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### CORRUPTION DURING THE COVID-19 CRISIS RESPONSE IN UGANDA AND ITS IMPLICATIONS FOR THE RIGHT TO HEALTH

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#### Abstract

Uganda's Covid-19 crisis response involved the mobilisation of resources from the international community and the private sector. The Ugandan parliament also appropriated a supplementary budget towards the response. To expedite the procurement of essential goods and supplies by government agencies, some public procurement procedures were not followed. As a result, tender prices were rigged, and the quality of products supplied was compromised. Fake vaccines were also sold to unsuspecting recipients. This article contends that acts of corruption did not only compromise health outcomes but also denied potential beneficiaries the right to health. This was despite existing anti-corruption laws and legal institutions. Some corruption-related suspects were arrested and prosecuted. Apart from that, private health facilities charged Covid-19 patients very high medical fees by taking advantage of the limited capacity of public facilities. This happened because of the lack of regulation of medical services by the Ministry of Health and the Uganda Medical and Dental Practitioners Council, which led to a public outcry. Despite the existence of a legal regime, acts of corruption still occurred. It was observed that the laws on corruption are weak and lack effective implementation, and that there is poor coordination between watchdog agencies. Dealing effectively with corruption requires strengthening anti-corruption laws, enacting laws to regulate emergency procurement, improving coordination among watchdog agencies, addressing political and bureaucratic constraints, integrating health systems governance into the overall health system, strengthening, empowering and supporting civil society activities, making information available, and ensuring effective implementation of the law.

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## 1. INTRODUCTION

The Covid-19 pandemic and its attendant crisis in Uganda, which started in early 2020, prompted the state to respond. To mitigate the pandemic's devastating effects, resources were mobilised from various donors.<sup>1</sup> The international community and development partners donated vaccines, while more of them were also pledged.<sup>2</sup> The government also called upon the private sector to donate to the cause. The mobilisation campaign in Uganda was successful as massive donations were made in the form of both cash and in-kind items.<sup>3</sup> The in-kind donations attributable to the private sector included food items for distribution to vulnerable people, essential medical supplies, and new motor vehicles for the fight against the disease.<sup>4</sup> In addition to donations, Parliament also appropriated supplementary budgets to support the intervention.<sup>5</sup>

Given the urgency of the Covid-19 response, and the need to expedite the purchase of essential goods and supplies such as face masks and food items, some public procurement procedures were circumvented. In Uganda, the publishing of bids, tenders and prices were waived and less attention was given to internal auditing.<sup>6</sup> This waiver of procedures, however, created opportunities for rigging tender prices and flouting some procurement regulations. Furthermore, since the donated items were to be utilised and distributed during the lockdown of businesses, effective monitoring mechanisms were apparently absent. For

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<sup>1</sup> OECD (26 May 2020) Policy Responses to Coronavirus (Covid-19): Policy Measures to Avoid Corruption and Bribery in the Covid-19 Response and Recovery, available at <https://www.oecd.org/coronavirus/policy-responses/policy-measures-to-avoid-corruption-and-bribery-in-the-covid-19-response-and-recovery-225abff3/> (visited 4 September 2021).

<sup>2</sup> US Embassy in Uganda (6 September 2020) 'United States Donation of 647,080 COVID-19 Vaccines for Uganda' (Press Release, Kampala), available at <https://ug.usembassy.gov/united-states-donation-of-647080-covid-19-vaccines-for-uganda-september-6-2021/> (visited 13 September 2021).

<sup>3</sup> Ministry of Health (3 April 2020) 'Ministry of Health Receives Donations from Private Sector', available at <https://www.health.go.ug/covid/2020/04/03/ministry-of-health-receives-donations-from-private-sector-to-boost-covid-19-response-in-uganda/> (visited 1 September 2021).

<sup>4</sup> Ministry of Health (2020).

<sup>5</sup> Nambatya P (2020), 'Uganda's Covid-19 Supplementary Budget: Pandemic Response or Cash Bonanza?' *U4 Blog*, available at <https://www.cmi.no/publications/7279-ugandas-covid-19-supplementary-budget-pandemic-response-or-cash-bonanza> (visited 8 September 2021).

<sup>6</sup> CABRI (n.d.) 'Streamlining Public Procurement Processes during COVID-19: Balancing Efficiency and Accountability' *Covid-19 Africa Public Finance Response Monitor* at 12 – 13), available at <https://www.cabri-sbo.org/uploads/files/Documents/Streamlining-public-procurement-processes-during-COVID-19-Balancing-efficiency-and-accountability.pdf> (visited 4 September 2021).

example, it was reported that 'Kampala Capital City Authority was asked to account for 21,000 vaccine doses that went missing in June 2021. Police also started to investigate the theft of 600 AstraZeneca doses that was recovered from two private medical clinics in Kampala.'<sup>7</sup> These incidents were perhaps a result of very significant risks of corruption in the management of the mobilised Covid-19-related resources.

Acts of corruption can have deleterious consequences, especially when they occur in the health system. Such acts usually manifest in various forms, such as misappropriation of medical supplies by medical workers for personal gain.<sup>8</sup> These acts may also lead to the creation of artificial shortages of essential medical supplies. Equally important is the effect that corruption has had on the quality of products which were supplied. Corruption may lead to the proliferation of substandard and fake pharmaceuticals with questionable efficacy in the health system,<sup>9</sup> and the seepage of funds. In Uganda, the Auditor-General's report has, for example, revealed that 55.8 billion shillings (approximately USD 15.2 million) destined for the distribution of Covid-19 relief items were unaccounted for.<sup>10</sup>

Acts of corruption and their impact are pervasive. They may, for example, compromise the pandemic response by impeding the flow of resources meant for the needy. Equally important is the deleterious effects it may have on public health management and the delivery of efficient, effective and equitable health services required for the right to health to be realised. In some extreme circumstances, patients may be charged for unnecessary or fake surgeries or medical services such as diagnostics, which are not performed.<sup>11</sup>

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<sup>7</sup> U4 Blog (9 August 2021) 'Covid-19 Corruption in 2021: Late-May–July Developments', available at <https://www.u4.no/blog/covid-19-corruption-in-2021-may-july-developments> (visited 4 September 2021).

<sup>8</sup> Mugabe S (3 July 2021) 'Kawempe Referral Hospital Nurses Arrested over Stolen Drugs', available at <https://chimpreports.com/kawempe-referral-hospital-nurses-arrested-over-stolen-govt-drugs/> (visited 4 September 2021).

<sup>9</sup> Africa News (23 July 2021) 'Hundreds of Ugandans Given Fake Covid Jabs: Health Officials', available <https://www.africanews.com/2021/07/23/hundreds-of-ugandans-given-fake-covid-jabs-health-officials/>; see also Ministry of Health (3 April 2020).

<sup>10</sup> U4 Anti-Corruption Resource Centre (22 April 2021) 'Covid-19 Corruption in 2021: January–April Developments', available at <https://medium.com/u4-anti-corruption-resource-centre/covid-19-corruption-in-2021-march-april-developments-c4a6dbec530b> (visited 8 September 2021).

<sup>11</sup> CONSTANTINE CANNON (n.d) 'Medically Unnecessary Services', available at <https://constantinecannon.com/practice/whistleblower/whistleblower-types/healthcare-fraud/medically-unnecessary-services/> (visited 5 April 2022).

The misappropriation and resale of publicly procured medicines, vaccines and medical supplies<sup>12</sup> have also been described as particularly common and harmful. Health workers in frontline medical facilities may collaboratively or individually misappropriate these resources,<sup>13</sup> and in some circumstances, they may act in collusion with private pharmacies.<sup>14</sup> The proliferation and increased impact of corruption can jeopardise a state's ability to respond to and recover from health crises.<sup>15</sup> The ultimate consequence of the vice of corruption is poor health outcomes that may deny those affected their right to health. This is the central argument of this article.

The right to health is a fundamental human right, one premised on the realisation that for life to exist sustainably, health care must be accessible to all citizens, and equitably. However, its most acceptable description, according to the World Health Organization (WHO), is 'the right to the highest attainable standard of physical and mental health'.<sup>16</sup> This means that even in difficult times such as the Covid-19 crisis, people should be able to live healthy lives, eat a balanced diet, and avoid stressful situations that may injure their mental health. During crises such as the Covid outbreak, such benchmarks are compromised where resources committed to health interventions are lost as a result of acts of corruption.

Uganda has ratified several international and regional human rights instruments directed at the promotion and protection of the right to health. They include the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966,<sup>17</sup> the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), 1979,<sup>18</sup> the Convention on the Rights of the Child (CRC), 1989,<sup>19</sup> and the

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<sup>12</sup> Gachane N (14 July 2018) 'Eight Grilled over Theft of Sh5m HIV Kits from Murang'a Hospital', *The Nation*.

<sup>13</sup> Monitor (19 November 2018) 'Healthcare corruption in Uganda is a matter of life and death', available at <https://www.monitor.co.ug/uganda/oped/columnists/muniini-k-mulera/healthcare-corruption-in-uganda-is-a-matter-of-life-and-death-1790822> (visited 4 April 2022).

<sup>14</sup> Gachane (2018).

<sup>15</sup> Makuta (2006).

<sup>16</sup> WHO (3 June 2021) 'Addressing Corruption in the Context of the COVID-19 Pandemic', available at <https://www.un.org/pga/75/wp-content/uploads/sites/100/2021/05/High-level-supporting-event-on-the-margins-of-32nd-UNGASS.pdf> (visited 8 September 2021).

<sup>17</sup> On 21 June 1995. The ICESCR provides the legal framework to protect and preserve the most basic economic, social and cultural rights, inter alia, the right to an adequate standard of living, and to the highest attainable standards of physical and mental health. Article 11 is concerned with the right to an adequate standard of living, including adequate food, while article 12 focuses on right to health.

<sup>18</sup> On 22 July 1985. The convention focuses on bringing the women female into the realm of human rights concerns.

African Charter on Human and Peoples' Rights (ACHPR), also referred to as the Banjul Charter, 1981.<sup>20</sup> These are international commitments to the observance of human rights, including the right to health, and provide guiding principles and a framework for legislation, policy formulation, and programming at the national level. It must be stated that some of these instruments do not directly support the right to health but act as an umbrella for the right.

At the national level, the Constitution of the Republic of Uganda 1995 (the Constitution) establishes the Inspectorate of Government,<sup>21</sup> describes its functions,<sup>22</sup> and jurisdiction,<sup>23</sup> and grants powers to Parliament to enact legislation to give effect to its mandate.<sup>24</sup> The Anti-Corruption Act 6 of 2009 and the Penal Code Act Cap 120 are some of the statutes that describe acts of corruption and define the penalties.<sup>25</sup>

Despite the legal regime in place, corruption remains a complex and problematic matter in times of emergencies such as pandemics because the level of sophistication with which it is executed makes it difficult to eliminate. It is often institutionalised within government agencies. Against this background, this article examines the mode and effect of corruption during the Covid-19 crisis response and its implications for the right to health in Uganda. The article deals with the following, in order: the background, providing a conceptualisation of corruption; the anti-corruption legal framework; the legal framework for the promotion of the right to health; the experience of corruption during the Covid-19 response in Uganda; the implications of corruption for the right to health; and conclusions and recommendations.

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<sup>19</sup> On 17 August 1990. It is concerned with the civil, political, economic, social, health and cultural rights of children. Article 1 defines a child as any human being under the age of 18, unless the age of majority is defined as earlier under national legislation.

<sup>20</sup> On 10 May 1986. It is concerned with the promotion and protection of human rights and basic freedoms in Africa.

<sup>21</sup> Art 223(1).

<sup>22</sup> Art 224 (a)-(f).

<sup>23</sup> Art 226.

<sup>24</sup> Art 232.

<sup>25</sup> The Anti-corruption Act 6 of 2009, for example, defines the offence of corruption under section 2 (a) to include 'the solicitation or acceptance, directly or indirectly, by a public official, of any goods of monetary value, or benefits, such as a gift, favour, promise, advantage or any other form of gratification for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions'. It creates categories of corruption such as embezzlement, abuse of office and sectarianism, and provides for penalties in Part III, and for the recovery, for example, in case of gratification (sec 27).

## 2. BACKGROUND

The act of corruption manifests in different faces and dresses in different contemporary fashions and designs. At its core is the manner in which it evolves to try to circumvent any new systems established to prevent its occurrence. Inherently it is opportunistic, taking advantage of any situation where it can flourish, such as disasters, and pandemics such as Covid-19.<sup>26</sup>

Some attempts to define corruption include those by Obura,<sup>27</sup> who defines it as dishonest or illegal behaviour, especially of people in authority. A widely applied definition is that of Farmer, who defines it as the misuse of position or money for personal gain at others' expense.<sup>28</sup> The African Union Convention on Preventing and Combating Corruption (AUCPCC) defines corruption as 'acts and practices including related offences proscribed in this convention'.<sup>29</sup> For its part, Uganda's Anti-Corruption Act 6 of 2009 does not define the word 'corruption'. Instead, it defines the word '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'. The Anti-Corruption Act's definition views corruption from the perspective of an act or omission, which brings forth an important conceptualisation.

Corruption in Uganda is not unique. In fact, Transparency International (TI) produces publications annually indicating Corruption Perceptions Indices (CPI) for all countries around the globe.<sup>30</sup> In 2003, for example, five of the ten most corrupt countries in the world were those in Africa. They included Nigeria, Madagascar, Angola, Kenya and Uganda. Uganda's corruption ranking worsened in 2020 from 2019, sliding five steps from 137 to 142. It performed very poorly compared to some regional states in the pandemic year where Rwanda was at position 49, Tanzania at 94, and Kenya was 124.<sup>31</sup> It is not clear why the anti-corruption efforts

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<sup>26</sup> New Vision (2019), 'Uganda's Biggest Corruption Scandals', available at [https://www.newvision.co.ug/new\\_vision/news/1511556/ugandas-corruption-scandals](https://www.newvision.co.ug/new_vision/news/1511556/ugandas-corruption-scandals) (visited 13 September 2021).

<sup>27</sup> Okello-Obura C (6 August 2012) 'Effective Records and Information Management as a Catalyst for Fighting Corruption', available at <https://doi.org/10.1177/026666691245184> (visited 9 November 2021).

<sup>28</sup> Farmer KB (2012) *Live out Morality? Finding God in the Fight against Corruption* Grand Rapids MI: Eerdmans at 58.

<sup>29</sup> Art 1(1).

<sup>30</sup> Transparency International (2003) *Corruption Perception Index*.

<sup>31</sup> Uganda Corruption Rank, available at <https://tradingeconomics.com/uganda/corruption-rank> (visited 6 September 2021).

undertaken do not translate into positive outcomes in Uganda. Nonetheless, Africa is portrayed as having accepted corruption, a place where those who have amassed wealth are glorified.<sup>32</sup> This signifies that to many, corruption is the order of the day and nothing can be done to stop it.

The right to health is concerned with access to health-care services which are responsive to the needs of the people according to their priority. Accessibility and the availability of health services are the other facets that define the right to health.<sup>33</sup> The right to health has been also construed in terms of four essential elements: availability, accessibility, acceptability and quality (also known as the AAAQ framework).<sup>34</sup>

The right to health is 'the right to the enjoyment of the highest attainable standard of physical and mental health'.<sup>35</sup> Internationally, it was first articulated in the 1946 Constitution of the WHO, whose preamble defines health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. The preamble further states that 'the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition'. The 1948 Universal Declaration of Human Rights (UDHR)<sup>36</sup> also recognises health as an aspect of the right to an adequate standard of living.<sup>37</sup> Similarly, it is recognised as a human right in the ICESCR. The entitlements to the right to health include 'the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; the right to prevention, treatment and control of diseases; and access to essential medicines'.<sup>38</sup>

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<sup>32</sup> Berkman CM (2013) 'Economic Development via Bureaucratic Corruption' 6(3) *American Behavioural Scientist* 8 – 30.

<sup>33</sup> WHO (2015) 'Anchoring Universal Health Coverage in the Right to Health: What Difference Would It Make? Policy Brief'.

<sup>34</sup> Committee on Economic, Social and Cultural Rights General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12) (22nd Sess., 2000).

<sup>35</sup> OHCHR (n.d.) 'The Right to Health' Fact Sheet No. 31 at 1, available at <https://www.ohchr.org/documents/publications/factsheet31.pdf> (visited 13 September 2021).

<sup>36</sup> Uganda ratified it on July 1985. It was the first legal document to establish the fundamental human rights to be universally protected.

<sup>37</sup> Art 25.

<sup>38</sup> The Right to Health (n.d.) at 2 – 3.



The right to health and the other human rights are interdependent.<sup>39</sup> This right is often founded on the promotion and enjoyment of other human rights, such as the right to education. The conditions which protect and promote the right to health beyond health services, goods and facilities, show that the right to health is dependent on and contributes to the realisation of many other human rights. These include the right to food, to water, to an adequate standard of living, and the right to benefit from scientific progress and its applications.<sup>40</sup>

The nexus of corruption and the right to health is a critical one. Acts of corruption lead to the seepage of resources meant, inter alia, for critical health interventions. These acts or omissions may also be used to occasion an artificial shortage of medical supplies. Other forms of corruption include or may lead to the administration of fake products, or substandard ones with questionable potencies, and to inappropriate diagnoses. These have direct or indirect effects on the right to health. For example, where resources meant for critical health supplies are embezzled, the intended beneficiaries will be deprived of the benefits of such resources, such as treatment for Covid-19 patients or the uptake of vaccinations. Corruption is thus a vice that undermines the right to health and exposes people to severe health risks, especially in the light of the Covid-19 crisis.

In the context of Uganda, the Covid-19 response entailed the imposition of certain restrictions to control its spread under the Ministry of Health Public Health (Control of Covid-19) Rules of 2020.<sup>41</sup> The rules provide for, inter alia, the closure of, for example, schools and institutions of higher learning, and proscribed holding public meetings.<sup>42</sup> Night curfews were also imposed on the directive of the President. As businesses were closed down, relief food items were distributed, and cash transferred to vulnerable people to help them get through the hard times.<sup>43</sup> Treatment of international arrivals included a 14-day quarantine in designated hotels at the expense of such travellers, while at some the expenses were paid by the government. Later, isolation centres were established throughout the country. Apart from that, donations of Covid-19 vaccines were received from donors. But as a result of corrupt tendencies, some of them found their way to private clinics for

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<sup>39</sup> The Right to Health (n.d.) at 6.

<sup>40</sup> The Right to Health (n.d.).

<sup>41</sup> Statutory Instrument 2020 No. 52.

<sup>42</sup> Ibid. sec. 9.

<sup>43</sup> The New Vision (2020) 'Gov't Donates Food to Vulnerable', available at [https://www.newvision.co.ug/new\\_vision/news/1517534/gov-donates-food-vulnerable](https://www.newvision.co.ug/new_vision/news/1517534/gov-donates-food-vulnerable) (visited 7 September 2021).



sale,<sup>44</sup> discriminating against the poor. This is not consistent with the spirit of the right to health.

### 3. ANTI-CORRUPTION LEGAL FRAMEWORK

#### 3.1 International instruments

At the international level, Uganda is a signatory to international instruments to combat corruption. They include the United Nations Convention against Corruption (UNCAC).<sup>45</sup> Under its statement of purpose, the UNCAC aims to 'promote and strengthen measures to prevent and combat corruption more efficiently and effectively'.<sup>46</sup> It also creates codes of conduct for public officials, which provide that 'each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials'.<sup>47</sup> The UNCAC also enjoins parties to apply codes or standards of conduct that are correct to perform public functions.<sup>48</sup>

It recognises and provides for the regulation of public procurement activities and procedures. Specifically, it provides for the review of the procurement system where domestic review shall be effective, including an appeals system to ensure legal recourse and remedies when rules or procedures are violated.<sup>49</sup> It also provides for declaration of conflict of interest in the procurement process to prevent arriving at biased procurement and tender-award decisions.<sup>50</sup>

Concerning the private sector, the UNCAC states:

Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and ... provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.<sup>51</sup>

Concerning establishment of criminal offences, the UNCAC provides that

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<sup>44</sup> Athumani H (9 April 2020) 'Top Ugandan Officials Arrested in COVID-19 Purchasing Scandal' *VOA News*, available at <https://www.voanews.com/science-health/coronavirus-outbreak/top-ugandan-officials-arrested-covid-19-purchasing-scandal> (visited 9 September 2021).

<sup>45</sup> Signed on 11 December 2003 and ratified on 2 December 2009.

<sup>46</sup> Art 1 (a).

<sup>47</sup> Art 8(1).

<sup>48</sup> Art 8(2).

<sup>49</sup> Art 9(1)(d).

<sup>50</sup> Art 9(e).

<sup>51</sup> Art 12.

each state party shall adopt such legislative and other measures as ... to establish as criminal offences, when committed intentionally: (a) The promise, offering or giving, and solicitation or acceptance by a public official, of an undue advantage, for the official himself or herself or another person for the official act or refrain from acting in the exercise of his or her official duties to a public official.<sup>52</sup>

### 3.2 Regional instruments

At the regional level, Uganda is signatory to the AUCPCC. The AUCPCC, under its scope of application, proscribes solicitation and acceptance of anything of monetary value by a public official for favour, promise or another advantage in exchange for any act or omission.<sup>53</sup> The AUCPCC also provides for state parties to adopt legislative and other measures to establish offences.<sup>54</sup>

Concerning money laundering of the proceeds of corruption, the AUCPCC enjoins state parties to adopt legislative and other measures for establishing criminal offences for the conversion or transfer of property with the knowledge that it is from the proceeds of corruption-related offences.<sup>55</sup>

### 3.3 Municipal laws

At the national level, the Constitution binds all authorities and persons in Uganda<sup>56</sup> and provides for measures to control corruption. Under the National Objectives and Directive Principles of State Policy (NODPSP), the Constitution enjoins citizens of Uganda to 'preserve and protect and promote a culture of preserving public property'<sup>57</sup> and to take all measures to eradicate corruption and abuse of office or misuse of power by those in public office.<sup>58</sup> The Constitution holds all public officers and those in leadership positions accountable for their acts and omissions to the Ugandan people.<sup>59</sup> Furthermore, it enjoins the citizens of Uganda to preserve and protect public property and combat corruption.<sup>60</sup> The Constitution also establishes the institutions charged with dealing with corruption and defines their mandate. For example, it establishes the Office of the Inspectorate of

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<sup>52</sup> Art 15.

<sup>53</sup> Art 4(1)(a).

<sup>54</sup> Art 5.

<sup>55</sup> Art 6(a).

<sup>56</sup> Art 2(1) of Constitution of the Republic of Uganda of 1995.

<sup>57</sup> 1995 Constitution, Objective xxv.

<sup>58</sup> 1995 Constitution, Objective xxvi.

<sup>59</sup> 1995 Constitution.

<sup>60</sup> 1995 Constitution, art 17(2)(d) and (i).

Government (IGG) and the nature inspectorate's appointment and tenure of office.<sup>61</sup>

The Anti-Corruption Act of 2009 stipulates offences under the Act to include corruption, for example where a public official solicits and accepts any goods of monetary value, benefits, gifts, favour for him- or herself or another person.<sup>62</sup> It also stipulates as an offence corrupt transactions with agents,<sup>63</sup> corruptly procuring tenders,<sup>64</sup> bribery of public officials,<sup>65</sup> and the diversion of public resources.<sup>66</sup> Other stipulations include payment of compensation to an aggrieved party,<sup>67</sup> influence peddling,<sup>68</sup> conflict of interest,<sup>69</sup> loss of public property, and embezzlement.<sup>70</sup>

The Act further provides sentences for violation of the provisions. For example, a public official convicted of diversion of public funds, influence peddling, or nepotism shall be liable on conviction to a prison term not exceeding ten years.<sup>71</sup> The Act also covers acts of corruption in the private sector.<sup>72</sup> The extension of liability in the private sphere provides opportunities for scope hitherto unregulated. This shows the robustness of the Act in extending its regulatory scope beyond the public sphere.

#### 4. ANTI-CORRUPTION LEGAL INSTITUTIONS

Uganda's main anti-corruption institutions include the parliament and the Public Accounts Committee (PAC), the Office of the Directorate of Public Prosecutions (ODPP),<sup>73</sup> the Office of the Inspectorate of Government (OIG), and the Directorate of Ethics and Integrity (DEI).

Parliament performs the legislative role of the government, in addition to its oversight functions, including acting as a watchdog over the executive. In the

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<sup>61</sup> Art 223.

<sup>62</sup> Sec 2(a).

<sup>63</sup> Sec 3.

<sup>64</sup> Sec 4.

<sup>65</sup> Sec 5.

<sup>66</sup> Sec 6.

<sup>67</sup> Sec 7.

<sup>68</sup> Sec 8.

<sup>69</sup> Sec 9.

<sup>70</sup> Sec 19.

<sup>71</sup> Sec 26(1).

<sup>72</sup> Conference of the States Parties to the United Nations Convention against Corruption, 2011.

<sup>73</sup> In Uganda, article 120 of the 1995 Constitution established the DPP with a mandate over all criminal prosecutions, including acts of corruption.

performance of its roles, it holds the executive accountable. The PAC is a standing committee of Parliament, and its mandate is concerned with watchdog roles on matters of financial accountability. Specifically, it was created to scrutinise the reports of the Auditor-General. Such reports are tabled before the floor of Parliament. Following the procedures of Parliament, the committee reports back to Parliament after considering the report for adoption.

The purpose of scrutiny is to recommend remedial actions to the cabinet. The PAC has the power to summon any controlling officer or department head to give an explanation and be held accountable for breaches in financial accounts in the auditor general's report. The scrutiny of annual accounts and audit reports by the PAC completes the circle of the various stages of control for ensuring financial accountability. Parliament is also empowered to censure ministers accused of engaging in acts of abuse of office and misconduct.<sup>74</sup>

The Constitution establishes the Directorate of Public Prosecutions as a constitutional office with the mandate of criminal prosecutions, including acts of corruption in Uganda.<sup>75</sup> In the performance of its mandate, the DPP shall be independent of the influence of other organs of the state, and it shall not be subject to any form of direction or control of whatever person or authority.<sup>76</sup> The constitutional role of the DPP also concerns giving police directions to conduct investigations into any information on matters concerning any criminal act and to prefer criminal charges and proceedings against any person in a court, apart from a court-martial.<sup>77</sup>

The DPP in the execution of his or her functions may execute these personally or may delegate them under his or her authority to officers authorised by him or her who are state attorneys and state prosecutors. Such authority is not delegated where it involves withdrawal of cases from the court, as this responsibility is exclusively his or her role. The police are responsible for criminal investigations, while the role of the DPP is to guide and advise the police in the conduct of investigations. The cases are reported to the police who carry out investigations and refer them to the DPP for legal guidance and /or conducting the prosecution.

The Inspectorate of Government plays the role of the ombudsman. It has a critical role in the corruption fight. It is an office with its establishment and functions

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<sup>74</sup> Komuhangi 2005.

<sup>75</sup> Art 120, Constitution.

<sup>76</sup> Art 120(6).

<sup>77</sup> Art 120(3).

defined under the Constitution.<sup>78</sup> The powers of the Inspectorate of Government include investigation, or causing investigation, arrest, or causing arrest, and prosecution or causing prosecution in respect of cases involving corruption.<sup>79</sup> Although the powers of the Inspectorate of Government and that of the DPP appear similar, they differ in some aspects. The power of the DPP does not include criminal investigation, but the Inspectorate of Government has such powers. The scope of matters limits the Inspectorate of Government only to corruption-related matters while the DPP has scope over all criminal matters.

The Courts of law are provided for under chapter eight of the Constitution. As an organ of the state, its constitutional mandate is the administration of justice. The magistrates' courts have jurisdiction to try corruption-related offences. Cases of corruption in Uganda are handled in the magistrates' courts and high courts. The judicial officers presiding over these courts are qualified lawyers. The above notwithstanding, the DPP has powers to commit any case to the High Court for trial despite the fact that magistrates have jurisdiction to handle them.<sup>80</sup>

The creation of the Directorate of Ethics and Integrity (DEI) was intended to deal effectively with corruption-related offences. The existing institutions did not appear to deal effectively with such cases and hence it was thought necessary to fill the gap. The DEI is therefore mandated to provide coordination policies and strategies for effective anti-corruption efforts.

Similar to most constitutional offices above, the office of the Auditor-General is an autonomous constitutional office.<sup>81</sup> Its overall mandate is the audit of public accounts. Its watchdog role is to ensure financial integrity. Its power also extends to value-for-money audits on the public accounts of Uganda. In performing its role, its jurisdiction extends to public offices, projects of government and statutory organisations.<sup>82</sup> The Auditor-General's audit responsibility and function extend to local government.

## 5. LEGAL FRAMEWORK TO PROMOTE THE RIGHT TO HEALTH

Several pieces of legislation touch on the right to health, but only a few are considered here. At the international level, the right to health has evolved under

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<sup>78</sup> Art 223.

<sup>79</sup> Art 230(1)

<sup>80</sup> The Trial on Indictments Act Cap 23 section 1. See also section 168 of the Magistrates Courts Act Cap 16.

<sup>81</sup> Art 163

<sup>82</sup> Art 163(3).

international law to provide a foundation for public health, health care services, social distancing measures, and global health solidarity in response to Covid-19.<sup>83</sup>

As a fundamental right under international law, the right to health is provided under the ICESCR. The latter enjoins states to take steps for the ‘prevention, treatment and control of epidemic, endemic, occupational and other diseases’ and to create conditions to assure ‘medical service and medical attention in the event of sickness’. The conceptualisation of the right extends beyond medical care, involving socio-economic factors that determine health such as safe and healthy working conditions, food and nutrition, housing, and water, sanitation and hygiene. States must take steps to respect, protect and fulfil the right to health. Implicit here is that states shall adopt legislative, administrative, budgetary, judicial, promotional and other measures to implement their obligations.

The UN Committee on the ICESCR has specified the essential characteristics to guide the implementation of the right to health.<sup>84</sup> The Committee states that health services, goods, and facilities should be available in adequate numbers; accessible – physically, economically, and on the basis of non-discrimination, in form of health information; acceptable to all and respectful of medical ethics; and of good quality. Apart from substantive obligations, the right provides for several procedural requirements.<sup>85</sup> While universal in scope, some elements of the right to health present immediate obligations, including non-discrimination and equality, whereas other elements of the right require states to devote maximum available resources toward the progressive realisation of the right.

At the national level, the Constitution of Uganda provides that ‘the State shall institute effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in the general displacement of people or disruption of their normal life’.<sup>86</sup>

Concerning the effect of Covid-19, some people in Uganda contracted the disease and recovered, while others succumbed to it. As a result, the government instituted certain measures to try to control the spread of the disease. They include

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<sup>83</sup> Mason B & Meier BM (n.d.) ‘Realizing the Right to Health Must Be the Foundation of the COVID-19 Response’ *Universal Rights Group*, available at <https://www.universal-rights.org/by-invitation/realizing-the-right-to-health-must-be-the-foundation-of-the-covid-19-response/> (visited 10 September 2021).

<sup>84</sup> Art 12.

<sup>85</sup> Provided under Part IV.

<sup>86</sup> See Objective xxiii.

certain restrictions on businesses and movement. The Public Health Act Cap 281 is another statute that empowers the Minister of Health to take measures to combat the spread of an infectious disease. Under this law, several statutory instruments were enacted to implement the measures given by the presidential directives to prevent the spread of Covid-19.

## 6. EXPERIENCE OF ACTS OF CORRUPTION IN UGANDA

The Covid-19 control restrictions severely affected the more vulnerable sections of the population. As a result, the government targeted them through interventions such as the distribution of food relief and money.<sup>87</sup> The national government, development partners and the international community made efforts to try to control the spread by donating vaccines,<sup>88</sup> providing treatment and extending cash grants,<sup>89</sup> to alleviate the plight of vulnerable sections of the population from socio-economic risks occasioned by certain restrictions. Some private sector players also contributed money and in-kind donations to the government to boost the pool of the targeted relief items,<sup>90</sup> such as beans, maize flour, rice, and milk. Others donated vehicles, and medical supplies such as protective equipment and oxygen cylinders to try to mitigate the effects of the disease.<sup>91</sup>

The Covid-19 pandemic has created significant risks of corruption in the disease-containment efforts in the country. The pandemic has led to a high risk of corruption, and there is no guarantee that this will be curbed.<sup>92</sup> Instead, given that substantial resources were mobilised to respond to the health emergency, the appetite for acts of corruption appears to have swiftly emerged among some workers in key government institutions related to the Covid-19 response.

The activities that attracted corruption were evident in public procurement in the health emergency response, as some procedures were circumvented to ensure that procurement was done without undue delay. Like many countries across the world,

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<sup>87</sup> Athumani (2020).

<sup>88</sup> WHO (2021) 'Uganda Receives 864,000 Doses of COVID-19 Vaccines', available at <https://www.afro.who.int/news/uganda-receives-864000-doses-covid-19-vaccines> (visited 12 September 2021).

<sup>89</sup> Ajuna DV (2021) 'Uganda: Covid Relief Payments Launched, Kampala Cash Pends' *Daily Monitor*, available at <https://allafrica.com/stories/202107080644.html> (visited 10 September 2021).

<sup>90</sup> Ruping D (n.d.) 'Covid-19: Investors Donate Generously Towards Fight Against Pandemic in Uganda', available at <https://www.ugandainvest.go.ug/covid-19-investors-donate-generously-towards-fight-against-pandemic-in-uganda/> (visited 10 September 2021).

<sup>91</sup> Ministry of Health (3 April 2020).

<sup>92</sup> Nambatya (2020).



‘to respond to health emergencies, Uganda [Ministry of Health] relied on emergency procedures to procure large volumes of equipment and supplies rapidly, while relaxing measures for accountability.’<sup>93</sup> In normal times, however, public procurement is regulated by the Public Procurement and Disposal of Assets Act of 2003 and its Regulations of 2018.

Uganda’s experience of acts of corruption was evident in circumstances such as administration of fake vaccines;<sup>94</sup> poor regulation of private health facilities; food relief distribution and cash transfers to vulnerable people;<sup>95</sup> tender awards for production of face masks; and the enforcement of Covid-19 guidelines issued by the Ministry of Health under the Public Health (Control of Covid-19) Rules, 2020 S.I. No. 52, considered below.

### 6.1 Use of fake Covid-19 vaccines

An estimated 800 people in Uganda were vaccinated with fake Covid-19 vaccines from unapproved people in May and June 2021.<sup>96</sup> This was a time when a surge in Covid-19 cases was registered in Uganda. The fraudsters focused on people who were prepared to pay for the shots. It was not surprising that the victims were predominantly corporate employees who could afford them, parting with between 80,000 and 500,000 Ugandan shillings (USD 25–120) for a fake shot.<sup>97</sup> This was also at a time when vaccines were difficult to access. Two medical workers were arrested, while one medical doctor is yet to be apprehended in connection with the scam.<sup>98</sup> Reports indicate that tests showed that the vials that were used to vaccinate the victims contained nothing dangerous, while others had water.<sup>99</sup> Dr Namara of the Ministry of Health was quoted in Africa News as saying, ‘We have arrested two medical workers in the scam, and one medical doctor is on the run.’<sup>100</sup>

Elsewhere in the world, several countries and institutions bought imported medical equipment and supplies using emergency procurement procedures. Anecdotal

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<sup>93</sup> Sendugwa G (2 November 2020) ‘Improving Disclosure and Value for Money in Health Procurement in Uganda’ *Open Contracting Partnership*, available at <https://www.open-contracting.org/2020/11/02/improving-disclosure-and-value-for-money-in-public-procurement-in-uganda/> (visited 9 September 2021).

<sup>94</sup> Africa News (2021).

<sup>95</sup> Amundsen I (2020) *Covid-19, Cash Transfers, and Corruption: Policy Guidance for Donors* CMI U4 Brief, available at <https://www.u4.no/publications/covid-19-cash-transfers-and-corruption.pdf>; Athumani H (9 April 2020).

<sup>96</sup> Africa News (2021).

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

reports indicate that the proliferation of substandard pharmaceuticals, overcharging, and bribery were on the increase. The Organization for Economic Cooperation and Development (OECD)<sup>101</sup> data shows that many detected cases of foreign bribery have occurred in the health industry. Meanwhile, bribery disrupts markets and may promote inferior or fake products, putting further lives at risk.<sup>102</sup>

## 6.2 Ineffective regulation of private health facilities

In Uganda, private healthcare providers charged Covid-19 patients very high fees.<sup>103</sup> The price ranges varied considerably, indicating the lack of regulation by the Ministry of Health and other regulators. The fees for maintaining a patient on oxygen per day from the price list of private health facilities in Kampala ranged from 1,500,000 to 2,500,000 Ugandan shillings (USD 420–700), with overall daily charges ranging between 5 to 10 million shillings (USD 1,400–2,800) at the peak of the spread.<sup>104</sup> To try to address the plight of patients, a public interest application was filed in the High Court of Uganda at Mukono and later transferred to Kampala, seeking an order of mandamus to compel the respondents to regulate pricing in private health facilities handling Covid-19 cases.

This was the case of *Mulumba Moses, Center for Health Human Rights, and Development v The Attorney General of Uganda, The Medical and Dental Practitioners Council, and the Ministry of Health*.<sup>105</sup> The Court granted the application and ordered the respondents to make regulations concerning fees chargeable by private hospitals and other health facilities for the management and treatment of patients infected with Covid-19. Furthermore, it issued an order of mandamus compelling the second respondent (the Medical and Dental Practitioners Council) to recommend to the Minister of Health reasonable fees chargeable for persons seeking access to Covid-19 treatment. This decision will go a long way in protecting the health rights of various Covid-19 patients to access treatment at a reasonable cost. The decision is progressive in reinforcing the right to health.

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<sup>101</sup> OECD (26 May 2020)

<sup>102</sup> Ibid.

<sup>103</sup> Abet T (17 June 2021) 'Uganda: Cost of Covid-19 Treatment at Private Health Facilities Beyond the Reach of Many Locals' *Daily Monitor*, available at <https://www.business-humanrights.org/en/latest-news/uganda-as-case-of-covid-19-rise-cost-of-treatment-at-private-health-facilities-beyond-the-reach-of-many-locals-industry-association-comments/> (visited 12 September 2021).

<sup>104</sup> Ibid.

<sup>105</sup> In the High Court of Uganda at Kampala (Civil Div.) Misc. Cause No. 198 of 2021.

### 6.3 Tender awards for supply of face masks

As part of the government's effort to prevent the spread of Covid-19, President Museveni instructed the Ministry of Health to provide free face masks to all Ugandans above the age of six.<sup>106</sup> However, the government found that some of the distributed masks, produced by certain companies contracted to supply them, were of poor quality and did not meet the standards issued by the Ministry.<sup>107</sup> The failure of the suppliers to comply with the specifications of the tender prompted the Minister to order investigations into the matter. Although the Minister observed that the supply of substandard face masks was 'a big disappointment on the side of the suppliers entrusted with the responsibility of producing quality face masks meant to save lives of Ugandans',<sup>108</sup> all that she did was to promise that they would be blacklisted. It is not clear what actions followed.

The purpose of the face mask is to create a physical barrier to prevent the virus from entering the nose and mouth. When government supplies products of an unacceptable standard and distributes them to the population for use, and the population assumes they are effective in controlling the spread of the disease when in fact they are not, this puts the population at risk of contracting the disease. Why were the masks not inspected before they were distributed? Why were the masks not retrieved from the recipients? Why were people not stopped from using them given that they were not effective in preventing the spread of the disease? Innocent people wearing the masks were exposed to the risk of contracting the disease, and their right to health was violated.

### 6.4 Enforcement of Covid-19 guidelines

The enforcement of the Covid-19 guidelines also turned into an opportunity for law enforcers to turn away from the law in return for kickbacks. In the meantime, many anti-corruption and enforcement mechanisms were inoperative on grounds of the Covid-19 restrictions. Many people also bribed their way through social distancing

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<sup>106</sup> Agaba N (23 August 2020) 'Government Distributes 13 Million Free Face Masks', available at <https://www.kampalapost.com/content/government-distributes-13-million-free-face-masks/> (visited 1 September 2021); Vision Reporter (20 March 2020) 'Coronavirus: 10 Foreigners Bribe Their Way out of Quarantine' *New Vision*.

<sup>107</sup> 'Gov't Must Expedite Investigations into Claims of Poor Quality COVID-19 Masks', available at <https://cbtpafrica.org/govt-must-expedite-investigations-into-claims-of-poor-quality-covid-19-masks/> (visited 1 September 2021).

<sup>108</sup> Agaba (23 August 2020).

regulations,<sup>109</sup> which risked escalating the spread of the disease. Reports also indicate that foreign citizens evaded quarantine rules by bribing officials. In Uganda, foreigners were required to stay at hotels designated for total isolation at their own expense. Many felt their escape was justified, as they believed the facilities were mismanaged, and that the costs were excessive and unfair.<sup>110</sup> This type of bribery ultimately leads to a further spread of the virus, aggravating the current health crisis.

Security forces in different parts of the country have been criticised for allegedly extorting money from the public in the enforcement of the presidential directives on the Covid-19 pandemic. A police officer, who did not want to disclose his identity for fear of being reprimanded, observed that when they are deployed to enforce Covid-19 guidelines such as the night curfews, many of them solicit bribes. When they do so, they share the bribes with their seniors.<sup>111</sup> He further noted that this is the way they make money to survive (although they earn monthly salaries).

Security personnel on night patrols only release suspects arrested on accusations of violating the Covid-19 rules if the suspects pay.<sup>112</sup> Those who do not pay are beaten, freed, or are taken to police stations where their relatives bring money for their freedom the following day. The report indicates that the security personnel usually charge the affected city residents between 10,000 and 30,000 Ugandan shillings (USD 3–9) per arrested person.<sup>113</sup> Apart from that, detaining groups of people, some not wearing masks, puts them at risk of contracting the disease. The police officers further report:

When we finish our assignments, we go back to our bosses and give half or more to them so that we can be deployed the following day. If you don't give or give little, you will not be deployed again.<sup>114</sup>

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<sup>109</sup> Vision Reporter (20 March 2020); Kos D, Richard S & James Wasserstrom J (2020) 'Minimising Bribery and Corruption in the Time of Covid-19' *International Anti-Corruption Academy*.

<sup>110</sup> Ssentongo J S (2020) 'Inside Uganda's Coronavirus 'Quarantine Prison Hotel' *Taarifa*.

<sup>111</sup> Lubowa D (23 June 2020) 'Security Officers Accused of Extortion In Lockdown', available at <https://www.monitor.co.ug/uganda/news/national/security-officers-accused-of-extortion-in-lockdown-1896228> (visited 7 September 2021).

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

## 6.5 Food relief distribution and cash transfers

The distribution of food relief and money to support the vulnerable section of the population affected by the containment restrictions was also affected by corrupt behaviour. During the first Covid-19 lockdown in 2020, the Government of Uganda decided to procure food to give to the vulnerable section of the population, whose daily incomes had been disrupted by the Covid-19 restrictions. The measures included the closure of businesses and a ban on the movement of public transport and motorcycles, except for essential workers. This considerably affected people who survived not only on the margins, but also on daily income. The office of the Minister of Disaster Preparedness was to arrange and procure food items.<sup>115</sup> The selected suppliers not only supplied substandard beans and posho, but the selection process itself was also marred by acts of corruption.<sup>116</sup>

The State House Anti-Corruption Unit reported that it had evidence of credible bidders who had quoted lower bid prices, but that officials at the office of the Prime Minister had rejected their bid offers. Instead, the tender was awarded to the highest bidder. Some of the people who were awarded the contracts were not even prequalified to supply tenders to the Office of the Prime Minister, which is a violation of procurement procedures. As a result, five government officials, including the Permanent Secretary of the Ministry, were arrested and are to stand trial in the Anti-Corruption Court.<sup>117</sup>

In July-June 2021, the second lockdown, spanning 42 days, was imposed. Given the restrictions that came with the lockdown, the government distributed 100,000 Ugandan shillings to selected people classified as vulnerable. The beneficiaries, estimated at 1,500,000, were identified from groups of people who depend on daily earnings in Kampala and all cities and municipalities in Uganda. Reports indicate that several people who benefited were actually not from the category intended to receive the money. The development came after Parliament's Public Accounts Committee (PAC), while on a fact-finding visit to Gulu City, faulted the city's leadership for mismanaging the distribution of the money. The lawmakers on the parliamentary PAC established that most people who received the government

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<sup>115</sup> Athumani (2020).

<sup>116</sup> *Ibid.*

<sup>117</sup> *Ibid.*

cash from the area were not from the designated categories, while others were not even residents of the area.<sup>118</sup>

The purpose of distributing the Covid-19 relief fund was to help the people whose businesses had been severely impacted by the Covid-19 restrictions to survive through the lockdown. However, the officials responsible for registering the designated category of the cash recipients included those who did not qualify. This clearly defeated the purpose of the grant, given that Covid-19 weakens the body's immune system. Those targeted recipients were eventually left at risk as they could not feed themselves; their bodily immunity was bound to become further compromised, exposing them to the infection. Their rights to health could be considered to have been violated.

## 7. IMPLICATIONS OF CORRUPTION FOR THE RIGHT TO HEALTH

The pervasive effect of the Covid-19 experiences should remind states to focus their attention and to prioritise global health concerns. Corruption tends to undermine health systems, and may negatively affect gains made over the years. The right to health comes with several pertinent obligations for governments. They should ensure that medical supplies, goods, and services are available, accessible, acceptable and of good quality for all. If corruption undermines the provision of health services, then states will struggle to fulfil such obligations. Some aspects of corruption and how they impact on the right to health are considered below.

### 7.1 Informal payments

Various forms of informal payments may be made to workers in health-care facilities. However, the Anti-Corruption Act specifies that directly or indirectly offering or soliciting gratifications is a form of corruption.<sup>119</sup> If cash or expensive items are involved, that would also constitute corruption.<sup>120</sup> Informal payments lead to discrimination in access to health care, where the economically endowed benefit. For example, when fake vaccines were administered in Kampala, the culprits were corporate employees.<sup>121</sup> Had the vaccines been genuine, the less economically endowed would have missed out, which would have led to discrimination with respect to the right to health.

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<sup>118</sup> Pithua A (2 September 2021) 'Gulu Leaders on the Spot as Ghosts Get Covid Relief Cash' *Daily Monitor*, available at <https://www.monitor.co.ug/uganda/news/national/gulu-leaders-on-the-spot-as-ghosts-get-covid-relief-cash--3535116> (visited 1 February 2022).

<sup>119</sup> Anti-Corruption Act 2009, sec 5(a) and (b).

<sup>120</sup> Bruckner (2019) at 8.

<sup>121</sup> Africa News (2021).

Several accounts indicate that people pay bribes in order to flout Covid-19 regulations. There is evidence, for example, to show that officials in Uganda received bribes from foreign citizens to evade quarantine rules.<sup>122</sup> In Uganda, some hotels were earmarked for the self-isolation of foreign citizens, where they were to meet the expenses during the period. However, many of them made their way out. Many justified their escape on the exorbitant costs of the isolation facilities. Nonetheless, organisations such as U4<sup>123</sup> concede that informal payments are likely to be manifested in this crisis, as health systems are facing greater patient overload, discriminating against the poorer sections of society and denying them their right to health.

## 7.2 Embezzlement

A person being an employee of the government, association, religious, or other organisation who steals chattels, or money, being the property of the organisation to which he or she has access by virtue of that office, commits an offence and is liable to conviction for a period not exceeding 14 years.<sup>124</sup> Embezzlement of money, medicines and other medical equipment and supplies by medical workers is not new. Theft and resale of publicly funded medicines, vaccines and medical supplies contribute to shortages and stock-outs in public health facilities. This restricts patients' access to adequate medical treatment and may also lead to misuse. It could ultimately lead to the further spread of infections, and consequently to poor health outcomes.<sup>125</sup>

## 7.3 Service provision

Manifestations of corruption in service provision are varied and diverse. They commonly include kickback-driven referrals and the overcharging of patients. In extreme cases, medical workers may charge patients for unnecessary or falsified medicines sold as high-quality medicines and non-performed diagnostic tests.<sup>126</sup> Such actions further expose unsuspecting patients and violate their right to health.

## 7.4 Sectarian tendencies

Where a person holding an office gives preferential treatment to patients with whom he or she has social connections at the expense of services provided to other

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<sup>122</sup> Vision Reporter (20 March 2020).

<sup>123</sup> Steingrüber S, et al. (2020) Corruption in the Time of Covid-19: A Double-Threat for Low-Income Countries Bergen: U4.

<sup>124</sup> Anti-Corruption Act 2009, sec 19 (a)-(d).

<sup>125</sup> Bruckner (2019) at 11.

<sup>126</sup> Bruckner (2019) at 12.



patients, this amounts to sectarianism. Under the Anti-Corruption Act 2009, this would constitute the offence of sectarianism.<sup>127</sup> Although money does not change hands, it introduces the dimension of discrimination which is contrary to the spirit of the right to health.

## **8. CONCLUSION**

The Covid-19 response was undertaken rapidly to control the spread, mitigate the impact, and buttress the vulnerable section of the population against the socio-economic effects attributed to the disease. Unfortunately, the agencies of government did not appear to have learnt lessons from previous disasters. This made the officials in the Office of the Prime Minister fall victim to the supply of substandard items in the Covid-19 intervention. Acts of corruption affected officials in the Ministry of Health, who did not show competence at their own game – upholding the right to health. Corruption-occasioned discrimination, proliferation of fake vaccines, and failure to provide for the needy ultimately denied the realisation of the right to health. The lack of effective monitoring, coupled with ineffective implementation of the law, led to the poor quality of supplies, some of which further exposed citizens to the risk of contracting the disease.

## **9. RECOMMENDATIONS**

This study has demonstrated in detail how corrupt tendencies during the Covid-19 pandemic affected healthcare service delivery and substantially undermined efforts to promote the right to health. It has highlighted various corrupt tendencies during the pandemic in Uganda. This study concludes with five recommendations on how to improve health by effectively curbing corruption in healthcare service delivery.

### **9.1 Emergency legislation**

Parliament should enact specific laws to guide government agencies in emergency procurement to save corruption losses, using the Public Procurement and Disposal of Public Assets Act of 2003 and the regulations of 2018. This can mitigate the challenges of timeframes and compliance with existing legal and regulatory framework during pandemics such as Covid-19.

### **9.2 Take political and bureaucratic constraints into account**

In health care, as in other sectors, corruption at the service-delivery level is typically rooted in deeper systemic problems. In many countries, powerful players

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<sup>127</sup> Anti-Corruption Act 2009, sec 12.

have a strong vested interest in perpetuating corruption. Similarly, in many donor agencies, senior decision-makers have a strong bureaucratic interest in not detecting or effectively tackling corruption within their portfolios. Anti-corruption efforts that do not take these realities and the resulting constraints into account are likely to replicate the overall disappointing track record of their predecessors.<sup>128</sup>

### **9.3 Integrate health-systems governance into the overall health-system strengthening**

As the WHO has pointed out, strong health-system governance is an integral part of well-functioning health systems that deliver good health outcomes. In this context, it makes sense to fully integrate anti-corruption approaches into wider efforts to strengthen health systems. This can be done by routinely conducting corruption risk analyses as part of wider sector situation analyses, using these analyses to prioritise which risks to address, and integrating strategic objectives on addressing corruption risks into the final plans and strategies.<sup>129</sup>

### **9.4 Information is essential**

Monitoring data and other information is required to determine whether and how well anti-corruption efforts are working, to detect and respond to emerging new challenges, and to improve health outcomes. As effective health system management in general requires reliable and timely data, the collection and analysis of data for anti-corruption purposes could be fully integrated into overall monitoring and management information systems. Information technologies are making the process of collecting data easier, cheaper and should be leveraged wherever appropriate.<sup>130</sup>

### **9.5 Empowering and supporting civil society activities**

The current Covid-19 crisis poses several problems for development generally, not least in the health sector, as there are significant corruption risks during a pandemic. As the current pandemic continues around the globe, donors and multilateral organisations have disbursed and continue to disburse huge funds to tackle the crisis. Yet there is concern that these funds are at risk of corruption that will seriously impact health outcomes. Amongst the host of accountability and anti-

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<sup>128</sup> Transparency International (2019) *The Ignored Pandemic: How Corruption in Healthcare Service Delivery Threatens Universal Health Coverage*, available at <http://ti-health.org> 2019 (visited 14 September 2021).

<sup>129</sup> Transparency International (2019).

<sup>130</sup> Transparency International (2019).

corruption measures available, the use of civil society organisations has become part of the mainstream practice of donors' anti-corruption efforts. There are several ways in which civil society can be engaged in anti-corruption programmes that play to its perceived strength when acting as a watchdog.

Civil society-led, bottom-up accountability (like any anti-corruption approach) on its own is not a panacea to fighting corruption. As with any intervention, it is important to consider the context, the capacity and motivation of actors (civil society included), and the like. However, civil society has had some success in playing such crucial roles as being a watchdog, informing citizens about their rights, and improving service delivery and development outcomes. During the Covid-19 pandemic, bottom-up accountability approaches are essential in ensuring that funds allocated for pandemic responses reach their intended destination.