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Effectiveness of Anti-Corruption Agencies in East Africa: Kenya, Tanzania and Uganda

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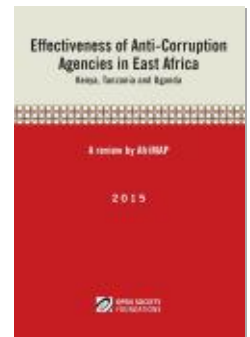
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Tanzania

A. Executive summary

Tanzania is a signatory and party to global instruments seeking to curb corruption, including the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AU Convention). These conventions require all signatory member states to put in place mechanisms to address corruption and strengthen the institutions dedicated to preventing and combating corruption. Tanzania is also a member of various anti-corruption organisations.

In 2014, Transparency International's East African Bribery Index ranked Tanzania as the second-most corrupt country within the East African Community. Its experiential survey established that the likelihood of a citizen encountering bribery in the course of a public-service encounter was 19%. A 2005 report by the National Democratic Institute (NDI) noted that electioneering in Tanzania was as expensive as in any other nascent democracy. Political candidates needed to finance 58% of electoral expenses. The NDI report also noted that respondents decried the domination of wealthy individuals who sought office in order to gain access to, and control over, lucrative contracts, and business contributors who demanded paybacks from those whom they supported politically. As a result, the political establishment is often seen as a circle of wealthy individuals who make policy decisions based on private interests, rather than the common good. It thus concluded that a significant proportion of those that wielded political power in Tanzania benefit either directly from corruptly acquired contracts or through contributions from businesses seeking their influence.

Tanzania has a robust anti-corruption legal framework anchored in the Prevention and Combating of Corruption Act and reflected in other laws, like the 2006 Anti-Money Laundering Act (AML), the 2006 Economic and Organised Crimes Control Act, the 2004

Public Procurement Act, and the 2010 Election Expenses Act. The Election Expenses Act prohibits corruption and bribery in elections and requires all candidates and political parties to provide detailed account of their election expenses. The Public Leadership Code of Ethics Act of 1995 (s 9) requires public officials to declare their assets as a mechanism for combating misuse of public resources and corruption in the public service.

In 2007, parliament established the Prevention and Combating of Corruption Bureau (PCCB) by enacting the Prevention and Combating of Corruption Act (PCCA) No. 11. Despite its seeming independence, the PCCB reports directly to the Office of the President. The president also has the power to appoint and remove the director general (DG). Consequently, there is a perception among members of the that patronage by the executive seriously compromises the independence of the PCCB and its ability to perform its functions. The DG has, in the past, expressed frustration with political obstacles placed in the way of the agency's work. Another challenge is the PCCB's reliance on other agencies to detain and prosecute. The DG can authorise an officer of the bureau to conduct an investigation under section 12 of the PCCA. However, the powers to prosecute are still controlled by the director of public prosecutions (DPP), who has the final say as to whether a particular case should be prosecuted or not (s 57 of the PCCA). The DPP also has powers not to prosecute any case by filing a nolle prosequi with the court, as per section 91 of the 1985 Criminal Procedure Act. As a result, out of 5 450 cases, only 473 convictions had been secured by the end of June 2014, representing a mere 8.6% of all the total cases completed. Moreover, a total of 574 cases resulted in acquittals during this period.

In view of the foregoing, the authors of this chapter commend the government for finally enacting the Whistle Blowers Protection Act (July 2015) as well as the Extractive Industries Transparency and Accountability Act (August 2015). However, the establishment of corruption courts is recommended to ensure expeditious trials in corruption cases. There is also a need to strengthen the PCCB's agency status (e.g. its legal framework, appointment, tenure and removal procedures, external oversight, autonomy and independence) preferably through the Constitution. We recommend an independent, external oversight structure for the PCCB and moving the PCCB away from the presidency, thus ensuring that it is free of political interference. Finally, we recommend that the PCCB's financing, independence and sustainability be assured through the independence of its budget process, in contrast with the current dependence on the ministerial budget.

B. Introduction

Tanzania is a signatory and party to global instruments and organisations seeking to curb corruption, including the United Nations Convention against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AU Convention). These conventions require all signatory member states to put in place mechanisms to address corruption and strengthen the institutions dedicated to preventing and combating corruption. Tanzania is also a member of various anti-corruption organisations.

In 2007, Tanzania passed the Prevention and Combating of Corruption Act (PCCA) and also expanded the powers of the Prevention and Combating of Corruption Bureau (PCCB) as an anti-corruption agency. Nonetheless, there are significant reservations among Tanzanians regarding the effectiveness of the PCCB. It is also worth noting that the PCCB's mandate is limited to mainland Tanzania, leaving Zanzibar to be covered by the Zanzibar Anti-Corruption and Economic Crimes Authority (ZACEA).

The PCCB is often criticised in the media for what is viewed as underperformance in combating corruption. Comments by civil society, politicians and academia suggest that the agency does not enjoy sufficient autonomy to enable it to undertake its mandate. The present study therefore interrogates the validity of these sentiments by examining the state of corruption in Tanzania, as well as PCCB operations. This chapter examines the historical evolution of the legal and institutional framework governing anti-corruption in Tanzania. It assesses the underlying successes and failures of the PCCB in preventing corruption in Tanzania and makes recommendations to strengthen anti-corruption measures in the country.

C. State of corruption

Transparency International's 2014 Corruption Perception Index (CPI) ranked Tanzania 119th out of 175 countries and territories on the global index. The levels of corruption in Tanzania are deemed to be a threat to national security.⁵³ It is estimated that, between 2001 and 2008, Tanzania lost USD1 billion (TZS1.6 trillion) to corrupt deals. Some of the scandals that have cost the nation tax monies include the following:

- The Bank of Tanzania's 'twin towers' scandal. A 2008 Ernest and Young audit report revealed that more than USD116 million had been improperly paid to 22 firms through the Bank of Tanzania's external payment arrears account in one financial year alone.
- In the Deep Green Finance Ltd scandal, the company was involved in funnelling money between Tangold Ltd and Meremeta Gold Ltd, eventually receiving 'billions of shilling from the Bank of Tanzania within its relatively short lifespan'.⁵⁴
- Tanzania purchased an obsolete radar system costing USD44 million (TZS70 billion) from British Aerospace Engineering (BAE Systems).⁵⁵

The East African Bribery Index of Transparency International in 2014 ranked Tanzania as the second-most corrupt country within the East African Community. Its experiential survey established that the likelihood of a citizen encountering bribery in the course of a public-service encounter was 19% (up from 12.9% in 2013). A disturbing 42% of respondents

53 See: http://www.businesstimes.co.tz/index.php?option=com_content&view=article&id=331:poverty-main-threat-to-peace-and-security-in-tanzania&catid=37:column&Itemid=60.

54 See: <https://star.worldbank.org/corruption-cases/node/18612>.

55 IPP Media (2012) 'Revealed: TZ thieves have Sh315bn in Swiss banks.' *The Guardian*, 23 June 2012. Available at: <http://www.ippmedia.com/frontend/index.php?l=42903> [accessed: 28 October 2015].

reported being solicited by public officers for bribes, and an astounding 82% of the public that interacted with the police had bribes demanded of them. Over half of Tanzanians interviewed admitted to having paid a bribe.⁵⁶

A 2009 PCCB survey indicated that 39% of households, 49.7% of company executives and 32.5% of public officials had given bribes to public officers in order to obtain a service.⁵⁷

Despite Transparency International's reports, a PCCB respondent during this enquiry opined that the level of corruption had either been reduced or had generally remained the same. The PCCB notes that the level of grand corruption with impunity has been reduced and that people are generally afraid to engage in grand or massive corruption. It concedes, however, that there is generally widespread corruption in procurement across sectors and especially in the telecommunications sector.

Contrary to the PCCB's opinion that grand corruption is on the wane, incidences of grand corruption continue to emerge. In July 2013, an escrow account for Independent Power Tanzania Ltd (IPTL) showed suspicious transactions amounting to nearly USD122 million, and IPTL is a state company. The controller and auditor general (CAG) found that some of the documents relating to the suspicious transactions were forged and that the withdrawals from IPTL's bank accounts were irregular. Government officials, including ministers, the attorney general and judges are said to have received suspicious payments from one of the former shareholders of IPTL. Parliamentary and public pressure as a result of the report forced the attorney general, Fredrick Werema, to resign, while a cabinet minister, Prof. Anna Tibaijuka, was dismissed by the president. According to the report, Werema and Tibaijuka received TZS1.4 billion and 1.6 billion (approximately USD1 million), respectively, from a former shareholder of IPTL, Mr James Rugemalira.

The politics of corruption

Over the past five years, the fight against corruption has become a politically contestable agenda in most political and policy competitions. In his inaugural speech to parliament in 2005, President Jakaya Kikwete identified fighting corruption as a top priority: 'We will accelerate the war on corruption in a more scientific way, and by addressing its root causes'.⁵⁸ While inaugurating the PCCB headquarters in 2009, President Kikwete warned the PCCB officials to either fight corruption or quit.⁵⁹

In 2007, while addressing a public rally at Mwembeyanga in Dar es Salaam, Dr Wilbrod Slaa – then chairperson of the opposition political party Chama Cha Demokrasia na Maendeleo (CHADEMA) – released a so-called list of shame of corruption sharks in Tanzania. The list included high-ranking government and political officials.

56 Transparency International (2014) *Corruption Perceptions Index 2014: Results*. Available at: <http://www.transparency.org/cpi2014/results> [accessed: 28 October 2015].

57 PCCB (2009) *National Governance and Corruption Survey 2009*. FACEIT in association with Dar Consultants. 21 November 2009.

58 PCCB (2009) *National Governance and Corruption Survey Report 2009* (Vols. 1–4). FACEIT in association with Dar Consultants. 21 November 2009.

59 Agenda Participation 2000 (2009) 'Fight Corruption or Quit, Says JK', *Tanzania Corruption Tracker*, July.

Since the 1995 multiparty elections, the ruling Chama Cha Mapinduzi (CCM) party has campaigned for anti-corruption steps, while at the same time tacitly practising it in its various forms. The Traditional Hospitality Act (2000), popularly known as *takrima*, was defended by the ruling party on the basis that it differs from corruption. In the view of the party leadership, it was meant to ensure that those competing for political posts could extend a vote of thanks to their supporters. The party opined that there is nothing wrong with a parliamentary, or any other elective, candidate providing drinks, food and entertainment for prospective voters as long as these are given in what they describe as good faith.

The financial inequality between ruling-party candidates, on the one hand, and opposition candidates, on the other, has tilted the balance toward incumbent ruling-party candidates. Most of the *takrima* events or activities also involve excessive use of money from unclear or dubious sources. There is thus speculation that candidates are simply agents of businesses for which they have agreed to provide public contracts in the event of them (the candidates) winning the elections.

On 25 April 2006, the high court of Tanzania declared the Traditional Hospitality Act illegal following a case filed by the Legal and Human Rights Centre (LHRC), Lawyers' Environmental Action Team (LEAT), and the National Organisation for Legal Assistance (NOLA).

The PCCB has since been able to act in respect of electoral malpractices, as outlined in Table 3.1.

Table 3.1: Number of people arrested for corruption relating to CCM preferential polls and elections in 2010

Region	District	Number of people arrested by the PCCB	Cause of arrest
Kilimanjaro	Moshi Urban	4 (including Kasulu District Commissioner Betty Machangu)	Found in possession of TZS150 000 and pairs of <i>khangas</i> (i.e. wrapping cloth for women)
Rukwa	Sumbawanga	1	Candidate found in possession of bicycles allegedly distributed to voters in wooing them to vote for him
Arusha	Arusha Urban	21 (including incumbent MP, Felix Mrema)	Found in possession of TZS115 000 and CCM membership cards (some without names and pictures, but already stamped and signed by CCM officials)
Tabora	Tabora East	10 (including Cabinet Minister, Magreth Sitta)	Found in possession of seven mobile phones, TZS1 015 000 and 145 empty envelopes

Source: Various media reports & Agenda Participation 2000 Policy Brief, 2010

A 2005 report by the National Democratic Institute (NDI) noted that electioneering in Tanzania is was expensive as in any other nascent democracy. Political candidates needed to

finance 58% of electoral expenses with rallies and events costing 44% of total expenditure. According to the report, most respondents indicated that what made campaigns so expensive in Tanzania was the fact that it had become almost impossible to be elected if a candidate was not willing to spend money either buying votes or influencing her/his party to field her/him in its list. Elections have become more about how much a person is worth and not whether they have policy-relevant ambitions. The report further noted that

the high cost of elections has turned the political process into something that can only be accessed by rich and predominantly male candidates. This has led to political parties being seen as private businesses rather than vehicles to address certain outstanding policy issues. Parties have formed the habit of nominating only rich candidates who have the capacity to fund their own elections.

The NDI report also noted that respondents decried the domination of wealthy individuals who sought office in order to gain access to, and control over, lucrative contracts, and business contributors who demanded payback from those whom they supported politically. As a result, the political establishment is often seen as a circle of wealthy individuals who make policy decisions based on private interests, rather than the common good.

It thus suffices to conclude that a significant proportion of those who wield political power in Tanzania benefit directly from corruptly acquired contracts or through contributions from businesses seeking their influence.

D. Civil society, donors and media engagement

A few Tanzanian civil-society organisations are currently implementing a series of anti-corruption initiatives. These initiatives include mobilising and training citizens to engage in public expenditure tracking surveys and social accountability monitoring in order to ensure that public resources are utilised appropriately. In 2009, a local civil-society organisation, Agenda Participation 2000, launched the Tanzania corruption-tracking system, which was an online platform for sharing information on corruption in Tanzania.

Tanzania's development partners (the United Nations Development Programme (UNDP), United Kingdom, the World Bank, Denmark, Sweden, Switzerland, Finland, Canada, Norway, and the European Union) list combating corruption as an agenda priority. Indicators of the fight against corruption have been included in the processes of Tanzania's General Budget Support (GBS) Performance Assessment Framework (PAF).⁶⁰ In 2014, major GBS donors temporarily withheld aid disbursements, requiring that government act on the recommendations of a parliamentary report on alleged corrupt transactions linked to the IPTL-Tegeta escrow account.

60 Within the GBS/PAF framework, for example, the government of Tanzania agreed to a results-related indicator requiring it to prepare five cases of grand corruption for prosecution by October 2008. Payments under the new Norwegian and British projects to support tackling grand corruption were to be based upon agreed, results-based performance reports.

Corruption has also dominated in the media. Local newspapers, such as *The Citizen* and *Mawio* (formerly *Mwanahalisi*), have been in the vanguard of reporting cases of corruption through investigative journalism. However, it is considered risky to engage in anti-corruption work in Tanzania. In 2011, Saed Kubenea, the editor of *Mwanahalisi*, was physically assaulted by unknown assailants following editorials and news reports on corruption published in his newspaper. The newspaper was later banned by government. In 2012, Absolom Kibanda, editor of the *Mtanzania* newspaper, was also physically attacked and seriously injured by unknown assailants.

The existing, stringent newspaper-registration requirements, as well as official secrets and national security laws, deter media investigation and reporting of sensitive corruption-related cases. A member of parliament, David Kafulia, and *The Citizen* are facing defamation and libel charges in court for blowing the whistle on the alleged fraudulent purchase of assets by IPTL, discussed above.

E. Commitment to international conventions on corruption

Tanzania has signed and ratified a number of relevant international conventions, instruments and protocols relating to corruption. It is a signatory to the UNCAC. This convention was signed by Tanzania on 9 December 2003 and was ratified on 25 May 2005. The government has also ratified the AU Convention and the Southern African Development Community (SADC) Protocol against Corruption. Tanzania has been one of the architects of the East African Community (EAC) anti-corruption protocol, which remains in draft form.⁶¹

Domestication of international conventions

The UNCAC, the AU Convention, and the SADC Protocol against Corruption have been domesticated through the PCCA. Pursuant to article 11 of the Tanzanian Constitution and articles 9 and 10 of the Tanzanian Law on Treaties (Law No. 24/2000), the AU Convention and the AUCPC enjoy a special, recognisable status within the laws of the United Republic of Tanzania.

To enhance implementation of these instruments, Tanzania passed the PCCA. In 2012, Zanzibar passed the Zanzibar Anti-Corruption and Economic Crimes Act. This Act establishes the Zanzibar Anti-Corruption and Economic Crimes Authority (ZACEA), with a mandate similar to that of the PCCB on the mainland.

Corruption reporting and the implementation status of international instruments on corruption

Tanzania has submitted a number of reports and has hosted to a number of United Nations (UN) and African Union (AU) verification missions. According to the PCCB's director general, Tanzania is a 'model country' as far as reporting on the implementation of its

61 Available at: http://federation.eac.int/index.php?option=com_content&view=article&id=183&Itemid=71..

internationally ratified instruments is concerned. The country has received a number of study missions, including a visit in 2014 by a South African delegation led by Dr Alex Mahapa, deputy director general, Governance and International Relations, South African Ministry of Public Service and Administration. The main purpose of the visit was to learn from South Africa's experience in creating a sustainable anti-corruption agency after the country's apartheid-era anti-corruption agency, the Scorpions, was disbanded. From the available information, it is evident that Tanzania is keen to report on, and demonstrate, the extent to which the internationally ratified instruments have been implemented. The reports are available online for greater public access.

In 2011, Tanzania participated a the pilot review with regard to the UNCAC. The review of Tanzania's implementation of the UNCAC covered nine provisions of the convention and was based on the self-assessment report received from Tanzania, the outcome of dialogue between experts from the Netherlands and the United Kingdom, and an on-site visit between 30 August 2008 and 5 September 2008. The self-assessment analysed Tanzania's anti-corruption systems, legislation and practices relating to the UNCAC's global standards. Among other recommendations, the review mentioned the need for increased capacity building in respect of the agency.⁶²

Since 2002, the PCCB has periodically commissioned its own corruption-assessment reports. These reports include the *State of Corruption in Tanzania: Annual Report 2002*; the *National Governance and Corruption Survey 2009* (four volumes); the *National Anti-Corruption Strategy and Action Plan II (NACSAP II) Implementation Report 2009*; *Taarifa ya Udhibiti na Taftiti Zilizofanyika Mwaka 2008/09* (Research and Control Report 2008/2009); and *Mianya ya Rushwa na uvunaji wa mazao ya misitu, November 2013* (Opportunities for Corruption and Exploitation of Natural Resources, November 2013). All these reports contain key findings and recommendations to improve the implementation of the convention as well as anti-corruption work in Tanzania.

The recommendations contained in the review reports are undermined by the absence of any reference to an independent oversight organ to hold the PCCB accountable. The PCCB has neither an independent oversight board nor independent external organs to which it must account. The agency has linkages with the Good Governance Coordination Unit (GGCU) in the president's office, but it is not clear whether this serves as an oversight body or on a facilitating agency. It is worth noting that direct linkages with the central executive, such as the aforementioned, has often created a negative image of the agency's credibility and independence.

62 UNODC. 'Pilot review programme.' Available at: <http://www.unodc.org/unodc/en/treaties/CAC/pilot-review.html> [accessed: 10 November, 2014].

F. Legal framework for preventing and combating corruption⁶³

Anti-corruption is generally regulated by the PCCA of 2007 and its substantive provisions. The Act provides a broad definition of corruption and of its related offences on section 15 and includes other forms of corruption, like sexual corruption (s 25), as an offence. It punishes both the giver and receiver involved in any form of corruption.

It prohibits corrupt transactions as an inducement to public officials (s 16), corruption in public procurement (s 18), and bribery of foreign officials and organisations (s 18). Possession of unexplained property is an offence under section 27, with embezzlement and misappropriation of public property being an offence under section 28. At face value, the PCCA is a progressive piece of anti-corruption legislation with extensive provisions; however, its effective implementation remains a challenge.

The constitutional regime governing anti-corruption work in Tanzania has been a subject of ongoing debate. The Constitution of Tanzania of 1977 mentions the fight against corruption under article 9(h) of its fundamental objectives and directives of state policy, in which the state commits itself to eradicate all forms of injustice, including corruption. Over the past years, there have, however, been concerns that these provisions are weak and need to be strengthened.

In the last five years, there have been appeals from civil society, citizens, donors and parliament for the PCCB to be given more constitutional autonomy. This was a subject of debate during consideration of the draft constitution by the national assembly in 2013. The initial draft constitution had omitted listing the PCCB as one of the constitutional bodies. After widespread advocacy and public debate, the PCCB was later included as a constitutional body in the draft, which is yet to be ratified by way of a referendum. It is hoped that the PCCB's constitutional status will be maintained in the new constitution. This is also one of the major recommendations of this study.

The anti-corruption regime has been reflected in other laws like the 2006 Anti-Money Laundering Act (AML), the 2006 Economic and Organised Crimes Control Act, the 2004 Public Procurement Act, and the 2010 Election Expenses Act (EEA). The EEA prohibits corruption and bribery in elections and requires all candidates and political parties to provide a detailed account of their election expenses. The Public Leadership Code of Ethics Act of 1995 (s 9) requires public officials to declare their assets as a mechanism for preventing misuse of public resources and corruption in the public service. Effective follow-up and enforcement of this code have remained largely weak. In 2011, the ethics secretariat commissioner, Judge Salome Kaganda, indicated at a press conference that almost half of public servants had

63 The legal framework includes the 1958 Prevention of Corruption Ordinance; the 1966 Permanent Commission of Inquiry (Office of the Ombudsman); the 1971 Prevention of Corruption Act; the 1973 Leadership Code; the 1975 amendment to the Prevention of Corruption Act, which provided for the creation of the Prevention of Corruption Bureau (initially, the Prevention of Corruption Squad); the 1983 Campaign against Economic Saboteurs; the 1984 Economic and Organised Crime Control Act; the 1990 Presidential Circular No. 1 on Guidelines for Deterrence of Corruption; the 1995 Law on Ethics for Public Leaders, which established the Commission on Effective Leadership or Ethics Commission (and its amendment of 2001); the 2006 Anti-Money Laundering Act; and the 2007 Prevention and Combating of Corruption Act.

not complied with the law. Political leaders topped the list of non-compliant public officials. Between 2006 and 2009, the ethics secretariat carried out physical verification which revealed that only 1 466 public servants had declared their assets.⁶⁴

The 2001 Public Finance Act (s 25) requires all spending agencies to abide by internationally accepted accounting standards in maintaining records and submitting accounts and reports to the controller and auditor general (CAG) for auditing. The CAG is empowered by law (under the 2008 Public Audit Act) to audit all public expenditures and to ascertain value for money by conducting special and social audits on specific projects. There have been lengthy negotiations to increase transparency in the extractive sector by enacting a new Tanzanian extractive industries transparency initiative (EITI) law. The Extractive Industries Transparency and Accountability Act was finally passed into law in August 2015. Further, there are proposals to amend the 2004 Public Procurement Act (PPA) to enhance its efficacy with regard to corruption. A whistle-blower Bill, intended to protect whistle-blowers and informers, and which had been before parliament since 2011, was finally enacted in August 2015.

The AML Act (s 4) establishes a department known as the Financial Intelligence Unit (FIU) based in the Ministry of Finance. The FIU is responsible (under s 6) for receiving, analysing and disseminating any suspicious-transaction reports and other information regarding potential money laundering or terrorist-financing received. It is supported by a national multidisciplinary committee on anti-money laundering (s 8 of the PCCA) comprising of representatives from various government organs. Despite the symbiosis of the functions of the bodies involved, the PCCB is not a member of this committee, which consequently weakens the bureau's ability to pursue its mandate effectively.

Curbing corruption and public waste features in both Tanzania's Third National Strategy for Reducing Poverty (NGSRP), popularly known as MKUKUTA III, and the five-year National Development Plan. The country's strategy to tackle corruption was articulated in NACSAP II, which ended in 2012. NACSAP III, whose implementation is yet to start, prioritises 'combating corruption in a more scientific way and by addressing its roots causes' as its primary goal.

Access to information

Corruption thrives in an environment of secrecy. It is therefore challenging to detect and measure it with a view to designing and executing appropriate responses. The absence of a law on access to information in Tanzania compromises the ability of law enforcement, oversight and citizen institutions, and individuals to recognise and act on corruption.

G. Prevention and Combating of Corruption Bureau

There are a number of factors which led to the establishment of the bureau. The economic turbulence of the 1960s, 1970s and 1980s made it necessary for the government to contain

64 PCCB (2009) *The National Anti-Corruption Strategy and Action Plan-II (NACSAP II) Implementation Report*, Dar es Salaam.

the misuse of public resources. Economic liberalisation and political pressure due to the advent of multiparty politics in the 1990s opened up space for broader debate on corruption and public misuse of the country's resources. Corruption had led to the collapse of major sectors of the economy, including the parastatal sector. Pressure from civil society and the international community to fight corruption led to the formation of the Warioba Commission (named after retired Judge Joseph Warioba) to look into tackling corruption in Tanzania. The commission's report made recommendations for strengthening the legal framework and for establishing a strong anti-corruption body. The combination of these factors played a major role in the establishment of the bureau and its subsequent expansion in 2007.

As discussed above, the PCCB was established by an Act of parliament in 2007 and was mandated by law (i.e. the 2007 Prevention and Combating of Corruption Act No. 11) to prevent corruption, educate society about the effects of corruption, and enforce the law against corruption. The PCCB is an independent public body (s 5 of the PCCA). It replaced the Prevention of Corruption Bureau (PCB), which was established in the 1990s, and the Anti-Corruption (Police) Squad (ACS), established in the 1970s. Despite its seeming independence, the PCCB reports directly to the office of the president. The president also has the power to appoint and remove the PCCB's director general (DG).

In view of its reporting line, public perception exists that patronage by the executive seriously compromises the independence of the PCCB and its ability to perform its task. The DG has, in the past, indicated that lack of political will and political interference are obstacles frustrating the agency's work.⁶⁵

Though its constitutive Act grants permanence and continuity to the bureau, the PCCB is not anchored in the Constitution. This absence of rootedness as a constitutional body makes the PCCB vulnerable to being disbanded without any constitutional amendment process. Moreover, the PCCA is silent on how the bureau may be disbanded.

Historical development of the institutional framework to combat corruption

The legal framework to combat corruption has evolved since the colonial era when Tanganyika (later Tanzania) was governed by the British administration. The Prevention of Corruption Ordinance (PCO) had been used by the British colonial government since the 1930s to punish corruption offenders. This legal regime was repealed by the PCO (Amendment) Act of 1958. In 1970, there was a further development with the passing of the Prevention of Corruption Ordinance (Amendment) Act, and, subsequently, the Prevention of Corruption Act (PCA), was enacted in 1971.

In 1974, the PCA was amended by Act No 2 of 1974, which established the Anti-Corruption Squad (ACS) by way of Government Notice No. 17 of 1975. The ACS took over the

65 These sentiments were expressed by Dr Edward Hosea in his opening remarks at the Pan-African Anti-Corruption Conference: Corruption and Development in Africa, held at the Serena Hotel in Dar es Salaam, Tanzania, on 4 June 2014.

anti-corruption functions which had hitherto been carried out by a specialised branch of the police force. In 1991, following the tide of economic liberalisation and political pluralism, the PCA was further amended through the Prevention of Corruption (Amendment) Act of 1990, which led to the establishment of the Prevention of Corruption Bureau (PCB). In 2007, the PCB was reconstituted as the PCCB.⁶⁶

According to the PCCB, the PCA Cap 329 (RE 2002) had shortcomings that affected the bureau's operations and functioning as a contemporary anti-corruption agency. For example, it was silent about how the agency should execute its functions. Furthermore, it did not provide a legal mandate or opportunity to follow up and prosecute cases, it and did not criminalise most corruption offences, such as trading in influence or possession of unexplained wealth. It was also silent on sexual corruption and other forms of favouritism, which were on the increase.⁶⁷ This necessitated a new law and a new institution in 2007.

The ACS and PCB were specialised security and law enforcement agencies designed to promote the economic objectives of the colonial era and of the post-independence *ujamaa* (i.e. socialist) state by tackling corruption and economic crimes. The institutional and legal regime has, however, evolved over time from that of dealing with relatively minor infractions relating to economic objectives during the colonial era to that of combating the sophisticated economic crimes of post-independence governments.

Since its establishment in 2007, the PCCB has not seen significant changes in its powers. Meanwhile, the manifestation and magnitude of corruption has evolved, and continues to rapidly evolve. The PCCB is now required to deal with transnational corruption, sophisticated syndicates, and cybercrime.

Stability of the agency

The PCCB has not experienced any major destabilisation since its inception.

PCCB staff

The PCCB is headed by a DG, assisted by a deputy director general (DDG). The DG and the DDG are both appointed by the president in terms of section 6(2) of the PCCA. The functions of the agency are executed by the DG, DDG, and five directors as heads of directorates. These directorates are the:

- investigations and prosecution (DI);
- research, control and Statistics (DRCS);
- community education (DC);
- planning, monitoring and evaluation (DPME); and
- human resources and administration (DHAR).

The DI is responsible for detecting, investigating and prosecuting corruption offences; the

66 PCCB. 'Historical background.' Available at: <http://www.pccb.go.tz/index.php/about-pccb/all-about-the-pccb/historical-background> [accessed: 29 October 2015].

67 Ibid.

DRCS is responsible for the prevention of corruption in the public and private sectors through the strengthening of systems; the DC is responsible for involving the community in fighting corruption; the DPME is responsible for planning, monitoring and evaluating the activities of the bureau; and the DHAR supports the other directorates by providing them with the right human and other physical and material resources.⁶⁸

The PCCB has no governing council, commission or board; however, some supporters of the current structure argue that it is a law enforcement agency whose functions cannot be subjected to a quasi-political structure, such as a board. They note that some of the cases handled and decisions made are too sensitive to be subjected to a broader organ like a governing council or board.

The absence of a governance board is seen by others as a major internal oversight and accountability deficit, and suggestions are now being proposed for the transformation of the bureau into an anti-corruption commission, which is one of the recommendations of this chapter. The PCCB's organogram is appended as Annex 1 to this report.

Recruitment and tenure

Section 7 of the PCCA mandates the bureau to recruit and employ staff necessary for the efficient performance of the functions of the bureau. The detailed recruitment process in respect of staff at directorate level is not specified in the Act. According to the DG, the heads of the various directorates are recruited openly through a transparent public process. The applicants are subjected to an interview process and screening, and are selected merit. They are further subjected to an internal vetting process before appointment. The PCCB decides their terms and conditions of employment.⁶⁹ Critics note that this insular process can be abused and recommend the inclusion of bodies, such as parliament, in the vetting of senior staff.

Security of tenure

The DG's tenure of office is not specified in the PCCA. The DG therefore has no security of tenure and can be removed from his or her office by the president, as the appointing authority. The DG is also required to mandatorily retire at 60 years of age. The staff of the bureau are granted immunity from prosecution for bona fide acts or omissions during the exercise of their functions under the PCCA (s 50).

The PCCA does not provide a detailed process for the removal from office of the head of the bureau or other senior staff. In the event of suspension, dismissal or resignation, the internal PCCB manuals apply. In the event of death or termination of mandate, the president appoints replacements as per section 6(2) of the Act.

The requirements for the recruitment of competent staff are guided by section 7 of the PCCA. However, the process of recruiting staff follows the procedures laid down in the Public

68 PCCB. 'Director general welcome message.' Available at: <http://www.pccb.go.tz/index.php/about-pccb/all-about-the-pccb/dg-s-welcoming-message> [accessed: 30 October 2015].

69 Ibid.

Service Management Act (PSMA). According to the PCCB's reports, the number of staff to be recruited needs to be approved by the public service management office because of its potential impact on the government wage bill, among others. Identified staffing-position needs and public service management office approval are then submitted to the commissioner for budget for the allocation of funds, because the Ministry of Finance has overall responsibility to plan and budget for each financial year. Once approval has been obtained, the recruitment process starts with the advertising of the relevant position, which is followed by shortlisting the top candidates, forming a recruitment committee, interviewing, vetting, and, ultimately, selecting the best candidate and training him or her.

Capacity

The PCCB has over 80 advocates and over 120 legal officers. It also has over 2 086 permanent staff. It has a staff-training plan and has developed an anti-corruption training syllabus that all staff are required to complete. The training programmes comprise a basic course in investigation (three months); an intermediate course in investigation (two months); a senior course in investigation (one month); a command course in investigation (two weeks); and an executive management course (two weeks).

The selection of staff for training and the training programmes are controlled by the bureau. Recruitment of staff for some specialised tasks is classified. Staff are trained both locally and abroad. For example, the Basel Institute on Governance (International Centre for Asset Recovery) has provided training in asset forfeiture.

Remuneration

The remuneration of the bureau's employees is described as 'reasonable' and better than that of mainstream civil servants of the same rank. The salary scales for the PCCB's officers were not available at the time of writing, but the average monthly salaries range between TZS1.5 million to 2.5 million (approximately USD1 000 to USD1 500). The PCCB has, however, expressed concern that the its remuneration of its legal and investigative staff could be lower compared with that of their peers in private practice. The PCCB noted that, if it were given greater constitutional autonomy and political support, further it would be able to access more resources and attract even greater talent.

Ethics

PCCB staff are required to abide by the PCCA and adhere to a code of conduct. Violation of the Act or codes/regulations may lead to action as per the PCCB's internal procedures.

Investigative and prosecutorial powers

The PCCB's mandate is articulated in section 7 of the PCCA. The bureau is tasked with promoting good governance and eradicating corruption. It has powers to examine and advise on matters relating to the prevention of corruption, to solicit public support in the fight against corruption, and to investigate and prosecute offences, on advice from the director of

public prosecutions (DPP), as per section 57 of the PCCA. The requirement of clearance by the DPP is seen as a major limitation to the PCCB's performance in dealing with corruption cases in an expeditious manner. It is hoped that the new constitution will broaden the PCCB's mandate to include full prosecutorial powers for all corruption offences.

The PCCB's mandate is limited to mainland Tanzania. Anti-corruption matters in Zanzibar are handled by the ZACEA. The United Republic of Tanzania therefore has two anti-corruption agencies. There is concern that having two agencies dealing with corruption in the same country is a major weakness, as it undermines effective and coordinated efforts against corruption. Multiple anti-corruption agency models have proven a failure in other countries, like Nigeria and South Africa. It is therefore recommended that one agency with a broad mandate covering both the mainland and Zanzibar would be the best option.

The PCCB has a mandate to receive information and reports on corruption. It has toll-free hotlines and secure email addresses for members of the public to report cases of corruption. The location and telephone numbers of all PCCB district and regional offices, and their respective commanders, are widely advertised in the PCCB's media and information material, such as calendars.

The PCCB receives large volumes of information; however, not all information received is sufficient to establish a case of corruption. The decision to act or investigate further depends on the information received. An evaluation is made to determine whether the available information meets the minimum threshold requirements before being subjected to further investigation and action. The minimum threshold is that the information received should show probable and reasonable cause that an offence has been committed.

In support of the PCCB's mandate to investigate all cases of corruption, the DG can authorise an officer of the bureau to conduct a search under section 12 of the PCCA. The powers to prosecute are, however, still vested with the DPP, who makes the final determination as to whether a particular case should be prosecuted or not (s 57 of the PCCA). The DPP also has the power not to proceed with a case by filing a *nolle prosequi* with the court as per section 91 of the 1985 Criminal Procedure Act.

The aforementioned powers of the DPP have often been a bone of contention between the DPP's office and the PCCB, with the bureau arguing that the DPP's office can sometimes be an obstacle to the speedy prosecution of corruption cases. The PCCB has powers to transfer files from one agency or department to another. According to the PCCB, a total of 1 711 files were transferred to other agencies for further action between 2005 and 2014. Under section 9 of the PCCA, the DG, or any officer, is required to institute criminal proceedings against any person within six months from the date of seizure. In the case of a failure to bring charges against an accused within the six months, an application for extension for another specified period is required. This timeline is also laid down by the Criminal Procedure Act; however, perpetual extension without charge may lead to a miscarriage of justice.

The relationship between the bureau and other law enforcement agencies, like the

police, is described as ‘good’.⁷⁰ The PCCB works with the integrity committees established within the police force to ensure that corruption within the force’s ranks is addressed. The bureau also depends on the police to detain those accused of corruption pending arraignment before court and trial. This collaborative relationship is, however, often compromised by the fact that the police have constantly been ranked as the most corrupt institution in Tanzania for the past three years. A PCCB study in 2009 ranked the police force and the judiciary as the most corrupt institutions, with each scoring 64.7% and 58.9%, respectively.⁷¹ Transparency International’s 2014 East African Bribery Index also ranked the police force and the judiciary as the most corrupt institutions.

There is a formal relationship between the PCCB and the justice system, including those judicial institutions specialising in dealing with political corruption. There is a legal relationship between the bureau and the DPP, which requires all cases to be forwarded to the DPP for a determination before any prosecution can proceed, as per section 7 of the PCCA and article 59B(2) of the Constitution. The PCCB uses the existing courts to prosecute all corruption cases. A legal relationship also exists between the bureau and the CAG, which requires the CAG to transfer or hand over all suspected cases of corruption to the PCCB for further investigation. The PCCB can also request the CAG to audit any suspected cases of corruption.

There is no formally institutionalised relationship between the PCCB and parliament. As a government agency, the PCCB reports to parliament through the Ministry of Good Governance. Members of the Parliamentary Committee on Constitutional and Legal Affairs regularly visit the bureau to learn and to share information on issues of interest. The last documented visit took place on 29 January 2014. The relationships between the bureau and other parliamentary bodies, like the Tanzanian chapter of the African Parliamentary Network against Corruption (APNAC), are ad hoc and largely built on information sharing and learning. The level of collaboration between parliament and the bureau on corruption matters has been sporadic and, at times, tense. For example, in 2010, the bureau was criticised by parliament for investigating members of parliament suspected of engaging in electoral corruption and fraud.⁷²

Public-feedback mechanism and witness protection

The PCCB has no clear feedback mechanism with regard to citizens’ complaints. It assures its informers of ‘total secrecy’ in accordance with section 51 of the PCCA, which prohibits the disclosure of the identity of informers. Also, disclosure of the identity of someone under investigation is an offence under section 37.

The Whistle-Blowers Protection Act was only recently enacted (September 2015). Consequently,

70 As per Dr Edward Hosea in an interview with the OSIEA researcher, PCCB headquarters, Dar es Salaam, 19 August 2014.

71 PCCB (2009) *National Governance and Corruption Survey Report 2009* (volumes 1–4). FACEIT in association with Dar Consultants.

72 Agenda Participation 2000 (2010) Are Corruption Tsars plotting to take over parliament? Article for the Tanzanian Corruption Tracker, Dar es Salaam, 2010.

most witnesses to date have feared disclosure of their identity. Moreover, they are hesitant to appear before courts of law as witnesses, due to a lack of effective witness protection programmes. The PCCB notes that this is one of the factors explaining the low number of citizens coming forward to report corruption or provide tip-offs. It also explains the difficulty in successfully prosecuting current and past corruption cases.

For example, out of 5 450 cases prosecuted since 2008, only 473 convictions had been secured by the end of June 2014, representing a meagre success rate of 8.6%. (For more details on the PCCB's performance and for case statistics, see section H below.)

Witnesses are reluctant to testify in practice and want assurances from the prosecution of personal safety. Some witnesses do not testify or turn hostile. Despite the fact that the PCCB has provisions regarding the protection of witnesses, the bureau still does not have any provisions on the relocation of witnesses, or on the non-disclosure, or limitation of disclosure, of information concerning the identity and whereabouts of such persons. Witness relocation and protection measures are expensive. Therefore the recent passing into law of the the Whistle Blowers Act is to be welcomed. Public officials have a duty to report corruption, but protection up to now has been limited to the provisions of section 52 of the PCCA.

Seizure, forfeiture, recovery of assets, and mutual legal assistance

The PCCB has extensive powers to investigate the private sector in terms of section 7 of the PCCA. It also has powers to seize and recover stolen assets section 38 and section 40 of the PCCA. For it to exercise this mandate, the PCCB can collaborate with local and international agencies through the mutual legal assistance procedures provided for in section 39 of the 1991 Mutual Assistance in Criminal Matters Act. The PCCB can also invoke mutual assistance under section 54 of the PCCA, and the extradition of criminals under section 55 of the PCCA. Other related offences are considered under the Extradition Act of 1991. Mutual legal assistance can be afforded for the purposes of identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter 5 of the UNCAC, which also stipulates that such assistance can be enlisted for the purpose of recovering assets.

In one case, Tanzanian authorities conducted a joint anti-money laundering investigation with India, involving funds stolen from the Central Bank of Tanzania.⁷³ The Swiss government has also undertaken to support the PCCB in recovering any proven stolen assets held in Swiss banks, but, so far, this cooperation has not materialised.⁷⁴

In recent years, there have been some difficulties in securing mutual legal assistance from certain foreign governments. For instance, the PCCB's request for information from the British Serious Fraud Office (SFO) on the corrupt BAE radar sale to Tanzania, and on assets held in offshore accounts by some public officials, was not honoured.⁷⁵ The law is

73 UNODC (2011) *UNCAC Tanzania Review 2011*, p. 143.

74 IPP Media (2009) 'Swiss ready to help Tanzania hunt loot.' *The Guardian*, 29 June 2009. Available at: <http://www.ippmedia.com/frontend/index.php?l=4035> [accessed: 7 August 2014].

75 Jamiiforums (2010) 'Dr Edward Hosea corners SFO.' *The Guardian on Sunday*, 14 February 2010. Available at: <http://www.jamiiforums.com/habari-na-hoja-mchanganyiko/52982-dr-edward-hosea-corners-sfo.html> [accessed: 30 October 2015].

also silent concerning extradition and mutual assistance in respect of corruption matters involving mainland Tanzania and Zanzibar, given that the PCCA is not applicable in Zanzibar and corruption is not a union matter.

Financial resources

The PCCB's funding is comprised of money appropriated by parliament to cover the bureau's functions (as per s 47 of the PCCA). The bureau is responsible for budgetary planning of its financial resources, based on the ceilings in respect by the Ministry of Finance. The bureau's budget is presented for parliamentary approval through the minister responsible for good governance. The budgetary planning of the bureau is based on the four-year strategic planning cycle, from which an annual plan is extrapolated.

The bureau's access to funds is dependent on releases from the national treasury, and, sometimes, there are delays in disbursement. This affects the bureau's operations. The PCCB has managerial autonomy in respect of its budget and its absorption capacity has been above 90% of the received funds. The bureau's budget is described as 'stable' by the DG, but needs to be increased to ensure greater efficiency.

The PCCB's cash flow is dependent on total revenue collection and disbursements by the central government and donors. No official figures have been provided by the PCCB regarding its total annual budget, but the World Bank estimates that the annual budget for the bureau is around TZS56 billion (around USD27 million).⁷⁶ The bureau has received funding from international development partners such as the United Nations Development Programme (UNDP) and the UK Department for Foreign and International Development (DFID). According to the national approved budget allocations, donors contributed over TZS8.1 billion between 2012/2013 and 2014/2015 towards support of key anti-corruption projects under the NACSAP I & II.⁷⁷

Table 3.2: PCCB donor budget allocations and expenditures 2012/2013 through 2014/2015

Item	Description	2012/2013		2013/2014		2014/2015		Donor
		Actual expenditure (TZS)		Approved estimates (TZS)		Approved estimates (TZS)		
Sub-vote	1003 Policy and planning	Local	Forex	Local	Forex	Local	Forex	Grant
6203		-	2 458 900 000	-	1 257 600 000	-	480 000 000	UNDP
6208		-	1 250 000 000	-	1 266 427 000	-	1 455 051 000	DFID

Source: URT (2015) Volume IV: Public Expenditure Estimates Supply Votes (Ministerial) as submitted to the National Assembly 2014/2015; Vote 30: President's Office and Cabinet Secretariat, p. 28.⁷⁸

76 <https://www.acauthorities.org/country/tz>.

77 URT. (2014) Volume IV: Public Expenditure Estimates Supply Votes (Ministerial) as submitted to the National Assembly 2014/15; Vote 30: President's Office and Cabinet Secretariat, p. 23. Available at: <http://www.mof.go.tz/mofdocs/budget/Budget%20Books/2013-2014/Volume%20IV%20Detail%20oby%20Vote-Print.pdf>.

78 Available at: http://www.mof.go.tz/mofdocs/budget/Budget%20Books/2014_2015/volume%20IV%20final.pdf.

The funds received from government's internal sources are insufficient for the bureau to undertake its mission when one considers the size of the country and the cost of fighting corruption. This has had negative ramifications for the bureau's financial sustainability and for continuity with regard to major anti-corruption projects, which are heavily reliant on donor support. The implementation of NACSAP III has remained stalled because of, among others, lack of approval of funding from the government. The future financial situation of the bureau is uncertain, as the priorities of development partners appear to be shifting from the fight against corruption to other issues, like oil and gas and private-sector support.

Detailed operational budget and auditing

Under section 47(2) of the PCCA, the PCCB is required to keep audited accounts and other records relating to the resources of the bureau. It is required, within three months before the end of each year, to submit financial reports of income and expenditure to the minister responsible for good governance. The reports are supposed to contain a performance report relating to the functions of the bureau. The respective minister is required to present this report to parliament for discussion and approval. The bureau is subjected to an annual audit by the CAG, and, over the past years, it has consistently received an unqualified audit. There are, however, no indications as to whether funds allocated for special operations are subjected to any audit and as to how the reports from these audits are treated. For what are described as 'security reasons', the agency has not been willing to publicly share detailed operational budgets. Requests by the authors for budget frames for the five-year period were declined by the PCCB authorities. There were also no complete operational budget reports documented in the official national budget books. It is therefore difficult to undertake a holistic and independent analysis of the PCCB's financial status in relation to its needs and performance.

Relationship with the public and other stakeholders

The bureau's relationship with the judiciary exists through the integrity committees that have been established within the judiciary. Its relationship with parliament is not formalised, but the bureau has, over time, established a relationship with parliament through visits and through seminar presentations to its committees, like the Constitutional and Legal Affairs Committee and APNAC. Parliament has, in the past, also asked the PCCB to investigate suspected cases of corruption (e.g. in the Richmond case in 2007⁷⁹ and the IPTL-Tegeta escrow account case in 2014).

The bureau's relationships with other state organs assume various forms. According to the PCCB, in one corruption case involving the Ministry of Education, the director of

79 Richmond Company was contracted to bring in generators to provide 100 megawatts of electricity each day after a drought early in 2006 left low water levels in dams, leading to severe power cuts. But a parliamentary inquiry, launched in November 2007, found that the generators had failed to arrive on time and, when they did arrive, they did not work as required. By the time the company was ready to start operations, Tanzania's power problems had been resolved. Despite these failings, the government paid Richmond more than USD100 000 a day.

personnel cooperated with the PCCB. As a result, the PCCB was able to share information and attend meetings in order to facilitate the investigation and prosecution of the case.⁸⁰ In a case involving the Tanzania Revenue Authority, a public servant reported an instance of corruption to the PCCB and the matter was referred to the Public Service Commission.⁸¹ The bureau has also collaborated with the police in making arrests and taking suspects into safe custody. In collaboration with the PCCB, the Integrity Committee of the police force conducts outreach, seminars and workshops with MPs, the press, and religious and community leaders on criminal issues, including corruption.

NACSAP II established the annual National Anti-Corruption Forum (NACF) in November 2008 with the aim of providing a platform for dialogue among all stakeholders on matters of corruption in the public sphere. The forum includes all state integrity institutions, local-government authorities, civil society, the private sector, the media and development partners. The NACF also seeks to inform the general public about stakeholders' achievements and challenges and the way forward. Some of the members of the NACF include representatives from the GGCU, the Leadership Forum, the Office of the Registrar of Political Parties, the Commission of Human Rights and Good Governance, the Legal Sector Reform Programme and the Office of the President – Public Service Management.

The bureau has collaborated with schools to establish anti-corruption clubs in primary and secondary schools. The bureau has also conducted a number of sensitisation seminars on corruption as a way of building greater cooperation between itself and civil society.⁸² In 2009, the Policy Forum collaborated with the PCCB in publishing a Swahili booklet *Makosa ya Rushwa katika Uchaguzi* (Corruption Offences in Elections). This was an extract from three different laws, namely the PCCA, the Local Government Elections Act and the National Elections Act. This collaboration, however to be formalised and regularised.

Relationship with the private sector

Under section 46 of the PCCA, the bureau is required to establish and maintain a system of collaboration on corruption issues with the private sector, particularly financial institutions. According to the DG, the bureau encourages the private sector to engage and report any cases of corruption. So far, the private sector has not fully taken up this offer. In 2008, the PCCB's collaboration with the private sector established Business Action Against Corruption (BAAC). However, this body is not very active and its results are yet to be seen.

A system for blacklisting companies convicted of corruption exists. Once a company is found to have been involved in corruption and to be in contravention of the Public Procurement Act No. 21 of 2004, section 57, the company will be blacklisted and barred from further tenders. Examples of companies blacklisted in terms of this framework

80 URT (2015) Volume IV: Public Expenditure Estimates Supply Votes (Ministerial) as submitted to the National Assembly 2014/15: Vote 30: President's Office and Cabinet Secretariat, p. 28.

81 Ibid.

82 PCCB (2012) *The National Anti-Corruption Strategy and Action Plan-II (NACSAP II) Implementation Report*, Dar es Salaam.

include Oxford University Press East Africa Ltd; Oxford University Press Tanzania Ltd; China Communications Construction Company Ltd; and China Geo-Engineering Corporation.⁸³ These companies were involved in corruption in order to secure government tenders. However, there is inadequate interagency collaboration to ensure that blacklisted companies do not win government procurement tenders elsewhere. For example, the above-mentioned companies are all still operational in the country and some have since won more government tenders. One of the blacklisted Chinese companies won a tender to construct the port of Dar es Salaam.

Financial institutions are required to cooperate with the PCCB on matters related to corruption in terms of section 48 of the Banking and Financial Institutions Act.

Donors provide the bureau with technical and financial. Donors funded the NASCAP I & II programmes, with over TZS8 billion being disbursed on anti-corruption measures between 2012/2013 and 2014/2015. The PCCB was the lead organisation in the implementation of these programmes. The PCCB reports on the progress of these programmes during the annual GBS review meetings. On 31 December 2013, the PCCB received a donation of property and equipment worth TZS400 million from the Chinese government. In addition, the DFID has supported training in criminal justice and has built the capacity of the PCCB's staff with regard to financial investigations and asset recovery.

Tanzania's membership of, and participation in, regional anti-corruption bodies

Tanzania is a member of the Eastern and Southern African Anti-Money Laundering Group, and, through this, the PCCB has been peer-reviewed. Among other suggestions, the review recommends further capacity building in the areas of investigation and prosecution. The most recent mutual evaluation can be found at <http://www.esaamlg.org/reports/me.php>. Tanzanian law enforcement authorities cooperate through the Southern African Regional Police Chiefs Cooperation Organisation and through the Eastern Africa Police Chiefs Cooperation Organisation. The PCCB is also a member of the Southern Africa Forum Against Corruption (SAFAC) and the PCCB's DG was SAFAC's chair between 2010 and 2011. The PCCB is a member of the East African Association of Anti-Corruption Authorities and Tanzania is the current president of the association. The PCCB's DG has also served on the AU's anti-corruption advisory board.

Reporting mechanism and public perception

From a legal standpoint, the PCCB falls within the ambit of the president's office and thus the bureau is required by law (s 14 of the PCCA) to submit its report to the president on or before 31 March of every year, or at such later date as the president may determine. The minister responsible for good governance also receives the PCCB reports, as per section 48 of the PCCA. The minister responsible is required to present these reports to parliament for discussion. The quality of discussion on these reports is often compromised

83 UNODC (2011) *UNCAC Tanzania Review 2011*.

because of limited knowledge of corruption matters and inadequate advance preparation and insufficient information provided for parliamentarians. Also, the time allocated for discussion of these reports is often limited due to the congested parliamentary schedule.

The bureau does not have a clear mechanism for objectively assessing public perceptions of its performance. According to the DG, these are just perceptions without objective truth and are quite often based on misinformation or lack of extensive knowledge of the sector. The bureau listens and sometimes acts on these perceptions, but it is not entirely driven by what the public says. The agency has commissioned a study to establish its own indicators for measuring the level of corruption in the country. This report is expected to be released before the end of 2015.

The bureau has a well-established physical infrastructure, including fully furnished headquarters in Dar es Salaam. The PCCB has sub-offices located in 24 regions and in all districts of mainland Tanzania. The PCCB has widely publicised their locations and the contact numbers of the respective district commanders as a strategy for increasing public access and the reporting of corruption.

The bureau has had a long-term working relationship with donors. Since 2012, the UNDP has contributed over TZS4.2 billion to the PCCB. The DFID has provided a further TZS3.9 billion towards strengthening anti-corruption work in the country.⁸⁴ The international community has also provided training and technical expertise. However, the relationship with donors has at times been strained, particularly when they request the PCCB to deliver better results. In 2011, the development partners withheld aid, demanding that the government prosecute grand-corruption cases. Speaking at the GBS annual review meeting, Svein Baera, Minister Counsellor of the Royal Norwegian Embassy and chair of the Development Partners Group, stated that the fight against petty and grand corruption was 'unsatisfactory' and sought evidence of the progress made. Development partners chose not to commit themselves on disbursing aid for general budget support. As mentioned above, in 2014, the development partners temporarily withheld aid due to corruption allegations surrounding the IPTL-Tegeta escrow account.

H. The PCCB's performance

The key strength of the bureau lies in its expansion over the past years. The organisation now has a presence in most parts of mainland Tanzania. During this period, the head of government has been supportive of the bureau, constantly urging it to deliver results. At the time of writing, the PCCB had over 2 086 permanent staff. However, the major challenge has been how to translate this infrastructure into effective machinery to combat corruption.

Case management and resources recovered

The number of successful prosecutions and the value of resources recovered by the bureau

84 UNODC (2011) *UNCAC Tanzania Review 2011*.

over the past six years are still low. According to the PCCB's case statistics, 473 convictions were secured and TZS86.6 billion recovered for the period between 2005 and June 2014.⁸⁵ Approximately TZS93 billion, roughly equivalent to USD59 million, has been recovered since 1995.

In 2011, the PCCB recovered TZS4.639 billion (USD3 million); in 2010, TZS10.123 billion (USD6.7 million); in 2009, TZS436 million (USD290 000); and TZS13.204 billion (USD8.8 million) in 2008.⁸⁶ Of the total recovered, it is not clear how much was from grand-corruption cases like the Bank of Tanzania–External Payment Accounts (BOT-EPA) scandal in 2005. It is also not clear how much has been recovered from corrupt dealings and savings in offshore accounts or assets frozen from outside Tanzania.

Table 3.3: Case statistics and resources recovered, 2005–June 2014 (*USD equivalent)

YEARS	*Allegations Received	Cases investigated	Completed investigation files	Administrative actions taken	Files transferred to other agencies	Files sent to DPP	New cases into courts	Total cases prosecuted	Conviction cases	Acquittal cases	Money saved/assets recovered
2005	3 121	677	540	111	2	20	50	218	6	10	2 500 600 000
2006	6 320	1 528	1 781	209	496	22	71	251	18	28	1 301 49 528
2007	8 235	1 266	1 966	280	460	38	196	352	35	45	1 580 099 081
2008	6 137	928	1 038	74	184	119	147	416	37	71	13 203 459 357
2009	5 930	884	1 188	40	152	156	222	463	46	73	436 132 336
2010	5 685	870	924	29	135	112	224	587	56	98	10 123 258 300
2011	4 765	819	868	30	84	143	193	709	52	61	4 638 939 558
2012	5 084	1 178	881	27	72	221	288	723	47	71	9 667 354 594
2013	5 456	1 100	1 027	19	98	358	343	894	89	62	4 235 401 591
(January–June) 2014	2 765	391	415	6	28	143	166	837	87	55	38 959 726 644
TOTAL	53 498	9 641	10 628	825	1 711	1 368	1 900	5 450*	473*	574	86 671 105 989

Source: PCCB – interview with key informant, Head Office, September, 2014.

* These figures have been corrected from the original figures from the PCCB, which had some errors in the calculations.

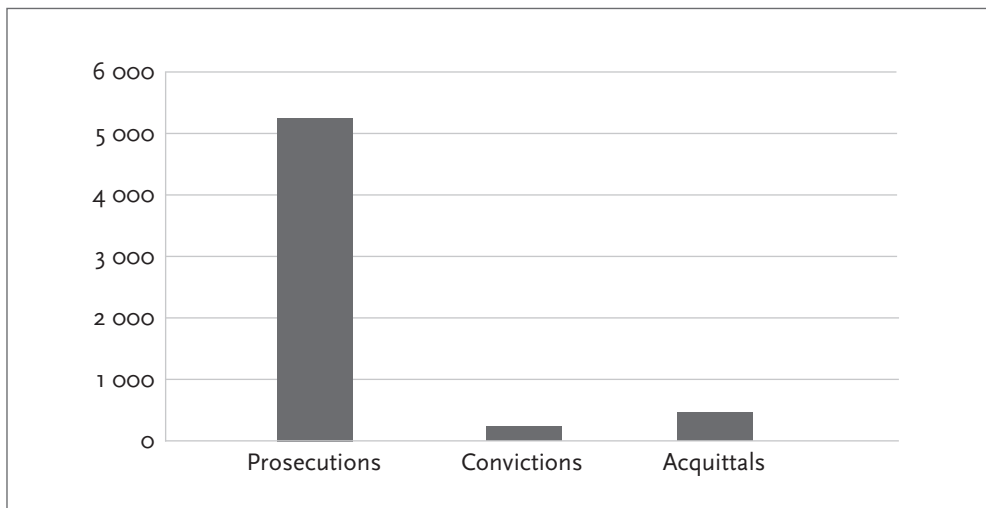
85 PCCB statistics available at: <http://www.pccb.go.tz/index.php/investigation/sport-news/case-statistics/579-statistics-as-from-2005-to-june-2014> [accessed: 2 November 2015].

86 UNODC (2011) *UNCAC Tanzania Review 2011*, p. 34.

The PCCB data indicates that, by the end of 2008, the number of cases filed in court increased to 1 900 from a mere 147 cases handled under the old PCA. Despite the increase in the amount of money recovered and in the number of cases filed in courts, the PCCB still faces a daunting challenge of low conviction rates. According to the data, out of 5 450 cases, only 473 convictions had been secured by the end of June 2014, representing a mere 8.6% of the total prosecutions completed. A total of 574 cases were acquittals, representing 10.5% of the total prosecutions for the period.

The number of administrative actions taken against public servants for corrupt behaviour from 2005 to December 2014 was 825. This represents 7.8% of all completed investigations carried out by the PCCB for the period. The highest number of cases of administrative action was that between 2005 and 2007. However, this data does not indicate the cadre of public servants who are more prone to or inclined towards corruption. There is no information regarding the nature of the administrative action taken. Quite often, the administrative action taken involved written warnings or the transfer of errant public servants from one department to another, or from one geographical area to another. The consequence of these actions is that corruption may be spread across departments and geographical locations.

Figure 3.1: Comparison of prosecutions, convictions and acquittals in PCCB corruption cases, 2005–2014.



Over the past few years, the PCCB has faced criticism from civil society and parliament for non-performance and arguments that the assets recovered and the convictions secured do not adequately reflect the magnitude of corruption in the country. The volume of funds recovered so far is low compared with what is estimated to have been lost. For example, the TZS93 billion (USD 62 million) recovered between 1995 and 2014 compares poorly

with the approximately TZS193 billion (USD128 million) lost in the combined BOT–EPA scandal and infamous military radar purchase alone.

There have been concerns regarding the general slackening in the prosecution of cases and the lack of funding to prosecute some corruption cases. In 2012, chief justice Othman Chande threatened to send back election-corruption cases to parliament for lack of funds to prosecute them. Since the chief justice's treat, it is not evident what remedial measure has been taken by government to boost the judiciary's financial capacity to prosecute these cases. On average, it takes 680 days (over two years) to investigate and prosecute a single election case.

Table 3.4: Cases of election corruption on mainland Tanzania reported and investigated before, during and after the 2010 general elections

1	Electoral incidences reported	41
2	Number of cases filed in court	23
3	Number of cases concluded to date	18
4	Number of cases withdrawn	01
5	Number of cases pending in courts of law	04
6	Type of court verdicts for concluded cases: Convictions Acquittals	7 11
7	Average number of days taken per case	680

Source: PCCB Headquarters, September 2014

According to the PCCB, some of its problems can be traced back to the office of the DPP and to the judiciary, whose mandates involve prosecuting and hearing cases referred to them by the bureau. They are, it is argued, not acting fast enough to prosecute and decide corruption cases. Once cases are with the DPP and the judiciary, the PCCB has very little say. The PCCB mandate ends here.⁸⁷

Despite its challenges, the PCCB has had successful investigations and prosecutions. One such cases was the matter of Amatus Liyumba,⁸⁸ a former director of personnel and administration at the Bank of Tanzania. Liyumba was successfully prosecuted and convicted for corruption and abuse of power, and for causing financial loss to the government. The court found that Liyumba had arbitrarily taken major decisions in altering the scope of work on a construction project financed by the Bank of Tanzania. As a result of these unilateral changes, the cost of the construction project rose from about USD73 million to USD357 675 568. The accused was sentenced to serve two years in jail. Other cases which the state won include: *Republic vs. John Kinyaki Nembo*, Criminal Case No. 09/2010; *Republic vs. Mohamed Ali*,

87 Based on the opening remarks of Dr Edward Hosea at the Pan-African Anti-Corruption Conference: Corruption and Development in Africa, held at the Serena Hotel in Dar es Salaam, Tanzania, 4 June 2013.

88 See *Republic vs. Amatus Liyumba*, Criminal Case No.105/2009.

Criminal Case No. 302/2010; *Republic vs. Jamila Nzota*, Criminal Case No. 1090/2009; and *Republic vs. Jaqueline Basilo Shazi*, Criminal Case No. 280/2009. The most recent case was the successful prosecution and conviction in August 2014 of the former Tanzania Bureau of Standards (TBS) DG, Charles Ekerege, who was sentenced to a three-year jail term for abuse of office leading to a loss to the government of over TZS70.2million through a bogus motor vehicle inspection programme abroad.

The PCCB has also experienced incidences of poor prosecution and political interference. An example is the case of the *Republic vs. Costa Mahalu and others* (Economic Criminal Case No. 1 of 2007. Costa Ricky Mahalu, a former ambassador to Italy, and his assistant, Grace Alfred Martin, were prosecuted for making suspicious payments relating to the purchase of Tanzania's chancery in Italy. It was alleged that the two conspired and ultimately misled their principal, resulting in a loss to the government. This was in violation of the PCCA (Cap. 16 R.E. 2002) and the Economic and Organised Crimes Control Act (Cap 2000 RE. 2002).⁸⁹

The purchase was done through two contracts executed on the same day, but for different prices. The first contract was executed before a notary public of Italy, Marco Papi, which showed that the purchase price was EUR1 032 913.80. The second contract executed between the vendor and the ambassador, but which was not witnessed by a notary public, showed that the purchase price was EUR3 098 741.40. According to bank statements tendered as exhibits in court, the payment of the purchase price was made on 24 September 2002 into two separate accounts, both of CERES S.R.L. The exhibits showed that a payment for EUR2 065 827.60 was made, and that another payment for EUR1 032 913.80 was deposited into a second account, in Rome. Upon signing the contracts and having confirmed receipt of the money on 1 October 2002, the vendor issued a payment receipt for EUR3 098 741.40. On 23 September 2002, the embassy had issued a payment voucher authorising payment of EUR3 098 741.40 to CERES S.R.L.⁹⁰

On the same date, the embassy instructed its banker, Direzione Territoriale Italia Centrale, to effect payment by transfer of the said amount of money into the vendor's account. The letter of instruction was signed by Dr Mahalu as ambassador and by his assistant, Grace Martin, as counsellor, and the money was transferred the next day. It is the unexplained amount of EUR2 065 827.60 above the quoted price that was the subject of the charges.

Despite the strong evidence of suspicious payments relating to the transaction, and after a long trial lasting over five years, the accused were acquitted. One in the turning points of the case was when former President Benjamin Mkapa defended the accused, exonerating him and others of any wrongdoing. This was a landmark case, as it was the first time that the former head of state had defended an accused person in court. The PCCB protested the ruling but opted not to pursue it further, as it had given rise to considerable political sensitivities involving a foreign government.

89 See the judgment in *Republic vs. Costa Mahalu and others*.

90 Ibid.

Most of the corruption cases have taken inordinately long to prosecute. Suggestions are being made for the amendment of the law to provide the PCCB with full prosecutorial powers or to include provisions in the current law requiring the DPP to act within a prescribed period in matters related to corruption, failing which the PCCB can move forward with the prosecutions concerned.

There have been calls for the establishment of an independent corruption court to hear and decide all cases and matters related to corruption. By doing this, Tanzania will have followed Uganda's example, where such courts are already in existence.

I. Conclusion

Generally, Tanzania has made significant progress in establishing a legal and institutional anti-corruption framework. Over the years, the PCCB has evolved into a model African anti-corruption institution in terms of both infrastructure and reporting on international anti-corruption instruments. The bureau is headed by a highly trained lawyer, academic and experienced law enforcement officer, Dr Edward Hosea, as DG. The organisation strives to be a transparent institution and has engaged in research in order to inform its anti-corruption efforts. The weakness of the bureau lies, however, in its inability to translate the elaborate institutional apparatus into a robust, efficient agency capable of tackling corruption. The political economy in which corruption takes place in Tanzania has been a contributing factor. Tanzanian polity is characterised by a 'big man syndrome',⁹¹ whereby those in positions of influence are seen as powerful and are often inclined to flaunt this power with impunity. Political patronage is common and those in positions of influence often use public resources or positions to reward political supporters, and vice versa. Tanzanian social relations encourage corruption, because people expect to receive favours from their relatives in power, and corrupt public and private leaders who amass wealth irrespective of the means are at times celebrated and revered by society as 'successful'. Citizens and corporates have therefore been driven towards embracing corruption. For fear of social and/or political retribution, and because of a lack of strong protection mechanisms provided by anti-corruption agencies, they are reluctant to report corruption and testify against suspects.

The institution is limited by law (the PCCA) to operating only on mainland Tanzania, and this affects its overall mandate in tackling corruption in the country, since Zanzibar is covered by another agency (ZACEA). Tanzania therefore has multiple agencies dealing with corruption, and, in practice, coordinating activities can be challenging. The bureau and the DG have no constitutional backing to cushion them against any politically motivated shocks and interference that may arise. The bureau is also vulnerable to political, financial and legal risks. As a consequence of the legal, institutional structure, capacity, financial and political hurdles, the bureau is struggling to meet the expectations of the general public and justify its existence in tackling corruption.

91 Hanns Seidel Foundation (2013) IV Pan-African Anti-Corruption Conference: Corruption and Development in Africa, Dar es Salaam, 4–5 June 2013, p. 9.

J. Recommendations

In order to address some of these challenges, the following recommendations are being made:

1. Strengthen the overall legal framework for combating corruption

Generally, Tanzania has a robust legal framework that is well linked with continental and international anti-corruption regimes. The effective implementation of this legal framework is, however, problematic. At least 90% of of 13 526 respondents (households and public officials) interviewed in a PCCB-commissioned study in 2009 believed that poor law enforcement or inadequate punishment of the culprits were factors responsible for corruption.⁹² Over a third of respondents interviewed by Transparency International saw no reason for reporting the payment of bribes, because they believed no action would be taken against the culprits.⁹³ There is therefore a need to address some of the legal lacunae that make enforcement, and the punishment of corruption, difficult. This can be done in the following ways:

- Tanzania should support the adoption of the East African Protocol on Combating Corruption (it has been in draft form for too long).
- The government of Tanzania should urgently enact and pass an access-to-information law (ATI), which was first mooted in 2006. President Kiwete also undertook on 31 October 2013 to have a Bill sent to parliament and gave assurances that an ATI law would be passed by April 2014. In March 2015, this Bill was presented to parliament under a certificate of urgency, but was later withdrawn. Since then, there has been no progress.
- Allocate resources to protect informers and implement witness protection programmes, as per sections 51 and 52, respectively, of the PCCA. The PCCB should advocate for these resources to be available.
- Establish corruption courts to expedite corruption cases. The pioneering case law from these courts could also help in opening up a new frontier in anti-corruption proceedings.
- Appropriate measures are needed to encourage persons who participate, or who have participated, in the commission of an offence established in accordance with the PCCA to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds. Currently, this discretion lies only with the courts.
- Introduce legal reforms that provide for mitigation based on collaboration with anti-corruption agencies. Mitigation of punishment based on collaboration with

92 PCCB (2009) *National Governance and Corruption Survey 2009*. FACEIT in association with Dar Consultants. 21 November 2009.

93 Transparency International-Kenya (2013) *East African Bribery Index 2013*. Nairobi, Kenya: TI-Kenya.

law enforcement agencies is currently only the prerogative of the courts. For this to happen, suspects will have to cooperate with law enforcement before they have participated in a criminal act, not afterwards.

- The anti-corruption legal framework in Tanzania should be reformed to allow for plea bargaining and for the signing of treaties catering for plea bargains between Tanzania and other countries. Among other benefits, this will increase intelligence on and knowledge of corruption within and outside Tanzania.

2. Strengthen the PCCB's status (legal framework, appointment, tenure and removal procedures, external oversight, autonomy and independence)

- Reforms are required to ensure that the PCCB is rooted in the Constitution. Currently, it is not a constitutional body and thus its existence is not certain. This constitutional rootedness needs to be matched by gazetting of corruption as a union matter as well.
- There is a need to secure the tenure of the head of the PCCB. The current law does not provide for security of tenure, nor is the position anchored in the Constitution.
- There is a need for an independent, external oversight body to be created. Currently, the PCCB's oversight structures are vague. The law is also silent on this.
- Move the PCCB away from the presidency and ensure that it is free of political interference. This oversight role can be given to parliament or the judiciary.
- Ensure that the new constitution provides a high degree of independence for the PCCB.
- Consider transforming the bureau into an anti-corruption commission with publicly vetted commissioners. This will give it more autonomy and cushion it against possible interference.
- As an anti-corruption agency, the PCCB itself might not be free of corruption. The question therefore arises as to who exercises checks in respect of corrupt conduct of the PCCB as an institution. Related to this issue, it is important to have clarity as to where citizens can report corruption, for example corruption involving senior officials of the PCCB.

3. Strengthen the mandate and interagency collaboration with state and non-state actors and with regional/continental networks

- Extend the jurisdiction and mandate of the PCCB to include Zanzibar, with the ZACEA working as a sub-agency under the PCCB. Having dual or multiple agencies engaged in anti-corruption activities in one country has proven a failure in many countries, like Nigeria and South Africa.
- At the moment, it appears that there is no clarity regarding how the mainland

and Zanzibar work together to monitor and fight corruption, even though the anti-corruption agencies may gain constitutional recognition in the proposed constitution. In the event that corruption is accorded the status of a union matter, it will be important that the institutions involved (the PCCB and the ZACEA) draw up a framework for collaboration that will allow corruption to be addressed as a countrywide issue.

- The mandate of the PCCB to deal with cases needs to be expanded. For example, embezzlement cases under the Penal Code, when sent to the DPP, are referred to the police and are not brought before the PCCB. There have been few cases under the PCCA, because the DPP prefers to deal with cases under the Penal Code.
- There is a need for more interagency collaboration. As with intergovernmental cooperation between the mainland and Zanzibar, there is clearly a challenge regarding interagency cooperation and information sharing. This needs to be improved across the board to avoid the possibility of agencies operating in isolation and undermining the effectiveness of sanctions which are imposed from time to time.
- There is limited interagency collaboration between the PCCB, the FIU, the police and the DPP. According to the PCCB, the need for the DPP's consent presents challenges in practice, because the DPP has a large workload involving all criminal matters, thus leading to delays. Pending receipt of consent, suspects are released on bail. The DPP has assigned special officers to deal with corruption cases. However, there is still a need to enhance the DPP's understanding of handling corruption prosecutions.
- There should be an investigation of the factors that limit efficiency and effectiveness in the cooperation arrangement between the PCCB and DPP. The underlying issues inhibit limit progress in prosecutions should be addressed.
- Increased high-level advocacy against secrecy jurisdictions and complex financial systems which enable corruption to thrive, is needed. The PCCB needs to openly join the global campaign for financial transparency.
- Collaboration with non-state actors, and their active participation in the PCCB's anti-corruption work, should be increased. Currently, this collaboration is not formalised and the level of engagement is erratic.

4. Improve the PCCB's financing, independence and sustainability

In respect of financial independence, it is necessary to ensure that there is sufficient funding of the PCCB to enable it to execute its mandated functions without any delay. Key anti-corruption projects and programmes, like the NACSAP, have been heavily reliant on donor funding, and, consequently, their continuity is not guaranteed. The study recommends that, to the extent possible, the PCCB be fully funded from internal resources to avoid the problems caused by the unreliability of donor financing.

5. Strengthen administration, staff capacity and infrastructure

The PCCB is a well-established institution and, from the available information, it is evident that the capacity of the organisation has been increasing. The number of legal staff has increased and now stands at 80 advocates and 120 legal officers. Nonetheless, the level of experience and the performance of the institution need to be improved. To improve its efficiency, the organisation needs to take the following actions:

- Invest in sophisticated technology to track suspected corrupt transactions and criminals within and outside the country's borders.
- Solicit more onsite assistance from corruption experts on modern ways of combating corruption, including staging 'sting' operations and anti-corruption 'surgical' raids.
- Enlist legal advice on legislative drafting and prosecution from competent individuals and institutions. The PCCB should be staffed with young legal officers and advocates whose experience matches that of the top senior advocates and law firms enlisted by corruption suspects.
- Introduce specialised training in investigative skills and prosecution techniques. Training should involve the judiciary, the DPP, the PCCB and the police. The PCCA is not well understood by judges. Furthermore, understanding complex corruption and offences like sexual corruption, trading in influence, and determining the level of guilt, is sometimes a challenge for some judicial officers.
- The PCCB needs to use the available studies and reports on corruption to mount anti-corruption operations, for example sting operations, laying traps, and surveillance, against corruption-prone departments and public-service points.
- Invest in more community sensitisation about the impact of corruption on social-service delivery and on the overall development of communities and the entire country. Sharing vivid examples of corruption cases and their impact could be vital in enlisting more support from the public.
- Sharing of good practices and model legislation from other countries can improve the organisation's performance.
- Communicate regularly with the public regarding the bureau's performance and practically demonstrate this with actual figures on arrests and prosecutions conducted during a particular period (either on a monthly or bimonthly basis) across the country. The level of public interface with the agency is limited.
- Improve the quality data collection relating to corruption cases. So far, statistics have been collected and presented at aggregate level, and these need to be disaggregated by type of corruption offence and possibly by sector.
- The PCCB should establish and implement a functional feedback mechanism capable of providing the public with regular (monthly or quarterly) on what happens to their tip-offs and updates on the PCCB's investigative and prosecutorial activities, etc. The PCCB needs to be more innovative in this regard.

ANNEX I: PCCB's organogram, 2014

