



## 1.0 Introduction

The Committee on Legal and Parliamentary Affairs considered the Anti Corruption (Amendment) Bill, 2013 and now presents its report.

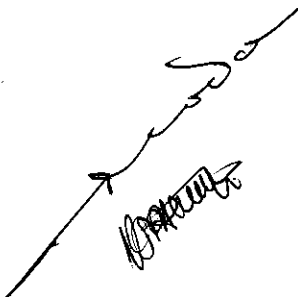

The Anti Corruption (Amendment) Bill, 2013; A Private Members Bill introduced by Hon. John Ssimbwa, was read for the first time on 27<sup>th</sup> August 2013. It was referred to the Committee on Legal and Parliamentary Affairs in accordance with Rules 117 and 118 of the Rules of Procedure of Parliament.


In scrutinising the Bill, the Committee was guided by Rule 118 of the Rules of Procedure of Parliament.

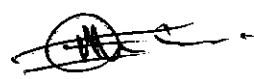

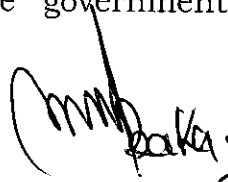
## 2.0 Background

The Anti Corruption (Amendment) Bill, 2013 is a private Members Bill intended to amend the Anti Corruption Act, 2009 to provide for the mandatory confiscation of property of persons convicted of offences under the Act. The bill further seeks to widen the scope of categories of persons who may commit the offences of embezzlement and causing financial loss by the inclusion of political leaders and private companies.

The Anti Corruption Act 2009 gives the court discretion to order for the confiscation of property of a convicted person derived directly or indirectly from the Act of corruption. However due to the nature of offences under the Anti Corruption Act, it is very difficult to prove that a particular property was derived directly or indirectly from an act of corruption. This creates a lacuna in the law given that securing a conviction does not necessarily guarantee that the convicted person will make good the loss occasioned to the government or any other organization.



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### 3.0 Methodology

In the process of analysing the Bill, the Committee discussed the Bill and received memoranda from the following stakeholders;

1. Hon. John Ssimbwa (Mover of the Bill),
2. Ministry of Justice and Constitutional Affairs/ The Attorney General's Chambers,
3. Uganda Law Reform Commission,
4. Law Development Centre,
5. Makerere University, School of Law,
6. The Minister of Ethics and Integrity,
7. The Inspectorate of Government,

The Committee also conducted benchmarking study tours to South Africa, Mauritius, the United Kingdom, Republic of Ireland and the Republic of Tanzania to gain broad exposure to the concept of confiscation of proceeds of corruption/crime and benchmark best practices.


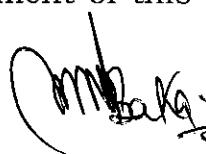
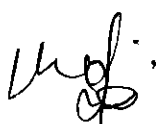
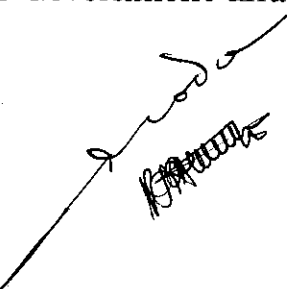
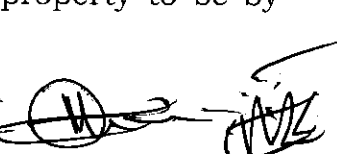


The Committee further held a workshop to consider the draft report on the Bill.

### 4.0 Objective of the Bill

The objective of the bill is to amend the Anti Corruption Act, 2009 to provide for mandatory confiscation of property of persons convicted of offences under this Act.

The proposal to amend the Anti Corruption Act, 2009 is intended to ensure that Government or any other company or organisation recovers the loss, if any, caused by a person convicted of an offence under this act.

The bill also seeks to vest the confiscated property of the convicted person with Government and for management of this property to be by

the public trustee appointed by the Minister in accordance with the Public Trustee Act.


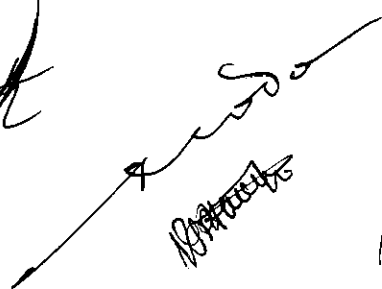
## 5.0 Observations and Recommendations

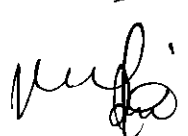

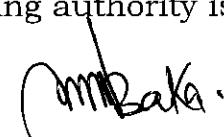



The Committee observed that;

- i. The law is necessary since existing provisions give court the discretion to confiscate the property of the convicted person but the confiscation is specifically restricted to properties acquired directly or indirectly from acts of corruption. This is difficult to implement since it is difficult to determine which property was derived directly or indirectly from an act of corruption.
- ii. Political leaders will be included in the category of people who may be culpable for their actions in facilitating corruption through their influence on administrative processes, procurements and decision making.
- iii. The crime of "corruption" is vague in many other jurisdictions and it was noted that most of these jurisdictions have laws that comprehensively recover proceeds of crime rather than proceeds of corruption as is the subject of this legislation. The responsible Minister will therefore have to come to Parliament with a comprehensive law on the proceeds of crime.
- iv. The Committee noted that the confiscation and forfeiture of properties/assets can be extended to even those properties elicited outside the physical boundaries of the country.
- 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 an unexplainable amount of wealth.
- vi. Any form of recovery, forfeiture or confecton 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 entity.

- vii. The conviction based form of recovery, empowers the government through its agencies to bring an action against a convict to recover assets that are proceeds of the crime/corruption.
- viii. The non-conviction based recovery of assets is generally premised on civil proceeding 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 the court results in forfeiture of the property under investigation.
- ix. It was noted that under this form of recovery, there is no need for criminal proceedings to have commenced as long as investigations point to the fact that a crime was committed and property was generated as a result.
- x. That prosecuting authorities are given powers to consider whether or not it is in the public interest to conduct a criminal investigation and (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 better served by using the non conviction-based recovery procedure.
- xi. The Directorate of Public Prosecution and the Inspectorate of Government have powers to apply to court for an order for confiscation, recovery, freezing and forfeiture upon conviction of the suspect.
- xii. That the standard of proof in civil recovery is that of the balance of probabilities. This is because the proceedings are civil in nature. The person against whom an action is brought is under a duty to give an explanation although the prosecuting authority is bound to

  
  
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bring evidence that the property in question was derived from corruption.

- xiii. That care should be taken in implementing the laws relating to recovery of property to avoid abuse by the implementers. Institutions involved should be accountable to government and applications for orders for recovery, confiscation or forfeiture should be made to the High Court.
- xiv. "Property "should be widely defined to include (whether within the jurisdiction or not) all benefits, interests and property, real and personal, tangible and intangible, and gifts made for the purpose of avoiding detection or forfeiture. Property which is held by a third party should also be capable of being subject to a restraint order.
- xv. 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 the balance of probabilities that the property did not represent such proceeds.

- xvi. Where a person accused of an offence under the Act dies or absconds, the court shall have discretion, on the application of the prosecuting authority, to make a forfeiture order in respect of his property.
- xvii. There is a need for inter-agency cooperation among institutions charged with fighting corruption, if the fight against corruption is to be successful. The existing multiplicity is hampering the fight against corruption.

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## 6.0 Recommendation

The Committee recommends that there be a Government led effort to bring a law to Parliament that will comprehensively deal with the matter of confiscation of assets acquired through crimes other than corruption. Assets acquired through trafficking of persons, illicit trade in drugs, arms trafficking, smuggling and tax evasion should also be confiscated.

The Committee further recommends that an Inter-Agency forum be created to bring together the different corruption fighting agencies in the implementation of this law.

The Committee recommends that the Bill be passed into law subject to the proposed amendments.

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## **Proposed amendments to the Anti-Corruption Bill, 2013**

### **1. The long title**

The Anti-corruption (Amendment) Bill, 2013, is amended by substituting for the long title the following;

“An Act to amend the Anti Corruption Act, 2009; to streamline the process of issuing confiscation and restraint orders; to provide for the recovery of the value of a benefit derived from corruption; to widen the scope of the offences of embezzlement, causing financial loss; and to provide for related matters.”

#### ***Justification***

- ***To provide for the aspect of recovery of the value of benefit derived from an act of corruption***

### **2. Clause 1**

The principal Act is amended in section 1 by inserting immediately after the definition of “inspectorate officer” the following-

- a) “Minister” means the Minister responsible for Justice

#### ***Justification***

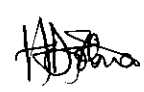
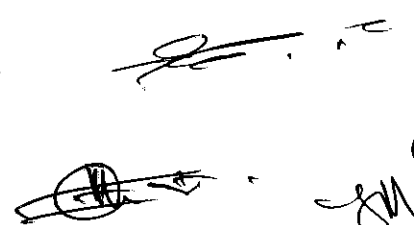
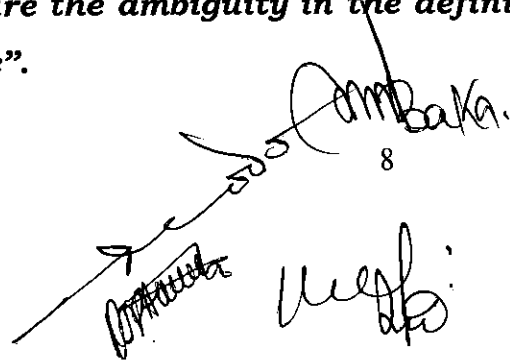
- ***To define who the Minister is.***

- b) Substitute for the definition of a “political office” with the following;

“Political office” includes the office of the vice president, the Speaker, Deputy Speaker, a Minister, a Member of Parliament or a member of any commission, authority, council or committee established by the Constitution or an act of Parliament;

#### ***Justification***

- ***To cure the ambiguity in the definition of the word “political office”.***





(c) Insert definition of prosecuting authority immediately after "political office"

"Prosecuting authority" means the Directorate of Public Prosecution or the Inspectorate of Government.

**Justification**

- **For clarity.**

**3. Clause 2**

Amendment of section 19 of the principal Act:

Redraft clause 2 as follows;

The Principal Act is amended in section 19 by:

- a) inserting immediately after paragraph (c) the following-

"(d) A political leader occupying a political office, or

**Justification**

- **For clarity.**

- b). Renumber section 19 (d) as 19 (e)

**Justification**

- **Consequential amendment.**

**4. clause 3**

- (a) Insert the words "in section 20" between the words "amended" and "by" appearing in the first line of the provision.

**Justification**

- **For better drafting**

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(b) **Redraft clause 3(a) as follows;**

(a) substitute for subsection (1) the following-

"(1) A political leader holding a political office, or a person employed by the Government, bank, a credit institution, a company or a public body, who in the performance of his or her duties does or fails to do any act knowing or having reason to believe that the act or omission will cause financial loss to the political office, Government, bank, credit institution, a company or a public body commits an offence and is liable on conviction to a fine not exceeding three hundred and thirty six currency points or to a term of imprisonment not exceeding fourteen years or both"

**Justification**

- **To correct the grammar and include a political leader holding political office responsible for causing financial loss**

c). Amend clause 3(b) deleting the year "2012" at the end of the provision

**Justification**

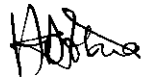
- **For better drafting**

**5. Clause 6**

Amend clause 6 by redrafting section 38 (1) as follows;

**38. Duty to give information.**

(1) Notwithstanding any law, a person from whom a police officer or special investigator requires information under this Act shall be under a duty to give the police officer or special investigator the information which is in his or her possession or knowledge.



## Justification

- ***To hold persons holding information duty bound to give the information to the police or the investigation officers.***

## 6. Clause 7

Substitute for clause 7 of the bill the following;

### **63. Court to assess benefit derived from the act of corruption**

- (1) Where a person is convicted of an offence of corruption under this Act, the Prosecuting authority may, apply to the convicting court or to any other appropriate court not later than six months after conviction to assess the value of the benefit derived by that person from the act of corruption.
- (2) Subject to section 65, the benefit derived from corruption by the convicted person shall be;-
  - (a) any property or interest held by the convicted person at any time whether before or after the commencement of this Act, being property or interest disproportionate to his or her known sources of income and the holding of which cannot be explained to the satisfaction of court;
  - (b) the value of the benefit derived by him or her from the act of corruption for which he or she is convicted, shall be the aggregate of the value of property or interest therein referred to in paragraph (a) and any other corporeal or incorporeal benefit.

## Justification

- ***To provide for the procedure for assessment of benefit derived from the act of corruption.***

*[Handwritten signatures and notes are present below the justification section, including "Negd", "11", and various initials.]*

7. Insertion of new clause 63A

Insert a new clause 63A immediately after section 63 as follows,

**63A Presumption of property or interest**

- 1) In assessing the benefit derived by a person from the offence of corruption, it shall be rebuttable presumption that,-
  - (a) any property or interest acquired by the convict within a period of ten years preceding his or her conviction represents a proceed or a benefit derived from the offence of corruption.
  - (b) any expenditure incurred by the convicted person at any time before conviction was met from property obtained by him or her as a result of the offence of corruption.
- 2) Where the prosecuting authority proves that the convicted person committed the offence of corruption prior to the period in subsection (1) (a), court shall take into account any property or any interest acquired by the convicted person when accessing the value of the benefit enjoyed.
- 3) The court shall not make a presumption under subsection (1) in relation to property, interest or expenditure if the assumption is shown to be incorrect, there would be a serious risk of injustice if the assumption were made.
- 4) A person convicted shall be given an opportunity to adduce evidence in rebuttal to the presumption that the property, interest or expenditure does not represent proceeds of an offence under this Act.

- 5) The proof in rebuttal under subsection (3) shall be on the balance of probabilities.

**Justification**

- ***To provide for presumptions in determining the value of benefit enjoyed by the convicted person.***

**8. Substitute for Clause 8 of the bill the following**

Insert a new section 63B after section 63A as follows;

**63B. Assessment order**

- (1) Where the court is satisfied that the convicted person derived benefit from the offence for which he or she was convicted under this Act, it shall make an assessment order, directing the convicted person to pay the stated amount within a period of six months.
- (2) Where an assessment order has been issued under this section, the convicted person may, on notifying the prosecuting authority, apply to court to have the restraining order lifted for purposes of satisfying the assessment order.
- (3) Court may-
- a) Grant the application to lift the restraining order on terms it deems fit,
  - b) Reject the application and instead appoint a receiver to realise restrained property for purposes of satisfying the assessment order.
- (4) For avoidance of doubt, the assessment order shall not have any mitigating effect on the sentence for the offence committed by the convicted person.

### ***Justification***

- ***To provide for assessment order and give the convicted person an opportunity to pay for the benefit derived from the offence committed under the Act.***

### **9. Substitute for clause 9 of the bill the following:**

Amendment of Section 64 of the principal Act

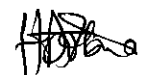

The Principal Act is amended by substituting for section 64 the following:

#### **64 Confiscation order**

- (1) 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 prosecuting authority shall apply to Court for a confiscation order.
- (2) Where the prosecuting authority makes an application for a confiscation order under subsection (1), it shall serve a copy of the application on the convicted person and on such other person as the court may direct.
- (3) A person on whom the application has been served under Subsection 2 of this section may appear and adduce evidence at the hearing of the application.
- (4) The absence of the convicted person in court or any other person on whom service has been affected shall not prevent the court from making a confiscation order in his or her absence.

### ***Justification***

- ***To provide for a detailed procedure for obtaining a confiscation order.***



10. **Insert a new clause 10 after clause 9 of the Bill as follows:**

The Principal Act is amended by inserting immediately after section 64 a new section 64A to read as follows;

**64A Court to appoint a manager, receiver or administrator**

- (1) Where court makes a confiscation order and is satisfied that the property is realisable or requires special attention, it shall appoint a person to take control or manage or otherwise deal with the property.
- (2) A person appointed under subsection (1) shall within six months from the date of appointment or such other period as the court may prescribe, file in court an inventory of the property or interest confiscated together with an account of the proceeds recovered.
- (3) A person appointed under subsection (1) shall realise the property specified in the confiscation order and pay the proceeds in the manner prescribed by the Minister in regulations.
- (4) A person shall be qualified to be appointed a manager, or receiver, administrator if he or she is qualified to act as an insolvency practitioner under the Insolvency Act.

**Justification**

- **To provide for the management of confiscated property**

11. **Insert a new clause 11 immediately after clause 10 as follows:**

The principal Act is amended by inserting a new Section 64B immediately after section 64A as follows;

**64B Review of a confiscation order**

1) A person who has an interest in a property in respect of which a confiscation order has been made may within fourteen days, apply to court for a review of the confiscation order.

2) An application for a review under sub section (1) shall not be heard by the court unless the applicant has served the prosecuting authority with the application.

3) The applicant in subsection (1) shall adduce evidence to show that he or she acquired the property or interest lawfully.

4) The court may revoke or vary the confiscation order or make the order subject to such conditions as it thinks fit.

***Justification***

- ***To provide an avenue for an aggrieved party to have the confiscation order reviewed.***

**12. Amendment of Clause 10 of the Bill**

- a) Renumber clause 10 of the bill as clause 12

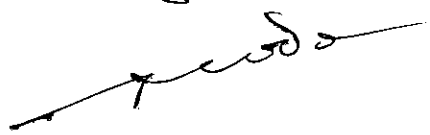
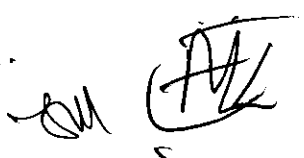
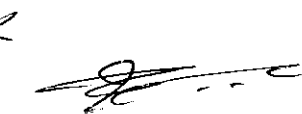
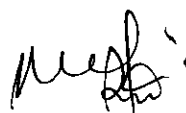
***Justification***

- ***Consequential amendment.***

- b) Substitute for the words "paid by the convicted person" appearing at the end of the provision with the words "recovered from the proceeds of recovery"

**Justification**

- ***To ensure that the costs of enforcing the confiscation order are realized from the proceeds of recovery.***





13. **Introduce a new clause 12 as follows;**

Amendment of section 67

The principal Act is amended in section 67 by deleting the words  
“responsible for justice” appearing in the first line of the provision.

**Justification**

- **Consequential amendment**

14. **Insert a new Part VIII immediately after Part VII**

Insert a new part VIII after Part VII

**“RECOVERY OF TAINTED PROPERTY”**

**67. Application for a recovery Order**

(1) Where the Director of Public Prosecutions or the Inspector General of Government has reasonable grounds to suspect that a person;-

a) maintains a standard of living above that which is commensurate with his or her current or past known sources of income or assets;  
or

b) is in control or possession of pecuniary resources or property disproportionate to his or her current or past known sources of income or assets,

the Director of Public Prosecutions or the Inspector General of Government may make an application to the Court for the grant of a recovery order in respect of the property or value of the benefit over and above that which is commensurate with his current or past known sources of income.

2) The Director of Public Prosecutions or the Inspector General of Government shall, within 14 days of an application under

subsection (1), give notice to every person known to have an interest in the property subject to the application.

3) A person referred to in subsection (2) or any other person claiming an interest in the property may appear at the hearing of an application made under subsection (1) –

(a) to oppose the making of the Order; or

(b) to apply for an order –

(i) excluding his or her interest in that property from the operation of the Order;

(ii) varying the operation of the Order in respect of that property or interest; or

(iii) to adduce evidence at the hearing of the application.

4) An Application for a recovery order shall be made to the High Court.

#### **Justification**

- ***To provide for non conviction based approach for recovery of a benefit derived from an act of corruption. This is premised on the notion that not always will evidence gathered during investigations be sufficient to secure a conviction in criminal proceedings.***
- ***The civil assets recovery of assets acquired as a result of crime has been supported by the United Nations Convention against Corruption. Article 20 of the Convention against corruption provides that state subject to their constitutions and fundamental principles of their legal systems should consider adopting laws which address a significant increase***

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***in the assets of a public official that he or she can't reasonably explain in relation to his or her lawful income.***

#### **68. Evidence relating to proceeds of unlawful activities**

(1) In determining whether a person has derived benefit from corruption, the court shall have regard to the following;

(a) if it is found that the respondent did not at the fixed date, since the beginning of a period of ten years before the fixed date, have legitimate sources of income sufficient to justify the interest in any property that the respondent holds;

(b) if it is found that a court had ordered the respondent during proceedings before it to disclose and that the respondent had without sufficient cause failed to disclose such facts or had, after being so ordered, furnished false information, knowing such information to be false or not believing it to be true;

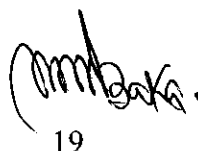
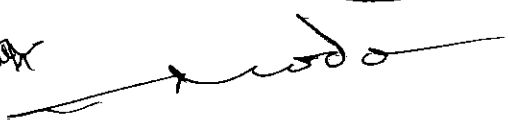
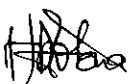

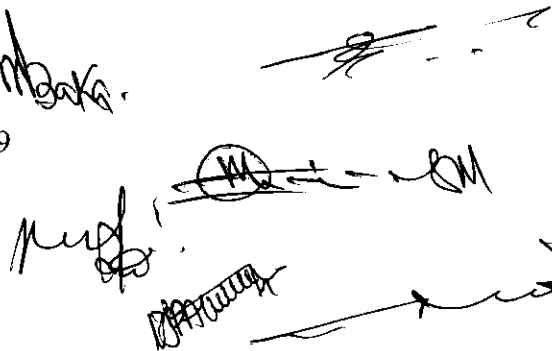
(c) property or interest is held by the respondent as an advantage, payment, service or reward in connection with the offence of corruption referred under this Act

#### ***Justification***

- ***To provide factors that would guide court in determining as to whether a recovery order should be issued.***

#### **69. Grant of a recovery order**

(1) Where Court is satisfied that the "owner" of the property has failed to satisfy court that he or she lawfully acquired the property, the Court

  
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shall, subject to subsection (2) and any other provision under this Act, make a recovery order.

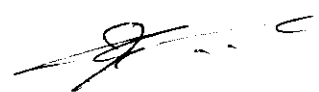

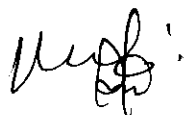
- (2) The court may before issuing a recovery order, direct that notice be given to any person in whose possession the property is found or who may have interest in the property or claim ownership of the property, to show cause why the property should not be recovered.
- (3) The Court may make a recovery order under this section notwithstanding the fact that a person was acquitted of an offence under this Act, the charge was withdrawn before a verdict was returned or the proceedings were stayed.
- (4) A recovery order made under this section shall be published in a daily newspaper of wide circulation within a period of seven days from the date it was made.
- (5) A person aggrieved with a recovery order made under this Act may appeal against the order within 14 days after the publication of the order.

### ***Justification***

- ***To provide for recovery orders***

### **70. Objection to a recovery order by third parties**

- (1) A person aggrieved by a recovery order who was not served with the application for a recovery order, may, within fourteen days after the last publication of the notice under section 68 (4), apply for an order excluding his or her interest in the property concerned from the operation of the Order, or varying the operation of the Order in respect of that property.
- (2) An application made under subsection (1) shall be accompanied by an affidavit setting out;-



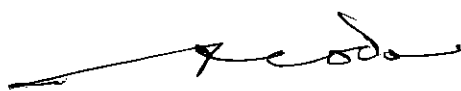
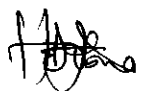
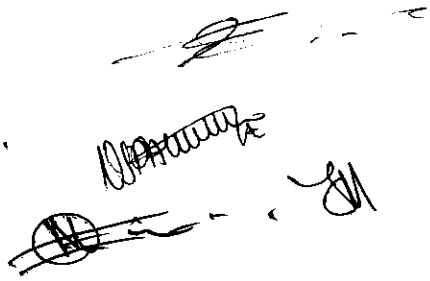
- (a) the nature and extent of the applicant's right, title or interest in the property concerned;
  - (b) the time and circumstances of the applicant's acquisition of the right, title, or interest in the property;
  - (c) any additional facts supporting the application; and
  - (d) the relief sought.
- (3) The application made under subsection (1) and the affidavit shall be served on the prosecuting authority which shall be entitled to appear at the hearing of the application.
- (4) The hearing of the application shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the application.
- (5) The Court may consolidate the hearing of the application with the hearing of any other application filed under this section.
- (6) The Court may make an order under subsection (1) where it finds that the applicant—
- (a) had acquired the interest concerned lawfully; and
  - (b) neither knew nor had reasonable ground to suspect that the property in which the interest is held is tainted.

**Justification**

- ***To provide an avenue through which third parties can apply to court to protect their interest in the property that is a subject of a recovery order.***



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## **71. Appeal against a recovery Order**

- (1) A person aggrieved by the grant of, or refusal to grant, a recovery order, may appeal to the Court of Appeal.
- (2) Where a recovery order has been made, it shall remain in force until the final determination of an appeal under subsection (1).

### ***Justification***


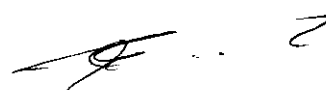
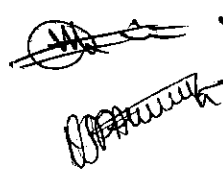
- ***To provide for the right of appeal once a recovery order is made.***

## **72. Enforcement of a recovery Order**

- (1) Where court makes a recovery order, the property affected by the order shall immediately vest in the Government.
- (2) Where the recovery order appoints a trustee or receiver to manage or realize property, the trustee or receiver may take possession of that property on behalf of the Government from any person in possession, or entitled to possession, of the property.
- (3) The trustee or receiver shall, subject to any order for the exclusion of an interest in the recovered property under this Act, take control and dispose of the property recovered by sale or any other means subject to the direction of the Court.
- (4) A right or interest in recovered property not exercisable by or transferable to the Government shall expire and shall not revert to the person who has possession, or was entitled to possession, of the property immediately before the Order took effect.



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- (5) A person who has possession, or was entitled to possession, of recovered property immediately before the recovery order took effect shall not be eligible to purchase recovered property at any sale conducted by the trustee or receiver.
- (6) The trustee or receiver shall within six months from the date of appointment or any other period determined by court, file in court an inventory and account for the property recovered and any expenses incurred.
- (7) The trustee or receiver shall deposit all proceeds of any sale or disposition of recovered property and any monies recovered into the consolidated fund.
- (8) The expenses incurred in connection with the recovery and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and Court costs, shall be paid out of the proceeds recovered.

***Justification***

- ***To provide the procedure for enforcement for a recovery order.***

**73. The Director of Public Prosecutions or the Inspector General of Government to give consent for an application for a recovery order**

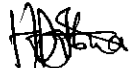
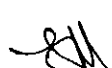
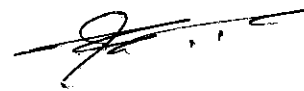
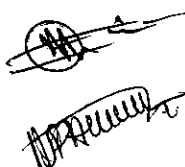
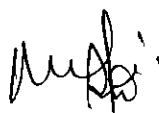
An application for a recovery order shall not be made to court without the written consent of the Director of Public Prosecutions or the Inspector General of Government themselves exclusively.

***Justification***

- ***To ensure that the process is not abused.***



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#### **74. Legal proof in recovery proceedings**

The burden of proof in proceedings for a recovery order shall be a higher standard of proof than on balance of probabilities but less than beyond reasonable doubt.

#### **Justification**

- *To provide for burden of proof in recovery proceedings*

#### **15. Amendment to section 67 of the principal Act**

Section 67 of the principal Act is amended by deleting the words "responsible for justice" appearing in the first line of the provision.

#### **Justification**

- *Consequential amendment*

#### **16. Insert a new clause 67A immediately after section 67 to read as follows;**

##### **67A Power of the Chief Justice to make rules**

The Chief justice shall make rules to govern the procedure;

- (a) for confiscation and recovery orders,
- (b) to be followed by persons appointed to act as trustees or receivers,  
and
- (c) for any related matters

#### **Justification**

- *To empower the Chief Justice to make rules governing the procedure for recovery orders*





17. **Insert a new clause 67B immediately after section 67A to read as follows;**

**67B Reciprocity with other States or territories**

**Declaration of reciprocating States or territories and courts**

(1) Where the Minister is satisfied that any State, has enacted laws for confiscation or recovery orders which have the same effect as this Act, the Minister may by statutory instrument declare the State to be a reciprocating State and the court with jurisdiction to issue the orders to be a reciprocating court for purposes of this Act.

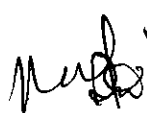
(2) Uganda shall enter into reciprocal agreements, treaties or arrangements for cross-border recovery of the benefit derived from an act of corruption through confiscation order or a recovery order, using the terms of that agreement, treaty or arrangement and the provisions of this Act shall apply with the necessary modifications, consistent with the subsisting agreement, treaty or arrangement to which the cases be subject.

18. **Insert a new clause 67C immediately after section 67B to read as follows;**

**67C Extraterritorial enforcement**

(1) Where the Prosecuting authority believes that any property that is a subject of a court order is situated in a country or territory outside Uganda, the prosecuting authority shall send a request for assistance to the Minister responsible for Justice to be forwarded to that country for enforcement.

(2) Where no confiscation order has been made, a request for assistance shall be a request to the Government of the receiving country to;



- (a) provide a list of property owned by or in which the person named in the request has interest;
- (b) ensure that the named person is prohibited from dealing with property in which he or she has an interest in;
- (c) realize property and the proceeds are transmitted to the consolidated fund; or
- (d) do any act which appears reasonable for the fulfillment of the request.

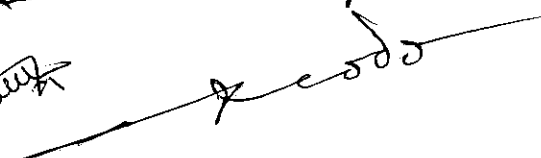
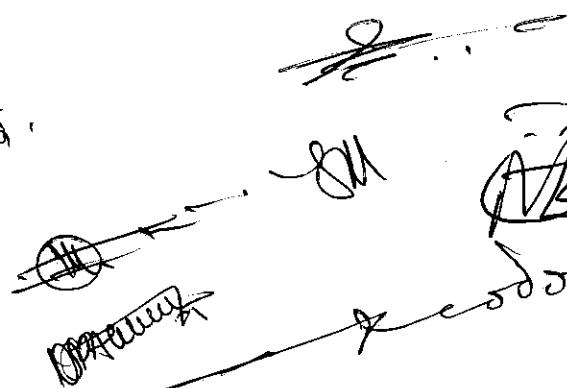
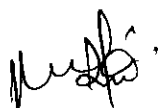
3) A request for assistance shall not be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

4) Property realized in pursuance of a request under subsection (2) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of the realization.

5) A certificate issued by or on behalf of the requested government is sufficient evidence of the facts it states—

- (a) that the property has been realized in pursuance of a request made under subsection (2),
- (b) the date of realization, and
- (c) the proceeds of realization.

6) Where the proceeds of realization made in pursuance of a request under subsection (2) are expressed in a currency other than Uganda shillings, they must be taken to be equivalent to Uganda shillings calculated in accordance with the rate of exchange prevailing at the end of the day of realization.



### Justification

- *To extend the application of confiscation orders beyond Uganda's boundaries*

## Cross reference

Insert companies Act No. 1 of 2012, Insolvency Act before “Public Trustees Act Cap 161”

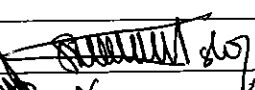
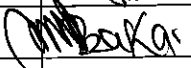
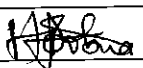
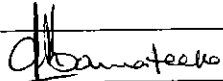
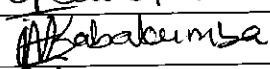
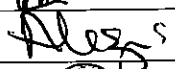
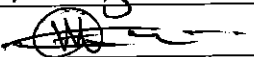

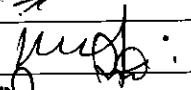

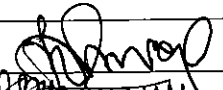
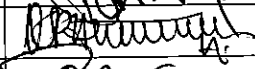
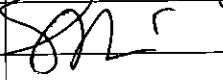
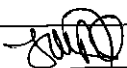
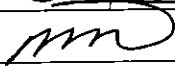
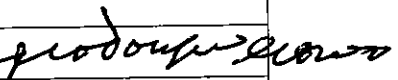
### Justification

- **To include the Companies Act No. 1 of 2012 and the Insolvency Act in the list of cross references**

27

# **COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS**

Signatures for Attachment to the Report of the Committee on Legal and Parliamentary Affairs on the Anti Corruption (Amendment) Bill, 2013

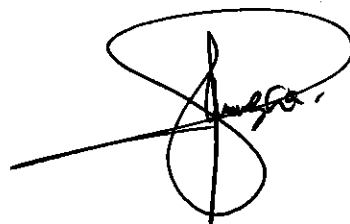
NO.	NAME	CONSTITUENCY	PARTY	SIGNATURE
1.	Hon. Tashobya Stephen	Kajara	NRM	
2.	Hon. Baka Stephen	Bukooli North	NRM	
3.	Hon. Achia Remigio	Pian	NRM	
4.	Hon. Obua Denis Hamson	Ajuri	NRM	
5.	Hon. Timbigamba Linda	Kyenjojo	NRM	
6.	Hon. Musinguzi Yona	Ntungamo	NRM	
7.	Hon. Kamateeka Jovah	Mitooma	NRM	
8.	Hon. Kabakumba Masiko	Bujenje	NRM	
9.	Hon. Ndeezi Alex	PWDs - Central	NRM	
10.	Hon. Nyakecho Okwenye A.	Otuke	NRM	
11.	Hon. Ochua David	Agule	NRM	
12.	Hon. Nakayenze Connie	Mbale	NRM	
13.	Hon. Byarugaba Alex Bakunda	Isingiro South	NRM	
14.	Hon. Amoding Monica	Youth Northern	NRM	
15.	Hon. Mbabazi Betty	Woman Rep. Rubirizi	NRM	
16.	Hon. Mbabazi Amama	Kinkizi West	NRM	
17.	Hon. Niwagaba Wilfred	Ndorwa East		
18.	Hon. Sarah Mpabwa (Lt. Col.)	UPDF		
19.	Hon. Katuntu Abdu	Bugweri	FDC	
20.	Hon. Lubega Medard Ssegona	Busiro East	DP	
21.	Hon. Balikuddembe Joseph	Busiro South	DP	
22.	Hon. Nabukenya Brenda	Luwero	DP	
23.	Hon. Namayanja Florence	Bukoto County East	DP	
24.	Hon. Mwiru Paul	Jinja Mun East	FDC	
25.	Hon. Acire Christopher	Gulu Municipality	FDC	
26.	Hon. Ayena Chrispus	Oyam North	UPC	
27.	Hon. Mujungu Jennifer	Woman Rep. Ntoroko	Indep	
28.	Hon. Otada Sam Amooti	Kibanda	Indep	
29.	Hon. Fox Odoi Oywelowo	West Budama North	Indep	
30.	Hon. Karuhanga Gerald	Youth Rep. Western	Indep	

**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**

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## 1.0 Introduction.

The Anti corruption (Amendment) Bill 2013, a private members bill was read for the first time on the 27<sup>th</sup> 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.

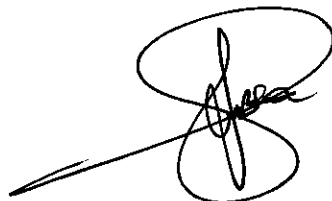
The majority report analysed the background to the bill and the minority agree with the analysis.

## 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;

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#### 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.

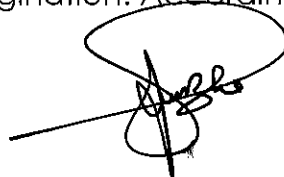
The words "**unexplainable amount of wealth**" as used and relied on by the majority are speculative. They are falsely based on a misapprehension that failure to explain or remember one's wealth is an offence whereas not.

**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;

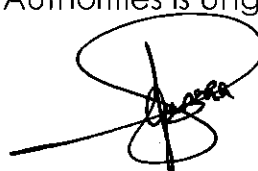
***"IX it was noted that under this form of recovery, there is no need for criminal proceedings as long as investigations point to the fact that a crime was committed and property was generated as a result".***

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 alter 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 Nambooze 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.

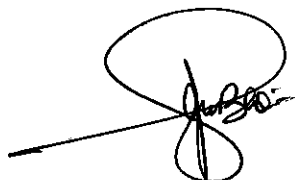
- b) Limiting the exercise of courts discretion RT. Hon speaker and colleagues. It has been held by the supreme court of Uganda in constructional Appeal No. ....of 20..... : **SUSAN KIGULA AND 99 OTHERS -VERSUS- THE ATTORNEY GENERAL**, that the power/discretion of court is a creature of the Constitution. 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;-

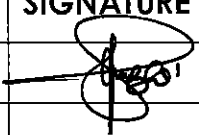
- 6.2 The minority disagrees with the proposal for Government to bring a law that will comprehensively deal with the matters of confiscation instead the minority recommend that all proposals to deal with confiscation be put in this amendment since it is the duty of Parliament to do so under Article 79 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.				