



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)
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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.
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International Legal Framework For Asset Recovery And Forfeiture

- ❑ 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.
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International Legal Framework For Asset Recovery And Forfeiture

- ❑ **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.
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Recommendations of The Financial Action Task Force (FATF)

- ❑ The FATF (the Financial Action Task Force) which is the international standard-setting body for anti-money laundering (AML), countering of the financing of terrorism (CFT), and countering proliferation financing (CPF) **has laid down a comprehensive framework of measures /recommendations for which countries must comply with to ensure to tackle illicit financial flows.**
 - ❑ 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
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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.
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Domestic Framework for Asset Recovery and Forfeiture

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.

The Leadership Code Act Cap 33.

- ❑ Regulates conduct of public leaders, requiring declaration of incomes, assets and liabilities
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Domestic Framework for Asset Recovery and Forfeiture

- 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.
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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.
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Key Institutions in Asset Recovery

- ❑ **Financial Intelligence Authority (FIA)**
 - ❑ Monitors financial transactions to detect and report illicit funds.
 - ❑ Supports investigations related to money laundering and asset recovery
 - ❑ **Office of the Auditor General (OAG)**
 - ❑ Audit government's activities to identify financial mismanagement.
 - ❑ Collaborates with the IG on investigations into corruption.
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Key Institutions in Asset Recovery

The Courts of Law

- ❑ Adjudicate forfeiture proceedings particularly through the Anti- corruption Act.
 - ❑ Ensure the legal process for asset recovery is followed.
 - ❑ Ensure that the **nature of sanctions are such that they are proportionate and dissuasive enough to prevent the offence of Money Laundering** from becoming prevalent in the country. (this is an FATF standard measure expected of all countries)
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Key Institutions in Asset Recovery

- ❑ Compensation orders are encouraged in cases where court finds that money had has been lost.
 - ❑ **The Uganda Revenue Authority (URA)**
 - ❑ Traces and recovers assets related to financial crimes, like tax evasion and corruption
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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) UGHACAD
 - ❑ Restoration of Stolen Wealth (Uganda v Lwamafa & 2 Ors (Criminal Session Case-2015/9) [2016]
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The Role Of Asset Recovery And Forfeiture In Fighting Corruption In Uganda

- ❑ Promoting justice and accountability (Uganda v Kazinda (HCT-00SC-2012/138) [2013]UGHCACD10)
 - ❑ Strengthening Rule of Law and Governance
 - ❑ International Cooperation and Global Standards
 - ❑ Disrupting Corruption Networks
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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
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Recommendations

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

- ❑ Asset recovery and forfeiture play a crucial role in the fight against corruption by directly removing the financial incentives for corrupt officials, acting as a strong deterrent against future corrupt activities, and by enabling the return of stolen funds to the public, thereby mitigating the negative impacts of corruption on society.
 - ❑ Institutional efforts must be enhanced and Uganda must further consider a NCBA law to bolster its efforts in the fight against corruption.
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*Thank you
for Listening!*
