

**THE UNITED REPUBLIC OF TANZANIA  
THE LAW REFORM COMMISSION OF TANZANIA**



**REPORT ON THE REVIEW  
of  
LEGISLATION RELATING TO CORRUPTION**

**PRESENTED TO THE MINISTER FOR  
JUSTICE AND CONSTITUTIONAL AFFAIRS**

**ON 22<sup>nd</sup> DECEMBER 2004**

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## **PREAMBLE**

*“Neither shalt thou take bribes, which even blind the wise, and pervert the words of the just”.*

**Exodus 23:8**

183 *And do not wrong men of their things, and do not act corruptly in the earth, making mischief.*

### **Surah xxvi – The Poets**

*“It is ridiculous that we are concerned with punishing petty thieves and ridiculing prostitutes who resort to shameful acts out of necessity while we condone people in high positions who take bribes.”*

**Nyerere, Daily News, February 6, 1978**

*“Corruption is an Enemy of the People”*

**Nyerere, in Freedom and Unity, Oxford University Press, Dar es Salaam, 1966, p.81.**



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## LIST OF ABBREVIATIONS

- |     |              |  |
|-----|--------------|--|
| 1.  | AIDS         | - Acquired Immune Deficiency Syndrome                    |
| 2.  | AG           | - Attorney General                                       |
| 3.  | CCM          | - Chama Cha Mapinduzi                                    |
| 4.  | DG           | - Director General                                       |
| 5.  | DPP          | - Director of Public Prosecutions                        |
| 6.  | <i>Et al</i> | - <i>Et alii (and other people)</i>                      |
| 7.  | HIV          | - Human Immunodeficiency Virus                           |
| 8.  | LRCT         | - Law Reform Commission of Tanzania                      |
| 9.  | <i>Ibid</i>  | - <i>Ibidem (in the same place)</i>                      |
| 10. | MDA'S        | - Ministries, Departments and Agencies.                  |
| 11. | MOHA         | - Ministry of Home Affairs                               |
| 12. | MOJCA        | - Ministry of Justice and Constitutional Affairs         |
| 13. | NEA          | - National Elections Act                                 |
| 14. | NGO's        | - Non-Governmental Organizations                         |
| 15. | OECD         | - Organization for Economic Co-operation and Development |
| 16. | p            | - Page   |
| 17. | PCA          | - Prevention of Corruption Act                           |
| 18. | PCB          | - Prevention of Corruption Bureau                        |
| 19. | Pp           | - Pages  |
| 20. | S.           | - Section  |
| 21. | SADC         | - Southern African Development Community                 |
| 22. | TRA          | - Tanzania Revenue Authority                             |
| 23. | UK           | - United Kingdom   |
| 24. | UN           | - United Nations   |
| 25. | UNDP         | - United Nations Development Programme.                  |
| 26. | VAT          | - Value Added Tax  |

## **LIST OF LEGISLATION**

1. Katiba ya Jamhuri ya Muungano wa Tanzania, 1977 [CAP 2 R.E 2002]
2. The National Elections Act, [CAP 343 R.E. 2002]
3. The National Security Act, 1970 [CAP 47 R.E 2002]
4. The Prevention of Corruption Act, [CAP 329 R.E 2002]
5. The Prevention of Corruption Ordinance, Repealed by the Prevention of Corruption Act
6. The Public Finance Act, [CAP 348 R.E 2002]
7. The Public Leadership Code of Ethics Act [CAP 398 R.E 2002]
8. The Public Leadership Code of Ethics [Declaration of Interests, Assets and Liabilities] Regulations 1996, GN No. 108 of June 21, 1996
9. The Public Procurement Act, [CAP 410 R.E 2002]

## **LIST OF INTERNATIONAL INSTRUMENTS**

1. UN Convention against Corruption
2. The African Union Convention on Preventing and Combating Corruption
3. OECD Convention on Bribery of Foreign Public Officials in International Business Transactions

# THE COMMISSION

At the time of undertaking this study the Commission comprised the following:-

## Commissioners

- |  |                               |
|--|-------------------------------|
| 1. Hon.Mr.Justice (Rtd)<br>Anthony N. Bahati   | - Chairman                    |
| 2. Hon. Mr.Justice (Rtd)<br>Edward A. Mwesiumo | - Full-Time Commissioner      |
| 3. Mr. William J.M. Mdundo                     | - Full-Time Commissioner      |
| 4. Hon. Pius Msekwa                            | - Part-Time Commissioner      |
| 5. Hon. Dr. Asha-Rose Migiro                   | - Part-Time Commissioner      |
| 6.Mr. Mohamed Ismail                           | - Part-Time Commissioner      |
| 7.Mr.Onel Malisa                               | - Part-Time Commissioner      |
| 8.Mr. Matt-Chikawe                             | - Secretary to the Commission |

## Members of the Secretariat.

- |                                 |                           |
|---------------------------------|---------------------------|
| 1.Ms.Caritas Mushi<br>Draftsman | - Principal Parliamentary |
| 2.Ms. Martha Kisyombe           | - Senior State Attorney   |
| 3.Mr. Adam J. Mambi             | - State Attorney          |
| 4.Mr. Fortunatus P. Swai        | - State Attorney          |
| 5.Mr. Joseph T. Kaare           | - State Attorney          |
| 6. Mr. Lusungu H. Hongoli       | - State Attorney          |
| 7. Ms. Flora J. Tenga           | - State Attorney          |
| 8. Ms. Michael R. Makombe       | - State Attorney          |
| 9.Ms.Judith M. Kakongwe         | - State Attorney          |
| 10.Ms.Marlin L. Komba           | - State Attorney          |
| 11.Ms. Mercy Mrutu              | - State Attorney          |
| 12.Ms. Zainabu Chanzi           | - State Attorney          |

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DAR ES SALAAM.

Ref.No

Hon. Harith Bakari Mwapachu (MP),  
Minister for Justice and Constitutional Affairs,  
P.O.Box 9050,  
DAR ES SALAAM.

**REPORT ON THE REVIEW OF LEGISLATION RELATING  
TO CORRUPTION:**

In July 2004 the Law Reform Commission of Tanzania, pursuant to the Attorney General's reference to it, commenced review on all legislation relating to corruption in order to have an effective legal framework that combats corruption.

In undertaking the study the following two main issues were determined.

- (a) Whether there are in the legislation loopholes from which the problem of corruption emanates.
- (b) Whether there are other strategies that can assist in the fight against corruption.

The Commission has completed the study and hereby submits to you the report on the subject above.

## EXECUTIVE SUMMARY

The Commission undertook the study on the review of legislation relating to corruption as part of its core functions in the law reform process as well as a reference from the Hon. Attorney General. Before the reference by the Hon. Attorney General the Commission had decided to undertake the study on the Law on Corruption in Tanzania in its Strategic Plan for 2002 – 2005.

Initial steps to carry out the study commenced in March 2004 by the Commission holding an interactive discussion with PCB officials in order to understand the extent and magnitude of the problem. However in July 2004 the Hon. Attorney General referred the matter to the Commission on the basis of recommendations presented to him by the PCB which had undertaken a review of the Prevention of Corruption Act 1971 (PCA) and made recommendations to him as to its amendment.

This report consists of five chapters. Chapter one is the introduction and chapter two is on the concept of corruption. Chapter three is on comparative study while chapter four is on research findings and analysis. The final chapter (chapter five) concludes and makes recommendations.

It is a well-known fact that corruption leads to poor functioning of the government machinery. Such a situation in turn fails to ensure sustainable economic development, promotion of democracy and human rights, safety and stability in the society.

In Tanzania, strategies to fight corruption can be traced since the British rule. In 1930 there was an amendment of the Penal

Code to incorporate provisions relating to corruption. In 1958 there followed the enactment of the Prevention of Corruption Ordinance. In 1967 the TANU Government drew up a Leadership Code, and in 1971 the Prevention of Corruption Ordinance was repealed and replaced by the Prevention of Corruption Act 1971. Subsequent to that there have been recent initiatives to fight corruption, such as the appointment of the Warioba Commission in 1996 and the enactment of the Procurement Act and Finance Act in 2001. Despite all these strategies which range from legal to administrative, Tanzania still faces the problem of corruption which threatens her economic, political and social development.

The Prevention of Corruption Act of 1971 established the Anti-Corruption Squad in 1975 which was later replaced by the Prevention of Corruption Bureau (PCB) in 1991. The PCB is mandated to take necessary measures on prevention of corruption, to investigate corruption offences and to advise the government on ways and means to prevent corruption. Unlike in other jurisdictions such as Hong-Kong, Kenya and Botswana where the Anti-Corruption institutions are independent, PCB is not fully independent. Its Director General is appointed by the President and he has no security of tenure. Similarly the directors of the PCB have no security of tenure. The Commission has recommended security of tenure for Director General and other Directors in order to make the PCB independent.

Unlike Police officers, Staff of the PCB who in most cases perform similar functions have no immunity and they can be obstructed during performance of their duties without any sanctions against the intruder. The Commission proposes more powers to be given to the PCB to deal with any person obstructing them in their work.

removed from the National Elections Act and returned to the PCA.

The Ethics Secretariat has very little capacity to perform its functions due to lack of personnel, funds and branches in the country. Even where some functions are done such as monitoring of assets declaration forms for leaders, such forms cannot be accessed by the ordinary citizen due to very restrictive rules made to regulate access to the declaration forms. The Commission has proposed transparency in dealing with assets declaration forms and strengthening of the secretariat itself.

The issues of legal representation, civic education, enhanced salaries, political will and poverty have also been addressed in the report. The Commission has proposed for necessary steps and action to be taken concerning each issue.

This report therefore, makes legal and non-legal recommendations for the fight against corruption. Under the legal recommendations amendments are proposed in the Prevention of Corruption Act, the Public Leadership Code of Ethics, the National Elections Act and the National Security Act so as to get rid of the loopholes in the legislation.



Moreover informers and whistle blowers are not protected under the PCA or any other law. It has been proposed that adequate protection of such persons is necessary for the fight against corruption and that the law should accordingly provide for such protection.

Another problem is that of inadequate fines. The fines which are provided in the PCA have been affected by inflation and as such they appear to be inadequate. The problem is due to the fining system used in Tanzania legislation which does not take care of the problem of inflation. The Commission proposes the use of currency points system.

The Commission has proposed that the payment of fines to people convicted of corruption offences should also be accompanied by mandatory forfeiture of property acquired through corrupt means.

Monitoring and supervisory machinery for the PCB was found to be necessary in order to ensure a balanced PCB free from corruption and other illegal practices. The Commission has proposed strongly for the formation of such an organisation.

The problem of corruption is also rampant in the political sphere especially after the deletion of the electoral corruption offences in the PCA in 1995 and the return of such offences to the National Elections Act. Such action made it impossible for PCB to prosecute such offences. Then in 2000 purported acts of "traditional hospitality" and "the use of money in good faith" were exempted from treating offences. This line of action was as if corruption had been legalized. The Commission has proposed that there should not be any exception of any acts which may amount to corruption and these corruption offences should be



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## ACKNOWLEDGEMENT

The Law Reform Commission of Tanzania is indebted to all stakeholders who contributed to the realization of this report. These include the Prevention of Corruption Bureau (PCB), the Faculty of Law University of Dar es Salaam, the Director of Public Prosecution's office, the Secretariat of Ethics, Tanzania Revenue Authority, the Media, the Police, the Judiciary, politicians and the general public. Their opinions, ideas and comments have enriched this report.

The Commission is also grateful to DANIDA for its financial support at all stages of the study.

The Commission however bears full and collective responsibility for both the form and content of this report.

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# CHAPTER ONE

## 1. INTRODUCTION:

### A. MANDATE

1.1 The Law Reform Commission of Tanzania (LRCT) is mandated by its establishing Act to undertake review of any law of the United Republic of Tanzania with a view to its systematic development and reform<sup>1</sup>. The Commission had on its programme intended to review laws relating to corruption before the Hon. Attorney General referred the matter to it. The Deputy Attorney General requested the Commission to undertake the review just as the Commission was taking the preparatory steps of doing the same. Therefore this project may be considered as a reference from the Attorney General.

### B. BACKGROUND TO THE PROJECT

1.2 Arising from a wide perception amongst members of the public that corruption had not abated despite Government's efforts in combating the scourge soon after the release of the Warioba Commission Report in 1996<sup>2</sup>, the Law Reform Commission decided to undertake a study on the Law on Corruption in Tanzania in its Strategic Plan for 2002 – 2005.

1.3 Initial steps to carry out the study were commenced in March 2004 by the Commission holding an interactive discussion with PCB officials in order to understand the extent and magnitude of the problem (if any), and as to why PCB had not been able to deal with the problem

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<sup>1</sup> The Law Reform Commission of Tanzania Act, 1980, S.4

<sup>2</sup> Commission of Inquiry on Corruption , 1996



effectively. The interactive discussion was intended to provide LRCT with insights of how to proceed with the study and especially in designing its work plan.

- 1.4 At that time (in March 2004), consideration of the corruption law was not high on LRCT's research agenda. However, as Civic and Parliamentary Elections approached, the problem of corruption took a different turn. Certain members of the public and especially those in civic organisations and political parties, had begun to openly accuse the Government of having legalised corruption when it made amendments to the Elections Act in February 2000.
- 1.5 The Attorney General's reference is based on the recommendations presented to him by the Prevention of Corruption Bureau (PCB). The PCB had undertaken a review of the Prevention of Corruption Act 1971 (PCA) and made recommendations as to its amendment. Those recommendations pointed out inadequacies in that particular law. Despite what the PCB had presented, the Attorney General was of the view that the Law Reform Commission should be involved in the review of PCA. For that reason the Attorney General referred this exercise on the review of the PCA to the Law Reform Commission and gave the Commission a time limit within which to present its report to the Minister. He gave the Commission up to December 2004 for this work. Subsequently during the budget session in July 2004 the Minister for Justice and Constitutional Affairs in answering questions in the House said that the review of PCA was on and that the Law Reform Commission was undertaking this task.
- 1.6 The Commission first met in August 2004 to determine its work plan for carrying out the research, which included

the holding of a number of consultative meetings with key stakeholders comprising members of the public through public meetings, professional bodies such as the PCB, DPP, the Police Force, Judges and Magistrates, TRA, the office of Ethics Secretariat and Members of the Media.

## **C. METHODOLOGY**

1.7 This study has employed the following methodology-

- Library Research
- Surfing on the Internet
- Field research through public hearings, meetings with PCB, Judiciary, the Police, the media and other stakeholders.
- A workshop with stakeholders.
- Rapid Social Appraisal (RSA)

## **D. SCOPE OF THE PROJECT**

1.8 This study reviews the PCA and examines other laws impacting on this Act such as the Public Leadership Code of Ethics Act, the National Elections Act and the Public Procurement Act.

1.9 The study also examines the concept of corruption, global overview of the problem of corruption, general effect of corruption and major anti corruption initiatives. There are recommendations following the analysis of all those areas.

## CHAPTER TWO

### 2.1 CONCEPT OF CORRUPTION

- 2.1.1 A number of explanations have been given to the term corruption. According to Chambua, the traditional definition of corruption is:  
"Misuse of Public office for private gain"<sup>3</sup>.  
According to Green (1999) corruption involves the following: fraud, waste, abuse, bribery, gratuity, official misconduct, conflict of interest, embezzlement, larceny, forgery and racketeering.
- 2.1.2 According to the book entitled "Controlling Corruption"<sup>4</sup> prepared by the Parliamentary Centre Canada and other institutions, corruption is abuse of public position for personal gain or for the benefit of individual or group to whom one owes allegiance.
- 2.1.3 The book goes on to explain that corruption occurs when a public official accepts, solicits or extorts a payment, or when private agents offer a payment to circumvent the law for competitive or personal advantage. It also goes on to explain that corruption is a two way process involving members of both the public and private sector who are engaged in illegal, illegitimate and unethical actions that diminish a country's economic prospects and degrade its social and political institutions. Corruption is a symptom of weakness in the political, social, legal and economic system.

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<sup>3</sup> Chambua S.E, et al (2002) p.3

<sup>4</sup> Controlling Corruption by the Parliamentary Centre, Canada: A parliamentarian's Handbook pg.19.

An effective litmus test to assist in determining the difference between corrupt and non-corrupt actions is whether activities are carried out in an open, transparent and accountable manner.<sup>5</sup>

- 2.1.4 The PCB has defined corruption in a formula form which is, Authority + Discretion - Accountability = Corruption<sup>6</sup>
- 2.1.5 Political corruption, according to the Global Corruption Report 2004 by Transparency International is the abuse of entrusted power by political leaders for private gain with the objective of increasing power or wealth.
- 2.1.6 According to the State of Corruption in Tanzania Annual Report 2002, corruption is defined as the abuse of public office for private gain. It encompasses unilateral abuses by government officials such as embezzlement and nepotism, as well as abuses linking public and private actors such as bribery, extortion, influence peddling and fraud.<sup>7</sup>
- 2.1.7 The Malawi Law Commission in its report has these definitions to encompass corruption;  
*“Corruptly” means the doing of, or the engaging in, any corrupt practice;*  
*“Corrupt practice” means-*  
*(a) the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person;*

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<sup>5</sup> Ibid.

<sup>6</sup> Hosea E, Director of Investigations PCB at Interactive Discussion March 2004.

<sup>7</sup> Economic and Social Research Foundation and Front Against Corrupt Element in Tanzania, The State of Corruption in Tanzania, Annual Report 2002 p.2



- (b) *the diversion of any property of a public body to or for purposes unrelated to those that the property was intended for;*
- (c) *influence peddling;*
- (d) *the extortion of any advantage;*
- (e) *misuse or abuse of office.*

***“extortion”, in relation to corrupt practice, includes:-***

- (a) *demanding or receiving by a person in office of a fee or other payment for services, work, supplies or other thing which should be performed, done, delivered, offered, provided, issued or given gratuitously; or*
- (b) *where compensation is permissible, demanding or receiving of a fee or other payment larger than is justified or which is, or when it is, not due.”<sup>8</sup>*

2.1.8 Many jurisdictions, including the UK from which a substantial number of the provisions of the PCA were borrowed, have not attempted to define the word “corruption” instead, their legislation adopt the term “Corruptly” as a basic word to denote corruption. Corruption is therefore defined contextually as is the case in several international protocols on corruption, including that for SADC in which the offering, giving, obtaining or soliciting of anything of value to illicitly influence the decision of officials, is considered as corruption. The UNDP on the other hand, defines the concept of corruption as “The misuse of public power, office or authority for private benefit through bribery, extortion, influence, nepotism, fraud, speed money or embezzlement”<sup>9</sup>

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<sup>8</sup> The Malawi Law Commission on the Review of the Corrupt Practices Act, Report no.9.p.12.

<sup>9</sup> UNDP, Febr.1999, fighting corruption to improve governance p.g.7

- 2.1.9 In its endeavour to modernize its corruption law in recent years, the UK has considered it imperative to simply define the concept “corruptly” and to categorise corrupt practices that would come within the ambit of the law. In this regard, new offences of corruption were created which included the following.:-
- Corruptly conferring, or offering or agreeing to confer an advantage;
  - Corruptly obtaining, soliciting or agreeing to obtain an advantage;
  - Corrupt performance by an agent of his/her functions as agent; and
  - Receipt by an agent of a benefit which consists of, or is derived from an advantage which the agent knows or believes to have been corruptly obtained.<sup>10</sup>

## 2.2 GENERAL EFFECTS OF CORRUPTION;

- 2.2.1 Generally, corruption frustrates any efforts to provide the public with efficient basic services. In any corrupt state, there is neither true democracy nor a conducive environment for the creation and exercise of good governance. Consequently, the public loses trust in the government. This state of affairs results in the creation of a poorly functioning government machinery which disables the fight against poverty, as it is obvious that poverty is one of the causes of corruption and vice versa.
- 2.2.2 Most fundamentally, corruption undermines the prospects for economic investments whereby the diversion of scarce resources by corrupt parties affects

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<sup>10</sup> Govt proposal for the Reform of the Criminal Law of Corruption in England and Wales  
<http://www.homeoffice.gov.uk/docs/4759.pdf> June 2000  
<http://www.lawcom.gov.uk/376/htm>

a government's ability to provide basic services to its citizenry and to build a sustainable economy. Moreover, corruption jeopardizes the health and safety of citizens through poorly designed infrastructure projects and the sourcing of inadequate or/and outdated medical supplies.

- 2.2.3 National and International companies undercut legitimate economic competition, distort economic growth and reinforce inequalities by offering bribes in the process to secure business in affected countries. This in turn undermines government legitimacy as well as the rule of law. Apart from causing poor investment, corruption is the worst enemy of human rights and democracy.

## **2.3 HISTORICAL BACKGROUND TO THE PROBLEM OF CORRUPTION IN TANZANIA.**

- 2.3.1 Tanzania like other developing countries is facing the problem of corruption which is among the worst drawbacks to her economic development. The battle against corruption in Tanzania has a long history, dating way back from colonial times. In 1930 the colonial government, in addressing the emerging corruption problem at that time, amended the Penal Code to make it a criminal offence to demand, solicit and give or receive bribes.

- 2.3.2 Further, in 1958 the Prevention of Corruption Ordinance (Cap. 400) was enacted to replace the provisions on corruption in the Penal Code Cap 16 that appeared to be inexhaustive and which had proved inadequate in curbing corruption. This Ordinance to some extent widened the coverage of corruption offences to include receiving gifts and commissions, which are considered to be corrupt transactions with agent and public servant

obtaining an advantage without consideration. It also redefined the earlier offences that were in the Penal Code.

2.3.3 It can be noted that in the pre-independence campaigns, corruption was one of the main items on the agenda of the nationalist struggle for independence<sup>11</sup>. During the early part of the 1960s, most incidents of corruption occurred within the middle and lower level public servants who were delivering services directly to the people. In order to check the abuse of such power by public officials and its agencies, the government established the Permanent Commission of Inquiry in 1965<sup>12</sup>.

2.3.4 In 1971, the Government enacted the Prevention of Corruption Act<sup>13</sup> to replace Cap. 400. The enactment of the new law was necessitated by the fact that corruption was on the increase due to various reasons, one of which was the nationalization of privately owned companies under the Arusha Declaration in 1967 and the creation of a large number of public corporations and cooperative societies to provide for a wide range of goods and services. After the Arusha Declaration the Government and its agencies became the largest employers. This led to the burgeoning of the Public Service, which in turn fanned the spread of corruption in the public sector. Entrusting public servants with power of decision making over investments and distribution in the expanding public sector, brought with it new avenues of corruption.

2.3.5 Under the PCA, new offences were added including the offence for a public officer being found with property suspected to have been corruptly acquired. Stiffer

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<sup>11</sup> Ibid. p.4

<sup>12</sup> Chapter 6 of the Interim Constitution of Tanzania, 1965

<sup>13</sup> (Act No 16 of 1971)



penalties were also provided in this legislation and the Police Force was empowered to arrest and investigate crimes relating to corruption.

2.3.6 In 1967, a Leadership Code was drawn up to curb the accumulation of wealth by leaders. The continued spread of corruption led to the establishment of the Anti-Corruption Squad in 1975 by amending the Prevention of Corruption Act 1971. According to the amended law, the squad was vested with some of the powers of the police which are arrest and investigation. The Squad, subject to the directions of the DPP, had also powers to prosecute offences involving corruption and to advise the Government and other parastatal organizations on ways to combat the scourge. This squad is reported to have had a positive impact in the late 1970s as many people were arrested, prosecuted and convicted but it soon waned<sup>14</sup>. In 1991, the Anti-Corruption Squad was renamed as the Prevention of Corruption Bureau with added power of seizure of property corruptly acquired.

2.3.7 Administrative control measures in economic management such as price control and allocation and distribution of goods were adopted in the 1970s to enable the public to have access to basic goods at fair prices. However, the poor supply of goods in the market that could not cope with the demand created a new form of corruption referred to as "sabotage". The government in response thereto passed the Economic Anti-Sabotage (Special Provisions) Act 1983, to give legal force to the exercise of dealing with the so-called "Economic Saboteurs". This Act was later repealed and replaced by the Economic and Organized Crime Control Act in

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<sup>14</sup> The Commission for Inquiry against Corruption, 1996 at pg.24.

1984 which incorporated offences under the Prevention of Corruption Act as economic offences.

- 2.3.8 In the mid 1980s, the government began to introduce partial trade liberalization measures by freeing the importation of commercial goods such as pick-up trucks for those who had their own foreign currency. The liberalization was later extended to other essential goods which could not be financed through the available foreign exchange of the Central Bank in 1985 and 1986<sup>15</sup>.
- 2.3.9 The exercise of liberalisation closed some avenues of corrupt practices associated with shortage of goods, but it gave rise to new avenues of corruption particularly in the Customs, Labour and Immigration departments. The liberalisation of internal and external trade on the one hand and political liberalisation on the other facilitated a close relationship between government leadership and the business community. This nexus grew stronger during the 1990s; a situation that created conducive grounds for grand corruption practices<sup>16</sup>.
- 2.3.10 In 1995, Parliament enacted the Public Leadership Code of Ethics to curb impropriety in the leadership. Various institutional reforms have been undertaken in the 1990s with a view to coping with new demands of the economy as one of the ways to combat corruption.
- 2.3.11 The most recent measures taken by the Government in its attempt to fight corruption in the institutions under it, were the enactment of the Public Procurement Act, 2001 and the Public Finance Act, 2001. These laws are mainly focussing on dealing with corruption in public institutions

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<sup>15</sup> Annual Report 2002 of The State of Corruption in Tanzania at pg. 5.

<sup>16</sup> Ibid

## **2.4 THE WARIOBA COMMISSION OF INQUIRY ON CORRUPTION**

2.4.1 In 1996, the President of the United Republic appointed a Commission of Inquiry under the Chairmanship of Justice J.S.Warioba, to probe into the chronic problem of corruption in the country. The appointment of this Commission was in response to wide spread allegations of the occurrence of corruption in the country despite past attempts by the Government to deal with the scourge. This move was the Government's latest strategy in strengthening efforts to combat corruption by plugging loopholes for corruption and by enhancing transparency in the conduct of Government business.

2.4.2 In order to ensure that the problem of corruption is comprehensively addressed this time round, the Commission was given broad terms of reference which included amongst others, the following:

- “(a) To examine Laws, Regulations and Procedures in order to identify loopholes for corruption in the following areas:
  - (i) Tax assessment and Administration of Tax Laws,
  - (ii) Procedures for issuance of different kinds of licences and permits,
  - (iii) Procurement procedures and the Tender System,
  - (iv) Procedures for dispensing Justice,
  - (v) Procedures for provision of social services;
- (b) To examine the adequacy of existing laws, regulations and procedures for combating corruption and to make appropriate recommendations for their improvement;
- (c) To examine the capacity and relationship of institutions and organs charged with the

responsibility of combating corruption and suggest ways for their improvement so that they become effective;

- (d) To devise new strategies for combating corruption;
- (e) To examine and advise on the best ways for the implementation of the Public Leadership Code of Ethics Law".<sup>17</sup>

2.4.3 The Commission's findings and recommendations constitute a major advance in the country's efforts to fight corruption in recent years and also provided a vision for dealing with the problem in the short, medium and the long terms.

2.4.4 In addressing the problem of corruption, the Commission found that earlier strategies for combating corruption were not successful because efforts were being directed at dealing with corruption incidents and not in addressing the major causes giving rise to the problem.<sup>18</sup> In this regard, the Commission took pains to identify the major causes of corruption in recent years as follows:

- (i) Excessive control and regulation of economic and social activities such as restriction on acquisition of motor vehicles by use of laws and regulations that are difficult to administer and which provide opportunities for corruption,
- (ii) Lack of supervision and accountability among leaders in their areas of jurisdiction,
- (iii) Long and bureaucratic procedures in clearing goods from the port or in obtaining licenses which irk persons concerned with clearance of goods forcing them to give bribes to quicken the process or to circumvent winding procedures,

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<sup>17</sup> Report of the Commission of Inquiry on Corruption, 1996 at pp 44-45

<sup>18</sup> Ibid p75



- (iv) Shortage of essential consumer goods which are in high demand and the desire of officials in charge of distribution to take advantage of the shortage by demanding bribes,
- (v) Inadequate salaries of civil servants in the face of high cost of living caused by hyper inflation, thus forcing public servants to augment their meagre salaries by demanding or soliciting for bribes,
- (vi) Lack of security of employment following redundancies carried out by the Government and in Public Corporations between the years 1975 and 1996 during the economic reform process, forcing those remaining in office to use their positions to solicit for bribes in order to hedge against uncertain future,
- (vii) Lack of political will to fight corruption,
- (viii) Weak state institutions, which had been created to combat corruption while employees within these institutions were themselves wallowing in corruption.<sup>19</sup>

2.4.5 Having made a critical analysis of the causes of corruption in the country, the Commission proceeded to make a wide range of recommendations, both legal and non-legal, focussing its attention mainly on measures for prevention of corruption. The most important salient features of the Commission's recommendations can be summarised as follows:

**A. Cleaning up of the leadership ranks:**

2.4.6. The Commission found that corruption had spread in all sectors of the economy because of the presence of weak leaders, some of whom involved themselves in acts of corruption. In the circumstances, the Commission was of the view that initial steps to deal with the problem

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<sup>19</sup>Ibid pp 65-68

of corruption should be directed towards leaders. The Commission therefore recommended that measures to be taken should aim at inculcating ethical conduct among leaders, forcing them to work collectively towards the eradication of corruption.

- 2.4.7 The Commission also recommended that the Government should take deliberate steps to remove from office, all bad leaders suspected to be tainted with corruption in order to restore the respect of members of the public in their leaders and to restore public confidence in the Government. Further more, a recommendation was made to the effect that the Government should ensure that new leaders appointed to those positions do not succumb to corruption.<sup>20</sup>

## **B. Strengthening Ethics:**

- 2.4.8 The Commission found that corruption had been left to spread unchecked because of the decline in the ethical standards of leaders following changes in the economic orientation of the country and the abrogation of the old leadership code. In this regard, the Commission recommended that the Government should set out clear and transparent ethical codes of conduct, which every public and civil servant must observe. Any person breaching them should be held accountable and be dealt with without mercy or favour so that a clear signal is sent out to caution leaders that the Government in place would not tolerate acts of corruption.
- 2.4.9 In this connection, the Commission recommended that the Law on Ethics should be reformed by incorporating all ethical codes of conduct to be observed by public leaders and civil servants and that a provision should

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<sup>20</sup>Ibid p78

be made in the law to allow the National Assembly to make additions to the Code whenever the need arises. The Commission's other recommendations in this area were that punishment for infringement of the Ethics Law should be clearly defined and should include the removal from office of such leaders and the loss of qualification for appointment to any leadership position.<sup>21</sup>

**C. Strengthening Appointment Procedures and Accountability in the Government:**

2.4.10. The Commission found that the prevalence of corruption in public service was caused by the following amongst other factors: circumvention of procedures for personal gains, weak supervision of government activities, lack of financial resources leading to the inadequacy of working tools and poor salaries being paid to the staff.<sup>22</sup> In order to address these problems, the Commission recommended the following:

- Persons to be appointed to leadership positions should be self-motivated, have the right qualifications for the jobs and should be of proven integrity, with track record of good conduct,
- Appointments of high civil servants should be carefully considered to ensure that those appointed have been trained adequately and have experience in public administration,
- There should be a special committee under the chairmanship of the Chief Secretary to advise the President on the appointment of senior civil servants,<sup>23</sup>

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<sup>21</sup>Ibid p98

<sup>22</sup>Ibid pp.111-112

- Management performance audit should be introduced in the civil service to ensure that there is proper and adequate performance according to set targets,<sup>24</sup>
- Low salaries paid to public servants do not only contribute to poor performance but also encourage petty corruption among public officers. The Commission therefore urged the Government to pay civil servants salaries at levels which will enable them to purchase necessities of life,<sup>25</sup>
- The Government should devise a strategic plan to provide adequate modern working facilities for all Ministries and Departments in order to enhance productivity and to eliminate excuses for poor performance as well as remove opportunities for solicitation of bribes.<sup>26</sup>

**D. Strengthening of Institutions charged with combating corruption:**

2.4.11 With regard to the performance of the PCB, the Commission found that the Bureau was not able to combat corruption effectively because of its structural weaknesses, lack of government support<sup>27</sup> and inadequacies in the Prevention of Corruption Act, 1971.<sup>28</sup> The Commission therefore recommended amongst other things the following:

- (i) That the Bureau should focus its attention on its key role of preventing corruption and in educating the general public on the evils of corruption. In

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<sup>23</sup> Ibid p.115

<sup>24</sup> Ibid p.116

<sup>25</sup> Ibid p. 124

<sup>26</sup> Ibid p.129

<sup>27</sup> Ibid p.139

<sup>28</sup> Ibid p.142



that regard, the organisation structure of the Bureau should be adjusted to take into account the need to focus attention on the key roles,

- (ii) That the Bureau should be restructured into a modern institution capable of detecting and investigating a high degree of incidents of corruption and to deal with them effectively. In this regard, the Government should take deliberate steps to enhance its capacity by providing it with modern working tools and by allocating it adequate financial resources,<sup>29</sup>
- (iii) That the staff of the Bureau should be sensitised from time to time on the code of conduct pertaining to their work and those found to infringe the code should be dealt with swiftly,
- (iv) That Staff Regulation and Disciplinary Procedures to govern the conduct and the discipline of the staff of the Bureau should be made without delay.<sup>30</sup>

2.4.12 With regard to the operating law against corruption, the Commission found that the Prevention of Corruption Act had the following weaknesses: that Section 6 does not state in clear terms, the kind of advantages without lawful consideration which are prohibited; that the Act does not provide for admission in evidence of the responses obtained from a suspect following a notification given pursuant to the provisions of section 8; and that the terms of Section 9 are not adequate enough to cover all incidences of having in control of assets reasonably suspected to have been acquired corruptly.

2.4.13 The Commission therefore recommended that the law should be appropriately amended so that the types and

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<sup>29</sup> Ibid p.142

<sup>30</sup> Ibid p.143

value of gifts which a civil/public servant can accept are clearly identified;<sup>31</sup> that responses to notification issued under Section 8 of the PCA are allowed to be taken in evidence and that the terms of Section 9 are widened so that, where any person is found to be maintaining a standard of living above that which is commensurate with his lawful income, is found to be in control of assets or resources disproportionate to his lawful income or has received the benefit of any service suspected to have been given in corrupt circumstances, such person may be prosecuted for being in control of assets or financial resources suspected to have been acquired corruptly, and if such person fails to give a reasonable explanation as to how he acquired such assets, he should be convicted.<sup>32</sup>

- 2.4.14 Concerning sentences under the PCA, the Commission found that imprisonment terms were generally adequate. It found however that fines were inadequate in some areas. The Commission therefore recommended enhancement of fines and further that in addition to imprisonment, the law should also provide for forfeiture of corruptly acquired assets.<sup>33</sup>
- 2.4.15 The Commission made other findings and recommendations with respect to other institutions, which deal with the prevention of corruption or are themselves suspected to be perpetrating corruption. These institutions include the Police Force, the Judiciary, the Immigration and Revenue Departments. Recommendations were also made with respect to government operations in general, stressing that institutionalisation of transparent regulations and

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<sup>31</sup> Ibid p.146

<sup>32</sup> Ibid p.149

<sup>33</sup> Ibid p.153

procedures would enable leadership at all levels to take decisions timely, thus avert the occurrence of corruption.

## **2.5 THE NATIONAL ANTI-CORRUPTION STRATEGY AND ACTION PLAN (NACSAP)**

- 2.5.1 This strategy was formulated in November 1999 as among the several strategies devised by the Government in its efforts to combat corruption in Tanzania since the government views this scourge as public enemy number one. It emerged as a clear commitment by the government to concretely address the deep-rooted problems of corruption in the country.
- 2.5.2 The NACSAP is intended to guide the policy makers, legislators, judicial officers and implementors. The Strategy seeks to bridge the gap between the government on one hand, and civil society and private sector on the other in the fight against corruption. It also puts emphasis on transparency and accountability in all government activities.
- 2.5.3 The NACSAP addresses prevention, enforcement, public awareness and institutional building with a view to achieving the following;
- (i) Comprehensive anti-corruption legislation.
  - (ii) Identification of areas of government activities most prone to corruption and to redress them.
  - (iii) Identification of legal and administrative corruption remedies that provide adequate deterrence

- (iv) Provision of a creative partnership between government and the civil society including the private sector, professional and religious organisations in fighting corruption<sup>34</sup>.

2.5.4 The strategy identifies seven priority areas with a detailed plan of action being adopted specifying what needs to be done in each priority area, who is responsible and the expected results within the short term and the long term.<sup>35</sup>

## 2.6 CURRENT STATE OF CORRUPTION IN TANZANIA.

2.6.1 Despite various steps taken by the government to curb corruption, Tanzania still ranks high amongst corrupt states in the world. In 2002 for example Transparency International ranked Tanzania at 76<sup>th</sup> position out of 102 countries<sup>36</sup>. In 2003, Amnesty International ranked Tanzania at 92<sup>nd</sup> position out of 133 countries<sup>37</sup>. The situation has improved marginally.

2.6.2 It can be recalled that in his first – term presidential election campaigns (1995), President Benjamin Mkapa promised Tanzanians that he would fight corruption with all the power at his disposal<sup>38</sup>. Today, a year before the expiry of his second and last term of his ten year presidency, and inspite of his best efforts to fight corruption including appointing the commission for inquiry into corruption, the vice still remains negatively effecting the economy.

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<sup>34</sup> The United Republic of Tanzania, The National Anti-Corruption Strategy and Action Plan for Tanzania, Government Printer, DSM.

<sup>35</sup> Ibid.

<sup>36</sup> Global Corruption Report 2003 p.265.

<sup>37</sup> Ibid.2004 p.285

<sup>38</sup> The State of Corruption in Tanzania Annual Report 2002 p.6



- 2.6.3 Researches conducted, have identified four main sectors in Tanzania where corruption is commonly practised. The areas identified are the Police, the Judiciary, Tanzania Revenue Authority and the Ministry of Lands<sup>39</sup>. Perhaps this is due to the nature of services offered by these Institutions which are given direct to the people.
- 2.6.4 The magnitude of corruption in the Police Force undermines the integrity and efficiency of the Force. The widespread corruption in the Force has generally made people lose confidence in this important organ of the state to the extent that they do not report crime. The reason behind this reaction is that the police, on corrupt reasons, either do not protect the identity of their informers or are perceived not capable of taking action against the alleged offenders<sup>40</sup>.
- 2.6.5 In the Judiciary, researches have shown that some officers have involved themselves in corrupt practices instead of combating corruption. Primary Court Magistrates have succumbed to corruption to the extent that they act contrary to the norms of their profession hence causing the people to perceive courts as places of "injustice"<sup>41</sup>.
- 2.6.6 Corruption has penetrated the District and Resident Magistrate's Courts and even the High Court. This is very dangerous to the justice system in the country. Assessors and court clerks are also engaged in petty corruption and this leads the ordinary citizens to have no faith in the judiciary<sup>42</sup>.

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<sup>39</sup> Ibid pp.36- 46

<sup>40</sup> Ibid p 42.

<sup>41</sup> Ibid .p.63.

- 2.6.7 There is a lot of improvement done with regard to TRA, but the trend shows that there are still some corrupt practices in the TRA. For example the 2001 case of evading import duty and VAT for importation of high priced saloon cars<sup>43</sup>. In this incident, not much was disclosed perhaps because of the sensitivity of the matter. There are other cases pending in courts of law such as that of an evasion of import duty on importation of fuel by Skanphil Colas. The amount involved is T.sh 2.4 billion. These incidents show that corrupt practices in Customs and the TRA in general still exist.
- 2.6.8 In the Ministry of Lands, loopholes for corruption have been taken care of especially after the enactment of the two Land legislation in 1999. However, the procedure for preparation of title deeds is too long and cumbersome and clients have been facing difficulties at every step. This eventually has been tempting Land Officers to demand bribes or compelling clients themselves to offer the same. The areas that are said to be prone to corruption are those dealing with survey of land and assessment of premium prior to the grant of a right of occupancy. Others are those dealing with approval of a disposition relating to right of occupancy, revocation of right of occupancy, registration and mortgage<sup>44</sup>.
- 2.6.9 Generally, corruption is still rampant almost in every institution whether private or public inspite of all strategies to combat it. Corruption especially petty corruption is still a serious problem in the Health sector in spite of the considerable steps taken by the government to fight it. Corruption in this sector depends on the prevailing circumstances. For instance, when the demand is greater than supply, clients are forced to give

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid p.75.

<sup>44</sup> Ibid p.37.

bribes to get quality services. In addition, when the client wants quick or preferential treatment the may offer a bribe.

- 2.6.10 In the political sphere, corruption appears to be more serious especially during election processes (within political parties and outside). During the election season candidates offer hospitality to the voters in the form of what is now commonly termed as “takrima”. It has been claimed that this hospitality has been abused and is currently practised as a legalized form of corruption. The fear among some members of the public is that the practice of offering takrima involves the very people who are decision makers and the ones expected to lead the war against corruption.
- 2.6.11 The Mining sector is also among the areas susceptible to corruption although some of the researches do not mention it. Officials vested with powers to issue various licenses are alleged to be engaging in corruption.
- 2.6.12 Corruption is also rampant in the Mass media. Members of the press are engaged in corrupt practices in various forms. The common ones are two. The first one is that, a newsman who is in possession of information on a person (e.g. a politician, an officer of the government or business-man) solicits a bribe to write or abstain from writing such information (depending on the nature of such information). Sometimes the person, if he needs publicity, may give bribes to the newsman for the same.
- 2.6.13 The second form of corruption in the media is that used by persons with authority (politically or economically)

to influence key persons in the media so that they are used to circumvent any information that is against them. This form of corruption is now common in the country and it is very dangerous for it affects the institution (the mass media), which is the mirror of the community, the destruction of which will make the community fail to understand what is going on in its jurisdiction for the community will be fed with wrong information.

## **2.7 CURRENT CAUSES OF CORRUPTION IN TANZANIA.**

### **2.7.1 THE LOOPHOLES IN THE LAW**

#### **A. The Prevention of Corruption Act**

2.7.2 The laws of Tanzania have categorized corruption as a criminal offence. The Prevention of Corruption Act 1971, ( No. 16 of 1971), was enacted as a special law to deal with corruption in Tanzania. However this Act has a number of deficiencies, which are impeding the fight against corruption.

2.7.3 Section 3 of the Prevention of Corruption Act lists down transactions, which constitute corrupt practices. However, some transactions are not specifically mentioned and have proved that they are amongst the main loopholes through which corruption is practised in Tanzania. These transactions include contracts between government institutions and other government or private organizations, procurement processes, government tenders and the auctioning of government properties.



- 2.7.4 There is also a problem of enforcing some of the provisions of the Prevention of Corruption Act. Section 9 (1) of the Act provides that it is a crime to be found in possession of property 'corruptly acquired'. It is believed that this expression has made it difficult to enforce the provisions of this section, as practice has proved the difficulty of convincing courts that the properties were corruptly acquired.
- 2.7.5 The Act also seems to be silent on what should be done to properties, which, though there are reasonable grounds to suspect that they were corruptly acquired, it is not possible to conduct investigation on them under this Act when the property or money is outside the country.
- 2.7.6 Section 2A of the Act provides that it is the duty of the President to establish the Prevention of Corruption Bureau and appoint its Director-General. In such circumstances, it is feared that the Director General will tend to be too much under the direct control of the President, who may fire him at his pleasure.
- 2.7.7 According to Section 18 of the Prevention of Corruption Act, some offences under this Act can only be prosecuted after obtaining consent from the D.P.P. This provision may create room for abuse and can sometimes lead to dropping of strong prosecution of cases that would have been successful.

## **B. The Public Procurement Act**

- 2.7.8 Section 16 of the Public Procurement Act provides for advertisement of all intended procurement of goods and services by the Government and other public bodies.

There is a requirement that invitations or calls for tenders should be approved by appropriate tender boards. This is intended to ensure that all procurements are conducted transparently to eliminate possibilities of corruption in the procurement process.

2.7.9 In order to ensure that there is close supervision of the procurement process, tender boards have been empowered by the provision of Section 17 to call for information and document from institutions initiating the tender process so that the tender boards are able to satisfy themselves on the transparency and competitiveness of the procurement. Tender boards may also request for professional or technical assistance from any body or institution to assist them in carrying out their supervisory function of the procurement process.

2.7.10 In order to ensure that public bodies provide to the Tender Boards true and accurate information relating to intended procurement, Section 17 of the Act creates offences for failure to comply with a request for information by a tender board or wilfully giving false or misleading answer to any question put forward by a tender board. A fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years or both such fine and imprisonment are also provided for under Section 17.

## **C. The Public Leadership Code of Ethics**

2.7.11 The Public Leadership Code of Ethics requires leaders to declare their properties acquired annually<sup>45</sup>. This condition would help responsible institutions and the

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<sup>45</sup> The Public Leadership Code of Ethics , Act No. 13 of 1995 S.9

public to make a follow up of the ways and means through which a leader acquired the property in issue. However there is no proper procedure for cross checking the authenticity/ truthfulness of such declarations. The said declarations appear not to be public for accessibility to such information has a cumbersome and expensive procedure<sup>46</sup>.

2.7.12 Although the declaration of assets and property belonging to public leaders and officials has been hailed as an achievement in itself, the register is not easily accessible to the general public, something which negates the good intention of the Ethics Act. Indeed, the forms made under sections 9 and 14 of the Ethics Act is accessible and subject to public scrutiny on the conditions that:

- (a) A person wishing to make inspection has lodged with the (Ethics) Commissioner a complaint against a public leader.
- (b) On his assessment, the Ethics Commissioner is satisfied that the complaint is genuine, relevant and was made in good faith,
- (c) An inspection fee of one thousand shillings has been paid.
- (d) The one who has seen the declaration assets form is not allowed to publish the information.<sup>47</sup>

2.7.13 In essence, all these conditions coming as they do in a subsidiary legislation negate the letter and spirit of the Principal Legislation. The Principal Legislation requires the declaration forms to be made available for inspection by members of the public at all reasonable times.<sup>48</sup>

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<sup>46</sup> G.N No.108 of June 1996 Section 32[1] and [2] [a] of the Ethics Act.

<sup>47</sup> G.N No.108 of June 1996

<sup>48</sup> S.20(2) PLCE

## D. The National Elections Act

- 2.7.14 Since the introduction of a multiparty election in Tanzania, election processes have involved heavy financial investments, creating room for corrupt transactions. However, election offences have been deleted from the Prevention of Corruption Act and moved to the National Elections Act<sup>49</sup>. The deletion of corruption offences from the Act is believed to have created a gap that aspirants for various political positions have used to win elections
- 2.7.15 Section 119 of NEA creates the offence of treating. The section provides that every person who corruptly, by himself or by any other person, either before, during or after an election provides or pays or gives food, drink, entertainment to or for any person for the purpose of corruptly influencing that person, or any other person to vote for him or to refrain from voting is deemed to be guilty of treating.
- 2.7.16 However S.119 gives exceptions in subsections (2) and (3) namely:  
(2) Any thing done in good faith as an act of normal or traditional hospitality shall be deemed not to be treating.  
(3) Normal or ordinary expenses spent in good faith in the election campaign or in the ordinary course of the election process shall be deemed not to be treating bribery or illegal practice.
- 2.7.17 These exceptions create room for corruption as it is hard to prove whether the act is done in good faith or in bad faith. This hospitality has been abused especially during election campaigns and is currently practiced as a legalised form of corruption.

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<sup>49</sup> The Prevention of Corruption Act Part IV, Ss.9A-9H repealed by Act no.8 of 1995.



- 2.7.18. Since traditional hospitality has existed from time immemorial it is superfluous to restate it in a statute book. Traditionally this hospitality has and is still being offered without the need of any legal guidelines. By creating exceptions the law has created loopholes for people to convert traditional hospitality into corruption with the excuse of offering it in good faith.

## **2.8 ADMINISTRATIVE, ECONOMIC AND SOCIAL CAUSES;**

- 2.8.1 The Warioba Report published in 1997 devoted about 10 percent of its contents to corruption in public procurement and contracting, particularly through the procurement of roadwork. It found corruption and fraud cases being practiced at various stages of procurement, particularly in the selection of consultants, pre qualification of contractors, tender evaluation including clarification of tenders, pre-contract negotiations, variation orders, supervision of contracts, evaluation of claims, dissemination of information and certification<sup>50</sup>.
- 2.8.2 There is also a problem that the PCB has elements of the image of a police organization. Taking into consideration the intensity of corruption in the Tanzania Police Force, people tend to associate the PCB with the Police Force, a fact that undermines the integrity and efficacy of the PCB. In such a situation people lose confidence in the Bureau and do not report cases of corruption.
- 2.8.3 In some instances, authorities concerned have dropped investigation of corruption cases without giving detailed explanation or reasons for so doing. Dropping of these investigations has taken place contrary to the

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<sup>50</sup> The State Of Corruption in Tanzania. Annual Report 2002,

public's expectation and under clearly dubious circumstances. Under such circumstances the public tend to regard PCB as not being an organization capable of taking action against corrupt people, especially those people holding sensitive or top positions in the government, a toothless bulldog so to speak.

2.8.4 There is also the problem of investigation and prosecution of corruption cases. Experience has shown that, the authorities concerned take a long time to complete investigation of corruption cases. After long investigations, follow a long prosecution process. The consequence of these long processes of investigation and prosecution is that the effect of measures taken to combat corruption is not seen hence the public loses confidence in the corruption-fighting organs and co-operation between the public and the police and PCB weakens.

2.8.5 Another problem is that of harassment of people who volunteer to report corruption incidents. After the arrest of the people reported, the volunteer may be harassed after his identity has been revealed<sup>51</sup> Once another law abiding citizen witnesses the harassment suffered by the volunteer due to the reason that the suffering person was just reporting such a crime, he/she becomes hesitant to volunteer information about corruption to responsible institutions like the police or PCB. Irresponsible or corrupt members of the Police Force or the PCB who reveal the names of informers are responsible for the creation of this attitude. To make the fight against corruption more effective, there is need to improve the way in which reporting of corruption practices is done and create a conducive environment for protection of informers.

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<sup>51</sup> ibid

unnecessary secrecy. By increasing transparency and accountability of the government to the public, corruption is likely to diminish.

- 2.8.13 Matters relating to Justice apart from the Court of Appeal and the Constitutional Court are not Union matters. Hence the PCA does not apply to Zanzibar. But corruption as such is a concern both of Tanzania mainland and Zanzibar. It is therefore appropriate, to make issues of corruption extend to Zanzibar and to be made a Union matter especially bearing in mind that the Conventions against corruption which were recently ratified by Parliament apply to Zanzibar as well. This are the UN Convention against corruption and the AU Convention on prevention and combating corruption.

## CHAPTER THREE

### 3. COMPARATIVE STUDY

#### 3.1 Global overview

- 3.1.1 Corruption is currently a global problem. It has existed ever since antiquity as one of the worst and most widespread forms of behaviour, which is harmful to the administration of public affairs of any country. It is agreeable to all states irrespective of their economic or political inclination that corruption is now representing one of the most serious threats to the stability of government institutions and the functioning of the market economy.
- 3.1.2 Corruption is largely common in developing countries<sup>52</sup>, though not confined within such countries. Links to international business corporations that appear to have bribed political leaders and public officials or to have funded political parties in a way that threatens the proper functioning of the government have been developed and these are inimical to the development and well being of these countries.
- 3.1.3 The advent of globalisation together with technological advancement in electronic communications is among the factors that have enhanced corruption. Private to private corruption and corruption between international institutions - "Inter-corruption"- are on the increase. These new forms of corruption need new strategies.

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<sup>52</sup> Global Corruption Report 2003, Corruption Index Perception.



### 3.2 Some International Interventions in Combating Corruption;

- 3.2.1 Due to the magnitude of the problem of corruption, several countries are making various strategies to fight it. Countries such as Korea, China and Japan have formed what they call the "Egmont Group", which is an International Cooperation between Financial Intelligence Units of those countries. One of the roles of the group is to set systems and standards to ensure that financial intelligence can be exchanged effectively at international level between financial intelligence units<sup>53</sup>.
- 3.2.2 The UN and other International organizations such as Transparency International have published various reports containing strategies to assist states in the battle against corruption. The UN has already completed drafting of a Convention against Corruption which was opened for signature on 9<sup>th</sup> December 2003. The Convention has already been signed by an overwhelming number of states by April 2004 indicating an acute awareness of the severity of the problem of corruption as well as a remarkable political commitment of states to tackle the problem . The UN Convention against Corruption contains provisions that make international cooperation mainly on extradition and provision of mutual legal assistance compulsory. It also has provisions on technical assistance aimed at helping countries access best practices in the fight against corruption and focuses on facilitation of specialized training.<sup>54</sup>
- 3.2.3 The Key issues of the Convention are as follows:

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<sup>53</sup> Global Forum III on Fighting Corruption and Safeguarding Integrity, Ongoing Challenges, Shared Responsibilities 29-31 May 2003, Seoul, Korea-Workshop p.I-11

<sup>54</sup> [http//www.4u./links/treaties.cfm](http://www.4u./links/treaties.cfm)

- (1) It covers corruption both in public and private sectors.
- (2) It requires governments to involve civil societies in the fight against corruption.
- (3) It urges governments to institute measures to enhance cooperation at national and international levels in the fight against corruption.
- (4) It introduces mechanisms for recovery of corruption proceeds and looted assets.
- (5) It urges governments to introduce mechanisms for monitoring and implementation of the Anti corruption strategies.<sup>55</sup>

### **3.3 The African Union**

3.3.1 In July 2003, African Heads of State who met in Maputo, Mozambique adopted the African Union Convention on Preventing and Combating Corruption. Countries ratifying the Convention will enter into a legally binding obligation to:-

- (i) Criminalize corrupt practices.
- (ii) Develop National Institutions to prevent corrupt practices and to prosecute offenders.
- (iii) Cooperate with other governments to recover stolen assets, and
- (iv) Help each other, including with technical and financial assistance to fight corruption, reduce its occurrence and reinforce integrity<sup>56</sup>

### **3.4 The European Union**

3.4.1 The European Nations have some initiatives in addressing the problem of corruption internationally. Many governments in Europe have become parties to a

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<sup>55</sup> Ibid

<sup>56</sup> <http://www.anti0corruption.org/legislation/index.php> DFID-Anticorruption online.

number of International instruments designed to tackle the problem of corruption including the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions. There is also the European based Group of States against Corruption (GRECO) set up to monitor the OECD convention. They have also passed the EU Corruption Convention and the Corruption Protocol to the EU Fraud Convention<sup>57</sup>.

- 3.4.2 The European Nations have another instrument to combat corruption i.e the First (corruption) Protocol to the Convention on the protection of European Community's Financial Interest<sup>58</sup>.

### **3.5 NIGERIA**

#### **3.5.1 Legal Institutional changes.**

Nigeria had a corruption perception index score of 1.4 in 2003 that is it was the last but one out of 133 countries. It has taken the following measures in order to combat corruption.

- 3.5.2 In December 2002 the National Assembly passed the Economic and Financial Crimes Act, 2002 which established the Economic and Financial Crime Commission (EFCC) which was mandated to investigate all financial crimes including money laundering, advanced fee fraud, counterfeiting, illegal charges transfers and futures market fraud. EFCC is also responsible for enforcing the money laundering legislation of 1995.
- 3.5.3 In February 2003 the Corruption Practices and Other Related Offences Commission Act, 2003 was passed to replace and strengthen a similar Act of 2002, but the

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<sup>57</sup> <http://www.wnkramer.com>.

<sup>58</sup> Ibid.

law was eventually blocked by the Federal High Court, because it was found to be a deliberate weakening of the existing legislation.

- 3.5.4 In April 2002 the National Assembly passed the Electoral Act 2002 to replace an earlier Act of 2001. This law empowered the independent National Electoral Commission to place a limit on donations to political parties by individuals or corporate bodies<sup>59</sup>.

### 3.6 EGYPT

- 3.6.1 Egypt which had a Corruption Perceptions Index score of 3.3 in 2003 that is 70<sup>th</sup> out of 133 countries. Egypt has made the following legal and institutional changes;
- 3.6.2 In order to reduce red tape and petty corruption and 'streamline transactions' in August 2002 the Ministry of Administrative Development created Citizen Service Centres where citizens and investors can do their government business without going to the relevant ministries. The ministry published a guide of 450 most requested services and posted the guide on the internet specifying the documents and official fees associated with each.
- 3.6.3 In an effort to confront widespread corruption among its members the National Democratic Party which was the ruling Party announced in September 2002 the creation of a new secretariat for Ethics.
- 3.6.4 In November 2002 the government appointed new chief executives to the four major public sector banks and required the establishment of an Audit Committee within each comprising 3 non-Executive Members.

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<sup>59</sup> Global Corruption Report 2004, p. 224.



- 3.6.5 In June 2003 Parliament passed a package of reforms which included a law abolishing the State Security courts. These exceptional courts were designed to mete out swift justice on National Security issues but had been used to try everyone from corrupt ex-ministers and businessmen to democracy advocates<sup>60</sup>.
- 3.7.1 Chile which had Corruption Perception Index score of 7.4 in 2003 that is 20<sup>th</sup> out of 133 countries was described to have two waves of reforms of the regulatory system. The first wave led to the creation of a Public Ethics Commission which came up with a number of proposal to strengthen public honesty and the prevention of corruption. It also proposed several new legislation and government regulations. One of them is the Administrative Honesty law which established regulations relating to Administrative integrity, transparency and public acts, and the government employees conduct which gives priority to public interest over individual interest<sup>61</sup>.
- 3.7.2 The law of probity recognises the right of the people to gain access to administration information and the administration obligation to declare interest and professional economic activities.

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<sup>60</sup> Ibid. pp. 184-185.

<sup>61</sup> Global forum III on fighting corruption and safeguarding integrity seoul 29-31 May 2003, workshop III Transparency and integrity, Regulatory Reform as a means to fight corrupt, suchit Bumbongkarn, Justice, the constitutional court, Thailand, Ministry of Justice Republic of Korea.p.1.

<sup>62</sup> Ibid.

- 3.7.3 The second wave of reforms includes the establishment of Probity and Transparency Commission which proposed several legal initiatives to strengthen the principle of probity and public transparency. The new international standards encouraged by UN and OECD and OAS are recognised and are being implemented<sup>62</sup>.

### 3.8 PHILLIPINES

- 3.8.1 In the Philippines there is the Senate 'Blue Ribbon' Committee on Public Accountability and Investigations. This committee has been in existence since May 18 1950 with the exception of 14 years of martial law. Today the Committee is widely perceived as the most powerful committee in the Senate in terms of its power to investigate 'in aid of legislation', a power guaranteed by the constitution. As interpreted in jurisprudence the power of the Committee to investigate includes not only the power to enquire into matters that may need corrective legislation but also to investigate official corruption, crime or wrong doing. It may compel the attendance of persons either as witnesses or as subjects of an investigation themselves and to testify and produce documents before the committee. The committee's recommendations are debated on the floor of the Senate and sent to appropriate authorities for action. Committee deliberations are open to the public and to coverage by print, radio and television media. Information is also disseminated on the Committee Chair's website, [www.nenepimentel.org](http://www.nenepimentel.org)<sup>63</sup>.

### 3.9 BOTSWANA

- 3.9.1 Botswana which had Corruption Perceptions Index score of 5.7 in 2003 that is 38 out of 133 countries has not been plagued by systemic corruption. While patronage is

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<sup>63</sup> Controlling corruption by Parliamentary Center Canada and other Institutions. p.52

prevalent in the political system, corruption is not. The resulting political confidence has attracted foreign investors and contributed to economic stability. The creation of a competent efficient civil service was a priority during the early independence period. Private business people are not required to bribe government officials to carry on normal business activities. Civil servants are paid adequate wages so that the temptation to solicit bribes to supplement their income is reduced.

- 3.9.2 In 1994, the Directorate on Corruption and Economic Crime was established on the model of the Hong Kong agency. The Directorate is under the Presidential jurisdiction, but is operationally independent. It has been mandated to investigate and prosecute offenders and mount public awareness campaigns. Although hampered by a slow court system it boasts of a solid conviction rate<sup>64</sup>.

### 3.10 THAILAND

- 3.10.1 Thailand which had Corruption Perceptions Index score of 3.3 in 2003 that is 75<sup>th</sup> out of 133 countries has a constitution which guarantees the people's rights to access to government information. The Constitution demands that Cabinet members reveal their assets and liabilities to the public. The access to government information permits the public to discover any possible corrupt practices by government officials. Revealing assets and liabilities of cabinet members to the public is an effective measure to fight corruption since it discourages cabinet members and politicians from

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<sup>64</sup> Ibid.p.69.

<sup>65</sup> Global forum III on fighting corruption and safeguarding integrity seoul 29-31 May 2003, workshop III Transparency and integrity, Regulatory Reform as a means to fight corrupt, suchit Bumbongkarn, Justice, the constitutional court, Thailand, Ministry of Justice Republic of Korea.p.3

accumulating personal wealth through malpractices and misuse of their authority<sup>65</sup>.

### 3.11 UNITED KINGDOM

3.11.1 The United Kingdom which had a Corruption Perception Index Score of 8.7 and ranked No.10 out of 102 countries in 2002 took measures to modernise its corruption law in the period between 1998 and 2000. Before modernisation of its corruption law in 2000, the UK had three separate statutes dealing with corruption. These were:-

- a) The Public Bodies Corruption Practices Act of 1889;
- b) The Prevention of Corruption Act of 1906, and
- c) The Prevention of Corruption Act of 1916<sup>66</sup>.

3.11.2 Under the old legislation, bribery was made a criminal offence whatever the nationality of those involved, if the offer, acceptance or agreement to accept a bribe took place within the UK's jurisdiction. During these earlier times, the common law offence of bribery was generally defined to mean "the receiving or offering of any undue reward by or to any person whatsoever, in public office to influence his/her behaviour in office, in order to incline him/her to act contrary to the known rules of honesty and integrity (Russel on Crime)<sup>67</sup>.

3.11.3 The overriding consideration in the modernisation of the UK law on corruption was to clarify and codify the law in line with developments both in the UK and internationally, in order to raise standards in both private and public life. Integrity, accountability and honesty were not considered as optional extras, but as

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<sup>66</sup> Govt proposal for the Reform of the Criminal Law of Corruption in England and Wales  
<http://www.homeoffice.gov.uk/docs/4759.pdf> June 2000

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.



core behaviours which were to underpin the professional and public life of the UK.<sup>68</sup>

The main concerns which were observed under the old legislation were centred on the following:-

- a) The scope and the overlap of the three principal corruption statutes outlined above,
- b) The lack of statutory definition of the term “corruptly” used in the three Acts, but its meaning left open to different interpretation;
- c) The different approaches taken with respect to a person serving under a public body and a person serving under a non-public body; and
- d) The need to effect criminal jurisdiction over offences of corruption committed outside the UK<sup>69</sup>.

3.11.4 In modernising the UK law on corruption, the following were identified as key elements in any modern legislation on corruption:-

- a) A definition of the term “corruptly”
- b) The concept of corruption as the suborning of an agent against his principal;
- c) The application of the concept to both the Public and the Private Sector; and
- d) An extension of the Municipal criminal jurisdiction over offences of corruption<sup>70</sup>.

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid

3.11.5 In the modernisation of the UK law on corruption, new offences of corruption were created. These included the following:

- a) Corruptly conferring or offering or agreeing to confer an advantage;
- b) Corruptly obtaining, soliciting or agreeing to obtain an advantage;
- c) Corrupt performance by an agent of his/her function as an agent; and
- d) Receipt by an agent of a benefit which consists of, or is derived from an advantage which the agent knows or believes to have been corruptly obtained<sup>71</sup>.

3.11.6 In order to capture a wide range of corrupt practices or transactions, the new law defined concepts of “acting corruptly” as “performing functions corruptly”, meaning accepting an advantage, believing that it was offered corruptly (accepting a bribe), or acting as the result of such advantage (acting on a bribe). In every case, it is not material whether it is the person being bribed, or a third party, who receives the advantage. It is also immaterial whether or not the person accepting the bribe actually acts, or fails to act as required, the accepting in itself is corrupt. When “a function is performed corruptly”, it would be sufficient to prove that the agent’s conduct was motivated by the hope of a corrupt reward, whether or not there was any agreement to that effect<sup>72</sup>.

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<sup>71</sup> Ibid.

<sup>72</sup> Ibid

<sup>73</sup> Ibid.

- 3.11.7 In order to ensure that legitimate payments are not considered as corrupt transactions, the law excludes “remuneration, tips and gratuities as criminal or corrupt practices”. Legitimate activities such as advertising, marketing, direct marketing and corporate hospitality have also been excluded.<sup>73</sup>
- 3.11.8 Furthermore, where the conferment or acceptance of an advantage has been properly authorised, there is no breach of trust by the agent and therefore no offence of corruption is considered to have occurred. In order to cover corruption both in the Public and the Private Sectors, a single definition has been introduced and that is acting corruptly “which concentrates on the relationship between the agent and the principal, which is the key ingredient in an offence of corruption, rather than on the status of the person concerned”<sup>74</sup>.
- 3.11.9 This innovation has been injected to take care of the situation where much of the public sector functions have been privatised or contracted out as a result of which, it became necessary to abolish the presumption of corruption which applied to public servants, given that the distinction between the public and the private sectors was to be removed.<sup>75</sup>
- 3.11.10 In the same vein, “trading in influence” was brought within the ambit of a corrupt practice and was defined as “intentionally, the promising, giving or offering or indirectly, of any undue advantage to any one who asserts or confirms that he/she is able to exert an improper influence over the decision making of domestic public officials, member of domestic public

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<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

assemblies, officials of international organisations, members of international parliamentary assemblies and judges and officials of international courts in consideration thereof, whether the undue advantage is for himself/herself or for anyone else; as well as the request, receipt or acceptance of the offer or promise of such advantage in consideration of that influence, whether or not the influence is external or whether or not the supposed influence leads to intended result.<sup>76</sup>

### **3.12 MALAWI**

#### **3.12.1 Protection of Whistle – blowers**

3.12.2 The Malawi Law Commission considered the important issue of how to protect whistle – blowers and other informers bearing in mind that every specialized law to combat corruption ought to make appropriate provisions to protect informers particularly to safeguard against reprisals, individuals working in, or doing business with public and private institutions or organisations. Such institutions or organisations often out of civic duty or considerations of public interest would wish to alert the law enforcement agencies about incidences of corrupt practices in those institutions or organisations but are fearful of reprisals if discovered to be sources of information to the agencies.<sup>77</sup>

“Protection of  
whistle-blowers and  
other information

3.12.3 The Malawi Law Commission recommended the adoption of the following provisions known as section 51A.

51A. – (1) Any person believing that the public interest overrides the interest of the institution, organization or office in or under which he serves or to which he is subject or overrides the interest of a

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<sup>77</sup> Report of the Law Commission on the Review of the Corrupt Practices Act, Report no.8.p.44



particular community, association or society to which he belongs, and any other person whosoever, may inform the Bureau or the police of an alleged or suspected corruption practice, or other offence connected therewith, which he knows or believes is being perpetrated by or in that institution, organization, office, community, association or society.

(2) Except as provided in subsections (3) and (4), no information relating to a whistle-blower or to any other informer who has provided information to the Bureau or to the police pursuant to subsection (1) as to an offence under this Act shall be admitted in evidence in any civil or criminal proceeding, and no witness shall be obliged or permitted to disclose the name or address of such whistle-blower or other informer, or state any matter which might lead to his discovery.

(3) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain any entry in which the whistle-blower or other informer is named or described or which might lead to his discovery, the court before which the proceeding is heard shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the whistle-blower or other informer from discovery, but no further.

(4) If on a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the whistle-blower or other informer wilfully provided information which he knew or believed to be false, or did not believe to be true, in material particular, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the whistle-blower or other informer, the court may permit inquiry and require full disclosure concerning the whistle-blower or other

<sup>78</sup> Ibid p.45

informer, and, if the information was provided in writing, require the production of the original thereof.

(5) Any person who, having knowledge that any person referred to in this section as a whistle-blower or an informer, has informed the Bureau or the police of an alleged or a suspected corrupt practice, or other offence connected therewith, takes, by himself or through another person, an action of any kind to punish or victimise such whistle-blower or informer in any way shall be guilty of an offence liable to a fine of K50,000 and to imprisonment for two years.<sup>78''</sup>

## I. KENYA

3.12.4 Ranked quite highly in the corruption index among East African Countries, Kenya has had a chequered history in its battle against corruption. However it was in 2003 that Kenya enacted a comprehensive law that deals with economic crime as well as corruption or simply known as *ufisadi* in Kiswahili. The Kenya Anti-Corruption and Economic Crimes Act no. 3 of 2003 provides for the prevention, investigation and punishment of corruption, economic crimes and related offences.

3.12.5 The Act establishes an Anti-Corruption Advisory Board, which comprises one member each from the Kenya Law Society, Institute of Public Accountants, International Federation of Women Lawyers of Kenya, Kenya Association of Manufacturers, a Joint Forum of Religious Organisations (consisting of a member from the Supreme Council of Kenya Muslims, the Kenya Episcopal Conference, the National Council of Churches of Kenya, the Evangelical Fellowship of Kenya and the Hindu Council of Kenya), The Federation of Kenya Employees, Kenya Bankers Association, Central Organisation of Trade Unions, The Association of Professional Societies in East Africa, The Architectural

Association of Kenya, The Institution of Engineers of Kenya, and The Kenya Medical Association. The Director of the Commission is a member of the Advisory Board. The main function of the advisory board is to advise the commission on the performance of its duties. In the performance of its duties the Advisory Board shall operate independently and shall be responsible only to the Parliament and to no one else.

- 3.12.6 The Act also establishes the Anti-Corruption Commission, which consists of the Director and up to four Assistant Directors. The Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective posts by the President. The term of office for the Director and his assistants is five years and the removal of these officers from their posts follows a similar procedure to that of their appointment. This guarantees their tenure of office. In the performance of its functions the Commission and the Director shall not be subject to the direction or control of any other person or authority, and shall be accountable only to Parliament.
- 3.12.7 Simultaneously the NARC government of Kenya enacted the Public Officers Ethics Act no.4 of 2003. This Act provides for the advancement of the ethics of public officers by providing for a Code of Conduct and Ethics for Public Officers and requiring financial declarations from certain public officers. This law is similar to the Leadership Code of Ethics for Tanzania. The major points of departure are, whereas the Public Leadership Code of Ethics Act deals with all public leaders and Politicians, The Kenya law has different Commissions and Committees dealing with Public Officers

depending on the nature of employment. For example, there is the committee of the National Assembly which is responsible for the ethics of members of the National Assembly, the President, the Speaker, the Attorney General and members of the Electoral Commission and the Public Service Commission and the Controller and Auditor General. Similarly the Judicial Service Commission is the responsible commission for judges and Magistrates. For each category of public officers there is the responsible Commission. The public officers in Kenya are not dealt with by one Commission as is the case in Tanzania

- 3.12.8 The Commission is desirous of borrowing some aspects from the Kenya Anti-Corruption Act as well as the Public officers Ethics Code. In the former, provisions regarding the appointment, tenure and independence of the Commission (in the Tanzanian case the PCB) and of the Director and Assistant Directors while in the latter, the application of the Code of Ethics, are such areas. Establishment of “a hands-off eyes-on” Advisory Board to oversee the activities of the PCB is another such area. Relevant recommendations will be made with regard to these areas in the relevant chapter.

### 3.13 GHANA

- 3.13.1 In March 2001, Ghana inaugurated a system of Fast Track Courts. These are special courts in which technological advances allow corruption cases to be more speedily resolved. After a successful pilot programme, plans were announced to establish fast – track courts in all regions of the country by March 2003. In 2001, two former ministers were tried and convicted of public corruption in the new courts.<sup>79</sup>

<sup>79</sup> The Corruption Notebooks published by The Centre for Public Integrity, Washington D.C Pp 73-74



## **CHAPTER FOUR**

### **4. RESEARCH FINDINGS AND ANALYSIS**

#### **4.1 The Prevention of Corruption Act, No 16 of 1971**

- 4.1.1 Most of the stakeholders said that the law to combat corruption should be tough. Corruption being a serious crime, should be severely punished. It was advocated that fines and imprisonment sentences under the PCA should be enhanced and that the law should provide for forfeiture of property or funds proved to have been acquired corruptly. On the other hand, stakeholders recommended that imposing fines in itself might not act as a deterrence to the offenders because they always have money.

**With regard to forfeiture the law provides for discretionary powers of the court to order for the same. The commission fully agrees with the view of the stakeholders and recommends that PCA should provide for a mandatory order of forfeiture.**

**The Commission noted that with the passage of time since the enactment of the PCA in 1971, the value of the Tanzania shilling has considerably depreciated and that fines sentences provided for in that Act appear to be lenient. In this respect the Commission is undertaking a project on currency points as a measure to take care of the effects of inflation on fines that is prescribed in the law.**

**The Commission finds it imperative that the areas of fines and imprisonment sentences should be revisited so that their severity is enhanced in line with the public abhorrence of the crime.**

4.1.2 PCB officials said that in order to enhance the independence of PCB so that it becomes an effective instrument for combating corruption:-

- (a) The DG of PCB may continue to be appointed by the President.
- (b) DG's appointment should however be ratified by the National Assembly as is done in Hong Kong and Zimbabwe.
- (c) DG should be accountable to the National Assembly where he has to submit Annual Reports of the activities of PCB.
- (d) PCB as an institution should be insulated against the whims of the senior members of the Executive branch of Government.

4.1.3 Stakeholders also said that similar steps like those taken in the appointment of the DG of PCB should be employed in the appointment of the Commissioner of Ethics and DPP.

**The Commission agrees with the stakeholders' views that the Posts of Director General of PCB, Commissioner of Ethics, and the Director of Public Prosecutions be advertised and those eligible be independently interviewed before their names are presented to the president for appointment. However the appointments should be confirmed by the National Assembly. This will help to get suitable and committed persons to fill such posts. In addition, their removal from office should follow the same procedure of removing Judges from office by recommendation of a committee whose members should be drawn from EAC and SADC member states.**

- 4.1.4 PCB and other stakeholders suggested that provisions should be made in the PCA to protect informers who supply information to PCB about corrupt transactions, or people who demand bribes.

**It is generally accepted that adequate protection has to be given to informers of corruption incidents if anti-corruption agencies are to be effective in their crusade for combating corruption.**

**These informers, who are sometimes called Whistle blowers, risk their lives and employment interests when they volunteer to report corruption incidents or transactions. As such, not many people are keen to volunteer information, fearing retribution from culprits.**

**The PCA does not appear to provide protection to informers at present and the Commission agrees with the views that adequate protection has to be provided for under the law, for the purpose of encouraging members of the public to report corruption incidents without fear of being victimized.**

- 4.1.5 PCB staff said that the PCA should have strict provisions requiring persons in possession of documents or information needed to facilitate detection or prosecution of corruption offences, to surrender such information or documents to PCB within a specified time; and failure to do so should constitute an offence punishable under the law. It was also contended that the provisions of section 12 of the PCA which empower PCB to obtain records and accounts of suspects in the course of conducting investigations, appear inoperative in the face of the provisions of section 36 of the Banking and Financial Institutions Act and section 140 of the Income Tax Act, which shield these institutions from

devulging information, accounts and records of their customers and tax payers. It was recommended that the PCA should have provisions clearly targeting TRA so that this Institution is also obliged to give information to PCB to facilitate investigations being conducted by PCB on persons suspected to have committed corruption offences. This position was felt necessary in order to enable PCB to complete investigation of corruption cases with speed.

Since corruption especially grand corruption is a sophisticated crime which can sometimes be detected through a trail of documents, it is only fair that the institution charged with the detection and investigation of this crime, is empowered to have access to certain information ,some of which may be privileged for the purpose of conserving the privacy of individuals.

The current legislation has provisions empowering the PCB to access to information in any bank account relating to a person under investigation, and to take copies of such accounts.

The power to access to privileged information available under Section 12 of the PCA is however restricted to banks only and it may be necessary that this power is expanded so that PCB may have access to information under the control of Tax agencies like the TRA and the Customs and Income Tax Departments, as well as other agencies like the Stock Exchange where inside trading may be carried on.

- 4.1.6 PCB officials also suggested that the giver of a bribe should not be considered as an accomplice or a criminal under the PCA, since he may have been tempted to do so because of certain extreme circumstances, for instance



the need to save the life of a relative requiring urgent medical attention, in cases where the provider of such services appears to demand a bribe.

**The suggestion that the giver of a bribe should be exonerated by the law, appears to be out of step with many legal regimes legislating against corruption. Clearly, if the giver of a bribe is excused as suggested, bribery will continue unabated.**

**In any case, an unwilling giver of a bribe would report the matter to authorities, and concerned authorities would invariably embrace him/her as an “agent provocateur,” to assist the anti-corruption agency in netting a culprit. Under such circumstances, a potential giver of a bribe would be excusable.**

**The Commission holds the view that the position of the law should remain as it is and that courts should be free to determine whether there are any exonerating circumstances which prompted a giver of a bribe and find him free from blame..**

- 4.1.7. Some stakeholders said that corruption should be defined in broad terms, so that grand corruption and sexual corruption are expressly covered under PCA. The present law has not attempted to define the word ‘corruption’ and in the view of the Commission it is for good and understandable reasons. This is so because not every criminal behaviour should be considered as corruption. There are certainly divergent opinions as to what constitutes “corruption”. An attempt to define the term may lead to a widening of the scope of what really constitutes corruption or to creation of loopholes through which acts or practices which are really corrupt, may escape the net of the law. As it has been highlighted in chapter two of this paper, many jurisdictions have

not defined the word corruption instead have adopted the term “corruptly” or “corrupt practice” to encompass it, which the Commission thinks is a safe mode to adopt.

- 4.1.8 PCB officials suggested that reference to the words “or other document” appearing in Section 5 of PCA should be interpreted *eiusdem generis* to mean documents similar to receipts or accounts, and not to documents of a different nature. In the circumstances, documents other than receipts or accounts cannot be taken to prove a case of corrupt transaction. A suggestion was made that in order to remove doubt concerning the kind of documents referred to in section 5 of PCA, that section should be amended so that the words “other document”, are followed by the words such as “any vouchers, proforma invoices, electronic devices, minute sheets and tender documents”. The argument of PCB officials supporting this view is that, if such documents were included in that section, PCB would be able to investigate and detect grand corruption, which is not the case at the moment. It was further recommended that section 3 of the Evidence Act 1967 be amended to include electronic evidence and other scientific developments.

In the case of REGINA V. TWEEDLE<sup>80</sup>, the Court of Appeal of England interpreting s.1(1) of The Prevention of Corruption Act of 1906<sup>81</sup> which provides;

*“If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any*

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<sup>80</sup> [1984]WLR p.44

<sup>81</sup> [1919]2K.B.171- The decision of this case was adopted in the case of Regina v. Tweedle above.

*material particular, and which to his knowledge is intended to mislead the principal; he shall be guilty of an offence"*

Said "The word 'or other document' should, in our judgment, be construed as meaning a document, which passes, *inter partes*. Such documents are capable of being given by a third party and then be used by an employee".

From this interpretation by the Court one may say that 'any other document' includes any document used by the employee or agent to deceive the principal. This interpretation includes electronic documents. The Commission appreciates the concern by the stakeholders and finds the importance of redefining section 5 to capture the interpretation by the Court of Appeal in Tweedle's case.

- 4.1.9 It was admitted that it is difficult to distinguish simple fraud or forgery from corruption committed through falsification of documents. In view of this difficulty, it was suggested that the offences declared under section 5 need not be placed under the ambit of the corruption law because most of the cases charged under this section do not bear any fruit.

The case of SAGE V EICHOLZ<sup>82</sup> explained well section 1 paragraph 3 of the Prevention of Corruption Act of 1906 of England. The wording of this paragraph is similar to s.5 of the PCA of Tanzania. Lawrence J. said, at p.177:

*".....The word "corruptly" is used in the first and second branches, and.....is deliberately omitted from the third. That omission is to my mind readily explained by the fact that it is frequently found impossible to prove that an agent has been*

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<sup>82</sup> The wording of such section is in parimateria with S.5 of the Prevention of Corruption Act, 1971.



*corrupted ; and in view of that difficulty it was thought sufficient, in order to establish an offence on the part of the giver, to prove that he knowingly gave to an agent a document which contained a statement that was false, erroneous, or defective, intending it to mislead the principal, to prove the agent, knowing that the document was false, used it with intent to deceive his principal”.*

The Commission also notes that before the establishment of the Anti-Corruption Squad and subsequently the PCB, corruption offences were investigated and in some instances charges preferred and prosecuted by the Police. During that time it was easier for the police to proceed with the accused person under fraud or forgery whenever the count of corruption appeared to fail. However it is a different case with the PCB for they are restricted only to corruption cases.

The Commission, in view of SAGE's case finds that since corruption transactions especially those involving grand corruption are closely linked with forgery or fraud, there is no need to separate them or to delink them from the PCB powers. In the view of the Commission it is not possible to prove grand corruption without involving elements of forgery or fraud. It is therefore recommended that in order to effectively fight corruption PCB should be allowed to proceed with or include offences of fraud and forgery in the same charge sheet.

- 4.1.10 In the public hearing at Arusha it was argued that the PCA should provide for a punishment of dismissal in



all cases where corruption is proved and where the perpetrator of the offence is an employee.

**The Commission believes that Public Sector Employment Regulations adequately provide for removal from office of employees convicted of serious criminal offences. It may be necessary to extend this kind of punishment to professional bodies so that they are obliged to strike off from their roll or registers, some of their members who are convicted of corruption offences.**

- 4.1.11 One Magistrate in Mbeya suggested that the giver of a bribe who is an accomplice in every sense, should not be taken as a witness in a case of corruption, but should rather be joined with the receiver of the bribe, since both were guilty of the offence of corruption. However, other stakeholders were of the view that the giver of a bribe was more culpable than the receiver. As such, the PCA should focus its attention to the giver of the bribe because if there is no giver, there would be no receiver of the bribe

**The Law covers the giver and the receiver of a bribe as both culpable. However, depending on the circumstances of each case, an investigator may choose how to proceed, whether to net both or leave one of them off the hook, if such course of action was likely to result into a conviction of one of them. The Commission is of the view that the law should not be disturbed.**

- 4.1.12 Some stakeholders said that corruption being a serious crime which affects the operations of the Union Government, should be considered a Union Affair and therefore, the law for combating the scourge should

apply to both parts of the Union. The institution created to combat the crime should also have territorial jurisdiction in all parts of the union. In the stakeholder's workshop it was further proposed that PCB should be a constitutional creature in order to secure its independence and security of tenure as in the case of Kenya, Malawi and Mauritius.

**The Commission finds that the need to designate prevention of corruption as a Union matter, to make PCB a constitutional creature and to provide for a joint framework to deal with the scourge is recognized. However, this should be a long-term program for consideration since it will entail amendment of the Constitution.**

- 4.1.13 A participant at police Mbeya meeting said that there was no need to create PCB to deal with a single kind of crime. Corruption, being a crime just like others, should be dealt with by the Police Force in collaboration with the Intelligence Department. Accordingly, PCB should be abolished in his opinion.

**The Commission finds that corruption is not just a crime like others. It is a serious crime that affects the fabric of society. Some stakeholders have described corruption as cancerous and more devastating than HIV/AIDS. In his preface to the Report on the State of Corruption in Tanzania, the President of the United Republic wrote, "Bribery and Corruption as a whole, is not just a crime, it is also a challenge of development, an attitude of mind."<sup>83</sup>**

**Given that a number a stakeholders have found nothing wrong with PCB if it could be made to work more efficiently, the Commission feels that there are**

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<sup>83</sup> The State of Corruption in Tanzania, Annual Report 2002,p. x

good and valid reasons to have in place an institution to deal with the crime.

There has been considerable improvements in terms of staffing, financing and allocation of resources to the PCB since its inception. With a little more effort and capacity building, the institution should be able to work more efficiently and more effectively.

- 4.1.14 At the meeting with PCB officials in Mwanza, it was said that the PCA should be appropriately amended so that PCB is empowered to track properties corruptly acquired, but hidden in foreign countries, and to have jurisdiction over such properties.

In recognition of the fact that corruption knows no boundaries, some jurisdictions have extended the jurisdiction of their courts to try corruption offences whether committed by their nationals or foreigners; and whether committed within their territorial boundaries or outside their countries. The UK is a case in point. In furtherance of the ability of a National Anti-Corruption agency, it may be necessary that the Institution is authorized by law to carry out investigations outside the country. However, with more coordination between the agency and the Police force, the same results can be achieved. It should be born in mind that collaborative action between the Anti-Corruption Agency and the Police Force can facilitate the Agency in obtaining detective service from the INTERPOL.

- 4.1.15 In order to enable PCB to operate efficiently in detecting corrupt public servants, it was suggested that the PCA should be amended to empower PCB to have access to property declaration forms of all public and civil servants.

The Commission finds that the Public Leadership Code of Ethics Act, 1995 was intended to enhance Ethics of leaders while in office such as to act with honesty, Compassion, Sobriety, Contenance, and temperance; proper use of public office and impartiality. In order to enhance such ethics public leaders are required to declare their assets and in addition, ministers are bound to abide by the principle of collective responsibility. Therefore the Code is not intended to act as an instrument for dealing with criminal behaviour unless strong suspicions of corruption exist against a particular public leader who is required to account for his/her assets under the provisions of Section 8 of PCA

- 4.1.16. A recommendation was made to the effect that PCB should be empowered to deal with grand corruption and as such, its officials should be provided with security of tenure.

**The Commission agrees with the idea.**

- 4.1.17. In all public hearings conducted it was contended that the PCA was outdated, focusing its attention on public servants only, and especially the low level cadre, when the economic landscape has changed dramatically. It was recommended that the PCA should be modernized so that the law is able to capture both private and public sector corruption. It was also suggested that PCB should modernize its operational tactics to take into account the complicated nature under which corruption transactions are effected. Admittedly, the focus of PCB's operations have been targeting public sector corruption only and hardly private sector corruption, although in some cases, the law does not discriminate between



public and private sector corruption. Section 3 of PCA for instance targets an “agent” who corruptly solicits, accepts or obtains any advantage as an inducement or reward for doing or forbearing to do anything in relation to his “principal’s” affairs or business. The term “agent” could be any person employed in the private or public sector, and the term “principal” includes an employer, who may be a public or a private institution.

The Commission is in agreement with these proposals.

- 4.1.18. PCB officials in Dar es Salaam said that in order to ensure that PCB does not degenerate into a corrupt institution, a mechanism to monitor its activities should be provided for within the PCA. The lack of such institutional arrangement may indeed provide opportunities for abuse of authority, overzealous application of power or other excesses. It was suggested that a supervisory and monitoring machinery should be established and its membership be drawn from the civil society, the private sector and the Public Service, and that members should be of outstanding competence and probity.

**The Commission agrees with this proposal.**

- 4.1.19 PCB officials in Mwanza alleged that currently, PCB is not able to effectively detect and prosecute grand corruption, which occurs through manipulation of laid down procurement procedures. It was suggested that the PCA should be amended so that persons who temper with procurement procedures in order to obtain advantages for themselves or for others, can be netted as having done corrupt transactions. The failure of PCB to net grand corruption offences related to tempering

with procurement procedures may not necessarily be on account of the fact that the malpractice has not been criminalized specifically under the CPA.

**The Commission notes that the Public Finance Act No 6 of 2001 and the Public Procurement Act No 3 of 2001 were enacted specifically to deal with the problems of embezzlement of public funds and corruption in public procurement. Concerns have however been expressed that the Public procurement Act is problematic in that it introduces unnecessary, cumbersome and bureaucratic procedures, which delay the process of procurement of goods and services. In order to deal with the problem of corruption which may occur when officers or agents circumvent procedures in order to obtain undue advantage for themselves, the Commission recommends that the PCA be amended by creating a new offence of "corrupt performance by an agent of his/her functions as an agent". However, since criminalizing the malpractice alone would not solve problems related to delays in the procurement function, the current intervention by the government to amend the Public Procurement Act is highly commendable.**

- 4.1.20. Concerning the ambit of Section 9 of PCA relating to having assets suspected to have been acquired corruptly, it was observed that the application of that section was difficult in view of changes which were brought about by the Zanzibar Resolution of 1990, which allowed Public Servants to engage in other economic activities, apart from their employment. Under such circumstances, it was difficult to relate whether properties in the possession of a public servant, were lawfully acquired through earnings generated from

permitted economic activities. It was suggested that this section should be amended to provide that, any person with properties in excess of a certain value, should be required to obtain certified audited accounts in support of his lawful economic activities which generated the income with which the assets were acquired. It was further recommended that the section be repealed and replaced to reflect the Hong Kong Model which simply say 'any public officer in possession of wealth disproportionate to his income is guilty'

**The Commission does not find the requirement to obtain certified audited accounts to be proper if it is to be mandatory because it puts a burden on the authority concerned to require such certified audited accounts. The Commission proposes that instead of the word "should" the word "may" should be used in the amendment of the section concerned. Furthermore the Commission does not find anything wrong with section 8 because the section does not put any burden of proof on the accused. The burden of proof remains with the prosecution to prove failure to comply with section 8 on the part of the accused who has been required to give a true account of his property and who gives a false account knowingly.**

**With regard to section 9, although the burden of proof shifts to the accused person once he is found to have in his possession property disproportionate to his known means of income after investigation pursuant to section 8 or a search conducted pursuant to section 13 or an investigation of his bank account pursuant to section 12 to have in his possession property disproportionate to his known means of income, such**



burden of proof is on the balance of probabilities only. It was held in *G.N. Mapunda V. Republic*<sup>84</sup> that where public officer is found with property whose value is disproportionate to his known sources of income there is a *Prima facie* case of corruption and the burden of proving that the property has not been corruptly acquired is upon the accused and the standard of proof is on a balance of probabilities.

In view of this decision of the Court of Appeal section 9 does not offend any provisions of any written law. Furthermore the concern about the difficulty of applying section 9 after the Zanzibar resolution is not really valid because what the investigator has to establish is that the property is disproportionate to the known sources of income of the accused and hence it is taken to have been corruptly obtained and it is on the accused to show how the property is not disproportionate to his sources of income.

- 4.1.21 It was alleged that there are difficulties in detecting grand corruption, which is often secretly perpetrated through documents or infringement of laid down procedures. PCB officials in Mwanza suggested that, administrative irregularities or infringement of procedures, should be taken as evidence of corrupt transactions and the law should provide for that. Administrative irregularities occurring as a result of incompetence or ignorance or simply done in good faith, could be excusable. In this regard, it was suggested that the definition of corruption should be widened to include misuse of office for personal gain.

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<sup>84</sup> [1982] 11LR 318



**As indicated above, the Commission does not support the proposition of providing for a definition of the term corruption for the reasons stated thereat.**

**In the same vein, it would be difficult to distinguish between irregularities done corruptly and those done in good faith.**

**The Commission does not support the above suggestion because it strongly feels that there are adequate mechanisms to deal with administrative irregularities and infringement of laid down procedures. In any event, recommendations made elsewhere would take care of the malpractice.**

- 4.1.22** Concerning the application of Section 6, it was observed that the law appears to cover the receiver of gifts and not the giver. It was suggested that the law should be amended so that the giver and the receiver of gifts are both netted and are subjected to penalties.

**The Commission agrees with this observation and notes that without dealing with the giver who is also equally culpable, corruption is likely to continue unabated.**

- 4.1.23** Officers of the PCB observed that, while PCB is charged with the responsibility of advising Government Departments on how to combat corruption, the law does not oblige those Departments to implement the advice given by PCB. It was suggested that PCA should be amended appropriately to require Government Departments to implement the advice given by PCB in that regard.

**Advice is a suggestion and not a command or an order. Advice can be taken, rejected or simply ignored, depending on whether it has value to bring about**

**desired change, and if its implementation would not cause additional administrative or financial burden. The Commission does not think that this is a matter which needs to be legislated upon.**

- 4.1.24 Some of the stakeholders consulted said that in order to combat corruption effectively, there is need for different agencies of the Government to collaborate in the war against corruption. In this regard, it was suggested that the PCA, NEA and Ethics Secretariat Act, should be amended by inserting provisions requiring the agencies created under these laws, to cooperate with each other and to exchange information between them so that corruption can be fought in all fronts.

**The Commission agrees that collaboration of different stakeholders and agencies is desirable in the fight against corruption. Institutions like the PCB, the Ethics Secretariat and the Elections Commission need to cooperate closely and to exchange information. Legislation to that effect is necessary to ensure such co-operation and exchange of information.**

- 4.1.25 PCB officials in Mwanza also observed that while PCB is charged with the responsibility of detecting and prosecuting corruption offences similar to the activities of the Police Force, the PCA does not facilitate the work of PCB as the Penal Code and CPA do to the Police, especially in incidences of obstruction. It was suggested that the PCA should be amended so that PCB officials are empowered to take action against persons who obstruct or hinder them in the course of their duties.

**The Commission sees the merit of making wilful obstruction of PCB officials in the course of their duties**

a cognisable offence. The PCA should be amended to give power to PCB officials to arrest any such offenders who obstruct them. They should also be able to investigate and eventually take the case to the DPP for prosecution before the court.

- 4.1.26 It was observed that PCB carry out prosecutorial functions similar to Police Prosecutors and other State Attorneys under the DPP, but the PCB officers do not prosecute in Superior Courts (i.e. in the High Court and Court of Appeal) It was suggested that PCB officer should be conferred with powers to prosecute corruption cases independently, and to initiate appeals in court without reference to State Attorneys.

The Commission is of the view that it is not necessary to vest PCB with prosecutorial powers since arrangements are under way for the DPP to assume prosecutorial functions in relation to all legislation. It is recognized that the requirement for DPP's consent to carry out a prosecution may delay the completion of cases, however the restriction has been introduced for a good cause in order to ensure that public interest is fully protected, while at the same time, the image and standing of a private citizen is not tarnished on frivolous or malicious reasons.

In view of the fact that the DPP will carry out all prosecutions in the country, the Commission does not propose to make any recommendations in relation to the requirement of the DPP's consent.

- 4.1.27 Other stakeholders were of the view that in order for the PCB to work efficiently, the Bureau should not be placed under the President's Office but under MOJCA or MOHA, so that DPP's consent can be obtained easily and without any bureaucratic hurdles. The Commission was informed that it is the intention of the DPP to

assume all prosecutorial functions in the Country. In this regard, the DPP intends to expand its presence up to the District level so that he is able to handle all prosecutions for all offences in the Country.

The Commission agrees that the PCB could be empowered by the PCA to investigate all corruption offences under the PCA or under any other law, but that all prosecutorial functions (work) should be undertaken by the DPP as planned.

The position of the Commission on this matter is in line with its earlier recommendation contained in its report on the Flow of Justice, that agencies charged with investigation of Criminal offences, should not be allowed to carry out prosecutions because of the inherent danger of miscarriage of justice if they are allowed to carry out the triple functions of arrest, investigation and prosecution.

- 4.1.28 A point was made relating to valuation of assets for offences under Sections 6 and 9, which in terms of Section 14 have to be valued on the basis of the market value approach. It was noted that the market value approach may not be appropriate in all cases, and has been a source of controversy in many cases prosecuted for offences under Sections 6 and 9. It was suggested that Section 14 should be amended appropriately to provide for valuation to be conducted using construction, replacement and or market values, depending on the circumstances and facts to be proved, or the type and age of the property concerned.

A recommendation to this effect was made by PCB officials and supported by the DPP. The Commission generally agrees with the proposition and will make recommendations to that effect.



- 4.1.29 Concerning protection of witnesses, it was contended that some employers harass witnesses under their employment in an effort to protect suspects accused of corruption offences who are also under their employment. It was suggested that employers who harass witnesses should be charged with contempt offences. Alternatively, contempt of court offences under section 114 paragraph (f) and (g) of the Penal Code, could be incorporated as offences under the PCA in order to ensure that witnesses to corruption cases are fully protected.

**The Commission agrees that there is a need to provide protection to informers/witnesses in order to encourage them to volunteer information. This is in line with a similar recommendation made above.**

- 4.1.30 It was observed that while corruption in the public sector is well covered under the PCA, the law does not appear to cover corruption in the private sector in that, while the term “public officer” is adequately defined, there is no similar definition for officers in private sector providing services to the public, and who may be inclined to receive bribes. It was suggested therefore that the law should be amended to cover officers in private institutions, by designating them as agents. Officers in private sector institutions who are to be designated as agents would be those serving in private sector institutions engaged in the provision of health, education or construction services and indeed any other services.

**The Commission is in agreement with the above views.**

## 4.2 THE NATIONAL ELECTIONS ACT

- 4.2.1 PCB staff were also concerned with electoral corruption offences of bribery or treating which were removed from the ambit of the PCA by Act No 8 of 1985. They advised that such offences should now be restored to the PCA, so that PCB is able to deal with such offences, and deserving punishment meted out under the PCA. However the DPP in his meeting with the Commission said that the corruption offences in the National Elections Act should be retained since election takes place once every five years.

The Commission agrees with the PCB's view that electoral corrupt offences should be restored to PCA.

- 4.2.2 In the public meeting at Arusha one participant said that it was enough punishment for election results to be nullified and that the respondent should not be imprisoned even if the cause of nullification was treating.
- 4.2.3 In the Media meeting at Arusha it was said that the National Elections Act had no teeth, as it were, and it was advised that punishment under the Act and under the PCA should be the same.
- 4.2.4 It was also found that the punishment in the Elections Act for corruption offences was not adequate. They recommended imprisonment in addition to any other punishment such as suspension from leadership position.

- 4.2.5 In Mwanza at the Media meeting it was said that the National Elections Act discriminated between ordinary citizens and leaders because the penalty in the Act was lighter than in the PCA. They advised for the amendment of the law.
- 4.2.6 In the meeting with politicians in Dar es Salaam one participant suggested that there should be proportional representation in the electoral process in order to minimize chances of corruption especially in cases of simple majority.  
In the National Elections Act petitions are filed to nullify elections or results of elections which have been obtained through illegal means. If the petition is successful the results would be nullified and sometimes suspension from leadership of the culprit would take place. That would be the end of the election petition. The law does not prohibit the charging of the culprit for offences proved in the petition, but charging never takes place. For that reason the Commission endorses the idea of taking the electoral corruption offences from the NEA to PCA in order to get rid of any discrimination between ordinary citizens and those aspiring to be MPs and in order to ensure that these offences are adequately punished

### **“TAKRIMA” OR TRADITIONAL HOSPITALITY**

- 4.2.7 Generally ‘takrima’ or traditional hospitality during the election period was found to be some form of corruption. But there were others who wanted proper analysis in each individual case. In the TRA group at Dar es Salaam one participant was concerned with the funding of elections and added that with more money a candidate could end up giving ‘takrima’ to the public,

which could be interpreted as another form of corruption. He therefore wanted more transparency in these areas of funding of elections.

- 4.2.8 Some stakeholders who aired their views to the Commission said that there should be a clear distinction between 'takrima' and corruption. Whereas others doubted whether 'takrima' really means traditional hospitality. They said that in the 1995 and 2000 elections there were a lot of corrupt practices in the name of 'takrima'. They found 'takrima' to be nothing else than a political compromise to corruption. It was also said that 'takrima' is not defined and is confined only to politics normally during election campaigns and not in other fields.
- 4.2.9 'Takrima' was said to create classes and discrimination among the society because it precludes the poor from participating in democracy and only the rich can contest and are guaranteed to win any election. As a result of 'takrima' in elections, people now demand to be given or paid something whenever they attend a meeting.
- 4.2.10 A participant said that democracy is not a commodity to be purchased but that every citizen has the right to choose or to be chosen. He advocated for the removal of 'takrima' from the electoral law so that every citizen can participate freely in democracy.
- 4.2.11. There were different views expressed about 'takrima' when LRC met the DPP and his staff. The DPP said that there was nothing wrong for a candidate with a group of people assisting him in the campaign to offer such people something. He likened 'takrima' to what happens in 'hitima' which is traditional hospitality. He



however cautioned that there could be ulterior motives in financing 'hitima' or 'maulidi'. He emphasized that there have to be limits in the use of funds for such activities. He said further that the time factor for 'takrima' was very important and that the law should specify when 'takrima' can be given. He gave another example of a wedding which involves donations and invitations of people as a form of traditional hospitality. He concluded that in developed countries, those campaigning receive money and donations from the public and not vice versa.

- 4.2.12 In Mbeya at a Public meeting one participant categorically termed 'takrima' as corruption only with a different name especially where it is given during an election period.
- 4.2.13 PCB officials said that 'takrima' was corruption because it is given out in order to get votes. It was suggested that instead of money coming from individuals each political party should set aside money for the purpose of traditional hospitality but the amount should be fixed for all parties. They also wanted a definition of 'takrima' to be provided in the law so that the courts are not given the task to define what is takrima and what is not.
- 4.2.14 One participant at a meeting with PCB officials in Mbeya was worried that even if proposals to abolish 'takrima' were taken before Parliament, Parliament might refuse to pass such a law because it was beneficial to the Parliamentarians.

- 4.2.15 Another participant said that 'takrima' has always been there as traditional hospitality but it becomes corruption when it is given in order to get something.
- 4.2.16 Yet another participant said that there was nothing wrong with 'takrima' so long as there are rules and regulations in the giving of 'takrima'.
- 4.2.17 Some stakeholders wanted 'takrima' to be removed from the National Elections Act because of its tendency to create classes and because MPs and Ministers who gave out 'takrima' would want to get their money back by all means.
- 4.2.18 Advocates from Mbeya suggested that if 'takrima' in elections has to go then all candidates must be under the supervision of the government during election campaigns. They concluded that the election law should be reviewed to get a better system of elections.
- 4.2.19 Politicians said that it was dangerous to scrap out 'takrima' in the law because it is given to a variety of groups of people during election campaigns such as 'ngoma' groups and choir groups. They added that in any case if there is treating the person concerned will face a five year suspension from leadership positions.
- 4.2.20 One participant advocated for 'takrima' saying that when one calls people to a meeting or to assist him in a task or event, he has to give them something.
- 4.2.21 Another participant said that there is good and bad 'takrima' and that what is important is how it is used. He said further that there is no way one can avoid 'takrima' because people need incentives. He explained that under

the one party system there was no takrima because all candidates were handled and managed by the government. However under multiparty system each party campaigns on its own. In order to get rid of 'takrima' he warned, the government would have to bear the costs of keeping all candidates together.

- 4.2.22 Some stakeholders thought that 'takrima' should be there all the time and not only during elections.
- 4.2.23 Other stakeholders condemned 'takrima' as unethical and therefore corruption. They recommended that elections should be funded from one source.
- 4.2.24 Some stakeholders who aired their views, found it difficult to say outright whether 'takrima' was corruption or hospitality or mere gifts.
- 4.2.25 Others did not find anything wrong with 'takrima'. They gave the example of people working the whole day and being given something to eat as hospitality. They also gave an example of 'Harambee' for a particular project as being a proper thing. They said that even sensitizing people to engage in development by giving them money or goods was not corruption.
- 4.2.26 It was pointed out that since the National Elections Act does not distinguish between dirty and clean money, dirty money could be used in election campaigns and given out as 'takrima'. The leader who gets elected would not be free from the influence of those who gave him the dirty money. They therefore advised that the law should be amended to require candidates to declare their sources of funding.

- 4.2.27 Some interviewees found any development project such as building a bridge and any large amount of food stuff given out during famine as corruption.
- 4.2.28 In some places it was said that it is not possible to get rid of 'takrima' in elections. They advised that PCB should make a distinction between traditional hospitality and corruption. They said that the law should distinguish what is 'takrima' and what is not so that PCB can tell when takrima ends and when corruption begins.
- 4.2.29 Some Journalists said that 'takrima' was corruption but that 'mshiko' was not because it was just assistance to journalists to enable them to pay for necessary expenses.
- 4.2.30 Politicians condemned 'takrima' saying that it was corruption and that CCM outlawed it in its party activities.
- 4.2.31 One politician advised that gifts of any amount should not be given to leaders because such gifts may be a source of corruption.
- 4.2.32. The Commission thinks that it is proper to examine the profile of the Elections Act since the 1970s, which in the view of the Commission would also assist to decide whether to remove the clause on "traditional hospitality" or not.
- 4.2.33 In 1970 (during the mono party System) corrupt practices in elections were criminalized under the Elections Act, 1970. According to the Act, any practice which could circumvent the electoral process was a ground to nullify an election result<sup>85</sup>. Acts such as giving

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<sup>85</sup> The Election Act, 1970. Section. 123(3)(d)



hoes to influence voters were among them. For example, in the case of *Rev. Simon Eliya Chiwanga vs. Rev. Severino Andrea Supa*<sup>86</sup>, the Court of Appeal affirmed the findings of the High Court which declared the result null and void on six grounds, holding, inter alia, that “giving hoes....to influence voters had the effect of avoiding the elections...”

- 4.2.34 The National Elections Act of 1985 which repealed that of 1970 also retained the electoral corruption offences. The High Court as per this new Act was required to report to the Director of Elections any findings of corrupt or illegal practices<sup>87</sup>.
- 4.2.35 In 1990, Act Number 13/1990 was enacted among other things to remove from the National Elections Act all Corruption offences and replace them by the offence of illegal practice only. Later in the same year Act number 20/1990 was made to transfer all corruption offences during election to the PCA so as to enable the PCB to deal with such offences. However five years later Parliament enacted Act number 8/1995 to re-introduce the Electoral corruption offences in the National Elections Act, by deleting them from the PCA. It should be recalled that the deletion of the electoral corruption offences from the PCA automatically removed the powers of the PCB to deal with such offences. It should be noted that this was made in the year when the first multiparty elections was conducted where one would expect intensive competition between political parties and individuals.
- 4.2.36 Other dramatic changes which were made in the elections law after the introduction of multiparty democracy were through Act number 4 of 2000. This

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<sup>86</sup> The National Elections Act, 1985, Section 114(1)

<sup>87</sup> [1982]TLR 12.

Act amended the National Elections law to exempt the so-called "acts done in good faith as acts of normal or traditional hospitality from the offence of treating"<sup>88</sup>. The law also exempts normal or ordinary expenses spent in good faith in the election campaigns or in the ordinary cause of elections process from treating, bribery or illegal practice<sup>89</sup>.

- 4.2.37 According to the provisions of section 130 of the Act, the High Court is vested with powers to determine whether or not the act was done in good faith. The introduction of this provision is rooted from the decision of the High Court in the case of *Lutter Nelson Vs. the Attorney General & Ibrahim Msabaha*<sup>90</sup> where Mkwawa, J, regarded proven allegations of treating the electorate to *pilau* by one of the candidates as untenable in amounting to corrupt practices.
- 4.2.38 The introduction of the said "Traditional hospitality" went hand in hand with the introduction of the provision in the Election Law, that required payment of 5 million shillings by the petitioner to the High Court as security for costs before the Registrar fixes the date for hearing<sup>91</sup>.
- 4.2.39 Mwakyembe on his part argues that the absence of some statutory interpretation as to the exact import of the concepts of "normal or traditional hospitality, normal or ordinary expenses spent in good faith" led to disastrous results in the 2000 general election. It was as if Parliament had condoned or rather legalized every kind of corrupt practices under the guise of "normal or traditional hospitality"<sup>92</sup>. In addition to Mwakyembe's

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<sup>88</sup> Ibid section 119(2).

<sup>89</sup> Ibid. section 119(3).

<sup>90</sup> Misc. Civ. Case No. 124. of 1995 High Court Dar es Salaam,

<sup>91</sup> Ibid. Section 133 (2). This section was subsequently successfully challenged by Advocate Julius Ndyababo in Court (2001), the current position the petitioner may be required upon determination of the court pay the sum which does not exceed 5million T.shillings.

<sup>92</sup> Harrison G. Mwakyembe, " The Electoral Law and Corruption Loopholes" in Samuel E. Chambua,et al(eds).Mult Party Elections and Corruption in Tanzania.p.92.

view one would say corruption practiced under the umbrella of takrima was highly protected by the requirement of 5 million shillings as payment for security of costs which no body could afford, thus no case would go to the Court.

- 4.2.40 Generally, Election Law applies only during elections, corruption offences dealt in the Elections Act, are those committed during election seasons. It is another view that since there is a thin line between acts done in good faith and those amounting to corruption it is better for the law to remain silent just as it was prior to 2000. It is a natural human behaviour to utilize every opportunity in his favour.
- 4.2.41 In the view of the Commission there is likelihood of some people to abuse such provisions especially in this era of political and economic liberalization where control of sources of funds is difficult. In that view the Commission agrees with the view held by Hoseah E. that the current position of the law “.....*defeats the good intentions of the government in promoting integrity, transparency and good governance reforms.....because when the electoral process is corrupted, democracy is undermined and dented*”<sup>93</sup>
- 4.2.42 There is an argument that the Court is vested with powers to determine whether an act was done in good faith or not, the Commission is aware of that, but the truth remains intact that not every matter goes to court due to various reasons. Some would not dare to waste their time bothering with court procedures, some would opt settlement out of court. The main reason is the requirement of payment of security for costs. One would say for a clever candidate in election who is conversant

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<sup>93</sup> ibid pg.

with the election law, this is a conducive environment to practice corruption in the name of "takrima".

- 4.2.43 Some countries such as Denmark, Sweden, Norway, Malawi and South Africa had provisions in their Elections Laws which provided for similar exception, but due to practical problems raised therefrom, they decided to get rid of such provisions. Moreover "Takrima" as part and parcel of African life is a law/rule on its own, in other words it is an obvious thing that does not need emphasis in statutes. It should be interpreted on its own.
- 4.2.44 In view of Article 21 of the Universal Declaration of Human Rights of 1948 which provides that, *"everyone has the right to take part in the government of his country, directly or through freely chosen representatives"*, by allowing the so called traditional hospitality to take place during elections, this would result into unfair process between individuals contesting, i.e. between the poor and the rich, and amongst political parties as between poor and rich political parties.
- 4.2.45 The Commission concludes by sharing views of a scholar who argued that *"In order to preserve the sanctity of the electoral process in Tanzania, there is an urgent need to do away with the "traditional hospitality" clause in the National Election Act since as noted it has given rise to a marked increase of corruption in the Country"*<sup>94</sup>...especially during election seasons.

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<sup>94</sup> ibid pg 92



### 4.3 PUBLIC LEADERSHIP CODE OF ETHICS

#### 4.3.1 Whether the law is adequate enough to combat corruption:

4.3.2 On this issue it was revealed in the field that the code was inefficient because there have hardly been any complaints using that law. The code was said to be incapable of ascertaining the truth about the money being declared because there is no requirement to investigate whether what was been declared is true or not. It was suggested that where there are allegations of corruption there should be a proper investigation by the government agencies instead of requiring the persons who are making the allegation to give evidence. It was also found that there is a need to verify the assets declaration forms of leaders who are required to comply with the leadership code.

4.3.3 Furthermore the PCB officials observed that the Ethics Secretariat has no investigators and that there is no follow up for the assets declarations so made. It was suggested that declaration of assets should be made to the PCB rather than to the Ethics Secretariat. It was also suggested that declaration of assets should be for every public officer and should be made to his employer on oath administered by each employer.

4.3.4 Most people visited in the regions said that the Code of Ethics has not done anything useful because even leaders known to have a lot of properties have remained without anything happening to them. It was suggested that there should be a closer follow up to get explanations as to why someone has become so rich so suddenly. Others said that the old Leadership Code

should be restored. It was also suggested that leaders of a certain rank should not own property as it was during 'the Ujamaa Days'.

The Commission observes that the earlier Leadership Code was dealing with leaders from a very low cadre. Moreover that code was during 'the Ujamaa' days, where leaders had to rely on one means of income only. Entrepreneurship was totally discouraged. After the 'Ujamaa period' leaders are free to engage in any other activities which can bring them income besides their salaries. As a result of that a leader can own lots of properties. 'Days of Ujamaa' have gone and leaders should not be restrained from owning properties. However, it would still be prudent to have a Code of Ethics which covers all public servants like in the case of Kenya.

- 4.3.5 Other participants were of the view that the Public Leadership Code of Ethics law is meaningless and that it should be scraped off. They said that the Secretariat has no power and is not known to the public. Others advised that all leaders including all political parties and accountants should be covered by the law.
- 4.3.6 Some participants said that the Secretariat is not independent because its Commissioner is appointed by the President and that it cannot investigate big shots. They advised that the Secretariat should be independent and that the National Assembly should appoint the Commissioner who will be answerable to it. They advised that the Commissioner should no longer be under the President's Office.

**The Commission does not agree with the idea of having the National Assembly as the appointing body of the Commissioner of the Ethics Secretariat as this is the function of the executive. Many other public officials are appointed by the President, e.g Judges, but they have never been accused of not being independent in the performance of their duties.**

- 4.3.7 Furthermore the participants recommended that the Leadership Code of Ethics should criminalize corruption.

The Commission observes that corruption of a leader can be dealt with under S.8[g] of the Public Leadership Code of Ethics Act. Since it is an offence under the PCA and the National Elections Act, by using these laws the leader can be taken to court.

- 4.3.8 With regard to the tribunal established under S.8 of the Public Leadership Code of Ethics, the Secretariat said that since they have powers to investigate any matter they should not be required to take the matter to the tribunal for investigation. Instead they should be able to investigate the matter and the tribunal should be on appellate stage.

**The Commission finds that what the secretariat is required to do is just preliminary investigation which is different from what the tribunal is doing.**

- 4.3.9 The Secretariat of Ethics was also concerned about the requirement of declaring assets every year. It found the period of one year to be too short for the purposes of acquiring assets. They recommended for the

amendment of the law to provide a period of two years instead.

**The Commission sees one year to be adequate as it is provided under the law.**

4.3.10 On whether the secretariat has interaction with PCB, the Secretariat said that there was such interaction not only with PCB but also with the Commission for Human Rights and Good Governance, Public Service Commission and President's Office Good Governance. It was also said that the Secretariat can seek assistance from investigative organs such as the Police and PCB.

4.3.11 The PCB cited Uganda and Zambia as countries with an Inspector General of Government who deal with all issues of Public Leadership Code of Ethics, corruption and such like matters. They said that in Tanzania there are six separate institutions dealing with corruption. These are the Ethics Secretariat for Public Leaders, the PCB, The Commission for Human Rights and Good Governance, Public Service Commission, President's Office Good Governance and the Police. Unfortunately, they said, these institutions work without coordination. South Africa was cited as one country having twelve such like institutions which are working in harmony.

**The Commission notes the idea and sees the importance of all these institutions to work in coordination as it is done elsewhere such as in South Africa.**

4.3.12 On the issue as to whether the Secretariat should be abolished on the ground that it impedes the work of PCB, they said that the Secretariat is an important institution of the government because it is a depository



of the declaration forms of assets of leaders. Moreover, they said that it deals with ethics, code of conduct, nepotism, favouritism, misuse of public properties and tribalism, and acts as a watchdog institution to make sure that public leaders do not enrich themselves because of their position.

**The Commission notes that the Secretariat is not competent to deal with Ethics of all kind of leaders because in the first place each category of leaders have their own kind of Commission such as the Judiciary, Public Service Commission etc. Further the Commission understands that the Secretariat has no means of knowing how a leader conducts himself while in the service of the Government. Thirdly, the filling in of the assets form cannot disclose any ethics concerning such leader. However, the Commission is of the view that the Secretariat should be retained and work harmoniously with PCB and other law enforcement agencies for dispensation of its function<sup>95</sup>**

- 4.3.13 Lawyers from the University of Dar es Salaam proposed that the Ethics Secretariat should remain for purposes of ethics and investigation activities in corruption cases should be under the PCB. They advised that there should be a Public Forum in the Secretariat.
- 4.3.14 Another concern was raised about gifts or presents amounting to 50,000/= (fifty thousand shillings). The Secretariat was of the opinion that the amount was too big. They recommended that it should be reduced to 20,000/=. The Minister concerned should be empowered to determine the actual amount which should be termed as gifts.

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<sup>95</sup> this was deliberated strongly in the stakeholders workshop

**The Commission finds it not necessary for the law to specify the value of the gift. The Commission agrees with the Secretariat that the Minister responsible should determine the value from time to time.**

- 4.3.15 Furthermore the Secretariat did not see the rationale of having to go to a magistrate in order to obtain an order which would allow them to look into an account of a person whom they are investigating, whereas on the other hand the Director General of PCB is authorized to issue a letter to a bank which must allow his staff to look at the account of the person they are investigating. They recommended for the amendment of such provision.

**The Commission finds it to be proper that under the system of checks and balances, an institution such as the Secretariat and the PCB should get an order from the Court when they want to look into an account of a person whom they are investigating. If the Director General is empowered to issue a letter, it is an exception to the rule.**

- 4.3.16 Most participants said that the Ethics Secretariat does not assist in netting corrupt persons because such persons would never disclose in the assets form money which was obtained corruptly. They added that in many cases false information is filed. It was suggested that the Secretariat should verify the declaration forms and that when a leader is alleged to be corrupt he should be investigated.

**The Commission thinks that what is important is for people to make the necessary complaints against the leader whom they suspect to have failed to disclose all**

of his property so that action can be taken by the Secretariat. In addition, section 27 (2) of the Leadership Code of Ethics makes it clear that it is an offence for any public leader who knowingly makes a false declaration of his assets or gives any false information in respect of his assets.

- 4.3.17 Moreover it was opined that the secretariat should be able to work as an independent institution unlike the current institutional set up which is in the President's Office. This impairs the Secretariat in discharging its duties effectively. Moreover, the Secretariat lacks adequate personnel, funds and there are no branches apart from Dar es Salaam. It was further suggested that Ethics Committees be formed in all MDAs.

**The Commission recommends for the empowerment of the Secretariat in terms of funds, manpower and consequently the formation of branches in the regions.**

- 4.3.18 It was suggested that the Ethics Secretariat should be revisited in order to have a better Ethics Secretariat with powers to scrutinize and recommend suitable persons for leadership positions as well as powers to remove those who are in breach of the code of ethics. In the alternative stakeholders wanted the formation of a Truth Commission to do those functions.

**The Commission is of the view that the formation of the Truth Commission could just be a change of name which does not apparently cure the inefficiency of the secretariat. It is therefore important to empower the secretariat as recommended in the previous paragraph.**

#### **4.3.19 Whether the rules to access to the declaration form are transparent enough.**

On this issue the Secretariat said that the declaration of assets forms can be accessed on four conditions:

- i) Whoever wants to access to the declaration assets forms must have a complaint against the public leader.
- ii) He/she must pay a fee of Tshs 1,000/=.
- iii) The Commissioner of the Ethics Secretariat must be satisfied that the complaint is relevant.
- iv) The one who has seen the declaration of assets form is not allowed to publish the information.

4.3.20 The Secretariat said that these are difficult procedures when compared to other countries such as South Africa, the United States of America, and the United Kingdom where such declaration forms are easily accessible to the public. However the Secretariat cautioned that there should be some degree of confidentiality so that public leaders assets are not exposed completely. Other participants proposed that the exposure of leaders' assets should be a long term strategy because the public might not understand how a public leader has so much assets.

**The Commission thinks that what is important is how the assets were acquired – whether they were acquired lawful or not – and not how much assets there are.**

4.3.21 Furthermore journalists visited in the regions found the law on the Public Code of Ethics to be against the freedom of the press because the press cannot report on what is contained in the assets declaration forms. It was recommended that the law be amended.



4.3.22 Others observed that the declaration of assets being done secretly was not enough for the purposes of combating corruption. This is because there were elaborate rules before someone could look at these declarations of assets forms. For that reason, they said, the heavy- weights could not be touched. Most people wanted the assets of leaders to be declared publicly so that the public can challenge whether they are correct or not. They wanted those forms to be in newspapers or deposited at a place where people can access them. Others suggested that there should be no fees for anyone who wants to see the assets forms. It was therefore recommended for more transparency and less cumbersome procedures.

4.3.23 However other participants wanted some secrecy on the assets declared on the form because it was dangerous to publicize them and because it could cause problems. The need to keep such forms confidential and the necessity to give teeth to the Secretariat was emphasized. It was further argued that the procedures to access assets forms were good in particular because somebody might have ill motives against a leader.

**The Commission is of the opinion that the exercise of declaring assets is intended to ensure transparency in the conduct of public servants. The public which the servants are supposed to serve have a right to know and monitor the conduct of their servants.**

**The Commission finds that the regulations under the code have the effect of nullifying the intentions of the code. The Commission feels that the code should apply to all public servants and the forms should be accessible to the public at all reasonable times. The**

**Commission recommends therefore that the regulations be amended to reflect this spirit.**

- 4.3.24 As to whether it was proper for the Commissioner of Ethics Secretariat to have discretionary powers to grant or to refuse an application for inspection of particulars of a declaration of assets forms of a public leader, the Secretariat said that the Commissioner could not be accepting every complaint even when it is quite clear that such complaint is not genuine and there is no truth in it.

**It is the view of the Commission that such discretion is uncalled for unnecessary and serves no purpose in the battle against corruption. The Commission is of the view that accessibility of the forms to the public is central to the whole concept of transparency. The Secretariat should be encouraged to set up a website where such information may be accessed by the general public.**

- 4.3.25 On the issue of the value of assets to be declared, for example, houses, the DPP's Office recommended that the declarant should declare the costs of construction as opposed to the market value, if he built the house himself and the market value, if he bought the house. The DPP said that PCB has also the power to require a suspect whom they are investigating to declare his assets.
- 4.3.26 Furthermore some participants said that PCB should have access to the records of the Secretariat in order to verify whether an assets declaration form is correct or not. It was further suggested that there should be

coordination between the PCB, Intelligence and the Secretariat. If not, the Secretariat should be given powers to prosecute. It was further claimed that because of what the Ethics Secretariat law is at present, no leader has been netted since the law was enacted.

**The Commission finds the coordination between the PCB, Intelligence and the Secretariat to be a welcome idea. However the Commission thinks that the Ethics Secretariat law is for a different purpose other than for punitive purposes only .**

- 4.3.27 Furthermore it was said that ethics do not consist of just filling assets forms. Ethics involve other consideration such as proper use of government motor vehicles and government funds to benefit not only senior officials but also others in all grades in the public service. It was also said to be illogical for Members of Parliament to receive 20 Million shillings as gratuity after five years as opposed to Ward Councillors who receive only 5 million shillings as gratuity after five years. It was also said that the whole idea of increasing seats in Parliament is unethical since Tanzania is only a small and poor country.

**The Commission agrees with what the stakeholders said that the code itself covers misuse of government properties and government funds.**

- 4.3.28 On the other hand it was suggested that all leaders contesting for elective posts should declare their properties in the assets declaration forms which will then be published in the Government Gazette. Such declaration should be made annually so that if there is a huge increase of the assets, they can be questioned as

to how such assets were acquired. They recommended for the publication of assets declaration forms of leaders within one month after election.

**The Commission agrees with the above suggestion.**

- 4.3.29 Other participants were of the view that focus should not be on assets of leaders only but on their general behaviour and integrity. Participants were worried that Tanzania is not in a position to evolve national ethics because foreigners of different cultural background have been allowed to take high positions in the government. They suggested that foreigners should not be allowed to take high posts in the Government.

**The Commission agrees with the first part of the recommendation. As to the second point the Commission is not aware of any foreigners in high government positions.**

#### **4.4 OTHER STRATEGIES**

##### **A. Cooperation between PCB and other stakeholders:**

- 4.4.1. Most of the people consulted in the field said that cooperation between the PCB and the public is important in the war against corruption. This is because the public are the ones who are affected by corruption and are in a better position to know corrupt persons through the services they are provided. It was said that PCB could not succeed to fight corruption by working in isolation of the public. PCB should have more interaction with the public by arranging more programmes in which to meet the public.



- 4.4.2 They pointed out that cooperation between PCB and the public is one way of preventing corruption. Some proposed that the public should be allowed to form Civil Societies. NGOs dealing with human rights should lead in the formation of these civil societies to assist the government in its war against corruption. According to the stakeholders, these Civil Societies will play the role of reporting corrupt practices and educating the public on the evils of corruption.
- 4.4.3 Others thought that the war against corruption could be tougher if there was no coordination between the PCB and other Government departments such as the police, Ethics Secretariat and the DPP's office. It was also said that such cooperation should extend even to the private sector. Detection of corrupt persons, or an employer suspending an employee when charged with a corruption offence until the matter is resolved in court, were cited to be among the areas of cooperation. It was further pointed out that some government institutions such as PCB, Ethics Secretariat, Police and the like are involved in the fight against corruption. In the course of discharging their role, it was suspected that there might be a duplication of some activities such as research, hence wastage of resources. It was pointed out that it would be better if these institutions could be coordinated by a special committee in the president's office dealing with the question of good governance.

**The Commission is aware of the UN Convention which requires that governments collaborate with civil society in fighting corruption. The Commission therefore welcomes the idea of the formation of civil societies and NGO's to fight corruption. The Commission urges**

**the government to facilitate the formation of such societies.**

The Commission agrees with the view of co-ordination between PCB and other government departments, taking into account the fact that corruption is a complex issue that needs cooperation between various institutions. In that regard the Commission concurs with the view of some scholars that:

*" Neither strategy is likely to be sufficient alone. Both government and civil society programs work best in partnership ..... "96*

- 4.4.4 Participants in the public hearing in Mwanza argued that PCB's offices should be well known to the public to enable them to report corrupt practices.

**The Commission finds this argument to be important in the fight against corruption because during research some of the interviewees were found to be ignorant of where to report corrupt practices. This implies that people do not know the Bureau's whereabouts. This problem in the view of the Commission would make PCB's activities difficult to transact.**

- 4.4.5 Others suggested that there should be a suggestions box in every government department and the PCB should keep the keys for such boxes. The main reason for this is to enable people to report corruption incidents without fear or favour and that PCB staff should work in public institutions but they should be incognito to the other staff. This is because corruption transactions are normally committed at a high level of secrecy. Therefore the suggestion boxes and incognito PCB staff will assist detection of corrupt practices.

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<sup>96</sup> Kpundeh,Sahr; 1998

- 4.4.6 Some stakeholders suggested that a supervisory system “Unyampara” should be restored in those sectors dealing with people directly so that people can report to these Nyamparas when they are denied services.

The Commission sees that it is a good idea to have a supervisory system where people would be able to report corrupt incidents. The idea of suggestion box and PCB staff working incognito is also welcome according to the Commission.

**B. Political will;**

- 4.4.7. Political will on the part of the government was also cited as one of the important weapon in the fight against corruption. However, in accordance with stakeholders’ views, it appears that leaders act contrary to what they preach in platforms about corruption. Most of the people who aired their views were annoyed by a developed tendency of leaders protecting each other in platforms when some of them are suspected of corruption by some members of the public. This was said to be discouraging and hence weakening the war against corruption.

**The Commission believes that political will is one of the most crucial elements in the fight against corruption. Parliament can enact a good anti-corruption legislation, but it will be largely useless if the political will to use that legislation does not exist.**

**The Commission is in agreement with the stakeholders view and adopts the Warioba’s contention that:**

*“ Without political will to combat corruption nothing will be achieved. Without committed leadership there will be no coherent policy to fight corruption and there will be no meaningful and effective mechanism for the*



*purpose. Reforms may be made on paper and institutions may be created but unless there is political will corruption will not be fought."*<sup>97</sup>

- 4.4.8 It was further said that in order to succeed in the war against corruption, transparency in all government activities including government rules, regulations and contracts should be made open to the public.

The Commission agrees with the idea of transparency in all government activities except for Defence contracts, Security or Intelligence contracts and any other contract of a sensitive nature.

- 4.4.9. Moreover, it was stressed that immediate action be taken whenever allegations of corruption are made instead of taking too much time to investigate a crime whose evidence is clear. All efforts made by the government including prosecution of corruption cases should be made public so that confidence in the public may be enhanced in the war against corruption.

The Commission is of the view that this idea is important and should not be ignored otherwise it would make the war against corruption tougher.

- 4.4.10 Most of the people in the field pointed out that the Government seems to concentrate more on petty corruption than on grand corruption. This has resulted into people perceiving that the Prevention of Corruption Act was enacted for the people of the lowest cadre because the highest cadre remains untouched. This discourages the fight against corruption and leads

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<sup>97</sup> Joseph Sinde Warioba, The State of Corruption in Tanzania, a professional lecture given at the University of Dar es Salaam and Published in the Daily News Paper, Tuesday, March 9, 2004.



to loss of trust and confidence of the public in the government<sup>98</sup>.

The Commission agrees with the view of stakeholders that equal force be applied on grand corruption as on petty corruption.

## **C. Poverty;**

- 4.4.11 Some of the stakeholders who were consulted by the Commission were of the view that most people providing service do solicit bribes because of poverty. As such they proposed for improvement of the economic conditions of most Tanzanians so that they do not succumb to corruption.

The Commission is aware of the efforts of the Government in this area which include the institutionalisation of the Poverty Reduction Strategy (MKUKUTA)<sup>99</sup> that incorporates the Millennium Development Goals (MDGs). The nexus of poverty and corruption is well articulated in this paper where the political will of individuals as well as societies cannot be sustained due to poverty. Politically those with money have been able to undertake vote buying from the poor who have ended up electing people on the basis of their wealth. In such cases countries have ended up being ruled and not led by people who have bought their way to power. Such a situation is not only anti-democratic but is inimical to people's development.

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<sup>98</sup> C.Mashamba et al 2004:11.

<sup>99</sup> Mkakati wa Kuondoa Umaskini na Kukuza Uchumi Tanzania.

**D. Better salaries and working conditions;**

- 4.4.12 In its research the LRCT also heard concerns from most stakeholders about low salaries and poor working conditions. Some stakeholders said that without enhancement of salaries and improvement of working conditions such as provision of loans for construction of houses and buying of cars, corruption will never end. The LRCT visited some of the Institutions where salaries have been enhanced such as the TRA.

**It was observed that the enhancement of salaries in the TRA has reduced corruption in the Authority. However the Commission sees the insecurity of employment in the Authority to be a threat to that achievement as claimed by TRA officials.**

**Furthermore the Commission is in full agreement with above views on salary increase. The Commission has noted that Botswana with a well paid public service does not have a serious problem with corruption. Civil Servants are paid adequate wages so that the temptation to solicit bribes is reduced. As a result of that private businessmen are not required to bribe government officials to carryout normal business activities.**

- 4.4.13 Apart from enhancing salaries and working conditions, the stakeholders said that life of an employee on retirement is not guaranteed. It was observed that retirement benefits which are given to employees in the low cadre are not adequate to sustain their lives on retirement. As such they engage in corrupt practices so as to prepare their lives after retirement. It was proposed that employers should ensure that employees are well provided for during the time when they are in office and after retirement in order to reduce reasons for corruption.

- 4.4.13 It was also pointed out that there is a big gap in terms of salaries between the higher rank and the low rank employees and that employees of similar grades who are in different Government Institutions differ in terms of salaries and other benefits. They pointed out that some are paid more handsomely than others and that this has resulted into employees of the same grade differing in standard of living. It was said that those in the low level struggle to move to the high level even through illegal means which includes corrupt practises. It was suggested that employees of similar grades should be paid equal salaries and should be paid timely.

**Basically the Commission agrees with what has been said above.**

**E. Improvement of services in the Society;**

- 4.4.14 Poor and insufficient services to the society was also said to be one of the causes of corruption. In some of the government departments such as the Police they complained about inadequate working facilities such as stationery, vehicles and uniforms which have caused police officers to work in difficult conditions, hence engaging in corrupt activities. It was also alleged that there is unfair distribution of funds in Government departments. They urged for fair distribution of the national cake in the infrastructure such as education and health services, which cover the whole country. They also advocated for better services to be provided by the government and other institutions.

**The Commission feels that money which is voted for Ministries or Departments should reach even the most remote areas.**

- 4.4.15 It was also said that government procedures in providing services to the public should not be bureaucratic to enable every citizen to access to the services easily. This will reduce chances of corruption.

**The Commission is aware of the problem of bureaucracy in government and other public offices which more often leads to corruption. The Commission recommends the establishment of what in Egypt are called Citizen Service Centres where citizens and others can do most of their government business without going to the relevant ministries.**

**F. Civic and Legal Education;**

- 4.4.16 In most areas which the Commission visited, it was observed that ignorance was one of the causes of corruption. Most people who aired their views said that the majority of Tanzanians do not know their rights including the law on corruption. Others pointed out that those in authority are using such ignorance to demand or solicit bribes. For example, while bail is granted free of charge, some people believe that in order to be granted bail, one has to bribe the Magistrate or court clerk.
- 4.4.17 The majority of the interviewees proposed civic and legal education to be offered to the public including the rural population through mass media, leaflets, booklets and public meetings. Others wanted Political Parties also to play a part in awareness programmes through their public education desks and to offer civic education to their members and voters.



The Commission finds the observation to be important because having good laws which are not known to the public is useless. Knowledge of the law by the public would also help to prevent corruption.

- 4.4.18 Furthermore, it was contended that, in order to make the public understand easily the law on corruption, the PCA and other related legislation should be translated into Kiswahili.

The Commission notes this contention as an outcry of the public because the majority of Tanzanians are not conversant with the English language. Apart from that the language used in legislative drafting is technical and it is difficult to understand even for a person who is conversant with the English language. The Commission (as it has recommended in other reports)<sup>100</sup> is of the same view that in order to ensure justice it is better for laws to be drafted in plain language and more so they should be translated into Kiswahili although this would be a long-term programme.

The Commission also agrees with the shared view by some stakeholders who proposed that education on corruption matters should be included in the primary and secondary schools syllabus to make pupils abhor corruption from their early ages.

- 4.4.19 It was alleged that Magistrates seem to be not conversant with the PCA, and that it takes too much time to complete corruption cases. This has resulted into people losing trust in the courts because it takes too long to hear the outcome of corruption cases. It was therefore suggested that magistrates should be trained

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<sup>100</sup> The Commission's reports on the Flow of Justice, Introduction of the Cadre of Paralegals, The Review of the Legislation Governing Police and Prisons.

in the PCA in order to ensure justice in corruption cases. It was further suggested for the establishment of special courts dealing with corruption cases. In the alternative, they contended that some magistrates in the ordinary courts should be designated to deal with corruption cases. This will ensure that corruption cases are tried by experienced magistrates and that there is no workload of corruption cases in the courts.

**The Commission agrees with this idea because corruption cases have always been tried by the High Court and only occasionally on special permit such cases are taken to the District Court for trial. In the view of the Commission all corruption offences should be tried by special Magistrates as proposed by the stakeholders.**

#### **G. The Prevention of Corruption Bureau**

- 4.4.20 It was alleged that many corruption cases do not succeed in court due to incompetence of the PCB staff. It was said that the staff of the PCB fail to understand the intricacies and complexities of corrupt transactions. It was suggested that competent persons who are proactive in detecting corruption incidents should be recruited in the PCB.

**The Commission notes that the PCB staff need proper training in order to do their work adequately.**

- 4.4.21 Some of the stakeholders were of the view that PCB should follow the system of security agencies in recruiting its staff or else it should be disbanded and instead police, intelligence and lawyers should constitute the institution.

**The Commission finds that the issue of disbanding the PCB seems not to be proper. It only needs to be improved.**

## **H. Fines;**

- 4.4.22 It was found in the research that big fines such as those in some traffic cases encourage corruption. This is because a wrong doer finds it easier to give a small amount of money to the traffic police rather than to go to court and face a big fine.

**The Commission agrees that the imposition of big fines might be one of the reasons of corruption in traffic matters. But the Commission sees no reason for reducing the current amount of fines stipulated in the law because doing so will encourage traffic offences.**

## **I. Legal representation;**

- 4.4.23. In the Public Meeting at Mbeya it was said that the majority of Tanzanians do not know the laws and also live in rural areas where they use primary courts in which advocates and prosecutors are not allowed to represent parties. The participant advocated for legal representation to ensure justice to all people.

**This idea is very important and the Commission has already researched on the subject and the report on the Introduction of the Cadre of Paralegals who will represent parties in the primary court is ready for submission to the government.**

## **J. Appointment of Leaders;**

- 4.4.24. Appointment of leaders was also identified to be one cause of corruption. Stakeholders were of the view that the President is vested with too much power in appointing leaders such as Director Generals. They suggested that such posts should be advertised and suitable candidates should apply and be interviewed by an independent consultant firm such as Price Water House Coopers. They also suggested that Ministers should not be appointed amongst Members of Parliament in order to have a proper separation of powers.

**The Commission finds this view to be important because it will assist to get qualified and committed persons to fill the posts, but the present system of appointing Ministers should not change.**

- 4.4.25 It was also pointed out that leaders should not be vested with too much powers without ensuring controls of such powers. This point emanates from the fact that some statutes confer discretionary powers on persons or institutions to make decisions as they deem fit. For example there is discretionary powers of the Minister for Mines to issue a Mining licence, and the powers of the Minister of Finance to exempt tax. It has been said that the discretionary powers may be influenced by existing or prevailing circumstances or a desire to receive bribes. It was further opined that the system of tax assessment should be transparent.

**The Commission thinks that there should be accountability at all stages in exercising discretionary powers and that the system of tax assessment should be transparent**



## CHAPTER FIVE

### 5. CONCLUSION AND RECOMMENDATIONS.

#### 5.1 CONCLUSION

5.1.1 In undertaking this project, the Commission made reference to a large body of literature and materials available on the subject, as well as to research studies undertaken by Law Reform Agencies of other Countries. Valuable lessons were also drawn from other jurisdictions in their efforts to address the problem of corruption in countries such as the UK, Nigeria, Egypt, Botswana, Malawi and Kenya.

5.1.2 Since corruption cuts across all areas of public and social life as well as in all sectors of the economy, the Commission saw it fit to widen the scope of the study to include examination of other laws impacting on the PCA such as the Public Leadership Code of Ethics Act, the National Elections Act and the Public Procurement Act. In this regard, the Commission identified certain issues to be addressed by stakeholders in their consideration of the matter. Some of the issues were as follows:

- Whether the Public Leadership Code of Ethics is adequate to Combat corruption.
- Whether the Secretariat of the Public Leadership Code of Ethics should be abolished because of the perception that it impedes the work of PCB.
- Whether the provisions of the PCA were adequate to deal with the problem of corruption and if not, what action needs to be taken to ensure that the legislation is strengthened.

- 5.1.3 The conclusions which have come out of this study clearly indicate that the battle against corruption cannot be won simply by legislating against the scourge, but that it also requires to be fought on different fronts, including putting in place a sound strategy to deal with the problem, as well as empowering the justice system to deal with the offence.
- 5.1.4 In the course of this study, it became clear to the Commission that there is a deep resentment and abhorrence of the crime of corruption amongst members of the public which if properly harnessed, could be utilized to combat corruption. It became evident also that not many people, including some of the practitioners charged with the administration of the PCA adequately understand what constitutes the crime of corruption. Furthermore, it also became clear that because of the enlargement of the democratisation process and free speech, many people tend to politicise the crime, using it as an electioneering weapon against their political opponents.
- 5.1.5 Based on the comments and views obtained from stakeholders as well as lessons drawn from other jurisdictions, the Commission has made legal and administrative recommendations aimed at making the war against corruption sustainable. These recommendations range from amending the legislation on combating corruption i.e. the PCA as well as other laws impacting on that legislation. Specific recommendations have been highlighted in the main body of the report while others will be made in the section covering recommendations as a whole.

## 5.2 RECOMMENDATIONS

### A. LEGAL REMEDIES

The Commission is of the opinion that a major factor that is linked to corruption levels is the quality of the country's legal system, particularly the existence of effective anti-corruption laws, and a strong probability of one being caught and punished meaningfully for engaging in corrupt practices.

As a general comment in respect of the role of legislation in combating corruption, the Commission agrees in principle with the following observations:-

- (a) *"Such a pervasive phenomenon like political corruption cannot be legislated out of existence. If a society as a whole, or the dominant section of it, indulges in or condones an evil practice, no law can stop it"*<sup>101</sup>
- (b) *"Deterrence and enforcement measures are valuable tools to fight corruption. However, initiatives that rely too much on punishment are unlikely to be successful in the long run, and may even be counter-productive"*<sup>102</sup>

In the light of these observations, the Commission recommends that greater efforts should be directed towards plugging the loopholes which facilitate corruption as identified by the Warioba Commission, rather than trying and hoping to legislate corruption out of existence.

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<sup>101</sup> Shashi B. 1995, Politics of Corruption: The goddess that failed p.187.

<sup>102</sup> Controlling Corruption: A Parliamentarian's handbook by Parliamentary Center, Canada, in partnership with the World Bank Instituted. September 2000 p.44.

## THE PREVENTION OF CORRUPTION ACT

- 5.2.1 The problem with the sentences in the PCA is the lenient fines to be imposed on conviction of an offence rather than the imprisonment term. The Commission recommends that the use of the currency points as described in one of the Commission's reports be adopted.
- 5.2.2 The scope of the PCA should be wider to cover other corrupt practices not in the Act and offences of obstruction to the PCB work.
- 5.2.3 PCB should be empowered by PCA to investigate any corruption offences even if they are not in the PCA. However investigation alone will not be sufficient action unless the DPP on his part is going to prosecute even offences not provided for in the PCA but are in the National Elections Act.
- 5.2.4 PCA should define what corruption or corrupt practices are as is done in some jurisdictions such as Malawi.
- 5.2.5 Section 12 of the PCA should be extended to cover other organisations such as TRA, Government Departments, Corporations and Private Institutions with regard to the production of information and documents.
- 5.2.6 Since section 6 of the PCA deals only with the receiver, it should be amended to include the giver.
- 5.2.7 Section 2 of the PCA should be amended to include education of the public as one of the function of the PCB.



- 5.2.8 Section 14 of the PCA provides for possession of property for an accused person the market value of which is disproportionate to his known sources of income. However, such property might have been constructed by the accused person a long time ago. The Commission recommends, therefore, that instead of sticking only to market value, the section should be amended to include cost of construction or replacement value as one of the criteria for determining whether a property is disproportionate to known sources of income of an accused person.
- 5.2.9 The Commission is in full agreement with the recommendation by the Malawi Law Commission concerning protection of whistle-blowers and other informers and recommends that the law should be amended on the lines of section 51A as proposed by the Malawi Law Commission.
- 5.2.10 No legal proceedings, civil or criminal should be instituted against any officer of the PCB or any other person assisting such officer for an act done or omission in good faith by such officer or other person.
- 5.2.11 The PCA should be amended to provide for the creation of an advisory board similar to the one created in the Kenya legislation.
- 5.2.12. The PCA should be amended to provide for the appointment, security of tenure and removal process of the Director General and other directors in line with the Kenya legislation.
- 5.2.13 The Commission recommends the adoption of the definition of 'property' as is contained in the PCB draft

document which includes assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible and any document or legal instrument evidencing title to, or interest in such assets.

- 5.2.14 The Commission recommends the adoption of the definition of 'public duty' as defined by PCB in its draft document thus a duty in the discharge of which the State, the public or the community at large has an interest.
- 5.2.15. The Commission prefers the definition of 'public officers' in PCB's draft document to that of the PCA and recommends that it be substituted for the PCA definition. Part of the PCB document is annexed.
- 5.2.16. The Commission recommends the amendment of the PCA to substitute the definition of 'specified authority' as per PCB's document for the PCA definition
- 5.2.17. The Commission recommends that the definition of corrupt transactions be made to cover contracts, procurement, withdrawal of tender and auctions.
- 5.2.18. The Commission is aware of situations in which a public officer may have private interests in a matter for resolution in a meeting. The Commission recommends that the PCA should provide that such officer should declare his interest and desist from continuing with the meeting under pain of punishment.

## **THE PUBLIC LEADERSHIP CODE OF ETHICS**

- 5.2.20 The Public Leadership Code of Ethics rules on how to access the assets declaration forms should be repealed and replaced by other rules which aim at transparency

## **THE NATIONAL ELECTIONS ACT**

- 5.2.21 Section 119 of the National Elections Act should be amended by deleting proviso 2 and 3 therefrom.
- 5.2.22 National Election offences that involve corruption in the Elections Act should revert to the PCA.
- 5.2.23 Section 130 of the NEA should be struck out from the statute book.

## **GOVERNANCE AND THE NATIONAL SECURITY ACT 1970**

- 5.2.24 Government decision making should be transparent to promote transparent governance. Furthermore generally a good number of public documents which are classified as confidential or secret are neither confidential nor secret. Such documents should not be issued under confidential cover. In particular the National Security Act 1970 should be revisited with the purpose of declassifying some documents which are classified as secret or confidential.

### **B. NON LEGAL MEASURES**

- 5.2.25 During the field research concern was expressed on the poor performance of both the Ethics Secretariat and the PCB due to inadequate staffs, inadequate funds, and in the case of the Ethics Secretariat the absence of any branch in the country. The Commission therefore recommends that the PCB and Ethics Secretariat should

be empowered to perform their work adequately to the satisfaction of the public.

- 5.2.26 Rules and Regulations which are involved in government business should be available to the public and where possible they should be translated into 'Kiswahili for more effective use by the public.
- 5.2.27 The State should educate Civil Servants and other employees on ethics, honesty and integrity of government leaders and Public Servants and even of leaders and members of political parties in order to create the necessary climate for political will to fight corruption.
- 5.2.28 Concern was raised during the field research on the deplorable conditions of government servants and employees of other public organisations with regard to salaries and other benefits including retirement benefits and security of tenure. The Commission recommends that the same should be improved as a priority in order to reduce cases of corruption due to those factors.
- 5.2.29. PCB were said to be targeting only public servants in their pursuit of corrupt elements. Since section 3 of the PCA does not exempt private persons or corporations from the wrath of the law, PCB should deal with corrupt offences even when public servants are not involved.
- 5.2.30 The Government should fully implement the administrative measures recommended by the Warioba Commission, and take prompt action to operationalize the strategy recommended in the National Anti-Corruption Strategy and Action.



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## ANNEXTURE

### AN EXTRACT FROM PCB's

#### PROPOSED DRAFT FOR THE REPEAL AND REPLACEMENT OF THE PREVENTION OF CORRUPTION ACT NO.16 OF 1971. (pp. 5-6)

*"public duty"* means a duty in the discharge of which the State, the public or the community at large has an interest;

In this clause "State" includes a corporation established by or under a Central, Regional District, or an authority or a body owned or controlled or aided by the Government or a company as defined in the Companies ordinance, Cap.212 and the government has vested interest.

*"Public Officer"* means:-

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority
- (iii) any person in the service or pay of a corporation established by or under any Act or an authority or a body owned or controlled or aided by the Government or a company as defined in paragraph (f) of this section,
- (iv) any judge, or magistrate, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory sanctions; and
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (viii) any person who is the president, secretary or other office-bearer of a registered co-operative society, receiving or having received any financial aid from the Central Government or Local Government, or foreign state or donors or from any corporation established by any Act or any authority or body owned or controlled or aided by the Government or a company as defined in paragraph (f) of this section.
- (ix) Any person who is a Chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (x) Any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
- (xi) Any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or local government or donors or foreign state.



*"Specified Authority"* means

- (a) the government.
- (b) a local government authority.
- (c) a body corporate established by or under any written law other than the companies ordinance.
- (d) any political party registered under the Political Parties Act No. 5 1992.
- (e) any organ of the political party, and every body of persons whether corporate or unincorporated, which is affiliated to the political party.
- (f) a trade union registered under the Trade Unions Act.
- (g) any company registered under the Companies Act Cap 212 not less than fifty percent of the issues share capital of which is owned by a specified authority or, where the company is limited by guarantee, a company in respect of which the amount that the specified authority which is a member of such company has undertaken to contribute in the event of the company being wound up is not less than fifty percent of the aggregate amount which all the members have undertaken to contribute; and references in this paragraph to a specified authority include references to any such company.

