



“Letting the Big Fish Swim”

Failures to Prosecute High-Level Corruption in Uganda

HUMAN
RIGHTS
WATCH



ALLARD K. LOWENSTEIN
INTERNATIONAL HUMAN RIGHTS CLINIC
YALE LAW SCHOOL



ALLARD K. LOWENSTEIN
INTERNATIONAL HUMAN RIGHTS CLINIC
YALE LAW SCHOOL

“Letting the Big Fish Swim”

Failures to Prosecute High-Level Corruption in Uganda

Copyright © 2013 Human Rights Watch

All rights reserved.

Printed in the United States of America

ISBN: 978-1-62313-0633

Cover design by Rafael Jimenez

Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.HumanRightsWatch.org>

The Allard K. Lowenstein International Human Rights Clinic is a Yale Law School course that gives students first-hand experience in human rights advocacy under the supervision of international human rights lawyers. The Clinic undertakes litigation and research projects on behalf of human rights organizations and individual victims of human rights abuses. Recent work has included involvement in human rights litigation in U.S. courts, preparing amicus briefs on international and comparative law for U.S., foreign, and international fora, advocacy before international and regional human rights bodies, and investigating and drafting reports on human rights situations.

More information about the Lowenstein Clinic is available at <http://www.law.yale.edu/intellecualife/lowensteinclinic.htm>



ALLARD K. LOWENSTEIN
INTERNATIONAL HUMAN RIGHTS CLINIC
YALE LAW SCHOOL

OCTOBER 2013

ISBN: 978-1-62313-0633

“Letting the Big Fish Swim”

Failures to Prosecute High-Level Corruption in Uganda

Summary	1
Recommendations.....	6
To the President, Cabinet, and Government of Uganda	6
To the Ugandan Police	6
To the Anti-Corruption Court and Ugandan Judiciary	6
To Uganda’s Parliament	7
To Uganda’s Development Partners and Donors, including the World Bank.....	7
Methodology.....	9
I. Context	11
Endless Zero-Tolerance Promises.....	11
Concerns for the Future	14
Patronage Politics and Lack of Political Will	15
The Impact of Corruption on Human Rights	17
Uganda’s Anti-Corruption Mechanisms	22
The Anti-Corruption Court	22
The Office of the Inspectorate of Government	22
The Auditor General.....	22
Parliament’s Public Accounts Committee	23
Directorate for Ethics and Integrity.....	23
II. Political Interference with Anti-Corruption Institutions	24
Lack of Appointed Personnel	24
Lack of Disclosure of Financial Assets	27
III. Shortcomings in Anti-Corruption Laws.....	31
Overlapping Mandates of the IGG and DPP.....	31
Vague Legal Definitions	32
Security of Tenure.....	34

IV. Obstacles to Successful Prosecutions.....	36
The Record of the Anti-Corruption Court	36
Political Influence and Corruption in the Gathering of Evidence	38
Threats to Prosecutors and Witnesses.....	39
V. Harassment and Intimidation of Anti-Corruption Activists	44
The “OPM” Scandal 2012-2013	48
VI. The Role of Uganda’s Donors	50
Strategic Need, Economic Considerations, and Entrenched Self-Interest	51
Inconsistency and Poor Coordination.....	53
Ineffective or Incomplete Donor Demands.....	56
Dangers of Budget Support and Inadequate Exploration of Funding Alternatives	57
VII. Uganda’s Obligations to Prosecute Corruption in International Law	60
Acknowledgements	63

Summary

“Untouchables. Come rain, come shine, they’re never going to court, not while there’s somebody close to them in power. That’s because of the politics involved.”

—Prosecutor in the Anti-Corruption Court, May 21, 2013

“This court is tired of trying tilapias when crocodiles are left swimming.”

—Justice John Bosco Katutsi, former head of the Anti-Corruption Court, during a ruling convicting an engineer during the Commonwealth Heads of Government Meeting scandal, June 29, 2010

“Someone will ask, ‘Will it pay?’ If it will, one will steal. If it won’t pay, one won’t steal. It should be too expensive to steal. This is why corruption is happening on a grand scale. They must steal enough to stay out of jail.”

—Auditor General John Muwanga, May 31, 2013

The news that US\$12.7 million in donor funds had been embezzled from Uganda’s Office of the Prime Minister (OPM) hit the headlines in many donor capitals in late 2012, prompting serious questions about Uganda’s commitment to fight corruption. The stolen donor funds were earmarked as crucial support for rebuilding northern Uganda, ravaged by a 20-year war, and Karamoja, Uganda’s poorest region. Approximately 30 percent of the national budget came from foreign aid in 2012. As a result of the OPM scandal and claims that the money was funneled into private accounts, the European Union, United Kingdom, Germany, Denmark, Ireland, and Norway suspended aid.

The OPM scandal was not the first time that grand scale theft of public money deprived some of Uganda’s poorest citizens of better access to fundamental services such as health and education. Past corruption scandals have had a direct impact on human rights. For example, millions of dollars’ worth of funds were diverted from the Global Alliance for Vaccines and Immunisation in 2006 and from the Global Fund to Fight AIDS, Tuberculosis and Malaria in 2005. Despite investigations, none of the high-ranking government officials who managed the implicated offices have faced criminal sanction. Most often they have

remained in office, untouched, while individuals working at the technical level have faced prosecution and, in some cases, jail time. Even when ministers have been forced to resign from office, such resignations have been temporary; they were eventually reappointed to key positions in government, in what one diplomatic representative calls a “game of musical chairs.” Years of evidence indicate that Uganda’s current political system is built on patronage and that ultimately high-level corruption is rewarded rather than punished.

Corruption in Uganda is severe, well-known, cuts across many sectors, and is frequently debated and discussed in the media. Such corruption undermines human rights in multiple ways: a direct defiance of the rule of law and accountability, it indicates that the law and its institutions cannot be relied on to protect against violations of fundamental human rights or deliver justice. By unlawfully interfering with resources that should be available to realize fundamental rights such as the rights to health, water, food, and education—either through illegally appropriating public funds for personal wealth or rendering access to services subject to bribes, which are illegal—corruption leads to violations of human rights that may have disastrous consequences.

Media attention of Uganda’s corruption often focuses on the “big fish who got away” and who were allegedly protected from prosecution by other elites. Solutions—often proposed and supported by international donors—usually rely on technical responses. Those responses overlook what, based on past actions, can be described as the government’s deep-rooted lack of political will to address corruption at the highest levels and importantly, to set an example—starting from the top—that graft will not be tolerated.

This report analyzes the government’s failure to close legal loopholes and ensure that laws are not written or interpreted to insulate political appointees from accountability. It documents why Uganda has failed to hold the highest members of its government accountable for theft of public funds, despite its stated commitment to eradicating corruption and much good work from investigators and prosecutors at the technical level. It also shows how lack of political will has crippled Uganda’s anti-corruption institutions, undermining their efforts through political interference, underfunding, harassment, and threats. The lack of a clear system to protect witnesses and insulate prosecutors from bribery and intimidation means that anti-corruption institutions in Uganda have ended up focusing on low-level corruption involving small sums of money, while the “big fish” have continued to accumulate wealth and power.

Lastly, the report examines how efforts of Uganda's international donors—often quick to respond with well-intentioned attempts to support anti-corruption efforts—have been undermined or weakened by their own vested interests, poor coordination, and fluctuating institutional memory, the latter thrown into stark relief by President Yoweri Museveni's long stay in power and his political shrewdness.

Since President Museveni took office in 1986, despite recurrent corruption scandals, only one minister has ever been convicted of a corruption-related offense, a verdict that was overturned on appeal just after the president publicly offered to pay the defendant's legal costs.

Uganda has a variety of government bodies focused on eradicating corruption, including the Anti-Corruption Court, a specialized tribunal within the Ugandan judiciary; the office of the Inspectorate of Government (IG, led by the Inspector General of Government, the IGG), an office mandated by the Ugandan constitution to fight corruption; the Auditor General; and Parliament's Public Accounts Committee, among others. But while these institutions have ably prosecuted low-level corruption for small amounts of money, thus far they have been largely ineffective in curbing grand scale corruption or pushing prosecutions and convictions in an equitable and apolitical manner that would be more likely to ensure accountability of the highest-ranking members of government.

There are institutional, political, and legislative reasons for Uganda's failure to prosecute grand corruption. Most importantly, President Museveni and parliament, which is heavily dominated by ruling party members, have failed to empower key institutions, either by failing to fill key vacancies or by failing to establish institutions such as the Leadership Tribunal which could challenge inaccurate financial asset declarations. In the most egregious example, the position of Deputy Inspector General of Government—which because of a constitutional court ruling is legally required to be filled in order for the IG's office to prosecute cases independently—was vacant since 1995. It was only filled in mid-2013 when donors pressured President Museveni to fill the post. The fact that this occurred only after donors made it a condition for resuming aid shows that a powerful inspector general's office was far from a priority for President Museveni's governance agenda. This case highlights the broader need for vacancies in the justice section to be filled—the Supreme Court has not yet heard the appeal of this ruling because of a lack of quorum—

and for legislative reform to address this issue since routine personnel vacancies should not be used to cripple a crucial anti-corruption institution.

Another important reason is that actors within the anti-corruption institutions are inadequately protected and shielded from political influence. In some Anti-Corruption Court cases involving well-connected individuals, senior officials have directed prosecutors to delay prosecution or prematurely try a case with incomplete or weak evidence. Investigators, prosecutors, and witnesses involved in such cases have been the targets of threats and requests for bribes. The Ugandan government should provide greater protection for those involved in prosecutions, including investigators, prosecutors, and witnesses. More robust systems for witness protection could potentially assist in ensuring that quality evidence against high-ranking members of government could come to light.

Legislative reforms would also bolster anti-corruption efforts. Vaguely defined offenses such as “abuse of office” and “causing financial loss” in the 2009 Anti-Corruption Act should be amended to specify more clearly what conduct is prohibited and that intentionality is required. The lack of definitional precision grants discretion to prosecutors to interpret corruption crimes and opens the door to allow political motives to drive cases. To some extent, the overlapping mandates of the Inspectorate of Government and the Directorate of Public Prosecutions for corruption-related offenses has caused a diffusion of responsibility in ensuring accountability for theft of public assets and makes it difficult to hold these agencies to account for prosecutorial inaction. So far the two offices have coordinated but this is an informal and fragile system. And the lack of security of tenure for prosecutors from the Inspectorate of Government makes them vulnerable to the shifting politics and vulnerable to removal should their investigations touch on certain individuals, particularly during the re-appointments process before parliament.

The government’s fresh pledges to fight corruption following the OPM scandal in 2013 are called into serious question by the arrest of at least 28 anti-corruption activists in 2013 alone—a significant increase over previous years. A coalition of civil society groups known as the Black Monday Movement began raising grassroots awareness and protesting corruption by wearing black on Mondays and handing out newsletters with information about graft in various sectors. Police have thwarted attempts to distribute information and arrested Black Monday Movement activists, charging them with a range of crimes, from “spreading of harmful propaganda” to “inciting violence” and “possession of prohibited

publications.” Rather than harassing activists and obstructing public access to information, the government should support the crucial role of civil society in upholding human rights and anti-corruption efforts. This will mean respect and tolerance for civil society’s interaction with, and education of, Uganda’s urban and rural citizenry. Corruption obstructs progress on many of Uganda’s most serious human rights problems, including access to justice, as well as economic and social rights, such as health, education, water, and food. For international development assistance to address these sectors, Uganda’s donors should massively increase the focus on accountability at the highest levels of government and ensure that any reengagement is based on substantive, not cosmetic, changes to Uganda’s anti-corruption structures, and serious, not token, government commitments to eradicate corruption. External donors should also actively and vocally support civil society working to document and raise awareness of corruption, by both financially supporting their work and publicly denouncing their arrests and harassment.

Some of Uganda’s international donors are considering expanding support for anti-corruption efforts. This support is critical to any meaningful effort to address high-level corruption given its low priority for government spending. However, international donors should proceed with caution if considering a return to sector or direct budget support and ensure the programs can be carefully monitored with clear benchmarks. Donors seeking to support the government in anti-corruption efforts should ensure that serious instances of corruption by high-level government officials, regardless of the stature of the alleged perpetrator or affiliation with the president’s inner circle, are duly investigated and successfully prosecuted. Focus should remain on the highest-ranking individuals possible not only to ensure that kingpins are held responsible but also to make clear that theft and diversion of public resources will not be tolerated irrespective of the perpetrator.

Human Rights Watch calls on the Ugandan government and its international donor community to fight corruption at the highest levels and its attendant human rights consequences and to bolster the capacity and functionality of key anti-corruption institutions. Given Uganda’s political patronage system and the duration of President Museveni’s stay in power, it is highly unlikely that anything other than the prosecution of the highest-ranking members of the government will fundamentally alter the deeply-rooted patterns of graft and resultant wealth accumulation of certain elites. Without substantial changes in this regard, the injustices of Uganda’s corruption problem will endure.

Recommendations

To the President, Cabinet, and Government of Uganda

- Publicly announce a commitment to facilitate an environment committed to non-partisan accountability for corruption by eliminating political interference at the Anti-Corruption Court.
- Encourage robust and independent investigations of high-level grand corruption and desist from making public comments on the quality of evidence of pending investigations or prosecutions of high-level members of government, including ministers and permanent secretaries, or their alleged innocence.
- Immediately fill all vacant positions in the justice system, including prosecutors, judges, and magistrates for the Anti-Corruption Court, and justices for the Constitutional Court and Supreme Court.
- Support strengthened protections for investigators, prosecutors, and witnesses in corruption-related cases.
- Promptly draft and present to parliament a bill establishing the Leadership Code Tribunal and in the interim call on public officials to make available to the public their financial disclosures, redacting information that raises privacy concerns such as bank account numbers.
- Promptly draft and present to parliament a bill establishing the prescribed form for the public release of asset declaration. Ensure broad public access to asset declaration records for civil servants and members of government.

To the Ugandan Police

- Stop all arrests, harassment, and intimidation of anti-corruption activists and immediately drop all criminal charges related to the distribution of anti-corruption information.

To the Anti-Corruption Court and Ugandan Judiciary

- Routinely publish decisions of the Anti-Corruption Court.
- Track case law, and in particular, the profile of the defendant and at which stage cases are disposed of, to enable greater statistical analysis of cases.

- Provide robust forms of protection to witnesses including the option to testify in camera, to change identities or residence; participate in the creation of a robust witness protection program.

To Uganda's Parliament

- Clarify in law the mandate and jurisdictions of the Inspectorate of Government and the Director of Public Prosecutions.
- Continue to urge the president and the Judicial Services Commission to fill all judicial vacancies, including at the Constitutional Court and the Supreme Court.
- Support the amendment of the constitution to increase the term of office of the Inspector General of Government and ensure that any parliamentarians under investigations recuse themselves from any appointments process to the inspector's office.
- In the absence of judicial action, support the amendment of the constitution and the Inspectorate of Government Act to ensure that vacancies in the office of Inspector General of Government cannot be a basis to prevent the Inspectorate from prosecuting corruption cases.
- Support amendment of the vague definition of corruption offenses in the Anti-Corruption Act, including "abuse of office" and "causing financial loss," to bring them in line with offences as defined under international standards.
- Support amendment of the Leadership Code Act to explicitly state that it is applicable to presidential appointees.
- Urge the Law Reform Commission and cabinet to draft a bill establishing the Leadership Code Tribunal and present it to parliament.
- Urge the Law Reform Commission and cabinet to move the draft Protection of Witnesses bill to parliament so as to better protect witnesses providing testimony during high-level corruption trials.

To Uganda's Development Partners and Donors, including the World Bank

- Maintain strong and consistent political pressure on the Ugandan government to allow anti-corruption institutions, including the Inspectorate of Government, to pursue robust and independent investigations and prosecutions of high-level corruption in a non-partisan manner, including by analyzing progress and ongoing

concerns in country strategies and similar documents which govern a donor's partnership with the Ugandan government.

- Urge the Ugandan government to implement the recommendations described in this report, and offer technical assistance in doing so where appropriate.
- Fund a threat assessment for witnesses in corruption-related trials to evaluate concrete risks and recommend which government institution would be best placed to administer robust witness protection in corruption-related cases.
- Routinely speak out and condemn the arrests of anti-corruption activists.
- When members of civil society are detained, make impromptu visits to police stations and encourage the government to withdraw all baseless charges.
- Encourage “demand-side accountability” by actively supporting civil society throughout Uganda working on anti-corruption investigations and education as well as seeking disclosure of financial asset declarations of leaders. Seek undertakings from the government that such civil society workers will not face reprisals for their work.
- Ensure any development assistance is project specific, can be effectively monitored over the long-term, and has a stated exit strategy should allegations of graft arise.
- Escalate efforts to monitor the effective use of development assistance, including by ensuring ample time and money for routine forensic audits.
- Ensure that local civil society plays a long-term and active role in monitoring the effective use of development assistance, so as to improve donors' contextual and political understanding of corruption in Uganda and to identify possible vulnerabilities in donor programs.
- Support the distribution of information to the public about corruption in donor-supported sectors and how the public can raise concerns for corruption in the use of government services and donor-supported projects.
- Ensure the structure of staff incentives include criteria such as the quality of project preparation and supervision to effectively prevent, monitor, and respond to corruption, policy violations (including of safeguard policies), and human rights violations including risks of reprisals against civil society monitors or complainants.

Methodology

This report is based on research carried out by Human Rights Watch and the Yale Law School Lowenstein Human Rights Clinic from May to August 2013, largely in Kampala. Forty-eight individuals with substantive knowledge of anti-corruption efforts in Uganda were interviewed, including current and former officials from the Inspectorate of Government, Auditor General, and the Directorate of Public Prosecutions; members of parliament; representatives of diplomatic missions; and members of the judiciary. Interviewees also included private attorneys, journalists, development and donor agency officials, and civil society activists involved with anti-corruption efforts in Uganda. Numerous reports from local civil society, Uganda's development partners, and the World Bank were also consulted to reflect the history of Uganda's entrenched corruption problems.

All interviews were conducted in English. Nearly all lasted over an hour and included just one interviewee at a time. No compensation or any form of remuneration was offered or provided to any person interviewed for this report. Due to fears of personal and professional reprisals, some interviewees requested that their comments not be directly attributed to them. Human Rights Watch and the Lowenstein Clinic have complied with this request and have withheld names and other personally identifiable information about interviewees.

Human Rights Watch and the Lowenstein Clinic analyzed 114 judgments by the Anti-Corruption Court issued since the court's creation in 2009. Eighty-eight of these judgments were for cases in the first instance and twenty-six were cases on appeal. A small number of these judgments (34) were publicly available from the Uganda Legal Information Institute. Human Rights Watch and the Lowenstein Clinic obtained the remainder from the Anti-Corruption Court as they were not publicly available.

In June 2013 the Anti-Corruption Court provided Human Rights Watch and the Lowenstein Clinic with a list of cases that appeared in its chambers since 2009. The case list included 124 defendants whose have gone to verdict (93 convictions and 31 acquittals). The list indicates that Human Rights Watch and the Lowenstein Clinic analyzed 71 percent of all available first instance cases.

The Anti-Corruption Court in a separate table indicated that, as of April 30, 2013, it had disposed of 516 out of the 766 cases that have been registered since 2009. The number of disposed cases far exceeds the number of verdicts in the June 2013 list because it includes cases that ended in involuntary discontinuations, dismissals with and without prejudice, and dismissals for “no case to answer.”

It is not possible to determine how the judgments Human Rights Watch and the Lowenstein Clinic reviewed compare to those we did not have access to. Therefore, this analysis does not represent the complete body of cases heard by the Anti-Corruption Court, and the findings described in the report cannot be generalized for the remaining cases. It is merely a description of a partial set of cases heard by the Anti-Corruption Court.

I. Context

“Corruption is the way the regime survives. The current regime is in survival mode and it depends on corruption.”

—Anti-corruption activist, May 19, 2013¹

Endless Zero-Tolerance Promises

President Yoweri Museveni, members of his government, and the ruling National Resistance Movement (NRM) party have repeatedly promised to root out corruption since he took office in 1986. Despite these pledges major corruption scandals have surfaced again and again and no high-ranking member of government who managed the implicated offices—for example, not a single minister—has served prison time for a corruption-related offence during Museveni’s long tenure. The only conviction of a minister was overturned on appeal in 2013, after the president himself offered to pay his legal costs.²

In the NRM Parliamentary Caucus Retreat in January 2013, NRM members pledged support for the party’s zero-tolerance policy on corruption.³ President Museveni echoed the same sentiments in his June 7, 2013 State of the Nation address confidently stating, “The evil of corruption is being handled.”⁴ His rhetoric was nothing new; the elimination of corruption and misuse of power was a key part of the president’s 1986 Ten Point Program.⁵

¹ Human Rights Watch and the Lowenstein Clinic interview with anti-corruption activist, Kampala, May 19, 2013.

² Chris Obore and Stephen Otage, “Museveni pledges to pay Mukula’s legal fees,” *Daily Monitor*, January 26, 2013, <http://www.monitor.co.ug/News/National/Museveni-pledges-to-pay-Mukula-legal-fees/-/688334/1675296/-/t5c6qjz/-/index.html> (accessed August 5, 2013).

³ “Resolutions of the NRM Parliamentary Caucus Retreat,” Kyankwanzi, January 11 to 18, 2013, on file with Human Rights Watch.

⁴ “State of the Nation Address by H.E. Yoweri Kaguta Museveni, President of the Republic of Uganda, At the Uganda International Conference Centre, Serena,” Kampala, June 6, 2013, <http://www.statehouse.go.ug/media/speeches/2013/06/07/state-nation-address-2013> (accessed July 23, 2013).

⁵ The State House of the President of Uganda, “Uganda, 25 years of nation building and progress, January 1986 to January 2011,” May 2011, <http://www.statehouse.go.ug/sites/default/files/files/departments/25-years-2.pdf> (accessed August 5, 2013).

With the new constitution in 1995 came more promises to eradicate corruption, but these proved hollow over the long term. As one report commissioned for the World Bank noted, “corruption in Uganda—as a form of patronage and regime maintenance—became increasingly apparent after 1996.”⁶

Waves of scandals have continued to hit the Museveni administration. Members of his inner circle—from both military and cabinet—have been accused of theft and improper procurement of state resources by the media, civil society, the auditor general, and parliament.⁷

There have also been three successive anti-corruption strategies launched over the last decade.⁸ The most recent scandal—the theft of \$12.7 million from the Office of the Prime Minister—occurred in the middle of the 2008 five-year National Anti-Corruption Strategy (NACS), which sought to address transparency and accountability and ensure “full compliance with regulatory and legal requirements” as described in Uganda’s national legislation and its international legal commitments.⁹ The strategy encompassed a variety of new initiatives, including providing guidance to ministries on anti-corruption policies; promoting engagement with the public to improve accountability; identifying

⁶ The World Bank, “The Political Economy of Uganda, The Art of Managing a Donor-Financed Neo-Patrimonial State , Summary of a Consultant Report to The World Bank,” November 20, 2005, on file with Human Rights Watch, p. 7.

⁷ Anne Mugisa and Edward Anyoli, “Uganda: The Genesis of Mukula’s Troubles,” *New Vision*, January 20, 2013, <http://allafrica.com/stories/201301210455.html> (accessed August 13, 2013); Siraje Lubwama, “Uganda: Muhwezi Set Free but Mukula Must Defend Himself,” *The Observer*, August 1, 2012, <http://allafrica.com/stories/201208021060.html> (accessed August 13, 2013); Henry Sekanjako and John Kato, “Mukula refunds Shs 240m GAVI funds,” *New Vision*, March 28, 2012, <http://www.newvision.co.ug/news/629924-mukula-refunds-sh240m-gavi-funds.html> (accessed August 13, 2013); Kaija, “Alice Kaboyo Confesses to Misappropriating GAVI Funds,” *The Independent*, June 12, 2012, <http://allafrica.com/stories/201206121038.html> (accessed August 13, 2013); Siraje Lubwama, “Ex-State House Aide Kaboyo Pleads Guilty, Pays 20 Million Fine” *The Observer*, June 12, 2012, <http://allafrica.com/stories/201206141081.html> (accessed August 13, 2013); Siraje lubwama and Derrick Kiyonga, “Kazinda-Witnesses or Suspects?” *The Observer*, February 12 2013, <http://allafrica.com/stories/201302121298.html> (accessed August 13, 2013); George Muzoora, “Kabakumba – I am Still Innocent,” *Daily Monitor*, January 31, 2012, <http://allafrica.com/stories/201202021073.html> (accessed August 13, 2013); David Limu, “Axed UBC Bosses Reveal Secrets,” *The Observer*, January 11, 2012, <http://allafrica.com/stories/201201121060.html?viewall=1> (accessed August 13, 2013); “Baku Defends Decision to Prosecute Ministers,” *New Vision*, January 1, 2013, <http://allafrica.com/stories/201301020136.html> (accessed August 13, 2013); and “Nine Corruption Scandals to Look Back At,” *New Vision*, November 11, 2012, <http://allafrica.com/stories/20121120092.html> (accessed August 13, 2013).

⁸ “Since 2001, the Government of Uganda through the Directorate of Ethics and Integrity in the Office of the President has put in place three national strategies to fight corruption and rebuild ethics and integrity in Uganda. The first strategy was for the period 2001–2004, the second strategy was for period 2004–2007 and the third strategy was for the period 2009-2013.” Uganda Debt Network, “Graft Unlimited? A Dossier on Corruption in Uganda: 2000-2012,” May 2013, [http://www.udn.or.ug/pdf/ResearchReports/UDNDossieronCorruption\(2013\).pdf](http://www.udn.or.ug/pdf/ResearchReports/UDNDossieronCorruption(2013).pdf) (accessed August 14, 2013).

⁹ Global Integrity, “Uganda Timeline 2011,” <http://www.globalintegrity.org/report/Uganda/2011/timeline> (accessed July 18, 2013).

successful anti-corruption policies; enabling anti-corruption agencies to carry out their work; and informing national policy.¹⁰

Yet despite these many plans and relentless promises, to date, corruption in Uganda remains pervasive at both low and high levels of public administration. Analysts note that bribery, nepotism, and misuse of official positions and resources are widespread.¹¹ As one report authored by a donor expert on anti-corruption efforts in Uganda noted, “[r]ecent international surveys coupled with nationally produced data indicate that corruption in Uganda is endemic and deeply ingrained; it shows no sign of subsiding and may be getting worse. Evidence exists of extensive grand corruption and impunity enjoyed by high-level officials.”¹² The problematic role of high-level actors was again brought to light in a 2012 public poll run by TracFM.org which asked the reason for Uganda’s corruption problem. The single largest response, forty-seven percent of respondents, said it was due to “corrupt elites” setting a “negative example.”¹³

Uganda topped the five countries in the East African Community (EAC) as the most corrupt in a 2012 assessment that examines frequency with which citizens reported being asked to pay bribes.¹⁴ The same year, Transparency International’s Corruption Perceptions Index (CPI), which ranks countries and territories based on how corrupt their public sector is perceived to be, ranked Uganda 130 out of 176 on a scale of least to most corrupt. The CPI also ranked Uganda 30 out of the 48 sub-Saharan Africa countries, and the World Economic Forum’s Global Competitiveness Index for 2012-2013 also has Uganda low on its spectrum of competitive economies, scoring it 123 out of 144, a drop from the previous year.¹⁵ Out of 16 factors, corruption was identified by business people surveyed as the most problematic issue for operating in Uganda.¹⁶ The World

¹⁰ The Republic of Uganda, “National Strategy to Fight Corruption and Rebuild Ethics and Integrity in Uganda, 2008-2013,” Directorate for Ethics and Integrity, Office of the President, August 2008, Draft 4.3, <http://www.track.unodc.org/LegalLibrary/LegalResources/Uganda/authorities/National%20Strategy%20to%20Fight%20Corruption%20and%20Rebuild%20Ethics%20and%20Integrity%202008-2013.pdf.pdf> (accessed July 24, 2013).

¹¹ Anti-Corruption Resource Centre, “Uganda: overview of corruption and anti-corruption,” U4 Expert Answer, April 8, 2013, <http://www.u4.no/publications/overview-of-corruption-in-uganda/> (accessed July 18, 2013), p. 1.

¹² Maja de Vibe, “A Joint Response to Corruption: Donors beginning to bite?” U4 Practice Insight, February 2012, p. 1.

¹³ Samira Sawlani, “Uganda, the Human Side of Corruption,” *The Observer*, August 15, 2013.

¹⁴ Transparency International, “Uganda Tops East Africa in Corruptions,” August 30, 2012, http://www.transparency.org/news/pressrelease/uganda_tops_east_africa_in_corruption (accessed July 18, 2013).

¹⁵ World Economic Forum, “The Global Competitiveness Report 2012-2013,” 2012, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf (accessed July 18, 2013).

¹⁶ *Ibid.*

Bank Worldwide Governance Indicators (WGI) shows Uganda as having made no improvements over the past six years to control corruption.¹⁷

Calculating total losses due to grand theft of state resources presents significant methodological challenges. According to one metric, the 2007 African Peer Review Mechanism (APRM) Report, Uganda loses 510 billion Ugandan shillings (\$258.6 million) a year due to corruption and procurement malpractices.¹⁸ Given the fact that Uganda's Auditor General has identified procurement as an area vulnerable to corruption, the true amount could potentially be much higher.¹⁹

Concerns for the Future

The recent discovery of oil in the Albertine Rift on Uganda's western border and the development of Uganda's nascent petroleum sector have renewed concern about the pervasive levels of corruption. It has also led some to question if Uganda is likely to become yet another model example of the so-called "resource curse" in Africa, the phenomenon by which, despite plentiful non-renewable natural resources, the country ultimately has lower rates of economic growth and poorer development indicators than countries without natural resources.²⁰ Experts point to various causes, including corrupt state institutions and the opacity and ease of diversion of extractive revenues.²¹ This

¹⁷ World Bank Institute, *Worldwide Governance Indicators, 1996-2012*, p. 7.

<http://info.worldbank.org/governance/wgi/pdf/c225.pdf>. See also, Anti-Corruption Resource Centre, "Uganda: overview of corruption and anti-corruption," <http://www.u4.no/publications/overview-of-corruption-in-uganda/>.

¹⁸ Global Integrity, "Uganda: Tough Talk, Much Noise, No Improvement," March 11, 2009, <http://www.globalintegrity.org/node/385> (accessed July 18, 2013).

¹⁹ Anti-Corruption Resource Centre, "Uganda: overview of corruption and anti-corruption," <http://www.u4.no/publications/overview-of-corruption-in-uganda/>, p. 5. The report notes that, "Public procurement is one of the sectors most affected by corruption in Uganda. According to the 2007 African Peer Review Mechanism Report, Uganda loses USD 258.6 million annually through corruption and procurement malfeasance. The report further estimates that if the country could eliminate corruption in public procurement, it would save USD 15.2 million a year. In the assessment of the country's Auditor General, procurement accounts for 70% of public spending, of which an estimated 20% is lost via corruption. In June 2008, a senior World Bank official stated that high level corruption in procurement deals had been responsible for a loss of USD 300 million since 2005."

²⁰ Peter G. Veit, Carole Excell, and Alisa Zomer, "Avoiding the Resources Curse: Spotlight on Oil in Uganda," World Resources Institute, January 2011, http://pdf.wri.org/working_papers/avoiding_the_resource_curse.pdf (accessed August 14, 2013); and "Preventing the Resources Curse in Uganda," Columbia School of International and Public Affairs, Spring 2012, <http://new.sipa.columbia.edu/academics/capstone-workshops/preventing-the-resource-curse-in-uganda> (accessed August 14, 2013).

²¹ For more see, Richard M. Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (London: Routledge, 1993). For more on the human rights and governance implications see Oxfam International, *Lifting the Resource Curse: How Poor People Can and Should Benefit From the Revenues of Extractive Industries*, Oxfam International, 2009, <http://www.oxfam.org/en/policy/lifting-resource-curse>.

specter increases the need for robust efforts to root out corruption by top leadership and ensure that oil revenues meaningfully contribute to Uganda's development.

Patronage Politics and Lack of Political Will

“Corruption has become embedded in the survival of the regime. It is a regime that depends on making everybody a client. And because of that, they go around paying everybody—civil society, politicians, voters, religious leaders.”
—Augustin Ruzindana, first Inspector General of Government, May 22, 2013

“You will point out corruption, but whether something happens depends on how well-connected they are politically. If they're deemed important to the establishment, then nothing will be done.”
—David Makumbi, Ombudsman Affairs Director, Inspectorate of Government, May 24, 2013

Fighting corruption and ensuring accountability for theft of state resources is challenging given the entrenched patronage network that ensures loyalty over the duration of the president's long stay in office, now over 27 years. In order to maintain itself, President Museveni's government has rewarded devotion with financial enrichment. One lawyer noted that, “Corruption is a tool of management in this country. This country runs on a web of patronage.”²²

The 2011 elections were, by many accounts, extremely expensive for the National Resistance Movement, as money was handed out to various groups to buy support.²³ Some analysts believe President Museveni and his party spent \$350 million for his campaign, the majority of it from state coffers.²⁴ Weeks before those elections, in January 2011 parliament passed a \$250 million supplementary budget, allegedly to be spent on the campaigns. Parliament also awarded each member of parliament \$8,500 just before the election.²⁵

²² Human Rights Watch and the Lowenstein Clinic interview with a lawyer, Kampala, May 19, 2013.

²³ John Njorgoe, “Uganda opposition suspicious of Museveni handouts,” *Africa Review*, January 7, 2011, <http://www.africareview.com/News/-/979180/1085456/-/i6u140z/-/index.html> (accessed August 22, 2013).

²⁴ Ioannis Gatsiounis, “Deadly Crackdown on Uganda's Walk to Work Protests,” *Time*, April 23, 2011, <http://www.time.com/time/world/article/0,8599,2067136,00.html> (accessed August 22, 2013).

²⁵ Joe Powell, “Money talks in Ugandan election,” *Royal African Society*, February 25, 2012, <http://www.one.org/international/blog/money-talks-in-ugandan-election/> (accessed July 16, 2013).

Since the 2011 elections the media has repeatedly published reports about the government doling out cash without clarity on the budgetary source or the motive for the allocation. For example, in April 2013, the president was widely criticized when his office distributed a photo of him handing out a large sack of money said to contain 250,000,000 Ugandan shillings (\$100,000) to a partisan youth group from Eastern Uganda.²⁶ Commentators noted the tragic comedy of the photo—for several days #sackofmoney was trending on Twitter in Uganda—particularly because it was quite obvious that the bag of cash was so heavy that the young man struggled to stay upright as he carried it away on his head.²⁷

The president’s public rhetoric regarding rooting out corruption is frequently belied by his public statements on specific cases. These comments are often seen as tacit signals to witnesses, prosecutors, and in some cases, judges. The local anti-corruption organization, Uganda Debt Network, recently summarized several instances when President Museveni undermined prosecutions or the potential for successful convictions of members of his inner circle or other high-ranking members of his government. For example when then-Security Minister and current Prime Minister Amama Mbabazi (and Secretary General of the ruling party) was implicated in corruption allegations related to a land sale to the National Social Security Fund (NSSF). President Museveni was quoted in the media about the case saying, “I will not run away from old friends.”²⁸ Mbabazi was never charged related to those allegations.

In another example from 2011, former Vice President Gilbert Bukenya was charged with abuse of office related to allegations of having profited from the hire of luxury vehicles for the Commonwealth Heads of Government Meeting in 2008. While the case was pending, President Museveni was quoted in the media saying that the Attorney General had informed him that the case had “no merit.”²⁹ As Uganda Debt Network rightly flags, public remarks from the head of state undermined the case brought by the Inspectorate of Government. This case was especially sensitive in that it was against the highest-ranking

²⁶ “Ugandan president gives sack with \$100,000 in cash, drawing the ire of anti-graft activists,” *Washington Post*, April 23, 2013.

²⁷ “Ugandan president’s #sackofmoney causes uproar on social media” *Humanipo*, April 24, 2013, <http://www.humanipo.com/news/5465/ugandan-presidents-sackofmoney-causes-uproar-on-social-media/>; and “Uganda’s #sackofmoney hits a nerve,” *Al-jazeera*, April 23, 2013, <http://stream.aljazeera.com/story/201304231859-0022697>.

²⁸ Uganda Debt Network, “Graft Unlimited?”

²⁹ “Bukenya has no case to answer – Museveni,” *Daily Monitor*, July 13, 2011, <http://www.monitor.co.ug/News/National/-/688334/1199970/-/byjv6nz/-/index.html> (accessed August 5, 2013). Uganda Debt Network, “Graft Unlimited?” p. 18.

member of President Museveni's government ever to be charged in his 27-year rule. The Inspectorate of Government later withdrew the case against Bukenya citing lack of evidence.³⁰ Bukenya told the media that he was grateful for the president's support, though Museveni denied to the media that he played a role in the case.³¹

Most recently, Hon. Mike Mukula, the former state minister for health and current member of parliament and vice chairman of the ruling party for the key electoral constituencies of Eastern Uganda, appealed his conviction and four-year sentence for embezzling 210 million Ugandan shillings (around \$80,000) from the Global Alliance for Vaccines and Immunisation (GAVI Alliance). Leaders from Eastern Uganda allegedly lobbied the president to ensure Mukula was freed.³² Ultimately, the President publicly offered to pay 100 million Uganda shillings (\$50,000) for his legal fees. The payment was confirmed in the media by the presidential press secretary.³³ Media reports noted that the president did say that he could not influence the judiciary, and that he had come to power to restore rule of law, but obviously coming in to support the defense in a highly controversial and long-standing corruption case mired it further in partisan politics. Ultimately Mukula was acquitted on appeal. As one prosecutor in the Office of the Inspectorate of Government said, "If the head of state comes out openly to offer to pay for someone's lawyers, what kind of message does that send to us? We know we cannot win."³⁴

The Impact of Corruption on Human Rights

Corruption is a direct threat to the rule of law and accountability as well as an illegal diversion of available resources away from basic services that are needed to meet fundamental rights obligations. The misappropriation of state resources budgeted for public services, including life-saving health treatment or infrastructure projects to deliver

³⁰ "Uganda drops Gilbert Bukenya CHOGM fraud charges," *BBC Online*, November 4, 2011, <http://www.bbc.co.uk/news/world-africa-15598628> (accessed August 14, 2013).

³¹ "As charges are dropped, Bukenya thanks Museveni for his support," *Dispatch Uganda*, November 7, 2011, <http://www.dispatch.ug/as-charges-are-dropped-bukenya-thanks-museveni-for-his-support/3346/> (accessed August 14, 2013); and "Museveni denies role in Bukenya Case," *New Vision*, November 11, 2011, <http://www.newvision.co.ug/news/19059-museveni-denies-role-in-bukenya-case.html> (accessed August 13, 2013).

³² According to one prosecutor, this system of supporters of one defendant going to plead for support from the president is relatively common. He notes that the fact that people go to the president and not the courts shows where the real power center is. Human Rights Watch interview with prosecutor B, Kampala, July 25, 2013.

³³ David Tash Lumu, "Museveni gives Mukula Shs 100m for legal fees," *The Observer*, March 4, 2013, http://www.observer.ug/index.php?option=com_content&task=view&id=24007&Itemid=116 (accessed August 5, 2013)

³⁴ Human Rights Watch interview with prosecutor B, Kampala, July 25, 2013.

clean water, negatively impacts the realization of the right to health. Unplanned or off-budget expenditure used for patronage spending seriously undermines government obligations to protect and fulfill human rights by diverting money from essential government services such as health and education, causing consistent and dire underfunding of these sectors.

Scandals have rocked the delivery of immunizations and essential medicines to fight HIV, tuberculosis, and malaria particularly. The facts are all too well-known in Uganda; in 2005, health ministry officials allegedly embezzled over \$4.5 million from the Global Fund to Fight AIDS, Tuberculosis and Malaria.³⁵ Mid-level managers faced prosecutions but the implicated ministers resigned only to return recently to key posts in government.³⁶ In 2007 the Inspectorate of Government detected an estimated \$800,000 missing from the GAVI Alliance under the responsibility of the Ministry of Health.³⁷ Ultimately none of the implicated former health ministers served jail time, though Alice Kaboyo, a former private secretary to the president, pled guilty to charges of misappropriation of funds, returned the money, and paid a fine.³⁸

Some health rights activists call the Ugandan health care system “dysfunctional” because people die of lack of services and medicines that they saw would have been available, had the money been used as directed.³⁹ Life expectancy in Uganda is among the lowest in the world at 56 years;⁴⁰ one in every 49 women dies as a result of giving birth.⁴¹ In national

³⁵ The Global Fund, The Office of the Inspector General, “Follow up review of the Global Fund grants to Uganda,” September 9, 2009, on file with Human Rights Watch and the Lowenstein Clinic, p. 6.

³⁶ Charles Wendo and Conan Businge, “Uganda Loses \$12m Global Fund,” *New Vision*, October 28, 2008, <http://www.newvision.co.ug/D/8/12/656872> (accessed July 23, 2013).

³⁷ *Uganda v. Hon. Jim K. Muhwezi and Three Others*, High Court of Uganda at Kampala, Anti-Corruption Division, Case No. ACD-CSC-97 of 2010, Ruling, July 31, 2012, http://www.igg.go.ug/static/files/publications/CRULING_FOR_JIM_MUHWWEZI__3_OTHERS.pdf.

³⁸ Kaija, “Alice Kaboyo Confesses to Misappropriating GAVI Funds,” *The Independent*, June 12, 2012, <http://allafrica.com/stories/201206121038.html> (accessed August 13, 2013); Siraje Lubwama, “Ex-State House aide Kaboyo pleads guilty, pays 20m fine,” *The Observer*, June 12, 2012, http://www.observer.ug/index.php?option=com_content&task=view&id=19238&Itemid=114 (accessed August 13, 2013).

³⁹ Human Rights Watch and the Lowenstein Clinic interview with Asia Russell, Director of International Advocacy, Health GAP (Global Access Project), Kampala, May 21, 2013.

⁴⁰ World Health Organization, “Uganda: Health Profile,” 2011, <http://www.who.int/gho/countries/uga.pdf> (accessed August 15, 2013).

⁴¹ World Health Organization, “Accountability for Maternal, Newborn & Child Survival, The 2013 Update, Uganda,” http://www.countdown2015mnch.org/documents/2013Report/Countdown_2013-Update_profilesS-Z.pdf (accessed August 15, 2013).

healthcare facilities, only half of all posts are filled.⁴² The World Health Organization estimates that around half of the population does not have any contact with modern healthcare facilities.⁴³ Some 70 percent of Ugandan doctors and 40 percent of nurses and midwives are based in urban areas, serving only 12 percent of the population.⁴⁴ Despite significant donor spending on the health care sector over the years, the government often fails to supply sufficient drugs and equipment countrywide.⁴⁵

The Auditor General reports have found that health centers lack simple medical equipment, such as rubber gloves, experience shortages or stock-outs of essential drugs and supplies, receive inadequate water and electricity, and that there is a lack of ambulances or other forms of adequate transport to transfer patients to larger hospitals for operations.⁴⁶

In Bundibugyo hospital on Uganda's western border, for example, in 2011 the media reported that the sewer system broke down several years ago and had never been fixed and the fire extinguishers installed in 1969 had never been replaced so the hospital resorted to using sand to put out a fire.⁴⁷ But also in 2011, the National Drug Authority reported that more than 100 "ghost" health centers had been created by corrupt officials which had been "receiving" medical supplies and equipment on a routine basis according to submitted paperwork.⁴⁸

⁴² Uganda Human Rights Commission, "12th Annual Report," 2009. In 2010, per 10,000 people, there was one physician, less than one dentist, and 13 midwives. As a result of understaffing, patients waited for four to six hours to see a nurse at health centers. Foundation for Human Rights Initiative, "The Right to Healthcare in Uganda," 2010, <http://www.fhri.or.ug/executive%20summary%20research%20report.pdf> (accessed August 15, 2013).

⁴³ World Health Organization, "Country Cooperation Strategy Uganda"; World Health Organization, "Country Profile: Uganda," 2009, http://www.who.int/tb/publications/global_report/2009/pdf/uga.pdf (accessed August 15, 2013).

⁴⁴ Annie Kelly, "Healthcare a Major Challenge for Uganda," *The Guardian*, April 1, 2009. There are not enough community health centers or hospitals. In theory, there are supposed to be healthcare facilities at the parish, sub-county, and county levels, as well as a hospital at the district level. Richard Kavuma, "Uganda's Healthcare System Explained," *The Guardian*, April 1, 2009. However, at least 26 districts in Uganda do not have a hospital, and patients must walk 12 kilometers in order to reach the nearest community health center. Foundation for Human Rights Initiative, "The Right to Healthcare in Uganda." On average, rural residents live 5.2 km and urban residents 2.9 km from the nearest health center. Uganda Bureau of Statistics, "National Service Delivery Survey," 2004, <http://openmicrodata.wordpress.com/category/uganda/> (accessed August 15, 2013).

⁴⁵ "Uganda Running Out of ARVs, HIV Kits," *IRINnews*, June 12, 2013, <http://reliefweb.int/report/uganda/uganda-running-out-arvs-hiv-test-kits> (accessed August 15, 2013); Foundation for Human Rights Initiative, "The Right to Healthcare in Uganda."

⁴⁶ Office of the Auditor General, "Annual Report of the Auditor general for the Year Ended 30th June 2012," Vol. 2, Central Government, http://www.oag.go.ug/index.php?option=com_phocadownload&view=category&id=29:2011-2012&Itemid=&Itemid=&Itemid=10.

⁴⁷ "Who will heal Uganda's sick health sector?" *Daily Monitor*, October 1, 2011, <http://www.monitor.co.ug/News/National/-/688334/1245686/-/item/2/-/3rpog4/-/index.html> (accessed August 14, 2013).

⁴⁸ "Who will heal Uganda's sick health sector?" *Daily Monitor*, October 1, 2011, <http://www.monitor.co.ug/News/National/-/688334/1245686/-/item/2/-/3rpog4/-/index.html> (accessed August 14, 2013).

The discovery of \$12.7 million embezzled donor funds from Uganda's Office of the Prime Minister's was destined for the 2009-2012 Peace Recovery and Development Plan (PRDP) for Northern Uganda. Northern Uganda is emerging from a two-decade war where, at one point, over one million people were living in internally displaced persons camps in life-threatening conditions.⁴⁹ This recent theft of reconstruction and development assistance via the OPM (what has become known as the "OPM scandal") therefore has serious consequences for a variety of human rights protections. The PRDP assistance aimed to re-establish the rule of law in the region by supporting key justice institutions, such as the courts and prisons, as well as the rehabilitation of infrastructure systems, such as water, and providing improved access to information and counseling services to the affected population—all crucial areas to restore civil, political, economic, and social rights in a region that was finally in a position to benefit from Uganda's economic growth.⁵⁰

The OPM money was also destined for development efforts in Karamoja, Uganda's poorest region and home to one million agro-pastoralists who have faced successive government programs of "forced disarmament," which have been rife with serious human rights abuses, including torture and extrajudicial killings.⁵¹ The development assistance was to focus on various projects, including improving access to water and food security.⁵² Karamoja faces cycles of drought and deluge that have made consistent access to food a significant challenge.⁵³ In 2013 alone at least 46 people in Kaabong

⁴⁹ "Need to focus on returnees and remaining IDPs in transition to development," Internal Displacement Monitoring Centre, May 24, 2012, <http://www.internal-displacement.org/countries/Uganda> (accessed August 14, 2013). For more Human Rights Watch reporting on the Lord's Resistance Army (LRA) and war in northern Uganda, see Human Rights Watch, *Abducted and Abused: Renewed War in Northern Uganda*, vol. 15, no. 12, July 2003, <http://www.hrw.org/reports/2003/07/14/abducted-and-abused-o>; *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, vol. 17, no. 12(a), September 2005, <http://www.hrw.org/reports/2005/09/19/uprooted-and-forgotten-o>; "As if We Weren't Human": *Discrimination and Violence against Women with Disabilities in Northern Uganda*, August 2010, <http://www.hrw.org/reports/2010/08/24/if-we-weren-t-human>.

⁵⁰ Office of the Prime Minister, "Peace and Recovery Development Plan for Northern Uganda," undated, <http://opm.go.ug/assets/media/resources/23/Recovery%20and%20Development%20Plan%20for%20Northern%20Uganda.pdf> (accessed August 22, 2013).

⁵¹ See Human Rights Watch, "Get the Gun!" *Human Rights Violations by Uganda's National Army in Law Enforcement Operations in Karamoja Region*, September 2007, vol. 19, no. 13(a), <http://www.hrw.org/reports/2007/09/10/get-gun>.

⁵² Peace, Recovery and Development Plan 2 (PRDP2), "Special Programmes," 2013, http://www.prdp.org.ug/index.php?option=com_content&view=article&id=13&Itemid=206 (accessed August 22, 2013).

⁵³ Stephen Ariong, "Starving Kaabong residents trek to Kenya to beg for food," *Daily Monitor*, August 31, 2013, <http://www.monitor.co.ug/News/National/Starving+Kaabong+residents+trek+to+Kenya+to+beg+for+food/-/688334/1490774/-/057ybk/-/index.html> (accessed August 22, 2013).

district in northern Karamoja were reported to have starved to death.⁵⁴ The theft of the money intended to realize the right to food and water in Karamoja potentially further placed residents in life-threatening jeopardy.

Civil society activists have often noted that sectors crucial to realizing basic human rights such as health and education services consistently struggle with underfunding when significant spending in other areas, such as the military, continues.⁵⁵ Massive off-budget expenditures have prompted the government to seek repeated supplementary budgets to provide basic government services and allocations are often late. Over the last two years the Office of the President has requested 121.8 billion Ugandan shillings (\$47 million) in supplementary budget allocations while delaying payments of salaries to health workers and teachers.⁵⁶ The Anti-Corruption Coalition has called the Office of the President “more of a liability than an asset to the citizens of Uganda” and “a bottomless pit that will never be filled up.”⁵⁷

⁵⁴ Stephen Ariong and Simon Emwamu, “46 dead as hunger pounds Karamoja, Teso,” *Daily Monitor*, July 17, 2013, <http://www.monitor.co.ug/SpecialReports/46-dead-as-hunger-pounds-Karamoja--Teso/-/688342/1917310/-/mah902z/-/index.html> (accessed August 22).

⁵⁵ “Uganda: Urgent call; civil society organizations demand accountability for outrageous government spending,” International Federation of Health and Human Rights Organisations, May 9, 2011, <http://www.ifhro.org/news-a-events/rfp-news/220-uganda-urgent-call-civil-society-organizations-demand-accountability-for-outrageous-government-spending> (accessed August 22, 2013).

⁵⁶ Anti-Corruption Coalition Uganda, “State House Extravagance,” April 3, 2013, <http://accu.or.ug/state-house-extravagance/> (accessed August 22, 2013).

⁵⁷ *Ibid.*

Uganda's Anti-Corruption Mechanisms

The Anti-Corruption Court

Established in 2008 the Anti-Corruption Division of the High Court was formed as “a result of public demand for a specialized court to try high profile corruption and related offences.”⁵⁸ In 2009 the Chief Justice issued a practice directive to formally operationalize the Anti-Corruption Court (ACC).⁵⁹ The ACC has exclusive jurisdiction over offenses under the Anti-Corruption Act of 2009, and can also hear cases under the Penal Code Act, Leadership Code Act, or any other law related to corruption.⁶⁰ The ACC has one court building, located in Kampala, though the court holds sessions in other parts of the country on an ad hoc basis. The ACC is supposed to have five magistrates and three judges, but it currently has only four magistrates and one judge.⁶¹

The Office of the Inspectorate of Government

The Office of the Inspectorate of Government (IG), headed by the Inspector General of Government (IGG), is mandated by the Ugandan constitution to fight corruption and abuse of authority and of public office.⁶² The IG can prosecute only government officials,⁶³ while public prosecutors from the Directorate of Public Prosecutions can prosecute both government officials and private citizens. Beyond this, however, no law sets forth any guidelines for when each agency is supposed to take on a case.

The Auditor General

The auditor general has powers to audit public accounts of courts, the central and local government, and public institutions. The office of the auditor general reports its findings annually to parliament.⁶⁴

⁵⁸ “Anti-Corruption Week 2011 Report,” Anti-Corruption Coalition Uganda, 2011, on file with Human Rights Watch and the Lowenstein Clinic.

⁵⁹ Anti-Corruption Coalition Uganda, 2013, <http://www.accu.or.ug>.

⁶⁰ The High Court (Anti-Corruption Division) Practice Directions, Legal Notice No. 9 of 2009, para. 8(1). Human Rights Watch and the Lowenstein Clinic interview with Fred Waninda, Registrar of the Anti-Corruption Court, Anti-Corruption Court, Kampala, May 23, 2013. If a defendant before the ACC also has been charged “with any other offence related to” the offense charged under one of the preceding Acts, the ACC can try the related offense. Legal Notice No. 9 of 2009, para. 8(2).

⁶¹ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013.

⁶² Constitution of the Republic of Uganda, art. 255; Inspectorate of Government Act, Act No. 5 of 2002.

⁶³ Inspectorate of Government Act, art. 9.

⁶⁴ Constitution of the Republic of Uganda, arts. 163(3), (4).

Parliament's Public Accounts Committee

The Public Accounts Committee (PAC) of Parliament scrutinizes and monitors the use of public funds on behalf of parliament.⁶⁵ The PAC may call any minister, public official, and private individual “to submit memoranda or appear before them to give evidence,” and can enforce the attendance of witnesses as well as compel the production of documents.”⁶⁶ The PAC conducts its own investigation of cases of misappropriation of funds identified in the annual Auditor General’s report to parliament, and then recommends action for Parliament to take in response, including prosecution, recovery of misappropriated funds, and dismissal of public officials.⁶⁷ A majority of parliament must approve any such recommendations.

Directorate for Ethics and Integrity

Located in the Office of the President, the Directorate is tasked with coordinating government efforts to fight corruption, “set ethical standards for rebuilding ethics and integrity in public office,” formulate anti-corruption policies and legislation, and monitor the observance of ethical standards and anti-corruption legislation.⁶⁸ Recent leaders of this office, including Hon. Nsaba Buturo and Hon. Simon Lokodo have focused primarily on fighting against the rights of lesbian, gay, bisexual, and transgender people under the auspices of protecting Uganda’s “integrity.”⁶⁹

⁶⁵ The PAC derives its power from Articles 164 and 90 of the Constitution of the Republic of Uganda. Article 164(1) states that “(1) The Permanent Secretary or the accounting officer in charge of a Ministry or department shall be accountable to Parliament for the funds in that Ministry or department,” and Article 164(3) provides that “Parliament shall monitor all expenditure of public funds.” Constitution of the Republic of Uganda, art. 164(1) and (3). Article 90 empowers Parliament to create standing committees “necessary for the efficient discharge of its functions.” Constitution of the Republic of Uganda, art. 90. The 2012 Parliamentary Rules of Procedure provide that it should have 30 members. Rules of Procedure of the Parliament of Uganda, 2012, rule 162(1). However, there are currently 28. Paul Mwiru, Vice-Chair of the PAC, “The Role, Experience, Challenges of the Public Accounts Committee in Handling Cases of Misappropriation of Public Funds,” (draft paper presented at the ULS annual conference at the Imperial Resort Beach hotel, March 22, 2012), on file with Human Rights Watch and the Lowenstein Clinic, p. 2.

⁶⁶ Constitution of the Republic of Uganda, art. 90(4).

⁶⁷ Mwiru Paul, “The Role, Experience, Challenges of the Public Accounts Committee,” p. 4.

⁶⁸ Directorate for Ethics and Integrity, Office of the President, “Rebuilding Ethics and Integrity,” brochure on file with Human Rights Watch. For more information, see Directorate for Ethics and Integrity, Office of the President, <http://www.dei.go.ug/> (accessed August 10, 2012).

⁶⁹ Human Rights Watch, *Curtailling Criticism: Intimidation and Obstruction of Civil Society in Uganda*, August 21, 2012, <http://www.hrw.org/reports/2012/08/21/curtailling-criticism>.

II. Political Interference with Anti-Corruption Institutions

“It is not for the lack of strategies, laws, or institutions that corruption has thrived; it is rather the lack of political will and commitment to the full implementation of the laws and policies.”

—Uganda Debt Network, May 2013

“We don’t need anything other than to be allowed to do our jobs, but we cannot. We are kept deliberately weak so the big fish can swim.”

—Human Rights Watch interview with a prosecutor, Kampala, July 26, 2013

Political pressure and limited resources have weakened Uganda’s multiple anti-corruption institutions and curtailed their ability to systematically address corruption, particularly at the highest levels of government. The president’s failure to fill key positions has made prosecutions cumbersome, causing delays and a large case backlog. Despite a legal requirement that leaders are required to make public statements about their financial assets—a crucial factor of transparency in governance—the system to enforce the obligation has not been established. Instead, as one Ugandan journalist noted, President Museveni has established a system “in which disgruntled elites and donors are able to feel that something is being done to stop corruption while letting corruption proceed with little effort to curb it.”⁷⁰

Lack of Appointed Personnel

Throughout the justice sector, long delays in filling key vacancies have made timely prosecutions very difficult.⁷¹ This problem has affected the prosecution of corruption cases in multiple ways and demonstrates a fundamental lack of commitment to robust anti-corruption mechanisms. According to the public relations officer of the IG, “We

⁷⁰ Andrew Mwenda, “Uganda’s anti-corruption rituals,” *The Independent*, August 12, 2012, <http://www.independent.co.ug/the-last-word/the-last-word/6255-ugandas-anti-corruption-rituals>.

⁷¹ The Uganda Law Society has concerns over the numerous vacancies in the justice section. See “The Leadership Vacuum in the Judiciary and the Directorate of Public Prosecutions,” Uganda Law Society, press statement, July 2, 2013, <http://www.uls.or.ug/uploads/Leadership%20Vacuum%20in%20the%20Judiciary-20130702-125408.pdf> (accessed August 5, 2013).

don't have full funding. We don't have full staffing.... There is a big backlog because of insufficient staff.”⁷²

By law the Inspectorate of Government is headed by the Inspector General of Government and two Deputy Inspector Generals.⁷³ The second deputy position has been vacant since the IGG was originally established in the 1995 constitution. While clearly creating a burden for other employees, the vacancy also became a structural obstacle to accountability when three ministers were charged by the IGG with abuse of office and causing financial loss in connection with the 2007 Commonwealth Heads of Government scandal. The three defendants brought a challenge to the Constitutional Court, questioning the legal power of the IG to prosecute cases while not being “fully constituted,” that is, that it has vacancies. In April 2012 the court ordered that the IGG's office cannot prosecute cases so long as it is not “fully constituted” and the three ministers were ultimately acquitted of all charges.⁷⁴ The IGG appealed to the Supreme Court, but the lack of judges appointed to that court meant that the appeal has yet to be heard.⁷⁵ The prosecutor called the judges' ruling “absurd” and is optimistic that the Supreme Court will eventually overturn the decision.⁷⁶

⁷² Human Rights Watch and the Lowenstein Clinic interview with Munira Ali, Public Relations Officer, Inspectorate of Government, Kampala, June 5, 2013.

⁷³ Inspectorate of Government Act, 2002, clause 3.

⁷⁴ *Hon. Sam Kuteesa and Two Others v. Attorney General*, Constitutional Court of Uganda at Kampala, Constitutional Petition No. 46 of 2011, Judgment, April 4, 2012, <http://www.ulii.org/ug/judgment/constitutional-court/2012/2> (accessed August 5, 2013).

⁷⁵ There are currently eight judges appointed to the Supreme Court. The Supreme Court is supposed to have 11 judges total and hold hearings with all 11 judges to hear appeals of constitutional matters. There have been vacancies for several years and controversies associated with appointments of judges in 2013, which have further added to the pre-existing backlog of hearings of any constitutional matters. See Anthony Wesaka, “Controversy as Swaziland names Odoki Chief Judge,” *Daily Monitor*, July 23, 2013, <http://www.monitor.co.ug/News/National/Controversy-as-Swaziland-appoints-Odoki-court-judge-/688334/1923556/-/item/1/-/509yfsz/-/index.html>; and “Lawyers' body petitions Speaker over Odoki reappointment,” *New Vision*, August 20, 2013, <http://www.newvision.co.ug/news/646293-lawyers-body-petitions-speaker-over-odoki-reappointment.html>. For more on the entrenched problems with the vacancies in the justice system see “Statement of the Uganda Law Society to the Parliamentary Committee on Legal and Parliamentary Affairs,” May 7, 2013, <http://www.uls.or.ug/uploads/ULS%20Statement%20to%20Parliamentary%20Committee%20on%20Legal%20and%20Parliamentary%20Affairs-20130508-191800.pdf>. The Law Society notes that regarding the vacancies, “The situation is grave because the Court of Appeal/Constitutional Court and the Supreme Court are no longer able to discharge their judicial functions for lack of quorum. This has denied many people justice and led to inordinate delay in hearing appeals, a matter which is a continuing violation of Article 28(1) of the Constitution.” Some appointments were confirmed after this statement was issued. At the time of writing, the Supreme Court has 7 of the 11 required positions filled, but some justices are in ill health and not actively hearing cases.

⁷⁶ Human Rights Watch interview with Sydney Asubo, Director of Legal Affairs, Inspector General of Government, Kampala, July 25, 2013.

The Constitutional Court decision also meant that the IGG became subordinate to the DPP and could not prosecute anyone without the express written permission of the DPP.⁷⁷ The DPP had to sign off on every charge sheet initiated by the IGG.⁷⁸ This left the IGG at a significant disadvantage, as it lacked prosecutorial independence and became mired in the politics of the DPP's office as well as creating the obvious manpower problems. According to one current DPP prosecutor, the then-director of public prosecutions expressed hesitation in prosecuting "personalities, when we're dealing with the public interest cases, where there is a lot of money involved."⁷⁹

From the time of the Constitutional Court decision in April 2012 until recently, the president took no action to appoint someone to the position of second deputy IGG so that the IG office could be functional and also did not ensure that appointments to the Supreme Court occurred in a timely fashion. It was only in the wake of the OPM scandal, when donors raised the lack of a second deputy IGG as a key action point, that President Museveni moved to fully compose the office of the IG. In July 2013 President Museveni appointed Mariam Wangadya as second deputy IGG and she was confirmed in August.⁸⁰ This is now the first time in the IGG's 25-year history that all three leadership positions have been filled, but it was clearly prompted solely by donor pressure. It is a significant step forward, but insiders voiced concern that this might be short lived given high turnover in the office and the possibility that other vacancies may not be filled quickly. "We have waited for six months for some people to be sworn in to office here and the files just accumulate. It will happen again," said one prosecutor.⁸¹

Ironically, in May 2013, the president appointed Richard Buteera, the long-serving DPP, and his deputy as Appeals Court and High Court judges, respectively, which meant that until the DPP vacancies were filled in August 2013 it was not possible for any corruption-

⁷⁷ Human Rights Watch and the Lowenstein Clinic interview with prosecutor C, Kampala, May 21, 2013; prosecutor A, Kampala, May 21, 2013; and prosecutor B, Kampala, May 24, 2013.

⁷⁸ Human Rights Watch and the Lowenstein Clinic interview with Munira Ali, Public Relations Officer, Inspectorate of Government, Kampala, June 5, 2013; prosecutor B, Kampala, May 24, 2013; and prosecutor A, Kampala, Tuesday, May 21, 2013.

⁷⁹ Human Rights Watch and the Lowenstein Clinic interview with prosecutor C, Kampala, May 21, 2013.

⁸⁰ Anthony Wesaka, "Wangadya Named New Deputy IGG," *Daily Monitor*, July 8, 2013, <http://www.monitor.co.ug/News/National/Wangadya-named-new-deputy-IGG/-/688334/1908158/-/h84xw6/-/index.html> (accessed July 15, 2013); and "New deputy IGG tasked to fight thieves in Government," *New Vision*, August 3, 2013, http://www.newvision.co.ug/article/fullstory.aspx?story_id=645707&catid=1&mid=53&utm_source=twitterfeed&utm_medium=twitter (accessed August 5, 2013).

⁸¹ Human Rights Watch interview with prosecutor B, Kampala, July 26, 2013.

related prosecutions to proceed.⁸² Activists questioned why the president would appoint someone to a new position without ensuring that his previous post—especially one absolutely essential for a functional justice system—was filled.⁸³

Not only should these positions clearly not be allowed to remain vacant for unduly and unjustifiably long periods but a temporary vacancy should not cripple the functionality of the institution or render it impossible for prosecutions to proceed. These loopholes should be urgently addressed in law so as to keep institutions strong and functional.

Lack of Disclosure of Financial Assets

Existing Ugandan laws require “leaders” to disclose financial assets.⁸⁴ This is an enormously important obligation that, if implemented, would greatly enhance the transparency of public officials’ finances and likely deter public graft. The public also has a right to information (deemed in the public interest) under the constitution and the Access to Information Act.⁸⁵ Despite the numerous laws, however, Uganda’s regulatory framework to combat corruption fails to apply the requirement of asset declarations to presidential appointees and other high-level officials, the tribunal to challenge the content of declarations has never been established, and there is no system for the public to access information regarding financial assets of officials.

The 2002 Leadership Code Act requires a wide range of national and local political leaders to disclose their financial information, including income, assets, and liabilities, as well the financial information of their family members.⁸⁶ The IGG is tasked with inspecting disclosure and can request clarification if discrepancies are discovered. Failure to comply

⁸² Anthony Wesaka, “Who is Chibita, the new DPP,” *Daily Monitor*, <http://www.monitor.co.ug/News/National/-/688334/1948392/-/7p1iqdz/-/index.html> (accessed August 22, 2013). Some have also raised concerns that Chibita’s relationship with the president might hinder his execution of the job in a non-partisan manner. Chibita served as the President’s Private Secretary in-charge of Legal Affairs for seven years.

⁸³ John Masaba, “Absence of Chief Justice irks the judiciary,” *New Vision*, July 19, 2013, <http://www.newvision.co.ug/news/645228-absence-of-chief-justice-irks-the-judiciary.html> (accessed August 22, 2013).

⁸⁴ Leader is defined in the law as both political leaders, such as the president, members of parliament, and specified officers such as judges, heads of government departments, presidential advisors, ambassadors, and all members of the military. For a complete list of those required to declare financial assets, see The Second Schedule, Parts A and B of the Leadership Code Act, Inspectorate of Government, 2002, <http://www.igg.go.ug/static/files/publications/leadership-code-act.pdf> (accessed July 24), section 5.

⁸⁵ Constitution of the Republic of Uganda, principle XXVI(ii) of the National Objectives and Directive Principles of State Policy; and Access to Information Act, 2006.

⁸⁶ The Leadership Code Act, art. 4(2).

with the IGG's request for clarification can, according to the law, lead to dismissal from office, though this provision has faced serious challenges in the courts and is currently not in force.⁸⁷ The act also prohibits a number of corrupt practices, including acting in a public capacity with conflict of interest,⁸⁸ acceptance of certain high-value gifts,⁸⁹ acceptance of government contracts,⁹⁰ abuse of public property,⁹¹ and misuse of official information.⁹²

On its face, the Leadership Code Act appears to set up a fairly strong two-pronged anti-corruption framework by requiring financial disclosure for public officials and establishing a Leadership Tribunal to enforce a code of conduct for political leaders.⁹³ However, such a body has never been formed, rendering the Leadership Code unenforceable in practice and crippling the IGG's ability to ensure accurate declarations.⁹⁴

According to those working in the Inspectorate of Government, most leaders do generally make asset declarations. One told Human Rights Watch that they have "about 30,000 files" but they lack both the resources to monitor the content of those declarations and, without an established Leadership Tribunal, there is no forum for the IGG to challenge the content itself.⁹⁵ In 2007 a judge ruled that the IGG cannot address violations of the Leadership Code Act because it is not the appropriate body to adjudicate cases for breaches and that this must occur in the non-existent Leadership Tribunal.⁹⁶ The judge argued that it should be urgently established to enforce "values of integrity and proper conduct in the

⁸⁷ The Leadership Code Act, art. 5(2).

⁸⁸ Leaders are not allowed to place him or herself in conflicts of interest, cannot exercise public authority where a conflict exists, and must disclose the nature and extent of personal interest where applicable. Failure to comply could result in loss of office and financial restitution.

⁸⁹ Leaders must declare gifts received and donate them to the government. Gifts of nominal value and customary gifts from family and friends are exempt from this requirement.

⁹⁰ Leaders and their family, agents and companies, cannot accept contracts with public bodies in which the leaders plays a role or with foreign business where when the contract is likely to conflict with public interests.

⁹¹ Leaders cannot use for themselves and cannot knowingly allow others to use public property for purposes other than those authorized by law.

⁹² Leaders are barred from using information obtained through their office for personal ends for private benefit.

⁹³ The Leadership Code Act, art. 7(1) and 7(2).

⁹⁴ Parliament amended the constitution in 2005 to establish a Leadership Code Tribunal that would enforce the Leadership Code, but the tribunal has not been formed, rendering the Leadership Code unenforceable. Constitution of the Republic of Uganda, section 235A; The Constitution Amendment Act of 2005, section 235A.

⁹⁵ Human Rights Watch interview with prosecutor B, Kampala, July 25, 2013.

⁹⁶ In 2005 the IGG recommended that John Ken Lukyamuzi, the head of the Conservative Party, be removed from parliament for failure to declare financial information. Lukyamuzi challenged his removal in court. Though he lost at the high courts, he won the Constitutional Court appeal. The Republic of Uganda, Constitutional Appeal No. 2 of 2007, Supreme Court of Uganda, Kampala, http://www.igg.go.ug/static/files/presentations/FULL_CASE_LUKYAMUZI.pdf (accessed July 24, 2013).

leadership of this country, values which I consider to be critical in the pursuit of development, democracy, good governance and the promotion of the rule of law,” and so that the “Leadership Code of Conduct can be effectively enforced.”⁹⁷

In addition, courts have drawn a distinction between presidential appointees and government employees, thereby shielding ministers from asset declaration. In 2002 the Constitutional Court ruled that the Leadership Code Act does not apply to presidential appointees, rendering the act irrelevant for a large number of the highest-ranking officials.⁹⁸ In that case, the IGG had dismissed Presidential Advisor Major Roland Kakooza Mutale for failure to make a financial declaration. He subsequently challenged his dismissal before the Constitutional Court, which ruled that the Leadership Code Act is void with respect to presidential appointees.⁹⁹ The court ruled that these provisions violate the constitution’s procedures for disciplining appointees and violated the president’s discretion. Ultimately this decision has meant that the IGG no longer has power to terminate or recommend the termination of presidential appointees and the president himself is not obligated to fire people who fail to report their assets.

Cabinet has impeded progress on establishing this crucial anti-corruption institution. A few years ago, then-acting IGG Raphael Baku, officials from the Directorate of Ethics and Integrity, and others formed a task force which formulated the legislative basis for the Leadership Tribunal and submitted recommendations to cabinet for approval. According to interviewees there has been no progress since that time.¹⁰⁰

Lastly, there is no mechanism to make any financial declarations available to the public. In 2002 the then-IGG made some records public only to face a barrage of criticism from

⁹⁷ The Republic of Uganda, Constitutional Appeal No. 2 of 2007, Supreme Court of Uganda, Kampala, http://www.igg.go.ug/static/files/presentations/FULL_CASE_LUKYAMUZI.pdf (accessed July 24, 2013).

⁹⁸ See Leadership Code Act, sections 19(1), 20(1) and 35(b) and (d); and *Fox Odoi-Oywelowo and James Akampumuza v. Attorney General*, Constitutional Court of Uganda at Kampala, Constitutional Petition No. 8 of 2003, Judgment, March 30, 2004, <http://www.ulii.org/files/ug/judgment/constitutional-court/2004/2/2.pdf> (accessed July 24, 2013). Human Rights Watch and the Lowenstein Clinic interview with David Makumbi, Ombudsman Affairs Director, Inspectorate of Government, Kampala, May 24, 2013.

⁹⁹ *Fox Odoi-Oywelowo and James Akampumuza v. Attorney General*, <http://www.ulii.org/files/ug/judgment/constitutional-court/2004/2/2.pdf>.

¹⁰⁰ Human Rights Watch email communications with prosecutor, Kampala, August 23, 2013 and donor governance advisor, August 23, 2013. It is possible that a member of parliament could table a “private members bill” to establish the Tribunal without cabinet support. Such bills are often subject to numerous obstacles, and progress very slowly if at all. Ultimately, a bill needs support from key Ministries to progress, for example to acquire the certificate of financial implications that is legally required before a bill can be presented for debate in parliament.

politicians.¹⁰¹ Ministers then wrote a petition to the attorney general asking if the IGG had acted properly by releasing such information. At the time the Access to Information Law had not yet come into force. The attorney general's position was that such information had not been released in the proper "prescribed form," but such regulations have never been drafted or come into effect.¹⁰² Since the Access to Information Law came into force in 2005, the attorney general has argued that law cannot be applied to release asset declarations to the public. This has not yet been tested in the courts. Interviewees from the Office of the Inspectorate of Government noted that, because the attorney general defends the IGG in court, it is difficult for them to test his legal advice in the courts.¹⁰³

A draft bill establishing the "prescribed form" to release information is also pending with cabinet, but in interviews with Human Rights Watch credible sources voiced considerable skepticism about its passage in a timely fashion, pointing out that the recently passed Anti-Money Laundering Bill floundered in cabinet for eight years. Ultimately, Uganda should urgently develop a system to ensure that financial assets of government leaders are scrutinized and available to the public. "In the absence of the leadership tribunal, we cannot enforce that act," said one prosecutor. "We need regulations and law because we need a system to make such information available to the public."¹⁰⁴

¹⁰¹ "IGG Gives Deadline," *New Vision*, October 18, 2002, <http://allafrica.com/stories/200210180568.html> (accessed August 13, 2013); and Edward Ojulu, "Uganda Leaders Declare Wealth," *The East African*, October 14, 2002, <http://allafrica.com/stories/200210180441.html> (accessed August 13, 2013).

¹⁰² Hussein Bogere, "IGG: We go for all fish, big or small," *The Observer*, April 3, 2011, http://www.observer.ug/index.php/index.php?option=com_content&view=article&id=12830%3Aigg-we-go-for-all-fish-big-or-small&Itemid=96.

¹⁰³ Human Rights Watch interview with prosecutor B, Kampala, July 25, 2013.

¹⁰⁴ *Ibid.*

III. Shortcomings in Anti-Corruption Laws

Overlapping Mandates of the IGG and DPP

“You have so many people working on the same thing. They’re not coordinating. Because of that, they clash.... Sometimes you don’t know which unit answers to whom. Sometimes there’s overlap ... so there’s no clear unit in charge of anti-corruption.”

—Human rights lawyer and anti-corruption activist, May 20, 2013¹⁰⁵

Uganda has a fairly robust set of laws to address corruption, but knowledgeable sources interviewed by Human Rights Watch flagged some areas of concern within the legal regime which if addressed could help to clarify roles and insulate prosecutors from political interference.

The Anti-Corruption Act grants both the Inspectorate of Government¹⁰⁶ and the Directorate of Public Prosecutions the power to prosecute offenses under the act.¹⁰⁷ As a result, prosecutors from both offices can prosecute cases before the Anti-Corruption Court.¹⁰⁸ By law the IGG can prosecute only government officials,¹⁰⁹ while the DPP can prosecute both government officials and private citizens. Beyond this distinction, however, no law sets forth any guidelines for when each agency is supposed to take on a case.

Current and former government officials in the DPP and IGG reported that the agencies have frequently discovered that they are both investigating the same case.¹¹⁰ Once parallel

¹⁰⁵ Human Rights Watch and the Lowenstein Clinic interview with an anti-corruption activist, Kampala, May 20, 2013.

¹⁰⁶ Two statutes specify the structure and scope of the IG’s authority: the 1995 constitution and the 2002 Inspectorate of Government Act. The 2002 Inspectorate of Government Act repealed the 1988 Inspectorate of Government Statute and revised the functions and composition of the Inspectorate of Government to be in line with Chapter 13 of the 1995 constitution. The Inspectorate of Government Act, Act, no. 5 of 2002, preamble.

¹⁰⁷ The Anti-Corruption Act, Act. no. 6 of 2009, art. 49.

¹⁰⁸ There are 8 DPP and 15 IGG prosecutors at the Anti-Corruption Court. Human Rights Watch and the Lowenstein Clinic interview with prosecutor B, Kampala, May 24, 2013; and prosecutor A, Kampala, May 21, 2013; and prosecutor C, Kampala, May 24, 2013.

¹⁰⁹ Inspectorate of Government Act, Act, no. 5 of 2002, art. 9.

¹¹⁰ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013; prosecutor C, Kampala, May 24, 2013; prosecutor B, Kampala, May 24, 2013; and Munira Ali, Principal Inspectorate Officer/Public Relations Officer, Inspectorate of Government Offices, Kampala, June 5, 2013.

investigations are discovered, the DPP and IGG coordinate informally and let the agency that is farther along in the case take over.¹¹¹ But the lack of systematic coordination between the DPP and IGG contributes to a confusion of responsibility since neither has complete ownership of anti-corruption prosecutions.¹¹² Because resolution of these occurrences is not formal and based purely on the personalities involved there is no guarantee that in the future the agencies will coordinate with each other in an effective manner.

This reliance on “after the fact” coordination also creates inefficiencies during investigations, wasting limited resources and personnel capacity. Prosecutors from the Inspectorate of Government use their own investigators, whereas prosecutors from the Directorate of Public Prosecutions rely on police to lead their inquiries.¹¹³ The police are widely perceived to be poor at investigating corruption cases.¹¹⁴ Prosecutors said a common problem is that police tend to arrest first and investigate later, sometimes violating the rights of defendants arrested without legally sufficient evidence.¹¹⁵ Individuals investigated by both agencies have also reportedly cited the duplicative efforts to claim that they are the subject of a “witch hunt,” which damages the credibility of both the IGG and DPP.¹¹⁶

The overlap also makes it difficult for the public and other key stakeholders to identify which agency is accountable for failures to investigate and prosecute specific incidents of corruption.¹¹⁷

Vague Legal Definitions

Many definitions of the over 20 offenses enumerated in the Anti-Corruption Act of 2009 are excessively broad or vague. Some offenses contain clear standards on the state of mind or intention of the offender,¹¹⁸ such as “intentional,” “knowing,” or “negligent,” but several

¹¹¹ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013; a prosecutor C, Kampala, May 24, 2013.

¹¹² Human Rights Watch and the Lowenstein Clinic interview with an anti-corruption activist, Kampala, May 20, 2013.

¹¹³ Human Rights Watch and the Lowenstein Clinic interviews with prosecutor B, Kampala, May 24, 2013; and prosecutor C, Kampala, May 24, 2013.

¹¹⁴ Human Rights Watch and Lowenstein interview with a former IGG investigator, Kampala, May 20, 2013; prosecutor B, Kampala, May 24, 2013; a lawyer, Kampala, May 19, 2013; and prosecutor A, Kampala, May 21, 2013.

¹¹⁵ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013; David Makumbi, Ombudsman Affairs Director, Inspectorate of Government, Kampala, May 24, 2013; and prosecutor B, Kampala, May 24, 2013.

¹¹⁶ Human Rights Watch and the Lowenstein Clinic interview with a lawyer, May 19, 2013.

¹¹⁷ Ibid.

¹¹⁸ For example, loss of public property, The Anti-Corruption Act, No. 6 of 2009, section 8.

offenses do not.¹¹⁹ Two egregious examples of excessively broad and vague offenses are “abuse of office”¹²⁰ and “causing financial loss.”¹²¹ The definition of abuse of office is “any arbitrary act prejudicial to the employers, in abuse of the authority of his or her office.” By using the term “in abuse of the authority of his or her office,” to define the abuse of office offense, the statute provides essentially no guidance as to what behavior constitutes a crime. Among the 88 anti-corruption cases analyzed by Human Right Watch and the Lowenstein Clinic, abuse of office was the most common charge (42 percent). One Ugandan criminal defense attorney said, “Under that law, it is possible to charge anybody.”¹²² In contrast, the UN Convention Against Corruption defines a similar offense with greater specificity, as “the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity ... when committed intentionally.”¹²³ The UN definition requires intention to commit a crime, a nexus with violation of a separate law, and that the offender have the objective of obtaining undue advantage, thereby constraining the circumstances in which a charge may be brought.

“Causing financial loss” refers to employees of the government, a bank, insurance company, or credit institution who, in the performance of duties, knowingly (or having reason to believe) commits an act or omission that “causes financial loss” to the organization.¹²⁴ This language encompasses a broad array of activities, including decisions that carry financial risk that are common to the banking and insurance industries, as well as decisions concerning public procurement and regulations. About one quarter of defendants in the 88 anti-corruption cases analyzed by Human Rights Watch and the Lowenstein Clinic were charged with “causing financial loss” (26 percent). A higher threshold of “intentional” conduct rather than the lower threshold of “knowing” conduct would constrain application of the law in such a way that is neither abusive nor wasteful of prosecutors’ and courts’ time given the constraints and case backlogs.

¹¹⁹ For example, diversion of public resources, *Ibid.*, section 6.

¹²⁰ *Ibid.*, sect. 11.

¹²¹ *Ibid.*, sec. 20.

¹²² Human Rights Watch and the Lowenstein Clinic interview with Ladislaus Rwakafuuzi, criminal defense attorney, Kampala, May 20, 2013.

¹²³ UN Convention Against Corruption, art. 19, “Abuse of Functions.”

¹²⁴ The Anti-Corruption Act, No. 6 of 2009, sec. 20.

The result of these broad and vague provisions is that the DPP and IGG enjoy great discretion to interpret the law that may allow for political motivations to drive investigation and prosecutorial decisions.

Security of Tenure

The IGG is appointed by the president with the approval of parliament for a term of four years with the possibility of a single reappointment by parliament for another four year term.¹²⁵ Some interviewees noted that the brevity of these terms is problematic given the complexity of the litigation, which often takes years to complete. The shortness of the terms also results in reduced job security and therefore greater susceptibility to outside influence. Some also noted that the mechanism of re-appointment via parliamentary approval could potentially deter an IGG from prosecuting ministers who would likely be present and could take the opportunity to embarrass them and/or rally others to deny them reappointment.

The Office of the Inspectorate of Government has encountered numerous rotations and in recent years, no person has served as IGG for the full eight-year term. Justice Faith Mwendha refused to go before the parliamentary appointments committee in 2009 which resulted in her serving only one term.¹²⁶ She argued that parliamentary approval was not required for her reappointment, given that the president had approved it himself.¹²⁷ Deputy IGG Raphael Baku served as acting IGG for three years before Justice Irene Mulyagonja's appointment in July 2012.¹²⁸ Baku left office as Deputy IGG in 2009 due to his completion of two four-year terms, the maximum allowed in law for that post too.¹²⁹ The head of the Anti-Corruption Division of the High Court, Justice Paul Kahaibale Mugamba, noted that this "lack of continuity and consistency" in the leadership of the IGG affected the competence of its prosecutors.¹³⁰ One former IGG prosecutor pointed out the difficulties in turnover, stating, "You have a drastic turnover of top leadership at the

¹²⁵ Constitution of the Republic of Uganda, art. 223(4), (7).

¹²⁶ Charles Ariko "Faith Mwendha Vacates IGG Office, Hands Over Vehicles," *New Vision*, July 13, 2009.

¹²⁷ Cyprian Musoke and Barbara Among, "IGG Defies Parliament," *New Vision*, April 1, 2009; US Department of State, "Ugandan IGG's Ambitions Threaten Anti-Corruption," cited in WikiLeaks cable ID: 09KAMPALA175, February 19, 2009, <http://wikileaks.org/cable/2009/02/09KAMPALA175.html> (accessed August 15, 2013).

¹²⁸ Edris Kiggundu, "Museveni Counsels New IGG," *The Observer*, July 5, 2012.

¹²⁹ Edward Anyoli, "Deputy IGG Leaves Office," *New Vision*, February 24, 2013.

¹³⁰ Human Rights Watch and the Lowenstein Clinic interview with Justice Paul Kahaibale Mugamba, head of the Anti-Corruption Division of the High Court, Kampala, May 24, 2013.

IGG so you have a top guy who doesn't understand the internal dynamics and can't put in place the programs necessary."¹³¹

Both the IGG and the auditor general are appointed by the president with the approval of parliament. And both may only be removed from office for exceptional and enumerated reasons: infirmity, misconduct, or incompetence.¹³² But the auditor general has no time limit of the term in office, giving the office relative security of tenure. According to Auditor General John Muwanga, "Security of tenure enables me to comment and criticize freely, without worry of being fired, of getting no contract." The Office of the Auditor General is widely considered one of the more effective anti-corruption bodies in Uganda. It was the office of the auditor general, for example, that revealed the existence and extent of the OPM scandal in 2012.

Extending the term of the IGG and recusing any ministers under investigation from participating in the reappointment process would give the IGG greater job security and ensure that the appointments process is free of conflicts of interest, as much as possible.

¹³¹ Constitution of the Republic of Uganda, arts. 163(10) and 224.

¹³² Inspectorate of Government Act, Act, no. 5 of 2002.

IV. Obstacles to Successful Prosecutions

“Political pressure on the IG [Inspectorate of Government] coupled with bribery of court officials hinders prosecution.”

—Inspectorate of Government, Report to Parliament, June 2012

“I left [the Inspectorate of Government].... Within me, I got this contradiction that I can’t keep working with a government that protects top officials against prosecution while I go prosecuting teachers and accountants.”

—Former investigator for the Inspectorate of Government, May 20, 2013

The vast majority of individuals convicted in Uganda have been low-level, local government officials. Prosecutions of ministers and influential individuals—the “big fish”—are rarely successful. Only one minister, Hon. Mike Mukula, has ever been convicted at trial, and that conviction was overturned shortly thereafter.¹³³ Instead, ministers are censured by parliament, lose their positions, are prosecuted and acquitted, and then are reappointed,¹³⁴ in what one donor called “a game of musical chairs.”¹³⁵

The Record of the Anti-Corruption Court

The Anti-Corruption Court is the key institution to bring perpetrators of corruption to account.¹³⁶ In the 88 first instance cases analyzed by Human Rights Watch and the Lowenstein Clinic, the Anti-Corruption Court convicted defendants 68 percent of the time, but these convictions are concentrated among low-level, local government workers. Local government workers made up the majority of defendants (65 out of 106 defendants, or 61

¹³³ Anne Mugisa and Edward Anyoli, “Uganda: The Genesis of Mukula’s Troubles,” *New Vision*, January 20, 2013, <http://allafrica.com/stories/201301210455.html> (accessed July 24, 2013).

¹³⁴ In 2012, President Museveni reappointed three senior government officials—Foreign Affairs Minister Sam Kutesa, government Chief Whip John Nasasira, and Labor Minister Mwesigwa Rukutana—while they were being investigated for corruption. Elias Biryabarema, “Uganda president reappoints officials accused of graft,” Reuters, Aug 15, 2012, www.reuters.com/article/2012/08/15/us-uganda-cabinet-idUSBRE87EoWF20120815 (accessed June 16, 2013); Human Rights Watch and the Lowenstein Clinic interview with Hon. Gerald Karuhanga, member of Public Accounts Committee, Kampala, May 21, 2013; and a former prosecutor, Kampala, May 21, 2013.

¹³⁵ Human Rights Watch and the Lowenstein Clinic interview with a consultant to a multilateral donor, Kampala, May 23, 2013.

¹³⁶ Established in 2008, the Anti-Corruption Division of the High Court was formed as a result of public demand for a specialized court to try high profile corruption and related offences.

percent), and the amounts of money that they were alleged to have illegally acquired in their cases were low (the average was \$1,300).

Of the 106 defendants, 3 were nongovernmental workers who were all convicted and 62 individuals convicted were local government workers. Representing conviction rates of 100 and 80 percent respectively, these are the highest rates whereas the lowest conviction rates were for central government leaders (33 percent, n=3)¹³⁷ and central government workers (20 percent, n=5). Only one central government leader, former State Minister for Health Mike Mukula, was convicted—and his conviction was overturned on appeal.¹³⁸ The average amounts that leaders—at both central and local levels—were accused of illegally taking are the highest among all cases (\$120,000 for central government, \$25,000 for local government).

Fifty-seven out of 106 defendants (54 percent) were prosecuted for amounts less than \$1,000. Interviewees corroborated the lack of prosecutions of high-level government officials. Only seven ministers have ever been charged with crimes for corruption-related behavior and all were eventually acquitted.¹³⁹ “It’s a statement by the president,” a prosecutor at the Anti-Corruption Court said. “Look, we’re taking them to courts. We don’t control the courts.’ But we know that’s not true.”¹⁴⁰

As a private criminal defense attorney told Human Rights Watch, “the petty corruption is prosecuted beautifully in Uganda.”¹⁴¹ Prosecutors in Uganda deserve some praise for prosecuting petty corruption cases carefully and capably. But the contrast is all the starker given the failure to convict the “bigger fish.”

¹³⁷ Central government leaders are deputy ministers and above, or deputy heads of independent agencies and above. The three central government leaders are Mike Mukula (state minister for health), Gilbert Bukenya (vice-president), and Kiyingi David Nyimbwa (assistant commissioner of procurement).

¹³⁸ *Flt. Cpt. George M. Mukula v. Uganda*, High Court of Uganda at Kololo, Anti-Corruption Division, HCT-00-AC-CN-0001 of 2013, Judgment, March 13, 2013, <http://www.ulii.org/ug/judgment/high-court/2013/37> (accessed July 15, 2013).

¹³⁹ In 2009, health minister Jim Muhwezi and state minister of health Mike Mukula were prosecuted. From 2012, Minister for Works John Nasasira, Minister for Foreign Affairs Sam Kutesa, Minister of Gender and Labour Rukutana Mwesigwa, Minister of Health Jim Muhwezi, and state minister of health Alex Kamugisha were prosecuted.

¹⁴⁰ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013.

¹⁴¹ Human Rights Watch interview with a private criminal defense attorney, Kampala, May 22, 2013.

Political Influence and Corruption in the Gathering of Evidence

Convictions are highly dependent on the quality of the evidence presented before the courts. Corruption cases in Uganda are often dismissed and defendants acquitted due to lack of evidence. While problems of capacity¹⁴² and training undermine the ability to collect the necessary evidence, many interviewees with significant experience in the sector cited the lack of political will as the biggest obstacle to securing sufficient evidence for successful convictions. Multiple interviewees, including prosecutors, specified that interference from the president or perceived to be from him via those working in his office is a serious problem.¹⁴³

Political influence most often takes the form of bribes, and the low salaries of civil servants increase their susceptibility. For example, investigating police officers have the responsibility to collect evidence that will later be necessary at trial. Police officers and investigators at the Inspectorate of Government, however, are paid poorly, and often late, rendering them susceptible to bribery so that they intentionally overlook key evidence or conduct poor investigations.¹⁴⁴ Bribery can thus result in a lack of evidence and be sufficient to prevent a case from going forward.¹⁴⁵

Former IG officials said they were offered bribes by high-level government officials or their agents to throw cases and faced threats if they refused.¹⁴⁶ The biggest bribes reportedly came during investigations of the “big fish.” One former IG prosecutor recounted being offered 20 million Uganda shillings (approximately \$ 7,800) to let a case be dismissed—with the promise of “an extra zero at the end of the figure” if all “went well.”¹⁴⁷

One former investigator from the Inspectorate of Government described the difficulty of pursuing “high profile cases”:

¹⁴² One prosecutor at the Anti-Corruption Court pointed out that numerous capacity issues resulted in failed cases. He said that police sometimes lacked the skills to investigate corruption offenses, such as fraudulent accounting. In addition, the lack of handwriting experts and the fact that all work is done in hard copy resulted in inefficiencies.

¹⁴³ Human Rights Watch and the Lowenstein Clinic interview with a former prosecutor, Kampala, May 21, 2013; prosecutor A, Kampala, May 21, 2013; an anti-corruption activist, Kampala, May 20, 2013; an anti-corruption activist, Kampala, May 23, 2013; prosecutor B, Kampala, May 24, 2013; and a journalist, Kampala, May 29, 2013.

¹⁴⁴ Human Rights Watch and the Lowenstein Clinic interview with John Muwanga, Auditor General, Kampala, May 31, 2013.

¹⁴⁵ Ibid.

¹⁴⁶ Human Rights Watch and the Lowenstein Clinic interview with a former IGG investigator, Kampala, May 20, 2013; and a former prosecutor, Kampala, May 21, 2013.

¹⁴⁷ Human Rights Watch and the Lowenstein Clinic interview with a former prosecutor, Kampala, May 21, 2013.

“By the time you finish reading through a case, inside you wonder, ‘Will I manage this?’ At the operational level, one, they are not paying me enough salary. Two, my staff are not trained enough to confront that fraud. Number three, the risk involved. You are going to investigate a minister, you have no security, and the amount involved is too much. And you are so sure that they won’t sit down and allow you to investigate.”¹⁴⁸

Hence, he said, “Those high profile cases, we never liked to investigate them. Those of us who liked investigating them, you wouldn’t tell anyone where you live, or where you socialize.... There is a lot of fear behind every high profile case.”¹⁴⁹

A former IGG investigator said that when he refused a bribe from a defendant, the defendant then claimed in court that the investigator had tried to exact a bribe from the defendant. “That’s when I began losing interest in taking any case to court.... From that day, I lost faith in what you would call the court system. Because if you don’t bribe the officers, somebody will be bribed in the court system, and somebody will get away.”¹⁵⁰

Threats to Prosecutors and Witnesses

Two former employees of the Inspector General of Government said that when investigators or prosecutors refused bribes, they received threats.¹⁵¹ The pressure and the scale of the threats increased during high-profile scandals, leading some to fear for their safety and the safety of their families. One former IGG prosecutor reported finding his dogs dead and receiving an anonymous call asking him how his dogs were doing.¹⁵² He also recounted that, after refusing a bribe from the high-level official he was prosecuting, he received a phone call from an unidentified individual asking if he was “bullet-proof,” told him the exact amount of money in his bank account, and advised him not to refuse the money.¹⁵³

¹⁴⁸ Human Rights Watch and the Lowenstein Clinic interview with a former IGG investigator, Kampala, May 20, 2013.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.; and Human Rights Watch and the Lowenstein Clinic interview with a former prosecutor, Kampala, May 21, 2013.

¹⁵² Human Rights Watch and the Lowenstein Clinic interview with a former prosecutor, Kampala, May 21, 2013.

¹⁵³ Ibid.

An Anti-Corruption Court prosecutor said that the government used prosecution as political leverage to keep political cadres in line.¹⁵⁴ “There are cases where somebody is being prosecuted. The evidence is there. But that’s not why he’s being prosecuted. It’s because he’s being investigated for something else. The government is trying to get him back on board. If he doesn’t cooperate, we prosecute.”¹⁵⁵ When the political calculations change, witnesses retract statements, evidence falls away, and ultimately the prosecutions unravel.

In a well-known example, Hon. Mike Mukula was quoted to have ambitions to run for president in 2016 in a WikiLeaks cable.¹⁵⁶ Media reports suggested that those ambitions were the reason he was initially successfully prosecuted and convicted, and that it was only once he publicly abandoned those ambitions that his conviction was reversed on appeal.¹⁵⁷ At the time of his conviction, leaders from his home region were quoted in the press, saying “Mukula made a big mistake. You cannot be in Museveni’s government and say openly that you want to take his job. You will be asking for trouble.”¹⁵⁸ Similarly, there were rumors that Vice President Bukenya was initially prosecuted because of rumors of a possible presidential run in 2016.¹⁵⁹ As one parliamentarian noted, “The moment you stick your neck out and express interest in the top job, you’re in trouble.”¹⁶⁰

Prosecutors reported occasionally feeling pressure to manipulate the timing of cases in order to benefit certain defendants. One prosecutor felt his superiors were “on speed dial with the president” and reported receiving phone calls, both from his superiors and from unidentified individuals he believed to be associated with the government, to delay going to trial despite having strong evidence.¹⁶¹ Delays also allow for extra time to buy off or pressure key witnesses. Cases dragging on for years led to the loss of

¹⁵⁴ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013.

¹⁵⁵ Ibid.

¹⁵⁶ US Department of State, “Ugandan IGG’s Ambitions Threaten Anti-Corruption,” cited in WikiLeaks cable ID: 09KAMPALA175, February 19, 2009, <http://wikileaks.org/cable/2009/02/09KAMPALA175.html> (accessed August 15, 2013).

¹⁵⁷ Timothy Nsubuga, “Mukula Conviction is Persecution,” January 21, 2013, *Uganda Correspondent*, <http://www.ugandacorrespondent.com/articles/2013/01/mukula-conviction-is-persecution-%E2%80%93-teso-elders/>.

¹⁵⁸ Ibid. Another leader from Mukula’s region was quoted as saying, “We know that these so-called ‘NRM historicals’ from Museveni’s area operate like mafias. Why is it that of all the hundreds of corrupt NRM people, it’s only our son Mukula who has been jailed?”

¹⁵⁹ “Bukenya paying for his presidential ambitions?” *Sunrise News*, October 6, 2011. <http://www.sunrise.ug/news/top-stories/3171-bukenya-paying-for-his-presidential-ambitions>.

¹⁶⁰ Ibid.

¹⁶¹ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013.

evidence and witnesses.¹⁶² In other cases, prosecutors reported being pressured by their superiors to go to trial before they were ready, resulting in cases being dismissed—often for lack of evidence.¹⁶³

Criminal defense attorneys who had practiced in the Anti-Corruption Court said that intentionally causing delays is a common litigation tactic.¹⁶⁴ Attorneys said that in particular, lodging an appeal in Constitutional Court is a favored way to delay prosecution.¹⁶⁵ The lack of a quorum at the Constitutional Court causes cases to stall immediately. One former IGG investigator said he was called as a principal witness in 2012 for a case he had investigated seven years earlier.¹⁶⁶ Delays then resulted in loss of evidence and witnesses relocating or forgetting key details.¹⁶⁷

Some interviewees pointed out that high-profile defendants enriched by corruption could afford to pay experienced private attorneys, whereas the prosecuting state attorneys were inexperienced, overworked, and/or easily intimidated.¹⁶⁸ The relative wealth of high-ranking defendants in corruption cases also provides opportunities for bribes to state attorneys.¹⁶⁹ Low-level, local government workers accused of corruption often cannot afford to pay private counsel. One criminal defense attorney who had represented defendants in the Anti-Corruption Court said that his defendants, all “lower cadre [public] servants” such as police officers, could be easily prosecuted “because their capacity to fight is limited.”¹⁷⁰

¹⁶² Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013; and a former IGG investigator, Kampala, May 20, 2013.

¹⁶³ Ibid.

¹⁶⁴ Human Rights Watch and the Lowenstein Clinic interview with Isaac Semakadde, criminal defense attorney, Kampala, May 20, 2013; David Mpanga, private attorney, Kampala, May 22, 2013; and MacDosman Kabega attorney, Kampala, May 23, 2013.

¹⁶⁵ Human Rights Watch and the Lowenstein Clinic interview with Isaac Semakadde, criminal defense attorney, Kampala, May 20, 2013; MacDosman Kabega attorney, Kampala, May 23, 2013; and John Mary Mugisha, criminal defense attorney, Kampala, May 23, 2013.

¹⁶⁶ Human Rights Watch and the Lowenstein Clinic interview with a former IGG investigator, Kampala, May 20, 2013.

¹⁶⁷ Human Rights Watch and the Lowenstein Clinic interview with Isaac Semakadde, criminal defense attorney, Kampala, May 20, 2013; and prosecutor A, Kampala, May 21, 2013.

¹⁶⁸ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013; and a former IGG investigator, Kampala, May 20, 2013.

¹⁶⁹ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013.

¹⁷⁰ Human Rights Watch and the Lowenstein Clinic interview with Ladislaus Rwakafuuzi, criminal defense attorney, Kampala, May 20, 2013.

High-level corruption can require the complicity of many individuals within an office acting in concert.¹⁷¹ As a result, in order to convict the top leadership, prosecutors sometimes make decisions to drop charges against some of the staff members and low-level officials so that they will testify against those at the top.¹⁷² However, in several prominent cases key witnesses called by prosecution ultimately flipped sides and testified in favor of the defense after taking the stand.¹⁷³

Interviewees cited the difficulty in testifying against a minister in open court, especially given well-founded fears that the minister is likely to remain in office or in a position of influence after the prosecution. A prosecutor at the Inspectorate of Government lamented the fact that the president had refused to suspend ministers while under investigation: “If the ministers remain in office and the witnesses are still working in the very ministries they’re heading, how do you expect some junior officer to testify in court against the minister?”¹⁷⁴

The ability of a witness to give evidence in court or to cooperate with investigations without fear of reprisal is indispensable to maintaining rule of law. Several lawyers and prosecutors working on corruption cases told Human Rights Watch that their witnesses were often bribed or intimidated into silence.¹⁷⁵ The main method seems to be bribes in exchange for not testifying, with threats coming at the tail end of the witness refused to accept the bribes.¹⁷⁶ One former investigator recounted the difficulty he had in getting witnesses to testify against the leaders of an eastern district. He was able to gather evidence during investigations, but all the witnesses became hostile and changed their stories once in court. He believed they had been threatened. One witness, a civil servant two years from retirement, later apologized to the prosecutor for not cooperating, saying he had been threatened with the loss of his pension or life.¹⁷⁷ One long time anti-corruption

¹⁷¹ Human Rights Watch and the Lowenstein Clinic interview with Valentine Mulindwa, Center for Justice Studies and Innovation, Kampala, May 22, 2013.

¹⁷² Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013; a former IGG investigator, Kampala, May 20, 2013; and a former prosecutor, Kampala, May 21, 2013.

¹⁷³ Human Rights Watch and the Lowenstein Clinic interview with a former IGG investigator, Kampala, May 20, 2013; a former prosecutor, Kampala, May 21, 2013; prosecutor A, Kampala, May 21, 2013; and prosecutor B, Kampala, May 24, 2013.

¹⁷⁴ Human Rights Watch and the Lowenstein Clinic interview with prosecutor B, Kampala, May 24, 2013.

¹⁷⁵ Ibid.; a former IGG investigator, Kampala, May 20, 2013; former prosecutors, Kampala, May 21, 2013; and prosecutor A, Kampala, May 21, 2013.

¹⁷⁶ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013.

¹⁷⁷ Human Rights Watch and the Lowenstein Clinic interview with a former prosecutor, Kampala, May 21, 2013.

prosecutor reflected on his career saying, “I realized that without a witness protection program, structural protection for witnesses, you can’t succeed with this.”¹⁷⁸

The executive’s personal and public support of ministers under investigation provides little incentive for witnesses to testify against these ministers.¹⁷⁹ One donor noted the “absolute sense of impunity that they [the ruling elite] can get away with anything.”¹⁸⁰ With little assurance that risking their jobs will secure a conviction, witnesses rarely testify against politically shielded ministers. Without the testimony of those who can identify high-level officials as the orchestrators of corruption, prosecutors are left with little evidence and lower-level officials take the fall.

A draft Witness Protection Bill is still undergoing technical review by Uganda’s Law Reform Commission but could be forwarded to cabinet by the end of 2013. According to those working on the draft, it draws heavily from the UN Office of Drugs and Crime Model Witness Protection Law as well as Kenyan and South African legislation.¹⁸¹ Ensuring that such legislation can be passed and meaningfully funded and implemented might assist to mitigate some of the problems of witness intimidation in corruption trials.

¹⁷⁸ Human Rights Watch and the Lowenstein Clinic interview with a former prosecutor, Kampala, May 21, 2013.

¹⁷⁹ Ibid. President Museveni reportedly paid former State Minister for Health Mike Mukula’s legal fees, a sum of \$38,600, to secure his acquittal on appeal. David Lumu, “Museveni gives Mukula Shs 100 million for legal fees,” *The Observer*, March 4, 2013, <http://allafrica.com/stories/201303040200.html> (accessed August 5, 2013).

¹⁸⁰ Human Rights Watch and the Lowenstein Clinic interview with donor governance advisor 2, Kampala, May 24, 2013.

¹⁸¹ Human Rights Watch email communication with OHCHR, August 5, 2013. See UNODC model law, <http://www.unrol.org/doc.aspx?d=2576>. The hold up with this law is reportedly because officials from the Law Reform Commission are seeking financial support for a “study tour” to learn from other jurisdictions.

V. Harassment and Intimidation of Anti-Corruption Activists

“Corruption has infringed on basic rights like health, food, and a stable living. What’s made it even worse is that when we were so disgruntled, when we wanted to discuss it and talk about how to change things, we’re being told we can’t speak. My final right has been stripped away from me.... Instead of sorting the problems, they shut up the victims.”

—Anti-corruption activist, May 20, 2013¹⁸²

Throughout 2013, civil society activists working to raise corruption issues and educate citizens about corruption have met with government efforts to silence them. These actions belie the government’s long-standing promises to both its citizens and international donors to root out corruption.

In November 2012 a coalition of around 50 civil society groups organized a campaign known as the Black Monday movement.¹⁸³ The participants wear black every Monday to highlight the theft of public money, raise awareness of corruption’s effect on citizens’ lives, and protest the impunity of government officials who have not been held accountable.¹⁸⁴ Activists also publish and distribute monthly newsletters that highlight corruption’s impact on various sectors, such as education, health, youth, taxes, and the police.

Police arrested and charged at least 28 individuals handing out Black Monday materials in the first ten months of 2013.¹⁸⁵ Nineteen were charged with inciting violence; five with possession of prohibited publications; and three with spreading of harmful propaganda.

¹⁸² Human Rights Watch and the Lowenstein Clinic interview with an anti-corruption activist, Kampala, May 20, 2013.

¹⁸³ Human Rights Watch and the Lowenstein Clinic interview with Arthur Larok, Executive Director of Action Aid, Kampala, May 21, 2013.

¹⁸⁴ Human Rights Watch and the Lowenstein Clinic interviews with Bishop Zac Niringiye, anti-corruption activist, Kampala, May 19, 2013; an anti-corruption activist, Kampala, May 23, 2013; Arthur Larok, Kampala, May 21, 2013; and an anti-corruption activist, Kampala, June 1, 2013. The four objectives of the movement are to 1) to highlight the mortality rates of women and children due to corruption; 2) encourage social shunning of corrupt politicians; 3) boycott businesses owned by corrupt politicians; and 4) demand action by the president to address corruption.

¹⁸⁵ Uganda National NGO Forum, “Summary of Threats and Cases of Attack on NGOs between 2012 and 2013,” undated, on file with Human Rights Watch and the Lowenstein Clinic; and Human Rights Watch mail communication with anti-corruption activists, October 7, 2013.

Most of those 28 were stopped from distributing Black Monday materials and held between three and ten hours in police detention before being released without charge. Of those charged, all were eventually released on police bond and continue to report to police on weekly or bi-weekly basis, for one or two months, as a condition of their bond.

Several of those arrested are long-standing, well-respected members of civil society. Police arrested anti-corruption activist and Executive Director of Action Aid Arthur Larok, and Leonard Okello, the Executive Director of the Uhuru Institute and the former director of Community Health Alliance, in January for distributing a newsletter about corruption on the street.¹⁸⁶ Police also arrested a nearby airtime seller for receiving and reading the newsletter.¹⁸⁷ They were detained for a few hours and eventually released.¹⁸⁸ In October, Job Kiiija, who works with Uganda NGO Forum, was arrested after giving an interview to the press while handing out Black Monday materials to market vendors in Kampala's Owino market. He was charged with inciting violence and unlawful assembly, detained for a few hours, and released.¹⁸⁹

Another anti-corruption activist who had been arrested separately in January 2013 for passing out the same newsletters at a church described her arrest: "I thought only criminals were arrested until it happened to me.... Just being in the police car itself is terrible. Going into the cell, taking off your shoes. It was dirty, stinking, it smelled of urine."¹⁹⁰ She was released on police bond and continues reporting to police. "Chances are that's what they do so that they keep you in fear and frustrate you," she said.¹⁹¹

In February 2013, police arrested religious leader and former bishop David Zac Niringiye along with nine students for handing out newsletters near the campus of Makerere University.¹⁹² After their arrest, the activists were interrogated and detained in total for

¹⁸⁶ Human Rights Watch and the Lowenstein Clinic interview with Arthur Larok, Executive Director of Action Aid, Kampala, May 21, 2013.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Human Rights Watch mail communication with anti-corruption activists, October 7, 2013.

¹⁹⁰ Human Rights Watch and the Lowenstein Clinic interview with an anti-corruption activist, Kampala, June 1, 2013.

¹⁹¹ Ibid.

¹⁹² Human Rights Watch and the Lowenstein Clinic interview with Bishop Zac Niringiye, anti-corruption activist, Kampala, May 19, 2013.

around nine hours at a police station.¹⁹³ Police released them on bond under the charge of “incitement to violence.” The activists then had to report to the police on a weekly basis for around two months before charges were dropped.¹⁹⁴ Bishop Niringiye, referring to the over ten police officers sent to arrest him, noted, “The priority in building capacity for police has been to improve the capacity to arrest us, not to investigate [corruption].”¹⁹⁵

This spate of arrests in 2013 is pernicious in that it demonstrates a concerted effort on the part of police to obstruct citizens’ access to information about how corruption affects government services. So far, no one has faced trial but the arrests themselves accomplish multiple objectives; the distribution is obstructed so that people do not access the information unless they seek it on the internet, which is out of financial reach for many Ugandans. Others are discouraged and intimidated from joining the Black Monday Movement for fear of also being arrested and charged with crimes. And the activists themselves are significantly inconvenienced. Over half of them are still required to report to police on a weekly or monthly basis as a condition of their bond, wasting their time and requiring money for transport. Some were purposely forced to report to police on Mondays, preventing them from organizing and taking part in regular weekly protest activities.¹⁹⁶

Donors have routinely discussed the importance of increasing the “demand side” as part of supporting accountability efforts. But donors have been relatively weak in publicly condemning the arrests of Black Monday activists or pushing police for any evidence of wrongdoing. One donor told Human Rights Watch that he had voiced concern for the arrests with members of government, only to be told that though the government agrees with the Black Monday Movement messaging, they don’t like the “way in which it is done.”¹⁹⁷

Arrest and harassment of anti-corruption activists has escalated in recent year as civil society across multiple sensitive topics have faced threats of deregistration and closing

¹⁹³ Human Rights Watch and the Lowenstein Clinic interview with Bishop Zac Niringiye, anti-corruption activist, Kampala, May 19, 2013.

¹⁹⁴ Human Rights Watch and the Lowenstein Clinic interview with an anti-corruption activist, Kampala, May 24, 2013.

¹⁹⁵ Human Rights Watch and the Lowenstein Clinic interview with Bishop Zac Niringiye, anti-corruption activist, Kampala, May 19, 2013.

¹⁹⁶ Human Rights Watch and the Lowenstein Clinic interview with an anti-corruption activist, Kampala, May 24, 2013.

¹⁹⁷ Human Rights Watch interview with a World Bank official, Kampala, July 11, 2013.

down of meetings and workshops.¹⁹⁸ For example, in February 2011, days before the presidential elections, at least 10 activists were arrested for passing out leaflets protesting Museveni's dispensing of 20 million Ugandan shillings (approximately \$8,500) to each parliamentarian under the guise of funding oversight of a national agricultural program.¹⁹⁹ The leaflets were part of the Respect Your Honor and Return Our Money Campaign, aimed at getting parliamentarians to refuse the money. One activist arrested during this campaign said, "What we realized is that the regime feels embarrassed to be seen arresting anti-corruption activists, but they also feel that corruption is actually the only thing that can bring them down."²⁰⁰

In 2009 Reverend Jasper Tumuhimbise, former director of the Anti-Corruption Coalition Uganda (ACCU), went into hiding after publishing a survey on officials Ugandans perceived as corrupt.²⁰¹ He received menacing phone calls and visits from security personnel questioning who the ACCU's donors were. A minister threatened Tumuhimbise on public radio, saying he would "crush him."²⁰²

Journalists reporting on corruption have also experienced harassment and intimidation from government officials.²⁰³ In one recent instance early in 2013 a journalist at a Kampala media house reported facing harassment by a government minister to drop coverage of alleged corruption.²⁰⁴ The government minister reportedly called the journalist's editor, demanding that he be fired or that the paper would lose advertising contracts in the future.²⁰⁵

¹⁹⁸ Human Rights Watch, *Curtailling Criticism: Intimidation and Obstruction of Civil Society in Uganda*, August 21, 2012, <http://www.hrw.org/reports/2012/08/21/curtailling-criticism>.

¹⁹⁹ "Uganda: Halt Pre-Election Intimidation Campaign," Human Rights Watch news release, February 11, 2011, <http://www.hrw.org/news/2011/02/10/uganda-halt-pre-election-intimidation-campaign>. Human Rights Watch and the Lowenstein Clinic interview with an anti-corruption activist, Kampala, May 24, 2013. Emmanuel Mulondo and Yasiin Mugerwa, "10 Activists Arrested Over MPs' Sh20 Million 'Bribe,'" February 8, 2011, <http://allafrica.com/stories/201102080102.html> (accessed July 16, 2013).

²⁰⁰ Human Rights Watch and the Lowenstein Clinic interview with an anti-corruption activist, Kampala, May 24, 2013.

²⁰¹ US Department of State, "Uganda: USG Supported Anti-Corruption Activist Threatened," cited in WikiLeaks cable ID: 10KAMPALA13, January 7, 2010, <http://wikileaks.org/cable/2010/01/10KAMPALA13.html> (accessed October 2, 2013).

²⁰² Human Rights Watch and the Lowenstein Clinic interview with a former IGG investigator, Kampala, May 24, 2013.

²⁰³ Human Rights Watch, *A Media Minefield: Increased Threats to Freedom of Expression in Uganda*, May 2, 2012, <http://www.hrw.org/reports/2010/05/02/media-minefield-o>.

²⁰⁴ Human Rights Watch and the Lowenstein Clinic interview with a journalist, Kampala, May 29, 2013.

²⁰⁵ *Ibid.*

The “OPM” Scandal 2012-2013

Donors reacted assertively following revelations in mid-2012 that more than 12 million euros had been misappropriated by the Office of the Prime Minister. The four countries directly impacted by the graft—Ireland, Norway, Sweden, and Denmark— responded by immediately suspending outstanding aid to Uganda. Ireland and the UK also sent their own forensic audit teams to Uganda to investigate the corruption.²⁰⁶

In the following months, the other donors providing direct budget support to Uganda also halted their aid.²⁰⁷ In addition, the European countries whose funds had been stolen demanded repayment from the Ugandan government, a demand that was satisfied by early 2013.²⁰⁸ The donors also negotiated a high-level “matrix” with the Ugandan government containing eight action items necessary to restore donor confidence and resume normal funding.²⁰⁹

Along with recovery of funds, donors also demanded that Uganda levy administrative sanctions against public officials involved in the corruption, seek legal remedies including prosecutions, overhaul its

²⁰⁶ “Tánaiste suspends aid to Ugandan Government and announces investigation of fraud allegations,” Irish Aid press release, October 10, 2012, <http://www.irishaid.ie/news-publications/press/pressreleasearchive/2012/october/mos-suspends-ugandan-aid/> (accessed August 14, 2013); “Tánaiste welcomes commitment from Government of Uganda to repay funds misappropriated from Irish Aid,” Irish Aid press release, November 5, 2012, <http://www.irishaid.ie/news-publications/press/pressreleasearchive/2012/november/tanaiste-government-of-uganda-funds-misappropriate/> (accessed August 14, 2013); “Uganda: UK suspends aid to government,” Department for International Development, November 16, 2012, <http://www.dfid.gov.uk/News/Latest-news/2012/Uganda-UK-suspends-aid-to-government/> (accessed August 14, 2013).

²⁰⁷ “The Role of Development Partners and International Actors in the fight against graft,” speech by Roberto Ridolfi, EU Ambassador, Hotel Africana, Kampala, December 3, 2012, <http://www.deluga.ec.europa.eu/index.php/delegation-activities-in-uganda/political-press-information/press-and-info/speeches-press-conference/14-speeches/163-h-e-roberto-ridolfi-the-role-of-development-partners-and-international-actors-in-the-fight-against-graft-dec-3-2012> (accessed August 14, 2013).

²⁰⁸ “Scandinavian countries ask Uganda to return stolen aid,” Agence France-Press, January 28, 2013, <http://reliefweb.int/report/uganda/scandinavian-countries-ask-uganda-return-stolen-aid> (accessed August 14, 2013). Norway only asked for a partial refund, since it had paid money into a special account that made it easier to detect fraud, while the other countries had deposited money into a joint account.

²⁰⁹ Donor Matrix, on file with Human Rights Watch and the Lowenstein Clinic.

financial management systems, fully constitute the IGG, and strengthen anti-corruption legislation relating to anti-money laundering and take steps toward establishing the Leadership Code Tribunal.²¹⁰

In June, 2013, the accountant working for the OPM, Geoffrey Kazinda was convicted and sentenced to five years for abuse of office.²¹¹ He has appealed that decision.²¹² Investigations into the OPM scandal continue.

²¹⁰ Ibid.

²¹¹ "Kazinda guilty, rules High Court," *Daily Monitor*, June 20, 2013, <http://www.monitor.co.ug/News/National/Kazinda-is-guilty--rules-High-Court/-/688334/1888584/-/hi7ha2/-/index.html> (accessed August 22, 2013).

²¹² "Kazinda appeals against five-year jail sentence," *New Vision*, July 4, 2013, <http://www.newvision.co.ug/news/644708-kazinda-appeals-against-5-year-jail-sentence.html> (accessed August 22, 2013).

VI. The Role of Uganda's Donors

International donors have played a significant role in the political economy of Uganda, but have a mixed record of applying meaningful pressure on the Ugandan government to address endemic corruption that leads to poor governance, failures of service delivery, and human rights abuses. Over the past decade, nearly three dozen bilateral and multilateral donors have pumped over \$13 billion into Uganda, comprising about 10 percent of the country's total yearly gross national income.²¹³

Foreign aid has slowed or halted at various times in response to high-profile corruption scandals, but each time it has resumed after largely cosmetic reforms. In 2005, for example, donors suspended \$200 million in aid²¹⁴ at the revelation that health ministry officials had embezzled over \$4.5 million from the Global Fund to Fight AIDS, Tuberculosis and Malaria,²¹⁵ and then worked to support the IGG to improve anti-fraud investigative capacity while pressuring the Ugandan government to prosecute and convict those responsible.²¹⁶ Money eventually flowed again, despite the prosecutions of relatively low-level officials and other scandals ensued.

In 2010 a group of donors providing direct budget support again cut some funding on the heels of the 2007 Commonwealth Heads of Government Meeting scandal, involving 6 billion Ugandan shillings (around \$2.4 million) and allegations against the former vice president and three government ministers.²¹⁷ The donor cuts amounted to over 10 percent

²¹³ World DataBank, World Development Indicators, 2011. See <http://databank.worldbank.org/>, indicators DT.ODA.ODAT.GN.ZS (Net ODA received (% of GNI)), DT.ODA.ODAT.XP.ZS (Net ODA received (percent of central government expense)), and DT.ODA.ODAT.CD (Net official development assistance received (current US dollars)). The U.S. has historically been Uganda's largest bilateral donor, followed by the UK. According to the latest available figures (2011), the U.S. gave \$397 million, while the UK gave \$142 million. See World DataBank, World Development Indicators, 2011. See <http://databank.worldbank.org/>, indicators DC.DAC.GBRL.CD (Net bilateral aid flows from DAC donors, United Kingdom (current US dollars)) and DC.DAC.USAL.CD (Net bilateral aid flows from DAC donors, United States (current US dollars)).

²¹⁴ "Killer Number One: The Fight Against Malaria," *IRINnews*, February 2006, <http://www.irinnews.org/pdf/in-depth/malaria-in-depth.pdf>, p. 25.

²¹⁵ Julius Barigaba, "Global Fund Scandal: Kampala Risks \$200m," *The East African*, December 25, 2006.

²¹⁶ Maja de Vibe, "A Joint Response to Corruption: Donors beginning to bite?" *U4 Practice Insight*, February 2012.

²¹⁷ Charges were dropped against the vice president and the three ministers challenged their charges before the Constitutional Court arguing that the IGG's office was not fully staffed and therefore could not proceed with the prosecution. They won and charges were dismissed.

of their \$360 million in direct budget support.²¹⁸ Most recently donors again stopped direct budget support at the end of 2012 and ultimately received repayment of the \$12.7 million that had vanished in the OPM scandal.²¹⁹

Despite increased pressure on the Ugandan government to address corruption, the donor community's own weaknesses—self-interest, inconsistencies, and poor coordination—have contributed to a failure to protect donor aid from graft in Uganda. Several knowledgeable sources suggested to Human Rights Watch that the best course of action for donors would be to stop financial support to the Ugandan government given the lack of concrete progress to root out high-level corruption, but none entertained the thought that this was a realistic option.²²⁰

If international donors continue providing financial support to Uganda, particularly to bolster social and economic rights such as health, education, water, sanitation, and land tenure, a more concerted long-term effort focused on accountability for grand scale corruption—particularly of high-ranking members of government—would improve their ability to successfully attain their development objectives. Showing a long-term dedication to high-level prosecutions would not only assist in punishing perpetrators but it would also set an example to other high-ranking Ugandan leaders and perhaps stem the tide of theft of donor aid.

Strategic Need, Economic Considerations, and Entrenched Self-Interest

“Countries are not just here because of altruism; they also have to promote their interests.”

—Donor official, May 2013²²¹

International donor commitment to fighting corruption in Uganda is compromised by other competing interests that soften their stance and dilutes their criticism. This must be

²¹⁸ “Donors trim Uganda budget aid over graft concerns,” Reuters, August 10, 2010 http://uk.reuters.com/article/2010/08/10/idUKLDE6790C3_CH_2420 (accessed August 22, 2013).

²¹⁹ “OPM fraud, Uganda returns 3M EUs stolen in aid to Norway,” *New Vision*, February 7, 2013, <http://www.newvision.co.ug/news/639615-opm-fraud-uganda-returns-3m-stolen-aid-to-norway.html>; “OPM Refunds UGX 14.2 Billion Irish Aid Money,” Uganda Radio Network, January 8, 2013; and “Uganda Refunds Swedish Aid Money,” *Red Pepper*, February 11, 2013, <http://www.redpepper.co.ug/uganda-refunds-aid-money-to-sweden/>.

²²⁰ Human Rights Watch telephone interview with donor governance advisor 3, May 28, 2013.

²²¹ Human Rights Watch and the Lowenstein Clinic interview with donor governance advisor 1, Kampala, May 22, 2013.

addressed head-on if donor money is to achieve its stated goals of poverty alleviation and effective development assistance.

Museveni has shrewdly consolidated Uganda's strategic importance as a counterterrorism ally, peacemaker, and negotiator in East Africa. Because of his commitments to provide (or threats to withdraw) peacekeeping and military presence in Somalia,²²² for counter-operations against the Lord's Resistance Army, and for counterterrorism operations in the region, some donors admit that their governments are reluctant to challenge Museveni assertively on corruption, preferring to maintain ties, thereby insulating him from some criticism.²²³

Trade and economic interests can also undermine the effectiveness of donor anti-corruption efforts. According to one European donor official there is an "unstated nervousness" among European donors that being too outspoken in demanding conditions and anti-corruption protections could damage their own commercial interests.²²⁴ Because countries like China do not use a "stick-based" approach when providing development assistance, the leverage of traditional Western donors, the effectiveness of their aid conditionality policies, and the relevance of their budget support model is perceived to have been weakened.²²⁵ As one donor official told Human Rights Watch, right now "[donors] need the government more than the government needs them."²²⁶ Furthermore, "Museveni knows. He visits China when the budget support is turned off, and this scares Western governments."²²⁷ Too often Western donors and multilateral agencies answer concerns about inadequacies in their response to corruption or their aid practices by citing a false dichotomy: it is either us or China. A global lowering of standards is not the answer.

Donor interests in trade and investment opportunities have only amplified since the discovery of oil in Uganda.²²⁸ A donor advisor described how one ambassador instructed

²²² "Uganda to withdraw troops from Somalia, says Mukasa," *BBC Online*, November 2, 2012, <http://www.bbc.co.uk/news/world-africa-20187369> (accessed August 14, 2013).

²²³ Human Rights Watch and the Lowenstein Clinic interview with donor governance advisor 2, Kampala, May 24, 2013.

²²⁴ *Ibid.*

²²⁵ Human Rights Watch and the Lowenstein Clinic interview with a consultant to a multilateral donor, Kampala, May 23, 2013.

²²⁶ *Ibid.*

²²⁷ Human Rights Watch and the Lowenstein Clinic interview with a lawyer, Kampala, May 19, 2013.

²²⁸ "Uganda confirms new oil deposits," *BBC Online*, September 18, 2012, <http://www.bbc.co.uk/news/business-19637784> (accessed August 14, 2013).

other members of a donor working group to “tone down our analysis” of corruption problems because it was harmful to that country’s negotiations in securing a significant investment opportunity. Unfortunately, such trade opportunities often win out when balanced against the human rights and anti-corruption agenda.

Because many in-country donor offices exist solely for the purpose of distributing aid, continuing that aid is an imperative, no matter how grievous the corruption scandal. This problem is particularly true for multilateral agencies such as the World Bank that do not have separated diplomatic functions. The problem is exacerbated by incentive structures, which at some institutions emphasize the amount of development dollars disbursed rather than rewarding staff for advancing inclusive, sustainable development which complies with safeguard policies and avoids or mitigates human rights risks.²²⁹ Such agencies often argue that aid that does actually reach communities in need of development assistance justifies ensuring that aid continues to flow into Uganda, despite failed promises to eradicate corruption and the ongoing arrests of Uganda’s anti-corruption activists.

Inconsistency and Poor Coordination

Donor action on corruption has also been weakened by the inevitable personnel rotation, loss of institutional memory, varying degrees of political and historical knowledge of Uganda, and the personal relationships of the donor and diplomatic corps. Even if one head of mission is aggressive in fighting graft and speaking out about the lack of accountability, momentum in fighting corruption is often undermined or erased by a successor who is less outspoken or less quick to seize on problems. Short-term reactionary responses to scandals and a dependence on the personalities of individuals in leadership positions will ultimately fail to address Uganda’s deeply-rooted corruption.

In contrast, the Museveni regime has been in power for over a quarter of a century. The Ugandan government is well-aware of its advantages as the only true repeat player. “They understand how donors work and how slowly they work,” one long-serving diplomat told Human Rights Watch. “They bide their time until this ambassador, who is too noisy, will go.”²³⁰

²²⁹ Independent Evaluation Group (IEG), “The Matrix System at Work - An Evaluation of the World Bank’s Organizational Effectiveness”, 2012, [http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/6BAE8B608D80F266852579E3006DB8AF/\\$file/matrix_eval.pdf](http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/6BAE8B608D80F266852579E3006DB8AF/$file/matrix_eval.pdf) (accessed April 8, 2013).

²³⁰ Human Rights Watch and the Lowenstein Clinic interview with donor governance advisor 1, Kampala, May 22, 2013.

Already ambassadors and other key donor officials in-country during the OPM scandal are beginning to take up new positions in other countries. Donor headquarters will need to manage these transitions, investing time and resources into ensuring meaningful hand-overs so that the positive momentum initiated post-OPM scandal is not lost.

Donor attention to fighting corruption in Uganda has also vacillated with cycles of various scandals and ultimately been disjointed. There are efforts underway to remedy this but it will require persistence in the face of increasing pressure for each country to return to business as usual. Over the last decade, international donors have tried various models to coordinate assistance and political analysis. Initially political working groups were separate from those focused on development, but this artificial distinction eventually collapsed. A merger was driven by a series of high-profile grand corruption cases that underscored the inherently political nature of development and revealed how the Ugandan government had exploited inconsistencies between the working groups.²³¹ There was recognition that the donor landscape was afflicted with disharmony, duplication, high transaction costs, and a general sense of confusion.²³²

Donors created a Joint Budget Support Framework (JBSF) in 2009, comprised of the approximately 10 countries and multilaterals that provided direct budget support to the Ugandan government. The objective was to coordinate the delivery of key services including education, health, water, and infrastructure.²³³ Under the JBSF framework, the Ugandan government and donors established a set of benchmarks and indicators against

²³¹ Ibid.

²³² Human Rights Watch and the Lowenstein Clinic interview with a consultant to a multilateral donor, Kampala, May 23, 2013.

²³³ Haggae Matsiko, "Uganda, donors sign budget support pact," *The Observer*, October 25, 2009, http://www.observer.ug/index.php?option=com_content&view=article&id=5667:uganda-donors-sign-budget-support-pact. The eleven Joint Budget Support Development Partners include the World Bank, the African Development Bank, the European Commission, the United Kingdom, Denmark, Sweden, Norway, Germany, Ireland, Belgium and the Netherlands. The JBSF is co-chaired by the UK's DfID and the World Bank. The 10 development partners who participated in JAF 1 (FY 2008/2009) were the World Bank, the European Union, the African Development Bank, Denmark, Germany, Ireland, Netherlands, Norway, Sweden, and the United Kingdom. Belgium and Austria joined the JBSF during JAF 2 (FY 2009/2010), but the African Development Bank (AfDB) left during JAF 3 (FY 2010/2011). At some point between the publication of JAF 3 and the OPM Scandal, Norway also left the JBSF. While Norway specifically cited corruption as a reason for leaving the JBSF (which will be explained later in this report), no specific information is available about the AfDB's withdrawal. "Joint Budget Support Framework: Second annual assessment by Development Partners of Government of Uganda's adherence to underlying principles and preconditions as well as progress in key sectors of joint budget support," JAF2, December 16, 2010, Kampala, Uganda, on file with Human Rights Watch and the Lowenstein Clinic; and "Joint Budget Support Framework, JAF3," December 22, 2011, Kampala, Uganda, on file with Human Rights Watch and the Lowenstein Clinic.

which the donors assess Uganda’s performance annually.²³⁴ This assessment then forms the basis for subsequent donor disbursement decisions.²³⁵

Anti-corruption is one of the key metrics. Specifically, this precondition measures whether there has been: a) continuous updating and improvement of anti-corruption legislation; b) enforcement of this legislation, in particular sanctioning and recovery of funds by administrative and judicial means in grand corruption cases; and c) audit reports and parliamentary review of anti-corruption measures within specified timeframes and with timely and effective follow-up. Every year, JBSF members have found that Uganda has failed to satisfy the anti-corruption benchmark.²³⁶

The Accountability Working Group (AWG)—a coalition of donors to Uganda led by the UK and the World Bank—began in 2009 and focuses on coordinating accountability and anti-corruption efforts.²³⁷ The AWG developed the Joint Response to Corruption, a high-level strategy for improving donor coordination and information-sharing. Although still in its early stages of development, the Joint Response has shown promise, particularly in coordinating donor responses after the OPM scandal, maintaining a “rolling core script” during diplomatic demarches and identifying action points for the government to undertake to rebuild donor confidence. The critical question will be if momentum will be maintained over time and personnel changes, and if this coordinated response will endure over time.

Although there is no shortage of donor constellations, the actual extent and quality of donor coordination is questionable. When asked about the relationship between the AWG and JBSF, for example, many interviewees, including donor and government officials, did not have a clear sense of how or to what extent the two groups overlapped or worked

²³⁴ At the end of every year, JBSF members publish a Joint Assessment Framework (JAF), which draws from government progress reports including the OPM’s Annual Performance Report, the Annual Budget Performance Report, and individual Annual Sector Progress Review Reports.

²³⁵ “Joint Budget Support Framework: Appraisal of Performance by the Government of Uganda Against the Joint assessment Framework 1,” JAF1, February 18, 2010, Kampala, Uganda, on file with Human Rights Watch and the Lowenstein Clinic. In theory, according to a representative from the World Bank, “good performance will be rewarded; poor performance will be penalized.” “Donors: good performance to be rewarded; poor penalized,” *The Independent*, November 25, 2009, <http://www.independent.co.ug/business/business-news/2169-donors-good-performance-to-be-rewarded-poor-penalised> (accessed October 2, 2013).

²³⁶ JAF1, February 18, 2010; JAF2, December 16, 2010; JAF3, December 22, 2011.

²³⁷ Human Rights Watch interview via telephone with donor governance advisor 3, May 28, 2013.

together. One expert interviewee noted that while there is no formal relationship, the two share the same lead agencies and the JBSF relies on the AWG as a source of advice and analysis.²³⁸ The alphabet soup of groups and frameworks, and the lack of clear roles and understandings among players within the system, suggests that a more streamlined donor coordination is required to have a meaningful impact on anti-corruption efforts long-term.

Ineffective or Incomplete Donor Demands

The Ugandan government often undertakes accountability reforms after a scandal in large part to placate donors. As a result, Uganda has developed a strong legal and institutional framework for fighting corruption—on paper. But, as stated above, nominal reforms and institutions are often intentionally understaffed and politically crippled in the long run. So while donor demands may be superficially satisfied, very little concrete change actually comes of the government’s actions. Instead, the difficult situation arises in which the Ugandan government promotes its anti-corruption efforts for public relations purposes, which are in reality “smokescreens of anti-corruption institutions that are not funded, not fully constituted, and with that laws are full of loopholes.”²³⁹

Donors have displayed a lack of meaningful follow-through specifically on the issue of prosecutions in the Anti-Corruption Court. One donor official told Human Rights Watch, “Donors are often quick to swing into action and demand prosecution—but will it end in a conviction? That’s a different story.”²⁴⁰ Indeed, high-level officials have been investigated and charged, per donor demands, but then are acquitted and re-appointed to a different government post and the “musical chairs” begins.

In their desire to demand accountability, donors may unintentionally put emphasis on the wrong objectives. In the context of the Anti-Corruption Court specifically, donor efforts have created some unhelpful incentives that emphasize sheer quantity over the quality and meaningfulness of prosecutions. For example, according to one Anti-Corruption Court prosecutor, donor pressure has contributed to the focus on prosecuting large numbers of relatively low-level prosecutions, despite the many complex cases implicating higher-level officials. “Donors are concerned about numbers. They want to see that we prosecuted 95

²³⁸ Human Rights Watch telephone interview with donor governance advisor 3, May 28, 2013.

²³⁹ Human Rights Watch and the Lowenstein Clinic interview with donor governance advisor 2, Kampala, May 24, 2013.

²⁴⁰ Human Rights Watch and the Lowenstein Clinic interview with a donor governance advisor, Kampala, May 19, 2013.

cases. They don't care about the content.”²⁴¹ The donor focus on the prosecutions is clearly important and legitimate but for fundamental change, pressure should be brought to improve the potential for the highest-ranking members of government to be held accountable.

Dangers of Budget Support and Inadequate Exploration of Funding Alternatives

Uganda is not receiving direct budget support at the time of writing, but it is not yet clear if or when some donors might return to this form of engagement.²⁴² Many donors had centralized aid to Uganda following the 2005 Paris Declaration on Aid Effectiveness.²⁴³ Eight years and millions of stolen dollars later, this commitment to providing discretionary funding to the central government is “in tatters,” as one donor official put it.²⁴⁴ Not only is there a growing sense that government ministries cannot be trusted to responsibly handle the money, but the supposed advantages of direct budget support—voice and influence—have also waned in light of failure to follow through and funding from “non-traditional” donors. Whether or not donors return to budget support will be a critical decision, determining the ultimate impact of the OPM scandal in the long run, indicating if Uganda donor relations will return to business as usual or if a new chapter of more effective and accountable donor engagement in Uganda will begin.

Most European donors generally argue that budget support is an important mechanism to have a “voice at the table” with the government. According to one donor, “The fact that you're contributing to the budget gives you a say in how the budget is being spent. If you stop budget support, to an extent it takes your voice away.”²⁴⁵ This sentiment is echoed by one donor expert advisor, who noted, “Without direct budget support, there's no obvious platform for discussing high-level reform crises with the government. There are no obvious reasons to sit down with the government.”²⁴⁶ But that platform must be used carefully and strategically over the long term to be effective, if it is to be used at all in the future.

²⁴¹ Human Rights Watch and the Lowenstein Clinic interview with prosecutor A, Kampala, May 21, 2013.

²⁴² Some disbursements which had been approved just before the OPM scandal broke have been handed over but as far as Human Rights Watch is aware, no country has approved new budget support allocations for this fiscal year.

²⁴³ Aid Effectiveness, OECD, “Paris Declaration and Accra Agenda for Action,” undated, <http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm> (accessed August 14, 2013); Human Rights Watch and the Lowenstein Clinic interview with donor governance advisor 2, Kampala, May 24, 2013.

²⁴⁴ Ibid.

²⁴⁵ Human Rights Watch and the Lowenstein Clinic interview with a consultant to a multilateral donor, Kampala, May 23, 2013.

²⁴⁶ Human Rights Watch telephone interview with donor governance advisor 3, May 28, 2013.

Given the unwillingness of donors to withdraw from Uganda altogether, donors admit that there are a limited number of alternative ways to disburse aid. Some are considering scrapping direct budget support in favor of a model of program-based funding. In theory, this type of aid that is earmarked to specific sectors, programs, and projects is easier to monitor and control.²⁴⁷ Yet as one expert in donor aid to Uganda noted, the fiduciary risks of sector-based support may not be all that different from direct budget support.²⁴⁸ Because of the sheer volume of money that many donors have committed to spend in Uganda, it is unlikely that donors will move all of the money through project-based support—such as building a school, for example. Instead, they choose to rely on more general sector-based funding that in reality differs little from direct budget support in terms of control, monitoring, and supervision.²⁴⁹ For the “fall back” position of sector budget support to be ultimately effective, there will need to be a dramatic escalation in the resources devoted to quality monitoring and supervision, including frequent field visits. It is also important for donors to ensure that their staff incentive schemes include criteria such as the quality of project preparation and supervision to ensure the absence of corruption, compliance with safeguards, and avoidance of human rights risks.²⁵⁰

Ugandan civil society could play a more meaningful role in ensuring effective monitoring and supervision, especially if supported by donors to increase technical knowledge and defended should they face threats and other forms of harassment and intimidation. Many Human Rights Watch interviewees suggested that donors should become more involved in funding Ugandan civil society organizations. A persistent refrain was the need to build local awareness of and demand for public accountability. One interviewee explained: “A woman in the village cannot connect the absence of medicine in her clinic to the grand corruption that is happening. Donors should work on building a demand side. As long as it remains weak, people cannot hold their leaders accountable. Work must be done to empower people to demand their leaders be accountable and make good investments. People need to connect poor quality of education to grand corruption at the top.”²⁵¹

²⁴⁷ Human Rights Watch and the Lowenstein Clinic interview with a consultant to a multilateral donor, Kampala, May 23, 2013.

²⁴⁸ Human Rights Watch telephone interview with donor governance advisor 3, May 28, 2013.

²⁴⁹ *Ibid.*

²⁵⁰ See, for instance, Independent Evaluation Group (IEG), “The Matrix System at Work - An Evaluation of the World Bank’s Organizational Effectiveness”, 2012, [http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/6BAE8B608D80F266852579E3006DB8AF/\\$file/matrix_eval.pdf](http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/6BAE8B608D80F266852579E3006DB8AF/$file/matrix_eval.pdf) (accessed April 8, 2013).

²⁵¹ Human Rights Watch and the Lowenstein Clinic interview with a lawyer, Kampala, May 19, 2013.

One obvious and immediate way for donors to build more “demand side accountability” is to actively and consistently support civil society’s existing efforts to educate the public about the impact of corruption, such as via the Black Monday Movement. Donors should not wait to see if activists will face trials for these charges before speaking out. Rather, they should monitor cases of activists’ arrests, including visiting them in detention even if they are detained briefly and observing first-hand the police’s handling of these types of cases, and publicly call for burdensome bond conditions, such as weekly reporting to police, and charges to be dropped.

Coordination problems are only likely to be exacerbated with the decline of direct budget support. As donor agencies turn away from general funding to concentrate on more discrete programs and projects, this could lead to fragmentation in how donors deal with the Ugandan government and each other. Additionally, important cross-cutting issues that fail to fit neatly within a sector or project may not be adequately recognized by donors.²⁵² Finally, there is a sense that narrower funding may lead to a type of anti-corruption “whack-a-mole.” One donor official admitted that although they took great pains to tighten financial controls in its projects to safeguard its resources, they represented just “a fraction of the total” funds and the corruption could simply shift to other more vulnerable and less closely monitored donor projects.²⁵³

²⁵² Human Rights Watch telephone interview with donor governance advisor 3, May 28, 2013.

²⁵³ Human Rights Watch and the Lowenstein Clinic interview with a consultant to a multilateral donor, Kampala, May 23, 2013.

VII. Uganda's Obligations to Prosecute Corruption in International Law

Uganda has ratified both the UN Convention against Corruption (UNCAC), and the African Union Convention on Preventing and Combating Corruption. UNCAC commits Uganda to prevent corrupt practices by promoting transparency in governmental affairs, financial systems, and the political process and by establishing a code of conduct for public officials that includes financial disclosure requirements.²⁵⁴ In order to enable successful anti-corruption prosecutions, UNCAC requires states to pass legislation that protects those who report corruption to authorities and act as witnesses in judicial proceedings.²⁵⁵ Though Uganda has passed a Whistleblower's Act, it has yet to pass the Witness Protection Bill, which at the time of writing is still being considered by Uganda's Law Reform Commission.²⁵⁶

In addition to international counter-corruption conventions, Uganda is party to numerous human rights conventions.²⁵⁷ Corrupt practices erode Uganda's ability to protect civil and political rights. Bribery and improper trade in influence violate principles of equal protection of the law and right to a fair determination and remedy that Uganda is obliged to uphold under the International Covenant on Civil and Political Rights (ICCPR)²⁵⁸ and the African Convention on Human and Peoples' Rights (Banjul Charter).²⁵⁹ Politically motivated prosecution and/or the prosecution of low-level corruption without similarly robust efforts targeting high-level corruption potentially violate these principles.

²⁵⁴ United Nations Convention against Corruption (UNCAC), adopted October 31, 2003, G.A. Res. A/58/422, entered into force on December 14, 2005, ratified by Uganda on September 9, 2004, art. 5.

²⁵⁵ *Ibid.*, art. 32.

²⁵⁶ The Whistleblowers Protection Act, 2010. The lack of public understanding of the Whistleblower's Act has limited its utility. Human Rights Watch email communications with Ugandan lawyers, September 10 and 15, 2013.

²⁵⁷ International Covenant on Civil and Political Rights (ICCPR) adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Uganda June 21, 2005; African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Uganda May 10, 1986.

²⁵⁸ *Ibid.*, arts. 2 and 26.

²⁵⁹ *Ibid.*, arts. 3 and 7.

The harassment and arrests of Uganda’s anti-corruption activists violates Uganda’s commitments to respect freedom of political association²⁶⁰ and freedom of expression and information.²⁶¹

Corruption also negatively impacts the fulfillment of socioeconomic rights. As a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Uganda is committed to “progressively realize” numerous economic, social and cultural rights, including rights to food, shelter, water, health, and education.²⁶² The Banjul Charter further affirms Uganda’s obligation to guarantee the right to health and education, and has been interpreted to implicitly provide for the rights to housing and food.²⁶³

The right to health is defined by the ICESCR as the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²⁶⁴ The Committee on Economic, Social and Cultural Rights, the international body of experts that monitors compliance with the ICESCR, has articulated the content of this right in more specific terms, stating that states’ efforts to realize the right to health should include the provision of “functioning public health and health-care facilities, goods and services,” such as “safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs.”²⁶⁵ Corruption in Uganda’s health care system violates the right to progressively realize the right to health, particularly when money has been earmarked to support the health sector.

²⁶⁰ ICCPR, arts. 21 and 22; Banjul Charter art. 13.

²⁶¹ ICCPR, art. 19; Banjul Charter, arts. 9-11.

²⁶² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976.

²⁶³ Social and Economic Rights Action Centre (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, African Commission on Human and Peoples’ Rights, Banjul, Gambia, No. 155/96, October 27, 2001.

²⁶⁴ ICESCR, art. 12(2).

²⁶⁵ UN Committee on Economic, Social and Cultural Rights, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights,” General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358boe2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358boe2c1256915005090be?Opendocument) (accessed August 15, 2013), para. 12(a).

The ICESCR also requires that primary education should be “compulsory and free to all.”²⁶⁶ In its general comment on the right to education, the UN Committee on Economic, Social and Cultural Rights, found that among other requirements primary education must meet certain minimum standards including providing “sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, [and] teaching materials.”²⁶⁷ However, the minimum required resources are often lacking, and the completion rate for primary education is only 55 percent in Uganda, despite a Universal Primary Education scheme.²⁶⁸

Corrupt practices, such as diversion of funds intending to mitigate poverty, prevent and combat diseases, or enhance public education, cause governments to violate their progressive realization obligations. The United Nations Economic and Social Council has declared that tolerance of corruption in the health sector is equivalent to failure to comply with the right to health.²⁶⁹ The Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights interprets the ICESCR as being violated when a government engages in the “reduction or diversion of specific public expenditure, when such reduction or diversion results in the non-enjoyment of such rights and is not accompanied by adequate measures to ensure the minimum subsistence rights for everyone.”²⁷⁰

²⁶⁶ ICESCR, art. 13(2)(a). See also African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, art. 11(3)(a).

²⁶⁷ Committee on Economic, Social and Cultural Rights, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights,” General Comment No. 13, The Right to Education, E/C.12/1999/10 (1999), [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument) (accessed August 15, 2013), para. 6, 8.

²⁶⁸ World Bank, Primary Completion Rate, total (percent of relevant age group), <http://data.worldbank.org/indicator/SE.PRM.CMPT.ZS> (accessed August 15, 2013).

²⁶⁹ UN Economic and Social Council, Commission on Human Rights, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, December 22, 2005, U.N. Doc. E/CN.4.2006/48/Add.1, <http://www2.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.48.Add.1.pdf>.

²⁷⁰ The Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights, January 1997, paragraph 14(g), http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html (accessed August 15, 2013). The Maastricht Guidelines were an effort by a group of more than thirty experts on international law to elaborate obligations, violations, and remedies under the ICESCR. Governments, multilateral organizations, and NGOs use the guidelines as guidance for interpreting the ICESCR.

Acknowledgements

This report was written and researched by Maria Burnett, senior researcher in the Africa Division of Human Rights Watch, and by a team from the Yale Law School Lowenstein Human Rights Clinic, law school students Julia Brower, Sheng Li, Tiffany Ng, and Jessica So, and Cover-Lowenstein Fellow Soo-Ryun Kwon. Jamie Vernaelde, senior associate in the Africa Division, provided research assistance.

The report was edited by Leslie Lefkow, deputy director of the Africa Division; Chris Albin-Lackey, senior researcher in the Business and Human Rights Division; Jessica Evans, senior researcher and advocate, International Financial Institutions, in the Business and Human Rights Division; Aisling Reidy, senior legal advisor; and Babatunde Olugboji, deputy program director. Jamie Vernaelde provided editing and production assistance, and the report was prepared for publication by Kathy Mills, publications specialist, and Fitzroy Hepkins, administrative manager.

Human Rights Watch wishes to thank the many individuals in Uganda who agreed to be interviewed for this report.

“Letting the Big Fish Swim”

Failures to Prosecute High-Level Corruption in Uganda

News of the embezzlement of US\$12.7 million in donor funds from Uganda’s Office of the Prime Minister in late 2012 raised serious questions about the government’s commitment to fight corruption. Repeated large scale theft of public money in Uganda has had direct impact on human rights, affecting access to health, water, food, and education.

Despite multiple investigations and an array of anti-corruption institutions, no high-ranking government officials have ever been convicted for corruption. A few have faced charges, only to be acquitted, and they often remain in office, untouched, while individuals working at the technical level have been prosecuted and, in some cases, jailed.

“Letting the Big Fish Swim”: Failures to Prosecute High-Level Corruption in Uganda is based on research carried out by Human Rights Watch and the Yale Law School Lowenstein Human Rights Clinic from May to September 2013. The report documents how Uganda has failed to hold the highest members of its government accountable for theft of public funds, despite repeated pledges to eradicate corruption and much good technical work from investigators and prosecutors. The report analyzes the government’s failure to close legal loopholes and ensure that laws are not used to insulate political appointees from accountability. It also shows how lack of political will has crippled Uganda’s anti-corruption institutions, undermining their efforts through political interference, harassment, and threats.

Human Rights Watch calls on the government of Uganda and its international donors to fight corruption at the highest levels, and its attendant human rights consequences, and to bolster the capacity and functionality of key anti-corruption institutions. Given Uganda’s political patronage system and President Yoweri Museveni’s long stay in power, it is highly unlikely that anything other than the prosecution of the highest ranking officials will fundamentally alter the deeply-rooted patterns of graft and resultant wealth accumulation of certain elites. Without substantial changes in this regard, the injustices of Uganda’s corruption problem will endure.



An anti-corruption billboard in Uganda.

© 2005 futureatlas.com