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FIGHTING CORRUPTION IN TANZANIA'S ENERGY SECTOR: LESSONS FROM THE RICHMOND AND IPTL/ESCROW SCANDALS

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ABSTRACT

Tanzania is rapidly expanding its energy sector through several projects, including the development of natural gas fields and construction of power plants. Policy wise, the energy sector is considered as an enabling sector that will transform Tanzania's economy by facilitating manufacturing, transportation, trade, and social and economic activities. However, as prospects of benefitting from the energy sector increase, so do the challenges of managing it. Corruption is among the critical challenges of energy governance globally, especially in developing countries like Tanzania. This paper examines two corruption scandals in Tanzania's energy sector, namely the Richmond and IPTL/Escrow scandals, to illustrate how the government handled them, and to discuss their implications for its anti-corruption strategy. Analysis and discussion are based on the documentary review of official reports, press reports and scholarly publications. There are three main findings in this paper. First, the mismanagement of procurement procedures is a corruption hideout which can have corrosive impacts on energy projects. Secondly, the ineffective response from the anti-corruption agency to corruption scandals spoils anti-corruption efforts. Thirdly, the limited prosecution of individuals implicated in grand corruption scandals undermines the seriousness to fighting this evil. Accordingly, this paper recommends the implementation of strong checks and balances in procurement and prohibiting retrospective consent to the assignment of contractual rights and obligations in energy projects. Further recommendations include the adoption of strategies to enhance public participation in anti-corruption work, ensuring the serious investigation and prosecution of individuals implicated in corruption, and enforcing severe sanctions to deter corrupt behaviour.

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1. INTRODUCTION

Tanzania considers the energy sector as an enabling sector that will transform its economy by facilitating manufacturing, transportation, trade, and social and economic activities.¹ By 2020, Tanzania had discovered reserves of natural gas in the southern coast amounting to 57 trillion cubic feet (TCF).² Following this discovery, several international oil companies have shown interest in developing the country's natural gas potential, including the United Kingdom's Shell, Norway's Equinor and the United States of America's ExxonMobil.³ Tanzania is also constructing a mega hydropower project along the Rufiji River named the Julius Nyerere Hydro Power Project (JNHPP). The project is expected to produce 2 115 megawatts of power.⁴ Further, in 2017, Tanzania signed an intergovernmental agreement with Uganda for the construction of the East Africa Crude Oil Pipeline (EACOP) which will transport crude oil from Hoima in Uganda to the Tanga port in Tanzania, en route to overseas markets. Eighty (80) per cent of this 1 445km-long pipeline will lie on Tanzanian land and the country will collect tariffs of US\$12.20 per barrel of crude oil transported through it.⁵ Apart from these projects, Tanzania is considering the exploitation of its renewable energy resources such as wind and solar, which are projected to produce 200MW and 150MW of power respectively.⁶ If implemented successfully, these projects will make Tanzania a major energy producer and transform its economy.

As investment in the energy sector expands, so do the challenges of managing it. Likewise, as expectations of future revenue from this sector increase, so does the risk of

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- 1 Ministry of Finance and Planning (2021) *National Five-Year Development Plan 2021/22-2025/26* Dodoma: Ministry of Finance and Planning at 80.
 - 2 Ministry of Energy (2020) *Hotuba ya Waziri wa Nishati Mhe. Dkt. Medard Matogolo Chananja Kalemani (MB), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Nishati kwa Mwaka 2020/21* Dodoma: Wizara ya Nishati at 5.
 - 3 See Friedrich-Ebert-Stiftung (2015) *Tanzania Oil and Gas Almanac* Dar es Salaam: Friedrich-Ebert-Stiftung at 96 – 142 for details about the companies involved.
 - 4 Ministry of Energy (2020) at 4.
 - 5 Petroleum Authority of Uganda “The East African Crude Oil Pipeline”, available at <https://pau.go.ug/midsteam/east-african-crude-oil-pipeline-project/> (visited 8 January 2023); and Assayer Risk (2018) “East Africa Crude Oil Pipeline (EACOP): Cone of Plausibility Analysis”, available at <https://www.assayerisk.com/20180627-east-africa-crude-oil-pipeline-eacop-cone-of-plausability-analysis/> (visited 8 January 2023).
 - 6 Ministry of Energy (2020) at 7.

corruption.⁷ The 2014 OECD Foreign Bribery Report indicates that the extractive sector (oil, gas, and mining) was the most corrupted sector with high bribery cases.⁸ Therefore, nations aspiring to expand their economies through this sector should first have strong systems to control the corruption that surrounds it. In the absence of such systems, energy resources may be counterproductive, triggering violent conflicts, undemocratic regimes, and extreme poverty.⁹ Conflicts in the Niger Delta in Nigeria, oil-related conflicts in Sudan and the natural gas-related conflicts in Mozambique exemplify the misfortunes of the energy sector in Africa.¹⁰ Scholars attribute such disruptions to corruption and failure of state institutions to manage properly the exploitation of natural resources and the distribution of accruing benefits.¹¹ Therefore, for Tanzania to benefit from its energy resources, the risk of corruption must be addressed before the sector further expands.

The period between 2005 and 2015 was covered by several grand corruption revelations in Tanzania.¹² It is a decade when the country's ranking in the Transparency International Corruption Perceptions Index (CPI) dropped by 29 positions from 88th out of 156 countries in 2005, to 117th out of 168 countries in 2015.¹³ One of the factors contributing to that backsliding was the uncovering of several grand corruption scandals coupled with government inaction to holding accountable those implicated.¹⁴ Two of those scandals

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- 7 Cappelen AE et al (2018) *Understanding the Resource Curse: A Large-Scale Experiment on Corruption in Tanzania* Dar es Salaam: Chr. Michelsen Institute & REPOA at 2.
 - 8 OECD (2014) *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* Paris: OECD Publishing at 21 – 22.
 - 9 Shaxson N (2007) "Oil, Corruption and the Resource Curse" 83(6) *International Affairs* 1123 – 1140.
 - 10 Wegenast T & Schneider G (2017) "Ownership Matters: Natural Resources Property Rights and Social Conflict in Sub-Saharan Africa" 61 *Political Geography* 110 – 122.
 - 11 Mehlum H, Moene K & Trovik R (2006) "Cursed by Resources or Institutions?" 29(8) *World Economy* 1117 – 1131; and Ross ML (2015) "What Have We Learned about the Resource Curse?" 18 *Annual Review of Political Science* 239 – 259.
 - 12 Gray H (2015) "The Political Economy of Grand Corruption in Tanzania" 114(456) *African Affairs* 382 – 403 at 388 – 393.
 - 13 See Transparency International (2005-2015) "Corruption Perceptions Index", available at <https://www.transparency.org/en/cpi/2022> (visited 12 January 2023). For a compiled analysis, see Lukiko L (2017) "Exploring a Sustainable Anti-Corruption Regime for Tanzania" LLM dissertation, University of the Western Cape, available at <http://etd.uwc.ac.za/xmlui/handle/11394/5692> (visited 20 April 2023) at 3.
 - 14 Gray (2015); and Lukiko L, Kilonzo C & Kimela H (2020) "Tanzania's Post-Independence Anti-Corruption Efforts: Examining the Prevention and Combatting of Corruption Bureau's (PCCB) Role during Magufuli's Regime" 4(1) *Journal of Anti-Corruption Law* 32 – 57.

concerned the energy sector. The first was uncovered in 2008, involving the unscrupulous signing of a Power Off-Take Agreement between the state-owned Tanzania Electric Supply Company Limited (TANESCO) and the sham company Richmond Development LLC (herein referred to as the Richmond scandal).¹⁵ The second was exposed in 2014 after about US\$125 million were withdrawn illegally from the Bank of Tanzania and paid to a power production company, Independent Power Tanzania Limited (IPTL) (herein referred to as the IPTL/Escrow scandal).¹⁶ The two scandals were debated seriously in Parliament and resulted in the political accountability of some politicians, including the resignation of Prime Minister Edward Lowassa, and other ministers in 2008.¹⁷ Nevertheless, there were no clear legal actions taken to hold accountable those implicated, especially politicians. Similarly, the Prevention and Combating of Corruption Bureau (PCCB) has not issued public reports on how it handled the scandals.

This article examines the Richmond and IPTL/Escrow scandals to illustrate how the government of Tanzania has dealt with grand corruption revelations and draw lessons for fighting corruption in the country's energy sector. The impetus for this paper is the fact that politicians and public officials implicated in the two scandals have never been arraigned on charges linked to these scandals. The only notable legal action taken was the arrest of the IPTL moguls, Habinder Sing Seth and James Rugemalira in 2017, who were charged for various crimes of forgery, economic sabotage, and money laundering.¹⁸ However, they were released in 2021, after Sethi conceded to a Tanzanian Shilling (Tsh) 26 billion plea bargaining

15 See Bunge la Tanzania (6 February 2008) *Majadiliano ya Bunge* Dodoma: Bunge la Tanzania.

16 National Audit Office of Tanzania (2014) *Taarifa Ya Ukaguzi Maalum Kuhusiana Na Miamala Iliyofanyika Katika Akaunti Ya 'Escrow' Ya Tegeta, Pamoja Na Umiliki Wa Kampuni Ya IPTL* Dar es Salaam: NAOT.

17 BBC (7 February 2008) "Tanzanian PM to Resign over Graft", available at <http://news.bbc.co.uk/2/hi/africa/7232141.stm> (visited 24 November 2023).

18 Gerald C (4 July 2017) "IPTL Kingpins Hit by Fresh Money Laundering Charges", available at <https://www.ippmedia.com/en/news/iptl-kingpins-hit-fresh-money-laundering-charges> (visited 20 January 2023).

agreement¹⁹ and Rugemalira obtained a *nolle prosequi*²⁰ from the Director of Public Prosecutions.²¹

The analysis in this article is based on documentary review of official reports in the public domain, press reports and scholarly publications. The article is organised in eight parts. After this introduction, the next part provides an overview of corruption in the energy sector globally and in Tanzania. Part three describes briefly the Tanzanian anti-corruption regime to create an understanding of the system which is entrusted with fighting corruption in the country. Parts four and five present the Richmond and IPTL/Escrow scandals in material facts to enable a reader novice to these scandals to grasp what happened. Part six presents the findings of this paper and the implications of these scandals on Tanzania’s anti-corruption strategy, particularly for the energy sector. Part seven gives recommendations for improving the countries anti-corruption strategy, and part eight is the conclusion.

2. CORRUPTION IN THE ENERGY SECTOR

According to the Global Industry Classification Standard (GICS), the energy sector comprises of oil, gas, coal, and consumable fuels.²² Energy resources are classified further into renewable and non-renewable.²³ Renewable energy resources include geothermal, solar, hydro, and wind power. Non-renewable energy resources are coal, oil, and gas. The non-renewable energy resources form part of the extractive industry which the OECD Foreign

19 The Guardian (17 June 2021) “IPTL’s Sethi Freed on 26bn/-Liability Accord”, available at <https://www.ippmedia.com/en/news/iptl%E2%80%99s-sethi-freed-26bn-liability-accord> (visited 21 March 2022).

20 According to Black’s Law Dictionary 7th Edition, a *nolle prosequi* is a “legal notice that a lawsuit has been abandoned”. It is a formal entry by the prosecutor in a criminal action that they do not wish to prosecute the case further.

21 The Citizen (17 September 2021) “Rugemalira Lives up to His Name as Case is Dropped”, available at <https://www.thecitizen.co.tz/tanzania/news/video-rugemalira-lives-up-to-his-name-as-case-is-dropped-3553714> (visited 21 March 2022).

22 Standard & Poor’s (2006) “Global Industry Classification Standard”, available at <https://www.unm.edu/~maj/Security%20Analysis/GICS.pdf> (visited 5 February 2023).

23 Güney T (2019) “Renewable Energy, Non-Renewable Energy and Sustainable Development” 26(5) *International Journal of Sustainable Development & World Ecology* 389 – 397 at 389.

Bribery Report 2014 identifies as the most bribery-prone sector.²⁴ However, renewable energy is also not immune from this vice.²⁵

Scandals, investigations, and prosecutions against corruption around the energy sector indicate the severity of this problem globally. In 2018, Spanish authorities charged the energy company Duro Felguera with international corruption and money laundering.²⁶ Reportedly, the company bribed a senior Venezuelan official with over US\$105 million to obtain a contract for constructing an energy plant worth US\$1.5 billion.²⁷ In 2019, a former senior staff member of the UK-based company Petrofac International Limited, pleaded guilty to 11 bribery counts related to corrupt payments made to obtain oil contracts in Iraq and Saudi Arabia.²⁸ Again in 2019, the USA charged former Hong Kong Secretary for Home Affairs Patrick Ho Chi-Ping, for complicity in a multi-million-dollar scheme to bribe Ugandan and Chadian officials to secure oil deals for CEFC China Energy Company.²⁹

In Africa, the Luanda Leaks published by the International Consortium of Investigative Journalists (ICIJ) revealed that former Angolan President José Eduardo dos Santos's daughter, Isabel dos Santos, exploited family ties to loot the Angolan national oil company, Sonangol, and hide that wealth abroad through shell companies.³⁰ In Equatorial Guinea, the Organised Crime and Corruption Reporting Project (OCCRP) reported that for many years the country's ruler Teodoro Obiang and his family embezzled its oil profits to get rich and reinforce their

24 OECD (2014) at 21 – 22.

25 Rahman K (2020) "Overview of Anti-Corruption in the Renewable Energy Sector", available at https://knowledgehub.transparency.org/assets/uploads/kproducts/Overview-of-anti-corruption-in-the-renewable-energy-sector_U4-reviewed_PR_2020_PDF.pdf (visited 26 February 2023).

26 Transparency International (2020) *Exporting Corruption Progress Report: Assessing Enforcement of the OECD Anti-Bribery Convention*, available at https://images.transparencycdn.org/images/2020_ReportFull_ExportingCorruption_English.pdf (visited 20 February 2023) at 107.

27 Transparency International (2020) at 107.

28 Transparency International (2020) at 118.

29 Transparency International (2020) at 126 & 129.

30 Freedberg SP et al (2020) "How Africa's Richest Woman Exploited Family Ties, Shell Companies And Inside Deals to Build an Empire", available at <https://www.icij.org/investigations/luanda-leaks/how-africas-richest-woman-exploited-family-ties-shell-companies-and-inside-deals-to-build-an-empire/> (visited 20 February 2023).

rule.³¹ In Nigeria, in 2019, the government accused former President Goodluck Jonathan and his oil minister for accepting bribes to broker a US\$1.3 billion oil deal for Shell and Eni.³² In Tanzania, the Richmond and IPTL/Escrow scandals, which are central to the discussion of this article, illustrate the point.

According to the Report of the High-Level Panel on Illicit Financial Flows from Africa, the continent loses over US\$50 billion in illicit financial flows (IFFs) annually.³³ These are perpetrated through commercial transactions, tax evasion, bribery, corruption, money laundering, abuse of office, and drugs and human trafficking.³⁴ The report indicates that oil-exporting African nations are more prone to IFFs.³⁵ This suggests that the energy sector contributes significantly to the share of lost revenue in Africa. The major driver of this menace is corruption.³⁶ Therefore, establishing strong measures to fight corruption in the energy sector is crucial to protecting Africa's wealth and promoting development.

3. TANZANIA'S ANTI-CORRUPTION REGIME

Tanzania's anti-corruption performance has been inconsistent and unpredictable.³⁷ While the country has enacted several laws and established institutions to fight corruption, performance appears to be dependent on the attitude of the incumbent President towards the problem.³⁸ When the President is strongly determined to fight corruption, the performance improves. However, when he/she maintains a soft stance, the problem escalates. Figure 1 below demonstrates Tanzania's performance in the globally respected measurement of CPI from 2005 to 2022. As presented in this figure, Tanzania's poorest ranking in the CPI was in 2009 when it ranked 126 of 180 countries, and in 2014 when it ranked

31 Massoko DM et al (2021) "Equatorial Guinea's Oil Minister Allegedly Siphoned Off Millions from Public Construction Project", available at <https://www.occrp.org/en/investigations/equatorial-guineas-oil-minister-allegedly-siphoned-off-millions-from-public-construction-project> (visited 1 March 2023).

32 George L (2019) "Nigeria says Ex-President and His Oil Minister Took Bribes: Court Filing", available at <https://www.reuters.com/article/us-nigeria-oil-idUSKCN1SG21U> (visited 1 March 2023).

33 AU/ECA (2015) *Report of the High-Level Panel on Illicit Financial Flows from Africa*, Addis Ababa: AU/ECA, at 20.

34 AU/ECA (2015) at 20.

35 AU/ECA (2015) at 91 – 94.

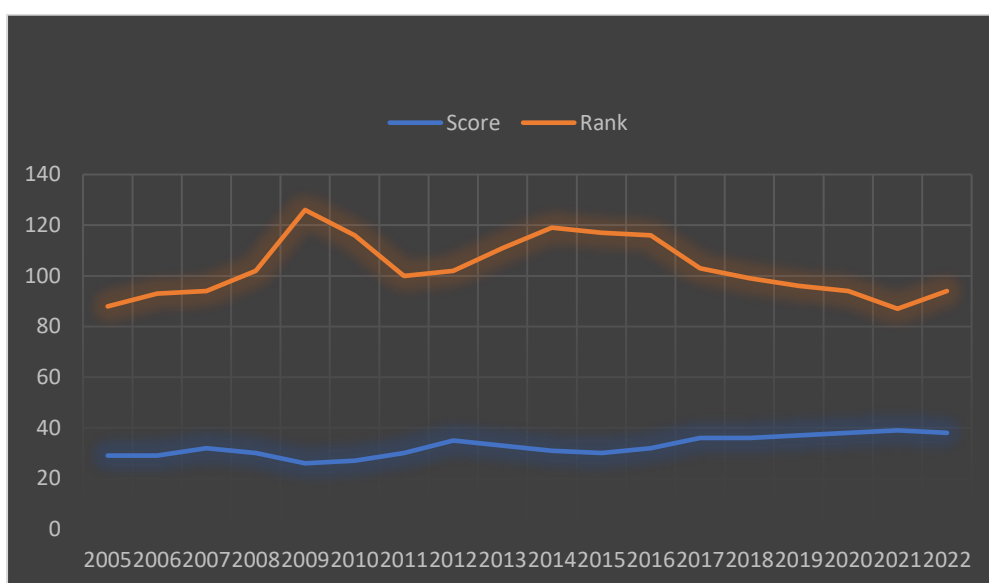
36 OECD (2016) *Corruption in the Extractive Value Chain: Typology of Risks, Mitigation Measures and Incentives* Paris: OECD Publishing.

37 Lukiko (2017) and Lukiko, Kilonzo & Kimela (2020) 34.

38 Lukiko, Kilonzo & Kimela (2020) 35.

119 of 175 countries. To put this in perspective, 2009 was the year immediately following the revelations of the Richmond scandal in 2008 and 2014 was the year when the IPTL/Escrow saga surfaced. Conversely, the country performance improved in 2016 to 2021 after President John Pombe Magufuli waged a serious anti-graft war. As shown in the figure below, performance started to decline again in 2022, one year after Magufuli’s death and the coming into power of another President.³⁹

Figure 1: Tanzania’s Ranking and Score in the CPI (2005 – 2022)



Source: Author analysis of data from Transparency International, Corruption Perceptions Index (2005 – 2022)

As pointed out earlier, Tanzania’s anti-corruption regime consists of several laws, regulations, and institutions. These are deployed to control corruption in all spheres. Below is a brief examination of that regime and its relation to anti-corruption in the energy sector.

3.1 Anti-corruption legal framework

The national anti-corruption legal framework is principally contained in the Constitution of the United Republic of Tanzania 1977 (Constitution),⁴⁰ the Prevention and Combating of

³⁹ President Magufuli’s death was confirmed on 17 March 2021 after serving one five-year term and on 19 March 2021, Samia Suluhu Hassan was sworn in as sixth President of the United Republic of Tanzania. Hassan was Magufuli’s Vice President.

⁴⁰ [Cap. 2. R.E.2002].

Corruption Act (PCCA),⁴¹ and the Anti-Money Laundering Act (AMLA).⁴² Also, it encompasses the Public Procurement Act (PPA),⁴³ the Economic and Organised Crime Control Act (EOCCA),⁴⁴ the Proceeds of Crime Act (POCA),⁴⁵ and the Whistle-blowers and Witness Protection Act (WWPA).⁴⁶ In addition, Tanzania has ratified three international anti-corruption instruments. These are, the United Nations Conventions Against Corruption (UNAC), the African Union Convention on Preventing and Combating Corruption (AUCPCC), and the Southern African Development Community Protocol against Corruption (SADC Protocol).⁴⁷

The Constitution gives a scanty framework to fighting corruption. Article 9(h) is the sole provision of the Constitution that requires state organs to fight corruption. However, this provision is only technically hortatory as it is not justiciable. The provision is contained in Part II of the Constitution, under which article 7(2) specifically ousts enforcement in any court. Therefore, citizens cannot constitutionally sue the government for not discharging its anti-corruption obligations. This fact is troubling considering that article 46(1) of the Constitution immunises Presidents against criminal prosecution for anything that they do in that capacity.

In the absence of a strong constitutional anchor, the PCCA is the primary anti-corruption legislation in Tanzania. It establishes 24 corruption offences, including bribery, illicit enrichment, embezzlement and misappropriation, bribery of foreign public officials, and corrupt transactions in procurement, employment, and contracts.⁴⁸ Section 5 of the PCCA establishes the Prevention and Combating of Corruption Bureau (PCCB) as the primary anti-corruption organ in the country. The PCCB is mandated to take all necessary measures to prevent and combat corruption in the public, parastatal, and private sectors.⁴⁹ To ensure that criminals do not benefit from their wrongs, part IV of the PCCA establishes asset recovery

41 [Cap. 326 R.E. 2019].

42 [Cap. 423 R.E. 2019].

43 [Cap. 410 R.E. 2022].

44 [Cap 200 R.E. 2019].

45 [Cap 256 R.E. 2019].

46 [Cap 446 R.E. 2022].

47 Ratified on 25 May 2005, 22 February 2005, and 20 August 2003, respectively.

48 See Part III of the PCCA.

49 Sec 7 of the PCCA.

mechanisms. Asset recovery provisions are enforced specifically under the POCA. Section 9(1) of POCA enjoins the Director of Public Prosecutions (DPP) to apply for forfeiture orders where a person has been convicted of a serious offence involving tainted property or in respect of the benefits derived from the commission of crime. To enlist public support, sections 51 and 52 of the PCCA establish whistle-blower and witness protection mechanisms. These mechanisms are implemented through the Whistleblower and Witness Protection Act.

To strengthen the war against money laundering, section 34 of the PCCA criminalises the laundering of the proceeds of corruption. Anti-money laundering measures are contained specifically in the AMLA. Section 3 of AMLA identifies all corruption offences under the PCCA as precursor offences to money laundering. This classification incorporates anti-money laundering enforcement organs and reporting persons into the country's anti-corruption arsenal. Corruption and money laundering are defined as economic and organised crimes under the EOCCA. In the context of the energy sector, EOCCA criminalises the misappropriation of the proceeds of the Oil and Gas Fund (OGF),⁵⁰ the unlawful mining of minerals,⁵¹ and the violation of transparency and accountability provisions under the Tanzania Extractive Industries (Transparency and Accountability) Act.⁵² The significance of the EOCCA fighting corruption in Tanzania rests in its punishment regime. For instance, the maximum sentence for corruption under the PCCA is a fine of not less than Tsh15 million or imprisonment for a term of not less than seven years.⁵³ Under EOCCA, the minimum sentence for an economic offence is imprisonment for a term not less than 20 years, in addition to confiscation and forfeiture of all instrumentalities and proceeds derived from the offence.⁵⁴ Courts are supposed to pass the EOCCA-imposed sentence unless a different law imposes a greater punishment for the offence.⁵⁵

Procurement is another public sector string that attracts high-level corruption. According to the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), the

50 Para 35 of the First Schedule to the EOCCA.

51 Para 27 of the First Schedule to the EOCCA.

52 Para 30 of the First Schedule to the EOCCA.

53 Secs 17 & 18 of the PCCA.

54 Sec 60(2) & (3) of the EOCCA.

55 Sec 60(1) of the EOCCA.

energy sector is one of the top-five sectors that are most vulnerable to procurement corruption.⁵⁶ For instance, the Richmond scandal as shall be discussed later in this article, resulted from procurement mismanagement. To address this conundrum, sections 83 – 85 of the PPA prohibit corruption, bribery, and influence peddling in public procurement. Section 62 of PPA empowers the Public Procurement Regulatory Authority (PPRA) to blacklist any tenderer who engages in corrupt practices and debar them from participating in public procurement.

3.2 Anti-corruption institutional framework

Several institutions constitute the anti-corruption enforcement arm in Tanzania. The primary institution is the Prevention and Combating of Corruption Bureau (PCCB).⁵⁷ It is mandated to prevent and combat corruption in the public, parastatal, and private sectors.⁵⁸ Also, it is empowered to receive and investigate corruption complaints and, subject to consent of the DPP, prosecute corruption offences.⁵⁹ The performance of the PCCB on corruption allegations in the energy sector, particularly regarding the Richmond and IPTL/Escrow scandals, is one of the central issues in this article.

The prosecution of corruption offences is primarily the role of the DPP.⁶⁰ The PCCB is empowered to prosecute offences under section 15 of the PCCA which principally deals with bribery. To prosecute other corruption offences, the PCCB must obtain consent of the DPP. However, the DPP fiat is criticised for delaying prosecution and undermining anti-corruption enforcement in Tanzania.⁶¹ In the current setting, the PCCB investigates corruption allegations and, if evidence warranting prosecution is obtained, submits the case to the DPP. The DPP assesses the evidence and makes the decision on whether to prosecute. Further, the DPP is empowered to discontinue the prosecution of any criminal case by entering a *nolle*

56 ESAAMLG (2019) *Procurement Corruption in the Public Sector and Associated Money Laundering in the ESAAMLG Region* Dar es Salaam: ESAAMLG.

57 For critical examination of the PCCB, see Lukiko, Kilonzo & Kimela (2020) at 32.

58 Sec 7 of the PCCA.

59 Sec 7(e) of the PCCA.

60 Arts 59B (1) & (2) of the Constitution, and sec 57 of the PCCA.

61 Lukiko, Kilonzo & Kimela (2020) at 45 – 46.

prosequi in court at any time before the judgment is delivered, without needing to give any reasons.⁶²

In 2016, the government amended the Economic and Organised Crime Control Act (EOCCA) to establish the Corruption and Economic Crimes Division of the High Court⁶³ (CECD).⁶⁴ The court has jurisdiction to hear and determine economic cases where the value of the subject matter exceeds Tsh1 billion. Also, it has primary jurisdiction over other crimes regardless of the value involved, as specified in Act.⁶⁵ Corruption is one of the offences where the pecuniary jurisdiction of the CECD is Tsh1 billion.⁶⁶ Corruption cases falling below this threshold are prosecuted in District Courts and Resident Magistrates' Courts.

Establishing a special division of the High Court to deal with economic crimes was a positive step towards speeding up the prosecution of corruption cases, particularly for the energy sector which involves huge sums of money. To analyse the impact of the CECD in anti-corruption enforcement, the author reviewed the cases which were decided by the court from 2016 when it was established until 20 April 2023. The cases were obtained through the TANZLII database.⁶⁷ During that period, the CECD decided 208 matters, none of them being a corruption case. Most of the cases decided by the court concerned trafficking in narcotic drugs and unlawful possession of a government trophy.

On the other hand, oversight of the government performance is exercised by the Controller and Auditor General (CAG) and the Parliament. Article 143 of the Constitution mandates the CAG to ensure that expenditures from the Consolidated Fund have been authorised by the law and are used for the purpose connected to such authorisation.

62 Sec 91(1) of the Criminal Procedure Act [Cap 20 R.E. 2019].

63 Sec 3 of the EOCCA.

64 The court hierarchy in Tanzania is as follows. The highest court in hierarchy is the Court of Appeal followed by the High Court which has five divisions: the Main Registry, the Commercial Division, the Labour Division, the Land Division, and the Corruption and Economic Crimes Division. Below the High Court, there are the District Courts and Courts of Resident Magistrates which have concurrent jurisdiction. These are followed by Primary Courts which are the lowest courts in the hierarchy.

65 Sec 3 and the first schedule to the EOCCA.

66 Sec 3(3)(a) of the EOCCA, and para 21 of the First Schedule to the EOCCA.

67 See <https://tanzlii.org/judgments/High-Court-Corruption-and-Economic-Crimes-Division>. TANZLII is the official repository of the Judiciary of Tanzania for decisions of the High Court and Court of Appeal which are the courts of record.

Annually, the CAG is required to audit and submit to the President an audit report on the accounts of the Government, the Judiciary, and the National Assembly.⁶⁸ The mandate of the CAG includes powers to forbid any public expenditure or investigate the sum involved where it appears to the CAG that there is deficiency or loss occasioned by negligence, misconduct, fraud, or corruption.⁶⁹ Revelations of the fraud involved in the IPTL/Escrow scandal resulted from the CAG's "Special Audit Report on the Transactions Conducted over the TEGETA ESCROW Account and the Ownership of the IPTL Company".⁷⁰

The enforcement arm of the CAG's recommendations is Parliament. Parliament is mandated to deliberate the CAG's reports and issue implementation directives. Article 63(2) of the Constitution empowers Parliament to oversee and advise the Government on behalf of the people. This encompasses powers to question Ministers on public affairs, debate on government budget and ministerial performance, and enact laws to regulate the implementation of government plans.⁷¹ If discharged effectively, these powers entrust Parliament with significant oversight of anti-corruption work.⁷² The Richmond and IPTL/Escrow scandals discussed below were uncovered by Parliament in the discharge of its oversight functions.

4. THE RICHMOND SCANDAL

The facts of the Richmond scandal are scattered in reports and case law. While it could be easy to refer the reader to those references, it is appropriate for the purposes of this paper to calibrate those facts here, albeit in a nutshell, to take the reader along during the discussion of the implications of these scandals, to the fight against corruption in Tanzania's energy sector. It will also help the reader, novice to these scandals, to grasp the impetus of this paper. The facts narrated below are the author's summary and interpretation from Hansard of the

68 Art 143(2)(c) of the Constitution.

69 Sec 11(3)(c) of the PAA

70 National Audit Office of Tanzania (2014) *Taarifa Ya Ukaguzi Maalum Kuhusiana Na Miamala Iliyofanyika Katika Akaunti Ya 'Escrow' Ya Tegeta, Pamoja Na Umiliki Wa Kampuni Ya IPTL* Dar es Salaam: NAOT.

71 Art 63(2) (a-d) of the Constitution.

72 See Lukiko L (2023) "Parliamentary Engagement in Fighting Corruption: A Discourse on the Parliament of Tanzania" 30(5) *Journal of Financial Crime* 1182 – 1193, available at <https://doi.org/10.1108/JFC-06-2022-0130> (visited 12 July 2024).

Parliament of Tanzania⁷³ and judgment of the High Court of Tanzania in *Tanzania Electric Supply Company Limited v Dowans Holdings SA & Dowans Tanzania Limited* (TANESCO's case).⁷⁴

The prolonged drought between 2002 and 2006 resulted in a severe electricity shortage as power generation depended wholly on hydropower. To respond to the situation, the government directed TANESCO to initiate necessary measures to procure emergency power. TANESCO is a state-owned corporation responsible for the generation, transmission, and distribution of electricity in Tanzania. In response to the government's directives, the tender for procurement of an emergency power plant was prepared and published in the press. To comply with the requirements of the Public Procurement Act of 2004 (PPA 2004),⁷⁵ TANESCO requested the PPRA for an abridgement of the bidding period from 45 days to ten days as the procurement was an emergency one. The PPRA advised it to utilise the international shopping method instead of abridging the bidding period, fearing that doing so could be counterproductive. Despite the PPRA's advice, the Ministry of Energy and Minerals (MEM) instructed TANESCO to proceed under the international competitive tendering method. The tender required bidders to have the plant ready for commissioning and be fully operational within four months from the date of signing the contract. Also, the bidders had to demonstrate experience and financial capability to undertake the project.

Eight bidders responded to the tender advertisement, including Richmond. TANESCO's Evaluation Committee found all the bids to be non-responsive. Richmond's bid was particularly classified as "the poorest technical proposal submitted ... with no experience in similar projects".⁷⁶ The Evaluation Committee recommended conducting a fresh tender process. Alternatively, TANESCO sought approval from the government to adopt the international shopping method as advised earlier by the PPRA. This method would allow TANESCO to invite six reputable companies to participate in the bidding. However, MEM rejected that proposal and ordered TANESCO to recall the original eight bidders and seek

73 Bunge la Tanzania (6 February 2008) *Majadiliano ya Bunge Dodoma*: Bunge la Tanzania.

74 Miscellaneous Civil Application 8 of 2011.

75 Art 21 of 2004. Later repealed and replaced by the Public Procurement Act 7 of 2011.

76 TANESCO's case, at 4.

further clarification of their bids. Recalling, the already unqualified bidders were outside of the procedures and had violated the provisions of the Public Procurement Act. Nevertheless, TANESCO obeyed and formed an Evaluation Committee to re-evaluate the previous unsuccessful bids. After the re-evaluation, the Committee produced a supplementary evaluation report which re-affirmed that none of the eight bids was responsive to the requirements of the tender. After the release of that supplementary report, MEM instructed TANESCO's Tender Board to suspend the tender process with immediate effect. From that point onward, the mandatory procedures of the PPA were ignored.⁷⁷ Thereafter, MEM took over the tendering process, leading to the awarding of a Power Off-Take Agreement (POA) to Richmond on 23 June 2006.

As it had no capacity to purchase the plant, Richmond could not perform the contract. However, it continued to misrepresent its ability to perform, including falsely stating that the plant had been shipped by sea already. Meanwhile, Richmond entered a secret assignment of its contractual rights and obligations to a Costa Rica-incorporated company known as Dowans Holdings SA (DHSA). DHSA was associated with a Tanzanian business tycoon and politician, Rostam Aziz, who reportedly had a Power of Attorney to manage its affairs outside Costa Rica.⁷⁸ Assignment of the contract between Richmond and DHSA was executed in complete ignorance of TANESCO, contrary to the terms of Power Off-Take Agreement which required TANESCO's prior consent.

Unaware of the assignment, TANESCO served Richmond with a Notice of Default and sent a copy to MEM. In reply, Richmond and DHSA jointly sought TANESCO's retrospective consent to the assignment. However, before the letter seeking that consent was served on TANESCO, it was informed by MEM that Richmond had proposed to assign the contract to a third party. As TANESCO sought to terminate the agreement, it received instruction from MEM to agree to the assignment of the contract. TANESCO abided by the orders of the ministry.

77 TANESCO's case, at 4 – 5.

78 TANESCO'S case, at 6.

Within a month of DHSA's taking over the project, electricity was being supplied to the national grid from DHSA's plant. During the same time, DHSA formed a subsidiary company named Dowans Tanzania Limited (DTL) and incorporated it in Tanzania. Thereafter, it asked TANESCO to consent to the assignment of the contract from DHSA to DTL. In March 2007, TANESCO consented to the assignment subject to a Deed of Undertaking that DHSA would remain fully responsible for implementing the agreement. By October 2007, DTL had fully commissioned the plant, generating 112 megawatts of power.

The award of the contract to Richmond and its subsequent assignment to DHSA/DTL raised great public concern. The media and human rights activist organisations claimed that the agreement was improperly procured and was contrary to public policy and the laws of Tanzania. The PPRA and the Prevention of Corruption Bureau (PCB) (now PCCB),⁷⁹ initiated investigations into the matter. Whereas the PPRA investigation concluded that the entire procurement process leading to the signing of the agreement was in breach of the Public Procurement Act and its Regulations,⁸⁰ the PCB was of the view that the procurement process was transparent and competitive, with no evidence of bribery or corruption.⁸¹

Further inquiry was conducted by a Parliamentary Select Committee, which made the following findings. First, MEM unscrupulously favoured the "unqualified and incapable" Richmond company throughout the procurement process, suggesting elements of corruption.⁸² Secondly, MEM intentionally contravened the provisions of the PPA and its Regulations by hijacking the procurement exercise of TANESCO.⁸³ Thirdly, the Office of Attorney General failed to discharge its legal duty of advising the government properly on the legal issues surrounding that project.⁸⁴ Fourthly, Richmond was a sham company not incorporated in Texas as claimed.⁸⁵ Fifthly, Edward Lowassa who was the Prime Minister at

79 In 2007, the PCB was transformed into the Prevention and Combating of Corruption Bureau (PCCB).

80 TANESCO's case, at 10.

81 Bunge la Tanzania (6 February 2008) at 60.

82 Bunge la Tanzania (6 February 2008) at 69.

83 Bunge la Tanzania (6 February 2008) at 70.

84 Bunge la Tanzania (6 February 2008) at 71.

85 Bunge la Tanzania (6 February 2008) at 73.

the time of tendering process, had influenced the favours which were granted to Richmond by MEM and other government institutions.⁸⁶

On the basis of those findings, the Parliamentary Select Committee presented 16 recommendations, including a proposal for the government to review all power generation agreements between TANESCO and independent power producers.⁸⁷ Parliament resolved that the government should review the legality of the agreement with the view to terminating it and stopping the payments to DHSA.⁸⁸ The report of the Parliamentary Select Committee resulted in the resignation of Prime Minister Edward Lowassa. Further, the Minister for Energy and Minerals at the time of signing the contract Ibrahim Msabaha, and the presiding minister for energy and minerals Nazir Karamagi also resigned.⁸⁹

Following that resolution of Parliament, in June 2008, after consultations with the Ministry of Energy and Minerals, TANESCO wrote to DTL expressing the illegality of the agreement and instructing it to decommission the plant by 1 August 2008. This prompted DHSA and DTL on 14 November 2008, to request for arbitration at the International Chamber of Commerce (ICC) pursuant to section 14 of the contract. The ICC Tribunal concluded that the Power of Attorney was a valid and enforceable contract and that by instructing DTL to decommission the plant, TANESCO was in repudiatory breach. Finally, on 15 November 2010, the ICC awarded DHSA and DTL joint damages in the sum of over US\$65 million.⁹⁰ TANESCO

86 Bunge la Tanzania (6 February 2008) at 78.

87 Bunge la Tanzania (6 February 2008) at 74.

88 Bunge la Tanzania (15 February 2008) *Majadiliano ya Bunge Dodoma*: Bunge la Tanzania, at 68.

89 Bunge la Tanzania (7 February 2008) *Majadiliano ya Bunge Dodoma*: Bunge la Tanzania, at 37, 51 & 61.

90 TANESCO's case, at 2.

5. THE IPTL/ESCROW SCANDAL

The IPTL/ESCROW chronicle is presented in various reports, case law, and literature just like the Richmond scandal. For purposes of the discussion in this paper, a summary of the facts is presented below.⁹¹

The events leading to this scandal dates to 26 May 1995, when TANESCO signed a 20-year Power Purchase Agreement with IPTL. In early 1990s, Tanzania experienced severe drought that reduced water levels in the hydropower generating dams. This resulted in power shortages nationwide. In response, the government invited investors to develop the Songo Songo and Mnazi Bay natural gas fields that were discovered in early 1970s. As negotiations with investors continued, the government received an unsolicited proposal from a Malaysian company Mechmar Corporation for financing and constructing an emergency diesel-fuelled power plant to mitigate the power shortage.⁹² Mechmar set up a joint venture between itself (holding a 70 per cent share) and a Tanzanian local partner, VIP Engineering Ltd (holding a 30 per cent share).⁹³ That venture was the IPTL. Eventually, TANESCO signed a 20-year Power Purchase Agreement with IPTL for constructing and operating a 100-megawatt slow-speed diesel (SSD) plant at the cost of US\$163.5 million.⁹⁴ At the time of signing the contract, the power crisis had ended as rainfall was back to normal. This solution to a short-term crisis resulted in a long-term agreement that eventually became a yoke on TANESCO. In fact, while the power crisis leading to the agreement lasted between 1993 and 1994, actual power production by the IPTL commenced on 15 January 2002.⁹⁵ Meanwhile, the development of

91 Summary provided in this section is calibrated from *Tanzania Electric Supply Company Limited v Independent Power Tanzania Limited* ICSID Case ARB/98/9 (TANESCO's arbitration); National Audit Office of Tanzania (2014), and Bunge la Tanzania (2014) *Taarifa ya Kamati Kufuatia Matokeo ya Ukaguzi Maalum wa Mhibiti na Mkaguzi Mkuu wa Hesabu za Serikali Katika Akaunti ya Tegeta Escrow Iliyokuwa Katika Benki Kuu ya Tanzania* Dodoma: Bunge la Tanzania.

92 Cooksey B (2017) "IPTL, Richmond and 'Escrow': The Price of Private Power Procurement in Tanzania" *African Research Institute*, available at <https://www.africaresearchinstitute.org/newsite/publications/iptl-richmond-escrow-price-private-power-procurement-tanzania/> (visited 12 February 2021) at 1.

93 National Audit Office of Tanzania (2014) at 1.

94 Cooksey B (2002) "The Power and the Vainglory: Anatomy of a Malaysian IPP in Tanzania" in Sundaram, JK (ed) *Ugly Malaysians: South-South Investments Abused* Institute for Black Research at 48.

95 National Audit Office of Tanzania (2014) at 8.

the Songo Songo and Mnazi Bay natural gas fields encountered a lot of bureaucratic hurdles and could not take off until 2004.

In implementing the agreement, the IPTL unilaterally substituted the plant specifications by installing ten medium-speed diesel (MSD) generators producing 10MW each instead of five SSD generators producing 20MW each as agreed. The MSD generators were cheaper and of lower generation capacity than the SSD generators. Nevertheless, IPTL overpriced the Engineering Procurement and Construction contract by charging TANESCO the cost of SSD generators. TANESCO unsuccessfully requested the necessary documentation from the IPTL to calculate the actual cost incurred. As such, in 1998 it filed for arbitration at the International Centre for Settlement of Investment Disputes (ICSID),⁹⁶ seeking to terminate the agreement.

During the hearing, TANESCO alleged bribery by the IPTL to obtain the agreement.⁹⁷ Claims were made before the Tribunal, alleging that James Rugemalira who was the CEO for VIP Engineering Ltd, paid Tsh100 000 (equivalent to about US\$200) as a “holiday gift package” to the Assistant Commissioner for Energy, Esther Masunzu during the 1994 Christmas season.⁹⁸ It emerged that the Commissioner for Energy, Patrick Rutabanzibwa, swore an affidavit stating that Rugemalira offered him US\$200 000 to support the IPTL deal.⁹⁹ Also, during the 1994 Christmas season, Rugemalira left a package containing Tsh500 000 at Rutabanzibwa’s home. That amount was equivalent to Rutabanzibwa’s 8½-month salary at the time. While Masunzu retained her package,¹⁰⁰ Rutabanzibwa returned his to Rugemalira.¹⁰¹ The Tribunal dismissed the bribery claim on the ground that there was not sufficient evidence to establish the plea.¹⁰² Finally, the Tribunal determined the case by reducing the project cost from the US\$163.5 million claimed by IPTL, to US\$127.2 million.¹⁰³

96 TANESCO’s arbitration, at 14.

97 Ibid.

98 *Tanzania Electric Supply Company Limited v Independent Power Tanzania Limited* ICSID Case ARB/98/9, Decision on Tariff and other Remaining Issues.

99 Cooksey (2002) at 64.

100 TANESCO’s arbitration, at 21 – 22.

101 Cooksey (2002) at 64.

102 TANESCO’s arbitration, at 21.

103 National Audit Office of Tanzania (2014) at 9.

Likewise, capacity charges were reassessed at US\$2.6 million per month instead of the claimed US\$3.6 million.¹⁰⁴

As the implementation of the agreement continued, TANESCO discovered that IPTL was still overcharging for capacity charges. In 2004, it served on IPTL a notice demanding the reassessment of capacity charges. Meanwhile, TANESCO withheld payment for the capacity charges. On 5 July 2006, an agreement was signed between the Government and IPTL for establishing an escrow account at the Bank of Tanzania (BoT). The account was known as Tegeta Escrow Account (TEA). All capacity charges were to be paid to that account pending settlement of the rates by the parties. In 2007, TANESCO submitted a second request for arbitration to the ICSID, maintaining that IPTL was still overcharging for power generated.¹⁰⁵ The decision was rendered in 2014 directing TANESCO and IPTL shareholders to agree on the rate of capacity charges.

As the second ICSID arbitration proceeded, in September 2010, Mechmar allegedly sold its 70 per cent share in the IPTL to Piper Link Investment (PIL) incorporated in the British Virgin Islands at the cost of US\$6 million. A year later, on 21 October 2011 PIL agreed to transfer its shares in the IPTL to Pan Africa Power Solutions Ltd (PAP) at the cost of US\$20 million. Harbinder Singh Sethi was the Managing Director of PAP. On 5 September 2013, the High Court of Tanzania vested onto PAP all affairs of the IPTL. This was preceded by VIP Engineering selling its 30 per cent share in the IPTL to PAP. On 13 September 2013, Harbinder Singh Sethi wrote to TANESCO demanding the payment of all monies held in the escrow account to PAP. After consultations with the Attorney General and the Ministry of Energy and Minerals, an agreement was reached on 21 October 2013, for the escrow funds to be paid to IPTL. Therefore, between 28 November and 24 December 2013, the Bank of Tanzania paid to the IPTL the sum of Tsh 203 102 540 890, equivalent to over US\$125 million.¹⁰⁶

104 Ibid.

105 Cooksey (2017) at 2.

106 Bunge la Tanzania (2014) at 39.

The Citizen newspaper discovered the payment of the escrow monies to IPTL and published an investigative journalism story.¹⁰⁷ That story caught the attention of the members of Parliamentary Public Accounts Committee (PAC) who subsequently requested the Controller and Auditor General (CAG) to perform a special audit of the transactions involving the Tegeta Escrow Account and ownership of the IPTL.¹⁰⁸ Similar requests came from MEM and the Prime Minister.¹⁰⁹ After the CAG's report, the PAC made a follow-up inquiry into the matter. The PAC found that over Tsh76.8 billion of the escrow monies were withdrawn and paid to various politicians, judges, civil servants, and clergy.¹¹⁰ Specifically, Rugemalira received US\$75 million from PAP as consideration for the 30 per cent share he had sold.¹¹¹ Some of those implicated in this scandal resigned, including the Attorney General Frederick Werema and two ministers.¹¹² Upon concluding his investigation, the CAG requested the PCCB to investigate those implicated and take appropriate legal action.¹¹³ In June 2021, the Court of Appeal of Tanzania in *Mechmar Corporation (Malaysia) Berhad v VIP Engineering & Marketing Limited and Others*,¹¹⁴ ruled that the transfer of the affairs of the Independent Power Tanzania Ltd to the total ownership of Pan African Power Solutions Ltd was illegal. In that sense, the escrow monies were paid by the government to an illegal owner of the IPTL.

6. FINDINGS FROM THE RICHMOND AND IPTL/ESCROW SCANDALS

Critical reflection of the Richmond and IPTL/Escrow scandals unveils the following key findings in relation to fighting corruption in Tanzania.

107 The Citizen (3 March 2014) "\$270m Deal: Story of IPTL, PAP and High Court," available at <https://www.thecitizen.co.tz/tanzania/news/national/-270m-deal-story-of-iptl-pap-and-high-court-2505906> (visited 24 November 2023).

108 Bunge la Tanzania (2014) at 3.

109 National Audit Office of Tanzania (2014) at 1.

110 Bunge la Tanzania (2014) at 61 – 63.

111 Bunge la Tanzania (2014) at 60.

112 Kabendera E & Anderson M (24 December 2014) "Tanzania Energy Scandal Ousts Senior Politicians", available at <https://www.theguardian.com/global-development/2014/dec/24/tanzania-energy-scandal-ousts-senior-politicians> (visited 30 March 2023).

113 National Audit Office of Tanzania (2014) at 60.

114 Civil Application 190 of 2013.

6.1 Procurement mismanagement has corrosive impact on energy projects

In the Richmond affair, the MEM violated the PPA by hijacking the procurement process of another procuring entity. Section 31(2) of the PPA 2004 prohibited a procuring entity from signing a contract that had not been approved by its tender board. The Richmond contract was approved and ordered for signing by the MEM and not TANESCO's tender board. TANESCO submitted to the Arbitrators that such violation was sufficient under the PPA to nullify the agreement. The Arbitrators dismissed that argument stating that the statutory context of the PPA and its public policy objectives did not support the implication that any contract signed in contravention of section 31 would automatically be null and void.¹¹⁵ A year after the ICC award, the government amended the PPA in 2011.¹¹⁶ Section 35(3) of the PPA 2011 states specifically that a contract signed without approval of the tender of board of the procuring entity is null and void. Analytically, this provision was introduced to secure procurement processes from unscrupulous interferences like that of the MEM over TANESCO.

Cooksey has documented how clientelism and trading in influence helped to secure the IPTL deal with TANESCO.¹¹⁷ At the time of procuring the IPTL project, public procurement in Tanzania was governed by multiple laws and regulations.¹¹⁸ There was no regulatory body to enforce procurement standards and rules.¹¹⁹ Competitive procurement was rarely applied and public officials had wide discretion with the selection of bidders.¹²⁰ It is in that context that of IPTL promoters offered bribes to different officials who were in the position to influence the approval of the project.¹²¹ The deficiencies of the old procurement system were addressed in 2001, when the government enacted the first Public Procurement Act.¹²²

Richmond and IPTL projects had significant negative economic impacts on Tanzania. While the projects were sought to remedy critical energy shortages, they became operational when the crisis had ended. Further, litigation in international tribunals and the damages

115 TANESCO's arbitration, at 119.

116 Public Procurement Act 7 of 2011.

117 Cooksey (2002).

118 See Nkinga NSD (2003) "Public Procurement Reform: The Tanzanian Experience", available at https://www.wto.org/gproc_e/tanzaniacase3_e (visited 20 April 2023).

119 Nkinga NSD (2003) at 10.

120 Ibid.

121 See Cooksey (2002) at 21 – 22.

122 Act 3 of 2001.

awarded added burdens to TANESCO. On the one hand, TANESCO has incurred loss of about US\$1.5 billion from the IPTL project.¹²³ On the other hand, it has settled to pay over US\$60 million to DHSA and DTL because of the Richmond project.¹²⁴

6.2 Ineffective response from the PCCB spoil anti-corruption efforts

Section 7(e) of the PCCA mandates the PCCB to investigate and, subject to the directions of the DPP, prosecute corruption offences. Unfortunately, the PCCB did not discharge this mandate effectively in respect of the Richmond and IPTL/Escrow scandals. Public criticism of the Richmond contract triggered investigation of both the PPRA and the PCCB.¹²⁵ Surprisingly, whereas the PPRA found serious flaws in the procurement process that suggested corruption, the PCCB was of the view that the process was transparent, competitive, and suggested no criminal conduct.¹²⁶ The PCCB report was vehemently attacked by the Parliamentary Select Committee that investigated the Richmond affair. The Committee wondered how a hijacked procurement process violating the established rules could be classified as transparent and competitive.¹²⁷ It concluded that the PCCB's investigation was just a cover up of the illegal behaviour behind the contract.¹²⁸ Ultimately, Parliament resolved that disciplinary action be taken against the PCCB Director General and staff involved in that investigation.¹²⁹ There is no public information on the actions that were taken by government to implement that resolution of Parliament. Likewise, there is no public information on any further investigations carried out by the PCCB against those implicated in the Richmond scandal.

Similar deficiency is observed in respect of the PCCB's approach towards the IPTL/Escrow saga. When the IPTL deal was procured, the PCCB operated as the Prevention of Corruption Bureau (PCB) that was established in 1990.¹³⁰ Cooksey highlights how the PCB dealt with the IPTL issue as follows:

123 Cooksey (2017) at 3.

124 TANESCO's case, at 2.

125 Bunge la Tanzania (6 February 2008) at 60.

126 Bunge la Tanzania (6 February 2008) at 61.

127 Bunge la Tanzania (6 February 2008) at 61.

128 Bunge la Tanzania (6 February 2008) at 76.

129 Bunge la Tanzania (6 February 2008) at 68.

130 Established vide the Prevention of Corruption (Amendment) Act 20 of 1990.

From early on, the Prevention of Corruption Bureau (PCB), which reports directly to the President, took a lively interest in IPTL. Edward Hoseah, Director of the Bureau and Co-ordinator of the government's anti-corruption strategy actively pursued the case, and at one point was ready to arrest Rugemalira on corruption charges. Hoseah was systematically thwarted by the Bureau's Director General, Maj. Gen. A L Kamazima, who along with Chenge, repeatedly told the President that there was no evidence of corruption in IPTL.¹³¹

It is under those circumstances that the bribery claim raised by TANESCO against IPTL at the ICSID Tribunal failed for lack of evidence.¹³² In fact, TANESCO reported to the Tribunal that the investigation into the bribery allegations was going on in Tanzania,¹³³ supposedly by the PCB. If any, the results of that investigation were not communicated to the public. Similarly, during the Escrow scandal, the CAG referred to the PCCB to investigate why escrow monies were paid to individuals.¹³⁴ For instance, Andrew Chenge, a prominent politician and former Attorney General of Tanzania,¹³⁵ who according to Cooksey, participated in blocking the PCB investigation of IPTL, reportedly received Tsh1.6 billion of the escrow monies.¹³⁶ It is likely that he received that money as consideration for supporting or influencing the signing of the IPTL contract and/or for thwarting adverse legal actions against the company, including anti-corruption investigation. Unfortunately, the PCCB has never communicated publicly the results of its investigations on this scandal after the CAG's referral. By withholding investigation feedback, the PCCB undermines one of its core mandates to "enlist and foster public support in combating corrupt practices".¹³⁷ Byrne et al posit that lack of communication from anti-corruption agencies to the public is one of the reasons why anti-corruption efforts fail.¹³⁸

131 Cooksey (2002) at 59.

132 TANESCO's arbitration, at 21.

133 TANESCO's arbitration, at 16.

134 Bunge la Tanzania (2014) at 60.

135 Andrew Chenge was Attorney General of Tanzania during the first decade of IPTL's existence (1993 – 2005).

136 Bunge la Tanzania (2014) at 61.

137 Sec 7(b) of the PCCA.

138 Byrne E et al (2010) *Building Public Support for Anti-Corruption Efforts: Why Anti-Corruption Agencies Need to Communicate and How* Washington DC: World Bank at 1.

6.3 Grand corruption revelation is prompted by Parliament instead of law enforcement organs

Tanzania's anti-corruption institutional framework places the PCCB at the frontline. Section 7(a) of the PCCA mandates the PCCB to devise mechanisms for detecting or preventing corruption in public, parastatal, and private organisations. Also, it is empowered to investigate any alleged or suspected corruption, including conduct of public officials that is connected to corruption.¹³⁹ Accordingly, the PCCB is expected to be proactive in garnering corruption complaints and whistleblower information from different fora and investigate them thoroughly. That way, it should be the first organ to investigate corruption allegations and report to the public. Considering the Richmond and IPTL scandals, that role was performed by Parliament which subsequently instructed the PCCB on what to do.

Unfortunately, Parliament has limited oversight powers over anti-corruption work in Tanzania.¹⁴⁰ According to section 14 of the PCCA, the PCCB reports to the President alone. Its performance reports are confidential and are not tabled in Parliament for scrutiny. Parliament only exercises some distant oversight of the PCCB through the Parliamentary Committee on Administration and Local Government (PCALG).¹⁴¹ According to Order 7(1) of the Eighth Schedule to the Parliamentary Standing Orders 2020, the PCALG is mandated to review budgets, legislative bills, and annual performance reports of ministries under its jurisdiction. This includes the President's Office Public Service Management and Good Governance ministry under which the PCCB operates. The PCALG exercises direct oversight against the ministry and not the organs operating under the ministry. In that sense, the PCALG may review the PCCB only when reviewing the activities of the ministry or during Committee visits to the institutions under that ministry. This structure makes parliamentary oversight on anti-corruption work very remote.¹⁴²

139 Sec 7(f) of the PCCA.

140 See Lukiko (2022).

141 Orders 6(4) & 7(1) of the Eighth Schedule to the Standing Orders of Parliament, 2020.

142 See Lukiko (2022) for detailed discussion on the role of parliament in fighting corruption.

6.4 Limited prosecution of individuals implicated in grand corruption scandals undermines anti-corruption performance

The only notable legal action taken against those implicated in Richmond and IPTL/Escrow scandals was the arrest and prosecution of the IPTL moguls Harbinder Singh Sethi and James Rugemalira. The two were arrested in June 2017 and charged with money laundering and economic sabotage.¹⁴³ However, Sethi was released in June 2021 after agreeing to a Tsh26 billion plea bargaining agreement.¹⁴⁴ Rugemalira was released three months later under a *nolle prosequi* by the Director of Public Prosecutions.¹⁴⁵

Apart from that, no senior government official or politician has been prosecuted for their involvement in the two scandals.¹⁴⁶ Only political accountability was taken by those implicated. For instance, Prime Minister Edward Lowassa and former Ministers of Energy and Minerals Nazir Karamagi and Ibrahim Msabaha resigned over the Richmond scandal.¹⁴⁷ Similarly, the Attorney General Judge Frederick Werema, Minister for Energy and Minerals Sospeter Muhongo and Minister for Land and Housing Development Anna Tibaijuka resigned following the Escrow scandal.¹⁴⁸

This approach to corruption allegations leaves doubts about the sanctity of Tanzania's anti-graft drive. In fact, the PCCB is criticised for catching the small fish and avoiding the big fish.¹⁴⁹ In his memoirs, Singapore's late Prime Minister Lee Kuan Yew observes that to uphold high moral standards, secure strong convictions and beat down corruption, there should be

143 Gerald (4 July 2017).

144 The Guardian (17 June 2021) "IPTL's Sethi Freed on 26bn/-Liability Accord", available at <https://www.ippmedia.com/en/news/iptl%E2%80%99s-sethi-freed-26bn-liability-accord> (visited 21 March 2023).

145 The Citizen (17 September 2021) "Rugemalira Lives Up to his Name as Case is Dropped", available at <https://www.thecitizen.co.tz/tanzania/news/video-rugemalira-lives-up-to-his-name-as-case-is-dropped-3553714> (visited 21 March 2023).

146 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 25.

147 Bunge la Tanzania (8 February 2008) at 37, 51 & 61.

148 Kabendera & Anderson (24 December 2014).

149 Cooksey B (2005) *Corruption and Governance in Tanzania: What the Literature Says* Dar es Salaam: Royal Norwegian Embassy and the Governance Working Group at 31.

strong leaders determined to deal with transgressors without exception.¹⁵⁰ It is submitted in this paper that Tanzania has not attained that level of anti-corruption determination. The late President Magufuli was determined to fight corruption and maladministration at all government levels. Nevertheless, his resolve never pushed the PCCB to investigate high-profile politicians who were implicated in the Richmond and IPTL/Escrow scandals. Most of those implicated were cadres of the ruling party *Chama cha Mapinduzi* (CCM) of which Magufuli was its chairperson for five years. Therefore, he had the opportunity as party chairperson and President to deal with their transgression but chose not to. When he was asked to revisit corruption scandals of the former regimes, Magufuli's reply was that: "let's not dig up the graves".¹⁵¹ It is uncertain if the incumbent President Samia Suluhu Hassan will be courageous to do so.

7. RECOMMENDATIONS FOR STRENGTHENING TANZANIA'S ANTI-CORRUPTION STRATEGY

The Richmond and IPTL/Escrow scandals provides several lessons for strengthening Tanzania's anti-corruption strategy not only for the energy sector but also for other sectors. From the discussion and findings presented above, the following recommendations emerge. First, procurement in future energy projects should be effectively checked and regulated to avoid falling in the same pits. Procuring entities and regulatory authorities should conduct enhanced due diligence of companies during the bidding process to establish their legitimacy and capacity to perform the contract.

Secondly, retrospective consent to assignment or transfer of contractual rights and obligations should be generally prohibited by law. Where such transfer is unavoidably necessary, strong checks and balances should be implemented. It is proposed that in such situations, an application for retrospective consent must be submitted to the PPRA for

150 Yew LK (2000) *From Third World to First World: The Singapore Story 1965-2000* New York: HarperCollins Publishers at 163.

151 Mhango N (no date) "Graves, Magufuli, Mineral Sands and Muhongo", available at <http://mpayukaji.blogspot.com/2017/05/graves-magufuli-mineral-sands-and.html> (visited 20 April 2023).

approval. The PPRA must examine the propriety and legality of the assignment before approving it.

Thirdly, the PCCB should revisit its public engagement approach to enlist strong public support in fighting corruption. It should glean corruption allegations from every fora, investigate thoroughly and communicate back to the public the findings of the investigation and the actions taken. To enhance transparency and accountability in fighting corruption, the PCCB should report parallel to the President and to the National Assembly. This will enhance public scrutiny of anti-corruption work and strengthen institutional trust in the public.

Fourthly, anti-corruption prosecution should be implemented seriously regardless of the status of the suspects. The public should see in practice that indulging in corruption is a very high-risk undertaking. Therefore, the graves which the late President Magufuli opted not to dig up must be dug up and those buried down there should be brought to justice. The PCCB should re-open investigations into the Richmond and IPTL/Escrow scandals with the view to bringing the culprits to justice.

Fifthly, punishment for corruption should be severe enough to discourage wrongdoing. For instance, in 1989, Singapore which is an example of successful anti-corruption strategies, raised the maximum fine for corruption to Singapore Dollars 100 000,¹⁵² currently equivalent to about Tsh175 million. That is 11 times higher than the maximum fine prescribed by the PCCA which is Tsh15 million. To make corruption an unrewarding endeavour, the asset forfeiture regime should be complimented with very severe fines, in addition to imprisonment.

8. CONCLUSION

Fighting corruption has been one of the Government of Tanzania's primary agenda since independence. Several policies, legislation, and institutions have been established to prevent and combat corruption in all spheres. However, the country's anti-corruption performance has been persistently low. This paper argues that one of the causes for the country's low anti-

152 Yew (2000) at 160.

corruption performance is weak enforcement response to corruption scandals. Using the Richmond and IPTL/Escrow scandals, this paper has shown that Tanzania's anti-corruption action suffers from weak enforcement of procurement laws and procedures, inefficient anti-corruption investigation and prosecution especially in cases involving high profile individuals, weak public engagement in anti-corruption work, and weak parliamentary oversight over the anti-corruption agency. To address these deficiencies and strengthen the country's anti-corruption strategy, it proposes to strengthen checks and balances in procurement and prohibit retrospective consent to assignment of contractual rights and obligations to third parties. Also, all persons implicated in corruption scandals should be re-investigated and where appropriate prosecuted regardless of their political, social, or economic status. This must be accompanied by severe punishment of those convicted of corruption. In addition, the paper recommends for the PCCB to be proactive in gleaning corruption information, investigate all complaints thoroughly and provide feedback to the public.