

UNIVERSITY OF THE WESTERN CAPE



FACULTY OF LAW

Exploring a Sustainable Anti-Corruption Regime for Tanzania

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in partial fulfilment of the requirements for degree of**



Masters of Laws

in

**Transnational Criminal Justice and Crime Prevention — An International and African
Perspective.**

by

Lukiko Vedastus Lukiko

Student Number: 3614680

Supervisor: Professor Raymond Koen

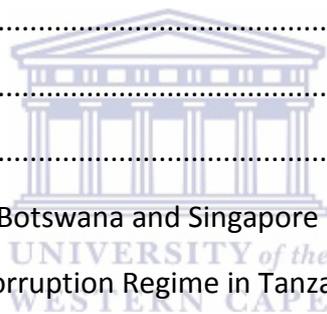
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Table of Contents

Declaration	v
Dedication.....	vi
Acknowledgments.....	vii
List of Abbreviations and Acronyms.....	viii
Keywords	xi
Chapter One.....	1
General Introduction and Overview of the Study	1
1.1 Introduction	1
1.2 Problem Statement.....	4
1.3 Background to the Problem.....	5
1.4 Objectives of the Study.....	12
1.5 Significance of the Study.....	13
1.6 Research Questions	13
1.7 Scope of the Study	13
1.8 Research Methodology.....	13
1.9 Chapter Outlines	14
Chapter Two.....	15
International Anti-Corruption Framework.....	15
2.1 Introduction	15
2.2 United Nations Convention against Corruption	16
2.2.1 Prevention of Corruption.....	16
2.2.2 Criminalisation of Corruption and Law Enforcement.....	19
2.3 African Union Convention on Preventing and Combating Corruption.....	22
2.3.1 Criminalisation of Corruption	22
2.3.2 Law enforcement	23
2.3.3 Preventive Measures	24
2.4 Southern African Development Community Protocol against Corruption.....	24
2.4.1 Criminalisation of Corruption	24

2.4.2	Preventing Corruption	25
2.4.3	Law Enforcement	26
2.5	Role of International Financial Institutions.....	26
2.5.1	International Monetary Fund	27
2.5.2	World Bank.....	28
2.6	Concluding Remarks.....	30
Chapter Three		31
Post-Independence Anti-Corruption Trends		31
3.1	Introduction	31
3.2	First Post-Independence Regime	32
3.2.1	Prevention of Corruption Act.....	34
3.2.2	Anti-Corruption Squad	35
3.2.3	Economic Crisis	35
3.2.4	Anti-Economic Sabotage Legislation.....	36
3.3	Second Post-Independence Regime	37
3.4	Third Post-Independence Regime.....	38
3.4.1	Public Leadership Code of Ethics Act.....	40
3.4.2	Warioba Commission on Corruption	41
3.4.3	National Anti-Corruption Strategy and Action Plan	41
3.4	Fourth Post-Independence Regime	42
3.5	Current Anti-Corruption Legal Framework.....	43
3.5.1	Anti-Money Laundering Act.....	43
3.5.2	Prevention and Combating of Corruption Act.....	44
3.5.3	National Elections Act and Election Expenses Act.....	44
3.6	Current Anti-Corruption Institutional Framework.....	46
3.6.1	Prevention and Combating of Corruption Bureau.....	46
3.6.2	Controller and Auditor General	47
3.6.3	Public Procurement Regulatory Authority.....	48

3.6.4	Commission for Human Rights and Good Governance	48
3.7	Role of Donors in Fighting Corruption in Tanzania	49
3.8	Fifth Post-Independence Regime.....	51
3.8.1	House Cleaning	51
3.8.2	Establishing the Anti-Corruption Court	52
3.8.2	Surprise Visits.....	53
3.9	Concluding Remarks.....	54
Chapter Four	.....	55
Recalibrating Aspects of the Tanzanian Anti-Corruption Regime	.....	55
4.1	Introduction	55
4.2	Anti-Corruption Best Practices from Other Jurisdictions	55
4.2.1	Hong Kong.....	56
4.2.2	Singapore	61
4.2.3	Botswana.....	63
4.3	Lessons from Hong Kong, Botswana and Singapore	66
4.4	Deficiencies of the Anti-Corruption Regime in Tanzania.....	68
4.4.1	Political Environment.....	68
4.4.2	Legal Environment	71
4.4.3	Economic Environment.....	74
4.4.4	Social Environment	76
4.5	Reforms for a Sustainable Anti-Corruption Regime in Tanzania	78
4.5.1	Introducing a Constitutional Anchor.....	78
4.5.2	Restructuring the PCCB.....	79
4.5.3	Strengthening Law Enforcement	80
4.5.4	Establishing Anti-Corruption Units in Government Departments.....	81
4.5.5	Soliciting Public Support	81
4.5.6	Integrating Ethics and Anti-Corruption Studies in Curricula	81
4.6	Limitations of the Proposed Reforms	82



4.6.1	Lack of Political Will	82
4.6.2	Inadequate Resources	83
4.7	Concluding Remarks.....	83
Chapter Five	.....	84
General Conclusion	.....	84
References	.....	87



Declaration

I, Lukiko Vedastus Lukiko, declare that **Exploring a Sustainable Anti-Corruption Regime for Tanzania** is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Student: LUKIKO VEDASTUS LUKIKO

Signed:.....

Date:.....

Supervisor: PROFESSOR RA KOEN

Signed:.....

Date:.....



Dedication

To all corruption fighters in Tanzania



Acknowledgments

I am grateful to the Almighty God for blessing me with strength and protection during the writing of this work.

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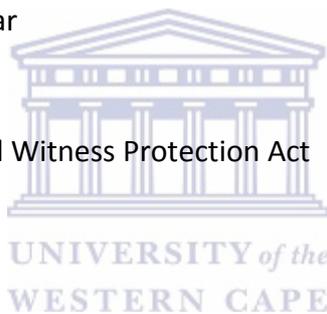
Lastly, I thank the DAAD class of 2016, Windell, Mutinta, Denis, Zimba, Wisel and Mr & Mrs Henry. I deeply treasure the support that you gave me at different stages of my LL.M studies, particularly during the writing of this work.

List of Abbreviations and Acronyms

ACA	Anti-Corruption Agency
ACS	Anti-Corruption Squad
AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Act
AU	African Union
BAE	British Aerospace Engineering
CAG	Controller and Auditor General
Cap	Chapter
CCM	<i>Chama cha Mapinduzi</i>
CECA	Corruption and Economic Crime Act
CHRAGG	Commission for Human Rights and Good Governance
CHRAGGA	Commission for Human Rights and Good Governance Act
CMI	Chr Michelsen Institute
CPAR	Country Procurement Assessment Report
CPI	Corruption Perceptions Index
CPIB	Corrupt Practices Investigation Bureau
DCEC	Directorate on Corruption and Economic Crime
DFID	Department for International Development
DPP	Director of Public Prosecutions
EEA	Election Expenses Act
EOCCA	Economic and Organised Crime Control Act
ESAAMLG	Eastern and Southern African Anti Money Laundering Group
ESRF	Economic and Social Research Foundation
FACEIT	Front against Corruption Elements in Tanzania
FATF	Financial Action Task Force
GBS	General Budget Support
ICAC	Independent Commission against Corruption

IMF	International Monetary Fund
LHRC	Legal and Human Rights Centre
LRCT	Law Reform Commission of Tanzania
MDAs	Ministries, Departments and Agencies
MP	Member of Parliament
NACSAP	National Anti-Corruption Strategy and Action Plan
NAOT	National Audit Office of Tanzania
NEA	National Elections Act
NFGG	National Framework on Good Governance
NGCS	National Governance and Corruption Survey
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PAA	Public Audit Act
PAP	People's Action Party
PCB	Prevention of Corruption Bureau
PCCA	Prevention and Combating of Corruption Act
PCCB	Prevention and Combating of Corruption Bureau
PCE	Permanent Commission of Enquiry
PLCEA	Public Leadership Code of Ethics Act
POCA	Prevention of Corruption Act
PPRA	Public Procurement Regulatory Authority
REPOA	Research on Poverty Alleviation
RTC	Regional Trading Corporation
SADC	Southern African Development Community
STACA	Strengthening Tanzania's Anti-Corruption Action
STR	Suspicious Transactions Report
TANU	Tanganyika African National Union
TCCIA	Tanzania Chamber of Commerce, Industry and Agriculture

TI	Transparency International
TLR	Tanzania Law Reports
TPA	Tanzania Ports Authority
TRA	Tanzania Revenue Authority
Tsh	Tanzanian Shilling
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
URT	United Republic of Tanzania
US\$	United States Dollar
VOA	Voice of America
WWPA	Whistleblower and Witness Protection Act



Keywords

Anti-Corruption

Anti-Corruption Regime

AU Convention on Preventing and Combating Corruption

Corruption

Government

International Anti-Corruption Law

Legislation

SADC Protocol against Corruption

Sustainability

Tanzania

UNCAC



Chapter One

General Introduction and Overview of the Study

1.1 Introduction

Corruption is among the world's devastating social, economic and political problems. It is enormous to the extent that "not one single country, anywhere in the world, is corruption-free".¹ Its effects on the quality of life of billions of people around the world are widely acknowledged. Kofi Annan, former UN Secretary General, in his statement on the adoption of the United Nations Convention against Corruption (UNCAC), proclaimed that:

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organised crime, terrorism and other threats to human security to flourish.²

Corruption takes different forms depending on the time and the social, political and economic circumstances that create avenues for its occurrence. Consequently, scholars construe corruption from different viewpoints. On the one hand, post-colonialists and Marxists perceive corruption as a product of capitalist pursuit of profit and capital accumulation.³ On the other hand, liberal-rationalists and free-market economists define corruption by looking at its negative effects on development and economic sustainability.⁴ The argument is that corruption discourages foreign investment and allows public officials to siphon off resources for their private advantage, thereby defeating the public good. Despite the definitional and ideological differences found in literature, there is an agreement that corruption is a bad thing and should be fought vigorously.

Although corruption is a global phenomenon, its enormity varies from one state to another.⁵ Countries with low income rates, low literacy levels and poor government functioning are more prone to corruption.⁶ Political leaders, particularly in developing countries, are accused of enriching themselves through corruption and they use such

1 Transparency International (2015).

2 Secretary General "Statement on the Adoption by the General Assembly of the United Nations Convention against Corruption" (31 October 2003).

3 Ninsin (2000) and De Maria (2008).

4 Mauro (1995) and Kaufmann (1997).

5 Parliamentary Centre (2000) 20.

6 Warf (2016) 663.

corruptly acquired wealth to perpetuate their stay into power.⁷ There is a widespread belief that poverty in developing countries is a result of the exploitation of the people by their own leaders.⁸ Hoseah identifies corruption as “the single greatest challenge that erodes and defeats efforts made by many nations, especially in the developing world, towards sustainable development and towards the promotion and strengthening of democratic institutions and values”.⁹

Recognising the harm caused by corruption to humankind, individual nations and the international community have devised various measures to prevent and combat the vice. Corruption, which was initially “a local, moral and importantly, non-economic category, is now increasingly constructed in global, economic and legal terms”.¹⁰ International and regional legal instruments have been adopted, including the United Nations Convention against Corruption, the African Union Convention on Preventing and Combating Corruption and the Southern African Development Community Protocol against Corruption. States have enacted laws and formulated policies aimed at eradicating the corruption malady. And civil society and non-governmental organisations have put a lot of effort into fighting this problem. However, corruption continues to escalate, especially in developing nations.

Tanzania is a country where the rate of corruption is high. As various studies reveal, corruption has existed in the country in various forms and magnitude from the colonial era, throughout the post-independence state-controlled economy, up to current era of trade liberalisation and free-market economy.¹¹ Initially after independence, corruption was seen as the product of the single party system.¹² However, the problem has grown even more after the introduction of multi-party politics.¹³ As illustrated in Table 1 below, Tanzania’s corruption profile from 2000 to 2016, as published by Transparency International (TI) in its Corruption Perceptions Indices (CPIs), indicates no significant reduction of corruption.

7 Nyerere (2000) 82.

8 Nyerere (2000) 82.

9 Hoseah (2014) 384.

10 Williams (1999) 503-505.

11 Mashamba (2004) 14.

12 Kasella-Bantu (1978) 25-26.

13 Babeiya (2011) 91.

Table 1: Tanzania's score and ranking in TI's CPI from 2000 to 2016

Year	Score	Rank
2016	32/100	116/176
2015	30/100	117/168
2014	31/100	119/175
2013	33/100	111/177
2012	35/100	102/176
2011	3.0/10	100/183
2010	2.7/10	116/178
2009	2.6/10	126/180
2008	3.0/10	102/180
2007	3.2/10	94/180
2006	2.9/10	93/163
2005	2.9/10	88/156
2004	2.8/10	90/146
2003	2.5/10	92/133
2002	2.7/10	71/102
2001	2.2/10	82/91
2000	2.5/10	76/90

Source: Transparency International, CPIs 2000-2016

The country has witnessed a series of graft scandals over the past ten years including, in particular, the Richmond scandal in 2008 that involved the then Prime Minister, Edward Lowasa. Corruption persists despite the fact that, since its independence in 1961, Tanzania has adopted various statutes, regulations and policies aimed at preventing and combating it.

Politically, all the five regimes that have led the country since independence have declared a commitment to fight corruption in all sectors.¹⁴ However, reports indicate that the effectiveness and impact of anti-corruption measures adopted differ from one regime to another. The first government regime generally is perceived to have been committed

14 Afro-Barometer & REPOA (2006) 1.

sincerely to fighting corruption.¹⁵ This is not the case, however, with the second, third and fourth regimes, which are perceived not to have been zealous enough in fighting corruption.¹⁶ The fifth regime has been in office for one-and-a-half years now and has demonstrated a practical commitment to fighting corruption, with the President himself leading the campaign. The current President's stance against corruption has prompted media houses to associate his government with the first post-independence government, during which President Julius Nyerere himself was on the anti-corruption frontline.¹⁷

This leadership trend creates a paradox in the country's anti-corruption system. Combating corruption appears to be based upon the will of individual leaders (especially Presidents) to do so. Despite having anti-corruption laws in force, Tanzania has been unable to establish a legal and institutional framework in terms of which state agencies and personnel are bound to fight corruption, regardless of who is heading the government. It is against this backdrop that this research seeks to explore avenues that may be adopted to create a sustainable anti-corruption regime in the country.

1.2 Problem Statement

While Tanzania has taken a variety of measures to legislate against corruption and put anti-corruption policies in place, the rate of corruption in the country continues to escalate. The current anti-corruption regime provides no predictability, since enforcement of laws and policies depends on who is heading the government. When the head of the government is particularly weak on corruption, the problem escalates. Dependence upon the commitment of the leader of government to fight corruption renders legislation and policies futile, and the evils of corruption continue to undermine the nation, contrary to Tanzania's vision and the African Union's vision of creating a corruption-free society by 2025 and 2063 respectively.

15 Msekwa (2012) 124-136.

16 The Warioba Report (1996) indicates massive corruption in the public sector during the second government regime; the Law Reform Commission of Tanzania (LRCT) "Report on the Review of Legislation Relating to Corruption" (2004) indicates that corruption was still a serious problem in the country during the third government regime; and the country ranked 117th out of 168 countries in Transparency International's *Corruption Perceptions Index* 2015, the year in which the fourth government regime completed its tenure.

17 Lubasi (28 June 2016).

1.3 Background to the Problem

Understanding Tanzania's corruption and anti-corruption trends requires a survey of the country's political and economic history. The fight against corruption in Tanzania dates back to 1930, when the British colonial government amended the Penal Code "to make it a criminal offence to demand, solicit and give or receive bribes".¹⁸ This provision was perceived later as inadequate in curbing the ever-increasing threat of corruption. Thus, in 1958 the Prevention of Corruption Ordinance was enacted to replace the provisions of the Penal Code on corruption. The Ordinance covered a wide range of corruption offences including "receiving gifts and commissions, which [were] considered to be corrupt transactions with agent and public servant obtaining an advantage without consideration".¹⁹ As there were few public servants at that time, this law was adequate for curbing corruption.²⁰

At the same time, anti-corruption was one of items on the nationalist agenda in the struggle for independence. Addressing Parliament in May 1960, Julius Nyerere, who was then the government's Chief Minister, identified corruption as an "enemy of the people" that should be dealt with "in the same way as treason". He said:

I think I would be less than honest if I said that all is well, because it is not. There is corruption ... I think corruption must be treated with ruthlessness because I believe myself corruption and bribery is a greater enemy to the welfare of a people in peacetime than in war. I believe myself corruption in a country should be treated in almost the same way as you treat treason.²¹

After independence, Tanzania adopted a socialist mode of economic development. The aim was to build a country where "all able-bodied men and women work for the collectivity in order to earn a living and no one is allowed to rip the fruits of other people's labour".²² Consequently, anti-corruption measures were needed in order to eliminate chances for exploitation of citizens by public servants. Thus, in 1963 Parliament enacted the Minimum Sentences Act²³ which imposed, in addition to imprisonment, corporal punishment of twenty-four strokes for offenders found guilty of taking part in a corrupt transaction with an

18 LRCT (2004) 8.

19 LRCT (2004) 8.

20 Warioba Report (1996) 11.

21 Nyerere (1967) 82.

22 Ngombale-Mwiru (1973) 53.

23 Act 29 of 1963.

agent or obtaining an advantage without consideration contrary to Sections 3 and 6 of the Prevention of Corruption Ordinance respectively.²⁴

Despite the commitment to building an independent and self-reliant state, the new post-independence government still relied on foreign aid to operate. The First Five Year Development Plan envisaged that over 70 percent of the development finance would come from foreign private and government sources.²⁵ These aid grants were not realised as anticipated, and “since leaders and bureaucrats did not have their own sources from which to accumulate wealth, they started targeting public resources”.²⁶

Further, economic hardships in the socialist bloc from the late 1960s to 1980s led to “low and declining civil service wages, combined with excess demand for public services”.²⁷ Essential goods and foodstuffs were scarce in almost all villages in the country and even in some urban areas.²⁸ As a result, most middle-and lower-level public servants resorted to corrupt practices in the course of delivering services to the people.²⁹ Parastatal officials hid the goods they produced until they were offered an extra corruption price called *bei ya kuruka*.³⁰ In response, the government, in the 1965 Interim Constitution,³¹ established the Permanent Commission of Enquiry (PCE), which functioned as an Ombud to “check on the abuse of power by government officials and its agencies”.³² However, the PCE had no powers to investigate the President or the Head of the Executive for Zanzibar. Section 67(4) of the Interim Constitution specifically provided that:

This section applies to persons in the service of the United Republic, persons holding office in the Party, the members and persons in the service of a local government authority and the members and persons in the service of such Commissions, corporate bodies established by statute and public authorities or boards, as may be specified by Act of Parliament, but does not apply to the President or the head of the Executive for Zanzibar.

24 Part I of the Schedule to the Minimum Sentences Act, 1963.

25 Mbilinyi *et al* (1974) 73.

26 Njunwa (accessed 4 January 2017) 11.

27 World Bank (1998) 3.

28 Kasella-Bantu (1978) 26.

29 LRCT (2004) 9.

30 Kasella-Bantu (1978) 26.

31 Section 67(3) of the Interim Constitution, 1965.

32 Afro-Barometer & REPOA (2006) 2.

Within six months the PCE had received 666 cases, which indicated that there was massive abuse of power in the public service.³³ However, the PCE was not an anti-corruption organ. It neither could arrest nor prosecute corruption offenders and its decisions were mere recommendations submitted to the President.³⁴ Thus, its work was constrained seriously and unfruitful in curbing corruption. Until 1975, there was no special body assigned the role of fighting corruption. Enforcement of anti-corruption laws all long had been the responsibility of the police force.

Regrettably, the economic policy characterised by nationalisation under the Arusha Declaration of 1967 and the creation of public corporations to provide services and goods to the people, escalated the problem of corruption in the early years after independence.³⁵ The government reacted by enacting the Prevention of Corruption Act (POCA) of 1971 which replaced the Prevention of Corruption Ordinance of 1958. POCA criminalised both active and passive bribery, introduced the offence of illicit enrichment and provided for a presumption of corruption in certain cases involving contracts with government authorities.³⁶

The new legislation made possible the establishment of the Anti-Corruption Squad in 1975.³⁷ Section 2A(3) of POCA, as amended by the Prevention of Corruption (Amendment) Act,³⁸ provided for three major functions of the Squad: firstly, to take all necessary measures to prevent corruption in the public, parastatal and private sectors; secondly, to investigate and, subject to the directions of the Director of Public Prosecutions (DPP), to prosecute offences involving corruption; thirdly, to advise the government and the general community on ways and means of preventing corruption. Many people were arrested, prosecuted and convicted as a result of the work done by the Anti-Corruption Squad.³⁹ But the Squad was not an independent organ. It was established as a special department of the

33 Martin (1974) 201.

34 Section 67(3) of the Interim Constitution, 1965.

35 LRCT (2004) 9.

36 Sections 3 & 9 of POCA.

37 Established on 15 January 1975 via Government Notice No 17 of 1975.

38 Act 2 of 1974.

39 Warioba Report (1996) 24.

police force. Further, the Squad had limited staff and resources. Thus, it relied heavily on the police force and the DPP for investigations and prosecutions.⁴⁰

In 1985, President Nyerere, who had led the country for twenty-five years, voluntarily stepped down from the presidency and Ali Hassan Mwinyi was elected head of the second post-independence regime. A few years later, economic crises in the socialist bloc forced Tanzania to abandon its socialist policies and adopt the structural adjustment programme advocated by the World Bank and the International Monetary Fund (IMF) in an effort to rescue its economy. A free-market economy, multi-party democracy, trade liberalisation and privatisation were introduced as part of the structural adjustment programme. The theory behind this programme argued that reducing state control over the economy would decrease the opportunities for corruption and influence proper administrative allocation of resources.⁴¹

On the one hand, this initiative closed the doors upon the corrupt practices that were associated with the economic crisis of the 1980s. On the other hand, it opened avenues for grand corruption which was facilitated by the close relationship between government leaders and businessmen.⁴²

As the state of corruption worsened, the government made two legislative efforts to curb it. Firstly, POCA was amended in 1990 to transform the Anti-Corruption Squad into the Prevention of Corruption Bureau (PCB). However, as the name suggests, this organ was concerned primarily with preventing corruption. The PCB had a number of shortcomings, one of which was the lack of a “legal mandate or opportunity to follow up and/or prosecute corruption related to fraud”.⁴³ Secondly, in 1995, the Tanzanian Parliament enacted the Public Leadership Code of Ethics Act,⁴⁴ which established the Ethics Secretariat with a mandate to promote and monitor the conduct of public leaders, receive declarations of assets and investigate complaints about unethical behaviour on the part of public leaders. Despite these efforts, corruption continued to mushroom in public institutions.

40 Shaidi (1975) 112.

41 Heilman & Ndumbaro (2002) 5.

42 LRCT (2004) 11.

43 PCCB (accessed 9 September 2016).

44 Act 13 of 1995.

The year 1995 was also an election year and the country witnessed its first multi-party election since independence. Benjamin Mkapa, who campaigned on a “clean government” platform, was elected as Tanzania’s third post-independence President. In an interview after being elected, President Mkapa expressed his concern about corruption and his readiness to fight the problem. He said: “We must begin cultivating the confidence of the people that we mean business in fighting corruption.”⁴⁵

Within a year, he had appointed a Presidential Commission of Inquiry on Corruption, under the Chairmanship of Justice Joseph S Warioba (retired), known as the Warioba Commission, to assess the state of corruption in the country. The Report of the Commission (the Warioba Report) was published in 1996 and revealed massive corruption within the public sector.⁴⁶ The Report established that “earlier strategies for combating corruption were not successful because efforts were being directed at dealing with corruption incidents and not in addressing the major causes giving rise to the problem”.⁴⁷

Building on the findings and recommendations of the Warioba Commission, the government, in the late 1990s, issued the National Framework on Good Governance, a document that “emphasised a government system that was transparent, responsive and accountable, managed by officials who are accountable, efficient, ethical and professional”.⁴⁸ Thereafter, a National Anti-Corruption Strategy was prepared to guide all government organs in combating corruption. Government ministries, departments, institutions and local authorities were required to prepare their own Anti-Corruption Action Plans.⁴⁹ These Action Plans were incorporated subsequently into the National Anti-Corruption Strategy, to form the National Anti-Corruption Strategy and Action Plan (NACSAP), published in November 1999.

In 2001, Parliament passed the Public Procurement Act⁵⁰ which, among others, prohibited corruption and fraudulent practices in public procurement. Section 60(2) required a procuring entity or an approving authority to reject a proposal for award of a contract or declare such person or firm ineligible to be awarded a public contract for ten

45 Mkapa (1995) 7.

46 Warioba Report (1996).

47 LRCT (2004) 13.

48 Afro-Barometer & REPOA (2006) 2.

49 Afro-Barometer & REPOA (2006) 2.

50 Act 3 of 2001.

years if it was satisfied that any person or firm, to which it was proposed that a tender be awarded, had engaged in corrupt or fraudulent practices in competing for the contract in question.

These measures taken by the Mkapa government suggest that corruption was being fought in all state entities. However, statistics tell a different story. As Table 1 above indicates, five years after the formulation of NACSAP, Tanzania continued to score below 3 out of 10 in the CPI. A number of grand corruption scandals featured in the Mkapa government, including the civil aviation radar purchase deal in 1999. The deal involved the purchase of a civil aviation radar system from British Aerospace Engineering (BAE).⁵¹ Later investigations by the British Serious Fraud Office revealed that the deal was significantly corrupt and BAE subsequently was ordered to pay £30 million in fines.⁵² Generally, no significant anti-corruption results were attained by 2005, when the Mkapa government completed its term.

The fourth post-independence government, too, began with a promise to fight corruption at all levels. President Kikwete, during the inauguration of the first Parliament of his term, declared that:

Serikali ya awamu ya nne ... itaendeleza mapambano dhidi ya rushwa bila woga wala kuoneana muhali. (The fourth regime ... will continue to fight corruption without fear or favour).⁵³

It is to be noted here that Tanzania had ratified the United Nations Convention against Corruption (UNCAC) on 25 May 2005. One of UNCAC's purposes is "to promote co-operation to prevent and combat transnational organised crime more effectively".⁵⁴ Tanzania, in its efforts to implement this purpose of UNCAC and to fulfil its obligations under other international instruments, enacted the Anti-Money Laundering Act in 2006.⁵⁵ Section 3 of the Anti-Money Laundering Act incorporated "corrupt practices" as predicate offences for

51 Gray (2015) 388.

52 Gray (2015) 388.

53 Speech of President Jakaya Mrisho Kikwete to the Parliament of the United Republic of Tanzania in Dodoma on 30 December 2005. Translation by author.

54 Article 1 of UNCAC.

55 Act 12 of 2006. The Act was amended in 2012 by the Anti-Money Laundering (Amendment) Act 1 of 2012.

offences of money laundering. Subsequently the government enacted the Prevention and Combating of Corrupting Act (PCCA) in 2007.⁵⁶

The PCCA repealed POCA and subsequently the PCB was transformed into the Prevention and Combating of Corruption Bureau (PCCB).⁵⁷ Further, the PCCA increased the number of corruption crimes from four under POCA to twenty-four. The new crimes cover active and passive bribery; corrupt transactions in contracts, procurement, auctions and employment; bribery of foreign public officials; unjust enrichment; embezzlement and misappropriation; trading in influence; diversion; sexual corruption; and other forms of liability including aiding, abetting and conspiracy. Unlike the PCB which had only preventive powers, the PCCB is mandated to take “necessary measures for the prevention and combating of corruption in the public, parastatal and private sectors”.⁵⁸

The PCCA was a substantial step in Tanzania’s undertaking to curb corruption in both the public and private sectors. However, just one year after the establishment of the PCCB, a grand corruption scandal around an energy deal was exposed, involving high profile public leaders, including the then Prime Minister, Edward Ngoyai Lowasa, who offered to resign.⁵⁹ The government subsequently was contaminated by other grand corruption scandals, notably the poaching scandal that implicated the Chinese presidential aircraft in carrying ivory from Tanzania during the Chinese President’s visit in 2014,⁶⁰ and the Escrow scandal that implicated government ministers and high profile politicians in receiving money (as gifts or payments) that was smuggled corruptly from the Central Bank of Tanzania.⁶¹

Despite tougher laws being enacted during the Kikwete presidency, corruption within the public sector, involving senior government officials in particular, remained rampant. Thus, it is not surprising that Tanzania ranked 119 out of 175 and 117 out of 168 countries in Transparency International’s CPI for 2014 and 2015 respectively.

56 Act 11 of 2007.

57 Section 5 of the PCCA.

58 Section 7 of the PCCA.

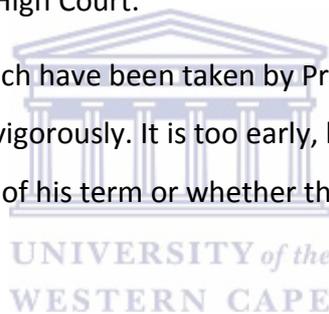
59 BBC (7 February 2008). The Prime Minister resigned on 7 February 2008.

60 See Environmental Investigation Agency (2014). The report showed that “2.9 tonnes of ivory concealed with shells” were linked to Chinese operations in Dar es Salaam. The report also revealed that “sophisticated criminal networks comprising Tanzanian poachers and middlemen, corrupt officials and Chinese traders [were] generating tens of millions of dollars in profits a year, with the bulk of the revenue accrued by the Chinese traffickers”.

61 See NAOT (2014).

Tanzania's fifth post-independence government, led by Dr John Pombe Magufuli, was elected in October 2015 and sworn in on 5 November 2015. During his election campaign, Magufuli expressed deep concern over corruption and vowed to fight it fearlessly. He demonstrated his commitment just one day after being sworn in by issuing directives to cut unnecessary expenses and allowances, and by firing and suspending many government officials. Since then the President has established himself as a leader with a zero-tolerance approach to corruption. He has facilitated also the establishment of the Corruption and Economic Crimes Division of the High Court to ensure timely prosecution and disposal of corruption cases.⁶² According to Section 3(3)(a) and paragraph 21 of the First Schedule to the Economic and Organised Crime Control Act,⁶³ as amended by the Written Laws (Miscellaneous Amendments) Act 3 of 2016, all corruption offences under the PCCA exceeding Tsh1 billion in value fall within the primary jurisdiction of the Corruption and Economic Crimes Division of the High Court.

The various initiatives which have been taken by President Magufuli indicate that he is committed to fight corruption vigorously. It is too early, however, to say whether that commitment will last for the rest of his term or whether the trend seen in the terms of his predecessors will re-emerge.



1.4 Objectives of the Study

The general objective of this study is to explore legal and institutional avenues that may be adopted to create a sustainable and working anti-corruption regime in Tanzania. Specifically, the study intends to:

- assess anti-corruption legislative enforcement trends in Tanzania;
- analyse anti-corruption policies and programmes adopted by different Tanzanian governments since independence and how they inform future regimes; and
- examine the current government's legal and institutional anti-corruption regime with a view to determining its effectiveness in curbing corruption.

62 The Division is established under the Economic and Organised Crime Control Act (Cap 200) through the Written Laws (Miscellaneous Amendments) Act 3 of 2016. The Act came into force on 7 July 2016.

63 Cap 200 RE 2002.

1.5 Significance of the Study

Corruption has continued to affect social, political and economic conditions in Tanzania despite a series of anti-corruption legislative and policy measures being adopted by governments since the country's independence in 1961. Tanzania's Vision 2025 envisages a country free of corruption.⁶⁴ However, anti-corruption regimes adopted since independence fail to provide significant indicators towards the realisation of this vision. In order to achieve Vision 2025, a different anti-corruption regime needs be elaborated. It is the legal and institutional structure of that different regime which this study intends to explore.

1.6 Research Questions

This research is governed by the following questions. They have been formulated with a view to finding a solution to the identified problem:

1. What factors have favoured or impeded post-independence anti-corruption regimes in Tanzania?
2. What are the deficiencies of the current legal and institutional regime in fighting corruption in Tanzania?
3. What reforms are needed in order to create a sustainable anti-corruption regime for Tanzania?



1.7 Scope of the Study

This study is limited to Tanzania Mainland. Zanzibar has a different legal and institutional anti-corruption framework which is not covered in this study, except by reference. The study draws examples and lessons from other jurisdictions which recently have been acknowledged for good performance in anti-corruption. These are Hong Kong, Singapore and Botswana. However, this is not a comparative study proper.

1.8 Research Methodology

This research is a qualitative desktop study. Data was collected through primary and secondary sources, with the aim of analysing the research problem and formulating answers to the research questions.

64 Tanzania Development Vision 2025.

1.9 Chapter Outlines

The study consists of four more chapters which are described below.

Chapter Two: International Anti-Corruption Framework

This chapter provides an analysis of international measures taken to combat corruption. Specifically, the chapter considers three instruments to which Tanzania is a State Party, namely, UNCAC, the AU Convention on Preventing and Combating Corruption, and the SADC Protocol against Corruption.

Chapter Three: Post-Independence Anti-Corruption Trends

This chapter goes to the root of the research questions and research objectives. It reviews systematically the anti-corruption enforcement trends since independence, with a view to assessing their effectiveness and how they inform future trends.

Chapter Four: Recalibrating Aspects of the Tanzanian Anti-Corruption Regime

In this chapter, the findings of Chapter Three are used to develop a new approach to fighting corruption in Tanzania. Experience and inferences are drawn from Singapore, Hong Kong and Botswana, and harmonised with local circumstances to identify the elements of a sustainable and practicable Tanzanian anti-corruption regime.

Chapter Five: General Conclusion

This chapter expounds in summary the findings and recommendations emerging from the research.

Chapter Two

International Anti-Corruption Framework

2.1 Introduction

For the past two decades, corruption has been a critical subject in the international political arena. Since 1996, the international community has adopted more than 10 instruments aimed at combating corruption. This trend indicates the global agreement that combating corruption requires joint efforts and co-operation among states.¹ Tanzania has joined these efforts by signing and ratifying three of these instruments.

The purpose of this chapter is to analyse the international framework against corruption. Focus is placed on prevention, criminalisation and law enforcement, as core elements of any sustainable anti-corruption regime. Such a regime requires an effective prevention strategy that is capable of reducing corruption opportunities in government departments, public institutions and the private sector. Comprehensive criminalisation is central to the legal fight against corruption and is a key to such anti-corruption activities as international co-operation and asset recovery. Further, efficient law enforcement is needed in “order to demonstrate to the public the government’s determination to eradicate corruption, as well as to demonstrate the strengths of the anti-corruption organs”.² Without proper law enforcement, the public will be hesitant to report corruption, legislation will become debilitated and corruption will escalate.

This chapter analyses the obligations and responsibilities that sovereign nations have under international law with the respect to anti-corruption. Such analysis is relevant for the assessment of Tanzania’s anti-corruption regime. The chapter will consider the three instruments to which Tanzania is a state party, namely, the United Nations Convention against Corruption,³ the African Union Convention on Preventing and Combating Corruption,⁴ and the Southern African Development Community Protocol against Corruption.⁵ The intention is to examine the prevention, criminalisation and law

1 Carr (2007) 246.

2 Man-wai (2006) 198.

3 Ratified by Tanzania on 25 May 2005.

4 Ratified by Tanzania on 22 February 2005.

5 Ratified by Tanzania on 20 August 2003.

enforcement provisions contained in these instruments, as a lens through which Tanzania's anti-corruption regime may be analysed and evaluated. Additionally, the role played by international financial institutions – the World Bank and the IMF – in fighting corruption is considered, given that a number of developing countries, including Tanzania are implementing anti-corruption programmes based on the conditionality imposed by the World Bank and the IMF.

2.2 United Nations Convention against Corruption

UNCAC is regarded as the most comprehensive and far-reaching international instrument in the fight against corruption.⁶ Currently with 140 signatories and 181 States Parties,⁷ UNCAC is said to be a real global response to the global challenge of corruption.⁸ UNCAC provides a forum where sovereign nations may put together efforts “to prevent and combat corruption more efficiently and effectively”.⁹ However, the linguistic style of the Convention indicates significant difficulty in formulating provisions of general application across states. Both mandatory and hortatory styles are used in the Convention. Hortatory provisions create the risk of enforcement disparity among states. Also, UNCAC features reservations in favour of domestic law in many of its provisions. Despite these challenges, UNCAC remains a significant achievement in international anti-corruption efforts.

Substantively, UNCAC focuses on prevention and criminalisation of corruption, the establishment of law enforcement systems, the promotion and facilitation of international co-operation and technical assistance, and asset recovery. The Convention is designed to prevent and combat corruption in both the public and private sectors at both national and transnational levels. It also deals with corruption from both the supply and demand sides. Interestingly, UNCAC does not allow corrupt people to benefit from their crimes and promotes both domestic and international systems of asset recovery.

2.2.1 Prevention of Corruption

UNCAC devotes an entire chapter to the prevention of corruption. This indicates agreement amongst States Parties that prevention is a key to eradicating corruption. Prevention is very

6 Babu (2006) 1.

7 Signature and Ratification Status as of 12 December 2016.

8 Hechler (2010) 1.

9 See Article 1 of UNCAC.

important because it seeks to fight corruption before the commission or execution of the offence.¹⁰ Hence, Article 5 of UNCAC provides that States Parties need to develop and implement policies and practices aimed at combating corruption. These policies and practices are to be implemented in both the public and private sectors.

Prevention Agencies

For purposes of implementing prevention policies and practices, UNCAC requires States Parties to establish a preventive anti-corruption body or such bodies.¹¹ Said body or bodies are mandated to oversee and co-ordinate the implementation of corruption prevention policies, as well as increasing and disseminating knowledge about preventing corruption.¹² The body or bodies need to be properly resourced with well trained staff and afforded the independence as necessary to carry out their functions effectively.¹³

Considering the range of functions allocated to these preventive agencies, a debate has risen among scholars as to whether a single body will suffice. For example, while Hussmann *et al* argue that a single public institution cannot implement anti-corruption policies effectively,¹⁴ South Africa's Corruption Watch believes that effective anti-corruption lies not in having multiple institutions but in having "serious political commitment" backing up the agency.¹⁵ Whatever the prevention institutional structure employed – whether a single body or different bodies – the spirit of Article 6 of UNCAC is to see that corruption prevention practices and policies work.

Public Sector Prevention

UNCAC provides a wide range of policies intended to prevent corruption in the public sector. Essentially, the Convention seeks to create transparency, probity and accountability in the conduct of public affairs. As one preventive measure, UNCAC requires States Parties to adopt and implement systems of public service based on recruitment, retention and promotion criteria which are objective and transparent and which are accompanied by

10 Doig (2012) 3.
11 Article 6 of UNCAC.
12 Article 6(1)(a) & (b) of UNCAC.
13 Article 6(3) of UNCAC.
14 Hussmann *et al* (2009) 15.
15 Corruption Watch (2013).

payment of adequate and equitable remuneration.¹⁶ In order to promote honesty, integrity, transparency and accountability in the public sector, States Parties are obligated to apply codes of conduct for public officials.¹⁷

Public sector prevention measures also call upon States Parties to promote transparent systems of public procurement and management of public funds, together with enhancing transparency in public administration generally.¹⁸ Interestingly, UNCAC notes the significance of the Judiciary in the fight against corruption and calls upon States Parties to “take measures to strengthen integrity and prevent opportunities for corruption among members of the judiciary”.¹⁹ This is an important provision because a corrupt Judiciary undermines people’s confidence in governance by allowing corruption to accelerate across the public sector, thereby creating the perception that corruption is acceptable.²⁰

Private Sector Prevention

Article 12 of UNCAC appears to be the result of an appreciation of the role played by the private sector as the “supply side” of corruption.²¹ UNCAC requires States Parties to take measures to prevent corruption involving the private sector. In so doing, States Parties have to promote co-operation between the private sector and law enforcement agencies; set codes of conduct and prevent conflicts of interests; prevent misuse of regulatory procedures such as subsidies and licences; and establish accounting and auditing controls. UNCAC also places an obligation on States Parties to “disallow the tax deductibility of expenses that constitute bribes”.²²

Participatory Prevention

UNCAC recognises the role and necessity of involving the public in preventing corruption. It is believed that those who have been (or are likely to be) affected, directly or indirectly, by corruption must be involved actively in the process of addressing and preventing it.²³ Thus, Article 13 of UNCAC calls upon States Parties to involve individuals, civil society, non-

16 Article 7 of UNCAC.

17 Article 8 of UNCAC.

18 Articles 9 & 10 of UNCAC.

19 Article 11 of UNCAC.

20 Transparency International (2007) xxi.

21 Low (2006) 6.

22 Article 12(4) of UNCAC.

23 UNODC (2009) 62.

governmental organisations and community based organisations in raising public awareness about corruption, participating in decision-making and reporting incidents of corruption. It also encompasses the provision of means through which citizens can access public information and through which they are able to express concerns and allegations without fear.²⁴

2.2.2 Criminalisation of Corruption and Law Enforcement

Effective implementation of UNCAC depends upon the readiness of States Parties to translate its provisions into national law. In order to ensure that no corrupt act goes unpunished, UNCAC encompasses a wide array of conduct that constitutes corruption and which States Parties are called upon to criminalise in their domestic laws. There are eight core corruption crimes under UNCAC. These are supplemented by other forms of liability, including liability of legal persons, and participation, attempt and preparation for an offence established under the Convention.

The Convention criminalises corruption in both the public and private sectors. However, it is important to note that the criminalisation part of the Convention has two categories of obligations. The first covers mandatory offences which States Parties must establish as crimes. The second covers non-mandatory offences which States Parties are called upon to consider establishing as crimes in their national laws.

Mandatory Offences

UNCAC contains five articles that establish mandatory corruption offences. The offences are: bribery of national public officials; active bribery of foreign public officials and officials of public international organisations; embezzlement, misappropriation or other diversion of property by a public official; laundering of proceeds of crime; and obstruction of justice.²⁵

According to the UNODC:

The acts covered by these offences are instrumental to the commission of corrupt acts and the ability of offenders to protect themselves and their illicit gains from law enforcement authorities.²⁶

24 UNODC (2009) 62.

25 Articles 15, 16(1), 17, 23 & 25 of UNCAC.

26 UNODC (2006) 77.

Therefore, criminalising these offences is a basic part of the co-ordinated global effort against corruption.²⁷ States Parties have an obligation to take legislative or other measures necessary to establish these acts as offences in their national laws.

Non-Mandatory Offences

There are a number of articles in UNCAC that establish non-mandatory offences. States Parties are required only to consider establishing such offences under their national laws. They include passive bribery of foreign public officials and officials of public international organisations, trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, and concealment of proceeds of corruption.²⁸ UNCAC sets minimum criminalisation standards and states are encouraged to go beyond these.²⁹ UNCAC therefore contains quite a number of non-mandatory offences so as “to cover as many types of misconduct as possible”.³⁰

Liability of Legal Persons

Legal persons such as corporations, companies and charitable organisations may be held liable for their participation in corrupt practices that are criminalised under UNCAC.³¹ Such liability may be civil, criminal or administrative in nature.³² With globalisation and trade liberalisation, corporations have a wide range of activities and can operate in different countries under different structures. Corporate structures increasingly become complex to the extent that makes it hard sometimes to ascertain who is responsible for particular corporate actions or decisions.³³ Further, individuals responsible might be residing outside the jurisdiction of the State Party in which the corrupt act was committed.³⁴ Generally, there are various corporate escape routes that can shield individuals from liability. To overcome this hurdle, UNCAC imposes corporate liability as a complement to individual liability of natural persons. Accordingly, corporate liability has to operate “without prejudice

27 UNODC (2006) 77.

28 Articles 16(2), 18, 19, 20, 21, 22 & 24 of UNCAC.

29 UNODC (2006) 77.

30 UNODC (2006) 99.

31 Article 26(1) of UNCAC.

32 Article 26(2) of UNCAC. See also UNODC (2006) para 180.

33 UNODC (2006) para 315.

34 UNODC (2006) para 315.

to the criminal liability of natural persons” who commit the offence.³⁵ When legal persons are found liable for corruption, UNCAC requires States Parties to impose effective, proportionate and dissuasive sanctions – criminal or civil –against the offenders.³⁶

Supplementary Forms of Liability

As noted earlier, UNCAC intended to “cover as many types of misconduct as possible”.³⁷ In that connection, Article 27 criminalises participation, attempt and preparation for the commission of a corruption offence. States Parties have a hard obligation to criminalise ‘participation’ but there is a soft obligation with respect to ‘attempt’ and ‘preparation’.³⁸ The provision on participation intends to cover various degrees, such as accomplices and assistants or instigators, but States Parties are not obligated to cover all such degrees in their domestic laws.³⁹

Law Enforcement

Prevention and criminalisation of corruption cannot be successful without the presence of effective and efficient law enforcement mechanisms. Accordingly, UNCAC includes a wide range of measures, standards and mechanisms required for detecting, investigating, prosecuting and punishing corruption crimes. It also provides measures for reparations relating to the consequences of acts of corruption. Particularly, UNCAC contains rules governing evidentiary standards; prescription periods for instituting corruption proceedings; prosecution, adjudication and sanctions; freezing, seizure and confiscation of proceeds of corruption; and principles for the protection of witnesses, victims and whistleblowers.⁴⁰ Further, the Convention requires the existence of specialised anti-corruption agencies and measures for enhancing co-operation amongst law enforcement authorities, national authorities and the private sector (including offenders).⁴¹ Also, the Convention seeks to prevent bank secrecy laws from impeding investigations.⁴² Lastly, UNCAC calls upon States

35 Article 26(3) of UNCAC.

36 Article 26(4) of UNCAC.

37 UNODC (2006) 99.

38 Article 27(1)-(3) of UNCAC.

39 UNGA (2003) 6.

40 Articles 28–33 of UNCAC.

41 Articles 36–39 of UNCAC.

42 Article 40 of UNCAC.

Parties to address the consequences of corruption by providing remedies for victims, including measures to ensure compensation for damages suffered.⁴³

2.3 African Union Convention on Preventing and Combating Corruption

The AU Convention is the first African agreement against corruption since the establishment of the African Union in July 2000.⁴⁴ In addition to the indirect social, economic and political effects, corruption is estimated to cost the continent some US\$148 billion annually.⁴⁵ The AU Convention is concerned about these negative effects of corruption and sets out “to pursue, as a matter of priority, a common penal policy aimed at protecting the society against” this problem.⁴⁶

The AU Convention aims at achieving five objectives: first, to promote and strengthen the development of anti-corruption mechanisms in Africa; second, to promote, facilitate and regulate transnational anti-corruption co-operation in Africa; third, to co-ordinate and harmonise anti-corruption policies and legislation among States Parties; fourth, to remove obstacles that hinder enjoyment of socio-economic, civil and political rights; and fifth, to establish mechanisms for fostering transparency and accountability in public affairs.⁴⁷



2.3.1 Criminalisation of Corruption

The AU Convention defines corruption ostensibly, listing the acts regarded to be corrupt.⁴⁸ Accordingly, Article 4 catalogues the acts of corruption which the Convention proscribes. They include the solicitation or acceptance of bribes by a public official or any other person; the offering or granting of bribes to a public official or any other person; the abuse of duty by a public official or any other person for the purpose of obtaining illicit benefits; the fraudulent diversion of state property or property belonging to state agencies; and active and passive bribery in the private sector.⁴⁹ Further, the Convention applies to the offences

43 Articles 34 & 35 of UNCAC.

44 Olaniyan (2004) 75.

45 Olaniyan (2004) 75.

46 Paras 6 & 9 of the Preamble to the AU Convention.

47 Article 2(1)-(5) of the AU Convention.

48 Article 1 of the AU Convention defines corruption to mean “acts and practices including related offences proscribed in this Convention”.

49 Article 4(1)(a)-(e) of the AU Convention.

of influence peddling, illicit enrichment and concealment of proceeds of corruption.⁵⁰ In addition, it criminalises participation, collaboration and conspiracy in the commission or attempted commission of proscribed acts of corruption.⁵¹

2.3.2 Law enforcement

States Parties are required to undertake legislative or other measures to ensure that the objectives of the Convention are met. They should establish as offences in their domestic jurisdictions the acts listed in Article 4(1) of the Convention.⁵² They have to strengthen national control measures to ensure that foreign companies operate subject to national legislation.⁵³ Further, States Parties have to ensure the existence of national anti-corruption bodies, and they have to strengthen accounting procedures in the public sector.⁵⁴ However, the accounting provision has been criticised for not setting the same accounting standards for the private sector.⁵⁵ Schroth notes that leaving the private sector out of the accounting requirements is a serious flaw in the fight against bribery by corporations.⁵⁶

The AU Convention also requires States Parties to take measures for the protection of whistleblowers. The significance of whistleblowers in the exposure and prosecution of corruption offences is recognised widely.⁵⁷ The AU Convention acknowledges the role of whistleblowers in Article 5(5)-(6). However, Article 5(7) creates an obligation that might defeat the essence of whistleblowing. It requires States Parties to punish persons “who make false and malicious reports against innocent persons”.⁵⁸ As Schroth puts it:

the threat of such punishment is an effective deterrent to honest whistleblowers who expose the guilty, because even truthful assertions may be very difficult to prove, particularly if the opposition in court has the extensive resources of the state or a large corporation.⁵⁹

50 Article 4(1)(f)-(h) of the AU Convention.
51 Article 4(1)(i) of the AU Convention.
52 Article 5(1) of the AU Convention.
53 Article 5(2) of the AU Convention.
54 Article 5(3)-(4) of the AU Convention.
55 Schroth (2005) 29.
56 Schroth (2005) 29.
57 See Harutyunyan & Schultz (2015) and Smith (2010).
58 Article 5(7) of the AU Convention.
59 Schroth (2005) 34.

2.3.3 Preventive Measures

Sadly, the AU Convention has little to say about the prevention of corruption. Article 5(8) provides that states should adopt anti-corruption education programmes as a means of preventing corruption. In addition, Article 10(2) calls for transparency in the funding of political parties. With regard to the private sector, Article 11 calls upon states to establish mechanisms for enhancing private sector participation in fighting “unfair competition” and to prevent companies from paying bribes when bidding for tenders. These preventive measures are manifestly inadequate. The lack of attention given to prevention is disappointing, especially since prevention features in the name of the Convention.

2.4 Southern African Development Community Protocol against Corruption

SADC member nations share a variety of attributes, including borders, culture and history. Importantly, they also have similar social, economic and political problems.⁶⁰ Corruption is one such problem that is common across the SADC region. The CPI of Transparency International identifies the sub-Saharan region, which includes the SADC countries, as one of the two regions where the level of corruption is perceived to be particularly high.⁶¹ The SADC Protocol explicitly takes cognisance of these facts and of the adverse effects that corruption has on the region, and undertakes to provide “a joint and concerted” regional effort in the fight against corruption.⁶²

2.4.1 Criminalisation of Corruption

The SADC Protocol defines corruption to mean:

any act referred to in Article 3 and includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violates their duties as public officials, private employees, independent agents or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others.⁶³

Accordingly, Article 3 enumerates the acts which amount to corruption to include: the solicitation, acceptance, offering or granting of bribes by a public official in the performance of his public functions; the abuse of public duty for purposes of obtaining illicit benefits; the fraudulent diversion of public property by public officials; offering, accepting, solicitation or

60 Nsereko & Kebonang (2005) 85.

61 Transparency International (2016). The sub-Saharan region scored 31 out of 100. The other region is Eastern Europe and Central Asia which scored 34 out of 100 in the 2016 CPI.

62 Para 11 of the Preamble to the SADC Protocol.

63 Article 1 of the SADC Protocol.

promising of bribes to or by persons working in the private sector; influence peddling; and concealment of proceeds of corruption.⁶⁴ Further, the SADC Protocol criminalises participation, collaboration or conspiracy in the commission or attempted commission of any act of corruption.⁶⁵

2.4.2 Preventing Corruption

The SADC Protocol affirms the need to eliminate corruption through preventive and deterrent measures.⁶⁶ Article 4 lays down the preventive measures that have to be undertaken by States Parties. Firstly, they have to adopt and maintain standards of conduct for public officials.⁶⁷ Such standards must require public officials not to obtain private gifts or other advantages while performing their official duties.⁶⁸ Secondly, States Parties have to create transparent, equitable and efficient systems for the hiring and procurement of goods and services.⁶⁹ This measure is particularly significant because sometimes individuals are required to provide material, financial or sexual inducements in order to be hired.⁷⁰ Again, government procurement, especially in the construction industry, often has been vulnerable to corruption.⁷¹

Thirdly, there need to be strong “revenue collection and control systems that deter corruption”.⁷² Fourthly, there ought to be mechanisms to protect corruption informers.⁷³ However, like the AU Convention, the SADC Protocol-also calls upon States Parties to enact laws that would punish informers “who make false and malicious reports against innocent persons”.⁷⁴ While the former is a necessary measure towards uncovering corruption, the latter can be a stumbling block that might defeat the purpose of having informers.⁷⁵

64 Article 3(a)-(g) of the SADC Protocol.
65 Article 3(h) of the SADC Protocol.
66 Paragraph 9 of the Preamble to the SADC Protocol.
67 Article 4(1)(a) of the SADC Protocol.
68 Nsereko & Kebonang (2005) 92.
69 Article 4(1)(b) of the SADC Protocol.
70 Nsereko & Kebonang (2005) 93.
71 OECD (2016) 7.
72 Article 4(1)(c) of the SADC Protocol.
73 Article 4(1)(e) of the SADC Protocol.
74 Article 4(1)(f) of the SADC Protocol.
75 See Schroth (2005) 34.

Fifthly, measures to deter bribery should be established.⁷⁶ Deterrents may include setting and maintaining accounting requirements, effective enforcement of laws relating to the registration and operation of companies and other corporate bodies, and imposing sanctions on violators.⁷⁷ Preventive measures include also public education and awareness, and the participation of society, the media and NGOs.⁷⁸

2.4.3 Law Enforcement

States Parties have an obligation to adopt legislative or other measures necessary to criminalise acts stipulated as offences in the SADC Protocol.⁷⁹ These measures need to be accompanied by the availability of institutions vested with powers to prevent, detect, punish and eradicate corruption.⁸⁰ Anti-corruption institutions serve as notice to all individuals, officials and private agents that they are subject to detection, investigation and prosecution whenever they become involved in corrupt practices. According to Nsereko & Kebonang, efficacious anti-corruption institutions need to meet three criteria:

First, they must be independent of the executive branch of government in the manner in which their leadership is appointed, in their day-to-day operations and in financial matters. Second, they must have the power to initiate investigations and if the evidence they find so warrants, to commence the prosecutions of the suspects. Third, they must enjoy the political support of the powers that be.⁸¹

Effective and efficient law enforcement machinery is necessary to make anti-corruption conventions living instruments. Without enforcement, conventions remain paper tigers and corruption keeps spreading.

2.5 Role of International Financial Institutions

Before 1996, anti-corruption was never on the agenda of global financial institutions, particularly the World Bank and the IMF. These institutions were aware of the problem but nobody dared talk about it.⁸² James Wolfensohn, the President of the World Bank, broke the ice in 1996 when he called upon financial institutions to fight the “cancer of corruption”.⁸³

76 Article 4(1)(h) of the SADC Protocol.
77 Nsereko & Kebonang (2005) 106–111.
78 Article 4(1)(i)-(j) of the SADC Protocol.
79 Article 7(2) of the SADC Protocol.
80 Article 4(1)(g) of the SADC Protocol.
81 Nsereko & Kebonang (2005) 102.
82 World Bank (2007) 38.
83 World Bank (2007) 38.

The following year, 1997, the IMF and the World Bank both took to fighting corruption and enhancing good governance within their member nations. The role played by these institutions in monitoring the governance performance of countries, particularly anti-corruption, is evident in their development projects and support programmes.

2.5.1 International Monetary Fund

Traditionally, the IMF focused “on encouraging countries to correct macroeconomic imbalances, reduce inflation, and undertake key trade, exchange, and other market reforms needed to improve efficiency and support sustained economic growth”.⁸⁴ There was no direct involvement by the Fund in governance issues. Thus, corruption was outside the scope of its activities. However, for the past two decades the IMF’s concern with and action in governance has grown tremendously. In September 1996, the IMF’s Interim Committee noted that “promoting good governance in all its aspects, including ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption”, was an integral aspect in the framework of sustained economic growth.⁸⁵

In 1997 the IMF adopted guidelines on its role in governance issues. Through the guidelines, the IMF limits its involvement to “economic aspects of governance – including the avoidance of corrupt practices”.⁸⁶ The Fund committed to focusing on two aspects: “improving the management of public resources through reforms covering public sector institutions”; and “supporting the development and maintenance of a transparent and stable economic and regulatory environment conducive to efficient private sector activities”.⁸⁷ Based on this limitation, the IMF can involve itself in instances of corruption only if such instances have “significant macroeconomic implications”.⁸⁸

The IMF mode of involvement in governance issues comprises three aspects. The first is “support of policy reforms that remove opportunities for rent-seeking activities”.⁸⁹ This aspect includes:

enhancing transparency in decision making and budgetary processes, reductions in tax exemptions and subsidies, improved accounting and control systems, improvements in

84 See IMF (1997) v.
85 IMF (1997) v.
86 IMF (1997) 3.
87 IMF (1997) 3.
88 IMF (1997) 5.
89 IMF (1997) 6.

statistical dissemination practices, improvements in the composition of public expenditure, and accelerated civil service reform.⁹⁰

To ensure that policy reforms are implemented, the IMF imposes “conditionality” on states that benefit from IMF resources, including loans and grants.⁹¹ Failure by the recipient state to meet the conditionality can result in suspension or delaying of financial assistance from the IMF.⁹²

Secondly, the IMF helps to “strengthen institutions and administration capacity” in member states.⁹³ This role is undertaken by providing technical assistance to governments in areas where the IMF has expertise, such as “budget management and control, tax and customs administration, central bank laws and organisation, foreign exchange laws and regulations, and macroeconomic statistical systems and dissemination practices”.⁹⁴ Thirdly, the IMF co-operates with other multilateral institutions and donors, particularly the World Bank, in addressing economic governance issues.⁹⁵

However, despite its efforts to promote good governance, the IMF does not put itself in the anti-corruption frontline but aims only to “strengthen the hands of those in the government seeking to improve governance”.⁹⁶ The IMF believes that responsibility for anti-corruption and governance rests primarily with the national authorities.⁹⁷ Recently the IMF suspended its lending to Ukraine and Malawi due governance issues, including corruption.⁹⁸

2.5.2 World Bank

Like the IMF, the World Bank also places on national governments the primary responsibility in governance issues.⁹⁹ In September 1997, the World Bank launched its global anti-corruption agenda, indicating its intended role in helping countries combat corruption.¹⁰⁰ Up to 2013, the Bank was reported to be spending US\$10 million annually on investigating

90 IMF (1997) 7.

91 See “IMF Conditionality” (accessed 27 October 2016).

92 IMF (1997) 8.

93 IMF (1997) 7.

94 IMF (1997) 7.

95 IMF (1997) 10.

96 IMF (1997) 3.

97 IMF (1997) 3.

98 Ukraine was suspended in February 2016 while Malawi was suspended in November 2013. See IMF (2016) 16.

99 See World Bank (2007) ii.

100 See World Bank (1997).

corruption allegations, with an investigation department of over 50 staff, and had commenced around 600 anti-corruption and governance programmes in about 100 countries.¹⁰¹

The World Bank's anti-corruption strategy encompasses three major aspects. Firstly, the Bank seeks to "prevent fraud and corruption within Bank-financed projects".¹⁰² This role is particularly important in order to ensure that the Bank's resources are used for the designated goals. It is important also for maintaining the Bank's credibility as an institution with fiduciary obligations to its shareholders, partners and other stakeholders.¹⁰³ Thus, the Bank provides guidelines and monitors procurements, loan disbursements, financial reporting, supervision and auditing procedures in all its financed projects.¹⁰⁴

Secondly, the Bank provides support to the efforts of individual countries to fight corruption.¹⁰⁵ It acknowledges that anti-corruption cannot succeed simply by imposing external conditionality on countries.¹⁰⁶ Therefore, the Bank sets itself to help countries that need its support to carry out their governance and anti-corruption programmes. It looks at the country's development vision and challenges, and selects a support programme "tailored to the country's needs".¹⁰⁷ The Bank's support includes designing and implementing anti-corruption programmes, assisting in economic policy reform and institutional strengthening, and facilitating workshops related to governance.¹⁰⁸

Thirdly, the World Bank contributes to international anti-corruption efforts.¹⁰⁹ It recognises that corruption is an international problem that needs international attention.¹¹⁰ The Bank's international anti-corruption role focuses on ensuring that "its member countries derive the greatest benefit from the synergy between its activities and those of other international actors".¹¹¹ In so doing, the Bank is committed to co-operating with other multilateral institutions, contributing to the work of international organisations such as the

101 Wanless (2013) 39.

102 World Bank (1997) 3.

103 World Bank (2007) 24.

104 World Bank (1997) 29-33.

105 World Bank (1997) 35.

106 World Bank (1997) 5.

107 World Bank (2007) 11.

108 World Bank (1997) 39.

109 World Bank (1997) 58.

110 World Bank (1997) 58.

111 World Bank (1997) 62.

OECD and the UN, and strengthening partnerships “with civil society, the media and the private sector”.¹¹²

2.6 Concluding Remarks

Considered as a whole, the international anti-corruption framework encapsulates a general consensus that a multifaceted approach is necessary for fighting corruption. On the one hand, international political bodies, such as the UN and the AU, have undertaken to fight corruption through legislative means, calling upon states to adopt comprehensive legislative and enforcement measures to prevent and eradicate corruption. On the other hand, international financial institutions, particularly the IMF and the World Bank, have formulated policies and mechanisms as contributions to the international campaign against corruption. However, all these approaches depend on the readiness of individual governments to consider anti-corruption as their primary objective. Therefore, without effective commitment and action from sovereign governments to fight corruption, these international measures stand to be unproductive.

Tanzania, being a signatory to the conventions discussed above and a member of the World Bank and the IMF, is bound by their provisions and policies. The country has a duty to take legislative and policy measures to ensure that it complies with its international obligations. The extent to which Tanzania complies with these obligations is the subject matter of the next chapter of this study.

112 World Bank (2007) 60–66.

Chapter Three

Post-Independence Anti-Corruption Trends

3.1 Introduction

Since independence in 1961, Tanzania has adopted various economic and political policies that have affected the country's corruption and anti-corruption trends. At independence, Tanzania retained the colonial capitalist economic system. This changed in 1967, when it adopted socialism as its model for economic development and political structure. However, the economic depression and fall of the socialist bloc in Eastern Europe during the 1980s forced Tanzania to abandon socialism in favour of free-market and liberalisation policies. Politically, the country has moved from a multi-party system at the time of independence, to a single-party system in 1965 and back to a multi-party system in 1992.

This chapter examines Tanzania's anti-corruption trends across the five post-independence government regimes. The chapter goes to the root of the research objectives by assessing post-independence anti-corruption legislative enforcement trends; by analysing anti-corruption policies and programmes adopted by the different Tanzanian governments since independence; and by examining the current government's legal and institutional anti-corruption regime with a view to determining its effectiveness in curbing corruption. Further, the chapter seeks to answer the first research question: what factors have favoured or impeded post-independence anti-corruption efforts in Tanzania?

Corruption has been rampant in all the five post-independence government regimes. However, its extent differs from one government regime to another. And although the post-independence government regimes have employed different approaches to fighting corruption, they have one common feature: all focus on criminalisation and give little attention to law enforcement and prevention. Consequently, many laws have been enacted to criminalise corruption in various sectors, but without the establishment of efficient enforcement systems. Further, institutions charged with corruption control have been constrained by many factors that weaken their capacity to fight the problem.

3.2 First Post-Independence Regime

During the first few years after independence, corruption resulted from the desire among nationalist leaders to amass wealth and property. As the PCCB put it, “they wanted to step into the shoes of their former colonial masters and capitalists in every way”.¹ However, the African bourgeoisie had neither capital nor its own sources of income from which it could accumulate wealth. Therefore, the only option was to target public resources.² Eventually, elite classes started accumulating wealth at the expense of the rest of the population.³

As corruption unfolded, the government under President Nyerere took legal and policy measures to fight it. The legal measures included the enactment of the Minimum Sentences Act 29 of 1963 by the Tanganyika African National Union (TANU) government. In addition to imprisonment, the Act imposed corporal punishment of twenty-four strokes for offenders found guilty of taking part in a corrupt transaction with an agent or obtaining an advantage without consideration contrary to Sections 3 and 6 of the Prevention of Corruption Ordinance.⁴

Politicians were bound by the party’s rules and policies. One of the objectives of TANU was “to see that the Government eradicates all types of exploitation, intimidation, discrimination, bribery and corruption”.⁵ Further, the Constitution of TANU contained a member’s pledge to fight corruption. The pledge stated that: “Corruption perverts justice; I shall neither offer nor accept bribes”.⁶ Corruption was condemned by both the government and the Party.

Further, in 1965 the government established the Permanent Commission of Enquiry (PCE), an organ empowered to “check on the abuse of power by government officials and agencies”.⁷ It had powers to enquire into the conduct of any Government or party official, except the President.⁸ Reports of the PCE were to be submitted to the President.⁹

1 PCCB (2015) 2.

2 PCCB (2015) 2.

3 Shivji (1973) 307.

4 Part I of the Schedule to the Minimum Sentence Act, 1963.

5 Article 2 of the Constitution of TANU.

6 Article 5 of the Constitution of TANU.

7 Afro-Barometer & REPOA (2006) 2.

8 Section 67(4) of the Interim Constitution of Tanzania, 1965.

9 Section 67(3) of the Interim Constitution of Tanzania, 1965.

The vision of TANU and President Nyerere was to build a classless socialist state. This was propounded clearly in the Constitution of TANU and later in the famous Arusha Declaration of 1967. Nyerere attacked as “anti-social” the capitalist nature of private accumulation of wealth.¹⁰ Adopting socialism had a dual impact. Firstly, all party and government leaders and civil servants were prohibited from associating with so-called capitalist practices, including holding shares or directorships in a company or any privately-owned enterprise.¹¹ Secondly, all major means of production, financial institutions, production industries, and the main import and export establishments were put under government control.¹² TANU believed that “in order to ensure economic justice, the State must have effective control of the principal means of production”.¹³

However, nationalisation of the major means of production did not improve production or efficiency.¹⁴ Consequently, by the early 1970s serious economic problems had started to appear.¹⁵ Shortages of imported foodstuffs, industrial inputs and consumer durables were grave.¹⁶ The financial system was strained, thereby curtailing the ability of Regional Trading Corporations (RTCs) and co-operative societies to maintain the flow of supplies to the public and production sectors.¹⁷

According to the Law Reform Commission of Tanzania (LRCT), “entrusting public servants with power of decision-making over investments and distribution in the expanding public sector, brought with it new avenues of corruption”.¹⁸ Public corporations and co-operative societies started exploiting the peasants and low-level workers. Parastatal officials hid the goods they produced until they were offered an extra corruption price to release them to the needy.¹⁹ Need, rather than greed, became the motive for corruption.²⁰ As Table

10 Nyerere (1967) 162-171.

11 See Part Five of the Arusha Declaration and TANU’s Policy on Socialism and Self-Reliance (1967).

12 Resnick (1981) 108.

13 Paragraph (h) of the Preamble to the Constitution of TANU.

14 Heilman & Ndumbaro (2002) 5.

15 Resnick (1981) 108.

16 Resnick (1981) 108.

17 Heilman & Ndumbaro (2002) 5.

18 LRCT (2004) 9.

19 Kasella-Bantu (1978) 26.

20 Cooksey (2005) 5.

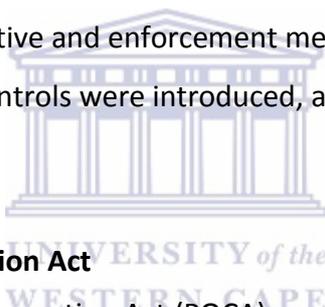
2 below illustrates, the number of corruption cases continued to increase in the seven years after the Arusha Declaration.

Table 2: Corruption cases reported to the police (1968-1974)

YEAR	CASES	
	REPORTED	CONFIRMED AS TRUE
1968	191	166
1969	197	166
1970	220	193
1971	211	183
1972	182	156
1973	319	303
1974	228	219

Source: Shaidi (1975).

As the problem of corruption became a threat to the stability of the economy, the government adopted both legislative and enforcement measures to rescue the situation. In March 1971, stricter exchange controls were introduced, aimed at preventing capital flight, tax evasion and smuggling.²¹



3.2.1 Prevention of Corruption Act

In May 1971, the Prevention of Corruption Act (POCA) was enacted,²² repealing and replacing the former Prevention of Corruption Ordinance of 1958. POCA criminalised both active and passive bribery.²³ It also introduced the offence of illicit enrichment and a presumption of corruption in certain cases involving contracts with government authorities.²⁴ In its operation, this law had retrospective effect. Offences committed before its coming into force could be prosecuted under it still.²⁵ Investigation and prosecution of corruption cases in terms of POCA were charged to the police force and the DPP respectively.

21 Aminzade (2013) 231.

22 Act 16 of 1971.

23 Section 3 of POCA.

24 Section 9 of POCA.

25 Section 20(2) of POCA.

3.2.2 Anti-Corruption Squad

In March 1974, Parliament enacted the Prevention of Corruption (Amendment) Act,²⁶ which established the Anti-Corruption Squad (ACS). The ACS was mandated to take all necessary measures to prevent corruption in the public, parastatal and private sectors.²⁷ Also, it was given powers to investigate and, subject to the directions of the DPP, to prosecute corruption offences.²⁸ The Director and members of the ACS were appointed by the President and were subject to the supervision of the Prime Minister.²⁹

By its establishment, the ACS took over the task that hitherto had been carried out by the police force, which also had become engulfed in corruption.³⁰ However, the ACS was just a special department within the police force. According to the first ACS Director, the Squad was set to identify methods used by those who involve themselves in corrupt transactions.³¹ This implied that the ACS was concerned with tracking-down and arresting corrupt offenders rather than with preventing corruption. Indeed, the Warioba Report of 1996 pointed out that previous anti-corruption measures focused on the prosecution instead of the prevention of corruption.³²

The ACS was limited in terms of jurisdiction and resources. Section 2A(1) of POCA gave the President discretion to determine the number of Assistant Directors and other officers of the Squad. Surprisingly, when the ACS was established in January 1975, it had only a Director. Lack of funds to run the Squad was stated to be the reason for not appointing other officers at the time.³³ As a result, the ACS had to rely heavily upon the police force and the DPP for investigations and prosecution respectively.³⁴

3.2.3 Economic Crisis

The decade of 1970 to 1980 witnessed an unprecedented economic depression in the country. As scarcity of commodities triggered inflationary pressures in the economy, the

26 Act 2 of 1974.

27 Section 2A(3)(a) of POCA.

28 Section 2A(3)(b) of POCA.

29 Section 2A(2) of POCA.

30 AfriMAP (2015) 59. See also Makaki (2004) 54.

31 Shaidi (1975) 110.

32 LRCT (2004) 13.

33 Shaidi (1975) 110.

34 Shaidi (1975) 112.

entire distribution system was disrupted by a few people seeking to obtain extra benefits.³⁵ The government responded by imposing political, legal and economic measures aimed at empowering the poor citizen to obtain essential needs at fair prices.³⁶ Additionally, the government was “forced to ration not only foodstuffs but also petroleum”.³⁷

To carry out this task, the government designated particular departments and officials to distribute the items to the people. Citizens needed to obtain “special permits” (*vibali*) from these designated officials in order to purchase scanty items such as sugar, maize, wheat flour, cement and corrugated iron sheets.³⁸ However, the legal restrictions placed on public servants made them invent new ways of earning extra incomes, mostly from corrupt dealings.³⁹ In response, the government arrested various officials and prosecuted them accordingly. Table 3 below indicates the number of corruption cases brought before courts of law from 1980 to 1983 and their outcomes.

Table 3: Corruption cases 1980–1983

Year	Number of Cases	Persons Arrested	Persons Convicted	Persons Acquitted
1980	149	174	26	58
1981	161	183	28	31
1982	111	126	6	9
1983	132	167	3	—

Source: TCCIA (1995).

WESTERN CAPE

3.2.4 Anti-Economic Sabotage Legislation

Due to the critical economic situation, the government lost its ability to provide services to its people and even to pay public servants their wages.⁴⁰ External financial aid was reduced also, as most donors became unwilling to continue supporting what they considered to be “an unsustainable development model” embraced by the Tanzanian government.⁴¹ Decline of the state-controlled economy led to the emergence of an “underground economy”

35 Warioba Report (1996) 9.

36 Warioba Report (1996) 9.

37 TCCIA (1995) 15.

38 TCCIA (1995) 15-16.

39 Warioba Report (1996) 9.

40 Heilman & Ndumbaro (2002) 5.

41 Muganda (2004) 2.

characterised by economic sabotage and racketeering.⁴² In response, the government declared war on economic saboteurs and racketeers.

The campaign against economic sabotage started during the early 1970s but was intensified in the 1980s. The government condemned economic sabotage as “a crime beyond description”.⁴³ The Prime Minister, Edward Moringe Sokoine, led the anti-economic sabotage campaign and rebuked government leaders who received corrupt benefits and sided with black market dealers.⁴⁴ In April 1983, the National Assembly passed the Economic Sabotage (Special Provisions) Act.⁴⁵ The Act was signed into law on 4 May 1983 but had retroactive operation to 24 March 1983, supposedly to legitimise efforts that had been commenced by Sokoine. This Act reformulated corruption offences as crimes of economic sabotage.⁴⁶

Within a month of the enactment of the Economic Sabotage Act, 4 216 economic saboteurs had been arrested for currency smuggling, hoarding, and profiteering.⁴⁷ The Act was repealed in 1984 and replaced by the Economic and Organised Crime Control Act (EOCCA).⁴⁸ Part II of the EOCCA established the Economic Crimes Court with jurisdiction to hear and determine cases involving economic offences.⁴⁹ Like its predecessor, the EOCCA brought under its purview all corruption offences identified in POCA.⁵⁰

3.3 Second Post-Independence Regime

President Nyerere voluntarily stepped down in 1985 and Ali Hassan Mwinyi succeeded him as the second post-independence President of Tanzania. President Mwinyi led the country into economic and political liberalisation.⁵¹ Liberalisation measures were largely the result of external influence from donor countries and the Bretton Woods institutions. Neoliberal economists suggested that in order to fight corruption the state had to reduce its control

42 Stokke (1995) 232.

43 Aminzade (2013) 231.

44 Aminzade (2013) 233.

45 Act 9 of 1983.

46 See Schedule to the Economic Sabotage (Special Provisions) Act, 1983.

47 Aminzade (2013) 233.

48 Act 13 of 1984.

49 Section 3(1) of the EOCCA.

50 See First Schedule to the EOCCA.

51 Brown (1998) 86.

over the economy.⁵² Thus, the government liberalised prices, trade and foreign exchange. Investment laws and institutions were established in order to attract foreign direct investment as well as local investment.⁵³

Businessmen and individuals who hid their funds in offshore jurisdictions “were allowed to import goods without even being asked about the source of their capital”.⁵⁴ This gave businessmen more power over state organs and government ministries. As businessmen moved closer to public leaders, corruption increased in the public sector. By the early 1990s, most of the top government officials, particularly in the Ministry of Finance (especially the tax department), the Ministry of Lands, parastatal banks, immigration services, the police force, customs authorities, and the magistrates’ courts were saturated with corruption.⁵⁵

As corruption levels went beyond control, the government issued Presidential Circular No 1 of 1990 on Guidelines for Deterrence of Corruption. These Guidelines set “strategies to deter corruption and measures to ensure that the policies and procedures of the civil service would reflect the principles of transparency and accountability”.⁵⁶ Additionally, POCA was amended to transform the Anti-Corruption Squad into the Prevention of Corruption Bureau (PCB).⁵⁷ The PCB focused on preventing corruption. However, its work was constrained by many factors, including lack of a “legal mandate or opportunity to follow up and prosecute corruption related to fraud”.⁵⁸ Fischer argues that there was no political commitment from top leaders to eliminate corruption. Therefore, the PCB was used only to create a political legitimacy to show the international community and donor organisations that the country was doing something to fight corruption.⁵⁹

3.4 Third Post-Independence Regime

In 1995, Benjamin Mkapa was elected as Tanzania’s third post-independence President. Mkapa had campaigned on a clean government platform, promising to fight corruption

52 Heilman & Ndumbaro (2002) 5.

53 Muganda (2004) 4.

54 Sedigh & Muganda (1999) 156.

55 See Warioba Report (1996) 11, Sedigh & Muganda (1999) 156 and LRCT (2004) 11.

56 Sedigh & Muganda (1999) 157.

57 Act 20 of 1990.

58 PCCB (accessed 9 September 2016).

59 Fischer (2006) 417.

briskly. Among others, Mkapa sought to strengthen the PCB by increasing its funding and staff. Table 4 below indicates that from the 1996/1997 to the 1999/2000 financial year, the disbursed PCB funds were increased more than six-fold. Likewise, the number of staff increased more than three times for the years 1996/1997 to 2001/2002.

Table 4: PCB Budget and Released Funds 1996/1997 to 2002/2003

PCB Budget – Released funds 1996/1997 to 2002/2003 (Tsh 000)						
1996/97	1997/98	1998/99	1999/2000	2000/01	2001/02	2002/03
264 034	594 853	1 395 153	1 817 283	2 964 629	3 750 277	(5 266 824)
Number of PCB Staff						
141 181	198	212	217	537	(714)	-

Source: ESRF & FACEIT (2002). Numbers in brackets indicate approved figure or budget.

In addition to the financial and human resources improvements, POCA was amended in 1997 to give members of the PCB powers to arrest and detain suspects, and to seize property suspected of being involved in corruption. However, the PCB had to seek consent from the DPP for it to prosecute certain corruption cases.⁶⁰ The anti-corruption agency condemned this provision as hindering effective prosecution of corruption cases.⁶¹

As it gained more strength, the PCB was able to record an increase in reported, investigated and prosecuted cases between 1995 and 2005. As shown in Table 5 below, the number of reported cases increased from 261 in 1995 to 3 121 in 2005, while the number of prosecuted cases rose from 8 to 50 in the same period. These figures suggest two different conclusions. On the one hand, they imply a rise in public awareness of corruption and anti-corruption and in people's willingness to expose the corrupt. On the other hand, they suggest that anti-corruption initiatives were inefficient, thus allowing corruption to escalate.

60 Section 18 of POCA.

61 Hosea (2014) 386-387.

Table 5: PCB Case Statistics from 1995 to 2005

Year	Reported	Investigated	Completed	Prosecuted	Convictions	Acquittals
1995	261	261	145	8	1	7
1996	513	513	245	21	2	9
1997	510	510	289	9	1	4
1998	545	545	200	15	2	6
1999	1 116	1 116	304	62	9	25
2000	1 244	1 244	276	-	6	3
2001	1 354	1 354	285	57	-	-
2002	1 384	1 384	732	52	12	26
2003	2 285	1 796	540	60	9	28
2004	2 223	1 149	458	60	6	8
2005	3 121	677	540	50	6	10

Source: Hoseah (2007).

3.4.1 Public Leadership Code of Ethics Act

In order to enforce ethics among public servants, the government enacted the Public Leadership Code of Ethics Act (PLCEA) of 1995.⁶² The PLCEA introduced ethical standards for public leaders, including the requirement to declare assets. The task of implementing the PLCEA was charged to the Ethics Secretariat, which is established under Article 132 of the Constitution of United Republic of Tanzania. Article 132(1) empowers the Ethics Secretariat “to inquire into the behaviour and conduct of any public leader”. The Secretariat can receive anonymous complaints, in oral or written form.⁶³ After receiving a complaint, the Secretariat can initiate an investigation in respect of the breach of ethics concerned.

The Ethics Secretariat is required also to receive assets declarations by public servants. The declarations are to be kept in a register and should be made available for public inspection at all reasonable times.⁶⁴ The impact of assets declarations in curbing corruption in Tanzania is questionable, as most government leaders do not declare their assets. Even when they do declare their assets, there are no mechanisms for verifying the correctness of such declarations.

62 Act 13 of 1995.

63 Section 18(3) of the PLCEA.

64 Section 20(1) & (2) of the PLCEA.

3.4.2 Warioba Commission on Corruption

In January 1996, President Mkapa formed the Presidential Commission of Inquiry on Corruption (the Warioba Commission) to probe the problem of corruption in the country. The Commission was mandated to investigate and report on the magnitude and forms of corruption in public services and to recommend actions necessary to eradicate this evil.⁶⁵ The Commission handed its report to the President in November 1996.

The Warioba Report indicated that corruption was rooted deeply in and widespread across all sectors of the public service.⁶⁶ Also, it identified the leadership vacuum as the main reason for the growth and spread of corruption.⁶⁷ The situation was aggravated by problems of implementing anti-corruption laws and regulations, lack of supervision and accountability, and lengthy and bureaucratic procedures in obtaining public services. Further, state institutions mandated to fight corruption were adjudged to be weak, with their employees also indulging in corruption. The Commission found that the public had given up on reporting corruption because the leaders who ought to be fighting it themselves were “engulfed by corruption”.⁶⁸

In order to fight corruption, the Warioba Commission recommended that both legal and non-legal actions be taken. The focus of the Commission’s recommendations was to prevent corruption and eradicate chances for its occurrence. Thus, it recommended institutional reforms and the strengthening of ethics. The Commission believed that corruption could be eradicated by having good and ethical leaders in office.

3.4.3 National Anti-Corruption Strategy and Action Plan

Building on the recommendations of the Warioba Report, the government developed a National Framework on Good Governance (NFGG). To implement the NFGG, a National Anti-Corruption Strategy was prepared. All government Ministries, Departments and Agencies (MDAs) were required to develop their own action plans for combating corruption.⁶⁹ Subsequently, the formulated action plans were integrated into the National Anti-

65 Warioba Report (1996) 1-2.

66 Warioba Report (1996) 10.

67 Warioba Report (1996) 9.

68 Warioba Report (1996) 10.

69 Afro-Barometer & REPOA (2006) 2.

Corruption Strategy to form the National Anti-Corruption Strategy and Action Plan (NACSAP). NACSAP was approved formally by Parliament in November 1999.

NACSAP focused on prevention, law enforcement, public awareness and institution building.⁷⁰ Specifically, NACSAP aspired to achieve the following: reforming of government agencies to institute financial discipline and delivery; raising public awareness in combating corruption; and increasing transparency, accountability and integrity in government business. Also, NACSAP aimed at involving civil society in the fight against corruption; co-ordinating, monitoring and evaluating the progress of anti-corruption efforts; and enacting and enforcing laws aimed at fighting corruption and enhancing good governance.⁷¹

In 2006, the second National Anti-Corruption Strategy and Action Plan (NACSAP II) was inaugurated. NACSAP II was a five-year strategy, covering 2008 to 2011. It was the anti-corruption blueprint of the fourth post-independence government, which had come to power in 2005 and was led by President Jakaya Kikwete. It underscored the fact that the government alone cannot fight corruption effectively. Thus, NACSAP II aimed to create a platform where all interested parties (the private sector, civil society, the media, public sector institutions and individuals) could participate fully to prevent and combat corruption.⁷² Unlike NACSAP which covered only 31 MDAs, NACSAP II covered 54 MDAs, including the President's Office.

3.4 Fourth Post-Independence Regime

A discussion of the current anti-corruption legal and institutional framework in Tanzania must appreciate the role played by the fourth government regime under President Jakaya Kikwete, who was in power from 2005 to 2015. In his first address to Parliament in December 2005, President Kikwete stated that he was determined to fight corruption “without fear or favour”.⁷³ Indeed, the decade during which Kikwete was in power witnessed significant changes in anti-corruption laws and empowerment of anti-corruption institutions aimed at controlling corruption. Regrettably, within the same decade, there was a series of graft scandals involving politicians and top government officials.

70 URT (1999) 5.

71 URT (1999) 5.

72 URT (2006) 28.

73 Speech of President Jakaya Mrisho Kikwete to the Parliament of the United Republic of Tanzania in Dodoma on 30 December 2005.

In May 2005, a few months before Kikwete came to power, Tanzania ratified UNCAC. As noted earlier, UNCAC obligates States Parties to establish and implement policies and practices aimed at preventing and combating corruption. In discharging these obligations, Tanzania formulated NACSAP II, enacted laws and established oversight and law enforcement institutions with a view to controlling corruption. Indeed, the bulk of the current anti-corruption regime in Tanzania took shape during Kikwete's tenure as President.

3.5 Current Anti-Corruption Legal Framework

The legal framework for fighting corruption in Tanzania comprises a set of laws established to regulate different sectors, including public procurement, public finance management, national elections, and regulation of financial institutions and the private sector. The intention was to put in place a comprehensive legal regime for controlling corruption in the public and private sectors. The key anti-corruption laws are discussed below.

3.5.1 Anti-Money Laundering Act

In 2006, the National Assembly passed the Anti-Money Laundering Act (AMLA).⁷⁴ This Act incorporated "corrupt practices" among the predicate offences that constitute offences of money laundering.⁷⁵ The scope of "corrupt practices" was not defined explicitly by the Act, but it referred by implication to corruption offences criminalised under POCA.

In 2009, the ESAAMLG "Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism in Tanzania" found that Tanzania was not complying to a large extent with the FATF Recommendations.⁷⁶ Following this report, in 2012 Tanzania enacted the Anti-Money Laundering (Amendment) Act⁷⁷ which extensively amends the AMLA. Of interest to this study are two provisions. Firstly, the definition of predicate offences was amended from including "corrupt practices" to cover "all corruption and related offences stipulated under the Prevention and Combating of Corruption Act".⁷⁸

74 Act 12 of 2006.

75 Section 3 of the AMLA.

76 ESAAMLG (2009).

77 Act 1 of 2012.

78 Section 3(c)(i) of the AML Amendment Act.

Secondly, the Prevention and Combating of Corruption Bureau (PCCB) was included as a law enforcement agency in the fight against money laundering and terrorist financing.⁷⁹ The amendment meant that corruption was to be fought not only by the PCCB but also by other anti-money laundering agencies, since all corruption offences constitute predicate offences for money laundering.

3.5.2 Prevention and Combating of Corruption Act

In April 2007, the National Assembly passed the Prevention and Combating of Corruption Act (PCCA).⁸⁰ The PCCA was intended to provide a holistic approach for the promotion of good governance and eradication of corruption in Tanzania. The PCCA repealed and replaced POCA. In substance, the PCCA has increased the number of corruption offences from four to twenty-four. These cover active and passive bribery; corrupt transactions in contracts, procurement, auctions and employment; bribery of foreign public officials; unjustified enrichment; embezzlement and misappropriation; trading in influence; diversion; sexual corruption; and other forms of corruption liability including aiding, abetting and conspiracy.⁸¹ The PCCA further provides for mechanisms for asset recovery⁸² and encourages co-operation between the PCCB and other local law enforcement organs and private institutions.⁸³



3.5.3 National Elections Act and Election Expenses Act

The Elections Act of 1985,⁸⁴ which is now the National Elections Act (NEA),⁸⁵ criminalised bribery and treating in elections.⁸⁶ This included giving, procuring, lending, receiving or agreeing to receive, directly or indirectly, any money, gift, loan, food, drink, entertainment, procurement or any other valuable consideration in order to induce any voter to vote or refrain from voting in any election.

79 Section 3(a) of AML Amendment Act.
80 Act 11 of 2007.
81 Part III of the PCCA.
82 Part IV of the PCCA.
83 Part V of the PCCA.
84 Act 1 of 1985.
85 Cap 343 RE 2010.
86 Sections 97 & 98 of the Elections Act, 1985.

Surprisingly, in 1990, all the provisions of the NEA that criminalised corruption in elections (Sections 96, 97, 98, 100, 102(1) and 107) were repealed.⁸⁷ However, another amendment to the NEA was made in April 1995, via the Elections (Amendment) Act,⁸⁸ to re-enact all the corruption provisions (Sections 96, 97, 98, 100, 102 and 107) that were repealed under the 1990 amendment. Subsequently, in 2000, Section 98 was amended again through the Electoral Laws (Miscellaneous Amendments) Act of 2000.⁸⁹ The amendment introduced what came to be known popularly as *takrima* provisions.⁹⁰ Section 98(2) and (3) provided that:

(2) For the purpose of subsection (1), anything done in good faith as an act of normal or traditional hospitality shall be deemed not to be treating.

(3) Normal or ordinary expenses spent in good faith in the election campaign or in the ordinary course of election process shall be deemed not to be treating, bribery or illegal practice.

The constitutionality of *takrima* provisions was challenged in the case of *Legal and Human Rights Centre & Two Others v Attorney General*.⁹¹ The petitioners in this case averred that *takrima* provisions legalised the offering, by an election candidate, of anything “as an act of hospitality to the candidate’s voters”. They argued that such provisions encouraged corruption in the election process and violated “the right against discrimination, the right to equality before the law and the right of the citizens of Tanzania to participate in fair and free elections”. In its judgment, the High Court held that *takrima* provisions violated the Constitution and ordered that the provisions be struck out of the NEA.

Following the judgment of the High Court, in 2010 Parliament passed the Electoral Laws (Miscellaneous Amendments) Act⁹² which repealed the whole of the bribery and treating provisions under Sections 97 and 98 of the NEA. In the same year, Parliament enacted the Election Expenses Act (EEA).⁹³ The EEA prohibits “unfair conducts” and “unconscionable funding” in elections. According to Section 24(8), where a person commits a prohibited practice, the provisions of the NEA or those of the PCCA shall apply against him

87 Repealed under Section 15 of the Elections (Amendment) Act 13 of 1990.

88 Act 9 of 1995.

89 Act 4 of 2000.

90 The word *takrima* signifies hospitality or good reception.

91 [2006] 1 TLR 240.

92 Act 7 of 2010.

93 Act 6 of 2010.

or her. Additionally, Sections 94 and 100 of the NEA criminalise bribery and treating respectively. A person who commits such offences is liable, upon conviction, to a fine of not less than Tsh 500 000 or to imprisonment for a term of not less than one year and not more than three years or to both.⁹⁴

3.6 Current Anti-Corruption Institutional Framework

Tanzania has a number of oversight institutions that, among others, have the responsibility to check and control corruption. The institutions are established under various statutes and have their primary functions as mandated by their establishing laws. However, it is the PCCB alone which is designated as a specialised body for preventing and combating corruption.

3.6.1 Prevention and Combating of Corruption Bureau

The PCCA transformed the Prevention of Corruption Bureau (PCB) into the Prevention and Combating of Corruption Bureau (PCCB).⁹⁵ The PCCB is an independent public body⁹⁶ mandated to examine and detect corruption practices; enlist and foster public support in combating corruption; advise public, private and parastatal bodies on ways of preventing corrupt practices; and co-operate with domestic and international organisations and institutions in combating corruption.⁹⁷ The PCCB is headed by the Director General and Deputy Director General who are both appointed by the President.⁹⁸ Currently, the PCCB has four directorates: the Directorate of Investigations; the Directorate of Research, Control and Statistics; the Directorate of Public Education; and the Directorate of Administration and Human Resource Management. Also, there is a special Department for Planning, Monitoring and Evaluation.

The PCCB is required to submit an annual report of its activities to the President.⁹⁹ These reports are not available readily for public consumption. Funds and resources of the

94 Section 94 of Cap 343.

95 Section 5 of the PCCA.

96 Section 5(2) of the PCCA.

97 Section 4 & 7 of the PCCA.

98 Section 6 of Act the PCCA.

99 Section 14(1) of the PCCA.

PCCB are appropriated by Parliament after it has received a report on estimates of income and expenditure for the Bureau from the Minister responsible for good governance.¹⁰⁰

3.6.2 Controller and Auditor General

Article 143 of the Constitution gives the Controller and Auditor General (CAG) authority to monitor and authorise payments made out of the Consolidated Fund. The CAG has to ensure that such moneys are used for the purposes authorised. Each year, the CAG has to audit and provide an audit report in respect of the accounts of the government, the accounts managed by the Clerk of the National Assembly and of all courts of the United Republic.

Despite the firm legal basis and mandate of the CAG, for many years the National Audit Office of Tanzania (NAOT) did not present itself as an effective oversight institution as regards public funds. Audit reports often were delayed, sometimes for up to three years.¹⁰¹ On the coming into power of President Kikwete, the NAOT was given a new impetus. In 2008, Parliament enacted the Public Audit Act (PAA).¹⁰² The Preamble to the PAA notes that the discharge of the mandate of the CAG is intended to promote accountable and democratic institutions in the country by preventing financial malpractice and corruption.¹⁰³ The CAG has the power to disallow any public expenditure or call into question the sum concerned whenever it appears to it that any deficiency or loss occasioned by negligence, misconduct, fraud or corruption has occurred.¹⁰⁴

Since the enactment of the PAA, the NAOT has been an active oversight institution of public funds. Its reports are issued timeously and are accessible publicly.¹⁰⁵ Various corruption and maladministration inquiries and investigations have been carried out since 2008, based on the CAG reports. This includes the 2014 inquiry into the Tegeta Escrow account that revealed massive fraud and corruption in the transfer of public money from

100 Section 48 of the PCCA.

101 Msasato (2011).

102 Act 11 of 2008.

103 Paragraph 2 of the Preamble to the PAA.

104 Section 11(3)(c) of the PAA.

105 The reports may be accessed at <http://www.nao.go.tz/category/cag-reports/>.

the Bank of Tanzania to various corporate and personal accounts of individuals and politicians.¹⁰⁶

3.6.3 Public Procurement Regulatory Authority

In 2003, the Country Procurement Assessment Report (CPAR) found that procurement system in Tanzania was over-centralised and inefficient.¹⁰⁷ It also found that about 20 per cent of government expenditure on procurement was being lost through corruption by way of kickbacks and bogus investments.¹⁰⁸ Consequently, the government enacted the Public Procurement Act of 2004.¹⁰⁹ This Act was later repealed and replaced by the Public Procurement Act of 2011.¹¹⁰ The 2011 Act establishes the Public Procurement Regulatory Authority (PPRA) with powers to fight corruption and fraudulent practices in procurement.¹¹¹ Section 83 of the Public Procurement Act prohibits persons and firms from engaging in corruption or fraudulent practices when competing for procurement contracts. If such practices have occurred, the procuring entity can reject the proposal for the award of a procurement contract, cancel the portion of the funds allocated to a contract, or declare the person or firm ineligible for a period of ten years to be awarded a public-financed contract. Further, the PPRA has powers to blacklist from participating in public procurement proceedings any tenderer who engages in fraud or corruption.¹¹²

3.6.4 Commission for Human Rights and Good Governance

Established under Article 129(1) of the Constitution, the Commission for Human Rights and Good Governance (CHRAGG) is an independent government department which exists, as its name suggests, for the protection of human rights and promotion of the principles of good governance in Tanzania. The CHRAGG replaces the Permanent Commission of Enquiry and it became operational on 1 July 2001, following the coming into force of the Commission for Human Rights and Good Governance Act (CHRAGGA).¹¹³ Thus, the CHRAGG is both the

106 See NAOT (2014) and Parliament of Tanzania (2014).

107 World Bank & URT (2003) 16.

108 World Bank & URT (2003) 23.

109 Act 21 of 2004.

110 Act 7 of 2011.

111 Section 7 of the Public Procurement Act, 2011.

112 Section 62 of the Public Procurement Act, 2011.

113 Act 7 of 2001.

nation's human rights institution and office of the ombudsman. Among others, the CHRAGG is mandated to:

investigate or inquire into complaints concerning practices or actions by persons holding office in the service of the government, public authorities or other public bodies, including private institutions and individuals where those complaints allege abuse of power, injustice, or unfair treatment of any person in the exercise of their official duties.¹¹⁴

However, the CHRAGG has no legal powers to enforce its decisions. After it has made its findings, the CHRAGG merely can report them to the authority responsible for the official who is the target of the complaint and recommend measures for effective redress.¹¹⁵

3.7 Role of Donors in Fighting Corruption in Tanzania

Tanzania's anti-corruption programmes have received mixed donor support for the past two decades. Multilateral institutions, including the World Bank, and developed nations have supported the fight against corruption in various ways. However, a striking characteristic of the donor support to anti-corruption efforts is that all donors increasingly have addressed corruption in response to circumstances "which suggested that the development environment was not as positive in Tanzania as it once had been assumed".¹¹⁶ These circumstances include "prominent grand corruption scandals, the growing media and public interest in corruption and reports of corruption surveys".¹¹⁷

A key instrument of donor co-ordination has been general budget support (GBS), which enables donors to press for prosecution of grand corruption cases and to leverage public finance management reforms.¹¹⁸ It has been reported that Tanzania received total GBS of some US\$3.69 billion from Norway, Sweden, Denmark and the UK between 2000 and 2013.¹¹⁹ Within the same period, aid commitments from these same countries to support governance and civil society approximated US\$860 million.

On the one hand, the focus of donor support has been on improving governance systems and management of public finances. On the other hand, donors have attempted to strengthen the anti-corruption fight by:

114 Section 6(1)(g) of the CHRAGGA.

115 Section 15(2) of the CHRAGGA.

116 Vaillant *et al* (2012) 19.

117 Vaillant *et al* (2012) 19.

118 Vaillant *et al* (2012) xiv.

119 See <http://aiddata.org/dashboard#/agregate/analytic-dashboard> (accessed 11 April 2017).

supporting government institutions dealing directly with corruption (mainly but not exclusively the PCCB); supporting governance reforms through government sector reform programmes and funding Civil Society Organisations to strengthen the demand for good governance.¹²⁰

The Strengthening Tanzania's Anti-Corruption Action (STACA) programme, launched by the UK Department for International Development (DFID) in February 2012, is a good example of donor involvement in anti-corruption in Tanzania. STACA was a £11 million programme designed to reduce the impact of corruption on the poor in Tanzania through more active implementation of anti-corruption measures with a focus on high risk/high impact sectors.¹²¹ It was a 4½-year programme running between the 2011/12 and 2015/16 fiscal years.

STACA consisted of two main elements. Firstly, it provided support to the government of Tanzania to improve the performance of the institutions most directly involved in tackling corruption (the PCCB, the DPP, the FIU and the NAOT). The programme aimed to make these institutions work more effectively together on the identification and handling of corruption risks and cases. It also addressed corruption in the police and Judiciary.¹²² Secondly, STACA effected the establishment of an Integrity Fund to provide support to a range of non-governmental initiatives in the field of anti-corruption.¹²³ STACA's theory of change centred on the hypothesis that corruption levels in Tanzania would decline if there were stronger oversight institutions, fewer opportunities and incentives to be corrupt, and more incentives for the government to act.¹²⁴

Generally, STACA was a complex programme that tried to solve an even more complex problem of institutional collaboration and trust among organs tasked with combating corruption in Tanzania. The programme succeeded in some areas. For example, the number of convictions for corruption increased from 52 in 2011 to 135 in 2014.¹²⁵ The

120 Vaillant *et al* (2012) 20.

121 See DFID (2012) 1.

122 See DFID (2013) 1.

123 DFID (2013) 1.

124 DFID (2012) Paras 2.7 & 2.8.

125 CMI *et al* (2016) 22.

number of suspicious transactions reports (STRs) also increased from 20 in 2011 to 144 in 2014.¹²⁶

However, there was meagre collaboration and trust among the institutions charged with fighting corruption.¹²⁷ This undermined the operational relevance of the programme.

As the STACA Evaluation Report notes:

it would be unrealistic to expect the activities under the STACA programme that have only been running for 2-3 years to already change collaborative practices and trust between partner agencies.¹²⁸

Success of such programmes as STACA requires longer design and implementation periods.¹²⁹

3.8 Fifth Post-Independence Regime

In November 2015, John Pombe Magufuli succeeded Kikwete to become the fifth President of Tanzania. From the beginning, Magufuli identified himself as a leader with a zero tolerance policy to corruption. During campaigns, he promised to fight corruption and embezzlement of public resources with all his energy. In his speech at the inauguration of the first Parliament of his term, Magufuli identified corruption as a boil that has infected the country's economic and political systems and that needed to be cut. He said:

One thing that I forcefully stressed in my campaigns was the fight against corruption and embezzlement. I did not do so to lure citizens to vote for me as their president. I did so with zeal and what I said is exactly what I meant. ... I understand the difficulty of the war I have decided to fight ... but the cure for a boil is to cut it. I have decided to be a boil cutter.¹³⁰

Basically, Magufuli's anti-corruption approach aims to restore ethics and promote accountability in the public service. However, little attention is given to private sector corruption.

3.8.1 House Cleaning

Magufuli began his term by dismissing or suspending various officials who were tainted with corruption scandals or whom he thought did not fit into his governance model. The

126 CMI *et al* (2016) 22.

127 CMI *et al* (2016) 21.

128 CMI *et al* (2016) 18.

129 CMI *et al* (2016) 18.

130 Speech of President John Pombe Magufuli at the inauguration of the New Parliament in Dodoma on 20 November 2015.

President's crackdown on tax evasion cost the jobs of the Tanzania Ports Authority (TPA) Director General, Mr Awadh Massawe, and of the Tanzania Revenue Authority (TRA) Director General, Mr Rished Bade, among the dozens of officials fired at the two agencies within one month of Magufuli's taking office.¹³¹

The rate of corruption and tax evasion discovered at the TRA and TPA annoyed Magufuli to the extent that he sacked the PCCB Director General, Dr Edward Hoseah. In a press statement, the Chief Secretary, Ombeni Sefue, explained that:

President Magufuli [was] disappointed that despite reports of tax evasion and other irregularities at TRA and TPA, the PCCB as a responsible organ to fight corruption [had] just kept quiet and watched the country lose a lot of revenue.¹³²

Magufuli's anti-corruption crackdown has been felt by almost all government institutions. He has cut down what he calls "unnecessary expenditure" in all government institutions. There has been a nationwide vetting of all public servants to identify "ghost workers". In September 2016, the Minister for Public Service Management and Good Governance, Angella Kairuki, announced that between 1 March 2016 and 20 August 2016 "a total of 16 127 ghost workers had been removed from the government payroll".¹³³ According to Kairuki, their removal saves the government around Tsh16 billion in monthly salaries.¹³⁴

3.8.2 Establishing the Anti-Corruption Court

During his presidential campaign, Magufuli had promised to establish a special court to deal with corruption crimes. In fact, the President believes that the Judiciary has a crucial role to fulfil in fighting corruption. During Law Day celebrations on 5 February 2016, Magufuli instructed the Treasury to release Tsh12.5 billion within five days to the Judiciary for it to repair its infrastructure. In return, the Judiciary was expected to deliver judgments in more than 400 pending tax evasion cases.¹³⁵ Magufuli said that the government would recover over Tsh1 trillion from these cases.¹³⁶

131 allAfrica (17 December 2015).

132 allAfrica (17 December 2015).

133 Wandiba (9 September 2016).

134 Wandiba (9 September 2016).

135 Mesomapyra (6 February 2016).

136 Mesomapyra (6 February 2016).

In an attempt to ensure that corruption is fought more effectively, Parliament passed the Written Laws (Miscellaneous Amendments) Act of 2016¹³⁷ which amended the Economic and Organised Crime Control Act.¹³⁸ The amendment establishes the Corruption and Economic Crimes Division of the High Court (the Anti-Corruption Court) with jurisdiction to hear and determine corruption and economic offences as stipulated in the First Schedule to that Act. The Anti-Corruption Court sat for the first time on 3 November 2016, almost three months after its establishment, to hear a bail application.¹³⁹ Hitherto, there have been 15 miscellaneous applications filed before the Anti-Corruption Court. A real corruption or economic crimes case yet is to be brought before this court.

3.8.2 Surprise Visits

One of the methods used by President Magufuli to monitor performance in various institutions has been “surprise visits”. On 6 November 2015, just the day after he was sworn into office, Magufuli paid a surprise visit to the Ministry of Finance where he found that most officials were not at their work stations.¹⁴⁰ Three days later, on 9 November 2015, Magufuli made another surprise visit, this time to Muhimbili National Hospital where he was annoyed with the poor services provided by the hospital and decided to dissolve the hospital board of trustees.¹⁴¹ The President also has made further surprise visits to other public institutions, including the Bank of Tanzania in March 2016 and the Julius Nyerere International Airport in May 2016 and February 2017.

Surprise visits have not been carried out by Magufuli only. This style has been adopted by other top government officials, including Prime Minister Kassim Majaliwa. On 27 November 2015, Majaliwa made a surprise visit to the Dar es Salaam harbour and discovered that more than 300 cargo containers had been moved illegally out of the port without the proper taxes being paid.¹⁴² Not more than a week later, Majaliwa paid a second surprise visit to the same harbour and discovered that another 2 431 cargo containers had

137 Act 3 of 2016.

138 Cap 200 RE 2002.

139 See John (4 November 2016).

140 Mwananchi (6 November 2015).

141 Elias (10 November 2015).

142 Mathias (8 December 2015).

been smuggled out of the port in the same way.¹⁴³ Majaliwa's surprise visits to the harbour cost the jobs of dozens of employees at the TPA and the TRA. Surprise visits by political leaders were a big issue in 2016 but they have decreased over time, with almost none featuring in the news recently.

3.9 Concluding Remarks

Tanzania has taken a wide range of both policy and legal measures to fight corruption. Throughout the five post-independence government regimes laws have been established and institutions put in place with a view to controlling corruption. The first government regime fought corruption through its socialist policies and by extending government control over major means of production. The second government regime opted to liberalise trade and economic sectors as means to revamp the economy and reduce corruption in the public sector. The third government regime used a multi-faceted approach by enacting laws and strengthening anti-corruption institutions. The fourth government regime expanded the scope of anti-corruption laws and re-energised anti-corruption institutions. The fifth government regime is undertaking various measures aimed at restoring ethics in the public service and eliminating corruption.

However, levels of corruption are still high. This implies that there are significant deficits in the country's anti-corruption regime that undermine anti-corruption efforts. The next chapter analyses these deficiencies with a view to suggesting reforms needed to design a sustainable anti-corruption regime for Tanzania.

143 Butahe (4 December 2015).

Chapter Four

Recalibrating Aspects of the Tanzanian Anti-Corruption Regime

4.1 Introduction

Tanzania has enacted various laws aimed at fighting corruption and enhancing good governance. Also, it has established different institutions which are charged with the role of enforcing these laws. Nevertheless, the levels of corruption in the country remain high and, for many years, the country has been performing poorly in international corruption indices, including the prominent Transparency International CPI. Furthermore, Tanzanian citizens perceive that corruption has risen to a level where one cannot obtain a public service without offering a bribe.¹ Clearly, the Tanzanian anti-corruption regime has failed.

This chapter seeks to answer the second and the third research questions of this study: what are the deficiencies of the current legal and institutional regime in fighting corruption in Tanzania; and what reforms are needed in order to create a sustainable anti-corruption regime for Tanzania? The chapter begins by exploring anti-corruption best practices from three territories which have managed to control corruption, namely, Hong Kong, Singapore and Botswana. Thereafter, the chapter examines the deficiencies of the current Tanzanian anti-corruption regime. Finally, it proposes reforms that are needed in order to create a sustainable anti-corruption regime for Tanzania.

This study argues that Tanzania has failed to operationalise its anti-corruption regime in keeping with its declared desire to eradicate corruption. Anti-corruption laws and policies have been formulated without the will to enforce and advance them. Therefore, the study proposes broad reforms of the anti-corruption framework in Tanzania with a view to creating an environment for generating a sustainable political will to pursue and promote anti-corruption work.

4.2 Anti-Corruption Best Practices from Other Jurisdictions

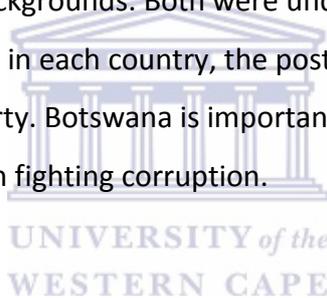
Some commentators hold the view that anti-corruption strategies cannot be imported from other jurisdictions.² Basically, their argument is that the context in which an anti-corruption regime has to operate prohibits such importation. The United Nations Development

1 Camargo & Rivera (2015) 259.

2 UNDP (2005) 4. See also DFID (2007) 1 as cited in De Speville (2010) 61.

Programme (UNDP) specifically claims that there is no “one-size-fits-all” approach to anti-corruption and that the different contexts in which corruption manifests imply that what has worked in one country may not work in the other.³ However, it is accepted that best practices exist and that these can serve as guidelines for developing national anti-corruption strategies.⁴

Accordingly, this study explores the anti-corruption best practices from Hong Kong, Singapore and Botswana as standards against which to understand the deficiencies of the Tanzanian anti-corruption regime. These territories have been chosen due to the proximity of their anti-corruption contexts to the Tanzanian context. The Hong Kong model is followed by many developing countries, including Botswana which has the best performance in anti-corruption in Africa.⁵ Indeed, the initial design of the Tanzanian anti-corruption bureau was based on Hong Kong’s Independent Commission against Corruption (ICAC).⁶ Singapore and Tanzania have similar political backgrounds. Both were under the British colonial rule until their independence in 1960s and, in each country, the post-independence governments have been led by one political party. Botswana is important because it provides an encouraging African experience in fighting corruption.



4.2.1 Hong Kong

Before 1974, Hong Kong featured among those territories with the worst corruption levels in world.⁷ Bribery was necessary in order to get things done.⁸ However, the situation changed radically after the establishment of ICAC in 1974. ICAC has managed to transform public perception in Hong Kong from corruption as way of life into corruption as a high-risk crime.⁹ Currently, Hong Kong is one of the best performers in anti-corruption. It ranks 15th in the Transparency International CPI for 2016.

ICAC adopts a three-pronged strategy in fighting corruption, namely, investigation, prevention and community education. The three elements are applied together, at the same

3 UNDP (2005) 4.
4 De Speville (2010) 61.
5 De Speville (2010) 48.
6 Hoseah (2010) 17.
7 De Speville (2010) 48.
8 Wing-chi (2013) 240
9 Manion (2004) 28-30.

time and in co-ordination.¹⁰ In accordance with its strategy, ICAC consists of three major departments: the Operations Department, the Corruption Prevention Department and the Community Relations Department.

Operations

The Operations Department is ICAC's enforcement unit. It works on detecting and investigating corruption with a view to prosecution.¹¹ Considering its role, the Operations Department is the largest of the ICAC departments.¹² ICAC allocates about 70 per cent of its resources to this department. Its logic is that "any successful anti-corruption regime must start with effective law enforcement against major targets".¹³ Staff of the Operations Department consists of professional investigators, intelligence experts, computer experts, accountants and lawyers.¹⁴

ICAC's enforcement strategy may be divided into four legs. The first is an effective public complaints management system designed to encourage corruption reporting by citizens and referrals from other public and private institutions.¹⁵ The second is a prompt response system to deal with complaints. ICAC has a 24-hour reporting centre with an investigative team ready to be called into action.¹⁶ The third leg maintains a zero tolerance policy towards corruption. ICAC does not discriminate between petty and grand corruption. As long as there is suspicion, all corruption reports will be investigated properly.¹⁷ Where the report falls outside the mandate of ICAC, it will be forwarded to the responsible organ.¹⁸ If a complaint is about a non-corruption offence but there is suspicion that the offence was facilitated by corruption, ICAC will investigate it thoroughly in an effort to uncover the underlying corruption.¹⁹ Fourthly, there is a review system to ensure that every complaint has been investigated comprehensively and professionally.

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- 10 De Speville (2010) 53.
11 Manion (2004) 36.
12 Manion (2004) 37.
13 Wing-chi (2013) 251.
14 Man-wai (2006) 199.
15 Man-wai (2006) 199.
16 Man-wai (2006) 199.
17 De Speville (2010) 55.
18 De Speville (2010) 55.
19 De Speville (2010) 55.

Corruption Prevention

ICAC is mandated statutorily to “examine the practices and procedures of government departments and public bodies and to secure the revision of methods of work or procedures which may be conducive to corrupt practices”.²⁰ Also, it is required to provide corruption prevention assistance when so requested by any member of the public or a private institution.²¹ These duties are discharged by the Corruption Prevention Department. Among others, the Department minimises corruption risks by studying and identifying corruption loopholes and proposing necessary reforms.²² Further, it funds studies and conducts workshops with public and private organisations on means to reduce corruption opportunities. Additionally, it reviews laws and regulations on the basis of findings from its studies with the aim of suggesting revisions.²³

The methodology of prevention used by ICAC involves enhancing internal controls, promoting staff integrity and propriety, and ensuring the presence of checks and balances in organisational structures. It also involves enhancing transparency and accountability, and promoting ethics and codes of conduct.²⁴ ICAC’s prevention strategy centres on speed and simplicity. Prevention measures are unacceptable if they result in slower delivery or operational complications.²⁵ ICAC interprets efficiency and prevention as two sides of the same coin. As a result, the prevention strategy is designed to enhance good governance and eliminate bureaucratic red-tape.²⁶

Community Relations

ICAC has managed to change public perceptions from tolerating corruption as way of life to fighting it. Currently, members of the public are willing not only to report corruption, but also to identify themselves in doing so.²⁷ This achievement results from the pro-active work of the Community Relations Department. The Department educates the public about the evils of corruption in order to enlist their support and collaboration in fighting corruption.²⁸

20 ICAC (2016) 1.

21 ICAC (2016) 1.

22 Wing-chi (2013) 244.

23 Heilbrunn (2004) 4.

24 Man-wai (2006) 199.

25 De Speville (2010) 59.

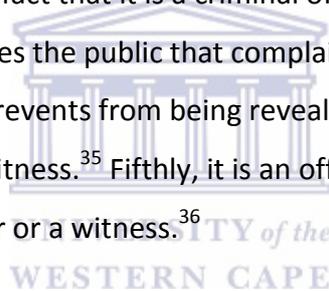
26 De Speville (2010) 59.

27 Man-wai (2006) 196.

28 Man-wai (2006) 198.

It conducts community-based education programmes through the mass media and outreach activities. And it undertakes sector-specific education programmes for groups such as business entities, professional bodies, technical personnel and the youth.²⁹

Community support for ICAC has increased tremendously. Its annual opinion surveys, conducted by independent research agencies, indicate that 97 per cent of Hong Kong citizens support ICAC.³⁰ Its popularity results not only from education programmes but also from having friendly and protective whistleblower structures. ICAC makes sure to remove any difficulties in reporting corruption. Firstly, the complaint can be made anonymously via phone, letter, email or personal visit. Secondly, ICAC makes it clear that it is not interested in the motive of the reporter, and that spite or revenge is immaterial.³¹ Thirdly, ICAC requires neither supporting evidence nor reasonable grounds for suspicion.³² The only requirement is that the reporter believes that the suspicion could be true. Malicious reporters are discouraged by the fact that it is a criminal offence to make a false complaint knowingly.³³ Fourthly, ICAC assures the public that complaints will be treated in strict confidence.³⁴ Likewise, the law prevents from being revealed in court the identity of an informer who is not called as a witness.³⁵ Fifthly, it is an offence to threaten, intimidate or otherwise act against an informer or a witness.³⁶



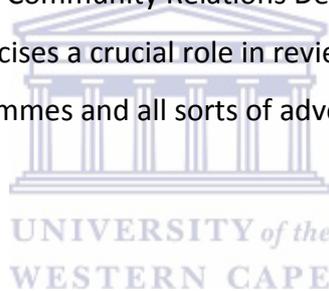
Review Mechanisms

A unique feature of the Hong Kong strategy is its system of checks and balances. ICAC is accountable directly to the Chief Executive. Consequently, the ICAC Commissioner reports to the Executive Council.³⁷ There is an Independent Complaints Committee that receives complaints made by the public against ICAC or its staff.³⁸ Also, ICAC has an internal monitoring unit that investigates all allegations of corruption or misconduct by ICAC staff.³⁹

29 Wing-chi (2013) 255.
30 ICAC (2016) 2.
31 De Speville (2010) 57.
32 De Speville (2010) 57.
33 De Speville (2010) 57.
34 De Speville (2010) 57.
35 De Speville (2010) 57.
36 De Speville (2010) 57.
37 Wing-chi (2013) 254.
38 Man-wai (2006) 200.
39 Wing-chi (2013) 254.

ICAC operations are overseen by four independent committees comprising members from different sectors of the community. The Advisory Committee on Corruption advises ICAC on broad policy issues.⁴⁰ The other three committees deal with the three ICAC departments. The Operations Department is reviewed by the Operations Review Committee, whose members come largely from the private sector.⁴¹ The Committee evaluates every report of corruption and the investigation conducted in order to ensure that there is no “whitewashing” in the handling of complaints.⁴² It publishes an annual report to be tabled before Parliament, thus ensuring transparency and accountability.⁴³ It also creates confidence in the public that complaints have been handled properly.

The Corruption Prevention Department is reviewed by the Corruption Prevention Advisory Committee which oversees the department in enhancing practices and procedures aimed at reducing corruption opportunities.⁴⁴ The Citizens Advisory Committee on Community Relations advises the Community Relations Department on measures for promoting public support. It exercises a crucial role in reviewing and monitoring the contents of billboards, TV programmes and all sorts of advertisements used for public education.⁴⁵



Adequate Resources

The Hong Kong government translates its political will to fight corruption into financial support. Arguably, “ICAC is one of the most expensive anti-corruption agencies in the world”.⁴⁶ For instance, in 2000, ICAC’s budget was equivalent to US\$90 million and it had around 1 200 staff.⁴⁷ Recently, the budget has increased to US\$100 million with the number of staff rising to about 1 300.⁴⁸ ICAC is not part of the public service and its officers enjoy salaries higher than their counterparts of similar rank in the public service.⁴⁹ De Speville

40 Wing-chi (2013) 254.
41 Wing-chi (2013) 254.
42 Wing-chi (2013) 254.
43 Man-wai (2006) 200.
44 Wing-chi (2013) 254.
45 Heilbrunn (2004) 5.
46 Man-wai (2006) 200.
47 Heilbrunn (2004) 4.
48 Wing-chi (2013) 255.
49 Manion (2004) 35.

argues that for any anti-corruption approach to succeed there must be investment of substantial resources in the effort.⁵⁰

4.2.2 Singapore

Corruption was a way of life in Singapore at the time of British colonial rule.⁵¹ Changes began after the coming into power of the People's Action Party (PAP) in 1959. According to Quah, the newly-elected PAP government realised that in order to ensure Singapore's development, corruption had to be controlled.⁵² Accordingly, "PAP leaders designed a comprehensive anti-corruption strategy by enacting the Prevention of Corruption Act (POCA) of 1960 and strengthening the Corrupt Practices Investigation Bureau (CPIB)".⁵³ The CPIB was established in 1952 by the British colonial government but its role became more prominent in the 1960s under the PAP government. PAP has been the ruling political party in Singapore since independence and its leaders are acknowledged for their commitment to fighting corruption.⁵⁴

Singapore adopts a three-pronged strategy in fighting corruption, involving legislation, enforcement and adjudication.⁵⁵ POCA is the main anti-corruption statute and the CPIB is charged with the role of enforcing it. Like ICAC's, the CPIB's enforcement approach does not differentiate between petty and grand corruption. It pursues every corruption allegation regardless of the value involved.⁵⁶ After investigation, the CPIB forwards the cases to the Public Prosecutor for prosecution.⁵⁷ With regard to adjudication, the Judiciary in Singapore is determined to create "a regime of punishment that is deterrent enough to hit home the maxim that corruption does not pay".⁵⁸

Singapore's anti-corruption strategy enjoys strong backing from the government. The PAP government demonstrates its political will to fight corruption by consistently

50 De Speville (2010) 65.
51 Quah (1995) 391.
52 Quah (2001) 32.
53 Quah (2001) 32.
54 Quah (2016) 19.
55 Yak (2003) 2.
56 Quah (2016) 21.
57 Yak (2003) 4.
58 Yak (2003) 5.

amending POCA in response to changing corrupt practices and by supporting the CPIB in terms of human and financial resources.⁵⁹ The PAP government follows the logic that:

since corruption is caused by both the incentives and opportunities to be corrupt, attempts to eradicate corruption must be designed to minimise or remove the conditions of both the incentives and opportunities that make individual corrupt behaviour irresistible.⁶⁰

To implement its “logic of corruption control”, the PAP government began by strengthening anti-corruption legislation and the anti-corruption agency. This was aimed at reducing opportunities for corruption and increasing the penalties for corrupt behaviour.⁶¹ POCA criminalises both active and passive bribery. It also introduces a presumption of corruption in certain cases involving public servants.⁶² When the gratification involved in corruption is a sum of money or if the value of said gratification can be assessed, POCA empowers courts to order the receiver of the bribe to pay an amount which is equal to the amount of the gratification.⁶³ This punishment is imposed in addition to other forms of punishment that the court might impose on the offender.

The PAP government has empowered the CPIB with operational autonomy to investigate corruption against anyone in Singapore, regardless of his or her status or political affiliation.⁶⁴ In this regard, between 1966 and 2016, the CPIB managed to investigate five PAP leaders who were involved in corruption allegations.⁶⁵ In 1984, the Minister for National Development, Teh Cheang Wan, committed suicide 12 days after being interrogated by senior CPIB officers.⁶⁶ These events have sustained the CPIB’s reputation for impartiality and have attracted generous public support for the Bureau.

In trying to prevent corruption, the CPIB “examines practices and procedures of government departments” in order to identify corruption-prone areas and devise counter-measures.⁶⁷ This role is carried out by the research unit of the CPIB.⁶⁸ The unit analyses administrative weaknesses and work procedures that lead to corruption in government

59 Quah (2016) 19.
60 Quah (1995) 394
61 Quah (2001) 32.
62 Section 8 of POCA (Singapore).
63 Section 13(1) of POCA (Singapore).
64 Quah (2016) 21.
65 Quah (2016) 22.
66 Quah (1995) 396.
67 Quah (1995) 397.
68 Quah (1995) 397.

departments. It also reviews completed cases with a view to ascertaining the *modus operandi* of corrupt officials and proposing measures to seal any loopholes.⁶⁹

The government of Singapore has committed to improving the salaries and working conditions of public servants as a way of reducing incentives for corruption. The PAP government believes that if public servants are underpaid they will succumb to temptation and indulge in corruption.⁷⁰ Accordingly, the 1994 salary revisions in Singapore raised the salary level of senior civil servants to the extent that they are amongst the most highly paid public servants in the world.⁷¹

Considered a whole, Singapore's anti-corruption strategy consists of two arms. On the one hand, it uses POCA and the CPIB to eliminate opportunities for corruption. On the other hand, it encompasses the government's will to remove incentives for corruption among public servants by improving salaries and working conditions.

4.2.3 Botswana

Botswana is the only African nation that has achieved an enhanced performance in anti-corruption over the past two decades. Since first featuring in the Transparency International CPI in 1998, Botswana has retained its position as the nation with the lowest perceived corruption levels across the African continent. The country is acknowledged for its relatively good governance, discreet economic management and sustained democratic process.⁷² However, like other African nations, Botswana has been rocked by a number of corruption scandals.⁷³ Sebudubudu argues that international corruption ratings for Botswana have been conservative and that citizens' perceptions allege a serious increase of corruption in the country.⁷⁴ Be that as it may, Botswana is a good example of anti-corruption best practice in the African region.

For many years after its independence in 1966, Botswana enjoyed a democratic society characterised by low levels of corruption.⁷⁵ The trend changed in the early 1990s when a series of graft scandals were uncovered. The major ones were the land and housing

69 Quah (1995) 397.

70 Quah (2001) 33.

71 Quah (2001) 34.

72 Sebudubudu (2013) 2.

73 See Ogwang (2007) 35 and Mwamba (2013) 67-68.

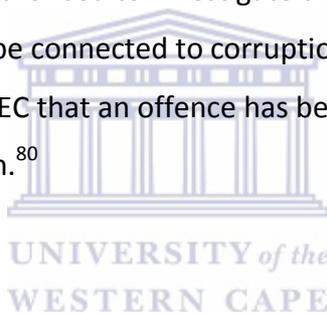
74 Sebudubudu (2013) 13.

75 Sebudubudu (2013) 4.

allocation scandals involving senior government officials and politicians.⁷⁶ In response to these scandals, the government of Botswana enacted the Corruption and Economic Crime Act (CECA) of 1994 which established the Directorate on Corruption and Economic Crime (DCEC). The DCEC was constituted along the lines of the ICAC model and is responsible for fighting corruption in Botswana.⁷⁷ Thus, the DCEC employs a three-pronged strategy comprising investigation, corruption prevention and public education.

Investigation

The investigation department of the DCEC has various teams consisting forensic experts, financial investigators, construction and engineering experts and covert operations experts.⁷⁸ According to Section 6 of CECA, the DCEC has powers to investigate any alleged or suspected offence under CECA or contravention of any provisions of the fiscal and revenue laws of Botswana. The DCEC is authorised to investigate the conduct of any person who, in the opinion of the Director, may be connected to corruption.⁷⁹ If, after investigation, it appears to the Director of the DCEC that an offence has been committed, he refers the matter to the DPP for prosecution.⁸⁰



Corruption Prevention

The DCEC implements a preventive strategy aimed at detecting and sealing loopholes that create opportunities for corruption in the public and private sectors.⁸¹ It examines and analyses practices and procedures of government departments, parastatals and other public and private bodies to identify corruption-prone areas and recommends appropriate measures for reducing corruption opportunities.⁸² For efficiency, the DCEC gives priority to high-risk organisations and to those which are party to large government contracts.⁸³

The corruption prevention strategy includes the use of assignment studies, workshops and seminars, and the secondment of DCEC officers to government departments and Ministries. Via assignment studies, the DCEC conducts thorough examinations of laws,

76 See Ogwang (2007) 36 and Sebudubudu (2013) 11.
77 Kuris (2013) 1.
78 Kuris (2013) 12.
79 Section 6(d) of CECA.
80 Section 39 of CECA.
81 Mwamba (2013) 74.
82 Mwamba (2013) 75.
83 Kuris (2013) 7.

policies and organisational structures governing certain institutions to identify weaknesses and propose methods for improvement.⁸⁴ Through workshops and seminars, the DCEC meets with stakeholders from different cadres in order to familiarise and capacitate them with corruption prevention techniques. The aim is to promote principles of good governance and corruption risk assessments.⁸⁵ Also, the DCEC deploys its officers to government departments and Ministries with a view to building internal anti-corruption capacity and evaluating the effectiveness of existing anti-corruption methods.⁸⁶

Public Education

Section 6(i) and (j) of CECA mandates the DCEC to educate the public about the evils of corruption in order to enlist and foster their support in fighting it. Thus, the DCEC conducts education programmes for public servants, the youth and the general public.⁸⁷ Since 2010, the DCEC, in co-operation with the Botswana Ministry of Education, has integrated corruption and anti-corruption studies into the school curriculum.⁸⁸ For instance, the *Rra Boammaruri* campaign aims at instilling primary school pupils with ethics and moral uprightness, already at their tender age.⁸⁹ Also, anti-corruption clubs have been formed to educate young people on the evils of corruption and to engage them in educating their peers.⁹⁰ Further, the DCEC has cultivated a co-operative relationship with the media. The media are considered to be an important source of intelligence in uncovering corruption.⁹¹

The DCEC maintains an effective whistleblower system that encourages the public to report corruption. It receives both anonymous and sourced corruption complaints via emails, telephone calls and personal visits.⁹² Moreover, it culls corruption reports from the media and receives referrals from other government agencies.⁹³ According to Kuris, public

84 Mwamba (2013) 75.
85 Mwamba (2013) 75-76.
86 Mwamba (2013) 78.
87 Mwamba (2013) 79.
88 Kuris (2013) 9.
89 Mwamba (2013) 79.
90 Mwamba (2013) 79.
91 Kuris (2013) 9.
92 Kuris (2013) 11.
93 Kuris (2013) 11.

education campaigns combined with the DCEC's intelligence capabilities have led to useful corruption reports followed by successful prosecutions.⁹⁴

4.3 Lessons from Hong Kong, Botswana and Singapore

Hong Kong, Singapore and Botswana have managed to control corruption in their respective jurisdictions. Their experiences are relevant to other countries struggling to fight corruption, including Tanzania. Bearing in mind their different contexts, a number of lessons may be learnt from Hong Kong, Singapore and Botswana in attempting to formulate a sustainable anti-corruption regime for Tanzania.

Firstly, political will from government leaders is an indispensable aspect of fighting corruption. When political leaders are weak on corruption, the entire anti-corruption system is doomed to failure. Government leaders must demonstrate exemplary leadership and "they should not indulge in corruption themselves".⁹⁵ Whoever is accused of corruption should be investigated and, if necessary, prosecuted, regardless of his social status or political affiliation. There should be no distinction between the small and big fish. Political will must be sustained across successive government regimes. The legal system must eliminate deficiencies that can break the chain of sustainability in fighting corruption.

Secondly, an anti-corruption agency (ACA) should have sufficient legal autonomy to perform its functions. The ACA should be independent of any undue interference from politicians or other government organs. When the ACA's autonomy is inadequate, the risk of breaking the chain of sustainability in fighting corruption increases. For example, in countries where the Director of the ACA is appointed by the head of the Executive and the ACA is directly accountable to the latter, the chain of sustainability is broken easily when the latter is corrupt and has immunity from prosecution. A special feature that has bolstered anti-corruption efforts in the three territories discussed above is the autonomy of their ACAs. ICAC, the DCEC and the CPIB have legal powers to investigate corruption against anyone in their respective jurisdictions. This assures the public that the rule of law and the fight against corruption continue, regardless of who is heading the government.

94 Kuris (2013) 11.

95 Quah (2001) 34.

The ACA itself must be incorruptible. It must be staffed with honest and competent personnel. In order to reduce incentives for corruption, staff of the ACA must be remunerated adequately. Also, it is necessary to put in place a rigorous disciplinary system for staff of the ACA. Internal controls must be effective to ensure that ACA staffers do not indulge in corruption.

Thirdly, legislation and enforcement should make corruption a high-risk and low-reward activity. Legislation and enforcement form the basic components of any anti-corruption strategy. Weaknesses in either undermine the effectiveness of the anti-corruption regime. Similarly, laws must be enforcement-friendly. Enforcement agencies, including the ACA, the prosecution agency and the Judiciary should be resourced sufficiently and empowered to ensure that every corruption complaint is investigated, prosecuted and adjudicated properly. Effective enforcement is required in order to demonstrate the government's commitment to eradicating corruption and to exhibiting the strength of the ACA. Additionally, punishment for corruption must be such as to operate as a deterrent for the public.

Fourthly, an anti-corruption regime must foster and enlist public support. The public is the primary source of intelligence in fighting corruption. If an anti-corruption regime is to be sustainable, it must have the support of the public. Public support can be procured through education programmes and the development of close co-operation between the ACA and other public and private institutions. Difficulties that discourage the public from reporting corruption must be eliminated. This includes ensuring protection for whistleblowers and witnesses.

Fifthly, incentives for corruption can be reduced by improving working conditions and raising salaries of public servants. Often, petty corruption results from the inability of public servants to live on their legitimate income. Therefore, an increase in salaries and the improvement of working conditions reduce their inclination towards corruption. Indeed, Singapore's success in anti-corruption is attributed to its dual strategy of reducing both the opportunities and incentives for corruption. However, removing incentives for corruption depends on the country's economic growth and financial resources. Developing countries, including Tanzania, likely will be unable to incorporate this element into their anti-corruption strategy.

Finally, a system of checks and balances should be formulated to ensure professionalism, diligence and impartiality in the handling corruption cases. The Hong Kong model provides a good experience of checks and balances in anti-corruption work. It ensures that no corruption allegation goes unexplored. It also cautions law enforcement officials about the likelihood of punishment if they mishandle corruption cases. A proper system of checks and balances helps to guarantee efficiency and effectiveness in fighting corruption.

4.4 Deficiencies of the Anti-Corruption Regime in Tanzania

Tanzania has come a long way in the fight against corruption. Since its independence in 1961, various measures aimed at controlling corruption have been adopted by the government. However, after 56 years of independence, corruption remains a threat to Tanzania's social, economic and political stability. This circumstance warrants an examination of the deficiencies that impede the sustainability of anti-corruption efforts in Tanzania.

According to Man-wai, an examination of a country's anti-corruption regime needs to look into its legal, political, economic and social environments.⁹⁶ Also, it must analyse the internal structures of the ACA in order to assess its effectiveness in fighting corruption.⁹⁷ This study considers the deficiencies of the Tanzanian anti-corruption regime in terms of its political, economic, legal and social context. The analysis is conducted in relation to the lessons from Hong Kong, Singapore and Botswana discussed above.

4.4.1 Political Environment

For anti-corruption efforts to be successful in any country, there must be strong political will supporting those efforts.⁹⁸ Persson *et al* argue that lack of political will is a common characteristic of countries where corruption is rampant.⁹⁹ According to Brinkerhoff, "political will includes the will to initiate the fight against corruption and the will to sustain it

96 Man-wai (2006) 196.

97 Man-wai (2006) 197.

98 Brinkerhoff (2000) 240.

99 Persson *et al* (2013) 454.

until success is attained”.¹⁰⁰ It also encompasses the will to hold corruption perpetrators accountable for their mischief.

The history of the Tanzanian government’s political will to fight corruption is a mixed one. The first government regime is acknowledged for its commitment to fighting corruption. However, that is not the case with the second, third and fourth government regimes. A common feature of these three regimes is that, while the leaders enacted laws and promised clean leadership, their anti-corruption efforts ultimately ended up being entangled in the very corrupt networks that they were meant to fight. The fifth government regime has been in power for one-and-a-half years and has demonstrated its commitment to fighting corruption. However, it is too early to predict whether or not that commitment will last throughout its term.

Tanzania’s deficit of political will is not about the initiation of anti-corruption strategies but about persistence with those strategies in order to make them successful. The middle three of Tanzania’s five government regimes all established anti-corruption systems but lacked the will to sustain them. For instance, President Mwinyi removed from cabinet the Minister for Home Affairs, Augustine Mrema, after Mrema publicly accused the Mwinyi administration of perpetuating corruption.¹⁰¹ Likewise, President Mkapa, who was the first to declare his assets when he assumed office in 1995, was not prepared to do so at the end of his term in 2005. A journalist of Rwandan origin, but who was born and lived in Tanzania, almost lost his citizenship after he challenged Mkapa to declare his assets upon leaving office.¹⁰² Similarly, President Kikwete accepted the resignation of Prime Minister Edward Lowassa after Lowassa was implicated in the Richmond saga but the President did not demand further investigation against him.

The deficit of political will in Tanzania may be ascribed to two factors. The first concerns the absence of a constitutional anchor for fighting corruption and the immunity from prosecution afforded to the President. Article 46(1) and (3) of the Constitution of the United Republic of Tanzania prohibits the instigation of any criminal proceedings “whatsoever” against the President during and after his term for anything he did in his

100 Brinkerhoff (2000) 240.

101 Ameir (27 February 1995).

102 Hussmann & Mmuya (2007) 177.

capacity as President. Criminal charges can be instituted only if the President left office after impeachment by the National Assembly.¹⁰³

Further, the Constitution contains only a single provision that obligates state authorities to direct their policies towards eradication of corruption.¹⁰⁴ Regrettably, this provision is not part of the “justiciable” provisions of the Constitution. Under this constitutional structure, Presidents of Tanzania have wide discretion in fighting corruption. There is always a risk that Presidents may abuse their positions without fear of being prosecuted. The threat of impeachment by Parliament is negligible, especially in the current situation where the ruling party has the majority of the MPs and the President is the party’s chairperson.

Tanzania has been undergoing a process of constitutional review aimed at adopting a new Constitution. The Proposed Constitution of 2014 contains a number of provisions which require the government to fight corruption in elections, public procurement, and in all decisions of public interest.¹⁰⁵ Specifically, article 94(4)(d) of the Proposed Constitution empowers the National Assembly to pass a resolution to impeach the President if he is accused of corruption. However, despite containing more anti-corruption provisions, the Proposed Constitution retains the immunity of Presidents from prosecution and fails to eliminate the deficits of the current Constitution with regard to fighting corruption.

Secondly, the deficit of political will is a result of the single-party hegemony in the country. The *Chama Cha Mapinduzi* (CCM) has been in power since 1961. Over the years, the party has established clientelistic networks that have supported its stay in power.¹⁰⁶ These include networks of its financial supporters, most of whom are part of the commercial elite.¹⁰⁷ In this connection, Gray argues that grand corruption in Tanzania is linked heavily to the nature of elite politics within the ruling CCM party.¹⁰⁸ No wonder the study by Camargo & Rivera on public attitudes towards corruption in Dar es Salaam found that the “ruling party is perceived as having the least impact on community wellbeing”.¹⁰⁹

103 Articles 46(3) & 46A(10) of the Constitution.

104 Article 9(h) of the Constitution.

105 Articles 8(2)(h), 12(2)(a), 27(2)(b), 94(4)(d), 209(2)(d)(ii), 256(2)(d) of the Proposed Constitution, 2014.

106 Croke (2017) 197.

107 Whitehead (2012) 1101.

108 Gray (2015) 385.

109 Camargo & Rivera (2015) 265.

Parliament is an important organ in creating the correct political environment for fighting corruption in a country. Apart from enacting laws, Parliament must hold accountable the executive arm of government for fighting corruption.¹¹⁰ Members of Parliament (MPs) must dissociate themselves from corrupt practices and must promote the fight against corruption in their constituencies.¹¹¹ Further, Parliament has to ensure that adequate resources are allocated to the fight against corruption.

Despite its growing interest in demanding accountability from the Executive, the Tanzanian Parliament has not supported fully the fight against corruption. On the one hand, Parliament has failed to demand investigation of MPs and politicians who have been implicated in various corruption scandals. For instance, the MP for Bariadi constituency, Andrew Chenge, was implicated in the BAE radar scandal and later in the Escrow scandal, but no investigation for corruption has been carried out against him. On the other hand, Parliament has failed to hold accountable the Executive for failing to investigate grand corruption allegations. It has failed also to exercise effective oversight of the PCCB. Section 48(1) of the PCCA requires the Minister responsible for good governance to table before Parliament an annual report on the performance of the PCCB. However, Parliament appears to be reluctant to hold accountable the PCCB, despite the frequent corruption allegations raised by MPs against politicians and public officials.

4.4.2 Legal Environment

Tanzania has a broad legal framework for fighting corruption. The PCCA is the major anti-corruption law. It is supplemented by other laws that regulate conduct and criminalise corrupt practices in other sectors, including the Anti-Money Laundering Act, the Public Procurement Act, the Public Audit Act, the Election Expenses Act and the National Elections Act.

Notwithstanding these legislative resources, the organs charged with law enforcement lack independence and are disappointingly weak in fighting corruption. For instance, the PCCB Director-General and the Deputy Director-General are appointed by the President and POCA does not specify qualifications for holders of these positions. Further, these two senior anti-corruption officials have no security of tenure and are accountable

110 Parliamentary Center (2000) 44.

111 Parliamentary Center (2000) 45.

directly to the President. Arguably, the operation and strength of the PCCB depend upon the will of the President to fight corruption. Former PCCB Director-General, Edward Hoseah, explains the dilemma in which the ACA's leaders find themselves:

As Heads of ACAs either they persevere with high-level investigations and bold reforms that are required to be taken to escalate the level of awareness and engagement of the society they live in, and by so doing they are risking their positions and constantly face the crippling pushback or potential dissolution of the ACAs they lead. Or they lower their sights and pursue unobtrusive efforts that might appear timid or biased. Either outcome imperils the political support or public trust ACAs need to sustain effective operations.¹¹²

A similar situation is encountered by other good governance watchdogs in Tanzania. The Commissioners of the Ethics Secretariat, the CHRAGG and the CAG are all appointees of the President and there is no vetting of the positions by Parliament. While these positions are established constitutionally with security of tenure, the respective institutions have no powers to enforce their findings. The impact of these institutions in promoting good governance and accountability depends upon the will of the Executive to enforce their recommendations. When the Executive does not support their findings, decisions of these institutions remain meaningless. Lack of enforcement is caused also by mistrust and poor co-operation amongst government organs charged with promoting good governance and fighting corruption.¹¹³

The prosecution system, too, is weak and inefficient. The PCCB can prosecute offences under Section 15 of the PCCA only. Section 15 criminalises passive and active bribery, which essentially forms the bulk of petty corruption in the country. It is in this connection that the Bureau has been condemned for going after the "small fish" but being lax on the "big fish".¹¹⁴ Prosecution of other corruption offences depends upon obtaining consent from the DPP.¹¹⁵ Accordingly, high profile and grand corruption cases are prosecuted either by the DPP or by the PCCB with the consent of the DPP. However, statistics suggest that the DPP has been reluctant to grant consent for the PCCB to prosecute corruption cases. For instance, of 143 files referred to the DPP in 2011, consent to prosecute was given in only 34 cases.¹¹⁶

112 Hoseah (2015).

113 See CMI *et al* (2016) 15.

114 Cooksey (2005) 31.

115 UNODC (2013) 51.

116 UNODC (2013) 18.

Ultimately, the prosecutorial fiat of the DPP weakens the anti-corruption enforcement project in Tanzania. Hoseah notes that by 2014 there were not more than 200 DPP state attorneys handling all criminal cases in Tanzania, including corruption cases.¹¹⁷ Further, the DPP attorneys have no special training in handling corruption cases. This observation is substantiated by comparing the number of acquittals and withdrawals of corruption cases against the number of convictions. For instance, in 2008 and 2009, the Resident Magistrates' Courts and District Courts nationwide disposed of a total of 143 corruption cases. Of these, prison sentences were imposed in 22 cases, 51 cases ended up in acquittals, 47 cases were withdrawn and 23 cases were discharged conditionally.¹¹⁸ The weakness of the prosecution system offers an opportunity for corruption offenders to operate without fear of punishment.

The expanding arsenal of global anti-corruption efforts relies on having fair and impartial judicial systems for enforcement.¹¹⁹ However, in Tanzania, the Judiciary has not acquired a good reputation for fighting corruption. The Warioba Report of 1996 classified the Judiciary among the institutions that were engulfed heavily in corruption.¹²⁰ Most of the citizens who appeared before the Warioba Commission expressed a lack of trust in the Judiciary. Similarly, the PCCB National Governance and Corruption Survey (NGCS) of 2009 found that households ranked the Judiciary as the third most corrupt institution in Tanzania, after the traffic police and the police force.¹²¹ The same survey also found that the Judiciary was ranked as the second most ineffective institution in fighting corruption, after the police force.¹²² Without an effective and trustworthy Judiciary, law enforcement becomes defunct. Likewise, where judges and magistrates are corrupt, the entire justice system collapses.

The provisions of the PCCA are inadequate as regards sanctions for corruption crimes. Sections 15 and 16 of the PCCA impose a minimum fine of Tsh500 000 and a maximum of Tsh1 million. The two sections also impose a minimum prison sentence of three years and a maximum of five years. Courts may impose either of the sanctions or both. The punishment for other offences under Sections 17 to 37 of the PCCA is inadequate

117 Hoseah (2014) 387.

118 UNODC (2013) 49.

119 Transparency International (2007) xvi.

120 Warioba Report (1996) 126-151.

121 PCCB (2009) 29.

122 PCCB (2009) 40.

to deter corrupt practices. The maximum penalty for offences under any of these sections is imprisonment for seven years or a fine of Tsh10 million (Tsh15 million for corrupt transactions in procurement and auctions) or both. The sanctions are raised to a minimum of 20 years' and a maximum of 30 years' imprisonment when the offender is charged under the EOCCA.¹²³ Without a minimum penalty being provided for offences under Sections 17 to 37 of the PCCA, courts have the discretion to decide. Where the discretion is abused, the offender may receive a punishment which is light in proportion to the gravity of the offence.¹²⁴

Further, the nature of sanctions under the PCCA does not pursue sufficiently the liability of legal persons. Obviously, legal persons cannot be imprisoned. However, they can be subjected to other criminal, civil and administrative sanctions, including fines.¹²⁵ The minimum and maximum fines imposed by the PCCA are too lenient to deter legal persons from engaging in corrupt practices.

4.4.3 Economic Environment

According to Man-wai, an examination of the economic environment for anti-corruption must examine the relationship that exists between poverty and corruption, the salaries of public servants, and the funding of anti-corruption activities.¹²⁶ Literature on corruption in Tanzania indicates that there is a causal link between poverty or poor remuneration and the spreading of corruption.¹²⁷ The NGCS of 2009 admitted that poverty and poor remuneration were the leading causes of petty corruption.¹²⁸ This finding suggests that pay reforms, including salary increases, would reduce the levels of petty corruption in the country. However, studies on pay reforms in crucial sectors, such as the TRA, suggest the opposite. Fjeldstad examined the impact of increasing salaries to fight fiscal corruption and found that "even with relatively respectable salaries and working conditions, corruption may still thrive".¹²⁹ Similarly, Mutahaba argues that "the link between pay and corruption in Tanzania

123 Section 60(2) of Cap 200.

124 UNODC (2013) 49.

125 Article 26 of UNCAC.

126 Man-wai (2006) 196.

127 Virtanen & Mhando (2008) 126.

128 PCCB (2009) 13.

129 Fjeldstad (2003) 172.

is tenuous”.¹³⁰ Fjeldstad and Mutahaba aver that without effective monitoring and accountability mechanisms, wage increases may end up being bonuses in addition to bribes taken by corrupt officials.¹³¹

This study subscribes to the view held by Fjeldstad and Mutahaba. If low wages are to be regarded as a leading cause of petty corruption, then poor countries will be condemned to permanent corruption. But that is not the case. Singapore was able to implement the second leg of its anti-corruption strategy by improving salaries and working conditions in 1980s, only after attaining economic growth.¹³² Hong Kong has managed to control corruption without focusing on raising salaries of public servants.¹³³ Therefore, it is submitted that corruption in Tanzania can be controlled without needing to raise salaries of public servants. Hence, poverty and poor remuneration are not to be considered as a debilitating deficiency within the Tanzanian anti-corruption regime.

Another aspect of the economic environment for anti-corruption is the funding of anti-corruption activities. De Speville argues that for any anti-corruption approach to succeed, there must be investment of substantial resources into the effort.¹³⁴ Undoubtedly, Hong Kong succeeded in controlling corruption after investing abundant resources into ICAC. According to Section 47(1) of the PCCA, the funds and resources of the PCCB are appropriated by Parliament upon receipt of the “estimates of income and expenditure of the Bureau” from the Minister responsible for good governance. Structurally, the PCCB operates as an institution under the President’s office. Thus, during the tabling of the budget before Parliament, all institutions under the President’s office are combined and represented in a single budget.¹³⁵ Consequently, the MPs are not able to deliberate on the budget of the PCCB directly as it is incorporated in the general budget for the President’s office. Reportedly, the PCCB suffers from lack of resources and capacity to fight corruption effectively.¹³⁶

130 Mutahaba (2005) 22.

131 See Fjeldstad (2003) 172 and Mutahaba (2005) 22.

132 Quah (2001) 33.

133 Quah (1995) 406.

134 De Speville (2010) 65.

135 See Budget Speech by the Minister of State, President’s Office, Public Service Management and Good Governance for the 2016/17 Financial Year.

136 Lindner (2014) 9.

4.4.4 Social Environment

In examining the social environment for anti-corruption in Tanzania, this study considers the public attitudes towards corruption and the willingness of citizens to report corruption. It also explores public perceptions about the government's readiness to fight corruption, the role of the media, and ethics education in schools and universities.

According to the Warioba Report of 1996, corruption was rampant in the early 1990s, to the extent that the public perceived it as a necessity for getting things done.¹³⁷ Sadly, this public perception persists two decades later. A study by Camargo & Rivera in 2015 found that the public perceive service delivery by public institutions to be based on the notion of "something for something and nothing for nothing".¹³⁸ This finding is supported by the Tanzanian Legal and Human Rights Centre (LHRC) which, in 2014, found that 14.8 per cent of respondents were of the view that corruption has become way of life in Tanzania.¹³⁹ Further, the public has a negative perception of the government's performance in anti-corruption. In a study by Afro-Barometer and REPOA in 2012, 66 per cent of respondents viewed the government's performance in fighting corruption as very bad or fairly bad.¹⁴⁰ The rate dropped to 58 per cent in 2014.¹⁴¹

The negative perceptions of citizens against the government undermine the legitimacy of public institutions charged with fighting corruption. They also discourage the public from reporting corruption. Afro-Barometer and REPOA's study of 2015 reports that 82 per cent of respondents who were compelled "to pay a bribe in order to access a public service" did not report the incident to the authorities.¹⁴² Factors that undermine the reporting of corruption include the fear of retribution from corrupt officials who have strong networks or power and the citizens' ignorance of reporting procedures and systems. However, the most frightening factor is that citizens consider reporting as "useless" since culprits will not be prosecuted and the reporter may end up being victimised.¹⁴³

137 Warioba Report (1996) 4.

138 Camargo & Rivera (2015) 259.

139 LHRC (2014) 237.

140 Afro-Barometer & REPOA (2015) 3.

141 Afro-Barometer & REPOA (2015) 3. See also TWaweza (2014) 9.

142 AfroBarometer & REPOA (2015) 2.

143 PCCB (2009) xvi.

Partly, the social environment described above is caused by the contradictory legal framework for regulating whistleblowing in Tanzania. Section 51 of the PCCA prohibits the disclosure of the identity of whistleblowers during court proceedings. It also introduces compensation for cases where the informer suffers reprisal, retaliation or victimisation.¹⁴⁴ However, the Whistleblower and Witness Protection Act (WWPA)¹⁴⁵ contains provisions which frustrate the essence of whistleblowing. For instance, the WWPA introduces the concept of “reasonable belief” for reporting corruption.¹⁴⁶ Furthermore, it requires details of the informer, including full names, address and occupation, to be recorded when the corruption complaint is made.¹⁴⁷ Ultimately, these provisions discourage potential whistleblowers from reporting corruption. In a country where citizens have no trust in public institutions, the requirement to disclose the identity of whistleblowers is unfounded.

Another aspect of the social environment is the role of the media. According to Stapenhurst, the media fight corruption by investigating and exposing corrupt officials, thereby prompting investigation by responsible government organs.¹⁴⁸ Also, the media reinforce the work and legitimacy of anti-corruption bodies by reporting their success and exposing their flaws.¹⁴⁹ To fulfil these roles, the media need to be guaranteed freedom of expression.

In Tanzania, freedom of expression is guaranteed under article 18 of the Constitution. However, the state of freedom of expression has deteriorated steadily during the tenure of the fifth government regime. Press freedom has been curtailed significantly by the recently-enacted Media Services Act,¹⁵⁰ the Cybercrimes Act,¹⁵¹ and the Statistics Act.¹⁵² Consequently, Tanzania has performed poorly in the 2017 Press Freedom Index, which places it in 83rd position, down 12 positions from the previous year’s ranking.¹⁵³ President Magufuli has been intolerant of media criticism. Repeatedly, the President has warned

144 Section 51(3) of the PCCA.
145 Act 20 of 2015.
146 Section 4(1) of the WWPA, 2015.
147 Section 5(1) of the WWPA, 2015.
148 Stapenhurst (2000) 4-5.
149 Stapenhurst (2000) 6-7.
150 Act 12 of 2016.
151 Act 14 of 2015.
152 Act 9 of 2015.
153 World Press Freedom Index (2017).

media houses to “watch out” since they do not have the “extent of freedom” that they claim to have.¹⁵⁴

Lastly, Tanzania lacks a curriculum tailored towards imparting anti-corruption knowledge to children and the youth. There are more than 3 000 youth anti-corruption clubs nationwide but their activities are not integral to the education curricula. Ethical studies are taught at various levels of education but focus on specific professional ethics, neglecting dedicated anti-corruption training.

4.5 Reforms for a Sustainable Anti-Corruption Regime in Tanzania

Having discussed the elements of successful anti-corruption regimes in other jurisdictions, and having explored the deficiencies of the current Tanzanian anti-corruption regime, the last research question can be answered now: what reforms are needed in order to create a sustainable anti-corruption regime for Tanzania?

In answering this question, this study extrapolates from the anti-corruption strategies employed by Hong Kong, Singapore and Botswana and customises them to fit the local circumstances of Tanzania. In this regard, it takes note of the different geographical, social, political and economic contexts and does not attempt to import wholesale these foreign anti-corruption strategies into Tanzania. The proposed reforms are formulated in response to the Tanzanian context and are based on the specificities of the country’s anti-corruption structures.

4.5.1 Introducing a Constitutional Anchor

As noted earlier, the deficit of political will in Tanzania is caused mainly by the absence of a constitutional anchor for fighting corruption and by the legacy of single-party domination. With regard to the latter, there is no straightforward solution. The problem lies within the party’s internal structures and requires extensive research on how its clientelistic networks can be overcome. Nevertheless, overcoming the constitutional deficit eventually will have an impact on the internal operations of political parties.

This study proposes two reforms in order to create a sustainable political will for fighting corruption in Tanzania. Firstly, the Constitution should be amended to establish the

154 See Mwalimu & Ibengwe (24 January 2017) and Reuters (24 March 2017).

criminal liability of Presidents for crimes they commit while in office, including corruption. Such liability should cover situations where a President fails to take measures to combat corruption during his term. Secondly, the obligation placed on state organs to fight corruption should be moved to the justiciable part of the Constitution. The Constitution should allow citizens to sue the government where it fails to fight corruption effectively. Just as other rights are justiciable under the Constitution, so should be the right of citizens of Tanzania to live in a corruption-free country. Certainly, fighting corruption should be a constitutional obligation, not a policy issue. Organs charged with fighting corruption and promoting good governance should have the endorsement of the Constitution.

4.5.2 Restructuring the PCCB

In order to fight corruption successfully, the ACA needs to be fully independent. As discussed earlier, the PCCB's independence in fighting corruption is inadequate. Thus, there is a need to restructure the PCCB in order to ensure its institutional and operational independence. As fighting corruption becomes a constitutional obligation, the organ responsible for implementing this obligation should have constitutional powers. Accordingly, the Constitution should be amended to re-establish the PCCB as a constitutional organ. Likewise, the Constitution should provide for the independence of the PCCB.

The appointment of senior officials of the PCCB should be made by an independent appointment Secretariat, and should be based on merit and on predefined criteria. The appointing Secretariat should consist of Members of Parliament and civil society organisations in order to ensure public participation. The Constitution should provide for security of tenure for the PCCB's senior officials. Again, the PCCB should have an independent budget which can be tabled in Parliament.

In order to safeguard against the abuse of independence, there should be strong review and disciplinary mechanisms. All activities of the PCCB should be reviewed by independent committees. Similarly, the conduct of senior officials and staff of the PCCB should be vetted by an independent committee which will submit its recommendations to the organ(s) which have disciplinary powers over the official or staff concerned. Further, there should be strong internal systems for monitoring and evaluating the activities and

conduct of the PCCB and its staff. There should be vigorous checks and balances in order to control discretion and reduce chances for abuses of power. Ultimately, the fight against corruption needs to be institutionalised securely.

4.5.3 Strengthening Law Enforcement

The success of any anti-corruption regime depends upon the presence of robust law enforcement systems.¹⁵⁵ Eventually, Tanzania must overcome its enforcement deficit for it to control corruption. To this end, the PCCB should be more pro-active in investigating corruption. This should begin with the installation of a solid complaints management system which encourages citizens to report corruption. All legal provisions that undermine whistleblowing should be removed from the statute book. Whistleblowers should be encouraged to report corruption with clear guarantees of anonymity and confidentiality. Also, the PCCB should be pro-active in gleaning corruption allegations from different fora, including the mass media and the social media, regardless of whether they are made formally or informally.

Complaints received should be investigated thoroughly. In order to ensure that investigations are carried out professionally, the PCCB must be staffed with experts in various disciplines, including lawyers with expertise in anti-corruption law, forensic experts, intelligence experts, professional investigators, professional accountants and undercover experts. Further, there should be steady and efficient collaboration between the PCCB and other enforcement organs and oversight institutions, including the police force, the FIU and the CHRAGG, the CAG and the Ethics Secretariat.

An investigation should be carried out against any person alleged to be involved in corruption, regardless of his social status or political affiliation. The big-and-small-fish syndrome should be eradicated. Likewise, there should not be discrimination between petty and grand corruption. As long as the complaint is alleging corruption, a proper investigation should be carried out. Reports of completed investigations should be publicised. This is important for restoring public confidence in the ACA.

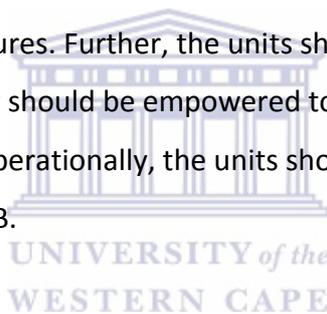
Completed investigations should be followed by effective prosecution. The DPP's monopoly in the prosecution of corruption cases should be eliminated. The National

155 Man-wai (2006) 198.

Prosecutions Act¹⁵⁶ and the PCCA should be amended to allow the PCCB to prosecute all corruption crimes without needing to obtain the consent of the DPP. Additionally, after establishing the criminal liability of Presidents, the Constitution should empower the PCCB to investigate and prosecute them for corruption crimes. Moreover, sanctions for corruption crimes must be increased with a view to making corruption a high-risk crime. The PCCA should provide minimum sanctions for all corruption crimes in order to limit the discretion of courts when determining sentences.

4.5.4 Establishing Anti-Corruption Units in Government Departments

Anti-corruption units ought to be established in all government departments and institutions. The primary function of these units should be to analyse corruption risks in their situations. They should be responsible for the examination of the practices and procedures of those departments or institutions in order to determine corruption-prone areas and propose counter measures. Further, the units should provide anti-corruption education at their locations. They should be empowered to expose corrupt practices and to receive corruption complaints. Operationally, the units should be accountable to and work under the supervision of the PCCB.



4.5.5 Soliciting Public Support

The PCCB should revisit its techniques of enlisting public support, and it must strive to clean up its image before the public. At this point, publicity matters. The PCCB should adopt an open and transparent system of sharing information with the public. Reports covering the PCCB's performance, including successful prosecutions, should be published in Kiswahili, which is the *lingua franca*, and should be accessible widely to the public. The Bureau should utilise all media fora, including newspapers, television, radio, websites and social media to educate the public about corruption and solicit their support in fighting it.

4.5.6 Integrating Ethics and Anti-Corruption Studies in Curricula

Tanzania needs to have good leaders in both political and management positions. However, good leaders are not born, they are made. Ethics and anti-corruption studies should be

156 Act 27 of 2008.

introduced into the curricula of schools, colleges and universities. Courses on professional ethics should include topics on corruption and anti-corruption for the various professions.

4.6 Limitations of the Proposed Reforms

The implementation of the reforms proposed above is subject to a number of limitations which may hamper the process of creating a sustainable anti-corruption regime for Tanzania. These limitations include lack of political will and inadequate resources to fund anti-corruption activities.

4.6.1 Lack of Political Will

The most challenging aspect of anti-corruption work is the creation of the necessary political will. Deficient political will is the leading cause of corruption increasing in many countries. Simultaneously, strong political will is the nucleus of the anti-corruption process. Thus, the process of creating a sustainable anti-corruption regime in Tanzania requires potent political will to implement the proposed reforms.

The proposed reforms entail major constitutional amendments. If implemented properly, the reforms may interfere with the interests of the ruling party, politicians and other prominent persons. Therefore, the constitutional amendments may not be welcomed by those in power. Tanzania completed its constitution review process in 2014 and there has been no progress regarding the referendum on the new Proposed Constitution. Indeed, on 4 November 2016, President Magufuli indicated that he was not interested in constitutional review currently.¹⁵⁷ This does not bode well for the recommended anti-corruption constitutional reforms.

Changes to the institutional framework depend upon the political will of the government too. Without ample support from the government, the institutions charged with fighting corruption will continue as usual, making little progress in controlling corruption.

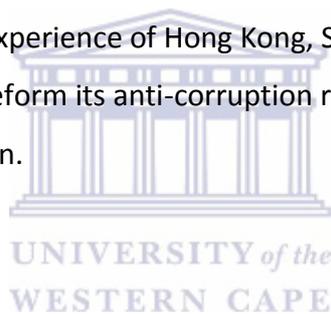
157 See VOA Swahili (4 November 2016).

4.6.2 Inadequate Resources

The effective implementation of the proposed reforms presupposes the availability of adequate human and financial resources. Although, the reforms are intended to be cost-effective, a sustainable anti-corruption regime needs sufficient funds in order to attain the desired results. The political will of the government must be reinforced by financial commitment to the fight against corruption.

4.7 Concluding Remarks

Fighting corruption is not an easy undertaking. It requires an uncompromising political will and government preparedness to track down the corrupt and protect the victims. It presumes strong public resistance to paying bribes and a public culture of exposing those who involve themselves in corrupt practices. It demands effective co-operation and co-ordination amongst organs and institutions charged with the investigation, prosecution and adjudication of corruption. The experience of Hong Kong, Singapore and Botswana can serve well Tanzania's efforts to reform its anti-corruption regime and adopt a more robust approach to combating corruption.



Chapter Five

General Conclusion

This study was conducted to explore avenues that may be adopted for creating a sustainable anti-corruption regime for Tanzania. Thus, it assessed the post-independence anti-corruption legislative enforcement trends in Tanzania with a view to determining the factors that favoured or impeded their success. It also analysed anti-corruption policies and programmes adopted by different post-independence governments in Tanzania, and examined the current legal and institutional anti-corruption regime in order to identify its deficiencies and to propose reforms. The study had recourse to the international anti-corruption instruments to which Tanzania is a State Party, and gathered anti-corruption best practices from Hong Kong, Singapore and Botswana.

Corruption had begun to mushroom in the Tanzanian public service a few years after independence. Since then, post-independence governments in Tanzania have attempted to fight corruption by adopting a range of legal and policy measures. Disappointingly, these measures have failed to reduce the levels of corruption in the country.

The anti-corruption strategies deployed by the first, second, third and fourth post-independence government regimes were constrained by a number of factors. For the first post-independence government regime, anti-corruption initiatives were hampered mainly by the bad economic situation that engulfed the country from the early 1970s to mid-1980s. President Nyerere was determined to fight corruption but the attempts by his government to implement laws and policies aimed at eliminating corrupt practices among public servants were thwarted by the economic environment. The bad economic situation also limited the government's ability to fund anti-corruption activities.

For the second post-independence government regime, anti-corruption work was fettered by the flaccidity of the government leaders. Apart from issuing the Presidential Circular on Guidelines for Deterrence of Corruption, transforming the Anti-Corruption Squad into the Prevention of Corruption Bureau, and enacting the Public Leadership Code of Ethics Act of 1995, no other significant initiatives were taken by this government regime. Hence, the spread of corruption in the late 1980s to the early 1990s is premised on the lack of

political will from the government's top leaders. The same applies, more or less, to the third and fourth post-independence government regimes. During these regimes, laws were enacted and institutions were either established or overhauled with a view to fighting corruption more actively. However, these efforts were characterised by serious enforcement deficit which ultimately minimised their impact on corruption.

The fifth post-independence government regime has been in power for one-and-a-half years and has demonstrated a commitment to fighting corruption, with President Magufuli identifying himself as a leader with a zero tolerance policy to corruption. However, Magufuli's anti-corruption approach, too, is unsustainable. His approach does not seek to empower institutions to fight corruption persistently, but concentrates on ambushing it episodically. Also, Magufuli is focusing on building his image as a strong leader and not on building strong institutions which can fight corruption even in his absence.

The current Tanzanian anti-corruption regime has many deficiencies that encumber its sustainability. Firstly, fighting corruption is dependent upon the personal will of the President. The law does not obligate Tanzanian Presidents to fight corruption. Conversely, it immunises them from criminal prosecutions for crimes they commit while in office, including corruption. Also, institutions charged with fighting corruption are subject to the will of the President. Hence, when the President is weak on corruption, the entire anti-corruption regime virtually is paralysed.

Secondly, Parliament has not been pro-active enough in holding the government accountable with regard to fighting corruption. Even where some of its members have been implicated in corruption scandals, Parliament has failed to demand investigations against them. Thirdly, organs charged with fighting corruption and promoting good governance are not fully independent. Lack of independence affects the impartiality of these institutions and diminishes public confidence in their operations. Fourthly, anti-corruption efforts are curtailed by the poor law enforcement that surrounds the investigation, prosecution and adjudication system. Finally, public support for anti-corruption is almost absent. There are no workable strategies for enlisting the public support, and whistleblower laws do not encourage corruption reporting.

The Tanzanian anti-corruption regime is in need of reform to make it more cost effective and more practicable. Thus, the study recommends the introduction of a

constitutional anchor for the fight against corruption, including the removal of the immunity from criminal prosecution for Presidents. It also recommends re-structuring of the PCCB in order to give it a constitutional endorsement in fighting corruption. This involves empowering the PCCB to investigate and prosecute corruption allegations against anyone in Tanzania, including the President.

Further, the law enforcement system needs to be strengthened by such measures as the establishment of friendly whistleblower procedures and the provision of adequate resources for the PCCB. Anti-corruption units ought to be established in government institutions and departments with a view to decentralising anti-corruption work. Anti-corruption and ethics studies ought to be introduced at all levels of education, from primary schools to universities, in order to breed a generation of good leaders and anti-corruption topics ought to be integrated into all courses on professional ethics.

Generally, Tanzania can control corruption if it adopts a more robust and sustainable approach to the problem. Already the country has a broad legal and institutional framework for fighting corruption in place. What is missing is the will to empower and capacitate the elements of this framework in order to attain the desired results. The proposed reforms seek to eliminate this deficit of political will in fighting corruption and facilitate sustainable anti-corruption work in Tanzania.

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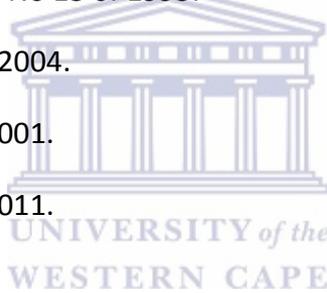
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