



PRESS INFORMATION

SUMMARY OF REPORT ON INVESTIGATION INTO ALLEGED MISMANAGEMENT/EMBEZZLEMENT AND LOSS OF TERMINAL BENEFITS OF FORMER INTERNAL SECURITY ORGANISATION (ISO) EMPLOYEES

1.0 The Complaint

1.1 The Inspectorate of Government (IG) received a detailed complaint in which it was alleged that the payment of terminal benefits to former employees of the Internal Security Organization (ISO) was mismanaged and money was misappropriated by a group of former employees and some officials of the Government of Uganda. It was specifically alleged that:

1.1.1 "A syndicate of crooks and fraudsters, a few of whom were some of the petitioners, crooked lawyers in Kampala and others that partly constituted the benefits negotiated settlement team caused the creation of a shadowy association by the name of Uganda Veteran Internal Security Organization (UVETISO)."

1.1.2 The Executive Committee of the above association included Mr. Jeff Kiwanuka as Chairman, Mr. Jamal Kitandwe as Treasurer and Mr. Bernard Kamugisha as Secretary, but the three were merely the front of an otherwise intricately woven wide criminal syndicate.

- 1.1.3 The creation of the association fronted as owned by all the petitioners was without the petitioners' knowledge or consent but the cunning syndicate merely used names on the verified list of petitioners to fraudulently create the association.
- 1.1.4 And that having created the Association, working in collusion with the some State Attorneys from the Attorney General's Office and some crooked civil servants at the Ministry of Finance, Planning and Economic Development, the syndicate fronted the shadowy criminally created association as a legitimate entity to receive terminal benefits (money) from Government on behalf of all beneficiaries and then purportedly thereafter pay the individual beneficiaries.
- 1.1.5 The whole of UGX 39 billion agreed upon with Government as terminal benefits for the former employees of ISO was paid to UVETISO Association, yet only UGX 2.8 billion was paid to beneficiaries and out of the 1078 only 117 beneficiaries were paid; and the association was holding the rest of the money in a local bank to earn interest.
- 1.1.6 The executive of the *"illegal association"* in collusion with law firms, said to be six in number, dubiously and for personal benefit set legal fees at an astronomical 38% of the total benefits due to the complainants. The syndicate also created a slush fund from the monies received to bribe politicians, civil servants and other people in security circles who were partly involved in reaching a negotiated settlement with Government as a protective measure, should their scheme backfire and criminal charges are preferred against them.

2.0 The Investigation

2.1 Since money paid by Government was the source of the complaint, and government employees and other leaders under the jurisdiction of the Inspectorate were alleged to be involved, the Inspectorate of Government began an investigation in order to establish whether the alleged fraud had indeed been orchestrated as alleged and whether any money had been paid to the detriment of the complainants as alleged. The objectives of the investigation were to establish the following:

- 2.1.1 Whether the Association (Uganda Veterans of Internal Security Organization) was formed with the knowledge and consent of all beneficiaries;
- 2.1.2 Whether the complainants and all beneficiaries authorized the Association to act as the legitimate entity to receive their terminal benefits from the Government and on behalf of all the beneficiaries;
- 2.1.3 Whether the Government paid terminal benefits meant for individual persons to a private association and whether UGX 39 billion was transferred by Government to the Association's account in Crane Bank Limited as alleged; and if so, what were the consequences?
- 2.1.4 What criteria, if any, were used to pay UGX 2.8 billion said to have been paid to 117 beneficiaries out of the 1078 total number of beneficiaries?
- 2.1.5 Whether there is still any money on the Association account in Crane Bank Limited.
- 2.1.6 Whether the legal fees paid to the lawyers were agreed upon by all the beneficiaries and whether such fees were lawfully paid to the lawyers by the persons with the representative order to sue.

- 2.2 In the course of preliminary investigation, it was established that the Ministry of Finance, Planning and Economic Development released UGX 10 billion for payment of terminal benefits of Ex-ISO employees which was transferred to the account of UVETISO Association Ltd in Crane Bank.
- 2.3 It was also established that large amounts of cash totaling UGX UGX 4,917,764,000/= were withdrawn by three of the members of the Executive Committee of the Association, that are the signatories to the Association's Account in Crane Bank: Jeff Lawrence Kiwanuka, Jamal Kitandwe and Kamugisha Bernard.
- 2.4 It was further established that of the UGX 10,000,000/= paid to the UVETISO Account, only about UGX 3,000,000,000/= was paid to 117 beneficiaries yet UVETISO Association was demanding that more money be paid to it, ostensibly to pay the rest of the beneficiaries who were over 900 in number.
- 2.5 Therefore, pursuant to Article 230 (2) of the Constitution and Section 14 (6) of the Inspectorate of Government Act, the Inspector General of Government (IGG) issued an order to the Secretary to the Treasury not to pay any more money to UVETISO Association. The Inspectorate then summoned the members of the Executive Committee of UVETISO (Jeff Lawrence Kiwanuka, Jamal Kitandwe and Kamugisha Bernard) to give evidence in the inquiry about how the monies they withdrew had been disbursed.
- 2.6 Compliance with the summonses was resisted and instead, UVETISO Association and the three members of its Executive Committee filed **Miscellaneous Application No. 147 of 2014** in the High Court Civil Division against the Attorney General for judicial review of the decision of the IGG to investigate matters alleged to be about a suit in court and they, among others, sought for orders to,
- i) quash the order of the Inspectorate to the Secretary to the Treasury not to pay them any more money;

- ii) quash the decision of the Inspectorate to investigate the complaint on the ground that it amounted to reviewing the judgment and orders of a court of law; and for
- iii) an injunction to stop the Inspectorate from carrying out any further investigations and issuing any further orders to stop payment of the money.

2.7 On the 24th September 2014, UVETISO Association and members of its Executive Committee obtained an interim order against the Attorney General wherein it was ordered that an injunction would issue:

“... to restrain the Inspectorate of Government and all its officers, servants and agents from conducting any further investigations, making and issuing any further summons and directives in respect of any matter pertaining to any claims and settlement of HCCS 164 of 2004 - Henry Waibale & Ors Vs Attorney General, pending determination of the application for judicial review of the Inspectorate’s decision and directive made in respect of the matter.”

2.8 The Inspectorate was never heard by Court before issuance of this order but complied with it as best as it could and stopped the investigation. Concerned citizens and beneficiaries continued to supply unsolicited information relating to the matter in spite of the court order.

2.9 The Inspectorate continued to receive unsolicited information from beneficiaries and other interested parties which it was under an obligation pursuant to its constitutional mandate under to accept.

2.10 However, a dispute arose between the Inspectorate and the Office of the Attorney General about how to defend the application. The Inspectorate applied to be joined as a party to the application in Msc. Application 536 of 2014, but its application was denied. The application for judicial review is still pending determination before

the High Court and it is alleged that the payment of the benefits of Ex-ISO employees has stalled partly because of the application.

2.11 However, a substantial amount of evidence had been gathered by the Inspectorate before the issuance of the injunction to stop the investigation. The Inspectorate therefore decided to issue a report of its findings in the partial investigation to aid Government make decisions as to how payment of the terminal benefits could be done more efficiently without causing any more losses to Government.

2.12 This report is issued to close the IG investigation in the matter for the following reasons

2.12.1 The evidence that had been gathered by the Inspectorate by the time the Executive Committee members of UVETISO filed the application for judicial review and obtained an interim order to stop the investigation showed that the purpose of the order was to resist efforts to bring them to account for the UGX 10 billion already paid to and disbursed by the Association.

2.12.2 The same members of the Executive Committee and their lawyers Matovu & Matovu, Advocates, were prematurely and aggressively demanding for the release of the balance of UGX 29 billion due to Ex-ISO employees yet they were not willing to account for the monies released before.

2.12.3 It is the opinion of the IGG that the order to stop the investigations and to prohibit the IGG from issuing any further orders in the matter was for an improper purpose and so amounted to abuse of court process.

2.12.4 Full compliance with the order would compromise the integrity of the IG in the performance of its constitutional mandate and expose government to loss of colossal amounts of money due to be paid out by Government in this matter.

- 2.12.5 The investigation of the loss of funds due to Ex-ISO employees can be taken on by other investigative agencies not hampered by the orders of court, for the benefit of recovery of any monies lost and apprehending those responsible for the loss.
- 2.12.6 The release of the findings of the Inspectorate will forestall further payments to UVETISO Association and its Advocates who have also resisted a request by the Secretary of the Treasury to them to account for UGX 10 billion that was released in June 2014.
- 2.12.7 Holding onto the grave and disturbing findings from the investigation so far and abstaining from issuing any orders and directives in view of those findings would amount to the Inspectors General of Government abdicating their Constitutional and statutory duties under Articles 225 (1) (a) and (c) and neglect of the duty to exercise the special powers under Article 230 (2) of the Constitution.
- 2.12.8 The grave and undesirable effects of the rampant issuance of orders by the civil courts against public bodies mandated by the Constitution to investigate and prosecute suspected criminals, and so prohibiting them from carrying out their constitutional duties without first availing them the non-derogable right to be heard, will be exposed;
- 2.12.9 The leaders of the judiciary may be moved by the effect of the order granted by the court in this matter to take more stringent steps to stop this retrogressive practice which is perceived by concerned citizens as efforts by the system of justice to allow corrupt individuals to go free.

3.0 Summary of Findings

- 3.1 As to whether UVETISO Association was formed with the knowledge and consent of all former employees of ISO that are entitled to payment of terminal benefits, and whether all beneficiaries authorized the Association to collect the terminal benefits on their behalf, it was established that:
 - 3.1.1 Not all former employees of ISO entitled to terminal benefits were aware of the formation of UVETISO Association neither were all of them members of the Association.
 - 3.1.2 Not all former ISO employees authorized UVETISO Association to receive terminal benefits from Government on their behalf.
 - 3.1.3 Regarding the law on whether the full plaintiffs in a representative action, such as this one was, are entitled to collect the judgment debt for the other persons that benefit from the judgment by estoppel, the representative order did not authorize them to collect the proceeds of the judgment.
 - 3.1.4 The representative order issued by court under Order 1 rule 8 of the Civil Procedure Rules only empowers the representatives to prosecute the suit. Those that are not full parties, as plaintiffs, only benefit by estoppel in that they may not bring another action on the same facts, the matter being *res judicata* on the pronouncement of judgment in favour of the representatives.
 - 3.1.5 UVETISO Association therefore neither had legal authority to collect monies due to the beneficiaries that were not full parties to the suit, nor authorization of all beneficiaries to do so.
- 3.2 As to whether Government paid the terminal benefits of former ISO employees to a private association and the consequences of such payment, it was established that:

- 3.2.1 Following a consent order filed in Misc. Application 153 of 2013, by an MOU signed on 21st May 2014, Government through the Attorney General's Chambers and the Ministry of Finance made an absolute assignment of their responsibility to pay the judgment creditors to a private association formed for that purpose, UVETISO Association.
- 3.2.2 It was agreed by the parties to the MOU in clause 3 thereof that a payment of UGX 39,189,499,715/= would be made to settle the claims of former ISO employees and payment shall be effected by the Ministry of Finance, Planning and Economic Development by way of Electronic Transfer made out in the name of the plaintiff's association, UVETISO Association Limited Account No. 0145034204600, in Crane Bank; and that upon completion of payment of the sum, the indebtedness of Government to the judgment creditors in respect of the decretal sum in HCCS 164 of 2004 and M/A 153 of 2011 shall be extinguished.
- 3.2.3 It was expected that UVETISO Association would be placed in a better position to safeguard the interests of beneficiaries than Advocates who have in the past been known to deprive judgment creditors of monies paid to them by government for the benefit of their clients, because UVETISO Association was formed by beneficiaries to the judgment and order in the two matters.
- 3.2.4 Although it was proposed during the negotiation process that the Office of the President, through the Minister of State for the Presidency, would monitor the process of making payments to the beneficiaries after transfer of the money to UVETISO Association's account, this protection was neither included in the consent order in Misc. Application 153 of 2011 nor in the subsequent MOU with Government.
- 3.2.5 A portion of UGX 10,000,000,000/=:, and not all of UGX 39 billion agreed upon in the consent order and the subsequent MOU was on 8th June 2014 paid into the account of the association in Crane Bank Ltd, with the expectation that the beneficiaries would be paid their terminal benefits by this private association.

- 3.2.6 Subsequently, only 117 out of the possible 1078 beneficiaries were paid leaving a possibility that payments were outstanding to 961 beneficiaries. It was also found that out of the UGX 10,000,000,000/= released, about 70% was used for payment of lawyers' fees and other expenses borne by the full parties to the representative action (**HCCS 164 of 2004**);
- 3.2.7 On their own and possibly for their own benefit, the self-appointed representatives of the beneficiaries, Jeff Kiwanuka, Jamal Kitandwe and Kamugisha Bernard withdrew a total of UGX 4,917,764,000/= (cash) from the UVETISO Association Account.
- 3.2.8 A good number of beneficiaries are deceased and survived by widows and orphans and some orphans attended meetings at the IG Offices. However, there was no arrangement made or agreed upon with UVETISO Association for identifying deceased beneficiaries and the right persons to pay in those circumstances. It was also clear that UVETISO did not have the capacity to verify the particulars of beneficiaries for they do not have the records required for that purpose.
- 3.2.9 The Executive Committee of UVETISO Association is largely under the influence and control of their Advocates who were mentioned in documents retrieved by IG Officers to be M/s Matovu & Matovu Advocates, Kampala Associated Advocates and Ligomarc Advocates.
- 3.2.10 It is therefore clear that the purpose of forming the Association in order to exclude the influence and the possibility of lawyers taking advantage of their indigent clients was not achieved by forming UVETISO Association. If anything, it became the vehicle through which the Advocates could and did extract large amounts of money out of their clients, who purported to represent beneficiaries flung far out in different parts of the country.

- 3.2.11 The full parties to the representative suit, i.e. Jeff Kiwanuka and Jamal Kitandwe, as well as their colleague Bernard Kamugisha refused to account to the Inspectorate of Government how much money was paid to the lawyers when they evaded interviews with IG Officers and opted to file a suit to stop the investigation. This in itself raises suspicion as to whether the three are able to discharge the responsibility of paying all of the outstanding claimants, 961 in total, from the balance of UGX 29 billion now expected from Government.
- 3.2.12 Section 6 (1) of the Public Finance and Accountability Act of 2003 provides that the Secretary to the Treasury may, from time to time, require an accounting officer, or the chief administrative officer of a local government council, or the chief executive of any public organization or any entity that manages an asset or liability of the Government, to supply any information that the Secretary to the Treasury considers necessary for the purpose of section 3 thereof. Section 3 (1) (b) of the Act mandates the Minister to supervise and monitor the finances of Uganda.
- 3.2.13 In this case the Secretary to the Treasury requested for an account of how the UGX 10,000,000,000/= was disbursed from Matovu & Matovu Advocates, signatories to the MOU as representatives of the beneficiaries, but the lawyers declined to supply the accounts. They reasoned that the terms of the MOU signed on 21st May 2014 made no provision for accounting for the money to the Treasury and they were only under the obligation to account to their clients.
- 3.2.14 The MOU is therefore lacking in that it does not make provision for accounting for the monies disbursed contrary to the Public Finance and Accountability Act. It left Government completely exposed to losses that could result from monies being paid to a private entity to satisfy obligations of Government.
- 3.2.15 Finally, if Government pays all of UGX 29 billion to UVETISO Association which was not party to HCCS No. 164 and Misc. Application 153 of 2011, in the event that the beneficiaries or any of them are not paid, they will no doubt still have recourse to Government in another civil action to recover their dues.

3.2.16 In view of the fact that neither UVETISO nor Matovu & Matovu Advocates have accounted for disbursement of the money, Government will have no evidence that it discharged its obligation to each and every one of the beneficiaries. The situation is compounded by the fact that there is a large group of beneficiaries who have disclaimed knowledge of UVETISO and denied having given it instructions to collect benefits on their behalf. If no care is taken to stop this process, government may have to pay for the same obligation twice.

3.3 As to whether there were any known criteria for identifying beneficiaries that were to be paid first over the others, and whether there was any money left on the UVETISO Account in Crane Bank Ltd;

3.3.1 At meetings held with former ISO employees at IG Offices on 29th October and 11th November 2014, it was established from some of the beneficiaries that received money out of the UGX 10 billion and those yet to be paid that there was no explanation given to them as to why some were paid and others not. Because the paymasters – Kiwanuka, Kamugisha and Kitandwe were never interviewed, IG was not able to answer this question.

3.3.2 By the time inspection of the UVETISO account in Crane Bank was carried out on 22nd August 2014, only UGX 31,769,316/= was left on the account. It is not known whether there is still any money on the account since the IG investigation was stopped by court.

3.4 As to whether the legal fees paid to the lawyers were agreed upon by all the beneficiaries and whether such fees were lawfully paid to the lawyers by the self-appointed representatives of the beneficiaries.

3.4.1 Section 26 of the Civil Procedure Act provides for costs in civil proceedings. The matter at hand resulted from civil proceedings in HCCS 164 and Misc. Application 153 of 2011 and costs had been awarded to the plaintiffs by court in HCCS 164 of 2001.

- 3.4.2 It is the law that costs will naturally follow the event. A successful party in a civil suit is awarded costs unless the judge has good reason to exercise his discretion otherwise, which was not the case in this matter.
- 3.4.3 The learned Attorney General misdirected himself when he opined that the payment of the costs of successful litigants which had been awarded by a court of law was a "*purely private matter between the litigants and their lawyers.*" It was also a variation of an essential aspect of the orders of court in HCCS 164 of 2004 which the Attorney General had no right to do, without the consent of the beneficiaries to the judgment in the process of a settlement with the lawyers of the full parties to the suit.
- 3.4.4 The failure to address the issue of the costs due to the advocates who handled this matter for the claimants led to an unnecessary further diminution of their entitlements and to the lawyers taking undue advantage of them.
- 3.4.5 Regulation 26 of the Advocates (Professional Conduct) Regulations provides that an advocate shall not enter into any agreement for the sharing of a proportion of the proceeds of a judgment whether by way of percentage or otherwise, either as part of or the entire amount of his or her professional fees, or in consideration of advancing to a client funds for disbursements.
- 3.4.6 However, by virtue of regulation 27 of the same rules an advocate representing a client shall not advance any money to the client except only for disbursements connected with the case on the matter in which he or she is instructed.
- 3.4.7 The Attorney General's refusal to consider a proposal of the Minister to have the fees of the Advocates paid separately from the judgment debt led to the Advocates taking undue advantage of their indigent and uninformed clients. This was to the extent that 70% of the first disbursement of UGX 10 billion went into payment of fees and other costs incurred during the many years of litigation. Certainly the percentage of 38% said to have been paid to lawyers was highly extortionate.

- 3.4.8 The said portion of the proceeds of the judgment could not be justified as disbursements under regulation 27 of the Advocates (Professional Conduct) Regulations. The advocates must therefore be called to account for UGX 6,969,294,840/=, if it is found that they were given this amount as disbursements for work done.
- 3.4.9 In addition, the lawyers in the matter were retained by the full plaintiffs to HCCS No 164 of 2004, i.e. Henry Waibale, Jeff Kiwanuka and Jamal Kitandwe who sued on behalf of 500 others. These would be the clients of the Advocates who claimed fees in the matter, not all the beneficiaries to the judgment.
- 3.4.10 The word "*client*" is defined in s. 1 (b) of the Advocates Act to include any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ, an advocate and any person who is or may be liable to pay to an advocate any costs.
- 3.4.11 The bigger number of the 1078 beneficiaries to the judgment in HCCS No 164 of 2004 did not bind themselves to pay any fees to the advocates. They did not sign any agreements with the said advocates to pay them fees. Agreements signed by the full plaintiffs in HCCS 164 of 2004 to pay fees could not bind all the beneficiaries to the judgment by estoppel for they were never privy to them.
- 3.4.12 The full plaintiffs in the suit were also not personal representatives of all beneficiaries to the judgment. The full plaintiffs only had the obligation to prosecute the suit by virtue of the representative order granted them under Order 1 rule 8 of the Civil Procedure Rules, or its equivalent at the time, and get judgment. Once they got judgment, the proceeds of the judgment became the property of the beneficiaries to the judgment, even those that benefitted by estoppel in that they could not bring a fresh action for recovery of their terminal benefits after the judgment in HCCS 164 of 2004 was handed down.

3.4.13 It was therefore illegal and unconstitutional (c/t Article 26 of the Constitution) for the self-appointed representatives, Jeff Kiwanuka, Jamal Kitandwe and Bernard Kamugisha to purport to give away any part of the proceeds of the judgment to unknown persons without the specific consent of the beneficiaries thereto. Those that did not sue Government, as well as those who did not specifically agree to pay part of their benefits to the advocates were “*free riders*” with no legal obligation to pay any fees to the advocates of the full plaintiffs in the suit.

3.4.14 It was also manifestly unfair and illegal for the self-appointed representatives of the beneficiaries to pay almost 70% of UGX 10 billion to advocates and other persons as expenses without consulting and getting the written consent of all beneficiaries. They as a result deprived beneficiaries of a large portion of their property in the judgment.

3.5 Article 230 (2) of the Constitution of the Republic of Uganda and Section 14 (6) of the Inspectorate of Government Act provide that the Inspector General of Government may, during the course of his or her duties or as a consequence of his or her findings make such orders and give such directions as are necessary and appropriate in the circumstances.

3.6 Although the court issued an order to stop the investigation and not to issue any orders in respect of the matter till conclusion of the hearing of the application for judicial review, it is incumbent upon the IGG to ensure that as we stop the investigations, the interests of the beneficiaries and government resources are protected while the investigation is frozen. It is therefore hereby ordered that:

3.6.1 The Attorney General, the Solicitor General, the Permanent Secretary/Secretary to the Treasury, the Accountant General, Ministry of Finance, Planning and Economic Development, and all its servants, agents and assigns, and others under their supervision cease to implement the Memorandum of Understanding signed on the 21st day of May 2014 between the Ministry of Finance, Planning and Economic Development and Matovu & Matovu, Advocates as the representatives of Henry

Waibale, J. Florence Jamal Kitamwe (*sic*) and Over 500 Others (*sic*) for the payment of UGX 39,189,499,715/= agreed upon as full settlement of the terminal benefits due to former ISO employees.

- 3.6.2 Jeff Lawrence Kiwanuka, Jamal Kitandwe and Bernard Kamugisha, the signatories to UVETISO Limited's Account No. 0145034204600 in Crane Bank Ltd, Kampala Road Branch, do account to the Permanent Secretary/Secretary to the Treasury for UGX 6,969,294,840/= of the UGX 10 billion released by the Ministry of Finance, Planning and Economic Development for the long awaited settlement of the terminal benefits of former employees of ISO, but which was not paid to the former employees of ISO.
- 3.6.3 No further payments of the terminal benefits agreed upon in the Consent Order signed on 13th March 2014 should be made until the signatories to UVETISO Limited's Account No. 0145034204600 in Crane Bank Ltd, Kampala Road Branch do account to the Ministry of Finance, Planning and Economic Development for the UGX 10,000,000,000/= that was disbursed.
- 3.6.4 The said accounts should be submitted to the Permanent Secretary, Ministry of Finance, Planning and Economic Development by the 17th January 2015;
- 3.6.5 In the event that the signatories to the UVETISO Account specified above fail to account for the monies by that date, the Director of Public Prosecutions should initiate an investigation into the loss of the said amount of UGX 6,969,294,840/= with a view to prosecuting the signatories to the account for theft and/or diversion of public funds or other appropriate offences.
- 3.6.6 No further payments of advocates costs and other expenses should be made out of the monies paid as terminal benefits for former employees of ISO at source. The order for costs in HCCS 164 of 2014 should be followed in the event that the monies already paid to the advocates by UVETISO Association are not sufficient to defray the taxed costs of the Advocates in HCCS 164 of 2004 and M/A 153 of 2011.

3.7 It is further recommended that:

- 3.7.1 The Office of the Auditor General and the Internal Security Organization do carry out a physical verification of the former employees of ISO that are entitled to payment of terminal benefits, including establishing those that are deceased and the legal representatives who are entitled to receive the terminal benefits on their behalf;
- 3.7.2 The Ministry of Finance, Planning and Economic Development do pay the terminal benefits to entitled and verified beneficiaries and legal representatives of deceased beneficiaries so identified directly into their bank accounts and bank accounts of legal representatives of those that are deceased;
- 3.7.3 The payments above shall be effected directly to the bank accounts of the beneficiaries either through the Internal Security Organization, Ministry of Justice and Constitutional Affairs, or other appropriate institution or agency identified by the Ministry of Finance.