

ASSET RECOVERY AND FORFEITURE AS A TOOL FOR FIGHTING CORRUPTION: THE LAW AND PRACTICE IN UGANDA

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Introduction

- It is estimated that Uganda loses up to UGX 9.144 trillion per year to corruption and this is nearly 44% of the country's domestic revenue.

- At least one trillion dollars a year is “stolen” from the world’s poorest countries by criminals and corrupt officials.
- Therefore, asset recovery and forfeiture have emerged as crucial legal instruments in recovering these ill-gotten assets and deterring future corrupt practices.
- Uganda’s governance, the legal and institutional frameworks for asset recovery provide a mechanism for reclaiming stolen public resources.

Definitions

- Transparency International defines corruption as the abuse of entrusted power for personal gain.
- Asset Recovery is the process of tracing, freezing, securing, managing confiscating and returning to the country/government of origin, property that has been obtained through illegal means.

- Leonard W Lavy in his publication '*A licence to steal: The forfeiture of property*' defines forfeiture as the taking back of proceeds that were gained unlawfully, or of property used to facilitate the commission of a crime. It is also referred to as confiscation in the Uganda Anti-Corruption Act Cap116 and Anti-Money Laundering Act Cap 118 (AMLA)

International Legal Framework For Asset Recovery And Forfeiture

United Nations Convention against Corruption (UNCAC)

- Provides for asset recovery as a fundamental principle in the fight against corruption.
- Provides for Mutual Legal Assistance (MLA), identification, tracing, freezing, confiscation and repatriation of proceeds and instrumentalities of corruptly acquired assets.

United Nations Convention against Transnational Organised Crime (Palermo Convention)

- Focuses on the prevention and criminalization of corruption and organized crime.
- Includes provision for the confiscation of proceeds derived from corruption related offences.

African Union Convention on Preventing and Combating Corruption (AUCPCC)

- Requires states to adopt legislative measures to enable competent authorities to identify, trace and seize proceeds and instrumentalities pending a final judgment.

Recommendations of The Financial Action Task Force (FATF)

- Provides guidelines to member states to implement effective legislation against corruption and money laundering.
- Highlights the need for measures that empower authorities to trace and freeze illicit assets.

Domestic Framework for Asset Recovery and Forfeiture

The Constitution of the Republic of Uganda, 1995

- Establishes mandates for agencies to combat economic crimes, including recovery of assets.
- Emphasizes accountability and protection of public property.

The Anti-Corruption Act Cap 116

- Criminalizes corrupt activities and provides for the confiscation of corruptly acquired assets.

- Empowers the IGG and the DPP with investigative powers.

Domestic Framework Cont'd

The Leadership Code Act Cap 33.

- Regulates conduct of public leaders, requiring declaration of incomes, assets and liabilities.
- Allows for investigations and potential forfeiture of properties acquired through illicit activities.

The Anti-Money Laundering Act Cap 118 criminalizes money laundering related to various offences, including corruption.

Empowers authorities to investigate and confiscate illicitly acquired property.

Key Institutions in Asset Recovery

Inspectorate of Government (IG)

- Investigates and prosecutes corruption cases
- Issues confiscation orders for assets acquired through corrupt means

Office of the Director of Public Prosecutions (ODPP)

- Prosecutes criminal cases including corruption- related offences.
- Applies for asset forfeiture under the Anti- corruption Act.

Financial Intelligence Authority (FIA)

- Monitors financial transactions to detect and report illicit funds.
- Supports investigations related to money laundering and asset recovery.

Key Institutions in Asset Recovery cont'd

Office of the Auditor General (OAG)

- Audit government's activities to identify financial mismanagement.
- Collaborates with the IG on investigations into corruption.

The Courts of Law

- Adjudicate forfeiture proceedings particularly through the Anti- corruption Act.
- Ensure the legal process for asset recovery is followed.

The Uganda Revenue Authority (URA)

- Traces and recovers assets related to financial crimes, like tax evasion and corruption.

The Role Of Asset Recovery And Forfeiture In Fighting Corruption In Uganda

- Removing the Incentive for Corruption. (Robert Baryemwesigye and Fred Kiwanuka vs Uganda CA NO 152 OF 2022, Uganda v Geoffrey Kazinda session case HCT AC /CO 4 of 2016(2020) UGHACD
- Restoration of Stolen Wealth (Uganda v Lwamafa & 2 Ors (Criminal Session Case-2015/9) [2016]
- Promoting justice and accountability (Uganda v Kazinda (HCT-00SC-2012/138) [2013]UGHACD10)
- Strengthening Rule of Law and Governance
- International Cooperation and Global Standards
- Disrupting Corruption Networks

Challenges in implementation of asset recovery and forfeiture

- Complexity and cost of Asset Tracing
- Absence of a law on non-conviction-based asset forfeiture
- Delay in concluding cases
- Lack of a proper asset management policy (Uganda Vs Sserwamba David Musoke and 6 others HCT-00-AC-SC-0011-2015)
- Political Interference
- Lack of Public Awareness
- International Challenges

Recommendations

- Strengthening Institutional Capacity
- Enactment of an enabling law for civil forfeiture
- Asset management Facilities
- Enhanced International Cooperation
- Public Awareness Campaigns
- Improving Legislative Frameworks

*Thank you
for Listening!*