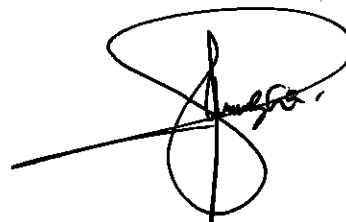


PARLIAMENT OF UGANDA

**MINORITY REPORT BY MEMBERS OF THE SECTORAL
COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS
ON THE ANTI CORRUPTION (AMENDMENT) BILL 2013**

**OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDING
KAMPALA -UGANDA**

DECEMBER 2014

A handwritten signature in black ink, featuring a large, stylized loop and a horizontal line extending to the left.

1.0 Introduction.

The Anti corruption (Amendment) Bill 2013, a private members bill was read for the first time on the 27th day of August 2013. It was referred to the committee in accordance with rules 117 and 118 of the rules of the House.

Rt Hon. Speaker and Honourable Colleagues, in accordance with Rule 194 of our Rules of Procedure, some members of the Committee, with respect to the majority wish to present this minority report. Rule 194 provides;

"194(1) Any Member or members dissenting from the opinion of a majority of a Committee may state in writing the reasons for his or her or their dissent and the statements of reasons shall be appended to the report of the committee."

Rt. Hon Speaker and colleagues, the reasons of dissent in this minority report are largely based on the constitution of the Republic of Uganda which the citizens enacted, promulgated and bestowed unto themselves and posterity for good reasons.

Experience also shows that a law made in good faith, if not carefully considered may be abused and people, the subject of the state may wantonly lose the protection of the Constitution.

Rt. Hon Speaker and Honourable members, it is imperative to strongly caution ourselves that whereas it is compelling to make laws that will guarantee a corruption free society, the apparent societal pressures must not stampede parliament and tempt legislators to invent legal fictions outside the purview of our Constitution that we gave unto ourselves

2.0. Background.

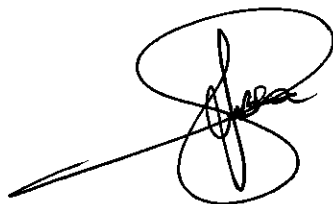
The majority report analysed the background to the bill and the minority agree with the analysis.

3.0. Methodology.

The minority concurs with the methodology adopted by the Committee as a true reflection of events.

4.0 Objects of the Bill.

The minority concurs with the majority on the object of the Bill as presented at Page 2 of the Bill (See page 2 long title to the Bill). The minority wish to add that except as expressly stated to be in dissent, the minority agree with a large number of observations and recommendations subject to stated points of dissent as stated hereunder;

A handwritten signature in black ink, featuring a large, stylized loop at the top and a long, sweeping horizontal stroke extending to the left.

4.0. Points of dissent.

2.1 The majority observe at Page 4 of their report thus;

"V The confiscation of properties can either be after a conviction has been secured or even before a conviction has been secured where an individual has accumulated unexplainable amount of wealth"

With respect, there should never be any confiscation of property where there is no conviction. The Bill is a penal proposal. Its provisions and principles can only be criminal and not civil. Confiscation of property in the proposed law is a remedy, which is part of the criminal process. It can only be a sentence following a conviction by a competent court exercising criminal jurisdiction. The recommendation by the majority members if accepted will amount to a negation of the core foundation of our criminal justice system and will certainly constitute and egregious derogation and abrogation of the existing and much cherished constitutional order. We observe that Ugandans whether majority or actually the entire country's mandate is limited by the constitution and we can only amend but not abrogate the constitution. The search for a solution against corruption in the country which we agree is serious vice in the country, perpetrated by those we entrust with public offices must of necessity be with in the four corners of our constitution.

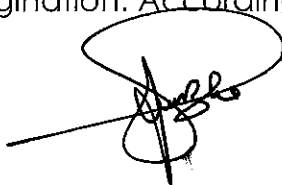
The words **"unexplainable amount of wealth"** as used and relied on by the majority are speculative. They are falsely based on a misapprehension that failure to explain or remember one's wealth is an offence whereas not.

Observation VI. The majority at Page 4 of the main report observe that:-

"VI Any form of recovery, forfeiture or conviction is legal and constitutional because property derived from crime or any benefit thereto cannot be said to constitute a right to property. In essence property acquired through corrupt means is property of the defrauded party".

The minority fundamentally disagrees for the following reasons;

1. The observation of the majority seems to hinge on a presumption that the property, the subject of confiscation is acquired feloniously which fact is not proved. This thinking would out rightly offend the spirit of Article 28 of the Constitution of the Republic of Uganda.
- ii. The phrase **"...property acquired through corrupt means is property of the defrauded entity"**. Still this presupposes that there is an entity proved to have been defrauded whereas not. This is actually the reason for the failure to prosecute the suspect. It also assumes that the person is holding the property acquired corruptly. This is conviction I itself and such a thinking is based on legal delusion. A suspect is innocent until proved guilty or until one pleads guilty. The guilt is a criminal phrase and has no civil connotations by any stretch of legal or juristic imagination. Accordingly, under no



circumstances can the property of a suspect be subjected to confiscation without circumventing the due process of the law.

In this "non conviction based confiscation" there is actually no body proved to be defrauded.

Observation viii. The majority observe at Page 5 of the Report that;

"VIII the non -conviction based recovery of assets is generally premised on civil Proceedings against the property of a suspected Criminal. In this case, an individual has the burden of highlighting the source of their acquired wealth. Failure to satisfy court results in forfeiture of the property under investigation".

Rt. Hon Speaker, there is no such a thing in law as **"suspected criminal"** the use of such language is misleading whether conscious, sub-consciously or unconsciously. A **criminal is a convict**. A suspect is undergoing trial and the two have different sets of rights under both the law and elementary common sense. The two do not rhyme. Instead they sharply contradict.

Observation IX. The majority observe thus;

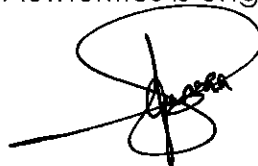
"IX it was noted that under this form of recovery, there is no need for criminal proceedings as long as investigations point to the fact that a crime was committed and property was generated as a result".

This again is contradictory. If investigations point to criminality, the option of the state is to prosecute since corruption is already an offence under the same law. Property generated feloniously is already provided for and the remedy is forfeiture among others. The minority observes that it is imprudent to allow state agencies to hide their inefficiency and deficiency under the curtain of such provisions. This kind of legislation would promote arbitrariness, laziness, corruption as well as unguarded and unguided exercise of powers on the part of the prosecution.

Observation X. At page 5 of the Report is to effect that..

"X presenting Authorities are given powers to consider whether or not it is in public interest to conduct a criminal investigation (at a later stage. If sufficient evidence is obtained a prosecution. In these circumstances relevant prosecuting authorities may also consider whether or not the public interest might be served by using the non-conviction based recovery procedure".

Rt. Hon. Speaker, the minority respectfully dissent determining public interest on a case by case basis would encourage arbitrariness and discrimination which offends Article 21 of the constitution .The principles of fairness would also not be served if the discretion of the prosecuting Authorities is unguided and limitless.



The principles of consistence, certainty and predictability would also greatly be compromised by speculative fanciful imaginations, which will often be based on imperfection in the course of investigation

Rt. Hon. speaker and members, the effect of this thinking in observation x above, is to lessen the standard of proof and also shift the burden of proof as enshrined in section 101 of the Evidence Act.

Whereas the committee observed the need to take care to avoid abuse by the implementers of this law and ensuring that the agencies of Government are accountable, the committee proposes no such measures so as to ensure this accountability. We must at all times avoid making a law that will be used against people for political or other mischievous means. A number of our laws have been applied for such.

Indeed there are no measures to curb human mischiefs .The only safeguard can only be to keep the burden on the prosecution and the standard where it is. The need to combat corruption needs no emphasis. This protects public property as well as morality. The need to protect individual liberties and rights is of proportionate if not greater importance. Constitutional liberties must not be sacrificed at the altar of fighting corruption.


Observation XV provides.

Where a person is convicted of an offence under the Anti-Corruption Act and owns property, or has owned property within the period of ten years preceding his or her conviction, it shall be presumed that such property represents the proceeds of the offence for which he or she was charged and convicted.

The person convicted should be able to rebut the presumption by proving on a balance of probabilities that the property did not represent such proceeds.

Rt. Hon Speaker and Members, the above Majority observation creates the following absurdities.

- i) The rebuttable presumption alluded to has the effect of shifting the burden of proof onto the suspect to disprove what ought to be an ingredient in the charge of corruption. It is the duty of the Prosecuting Authority to prove all the elements of the offence including what was actually stolen or obtained corruptly.
- ii) Further .Hon Members, where a person has already been convicted, there is no further procedure for disproving the presumption of illegality, which in any case is unconstitutional. The constitution in articles 28 enacts presumption of legality. Post conviction proceedings must also be defended.



Rt. Hon speaker and members the summary of the objectionable observations above is that:-

- a) They offend the presumption of innocence guaranteed by the constitution and
- b) They limit the discretion of court by providing for "**mandatory confiscation**" of the property of the convict or suspect.

They raise very serious constitutional ramifications and this minority report points them out as hereunder:-

- a) **Presumptions of innocence.** As observed above these presumptions are a creature of the constitution in all civil and criminal matters

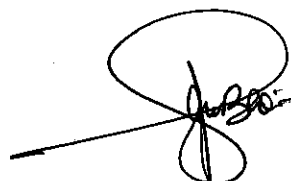
Following the promulgation of the current Constitutions. this provision was started by the **Hon. Justice Richard Oscar Okumu - Wengi** to be a variance with the Constitution (**See Betty Namboozie Bakireke -Versus- Uganda, Criminal Appeal No.....of 2003**

To this end, Providing for non-conviction based confiscation would re-enact provisions of the law existing before the Constitution.

- b) Limiting the exercise of courts discretion RT. Hon speaker and colleagues. It has been held by the supreme court of Uganda in constructional Appeal No.of 20..... : **SUSAN KIGULA AND 99 OTHERS -VERSUS- THE ATTORNEY GENERAL**, that the power/discretion of court is a creature of the Constitution. As such an Act of Parliament cannot limit it. Therefore, the mandatory/confiscations alluded to may be constitutionally challenged on two fronts namely:-
 - a. That it is out rightly unconstitutional for encroaching or constitutionally protected territory; and
 - b) That it is legislating to reverse a decision of court as stated above.

6.0 **Recommendations.**

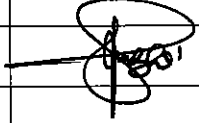
- 6.1 The minority agree with the majority report that the Bill be passed into law subject to the observations herein;-
- 6.2 The minority disagrees with the proposal for Government to bring a law that will comprehensively deal with the matters of confiscation instead the minority recommend that all proposals to deal with confiscation be put in this amendment since it is the duty of Parliament to do so under Article 79 of the constitutional. This is a perfect opportunity.



PROPOSED AMENDEMENTS BY MINORITY MEMBERS OF THE COMMITTEE ON LEGAL AND PARLIMENTARY AFFAIRS TO THE ANTI CORRUPTION (AMENDMENTS) BILL. 2013.

As per the recommendations above, we propose to delete the provisions on non-conviction based confiscation. We also propose that the procedure for post conviction proceedings be provided.

I beg to move

No.	NAME	CONSTITUENCY	PARTY	SIGNATURE
1.	Hon. Lubega M. Sseggon	Busiro East	DP	
2.				