption cases.

3.3.7.4 House Divided Against Itself

Probably the most tragic challenge of all is the fact that the Inspectorate of Government is a house divided against itself. This situation was revealed most starkly by the recent statements made by the IGG Justice Faith Mwondha in a recorded interview broadcast during the August 28 2008 edition of Spectrum—a talk show on Radio One FM 90. In that interview, Justice Mwondha alleged that deputy IGG Raphael Baku was conniving with members of parliament and other people such as Prime Minister Apollo Nsibambi to taint her name and thus ensure her exit.

In a rebuttal to the accusation, Baku revealed that the cause of the problem is because the two work independently and he is not supposed to report to her as deputy IGG. He went on to note that they “have adopted a working style so that one matter is under my supervision. I supervise the investigations—and she does her part… Our work is divided according to the individual cases we are working on.” This situation is confirmed by an earlier interview in which Baku confirmed that investigations were being carried out regarding the alleged embezzlement of GAVI (Global Alliance for Vaccines and Immunization) Funds by the former junior Health Minister Mike Mukula. He however noted that he was not in charge of the investigation and that the matter was being directly supervised by Justice Mwondha.

388 Id.
389 Id.
391 Id. where Justice Mwondha is quoted as saying “I know that there are some members of Parliament conniving with my officers here, including the deputy Inspector General of Government and the officers whom I sent away because of corruption, to taint my name and to make sure that the President removes me”.
392 Id. He is quoted as having said that “I was very surprised to listen on radio that the IGG is accusing me of conniving with MPs and people who have been dismissed from the Inspectorate of Government to ensure that the President removes her from the job. Certainly, that is false, and I think it was irresponsible of her to make such a statement in public,” supra., note 264.
These comments are not surprising because a number of people interviewed for this study commented about the abrasiveness of the current IGG in her line of work. These examples of this alleged abrasiveness include the surprising sackings of many employees at the Inspectorate, the arrest and blatant persecution of journalists who wrote about her salary structure, and the refusal to appear before the Parliamentary committee on legal affairs. This attitude has indeed caused a number of conflicts in which many have found it difficult to separate the personality of the IGG from the institution. However, this has been complicated by heckling from some well placed individuals, and yet some have noted positively that whereas “there may be some edginess about her conduct of public affairs,... she has re-invigorated the office of IGG.”

The above clearly reveals a sorry state of affairs; not only is the IGG house divided against itself but it is clearly difficult to work in situations where one is found difficult to have a disagreeable character. This is unfortunate in a fight that needs unity of purpose, a comity of ideas and sufficient resources. In such a situation, the Inspectorate stands at a huge disadvantage which impacts negatively on the public and the mandate that the Inspectorate has to accomplish.

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394 These included personnel who are either formerly employed or currently employed by the Inspectorate of Government. They however spoke on condition of anonymity for fear of reprisals. Other similar views were expressed by personnel who have interacted with the Inspectorate either as members of other anti-corruption agencies, or related agencies like the Attorney General’s Chambers.

395 As confirmed in her remarks. See supra, note 324.


397 See comments in parliament made by the Prime Minister and various members of the parliament as well as comments by Hon. Steven Tashobya in Rodney Muhumuza & Richard Wanambwa, ‘Deputy IGG attacks Mwondha’ The Daily Monitor; 18th September 2008. Available at http://www.monitor.co.ug/artman/publish/news/Deputy_IGG_attacks_Mwondha_71416.shtml. These comments were repeated by Tashobya and other members of the legal and parliamentary affairs committee as well as members of the public on various Radio talk shows like Spectrum on Radio One FM 90.


IV: CONCLUSION AND MAJOR RECOMMENDATIONS

This paper has demonstrated that the IGG has a wide mandate in the fight against political corruption, while at the same time acting as the national ombudsman and enforcer of the leadership code of conduct. However, this fight against corruption has to be a multi-pronged approach since corruption, and specifically political corruption, comes in all shapes and forms. As noted by Tanzi, “…the greatest mistake that can be made is to rely on a strategy that depends excessively on actions in a single area, such as increasing the salaries of the public sector employees, or increasing penalties, or creating an anti corruption office, and then expect quick results.”

The IGG should therefore be encouraged to work in concert with other similarly equally mandated institutions in order to achieve this huge goal.

4.1 Revisiting the Definition of Corruption and the Mandate of the Inspectorate

There is an urgent need to revisit the definition of political corruption. Corruption should not only include commissions done but also those omissions, which facilitate corrupt practices. The Law Reform Commission and the First Parliamentary Counsel who are in charge of drafting the new anti-corruption legislation should consider situations where corruption shall be assumed from the surrounding circumstances. This is because corruption is so hard to prove, yet circumstantial evidence could be used to guide the investigators to infer corrupt behaviour and practice. Members of Parliament should not hesitate to support these offices and that of the IGG by giving priority amending the laws that are aimed at fighting corruption.

The mandate of the Inspectorate needs to be split up and some roles taken up by other agencies. In order to have more efficient results, working as an Ombudsman and enforcer of the Leadership code, in addition to the daunting task of fighting corruption is too much work and is bound to have serious lapses in light of the fact that the Inspectorate is overwhelmed with a lot of work but having insufficient funding and resources. The IGG’s duties should therefore be split in order to maximise efficiency. This is the case in Tanzania where the three functions are carried out by a separate Anti-Corruption Unit, an Ethics Commission and the Ombudsman. In Uganda, the Ombudsman role should be taken over by the Directorate of Ethics and Integrity and the tribunal that should be established by Article 235A can concentrate on enforcing the leadership code while the IGG focusses on the fight against corruption.

401 See Tanzi, op. cit. at 587.
404 See Watt Alan Doig, David & Williams Robert May, 2005 at 73.
405 Interviewed on the 29th of August 2007.
407 Suggestion by Mr Jotham Tumwesigye former IGG.
408 See also http://allafrica.com/stories/200809050350.htm.
In most situations, the IGG has insisted that as an independent institution, it is not answerable to anybody.\footnote{See for example statement by Christine Mugerwa, Head, Communications & Public Relations Unit of IGG entitled ‘Clarification on the Powers of the Inspectorate of Government and the Proposed Anti Corruption Court’ as reaction to ‘Govt To Set Up Anti-Corruption Court’, The Daily Monitor; 14th August 2007 at 1; See also Lorrinda Aredraru, ‘Govt has no power over IGG, Court Rules’ The New Vision; 16th September 2006, at 1.} The IGG should however also be answerable to another watchdog and this is why Article 235A created a Leadership Code Tribunal whose decisions would be binding on the authority (IGG) that is supposed to enforce the code.\footnote{Interview with a member of the Inter Agency Forum against Corruption conducted on 24th August 2007.} However, this has caused many clashes with other institutions that are also fighting corruption\footnote{See Felix Osike, ‘Report Implicating IGG Mwondha Fake’, The Sunday Vision; 25th August 2007, available at http://www.sundayvision.co.ug/detail.php ?mainNewsCategoryId=7&newsCategoryId=123&newsId=583219.} The IGG should therefore strive to work with other institutions instead of shooting itself in the foot by refusing to work with others since corruption is an amoeba that needs the input of all stakeholders.

The IGG should be given facilitation to train its staff, purchase more vehicles, computers and other hi-tech equipment to enable it meet the challenges of cyber-based corrupt practices. Indeed, all the stakeholders involved in the fight against corruption should support the Inspectorate’s work.\footnote{See Beti Olive Kamya, ‘The country needs redemption’ The Daily Monitor; 23rd July 2007 available at http://www.monitor.co.ug/oped/oped07232.php.} The IGG should also improve its working relationships with the rest of the government and other ministries and institutions so that it can get as much support as possible in the fight against corruption. The arrest and threats to arrest officers of other institutions like the Solicitor General should be avoided. Instead, a more diplomatic approach aimed at establishing better working relationships should be encouraged as much as possible.

Those members of the public who are authoring false documents\footnote{Editorial, ‘Don’t Fight The Inspector General Of Govt’, The New Vision; 26th August, 2007 available at http://www.newvision.co.ug/D /8/14/583342.} as a way of trying to remove the IGG from office should desist from doing so. This is because the Inspectorate is the last resort in the fight against political corruption and abuse of office.\footnote{Editorial, ‘Don’t Fight The Inspector General Of Govt’, The New Vision; 26th August, 2007 available at http://www.newvision.co.ug/D /8/14/583342.} Therefore, both the government and the opposition must show strong anti-corruption commitment.

The MPs should not play Judas (traitors) in the fight against corruption. The IGG should be insulated from political interference.\footnote{Editorial, ‘Don’t Fight The Inspector General Of Govt’, The New Vision; 26th August, 2007 available at http://www.newvision.co.ug/D /8/14/583342.}

4.2. The Role of Academia and The Media

Academic lawyers, in concert with all other professionals, have a special role to play in the fight against corruption and specifically political corruption. Whereas lawyers in practice are generally more concerned with winning the case on hand, consequently, their\footnote{See for example statement by Christine Mugerwa, Head, Communications & Public Relations Unit of IGG entitled ‘Clarification on the Powers of the Inspectorate of Government and the Proposed Anti Corruption Court’ as reaction to ‘Govt To Set Up Anti-Corruption Court’, The Daily Monitor; 14th August 2007 at 1; See also Lorrinda Aredraru, ‘Govt has no power over IGG, Court Rules’ The New Vision; 16th September 2006, at 1.}

409 See for example statement by Christine Mugerwa, Head, Communications & Public Relations Unit of IGG entitled ‘Clarification on the Powers of the Inspectorate of Government and the Proposed Anti Corruption Court’ as reaction to ‘Govt To Set Up Anti-Corruption Court’, The Daily Monitor; 14th August 2007 at 1; See also Lorrinda Aredraru, ‘Govt has no power over IGG, Court Rules’ The New Vision; 16th September 2006, at 1.
410 Per Jotham Tumwesigye as interviewed on 23rd August 2007.
414 See for example statement by Christine Mugerwa, Head, Communications & Public Relations Unit of IGG entitled ‘Clarification on the Powers of the Inspectorate of Government and the Proposed Anti Corruption Court’ as reaction to ‘Govt To Set Up Anti-Corruption Court’, The Daily Monitor; 14th August 2007 at 1; See also Lorrinda Aredraru, ‘Govt has no power over IGG, Court Rules’ The New Vision; 16th September 2006, at 1.
professional focus tends to rest on finding and knowing the law as it is, academic lawyers can be more concerned with what the law should be.\textsuperscript{416} Academic lawyers are better placed to “…engage the flaws and merits of judicial opinions in a more rarified atmosphere without jeopardising the interests of the client.”\textsuperscript{417} The role of the academic lawyer and especially the constitutional scholar is to ‘render both a second opinion of sorts on what the courts have already decided and an advisory opinion on what they may yet decide in the future’.\textsuperscript{418} This can take the form of public interest litigation, writing critiques to judgements and state policy in various print media and journals and getting involved in helping the law reform commission draft better laws by making their research available to them.

The Role of the Media should also be encouraged to courageously expose those who engage in corruption of all forms, like breaching procurement procedures or unduly influencing decisions of public officers among others. However, media should ensure that it is not intimidated but lays down the truth without undue influence or intimidation.\textsuperscript{419} The Media should not be intimidated by the government or the IGG and neither should the public refrain from assisting the media in disclosing corruption. Attempts to clamp down on the media should be avoided and discouraged.\textsuperscript{420}

4.3 Government

The English saying “…to he whom much is given, much is expected...,” applies in its totality to the Government. The starting point should be a clear policy of equitable resource distribution.\textsuperscript{421}

A lot of support should be shown by the government especially with regard to helping the IGG access public records for investigation, arresting suspects, and providing the facilitation for these activities. Equally, the constant bickering by politicians against the modus operandi of the IGG should be discouraged. We need to hear more positive statements instead of criticism of the work of the IGG. If not, then there is no way the public will know that the leadership of this country is in support of the work of the inspectorate. As noted by Tanzi, (there needs to be) “… honest and visible commitment by the leadership to the fight against corruption, for which the leadership must show zero tolerance.”\textsuperscript{422} Government should also review the role of the anti-corruption agencies with a view to strengthening them. There are too many and the central question is whether the multiplicity of institutions is a facilitator or a hindrance.

\textsuperscript{416} See Kwasi Prempeh 2006.
\textsuperscript{417} Id.
\textsuperscript{418} Id., at 33.
in the fight against corruption. Currently, they are too many and poorly resourced to have any meaningful impact in the fight against corruption.

The Directorate of Ethics and Integrity was established to among other things “…co-ordinate anti-corruption agencies.” Whereas the creation of this Directorate was a noble idea, it is proposed that in order to avoid political compromise, such directorate should not be headed by an elected politician. This is because most decisions by politicians are normally made as strategies for the next campaign and not necessarily having the fight against corruption as a priority.

Additionally, government departments, ministries and parastatals should be encouraged to follow the correct procedures in order to avoid the increasing interference by the IGG in situations where procedures have not been followed. This is most common with tendering and other procurement processes. Furthermore, Public officials should be encouraged to work ethically by being rewarded for honest behaviour, but they also should be subjected to stringent penalties in case they breach the moral code of conduct. Similarly, they should be able to step aside in case they are incompetent or when accused of corrupt practices in order to enable the investigation process to take place without hindrance. These officers can then either be reinstated or awarded damages in case they are found innocent or in case they are aggrieved. However, if they insist on staying in office, any success in their legal challenges will forever be tainted by the irregularity described. Finally, it is quite clear that in order to operate effectively, the IGG’s office should be given more political and financial support.

Since the most perverse political corruption takes place with respect to the procurement of goods and services, with billions of shillings lost every year, rules for the behaviour of international corporations should be made more stringent. An International Anti-

423 These include the Directorate of Ethics and Integrity, the Ministry of Public Service Inspectorate division, the Ministry of Public Service Inspectorate division, the Local Government Finance Committee, all ministerial service Commissions, The Auditor General, The Accountant General, the Justice Law and Order Sector.
424 Ibid.
425 Interview with a member of parliament representing the ruling NRM party speaking on condition of anonymity. See also comments by Angelo Izama and Charles Mwagushya on “The Hot Seat” 93.3 KFM Radio talk show on October 5, 2008.
429 “for example former Director of Civil Litigation Mr. Cheborion Barishaki has since been cleared of any wrong doing and asked to return to office”.
Corruption Tribunal should also be established to deal with corruption across borders. There are already moves to lobby the Global Forum on Corruption in The Hague to approve the suggestion that was made by Civil Society Organisations.432

4.4 Role of Development Partners, Judiciary and Civil Society

The role of development partners in supporting the work of the IGG is laudable.433 There is need for more specialist and financial support from our donor partners to push the Government to do more about corruption.434 The Government should be engaged further so that it does not drag its feet.435

The role of the civil society and religious organisations should not be underestimated but rather, encouraged. Church leaders and religious leaders should be encouraged to preach against corrupt practices and civil society should support efforts made at the grassroots to fight corruption. The government should also consider funding religious based organisations to preach the gospel against corruption. Organisations such as the Anti Corruption Coalition of Uganda, Uganda Debt Network and others should be encouraged and supported in their campaign against corruption.

Equally important is the role of parents and guardians in teaching their children about the dangers of corruption and to live by example. 436 It is therefore laudable to note that the Minister of Ethics and Integrity is working with the Ministry of Education and Sports to make sure that issues of morality are imbedded in school curricula. This is certainly the best way of dealing with this corruption weed by uprooting it from the minds of tomorrow’s leaders. 437

The newly established Anti Corruption division of the High Court needs to be facilitated in order to ensure that the trials are speedy before witnesses lose interest or are unduly influenced to against the prosecution. The use of modern information and communication technology should also be encouraged so that trials do not drag on for long periods due to the fact that the judicial officer has to manually write down each and everything that is spoken in the court room. Such facilitation will go a long way in

432 Id.

433 US government provided $10.4m (about sh17 billion) to tackle corruption by improving public procurement, audit and financial management practices, and strengthen the role of civil society in fighting graft. Uganda also receives $70 million from donors under the Public Financial Management project and out of this money; about $2 million is committed to Parliament. See note 129 supra; See also Yasin Mugerwa, ‘Donors scoff at govt’s anti-corruption fight’, The Daily Monitor; available at http://www.monitor.co.ug/artman/publish/news/Donors_scoff_at_govt_s_anti-corruption_fight.shtml.


436 Comments by Minister of ethics and Integrity, Dr. Nsaba Buturo appearing on ‘On the Spot’ programme of Nation Television, 25th September 2008.

437 See Nsaba Buturo, supra.
showing that the government is committed to the fight against corruption. The doctrine of tracing should also be used to help these courts attaching and selling properties of culprits in order to put the money back in the public coffers. More so, the rules of procedure and evidence should be constantly reviewed in corruption cases in light of the unique way in which this vice is being perpetrated.  

4.5 CONCLUSION

There is no doubt that the Inspectorate of Government has done a commendable job. Instead of looking at the IGG as an organ that frustrates its projects, government should instead view the IGG as a partner in development and in the fight against corruption and particularly political corruption.

However, this paper has shown that the work of the IGG is frustrated by lack of political will. This normally sends conflicting messages about the government’s willingness to fight corruption and as such complicates the work of the IGG. The paper also notes that there is well-orchestrated political influence that seeks to stall the work of the IGG and this is not helped by the escalating instances of in-fighting among the state institutions. This is coupled with a proliferation of anti-corruption institutions which have no clear mandate and yet each are clamouring for superiority in the fight against corruption. Most frustrating however is the fact that the IGG is a house divided against itself which is a time-bomb about to explode. This is in addition to the inadequacies faced by the IGG as an institution because it lacks the financial and human capacity to make an impact on high level political corruption involving senior government officials, white collar corruption or that based on information communication technology.

The IGG’s office should therefore be strengthened with supervision, investigation, and enforcement mechanisms. In this way, the IGG’s work in fulfilling its constitutional duties will be easier. However, not all this will be achieved unless rule of law takes deeper roots in Uganda. All those who take part in decision making especially the political heads, and civil servants should work hand in hand with IGG’s office to fight against abuse of office, and corruption.

Most importantly, the fight against corruption is not for the IGG or the government; it is about all citizens of Uganda developing a sense of responsibility to fight, reduce, report and abhor corruption.

438 As suggested by a former prosecuting Officer.
439 Id.
441 The IGG is also quoted as advising the public this; ‘Let us fight corruption together because it is a cancer which has eaten this country. It is not the job of the IGG alone.’ See Felix Osike, ‘I expect a conviction in Muhwezi, Mukula case - IGG mwonnda’, The New Vision; 2nd June 2007 available at http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=130&newsId=568497.
442 See comments by Minister of ethics and Integrity, Dr. Nsaba Buturo appearing on ‘On the Spot’ programme of Nation Television, 25th September 2008.
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