RECOVERY OF PROCEEDS OF CRIME IN CORRUPTION AND AML CASES IN UGANDA, THROUGH ASSET RECOVERY AND NON-PROSECUTION OR DEFERRED PROSECUTION AGREEMENTS

RECUPERAÇÃO DE PRODUTOS DO CRIME EM CASOS DE CORRUPÇÃO E DE LAVAGEM DE DINHEIRO EM UGANDA, POR MEIO DA RECUPERAÇÃO DE ATIVOS E DE ACORDOS DE NÃO PERSECUÇÃO PENAL OU DE PERSECUÇÃO PENAL DIFERIDA

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ABSTRACT

This study examined two concepts: whether the effective recovery of proceeds of crime in corruption cases could be executed through the asset recovery (AR) model and whether the challenges in the recovery of stolen funds in corruption cases with the reliance of the non-prosecution agreement (NPA) or Deferred Prosecution Agreement (DPA) model. The study intended to acquire comprehensive information concerning effective recovery of proceeds of crime in corruption and anti money laundering (AML) cases which could be executed through the asset recovery model, and challenges to relying on the recovery of stolen funds in corruption cases and proceeds of crime in AML using the non-prosecution agreements model. The study exemplifies that endeavors to recover proceeds of crime in corruption and AML cases could be conducted in diverse means, one of which is the AR model. AR plays a critical part in recovering assets obtained from corruption crimes, most importantly by public officials. AR can be effective where there is coordination and cooperation between stakeholders in the criminal justice system. It should be noted that recovery of stolen public funds by public officials is no mean achievement especially for those that are politically connected. Corrupt perpetrators in high public offices wield power and are not easy to investigate and prosecute. It is also not easy to trace the proceeds of crime as the perpetrators have means to launder it abroad and or use third parties to hide the proceeds of crime. It should be noted that AR

is not an easy process given its intricacies therefore the reliance on the N/DPA model as an alternative should ease the burden on the criminal justice stakeholders in their efforts to fight against corruption and AML.

Keywords: Asset recovery; non-prosecution agreement; deferred prosecution agreement; corruption.

1 BACKGROUND

Corruption has bedeviled society since time immemorial. States are tasked with combating the vice of corruption. The only differences are the measures taken by individual states to make corruption less palatable for the would-be perpetrators especially in public offices. In Uganda, the society seems to have become complacent towards the impact of corruption. It is common place for people to defend the corrupt as being 'wise and hard working'. In the situation where resources are in the hands of a few, there is a tendency for whoever access public office to have 'their turn to eat or steal' (Mbabazi et al, 2020). The ramifications of corruption on the economy and national development are overall perceived by many as negative. It goes without saying that with corruption, there will be squandering of public and private finances or assets, whose purpose cannot be achieved since it is under the control of the perpetrators, who certainly utilize the same for personal gain at the expense of the public or the private sector. It is posited that corruption curtails and undermines the emergence of the middle class and genuine entrepreneurs (Obicci, 2025). Nonetheless the society will lack a labour force that is ethical and proficient which is vital in order to spur economic development. A corrupt generation gives rise to middlemen or 'fixers' or 'petty bourgeoisie' who focus on consumption of the stolen wealth rather than generating it which is not sustainable in the long run (Raeymaekers, 2014). Public corruption and fraud can be considered as forms of misuse of public power: the (non)action or (non)decision of a politician or civil servant is related to private instead of public interests (Hubert,. LWJC, 1998). The United Nations Convention Against Corruption (UNCAC) states that corruption is not only a crime that undermines the legal system and democracy but is also a violation of human rights (Weilert,. A.K, 2016). It undermines the economic system, reduces the quality of life, fosters organized crime, and threatens humanity and sustainable development (Buscaglia,. 2003). Corruption is not only a national concern but also an international concern (Larmour & Wolanin,. 2013). In the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was held at Havana, resulting, inter alia, in the adoption of resolution 7, entitled "Corruption in

government" (A/CONF.144/28/Rev.1)., among other things provided for the following elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.

Global efforts since 1997 culminated with the birth of the United Nations Convention Against Corruption, 2003 (UNCAC 2003), even though several G-8 countries and countries where financial centers have not ratified it. UNCAC is the first legally binding global anti-corruption agreement. UNCAC contains extensive material, including international cooperation in asset recovery, which was then followed by the birth of the StAR initiative in June 2007, which contains challenges, opportunities, and action plans in efforts to recover stolen assets. Based on the United Nations Convention against Corruption (UNCAC), state asset recovery has become a fundamental principle in eradicating corruption, in addition to the imposition of crimes such as deprivation of liberty. Thus, for participating countries, the restoration of state assets that have been corrupted (stolen asset recovery) has been placed as an important goal in eradicating corruption. The fight against corruption must be steadfast and consistent. The convictions secured following successful investigations and prosecutions must mirror the assets recovered. The chapeau of anti corruption and AML laws is that perpetrators must not derive benefit from crime. Efforts must always be made to trace the proceeds from suspects or their associates. Many a time perpetrators are kept in jail as their associates are enjoying the proceeds. This distorts law enforcement efforts as criminals groups continue with their enterprise. The message from law enforcement agencies must be clear that crime does not pay period.

1.1 What is corruption? And its impact on society

There is no universally accepted definition for corruption (Svensson J, 2005). For one to appreciate the phenomenon of corruption, one has to look back to medieval Europe where society believed that an individual was born with integrity. The word *Integer* comes from a 16th century Latin word meaning "whole" or "intact." The other term from Medieval Latin *integralis* "making up a whole". These terms have evolved into the English noun 'integrity'. It follows therefore in the present times that when one lacks integrity, then they are said to be corrupt. On the other hand, the term 'corruption' is from

a Latin derivative 'corruptus' meaning one with broken virtues or morals. According to mediaeval Europe when one lost their virtues they ceased to be an integer (whole) thus being corrupt. It is posited that corruption is a cross-systemic, cross-temporal and cross-cultural phenomenon which can exist in any country, at any time, and under any form of government (Farrales,. MJ, 2005). It is also argued that corruption is a kind of behavior which deviates from the norm actually prevalent or believed to prevail in a given context, such as the political (Friedrich,. CJ, 2017). It is deviant behavior associated with a particular motivation, namely that of private gain at public expense. Aidt defines corruption as a special means by which private agents may seek to pursue their interest in competition for preferential treatment by government officials or politicians and where the ''means'' are valued by the recipient (Aidt, 2016). The Anti-Corruption Act of Uganda, 2009 does not define corruption but expounds upon conduct that gives rise to the offences of corruption. The Act only defines the adverb "corruptly" which means purposely doing an act, which tends to corrupt, or influence a person to do an act or omission contrary to established procedures"

Corruption takes various forms ranging from benign level of bribery and solicitation of a gratification, to bureaucratic corruption or the institutional level and then at the other extreme, "political" or "grand" corruption arises from a rogue dictator's control over a country's resource allocation and expenditure decisions or a leader treating society's assets as personal property (DeLeon,. P, 2015). Public corruption is the abuse of public power for personal gain (Luiz and Stewart 2014). Organisational corruption is the conscious violation of legal rules of the organisation for personal gain, possibly at the organisation's detriment (Hodgson and Jiang 2007). It should be noted that forms of corruption differ from one another in terms of both the source of power that is exploited and the impact they have on the economy and the society (Jain,. AK, 2011). This form of corruption leads to a misallocation of resources and an extreme degree of concentration of wealth into the hands of a few.

The impact of corruption cannot be overstated on the various facets of society. To this end the vice is understood to have adverse effects on economic growth since it allows the misallocation of productive resources (Veisi, 2017). It also has direct effects on corporate bodies since it may operate as a levy. This results into artificially raising the costs of doing business which may be higher than the formal taxes (Payne *et al.*, 2018).

The triggers for corruption include; the existence of rents associated with a government's regulatory powers (Aidt *et al.*, 2017). The terms ''rent seeking'' and ''corruption'' are often used interchangeably. The standard definition of ''rent seeking'' is the quest for privileged benefits from government [see, for example, Hillman (2013)] The other scenario requires that the public institutions tackling corruption be weak and

ineffective. These institutions include civil society that exert moral pressures, political parties and the media that could expose the wrongdoing, and the legal system that would have the authority to prosecute and punish the guilty. The other enabler requires that corrupt bureaucracies be somewhat independent within the remaining administrative structure of the government. External controls on the bureaucracy, whether imposed by the remainder of the administrative system or by the society at large, must be weak. If some agents seem to get away with acts of corruption, the internal dynamics of a corrupt bureaucracy will motivate other bureaucrats to expend more effort on increasing the level of their illicit income; some of that effort will have to be spent on ensuring an appropriate redistribution of the illicit income within the bureaucracy.

Corruption also enriches a few corrupt people at the expense of the majority as a result it exacerbates poverty (Ulsaner 2017). It also distorts meritocracy when it enables those who less deserve to reach goals ahead of those qualified (Rose-Ackerman & Palifka 2016).

Disadvantaged groups and vulnerable persons suffer disproportionately from corruption (Bullock & Jenkins 2020). Some marginalised groups are more likely to encounter coercive attempts to extract bribes and other rent-seeking behaviour due to their restricted access to justice. Other marginalised groups may inhabit regions that expose them to particular risks, such as land grabbing. Corruption also erodes the trust we have in the public sector to act in our best interests (Armey & Melese 2018). It wastes taxes and rates meant for important community projects (Doig & Theobald 2013). This results in poor quality services or infrastructure, or projects never getting off the ground.

Corruption results into lack of quality in services including health, education and service delivery due to misappropriation of funds and goods (Vian 2020). The other effect is the lack of proper justice as the actors in the justice chain dispense justice subjectively based on who and how much money one has paid. Corruption increases the chances of unemployment as there is no meritocracy especially in the public service as jobs are accessed by those with more. Corruption results in poor health and education services due to misappropriation of the funds and goods.

Corruption threatens sustainable economic development, ethical values and justice; it destabilises our society and endangers the rule of law (Safara & Odeku,. 2021).

Corruption is a serious threat to prosperity, democracy and human wellbeing, with mounting empirical evidence highlighting its detrimental effects on society (Rothstein & Varraich,. 2017).

1.2 The problem of Corruption and the Efforts to tackle it in Uganda

Uganda is reported to be among the most corrupt nations globally (Saxton, 2022). As stated by Inspectorate of Government (IG) (2021-2022, by the conservative estimate, the overall annual cost of corruption in Uganda equals to more than 9.1 trillion UGX (2.1 billion EUR) (Sebaggala & Cheromoi, 2024). The total cost of corruption in taxation is estimated to be UGX 136 billion per year. The amounts people have to pay in bribes in order to access water and electricity utilities as well as the corruption costs of unpaid utility fees for the government result in a total loss of almost UGX 478 billion per year. The estimated cost of corruption in contract royalties in the natural resources sector is UGX 868 billion per year. The estimated loss of environmental resources to corruption is UGX 2.28 trillion per year, while the cost of environmental pollution and degradation amounts to UGX 536.8 billion per year. In total, the cost of corruption in healthcare amounts to nearly UGX191 billion per year (Although Health Systems Global estimates the total cost of corruption in the healthcare sector amounts to nearly UGX 670 billion annually) and in the education sector to about UGX 278 billion per year (Saxton, 2022). From the above figures, the cost of corruption cannot be underestimated. It is evident that in most developing nations including Uganda theft of public resources is prevalent and intricate to combat. The country in the last three decades has taken both legal and administrative measures to combat corruption. These include the establishment of the Office of the Inspector General of Government (IGG), the Office of the Auditor General (OAG), the Leadership Code Tribunal, the Public Procurement and Disposal Assets Authority (PPDAA), the Office of the Director of Public Prosecutions (ODPP), the Criminal Investigations Directorate (CID), the Anti-Corruption Division (ACD) of the High Court of Uganda, Public Accounts Committee (PAC) of Parliament, Directorate of Ethics and Integrity, Financial Intelligence Authority (FIA) State House Anti-corruption monitoring unit among others. There is a school of thought that the multiplicity of agencies to combat corruption has led to duplication of roles and poor coordination of efforts thus leading to failure (Davis et al, 2021). In this regard, Uganda has put in place the Anti-corruption Agencies Forum (IAF) to which some JLOS institutions are active participants. The Forum is chaired by the Minister of Ethics and Integrity and comprises of the Inspector General of Government (IGG), the Director of Public Prosecutions (DPP), the judiciary, the police, Public Procurement and Disposal of Public Assets Authority, the Auditor General and other institutions. Through the forum the anti-corruption agencies have been working together in the design and implementation of a national strategy to fight corruption, promoting publicity and advancing legal reforms (Wagona, 2014). Another school of thought posits that there is

no political will to deal with especially political corruption hence the rather disjointed approach (Philip, 2017). This state of affairs results into conflicts between and amongst the different agencies which in the end lose sight of their target. Corruption in Uganda takes the form of bribery, embezzlement, causing financial loss, disposal of trust property, abuse of office, money laundering, among others. The ACD has convicted and sentenced on charges of corruption a reasonable number of public officers and private individuals in over a decade of its existence. In spite of these interventions, corruption seems persistent in Uganda.

1.3 Uganda's efforts to tackle corruption are focused on three main areas, namely: Prevention

1.3.1 Building capacity for the key stakeholders

The best approach to combating corruption in Uganda has been to build capacity for the key stakeholders including the public, law enforcement, public officers, politicians to mention but a few. In an effort to fight corruption effectively, emphasis has been placed on the key actors within agencies, departments, or ministries, the public or the private sector all of whom ought to be aware of their roles and responsibilities in ensuring transparency and accountability (Mayanja & Nkata, 2019). It is hoped that Uganda's approach to building institutions founded on professionalism, transparency and accountability, the opportunities for corruption would likely be diminished. In the same vein, Uganda is still grappling with distinguishing politicians from public servants. For instance, there is a conflict of interest when members of Parliament are appointed as ministers under the executive. It implies that such M.Ps cannot hold the executive accountable. Some argue that the ruling class does this to maintain a grasp on political power (Tapscott, 2021).

1.3.2 Promote Transparency and Accountability

One of the effective approaches to curbing corruption in Uganda is to augment transparency and accountability through the provision of information as regards to public expenditure. This has been done by posting information at all levels of government and onto different platforms including MDAs and Local government, CSOs WebPages thereby ensuring that this information is accessible to as many people as practicable (Kuteesa et al, 2021). All agencies of government have public relations or communication officers whose full time job is to provide timely information to the public as regards the on goings in the respective institutions. Whereas this is a step in the right direction,

there is still more to be done especially as regards public expenditure clothed under classified budgets.

It should be noted that the more public processes such as procurements, disposal of public assets, execution of public projects are done in a transparent manner, the more the public gets to know and appreciate how public funds are utilized (Basheka, 2021). This ensures that there is 360 degree accountability over public resources. This empowers the ordinary citizen to hold accountable those in public office.

1.3.3 Power is derived from the people

The framers of the 1995 Constitution of the Republic of Uganda boldly stated that all power is derived from the people. By necessary implications all holders of public offices in Uganda are bound by the constitution and the principles contained therein. It should be emphasized that for any given country to develop there must be effort from the citizens. The citizens have the power and right to determine their own destiny. The government structure only acts as a guide and provider of an enabling environment in which the citizens thrive. There cannot be any development without the participation of the citizens (Stiglitz, 2002). When citizens are alienated by the holders of delegated power, citizens can not develop their skills and be innovative to their highest potential.

1.3.4 A deeper appreciation of Corruption

The people must appreciate that corruption takes various forms. These forms may be petty, syndicated and or political. To the ordinary citizen petty corruption including bribery, solicitation of kicks backs is common place. The middle level forms of corruption by public officials include embezzlement, causing financial loss and abuse of office. The high level form of corruption by politicians involves manipulating national budgets, granting bail outs to private entities using public funds, disposing of natural resources and executing non disclosure agreements among others (Otusanya, 2011). When the citizens of Uganda appreciate the various forms then the country will be on the right trajectory to fighting corruption. To this end through the anti-corruption days of activism, agencies of government under the accountability sector and the CSOs have been conducting outreach programs and community sensitization on all forms of corruption (Asea, 2018). These efforts will go a long way in awakening the Ugandan public about corruption in all its facets.

Furthermore all efforts to combat corruption in Uganda should target all levels of society (Areskar Kaddu, 2024). It is said that if 'one tackles the small fish, it affects

how the big fish swim'. In other words if corruption is not tolerated at the lowest level of society and government, then it will have the ripple effect to the upper echelons of power (Okok & Ssentongo, 2020). To successfully combat the vice, the anti-corruption net should target ordinary citizens as well as politicians and civil servants.

There is need for Ugandans to be vigilant and aware of the complaints mechanisms for the effective tackling of corruption.

1.3.5 Equality under the law

The fight against corruption will succeed only when everyone knows that no one is above the law. The measures to combat corruption in Uganda are ensuring that the rule applies to everyone. There is no selective prosecution. In Uganda, sitting ministers, M.Ps, permanent secretaries, judicial officers and prosecutors have been successfully prosecuted for corruption.[3] Recently billions were lost from the Central Bank in suspected fraud, this led to the arrest of the Accountant General and officers of the Central Bank.[4] This can be viewed as the step in the right direction.

1.3.6 Digital Transformation to fight corruption

The other way Uganda is fighting corruption is through digital transformation in governmental processes. The adaptation of technology has seen increased transparency, improved efficiency, and saving time. Uganda adapted e-governance over a decade ago in an effort to improve service delivery which has seen increased transparency and increased accountability (Assimwe & Lim, 2010). There are e-signatures to combat corruption and fraud, there are e-transactions in the procurement and disposal of assets, there is the e-payroll and pension roll among many innovations in an effort to combat corruption in public management (Ayeta et al, 2023). Although paperless transactions have minimized fraud, there is still need to be vigilant as the e-transaction mechanisms are not foolproof as happened in a 60 Billion Shillings heist from Bank of Uganda. As regards procurements the government established the electronic government procurement system (eGP) which has streamlined the procurement system (Olupot, 2023).

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3 https://sh-acu.go.ug/permanent-secretary-mps-charged-over-corruption-charges/news/ Accessed on 24/02/2025. See also Uganda v Kashaka and 5 others 2014 UGHCACD 7.
4 https://www.independent.co.ug/bou-shs60-billion-heist-accountant-general-8-others-arrested/#:~:text=Kampala%2C%20 Uganda%20%7C%20THE%20INDEPENDENT%20%7C,Bank%20of%20Uganda%20(BOU). Accessed on: 24/02/2025.

1.3.7 Zero tolerance for corruption

The government of Uganda adopted the zero tolerance for corruption policy (Muhumuza, 2016). This was to guarantee that no one gets away with corruption. Civil servants found guilty of corruption have been arrested, prosecuted and sentenced to prison. This course of action has sent a firm signal to others that they will be punished when trapped within the system.

1.3.8 Everybody matters in the fight against corruption

Uganda's fight against corruption involves all the citizens (Gumisiriza & Mukobi, 2019). These include politicians, public servants, civil servants, the ordinary citizens, NGOs, the religious, the cultural institutions among others. Many activities including media debates, community sensitizations, public educations, days of activism, open days, public rallies, public matching et al are carried out with a view of engaging every citizen in the fight.

1.3.9 Protection for whistleblowers

The Whistleblowers Act of Uganda was enacted to ensure that informants who report corruption are protected from the consequences of revealing this information. This is meant to incentivize the informants who may include public officials and ordinary citizens to raise red flags on any wrong doing in a given public office (Mbago et al, 2018). When the informant is not secure from the consequences of this action, he/she will not report the corruption to anyone again.

1.4 Eradication of corruption efforts in Uganda

Looking at the number of agencies created to tackle corruption, it is apparent that the government of Uganda has been keen to eradicate this malady. The government in an effort to compliment the efforts of the Director of Public Prosecutions, CID in combating, government established the office of the Inspector General of Government (IGG). The IGG has the mandate to investigate and prosecute corruption related offences. The IGG also enforces the Leadership Code legislation which requires persons in leadership positions to declare their wealth (Mulira, 2008).

The government has also constituted commissions of inquiry into corruption in the army, police, Uganda Revenue Authority, banks, and the land sector. These commissions have made recommendations which have resulted into increased professionalism, digital transformation, transparency and accountability in those sectors (Kirya, 2011).

1.4.1 Political Commitment

The effort to control and mitigate the effects of corruption would be futile without political commitment on the part of political leadership in a growing democracy like Uganda (Tangri & Mwenda, 2006). It is evident that all the interventions to combat corruption can be effective only if action comes from the political elite in Parliament and executive authority led by the President (Muhumuza, 2016). The defiance of the politicians can be restrained only from within the corridors of power. Without political will and commitment no agency can enforce transparency and accountability from outside. Under Uganda's constitutional democracy, heads of anti-corruption agencies are appointed by the Executive and are accountable to Parliament. It follows that the Executive and Parliament wield a lot of power over them. This is a conundrum that Uganda faces. Lately the President has established the State House Anti-Corruption Unit to tackle political corruption but many view this as a way of shielding himself and his cronies from scrutiny of the anti-corruption agencies (Gumisiriza & Mukobi, 2019).

1.4.2 Administrative Accountability

Another essential component of anti-corruption strategy is the strict enforcement of the principle of accountability at all levels. In Uganda the government performs vast functions over a wide range of areas of public concern. Decisions are taken at various levels of government in which discretionary power may be involved. The present situation is that there is general lack of accountability in administration (Olum, 2014). Almost everyone in the public services is accountable to no one and is considered above the law. Respect for the rule of law is woefully uncommon and it is often noticed that those who violate the law in the most blatant fashion are the ones who get away the easiest (Mubangizi, 2023). The judiciary has a key role in ensuring that political and administrative power is used only in accordance with law and everyone is held accountable for wrong doing or misuse of authority. Recent decisions given by the judiciary have created a hope for corrective action. The apex court and several high courts have upheld cases against political and administrative functionaries at the highest levels. Three top officials in the Ministry of Public Service, Christopher Obey, Jimmy Lwama-

fa and Kiwanuka Kunsa, showed that they illegally budgeted payments amounting to UGX 88.2 billion to the National Social Security Fund (NSSF) between 2010 and 2012. The payments were made on ghost accounts were purported as gratuities and pensions to former employees of the defunct East African Community instead of the NSSF.[5]

1.4.3 Procedural Reforms

As explained earlier administrative delay is one of the major causes of corruption. Therefore to reduce or control corruption it is necessary to eliminate such delays. For that it is essential that office procedures should be simplified and levels of hierarchy reduced. In Uganda public administration and procedural structures were inherited from the British and have to inefficiencies within the developmental initiatives (Watt et al, 2013).

1.4.4 Civil Society involvement

Civil society is considered as the realm of association between the household and the state. Typically this includes professional organizations as well as other formal and informal non-profit associations. Such associations fulfill certain functions essential for aggregating and expressing societal interests, including social integration, social participation in state governance, and promoting the democratic values (Kpundeh, 2017). Through its many functions, civil society can create pressure for policy reform and improved governance, as well as explicitly monitor the state's actions for fighting corruption and abuse. In other words, the civil society addresses the will of the state to operate in an accountable, transparent and responsive manner (Kisubi, 1999).

Thus, identifying key institutional reforms in Uganda, and mobilizing support for such reforms, needs to be fully integrated into the participatory process from very early on. Such early convergence is likely to promote a better balance between prevention and enforcement measures in addressing corruption (Basheka et al, 2015).Uganda's efforts have largely been premised on enforcement.. There is need to balance anti corruption measures with enforcement, since the law enforcement institutions themselves are currently part of the corruption problem in Uganda (Atwine, 2025).

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5 Lwamafa Jimmy 2 Ors v Uganda (Criminal Appeal No 0357 of 2016) 2020 UGCA 47 (18 February 2020).

2 ASSET RECOVERY PROCEDURE IN UGANDA

2.1 Preparing Plans and Policies in asset recovery

This stage involved planning and policy determination through benchmarking and research. Working papers were developed after regulatory impact assessments by the taskforces and then policy documents followed. The ODPP and IG then established asset recovery units in their respective institutions, strengthening institutional capacity, preparing resources, setting targets and active intelligence, training, and capacity building, as well as technical assistance. The Asset Recovery Department of ODPP has guidelines that enable them execute their mandate. Ideally, in recovering assets, several stages must be carried out by law enforcement officials:

2.2 The Maintenance and Security of Assets stage

The process of recovering proceeds of crime in corruption and AML cases involves identification, tracing, seizing and confiscation. This takes the form of issuing asset confiscation orders, asset freezing, asset confiscation, temporary measures, third-party interest/inclusion, classification of tangible and intangible goods, and legal proceedings.

2.3 Investigations

For there to be effective investigations for recovery of proceeds of crime, there has to be an investigation plan that encapsulates asset tracing, extracting sources of information, determining witnesses and suspects, digital forensics, subject profiles, document analysis, financial profiles, accounts payable, corporate structure, and beneficial ownership tracing, digital currency and open sources of information. The investigative plan must have check lists so that the prosecutors and investigators do not leave any stone unturned as it may have ramifications during the later stages of a given case.

According to the Uganda's anti-corruption laws the Public Prosecutor can file an application for a confiscation order for the recovery of the illegally obtained or tainted property.[6] Confiscation simply put is when the government permanently takes a person's tainted property without compensation. It is a permanent measure to take illegally obtained property away from criminals or their accomplices. A confiscation order is to the effect that private property is taken into possession by the state. These orders are

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6 Section 66 of the Anti Corruption Act, Chapter 116 Vol. VI and Section 86 of the Anti Money Laundering Act Chapter 118 Vol. VI Laws of Uganda.

put in place to take the profit out of crime. It is assumed that if crime is less profitable then would be criminals would abandon such behaviour. These types of court orders are often used in corruption, money laundering and drug trafficking cases. It is a common misconception that assets can only be frozen belonging to those who have been arrested and charged with taking part in a crime. This is not true as the law envisages associates and families. It follows that anyone who gets involved in any active criminal investigation, despite of whether or not they have been legally charged with a criminal offence, can have restraint proceedings instigated against them.

The provisions regarding confiscation and confiscation of criminal assets in Uganda's anti corruption laws and regulations are derived from the UN Anti Corruption Convention. The AMLA and ACA of Uganda are limited to two models of confiscation, namely: Confiscation of assets used to commit criminal acts (*instrumentum sceleris*), and Objects related to criminal acts (*objectum sceleris*) in the meantime, in the laws and regulations mentioned above, the confiscation of the proceeds of crime (*fructum sceleris*) has not been regulated in detail and adequately, including the reverse verification process in confiscating criminal assets. The convention intends for states to enact laws and regulations that cater for three types of confiscation which are intended solely for the benefit of the state and have not been intended for the benefit of victims of criminal acts. In other words proceeds from tainted property should be forfeited to the state and not individual victims. Confiscation and confiscation of criminal assets for the purposes of the victim's interests have been enacted in the Criminal Code in Belgium and the Netherlands (Fernandez-Bertier, 2016).

The government of Uganda enacted the Anti Corruption Act 2009 which includes the criminalization of certain acts within the scope of criminal acts of corruption, namely, among others, acts of enriching oneself illegally (illicit enrichment) basing on the UN Anti Corruption Convention.

It should noted that Confiscation Orders can only be given by the Court, and so the proceedings can only begin once the defendant has been convicted of an offence and sentenced.[7] Regardless of the specific circumstances in which the Confiscation Order is issued, it comes about as a request of the prosecution, or it may be handed down to the defendant by the court itself, depending upon the circumstances of the case and alleged offence.[8]

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7 Section 89 of the AMLA
8 Section 66 ACA and Section 86 of the AMLA

2.4 Management of recovered Assets

At this stage, the officer analyzes the ability to manage assets, identifies evidence/seizure track records, reports on asset management, calculates impairment of assets, and plans proper asset management.

With the exception of financial crimes, the Confiscation order can concern all kinds of criminal offences and all profits following an assessment.[9] Where the court orders confiscation of property the costs of enforcing the order shall be recovered from the proceeds of recovery.[10]

Once the recovery order is final, the ARD gets the task to execute it. The court is enjoined to appoint a manager, receiver or administrator where it makes a confiscation order and is satisfied that the property is realizable or requires special attention.[11]The appointed manager, receiver or administrator must file an inventory every 6 months and must account for the proceeds recovered.[12]Where the tainted property is perishable or rapidly depreciating property or is worthless, court may order for its sell or destruction respectively.[13]

2.5 The Stage of Deprivation

At this stage, the court issues a forfeiture order and a confiscation order. It may also include fines, confiscation without trial, orders explaining the origin of assets (the reverse onus), and orders for execution as in civil proceedings.

Where the court is satisfied that the convicted person derived benefit from the offence for which he or she was convicted under the Anti Corruption Act, the court shall make an assessment order, directing the convicted person to pay the stated amount within a period of six months.[14]Further, where the convicted person has not satisfied the assessment order within a period of six months from the date on which the assessment order was issued, the Director of Public Prosecutions or the Inspector General of Government shall apply to court for a confiscation order.[15]

A person with interest in property subject to a confiscation order has a right to apply to court for a review within 14 days from the date the order was issued.[16] The applicant

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9 Section 65 of ACA
10 Section 69 of the ACA
11 Section 67 (1) of ACA
12 Section 67 (2) of ACA
13 Section 107 of AMLA
14 Section 65(1) of ACA
15 Section 66(1) of ACA
16 Section 68(1) of ACA

is required to serve the DPP or IGG with the application for review failure of which court would not entertain it.[17] The applicant bears the burden to adduce evidence that the property subject to the confiscation orders was acquired lawfully.[18]

Where a public prosecutor or authorized officer discovers any other tainted property linked to the convict, they are required to apply to court for additional confiscation orders.[19] The applicant may apply to amend an application to include any other tainted property or benefit, as the case may be, and the court may upon being satisfied that— firstly, the tainted property or benefit was not reasonably capable of identification when the application was made; secondly necessary evidence became available only after the application was originally made; and lastly it is in the interest of justice that the application be amended, grant the application.[20] The public prosecutor or authorized person who seeks to amend an application or seeks additional confiscation orders against discovered tainted property, is required to give a 14 day notice and serve it upon the convict. This is to enable either the convict or any third parties interests to appear and present evidence that the property or their interest is lawful.[21]

2.6 The Disposal Stage

This starts with the auction process, then disposal, repatriation, return to victims, and use of funds by the state.

Where tainted property has been successfully confiscated, court shall order for its appropriate transfer and or disposal and the proceeds from it are deposited in the Consolidated Fund.[22] The Anti-Corruption Act and AMLA cater for acts of appropriation of wealth without being penalized in the event that the perpetrator cannot be prosecuted on the grounds of death, being a fugitive, or not being present in other similar cases.[23]

The above procedures indicate that the full execution of a recovery orders is such a tedious exercise. It follows that recovering proceeds of crime money, costs money and time.

3 METHOD OF RESEARCH

This paper applied mixed methods research design in that there was collection and

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17 Section 68(2) of ACA
18 Section 68(3) of ACA
19 Section 86(2) of AMLA
20 Section 86(4) of AMLA
21 Section 87 of AMLA
22 Section 104 of the AMLA
23 Section 70 of the ACA and Section 88 of the AMLA

analysis of both quantitative (numerical) and qualitative (descriptive) data (Taguchi, 2018). This allowed the researcher to gain a more comprehensive understanding of a topic by combining different perspectives and data types. Interviews enabled the researcher gain in-depth understanding about asset recovery from key informants. The self administered questionnaires enabled the researcher get an overview from the respondents on the subject. This paper will only present the findings of the empirical part of the research and aspects concerning the analysis of the data from the Asset Recovery Department (ARD) database and criminal files. These consist of the administrative database of the ARD and a selection of criminal recovery files.

3.1 The scope of the study

The study covered key actors in the criminal justice system. The study was conducted between September 2022 and February, 2025.

3.2 Research questions

- How effective is the effort to recover proceeds of crime in corruption and AML cases through the asset recovery model and non-prosecution agreements?
- What is the ideal asset recovery model and non-prosecution agreement for optimizing efforts to recover proceeds of crime in corruption cases?
- How much has the ARD recovered as proceeds of crime from tainted property to date?
- Do the various actors in the criminal justice system appreciate the procedure of asset recovery?
- Are there cases where defendants agree to forfeit assets in exchange for non or deferred prosecution? If so, how do you go about the process?
- What challenges do you experience in the process of enforcing orders under the asset recovery procedure?
- What recommendations if any would you make in order for the asset recovery mechanism to be more effective?

4 RESULTS/FINDINGS AND ANALYSIS/DISCUSSION

4.1 Asset Recovery and Non or Deferred Prosecution Agreements

The procedure of asset recovery in Uganda is majorly governed by among others

the Anti Corruption Act and the Anti Money laundering Act among others. The asset recovery laws in Uganda are premised on the provisions of Article 51 of the Anti--Corruption Convention technically allow claims, both civilly and criminally, to return state assets that have been obtained by someone through acts of corruption. In spite of the wider latitude of the Convention, Uganda focuses only on the conviction based asset recovery model.

The Asset Recovery Unit (ARU) of the Inspector General (IG) was established in 2016. The Unit is tasked with the enforcement of recovery orders and may also enter into non or deferred prosecution agreements for recovery of property from suspects. The non or deferred prosecution agreements are done at the behest of the suspects. As of June 2024, ARU had recovered a total of UGX 4,419,014,014 (Approx. USD 1,210,000).

The ODPP also has a committed Asset Recovery Division (ARD). In FY2020/21, the ODPP recovered a total sum of Shs. 8.1Bn (Approx USD 2,100,000). In FY 2021/22 the ODPP recovered Shs. 10Bn. Further during FY2021/22 the Asset Recovery Unit recovered UGx 243,379,920/= which money is deposited on the ODPP Asset Recovery Management Account in Bank of Uganda. So far in FY 2023/24 the ARD has recovered 4 Billion Shillings (Approx 1,052,000 USD). In the same period, the ARD has been able to obtain restraining orders in respect to property constituting of land, motor vehicles and bank accounts belonging to various persons charged with offences under the Anti money laundering and Anti-Corruption Acts. Following the enactment of the Anti-Money Laundering Act, 2013 the mandate of the ARU and ARD is supported by the Financial Intelligence Authority (FIA) and gives the FIA various powers in respect to recovery of tainted property. It was in May 2017, that the ODPP secured the first anti money laundering and recovery of proceeds of crime conviction in the land mark case of *Uganda v Serwamba David Musoke and Others*.[24] The case involved the swindling of USD 1,450,000 in a bank heist. The bank officials and their co-conspirators were convicted and the assets obtained including vehicles, houses and other real estate were recovered.

According to the Head of the Asset Recovery Department (ARD) under ODPP Ms. Annet N. Ddungu in an interview argued that the asset recovery model of confiscation is effective.[25] Although the anti corruption legal regime is only conviction based. She explained further that; *the conviction based confiscation is suited more for syndicated crime. That on the other hand the non conviction based confiscation is suited more for non syndicated crime.*

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24 Uganda-v-Sserwamba-ors-2017-ughccrd-100-30-may-2017.
25 The interview was conducted on the 11th of February, 2025.

She noted that it is work in progress as many actors are slowly getting to appreciate asset recovery. As regards non prosecution agreements, she noted that these have led to recovery of funds through plea bargains especially where the victims are private entities. Private entities are always interested in recovery of their money rather than see the perpetrator jailed. When parties have agreed with the accused persons to return the proceeds, the virtual complainants then express lack of interest in pursuing the matter, the DPP then terminates the charges.

Ms. Annet N. Ddungu in an interview contended that both conviction and non conviction based orders can complement each other.[26] Although the anti corruption legal regime in Uganda is only conviction based.

Non-prosecution agreements (NPAs) and deferred prosecution agreements (DPAs) are forms of alternative dispute resolution mechanisms that emerged from the U.S (Uhlmann, 2012). Simply put an NPA is a privately negotiated agreement between the public prosecutor and a corporation. These agreements take the form of a letter agreement from the public prosecutor to a corporation's lawyer and generally include a brief that the company acknowledges responsibility for, as well as a host of compliance undertakings that the company agrees to implement (Koehler, 2015). Critics argue that because an NPA is not filed with a court, there is absolutely no judicial oversight of these agreements, including the statement of facts and legal conclusions that serve as the basis of the agreement. It is asserted that there is no independent entity to determine the liability or the lack of it of the corporation. In other words, when relying on an NPA, the public prosecutor assumes the role of prosecutor, judge, and jury all at the same time (Davis, 2021).

A DPA, on the other hand, is filed with a court as a pleading, although the factual allegations are made in brief and complete with legal conclusions (Stock, 2022). Like NPAs, DPAs are also the result of privately negotiated agreements between the public prosecutor and a corporation's lawyer. In exchange for the public prosecutor agreeing to defer prosecution of the crime alleged, the company acknowledges responsibility for the alleged conduct and agrees to implement a host of compliance undertakings. Since a DPA is filed with a court, these agreements would be subject to meaningful judicial analysis (Alexander & Cohen, 2015). A DPA would have a number of benefits to the Public. These include the enhancing the rule of law and accountability through compliance, saving the taxpayers money that would have been utilized in the trial and post-conviction process as well as reduction of case backlog hence saving courts time.

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26 The interview was conducted on the 11th of February, 2025.

In Uganda, the ARU of IG and ARD of ODPP can enter into voluntary agreements with suspects akin to N/DPAs. This can include full return of defrauded funds, surrender of ill-gotten assets in exchange for lesser charges or deferred prosecution. The ARD of ODPP often relies on deferred prosecution agreements and plea bargains when suspects voluntarily surrender the proceeds of crime.

The ARD reports that there are cases where accused persons agree to pay and dispose off assets in exchange for non prosecution through plea bargain. In ***Uganda v Ayebare Herbert Kabwiga and Another***[27] a matter in which the accused persons were charged with Causing financial loss, electronic fraud and money laundering. In this case the money defrauded belong to UGAFODE Microfinance totaling 310,000,159/=. The complainants and accused persons entered into an agreement for the accused persons to pay 400,000,000/=. Following the payment of the said sums, DPP tendered a Nolle and the accused persons were discharged. It should be noted that such a discharge shall not operate as a bar to any subsequent proceedings against him or her on account of the same facts.[28]It follows that the agreement executed in the above case was a DPA.

The ARD maintains an inventory of assets and monies recovered. To this end the recovered monies are on an account held at the Central Bank-The Bank of Uganda. The ARD notes that for private victims especially corporations, recovered proceeds are paid directly to the victims. It is therefore difficult to track the sums of the recovered funds where parties elect to settle out of court.

4.1.1 Asset Recovery and Proceeds of Crime Survey

A total of 50 self administered questionnaires were issued and only 39 were received back from the intended respondents.

Quantitative Data Analysis of Results

1. The criminal justice system appreciates the Anti Money Laundering and Corruption laws?					
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Prosecutors	01	08	06			15
Investigators		09	05			14
Judicial Officers		06	04			10
Total	01	23	15			39

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27 HCT-ACD-CO-66-2023.
28 Section 133 of the Trial on Indictments Act Chapter 25 Volume II Laws of Uganda 2024 Edition.

Descriptive Statistics: 61.54% of respondents rated the appreciation of AML laws as "Agree" or "Strongly Agree," while 38.5% rated them as "Neutral".

Interpretation: The majority of respondents are satisfied with the AML laws, but there's a significant minority that is neutral about it.

2. It is relatively easy to secure a conviction based recovery order						
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	**Total**
Prosecutors	03	06	05	01		15
Investigators	01	07	06			14
Judicial Officers	02	06	02			10
Total	06	19	13	01		39

Descriptive Statistics: 64.1% of respondents rated the ease with it to secure a conviction based recovery order as "Agree" or "Strongly Agree," while 33.3% of the respondents rated it as "Neutral"; while 2.6% rated them as "Disagree".

Interpretation: The majority of respondents are satisfied with the conviction based recovery order, but there's a significant minority that took a neutral stand while the minority disagree.

3. It is impossible to secure a non conviction based recovery order						
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	**Total**
Prosecutors	15					15
Investigators		10	04			14
Judicial Officers		06	04			10
Total	15	16	08			39

Descriptive Statistics: 79.5% of respondents rated the impossibility to secure a noon conviction based recovery order "Agree" or "Strongly Agree," while 20.5% rated it as "Neutral".

Interpretation: The majority of respondents indicated that it was impossible to secure a non conviction based recovery order, but there's a significant minority that is neutral.

4. The investigators easily locate the proceeds of crime						
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Prosecutors		09	06			15
Investigators			04	10		14
Judicial Officers		04	03	03		10
Total		13	13	13		39

Descriptive Statistics: 33.3% of respondents rated the ease of investigators to locate proceeds of crime as "Agree", while 33.3% were "Neutral," while 33.3% rated them as "Disagree".

Interpretation: The respondents are similarly satisfied with the ease with which proceeds of crime are located, the neutral ones are equal to those who disagree.

5. The prosecutors appreciate AML and Anti Corruption Laws and Asset Recovery						
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Prosecutors		08	05	02		15
Investigators		07	02	05		14
Judicial Officers		04	03	03		10
Total		19	10	10		39

Descriptive Statistics: 48.72% of respondents rated the prosecutors' appreciation of AML and AR laws as "Agree", while 25.6% were "Neutral," and 25.6% rated them as "Disagree".

Interpretation: The majority of respondents are satisfied that prosecutors appreciate the AML and AR laws, but there's a significant minority that is neutral and those that disagree.

6. There is proper coordination and cooperation with all stakeholders in AML and Asset Recovery						
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Prosecutors			05	10		15
Investigators			02	12		14
Judicial Officers			05	05		10
Total			12	27		39

Descriptive Statistics: 69.2% of respondents rated the coordination and cooperation with stakeholders as "Disagree", while 30.8% were "Neutral".

Interpretation: The majority of the respondent disagree that there is proper coordination and cooperation, but there's a significant minority that were neutral.

7. It is easy to recover proceeds of crime in and outside Uganda					
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Prosecutors			07	08		**15**
Investigators			02	12		**14**
Judicial Officers			06	04		**10**
Total			15	24		**39**

Descriptive Statistics: 61.5% of respondents rated the ease of recovery of proceeds in and outside Uganda as "Disagree", while 38.5% were "Neutral".

Interpretation: The majority of respondents disagree that it is easy to recover proceeds of crime from in and out of Uganda, but there's a significant minority that is neutral.

8. The sentences under the AMLA are adequate					
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Prosecutors		10	02	03		**15**
Investigators		12		02		**14**
Judicial Officers		07	03			**10**
Total		29	05	05		**39**

Descriptive Statistics: 74.4% of respondents rated the sentences under AMLA as "Agree", while 12.82% were "Neutral" and 12.82% rated them as "Disagree".

Interpretation: The majority of the respondents is satisfied with the AMLA's sentences, while a significant minority is either neutral or disagrees.

4.1.2 Qualitative Data Analysis of Results

From the survey, there were mixed responses regarding the efficacy of the AML and Asset Recovery legal regimes. The prosecutors were optimistic that the law was adequate in as far as it supports the conviction based approach. However the investigators were pessimistic that the law is limited. Ms. Kwezi a prosecutor under the ARD ODPP explained that the AML and AR laws provide for adequate punishment and provide for deprivation of proceeds of crime. She however noted that much more effort was required for the proper implementation and utilization of the law especially during investigations.

As regards the criminal justice system appreciating the AML and AR laws, whereas most respondents rated "agree", some went on to offer explanations. It was observed that the appreciation may only be in respect to specialized departments like the Anti Corruption Department, Anti Corruption Court and the Economic Crime Division of CID.

When it comes to the ease with which to secure a conviction based recovery order, most respondents rated their response as "strongly agree or agree". A more nuanced explanation was that securing a conviction in a criminal trial depends on other factors including the right of appeal. That some of these procedures may cause delays.

Majority of the respondents agreed that it is impossible to secure a non conviction based recovery order. This is due to the fact that Uganda does not have civil forfeiture on non conviction based recovery orders.

When it comes to the ease with which investigators locate the proceeds of crime the results were evenly matched. Most investigators disagreed with the proposition citing a number of challenges including properties being registered in names of third parties, unregistrable holdings of customary land and interference in investigations. Some of the explanations from the judicial officers and prosecutors were that there are obvious proceeds for instance vehicles and houses that are in control of the accused persons that may easily be located.

Most respondents agreed that prosecutors appreciate AML and AR laws. However there were further explanations offered that this was more for those deployed under specialized departments including the Anti Corruption Department and the Asset Recovery Department of the ODPP.

In as far as to whether there is proper coordination and cooperation with all stakeholders in AML and AR, most respondents disagreed. IP Mfutindinda a police investigator observes that there are many challenges they face as investigators from other stakeholders especially those in fiduciary relationship with the suspects. On the other hand Ms. Kwezi observes that coordination has improved overtime, however some challenges remain especially timely feedback from other agencies, requirement to pay fees before securing certified documents. On the part of the court, judicial officers were of the view that investigators should be more proactive rather reactive when it comes to AML and AR cases.

As to whether it is easy to recover proceeds of crime in and outside Uganda, most respondents disagreed with the proposition. For the investigators they consider recoveries both in and outside Uganda as an uphill task. Whereas prosecutors considered "recoveries in country easier than those abroad due to modalities and complexities involved and the need of technical knowledge."

When it comes to the adequacy of sentences under the AMLA, the majority of the respondents were satisfied that they are punitive enough.

4.2 Benefits of Asset Recovery

In the fight against corruption criminal sanctions against the perpetrators are not enough; but rather it must be balanced with efforts to cut off the flow of proceeds from crime. By seizing property resulting from the crime of corruption, it is hoped that the perpetrator will lose his motivation to commit or continue living off proceeds of criminality. With the appropriate legislation for asset confiscation in place, it is achievable.

Firstly, it is unlikely that the perpetrator will think of committing a crime because it will not be profitable or the benefits will be confiscated by the State. This would have a deterring effect.

Second, the prospect of being imprisoned will not be able to prevent the commission of a crime because the perpetrator can still enjoy the results/benefits of his crime.

Third, asset recovery can increase public confidence and send a stern warning that the government is committed to fighting crime. Fourth, asset recovery is a manifestation of fight against organized crime. Fifth, the fines that have been imposed on perpetrators are often considered inadequate to deter perpetrators of criminal acts. Sixth, asset confiscation has a role to warn those who are about to commit a crime (Aliyth Prakarsa dan Rena Yulia, 2017, 32).

4.3 Challenges faced during asset recovery

Ms. Ddungu observes that, public prosecutors regularly face impediments on how to effectively and efficiently conduct the identification process for proceeds of crime. She notes that as the ARD they have no direct access to registries for land, companies and motor vehicles. That the moment the ARD makes inquiries, there are leakages of information resulting into tipping off the person holding or with interest in tainted property.

It has been also noted that prosecuting agencies have an unenviable task to carry out reverse proof of criminal assets through criminal prosecution. This is because of the very high standard of proof beyond a reasonable doubt. It is only upon a conviction that the confiscation order is issued against tainted assets that have been converted or donated to third parties on the basis of reversed evidence. This conviction based asset confiscation model is tedious and it is often faced with the fact that in some of the cases the suspect is a fugitive or his whereabouts are unknown, or has died. Furthermore there a challenge is in tracking/tracing the transfer of assets to other people,

especially in a cash based economy like Uganda's or transferred rapidly given the latest technological advancement.

Another challenge that was identified is where asset freezing orders may be fraudulently lifted without the knowledge of the ARD. This is likely to result into dissipation of the assets.

A further challenge faced by the ARD is the management and storage of confiscated assets. Whereas the legislation enjoins the court to appoint a manager, receiver and administrator[29], in practice the task lies with the ARU to deal with the property which is an insurmountable task.

One of the issues the ARD is grappling with is whether they should use civil processes of recovery only. The ARD faces a conundrum as to whether the ODPP should be involved in civil proceedings involving recovery of tainted property.

The other challenge is that some actors are slowly adjusting to the asset recovery process. To this end some orders for freezing and confiscation are denied without adequate appreciation of the cases which leads to the dissipation of the tainted property.

Another issue is whether the police investigators treat tainted assets as exhibits whereas the DPP regards as proceeds of crime that ought to be preserved with of view of recovering their value back into the state coffers.

The ARD relies on the Chief Government valuer to carry out valuations in respect to confiscated tainted property. However they face a challenge of costs for survey and valuation especially for real estate tainted property which are not borne by the government valuer.

In order to overcome challenges regarding suspected tainted assets, law enforcement in the U.S and the U.K have relied upon the reverse verification model with the view of confiscating assets by civil forfeiture in absence of criminal prosecutions against the alleged owner of the said assets (Davis, 2016). Confiscation of assets through civil forfeiture is the procedure of determining the legitimacy of a person's ownership of tainted assets and is not aimed at apportioning criminal liability (Yusni et al, 2023). Furthermore, the concern for the prosecution of suspects in civil confiscation of assets is focused on the existence of tainted assets and not solely on the perpetrators of criminal acts, since the tainted assets are often already in the control of other people or someone who are unaware of the origin of these assets (Tzenios, 2023). The law enforcement officers must follow the assets so that neither the perpetrators nor their associates derive benefit from them. That is the main purpose of asset recovery.

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29 Section 67 of the ACA and Section 107 of the AMLA

4.4 Recommendations

The respondents during the study made several recommendations as regards to how the asset recovery procedure should be implemented so as recover proceeds of crime in corruption and AML cases. Below are some of the recommendations:

4.4.1 Capacity Building

The respondents suggested that there has to be training for prosecutors, investigators and judicial officers so that they get grounded in asset recovery, AML and corruption laws. More specialized trainings should be conducted for the officers deployed at the ACD High Court, ACD-ODPP, ARD and Economic Crimes-CID.

4.4.2 Cooperation and Coordination

Cooperation and coordination enables entities build synergies in combating AML and AR. There is need to implement a multi-sectoral agency approach incorporating prosecutors, investigators and courts. This would avert delays and each agency would appreciate their role.

4.4.3 Access to systems

Investigators and prosecutors should be granted reasonable access to registries for motor vehicles, land, companies for purposes of investigations. It was observed that the lack of access leads to tipping off or leakages thereby jeopardizing investigations. This enables suspects to move or dispose of proceeds of crime.

4.4.4 Prosecution guided Investigation

It has been observed that when prosecutors guide investigations, they are to focus on aspects that could lead to a successful prosecution and would also recovery of the proceeds. This is a recommended form of investigation which the ODPP has adopted (Assimwe, 2016).

4.4.5 Formal and Informal Investigations

The prosecutors and investigators must utilize both formal and informal means of

investigation. This is especially useful when tracing proceeds of crime. Informally obtained information would be useful in linking proceeds to suspects.

4.4.6 Financial Investigators

There is need for training specialized financial investigators in ODPP and CID. This is due to the developments in complex financial systems, digital currencies, DNA and other forensic evidence, the availability of material from CCTV cameras, call data records, automatic number plate recognition, Internet traffic, improved intelligence analysis and more provide prosecutors and investigators with sources of material that were envisaged before (Drew *et al*, 2021).

4.4.7 Mindset Change

There is need for the stakeholders including the public to have mindset change. The Ugandan society to some extent does not abhor AML and corruption related crime since they are indirect victims. Webster's dictionary defines mindset in two ways: the first is "a mental attitude or inclination" and the second is "a fixed state of mind". Both definitions explain the mindset as something that occurs in a person's head; however, the mindset also has the power to control a person's attitudes, and potentially influences a person's behavior. There is need to sensitize the public about the adverse effects of corruption, this would in the long run see the public shun corruption (Duchi *et al*, 2020).

4.4.8 Allocation of Adequate resources

The ODPP and CID must be allocated adequate financial resources to enable them cope with the new trends in AML and AR. More funding would lead to robust investigations and effective prosecutions.

4.4.9 Provision of Tools

Prosecutors and investigators must be availed with tools to enable them conduct surveillance, tracing, preserving proceeds of crime. These tools enable the investigators and prosecutors secure evidence linking the tainted assets to the accused persons.

4.4.10 Expert involvement

There is need to involve various experts in AML and AR investigations including auditors, valuers, IT specialists among others. This is due to the complexities involved in AML and recovering proceeds. The corrupt also deploy experts to enable them keep proceeds of crime.

5 THE IDEAL MODEL OF ASSET RECOVERY AND NON PROSECUTION AGREEMENTS FOR OPTIMIZING EFFORTS TO RECOVER PROCEEDS OF CRIME IN CORRUPTION CASES

It should be noted that for the recovery model to be effective, the scope of N/DPA agreements, must include: Identity of persons and their location, Record statements, Provide all necessary documents linked to proceeds of crime, identify associates to provide information or to assist with an investigation, and Identify of assets or proceeds and link them to the suspects and their associates.

As noted in section 4.1 above, ARD and ARU can enter into voluntary non or deferred prosecution agreements with a view of recovering proceeds of crime, It follows that the ideal model for implementing asset recovery through N/DPA is that the formation of an asset recovery task force including ARD, ARU, FIA, CID, ESO, even outside the investigation stage, can prevent the creation of obstacles for asset recovery due to a lack of coordination. The need for review of policies, laws and the execution processes because procedural asset recovery includes tracking, freezing, confiscation, confiscation, maintenance/management, and return of stolen assets/proceeds of crime to victims of crime/the state. In the case of corruption and AML crimes, the recovery of assets resulting from crime is the right of the state, which is seen as a victim of crime.

The recovery model should have both non-procedural including N/DPAs and procedural measures including conviction based and non-conviction based.

It is reiterated that asset recovery is the process of handling assets resulting from crime in an integrated manner at every stage of law enforcement so that the value of these assets can be maintained and returned in full to victims of crime, including to the state. Asset recovery also includes all preventive actions to keep the value of these assets from depreciating or dissipating.

6 CONCLUSION

The efforts to combat corruption are not limited to criminal sanctions but include other measures intended to complement it, namely: asset recovery or the return of state assets that have been corrupted. Law enforcers, such as the police, prosecutors, and

judges, as a matter of prudent practice must also use the asset recovery approach in handling corruption and AML cases. None the less, law enforcement officers should be cautious in using this approach given its delicate nature. Additionally, in efforts to return assets placed abroad, law enforcement officers often find it insurmountable to repatriate them to Uganda. This calls for a Mutual Legal Assistance (MLA) law to enable cross border recoveries. To this end, there is need for policy formulation and law reform to cater for all types of asset recovery including the non procedural catering for N/DPAs, conviction based and non-conviction based or civil forfeiture. The proposed reforms would go a long way in strengthening the AR regime in Uganda. Where there are loopholes in the processes, the criminals would likely exploit them so as to keep proceeds of crime. Uganda is on the right trajectory in recovering proceeds of crime although it is still work in progress.

RECUPERAÇÃO DE PRODUTOS DO CRIME EM CASOS DE CORRUPÇÃO E DE LAVAGEM DE DINHEIRO EM UGANDA, POR MEIO DA RECUPERAÇÃO DE ATIVOS E DE ACORDOS DE NÃO PERSECUÇÃO PENAL OU DE PERSECUÇÃO PENAL DIFERIDA

RESUMO

Este estudo examinou dois conceitos: se a recuperação eficaz dos produtos do crime em casos de corrupção pode ser realizada por meio do modelo de recuperação de ativos (RA) e se existem desafios na recuperação de fundos desviados em casos de corrupção com base em acordos de não persecução penal (ANPP) ou acordos de persecução penal diferida (APPD). O objetivo do estudo foi obter informações abrangentes sobre a recuperação eficaz dos produtos do crime em casos de corrupção e de lavagem de dinheiro (LD), que possam ser executadas por meio do modelo de recuperação de ativos, bem como os desafios relacionados à dependência de acordos de não persecução penal para a recuperação de fundos desviados em casos de corrupção e dos produtos do crime em casos de LD. O estudo demonstra que os esforços para recuperar os produtos do crime em casos de corrupção e LD podem ser conduzidos por diferentes meios, sendo um deles o modelo de RA. A recuperação de ativos desempenha um papel fundamental na recuperação de bens obtidos por meio de crimes de corrupção, especialmente quando cometidos por agentes públicos. A RA pode ser eficaz quando há coordenação e cooperação entre os atores do sistema de justiça criminal. Deve-se observar que a recuperação de fundos públicos desviados por agentes públicos não é uma tarefa simples, especialmente quando se trata de indivíduos com conexões políticas. Os autores de corrupção

em altos cargos públicos detêm poder e não são facilmente investigados ou processados. Também não é fácil rastrear os produtos do crime, pois os autores têm meios para lavá-los no exterior ou utilizar terceiros para ocultá-los. É importante destacar que a RA é um processo complexo, e, por isso, a utilização dos modelos de ANPP ou APPD como alternativa pode aliviar a carga dos atores do sistema de justiça criminal em seus esforços no combate à corrupção e à lavagem de dinheiro.

Palavras-chave: recuperação de ativos; acordo de não persecução penal; acordo de persecução penal diferida; corrupção.

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Appendix 1

Asset Recovery and Proceeds of Crime Survey Questionnaire

I. Questions

Directions: Please indicate your level of agreement or disagreement with each of these statements regarding the legal regime and practice regarding Asset Recovery and Proceeds of crime in Uganda . Place an "X" mark in the box of your answer.

Q1: How many cases involving money laundering leading to Asset Recovery do you handle in a year?

_____

Q2: Do you think the Anti Money Laundering and Asset Recovery legal is adequate to deal with this vice?

        □ Yes   □ No

If Yes, give reasons _____

_____

If   No,   give   rea-sons_____

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
1. The Criminal Justice System appreciates the Anti Money Laundering laws.					
2. It is relatively easy to secure a conviction based recovery order.					
3. It is impossible to secure a non conviction based recovery order.					
4. The investigators easily locate the proceeds of crime.					
5. The prosecutors appreciate AML laws and Asset recovery.					
6. There is proper coordination and cooperation with all stakeholders in AML and Assets Recovery.					
7. It is easy to recover proceeds of crime in and outside Uganda.					
8. The sentences under the AMLA are adequate.					

Q9: How would you rate your overall experience in handling Anti Money Laundering and Asset Recovery cases?

        □ Highly satisfactory

        □ Satisfactory

        □ Neutral

        □ Unsatisfactory

        □ Highly Unsatisfactory

Q10: What could be done to make investigation and prosecution of Anti Money Laundering and Asset recovery better?

_____

_____

_____

III. Demographic Data

Name (optional):_____

Age: ____

Gender: ____

Number of Anti Money Laundering and Asset recovery cases handled:

       □ **1-2**

       □ **3-5**

       □ **6-10**

       □ **more than 10**

Email Address (optional): _____

IV. Thank you for sharing your thoughts with us at Legal Research Consortium LTD.