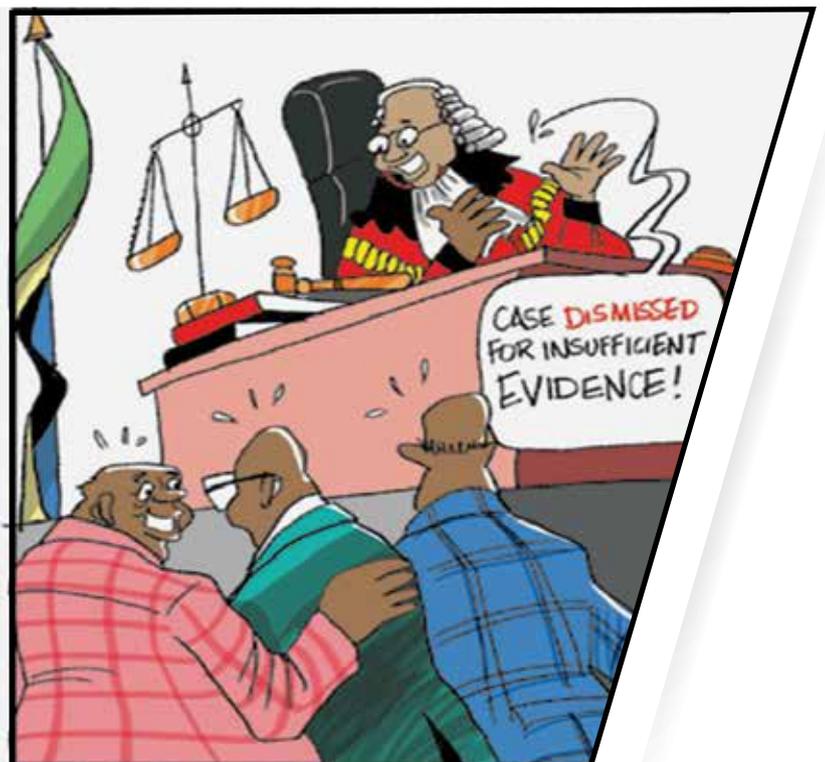
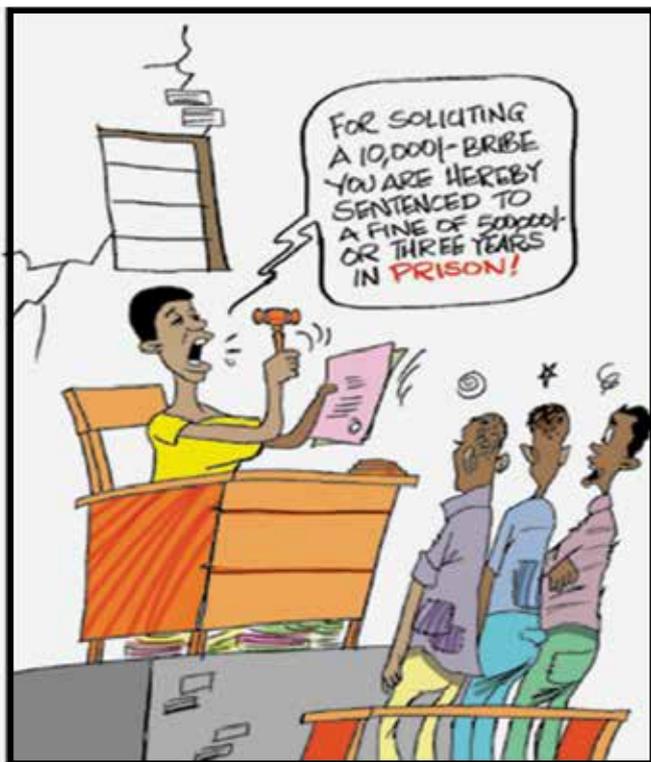


# A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16



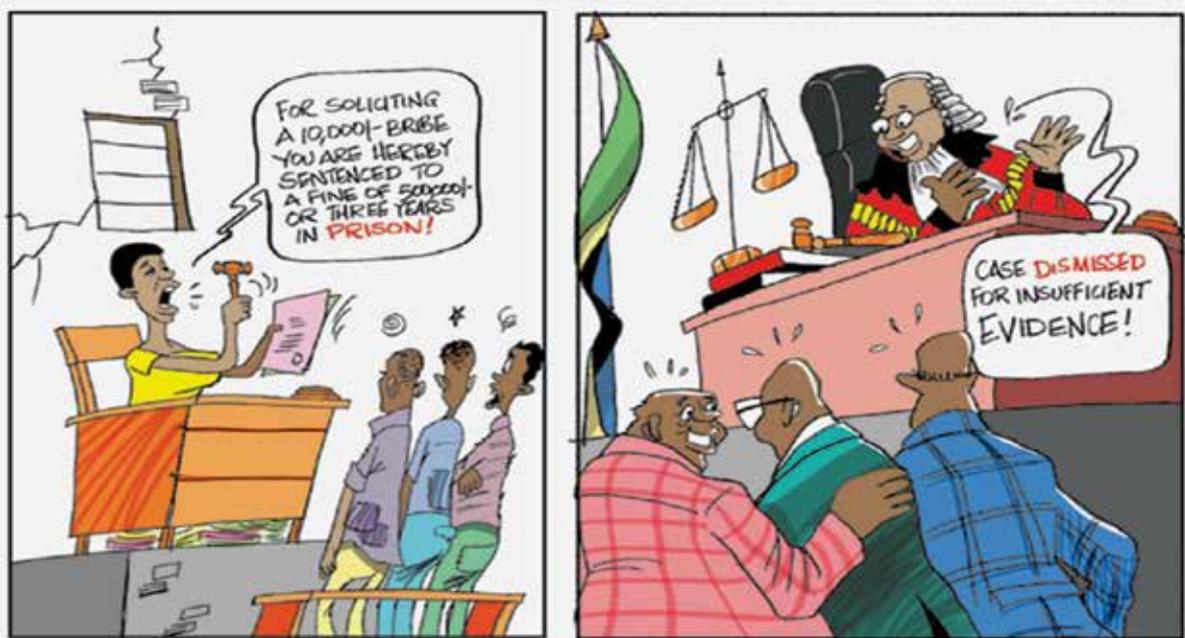
November 2018



# A Review of the Performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16

## **PART I: MAIN REPORT**

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November 2018

**A review of the performance of Tanzania's Prevention and Combating of  
Corruption Bureau, 2007-16**

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# A review of the performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16

## REVIEW PROCESS

This review is based on an analysis of PCCB's performance data, including case-load management and successful prosecutions, supplemented by information from government and donor agencies, academics and think tanks, local and international NGOs and the media.

In 2017, Policy Forum commissioned a study of PCCB activities and performance, including interviews with investigators in Dar es Salaam and up-country. Following an extended exchange of letters, PCCB refused permission to interview Bureau staff or to access documents in its library, citing security concerns. The study was therefore turned into a desk review of available materials.

In May 2018, the draft report was shared with PCCB, and on 7<sup>th</sup> June the review team received detailed critical comments from the Director General and senior PCCB staff during a meeting held at PCCB's invitation at the Bureau's headquarters. On 9<sup>th</sup> July, the review team received PCCB's detailed written comments, reported in **Appendix 8**. To the extent possible, the revised review has taken these comments into account. Any errors of omission or commission that remain are regretted.

The performance data and the 'List of Shame' featured in this review were accessed via the Bureau's website <[www.pccb.go.tz](http://www.pccb.go.tz)> for detailed secondary analysis. These sources were publicly available when the review was initiated but have since been deleted. The paucity of publicly-available data on PCCB budgets, staff numbers and regional deployment makes it impossible to present more than a partial picture of the Bureau's activities. However, the published performance data and the 'List of Shame' provide a good basis on which to draw some conclusions on PCCB's performance with a fair degree of confidence.

## ACKNOWLEDGEMENT

This review was financed by Policy Forum, whose support is gratefully acknowledged, and written by Brian Cooksey (Tanzania Development Research Group), Fundikila Wazambi and Paul Mikongoti (Legal and Human Rights Centre), and Pasience Mlowe (Tanzania Law Society, formerly of LHCR). The review contains the findings and conclusions of the reviewers and does not reflect the views of Policy Forum, TADREG or LHRC.

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# The performance of Tanzania's Prevention and Combating of Corruption Bureau, 2007-16

## Prologue

The Prevention and Combating of Corruption Bureau (PCCB) is responsible for corruption control in Tanzania's criminal justice system. PCCB is answerable to the President's office, not to parliament. PCCB can only bring to court cases approved by the Director of Public Prosecutions (DPP). Cases are heard in magistrates, district and high courts, and since 2016 there is a High Court Division dealing exclusively with corruption. While corruption is prosecuted under the 2007 Prevention and Combating of Corruption Act (PCCA), the Bureau can also prosecute under the Public Procurement Act, and the National Audit Office (NAOT) provides the Bureau with information on district councils or development projects that are suspected of corruption. Parliament's oversight role is minimal; the Bureau's voted budget is not known in detail, and actual expenditure even less so. There have been repeated demands in parliament to review the 2007 legislation to make fines and sentences better reflect the seriousness of the crime.

The weaknesses of PCCB documented in this report are not limited to the Bureau. Though the report focuses on PCCB, the findings apply equally to Tanzania's criminal justice system overall, including the police and the law courts. All are in deep crisis. The human and financial resources available to the state are woefully inadequate for preventing and punishing crime, given the scope and depth of criminality, including systemic corruption, in the country. Despite some significant recent improvements, the wheels of justice turn very slowly, while many prisoners, including those charged with economic crimes, languish in detention for years on end. The courts, police and the PCCB are vulnerable to corruption, both bribery and extortion. While more and more pressures are placed on the criminal justice system to investigate and punish all kinds of alleged criminal behaviour, including corruption, actual budgets received by the various layers of the judiciary to perform routine duties appear to be stagnant or declining. The final commonality between the different institutions is the extent to which the executive frustrates attempts to investigate or prosecute cases involving the rich and powerful. This suggests that even a better-resourced criminal justice system, including PCCB, would continue to underperform in the absence of meaningful accountability. PCCB compounds its own performance failures by aspiring to perform all corruption-related activities and to cover the entire country, which would eventually mean having almost 200 offices outside Dar es Salaam.

## Summary of PCCB's performance 2007-16

This review analyses the Prevention and Combating of Corruption Bureau's (PCCB) performance in investigating and prosecuting corruption cases during its first decade. It is based on PCCB and other official data, academic studies, and reports by donor agencies, think tanks, local and international NGOs and the media.

The 2007 Prevention and Combating of Corruption Act (PCCA) empowers PCCB to address all aspects of corruption prevention and control on mainland Tanzania. The Act empowers the President to appoint and dismiss PCCB's Director General (DG) and his or her deputy (DDG), and gives the Director of Public Prosecutions' (DPP, another presidential appointee) powers to decide which cases to prosecute.

From 2008, PCCB grew rapidly in both staffing and national outreach: currently the Bureau has over 2,000 staff and a presence in every region and most districts of Tanzania mainland, giving it a wide terrain in which to identify, investigate and prosecute corruption cases. However, the number of cases brought to court is a small fraction of the number of cases for which files are opened, and the number of successful convictions is extremely low (**Chapter 4**). While the expansion of the Bureau's activities outside Dar es Salaam has arguably increased the number of petty corruption cases brought to court, there has been little progress in sanctioning top officials and businesspeople involved in grand and political corruption. Petty offenders are often fined a multiple of the amounts they misappropriate or extort, and are jailed when they cannot pay the

minimum fine of TShs 0.5m (**Appendix 7**). In contrast, the few senior officials found guilty of large-scale corruption are fined relatively trivial amounts, and corruptly-obtained property is rarely confiscated.

Since coming to power in 2015, President John Magufuli has waged war on corruption and waste in government, including arresting prominent government officials and businessmen (**Chapter 5**). But the Bureau has difficulty responding to these additional demands, reflecting both financial and human resource constraints. President Magufuli has expressed his frustration at the low number of high-level prosecutions taking place. The Bureau's lack of senior personnel to handle its growing case-load is found throughout Tanzania's criminal justice system. Suspects can spend years in remand prison waiting for their day in court.

## **External influences on PCCB**

During the 1990s, the global development community promoted stand-alone ACAs as a means of combatting corruption in countries receiving aid. This involved the transfer of developed-country approaches to corruption control to poor countries where such notions were often deemed culturally alien, politically naïve, or impossible to replicate. The growth of donor assistance to PCCB was part of this global trend of replicating existing ACA models, in particular, Hong Kong's Independent Commission against Corruption (ICAC).

Donors and civil society organisations (CSO) pointed out what they saw as fatal flaws in the PCCA of 2007, in particular its control by the executive branch and lack of independent prosecutorial powers. During its first decade, PCCB has received modest support from donors, consisting largely of capacity building and technical support for tracing illicit financial flows (IFF), learning advanced investigative skills and promoting closer collaboration with the rest of the criminal justice system.

Donors have been critical of the lack of operational independence of PCCB and its failure to prosecute senior politicians and officials (**Chapter 6** and **Appendix 3**). Overall, however, donors have failed to assess the Bureau's performance critically and the role that aid can realistically be expected to play in enhancing it.

## **Factors affecting PCCB's performance (Chapter 7)**

Economic and political liberalisation have been the main sources of the growth and proliferation of corruption of all kinds. The cost of maintaining political stability in a multi-party system, including the cost of elections, has meant a rapid rise in political corruption, and money politics. Informal networks of patronage and clientelism continue to dictate the functioning of Tanzania's state apparatus in the absence of robust formal institutions and fairly enforced laws and regulations. The significant progress made in democratisation during President Kikwete's first term (2005-10) was reversed when greater transparency and attempts at enforcing accountability began to threaten the 'political settlement' of the ruling elite and its supporters. In short, Tanzania's underlying political economy inhibits the emergence of an independent agency with a mandate to tackle corruption freely and fairly. Viewing corruption as systemic challenges the notion that one state institution can be expected to hold others accountable. The underlying constraints can only be addressed through collective action.

## **The way forward (Chapter 7)**

President Magufuli has adopted a home-grown approach to official corruption and laxity that is unprecedented in Tanzanian history. More than once he has criticised the criminal justice system for its apparent inability to investigate and prosecute high-profile corruption cases. To be sustainable, President Magufuli's anti-corruption efforts need broad-based support in the political system, civil society, FBOs and the media. But recent restrictive legislation and its enforcement threaten to undermine the basis of such support. Politicians, CSOs, FBOs, print and social media

seeking a more just and corruption-free society should support President Magufuli with evidence-based ideas on how to address the worst forms of corruption in practical and sustainable ways. An inclusive debate is required, not interest-based confrontation. This report provides the evidence on which to begin such a debate.



## CHAPTER 1: Introduction

The Prevention and Combating of Corruption Bureau (PCCB) was established through the *Prevention and Combating of Corruption Act* of 2007 (PCCA). The Act replaced the Prevention of Corruption Bureau (PCB) with a formally independent department under the President's Office with powers to summon senior officials for questioning, seize property and freeze bank accounts. But under the PCCA, the PCCB continued to answer to the presidency rather than parliament, its key officials continued to be presidential appointees, and the Director of Public Prosecutions (DPP), another political post, retained veto powers over investigations and prosecutions.<sup>1</sup> These constraints have been variously exercised over time.

The punishments (fines and imprisonment) meted out for the various types of corrupt practices defined in the act make it clear that the focus of the legislation is on relatively small-scale offences. Fines specified by the Act range from Shs 0.5m to Shs 15m and/or prison sentences from three to seven years.<sup>2</sup> While petty offenders are regularly jailed through failure to pay the minimum fine of Shs 0.5m, major offenders have little problem finding the maximum fine of Shs 15m. Though PCCB investigates cases of political and grand corruption, very few cases are brought to court and fewer still result in convictions.

Over the last thirty years, western donor agencies have committed large amounts of technical and financial assistance to improve public finance management and control corruption among aid recipients, including Tanzania. The objective of such assistance is to 'strengthen' existing institutions and if necessary create new ones, including independent anti-corruption agencies (ACAs). Western donors have also promoted competitive politics in order to limit the arbitrary exercise of executive power, and empower citizens. Underlying these initiatives is the core ideological justification for western aid, namely crafting democratic institutions with checks and balances that are considered inherently developmental.

During the 1990s, the global development community began to promote stand-alone ACAs as a means of combatting corruption among aid recipients. The origins of this trend lie in part in New Public Management (NPM) theory which favoured the creation of semi-autonomous executive agencies (EAs) as a means of improving the efficiency of public finance management (PFM) and tax collection. A second factor contributing to the proliferation of ACAs was the parallel rise of the anti-corruption movement in the 1990s, spearheaded by Transparency International (TI) and the World Bank Institute (WBI).<sup>3</sup> The growth of donor assistance to PCCB was part of a global trend to replicate successful ACA models, in particular Hong Kong's Independent Commission against Corruption (ICAC, established 1974).<sup>4</sup> TI's strategy stressed the role of CSOs in fighting corruption from the 'demand side' as part of the 'good governance' (GG) agenda that has

<sup>1</sup> PCCB has no oversight Board. It does not operate in Zanzibar.

<sup>2</sup> Inflation during the last decade has halved the real value of the fines.

<sup>3</sup> Transparency International was established in 1993. In 1996 World Bank President James Wolfensohn told the Annual Meeting that the Bank should henceforth address the 'cancer of corruption'. The World Bank's Economic Development Institute was instrumental in promoting the Bank's anti-corruption policy. See: <http://web.worldbank.org/archive/website00818/WEB/ABOUT.HTM>.

<sup>4</sup> See Jeremy Pope 2000. 'National integrity systems: the TI source book', Transparency International, Berlin, Second edition, Chapter 11. This source concludes that: 'Those who have tried to copy the [Hong Kong] model have largely failed because they have lacked both [a] coherent approach and the resources necessary to carry it through.' (page 95).

dominated large swathes of the development discourse during this period (see **Appendix 1**). Donor support for PCCB during the decade of its existence has been firmly rooted in the NPM approach, though donors include such support in their GG programmes.

The rise of the anti-corruption movement coincided with the economic and political liberalisation that accompanied the collapse of communism and the ascendancy of neo-liberal economic policies. The twin forces of political and economic liberalisation have been the main sources of the growth and proliferation in national and trans-national corruption of all kinds during the last 30 years. The cost of maintaining political stability in a multi-party system, including the cost of elections, has meant a rapid rise in political corruption and money politics. At the same time, economic liberalisation has seen the rise of various business and other influential elites with political entrée that can lead to private-sector constraining outcomes, including rigged tenders, cartels and monopolies.<sup>5</sup> Economic and political liberalisation are intimately interlinked through 'corrupt' practices of all kinds.<sup>6</sup>

A substantial academic literature<sup>7</sup> questions the rationale for and effectiveness of donor GG initiatives on theoretical, historical and practical grounds, while both external and nationalist critiques claim that 'aid dependency' seriously undermines local accountability and fuels corruption.<sup>8</sup> This study aims to go beyond such critiques to address underlying questions of donor aid to corruption control and its impact on the wider political economy of Tanzania. The aim is to replace the donor-centric paradigm, which is the norm in discussions of 'aid effectiveness', by attributing agency to 'local' actors. If aid fails to achieve its stated objectives (poverty reduction, improved PFM, corruption control) this does not mean that it has served no instrumental purpose for national elites (influence, power, legitimacy, recognition). PCCB has been widely criticised in parliament and the media for inaction or for prosecuting only 'small-fry' while protecting the very corrupt. Nevertheless, PCCB is an established part of the state's administrative apparatus, employing over 2,000 staff nationwide.<sup>9</sup>

The following chapter presents the study methodology and review questions.

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<sup>5</sup> Khan distinguishes between 'private sector constraining' and 'public sector or state constraining' types of corruption. See: Mushtaq Khan and Hazel Gray 2006. 'State weakness in developing countries and strategies of institutional reform – Operational Implications for Anti-Corruption Policy and A case-study of Tanzania', mimeo.

<sup>6</sup> Almost all large-scale corruption scandals involve international private parties, including power (IPTL/Escrow, Dowans), the Eurobond scandal (British bank), BEA Radar (British arms supplier), Meremeta (South African bank). For a typology of corruption in Tanzania see: Brian Cooksey 2011. 'Public Goods, Rents and Business in Tanzania', African Power and Politics Programme, Background Paper 01, June

<sup>7</sup> For example: Tim Kelsall 2008. 'Going with the grain in African development?' Power and Politics in Africa, Discussion Paper no. 1 June; David Booth 2011. 'Aid effectiveness: bringing country ownership (and politics) back in', 1 Overseas Development Institute, APPP Working Paper 336, August; Kate Bridges and Michael Woolcock 2017. 'How (Not) to Fix Problems That Matter: Assessing and Responding to Malawi's History of Institutional Reform', Policy Research Working Paper 8289. Washington, DC: World Bank.

<sup>8</sup> For example, Stephen Knack, 2000. 'Aid dependency and the quality of governance: A cross-country empirical analysis', Washington: World Bank, July. For corruption in aid projects see: Michael Kramer 2007. 'Corruption and Fraud in International Aid Projects', U4 Brief, Chr. Michelsen Institute, Bergen, May.

<sup>9</sup> For comparison, the National Audit Office, Controller and Auditor General, employs about 1,000 staff, tasked to audit all ministries, LGAs, public corporations and development projects in the country.

## CHAPTER 2: Methodology, review questions limits of the review

PCCB's main roles are investigating and prosecuting corruption allegations and public education on the evils of corruption.<sup>10</sup> It is widely agreed that the probability of being detected and punished strongly influences levels of corrupt behaviour. Given the systemic nature of corruption in Tanzania, it is unlikely that PCCB, with limited resources, could ever hope to catch and punish more than a very small proportion of wrongdoers. It is reasonable to assume that, unless sanctions are regularly, fairly and universally applied, the misuse of public resources and non-compliance with rules and regulations will continue. However, it is still highly instructive to examine PCCB's performance in investigating and prosecuting cases. What can be said about the Bureau's choice of cases to investigate, the kinds of people prosecuted and their alleged crimes, and the fines or jail sentences meted out?

Scattered data are available on the extent of PCCB's educational functions, which are intended to instill ethical behaviour in citizens. There is information on the number of classes held and anti-corruption clubs set up in schools and colleges, but we have no way of knowing the impact of these activities on public attitudes and behaviour.

Obtaining accurate figures on the extent and nature of corrupt practices is virtually impossible, so that much empirical research is based on perceptions and reported experiences and on expert opinion. This review of PCCB's performance is based on a detailed analysis of the available evidence rather than on perceptions or opinions, although the latter are reviewed in some detail since they also yield useful insights on the 'demand side' of anti-corruption.

The review asks the following questions:

### 1. How has the PCCB performed during the last decade?

PCCB trend data allow for quite a detailed analysis of performance in terms of the number of new files opened, investigations completed, cases brought to court and punishments meted out. These trends are analysed in some detail in **Chapter 4**.

### 2. What factors explain performance trends?

PCCB's financial and human resources dictate what the agency can reasonably aspire to achieve in terms of investigation and prosecution. But how these resources are deployed and what other factors come into play strongly influence the overall efficiency and effectiveness of the Bureau's activities. These broader issues are addressed in **Chapter 5**.

### 3. What role have donors played in PCCB's performance?

External forces have strongly influenced trends in and responses to corruption at both national and trans-national levels. **Chapter 6** summarises donor aid to PCCB and anti-corruption more generally. **Appendix 3** examines the impact on PCCB of development assistance from the UK and other donor agencies while **Appendix 5** examines the 'aid settlement'.

### 4. What underlying factors determine the observed trends?

A generation of economic and political liberalisation has witnessed the growth and proliferation of corruption of all kinds. The cost of maintaining political stability in a multi-party system, including the cost of elections, has meant a rapid rise in political corruption and money politics. Informal patronage networks control the functioning of Tanzania's state apparatus in the absence of robust

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<sup>10</sup> The so-called 'three-pronged approach' (prevention, investigation, and education) is based on the Hong Kong model.

formal institutions and fairly enforced laws and regulations. The manner in which PCCB's carries out its mandate to prevent and combat corruption reflects the realities of Tanzania's 'political settlement'. It is too early to judge whether the Magufuli presidency can enforce a more 'developmental' vision. Evidence that PCCB has focused its efforts on petty corruption can be found throughout the review (see **Chapter 4.4** in particular).

\*\*\*\*\*

This review consists of a detailed analysis of PCCB's performance data and of the so-called 'List of Shame' (LOS) documenting prosecutions and convictions for corruption. These were downloaded from the PCCB website.<sup>11</sup> PCCB and its predecessor PSB have published performance trends since 1995. Trends in the following performance indicators are reported for the lifespan of the Bureau (2008 to date): complaints received; new files opened; files closed; files sent to the DPP; files received from the DPP to prosecute/not to prosecute; cases brought to court; cases won and lost; savings made. The review attempts to link trends in complaints registered to the electoral cycle and contemporary political developments.

The LOS (**Appendix 7**) records where the corrupt act took place; the nature of the offence (offering or soliciting a bribe, embezzlement of public monies); the amount of money or goods involved; and the fine or prison sentence delivered, as well as the background profile of the offenders (sex, age, occupation) and the district in which the offences occurred. Though full information is not available for all cases, enough information can be culled from the LOS to come to some relatively firm conclusions on the Bureau's prosecutorial practices.

The review is essentially descriptive and inductive, supporting its main propositions on the basis of available evidence. A number of the key weaknesses of the PCCB have been pointed out in the past by a variety of observers. The review aspires to add to existing knowledge by probing further into key performance issues than has been attempted previously and coming to new conclusions on the basis of original data analysis. Although PCCB would not allow interviews, the combined past experience of the review team in fieldwork that has included visiting PCCB regional offices allows for a confident collective endorsement of the performance of the Bureau emerging from a close reading of the available evidence, most of which comes from the PCCB itself.

As an agency that reports to State House rather than parliament, PCCB's budget is not a matter of close parliamentary scrutiny or debate. Consequently, the external observer has limited insights into the Bureau's finances, though clearly there have been substantial investments in both physical infrastructure and human capital in recent years. The review team applied to PCCB for permission to undertake regional case studies, designed to contribute to our understanding of the processes involved in identifying, pursuing and prosecuting corruption cases. Permission was refused on security grounds. Though there are consequently major gaps in the information available on the Bureau's activities, there is still enough to draw relatively confident conclusions on its overall performance.

The analysis of PCCB performance data is preceded by an overview of corruption trends and how they were addressed in post-independence Tanzania (**Chapter 3**).

The review is innovative in that it looks at both the donor and recipient side of the aid equation through a political economy lens in order to better understand why the aid relationship is sustained in the face of poor performance and a lack of transparency and accountability (**Appendix 5**).

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<sup>11</sup> [www.pccb.go.tz](http://www.pccb.go.tz). These no longer feature on the site.

## CHAPTER 3: Background and literature review

The literature on anti-corruption agencies (ACA) and the role of donors in supporting their creation and expansion does not encourage optimism, particularly in the African context. A World Bank (WB) comment from 2008 is typical: ‘Direct measures to reduce corruption—such as anticorruption laws and commissions—rarely succeeded, as they often lacked the necessary support from political elites and the judicial system.’<sup>12</sup> A decade later, aid agencies continue to finance projects in support of ACAs throughout Africa, including Tanzania.

### 3.1 Types of corruption<sup>13</sup>

The main types of corruption relevant for this study are *extortion*, through which public officials exploit citizens and businesses; *bribery*, whereby private actors buy favours from officials;<sup>14</sup> and *looting*, through which officials embezzle public resources. Low-level (‘petty’) corruption can be any of these types.<sup>15</sup> Acts of extortion, collusion, bribery, and looting can also be more substantial in size and complexity. ‘Grand’ and political corruption involve the use of political power and connections to carry out corrupt deals worth sometimes hundreds of millions of dollars.<sup>16</sup> Examples of all types of corruption involving PCCB investigations are given in the text, and in **Appendix 6**. The 2007 PCCA defines about twenty types of corrupt acts falling into the above categories.<sup>17</sup> Sexual corruption is also outlawed in the PCCA.<sup>18</sup> In addition, PCCB is empowered to investigate corruption relating to elections of all kinds. There are provisions for seizure of property and whistle-blower protection. Complementary legislation outlaws corruption in public procurement and money laundering (see **Timeline** below for dates of enactment).

### 3.2 Corruption control in Tanzanian history

This section provides a brief overview of corruption control efforts by the Tanzanian government since independence. It argues that the seeds of administrative corruption (embezzlement, fixed tenders and extortion) were sown under Nyerere’s presidency (1964-85), while systemic grand and political corruption date from the epoch of political and economic liberalisation.

<sup>12</sup> Independent Evaluation Group 2008. ‘Public Sector Reform: What works and why?’ An IEG Evaluation of World Bank support, page xi.

<sup>13</sup> ‘Rent-seeking’ is a less morally-charged term than ‘corruption’ and is more useful for analytical purposes. The report continues to use the ‘c-word’ since it is concerned with the PCCB.

<sup>14</sup> ‘Bribery’ (‘hongo’) is used to mean either soliciting (‘kuomba hongo’) or offering (‘kutoa hongo’) a bribe. In most circumstances it is clear to both parties in the ‘corrupt’ transaction what is at stake, though there are exceptions. Both offering and soliciting a bribe are offences under the 2007 PCCA. Prosecutions are overwhelmingly for soliciting, not offering, bribes.

<sup>15</sup> Collusion, where officials make informal and mutually-beneficial deals with citizens and businesses, does not feature in PCCB reported cases (see **Appendix 6**). For more on definitions of corrupt practices see: Brian Cooksey 2011. ‘Public Goods, Rents and Business in Tanzania’, *African Power and Politics Programme*, Background Paper 01, June; [www.institutions-africa.org/.../20130724-public-goods-rents-and-business-in-tanzania](http://www.institutions-africa.org/.../20130724-public-goods-rents-and-business-in-tanzania).

<sup>16</sup> These are direct costs. In the worst cases, the down-stream costs of corrupt deals may be large multiples of the original costs, for example, in inappropriate or bogus power procurement. See Policy Forum 2015. ‘Tanzania Governance Review 2014: The year of Escrow’. PCCB’s focus on petty corruption (see text) means that the much more serious impact of large-scale corruption on state and private-sector capacities remains largely unaddressed.

<sup>17</sup> Prevention and Combating of Corruption Act 2007, Part III.

<sup>18</sup> Prevention and Combating of Corruption Act 2007, section 25.

There was little or no public discussion of corruption during the immediate post-independence period. President Nyerere famously reported how he had been approached by a foreign bank to open a personal account, which he of course refused. Rampant corruption in cooperatives in the immediate post-independence period led to a 1966 Presidential Special Committee of Inquiry. In the 1970s, projects involving the National Development Corporation (NDC) were widely thought to have involved serious corruption.<sup>19</sup> During President Mwinyi's second term (1990-95), Nyerere called a press conference in which he said the ruling party was "stinking" of corruption.<sup>20</sup> Though political corruption rose rapidly under Mwinyi, the roots of the surge in corruption arguably go back to Nyerere's attempted socialist agricultural and industrial policies, which saw the rapid growth of government bureaucracies, cooperative unions and parastatal organisations. Economic crisis in the late 1970s and 1980s led to rapid inflation and shrinking real incomes, currency rationing and black markets, fertile ground for the rapid growth of embezzlement and extortion.<sup>21</sup>

The beginnings of economic liberalisation under President Mwinyi (1985-95) saw the ruling Chama Cha Mapinduzi (CCM) add businesspeople (*wafanyabiashara*) to its core membership of workers and peasants and the subsequent development of cronyism between business and political elites. Political liberalisation after 1992 saw the parallel emergence of vote buying within the ruling party and during general elections. Externally inspired economic and political liberalisation became the main drivers of rent-seeking.

While anti-corruption was a key pillar of Mkapa's 1995 presidential campaign, the PCB was not empowered under his presidency, corruption levels were perceived to rise, and Mkapa himself lost his reputation as 'Mr Clean.' The WB and the fledgling Transparency International (TI), the global coalition against corruption, were influential behind the scenes promoters of Mkapa's anti-corruption strategy during his first term (1995-2000). The WB financed the production of a National Integrity System report<sup>22</sup> following a major workshop organised by PCCB that attracted most of the top officials in the country, as well as running a day's sensitisation session with a large number of MPs. On becoming President, Mkapa declared his and his wife's property, the first (and last) time a Tanzanian President has done so.<sup>23</sup>

Tanzania's last three presidents (Mkapa, Kikwete and Magufuli) all found fault with their predecessors' anti-corruption record, but external pressures have also been instrumental in shaping Tanzanian anti-corruption efforts. As CCM's presidential candidate in the country's first competitive elections (1995), Benjamin Mkapa ran on an anti-corruption platform. Both local and external observers perceived that economic liberalisation under President Ali Hassan Mwinyi (1985-95) had been accompanied by a quantum leap in the incidence of corruption in state institutions and in relations with elements of the private sector. Mkapa's accession to power coincided with the emergence of the global anti-corruption movement, and the rise of 'good governance' as an influential concept in the aid lexicon. TI was launched in 1993 and in 1995 the WB famously declared 'zero tolerance' on corruption. The WB and TI provided external support for Mkapa's anti-corruption strategy, and bilateral donors followed up with projects supporting the expansion of the PCB. Still, no senior official was jailed for corruption during

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<sup>19</sup> Andrew Coulson 2013. *Tanzania: A political economy*, Oxford: Oxford University Press, and pers. comm., February 2018. Nyerere is thought to have been aware of corrupt elements in the top echelons of government, but chose not to sanction them.

<sup>20</sup> Ibrahim J Werema 2012. *After 50 years the promised land is still too far! 1961-2011*, Dar es Salaam: Mkuki na Nyota Publishers Ltd., Chapter 2.

<sup>21</sup> Policy Forum 2009. 'Tanzania Governance Review 2006-07: Kikwete's first two years', Dar es Salaam, and references therein. See: [www.policyforum.or.tz](http://www.policyforum.or.tz)

<sup>22</sup> Patricia Langan and Brian Cooksey, (eds.), 'The National Integrity System in Tanzania: Proceedings of a Workshop Convened by the Prevention of Corruption Bureau, Tanzania,' Economic Development Institute, World Bank, 1995.

<sup>23</sup> All 'leaders' have to complete an annual assets declaration form for the Ethics Secretariat, but these are not for public disclosure. The secretariat lacks the resources to check declarations or impose penalties for non-compliance. See Peter Bofin, and Daniel Kobb 2012. 'Tanzanian Institutions of Accountability: A Review and Assessment', Development Partners Group. See also Brian Cooksey 2006. 'Wealth declarations in East Africa', *Adili*, Transparency International-Kenya, Newsletter No. 82, September.

Mkapa's presidency, reflecting the high level of self-protecting solidarity within the ruling party/elite.

Mkapa eventually failed in his heavily donor-guided anti-corruption strategy, and his successor Jakaya Kikwete (2005-15), though not an anti-corruption crusader by temperament, was pressured by the donors to act on grand corruption, in particular the External Payments Accounts (EPA) scandal that was executed during Mkapa's second term (2000-2005) and is thought to have helped finance the 2005 elections. Donors were increasingly concerned that corruption was undermining the credibility of general budget support, which was the largest component of foreign financial assistance at the time.<sup>24</sup>

**Box 3.1** describes the involvement of civil society organisations in the process leading to the belated passing of the PCCB bill.<sup>25</sup> The draft bill proposed to the Parliamentary Draftsman contained clauses guaranteeing the political independence of the agency and the appointment of an oversight body. The draft circulated for comments is the one described in Box 3.1.

Donors also made numerous recommendations on ways to improve the bill, including 'enshrining' the bureau in the constitution, making it independent of the DPP, increasing public participation, and guaranteeing the Director General's tenure.<sup>26</sup> After the PCCA was passed by parliament, US Ambassador Michael Reitzer expressed the hope that "the PCCB will intensify its efforts to investigate, prosecute, and jail any person, regardless of name, title or position. Political will either exists or it does not."<sup>27</sup>

During president Kikwete's first term, there was a general trend towards a free press and active civil society, and a relatively empowered national assembly, all areas with a heavy donor presence. PCCB was eventually established in 2007, and contributed to a growing sense that transparency and accountability were increasing. In the past, it was common for the more 'sensitive' cases to be blocked by the DPP. During 2006-07, 'for the first time in Tanzanian history, senior politicians, government officials and big businessmen have been arrested and charged with corruption and abuse of office.'<sup>28</sup> Parliamentary protests at rising levels of corruption forced President Kikwete to sack ministers, including Prime Minister and rival Edward Lowassa over the Richmond affair, and senior ministers from the Mkapa period Daniel Yona and Basil Mramba were arraigned over irregularities in the hiring of a gold audit company, with losses from tax exemptions in the millions of dollars. In a campaign speech (2010), Kikwete defended his anti-corruption record: "We have amended the anti-corruption laws and ... strengthened the [PCCB]..."<sup>29</sup>

"Our party is committed [to] fighting corruption. Those who are accused of grand corruption are in court, and the president has demonstrated that he tackles corruption from the top..."

CCM campaign manager  
Abdulrahman Kinana, BBC News,  
Dar es Salaam, 27 October 2010

<sup>24</sup> Budget support is conditional on acceptable levels of governance, which was a chronic problem throughout the 2000s. At its peak, budget support accounted for x percent of aid and y percent of the budget. Continued poor governance prompted a rapid decline in budget support. See Policy Forum 2016.

<sup>25</sup> 'Belated' as eleven years elapsed between the publication of the 'Warioba Report', that recommended an empowered PCB, and the passing of the PCCA.

<sup>26</sup> Rodgers Luhwago 2007. 'Donors: Make PCB constitutional body', Citizen, 28 March, cited by Policy Forum 2008. 'Tanzania Governance Review 2006-07', page 99.

<sup>27</sup> Sebastian Mrindoko 2007. 'Probe graft suspects, urges US envoy', Thisday, 3 August, cited by Policy Forum 2007. 'Tanzania Governance Review 2006-07', page 99.

<sup>28</sup> Policy Forum 2007. 'Tanzania Governance Review 2006-07', page 21

<sup>29</sup> Cited by Policy Forum 2012. 'Tanzania Governance Review 2010-2011: Economic Growth without Poverty Reduction', page 4. Kikwete continues: "All the people are witnesses on how many prominent people have been taken to court for corruption, what else do you want us to do?" Kikwete won the election with a reduced majority of 62.8 percent as opposed to 80.3 percent in 2005.

### Box 3.1: Civil society’s unsuccessful attempt to influence the Prevention and Combating of Corruption Act (2007)

The drafting and enactment of the **Prevention and Combating of Corruption Act (PCCA)** was a lengthy process. President **Benjamin Mkapa** came to power in 1995 on an anti-corruption platform, but the PCCA was not passed until 12 years later, two years into his successor **Jakaya Kikwete’s** first term. In early 2006, the draft PCCA prepared by the **Chief Parliamentary Draftsman** was circulated for discussion and possible amendment before presentation to parliament. A number of members of **Policy Forum (PF)**, an umbrella for governance CSOs in the country, including the **Legal and Human Rights Centre**, prepared detailed comments on the draft with the help of a legal expert on corruption legislation from the UK. The informal PF team was concerned with a number of issues, including the independence of the proposed PCCB (it should report to parliament rather than the President), and the Bill’s apparent focus on petty/bureaucratic corruption. The team’s comments were forwarded to the Parliamentary Draftsman for consideration with a view to amending the Act to give PCCB more teeth. In the event, none of the team’s concerns were reflected in the Bill eventually passed by Parliament. The key architect of the PCCA was former **Attorney General Andrew Chenge**, who was subsequently exposed for receiving bribes in both the **BEA radar** and the **Tegeta Escrow Account** scandals. Despite in-depth PCCB investigations of both deals, Chenge has never been arraigned for corruption.

Source: Author’s archive; Policy Forum (various years) Tanzania Governance Reviews; <http://dgtlubun2.tumblr.com/post/68744406183/is-the-war-against-corruption-in-tanzania-a-joke>.

But the trend towards more transparent government was short-lived, as powerful elements within the ruling party mobilised against it, fearful that an increasingly empowered parliament, a free press and social media, and a vibrant civil society would undermine the hegemony of the former single-party.<sup>30</sup>

Table 3.1 presents a summary timeline of anti-corruption in Tanganyika/Tanzania to date.

**Table 3.1: PCB-PCCB Timeline**

1958	<b>Prevention of Corruption Ordinance.</b>
1971	<b>Prevention of Corruption Act</b> (amended 2002).
1974	<b>Anti-Corruption Squad</b> under Ministry of Home Affairs.
1983	<b>Economic Sabotage Act</b>
1984	<b>Economic and Organised Crime Control Act</b>
1990	<b>Prevention of Corruption Bureau.</b> Oversight moved from Home Affairs to President’s Office.
1995	November. <b>Benjamin Mkapa</b> elected President, publicly declares his assets.
1995	<b>Public Leadership Code of Ethics Act.</b>
1996	<i>Presidential Commission against Corruption</i> produces the ‘ <b>Warioba report</b> ’ on corruption.
2000	<b>National Anti-Corruption Strategy and Action Plan (NACSAP)</b> launched.
2003	‘... while grand corruption is eating up the country’s efforts to develop her economy, the fight against corruption [is] waged against low-level government officers.’ <b>Mateo Qaresi</b> , RC, Mbeya Region.
2004	<b>Public Procurement Act.</b>

<sup>30</sup> Policy Forums Tanzania Governance Reviews document the relative openness of Kikwete’s first term and the subsequent tightening up. The revised draft of the proposed new constitution that was launched during Kikwete’s second term, known as the ‘Chenge draft’, made no reference to PCCB. See Mwassa Jingi 2017. ‘Why PCCB ‘not issue’ in Katiba?’, Citizen, 2 November.

2005	Former <b>Minister of Finance Edwin Mtei</b> considers that “the PCB are only mice; and mice cannot bell free-roaming cats.” Stanley Kamana, 2005. ‘Mkapa’s Problem: Everyone is Totally Corrupt’, <i>The East African</i> , 24 Jan
2005	November: <b>Jakaya Kikwete</b> elected President.
2006	<b>Anti-Money Laundering Act, Economic and Organised Crimes Control Act.</b>
2006	<b>President Kikwete appoints Dr Edward Hoseah Director General of PCB.</b>
2007	<b>Prevention and Combating of Corruption Act.</b> PCCB replaces PCB.
2007	Prime Minister <b>Edward Lowassa</b> resigns over the <b>Richmond</b> affair.
2008	<b>Public Audit Act.</b>
2008	March: Edward Hoseah elected chairman of the <b>East African Association of Anti-Corruption Authorities.</b>
2008	Collaboration between PCCB and Britain’s Serious Fraud Office (SFO) leads to resignation of former <b>Attorney General, Andrew Chenge</b> , after a transfer of US\$1m to an offshore account in his name is discovered.
2008	<b>Basil Mramba</b> and <b>Daniel Yona</b> arraigned over the <b>Alex Stewart</b> gold assaying scandal.
2008	<b>NACSAP II (2008-11).</b>
2010	<b>Election Expenses Act.</b>
2015	September <b>Whistleblowers Protection Act.</b>
2015	<b>Basil Mramba</b> and <b>Daniel Yona</b> sentenced to three years jail and payment of Shs5m each.
2015	November. <b>President Magufuli</b> pledges law to expedite anti-corruption and economic sabotage cases. Faustine Kapama 2018. ‘Probes fail 500bn/- corruption cases’, <i>Daily News</i> , 29 January.
2015	16 <sup>th</sup> December. <b>President Magufuli</b> replaces PCCB Director General <b>Edward Hoseah</b> with <b>Valentino Mlowola</b> . <a href="http://www.google.com/search?rls=aso&amp;client=gmail&amp;q=Hosea%20sacked&amp;authuser=0">www.google.com/search?rls=aso&amp;client=gmail&amp;q=Hosea%20sacked&amp;authuser=0</a>
2016	Hotline for reporting corruption launched. <a href="https://www.newsghana.com.gh/tanzanias-anti-graft-watchdog-unveils-corruption-reporting-hotline/">https://www.newsghana.com.gh/tanzanias-anti-graft-watchdog-unveils-corruption-reporting-hotline/</a>
2016	<b>Anti-Corruption Court</b> law passed by parliament.
2016	<b>NACSAP III (2016-22).</b>
2017	14 <sup>th</sup> May. Land, houses and other property worth <b>Shs3.6bn</b> belonging to <b>Godfrey Gugai</b> , <b>PCCB’s chief accountant</b> frozen pending investigations into how they were acquired. Faustine Kapama 2017. ‘PCCB accountant risks losing 3.6bn/- worth of houses, vehicles’, <i>Daily News</i> , 15 May
2017	19 <sup>th</sup> June. PCCB arraign <b>James Rugemalira</b> and <b>Harbinder Singh Sethi</b> over the Escrow affair: <a href="https://ippmedia.com/en/news/iptl-barons-nabbed">https://ippmedia.com/en/news/iptl-barons-nabbed</a>
2017	24 <sup>th</sup> August. <b>Brigadier General John Julius Mbungu</b> appointed PCCB’s deputy Director General.
2017	13 <sup>th</sup> November. PCCB’s former Chief Accountant <b>Godfrey Gugai</b> arrested and assets frozen.
2018	6 <sup>th</sup> September. <b>President Magufuli</b> replaces PCCB DG <b>Valentino Mlowola</b> with <b>Diwani Athumani</b> , former <b>Director of Criminal Investigations</b> (DCI). Reporter 2018. ‘PCCB debate hots up as JPM removes anti-graft czar’, <i>Citizen</i> , 7 September.

### 3.3 PCCB functions and linkages

The main functions of the Bureau are to:

1. 'Investigate and, subject to the directions of the Director of Public Prosecutions, prosecute offences ... involving corruption';
2. 'Investigate any alleged or suspected (i) offence; (ii) conspiracy to commit an offence ... ; (iii) conduct of a public official which is connected to corruption';
3. 'Enlist and foster public support in combating corrupt practices';
4. 'Advise public, private and parastatal bodies on means of preventing corrupt practices, and on changes in methods of work or procedures ...'<sup>31</sup>

Though described as an 'independent department', PCCB does not have autonomy to prosecute any case it chooses: that power lies formally with the DPP.<sup>32</sup> PCCB both initiates investigations based on complaints or internal processes, and opens investigations under instructions from State House or, more rarely, parliamentary committees, as in the case of Escrow. But only the DPP can initiate prosecutions. **Chapter 4** examines the PCCB-DPP interface in deciding which cases to prosecute and which not.

Tanzania, through PCB/PCCB has been involved in anti-corruption initiatives at the global, African, Commonwealth and regional levels. Though these involvements help legitimise the Bureau, and portray the image of being part of a global anti-corruption movement, it is difficult to identify any concrete benefits at the local level. Where international cooperation is most vital—in the return of assets lost through corruption—success has been very slow in coming.

International conventions which Tanzania has ratified include:<sup>33</sup>

- Southern African Development Community Protocol Against Corruption of 2001.
- United Nations Convention Against Corruption of 2003.
- African Union Convention on Preventing and Combating Corruption of 2003.
- East African Community Protocol on Preventing and Combating Corruption of 2014.

Of these, the United Nations Convention against Corruption (UNCAC) is the most important, with both governments and development agencies pressured to align their policies and practices with the Convention's provisions.

Tanzania is also a member of the East Africa Association of Anti-Corruption Agencies (EAAACA) and of the African Union Peer Review Mechanism, which monitors governance, including corruption control, on the basis of periodic self-evaluations.

#### Why do anti-corruption agencies fail?

- Weak political will
- Lack of resources
- Political interference
- Fear of the consequences
- Unrealistic expectations
- Excessive reliance on enforcement
- Overlooking the elimination of opportunities
- Inadequate laws
- Being overwhelmed by the past
- Failure to win the involvement of the community
- Insufficient accountability
- Loss of morale
- The Agency becomes corrupt.

Adapted from: Jeremy Pope 2000. 'TI Source Book', Second Edition, Chapter 11, page 95, citing Bertrand de Speville 2000.

<sup>31</sup> Bofin and Kobb 2012, citing the 2007 Prevention and Combating of Corruption Act. Additional functions of the Bureau are to: 'examine/advise the practices and procedures of public, parastatal and private organizations, to facilitate the detection or prevention of corruption'; 'secure the revision of methods of work or procedure which appear to add to the efficiency and transparency of the institution concerned'; and 'cooperate and collaborate with international institutions, agencies or organizations in the fight against corruption.'

<sup>32</sup> It is unlikely that the DPP will take a decision without consulting the AG

<sup>33</sup> This section summarises: Legal and Human Rights Centre 2015. 'Survey report on corruption, awareness, whistleblowers' protection and people's willingness to fight it: A case study of six regions in Tanzania Mainland', February, Chapter 3.

The more practical international dimensions of anti-corruption involving stolen asset recovery and collaboration on corruption cases across jurisdictions have been the subject of bilateral agreements and donor support to PCCB. PCCB collaborated with private investigators in the early days of the IPTL saga and over the BEA radar scandal, which involved a British company bribing senior officials through Tanzanian Asian middlemen. The radar deal was the first case in which a foreign company has repaid (albeit in kind) the value of a corrupt transaction. PCCB was minimally involved in bringing this about.<sup>34</sup>

### **3.4 Conclusion**

Though multiple donors and TI put pressure on the Mkapa government to empower the PCB as one of a number of measures to address corruption, progress was slow and it took well over a decade to 'upgrade' PCCB. But the PCCA of 2007 retained the key elements of presidential control, reflecting the executive's reluctance to embrace both the letter and the spirit of the ACA initiative.

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<sup>34</sup> In this case, the equivalent of US\$40m, which was repaid in textbooks. See Policy Forum 2015. 'Tanzania Governance Review 2014', PCCB's role in investigating the deal is mentioned below. In November 2015, Standard Bank (UK) was fined US\$ 25million and ordered to pay the government of Tanzania US\$7 million in compensation for allegedly failing to prevent bribery over the (still outstanding) EGMA case, concerning the controversial placement of Tanzania's first sovereign bond. See: <https://www.reuters.com/article/tanzania-bond-idUSL6N0BT8WU20130301>.

## Chapter 4: PCCB's capacities and performance

While opening new PCCB premises in Songea in July 2014, President Kikwete said the Bureau's performance 'was improving every year', but urged it to only file cases in court 'that are substantially proven' so that 'accused persons are convicted'.<sup>35</sup> 'Most anti-corruption initiatives fail'.<sup>36</sup>

It is only possible to give a very incomplete description of PCCB's budget, staffing and activities throughout the country since the relevant data are not publicly available. A WB website cites total staff of 2,086, but there is no breakdown by task or location.<sup>37</sup> Though PCCB claims to have a presence in the country's 160 or so districts, this is no information on actual numbers deployed per region and district.<sup>38</sup>

### 4.1 Budgets, staffing and activities

PCCB's performance is highly dependent on the adequacy of its staffing and finances. Unfortunately, basic data on trends in PCCB's budget, staffing and deployment throughout the country are not publicly available.<sup>39</sup> The only publicly available data on PCCB staff and budgets appear on the WB's Anti-Corruption Agency website (Table 4.1),<sup>40</sup> which gives a figure of 2,086 staff nationwide, but there is no information available on how these are deployed.<sup>41</sup> This source also gives 2014 figures of TShs 40.4bn for PE (personal emoluments, that is, salaries and allowances) and TShs16bn for OC (other charges, i.e. non-salary running

**Table 4.1: PCCB staff, budget, complaints and prosecutions, 2014/15**

Staff	2,086
Budget USD million	34
Budget / staff (USD)	16,299
Population (million)	52.2
Complaints	5,465
Complaints/population	0.0001
Prosecutions	256
Prosecutions/complaints	0.05
Cases in court	646
Convictions	135
Budget/ convictions (USD)	252,000
Acquittals	142

<https://www.acauthorities.org/>  
[www.nbs.go.tz/](http://www.nbs.go.tz/)

<sup>35</sup> Reporter 2014. 'Take provable cases to court, JK tells PCCB', *Guardian*, 19 July. Cited in Policy Forum 2005. 'Tanzania Governance Review 2014: The year of Escrow', Policy Forum, [www.policyforum.or.tz](http://www.policyforum.or.tz).

<sup>36</sup> U4 2011 'Understanding success and failure of anti-corruption initiatives', page 1.

<sup>37</sup> <https://www.acauthorities.org/>. The data shared with the World Bank are publicly available in Tanzania.

<sup>38</sup> <https://www.google.com/search?rls=aso&client=gmail&q=TANZANIA%20NACSAP&authuser=0>

By the 2012 census, Tanzania had 30 regions (25 mainland, 5 Zanzibar), 19 municipalities, 7 cities and 134 (rural) districts. See: <https://www.citypopulation.de/php/tanzania-admin.php>.

<sup>39</sup> [www.pccb.go.tz/](http://www.pccb.go.tz/). Users of this website report a significant deterioration in the amount of information available in recent years. For example, only one page (three cases) of the List of Shame is posted. The Bureau's 'hotline' for reporting corruption is not easily locatable. PCCB's Strategic Plan (2017: 9) claims that the website was successfully upgraded in 2016 'to meet government standards.' It falls far short of those standards.

<sup>40</sup> <https://www.acauthorities.org/>. This source is also referred to by Open Societies 2017. The latter source (2017: 66) says they were unable to access operational budgets for what the Bureau called 'security reasons', concluding that 'it is therefore difficult to undertake a holistic and independent analysis of the PCCB's financial status in relation to its needs and performance.'

<sup>41</sup> The PCCB Annual Report 2014/15, section 5.1, does not specifically mention the number of staff, but indicates that 432 of its staff, equalling 21% of all staff members, attended short-term and long-term training within and outside Tanzania during the year. Based on these figures, the total number of staff members comes to 2,057, which is very close to the number quoted in the text.

costs).<sup>42</sup> If the figures in Table 4.1 are accurate, then a single conviction cost over a quarter of a million USDs.

Since PCB was upgraded to PCCB in 2007, total staff numbers have multiplied tenfold, from about 200 to over 2,000. From having just five zonal offices under PCB,<sup>43</sup> PCCB expanded nationwide and its budget grew steadily to hire new staff and finance new offices and equipment.<sup>44</sup>

Though figures are lacking, PC salaries and benefits are said to be quite generous by Tanzanian official standards. Certainly this was the view of senior officials who met the review team on 7<sup>th</sup> June 2018.<sup>45</sup>

#### **New PCCB offices in Newala District, Mtwara Region, opened in 2014/15<sup>46</sup>**



Source: PCCB Annual Report 2014/15.

PCCB is reported to have offices in 25 mainland regions and 159 districts, but there is no information on how the Bureau's staff are deployed.<sup>47</sup> In 2014/15, PCCB opened new offices in Newala (see photo), Kigoma and Mkinga (Tanga Region). In the same year, PCCB spent

<sup>42</sup> <https://www.acauthorities.org/country/tz>

<sup>43</sup> The zones were Dar es Salaam, Mbeya, Mwanza, Dodoma and Arusha.

<sup>44</sup> This is an inference from the recorded growth: there are no secondary sources to quantify the growing numbers of offices, staff, vehicles and equipment. Most of the expansion is financed out of the government's budget, not through donor projects. Budget support effectively financed PCCB expansion in proportion to financial aid's overall importance in the budget. Budget support reached USD767m in 2009/10, and has declined thereafter. See: <https://www.policyforum-tz.org/sites/default/files/DonorMoneyinthebudget.pdf>

<sup>45</sup> The officials also challenged the statement attributed to the Director General to the effect that the Bureau's non-salary budget was shrinking, discussed below.

<sup>46</sup> If it is assumed that PCCB staff members are evenly distributed across the 191 locations, the average office would have a staff of 10-11. Since staff are likely to be unevenly distributed, it is most likely that the average district office has just a handful of workers. No figures are available on which to base a substantive analysis.

<sup>47</sup> In 2004, three years before PCCB's establishment, the PCB is said to have had 15–20 staff in each regional (zonal?) office, comprising 7/8 investigators and the remaining support workers and drivers. See: U4 2005. 'Measuring 'success' in five African Anti-Corruption Commissions- the cases of Ghana, Malawi, Tanzania, Uganda & Zambia', Alan Doig, David Watt & Robert Williams, May (page 68). NACSAP1 (2001-05) is credited with 'establishing PCCB offices in all districts nationwide'; see: APRM 2012. 'The United Republic of Tanzania Country Review Report (2012)', <http://www.aprmtoolkit.saiia.org.za/country-reports-and-experiences/tanzania>. There is no evidence to corroborate this claim.

Shs367m on office rent in three regions, 68 districts and seven other special centres ('vituo maalum') such as the Revenue Authority (TRA) and the Ports Authority (TPA).<sup>48</sup> This means that PCCB has its own offices in 22 regions and 91 districts.<sup>49</sup>

Though exact figures are lacking, an earlier annual report provides selective statistics on the number of cases forwarded to the DPP for approval by district. Eighteen district offices are named that forwarded between 4 and 11 cases.<sup>50</sup> This implies that the remaining 141 districts sent no cases to the DPP for approval to prosecute, amounting to 89 percent of the mainland districts. It is understandable, then, when the review concludes: 'This review challenges the districts and centres that did not forward even a single case in court during the reporting period to work hard.'<sup>51</sup> It is not known how many regions and districts have functioning PCCB offices.<sup>52</sup> During the FY2012/13 PCCB claims to have submitted eight 'grand' corruption cases to the DPP and to have 'audited' 902 projects worth Shs56bn, though how many cases resulted in investigations is not recorded.<sup>53</sup> In addition, PCCB HQ submitted 34 other cases to the DPP.

Though firm evidence is lacking, it appears that PCCB's budget has not increased to reflect the President's renewed emphasis on prosecuting and jailing big offenders. In February 2016, PCCB DG Valentino Mlowola is reported to have requested the Minister of State in the President's Office (Good Governance), Angella Kairuki, 'to consider increasing the budget which he said has remained the same each financial year.'<sup>54</sup> PCCB's Annual Report for 2014/15 claimed that shortages of funds limited the number of investigations undertaken.<sup>55</sup> Though President Magufuli has taken fighting corruption far more seriously than his predecessors, the financial support to enhance the Bureau's performance seems inadequate.<sup>56</sup>

All political and 'grand' corruption cases are dealt with by the Bureau's head office in Dar es Salaam, leaving regional and district offices to handle complaints and investigations of a relatively minor nature.<sup>57</sup>

<sup>48</sup> URT 2016: 31. This works out at just under Shs400,000/month per office.

<sup>49</sup> Tanzania mainland has 159 districts, Zanzibar 10. See: <http://www.nbs.go.tz/nbstz/index.php/english/statistics-by-subject/population-and-housing-census/844-tanzania-total-population-by-district-regions-2016>.

<sup>50</sup> PCCB 2014. 'Annual Report for FY2012/13', Dar es Salaam. Some districts are double-counted with different figures. Mbarali 11 cases, Nachingwea 9, Monduli 8, Chato 8, Kilwa 7, Kongwa 7, Kibondo 7, Bunda 6, Same 6, Kondo 6, Kilindi 6, Mwanga 6, Karagwe 6, Kyela 4, Kahama 4, Kibindo 3, Ukerewe 3.

<sup>51</sup> PCCB 2014 op. cit.

<sup>52</sup> The report claims that by June 2013 PCCB had 29 regional offices and 91 district offices. But there are only 25 mainland regions, and PCCB does not operate on Zanzibar and Pemba. If there are 91 district offices, this would mean that 68 districts have no PCCB presence. See also: <http://www.pccb.go.tz/2017/03/23/ofisi-za-mikoa-na-wilaya/>.

<sup>53</sup> See Chart 4.3 below for evidence that proportionally more projects are investigated than prosecuted.

<sup>54</sup> Reporter 2016. 'Zonal, regional PCCB bosses get new orders', Citizen, 16 February. See: <http://www.thecitizen.co.tz/News/Zonal--regional-PCCB-bosses-get-new-orders/1840340-3078858-lrfuyu/index.html>.

In October 2017, Director General Valentino Mlowola was quoted as complaining of a 50 percent fall in his agency's recurrent budget since 2014. In a meeting with Mr Mlowola on 7<sup>th</sup> June, he stated that the words attributed to him were incorrect.

<sup>55</sup> Taasisi ya Kuzuia na Kupambana na Rushwa, 'Taarifa ya mwaka 2014/15', 31 Machi 2016. PCCB Annual Report 2014-15, section 7.1.4. In addition, staff shortages make it difficult to perform 'routine activities.' Still, the Bureau's Strategic Plan (2017: 27) aims to recruit 580 additional staff to reach a total of 5,000 employees 'after five years'.

<sup>56</sup> Alawi Masare 2017. 'PCCB saves Sh53bn in graft cases', Citizen, 8 April. As a comparison, Kenya's Ethics and Anti-Corruption Commission budget rose from KShs1.8bn in 2014 to KShs3bn in 2015 and KShs3.2bn (about US\$32m) in 2016, a nominal increase of 77 percent. The EACC has a staff of 675, which is only one-third of PCCB's. See: <http://www.eacc.go.ke/>. Unlike PCCB, the EACC publishes its annual reports online. See: <http://www.eacc.go.ke/default.asp?pageid=20>. The EACC also publishes monthly and quarterly reports.

<sup>57</sup> Even at the local government level, losses due to corruption sometimes run into hundreds of millions, even billions of shillings, but the huge thefts—tens to hundreds of billions—are concentrated in Dar. See **Appendix 6** for examples of both large and small corruption.

At the local government level, particularly in large, municipal councils, losses due to corruption can run into hundreds of millions, even billions of shillings. The sidebar gives a recent example of PCCB arrests in Ilala.<sup>58</sup>

The PCCB is a member of the Regional Security Committee along with the Regional Commissioner and Regional Police Commander, making it unlikely that these or other regional officials will be the object of PCCB scrutiny. This leaves local government, ward and village officials and politicians, magistrates and development projects as the likely focus of PCCB investigations.

The expansion of PCCB activities to rural areas, hailed as a 'success' by donors, may contribute to rising prosecution and conviction rates for petty offences, deepening the Bureau's image as essentially an anti-petty corruption agency.<sup>59</sup> This theme is reprised in the analysis of the List of Shame.

Despite evidence of shortage of funds and personnel to undertake complex investigations, the Bureau claims to have responded to the President's challenge to prosecute big cases. In April 2017, the Bureau's Director General stated that in the previous year (2016) 443 new cases had been filed with the courts, compared to 361 in 2015. Of these, 15 constituted 'high profile corruption cases'.<sup>60</sup> The arrest of the Escrow principals on 19 June 2017, led to expectations that more grand corruption cases would be prosecuted, and later in the month PCCB declared that they would be prosecuting some major cases on "completion of investigations."<sup>61</sup>

To deal with the increased number of corruption cases, in 2016 a Corruption and Economic Crimes Division was established in the High Court.<sup>62</sup> Between November 2016 and April 2017, the Division 'registered' a total of 25 cases, though no details are available.<sup>63</sup> PCCB's performance data cited below indicate a significant increase in the number of corruption cases decided in court

"Public officials have realised that ... business is no longer as usual, there are consequences if they indulge in corrupt practice."

PCCB Director General, Valentino Mlowola, April 2017

#### PCCB sting operation for Shs3m

In July 2018, three ward councillors from **Ilala District, Dar es Salaam**, were caught in a PCCB sting operation as they solicited a TShs3m (USD1,300) bribe from a consulting engineer in relation to planned Shs13bn (USD5.8m) construction project. PCCB's Ilala District chief **Zainab Bakari** did not name the engineer or company involved. The suspects (names provided) were released on bail as investigations continued.

<sup>58</sup> The attempted 'bribe' of about US\$450 for each councillor, is equal to 0.0002 of the project value of USD5.8m. See: Henry Mwangonde 2018. 'PCCB nabs ward councillors for alleged solicitation of 3m/- bribe', Daily News, 27 July. See **Appendix 6** for examples of cases of both large and small corruption pursued by PCCB.

<sup>59</sup> PCCB's latest Strategic Plan (2017: 10) challenges this perception, claiming that between 2014 and 2017 it prosecuted 69 cases of grand corruption and 560 cases of petty corruption, giving a total of 629, out of which more than one in ten (11 percent) are grand corruption cases. However, the performance figures cited in the Plan are very different from those published (until recently) by the Bureau.

<sup>60</sup> Of the 443 cases, 195 were under Section 20 of the PCCA. Shs54bn had been saved compared to only Shs6bn the previous year See: Reporter 2017. 'Tanzania: Govt Ups Anti-Corruption Fight', Daily News, 9 April.

<sup>61</sup> The quote is from PCCB spokesperson Mussa Misalaba. The cases still under investigation were Meremeta, Tangold, Kagoda Agriculture (EPA), and the BEA military radar scam. See: Aisia Rweyemamu 2017. 'After IPTL, PCCB now sets its sights on Richmond and military radar deals', Guardian, 25 June.

<sup>62</sup> See: <file:///C:/Users/user/Downloads/Written%20laws%20Act-2016.pdf>. See also: Rosina John 2016. 'Tanzania's anti-corruption court starts operations', Citizen, 4 November.

<sup>63</sup> Reporter 2017. 'Corruption court registers 25 cases since started operations', Guardian, 26 April.

(Chart 4.4). Independent observers also detect an improvement in PCCB's performance as a result of President Magufuli's directive to prosecute more serious cases.<sup>64</sup>

Does this newfound political will to address grand corruption mean that PCCB has less of an incentive to pursue minor cases? In a discussion of the draft report from this review, PCCB staff argued strongly that petty corruption should not be considered 'petty' in terms of its impact on people's rights and livelihoods, and that the expansion of the Bureau's activities outside Dar was therefore justified.<sup>65</sup> The conclusion of this review is not that petty corruption should be ignored because it is 'less important' than grand corruption, but that PCCB does not have the resources to address all types and levels of corruption at the same time and should therefore focus on what it can handle most effectively.<sup>66</sup> In addition, the review finds that cases of petty corruption prosecuted are frequently frivolous and do not focus adequately on public concerns with social service provision (see below). PCCB's failure to deal effectively with either petty or grand corruption argues strongly in favour of focusing on what it can do best.

## 4.2 Trends in reporting and investigating corruption<sup>67</sup>

This section examines trends in reporting allegations of corruption, the number of files opened, cases sent to the DPP for approval to prosecute, and cases returned by the DPP with orders to prosecute, investigate further, or drop charges. Trends in the number of corruption cases brought to court and the conviction rate complete the analysis. **Chart 4.1** presents the first four dimensions listed.

What explains the general trends observed? What do trends in allegations and information received (AIR) tell us about PCCB's capacity to respond to public demand for its services across the country? PCCB data suggest that AIR spiked during President Kikwete's first two years in power, as demand grew both in parliament and among donors to resolve the large-scale corruption cases that became public knowledge during President Mkapa's second term (2000-2005). Thus AIR rose sharply in the two years *before* the PCCB Act was passed in 2007. This enthusiasm to address perceived growing corruption might help explain the rapid rise in allegations after Kikwete's election, but there are also possible explanations on the 'supply side'.

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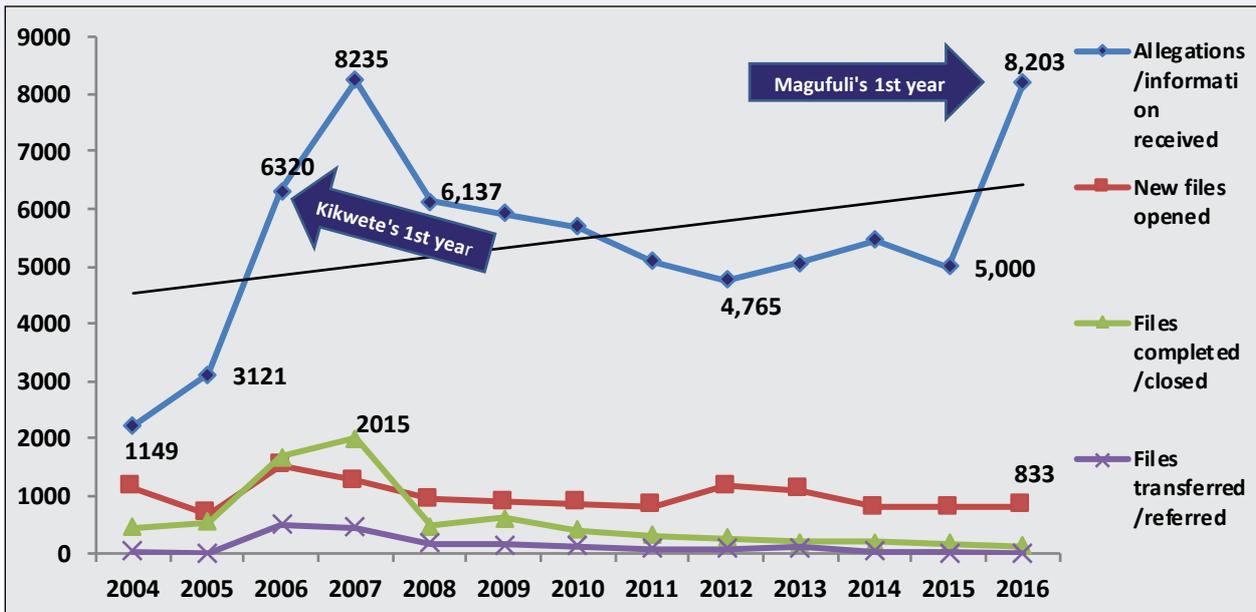
<sup>64</sup> For example, Sambaiga et al. (2018: 26) express the view that the willingness of Magufuli's regime to pursue 'politically sensitive' cases has contributed to PCCB's 'better performance...'

<sup>65</sup> A point made forcefully at: <https://globalanticorruptionblog.com/2017/12/29/petty-corruption-isnt-petty/>.

<sup>66</sup> Interactions between grand and petty corruption are discussed in the blog just cited.

<sup>67</sup> PCCB's published statistics differ (often significantly) from those reported in Annual Reports. For this reason, the report only reviews major trends. Even then, the four dimensions listed are far from clear in terms of the processes involved and explanations for the gross trends reported. Again, lack of cooperation from PCCB is regrettable, since no doubt Bureau staff could have helped clarify such issues.

Chart 4.1: PCB/PCCB performance 2004-2016



Source: <http://www.pccb.go.tz/index.php/investigation>

PCB/PCCB data from 1996 to 2003 show an increase in cases under investigation at both HQ and regional levels. Cases investigated at HQ increased from 17 in 1997 to 124 in 2003, and in the regions from 8 to 789.<sup>68</sup> Between 1998 and 2003, the proportion of cases investigated fell from 82 percent to only 14 percent.<sup>69</sup>

After peaking in 2007, the number of allegations of corruption declined rapidly, falling by nearly two-fifths (39 percent) between Kikwete's second and final year in office (2015). Like Mkapa before him, Kikwete's years in power were blighted by growing scandals and a generally loose approach to PFM, culminating in the Escrow scandal (2014-15) which saw Kikwete aligning with the perpetrators in the face of massive evidence of their culpability.

So the transition from Kikwete to Magufuli resulted in another spike in reported cases of corruption to PCCB, with an increase of over 60 percent between 2015 and 2016.<sup>70</sup> Three explanations are worth considering for this rapid increase in the rate of reporting corruption. First, while donor pressures to address grand corruption (EPA, Escrow) were common to both transitions, it is unlikely that donor pressure was particularly influential in the Magufuli case. Though donors were pressing the government to address the Escrow/IPTL issue, their collective influence on government behaviour has declined quite rapidly in recent years, reflecting the declining importance of aid in the national budget and other factors.<sup>71</sup>

Second, the 'Magufuli effect' is arguably the key factor prompting renewed public interest in corruption control.<sup>72</sup> There is no doubt that the President's anti-corruption politics is of a different order to anything that has gone before, and not just in Tanzania. One of his first acts was to fire

<sup>68</sup> See U4 2005 op. cit., p68.

<sup>69</sup> Ibid.

<sup>70</sup> An undated paper forwarded by PCCB to the reviewers gives widely divergent figures to those cited in the table for allegations received. According to this second source, there was a large increase in allegations between 2014 and 2015 (from 4,675 to 7,303, or +56%), and very little change between 2015 and 2016. The source of the discrepancy is unclear but could reflect different accounting periods for the two series. See: 'PCCB (no date) 'ALLEGATIONS RECEIVED AND INVESTIGATED DURING THE FINANCIAL YEAR 2014/2015 TO 2016/2017'. This document was availed to the review team by PCCB after a discussion of the draft report on 7<sup>th</sup> June.

<sup>71</sup> Including the rise of China as a counterweight to Western donors with their governance preoccupation. See **Appendix 2** and Brian Cooksey 2014. 'Corruption and development aid in Africa: A political economy approach', Swiss Development Cooperation, ESAD Learning Event on Anti-Corruption, Dar es Salaam, 25-28 November.

<sup>72</sup> See Policy Forum 2017. 'Tanzania Governance Review 2015-16: From Kikwete to Magufuli', chapters 1, 2 & 9.

long-serving PCCB boss Edward Hoseah, on the grounds that he had dragged his feet over grand corruption in the TPA and the TRA.<sup>73</sup> The politics of the Bureau is the main theme of **Chapter 5**.

A third possible explanation for the rapid rise in complaints comes from the ‘demand’ side, where the continued expansion of the Bureau’s national reach may have made up-country citizens more aware of the Bureau’s existence. According to two Twaweza studies, citizens’ knowledge of where to report corruption increased from 44 percent of respondents in 2014 to 56 percent in 2016.<sup>74</sup>

All three explanations--the ‘Magufuli effect’, the expansion of PCCB activities nationwide, and growing public awareness--may help explain the recent spike in ‘whistleblowing’. But in the greater scheme of things, the few thousand Tanzanian who report corruption annually are far outnumbered by those who perceive reporting corruption to be a dangerous proposition. A majority do not trust PCCB, the police or the justice system. In a 2006 survey, REPOA found that one in three respondents had witnessed a corrupt act involving a public official, but 97 percent failed to report it for fear of ‘negative repercussions’.<sup>75</sup> In a 2014 study, the Legal and Human Rights Centre (LHRC) also found that only three percent of those asked for a bribe (i.e. extortion) reported the incident.<sup>76</sup>

For obvious reasons, there are no data with which to profile those reporting corruption, neither can the reviewer know the nature of the claimed corruption (embezzlement, extortion, collusion, bribery...) or judge how many complaints are real, frivolous or malicious.<sup>77</sup> Social media inform the younger, urban, more educated Tanzanians about large corruption cases, and has been a forum where some important cases have been first mentioned.<sup>78</sup> PCCB’s Directorate for Community Education holds numerous workshops and seminars and promotes ‘anti-corruption clubs’ in primary and secondary schools nationwide, but it is impossible to know what impact these have on willingness to report corruption.<sup>79</sup> Public attitudes towards corruption in PCCB and more generally are discussed in the following chapter.

The third striking feature of **Chart 4.1** is the growing gap between the number of cases reported and PCCB’s capacity to deal with them. Fewer new files were opened in 2016 than in 2004, during the last years of the PCB.<sup>80</sup> The number of new files opened plummeted at about the time PCCB replaced PCB. From 2008 to 2016, the numbers of new files opened, files closed, and files transferred or referred stagnated or declined. Falling budgets in recent years could help explain this poor performance, but not the overall trend. It is also likely that in certain, especially rural, districts, the Bureau’s presence is more theoretical than real. New offices may be opened but adequate staff and resources to investigate cases and initiate proceedings may be lacking. Without undertaking detailed fieldwork, reviewers can only speculate. Still, the apparent correlation between the expansion of the Bureau nationwide and declining aggregate performance, in terms of opening new cases and closing completed ones, is a major concern.

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<sup>73</sup> See <http://www.afrikareporter.com/no-nonsense-magufuli-fires-anti-corruption-body-chief/>.

<sup>74</sup> In 2016, 42 percent specifically mentioned PCCB, up from 33 percent in 2014. There is no information on the profiles of those reporting corruption cases to PCCB.

<sup>75</sup> NORAD 2011: 120.

<sup>76</sup> Legal and Human Rights Centre 2015. ‘Survey report on corruption, awareness, whistleblowers’ protection and people’s willingness to fight it: A case study of six regions in Tanzania Mainland, February. Nearly half (49 percent) said they paid the bribe (n=300). More than half (51 percent) of respondents said they did not report a corrupt activity because ‘no action would have been taken’ (a quarter [24 percent] said they did not know where to report the incident, while 17 percent ‘were afraid’).

<sup>77</sup> It should not be assumed that investigations are based only on formal complaints to the Bureau. It is likely that many are based on tip-offs from within the ‘system’.

<sup>78</sup> Jamii Forums <https://www.jamiiforums.com> is a popular platform for discussions of corruption. The co-founder of the forums has been charged under the much reviled Media Act: see: <http://www.zamampya.com/featured/kesi-dhidi-ya-mkurugenzi-wa-jamiiforums-zaahirishwa-tena-lema-aendelea-kunganganiwa-arusha/>. The case drags on to date (March 2018) without resolution.

<sup>79</sup> PCCB Annual Report 2014-2015, section 4.1.2. Between 2007 and 2016, PCCB established 7,788 anti-corruption clubs in primary and secondary schools and colleges, with a total membership of 555,770. See: <http://www.pccb.go.tz/2017/04/19/klabu-za-wapinga-rushwa/>.

<sup>80</sup> In 2004, 1,149 new files were opened, in 2016 833 (PCCB statistics).

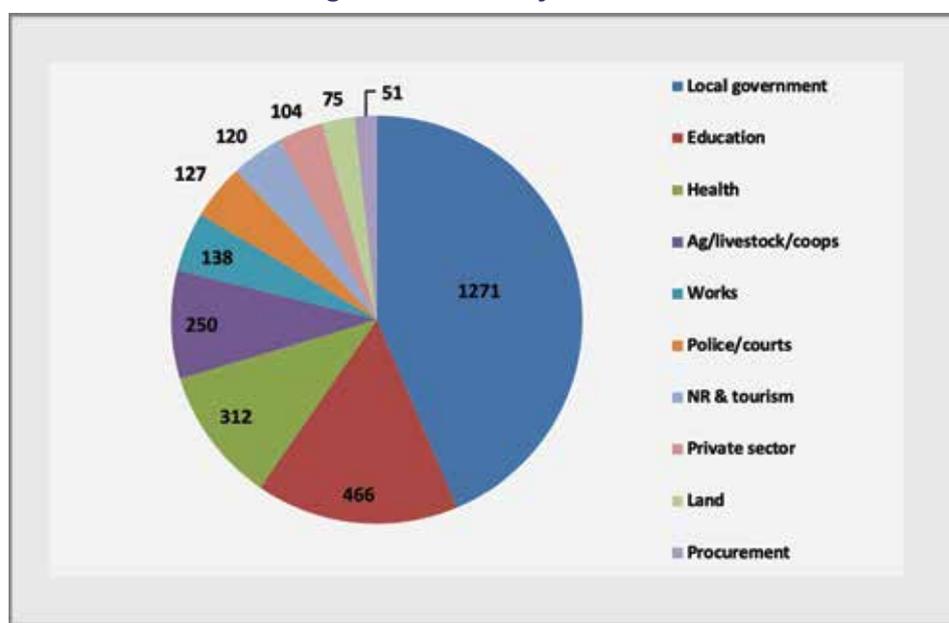
Neither parliamentary oversight nor donor project evaluations have identified this major institutional failure.<sup>81</sup>

Analysis of the List of Shame (LOS) indicates that PCCB does not specifically target services where petty corruption affects ordinary people’s lives or where corruption is thought to be most prevalent. **Chart 4.2** shows the sectors in which PCCB investigations were underway in 2014/15.<sup>82</sup> Local governments were the focus of over two-fifths (44 percent) of all investigations, followed by education, health and agriculture.<sup>83</sup>

Yet only about 15 percent of all LOS recorded convictions were for offences in the education, health, land, and legal sectors, that is, the areas where the public come into contact with the state most frequently.<sup>84</sup>

A separate classification of cases under investigation during 2014/15<sup>85</sup> lists corruption in development projects as the Bureau’s main focus, followed by bribery, CAG audits, ghost workers and farm input irregularities.<sup>86</sup> **Chart 4.3** compared this with the distribution of cases taken to court.

**Chart 4.2: Sectors with PCCB investigations underway 2014-15**



<sup>81</sup> While Policy Forum’s Tanzania Governance Reviews have consistently flagged PCCB’s weak performance, the agency has not attracted much civil society interest.

<sup>82</sup> United Republic of Tanzania 2016. ‘Taarifa ya mwaka 2014/15’, Tasisi ya Kuzuia na Kugombana na Rusha, p11.

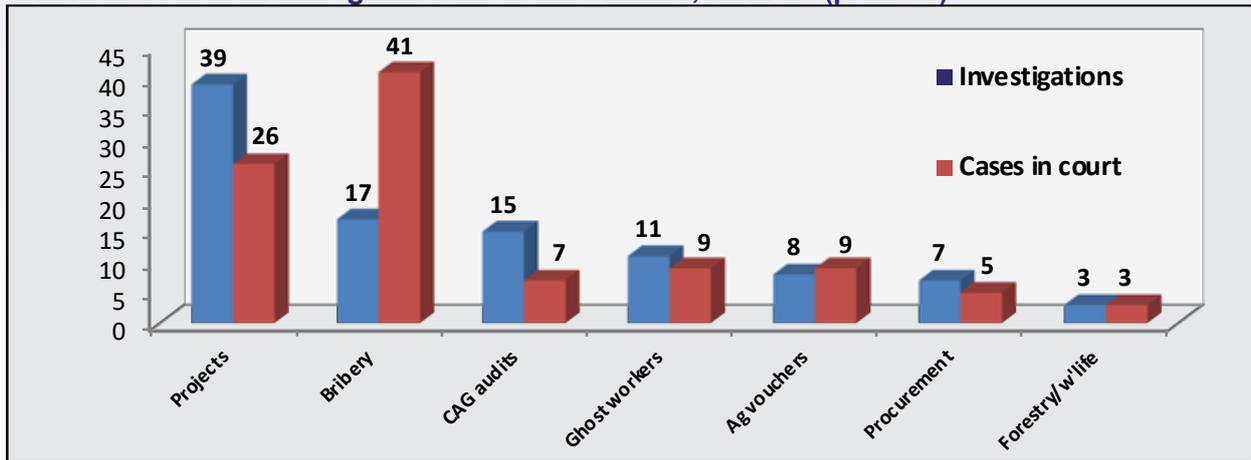
<sup>83</sup> In April 2017, PCCB head in Dodoma, Ms Emma Kuhanga, reported that 84 out of 143 allegations (59 percent) were against LGA official. Of the 84 accusations, 68 (81 percent) were against municipal, district, ward , village and street-level (‘vitongoji’) officials, and only 16 (19 percent) involved education or health sector workers. Other allegations were: private sector (19); police and judiciary (18); coops/SACCOS (5); trade unions (4); land tribunals (4); the CDA (4); public institutions (3); and water authorities (2). See: Ben Patrick 2017. ‘Local govts top in list of the most corrupt: new report’, Citizen, 19 April 2017.

<sup>84</sup> In 2017, PCCB claimed that the number of corruption cases in LGAs is decreasing, a trend attributed to ‘the establishment of Public Expenditure Tracking Survey (PETS) units in district and municipal councils.’ See: Legal and Human Right Centre 2018. ‘“Unknown Assailants”: A Threat to Human Rights’, Tanzania Human Rights Report 2017, Dar es Salaam, p167, citing Sylvester Domasa 2017. ‘Corruption cases dropping – PCCB’, Daily News, 23 November. The links between PCCB’s investigative activities and PETS is not known. PETS have been popular among donors and NGOs for about 20 years. According to one author: ‘Not only is there little evidence of any change in attitude and behavior in terms of accountability, the willingness by organizational providers to engage in a survey or even provide information is minimal.’ (Kees de Graaf 2005. ‘Public expenditure tracking in Tanzania at district-level. Effects on local accountability’, SNV, pp11-12).

<sup>85</sup> URT op. cit., page 11.

<sup>86</sup> The remainder are purchases/auctions (‘manunuzi/zabuni’) (7 percent), and forestry/wildlife (3 percent).

**Chart 4.3: Cases investigated and cases in court, 2014/15 (percent)**



Source: URT/PCCB 2016: 11-12.

Though corruption in development projects accounted for two-fifths (39 percent) of investigations, this category accounted for only a quarter of cases in court (26 percent), while bribery accounted for two-fifths (41 percent) of cases in court but less than a fifth (17 percent) of investigations. Two-fifths (39 percent) of LOS subjects were LGA employees.

The breakdown of investigations in **Chart 4.3** also bears little relationship to cases that resulted in convictions. For example, two-fifths (40 percent) of LOS convictions involved bribery, more than twice the proportion of reported investigations. More CAG audits are investigated than are brought to court. Another example: the LOS records only nine convictions for offences related to farm input voucher irregularities—a notable source of illicit ‘rents’ at the regional and district level since the inputs were heavily subsidised—or two percent of all convictions, one quarter the number of investigations (8 percent).<sup>87</sup>

In sum, while citizens are more likely to encounter corruption in basic service provision, most of the cases investigated by PCCB were in LGAs, but largely unrelated to basic services. While development projects implemented by LGAs were the main focus of PCCB investigations, the focus of cases brought to court was bribery, suggesting that much effort in investigating cases is wasted.

The following section examines the process of bringing cases to court and delivering judgements.

### 4.3 Crime and punishment

“We are still highly committed to fighting grand corruption. Our main stumbling block ... has been investigations, which require enough resources and time.”<sup>88</sup>

‘...PCCB still faces a daunting problem of low conviction rates.’<sup>89</sup>

“Someone is convicted in a case involving loss of billions and told to clean as punishment and those involved in stealing ... a chicken are sentenced [to] five years.”<sup>90</sup>

‘... conviction rates have not improved, and the number of public servants detected and sanctioned remains a small drop in the bucket.’<sup>91</sup>

<sup>87</sup> The Ministry of Agriculture’s National Input Voucher Scheme (NIVS) was suffused with corruption at all levels, though the World Bank (who financed most of it) claimed that less than one percent of vouchers were misallocated. See: Brian Cooksey 2013. ‘What difference has CAADP made to Tanzanian agriculture?’ Future Agricultures Consortium, Working Paper 070, November.

<sup>88</sup> Quoting President Kikwete: Richard Mgamba 2007. ‘JK: We are fighting corruption’, Thisday, 21 December, cited by Policy Forum 2009. ‘Tanzania Governance Review 2007-2008’, page 93.

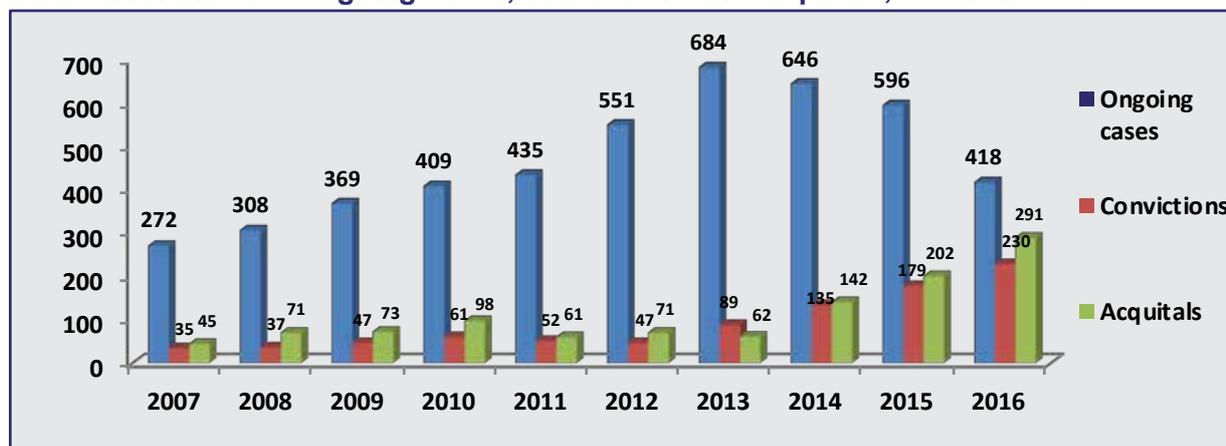
<sup>89</sup> Open Societies Foundations 2014: 71.

<sup>90</sup> Ally Kessy (MP for Nkasi, CCM).

<sup>91</sup> Bofin and Kobb op. cit., p39.

**Chart 4.4** presents trends in ongoing cases, convictions and acquittals between 2007 and 2016. The number of ongoing cases rose steadily between 2007 and 2013 while the number of conviction and acquittals stagnated. From 2014 to 2016, ongoing cases declined considerably and the number of convictions and acquittals rose pro rata, suggesting a more rapid turn-around of cases. If the numbers are to be believed, in 2016 the number of cases resolved exceeded the number of ongoing cases for the first time in the Bureau’s existence.<sup>92</sup>

**Chart 4.4 Number of ongoing cases, convictions and acquittals, PCCB 2007-16**



Source: PCCB data<sup>93</sup>

Of the 9,448 cases brought to court by PCCB between 2007 and 2016, there were 912 convictions and 1,116 acquittals (a total of 2,028 completed cases), a conviction rate of 45 percent. Presumably PCCB brings only the strongest cases to court, which makes the conviction rate look even more abysmal, a theme returned to in the following chapter.

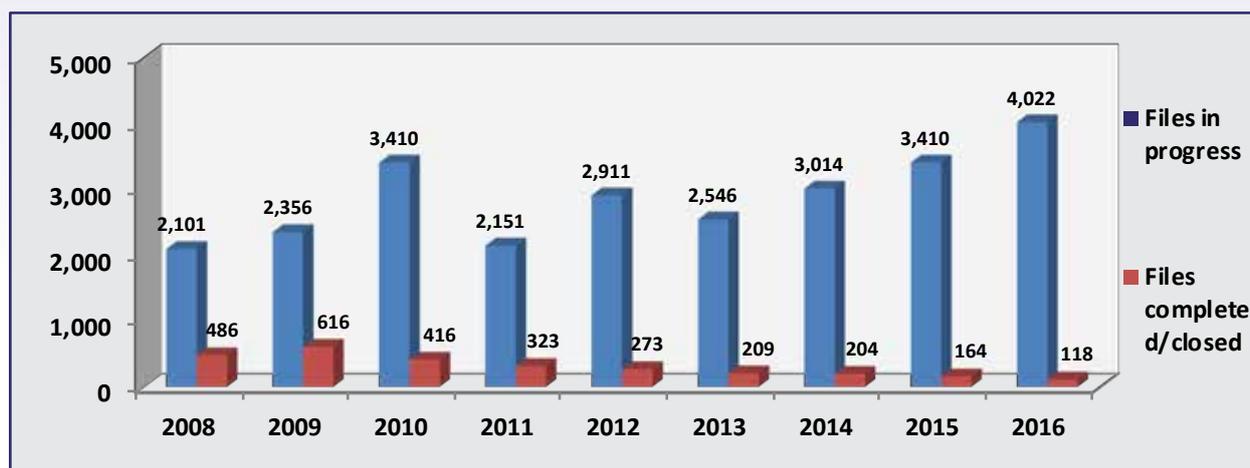
From 2014 to 2016, PCCB report a rapid fall in the number of ongoing cases and numbers of convictions and acquittals have picked up significantly. How this turn-around has been achieved in the absence of additional staff and finance is not known.

Even though corruption reporting has declined over time, comparing the number of files ‘in progress’—that is, still officially being investigated—with the number of files completed/ closed, gives further evidence of PCCB’s lack of capacity to deal with its case-load expeditiously (**Chart 4.5**)

<sup>92</sup> Such a rapid apparent turn-around would seem unlikely purely on the basis of the court system’s capacity to dispatch cases promptly. It is worth repeating that there is no guarantee of these statistics’ validity or reliability.

<sup>93</sup> These statistics are no longer published on PCCB’s website. See: <http://www.pccb.go.tz/category/uelimishaji-umma/takwimu-za-uelimishaji/>

**Chart 4.5: PCCB files in progress and files completed 2008-2016**



Source: PCCB data

While the number of files in progress nearly doubled between 2008 and 2016, the number of files completed and closed actually fell by over three-quarters (76 percent). Files completed/closed were equal to 23 percent of files in progress in 2008, but to only three percent in 2016.

Though no data are available on which to base a thorough cost-benefit analysis of PCCB, it is possible to make a very rough estimate. **Box 4.1** guesstimates PCCB's 'value for money'.

#### **Box 4.1: PCCB back-of-envelope cost-benefit analysis**

The only recent year for which data on PCCB's budget exists is 2014 (see **Sidebar 4.1** above) when the agency reported a total budget of \$34m (approximately Shs54.4bn). During the year, PCCB saved Sh39.4bn, a very large amount by the Bureau's standards. Deducting this amount from the total budget leaves Sh15bn. During 2014, PCCB recorded 135 convictions, meaning that a conviction cost about Sh111m, which is approaching \$70,000 per case. Some of these convictions led to fines (another saving) while others led to prison sentences (a cost to the state). This very rough calculation does not include the costs of non-PCCB actors including the police, magistrates and judges involved in legal proceedings. Neither does it involve the income foregone to those sentenced to jail for the duration of their sentences (See 'List of Shame' below). If the direct and indirect costs of bringing cases to court which resulted in acquittals were included in the definition of PCCB's performance, then the costs would increase *pro rata*.

In sum, a *very rough* estimate for 2014 (an exceptional year for saving money from corruption)<sup>94</sup> gives a cost per conviction of nearly \$70,000. With a per capita GDP of US\$768 in 2014, the conviction of one petty 'criminal' represents the annual income of about 90 Tanzanians.<sup>95</sup> To repeat, this is an order of magnitude estimate and should not be taken too literally. It is telling, however, that no one on either side of the aid equation has ever attempted to perform such an obvious exercise using actual data.<sup>96</sup> The claim that PCCB's performance has improved in recent years should be examined critically using more realistic criteria than an increase in the number of cases won. Nearer the truth is the conclusion that PCCB employs over 2,000 staff countrywide to little practical effect.

<sup>94</sup> During the previous six years, PCCB had saved Shs7bn a year, according to PCCB's data base.

<sup>95</sup> IMF figure for 2014. See: [https://en.wikipedia.org/wiki/Economy\\_of\\_Tanzania](https://en.wikipedia.org/wiki/Economy_of_Tanzania).

<sup>96</sup> In 2014 the U.K. GDP per capita was US\$46,412, meaning that a PCCB performance level would cost nearly US\$4.2m per conviction. Such a statistic would cause a national scandal.

## 4.4 The List of Shame

**Appendix 7** presents a full analysis of the contents of the LOS. Its main findings are summarised here. Tables in **Appendix 7** are indicated in the text.

The LOS contains data on over half (55 percent) of all convictions obtained by the Bureau from 2008 to 2016 (**Table A7.1**). It is difficult to judge whether this sample of cases is randomly or purposely selected. Cases reported originate from all over the country (**Table A7.2**). Dar es Salaam is by far the largest region in the country, and arguably the modal region for corruption, but ranks only tenth in terms of convictions for corruption. Coast Region has two and a half times Dar's number of convictions.

The sums involved in corruption cases can be computed for 183 of the 416 cases reported (**Table A7.3**). Nearly a third of cases (31 percent) involved sums of between Shs 4,000 and Shs 50,000 (US\$1.8 to US\$22). Over three-quarters (76 percent) of cases involved less than Shs0.5m (US\$222), but these cases account for only four percent of all monies lost. Cases involving from Shs5m to Shs65m accounted for only 10 percent of all cases but for 82 percent of all the monies lost. These numbers are consistent with the view that PCCB focuses largely on petty rather than grand corruption. At Shs 2m (US\$890), the average corruption case recorded is quite minor, and the entire amount reported for the 183 cases (equal to US\$170,000) would not qualify as one case of 'grand corruption' by Tanzanian standards.

Three-quarters of cases involved a fine or a prison sentence option. The average fine imposed was just over Shs 900,000, with a mode of Shs 0.5m. The average sentence meted out was just over two years (25months) and the modal sentence 36 months (three years) (**Table A7.4**). The average fine imposed was *less than half* of the average amount lost to corruption, reflecting the low penalties prescribed in the 2007 PCCA.

Extortion (requesting a bribe) is the most common offence in the LOS, accounting for half of all cases. Offering and paying a bribe are much less common (six percent of cases) than other misdemeanors, including the misuse of position and forging documents.

The main conclusions drawn from analysing the LOS are:

- Extending PCCB's activities to the regions and districts has lessened the focus on Dar es Salaam, where official corruption is the most widespread;
- National coverage also leads to a concentration on corruption among LGA staff as opposed to corruption in central government and major corporations;
- Fines and prison sentences meted out are frivolous for the small numbers of perpetrators of grand and political corruption who are arraigned and punished, but are onerous for the much larger number of petty 'criminals' who cannot afford the minimum fines and therefore end up in jail.

In 2012, a Singida (Rural District) wildlife officer was found guilty of receiving a Shs 4,000 bribe from three illegal charcoal makers and ordered to pay a fine of Shs 0.5m or go to jail for three years.

Source: List of Shame

These findings are in line with views expressed in parliament that the PCCA (2007) and its regulations are defective in not providing for fines and confiscation of property in proportion to the seriousness of the crime. In July 2018, the chairperson of the African Parliamentarians Network Against Corruption (APNAC) made this point while discussing the budget of the President's Office, Public Services and Good Governance.<sup>97</sup> The PCCA is reported to be under review to address the anomaly.<sup>98</sup>

<sup>97</sup> Polycarp Machira 2017. 'PCCB legislation up for review to make it tighter', Guardian, 19 April. See also: <http://www.pccb.go.tz/2017/07/26/wabunge-wasifia-utendajikazi-wa-takukuru/>.

<sup>98</sup> See Chapter 5.1 below.

## 4.5 Justice delayed...

The accumulation of unresolved and (presumably) *de facto* abandoned cases reflects the slow rate at which the wheels of justice turn in Tanzania. As explained below, this is not just a PCCB problem.

Between 2015 and 2016, the number of complaints made to PCCB jumped from 5,000 to 8,200. At the same time, PCCB has been pressured by State House to undertake major investigations into new corruption cases.<sup>99</sup> In addition, PCCB investigates growing numbers of CAG audits.<sup>100</sup> The CAG is obliged by law to 'hand over all suspected cases of corruption to the PCCB for further investigation.'<sup>101</sup> Furthermore, PCCB is mandated to investigate cases of corruption in elections of all kinds, especially bribing voters (see **Box 4.2**).

### Box 4.2: PCCB and electoral corruption

Although the 2010 elections that saw the reelection of **President Kikwete** for a second term were generally judged to be 'free and fair', they produced 41 alleged incidents of bribery or other misconduct that were investigated by PCCB. Of these, 23 were filed in court, 18 of which were concluded by September 2014. One case was withdrawn and four were still pending in court. Of the 18 cases, there were 7 convictions and 11 acquittals. On average, each case took nearly two years (680 days) to conclude. **AfriMAP** argues that the delays in bringing cases to court are mainly the result of the slow procedures in the **DPP's** office and the **judiciary**.

Source: AfriMAP 2015. 'Effectiveness of Anti-Corruption Agencies in East Africa', Open Society Foundations, December, p72, citing PCCB Headquarters 2014.

Given budgetary constraints and this additional workload, PCCB's capacity to perform its key functions appears increasingly stretched. One likely consequence is an increase in the number of corruption suspects in remand (**Box 4.3** below), though no figures are available. Even those accused of bailable offences under the 2007 legislation may wait years to have their cases heard. In August 2017, President Magufuli ordered PCCB 'and the country's judiciary to step up the pace of investigations, prosecutions and convictions of grand corruption cases, saying that he remains unsatisfied by progress made so far in the fight against graft.' 'He said ... he wants to see more people locked up for grand corruption...'.<sup>102</sup> The same concern has been repeated in parliament. For example, in February 2018, the chairperson of the National Assembly's Constitutional and Legal Affairs Committee asked why there were no charges brought to date against twelve senior officials of the National Social Security Fund (NSSF) who were arrested in July 2016 and accused of embezzling NSSF money.<sup>103</sup>

**Box 4.3** highlights the links between slow procedures and delays in the PCCB, the DPP and the judicial system overall. One of several reasons proposed for why there are so many remandees is the tendency to arrest suspects in the absence of prior investigation.<sup>104</sup> The subsequent investigations are likely to be slow or are effectively abandoned. In 2013 and 2014, Arusha police arrested dozens of people for suspected involvement in deadly 'terrorist' attacks on a church and a popular bar in the city and an unauthorised demonstration by opposition party CHADEMA that

<sup>99</sup> The President, the Prime Minister and Ministers can instruct PCCB to undertake such investigations.

<sup>100</sup> The number of investigations PCCB has initiated using information supplied by the CAG's office rose from 56 in FY 2011-12 to 185 in FY 2013-14. However, 'only one of 37 cases ... based on NAO [i.e. CAG] reports has been adjudicated. While it did result in a conviction, the other 36 cases (of which 23 are against local government authorities themselves) remain pending with some filed as long ago as 2012.' (DFID 2016: 31). The CAG has suffered a similar decline in its OC budget in recent years as its operations have not been prioritised by successive governments. See Policy Forum 2017. See: Policy Forum 2017. 'Tanzania Governance Review 2015-16', Chapter 1.

<sup>101</sup> Open Society Foundations, page 70. The PCCB can also request the CAG to audit any suspected cases of corruption.

<sup>102</sup> Magufuli was swearing in Brigadier General John Julius Mbungu as PCCB's deputy DG. See: Reporter 2017. 'Magufuli slams PCCB, courts for delays in corruption cases', Guardian, 25 August; Reporter 2017. 'Speed up cases, PCCB ordered', Daily News, 25 August.

<sup>103</sup> Dr Ramadhan Dau, the former boss of the twelve managers, was earlier removed by President Magufuli, and subsequently appointed High Commissioner to Malaysia. See: Sylvester Domasa 2018. 'Tanzania: Dilly-Dallying Over Bad Elements Disturbs MPs', Citizen, 9 February, <https://allafrica.com/stories/201802090176.html>.

<sup>104</sup> According to the National Assembly's Deputy Speaker, Tulia Ackson: "PCCB sometimes arrests people just after being tipped off..." (Reference pending).

turned violent and led to a number of deaths and injuries. To date, (May 2018) all those arrested are still in remand awaiting trial.<sup>105</sup>

#### **Box 4.3: Tanzania's entire judicial system, not just PCCB, is under siege**

A similar workload challenge in relation as that described in the text faces the entire Tanzanian judicial system. Nationwide, pending cases increased from 28,307 in 2012 to 33,190 in 2017. According to the **Chief Justice Prof Ibrahim Juma**: 'Given declining numbers of high court judges and an increasing case load, the Chief Justice ... told **President Magufuli** that: 'if the situation were not controlled, the challenge relating to case pile-ups would continue, and tarnish the image of the Judiciary and the country as a whole.' "... every High Court judge is required to handle an average of 535 cases annually against the acceptable number of 220 cases," he said. Though more recent figures are lacking, by March 2015, there were said to be **17,523 remandees**, which means that about half of Tanzanian prisoners are in remand, the same proportion as in 2010. Well over half (59 percent) of **Morogoro region's** prison inmates in 2014 were remandees (987 of the 1,686 inmates). Sources: Bureau of Democracy, Human Rights, and Labor 2011. '2010 Human Rights Report: Tanzania, 2010'; Reporter 2014. 'Tanzania: Prison Congestion Should Be Solved', *Daily News*, 22 December; Faustine Kapama 2018. 'Judiciary saves 60bn/-, case speed satisfactory', *Daily News*, 2 February; Deogratius Kamagi 2018. 'Tanzania: Magufuli Outlines Factors Holding Back the Judiciary', *Citizen*, 2 February.

It has become increasingly evident that PCCB lacks adequate numbers of skilled lawyers and financial resources to investigate and prosecute complex corruption cases, most of which involve an international dimension.<sup>106</sup> Bringing cases to court is also problematic. Witnesses can be bought off or threatened and are known to contradict their sworn statements in court.<sup>107</sup> Judges sometimes recuse themselves from hearing 'sensitive' cases. The few high-profile corruption cases that reach court routinely drag on with constant adjournments and an excess of technical over substantive procedures. The result is a slow and inefficient criminal justice system in which justice is rarely done or seen to be done. Inadequate staff and finance and low technical capacity in PCCB are part of a much bigger malaise affecting the entire judiciary.

Low capacity, inadequate funding and procedural wrangling were among the concerns of the Legal Sector Reform Programme (LSRP). But underlying these concerns are systemic corruption and interference in judicial processes that undermine the notional independence of the judiciary. Judges were among the recipients of payments from the perpetrators of the Escrow account scandal.<sup>108</sup> Corruption in the Tanzanian judiciary is examined in more detail in **Appendix 4**.

## **4.6 Conclusion**

In December 2015, President Magufuli dismissed DG Edward Hoseah on the grounds that the Bureau was not addressing major corruption in the port and the TRA. This move signaled the President's determination to bring major cases to court promptly and sentence those found guilty to stiff jail terms. But this has not happened. To date, only the Escrow/IPTL arrests have delivered on the Presidential promise, but neither this nor other outstanding grand corruption cases have been brought to court. Although President Magufuli has expressed frustration at the slow pace of case completion, PCCB has apparently not received the additional funding required to enhance its operational capacity.

<sup>105</sup> Reporter 2018. 'Business grinds to a halt in Arusha as remandees protest', *Guardian*, 17 January.

<sup>106</sup> PCCB receives bilateral support to increase its investigative capacity and address asset recovery from DfID and Swiss development aid, through the Basel Institute on Governance (International Institute for Asset Recovery), respectively.

<sup>107</sup> The following chapter highlights public mistrust of the judicial system and concern that whistle-blowing involves high and unacceptable risks. Whistle-blower protection is covered in the 2007 PCCA, but there are no resources to operationalise this in practice.

<sup>108</sup> Judge Prof. Eudes Ruhangisa and Judge J.A.K. Mujulizi received Shs 404m (USD 250,000) and Shs 40.4 (USD 25,000) respectively from James Rugemalira. Neither judge was charged under the PCCA, though numerous other suspects were subsequently arrested and charged. Neither were they summoned by the Judicial Services Commission, which is headed by the Chief Justice. See: LHRC 2015. 'Tanzania Human Rights Report 2014.'

## Chapter 5: Corruption, politics and the PCCB

“As long as the president remains responsible for appointing the judiciary, the, the DPP, and members of the PCCB, those committed to combating graft will be constrained by reporting hierarchies and the threat of political interference.”<sup>109</sup>

‘A common *mwananchi* ... is severely punished for engaging in petty theft and corruption, and sees ... public leaders engaging in grand corruption with impunity.’<sup>110</sup>

“Most political leaders are involved in corrupt dealings ... The participation of some politicians in [the] anti-graft drive is more theoretical than practical.”<sup>111</sup>

### 5.1 Corruption within PCCB and the judiciary

‘The Tanzanian judicial system is tainted by corruption and is subject to executive influence. The judiciary is underfunded, corrupt and inefficient, especially in the lower courts. Court clerks and magistrates are known to accept bribes to open/misdirect cases or to altogether determine a case’s outcome, respectively’.<sup>112</sup>

If corruption of different types is endemic or systemic in the country’s state apparatus,<sup>113</sup> then it is legitimate to ask how PCCB could *not* be vulnerable to corrupt behaviour. What types of corruption are found in PCCB and who are the principal perpetrators? No firm answers can be given to these questions, of course, but some observations are in order.

PCCB can be expected to be particularly vulnerable to corrupt practices since its governance model lacks even formal transparency and accountability mechanisms, and its key activities can easily be abused for corrupt practices, in particular extortion.<sup>114</sup> As reported above, the Bureau does not have a board of directors and reports only to the President, who appoints its chief executives.<sup>115</sup> Its budget and deployment of staff nationwide are state secrets. The CAG does not audit PCCB’s annual accounts, though the Public Procurement Regulatory Authority (PPRA) audits the Bureau’s procurement activities. Parliamentary oversight is rarely exercised.<sup>116</sup>

The main potential sources of corrupt rents in PCCB are embezzlement (theft of treasury transfers), extortion from those accused of corruption, bribery on the part of those accused of corruption, and theft of aid transfers. The first and last types are likely to take place at PCCB headquarters, and the second and third are temptation to investigators in general. **Box 5.1** relates a particularly egregious case of corruption at PCCB’s headquarters.

<sup>109</sup> Semkai Kilonzo, Policy Forum, cited by Nick Branson 2016. ‘Debt and corruption in Tanzania – 2’, *Guardian*, 19 February.

<sup>110</sup> Legal and Human Rights Centre 2016: 198, quoted by Policy Forum 2017.

<sup>111</sup> PCCB’s Director General Dr Edward Hoseah addressing PCCB’s annual meeting in 2012, see: Zephania Musendo 2012. ‘Corruption: the order of the day in Tanzania?’, *Mirror Digest*, 27 October

<sup>112</sup> Business anti-Corruption Portal 2016. ‘Tanzania Corruption Report’, <https://www.business-anti-corruption.com/country-profiles/tanzania/>.

<sup>113</sup> See Brian Cooksey 2011. ‘Public Goods, Rents and Business in Tanzania’, African Power and Politics Programme, Background Paper 01, June; [www.institutions-africa.org/.../20130724-public-goods-rents-and-business-in-tanzania](http://www.institutions-africa.org/.../20130724-public-goods-rents-and-business-in-tanzania)

<sup>114</sup> In 2014/15, PCCB disciplined 45 workers, 10 were dismissed for various reasons and 35 received warnings. See: URT 2016: 32.

<sup>115</sup> The Parliamentary Committee on Constitutional Affairs, Law and Administration oversees PCCB, but has no formal powers over it.

<sup>116</sup> The oversight body is the Parliamentary Committee on Constitutional Affairs, Law and Administration.

### Box 5.1: PCCB Chief Accountant in the dock

In May 2017, land, houses and other property worth an estimated Shs3.6bn belonging to PCCB's **Chief Accountant, Godfrey Gugai**, were 'frozen' pending investigations into where he obtained the money to buy them. In November, PCCB **deputy DG Brigadier General John Julius Mbungu** offered a reward of Sh10m to anyone finding Gugai, who had failed to substantiate how he had acquired these assets, and apparently disappeared. (On giving himself up, Gugai claimed his 'disappearance' was a fabrication). Most of the assets were said to have been acquired over a ten-year period (2005-15). PCCB claimed that Gugai had acquired forty or so properties all over the country, including houses and storey buildings in Dar es Salaam, and various houses and plots of land in Tanga, Musoma, Arusha, Mwanza, Dodoma and Morogoro, plus numerous motor vehicles. The plots were said to have been acquired by revoking title deeds deemed bogus. To date, no case has been opened against Gugai. A 2014 DfID review of an ongoing project voiced concerns that the risk of corruption in PCCB's management of aid money was 'high', based on reported weaknesses in accounting for past aid.

Sources: Faustine Kapama 2017. 'PCCB accountant risks losing 3.6bn/- worth of houses, vehicles', Daily News, 15 May. Faustine Kapama 2017. 'PCCB clarifies on its official's frozen assets', Daily News, 17 May; Louis Kolombia 2017. 'PCCB issues Sh10 million Prize for arrest of official', Citizen, 14 November. **Appendix 3** (this review).

It appears that at least some of Gugai's properties were acquired by extortion. Was he alone in taking advantage of PCCB's access to rent-seeking opportunities, or is this an indication that corruption among PCCB staff is more widespread?<sup>117</sup> At all events, the Gugai revelations (assuming they are true) seriously undermine the credibility of the Bureau, since 'credibility and effectiveness depend on the exemplary behavior of the anticorruption agency itself.'<sup>118</sup>

On 6th September 2018, President Magufuli replaced PCCB DG Valentino Mlowola with Diwani Athumani, a former Director of Criminal Investigations (DCI) (see sidebox).<sup>119</sup> Though under pressure from State House to bring grand corruption cases to court, PCCB failed to bring a single case during Mlowola's 21 months as DG. At the new DG's swearing in ceremony, President Magufuli 'tasked Diwani to weed out all members of the bureau's staff who are tainted by corruption, before moving on to other government entities.'<sup>120</sup> One may ask: who will guard the guardians?<sup>121</sup>

#### Magufuli on PCCB

"Some PCCB employees are engaged in corruption, and I want you to remove them. I want to see this bureau truly fighting corruption, especially grand corruption."

Source: Directorate of Presidential Communications, 12<sup>th</sup> September 2018

In its 2014-15 Annual Report, PCCB complains that the PCCA is inadequate to effectively combat corruption as it provides for sentences which are too lenient compared to the loss occasioned by

<sup>117</sup> In 2014/15, PCCB disciplined 45 workers, 10 were dismissed for various causes and 35 received warnings. See: URT 2016: 32.

<sup>118</sup> Jeremy Pope and Frank Vogl 2000. 'Making Anticorruption Agencies More Effective', *Finance and Development*, June, Volume 37, Number 2

<sup>119</sup> Reporter 2018. 'PCCB debate hots up as JPM removes anti-graft czar', Citizen, 7 September. Mlowola was made an ambassador, though his duty station was not named.

<sup>120</sup> Reporter 2018. 'JPM tells new PCCB boss to start with intensive in-house cleansing', Guardian, 13 September.

<sup>121</sup> All ACAs are vulnerable to corruption. In the UK, the Independent Office for Police Conduct (IOPC) is investigating '14 officers including one of Britain's highest-profile police chiefs' on allegations 'of child abuse, fraud, physical assault, racism, ...' See: Organised Crime and Corruption Reporting Project 2018. 'Scotland Yard Under Investigation for Corruption' available at: <https://www.occrp.org/en/27-ccwatch/cc-watch-briefs/8359-scotland-yard-under-investigation-for-corruption>.

corrupt transactions. The 2007 PCCA specifies minimum and maximum fines and prison sentences, irrespective of the seriousness of the case or amounts involved. The maximum penalty for corruption specified in the PCCA is a seven-year jail term or fine of Tanzanian Shillings 15m.<sup>122</sup> Those found to have corruptly acquired many billions of shillings are fined frivolous amounts, stolen monies are not returned, and properties are not seized. For example, Basil Mramba and Daniel Yona were fined Shs 5m (and imprisoned for three years) for crimes said to have occasioned losses of Shs 11.7bn.<sup>123</sup>

PCCB has the power to seize property to return all or some of the amounts lost through corrupt deals. No figures exist, but there is little evidence that larger thefts—those in the billions of shillings—result in any significant repayments.<sup>124</sup> PCCB's performance in saving money through seizing and disposing of assets is mediocre.<sup>125</sup>

This weakness in the 2007 PCCA has been widely commented on since the law was passed, and plans are said to be afoot to 'to align the law with the current efforts to combat corruption.' According to the PCCB Director General Valentine Mlowola '...the current law did not facilitate [the Director General's] office...especially in the areas of prosecution and the seizure of assets.'<sup>126</sup>

But while the fines are inadequate to punish grand corruption, they are arguably excessive where petty corruption is involved. Analysis of the List of Shame reveals that, for years, the effective minimum fine imposed has been Shs 0.5m for frivolous cases involving sums as low as Shs 10,000. For those sentenced to jail, the average sentence is just over two years (25 months). Those committing the most trivial offences are likely to be the least capable of paying the fines and so end up in jail. The sentencing issue is discussed further in the next chapter.

More serious corruption cases are classified as 'economic crimes', which are non-bailable offences as defined by the Economic and Organised Crime Control Act of 2016, and can lead to years in detention without trial. PCCB may prosecute cases under this and public procurement

In December 2012, a Kahama District (Shinyanga Region) Village Executive Officer (VEO) was sentenced to three years in prison for receiving a bribe of a cow from a villager.

Source: List of Shame

In February 2017, former Tanzania Ports Authority Director General Ephraim Mgawe paid a fine of Shs 5m to avoid a three-year jail term for irregularly awarding a USD600m contract to a Chinese company.

Source: Rosina John 2017

<sup>122</sup> Annual Report 2014-15, section 7.1.4. Punishment for bribing officials is a fine of between Shs 1-3m or 3-5 years in jail irrespective of the amount involved.

<sup>123</sup> Faustine Kapama 2015. These weaknesses in the legislation were pointed out during discussions of the draft PCCB bill in 2006 (see **Box 1** above). Mramba and Yona are widely considered as scapegoats whose arrest helped mollify donors after the excesses of the late Mkapa regime. If they were guilty in the Alex Stewart scandal (the actual loss to the treasury was nearer US\$70m than the Shs11.7bn mentioned above), other senior Mkapa appointees were guilty of larger crimes for which they went unpunished. Even those punished in relation to the EPA scandal were not necessarily the most culpable. See Cooksey and Kelsall (2011: 78) for a detailed summary.

<sup>124</sup> The EPA scandal is a partial exception. Under strong donor pressure to act, President Kikwete's government pressured the recipients of EPA money to repay what they had stolen. The process was non-transparent and only a small proportion of what was stolen was returned. Subsequent arrests and sentencing of government officials and private businessmen support the notion that little of what is plundered is ever returned.

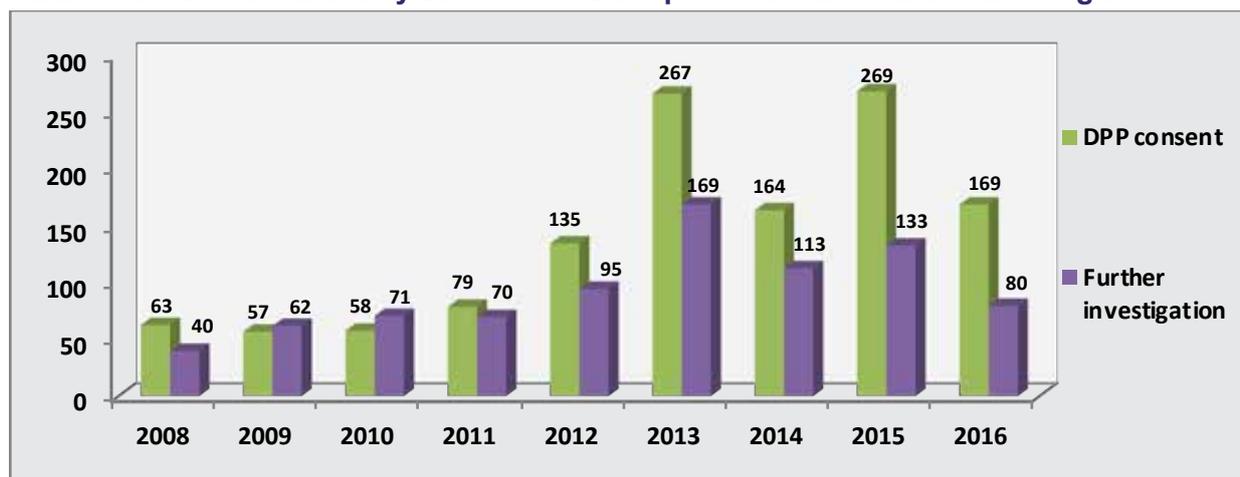
<sup>125</sup> Between 2007 and 2016, PCCB 'savings' were less than Shs14bn a year at nominal values.

<sup>126</sup> Rosemary Mirondo 2017. 'W. Bank: How Tanzania can win graft war', Citizen, 23 June. The side box reference: Rosina John 2017. 'Ex-TPA boss pays fine to escape prison'. Citizen, 11 February. The company in question is the China Communication Construction Company Ltd (CCCCL).

legislation, though there are no statistics on the number of cases prosecuted under the different Acts.<sup>127</sup> Trends in the number of cases receiving DPP consent are presented in **Chart 5.1**.

From 2008 to 2016 the DPP returned 2,094 files to the PCCB, authorising the prosecution of 1,261 cases (60 percent) and instructing the agency to further investigate the remaining 833 (40 percent). It is not known how this process works, since the DPP's reasons for returning files are not divulged. At the very least, the process represents a huge waste of time for PCCB lawyers, unless they are forwarding very incomplete case files to the DPP, which is of course possible. The relationship between the DPP and PCCB is often portrayed as conflictual, with PCCB complaining that their hands are tied by the DPP's veto when it comes to prosecuting cases, and the DPP complaining of the poor quality of PCCB's investigations.<sup>128</sup>

**Chart 5.1: Cases returned by DPP to PCCB for prosecution or further investigation**



Source: PCCB data.

It is likely that the most 'sensitive' cases are referred to State House, or other pressures brought on the DPP not to authorise prosecution. In a leaked message in July 2007, the US Ambassador to Tanzania quoted PCCB's DG Dr Edward Hoseah as saying in effect that 'President Kikwete does not appear comfortable letting the law handle corruption cases which might implicate top level officials.'<sup>129</sup> At that time, cases had been brought against Mramba and Yona, discussed above, while senior officials and businessmen implicated in grand/political corruption were not charged, though some were forced to resign.<sup>130</sup>

PCCB officials deny, however, that operational independence is a problem, pointing out that President Magufuli has reiterated on several occasions that his Government would not interfere with the Bureau's operations.<sup>131</sup> If this is the case, then the continued failure of PCCB to bring major cases to court confirms the view that the agency lacks the capacity to prosecute complex corruption cases, not the 'political will'.<sup>132</sup> As a result, those remanded are effectively serving jail sentences for crimes they may or may not have committed.

<sup>127</sup> PCCB can also prosecute under procurement legislation.

<sup>128</sup> In December 2009, the DPP Eliezer Feleshi hit back 'against the PCCB director general's pronouncement that his [Feleshi's] office is sitting on files of convictable perpetrators of grand graft.' See: Mkinga Mkinga 2009. 'Tanzania: Graft Cases Delay - Feleshi Hits Back', Citizen, 12 December. Another interpretation is that--accepting that PCCB may indeed forward incomplete investigations to the DPP--it is convenient for both sides to be able to 'pass the buck', while the actual decisions on who to prosecute are taken elsewhere.

<sup>129</sup> Wikileaks, citing US Embassy message to Washington dated 24 July 2007, cited in turn by Policy Forum 2011. 'Tanzania Governance Review 2008-2009', page 21.

<sup>130</sup> A list compiled in 2009 contains nine senior politicians (two charged), ten senior officials (all charges, various outcomes) and seven 'businessmen' (two charged). See: Policy Forum 2011 op. cit., pp21-22.

<sup>131</sup> Meeting with officials at PCCB headquarters, 7<sup>th</sup> June, 2018.

<sup>132</sup> This conclusion supports the argument that PCCB should focus on its core mandate rather than spreading its resources too thinly to achieve significant results in any of its multiple activities.

In some notable cases, the PCCB itself concludes that there is no corruption case to answer. For example, in February 2008, Dr Hoseah came under heavy criticism by a parliamentary select committee investigating the Richmond case for declaring that the project was ‘clean.’<sup>133</sup> In November 2011, Hoseah was again in the news when he declared that former Attorney General Andrew Chenge was not implicated in the BEA radar scam, which subsequently proved to be untrue.<sup>134</sup> An investigation into the Escrow scandal ordered by the Public Accounts Committee chair Zitto Kabwe in 2014 could not be used in the parliamentary debate that exposed the scam in great detail since State House did not release the document.<sup>135</sup> In a report to concerned donors in 2008, Hoseah listed cases that were the subject of PCCB investigations (**Table 5.1**). The donors added a number of suspected cases that were not under investigation.

**Table 5.1: Grand corruption cases under investigation, or not, 2008**

Under investigation	Not under investigation
•BAE Radar	•Deep Green Finance Company Limited
•BoT Twin Towers	•Independent Power Tanzania Limited (IPTL)
•Alex Stewart Assayers	•Lake Victoria-Shinyanga Water Pipeline
•Buzwagi contract	•LogScam
•Mchuchuma mine	•Loliondo Hunting Blocks
•Mwananchi Gold	•Mafuta House
•Meremeta Limited	•Quality Plaza
•Tangold Limited	•Sale of Government Houses
•Mwananchi Trust Co.	•Serengeti National Park Privatisation
•Chimela Co. Ltd	•Tanzania International Container Terminal Services
•VMB holdings Co. Ltd	•Ubungo Godowns

Source: Development Cooperation Forum Corruption Update 10 March 2008<sup>136</sup>

Of the cases listed in the first column, only Alex Stewart resulted in the prosecution and imprisonment of senior officials. Of the cases listed in the second column, the IPTL case eventually led to the arrest of the principals involved when the 20 year old IPTL scam took on the ‘Escrow’ dimension.

The failure to address the majority of grand and political cases should not be seen as simply an indictment of PCCB but as a structural issue characterising the Tanzanian state as a whole.

Finally, PCCB routinely loses the majority of the few cases involving senior officials and large amounts of money that reach court. This helps account for why PCCB has such a low conviction rate, as discussed above. It is discouraging for PCCB prosecutors to lose cases with clear evidence of wrong-doing. Yet judges routinely use the ‘not proven beyond reasonable doubt’ argument to rule in favour of the defence. Numerous examples are reported in **Appendix 6**.

<sup>133</sup> Judica Terimo 2008. ‘I will not resign—Hoseah’, Guardian, 16 February, cited by Policy Forum 2011. ‘Tanzania Governance Review 2008-2009’, page 19. The Parliamentary Select Committee (PSC) on the Richmond Affair and others MPs called for the resignation of both the Director General of the PCCB whose organisation investigated the Richmond case and the Attorney General whose office was involved in the procurement process that selected Richmond. Hoseah’s position was that TANESCO and the Treasury had confirmed that no money had been paid to Richmond and consequently there was no basis for prosecution on the grounds of corruption.

<sup>134</sup> Policy Forum 2012. ‘Tanzania Governance Review 2011-2011’, page 104. The BEA scam is reported in this source and subsequent Tanzania Governance Reviews.

<sup>135</sup> Policy Forum 2016. ‘Tanzania Governance Review 2014: The year of Escrow’, Ch 1 and Appendix 1.

<sup>136</sup> See [www.policyforum.or.tz](http://www.policyforum.or.tz) TGRs for details of most of these cases and their resolution.

## 5.2 Popular perceptions of corruption and the PCCB

While high percentages of Tanzanians interviewed routinely condemn corruption, including in service delivery, it is not the case that fighting corruption is high on their list of priorities. In a 2015 REPOA/ Afrobarometer survey, respondents were asked to list the three main problems facing Tanzania that the government should address. Corruption ranked eighth among the issues mentioned.<sup>137</sup> Two years later, it had fallen to 12<sup>th</sup> place.<sup>138</sup> The assumption of near universal hostility to corruption<sup>139</sup> is belied by its systemic practice. A 2016 review of East African ACAs argued that:

Tanzanian social relations encourage corruption, because people expect to receive favours from their relatives in power, and corrupt public and private leaders who amass wealth irrespective of the means are at times celebrated and revered by society as 'successful'.<sup>140</sup>

In the presentation to the African Parliamentarians Network Against Corruption in April 2017 mentioned above, PCCB director general Valentino Mlowola flagged 'the culture of glorifying corruption among citizens' as one of the challenges facing anti-corruption efforts.<sup>141</sup>

Surveys confirm that many young people endorse corruption whole-heartedly. In a 2016 survey<sup>142</sup> of 18 to 35 year olds in East Africa, the Aga Khan University found that:

- *Sixty* percent of Tanzanian youth interviewed agreed with the statement that it doesn't matter how people make money as long as they don't end up in jail;
- *Fifty-eight* percent admire people with money irrespective of how they came by it;
- *Forty percent* said they would only vote for someone who 'bribed' them; and
- *Thirty-five* percent would readily give or take a bribe.<sup>143</sup>

In the same survey, three-quarters of respondents said they would not report corruption for fear of retribution. A REPOA/Afrobarometer survey from 2017 found similar numbers of respondents giving the same response (**Chart 5.2**).<sup>144</sup>

Nearly three-quarters (74 percent) of urban respondents thought that reporting corruption could lead to retaliation. Anecdotal evidence of the risks involved include the practice of PCCB staff informing a suspect that s/he has been reported on, with potential repercussions for the whistleblower, including intimidation and, in some cases, the actual murder of witnesses. It is impossible to assess the frequency of such events.

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<sup>137</sup> REPOA/Afrobarometer 2015: Q60: "What are the most important problems facing the country that the government should address?" The question was open-ended and three answers were requested. All responses aggregated gave the following list: healthcare (17% of total); education (11%); agriculture (9%); water (8%); roads (8%); economy (5%); poverty (4%); corruption (4%); Other (34%). See Policy Forum 2015 'Tanzania Governance Review 2014: The year of Escrow', page 39.

<sup>138</sup> Afrobarometer and REPOA 2018. 'Summary of Results, Survey in Tanzania, Round 7. Question 55. In both surveys, the major concerns were health, water and roads.

<sup>139</sup> 'Corruption is spiritually and emotionally loathed by our people...' Kiangiosekazi wa-Nyoka 2017. 'Anti-corruption body re-energised', *Daily News*, 2 September.

<sup>140</sup> AfriMAP 2015. 'Effectiveness of Anti-Corruption Agencies in East Africa', Open Society Foundations, December, p74.

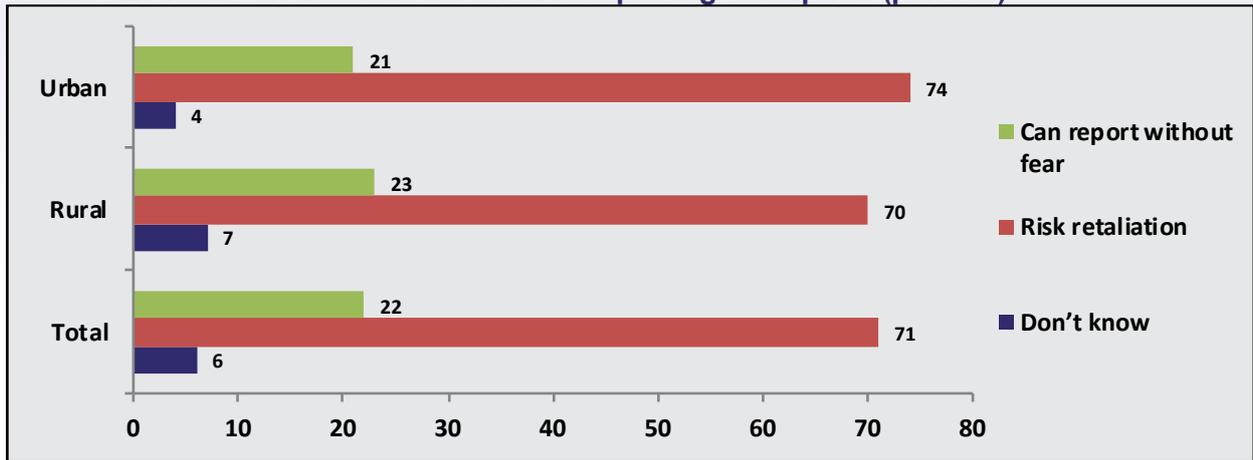
<sup>141</sup> <https://www.alleastafrica.com/2017/04/09/tanzania-govt-ups-anti-corruption-fight/>.

<sup>142</sup> Aga Khan University 2016. 'The Tanzania Youth Survey Report.' Only 23 percent thought it was important to pay taxes.

<sup>143</sup> These figures should be treated as approximations since the AKU study, covering 'youth' in the three major EAC states, does not inspire much confidence.

<sup>144</sup> REPOA and Afrobarometer 2017. 'In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement', Lulu Olan'g and Jamal Msami, Afrobarometer Dispatch No. 178. The question was: '... can ordinary people report incidents of corruption without fear, or do they risk retaliation or other negative consequences if they speak out?'

**Chart 5.2: Views on the risks involved in reporting corruption (percent)**



Source: REPOA/Afrobarometer 2017: 33

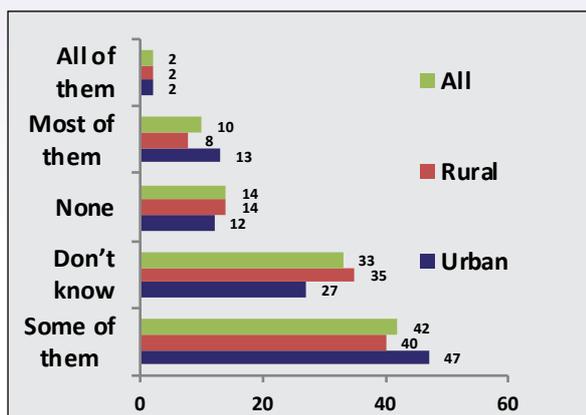
The REPOA/Afrobarometer report (2017) asked respondents what proportion of PCCB employees they thought were corrupt (**Chart 5.3**). Twelve percent of respondents considered that ‘all’ or ‘most’ PCCB official were corrupt, down from 29 percent in 2014. Similar trends in declining perceived corruption were found for all other key state institutions, reflecting a positive view of President Magufuli’s anti-corruption efforts.<sup>145</sup>

But public trust in state institutions is still lacking. Indeed, REPOA/Afrobarometer identify *declining trust* in key state institutions, including PCCB, between 2014 and 2017. Whereas well over a quarter (28 percent) of respondents said they trusted PCCB ‘a lot’, just over half (52 percent) said they trusted the agency ‘just a little, somewhat or not at all’, while nearly one in five (19 percent) had no opinion (**Chart 5.4**). Those trusting PCCB ‘somewhat’ and ‘a lot’ fell from 58 to 46 percent during this period, which includes the Kikwete-Magufuli transition. It seems perverse that trust in state institutions, including PCCB, fell between 2014 and 2017 while perceptions that the Bureau’s officials were corrupt also fell. These finding, if correct, challenges the notion of a ‘Magufuli effect’ on trust in state institutions, including PCCB, proposed above (see **Section 4.2, Chart 4.1**).<sup>146</sup>

<sup>145</sup> REPOA and Afrobarometer 2017 op. cit., p4. The view that ‘all’ or ‘most’ of TRA, PCCB, local government councillors, police, judges and magistrates, government officials, MPs and the office of the president were corrupt fell by between 10 and 23 percentage points.

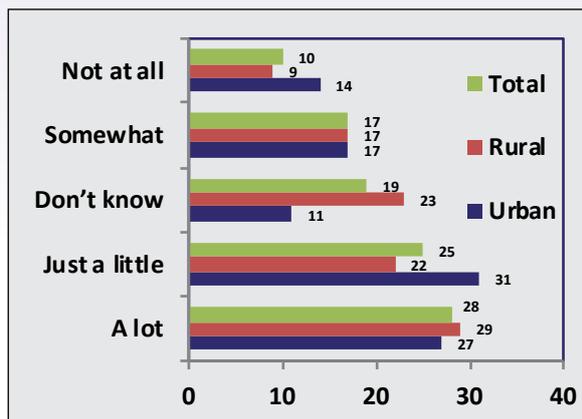
<sup>146</sup> REPOA and Afrobarometer 2017. In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement’, Lulu Olan’g and Jamal Msami, Afrobarometer Dispatch No. 178, page 5. The lack of clear and consistent short-term trends in levels of trust and perceptions of institutional corruption suggest that the 2017 data (collected in May 2017) may not be entirely reliable.

**Chart 5.3: Views on how many PCCB officials are involved in corruption (%)**



Source: REPOA/Afrobarometer 2017: 4

**Chart 5.4: How much do you trust PCCB? (%)**



Source: REPOA/Afrobarometer op. cit.

### 5.3 Conclusion

The finding that the Tanzanian public does not roundly condemn corruption or corrupt leaders and that many, including young people, actively embrace it, challenges the view that 'fighting corruption' will create political capital for leaders or elicit massive popular support.<sup>147</sup> Low levels of trust in state institutions reflect perceptions that corruption is widespread, leading to reluctance to report corruption for fear of retribution. This gloomy conclusion underlines one of the key messages of PEA, that addressing corruption requires collective action, not principal-agent solutions.

<sup>147</sup> After failing to secure the CCM presidential nomination in 2015, former Prime Minister Edward Lowassa, switched allegiances to the opposition CHADEMA and became its presidential candidate. The fact that CHADEMA was campaigning against CCM's chronic corruption problem, exemplified by Lowassa, did not inhibit CHADEMA's move, which many of the party's supporters applauded.

## Chapter 6: Donor support to PCCB

Donor agencies have played the major role in the spread of dedicated ACAs among aid recipients worldwide, in Africa in particular. The basic assumption behind the promotion of ACAs is that enhancing state powers to investigate and prosecute the corrupt through dedicated ACAs is feasible even where the state suffers from high levels of corruption of all kinds. This assumption corresponds to the NPM 'principal-agent' approach to governance, as outlined in **Chapter 3** and **Appendix 1**. The following section details government-donor relations in anti-corruption activities in general. These are explored further in relation to PCCB in the subsequent section, to which the busy reader may proceed directly.

### 6.1 Overview of government-donor anti-corruption relations

Donor support for the PCCB is based on a mixture of NPM and GG assumptions. Recanatini describes the donors' progression from NPM to GG approaches.<sup>148</sup> The first phase consisted of '... *ad hoc* anti-corruption initiatives ... focusing on the introduction of anticorruption laws and regulations.' In Tanzania, this corresponds (roughly) to the election of President Mkapa (2005), the publication of the Warioba Report (1996) and the launch of the National Anti-Corruption Strategy and Action Plan (NACSAP).

During the 1990s, donors promoted NPM approaches to anti-corruption as well as to civil service reform, revenue collection, public procurement and supreme audit, all of which contained a direct or indirect anti-corruption element.<sup>149</sup> The main conceptual weakness of these initiatives, and reason for their limited success, is that they all rely on the notion that power and politics can be delinked from the functioning of the state apparatus by creating, capacitating and upgrading semi-autonomous agents in the fields mentioned.<sup>150</sup>

Democratisation and GG constitute a second set of externally derived principles on how to improve state performance and counter corruption by promoting transparency and accountability (T&A) (**Appendix 1**). The underlying premise is that 'bottom-up' pressures on the executive and the ruling elite will achieve more than simply expecting agents of state power to act in the public interest. T&A are promoted *inter alia* through donor support to parliament, CSOs and the private media.<sup>151</sup>

Throughout the 2000s, numerous donor-financed PFM and GG reforms were implemented in parallel, with mixed results. By the time PCCB was set up (2007), GG initiatives of all kinds were underway, and were already being criticised for 'lack of impact'.<sup>152</sup>

<sup>148</sup> Francesca Recanatini 2012. 'Anti-corruption Authorities: An Effective Tool to Curb Corruption?', in International handbook on the economics of corruption, Volume II, (eds) Susan Rose-Ackerman and Tina Søreide.

<sup>149</sup> Kauffman argues that you don't 'fight corruption by fighting corruption' directly: See: <https://www.brookings.edu/opinions/rethinking-the-fight-against-corruption/>

<sup>150</sup> See references to Kelsall and Booth. A decade of Tanzania Governance Reviews (2006-15) has demonstrated conclusively that 'corruption' (better described as 'rent-seeking') characterises all levels of the Tanzanian state apparatus. See also Cooksey (2011).

<sup>151</sup> Though good governance and democratisation are conceptually distinct, western aid tends to see the two as closely related.

<sup>152</sup> See Tim Kelsall 2008. 'Going with the grain in African development?' Power and Politics in Africa, Discussion Paper no. 1 June, page 2. See: <http://www.institutions-africa.org/filestream/20080623-discussion-paper-1-going-with-the-grain-in-african-development-tim-kelsall-june-2008>. These issues are discussed in general terms in **Appendix 1**.

Donor support for anti-corruption in Tanzania, including PCCB and NACSAP,<sup>153</sup> is just one component of support to the judicial system overall. The Legal Sector Reform Programme (LSRP) aspires to achieve 'Timely Justice for All' through 'interventions in five areas: the national legal framework; access to justice for the poor and the disadvantaged; human rights and the administration of justice; knowledge and skills of legal professionals; and service delivery capacity in key legal sector institutions.' The Mid-Term Review of the LSRP found that serious delays in donor disbursements had undermined its implementation, so that only 21 percent of the programme's objectives had been met.<sup>154</sup> A joint bilateral evaluation of anti-corruption efforts in 2011 found that 'the long running LSRP ... has achieved little. A clear focus on anti-corruption was never a part of the programme. ... Corruption within the judiciary remains a key issue.'<sup>155</sup>

**Chapter 5** concluded that the judiciary is in deep crisis at all levels for multiple reasons, including corruption (see also **Appendix 4**).

In Tanzania and elsewhere, an effort to get away from the widely discredited project mode of aid delivery led to the introduction of General Budget Support (GBS) as the main aid modality in the new century.<sup>156</sup> Coordination of donor anti-corruption efforts increased markedly under GBS, given the inherent risks involved, with concerted efforts to get the Tanzanian government to address grand corruption, culminating in the Escrow/IPTL scam in 2014/15. Though President Kikwete, under donor pressure, took partial steps to address the EPA scam at the beginning of his first term in office, he was successful in resisting similar pressures, as well as internal political pressures, over Escrow.<sup>157</sup>

Withholding GBS over Escrow led to a serious deterioration in GoT/ donor relations. The GoT claimed that donors had no mandate to attach corruption conditions to GBS.<sup>158</sup> Donors eventually backed down with the Escrow/IPTL issue still unresolved.<sup>159</sup>

This story highlights a key challenge to donors promoting governance and democratisation: they no longer have the leverage on policy that they had during the early years of post-Nyererian adjustment afforded by the massive role of aid in the budget and balance of payments. Years of unprecedented economic growth have reduced the importance of aid in balancing budgets and funding development activities.

In March 2015, donors 'pledged willingness to collaborate with the Government in governance reforms and in strengthening the capacities of anti-corruption institutions.'

<http://tzdpg.or.tz/index.php?id=34>

<sup>153</sup> The 'NACSAP' template originated in the World Bank and has received financial support from the World Bank, European Union and other aid agencies. NACSAP relies heavily on the willingness of ministries and departments to self-report. See Brian Cooksey 2005. 'Corruption and governance in Tanzania: What Does the literature say?', Norwegian Embassy and Governance Working Group.

<sup>154</sup> United Republic of Tanzania 2009. 'Mid-Term Review of the Legal Sector Reform Programme', Ministry of Constitutional Affairs and Justice, Final Report, October: [http://www.tzdpg.or.tz/fileadmin/documents/external/publications/uploads\\_2010\\_05\\_07/Tanzania\\_LSRP\\_MTR\\_Final\\_Report.pdf](http://www.tzdpg.or.tz/fileadmin/documents/external/publications/uploads_2010_05_07/Tanzania_LSRP_MTR_Final_Report.pdf)

<sup>155</sup> NORAD Evaluation Department 2011. 'Joint Evaluation of Support to Anti-Corruption Efforts', Tanzania Country Report 6, June, page XV. See this report, **Appendix 4** for more on judicial corruption.

<sup>156</sup> Policy Forum, Tanzania Governance Reviews 2013, 2014. 'Basket funding' is a widely practiced sectoral form of budget support practiced in health, education, agriculture and anti-corruption.

<sup>157</sup> Policy Forum (2015, 2017) describe in detail the processes involved and the evident push-back by elements within the ruling party against the significant governance gains made during Kikwete's first term.

<sup>158</sup> In theory, the Paris Declaration 'outlawed' conditionality in the name of local ownership of development policy, a point stressed by the GoT in its reaction to the suspension of GBS.

<sup>159</sup> Compare the 2015 step-down with the following statement from 2010: '...GBS has been effective in dealing with the EPA ... scandal and in signaling to the GoT that DPs will not tolerate inaction on grand corruption cases.' Joint Evaluation of Donor Support to Anti-Corruption in Tanzania, cited by Policy Forum 2012: 64. The same source also argued that 'dialogue' between DPs and the GoT had deteriorated due to a breakdown in trust following 'recent grand corruption scandals.'

Crucially, during the period of the decline in the policy leverage enjoyed by western donors, China has emerged as an alternative 'development partner', prepared to finance large infrastructural and other projects without demanding improvements in governance.<sup>160</sup> These trends are common across many formerly heavily aid-dependent countries.<sup>161</sup> A report of the Independent Facilitation Team that was set up in 2016 to improve the aid relationship in the wake of the Escrow scandal, cites the view of 'a number of 'new' development partners, including Brazil, India and China' that: 'corruption [is] an inevitable part of the development process...'<sup>162</sup> A 2017 Pew survey of global attitudes showed that more Tanzanians have positive attitudes towards China than towards the US.<sup>163</sup> In 2009, President Kikwete said China had "no hidden agenda" and 'its aid policies were based on "mutual respect" of the interests of recipient nations.' "It is a relationship based on mutual understanding and equality; they understand our situation."<sup>164</sup> By contrast, in May 2015 President Kikwete 'said that western donors were setting degrading conditions for aid ... and he could be forced in time to tell them: "keep your aid."<sup>165</sup>

Despite the declining role of aid in influencing the architecture and functions of the state, it is difficult to find a ministry or state corporation that has not received project or programme support for 'institutional capacity building' or 'strengthening' over the last 25 years.<sup>166</sup> Despite their limitations, these types of support show no sign of losing popularity among donor agencies. Democracy and 'good governance' still constitute the dominant discourse of western aid.<sup>167</sup>

## 6.2 Donors and the PCCB

The aid settlement (AS) is the minimum conditions required for aid flows to continue. This definition can be broken down into minimum conditions for the continuation of aid in general, aid of different types, and aid to a specific sector such as anti-corruption. This is obviously too big an agenda to be dealt with in this review. The perpetuation of support to PCCB by different agencies is contingent on the government's acceptance of NPM and GG-inspired project and programme aid to formal state institutions. The GoT prefers GBS to project support, a position in line with the Paris Declaration's principles. Evidence that GBS was vulnerable to corruption led the donors to reduce or in some cases abandon GBS altogether, some reverting to projects. Though aid has lost most of its policy leverage, major donor resources continue to be committed to NPM and GG-inspired activities.<sup>168</sup>

**Appendix 5** discusses the nature of incentives in maintaining aid flows on both sides of the settlement. It gave evidence suggesting that aid agencies may have strong incentives to ignore

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<sup>160</sup> Policy Forum 2016. 'Tanzania Governance Review 2014'. The weight or consequence of donor conditionalities should not be exaggerated: often aid is misused while donors look the other way (they have disbursement targets to meet and want to retain good diplomatic relations), or government initiates a new policy that challenges the rationale for a project, but the project continues regardless.

<sup>161</sup> Cooksey 2014: 17. 'Corruption and development aid in Africa: A political economy approach', Swiss Development Cooperation, Dar es Salaam, November.

<sup>162</sup> Centennial Group International and Uongozi Institute 2017. 'Development Cooperation for an Emerging Tanzania: Recommendations and the Road Ahead', Final Report of an Independent Facilitation Team, April, p9. China is ranked 77<sup>th</sup> out of 180 countries in Transparency International's Corruption Perception Index for 2017, India 81<sup>st</sup> and Brazil 96<sup>th</sup>. Along with Russia (ranked 135<sup>th</sup>) and South Africa (71<sup>st</sup>), these countries constitute the BRICS group, which aspires to create its own development bank.

<sup>163</sup> Sixty-three percent of interviewees had positive attitudes towards China and 15 percent negative views. For the US the figures were 57 and 25 percent. See: <http://www.pewglobal.org/2017/09/21/global-attitudes-toward-china-and-the-u-s/>.

<sup>164</sup> Vincent Mnyanyika and Irene Mchomvu 2009. 'Kikwete: Why African leaders prefer Beijing', Citizen, 17 February.

<sup>165</sup> David Kisanga 2015. 'JK warns envoys to support national economy', Guardian, 27 May, Cited by Policy Forum 2017. 'TGR 2015-16, From Kikwete to Magufuli: Break with the past or more of the same', page 96. See **Appendix 5** for a deeper analysis.

<sup>166</sup> An exception may be the large number of executive agencies that have been created in recent years and which are yet to be the subject of critical research. A working hypothesis is that these agencies serve to extend the influence of the state as a means of control and surplus extraction.

<sup>167</sup> Academics use the term 'metanarrative' to describe the same thing. See Rottenburg 2009: xxviii-xxix.

<sup>168</sup> Major actors include the World Bank, the EU, and the UK. Scandinavian agencies also have a sizeable footprint.

corruption in the projects and programmes which they finance. Though no donor has ever accused PCCB of misusing funds, a DfID review cited in **Appendix 3** rated the corruption risk for the project in question as 'High', on the basis of the poor quality and late delivery of internal audit reports in an ongoing project.<sup>169</sup> This resulted in late disbursement of project funds. More recent revelations of grand corruption on the part of the agency's former chief accountant confirm DfID's suspicion that PCCB is not above practicing the vice that it was set up to fight. There is no evidence that this revelation (which remains to be proved) has undermined donors' preparedness to continue support for the Bureau.

**Appendix 5** also argued that certain agencies are vulnerable to internal corruption, including collusion with host country officials. The UNDP is the UN agency responsible for governance issues, including corruption control, in the UN system. UNDP is also the coordinator of the Sustainable Development Goals (SDG).<sup>170</sup> Above, it was argued that the UN and its agencies suffer from serious and usually unsanctioned corruption.<sup>171</sup> UNDP has been responsible for managing a multi-donor 'basket-fund' that financed activities under NACSAP and including PCCB.<sup>172</sup> **Box 6.1** summarises critical issues with this arrangement.

### **Box 6.1: Claims of serious UNDP governance weaknesses in basket fund management**

According to NORAD (2011: 25): 'Some basket funds managed by the UNDP have ... been problematic and perceived as non-transparent.' These funds are NACSAP and the Deepening Democracy project, for which UNDP was responsible for providing technical assistance, releasing funds, making direct payments and managing procurement and contracting (NORAD 2011: 28). An external evaluation cited by NORAD (2011: 28) concluded that both projects suffered from: '... poor reporting and the possibility of misuse of donor resources, [and] lack of communication and transparency between UNDP and contributing development partners.... [D]onors feel that they were not adequately informed about important issues such as "the resignation of the Project Coordination Office Coordinator, the efforts to have him replaced, the delays with regard to the mid-term evaluation, as well as finance management and the outcome of the audit."' (Emphasis in the original).

UNDP undertook an audit in response to donor concerns about finance management and procurement, but its results were not made available to donors because the audit 'covered a larger part of UNDP's portfolio.' (NORAD 2011: 28-9). Donors 'mitigated the perceived high levels of fiduciary risk associated with these funds by increasing their direct involvement in programmes, including engaging in direct discussions with implementing partners.' (NORAD op. cit., 28-9).

Source: NORAD Evaluation Department 2011. 'Joint Evaluation of Support to Anti-Corruption Efforts', Tanzania Country Report 6, June, pp30-31; Deepening Democracy in Tanzania Programme. Mid-Term Evaluation April-May 2009, Final Report.

It is possible that UNDP's poor management of basket funds could have had a negative impact on donor support to PCCB, the nominal coordinator of NACSAP, though there is no definitive proof.

<sup>169</sup> The actual wording: [The risk was 'High' that] 'corruption is uncovered in the programme, undermining its credibility and forcing DFID to suspend funding.'

<sup>170</sup> Of the 17 SDGs, number 16 is Peace, Justice and Strong Institutions. One of the 12 Targets for SDG 16 is 'Substantially reduce corruption and bribery in all their forms.' See: <https://www.un.org/development/desa/disabilities/envision2030-goal16.html>.

<sup>171</sup> Again, the majority of UN staff are people of high integrity and are themselves often concerned with the rogue elements in their midst, who are often well-known and go largely unpunished. This said, a number of well know scandals involving the UN, in particular the Iraqi oil-for-food program that ended in October 2005, constitute huge shocks for the UN systems credibility. UN specialist agencies, including FAO and UNICEF have also suffered from corruption scandals over the years. See: <https://www.cfr.org/backgrounder/impact-un-oil-food-scandal>. Over a third (37 percent) of British aid goes to fund multilateral organisations, including the UN. See: <http://www.theweek.co.uk/63394/foreign-aid-how-and-where-is-britain-s-budget-spent>.

<sup>172</sup> NORAD Evaluation Department 2011. 'Joint Evaluation of Support to Anti-Corruption Efforts', Tanzania Country Report 6, June. Norway, Sweden and Finland supported NACSAP under UNDP's Support to Strengthening the Capacities to Combat Corruption in Tanzania' project (2000-05).

In sum, there is an issue with aid agencies' tendency to ignore or underestimate the incidence of corruption in the Bureau. The possibility that PCCB officials may abuse their positions by practicing extortion does not appear as a risk factor in their log-frames. In addition, there is a possibility that aid to anti-corruption will be undermined by corruption on the aid 'supply side' that is also likely to involve collusion between donor and recipient. The above risks belie the objectives of promoting transparent and accountable behaviour among aid recipients, of course, and help support the unstated but common view that aid donors have their own informal agendas for providing aid.

### 6.3 The donor-PCCB interface: meaningful dialogue or dialogue of the deaf?

'...more work is needed to develop a shared understanding of the needs of the Bureau so that donors can provide appropriate support in technical expertise and knowledge'.<sup>173</sup>

'In order even to participate in a mutual game, players ... must agree on a universal code that appears to be comprehensible in all frames of reference.'<sup>174</sup>

Between 2012/13 and 2014/15 donors committed TShs8.2bn (cUS\$5m) to anti-corruption projects, a minor sum by aid standards. Of this amount, the United Nations Development Programme (UNDP) accounted for TShs4.2bn and DfID for TShs4bn.<sup>175</sup> By October 2017, eight bilateral donor agencies had programmes and projects addressing anti-corruption and accountability, including the media and civil society, as well as UNDP, the WB and the European Union.<sup>176</sup> DfID is the single most important donor to PCCB.<sup>177</sup>

A critical reading of the literature suggests that there are issues at the aid interface that help explain why aid seems unable to leverage the kinds of behavioural change explicit in project and programme design. Scattered references suggest that donors and PCCB top management have tended not to share a common understanding of what aid to the organisation is supposed to achieve. For example, **Appendix 3** cites the following statements from a DfID project review: '... more work is needed to develop a shared understanding of the needs of the Bureau so that donors can provide appropriate support in technical expertise and knowledge'. '... PCCB has not been ready to accept the donors' proposed technical expertise ... The reasons for this appear to relate to an *inadequate shared understanding* of the needs of the PCCB.'<sup>178</sup>

This suggests a lack of meaningful dialogue at the interface between donor and recipient. This could be interpreted as simple mutual misunderstanding or a wish on either side to avoid confrontation on fundamental or 'sensitive' issues that might jeopardise a planned agreement. Alternatively, one could consider the relationship as a symbolic game in which both sides suspect hidden motives of the other. These interpretations are not mutually exclusive. Donor project managers and technical assistance personnel sometime seek to overcome poor communications between the two sides of the aid equation by establishing good personal relations with key players during the implementation phase. PCCB's former Executive Director was seen as a 'strong leader' with whom donors could work productively. Still one donor evaluation observed that:

'PCCB has not been ready to accept the donors' proposed technical expertise (other than the technical support offered by the MCC [Millennium Challenge Corporation]). The reasons for this appear to relate to an *inadequate shared understanding* of the needs of the PCCB. Development

<sup>173</sup> DfID 2014, cited in **Appendix 4** to this report.

<sup>174</sup> Richard Rottenburg 2008: xxix. The quote continues: 'I will call this a *metacode*.' Emphasis in the original.

<sup>175</sup> Open Society Foundations 2011: 68. These are actual expenditures for 2012/13 and approved estimates for the following years. See: <http://www.mof.go.tz/mofdocs/budget/Budget%20Books/2013-2014/Volume%20IV%20Detail%20by%20Vote-Print.pdf>.

<sup>176</sup> Donor Governance Group seminar, Double Tree Hotel, 5 October 2017. Bilateral donors are UK, Finland, Norway, Ireland, Switzerland, Denmark, USA, and France.

<sup>177</sup> DFID's Anti-Corruption Evidence Programme (ACE), worth £6m (\$8.4m) over five years, plans to undertake research in Tanzania, Nigeria and Bangladesh. See: <https://www.soas.ac.uk/ace/>.

<sup>178</sup> See Appendix 3. Emphasis added.

partners acknowledge this and are entering dialogue with PCCB in order to develop a renewed relationship of technical assistance.<sup>179</sup>

Here too, the aid interface seems not to reflect shared assumptions or frames of reference.<sup>180</sup>

Since such issues are crucial for the successful implementation of programmes and projects, it is fair to ask why such an unsatisfactory state of affairs is allowed to continue. After all, neither side is forced into this relationship against its will.

Donors and recipients may object to this as an unfair or exaggerated characterisation of the 'aid relationship'. Internal and external reviews and assessments of PCCB often paint quite a rosy picture, while acknowledging problem areas. A recent review of DfID's STACA, for example, concluded that: 'STACA has already *proven its relevance* and has been effective in reaching a number of key self-defined performance indicators such as an increase in conviction rates.'<sup>181</sup> An earlier evaluation of budget support argued that: 'The PCCB has significantly increased the scale of its operations and has shown improvement in key performance indicators, notably in the number of cases prosecuted.'<sup>182</sup> However, these increased conviction rates reflect fines and prison sentences imposed on mostly petty offenders, as shown in this review, while the plunder of public resources by senior officials and politicians goes largely unpunished.

Understating problem areas can also be illustrated from PCCB. An internal review argues that: 'PCCB independence ... is *potentially compromised* [because] it reports directly to the President.'<sup>183</sup>

The Bureau is not *potentially* compromised: it is *intentionally* compromised by those who drafted the PCCA in 2007! The ruling elite has no incentive to empower an independent ACA to investigate political and grand corruption in which it is likely to be the key player. No strong popular or political pressure exists to force the elite to compromise on this issue.<sup>184</sup>

**Chapter 3** describes how attempts to create an independent agency reporting to parliament rather than State House were effectively frustrated by the ruling party. Donors always had the choice *not* to support PCCB on the grounds that the PCCA guaranteed that the agency would only be empowered to deal with petty corruption. Accepting this limitation, donors have continued to support the agency as it expands its upcountry presence and, in recent years, prosecutes a growing number of largely petty corruption cases. Although the Bureau also investigates a

To operate successfully, an Anti-Corruption Agency must possess the following:

- \* committed political backing at the highest levels of government;
- \* adequate resources to undertake its mission;
- \* political and operational independence to investigate even the highest levels of government;
- \* adequate powers of access to documentation and for the questioning of witnesses;
- \* "user-friendly" laws (including the criminalisation of "illicit enrichment"); and,
- \* leadership which is seen as being of the highest integrity.

Source: Jeremy Pope (2000: 96)

<sup>179</sup> SIDA 2012. 'Joint Evaluation Support to Anti-Corruption Efforts', p35, emphasis added.

<sup>180</sup> See Rottenburg 2009 for a detailed anthropological approach to the complexities of the donor-recipient interface in the Tanzanian urban water sector. Difficulties arise as a result of 'differences between the frames of reference employed by the cooperating parties...' (page 199). Mistrust and cultural differences lead each side to question the motives and agendas of the other.

<sup>181</sup> U4, REPOA and CMI 2016. 'Strengthening Tanzania's Anti-Corruption Action (STACA) Programme, A Case Study Evaluation' UKaid, March, p7 (emphasis added). This study ignores DfID's own critique of the principal-agent approach to improving governance outcomes contained in STACA reviews.

<sup>182</sup> ADE, ITAD and COWI 2013. 'Joint Evaluation of Budget Support to Tanzania: lessons learned and recommendations for the future', Final Report: Volume 1, page xi. See: [http://ec.europa.eu/europeaid/how/evaluation/evaluation\\_reports/reports/2013/1321\\_vol1\\_en.pdf](http://ec.europa.eu/europeaid/how/evaluation/evaluation_reports/reports/2013/1321_vol1_en.pdf).

<sup>183</sup> Emphasis added. See **Appendix 3** for full reference.

<sup>184</sup> This is another example of the weakness of the principal-agent approach to governance identified by Booth (2012) and others.

growing number of grand corruption cases involving senior government officials, these are generally not brought to court. The usual explanation offered is that PCCB lacks capacity to investigate complex cases.<sup>185</sup>

Reviewing aid agencies' support to PCCB and anti-corruption more generally leaves an impression that, while focusing on technical capacities and inter-agency coordination, they routinely ignore the bigger picture.

The unambiguous conclusion from this review is that PCCB has seriously underperformed since its inception in meeting its core mandate. During the decade of its existence, PCCB has substantially expanded its staff and opened new offices in all regions and a number of districts. The net result has been a modest increase in the number of cases brought to court, the majority of which are for trivial offences.

One implication of the aid settlement for PCCB is that aid can continue as long as it poses no threat to the ruling elite. The PCCA virtually guaranteed this for reasons well known to readers by now, and donors' preparedness to support an essentially anti-*petty* corruption agency signalled their acquiescence. It is hardly surprising that PCCB's inability to rein in grand corruption has not threatened continued donor support.<sup>186</sup>

Apart from helping to build PCCB's capacity and expand activities outside Dar es Salaam, accessing donor support has other less obvious political advantages. From the point of view of the ruling elite, there is prestige and political capital to be made from the President opening a brand new PCCB regional office. PCCB is portrayed as extending its reach by establishing district offices across the country. In addition, PCCB is a member of international networks of similar agencies in East Africa<sup>187</sup> and the wider world, including the Commonwealth.<sup>188</sup> These and other fora allow the PCCB to participate in the global anti-corruption movement. Not to be a member of such networks would be viewed badly by peers from other countries. In all these activities, the form matters more than the content.

## 6.4 The Magufuli effect

'After painful and necessary institutional and economic shocks in the public and private sectors, Tanzania has been slowly moving towards a new stable equilibrium in its political settlement.'<sup>189</sup>

Donors are caught between supporting President Magufuli's home-grown attack on corruption, tax evasion, legal waste and inefficiency in government, and criticising his heavy-handed approach to freedom of speech and party politics, areas where they have committed considerable resources over many years. To be fair, the push-back against relative democratisation began during Kikwete's second term, not Magufuli's first. However, he has gone much further than the previous regime in throttling the political opposition, limiting the powers of parliament and local governments, and clamping down on the press and social media. His personalised approach to governance reflects his view that formal means of handling corruption and economic crimes

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<sup>185</sup> See **Chapter 4**. Cases where high profile arrests have been made but not taken to court include Escrow and Stanbic/EGMA. In the Stanbic case, former TRA Commissioner General Harry Kitiyla and two Stanbic employees have been in remand for two years, while prosecution State Attorneys claim that investigations are not yet complete. See: Faustine Kapama 2018. 'Kitiyla, two mates seek faster probe of two-year plus case', Daily News, 14 April.

<sup>186</sup> There is, of course, merit in pursuing petty corruption offences in service provision, but PCCB's lame performance in this respect and the costs involved suggest that even this is achieving very little.

<sup>187</sup> The East African Association of Anti-corruption Authorities has eight members, including ACAs from Ethiopia and Djibouti. Its secretariat is in Kampala. See: <http://www.pccb.go.tz/wp-content/uploads/2017/04/EAAACA-Brochure.pdf>.

<sup>188</sup> Frank Vogl 2014. 'Building Anti-Corruption Agencies in the African Commonwealth', Transparency International UK, 5 June, reporting on a four-day conference of 17 ACAs held in Accra, Ghana organised by the Commonwealth Secretariat. This source concludes: 'The Commonwealth deserves credit for working with the ACAs to encourage their efforts, to assist them to learn from diverse country experiences and share knowledge, and to improve staff training.' The Commonwealth Africa Anti-Corruption Centre in Botswana hosts annual meetings of its 18 member ACAs. See: <http://www.thecaacc.org/annual-reports>

<sup>189</sup> <https://ace.soas.ac.uk/tanzania-2/>

through PCCB and the law courts are ineffective in delivering justice in a timely manner,<sup>190</sup> a view fully corroborated by this review.

The President's anti-corruption measures to date differ from those of Presidents Mkapa and Kikwete in that they are not an attempt to pacify unhappy donors but to 'stop the rot' in the ruling party and its government and to wrest power from informal networks of politicians and business interests. This strategy goes to the core of the 'political settlement' and its success cannot be taken for granted.<sup>191</sup>

President Magufuli clearly sees what donor agencies are reluctant to admit, namely that the state's formal bureaucracy is largely a cover for complex informal structures based on norms of clientelism and patronage. Some speculate whether Magufuli is emulating the 'Kagame model',<sup>192</sup> involving the 'centralisation of rent management' aimed at economic transformation through an interventionist state.<sup>193</sup> This issue is beyond the purview of this review.

For reasons discussed at length in **Chapter 5**, it is unlikely that traditional donors will try to sanction Magufuli for what they see as his authoritarian tendencies, and GG projects are likely to continue, including support for PCCB (see sidebar), despite the disconnect between their stated objectives and the governance trends within the country.<sup>194</sup>

In August 2018, British International Development Secretary Penny Mordaunt visited Tanzania to announce a new aid package consisting of £55m (USD72m) for family planning, £41.6m (USD54m) for education, and £8 million (USD10m) 'to share UK expertise to improve Tanzania's criminal justice and legal systems to help tackle corruption...'

<https://www.youtube.com/watch?v=96MhUsDn9jI>

<sup>190</sup> Citizen reporter 2017. 'Magufuli slams PCCB, courts for delays in corruption cases', 25 August. See: <https://www.ippmedia.com/en/news/magufuli-slams-pccb-courts-delays-corruption-cases>.

<sup>191</sup> One recent analysis argues that: 'Central corruption nodes have retained their power and will resist change, affecting the developmental outcome of Magufuli's government. See: Antonio Andreoni 2017. 'Anti-corruption in Tanzania: A political settlement analysis', Anti-Corruption Evidence Programme (ACE), Working Paper 001, page 42.

<sup>192</sup> Rwanda's President Paul Kagame has invoked the concern of western donors and the wrath of human rights groups for his authoritarianism, but his policies have delivered on anti-corruption, security and social development where the best examples of multiparty democracy in Africa have failed, Ghana for example. Rwanda's rank in the Corruption Perception Index (48<sup>th</sup>) is second only to Botswana in Africa (34<sup>th</sup>) and compares favourably with Tanzania (103<sup>rd</sup>) and Kenya (143<sup>rd</sup>). See: [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017#table](https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table).

<sup>193</sup> See for example: [https://www.huffingtonpost.com/young-professionals-in-foreign-policy/is-magufuli-the-regions-n\\_b\\_9982846.html](https://www.huffingtonpost.com/young-professionals-in-foreign-policy/is-magufuli-the-regions-n_b_9982846.html). See also Andreoni 2017, passim.

<sup>194</sup> In early September, President Magufuli 'reiterated his opposition to birth control, telling Tanzanians to continue reproducing.' See: Reporter 2018. 'JPM advises against birth control', Citizen, 10 September. It is not clear where this message leaves Britain's USD72m for family planning.

## Chapter 7: Summary and conclusions

'Unfortunately, Anti-Corruption Agencies have been more often failures than successes.'<sup>195</sup>

'... many of the governance objectives identified in the standard reform agenda, such as significant reductions in corruption and improvements in accountability are *very likely to be unattainable in the short to medium term*.'<sup>196</sup>

'Because corruption is itself a symptom of governance failure, the higher the incidence of corruption, the less an anticorruption strategy should include tactics that are narrowly targeted at corrupt behavior and the more it should focus on the broad underlying features of the governance environment.'<sup>197</sup>

### 7.1 Review questions revisited

This review poses four questions.

#### 7.1.1 How has the PCCB performed during the last decade?

After its establishment in 2007, PCCB grew rapidly in both staffing and national outreach. PCCB claims to have a presence in every region and most districts in the country. Yet the number of corruption cases brought to court is a small fraction of the cases reported and investigated, and the number of convictions is remarkably low. While the expansion of the Bureau outside Dar es Salaam has increased the number of petty corruption cases brought to court, there has been little progress in sanctioning top officials and businesspeople involved in grand and political corruption (**Chapter 4**). The exception—the arrest in June 2017 of the principals in the Escrow/IPTL scandal—was a clear break with PCCB's past record of protecting some of the most corrupt elements in the country. Still there is a growing log-jam of high-profile cases that have yet to be brought to court (**Chapter 5**). Punishing a few 'minnows' for petty corruption with disproportionate fines and prison sentences, while letting the 'sharks' get away with systematic looting, imposing trivial fines on the rare occasions that some of them are found guilty, but not confiscating property or handing out substantial jail sentences, arguably amounts to an abuse of human rights.<sup>198</sup>

#### 7.1.2 What factors explain performance trends?

PCCB's performance in investigating both grand and petty corruption is severely constrained by its meagre (and dwindling) budget allocations, which make it difficult to investigate cases. Rather than focusing on a small number of key activities, PCCB attempts to address all aspects of corruption, making it difficult to succeed in any one. Spreading its resources thinly across the country arguably has the same effect.

<sup>195</sup> Jeremy Pope 2000:104.

<sup>196</sup> Mushtaq Khan and Hazel Gray 2006. 'State weakness in developing countries and strategies of institutional reform – Operational Implications for Anti-Corruption Policy and A case-study of Tanzania', mimeo, page 1, emphasis added. A team led by Professor Khan is currently implementing a £6m (USD8m, Shs18bn) DfID-funded anti-corruption research programme in Tanzania, Nigeria and Bangladesh. 'DFID's Anti-Corruption Evidence Programme (ACE) has been created to tackle corruption and lead to more effective, evidence-based anti-corruption initiatives by DFID and its partners.' See: <https://www.soas.ac.uk/news/newsitem114119.html>

<sup>197</sup> Fjeldstad, Odd-Helge and Jan Isaksen 2008. 'Anti-corruption reforms: Challenges, Effects and Limits of World Bank Support, Working Paper 7, Independent Evaluation Group, World Bank, Washington. p.16.

<sup>198</sup> The disconnect between the seriousness of the crime and the size of the penalties was raised in parliament in April. See:

But even much larger budget allocations would not address the fundamental structural constraints on PCCB's performance. The Bureau's poor performance in bringing grand corruption cases to court reflects weaknesses in Tanzania's criminal justice system, including political interference and bribery. The lack of an adequately trained cadre of lawyers to investigate and prosecute complex cases is an additional constraint, but, again, technical competence cannot address the abuse of power. Underpinning these strategic, financial and human capital constraints is the nature of the country's political system, discussed below.

### 7.1.3 What role have donors played in PCCB's performance?

During the 1990s, the global development community promoted stand-alone ACAs as a means of combatting corruption for countries receiving aid. The intellectual origins of this lie in part in the NPM theory which favoured the creation of semi-autonomous executive agencies outside direct government control as a means of improving the efficiency of public administration and tax collection. A second factor was the rise of the anti-corruption movement in the 1990s spearheaded by TI and the WB. Both of these factors involved the transfer of a north American/Anglo-Saxon ideology of statecraft and governance to poor countries where such notions were culturally alien, politically naïve, and impossible to replicate. The growth of donor assistance to PCCB was part of this global trend of replicating inappropriate ACA models, in particular, Hong Kong's Independent Commission against Corruption (ICAC, est. 1974).<sup>199</sup>

On occasion, donors have been critical of the lack of operational independence of PCCB and its failure to prosecute senior politicians and officials (see **Chapter 6** and **Appendix 3**). Still, the basic defects in the PCCA discussed at length in this report did not discourage donors from supporting the Bureau's expansion. A decade of donor support to PCCB has consisted largely of training, 'capacity building', and technical support for functions including tracing illicit financial flows (IFF) and teaching investigative skills. There are no data on who has funded the numerous building projects involved in up-country expansion (see **Chapter 4.1** above).<sup>200</sup> It is not clear whether up-country expansion was a home-grown or an externally-sourced idea, but donors see it as a positive move. The evidence presented in this review challenges this perception.

### 7.1.4 What underlying factors determine the observed trends?

Economic and political liberalisation during the last 30 years have been the main sources of the growth and proliferation in corruption of all kinds, that donors and the government of Tanzania propose PCCB to address. The political and economic elites broker deals that serve to undermine both state and private sector development capacities. The cost of maintaining political stability in a multi-party system, including the cost of elections, has meant a rapid rise in political corruption, and money politics. Signs of relative democratisation during President Kikwete's first term (2005-10) were quickly reversed when enhanced transparency and attempts at enforcing accountability began to threaten the 'political settlement' of the ruling elite and its supporters. Informal networks of patronage and clientelism dictate the functioning of Tanzania's state apparatus in the absence of robust formal institutions and fairly enforced laws and regulations. The underlying political economy prevents the emergence of an independent agency with a mandate to tackle corruption freely and fairly. It remains to be seen whether the present regime can overturn the existing political settlement to make it more 'developmental'.

## 7.2 Major lessons learned and a way forward<sup>201</sup>

Pursuing individual cases of corruption on an *ad hoc* basis across the country is akin to swotting mosquitos in a room where all the doors and windows have been left open. The few cases of

<sup>199</sup> Since the return of Hong Kong to mainland China, the ICAC has lost some of its former glory. See: <http://www.icac.org.hk>.

<sup>200</sup> A full political economy of PCCB would include an analysis of its building programme, tendering procedures, and finances. The costs per office building were closely controlled and are under TShs1bn (US\$444,000) for a district office, Shs 1.1-1.2bn for a regional office, and the seven-storey Dar headquarters cost Shs4.1bn (at the time of construction about US\$2.6m). PCCB has had a clean audit from the Public Procurement Regulatory Authority (PPRA), which examines tender documents. This may or may not be significant.

<sup>201</sup> The lack of recommendations in this review reflects the reviewers' conceptual framework: if all state institutions are vulnerable to corruption of various kinds, then no state institution has the ability to hold another accountable for

(mostly petty) corruption prosecuted successfully cannot be considered a deterrent to corruption. It is worth repeating that corruption is a structural issue, not one of individual moral turpitude, and as such can only be addressed by structural change.

Despite its poor performance, the image of PCCB presented by the government, the Bureau itself and the donors is that of a modern, effective and expanding organisation actively pursuing the objectives of both preventing and punishing corrupt acts. This has been described as 'isomorphic mimicry' (see **Appendix 2**) and defined as 'a technique of successful failure.'<sup>202</sup> By examining the available evidence, this review concludes that, far from corresponding to its positive image, PCCB has only a modest impact on corruption control in Tanzania. This conclusion is supported by the following evidence:

- The resources available to the Bureau are most inadequate given the magnitude of the 'problem' and PCCB's inclusive ('holistic') strategy regarding corruption control;
- But the limited human and financial resources available are deployed extremely inefficiently, leading to very low investigation, prosecution and conviction rates;
- Large-scale corruption goes largely unpunished while most of those prosecuted, fined and jailed have committed minor, often trivial, offences;
- The fines imposed and prison sentences handed down for minor offences are excessive;
- The amount of property confiscated or stolen funds returned to the treasury by those convicted of large-scale corruption are minimal.

How can PCCB's performance be considered a 'technique of successful failure'? Because the main actors on both government and donor sides conspire tacitly to ignore the 'obvious' weaknesses and failures listed above, focusing instead on further expansion and greater 'success' in meeting core mandates. Why do government and donors do this? Because it is in both sides' interest to present a positive image of the Bureau within the current 'dominant discourse' of good governance. There is no 'Plan B'. Both sides downplay or ignore the extremely low levels of transparency and accountability displayed by PCCB described in this review, despite their formal adherence to these principles. In addition, the lack of publicly available data on what the Bureau does with its resources, particularly outside Dar es Salaam, makes it virtually impossible for external observers to gain a good idea of actual performance.<sup>203</sup> Still, even the meagre information publicly available suggests serious under-performance.<sup>204</sup> An important issue not explored here is the extent to which PCCB serves ruling elite interests both symbolically and concretely.

A broad-based public debate is required to review the rationale for current anti-corruption policies and the role of PCCB in Tanzania's current circumstances. Such a debate might help avoid the waste of funds involved in building new offices across the country and the abuse involved in punishing petty corruption while ignoring the grand. In sum, CSOs, FBOs, the legal community and others seeking a more just and corruption-free society should take the initiative to support President Magufuli with evidence-based ideas on how to address the worst forms of corruption in practical and sustainable ways. To succeed, this initiative should include PCCB as an active partner, not as a hostile adversary.

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governance shortcomings. The most promising way forward is to engage in collective reflection on how to address an urgent public policy issues more effectively.

<sup>202</sup> Matt Andrews, Lant Pritchett, and Michael Woolcock 2017. 'Building State Capability: Evidence, Analysis, Action', Oxford Scholarship Online, February.

<sup>203</sup> The Bureau's 2014/15 Annual Report lists a large number of activities but to the reviewers' knowledge no attempt has ever been made to assess their impact.

<sup>204</sup> There is no suggestion of an *active* conspiracy between the two sides to conceal potentially embarrassing information from the public or watchdog organisations.

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# ACRONYMS

ACA	Anti-Corruption Agency
CAG	Controller and Auditor General
CCM	Chama cha Mapinduzi
CSO	Civil Society Organisation
DfID	Department for International Development
DPP	Director of Public Prosecutions
EPA	External Payments Account
GG	Good Governance
LHRC	Legal and Human Rights Centre
ICAC	Independent Commission against Corruption
IPTL	Independent Power Tanzania Ltd
LGA	Local Government Authority
LOS	List of Shame
LSRP	Legal Sector Reform Programme
NACSAP	National anti-Corruption Strategy and Action Programme
NDC	National Development Corporation
NPM	New Public Management
PCB	Prevention of Corruption Bureau
PCCB	Prevention and Combating of Corruption Bureau
PEA	Political Economy Analysis
PF	Policy Forum
REPOA	Policy Research for Development
SDG	Sustainable Development Goals
STACA	Strengthening Tanzania's Anti-Corruption Action
TI	Transparency International
TPA	Tanzania Ports Authority
TRA	Tanzania Revenue Authority
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Programme
WB	World Bank

**The performance of Tanzania's Prevention and  
Combating of Corruption Bureau**

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**PART II: APPENDICES**

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## Appendix 1: Theories and concepts for framing corruption control

Various theories and concepts have been employed by development agencies to frame the functions and performance of ACAs, including PCCB, and develop programmes and projects to build or strengthen their capacities to control corruption. **Figure A1.1** presents a rough sequencing of three common approaches.

**Figure A1.1: Corruption control viewed from different conceptual perspectives**

New Public Management (NPM)	➔	‘Good Governance’ (GG)	➔	Political Economy Analysis (PEA)
<b>Basic assumptions</b>				
Autonomous Anti-Corruption Agency (ACA) enhances the efficiency and effectiveness of CC as a component of improved PFM.		CC contributes to greater transparency and accountability of public officials and has positive impact on citizens (lower petty corruption), the economy (easier doing business) and the state		No evidence that democratic or ‘good’ governance in the western sense is a precondition for social and economic transformation. Reforms ignore underlying political forces.
<b>Key concepts</b>				
Public choice theory. Principal-agent theory. Executive Agencies.		Transparency & accountability. Zero tolerance for corruption. Petty vs grand corruption.		Incentives to rent-seeking. Political settlements. Formal vs informal norms and institution. Collective action.
<b>Types of external interventions proposed</b>				
CC programmes and projects including financial support and Technical Assistance.		CC programmes and projects including financial support and Technical Assistance.		‘Going with the grain’ project support. ‘Smart’ partnerships.
<b>Success indicators</b>				
Institutional and human capacities built.		Institutional and human capacities built. Downward accountability.		Changed incentives. Transformation.
<b>Key risk factors for interventions</b>				
Resistance to change. Low capacity.		Lack of ‘political will’. Lack of sustainability.		Failure to address underlying political and structural factors.
<b>Aid focus</b>				
Updating management systems, computerisation, PFM and civil service modernisation, independent tax authority. Expenditure tracking. Lean state. Executive agencies. Strengthening ACAs.		Creating accountable and transparent institutions, including ACCs, through capacity building. Media, parliament, civil society.		‘Going with the grain’, recognising and adapting to local institutions, the political settlement, incentives and agency.

The arrows in **Figure A1.1** suggest a clear sequencing, though there are large overlaps in practice. However, some see a progression from NPM to CC based on donors' experience. For example, Recanatini argues that:

[The NPM] approach, in part because it neglected to address the more fundamental and systematic governance reforms needed in many countries, failed to show significant progress in addressing corruption and forced governments and practitioners to rethink their approach to anti-corruption.<sup>1</sup>

The three paradigms presented above are, of course, essentially external, donor-driven products. They are not developed on the basis of dialogue with aid recipients, let alone as 'home-grown' initiatives, but rather on the basis of critical assessments of the impact of aid by the aid community itself. This helps explain the sluggish progression from one paradigm to the next. The first two are essentially ahistorical blueprint approaches based on Anglo-American practices and assumed experience. PEA, on the other hand, stresses the importance of starting from in-depth analysis of individual national contexts rather than making *a priori* assumptions on what is needed to steer aid recipients towards greater T&A and therefore a better performing state.<sup>2</sup>

Critical assessments<sup>3</sup> take time to filter through to the aid policy-makers, since nobody wants to hear the bad news ('your approach isn't working') or to change track once routines and career paths have been established. For example, as early as 2003, DfID launched an important research programme examining the underlying sources of power in an attempt to understand the 'drivers of change' in Tanzania, as a result of 'frustrating experience with Governance.'<sup>4</sup>

According to Kelsall:

... several studies came to the conclusion that the realities of power and culture in Africa posed formidable obstacles to the implementation of Good Governance, but also that the way power was exercised must change if more rapid development was to ensue.<sup>5</sup>

In sum, the application of political economy analysis (PEA) to the governance arena has added a critique of donor support to anti-corruption efforts of both NPM and GG provenance, but has not shaken the ideological tenets underpinning them, GG in particular. Two PEA-based alternatives to the relative failure of GG initiatives can be mentioned: 'good enough governance' (GEG), and 'going with the grain'. According to the Policy Practice:

'Good enough governance' refers to the minimal conditions of governance necessary to allow (sic) political and economic development to occur, contrasting with the long and growing list of normative requirements included in the traditional good governance agenda.<sup>6</sup>

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<sup>1</sup> Ibid.

<sup>2</sup> See Heather Marquette and Caryn Peiffer 2015. 'Corruption and Collective Action', Development leadership Program and U4, Research paper 32, January, for a critical discussion of the principal-agent and collective action paradigms.

<sup>3</sup> Many donor assessments are biased towards exaggerating positive and underreporting negative results.

<sup>4</sup> The research aimed at unveiling the 'formal and informal rules, power structures, vested interests and incentives' that inform state and development institutions... See Tim Kelsall 2008. 'Going with the grain in African development?' Power and Politics in Africa, Discussion Paper no. 1 June, page 2. See: <http://www.institutions-africa.org/filestream/20080623-discussion-paper-1-going-with-the-grain-in-african-development-tim-kelsall-june-2008>.

<sup>5</sup> Ibid.

<sup>6</sup> The Policy Practice 'Good Enough Governance Revisited': <https://thepolicypractice.com/library/good-enough-governance-revisited/>

Coined by Grindle, GEG challenges the GG paradigm on practical grounds, arguing that interventions should be targeted on specific country institutions:

... given the limited resources of money, time, knowledge, and human and organisational capacities, practitioners are correct in searching for the best ways to move towards better governance in a particular country context. ... the feasibility of particular interventions can be assessed by analysing the context for change and the implications of the content of the intervention being considered.<sup>7</sup>

The concept of 'going with the grain' emerged about a decade ago, and is associated with the work of Tim Kelsall, David Booth and the African Power and Politics Programme (APPP).<sup>8</sup> Kelsall's main concern is to highlight the forces in African society inhibiting or facilitating collective action and the creation of public goods, presenting a broad historical analysis that identifies pre-colonial, colonial and contemporary forces that have shaped notions of power, authority and morality. His analysis stresses the tensions existing between formal and informal institutions.

The approach taken in this report is to apply PEA to both sides of the aid equation in an attempt to understand the 'aid settlement'. The tools of PEA can help elucidate the nature of the aid relationship, including the incentives facing the principal actors, relations between political and commercial interests, and 'path dependent' political and ideological factors among aid donors as well as recipients.

## Final reflections

A large literature not touched on above concerns the negative consequences of aid and aid dependency, including its potential to incentivise corrupt practices. Policy Forum presents a typology of risk factors that encourage or discourage corruption in aid (**Figure A1.1**).

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<sup>7</sup> Merilee S. Grindle 2007. *Good Enough Governance Revisited*, Development Policy Review Volume 25, Issue 5, September, pages 533–574

<sup>8</sup> Tim Kelsall 2008, op. cit.

**Figure A1.1: Factors influencing corruption in aid**

<b>Corruption risk</b>	<b>Examples</b>	<b>Trend</b>
<b>Trends in aid commitments</b>	More aid puts pressure on local 'absorptive capacity' and accountability mechanisms.	Rising despite 2008 global crisis.
<b>Donor proliferation, aid fragmentation</b>	More public and private aid undermines coordination efforts and empowers aid recipients.	Rising rapidly.
<b>Aid composition</b>	General budget support is 'fungible' compared to project aid.	In transition to 'lower risk' scenario.
<b>Aid dependency</b>	The negative consequences of aid increase with the level of aid dependency.	Declining trend.
<b>Strategic alliances</b>	Geopolitics of terrorism and security; competition for resources and markets.	Increasing with trends in global terror and the China factor.
<b>Recipients' political economy</b>	Competitive patronage politics makes aid a good target for rent-seeking.	Rising competitive patronage.

Source: Policy Forum 2015. 'Tanzania Governance Review 2013', page 87

Proliferation means that many donors support the same sectors but in a largely uncoordinated manner (fragmentation). Over the years, the PCCB has benefited from multi-donor support, but there is no evidence to suggest that donors were competing against each other, or undermining each other's efforts. However, the continued poor performance of PCCB suggests that aid has not been able to overcome the inherent weaknesses of the Bureau. It is hard to argue that things might have been worse without aid, since aid has encouraged the expansion of the Bureau up-country to focus efforts of investigators on petty crimes, down to the ward and village level. Aid donors encouraged this trend by stressing the importance of completed cases as a performance indicator. They have praised the agency for expanding its reach.

The fact that aid dependency is declining attenuates the impact of the other risk factors and corruption risks also fall with the declining role of GBS in the aid portfolio. Nevertheless, the remaining risk factors are enough to undermine the smooth implementation of projects and contribute to their all too common failure.

A non-PEA based approach to aid effectiveness is outlined in **Appendix 2**.

## Appendix 2: A partial critique of aid: Isomorphic mimicry and premature load-bearing

**NOTE:** The work described in this appendix is useful in understanding the narratives driving many social development-related aid programmes and projects. It helps address the question: why do aid agencies continue to employ failed paradigms to address development problems? However, the analysis fails to address the issue of what drives aid recipients to endorse the repeated and predictable failure of externally-driven paradigms. Reforms targeting greater 'aid effectiveness' are derived entirely from reflections on what aid donors need to do differently, without problematising the aid relationship itself. As a result, 'aid effectiveness' narratives hardly involve aid recipients at all.

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Pritchett et al. (2012) employ two concepts that help inform thinking on aid-driven institution-building in developing countries. 'Isomorphic mimicry' flags the hollowness of formal organisations that aspire to perform complex functions for which they lack human, organisational and financial capacity, while 'premature load-bearing' points to over-optimistic efforts to empower these organisations to perform those functions.<sup>9</sup> Pritchett et al. argue:

'When isomorphic mimicry is a sustainable, if not optimal, organizational strategy it can result in what we call a 'capability trap', in which the *appearance* of development activity masks the lack of *functional* development activity. Such a trap emerges when agents of development inadvertently promote and solidify isomorphic mimicry by rewarding organizations that adopt 'modern' or 'best practice' forms or notional policies, even when these are not followed up by, or are even consistent with, *actual functional performance* in the context of a given organization's actual capability for policy implementation. These carbon-copy organizations are then asked to perform tasks that are too complex and too burdensome, too soon and too often, a process we call premature load bearing.'<sup>10</sup>

Pritchett et al. then go on to argue that increasing capabilities through training (of 'health workers, teachers, procurement officers, policemen, regulators, lawyers') will not succeed in improving performance 'if the organization [in which these cadres work] is under excessive stress due to the attempt to implement over-ambitious policies..'.<sup>11</sup>

Though the above may be true, we propose a different approach to institutional failure, one calling on other strands of social analysis. In particular, we intend to stress active and goal-oriented *agency* on the part of the beneficiary organisations, the OoA we intend to examine,

<sup>9</sup> Lant Pritchett, Michael Woolcock and Matt Andrews 2012. 'Looking Like a State: Techniques of Persistent Failure in State Capability for Implementation', WIDER Working Paper No. 2012/63, July. <https://www.wider.unu.edu/sites/default/files/wp2012-063.pdf>. 'We distinguish between institutional form (what institutions 'look like') and function (what they actually 'do'), and argue that their conflation has been one of the most ubiquitous but pernicious mistakes of development policy over the last sixty years, and is manifest most clearly in widespread implementation failure.'

<sup>10</sup> Pritchett et al., op. cit., page 17, emphasis added. The list should also include 'too politically sensitive' and 'too challenging to elite interests' for agencies concerned with financial management, procurement and so on.

<sup>11</sup> Ibid.

and the nature of the norms of accountability that inhere in the hierarchies of social control in which they are embedded.

In some cases, the aided entities are entirely the creation of donor agencies; in others they already existed but have been upgraded and 'strengthened' through aid. In all cases, we suggest, the imperative to protect the ruling elite from the consequences of more transparent procedures is the underlying rationale determining the outcome of the reform programmes.

'Isomorphic mimicry' in our formulation involves upgrading the formal functional capabilities of organisations--new headquarters, more office space, up-country expansion, more and better-trained staff, modern computer systems and equipment, vehicles...--without assuring the institutional autonomy that would make a qualitative difference in accountability.

Why do we consider this only a partial critique of aid? The analytical framework described above does not highlight recipient agency as a relevant factor, except as a spoiler, rather than an active player in creating the effectiveness myth. Both aid donors and recipients are motivated to nourish the myth of effectiveness through a desire to maintain aid flows. Pritchett et al. avoid or ignore the politics implicit at the interface of aid.

According to Andrews (2008):<sup>12</sup>

'Effective government matters, but what is it? Good governance indicators go some way to provide a definition, but how much do they say about what effectiveness is, why this is so, and how it matters to development? ... much work on the good governance agenda suggests a one-best-way model, ostensibly of an idyllic, developed country government: Sweden or Denmark on a good day, perhaps. The implied model lacks consistency, however, seems inappropriate for use in the development dialogue and is not easily replicated. In short, it resembles a set of well-meaning but problematic proverbs. The good governance picture of effective government is not only of limited use in development policy but also threatens to promote dangerous isomorphism, institutional dualism and "flailing states". It imposes an inappropriate model of government that "kicks away the ladder" that today's effective governments climbed to reach their current states. The model's major weakness lies in the lack of an effective underlying theoretical framework to assist in understanding government roles and structures in development. A framework is needed before we measure government effectiveness or propose specific models of what government should look like. Given the evidence of multiple states of development, the idea of a one-best-way model actually seems very problematic.'

## Final reflections

Various donor-driven PFM and related reforms in Tanzania have delivered significant results in terms of enhancing functional capacities and performance. For example, the establishment of the Tanzania Revenue Authority (TRA) brought about a significant increase in tax collection as a percentage of GDP. Aid also improved the performance of the Controller and Auditor General (CAG) in terms of the coverage of annual audits (central and local government, parastatals, other government agencies, and aid-funded projects), their prompt publication and therefore their utility for the work of parliamentary committees, and their public availability (five annual reports uploaded to the CAG website). Other examples where donor money and technical assistance have enhanced performance include the Public Procurement Regulatory

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<sup>12</sup> Andrews, M. 2008. 'The Good Governance Agenda: Beyond Indicators without Theory'. Oxford Development Studies, 36(4): 379-407.

Authority (PPRA) and PCCB. Last, the Public Sector Reform Programme (PSRP) is credited with improving the efficiency of central government budgeting and spending processes.<sup>13</sup>

Do these examples of apparently successful aid challenge the reality of isomorphic mimicry and premature load-bearing?

They do not. Behind the apparent successes recorded are concerns that: (1) the organisations of accountability listed are experiencing budgetary crises that prevent them from maintaining their performance (sustainability); (2) that their work does not lead to significant sanctions (accountability) or behavioural change; and that (3) the malpractices that they reveal are only a fraction of all malpractices. For example, the majority of ministries, agencies, parastatals, LGAs and donor projects audited by the CAG receive ‘unqualified’ opinions when it is widely believed that corruption and waste are endemic. Though the research has not yet been undertaken to substantiate the point, it is unlikely that corruption, including public procurement, and waste of public resources, have been seriously affected by any of the NPM-inspired donor programmes, despite their initial successes.<sup>14</sup>

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<sup>13</sup> See Bofin and Kobb 2012 for a summary analysis.

<sup>14</sup> These points are elaborated in various editions of the Tanzania Governance Review, for example, ‘TGR 2015-16: From Kikwete to Magufuli: Break with the past or more of the same?’, Chapter 2.

## Appendix 3: A DfID perspective on aid to PCCB

“One of the challenges that I would identify for Tanzania ... is to ensure that our ability to continue to support you ... is not compromised by the taint of corruption.”<sup>15</sup>  
‘Anticorruption Commissions have, with one or two exceptions, been a disappointment.’<sup>16</sup>  
Anticorruption policies in most countries ‘have not been overly successful.’<sup>17</sup>

### Main points

- Since the PCCA was passed in 2007, donors, including DFID, have accepted the *de facto* executive control of the agency and focused their efforts on capacity building through technical assistance;
- Though DFID and other agencies have incorporated PEA in their programming, they fall back on NPM/principal-agent paradigms in their support to PCCB;
- Consequently, PCCB’s failure to prosecute grand corruption cases is attributed to ‘lack of political will’ rather than to the self-interested exercise of executive control;
- Donor concerns with transparency and accountability in government have not informed their support for PCCB, where these are major shortcomings;
- PCCB has not been a major aid recipient compared to other agencies of accountability, for example, the NAO/CAG or PPRA;
- Neither DFID nor other donor agencies have attempted to assess PCCB’s performance in terms of efficiency (value for money) or equity (who gets caught and punished) even though PCCB’s own published monitoring data allow for such analysis;
- Donors have not questioned PCCB’s failure to prioritise its activities nor its expansion outside Dar es Salaam despite the efficiency and equity implications (heavy punishment for minor offenders, lenient treatment of the most corrupt).

DFID is the major bilateral donor to PCCB.<sup>18</sup> This appendix looks at recent DFID project activities and draws some conclusions that might have wider implications for understanding the nature of the donor-recipient interface. It is not intended to cover all issues relevant to this interface, however, or to claim that British Aid is particularly vulnerable to the pitfalls of the aid relationship discussed further in **Appendix 5**.

<sup>15</sup> Anthony Tambwe and Ray Naluyaga 2007. ‘BoT scandals worry Britain’, *The African*, 28 November. The quote is from British Secretary of State for International Development, Douglas Alexander, quoted by Policy Forum 2008. ‘Tanzania Governance Review 2006-07’, page 99.

<sup>16</sup> Robert Williams and Alan Doig 2007. ‘Achieving Success and Avoiding Failure in Anti-Corruption Commissions: Developing the Role of Donors’, Bergen: Chr. Michelsen Institute, U4 Brief 2007:1, page 1.

<sup>17</sup> Karen Hussmann, Hannes Hechler 2008. ‘Anti-corruption Policy Making in Practice: Implications for Implementing UNCAC’, Bergen: Chr. Michelsen Institute, U4 Brief 2008:1. See also: William De Maria 2010. ‘The Failure of the African Anti-Corruption Effort: Lessons for Managers’, *International Journal of Management*, Vol. 27, Issue 1.

<sup>18</sup> Globally, DFID spent GBP36m on anti-corruption initiatives between 2004-09, compared to GBP 234m on political systems and elections and GBP 161m on security and justice. See: DfID 2011. ‘2004-09 Governance Portfolio Review Summary’, July.

Most of the literature on PFM and CC in Tanzania is framed, explicitly or implicitly, within NPM and GG paradigms (**Appendix 1**).<sup>19</sup> Much donor commentary on PCCB focuses on capacity building and training, with little reference to wider issues of 'bottom-up' accountability through GG-type initiatives. For example, DfID's main approach to improving PCCB's performance in recent years has been to channel aid resources into improving co-operation and collaboration between PCCB, the DPP, CAG, PPRA and the Ethics Secretariat rather than to press, for example, for accountability to parliament rather than State House, which would require a change in the PCCA. This focus on the technical/feasible rather than the political/difficult is an admission that executive control of the agency is likely to continue – arguably a realistic assumption.

For a decade or more, NPM and GG-inspired projects have been criticised by political economists and others who have examined the underlying cultural, political and economic drivers of state performance, including corruption control. For example, an influential paper by David Booth led DfID to reformulate its 'theory of change' for an anti-corruption project in Tanzania by incorporating PEA:

'The previous theory had seen corruption in Tanzania as largely a 'principal-agent' problem in which corruption is an isolated form of wrongdoing in a largely non-corrupt system. The 2013 revision introduced the concept of the 'collective action problem' in which the system provides incentives against integrity, and corruption is not an isolated issue or act by one person.'<sup>20</sup>

It is unclear whether this change made any difference to the project during the second half of its life. It is now routine for donors to include a PEA for governance projects across sectors, but the lessons drawn from these exercises concerning the underlying causes of corruption and mal-governance are widely ignored during project implementation.

Overlaps between NPM and GG reflect the slow speed at which reforms are implemented. Inertial forces help prevent prompt policy changes being adopted once vested interests have emerged around a particular approach. For example, NACSAP (the National Anti-Corruption Strategy and Action Plan) was a donor-financed spin-off of the Warioba Report (1996) containing elements of NPM (self-monitoring and reporting, coordinated by PCCB) and GG (the involvement of civil society) (**Box A3.1**).

The 'Action Plan' continues to date (NACSAP III) despite little evidence that it has had any significant traction in the 'war on corruption'.

DFID has been involved in a number of initiatives designed to combat corruption in Tanzania. The £10m Strengthening Tanzania's Anti-Corruption Action programme (STACA, 2012–2017) followed the £6.3m 'Tackling Corruption Programme 2008-2012' and included the PCCB as part of a larger effort to strengthen Tanzania's judiciary. A 2017 Project Completion Review claimed that [STACA] led to a fourfold increase in the number of corruption convictions.<sup>21</sup> Earlier reviews identified serious issues. Challenges highlighted in a 2014 review include the following:<sup>22</sup>

<sup>19</sup> <https://www.slideshare.net/nayanarenu/good-governance-6268274>.

<sup>20</sup> Booth, D., 2012. 'Development as a collective action problem: Addressing the real challenges of African governance', Synthesis report of the Africa Power and Politics Programme, Overseas Development Institute. The project involved was STACA.

<sup>21</sup> DfID 2017. 'Project Completion Review', p1. Assuming they can be attributed to STACA rather than other causes, most of these additional convictions are for petty offences. See main text for the moral hazard involved in pursuing the 'minnows' while ignoring the sharks.

<sup>22</sup> DFID 2014 'Strengthening Tanzania's Anti-Corruption Action: Annual Review.' See: <https://devtracker.dfid.gov.uk/projects/GB-1-202770/documents>, page 11.

### Box A3.1: PCCB and NACSAP

PCCB was one of the key implementers of NACSAPI and II. NACSAP II was implemented between 2008-11. Financial shortfalls and late disbursement of funds (UNDP was the main donor) undermined the effectiveness of the programme: '[The] effectiveness of the programme was ... constrained by inadequate resources, slow funds disbursement, low quality of reports, ad-hoc planning and implementation and duplication of efforts by other development partners with state and non-state actors.'<sup>23</sup> In addition, 'The ineffectiveness of NACSAP in achieving synergies is also due to duplication of efforts and parallel funding sources and lack of harmonious reporting requirements by international development partners on similar activities.'<sup>24</sup> Lack of a monitoring framework made it 'nearly impossible to accurately assess the impact of the NACSAP II.'<sup>25</sup> Overall, however, the evaluation found that NACSAPII was effective in that it addressed the 'root causes' of corruption.<sup>26</sup>

'The programme's most important challenge is the mixed political will to fight corruption. There is a general will to prosecute (and be seen to prosecute) corruption cases; this has driven the increase in capacity of PCCB over recent years and its extension into rural areas.'

The 'general will' seems limited to prosecuting a growing number of cases of petty corruption. Defining the increase of PCCB's capacity to include the extension of its activities in rural areas is another way of saying that 'rolling-out' PCCB's reach outside Dar and other urban centres will facilitate the prosecution of petty corruption.

DfID identified a number of risks facing STATA.

Risk 6: 'Corruption is uncovered in the programme, undermining its credibility and forcing DFID to suspend funding' was rated as 'High'

The implication is that the agency entrusted to combat corruption is itself vulnerable to corruption. The 'High' risk assessment was the result of poor audit quality for donor disbursements. The main text (**Chapter 5**) reports on the arrest in 2017 of PCCB's former chief accountant for acquiring houses, land, vehicles and other property worth an estimated Shs3.8bn throughout the country, suggesting that DFID's rating of the corruption risk was justified. Despite this evidence of egregious corruption inside PCCB, DFID and other donors continue with projects to support the agency. This constitutes 'moral hazard' and poses the age-old question: 'Who will guard the guardians?'<sup>27</sup>

As well as the corruption risk, DFID was also concerned with the issue of 'capacity building'.

Risk 7: 'Risk that capacity building initiatives are not effective in improving capacity' was also rated 'High'

<sup>23</sup> United Republic of Tanzania, United Nations Development Programme 2012. 'Evaluation of the enhanced National Anti-corruption Strategy and Action Plan –II (NACSAP II) 2008-2011 for the [United] Republic of Tanzania', September.

<sup>24</sup> In addition: 'Poor coordination of NACSAP II reports and budgets by GGCU [Good Governance Co-ordination Unit] contributed to inefficiencies and delays in implementation.' URT/UNDP op. cit., page 4.

<sup>25</sup> Ibid., page 4.

<sup>26</sup> Ibid., page 3.

<sup>27</sup> This also suggests that it is wise for the Tanzanian state not to accord independence to the Bureau to seize suspects' property, which might easily lead to extortion.

If correct, this rating suggests that the core rationale for donor support to PCCB—capacity building—is not being realised, suggesting the need for a radical rethink of what project support to the agency is supposed to achieve.

Critical points from another review,<sup>28</sup> discussed further in the main report, especially **Chapter 5**, include the following:

‘...more work is needed to develop a shared understanding of the needs of the Bureau so that donors can provide appropriate support in technical expertise and knowledge.’

‘... success in concluding grand corruption prosecutions has so far eluded it. ... there has not been a single instance of successfully concluded grand corruption prosecution since independence in 1961.’

‘...PCCB’s operational constraints also stem from its limited technical expertise to handle complex issues.’

‘... PCCB has not been ready to accept the donors’ proposed technical expertise ... The reasons for this appear to relate to an inadequate shared understanding of the needs of the PCCB.’

‘...the programme underestimated how difficult, complex and time-consuming it would be to change collaborative practices among law enforcement institutions.’<sup>29</sup>

DFID has also been concerned with inter-agency cooperation.

‘... improving the enforcement of the criminal law requires not only that each agency in the criminal justice chain operate efficiently and effectively but that they all work together closely.’<sup>30</sup>

DFID and other donors’ views have not changed very much over time.<sup>31</sup> The concern with the independence of the agency (whether PCB or PCCB) to investigate and bring complex cases to court is nothing new, nor its lack of resources to make more than a dent in the incidence of corruption within the central and local government. U4’s 2005 evaluation of PCB concludes:

‘Overall the PCB was regarded as under-resourced, under-powered and without the capability to investigate administrative and political corruption efficiently and effectively and ultimately too close to the Government to investigate major political corruption with sufficient commitment. Questions were thus raised as to the PCB’s *capacity, capability and commitment* to deal with corruption at both ends of the spectrum.’ [There is] ‘ a perception that it lacks the resources to investigate petty corruption at the local level and also is itself in need of more rigorous supervision in order to guarantee its own organisational integrity and in turn maintain its authority to challenge political corruption at the grand level.’<sup>32</sup>

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<sup>28</sup> DFID 2014 ‘Strengthening Tanzania’s Anti-Corruption Action: Annual Review’, pp11-16.

<sup>29</sup> One key activity was improving communications between DPP PCCB, and others, but this proved difficult.

<sup>30</sup> DFID 2016. ‘Strengthening Tanzania’s Anti-Corruption Action (STACA) Programme: A Case Study Evaluation’, REPOA and CMI, March.

<sup>31</sup> See U4 2005. ‘Measuring ‘success’ in five African Anti-Corruption Commissions- the cases of Ghana, Malawi, Tanzania, Uganda & Zambia’, Alan Doig, David Watt & Robert Williams, May, pages 70-1. This review concluded that ‘PCB’s relationship to President’s Office serves to constrain its authority and overall operational effectiveness;’ and ‘PCB is further constrained by its level of commitment and resources to implement Tanzania’s anti-corruption legislation.’

<sup>32</sup> U4 op. cit., pp 68-9.

A 1998 World Bank review of PCB mentions ‘the weak investigative skills of the PCB.’<sup>33</sup> The concern with political control and low capacity to investigate petty corruption are recurrent themes. The 2007 legislation allowed the *status quo ante* to continue regarding relations between the political centre and the PCB/PCCB, despite which donors continued to launch new projects.

It is generally accepted that an ACA that is led by presidential appointees, has no wider accountability constraints through a respected board, parliament or civil engagement, and does not have independent prosecutorial powers, cannot be expected to achieve its official mission successfully.<sup>34</sup> An unaccountable ACA cannot be expected to uphold high standards of integrity in a context of systemic corruption. Why then do bilateral and multilateral donors continue to fund PCCB through project assistance? Does continuing to provide project aid to an agency itself considered vulnerable to corruption not constitute moral hazard? The final chapter of the report attempts to grapple with this dilemma.

Until the ruling elite is prepared (or forced) to empower an autonomous ACA that could potentially investigate their own wealth and involvement in corrupt deals, we should not expect any breakthroughs on this front. Aid agencies have not been able to leverage radical change through projects supporting PCCB’s core activities.

### Some final statements and comments

‘Available research suggests that there is a limited likelihood of DPs [Development Partners] influencing wider corruption trends. Money cannot buy policy reform, and domestic political considerations are the prime factors determining reforms.’<sup>35</sup>

‘In the absence of strong global evidence on the effectiveness of anti-corruption efforts, we would expect DFID to make extensive efforts of its own to understand corruption in its priority countries and to *justify the anti-corruption measures it is undertaking.*’

‘... much of DFID’s analysis of corruption is based on limited political economy analyses and fiduciary risk assessments...’<sup>36</sup>

This latter comment does not apply to the Tanzanian case. More than a decade ago, DfID Tanzania made the following analysis:

[Tanzanian] ‘politics ... relies ... little on the impersonal “formal” rules of the modern state.’ Informality pre-empts ‘attempts at bringing greater public accountability and transparency to public policy and ... administration ... and constrains official reform efforts. Dealing with these issues is a *daunting challenge* for donors since so much of their efforts to improve governance encounter a *political system built around clientelism*. Conventional approaches ... that focus on strengthening formal institutions *will not bring about rapid change* ... because [clientelism] is the very backbone ... on which the country’s power structure depends.’<sup>37</sup>

<sup>33</sup> World Bank 1998. ‘Support to the Government of Tanzania’s Anti-corruption Program’, page 5. At the time, PCB had only 44 staff, with only three lawyers. (page 17).

<sup>34</sup> Jeremy Pope and Frank Vogl 2000. ‘Making Anticorruption Agencies More Effective’, Finance and Development, June, Volume 37, Number 2.

<sup>35</sup> U4 2013. ‘Donor anti-corruption strategies: Learning from implementation’, page xi.

<sup>36</sup> Independent Commission for Aid Impact 2014. ‘DFID’s Approach to Anti-Corruption and its Impact on the Poor’, pp 26-27. See: <https://icai.independent.gov.uk/wp-content/uploads/DFIDs-Approach-to-Anti-Corruption-and-its-Impact-on-the-Poor-FINAL.pdf>.

<sup>37</sup> DFID Tanzania 2007. ‘Annual statement of progress relating to the fiduciary risk associated with the provision of poverty reduction budget support in Tanzania’, Dar es Salaam, May, cited by Policy Forum 2009. ‘Tanzania Governance Review 2006-07’, page 62, emphasis added.

A Tanzanian governance specialist argued that PEA:

*'is fundamentally incompatible* with a technical approach to governance - which ends up being the limit of what donors feel they can do. A realisation that clientelist politics is dominant does not help you to design a programme of assistance which is within the limits of acceptance to the Government of the day.'

This informant explains the unusually forthright statement as follows: '... usually these statements get filtered out but occasionally, e.g. in the wake of a big scandal, DFID feels bold enough to say what the politicians have known all along.'<sup>38</sup>

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<sup>38</sup> Email exchange, April 2018. Emphasis added.

## Appendix 4: Corruption within the Tanzanian judiciary<sup>39</sup>

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Legal and Human Rights Centre



The High Court of Tanzania, Dar es Salaam © Daily News

### A4.1 Introduction

The Constitution of the United Republic of Tanzania of 1977 gives the judiciary the mandate to be the final decision maker in the dispensation of justice in the country.<sup>40</sup> In doing so, the judiciary must adhere to several principles, including impartiality regardless of one's status in the community; refrain from delaying justice without reasonable ground; ensuring effective remedy for victims; and dispensing justice without being tied up with technicalities which may obstruct the dispensation of justice.<sup>41</sup> The Constitution and other laws establish five courts, namely the Court of Appeal, the High Court, the resident magistrate court, district court and primary court. The High Court has several divisions, including commercial court, land court, labour court and recently established anti-corruption court. The laws also establish the Commission for Mediation and Arbitration (CMA) and various tribunals at district and ward levels. Freedom of the judiciary is guaranteed under Article 107B of the Constitution.

<sup>39</sup> This paper was commissioned as part of this research project. It reflects the views of the author, not those of the Legal and Human Rights Centre.

<sup>40</sup> See Article 1017A of the Constitution of the United Republic of Tanzania, 1977.

<sup>41</sup> *Ibid*, Article 107A (2).

Tanzania judiciary is faced with a number of challenges which hinder effective delivery of justice.<sup>42</sup> These include shortage of human resources such as judges, magistrates and court clerks; shortage of facilities such as court buildings and offices; and corruption. These challenges cause delays in dispensation of justice or deny justice altogether.

There are two types of judicial corruption, the first being political interference in judicial processes, whereby judges, magistrates and other judicial officers may be threatened, intimidated or bribed to make favourable decisions.<sup>43</sup> This type of judicial corruption may also manifest through manipulation of appointment of key judicial personnel such as judges and magistrates and their remuneration.<sup>44</sup> The second type of judicial corruption is bribery, whereby corrupt judges and other judicial officers may be approached with bribes or extort bribe or 'fees' to facilitate, expedite or delay cases.<sup>45</sup> Low opinion of the judicial officers may also prompt clients/customers to resort to bribing them to achieve justice or win cases.<sup>46</sup>

Factors influencing judicial corruption include judicial appointments, terms and conditions, accountability and discipline and transparency. Judges and magistrates may not be appointed based on merit alone, which is a common scenario across public sectors in Africa.<sup>47</sup> Poor remuneration and working conditions create an environment of bribery among judicial personnel, while lack of media and CSOs as watchdogs of judicial activity also presents a problem.

#### **A4.2 Prevalence of judicial corruption in Tanzania**

The judiciary has been cited over the years as one of the sectors tainted by corruption, alongside the police force. Corruption is pervasive within the judicial system, including among judges, magistrates and court clerks, with the situation being worse in lower courts (resident magistrate, district and primary courts). Judges, magistrates and other court officers have been known to ask for and accept bribes for them to make favourable court decisions for individuals (especially those with political or economic influence) and companies. Court clerks have often been mentioned to seek and receive bribes, sometimes on behalf of magistrates or judges, in order to expedite case files. Court processes, bureaucracy and delays prompt people to bribe judicial officials and their negative perception of the judiciary does not help either.

According to a study conducted by PCCB in 2015, judicial corruption is widespread within all levels of the judicial system, but is more prevalent in lower courts,<sup>48</sup> which are Resident Magistrate Court, District Court and Primary. Ignorance of the law and court procedures among Tanzanians, as well as not knowing their rights, is a big challenge, leaving them vulnerable to corrupt judicial officers, who use the opportunity to solicit bribes.

The Legal and Human Rights Centre (LHRC)<sup>49</sup> interaction with legal aid clients has also revealed that lack of legal knowledge among majority members of the public creates a conducive environment for judicial officers to solicit bribes from them. Since knowledge levels are even lower in rural areas, where access to judicial services is even a bigger problem,

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<sup>42</sup> For more on the challenges in the judiciary see PCCB report titled "Review of Corruption in High Risk and High Impact Sectors" of December 2015.

<sup>43</sup> Mary Noel Pepys 'Corruption within the judiciary: causes and remedies' in Transparency International (2007), *Global Corruption Report 2007: Corruption in Judicial Systems* (Cambridge University Press, New York, 2007), p. xxii, available at [http://cdn01.pucp.education/idehpucp/wp-content/uploads/2017/06/27151710/estadistica001\\_en.pdf](http://cdn01.pucp.education/idehpucp/wp-content/uploads/2017/06/27151710/estadistica001_en.pdf), accessed 22<sup>nd</sup> March 2018.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid, p. xxiv.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid. p. xxiv.

<sup>48</sup> *Prevention and Combating of Corruption Bureau*, Review of Corruption in High Risk and High Impact Sectors, December 2015, p. 49.

<sup>49</sup> LHRC is leading human rights NGO that was established in 1995 and operates in Tanzania Mainland. It monitors human rights situation in Tanzania, engages in advocacy and provides legal aid to members of the public who cannot afford legal representation.

residents of rural areas are thus more susceptible to judicial corruption. Majority of them have easier access to the lowest court, the Primary Court; and according to the PCCB study, judicial officers involved in soliciting bribes from people who access judicial services at this level include magistrates, court clerks, court assessors and police officers.<sup>50</sup> Poor working environment, including dilapidated office premises and poor filing system, are more likely to encourage the culture of corruption.<sup>51</sup>

Some of the clients attended by LHRC and provided with legal aid complain or state that they are made to pay for court documents that are free or pay more than the amount legally required. Through its interaction with the judiciary, LHRC has also noted with concern the tendency of postponing cases at the request of attorneys, which may suggest a corrupt environment for them to attend sessions at other courts, delaying dispensation of justice for their personal gain in the process. It has been claimed that these attorneys take advantage of 'arrangements' they have with magistrates and judges. In some cases, investigators and attorneys tend to bribe magistrates and judges in order to boost their fame. Magistrates and judges are also known to abuse their discretionary powers to intimidate customers or accused persons, postpone cases without justifiable reasons or even deny bail unfairly, doing all these to solicit bribes.<sup>52</sup> They are also known to take advantage of backlog of cases to demand bribes in order to 'fast-track' cases or slow down a trial.

Most court assessors are known to be corrupt in primary courts, where the majority among the court assessors and the magistrate decide who wins a case. As a result, the option to secure a case win is usually to bribe court assessors.<sup>53</sup>

Two investigative journalists, Kizito Makoye and Kalunde Jamal, illustrate corruption scenarios mentioned above and reveal the extent of corruption in Tanzania. According to Kizito Makoye, from 2007 to 2012 at least four magistrates were charged by PCCB with receiving bribes, noting that determination of guilt or innocence depends on how much money a magistrate can pocket.<sup>54</sup> He goes on to highlight a number of corruption incidents involving magistrates as follows:

- Arrest of Pamela Kalala, a magistrate at Ilala District Court in Dar es Salaam, accused of soliciting bribes totaling Tshs. 3 million and receiving advance payment of Tshs. 900,000 from a relative of an accused person to decide in the accused's favour;
- Arrest of Jamila Nzota, a district court magistrate, accused in December 2007 of soliciting Tshs. 700,000 in exchange for preferential treatment in a civil case. She was found guilty and imprisoned for three years;
- Prosecution of Adolf Mahai, Kisutu Resident Magistrate, and Ndovela Kihenga, Primary Court Magistrate, for receiving bribes in 2007 and 2011 respectively; and
- A woman and her husband seeking divorce at Sinza Primary Court were asked for Tshs. 5,000 by a security guard to be taken to a magistrate, Tshs. 20,000, instead of Tshs. 2,000 required by law, by a court clerk to open case file, Tshs. 5,000 by a court clerk again to correct the case file she deliberately put wrong information on, and Tshs. 200,000 by the magistrate 'for the service.' They paid all these bribes to finally get a divorce.

Kalunde Jamal notes that an investigation conducted by the *Mwananchi* newspaper in 2015 revealed a network of corruption in Dar es Salaam involving fake lawyers, police and

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<sup>50</sup> Ibid.

<sup>51</sup> PCCB 2015. 'Review of Corruption in High Risk and High Impact Sectors', December, p50.

<sup>52</sup> PCCB op. cit. p55.

<sup>53</sup> PCCB op. cit. p56.

<sup>54</sup> Kizito Makoye, 'How bribery cripples justice in Tanzania Courts', Thomson Reuters Foundation, November 2012, available at <http://news.trust.org/item/?map=how-bribery-cripples-justice-in-tanzania-courts>, accessed 23<sup>rd</sup> March 2018.

magistrates.<sup>55</sup> She indicates that the network hinder proper dispensation of justice by deliberately delaying cases, promising to ensure release of remandees, soliciting bribes to 'facilitate' bail and persuading settlement of case out of court.<sup>56</sup> Those who are reluctant to pay money 'to fast-track a case' are usually not given adequate cooperation, including being told to come for their cases or those of their relatives early in the morning while case hearing is in the evening or have been postponed.<sup>57</sup> She also highlights a number of incidents involving soliciting bribes by judicial personnel as follows:

- Muhidini Ngulumwa was asked by a court assessor for Tshs. 500,000 to fast-track his case (he was accused), Tshs. 200,000 of which was to be given to a magistrate and the rest to be divided among court assessors. He refused to pay the bribe and his case keeps on being postponed as he is informed every time that the complainant 'has an emergency.' He wonders why the complainant does not appear in court on more than five occasions while he keeps on spending his money on fare to and from the court;
- Kuruthumu Majjid filed a civil case against former business partner at Magomeni Primary Court, having paid the police Tsh100,000 to arrest the partner. The partner was released through court bail but the case has been postponed more than four times in 13 months;
- Abdallah Mjata filed a civil case at Mbagala-Kizuiani Primary Court but every time he goes there he is told the investigation is not yet complete and court assessors approached him to convince him to settle the matter with the respondent outside the court;
- Halima Abdan, whose relative was remanded at Segerea Prison, was asked for bribes by a prison officer, court assessor and magistrate totaling more than Tshs. 1.2 million. But the relative was not released and the magistrate was later not reachable;
- Laizer Kaanan was asked for Tshs. 600,000 at Kariakoo Primary Court to facilitate release of his relative; and
- Abdallah Mpondela, a resident of Lindi, came to Dar es Salaam to seek the release of his relative from Segerea Prison, whereby he was asked for Tshs. 980,000 by the court assessors and magistrate to secure his release.

A 2016 human rights report on Tanzania by the United States' Department of State indicates that the judiciary continued to be underfunded, corrupt and inefficient.<sup>58</sup> The report further indicates that court clerks continued to solicit bribes to open or tamper with case files and magistrates of lower courts occasionally accepting bribes to deliver favourable decisions.<sup>59</sup> It is not a surprise, therefore, that a more recent survey on corruption in the public sector has indicated that members of the public still see the institutions of police and judiciary as the most corrupt.<sup>60</sup>

#### **A4.3 Impact of judicial corruption on the delivery of justice**

Judiciary's ability to deliver justice is compromised by corruption within and outside it. On the one hand, grand or political corruption means shortage of funds on the part of the Government to adequately finance its institutions, including the judiciary, hence the shortages. On the other hand, judicial corruption means access to justice is a mission impossible, especially for the majority poor.

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<sup>55</sup> Kalunde Jamal 2015. 'Mtandao wa rushwa mahakamani huu hapa' Mwananchi, 21 July, available at: <http://www.mwananchi.co.tz/habari/habari-ya-ndani/Mtandao-wa-rushwa-mahakamani-huu-hapa-/1724700-2800928-format-xhtml-54oj7/index.html>, accessed 23<sup>rd</sup> March 2018.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> TANZANIA 2016 HUMAN RIGHTS REPORT, available at: <https://www.state.gov/documents/organization/265522.pdf>.

<sup>59</sup> Ibid.

<sup>60</sup> LHRC & ZLSC 2018. 'Tanzania Human Rights Report 2017'.

Consequently, judicial corruption results into miscarriage of justice, tainting the image of the judiciary as an institution in the process. LHRC's annual human rights reports indicate that corruption within the justice system is a major reason the public has little faith in the police and judiciary, contributing to mob violence.<sup>61</sup>

#### **A4.4 Conclusion**

In almost a decade now, the judiciary is still perceived to be among the most corrupt institutions, together with the police force. In order to address judicial corruption, the Government must take deliberate measures to reform the judiciary. These measures include creating an independent oversight body to oversee appointments of judicial personnel, which will ensure appointment based on merit; consulting CSOs on merits of judicial service candidates; and judicial salaries should be fair and personnel should be promoted in accordance with the labour laws. CSOs and the media should be allowed more access to judicial activity to expose bias and corruption.

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<sup>61</sup> See LHRC & ZLSC 2017. 'Tanzania Human Rights Report 2016'; Tanzania Civil and Political Rights Perceptions Index 2016; and LHRC 2017. 'Bi-Annual Human Rights Report 2017', all available at [www.humanrights.or.tz](http://www.humanrights.or.tz)

## Appendix 5: The aid settlement

Main points for the busy reader:

- The ‘aid settlement’ (AS) is the tacit agreement between aid donors and recipients to perpetuate the aid relationship as long as it meets certain minimum conditions;
- Disbursement imperatives make it unlikely that donors will look too closely for evidence of waste or corruption in all the programmes and projects they finance;
- Western donors no longer enjoy the policy leverage that high levels of aid dependence once afforded them, though they maintain a strong presence in GG programmes and projects;
- The rise of China as a major player reduces pressures on recipients of aid to accept governance conditionalities;
- Ruling elites instrumentalise aid in support of good governance to protect and advance their own governance strategies.

### A5.1 Introduction

This appendix outlines the concept of the aid settlement (AS). The AS is not specific to anti-corruption or GG approaches to social development, though different types of aid (budget support, projects) have different dynamics. There are also differences between the UN system, lending agencies like the World Bank and African Development Bank, and bilateral donors that provide mostly grant aid. In **Chapter 6** the concept is applied to the PCCB.<sup>62</sup> The focus is on western aid from bilateral and multilateral sources. The AS helps us understand why certain forms of aid continue more or less uninterrupted over decades despite routine failure in meeting their stated objectives. Like political settlements, the AS may be more or less stable depending on a number of structural, historical and contingent factors. A number of the issues at stake are the subject of public discussion and bargaining while others are in the realm of the informal and the unstated.

The ‘aid settlement’ (AS) is the tacit agreement between aid donors and recipients to perpetuate the aid relationship as long as it meets certain minimum conditions. As with political settlements (PS), the AS can be stable or unstable, confrontational or harmonious. Unlike the PS, however, the AS cannot be violent, since it does not entail competition for the control of a state or territory. The AC relies on diplomacy and compromise, not on force and confrontation. The AC refers to development aid and not to humanitarian, emergency or post-conflict assistance, where different dynamics are at play. The AC attempts to explain why certain forms of aid continue relatively unchanged over extended periods despite their repeated failure to achieve their stated goals.

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<sup>62</sup> Disclaimer: The AC does not constitute a blanket dismissal of the development aid project per se and should not be seen as aligning with the views that foreign aid should be radically reduced or abandoned altogether. It does, however, constitute a radical critique of the entire ‘western’ approach to democratisation and good governance as the basic tenets of this approach.

It is useful to approach the AS from both 'supply' and 'demand' sides before attempting to define the interface.

## A5.2 The supply side of the AS

As they grow, complex institutions of all types develop self-interests that come to resist external pressures, including democratic processes, to control or reform them. This phenomenon has been commented on by social scientists for over a century.<sup>63</sup> Development aid agencies constitute formal institutions of this type. In development aid, the United Nations and its specialist agencies constitute the most obvious example. Although bilateral aid agencies can be more easily reined in by democratic processes, at least potentially, they are still prone to oligarchic tendencies.

The end of the cold saw the rise of free market economics and democratic politics as the twin ideological forces driving western aid. Within the major western democracies there have been constant tensions between those interest groups who see aid as a means of promoting national commercial and industrial interests under the guise of free market development and those who consider such a strategy as inimical to the realisation of overarching developmental goals, including democratisation, poverty reduction and environmental protection.

Development aid is driven by these potentially conflicting interests. To allay fears that aid can be subverted by purely commercial interests, the majority of bilateral aid agencies have abandoned the practice of formally tying aid to national manufacturing or commercial interests, for example, for infrastructure development. This does not mean, however, that development aid does not indirectly promote strategic and commercial interests in donor countries or regions. For example, War on Want, a British charity, demonstrates how the British food and consumer goods giant Unilever benefits 'massively' from various DfID-funded initiatives.<sup>64</sup> This source also discusses the 'revolving door' practices in which senior staff move back and forth between DfID, Unilever (in this case) and other key British companies and government agencies.

Critics of aid also point out how much development aid money finances consulting and contracting companies from donor countries to manage or service aid projects and programmes. For example, again according to War on Want, PriceWaterhouseCoopers held a total of 193 privatisation 'mandates' in 1999 and KPMG<sup>65</sup> held a further 153.<sup>66</sup> The corporatisation of development consultancies through expansion and take-overs means that fewer and fewer companies capture more and more of the available contracts. A variable but significant proportion of aid to poor countries for governance programmes and projects finances donor country consultants and contractors.<sup>67</sup>

In such a context, development aid becomes increasingly vulnerable to the anti-competitive practices that characterise big business in general. For example, in recent years, British and Norwegian consulting companies have been involved in dubious practices forcing one to restructure and the other to close. In March 2017, four of the founding directors of Adam Smith International (ASI), DfID's largest aid contractor, were forced to resign. Between 2011 and

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<sup>63</sup> The 'iron law of oligarchy' theory was first developed by German sociologist Robert Michels in his 1911 book, 'Political Parties'. Michels, who later became a supporter of Italian fascism, highlighted oligarchic tendencies in European socialist parties and unions of the time.

<sup>64</sup> War on Want 2012. 'The hunger games: How DfID support for agribusiness is fuelling poverty in Africa', London. Cited by Cooksey 2014: 15.

<sup>65</sup> KPMG held a further 153. Based in the Netherlands, KPMG is a global network of autonomous companies specialising in audit (40%), advisory (38%) and tax services (22%). It is one of the 'big four' audit companies along with Deloitte, Ernst & Young (EY), and PricewaterhouseCoopers (PwC). See: <https://en.wikipedia.org/wiki/KPMG>. Arthur Andersen, a large American audit firm, was forced to close in 2002 over its complicity in the ENRON scandal. Thus the 'big five' became the 'big four'.

<sup>66</sup> See Cooksey 2014, op. cit., citing War on Want.

<sup>67</sup> Not all contracts go to home-based companies, of course. For example, DfID also hires large foreign contractors, including KPMG (Dutch) and Palladium (American) to implement projects. USAID projects are implemented mainly by large American contractors, university departments and not-for-profit organisations.

2015, ASI received at least £485m (c\$630) for projects worldwide.<sup>68</sup> Government officials found that ASI ‘used “improperly obtained” government documents for commercial advantage. ASI was also criticised by MPs for faking “letters of appreciation” from aid beneficiaries submitted to an inquiry into the use of aid contracts.’<sup>69</sup> The journalist revealing the scandal concluded that: ‘... ASI should not just be seen as one bad apple. This firm stands as a symbol of a system riddled with corruption.’<sup>70</sup> This is probably an exaggeration: legal kinds of informal patronage are likely to be more common than blatant corruption.

In 2016, investigative journalists disclosed how the Norwegian International Law and Policy Institute (ILPI), that specialised in good governance, peace and conflict, and international law,<sup>71</sup> obtained dubious contracts from the Norwegian Ministry of Foreign Affairs, revealing close ties between the two. The three ILPI owners paid themselves high salaries, allegedly using what one professor called a “straw clearly thrust deep down into the state treasury.” After further embarrassing revelations, ILPI closed down on 30 June 2017.<sup>72</sup>

‘Neither internal nor external audits -- by the Ministry’s own auditors, the national audit institution, PriceWaterhouseCoopers, or the Norwegian Embassy -- uncovered major problems during more than ten years of programme support.’

Eirik Jansen 2009

Finally, the level of poor governance and corruption in the United Nations system has been the subject of adverse commentary for many years. Critics talk of the ‘culture of impunity’ in the UN and its specialist agencies, the weakness of the accountability mechanisms in place, and the systematic victimisation of whistle-blowers.<sup>73</sup> A 2016 survey by the UN’s Joint Inspection Unit (JIU) found that “more than half” of some 16,000 UN staffers and 164 executive managers ... “indicated that they believe that fraudulent behavior goes unpunished in their organization.”<sup>74</sup> Salaries are roughly twice as high in the UN system (and the World Bank) as in bilateral donor agencies, and ‘in country’ allowances for working in ‘hardship posts’ are generous, which helps explain why jobs in these organisations are often jobs for life. High salaries and generous allowances are strong disincentives to those disposed to criticise their own projects for apparent failure to achieve their stated objectives.

These examples suggest that cronyism and unethical practices are not the monopoly of aid recipients like Tanzania. They also suggest that aid agencies may be motivated to ignore

<sup>68</sup> See: <http://www.dailymail.co.uk/news/article-4282034/MoS-victory-4-foreign-aid-contractors-forced-quit.htm>; <https://www.globaljustice.org.uk/news/2017/mar/2/controversial-aid-consultant-bosses-quit-amidst-falsification-scandal>. Projects managed by ASI include a £14m (\$18m) for an anti-corruption project in Uganda.

<sup>69</sup> See: <https://www.thetimes.co.uk/article/more-scandal-at-adam-smith-international-as-boss-sir-martin-davidson-ousted-3tgxkw3h>.

<sup>70</sup> Ian Birrell of the Mail on Sunday. See: <http://www.dailymail.co.uk/news/article-4282034/MoS-victory-4-foreign-aid-contractors-forced-quit.html>.

<sup>71</sup> See: <https://ilpi.org/this-is-ilpi/>.

<sup>72</sup> See: <http://www.newsenglish.no/?s=ILPI>; and: <http://www.development-today.com/magazine/2017/dt-4-5/news/ilpi-scandal-massive-troubles-with-grant-management-at-foreign-ministry-in-oslo>.

<sup>73</sup> Rasna Warah 2016. ‘Unsilenced: Unmasking the United Nations’ Culture of Cover-ups, Corruption and Impunity’, March. See also: Claudia Rosett 2006. ‘How corrupt is the United Nations?’ April 1, <https://www.commentarymagazine.com/articles/how-corrupt-is-the-united-nations/>; Alex Newman 2016. ‘Aid Tsunami of Scandals, UN Ignores Massive Corruption’, New American, 25 July; and <https://www.reuters.com/article/us-un-corruption-exclusive/exclusive-u-n-audit-identifies-serious-lapses-linked-to-alleged-bribery-idUSKCN0X00VD>.

<sup>74</sup> See: <http://www.foxnews.com/world/2016/07/12/fraud-what-fraud-watchdogs-find-un-in-state-near-denial-about-internal-corruption.html>. It is not clear how such a large number of staff members were polled.

evidence of problem areas, including corruption, in their projects. This observation also holds for international NGOs and foundations of all kinds.<sup>75</sup>

Those aid agencies whose funding is tied to GDP, including Norway, Denmark and the UK, face special 'moral hazards' over the imperative to spend ever larger amounts of money irrespective of the overall 'absorptive capacity' of aid recipients.<sup>76</sup> The disbursement imperative routinely trumps formal commitment to integrity and sound business practices. In a rare account of a programme that suffered from systematic abuse by those implementing it, a former Norwegian Embassy staff member in Tanzania explained how abuse was not discovered or was ignored throughout the life of the programme, which was implemented by the Ministry of Natural Resources and Tourism.<sup>77</sup> 'The need to negotiate large agreements quickly reduced incentives for Embassy staff to look for, or respond to, irregularities...'. 'Neither internal nor external audits -- by the Ministry's own auditors, the national audit institution [NAO], PriceWaterhouseCoopers, or the Norwegian Embassy -- uncovered major problems during more than ten years of programme support.'<sup>78</sup> Though NORAD took the unprecedented step of requesting the repayment of a large proportion of the project costs, the Embassy challenged the accuracy of the audit results and NORAD eventually settled for the repayment of a token amount. Subsequently, Norwegian Prime Minister Jens Stoltenberg sought 'assurance that aid funds would not end up in the pockets of corrupt people...' to which President Kikwete replied: "Whenever there is a corruption issue, action is taken immediately. I am confident that aid from Norway will be spent well."<sup>79</sup>

The above discussion suggests that waste and corruption contribute to the regular underperformance of programmes and projects.<sup>80</sup> Though internal evaluations of donor-funded anti-corruption programmes and projects often come to quite positive conclusions, the academic literature is much more critical, highlighting issues of corruption as well as ownership, dependency, and sustainability.<sup>81</sup> According to a 2014 review of DFID's anti-corruption work by the Independent Commission for Aid Impact:<sup>82</sup>

In our view, it is highly problematic for DFID to support government systems and structures that are known to be corrupt, especially if they increase the perception among the poor that corruption is a necessary and legitimate way of acting.

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<sup>75</sup> It is not suggested that all aid agencies are riddled with corruption from top to bottom. The point is that aid is not immune to 'supply side' corrupt practices, including cronyism, and that there are strong incentives for agencies to ignore or underplay the seriousness of the problem.

<sup>76</sup> In 2015 the UK enshrined in law a commitment to spend 0.7% of its national income on international aid. See: [https://www.globaljustice.org.uk/sites/default/files/files/resources/the\\_privatisation\\_of\\_uk\\_aid.pdf](https://www.globaljustice.org.uk/sites/default/files/files/resources/the_privatisation_of_uk_aid.pdf). From 2014 to 2017, the aid budget expanded by £295m (c\$384m). See: <http://www.dailymail.co.uk/news/article-4282034/MoS-victory-4-foreign-aid-contractors-forced-quit.html#ixzz5BdFkE5uE>.

<sup>77</sup> Eirik Jansen 2009. 'Monitoring aid: Lessons from a natural resources programme in Tanzania, U4 Practical Insight 2009:1, Bergen

<sup>78</sup> Jansen op. cit., p6.

<sup>79</sup> Rose Athumani 2008. 'Norway demands assurance on proper utilisation of assistance', Citizen, 22 April, cited by Policy Forum 2011. 'Tanzania Governance Review 2008-09', page 94.

<sup>80</sup> One observer argued that 'it is not likely that Norwegian aid is misspent in a manner that is atypical of how donor money is regularly used.' Young Kimaro 2007. 'The greatest contribution donors can make to this country's future', Daily News on Saturday, 25 April, cited by Policy Forum 2011. 'Tanzania Governance Review 2008-09', page 74.

<sup>81</sup> There is a huge literature. For a sample, see References in: Brian Cooksey 2010. 'Can aid agencies really help combat corruption? An overview of donor policies and practices in East Africa', paper presented at the III ANCORAGE-NET Biannual Meeting Protecting Aid Funds in Unstable Governance Environments: Towards an Integrated Strategy, Lisbon, 18-19 May.

<sup>82</sup> Independent Commission for Aid Impact 2014. 'DFID's Approach to Anti-Corruption and its Impact on the Poor', p22. See: <https://icai.independent.gov.uk/wp-content/uploads/DFIDs-Approach-to-Anti-Corruption-and-its-Impact-on-the-Poor-FINAL.pdf>

### A5.3 The demand side of the AS

An aspect of aid of great importance to this research is the notion that donor efforts to enhance government efficiency and accountability have been *instrumentalised* to serve elite agendas of empowerment, control and resource extraction.<sup>83</sup> Examples include decentralisation and the creation of executive agencies (EA) for regulatory purposes. While proposed by donors for reasons of 'getting government closer to the people' (decentralisation), and increasing efficiency in service provision and regulation (EA), these innovations can be seen as part of an implicit elite project of control and resource extraction from businesses, farmers, citizens, natural resources ... and aid donors.

An additional factor framing the analysis is the widespread sentiment among recipient policymakers and politicians that western donors have no right to lecture aid recipients on how to manage their public affairs. Though proof is lacking, it is reasonable to imagine that such sentiments were repressed for instrumental reasons during the crisis years, but nevertheless informed recipients' responses to donor initiatives throughout.<sup>84</sup> Thus, while politicians and officials often adopt the dominant donor discourse of poverty reduction, empowerment and good governance, including transparency, accountability and 'zero tolerance' for corruption, the incentives driving actual behaviour lie in a different realm altogether.

Another view common among aid recipients is that donors are not disinterested philanthropists but self-interested, at the extreme cynical, players in the 'aid game'. No special case can be made that aid workers are more or less self-interested than (say) private sector professionals in maximising their income, advancing their careers or raising their families.<sup>85</sup> The rotation of the majority of aid workers prevents individuals or group from developing vested interests (good or bad) in a particular programme or project.<sup>86</sup>

At the aid interface, technical assistance personnel are often resented by local officials because of the huge income disparities between the two sides, irrespective of the quality or value of the assistance provided. Locally hired staff working on projects may also resent these disparities, and may doubt whether the differences in competence justify the differences in status and position. Projects implemented through a 'project implementation unit' or equivalent exhibit different dynamics. Local project managers can exercise considerable patronage in hiring and contracting, though expenditures are usually closely monitored.<sup>87</sup>

### A5.4 Aid and policy leverage

A key structural issue affecting the relative leverage of the two sides of the AS is the proportion of aid in the national budget. At its height, during the crisis years after 1985, aid accounted for a significant proportion of recurrent expenditure and most of the development budget. According to the Development Partner Group (DPG), in 2004/05 44 percent of government spending was financed by foreign aid, falling to 33 percent in 2010/11, 19 percent in 2013/14, and an estimated 14 percent in 2014/15, representing a dramatic two-thirds (68 percent)

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<sup>83</sup> For a formulation of how African states have instrumentalised foreign aid see: Patrick Chabal and Jean-Pascal Daloz 1999. 'Africa Works: The political instrumentalization of disorder', James Currey and Indiana University Press.

<sup>84</sup> We assume that the recipient does not pro-actively seek aid for institutional development but rather responds to pro-active and well-resourced donors.

<sup>85</sup> In general, UN-system, WB and IMF salaries are significantly higher than those of bilateral donor agencies.

<sup>86</sup> At the same time, aid effectiveness may suffer as most expatriate aid workers don't have time to get to know the country or language properly. There are unverifiable stories of advisors from certain UN agencies bribing officials to have their contracts renewed.

<sup>87</sup> The PMU arrangement is favoured by the World Bank. Past discussions with TA personnel tasked to review procurement on big contracts have described the pressures they are under to sign off on presumably questionable deals.

decline over a decade.<sup>88</sup> This precipitate decline occurred during a period of sustained economic growth that coincided with declining donor confidence in the government's capacity to put budget support to good use, culminating in the Escrow/IPTL scandal that saw donors withhold over US\$500m in pledged budget support for 2014/15.<sup>89</sup> The donors' eventual capitulation signalled a significant decline in their influence over the Kikwete presidency.<sup>90</sup> During the later Kikwete years, donors found it increasingly difficult to engage with high-level government officials, leading eventually to the creation of an 'Independent Facilitation Team' to broker a renewal of good working relations between the two sides (see Main Report, **Chapter 7**).<sup>91</sup>

A related factor signalling a decline in traditional donor influence has been the rapid rise of China as a source of large loans and grants for infrastructural development. Unlike western donors, anti-corruption and 'good governance' are not key components of their aid strategies. The final report of the Independent Facilitation Team cites the view of 'a number of 'new' development partners, including Brazil, India and China' that: 'corruption [is] an inevitable part of the development process...'<sup>92</sup> A 2017 Pew survey of global attitudes showed that more Tanzanians have positive attitudes towards China than towards the US.<sup>93</sup>

As a result of these and possibly other factors, senior politicians and officials have started to express their hitherto repressed views that western aid is demeaning and offensive. For example, in May 2015 President Kikwete 'said that western donors were setting degrading conditions for aid ... and he could be forced in time to tell them: "keep your aid."<sup>94</sup> In recent years, increasing numbers of Ministers and MPs have made similarly blunt statements about aid and donors.

Last, underlying the lack of meaningful dialogue at the aid interface is the asymmetry between the two sides in that, first, it is invariably the bearer of the aid who takes the project or programme initiative, and, second, who announces changes in aid policy to recipient governments. In the governance field with which this report is concerned, there is no evidence to suggest that intended beneficiaries play an active part in the processes leading to changes in aid delivery. It is hardly surprising if, rather than challenge the rationale or likely feasibility of the proposed programmes and projects, and risk losing them, recipients endorse the

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<sup>88</sup> Development Partner Group (no date). 'Overview of Aid in Tanzania', see: <http://www.tzdpq.or.tz/dpg-website/development-effectiveness/overview-of-aid-in-tanzania.html>. Aid as a proportion of GDP fell from over 16 percent in 1995 to under 6 percent in 2014. See: [http://www.tzdpq.or.tz/fileadmin/user\\_upload/FINAL\\_KABERUKA\\_FACILITATION\\_REPORT.pdf](http://www.tzdpq.or.tz/fileadmin/user_upload/FINAL_KABERUKA_FACILITATION_REPORT.pdf), page 16.

WB Tanzania Economic Update (May 2016: 13) gives figures of eight percent of GDP in 2007/08 to three percent in 2014/15: [www.worldbank.org/tanzania/economicupdate](http://www.worldbank.org/tanzania/economicupdate).

<sup>89</sup> In March 2015, disbursements of the 'frozen' aid were resumed, and donors 'expressed appreciation on how Tanzania's accountability institutions addressed the issues arising from the IPTL saga, as reflected in the resolutions of the Parliament and the guidance by the President in [a] speech on 22nd December 2014.' See: <http://tzdpq.or.tz/index.php?id=34>. In the speech mentioned, President Kikwete effectively sided with the perpetrators of the Escrow scam, declaring that the Escrow money was 'private money.'

<sup>90</sup> One of the results of the decline in budget support in recent years has been a revival of project aid, which was previously criticised for lack of local ownership, impact, and sustainability.

<sup>91</sup> See: [http://www.tzdpq.or.tz/fileadmin/user\\_upload/FINAL\\_KABERUKA\\_FACILITATION\\_REPORT.pdf](http://www.tzdpq.or.tz/fileadmin/user_upload/FINAL_KABERUKA_FACILITATION_REPORT.pdf). A similar exercise followed deteriorating relations between donors and the GoT at the end of the Mwinyi government, which was seen to be marred by corruption and poor economic management. See: Gerry Helleiner et. al. 1995. 'Development cooperation issues between Tanzania and its aid donors, report of the group of independent advisers', June: [www.tzdpq.or.tz/fileadmin/migrated/content.../Helleiner\\_Report\\_1995\\_01.doc](http://www.tzdpq.or.tz/fileadmin/migrated/content.../Helleiner_Report_1995_01.doc).

<sup>92</sup> The 'Kaberuka report', p9. China is ranked 77<sup>th</sup> out of 180 countries in Transparency International's Corruption Perception Index for 2017, India 81<sup>st</sup> and Brazil 96<sup>th</sup>. Along with Russia (ranked 135<sup>th</sup>) and South Africa (71<sup>st</sup>), these countries constitute the BRICS group, which aspires to create its own development bank.

<sup>93</sup> Sixty-three percent of interviewees had positive attitudes towards China and 15 percent negative views. For the US the figures were 57 and 25 percent. See: <http://www.pewglobal.org/2017/09/21/global-attitudes-toward-china-and-the-u-s/>.

<sup>94</sup> David Kisanga 2015. 'JK warns envoys to support national economy', Guardian, 27 May, Cited by Policy Forum 2017. 'TGR 2015-16, From Kikwete to Magufuli: Break with the past or more of the same', page 96.

proposed assistance and subsequently find ways of turning what is on offer to better fit with their own priorities.<sup>95</sup>

### **A5.5 Conclusion**

The AS is the tacit agreement between aid donors and recipients to perpetuate the aid relationship as long as it meets certain minimum conditions. The relationship is asymmetric in that donor agencies are inherently pro-active in elaborating development policies, programmes and projects that are then proposed to aid recipients like the GoT. The strategic advantage of the recipients is the ability to manipulate aid agreements to varying degrees to meet their own strategic objectives, which may bear little or no relation to the stated objectives of the donor.

It is, of course, not easy for aid agencies to turn the aid tap off and on rapidly in the face of evidence of corrupt practices among recipients, so a certain amount of inertia is to be expected. Nonetheless, there is a strong sense that, in general, aid is sustained in spite of massive evidence that corruption and other factors seriously undermine its impact on aided MDAs.<sup>96</sup> This is a generic issue, not specifically related to aid to anti-corruption.

Donors have lost much of the leverage that aid dependency once engendered, and the arrival of China on the aid scene has further marginalised the 'traditional' donor group's influence. Still, the pressures on aid agencies to continue disbursements on PFM/GG-inspired projects of all kinds keeps programme and project aid at high levels, to the benefit of agency staff, consultants and advisors, and the local officials, academics, consultants, contractors and think tanks among recipients. As long as the supply and demand sides of the aid relationship are in approximate balance, the 'aid settlement' will continue to hold.

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<sup>95</sup> The 2005 Paris Declaration on Aid Effectiveness is based on the principles of local ownership, alignment, harmonisation, managing for results and mutual accountability. See: <http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm>. These principles are arguably unimplementable, for reasons beyond the remit of this research.

<sup>96</sup> The impact evaluation just mentioned (2014: 24) concluded that: 'Despite the significant amounts of money that DFID is spending on its anti-corruption efforts, we conclude that its expenditure does not appear to achieve significant impact in reducing corruption.'

## Appendix 6: Press reports 2009-18

Not all acts that could qualify as 'corrupt' fall under PCCB's remit: many are dealt with directly by the police, intelligence and security services, or resolved through internal administrative procedures. The cases summarised below are mostly from the Kiswahili press plus some English language newspapers and blogposts. Though numerous petty cases are reported, there is a clear bias towards cases brought in Dar es Salaam involving senior officials and large amounts of money. The cases listed did not necessarily lead to court proceedings, fines or sentences. Further observations on the lessons to be learned from these reports can be found at the end of the Appendix and in the main text (**Chapter 5**).

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<sup>97</sup> Some of the references are statements and comments by PCCB and have not been included in the statistical breakdown following the table.

**Table 6.1: Press reports of PCCB cases, 2009-18**

Suspects' names, occupation, location <sup>97</sup>	Nature of claimed offence, values involved	Source/date/ link
1. Amatus Liumba, former director of personnel and administration, BOT	Corruption and abuse of power. Unilaterally changed the scope of work of the BOT Twin Towers resulting in cost increase from US\$72m to US\$ 358. Jailed for two years.	Republic vs Amatus Liumba, Criminal case No. 105/2009
2. Charles Ekerege, former Director General of the Tanzania Bureau of Standards.	Created a bogus offshore vehicle inspection scheme, occasioning losses of over Shs70m. Jailed for three years.	August 2009. Cited in AfriMAP 2014: 72.
3. Temeke (DSM) District Court Magistrate Jamila Nzota arraigned on four counts of soliciting a 5m/- bribe.	Given an 11 year sentence to run concurrently. Though a first offender, 'a severe punishment was needed to end the rot in the Judiciary.'	Rosina John 2009. 'Court official is jailed 11 years', Citizen, 23 May.
4. PCCB arraign Hassan Mghenyi, Village Executive Officer of Mpetu, Singida Region.	Accused alleged to have solicited a 110,000/s bribe from a livestock keeper.	Reporter 2009. 'Village executive officer faces bribe charge', Thisday, 29 May.
5. PCCB holding Ms Magdalena Ponela of Nungwe Primary Court, Morogoro.	She allegedly solicited a 15,000/- bribe from an accused person.	Samuel Msuya 2009. 'Magistrate in trouble over sh 15,000 bribe', Citizen, 3 June. <a href="https://issuu.com/vijanaforum/docs/tanzaniagovernancereview200809/93">https://issuu.com/vijanaforum/docs/tanzaniagovernancereview200809/93</a>
6. Eustace Mrefu, security guard with St. Mary's School, Dar Es Salaam.	Caught demanding sex on 28 <sup>th</sup> April, 2008 at a guest house in Tabata DSM from one Celine Peter whom he had promised to assist to secure employment at St. Mary's School. Bailed on two 500,000/= sureties.	<a href="https://issamichuzi.blogspot.com/2009/12/kesi-ya-rushwa-ya-ngono-yaanza-dar-leo.html">https://issamichuzi.blogspot.com/2009/12/kesi-ya-rushwa-ya-ngono-yaanza-dar-leo.html</a> December 2009.
7. PCCB DG Dr Edward Hoseah declares that former AG Andrew Change is being investigated for possession of unexplained property.	Hoseah states Change's alleged involvement in the BEA radar scam "has no iota of truth."	Tanzania Corruption Monitoring System 2011. 'PCCB probes Change over wealth, property', Citizen, 22 July

<sup>97</sup> Some of the references are statements and comments by PCCB and have not been included in the statistical breakdown following the table.

8.	PCCB charged a ward councillor, former ward executive officer, former secondary school headmaster, school board chairman, a teacher, school board member and a businesswoman.	Accused of loss of Sh13.4m over payment of a 'fictitious debt' for teachers' house construction equipment not supplied.	Omary Magongo 2012. 'PCCB takes 7 to court over abuse of office', Citizen, 7 May
9.	Rajabu Maranda, Farijala Hussein	EPA scam 2005-06. Remanded for second time. Said to have forged company registration certificate issued by BRELA, theft of 660m/-, and unlawful acquisition of 2bn/- from BOT.	'Maranda, Farijala wafungwa Jela Tena'. Mtanzania, 25, July, 2012: www.katabazihappy.blogspot.com
10.	Col. Ayoub Mwakang'ata director, National Service Branch, SUMA JKT, Lieutenant Col. Mkohi Kichogo, Paul Mayavi, Major Peter Lushika, Sergeant John Lazier, Major Yohana Nyichi and the director for Tractor project in SUMA Lt. Col. Felex Samillan.	In March 2008, they appeared before the Kisutu Magistrate court charged with collusion and misuse of authority under PCCB Act No. 11 of 2007 Section 31 as the procured/purchased used vehicles and building hard ware materials in March 2012, contrary to the PPRA Act of 2005. Released in April 2014 as case not 'proved beyond reasonable doubt'.	'Vigogo SUMA -JKT kortini', Tanzania Daima, 3 July, 2012: <a href="http://allafrica.com/stories/201404240109.htm">http://allafrica.com/stories/201404240109.htm</a>
11.	Professor Costa Mahalu former Ambassador Italy and Grace Martin the embassy counsel.	Charged with loss of €2m through misuse of authority while purchasing of office building in Italy. Found not guilty after former President Benjamin Mkapa testified in his defence.	'Mahalu, Mkapa Wambwaga JK' Daima, 10 August, 2012. <a href="https://www.youtube.com/watch?v=zFbFFINsMgI">https://www.youtube.com/watch?v=zFbFFINsMgI</a>
12.	Bahi MP Omary Badwel (CCM) on trial for receiving 1m/- bribe from District Executive Director of Mukaranga District Council.	PCCB witness Janeth Machurya caught Badwell through a sting operation. Money said to be part of an 8m/- bribe for members of the parliamentary Local Authorities Accounts Committee to pass the Councils 'problematic' financial report for 2011/12.	Karama Kenyuko 2012. 'PCCB witness implicates Bahi MP in corruption case', Guardian, 4 September.
13.	Ilala (DSM) PM Mussa Azza Zungu (CCM) arrested	Alleged that he bribed delegates of the party's parents' wing	'PCCB arrests Zungu over graft', Daily News, 1 November

14. PCCB arraign former managing director of TANESCO, William Mhando for abuse of office. Case includes his wife and three other former TANESCO officials.
- Claimed that he awarded a contract worth more than 880 million Tanzanian shillings (US\$555,000) for office supplies to a company he jointly owned with his wife and children. All were acquitted as 'nothing indicated that they received benefits of any kind.' The CAG had 'found clear evidence of abuse of company procedures and abuse of office against the managing director.'
- Rosina John 2014. 'Ex-TanESCO MD and wife hauled to court', Citizen, 27 May. <http://www.reuters.com/article/tanzania-corruption-idUSL5E8LVDQX20121031>.
15. An alleged attempt to influence the outcome of the CCM presidential selection process was foiled when police and PCCB officials arrested an Indian national carrying TShs725m in two suitcases, allegedly for distribution to 'members of the CCM general congress and higher party organs.'
- Amit Kevarami (31) was said to be an employee of Quality Group, a company owned by businessmen Yusuf Manji. Suspect freed when Dodoma RPC David Misime, said the money was for an unsuccessful purchase of agricultural produce. 'He was about to return the money to the bank after his intended purchase of cereals fell through', he said.
- Guardian Reporters 2015. 'Manji agent nabbed in alleged Sh700m bribe', Guardian, 12 July.
- Rachel Chimbwete 2015. 'RPC: Sh700m not for bribes', Citizen, 15 July
16. Josiah Mwaipela and Julius Idana, Tanzania Football Federation leaders.
- Charged with corruption, misuse of authority, embezzlement of Tsh. 276m, between March, 2012 and November, 2013
- <http://www.tanzaniatoday.co.tz/news/takukuru-yawafikisha-kortini-maofisa-tff-kwa-rushwa> 2016
17. Eleven TRL top officials taken to court by PCCB. Kipallo Aman Kisamfu CEO, Jasper Hurbert Kisiraga, Chief Internal Director, Ngoso Joseph Ngosomwiles, Chief Mechanical Engineer, Mathias Andrew Massae, Muungano Kaupunda, Paschal Mafikiri, Kedmon Mapunda, Felix Kashaigili Lowland Simtengu, Joseph Syaizyagi, and Charles Ndege.
- PCCB brought suspects to court to answer 9 charges including abuse of authority that led them to the procurement of 25 defective wagons ; causing loss of USD1.3m (230bn/-) between 1 January, 2013 and 31<sup>st</sup> May 2014., The 11 were charged for corruption and purposely failing to implement the procurement contract for personal gain . The contract was awarded to M/S Hindustan Engineering and Industries Ltd),
- 'Takukuru Yawafikisha Kortini Vigogo 11 wa TRL' Global Publishers at: <http://www.tanzaniatoday.co.tz/news/takukuru-yawafikisha-kortini-vigogo-11-wa-trl>, 12 February 2016
18. Martin Chacha, former TFF Director and Juma Matandika, consultant.
- The two were charged for soliciting a bribe amounting to Shs 25m on 10<sup>th</sup> November, 2016.
- 'Takukuru Yawafikisha Kortini maofisa TFF kwa rushwa', 2016

19.	Kangi Lugola (CCM, Mwibara) Sadiq Murad (CCM, Mvomero) and Victor Mwambalawa (CCM, Lupa), Members of Parliament and Local Authorities Accounting Committee (LAAC).	Appeared before the Kisutu Resident Magistrate to answer charges of soliciting Shs30m from the Director of Gairo District Council, Morogoro.	'Three Members of Parliament taken to Court', michuzi blog 31 March 2016 <a href="https://issamichuzi.blogspot.com/2016/03/wa-bunge-wafatu-wapandishwa-kizimbani.html">https://issamichuzi.blogspot.com/2016/03/wa-bunge-wafatu-wapandishwa-kizimbani.html</a>
20.	Ghost workers verification team member (name not disclosed) in Shinyanga.	Held by PCCB for soliciting bribes worth Sh 150,000 from a teacher for assisting him to fix his employment documents in his Public Service Management file to avoid disciplinary measures.	Stella Ibengwe 2016. Mwananchi 2016, 12 May. <a href="http://www.mwananchi.co.tz/habari/mhakiki-hewa-wa-watumishi-hewa-akamatwa/1597578-3200960-5730kf/index.html">http://www.mwananchi.co.tz/habari/mhakiki-hewa-wa-watumishi-hewa-akamatwa/1597578-3200960-5730kf/index.html</a>
21.	Mkombozi Primary School teacher in Singida Municipal Council, an engineer for Bahi District Council Dodoma, together with the Managing Director for Masons Eng Co. Ltd, TRA officer Flavian Chacha	Were alleged to have committed crime involving sexual favours from a pupil of Mkombozi primary school. The teacher was caught red-handed with the complainant. A civil engineer with Bahi District Council was arraigned for constructing the Kigwe Road bridge below standard contrary to the agreed contractual terms. In Flavian Chacha TRA employee was also netted for soliciting and receiving bribe worthy 1.5m/-.	Gasper Andrew, Singida and Habel Chidawali, Dodoma Daily Nation 2016, April, Waandishi Wetu, Mwananchi mwananchipapers@mwananchi.co.tz/Singida <a href="http://www.mwananchi.co.tz/Takukuru-yawanasa-mwalimu--mhandisi-kwa-kuomba-rushwa/-/1596774/3149976/-/view/printVersion/-/vntdcc/-/index.html">http://www.mwananchi.co.tz/Takukuru-yawanasa-mwalimu--mhandisi-kwa-kuomba-rushwa/-/1596774/3149976/-/view/printVersion/-/vntdcc/-/index.html</a>
22.	Rajabu Maranda (former CCM official), Imam Mwakosya, Esther Komu, Bosco Kimela (BOT), Ajay Somani (businessman)	Marandu served three years from 2013. All four acquitted for involvement in 5.9bn/- EPA theft. Panel of three judges said case not proved 'beyond reasonable doubt'.	Reporter 2016, 'Maranda, 4 others acquitted of Sh6bn EPA theft charges', Citizen, 1 September
23.	PCCB launches 'initial investigation' into Shs3bn irrigation scheme in Ujamaa Msolwa village, Kilombero District.	Mr Beutoz Mbwiga, Morogoro Regional head of PCCB, said that between July 2016 and March 2017 the watchdog had filed 29 cases in various courts in the region. Rulings in 22 cases. Won 8, 14 lost. 31 cases still pending.	John Nditi 2017. 'PCCB spotlight narrows on suspect village irrigation scheme', Daily News, 18 April.
24.	Sadiki Nombo, acting Tanga Regional head of PCCB, said that between July 2016 and March 2017 the watchdog had filed 16 cases.	Lost 5, the remaining 11 were pending. 222 complaints were received. Cases lost through 'lack of concrete evidence'.	Paskal Mbunga 2017. 'PCCB in Tanga suffers as graft agency loses five cases', Citizen, 18 April.

- 25.** Minister of State In the President's Office, Responsible at Public Service Management Angela Kairuki said: The 2007 Act was to be reviewed to 'allow for the confiscation of fraudulently acquired ... properties' and Between July 2016 and March 2017 Polycarp Machira 2017. 'PCCB legislation up for review to make it tighter', Guardian, 19 April.
- 26.** Official in Mbozi District, Songwe Region to be arraigned for poor project implementation performance. Money (688m/-) to build/maintain warehouses funded by the Gates Foundation misused. Guardian Reporter 2017. 'PCCB to arraign officials over embezzlement', Guardian, 20 April.
- 27.** Thadei Nyoni, TANROADS employee arraigned by PCCB Took 100,000/- bribe from driver at Tunduma weighbridge. Guardian Reporter 2017. 'PCCB to arraign officials over embezzlement', Guardian, 20 April.
- 28.** PCCB freezes 40 properties said to belong to PCCB's former chief accountant Gofrey Gugai. Properties worth 3.6bn/- include houses, apartment blocks, plots of land and vehicles. Faustine Kapama 2017. 'PCCB accountant risks losing 3.6bn/- worth of houses, vehicles', Daily News, 15 May.
- 29.** Gugai's properties detailed. Properties owned in Dar es Salaam, Mwanza, Arusha, Tanga, Dodoma, Morogoro, Coast and Mara regions. Faustine Kapama 2017. 'PCCB clarifies on its official's frozen assets', Daily News, 17 May.
- 30.** PCCB 'has saved 53.9bn/- 'through various operations in 2016/2017...' Prime Minister Kassim Majaliwa said this while addressing the African Parliamentarians Network against Corruption. '...the government will continue strengthening PCCB.' Reporter 2017. 'Govt saves 54bn/- in anti-corruption drive', Daily News, 10 June.
- 31.** Elias Chinamo, Mkurugenzi wa Afya na Usafi wa Mazingira wa Wizara ya Afya na Ustawi wa Jamii Between June 2011 and February 2013, extorted Shs 14.4m in kickbacks from organisers of seminars for the ministry of Health. Fourteen offences. Tausi Ally na Samwel Eugen, June 13, 2016: <http://www.mwananchi.co.tz/habari/Kitaifa/Mkurugenzi-wa-Wizara-ya-Afya-kortini-kwa-tuhuma-za-rushwa/1597296-2750238-12js1mfz/index.html>
- 32.** Arusha regional PCCH head Mogasa Mogasa singled out 'the Judiciary, where some sought to induce corruption through indefinite delays and by adjourning cases indefinitely.' Mariam Juma 2017. 'PCCB lays bare its own backyard's corruption loopholes', Daily News, 19 June
- 33.** PCCB DG Valentine Mlowola reveals that the government was reviewing the 2007 PCCB Act 'to align the law with the current efforts to combat corruption.' '...the current law did not facilitate his Rosemary Mirondo 2017. 'W. Bank: How Tanzania can win graft war', Citizen, 23 June.

	office...especially in the areas of prosecution and the seizure of assets.'		
<b>34.</b>	Musoma immigration officer nabbed	Charles Kisuke	For receiving the bribe from three private primary schoolteachers believed to be Kenyans. Correspondent 2017. 'PCCB nabs immigration official over Sh295,000 corruption', Guardian, 24 June.
<b>35.</b>	According to PCCB 'all the [grand] corruption cases were still subject to ongoing investigations.'	Mussa Misalaba Richmond, Kagoda (EPA), Tangold, Metemeta and military radar scams.	Mussa Misalaba mentioned now sets its sights on Richmond and military radar deals', Guardian, 25 June
<b>36.</b>	President Magufuli orders judiciary to step up prosecutions and convictions in cases,	Magufuli and the country's pace of investigations, grand corruption cases,	Magufuli slams PCCB, courts for delays in corruption cases', Guardian, 25 August.
<b>37.</b>	Dr. Deogratias Godfrey, Kilimanjaro/KCMC.	Mawenzi referral hospital	General John Julius Mbungo as PCCB's deputy DG Soliciting and receiving bribe of 0.5m/- from patient's relative to speed up operation. <a href="http://www.matukiodaima.co.tz/2017/11/takukuru-kilimanjaro-yamshikilia.html">http://www.matukiodaima.co.tz/2017/11/takukuru-kilimanjaro-yamshikilia.html</a> , November 2017.
<b>38.</b>	Arumeru East MP PCCB as proof to bribed to defect to CCM.	Joshua Nassari submits video to CHADEMA councillors were	Louis Kolumbia 2017. 'PCCB warns Nassari against interference', Citizen 18 October
<b>39.</b>	PCCB 'set to deploy its officers to monitor corruption in the forthcoming councillors in Arusha Urban constituency.'	to monitor by-elections for	Bertha Ismail 2017. 'PCCB deploys officers ahead of by-election for councillors', Guardian, 13 November.
<b>40.</b>	Anthony Diallo, Mwanza Region arrested by PCCB.	Mwanza Region CCM chairman,	Johari Shani and Faustine Fabian 2017. 'Diallo, other CCM members quizzed over graft claims', Citizen on Sunday, 3 December

41.	PCCB to charge Sadifa Juma Khamis, MP, outgoing CCM youth wing leader, with attempted bribery	Suspected of trying to bribe UVCCM members ahead of new elections. President Magufuli: "Your leader is now under detention for such matters."	Reporter 2017. 'CCM youth wing leader faces bribery dishonour', Guardian, 11 December
42.	Godfrey John Gugai, former PCCB Chief Accountant.	PCCB charge Gugai with illicit enrichment between 2005 and 2015; as a public servant he accrued property that does not match with his earnings as a public servant contrary to section 38 (1)(a)(b) of PCCB Act 11/2007.	<a href="https://www.jamiiforums.com/threads/takukur-u-kutoa-milioni-10-kwa-atakayefanikisha-kukamatwa-kwa-aliyekuwa-mhasibu-wao-godfrey-gugai.1352322/">https://www.jamiiforums.com/threads/takukur-u-kutoa-milioni-10-kwa-atakayefanikisha-kukamatwa-kwa-aliyekuwa-mhasibu-wao-godfrey-gugai.1352322/</a> . 2017
43.	Samson Mhimbo (66) NIT University Lecturer	Charged for seeking sexual favours from a female student.	Emmy Mwaipopo 2017
44.	Professor Johannes Monyo, former principal of Arusha Institute of Accountancy.	On 15/11/2016 he was sentenced to 1 year imprisonment or a fine of 1.5m/- for misuse of authority for employing Chacha Wambura as a Human Resources Management Officer without permission from the Ministry of Public Service Management. He paid the fine.	<a href="http://www.pccb.go.tz/2017/04/18/aliyekuwa-mkuu-wa-chuo-cha-uhasibu-arusha-ahukumiwa-kwenda-jela/">http://www.pccb.go.tz/2017/04/18/aliyekuwa-mkuu-wa-chuo-cha-uhasibu-arusha-ahukumiwa-kwenda-jela/</a>
45.	Israel Mushi (48) CHADEMA Councilor for Msigani, Ubungo and Francis Mwanjela Peter (28) Mapping Expert in the Ubungo Municipality	Soliciting and receiving of bribe worthy Sh.5,000,000/=	12 July, 2017
46.	Former Director of Legal Services in the Ministry of Lands, Rugonzibwa Mujunangoma, accused of corruptly obtaining over 323m/- from businessman, James Rugemalira.	Case withdrawn by PCCB prosecutor Leonard Swai on technicalities.	Faustine Kapama 2017. 'Court sets free former ministry director in 323m/- graft', Daily News, 3 November.
47.	Ramadhani Madabida Former Dar Es Salaam CCM regional chairman, Seif Shamte, Director of Operations, Simon Msoffe, Marketing Manager, Fatuma Shango, Assistant Accountant of the Tanzania Pharmaceutical Industries Ltd. Sadick Materu and Evance Mwemezi	Charged under the economic sabotage crimes for alleged collusion in distributing fake ARV drugs, after acquittal from the original case for causing loss of 148m/- in 2014 through colluding to get illicit money by supplying fake ARVs. Employees of MSD assigned with quality assurance were accused of colluding in procuring and distributing	Kuliwa Mzee, 2017, Madabida Afunguliwa Kesi ya Uuhujumu Uchumi' <i>Mtanzania</i> 7, Disemba

fake ARV drugs between February and April, 2011.		
The Morogoro RC Dr. Kebwe ordered suspension of five TANROADS workers from Kihonda-Morogoro weighbridge Accused of falsifying weight of trucks and seeking bribe amounting to 100,000/=	John Nditi, 2017, Morogoro, Daily News	
Won the case against PCCB Director General for being unfairly terminated. He won a case on 04/05/2017	Ferdinand Nsakuzi a lawyer (PCCB employee)	Unfair termination of PCCB Lawyer <a href="https://www.jamiiforums.com/threads/mwanasheria-takukuru-makete-frednand-nsakuzi-ashinda-kesi-cma.1247084/">https://www.jamiiforums.com/threads/mwanasheria-takukuru-makete-frednand-nsakuzi-ashinda-kesi-cma.1247084/</a>
Misuse of funds by the Board officials	Cotton Development Trust Fund (CDTF) Board	'Prime Minister Dissolves Cotton Development Trust Fund (CDTF), Orders a Funds Probe'. Daily News Monday, 25, 2017.
Arrested and charged on 19/6/2017 for economic sabotage over the 300bn/- obtained from the TEGETA ESCROW account in the BoT and paying large bribes to public officials. More than 30 people interrogated received money, including MPs and former cabinet ministers, public servants, and religious leaders.	James Rugemalira (VIP Engineering and Marketing Ltd) and Harbinder Singh Sethi Chairman of IPTL/Pan African Power Ltd -PAP	Mwandishi Wetu 2017. 'Mmali za Vinara wa ESCROW Zakamatwa', Mtanзания 23, Juni
Alleged to have caused loss amounting to 12.7bn/- through assisting tax evasion, their case was dropped by the DPP. Haroon Mpande (28) of ICT TRA were charged for deleting data contrary to the cyber Crime Control Act, forgery, and money laundering that led to the loss of revenue worth Shs 12.7bn while assisting tax evaders. Their cases were reopened with 110 charges against them.	Tiagi Masamaki, former TRA Commissioner for Customs and Tax, Habibu Mponezya, Manager Tax Department, Burton Mponezya, Customs Administration and Operations, Tax and Customs Supervisor ICD AZAM, Eliachi Mrema, AZAM ICD Ashraf Khan, Mrema Business Analyst Hamisi Omary, Security, Operations Manager ICD Raymond Louis.	Tausi Ally, 2017. 'Masamaki wa TRA, wengine wanne huru wenzao watano mashtaka', Mwananchi, 14 Julai

<p><b>53.</b> David Mattaka, former ATCL Executive Director, Internal Auditor, William Haji and Elisaph Mathew, Deputy Principal financial management officer.</p>	<p>They were charged with abuse of authority and collusion that caused a loss of over USD143,000. Mattaka was ordered to pay a fine of 35m/- or six years in prison. Mattaka and Elisaph Mathew were ordered to pay 70m/- or serve 12 years.</p>	<p>Faustine Kapama 2017. 'Ex-ATCL Chief Condemned to 21 Years Behind Bars', Daily News, 14 September. Mussa Misalaba: <a href="http://www.tanzaniatoday.co.tz/news/mattaka-wa-atcl-kizimbani">http://www.tanzaniatoday.co.tz/news/mattaka-wa-atcl-kizimbani</a></p>
<p><b>54.</b> USD653m project 'marred by serious irregularities.'</p>	<p>Contractor Azimio Housing Estate suspended the project in February 2016 due to 'financial hiccups.' The issues raised by the Public Accounts Committee</p>	<p>Katare Mbashiru 2016. 'PCCB, TRA probe NSSF project', Daily News, 27 October.</p>
<p><b>55.</b> Jennifer Mushi The assistant customs officer employee in TRA</p>	<p>Accused of owning 19 vehicles valued at Tsh. 198m, she appeared at the Kisutu Resident Magistrate court.</p>	<p>'Kesi ya kumiliki mali Kusikizwa Januari, 2018'. Kulwa Mzee. 2017. Mtanzania 7 Disemba, 2017</p>
<p><b>56.</b> Professor John Monyo, Principal of Arusha Institute of Accountancy</p>	<p>Accused of misuse of authority. While the case was in progress, witnesses, prosecutors and the magistrate were in shock following the claim that one of the witnesses was 'attacked by a leopard' on the day he was scheduled to appear in court. Another was 'attacked by siafu' (biting ants), and the magistrate was forced to adjourn the hearing after finding black powder in the case file.</p>	<p>Adam Kilonzo 2017. 'Sorcery and corruption', December, 2017. Mwandishi Wetu, 2017 Nipashe.</p>
<p><b>57.</b> Halider Ghulamali (46) owner of mattress factory Dodoma</p>	<p>Offering bribe worth 2 million to national security officer in order to facilitate his success in the election during the committee session for selection of candidates.</p>	<p>Nathanael Limu 2017Mtanzania, 14 Disemba</p>
<p><b>58.</b> Theobald Meela District Executive Director and Valentine Mollel, accounts clerk accused of embezzling 27m/- in 2014.</p>	<p>In Hai District council, Kilimanjaro Region, embezzled money for the payment of ghost workers and former employees who were already out of employment. DED colluded with his treasurer.</p>	<p>Uhuru. Disemba, 29, 2017.</p>

<p><b>59.</b> Nehemiah Mchechu, CEO of the National Housing Corporation, accused over misuse of financial resources and illicit enrichment.</p>	<p>Convening board meetings in Dubai, buying plots for himself using the corporation money and owning 50 percent shares in some projects using false names, etcetera.</p>	<p>Reporter 2017. 'JPM dashes NHC plea for cash, <i>Daily News</i>, T 14 November.</p>
<p><b>60.</b> Relations officer ACACIA Mining company</p>	<p>The Tarime District Commissioner ordered PCCB to investigate the public relations unit of ACAIA for allegedly cheating on the assistance provided to the entrepreneurs of Nyamongo. The existence of poor relationships as an indicator of corruption intents by ACACIA Mining Company public Relations Unit.</p>	<p>Cheating Over The Assistance Provided To Entrepreneurs Of Nyamongo Acacia Mara Region Mgaya Maisha, 2017. Mtanzania, 11. Disemba 2017</p>
<p><b>61.</b> UVCCM Chairman netted for bribing voters.</p>	<p>Aligawa fedha kushawishi kupigiwa kura mgombea aliyekuwa akimuunga mkono. Alitiwa mbaroni na Kesi kushughulikiwa na TAKUKURU. JPM shocked over UVCCM chairman netted over bribing voters.</p>	<p>'Asitushwa Mwenyekiti UVCCM kunaswa kwa rushwa'. Mtanzania Disemba 2017</p>
<p><b>62.</b> Nkasi District, Rukwa Region. Dept of land and natural resources. Natural resources officer, wildlife officers.</p>	<p>Taking bribes of 1.2m/-, 'soliciting and accepting the funds from pastoralists'. Seized at least 40 cattle 'which had entered the conservation area illegally.' 850,000/- sent through m-pesa traced.</p>	<p>Correspondent 2018. 'PCCB holds four gvt employees for allegedly taking bribes', Guardian, 1 January</p>
<p><b>63.</b> Tido Mhando, former DG, Tanzania Broadcasting Corporation</p>	<p>Occasioning loss of Shs887m in rigged contracts with UAE company</p>	<p>Hadija Jumanne and Taus Ally 2018. 'Veteran joumo Tido out on bail', Citizen, 27 January</p>
<p><b>64.</b> Case against former TRA Commissioner Harry Kitilya arraigned on April 1, 2016 for money laundering (12 bn/-) not brought to court to date.</p>	<p>Others: Harbinder Singh Sethi and James Rugemalira (400bn/-) arraigned on June 19, 2007; five football officials (1.4bn/-). Leonard Swai of PCCB says 'delays in investigations are due to the complexity of the cases...'</p>	<p>Faustine Kapama 2018. 'Probes fail 500bn/- corruption cases', Daily News, 29 January</p>
<p><b>65.</b> A magistrate in Mwanga District Kilimanjaro</p>	<p>PCCB nabbed a court magistrate for soliciting and receiving 0.5m/- bribe in order to provide bail to a</p>	<p>Reference missing</p>

prisoner who was stuck at the Mwanga district Kiruru prison.

66. Former RAHCO DG Benhadard Tito and two others. Irregular tender with Chinese company and procuring consulting services which were not delivered, both in 2015. Case not brought to court after two years in remand. Faustine Kapama 2018. 'Trio in 15tri/- case fault prosecution, request for release', Daily News, 30 January.
67. Chair of Legal Affairs Committee, Mohamed Mchengerwa, urged the government to bring 'thieves and corrupt elements' to book. Sylvester Domasa 2018. 'Dilly-dallying over bad elements disturbs MPs', Daily News, 9 February
68. Former acting Commissioner for Minerals Ally Samaje charged with power abuse. Dating back to 2013, accused said to have allocated gemstone mining licence irregularly. Reporter 2018. 'PCCB hauls ex-Minerals Commissioner to court', Guardian, 10 February
69. Statement by Isack Kamwelwe, Minister of Water and Irrigation. To investigate negligence in overseeing water project worth 'billions'. Sylvester Domasa 2018. 'Minister tasks PCCB, CAG with probes on Buchosa water project', Daily News, 16 February.
70. Acting PCCB Commander for Nkasi district (Rukwa) Prosper Pantaleo Said those who impregnate schoolgirls bribe parents and the girls, and magistrates. Peti Simaye 2018. 'PCCB blames teenage pregnancies on bribe', Daily News, 20 February
71. Five accountants with the Ngorongoro Crater Conservation Authority arraigned for economic sabotage. Loss to government of US\$35,000 when working at Nabi and Loduare gates. Remanded until April 10<sup>th</sup> as they could not meet the 7.9m/- bail requirement. Reporter 2018. 'NCAA accountants charged in economic sabotage case', Guardian, 28 March.

## Breakdown of cases<sup>98</sup> (Shs) (N=105)

	2bn+	500m- 2bn	50m- 500m	10m- 50m	0.5m- 10m	<0.5m	Sexual	Total
<b>Senior government officials</b>	22	9	10	6	3	0	2	52
<b>Junior government officials</b>	0	2	6	6	6	10	1	31
<b>Businessmen/ women</b>	5	0	0	0	1	0	0	6
<b>Private employees (all)</b>	4	1	3	0	0	0	1	9
<b>Politicians</b>	0	0	1	4	1	0	1	7
<b>Total</b>	31	12	20	16	11	10	5	105

Half the cases in the data base involve senior government officials, 41 of whom (39 percent of all cases) were involved in corruption cases worth over Shs50m, and one in five of the total cases involved over Shs2bn. A further 30 percent of cases involved junior government officials, who accounted for all the petty bribes in the data base, plus a few larger cases too. The remaining fifth consisted of private company employees, politicians and businesspeople, including those involved in the EPA and Escrow/IPTL scandals.<sup>99</sup>

Scams involving huge sums are usually lightly punished; for example, the quadrupling of the cost of building the Bank of Tanzania's twin towers, from US\$72m to US\$358m, earned one of those involved a two-year jail sentence. (Others involved managed to avoid prosecution). Some of the larger cases were dismissed through lack of conclusive evidence. In one notorious case (No. 5) the former Ambassador to Italy, Costa Mahalu, was accused of embezzling Euros 2m in a house purchase scam. After a long and drawn-out case, former President Mkapa testified on behalf of the defence, and the case was dismissed.<sup>100</sup> Many of those prosecuted in the EPA scandal were acquitted. For example, Rajabu Maranda (former CCM official), Imam Mwakosya, Esther Komu, Bosco Kimela (BOT), and Ajay Somani (businessman) were acquitted of receiving Shs 5.9bn/- of EPA money. A panel of three judges said the case was not proved 'beyond reasonable doubt.'<sup>101</sup> The main report describes the involvement of high court judges in the Escrow/IPTL scam, two of whom were prosecuted for receiving bribes. Others prosecuted for receiving money from the Escrow account won their cases. For example, the former Director of Legal Services in the Ministry of Lands, Housing and Human Settlements Development, Rugonzibwa Mujunangoma, was accused of corruptly obtaining over Shs 323m/- from James Rugemalira. The case was withdrawn by PCCB prosecutor Leonard Swai on technicalities.<sup>102</sup>

<sup>98</sup> Cases where no money values are cited have not been included in the table.

<sup>99</sup> To repeat, this is a non-random sample of cases involving the PCCB. It is presented for illustrative purposes only.

<sup>100</sup> 'Mahalu, Mkapa Wambwaga JK' Daima, 10 August, 2012. See also: <https://www.youtube.com/watch?v=zFbFFINsMgl>

<sup>101</sup> Reporter 2016, 'Maranda, 4 others acquitted of Sh6bn EPA theft charges', Citizen, 1 September. Marandu had already served a two-year sentence.

<sup>102</sup> Faustine Kapama 2017. 'Court sets free former ministry director in 323m/- graft', Daily News, 3 November.

On the other hand, minor cases are punished severely. For example, in 2009 a Dar es Salaam magistrate was given an 11 year sentence for soliciting a Shs5m bribe (Case 3.). Though the magistrate was a first offender, the judge said: 'a severe punishment was needed to end the rot in the Judiciary.'<sup>103</sup>

**Appendix 4** above argues that magistrates and judges are systematically bribed to dismiss cases as not proven 'beyond reasonable doubt' or on other technical grounds even when state prosecutors present massive incriminatory evidence. Consequently, conviction rates are likely to correlate inversely with the size of the corrupt act. This would help explain PCCB's low conviction rate. No data are available to test this proposition.

The above sample of cases also shows that a number of large-scale corruption cases take years to bring to court, during which time those accused languish in remand prison. Examples include the Standard Bank/EGMA contract involving former TRA DG Harry Kitilya and two others who have spent over two years in remand prison; Eng. Benhadard Tito and two others (RAHCO), who have also spent over two years in remand; and Harbinder Singh Sethi and James Rugemalira (Escrow/IPTL), who have spent over a year in remand (all up to mid-July 2018). Leonard Swai of PCCB said: 'delays in investigations [of these and another case] are due to the complexity of the cases...'<sup>104</sup>

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<sup>103</sup> Rosina John 2009. 'Court official is jailed 11 years', Citizen, 23 May. It is not clear why the magistrate was given an 11 year sentence, which exceeds the maximum 7 years prescribed in the PCCA of 2007. Other similar anomalies were noted in the LOS.

<sup>104</sup> Faustine Kapama 2018. 'Probes fail 500bn/- corruption cases', Daily News, 29 January.

## Appendix 7: PCCB's 'List of Shame'

### A7.1 Background

Until 2017, PCCB's website featured a so-called 'List of Shame' (LOS) containing details of convictions obtained in corruption cases initiated by the agency. The LOS contains details of 441 cases successfully prosecuted in court during 2008-2016 (**Table A7.1**). The detailed analysis contained in this appendix is based on 416 of these cases, for which adequate information is reported. Compared to **Appendix 6** above, the LOS contains very few large cases, suggesting that these have been purposely left out of the list or that few large cases result in convictions fines and/or prison sentences, or both.

**Table A7.1: LOS and all PCCB total convictions, 2008-16**

Year	LOS convictions	Total convictions	LOS as % of convictions
2008	8	37	22
2009	30	47	64
2010	22	61	36
2011	41	52	79
2012	39	47	83
2013	57	89	64
2014	75	135	55
2015	154	179	86
2016	15	230	7
<b>Total</b>	441	877	Average 55

Source: PCCB data

The LOS captures over half of all convictions obtained by the Bureau from 2008 to 2016. It is not possible to assess whether the LOS is a random sample of cases or has been put together in a purposive manner.<sup>105</sup>

Most of the LOS cases (82 percent) were concluded between 2011 and 2015. LOS covers two-thirds (66 percent) of all cases won during those years.

The following sections analyse the LOS database providing a regional breakdown of cases, fines paid, sentences imposed, and sums recovered.

<sup>105</sup> The LOS database lacks considerable amounts of data on quite a number of key variables. It proved impossible for the researchers to interview staff members of PCCB to attempt to clarify these issues and perhaps obtain more reliable data.

## A7.2 Regional distribution of LOS convictions

**Table A7.2** shows the regional distribution of cases and fines paid by those convicted of corruption. Regional population rankings (fourth column) are taken from the 2012 population census.<sup>106</sup>

Regions where cases are disproportionate to the size of the region are *Coast, Ruvuma, Shinyanga, Iringa, Singida* and *Mtwara*. The opposite is true (few cases compared to the size of the region) for *Mwanza, Dar es Salaam, Kagera, Tabora, Geita* and *Kigoma*. Cases in *Arusha, Mbeya/Songwe, Simiyu, Rukwa, Lindi* and *Njombe* are more or less in proportion to

**Table A7.2: Regional distribution of LOS convictions and fines paid, 2008-16**

	Region	Convict-ions	Population rank	Variance	Fines Shs '000
1	Dodoma	45	8	7	26,870
2	Mbeya/Songwe	39	3	1	30,150
3	Ruvuma	35	17	14	9,492
4	Coast	30	20	16	50,800
5	Shinyanga	27	15	10	18,100
6	Mara	26	10	4	13,400
7	Kilimanjaro	22	13	6	9,050
8	Singida	22	18	10	5,001
9	Mtwara	21	19	10	15,550
10	Dar es Salaam	20	1	10	18,250
11	Manyara	18	16	5	20,060
12	Iringa	17	22	10	10,650
13	Arusha	15	12	1	8,550
14	Morogoro	13	6	8	20,500
15	Tanga	10	9	6	3,800
16	Simiyu	10	14	2	16,500
17	Kigoma	9	7	10	4,900
18	Mwanza	9	2	16	12,600
19	Tabora	8	5	14	7,900
20	Geita	7	11	9	0
21	Njombe	7	24	3	0
22	Rukwa	3	21	1	0
23	Kagera	2	4	19	1,000
24	Lindi	1	23	1	1,000
25	Katavi	0	25	0	

their populations. At 7.7, the average variance (difference between regional population ranking and number of LOS cases ranking) is large, suggesting a significant mismatch between regional population distribution and the investigation of accusations of corruption. A glaring example is Dar es Salaam, which is by far the largest region in the country, but only the tenth in terms of convictions for corruption. This underrepresentation of Dar es Salaam is particularly noteworthy, given Dar's likely high concentration of corrupt behaviour as defined by the 2007 PCCA.<sup>107</sup>

The correlation between regional population size and fines paid is also weak (variance of 6.8), with a relatively small region like Coast paying more in fines than larger regions, including Kagera, Geita and Tabora which pay relatively little. Dar es Salaam, by far the largest region,

<sup>106</sup>

[http://www.tzdpq.or.tz/fileadmin/documents/dpg\\_internal/dpg\\_working\\_groups\\_clusters/cluster\\_2/water/WSDP/B ackground\\_information/2012\\_Census\\_General\\_Report.pdf](http://www.tzdpq.or.tz/fileadmin/documents/dpg_internal/dpg_working_groups_clusters/cluster_2/water/WSDP/B ackground_information/2012_Census_General_Report.pdf). Mbeya (second Region listed) accounted for 35 cases and Songwe for 3. Songwe Region was created in 2016.

<sup>107</sup> Dar accounts for nearly 12 percent of the country's population but under five percent of the LOS sample.

is ranked 6th in terms of fines paid. The total value of fines paid, averaged over the 8 years of the LOS, is just Shs38m, less than USD0.2m at 2014 exchange rates. If the LOS is representative, all convictions between 2008 and 2016 would yield less than USD0.4m a year.<sup>108</sup>

### A7.3 Losses involved in LOS cases

Full information exists on the amounts lost to corruption for only 183 of the 416 cases (44 percent) in the LOS database. **Table A7.3** should therefore not be taken as representative of the database.

**Table A7.3: Amounts involved in a non-representative sample of LOS cases (Shs)**

Amounts involved (Shs)	Number of cases	Total Shs	Average Case Shs	Percent cases	Percent Shs
4,000 to 100,000	88	4,611,000	52,000	48	1
110,000 to 500,000	51	12006000	235,000	28	3
570,000 to 5m	26	50621086	1.9m	14	13
5m to 65m	18	316671770	18m	10	82
Total	183	383,909,856	2m	100	99

The average case involved just over Shs2m. Nearly half of cases (48 percent) accounted for only one percent of total cash involved. Over three-quarters (76 percent) of all cases for which data are available involved less than Shs0.5m (US\$222); these cases account for only 4 percent of all cases. A third of cases (31 percent) were for Shs 50,000 or less. By contrast, cases involving from Shs5m to Shs65m accounted for only 10 percent of all cases but for 82 percent of all the money involved. Though not necessarily reliable, these numbers are consistent with the view that PCCB focuses largely on petty rather than grand corruption.<sup>109</sup> At Shs 2m (US\$890), the average corruption case recorded is quite minor, and the entire amount reported for 183 cases (equal to US\$170,000) would not qualify as a case of 'grand corruption' by Tanzanian standards.

<sup>108</sup> February 2014 exchange rate: USD1 = TShs1,600. These estimates are very speculative.

<sup>109</sup> One outlier not included in the above computations is the Mramba/Yona case, listed in the LOS, which was said to be worth Shs11.7bn. If included, this one case would account for 97 percent of the total losses recorded! The main text reports that this sum is substantially less than the US\$50-70m said to have been lost to the Treasury through the Alex Stewart scam.

## A7.4 Sentences

Those found guilty under the 2007 PCCA are normally presented with a choice between paying a fine or going to jail, and possibly to return stolen money to pay for the loss caused. A quarter of all convictions only involved payment of fines; the remainder were given jail sentences. In 216 cases in the LOS database a choice to go to jail or to pay a fine was recorded. Very few cases actually show what decision was taken by the accused.<sup>110</sup> Consequently, **Table A7.4** describes the sentences meted out to those convicted of corruption, not sentences served. The average sentence was just over two years (25months) and the modal sentence 36 months (three years). If all sentences were fully served, total incarceration would have amounted to 867 years, equal to about 13 Tanzanian lifetimes.<sup>111</sup>

**Table A7.4: Sentences delivered (months)**

Sentence (months)	Number sentenced	Total months
None	106	0
1	1	1
3	1	3
6	12	72
9	1	9
12	37	444
18	3	54
24	67	1,608
36	128	4,608
48	14	672
54	1	54
60	31	1,860
72	5	360
84	5	420
120	2	240
<b>Total</b>	<b>416</b>	<b>10,406</b>

<sup>110</sup> In 13 cases, the decisions made were unclear, usually because a group of people were mentioned or the accusation which was made was not clearly stated.

<sup>111</sup> Average Tanzanian life expectancy (2017): 65.5 years. See: <https://www.google.com/search?q=life+expectancy+tanzania&og=life+expectancy+Tanzania&qs=chrome.0.016.8928j0j7&sourceid=chrome&ie=UTF-8>. Though the maximum sentence under the PCCA is seven years (84 months), the LOS contains two cases of ten-year sentences, and other similar examples are contained in Appendix 6.

## A7.5 Fines

**Table A7.5** reports the total value of fines imposed in nominal shillings.<sup>112</sup> The average fine imposed was less than half of the average amount lost. The average fine in the 302 recorded cases was just over Shs 900,000 compared to an average loss of about Shs 2m. (**Table A7.2**).

The modal fine was Shs5m. In 111 cases where no fines were paid, it is assumed that jail sentences were served, meaning that more than a third (36 percent) of those convicted went to jail.

Fines were not paid in more than a fifth (21 percent) of cases, again suggesting that many poorer culprits of petty corruption could not pay the minimum fine and were sent to jail instead. To those involved in larger-scale corruption, the fines imposed are trivial.<sup>113</sup>

Fines imposed totaled Shs275m for the 2008-16 period, an average of Shs 31m a year. Dar es Salaam ranked sixth in fine payments,<sup>114</sup> behind Coast, Mbeya, Dodoma, Morogoro and Manyara regions (**Table A7.2**). Coast region collected more than two and a half times the fines collected in Dar es Salaam.<sup>115</sup>

**Table A7.5: Fines imposed, Shs million**

Amount	No	Total Shs	Amount	No.	Total Shs
Zero	111	0			
0.004	1	4,000	1.20	1	1,200,000
0.01m	2	20,000	1.40	1	1,400,000
0.05	5	250,000	1.50	8	12,000,000
0.10	28	2,800,000	1.60	1	1,600,000
0.15	9	1,350,000	1.70	1	1,700,000
0.16	1	160,000	1.80	2	3,600,000
0.20	30	6,000,000	1.90	2	3,800,000
0.28	1	280,000	2.00	13	26,000,000
0.30	32	9,600,000	2.30	1	2,300,000
0.35	4	1,400,000	2.40	2	4,800,000
0.40	8	3,200,000	2.50	1	2,500,000
0.45	2	900,000	2.80	1	2,800,000
0.49	1	490,000	3.00	3	9,000,000
0.50	66	33,000,000	3.50	1	3,500,000
0.502	1	502,000	3.75	2	7,500,000
0.55	2	1,100,000	4.00	3	12,000,000
0.60	14	8,400,000	5.00	4	20,000,000
0.70	4	2,800,000	5.50	1	5,500,000
0.75	1	750,000	9.00	1	9,000,000
0.80	2	1,600,000	10.0	1	10,000,000
			0		
0.85	1	850,000	11.0	1	11,000,000
			0		
0.90	4	3,600,000	14.0	1	14,000,000
			0		
1.00	30	30,000,000	Tot	302	275,356,000
			al		
1.10	1	1,100,000			

<sup>112</sup> As with fines versus sentences, the table reports the notional fine, not actual amounts paid.

<sup>113</sup> The likelihood of being apprehended is, in any case, extremely low for the more seriously corrupt.

<sup>114</sup> See **Table A7.1** above. Fines collected by PCCB are to be forwarded to the treasury, but there is no information on the how the process functions in practice. PCCB is not audited by the CAG.

<sup>115</sup> It is possible, however, that a number of much larger corruption cases have not been included in the LOS.

## A7.6 Nature of corrupt acts committed

**Table A7.6** categorises the corrupt acts for which LOS subjects were charged and found guilty.

**Table A7.6: Nature of corrupt acts**

Offence	N=	Percent
Request a bribe (24), request and receive a bribe (180)	204	49
Document misuse, forgery	66	16
Misuse of authority	52	13
Offer a bribe (13), offer and give a bribe (10)	23	6
No data (38)	38	9
Other <sup>116</sup>	31	7
<b>Total</b>	<b>414</b>	<b>100</b>

Extortion (requesting a bribe) is the most common offence in the LOS, accounting for half of all cases. Offering and paying a bribe are much less common (six percent of cases) than other misdemeanors, including the misuse of position and forging documents. Local government officials embezzle public funds (council budgets, development projects) while citizens forge certificates and impersonate others. Some examples of corrupt practices punished by PCCB are listed in **Box A7.1**.

### **Box A7.1: A selection of corrupt practices punished by PCCB, 2008-16**

#### **Requesting a bribe (extortion)**

- To settle an outstanding invoice
- Not to report a charge of murder
- To obtain a favourable court judgement
- To obtain release from police custody
- To get approval of an issue before a local council

#### **Embezzlement**

- Breaking public procurement regulations in tendering
- Charging/claiming for activities (development projects, seminars) that have not taken place
- Payment of ghost worker

#### **Offering a bribe**

- To avoid arrest over unauthorised gun ownership
- To release an impounded vehicle

#### **Forgery**

- Forging diploma to deceive a public servant
- Using someone else's certificate to seek employment

Common practices that did not feature in the LOS were: corruption among traffic police (no cases), cultivation and trade in marijuana (one case) and the production and sale of charcoal (one case), all of which are common throughout Tanzania.

<sup>116</sup> Corrupt transaction (12), breaking laws and regulations (10), use status to steal money or property (6); misbehaviour in court case (1); avoiding legal action (1); perjury (1).

## A7.7 Occupational background and gender of LOS subjects

Table A7.7 presents the occupations of LOS subjects.

Table A7.7: Occupational background of LOS subjects

Occupation	N=	Percent
Local government (139); Accounts (18); Education Department (2)	159	39
Local politician	77	19
Farmer	26	6
Businessman/woman	26	6
Private employee	26	6
Police, militia	20	5
Teacher	18	5
Medical	18	5
Central government	16	4
Legal	9	2
Aid employee	5	1
National politician	5	1
Journalism (4), Religion (3), Other (2)	9	2
All	414	101

Two-fifths of those sentenced for corruption worked in local government departments, and a further fifth were local politicians. Non-state actors, including farmers, businesspeople, private employees, lawyers and aid workers, accounted for nearly a third (31 percent) of the data set. Although surveys show that citizens are most likely to experience corruption in interactions with the police, health services and other service providers, less than a fifth (17 percent) of convictions involved these groups.<sup>117</sup>

Less than a tenth (9 percent) of LOS subjects were women. No figures could be found on the gender distribution of state employees that would indicate whether this is a representative distribution of cases.

Some further data analysis possibilities are discussed below.

<sup>117</sup> Police/militia, health, teaching, and legal.

## **A7.8 Further analysis**

Further analysis of the LOS would yield further insights into the nature of PCCB convictions. Though the big picture is relatively clear, it would be interesting to know the relationship between occupational background and the cases brought and punishments meted out to proven offenders. One of the main findings of this review of PCCB performance is that fines and prison sentences are disproportionately harsh for petty offenders and disproportionately lenient for major offenders.

Though this trend is quite clear from the evidence produced, it has not been quantified. Another incongruity is the apparent lack of consistency in sentencing for the same or similar offence. While sentencing and fining are vulnerable to bribery and extortion, there are instances of different magistrates and judges handing out different penalties for the same or similar offence.

Overall, however, the most harmful anomaly remains the 2007 PCCA, which allows for very petty offences to be punished with a minimum TShs 0.5m fine or a minimum three-year jail sentence while the few perpetrators of large-scale corruption who are actually prosecuted either go free or receive disproportionately mild fines or sentences. PCCB have publicly acknowledged these anomalies for some time, but the legislation is yet to be revised.

## Appendix 8: PCCB's response to the draft report

This appendix contains PCCB's response to the draft report that was forwarded to the Bureau in early June, 2018. The review team responded to the issues raised point by point ('Response' below). The team thanks PCCB staff for taking time to comment in detail on the draft report.

[To]: **Coordinator-policy forum**

We have read the document by the Policy Forum with respect to the PCCB's performance issues. Here are our general measured opinions and observations

- (1) The report has predominantly overly-relied on the secondary data (published materials) with absolutely no collaboration of data from the primary sources to reinforce secondary data with the key informants from the PCCB for clarifications or verifications of some issues under investigation. In the same vein, the conclusions have largely been drawn on the basis of the LIST of SHAME reports. In our view, integration of both primary and secondary data would have provided a better understanding of the PCCB's performance from different vantage which is critical in a scientific inquiry. This is, in our measured opinion, one of the serious flaws of the report.

*Response. PCCB data are the main empirical sources on which the report is based. The primary sources used are from PCCB's website, in particular performance data from 1999 to 2016 and the List of Shame, covering 2009 to 2017 (chapter 4.4, Appendix 6). These provide a reasonable basis on which to assess PCCB's performance in corruption control. The reviewers' requests to access PCCB's library and to interview PCCB staff in Dar es Salaam and Arusha were not granted, on security grounds. The reviewers managed to download PCCB Annual Reports for 2012/13 and 2014/15 from the internet. A written request for hard copies of recent Annual Reports was denied. The only other document providing some primary data was received from PCCB on 21<sup>st</sup> June. This document has been incorporated into the final draft of the report. Despite several requests, PCCB did not provide the team with current or historical trend data on PCCB operations, budgets or staffing, which appear to be state secrets. The incomplete nature of the review is in large part the result of PCCB's refusal to share information. PCCB are well aware of the above, and it is disingenuous to refer the reviewers to 'primary sources' to which access was denied. The LOS and performance data are primary sources that have been thoroughly analysed.*

- (2) Judgmental and contradictory statements

In one of the areas the report claims that the expansion of PCCB to the regions has chiefly focused on the small-scale corruption in village and ward level

investigation! This statement is not only contradictory but also judgmental in nature. While the researchers that the PCCB's poor performance is to the greatest extent marred by weak institutional capacity [the view which we also subscribe to], the same report asserts that the expansion of the Bureau to the regions and districts is unimportant. In this regard, two nagging questions remain unanswered. Do the researchers mean that all the government's efforts to address petty corruption, which causes serious annoyance to many common Tanzanians wastage of time? Or does it connote that the government (in the name of the PCCB) should wholly and only focus on the high-profile corruption cases (popularly known as grand corruption) at the expense of, as their report claims the 'small scale corruption'? These questions are important and for this reason, may require clarifications from the researchers themselves; otherwise they seem to generate more heat than light and as such, affect the authenticity of the report. Besides, meticulous reading between the lines, a critical thinker gets an impression that the writers had their own pre-determined conclusions that are not supported by strong empirical evidences.

*Response: The claim that the expansion of PCCB activities to the regions and districts has 'chiefly focused on the small-scale' corruption is well supported in the draft report (see for example Chapter 4.1). Since receiving the draft report, PCCB have had ample time to provide primary data to challenge this claim. The team sees no contradiction between identifying capacity constraints as a general issue for PCCB and claiming at the same that the expansion of up-country activities has had the result suggested. The team agrees that petty corruption is a major issue for ordinary people. However, the draft report points out that, first, the focus on small-scale corruption does not target corruption in service delivery very efficiently (Chapter 4.2, Chart 4.2), and second, that by not focusing on priority activities, given its limited resources, PCCB has been unable to dispatch its core mandate effectively, as shown for example by the low prosecution and conviction rates. It is regrettable if the reader suspects 'pre-determined conclusions' when reading the report. Every effort has been made to maintain strict neutrality in reviewing the available evidence. The Bureau is at liberty to come up an alternative interpretation of the sources cited, plus others sources to which the reviewers did not have access, to challenge the conclusions presented in the draft report. For example, if PCCB were to share statistics on their staff deployment nationwide, or recent budget trends, they would be able to disprove any misinterpretations in the draft report. The reviewers are ready at all times to cite additional basic information that PCCB may avail.*

### (3) The meaning of 'operational independence' of the Bureau

The report claims that on several occasions, donors have been critical about the lack of operational independence of the PCCB and its failure to prosecute in particular the senior political officials. The researchers need to understand that the PCCB is a government institution. According to the PCCA 11/2007, Sec. 5 of the Act, expressly states that PCCB is an independent body empowered by the law to prevent and combat Corruption on the Country. Also time and again, the President of the United Republic of Tanzania H.E Dr. John Pombe Magufuli has reiterated his commitment to fight corruption and all forms of malfeasances mercilessly without fear or favor and that he will never make any interference with the PCCB's operations.

The researchers need to understand that the question of “Independence” has been one of the areas of contention in the world of anti-corruption and good governance discourses. So far, the meaning as to what really constitutes the operational independence of ACAs is still unpersuasive. Additionally, the independence which most donors and other development partners persistently claim is not *absolute* but its real meaning as of necessity is better understood in *relative* terms. They also need to be informed that the PCCB is a government institution under the Executive control and direction. Being a government institution, it goes without saying that, the PCCB receives its budget from the main government coffers and what the donors do, is to supplement where the government cannot reach in terms of funding its operations. Here comes a question, can the researchers give us one good model where the public anti-corruption agency which is wholly funded by the government operates completely independently with no guidance or direction from the central government? If any, we will be very glad to learn from that case. As far as we understand, not only in developing but also in developed countries that ideal model does not exist. The operational independence which the donors claim is more often than not, a matter of desire but not feasible in practice. However, in Tanzania, the PCCB operationally enjoys fully independence in its functioning and we can bold say without hesitation that ‘independence’ has never been an obstacle at all to impair the efficient and effective execution of our core mandates. Put simply, the Presidency does not dictate what the Bureau should do and not do. However, in all its operations, the Bureau operates professionally, objectively and more importantly, in accordance with the law.

*Response: The point that the independence of PCCB should be seen in relative rather than absolute terms is well taken. The team understands that it is unrealistic in current circumstances to expect the executive to voluntarily cede oversight of PCCB to the legislature. This does not contradict the view, however, that de facto control of the Bureau’s investigatory and prosecutorial powers allows the executive to protect senior politician and officials against criminal prosecution. The report highlights President John Magufuli’s unprecedented commitment to fighting corruption, but President Magufuli has also expressed his frustration at the extreme slowness of the Tanzanian criminal justice system, including PCCB, as demonstrated by the non-prosecution to date of major corruption cases, including IPTL/Escrow and EGMA (See chapter 4.5), in which senior officials are heavily implicated. As to the question ‘can the researchers give us one good model where the public anti-corruption agency which is wholly funded by the government operates completely independently with no guidance or direction from the central government?’, the reviewers stress that there are degrees of ‘guidance or direction’ and Tanzania is nearer to the ‘total executive control’ model than to the ‘free of political interference or control’ model. For comparative purposes, in the recent past, the former presidents of South Africa, South Korea and Brazil and the former prime ministers of Malaysia and Pakistan, and their families have been barred from vying for political office, indicted, sentenced and/or imprisoned, and property confiscated. To date, Tanzania has imprisoned two former cabinet ministers for relatively short sentences and imposed minor fines.*

#### 4. Factors explaining the PCCB performance trends.

From the report, one gets an impression that the performance of the PCCB is only and better measured by jailing as many corrupt people as it could or by opening as many grand corruption cases as possible! This view is erroneous. The

researchers need to understand that effective corruption prevention is more than just jailing the so called senior political and bureaucratic officials engaged in grand corruption cases. In our view, this is yet another fallacy found in the report to think that people are corrupt because those who wield powers and influence are not jailed. Effective corruption controls and prevention always takes a multi-dimensional approach because by its nature corruption is a complex social vice. Cognizance of that fact, the PCCB has adopted a three-pronged approach. This approach includes prevention, education and investigation and prosecution. Tanzania as a country cannot brag that we are effective in the battle against corruption because we have so many people 'big fish' in jails or dragged in court. The researchers need to understand that jailing people is a short lived solution although it is an integral part of any successful fight against corruption. In our view, the researchers seem to seriously down play the centrality of systems' strengthening and public awareness programs as the key pillars in the war against corruption.

*Response. The commentator argues that the number of prosecutions of senior officials should not be the only criterion by which to assess performance, a position with which the team agrees. The team believes, however, that it is entirely legitimate to consider the number and incidence of high-level prosecutions and convictions/confiscation of property as reasonable indicators of performance. The fact that there are effectively no major sanctions exercised against the most corrupt elements in Tanzanian society can hardly be dismissed as irrelevant if the likelihood of being caught and punished is to constitute a credible deterrent. (Even the few petty-corruption convictions can hardly constitute a serious deterrent). If PCCB downplays the importance of punishing large-scale wrong-doing, then it is unclear how it will comply with presidential directives to bring major cases to court and punish the guilty as a matter of urgency.*

*The report is accused of implying that 'people are corrupt because those who wield powers and influence are not jailed.' It is regrettable if this impression is given by the report. Numerous sections contain arguments suggesting that political factors influencing the nature and incidence of corruption contribute to the inability of the state, including PCCB, to address corruption efficiently or effectively (Chapter 5.2 and Appendices 1 and 2). PCCB is invited to present evidence demonstrating that prevention and education have any significant effect on attitudes towards corruption (Chapter 5.2 discusses public attitudes at length).*

#### 5. How has PCCB fared in terms of performance over the last two decades

In our view, one of the greatest weaknesses of this report is the researchers' tendency to jump into conclusions on the basis of mere scrappy pieces of comments/quotes to suggest the all time PCCB's performance trends. For example, throughout the report, there has been an emphasis that the Bureau has poorly performed over the last two decades because of registering a small fraction of cases reported and investigated and that the number of convictions is low. This statement is sweeping and judgmental; the researchers ought to have gone further to consult the relevant and competent authorities say, the Director of Investigations (DOI), Deputy Director General (DDG) and more preferably, the Director General (DG) of the Bureau for verifications and clarifications of some pertinent performance issues. In our strongest opinion, despite the operational

challenges, the current situation on the ground is different. The researchers also need to understand further that a journey from the reception of a corruption complaint (allegation) up to the delivery of the final verdict in court, is too long-drawn-out and indeed complex which involves several public actors from the different law enforcement organs and not the PCCB alone as the researchers would wrongly want us believe.

*Response: The 'scrappy pieces of comments/quotes' mentioned above could have been less scrappy had more public information been available concerning, among others, PCCB's finances and nationwide activities. If the report failed to provide convincing arguments in support of its analysis of performance, it is at least partly because the necessary information has not been availed to the public, or shared with the reviewers, who were effectively denied access to basic information as described above. If the Bureau wishes to avail the requested data to the reviewers, they will be happy to include it in any further analysis.*

*The last point made by the Bureau is legitimate, and the report makes it on numerous occasions (Chapter 4.5).*

#### 6. A claim that the donors and PCCB relationship is inadequate

A claim the PCCB has not been ready to accept the donors proposed technical aid conditionality due to inadequate shared understanding! The researchers need to understand that the PCCB can only accept the donors' aid conditions as long as they will ultimately promote the performance of the PCCB in particular and the nation at large. Otherwise not every donor's conditionality is good and hence acceptable. The PCCB must first discern what it believes to be a *fact* from *fiction*, and to sift critically between the important and unimportant ones to guide its decisions.

*Response: The team is not commenting specifically on whether PCCB should bow to donor conditions, or whether donors should impose conditions at all, but is reporting evidence that donors have perceived PCCB to be slow in implementing agreed 'conditions'. Disregarding agreed conditions is different from rejecting assistance on the grounds that conditions are unacceptable (Appendices 3 and 5).*

#### 7. General observations

1. We tend to agree in some way with the report that the PCCB's performance is to the greatest extent marred by derisory institutional capacity.
2. However, most of the report's conclusions are anchored on fragmented pieces of secondary data without any collaboration from the primary sources. It could have been more logical for the researchers to arrive at the generalizations after cross-checking the authenticity of the published data from the key PCCB's informants.
3. The report's conclusions suggest that the best way the PCCB can only shine is to jail as many people as it could especially those found guilty of grand corruption. This is absolutely off beam and a serious misconstruction of the government approach to corruption prevention.

4. The researchers have advanced their arguments from the civil society lens by overly criticizing without appreciation of some remarkable interventions the government has taken from time to time in the fight against corruption. In our view, the conclusions are activism-driven. However, despite the methodological and conceptual weaknesses found in the report, there are areas, we think the PCCB needs to critically and objectively re-examined itself with a view to taking necessary measures to rectify the performance pathologies indicated in the report to stimulate superior performance

#### Response

1. *The team fully agrees with PCCB that the quantity and quality of the Bureau's key staff are inadequate to allow it to effectively perform its core functions. However, the team disagrees that inadequate capacity is the sole constraint on performance, or that recruiting additional staff would address 'the problem'. The report is at pains to quote the Bureau's own monitoring data and the List of Shame (Chapter 4.4) highlighting the multiple factors that contribute to low prosecution and conviction rates, particularly for major offenders. The prosecution rate has not increased significantly since 2008 despite a tenfold increase in PCCB personnel. Other sources cited in the text suggest that the criminal justice system itself is not immune to the malpractices it is mandated to combat (Chapter 3.3, Appendix 4).*
2. *The team has addressed this issue above. It is true that the evidence on which the report bases its conclusions is full of gaps. The fault for this lies largely with PCCB. The team engaged as fully as it could with the Bureau's key informants. Still, neither the present critique of the draft report nor earlier documents forwarded by the Bureau have furnished primary data with which to address the identified gaps in the narrative.*
3. *The claim is an interpretation of the report's conclusions which the review team refutes for reasons discussed above.*
4. *'Activism-driven' conclusions. The report acknowledges the government's 'remarkable interventions' but also examines critically the performance of the bureau seen through a public policy lens. In its attempt to be fair and objective, the report and its Appendices are also critical of the effectiveness of donor interventions. The objective of the review is not to throw stones at PCCB, an agency that works under considerable financial, human and governance constraints, but rather to initiate a public debate concerning the best way forward in corruption control in the public interest. Self-examination is laudable, but without a full and inclusive review of the country's current approach to corruption control, including PCCB's performance, it is very unlikely that the Bureau will be able to address the issue effectively.*

*Policy Forum looks forward to a full and frank engagement with PCCB in the vital and daunting task of addressing corruption of all types effectively and efficiently.*







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