

Asset Tracing and Recovery in Anti-Corruption Action

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Asset Recovery in the ACA

- ▶ Introduction
- ▶ The law
- ▶ Efforts made by IG in asset recovery
- ▶ Challenges
- ▶ Way forward

Asset Recovery in the ACA

- The Anti-Corruption Act (ACA) makes provision for recovery of public funds and assets in various of its provisions as follows:
 - Evidence of pecuniary sources of property (s.30 ACA)
 - Illicit enrichment (s.31 ACA)
 - Part VI provides for restraining orders
 - Part VII provides for confiscation orders

Asset Recovery in the ACA

- Evidence of pecuniary sources of property (s.30 ACA)

In a trial by a court for an offence under this Act, the fact that an accused person is in possession, for which he or she cannot satisfactorily account, of pecuniary resources or property disproportionate to the accused person's known sources of income, or that the accused person had, at or about the time of the alleged offence, obtained an accretion of his or her pecuniary resources or property for which he or she cannot satisfactorily account, that fact may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in the trial or inquiry that the accused person accepted or obtained or agreed to accept or attempted to obtain any gratification and as showing that the gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

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- ▶ The provisions of s.30 ACA have not been tested before (not to my knowledge)
- ▶ It could be because persons charged with the offence of soliciting for and receiving gratification are usually low earners in the public service

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Section 31. Illicit enrichment.

(1) The Inspector General of Government or the Director of Public Prosecutions or an authorised officer, may investigate or cause an investigation of any person where there is reasonable ground to suspect that the person –

- (a) maintains a standard of living above that which is commensurate with his or her current or past known sources of income or assets; or
- (b) is in control or possession of pecuniary resources or property disproportionate to his or her current or past known sources of income or assets.

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Section 31 (2) provides that

A person found in possession of illicitly acquired pecuniary resources or property commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding two hundred and forty currency points or both.

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- ▶ Why has it not been possible to make people account for their assets under these provisions of the law?
 - Difficulty and expense of tracing assets – verification of assets of a public officer may cost about shs. 5 million, excluding valuation of the assets
 - Valuation of the assets of one of the Principal Accounts suspected of having illicitly acquired wealth run into a cost of UGX 40m

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- ▶ Chief Govt. Valuer is difficult to use in these processes because of the time spent waiting for results and the inconsistencies attached to values given to property by that office.
- ▶ IG is considering hiring a valuer to do this work in-house
- ▶ Though this may have its shortcomings given current levels of impunity, it may be more reliable than Govt. valuation and private valuation firms

Asset Recovery in the ACA

- ▶ The OPM and MOPs Cases and Asset Recovery
 - Investigations were done by UPF and prosecution by DPP
 - Request for us to verify assets was not thought useful at the beginning of the investigation
 - By the time it was requested assets had been "verified" by the Police
 - Too late for IG to get into the cases

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- ▶ About 6 officers' assets are being verified by IG on the basis of allegations that they illicitly acquired wealth
- ▶ Only one case seems to be promising for purposes of prosecution under this provision
 - Mention digging up of the house in search of money, etc

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- ▶ Restraining Orders

Section 53 ACA

Application for restraining order

Where a person has been charged or is about to be charged with an offence under this Act, an authorized officer may make an application to the court for an order, in this Act referred to as a restraining order, restraining the disposal of the property of, or in possession or under the control of that person, wherever that property is situated.

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54. Contents of application for restraining order.

sAn application made under section 53 shall be accompanied by an affidavit setting out

- (a) the offence under investigation;
- (b) a description of the property in respect of the restraining order sought;
- (c) the name and address of the person believed to be in the possession of the property;
- (d) the grounds for the belief that the property is tainted in relation to the offence or that the person being investigated derived a benefit directly or indirectly from the commission of the offence under investigation;

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(e) where the application is for a restraining order against property of a person other than the person being investigated, the grounds for the belief that the property is tainted property in relation to the offence under investigation and is subject to the effective control of the accused; and

(f) the grounds for the belief that a confiscation order or a pecuniary order may be or is likely to be made under this Act in respect of the property.

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- ▶ IG has not used the provision yet, and why
 - Because of the stay of actions of the ACD, in the recent past it was easier for IG to just place caveats on property of some officers being investigated
 - The burden placed on the applicant in section 54 seems to be steep and would be difficult to prove to court

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- ▶ 63. Confiscation order.

(1) Where a person is convicted of an offence under this Act, in addition to the penalties imposed under this Act, the court may make an order confiscating the property that is the subject of or derived directly or indirectly from the act of corruption.

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- ▶ IG has had the experience of seeing such orders made by the courts but no recoveries have been made so far; in many cases the monies have already been spent.
- ▶ Convicts have pending appeals against both the conviction, the confiscation and compensation orders. Confiscations orders are within the realm of conviction based forfeiture which has its own challenges:

Asset Recovery in the ACA

- ▶ Confiscations orders are within the realm of conviction based forfeiture which has its own challenges:
 - ▶ Conviction-Based Forfeiture
The prosecutor must:
 - Prove accused owns property
 - Fight false claims from nominees
 - May need to show property involved in crime
 - ▶ Non- Conviction Based Forfeiture
 - Must prove property was involved in crime

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- ▶ The standard is again steep in non-conviction based forfeiture
- ▶ So what has the IG tried to do?
- ▶ What has been successful?

Asset Tracing and Recovery

- ▶ Detection of loss of funds from:
 - Complaints
 - Audit report from OAG
 - Audit reports from local governments

- Unfortunately this is often after the event - the funds or other assets have already been embezzled and sometimes dissipated by the suspect

Asset Recovery in the ACA

- Tracks are often covered well to avoid detection cold trails are found from which one may not be able to get concrete evidence to have anyone convicted.
- Common occurrence is the transfer of property acquired into the names of others - e.g.. Companies
- (Obey and others in OPM and MOPs)

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- ▶ In a few cases detection is achieved before funds are embezzled or other resources are lost;
 - IG issues orders to stop payments and in most cases there is stiff resistance and sometimes the interference of politicians (e. Bukooli College case where 700 million was at stake but 316 million had already been paid.
 - Stop order prevented the payment of UGX 498 which was banked on Asset Recovery Account
 - IG sometimes benefits from recoveries by having subventions made to budget to facilitate its operations

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- ▶ Recovery during prosecution
 - Nsimbe case where one accused person pleaded guilty and agreed to pay a fine and compensation to NSSF of UGX 50m; he also paid a fine into the coffers of GOU of UGX 50million
 - Many smaller cases where the accused persons decide to pay up the amount lost or embezzled in exchange for stopping the prosecution.
 - In some cases IG insists that the accused person also forfeits his/her office in the public interest as a pre-condition to stopping prosecution

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- ▶ For corruption across the borders there are cooperation agreements (MLAs); IG is a member of networks of asset recovery;

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▶ Challenges

- Delay in concluding cases sometimes renders it impossible to get any recoveries
- Appeals frustrate the process of prosecution based recovery
- Computerized systems of making payments in government have made investigations more difficult; the government payment system is not easily accessible to investigators
- Investigators also lack skills to investigate cyber crime

Asset Recovery in the ACA

▶ WAY FORWARD

- We have resolved to use a preventive approach targeting recovery of misappropriated resources; decisions taken in managing cases should lead to recovery of the resources lost as well as send a message to the public that it does not pay to engage in corruption;
- Training and improving the capacity of our staff to be able to detect corruption even in complex cases;

