

## TANZANIA'S POST-INDEPENDENCE ANTI-CORRUPTION EFFORTS: EXAMINING THE PREVENTION AND COMBATTING OF CORRUPTION BUREAU'S (PCCB) ROLE DURING MAGUFULI'S REGIME

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### ABSTRACT

During the five years of John Magufuli's presidency, Tanzania's anti-corruption efforts yielded significant improvements. This improved performance was associated mainly with the President's personal anti-corruption stance. Institutions entrusted with fighting corruption, particularly the Prevention and Combating of Corruption Bureau (PCCB), appear to be performing their functions based on the attitude of the incumbent President towards the problem. This creates a risk of personalising anti-corruption instead of institutionalising it. Unfortunately, President Magufuli passed away in March 2021 and the sustainability of his anti-corruption approach is now in question. This article assesses Tanzania's post-independence efforts to fighting corruption, and specifically examines the role of the PCCB during the reign of President Magufuli. We argue that during Magufuli's presidency, the anti-corruption approach in the country has been top-down instead of bottom-up. Decisions and directives to investigate and prosecute corruption have emanated from the President and other members of the Executive directed towards the PCCB, which is the primary organ in fighting corruption. The article proposes: the introduction of a constitutional anchor in the establishment and mandate of the PCCB and its staff; the abolition of the Director of Public Prosecutions (DPP) fiat in order to allow the PCCB to prosecute corruption offences without having to obtain consent of the DPP; and adopting various strategies to enlist public support in fighting this vice.

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## 1. INTRODUCTION

Corruption is a global conundrum.<sup>1</sup> It is widespread to the extent that 'not one single country, anywhere in the world, is corruption-free'.<sup>2</sup> Corruption affects the lives of billions of people worldwide as it undermines democracy and accountability in government systems, supports organised crime and terrorism, distorts economic markets, influences civil and political unrests and exacerbates extreme poverty.<sup>3</sup> Considering the corrosive effect of corruption, various measures have been adopted by nations, regional bodies and international organs to fight this vice.<sup>4</sup>

Corruption manifests itself in different forms depending on the circumstances of its occurrence, the people involved and the purpose of their undertaking.<sup>5</sup> The different forms in which corruption may exhibit itself include bribery, clientelism, embezzlement, influence peddling, illicit enrichment, abuse of office or authority, diversion and nepotism.<sup>6</sup> The diversity of the forms of corruption has culminated into various interpretations of the concept by scholars. On the one hand, post-colonialists and Marxists construe corruption as resulting from capitalist desire for profit and private accumulation of wealth.<sup>7</sup> On the other hand, liberal-rationalists and free-market economists delineate corruption through its socio-economic

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- 1 Annan KA (2004) Foreword to the United Nations Conventions against Corruption, New York: United Nations at iii.
  - 2 Transparency International (2015) *Corruption Perceptions Index* available at <https://www.transparency.org/en/cpi/2015> (visited 26 June 2020) at 1.
  - 3 Annan KA (31 October 2003) 'Secretary General Statement on the Adoption by the General Assembly of the United Nations Convention against Corruption' available at <https://www.unodc.org/unodc/en/treaties/CAC/background/secretary-general-speech.html> (visited 26 June 2020).
  - 4 These measures include the adoption of the United Nations Conventions against Corruption (UNCAC) of 2003, the Inter-American Convention against Corruption of 1996, the African Union Convention on Preventing and Combating Corruption (AUCPCC) of 2003, the Council of Europe Criminal/Civil Law Conventions on Corruption of 1999 and, the Southern African Development Community Protocol against Corruption of 2001.
  - 5 Dimant E & Schulte T (2016) 'The Nature of Corruption: An Interdisciplinary Perspective' 17(1) *German Law Journal* 53-72.
  - 6 See United Nations Convention against Corruption (UNCAC) arts 15 -23, African Union Convention on Preventing and Combating Corruption (AUCPCC) art 4(1), Southern African Development Community Protocol against Corruption (SADC Protocol) art 3, and the Prevention and Combating of Corruption Act No 11 of 2007 secs 15-36.
  - 7 Ninsin KA (2000) 'The Root of Corruption: A Dissenting View' in Mukanda RS (ed) *African Public Administration* Harare: AAPS Books; and De Maria W (2008) 'Measurements and Markets: Deconstructing the Corruption Perceptions Index' 21(7) *International Journal of Public Sector Management* 777-797

effects.<sup>8</sup> They argue that corruption undermines investment and perpetuates the siphoning off of public resources for private advantage.<sup>9</sup> Despite their ideological differences, scholars agree generally that corruption is evil and has to be combatted.<sup>10</sup>

Despite its global presence, the intensity and impact of corruption varies across nations.<sup>11</sup> Developing countries which are characterised by low literacy levels and inefficient government institutions are more vulnerable to corruption.<sup>12</sup> Countries with low-income levels are identified as the most corrupt in the Corruption Perception Indices published annually by Transparency International.<sup>13</sup>

Tanzania is a developing country and its corruption rate is relatively high. The literature indicates that corruption in this country has existed at different levels during different eras of the country's history which include colonialism, the post-independence formative years and the present.<sup>14</sup> During the aforementioned periods, the nation adopted various measures aimed at overcoming this vice. The outcome of those measures varies across the regimes which have led this country during those eras. The first post-independence government regime under President Nyerere is considered to have been determined to fighting corruption.<sup>15</sup> However, the case is different with regard to the second, third and fourth regimes, which are perceived to have been weak on fighting corruption or ended up being engulfed by it.<sup>16</sup>

Tanzania's fifth post-independence government regime under President Magufuli led the country for five years and five months. Unfortunately, President Magufuli died on 17 March

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- 8 Mauro P (1995) 'Corruption and Growth' 110(3) *Quarterly Journal of Economics* 681-712 and Kaufmann D (1997) 'Corruption: The Facts' 107 (summer) *Foreign Policy* 114-131.
- 9 William A & Dupuy K (2016) 'At the extremes: Corruption in natural resource management revisited' U4 Brief No 6 available at <https://www.cmi.no/publications/file/5950-at-the-extremes-corruption-in-natural-resource.pdf> (visited 22 March 2021).
- 10 Dimant & Schulte (2016) 56-58.
- 11 Parliamentary Centre (2000) *Controlling Corruption: A Parliamentarian's Handbook* (2ed) Canada: World Bank Institute and Canada International Development Agency at 20.
- 12 Warf B (2016) 'Global geographies of corruption' 81(5) *GeoJournal* 657-669 at 663.
- 13 See for instance Transparency International (2021) *Corruption Perceptions Index 2020* available at [https://images.transparencycdn.org/images/CPI2020\\_Report\\_EN\\_0802-WEB-1\\_2021-02-08-103053.pdf](https://images.transparencycdn.org/images/CPI2020_Report_EN_0802-WEB-1_2021-02-08-103053.pdf) (visited 16 March 2021). Sub-Saharan Africa is the lowest performing region in the 2020 CPI 'showing little improvement from previous years and underscoring a need for urgent action' at 20.
- 14 Mashamba CJ (2004) *When the Operation of the Law Enhances Corruption in Tanzania: An Enigma in a Legal Regime Needing Reform* Dar es Salaam: National Organisation for Legal Assistance at 14; and Lukiko L (2017) *Exploring a Sustainable Anti-Corruption Regime for Tanzania* LL.M Dissertation University of the Western Cape available at <https://etd.uwc.ac.za/xmlui/handle/11394/5692> (visited 26 June 2020) at 31-54.
- 15 Msekwa P (2012) *The Story of the Tanzania Parliament* Dar es Salaam: Msekwa at 124-136.
- 16 Lukiko (2017) at 37-42.

2021, while leading his second five-year presidential term that commenced in November 2020. During his presidency, the government demonstrated a practical commitment to fighting corruption, with the President himself in the frontline. The country has witnessed a significant decline in corruption levels in the past five years. Currently, Tanzania has a score of 38/100 and ranks 94<sup>th</sup> out of 180 countries in the Transparency International's Corruption Perceptions Index (CPI) 2020.<sup>17</sup> This is an upturn by 23 positions from its 117<sup>th</sup> ranking in 2015, the year Magufuli became President.<sup>18</sup>

Despite its improved performance in combatting corruption, Tanzania's approach is structurally and practically unsustainable. Fighting corruption appears to be hinged on the will of the incumbent President instead of being institutionalised.<sup>19</sup> When the President is 'soft' on corruption, the problem escalates. When he is determined to fight it, the problem declines. This paradox creates uncertainties about future anti-corruption trends in the country, especially now that Magufuli is gone.

This article builds on the research conducted for a Master of Laws dissertation by Lukiko Lukiko at the University of the Western Cape in 2017.<sup>20</sup> It analyses Tanzania's anti-corruption ecology across the past five post-independence government regimes. Specifically, it examines the performance of the fifth government regime under President Magufuli and the role of the PCCB during that period. The PCCB is the primary organ entrusted with the role of curbing corruption in the country. Consequently, the examination of the PCCB in this article is motivated by the fact that despite the country's positive performance in anti-corruption efforts during Magufuli's regime, the PCCB's contribution in this regard was inadequate.<sup>21</sup> The article deconstructs the PCCB by examining its structural and functional components with the view to identifying aspects which prevents it from performing effectively as a primary anti-corruption body in the country and proposing appropriate reforms.

Part two of this article describes the anti-corruption efforts taken since independence in 1961. Subsequently, part three analysis the current legal and institutional framework deployed to fighting corruption in the country. Parts four and five examine the PCCB, considering its establishment, composition, functions, reporting and accountability mechanisms and, performance during Magufuli's administration. Part six offers some critical reflections, lessons and proposes interventions needed. Part seven is the conclusion.

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17 Transparency International (2021) *Corruption Perceptions Index* available at <https://www.transparency.org/en/cpi/2020/index/nzl> (visited 15 March 2021) at 3.

18 See Lukiko (2017) at 3 for ranking trends between 2000 and 2016.

19 Lukiko (2017) at 4.

20 Lukiko (2017).

21 See detailed discussion at part 5 of this article.

## 2. THE HISTORICAL MILIEU OF TANZANIA'S ANTI-CORRUPTION REGIME

Although corruption existed in Tanzania before colonialism, the country's anti-corruption regime can be traced from the 1930s when the British colonial government in Tanganyika<sup>22</sup> introduced in the Penal Code the act of demanding, soliciting, giving or receiving bribes as an offence.<sup>23</sup> As the threat of corruption increased, the colonial government enacted legislation to address the problem. The first anti-corruption statute, namely, the Prevention of Corruption Ordinance was enacted in 1958. At that time, the Ordinance adequately addressed corruption as there were not many public servants to be monitored under it and the private sector's influence was negligible.<sup>24</sup> The Ordinance criminalised a range of corrupt practices such as 'receiving gifts and commissions, which [were] considered to be corrupt transactions with agent and public servants obtaining an advantage without consideration'.<sup>25</sup> Likewise, fighting corruption was a key agenda of nationalists in the struggle for independence. The nationalist movement Leader Julius Nyerere addressed Parliament in May 1960 and labelled corruption as an 'enemy of the people' equal to treason.<sup>26</sup>

After independence in 1961, President Nyerere was determined to build a classless socialist state where there would be no exploitation amongst persons. As such, the government devised various mechanisms to eliminate opportunities for exploitation, corruption and private accumulation of wealth. In 1963, the Minimum Sentences Act<sup>27</sup> was enacted and introduced, in addition to imprisonment, corporal punishment of twenty-four strokes for persons convicted of corruption under the Prevention of Corruption Ordinance.<sup>28</sup>

In 1965, Tanzania became a one-party state and the Tanganyika National Union (TANU) was recognised constitutionally as the only political party in the country.<sup>29</sup> Interestingly, the Constitution of TANU formed part of the Interim Constitution of the country. One of the objectives of TANU was 'to see that the Government eradicates all types of exploitation, intimidation, discrimination, bribery and corruption'.<sup>30</sup> In that regard, the Constitution of TANU contained a member's pledge to fight corruption which stated that "corruption perverts justice,

22 Tanganyika was renamed Tanzania after its union with Zanzibar in 1964.

23 Law Reform Commission of Tanzania (LRCT) (2004) *Report on the Review of Legislation Relating to Corruption* Dar es Salaam: LRCT at 8.

24 United Republic of Tanzania (URT) (1996) *Report of the Presidential Commission of Inquiry on Corruption* Dar es Salaam: Government Printers at 11.

25 LRCT (2004) at 8.

26 Nyerere JK (1967) *Freedom and Unity* Dar es Salaam: Oxford University Press at 82.

27 Act 29 of 1963.

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

29 The Interim Constitution of Tanzania, 1965 sec 3.

30 URT (1965) *Constitution of TANU* art 2.

I shall neither offer nor accept bribes".<sup>31</sup> Further, section 67 of the Interim Constitution established the Permanent Commission of Enquiry and conferred upon it the power to oversee the conduct of government officials and agencies. The President was, however, not subject to the oversight powers of the Commission. These early measures indicate the first post-independence government's determination to fight corruption. However, Nyerere had to contend with socio-economic currents.

In 1967, Tanzania formally adopted socialism as its political and economic ideology through the famous Arusha Declaration. This approach had two implications. Firstly, politicians and public servants were prohibited from engaging in any private accumulation of wealth. They could, for example, not hold shares in any private-owned company.<sup>32</sup> Secondly, the government nationalised and controlled all major means of production, including land, industries, financial institutions and import and export facilities.<sup>33</sup> This move resulted in serious economic problems which engulfed the country from the early 1970s. In particular, there were grave shortages of essential supplies such as foodstuffs and consumer goods, as well as limited industrial inputs.<sup>34</sup> The financial system was overwhelmed to the extent that it could not support the established Regional Trading Corporations (RTCs) and co-operative societies to maintain the flow of supplies to the public and production sectors.<sup>35</sup> The government started to ration the available supplies to address those shortages. This brought new avenues for corruption. Officials entrusted with the rationing, hoarded the available goods and released them when offered a bribe.<sup>36</sup> At this point, need and greed drove corruption.<sup>37</sup>

In response to the increased levels of corruption, the government enacted the Prevention of Corruption Act (POCA) of 1971 to replace 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.<sup>38</sup> The government furthermore established the Anti-Corruption

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31 URT (1965) art 5.

32 See URT (1967) *Arusha Declaration and TANU's Policy on Socialism and Self-Reliance* Arusha: URT part 5.

33 Resnick IN (1981) *The Long Transition: Building Socialism in Tanzania* New York: Monthly Review Press at 108.

34 Resnick (1981) at 108.

35 Heilman B & Ndumbaro L (2002) 'Corruption, Politics, and Societal Values in Tanzania: An Evaluation of the Mkapa Administration's Anti-Corruption Efforts' 7(1) *African Journal of Political Science* 1-19 at 5.

36 Kasella-Bantu J (1978) *Tanzanian Voice from Detention: The Causes of Corruption in Tanzania* Dar es Salaam: Dar es Salaam University Press at 26.

37 Cooksey B (2005) *Corruption and Governance in Tanzania: What the Literature Says* Dar es Salaam: Royal Norwegian Embassy & Governance Working Group at 5.

38 POCA sections 3 & 9.

Squad (the Squad) in 1975.<sup>39</sup> The Squad had three main functions, namely: Preventing corruption in the public, parastatal and private sectors; Investigating and, subject to approval by the Director of Public Prosecutions (DPP), prosecuting corruption offences; and Advocacy on corruption prevention. The Squad arrested, prosecuted and convicted many people in this regard.<sup>40</sup> Nevertheless, the Squad was not a fully-fledged anti-corruption agency. It was established as a special department of the police force and had limited staff and resources. Consequently, its operation depended mostly on the police force and the DPP for investigation and prosecution.<sup>41</sup>

In 1978, Tanzania went to war against Uganda. The effects of that war devastated Tanzania's economy and corruption took root. The government lost its ability to provide services to its people and even to pay public servants their wages.<sup>42</sup> State control over the economy proved inefficient and currency smuggling became rampant.<sup>43</sup> External financial aid was also reduced as most donors became unwilling to continue supporting what they considered as 'an unsustainable development model' embraced by the Tanzanian government.<sup>44</sup> As the situation worsened, an elite merchant class arose which operated an underground economy characterised by economic sabotage and racketeering.<sup>45</sup>

Once again, the government responded by declaring war against economic sabotage. It enacted the Economic Sabotage (Special Provisions) Act of 1983<sup>46</sup> which, *inter alia*, criminalised corruption as an offence of economic sabotage. This law was short-lived. In the following year, it was repealed and replaced by the Economic and Organised Crime Control Act (EOCCA) of 1984.<sup>47</sup> In particular, EOCCA established the Economic Crimes Court with jurisdiction over cases of economic crimes, including corruption.<sup>48</sup>

In 1985, President Nyerere, who had led the country for twenty-five years, voluntarily stepped down from the presidency and Ali Hassan Mwinyi succeeded him. President Mwinyi abandoned the socialist policies of his predecessor in favour of economic and political

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

40 URT (1996) at 24.

41 Shaidi PL (1975) *The Problem of Corruption in Tanzania* LL.M Dissertation, University of Dar es Salaam at 112.

42 Heilman & Ndumbaro (2002) at 5.

43 Heilman & Ndumbaro (2002) at 5.

44 Muganda A (2004) *Tanzania's Economic Reforms – and Lessons Learned* Washington: World Bank at 2.

45 Stokke O (1995) *Aid and Political Conditionality* New York: Frank Cass at 232.

46 Act 9 of 1983.

47 Act 13 of 1984.

48 EOCCA section 3(1).

liberalisation which was highly favoured by the Bretton Woods Institutions.<sup>49</sup> A free-market economy, multi-party democracy, trade liberalisation and privatisation were aimed at reducing state control over the economy and thereby minimising opportunities for corruption.<sup>50</sup> However, as business restrictions were relaxed and businessmen grew closer to public leaders, corruption engulfed state institutions ferociously. By the end of Mwinyi's first presidential term, corruption was rampant in most of the top government departments, ministries, parastatal banks, immigration departments, police force and magistrate courts.<sup>51</sup>

In response to the deteriorating situation, the government amended the Prevention of Corruption Act in 1990 and transformed the Anti-Corruption Squad into the Prevention of Corruption Bureau (PCB). As its name suggests, the PCB dealt primarily with corruption prevention. It had a limited mandate to prosecute corruption offences, subject to the approval of the DPP. By the end of Mwinyi's second term, corruption levels in government institutions had risen to the level that Mwalimu Nyerere labelled it as one of the 'cracks' of Mwinyi's administration. He stated that:

'We have been shaken, a wide crack. Nowadays, corruption in Tanzania is not a shameful thing. ...our country is stinking'.<sup>52</sup>

To contain the situation, the government enacted the Public Leadership Code of Ethics Act of 1995,<sup>53</sup> 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. The same year, Mwinyi ended his tenure as president and Benjamin Mkapa succeeded him.

Mkapa's early years as a President indicated his determination to fight corruption and restore ethics in public service. He stated that he 'meant business in fighting corruption'.<sup>54</sup> In 1996, he designated a Presidential Commission of Inquiry on Corruption, under the Chairmanship of Justice Joseph Warioba (retired), known as the Warioba Commission, to assess the state of corruption in the country and to propose appropriate interventions.

Based on the report of the Warioba Commission, the government adopted various measures to fight corruption. These included the operationalisation of the Tanzania Revenue

49 Brown A (1998) 'Democratisation in Tanzania: Stability Concerns During Transition and Consolidation' 30(3) *Peace Research* 86-95 at 86.

50 Heilman & Ndumbaro (2002) at 5.

51 URT (1996) at 11 and LRCT (2004) at 11.

52 Nyerere JK (1995) *Nyufa* Dar es Salaam: Mwalimu Nyerere Foundation at 19.

53 Act 13 of 1995.

54 Mkapa BW (1995) *Building a Vision* Dar es Salaam: SARDC & African Publishing Group at 7.

Authority in 1996, the development of a National Framework on Good Governance in 1999, preparation of the National Anti-Corruption Strategy and Action Plan in 1999 and the enactment of the Public Procurement Act<sup>55</sup> in 2001. In addition, during Mkapa's second term, the adoption of three regional and international anti-corruption conventions occurred to which Tanzania is currently a State Party. These conventions include the United Nations Convention against Corruption (UNCAC) of 2003, the African Union Convention on Preventing and Combating Corruption of 2003 and the SADC Protocol against Corruption of 2001.<sup>56</sup>

The measures which Mkapa's regime introduced suggest that corruption was fought seriously in all sectors. There was a significant drop in corruption levels and an improvement in economic performance during this period. However, there were some shortcomings which tainted the third government regime's anti-corruption discourse. These included the purchase of the military radar, from the British-based BAE Systems which involved an organised criminal syndicate;<sup>57</sup> the controversial purchase of a \$40 million Gulfstream G550 jet for the President;<sup>58</sup> the siphoning off of Tsh133 billion from the BoT-held External Payment Arrears account;<sup>59</sup> and privatisation of the Kiwira coal mine.<sup>60</sup>

In late 2005, Jakaya Kikwete succeeded Mkapa as the fourth post-independence President. Like his predecessor, Kikwete promised to fight corruption at all levels. Early measures taken by his government to fight corruption included enacting the Anti-Money Laundering Act in 2006<sup>61</sup> and the Prevention and Combating of Corrupting Act (PCCA) in 2007.<sup>62</sup> The PCCA replaced POCA and transformed the PCB into the Prevention and Combating of Corruption Bureau (PCCB).<sup>63</sup> Further, the PCCA increased the number of corruption crimes from four under POCA to twenty-four.

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55 Act 3 of 2001.

56 Respectively ratified Tanzania on 25 May 2005, 22 February 2005 and 20 August 2003.

57 Gray SH (2015) 'The Political Economy of Grand Corruption in Tanzania' 114(456) *African Affairs* 382-403 at 388.

58 BBC (6 October 2004) 'Tanzania's leader snubs new jet' available at <http://news.bbc.co.uk/2/hi/africa/3719712.stm> (visited 26 June 2020).

59 Mniwasa E (2019) 'Money laundering control in Tanzania: Did the Bank gatekeepers Fail to Discharge their Obligations?' 22(4) *Journal of Money Laundering Control* 796-835 at 806.

60 For a comprehensive analysis see Cooksey B (2010) 'Trends in Corruption During the Mkapa Era – Who Wants to Know?' in Havnevik K & Isinika AC (eds) *Tanzania in Transition: From Nyerere to Mkapa*, Dar es Salaam: Mkuki na Nyota Publishers at 192-197.

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

62 Act 11 of 2007.

63 Section 5 of the PCCA.

Like its predecessors, the fourth government regime was engulfed with a number of grand corruption scandals. In 2008, Prime Minister Edward Lowassa and four other ministers resigned over corruption allegations regarding a power generation deal involving the sham Richmond Development Company. Also, the government was tainted by a poaching scandal where a Chinese presidential aircraft was implicated in trafficking Tanzanian ivory during the Chinese President's visit in 2014.<sup>64</sup> The same year, high profile politicians, ministers, judges and clergy were implicated in another scandal of the siphoning off of about US\$22 million from the BoT-held Tegeta ESCROW account.<sup>65</sup> Tanzania's performance in combatting corruption declined significantly during Kikwete's presidency. By the time Kikwete left office, the country ranked 117<sup>th</sup> out of 168 countries in the Transparency International's CPI of 2015. This ranking was a drop by 29 positions from its 88<sup>th</sup> rank in 2005, the year Kikwete became President.

Tanzania's fifth post-independence president, Dr John Pombe Magufuli, was elected in October 2015 and sworn in on 5 November 2015. His election agenda was mainly to fight corruption and ensure socio-economic development of the people. Indeed, the five years of Magufuli's presidency witnessed a strong commitment to fighting corruption in the country. Nevertheless, Magufuli's anti-corruption regime was criticised as unsustainable as it relied upon the attitude of the President towards the problem, instead of being institutionalised.<sup>66</sup> This article examines the initiatives which were adopted by the Magufuli administration in curbing corruption. It also identifies the contribution and deficits of the PCCB in that regard and proposes appropriate reforms.

### 3. CURRENT ANTI-CORRUPTION LEGAL AND INSTITUTIONAL FRAMEWORK IN TANZANIA

Tanzania has established a broad legal and institutional framework to fighting corruption. This framework has developed over the years since independence. However, the current anti-corruption framework consists of laws and institutions established from 2006, during the first term of the fourth government regime.

64 See Environmental Investigation Agency (2014) *Vanishing Point: Criminality, Corruption and Devastation of Tanzania's Elephants* London: Environmental Investigation Agency available at <https://eia-international.org/report/vanishing-point-criminality-corruption-and-the-devastation-of-tanzanias-elephants/> (visited 26 June 2020). 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'.

65 See NAOT (2014) *Special Audit Report on the Transactions Conducted over the TEGETA ESCROW Account and the Ownership of IPTL Company* Dar es Salaam: National Audit Office of Tanzania at 37.

66 See Lukiko (2017).

### 3.1 Anti-corruption legal framework

Tanzania's anti-corruption legal framework comprises domestic laws and international instruments. The country has ratified UNCAC, the African Union Convention on Preventing and Combating Corruption and the Southern African Development Community Protocol against Corruption. Collectively, the established legal framework controls corruption in different sectors, including public procurement, public finance, public service management, national elections and the private sector. The key domestic laws in this regard are discussed below.

#### 3.1.1 *Anti-Money Laundering Act*

The Anti-Money Laundering Act 12 of 2006 (AMLA) establishes the legal and institutional framework for fighting money laundering in Tanzania. AMLA incorporates all corrupt practices as predicate offences of money laundering.<sup>67</sup> Section 3(c)(i) of the Anti-Money Laundering (Amendment) Act 1 of 2012 defines corrupt practices to include 'all corruption and related offences stipulated under the Prevention and Combating of Corruption Act'. In addition, the Amendment Act indicates the PCCB is one of the enforcement agencies tasked with fighting money laundering and terrorist financing.<sup>68</sup> Since all corrupt practices are predicate offences for money laundering, it means that organs mandated to fight money laundering have to fight corruption as well.

#### 3.1.2 *Prevention and Combating of Corruption Act*

The Prevention and Combating of Corruption Act 11 of 2007 (PCCA) was enacted to provide a comprehensive regime for fighting corruption and promoting good governance. It introduced twenty four corruption crimes including: 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.<sup>69</sup> Part II of the PCCA establishes the PCCB as an independent public body with powers to take all necessary measures for the prevention and combating of corruption. Further, the PCCA introduces mechanisms for asset recovery and promotes international cooperation in fighting corruption.<sup>70</sup>

#### 3.1.3 *National Elections Act and Election Expenses Act*

Elections are susceptible to corruption. As a result, the National Elections Act (NEA)<sup>71</sup> criminalises bribery and treats it as corruption practices in elections.<sup>72</sup> The penalty for such

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67 AMLA section 3.

68 Act 1 of 2012 section 3(a).

69 PCCA part III.

70 PCCA part IV & V.

71 Cap 343 R.E 2015.

offence is a fine of not less than five hundred thousand shillings or imprisonment for a term of not less than one year and not more than three years.<sup>73</sup> A convict may be fined and sentenced to imprisonment concurrently.<sup>74</sup> In addition, a person convicted of any corrupt practice will be disqualified from voting at any election for a period of five years from the date of conviction.<sup>75</sup> Likewise, section 10A(c) of the Political Parties Act<sup>76</sup> disqualifies any person convicted of corruption within five years prior to the date of submission of his name from standing for election or nomination as a leader of a political party.

The Election Expenses Act (EEA)<sup>77</sup> prohibits unfair conduct and unconscionable funding in elections. Sections 21 and 21 of the EEA describes these prohibited practices to include active and passive bribery intended to induce any person to vote or refrain from voting for any other person. A person who commits a prohibited practice shall be disqualified from participating in the election and the Attorney-General may institute criminal proceedings against him.<sup>78</sup> In addition, such person shall be dealt with in accordance with the provisions of the PCCA.<sup>79</sup>

#### 3.1.4 *Public Procurement Act*

The Public Procurement Act 7 of 2011 (PPA) regulates procurement in all public institutions. The PPA prohibits fraud and corruption in procurement contracts.<sup>80</sup> The PPA also prohibits conduct which are intended to influence public officers during procurement proceedings. This include conduct such as offering a gift of money or any valuable item to the member of the procurement committee or approaching any member or any associate of a member of a tender board or its committee or any of its officer with the intent to gaining advantage.<sup>81</sup> The tender proposal of any person or firm found to have engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract may be rejected, the tenderer declared ineligible for award for not less than ten years or requiring the person to reimburse the portion of disbursed funds or cancel the portion of undisbursed funds to a contract.<sup>82</sup> Similarly, section 84(6) requires any tender awarded corruptly to be revoked and the matter to be reported to the PCCB for appropriate action, including the institution of criminal proceedings.

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72 NEA section 94.

73 NEA section 94 & 102.

74 NEA section 94 & 102.

75 NEA section 96.

76 Cap 258 R.E 2015.

77 Cap 278 R.E 2015.

78 EEA section 24(1) & (3).

79 EEA section 24(4).

80 PPA section 83(1).

81 PPA section 84(1) (a) & (b) and 84(2).

82 PPA section 83(2) (a) & (b) and 83(3) (a) & (b).

### 3.2 Anti-corruption institutional framework

Tanzania's anti-corruption institutional framework comprises various institutions which have been established under different statutes for diverse purposes, including detecting, preventing and combating corruption. The PCCB is designated as a specialised body for preventing and combating corruption in the country. The PCCB is discussed in detail in the next section. Other key institutions in fighting corruption are discussed also.

#### 3.2.1 *Controller and Auditor-General*

The Controller and Auditor-General (CAG) is established under Article 143 of the Tanzanian Constitution. The CAG is mandated to monitor the authorised payment of money out of the consolidated fund; to ensure that the monies paid are used for the authorised purposes; and to audit and provide an audit report every year in respect of the accounts of the government, local government authorities, executive agencies, independent departments, judiciary and the National Assembly.<sup>83</sup> The Preamble to the Public Audit Act (PAA) provides that the CAG's mandate is aimed at promoting accountable and democratic institutions in Tanzania by preventing financial malpractice and corruption.<sup>84</sup> Accordingly, section 11(3)(c) of the PAA, empowers the CAG to prohibit any public expenditure or challenge the relevant amount of funds where there appears to be any deficiency or loss occasioned by negligence, misconduct, fraud or corruption.

Since the enactment of the PAA, the CAG has audited public accounts actively, issuing its reports timely and publicly.<sup>85</sup> Based on those reports, some crucial investigations concerning corruption have been undertaken. The 2014 special inquiry into the Tegeta ESCROW account maintained at the Bank of Tanzania is a notable example of such investigations. Investigation by the CAG found that over US\$22 million had been siphoned off from the respective account and paid to some ministers, high-profile politicians, judges and clergy as gifts.<sup>86</sup>

#### 3.2.2 *Public Procurement Regulatory Authority*

The Public Procurement Regulatory Authority (PPRA) was established under section 7 of the PPA. The PPRA is mandated *inter alia* to fight corruption and fraudulent practices by ensuring fair, competitive and transparent procurement.<sup>87</sup> Section 9(1)(1) of the PPA empowers the PPRA to institute procurement, contract and performance audits in respect of any public

83 Public Audit Act No 11 of 2008 sec 5.

84 PAA preamble para 2.

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

86 NAOT (2014) at 37 & Parliament of Tanzania (2014) *Report of the Public Accounts Committee on the Findings of the Special Audit Report of the Controller and Auditor General on the TEGETA ESCROW Account* Dodoma: Parliament of Tanzania at 39.

87 PPA section 8 & 83.

tender. In that regard, the PPRA has developed a list of 'red flags' which it uses in detecting corruption in procurement processes. Where procurement manifests more than 20 percent of the red flags, it indicates a likelihood there may be corruption involved.<sup>88</sup> Consequently, the PPRA may blacklist any tenderer who engages in fraud or corruption from participating in public procurement proceedings.<sup>89</sup> According to section 29(1)(a) and (2) of the PPA, the PPRA has to submit its audit and investigation reports to the Minister responsible for finances who will then table it before the National Assembly. This ensures parliamentary oversight in public procurement and provides a platform for holding accountable those engaging in corrupt practices.

### 3.2.3 Director of Public Prosecutions

The Director of Public Prosecutions (DPP) is established under Article 59B of the Constitution with powers to 'institute, prosecute and supervise *all* criminal proceedings in the country'. The DPP is entrusted with powers to decide on whether or not to prosecute an offence.<sup>90</sup> The PCCB is required to obtain the consent of the DPP before prosecuting corruption with the exception of bribery offences under section 15 of the PCCA.<sup>91</sup> The prosecution of all high profile and grand corruption cases therefore depends on the decision of the DPP.

As a result of the requirement to obtain consent to prosecute as explained above, the PCCB is criticised for chasing after the 'small fish' and leaving the 'big fish'.<sup>92</sup> Unfortunately, there are no rules which guide the DPP in granting consent for the prosecution of offences. The decision is purely discretionary and based on the DPP's own assessment of the evidence at hand. Similarly, section 9(1)(e) of the National Prosecutions Service Act (NPSA) and section 91(1) of the Criminal Procedure Act<sup>93</sup> empowers the DPP to discontinue any criminal proceedings at any stage before judgment is delivered. This is technically known as entering a *nolle prosequi*. Practically, the DPP is not enjoined to give reasons for entering a *nolle prosequi*.<sup>94</sup> Consequently, even after granting consent to prosecute, the DPP can stop the prosecution at any stage before judgment is delivered.

The DPP's required consent significantly undermines the PCCB's prosecution efforts. As shown in table 1 at part 6.3 of this article, the DPP grants consent in very few cases compared to the number of cases submitted for his approval. For instance, in the financial year 2019/20,

88 PPRA (2019) *Annual Performance Evaluation Report for Financial Year 2018/19* Dar es Salaam: PPRA at 79.

89 PPA section 62.

90 National Prosecutions Service Act [Cap 430 R.E. 2002] section 9(1)(a).

91 PCCA section 57(1).

92 Cooksey (2005) at 31.

93 [Cap 20 R.E. 2019].

94 Sayi PR (2016) 'Crime Victims' Remedy against a DPP Decision not to Prosecute in Tanzania' 1(10) *International Journal of Science Arts and Commerce* 1-12 at 4.

the DPP granted consent to 47 out of 183 cases submitted to him by the PCCB.<sup>95</sup> This trend may discourage the PCCB from investigating corruption complaints effectively, considering that another organ has the power to determine the subsequent prosecution. Similarly, the discretionary powers of the DPP in this regard are susceptible to abuse by unethical individuals. There is thus a need to regulate the conduct of the DPP in granting consent to prosecute and in entering a *nolle prosequi*. This may be achieved by introducing specific factors to be considered by the DPP during decision-making.

#### 4. PREVENTION AND COMBATING OF CORRUPTION BUREAU

Section 5 of the PCCA establishes the Prevention and Combating of Corruption Bureau (PCCB) as an independent public body. The PCCB is mandated 'to take necessary measures for the prevention and combating of corruption in the public, parastatal and private sectors'.<sup>96</sup> It is the primary anti-corruption organ in Tanzania. This section analyses the PCCB with the view to deciphering new perspectives about its role in fighting corruption in Tanzania.

##### 4.1 Functions and powers of the PCCB

The PCCB draws its mandate from the PCCA. Section 7 of the PCCA outlines the functions of the PCCB, which include examining practices and procedures of public, parastatal and private organisations and providing advice regarding the mechanisms that facilitate the detection and prevention of corruption. It is mandated to receive and investigate corruption complaints and, subject to the consent of the DPP, prosecute corruption offences.<sup>97</sup> Further, the PCCB has to solicit public support and cooperate with other international and domestic entities in fighting corruption.<sup>98</sup>

In carrying out its mandate, authorised officers of the PCCB have powers to arrest, enter premises, search, detain suspects and seize property suspected of being involved or likely to be involved in corruption.<sup>99</sup> Also, they have powers to investigate corruption, including summoning any person to appear before an officer of the PCCB for questioning, ordering any person to produce any document which may assist the investigation and requiring any person to provide on oath information which may assist the investigation of the offence.<sup>100</sup>

##### 4.2 Composition of the PCCB

Section 6 of the PCCA provides that the PCCB shall be composed of Director General, Deputy Director General and other officers needed for the effective and efficient performance of its

95 See table 1 at part 6.3 for statistics for the past five years.

96 PCCA section 7.

97 PCCA section 7(e).

98 PCCA section 7(b & d).

99 PCCA section 8(2).

100 PCCA section 8(5)(i) & 10(1).

functions. In addition, regulation 3 of the Prevention and Combating of Corruption Regulations of 2009<sup>101</sup> (PCCR) establishes three other directors and four committees of the PCCB. The three directors are: Director of Community Education; Director of Research, Control and Statistic; and Director of Planning, Monitoring and Evaluation. The four committees are: the Oversight Committee; the Management Committee; the Integrity Committee and the Remuneration Committee.

#### **4.3 Qualifications and Appointment of PCCB Staff**

The PCCA and PCCR do not provide the required qualifications for staff of the PCCB. Section 6(2) of the PCCA provides that the Director-General and Deputy Director-General shall be appointed by the President. There are no set qualifications or criteria under the law which the President must consider when appointing the two top officers of the PCCB. Similarly, regulations 9 and 11 of the PCCR empower the Director-General to appoint staff of the PCCB, including Regional Bureau Chiefs, the Deputy Regional Bureau chief, Heads of Sections, Heads of Units, District Bureau Chiefs and Deputy District Bureau Chief. These regulations do not set out the required qualifications of such staff.

#### **4.4 Funding of the PCCB**

Successful anti-corruption approaches require substantial resources. According to section 47 of the PCCA, funds and resources of the PCCB consist of the sums of money appropriated by the Parliament. Annual budgets for the PCCB are tabled in Parliament by 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. In addition to public funding, PCCB receives support from donors.

#### **4.5 Reporting and accountability**

The PCCB reports to the President of the United Republic of Tanzania who is also the appointing authority of its Director-General.<sup>102</sup> This makes the PCCB structurally accountable to the President.<sup>103</sup> Accounts of the PCCB are not audited by the CAG although its procurement activities are audited by the PPRA.<sup>104</sup> Similarly, the Parliamentary Committee on Administration and Local Government (PCALG) is mandated to oversee affairs of all agencies under the

101 Government Notice No 300 of 21 August 2009.

102 PCCA sections 14 & 6(2).

103 Administratively, the PCCB is established under the President's Office, Public Service Management and Good Governance ministry.

104 Policy Forum (2018) *A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16* Dar es Salaam: Policy Forum at 26.

President's office, including the PCCB.<sup>105</sup> However, the PCALG's oversight role over the PCCB is very remote. The PCCB does not report to Parliament. The Committee may review the performance of the PCCB only through ministerial reports or through visits to the institution as part of the visitations of parliamentary committees to government departments.<sup>106</sup>

Order 136(15) of the Parliamentary Standing Orders 2020 requires every parliamentary committee to table in Parliament an annual report of its activities for discussion. A keyword search into the PCALG's reports for the years 2018/19 and 2019/20, using *TAKUKURU* and *rushwa* which are Kiswahili words for PCCB and corruption, yielded two results. Firstly, *TAKUKURU* was mentioned only once in the 2018/19 report as one of the organs which had been visited by the Committee during that year. There was no further information about the Committee's findings during that visit. Secondly, *rushwa* was mentioned also in the 2018/19 report only, referring to training on corruption which members of the Committee had attended in that year. There was no scrutiny by the Committee of the PCCB or state of corruption and anti-corruption in the country. This bolsters the argument of this article that Parliamentary oversight on anti-corruption efforts in Tanzania is flawed. To enhance accountability for anti-corruption efforts, the PCCB should report to the President and to Parliament. Subsequently, the Parliament should have the power to debate and deliberate on the PCCB reports.

## 5. ANTI-CORRUPTION DURING MAGUFULI'S REGIME AND THE ROLE OF THE PCCB

Tanzania's anti-corruption performance improved significantly during the five years of Magufuli's presidency. The country moved from a 117<sup>th</sup> rank with a score of 30/100 in 2015 to a 94<sup>th</sup> rank with a score of 38/100 in 2020 in the CPI. Transparency International's Global Corruption Barometer Africa 2019 found that Tanzania was the leading country in Africa where 71 per cent of her citizens perceive that the government is doing well in fighting corruption as opposed to 37 per cent in 2015.<sup>107</sup> Similarly, 72 per cent of Tanzania's citizens perceive that corruption levels in the country have decreased; In 2015 only 13 percent of citizens believed that corruption levels decreased.<sup>108</sup> Further, Tanzania is ranked 28<sup>th</sup> out of 136 countries with a score of 4.2/7 in the World Economic Forum's efficiency of government spending criteria.<sup>109</sup>

105 Paragraphs 6(4) & 7 of the Eighth Schedule to the Parliamentary Standing Orders, 2020.

106 Paragraph 7(1) of the Eighth Schedule to the Parliamentary Standing Orders, 2020 prescribes the general roles of Parliamentary Standing Committees.

107 Transparency International (2019) *Global Corruption Barometer Africa 2019* available at <https://images.transparencycdn.org/images/Full-Report-Global-Corruption-Barometer-Africa-2019.pdf> (visited 16 June 2020) at 11 & 55.

108 Transparency International (2019) at 55.

109 World Economic Forum (2018) *Global Competitiveness Index 2017-18* available at [http://reports.weforum.org/pdf/gci-2017-2018-scorecard/WEF\\_GCI\\_2017\\_2018\\_Scorecard\\_EOSQ043.pdf](http://reports.weforum.org/pdf/gci-2017-2018-scorecard/WEF_GCI_2017_2018_Scorecard_EOSQ043.pdf) (visited 16 June 2020).

Tanzania's improvement in this regard is attributed to stern measures implemented by Magufuli's administration towards preventing and combating corruption. The next section describes some of those measures while examining the contribution of the PCCB in that regard.

### 5.1 'House-cleaning' measures

President Magufuli employed a hire-and-fire approach throughout his term as President. He began his reign by firing and suspending a number of officials who were tainted with corruption or whom he perceived to be unfit for his administration. In the early months of his tenure, he fired the Tanzania Ports Authority (TPA) Director-General Mr. Awadh Massawe, the Tanzania Revenue Authority (TRA) Director-General Mr. Rished Bade and the PCCB Director-General Dr. Edward Hoseah.<sup>110</sup> 'House cleaning' measures were applied to all government institutions. The government directed all public institutions to reduce what it described as 'unnecessary expenditure' including some national events like independence celebrations and redirected those funds to development projects.<sup>111</sup>

In March 2016, the government initiated a nationwide crackdown against the so-called 'ghost workers'. President Magufuli ordered all Regional Commissioners to remove all ghost workers from the government payroll in their respective regions. By August 2016, a total of 16,127 ghost workers had been removed from the government payroll.<sup>112</sup> That move saved the government about Tsh16 billion which would have been paid to ghost workers monthly.<sup>113</sup>

The hire-and-fire approach affected many institutions of the Executive arm. Various ministers, permanent secretaries, regional and district commissioners, directors of government agencies and other presidential appointees were fired, suspended or relocated to other positions. The PCCB was not spared from this effect. The PCCB has had four successive Director-Generals in five years.<sup>114</sup> This suggests that either the persons appointed to lead the agency were incompetent and this necessitated frequent replacements or the President became suspicious about the integrity of his appointees during the performance of their duties. This approach undermines the PCCB's competence and sustainability in fighting corruption. When

110 AllAfrica (17 December 2017) 'Tanzania: Anti-Graft Boss Kicked Out in JPM Crackdown' available at <https://allafrica.com/stories/201512171368.html> (visited 16 June 2020).

111 Ubwani Z (3 March 2016) 'Magufuli expands cost cutting agenda to EAC' available at <https://www.thecitizen.co.tz/news/1840340-3101466-p3q3e5z/index.html> (visited 16 June 2020).

112 Utumishi (5 September 2016) 'Kufuta Watumishi wa Umma Wasiostahili Kuwepo Katika Orodha ya Malipo ya Mshahara Serikalini ni Zoezi Endelevu' available at <https://utumishitz.blogspot.com/2016/09/kufuta-watumishi-wa-umma-wasiostahili.html> (visited 16 June 2020).

113 Utumishi (5 September 2016).

114 Edward Hoseah (sacked after almost one month of Magufuli's reign in 2015), Valentino Mlowola (December 2015 – Sept 2018), Diwani Athuma (Sept 2018 – Sept 2019) and Brigadier General John Mbungu (Sept 2019 to Present).

the Director-Generals are insecure about their tenure, they are likely to be timid and succumb to the wishes of the President instead of acting independently.

## 5.2 Surprise Visits

One of the methods used by the Magufuli administration to monitor performance during the early years of his presidency was 'surprise visits' to public institutions. On 6 November 2015, just the next day after he was sworn in as President, Magufuli paid a surprise visit to the Ministry of Finance where many staff were absent from work.<sup>115</sup> Three days later, he surprised the Muhimbili National Hospital with a visit which resulted in the dissolution of the hospital's Board due to poor service provision.<sup>116</sup> Other notable surprise visits were made to the Bank of Tanzania in March 2016 and the Julius Nyerere International Airport in May 2016 and February 2017.

The surprise-visits-style was embraced by Prime Minister Kassim Majaliwa as well. On 27 November 2015, Majaliwa made a surprise visit to the Dar es Salaam port and found that over 329 cargo containers had been cleared from the port without due tax payment.<sup>117</sup> A week later, Majaliwa returned to the same port and discovered that another 2,431 cargo containers had been smuggled from the port in the same way.<sup>118</sup> These surprise visits resulted in the dismissal of a number of employees at the Tanzania Ports Authority (TPA) and the Tanzania Revenue Authority (TRA). Also, the TPA Board was dissolved.<sup>119</sup>

During 2016, top government leaders paid many surprise visits to government institutions. However, this style of administration was abandoned over time. In the two final years of Magufuli's presidential term, there were no news reports about such visits. Surprise visits had a strong impact on the public service. It restored ethics in workplaces as public servants became concerned with the erratic state of affairs. It also signalled the audacity of top leaders in

115 Mwananchi (6 November 2015) 'Magufuli aibukia Wizara ya Fedha, akosa maofisa ofisini' available at <https://www.mwananchi.co.tz/habari/kitaifa/Magufuli-aibukia-Wizara-ya-Fedha--akosa-maofisa-ofisini/1597296-2945676-j84q8z/index.html> (visited 16 June 2020).

116 Elias P (10 November 2015) 'Dk Magufuli atimua bosi, avunja bodi Muhimbili' available at <http://www.mwananchi.co.tz/habari/Kitaifa/Dk-Magufuli-atimua-bosi--avunja-bodiMuhimbili/1597296-2950128-p5oh4rz/index.html> (visited 16 June 2020).

117 Mathias J (8 December 2015) 'Kimbunga chawakumba mabosi TPA, TRL' available at <http://www.mwananchi.co.tz/habari/Kimbunga-chawakumba-mabosi-TPA--TRL/1597578-2987974-format-xhtml-14red09/index.html> (visited 16 June 2020).

118 Butahe F (4 December 2015) 'Waziri Mkuu abaini ufasadi mwingine wa makontena' available at <http://www.mwananchi.co.tz/mcltz/habari/Ufisadi-wa-makontena/1597578-2983676-yfmfg8/index.html> (visited 16 June 2020).

119 Mathias (8 December 2015).

overcoming corrupt practices and maladministration which had become entrenched in the public service over the years. It is doubtful if the impact of surprise visits has been sustained. Research is needed to explore this aspect further.

### 5.3 Anti-Corruption Court

To ensure that corruption offenders are prosecuted effectively, the government amended the Economic and Organised Crime Control Act (EOCCA)<sup>120</sup> in 2016 to establish the Corruption and Economic Crimes Division of the High Court (commonly referred to as the anti-corruption court).<sup>121</sup> The anti-corruption court has jurisdiction to hear and determine corruption and economic offences as stipulated in the First Schedule to that Act. The Anti-corruption court was in session for the first time on 3 November 2016, to hear a bail application, almost three months after its establishment.<sup>122</sup> A survey through the database of the Tanzania Legal Information Institute (TanzLII) which is managed by the judiciary found that out of the 166 judgments given by the anti-corruption court up to February 2021, none concerned a corruption case.<sup>123</sup> Most of the cases that have been uploaded into the TanzLII database regarding the anti-corruption court concern trafficking in narcotic drugs and unlawful possession of government trophy.<sup>124</sup>

The high threshold of the monetary value in cases that have to be tried before the anti-corruption court resulted in the court not adjudicating upon any corruption cases. As provided under section 3(3)(a) of the EOCCA and paragraph 21 of the First Schedule to the EOCCA, the value of money involved in the corruption offence must exceed Tsh1 Billion for it to fall within the primary jurisdiction of the anti-corruption court.<sup>125</sup> Consequently, most of the corruption cases prosecuted in the past five years were tried by Resident Magistrates' Courts and District Courts. Under EOCCA, not all economic crimes need to comply with the Tsh1 Billion threshold to be tried by the anti-corruption court. Section 3(3)(b) of the EOCCA stipulates offences that

120 Cap 200 R.E. 2019.

121 Written Laws (Miscellaneous Amendments) Act No 3 of 2016.

122 See John R (4 November 2016) 'Tanzania's anti-corruption court starts operations' available at <https://www.thecitizen.co.tz/news/Tanzania-s-anti-corruption-court-starts-operations/1840340-3440538-nqjgh0z/index.html> (visited 17 June 2020).

123 Tanzlii (2021) "High Court Corruption and Economic Crimes Division of Tanzania" available at <https://tanzlii.org/tz/judgments/high-court-corruption-and-economic-crimes-division> (visited 15 March 2021). No information in this regard was available on the database for 2019 and 2020.

124 According to section 77 of the Wildlife Conservation Act (WCA) No 5 of 2009, trophy means 'ivory, rhinoceros horns, hippopotamus tooth, animal turshes, animal horns and skin of any game animal'. See section 86(1) of the WCA for the list of government trophies.

125 Offences that fall within the jurisdiction of the court regardless of their monetary value are stipulated under section 3(3)(b) of the EOCCA.

fall within the jurisdiction of this court regardless of the monetary value involved, including offences related to money-laundering, terrorism, mining and drugs control.<sup>126</sup>

#### 5.4 PCCB's Performance

As table 1 below indicates, the PCCB has investigated and prosecuted a number of corruption cases in the past five years. The statistics in table 1 were collated from budget speeches of the Minister of State, the President's Office, Public Service Management and Good Governance presented in Parliament from 2015 to 2020. Notably, the PCCB has recorded a steady increase in the number of complaints reported by the public. Also, it has recovered a substantial amount of stolen assets to the value of Tsh9.5 billion in 2015/16 and Tsh50.5 billion in 2019/20. Further, the number of new cases prosecuted has increased from 227 in 2016/17 to 352 in 2019/20.

**Table 1: PCCB case statistics 2015-2020**

Component/ financial year	2015/16	2016/17	2017/18	2018/19	2019/20
Reported complaints	3,986	199,337	119,285	225,688	166,643
Completed investigations	439	376	325	170	183
Cases forwarded to DPP for approval	277	376	325	170	183
Cases granted DPP approval	190	157	214	107	47
New cases filed in court	No data	227	201	276	352
Total cases prosecuted	927	706	727	704	762
Decided cases	320	264	219	253	339
On-going cases	578	409	494	411	649
Amount of money recovered (Tsh)	9.505bn	12.316bn	No data	977.92m	50.8bn

Despite the achievements mentioned above, there is a significant decrease in the number of completed investigations each year. In 2015/16, there were 439 completed investigations compared to 183 in 2019/20. Likewise, the number of cases granted approval of the DPP to prosecute has dropped drastically from 190 in 2015/16 to 47 in 2019/20, except for 2017/18 when it rose to 214. These statistics are puzzling. While the number of complaints increased, the number of completed investigations dropped. Subsequently, cases forwarded for the consent of the DPP dropped and the number of cases granted consent dropped as well. This decrease in investigations and cases consented to for prosecution is paradoxical due to the efforts by the Magufuli administration in fighting corruption. This necessitates a further look into the PCCB's capacity to fighting corruption in the country.

126 See First Schedule to the EOCCA, paragraphs 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37 and 39.

This article submits that the PCCB has been reactive rather than proactive in investigating and prosecuting corruption. Most of the high-profile corruption cases during this regime have been investigated or prosecuted by the PCCB in response to directives from the Executive. Few examples will substantiate this. On 14 October 2019, President Magufuli directed the PCCB to investigate 107 development projects which were suspected of corruption during the national torch celebrations.<sup>127</sup> On 30 July 2018, Prime Minister Majaliwa directed the PCCB to investigate corruption in the construction of Buhigwe District Hospital.<sup>128</sup> On 3 December 2019, Minister of Agriculture Japhet Hasunga submitted to the PCCB an initial report indicating corruption in agricultural cooperative societies and requested the PCCB to investigate those allegations further.<sup>129</sup> Surprisingly, on 22 July 2020 President Magufuli instructed the PCCB to investigate corruption among its officials after he 'smelled' corruption in the construction of PCCB offices in Chamwino district.<sup>130</sup> The next day, the PCCB stated that it had suspended from office nine members of staff pending investigation.<sup>131</sup> Similar requests and directives to the PCCB have been given by some Regional and District Commissioners at different instances.<sup>132</sup>

A reactive approach results in the PCCB performing mainly a combating function rather than the prevention function. A critical reflection on the fifth government regime's anti-corruption style suggests that corruption was fought using a top-down instead of a bottom-up approach. The PCCB's reaction to corruption has been influenced largely by top government officials whom it is primarily supposed to monitor. The top-down approach has the risk of subjecting the PCCB to political influence and undermining its independence.<sup>133</sup> Conversely, a

127 State House (14 October 2019) 'Press Release' available at <http://maelezo.go.tz/new/rais-magufuli-aitaka-takukuru-kuchunguza-miradi-107-ya-mwenge-na-kuwataka-watanzania-kumuenzi-baba-wa-taifa-kwa-vitendo> (visited 17 June 2020).

128 ITV (30 July 2018) 'Majaliwa aagiza TAKUKURU kuchunguza miradi ya wilaya ya Buhigwe' available at <https://www.itv.co.tz/news/majaliwa-aagiza-takukuru-kuchunguza-miradi-wilaya-ya-buhigwe> (visited 17 June 2020).

129 Wizara ya Kilimo (3 December 2019) 'Waziri Hasunga akabidhi taarifa ya ubadhilifu kwenye Vyama vya Ushirika kwa TAKUKURU' available at <https://www.kilimo.go.tz/index.php/en/highlights/view/waziri-hasunga-akabidhi-taarifa-ya-ubadhilifu-kwenye-vyama-vya-ushirika-kwa> (visited 17 June 2020).

130 Mahenge M (23 July 2020) 'Magufuli anusa rushwa TAKUKURU' available at <https://www.habarileo.co.tz/habari/2020-07-235f1928c2d7ccf.aspx> (visited 15 March 2021).

131 Xinhua (23 July 2020) 'Nine Tanzania's anti-graft watchdog officials suspended over corruption claims' available at [http://www.xinhuanet.com/english/2020-07/23/c\\_139235709.htm](http://www.xinhuanet.com/english/2020-07/23/c_139235709.htm) (visited 15 March 2021).

132 For instance, on 24 January 2021, the Regional Commissioner for Morogoro directed the PCCB to investigate the expenditure of Tsh260 Million disbursed for the construction of hostels at a girls secondary school in Gairo district, available at <http://www.morogoro.go.tz/new/rc-sanare-aagiza-takukuru-kufanya-uchunguzi-wa-mil260> (visited 16 March 2021).

133 For critical discourse on top-down and bottom-up approaches to anti-corruption see Lamsdorff JG (2008) *The organization of anti-corruption: Getting incentives right!* Passauer Diskussionspapiere -

bottom-up approach ensures public participation and empowers the PCCB to hold accountable all persons, including top political leaders.<sup>134</sup>

In a study conducted in 2017, Lukiko proposed that the PCCB should be proactive in gleaning corruption allegations from different fora and investigate them thoroughly regardless of the source of complaints.<sup>135</sup> However, the PCCB has been controversial in this regard. On 17 October 2017, Joshua Nassari who then was a Member of Parliament for the Arumeru constituency submitted to the PCCB videos alleging that three Arumeru District leaders were involved in bribing opposition councillors to shift to the ruling party.<sup>136</sup> The next day, PCCB Director-General Valentino Mlowola warned Nassari not to politicise the matter lest legal measures be taken against him.<sup>137</sup> Subsequently, on 18 December 2017, the PCCB rejected Nassari's complaint and evidence condemning it for being politicised.<sup>138</sup>

On 8 December 2018, Member of Parliament for Kigoma constituency, Zitto Kabwe, submitted to the PCCB his complaint and documents alleging bribery by some companies from China, Turkey and Russia to some government leaders in order to derail the implementation of the Liganga and Mchuchuma iron mining projects.<sup>139</sup> Since then, no feedback has been given by the PCCB regarding those allegations. Recently, during the 19<sup>th</sup> Parliamentary session, three opposition MPs from *Chama cha Demokrasia na Maendeleo* (CHADEMA), at different occasions when declaring their decisions to shift to *Chama cha Mapinduzi* (CCM), condemned the party leadership for embezzling the party's funds.<sup>140</sup> A few days later, the PCCB announced the

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Volkswirtschaftliche Reihe, No V-57-08 available at <http://hdl.handle.net/10419/55006> (visited 16 March 2021) and Serra D (2012) 'Combining Top-Down and Bottom-Up Accountability: Evidence from a Bribery Experiment' 28(3) *Journal of Law, Economics, & Organization* 569-587.

134 See Serra (2012) at 584-585 on the impact of bottom-up participation in fighting corruption.

135 Lukiko (2017) 80.

136 Nassor T (17 October 2017) 'Nassari awasilisha ushahidi wa tatu TAKUKURU' available at <https://mtanzania.co.tz/nassari-awasilisha-ushahidi-wa-tatu-takukuru/> (visited 17 June 2020).

137 Kenyunko K (18 October 2017) 'Taasisi ya kupambana na rushwa yamwonya mbunge wa Arumeru mashariki' available at <http://www.mtaakwamtaa.co.tz/2017/10/taasisi-ya-kupambana-na-rushwa-yamwonya.html> (visited 17 June 2020).

138 Butahe F (18 December 2017) 'Nassari azungumzia ushahidi aliowasilisha Takukuru' available at <https://www.mwananchi.co.tz/habari/Nassari-aeleza-Takukuru-imemshangaza/1597578-4233158-view-printVersion-15qv6uf/index.html> visited 17 June 2020).

139 Michael C (9 December 2018) 'Zitto atumia dakika 240 Takukuru' available at <https://www.mwananchi.co.tz/habari/kitaifa/Zitto-atumia-dakika-240-Takukuru/1597296-4887554-nbe8p8/index.html> (visited 17 June 2020).

140 Hassan R (11 June 2020) 'Hatma viongozi Chadema mikononi mwa Takukuru' available at <https://mtanzania.co.tz/hatma-viongozi-chadema-mikononi-mwa-takukuru/> (visited 17 June 2020).

commencement of an investigation of the matter and proceeded to question a number of CHADEMA leaders.<sup>141</sup>

The PCCB's reaction to corruption complaints is criticised because when complaints are made by opposition MPs against government officials, they are often disregarded. Contrarily, when those complaints are made against members of opposition parties, they are honoured.<sup>142</sup> It is therefore unsurprising that despite registering many complaints annually, the number of completed investigations is negligible.

## **6. RECALIBRATING ASPECTS OF THE PCCB FOR EFFECTIVE ANTI-CORRUPTION**

A deconstruction of the PCCB reveals a number of deficiencies which undermines its anti-corruption capacity. The key deficits of the PCCB are discussed below. Proposed reforms are offered also.

### **6.1 President's influence**

The PCCB is structurally and functionally dependent upon the will of the President to fight corruption. It is structurally located in the President's office and reports directly to the him. Further, the President appoints the two top officials of the PCCB and has powers to dismiss them any time. This undermines the PCCB's independence and subjects it to political influence of the Executive.

To fight corruption effectively, the PCCB needs to be independent in practice and not only in theory. To achieve this, the PCCB should be re-established as a constitutional body and its independence must be guaranteed by the Constitution. The appointment of top officials and directors of the PCCB should be made by an independent appointment body based on merit and predefined qualifications and vetted by Parliament. In addition, the PCCB should have an independent budget which can be tabled in Parliament. This will enhance public scrutiny over the PCCB's operations and performance.

To guard against the abuse of independence, there should be strong review and disciplinary mechanisms. All activities of the PCCB should be reviewed by independent committees. 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. Vigorous checks and balances are needed to control the discretion and abuse of office by PCCB staff. There should be strong internal and external systems for monitoring and evaluating the activities and conduct of the

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141 Hassan (2020).

142 See for instance Machira P (11 June 2020) 'Salary cuts: PCCB interrogates 69 ex-Chadema MPs, officials' available at <https://www.ippmedia.com/en/news/salary-cuts-pccb-interrogates-69-ex-chadema-mps-officials> (visited 16 March 2021).

PCCB and its staff. The fact that some PCCB staff have been prosecuted for corruption in recent years substantiates the need for such control mechanisms.<sup>143</sup>

## 6.2 Enforcement

As discussed earlier, the PCCB investigates a relatively low number of cases compared to the number of reported complaints. The DPP fiat undermines the PCCB's prosecution role. For anti-corruption to be successful, a robust enforcement regime should be implemented. To this end, the PCCB has to be proactive in garnering corruption complaints from the public and media. Whistleblower provisions should encourage individuals to report corruption by guaranteeing security, anonymity and confidentiality.

All complaints received should be properly investigated regardless of the source or the social, political or economic status of the person(s) implicated. Feedback should be provided to the public regularly. This will enhance public confidence in the PCCB and enlist their support in fighting corruption. For effective investigation, the PCCB should be staffed with experts in anti-corruption law, forensics, intelligence, criminal investigation, and accounting and finance. Likewise, there should be proper synergy between the PCCB and other organs such as the CAG, PPRA, police force, DPP and the Financial Intelligence Unit.

Effective prosecution must accompany completed investigations. The DPP fiat should be abolished and allow the PCCB to prosecute all corruption offences. At that point, the PCCB should be well staffed and resourced to enhance its capacity to deal with all corruption cases nationwide. Sanctions for corruption crimes should be increased in order to make corruption a high-risk crime.

## 6.3 Public support

The PCCB has a Directorate of Community Education which has the role to create public awareness about corruption and the functions of the PCCB. The Directorate conducts workshops, seminars, radio and TV sessions and hold public meetings to educate the public about corruption and anti-corruption actions. Nevertheless, there is low public trust in the PCCB.<sup>144</sup> Accordingly, the PCCB should strive to clean its image and revisit its strategies of enlisting public support. The PCCB should adopt an open and transparent system of sharing information and engaging 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. Currently, such reports are inaccessible or unavailable. An internet search for those reports through the PCCB's website and official government

143 See Policy Forum (2018) at 26-27.

144 Policy Forum (2018) at 31-32.

information portals proved futile. This curtails public scrutiny over the PCCB's performance and inhibits scholarly engagement.

## **7. CONCLUSION**

President Magufuli's anti-corruption approach yielded significant results during his five years in office. However, his demise leaves serious doubts about its sustainability and raises uncertainties about Tanzania's future anti-corruption performance. This may be attributed to Magufuli's anti-corruption style which depended on his individual directives and stance. The PCCB which is the primary anti-corruption organ seems to align its approaches with the incumbent President. The structure in which it operates makes it susceptible to political influence and manipulation. As a result, if the next President maintains a 'soft' stance, corruption will re-emerge aggressively, eroding all that Magufuli achieved in this regard. To avoid that peril, anti-corruption approaches should be institutionalised and the political will to fight corruption should be established constitutionally. In order to address the legal and institutional deficits which undermine the capacity of the PCCB to fight corruption, this article proposes constitutional reforms to re-establish it as a constitutional body. This article also recommends the abolition of the DPP fiat in the prosecution of corruption offences and suggests that the PCCB enlist public support by adopting strategies which can restore public confidence in the PCCB.